UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUNE SHEW, et al.	:	
Plaintiffs	:	CIVIL ACTION NO.
	:	3:13-CV-00739-AVC
	:	
v.	:	
	:	
DANNEL P. MALLOY, et al.	:	
Defendants	:	January 7, 2014

DEFENDANTS' REPLY BRIEF IN FURTHER SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiffs bear the burden in this case to establish that the Second Amendment protects an individual's right to keep and bear military-style semiautomatic firearms and large capacity magazines. Despite extensive briefing and evidence, Plaintiffs have not carried their burden to make this threshold showing and summary judgment for Defendants is therefore appropriate. Defendants have provided this Court with evidence demonstrating: the military origins of the banned firearms and magazines; their disproportionate lethality, injuriousness and use in crime relative to their market presence; the decades-long restrictions on their use and possession by civilians; the absence of evidence that they are actually commonly used for self defense; and that many lawful alternative firearms with which Plaintiffs can exercise their Second Amendment rights which remain available. Defendants' evidence establishes not only that the small subset of

firearms and the magazines prohibited by the Act[1] are not protected under the Second Amendment right announced in *Dist. of Columbia v. Heller*, 554 U.S. 570, 626-28 (2008) ("*Heller*"), but also that the Act survives constitutional scrutiny even if they are. Plaintiffs fail to provide this Court with admissible evidence on these key points to dispute, or even address Defendants' evidence. For that reason, this Court should grant summary judgment in favor of Defendants.

II. ARGUMENT

A. Plaintiffs Have Failed to Satisfy Their Burden To Establish That The Second Amendment Protects Military-Style Firearms And Magazines.

As Plaintiffs well know, the Second Amendment does not apply to all weapons and does not provide a "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Heller,* 554 U.S. at 623, 626, citing *United States* v. *Miller,* 307 U.S. 174, 178-82 (1939). Moreover, even after *Heller,* longstanding gun regulations that apply both in the home and in public are "presumptively constitutional". *Heller*, 554 U.S. at 626-27 and n.26. Defendants have presented this Court with extensive evidence demonstrating that military-style firearms and magazines fall outside the purview of the Second Amendment, and Plaintiffs have not seriously disputed that material evidence.

Specifically, Defendants have shown that assault weapons and LCMs have been used in gun crime at rates two to eight times more than their presence in the civilian gun market, and that criminals who commit mass killings and kill police disproportionately select assault weapons and magazines. (Exh. 26, Koper Aff. at ¶¶7, 14, 17- 24, 30, 47, 87-88). There also is no dispute that mass killers have selected assault weapons and/or LCMs in over half of the mass public

[1] "An Act Concerning Gun Violence Prevention And Children's Safety," Public Act 13-3 as amended by Public Act 13-220.

shootings in the past thirty years, and that those mass killing incidents that involved assault weapons resulted in an average of nearly three more lives lost, and two times as many people shot but not killed, compared to non-assault weapon cases. (Exh. 70, Koper Suppl. Aff. at ¶¶13-14); Def. Exhs. 44-46). The horrific events in Newtown on December 14, 2012 provide another example of this sad truth. The shooter in Newtown fired 154 rounds from a Bushmaster XM-15 AR-15 assault rifle in Sandy Hook Elementary School in just five minutes killing twenty young children and six educators. (Def. Exh. 71, A118). He carried on his person over thirty pounds of guns and ammunition and had available an additional 312 live rounds on or near his person when he killed himself with a Glock pistol. (Def. Exh. 71 p. 22 and A141).[2] Because Plaintiffs cannot rebut these objective facts, they instead seek to minimize the importance of them by contending, remarkably, that "the frequency of mass shootings is irrelevant" to the constitutional inquiry and also pointing out "civilians are rarely murdered with banned weapons" (Doc. #111, Pl. 56(a)(2) stmt, p. 75, ¶¶ 79.2-79.3). Presumably, Plaintiffs believe that for these reasons a legislative response to the devastating mass killing in Newtown was therefore unwarranted.

Defendants have shown that not only is Connecticut's legislative response to the Newtown shooting incident appropriate, it will be meaningful. Defendants' evidence demonstrates that gun crime incidents involving assault weapons and LCMs result in more people being shot, as well as more gunshot wounds per victim. Looking at just LCM gun crimes alone, Defendants have demonstrated that, in gun crime incidents in which LCMs are known to have been used, more people were killed, many more people were shot, and the victims were

[2] The full 223 page appendix to the "Report of the State's Attorney for the Judicial District of Danbury on the Shootings at Sandy Hook Elementary School and 36 Yogananda Street, Newtown, Connecticut on December 14, 2012", which was published by the State's Attorney on November 25, 2013, can be located at http://www.ct.gov/csao/cwp/view.asp?q=535784 (last viewed January 7, 2014).

shot more times. (Koper Aff. ¶¶33-36). Mass public shooting incidents that also involved LCMs, like Newtown, provide a striking illustration of the disproportionate lethality of LCMs. In those mass public shootings involving LCMs, an average of four more people were killed and eight more people were shot than in non-LCM mass public shootings. (Koper Aff. ¶33). Significantly, if a person is shot more than once she has a 63% greater chance of dying. Defendants also have adduced compelling evidence that establishes that military-style assault firearms and LCMs result in far more death and injury and pose "a particularly grave risk due to their high firepower," *Heller II*, 698 F. Supp. 2d at 194. In short, Defendants have shown that the banned firearms and magazines are "dangerous and unusual," *Heller*, 554 U.S. at 627, and do not warrant Second Amendment protection. Plaintiffs do not seriously dispute these data - because they cannot – and have failed to satisfy their burden to show that Second Amendment rights are even implicated by the Act.

Defendants have also exposed the absence of any admissible evidence that assault weapons and LCMs are commonly used for self defense purposes protected by the Second Amendment. *Heller II*, 698 F. Supp. 2d at 194 ("assault weapons and large capacity ammunition feeding devices constitute weapons that are not in common use, are not typically possessed by law-abiding citizens for lawful purposes and are 'dangerous and unusual' within the meaning of *Heller*."). While it is Plaintiffs' burden to establish that actual use of assault weapons and LCMs for self defense is common, they have provided only conjecture and self serving statements of unqualified "expert" witnesses on this critical issue.[3] In contrast, Defendants have exposed the

[3] Defendants object, in whole or in part, to the affidavits of purported expert witnesses proffered by Plaintiffs in their opposition and main briefs. While the filing of separate motions to strike is disfavored in this district, *see e.g. Wanamaker v. Town of Westport Bd. of Educ.*, 3:11CV1791 MPS WIG, 2013 WL 3816592 (D. Conn. July 22, 2013), Defendants, nonetheless, wish to assert and preserve their objections to evidence and avoid reliance on inadmissible evidence in this

absence of material facts supporting the alleged need for a large capacity magazine for self defense. The evidence compiled by opponents of assault weapon and LCM restrictions indicate that the average number of shots fired in a lawful "defensive use of gun" situation is only about 2 rounds. (Def Exh. 61 at 16-17).

Defendants have also revealed the lack of evidence that citizens commonly use actual assault weapons in lawful self defense situations, as opposed to conventional handguns, shotguns and rifles, which remain legal under the Act. Plaintiffs have adduced absolutely no evidence connecting their statistics about the "defensive use of guns" to actual assault weapon use. And they certainly have not made a connection between actual self defense uses and their coveted AR-15 rifle, which is their primary focus in this litigation. Instead, Plaintiffs speak in generalities about the fact that guns, when used lawfully for self defense, provide a social benefit. (Doc. #111, Pl. 56(a)(2) stmt, p. 49, ¶¶ 56.1-56.4). There is no dispute that most gun owners use firearms lawfully and a few may actually find themselves in situations where it is appropriate to defend themselves with a firearm. What Plaintiffs neglect to acknowledge, however, is that the data about defensive gun use situations they point to do not provide a basis

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Court's summary judgment ruling. For example, this Court should not consider testimony of any witness held out as an expert who has not proffered qualifications that would warrant the admissibility of his "opinion" on any matter. (*See e.g.*, Doc. #111, Curcuruto Aff. ¶¶2, 10, 16, 21-22,). Also, Plaintiffs' expert witness testify to topics for which they are not qualified to provide opinions or which inappropriately encroach upon the role of this Court because they encompass the ultimate legal issues in this case. (*See e.g.* Doc. #61-11, Roberts Aff. pp. 9,10, 13, 14; Rossi Aff. #15-5, pp. 2, 4, 6, 9, Rossi Aff. #111-1, pp. 3-5, 9, 11; Kleck Aff. #15-13, pp. 8-9 and #111-3, ¶¶4-5, 7.) Plaintiffs' witnesses exceed the scope of their expertise by testifying to ultimate issues such as functioning of firearms, common use of assault weapons and LCMs by Connecticut citizens for self defense. They render their sweeping "expert" opinions without citation to authority or any foundation that they are actually experts in these areas. Accordingly, the Court should disregard those portions of their testimony for which they have not provided a proper foundation for their expertise.

to permit a finder of fact to conclude that assault weapons are actually commonly used in "defensive use of gun" situations. Indeed, given that assault weapons make up a miniscule percentage of the civilian gun market overall, it is most likely that the vast majority of those "defensive gun use" incidents highlighted by Plaintiffs involved non-assault weapons and non-LCMs, and are therefore not germane to the issues in this case. A conventional handgun, which the Supreme Court has described as "quintessential self-defense weapon," *Heller*, 554 U.S. at 629, is not impacted by the Act.

B. Even If The Second Amendment Protects Civilian Possession of Military-Style Firearms and Magazines, The Act is Constitutional.

Defendants have undisputedly demonstrated that military-style assault weapons and large capacity magazines pose an unusually dangerous threat to public safety and law enforcement, and that no evidence has been adduced by Plaintiffs that they are commonly used, or necessary, for self defense. Plaintiffs do not address or contravene Defendants' evidence on these critical issues, and that fact alone warrants dismissal of their claims. Nonetheless, should this Court proceed to analyze Plaintiffs' claims under the Second Amendment, judgment for the Defendants remains appropriate. Even under a Second Amendment analysis, the undisputed facts, which genuinely matter to any constitutional inquiry in this case, all militate in favor of granting judgment for Defendants.

1. In The Second Circuit, Only Laws that Impose A Substantial Burden on Second Amendment Rights Are Subjected to Heightened Scrutiny.

In the Second Circuit, gun laws that impose "[a] marginal, incremental or even appreciable restraint on the right to keep and bear arms . . . ." *Decastro*, 682 F.3d at 166, are not subjected to heightened scrutiny. Instead, heightened scrutiny is reserved for those enactments that "operate as a substantial burden on the ability of law-abiding citizens to possess and use a

firearm for self-defense (or for other lawful purposes)." *Decastro*, 682 F.3d at 166. Plaintiffs were required to show, in their opposition to Defendants' summary judgment, that the Act imposes a substantial burden on their right to keep and bear arms for self defense purposes, but they have utterly failed to make this required showing. As a consequence, the Act must be upheld under controlling Second Circuit precedent. Another district court in this Circuit reached exactly this conclusion regarding New York's newly enacted bans on assault weapons and LCMs. *See Kampfer v. Cuomo*, Docket No. 6:13-cv-82 (GLS/ATB) (N.D.N.Y. January 7, 2014) (Sharpe, C.J.) (attached hereto as Def. Exh. 73) (dismissing challenge to New York's assault weapon and LCM bans because they "[do] not substantially burden the fundamental right to obtain a firearm sufficient for self-defense." *Id.* at p. 17 quoting *Decastro*, 682 F.3d at 168-169).

The Act does not impose a substantial burden on Plaintiffs' right to keep and bear arms for self defense as a matter of law. Even after the effective date of the Act, there exist "ample alternative means of acquiring firearms for self-defense purposes" in Connecticut. *Decastro,* 682 F.3d at 166-68 and n.5. Defendants have conclusively established that many alternative firearms suitable for self defense remain legal and available in Connecticut, and Plaintiffs do not – because they cannot - dispute this fact. (Delehanty Aff. at ¶¶29-32; *see* Sweeney Aff. at ¶21). Nor is there any dispute that Connecticut citizens can continue to use many of the most popular pistols, revolvers, rifles and shotguns as firearms for lawful and responsible Second Amendment purposes such as self defense and home defense. (Delehanty Affidavit, ¶ 31). These facts on their own establish that the Act does not substantially burden Plaintiffs' right to keep and bear arms for self defense. *See Decastro,* 682 F.3d at 168. Moreover, Plaintiffs own evidence, even when viewed the light most favorable to them, establishes that lawful substitute firearms can be fired with speed and accuracy and that non-LCM ten round magazines can be changed quickly.

(*compare*, Pl. Videos Exhibits F, demonstrating 10 round magazine changes and Exhibit E "30 round aimed fire" with only 2 second difference), *see also, (*Pl. Video Exhibit L demonstrating the accuracy and firepower of alternative firearms which remain lawful).

2. Intermediate Scrutiny is the Applicable Standard of Review for Laws that Impose A Substantial Burden on Second Amendment Rights.

The Second Circuit has made clear that even those laws that impose a substantial burden on Second Amendment rights, which the Act does not, are scrutinized under an "intermediate scrutiny" standard of review.[4] *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 93 (2d Cir. 2012) *cert. denied*, 133 S. Ct. 1806 (2013); *Kwong v. Bloomberg*, 723 F.3d 160, 167-69 (2d Cir. 2013). As recently as a week ago, a court in this Circuit followed this controlling precedent and upheld a ban on assault weapons and LCMs because those restrictions are compatible with Second Amendment rights. *New York State Rifle & Pistol Ass'n v. Cuomo*, Docket No. 1:13-cv-00291-WMS (W.D.N.Y. Dec. 31, 2013) (Skretny, C.J.) ("NYSRPA") (attached hereto as Def. Exh. 72)[5].

[4] Plaintiffs' argument that Second Circuit precedent supports application of strict scrutiny because the Act restricts an entire class of firearms, (Pl. Opp. Br. p. 7, quoting *Decastro*, 682 F.3d at 166), is untenable. Unlike the law at issue in *Heller*, the Act does not restrict all handguns, nor does it restrict all rifles or shotguns, which are the categories that may appropriately be considered "classes of firearms." Since assault weapons make up only approximately 2% of civilian firearms, the Act leaves unaffected 98% of firearms, and many alternatives in each class remain legal, including semiautomatics. (Delehanty Aff. ¶¶29-32). Moreover, Plaintiffs' reasoning on this score is specious; by their logic each time a legislature lists weapons by name or descriptive feature it has established an "entire class of firearms." *Heller*. This statutorily created list is clearly not the type of "class of arms" to which the *Heller* decision refers. *Heller*, 554 U.S. at 628; *see also*, Def. Exh. 72, *NYSRPA* decision, p. 26 (rejecting plaintiffs' "entire class of arms" argument.)

[5] The plaintiffs in *NYSRPA*, who are represented by Plaintiffs' counsel in this case, also submitted affidavits from Dr. Kleck, Dr. Roberts, Mr. Rossi and Mr. Overstreet similar, if not identical, to their affidavits in this case. The District Court in *NYSRPA* did not find their testimony to be material to the issue of the constitutionality of New York's bans on assault weapons and LCMs.

Under intermediate scrutiny, legislative judgments regarding firearms regulations are accorded a wide degree of deference by federal courts, and the State need only demonstrate that the law is substantially related to an important governmental purpose. *Kachalsky*, 701 F.3d at 96-97. The Defendants not only satisfied that scrutiny standard in their summary judgment papers, they exceeded it. There can be no dispute that the State's interest in combatting the plague of gun crime and gun death across Connecticut is an important, indeed a compelling, governmental interest. *Id.* at 97. Plaintiffs' only dispute lies with questioning whether bans on assault weapons and LCMs really advance, or are substantially related to, this State interest. Defendants, in their well-supported motion for summary judgment, exhaustively demonstrated that Connecticut's interest in combatting gun death and injury is furthered by the Act.

The bans on assault weapons and LCMs significantly advance the State's interest in decreasing gun shot death and injury in this State. The record submitted by Defendants establishes that the military-style firearms and large capacity magazines restricted by the Act, which were specifically designed to kill large numbers of people in short periods of time, are "dangerous and unusual" and therefore not entitled to Second Amendment protection at all. This same record evidence is equally relevant to the question of whether the bans advance the State's interest in combatting gun shot death and gun shot injury. As extensively discussed in Defendants' main brief, (Def. Br., Doc. #78-1, pp. 17-28), and above, pp. 2-4, limiting civilian access to assault weapons and large capacity magazines has the potential to: (1) reduce the number of crimes committed with assault weapons and LCMs; (2) reduce the number of shots fired during gun crimes; (3) reduce the number of gunshot victims; (4) reduce the number of wounds per gunshot victim; (5) reduce the lethality of gunshot injuries; and (6) reduce the substantial economic and non-economic societal costs of gun crime. (Koper Aff. ¶ 10). Three

chiefs of police described the unique threat to law enforcement and the public posed by assault weapons and LCMs in their affidavits in support of Defendants' motion. (Mello Aff. ¶¶13-18, Rovella Aff. ¶¶13-20, 54, 56; Sweeney Aff. ¶15). One chief even recounted Connecticut's problematic history with assault weapons that led to the enactment of Connecticut's first ban on assault weapons twenty years ago. (Sweeney Aff. ¶¶7-11).

Plaintiffs have no response to the overwhelming weight of evidence establishing the disproportionate threat posed by assault weapons and LCMs. Lacking admissible evidence to dispute or rebut the testimony of credible and persuasive witnesses like Dr. Koper and the chiefs of police, Plaintiffs instead resort to dismissive characterizations of the evidence as "inherently unreliable" and mere "hopeful" statements. (Doc. #111, Pl. 56(a)(2) stmt, p. 67, ¶69). Plaintiffs attempt to marginalize and disparage Dr. Koper's analysis as mere "hopeful predictions" is unpersuasive. (*Id.* at p. 105). Neither Dr. Koper nor the General Assembly knows with complete certainty what the future impact of the Act will be, indeed many legislative enactments could be described as "hopeful predictions" of a legislative body. The lack of definitive empirical evidence to support a law does not render it unconstitutional. The most reliable data on the effectiveness of the Act will come after the Act is in effect and allowed to operate for an extended period of time. Then, and only then, will it be possible to obtain definitive results that can be evaluated by policy makers and citizens. (Koper Suppl. Aff. ¶¶3-4). The evidence the General Assembly had before it regarding assault weapon and LCM use in crime and the experience of other jurisdictions with restrictions on these weapons was sound, and the legislature reasonably relied upon it.

C. Plaintiffs' Equal Protection Claims Also Fail As A Matter of Law.

In their opposition papers, Plaintiffs persist in their claim that they are similarly situated to individuals who have a professional purpose for owning, procuring and training on assault weapons and using LCMs. Plaintiffs do not allege that the legislature exempted these groups with any animus toward them, nor do they allege the exemptions are inappropriate in all their applications. Instead, Plaintiffs object to where the legislature drew the lines, apparently believing that they know best to which professions and which hours of the day an exemption ought to apply.

As discussed above, Plaintiffs' right to keep and bear arms in self defense are not implicated by the Act, and they have no basis to claim a constitutional harm resulting from the policy judgments of the legislature that certain individuals, who act in certain professional positions, should be permitted to acquire assault weapons and LCMs for official use. Notably, Plaintiffs concede in their opposition – as they must - that they are not similarly situated to "off-duty" law enforcement. (Pl. Opp. Br. p. 24). Beyond that concession, Plaintiffs have the burden to establish through admissible evidence that they are similarly situated to each of the individuals that the Act treats differently, and that the exemptions for those individuals are irrational and serve no governmental purpose. They have plainly failed to do so. They have provided no information, affidavits or other evidence on any of these issues. Rather, they content themselves with relying on bald assertions that they are like armored car drivers, nuclear facility security personnel and members of the United States Military in the threats they face and their need to train on and use military grade weaponry. It is Plaintiffs' burden to make a showing that they are

similarly situated to these individuals, and they have completely failed to do so. Their equal protection claim should be dismissed accordingly**.**

D. Plaintiffs' Policy Arguments Belong In The Legislature, And Not This Court.

Much of Plaintiffs' opposition brief reads like a policy paper on why the General Assembly incorrectly concluded that the Act will decrease in gun crime death or injury in Connecticut. In their view, restrictions such as those contained in the Act will not prevent gun crime or gun deaths or injuries, and they therefore claim that their firearm choices are needlessly constrained. The General Assembly took a different view of the evidence, as was their constitutional right to do. Plaintiffs' only avenue of recourse to change or repeal the legislature's reasonable and supported policy judgment is through the legislative process, and not this litigation.

Plaintiffs note that the individual who committed the atrocities in Newtown "could have committed the same horrific acts with any number of firearms and magazines." (Pl. Opp. Br. P. 4). But he did not, and the legislature appropriately responded to the evidence from Newtown, Aurora, Tucson and other senseless mass public shootings, when it made its policy judgment that a small subset of semiautomatic assault pistols, rifles and shotguns along with large capacity magazines pose a disproportionately grave threat to public safety. The legislature's response to Newtown was reasonable and appropriate, and this Court must give "substantial deference to the predictive judgments of the legislature." *Kachalsky*, 701 F.3d at 97. Because "the legislature is 'far better equipped than the judiciary' to make sensitive policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks." *Id.*, quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 665 (1994).

Plaintiffs may ardently disagree with the policy choices made by the Connecticut General Assembly when it passed the Act, and they may genuinely prefer to own an AR-15 assault rifle for personal and recreational use. But their personal preferences are immaterial to the constitutionality of the Act. The Connecticut General Assembly has made a predictive judgment that restricting assault weapons and large capacity magazines will protect public safety, it left ample breathing room for the exercise of Second Amendment rights, and it is not this Court's place to second guess the legislature's judgment based on Plaintiffs' own policy arguments.

III. CONCLUSION

Because Plaintiffs have effectively conceded that they are not entitled to summary judgment by submitting a list of over seventy disputed issues of material fact, and because the facts material to Defendants' motion for summary judgment are not disputed by Plaintiffs, this Court should deny Plaintiffs' motion for summary judgment and grant Defendants' judgment in this case.

Respectfully Submitted,

DEFENDANTS
DANNEL P. MALLOY, et al.

GEORGE JEPSEN
ATTORNEY GENERAL

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

CERTIFICATION

I hereby certify that on January 7, 2014, a copy of the foregoing Defendants' Reply Brief was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUNE SHEW, et al.	:	**No. 3:13-CV-0739 (AVC)**
Plaintiffs,	:	
	:	
v.	:	
	:	
DANNEL P. MALLOY, et al.	:	
***Defendants*.**	:	**JANUARY 7, 2014**

DEFENDANTS' SUPPLEMENTAL EXHIBIT LIST

In additional to Exhibits 1-69, which were filed in support of Defendants' Motion for Summary Judgment on October 11, 2013, (Doc. # 78), Defendants also submit, as attachments to their reply brief, the following four additional exhibits in further support of their motion:

Exhibit 70 – Koper supplemental affidavit

Exhibit 71 – Sandy Hook Report of December 14, 2012 (with selected appendix attachments)

Exhibit 72 – *New York State Rifle & Pistol Ass'n v. Cuomo*, Docket No. 1:13-cv-00291-WMS (W.D.N.Y. Dec. 31, 2013) (Skretny, C.J.)

Exhibit 73 - *Kampfer v. Cuomo*, Docket No. 6:13-cv-82 (GLS/ATB) (N.D.N.Y. January 7, 2014) (Sharpe, C.J.)

Respectfully Submitted,

DEFENDANTS
DANNEL P. MALLOY, et al.

GEORGE JEPSEN
ATTORNEY GENERAL

BY: */s/ Maura Murphy Osborne*
Maura Murphy Osborne (ct19987)
Michael K. Skold (ct28407)
Assistant Attorneys General
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120
Tel: (860) 808-5020
Fax: (860) 808-5347
Maura.MurphyOsborne@ct.gov
Michael.Skold@ct.gov

CERTIFICATION

I hereby certify that on January 7, 2014, a copy of the foregoing Defendants' Exhibit List was filed electronically. Notice of this filing will be sent by electronic mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Maura Murphy Osborne
Maura Murphy Osborne

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUNE SHEW, et al.	:	
Plaintiffs	:	CIVIL ACTION NO.
	:	3:13-CV-00739-AVC
	:	
v.	:	
	:	
DANNEL P. MALLOY, et al.	:	
Defendants	:	January 6, 2014

SUPPLEMENTAL AFFIDAVIT OF CHRISTOPHER KOPER

Christopher S. Koper, Ph.D., declares and states, under penalty of perjury, as follows:

1. I am an Associate Professor for the Department of Criminology, Law and Society at George Mason University, in Fairfax, Virginia, and a senior fellow at George Mason's Center for Evidence-Based Crime Policy.

2. I submit this declaration to supplement an affidavit I submitted in support of Defendants' motion for summary judgment filed October 11, 2013 in this case. ("Koper Aff.").

3. I have reviewed Plaintiffs' opposition to Defendants' motion and I wish to reiterate and clarify for the Court several points.

4. First, Plaintiffs misrepresent my conclusions regarding the likely effects of Connecticut's ban on assault weapons and large capacity magazines. It is my expert opinion that Connecticut's ban on assault weapons and LCMs will, if it is allowed to operate over a period of time, potentially reduce the injuriousness and lethality of gun crime incidents. Plaintiffs state,

repeatedly, that because I did not find a reduction in gun crime overall during the period the federal ban was in effect that Connecticut's Act will be ineffective. It is my opinion that there is evidence to suggest that, if criminals are forced to use substitute weapons and magazines, that will reduce the number of shots fired in gun attacks, which could yield lower gunshot victimization rates and lower gun death rates.

5. Second, Plaintiffs contend that my conclusions are "inherently unreliable" and amount to "hopeful predictions." While I do make some predictions about the possible effects of Connecticut's Act in my affidavit, the predictions are grounded in data and analysis. In order to have definitive results about the effects of the Act, it is necessary to allow it to operate and to then study and evaluate the available evidence about its effectiveness.

6. Third, since submitting my affidavit in October 2013 in this case I have undertaken a second examination of the mass shooting data compiled by *Mother Jones* regarding the 62 mass shootings in the United States from 1982-2012, and have determined that, based on a one-feature assault weapon definition like that in Connecticut's Act, there is an even stronger correlation between the use of assault weapons and death and injury of victims in mass shootings.

7. In my initial affidavit, I relied upon the conclusions and analysis of a graduate student, Luke Dillon, who was working under my direction. In reaching some of his conclusions, Mr. Dillon relied upon a definition of assault weapon that was less precise than that contained in Connecticut's law and in proposed federal legislation. Mr. Dillon's reliance on that definition affected his conclusions about the injuriousness and lethality of assault weapons. I submit this supplemental affidavit to clarify this point and to provide for the Court an updated lethality analysis of the *Mother Jones* data.

8. In their study, the authors of the *Mother Jones* articles compiled data about the 62 mass shooting incidents that involved the death of four or more people over the period 1982-2012. (Def. Exhs. 44-46). When *Mother Jones* began its study, it did not use a well-defined definition of assault weapon, perhaps because it pre-dated recent legislative proposals in Congress and the states. For example, it is my understanding from reviewing the early *Mother Jones* data set, that *Mother Jones* characterized as an "assault weapon" some firearms that either were not clearly identified, did not have military-style features, or were not semiautomatic.

9. *Mother Jones* subsequently changed its approach in 2013, after U.S. Senator Diane Feinstein[1] introduced new federal legislation that defined an assault weapon as a semiautomatic firearm that can accept a detachable magazine that also has any one military-style feature.[2] After the one-feature test legislation was proposed, *Mother Jones* began using that definition of assault weapon in its analysis.[3]

10. I recognized that Mr. Dillon used the initial data from *Mother Jones* that was based on the less precise definition of assault weapon, and therefore decided to perform my own analysis applying the one-feature test definition. When I analyzed the 62 mass shootings compiled in the *Mother Jones* data using the one-feature definition of assault weapon, I found

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[1] S. 150, 113th Cong. (2013); *see* http://www.feinstein.senate.gov/public/index.cfm/assault-weapons-ban-summary.

[2] The definition of a large capacity magazine, which is a magazine that can hold more than ten rounds, has never been altered by the authors of the *Mother Jones* study. Also, the *Mother Jones*'s study finding that more than half of all mass shooters in the United States between 1982 and 2012 possessed assault weapons, large-capacity magazines, or both remains unchanged because the authors used the one-feature test definition of assault weapon in reaching this conclusion.

[3] *See* Mark Follman, Gavin Aronsen & Jaeah Lee, *More Than Half of Mass Shooters Used Assault Weapons and High-Capacity Magazines* (Feb. 27, 2013), *available at* http://www.motherjones.com/politics/2013/02/assault-weapons-high-capacity-magazines-mass-shootings-feinstein.

that in the 14[4] of the 62 mass shootings that involved the use of an assault weapon, as defined by the one-feature test, there was an even stronger correlation between assault weapons and injury and death of victims than I described in my initial affidavit.[5]

11. Initially, I informed the Court, based on Mr. Dillon's work, that an average of 11.04 people were shot but not killed in mass shootings involving assault weapons, compared to 5.75 people shot in non-assault weapon cases; and that 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. ¶ 23). I also reported that Mr. Dillon found that the average number of deaths was roughly the same between assault weapon and non-assault weapon cases, 8.23 and 8.31 fatalities, respectively.

12. When I conducted a new analysis of the *Mother Jones* data applying the one-feature definition of an assault weapon, I found an increase in the average number of fatalities and injuries in assault weapon mass shootings. Specifically, I found an average of 10.4 fatalities in mass shootings involving assault weapons, compared to 7.7 fatalities in non-assault weapon cases. I also found an average of 13.5 people injured in mass shootings involving assault weapons, compared to an average of 6.4 injuries in non-assault weapon cases.

13. In total, based on the one-feature definition of an assault weapon, I found that the average number of people killed and injured in mass shootings involving assault weapons was 23.9, compared to 14.0 in non-assault weapon cases.

14. It is my opinion based upon my analysis of the *Mother Jones* data set that the use

[4] Mr. Dillon concluded that 26 of the 62 mass shootings in the *MJ* database involved assault weapons but this was based on the less precise assault weapon definition first used by *MJ.* (Koper Aff. ¶ 22).

[5] I have not independently investigated or researched the mass shooting incidents reported by *Mother Jones* but am simply using the data as it appears in *Mother Jones*'s updated data set.

of assault weapons in mass public shootings has resulted in an average of almost three additional people killed per shooting incident and over double the number of people injured compared to those mass shooting incidents that did not involve assault weapons.

The foregoing is true and accurate to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

Christopher S. Koper, Ph.D.

STATE OF VIRGINIA)
)ss: Brambleton Virginia
COUNTY OF Loudoun)

Subscribed and sworn to before me, this 6th day of January, 2014.

Notary/ Commissioner of the Superior Court

SARAH YORK CONRAD
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7365612
My Commission Expires Nov. 30, 2014

CERTIFICATION

I hereby certify that on January 7, 2014, a copy of the foregoing Supplemental Affidavit of Christopher Koper was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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

Report of the State's Attorney for the Judicial District of Danbury on the Shootings at Sandy Hook Elementary School and 36 Yogananda Street, Newtown, Connecticut on December 14, 2012

OFFICE OF THE STATE'S ATTORNEY
JUDICIAL DISTRICT OF DANBURY
Stephen J. Sedensky III, State's Attorney

November 25, 2013

TABLE OF CONTENTS

APPENDIX[1]

Search Warrants

[1] Because of its volume, the Appendix to this report is published as a separate document. Some of the search warrants and reports contained in the Appendix have been redacted to meet court orders, exceptions to the Freedom of Information Act, protect the identity of witnesses, protect records of child abuse or personal identification information.

EXECUTIVE SUMMARY

The purpose of this report is to identify the person or persons criminally responsible for the twenty-seven homicides that occurred in Newtown, Connecticut, on the morning of December 14, 2012, to determine what crimes were committed, and to indicate if there will be any state prosecutions as a result of the incident.

The State's Attorney for the Judicial District of Danbury is charged, pursuant to Article IV, Section 27 of the Constitution of the State of Connecticut and Connecticut General Statutes (C.G.S.) Sec. 51-276 *et seq.*, with the investigation and prosecution of all criminal offenses occurring within the Judicial District of Danbury. The Connecticut State Police have the responsibility to prevent and detect violations of the law and this State's Attorney has worked with and relied upon the Connecticut State Police since the incident occurred.

Since December 14, 2012, the Connecticut State Police and the State's Attorney's Office have worked with the federal authorities sharing responsibilities for various aspects of this investigation. Numerous other municipal, state and federal agencies assisted in the investigation. The investigation materials reflect thousands of law enforcement and prosecutor hours. Apart from physical evidence, the materials consist of more than seven-hundred individual files that include reports, statements, interviews, videos, laboratory tests and results, photographs, diagrams, search warrants and returns, as well as evaluations of those items.

In the course of the investigation, both state and federal law enforcement personnel received a large number of contacts purporting to provide information on the shootings and the shooter. Although many times these "leads" would go nowhere, each one was evaluated and often required substantial law enforcement time to pursue. An abundance of caution was used during the investigation to ensure that all leads were looked into, despite the fact that more than 40 such "leads" proved, after investigation, to be unsubstantiated. Information that was substantiated and relevant was made part of the investigation.

It is not the intent of this report to convey every piece of information contained in the voluminous investigation materials developed by the Connecticut State Police and other law enforcement agencies, but to provide information relevant to the purposes of this report. While no report is statutorily required of the State's Attorney once an investigation is complete, it has been the practice of State's Attorneys to issue reports on criminal investigations where there is no arrest and prosecution if the State's Attorney determines that some type of public statement is necessary. Given the gravity of the crimes committed on December 14, 2012, a report is in order.

On the morning of December 14, 2012, the shooter, age 20, heavily armed, went to Sandy Hook Elementary School (SHES) in Newtown, where he shot his way into the locked school building with a Bushmaster Model XM15-E2S rifle. He then shot and killed the principal and school psychologist as they were in the north hallway of the school responding to the noise of the shooter coming into the school. The shooter also shot and injured two other staff members who were also in the hallway.

The shooter then went into the main office, apparently did not see the staff who were hiding there, and returned to the hallway.

After leaving the main office, the shooter then went down the same hallway in which he had just killed two people and entered first grade classrooms 8 and 10, the order in which is unknown. While in those rooms he killed the two adults in each room, fifteen children in classroom 8 and five in classroom 10. All of the killings were done with the Bushmaster rifle.

He then took his own life with a single shot from a Glock 20, 10 mm pistol in classroom 10.

Prior to going to the school, the shooter used a .22 caliber Savage Mark II rifle to shoot and kill his mother in her bed at the home where they lived at 36 Yogananda Street in Newtown.

