
No. 18-1545

United States Court of Appeals
for the First Circuit

**DAVID SETH WORMAN; ANTHONY LINDEN; JASON WILLIAM SAWYER; PAUL NELSON
CHAMBERLAIN; GUN OWNERS' ACTION LEAGUE, INC.; ON TARGET TRAINING, INC.;**
OVERWATCH OUTPOST,
Plaintiff-Appellants

NICHOLAS ANDREW FELD
Plaintiff

v.

**MAURA TRACY HEALEY, IN HER OFFICIAL CAPACITY AS ATTORNEY GENERAL
OF THE COMMONWEALTH OF MASSACHUSETTS, DANIEL BENNETT, IN HIS OFFICIAL
CAPACITY AS SECRETARY OF THE EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY;**
**COLONEL KERRY GILPIN, IN HER OFFICIAL CAPACITY AS SECRETARY OF THE
MASSACHUSETTS STATE POLICE,**
Defendants-Appellees,

CHARLES D. BAKER, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE OF MASSACHUSETTS;
MASSACHUSETTS STATE POLICE,
Defendants

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS (Boston)
Case No. 1:17-cv-10107-WGY

**BRIEF OF AMICI CURIAE MASSACHUSETTS CHIEFS OF POLICE ASSOCIATION
and MASSACHUSETTS MAJOR CITY CHIEFS OF POLICE ASSOCIATION
IN SUPPORT OF APPELLEES AND URGING AFFIRMANCE**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a), counsel for *amici curiae* certifies that none of the *amici* has a parent corporation and no publicly held corporation owns 10% or more of the stock of any of the *amici*.

Dated: November 12, 2018

s/ M. Patrick Moore, Jr.

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STATEMENT OF INTEREST OF AMICI CURIAE^{1,2}

Amici are nonprofit organizations comprised of leaders of municipal law enforcement from throughout the Commonwealth.

The **Massachusetts Chiefs of Police Association, Inc.** (“MCOPA” or “Mass. Chiefs”) represents the interests of municipal chiefs of police in Massachusetts. The organization’s purposes are to advance the provision of professional police services; to develop and promote enhanced police practices; and to facilitate the sharing of information by state and local public safety officials. MCOPA was founded more than 120 years ago for these purposes and continues to be the voice of the Commonwealth’s police chiefs.

The **Massachusetts Major City Chiefs of Police Association, Inc.** (“MMCC” or “Major City Chiefs”) is an association comprised of the police leadership of the Commonwealth’s larger municipalities (those with at least 40,000 residents or at least 75 sworn police officers). Like MCOPA, MCCC’s primary concern is the safety and security of the people of the Commonwealth, and the

¹ All parties have assented to the filing of this brief.

² Pursuant to Fed. R. App. P. 29(a)(4)(E), amici state that: no party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief; and no person, other than the amici or their counsel, contributed money that was intended to fund preparing or submitting this brief. The Colonel of the Massachusetts State Police is an ex officio member of the Massachusetts Major City Chiefs Association. She played no role whatsoever in the decision to file — or the substance of — this brief.

organization advances professional best practices and advocates for public policy that will best protect that safety and security.

Our organizations grapple with the threat posed by gun violence to the general public, and the threat of such violence to law enforcement officers in particular. Our work includes the development of training and best practices — for officers who carry firearms and for those who encounter individuals using firearms criminally. Our work also includes dialogue with the state executive and legislative branches, to ensure that our state and local governments are responsive to emerging public safety threats by enforcing existing laws and, where appropriate, enacting new ones. We have been active participants in the Commonwealth’s response to gun violence. Though there is much work to do, we are proud that Massachusetts consistently has one of the lowest rates of death by firearm in the country.³

Our organizations support G.L. c. 140, §§ 121, 131M — the Commonwealth’s prohibition on the sale and possession of semi-automatic assault rifles and large capacity magazines — because it is an important public safety tool. This brief will explore, from the perspective of local law enforcement, the unique

³ See Centers for Disease Control and Prevention, “Firearm Mortality by State” (Jan. 10, 2018), available at https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm (Massachusetts had the lowest firearm death rate in the country in 2016 and 2015).

public safety threat posed by semi-automatic assault rifles and the state's interest in addressing that threat comprehensively. Were the Second Amendment to require the widespread availability of firearms that were designed for combat use, as the Plaintiffs contend, the ability of local law enforcement to protect the public would be hindered and law enforcement officers would be placed in undue danger. The Constitution does not require that result.

SUMMARY OF ARGUMENT

Our organizations support without hesitation the right to individual firearm ownership recognized by *District of Columbia v. Heller*, 554 U.S. 570 (2008). We nevertheless are cognizant of the Supreme Court's clear instruction that the Second Amendment does "not [provide] a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626. Instead, the Supreme Court has recognized certain "presumptively lawful regulatory measures," including prohibitions on "the carrying of 'dangerous and unusual' weapons" and "weapons that are most useful in military services — M-16 rifles[,] and the like." *Id.* at 626, 627 n. 26, 636. The Court has acknowledged and even encouraged "state and local experimentation with reasonable firearms regulations." *McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010) (internal quotation marks and citation omitted).

Among such reasonable regulations is the prohibition on civilian ownership of semi-automatic assault rifles. This brief will set forth the Commonwealth's compelling public interest in protecting public safety, which the Supreme Court and many others have described as the core of the state's police power. *E.g.*, *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"); *Queenside Hills Realty Co. v. Saxl*, 328 U.S. 80, 82 (1946) ("Protection of the safety of persons is one of the traditional uses of the police power of the States"). We agree. This brief will describe why that compelling interest is furthered by sharply constricting the possession and use of firearms designed for modern military combat. There is no question among Massachusetts law enforcement that semi-automatic assault rifles pose uniquely dangerous threats. Such weapons can be fired rapidly with ease — that is the very purpose for which they were designed. When such firearms are used, they are distinctly hazardous to the Commonwealth (as, on average, they kill more people more quickly than other firearms) and responding law enforcement (as they may be discharged from distance with minimal interruption).

In addition, the distinction that Plaintiffs attempt to draw between automatic rifles (which they concede, consistent with *Heller* and its progeny, may be prohibited) and semi-automatic assault rifles fails upon inspection. First, semi-

automatic assault rifles may be manipulated easily into automatic rifles. Second, to a responding officer, the difference between an automatic rate of fire and a semi-automatic assault rifle rate of fire is nearly imperceptible. There is no basis, factual or constitutional, on which to contend that possession of one should be beyond the pale, while the possession of the latter should be available nearly at will. In fact, the experience of law enforcement suggests quite the opposite. Police officers in Massachusetts can and do carry semi-automatic assault rifles but only in the most limited of circumstances and only following extensive training.

Finally, part of the work of local law enforcement is to communicate and coordinate with state officials and lawmakers, so as to ensure that state government is aware of and responsive to threats to public safety. Both of our organizations prioritize that work. Plaintiffs in this case contend that the only material question under the Second Amendment is whether a firearm has become sufficiently popular and, if so, they assert that the Constitution demands that it be widely available. Brief of Plaintiffs-Appellants (“Worman Br.”) at 2, 5, 7, 19. Were that argument to prevail, a judicial dictate would inhibit the Commonwealth’s ability to meet its core responsibility of public protection. The dictate would be rooted not in constitutional text, but instead in the sales records of firearms manufacturers. *Heller* does not require such a radical result.

