No. 112116
IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ALBERTO AGUILAR, Defendant-Appellant.	Appeal from the Appellate Court of Illinois First Judicial District No. 1-09-0840 There heard on Appeal from the Circuit Court of Cook County, Illinois No. 08 CR 12069 Hon. Charles P. Burns, Judge Presiding

BRIEF FOR *AMICI CURIAE*, LEGAL COMMUNITY AGAINST VIOLENCE, THE CITY OF CHICAGO, ASSOCIATION OF PROSECUTING ATTORNEYS, THE BOARD OF EDUCATION OF THE CITY OF CHICAGO, AND MAJOR CITIES CHIEFS ASSOCIATION

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I. INTEREST OF *AMICI CURIAE*

Amicus Legal Community Against Violence ("LCAV") is a national law center dedicated to preventing gun violence. Founded after an assault weapon massacre at a San Francisco law firm in 1993, LCAV provides legal and technical assistance in support of gun violence prevention. LCAV tracks and analyzes federal, state, and local firearms legislation, as well as legal challenges to firearms laws. As an *amicus,* LCAV has provided informed analysis in a variety of Second Amendment cases, including *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010); and *Wilson v. Cook County*, No. 112026.

Amicus the City of Chicago, the third-largest city in the United States, faces a serious problem of firearms violence. More than 300 people are murdered with firearms each year in Chicago, and the vast majority of those occur outside the home. In order to keep firearms out of the hands of gang members, criminals, and others who may misuse them to kill or injure others, Chicago police officers actively enforce the Aggravated Unlawful Use of a Weapon statute at issue in this case, and the Chicago City Council has enacted an ordinance that similarly prohibits firearms possession outside the home. *See* Municipal Code of Chicago, Ill. §§ 8-20-020, 8-20- 030 (2011). These firearms restrictions play an important role in attempting to reduce the devastating impact of gun violence in Chicago.

Amicus the Major Cities Chiefs Association (MCCA) is a professional association of chiefs and sheriffs of seventy of the largest law enforcement agencies in the United States and Canada. Its members serve over 76.5 million people (68 U.S., 8.5 Canada) with a workforce of 177,150 (159,300 U.S., 17,850 Canada) officers and non-sworn personnel. Because firearms are the primary tools used in serious assaults and homicides,

MCCA has a long term interest in public policy effecting their possession and use.

Amicus Board of Education of the City of Chicago educates more than 404,000 children in 675 elementary and high schools. So far this year, 17 Chicago public school students have been killed and 221 have been injured by firearms.

Amicus Association of Prosecuting Attorneys ("APA") is a national organization representing prosecutors and providing additional resources in an effort to develop proactive and innovative prosecutorial practices that prevent crime, ensure equal justice, and make our communities safer. The APA serves as an advocate on issues related to the administration of justice, including by submitting briefs as *amicus curiae* where appropriate. The APA strongly supports measures to protect public safety, including laws restricting the carrying of weapons in public places.

II. INTRODUCTION

In adopting the Aggravated Unlawful Use of a Weapon Law ("AUUW" or "Illinois Statute"), § 720 ILCS 5/24-1.6, the State of Illinois properly exercised its police power to limit the threat firearms pose to the safety of the general public and to law enforcement officers statewide. The AUUW prohibits the carrying of an uncased, loaded and immediately accessible firearm, as well as the carrying of an uncased and unloaded firearm if ammunition for the weapon is immediately accessible, among other provisions. The statute explicitly exempts the carrying of a firearm in one's home or place of business.

Aimed at curtailing the dangers that readily accessible firearms pose, the AUUW is consistent with a longstanding, nationwide tradition of states enacting regulations limiting the carrying of guns in public. Since the early days of the Republic, states have regulated the use and possession of firearms outside the home in order to enhance

public safety -- without any understanding that the Second Amendment might impede this critical collective interest. A decision to invalidate the AUUW on Second Amendment grounds is unwarranted, contrary to the long history of state action in this area, and inconsistent with Supreme Court and other existing precedent.

Appellant and his supporting *amici* nonetheless claim that the Illinois Statute violates the Second Amendment. For the reasons set forth below, those arguments should be rejected. The decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and lower federal and state courts construing *Heller* are properly read to protect a responsible, law-abiding citizen's right to possess an operable handgun *in the home for self-defense*. The AUUW does nothing to burden that limited Second Amendment right.

The historical regulation of public carry demonstrates that no basis exists for expanding the Second Amendment right recognized in *Heller* to outside the home. And even if such regulation warrants scrutiny under the Second Amendment at all, at most, an intermediate scrutiny review is appropriate. Under that review, the statute must be upheld due to the obvious and compelling benefits to limiting public carry of firearms. Because the AUUW contains enumerated exceptions for conduct that does not give rise to criminal liability, including carrying or possessing a firearm in an individual's own home, the AUUW clearly does not burden the Second Amendment right set forth in *Heller*. Through the AUUW, the Illinois legislature fulfills paramount interests in preventing gun violence and protecting the safety of the general public and law enforcement officers.

In its review, the Court should not lose sight of the factual underpinnings of this particular case. The sixteen year-old defendant was carrying a handgun with three live

rounds tucked in his waistband when a Chicago Police Officer witnessed him yell and throw bottles at passing cars in a Chicago neighborhood. He had ready access to the handgun and ammunition when the police officers apprehended him. The facts of this case exemplify the need for meaningful firearm regulations restricting public carry, to protect the public and law enforcement officers, like the ones who arrested defendant, from gun violence. Striking down the AUUW would handicap law enforcement and put both the police and public in peril from pistol-packing street criminals – with the prospect of deadly violence in every encounter. It is through this lens that the Court should analyze the AUUW and affirm the holding of the court below.

III. ARGUMENT

A. Illinois' Aggravated Unlawful Use of a Weapon Law Does Not Implicate the Second Amendment.

1. The Second Amendment Protects the Right to Possess a Handgun for Self-Defense Within the Home.

The U.S. Supreme Court has never held that the Second Amendment protects the right to carry a loaded firearm in public, and nothing in either of the Court's recent Second Amendment cases can be plausibly read as tacitly endorsing such an expansive and dangerous "right" as the appellant seeks here.

