No. 112026

# In the
# Supreme Court of Illinois

MATTHEW D. WILSON, *et al.*,

*Plaintiffs-Appellants,*

v.

COOK COUNTY, *et al.*,

*Defendants-Appellees.*

On Petition for Leave to Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-08-1202.
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 07 CH 4848.
The Honorable **Mary K. Rochford**, Judge Presiding.

## BRIEF OF *AMICI CURIAE* LEGAL COMMUNITY AGAINST VIOLENCE, THE CITY OF CHICAGO, THE MAJOR CITIES CHIEFS ASSOCIATION, AND THE ASSOCIATION OF PROSECUTING ATTORNEYS IN SUPPORT OF COOK COUNTY, ET AL.

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## 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 the support of gun violence prevention. It tracks and analyzes federal, state, and local firearms legislation, as well as legal challenges to firearms laws nationwide. As an *amicus*, LCAV has provided informed analysis in a variety of Second Amendment cases, including *District of Columbia v. Heller* and *McDonald v. City of Chicago*.

*Amicus* the City of Chicago, the third-largest city in the United States, faces a serious problem of firearms violence, to which the presence of assault weapons and large capacity ammunition magazines greatly contribute. Chicago recovers about 350 assault weapons a year, and has recovered more than 1,800 since the Federal Assault Weapons Ban ended in September 2004. In order to keep these particularly dangerous firearms out of the hands of gang members, criminals, and others who may misuse them, as well as to limit the presence of these inappropriate and unnecessary weapons in a densely populated, urban environment, Chicago has enacted an assault weapons and large capacity ammunition magazines statute similar to the Cook County prohibition at issue in this case. *See* Chicago, Ill., Municipal Code §§ 8-20-010, 8-20-170 (2011). Both the Cook County and Chicago assault weapons and large capacity ammunition magazines prohibitions play an important role in attempting to reduce the devastating impact of use of these highly dangerous firearms in Chicago.

*Amicus* the Major Cities Chiefs Association ("MCCA") is a professional association of Chiefs and Sheriffs representing the largest cities in the United States and Canada. MCCA membership is comprised of Chiefs and Sheriffs of the seventy largest

law enforcement agencies in the United States and Canada. They serve over 76.5 million people (68 US, 8.5 Canada) with a sworn workforce of 177,150 (159,300 US, 17,850 Canada) officers and non-sworn personnel. MCCA was formed in the late 1960s to provide a forum for executives to share ideas, experiences and strategies for addressing the challenges of policing large urban communities. While the forum remains a primary purpose, as MCCA has grown, its purpose has expanded to include:

- To influence national public policy on law enforcement matters;
- To enhance the development of current and future leaders;
- To encourage and sponsor research.

Because firearms are the primary tools used in serious assaults and homicides, MCCA has had a long term interest in public policy effecting their possession and use.

*Amicus* the 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 regulating assault weapons and large capacity ammunition magazines.

## INTRODUCTION AND SUMMARY OF ARGUMENT

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the United States Supreme Court held that the Second Amendment protects a law-abiding, responsible individual's right to possess an operable handgun in the home for self-defense. Cook County's laws do not conflict with this right, as residents may lawfully purchase and possess numerous handguns and ammunition magazines for use in domestic self-protection. Appellants and

their *amici*, however, are not satisfied. It is not enough that many types of firearms are available to them. Instead, they demand that this Court extend *Heller* to protect the possession of assault weapons and "large capacity" ammunition magazines, devices of military origin that are designed to kill large numbers of people quickly and efficiently. The mere desire to possess assault weapons and "large capacity" magazines is not constitutionally protected. On the contrary, the Second Amendment does not guarantee the possession of weapons frequently employed in mass shootings and attacks on law enforcement.

This Court should affirm the decisions of the Circuit Court of Cook County and the Illinois Appellate Court, *Wilson v. Cook County*, 407 Ill. App. 3d 759, 943 N.E.2d 768 (lst Dist. 2011), because the Cook County Blair Holt Assault Weapons Ban (hereinafter the "Cook County Ban") is fully consistent with the Second Amendment. Assault weapons are "dangerous and unusual weapons," excluded from Second Amendment protection by *Heller*, and assault weapons and large capacity magazines are inappropriate for self-defense in the home. Moreover, because the Cook County Ban does not prevent an individual from possessing any of a number of firearms and ammunition magazines in the home, the Ban places absolutely no burden on the Second Amendment right. Finally, even assuming restrictions on assault weapons and "large capacity" ammunition magazines do implicate the Second Amendment, the Cook County Ban clearly satisfies review under intermediate scrutiny.

## ARGUMENT

### I. THE COOK COUNTY BAN FALLS OUTSIDE THE SCOPE OF THE SECOND AMENDMENT RIGHT RECOGNIZED IN *HELLER.*

Cook County, Illinois, like a number of states and local governments nationwide, prohibits the sale or possession of assault weapons and large capacity ammunition magazines.[1] The Cook County Ban states that "[n]o person shall manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess any assault weapon or large capacity magazine." Cook County, Ill., Code of Ordinances §§ 54-211-212(a) (2011) (amended Nov. 14, 2006).

Under the Ban, assault weapons are defined to include a list of identified models as well as firearms possessing any of a number of characteristics that enable the firing of hundreds of bullets per minute or facilitate the weapon's concealment, purposes that are inconsistent with use in self-defense in the home. These characteristics include:

---

[1] States that have banned assault weapons and "large capacity" magazines include: California, Massachusetts, Hawaii, Maryland, New Jersey, and New York. Cal. Penal Code §§ 12275-1290 (Deering, 2011); Haw. Rev. Stat. Ann. §§134-1, 134-4, 134-8 (LexisNexis 2011); Md. Code Ann., Crim. Law §§ 4-301-4-306 (LexisNexis 2011); Mass. Gen. Laws ch. 140, §§ 121-123, 131, 131M (2011); N.J. Stat. §§ 2C:39-1w, 2C:39-5, 2C:58-5, 2C:58-12, 2C:58-13 (LexisNexis 2011); N.Y. Penal Law § 265.02(7) (Consol. 2011); *see* Legal Cmty. Against Violence, *Regulating Guns in America* 20-23 (Feb. 2008), http://www.lcav.org/publications-briefs/regulating_guns.asp. *See also* Legal Cmty. Against Violence, *Large Capacity Ammunition Magazines* 3 (2011), http://www.lcav.org/content/large_capacity_ammunition_magazines.pdf.