ARGUMENT

Regardless whether the possession of a semi-automatic assault rifle is conduct that falls within the scope of the Second Amendment, each Circuit Court of Appeals to have considered the constitutionality of strict limitations on the ownership of such firearms (and the large capacity magazines so often used as an accessory to them) has applied intermediate scrutiny. *See Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (en banc), *cert. denied* 138 S.Ct. 469 (2017); *New York State Rifle & Pistol Assoc., Inc. v. Cuomo*, 804 F.3d 242, 263-64 (2d. Cir 2015) (Cabranes, J.) (“*NYSRPA*”), *cert. denied sub nom.* 136 S.Ct. 2486 (2016); *Friedman v. City of Highland Park*, 784 F.3d 406, 409 (7th Cir. 2015) (Easterbrook, J.), *cert. denied* 136 S.Ct. 447 (2015); *Fyock v. City of Sunnyvale*, 779 F.3d 991, 998–99 (9th Cir. 2015); *Heller v. District of Columbia*, 670 F.3d 1244, 1256 (D.C. Cir. 2011) (“*Heller II*”).

In its classic formulation, intermediate scrutiny requires that a law be “substantially related to an important government objective.” *Kittery Motorcycle, Inc. v. Rowe*, 320 F.3d 42, 47 (1st Cir. 2003); *see Gould v. Morgan*, -- F.3d --, 2018 WL 5728640, *10 (1st Cir. Nov. 2, 2018); *United States v. Booker*, 644 F.3d 12, 25 (1st Cir. 2011); *Kolbe*, 849 F.3d at 133 (“The less onerous standard of intermediate scrutiny requires the government to show that the challenged law is reasonably adapted to a substantial governmental interest”).

It is beyond question that public safety is an important governmental interest. *Schenk v. Pro-Choice Network of W. New York*, 519 U.S. 357, 376 (1997); see *United States v. Salerno*, 481 U.S. 739, 750 (1987) (“the [g]overnment’s general interest in preventing crime” is “compelling”); *Friedman*, 784 F.3d at 418–19 (“public safety is an obvious compelling interest”); cf. *United States v. Morrison*, 529 U.S. 598, 618 (2000) (“Indeed, we can think of no better example of the police power . . . than the suppression of violent crime”). This brief sets forth why that is so from the perspective of law enforcement. Barring civilian ownership of semi-automatic assault rifles that are capable of firing hundreds of lethal rounds per minute is substantially related to protecting the safety of the public and law enforcement.

I. SEMI-AUTOMATIC ASSAULT RIFLES POSE A DISTINCT, LETHAL THREAT TO THE PUBLIC AND LAW ENFORCEMENT OFFICERS.

The extensive record in this case details that semi-automatic assault rifles were designed for modern military combat. See Brief of Attorney General Maura Healey, et al. (“AG Br.”) at 18–26. When they are deployed in civilian settings, the danger posed to the general public and members of law enforcement is acute.

A. The Rate and Continuity of Fire is Extreme.

A semi-automatic assault rifle may fire 30 bullets every five seconds and well over 500 rounds per minute if manipulated to approximate automatic fire. See

Kolbe, 849 F.3d at 125; Joint Appendix (“JA”) 1528.⁴ If the firearm is equipped with a large capacity magazine (which is illegal in Massachusetts, but only under the law that Plaintiffs would have this Court strike down), as many as 100 bullets may be discharged before the shooter is forced to reload. JA 1529; AG Br. at 50; *Kolbe*, 849 F.3d at 125. This rate and volume of fire far exceeds any conceivable handgun use. *See Friedman v. City of Highland Park*, 784 F.3d 406, 409 (7th Cir. 2015) (Easterbrook, J.) (“[S]emi-automatic guns with large capacity magazines enable shooters to fire bullets faster than handguns equipped with smaller magazines”); Richard A. Oppel Jr., “Synagogue Suspect’s Guns Were All Purchased Legally, Inquiry Finds,” *N.Y. Times* (Oct. 30, 2018).

As numerous Circuit Courts have recognized, where a shooter can maintain a high rate of fire with minimal need to reload, law enforcement has fewer opportunities to intervene during pauses in the gunfire. *NYSRPA*, 804 F.3d at 263-64; JA at 922-23; *see Heller II*, 670 F.3d at 1264 (“[T]he 2 or 3 second pause during which a criminal reloads his firearm can be of critical benefit to law enforcement”). Innocent civilians also are afforded fewer opportunities to flee. *See* JA 1525; *Heller II*, 670 F.3d at 1264. Simply stated, laws like those in

⁴ For the reasons set forth *infra* § III–A, semi-automatic assault rifles are easily manipulated for near-automatic fire. The bump stock, which has gained notoriety in the wake of the massacre of 58 people in Las Vegas, Nevada, is one such example. But as a quick Google search will indicate, it is one of many examples.

Massachusetts that “reduc[e] the number of rounds that can be fired without reloading increases the odds that lives will be spared in a mass shooting.” *Kolbe*, 849 F.3d at 128.

Not only are semi-automatic assault rifles designed to make firing a large number of bullets as easy as possible, they also may be accessorized to make that lethal task easier still. For example, forward handgrips and barrel shrouds allow a shooter to hold and control the firearm longer than would normally be possible upon rapid, sustained fire; muzzle breaks and compensators have similar effects. *See NYSRPA*, 804 F.3d at 263. Where a shooter may discharge voluminous rounds without interruption and do so in relative comfort, responding officers are disadvantaged substantially; so, too, is any person in the shooter’s vicinity. *See JA 788; NYSRPA*, 804 F.3d at 263 (“[T]he net effect of these military combat features is a capability for lethality — more wounds, more serious, in more victims — far beyond other firearms in general, including other semi-automatic guns”) (internal quotation marks and citation omitted).

This problem is exacerbated by the fact that semi-automatic assault rifles may be used effectively at a range of up to 500 yards. *JA 788*. So, a would-be shooter can ensconce himself in a secluded location and train continuous gunfire of more than 100 rounds per minute at civilians and responding law enforcement. *JA 788; see Kolbe*, 849 F.3d at 127 (“Criminals armed with the banned assault

weapons possess a military-style advantage in firefights with law enforcement officers, as such weapons allow criminals to effectively engage law enforcement officers from great distances”) (internal quotation marks omitted). The state’s substantial interest in preventing such occurrences is unmistakable. *See Booker*, 644 F.3d at 25 (describing the state’s interest in preventing gun violence as “undeniably important”); *Kolbe*, 849 F.3d at 139 (“To be sure, [the state’s] interest in the protection of its citizenry and the public safety is not only substantial, but compelling”). *Accord NYSRPA*, 804 F.3d at 263.

B. The High Velocity of Bullets Can Render Body Armor Ineffective.

Bullets from semi-automatic assault rifles are fired at high velocity, and even from long distance the firearms and their ammunition are designed to deliver “major destructive kinetic energy.” Peter M. Rhee et al., *Gunshot Wounds: A Review of Ballistics, Bullets, Weapons, and Myths*, 80 J. TRAUMA ACUTE CARE SURG. 859, 861, 863 (2016). Bullets from handguns, by contrast, typically travel shorter distances and are less destructive to the human body. *Id.* at 859. It is no surprise, then, that police officers who are killed by firearms while on duty are disproportionately killed by semi-automatic assault weapons. JA at 3754; *see* Christopher Koper, et al., *Criminal Use of Assault Weapons and High-Capacity Semiautomatic Firearms: An Updated Examination of Local and National Sources*, J. URBAN HEALTH (Oct. 2, 2017); Violence Policy Ctr., *New Data Shows One in*

Four Law Enforcement Officers Slain in the Line of Duty in 2016 Felled by an Assault Weapon (Feb. 27, 2018).