In *District of Columbia v. Heller*, the Supreme Court struck down the District of Columbia's handgun possession ban, holding that the Second Amendment protects the right to possess a handgun in the home for self-defense. *Heller*, 554 U.S. at 628. While the Second Amendment prevents a government from adopting an "absolute prohibition of handguns held and used for self-defense in the home," the *Heller* Court made clear that "the right secured by the Second Amendment is not unlimited." *Id.* at 626. It could have—but did not—reject all restrictions on firearm possession. The Second

Amendment was unambiguously described as protecting the "right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635. The Court observed, however, that the right would not prevent governments from adopting laws to combat the nation's gun violence epidemic, stating that, "The Constitution leaves the District of Columbia a variety of tools for combating that problem, including some measures regulating handguns." *Id.* at 636.

In fact, the Court specifically noted that laws prohibiting the carrying of concealed weapons were consistent with the limited scope of the Second Amendment right. The Court observed that:

> From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. *See, e.g., Sheldon*, in 5 Blume 346; Rawle 123; Pomeroy 152-153; Abbott 333. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues. *See, e.g., State v. Chandler*, 5 La. Ann., at 489-490; Nunn v. State, 1 Ga., at 251; *see generally* 2 Kent *340, n.2; The American Students' Blackstone 84, n.11 (H. Chase ed. 1884).

554 U.S. at 626-27.

The Supreme Court subsequently held that that the Second Amendment was incorporated against the states in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). Evaluating the City of Chicago's law prohibiting the possession of handguns in the home, the Court did not expand "the right to possess a handgun in the home for the purpose of self-defense." *Id.* at 3050. As in *Heller,* the *McDonald* Court recognized no absolute right to carry firearms, and reiterated that the Second Amendment is consistent with a wide variety of firearms laws.

The Court's emphasis on the distinct importance of the home in *Heller* and

McDonald echoes its longstanding respect for an individual's privacy within his or her home. *Silverman v. U.S.*, 365 U.S. 505, 506-07 (1961) (noting that "at the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."); *Mincey v. Arizona*, 437 U.S. 385, 393 (1978) ("[T]he Fourth Amendment reflects the view of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law."); *Payton v. New York*, 445 U.S. 573, 601 (1980) ("[N]either history nor this Nation's experience requires us to disregard the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic."); *Lawrence v. Texas*, 539 U.S. 558, 562 (2003) (recognizing that amendment protects against unwarranted government intrusion into the home to invalidate a Texas statute making it a crime for two homosexual persons to engage in sexual conduct). Further, these cases evince that what is constitutionally protected in the privacy of one's home is not necessarily the same as what is protected in public. Just as the home has had a central role in the Court's privacy cases, it sets the appropriate boundary for the right safeguarded by the Second Amendment, to defend one's self and one's possessions in one's home, without infringing other citizens' inalienable right to personal security and the states' right to protect their citizens.

2. The Historical Record Confirms that the Possession of Firearms in Public is Outside the Scope of the Second Amendment.

In *Ezell v. City of Chicago*, 651 F.3d 684, 702-03 (7th Cir. 2011), the Seventh Circuit held that, to determine whether a challenged law regulates conduct protected by the Second Amendment, a court must examine whether the law at issue "regulates

activity falling outside the scope of the Second Amendment right as it was understood at the relevant historical moment--1791 or 1868." If it does, "then the analysis can stop there; the regulated activity is categorically unprotected, and the law is not subject to further Second Amendment review." *Id.* at 703.

Applying *Ezell* to this case, the relevant English and American history demonstrates that the scope of the Second Amendment has never included the right to publicly carry firearms. In *Heller*, the Court stated that "the Second Amendment was not intended to lay down a novel principle, but rather codified a right inherited from our English ancestors," *Heller*, 554 U.S. at 599 (internal quotations omitted), and "it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right" at English law, *id.* at 592 (emphasis in original). Thus, if English law did not consider an activity to be protected conduct, then that activity is not within the Second Amendment's protections.

Neither English statutory nor common law provided any right to carry weapons in public. In fact, for nearly 700 years, England criminalized the practice. The Statute of Northampton, one of the earliest laws regulating weapons possession, provided that, except while on the King's business, no man was permitted to "go nor ride armed by night nor by day, in fairs, markets, nor in the presences of the justices or other ministers, nor in no part elsewhere, upon pain to forfeit their armour to the King, and their bodies to prison at the King's pleasure." Statute of Northampton, 2 Edw. 3, c. 3 (1328) (Eng.). English courts continued to uphold this law for hundreds of years. In *Sir Knight's Case*, 87 Eng. Rep. 75 (1686), for instance, the Chief Justice noted that carrying arms in public was not merely banned by the Statute of Northampton, but was "likewise a great offence

at the common law." *Id.* Carrying arms in public, the court found, was dangerous, as well as an insult to the sovereign and the social compact: "as if the King were not able or willing to protect his subjects." *Id.* In this way, the Statute of Northampton was "but an affirmance" of the longstanding common law rule that there is no right to carry weapons in public. *Id.*

The most prominent common law scholars agreed that British subjects had no right to carry weapons outside the home. Lord Edward Coke was "widely recognized by the American colonists as the greatest authority of his time on the laws of England," *Payton v. New York*, 445 U.S. 573, 593-94 (1980) (internal markings omitted). In a chapter entitled "Against going or riding armed," 3 Coke, Institutes of the Laws of England 160 (1797 ed.), Coke confirmed that English law forbade carrying weapons in public. Under the Statute of Northampton, Coke explained, one could possess weapons in the home "to keep his house against those that come to rob, or kill him, or to offer him violence in it." *Id.* "But he cannot assemble force, though he be extremely threatned [*sic*], to goe [*sic*] with him to church, or market, or any other place." *Id.* at 162. That the weapons were carried for self-defense was no excuse under the Statute. *Id.* Indeed, even an immediate threat of harm did not permit one to go armed in public places. *Id.*

William Blackstone, whose works "constituted the preeminent authority on English law for the founding generation," *Heller*, 554 U.S. at 593-94 (internal quotations omitted), further confirmed there was no right to carry weapons in public for personal self-defense. "The offence of riding or going armed with dangerous or unusual weapons," he wrote, "is a crime against the public peace, by terrifying the good people of the land, and is particularly prohibited by the [Statute of Northampton], upon pain of

forfeiture of the arms and imprisonment during the king's pleasure: in like manner as, by the laws of the Solon, every Athenian was finable who walked about the city in armour." Commentaries *149. In short, while English law acknowledged a right to use arms to defend the home -- the right recognized in *Heller* -- it did not recognize *any* right to carry weapons in public for personal self-defense. *See* 3 Coke, Institutes at 160.

