

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CLERK'S CERTIFICATE AND APPEALS COVER SHEET

ABBREVIATED ELECTRONIC RECORD

Case Caption: Granata et al v. Healey et al

District Court Number: 21cv10960-RWZ

Fee: Paid? Yes No Government filer *In Forma Pauperis* Yes No

Motions Pending Yes No Sealed documents Yes No
If yes, document # _____ *If yes, document #* _____

Ex parte documents Yes No Transcripts Yes No
If yes, document # _____ *If yes, document #* _____

Notice of Appeal filed by: Plaintiff/Petitioner Defendant/Respondent Other:

Appeal from:
#24 Memorandum and Order, #25 Order of Dismissal
Other information:

I, Robert M. Farrell, Clerk of the United States District Court for the District of Massachusetts, do hereby certify that the annexed electronic documents:

#24, #25, and #26
with the electronic docket sheet, constitute the abbreviated record on appeal in the above entitled case for the Notice of Appeal # 26 filed on June 15, 2022.

In testimony whereof, I hereunto set my hand and affix the seal of this Court on June 15, 2022.

ROBERT M. FARRELL
Clerk of Court

/s/Matthew A. Paine
Deputy Clerk

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APPEAL

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:21-cv-10960-RWZ**

Granata et al v. Healey et al
Assigned to: Judge Rya W. Zobel
Cause: 42:1983 Civil Rights Act

Date Filed: 06/08/2021
Date Terminated: 05/19/2022
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

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Email All Attorneys

Email All Attorneys and Additional Recipients

Date Filed	#	Docket Text
06/08/2021	<u>1</u>	COMPLAINT against All Plaintiffs Filing fee: \$ 402, receipt number 0101-8810702 (Fee Status: Filing Fee paid), filed by Stefano Granata. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Supplement Civil Action Cover Form)(Chambers, Richard) (Entered: 06/08/2021)
06/08/2021	2	ELECTRONIC NOTICE of Case Assignment. Judge Rya W. Zobel assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Judith G. Dein. (Danieli, Chris) (Entered: 06/08/2021)
06/08/2021	<u>3</u>	Summons Issued as to All Defendants. Counsel receiving this notice electronically should download this summons, complete one for each defendant and serve it in accordance with Fed.R.Civ.P. 4 and LR 4.1. Summons will be mailed to plaintiff(s) not receiving notice electronically for completion of service. (Vieira, Leonardo) (Entered: 06/08/2021)
06/30/2021	<u>4</u>	NOTICE of Appearance by Phoebe Fischer-Groban on behalf of Maura Healey, Thomas Turco (Fischer-Groban, Phoebe) (Entered: 06/30/2021)
06/30/2021	<u>5</u>	Assented to MOTION for Extension of Time to August 20, 2021 to File Answer re <u>1</u> Complaint, by Maura Healey, Thomas Turco.(Fischer-Groban, Phoebe) (Entered: 06/30/2021)
07/01/2021	6	Judge Rya W. Zobel: ELECTRONIC ORDER entered granting <u>5</u> Motion for Extension of Time to Answer re <u>1</u> Complaint, Maura Healey answer due 8/2/2021; Thomas Turco answer due 8/2/2021. (Urso, Lisa) (Entered: 07/01/2021)
07/01/2021	7	Set/Reset Deadlines: Maura Healey 8/20/2021; Thomas Turco 8/20/2021. (Urso, Lisa) (Entered: 07/01/2021)
07/13/2021	<u>8</u>	Assented to MOTION for Leave to Appear Pro Hac Vice for admission of Raymond DiGuseppe Filing fee: \$ 100, receipt number 0101-8856990 by Colby Cannizzaro, FIREARMS POLICY COALITION, INC., Stefano Granata, Cameron Prosperi, The Gunrunner, LLC, Judson Thomas. (Attachments: # <u>1</u> Affidavit Affidavit of counsel, # <u>2</u> Certification) (Chambers, Richard) (Attachment 1 replaced on 7/13/2021 - Document filed with wrong affidavit and replaced with correct one provided by counsel) (Currie, Haley). (Entered: 07/13/2021)
07/13/2021	<u>9</u>	Assented to MOTION for Leave to Appear Pro Hac Vice for admission of William Sack Filing fee: \$ 100, receipt number 0101-8857073 by Colby Cannizzaro, FIREARMS POLICY COALITION, INC., Stefano Granata, Cameron Prosperi, The Gunrunner, LLC, Judson Thomas. (Attachments: # <u>1</u> Affidavit Affidavit of counsel, # <u>2</u> Certification)(Chambers, Richard) (Entered: 07/13/2021)

07/13/2021	10	Judge Rya W. Zobel: ELECTRONIC ORDER entered granting <u>8</u> Motion for Leave to Appear Pro Hac Vice Added Richard DiGuissepe; granting <u>9</u> Motion for Leave to Appear Pro Hac Vice Added William Sack. Attorneys admitted Pro Hac Vice must register for electronic filing if the attorney does not already have an ECF account in this district. To register go to the Court website at www.mad.uscourts.gov. Select Case Information, then Electronic Filing (CM/ECF) and go to the CM/ECF Registration Form. (Currie, Haley) (Entered: 07/13/2021)
08/03/2021	<u>11</u>	SUMMONS Returned Executed Maura Healey served on 6/17/2021, answer due 8/20/2021. (Chambers, Richard) (Entered: 08/03/2021)
08/03/2021	<u>12</u>	SUMMONS Returned Executed Thomas Turco served on 7/1/2021, answer due 8/20/2021. (Chambers, Richard) (Entered: 08/03/2021)
08/19/2021	<u>13</u>	NOTICE of Appearance by Grace Gohlke on behalf of Maura Healey, Thomas Turco (Gohlke, Grace) (Entered: 08/19/2021)
08/20/2021	<u>14</u>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM by Maura Healey, Thomas Turco.(Fischer-Groban, Phoebe) (Entered: 08/20/2021)
08/20/2021	<u>15</u>	MEMORANDUM in Support re <u>14</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Maura Healey, Thomas Turco. (Fischer-Groban, Phoebe) (Entered: 08/20/2021)
08/31/2021	<u>16</u>	Assented to MOTION for Extension of Time to September 17, 2021 to File Response/Reply to <i>Defendants' Motion to Dismiss</i> by Colby Cannizzaro, FIREARMS POLICY COALITION, INC., Stefano Granata, Cameron Prosperi, The Gunrunner, LLC, Judson Thomas.(Chambers, Richard) (Entered: 08/31/2021)
09/08/2021	17	Judge Rya W. Zobel: ELECTRONIC ORDER entered granting <u>16</u> Motion for Extension of Time to File Response/Reply re <u>14</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM - Responses due by 9/17/2021. (Currie, Haley) (Entered: 09/08/2021)
09/17/2021	<u>18</u>	Opposition re <u>14</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Colby Cannizzaro, FIREARMS POLICY COALITION, INC., Stefano Granata, Cameron Prosperi, The Gunrunner, LLC, Judson Thomas. (Currie, Haley) (Entered: 09/18/2021)
10/08/2021	<u>19</u>	MOTION for Leave to File <i>Reply Memorandum</i> by Maura Healey, Thomas Turco. (Attachments: # <u>1</u> Exhibit A - Defendants' Reply in Support of Motion to Dismiss)(Fischer-Groban, Phoebe) (Entered: 10/08/2021)
10/28/2021	20	ELECTRONIC NOTICE Setting Hearing on Motion <u>14</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM : Motion Hearing set for 11/18/2021 02:00 PM in Courtroom 12 (In person only) before Judge Rya W. Zobel. (Urso, Lisa) (Entered: 10/28/2021)
10/28/2021	21	Judge Rya W. Zobel: ENDORSED ORDER entered granting <u>19</u> Motion for Leave to File Document ; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the

		document. (Urso, Lisa) (Entered: 11/02/2021)
11/03/2021	<u>22</u>	REPLY to Response to <u>14</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Maura Healey, Thomas Turco. (Fischer-Groban, Phoebe) (Entered: 11/03/2021)
11/18/2021	<u>23</u>	Electronic Clerk's Notes for proceedings held before Judge Rya W. Zobel: Motion Hearing held on 11/18/2021 re <u>14</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Thomas Turco, Maura Healey. Judge hears counsel and takes the matter under advisement; (Court Reporter: Linda Walsh at lwalshsteno@gmail.com.)(Attorneys present: Chambers, DiGuiseppe, Groben & Gohlke) (Urso, Lisa) (Entered: 11/18/2021)
05/19/2022	<u>24</u>	Judge Rya W. Zobel: MEMORANDUM AND ORDER entered. Defendants' Motion to Dismiss Plaintiffs' Complaint (Docket No. <u>14</u>) is ALLOWED . (Warnock, Douglas) (Entered: 05/19/2022)
05/19/2022	<u>25</u>	Judge Rya W. Zobel: ORDER entered. ORDER DISMISSING CASE (Warnock, Douglas) (Entered: 05/19/2022)
06/15/2022	<u>26</u>	<p>NOTICE OF APPEAL re <u>24</u> MEMORANDUM AND ORDER, <u>25</u> ORDER OF DISMISSAL by Colby Cannizzaro, FIREARMS POLICY COALITION, INC., Stefano Granata, Cameron Prosperi, The Gunrunner, LLC, Judson Thomas Filing fee: \$ 505, receipt number AMADC-9370591 Fee Status: Not Exempt. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 7/5/2022. (Attachments: # <u>1</u> Memorandum & Order, # <u>2</u> Order of Dismissal)(Chambers, Richard)</p> <p>Modified on 6/15/2022 to Correct Docket Text and Add CM/ECF Document Links to Orders Being Appealed as Counsel Failed to Follow the CM/ECF NextGen Prompts When Filing the Notice of Appeal. (Paine, Matthew).</p> <p>(Entered: 06/15/2022)</p>

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 1:21-CV-10960-RWZ

STEFANO GRANATA, JUDSON THOMAS, COLBY CANNIZZARO, CAMERON
PROSPERI, THE GUNRUNNER, LLC, and FIREARMS POLICY COALITION, INC.

v.

