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United States Court of Appeals *for the* Second Circuit

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

Plaintiffs-Appellants-Cross-Appellees,

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

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

RENZULLI LAW FIRM, LLP
81 Main Street, Suite 508
White Plains, New York 10601
(914) 285-0700

LAWRENCE G. KEANE, ESQ.
JEFFERY S. YUE, ESQ.
The National Shooting Sports Foundation, Inc.
11 Mile Hill Road
Newtown, Connecticut 06470
(203) 426-1320

Attorneys for Amicus Curiae The National Shooting Sports Foundation, Inc.

— v. —

ANDREW M. CUOMO, Governor of the State of New York, ERIC T.
SCHNEIDERMAN, Attorney General of the State of New York, JOSEPH A.
D'AMICO, Superintendent of the New York State Police,

Defendants-Appellees-Cross-Appellants,

FRANK A. SEDITA, III, District Attorney for Erie County, GERALD J.
GILL, Chief of Police for the Town of Lancaster, New York,
LAWRENCE FRIEDMAN,

Defendants-Appellees.

**DISCLOSURE OF CORPORATE AFFILIATIONS
AND FINANCIAL INTEREST**

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

Dated: May 6, 2014

/s/ Christopher Renzulli
Christopher Renzulli, Esq.
Attorney for Amicus Curiae
The National Shooting Sports Foundation, Inc.

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Amicus curiae The National Shooting Sports Foundation, Inc. (“NSSF”), respectfully submits this brief in support of the Plaintiffs-Appellants-Cross-Appellees (“Plaintiffs”) appeal currently pending before this Honorable Circuit Court.

All parties have consented to the filing of this Brief.

INTERESTS OF AMICUS CURIAE¹

The NSSF is the trade association for the firearms, ammunition, hunting, and shooting sports industry. Formed in 1961, the NSSF is a Connecticut non-profit tax-exempt corporation with a membership of more than 10,000 federally licensed firearms manufacturers, distributors, and retailers (also known as “federal firearms licensees” or “FFLs”); sportsmen’s organizations; shooting ranges; gun clubs; publishers; hunters and recreational target shooters. NSSF’s membership includes almost 150 FFLs in the State of New York. The NSSF’s mission is to promote, protect and preserve hunting and the shooting sports. The NSSF provides trusted leadership in addressing industry challenges; advances participation in and understanding of hunting and the shooting sports; reaffirms and strengthens its members’ commitment to the safe and responsible use of their products; and promotes a political environment that is supportive of America’s traditional

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

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

The NSSF's interest in this action derives principally from the fact that the NSSF's federally licensed manufacturer, distributor, and retailer members provide the lawful commerce in firearms that make the exercise of Second Amendment rights possible. Thus, NSSF's members are the very entities that are foreclosed from conducting lawful commerce protected by the Second Amendment as a result of the New York SAFE Act's unconstitutional ban on "typically possessed" firearms and magazines.

Moreover, as the medium through which lawful commerce in arms in New York occurs, NSSF's members must work within the confines of the New York SAFE Act's provisions every day. Simply put, if law enforcement officials cannot understand what constitutes violations of the provisions of the New York SAFE Act, then it is equally impossible for NSSF's members to comply with

those provisions in the course of providing lawful commerce in firearms and ammunition to law-abiding New Yorkers.

The impact on NSSF's members, however, runs deeper than the impact on law enforcement, as law enforcement officials have the discretion to elect not to enforce a given law if the vagueness of the law leaves them confused as to whether certain conduct violates the law. NSSF's members do not have that luxury. Instead, their businesses and livelihoods depend upon their ability to provide lawful commerce in arms and are subject to licensing requirements, as well as strict oversight and regulation. For NSSF's members, an unintentional violation can result in revocation of their license and thus the end of their businesses and livelihoods. In these respects, the vague provisions of the New York SAFE Act impose an unconstitutional burden on NSSF's members and violate their due process rights by forcing them to guess what conduct is permissible and gamble with their businesses and livelihoods.

The NSSF submits this brief to expand upon the Plaintiffs' arguments demonstrating that the banned firearms and magazines are "typically possessed" and to supply further support for the application of the "permeated with vagueness" standard to the vague provisions of the New York SAFE Act. The NSSF further submits this brief to provide the Court with crucial insight into the unconstitutionally detrimental impact the New York SAFE Act will have on lawful

commerce in arms from the unique and valuable perspective of NSSF's members—the entities from whom law-abiding New Yorkers seek to purchase firearms and ammunition and whom are expected to comply with the impermissibly vague provisions of the New York SAFE Act.