For over 200 years since this Nation's founding, the states likewise have exercised their police power to restrict the carrying of guns in public. Immediately after the adoption of the Constitution, Massachusetts, North Carolina, and Virginia prohibited going armed in public. *See* Patrick J. Charles, *Scribble Scrabble, the Second Amendment, and Historical Guideposts: A Short Reply to Lawrence Rosenthal and Joyce Lee Malcolm*, 105 NW. L. REV. COLLOQUY 227, 237 (2011).

In the early nineteenth century, states began to enact laws prohibiting concealed carry in response to a rise in violence caused, in large part, by the increase in concealable firearms.[1] In the decades before the Civil War, at least eight states outlawed the carrying of concealed weapons.[2] In 1813, Kentucky passed the first concealed weapon statute, which banned carrying a "pocket pistol...concealed as a weapon," subject only to a narrow exception "when traveling on a journey."[3] Louisiana adopted a law prohibiting concealed carrying that same year, hoping to stem "assassinations. . . [that] have of late been of such frequent occurrences as to become a subject of serious alarm to the

[1] Saul Cornell, A Well Regulated Militia, The Founding Fathers and the Origins of Gun Control in America 131-40 (2006).

[2] Cornell at 131-40.

[3] Cornell at 141-42; *see also* Act of Feb. 13, 1813, ch. 89, 1813 Ky. Acts 100.

peaceable and well-disposed inhabitants of the state."[4] Six other states enacted similar laws in the decades that followed.[5]

Firearm possession again increased following the Civil War, prompting another wave of regulations.[6] Former soldiers kept firearms intended for battle, and firearm manufacturers that had been supplying soldiers during the War sought to remain solvent by manufacturing concealable weapons for civilian use.[7] In response, several states and cities during the 1870's and 1880's – contemporaneous with the adoption of the Fourteenth Amendment – completely prohibited the public carrying of pistols.[8] Even in the "Old West," often mythologized for its gun culture, cattle towns like Dodge City, Kansas, banned the public carrying of guns. Dodge City, Kan., Ordinance No. 16, § XI (Sept. 22, 1876). At least fourteen additional states prohibited the carrying of concealed

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[4] Cornell at 141; *see also* Act of Mar. 25, 1813, 1813 La. Acts 172-75.

[5] Indiana (1820), Alabama (1837), Tennessee (1838), Virginia (1838), Georgia (1838) and Ohio (1859). See Cornell at 141-42; Saul Cornell & Nathan DeDino, *The Second Amendment and the Future of Gun Regulation*, 73 Fordham L. Rev. 487, 513 (2004) (citing Act of Mar. 18, 1859, 1859 Ohio Laws 56; Act of Oct. 19, 1821, ch. XIII, 1821 Tenn. Pub. Acts 15; and Act of Feb. 2, 1838, 1838 Va. Acts ch. 101, at 76); Clayton E. Cramer, Concealed Weapon Laws of the Early Republic 3 (1999) (citing Raymond W. Thorp, Bowie Knife (1948)); State v. Reid, 1 Ala. 612 (1840); Alexander DeConde, Gun Violence in America 79 (2001).

[6] DeConde at 79.

[7] *Id.*

[8] 1879 Tenn. Pub. Acts ch. 186, § 1 (prohibiting citizens from carrying "publicly or privately, any . . . belt or pocket pistol, revolver, or any kind of pistol, except the army or navy pistol, usually used in warfare, which shall be carried openly in the hand"); 1876 Wyo. Comp. Laws ch. 52, § 1 (forbidding "concealed or ope[n]" bearing of "any fire arm or other deadly weapon, within the limits of any city, town or village"); Ark. Act of Apr. 1, 1881, ch. 96, § 1 (prohibiting the "wear[ing] or carry[ng]" of "any pistol . . . except such pistols as are used in the army or navy," except while traveling or at home); Tex. Act of Apr. 12, 1871, ch. 34 (prohibiting the carrying of pistols unless there are "immediate and pressing" reasonable grounds to fear "immediate and pressing" attack or for militia service)

weapons in public from 1870 to 1900.[9]

Noted legal scholars and commentators in the United States have also long recognized that a right to keep and bear arms does not prevent states from restricting or prohibiting guns in public places. For example, John Norton Pomeroy's Treatise, which *Heller* cited as representative of "post-Civil War 19th-century sources" commenting on the right to bear arms, stated that right "is certainly not violated by laws forbidding persons to carry dangerous or concealed weapons ...." 554 U.S. at 618 (quoting JOHN NORTON POMEROY, AN INTRODUCTION TO THE CONSTITUTIONAL LAW OF THE UNITED STATES 152-53 (1868)). Similarly, Judge John Dillon explained that, "the peace of society and the safety of peaceable citizens plead loudly for protection against the eveils (sic) which result from permitting other citizens to go armed with dangerous weapons." Hon. John Dillon, *The Right to Keep and Bear Arms for Public and Private Defense (Part 3)*, 1 Cent. L.J. 259, 287 (1874). An authoritative study published at the beginning of the 20th century concluded that the Second Amendment and similar state provisions had "not prevented the very general enactment of statutes forbidding the carrying of concealed weapons," demonstrating that "constitutional rights must if possible be so interpreted as not to conflict with the requirements of peace, order and security." ERNST FREUD, THE POLICE POWER, PUBLIC POLICY AND CONSTITUTIONAL RIGHTS (1904).

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[9] Colorado, Florida, Illinois, Kentucky, Nebraska, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Texas, Virginia, Washington, and West Virginia. See Colo. Rev. Stat. § 149, at 229 (1881); Fla. Act of Feb. 12, 1885, ch. 3620, § 1; Ill. Act of Apr. 16, 1881; Ky. Gen. Stat., ch. 29, § 1 (1880); Neb. Cons. Stat. § 5604 (1893); 1879 N.C. Sess. Laws, ch. 127; N.D. Pen. Code § 457 (1895); Act of Feb. 18, 1885, ch. 8, §§ 1-4, 1885 Or. Laws 33; 1880 S.C. Acts 448, § 1; S.D. Terr. Pen. Code § 457 (1877); Tex. Act of Apr. 12, 1871; 1869–1870 Va. Acts 510; Wash. Code § 929 (1881); W. Va. Code ch. 148, § 7 (1870).

Further, bans on discharging guns in public have been commonplace throughout history, demonstrating that the use of firearms for self-defense has historically not been understood to extend beyond the home. For example, a 1787 New York law banned the discharge of guns in street lanes and alleys in New York City, as well as "any ... garden or other inclosure from any house, or in any other place where persons frequently walk."[10] Similarly, in Boston in 1746 it was illegal to "discharge any Gun or Pistol" except during approved training, because "the Lives and Limbs of many Persons have been lost, and others have been in great Danger...by the indiscreet firing of guns."[11] Eighteenth century Boston legislators would be aghast at the obscene number of "Lives and Limbs" that are lost to guns in present time.