MAURA HEALY, in her official capacity as Attorney General of the Commonwealth of
Massachusetts, and THOMAS TURCO, in his official capacity as Secretary of the
Executive Office of Public Safety and Security of the Commonwealth of Massachusetts

MEMORANDUM & ORDER

May 19, 2022

ZOBEL, S.D.J.

Plaintiffs brought this action to challenge enforcement of the handgun regulatory scheme established by Mass. Gen. Laws ch. 140, § 123, together with the regulations promulgated by the Massachusetts Attorney General and codified at 940 C.M.R. §§ 16.00 *et seq.* The challenged scheme sets forth safety requirements for handguns sold within the Commonwealth, to prevent unnecessary death and injury from unsafe and defective handguns, particularly in the hands of children. Plaintiffs assert that they violate the Second Amendment to the Constitution by effectively banning the sale of eighteen makes and models of handguns that are in common use and sold in other states. Defendants move to dismiss the complaint for failing to state a claim. The motion is allowed.

I. Background

A. The Challenged Handgun Safety Regulations

In 1997, the Attorney General of Massachusetts promulgated regulations applicable to "transfers" of handguns by "handgun purveyors" to customers in Massachusetts,¹ codified at 940 C.M.R. § 16.00 *et seq.*, pursuant to his authority under the Massachusetts Consumer Protection Act, Gen. Laws Ch. 93A, § 2(c). They followed national research and recognition of the need for additional safety restrictions on firearms, especially to protect children. U.S. Gov't Accountability Office, Report to the Chairman, Subcomm. on Antitrust, Monopolies, and Business Rights, Comm. on the Judiciary, U.S. Senate, *Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could Be Prevented* (1991) ("GAO Report").

The regulations make it "an unfair or deceptive practice for any handgun-purveyor" to transfer to a consumer in the Commonwealth a handgun that does not comply with the minimum safety requirements and performance standards set forth. 940 C.M.R. § 16.02. Their purpose is "to protect responsible gun owners and their families from firearms that are unsafe by design or manufacture." Massachusetts Attorney General, July 16, 2004 Consumer Advisory on Glock Handguns at 8. They do not apply to private sellers, defined as someone who transfers fewer than five handguns per year. 940 C.M.R. § 16.01. The majority of the regulations also do not apply to

¹ "Transfer" means "sell, lease, or rent" and excludes sales to firearm wholesalers who cannot resell the firearm to a retailer or consumer in the Commonwealth. 940 C.M.R. § 16.01. "Handgun purveyor" means "any person or entity that transfers handguns to a customer located within the Commonwealth" and excludes any entity that transfers fewer than five handguns per year; transfers for the purpose of supplying law enforcement, military personnel, museums, and other educational collectors; transfers of handguns considered antiques; and transfers of handguns designed and sold specifically for formal target shooting. *Id.*

transfers of handguns manufactured on or before October 21, 1998. Enforcement Notice #2: Attorney General's Handgun Safety Regulations at 3.

In 1998, soon after the Attorney General's regulations were promulgated, the Massachusetts Legislature codified certain handgun safety requirements at Mass. Gen. Laws ch. 140, § 123, cl. 18-21, making it unlawful for a retailer to sell within the Commonwealth a handgun that does not meet the prescribed safety features. Mass. Gen. Laws ch. 140, § 128. Several of these features overlap with those promulgated by the Attorney General. Like the former, the statutory requirements exempt private sellers, and apply only to "firearm dealer[s] in Massachusetts" as defined at 501 C.M.R. § 7.02. They also do not apply to the sale of firearms that were lawfully owned or possessed on or before October 21, 1998. Mass. Gen. Laws ch. 140, § 123.

Taken together, the Attorney General's regulations and § 123 require that handguns lawfully sold within the Commonwealth:

- Not be made of "inferior materials," they must be made of materials that meet specified minimum melting points, tensile strength, and density; or pass a make and model performance test (940 C.M.R. §§ 16.01, 16.04(1) and (3); Mass. Gen. Laws ch. 140, § 123, cl. 18);
- Not be prone to either repeated firing from a single trigger pull or explosion upon firing (940 C.M.R. § 16.04(2); Mass. Gen. Laws ch. 140, § 123, cl. 20);
- Not be prone to accidental discharge (940 C.M.R. §§ 16.01, 16.04(2); Mass. Gen. Laws ch. 140, § 123, cl.19);
- Have a "safety device" that prevents unauthorized use of the firearm (940 C.M.R. § 16.05(1));
- Have a mechanism that "effectively precludes an average five-year-old child from operating the handgun when it is ready to fire" (i.e., a form a childproofing), "such mechanisms shall include, but are not limited to: raising trigger resistance to at least a ten pound pull, altering the firing mechanism so that an average five year old child's hands are too small to operate the handgun, or requiring a series of multiple motions in order to fire the handgun" (940 C.M.R. § 16.05(2));

- Have a tamper-resistant serial number (940 C.M.R. § 16.03); and
- For semi-automatic handguns, have either “a load indicator or a magazine safety disconnect” (940 C.M.R. § 16.05(3) and (4)).²

In conjunction with Mass. Gen. Laws ch. 140, § 123, the Legislature directed the Secretary of the Executive Office of Public Safety and Security to “compile and publish a roster” of handguns that meet the § 123 requirements, known as the “Approved Firearms Roster” (the “Roster”). Mass. Gen. Laws ch. 140, § 131-3/4; 501 C.M.R. § 7.00; see also Enforcement Notice #3: Attorney General’s Handgun Safety Regulations at 5. To be listed on the Roster, the Secretary must receive a final test report from an approved testing laboratory certifying that the handgun satisfies the § 123 requirements. 501 C.M.R. § 7.03(1). As of June 2021, the Roster listed over 1,000 handgun models from twenty-nine manufacturers, often with multiple models for each manufacturer. Approved Firearms Roster: 06/2021. It is unlawful for a retailer to sell a firearm that is not so listed. 501 C.M.R. § 7.05; see also Enforcement Notice #3: Attorney General’s Handgun Safety Regulations at 5.

The Roster lists firearms that meet the statutory requirements of § 123 but not necessarily the Attorney General’s regulations on childproofing, load indicators, and tamper-resistant serial numbers. See Enforcement Notice #3: Attorney General’s Handgun Safety Regulations at 5-6. Nonetheless, to be legally sold by a retailer in Massachusetts, a handgun must appear on the Roster *and* comply with the Attorney General’s regulations. Id.

² The Attorney General’s regulations also include certain safety warnings and disclosure requirements at the time of sale. See 940 C.M.R. § 16.006. Because Plaintiffs do not allege any injuries related to these requirements, they will not be addressed.

B. The Complaint

Plaintiffs challenge both the Attorney General's regulations and the § 123 statutory requirements (collectively, the "Handgun Safety Regulations"). They are: four individuals, all of whom claim to have a valid Massachusetts license that allows them to purchase handguns and carry them in public (Docket # 1 ¶¶ 47-50); one retail seller, The Gunrunner, LLC, who is alleged to be a licensed handgun purveyor (id. ¶ 51); and one organization, the Firearms Policy Coalition, Inc. ("FPC"), which includes as members the four individual plaintiffs (id. ¶ 52). The two defendants, Maura Healey and Thomas Turco, are both sued in their official capacities, as Attorney General of Massachusetts and Secretary of the Executive Office of Public Safety and Security of Massachusetts, respectively.

