

Brady Center Amicus Brief re: NY SAFE Act

- I. The District Court correctly applied intermediate scrutiny to determine that the challenged provisions of the SAFE Act pass constitutional muster.
 - a. *Heller* does not compel stricter scrutiny.
 - b. *Decastro* and *Kachalsky* apply intermediate scrutiny
- II. Applying intermediate scrutiny to the challenged provisions compels the conclusion that they are consistent with the Second Amendment.
 - a. Intermediate scrutiny requires that the challenged restrictions be substantially related to the achievement of an important governmental interest.
 - b. There can be no more important governmental interest than that of insuring the safety of law enforcement personnel who, in turn, are charged with guarding public safety.
 - c. The challenged restrictions are substantially related to insuring the safety of law enforcement personnel as well as that of the general public.
 - i. Assault weapons ban
 1. Features of assault weapons making them easier to use also increase the likelihood that they will be used to threaten the safety of law enforcement personnel generally and in the specific context of mass shootings.
 - a. Testimony re: military use
 - b. Testimony re: purpose of assault weapons features to injure large numbers of people
 2. In fact, assault weapons have been used in increasing numbers against police officers in law enforcement
 - i. ATF Records of Gun Crimes
 - ii. Washington Post Studies
 3. Assault weapons have also been used in mass shootings in numbers disproportionately large compared to their proportion of total firearms, creating unique risks for law enforcement personnel
 - i. Mother Jones Investigation
 - ii. Mayors Against Illegal Guns, *Analysis of Recent Mass Shootings*
 - ii. Large capacity magazines ban
 1. Similar to the features of assault weapons discussed above, large capacity magazines make it easier for shooters to injure large numbers of people, including law enforcement personnel, in a shorter period of time.
 - a. Examples of particular dangers of large capacity magazines to law enforcement personnel generally (largely in the gang and trafficking contexts)

- i. Expert Declarations (Koper, etc)
 - ii. Washington Post Studies
 - b. Examples of dangers of large capacity magazines to law enforcement personnel in the mass shootings context
 - i. Mother Jones Investigation
 - ii. Mayors Against Illegal Guns, *Analysis of Recent Mass Shootings*
- III. Address arguments of Sheriff's *amicus* brief
 - a. The evidence considered by the Legislature (if any) was inadequate to support the challenged restrictions
 - i. Response: Ample evidence of the particular dangers of assault weapons features and large capacity magazines existed, including evidence considered by a previous Legislature re: the two-feature test
 - ii. Response: It is appropriate for a Legislature to rely on common-sense justifications for the challenged provisions of the SAFE Act
 - b. "Assault weapons" is a political, made-up term to vilify military-style firearms which are used in only a small percentage of gun crimes.
 - i. Response: Legislature does not rely on terminology, rather, it has specifically identified features which make certain firearms inherently more dangerous and sought to ban only those
 - ii. Response: The Sheriffs Association *amicus* brief relies on outdated data to demonstrate assault weapons are used in only a small percentage of gun crimes.
 - a. ATF Records
 - b. Expert Declarations
 - iii. Response: When combatting a serious, wide-ranging problem, like gun violence, the Legislature is entitled to attack a smaller segment of the problem first and the fact that the proposed legislative solution does not directly address the entire problem shall not invalidate the piecemeal solution