During the nineteenth century, several municipalities also enacted some type of discharge ban.[12] These ordinances demonstrate that the right to possess a firearm for self-defense never extended outside of the home because the dangers to the public and the police were too great. These ordinances further evince a proper balance between the right to possess a firearm for self-defense in the home and the public's inalienable right to personal security. Refusing to extend the Second Amendment right outside the home, the Fourth Circuit Court of Appeals explained: "This is serious business. We do not wish to be even minutely responsible for some unspeakably tragic act of mayhem because in the peace of our judicial chambers we miscalculated as to Second Amendment rights."

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[10] Laws of the State of New York, Sessions of the Legislature Held in the Yeats 1785, 1786, 1787 and 1788, inclusive, Volume II, Chap. 43 (1786).

[11] Act and Laws of Massachusetts-Bay, Chap X. Firing of Guns (1746)

[12] *See, e.g.,* Charter and By-Laws of the Coty of New Haven, Chapter IV (June 1865); Municipal Code of Chicago, Art. XX (1881).

United States v. Masciandaro, 638 F.3d 458, 475 (4th Cir. 2011).

The Second Amendment, when understood within this historical context, does not invalidate the AUUW. A judicial declaration that public carry is a fundamental constitutional right in 2011 - when no such right existed when the Fourteenth Amendment was enacted in 1868 or when the Second Amendment was ratified in 1791 - would depart from sound constitutional jurisprudence and settled expectations that guns are prohibited in public. Such a radical reading of the Second Amendment is not supported by its text or historical context, and would inflict tremendous costs on the residents of this state and law enforcement officers by spreading the epidemic of gun violence.

3. Many Lower Courts Have Confirmed that *Heller* and *McDonald* do not Confer Gun Rights Outside the Home.

Recently, the U.S. District Court for the Central District of Illinois rejected a Second Amendment challenge to the statute at issue in this case in *Moore v. Madigan*, 2012 WL 344760 (C.D. Ill. 2012). The *Moore* court found that "The *Heller* Court's emphasis on the right to bear arms 'in defense of hearth and home' and the Court's express approval of regulations prohibiting concealed carry of weapons in public reflect that the Court in *Heller* did not recognize a Second Amendment right to possess operable firearms in public." *Id.* at *6. Instead, according to Judge Myerscough, "the Supreme Court in *Heller* clearly affirmed the government's power to regulate and restrict possession of firearms outside of the home." *Id.* at *8.

As noted in *Moore*, numerous federal courts (including the Seventh Circuit) and state courts have applied the Supreme Court's narrow holding in *Heller* and *McDonald* to reject challenges to laws regulating firearms *outside of the home*, and this Court should

reach the same conclusion. *See, e.g., Masciandaro*, 638 F.3d at 475 (4th Cir. 2011) (declining to extend the Second Amendment right beyond the home, rejecting any effort to "push *Heller* beyond its undisputed core holding."); *United States v. Marzzarella*, 614 F.3d 85, 92 (3d Cir. 2010) (reasoning that *Heller* and *McDonald* recognized that "the Second Amendment protects the right of law-abiding citizens to possess [handguns] for self-defense in the home"); *United States v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (noting that *Heller* recognized a limited right to keep and bear arms for personal protection in the home); *United States v. Vongxay*, 594 F.3d 1111, 1114-15 (9th Cir. 2010) (describing the *Heller* right as "the right to register and keep a loaded firearm in [the] home for self-defense" and noting "Courts often limit the scope of their holdings, and such limitations are integral to those holdings"); *Little v. United States*, 989 A.2d 1096, 1101 (D.C. App. 2010) ("Appellant conceded that he was not in his own home. Thus, appellant was outside the bounds identified in *Heller*."); *Richards v. County of Yolo*, 2011 WL 1885641, *3 n.4 (E.D. Cal. May 16, 2011) (noting the *Heller* and *McDonald* courts made painstaking efforts to limit their holding "to the right to keep a firearm *in the home* for self-defense purposes") (emphasis in original) (appeal pending); *People v. Yarbrough*, 169 Cal. App. 4th 303, 313-24 (Cal. Ct. App. 2008) (finding that California's concealed firearm carry law "does not broadly prohibit or even regulate the possession of a gun in the home for lawful purposes of confrontation or self-defense, as did the law declared constitutionally infirmed in *Heller*"); *People v. Dykes*, 46 Cal. 4th 731, 778 (Cal. 2009) (stating that "the court in *Heller* disapproved a statute that prohibited possession of an ordinary handgun *in the home*") (emphasis in original); *People v. Ellison*, 196 Cal. App. 4th 1342 (Cal. Ct. App. 2011) (similar); *State v.*

Robinson, 2011 N.J. Super. Unpub. WL 3667606, *4 (App. Div. Aug. 23, 2011) (emphasizing that *Heller* and *McDonald* "dealt exclusively with guns in the home"); *Gonzalez v. Village of W. Milwaukee*, No. 09CV0384, 2010 WL 1904977, at *4 (E.D. Wis. May 11, 2010) ("The Supreme Court has never held that the Second Amendment protects the carrying of guns outside the home."); *Riddick v. United States*, 995 A.2d 212, 222 (D.C. 2010) (Second Amendment does not "compel the District to license a resident to carry and possess a handgun outside the confines of his home, however broadly defined.") (quoting *Sims v. United States*, 963 A.2d 147, 150 (D.C. 2008)).

In dismissing a Second Amendment challenge to a similar state statute regulating the carrying of firearms, the Maryland Court of Appeals, that state's highest court, reached the same conclusion, holding that "it is clear that prohibition of firearms in the home was the gravamen of the certiorari questions in both *Heller* and *McDonald* and their answers." *Williams v. State*, 10 A.3d 1167, 1177 (Md. 2011).