The complaint asserts a single cause of action under 42 U.S.C. § 1983 and the United States Constitution that the Handgun Safety Regulations infringe Plaintiffs' Second Amendment right "to keep and bear arms." Docket # 1 ¶¶ 56-73. The individual plaintiffs specifically object to the limitations on handguns incorporated into the roster. They assert that they would purchase eighteen specific models of handguns, "new from a licensed retailer[]" for self-defense and other lawful purposes," but for the challenged Handgun Safety Regulations. Id. ¶¶ 47-50. The Gunrunner, the retailer, asserts for itself and "on behalf of all similarly situated licensed retailers," that it would "make available for sale to all of its law-abiding customers all commercially available handguns in common use for self-defense and other lawful purposes that are widely sold and possessed outside of Massachusetts" but for the challenged Handgun Safety

Regulations.³ Id. ¶ 51. FPC, the organization, asserts, on behalf of its members and similarly situated members of the public, that they “have been adversely and directly harmed by Defendants’ enforcement” of these challenged regulations. Id. ¶¶ 52-55. Plaintiffs do not dispute that individual licensed consumers within Massachusetts can still purchase or possess an operational handgun for self-defense or other lawful purposes.

Defendants moved under Fed. R. Civ. P. 12(b)(6) to dismiss Plaintiffs’ complaint for failing to state a claim. Docket # 14. They contend that the challenged Handgun Safety Regulations are constitutional and thus enforceable because they do not burden conduct falling within the scope of the Second Amendment, but, even if they did, they easily withstand heightened scrutiny. Id.; Docket # 15.

II. Discussion

A. Legal Standard

To survive a motion to dismiss, a complaint must contain “sufficient factual matter” to “state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). The Court must accept all factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff’s favor. Langadinos v. Am. Airlines, Inc., 199 F.3d 68, 69 (1st Cir. 2000). It need not however, accept legal conclusions as true. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

³ Defendants argue that “there is no textual or historical basis upon which to suggest that the Second Amendment protects a right to *sell* firearms,” thus “any claim that the challenged regulations impinge upon a purported right of dealers to *sell* firearms must be rejected.” Docket # 15 at 8 n.15 (emphasis in original). Whether there is a right to sell firearms does not impact the analysis, wherefore the Court declines to weigh in on this question.

B. Second Amendment Legal Framework

The Second Amendment states: “[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. The U.S. Supreme Court has held that the Second Amendment protects an individual's right “to keep and bear arms (unconnected to service in the militia)” and the protection applies to the states through the Fourteenth Amendment. Gould v. Morgan, 907 F.3d 659, 667 (1st Cir. 2018); see also McDonald v. City of Chicago, 561 U.S. 742, 750 (2010); District of Columbia v. Heller, 554 U.S. 570, 592 (2008). The law challenged in District of Columbia v. Heller constituted an “absolute prohibition of handguns held and used for self-defense in the home,” which the Court determined does violate the Second Amendment. 554 U.S. at 635-36. Although it has not yet examined “the full scope of the Second Amendment” right, it made clear in Heller that the right “is not unlimited.” Id. at 626. Certain “longstanding prohibitions” are “presumptively lawful,” including “laws imposing conditions and qualifications on the commercial sale of arms.” Id. at 626-27. The Second Amendment does not confer “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” Id.

The First Circuit has adopted a two-step approach for analyzing Second Amendment claims. Gould, 907 F.3d at 668-69. At the first step, the court asks “whether the challenged law burdens conduct that falls within the scope of the Second Amendment’s guarantee.” Id. “This is a backward-looking inquiry, which seeks to determine whether the regulated conduct was understood to be within the scope of the right at the time of ratification . . .” Id. If the challenged law imposes no such burden, it is valid. “If, however, it burdens conduct falling within the scope of the Second

Amendment,” the court moves to the next step at which it determines the appropriate level of scrutiny and whether the challenged law survives that determination. Id.

C. Scope of the Second Amendment Right

The Supreme Court recognizes that “laws imposing conditions and qualifications on the commercial sale of arms” are a category of regulations that are “presumptively lawful.” Heller, 554 U.S. at 626-27. However, neither the First Circuit nor the Supreme Court has interpreted the full confines of the phrases “presumptively lawful” or “conditions and qualifications on the commercial sale of arms.” Accordingly, courts have been inclined to assume without deciding that a regulation burdens conduct protected by the Second Amendment for purposes of analysis, rather than delving into the question whether the regulation falls into the exception of “conditions and qualifications on the commercial sale of arms.” See, e.g., Pena v. Lindley, 898 F.3d 969, 976 (9th Cir. 2018) (“The opaqueness of the presumption of legality for ‘conditions and qualifications on the commercial sale of arms’ likely explains why we and other courts often have assumed without deciding that a regulation does burden conduct protected by the Second Amendment rather than parse whether the law falls into that exception. . . . We, too, follow this well-trodden and ‘judicious course.’”); see also Worman v. Healey, 922 F.3d 26, 35 (1st Cir. 2019) (deciding case at second rather than first step of inquiry, explaining that “courts should not rush to decide unsettled issues when the exigencies of a particular case do not require such definitive measures”).

The same approach is taken here, by assuming, without deciding, that the challenged regulations touch on conduct protected by the Second Amendment. “By making this assumption, [the court] bypass[es] the constitutional obstacle course of

defining the parameters of the Second Amendment's individual right in the context of commercial sales." Pena, 898 F.3d at 976.

D. Scrutiny

Because the challenged Handgun Safety Regulations are assumed to implicate Plaintiffs' Second Amendment rights, the analysis turns to the second step to determine the appropriate level of scrutiny and then to use it to assess the regulations. See Gould, 907 F.3d at 668-69.

1. Level of Scrutiny

Plaintiffs argue that strict scrutiny applies because the Handgun Safety Regulations implicate the core of the Second Amendment right, Docket # 18 at 11-12, while Defendants assert that only intermediate scrutiny is required, Docket # 15 at 13-15. Intermediate scrutiny is appropriate here.

"The appropriate level of scrutiny 'turn[s] on how closely a particular law or policy approaches the core of the Second Amendment right and how heavily it burdens that right.'" Worman, 922 F.3d at 36 (quoting Gould, 907 F.3d at 670-71). "[I]ntermediate scrutiny is appropriate as long as a challenged regulation either fails to implicate the core Second Amendment right or fails to impose a substantial burden on that right." Worman, 922 F.3d at 39 ("[I]ntermediate scrutiny is the appropriate level of scrutiny for evaluating a law . . . that arguably implicates the core Second Amendment right to self-defense in the home but places only a modest burden on that right.").

The First Circuit has established "that the core Second Amendment right is limited to self-defense in the home" by "responsible, law-abiding individuals." Id. (quoting Gould, 907 F.3d at 671). Plaintiffs here contend that the regulations do affect

their ability to defend themselves in their homes. Assuming in Plaintiffs' favor that the regulations implicate the core of the Second Amendment right, the inquiry then focuses on "how heavily [they] burden[] that right." Worman, 922 F.3d at 36 (quoting Gould, 907 F.3d at 671).

The Handgun Safety Regulations in this case place, at most, a modest burden on the core Second Amendment right. The regulations only require that handguns lawfully sold within the Commonwealth meet certain safety requirements; they do not restrict the possession of handguns by eligible individuals in the home or elsewhere. See Draper v. Healey, 98 F. Supp. 3d 77, 85 (D. Mass. 2015) (finding that regulation prohibiting the sale of handguns without a load indicator or magazine safety disconnect "does not substantially burden the right to bear arms in self-defense in one's home" because it "in no way prevents citizens from obtaining a wide array of firearms"). Even though the Handgun Safety Regulations may limit the types of handguns with which individuals can defend themselves, to only those that meet the safety requirements of the regulations—unlike Heller, they do not result in a total prohibition against keeping a handgun for self-defense within the home. See Pena, 898 F.3d at 977-78; see also Worman, 922 F.3d at 40 (finding Massachusetts law banning certain semiautomatic firearms passed intermediate scrutiny because "the Act does not outlaw all semiautomatic firearms and magazines[, n]or does it circumscribe in any way the fundamental right of law-abiding, responsible citizens to possess handguns in their homes for self-defense").

Plaintiffs argue that by prohibiting the sale of handguns that do not meet the safety requirements, the Handgun Safety Regulations in effect result in a total ban on the sale and thus possession of those specific makes and models, thereby running afoul

of the Supreme Court's admonition in Heller that states cannot "ban the possession of handguns." Docket # 18 at 13-14 (citing Heller, 554 U.S. at 629). Plaintiffs' argument, however, stretches Heller beyond the plain meaning of its text without any authority for doing so. Prohibiting the sale of specific makes and models of handguns for safety reasons is not the same as a total prohibition of the sale of handguns. See Pena, 898 F.3d at 978 ("being unable to purchase a subset of semiautomatic weapons, without more, does not significantly burden the right to self-defense in the home"); see also Heller, 554 U.S. at 626 ("[T]he right secured by the Second Amendment is not unlimited. . . . [It] was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.").