Standard police guidance in Massachusetts provides that more flexible body armor — of the type most typically used by responding officers, because its dexterity allows for greater ease of movement — cannot be expected to withstand fire from a semi-automatic assault rifle. JA 789; *see Kolbe*, 849 F.3d at 139 (describing the capability of semi-automatic assault rifles to “penetrate building materials and soft body armor”).⁵ In fact, the most common semi-automatic assault rifle (the AR-15) was designed to pierce soft body armor and steel helmets at distances up to 500 yards. JA 2446. When encountering an individual armed with a semi-automatic assault rifle, heavier armor must be used. JA 789. That heavier armor is cumbersome, more restrictive of movement, and more difficult to conceal. JA 789. It is not typically worn, and were the proliferation of semi-automatic assault weapons to require it to become part of the typical duty uniform, policing would become more difficult. *See* JA 789.

⁵ *See generally* United States Dep’t of Justice, Nat’l Inst. of Justice, “Ballistic Resistance of Body Armor” (Jul. 2008), available at <https://www.ncjrs.gov/pdffiles1/nij/223054.pdf>.

C. The Characteristics That Make Semi-Automatic Assault Rifles Particularly Dangerous for Police Officers Likewise Make Them Particularly Dangerous for the General Public.

The characteristics of semi-automatic assault rifles that pose a unique danger to law enforcement — the high rate of fire, the greater ability to fire continuously, and the destructive effect of the bullet striking its target — also make them particularly dangerous to members of the general public. Substantially more victims die in multiple-victim shootings involving semi-automatic assault rifles than do in shootings involving other types of firearms. Elzerie de Jager, et al., *Lethality of Civilian Active Shooter Incidents With and Without Semiautomatic Rifles in the United States*, 320 J. AM. MED. ASSOC. 1034, 1034 (Sept. 11, 2018).

It will come as no surprise that the same bullets from semi-automatic rifles that can overcome the most commonly used body armor also are particularly destructive to civilians. *See* Rhee, *supra*, at 863-65; Heather Sher, “What I Saw Treating the Victims from Parkland Should Change the Debate on Guns,” *The Atlantic* (Feb. 22, 2018). Many handgun victims have a fighting chance of survival as long as the bullet has not directly hit the heart, aorta, or blood source to a major organ. Sher, *supra*, at 2. By contrast, semi-automatic assault rifles cause more severe injuries; their rounds generate a pressure wave that can shatter vital organs and produce exit wounds “the size of an orange.” Rhee, *supra*, at 864; Sher, *supra*, at 3. The immediate, catastrophic bleeding these firearms cause often kills victims

before they ever reach a hospital for care. *Sher, supra*, at 3. Nor may civilians easily find refuge when confronted by an active shooter. Neither body armor nor makeshift barricades will do. “[R]ounds from assault weapons have the ability to easily penetrate most materials used in standard home construction, car doors, and similar materials.” *Kolbe*, 849 F.3d at 127.

As summarized by the Second Circuit, “[w]hen used, these weapons tend to result in more numerous wounds, more serious wounds, and more victims”; they are “disproportionately used in crime, and particularly in criminal mass shootings”; and are “disproportionately used to kill law enforcement officers.” *NYSRPA*, 804 F.3d at 262; *see Friedman*, 784 F.3d at 411 (“[A]ssault weapons with large-capacity magazines can fire more shots, faster, and thus can be more dangerous in the aggregate. Why else are they weapons of choice in mass shootings?”).

D. Wide Availability of Semi-Automatic Assault Weapons Would Make Policing More Dangerous.

Police work is essential to public safety; it also is exceptionally dangerous. *E.g.*, Katie Camero, “Police Officers Honored for Bravery During Hanna Award Ceremony,” *Boston Globe* (Sept. 7, 2018). Policing in a Commonwealth where possession of semi-automatic assault weapons were commonplace would be more dangerous still. *Cf. David Swedler et al., Firearm Prevalence and Homicides of Law Enforcement Officers in the United States*, 105 AM. J. OF PUB. HEALTH 2042, 2046 (Oct. 2015) (police officer occupational homicide rate increases when

officers “more frequently encounter[] situations where privately owned firearms [are] present”). Limiting the availability of such weapons ensures that police will be adequately equipped to neutralize criminals and ensures that when a criminal misuses a firearm “he does so with a less dangerous weapon and less severe consequences.” *Kolbe*, 849 F.2d at 140; *see* JA 793. As our state legislature has wisely determined, the Commonwealth’s police officers charged with diffusing criminal behavior should not have that task made more difficult and more dangerous by the proliferation of weaponry designed for professional military combat. That is “precisely the type of judgment that legislatures are allowed to make without second-guessing by a court.” *Kolbe*, 849 F.3d at 140; *see NYSRPA*, 804 F.3d at 263 (describing the “substantial deference” owed to “predictive judgments of the legislature on matters of public safety”).

II. MASSACHUSETTS LAW ENFORCEMENT OFFICERS MUST MEET QUALIFICATION AND TRAINING STANDARDS TO CARRY SEMI-AUTOMATIC PATROL RIFLES.

The limited circumstances in which Massachusetts law enforcement use semi-automatic assault rifles, and the training that precedes any such use, demonstrate the unique nature of these firearms.

A. Law Enforcement Officers that Carry Semi-Automatic Assault Rifles Undergo Regular Training.

Each and every sworn municipal police officer in the Commonwealth must qualify annually to carry a patrol rifle — typically an AR-15 or a semi-automatic

M4 carbine. *See* Massachusetts Municipal Police Training Committee, *MPTC Minimum Standards for Patrol Rifle Re-Qualification and Continual Training* (Feb. 2016) (included in the Addendum). Annual training requires the demonstration of proficiency in handling the rifle safely and firing it in a range of circumstances (e.g., at multiple targets, while in motion, or in reduced light). Addendum at 1-2.

In the City of Chelsea, for example, before an officer will have access to a patrol rifle, he or she must demonstrate the ability to safely operate the weapon after taking a class for that purpose; score above 94% on gun-range tests; and score 100% on the written exam pertaining to the department policy. *See* Chelsea Police Department, “Patrol Rifle Policy” (Apr. 1, 2018) (included in the Addendum). These are rigorous, meaningful requirements meant to ensure proficiency with tactical firearms. In addition, when any officer discharges a patrol rifle, extensive reporting requirements are triggered.⁶ All told, officers who carry patrol rifles are specifically trained to do so; and each municipal law enforcement agency closely oversees anytime the firearm is actually discharged (to ensure compliance with

⁶ *See, e.g.*, Worcester Police, “Policy and Procedure: Firearms Guidelines” (Dec. 2, 2015), available at <http://www.worcesterma.gov/wpd-policy-manual/operations/firearms-guidelines.pdf> (“When an officer discharges a firearm, [it] is a reportable Use of Force” that triggers an investigation by a supervisory officer concerning the “circumstances surrounding the discharge” that must be submitted for review by the Chief of Police, among others) (included in the Addendum).

department policies and avoid misuse). Plaintiffs claim a right to possess and use the same weapons without such extensive training and oversight, which would be infeasible and, in their view, unconstitutional. That is a public safety concern of the highest order.