In addition to Cook County, many localities have prohibited assault weapons and "large capacity" magazines, including Chicago, Boston, Columbus, New York City, and the District of Columbia. 1989 Mass. Acts §§ 1-7 (2010); Chicago, Ill., Municipal Code §§ 8-20-010, 8-20-170 (2011); Columbus, Ohio, Code §§ 2323.11(L), (M), 2323.31, 545.04(a)(2011); D.C., Code Ann. §§ 7-2501.01(10), (12), 7-2502.01, 7-2502.02, 7-2551.01, 7-2551.02 (LexisNexis 2011); N.Y.C, N.Y., Admin. Code §§ 10-301(16), 10-303.1 (2011); N.Y.C., N.Y., Rules tit. 38, § 17-01(2011); Legal Cmty. Against Violence, *Regulating Guns in America*, *supra*, at 25. *See also* Legal Cmty. Against Violence, *Large Capacity Ammunition Magazines*, *supra*, at 3.

- The ability to accept a "large capacity" magazine: This feature enables a shooter to fire rapidly and for a longer duration of time without reloading.

- A protruding forward grip or barrel shroud: This feature allows a shooter to hold the firearm with two hands for greater control during rapid fire (when the muzzle of the gun can quickly get too hot to hold).

- A pistol grip on a rifle or shotgun without a stock attached, or a thumbhole stock: This feature helps a shooter retain control of a firearm while holding the firearm at his or her hip, facilitating the spraying of rapidly-fired ammunition.

- A folding or telescoping stock: This feature promotes concealment and mobility in combat.

- A muzzle brake or muzzle compensator: This feature helps reduce recoil and muzzle movement caused by rapid fire.

*See* Legal Cmty. Against Violence, *Banning Assault Weapons – A Legal Primer for State and Local Action* 1 (Apr. 2004), http://www.lcav.org/publications-briefs/reports_analyses/Banning_Assault_Weapons_A_Legal_Primer_8.05_entire.pdf.

The Cook County Ban defines a "large capacity magazine" as any ammunition feeding device with "the capacity to accept more than ten rounds." Cook County, Ill., Code of Ordinances § 54-211 (2011) (amended Nov. 14, 2006). Some large capacity magazines available on the consumer market can hold up to 100 rounds of ammunition.

Governments across the country have adopted laws restricting the possession of assault weapons and "large capacity" magazines because of the devastating role they play in mass shootings. For example:

- In July 1993, a shooter armed with assault weapons and large capacity magazines killed nine people, including himself, and injured six others (one of whom subsequently died) at a law firm in San Francisco. Karyn Hunt, *Gunman Said to Have List of 50 Names*, Charlotte Observer, July 3, 1993, at 2A. This tragedy led to the formation of *amicus* Legal Community Against Violence.

- In April 1999, the killers in the Columbine High School massacre, which killed 15 people, including the shooters, and wounded 23, used assault weapons and

large capacity magazines. David Olinger, *Gun Dealer Surrenders Firearms License*, Denver Post, Oct. 14, 1999, at B07.

- In October 2002, the assailants known as the "D.C. Shooters" killed ten innocent people using a Bushmaster .223-caliber sniper rifle, an assault weapon. Josh White & Maria Glod, *D.C. Sniper Executed by Lethal Injection*, Pittsburgh Post-Gazette, Nov. 11, 2009, at A1.

- In April 2007, the shooter responsible for the Virginia Tech massacre armed himself with numerous 15-round magazines, which enabled him to fire nearly 200 rounds in an attack that left 33 dead, including the shooter, and 17 injured. Violence Policy Ctr., *Mass Shootings in the United States with Large Capacity Magazines* (Jan. 2011), *available at* http://www.vpc.org/fact_sht/VPCshootinglist.pdf.

- In a December 2007 shopping mall slaughter in Omaha, Nebraska, a teenager killed nine people, including himself, with an assault rifle and two large capacity magazines holding 30 rounds of ammunition each, taped together. Editorial, *Just Bring Your Wallet: Omaha Mall Shootings Prompt People to Carry Firearms While Shopping, But That Could Do More Harm Than Good*, Grand Rapids Press, Dec. 21, 2007, at A12; *see* Violence Policy Ctr., *Mass Shootings in the United States with Large Capacity Magazines, supra.*

- In February 2010, three teenagers were killed with an AK-47 in broad daylight on Chicago's southeast side. *Reconsideration of Supplemental Agenda Regarding the City of Chicago's Gun Ban: Hearings Before the Committee on Police and Fire of the Chicago City Council*, at 172 (Jun. 29, 2010) [hereinafter *Hearings*](statement of Ernest Brown, Acting Deputy Superintendent of the Bureau of Patrol for the Chicago Police Dept.) (attached hereto as Appendix A).

- In January 2011, a shooter killed six people and wounded 13 others, including Congresswoman Gabrielle Giffords, in a Safeway parking lot in Tucson using a large capacity magazine holding 33 rounds of ammunition. Violence Policy Ctr., *Mass Shootings in the United States with Large Capacity Magazines, supra.*

- In September 2011, a shooter killed five people, including himself, and injured seven others at a Carson City, Nevada, IHOP, with an illegally converted Norinco Mak 90, "a Chinese version of the Russian AK-47." Ed Vogel, *IHOP Gunman Had Altered AK-47-Like Rifle*, Las Vegas Rev., Oct. 6, 2011, at 8B; *Gunman in Carson City IHOP shooting reloaded at least once*, Reno Gazette-J., Sept. 7, 2011, *available at* 2011 WLNR 17677339.

This litany of tragedies demonstrates that assault weapons and large capacity magazines are particularly attractive to those intending to inflict the maximum amount of destruction.

### A. The Second Amendment Does Not Protect a Right to Possess Assault Weapons or Large Capacity Ammunition Magazines.

The United States Supreme Court held in *District of Columbia v. Heller* that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense. 554 U.S. at 635 ("[W]e hold that the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense."). The Court in *Heller* found the D.C. statute invalid because, the Court emphasized, it prohibited an entire class of arms chosen by the public for self-defense in the home. *Id* at 628, 636.

#### 1. The Second Amendment Does Not Protect Dangerous and Unusual Weapons.

*Heller* carefully explained that the right protected by the Second Amendment is not "unlimited." *Heller,* 554 U.S. at 626. The Second Amendment does not include the "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* The *Heller* Court also excluded certain classes of weapons from the scope of the Second Amendment. It specifically endorsed the "historical tradition of prohibiting the carrying of dangerous and unusual weapons." *Id.* at 627, *aff'g United States v. Miller*, 307 U.S. 174, 178 (1939) (holding that short-barreled shotguns are not

protected by the Second Amendment, because they are dangerous and unusual) (internal quotation omitted).[2]

In *McDonald v. City of Chicago*, the Supreme Court extended *Heller*'s holding to apply to state and local governments through the Fourteenth Amendment. 130 S. Ct. 3020, 3050 (2010). *McDonald* reaffirmed *Heller's* "assurances" about the limited nature of the Second Amendment right and put to rest "doomsday proclamations" that incorporation would lead to the invalidation of a variety of state and local firearms laws. Indeed, *McDonald* emphasized that "incorporation does not imperil every law regulating firearms," and agreed "reasonable firearms regulation will continue under the Second Amendment." *McDonald*, 130 S. Ct. at 3046-47 (internal citations omitted).