Eligible individuals within Massachusetts can freely choose from over a thousand handguns listed on the June 2021 Roster that also meet the Attorney General safety regulations. The fact that they cannot purchase every single handgun that may be in common use and available for purchase in other states, does not transform the regulations into a total ban on a category or class of firearms (i.e., handguns in this case). To conclude otherwise would eviscerate Heller's holding that some regulation of firearm possession is permissible. See Worman, 922 F.3d at 32 n.2.

Two additional points reinforce the limited burden placed on individuals' ability to exercise their Second Amendment right: First, the Handgun Safety Regulations carve out private sales of handguns from their safety requirements. Second, Plaintiffs do not claim that the handguns available for purchase in Massachusetts are inadequate to exercise their core Second Amendment right. Thus, there is no basis to conclude that the eighteen handguns specifically identified by Plaintiffs in their complaint, as well as

any other handguns in common use in other states, that allegedly are not available for purchase in the Commonwealth because of the regulations, would in some way enable or enhance an individual's exercise of their right to possess a handgun in their home for self-defense in a way not achievable by the handguns that are available.

Because the Handgun Safety Regulations do not impose a substantial burden on Plaintiffs' core Second Amendment right, intermediate scrutiny is appropriate to assess the enforceability of the regulations. See e.g., Pena 898 F.3d at 979.

2. Application of Intermediate Scrutiny

"To survive intermediate scrutiny, a statute 'must be substantially related to an important governmental objective.'" Worman, 922 F.3d at 38 (quoting Gould, 907 F.3d at 672). "To achieve this substantial relationship, there must be a 'reasonable fit' between the restrictions imposed by the law and the government's valid objectives, 'such that the law does not burden more conduct than is reasonably necessary.'" Id. (quoting Gould, 907 F.3d at 674). In its assessment, a court may consider "the legislative history of the enactment as well as studies in the record or cited in pertinent case law." Pena, 898 F.3d at 979 (internal quotation marks omitted). A court cannot substitute "its own appraisal of the facts for a reasonable appraisal made by the legislature." Gould, 907 F.3d at 673.

Plaintiffs concede that the Commonwealth has important objectives in protecting "[p]ublic safety and preventing accidental firearm injuries," see Docket # 18 at 15, and the First Circuit has recently reiterated the Commonwealth's important objective in preventing crime, see Worman, 922 F.3d at 39 ("Massachusetts indubitably 'has compelling governmental interests in both public safety and crime prevention'").

Accordingly, the only remaining question is whether the regulations substantially relate to those interests. Id.

Both § 123 and the Attorney General's regulations, require that handguns sold commercially are (1) not made of inferior materials or, if they are, they nonetheless pass a performance test; (2) not prone to uncontrolled firing or exploding during normal use; and (3) not prone to discharging accidentally when dropped. 940 CMR § 16.04; Mass. Gen. Laws ch. 140, § 123, cls. 18-20. They allow purchasers of handguns to reasonably rely on the assumption that the handgun will not accidentally fire, explode, or pose any other threat to their own safety and the safety others who may have access to the firearm, especially children.

In addition, the Commonwealth's interest in public safety and the Attorney General's child-proofing requirements mutually support the regulations in issue. As Defendants noted, the GAO Report "found that all of the accidental firearm fatalities caused by children under the age of six could have been prevented had the firearm been equipped with childproofing features like those required by the regulations." Docket # 15 at 17-18 (citing GAO Report at 3, 34). The childproofing regulations are satisfied by any mechanism that "effectively precludes an average five-year old from operating a handgun when it is ready to fire," thus Plaintiffs' criticism of one such mechanism—a ten-pound trigger pull (see Docket # 18 at 18)—does not alter the analysis. See 940 CMR §§ 16.05(2), (4) ("such mechanisms shall include, but are not limited to: raising trigger resistance to at least a ten pound pull, altering the firing mechanism so that an average fire year old child's hands are too small to operate the handgun, or requiring a series of multiple motions in order to fire the handgun," as well

as a hammer deactivation device). Similarly, the Attorney General's requirement that handguns be sold with a "safety device" that prevents unauthorized use, 940 CMR § 16.05(1), is supported by the GAO Report's finding that one in three accidental firearm deaths in 1988 and 1989 could have been prevented by the addition of a firearm safety device. Docket #15 at 18 (citing GAO Report at 3, 36).

The requirement that handguns contain tamper-resistant serial numbers also reasonably supports the Commonwealth's interests in public safety and crime prevention. See United States v. Marzzarella, 614 F.3d 85, 98 (3d Cir. 2010). As the Third Circuit explained in an opinion upholding a law prohibiting the possession of a handgun with an obliterated serial number under intermediate scrutiny, "there would appear to be no compelling reason why a law-abiding citizen would prefer an unmarked firearm" which has "value primarily for persons seeking to use [it] for illicit purposes." Id. at 95. The requirement here, is thus also "properly designed to remedy the problem of untraceable firearms." See id. at 101.

Finally, the requirement that semiautomatic pistols contain either a load indicator or magazine safety disconnect easily passes muster. These exact measures have already been deemed constitutional within this jurisdiction and others. See Draper v. Healey, 98 F. Supp. 3d 77, 85 (D. Mass. 2015 (Gorton, J.) (finding Attorney General's load indicator or magazine safety disconnect requirement enforceable under any level of heightened scrutiny); Pena, 898 F.3d at 980 (finding load indicator or magazine safety disconnect requirement "reasonably fit with California's interest in public safety"). These regulations are further supported by the GAO findings that twenty-three percent of accidental firearm fatalities occurred because individuals incorrectly believed the

firearms were unloaded and that those deaths could have been prevented by a load indicator. Docket # 15 at 18-19 (citing GAO Report at 3).

Each individual safety requirement set forth in the regulations buttresses the important government interests identified; wherefore the requirement that handguns be pre-approved for sale and listed on the Roster fully passes scrutiny.

The existence of available alternatives that may promote public safety—e.g., “education, training, and public outreach regarding basic rules of firearm safety, storage, and use” identified by Plaintiffs (Docket # 1 ¶ 42)—do not alter the analysis. Nor is the analysis altered by Plaintiffs’ argument that the GAO Report is unsuitable to support the enforceability of the regulations because it showed that the studied safety requirements only prevented some, but not all or enough, accidental deaths. Docket # 18 at 15-18. The means for accomplishing the important government interests need not be narrowly tailored nor is there any requirement that regulations prevent all deaths. See Gould, 907 F.3d at 674 (“a legislature’s chosen means need not be narrowly tailored to achieve its ends” when applying intermediate scrutiny); id. at 674-75 (finding requirements for obtaining a license to carry firearm in public passed intermediate scrutiny because states with more restrictive firearm licensing schemes have lower rates of gun-related deaths, even though not all deaths were prevented). Nor should the Court substitute its own judgment for that of the Attorney General and Legislature in determining the appropriate means to pursue its important interests. See Worman, 922 F.3d at 40 (it is “the legislature’s prerogative . . . to weigh the evidence, choose among conflicting inferences, and make the necessary policy judgments,” “[t]he role of a reviewing court is

limited to ensuring ‘that, in formulating its judgments, [the legislature] has drawn reasonable inferences based on substantial evidence’”).

The Handgun Safety Regulations are well supported and reasonable, a conclusion reinforced by the fact that Massachusetts “consistently has one of the lowest rates of gun-related deaths in the nation.” See Gould 907 F.3d at 674-75. The challenged regulations therefore pass intermediate scrutiny.

III. Conclusion

Defendants’ Motion to Dismiss Plaintiffs’ Complaint (Docket # 14) is ALLOWED.

May 19, 2022
DATE

Ryan W. Zobel
RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE

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**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Stefano Granata, et al.

Plaintiffs

V.

CIVIL ACTION

NO. 21-10960-RWZ

Maura Healey, et al.

Defendants

ORDER OF DISMISSAL

Zobel, D. J.

In accordance with the Court's Memorandum and Order dated May 19, 2022
ALLOWING the Defendant's Motion to Dismiss, this civil action is hereby DISMISSED.

By the Court,

May 19, 2022
Date

/s/Douglas Warnock
Deputy Clerk

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15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF MASSACHUSETTS**

17 STEFANO GRANATA; JUDSON
18 THOMAS; COLBY CANNIZZARO;
19 CAMERON PROSPERI; THE GUN
20 RUNNER, LLC; and FIREARMS
21 POLICY COALITION, INC.,

22 Plaintiffs,

Case No. 1:21-CV-10960-RWZ

23 v.

24 MAURA HEALEY, in her official
25 capacity as Attorney General of the
26 Commonwealth of Massachusetts; and
27 THOMAS TURCO, in his official
28 capacity as Secretary of Executive Office
of Public Safety and Security of the
Commonwealth of Massachusetts,

Defendants.

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NOTICE OF APPEAL

PLEASE TAKE NOTICE that the above-named Plaintiffs hereby appeal to the United States Court of Appeals for the First Circuit from the Court's Order entered on May 19, 2022 (ECF Doc. 24) and the related Judgment entered the same day (ECF Doc. 25). A copy of the Order and Judgment are attached.