SUMMARY OF ARGUMENT

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

Furthermore, the Due Process Clause of the Fourteenth Amendment prohibits states from enacting statutes that are so vague that ordinary persons cannot readily determine whether their conduct might expose them to criminal penalties. That, however, is precisely what New York did when it enacted the New York SAFE Act. Indeed, the New York SAFE Act created and amended numerous penal laws that are replete with unconstitutionally vague provisions rendering it impossible for citizens of New York to determine what course of conduct will expose them to criminal penalties. While the District Court acknowledged and properly struck down a number of these impermissibly vague statutes, it upheld two particularly vague and problematic provisions relating to magazines (N.Y. Penal Law §§ 265.00(23)(a), 265.00(22)(b)(iv)), despite evidence in the record that these laws are so vague that even the law enforcement officials charged with enforcing the laws are incapable of discerning what actions violate its provisions. If law enforcement officials cannot understand what constitutes violations of the provisions of the New York SAFE Act, then it is equally, if not more, impossible for NSSF's members to comply with those provisions in the course of providing lawful commerce in firearms and ammunition to law-abiding New Yorkers.

The vagueness of these provisions is particularly problematic for NSSF's members whose businesses and livelihoods are heavily related to the manufacture, distribution and/or sale of firearms, are already strictly regulated and depend upon

absolute compliance. To be sure, even a harmless and unintentional violation of the New York SAFE Act by NSSF's members exposes them to the criminal penalties applicable to the challenged provisions, but also has the potential to destroy their business and the financial support it provides to their families, their employees and their employees' families. Given the potentially dire consequences of non-compliance faced by NSSF's members, the vagueness of the challenged provisions, as set forth more fully below, presents an untenable situation in which the required absolute compliance is impossible. The situation is, therefore, unconstitutional under the Due Process Clause of the Fourteenth Amendment. Thus, the challenged provisions should be struck down by this Honorable Court.

ARGUMENT

I. THE NY SAFE ACT UNCONSTITUTIONALLY INFRINGES THE SECOND AMENDMENT BY BANNING POSSESSION OF AND LAWFUL COMMERCE IN "TYPICALLY POSSESSED" FIREARMS AND MAGAZINES

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

Since the right to bear arms would be meaningless in the absence of a means to lawfully obtain those “typically possessed” arms it follows that the Second Amendment also protects lawful commerce in arms, including those which are “typically possessed.” The Seventh Circuit applied this logic in finding that the plaintiffs had shown a likelihood of success on their Second Amendment challenge to the City of Chicago’s outright ban on shooting ranges. *See Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011). Indeed, relying on several passages from *Heller*, the Seventh Circuit held that “the right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn’t mean much without the training and practice that make it effective.” *Id.* Thus, just as the Second Amendment guarantees the right of individuals to possess “typically possessed” firearms and magazines, so too does it protect NSSF’s members’ right to engage in lawful commerce in “typically possessed” firearms and magazines. Accordingly, if the firearms and magazines which are banned by the New York SAFE Act are “typically possessed” then the New York SAFE Act’s outright ban on the possession and sale of such firearms and magazines is unconstitutional and infringes the Second Amendment rights of both individuals and NSSF’s members.²

² It must be noted that the New York SAFE Act’s ban *is* an outright ban on the possession and sale of so-called “assault weapons” and “large capacity magazines” as distinguished from a time, place and manner restriction in that the banned items

Empirical data is perhaps the best means for determining whether firearms and magazines are “typically possessed by law-abiding citizens for lawful purposes.” In order to support its members’ businesses, NSSF regularly researches and compiles data on the sale, ownership and use of firearms and magazines in the United States. *See* Report of James Curcuruto, ADD 2-3.³

Among other things, empirical data studied and compiled by NSSF demonstrates that firearms banned by the New York SAFE Act (widely known as “modern sporting rifles”) are “typically possessed.” For instance, data compiled from the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) Annual Firearms Manufacturers and Exports Report (“AFMER”) reveals that between 1990 and 2012 nearly 4.8 million AR platform rifles⁴ (which are banned by the New York SAFE Act), were manufactured in the United States for sale within the United States. *See* ADD-3. During the same timeframe, International Trade Commission (“ITC”) data reflects that more than 3.4 million AR and AK platform rifles were imported into the United States. *Id.* The commonality of these rifles today is further demonstrated by the fact that nearly 1 million of these roughly 8 million rifles that were manufactured or imported for sale in the United States were

cannot be possessed *anywhere* (including the home), by *any* law-abiding citizen, for *any* lawful purpose. Such absolute bans are precisely what *Heller* forbids. Thus, the only question is if they are “typically possessed.”