Several courts since *Heller* have upheld other prohibitions that restrict the possession of "dangerous and unusual" weapons. *See United States v. Fincher*, 538 F.3d 868, 874 (8th Cir. 2008) (holding that the defendant's possession of fully automatic assault weapons was not protected by the Second Amendment as they fell "within the category of dangerous and unusual weapons"); *People v. James*, 94 Cal. Rptr. 3d 576, 586 (Cal. Ct. App. 2009) (upholding California's assault weapon prohibition because assault weapons fall within the category of dangerous and unusual weapons). *Cf. Heller v. District of Columbia* ("*Heller II*"), No. 10-7036, 2011 WL 4551558 at *15-16 (D.C. Cir. Oct. 4, 2011) (acknowledging *Heller*'s exception for "dangerous and unusual"

[2] The Supreme Court also identified a non-exhaustive list of "presumptively lawful regulatory measures" (*Heller*, 554 U.S. at 627 n.26), including "longstanding prohibitions" on firearm possession by felons and the mentally ill, as well as laws forbidding firearm possession in sensitive places such as schools and government buildings, and imposing conditions on the commercial sale of firearms. *Id.* at 626-27. In addition, the Court declared that its analysis should not be read to suggest "the invalidity of laws regulating the storage of firearms to prevent accidents." *Id.* at 632.

weapons, and upholding the D.C. assault weapons and large capacity magazine bans against a Second Amendment challenge); *United States v. Marzzarella*, 614 F.3d 85, 94-95 (3d Cir. 2010) (noting the possibility that unmarked firearms might be "dangerous and unusual" firearms under *Heller* and holding that law prohibiting possession of a handgun with an obliterated serial number does not impair Second Amendment rights). The Cook County Ban codifies the "well-established tradition" of firearm regulations prohibiting "dangerous and unusual" weapons.

**a) Assault Weapons Are Unusually Dangerous Military-Style Firearms.**

Because of their unique characteristics, assault weapons are categorically different from the handguns described in *Heller*. Assault weapons are semiautomatic versions of fully automatic weapons designed for combat.[3] For example, the AR-15 rifle, prohibited by the Cook County Ban, was first designed as a military weapon and issued primarily to combat troops and Special Forces, among other military units. *See* ArmaLite, *A Historical Review of ArmaLite* 3, 12 (Jan. 4, 2010), http://www.armalite.com/images/Library/History.pdf. The AR-15 was eventually reclassified as the M-16 and "became the military's basic service rifle." *Id.* at 12.

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[3] The first assault weapon, the STG (Sturmgewehr) 44, was developed by Germany in World War II. *See* Violence Policy Ctr., *Bullet Hoses: Semiautomatic Weapons – What Are They? What's So Bad About Them?* (May 2003), *available at* http://www.vpc.org/studies/hosecont.htm (citing Peter R. Senich, *The German Assault Rifle*, 1935-1945 (Paladin Press 1987); Chuck Taylor, *The Fighting Rifle: A Complete Study of the Rifle in Combat* (Paladin Press 1984)). Contrary to the NRA's claims, the term "assault weapon" is not a "recent legislative invention." *See, e.g.*, Brief for the Nat'l Rifle Ass'n of America, Inc., as *Amici Curiae* Supporting Plaintiff-Appellant, *Wilson v. Cook County*, No. 112026 at 15 (Aug. 1, 2011). The term dates back to World War II. *See Machine Carbine Promoted: M. P. 43 Is Now "Assault Rifle 44,"* Tactical and Technical Trends, No. 57 (Apr. 1945), *available at* http://www.lonesentry.com/articles/ttt07/stg44-assault-rifle.html.

The main difference between military and civilian assault rifles is how quickly bullets can be fired. "A semiautomatic weapon fires one bullet for each squeeze of the trigger. After each shot, the gun automatically loads the next bullet and cocks itself for the next shot, thereby permitting a somewhat faster rate of fire relative to non-automatic firearms." Christopher S. Koper, U.S. Dep't of Justice, *An Updated Assessment of the Federal Assault Weapons Ban* 4 n.1 (2004). A fully automatic assault weapon "fires continuously as long as the trigger is held back - until it runs out of ammunition." *See* Violence Policy Ctr., *Bullet Hoses: Semiautomatic Assault Weapons – What Are They? What's So Bad About Them*? Sec. 2 (May 2003), *available at* http://www.vpc.org/studies/hosetwo.htm.

In reality, the differences between firing a semiautomatic assault weapon and a fully automatic one are minimal -- both can fire hundreds of bullets in a single minute. In a police department test, a fully automatic UZI with a 30-round magazine "emptied in slightly less than *two seconds*. . . while the same magazine was emptied in just *five seconds* on semiautomatic" mode. *Heller II*, 2011 WL 4551558 at *15 (quoting *Firearms Registration Amendment Act of 2008: Hearing on Bill 17-0843 Before the Comm. on Public Safety and the Judiciary of the Council of the District of Columbia* (Oct. 1, 2008) (statement of Brian J. Siebel, Brady Ctr. To Prevent Gun Violence)) (emphasis added).

Semiautomatic assault weapons are "designed to enhance [the] capacity to shoot multiple human targets very rapidly." *Id.* The Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") confirms that "[a]ssault weapons were designed for rapid fire, close quarter shooting at human beings. That is why they were put together the way they

were." Bureau of Alcohol, Tobacco and Firearms, *Assault Weapons Profile* 19 (1994). "You will not find these guns in a duck blind or at the Olympics. They are mass produced mayhem." *Id.*

For these reasons, weapons like the AR-15, AK-47, and UZI models that are prohibited by the Cook County Ban are chosen by violent criminals for offensive attacks, assaults, or homicides. *Heller II*, 2011 WL 4551558 at *15 (citing Dep't of Treasury, *Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles* 34-35, 38 (1998)) ("assault weapons are preferred by criminals . . . because of their high firepower.").

