

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

JUNE SHEW, et al.,

Plaintiffs.

v.

Case No. 3:13-cv-739-AVC

DANNEL P. MALLOY, et al.,

Defendants.

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**BRIEF OF *AMICI CURIAE* -- LAW CENTER TO PREVENT GUN VIOLENCE,  
CONNECTICUT AGAINST GUN VIOLENCE, MOMS DEMAND ACTION FOR GUN  
SENSE IN AMERICA, AND CLEVELAND SCHOOL REMEMBERS --  
IN SUPPORT OF DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT  
AND IN OPPOSITION TO PLAINTIFFS' MOTIONS FOR PRELIMINARY  
INJUNCTION AND SUMMARY JUDGMENT**

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### INTEREST OF *AMICI CURIAE*

*Amicus curiae* the Law Center to Prevent Gun Violence (“the Law Center”) is a non-profit, national law center dedicated to reducing gun violence and the destructive impact it has on communities. The Law Center focuses on providing comprehensive legal expertise to promote smart gun laws. These efforts include tracking all Second Amendment litigation nationwide and providing support to jurisdictions facing legal challenges. As an *amicus*, the Law Center has provided informed analysis in a variety of firearm-related cases, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010).

The Law Center has a particular interest in this litigation because it was formed in the wake of an assault weapon massacre at a San Francisco law firm in 1993. The shooter in that rampage was armed with two assault weapons and multiple large capacity ammunition magazines, some capable of holding up to 50 rounds of ammunition.

*Amicus curiae* Connecticut Against Gun Violence (CAGV) has been since 1993 the predominant statewide gun violence prevention organization in Connecticut. Its mission has been to reduce gun violence through education and legislative advocacy. Its members and supporters number more than 30,000 Connecticut residents. The organization has been involved in every legislative effort to reform gun safety law since its founding in 1993. It was in the forefront of the legislative campaign following the Sandy Hook Elementary school shooting, including organization of a grass roots effort that played a critical role leading to the major reforms included in Public Act 13-3, signed into law by Governor Dannel Malloy on April 4, 2013. In its effort to keep communities, families, and children safe from gun violence, CAGV has strongly advocated the position that the changing nature of weapons towards more powerful, military style ones is a major threat to the public safety of the people of Connecticut.

*Amicus curiae* Moms Demand Action for Gun Sense in America (“Moms Demand Action”), formed in the aftermath of the mass shooting at Sandy Hook Elementary School in December 2012, is a nonpartisan grassroots organization with more than 100,000 members and chapters in every state. A core purpose of Moms Demand Action is to advocate for common-sense federal and state gun laws in order to curtail the epidemic of gun violence in the United States. Moms Demand Action strongly supports laws that protect public safety by prohibiting assault weapons and large capacity ammunition magazines.

*Amicus curiae* Cleveland School Remembers is a grassroots group motivated to organize in the aftermath of the Sandy Hook School shooting of December 14, 2012. The founding members were teachers and staff at Cleveland Elementary School in Stockton, California in January of 1989 when a gunman with a semiautomatic assault weapon equipped with high capacity magazines came onto their campus and murdered five students and wounded 31 others, including a teacher, in just three minutes. In the aftermath of the Cleveland School shooting, the California Legislature enacted a ban on assault weapons and adopted a ban on large capacity ammunition magazines in 2001.

Cleveland School Remembers works locally and nationwide to bring about strong, enforceable gun violence prevention legislation through affiliations with education, law enforcement, and other organizations. The organization supports laws banning assault weapons and large capacity magazines.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

On December 14, 2012, a man walked into Sandy Hook Elementary School in Newtown, Connecticut, carrying an assault weapon with large capacity ammunition magazines and hundreds of rounds of ammunition. He shot 20 children and six adults before turning the gun on himself – all *within five minutes*. In that very short time, the gunman fired 155 bullets and shot

each of his victims multiple times, including one six-year-old who was shot 11 times. In response to this horrific incident and the many others preceding it, Connecticut strengthened its longstanding ban on assault weapons, enacting the Gun Violence Prevention and Children's Safety Act (the "Act") to prevent such tragedies from happening again.

This Court should grant Defendants' Cross-Motion for Summary Judgment and deny Plaintiffs' Motion for Preliminary Injunction and Motion for Summary Judgment because the Gun Violence Prevention and Children's Safety Act, Public Act 13-3 (the "Act") and its prohibitions on assault weapons and large capacity ammunition magazines are fully consistent with the Second Amendment.

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment protects an individual's right to possess an operable handgun in the home for self-defense. The Act does not conflict with this right, as residents may lawfully purchase and possess numerous handguns and ammunition magazines for use in domestic self-protection. Plaintiffs, however, are not satisfied. They demand that this Court expand *Heller* to protect the possession of assault weapons and large capacity ammunition magazines, devices of military origin that are designed to kill large numbers of people quickly and efficiently. *Heller* does not support such an expansion and, as courts elsewhere have ruled, the Second Amendment does not guarantee the right to possess these weapons, which are frequently employed in mass shootings and attacks on law enforcement and are not suitable for self-defense.

As discussed in Section I below, Plaintiffs' challenge to the Act fails because the Act places no burden on any Second Amendment right. As shown in Section II, even if the Act did implicate the Second Amendment, it easily passes constitutional muster under any applicable standard of review.

## ARGUMENT

### I. THE ACT FALLS OUTSIDE THE SCOPE OF THE SECOND AMENDMENT RIGHT RECOGNIZED IN *HELLER*.

#### A. The State of Connecticut, like many other state and local governments nationwide, prohibits assault weapons and large capacity ammunition magazines.<sup>1</sup>

Assault weapons have been banned in Connecticut since 1993. The Act revised the definition of “assault weapon” under Connecticut law. Conn. Gen. Stat. § 53-202a *et seq.* Under the Act, semiautomatic rifles, shotguns, and pistols qualify as prohibited assault weapons if they have any of a number of specifically enumerated characteristics that enable the firing of over a hundred bullets per minute, aid in the commission of mass murders and assaults, or facilitate the weapon’s concealment, purposes that are all inconsistent with responsible self-defense in the home. *See* Conn. Gen. Stat. § 53-202a(1)(E). Plaintiffs’ challenge focuses on three of these characteristics:

- A folding or telescoping stock. This feature promotes concealment and mobility, allowing shooters to easily hide their weapons before a rampage and move from place to place during mass killings.
- A pistol grip that protrudes conspicuously beneath the action of the weapon. This feature allows a shooter greater control during rapid fire (when the barrel of the gun can jump and quickly get too hot to hold), making it deadlier.

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<sup>1</sup> In the wake of the Newtown shooting, Colorado and New York also enacted laws either strengthening existing prohibitions or creating new prohibitions on the sale and/or possession of assault weapons and/or large capacity magazines. H.B. 13-1224, 69th Gen. Assemb., Reg. Sess. (Colo. 2013); N.Y. Penal Law §§ 265.02(7)-(8), 265.37. States that – like Connecticut – already banned assault weapons and large capacity magazines include California, Massachusetts, Hawaii, Maryland, and New Jersey. Cal. Penal Code §§ 12275-1290 (2013); Haw. Rev. Stat. Ann. §§134-1, 134-4, 134-8 (2013); Md. Code Ann., Crim. Law §§ 4-301-4-306 (2013); Mass. Gen. Laws ch. 140, §§ 121-123, 131, 131M (2013); N.J. Stat. Ann. §§ 2C:39-1w, 2C:39-5, 2C:58-5, 2C:58-12, 2C:58-13 (2013). Similarly, several local governments also prohibit assault weapons and/or large capacity magazines including the District of Columbia, Cook County, Illinois, and New York City. *See* D.C. Code Ann. §§ 7-2551.01 – 7-2551.03; Cook Cnty. Code of Ordinances §§ 54-211 – 54-213; New York City Admin. Code § 10-301.

