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APPELLATE COURT

OPINION OF FEBRUARY 9, 2011

NOTICE
The text of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

THIRD DIVISION
February 9, 2011

No. 1-08-1202

MATTHEW D. WILSON, TROY EDHLUND, and JOSEPH MESSINEO, Plaintiffs-Appellants,	Appeal from the Circuit Court of Cook County, Illinois.
v.	No. 07 CH 4848
COOK COUNTY, a Public Body and Corporate, TODD STROGER, Board President, in His Official Capacity, and its Board of Commissioners in Their Official Capacities, namely: EARLEAN COLLINS, ROBERT STEELE, JERRY BUTLER, WILLIAM M. BEAVERS, DEBORAH SIMS, JOAN PATRICIA MURPHY, JOSEPH MARIO MORENO, ROBERT MALDONADO, PETER N. SILVESTRI, MIKE QUIGLEY, JOHN P. DALEY, FOREST CLAYPOOL, LARRY SUFFREDIN, GREGG GOSLIN, TIMOTHY O. SCHNEIDER, ANTHONY J. PERAICA, ELIZABETH ANN DOODY GORMAN, and THOMAS DART, Sheriff of Cook County, in his Official Capacity, Defendants-Appellees.	Honorable Mary K. Rochford, Judge Presiding.

JUSTICE MURPHY delivered the judgment of the court, with opinion.

Presiding Justice Quinn and Justice Neville concurred in the judgment and opinion.

This appeal arises from the dismissal of plaintiffs' (Matthew D. Wilson, Troy Edhlund, and

Joseph Messineo) amended complaint seeking declaratory judgment and injunctive relief against defendants (Cook County, the Cook County commissioners, and Cook County Sheriff Tom Dart). Specifically, plaintiffs sought a declaration that the Blair Holt Assault Weapons Ban (Cook County Ordinance No. 06-O-50 (Nov. 14, 2006), amending Cook County, Illinois, Code of Ordinances §54–211 *et seq.* (eff. Jan. 1, 1994)) (Ordinance) was unconstitutional. On April 29, 2008, the trial court dismissed plaintiffs' first amended complaint pursuant to section 2-615 of the Code of Civil Procedure. 735 ILCS 5/2-615 (West 2006). The trial court found that: (1) the Ordinance is not unconstitutionally vague or overbroad; (2) plaintiffs did not state a cause of action for violation of the due process and equal protection clauses of the United States Constitution; (3) the Ordinance did not violate article I, section 22, of the Illinois Constitution (Ill. Const. 1970, art. I, §22) or the second amendment of the United States Constitution (U.S. Const., amend. II); and the county properly exercised its police powers in enacting the Ordinance.

Plaintiffs appealed and advanced several arguments. This court held that the United States Supreme Court's holding in *District of Columbia v. Heller*, 554 U.S.__, 128 S. Ct. 2783 (2008), provided that the second amendment grants a right to bear arms within the home for self-defense and limited application of the right to federal laws. *Wilson v. Cook County*, 394 Ill. App. 3d 534, 537-42 (2009). We held that the *Heller* Court did not announce that the second amendment provides a fundamental right to bear arms and rejected plaintiffs' argument that it must be incorporated under the fourteenth amendment and applied to the states. Based on this finding and *Heller*'s limited federal reach, we found that Illinois precedent on this issue stood and affirmed the dismissal of plaintiffs' complaint as the individual right to bear arms remained subject to the police power. *Wilson*, 394 Ill. App. 3d at 542-44. We also found that, without an announced standard of strict scrutiny review, the trial court properly denied plaintiff's argument the Ordinance was vague and overly broad - a doctrine not considered out of the first amendment context by Illinois courts. *Wilson*, 394 Ill. App. 3d at 544-46. Finally, denial of plaintiff's equal protection and waiver claims was affirmed for plaintiff's failure to sufficiently plead facts in support. *Wilson*, 394 Ill. App. 3d 546-47.

Following denial of plaintiff's petition for rehearing, this court corrected its opinion and plaintiff filed a petition for leave to appeal before our supreme court. While that petition was pending, the United States Supreme Court issued *McDonald v. City of Chicago*, __ U.S. __, 130 S. Ct. 3020 (2010). Our supreme court entered a supervisory order directing this court to vacate our prior holding and reconsider the judgment in light of *McDonald*. *Wilson v. Cook County*, 237 Ill. 2d 593 (2010). That judgment was vacated. Both parties provided supplemental briefs. For the following reasons, we affirm the trial court's dismissal of the remaining counts in plaintiffs' complaint.

I. BACKGROUND

The Ordinance was originally enacted in 1993 by the Cook County Board of Commissioners (Commissioners) as the Cook County Deadly Weapons Dealer Control Ordinance to ban certain assault weapons and assault ammunition. Cook County Ordinance No. 93-O-37 (eff. Jan. 1, 1994). In the prefatory clauses, the Commissioners cited to the public health, safety, and welfare concerns caused by both assault weapons and guns in general. The Ordinance set 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; there were more federally licensed gun dealers in Cook County than gas stations; 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. In addition, the Commissioners stated that there was no legitimate sporting purpose for the military-style assault weapons used on the streets.

Prior to its effective date, the Ordinance was amended to remove the prohibitions on the sale, transfer, acquisition, or possession of assault ammunition. Cook County Ordinance No. 93-O-46 (amended Nov. 16, 1993). The Ordinance prohibited the sale, transfer, acquisition, ownership, or possession of assault weapons, defined as 1 of a list of 60 types or models of high capacity, rapid-fire rifles or pistols. The Ordinance required any owners of the defined assault weapons to remove them from Cook County, modify them, or surrender them to the Cook County sheriff within 14 days of the enactment. Failure to comply with the Ordinance would result in a criminal penalty including a fine and possible imprisonment.