The response to these crimes began unfolding at 9:35:39 a.m. when the first 911 call was received by the Newtown Police Department. With the receipt of that call, the dispatching and the arrival of the police, the law enforcement response to the shootings began. It was fewer than four minutes from the time the first 911 call was received until the first police officer arrived at the school. It was fewer than five minutes from the first 911 call, and one minute after the arrival of the first officer, that the shooter killed himself. It was fewer than six minutes from the time the first police officer arrived on SHES property to the time the first police officer entered the school building. In fewer than 11 minutes twenty first-grade pupils and six adults had lost their lives.

The following weapons were recovered in the course of this investigation: (1) a Bushmaster Model XM15-E2S semi-automatic rifle, found in the same classroom as the shooter's body. All of the 5.56 mm shell casings from the school that were tested were found to have been fired from this rifle. (2) a Glock 20, 10 mm semi-automatic pistol found near the shooter's body and determined to have been the source of the self-inflicted gunshot wound by which he took his own life. (3) a Sig Sauer P226, 9 mm semi-automatic pistol found on the shooter's person. There is no evidence this weapon had been fired. (4) a Izhmash Saiga-12, 12 gauge semi-automatic shotgun found in the shooter's car in the parking lot outside the school, and which was secured in the vehicle's trunk by police responding to the scene. There is no evidence this weapon had been fired. (5) a Savage Mark II rifle found at 36 Yogananda Street on the floor of the master bedroom near the bed where the body of the shooter's mother was found. This rifle also was found to have fired the four bullets recovered during the autopsy of the shooter's mother.

All of the firearms were legally purchased by the shooter's mother. Additionally, ammunition of the types found had been purchased by the mother in the past, and there is no evidence that the ammunition was purchased by anyone else, including the shooter.

At the date of this writing, there is no evidence to suggest that anyone other than the shooter was aware of or involved in the planning and execution of the crimes that were committed on December 14, 2012, at Sandy Hook Elementary School and 36 Yogananda Street. From the time an unknown male was encountered by the Newtown police outside of the school during the initial response, until well after the staff and children had been evacuated, the thought that there may have been more than one shooter was a condition all responding law enforcement worked under as they cleared the school. Individuals located in the wooded areas surrounding the school

as the searches and evacuations were taking place were initially treated as suspect and handled accordingly (including being handcuffed) until their identity could be determined. The circumstances surrounding all of these individuals were fully investigated and revealed no additional shooters. DNA testing of evidence recovered from both the school and 36 Yogananda Street also revealed no potential accessories or co-conspirators.

It is the conclusion of this State's Attorney that the shooter acted alone and was solely criminally responsible for his actions of that day. Moreover, none of the evidence developed to date demonstrates probable cause to believe that any other person conspired with the shooter to commit these crimes or aided and abetted him in doing so.

Unless additional – and at this time unanticipated – evidence is developed, there will be no state criminal prosecution as result of these crimes. With the issuance of this report, the investigation is closed. Should additional reliable information related to the existence of accessories or co-conspirators come to the attention of the investigators, the investigation will be reopened.[2]

In the course of his rampage the shooter committed a number of crimes in violation of our Connecticut Penal Code. The most significant are those where lives were taken and people were physically injured. In Sandy Hook Elementary School, the crime of Murder under Special Circumstances, in violation of C.G.S. Sec. 53a-54b, was committed twenty-six times and Attempted Murder under Special Circumstances in violation of C.G.S. Secs. 53a-49 and 53a-54b was committed twice as it relates to the two individuals who were shot by the shooter and survived. The crime of Murder in violation of C.G.S. Sec. 53a-54 was committed by the shooter in killing his mother.

The obvious question that remains is: "Why did the shooter murder twenty-seven people, including twenty children?" Unfortunately, that question may never be answered conclusively, despite the collection of extensive background information on the shooter through a multitude of interviews and other sources. The evidence clearly shows that the shooter planned his actions, including the taking of his own life, but there is no clear indication why he did so, or why he targeted Sandy Hook Elementary School.

It is known that the shooter had significant mental health issues that affected his ability to live a normal life and to interact with others, even those to whom he should have been close. As an adult he did not recognize or help himself deal with those issues. What contribution this made to the shootings, if any, is unknown as those mental health professionals who saw him did not see anything that would have predicted his future behavior. He had a familiarity with and access to firearms and ammunition and an obsession with mass murders, in particular the April 1999 shootings at Columbine High School in Colorado. Investigators however, have not discovered any evidence that the shooter voiced or gave any indication to others that he intended to commit such a crime himself.

[2] It should be noted that potentially important evidence, i.e., a computer hard drive recovered from the shooter's home, as of this date remains unreadable. Additional insight could be gained should efforts to recover data from the hard drive ever prove successful, which at this time appears highly improbable. It is because of this improbability, coupled with the current determination of no accessories or co-conspirators that the case is being closed.

This State's Attorney expresses his sincere sympathy and condolences to the victims of the incident of December 14, 2012, and to their families. He also expresses his appreciation for their continued patience and understanding during the course of the investigation and preparation of this report. He acknowledges and thanks law enforcement, which responded to Sandy Hook Elementary School in minutes and entered the building believing someone could be there ready to take *their* lives as well. He also acknowledges and thanks the staff of the Sandy Hook Elementary School who acted heroically. The combination saved many children's lives.

This report would not have been possible if not for the assistance and cooperation of numerous agencies at the state, local and federal levels of government. The State's Attorney expresses his sincere gratitude and appreciation to all of these agencies and to all of the men and women who contributed so much to this investigation. The assistance of federal authorities has been invaluable. Particularly worthy of special note are the men and women of the Connecticut State Police, and in particular, the Western District Major Crime Squad. The thoroughness and sensitivity with which they conducted their investigation is unmatched in my experience.

INTRODUCTION

On the morning of December 14, 2012, Adam Lanza, the shooter,[3] age 20, went to Sandy Hook Elementary School (also SHES) in Newtown, Connecticut, where he shot his way into the building and killed twenty children and six adults and wounded two other adults, all with a Bushmaster Model XM15-E2S rifle. The shooter then took his own life with a single shot from a Glock 20, 10 mm handgun. From the time the doors of the school were locked at 9:30 a.m. until the time it is believed the shooter killed himself at 9:40:03, fewer than 11 minutes had elapsed.

Prior to going to the school, the shooter used a .22 caliber Savage Mark II rifle to shoot and kill his mother in her bed. This occurred at the home where they lived at 36 Yogananda Street, also in Newtown.

With these unprecedented horrific crimes came a responsibility for an investigation to determine what crimes were committed and, more importantly, if the shooter acted alone. Any person who aided and abetted the shooter or who conspired with him had to be held accountable.

Beginning on December 14, 2012, the Connecticut State Police and the State's Attorney's Office worked in cooperation with the federal authorities sharing responsibilities for various aspects of the case. The federal involvement has been invaluable. Though some evidence is still being examined, there is no indication in the investigation by either state or federal authorities to date that the shooter acted with anyone on December 14, 2012, or had co-conspirators or accessories who could be prosecuted.

In addition to physical evidence,[4] the investigation materials contain over seven-hundred individual files that include reports, statements, interviews, videos, laboratory tests and results, photographs, diagrams, search warrants and search warrant returns as well as evaluations of those items. Investigators interviewed individuals who were present at SHES on December 14, 2012, and witnessed the incident, among them students, staff members, parents of students and neighbors. Special attention and consideration was given to the interviewing of child witnesses, given their traumatic experience. Also interviewed were police officers and other first responders who were present at SHES during the course of the incident itself and in the course of the subsequent search, evacuation of the school and processing of the scenes.

Investigators attempted to obtain as much information about the shooter's life as possible in an effort to determine the reasons or motives for his actions on December 14, 2012. Interviews were conducted with members of the shooter's family, those who knew the shooter or his family throughout his life, as well as teachers and school personnel who had been involved with him and his family over his time in Newtown.

Efforts were made within the limits of privacy laws to gather information on medical consultations and/or treatments the shooter was involved with over the course of his years in Newtown. In doing so, investigators found no evidence to suggest the shooter had taken any

[3] Throughout the remainder of this report Adam Lanza will be referred to as "the shooter."

[4] Over 270 evidence designations were used, many grouping related items as one number.

medication that would affect his behavior or by any means to explain his actions on December 14, 2012.

An investigation of this magnitude requires careful planning and review. The interviews took substantial time, first to identify which individuals should be interviewed and then to conduct the actual interviews. Physical evidence had to be examined and forensically reviewed. This included ballistics, fingerprint and DNA analysis. Additionally, all of the information collected had to be reviewed and summarized in written statements that have since become a part of the investigation, reflecting thousands of dedicated law enforcement and prosecutor hours.

I had been working closely with the Connecticut State Police, who conducted the state investigation, and federal law enforcement officers since December 2012. Once the investigation was delivered for my review, I took the time to read, digest, evaluate and summarize the material, mindful of the privacy interests involved and the approaching December 14, 2012, anniversary.

The federal authorities have stated that under federal law many of their reports and materials cannot become part of the public record due to rules regarding the dissemination of information obtained pursuant to grand jury subpoenas, sealed search warrants, and federal Freedom of Information law. Therefore, information obtained by federal authorities will not, for the most part, be incorporated into the Connecticut State Police criminal investigation file.

While the reports and materials will not be part of the state investigation record, such materials have been examined and considered by state law enforcement authorities. Based upon a review of all of the documentation, both state and federal, we are left confident at this time that the evidence developed to date does not reveal co-conspirators or accessories. Accordingly, as a result of the investigation to date, there will be no state criminal prosecution of anyone.

PURPOSE AND SCOPE OF REPORT

The State's Attorney's Office for the Judicial District of Danbury is charged, pursuant to Article IV, Sec. 27 of the Connecticut State Constitution[5] and Connecticut General Statutes (C.G.S.) Sec. 51-276[6] *et seq*., with the investigation and prosecution of all criminal offenses occurring within the Judicial District of Danbury. The Connecticut State Police have the responsibility to prevent and detect violations of the law and this State's Attorney has worked with and relied upon the Connecticut State Police since the incident occurred. The investigation has been

[5] Connecticut Constitution Article 4, Sec. 27. There shall be established within the executive department a division of criminal justice *which shall be in charge of the investigation and prosecution of all criminal matters.* Said division shall include the chief state's attorney, who shall be its administrative head, and the state's attorneys for each judicial district, which districts shall be established by law. The prosecutorial power of the state shall be vested in a chief state's attorney and the state's attorney for each judicial district.

[6] Sec. 51-276. Division established. There is hereby established the Division of Criminal Justice within the Executive Department, which shall be in charge of the investigation and prosecution of all criminal matters in the Superior Court. The Division of Criminal Justice shall be an agency within the Executive Department with all management rights except appointment of all state's attorneys.

tirelessly conducted by the Connecticut State Police (also CSP) with the assistance of multiple local, state and federal agencies, both in and out of Connecticut.

While no report is statutorily required of the State's Attorney once the investigation is complete, it has been the practice of state's attorneys to issue reports on criminal investigations where there is no arrest and prosecution if the state's attorney determines that some type of public statement is necessary.[7] Given the gravity of the crimes committed on December 14, 2012, a report is in order.

The purpose of this report is to identify the person or persons criminally responsible for the twenty-seven homicides that occurred in Newtown, Connecticut,[8] on the morning of December 14, 2012, to determine what crimes were committed, and to indicate if there will be any state prosecutions as a result of the incident.

Many witnesses to this case have expressed great concern that their identities will be disclosed publicly and make them susceptible to threats or intimidation as a result of their cooperation or connection with the investigation.[9] This cooperation has been essential and greatly appreciated. As a result of the witnesses' concerns, this report will not identify lay witnesses, except where necessary.

Consistent with Public Act 13-311,[10] exceptions to the state Freedom of Information Act[11] and C.G.S. Sec. 17a-101k(a) [12] this report will not list the names of the twenty children killed in

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[7] See for example: Statement of David I. Cohen, State's Attorney for the Judicial District of Stamford/Norwalk, in reference to the February 16, 2009, attack on Charla Nash by the Chimpanzee Named Travis, Issued December 7, 2009; Statement of the State's Attorney for the Judicial District of Stamford-Norwalk Concerning the Fatal Fire on December 25, 2011, at 2267 Shippan Avenue, Stamford, Issued June 8, 2012; and Report of the State's Attorney for the Judicial District of Ansonia-Milford on the Murder of Shangyl Rasim on January 17, 2010, Issued May 24, 2010.

[8] Newtown, Connecticut is within the Judicial District of Danbury.

[9] In fact, some witnesses have had that occur to them.

[10] An Act Limiting the Disclosure of Certain Records of Law Enforcement Agencies and Establishing a Task Force Concerning Victim Privacy Under the Freedom of Information Act.

[11] See C.G.S. Sec. 1-210.

[12] Sec. 17a-101k. Registry of findings of abuse or neglect of children maintained by Commissioner of Children and Families. Notice of finding of abuse or neglect of child. Appeal of finding. Hearing procedure. Appeal after hearing. Confidentiality. Regulations. (a) The Commissioner of Children and Families shall maintain a registry of the commissioner's findings of abuse or neglect of children pursuant to section 17a-101g that conforms to the requirements of this section. The regulations adopted pursuant to subsection (i) of this section shall provide for the use of the registry on a twenty-four-hour daily basis to prevent or discover abuse of children and the establishment of a hearing process for any appeal by a person of the commissioner's determination that such person is responsible for the abuse or neglect of a child pursuant to subsection (b) of section 17a-101g. The information contained in the registry and any other information relative to child abuse, wherever located, shall be confidential, subject to such statutes and regulations governing their use and access as shall conform to the requirements of federal law or regulations. Any violation of this section or the regulations adopted by the commissioner under this section shall be punishable by a fine of not more than one thousand dollars or imprisonment for not more than one year.

Sandy Hook Elementary School, nor will it recite 911 calls made from within the school on that morning or describe information provided by witnesses who were in the classrooms or heard what was occurring in the classrooms.

It is not the intent of this report to convey every piece of information contained in the voluminous investigation materials developed by the Connecticut State Police and other law enforcement agencies, but to provide information relevant to the purposes of this report.

To conclude that *all* such information, including the basic facts of the incident itself is confidential would prohibit even the disclosure of the children being killed. Such an interpretation would be unworkable and is not taken here. It is concluded though that the C.G.S. Sec. 17a-101k(a) is applicable in the present case and will be applied in the manner described.

SANDY HOOK ELEMENTARY SCHOOL - INCIDENT AND RESPONSE

Incident

On the morning of December 14, 2012, the shooter parked his 2010 Honda Civic next to a "No Parking" zone outside of Sandy Hook Elementary School in Newtown, Connecticut.[13] Shortly after 9:30 a.m. he approached the front entrance to the school.[14] He was armed with a Bushmaster Model XM15-E2S rifle (also Bushmaster rifle), a Glock 20, 10 mm pistol and a Sig Sauer P226, 9 mm pistol and a large supply of ammunition.

The doors to the school were locked, as they customarily were at this time, the school day having already begun. The shooter proceeded to shoot his way into the school building through the plate glass window to the right of the front lobby doors.

The main office staff reported hearing noises and glass breaking at approximately 9:35 a.m. and saw the shooter, a white male with a hat and sunglasses, come into the school building with a rifle type gun. The shooter walked normally, did not say anything and appeared to be breathing normally. He was seen shooting the rifle down the hallway.

Just down the hallway from the main office, in the direction that the shooter was to be seen firing, a 9:30 a.m. Planning and Placement Team (PPT) meeting was being held in room 9, a conference room. It was attended by Principal Dawn Hochsprung and School Psychologist Mary Sherlach, together with a parent and other school staff. Shortly after the meeting started, the attendees heard loud banging. The principal and school psychologist then left the room followed shortly after by a staff member. After leaving the room, Mrs. Hochsprung yelled "Stay put!"

As the staff member left the room, the staff member heard gunshots and saw Mrs. Hochsprung and Mrs. Sherlach fall down in front of the staff member. The staff member felt a gunshot hit the staff member's leg. Once down, the staff member was struck again by additional gunfire, but laid still in the hallway. Not seeing anyone in the hallway, the staff member crawled back into room 9 and held the door shut. A call to 911 was made and in the ensuing moments the telephone in room 9 was also used to turn on the school wide intercom system. This appears to have been done inadvertently, but provided notice to other portions of the building.[15]

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[13] On December 13, 2012, the student enrollment was 489. Official attendance had not yet been recorded as of 9:30 a.m. on December 14, 2012. The staff for the school is 91, but on December 14, 2012, there were nine staff members absent. The staffing was at 82 for the day.

[14] A more complete description of the school building and the front entrance starts on page A119 of the Appendix. For the purposes of this report, the front of SHES faces north.

[15] Intercom system could be accessed from nine phones located in seven rooms. These telephones and rooms were three phones in the main office, the principal's office, the nurse's office (room 57), room 9 conference room, room 29, room 32 and room 60. The "All Call" which opens the intercom to the entire school was accessed by pressing "#0" from the telephones mentioned. The All Call-except quiet rooms was accessed by pressing "#1."

At the same time the shooter was firing in the hallway, another staff member was at the far east end of the hallway near classroom 1. The staff member was struck by a bullet in the foot and retreated into a classroom.

Both Dawn Hochsprung, age 47, and Mary Sherlach, age 56, died as a result of being shot. Both wounded staff members shot in the hallway were later evacuated to the hospital and survived.

After shooting and killing the two adults and wounding the two others, the shooter entered the main office. The office staff had taken shelter in the office. They heard sounds of the office door opening, footsteps walking inside the office and then back toward the office door. Staff members heard the door open a second time and then heard more gunfire from outside the office. They called 911.

Where the shooter specifically went next is unclear. The evidence and witness statements establish the shooter went down the hallway in an easterly direction ultimately entering first grade classrooms 8 and 10. The order is not definitively known. While in classrooms 8 and 10, the shooter shot and killed four adults and twenty children with the Bushmaster rifle. Twelve children survived, one from classroom 8 and eleven from classroom 10.

The shooter finally killed himself in classroom 10 with one gunshot to his head from a Glock 20, 10 mm pistol. This is believed to have occurred at 9:40:03.[16]

Classroom 8's substitute teacher was Lauren Rousseau, age 30, who was assisted by Rachel D'Avino, age 29, a behavioral therapist. Fifteen children were found by police. Fourteen who were deceased and one who was transported to Danbury Hospital and later pronounced dead. The two adults were found deceased close to the children. In all, seventeen people were killed in classroom 8. A sixteenth child survived and exited classroom 8 after the police arrived.

Classroom 10's teacher was Victoria Soto, age 27. Working with her was Anne Marie Murphy, age 52, a behavioral therapist. Five children were found, with Mrs. Murphy partially covering one child. Four of the five children were deceased. One of the five children was transported to the hospital and pronounced dead. Miss Soto was found deceased in the room near the north wall with a set of keys nearby. Nine children had run out of the room and survived. A police officer found two uninjured children in the class restroom.

In all, eighteen children and six adult school staff members were found deceased within the school. Two more children were pronounced dead at Danbury Hospital. Two other adult school staff members were injured and were treated at nearby hospitals and survived.

The two classrooms on either side of 8 and 10 were numbered 6 and 12. Classroom 6 was on the eastern side of classroom 8 and classroom 12 was on the western side of classroom 10. Staff and students hid in the class restrooms, locking the restroom doors from the inside.

[16] See the time line in the Appendix starting at page A84.

Throughout the rest of the school, staff and students hid themselves wherever they happened to be at the time they became aware of gunfire. The staff used various ways to keep the children calm, from reading to having them color or draw pictures. Those hiding in rooms closest to the shooter kept silent. Some people were able to escape out of the building prior to the police arrival and went to Sandy Hook center, nearby residences, or received rides from parents going to the school or from passersby.

One staff member heard a loud crashing noise and ran toward the front lobby. As the staff member got closer, bullet holes could be seen and gun powder smelled. Realizing what was going on, the staff member immediately called 911, turned and went back down the hall from where the staff member had come. During the incident, while staying on the line with the 911 operator, this staff member sent other staff to their rooms or had them stay in their rooms and this staff member went about locking doors. The staff member remained in the hallway on the telephone with the 911 operator until the police arrived.

Response

Upon the receipt of the first 911 call, law enforcement was immediately dispatched to the school. It was fewer than four minutes from the time the first 911 call was received until the first police officer arrived at SHES. It was fewer than five minutes from the time the first 911 call was received until the shooter killed himself. It was fewer than six minutes from the time the first police officer arrived on SHES property to the time the first police officer entered the school building.

Below is an abbreviated time line from the first 911 call received to the time the police entered the school building.[17]

9:35:39 - First 911 call to Newtown Police Department is received.

9:36:06 - Newtown Police Department dispatcher broadcasts that there is a shooting at Sandy Hook Elementary School.

9:37:38 - Connecticut State Police are dispatched to SHES for active shooter.

9:38:50 - CSP are informed that SHES is in lockdown.

9:39:00 - First Newtown police officer arrives behind SHES on Crestwood Rd.

9:39:13 - Two more Newtown officers arrive at SHES and park on the driveway near the ball field. Gunshots are heard in the background.

[17] See page A84 of the Appendix for full time line put together by the Connecticut State Police Western District Major Crime Squad. This time line was compiled from 911 calls, witness statements, police car cameras, police radio and police dispatch transmissions.

9:39:34 - Newtown officer encounters unknown male running along the east side of SHES with something in his hand.

9:40:03 - Last gunshot is heard. This is believed to be the final suicide shot from the shooter in classroom 10.

9:41:07 - Information is relayed as to the location of the last known gunshots heard within SHES, the front of the building.

9:41:24 - Newtown officer has unknown male prone on ground, starting information relay regarding possibly more than one shooter.

9:42:39 - Newtown officer calls out the license plate of the shooter's car.

9:44:47 - Newtown officers enter SHES.

9:46:23 - CSP arrive at SHES.

9:46:48 - CSP enter SHES.

As the gravity of the situation became known, local, state and federal agencies responded to the scene to assist.

From the time the unknown male was encountered by the Newtown police outside of SHES until after the staff and children were evacuated, all responding law enforcement operated under the belief that there may have been more than one shooter and acted accordingly.[18]

For example, K-9 units were brought in to search the area and officers were posted to act as lookouts to ensure the safety of those evacuating the school building. Some people were located in the areas surrounding the school as the searches and evacuations were taking place. Some of those individuals were treated initially as suspects and handled accordingly, including being handcuffed, until their identities and reason for being there could be determined.

Some of these detentions included:

1. The initial unknown male who turned out to be a parent with a cell telephone in his hand;
2. Two reporters located in the woods around SHES, who were held at gun point by Department of Energy and Environmental Protection (DEEP) police officers until their identities could be determined; and
3. A man from New York who was working in a nearby town and went to SHES after an application on his cell telephone alerted him to the situation at the school. He drove to the firehouse and went up to the school on foot. He was taken from the scene

[18] In fact, the possibility that there was more than one shooter remained a consideration beyond December 14, 2012. It was only after potential leads were investigated that investigators became confident that the shooter was not aided in any way by others and that no one knew of the shooter's plan prior to December 14, 2012.

of the school in handcuffs and later to Newtown Police Department. It was later determined that he did not have a connection to the shooting and had gone to SHES to see what was going on.

As noted above, on December 14, 2012, there was a concern that there may have been more than one shooter. This was based upon a number of factors:

1. The initial police encounter with the unknown male outside SHES;[19]
2. Reports by school personnel during the shooting on a 911 call of seeing someone running outside the school while the shooting was ongoing;
3. The location of two black zip up sweat jackets on the ground outside of the shooter's car;
4. The discovery of an Izhmash Saiga-12, 12 gauge shotgun and ammunition in the passenger compartment of the shooter's car. A police officer moved this shotgun and ammunition to the car's trunk for safety purposes;
5. Shell casings that were located outside of the school; and
6. The apparent sound of gunfire coming from outside of the school;

The subsequent investigation revealed there were no additional shooters based upon:

1. Searches of the area and examinations of local business security surveillance videos;
2. Persons detained revealed they were not connected to the shootings. In the case of the initial unknown male, he was identified as the parent of a student and had a cell telephone, rather than a weapon, in his hand;
3. Witness interviews which indicated that no witness saw anyone other than the shooter, with a firearm;
4. Witness interviews in which it was determined that a number of SHES staff had escaped from the school through a window and had been running outside the school building during the shootings;
5. The shotgun located in the shooter's car had been purchased by the shooter's mother previously;
6. The two sweat jackets were both C-Sport brand black zip up hooded sweat jackets with no size listed and were located immediately outside the shooter's car;[20] Both are believed to have been brought there by the shooter;[21]
7. The live shotgun shells (other than the one found on the shooter and the ones found in the shooter's car) that were located inside and outside of the school were in locations where first responders had been. Additionally, there were first responders who

[19] The man was later determined to be the parent of one of the school's children and the item in his hand was a cell telephone.

[20] See the Appendix at page A174.

[21] A parent who arrived at SHES as the shooting was taking place saw the shooter's car parked in front of the school with the passenger side door open and the two sweat jackets on the ground near the car. To the parent, the jackets looked like two black blankets on the ground.

reported missing live shotgun rounds. Moreover, the shells were found in locations where there had not been reported sightings of any non-law enforcement individuals;
8. There were no expended shotgun shells found in the actual crime scene nor were any expended 12 gauge shotgun pellets or slugs recovered;
9. The only expended casings located outside of the school building were 5.56 mm casings located just outside the school's front entrance, consistent with the shooter's entry into the school; and
10. The officer who heard what he believed to be outside gunfire was in a position to have heard the shooter's gunfire coming from window openings in the classroom in which the shooter was firing.

Stopping the active shooter was the first priority. Once that occurred, the location and treatment of the victims, the search for additional shooters, and the safe evacuation of the school were of primary importance.[22] The collection of evidence and the preservation and documentation of the crime scene, while important, came second.

Two command centers were set up, one at the firehouse on Riverside Road and the other at Newtown's Emergency Operations Center, located on the Newtown Fairfield Hills Campus. In the week immediately after the shootings, services to victims' families and victims, as well as support to the investigators in the school were handled out of the firehouse. All other aspects of the investigation not related to the school itself were run out of the Emergency Operations Center.

Investigation responsibilities were handled as follows:[23]

Connecticut State Police (CSP)

CSP-Western District Major Crime (WDMC) squad was the lead CSP unit for the entire investigation and acted as the coordinating law enforcement agency for other agencies and units of the CSP.[24] The van unit processed the interior of SHES.

CSP-Central District Major Crime (CDMC) squad van unit processed the exterior of SHES, including the shooter's car, and established the temporary morgue[25] with the

[22] One of the difficulties encountered was the inability of state police radios to operate within SHES.

[23] This report does not include a listing of all of the law-enforcement and non-law enforcement service providers and their actions. In the days and weeks that followed the tragedy, local, state and federal agencies provided help to the Town of Newtown and its families through counseling, funeral protection, traffic control, handling bomb threats as well as many other services. Additionally, the CSP set up an invaluable law enforcement liaison program with the families of the deceased victims in which a state or local police officer was specifically assigned to the family of a deceased victim to provide communication and protection in the days and weeks that followed December 14th.

[24] WDMC Squad and Van, as the lead CSP unit, over the course of the week that followed was there for seven days processing the interior scene, the shooter and victims' personal effects, including assisting with the packing and removal of furniture from the immediate scene.

[25] The Department of Public Health provided and set up the portable tent used for the temporary morgue.

OCME to identify and document the decedents prior to their being moved to the OCME in Farmington.[26] CDMC also attended the autopsies at the OCME and did a secondary search of 36 Yogananda Street, as well as photographing doors and locks in SHES.

Eastern District Major Crime (EDMC) squad processed the scene at 36 Yogananda Street and were the investigators for the shooting of Nancy Lanza, the shooter's mother.

CSP-Emergency Services Unit (ESU), Tactical Teams, were assigned to both SHES and 36 Yogananda Street to handle the clearing of the scenes and rendering them safe.[27]

CSP – Troop A, Southbury and CSP from other troops and units, in addition to being first responders, worked to secure the scene and worked with WDMC and the OCME.

Computer Crimes and Electronic Evidence Unit handled the seizure and examination of additional electronic evidence from 36 Yogananda Street together with EDMC, CDMC and WDMC.

CSP - Collision, Analysis and Reconstruction Squad (CARS) was assigned to produce the sketch maps for both the interior and exterior of the school.

CSP - On December 14, 2012, virtually every aspect of the CSP was engaged in the response to SHES and 36 Yogananda Street. For example, included in the first responders were troopers and detectives, not only from Troop A in Southbury, but other troops and units as well, including the Statewide Narcotics Task Force.

Department of Energy and Environmental Protection (DEEP) provided first responders at SHES.

Forensic Science Laboratory, Division of Scientific Services, Department of Emergency Services and Public Protection (DESPP) examined items seized and collected from SHES and 36 Yogananda Street.

Office of the Chief Medical Examiner (OCME) was responsible for investigating the cause and manner of the deaths involved in this case and worked with the CSP in setting up the temporary morgue at SHES that was used to identify and document the deceased prior to their being moved to Farmington.

Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in addition to responding to both scenes, worked on the firearms aspect of the investigation.

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[26] WDMC and CDMC personnel were also assigned and paired with the FBI to conduct interviews and neighborhood canvasses as well as assist with the identification of victims, investigate a report of another shooter at a hospital, as well as prepare search warrants and attend autopsies.

[27] There were numerous law enforcement agencies that worked on the clearing of SHES and the protection of those who were doing the clearing.

Federal Bureau of Investigation (FBI) – in addition to responding to the scenes, handled interviewing of witnesses and investigation both at a local level and on a national level. The Tactical Team assisted with the clearing of the school. The Behavioral Analysis Unit (BAU), as part of the search warrant execution for 36 Yogananda Street, was provided with materials for review. They provided their expertise in the preparation of witness interviews. The Victim Assistance Unit worked with victims' families, victims and witnesses.

United States Attorney's Office was stationed at the Emergency Operations Center overseeing the investigation into the possible commission of federal crimes and the issuance of federal legal process, as well as coordinating the various federal agencies involved in assisting with the state investigation.

United States Marshals Service, Technical Operations Group provided technical and investigation assistance.

United States Postal Service looked for mail that may have been relevant to the investigation.

Municipal Police Departments from around the state assisted throughout the Town of Newtown, including being first responders at SHES, handling calls in town and the tremendous inflow of media and visitors to the Town in the weeks after December 14, 2012.

Newtown Police Department in addition to being first responders, worked to secure the scene and assisted WDMC.

Office of the State's Attorney, Judicial District of Danbury (SAO) – oversaw the state investigation, working with the Connecticut State Police. Together with the assistance of the Office of the Chief State's Attorney, the SAO was stationed at the Emergency Operations Center starting December 14, 2012, and oversaw the legal issues and state aspect of the investigation including search warrant review, child witness issues, working with the federal authorities, etc.

SANDY HOOK ELEMENTARY SCHOOL – SCENE INVESTIGATION

On the afternoon of December 14, 2012, the WDMC and CDMC van units began documenting the crime scene and collecting evidence. The units could not begin this process until the scene was declared safe. The scene processing took seven days.

The scene was thoroughly processed, with the WDMC van unit handling the interior of SHES and the CDMC van unit covering the exterior. This processing included extensive written documentation as well as taking videos and thousands of photographs and measurements. In addition to the recovery of evidence, bullet trajectories were analyzed and documented.

My description of the scene processing starts with the front entrance and moves into the school building itself. This does not necessarily reflect the actual order in which the crime scene was processed. Many descriptions come directly from the investigation reports but are not in quotation marks to ease reading.

The conditions of windows and doors were documented, but some may have been disturbed by police and emergency personnel during the emergency response and protective sweep of the building. Similarly, other items of evidence, such as shell casings, may not have been found in their original positions because, as mentioned previously, the first priority was to locate and neutralize any active shooter, followed by the location and treatment of the victims, the search for additional shooters and the safe evacuation of the school. Only then could evidence collection begin.

Interior

Sandy Hook Elementary School was[28] a one story brick public school building of approximately 66,000 square feet, built in 1954. The building was on Dickinson Drive off of Riverside Road in the Sandy Hook section of Newtown. The front of the building sat in a magnetic northeast direction, but will be considered north for the purposes of this report. See the diagram at page 19.

SHES was rectangular in shape with four hallways in the main building and portable classrooms attached to the rear (south) side which were accessed from the south side of the main building. Classrooms on the exterior walls had even numbers and interior classrooms had odd numbers.

- **Main entrance**

The main entrance to the school was located next to the large glass window that the shooter shot out to enter the school. A patio area was just before the entrance doors. The entrance to the lobby consisted of two sets of locked full glass doors that opened outwardly using a pull handle. They were separated by a small vestibule. The doors were secured with an electronic locking mechanism. The doors could be opened from the inside with a horizontal push bar across the middle of the door.

The broken area of the window that the shooter shot out measured approximately 35.33 inches wide and 42.5 inches high.[29]

The exterior of the main entrance door way had a call box, buzzer system with a video camera. The call box was installed in 2005. The video camera did not record, but the video could be viewed live on three monitoring systems on the secretaries' desks in the main office, with no recording capabilities. The electronic unlocking of the front doors was done by using a "key button" on any of the three monitoring systems.

Glass shards were located just before and to the side of the outside entrance doors on the patio and plantings in the area and also on the floor in the lobby.[30] Eight expended brass colored 5.56

[28] SHES was demolished in October and November 2013.

[29] See the Appendix starting at page A168.

[30] See the Appendix at page A169 and A171.

mm bullet casings stamped with "S&B 60 5.56x45"[31] were located in the area outside the broken window and front entrance doors. These were seized.

The front entrance led into the school's lobby. The lobby measured approximately 28 feet north to south and 36 feet east to west. The southeast corner of the lobby allowed open access to the north hallway of the school. Sixteen brass colored expended 5.56 mm bullet casings were located on the floor within the lobby area and were seized. Furniture in the lobby area had holes consistent with having been struck by a bullet. There were eleven damaged areas consistent with bullet strikes in the lobby.

- **North Hallway**

The hallway on the north side of the building, where the shootings occurred, ran east to west and contained the lobby and main office, inside of which was the nurse's office. The hallway also contained rooms numbered 1-10, 11A-5 and 12. The bulk of the scene processing occurred in this area. See the diagram on page 19.

The ceiling as in the lobby was 8 feet high. And the width of the hall was 8.5 feet. The even numbered rooms were on the north side of the hallway with classroom 12 being the western most classroom and classroom 2 being the eastern most. The odd numbered rooms were on the south side of the hallway with the main office being the western most room and classroom 1 being the eastern most. East of the main office was a closet labeled "11A-5 storage" and the east of the closet was a conference room identified as Room 9.