- A thumbhole stock. This feature also helps a shooter retain control of a firearm while holding the firearm at the hip, facilitating the spraying of rapidly-fired ammunition, making it easier to kill many people quickly.

Clearly, these features have nothing to do with lawful self-defense in the home and everything to do with firing as many rounds as quickly and easily as possible in public.

Connecticut also enacted a prohibition on the possession or transfer of any “magazine, belt, drum, feed strip, or similar device that has the capacity of, or can be readily restored or converted to accept, more than ten rounds of ammunition”. Conn. Gen. Stat. § 53-202p(a)(1), 53-202p(b). The Act requires that persons possessing such magazines either lawfully dispose of them, register them and keep them at home, or permanently alter them to limit the device’s capacity to no more than 10 rounds of ammunition. Conn. Gen. Stat. §§ 53-202p(e)(3), 53-202q(f)(7), 53-202p(a)(1).

**B. The Second Amendment Does Not Protect a Right to Possess Assault Weapons or Large Capacity Ammunition Magazines.**

The United States Supreme Court held in *District of Columbia v. Heller* that the Second Amendment protects the right to possess a handgun in the home for the purpose of lawful self-defense. 554 U.S. at 635. The Court in *Heller* found the D.C. ordinance at issue invalid because it banned handguns of *any type*. *Id.* at 628, 636.

**1. The Second Amendment Does Not Protect Dangerous and Unusual Weapons.**

The Second Amendment is not “unlimited.” *Heller*, 554 U.S. at 626. It does not include the “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* The *Heller* Court explicitly excluded certain classes of weapons from the scope of the Second Amendment, specifically endorsing the “historical tradition of prohibiting the carrying of dangerous and unusual weapons.” *Id.* at 627, *aff’g United States v. Miller*, 307 U.S. 174, 178 (1939) (holding that short-barreled shotguns are not protected by the Second

Amendment, because they are dangerous and unusual) (internal quotation omitted).<sup>2</sup> Consistent with *Heller*'s rule circumscribing the reach of the Second Amendment, in *McDonald v. City of Chicago*, the Supreme Court emphasized that “incorporation [of the Second Amendment into the Due Process Clause of the Fourteenth Amendment] does not imperil every law regulating firearms,” and agreed that “reasonable firearms regulation will continue under the Second Amendment.” *McDonald*, 130 S. Ct. 3020, 3046 (2010) (internal citations omitted).

The Second Circuit has confirmed the limited nature of the right recognized in *Heller*: “[T]he Second Amendment right does not encompass all weapons, but only those ‘typically possessed by law-abiding citizens for lawful purposes’ and thus does not include the right to possess ‘dangerous and unusual weapons.’” *United States v. Decastro*, 682 F.3d 160, 165 n.4 (2d Cir. 2012) (quoting *Heller*, 554 U.S. at 625, 627) (emphasis added). Courts outside the Second Circuit have also upheld other prohibitions that restrict the possession of “dangerous and unusual” weapons after *Heller*. See, e.g., *Heller v. Dist. of Columbia* (“*Heller II*”), 670 F.3d 1244, 1263-64 (D.C. Cir. 2011) (acknowledging *Heller*'s exception for “dangerous and unusual” weapons, and upholding D.C. assault weapons and large capacity magazine bans against Second Amendment challenge); *United States v. Fincher*, 538 F.3d 868, 874 (8th Cir. 2008) (defendant's possession of machine gun not protected by Second Amendment as those firearms fall “within the category of dangerous and unusual weapons”); *People v. James*, 94 Cal. Rptr. 3d 576, 586,

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<sup>2</sup> The Supreme Court also identified a non-exhaustive list of “presumptively lawful regulatory measures” (*Heller*, 554 U.S. at 627 n.26), including “longstanding prohibitions” on firearm possession by felons and the mentally ill, as well as laws forbidding firearm possession in sensitive places such as schools and government buildings, and imposing conditions on the commercial sale of firearms. *Id.* at 626-27. In addition, the Court declared that its analysis should not be read to suggest “the invalidity of laws regulating the storage of firearms to prevent accidents.” *Id.* at 632.



174 Cal. App. 4<sup>th</sup> 662, 676 (Cal. Ct. App. 2009) (upholding California's assault weapon prohibition because assault weapons fall within category of “dangerous and unusual” weapons).

**a) Assault Weapons Are Unusually Dangerous Military-Style Firearms.**

Assault weapons are categorically different from the handguns at issue in *Heller*. Assault weapons are semiautomatic versions of fully automatic weapons designed for one purpose: combat. For example, the AR-15 rifle, some versions of which are prohibited by the Act, was originally designed as a military weapon and issued primarily to combat troops, special forces, and other military units. See ArmaLite, *A Historical Review of ArmaLite* 3, 12 (Jan. 4, 2010), <http://www.armalite.com/images/Library/History.pdf>. The AR-15 was eventually reclassified as the M-16 and “became the military’s basic service rifle.” *Id.* at 12.

The only significant difference between civilian and military assault rifles is the manner in which they fire multiple bullets (i.e., whether they are “semiautomatic” or “fully automatic”). “A semiautomatic weapon fires one bullet for each squeeze of the trigger. After each shot, the gun automatically loads the next bullet and cocks itself for the next shot, thereby permitting a somewhat faster rate of fire relative to non-automatic firearms.” Christopher S. Koper, U.S. Dep’t of Justice, *An Updated Assessment of the Federal Assault Weapons Ban*, p. 4 n.1 (2004). In contrast, a fully automatic assault weapon “fires continuously as long as the trigger is held back - until it runs out of ammunition.” See Violence Policy Ctr., *Bullet Hoses: Semiautomatic Assault Weapons – What Are They? What’s So Bad About Them?* Sec. 2 (May 2003), available at <http://www.vpc.org/studies/hosetwo.htm>.

In reality, the differences between firing a semiautomatic assault weapon and a fully automatic firearm are minimal, and both remain dangerous and unusual weapons within the meaning of *Heller*. Most notably, both can fire more than one hundred bullets in a single minute.

In a police department test, a fully automatic UZI with a 30-round magazine “emptied in slightly less than two seconds . . . while the same magazine was emptied *in just five seconds* on semiautomatic” mode. *Heller II*, 670 F.3d at 1262-63 (quoting *Firearms Registration Amendment Act of 2008: Hearing on Bill 17-0843 Before the Comm. on Public Safety and the Judiciary of the Council of the District of Columbia* (Oct. 1, 2008) (statement of Brian J. Siebel, Brady Ctr. To Prevent Gun Violence) (“Siebel Statement”) (emphasis added)).

Just like fully automatic weapons, semiautomatic assault weapons are “designed to enhance [the] capacity to shoot multiple human targets very rapidly.” *Id.* Attacks in which shooters use semiautomatic weapons, particularly when combined with large capacity magazines, result in a greater number of bullets fired, more injuries, and injuries of greater severity than attacks in which ordinary handguns are used. Koper, *supra*, at 89. A study analyzing mass shooting incidents before the federal assault weapons ban concluded that mass shooting incidents involving semiautomatic weapons with large capacity magazines resulted in an average of 16 more victims per incident than attacks that did not involve these weapons. Koper, *supra*, at 86.

The Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) confirms that “[a]ssault weapons were designed for rapid fire, close quarter shooting at human beings. That is why they were put together the way they were.” ATF, *Assault Weapons Profile* 19 (1994). “You will not find these guns in a duck blind or at the Olympics. They are mass produced mayhem.” *Id.*

For these reasons, weapons like the AR-15, AK-47, and UZI models that are prohibited by the Act are frequently chosen by criminals for assaults and homicides. See *Heller II*, 670 F.3d at 1263 (citing Dep’t of Treasury, *Study on the Sporting Suitability of Modified Semiautomatic*

*Assault Rifles* 34-35, 38 (1998)) (“assault weapons are preferred by criminals . . . because of their high firepower.”). “[T]he military features of semiautomatic assault weapons are designed to enhance their capacity to shoot multiple human targets very rapidly’ and ‘[p]istol grips on assault rifles . . . help stabilize the weapon during rapid fire and allow the shooter to spray-fire from the hip position.’” *See Heller II*, 670 F.3d at 1262-63 (quoting Siebel Statement). Indeed, assault weapons are 20 times more likely to be used in the commission of a crime than other kinds of weapons. *See* Jim Stewart & Andrew Alexander, *Assault Guns Muscling in on Front Lines of Crime*, Atlanta Journal-Atlanta Constitution, May 21, 1989, at A1, A8.

Unlike the handguns at issue in *Heller*, these weapons do not have a tradition of use for lawful self-defense. In fact, these weapons were hardly used at all until the mid-1980s when gun manufacturers began heavily promoting assault weapons in order to create a new revenue stream to make up for declining handgun sales. *See* Violence Policy Center, *The Militarization of the U.S. Civilian Firearms Market*, June 2011, at 21-29, available at <http://www.vpc.org/studies/militarization.pdf> (“The gun industry introduced semiautomatic versions of these deadly military assault weapons in order to create and exploit civilian markets.”).

Contrary to plaintiffs’ assertion, the Act does not prohibit these semiautomatic assault weapons merely because they *resemble* their military-style, fully-automatic equivalents. It prohibits them because, as discussed above, semiautomatic assault weapons and fully-automatic weapons are virtually the same. Both are equally unusual and dangerous -- capable of discharging over 100 bullets per minute and of killing or wounding scores of people in a very short time. Indeed, their characteristics are so similar that a semiautomatic assault weapon can readily be converted into a fully automatic weapon. *See, e.g., Full Auto Conversion, Weapons*

Combat, <http://www.weaponscombat.com/full-auto-conversion> (last visited June 7, 2013) (providing for purchase, instructions, blueprints, and schematics detailing the conversion of numerous semiautomatic weapons into fully automatic weapons). For example, a device called the “Lightning Link” easily converts an AR-15 into a fully automatic weapon and can be installed in a matter of 10 seconds. *See, e.g., Lightning Link*, The Home Gunsmith, [http://thehomegunsmith.com/pdf/fast\\_bunny.pdf](http://thehomegunsmith.com/pdf/fast_bunny.pdf) (last visited June 7, 2013); *see also How a Lightning Link Works for All AR15 Calibers*, Guns Lot, <http://www.gunslot.com/videos/how-lightning-link-works-all-ar15-calibers> (last visited June 7, 2013) (instructional video demonstrating how Lightning Link works). The ease of modification of semiautomatic assault weapons to fully automatic weapons underscores the dangerous and unusual nature of these weapons that excludes them from Second Amendment protection.

**b) Assault Weapons and Large Capacity Magazines Are Unsuitable for Responsible Self-Defense in the Home.**

In *Heller*, the Supreme Court held that the Second Amendment protects the right of individuals to possess a handgun in the home for self-defense. As discussed above, however, the Court also held that the Second Amendment does not include the “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Heller*, 554 U.S. at 626. The exceedingly dangerous nature of assault weapons makes them an inappropriate choice for self-defense. Ammunition shot from some assault weapons is powerful enough to penetrate walls, increasing the already significant threat of stray bullets harming innocent family members, neighbors, and passersby. The Executive Director of the Fraternal Order of Police explained that “[a]n AK-47 fires a military round. In a conventional home with dry-wall walls, I wouldn’t be surprised if [an AK-47 round] went through six of them.” *See* Brian J. Siebel, Brady Ctr. To Prevent Gun Violence, *Assault Weapons: Mass Produced Mayhem* 16 (2008),

[http://www.gs2ac.com/flyers/2008/200810\\_mass-produced-mayhem.pdf](http://www.gs2ac.com/flyers/2008/200810_mass-produced-mayhem.pdf) (quoting *Police Fear a Future of Armored Enemies*, USA Today, Mar. 3, 1997, at 02A).

Large capacity magazines are also inappropriate for responsible self-defense in the home. See Affidavit of City of Hartford Police Chief James C. Rovella (Dkt. No. 80-1) (“Rovella Aff.”), at ¶¶ 39-40; Affidavit of City of Milford Police Chief Keith L. Mello (Dkt. No. 80-2) (“Mello Aff.”), at ¶ 10. As a former Baltimore Police Colonel stated, “[t]he typical self-defense scenario in a home does not require more ammunition than is available in a standard 6-shot revolver or 6-10 round semiautomatic pistol. In fact, because of potential harm to others in the household, passerby, and bystanders, too much firepower is a hazard.” Brian J. Siebel, Brady Ctr. To Prevent Gun Violence, *Assault Weapons: Mass Produced Mayhem* 16 (2008), <http://www.bradycenter.org/xshare/pdf/reports/mass-produced-mayhem.pdf>. Large capacity magazines exacerbate concerns about stray bullets, because “the tendency for defenders [is] to keep firing until all bullets have been expended.”<sup>3</sup> *Id.* Plaintiffs themselves concede the additional danger that large capacity magazines create, and their inappropriateness for responsible self-defense in the home, by acknowledging that that “[a] homeowner under the extreme duress of an armed and advancing attacker is likely to fire at, but miss, his target.” (Plaintiffs’ Br. at 13.) Responsible self-defense does not mean the capacity to spray dozens of additional bullets in the home when the first 10 have not been fired accurately.

The risk of errant bullets striking innocent household members or bystanders is magnified when one considers the possibility of an assault weapon or a large capacity magazine being used

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<sup>3</sup> “The threat posed by military-assault weapons is increased significantly if they can be equipped with high-capacity ammunition magazines” because, “[b]y permitting a shooter to fire more than ten rounds without reloading, they greatly increase the firepower of mass shooters.” See *id.* at \*16; see also Koper, *supra*, at 87 (“guns used in shootings are 17% to 26% more likely to have [magazines holding more than ten rounds] than guns used in gunfire cases resulting in no wounded victims”).

in a home located within any of the many densely populated areas of a state like Connecticut. This risk is not hypothetical. In September 2010, a 15-year-old girl was killed in Buffalo, New York, by stray bullets from an AK-47 assault rifle while she was in her house typing on her computer. Lou Michel, *Dead girl was not target of shooting; Police say her brother may have been the one*, Oct. 2, 2010, available at <http://www.buffalonews.com/apps/pbcs.dll/article?AID=/20101002/CITYANDREGION/310029895>. Police recovered 19 shell casings from the scene of the crime, but the intended target – the victim’s brother – was not killed. *Id.* Indeed, Hartford Chief of Police James C. Rovella explains that ammunition typically used with assault weapons “could easily pass through the walls of many dwellings and result in shooting of unintended victims such as family members, passers-by or neighbors.” Rovella Aff. At ¶ 39; *see also* Affidavit of [Former Glastonbury Police Chief] Thomas Sweeney (Dkt. No. 80-2) (“Sweeney Aff.”), at ¶¶ 9-10 (Because of the presence of assault weapons, “[p]arents in neighborhoods with high numbers of shootings were fearful of stray bullets coming through the walls and windows of their homes; some parents even told me that they had their children sleep in bathtubs for greater protection.”).