B. Patrol Rifles Are Used Sparingly and Only in Limited Circumstances.

In most of the Commonwealth's municipal police departments, police officers carry patrol rifles only in limited circumstances. These circumstances include responses to active shooters, apprehension of well-armed criminals, hostage situations, and other encounters involving a significant threat of violence. JA 792. Unfortunately, such events are encountered from time to time by law enforcement officers in the Commonwealth. They are not, however, typical self-defense circumstances. Every law enforcement officer in the Commonwealth must be prepared to defend him or herself; the overwhelming majority carry handguns for that purpose. JA 793. The record in this case reflects that experience. As noted by the Attorney General, Plaintiffs have introduced no serious evidence of the use of semi-automatic assault rifles for self-defense in *any* circumstance. AG Br. at 30 and n. 69; *see Kolbe*, 849 F.3d at 127 (“Neither the plaintiffs nor [state] law enforcement officials could identify a single incident in which a [resident] has used a military-style rifle or shotgun, or needed more than 10 rounds, to protect herself”).

III. THERE IS NO FUNCTIONAL OR CONSTITUTIONALLY MEANINGFUL DIFFERENCE BETWEEN SEMI-AUTOMATIC ASSAULT RIFLES AND AUTOMATIC ASSAULT RIFLES.

Plaintiffs recognize, as they must, that they do not have a constitutional right to acquire, possess, or use automatic rifles or machine guns. *See Heller*, 570 U.S. at 628; *Hollis v. Lynch*, 827 F.3d 436, 450–51 (5th Cir. 2016) (holding that “machine guns . . . do not receive Second Amendment protection”); *United States v. One Palmetto State Armory PA–15 Machinegun Receiver/Frame*, 822 F.3d 136 (3d Cir. 2016) (“[W]e repeat today that the Second Amendment does not protect the possession of machine guns”). Their case rests entirely upon an attempted distinction between automatic rifles, on the one hand, and semi-automatic rifles on the other. No such distinction can be gleaned from the text of the Second Amendment. *See* AG Br. at 17–19. Plaintiffs’ proposed distinction also cannot be reconciled with the experience of law enforcement. Their rhetoric is detached from any recognizable real world experience.

A. Semi-Automatic Assault Rifles May Be Manipulated Easily Into Automatic Firearms.

First, a semi-automatic assault rifle may be converted to the functional equivalent of a fully automatic assault rifle with minimal difficulty. There are numerous inexpensive products specifically designed to render semi-automatic assault rifle fire automatic, most notoriously including bump fire stocks. *E.g.*, Miles Kohrman, “The Las Vegas Shooter’s Accessories,” *The New Yorker* (Oct. 4,

2017); *see* Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”), Notice of Proposed Rulemaking, 83 Fed. Reg. 13442 (Mar. 29, 2018) (“The devices used in [the] Las Vegas [massacre] and the other bump-stock type devices currently on the market all utilize the same functional design. They are designed to be affixed to a semi-automatic long gun . . . in place of a standard, stationary rifle stock, for the express purpose of allowing ‘rapid fire’ operation of the semiautomatic firearm to which they are affixed”).⁷ The use of these devices can enable a shooter with a semi-automatic assault rifle to fire between 400 and 800 rounds per minute.⁸

⁷ As ATF describes,

Ordinarily, to operate a semiautomatic firearm, the shooter must repeatedly pull and release the trigger to allow it to reset, so that only one shot is fired with each pull of the trigger. When a bump-stock type device is affixed to a semiautomatic firearm, however, the device harnesses the recoil energy to slide the firearm back and forth so that the trigger automatically re-engages by ‘bumping’ the shooter’s stationary finger without additional physical manipulation of the trigger by the shooter. The bump-stock type device functions as a self-acting and self-regulating force that channels the firearm’s recoil energy in a continuous back-and-forth cycle that allows the shooter to attain continuous firing after a single pull of the trigger No further physical manipulation of the trigger by the shooter is required.

83 Fed. Reg. at 13443.

⁸ *See* Violence Policy Center, *FAQs About Bump-Fires and Similar Devices*, available at http://vpc.org/fact_sht/bumpfireFAQfinal.pdf.

Scores of more rudimentary, “do-it-yourself” devices are a mere internet search away.

Remarkably, an entity known as the Firearms Policy Coalition submitted a lengthy comment in response to ATF’s proposed prohibition of bump stocks, arguing that the draft regulation was arbitrary because there are *so many other* ways to produce automatic rates of fire from semi-automatic assault rifles.⁹ One news organization described the filing thusly: “The filing by the Firearms Policy Coalition . . . points out videos, some available on YouTube, that show how to fire an unmodified AR-15 faster and more accurately than a bump-fire stock. One technique shows how to achieve the same result with a simple rubber band, which is apparently not banned by the ATF’s proposal.”¹⁰

No less an authority than ATF believes that bump stock and equivalent devices transform what otherwise are semi-automatic assault rifles into automatic machine guns. *See* 83 Fed. Reg. at 13446 (“ATF has now determined . . . that

⁹ *See* Firearms Policy Coalition and Firearms Policy Foundation’s Comments in Opposition to Proposed Rule, ATF Docket No. 2017R–22, available at <http://www.publicfiles.firearmspolicy.org/atf-2017r-22-bump-stock-comment/fpc-fpf-comment-atf-2017r-22-bump-stocks-2018-6-19.pdf>.

¹⁰ Declan McCullagh, “ATF Flips on Bump Stock Ban, Some Gun Rights Groups Are Mad,” *Reason* (Jun. 27, 2018), available at <https://reason.com/archives/2018/06/27/atf-flips-on-bump-stock-ban-some-gun-rig>”).

these bump-stock-type devices” turn “semiautomatic firearms into machineguns” because they initiate an “automatic firing cycle sequence”). As a sister Circuit has recognized, “[a] modern machine gun can . . . allow[] a shooter to kill dozens of people within a matter of seconds. Short of bombs, missiles, and biochemical agents, we can conceive of few weapons that are more dangerous than machine guns.” *United States v. Henry*, 688 F.3d 637, 640 (9th Cir. 2012).

The bright-line that Plaintiffs attempt to draw between automatic rifles and semi-automatic assault rifles cannot withstand scrutiny. The latter may become the former far too easily. *See* 83 Fed. Reg. at 13454 (“Based on public comments, individuals wishing to replicate the effects of bump-stock-type devices could also use rubber bands, belt loops, or otherwise train their trigger finger to fire more rapidly”).

B. The Difference in the Rate of Fire, If Any, Is Not Material to Responding Officers.

Even without manipulation, there is minimal, if any, distinction between automatic and semi-automatic rates of fire when a criminal begins shooting at civilians or law enforcement. As the Fourth Circuit recognized, “[a]lthough an M16 rifle is capable of fully automatic fire and the AR-15 is limited to semiautomatic fire, their rates of fire (two seconds and as little as five seconds, respectively, to empty a thirty-round magazine) are nearly identical.” *Kolbe*, 849 F.3d at 136; *see Heller II*, 670 F.3d at 1263.