Dated: June 15, 2022

/s/ Richard C. Chambers, Jr.
ATTORNEY FOR PLAINTIFFS
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CERTIFICATE OF SERVICE

I, Richard C. Chambers, hereby certify that I served a copy of the *Notice of Appeal* through the Court’s ECF system to all registered users.

Dated: June 15, 2022

By:

/s/ Richard C. Chambers, Jr.
Richard C. Chambers
Chambers Law Office
220 Broadway, Suite 404
Lynnfield, MA 01940

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 1:21-CV-10960-RWZ

STEFANO GRANATA, JUDSON THOMAS, COLBY CANNIZZARO, CAMERON
PROSPERI, THE GUNRUNNER, LLC, and FIREARMS POLICY COALITION, INC.

v.

MAURA HEALY, in her official capacity as Attorney General of the Commonwealth of
Massachusetts, and THOMAS TURCO, in his official capacity as Secretary of the
Executive Office of Public Safety and Security of the Commonwealth of Massachusetts

MEMORANDUM & ORDER

May 19, 2022

ZOBEL, S.D.J.

Plaintiffs brought this action to challenge enforcement of the handgun regulatory scheme established by Mass. Gen. Laws ch. 140, § 123, together with the regulations promulgated by the Massachusetts Attorney General and codified at 940 C.M.R. §§ 16.00 *et seq.* The challenged scheme sets forth safety requirements for handguns sold within the Commonwealth, to prevent unnecessary death and injury from unsafe and defective handguns, particularly in the hands of children. Plaintiffs assert that they violate the Second Amendment to the Constitution by effectively banning the sale of eighteen makes and models of handguns that are in common use and sold in other states. Defendants move to dismiss the complaint for failing to state a claim. The motion is allowed.

I. Background

A. The Challenged Handgun Safety Regulations

In 1997, the Attorney General of Massachusetts promulgated regulations applicable to “transfers” of handguns by “handgun purveyors” to customers in Massachusetts,¹ codified at 940 C.M.R. § 16.00 *et seq.*, pursuant to his authority under the Massachusetts Consumer Protection Act, Gen. Laws Ch. 93A, § 2(c). They followed national research and recognition of the need for additional safety restrictions on firearms, especially to protect children. U.S. Gov’t Accountability Office, Report to the Chairman, Subcomm. on Antitrust, Monopolies, and Business Rights, Comm. on the Judiciary, U.S. Senate, *Accidental Shootings: Many Deaths and Injuries Caused by Firearms Could Be Prevented* (1991) (“GAO Report”).

The regulations make it “an unfair or deceptive practice for any handgun-purveyor” to transfer to a consumer in the Commonwealth a handgun that does not comply with the minimum safety requirements and performance standards set forth. 940 C.M.R. § 16.02. Their purpose is “to protect responsible gun owners and their families from firearms that are unsafe by design or manufacture.” Massachusetts Attorney General, July 16, 2004 Consumer Advisory on Glock Handguns at 8. They do not apply to private sellers, defined as someone who transfers fewer than five handguns per year. 940 C.M.R. § 16.01. The majority of the regulations also do not apply to

¹ “Transfer” means “sell, lease, or rent” and excludes sales to firearm wholesalers who cannot resell the firearm to a retailer or consumer in the Commonwealth. 940 C.M.R. § 16.01. “Handgun purveyor” means “any person or entity that transfers handguns to a customer located within the Commonwealth” and excludes any entity that transfers fewer than five handguns per year; transfers for the purpose of supplying law enforcement, military personnel, museums, and other educational collectors; transfers of handguns considered antiques; and transfers of handguns designed and sold specifically for formal target shooting. *Id.*

transfers of handguns manufactured on or before October 21, 1998. Enforcement Notice #2: Attorney General's Handgun Safety Regulations at 3.

In 1998, soon after the Attorney General's regulations were promulgated, the Massachusetts Legislature codified certain handgun safety requirements at Mass. Gen. Laws ch. 140, § 123, cl. 18-21, making it unlawful for a retailer to sell within the Commonwealth a handgun that does not meet the prescribed safety features. Mass. Gen. Laws ch. 140, § 128. Several of these features overlap with those promulgated by the Attorney General. Like the former, the statutory requirements exempt private sellers, and apply only to "firearm dealer[s] in Massachusetts" as defined at 501 C.M.R. § 7.02. They also do not apply to the sale of firearms that were lawfully owned or possessed on or before October 21, 1998. Mass. Gen. Laws ch. 140, § 123.

Taken together, the Attorney General's regulations and § 123 require that handguns lawfully sold within the Commonwealth:

- Not be made of "inferior materials," they must be made of materials that meet specified minimum melting points, tensile strength, and density; or pass a make and model performance test (940 C.M.R. §§ 16.01, 16.04(1) and (3); Mass. Gen. Laws ch. 140, § 123, cl. 18);
- Not be prone to either repeated firing from a single trigger pull or explosion upon firing (940 C.M.R. § 16.04(2); Mass. Gen. Laws ch. 140, § 123, cl. 20);
- Not be prone to accidental discharge (940 C.M.R. §§ 16.01, 16.04(2); Mass. Gen. Laws ch. 140, § 123, cl.19);
- Have a "safety device" that prevents unauthorized use of the firearm (940 C.M.R. § 16.05(1));
- Have a mechanism that "effectively precludes an average five-year-old child from operating the handgun when it is ready to fire" (i.e., a form a childproofing), "such mechanisms shall include, but are not limited to: raising trigger resistance to at least a ten pound pull, altering the firing mechanism so that an average five year old child's hands are too small to operate the handgun, or requiring a series of multiple motions in order to fire the handgun" (940 C.M.R. § 16.05(2));

- Have a tamper-resistant serial number (940 C.M.R. § 16.03); and
- For semi-automatic handguns, have either “a load indicator or a magazine safety disconnect” (940 C.M.R. § 16.05(3) and (4)).²

In conjunction with Mass. Gen. Laws ch. 140, § 123, the Legislature directed the Secretary of the Executive Office of Public Safety and Security to “compile and publish a roster” of handguns that meet the § 123 requirements, known as the “Approved Firearms Roster” (the “Roster”). Mass. Gen. Laws ch. 140, § 131-3/4; 501 C.M.R. § 7.00; see also Enforcement Notice #3: Attorney General's Handgun Safety Regulations at 5. To be listed on the Roster, the Secretary must receive a final test report from an approved testing laboratory certifying that the handgun satisfies the § 123 requirements. 501 C.M.R. § 7.03(1). As of June 2021, the Roster listed over 1,000 handgun models from twenty-nine manufacturers, often with multiple models for each manufacturer. Approved Firearms Roster: 06/2021. It is unlawful for a retailer to sell a firearm that is not so listed. 501 C.M.R. § 7.05; see also Enforcement Notice #3: Attorney General's Handgun Safety Regulations at 5.

The Roster lists firearms that meet the statutory requirements of § 123 but not necessarily the Attorney General's regulations on childproofing, load indicators, and tamper-resistant serial numbers. See Enforcement Notice #3: Attorney General's Handgun Safety Regulations at 5-6. Nonetheless, to be legally sold by a retailer in Massachusetts, a handgun must appear on the Roster *and* comply with the Attorney General's regulations. Id.

² The Attorney General's regulations also include certain safety warnings and disclosure requirements at the time of sale. See 940 C.M.R. § 16.006. Because Plaintiffs do not allege any injuries related to these requirements, they will not be addressed.

B. The Complaint

Plaintiffs challenge both the Attorney General's regulations and the § 123 statutory requirements (collectively, the "Handgun Safety Regulations"). They are: four individuals, all of whom claim to have a valid Massachusetts license that allows them to purchase handguns and carry them in public (Docket # 1 ¶¶ 47-50); one retail seller, The Gunrunner, LLC, who is alleged to be a licensed handgun purveyor (*id.* ¶ 51); and one organization, the Firearms Policy Coalition, Inc. ("FPC"), which includes as members the four individual plaintiffs (*id.* ¶ 52). The two defendants, Maura Healey and Thomas Turco, are both sued in their official capacities, as Attorney General of Massachusetts and Secretary of the Executive Office of Public Safety and Security of Massachusetts, respectively.

