

# 14-0319-cv

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United States Court of Appeals  
*for the*  
Second Circuit

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

*Plaintiffs-Appellants,*

– v. –

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

*(For Continuation of Caption See Inside Cover)*

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

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**BRIEF OF THE NATIONAL SHOOTING SPORTS FOUNDATION, INC.  
AS AMICUS CURIAE IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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MATTHEW C. GEDANSKY, in his official capacity as State's Attorney for the Tolland Judicial District, Geographical Area No. 19,

*Defendants-Appellees.*

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**DISCLOSURE OF CORPORATE AFFILIATIONS  
AND FINANCIAL INTEREST**

The National Shooting Sports Foundation, Inc. is a Connecticut non-profit tax exempt corporation. It has no parent corporation and no publicly held corporation owns 10% or more of its stock.

Dated: May 23, 2014

/s/ Christopher Renzulli  
Christopher Renzulli, Esq.  
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*Amicus curiae* The National Shooting Sports Foundation, Inc. (“NSSF”), respectfully submits this brief in support of the Plaintiffs-Appellants’ (“Plaintiffs”) appeal currently pending before this Honorable Circuit Court.

All parties have consented to the filing of this Brief.

### **INTERESTS OF *AMICUS CURIAE*<sup>1</sup>**

The NSSF is the trade association for the firearms, ammunition, hunting, and shooting sports industry. Formed in 1961, the Newtown, Connecticut-based NSSF is a Connecticut non-profit tax-exempt corporation with a membership of more than 10,000 federally licensed firearms manufacturers, distributors, and retailers (also known as “federal firearms licensees” or “FFLs”); sportsmen’s organizations; shooting ranges; gun clubs; publishers; hunters and recreational target shooters. NSSF has more than 250 members in the State of Connecticut. The NSSF’s mission is to promote, protect and preserve hunting and the shooting sports. The NSSF provides trusted leadership in addressing industry challenges; advances participation in and understanding of hunting and the shooting sports; reaffirms and strengthens its members’ commitment to the safe and responsible use of their products; and promotes a political environment that is supportive of America’s traditional hunting heritage and firearms freedoms. As a guardian of our nation’s

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<sup>1</sup> In accordance with Local Rule 29.1(b), the NSSF states that no party’s counsel authored this brief in whole or in part, no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief, and no person other than the NSSF, its Board of Directors or its counsel contributed money that was intended to fund preparing or submitting this brief.

rich hunting and shooting traditions, the NSSF believes that lawful commerce in firearms and firearm-related products must be protected - and that, in particular, no law or regulation should unreasonably limit the lawful transfer of firearms to responsible, law-abiding adults who have individual constitutional rights guaranteed by the Second Amendment to the United States Constitution to purchase, own, possess and use such firearms and ammunition.

The NSSF's interest in this action derives principally from the fact that the NSSF's federally licensed manufacturer, distributor, and retailer members provide the lawful commerce in firearms that make the exercise of Second Amendment rights possible. Thus, NSSF's members are the very entities that are foreclosed from conducting lawful commerce protected by the Second Amendment as a result of the unconstitutional ban on "typically possessed" firearms and magazines which was enacted by Connecticut Public Act 13-3, as amended by Public Act 13-220 (hereinafter the "Act").

Moreover, as the medium through which lawful commerce in arms in Connecticut occurs, NSSF's members must work within the confines of the Act's provisions every day. As such, the vague provisions of the Act pose a daily threat to the businesses and livelihoods of NSSF's members which depend upon their ability to provide lawful commerce in arms and are subject to licensing requirements, as well as strict oversight and regulation. For NSSF's members,

an unintentional violation of the Act could result in revocation of their license and the end of their businesses and livelihoods. Thus, the vague provisions of the Act force NSSF's members to guess what conduct is permissible and gamble with their businesses and livelihoods. In doing so, the Act also imposes an unconstitutional burden on NSSF's members and violates their due process rights.

The NSSF submits this brief to expand upon the Plaintiffs' arguments demonstrating that the banned firearms and magazines are "typically possessed" and that there is no justification for the Act's infringement of the Second Amendment. The NSSF further submits this brief to supply additional support for the application of the "permeated with vagueness" standard to the vague provisions of the Act, as well as to provide the Court with crucial insight into the unconstitutionally detrimental impact the Act will have on lawful commerce in arms from the unique and valuable perspective of NSSF's members—the entities from whom the law-abiding citizens of Connecticut seek to purchase firearms and ammunition and whom are expected to comply with the impermissibly vague provisions of the Act.

### **SUMMARY OF ARGUMENT**

The Supreme Court has made clear that firearms and magazines which are "typically possessed by law-abiding citizens for lawful purposes" are protected by



the Second Amendment and may not be banned by state law. It follows, therefore, that lawful commerce with respect to firearms and magazines protected by the Second Amendment must also be protected by the Second Amendment else the right to bear protected arms would be rendered meaningless. Thus, if the firearms and magazines banned by the Act are “typically possessed,” then the Act infringes both the rights of the citizens of Connecticut who wish to possess those banned items and the rights of those, like NSSF’s members, that wish to sell those items as a part of their business of conducting lawful commerce in arms. That said, empirical data compiled by NSSF (and others involved in this action) renders it beyond dispute that the firearms and magazines banned by the Act are “typically possessed.” As such, the Act’s ban on these items unquestionably infringes the Second Amendment and must be declared unconstitutional.