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

⁴ The AR platform and AK platform rifles are both considered modern sporting rifles and are both banned by the New York SAFE Act.

manufactured or imported in 2012 alone. *Id.* That is more than twice the number of Ford F-150s—the most commonly sold vehicle in the United States in 2012—sold in the same year. Moreover, an analysis of the data from ATF and ITC shows that more than 4.8 million people in the United States currently own at least one modern sporting rifle. Such data clearly demonstrates that firearms banned by the New York SAFE Act, such as the modern sporting rifle, are “typically possessed.”

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

Similarly, the so-called “large capacity magazines” that the New York SAFE Act bans are also “typically possessed.” Empirical data reflects that between 1990 and 2012, some 158 million pistols and rifle magazines were in the possession of United States consumers. *See* ADD-6. Of this 158 million magazines, “approximately 75 million or 46[%]” were magazines capable of holding more than ten rounds, which are banned by the New York SAFE Act. *Id.* Put differently, the magazines which the New York SAFE Act bans account for almost half of all magazines possessed by private citizens in the United States. Simply put, as with modern sporting rifles, such data compels the conclusion that the magazines which the New York SAFE Act bans are “typically possessed.” Thus, under *Heller* and *McDonald*, the New York SAFE Act’s ban on possession and sale of these items violates the Second Amendment rights of individual New Yorkers and NSSF’s members, and must be declared unconstitutional.

II. THE MAGAZINE CAPACITY RESTRICTIONS OF THE NY SAFE ACT MUST BE EVALUATED UNDER THE PERMEATED WITH VAGUENESS STANDARD

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

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

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

In determining the appropriate level of review to be applied in vagueness analyses under the Due Process Clause of the Fourteenth Amendment, courts consider, among other things, whether the laws at issue impinge upon fundamental rights, and, in the case of statutes imposing criminal penalties, whether the statutes require a *mens rea*, or are strict liability offenses. Laws which impinge upon fundamental rights, regardless of whether they violate those rights, are notably suspect and subject to a heightened level of scrutiny. *See Vill. of Hoffman Estates v. Flipside*, 455 U.S. 489, 499 (1982); *see also Hayes v. N.Y. Atty. Grievance Comm. of the Eighth Judicial Dist.*, 672 F.3d 158, 168 (2d Cir. 2012). Similarly, laws imposing criminal penalties, especially those imposing strict liability, are also considered highly suspect and subjected to a heightened level of scrutiny. *See Vill. of Hoffman Estates*, 455 U.S. at 498-99. Moreover, when a statute combines all of

these criteria (impinges a fundamental right, is criminal in nature and imposes strict liability) Supreme Court decisions suggest that such statutes may be declared void for vagueness where the statute is permeated with vagueness. *See City of Chicago v. Morales*, 527 U.S. 41, 55 (1999), *see also Kolender v. Lawson*, 461 U.S. 352, 358, n.8 (1983).

It is beyond dispute that the New York SAFE Act's magazine capacity restrictions impinge on the fundamental right to keep and bear arms. It is also beyond dispute that the statutes strictly prohibit the sale and possession of prohibited magazines and impose criminal penalties for violation of the provisions. Thus, the magazine capacity restrictions of the New York SAFE Act are precisely the type of laws for which the permeated with vagueness standard exists. Moreover, the fact that the vagueness of the New York SAFE Act's magazine capacity restrictions burdens not only the rights of private citizens and the law enforcement officers tasked with enforcing those rights, but also burdens lawful commerce in firearms protected by the Second Amendment, provides further justification for the application of the permeated with vagueness standard to these provisions.

III. THE NEW YORK SAFE ACT'S MAGAZINE CAPACITY RESTRICTIONS ARE UNCONSTITUTIONALLY VAGUE

While the District Court acknowledged the existence of the permeated with vagueness standard, it erroneously concluded that the statutes in question were

neither permeated with vagueness nor vague in all circumstances. Despite proclaiming as much, the District Court's decision only really analyzes the magazine capacity restrictions under the vague in all circumstances standard before concluding that the statutes are not permeated with vagueness. Indeed, had the District Court actually analyzed the magazine capacity restrictions under the permeated with vagueness standard the only viable conclusion would have been that the provisions are unconstitutionally vague. To be sure, the evidence before the District Court demonstrated that New York law enforcement officers could not understand the laws with sufficient clarity to enforce them. Simply put, it is hard to comprehend how laws which are too vague for law enforcement to enforce could not be permeated with vagueness.