Any suggestion that the Cook County Ban arbitrarily prohibits assault weapons merely because they *resemble* military-style fully automatic assault weapons[4] is disingenuous. In wholly non-superficial ways, semi- and fully-automatic assault weapons are virtually the same. Further, the characteristics of the weapons are so similar that a semi-automatic assault weapon can readily be converted into a fully automatic weapon, contrary to the NRA's claims. *See, e.g.*, *Full Auto Conversion*, Weapons Combat, http://www.weaponscombat.com/full-auto-conversion (last visited Oct. 19, 2011) (providing for purchase, instructions, blueprints, and schematics detailing the conversion of numerous semiautomatic weapons into fully automatic weapons). For example, a device called the "Lightning Link," easily converts an AR-15 into a fully automatic weapon, and can be installed in a matter of ten seconds. *See, e.g.*, *Lightning Link*, The Home Gunsmith, http://thehomegunsmith.com/pdf/fast_bunny.pdf (last visited Oct. 19, 2011); *see also How a Lightning Link Works for All AR15 Calibers*, Guns Lot,

[4] *See* Brief for the Nat'l Rifle Ass'n of America, Inc., as *Amici Curiae* Supporting Plaintiff-Appellant, *Wilson v. Cook County*, No. 112026 at 16 (Aug. 1, 2011).

http://www.gunslot.com/videos/how-lightning-link-works-all-ar15-calibers (last visited Oct. 19, 2011) (instructional video demonstrating how a Lightning Link works)). The ease of modification to a fully automatic weapon further underscores the dangerous and unusual nature of these weapons that excludes them from Second Amendment protection.

**b) Assault Weapons and "Large Capacity" Magazines Are Unsuitable for Responsible Self-Defense in the Home.**

In *Heller*, the Supreme Court held that the Second Amendment protects the right to possess a handgun in the home for self-defense. The Court clearly held that the Second Amendment does not, however, include the "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Heller*, 554 U.S. at 626. Indeed, the exceedingly dangerous nature of assault weapons makes them a particularly inappropriate choice for self-defense purposes. Ammunition shot from some assault weapons is powerful enough to penetrate walls, increasing the already significant threat of stray bullets harming innocent family members, neighbors, and passersby. The Executive Director of the Fraternal Order of Police explained that, "[a]n AK-47 fires a military round. In a conventional home with dry-wall walls, I wouldn't be surprised if [an AK-47 round] went through six of them." *See* Brian J. Siebel, Brady Ctr. To Prevent Gun Violence, *Assault Weapons: Mass Produced Mayhem* 16 (2008), http://www.bradycenter.org/xshare/pdf/reports/mass-produced-mayhem.pdf (quoting *Police Fear a Future of Armored Enemies*, USA Today, Mar. 3, 1997, at 02A).

Large capacity magazines are also inappropriate for responsible self-defense in the home. A former Baltimore Police Colonel states that, "[t]he typical self-defense scenario in a home does not require more ammunition than is available in a standard 6-shot revolver or 6-10 round semiautomatic pistol. In fact, because of potential harm to

others in the household, passerby, and bystanders, too much firepower is a hazard." *Id.* Large capacity magazines exacerbate concerns about stray bullets, because "the tendency for defenders [is] to keep firing until all bullets have been expended." *Id.*

The risk of an errant bullet striking innocent household members, neighbors, or bystanders is magnified when one considers the possibility of an assault weapon or a large capacity magazine being used in a home located within a densely urban environment like Cook County. In March 2006, a 14-year-old girl was killed in Cook County by stray bullets from an AK-47 assault rifle while she was in her house getting ready for school. Editorial, *A Spray of Fire,* Chi. Trib., Mar. 27, 2006, at 20. Police reported that the assault weapon used in the shooting "sprayed 29 rounds and hit seven other houses" on the same block, but missed its intended targets – two suspected drug dealers. David Heinzmann, *2 Hunted in Killing of Girl: Assault Weapon Used in Slaying, Police Say,* Chi. Trib., Mar. 7, 2006, at 1. The following week a 10-year-old child was killed in her Cook County home by a stray bullet from a TEC-9 assault handgun while at her birthday party. Rummana Hussain, *Mayor, Gov March to Denounce Slaying of Englewood Girls*, Chi. Sun-Times, Mar. 19, 2006, at A12. The intended targets, gang members sitting on the front steps of the child's home, were missed. David Heinzmann, *Suspect Bought AK-47 in Indiana: Feds Were Investigating Previous Gun Purchase*, Chi. Trib., Mar. 16, 2006, at 1.

Moreover, assault weapons are not commonly used or purchased by the public. These weapons have historically only comprised a small percentage of the total amount of firearms in circulation. *See* Marianne W. Zawitz, U.S. Dep't of Justice, *Guns Used in Crime* 6 (1995) (assault weapons constituted about 1% of guns in circulation prior to the

federal assault weapons ban). Unlike the right to own a handgun in *Heller*, any alleged "right to possess assault weapons" is "not at all rooted in the conscience of the American public." Jason T. Anderson, *Second Amendment Standards of Review: What the Supreme Court Left Unanswered in District of Columbia v. Heller*, 82 S. Cal. L. Rev. 547, 583 (2009).

**c) Assault Weapons and Large Capacity Magazines Are Used Overwhelmingly in Crimes with Multiple Victims and Assaults on Law Enforcement.**

Criminals disproportionately use assault weapons and large capacity magazines in two categories of crimes: those with multiple victims and those that target law enforcement. Assault weapons "account for a larger share of guns used in mass murders and murders of police, crimes for which weapons with greater firepower would seem particularly useful." Koper, *supra*, at 87. As described above (*see supra*, Part I), assault weapons and "large capacity" magazines have played a devastating role in numerous mass shootings nationwide.

Criminals also overwhelmingly choose assault weapons and large capacity magazines for attacks against law enforcement. A study analyzing FBI data found that 20% of the law enforcement officers killed in the line of duty were killed with an assault weapon. *See* Violence Policy Ctr., *"Officer Down" — Assault Weapons and the War on Law Enforcement, Section One: Assault Weapons, the Gun Industry, and Law Enforcement* (May 2003), *available at* http://www.vpc.org/studies/officeone.htm. Speaking from his own experience in Cook County, a top Chicago police officer has observed that: "[p]olice officers are at a particular risk from these weapons because . . . of their high firepower and a capability of penetrating body armor and the fact that officers are often the first to respond in these dangerous situations." *Hearings*, *supra*, at 172

(statement of Ernest Brown, Acting Deputy Superintendent of the Bureau of Patrol for the Chicago Police Dept.). The prohibition on large capacity magazines serves as further protection for law enforcement officers, because gun users limited to ten-round magazines must reload more frequently. For law enforcement confronting dangerous shootouts, "the 2 or 3 second pause to reload [ammunition] can be critical." *Heller v. District of Columbia*, 698 F. Supp. 2d 179, 194 (D.D.C. 2010).