The doors in the hallway all locked from the outside with a key. The interior door handles had no locking mechanism. All of the doors opened outwardly toward the hallway. All doors were solid wood with a circular window in the upper half of the door.[32]

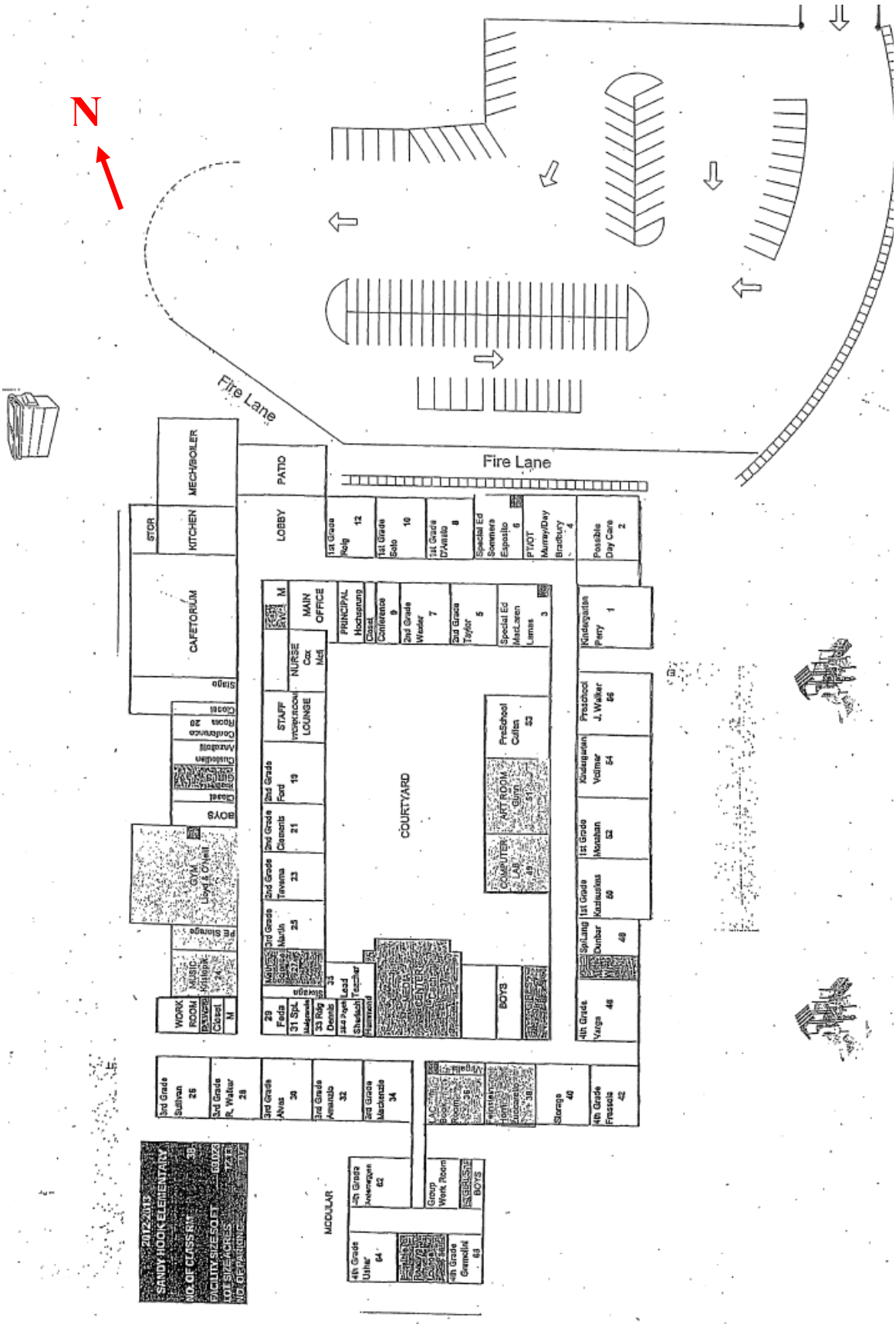
All classrooms in the north hallway had a restroom and a closet. The restrooms were uniformly designed, approximately 4 feet 7 inches by 3 feet 6 inches with a solid wood door. The door of each restroom opened inward and away from the toilet. Each restroom door had a knob push button lock on the inside handle and a key lock on the outside handle.[33] The conference room did not have a restroom.

Classrooms in the north hallway 12 and 10, 8 and 6, 6 and 4, and 3 and 5 respectively had an interior door that was shared by the two classrooms.

[31] The ammunition used by the shooter in the Bushmaster rifle has been described as .223 caliber, 5.56 mm NATO and 5.56 X 45. All of these descriptions are for similar bullets (cartridges) that can be fired from the Bushmaster rifle. The ammunition that the shooter used in this case for the Bushmaster bore the stamp "S&B 60 5.56 X 45" on the base of the cartridges and will be referred to as a 5.56 mm round. The distinction between a .223 cal. and a 5.56 mm is not relevant to this report.

[32] See the Appendix at page A178 for an example of classroom door locks.

[33] See the Appendix at page A177 for an example of restroom door locks.


N
Fire Lane
Fire Lane
PATIO
LOBBY
MECH/BOILER
KITCHEN
STOR
CAFETORIUM
MAIN OFFICE
PRINCIPAL Hochsprung
NURSE Cox Mat
STAFF LOUNGE
COURTYARD
GYM Lloyd & O'Neill
MUSIC Killelea
WORK ROOM
BOYS
GIRLS
ART ROOM Glynn
COMPUTER LAB
PreSchool Collins
Kindergarten Perry
PreSchool J. Walker
Kindergarten Vellmar
1st Grade Monahan
1st Grade Kadlauskas
Sp/Lang Dunbar
4th Grade Varga
4th Grade Freasela
Storage
3rd Grade Sullivan
3rd Grade R. Wallar
3rd Grade Alvas
3rd Grade Amabile
3rd Grade Mackenzie
2nd Grade Ford
2nd Grade Clements
2nd Grade Taverna
2nd Grade Martin
Lead Teacher Hammond
2nd Grade Wexler
2nd Grade Taylor
Special Ed MacLaren
1st Grade Roig
1st Grade Soto
1st Grade D'Aniello
Special Ed Sommers
PT/OT Murray/Day
Possible Day Care
MODULAR
4th Grade Usher
4th Grade Grenadier
Group Work Room
BOYS
GIRLS
SANDY HOOK ELEMENTARY
NO. OF CLASSROOMS
FACILITY SIZE SQ FT
LOT SIZE ACRES
NO. OF PERSONNEL

The bodies of Mrs. Hochsprung and Mrs. Sherlach were located in the western-most area of the north hallway, near the lobby. One brass colored expended 5.56 mm casing was located and seized from the floor in the area of Mrs. Hochsprung and Mrs. Sherlach.[34] In addition to the 5.56 mm ballistics, one 10 mm shell casing was found in the north hallway and was later identified as having been fired from the Glock 20, 10 mm pistol found near the shooter.

- **Conference Room (Room 9)**

Conference room 9 was on the south side of the north hallway on the opposite side of the hallway and approximately 16 feet east of the door for classroom 12. The room had a telephone mounted in the center of the west wall.

- **Classroom 12**

Classroom 12 was located on the north side of the north hallway and was the first classroom east of the front lobby. The classroom door was located 23 feet east of the lobby. The window to the door was covered on the hallway side with dark colored paper that was there from a previous lockdown drill.

- **Classroom 10**

Classroom 10 was located on the north side of the north hallway and was the second classroom east of the front lobby. The hallway door was approximately 27 feet east of classroom 12. The window was not completely covered, but did have a decoration over part of the inside of the window.

The room measured 27 feet east to west and 30 feet north to south with carpeted floors and painted cinder block walls. There were large windows across the north wall, which provided a view into the front (north) parking lot. Fluorescent ceiling lights turned on automatically when the room was entered. As mentioned previously, there was a restroom in the room and a closet. This closet door had no lock. The door that provided access to classroom 12 was on the center of the west wall. This had a key lock on both sides and the door was unlocked. There was a telephone mounted on the south side of the east wall north of the closet. An Emergency Response Packet Plan was hanging on the south wall. The packet was above a map depicting the emergency evacuation route for this classroom.

The classroom door that opened into the north hallway could only be locked with a key from the outside (hallway side). The door was unlocked with no signs of forced entry.

In the window area for classroom 10 there were no less than nine holes consistent with being bullet holes. Investigators conducted a trajectory analysis of the shots that went through the window area of classroom 10. No determination could be made as to whether the shots through the window area were intended for the outside of the building. In other words, it could not be determined whether the shooter, while in classroom 10, had intentionally fired at something or

[34] See the Appendix starting at page A130 for a description of the ballistics evidence from the north hallway.

someone outside of the building. There was no indication that any shots through the window area of classroom 10 came from outside of the school. All of the evidence indicates that shots went out of the window area of classroom 10 and into the parking area north of the school.

Classroom 10 evidence is further described below.

- **Classroom 8**

Classroom 8 was located on the north side of the north hallway and was the third classroom east of the front lobby, with its entrance door approximately 27 feet east of classroom 10. As with the others, its classroom door opened out into the hallway and could only be locked from the hallway side with a key. The window was not covered. The classroom door to the hallway was unlocked with no signs of forced entry.

The room dimensions and construction were similar to those of classrooms 10 and 12. There was also a restroom in this classroom. The closet door in classroom 8 had no locking device. There were also large glass windows across the north wall providing a view into the front (north) parking lot of the school. There was a wall telephone in the room on the south side of the east wall, north of the closet. An "Emergency Response Plan" packet was hanging on the south wall adjacent to the east side of the entrance door. This packet was above a map depicting the emergency evacuation route for the classroom.

The door that connected into classroom 6 was on the north side of the east wall, had key locks on both sides of the door. The door was unlocked.

Ballistic evidence located in classroom 8 is described in the Appendix at page A134, which includes a total of twenty-four rounds of 5.56 mm ammunition found, of which ten rounds were in one PMAG 30 magazine, thirteen rounds were in another such magazine and one live round was on the floor. There was a third empty PMAG 30 magazine seized. There were a total of eighty expended 5.56 mm casings seized from classroom 8.

- **Classrooms 6 and 4**

Located on the floor of classroom 6 was one live round "Federal Tactical" 12 gauge shotgun slug shell (Exhibit 49). This shotgun shell was made of clear-like plastic and was different in color from the shotgun shell that was seized on the shooter's person. On the floor of classroom 4 was a blue colored 12 gauge slug shotgun shell with the word "Federal Premium Tactical Rifled slug" stamped on the side and "12 GA Made in USA stamped on the head of the shell (Exhibit 99). This shotgun shell was made of a blue colored plastic and also was different in color from the shotgun gun shell that was seized from the shooter's person.

As mentioned previously, the loose shotgun shells not found on the shooter were in locations where first responders had been and had reported missing shotgun shells. Additionally, there were no witness reports of any persons being seen with firearms other than first responders in those locations, there were no expended shotgun shell casings or projectiles recovered at the scene and the live shotgun shell on the shooter's person and those recovered from his car did not

match any of those recovered from the three locations. No shotgun was recovered from the school. It is believed that these live shells were dropped by first responders.

- **Shooter**

Responding police officers found the shooter in classroom 10 northwest of the hallway entrance dead from a self-inflicted gunshot wound to the head. He was wearing a pale green pocket vest over a black polo style short sleeve shirt over a black t-shirt. He had yellow colored earplugs in each ear. He was wearing black cargo pocket pants, black socks, black sneakers, a black canvas belt and black fingerless gloves on each hand. He had an empty camouflage drop holster that was affixed to his right thigh.

After all of the victims were removed from the school, the shooter's body was removed once all firearms and ballistic evidence were recovered from his person. The body was moved to the OCME on December 15, 2012.

- **Weapons on Shooter and Ammunition in Classroom 10**

The weapons on the shooter together with a description of items seized related to the shooting are contained in the Appendix starting at page A136. On the shooter's person was a loaded semi-automatic Sig Sauer P226, 9 mm pistol and additional ammunition. Located near the shooter was a partially loaded Glock 20, 10 mm semi-automatic pistol that appeared to be jammed.

A Bushmaster Model XM15-E2S rifle was located some distance away from the shooter. The rifle's shoulder strap was attached in the front but disconnected at the butt of the rifle. The disconnected rear portion was the result of a failed nut attachment. It is unknown if the nut failed while the rifle was being used or as the result of being dropped or thrown to the floor.

The Bushmaster rifle was found with the safety in the "fire" position. There was one live 5.56 mm round in the chamber and one PMAG 30 magazine in the magazine well. The magazine contained fourteen live 5.56 mm rounds of ammunition. The rifle did not appear to have malfunctioned when observed by the WDMC van unit, but a CSP-ESU report described the weapon as appearing to have jammed. When tested later, the rifle functioned properly.

Two empty PMAG 30 magazines that were duct-taped together in a tactical configuration and one live 5.56 mm round were found near the rifle.

Officers found two-hundred-fifty-three live rounds on the shooter's body: one-hundred-sixteen 9 mm rounds, seventy-five rounds of 10 mm, sixty-one rounds of 5.56 mm and one 12 gauge shotgun shell. Officers also seized forty-six 5.56 mm live rounds. This consisted of fifteen from the rifle, one from the floor and thirty from the magazine under the body of the shooter, as well as thirteen 10 mm live rounds (nine from the Glock and four from the floor). There were forty-nine expended 5.56 mm casings seized and one 10 mm casing from classroom 10. Total live rounds seized were three-hundred-twelve and total expended casings seized from classroom 10 were fifty.

Exterior

CDMC processed the exterior of SHES.

- **Shooter's Car**

The shooter's car was found parked in front of the school, west of the front entrance, next to a "No Parking" zone. It was a black 2010 Honda Civic with Connecticut registration 872YEO. The car was registered to his mother, Nancy Lanza, but had been purchased for him.

Recovered from the car was an Izhmash Saiga-12, 12 gauge shotgun with two magazines containing a total of twenty rounds of ammunition.[35] The shotgun and ammunition were originally seen in the passenger compartment of the car and were moved by police to the car's trunk for safekeeping during the initial response and evacuation.

- **Parking Lot**

There were a number of cars parked in the north parking lot of SHES. Three of these cars were struck by gunfire. None of the cars struck belonged to law enforcement. A total of five strikes to those three cars were identified as having come from classroom 10. It could not be determined whether these shots were intended to go outside of the classroom.

Also found in the north parking lot, was a shotgun shell that was dropped by a first responder.

SANDY HOOK ELEMENTARY SCHOOL – AUTOPSY INFORMATION

Deceased victims were removed from the school building to a large military-style tent located in the north parking lot, near the front of the school. The Office of the Chief Medical Examiner sought to make positive identification of the victims through photos, school records and personal and clothing descriptions.

On Saturday, December 15, 2012, all of the victims were transported to the OCME in Farmington for autopsies; autopsies were performed the same day. The cause of death for all of the victims was determined to have been gunshot wounds; the manner of death was determined to have been homicide.[36]

Evidence collected during the autopsies was turned over to CDMC and forwarded to the Division of Scientific Services for examination. The Evidence Examination section of this report contains a summary of the results.

[35] A search warrant was obtained for the car. The search warrant return originally reported the amount of ammunition as seventy rounds. This was corrected to twenty rounds and the search warrant return was amended.

[36] Our law defines homicide as the killing of one human being by another human being.

36 YOGANANDA STREET, NEWTOWN, CT – INCIDENT AND RESPONSE

Incident

Sometime on the morning of December 14, 2012, before 9:30 a.m., the shooter shot and killed his mother, Nancy Lanza, in her bed at 36 Yogananda Street, Newtown. The weapon used was a .22 caliber Savage Mark II rifle. Someone in the area reported hearing "two or three" gunshots in the neighborhood between 8:00 a.m. and 9:00 a.m. That person thought them to be from hunters, though the person indicated the shots did "sound unusually close."

Between 9:30 a.m. and 10:00 a.m. there was a delivery made to the house. The delivery driver saw no one, did not see any vehicles in the driveway and the garage door was closed. A delivery slip was left and the driver continued on.

The mother was found by police dead in her bed when they entered the house. The rifle was found on the floor next to the bed.

Response

Once it was determined that the shooter's car was registered to his mother at 36 Yogananda Street, Newtown, Connecticut, the Newtown police went to the house and evacuated the surrounding homes. The CSP-ESU came to the scene to clear the residence of potential hazards, such as booby traps or trip wires.

36 YOGANANDA STREET, NEWTOWN, CT – SCENE INVESTIGATION

After the body of the shooter's mother was found and the scene declared safe, the process of obtaining search warrants for the house began, with the first warrant being reviewed and signed by a judge of the Superior Court at 5:29 p.m. on December 14, 2012, at the Emergency Operations Center.[37]

Additional search warrants were approved and issued as the search disclosed additional evidence. The investigation of the shooter's mother's killing and the scene processing was done by EDMC and the search for evidence at 36 Yogananda Street related to the shootings at SHES was investigated by both CDMC and WDMC. A list of the items seized from the home is contained in the search warrant returns in the Appendix, with some descriptions in the "Digital Image Report," starting at page A188 in the Appendix.[38]

[37] The Judicial Branch and the Honorable John F. Blawie are to be commended for their response to the SHES shootings. Judge Blawie was available at the Emergency Operations Center to review search warrants.

[38] A description of the home is also in the Appendix starting at page A181.

The weapon used to kill Nancy Lanza, the .22 cal. Savage Mark II rifle, was found near her bed and seized. In the chamber of the rifle was a spent .22 cal. shell casing and three live rounds were in the magazine. Three other spent .22 cal. shell casings were found in the room and seized.

The shooter's second floor bedroom windows were taped over with black trash bags. The second floor computer room also had its windows covered. There, investigators found a computer hard drive that appeared to have been intentionally damaged. To date, because of the extensive damage, forensic experts have not yet been able to recover any information from that hard drive.

In a typical criminal case, the investigation would remain open when potentially important evidence was still being examined. Given the improbability of any information being recovered from the damaged hard drive, this outstanding piece of evidence is not preventing the closure of this case now. Should any relevant information related to the existence of any accessory or co-conspirator be obtained from the hard drive, the case will be reopened.

Investigators found a large number of firearms and related items in the home. All firearms involved in these incidents were legally purchased by the shooter's mother over the years. The home also contained many edged weapons, knives, swords, spears, etc. A prescription bottle in the shooter's name for acetaminophen with codeine was found in the mother's bathroom, which was part of the master bedroom.

During the search of 36 Yogananda Street, a global positioning system (GPS) device was located in the shooter's room with various routes in the memory from April 25, 2012, through December 13, 2012. Investigation revealed that the GPS was purchased for the shooter.

The routes taken indicate a number of trips from 36 Yogananda Street to the area of a local theater where a commercial version of the game "Dance Dance Revolution" is located. Over that time period, trips were made that took the driver in the vicinity of some schools in Newtown, including SHES. On December 13, 2012, a trip was recorded from 2:09 p.m. to 2:32 p.m. starting and ending on Yogananda Street and driving in Sandy Hook, which is in the area of SHES, though the route does not indicate the shooter drove up to the school.

Numerous video games were located in the basement computer/gaming area. The list of video games includes, but is not limited to:

-"Left for Dead"
-"Metal Gear Solid"
-"Dead Rising"
-"Half Life"
-"Battlefield"
-"Call of Duty"
-"Grand Theft Auto"
-"Shin Megami Tensei"
-"Dynasty Warriors"
-"Vice City"
-"Team Fortress"
-"Doom"

Other items found and noted for this report are:

- A Christmas check from the mother to the shooter to purchase a CZ 83 firearm;[39]
- A New York Times article from February 18, 2008, regarding the school shooting at Northern Illinois University;
- Three photographs of what appear to be a dead human, covered in blood and wrapped in plastic;
- The book *Amish Grace: How Forgiveness Transcended Tragedy*, Jossey-Bass, 2007, by Donald B. Kraybill, Steven Nolt and David Weaver-Zercher;[40] and
- Photocopied newspaper articles from 1891 pertaining to the shooting of school children

While the vast majority of persons interviewed had no explanation for the shooter's actions, a review of electronic evidence or digital media that appeared to belong to the shooter, revealed that the shooter had a preoccupation with mass shootings, in particular the Columbine shootings[41] and a strong interest in firearms. For example, there was a spreadsheet with mass murders over the years listing information about each shooting.

The review of the electronic evidence also found many things that are on a typical hard drive or memory card that would probably have no relevance to the investigation either because of creation date or subject matter. That being said, the following selected topics or items were found within the digital evidence seized:

- Bookmarks pertaining to firearms, military, politics, mass murder, video games, music, books, Army Ranger, computers and programs, ammunition, candy, economic books
- Web page design folders
- Two videos showing suicide by gunshot
- Commercial movies depicting mass shootings
- The computer game titled "School Shooting" where the player controls a character who enters a school and shoots at students
- Screen shots (172) of the online game "Combat Arms"
- "Dance Dance Revolution" (DDR) game screen shots
- Videos of shooter playing DDR
- Images of the shooter holding a handgun to his head
- Images of the shooter holding a rifle to his head
- Five-second video (dramatization) depicting children being shot
- Images of shooter with a rifle, shotgun and numerous magazines in his pockets
- Documents on weapons and magazine capacity

[39] The return for the December 16, 2012, search warrant indicates that Exhibit #612 was a check for a "C183." A closer inspection of the check makes it clear that "CZ83" is written. A CZ 83 is a type of pistol. The check reads "Christmas Day" in the check's date section.

[40] In October 2006 a gunman entered a one-room Amish school in Pennsylvania, killed five children and leaving others wounded.

[41] The Columbine High School shootings occurred in April 1999 at Columbine High School in Colorado. Two shooters, in a planned attack, killed a number of students and a teacher and injured others.

- A document written showing the prerequisites for a mass murder spreadsheet
- A spreadsheet listing mass murders by name and information about the incident
- Materials regarding the topic of pedophilia and advocating for rights for pedophiles (not child pornography)[42]
- Large amount of materials relating to Columbine shootings and documents on mass murders
- Large amount of materials on firearms
- Comedy videos
- Music
- Images of hamsters
- Images of Lego creations

36 YOGANANDA STREET, NEWTOWN, CT – AUTOPSY INFORMATION

The OCME performed an autopsy on the body of Nancy Lanza, age 52, on December 16, 2012, at the OCME. The cause of death was determined to be multiple gunshots to the head. The manner of death was homicide.

SHOOTER - AUTOPSY INFORMATION

The autopsy of the shooter was conducted on December 16, 2012, at the OCME. The shooter, age 20, was 72 inches tall and weighed 112 pounds. No drugs were found in the shooter's system. The cause of death was determined to be a gunshot wound to the head. The manner of death was suicide.

INVESTIGATION TO DETERMINE ACCESSORIES AND/OR CO-CONSPIRATORS

The investigation sought to determine if the shooter was aided by or had conspired with anyone to commit these crimes. As detailed above, none of the persons found in the vicinity of SHES on December 14, 2012, played any role in the shootings. Most were attempting to escape the area; others were responding to the school after learning of the shootings. None had any association with the shooter.

Investigators then sought to determine if anyone had conspired with or aided the shooter before the shootings. To that end, investigators examined social contacts, writings, e-mails, internet blogs, telephone records and his general internet presence. One of the internet blogs on which the shooter posted focused on mass shootings and in particular the Columbine shootings. The shooter also exchanged e-mails with others who were interested in the topic of mass shootings. None of these communications, however, related to SHES or in any way suggested that the shooter intended to commit a mass shooting. Thus, the evidence as developed to date, does not demonstrate that any of those with whom he communicated conspired with the shooter or criminally aided and abetted him in committing the murders on December 14, 2012.

[42] No child pornography was seen on any of the digital media.

EVENTS AND BACKGROUND INFORMATION LEADING UP TO DECEMBER 14, 2012

Recent Background Information

As of December 14, 2012, the shooter and his mother lived at 36 Yogananda Street. This had been the family home for years, although only the shooter and his mother had resided in the house for an extended time.

Both the shooter's and his mother's bedrooms were on the second floor; the mother occupied the master bedroom.

In November 2012, the mother sought to buy the shooter another computer or parts for a computer for the shooter to build one himself. She was concerned about him and said that he hadn't gone anywhere in three months and would only communicate with her by e-mail, though they were living in the same house. The mother never expressed fear of the shooter, for her own safety or that of anyone else.

The mother said that she had plans to sell her home in Newtown and move to either Washington state or North Carolina. She reportedly had told the shooter of this plan and he apparently stated that he wanted to move to Washington. The intention was for the shooter to go to a special school in Washington or get a computer job in North Carolina. In order to effectuate the move, the mother planned to purchase a recreational vehicle (RV) to facilitate the showing and sale of the house and the eventual move to another state. The RV would provide the shooter with a place to sleep as he would not sleep in a hotel. In fact, during Hurricane Sandy in October 2012, with no power in the house, the shooter refused to leave the home and go to a hotel.

The mother wanted to buy the shooter a CZ 83 pistol for Christmas and had prepared a check for that purchase to give the shooter.

On December 10, 2012, the mother indicated to a friend that the shooter had bumped his head badly, there was some bleeding, but he was okay. This appeared to have occurred at 5:30 a.m. She then prepared for her trip to New Hampshire and cooked for the shooter before she left, leaving him his favorites.

During the week of December 10, 2012, the shooter's mother was out of town in New Hampshire. She arrived home Thursday evening December 13, 2012, at approximately 10:00 p.m.

As mentioned above, the GPS found in the home, revealed that on Thursday, December 13, 2012, the device was used. It recorded a trip from and back to 36 Yogananda Street with a route in the Sandy Hook area of Newtown between 2:09 p.m. and 2:32 p.m. The GPS did not report that the driver drove up to SHES. Presumably this was the shooter driving the black Honda Civic as this would have been the only car available to the shooter and it was reportedly his, having been purchased for him.

General Background Information

Investigators conducted many interviews with persons who knew the shooter and members of his family. As explained above, they did so principally to determine if anyone had conspired with the shooter or aided his crimes. But they also sought to ascertain what might have motivated him to murder children and their teachers and his mother.

The first question was whether the shooter had a reason specifically to target SHES or any student, teacher, or employee. No evidence suggests that he did. In fact, as best as can be determined, the shooter had no prior contact with anyone in the school that day. And, apart from having attended the school as a child, he appears to have had no continuing involvement with SHES.

More generally, those who knew the shooter describe him in contradictory ways. He was undoubtedly afflicted with mental health problems; yet despite a fascination with mass shootings and firearms, he displayed no aggressive or threatening tendencies. In some contexts he was viewed as having above-average intelligence; in others below-average. Some recalled that the shooter had been bullied; but others – including many teachers – saw nothing of the sort. With some people he could talk with them and be humorous; but many others saw the shooter as unemotional, distant, and remote.

What follows are some observations that investigators developed in attempting to determine the shooter's motive.

Parents

The shooter's mother and father Peter Lanza had been married to each other. They moved from New Hampshire to the Sandy Hook section of Newtown in 1998. In addition to the shooter, they had another son Ryan Lanza, who was four years older than the shooter.[43] In 2001 the shooter's parents separated. The children continued to reside with the mother. The parents subsequently divorced. The father remarried in 2011; the mother never remarried.

After college, the brother moved out of state. He reached out to the shooter a few times but the shooter did not respond. As of December 14, 2012, the older brother had not had contact with the shooter since 2010. The brother believed that the shooter and his mother had a close relationship. After his older brother left for college, the shooter reportedly became interested in firearms and at one point considered joining the military.

Both the shooter's mother and father indicated that the shooter was bullied growing up. The father indicated that it was not excessive and concerned his social awkwardness and physical gait. As expanded upon in the Education and Mental Health section below, other witnesses did not recall the shooter being overtly bullied. Nonetheless, the shooter appears to have had few friends growing up.

[43] Both the shooter's father and brother cooperated fully with the investigation.

The shooter's father saw him regularly until he turned 18. They would go hiking, play video games and other activities. They went shooting twice. The shooter had a cell phone but never used it. Calls all went to voice mail. His father would just e-mail him when he wanted to reach him.

The shooter's relationship with his father deteriorated in the last quarter of 2010 and the father last saw the shooter in that year. After that the father would reach out to the shooter by mail or through e-mails regularly, asking him to join him at various places for different activities. The shooter stopped responding at some point prior to December 2012.

One witness who knew the shooter in 2011 and 2012 said that he rarely mentioned his father or his brother; though he would mention briefly something he did with his father or brother in the past.

While it appears that the shooter's mother did volunteer at SHES, it was when the shooter was a student. There is no indication that she volunteered there in recent years.

The mother took care of all of the shooter's needs. The mother indicated that she did not work because of her son's condition. She worried about what would happen to the shooter if anything happened to her.

One witness indicated that the shooter did not have an emotional connection to his mother. Recently when his mother asked him if he would feel bad if anything happened to her, he replied, "No." Others, however, have indicated that they thought the shooter was close to his mother and she was the only person to whom the shooter would talk.

A person who knew the shooter in 2011 and 2012 said the shooter described his relationship with his mother as strained because the shooter said her behavior was not rational.

The shooter was particular about the food that he ate and its arrangement on a plate in relation to other foods on the plate. Certain types of dishware could not be used for particular foods. The mother would shop for him and cook to the shooter's specifications, though sometimes he would cook for himself. Reportedly the shooter did not drink alcohol, take drugs, prescription or otherwise, and hated the thought of doing any of those things.

The mother did the shooter's laundry on a daily basis as the shooter often changed clothing during the day. She was not allowed in the shooter's room, however, even to clean. No one was allowed in his room.

The shooter disliked birthdays, Christmas and holidays. He would not allow his mother to put up a Christmas tree. The mother explained it by saying that shooter had no emotions or feelings. The mother also got rid of a cat because the shooter did not want it in the house.

People Outside the Family

When the shooter had his hair cut, he did not like to be touched and did not like the sound of clippers, so they were not used much. He would sit with his hands in his lap and always look down, giving one word answers if the cutter tried to engage him in conversation.

Those who worked on the property at 36 Yogananda Street never entered the home. They spoke with the mother outside in the yard or at the bottom of driveway. They were instructed never to ring the doorbell and to make prior arrangements before using power equipment as her son had issues with loud noises. The shooter was observed at times coming and going from the residence.

There were a number of people who knew the mother over the years, some fairly well, who had never met the shooter – although were aware of his existence – and had never been inside her residence.

Shooter's Interests

Over the years his hobbies included building computers,[44] writing poetry and hiking. The shooter worked briefly at a computer repair shop. When he was younger he played the saxophone. The shooter had a cell phone but never used it.

Shooting was a pastime in which the family engaged. Over the years the shooter enjoyed target shooting and would go to a range with his brother and mother. The mother had grown up with firearms and had a pistol permit. The shooter did not. Both the mother and the shooter took National Rifle Association (NRA) safety courses. The mother thought it was good to learn responsibility for guns. Both would shoot pistols and rifles at a local range and the shooter was described as quiet and polite.

He played video games often, both solo at home and online. They could be described as both violent and non-violent. One person described the shooter as spending the majority of his time playing non-violent video games all day, with his favorite at one point being "Super Mario Brothers."

Another said he used the computer to play games online and communicate. Sometimes the shooter would not respond to e-mails and be unavailable for a couple of weeks. The shooter explained that he was "moping around." The shooter frequently formatted the hard drive of his computer as a way of "staying off the grid" and minimizing his internet trace.

Initially the shooter did not drive but he eventually got a driver's license and the Honda was purchased for him. The shooter was issued a driver's license in July 2010.

The shooter liked to play a game called "Dance Dance Revolution" (DDR), which is a music video game in which the player stands on a platform, watches a video screen and moves his feet

[44] By all accounts the shooter was extremely computer savvy.

as directed by the video. A home version of this was seen and photographed in the shooter's home.[45] Several videos of him playing DDR were found on digital media taken from the home.

The GPS found in the home and reportedly belonging to the shooter indicated that he regularly went to the area of a theater that had a commercial version of the DDR game in the lobby. In 2011 and up until a month before December 14, 2012, the shooter went to the theater and played the game. He went most every Friday through Sunday and played the game for four to ten hours.

The shooter was specific about the clothes he wore. He typically wore the same clothing when at the theater: a grey hoodie and slacks. After a snowstorm in 2011 the shooter was not seen at the theater until about February 2012. At that time he seemed more anti-social and no longer played DDR with others.

An acquaintance of the shooter from 2011 to June 2012 said that the shooter and the acquaintance played DDR quite a bit. They would play the game and occasionally see a movie. They did not play first person shooter games at the theater.[46] The shooter had stamina for DDR and never appeared winded unless really exhausted.

The acquaintance said the shooter seemed to enjoy nature and mentioned the possibility of going hiking more than once. The shooter was capable of laughing, smiling and making jokes, though always in a dry fashion. The shooter never mentioned being bullied while growing up. Topics of conversation included world and current events, and included chimpanzee society and how they interacted.

In the course of their conversations, the shooter indicated that he had an interest in mass murders and serial killing. They never spent a lot of time discussing them, but it would be a topic of conversation.[47] There were no conversations about weapons or shooting at a gun range.

Shooter – Education and Mental Health

The following background information is compiled from a variety of sources and may at times appear to be inconsistent. This is a function of the differing perspectives of those interviewed. The information also varied based upon the time period during which the witness knew or associated with the shooter or his family.

The shooter went through the Newtown public school system, though part of seventh grade and part of eighth grade were done at St. Rose of Lima School in Newtown.

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[45] See the Appendix at page A197.

[46] Online first person shooter games that the shooter did play as determined by a search of the digital media in the home, "Combat Arms" and "World of Warcraft" were played on the computer using a keyboard to control the player.

[47] The shooter also wrote about all of these topics. Other topics of discussion included human nature, perception, judgment, morality, lack of control, prejudice, empathy, suicide, mental illness, existential crisis, urban exploration of abandoned areas, hiking and cookies.

While the shooter did attend SHES from 1998 to 2003, the first through fifth grade, he was never assigned to the classrooms where the shootings occurred. The shooter went for walks with his family around and near SHES after he had gotten out of the school. The shooter indicated that he loved the school and liked to go there.

According to some, the shooter was more social when he first moved to Connecticut and was younger. He would attend play groups and parties. The early school years have him portrayed as a nice kid, though sort of withdrawn. He loved music and played saxophone.

As he got older his condition seemed to worsen, he became more of a loner. As the shooter got into the higher grades of middle school, he did not like noise and confusion and began to have issues when he had to walk to different classes. As a result, in high school, the shooter was home schooled for a period of time. Though not in a mainstream setting, he could sit through a quiet lecture. The mother drove the shooter where he needed to go. He did not want to go to events with crowds.

He attended Newtown High School (NHS) with a combination of home schooling, tutoring and classes at NHS and Western Connecticut State University (WCSU). At NHS he was considered a special education student. Having enough credits, the shooter graduated from NHS in 2009. He continued to take classes at WCSU after high school graduation.

Various witnesses made the following observations about the shooter through his school years:

1. In the 2002-2003 school year, when the shooter was in the fifth grade, he was quiet, reluctant, very bright and had good ideas regarding creative writing. He wouldn't necessarily engage in conversation, but wouldn't ignore one. There was no recollection of him being bullied or teased.
2. The fifth grade was also the year that, related to a class project, the shooter produced the "Big Book of Granny" in which the main character has a gun in her cane and shoots people. The story includes violence against children. There is no indication this was ever handed in to the school.[48]
3. In the fifth grade the shooter indicated that he did not like sports, did not think highly of himself and believed that everyone else in the world deserved more than he did.
4. In intermediate school from 2002-2004 he was a quiet shy boy who participated in class and listened. He did not show enthusiasm, extreme happiness or extreme sadness. He was neutral.
5. In the fifth and sixth grades from 2003 to 2004 the shooter participated in concerts at school. He was not remembered by the teacher as having been bullied and the shooter had at least one friend.
6. A sixth grade teacher described the shooter as an average student with A's and B's; homework was never an issue. The shooter never made trouble or distracted others. He had friends and was friendly to others. He was a normal child with no oddities and there were no reports of bullying or teasing.