**c) Assault Weapons and Large Capacity Magazines Are Used Overwhelmingly in Crimes with Multiple Victims and Assaults on Law Enforcement.**

Criminals disproportionately use assault weapons and large capacity magazines in two categories of crimes: those with multiple victims and those that target law enforcement. Assault weapons “account for a larger share of guns used in mass murders and murders of police, crimes for which weapons with greater firepower would seem particularly useful.” Koper, *supra*, at 87. A recently-conducted study concluded that 42% of mass shooting incidents within the last three decades involved an assault weapon and more than half of the perpetrators possessed assault weapons, large capacity magazines, or both. *See* Affidavit of Christopher S. Koper dated Sept.

30, 2013 (Dkt. No. 80-1). On average, shooters who use assault weapons and/or large capacity magazines in mass shootings shoot 151% more people, and kill 63% more people than shooters who do not use assault weapons and large capacity magazines. Mayors Against Illegal Guns, Analysis of Recent Mass Shootings, [https://s3.amazonaws.com/s3.mayorsagainstillegalguns.org/images/Analysis\\_of\\_Mass\\_Shootings.pdf](https://s3.amazonaws.com/s3.mayorsagainstillegalguns.org/images/Analysis_of_Mass_Shootings.pdf).

It is therefore no surprise that assault weapons and/or large capacity magazines have played a devastating role in numerous mass shootings nationwide. For example:

- In January 1989, a shooter armed with a semiautomatic assault rifle killed five people and injured 31 others, including a teacher, at an elementary school in Stockton, California.<sup>4</sup>
- In July 1993, a shooter armed with semiautomatic assault weapons and large capacity magazines killed eight people and injured six others (one of whom subsequently died) at a law firm in San Francisco.<sup>5</sup>
- In December 1993, a shooter armed with a semiautomatic pistol and large capacity magazines killed six people and wounded 19 others, on a Long Island Rail Road train.<sup>6</sup>

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<sup>4</sup> Kathleen Miles, *Gun Control California: Stockton School Shooting In 1989 Was Catalyst For Stricter Gun Control*, huffingtonpost.com, Dec. 18, 2012, available at [http://www.huffingtonpost.com/2012/12/18/gun-control-california-stockton-school-shooting\\_n\\_2316666.html](http://www.huffingtonpost.com/2012/12/18/gun-control-california-stockton-school-shooting_n_2316666.html). This shooting led to the formation of *amicus* Cleveland School Remembers.

<sup>5</sup> Karyn Hunt, *Gunman Said to Have List of 50 Names*, Charlotte Observer, July 3, 1993, at 2A. This tragedy led to the formation of *amicus* Law Center to Prevent Gun Violence.

<sup>6</sup> Wikipedia page, available at [http://en.wikipedia.org/wiki/Colin\\_Ferguson\\_\(mass\\_murderer\)](http://en.wikipedia.org/wiki/Colin_Ferguson_(mass_murderer)); Pat Milton, Colin Ferguson Convicted of Murdering Six in Train Massacre, AP News Archive, Feb. 18, 1995, available at <http://www.apnewsarchive.com/1995/Colin-Ferguson-Convicted-of-Murdering-Six-in-Train-Massacre/id-49433c4650ab4c17b9b412fe0a8717d6>; Richard Cohen *Survivors Of The Long Island Rail Road Massacre Warn Of A 'Contract On America'*, philly.com, Feb. 25, 1995, available at [http://articles.philly.com/1995-02-25/news/25704325\\_1\\_gun-people-gun-control-national-gun-policy](http://articles.philly.com/1995-02-25/news/25704325_1_gun-people-gun-control-national-gun-policy).



- In March 1998, a gunman killed four people at the Connecticut State Lottery Headquarters in Newington, Connecticut. The shooter was armed with a 9mm pistol and three ammunition magazines holding at least 19 rounds of ammunition each.<sup>7</sup>
- In April 1999, the gunmen in the Columbine High School massacre used semiautomatic assault weapons and large capacity magazines to kill 13 people and wound 23 others.<sup>8</sup>
- In October 2002, the assailants known as the “D.C. Snipers” killed 10 innocent people using a Bushmaster .223-caliber sniper rifle, a semiautomatic assault weapon.<sup>9</sup>
- In April 2007, the shooter responsible for the Virginia Tech massacre armed himself with numerous 15-round magazines in an attack that left 33 dead, including himself, and 17 injured.<sup>10</sup>
- In April 2009, a shooter armed with two pistols, two 30-round large capacity ammunition magazines, and two 15-round large capacity magazines killed 13 people and wounded four others in Binghamton, New York.<sup>11</sup>
- In September 2009, a shooter, armed with an assault rifle fired 29 rounds into a crowd of people in Far Rockaway, New York, killing one person and injuring another.<sup>12</sup>
- In August 2010, a gunman killed nine of his co-workers at a family-owned beer and wine wholesaler in Manchester, Connecticut. The shooter was armed with a Sturm Ruger SR9 pistol with two magazines that each held 17 rounds.<sup>13</sup>

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<sup>7</sup> Violence Policy Ctr., *Where'd They Get Their Guns?*, available at <http://www.vpc.org/studies/wgun980306.htm>; Violence Policy Ctr., *Mass Shootings in the United States Involving High Capacity Ammunition Magazines* (June 2013), [http://www.vpc.org/fact\\_sht/VPCshootinglist.pdf](http://www.vpc.org/fact_sht/VPCshootinglist.pdf); [murderpedia.org/male.B/b/beck-matthew.htm](http://murderpedia.org/male/B/b/beck-matthew.htm).

<sup>8</sup> David Olinger, *Gun Dealer Surrenders Firearms License*, Denver Post, Oct. 14, 1999, at B07.

<sup>9</sup> Josh White & Maria Glod, *D.C. Sniper Executed by Lethal Injection*, Pittsburgh Post-Gazette, Nov. 11, 2009, at A1.

<sup>10</sup> Violence Policy Ctr., *Mass Shootings in the United States Involving High Capacity Ammunition Magazines* (June 2011), [http://www.vpc.org/fact\\_sht/VPCshootinglist.pdf](http://www.vpc.org/fact_sht/VPCshootinglist.pdf).

<sup>11</sup> Citizens Crime Commission of New York City, *Mass Shooting Incidents in America* (1984-2012), <http://www.nycrimecommission.org/mass-shooting-incidents-america.php>.

<sup>12</sup> District Attorney, Queen County Press Release dated July 25, 2012, available at [http://www.queensda.org/newpressreleases/2012/july/williams\\_paul\\_07\\_25\\_2012\\_sen.pdf](http://www.queensda.org/newpressreleases/2012/july/williams_paul_07_25_2012_sen.pdf).