The complaint asserts a single cause of action under 42 U.S.C. § 1983 and the United States Constitution that the Handgun Safety Regulations infringe Plaintiffs' Second Amendment right "to keep and bear arms." Docket # 1 ¶¶ 56-73. The individual plaintiffs specifically object to the limitations on handguns incorporated into the roster. They assert that they would purchase eighteen specific models of handguns, "new from a licensed retailer[] for self-defense and other lawful purposes," but for the challenged Handgun Safety Regulations. *Id.* ¶¶ 47-50. The Gunrunner, the retailer, asserts for itself and "on behalf of all similarly situated licensed retailers," that it would "make available for sale to all of its law-abiding customers all commercially available handguns in common use for self-defense and other lawful purposes that are widely sold and possessed outside of Massachusetts" but for the challenged Handgun Safety

Regulations.³ Id. ¶ 51. FPC, the organization, asserts, on behalf of its members and similarly situated members of the public, that they “have been adversely and directly harmed by Defendants’ enforcement” of these challenged regulations. Id. ¶¶ 52-55. Plaintiffs do not dispute that individual licensed consumers within Massachusetts can still purchase or possess an operational handgun for self-defense or other lawful purposes.

Defendants moved under Fed. R. Civ. P. 12(b)(6) to dismiss Plaintiffs’ complaint for failing to state a claim. Docket # 14. They contend that the challenged Handgun Safety Regulations are constitutional and thus enforceable because they do not burden conduct falling within the scope of the Second Amendment, but, even if they did, they easily withstand heightened scrutiny. Id.; Docket # 15.

II. Discussion

A. Legal Standard

To survive a motion to dismiss, a complaint must contain “sufficient factual matter” to “state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). The Court must accept all factual allegations in the complaint as true and draw all reasonable inferences in the plaintiff’s favor. Langadinos v. Am. Airlines, Inc., 199 F.3d 68, 69 (1st Cir. 2000). It need not however, accept legal conclusions as true. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

³ Defendants argue that “there is no textual or historical basis upon which to suggest that the Second Amendment protects a right to *sell* firearms,” thus “any claim that the challenged regulations impinge upon a purported right of dealers to *sell* firearms must be rejected.” Docket # 15 at 8 n.15 (emphasis in original). Whether there is a right to sell firearms does not impact the analysis, wherefore the Court declines to weigh in on this question.

B. Second Amendment Legal Framework

The Second Amendment states: “[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. The U.S. Supreme Court has held that the Second Amendment protects an individual’s right “to keep and bear arms (unconnected to service in the militia)” and the protection applies to the states through the Fourteenth Amendment. Gould v. Morgan, 907 F.3d 659, 667 (1st Cir. 2018); see also McDonald v. City of Chicago, 561 U.S. 742, 750 (2010); District of Columbia v. Heller, 554 U.S. 570, 592 (2008). The law challenged in District of Columbia v. Heller constituted an “absolute prohibition of handguns held and used for self-defense in the home,” which the Court determined does violate the Second Amendment. 554 U.S. at 635-36. Although it has not yet examined “the full scope of the Second Amendment” right, it made clear in Heller that the right “is not unlimited.” Id. at 626. Certain “longstanding prohibitions” are “presumptively lawful,” including “laws imposing conditions and qualifications on the commercial sale of arms.” Id. at 626-27. The Second Amendment does not confer “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” Id.

The First Circuit has adopted a two-step approach for analyzing Second Amendment claims. Gould, 907 F.3d at 668-69. At the first step, the court asks “whether the challenged law burdens conduct that falls within the scope of the Second Amendment’s guarantee.” Id. “This is a backward-looking inquiry, which seeks to determine whether the regulated conduct was understood to be within the scope of the right at the time of ratification . . .” Id. If the challenged law imposes no such burden, it is valid. “If, however, it burdens conduct falling within the scope of the Second

Amendment,” the court moves to the next step at which it determines the appropriate level of scrutiny and whether the challenged law survives that determination. Id.

C. Scope of the Second Amendment Right

The Supreme Court recognizes that “laws imposing conditions and qualifications on the commercial sale of arms” are a category of regulations that are “presumptively lawful.” Heller, 554 U.S. at 626-27. However, neither the First Circuit nor the Supreme Court has interpreted the full confines of the phrases “presumptively lawful” or “conditions and qualifications on the commercial sale of arms.” Accordingly, courts have been inclined to assume without deciding that a regulation burdens conduct protected by the Second Amendment for purposes of analysis, rather than delving into the question whether the regulation falls into the exception of “conditions and qualifications on the commercial sale of arms.” See, e.g., Pena v. Lindley, 898 F.3d 969, 976 (9th Cir. 2018) (“The opaqueness of the presumption of legality for ‘conditions and qualifications on the commercial sale of arms’ likely explains why we and other courts often have assumed without deciding that a regulation does burden conduct protected by the Second Amendment rather than parse whether the law falls into that exception. . . . We, too, follow this well-trodden and ‘judicious course.’”); see also Worman v. Healey, 922 F.3d 26, 35 (1st Cir. 2019) (deciding case at second rather than first step of inquiry, explaining that “courts should not rush to decide unsettled issues when the exigencies of a particular case do not require such definitive measures”).

The same approach is taken here, by assuming, without deciding, that the challenged regulations touch on conduct protected by the Second Amendment. “By making this assumption, [the court] bypass[es] the constitutional obstacle course of

defining the parameters of the Second Amendment's individual right in the context of commercial sales.” Pena, 898 F.3d at 976.

D. Scrutiny

Because the challenged Handgun Safety Regulations are assumed to implicate Plaintiffs’ Second Amendment rights, the analysis turns to the second step to determine the appropriate level of scrutiny and then to use it to assess the regulations. See Gould, 907 F.3d at 668-69.

1. Level of Scrutiny

Plaintiffs argue that strict scrutiny applies because the Handgun Safety Regulations implicate the core of the Second Amendment right, Docket # 18 at 11-12, while Defendants assert that only intermediate scrutiny is required, Docket # 15 at 13-15. Intermediate scrutiny is appropriate here.

“The appropriate level of scrutiny ‘turn[s] on how closely a particular law or policy approaches the core of the Second Amendment right and how heavily it burdens that right.’” Worman, 922 F.3d at 36 (quoting Gould, 907 F.3d at 670-71). “[I]ntermediate scrutiny is appropriate as long as a challenged regulation either fails to implicate the core Second Amendment right or fails to impose a substantial burden on that right.” Worman, 922 F.3d at 39 (“[I]ntermediate scrutiny is the appropriate level of scrutiny for evaluating a law . . . that arguably implicates the core Second Amendment right to self-defense in the home but places only a modest burden on that right.”).

The First Circuit has established “that the core Second Amendment right is limited to self-defense in the home” by “responsible, law-abiding individuals.” Id. (quoting Gould, 907 F.3d at 671). Plaintiffs here contend that the regulations do affect

their ability to defend themselves in their homes. Assuming in Plaintiffs' favor that the regulations implicate the core of the Second Amendment right, the inquiry then focuses on "how heavily [they] burden[] that right." Worman, 922 F.3d at 36 (quoting Gould, 907 F.3d at 671).

The Handgun Safety Regulations in this case place, at most, a modest burden on the core Second Amendment right. The regulations only require that handguns lawfully sold within the Commonwealth meet certain safety requirements; they do not restrict the possession of handguns by eligible individuals in the home or elsewhere. See Draper v. Healey, 98 F. Supp. 3d 77, 85 (D. Mass. 2015) (finding that regulation prohibiting the sale of handguns without a load indicator or magazine safety disconnect "does not substantially burden the right to bear arms in self-defense in one's home" because it "in no way prevents citizens from obtaining a wide array of firearms"). Even though the Handgun Safety Regulations may limit the types of handguns with which individuals can defend themselves, to only those that meet the safety requirements of the regulations—unlike Heller, they do not result in a total prohibition against keeping a handgun for self-defense within the home. See Pena, 898 F.3d at 977-78; see also Worman, 922 F.3d at 40 (finding Massachusetts law banning certain semiautomatic firearms passed intermediate scrutiny because "the Act does not outlaw all semiautomatic firearms and magazines[, n]or does it circumscribe in any way the fundamental right of law-abiding, responsible citizens to possess handguns in their homes for self-defense").

Plaintiffs argue that by prohibiting the sale of handguns that do not meet the safety requirements, the Handgun Safety Regulations in effect result in a total ban on the sale and thus possession of those specific makes and models, thereby running afoul

of the Supreme Court's admonition in Heller that states cannot "ban the possession of handguns." Docket # 18 at 13-14 (citing Heller, 554 U.S. at 629). Plaintiffs' argument, however, stretches Heller beyond the plain meaning of its text without any authority for doing so. Prohibiting the sale of specific makes and models of handguns for safety reasons is not the same as a total prohibition of the sale of handguns. See Pena, 898 F.3d at 978 ("being unable to purchase a subset of semiautomatic weapons, without more, does not significantly burden the right to self-defense in the home"); see also Heller, 554 U.S. at 626 ("[T]he right secured by the Second Amendment is not unlimited. . . . [It] was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.").

Eligible individuals within Massachusetts can freely choose from over a thousand handguns listed on the June 2021 Roster that also meet the Attorney General safety regulations. The fact that they cannot purchase every single handgun that may be in common use and available for purchase in other states, does not transform the regulations into a total ban on a category or class of firearms (i.e., handguns in this case). To conclude otherwise would eviscerate Heller's holding that some regulation of firearm possession is permissible. See Worman, 922 F.3d at 32 n.2.