[48] See the Appendix starting at page A220.

7. In 2004 while at the intermediate school he was described as respectful and cooperated with others.
8. One person who remembered him from the middle school never saw the shooter bullied.
9. In seventh grade, a teacher described the shooter as intelligent but not normal, with anti-social issues. He was quiet, barely spoke and did not want to participate in anything. His writing assignments obsessed about battles, destruction and war, far more than others his age. The level of violence in the writing was disturbing. At the same time, when asked to write a poem, he was able to write a beautiful one and presented it in public.
10. In the ninth and tenth grades the shooter was reclusive, shutting himself in the bedroom and playing video games all day. In the upper classes the shooter compiled a journal instead of attending physical education.
11. In high school the shooter did not have good social skills. He did not show any signs of violence.
12. In high school the shooter would have "episodes"[49] and his mother would be called to the school. The episodes would last about fifteen minutes each. There were no signs of violence during any of these episodes and the shooter was more likely to be victimized than to act in violence against another.
13. In high school the shooter was not willing to talk much, hard to communicate with and had poor social skills. He often became withdrawn in a social environment. The shooter would have both inclusive class time and leave the class for specialized sessions.
14. At NHS the shooter was in the "Tech Club" in 2007–2008. He was remembered in a variety of ways including as a quiet person who was smart. He wore the same clothing repeatedly and might not speak to you, even if you were talking to him. He was not remembered to have been bullied or to have spoken about violence. The advisor looked out for him and tried to have him included wherever possible. He was also remembered for pulling his sleeves over his hand to touch something. He was not known to be a violent kid at all and never spoke of violence.
15. The shooter had a LAN party[50] at his home in 2008 with Tech Club members; no firearms were seen at the shooter's home.
16. In terms of video games, the shooter liked to play "Phantasy Star Online" (a role playing game), "Paper Mario," "Luigi's Mansion" and "Pikmin." He also liked Japanese animated films and television.

Over the years from the late 1990s and into the 2000s, the shooter had evaluations of various types, some of which were available to the investigators. In the late 1990s he was described as having speech and language needs. At that time he was also being followed medically for seizure activities. In preschool his conduct included repetitive behaviors, temper tantrums, smelling things that were not there, excessive hand washing and eating idiosyncrasies.

In 2005, the shooter was diagnosed with Asperger's Disorder and was described as presenting with significant social impairments and extreme anxiety. It was also noted that he lacked empathy and had very rigid thought processes. He had a literal interpretation of written and

[49] What these episodes were was unclear.

[50] This is a party where attendees eat pizza and play video games.

verbal material. In the school setting, the shooter had extreme anxiety and discomfort with changes, noise, and physical contact with others.

In 2006 the shooter had an overall IQ in the average range. He had no learning disability. Depending on the psychological test taken he could be average, below average or above average. Testing that required the touching of objects could not be done. It was reported that his school issues related to his identified emotional and/or Pervasive Developmental Disorder (PDD) spectrum behaviors. His high level of anxiety, Asperger's characteristics, Obsessive Compulsive Disorder (OCD) concerns and sensory issues all impacted his performance to a significant degree, limiting his participation in a general education curriculum. Tutoring, desensitization and medication were recommended. It was suggested that he would benefit by continuing to be eased into more regular classroom time and increasing exposure to routine events at school.

The shooter refused to take suggested medication and did not engage in suggested behavior therapies.

Over the years his mother consistently described the shooter as having Asperger's syndrome. She had a number of books in the home on the topic. She also described the shooter as being unable to make eye contact, sensitive to light and couldn't stand to be touched. Over time he had multiple daily rituals, an inability to touch door knobs,[51] repeated hand washing and obsessive clothes changing, to the point that his mother was frequently doing laundry.

In 2006, the shooter's mother noted that there were marked changes to the shooter's behavior around the seventh grade. Prior to that, he would ride his bike and do adventurous things such as climbing trees or climbing a mountain. He had stopped playing the saxophone. He had been in a school band but dropped out. He had withdrawn from playing soccer or baseball which he said he did not enjoy.

It is important to note that it is unknown, what contribution, if any, the shooter's mental health issues made to his attack on SHES. Those mental health professionals who saw him did not see anything that would have predicted his future behavior.

EVIDENCE EXAMINATION

Electronics

Examinations of the following seized items were done by the WDMC squad and the Computer Crimes and Electronic Evidence Laboratory of the Department of Emergency Services and Public Protection (DESPP).

Sony PlayStation 2: An older games history was found. Games located included "Dynasty Tactics," "Kingdom Hearts," "Kingdom Hearts 2," "Onimusha," "Dynasty Warriors," and "The Two Towers." The PlayStation 2 games could not be played with others over the internet.

[51] This included not opening doors for himself because he did not like touching the door handle or other metal objects, often going through a box of tissues a day to avoid the contact.

Xbox: A game history for the console and an indication of an Xbox Live user account were found. Games found in the gaming history included "Call of Duty 2: Big Red One," "Call of Duty: Finest Hour," "Dead or Alive 3," "Halo," "Halo 2," "Lego Star Wars," "MechAssault," "Mercenaries," "MGS2 Substance," "Panzer Dragoon ORTA," "PSO," "Shenmue II," "Spiderman," "Splinter Cell 2," "Splinter Cell-CT," "Star Wars Battlefront," "Star Wars Republic Commando," "Tenchu: Return from Darkness," "The Return of the King," and "Worms Forts Under Seige."

It was noted on both of the above items that the gaming history found may not be the complete history of those actually played. No evidence regarding the existence of any accessories or co-co-conspirators was found.

Xbox 360: Found to be damaged and inoperable.

Firearms and Related Evidence

Of the firearms seized in this case, five are directly involved, four from SHES and one from 36 Yogananda Street.

- **History**

All of the firearms below and involved in these cases were legally purchased by the shooter's mother. Additionally, ammunition of the type used in these cases had been purchased by the shooter's mother in the past. There is no reason to believe the ammunition used here was purchased by anyone else. The evidence does not show any ammunition purchases by the shooter.

The shooter did not have a permit to carry a pistol, nor had he ever had one. His mother had a valid pistol permit.

A pistol is defined as "… any firearm having a barrel less than twelve inches."[52] Both the Glock 20, 10 mm and the Sig Sauer P226, 9 mm qualify as pistols. They are firearms and their barrel lengths were less than 12 inches.

- **Firearms, Recovered Bullets and Fragments**

Recovered from Shooter's Honda Civic Outside of SHES

Izhmash Saiga-12, 12 gauge, semiautomatic shotgun: The Izhmash Saiga-12 was found in the shooter's Honda Civic that was parked outside SHES. It was tested and found to be operable without malfunction. There was no physical evidence indicating this weapon had been fired at SHES, i.e., the bullets, bullet fragments and expended shell casings recovered at the scene and from the OCME could not have been fired from this weapon.

[52] C.G.S. Sec. 53a-3(18).

Recovered from Classroom 10, SHES

Bushmaster Model XM15-E2S semiautomatic rifle: The Bushmaster rifle was found in classroom 10. The Bushmaster was tested and found to be operable without malfunction. All of the 5.56 mm shell casings from SHES that were tested were found to have been fired from this rifle. All of the bullets and fragments, recovered from SHES and the OCME that were tested, with the exception of those mentioned immediately below, are consistent with having been fired from the Bushmaster rifle.[53] They could not have been fired from the Saiga-12, the Glock 20 or the Sig Sauer P226.

Glock 20, 10 mm, semiautomatic pistol: The Glock 20 was found in classroom 10 near the shooter's body. The Glock 20 was tested and found to be operable without malfunction. It was found to have fired both of the 10 mm shell casings recovered at SHES. It was consistent with having fired the bullet that was recovered from the ceiling of classroom 8 in a location along the trajectory of the suicide shot of the shooter in classroom 10. It could have fired the three bullet fragments recovered from classroom 10. The three fragments together weigh less than one bullet and are presumed to have been parts of the same one bullet. Though all lacked sufficient striate for a positive identification, all had polygonal rifling consistent with the Glock 20. They could not have been fired from the Saiga-12, the Bushmaster or the Sig Sauer P226.

Sig Sauer P226, 9 mm, semiautomatic pistol: The Sig Sauer P226 was found in classroom 10 on the shooter's person. The Sig Sauer P226 was tested and found to be operable without malfunction. There was no physical evidence found indicating that this weapon had been fired at SHES, i.e. casings, bullets and bullet fragments recovered at the scene and from the OCME could not have been fired from this weapon.

The total weight of the guns and ammunition from the shooter at SHES was 30.47 lbs.[54]

Recovered from 36 Yogananda Street, Newtown, CT

Savage Mark II, .22 cal. Long Rifle, bolt action: The Savage Mark II rifle was found on the floor of the master bedroom near the bed where the body of the shooter's mother was found. The rifle was found to be operable without malfunction. The rifle was found to have fired the .22 cal. casing recovered from the rifle's chamber and the three .22 cal. casings found in the master bedroom. The rifle also was found to have fired the four bullets recovered during the autopsy of the shooter's mother.

[53] "No positive identification could be made to any of the bullet evidence submissions noted … … in 5.56 mm caliber. The physical condition of the bullet jacket surfaces were severely damaged and corroded. They all lacked individual striated marks of sufficient agreement for the identification process. The test fires also exhibited a lack of individual striated marks on the bullet surface for comparison purposes. This condition can be caused by fouling in the barrel of the rifle and the ammunition itself. The Bushmaster rifle cannot be eliminated as having fired the 5.56 caliber bullet evidence examined," quoting from the 6/19/13 Forensic Science Laboratory report.

[54] See the Appendix at page A141.

Other Testing

In the course of the investigation swabbings to test for DNA were taken from various pieces of evidence in the case, both at Sandy Hook Elementary School and 36 Yogananda Street. The purpose was to determine if anyone else had actively been involved in the planning or carrying out of the shootings. These swabbings were tested and compared to known samples in the case and no potential accessories or co-conspirators were revealed by the testing.[55]

MISCELLANEOUS INVESTIGATIVE LEADS

In the course of the investigation, law enforcement personnel received a large number of contacts purporting to provide information on the shootings and the shooter. This applied to both state and federal law enforcement. Information that was substantiated and relevant was made part of the investigation. Other information, after investigation was not substantiated.

Typically someone would call the CSP and leave a message that they had information relevant to the shootings at Sandy Hook Elementary School. In an abundance of caution, a detective was assigned to follow up on every "lead," regardless of its presumed validity.

Some of the more than forty unsubstantiated leads and information are described below because of their nature or mention in investigation documents.

1. In the December 14, 2012, 7:25 p.m. search warrant for 36 Yogananda Street, paragraphs 8 and 9 read as follows:

    8. That investigators determined that on 12/12/12, an individual logged onto a website called 4Chan.com and anonymously posted "I'm going to kill myself on Friday and it will make the news. be watching at 9:00 am." That another anonymous individual asked "Where at?" The first individual responded "I live in Connecticut, that's as much as I'll say."
    9. That additionally on 12/14/12, a concerned individual in Texas contacted the Hartford Police Department and reported that her son was playing a video game named 'Call of Duty' approximately 20 hours ago. She continued that a gamer with the screen name [RaWr]i<3EmoGirls (hereinafter "User") stated; "next week or very soon there maybe a shooting at my school and other schools so if i die remember me plz if I don't get on for 3-5 not including weeks that means i died and im being 100 percent serious." The User then stated: "something might go bad tomorrow this could possibly be my last moments alive.-." Finally, User stated, "as far as I know theres a list of ppl that are gunna get shot-. I hope I aint on it."

[55] Two of the items examined from outside the building of SHES, one from the shotgun in the shooter's car and a second from 36 Yogananda Street yielded DNA profiles consistent with the DNA profiles of two victims killed in SHES, one in each. It is strongly believed that this resulted from an accidental transference as a result of the unique circumstances of this case. There is no reason to believe that either victim would ever have come in contact with these items. The DESPP is conducting a separate protocol inquiry in an attempt to determine the reason that the DNA appears on the items.

Both of these leads were immediately investigated by federal law enforcement and found to have no validity and no relation to Newtown.[56]

2. A December 14, 2012, search of the Stamford residence of Peter Lanza, the father of the shooter, was conducted with the FBI. Some illegal fireworks were seized and secured. After consultation with David I. Cohen, the State's Attorney for the Judicial District of Stamford/Norwalk, and based on all of the circumstances involved, this state's attorney has decided to exercise his discretion and not prosecute Mr. Lanza for possession of the fireworks, which are in no way related to the events of December 14, 2012.
3. Dick's Sporting Goods – Police received a lead that the shooter had tried to buy ammunition at a Dick's Sporting Goods store. Store security surveillance videos were recovered and reviewed. None of the individuals depicted in the videos appear to be the shooter or connected to shooter.
4. A person called the police indicating that the shooter had tried to rent a room from her and indicated he was having problems with his mother. This proved to be unsubstantiated after an investigation.
5. Some callers indicated that they chatted with the shooter online in postings. These postings were determined to be false.
6. Numerous citizens in Newtown received calls on their telephones with messages left saying "I am [the shooter's name] and I am going to kill you." It was determined that these calls were made from out of state and the investigation is ongoing. Preliminary investigation results establish that the callers were not associated with the shooter.
7. CSP investigated a lead that the shooter went to Newtown High School before going to SHES. In the course of this investigation one parent refused to let her high school child be interviewed by police and related that a friend of the child had told the child they saw the shooter in the parking lot before the shooting. A review of Newtown High School video did not substantiate this claim.
8. There were reports of the shooter being at SHES on December 12, 2012, that were investigated and found not to be substantiated.
9. A report that a man claimed that while in Oklahoma a woman told him about the planned shooting before the shooting occurred. Federal law enforcement investigated this and found that it could not be true.

[56] These search warrants were applied for with information that was available at the time. Some of the information was later determined to be inaccurate.

DETERMINATIONS OF CRIMES COMMITTED

In the course of his rampage the shooter committed a number of state crimes. The most significant are those where lives were taken and people were specifically injured.

At Sandy Hook Elementary School, the crime of Murder under Special Circumstances[57] in violation of C.G.S. Sec. 53a-54b was committed twenty-six times. Attempted Murder under Special Circumstances[58] in violation of C.G.S. Secs. 53a-49 and 53a-54b was committed twice as it relates to the two individuals who were shot and survived. These crimes reflect the killings of the children and adults, as well as those physically injured.[59] The crime of Murder in violation of C.G.S. Sec. 53a-54a was committed by the shooter in killing his mother at 36 Yogananda Street.[60]

Also listed are other major crimes committed by the shooter on December 14, 2012.[61]

The major felonies[62] committed by the shooter in this case are:

- Murder with Special Circumstances
- Attempted Murder with Special Circumstances
- Assault in the First Degree[63]

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[57] Sec. 53a-54b. Murder with special circumstances**.** A person is guilty of murder with special circumstances who is convicted of any of the following: (1)… … (7) murder of two or more persons at the same time or in the course of a single transaction; or (8) murder of a person under sixteen years of age.

[58] Sec. 53a-49. Criminal attempt: Sufficiency of conduct; renunciation as defense. (a) A person is guilty of an attempt to commit a crime if, acting with the kind of mental state required for commission of the crime, he: … … (2) intentionally does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime.

[59] Though state law as to who is a "victim" in a criminal case is very broad, only those victims mentioned above will be discussed. Connecticut defines a "victim of crime" as an individual who suffers direct or threatened physical, emotional or financial harm as a result of a crime and includes immediate family members of a minor, incompetent individual or homicide victim and a person designated by a homicide victim in accordance with section 1-56r. See C.G.S. Sec. 1-1k.

[60] Sec. 53a-54a. Murder. (a) A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person or of a third person or causes a suicide by force, duress or deception; except that in any prosecution under this subsection, it shall be an affirmative defense that the defendant committed the proscribed act or acts under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be, provided nothing contained in this subsection shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime.

[61] The investigation has not discovered any evidence that Nancy Lanza was in any way aware of her son's plans.

[62] In any given situation, the facts giving rise to the commission of one crime will suffice to meet the elements of additional crimes. Here the focus will be on the major crimes committed and not go into every possible felony justified by the evidence.

- Burglary in the First Degree[64]
- Risk of Injury to a Minor[65]
- Possession of a Weapon on School Grounds[66]
- Carrying a Pistol Without a Permit,[67]

The crimes listed above all require some type of mental state whether it is a specific intent, knowledge or a general intent to do the prohibited act.

The intent to kill for the crime of murder can be seen in the circumstantial evidence such as the type of weapon used, the manner in which it was used, the type of wounds inflicted and the events leading to and immediately following the deaths, as well as with the shooter intending the natural consequences of his voluntary acts.[68]

Here the intent is clear from the evidence that the shooter intentionally armed himself heavily, drove to SHES, parked in a manner out of direct sight of the front door, shot his way into the building and immediately killed those who confronted him as well as those in classrooms 8 and 10. The evidence found at his home on the digital media further support his intentions to kill, both at the school and with his mother. Further the manner in which he killed his mother reflects the shooter's intent to kill her.

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[63] Sec. 53a-59. Assault in the first degree: Class B felony: Nonsuspendable sentences. (a) A person is guilty of assault in the first degree when: (1) With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument;… … or (5) with intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of the discharge of a firearm.

[64] Sec. 53a-101. Burglary in the first degree: Class B felony. (a) A person is guilty of burglary in the first degree when (1) such person enters or remains unlawfully in a building with intent to commit a crime therein and is armed with explosives or a deadly weapon or dangerous instrument, or (2) such person enters or remains unlawfully in a building with intent to commit a crime therein and, in the course of committing the offense, intentionally, knowingly or recklessly inflicts or attempts to inflict bodily injury on anyone, or …..

[65] Sec. 53-21. Injury or risk of injury to, or impairing morals of, children. Sale of children. (a) Any person who (1) wilfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the life or limb of such child is endangered, the health of such child is likely to be injured or the morals of such child are likely to be impaired, or does any act likely to impair the health or morals of any such child, or … …, shall be guilty of a class C felony for a violation of subdivision (1) ….

[66] Sec. 53a-217b. Possession of a weapon on school grounds: Class D felony. (a) A person is guilty of possession of a weapon on school grounds when, knowing that such person is not licensed or privileged to do so, such person possesses a firearm or deadly weapon, as defined in section 53a-3, (1) in or on the real property comprising a public or private elementary or secondary school, or ….

[67] Sec. 29-35. Carrying of pistol or revolver without permit prohibited. Exceptions. (a) No person shall carry any pistol or revolver upon his or her person, except when such person is within the dwelling house or place of business of such person, without a permit to carry the same issued as provided in section 29-28.

[68] State v. Otto, 305 Conn. 51, 66-67 (2012).

Murder with Special Circumstances is met both in the killing of the children and in the killing of more than one person at the same time.

In this case the shooter's mental status is no defense to his conduct as the evidence shows he knew his conduct to be against the law. He had the ability to control his behavior to obtain the results he wanted, including his own death. This evidence includes his possession of materials related to mass murders, his removal of the GPS from his car, his utilization of ear plugs, the damaging of the hard drive and waiting for his mother's return from New Hampshire.[69]

The existence of an extreme emotional disturbance for which there is a reasonable explanation or excuse is also not present in this case.[70] It is clear that the shooter planned his crimes in advance and was under no extreme emotional disturbance for which there was a reasonable explanation or excuse.

[69] Sec. 53a-13. Lack of capacity due to mental disease or defect as affirmative defense. (a) In any prosecution for an offense, it shall be an affirmative defense that the defendant, at the time he committed the proscribed act or acts, lacked substantial capacity, as a result of mental disease or defect, either to appreciate the wrongfulness of his conduct or to control his conduct within the requirements of the law.

[70] Sec. 53a-54a. Murder. (a) A person is guilty of murder when, … …with intent to cause the death of another person, he causes the death of such person or of a third person or causes a suicide by force, duress or deception; except that in any prosecution under this subsection, it shall be an affirmative defense that the defendant committed the proscribed act or acts under the influence of extreme emotional disturbance for which there was a reasonable explanation or excuse, the reasonableness of which is to be determined from the viewpoint of a person in the defendant's situation under the circumstances as the defendant believed them to be, provided nothing contained in this subsection shall constitute a defense to a prosecution for, or preclude a conviction of, manslaughter in the first degree or any other crime.

CONCLUSION

With the issuance of this report, the investigation is closed.[71] If additional reliable information, related to the existence of others' involvement in the case, comes to the attention of the investigators, it is subject to being reopened. I do not anticipate that occurring. As of now, there will be no state prosecution of anyone as an accessory or co-conspirator.

Many people have asked why the shooter did what he did on December 14, 2012. Or, in the vernacular of the criminal justice system, "Did he have a motive to do what he did?" This investigation, with the substantial information available, does not establish a conclusive motive.

What we do know is that the shooter had significant mental health issues that, while not affecting the criminality of the shooter's mental state for the crimes or his criminal responsibility for them, did affect his ability to live a normal life and to interact with others, even those to whom he should have been close. Whether this contributed in any way is unknown. The shooter did not recognize or help himself deal with those issues. He had a familiarity with and access to firearms and ammunition and an obsession with mass murders, in particular the Columbine shootings.

There is no clear indication why Sandy Hook Elementary School was selected, other than perhaps its close proximity to the shooter's home.

What is clear is that on the morning of December 14, 2012, the shooter intentionally committed horrendous crimes, murdering 20 children and 6 adults in a matter of moments, with the ability and intention of killing even more. He committed these heinous acts after killing his own mother. The evidence indicates the shooter planned his actions, including the taking of his own life.

It is equally clear that law enforcement arrived at Sandy Hook Elementary School within minutes of the first shots being fired. They went into the school to save those inside with the knowledge that someone might be waiting to take *their* lives. It is also clear that the staff of Sandy Hook Elementary School acted heroically in trying to protect the children. The combination saved many children's lives.

November 25, 2013

Stephen J. Sedensky III
State's Attorney
Judicial District of Danbury

[71] There remain some outstanding reports, returns and an evidence examination evaluation to be filed.

ACKNOWLEDGEMENTS

Over the course of the last eleven months many agencies, governmental and private, have come together to assist the victims' families, victims, first responders, others affected by the crimes, the Connecticut State Police and the State's Attorney's Office for the Judicial District of Danbury.

I wish to thank the below agencies, listed alphabetically, for their investigative work, cooperation and assistance in this investigation. Though I have tried to list all of the agencies that provided assistance to the investigation, I suspect some will be inadvertently left out. For this I apologize.

- Connecticut State Police and in particular Western District Major Crime Squad[72]*
- Connecticut Intelligence Center (CTIC)
- Bureau of Alcohol, Tobacco, Firearms and Explosives
- Department of Emergency Services and Public Protection Forensic Science Laboratory
- Faculty of Finding Words-Connecticut, A ChildFirst State[73]
- Family & Children's Aid of Danbury[74]
- Federal Bureau of Investigation,[75] including Victim Services and Behavior Analysis units
- Gundersen Health System's National Child Protection Training Center
- Hoboken, New Jersey, Police Department
- Homeland Security
- Municipal police departments in Connecticut
- Newtown Police Department
- Office of the Chief Medical Examiner
- Office of the Chief State's Attorney[76]*
- State of Connecticut Judicial Branch
- United States Attorney's Office for the District of Connecticut*
- United States Drug Enforcement Agency
- United States Marshals Service

I would also like to thank the members of the Danbury State's Attorney's Office, in particular, Supervisory Assistant State's Attorney Warren Murray and Inspectors Donald Brown and John Mahoney for their assistance and support.

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[72] The Western District Major Crime Squad under the leadership of Lt. David Delvecchia investigated this case with a thoroughness and sensitivity that is unmatched in my experience.

[73] Connecticut is a ChildFirst state whose one week program Finding Words Connecticut, Interviewing Children and Preparing for Court is funded by the Governor's Task Force on Justice for Abused Children.

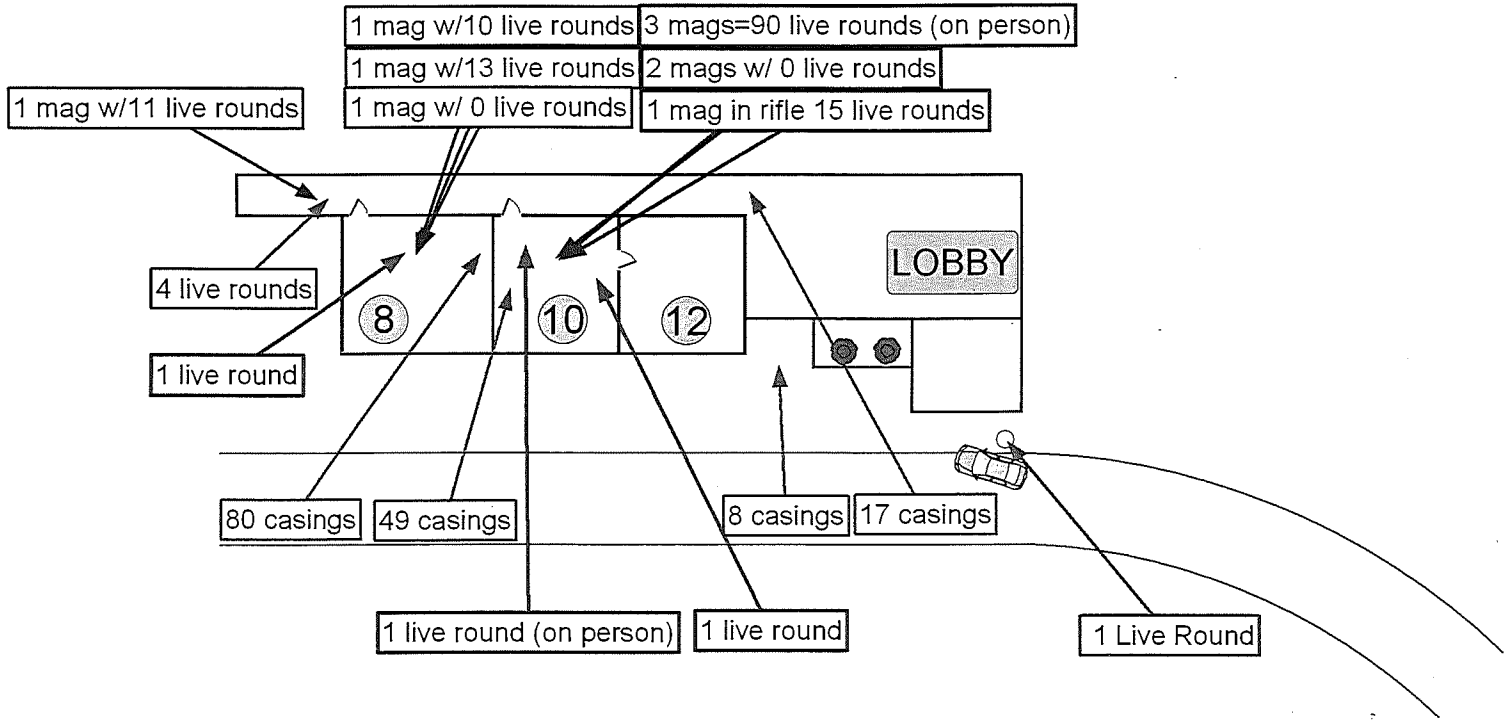
[74] Family & Children's Aid of Danbury hosts the Multidisciplinary Investigation Team.

[75] This includes FBI agents across the country who sought out evidence and interviewed witnesses in many states.

[76] Chief State's Attorney Kevin T. Kane's counsel and assistance has been an invaluable asset to me and this case, together with the assistance of those in his office who worked on the case.

* I am grateful for the suggestions, editing and reviews of the drafts of this report provided by these organizations. Any errors that remain are mine.

CONNECTICUT 1903 STATE POLICE	Case Number: CFS12-00704597	Date:
	Location: 12 Dickinson Drive, Sandy Hook, CT	
	Description: 5.56 Rounds at scene 5.56 Live Rounds Remaining= 147 5.56 Casings =154 5.56 Total on scene =301 Revised 11/04/13	



State of Connecticut, Department of Public Safety- Investigation Report (DPS-302-C) (Revised 12/07/04)	DPS INCIDENT NUMBER: CFS-12-00704597	Page 46 of 54
REPORT TYPE: ☐ INITIAL ☐ ASSIST ☒ SUPP ☐ RE-OPEN ☐ CLOSING	ATTACHMENTS: ☐ STATEMENTS ☐ TELETYPE ☐ PHOTOS ☐ SKETCH MAP ☐ EVIDENCE ☒ OTHER	

[redacted]

Search for casings and projectiles in classroom #8

Detective Sliby #810 measured equal distances on each wall of classroom #8 and cordoned off the room into four (4) quadrants. The southeast, southwest, northeast and northwest quadrants were established for purposes of collecting expended bullet shell casings and projectiles.

CASE STATUS: X 1 ACTIVE ☐ 2 CLEARED BY ARREST ☐ 3 SUSPENDED ☐ 4 EXCEPTIONAL CLEARANCE ☐ 5 NO CRIMINAL ASPECT ☐ F FUGITIVE

TYPE OF EXCEPTIONAL CLEARANCE: ☐ A OFFENDER DECEASED ☐ B PROSECUTION DECLINED ☐ C EXTRADITION DENIED ☐ D DECEDENT UNCOOPERATIVE ☐ E JUVENILE-NO

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN, DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE:	INVESTIGATOR I.D.#:	REPORT DATE:	SUPERVISOR SIGNATURE:	SUPERVISOR I.D.#:	APPROVAL DATE:
Det K. Keith	533	11/18/2013	Sgt. Jeffrey Cavallo	167	11/19/13

Detective Karoline Keith

- **NE Quadrant:** *no expended shell casings recovered*
- **NW Quadrant:** Exhibit #53 (Thirty seven (37) expended 5.56 mm casings as well as copper and lead fragments that were collected into an envelope)
- **SE Quadrant:** *no expended shell casings recovered*
- **SW Quadrant:** Exhibit #54 (Forty two (42) expended 5.56 mm casings as well as copper and lead fragments that were collected into an envelope)

There was one (1) expended 5.56 mm shell casing seized as Exhibit # 128. This casing was located within the removed contents of this classroom, specifically the desks removed from the southwest corner of the room.

There was a large amount of lead and copper-like fragments located within the bathroom of classroom #8 that were seized collectively as part of Exhibit #95. There were lead and copper-like fragments located within the southwest quadrant of classroom #8 that were seized collectively as part of Exhibit #54.

BALLISTIC TOTALS FOR CLASSROOM #8

LIVE ROUNDS SEIZED from Classroom #8: (TOTAL: 24)
EXPENDED CASINGS SEIZED from Classroom #8: (TOTAL: 80)
5.56 mm: Total 80 (by quadrant: NW-37, SW 43 (includes Exh. #128 found in removed items from classroom)

CLASSROOM #6

Classroom #6 was located on the north side of the north hallway and was the fourth classroom east of the front lobby and approximately 27 feet east of classroom #8. This classroom was accessed from a door that was recessed within the north side of the north hallway. As previously mentioned, the door opened outward (toward the hallway) and was wooden with a large circular window in the upper portion. This door was hinged on the east side. This window was partially covered on the inside of the window by a wooden "Apple" designed decoration. The door could only be locked by using a key on the exterior door handle key lock. The interior door handle had no locking mechanism. This room was carpeted with painted cinderblock walls. Florescent ceiling lights automatically turned on when entering the room.

There was a door on the north side of the west wall that provided access into classroom #8. This door opened inward to classroom #6 and was hinged on the north side. This door knob was unlocked and had key locks on both sides of the door.

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D. K. 4/2/14	533	11/18/2013	Sgt. [illegible]	167	11/19/13

Detective Karoline Keith

REPORT TYPE: ☐ INITIAL ☐ ASSIST ☒ SUPP ☐ RE-OPEN ☐ CLOSING
ATTACHMENTS: ☐ STATEMENTS ☐ TELETYPE ☐ PHOTOS ☐ SKETCH MAP ☐ EVIDENCE ☒ OTHER

[redacted]

Weapons and Ammunitions on the Shooter's Person:
(All weapons were made safe by assigned Evidence Detective Dan Sliby #810).

- Left upper breast pocket of the vest were a total of three (3) magazines seized as Exhibit #41 (Two (2) "Sig Sauer" magazines each containing twenty (20) live rounds of 9 mm ammunition and one (1) "Plus 2" magazine containing eighteen (18) rounds of live 9mm ammunition). Each magazine was loaded to full capacity.

CASE STATUS: X 1 ACTIVE ☐ 2 CLEARED BY ARREST ☐ 3 SUSPENDED ☐ 4 EXCEPTIONAL CLEARANCE ☐ 6 NO CRIMINAL ASPECT ☐ F FUGITIVE

TYPE OF EXCEPTIONAL CLEARANCE: ☐ A OFFENDER DECEASED ☐ B PROSECUTION DECLINED ☐ C EXTRADITION DENIED ☐ D DECEDENT UNCOOPERATIVE ☐ E JUVENILE-NO

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Det. K. Keith	533	11/18/2013	Sgt. Jeffrey T. Lovello	167	11/19/13

Detective Karoline Keith

- Right upper breast pocket of the vest were a total of three (3) magazines seized as Exhibit #45 (two (2) "Sig Sauer" magazines each containing twenty (20) live rounds of 9 mm ammunition and one (1) "Glock 10mm" magazine containing fifteen (15) live rounds of 10 mm ammunition). Each magazine was loaded to full capacity.

- Right lower vest pocket were two (2) black "PMAG 30" magazines each containing thirty (30) live rounds of 5.56 mm ammunition (head stamp S&B 5.56x45). These magazines were seized as Exhibit #46. Each magazine was loaded to full capacity.

- Left front trouser pocket of pants was a Sig Sauer P226 semi-automatic 9 mm pistol that was seized as Exhibit 20 (One Sig Sauer P226 9mm, S/N UU676027 handgun with an empty chamber and a magazine of eighteen (18) "Speer 9mm Luger" live rounds). This magazine was loaded to full capacity.

- Left cargo pocket of pants contained one (1) live round of 5.56mm ammunition (head stamp S&B 5.56x45) that was seized as Exhibit #40.

- Right cargo pocket of pants contained one (1) green colored "Winchester" 12 gauge shotgun shell that was seized as Exhibit #39.

- Left rear pants pocket contained two (2) "Glock 10 mm" magazines each containing fifteen (15) live rounds of 10 mm ammunition. These magazines were seized as Exhibit #43. Each magazine was loaded to full capacity.

- Right rear pants pocket contained two (2) "Glock 10 mm" magazines each containing fifteen (15) live rounds of 10 mm ammunition. These magazines were seized as Exhibit #44. Each magazine was loaded to full capacity.