Furthermore, the Connecticut Legislature abused the legislative process, and violated the U.S. Constitution and the Connecticut Constitution when it introduced and passed the Act in the same day via an improper use of the emergency certification statute and providing no facts necessitating an immediate vote. Even leaving the unconstitutional procedure aside, the passing of the statute within the same day that it was introduced compels the conclusion that the Legislature lacked any meaningful information about the ability of the Act to accomplish its stated purpose of reducing violence and increasing public safety. Since the Legislature

lacked any such information, the Act's infringement of the Second Amendment rights of NSSF's members and other citizens of Connecticut cannot be justified under any heightened level of scrutiny.

Moreover, any attempt to justify the Act must also fail because the provisions of the Act are plainly incapable of reducing violence and increasing public safety. A simple comparison of banned firearms with those that are not banned makes it obvious that the features which are banned by the Act's one-feature test will not reduce gun violence or improve public safety. In fact, banning simple cosmetic features like those contained in the Act's one-feature test may actually serve to decrease public safety. Thus, the Act's ban cannot even pass rational basis scrutiny.

Finally, the Due Process Clause of the Fourteenth Amendment prohibits states from enacting statutes that are so vague that ordinary persons cannot readily determine whether their conduct might expose them to criminal penalties. That, however, is precisely what Connecticut did when it passed the Act. Indeed, the Act created and amended numerous criminal laws that are replete with unconstitutionally vague provisions rendering it impossible for citizens of Connecticut to determine what course of conduct will expose them to criminal penalties. In particular, the Act criminalizes the possession and sale of "copies or duplicates" of other firearms (CONN. GEN. STAT. § 53-202a(1)(B)-(D)), and

possession and sale of magazines which “can be readily restored or converted to accept” more than ten rounds of ammunition (Conn. Gen. Stat. § 53-202w(a)(1)). Since the Act provides absolutely no guidance concerning what conduct violates these provisions, it is impossible for NSSF’s members and other citizens of Connecticut to ensure compliance with those provisions. Such a situation is particularly problematic for NSSF’s members whose businesses and livelihoods are heavily related to the manufacture, distribution and/or sale of firearms, are already strictly regulated and depend upon absolute compliance. To be sure, even a harmless and unintentional violation of the Act by NSSF’s members exposes them to the criminal penalties applicable to the challenged provisions, but also has the potential to destroy their business and the financial support it provides to their families, their employees and their employees’ families. Given the potentially dire consequences of non-compliance faced by NSSF’s members, the vagueness of the challenged provisions, as set forth more fully below, presents an untenable situation in which the required absolute compliance is impossible. The situation is, therefore, unconstitutional under the Due Process Clause of the Fourteenth Amendment. Thus, the challenged provisions of the Act should be struck down by this Honorable Court.

## **ARGUMENT**

### **I. THE ACT UNCONSTITUTIONALLY INFRINGES THE SECOND AMENDMENT BY BANNING POSSESSION OF AND LAWFUL COMMERCE IN “TYPICALLY POSSESSED” FIREARMS AND MAGAZINES**

The Supreme Court has made clear that the right to keep and bear arms is a fundamental, individual right guaranteed by the Second Amendment. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). That right extends to firearms and magazines that are “typically possessed by law-abiding citizens for lawful purposes.” *See District of Columbia v. Heller*, 554 U.S. 570 (2008). Thus, it is well-settled that a state may not ban possession of such firearms and magazines.

Since the right to bear arms would be meaningless in the absence of a means to lawfully obtain those “typically possessed” arms it follows that the Second Amendment also protects lawful commerce in arms, including those which are “typically possessed.” The Seventh Circuit applied this logic in finding that the plaintiffs had shown a likelihood of success on their Second Amendment challenge to the City of Chicago’s outright ban on shooting ranges. *See Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011). Indeed, relying on several passages from *Heller*, the Seventh Circuit held that “the right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn’t mean much without the training and practice that make it

effective.” *Id.* Thus, just as the Second Amendment guarantees the right of individuals to possess “typically possessed” firearms and magazines, so too does it protect NSSF’s members’ right to engage in lawful commerce in “typically possessed” firearms and magazines. Accordingly, if the firearms and magazines which are banned by the Act are “typically possessed” then the Act’s outright ban on the possession and sale of such firearms and magazines is unconstitutional and infringes the Second Amendment rights of both individuals and NSSF’s members.<sup>2</sup>

Empirical data is perhaps the best means for determining whether firearms and magazines are “typically possessed by law-abiding citizens for lawful purposes.” In order to support its members’ businesses, NSSF regularly researches and compiles data on the sale, ownership and use of firearms and magazines in the United States. *See* Report of James Curcuruto, ADD 2-3.<sup>3</sup>

Among other things, empirical data studied and compiled by NSSF demonstrates that firearms banned by the Act (widely known as “modern sporting rifles”) are “typically possessed.” For instance, data compiled from the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) Annual Firearms

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<sup>2</sup> It must be noted that the Act’s ban *is* an outright ban on the possession and sale of so-called “assault weapons” and “large capacity magazines” as distinguished from a time, place and manner restriction in that the banned items cannot be possessed *anywhere* (including the home), by *any* law-abiding citizen, for *any* lawful purpose. Such absolute bans are precisely what *Heller* forbids. Thus, the only question is if they are “typically possessed.”

