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June 7, 2013

Assemblyman Michael Montesano
Chairman, Assembly Legislative Oversight Committee
Legislative Office Building, Room 437
Albany, NY 12248

Dear Assemblyman Montesano,

The New York State Sheriffs' Association, its member Sheriffs and I thank the Assembly Legislative Oversight Committee for the opportunity to have this statement considered in relation to the Committee's review of the New York SAFE Act and its implications for local authorities.

All Sheriffs and I agree that only appropriate persons should possess guns. And while some may say that any attempt at gun control violates the Second Amendment, the reality is that freedoms enumerated within the Bill of Rights have historically been subjected to legitimate constraint. As Sheriff, I am constantly confronted with this appropriate infringement of constitutional rights whenever we conduct a search without a warrant pursuant to a recognized exception to the 4th Amendment. And just as someone cannot invoke the freedom of speech after yelling "FIRE!" in a movie theatre, or after disclosing privileged or top-secret information, so too can a person not expect to be able to possess every weapon devisable by man.

It is my strong opinion that the SAFE Act crosses the line between appropriate governmental regulation and the unconstitutional deprivation of fundamental rights. The SAFE Act strikes at the heart of what the 2nd Amendment was meant to protect—as interpreted by the Supreme Court's holding in *District of Columbia v. Heller*—which is individual gun ownership of the types of weapons in common use for traditional purposes. The restrictions placed on gun ownership by the SAFE Act, from the ammunition loading restrictions to the ban on the sale and transfer of newly redefined assault weapons, effectively dispossess law-abiding citizens of guns which they are entitled to own.

Not only is the law fundamentally unsound, but it is technically vague, providing little guidance to Sheriffs on how to properly enforce its provisions. In the wake of its passage, countless hours have been spent trying to decipher how to deal with the numerous tasks imposed by the law: processing of the FOIL opt-out forms, procedures for handling the 9.46 mental health reports, the limit of a police officer's authority to effect a seizure order, and whether said police officer will be granted qualified immunity

for executing that order should the law eventually be found unconstitutional. The cost of manpower and resources that will need to be dedicated to enforcing this law will be astronomical, and will severely burden local governments. All these issues and more are left unsaid and uncompensated for by the law, leaving Sheriffs to wade into uncertain waters and expose themselves to civil liability or worse, the barrel of a gun aimed by an angry citizen.

Finally, it is my opinion this law will only burden and disadvantage upright citizens, and will do nothing to deter criminals from using guns to further their illicit enterprises. Criminals will not hesitate to acquire illegal weapons or load them with more than 7 rounds. Meanwhile, law-abiding citizens will find themselves at the mercy of nefarious individuals who are better armed than they. The idea that an upstanding citizen may only load 7 rounds into his gun, while a burglar invading his home will not hesitate to arm himself to full capacity, is beyond comprehension.

Also, criminals who currently possess assault weapons will never comply with the registration requirements imposed by this law. When this is taken into consideration, all that is left is a costly government initiative that will catalogue weapons that are by-and-large indistinguishable from ordinary long guns and exclusively owned by appropriate persons. I question the need for registration of such weapons, especially considering the new criteria for what constitutes an "assault weapon." I am not convinced that the addition of a single arbitrary feature to an otherwise innocuous gun inherently increases that weapons lethality, such that it should be subject to registration.

Safe storage of guns, mental health reporting (in theory), automatic suspension of pistol permits upon the issuance of an order of protection, pistol permit FOIL exemption, increased penalties for gun crimes, and mandatory NICS checks for private sales are things contained within the law which Sheriffs statewide and I agree with and believe will make a difference. However, the unworkable and indefensible parts of this law overshadow the beneficial aspects also contained therein.

It is my belief that had Sheriffs and other law enforcement representatives been given a chance to comment on the provisions contained within this law, the result would have been a much more efficient and effective law which New Yorkers could be proud of. No amount of administrative regulation or diligent enforcement will be able to remedy the drastic shortcomings of this law. As it stands, it is my opinion and that of Sheriffs statewide that legislative amendments are necessary to modify, clarify, or repeal those sections of the law which codify the objectionable provisions described above.

It is my view that anytime government decides it is necessary or desirable to test the boundaries of a constitutional right that it should only be done with caution and with great respect for those constitutional boundaries. I further believe it should only be done if the benefit to be gained is so great and certain that it far outweighs the damage done by the constriction of individual liberty.

Unfortunately the process used to adopt this act did not permit the mature development of arguments on either side of the debate, and thus many of the stakeholders in this important issue are left feeling ignored by their government. Even those thrilled with the passage of this legislation should be concerned about the process used to secure its passage, for the next time they may find themselves the victim of that same process of necessity.

My oath of office is the same or identical oath of office conferred on and taken by other public local, county and state officials. While there is no doubt that in New York State the Office of Sheriff is deemed to be the chief county law enforcement official with significant and special powers and duties, these additional powers and duties do not derive from the oath of office taken by any individual sheriff.

The office of the elected sheriff is a time honored tradition that I diligently protect as the Office of Sheriff represents direct democracy through the right of our citizens to choose their local chief law enforcement officer. My fellow New York State Sheriffs and I protect our citizens' individual rights through the elected Office of Sheriff. However, my colleague Sheriffs and I should not fall into the mythology that any "oath of office" taken by the man or woman who fills the position of Sheriff conveys upon that individual any extraordinary powers or duties that are not otherwise set out under the constitutions and laws of New York State. Furthermore, my fellow Sheriffs and I should always perform our duties in accordance with the Constitution of New York State and the Constitution of the United States as interpreted by the United States Supreme Court.

I will continue to enforce all laws of the state and will protect the rights of all citizens.

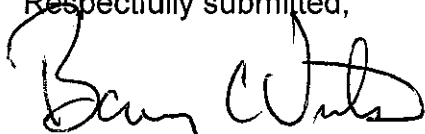
The problems and concerns addressed by the act should have been criminal behavior, not the law abiding citizen that appropriately owns and possesses firearms.

I support any and all legislation that focuses on the criminal behavior of felons and the mentally ill that are a threat to themselves and others that are committing these horrendous and terrifying crimes while using firearms.

The NY SAFE Act unfairly focuses on law abiding citizens that legally and lawfully possess, use and enjoy their firearms for pleasure, hunting, target shooting, self-defense and most importantly their constitutional right to bear arms.

In closing, appropriate people should have guns and inappropriate people should not.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barry C. Virts". The signature is written in a cursive, flowing style.

Barry C. Virts, Sheriff
Wayne County, NY