Accordingly, the Second Amendment right articulated by *Heller* and *McDonald* does not extend to carrying loaded and easily accessible firearms outside of the home.[13] The AUUW expressly carves out an exception permitting a person to keep and carry a firearm in the home. Because it only applies to firearm possession outside the home, the challenged statute does not regulate, must less burden to *any* degree, the ability of Illinois

[13] Appellant's claim that the inclusion of the word "bear" in the Second Amendment necessitates permitting public possession of weapons is without merit. The discussion and remedy in *Heller* dispose of this argument. Carrying "upon the person or in the clothing or in a pocket" – the meaning of "bear" articulated in *Heller* – does not itself recognize a right outside the home. *Heller*, 554 U.S. at 584. Indeed, in *Heller*, the remedy provided by the Court was to give Mr. Heller a permit to "carry" a handgun in his home. *See id.* at 635 ("Assuming that Heller is not disqualified from the exercise of Second Amendment rights, the District must permit him to register his handgun and must issue him a license *to carry it in the home*." (emphasis added)). Thus, obviously, Mr. Heller could "bear" arms without leaving the home.

citizens to keep loaded firearms for self-defense inside their homes. Appellant's Second Amendment challenge should end here.[14]

B. Even If Heightened Scrutiny Is Required, Intermediate Scrutiny Is The Appropriate Level Of Review, And The Illinois Statute Satisfies That Standard.

Appellant's Second Amendment challenge is foreclosed by the fact that the Second Amendment right protects only conduct within the home. Should this court find that the Second Amendment implicates some right to possess firearms outside of the home, the court should apply intermediate scrutiny to the review of the Illinois Statute. The statute easily meets this standard.

1. Intermediate Scrutiny is the Appropriate Level of Review for Second Amendment Challenges.

Because the exercise of the Second Amendment right creates unique and significant risks to public safety, the level of scrutiny applied in evaluating Second Amendment challenges must not deprive legislatures of necessary flexibility to address the problem of gun violence. *See Heller*, 554 U.S. at 636 (the Constitution permits legislatures "a variety of tools for combating that problem"). Firearms—which by their very nature are extremely dangerous instruments responsible for over 30,000 deaths and almost 70,000 injuries each year[15]—must necessarily be regulated. Firearms are

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[14] In any event, the AUUW would withstand a rational basis review as it does not burden the right to keep and bear arms. Illinois made the rational decision to "simply restrict[] the public possession of a loaded and accessible firearm on one's person or in one's vehicle." *People v. Dawson*, 934 N.E.2d 598 (Ill. App. Ct. 2010). Its proscriptions are all reasonably related to its efforts to maintain public safety by preventing gun-related crime and, most importantly, to preserve the lives of its citizens. *See generally, 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"). Thus, it survives a rational basis review.

[15] U.S. Dep't of Health & Human Servs., Centers for Disease Control & Prevention, Nat'l

(Footnote continued on next page)

designed to inflict grievous injury and death, the effects of which are all too apparent in the 85 gun-related deaths that on average occur every day (representing more than three deaths each hour).[16]

To enable legislatures to responsibly address this epidemic, courts should employ intermediate, rather than strict, scrutiny for the evaluation of laws that implicate the Second Amendment right. Intermediate scrutiny requires a showing that the asserted governmental end is "significant," "substantial," or "important." *See, e.g., Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 662 (1994); *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989). It requires that the fit between the challenged regulation and the stated objective be reasonable, not perfect, and does not require that the regulation be the least restrictive means of serving the interest. *See, e.g., Lorrilard Tobacco Co v. Reilly*, 533 U.S. 525, 556 (2001); *Ward*, 491 U.S. at 798.

Because intermediate scrutiny is the level of review best suited for Second Amendment challenges, post-*Heller* courts have overwhelmingly applied that test. *See Heller v. District of Columbia*, 2011 WL 4551558, *8, 14 (finding intermediate scrutiny appropriate to review handgun registration law and prohibitions on assault weapons and large capacity ammunition magazines); *Peruta v. County of San Diego,* 758 F. Supp. 2d

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Center for Injury Prevention & Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Injury Mortality Reports, 1999-2007* (last visited November 17, 2011), at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html; U.S. Dep't of Health & Human Servs., Centers for Disease Control & Prevention, Nat'l Center for Injury Prevention & Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Nonfatal Injury Reports, 1999-2007* (last visited November 17, 2011), at http://webappa.cdc.gov/sasweb/ncipc/nfirates2001.html.

[16] U.S. Dep't of Health & Human Servs., Centers for Disease Control & Prevention, Nat'l Center for Injury Prevention & Control, Web-Based Injury Statistics Query & Reporting System (WISQARS), *WISQARS Injury Mortality Reports, 1999-2007* (last visited November 17, 2011), at http://webappa.cdc.gov/sasweb/ncipc/mortrate10_sy.html.

1106, 1117 (S.D. Cal. 2010); *People v. Montyce H.*, 2011 Ill. App. LEXIS 1184 (Ill. App. Nov. 18, 2011) (using intermediate scrutiny to uphold the constitutionality of the AUUW); *People v. Mimes*, 953 N.E.2d 55, 75, 2011 Ill. App. LEXIS 644 (Ill. App. 2011) (same); *Masciandaro*, 638 F.3d at 470-471 (applying intermediate scrutiny to review challenges of laws regulating firearms outside the home); *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) (en banc) (accepting government's concession that intermediate scrutiny is appropriate for reviewing statute prohibiting individuals convicted of domestic violence misdemeanors from possessing firearms); *U.S. v. Chester*, 628 F.3d 673, 688-89 (4th Cir. 2010) (similar); *Marzzarella*, 614 F.3d at 98-99 (applying intermediate scrutiny to statute prohibiting possession of guns with obliterated serial numbers); *United States v. Williams*, 616 F.3d 681, 683 (7th Cir. 2010) (applying intermediate scrutiny to uphold a statute barring felons from possessing firearms); *United States v. Yancey*, 621 F.3d 681, 692-93 (7th Cir. 2010) (applying intermediate scrutiny to uphold statute barring narcotics addicts from possessing firearms).

2. <u>The Application of Strict Scrutiny Would Be Improper.</u>

a. Strict Scrutiny of Firearm Regulations is Unwarranted.

While intermediate scrutiny makes sense for laws that burden the Second Amendment, strict scrutiny does not. Most constitutionally enumerated rights simply do not trigger strict scrutiny. Rights that *do* require strict scrutiny are different, and reflect justifications that do not apply here.

For example, strict scrutiny is appropriate in evaluating challenges to content-based speech restrictions and laws involving racial classifications. Courts apply the most stringent level of review to laws burdening speech of a particular content because they "raise[] the specter that the government may effectively drive certain ideas or viewpoints

from the marketplace." *Simon & Schuster, Inc. v. Members of NY State Crime Victims Bd.*, 502 U.S. 105, 116 (1991). Such laws are fundamentally at odds with "the premise of individual dignity and choice upon which our political system rests." *Id.* Racial classifications similarly merit strict scrutiny because "[d]istinctions between citizens solely because of their ancestry are by their very nature odious." *Hirabayashi v. United States*, 320 U.S. 81, 100 (1943). Such laws are "in most circumstances irrelevant' to any constitutionally acceptable legislative purpose." *Adarand Constructors v. Pena*, 515 U.S. 200, 216 (1995).