<sup>3</sup> The report is attached hereto at the Addendum (“ADD-#”).

Manufacturers and Exports Report (“AFMER”) reveals that between 1990 and 2012 nearly 4.8 million AR platform rifles<sup>4</sup> (which are banned by the Act), were manufactured in the United States for sale within the United States. *See* ADD-3. In fact, based upon newly released data ATF, this number now stands at more than 5.1 million.<sup>5</sup> During the same timeframe, International Trade Commission (“ITC”) data reflects that more than 3.4 million AR and AK platform rifles were imported into the United States. *Id.* The commonality of these rifles today is further demonstrated by the fact that nearly 1 million (1.5 million based on newly released data) of these roughly 8 million rifles that were manufactured or imported for sale in the United States were manufactured or imported in 2012 alone.<sup>6</sup> *Id.* That is more than twice the number of Ford F-150s—the most commonly sold vehicle in the United States in 2012—sold in the same year. Moreover, an analysis of the data from ATF and ITC shows that more than 4.8 million people in the United

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<sup>4</sup> The AR platform and AK platform rifles are both considered modern sporting rifles and are both banned by the Act.

<sup>5</sup> *See* 2012 AFMER Report available at <http://www.atf.gov/content/About/statistics>.

<sup>6</sup> Expanding that data to the period of 2008 to 2012, shows that 11.4% of all firearms produced in the United States for domestic sale were AR-type modern sporting rifles. In fact, more AR-type modern sporting rifles were manufactured in the United States for domestic sale between 2008 and 2012 (3,457,230) than revolvers during the same period (2,778,089). If the number of AK-type modern sporting rifles imported during those five years (968,000) are added to the number of AR-type modern sporting rifles manufactured for domestic sale, a total of 4,425,230 modern sporting rifles were available for domestic sale in the United States, which is more than the number of shotguns produced for domestic sale during the same period (3,938,198). *See* AFMER Reports 2008, 2009, 2010, 2011 and 2012 available at <http://www.atf.gov/content/About/statistics>.

States currently own at least one modern sporting rifle. Such data clearly demonstrates that firearms banned by the Act, such as the modern sporting rifle, are “typically possessed.”

Empirical data also demonstrates that the typical owners of modern sporting rifles are law-abiding citizens using the rifles for lawful purposes. “The typical owner of a modern sporting rifle is male, over 35 years old, married with a household income above \$75,000 and has some college education.” *See* ADD-4. The typical use of modern sporting rifles is “recreational target shooting . . . followed closely by home defense.” *Id.* Modern sporting rifles are also among the most common firearms sold with studies reflecting that the sale of modern sporting rifles make up 20.3 percent of all firearms sales and are sold by 92.5% of retailers. *See* ADD-5. Notably, traditional styled rifles made up only 14% of the firearms sold while shotguns constituted only 13% of firearms sold. *Id.* In other words, modern sporting rifles are the most popular of all long guns sold in the United States. Given such data any argument that these rifles (which the Act bans) are not “typically possessed by law-abiding citizens for lawful purposes” is absurd.

Similarly, the so-called “large capacity magazines” that the Act bans are also “typically possessed.” Empirical data reflects that between 1990 and 2012, some 158 million pistols and rifle magazines were in the possession of United States consumers. *See* ADD-6. Of this 158 million magazines, “approximately 75

million or 46[%]” were magazines capable of holding more than ten rounds, which are banned by the Act. *Id.* Put differently, the magazines which the Act bans account for almost half of all magazines possessed by private citizens in the United States. Simply put, as with modern sporting rifles, such data compels the conclusion that the magazines which the Act bans are “typically possessed.” Thus, under *Heller* and *McDonald*, the Act’s ban on possession and sale of these items violates the Second Amendment rights of NSSF’s members and other law-abiding citizens of Connecticut, and must be declared unconstitutional.

## **II. THE ACT’S INFRINGEMENT OF THE SECOND AMENDMENT CANNOT BE JUSTIFIED UNDER ANY LEVEL OF HEIGHTENED SCRUTINY**

It is well-settled that a court reviewing a challenged statute must “assure that, in formulating its judgments, [the legislature] has drawn reasonable inferences based on substantial evidence.” *Turner Broadcasting Systems, Inc. v. FCC*, 512 U.S. 622 (1994). Implicit within this standard is the requirement that the “substantial evidence” be before the legislature at the time the challenged statute is enacted. Thus, it follows that when a statute is challenged, the state may not use evidence which was not before the legislature at enactment to justify its reasons for enacting the statute to the reviewing court.