253 live rounds of ammunitions on the shooter's person:

9 mm:	116 rounds
10mm:	75 rounds
5.56 mm:	61 rounds
12 ga:	1 round

Located on the floor underneath the shooter was one (1) black "PMAG 30" magazine containing thirty (30) live rounds of 5.56 mm ammunition (head stamp S&B 5.56x45). This magazine was seized as Exhibit #42. This magazine was loaded to full capacity.

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Detective Karoline Keith

Located on the floor east of the shooter was a "Glock" 10 mm semi-automatic pistol that was seized as Exhibit #19 (one "Glock" 10 mm, S/N SMA461). One round was partially loaded in the chamber, with a magazine of eight (8) rounds remaining). I observed this pistol to be lying on its left side pointed in a southwest direction. This pistol was measured to be approximately 2 feet 6 inches north of the hallway entrance door and approximately 2 feet 8 inches east of the suspect. This pistol appeared to be jammed with a partially open ejection port and one (1) live round of "10mm Auto" ammunition partially loaded into the chamber. This pistol contained one (1) "Glock 10mm" magazine that contained eight (8) live rounds of 10mm ammunition with the head stamp "10 mm Auto". (Magazines full capacity is 15). This pistol had numerous attached hairs to the front sight area of the pistol. These hairs were consistent in color with that of the shooter's hair. I observed one expended 10 mm casing located on the west side of the hallway entrance door in the area of the shooter. This expended casing was seized as part of **Exhibit #37** (from the southwest quadrant of classroom #10). There were four (4) live rounds of 10 mm ammunition all with the head stamp "10mm AUTO" on the floor in the southeastern portion of the classroom which is also the area the shooter was located. These live rounds of 10mm ammunition were seized as **Exhibits #22 thru #25. [NOTE: Four live 10 mm rounds found under the body, nine live 10 mm rounds in the pistol, and two expended 10 mm casings located = 15 rounds total, making a full capacity magazine]**

A black colored "Flexfit" canvas "boonie-styled" hat was located on the floor northeast of the suspect. This hat was seized as **Exhibit #21**. This hat had blood-like stains, hairs and a hole consistent with a bullet hole in the forward portion of the top of the hat. This hole was consistent with having been worn by the shooter at the time the shooter received a bullet to the right rear lower portion of his head which exited out the top forward portion of his head and hat. There was a pair of small wire framed glasses on the floor north of Exhibit #19 (Glock 10 mm). These glasses had blood-like stains on them and appeared to be small and consistent with child size glasses. There was no deceased child in close proximity to the shooter's body.

TRAJECTORY OF SUSPECTED SUICIDE SHOT

There was a hole consistent with a bullet hole located in the ceiling tile located approximately 8 feet 1 inch from the south wall and 5 feet 2 inches from the east wall. This hole was documented in photographs as "SBH #1 room 10". This projectile struck but did not penetrate a corrugated metal ceiling that was

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Det K. Keith	533	11/18/2013	Sgt. Jeffrey Arcella	167	11/19/13

Detective Karoline Keith

elevated and behind the ceiling tile. This strike was documented in photographs as "Strike #1 A". The projectile ricocheted and was later located above the ceiling tile in classroom 8 and seized as Exhibit # 98 (a lead and copper projectile). In the ceiling there was only a knee wall separating the two rooms.Trajectory documentation was completed on this hole with a documented horizontal angle (right (east) to left (west) of 66 degrees) and a vertical angle of 40 degrees from the floor. At a height of 5 feet along the path of this trajectory the muzzle would be located at approximately 7 feet 7 inches from the east wall and 7 feet 9 inches from the south wall.

Trajectory documentation, locations of blood-like stains, tissue, hair, and the shooter's body are all consistent with the shooter standing and facing in an east direction at the time of receiving a suspected self-inflicted gunshot wound to the right side of his head.

"BUSHMASTER" semi-automatic rifle [Exhibit #17]

A Bushmaster caliber .223 rifle, model XM15-E2S with associated serial number L534858 was located on the floor of classroom #10 and was seized as Exhibit #17. This rifle was located west of the southern-most cluster of desks and east of the door on the west wall that provides access to classroom #12. This rifle was lying on its right side pointed in a northeast direction. This rifle had a shoulder strap that was attached in the front to the underside of the forearm in the area under the rear attachment for the front site. The rear portion of the sling attachment had become detached when a threaded nut failed and detached from the underside of the rear portion of the stock. The black threaded nut that was consistent with the sling attachment to the rifle was located on the floor in close proximity (approximately 2 feet northeast) of the rifle (Exhibit #17). This black thread nut was seized as Exhibit #33. It could not be determined whether the sling failed during use or when it was placed, thrown or dropped on the floor.

The rifle (Exhibit #17) was observed to be lying on the floor on its right side. The rifle safety indicator was on "FIRE". There was one (1) live round of 5.56 mm ammunition in the chamber and one (1) "PMAG 30" magazine in the magazine well, containing fourteen (14) live 5.56 mm rounds of ammunition. The charging handle was observed to be in the forward position with no obvious malfunctioning issues. The barrel of the rifle had a muzzle break.

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Detective Karoline Keith

The barrel appeared to have a chalky residue on all sides of the muzzle break to, and including, the front site. This weapon was made safe by assigned Evidence Detective Dan Sliby #810 with its configuration documented.

CLASSROOM #10 (Continued)

On the floor within inches of the barrel of Exhibit #17 (Bushmaster Rifle), there were two (2) empty "PMAG 30" magazines duct taped together in a tactical configuration. These two (2) magazines were seized as Exhibit #18. There was one (1) live round of 5.56 mm ammunition located on the floor in close proximity to the west side of the barrel of Exhibit #17 (Bushmaster rifle). This round was seized as Exhibit #34.

Search for casings and projectiles in classroom #10

Detective Sliby #810 measured equal distances on each wall of classroom #10 and cordoned off the room into four (4) quadrants. The southeast, southwest, northeast and northwest quadrants were established for purposes of collecting expended bullet casings and projectiles.

- **NE Quadrant**: Exhibit #36 (Fifteen (15) expended 5.56 mm casings and copper jackets and lead-like fragments)
- **NW Quadrant:** Exhibit #35 (one (1) expended 5.56 mm casing)
- **SE Quadrant:** Exhibit #38 (Twenty six (26) expended 5.56 mm casings)
- **SW Quadrant:** Exhibit #37 (Seven (7) expended 5.56 mm casings and one (1) expended 10 mm casing)

Six (6) lead projectiles were seized from the northwest quadrant and seized as Exhibits #26 and # 28 thru 32. One (1) lead projectile was seized as Exhibit #27 from the southwest quadrant near the door to classroom #12. One (1) lead and copper fragment with wood particles was seized as Exhibit #84 from the west wall approximately 8 inches from the floor and 1 foot 4 ½ inches from the south edge of the bookcase on the north wall. This projectile was in an area near the semi-circular table. There was a lead and copper like fragment that was seized as Exhibit #96 from the venetian blind on the north wall approximately 6 feet 8 inches from the floor and 4 ½ inches from the east wall. There was a copper jacketed projectile (seized as Exhibit #129) lodged in the top metal portion of the north corner of this bulletin board in an area above the teacher's desk. There was a lead and copper like fragment seized as Exhibit #85 from the top metal bulletin board frame on the east wall. This

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN, DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE: OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT: OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE:	INVESTIGATOR I.D.#:	REPORT DATE:	SUPERVISOR SIGNATURE:	SUPERVISOR I.D.#:	APPROVAL DATE:
Det K. Keith	533	11/18/2013	Sgt. Jeffrey Ebrulla	167	11/19/13

Detective Karoline Keith

STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-
INVESTIGATION REPORT (DPS-302-E) (REVISED 2/3/06)

Report #: 1200704559 - 00143439

Report Type: Initial Report: ☐ Prosecutors Report: ☐ Supplement: ☒ Re-open: ☐ Assist: ☐ Closing: ☐

Attachments: Statements: ☐ Teletype: ☐ Photos: ☐ Sketchmap: ☐ Evidence: ☐ Other: ☒

CFS NO	INCIDENT DATE	TIME	INCIDENT DATE	TIME	PRIMARY OFFICER	BADGE NO	INVESTIGATING OFFICER	BADGE NO
1200704559	12/14/2012	09:41	12/14/2012		JEWISS, DANIEL E.	0336	DOWNS, MICHAEL A.	0502

INCIDENT ADDRESS	APARTMENT NO	TOWN CD	TYPE OF EXCEPTIONAL CLEARANCE	CASE STATUS
00012 Dickinson Dr/ Newtown 06482			Not Applicable	Active

ACTION TAKEN:

On 06/24/13, I was assigned to determine the total weight of guns, magazines and ammunition carried by Adam Lanza on 12/14/13. On 06/25/13, I spoke to Doug Fox at the Forensic Lab to determine if the guns were weighed as part of the functionality tests. Fox indicated that the weapons are not usually weighed as part of their testing.

Since the weights could not be determined from the actual evidence, all weights were obtained from firearms related websites. The following is the estimated totals:

Bushmaster XM-15 7.0 lbs
SigSauer P226 9mm 2.15 lbs
Glock 20SF 10mm 1.72 lbs

Total: 10.87 lbs

.223 Ammo 301 rounds=8.09 lbs
9mm Ammo 116 rounds=3.05 lbs
10mm Ammo 90 rounds=3.37 lbs

Total: 14.49 lbs

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAININGTO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1)MY PERSONAL OBSERVATION AND KNOWLEDGE: OR (2)INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT:OR (3)INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE:	INVESTIGATOR I.D.#:	REPORT DATE:	SUPERVISOR SIGNATURE	SUPERVISOR I.D.#:
/TFC MICHAEL A DOWNS/	0502	07/01/2013 11:18 am	Sgt. [illegible]	130

.223 magazine	10 magazines=2.68 lbs
9mm magazine	6 magazines=1.31 lbs
10mm magazine	6 magazines=1.12 lbs

Total: 5.11 lbs

Total Weight: 30.47 lbs

CASE STATUS:
This case remains ACTIVE pending further investigation.

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAININGTO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1)MY PERSONAL OBSERVATION AND KNOWLEDGE: OR (2)INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT:OR (3)INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE:	INVESTIGATOR I.D.#:	REPORT DATE:	SUPERVISOR SIGNATURE	SUPERVISOR I.D.#:
/TFC MICHAEL A DOWNS/	0502	07/01/2013 11:18 am	Sgt.	130

Total weight of guns, magazines and ammo carried

Bushmaster XM-15	7.0 lbs
Sig Sauer P226 9mm	2.15 lbs
Glock 20SF 10mm	1.72 lbs
	10.87 lbs

.223 Ammo	100 rounds=2.69 lbs	300 rounds=8.07 lbs
9mm Ammo	100 rounds=2.63 lbs	116 rounds=3.05 lbs
10mm Ammo	1 round=17grams	90 rounds=1530 grams
	453grams=1 lb	90 rounds=3.37 lbs
		14.49 lbs

.223 magazine	1 mag =4.3 ounces	10 mags=43 ounces
	16 ounces=1 lb	10 mags=2.68 lbs
9mm magazine	1 mag=3.5 ounces	6 mags=21 ounces
	16 ounces=1 lb	6 mags=1.31 lbs
10mm magazine	1 mag=3 ounces	6 mags=18 ounces
	16 ounces=1 lb	6 mags=1.12 lbs
		5.11 lbs

Total Weight=30.47 lbs

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

NEW YORK STATE RIFLE AND PISTOL ASSOCIATION, INC.; WESTCHESTER COUNTY FIREARMS OWNERS ASSOCIATION, INC.; SPORTSMEN'S ASSOCIATION FOR FIREARMS EDUCATION, INC.; NEW YORK STATE AMATEUR TRAPSHOOTING ASSOCIATION, INC.; BEDELL CUSTOM; BEIKIRCH AMMUNITION CORPORATION; BLUELINE TACTICAL & POLICE SUPPLY, LLC; BATAVIA MARINE & SPORTING SUPPLY; WILLIAM NOJAY, THOMAS GALVIN, and ROGER HORVATH,

Plaintiffs,

v.

DECISION AND ORDER
13-CV-291S

ANDREW M. CUOMO, Governor of the State of New York; ERIC T. SCHNEIDERMAN, Attorney General of the State of New York; JOSEPH A. D'AMICO, Superintendent of the New York State Police; LAWRENCE FRIEDMAN, District Attorney for Genesee County; and GERALD J. GILL, Chief of Police for the Town of Lancaster, New York,

Defendants.

TABLE OF CONTENTS

I. INTRODUCTION

On January 15, 2013, New York's Governor, Andrew M. Cuomo, signed into law the New York Secure Ammunition and Firearms Enforcement Act of 2013. Commonly known by its acronym, the SAFE Act makes broad and varied changes to firearm regulation in New York State. The Act amends or supplements various aspects of New York law, including, among others, the criminal procedure law, the correction law, the family court law, the executive law, the general business law, the judiciary law, the mental hygiene law, and, of course, the penal law. According to its drafters, this network of new laws, which generally enhances regulation and increases penalties for the illegal possession of firearms, is designed to "protect New Yorkers by reducing the availability of assault weapons and deterring the criminal use of firearms while promoting a fair, consistent and efficient method of ensuring that sportsmen and other legal gun owners have full enjoyment of the guns to which they are entitled." (Senate, Assembly, and Gov. Memos in Supp., Bill No. S2230-2013.)

Plaintiffs, comprising various associations of gun owners and advocates, companies in the business of selling firearms, and individual gun-owning citizens of New York, challenge several aspects of the law. Principally, Plaintiffs maintain that certain restrictions codified in the SAFE Act, like those concerning large-capacity magazines and those regulating assault weapons, violate their right "to keep and bear arms" under the Second Amendment to the United States Constitution. They also assert that several aspects of the law are unconstitutionally vague and that certain provisions violate the Equal Protection and "dormant" Commerce Clauses of the United States Constitution.

Three motions are currently before this Court. Plaintiffs first filed a motion for a

preliminary injunction. That motion raised several — but not all — the challenges outlined above. In response to that motion, Defendants Andrew Cuomo, Eric Schneiderman, and Joseph D'Amico cross-moved to dismiss the case under Rules 12(b)(1), 12(b)(6), and 56 of the Federal Rules of Civil Procedure.[1] Then, Plaintiffs responded with their own motion for summary judgment. Because both sides have subsequently filed dispostive motions, this Court deems Plaintiffs' motion for a preliminary injunction moot.

In resolving the pending motions, this Court notes that whether regulating firearms is wise or warranted is not a judicial question; it is a political one. This Court's function is thus limited to resolving whether New York's elected representatives acted within the confines of the United States Constitution in passing the SAFE Act. Undertaking that task, and applying the governing legal standards, the majority of the challenged provisions withstand constitutional scrutiny.

As explained in more detail below, although so-called "assault weapons" and large-capacity magazines, as defined in the Safe Act, may — in some fashion — be "in common use," New York has presented considerable evidence that its regulation of these weapons is substantially related to the achievement of an important governmental interest. Accordingly, the Act does not violate the Second Amendment in this respect.

Further, because the SAFE Act's requirement that ammunition sales be conducted "face-to-face" does not unduly burden interstate commerce, it does not violate the dormant Commerce Clause.

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[1]Defendant Gerald Gill also filed such a motion, in which he joins the motion filed by Cuomo, Schneiderman, and D'Amico. Although Defendant Lawrence Friedman did not appear in or defend this action, this failure does not affect the outcome of this case, and, for the sake of thoroughness, this Court will, *sua sponte*, apply the Decision and Order in equal measure to him. See Coach Leatherware Co. v. AnnTaylor, Inc., 933 F.2d 162, 167 (2d Cir.1991).

The Act, however, is not constitutionally flawless. For reasons articulated below, the seven-round limit is largely an arbitrary restriction that impermissibly infringes on the rights guaranteed by the Second Amendment. This Court therefore strikes down that portion of the Act. Finally, this Court must strike three provisions of the SAFE Act as unconstitutionally vague because an ordinary person must speculate as to what those provisions of the Act command or forbid.

II. BACKGROUND

A. The SAFE Act

In response to the tragic and incomprehensible shooting at Sandy Hook Elementary in Sandy Hook, Connecticut on December 14, 2012, the New York State Legislature and Governor Andrew Cuomo quickly enacted the New York Secure Ammunition and Firearms Enforcement Act of 2013. The 39-page Act makes broad changes to existing firearm regulation in New York State.

Section 17 of the Act, for instance, expands an existing requirement by adding a new article to the general business law that requires background checks for all gun sales — including private sales (except those made to immediate family members).

Section 48 of the Act amends the penal law to require counties within the state to re-certify gun licenses every five years. Previously, gun licenses never expired.

Section 49 establishes a statewide gun-license and record database.

Other provisions relate to firearm storage; others still amend the mental hygiene law, strengthening provisions meant to curtail access to weapons.

But those provisions are not the subject of Plaintiffs' challenge here; their concerns principally involve the Act's two main provisions, which directly regulate firearms and ammunition.

1. Assault Weapons

Before the SAFE Act was enacted, New York already regulated those weapons it considered to be "assault weapons." 2000 N.Y. Laws, ch. 189, § 10. In 2000, New York enacted a law regulating assault weapons in a manner modeled after the now-expired

federal assault weapons ban.[2] That law, enacted in 1994 as the Public Safety and Recreational Firearms Use Protection Act, established a prohibition on semiautomatic weapons — that is, weapons designed to fire once each time the trigger is pulled — with two "military-style" features. Pub. L. No. 103-322, tit. XI, subtit. A, 108 Stat. 1796, 1996-2010 (1994) (repealed by Pub. L. 103-322, § 110105(2), effective Sept. 13, 2004). Those features were defined in the statute, and weapons meeting the listed criteria were deemed "semiautomatic assault weapons" subject to stringent regulation. Id. This model thus became known as the "two-feature" test, because, as the name suggests, the law outlawed semiautomatic weapons that had two military-style features, and, in the case of rifles and pistols, had the capacity to accept a detachable magazine. Before the SAFE Act, New York State regulated weapons under this rubric.

But the SAFE Act expands the reach of New York's regulation to include semiautomatic weapons that have only *one* feature "commonly associated with military weapons" and, in the case of rifles and pistols, have the ability to accept a detachable magazine. Put simply, the SAFE Act institutes a "one-feature" test.

Those features are set out in Penal Law § 265.00, and, as they apply to rifles with detachable magazines, are as follows:

- a folding or telescoping stock;
- a pistol grip that protrudes conspicuously beneath the action of the weapon;
- a thumbhole stock;
- a second handgrip or a protruding grip that can be held by the non-trigger

[2]Other firearms regulations go back much further. As the Second Circuit has noted, New York's efforts in regulating the possession and use of firearms "predate the Constitution." Kachalsky v. Cnty. of Westchester, 701 F.3d 81, 84 (2d Cir. 2012). There were several laws on the books as early as 1785. Id.

hand;

- a bayonet mount;
- a flash suppressor, muzzle break, muzzle compensator, or threaded barrel designed to accommodate a flash suppressor, muzzle break, or muzzle compensator;
- a grenade launcher.[3,4]

Weapons meeting this criteria are defined as "assault weapons", and, subject to certain exemptions, the possession of such a weapon constitutes a "Class D" felony. N.Y. Penal Law §§ 265.02(7); 265.00(22)(g) (identifying exempt weapons).

Although colloquially referred to as a "ban," the SAFE Act does not prohibit all

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[3] Most shotguns and pistols are unaffected by the SAFE Act. But the definition of "assault weapon" is not limited to rifles. The SAFE Act also sets forth similar features for semiautomatic shotguns and pistols. Semiautomatic shotguns meet the definition of assault weapons if they have one of the following features:

- a folding or telescoping stock,
- a thumbhole stock,
- a second handgrip or a protruding grip that can be held by the non-trigger hand,
- a fixed magazine capacity in excess of seven rounds, or
- an ability to accept a detachable magazine.

N.Y. Penal Law § 265.00(22)(b)(i)–(v).

Semiautomatic pistols meet the definition of assault weapons if they have the ability to accept a detachable magazine and are (1) "semiautomatic version[s] of an automatic rifle, shotgun, or firearm," or (2) have one of the following features:

- a folding or telescoping stock,
- a thumbhole stock,
- a second handgrip or a protruding grip that can be held by the non-trigger hand,
- the capacity to accept an ammunition magazine that attaches to the pistol outside of the pistol grip,
- a threaded barrel capable of accepting a barrel extender, flash suppressor, forward handgrip, or silencer
- a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the firearm with the non-trigger hand without being burned, or
- a manufactured weight of fifty ounces or more when the pistol is unloaded.

Id. (c)(i)–(viii).

[4] Illustrations of the banned features are set forth in Appendix A, and are available at http://www.governor.ny.gov/assets/documents/RiflesBannedFeatures.pdf

possession of these firearms. Current owners of these weapons can keep them, but they must register them. And while current owners are permitted to transfer and sell the weapons, transfers and sales must be made to firearm dealers or out-of-state buyers. Id. § 265.00(22)(h).

2. Magazines and Ammunition

The SAFE Act also tightens regulation of magazines and ammunition. Section 38 of the Act amends Penal Law Section 265.00(23), making it unlawful to possess or sell magazines that have the capacity to hold more than 10 rounds of ammunition. Though this restriction was a part of the prior law, the SAFE Act eliminates the "grandfather" clause, which had exempted such "large-capacity" magazines that were manufactured before September 13, 1994 (the date of the federal law). Now, all large-capacity magazines (defined as "a magazine, belt, drum, feed strip, or similar device, that [] has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition"), regardless of their date of manufacture, are subject to regulation. Id. § 265.00(23). And, unlike the assault weapons described above, current owners cannot retain these large-capacity magazines in their current form. Owners of this type of magazine must sell it out of state, transfer it to an authorized in-state dealer or law enforcement, modify it, or discard it before January 15, 2014. Id. §§ 265.00(22)(h), 265.00(23).

Moreover, unless used at a firing range or during a shooting competition, 10-round magazines may not be fully loaded. Instead, the SAFE Act prohibits users from loading more than seven rounds of ammunition into "an ammunition feeding device." Id. § 265.37.

Possession of a large-capacity magazine is a "Class D" felony, and, depending on

the circumstances, penalties for possession of a magazine loaded with more than seven rounds of ammunition range from a "violation" to a "Class A" misdemeanor.[5] Id. § 265.37.

Restrictions on the sale of ammunition have been tightened as well. All ammunition dealers conducting business in New York must register with New York State or be otherwise licensed to sell ammuntion, and no sale can legally be completed without a state background check. The seller must also send a record of the sale to the State Police. The Act also bans the sale of ammunition over the Internet, imposing a requirement that any ammunition transaction be conducted "face-to-face" and compelling the purchaser to present valid photo identification. Id. § 400.03 (effective Jan. 15, 2014).

B. Procedural History

On March 21, 2013, roughly three months after the SAFE Act was enacted into law, Plaintiffs filed a complaint in this Court alleging that the law violated several of their constitutional rights. (Docket No. 1.) On April 11, 2013, they filed an amended complaint (Docket No. 17), and shortly thereafter, a motion for a preliminary injunction (Docket No. 23), in which they sought to enjoin enforcement of several aspects of the law. Defendants Andrew Cuomo, Joseph D'Amico, and Eric Schneiderman then filed a motion to dismiss and a motion for summary judgment on June 21, 2013. (Docket No. 64.) Defendant Gerald Gill joined that motion the same day. (Docket No. 70.) Plaintiffs responded with their own motion for summary judgment on August 19, 2013. (Docket No. 113.) All briefing concluded on October 18, 2013.

In addition, this Court has permitted various *amici curiae*, supporting both sides of

[5]It is not a felony, however, to posses a large-capacity magazine if it was (1) possessed before the SAFE Act was enacted and (2) "was manufactured before September [13, 1994]." N.Y. Penal Law § 265.02(8).

the litigation, to file briefs advocating for their interests in the outcome of this case.

III. DISCUSSION

A. Legal Standards

The various motions pending before this Court implicate two Federal Rules of Civil Procedure: Rules 12(b)(1) and 56.[6]

Rule 12(b)(1) applies to Defendants' jurisdictional arguments. A motion under this rule "challenges the district court's authority to adjudicate a case, and, once challenged, the burden of establishing that the Court in fact retains such authority lies with the party who asserts jurisdiction." Loew v. U.S. Postal Serv., No. 03-CV-5244, 2007 WL 2782768, at *4 (E.D.N.Y. Feb. 9, 2007) (citing Arndt v. UBS AG, 342 F. Supp.2d 132, 136 (E.D.N.Y. 2004)). Dismissal of a case under Rule 12(b)(1) is proper "when the district court lacks the statutory or constitutional power to adjudicate it." Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000).

Both Plaintiffs and Defendants seek summary judgment. Under Rule 56, the plaintiff generally must produce evidence substantiating his claim, and the court can grant summary judgment only "if the movant shows that there is no genuine dispute as to any material fact." Fed. R. Civ. P. 56. A fact is "material" if it "might affect the outcome of the suit under governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202 (1986). A "genuine" dispute exists "if the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. In determining

[6]Defendants also move to dismiss at least one aspect of this case under Rule 12(b)(6). In their original memorandum, Defendants sought to dismiss the four business plaintiffs' Second Amendment claims because, as they argue, the business plaintiffs do not have Second Amendment rights. But Defendants abandoned this argument in their reply memorandum, and, regardless, resolution of this contention would not affect the outcome of this case, as explained below. Accordingly, this Court need not recount the Rule 12(b)(6) standard here.

whether a genuine dispute regarding a material fact exists, the evidence and the inferences drawn from the evidence "must be viewed in the light most favorable to the party opposing the motion." Adickes v. S. H. Kress & Co., 398 U.S. 144, 158–59, 90 S. Ct.1598, 1609, 26 L. Ed. 2d 142 (1970) (internal quotations and citation omitted). When both parties move for summary judgment, "each party's motion must be examined on its own merits, and . . . all reasonable inferences must be drawn against the party whose motion is under consideration." Morales v. Quintal Entm't, Inc., 249 F.3d 115, 121 (2d Cir. 2001).

The function of the court is not "to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson, 477 U.S. at 249. Nonetheless, "disputed legal questions present nothing for trial and are appropriately resolved on a motion for summary judgment." Flair Broad. Corp. v. Powers, 733 F. Supp. 179, 184 (S.D.N.Y. 1990) (quoting Holland Indus. v. Adamar of New Jersey, Inc., 550 F. Supp. 646, 648 (S.D.N.Y. 1982)) (modifications omitted).

B. Standing

As in every case, this Court must "satisfy itself that the case comports with the 'irreducible constitutional minimum' of Article III standing." Hedges v. Obama, 724 F.3d 170, 204 (2d Cir. 2013). Here, Plaintiffs Horvath and Galvin testify that they own rifles, pistols, and large-capacity magazines that the SAFE Act regulates. They further testify that, but for the Act, they would acquire weapons and ammunition-feeding devices that the Act renders illegal. As such, these plaintiffs clearly "face a credible threat of prosecution and should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." See Holder v. Humanitarian Law Project, 561 U.S. 1, 130 S. Ct. 2705, 2717, 177 L. Ed. 2d 355 (2010). They have thus established Article III standing for the

purposes of their Second Amendment and vagueness claims. See id.; see also Ezell v. City of Chicago, 651 F.3d 684, 695 (7th Cir. 2011) (plaintiffs had standing to bring challenge under Second Amendment because "the very existence of a statute implies a threat to prosecute, so pre-enforcement challenges are proper"). Further, because at least one plaintiff has standing, "jurisdiction is secure and [this Court] can adjudicate the case whether the additional plaintiff[s] ha[ve] standing or not." Kachalsky v. Cnty. of Westchester, 701 F.3d 81, 84 n. 2 (2d Cir. 2012).

C. The Second Amendment & Heller

Plaintiffs contend that New York's restrictions on assault weapons and large-capacity magazines violate the Second Amendment.

That Amendment, adopted in 1791 as part of the Bill of Rights, provides that "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Before 2008, most courts to address the scope and import of the Second Amendment relied heavily on United States v. Miller, one of the few Supreme Court decisions to have expressly addressed the Amendment. 307 U.S. 174, 179, 59 S. Ct. 816, 83 L. Ed. 1206 (1939). Those courts concluded that the Second Amendment confers no individual right to firearm ownership, but extends only to use or possession of a firearm that has "some reasonable relationship to the preservation or efficiency of a well regulated militia." See id.; see also, e.g., United States v. Haney, 264 F.3d 1161, 1164–66 (10th Cir. 2001) ("We hold that a federal criminal gun-control law does not violate the Second Amendment unless it impairs the state's ability to maintain a well-regulated militia"); Gillespie v. Indianapolis, 185 F.3d 693, 710–11 (7th Cir. 1999); Stevens v. United States,

440 F.2d 144, 149 (6th Cir. 1971) ("There can be no serious claim to any express constitutional right of an individual to possess a firearm"); Burton v. Sills, 53 N.J. 86, 100, 248 A.2d 521 (1968) ("[Regulation . . . which does not impair the maintenance of the State's active, organized militia is not at all in violation of [] the terms or purposes of the [S]econd [A]mendment."). But see United States v. Emerson, 270 F.3d 203 (5th Cir. 2001) (rejecting both the "collective rights" model and the proposition that Miller mandates such an approach). In other words, the Second Amendment was read by an overwhelming majority of courts to offer no protection for the right of individuals to possess and use guns for private and civilian purposes.

But in 2008 that rationale was deemed flawed in the seminal Supreme Court case, District of Columbia v. Heller, where the Court addressed a District of Columbia law that essentially prohibited the possession of handguns. 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).[7] In Heller, the first Supreme Court case since Miller to expressly address the Second Amendment, the Court noted that "[t]he Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause." Id. at 577. It held that the prefatory clause of the Amendment — that which reads, "a well regulated militia, being necessary to the security of a free State" — "announces the purpose for which the right was codified" but does not restrict the right to own guns to the circumstances of militia service. Id. at 599. The Supreme Court explained that the Second Amendment codified a pre-existing *"individual* right to keep and bear arms." Id. at 592, 622 (emphasis added).

[7]Indeed, the District Court for the District of Columbia, which first adjudicated the challenge to the D.C. law, dismissed the case because it found that the Second Amendment conferred no individual right to bear arms. See Parker v. District of Columbia., 311 F. Supp. 2d 103, 109 (D.D.C. 2004).

The Court did not, however, find that the prefatory clause was meaningless or decoupled from the operative clause of the provision. Indeed, "[l]ogic demands that there be a link between the stated purpose and the command." Id. at 577. Rather, the Heller Court found that because "the conception of the militia at the time of the Second Amendment's ratification was the body of all citizens . . . who would bring the sorts of lawful weapons that they possessed at home to militia duty," the prefatory clause informs and limits the right to those weapons in "common use at the time" — those weapons, that is, that a typical citizen would own and bring with him when called to service. The Court further found that this notion must be adapted and updated to include "all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." Id. at 582. And it went on to stress that the core component of the Amendment secures an individual right to own weapons for self defense, most notably in the home. Id. at 592–95.

The salient question for the Heller Court, then, was not what weapons were in common use during the revolutionary period, but what weapons are in common use today. Weapons that meet that test — that are "in common use at the time" — are protected, at least to some degree, by the Second Amendment. But other weapons, "not typically possessed by law-abiding citizens for lawful purposes" like self-defense, are not. Id. at 625.[8]

[8]Although the Bill of Rights, including the Second Amendment, originally applied only to the federal government, see Barron ex rel. Tiernan v. Mayor of Baltimore, 7 Pet. 243, 8 L. Ed. 672 (1833), most protections set out in the Bill of Rights have subsequently been held to apply to the States through the Fourteenth Amendment, which, among other things, prohibits States from depriving "any person of life, liberty, or property, without due process of law." The Second Amendment is no exception. The Heller Court did not address this question because the law at issue there applied in the District of Columbia. But two years after Heller, the Supreme Court affirmatively held that the right of an individual to "keep and bear arms," protected by the Second Amendment from infringement by the federal government, is

In Heller, the Court concluded that "the American people have considered the handgun to be the quintessential self-defense weapon" and that "handguns are the most popular weapon chosen by Americans for self-defense in the home." Id. at 629, 630. Therefore, the majority had no trouble finding that the District of Columbia's "complete prohibition of their use is invalid." Id. at 629.

The Supreme Court decided Heller in 2008. As many courts and commentators have noted, in many ways Heller raised more questions than it answered. See United States v. Masciandaro, 638 F.3d 458, 475 (4th Cir. 2011) (Wilkinson, J.) (ground opened by Heller is a "vast 'terra incognita'"). Indeed, the Heller Court candidly remarked that the decision was never meant "to clarify the entire field" of Second Amendment jurisprudence. Heller, 554 U.S. at 635.

Among the questions left open by Heller is the standard courts should apply when evaluating the constitutionality of gun restrictions. Some restrictions are surely valid: the Court emphasized that, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." Id. at 626. It even explicitly identified some "presumptively lawful regulatory measures" that were meant to be illustrative, "not exhaustive":

> [N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

Id. at 626–27 & n. 26.

But what other regulations, restrictions, and prohibitions are constitutionally sound?

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incorporated by the Fourteenth Amendment and "is fully applicable to the States." McDonald v. City of Chicago, Ill., 130 S. Ct. 3020, 3026, 177 L. Ed. 2d 894 (2010).

And under what framework, or level of scrutiny, must they be analyzed? Heller did not answer these questions. "Under any of the standards of scrutiny that we have applied to enumerated constitutional rights," wrote Justice Scalia for the majority, "this law would fail constitutional muster." Id. at 628–29. That task was left, for now, to the lower courts.

Since Heller was decided, the Second Circuit has had occasion to consider and interpret that decision. Although none of the cases addresses restrictions like those in the SAFE Act, they remain instructive in determining the appropriate standard of review.

D. Standard of Review

First, some background. Throughout its jurisprudence, the Supreme Court has developed varying levels of scrutiny, which, depending on the circumstances, apply to statutes that affect constitutional rights. See United States v. Carolene Prods. Co., 304 U.S. 144, 152 n. 4, 58 S. Ct. 778, 82 L. Ed. 1234 (1938) (introducing the levels-of-judicial-scrutiny concept). Some laws are subject to the most deferential standard: rational-basis review. See Armour v. City of Indianapolis, Ind., 132 S. Ct. 2073, 2079, 182 L. Ed. 2d 998 (2012) (applying this standard for a classification that did not implicate a fundamental right, and concerned a local, economic, and commercial subject matter). Others, like content-neutral restrictions on speech, are subject to intermediate scrutiny. Turner Broad. Sys., Inc. v. FCC, 520 U.S. 180, 189, 117 S. Ct. 1174, 137 L. Ed. 2d 369 (1997) (requirement that cable television systems dedicate some of their channels to local broadcast television stations analyzed under intermediate scrutiny). And others still, like race-based classifications, are reviewed under the most rigorous standard: strict scrutiny. See Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1, 551 U.S. 701, 720, 127 S. Ct. 2738, 2751, 168 L. Ed. 2d 508 (2007) (school district relied on race to determine what public

schools children attended).[9]

In two recent decisions, United States v. Decastro and Kachalsky v. County of Westchester, the Second Circuit shed considerable light on the standard applicable to gun restrictions under the Second Amendment. 682 F.3d 160, 166 (2d Cir. 2012); 701 F.3d 81, 90 (2d Cir. 2012).