For example, in 2008, two Chicago police officers from the 22nd District were responding to a call about a "man with a gun." *Hearings*, *supra*, at 169 (statement of Ernest Brown, Acting Deputy Superintendent of the Bureau of Patrol for the Chicago Police Dept.). As the officers approached the scene, they were immediately attacked by the gunman, who was standing in the middle of the street armed with an assault weapon. *Id.* The officers were trapped in their car, because of "the superior firepower of the assault weapon," and returned fire from the safety of their vehicle. *Id.* Fortunately, the officers survived and the man was captured. *Id.*

Recently, officers from the Chicago gang unit engaged in a firefight with gang members who were on their way to execute a rival gang member on Chicago's west side. *Id.* at 170. "As the officers curbed the gang members' vehicle, the gang members inside the car began a shootout with the police." *Id.* One of the weapons used in that attack was an AK-47. *Id.* None of the officers were seriously injured, but two of the gang members were killed in that gun battle. *Id.*

As demonstrated by all of the evidence provided above, the assault weapons prohibited by Cook County encompass only "dangerous and unusual" weapons that are not protected by the Second Amendment. They are not the "usual" firearms used for self-

defense in the home. To the contrary, assault weapons and large capacity ammunition magazines are used by criminals who wish to inflict the maximum amount of harm on the greatest number of victims. For these reasons, the Cook County Ban falls outside the scope of the Second Amendment.

### 2. Under the Cook County Ban, Individuals May Still Possess a Wide Variety of Handguns and Magazines for the Purpose of Responsible Self-Defense in the Home.

The Cook County Ban prohibits only a tiny fraction of available firearms – those that are military-style weapons capable of rapid fire-fueled devastation. *See* Bureau of Alcohol, Tobacco and Firearms, *supra*, at 19. The Ban leaves common handguns, the weapons "overwhelmingly chosen" by the American people for self-defense in the home, untouched. *See Heller*, 554 U.S. at 628. As a result, the law does not interfere with public access to a wide array of firearms for responsible self-defense in the home.

Individuals are also free under the Cook County Ban to possess numerous magazines that hold ten rounds of ammunition; the Ban only prohibits the possession of "large capacity" magazines, some of which can hold up to 100 rounds and which have been used in every major recent mass shooting. Because the prohibition of assault weapons and "large capacity" magazines does not affect an individual's ability to possess an operable handgun for in-home self-defense, the Ban imposes no burden on an individual's ability to exercise his or her Second Amendment right, and the appellants' challenge should be rejected.

## II. EVEN IF ASSAULT WEAPONS AND "LARGE CAPACITY" AMMUNITION MAGAZINES DO IMPLICATE THE SECOND AMENDMENT, COOK COUNTY'S ORDINANCE BANNING THESE WEAPONS REMAINS CONSTITUTIONAL.

Appellants' failure to establish a Second Amendment right to possess assault weapons and "large capacity" magazines should end this Court's inquiry. *See, e.g., Heller II*, 2011 WL 4551558 at *5; *Ezell v. City of Chicago*, 651 F.3d 684, at 702-04 (7th Cir. 2011); *Marzzarella*, 614 F.3d at 89. But even if this Court expands the limited holdings of *Heller* and *McDonald* and concludes that the Cook County Ban implicates the Second Amendment right to possess a handgun in the home for self-defense, the assault weapons and large capacity ammunition magazine bans pass constitutional muster. As set forth below, intermediate scrutiny is the most appropriate level of review and the Cook County Ban more than meets this standard.

### A. If Heightened Scrutiny Is Necessary In Evaluating This Challenge, Strict Scrutiny Is Not Appropriate.

#### 1. The Application of Strict Scrutiny to Firearm Regulations Is Generally Inappropriate.

Appellants and their *amici* argue the Cook County Ban must be subject to a strict scrutiny standard because the enumerated right the Second Amendment protects is fundamental. *See McDonald*, 130 S. Ct. at 3036-42. However, appellants are wrong in asserting that strict scrutiny inexorably applies whenever a fundamental right is involved. Not all constitutionally enumerated rights trigger strict scrutiny. *See Marzzarella*, 614 F.3d at 96-97 (noting that even the right to free speech, an enumerated fundamental right essential to democratic governance, "is susceptible to several standards of scrutiny, depending upon the type of law challenged and the type of speech at issue," and finding

that there is "no reason why the Second Amendment would be any different") (internal citations omitted).

Even for rights that may warrant strict scrutiny, that standard is only appropriate in limited circumstances, based on justifications that do not apply in the area of firearm regulations. For example, courts apply the most stringent level of review to laws burdening speech of a particular content because such laws are fundamentally at odds with "the premise of individual dignity and choice upon which our political system rests." *Simon & Schuster, Inc. v. Crime Victims Bd.*, 502 U.S. 105, 116 (1991).[5] In contrast, content-neutral regulations on the time, place, and manner of even core political speech are not subject to strict scrutiny. *See Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (upholding content-neutral regulations on the time, place, and manner of speech, aimed at limiting the volume of amplified music and speeches); *see also Burdick v. Takushi*, 504 U.S. 428, 432 (1992) (although voting is a fundamental political right, it is erroneous to assume that any burden upon the right to vote must be subject to strict scrutiny). If a limit on the amplification of speech is not subject to strict scrutiny (*see Ward*, 491 U.S. at 791), then surely a limit on the amplification of lethal firepower is not.

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[5] While some analogies may be drawn to the First Amendment, the values and purposes underlying the First and Second Amendments are fundamentally different. *Compare Citizens United v. F.E.C.*, 130 S. Ct. 876, 898 (2010) ("Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it."), *with Heller*, 554 U.S. at 635 (holding that the Second Amendment protects an essentially private interest: the right to possess and carry a handgun in the home for purposes of self-defense). Regulating gun use, unlike regulating speech, undermines neither the democratic process nor the marketplace of ideas. To the contrary, because of the inherent lethal dangers posed by the use of firearms, strong regulation of guns is necessary to protect public safety.

Strict scrutiny is further unwarranted in areas where the government must adopt regulations to fulfill core civic responsibilities. Thus, for example, strict scrutiny does not apply to commercial speech because such speech occurs "in an area traditionally subject to government regulation," *Central Hudson Gas & Elec. v. Public Serv. Comm'n*, 447 U.S. 557, 562-63 (1980), to voting laws because the "government must play an active role in structuring elections," *Burdick*, 504 U.S. at 433-34, and to some conduct of juveniles because their characteristics, "warrant increased state oversight," *Hutchins v. District of Columbia*, 188 F.3d 531, 541 (D.C. Cir. 1999).