Although the District Court recognized the existence of this duty, it wholly failed to fulfill its obligations. Indeed, the Connecticut Legislature had absolutely



no evidence before it at the time of enactment (much less substantial evidence) because the Act was introduced and passed by the Connecticut Legislature in one day through an improper use of Connecticut's emergency certification statute (CONN. GEN. STAT. § 2-26).

While the emergency certification statute permits the Speaker of the House and the President Pro Tempore of the Senate to bring the bill before the Legislature for an immediate vote (thus skipping the normal legislative process and requirement that bills be printed two legislative days before a vote), it requires that the Speaker of the House and President Pro Tempore of the Senate certify "in writing, the facts which . . . necessitate an immediate vote." CONN. GEN. STAT. § 2-26. The emergency certification executed with the respect to the Act, however, lacks *any* facts.<sup>7</sup> See Emergency Certification, ADD-8. Thus, the emergency certification cannot provide any support or evidence for the judgments formulated by the Legislature. Further, as the statute was voted upon and passed as an

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<sup>7</sup> Notably, this renders the emergency certification invalid, and thus invalidates the procedure by which the Act was passed in the first place. Indeed, in the absence of a valid emergency certification, the Legislature lacked the authority under the Connecticut Constitution to vote and pass the Act. See CONN. CONST., ART. IV, § 15, CONN. GEN. STAT. § 2-26 ("no bill shall be passed or become law unless it has been printed in its final form . . . and upon the desks of the members at least two legislative days prior to its final passage"). Put differently, the invalid emergency certification renders the legislative process defective, thereby violating legislative due process under the Fourteenth Amendment. See *Atkins v. Parker*, 472 U.S. 115 (1985), *Story v. Green*, 978 F.2d 60 (2d Cir. 1992), *Richardson v. Eastover*, 922 F.2d 1152 (4th Cir. 1991). As such, the Act is unconstitutional and invalid as a whole and should be struck down for this additional reason.

emergency just hours later without any legislative record or proceedings, it is indisputable that the Legislature's purported 'judgments' were not based upon reasonable inferences drawn from substantial evidence.

Despite the complete failure of the Legislature to formulate its judgments based upon any inference or any evidence (much less reasonable inferences and substantial evidence), the District Court essentially looked the other way. The District Court further erred when it accepted affidavit evidence prepared and submitted by the State during the litigation as justification for the State's formulated judgments.<sup>8</sup> Such evidence was not, and could not have been, before the Legislature at the time the Act was passed, and, therefore, it cannot support the Legislature's judgments, nor can it be used to satisfy the Court's duty to assure that "in formulating its judgments, [the Connecticut Legislature] has drawn reasonable inferences based on substantial evidence." As such, there is simply no basis upon which the Connecticut Legislature's judgments and the Act's ban on "typically possessed" firearms and magazines can be justified, and the Act's ban on such firearms and magazines must be declared unconstitutional.

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<sup>8</sup> For instance, at page 24 of its opinion, the District Court specifically relied upon the *post hoc* affidavit of Christopher Koper as support that the Act would reduce gun violence and improve public safety.

### **III. THE ACT’S BAN ON “TYPICALLY POSSESSED” FIREARMS CANNOT PASS ANY STANDARD OF REVIEW**

The Act’s ban on “typically possessed” firearms and magazines should be subjected to strict scrutiny. Even if this Court were to apply a rational basis review to the Act’s ban on “typically possessed” firearms, the ban is still unconstitutional, as features which are banned by the Act are merely cosmetic and will have not reduce gun violence or increase public safety. In fact, banning simple cosmetic features like those contained in the Act’s one-feature test may actually serve to decrease public safety.<sup>9</sup>

Perhaps the best evidence of the purely cosmetic and absurdly ineffective criteria by which the Act classifies assault weapons is a few photographic comparisons of firearms which are not banned by the Act with their banned counterparts. As a first example, the picture below depicts two variants of the same .22 caliber semi-automatic modern sporting rifle made by the same manufacturer. Although they are of the same caliber and have the same functional capabilities (discharge one round of ammunition with each pull of the trigger), the top rifle is legal, while the bottom rifle is illegal because of the presence of a thumbhole stock:

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<sup>9</sup> NSSF notes that it is well-known that studies have shown no statistical evidence that the now-expired Federal Assault Weapons Ban reduced violence or increased public safety while it was in effect.



The same absurd result is reached in the next example which again depicts two variants of the same model of modern sporting rifle, chambered for the same caliber of ammunition and made by the same manufacturer. The top one is perfectly legal in Connecticut, yet the bottom one (with an Olympic stock) is illegal:



The next example provides perhaps the best demonstration of how the Act's provisions will have no impact on gun violence or public safety:



Simply put, the two modern sporting rifles depicted above are chambered for the same caliber ammunition and have precisely the same functional capabilities (each capable of discharging one round of ammunition with each pull of the trigger. Absurdly, the modern sporting rifle on the bottom is banned while the one on the top is legal. More importantly, these examples make clear that the features which the Act uses to identify banned firearms cannot have any impact on the Act's intended goals of reducing gun violence and increasing public safety. As such, there is no rational basis for the Act's one-feature test for defining "assault

weapons,” and those provisions of the Act must be struck down as unconstitutional.