In Decastro, the court addressed the constitutionality of 18 U.S.C. § 922, which prohibits anyone other than a licensed importer, manufacturer, dealer or collector from transporting into his state of residence a firearm obtained outside that state. Analogizing the right to bear arms to other rights embodied in the Constitution, including the right to marry, the right to vote, and the right to free speech, the court held:

> [W]e do not read [Heller] to mandate that any marginal, incremental or even appreciable restraint on the right to keep and bear arms be subject to heightened scrutiny. Rather, heightened scrutiny is triggered only by those restrictions that (like the complete prohibition on handguns struck down in Heller) operate as a substantial burden on the ability of law-abiding citizens to possess and use a firearm for self-defense (or for other lawful purposes).

Decastro, 682 F.3d at 166 (parentheses in original).

Thus, in this Circuit, some form of heightened scrutiny (that is, intermediate or strict, or, possibly, something in between) is reserved for those "regulations that burden the Second Amendment right substantially." Id. The Decastro court was clear that "[r]eserving heightened scrutiny for regulations that burden the Second Amendment right substantially is not inconsistent with the classification of that right as fundamental to our scheme of

[9]For a full explanation of each level of scrutiny, as least as they apply in the equal-protection context, see United States v. Windsor, 133 S. Ct. 2675, 2717, 186 L. Ed. 2d 808 (2013). Though it should also be noted that "the label 'intermediate scrutiny' carries different connotations depending on the area of law in which it is used." Ernst J. v. Stone, 452 F.3d 186, 200 n. 10 (2d Cir. 2006).

ordered liberty." Id. at 167. This approach accords with other circuits' reasoning in the wake of Heller. See Heller v. District of Columbia., 670 F.3d 1244, 1262 (D.C. Cir. 2011) ("Heller II")[10]; Ezell, 651 F.3d at 702; United States v. Marzzarella, 614 F.3d 85, 89 (3d Cir. 2010).

In Ezell, for example, the court found parallels to First Amendment jurisprudence, noting that "some categories of speech are unprotected as a matter of history and legal tradition. So too with the Second Amendment." 651 F.3d at 702. Thus, according to both the Ezell and Decastro courts, just as some forms of speech — obscenity, defamation, fraud — are outside the reach of the First Amendment, some forms of gun restrictions are outside the reach of the Second. Applying this standard, the Decastro court found that the prohibition on importing out-of-state firearms was among those restrictions that did not implicate the Second Amendment

The Second Circuit built on this foundation in Kachalsky, where it faced the following issue: "Does New York's handgun licensing scheme violate the Second Amendment by requiring an applicant to demonstrate 'proper cause' to obtain a license to carry a concealed handgun in public?" Kachalsky, 701 F.3d at 83. Drawing from its earlier ruling in Decastro, the court found that New York's licensing scheme — unlike the challenged law in Decastro — *did* impose a substantial burden on the plaintiffs' Second Amendment rights. It held, "New York's proper cause requirement places substantial limits on the ability of

[10]Some clarification of Heller II is warranted. After the Supreme Court ruled that the District of Columbia's ban on handguns was unconstitutional, the District adopted the Firearms Registration Amendment Act of 2008, D.C. Law 17–372, which required the registration of all firearms, and prohibited both the possession of "assault weapons" and magazines with a capacity of more than 10 rounds of ammunition. Joined by several other plaintiffs, Anthony Dick Heller, the same plaintiff from the earlier litigation, brought suit challenging the new law. Thus, this second round of litigation concerning D.C.'s firearm laws will be referred to in this Decision and Order as "Heller II."

law-abiding citizens to possess firearms for self-defense in public." Id. at 93.

The court's next holding is critical in determining the correct standard of review here. It found that the proper sequence of analysis required it to review the law under the familiar three-tiered scrutiny system. Specifically, it held:

> Although we have no occasion to decide what level of scrutiny should apply to laws that burden the "core" Second Amendment protection identified in Heller, we believe that applying less than strict scrutiny when the regulation does not burden the "core" protection of self-defense in the home makes eminent sense in this context and is in line with the approach taken by our sister circuits.

Id.

The court concluded that "because our tradition so clearly indicates a substantial role for state regulation of the carrying of firearms in public," and because the restriction did not burden a "core" right, intermediate scrutiny was appropriate. Id. at 96. The licensing requirement, which was substantially related to the achievement of an important governmental interest, survived under that standard.

Extrapolating from these holdings, this Court finds that it must engage in a three-part inquiry. First, it must determine whether any of the regulated weapons or magazines are commonly used for lawful purposes. If any are, it must next determine if any of the challenged provisions of the SAFE Act substantially burden a Second Amendment right. Finally, if any do, it must then decide what level of scrutiny to apply.

Contrary to the urging of some *amici*, the Second Circuit has eschewed any test under the so-called "history-and-tradition" model. Espoused most prominently by Judge Kavanaugh in dissent in Heller II, this model would test the constitutionality of certain gun laws by asking whether they were "rooted in history and tradition." 670 F.3d at 1284; see

also 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, 1463 (2009). But the Second Circuit categorically "disagree[s]" with this approach, stating unequivocally:

> Heller stands for the rather unremarkable proposition that where a state regulation is entirely inconsistent with the protections afforded by an enumerated right — as understood through that right's text, history, and tradition — it is an exercise in futility to apply means-end scrutiny. Moreover, the conclusion that the law would be unconstitutional "[u]nder any of the standards of scrutiny" applicable to other rights implies, if anything, that one of the conventional levels of scrutiny would be applicable to regulations alleged to infringe Second Amendment rights.

Kachalsky, 701 F.3d at 89 n. 9.

Accordingly, this Court will analyze the law under the rubric set forth in Heller, and as further developed by the Second Circuit.

1. Common Use & Substantial Burden

Under Heller, the Second Amendment does not apply to weapons that are not "in common use at the time." Thus, inherent in the substantial-burden analysis is the question whether the SAFE Act affects weapons in common use.

Much of Plaintiffs' briefs are dedicated to the topic of the popularity and lawfulness of the firearms that New York defines as assault weapons. Both sides attempt to point to empirical evidence that suggests the weapons are — or are not — in common use for lawful purposes. And, in turn, much of that evidence deals with the archetypal AR-15.

This weapon, first manufactured by ArmaLite (thus, "AR"), then sold to and popularized under Colt, is representative of the type of weapon the SAFE Act seeks to regulate. Though the mark "AR-15" is Colt's, many manufacturers make a similar firearm.

Generally, it is a semiautomatic rifle that has a detachable magazine, has a grip protruding roughly four inches below the action of the rifle, and is easily accessorized and adapted.[11] (See Overstreet Decl., ¶¶ 3–5; Docket No. 23-2); (National Shooting Sports Foundation survey, at 7, attached as Ex. B; Docket No. 23–3,4,5) (84% of owners of AR-15 type rifles have at least once accessory on their rifle).

It is also popular. According to Plaintiffs, since 1986 (when record-keeping began) "at least 3.97 million AR-15 type rifles have been manufactured in the United States for the commercial market." (Overstreet Decl., ¶ 5.) In 2011, AR-15s accounted for 7% of all firearms sold. (Id., ¶ 8.) Plaintiffs also assert that the AR-15 rifles are regularly used for self defense, hunting, and sporting competitions.

As the Heller II court found, "in 2007 this one popular model accounted for 5.5 percent of all firearms, and 14.4 percent of all rifles, produced in the U.S. for the domestic market." 670 F.3d at 1261. Although the Heller II court could not determine if this type of weapon is used for lawful purposes, it "th[ought] it clear enough in the record that semi-automatic rifles . . . are indeed in 'common use.'" Id.

Defendants paint a different picture, contending that assault weapons "are a tiny percentage of the firearms available." (Def.'s Br., at 29; Docket No. 77.) According to the testimony of Professor Laurence Tribe before the United States Senate in February of 2013, Americans own roughly 310 million firearms and roughly 7 million assault weapons. (Tribe Testimony, at 24, attached as Ex. 28; Docket No. 78-3.) Using these rough numbers, assault weapons account for only about 2% of the guns owned in this country.

[11] An action is the mechanism on a firearm that loads, fires, and ejects a cartridge. Varieties include the lever action, pump action, bolt action, and semi-automatic.

But these statistics leave many questions unanswered. The Brady Center for the Prevention of Gun Violence, as *amicus curiae*, points out that the Heller Court did not specify what "time" it meant when it held that protected weapons are those that are "in common use at the time." There is no dispute that there has been a surge in the popularity of this type of firearm in the last decade. (Brady Center Br., at 8; Docket No. 121.[12]) The Brady Center argues that it is anomalous that a weapon could be unprotected under the Second Amendment one moment, then, subject only to the whims of the public, garner protection in the next moment. (Id., at 9.) It contends that this Court must look to a "historically representative period of time" and that there is no evidence that the weapons regulated by the SAFE Act were in common use for such a period. (Id.)

Regardless, ownership statistics alone are not enough. The firearm must also be possessed for lawful purposes, like self-defense. Heller, 554 U.S. at 625 ("Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes."). On this point, too, the parties are deeply divided. And, as the Heller II court noted, reliable empirical evidence on this point is elusive. 670 F.3d at 1261 ("[We cannot be certain whether these weapons are commonly used or are useful specifically for self-defense or hunting and therefore whether the prohibitions . . . meaningfully affect the right to keep and bear arms."). Although Defendants argue that the regulated weapons are not suitable for self-defense due to, among other things, their excessive firepower, there can be little dispute that tens of thousands of Americans own these guns and use them exclusively for lawful purposes such as hunting, target shooting,

[12]This brief was filed jointly by the Brady Center, The Police Foundation, and the Major Cities Chiefs Association.

and even self-defense. See Christopher S. Koper *et al.*, U. Penn. Jerry Lee Ctr. of Criminology, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994–2003* at 1 (2004) (around 1990, "there were an estimated 1 million privately owned [assault weapons] in the U.S."); see also Heller II, 670 F.3d at 1287–88 (Kavanagh J., dissenting) (A "brief perusal of the website of a popular American gun seller" underscores that "[s]emi-automatic rifles are commonly used for self-defense in the home, hunting, target shooting, and competitions"); (King Aff. ¶¶ 16–18; Docket No. 116.)

Despite the inherent ambiguities in making such a determination, for purposes of this Decision, this Court will assume that the weapons at issue are commonly used for lawful purposes. Further, because the SAFE Act renders acquisition of these weapons illegal under most circumstances, this Court finds that the restrictions at issue more than "minimally affect" Plaintiffs' ability to acquire and use the firearms, and they therefore impose a substantial burden on Plaintiffs' Second Amendment rights.

Large-capacity magazines are also popular, and Defendants concede they are in common use nationally. See Heller II, 670 F.3d at 331 ("There may well be some capacity above which magazines are not in common use but, if so, the record is devoid of evidence as to what that capacity is; in any event, that capacity surely is not ten."); Koper, *supra*, at 10 (as of 1994, roughly 20% of civilian owned handguns were equipped with large-capacity magazines); (Defs.' Br., at 36; Docket No. 77). Indeed, the "standard magazine" for an AR-15 holds 20 or 30 rounds. (Overstreet Decl., ¶ 4.) Given their popularity in the assumably law-abiding public, this Court is willing to proceed under the premise that these magazines are commonly owned for lawful purposes.

Further, this Court finds that a restraint on the amount of ammunition a citizen is permitted to load into his or her weapon — whether 10 rounds or seven — is also more than a "marginal, incremental or even appreciable restraint" on the right to keep and bear arms. See Kachalsky, 701 F.3d at 93 (New York's proper cause requirement for a concealed carry permit places a substantial burden on the Second Amendment right); see also Koper, *supra*, at 1 (A [large capacity-magazine] is arguably the most functionally important feature of most [assault weapons], many of which have magazines holding 30 or more rounds). Certainly, if the firearm itself implicates the Second Amendment, so too must the right to load that weapon with ammunition. Round restrictions, whether seven or 10, are therefore deserving of constitutional scrutiny. Thus, under Second Circuit precedent, this Court must next ask under what standard the restraints ought to be judged.

2. Intermediate Scrutiny

In Kachalsky, the Second Circuit applied intermediate scrutiny to restrictions on the possession of a gun outside the home, but noted that it did not have occasion to consider what standard would apply to restrictions inside the home, where "Second Amendment guarantees are at their zenith." 701 F.3d at 89. Although the SAFE Act unquestionably affects Plaintiffs' ownership rights in their home, for three reasons, this Court finds that intermediate scrutiny remains the appropriate standard under which to evaluate the law.

First, although addressing varied and divergent laws, courts throughout the country have nearly universally applied some form of intermediate scrutiny in the Second Amendment context. See, e.g., id.; Marzzarella, 614 F.3d at 96; United States v. Skoien, 614 F.3d 638, 641-42 (7th Cir. 2010); United States v. Walker, 709 F. Supp. 2d 460 (E.D. Va. 2010); see also United States v. Lahey, No. 10-CR-765 KMK, 2013 WL 4792852, at

*15 (S.D.N.Y. Aug. 8, 2013) ("The emerging consensus appears to be that intermediate scrutiny is generally the appropriate level of scrutiny for laws which substantially burden Second Amendment rights.").

Second, application of strict scrutiny would appear to be inconsistent with the Supreme Court's holdings in Heller and McDonald, where the Court recognized several "presumptively lawful regulatory measures." Heller, 554 U.S. at 626–27; McDonald, 130 S. Ct. at 3047 ("Incorporation does not imperil every law regulating firearms."). These types of restrictions are presumably justified because of the unique ability of firearms to upset and disrupt public order. The four dissenting justices in Heller point out that "the majority implicitly, and appropriately, rejects [a] suggestion [that strict scrutiny should apply] by broadly approving a set of laws — prohibitions on concealed weapons, forfeiture by criminals of the Second Amendment right, prohibitions on firearms in certain locales, and governmental regulation of commercial firearm sales — whose constitutionality under a strict scrutiny standard would be far from clear." Heller, 554 U.S. at 688 (Breyer, J.). The Western District of Pennsylvania later reiterated this sentiment, writing that "the Court's willingness to presume the validity of several types of gun regulations is arguably inconsistent with the adoption of a strict scrutiny standard of review." United States v. Marzzarella, 595 F. Supp. 2d 596, 604 (W.D. Pa. 2009). The district court in Heller II similarly noted that "a strict scrutiny standard of review would not square with" the majority's holding in Heller. Heller v. District of Columbia., 698 F. Supp. 2d 179, 187 (D.D.C. 2010). Accordingly, not only does this level of scrutiny lack precedent, but the Supreme Court's own holdings suggest that it is incongruous with extant, presumptively valid restrictions.

Last, this Court finds that First Amendment jurisprudence provides a useful guidepost in this arena.[13] As the Third Circuit has held, "[T]he right to free speech, an undeniably enumerated fundamental right, is susceptible to several standards of scrutiny, depending upon the type of law challenged and the type of speech at issue. . . . We see no reason why the Second Amendment would be any different." Marzzarella, 614 F.3d at 96 (internal citations omitted).

When considering restrictions that implicate the First Amendment, strict scrutiny is triggered only by content-based restrictions on speech in a public forum. By contrast, content-neutral restrictions that affect only the time, place, and manner of speech trigger a form of intermediate scrutiny. See Hobbs v. Cnty. of Westchester, 397 F.3d 133, 149 (2d Cir. 2005); see also Madsen v. Women's Health Ctr., Inc., 512 U.S. 753, 791, 114 S. Ct. 2516, 2537, 129 L. Ed. 2d 593 (1994) (Scalia, J.) (concurring in part and dissenting in part) (intermediate scrutiny "applicable to so-called 'time, place, and manner regulations' of speech").

Like the Heller II court, which applied intermediate scrutiny to firearm restrictions similar to those at issue here, this Court finds that the burden here is akin to a time, place, and manner restriction. As described by the Heller II court, "[R]estrictions that impose severe burdens (because they don't leave open ample alternative channels) must be judged under strict scrutiny, but restrictions that impose only modest burdens (because

[13]The Second Circuit has expressed reservations about "import[ing] *substantive* First Amendment principles wholesale into Second Amendment jurisprudence." Kachalsky, 701 F.3d at 92 (emphasis in original). But that admonishment is not applicable here. This Court is not applying "substantive principles"; rather, as the Second Circuit has explicitly held, when deciding whether a law substantially burdens a Second Amendment right, or, in deciding what level of scrutiny to apply, "it is [] appropriate to consult principles from other areas of constitutional law, including the First Amendment." Decastro, 682 F.3d at 167–68 (citing Marzzarella, 614 F.3d at 89 & n.4).

they do leave open ample alternative channels) are judged under a mild form of intermediate scrutiny." 670 F.3d at 1262 (quoting Volokh, *supra*, at 1471) (parentheses in original). The court concluded that because "the prohibition of semiautomatic rifles and large-capacity magazines does not effectively disarm individuals or substantially affect their ability to defend themselves" — because, in other words, alternative channels for the possession of substitute firearms exist — the restrictions should be judged under intermediate scrutiny. Id.

Calling the SAFE Act's restrictions "a ban on an entire class of firearms," Plaintiffs liken the SAFE Act to the ban struck down by the Supreme Court in Heller. But unlike the handgun ban, the SAFE Act applies only to a subset of firearms with characteristics New York State has determined to be particularly dangerous and unnecessary for self-defense; it does not totally disarm New York's citizens; and it does not meaningfully jeopardize their right to self-defense. Current owners of the now-regulated weapons may lawfully possess them so long as they register the weapons with the State. They may also possess 10-round magazines, and, most places, they may load those magazines with up to seven rounds of ammunition. And, at certain designated areas, they may load the weapon with 10 rounds. Although the Act does make unlawful future purchases or sales of assault weapons, New Yorkers can still purchase, own, and sell all manner of semiautomatic weapons that lack the features outlawed by the SAFE Act. Indeed, Plaintiffs themselves concede that attributes of the banned weapons are "present in easily-substituted unbanned, counterpart firearms." (Pls.' Br. at 22; Docket No. 23-1.)

Accordingly, this Court finds that intermediate scrutiny is the most suitable standard under which to evaluate each challenged aspect of the law.

E. Application of Intermediate Scrutiny to the SAFE Act

Under intermediate scrutiny, this Court must ask whether the challenged restrictions are "substantially related to the achievement of an important governmental interest." Kachalsky, 701 F.3d at 96. The Second Circuit recently observed and reaffirmed that "New York has substantial, indeed compelling, governmental interests in public safety and crime prevention." Id. at 97. There is no dispute that the SAFE Act is clearly intended to further this goal. (See Senate, Assembly, and Gov. Memos in Supp., *supra*.) Thus, the only remaining question is whether the challenged provisions are substantially related to the governmental interest in public safety and crime prevention. Starting with New York's definition of assault weapons, moving to the ban on large-capacity magazines, and concluding with the seven-round limit, this Court next undertakes that analysis.

1. Assault Weapons

There is much debate, both in the community at large and in this litigation, whether the banned "military-style features" of semiautomatic weapons will be effective in reducing crime and violence.

Plaintiffs contend that many of the outlawed features do not make firearms more lethal; instead, according to Plaintiffs, several of the outlawed features simply make the firearm easier to use. For instance, they argue that a telescoping stock, which allows the user to adjust the length of the stock, does not make a weapon more dangerous, but instead, like finding the right size shoe, simply allows the shooter to rest the weapon on his or her shoulder properly and comfortably. Another outlawed feature, the pistol grip, also increases comfort and stability. The same goes for the "thumbhole stock," which, as the name suggests, is a hole in the stock of the rifle for the user's thumb. It too increases

comfort, stability, and accuracy according to Plaintiffs.

But Plaintiffs later argue that the banned features increase the utility for self-defense — which is just another way of saying that the features increase their lethality. Plaintiffs make this explicit: "Where it is necessary for a crime victim to shoot the aggressor, and lethal or incapacitating injury will stop him, the lethality of the defender's firearm is a precondition to her ability end the criminal attack." (Pls.' Br. at 22; Docket No. 23-1.) The National Rifle Association of America, as *amicus curiae,* make a similar argument, describing how the banned features improve a firearm's usability. (NRA Br. at 10; Docket No. 46.)

There thus can be no serious dispute that the very features that increase a weapon's utility for self-defense also increase its dangerousness to the public at large. See, e.g., McDonald, 130 S. Ct. at 3107 (Stevens, J., dissenting) ("Just as [firearms] can help homeowners defend their families and property from intruders, they can help thugs and insurrectionists murder innocent victims."). Pointing to the benefits of these features to those who might use them defensively, Plaintiffs argue that the SAFE Act ought to be struck down. But under intermediate scrutiny, this Court must give "substantial deference to the predictive judgments of the legislature." Kachalsky, 701 F.3d at 97. And "[i]n the context of firearm regulation, the legislature is 'far better equipped than the judiciary' to make sensitive policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks." Id. (quoting Turner Broad., 512 U.S. at 665).

To be sure, this Court's deference is not without bounds. New York must rely on evidence that "fairly support[s]" its rationale in passing the law. City of Los Angeles v.

Alameda Books, Inc., 535 U.S. 425, 438, 122 S. Ct. 1728, 1736, 152 L. Ed. 2d 670 (2002). Here, New York has met that burden; substantial evidence supports its judgment that the banned features are unusually dangerous, commonly associated with military combat situations, and are commonly found on weapons used in mass shootings.

The recent mass shooting in Newtown, CT, which prompted the quick passage of this law, was no exception. The shooter armed himself with a .223-caliber Bushmaster Model XM15 rifle and a 30-round magazine. See Connecticut State Police Press Release, Jan. 18, 2013, available at http://www.ct.gov/despp/cwp/view.asp?Q=517284 ("The shooter used the Bushmaster .223 to murder 20 children and six adults inside the school; he used a handgun to take his own life inside the school. No other weapons were used in this crime.").

Of course, this is only one incident. But it is nonetheless illustrative. Studies and data support New York's view that assault weapons are often used to devastating effect in mass shootings. (See Koper Decl., ¶¶ 11–14; Zimring Decl. ¶¶ 15–22; Docket Nos. 67, 68). For example, an exhaustive study of mass shootings in America, defined as the murder of four or more people in a single incident, found that there have been at least 62 mass shootings across the country since 1982.[14] Mark Follman, *et al.*, *A Guide to Mass Shootings in America*, Mother Jones, updated Feb. 27, 2013, http://www.motherjones.com/politics/2012/07/mass-shootings-map. Frighteningly, "twenty-five of these mass shootings have occurred since 2006, and seven of them took place in 2012." Id. In the mass shooting with the most victims, at an Aurora, Colorado

[14]The study excluded crimes involving armed robbery or gang violence.

movie theater, police say the shooter used an AR-15 type weapon until its 100-round barrel magazine jammed. In all, the study found that assault weapons, high-capacity magazines, or both were used in over half of all mass shootings. Id.

The State points to other evidence as well. It suggests that it should come as no surprise that assault weapons produced carnage in Aurora and Newtown, as The Bureau of Alcohol Tobacco and Firearms found that these weapons "were designed for rapid fire, close quarter shooting at human beings" — or, as the report called it, "mass produced mayhem." (ATF, *Assault Weapons Profile,* at 19 (1994), attached as Ex. 40.) The Supreme Court has previously described the AR–15 as "the civilian version of the military's M–16 rifle." Staples v. United States, 511 U.S. 600, 603, 114 S. Ct. 1793, 128 L. Ed. 2d 608 (1994). Indeed, there is no dispute that the AR-15 type rifle derives from a weapon designed for fully-automatic military use on the battlefield. As Brain Siebel testified, the military features of semiautomatic assault weapons "serve specific, combat-functional ends" and are "designed to enhance the capacity to shoot multiple human targets rapidly." (Testimony of Brian J. Siebel, Brady Center to Prevent Gun Violence, at 1 (Oct. 1, 2008), attached as Ex. 29.) "The net effect of these military combat features is a capability for lethality — more wounds, more serious, in more victims — far beyond that of firearms in general, including other semiautomatic guns." H.R. Rep. 103-489, at 19-20 (1994) (chronicling five years of congressional hearings on semiautomatic assault weapons); (see Bruen Decl. ¶¶ 13-26; Docket No. 66.) The Chief of Police for the Rochester Police Department expresses similar sentiments, stating that assault weapons "are designed for one purpose — to efficiently kill numerous people." (Shepard Decl., ¶ 14; Docket No. 72). In other words, evidence suggests that the banned features make a deadly weapon

deadlier.

And while there is not (and cannot be) a dispute that the outlawed features make semiautomatic weapons easier to use, New York identifies purposes of these features that are particularly unnecessary for lawful use. Of course, several of the banned features, like a grenade launcher, bayonet mount, or a silencer, require no explanation. Indeed, Plaintiffs do not explicitly argue that the Act's regulation of firearms with these features violates the Second Amendment. But for the contested features, like a pistol grip and thumbhole stock, New York points to evidence that these features aid shooters when "spray firing" from the hip. (Bruen Decl., ¶ 19); see Heller II, 670 F.3d at 1262–63 (quoting Siebel Testimony, *supra*). As the Second Circuit has held, "This factor aims to identify those rifles whose pistol grips are designed to make such spray firing from the hip particularly easy." Richmond Boro Gun Club, Inc. v. City of New York, 97 F.3d 681, 685 (2d Cir. 1996). Folding and telescoping stocks aid concealability and portability. (See Bruen Decl., ¶ 18; 2011 ATF Study at 9, attached as Ex. 10); see also Richmond Boro, 97 F.3d at 684–85. A muzzle compensator reduces recoil and muzzle movement caused by rapid fire. (Bruen Decl., ¶ 20.)

And New York further points to evidence that AR-15 type rifles are "not generally recognized as particularly suitable for or readily adaptable to sporting purposes," nor used frequently for self-defense. See Dep't of Treasury, *Study on the Sporting Suitability of Modified Semi-automatic Assault Rifles*, 38 (1998); Gary Kleck & Marc Gertz, *Armed Resistance to Crime: The Prevalence and Nature of Self–Defense with a Gun*, 86 J. Crim. L. & Criminology 150, 185 (1995) (revolvers and semi-automatic pistols are together used almost 80% of the time in incidents of self-defense with a gun).

What's more, New York presents evidence that its regulations will be effective. Drawing from his comprehensive study of the 1994 federal ban (*supra*, at 21), Christopher Koper avows that the regulations will reduce the stock of "dangerous weaponry" in New York and are thus "likely to advance New York's interests in protecting its populace from the dangers of [] shootings." (Koper Decl., ¶ 65.) His analysis of the data "indicates that the criminal use of assault weapons declined after the federal assault weapons ban was enacted in 1994, independently of trends in gun crime." (Id.) Because New York's regulations are tighter than those in the federal ban, he believes, quite reasonably, that the affect will be greater. (Id., ¶ 60.)

For their part, Plaintiffs point to conflicting opinions and argue that criminals will retain their assault weapons while law-abiding citizens will be unable to acquire them. They also argue that the ban is irrational because there are numerous legal substitutes offering the same firepower. Further, there is no dispute that semiautomatic handguns are also often used in mass shootings. In fact, according to the Follman study, handguns were used in greater numbers than assault rifles.

But to survive intermediate scrutiny, the fit between the governmental objective and the challenged regulation need only be substantial, not perfect. And while these are legitimate considerations, "it is the legislature's job, not [this Court's], to weigh conflicting evidence and make policy judgments." Kachalsky, 701 F.3d at 99. New York, citing the undisputed potential for mass casualty that assault weapons present, is empowered to take action to reduce the quantity of such weapons in its state. See Nat'l Rifle Ass'n, 700 F.3d at 211 (quoting Buckley v. Valeo, 424 U.S. 1, 105, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976)) ("It is well-settled that 'a statute is not invalid under the Constitution because it

might have gone farther than it did, that a legislature need not strike at all evils at the same time, and that reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.'"). The ultimate merits of this judgment remain to be seen, but, considering especially that Plaintiffs themselves concede that the banned features increase the lethality of firearms — or as Brain Siebel has testified, that the military features of semiautomatic assault weapons are "designed to enhance the capacity to shoot multiple human targets rapidly" — this Court finds that New York has satisfied its burden to demonstrate a substantial link, based on reasonably relevant evidence, between the SAFE Act's regulation of assault weapons and the compelling interest of public safety that it seeks to advance.

2. Large-capacity Magazines

The same finding is true for the ban on large-capacity magazines. Indeed, the link between the SAFE Act's restrictions on large-capacity magazines and the state's interest in public safety is arguably even stronger here.

Koper testifies that it is "particularly" the large-capacity magazine ban that will prevent shootings and save lives. (Koper Decl., ¶ 65.) Indeed, large-capacity magazines are used regularly in mass shootings — they were used in more than half of the mass shootings since 1982. And, more troubling, their use is on the rise. In the past year, guns with large-capacity magazines were used in at least five of the six mass shootings. (Allen Decl.¶ 18; Docket No. 69.)

Evidence also suggests that, quite simply, more people die when a shooter has a large-capacity magazine. According to analysis conducted by NERA Economic Consulting, the average number of fatalities or injuries per mass shooting more than doubles when a

shooter uses a large-capacity magazine. (Id., ¶ 20.) Similarly, a 2013 study of mass shootings over the past four years using data collected by the FBI found that shooters who used assault weapons, high-capacity magazines, or both shot over twice as many people and killed 57% more people than shooters who did not use these weapons. *(*Mayors Against Illegal Guns*, Analysis of Recent Mass Shootings*, February 22, 2013, attached as Ex. 39.)

Just as with assault weapons, Plaintiffs find policy and judgment flaws in New York's decision to ban large-capacity magazines. Mass shooters, argues Gary Kleck in an affidavit submitted by Plaintiffs, often carry multiple firearms. (Kleck Decl., at 5; Docket No. 23–9.) So, according to Plaintiffs, any large-capacity-magazine ban would be ineffective, or worse, would only affect law-abiding citizens. But New York's evidence — far more comprehensive than Plaintiffs' — runs counter to this presumption, and again, "[i]n the context of firearm regulation, the legislature is 'far better equipped than the judiciary' to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks." Kachalsky, 701 F.3d at 97 (quoting Turner Broad. Sys., 512 U.S. at 665.) This Court's role is "to assure that, in formulating its judgments, New York has drawn reasonable inferences based on substantial evidence." Id. (internal citations omitted). Though by no means a panacea, in passing these provisions New York has made a public policy judgment that draws reasonable inferences from substantial evidence. It thus survives intermediate scrutiny.

3. Seven-round limit

The same cannot be said, however, about the seven-round limit. The SAFE Act adds New York Penal Law § 265.00(37), which makes it "unlawful for a person to

knowingly possess an ammunition feeding device where such device contains more than seven rounds of ammunition."[15] Unlike the restrictions on assault weapons and large-capacity magazines, the seven-round limit cannot survive intermediate scrutiny.

It stretches the bounds of this Court's deference to the predictive judgments of the legislature to suppose that those intent on doing harm (whom, of course, the Act is aimed to stop) will load their weapon with only the permitted seven rounds. In this sense, the provision is not "substantially related" to the important government interest in public safety and crime prevention.

Indeed, Heller found that the Second Amendment right is at its zenith in the home; in particular, the Court highlighted the right of a citizen to arm him or herself for self-defense. But this provision, much more so than with respect to the other provisions of the law, presents the possibility of a disturbing perverse effect, pitting the criminal with a fully-loaded magazine against the law-abiding citizen limited to seven rounds.

Although Plaintiffs make this type of argument with respect to all aspects of the SAFE Act, the distinction here is plain. This Court has ruled that New York is entitled to regulate assault weapons and large-capacity magazines under the principal presumption that the law will reduce their prevalence and accessability in New York State, and thus,

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[15]The seven-round limit does not apply at:

> an indoor or outdoor firing range located in or on premises owned or occupied by a duly incorporated organization organized for conservation purposes or to foster proficiency in arms; at an indoor or outdoor firing range for the purpose of firing a rifle or shotgun; at a collegiate, olympic or target shooting competition under the auspices of or approved by the national rifle association; or at an organized match sanctioned by the international handgun metallic silhouette association.

N.Y. Penal Law § 265.20(7-f).

inversely, increase public safety. (See Koper Decl., ¶ 64) (restrictions in Safe Act will "help prevent the spread of particularly dangerous weaponry"). The ban on the number of rounds a gun owner is permitted to load into his 10-round magazine, however, will obviously have no such effect because 10-round magazines remain legal. As described above, the seven -round limit thus carries a much stronger possibility of disproportionately affecting law-abiding citizens.

Defendants contend, pointing to a study conducted by the NRA, that the average citizen using his or her weapon in self-defense expends only two bullets. (Allen Decl.,¶¶ 12–15). Thus, New York argues, citizens do not truly need more than seven rounds, and the restriction minimizes the danger without hampering self-defense capabilities. But as an initial matter, New York fails to explain its decision to set the maximum at seven rounds, which appears to be a largely arbitrary number. And even if a person using a weapon in self-defense needs only a few rounds, and even if that is a rational reason for adopting the law, under intermediate scrutiny there must a "substantial relation" between the means and the end. The State's justification for the law need not be perfect, but it must be "exceedingly persuasive." Windsor v. United States, 699 F.3d 169, 185 (2d Cir. 2012) (quoting United States v. Virginia, 518 U.S. 515, 533, 116 S. Ct. 2264, 135 L .Ed. 2d 735 (1996)); see Lederman v. N.Y. City Dep't of Parks & Recreation, 731 F.3d 199, 202 (2d Cir. 2013). This peripheral rationale, which is possibly meant to protect bystanders when a firearm is being discharged lawfully, or victims of impromptu acts of violence, is largely unsupported by evidence before this Court. It thus fails the more demanding test and must

be stuck down.[16]

F. Vagueness

In addition to their Second Amendment arguments, Plaintiffs also contend that various aspects of the SAFE Act, mainly those describing the banned features, are unconstitutionally vague. They contend, in other words, that certain aspects of the law are void for vagueness.

The void-for-vagueness doctrine finds its roots in the Due Process Clause of the United States Constitution, as "[a]mong the most fundamental protections of due process is the principle that no one may be required at peril of life, liberty or property to speculate as to the meaning of statutes." Cunney v. Bd. of Trustees of Vill. of Grand View, N.Y., 660 F.3d 612, 620 (2d Cir. 2011) (internal modifications, quotation marks, and citations omitted). Simply, "[a]ll are entitled to be informed as to what the State commands or forbids." Id.

"As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." United States v. Rybicki, 354 F.3d 124, 129 (2d Cir. 2003) (quoting Kolender v. Lawson, 461 U.S. 352, 357, 103 S. Ct. 1855, 75 L. Ed. 2d 903 (1983)).