Gun regulations do not raise similar concerns. On the contrary, state and local governments have a profound interest—indeed, "cardinal civic responsibilities"—in protecting the public and law enforcement personnel from gun violence. *Department of Revenue of Ky. v. Davis*, 553 U.S. 328, 342 (2008). The "rigid" inquire mandated by strict scrutiny, *Korematsu v. United States*, 323 U.S. 214, 216 (1944), is thus not appropriate for Second Amendment legal challenges such as the present.

b. Strict Scrutiny is Inconsistent with the Supreme Court's Opinion in *Heller*.

Strict scrutiny requires a rigorous analysis of whether the challenged law is the least restrictive means to further a compelling objective. Although the Court in *Heller* did not articulate a standard of review, the majority's recognition that various firearms regulations were "presumptively lawful regulatory measures" is inconsistent with strict scrutiny. *See Heller*, 554 U.S. at 626-27 & n.26; *see also Heller v. District of Columbia*, 698 F. Supp. 2d at 187 (summarizing observations made by other courts and legal scholars on the inconsistency between strict scrutiny and *Heller*'s list of "presumptively lawful" regulations). The Court further recognized that States could employ "a variety of

tools for combating" the problem of gun violence, and did not even suggest that any such tools be narrowly tailored to a specific compelling interest. *Heller*, 554 U.S. at 636.[17]

c. Strict Scrutiny is Inconsistent with Seventh Circuit Jurisprudence.

To the extent that the Seventh Circuit has applied a level of scrutiny in evaluating Second Amendment challenges, it has done so almost exclusively through intermediate scrutiny. *See United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010); *United States v. Williams*, 616 F.3d 685 (7th Cir. 2010). Similarly, in *Ezell*, the Seventh Circuit held that the level of scrutiny to be applied to a law regulating conduct protected by the Second Amendment depends on the severity of the law's burden on the Second Amendment right. *Ezell*, 651 F.3d at 708. Compared to laws imposing severe burdens, the court continued, "laws restricting activity lying closer to the margins of the Second Amendment right, laws that merely regulate rather than restrict, and modest burdens on the right" all merit a more deferential form of review. *Id.*

If this court extends the limited scope of the right recognized in *Heller* and *McDonald* to find that the Second Amendment protects the carrying of firearms outside

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[17] The *amicus* brief of the National Rifle Association, which argues that all rights labeled "fundamental" are automatically subject to strict scrutiny, is incorrect and at odds with Supreme Court decisions. *See, Clingman v. Beaver*, 544 U.S. 581, 592 (2005) ("strict scrutiny is appropriate only if the burden is severe"); *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) ("Regulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review ...."); *Ward*, 491 U.S. at 791 (applying intermediate scrutiny to restrictions on "time, place or manner of protected speech"). Federal appellate courts have likewise rejected this inflexible assertion. *Heller v. District of Columbia*, 2011 WL 4551558, *8 (D.C. Oct. 4, 2011) ("The [Supreme] Court has not said, however, and it does not logically follow, that strict scrutiny is called for whenever a fundamental right is at stake."); *Marzzarella*, 614 F.3d at 96 ("Strict scrutiny does not apply automatically any time an enumerated right is involved"); *Chester*, 628 F.3d at 682 ("We do not apply strict scrutiny whenever a law impinges upon a right specifically enumerated in the Bill of Rights").

of the home, *Ezell* and the Seventh Circuit's other decisions confirm that strict scrutiny is not appropriate. The Illinois Statute imposes absolutely no burden, far less than even a "modest burden," on an individual's ability to possess a firearm within the home for self-defense. *See Moore v. Madigan*, 2012 WL 344760 (C.D. Ill. 2012) (finding that the AUUW statute does not burden the Second Amendment, but also finding that the statute meets intermediate scrutiny). Therefore, intermediate scrutiny is the most appropriate standard of review to apply in this case (assuming some form of heightened scrutiny is required).

3. The AUUW Satisfies Intermediate Scrutiny.

a. The Threat to Public Safety Created by Carrying Loaded, Uncased Firearms in Public is Well-Established.

Gun violence poses a serious threat to public safety in Illinois and nationwide. Of the 453 people murdered in Illinois last year, 364, or 80%, were killed by firearms.[18] In 2010, 12,996 people were murdered in the US. Of those murders, 8,775 were committed using firearms. Last year, over one third of all robberies (128,793) were committed at gun point.[19]

Gun violence also poses a grave risk to law enforcement officers.[20] Nationwide, 541 officers have been killed in the line of duty in the last ten years, and 498 of those

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[18] FBI, Crime in the United States, Murder, by State, Types of Weapons, Table 20, at http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl20.xls

[19] FBI, Crime on the United States, Crime Trends, Table 15, Additional information about selected offenses, at http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl15.xls

[20] National Law Enforcement Officers Memorial Fund, *A Tale of Two Trends: Overall Fatalities Fall, Fatal Shootings on the Rise.(Dec 2009)*

officers were killed by firearms.[21] Although overall fatalities fell in 2009, firearm-related fatalities rose 6%.[22] In 2011, for the first time in 14 years, more police officers were killed in gun-related violence than traffic accidents.[23] Law enforcement fatalities have risen for the last three years, reaching a 20 year high of 68 fatalities.[24] In 2011 alone, six police officers were killed by firearms during traffic stops.[25] Twenty-percent of all police fatal shootings in 2010 were due to ambush style attacks.[26] In 2010, four Chicago Police officers were murdered while attempting to arrest a suspect.[27]

b. The Illinois Statute is Substantially Related to Protecting Public Safety.

In an effort to combat the threat of gun violence and protect the safety of both the general public and law enforcement officers, Illinois has made the sensible decision to restrict the carrying of readily accessible firearms in public. Putting more guns on the street increases the risk of gun violence.[28] Indeed, unlike possession of a gun in the home

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[21] FBI, Uniform Crime Reports, Law Enforcement Officers Feloniously Killed, Type of Weapon, 2001-2010, Table 27, available at http://www.fbi.gov/about-us/cjis/ucr/leoka/leoka-2010/tables/table27-leok-feloniously-type-of-weapon-01-10.xls.