#### **IV. THE ACT’S PROVISIONS DEFINING AND BANNING “ASSAULT WEAPONS” AND “LARGE CAPACITY MAGAZINES” MUST BE EVALUATED UNDER THE PERMEATED WITH VAGUENESS STANDARD**

It is axiomatic that, under the Due Process Clause of the Fourteenth Amendment, laws must clearly set forth the conduct which they command or prohibit so that citizens of ordinary intelligence can know what conduct will constitute a violation. As to penal statutes such as those created by the Act, the Supreme Court has made clear that:

the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well-recognized requirement...and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law.

*Connally v. General Const. Co.*, 269 U.S. 385, 391 (1926). In other words, “the crime, and the elements constituting it, must be so clearly expressed that the ordinary person can intelligently choose, in advance, what course it is lawful for him to pursue.” *Id.* at 393.

In determining the appropriate level of review to be applied in vagueness analyses under the Due Process Clause of the Fourteenth Amendment, courts consider, among other things, whether the laws at issue impinge upon fundamental

rights, and, in the case of statutes imposing criminal penalties, whether the statutes require a *mens rea*, or are strict liability offenses. Laws which impinge upon fundamental rights, regardless of whether they violate those rights, are notably suspect and subject to a heightened level of scrutiny. *See Vill. of Hoffman Estates v. Flipside*, 455 U.S. 489, 499 (1982); *see also Hayes v. N.Y. Atty. Grievance Comm. of the Eighth Judicial Dist.*, 672 F.3d 158, 168 (2d Cir. 2012). Similarly, laws imposing criminal penalties, especially those imposing strict liability, are also considered highly suspect and subjected to a heightened level of scrutiny. *See Vill. of Hoffman Estates*, 455 U.S. at 498-99. Moreover, when a statute combines all of these criteria (impinges a fundamental right, is criminal in nature and imposes strict liability) Supreme Court decisions suggest that such statutes may be declared void for vagueness where the statute is permeated with vagueness. *See City of Chicago v. Morales*, 527 U.S. 41, 55 (1999), *see also Kolender v. Lawson*, 461 U.S. 352, 358, n.8 (1983).

It is beyond dispute that the provisions of the Act defining and banning “assault weapons” and “large capacity magazines” impinge on the fundamental right to keep and bear arms. It is also beyond dispute that the statutes strictly prohibit the sale and possession of prohibited weapons and magazines, and impose criminal penalties for violation of the provisions. Thus, the provisions of the Act defining and banning “assault weapons” and “large capacity magazines” are

precisely the type of laws for which the permeated with vagueness standard exists. Moreover, the fact that the vagueness of these provisions burdens not only the rights of private citizens, but also burdens lawful commerce in firearms protected by the Second Amendment, provides further justification for the application of the permeated with vagueness standard to these provisions.

## **V. THE DEFINITIONS OF “ASSAULT WEAPONS” AND “LARGE CAPACITY MAGAZINES” CONTAINED IN THE ACT ARE UNCONSTITUTIONALLY VAGUE**

The District Court erroneously concluded that the statutes in question were not unconstitutionally vague. In short, the District Court accepted the State’s rationale that the provisions were “clear enough” to put the average person on notice of what conduct is prohibited. Such a conclusion, however, fails to account for the fact that commerce in firearms is a highly regulated business which requires absolute compliance. Thus, as demonstrated more fully below, “clear enough” is not enough when it comes to firearms laws.

### **“Readily Restored or Converted to Accept”**

By prohibiting magazines which can be “readily restored or converted” to hold more than 10 rounds, this provision contemplates modifying magazines in order to reduce their capacity below the maximum of 10 rounds imposed by the Act. CONN. GEN STAT. § 53-202w(a)(1). The phrase “readily restored,” however, is undefined in the statute leaving NSSF’s members to wonder what is sufficient to



modify a magazine that is capable of holding more than 10 rounds so that it is no longer capable of being “readily restored” to hold more than 10 rounds. Similarly, NSSF’s members are apparently also expected to guess about what magazines are capable of being “readily converted” to hold more than 10 rounds. Even worse, the answer to that guess turns on, among other things, another question: “readily converted” by who? An engineer? A gunsmith? An individual who has never handled and has no experience with a firearm? Someone with access to normal household tools, or a full machine shop? If nothing else, these questions illustrate the unconstitutional vagueness that permeates the challenged provision and warrants this Court striking it down. For example, many detachable pistol magazines have been modified to reduce their capacity to ten rounds or less by increasing the size of the baseplate or follower in the magazine body. The capacity of such a magazine could be further decreased or increased by changing the baseplate or follower. Would such a magazine be considered banned by the Act? Regardless, the volumes of questions, guesses and conjecture triggered by this provision make clear that the provision is permeated with precisely the type of vagueness that compels declaring it unconstitutional. Indeed, NSSF’s members should not be forced to resort to guesswork and speculation when making decisions about what they can legally manufacture, ship, sell and stock, much less

be subjected to criminal penalties if those guesses prove wrong. As such, Connecticut General Statute § 53-202w(a)(1) should be declared unconstitutional.