The application of strict scrutiny is similarly inappropriate in the evaluation of firearm regulations. Protecting public safety is the bedrock function of government, and guns have a "unique potential to facilitate death and destruction and thereby to destabilize ordered liberty." *McDonald*, 130 S. Ct. at 3108 (Stevens, J., dissenting). Accordingly, state and local governments have a profound interest in safeguarding the public and law enforcement personnel from gun violence. *See 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"). The level of scrutiny applied to firearms regulations must not deprive legislatures of the necessary flexibility to address the problem of gun violence. *See Heller*, 554 U.S. at 636 (Constitution permits legislatures "a variety of tools for combating that problem"). Indeed, most courts that have chosen a level of scrutiny for evaluating Second Amendment claims have rejected strict scrutiny. *See, e.g., Heller II*, 2011 WL 4551558 at *14; *United States* v. *Masciandaro*, 638 F.3d 458, 471 (4th Cir. 2011); *United States. v. Williams*, 616 F.3d 685, 691-93 (7th Cir. 2010); *Marzzarella*, 614

F.3d at 96-97; *United States v. Skoien*, 614 F.3d 638, 641-42 (7th Cir. 2010); *United States v. Walker*, 709 F. Supp. 2d 460, 466 (E.D. Va. 2010).[6]

### 2. Strict Scrutiny is Inconsistent with *Heller* and *McDonald*.

Although *Heller* did not articulate a level of review, the decision implicitly rejected the use of strict scrutiny in the Second Amendment context. As "numerous other courts and legal scholars have pointed out, a strict scrutiny standard of review" does "not square with the majority's references to 'presumptively lawful regulatory measures.'" *Heller v. District of Columbia*, 698 F. Supp. 2d at 187 (citing *Skoien*, 587 F.3d at 812 (noting that the court did "not see how the listed laws could be 'presumptively' constitutional if they were subject to strict scrutiny"); *United States v. Marzzarella*, 595 F. Supp. 2d 596, 604 (W.D. Pa. 2009) (observing that "the Court's willingness to presume the validity of several types of gun regulations is arguably inconsistent with the adoption of a strict scrutiny standard of review"); Dennis A. Henigan, *The Heller Paradox*, 56 UCLA L. Rev. 1171, 1197-98 (2009) (stating "the *Heller* majority . . . implicitly rejected strict scrutiny" by describing certain firearms regulations as presumptively lawful)).

Additional cautionary remarks about the boundaries of the Second Amendment in *Heller* and *McDonald* indicate the inappropriateness of employing a strict scrutiny review

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[6] Although *amici* for Appellants cite cases from district courts in the Ninth and Tenth Circuits that applied strict scrutiny to laws restricting firearm possession by felons or persons subject to a domestic protection order, the Courts of Appeals for both these Circuits have rejected that approach. *See United States v. Reese*, 627 F.3d 792, 802 (10th Cir. 2010) (applying intermediate scrutiny to law prohibiting the possession of firearms while subject to a domestic protection order); *see also Nordyke v. King*, 644 F.3d 776, 783-86 (9th Cir. 2011) (refusing to apply strict scrutiny to law prohibiting possession of firearms on county property, and explaining that subjecting all gun-control regulations to strict scrutiny is inconsistent with *Heller*).

in the area of firearms regulations. The *Heller* Court was careful to point out that the Second Amendment's right to bear arms is "not unlimited," and is not a "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Heller*, 554 U.S. at 626. Rather, legislatures must be allowed to employ "a variety of tools for combating" the problem of gun violence. *Id.* at 636. *McDonald* reaffirmed *Heller's* "assurances" about the limited nature of the Second Amendment right, emphasizing that "incorporation does not imperil every law regulating firearms." *McDonald*, 130 S. Ct. at 3046-47. These unambiguous statements by the Supreme Court are incompatible with the presumption of unconstitutionality that accompanies strict scrutiny. *See San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 16-17 (1973).

### B. If Heightened Scrutiny Applies, Intermediate Scrutiny is the Appropriate Level of Review.

#### 1. Restrictions on Assault Weapons and Large Capacity Ammunition Magazines Do Not Prevent a Law-Abiding, Responsible Citizen from Possessing an Operable Handgun in the Home for Self-Defense.

Because the Cook County Ban does not prevent the exercise of the Second Amendment right to possess a handgun in the home for self-defense, at most an intermediate scrutiny level of review ought to apply to review of the Ban. Courts have reached similar conclusions in other cases involving prohibitions on classes of weapons that still enabled law-abiding citizens to possess other firearms in their homes for self-defense. Recently, the U.S. Court of Appeals for the D.C. Circuit applied intermediate scrutiny to a ban on assault weapons and "large capacity" magazines substantially similar to the Cook County Ban. *Heller II*, 2011 WL 4551558 at *16 (upholding the constitutionality of the District of Columbia's ban). The Court stated that the prohibition of assault weapons and "large capacity" magazines was "more accurately characterized

as a regulation of the manner in which persons may lawfully exercise their Second Amendment rights," since the prohibition did not "prevent a person from keeping a suitable and commonly used weapon for protection in the home." *Id.* The Court also acknowledged a critical distinction between the handgun ban at issue in *Heller* and bans on assault weapons and "large capacity" magazines: "Unlike the law held unconstitutional in *Heller*, the [bans on assault weapons and large capacity magazines] do not prohibit the possession of the 'quintessential self-defense weapon,' to wit, the handgun." *Id.* (quoting *Heller*, 544 U.S. at 629).

Similarly, in *United States v. Marzzarella*, the Third Circuit concluded that the federal prohibition on unmarked firearms should be evaluated under intermediate scrutiny because the law did not severely limit the possession of firearms. 614 F.3d at 97. The Court explained that because the prohibition left a person "free to possess any otherwise lawful firearm," it was "more accurately characterized as a regulation of the manner in which persons may lawfully exercise their Second Amendment rights." *Id.*

If this Court decides to apply some form of heightened scrutiny, it should similarly apply intermediate scrutiny to Cook County's ban on assault weapons and "large capacity" magazines. Like those bans at issue in *Heller II* and *Marzzarella*, the Cook County Ban does not impose a substantial burden on an individual's ability to exercise his or her Second Amendment right since it does not "prevent a person from keeping a suitable and commonly used weapon for protection in the home." *Heller II*, 2011 WL 4551558 at *14. Instead, the Cook County Ban leaves weapons "overwhelmingly chosen" by the American people untouched. *See Heller*, 554 U.S. at 628.

If even the First Amendment does not require strict scrutiny of narrow bans on modes of communication that leave alternative channels for speech, *Kovacs v. Cooper*, 36 U.S. 77, 86-89 (1949) (upholding ban on sound trucks when alternative "easy means of publicity" were available); *see also Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 53-54 (1986) (upholding a city zoning ordinance that restricted the location of adult movie theaters because the ordinance left more than five percent of the city land area open to use as adult theater sites), then certainly the Second Amendment does not require strict scrutiny of a narrow ban that leaves a law-abiding citizen with ample alternative types of firearms for self-defense in the home.