Two additional points reinforce the limited burden placed on individuals' ability to exercise their Second Amendment right: First, the Handgun Safety Regulations carve out private sales of handguns from their safety requirements. Second, Plaintiffs do not claim that the handguns available for purchase in Massachusetts are inadequate to exercise their core Second Amendment right. Thus, there is no basis to conclude that the eighteen handguns specifically identified by Plaintiffs in their complaint, as well as

any other handguns in common use in other states, that allegedly are not available for purchase in the Commonwealth because of the regulations, would in some way enable or enhance an individual's exercise of their right to possess a handgun in their home for self-defense in a way not achievable by the handguns that are available.

Because the Handgun Safety Regulations do not impose a substantial burden on Plaintiffs' core Second Amendment right, intermediate scrutiny is appropriate to assess the enforceability of the regulations. See e.g., Pena 898 F.3d at 979.

2. Application of Intermediate Scrutiny

"To survive intermediate scrutiny, a statute 'must be substantially related to an important governmental objective.'" Worman, 922 F.3d at 38 (quoting Gould, 907 F.3d at 672). "To achieve this substantial relationship, there must be a 'reasonable fit' between the restrictions imposed by the law and the government's valid objectives, 'such that the law does not burden more conduct than is reasonably necessary.'" Id. (quoting Gould, 907 F.3d at 674). In its assessment, a court may consider "the legislative history of the enactment as well as studies in the record or cited in pertinent case law." Pena, 898 F.3d at 979 (internal quotation marks omitted). A court cannot substitute "its own appraisal of the facts for a reasonable appraisal made by the legislature." Gould, 907 F.3d at 673.

Plaintiffs concede that the Commonwealth has important objectives in protecting "[p]ublic safety and preventing accidental firearm injuries," see Docket # 18 at 15, and the First Circuit has recently reiterated the Commonwealth's important objective in preventing crime, see Worman, 922 F.3d at 39 ("Massachusetts indubitably 'has compelling governmental interests in both public safety and crime prevention'").

Accordingly, the only remaining question is whether the regulations substantially relate to those interests. Id.

Both § 123 and the Attorney General's regulations, require that handguns sold commercially are (1) not made of inferior materials or, if they are, they nonetheless pass a performance test; (2) not prone to uncontrolled firing or exploding during normal use; and (3) not prone to discharging accidentally when dropped. 940 CMR § 16.04; Mass. Gen. Laws ch. 140, § 123, cls. 18-20. They allow purchasers of handguns to reasonably rely on the assumption that the handgun will not accidentally fire, explode, or pose any other threat to their own safety and the safety others who may have access to the firearm, especially children.

In addition, the Commonwealth's interest in public safety and the Attorney General's child-proofing requirements mutually support the regulations in issue. As Defendants noted, the GAO Report "found that all of the accidental firearm fatalities caused by children under the age of six could have been prevented had the firearm been equipped with childproofing features like those required by the regulations." Docket # 15 at 17-18 (citing GAO Report at 3, 34). The childproofing regulations are satisfied by any mechanism that "effectively precludes an average five-year old from operating a handgun when it is ready to fire," thus Plaintiffs' criticism of one such mechanism—a ten-pound trigger pull (see Docket # 18 at 18)—does not alter the analysis. See 940 CMR §§ 16.05(2), (4) ("such mechanisms shall include, but are not limited to: raising trigger resistance to at least a ten pound pull, altering the firing mechanism so that an average fire year old child's hands are too small to operate the handgun, or requiring a series of multiple motions in order to fire the handgun," as well

as a hammer deactivation device). Similarly, the Attorney General's requirement that handguns be sold with a "safety device" that prevents unauthorized use, 940 CMR § 16.05(1), is supported by the GAO Report's finding that one in three accidental firearm deaths in 1988 and 1989 could have been prevented by the addition of a firearm safety device. Docket #15 at 18 (citing GAO Report at 3, 36).

The requirement that handguns contain tamper-resistant serial numbers also reasonably supports the Commonwealth's interests in public safety and crime prevention. See United States v. Marzzarella, 614 F.3d 85, 98 (3d Cir. 2010). As the Third Circuit explained in an opinion upholding a law prohibiting the possession of a handgun with an obliterated serial number under intermediate scrutiny, "there would appear to be no compelling reason why a law-abiding citizen would prefer an unmarked firearm" which has "value primarily for persons seeking to use [it] for illicit purposes." Id. at 95. The requirement here, is thus also "properly designed to remedy the problem of untraceable firearms." See id. at 101.

Finally, the requirement that semiautomatic pistols contain either a load indicator or magazine safety disconnect easily passes muster. These exact measures have already been deemed constitutional within this jurisdiction and others. See Draper v. Healey, 98 F. Supp. 3d 77, 85 (D. Mass. 2015 (Gorton, J.) (finding Attorney General's load indicator or magazine safety disconnect requirement enforceable under any level of heightened scrutiny); Pena, 898 F.3d at 980 (finding load indicator or magazine safety disconnect requirement "reasonably fit with California's interest in public safety"). These regulations are further supported by the GAO findings that twenty-three percent of accidental firearm fatalities occurred because individuals incorrectly believed the

firearms were unloaded and that those deaths could have been prevented by a load indicator. Docket # 15 at 18-19 (citing GAO Report at 3).

Each individual safety requirement set forth in the regulations buttresses the important government interests identified; wherefore the requirement that handguns be pre-approved for sale and listed on the Roster fully passes scrutiny.

The existence of available alternatives that may promote public safety—e.g., “education, training, and public outreach regarding basic rules of firearm safety, storage, and use” identified by Plaintiffs (Docket # 1 ¶ 42)—do not alter the analysis. Nor is the analysis altered by Plaintiffs’ argument that the GAO Report is unsuitable to support the enforceability of the regulations because it showed that the studied safety requirements only prevented some, but not all or enough, accidental deaths. Docket # 18 at 15-18. The means for accomplishing the important government interests need not be narrowly tailored nor is there any requirement that regulations prevent all deaths. See Gould, 907 F.3d at 674 (“a legislature’s chosen means need not be narrowly tailored to achieve its ends” when applying intermediate scrutiny); id. at 674-75 (finding requirements for obtaining a license to carry firearm in public passed intermediate scrutiny because states with more restrictive firearm licensing schemes have lower rates of gun-related deaths, even though not all deaths were prevented). Nor should the Court substitute its own judgment for that of the Attorney General and Legislature in determining the appropriate means to pursue its important interests. See Worman, 922 F.3d at 40 (it is “the legislature’s prerogative . . . to weigh the evidence, choose among conflicting inferences, and make the necessary policy judgments,” “[t]he role of a reviewing court is

limited to ensuring ‘that, in formulating its judgments, [the legislature] has drawn reasonable inferences based on substantial evidence’”).

The Handgun Safety Regulations are well supported and reasonable, a conclusion reinforced by the fact that Massachusetts “consistently has one of the lowest rates of gun-related deaths in the nation.” See Gould 907 F.3d at 674-75. The challenged regulations therefore pass intermediate scrutiny.

III. Conclusion.

Defendants’ Motion to Dismiss Plaintiffs’ Complaint (Docket # 14) is ALLOWED.

May 19, 2022
DATE

Ryan W. Zobel
RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE

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**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

Stefano Granata, et al.

Plaintiffs

V.

CIVIL ACTION

NO. 21-10960-RWZ

Maura Healey, et al.

Defendants

ORDER OF DISMISSAL

Zobel, D. J.

In accordance with the Court's Memorandum and Order dated May 19, 2022
ALLOWING the Defendant's Motion to Dismiss, this civil action is hereby DISMISSED.

By the Court,

May 19, 2022
Date

/s/Douglas Warnock
Deputy Clerk

United States Court of Appeals For the First Circuit

No. 22-1478

STEFANO GRANATA; JUDSON THOMAS; COLBY CANNIZZARO; CAMERON
PROSPERI; GUNRUNNER, LLC; FIREARMS POLICY COALITION, INC.,

Plaintiffs - Appellants,

v.

MAURA HEALEY, in her official capacity as Attorney General of the Commonwealth of
Massachusetts; THOMAS TURCO, in his official capacity as Secretary of Executive Office
of Public Safety and Security of the Commonwealth of Massachusetts,

Defendants - Appellees.

CASE OPENING NOTICE

Issued: June 22, 2022

The above-captioned appeal was docketed in this court today pursuant to Rule 12 of the Federal Rules of Appellate Procedure. The above case number and caption (unless modified or amended as reflected in the heading of future court notices or orders) should be used on all papers subsequently submitted to this court. If any party disagrees with the clerk's office's designation of the parties on appeal, it must file a motion to amend the caption with any supporting documentation attached. Absent an order granting such a motion, the parties are directed to use the above caption on all pleadings related to this case.