The Supreme Court has cautioned, however, "that this doctrine does not require 'meticulous specificity' from every statute, as language is necessarily marked by a degree

[16]In light of this ruling, this Court need not address Plaintiffs' alternative argument that the seven-round limit violates the Equal Protection Clause.

of imprecision." Thibodeau v. Portuondo, 486 F.3d 61, 66 (2d Cir. 2007) (quoting Grayned v. City of Rockford, 408 U.S. 104, 110, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972)).

Finally, depending on the type of law and conduct at issue, a statute may be challenged on vagueness grounds either "as applied" or "on its face." "Both types of vagueness challenges require the inquiry described above." Id. at 67 (internal citation omitted). Here, because the challenge is mounted "pre-enforcement," or before Plaintiffs have been charged with any crime under the law, it is correctly categorized as a "facial challenge." See Richmond Boro, 97 F.3d at 686 ("It would be premature to entertain [an as-applied] vagueness challenge . . . until a broader use of the ordinance is actually initiated"); see also Parker v. Levy, 417 U.S. 733, 759, 94 S. Ct. 2547, 41 L. Ed. 2d 439 (1974) ("[A] person to whom a statute may constitutionally be applied will not be heard to challenge that statute on the ground that it may conceivably be applied unconstitutionally to others, in other situations not before the Court."). But "[a] facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that *no set of circumstances exists under which the Act would be valid*." United States v. Salerno, 481 U.S. 739, 745, 107 S. Ct. 2095, 2100, 95 L. Ed. 2d 697 (1987) (emphasis added).

A three-member plurality of the Supreme Court, however, has also set forth a somewhat different test, finding that when a criminal law with no *mens rea* requirement is the subject of the challenge and "[w]hen vagueness permeates the text of such a law, it is subject to facial attack." City of Chicago v. Morales, 527 U.S. 41, 119 S. Ct. 1849, 144 L.Ed. 2d 67 (1999) (Stevens, J.). The Second Circuit, highlighting the unsettled nature of this area of law, has declined to express a preference for either the "no-set-of-

circumstances" or "permeated-with-vagueness" standard. Rybicki, 354 F.3d at 132 n. 3 (*en banc*).

It is unclear whether the challenged provisions here lack a *mens rea* requirement to a degree that would trigger the latter test; but it is no matter, as this Court finds that the outcome is the same regardless of the standard applied.

Plaintiffs' vagueness challenge concerns the following 10 aspects of the SAFE Act:

- "conspicuously protruding" pistol grip
- threaded barrel
- magazine-capacity restrictions
- five-round shotgun limit
- "can be readily restored or converted"
- the "and if" clause of N.Y. Penal Law § 265.36
- muzzle "break"
- "version" of automatic weapon
- manufactured weight
- commercial transfer

This Court will explain and address each in turn.

1. The "conspicuously protruding" pistol grip

Penal Law § 265.00 regulates semiautomatic weapons that have a "pistol grip that protrudes conspicuously beneath the action of the weapon." Plaintiffs assert that an ordinary person would not know whether a pistol grip "conspicuously protrudes" beneath a weapon.

The Second Circuit, however, has already found that this provision is not

unconstitutionally vague, at least as analyzed under the "no-set-of-circumstances" test. In Richmond Boro Gun Club, the Second Circuit addressed a New York City law that criminalizes, in much the same way as the SAFE Act, possession or transfer of assault weapons. 97 F.3d 681. The law at issue there, Local Law 78, also employs a one-feature test and bans semiautomatic rifles and shotguns that have, among other features, a "pistol grip that protrudes conspicuously beneath the action of the weapon."

In that case, the plaintiff sued New York City, arguing that this provision and others were unconstitutionally vague. The Appeals Court found that "Plaintiff's facial vagueness challenge is plainly without merit" because, among other reasons, "it is obvious in this case that there exist numerous conceivably valid applications of Local Law 78." Id. at 684. Relying on evidence that is also present in this case (such as depictions of rifles with conspicuously protruding pistol grips), the circuit court found the plaintiff's argument regarding the "conspicuously protruding pistol grip" to be "disingenuous." Id. at 685.

Although the Second Circuit was proceeding under the assumption that Local Law 78 did not implicate a "fundamental right," Plaintiffs here have not identified any compelling reason to depart from this precedent.[17]

[17]National Shooting Sports Foundation, Inc., as *amicus curiae*, argue that a more stringent test should apply because the right to firearm ownership is, as we now know, fundamental. As an initial matter, however, *amicus* does not specify what test it advocates. Moreover, to the extent *amicus* asks this Court to apply the "overbreadth doctrine," the Supreme Court has never recognized the doctrine outside the limited context of the First Amendment. Further, while the Court has recognized a "less strict" test in some situations, such a situation is not present here and this Court has not considered the law under this relaxed standard. See Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 498, 102 S. Ct. 1186, 71 L. Ed. 2d 362 (1982) (a "less strict" standard applies to economic regulation). Indeed, the "more stringent analysis" applies "when examining laws that impose criminal penalties." Thibodeau, 486 F.3d at 66; see also Arriaga v. Mukasey, 521 F.3d 219, 222–23 (2d Cir. 2008) ("The 'void for vagueness' doctrine is chiefly applied to criminal legislation. Laws with civil consequences receive less exacting vagueness scrutiny.").

Further, even under the "permeated-with-vagueness" standard, which was articulated after the Richmond Boro decision, this provision still survives. Under this standard "a law must at a minimum be 'vague in the vast majority of its applications' to be facially vague." United States v. Awan, 459 F. Supp. 2d 167, 180 (E.D.N.Y. 2006) (quoting Doctor John's, Inc. v. City of Roy, 465 F.3d 1150, 1152 (10th Cir. 2006)). That is not the case here — as the Richmond Boro court noted, there are a significant number of applications where this provision is not vague. 97 F.3d at 684–85. Accordingly, this provision will not be struck for vagueness.

2. The threaded barrel

Penal Law § 265.00 also regulates semiautomatic weapons that have a "threaded barrel designed to accommodate a flash suppressor, muzzle break, or muzzle compensator." Plaintiffs assert that an ordinary person could not know whether a threaded barrel is "designed" to accommodate the outlawed attachments.

But like the pistol grip, the Second Circuit in Richmond Boro has already found that the phrase "threaded barrel designed to accommodate a flash suppressor" is not vague. Id. at 683. It rejected the plaintiff's argument with respect to the outlawed "threaded barrel" because "when the statute is applied to firearms advertised to include parts identified as bayonet mounts, flash suppressors, barrel shrouds, or grenade launchers," there is "certainly" no vagueness. Id.

Even if this were not binding precedent, this Court finds the term to be sufficiently clear. Accordingly, this provision will not be struck for vagueness.

3. Magazine-capacity restrictions

Plaintiffs contend that the 10-round magazine restriction, found at N.Y. Penal Law

§ 265.00(23), is vague when applied to tubular magazines, because the capacity of such a magazine varies with the length of the cartridge.

This challenge must fail because, as is evident from Plaintiffs' argument, this provision is only possibly vague when applied to a specific use. When applied to non-tubular magazines, the restriction is not vague. (See Bruen Decl., ¶ 30.) Plaintiffs do not argue otherwise. Because the provision is neither impermissibly vague in all its applications, nor permeated with vagueness, this challenge must fail.

4. The five-round shotgun limit

Plaintiffs further argue that the language excluding "semiautomatic shotgun[s] that cannot hold more than five rounds of ammunition in a fixed or detachable magazine" from the definition of assault weapons is vague because shotgun shells come in various lengths. See § 265.00(22)(g)(iii).

But this challenge fails for the same reason: it is only possibly vague when applied to a specific use. When applied to a standard-length shell, the restriction is not vague. Thus, this language will also not be stricken for vagueness.

5. "Can be readily restored or converted"

The SAFE Act not only criminalizes magazines that have the capacity to accept more than 10 rounds of ammunition, it also outlaws any magazine that "can be readily restored or converted to accept" more than 10 rounds of ammunition. N.Y. Penal Law §§ 265.00(23), 265.02(8), 265.36, 265.37. Plaintiffs contend that this language is impermissibly vague because it is unclear what is meant by "readily," which, they contend, is a purely subjective criterion.

This language has been in existence since the 1994 federal ban, and was adopted

by New York in its 2000 assault weapons ban. While that does not, in itself, render the language sufficiently clear, Plaintiffs have presented no evidence that there has been any confusion on this issue in the many years of its existence.

Although this Court is sympathetic to Plaintiffs' concerns, this provision reflects the limitations of our language more than poor draftsmanship. In this sense, this Court agrees with the District of New Jersey, which, addressing similar language and relying in part on the Second Circuit's decision in Richmond Boro, held:

> Surely the Legislature, intent on reaching assault weapons which could be altered in minor ways or disassembled to avoid the purview of the other assault weapon definitions, did not have to specify in hours and minutes and with reference to specific tools and degrees of knowledge the parameters of what 'readily assembled' means. The precision in drafting which plaintiffs demand is neither constitutionally required nor perhaps even possible or advisable given the confines of language in which we all operate.

Coal. of N.J. Sportsmen, Inc. v. Whitman, 44 F. Supp. 2d 666, 681 (D.N.J. 1999).

Here, "[t]he words of this provision are marked by flexibility and reasonable breadth, rather than meticulous specificity, but [this Court] think[s] it is clear what the ordinance as a whole prohibits" — namely, magazines that can be easily restored to violate the law. Accordingly, this provision is not unconstitutionally vague. See Grayned v. City of Rockford, 408 U.S. 104, 110, 92 S. Ct. 2294, 2300, 33 L. Ed. 2d 222 (1972) (citations and quotations marks omitted).

6. The "and if" clause of Penal Law § 265.36

New York Penal Law § 265.36 provides, in relevant part, that:

> It shall be unlawful for a person to knowingly possess a large capacity ammunition feeding device manufactured before September thirteenth, nineteen hundred ninety-four, **and if**

> such person lawfully possessed such large capacity feeding device before the effective date of the chapter of the laws of two thousand thirteen which added this section, that has a capacity of, or that can be readily restored or converted to accept, more than ten rounds of ammunition.

Plaintiffs concede that this Section "is clear in making it unlawful to knowingly possess a large capacity ammunition feeding device manufactured before September 13, 1994." (Pls.' Br. at 42; Docket No. 114). They contend only that the remainder of the paragraph should be stricken.

Plaintiffs correctly note that the clause beginning with "and if" is unintelligible. Although Defendants contend that this is simply a "grammatical error" and the meaning of the provision, when read as a whole, remains apparent despite the error, this Court cannot agree. The error is more substantial than a mere mistake in grammar. Rather, the "and if" clause is incomplete and entirely indecipherable; in short, it requires an ordinary person to "speculate as to" its meaning. See Cunney, 660 F.3d at 620. This clause must therefore be stricken as unconstitutionally vague. Id. The preceding clause, however, is not challenged, and will remain.[18]

7. Muzzle "break"

When properly attached to a firearm, a muzzle brake reduces recoil. The SAFE Act, however, regulates muzzle "breaks." See N.Y. Penal Law § 265.00(22)(a)(vi). Although New York contends that this is a simple oversight in drafting, and that it intended to refer to muzzle "brakes," it has provided no evidence suggesting that this was the legislature's

[18]Section 265.36 contains two subsequent error-free paragraphs. Those are also unchallenged, and will remain.

intent. In any event, "[b]ecause construction of a criminal statute must be guided by the need for fair warning, it is rare that legislative history or statutory policies will support a construction of a statute broader than that clearly warranted by the text." Crandon v. United States, 494 U.S. 152, 160, 110 S. Ct. 997, 108 L. Ed. 2d 132 (1990). Indeed, "[l]egislatures and not courts should define criminal activity." McBoyle v. United States, 283 U.S. 25, 27, 51 S. Ct. 340, 75 L. Ed. 816 (1931) (Holmes, J.). This Court's job is to "presume that a legislature says in a statute what it means and means in a statute what it says there." Conn. Nat'l Bank v. Germain, 503 U.S. 249, 253–54, 112 S. Ct. 1146, 117 L. Ed. 2d 391 (1992). Of course here, the word "break" has its own meaning, distinct from its homophone "brake." And there is no dispute that there is no accepted meaning to the term "muzzle break." Both sides agree that it is, quite simply, meaningless. Consequently, an ordinary person cannot be "informed as to what the State commands or forbids." See Cunney, 660 F.3d at 620. All references to muzzle "break" must therefore be stricken.

8. "Version" of an automatic weapon

New York Penal Law § 265.00(22)(c)(viii) regulates semiautomatic pistols that have an ability to accept a detachable magazine and that are "semiautomatic version[s] of an automatic rifle, shotgun or firearm."

This Court also finds this language to be excessively vague, as an ordinary person cannot know whether any single semiautomatic pistol is a "version" of an automatic one.

New York argues that some courts, referencing certain firearms, have called them "versions" of automatic weapons. See, e.g., Staples, 511 U.S. at 614 (referring to the AR-15 rifle as the civilian version of the M-16 automatic rifle). But that alone is insufficient to adequately inform an ordinary gun owner whether his or her specific weapon is a version

of an automatic weapon. The statute provides no criteria to inform this determination, and, aside from the largely irrelevant citations to case law, New York fails to point to any evidence whatsoever that would lend meaning to this term. Thus, it not only fails to provide fair warning, but also "encourag[es] arbitrary and discriminatory enforcement." Section 265.00(22)(c)(viii) must therefore be stricken as unconstitutionally vague.

9. Manufactured weight

New York Penal Law § 265.00(22)(c)(vii) regulates semiautomatic pistols that have an ability to accept a detachable magazine and that have a manufactured weight of fifty ounces or more when unloaded. Plaintiffs claim that the term "manufactured weight" is vague. But this Court finds that the term has a plain and commonly-accepted meaning, and that this meaning provides sufficient notice to the ordinary person. This challenge is rejected.

10. Commercial transfer

Plaintiffs also claim that the term "commercial transfer" is vague as used in N.Y. Penal Law § 400.03(7), which outlaws any commercial transfer of a firearm or ammunition unless a licensed dealer in firearms or a registered seller of ammunition acts an intermediary. Once again, however, this Court finds the term has an ordinary and commonly-accepted meaning. Accordingly, this Court will not strike it as vague.

G. Dormant Commerce Clause

Last, Plaintiffs argue that a portion of the SAFE Act violates the so-called "dormant" aspect of the Commerce Clause.

That portion, Section 50, effectively bans ammunition sales over the Internet and imposes a requirement that an ammunition transfer "must occur in person." Plaintiffs,

including those who allege that they would continue to buy ammunition online from out-of-state dealers if not for the law, contend that this violates the Commerce Clause, which provides that "Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States." U.S. Const. art. I, § 8, cl. 3. As the Second Circuit has astutely observed, "[i]t is well established that the affirmative implies the negative, and that the Commerce Clause establishes a 'dormant' constraint on the power of the states to enact legislation that interferes with or burdens interstate commerce." Arnold's Wines, Inc. v. Boyle, 571 F.3d 185, 188 (2d Cir. 2009). Thus, "[t]he negative or dormant implication of the Commerce Clause prohibits state taxation or regulation that discriminates against or unduly burdens interstate commerce and thereby impedes free private trade in the national marketplace." Gen. Motors Corp. v. Tracy, 519 U.S. 278, 287, 117 S. Ct. 811,136 L. Ed. 2d 761 (1997) (internal quotation marks, brackets, and citations omitted).

Initially, Defendants contend that this Court should not address the merits of this challenge; they argue that because the provision at issue is not effective until January 15, 2014, Plaintiffs' Commerce Clause claim is not ripe and should be dismissed under Federal Rule of Civil Procedure 12(b)(1).[19]

The ripeness doctrine, "drawn both from Article III limitations on judicial power and

[19]Defendants do not seek dismissal on the related issue of standing, but this Court notes that Plaintiffs allege that they currently buy ammunition from out-of-state dealers. Under the Act, Plaintiffs will be foreclosed from doing so. As with the discussion regarding the possession of firearms and ammunition, this assertion is adequate to establish standing for this particular claim because Plaintiffs are forced to choose between refraining from making purchases that are not "face-to-face," or subjecting themselves to prosecution. See Humanitarian Law Project, 130 S. Ct. at 271; see also Gen. Motors Corp., 519 U.S. at 286 (customers of class that has allegedly been discriminated against in violation of dormant Commerce Clause have standing); Am. Booksellers Found. v. Dean, 342 F.3d 96, 101 (2d Cir. 2003) (plaintiffs had standing to bring dormant Commerce Clause claim because "[i]n th[at] case, the choice that the statute present[ed] to plaintiffs — censor their communications or risk prosecution — plainly present[ed] a 'realistic danger' of 'direct injury'").

from prudential reasons for refusing to exercise jurisdiction," protects the government from "judicial interference until a [] . . . decision has been formalized and its effects felt in a concrete way by the challenging parties." Nat'l Park Hospitality Ass'n v. Dep't of Interior, 538 U.S. 803, 808, 123 S. Ct. 2026, 155 L. Ed. 2d 1017 (2003) (internal citations omitted); Abbott Labs. v. Gardner, 387 U.S. 136, 148-49, 87 S. Ct. 1507, 1515, 18 L. Ed. 2d 681 (1967), *overruled on other grounds*, Califano v. Sanders, 430 U.S. 99, 97 S .Ct. 980, 51 L .Ed .2d 192 (1977). New York does not identify whether it seeks dismissal on Article III or prudential grounds, but this Court finds that the facts demonstrate a "concrete dispute affecting cognizable current concerns of the parties" sufficient to satisfy constitutional ripeness. See N.Y. Civil Liberties Union v. Grandeau, 528 F.3d 122, 131 (2d Cir. 2008) (internal citation omitted). Indeed, pre-enforcement review of the validity of a statute or regulation is warranted "principally when an individual would, in the absence of court review, be faced with a choice between risking likely criminal prosecution entailing serious consequences, or forgoing potentially lawful behavior." Thomas v. City of New York, 143 F.3d 31, 35 (2d Cir. 1998). That is the case here.

Thus, the only issue is one of prudential ripeness. "A case held not to be prudentially ripe reflects a court's judgment that the case would 'be better decided later.'" Ehrenfeld v. Mahfouz, 489 F.3d 542, 546 (2d Cir. 2007). Challenges of this sort require courts to engage in a two-part inquiry, related to the Article III inquiry, that evaluates "both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." Abbott Labs., 387 U.S. at 149; Grandeau, 528 F.3d at 132.

The first step "is concerned with whether the issues sought to be adjudicated are contingent on future events or may never occur," while the second step asks "whether and

to what extent the parties will endure hardship if decision is withheld." Grandeau, 528 F.3d at 132, 134 (internal citations and quotation marks omitted). In assessing the possibility of hardship, courts "ask whether the challenged action creates a direct and immediate dilemma for the parties." Id.

Here, this Court finds that both facets of the prudential-ripeness requirement are met. Plaintiffs raise a purely legal question, unconnected to "future events that may never occur." And Plaintiffs have sufficiently demonstrated that the impending effective date for the law imposes a direct and immediate dilemma, as Plaintiffs must prepare to comply with the law's new requirements. See New York v. United States, 505 U.S. 144, 175, 112 S. Ct. 2408, 120 L. Ed.2d 120 (1992) (issue ripe for review where plaintiff had to take action to avoid the consequences of a provision with an effective date several years off). Plaintiffs' claim of hardship is further buttressed by the fact that the law creates new obligations and subjects those failing to comply to civil and criminal liability. C.f. Nat'l Park, 538 U.S. at 809 (claim not ripe because regulation at issue did "not command anyone to do anything or to refrain from doing anything[,] . . . subject anyone to any civil or criminal liability," nor create "legal rights or obligations") (modifications omitted).

Having determined that Plaintiffs' claim is ripe for review, the Court will move to the merits.

Under dormant Commerce Clause jurisprudence, a challenged provision is likewise analyzed under a two-prong test: First, this Court asks whether the ordinance "discriminates" against interstate commerce. If it does, this Court will apply the strictest scrutiny to the ordinance. If it does not, this Court proceeds to "balance" the ordinance's "incidental" burdens on interstate commerce against its "putative local benefits." See

Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth., 476 U.S. 573, 579, 106 S. Ct. 2080, 90 L. Ed. 2d 552 (1986); Pike v. Bruce Church, Inc., 397 U.S. 137, 142, 90 S. Ct. 844, 25 L. Ed. 2d 174 (1970).

Undertaking that analysis, this Court finds that the face-to-face requirement does not run afoul of the dormant Commerce Clause. The Second Circuit addressed a remarkably similar issue in Brown & Williamson Tobacco Corp. v. Pataki, 320 F.3d 200, 213 (2d Cir. 2003). There, the plaintiffs alleged that a New York law prohibiting cigarette sellers from shipping and transporting cigarettes directly to New York consumers violated the dormant Commerce Clause. The Second Circuit disagreed, holding that the statute imposed burdens on in-state and out-of-state dealers alike and that, contrary to the plaintiffs' argument and the district court's holding, it did not effectively forbid out-of-state dealers from selling cigarettes in New York state; instead, it eliminated *all* sales not made face-to-face, regardless of the seller's place of business.

The Brown court then went on to find that whatever additional costs the statute imposed were only "incidental effects on interstate commerce" and that the statute passed constitutional muster under the Pike balancing test. Id. at 216–17.

The same is true here. As in Brown, Section 50 of the SAFE Act applies restrictions evenhandedly between in-state and out-of-state arms and ammunition dealers. It does not create a "monopoly" for New York dealers, as Plaintiffs argue; instead (and again like Brown) it eliminates the direct sale of ammunition to New Yorkers no matter the seller's place of business. As the Brown court found with regard to cigarettes, even assuming that the only way an out-of-state dealer could legally sell ammunition to New York consumers is to establish a brick-and-mortar outlet in New York, so too must in-state sellers. And,

even if it is costly and burdensome for out-of-state dealers "to establish brick-and-mortar outlets in New York, that is insufficient to establish a discriminatory effect." See Brown, 320 F.3d at 212; see also Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 125, 98 S. Ct. 2207, 2214, 57 L. Ed. 2d 91 (1978) (even if a statute's burdens fall solely on interstate companies, this "does not lead, either logically or as a practical matter, to a conclusion that the State is discriminating against interstate commerce at the retail level").

Having determined that the statute regulates evenhandedly with only incidental effects on interstate commerce, this Court must uphold the law unless the burden imposed on interstate commerce is clearly excessive in relation to a legitimate local public interest. See Pike, 397 U.S. at 142; USA Recycling, Inc. v. Town of Babylon, 66 F.3d 1272, 1287 (2d Cir. 1995).

This provision is plainly intended to further a legitimate and important public interest: preventing those prohibited from purchasing ammunition from doing so online, especially in mass quantities, by requiring sellers to confirm the identity of a buyer through inspection of valid photo identification. (See Gov.'s Memo in Support, at 7.) If, like here, "a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." Pike, 397 U.S. at 142. Although Plaintiffs argue that New York's goal can be achieved through other means (such as electronic background checks), Plaintiffs offer no evidence on this point, and have thus have failed to raise a triable issue of fact — as is their obligation — that the law "places a burden on interstate commerce that is 'clearly excessive in relation to the putative local benefits." See Town of Southold v. Town of E.

Hampton, 477 F.3d 38, 47 (2d Cir. 2007) (If the challenging party cannot show discrimination . . . it must demonstrate that the law "places a burden on interstate commerce that is 'clearly excessive in relation to the putative local benefits'"). Accordingly, Plaintiffs' motion on this ground is denied and Defendants' is granted.

IV. CONCLUSION

"Our Constitution is designed to maximize individual freedoms within a framework of ordered liberty." Kolender v. Lawson, 461 U.S. 352, 357, 103 S. Ct. 1855, 1858, 75 L. Ed. 2d 903 (1983). In Heller and McDonald, the Supreme Court found that the right to "keep and bear arms," enshrined in the Second Amendment, was among those individual freedoms. But the Court also noted that the right was not unlimited. Drawing from post-Heller rulings that have begun to settle the vast *terra incognita* left by the Supreme Court, this Court finds that the challenged provisions of the SAFE Act — including the Act's definition and regulation of assault weapons and its ban on large-capacity magazines — further the state's important interest in public safety, and do not impermissibly infringe on Plaintiffs' Second Amendment rights. But, the seven-round limit fails the relevant test because the purported link between the ban and the State's interest is tenuous, strained, and unsupported in the record.

Further, three aspects of the law — the "and if" clause of N.Y. Penal Law § 265.36, the references to muzzle "breaks" in N.Y. Penal Law § 265.00(22)(a)(vi), and the regulation with respect to pistols that are "versions" of automatic weapons in N.Y. Penal Law § 265.00(22)(c)(viii) — must be stricken because they do not adequately inform an ordinary person as to what conduct is prohibited.

Finally, because the SAFE Act's requirement that all ammunition sales be conducted in-person does not unduly burden interstate commerce, it does not violate the Commerce Clause.

V. ORDERS

IT HEREBY IS ORDERED, that Plaintiffs' Motion for Summary Judgment (Docket No. 113) is GRANTED in part and DENIED in part.

FURTHER, that Plaintiffs' Motion for a Preliminary Injunction (Docket No. 23) is DENIED as moot.

FURTHER, that New York State Defendants' Motion for Summary Judgment and Motion to Dismiss (Docket No. 64) is GRANTED in part and DENIED in part.

FURTHER, that Gerald Gill's Motion for Summary Judgment and Motion to Dismiss (Docket No. 70) is GRANTED in part and DENIED in part.

FURTHER, the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: December 31, 2013
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Court

RIFLES – BANNED FEATURES

RIFLES REQUIRING REGISTRATION ARE

- Semiautomatic rifles capable of receiving a detachable magazines

AND

- Have one or more of the following military characteristics

Banned Features

- Folding or Telescoping Stock
- Protruding Pistol Grip
- Thumbhole Stock
- Second Handgrip or Protruding Grip that can be held by non shooting hand
- Bayonet Mount

Banned Features

- Flash Suppressor
- Muzzle Brake
- Muzzle Compensator
- Or a threaded barrel designed to accommodate the above
- Grenade Launcher

Banned Feature

Folding Stock

~Illustration~

Banned Feature

Telescoping Stock

~Illustration~

Banned Feature

Protruding Pistol Grip

~Illustration~

Banned Feature

Thumbhole Stock

~Illustration~

Banned Feature

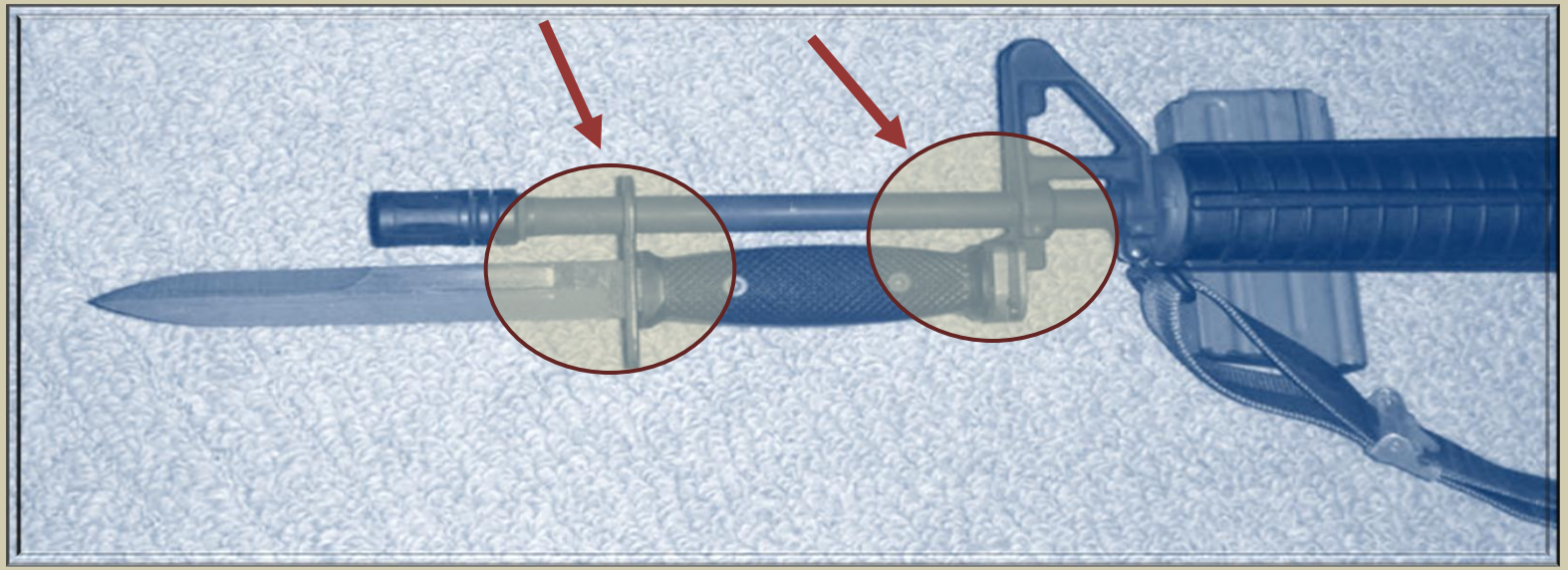
Second Handgrip

~Illustration~

Banned Feature

Bayonet Mount

~Illustration~



Banned Features

Flash Suppressor, Muzzle Brake or Compensator

~Illustration~

Banned Feature

Threaded Barrel to accommodate:

Flash suppressor, Muzzle brake or Compensator

~Illustration~

DESPP DIVISIONS:

Commission on Fire Prevention and Control

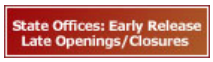
Emergency Management and Homeland Security

Statewide Emergency Telecommunications

Police Officer Standards and Training Council

Scientific Services

State Police



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Connecticut State Police
Public Information Office
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Middletown, Connecticut 06457

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DESPP.Feedback

Colonel Danny R. Stebbins
Deputy Commissioner
Division of State Police

Reuben Bradford
Commissioner

FOR IMMEDIATE RELEASE
January 18, 2013

**** UPDATE ****

STATE POLICE IDENTIFY WEAPONS USED IN SANDY HOOK INVESTIGATION; INVESTIGATION CONTINUES

In previous press conferences, the Connecticut State Police clearly identified all of the weapons seized from the crime scene at Sandy Hook Elementary School.

To eliminate any confusion or misinformation, we will again describe and identify the weapons seized at the school crime scene.

Seized inside the school:

#1. Bushmaster .223 caliber-- model XM15-E2S rifle with high capacity 30 round magazine

#2. Glock 10 mm handgun

#3. Sig-Sauer P226 9mm handgun

Seized from suspect's car in parking lot:

#4. Izhmash Canta-12 12 gauge Shotgun (seized from car in parking lot)

The shooter used the Bushmaster .223 to murder 20 children and six adults inside the school; he used a handgun to take his own life inside the school. No other weapons were used in this crime. This case remains under investigation.

Lt. J. Paul Vance

Content Last Modified on 3/13/2013 3:34:09 PM

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1111 Country Club Road, Middletown, CT 06457

A Guide to Mass Shootings in America

There have been at least 67 in the last three decades—and most of the killers got their guns legally.

—By **Mark Follman** (/authors/mark-follman), **Gavin Aronsen** (/authors/gavin-aronsen), and **Deanna Pan** (/authors/deanna-pan) | Updated: Wed Feb. 27, 2013 7:45 AM PST

It is perhaps too easy to forget how many times this has happened. The horrific mass murder at a movie theater in Colorado (http://www.motherjones.com/politics/2012/07/batman-theater-shooting-updates-dark-knight-rises) last July, another at a Sikh temple in Wisconsin (http://www.motherjones.com/politics/2012/08/what-we-know-about-sikh-temple-shooting-wisconsin-updates) in August, another at a manufacturer in Minneapolis (http://www.startribune.com/local/171774461.html) in September—and then the unthinkable nightmare at a Connecticut elementary school (http://www.motherjones.com/politics/2012/12/newtown-connecticut-school-shooting-explained) in December—are the latest in an epidemic of such gun violence over the last three decades. Since 1982, there have been at least 62 mass shootings* (#update) across the country, with the killings unfolding in 30 states from Massachusetts to Hawaii. Twenty-five of these mass shootings have occurred since 2006, and seven of them took place in 2012. We've gathered detailed data on the cases and mapped them below, including information on the shooters' identities, the types of weapons they used, and the number of victims they injured and killed.

Weapons: Of the 143 guns possessed by the killers, more than three quarters were obtained legally. The arsenal included dozens of assault weapons and semi-automatic handguns with high-capacity magazines (http://www.motherjones.com/politics/2013/01/high-capacity-magazines-mass-shootings). (See charts below.) Just as Jeffrey Weise used a .40-caliber Glock to slaughter students in Red Lake, Minnesota, in 2005, so too did James Holmes, along with an AR-15 assault rifle (http://en.wikipedia.org/wiki/AR-15), when blasting away at his victims in a darkened movie theater. In Newtown, Connecticut, Adam Lanza wielded a .223 Bushmaster semi-automatic assault rifle (http://en.wikipedia.org/wiki/Bushmaster_Firearms_International) as he massacred 20 school children and six adults.