### 2. Courts That Have Applied Heightened Scrutiny to Second Amendment Challenges Have Overwhelmingly Applied Intermediate Scrutiny.

Courts adopting a level of heightened scrutiny in evaluating Second Amendment challenges post-*Heller* have almost uniformly employed intermediate scrutiny. *See, e.g.*, *Heller II*, 2011 WL 4551558 at *14 (applying intermediate scrutiny to assault weapons ban); *Reese*, 627 F.3d at 802 (applying intermediate scrutiny to statute prohibiting possession of firearms by persons subject to a protection order); *Marzzarella*, 614 F.3d at 97-99 (applying intermediate scrutiny to statute prohibiting possession of guns with obliterated serial numbers); *Skoien*, 614 F.3d at 641-42 (accepting government's concession that intermediate scrutiny is appropriate for reviewing statute prohibiting possession of firearm by person convicted of domestic violence misdemeanors); *Masciandaro*, 638 F.3d at 470-71 (applying intermediate scrutiny to ban on loaded weapons in federal parkland). That the clear weight of authority has adopted this standard is understandable: intermediate scrutiny appropriately protects the individual right to possess a handgun in the home for self-defense, while providing elected officials

with the necessary latitude to engage in the complex empirical judgments that are so critical to protecting the societal interest in public safety.

### C. The Assault Weapons and "Large Capacity" Ammunition Magazine Ban Satisfies Intermediate Scrutiny.

Intermediate scrutiny requires a showing that the asserted governmental end is "significant," "substantial," or "important." *See, e.g., Turner Broad. Sys., Inc. v. F.C.C.*, 512 U.S. 622, 662 (1994); *Ward*, 491 U.S. at 791; *Skoien*, 614 F.3d at 641-42. It requires only 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; *Marzzarella*, 614 F.3d at 98.

Cook County's ban on assault weapons and "large capacity" magazines satisfies judicial review under intermediate scrutiny. First, the law enables Cook County to fulfill two of its most important purposes: guarding public safety and protecting the citizenry from violent crime. Second, because the ban only affects a small sub-class of dangerous and unusual firearms, while leaving a wide array of weapons available for self-defense in the home, it is sufficiently tailored to the government's vital objectives.

#### 1. Preservation of Public Safety and Prevention of Crime Are Paramount Government Interests.

In enacting its Ban, the Cook County Board of Commissioners was concerned by the threat to public safety posed by assault weapons and "large capacity" magazines, as well as the high level of violent crime in Cook County. *See* Cook County, Ill., Ordinance No. 93-O-37 (eff. Jan. 1, 1994); *see also* Cook County, Ill., Ordinance No. 99-O-27 (amended Nov. 23, 1999). It is beyond dispute that public safety and the prevention of crime are substantial and compelling governmental interests. *See, e.g., United States v.*

*Salerno*, 481 U.S. 739, 748-50 (1987) (noting that "the Government's regulatory interest in community safety can, in appropriate circumstances, outweigh an individual's liberty interest" and holding that the government's interest in preventing crime is compelling); *Schall v. Martin*, 467 U.S. 253, 264 (1984) ("The legitimate and compelling state interest in protecting the community from crime cannot be doubted"); *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"); *see also Skoien*, 614 F.3d at 642 ("preventing armed mayhem is an important governmental objective"). 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).

**a) Assault Weapons and Large Capacity Ammunition Magazines Jeopardize Public Safety.**

As demonstrated extensively above (*see supra* Part I.A.1.), assault weapons are particularly dangerous, military-style weapons designed for combat use, making them a significant threat to public safety. The Cook County Board of Commissioners' factual findings indicate that assault weapons are 20 times more likely to be used in the commission of a crime than other kinds of weapons. *See Wilson*, 407 Ill. App. 3d at 761. Additionally, according to a top Chicago Police Officer, "[s]ince the Federal Assault Weapons Ban ended in September 2004, we've confiscated more than 1800 assault weapons." *Hearings*, *supra*, at 172 (statement of Ernest Brown, Acting Deputy Superintendent of the Bureau of Patrol for the Chicago Police Dept.).

The characteristics that qualify firearms as assault weapons make them particularly dangerous to the public. "[T]he military features of semiautomatic assault weapons are designed to enhance their capacity to shoot multiple human targets very rapidly' and '[p]istol grips on assault rifles . . . help stabilize the weapon during rapid fire and allow the shooter to spray-fire from the hip position.'" *See Heller II*, 2011 WL 4551558 at *15 (quoting *Firearms Registration Amendment Act of 2008: Hearing on Bill 17-0843 Before the Comm. On Public Safety and the Judiciary of the Council of the District of Columbia* (Oct. 1, 2008) (statement of Brian J. Siebel, Brady Ctr. To Prevent Gun Violence)). As discussed above at pages 12-13, ammunition fired from some assault weapons is powerful enough to penetrate structures, increasing the threat of stray bullets harming innocent persons, especially in a densely urban environment, such as Cook County. Moreover, studies have consistently shown that assault weapons are used overwhelmingly in crimes with multiple victims and assaults on law enforcement. Cook County has an interest in preventing the most devastating attacks with multiple victims, such as the mass shooting at Columbine High School or the D.C.-area sniper attacks.

Large capacity ammunition magazines also pose special dangers to public safety, especially when used with assault weapons. "The threat posed by military-assault weapons is increased significantly if they can be equipped with high-capacity ammunition magazines" because, "[b]y permitting a shooter to fire more than ten rounds without reloading, they greatly increase the firepower of mass shooters." *See id.* at *16; *see also* Koper, *supra*, at 87 ("guns used in shootings are 17% to 26% more likely to have [magazines holding more than ten rounds] than guns used in gunfire cases resulting in no wounded victims").

Cook County has a further interest in protecting from harm the law enforcement officers, in Chicago and elsewhere, who serve and protect its citizens. These officers have had to arm themselves with assault weapons to fight criminals who are using these weapons. *See* Steve Schmadeke & Angela Rozas, *Teens Protest Police Getting Assault Rifles*, Chi. Trib., Nov. 21, 2008, at 33; Dave Newbart, *Daley Backs Plan to Give Assault Rifles to All Cops*, Chi. Sun-Times, Apr. 27, 2008, at A13; *see also* Siebel, *supra*, at 4. A "survey of about 20 police departments conducted by the International Association of Chiefs of Police revealed that, since 2004, all of the agencies have either added assault weapons to patrol units or replaced existing weapons with military-style assault weapons." Siebel, *supra*, at 4 (citing Kevin Johnson, *Police Needing Heavier Weapons: Chiefs Cite Spread of Assault Rifles*, USA Today, Feb. 20, 2007, at 1A). The arms race among criminals jeopardizes the safety of law enforcement officers, and the public, by turning the streets into a war zone.