<sup>13</sup> *9 Dead in Manchester, Conn. Workplace Shooting*, The Hartford Courant, Aug. 3, 2010, available at [http://articles.courant.com/2010-08-03/news/hc-omar-thornton-workplace-shooting-020100803\\_1\\_workplace-shooting-east-hartford-shooting-victims](http://articles.courant.com/2010-08-03/news/hc-omar-thornton-workplace-shooting-020100803_1_workplace-shooting-east-hartford-shooting-victims); *Breaking: 9*



- In January 2011, a shooter killed six people and wounded 13 others, including Congresswoman Gabrielle Giffords, in a Safeway parking lot in Tucson using a large capacity magazine holding 33 rounds of ammunition.<sup>14</sup>
- In July 2012, a gunman killed 12 people and wounded 58 others in a movie theater in Aurora, Colorado, armed with an AR-15 semiautomatic assault rifle and 100-round ammunition magazines.<sup>15</sup>
- In December 2012, a gunman killed 26 people and wounded two more at Sandy Hook Elementary School in Newtown, Connecticut. Twenty of the dead were young children. The gunman was armed with a semiautomatic Bushmaster XM-15 assault rifle, two handguns, multiple 30-round magazines, and hundreds of rounds of ammunition.<sup>16</sup>
- In July 2013, another shooter killed five people in Santa Monica, California, armed with 1,300 rounds of ammunition and multiple firearms, including a semiautomatic AR-15 assault rifle with large capacity ammunition magazines.<sup>17</sup>

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*Reportedly Shot Dead at Conn. Beer Distributor*, Before It's News, Aug. 3, 2010, available at <http://beforeitsnews.com/alternative/2010/08/breaking-9-reportedly-shot-dead-at-conn-beer-distributor-124217.html>; Jesse Leavenworth, Dave Altimari, and David Owens, *Hartford Distributors Killer Talked Of Shooting Co-Workers Night Before Rampage*, The Hartford Courant, May 12, 2011, available at [http://articles.courant.com/2011-05-12/business/hc-hartford-beer-distributor-shooting20110512\\_1\\_omar-thornton-manchester-police-hartford-distributors](http://articles.courant.com/2011-05-12/business/hc-hartford-beer-distributor-shooting20110512_1_omar-thornton-manchester-police-hartford-distributors).

<sup>14</sup> Violence Policy Ctr., *Mass Shootings in the United States Involving High Capacity Ammunition Magazines*; Sarah Garrecht Gassen and Timothy Williams, *Before Attack, Parents of Gunman Tried to Address Son's Strange Behavior*, N.Y. Times, Mar. 27, 2013, at A14.

<sup>15</sup> Dan Frosch and Kirk Johnson, *Gunman Kills 12 in Colorado, Reviving Gun Debate*, N.Y. Times, July 21, 2012, at A1.

<sup>16</sup> Susan Candiotti, Greg Botelho and Tom Watkins, *Newtown shooting details revealed in newly released documents*, cnn.com, Mar. 29, 2013, available at <http://www.cnn.com/2013/03/28/us/connecticut-shooting-documents>; Erica Goode, *Rifle Used in Killings, America's Most Popular, Highlights Regulation Debate*, N.Y. Times, Dec. 16, 2012, at A25.

<sup>17</sup> Holly Yan, Kyung Lah and Dana Ford, *Santa Monica Shooting Survivor: "Thank God, I'm Alive"*, cnn.com, June 11, 2013, available at [http://www.cnn.com/2013/06/10/justice/california-college-gunman/index.html?hpt=hp\\_t2](http://www.cnn.com/2013/06/10/justice/california-college-gunman/index.html?hpt=hp_t2); Richard Esposito and Daniel Arkin, *Santa Monica shooting spree suspect identified as death toll climbs*, available at [http://usnews.nbcnews.com/\\_news/2013/06/09/18865467-santa-monica-shooting-spre-suspect-identified-as-death-toll-climbs?lite](http://usnews.nbcnews.com/_news/2013/06/09/18865467-santa-monica-shooting-spre-suspect-identified-as-death-toll-climbs?lite).

- On August 5, 2013, a shooter fired 28 rounds from a Ruger Mini-14 rifle, killing three people and injuring two others at a town meeting in Ross Township, Pennsylvania. The shooter was subdued by citizens only after retreating to his vehicle to substitute his rifle for additional weapons; when he returned to the meeting, individuals managed to disarm the shooter, who later told police that he wished he had killed more people. The shooter used a 30-round magazine in his rifle and had 90 rounds of ammunition in his car.<sup>18</sup>
- On August 20, 2013, a shooter arrived at a primary school in Decatur, Georgia armed with an AK 47-style rifle and nearly 500 rounds of ammunition. The gunman exchanged fire with local law enforcement before ultimately surrendering.<sup>19</sup>
- On September 20, 2013, a shooter, armed with a rifle equipped with a large-capacity magazine, injured 13 people at a park on the south side of Chicago.<sup>20</sup>

Criminals also overwhelmingly choose assault weapons and large capacity magazines for attacks against law enforcement. A study analyzing FBI data found that 20% of the law enforcement officers killed in the line of duty were killed with an assault weapon. See Violence Policy Ctr., “*Officer Down*” — *Assault Weapons and the War on Law Enforcement, Section One: Assault Weapons, the Gun Industry, and Law Enforcement* (May 2003), available at <http://www.vpc.org/studies/officeone.htm>. Earlier this month, Bridgeport, Connecticut police made three arrests and seized several illegal assault weapons. Following the arrests, Police Chief Joseph L. Gaudett Jr. said, “These weapons have devastating capability . . . They posed a risk to our community and our police officers. The rounds in the seized AK-47 would rip through a

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<sup>18</sup> Joe McDonald, *Pennsylvania gunman who killed three had 90 more rounds: police*, Reuters, Aug. 6, 2013, available at <http://www.reuters.com/article/2013/08/06/us-usa-pennsylvania-shooting-idUSBRE97510A20130806>; Hunter Walker, *Pennsylvania Municipal Meeting Shooter Used High-Capacity Magazine*, TPM Livewire, Aug. 8, 2013, available at [livewire.talkingpointsmemo.com/entry/Pennsylvania-town-meeting-shooter-used-high-capacity-magazine](http://livewire.talkingpointsmemo.com/entry/Pennsylvania-town-meeting-shooter-used-high-capacity-magazine).

<sup>19</sup> Michael Brandon Hill packing nearly 500 rounds at Georgia elementary school, cbsnews.com, Aug. 21, 2013, available at [http://www.cbsnews.com/8301-201\\_162-57599610/michael-brandon-hill-packing-nearly-500-rounds-at-georgia-elementary-school/](http://www.cbsnews.com/8301-201_162-57599610/michael-brandon-hill-packing-nearly-500-rounds-at-georgia-elementary-school/).

<sup>20</sup> Monica Davey and Timothy Williams, *Violence Flares Anew on Chicago’s Southside*, N.Y. Times, Sept. 21, 2013, at A13.

police officer's bullet-proof vest. Imagine what it would do to a group of young people standing on a corner." *Trumbull man among those arrested in gun trafficking investigation*, Trumbull Times, Oct. 1, 2013.

Law enforcement professionals testifying in this case have identified several ways in which assault weapons pose an acute risk to law enforcement. For example, "assault weapons with [large capacity ammunition magazines] allow a shooter to engage law enforcement with suppressing fire and effectively hold-off and overwhelm an initial law enforcement response." Rovella Aff. ¶ 17. Assault weapon attacks on law enforcement also "result in more rounds fired." Mello Aff. ¶ 18. Moreover, assault weapons "can defeat or delay the efforts of the first responding officers to move directly toward and to end the [mass] shooting." Sweeney Aff. ¶ 15. Speaking from his own experience, Buffalo's Police Commissioner Daniel Derenda has observed that: "[i]n my opinion, they [assault rifles] exist for one purpose and one purpose only and that is to kill." Lou Michel, *The return of the assault rifle; High-powered weapons seem to be regaining their deadly role in WNY crime and violence*, Nov. 21, 2010, available at <http://www.buffalonews.com/apps/pbcs.dll/article?AID=/20101121/CITYANDREGION/311219987>; *see also* Rovella Aff. ¶ 16 ("Assault weapons have been used to kill police and other law enforcement.").