**“Copies or duplicates”**

The provisions of the Act which declare that “copies or duplicates” of other identified firearms are also “assault weapons” are also unconstitutionally vague. CONN. GEN. STAT. §§ 53-202a(1)(B)-(D). Indeed, exactly what constitutes a “copy” or a “duplicate” of another firearm? Do they have to look identical in appearance? Does color matter? What if they differ in some minor cosmetic way? What if they differ by virtue of one operational feature? What about two? Exactly how many differences does it take for a firearm to no longer be a “copy” or a “duplicate”? While the District Court was willing to accept the State’s assurance that “it is unlikely that any individual will ever need to know whether a firearm is a ‘copy or duplicate,’” such an assurance does nothing to clarify these vague provisions. The State’s assurance will also offer little solace to NSSF’s members, their employees and their employees’ families when it turns out that they guessed wrong on complying with the Act and are forced to close down their business because their FFL is revoked.

Moreover, the vagueness of this provision is underscored by the District Court’s holding that a “copy or duplicate” must be the “functional equivalent” of a listed firearm. Exactly what constitutes the “functional equivalent” of another

firearm? As if these provisions of the Act were not already vague enough, NSSF's members must now speculate about which of the myriad of functional characteristics of a listed firearm control whether another firearm is its functional equivalent. If they wrongly guess that a firearm is not the functional equivalent of a listed firearm (and thus legal), they are subject to criminal consequences. If they wrongly guess that a firearm is the functional equivalent of a listed firearm (and thus illegal), then they lose the ability to earn a livelihood from the sale of a legal product. Such vagueness and confusion is untenable and is precisely what the Due Process Clause of the Fourteenth Amendment prohibits. As such, Connecticut General Statute §§ 53-202a(1)(B)-(D) should also be declared unconstitutional.

### **CONCLUSION**

For all of the reasons set forth herein, the Act is unconstitutional and should, therefore, be struck down by this Court.

Dated: White Plains, New York  
May 23, 2014

/s/ Christopher Renzulli

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**CERTIFICATE OF COMPLIANCE**

This brief complies with type-volume limitations Fed. R. App. P. Rules 28.1(e)(2)(a) and 29(d) because this brief contains 5,035 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

Dated: May 23, 2014

/s/ Christopher Renzulli  
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*The National Shooting Sports Foundation, Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23rd day of May, 2014, this brief of *amicus curiae* was served, via electronic delivery to all parties' counsel via the CM/ECF system which will forward copies to Counsel of Record.

Dated: May 23, 2014

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## **ADDENDUM**

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**ADD-1**

Expert Report of James Curcuruto

Director, Industry Research & Analysis

National Shooting Sports Foundation, Inc.

11 Mile Hill Road

Newtown, CT 06470-2359

December 13, 2013

  
James Curcuruto

**ADD-2**

**My Qualifications**

As of the date noted on this report I am working as Director, Industry Research & Analysis for the National Shooting Sports Foundation, Inc. (NSSF), a position held since November 2009. I received my associate's degree in business administration from the State University of New York at Cobleskill in 1991 and my bachelor's degree in business management from the University of North Carolina at Wilmington in 1993. My approximate 20 year business work history focuses mainly on sales, marketing, advertising, research and analysis.

NSSF, formed in 1961, is the trade association for the firearms, ammunition, hunting and recreational shooting sports industry. Its mission is to promote, protect and preserve hunting and the shooting sports. The NSSF has a membership of more than 9,000 manufacturers, distributors, firearm retailers, shooting ranges, sportsmen's organizations and publishers.

In my current position as Director, Industry Research and Analysis, I am responsible for most of the research activities at NSSF, and I direct the activities of an internal research coordinator as well as several outside companies retained to conduct research and gather market and consumer information useful to NSSF members. Under my direction, dozens of informational reports and studies focusing on industry topics and trends such as: firearms, ammunition, target shooting and hunting have been released to the NSSF member base and many are shared outside the NSSF member base as well. Data from these releases has been referenced many times in endemic, non-endemic, online and print newspaper and magazine articles, used in corporate 10K reports, and mentioned in other media. I have authored and provided information for several articles published in trade magazines. I have also been deposed as an expert witness on the topics of commonality of modern sporting rifles and magazines capable of holding more than 10 rounds of ammunition.

I am not receiving a fee in exchange for my opinions.