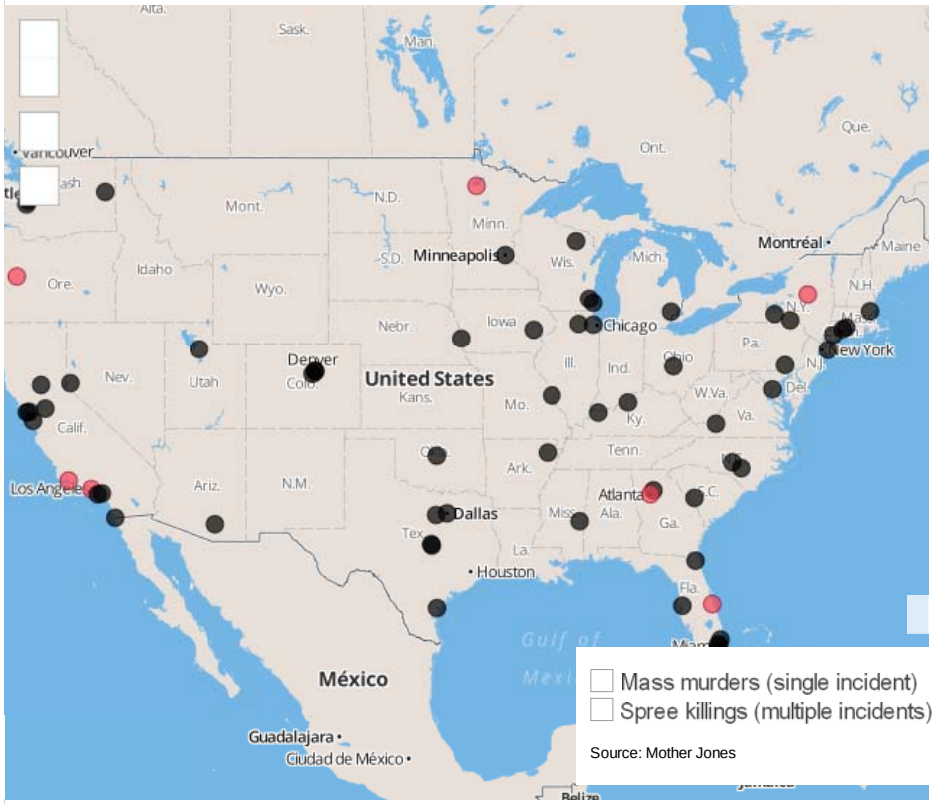
The killers: More than half of the cases involved school or workplace shootings (12 and 20, respectively); the other 30 cases took place in locations including shopping malls, restaurants, and religious and government buildings. Forty four of the killers were white males. Only one of them was a woman. (See Goleta, Calif., in 2006.) The average age of the killers was 35, though the youngest among them was a mere 11 years old. (See Jonesboro, Ark., in 1998.) A majority were mentally troubled—and many displayed signs of it before setting out to kill (http://www.motherjones.com/politics/2012/11/jared-

Tragedy in Newtown

- The NRA Myth of Arming the Good Guys (/politics/2012/12/nra-mass-shootings-myth)
- More Guns, More Mass Shootings—Coincidence? (/politics/2012/09/mass-shootings-investigation)
- Do Armed Civilians Stop Mass Shooters? Actually, No. (/politics/2012/12/armed-civilians-do-not-stop-mass-shootings)
- "A Killing Machine": Half of All Mass Shooters Used High-Capacity Magazines (/politics/2013/01/high-capacity-magazines-mass-shootings)
- Mass Shootings: Maybe We Need a Better Mental-Health Policy (/politics/2012/11/jared-loughner-mass-shootings-mental-illness)
- Why Mass Shootings Deserve Deeper Investigation (/politics/2013/01/mass-shootings-james-alan-fox)

loughner-mass-shootings-mental-illness) . Explore the map for further details—we do not consider it to be all-inclusive, but based on the criteria we used (#criteria) we believe that we've produced the most comprehensive rundown available on this particular type of violence. (Mass shootings represent only a sliver of America's overall gun violence.) For a timeline listing all the cases on the map, including photos of the killers, jump to page 2 (http://www.motherjones.com/politics/2012/07/mass-shootings-map?page=2) . For the stories of the 151 shooting rampage victims of 2012, click here (http://www.motherjones.com/politics/2012/12/mass-shootings-victims-2012) , and for all of MoJo's year-long investigation into gun laws and mass shootings, click here (http://www.motherjones.com/special-reports/2012/12/guns-in-america-mass-shootings) .

Hover over the dots or use the search tool in the top-left corner of the map to go to a specific location. (Zoom in to see the Aurora shooting, located close to other massacres in Colorado, and to see other proximate shootings in Milwaukee, Seattle, and elsewhere.)



Sources: Research by Mother Jones. (With thanks to the Associated Press (http://newsfeed.time.com/2012/07/20/the-worst-mass-shootings-of-the-past-50-years/) , Canada.com (http://o.canada.com/2012/07/17/interactive-map-mass-shootings-in-north-american-history/) , and Citizens Crime Commission of NYC (http://www.nycrimecommission.org/initiative1-shootings.php) .)

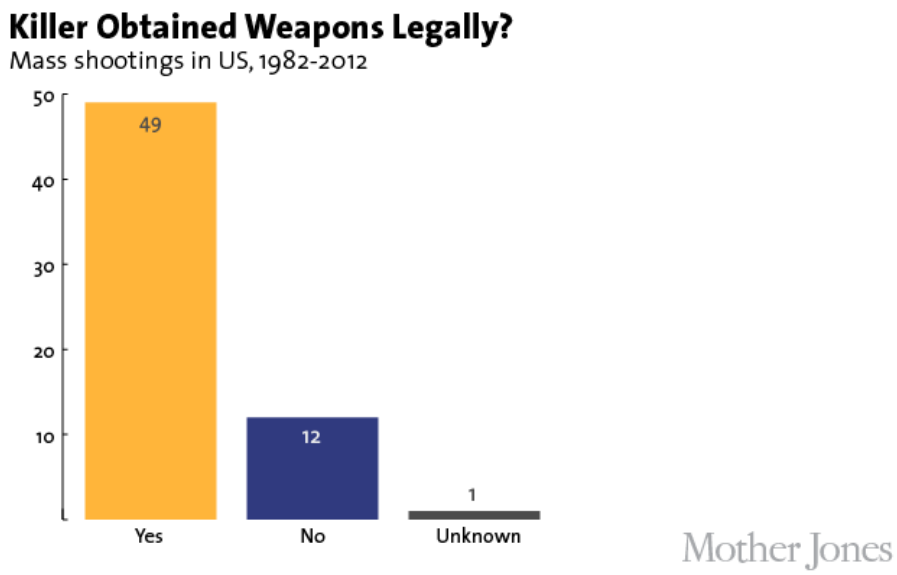
We used the following criteria to identify mass shootings:

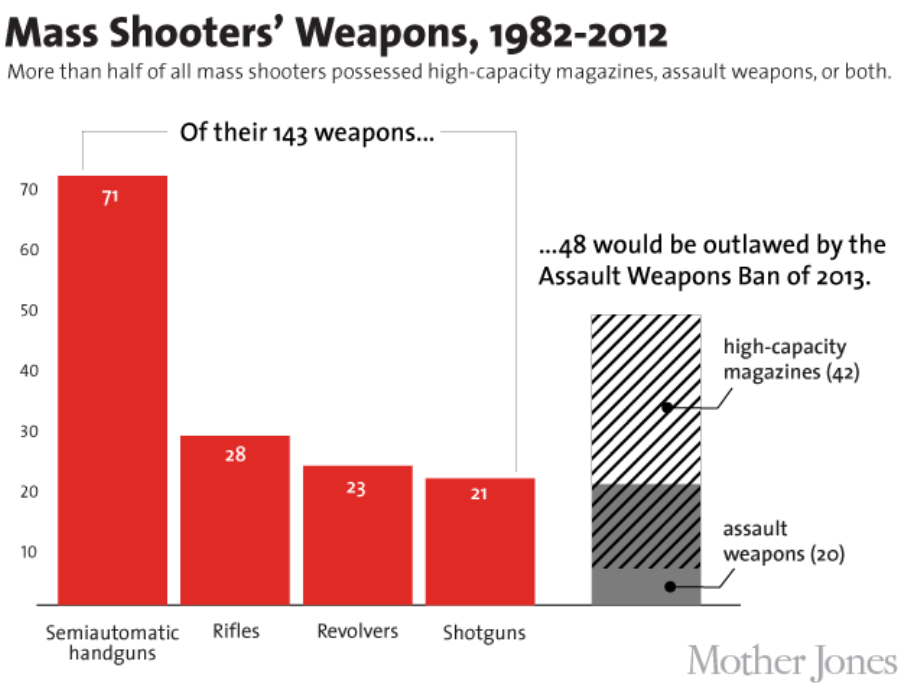
- **The shooter took the lives of at least four people**. An FBI crime classification report (http://www.fbi.gov/stats-services/publications/serial-murder/serial-murder-1#two) identifies an individual as a mass murderer—versus a spree killer (http://en.wikipedia.org/wiki/Spree_killer) or a serial killer (http://en.wikipedia.org/wiki/Serial_killer) —if he kills four or more people in a single incident (not including himself), typically in a single location.
- **The killings were carried out by a lone shooter**. (Except in the case of the Columbine massacre and the Westside Middle School killings, both of which involved two shooters.)
- **The shootings occured in a public place.** (Except in the case of a party in Crandon, Wisconsin, and another in Seattle.) Crimes primarily related to gang activity or armed robbery are not included.
- **If the shooter died or was hurt from injuries** sustained during the incident, he is included in the total victim count. (But we have excluded many cases in which there were three fatalities and the shooter also died, per the above FBI criterion.)

- **We included a handful of so-called "spree killings"**—high-profile cases that fit closely with our above criteria for mass murder, but in which the killings occurred in more than one location over a short period of time.

For more on how we determined the criteria, see our mass shootings explainer (http://www.motherjones.com/mojo/2012/08/what-is-a-mass-shooting). Plus: more on the crucial mental illness factor (http://www.motherjones.com/politics/2012/11/jared-loughner-mass-shootings-mental-illness), and on the recent barrage of state laws rolling back gun restrictions across the US (http://www.motherjones.com/politics/2012/09/map-gun-laws-2009-2012). And: Explore the full data set behind our investigation (http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data).

Here are two charts detailing the killers' weapons:





We've updated and expanded this story with additional research multiple times since initial publication on July 20, 2012, thanks in part to some valuable feedback from MoJo readers. (Thanks also to Professor James Alan Fox of Northeastern University.) Details about our

updated analysis and data on the shooters' weapons are in this story. (http://www.motherjones.com/politics/2013/02/assault-weapons-high-capacity-magazines-mass-shootings-feinstein) For more about the mass shooting at the movie theater in Aurora, Colo., click here (http://www.motherjones.com/politics/2012/07/batman-theater-shooting-updates-dark-knight-rises), and for the mass shooting in Newtown, Connecticut, click here (http://www.motherjones.com/politics/2012/12/newtown-connecticut-school-shooting-explained). And for additional reporting and analysis from our in-depth investigation, read this companion story (http://www.motherjones.com/politics/2012/09/mass-shootings-investigation). (Return to intro.) (#intro)

First published: Fri Jul. 20, 2012 7:32 PM PDT.

Interactive production by Tasneem Raja (/authors/tasneem-raja) and Jaeah Lee (/authors/jaeah-lee)

Image: Clockwise from upper left: Wade Michael Page: Anti-Defamation League (http://blog.adl.org/extremism/adl-connects-suspected-shooter-at-wisconsin-sikh-temple-to-white-supremacist-skinhead-group); James E. Holmes: Arapahoe County Sheriff's Dept./Zuma; Seung-Hui Cho: Virginia Tech University/Wikimedia (http://en.wikipedia.org/wiki/File:Cho_Seung-hui_3.jpg); Jared Loughner: Pima County Sheriff's Office/Wikimedia (http://en.wikipedia.org/wiki/File:Jared_Loughner_USMS.jpg)

Next Page: *A 30-year timeline of mass shootings, with photos of the killers (/politics/2012/07/mass-shootings-map?page=2)*

Page 1 of 2

MARK FOLLMAN (/authors/mark-follman) *Senior Editor* (/PRINT/186991) (/FORWARD?PATH=NODE/186991)

Mark Follman is a senior editor at *Mother Jones*. Read more of his stories (http://www.motherjones.com/authors/mark-follman), follow him on Twitter (http://twitter.com/#!/markfollman), or contact him with tips or feedback at mfollman (at) motherjones (dot) com. RSS (/RSS/AUTHORS/22418) | TWITTER (HTTP://TWITTER.COM/MARKFOLLMAN)

(/authors/mark-follman)

GAVIN ARONSEN (/authors/gavin-aronsen)

For more of Gavin's stories, click here (http://www.motherjones.com/authors/gavin-aronsen).

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DEANNA PAN (/authors/deanna-pan)

Deanna Pan is a former senior editorial fellow at *Mother Jones*.

(/authors/deanna-pan)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DOUGLAS E. KAMPFER,

Plaintiff, **6:13-cv-82 (GLS/ATB)**

v.

ANDREW CUOMO, Governor
State of New York,

Defendant.

APPEARANCES: **OF COUNSEL:**

FOR THE PLAINTIFF:
Douglas E. Kampfer
Pro Se
P.O. Box 747
142 Kunkel Point Road
Mayfield, NY 12117

FOR THE DEFENDANT:
HON. ERIC T. SCHNEIDERMAN
New York State Attorney General
The Capitol
Albany, NY 12224

ADRIENNE J. KERWIN
Assistant Attorney General

Gary L. Sharpe
Chief Judge

MEMORANDUM-DECISION AND ORDER

I. Introduction

Plaintiff *pro se* Douglas E. Kampfer commenced this action, which

attacks the New York Secure Ammunition and Firearms Enforcement Act[1] (hereinafter "the SAFE Act"), against Andrew M. Cuomo, Governor of the State of New York. (Am. Compl., Dkt. No. 21 at 3-6.) Pending are Cuomo's motions to set aside entry of default, (Dkt. No. 33), dismiss the complaint, (Dkt. No. 17), and requesting that the court consider the original motion to dismiss as against the amended complaint, (Dkt. No. 22), and Kampfer's cross motion for default judgment, (Dkt. No. 34). For the reasons that follow, Cuomo's motions are granted, and Kampfer's cross motion is denied.

II. Background

A. Facts[2]

On January 15, 2013, Cuomo signed the SAFE Act into Law. (Am. Compl. ¶ 4.) Cuomo publicly commented that, in light of the tragedy in Newtown, Connecticut, the legislation was "necessary . . . to protect the lives of citizens of the State of New York." (*Id.*) By virtue of the SAFE Act's passage, Kampfer, who did not own an "assault weapon" prior to

[1] *See* L. 2013, ch. 1, *amended by* L. 2013, ch. 57, pt. FF.

[2] The facts are drawn from Kampfer's amended complaint and presented in the light most favorable to him.

January 15, 2013, is now precluded from owning such a firearm.[3] (*Id.*) The SAFE Act also bans felons and the mentally ill from owning "assault weapons," but Kampfer is not a felon, nor has he been declared mentally ill. (*Id.*)

B. The SAFE Act

As relevant here, the SAFE Act amended the definition of "[a]ssault weapon" provided in Penal Law § 265.00(22), and "[l]arge capacity ammunition feeding device" set forth in Penal Law § 265.00(23). L. 2013, ch. 1, §§ 37, 38. As amended by the SAFE Act, the definition of "assault weapon" is defined as: (1) a semiautomatic rifle with the ability to accept a detachable magazine plus one additional listed characteristic; (2) a semiautomatic shotgun plus one additional listed characteristic; (3) a semiautomatic pistol with the ability to accept a detachable magazine plus one additional characteristic; (4) a revolving cylinder shotgun; (5) certain semiautomatic rifles, shotguns, and pistols that were formerly explicitly excepted from the definition; and, finally, (6) semiautomatic rifles,

[3] The court ascribes the same meaning to "firearm," as it is used throughout this Memorandum-Decision and Order, as does the Penal Law. *See* N.Y. Penal Law § 265.00(3).

shotguns, or pistols meeting any of the first three definitions and possessed prior to January 15, 2013.[4] *See* N.Y. Penal Law § 265.00(22)(a)-(f). While the definition of "[a]ssault weapon" was expanded, which had the practical effect of criminalizing the possession of a greater number of guns or otherwise restricting them, *see, e.g.*, N.Y. Penal Law §§ 265.00(3)(e), 265.01-b(2), 265.02(7), 265.10(2), (3), 400.00(16-a), a grandfather provision was also included that permitted certain individuals who possessed "assault weapons," as defined by § 265.00(22)(e) and (f), before the January 15, 2013 effective date to lawfully continue to possess such "assault weapons," but required registration of them within a prescribed time period. L. 2013, ch. 1 §§ 37, 48 (codified at N.Y. Penal Law § 265.00(22)(g)(v); § 400.00(16-a)).

The definition of "[l]arge capacity ammunition feeding device" was expanded to include, among other things, devices with a capacity of ten or less rounds of ammunition, but "containing more than seven rounds of ammunition," or those obtained after the effective date that have "a

[4] Prior to passage of the SAFE Act, the definition, as it related to semiautomatic rifles, shotguns, and pistols, required the presence of at least two of the additional listed features. *See* Penal Law § 265.00(22)(a)-(c) (2010). The older version also encompassed specific models of guns or copies or duplicates of them. *Id.* § 265.00(22)(d).

capacity of, or that can be readily restored or converted to accept, more than seven rounds of ammunition." L. 2013, ch. 1, § 38. Related to ammunition feeding devices, Penal Law § 265.37 was added, which makes unlawful the knowing possession of an ammunition feeding device that was possessed before the effective date and has the capacity to accept more than seven but less than ten rounds of ammunition if it contains more than seven rounds of ammunition. L. 2013, ch. 1, § 46-a. The provisions related to ammunition feeding devices have since been amended, however, and the definitional portion has been "suspended and [is] not effective," whereas § 265.37 now prohibits only the knowing possession of an ammunition feeding device where such device contains more than seven rounds of ammunition. L. 2013, ch. 57, pt. FF, §§ 2, 4.

C. Procedural History

Kampfer commenced this action on January 23, 2013. (Dkt. No. 1.) Before filing an answer, Cuomo moved to dismiss the complaint for failure to state a claim. (Dkt. No. 17.) In response to that motion, and less than twenty-one days after it was filed, Kampfer filed an amended complaint.[5]

[5] Because Kampfer had not previously amended his pleading, he was entitled, as a matter of course, to amend the complaint within twenty-

(*See generally* Am. Compl.) Thereafter, Kampfer sought entry of default pursuant to Fed. R. Civ. P. 55(a) and N.D.N.Y. L.R. 55.1, citing Cuomo's failure to timely respond to his amended complaint, (Dkt. No. 23), which, by one day, preceded Cuomo's renewal of his motion to dismiss against the amended complaint, (Dkt. No. 22). Pointing out that Cuomo failed to timely serve an answer to the amended complaint, Kampfer again sought entry of default. (Dkt. No. 28.) The Clerk eventually entered Cuomo's default. (Dkt. No. 32.) Following entry of default, Cuomo moved to vacate the default pursuant to Fed. R. Civ. P. 55(c), (Dkt. No. 33), and Kampfer cross moved for default judgment, (Dkt. No. 34).

III. Standards of Review

A. Motion to Set Aside Default

"The court may set aside an entry of default for good cause," Fed. R. Civ. P. 55(c), which requires the court's consideration of three factors: "(1) whether the default was willful; (2) whether setting aside the default would prejudice the party for whom default was awarded; and (3) whether the

---

one days after service of Cuomo's motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). *See* Fed. R. Civ. P. 15(a)(1)(B). Accordingly, the operative pleading is Kampfer's amended complaint.

moving party has presented a meritorious defense." *Peterson v. Syracuse Police Dep't*, 467 F. App'x 31, 33 (2d Cir. 2012).

B. Motion to Dismiss

The standard of review under Fed. R. Civ. P. 12(b)(6) is well settled and will not be repeated here. For a full discussion of the standard, the court refers the parties to its prior decision in *Ellis v. Cohen & Slamowitz, LLP*, 701 F. Supp. 2d 215, 218 (N.D.N.Y. 2010).

IV. Discussion

A. Default

Cuomo contends that his default should be set aside. (Dkt. No. 33, Attach. 3 at 2-9.) In particular, he claims that good cause is shown because his delay in responding to the amended complaint "was due to a calendaring error," and, thus, was not willful; he has a meritorious defense to the action for the reasons stated in his original motion to dismiss; and, finally, because the parties have been carrying on as though there was no default, Kampfer has suffered no resulting prejudice. (*Id.*) In one filing, Kampfer both opposes Cuomo's motion and seeks entry of a default judgment. (Dkt. No. 34.) Because Cuomo has shown good cause, his motion is granted and his default is set aside.

An extended discussion is not warranted. Satisfied that good cause has been shown for the reasons set forth in his memorandum of law, and on the authority of *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 95-98 (2d Cir. 1993), the court sets aside Cuomo's default. In light thereof, Kampfer's cross motion for entry of a default judgment, (Dkt. No. 34), is denied as moot. *See United States v. Premises & Real Prop. with Bldgs., Appurtenances, & Improvements Located at 26 E. Park St., Albion, NY*, No. 07-CV-759S, 2008 WL 4596210, at *2 (W.D.N.Y. Oct. 14, 2008).

B. Motion to Dismiss

Having granted Cuomo's motion to set aside entry of default, the court also grants his letter motion seeking to renew his motion to dismiss as against the amended complaint. (Dkt. No. 22.) Before considering Cuomo's arguments in support of dismissal, however, the court must endeavor to decipher what causes of action Kampfer has alleged in his amended complaint. This is no easy task.

In the preamble to his amended complaint, Kampfer alleges that he has filed a civil rights action seeking declaratory and injunctive relief:

> to defend and protect [his] rights . . . , guaranteed under the Second Amendment of the United States Constitution . . . to keep and bear arms and, to be

> protected by the rights of the laws of the United States and the Unites States Constitution pursuant to Article VI of the United States Constitution as Supreme Law of the Land[.]

(Am. Compl. ¶ 1.) In the same introductory section, Kampfer claims that Cuomo:

> [arbitrarily] and [capriciously] signed into law the [SAFE Act], banning [him] the right to be armed and to defend his country, his home, and for self defense, with a[n] "assault weapon" of Military style, make and model, having the ability to fire or shoot ammunition in a clip, magazine holding seven rounds of ammunition or less the same as other citizen(s) of the United States . . . ; the arbitrary act of signing the [SAFE Act], further banning [him] the rights that shall not be infringed, under the Second Amendment by allowing a "Grandfather" clause within the [SAFE Act], in banning [him] of the ability to buy, purchase, or trade for a[n] "assault weapon" after the January 15, 2013 effective date of the law, because [he] who is not a felon or mentally ill, did not own a[n] "assault weapon" prior to the January 15, 2013 effective date of the law.

(*Id.*) After reciting the sparse facts mentioned above, *see supra* Part II.A, Kampfer seeks the following relief:

> [A] Declaratory Judgment, declaring that the Administrative Act of . . . Cuomo, signing into law the [SAFE Act] which deprives [him] of owning, buying or trading for a[n] "assault weapon" which is legal under Federal Law as **ARBITRARY** and **CAPRICIOUS**[; and]

> . . . a Permanent Injunction requiring . . . Cuomo . . . to remand the [SAFE Act] back to the State of New York Assembly and Senate for further actions not inconsistent with this Court[']s rulings.

(*Id.* ¶ 5.)

Bearing in mind that Kampfer's amended complaint "must be construed liberally 'to raise the strongest arguments [it] suggest[s],'" *Walker v. Schult*, 717 F.3d 119, 124 (2d Cir. 2013) (quoting *Pabon v. Wright*, 459 F.3d 241, 248 (2d Cir. 2006)), the court discerns three possible claims. While Kampfer seeks relief related to the entirety of the SAFE Act, (Am. Compl. ¶ 5), his pleading, read liberally, alleges: (1) a facial challenge to the portions that altered or created restrictions and prohibitions on "assault weapons" under Second Amendment principles; (2) an equal protection challenge to the grandfather provision under a class-of-one theory; and (3) a claim that the state procedures under which the SAFE Act came into being was somehow infirm, rendering the entirety of the legislation invalid.[6]

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[6] While Kampfer specifically mentions "a clip, magazine holding seven rounds of ammunition or less," the court does not read the amended complaint to attack that portion of the SAFE Act that made it unlawful to possess an ammunition feeding device that has a capacity of more than seven rounds of ammunition. In any event, had Kampfer alleged such a claim, the amendment to the SAFE Act suspending and

It is noteworthy that, while Cuomo fails to address whether Kampfer has made out a facial challenge to those portions of the SAFE Act that prohibit and restrict "assault weapons," he argues, generically, that Kampfer has failed to do so with respect to the grandfather provision. (Dkt. No. 17, Attach. 1 at 4-7.) Moreover, Cuomo contends that Kampfer has failed to allege that the grandfather provision violates the Equal Protection Clause because: (1) he is not similarly situated to people who owned assault weapons prior the SAFE Act's enactment; and, alternatively, (2) the grandfather provision does not unconstitutionally burden his Second Amendment rights. (*Id.* at 7-12.) In response to these arguments, Kampfer merely contends that the Supreme Court of the United States in *District of Columbia v. Heller*, 554 U.S. 570 (2008), held that the only tolerable restrictions on the Second Amendment right were with respect to possession by felons or mentally ill individuals, carrying firearms in sensitive places, such as schools and government buildings, and laws

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declaring ineffective those provisions, *see* L. 2013, ch. 57, pt. FF, § 4, would render his claim moot. Nor does the court perceive a challenge to the prohibition against loading more than seven rounds into an ammunition feeding device with a larger capacity. Kampfer apparently mentions a "magazine holding seven rounds of ammunition or less" merely to compare himself with non-New Yorkers. (Am. Compl. ¶ 1.)

imposing qualification on the commercial sale of arms. (Dkt. No. 25 at 1-2.)[7] The thrust of Kampfer's argument is that the SAFE Act imposes greater restrictions than those identified by the Court as permissible. (*Id.* at 2.)

1. Facial Challenge Under the Second Amendment: "Assault Weapon" Restriction and Prohibition[8]

Cuomo first argues that Kampfer's facial challenge must fail because the SAFE Act "does not ban all or even most firearms, including handguns, shotguns, and rifles which have been customarily used for protection in the home, hunting or target shooting, but only military-style weapons deemed by the Legislature to pose a particular public safety threat." (Dkt. No. 17, Attach. 1 at 6.)

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[7] Kampfer's assertion is plainly without merit. Indeed, the Court specifically noted that the regulatory measures identified by Kampfer were provided "only as examples" and that the list of presumptively lawful regulatory measures "does not purport to be exhaustive." *Heller*, 554 U.S. at 627 n.26. In any event, the ineptitude of Kampfer's response does not compel the demise of his amended complaint. The court must measure Kampfer's claims as against the applicable law, whether identified by him in response to Cuomo's motion to dismiss or not.

[8] It is noteworthy that Kampfer cannot make an as applied challenge to the SAFE Act's "assault weapon" ban because it has not been applied to him, nor has he shown, or even alleged, a genuine threat of enforcement. *Cf. Ellis v. Dyson*, 421 U.S. 426, 432 (1975).

Facial challenges are typically disfavored as they "often rest on speculation," which, "[a]s a consequence, . . . raise[s] the risk of 'premature interpretation of statutes on the basis of factually barebones records.'" *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008) (quoting *Sabri v. United States*, 541 U.S. 600, 609 (2004)). Moreover, such challenges undercut "the fundamental principle of judicial restraint that courts should neither anticipate a question of constitutional law in advance of the necessity of deciding it nor formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied," and "threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Id.* at 450-51 (internal quotation marks and citations omitted). To be successful, a litigant that attacks the facial validity of a statute "must establish that no set of circumstances exists under which the Act would be valid," *United States v. Salerno*, 481 U.S. 739, 745 (1987); *see Broadrick v. Oklahoma*, 413 U.S. 601, 610-11 (1973), or that it "at least . . . lacks a 'plainly legitimate sweep,'" *United States v. Decastro*, 682 F.3d 160, 168 (2d Cir. 2012).

Turning to the constitutional rights implicated here, in *McDonald v.*

City of Chicago, 130 S. Ct. 3020 (2010), the Supreme Court of the United States held "that the Second Amendment right is fully applicable to the States." *Id.* at 3026. Although well known, the Second Amendment text is worth repeating: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. As explained by the Court in *McDonald*, "individual self-defense is 'the *central component*' of the Second Amendment right." *McDonald*, 130 S. Ct. at 3036 (quoting *Heller*, 554 U.S. at 599). The Court also noted, first in its decision in *Heller*, and again in *McDonald*, that handguns are "'the most preferred firearm in the nation to keep and use for protection of one's home and family.'" *Id.* (quoting *Heller*, 554 U.S. at 628-29) (some internal quotation marks omitted). Accordingly, the Court concluded that citizens must be permitted to use handguns for self-defense. *Id.* In neither decision did the Court articulate the appropriate standard of review to apply to a Second Amendment challenge—a matter that has generated some confusion. *See generally* Andrew Peace, Comment, *A Snowball's Chance in* Heller*: Why* Decastro's *Substantial Burden Standard is Unlikely to Survive*, 54 B.C. L. Rev. E. Supp. 175, 180-82 (2013). Importantly, even in finding a statute prohibiting

handguns as violative of the Second Amendment in *Heller*, 554 U.S. at 635, the Court cautioned that its holding "should [not] be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms," *id.* at 626-27.

More recently, in *United States v. Decastro*, the Second Circuit confronted a Second Amendment challenge to 18 U.S.C. § 922(a)(3). *See* 682 F.3d 160. Dealing with the question of what standard of review applies to such a challenge, the Circuit held "that heightened scrutiny is appropriate only as to those regulations that substantially burden the Second Amendment." *Id.* at 164, 166 ("[H]eightened scrutiny is triggered only by those restrictions that (like the complete prohibition on handguns struck down in *Heller*) operate as a substantial burden on the ability of law-abiding citizens to possess and use a firearm for self-defense (or for other lawful purposes)."). By default then, if Second Amendment rights are "only minimally affect[ed]," the statute "is not subject to any form of

heightened scrutiny." *Id.* at 164[9]; *see Kwong v. Bloomberg*, 723 F.3d 160, 167 (2d Cir. 2013).

Here, the SAFE Act does not impose a substantial burden on Kampfer's exercise of his Second Amendment rights.[10] Indeed, as with

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[9] Notably, short of deciding the issue, the Supreme Court expressed its unfavorable view of rational basis scrutiny, explaining that "[i]f all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect." *Heller*, 554 U.S. at 628 n.27. In any event, regardless of the characterization of the applicable standard of review identified by the Second Circuit in *Decastro*, that precedent is binding on this court.

[10] The court recognizes that one of its sister courts very recently reached a different conclusion on this issue, and applied intermediate scrutiny to a SAFE Act challenge pertaining to "assault weapons." *See N.Y. State Rifle & Pistol Ass'n, Inc. v. Cuomo*, No. 13-CV-291S, 2013 U.S. Dist. LEXIS 182307, at *37, *39-44 (W.D.N.Y. Dec. 31, 2013). In support of its finding that a substantial burden was imposed on the Second Amendment through the SAFE Act's treatment of "assault weapons," that court explained that "because the SAFE Act renders acquisition of these weapons illegal under most circumstances, this Court finds that the restrictions at issue more than 'minimally affect' Plaintiffs' ability to acquire and use the firearms, and they therefore impose a substantial burden on Plaintiffs' Second Amendment rights." *Id.* at *37. This court frames the issue slightly differently, and measures the burden placed upon the Second Amendment right to bear arms generally; in other words, any burden upon the possession of an "assault weapon" is relevant only insofar as it generally impacts one's ability to possess arms. Accordingly, for reasons explained elsewhere in this decision, the SAFE Act, as challenged here, does not substantially burden Kampfer's Second Amendment right.

§ 922(a)(3) in *Decastro*, the SAFE Act's alteration of the definition of "assault weapon" and the corresponding Penal Law sections restricting or prohibiting them "does not substantially burden the fundamental right to obtain a firearm sufficient for self-defense." *Decastro*, 682 F.3d at 168-69. As explained above, *see supra* Part II.B, the restrictions and prohibitions do not create a categorical ban on an entire class of weapons, and ample firearms remain available to carry out the "'*central component*'" of the Second Amendment right: self-defense. *McDonald*, 130 S. Ct. at 3036 (quoting *Heller*, 554 U.S. at 599).

Bearing in mind that Kampfer was compelled to make a significant showing to be successful on his facial challenge, he has not shown that the portions of the SAFE Act restricting or prohibiting "assault weapons" are unconstitutional in all of their applications or that they lack a legitimate sweep. *See Mongielo v. Cuomo*, 40 Misc. 3d 362, 366 (N.Y. Sup. Ct. 2013). Accordingly, because the provisions at issue attempt only to decrease in number certain firearms deemed particularly dangerous by the legislature for the sake of public safety, which interests are clearly advanced by the legislation, they do not infringe the Second Amendment right to keep and bear arms, and are plainly legitimate in their sweep. *See*

Decastro, 682 F.3d at 168-69. It follows that Kampfer's first claim, attacking the facial validity of those portions of the SAFE Act that restrict and prohibit "assault weapons," is dismissed.

2. Equal Protection: Grandfather Provision

Next, Cuomo asserts that Kampfer has failed to state an equal protection claim. (Dkt. No. 17, Attach. 1 at 7-12.) Principally, Cuomo argues that Kampfer is not being treated differently than those similarly situated to him. (*Id.* at 7-8.) Alternatively, Cuomo contends that the statutes about which Kampfer complains do not substantially burden his Second Amendment right, triggering rational basis review, which the challenged provisions pass. (*Id.* at 8-12.) Kampfer initially made no argument whatsoever regarding the grandfather provision. (Dkt. No. 25 at 1-2.) However, since the court gave him permission to file an otherwise unpermitted reply in further support of his motion for default judgment, (Dkt. No. 38), he argues that: (1) he is similarly situated to citizens that owned "assault weapons" prior to the enactment of the SAFE Act; and (2) the grandfather clause acts as a total ban to possession or ownership of an "assault weapon," and, therefore, burdens his Second Amendment rights, (Dkt. No. 39 at 7-8). For the reasons explained below, Kampfer's

equal protection claim fails.

"The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (quoting U.S. Const. amend. XIV, § 1). To succeed on a class-of-one equal protection claim, the plaintiff "must show an extremely high degree of similarity between [himself] and the persons to whom [he] compare[s himself]." *Ruston v. Town Bd. for Town of Skaneateles*, 610 F.3d 55, 59 (2d Cir. 2010) (internal quotation marks and citation omitted). Some distinctions in treatment are permissible, but they must "'have some relevance to the purposes for which the classification is made.'" *Kwong*, 723 F.3d at 169 (quoting *Baxstrom v. Herold*, 383 U.S. 107, 111 (1966)). Where the complained of statute "neither burdens a fundamental right nor targets a suspect class, [courts] will uphold the legislative classification so long as it bears a rational relation to some legitimate end." *Romer v. Evans*, 517 U.S. 620, 631 (1996).

Here, assuming, without deciding, that Kampfer has been treated

differently than those similarly situated to him, the bundle of laws he takes issue with do not burden his fundamental Second Amendment right for reasons similar to those explained above, *see supra* Part IV.B.1, nor do they target a suspect class. As such, the lowest level of constitutional review applies, and—for the same reasons Kampfer's facial challenge is unassailable—his equal protection claim fails when measured against that standard. *See Kwong*, 723 F.3d at 169-72.

3. The State Process

Little discussion is warranted on this cause of action because the court declines to exercise supplemental jurisdiction of this claim arising out of matters of state law. Indeed, Kampfer's agitation regarding the process by which the SAFE Act came into being is an issue of New York law and procedure. In any event, it is worth noting that the state courts have dealt with similar issues and found them to be without merit. *See, e.g.*, *Schulz v. State of N.Y. Exec.*, 108 A.D.3d 856 (3d Dep't 2013).

V. Conclusion

WHEREFORE, for the foregoing reasons, it is hereby

ORDERED that Cuomo's motion to set aside default (Dkt. No. 33) is **GRANTED**; and it is further

ORDERED that Kampfer's cross motion for entry of a default judgment (Dkt. No. 34) is **DENIED** as moot; and it is further

ORDERED that Cuomo's letter motion seeking to renew his motion to dismiss against the amended complaint (Dkt. No. 22) is **GRANTED**; and it is further

ORDERED that Cuomo's motion to dismiss (Dkt. No. 17) is **GRANTED** and Kampfer's amended complaint (Dkt. No. 21) is **DISMISSED**; and it is further

ORDERED that the Clerk close this case; and it is further

ORDERED that the Clerk provide a copy of this Memorandum-Decision and Order to the parties.

IT IS SO ORDERED.

January 7, 2014
Albany, New York

Gary L. Sharpe
Chief Judge
U.S. District Court