[22] National Law Enforcement Officers Memorial Fund, *A Tale of Two Trends: Overall Fatalities Fall, Fatal Shootings on the Rise.(Dec 2009)*

[23] National Law Enforcement Officers Memorial Fund, Law Enforcement Officer's Death, 2011 Preliminary Report.

[24] National Law Enforcement Officers Memorial Fund, Law Enforcement Officer's Death, 2011 Preliminary Report; 2011 Mid-year Report.

[25] FBI, Uniform Crime Reports, Law Enforcement Officers Feloniously Killed, Circumstance at Scene of Incident by Type of Weapon, 2010, Table 31, available at http://www.fbi.gov/about-us/cjis/ucr/leoka/leoka-2010/tables/table31-leok-feloniously-circumstance-by-type-weapon-10.xls.

[26] National Law Enforcement Officers Memorial Fund, Law Enforcement Officer Deaths: Preliminary 2010, Law Enforcement Fatalities Spike Dangerously in 2010.

[27] National Law Enforcement Officers Memorial Fund, Law Enforcement Officer Deaths: Preliminary 2010, Law Enforcement Fatalities Spike Dangerously in 2010.

[28] There is no credible evidence that laws permitting widespread concealed carrying decrease crime. If anything, compelling research has found that such laws may be

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where a defined space is under the legal control of the homeowner who exercises an absolute right to exclude others, public carry introduces the firearm into a universe of innumerable variables outside the control of the gun owner. Common sense, as much as any statistical report, compels the conclusion that "carrying a concealed firearm in public presents a recognized threat to public order" and "poses an imminent threat to public safety." *People v. Yarbrough*, 169 Cal. App. 4th 303, 313-14 (Cal. Ct. App. 2010).

This is especially so with loaded, uncased firearms in congested metropolitan streets. Recognizing a right to carry guns in public would increase the risk that everyday disagreements would escalate into public shootouts. One such example is the case of Alan Simons in Asheville, North Carolina. Mr. Simons was enjoying a Sunday morning bicycle ride with his 4 year-old son strapped in behind him, when Charles Diez, an area firefighter and concealed gun-permit carrier, pulled alongside him in his vehicle and started "berating him for riding on the highway".[29] What could have been a run-of-the-mill disagreement quickly intensified as Mr. Diez pulled out his gun, threatened Mr. Simons, and fired at him. Fortunately, the bullet passed through his bike helmet just above his left ear, barely missing him. Similar incidents of "road rage" are commonplace.

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associated with increases in crime. See Ian Ayres & John J. Donohue III, *Shooting Down the "More Guns, Less Crime" Hypothesis*, 55 Stan. L. Rev. 1193, 1285, 1296 (Apr. 2003); Ian Ayres & John J. Donohue III, *The Latest Misfires in Support of the "More Guns, Less Crime" Hypothesis*, 55 Stan. L. Rev. 1371, 1397 (Apr. 2003). Since May 2007, the Violence Policy Center has used news reports to identify 440 people, including 12 law enforcement officers, who have been killed by individuals legally allowed to carry concealed weapons nationwide. Violence Policy Center, *Concealed Carry Killers* (Mar. 22, 2012), at http://www.vpc.org/ccwkillers.htm.

[29] Michael Luo, *Guns in Public, and Out of Sight*, NEW YORK TIMES (Dec. 26, 2011), available at http://www.nytimes.com/2011/12/27/us/more-concealed-guns-and-some-are-in-the-wrong-hands.html?pagewanted=1&_r=3&nl=todaysheadlines&emc=tha23

Public opinion supports the logical proposition that carrying guns in public increases the risk of gun violence. In a recent poll, more Americans felt less safe – as opposed to safer – with laws allowing individuals to carry guns in public places.[30]

The increased risk of accidental and intentional shootings, especially in places where large numbers of people congregate, demands a responsible legislative response. One need to look no further than the shooting of Congresswoman Gabrielle Giffords and 18 other people, including a 9 year-old child, outside a Tucson supermarket to understand the dangers of state laws permitting guns in public places.[31] The shooter, Jared Lee Loughner, was lawfully carrying a firearm in public pursuant to Arizona's lax gun laws.[32] According to the defendant in this case (and his *amici*), Loughner is the kind of model citizen who was "lawfully" exercising his right to carry a gun in public. Indeed, every criminal is a law-abiding citizen until the moment he or she commits that first crime.

It is hokum to suggest, as many gun advocates do, that the carnage inflicted by those who carry handguns would decline if everyone was armed. History shows that the increased availability of guns in inner city neighborhoods has resulted in increased gun violence, including homicides, as one would expect. The gun advocate's related fantasy -- that responsible, law-abiding gun owners could stop mass slayings by deranged killers – also is not borne out by the facts. For example, the massacre in Tucson was completed in

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[30] Lake Research Partners for the Brady Center to Prevent Gun Violence, *Findings from a National Survey of 600 Registered Voters*, April 26-28, 2010, at http://www.bradycampaign.org/xshare/bcam/legislation/open_carry/pollingoverview-slides.ppt.

[31] *Aftermath; Charges Files Against Jared Lee Loughner, 22, following Arizona Melee that Leaves 6 Dead,* CHICAGO TRIBUNE, pg. 3 (Jan. 10, 2011).

[32] Bob Drogin, *Check my gun? No way, marshal; Firearms laws these days in Tombstone, Ariz., are more lenient than they were in the era of the OK Corra*l, LOS ANGELES TIMES, pg. A-1 (Jan 23, 2011).

under a minute, as the shooter emptied a 33-round magazine in fewer than 15 seconds, striking 19 people and killing six, including the chief judge of the Arizona district court. Even in a state like Arizona, where many law-abiding citizens *do* carry firearms, no one was able to fire back. In fact, one armed individual at the scene admitted that he "never got a shot off at the gunman, but he nearly harmed the wrong person — one of those trying to control Loughner."[33] The timely intervention of a responsible, law-abiding, gun-carrying Good Samaritan remains an urban myth.

The promotion of public safety is a basic and well-settled exercise of a state's police power. As the Supreme Court has recognized, states are generally afforded "great latitude" in exercising "police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons . . ." *Gonzales v. Oregon,* 546 U.S. 243, 270 (2006) (internal quotations and citation omitted); *see also Kelley,* 425 U.S. at 247 ("promotion of safety of persons and property is unquestionably at the core of the State's police power"). Reasonable and effective gun regulations are integral to the state's exercise of that power. *See Peruta,* 758 F. Supp. 2d at 1117 ("[The state] has an important and substantial interest in public safety and in reducing the rate of gun use in crime.") (internal citations omitted). It is well-settled that the Second Amendment does not protect the right to carry any weapon, at any time, in any place and for any purpose. The contours of the what, when, how and where are best left to states to consider in light of their specific public safety and crime concerns.