Appellant must complete and return the following forms to the clerk's office by **July 6, 2022** to be deemed timely filed:

- [Appearance Form](#)
- [Transcript Report/Order Form](#) (Please carefully read the instructions for completing and filing this form.)
- [Docketing Statement](#)

These forms are available on the court's website at www.ca1.uscourts.gov, under "Forms & Notices." Failure to comply with the deadlines set by the court may result in dismissal of the appeal for lack of diligent prosecution. See 1st Cir. R. 3.0, 10.0, and 45.0.

Upon confirmation by the circuit clerk that the record is complete either because no hearing was held, no transcript is necessary, or the transcript is on file, the clerk's office will set the briefing schedule and forward a scheduling notice to the parties.

Unless the appellant was already determined to be in forma pauperis in the underlying district court action, or was determined to be financially unable to obtain an adequate defense in a criminal case, see Fed. R. App. P. 24(a)(3), a filing fee is due within seven days of filing the notice of appeal. An appellant not already determined to be indigent, who seeks to appeal in forma pauperis, must file a motion and financial affidavit in the district court in compliance with Fed. R. App. P. 24. For an appellant not already determined to be indigent, failure to pay the filing fee or file a motion seeking in forma pauperis status with the district court within fourteen days of the date of this notice, may result in the appeal being dismissed for lack of prosecution. 1st Cir. R. 3.0(b).

An appearance form should be completed and returned immediately by any attorney who wishes to file pleadings in this court. 1st Cir. R. 12.0(a) and 46.0(a)(2). Any attorney who has not been admitted to practice before the First Circuit Court of Appeals must submit an application and fee for admission using the court's Case Management/Electronic Case Files ("CM/ECF") system prior to filing an appearance form. 1st Cir. R. 46.0(a). *Pro se* parties are not required to file an appearance form.

Dockets, opinions, rules, forms, attorney admission applications, the court calendar and general notices can be obtained from the court's website at www.ca1.uscourts.gov. Your attention is called specifically to the notice(s) listed below:

- [Notice to Counsel and Pro Se Litigants](#)
- [Transcript Notice](#)

If you wish to inquire about your case by telephone, please contact the case manager at the direct extension listed below.

Maria R. Hamilton, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
John Joseph Moakley
United States Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210
Case Manager: Christine - (617) 748-9026

United States Court of Appeals For the First Circuit

NOTICE OF ELECTRONIC AVAILABILITY OF CASE INFORMATION

The First Circuit has implemented the Federal Judiciary's Case Management/Electronic Case Files System ("CM/ECF") which permits documents to be filed electronically. In addition, most documents filed in paper are scanned and attached to the docket. In social security and immigration cases, members of the general public have remote electronic access through PACER only to opinions, orders, judgments or other dispositions of the court. Otherwise, public filings on the court's docket are remotely available to the general public through PACER. Accordingly, parties should not include in their public filings (including attachments or appendices) information that is too private or sensitive to be posted on the internet.

Specifically, Fed. R. App. P. 25(a)(5), Fed. R. Bank. P. 9037, Fed. R. Civ. P. 5.2 and Fed. R. Cr. P. 49.1 require that parties not include, or partially redact where inclusion is necessary, the following personal data identifiers from documents filed with the court unless an exemption applies:

- **Social Security or Taxpayer Identification Numbers.** If an individual's social security or taxpayer identification number must be included, only the last four digits of that number should be used.
- **Names of Minor Children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- **Dates of Birth.** If an individual's date of birth must be included, only the year should be used.
- **Financial Account Numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.
- **Home Addresses in Criminal Cases.** If a home address must be included, only the city and state should be listed.

See also 1st Cir. R. 25.0(m).

If the caption of the case contains any of the personal data identifiers listed above, the parties should file a motion to amend caption to redact the identifier.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, national security information, and sensitive security information as described in 49 U.S.C. § 114.

Attorneys are urged to share this notice with their clients so that an informed decision can be made about inclusion of sensitive information. The clerk will not review filings for redaction.

Filers are advised that it is the experience of this court that failure to comply with redaction requirements is most apt to occur in attachments, addenda, or appendices, and, thus, special attention should be given to them. For further information, including a list of exemptions from the redaction requirement, see <http://www.privacy.uscourts.gov/>.

United States Court of Appeals For the First Circuit

NOTICE TO COUNSEL REGARDING MANDATORY REGISTRATION AND TRAINING FOR ELECTRONIC FILING (CM/ECF)

On August 21, 2017, the U.S. Court of Appeals for the First Circuit upgraded its CM/ECF system to NextGen CM/ECF, the latest iteration of the electronic case filing system. Use of the electronic filing system is mandatory for attorneys. If you intend to file documents and/or receive notice of docket activity in this case, please ensure you have completed the following steps:

- **Obtain a NextGen account.** Attorneys who had an e-filing account in this court prior to August 21, 2017 are required to update their legacy account in order to file documents in the NextGen system. Attorneys who have never had an e-filing account in this court must register for an account at www.pacer.gov. For information on updating your legacy account or registering for a new account, go to the court's website at www.ca1.uscourts.gov and select *E-Filing (Information)*.
- **Apply for admission to the bar of this court.** Attorneys who wish to e-file must be a member of the bar of this court. For information on attorney admissions, go to the court's website at www.ca1.uscourts.gov and select *Attorney Admissions* under the *Attorney & Litigants* tab. Bar admission is not required for attorneys who wish to receive notice of docket activity, but do not intend to e-file.
- **Review Local Rule 25.** For information on Loc. R. 25.0, which sets forth the rules governing electronic filing, go to the court's website at www.ca1.uscourts.gov and select *First Circuit Rulebook* under the *Rules & Procedures* tab.

United States Court of Appeals For the First Circuit

ORDER OF COURT

Entered: February 9, 2021

In response to recent disclosures of wide-spread breaches of both private sector and government computer systems, the Court has adopted new security procedures to protect any highly sensitive document (HSD) filed with the Court that, if improperly disclosed, could cause harm to the United States, the Federal Judiciary, litigants, or others.

HSDs are documents containing information that is likely to be of interest to the intelligence service of a foreign government and the use or disclosure of such information by a hostile foreign government would likely cause significant harm to the United States or its interests. Examples of HSDs include unclassified sealed documents involving national security, foreign sovereign interests, criminal activity related to cybersecurity or terrorism, investigation of public officials, and extremely sensitive commercial information likely to be of interest to foreign powers.

The following types of sealed documents, if they do not fall into one of the categories above, typically will not qualify as HSDs: (1) presentence reports and related documents; (2) pleadings related to cooperation in criminal cases; (3) Social Security records; (4) administrative immigration records; and (5) most sealed documents in civil cases.

The designation of a document as highly sensitive is typically made by the district court or originating agency. Documents that have previously been designated by the district court or an agency as highly sensitive will ordinarily be treated in the same manner by this court. See 1st Cir. R. 11.0(c)(1).

If a document qualifies as an HSD as that term is described above, a filer is required to file a motion to treat that document as an HSD. The movant must serve the motion and the proposed HSD on all other parties by mail with proof of service under Fed. R. App. P. 25(d)(1). The motion and each proposed HSD should be conspicuously marked as a “HIGHLY SENSITIVE DOCUMENT” and placed inside an envelope marked “HIGHLY SENSITIVE.” The motion to treat a document as an HSD should be filed contemporaneously with the filing of a motion to seal the document and should be filed in paper format only under the procedures and requirements of 1st Cir. R. 11.0(c). The motion must set forth in detail why the proposed document constitutes a highly sensitive document under the criteria set out in this order, including the specific grounds for asserting that the document contains information that is likely to be of interest to the intelligence service of a foreign government and the use or disclosure of such information by a hostile foreign government would likely cause significant harm to the United States or its interests. Conclusory assertions will not be deemed a sufficient basis for filing a motion to treat a sealed document as an HSD. If a filer believes that a previously filed document in an ongoing case before

the court qualifies as an HSD, a motion to treat the sealed document as an HSD may be filed. There is no need to file such a motion in a closed case.

/s/ Jeffrey R. Howard
Jeffrey R. Howard
Chief Judge

cc:

Richard C. Chambers Jr.
Raymond Mark DiGuiseppe
Phoebe Fischer-Groban
Grace Gohlke
Jason A. Guida
William Sack

United States Court of Appeals For the First Circuit

NOTICE TO ALL CM/ECF USERS REGARDING "NATIVE" PDF REQUIREMENT

All documents filed electronically with the court must be submitted as "native" Portable Document ("PDF") files. See 1st Cir R. 25.0. A **native PDF file** is created by electronically converting a word processing document to PDF using Adobe Acrobat or similar software. A **scanned PDF file** is created by putting a paper document through an optical scanner. Use a scanner **ONLY** if you do not have access to an electronic version of the document that would enable you to prepare a native PDF file. If you fail to file a document in the correct format, you will be asked to resubmit it.