Recordings of law enforcement responding to active shootings demonstrate as much. For example, in responding to the recent massacre at the Tree of Life Synagogue in Pittsburgh, Pennsylvania, law enforcement stated the following:

- “We’re under fire, we’re under fire, he's got an automatic weapon, he's firing out of the front of the synagogue.”
- “3-1-5 every available unit in the city needs to get here now, all units hold the perimeter, we’re taking on AK-47 fire, from out the front of the synagogue.”
- “We are pinned down by gunfire, he’s firing out of the front of the building with an automatic weapon.”¹¹

Of course, the assailant there used a semi-automatic assault rifle, not an automatic weapon. *See* Richard A. Oppel, Jr., “Synagogue Suspect’s Guns Were All Purchased Legally, Inquiry Finds,” *N.Y. Times* (Oct. 30, 2018). He killed 11 people and injured four law enforcement officers. Kris Mamula, et al., “Eleven Dead, Six Wounded in Massacre at Squirrel Hill Synagogue,” *Pittsburgh Post-Gazette* (Oct. 27, 2018).

Further illustrating the lethality of semi-automatic fire, the United States military now most commonly deploys its patrol rifles in semi-automatic mode. AG

¹¹ The recordings, obtained by the local Pittsburgh ABC television affiliate, are available at <https://abc13.com/officers-responding-to-synagogue-shooting-met-with-a-hail-of-fire/4566335/>.

Br. at 23–24. An officer, like those in Pittsburgh, responding to an active civilian shooter with a semi-automatic rifle is responding to combat fire.

C. That Semi-Automatic Assault Rifles Are More Common Than Automatic Machine Guns Is a Function of Federal Law and Has No Constitutional Import.

Given that semi-automatic assault rifles are easily manipulated and appear to be automatic to those targeted by (and responding to) their fire, Plaintiffs’ argument that they are distinct from automatic machine guns reduces to the fact that they are more common. Worman Br. at 2, 5, 7, 19. That argument is comprehensively addressed by the Attorney General, *see* AG Br. at 32–35, and hopelessly circular as Judge Easterbrook succinctly explained:

[R]elying on how common a weapon is at the time of litigation [is] circular Machine guns aren’t commonly owned for lawful purposes today because they are illegal; semi-automatic weapons with large-capacity magazines are owned more commonly because, until recently (in some jurisdictions) they have been legal. Yet it would be absurd to say that the reason why a particular weapon can be banned is that there is a statute banning it, so that it isn’t commonly owned. A law’s existence can’t be the source of its own constitutional validity.

Friedman, 784 F.3d at 409.

IV. Massachusetts Law Enforcement Works Closely With State Officials to Respond to Public Safety Threats Just As Our Federalism Envisions.

Our organizations work closely with state and local leaders to ensure that law enforcement has the tools and resources it needs to address threats to public safety. We have been particularly active in working with state leaders to combat

the opioid crisis. *E.g.*, David Scharfenberg, “State House Leaders Tout Opioid Bill,” *Boston Globe* (Jan. 11, 2106). And in ensuring that our police receive the training they need. *E.g.*, Colin A. Young, “Lawmakers Poised to Send Baker Fee Bill to Train Police,” *State House News Serv.* (Jul. 18, 2018).

Constitutional considerations often play a role in this work. For example, we are cognizant of the need to update the state’s wiretapping statute, and equally cognizant of the Fourth Amendment and Due Process considerations involved in that task. *See* Milton J. Valencia, “Baker, Prosecutors Propose Changes to Wiretap Law,” *Boston Globe* (May 2, 2017). Constitutional concerns likewise are implicated in proposals for pretrial detention of dangerous individuals. *E.g.*, Colin A. Young, “Baker Dangerousness Bill Expands Pre-Trial Detention of Suspects,” *State House News Serv.* (Sept. 6, 2018). And certainly there are constitutional considerations involved in regulating firearm possession. *E.g.*, Andy Metzger, “Task Force Outlines 44 Recommendations to Reduce Gun Violence,” *State House News Serv.* (Feb. 3, 2014).

Our organizations actively participate in these discussions, so that state policymakers are aware of the experiences of local law enforcement. That is how the policymaking process should work. Of course, courts can, should, and do play an active role in ensuring constitutional compliance. What Plaintiffs propose to do, however, is to take a particularly important public safety issue — civilian

possession and use of combat weapons — and place it beyond the reach of state policy. This Court should be extraordinarily reluctant to embrace such a result. *See Kolbe*, 849 F.3d at 150 (Wilkinson, J., concurring) (“Leaving the question of assault weapons bans to legislative competence preserves the latitude that representative governments enjoy in responding to changes in facts on the ground. Constitutionalizing this critical issue will place it in a freeze frame which only the Supreme Court itself could alter. The choice is ultimately one of flexibility versus rigidity, and beyond that, of whether conduct that has visited such communal bereavement across America will be left to the communal process of democracy for resolution”).

CONCLUSION

Because the Commonwealth’s interest in public safety is profound and, by any measure, strict limitations on access to semi-automatic assault rifles and large capacity magazines substantially furthers that interest, the judgment of the District Court should be affirmed.

Respectfully submitted,

MASSACHUSETTS CHIEFS OF
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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limit of Fed. R. App. P. 32(g)(1) and Fed. R. App. P. 29(a)(5) because, excluding the parts of the brief exempted by Fed. R. App. P. 32(f), this brief contains 5,518 words.

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 document has been prepared in a proportionally spaced typeface (14-point Times New Roman) using Microsoft Word 2016 (the same program used to calculate the word count).

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system on November 12, 2018, and that parties or their counsel of record are registered as ECF Filers and that they will be served via the CM/ECF system.

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ADDENDUM

Massachusetts Municipal Police Training Committee, “MPTC Minimum Standards for Patrol Rifle Re-Qualification and Continual Training” (Feb. 2016) ADD1

Chelsea Police Department, “Patrol Rifle Policy” (Apr. 1, 2018) ADD3

Worcester Police, “Policy and Procedure: Firearms Guidelines” (Dec. 2, 2015) ADD9

MPTC Minimum Standards for Patrol Rifle
Re-Qualification & Continual Training

The minimum standards included herein are required of all sworn municipal police officers in the Commonwealth, whether full time, reserve or intermittent. These standards are divided into two sections: *Qualification and Training*. Qualification under these standards is intended to document existing marksmanship proficiency and safe firearms handling skills. Training is intended to improve the officer's marksmanship, reaction and decision making skills under stress in a variety of potential shooting situations, as well as to enhance officer safety and safety of the public. The standards listed are minimum standards only. Nothing herein should be construed as recommending adherence to only to the minimum standards or restricts agencies in any way from exceeding them.

Qualification

1. Annually complete the MPTC Basic Patrol Rifle Qualification Course at least once with a minimum score of 90% and 100% round accountability
 - a. While duty ammo is not required, the caliber used for qualification shall be tested with duty or duty equivalent ammunition.
 - b. The target used for qualification shall be the standard MPTC approved target.