Unfortunately, it is not hard to find examples of the threat assault weapons pose to law enforcement. In December 2012, William Spengler, armed with the same make and caliber semiautomatic rifle used in the Newtown massacre, lured first responders to his home in Webster, New York by starting a fire, and then killed two firefighters and wounded two others. Associated Press, *Killer of 2 NY firemen had semiautomatic rifle*, available at <http://www.boston.com/news/local/connecticut/2012/12/25/killer-firemen-had-semiautomatic->

rifle/nT8sAMWgiwhQMhiXo73yLP/story.html. In January 2010, a carjacking suspect held New York State troopers at bay for nearly an hour because he was armed with a semiautomatic AK-47, while the state troopers were armed with ordinary .45 caliber handguns. Editorial, *Arm the Troopers*, NY Post, Feb. 22, 2010, available at [http://www.nypost.com/p/news/opinion/editorials/arm\\_the\\_troopers\\_yc3hgD49GnjNT8a4kDUkiI](http://www.nypost.com/p/news/opinion/editorials/arm_the_troopers_yc3hgD49GnjNT8a4kDUkiI). In January 2005, a police officer in Newington, Connecticut was killed in the line of duty by an assailant equipped with an assault weapon. See William Yardley and Stacey Stowe, *Thousand Mourn Officer Slain on Domestic Dispute*, N.Y. Times, Jan. 5, 2005, available at <http://query.nytimes.com/gst/fullpage.html?res=9907E2D81339F936A35752C0A9639C8B63>.

The prohibition on large capacity magazines serves as further protection for law enforcement officers, because gun users limited to 10-round magazines must reload more frequently. For law enforcement confronting dangerous shootouts, “the 2 or 3 second pause to reload [ammunition] can be of critical benefit.” *Heller v. Dist. of Columbia*, 698 F. Supp. 2d 179, 194 (D.D.C. 2010). Thus, for example, in January 2011, Jared Lee Loughner was only subdued in the midst of the mass shooting in Tucson that left six people dead and a dozen more injured after he was forced to interrupt his shooting spree in order to reload. Similarly, after killing six people and injuring 19 more on December 7, 1993, Colin Ferguson was only prevented from continuing his rampage on the Long Island Rail Road because he was subdued while attempting to reload. Prohibiting large capacity ammunition magazines will force shooters to reload—and put themselves in a position to be subdued—*before* they can cause mass casualties. In this case, no less than three experienced law enforcement professionals have explained that the seconds needed to reload a weapon present an invaluable opportunity for first

responders to thwart an ongoing attack. *See* Rovella Aff. ¶ 29; Mello Aff. ¶ 30; Sweeney Aff. ¶ 15.

For the reasons discussed above, the assault weapons and large capacity ammunition magazines prohibited by the Act constitute “dangerous and unusual” weapons that are not protected by the Second Amendment.

**2. Under the Act, Individuals May Still Possess a Wide Variety of Firearms and Magazines for the Purpose of Responsible Self-Defense in the Home.**

The Act prohibits a tiny fraction of available firearms – those that are military-style weapons capable of rapid-fire-fueled devastation. *See* ATF, *supra*, at 19. The Act leaves common handguns, the weapons “overwhelmingly chosen” by the American people for self-defense in the home, untouched. *See Heller*, 554 U.S. at 628. As a result, the law does not interfere with public access to a wide array of firearms for responsible self-defense in the home.

Assault weapons are unusual. They are not commonly used or purchased by the public and have historically comprised only a small percentage of the total amount of firearms in circulation. *See* Marianne W. Zawitz, U.S. Dep’t of Justice, *Guns Used in Crime* 6 (1995) (assault weapons constituted about 1% of guns in circulation prior to the federal assault weapons ban).<sup>21</sup> Unlike the right to own a handgun in *Heller*, any alleged “right to possess assault

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<sup>21</sup> While Plaintiffs and their *amici* offer a lot of bluster about how supposedly common these weapons are, their own numbers tell a different story. The website of the National Rifle Association estimates that there are nearly 300 million privately owned firearms in the United States. *See* NRA-ILA, *Firearm Fact Card, 2011*, <http://www.nraila.org/news-issues/fact-sheets/2011/firearm-fact-card-2011.aspx> (last visited June 13, 2013). According to the NRA’s brief, less than four million AR-15’s (which the NRA alleges is the “most popular” assault weapon) have been manufactured for sale on the US domestic market *in the entire period from 1986 to the present*. *See* Brief of the National Rifle Association, at 9. In other words, even if every single one of these AR-15s was still in circulation (a dubious assumption), they would account for just slightly more than 1% of all privately owned weapons in the United States.

weapons” is “not at all rooted in the conscience of the American public.” Jason T. Anderson, *Second Amendment Standards of Review: What the Supreme Court Left Unanswered in District of Columbia v. Heller*, 82 S. Cal. L. Rev. 547, 583 (2009).

Individuals are also free under the Act to possess numerous magazines that are capable of holding up to 10 rounds of ammunition. The Act only prohibits the possession of large capacity magazines, the type of magazines that have been used in nearly every major recent mass shooting. Because the prohibition on assault weapons and large capacity magazines does not affect an individual’s ability to possess an operable firearm for in-home self-defense, the Act imposes no burden on any Second Amendment right.

## **II. EVEN IF PROHIBITIONS ON ASSAULT WEAPONS AND LARGE CAPACITY AMMUNITION MAGAZINES DO IMPLICATE THE SECOND AMENDMENT, CONNECTICUT’S STATUTE REMAINS CONSTITUTIONAL.**

Plaintiffs’ failure to establish a Second Amendment right to possess assault weapons and large capacity magazines should end this Court’s inquiry. *See, e.g., Heller II*, 670 F.3d at 1252; *Ezell v. City of Chicago*, 651 F.3d 684, 702-04 (7th Cir. 2011); *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010). But even if this Court were to radically expand the limited holdings of *Heller* and *McDonald* to conclude that the Act implicates the right enunciated in *Heller* to possess a handgun in the home for self-defense, the Act would still pass constitutional muster. Intermediate scrutiny is the most appropriate level of Second Amendment review, and the Act more than meets this standard.

### **A. If Heightened Scrutiny Is Necessary In Evaluating This Challenge, Strict Scrutiny Is Not Appropriate.**

Plaintiffs and their *amici* argue the Act must be subject to a strict scrutiny standard -- or perhaps a standard even more rigorous than strict scrutiny -- because the right protected by the Second Amendment is fundamental. Indeed, Plaintiffs assert that, “like the handgun ban in

*Heller*,” Connecticut’s ban on assault weapons and large capacity magazines “is *categorically* void under the Second Amendment.” (Pl. S.J. Mem. at 23; emphasis supplied.) Plaintiffs’ *amicus*, the National Rifle Association, similarly argues for a “categorical” approach that rejects virtually any regulation of guns whatsoever without applying any level of scrutiny. (NRA Amicus Brief at 3-6.) No court anywhere in the nation has embraced this radical approach, and this Court should not become the first. *See, e.g., Woollard v. Gallagher*, 712 F.3d 865 (4th Cir. 2013); *United States v. Masciandaro*, 638 F.3d 458 (4th Cir. 2011); *Marzzarella*, 614 F.3d 85; *United States v. Williams*, 616 F.3d 685 (7th Cir. 2010); *United States v. Reese*, 627 F.3d 792 (10th Cir. 2010); *Heller v. Dist. of Columbia*, 698 F. Supp. 2d 179 (D.D.C. 2010), *aff’d in part and vacated in part*, 670 F.3d 1244 (D.C. Cir. 2011).