**2. The Cook County Ban is Substantially Related to the Government's Significant Interests.**

Given the real and immediate threats to the safety and welfare of the public and law enforcement personnel caused by assault weapons and large capacity ammunition magazines, Cook County made the responsible choice to prohibit access to these dangerous instruments of mass mayhem. Since the most effective way to eliminate the danger and destruction caused by assault weapons and "large capacity" magazines is to prohibit their use, possession, and sale, a substantial relationship clearly exists between the Cook County Ban and the government's significant interests. The factual findings adopted by the Cook County Board of Commissioners in support of its Ban underscore the connection between the Ban and the County's interest in reducing gun violence. *See*

*e.g.*, Cook County, Ill., Ordinance No. 93-O-37 (eff. Jan. 1, 1994) (setting forth several supporting facts, including: 1,000 of the 4,500 trauma cases handled by Cook County Hospital that year were due to gunshot wounds; an estimated 1 in 20 high school students had carried a gun in the prior month; and assault weapons are 20 times more likely to be used in the commission of a crime than other kinds of weapons); Cook County, Ill., Ordinance No. 99-O-27 (amended Nov. 23, 1999) (citing undercover investigations and studies conducted by Cook County, the City of Chicago, the Cook County State's Attorney's office, and the Bureau of Alcohol, Tobacco and Firearms).[7]

Contrary to Appellants' assertions, the Cook County Ban narrowly restricts only firearms designed for rapid-firing and magazines capable of holding high volumes of ammunition. These guns and magazines have been prohibited because of their demonstrated ability to cause a high degree of lethal damage to a degree well-beyond anything required for reasonable self-defense in the home. For instance, the assault weapons ban covers rifles with features such as protruding pistol grips—which allow the shooter to spray-fire from the hip position—and barrel shrouds—which help a shooter stabilize a weapon during rapid fire, without incurring serious burns from the heat generated by firing many rounds in rapid succession. *See* Siebel, *supra*, at 14-16. These

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[7] In reviewing the constitutionality of a statute or ordinance, courts must give substantial deference to legislative findings. *See, e.g., Turner Broad. Sys., Inc. v. F.C.C.*, 520 U.S. 180, 195 (1997) (explaining that courts accord "substantial deference" to legislative findings in part because "the institution is far better equipped than the judiciary to amass and evaluate the vast amounts of data bearing upon legislative questions") (internal citations omitted); *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62, 75 (2008) ("Courts are not empowered to 'adjudicate' the accuracy of legislative findings. The legislative fact-finding authority is broad and should be accorded great deference by the judiciary."); *Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 389-90 (1997) ("Plaintiffs may not prevail on their constitutional challenges merely by showing that the General Assembly was mistaken in its legislative findings of fact.").

features enable the shooter to maximize firepower, and are therefore inherently more suited to offensive combat use than to responsible self-defense in the home. Other characteristics used to identify assault weapons under the Ban, such as folding or telescoping stocks, serve mostly to promote concealment and mobility in close combat, making these weapons exceptionally attractive for criminal purposes. *See id.*

While the governmental interest in limiting access to assault weapons and "large capacity" magazines is significant, the Cook County Ban places no burden on an individual's ability to possess a firearm for self-defense in the home. As explained previously, the ban covers only a tiny fraction of available firearms, and those covered were chosen based on their especially dangerous capabilities. A wide array of firearms and magazines continue to be available for citizens to possess for lawful in-home self-defense. As a result, the Cook County Ban is a sufficiently-tailored means of serving vital government interests that is neither overly broad nor arbitrary. *See, e.g., Turner Broad. Sys.*, 512 U.S. at 662; *Heller II*, 2011 WL 4551558 at *15; *Marzzarella*, 614 F.3d at 98.

In sum, the Cook County Ban is an appropriately tailored means to serve the County's interests in the protection of public safety and prevention of violent crime, banning only a small sub-class of weapons that is easily distinguishable from the common handgun that an individual has a constitutional right to possess in the home for self-defense. Under intermediate scrutiny, the fit between the government regulation and the asserted interest need not be perfect, nor must the regulation be the least restrictive means of serving the interest. *See, e.g., Turner Broad. Sys.*, 512 U.S. at 662; *Marzzarella*, 614 F.3d at 98. Instead, the regulation must be substantially related to the

governmental interest and, as explained above, the Cook County Ban more than meets this standard.[8]

## CONCLUSION

This Court should affirm the decisions of the Circuit Court of Cook County and the Illinois Appellate Court (*Wilson v. Cook County*, 407 Ill. App. 3d 759 (lst Dist. 2011)) and uphold the Cook County Ban because it is fully consistent with the Second Amendment. The United States Supreme Court in *Heller* and *McDonald* recognized an individual right to possess an operable handgun in the home for purposes of self-defense, but it made clear that the Second Amendment does not encompass a right to keep and carry "dangerous and unusual weapons." Assault weapons and large capacity magazines are dangerous and unusual weapons designed to kill human beings quickly and efficiently. They are used regularly by gang members and other criminals for the purpose of shooting multiple victims and police officers, and are not suitable for reasonable self-defense in the home. They are particularly dangerous in densely populated urban environments, such as Cook County, where the possibility of stray bullets is great. Moreover, even assuming assault weapons and "large capacity" ammunition magazines implicate the Second Amendment right, the Cook County Ban still passes constitutional muster under an intermediate level of review. For the foregoing reasons, this Court should uphold the Cook County Ban under the Second Amendment and this Court should affirm the decisions below.

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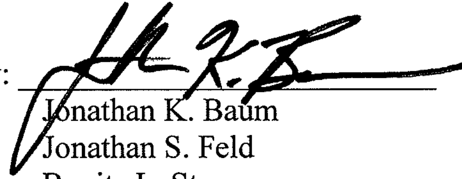
[8] Although strict scrutiny review should not be applied, the Cook County Ban would also satisfy that level of review as a regulation necessary to achieving the County's compelling interests in protecting the safety of the public and members of law enforcement.

Dated: November 18, 2011

Respectfully submitted,

By: 

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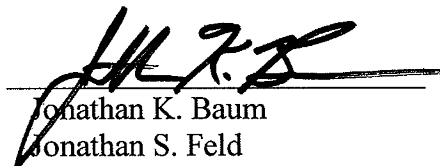
## CERTIFICATE OF COMPLIANCE

The undersigned certifies 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 31 pages.

Dated: November 18, 2011

Respectfully submitted,

By: 

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