Training

1. Annually receive instruction and review in legal issues and department policy on deadly force, and the safe handling and storage of firearms (c.140§131L). **This requirement may be met with similar training conducted with the duty handgun if department patrol rifle policy & procedure is incorporated.** This may be done at the time of qualification, during range training or on a separate date.
2. In *addition* to the annual qualification standard and the annual review requirements outlined above, each officer shall complete, within each 12 month period, two training sessions in the use of the patrol rifle.
 - a. At a minimum, each officer shall discharge at least 50 live fire rounds for training purposes other than the MPTC Basic Patrol Rifle Qualification Course. The intent is for these rounds to be expended in multiple firearms training sessions.
 - b. Each training session shall be realistic in nature; training should include the following: judgmental shooting, reduced light and multiple target drills or scenarios, shooting at moving targets, and shooting while moving.
 - c. Training should enhance skill diversity by varying the live fire drills from session to session.
 - d. Training should be scenario based wherever practical and incorporate the use of cover, shooting from a variety of positions, and the use of both sighted and point shooting techniques.

MPTC Minimum Standards for Patrol Rifle
Re-Qualification & Continual Training

e. Any target may be used for training purposes; however, the use of steel or reactive targets is encouraged where practical.


f. Skill building drills may include firearms simulators (such as Range 3000), Simunition weapons, Airsoft, plastic rounds and Red/Blue guns.

g. Departments are encouraged to use MPTC certified instructors in their firearms training programs.

h. Instructors are encouraged to conduct transition drills to integrate handgun training into this program.

Approved by MPTC Firearms Advisory Committee - February 2016

Policy 1.01b Patrol Rifle

CHELSEA POLICE DEPARTMENT		Department Manual: Policy No. 1.01a
Subject: PATROL RIFLE POLICY		
MASSACHUSETTS POLICE ACCREDITATION STANDARDS REFERENCED: 1.2.2, 1.3.9; 1.3.10; 1.3.11		GENERAL ORDER
Effective Date: April 1, 2018	Issuing Authority <i>Brian Kyes</i> Brian A. Kyes Chief of Police	

Mass State Police CPAC Unit	617-727-8817
Mass State Police Headquarters	508-820-2121
Mass State Police Employee Assistance Unit	781-821-5496
Suffolk County District Attorney Office BPD Operations	617-343-4680

I. GENERAL CONSIDERATIONS AND GUIDLINES

Traditionally the police have relied upon shotguns as an alternative weapon in tactical situations. In an urban setting the utilization of a shotgun has limited use. It often proves to be ineffective when it comes to its overall deployment and utilization. As of late the police have been moving to the patrol rifle as a replacement and preferred long gun when it comes to officers responding to certain types of tactical situations.

There are several advantages for the officer when deploying the patrol rifle. The patrol rifle provides a greater probability of stopping a suspect with minimum number of rounds than the handgun or shotgun. The patrol rifle will defeat most types of body armor and will defeat most light cover. Due to the lightweight design of the patrol rifle round, missed rounds break up more consistently than handgun or shotgun rounds, thereby causing less of a downrange hazard. Compared with the shotgun the patrol rifle is more accurate, has less recoil, greater effective range, faster reloading and larger ammunition capacity.

Policy 1.01b Patrol Rifle

It is essential that the officers demonstrate a high degree of proficiency prior to having access and utilization of the weapon. Officers must: (1) attend a four hour lecture on the safe operation of the weapon; (2) demonstrate the ability to safely handle, manage, and operate the weapon; (3) qualify on the range with a passing score of 94%; (4) pass a written exam with a minimum passing score or 92% before being deemed qualified to use this weapon. The patrol rifle will be stored in the locked container or approved locking rifle mount in a patrol vehicle. Only those officers who have been trained and qualified to use the patrol rifle will be permitted to deploy the weapon.

II. DEFINITIONS

- A. **Patrol Rifle:** The designated patrol rifle for the department is the Wyndham Arms or Sig Sauer M-4 type carbine, semi-automatic rifle. Each rifle will have an EOTECH red dot optic mounted and zeroed. All patrol rifles will be purchased and issued by the department; personally owed weapons are not authorized.
- B. **Approved Gun Box/Mount:** The department will install secured boxes or locking rifle mounts in those police vehicles that are equipped to transport the department's patrol rifle. When not in use the patrol rifle will remain in the locked gun boxes or in an approved locking gun mount in a cruiser carry condition. Weapons will not be stored in those patrol vehicles that are not equipped with the approved gun box or locking gun mount.
- C. **Chamber:** An area at the breech end of the barrel, of about the diameter of the cartridge for which the gun was intended, and into which the cartridge is inserted.
- D. **Magazine:** A spring operated reservoir for cartridges for a repeating firearm; often removable. Typically the department will deploy 30 round magazines containing 28 rounds with the patrol rifle.
- E. **Safety:** A device incorporated into the design of most firearms that, when engaged, should prevent the discharge of the firearm. Department rifles are equipped with nylon 3 point slings.
- F. **Sling:** A strap, usually of leather or sturdy webbing, fitted to the fore and aft (usually) of a rifle as an aid to carrying over the shoulder and as an aid to holding the rifle steady while aiming.
- G. **Approved Ammunition:** Only the ammunition that has been approved by the department's firearm coordinator may be used in the department's patrol rifles. **1.3.9a**
- H. **Deployment:** For purposes of this directive, the deployment of a patrol rifle shall mean the removal of the patrol rifle from the secure gun box, mount, or facility for the purpose of using the weapon for an operational purpose.
- I. **EOTECH:** a battery powered electronic optical sight which has to be manually activated. It is to be used as the primary sighting device for the patrol rifle.

Policy 1.01b Patrol Rifle

- J. **Weapon mounted light:** a hand activated white light attached to the patrol rifle. To be used to illuminate and identify lethal threats. It is not to be used as an illumination tool in a general search.
- K. **BUIS: Back up iron sights.** The flip up rear sight and the front post sight which are attached to the patrol rifle. These can be used in the event that the EOTECH sight is disabled. The EOTECH does not have to be removed.

III. PURPOSE

The purpose of this directive is to establish and outline the guidelines to be followed as it relates to the training, safekeeping, deployment, issuance, care, and maintenance of the police department's patrol rifles. This directive is also designed to provide broad parameters when it would be considered to deploy these weapons.

IV. POLICY

It is the policy of the Chelsea Police Department to provide access to patrol rifles to its officers for those situations that may necessitate the utilization of a long gun. Further, only those officers who have been trained and qualified on the use of the patrol rifle may have access to said weapon. **1.2.2**

V. PROCEDURES

- A. **Training & Orientation:** Only those officers who have successfully completed the training and orientation courses will be permitted to deploy the patrol rifle.
 1. Officers will receive training and orientation on the patrol rifle on an annual basis. The training at a minimum will include instruction on the department's use of force policy, safe handling of the weapon, and demonstrated proficiency on its use and accuracy.
 2. The training course for patrol rifle will be in conformance with the training and qualifications established by the Municipal Police Training Committee (MPTC) and conducted by certified firearms instructors. The minimum passing score for the patrol rifle course will be 94% with 100% round accountability. Officers must also pass a written test with a minimum passing score of 92%.
 3. Officers who are not able to demonstrate the safe handling and proficiency with the department's patrol rifle may receive additional training until such time they are able to meet the qualifications standards that have been set by the MPTC. **1.3.9c**