The Illinois General Assembly has reasonably addressed public safety concerns in the AUUW. "To accomplish the goals of safety and good order of society, the [Illinois]

[33] Timothy Egan, *Myth of the Hero Gunslinger*, New York Times (Jan. 20, 2011), at http://opinionator.blogs.nytimes.com/2011/01/20/myth-of-the-hero-gunslinger/.

legislature regulated the possession and use of firearms not only by certain dangerous types of people, but also 'by prohibiting the accessibility to loaded weapons in public places by society at large.'" *People v. Mimes*, 953 N.E.2d 55, 75, 2011 Ill. App. LEXIS 644 (Ill. App. 2011) (citing *People v. Marin,* 342 Ill. App. 3d 716, 723-24 (2003)). "[T]he carrying of uncased, loaded and accessible firearms in public on the street, even if for the purpose of self-defense, poses unusual and grave dangers to the public, particularly innocent bystanders who may be severely or fatally injured by stray bullets." *Mimes*, 953 N.E.2d at 76. As the Illinois Appeals Court recently held in *Mimes*, "the [AUUW's] prohibition [of carrying a loaded, uncased and accessible firearm on the street] is justified by the potential deadly consequences to innocent members of the general public when someone carrying a loaded and accessible gun is either mistaken about his need for self-defense or just a poor shot." *Id.*

Public-carry restrictions are substantially related to the state's legitimate objectives in reducing firearms violence. Aggressive enforcement of laws limiting the public carrying of firearms is an effective means of removing guns from criminal hands and, correspondingly, preventing violence on the streets. When a police officer encounters a person with a gun-shaped bulge in their pocket, that officer has a reasonable suspicion that a law is being violated and may stop and frisk. *See, e.g., United States v. Black*, 525 F.3d 359, 364-65 (4th Cir. 2004); *United States v. Mayo*, 361 F.3d 802, 807-08 (4th Cir. 2004); *United States v. Gibson*, 64 F.3d 617, 624 (11th Cir. 1995), *cert. denied*, 517 U.S. 1173 (1996). Upon recovering the gun, the officer can make an arrest and remove the gun from the street. When police aggressively enforce the AUUW, it becomes riskier for criminals to bring their guns outdoors, and thus increases the

likelihood that gang members who are aware of aggressive policing tactics will keep their guns indoors. And, when they do not, officers will often be able take firearms off the streets before they are used in crimes. *See* Lawrence Rosenthal, *Second Amendment Plumbing After Heller: Of Standards of Scrutiny, Incorporation, Well-Regulated Militias, and Criminal Street Gangs,* 41 Urb. Lawyer 1, 30-48 (2009); Rosenthal, *Pragmatism, Originalism, Race, and the Case against Terry v. Ohio*, 43 Tex. Tech. L. Rev. 299, 321-30 (2010).

Aggressive policing strategies centered on stringent firearms regulations have been shown to aid in the reduction of gun-related gang activity in the streets. *See* Rosenthal, *Second Amendment Plumbing* at 30-44 (discussing studies correlating police tactics geared to recover handguns with crime reduction in New York City); Phillip J. Cook, *et al.*, *Underground Gun Markets*, 117 Economic J. F558, F581-82 (2007) ("law enforcement efforts targeted at reducing gun availability at the street level seem promising"). It is doubtful that such police strategies could be as effective where public carry is generally allowed, even if a license or permit was also required. It is questionable whether an officer may legally stop a suspect based solely on speculation that the suspect lacks the requisite license. This is because the mere suspicion of gun possession is not a sufficient reason to suspect the possessor is unlicensed or that any other crime has occurred. *See, e.g., United States v. Ubiles*, 224 F.3d 213, 217-18 (3d Cir. 2000) (officers' suspicion that defendant had gun in crowded street festival was not reason to believe criminal activity was afoot since they had no reason to believe defendant was unlicensed and carrying a gun in a crowded area is not necessarily a crime); *Commonwealth v. Couture*, 552 N.E.2d 538, 541 (Mass. 1990) ("The mere possession of a handgun was not

sufficient to give rise to a reasonable suspicion that the defendant was illegally carrying that gun [without a license] and the stop [of the suspect's vehicle] was therefore improper under the Fourth Amendment principles.").

Even if similarly effective policing strategies might be developed under a licensing regime, that would not detract from the proven effectiveness of prohibiting public carry of firearms. When a regulation is evaluated under intermediate scrutiny, it need not be the least restrictive means of accomplishing its objectives, but only a means substantially related to those important objectives. And since police enforcement of public carry prohibitions are substantially related to the reduction of gun violence, those prohibitions easily survive intermediate scrutiny.

The number of deaths caused by firearms, both in the general population and among police officers, is staggering, and Illinois rightfully exercised its police power to limit possession of uncased, loaded firearms outside the home to curb this epidemic of violence. With the AUUW in place, the police are better able to protect members of the public and themselves before a weapon is used to commit a crime. *See Peruta,* 758 F. Supp. 2d at 1117 ("In particular, the government has an important interest in reducing the number of concealed weapons in public in order to reduce the risks to other members of the public who use the streets and go to public accommodations. The government also has an important interest in reducing the number of concealed handguns in public because of their disproportionate involvement in life-threatening crimes of violence, particularly in streets and other public places.") (internal citations omitted).

In this case, the defendant was a 16-year old youth engaged in dangerous and criminal behavior -- throwing bottles at moving vehicles -- at night and in an inner city

neighborhood where residents often fall victim to crimes. The fact that this immature individual was carrying a loaded firearm should send shivers down the spine of every neighbor, parent, teacher, social worker, police officer, and judge. Getting this dangerous young man off the street – and keeping his gun off the street – is undeniably sound public policy.

IV. CONCLUSION

The AUUW is a valuable and entirely appropriate exercise of the state's police powers that does not burden the Second Amendment. Even if the court finds the Second Amendment protects conduct implicated by this statute, the law passes constitutional muster. Similar laws have protected Americans and their legal forebears for 700 years and have long been upheld by Anglo and American courts. This Court should continue in that tradition by affirming the appellate court's decision below

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CERTIFICATION

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 30 pages.

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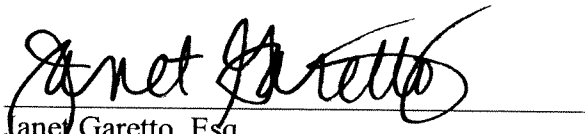

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