"Readily Restored or Converted to Accept"

By prohibiting magazines which can be "readily restored or converted" to hold more than 10 rounds, this provision contemplates modifying magazines in order to reduce their capacity below the maximum of 10 rounds imposed by the New York SAFE Act. N.Y. PENAL LAW § 265.00(23)(a). The phrase "readily restored," however, is undefined in the statute leaving NSSF's members to wonder what is sufficient to modify a magazine that is capable of holding more than 10 rounds so that it is no longer capable of being "readily restored" to hold more than 10 rounds. Similarly, NSSF's members are apparently also expected to guess

about what magazines are capable of being “readily converted” to hold more than 10 rounds. Even worse, the answer to that guess turns on, among other things, another question: “readily converted” by who? An engineer? A gunsmith? An individual who has never handled and has no experience with a firearm? Someone with access to normal household tools, or a full machine shop? If nothing else, these questions illustrate the unconstitutional vagueness that permeates the challenged provision and warrants this Court striking it down. For example, many detachable pistol magazines have been modified to reduce their capacity to ten rounds or less by increasing the size of the baseplate or follower in the magazine body. The capacity of such a magazine could be further decreased or increased by changing the baseplate or follower. Would such a magazine be considered banned by the New York SAFE Act? Regardless, the volumes of questions, guesses and conjecture triggered by this provision make clear that the provision is permeated with precisely the type of vagueness that compels declaring it unconstitutional. Indeed, NSSF’s members should not be forced to resort to guesswork and speculation when making decisions about what they can legally manufacture, ship, sell and stock, much less be subjected to criminal penalties if those guesses prove wrong. As such, New York Penal Law § 265.00(23)(a) should be declared unconstitutional.

Shotgun Magazine Capacity

The provision making a semi-automatic shotgun an “assault weapon” if it has “a fixed magazine capacity in excess of seven rounds” is also unconstitutionally vague. N.Y. PENAL LAW § 265.00(22)(b)(iv). Most shotguns have fixed magazine tubes underneath the barrel that hold the shells end to end, such that their capacity is determined by the length of the shells loaded in them. The three most common lengths of 12 gauge shotgun shells are 2 ¾", 3", and 3 ½". A shotgun with a 3 ½" chamber can fire any of these three shell lengths, and a shotgun with a 3" chamber can also fire 2 ¾" shells. The capacity of the fixed magazine tube on a shotgun is therefore variable. Because the New York SAFE Act does not define how the capacity of a fixed shotgun magazine is to be determined, but imposes strict liability and criminal penalties for its violation, this provision is unconstitutionally vague.

Notably, the fact that this provision is permeated with vagueness is underscored by the District Court’s stated basis for upholding it. Indeed, the District Court held that “when applied to a standard-length shell, the restriction is not vague.” But that is the whole point—the statute requires the world to guess what constitutes a “standard-length shell.” Thus, NSSF’s members are left to guess whether a particular shotgun is legal or not. If they wrongly guess that the firearm is legal, they are subject to criminal consequences. If they wrongly guess

that it is illegal, then they lose the ability to earn a livelihood from the sale of a legal product. Such vagueness and confusion is untenable and is precisely what the Due Process Clause of the Fourteenth Amendment prohibits. As such, New York Penal Law § 265.00(22)(b)(iv) should also be declared unconstitutional.

CONCLUSION

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

Dated: White Plains, New York
May 6, 2014

/s/ Christopher Renzulli

John F. Renzulli, Esq.
Christopher Renzulli, Esq.
Edwin T. Brondo, Jr., Esq.
RENZULLI LAW FIRM, LLP
81 Main Street, Suite 508
White Plains, New York 10601
(914) 285-0700

-and-

Lawrence G. Keane, Esq.
Jeffery S. Yue, Esq.
THE NATIONAL SHOOTING SPORTS FOUNDATION, INC.
11 Mile Hill Road
Newtown, Connecticut 06470
(203) 426-1320

Attorneys for Amicus Curiae
The National Shooting Sports Foundation, Inc.

CERTIFICATE OF COMPLIANCE

This brief complies with type-volume limitations Fed. R. App. P. Rules 28.1(e)(2)(a) and 29(d) because this brief contains 3,744 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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

Dated: May 6, 2014

/s/ Christopher Renzulli
Christopher Renzulli, Esq.
Attorney for Amicus Curiae
The National Shooting Sports Foundation, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of May, 2014, this brief of *amicus curiae* was served, via electronic delivery to all parties' counsel via the CM/ECF system which will forward copies to Counsel of Record.

Dated: May 6, 2014

/s/ Christopher Renzulli
Christopher Renzulli, Esq.
Attorney for Amicus Curiae
The National Shooting Sports Foundation, Inc.

ADDENDUM

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ADD-1

Expert Report of James Curcuruto

Director, Industry Research & Analysis

National Shooting Sports Foundation, Inc.

11 Mile Hill Road

Newtown, CT 06470-2359

December 13, 2013


James Curcuruto

ADD-2**My Qualifications**

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

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

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

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

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| ADD-3 |
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Opinions and Supporting Evidence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Published Articles

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

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

Expert Witness History

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