Policy 1.01b Patrol Rifle

- B. Deployment of the Patrol Rifle:** Any time an officer elects or is directed to remove the patrol rifle from the gun box or mount in a patrol vehicle; he/she will be guided by the following considerations:
1. Anytime an officer deploys/removes the patrol rifle from the gun box or mount of a patrol vehicle, that officer will be responsible for maintaining control over the that weapon at all times, unless the officer turns the weapon over to another officer who has been qualified on the use of the patrol rifle or returns it to secured storage.
 2. Incidents when it may be considered appropriate to deploy the patrol rifle, would include the following, but are not necessarily restricted to these situations:
 - a) Any potentially dangerous/deadly force situation when the officer has reason to believe that deployment of the patrol rifle will contribute to the safe resolution of the incident or diminish risk to the officer or the public.
 - b) Any situation where lethal/deadly force is justified against a suspect armed with a firearm which would give the officer a tactical advantage.
 - c) The officer has cause to believe that an armed offender(s) is wearing body armor or is shielded by an intervening barrier.
 - d) The officer might be placed in a situation when the offender (s) may be engaged at an extended distance.
 - e) The suspect is believed to be armed with or has immediate access to a long gun or other high powered or shoulder fired weapons.
 - f) Situations when approval for deployment of the patrol rifle is authorized by the Patrol Supervisor or other Superior Officer.
- C. Security and Care of the Patrol Rifle** Whenever an officer is authorized to deploy the patrol rifle, it is that officer's responsibility to maintain custody and security of the weapon at all times. Whenever returning the patrol rifle to a Patrol Vehicle, the officer will render the weapon in the cruiser ready condition prior to storing/securing the weapon.**1.3.9f**
- D. Storage and Security of the Patrol Rifle:** When deployed in the field, patrol rifles will be secured and maintained in a Patrol Vehicle. The patrol rifle will be maintained in a cruiser ready condition while stored in the vehicle. The cruiser ready condition of the patrol rifle will be comprised of the following:
1. The safety for the patrol rifle will in the ON position.
 2. The chamber of the patrol rifle will be empty.
 3. The bolt on the patrol rifle will be in the forward or closed position.
 4. There will be a fully loaded magazine inserted into the patrol rifle.
 5. The dust cover for the patrol rifle will be closed.

Policy 1.01b Patrol Rifle

6. The patrol rifle will be properly secured within the firearms locker or mount of the vehicle.
7. Two back up magazines will be stored with each rifle.

- E. Post Deployment of the Patrol Rifle:** When returning the patrol rifle following its deployment, the officer who is charged with the position of the weapon will be sure that it is rendered safe and restored to the cruiser ready condition (as described in the aforementioned section). The superior officer responsible for the scene / officer shall inspect the weapon to ensure the weapon is in a safe and cruiser ready condition prior to storing the weapon. The process for making the patrol rifle safe involves the following steps:
1. The safety for the patrol rifle should be in the ON position.
 2. The magazine should be removed from the patrol rifle.
 3. The chamber should be cleared of the round that may have been chambered, and as a precautionary measure should always be checked. The ejected round should be inserted back into the magazine.
 4. When presenting the weapon for inspection, the bolt should be locked open, with the magazine out of the weapon.
 5. Once the patrol rifle has been inspected to ensure it has been rendered into a safe condition, the bolt should be closed, dust cover closed, the magazine reinserted into the weapon prior to being secured in the patrol vehicle's gun locker or mount.
- F. Security of the Patrol Vehicle:** A Patrol Vehicle is never to be left unattended while the patrol rifles are stored in the vehicle, unless the vehicle is turned off and locked. It is the responsibility of the officer who has been charged with the operation of this vehicle to ensure that it is always properly secured when left unattended. When a patrol vehicle is not used it is the responsibility of the Shift Commander or designee to ensure it is properly secured when left unattended.
- G. Removal of Patrol Rifles for Maintenance or Storage:** The patrol rifle should be left secured in a patrol vehicle, unless the vehicle is being sent out for maintenance. If the weapons are removed from the patrol vehicle they should be moved to the gun locker or armory located within the police station. **1.3.9d, f**
- H. Loading and Unloading the Patrol Rifle:** Whenever loading or unloading the patrol rifle, it should be done at the unloading station in the police station when possible, or outside in a safe area, preferably not in the public view.

Policy 1.01b Patrol Rifle

VI. MAINTENANCE OF THE PATROL RIFLES:

- A. Routine Inspection & Maintenance:** It will be the responsibility of the Firearms Coordinator to routinely check the patrol rifles, magazines, duty ammunition, EOTECH sights, BUIS sights, sling, and weapon mounted light to make sure they are properly secured, in good working order, and to make sure they are regularly cleaned, lubricated, and maintained.
- B. Reporting Patrol Rifle Malfunctions:** Whenever it is discovered that a patrol rifle or other associated equipment is not working properly, it is to be reported to the Shift Commander, who will be responsible making the appropriate notification to the Firearms Coordinator.
1. The weapon should be taken out of service and stored in the firearms locker or armory at the police station.
 2. A tag should be placed on the rifle case indicating that it is out of service.
 3. It is the responsibility of the Firearms Coordinator to make the necessary arrangements to have the weapon repaired.
 4. No modification should be made to any patrol rifle without proper authorization.

POLICY AND PROCEDURE

NO.400.7



Firearms Guidelines

Date Issued December 2, 2015	Date Effective December 2, 2015	Revision No. 4	No. of pages 5
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Police Officers are issued firearms and trained in their use for self-protection, for the protection of the public and to be utilized in accordance with the **WPD Use of Force Policy**.

An officer is authorized to use deadly force to:

- A. Protect the officer and/or another person(s) from an unlawful attack, which the officer reasonably perceives as an immediate threat of death or serious physical injury.
Under no circumstances may deadly force be used for the sole purpose of protecting or preserving property.
- B. **Fleeing Felon:** Can only use deadly force if the officers are presented with a deadly threat to themselves or another. Whenever it is both practical and reasonable, a clear warning to the fleeing felon is required prior to the use of deadly force. Deadly force may never be used to stop or apprehend a fleeing misdemeanor.
- C. Render harmless an animal which presents a clear and immediate danger of death or serious injury to a human being, or an animal which is so severely injured that humanity requires its removal from further suffering.
 - Officers who find it necessary to discharge firearms in this situation shall exercise due care for the safety of persons and property in the area and shall fire only when reasonably certain that there is no substantial risk to bystanders.
 - Where feasible, children should not be present.

A police officer may also discharge a weapon under the following circumstances:

1. For authorized target practice, competition, or demonstration (testing) with weapons authorized by the department.
2. Annual or required department qualification or proficiency testing.

WARNING SHOTS:

Because of the danger of unintentional death or injury, warning shots are prohibited

SIGNALING DEVICES:

Firearms shall not be used as signaling devices or to summon assistance.

MOVING VEHICLES:

1. *Officers shall not discharge a firearm from within a moving vehicle.*
2. Discharging a firearm at a moving vehicle by an officer is prohibited, except to defend himself or

another when the police officer reasonably believes there is immediate threat of great bodily harm to the police officer or others, and the officer reasonably believes that he will not endanger innocent persons.

3. Firing strictly to disable a vehicle is prohibited.
4. In every incident, the officer shall make an effort, if circumstances allow, to note the approximate location of vehicular and pedestrian traffic and the potential hazard to innocent persons.
5. Firearms shall not be utilized when the circumstances do not provide a high probability of striking the intended target, or when there is substantial risk to the safety of other persons, including risks associated with vehicle accidents.
6. Every precaution shall be taken to ensure the safety of the general public in the vicinity.