Moreover, not all constitutionally enumerated rights -- even those that are fundamental -- automatically trigger strict scrutiny. *See Marzzarella*, 614 F.3d at 96-97 (noting that even the right to free speech, an enumerated fundamental right essential to democratic governance, “is susceptible to several standards of scrutiny, depending upon the type of law challenged and the type of speech at issue,” and finding that there is “no reason why the Second Amendment would be any different”) (internal citations omitted). In fact, strict scrutiny is particularly inappropriate in the Second Amendment context because of the state’s profound interest in protecting citizens from gun violence. *Osterweil v. Bartlett*, 706 F.3d 139, 143 (2d Cir. 2013), *certified question answered by* 2013 N.Y. Slip Op. 06 637, 2013 WL 5610272 (Oct. 15, 2013) (O’Connor, Sup. Ct. Justice (Ret.) sitting by designation) (“[t]he regulation of firearms is a paramount issue of public safety, and recent events in this circuit are a sad reminder that firearms are dangerous in the wrong hands”); *see also Heller*, 554 U.S. at 636 (Constitution permits legislatures “a variety of tools for combating that problem”). Indeed, as discussed below, binding Second Circuit



authority has already rejected uniform application of strict scrutiny in Second Amendment cases. *See Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 96 (2d Cir. 2012) (“Because our tradition so clearly indicates a substantial role for state regulation of the carrying of firearms in public, we conclude that intermediate scrutiny is appropriate in this case.”); *see also Kwong v. Bloomberg*, 723 F.3d 160, 167 (2d Cir. 2013) (“[T]he appropriate level of scrutiny under which a court reviews a statute or regulation in the Second Amendment context is determined by how substantially that statute or regulation burdens the exercise of one’s Second Amendment rights.”).

While the Court in *Heller* did not articulate a level of review, it implicitly rejected the use of strict scrutiny in the Second Amendment context. As “numerous other courts and legal scholars have pointed out, a strict scrutiny standard of review” does “not square with the majority’s references to ‘presumptively lawful regulatory measures.’” *Heller v. Dist. of Columbia*, 698 F. Supp. 2d at 187 (citing *United States v. Skoien*, 587 F.3d 803, 812 (7th Cir. 2009) (noting that the court did “not see how the listed laws could be ‘presumptively’ constitutional if they were subject to strict scrutiny”); *United States v. Marzzarella*, 595 F. Supp. 2d 596, 604 (W.D. Pa. 2009) (observing that “the Court’s willingness to presume the validity of several types of gun regulations is arguably inconsistent with the adoption of a strict scrutiny standard of review”); Dennis A. Henigan, *The Heller Paradox*, 56 UCLA L. Rev. 1171, 1197-98 (2009) (stating “the *Heller* majority . . . implicitly rejected strict scrutiny”)).

Additional cautionary remarks about the boundaries of the Second Amendment in *Heller* and *McDonald* further evidence the inappropriateness of employing a strict scrutiny review of firearms regulations. *See, e.g., Heller*, 554 U.S. at 626 (noting that the Second Amendment’s right to bear arms is “not unlimited,” and that legislatures must be allowed to employ “a variety



of tools for combating” the problem of gun violence.); *McDonald*, 130 S. Ct. at 3047 (“incorporation does not imperil every law regulating firearms.”). These unambiguous statements by the Supreme Court are incompatible with the presumption of unconstitutionality that accompanies strict scrutiny. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16-17 (1973).

Most courts that have evaluated laws challenged on Second Amendment grounds have rejected wholesale application of strict scrutiny. *See, e.g., Heller II*, 670 F.3d at 1257; *Masciandaro*, 638 F.3d at 471; *Reese*, 627 F.3d at 802; *Williams*, 616 F.3d at 691-93; *Marzzarella*, 614 F.3d at 96-97; *United States v. Walker*, 709 F. Supp. 2d 460, 466 (E.D. Va. 2010). In particular, the Second Circuit has expressly rejected the indiscriminate application of strict scrutiny to regulations that simply touch on Second Amendment rights. To the contrary, that Court has held: “[r]eserving heightened scrutiny for regulations that burden the Second Amendment right substantially is not inconsistent with the classification of that right as fundamental to our scheme of ordered liberty in *McDonald* . . .” *United States v. Decastro*, 682 F.3d 160, 166-67 (2d Cir. 2012). “In deciding whether a law substantially burdens Second Amendment rights,” the *Decastro* Court explained, “it is . . . appropriate to consult principles from other areas of constitutional law, including the First Amendment”:

In evaluating the reasonableness of content-neutral time, place or manner regulations under the First Amendment, we ask whether the challenged regulation “leave[s] open ample alternative channels for communication of the information.” . . . Regulation may “reduce to some degree the potential audience for [one’s] speech” so long as “the remaining avenues of communication are [ ]adequate.” . . . By analogy, law that regulates the availability of firearms is not a substantial burden on the right to keep and bear arms if adequate alternatives remain for law-abiding citizens to acquire a firearm for self-defense.

*Id.* at 167-168 (citations omitted). As demonstrated above, the Act’s prohibition on a limited class of firearms that are particularly dangerous and unusual, and that are not well-suited for self-

defense in the home, leaves citizens free to employ any of a vast array of alternative firearms to defend themselves in their homes. Accordingly, strict scrutiny of the Act's bans on assault weapons and large capacity magazines is unwarranted.

Plaintiffs' *amicus* National Rifle Association of America concedes that in *Kachalsky*, the Second Circuit "left the question open" of "what level of scrutiny should apply to laws that burden the 'core' Second Amendment protection identified in *Heller*." (NRA Brief at 12 n.4.) But Plaintiffs claim that *Kachalsky* "implies" application of strict scrutiny to any law that bans the possession of any firearm in the home. (Pl. S.J. Mem. at 14.) *Kachalsky* does no such thing. First, *Kachalsky* correctly identifies the limited scope of the "'core' protection of the Second Amendment" as defined in *Heller*: "the 'right of law-abiding, responsible citizens to use arms in defense of hearth and home.'" *Kachalsky*, 701 F.3d at 93 (quoting *Heller*, 554 U.S. at 634-35). Plaintiffs assert that this "is the right that the Act violates here" (Pl. S.J. Mem. at 14), but the right recognized in *Heller* is the right to use a firearm for self-defense in the home – not *any type of* firearm. In particular, it does not include a right to use "dangerous and unusual" arms. *Heller*, 554 U.S. at 627. Second, *Kachalsky* reaffirms *Decastro*'s holding that "heightened scrutiny is triggered only by those restrictions that (like the complete prohibition on [all] handguns struck down in *Heller*) operate as a *substantial burden* on the ability of law-abiding citizens to possess and use a firearm for self-defense (or for other lawful purposes)." *Kachalsky*, 701 F.3d at 93, (quoting *Decastro*, 682 F.3d at 166) (emphasis added). The Act's limited prohibitions impose no such burden on citizens.

Even for rights that may sometimes warrant strict scrutiny, that standard is not applied to reasonable regulation of those rights. For example, content-neutral regulations on the time, place, and manner of even core political speech are not subject to strict scrutiny. *See Ward v.*

*Rock Against Racism*, 491 U.S. 781, 791 (1989) (upholding content-neutral regulations on the time, place, and manner of speech, aimed at limiting the volume of amplified music and speeches); *see also Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (noting that although “voting is of the most fundamental significance under our constitutional structure . . . [i]t does not follow, however, that the right to vote in any manner . . . [is] absolute.”). If a limit on the amplification of speech is not subject to strict scrutiny (*see Ward*, 491 U.S. at 791), then surely a limit on the amplification of lethal firepower is not subject to such scrutiny. Moreover, narrow impositions that permit citizens to exercise their rights in alternative ways are frequently subject to less rigorous standards of review. *Id.* at 791. Thus, the Second Amendment does not require strict scrutiny of narrow regulations – like those at issue here – that leave a citizen with ample alternative types of firearms for self-defense in the home.

**B. If Heightened Scrutiny Applies, Intermediate Scrutiny is the Appropriate Level of Review.**

Because the Act does not interfere with the right to possess a handgun in the home for self-defense, intermediate scrutiny is the highest possible level of appropriate review (although, as explained above, no means-end scrutiny review is necessary because the Act does not burden any recognized right). Courts have reached similar conclusions in cases involving prohibitions on certain classes of weapons.