**ADD-3****Opinions and Supporting Evidence**

Many NSSF members manufacture, distribute and/or sell firearms, and they look to NSSF to provide market data reflecting consumer preferences, market trends and other information for use in their business decisions. Among the firearm products sold by NSSF members are modern sporting rifles, a category of firearms comprised primarily of semiautomatic rifles built on the AR- and AK-platforms.<sup>1</sup> A "semiautomatic," or self-loading, rifle is a firearm which fires, extracts, ejects and reloads a cartridge once for each pull and release of the trigger.<sup>2</sup> These rifles have the capacity to accept a detachable magazine. Additionally, they come in a range of calibers, including 22 rimfire, 223 Remington, and larger calibers used for hunting big game (e.g., white-tailed deer). Research conducted by the NSSF and under my direction demonstrates that modern sporting rifles are popular and commonly owned and used by millions of persons in the United States for a variety of lawful purposes, including, but not limited to, recreational and competitive target shooting, home defense, collecting and hunting.

1) Figures from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Annual Firearms Manufacturers and Exports Reports (AFMER) show that between 1990 and 2012, United States manufacturers produced approximately 4,796,400 AR-platform rifles for sale in the United States commercial marketplace. Approximately 37 different manufacturers produced these rifles, including Smith & Wesson, Colt, Remington, Sig Sauer and Sturm, Ruger. During these same years, figures from the U.S. International Trade Commission (ITC) show approximately 3,415,000 AR- and AK-platform rifles were imported into the United States for sale in the commercial marketplace. In 2012 alone, nearly one million of these rifles were either manufactured in the U.S. or imported to the U.S. for sale. By way of

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<sup>1</sup> The AR in "AR-platform" rifle stands for ArmaLite, the company that in the 1950s developed this style of rifle, which eventually became both the military's M16 rifle and the civilian semi-automatic sporting rifle known as the AR-15, or modern sporting rifle. "AR" does NOT stand for "assault rifle" or "automatic rifle."  
<http://www.nssfblog.com/%E2%80%98stands-for-armalite/>.

<sup>2</sup> "Semiautomatic" rifles should not be confused with "automatic" rifles, which fire when the trigger is pulled and continue to fire until the trigger is released or ammunition is exhausted. Sporting Arms and Ammunition ("SAAMI") Glossary of Industry Terms, <http://www.saami.org/Glossary/display.cfm?letter=S>



**ADD-4**

comparison, in 2012, the number of modern sporting rifles manufactured in or imported to the U.S. was more than double the number of the most commonly sold vehicle in the U.S., the Ford F-150. See <http://www.edmunds.com/car-reviews/top-10/top-10-best-selling-vehicles-for-2012.html> (434,585 sold). Modern sporting rifles have been available to civilians since at least the late 1950s.<sup>3</sup> Thus, many more AR- and AK-platform rifles were either manufactured in the U.S. or imported to the U.S. for sale in the commercial marketplace prior to 1990.

2) In 2013, NSSF published its Modern Sporting Rifle (MSR) Comprehensive Consumer Report 2013. The findings in the report were based on on-line responses from 21,942 owners of modern sporting rifles. Included among the findings were that the typical owner of a modern sporting rifle is male, over 35 years old, married with a household income above \$75,000 and has some college education. Approximately 35 percent of all owners of modern sporting rifles are current or former members of the military or law enforcement.<sup>4</sup> The survey found that three out of every four recently purchased modern sporting rifles are chambered for 223 Remington ammunition. Standard capacity magazines capable of holding 30 rounds or more of ammunition are the most popular magazines used in modern sporting rifles. Owners of modern sporting rifles consider accuracy and reliability to be the most important attributes of a modern sporting rifle. Other reasons cited by survey respondents for their purchase of modern sporting rifles include ergonomics, low recoil, ease with which they can be shot and their light weight. Recreational target shooting was ranked as the number one reason why owners purchased a modern sporting rifle, followed closely by home defense. Other reasons for owning a modern sporting rifle include, but are not limited to, varmint hunting, big game hunting, competitive target shooting and collecting. The average price paid for a modern sporting rifle by survey respondents

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<sup>3</sup> <http://world.guns.ru/civil/usa/ar-15-e.html>. The original AR-15 Sporter rifles were manufactured for the civilian market by Colt's Firearms since 1963. See, attached advertisement.

<sup>4</sup> By contrast, the NSSF Modern Sporting Rifle (MSR) Comprehensive Consumer Report 2010 found that 44% of all owners of modern sporting rifles were current or former members of the military or law enforcement. Consistent with general sales trend data, it is reasonable to infer that this difference is attributable to an increase in the popularity and ownership of modern sporting rifles in the general civilian population.

**ADD-5**

was \$1,058.00. Combining data from this report with production and import data from ATF AFMER and ITC, we can apply a weighted average formula showing more than 4.8 million people currently own one or more modern sporting rifle.

3) In 2013, the NSSF published its Firearms Retailer Survey Report 2013 edition. The report set forth findings based on an on-line survey of 752 firearm retailers located in all 50 states. Among the findings were that 92.5 percent of those responding to the survey currently sell new modern sporting rifles compared to 89.2 percent who sell new traditionally-styled rifles. Of the modern sporting rifles sold, those chambered for 223 Remington ammunition were by far the most commonly purchased. Respondents reported that modern sporting rifles were the most popular long gun sold accounting for 20.3 percent of the firearms they sold in 2012. In contrast, 14 percent of the firearms sold were traditionally styled rifles while 13 percent of the firearms they sold were shotguns.