DRAWING OR DISPLAYING:

An officer shall avoid the unnecessary display of firearms and not draw a firearm except when there is justification for its use to accomplish a proper police purpose. However, in responding to any potentially dangerous situation (e.g., searching a building pursuant to a burglar alarm or approaching a business establishment on a report of a robbery in progress, etc.) the officer should carry his firearm in a position that will facilitate its speedy, effective, and safe use.

PERMISSIBLE WEAPONS AND AMMUNITION:

1. Officers shall only carry firearms and ammunition issued or authorized by the department while on duty. Officers shall carry their issued service weapon while on duty unless authorized by the Chief of Police to carry a different weapon.
2. An officer shall not alter or modify his firearms, ammunition, or firearm related equipment in any way without the express permission of the Chief of Police or after review and testing by department authorized firearm or defensive tactic instructors. Under Massachusetts General Laws, a police officer is authorized to carry an issued or authorized firearm at all times when on duty and may carry such firearm while off duty within the Commonwealth of Massachusetts, unless prohibited by a court order.

Members of the department shall take all reasonable precautions to ensure that weapons issued to them by the department are protected from loss, misuse, or theft.

Officers are responsible for keeping their issued weapons clean and in good working order. A weapon, which malfunctions, shall be returned to the department's Armorer forthwith.

TRAINING AND QUALIFICATIONS:

1. All officers shall qualify with their issued service weapon(s) and any other weapon they are authorized to carry while on duty at least annually.
2. Qualifications shall be under the direction of the department's Firearms Instructor.
3. Following a reasonable period of practice and training, all officers will be expected to qualify in accordance with the standards established by the WPD, MPTC and any other current applicable law enforcement procedures.
4. Officers who fail to qualify with their service weapon(s) shall be denied permission to carry such

weapon. The officers will receive additional instruction and will be given a reasonable amount of time to qualify while assigned to administrative duty.

5. Qualification shall include an inspection of any firearm used by the officer to ensure that it is in good working condition.
6. No member of this department will be authorized to carry a firearm until he has:
 - a. Been issued a copy of the Department's **Use of Force** policy and **Use of Firearms** guidelines, received instruction and successfully passed a written examination on same;
 - b. Qualified at the range and demonstrated all applicable weapon handling safety procedures.

OFF-DUTY WEAPONS:

1. Any weapon that an officer carries on his person while off duty for protection or to enable him to take action as a police officer (especially a weapon carried by an officer to and from an assigned tour of duty), excluding the officer's issued service weapon, will be considered an off-duty weapon.
2. All police officers must carry department issued/approved firearms while on duty. Any and all weapons, when carried "off-duty" must first be approved by the primary firearms instructor through the office of the Chief of Police. A record shall be made indicating weapon type, caliber, serial # and any other identifying information. This is necessary so that police officers will be indemnified by the City of Worcester when weapons are used as a result of a police action taken by an officer.
3. All approved off-duty weapons must be carried in a type of holster designed for such weapon.
4. All Police Officers shall demonstrate familiarization and proficiency with their off-duty weapon on at least an annual basis to the satisfaction of the primary firearms training officer. It is the responsibility of the individual officer to arrange such training and provide required documentation with the primary firearms training officer, other certified members of Training Division or officials assigned to this duty per the Chief of Police. These standards shall be in line with the official qualification procedures listed above.
5. Any officer who has not qualified with his approved off-duty weapon may not be indemnified by the City of Worcester for any use of such weapon until such time as the officer has qualified. The officer may, however, carry his service weapon while off duty (if he/she has qualified with it).
6. Officers are reminded that their license to carry applies only to Massachusetts. Carrying a firearm in or through any other state is subject to that state's laws and local ordinances.
7. Under a recent addition to M.G.L. regarding firearms; each weapon stored in a residence must minimally be secured by a trigger lock that prevents unauthorized use of the firearm.

SPECIAL WEAPONS:

Unless authorized to be carried in the police vehicle at all times by the Chief of Police, special weapons (shotguns, sniper rifles, etc., and ammunition for same) will be maintained in a secure area of the police department.

When not carried in the patrol vehicle on routine patrol, special weapons will only be issued, with the knowledge and permission of the officer in charge of the police station, to officers who have qualified with them or authorized members of special trained personnel (S.W.A.T.).

REPORTING PROCEDURES:

When an officer discharges a firearm, is a reportable Use of Force. See policy # 400, Use of Force (section X, Reporting Use of Force Incidents).

In addition, the Commanding Officer will assign an officer of supervisory level to:

1. Conduct a preliminary investigation of the incident and file a complete report through channels to the Chief of Police, with copies of the report to be provided to the Detective Bureau and Internal Affairs.
2. Impound the weapon if bodily injury has occurred and issue a replacement weapon to the officer.
3. Impound related articles, secure the scene and have the photographs taken.
4. Turn over the impounded weapon and evidentiary items to the Detective Bureau, which will have the primary investigatory responsibility, with Internal Affairs and the officer's Commanding Officer working in conjunction with the Detective Bureau.
5. Notify the Crime Scene Unit and the Department Armorer to insure that the weapon is safely received, stored and transported for analysis.

At the completion of the investigation of the circumstances surrounding the discharge of a firearm, the Detective Bureau will submit a detailed report to the Chief of Police with copies to Professional Standards and the officer's Commanding Officer.

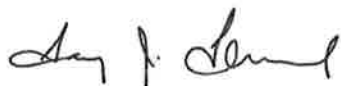
As stated, in addition to this report, the officer's Commanding Officer will submit a report to the Chief of Police.

In the event that an officer is involved in any shooting incident, either being shot at, or in the event that he/she fires their weapon at someone, his/her Unit Commander or designee will forthwith notify the Director of the Stress Unit. This officer will immediately be assigned to the Office of the Chief of Police, and will be directly supervised by the Stress Unit Director or his Designee. The Stress Unit Director or Designee will initiate supportive services for said officer and/or family members, and a recommendation will be made as to when the involved officer(s) can return to active service. A concurrent recommendation will also be made to the Chief of police by the Deputy Chief and Commanding Officer of the Investigative Divisions concerning the officer's return to duty.

A committee consisting of members of the Training Division, Bureau of Professional Standards, a representative from the involved officer's chain of command, as well as other relevant officials and officers as identified by the Chief of Police will be convened specifically to determine if the occurrence comports with policy guidelines and to determine what, if any, training needs exist as it relates to both the individual officer and department wide. Their findings and recommendations will be forwarded to the Chief of Police or his designee for review.

Before returning to service and after their firearm has been reissued, the officer(s) shall be required to discharge their firearm under the direction of a member of the Training Division.

Per:

A handwritten signature in black ink, appearing to read "Gary J. Gemme". The signature is written in a cursive style with a large initial "G".

Gary J. Gemme
Chief of Police

(Policy #450 Use of Firearms September 3, 1993 was revised March 15, 2002.)
(Policy #450 changed to Firearms Guidelines 400.7 and revised April 13, 2007)
(Firearms Guidelines 400.7 revised October 13, 2011 Reporting Procedures updated)
(Firearms Guidelines 400.7 revised December 02, 2015 Review committee page 4 added)