The U.S. Court of Appeals for the D.C. Circuit applied intermediate scrutiny to uphold the constitutionality of the District of Columbia’s ban on assault weapons and large capacity magazines substantially similar to the Act. *Heller II*, 670 F.3d at 1261. The court stated that the prohibition of assault weapons and large capacity magazines was “more accurately characterized as a regulation of the manner in which persons may lawfully exercise their Second Amendment rights,” since the prohibition did not “prevent a person from keeping a suitable and commonly

used weapon for protection in the home.” *Id.* at 1262. The court also aptly summarized a fundamental distinction between the absolute handgun ban in *Heller* and bans on assault weapons and large capacity magazines: “Unlike the law held unconstitutional in *Heller*, [bans on assault weapons and large capacity magazines] do not prohibit the possession of the ‘quintessential self-defense weapon,’ to wit, the handgun.” *Id.* at 1261-62 (quoting *Heller*, 554 U.S. at 629).

In *Marzzarella*, the Third Circuit analyzed the federal prohibition on unmarked firearms under the intermediate scrutiny standard because the law did not severely limit the possession of firearms. 614 F.3d at 97. The Court explained that the prohibition left a person “free to possess any otherwise lawful firearm,” so it was “more accurately characterized as a regulation of the manner in which persons may lawfully exercise their Second Amendment rights.” *Id.*

If this Court decides to apply some form of heightened scrutiny, it should similarly apply intermediate scrutiny to Connecticut’s ban on assault weapons and large capacity magazines. Like the laws at issue in *Heller II* and *Marzzarella*, the Act does not impose a substantial burden on an individual’s ability to exercise his or her Second Amendment right because it does not “prevent a person from keeping a suitable and commonly used weapon for protection in the home.” *Heller II*, 670 F.3d at 1262. The Act imposes no regulations upon ordinary handguns “overwhelmingly chosen” for self-defense. *See Heller*, 554 U.S. at 628.

### **C. The Act Satisfies Intermediate Scrutiny.**

Intermediate scrutiny requires a showing that the asserted governmental end is “significant,” “substantial,” or “important.” *See, e.g., Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 662 (1994); *Ward*, 491 U.S. at 791; *United States v. Skoien*, 614 F.3d 638, 641-42 (7th Cir. 2010). It requires that the fit between the challenged regulation and the stated objective be reasonable, not perfect, and does not require that the regulation be the least restrictive means of

serving the interest. *See, e.g., Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 556 (2001); *Marzzarella*, 614 F.3d at 98. The Act easily satisfies this standard.

**1. Preservation of Public Safety and Prevention of Crime Are Paramount Government Interests.**

In adopting the Act, the Connecticut General Assembly recognized the clear threat to public safety posed by assault weapons and large capacity magazines, as well as the high level of violent crime in Connecticut. *See Connecticut Governor Malloy signs wide-ranging gun limits into law*, foxnews.com, Apr. 4, 2013 available at <http://www.foxnews.com/politics/2013/04/04/connecticut-senate-approves-gun-control-bills-sends-to-house/>; Lateef Mungin and Brittany Brady, Connecticut governor signs sweeping gun measure, cnn.com, Apr. 4, 2013, available at <http://www.cnn.com/2013/04/04/us/connecticut-gun-law-overhaul/index.html>.

Public safety and the prevention of crime, of course, are substantial and compelling governmental interests. *See, e.g., United States v. Salerno*, 481 U.S. 739, 748-50 (1987) (noting that “the Government’s regulatory interest in community safety can, in appropriate circumstances, outweigh an individual’s liberty interest” and holding that the government’s interest in preventing crime is compelling); *Schall v. Martin*, 467 U.S. 253, 264 (1984) (“The ‘legitimate and compelling state interest’ in protecting the community from crime cannot be doubted”); *Kelley v. Johnson*, 425 U.S. 238, 247 (1976) (“promotion of safety of persons and property is unquestionably at the core of the State’s police power”); *see also Gonzales v. Oregon*, 546 U.S. 243, 270 (2006) (noting that states are generally afforded “great latitude” in exercising “police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons. . . .”) (internal quotations and citation omitted).

**2. Assault Weapons and Large Capacity Ammunition Magazines Jeopardize Public Safety.**

As demonstrated above (*see supra* Sections I.B.1.), assault weapons are particularly dangerous, military-style weapons designed for combat, making them a significant threat to public safety. Connecticut has an interest in preventing devastating attacks committed with assault weapons, such as the mass shootings at Sandy Hook Elementary School, at a college campus in Santa Monica, California, at a movie theater in Aurora, Colorado, at a supermarket in Tucson, Arizona, and at a law firm in San Francisco. *See* discussion *supra* at II.C.1. Large capacity ammunition magazines also pose special dangers to public safety as well, especially when used with assault weapons. *Id.* Connecticut has a further interest in protecting from harm the law enforcement officers who serve and protect its citizens. As illustrated by the numerous tragic deaths of first responders and ordinary citizens killed by criminals armed with assault weapons (*see supra* at 4-6, 10, 13-15), the arms race among criminals -- who, in the absence of the Act, would enjoy increased access to dangerous weapons -- jeopardizes the safety of law enforcement officers, and the public, by turning the streets and other public venues into a shooting gallery.

**3. The Act is Substantially Related to the Government's Significant Interests.**

Given the real and immediate threats to the safety of the public and law enforcement personnel caused by assault weapons and large capacity ammunition magazines, Connecticut has made the reasonable choice to reduce these threats by prohibiting access to such dangerous instruments of mass mayhem while preserving access to handguns and other firearms. Since the most effective way to eliminate the danger and destruction caused by assault weapons and large capacity magazines is to prohibit their use, possession, and sale, a substantial relationship clearly exists between the Act and the government's significant interests.

Contrary to Plaintiffs' assertions, the Act narrowly restricts only firearms designed for rapid firing, including when they are easily concealable, and magazines capable of holding high volumes of ammunition. These guns and magazines have been prohibited by the legislature because of their demonstrated ability to cause a level of damage well beyond that caused by weapons ordinarily used for self-defense in the home. *See* Siebel, *supra*, at 14-16.

While the governmental interest in limiting access to assault weapons and large capacity magazines is significant, the Act places no burden on an individual's ability to possess a firearm for self-defense in the home. The ban covers only a tiny fraction of available firearms, and those covered were chosen based on Connecticut's reasonable determination that they possessed especially dangerous capabilities. As a result, the Act is a sufficiently narrowly-tailored means of serving vital government interests that is neither overly broad nor arbitrary. *See, e.g., Turner Broad. Sys.*, 512 U.S. at 662; *Heller II*, 670 F.3d at 1262; *Marzzarella*, 614 F.3d at 98.

Under intermediate scrutiny, the fit between the government regulation and the asserted interest need not be perfect, nor must the regulation be the least restrictive means of serving the interest. *See, e.g., Turner Broad. Sys.*, 512 U.S. at 662. Instead, the regulation must be substantially related to the governmental interest, and the Act more than meets this standard.<sup>22</sup>

### CONCLUSION

For all of the reasons set forth above, this Court should grant Defendants' Cross-Motion for Summary Judgment, deny Plaintiffs' Motions for Preliminary Injunction and Summary Judgment, and uphold the Gun Violence Prevention and Children's Safety Act because it is fully consistent with the Second Amendment.

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<sup>22</sup> Although strict scrutiny review should not be applied, the Act would also satisfy that level of review as a regulation necessary to achieving the State's compelling interests in protecting the safety of the public and members of law enforcement.

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