4) In 2013, NSSF published its Sports Shooting Participation in the United States in 2012 report. The report, based upon 8,335 telephone interviews, indicates that participation in any target shooting or sport shooting increased 18.6 percent from approximately 34.4 million participants in 2009 to 40.8 million participants in 2012, an increase of 6.4 million participants. The report also indicates that participation in target shooting with a modern sporting rifle increased 35.0 percent from approximately 8.9 million participants in 2009 to 12.0 million participants in 2012.

5) The Federal Bureau of Investigation (FBI) releases National Instant Criminal Background Check System (NICS) figures on a monthly basis. NICS figures are commonly viewed as a proxy for firearm sales. NSSF adjusts down the monthly FBI NICS by subtracting background checks that do not correspond with a firearm transfer ("NSSF-Adjusted NICS"). NSSF releases NSSF-Adjusted NICS data to the industry in an attempt to provide a more accurate picture of market conditions. In 2012, total NSSF-Adjusted NICS were approximately 13,780,000 nationwide. The state of Maryland accounted for

**ADD-6**

approximately 136,440 NSSF-Adjusted NICS in 2012. Combining NSSF-Adjusted NICS data with NSSF's Firearms Retailer Survey Report 2013 edition, which determined that 20.3% of all firearms sales are modern sporting rifles, it can be estimated that approximately 27,700 of the 136,440 NSSF-Adjusted NICS for the state of Maryland in 2012 were conducted for the transfer or sale of a modern sporting rifle.

6) In 2013, NSSF compiled and released a report estimating that 158 million pistol and rifle magazines were in U.S. consumer possession between 1990 and 2012. The data supporting that report further shows magazines capable of holding more than ten rounds of ammunition accounted for approximately 75 million or 46 percent of all magazines owned. Combining this data with NSSF-Adjusted NICS figures, it can be estimated that more than 725,000 magazines capable of holding more than ten rounds of ammunition are owned by Maryland residents. It can be assumed many more such magazines were manufactured in the U.S. or imported to the U.S. for sale in the commercial marketplace prior to 1990.

Based on the findings listed above, it is my opinion that both modern sporting rifles and magazines that are capable of holding more than ten rounds of ammunition are commonly used by millions of law abiding Americans for a variety of lawful purposes. Additionally it is my opinion that both lawful ownership and usage of modern sporting rifles are becoming even more common in recent years.

A copy of each NSSF-published report referenced herein is appended to this report.

#### Published Articles

- |                                      |                  |                |
|--------------------------------------|------------------|----------------|
| 1) Firearms Accidents Drop           | SHOT Business    | June/July 2011 |
| 2) New Study Can Aid Planning        | The Range Report | Winter 2011    |
| 3) NSSF Releases Report on Diversity | SHOT Business    | April/May 2013 |



**ADD-7**

- |                                |               |               |
|--------------------------------|---------------|---------------|
| 4) Participation Trends        | SHOT Business | Aug/Sept 2013 |
| 5) Industry Research from NSSF | SHOT Business | December 2013 |

**Expert Witness History**

- 1) Deposed for *Wilson, et al. v. Cook County, Illinois*, No. 07 CH 4848, In the Circuit of Cook County Illinois County Department, Chancery Division. November 7, 2013 Waterbury, CT 06702

**ADD-8**

**EMERGENCY CERTIFICATION**

(To Raise)

As provided in Section 2-26 of the Connecticut General Statutes and Rules 9 and 17 of the Joint Rules of the 2013 Regular Session of the General Assembly, we, **DONALD E. WILLIAMS, JR.**, President Pro Tempore of the Senate, and **J. BRENDAN SHARKEY**, Speaker of the House of Representatives, hereby certify that a certain bill/resolution namely:

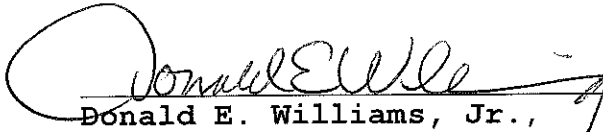
BILL No.                      entitled:

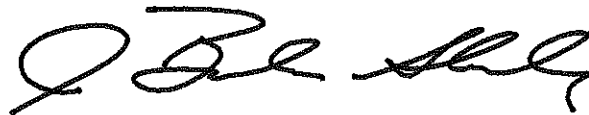
**AN ACT CONCERNING GUN VIOLENCE PREVENTION AND CHILDREN'S SAFETY**

necessitates action by the General Assembly for the following reasons:

in accordance with Rules 9 and 17 of the Joint Rules of the 2013 Regular Session, to pass an act concerning gun violence prevention and children's safety .

Dated at Hartford, Connecticut this 2 day of April, 2013.

  
Donald E. Williams, Jr.,  
President Pro Tempore of the Senate

  
J. Brendan Sharkey,  
Speaker of the House of Representatives