The Ordinance was amended again in 1999 to modify sections not at issue in this appeal; however, additional prefatory language was included to support the ban as necessary to protect the public welfare by reducing violent crime and the huge costs associated with those crimes. The Commissioners indicated that the revisions were based not only on the prolific black-market sales of weapons, but those by licensed dealers. The Commissioners cited 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, which indicated that weapons utilized in the commission of crimes are traced to licensed gun dealerships. Cook County Ordinance No. 99-O-27 (amended November 23, 1999).

On November 14, 2006, the Ordinance was amended to apply to both assault weapons and large capacity magazines and expand the list of banned weapons and definition of those weapons. In addition, the time period for removal, surrender, or rendering inoperable was expanded from 14 to 90 days. Cook County Ordinance No. 06-O-50 (amended Nov. 14, 2006). The Ordinance was also amended in 2007 to change the name to the Blair Holt Assault Weapons Ban. Cook County Ordinance No. 07-O-36 (adopted June 19, 2007).

As for the specific provisions, section 54-211 of the Ordinance provides these definitions, followed by a nonexhaustive list of specifically banned weapons:

"*Assault weapon* means:

(1) A semiautomatic rifle that has the capacity to accept a large capacity magazine detachable or otherwise and one or more of the following:

(A) Only a pistol grip without a stock attached;

(B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;

(C) A folding, telescoping or thumbhole stock;

(D) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel; or

(E) A muzzle brake or muzzle compensator;

(2) A semiautomatic pistol or any semi-automatic rifle that has a fixed magazine, that has the capacity to accept more than ten rounds of ammunition;

(3) A semiautomatic pistol that has the capacity to accept a detachable magazine and has one or more of the following:

(A) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;

(B) A folding, telescoping or thumbhole stock;

(C) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel;

(D) A muzzle brake or muzzle compensator; or

(E) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(4) A semiautomatic shotgun that has one or more of the following:

(A) Only a pistol grip without a stock attached;

(B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;

(C) A folding, telescoping or thumbhole stock;

(D) A fixed magazine capacity in excess of five rounds; or

(E) An ability to accept a detachable magazine;

(5) Any shotgun with a revolving cylinder.

(6) Conversion kit, part or combination of parts, from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person." Cook County, Illinois, Code of Ordinances §54–211 (amended Nov. 14, 2006).

The Ordinance specifically excludes "any firearm that has been made permanently inoperable *** 'antique firearm[s]' *** or weapons designed for Olympic target shooting events." Cook County, Illinois, Code of Ordinances §54–211 (amended Nov. 14, 2006). In addition, section 54-211 provides further detailed definitions:

"*Detachable magazine* means any ammunition feeding device, the function of which is to deliver one or more ammunition cartridges into the firing chamber, which can be removed from the firearm without the use of any tool, including a bullet or ammunition cartridge.

Large capacity magazine means any ammunition feeding device with the capacity to accept more than ten rounds, but shall not be construed to include the following:

(1) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds.

(2) A 22 caliber tube ammunition feeding device.

(3) A tubular magazine that is contained in a lever-action firearm.

Muzzle brake means a device attached to the muzzle of a weapon that utilizes escaping gas to reduce recoil.

Muzzle compensator means a device attached to the muzzle of a weapon that utilizes escaping gas to control muzzle movement." Cook County, Illinois, Code of Ordinances §54–211 (amended Nov. 14, 2006).

Plaintiffs filed the instant cause of action as law-abiding residents of Cook County. Each plaintiff indicated that he had never been convicted of a crime, had a properly issued firearm owner's identification card, and had legally purchased guns that were subject to the Ordinance's ban. Plaintiffs indicated the guns were owned as part of collections, for self-defense, or for recreational purposes. This appeal followed the trial court's dismissal of plaintiffs' complaint pursuant to section 2-615 of the Code of Civil Procedure.

II. ANALYSIS

A motion to dismiss under section 2-615 of the Code of Civil Procedure challenges the legal sufficiency of a complaint based on facial defects of the complaint. *Borowiec v. Gateway 2000, Inc.*, 209 Ill. 2d 376, 413 (2004). This court conducts a *de novo* review of a trial court's ruling on the sufficiency of a motion to dismiss. *U.S. Bank National Ass'n v. Clark*, 216 Ill. 2d 334, 342 (2005). While allegations in the complaint are viewed in a light most favorable to the plaintiff, the decision to dismiss a case may be affirmed on any basis contained in the record. *Gallagher Corp. v. Russ*, 309 Ill. App. 3d 192, 196 (1999). As noted above, plaintiffs' claims that the Ordinance violated the equal protection clause and failed to provide a *scienter* requirement were previously rejected by this court based on plaintiffs' pleadings and are not affected by the ruling in *McDonald*. Therefore, we begin with a discussion of the holdings in *Heller* and *McDonald* prior to addressing plaintiffs' surviving arguments in turn.

A. *District of Columbia v. Heller* and *McDonald v. City of Chicago*

The second amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II. In *Heller*, the Supreme Court considered the District of Columbia's handgun ban that "totally bans handgun possession in the home." *Heller*, 554 U.S. at __, 128 S. Ct. at 2817. The ban required that any lawful firearm in the home be either dissembled or rendered inoperable by a trigger lock. *Heller*, 554 U.S. at __, 128 S. Ct. at 2817. Both the majority and the dissent embarked on extensive reviews of the history and meaning of the second amendment in coming to opposite conclusions regarding the original meaning and understanding of the amendment.

For our purposes, we are not concerned with the majority's use of plain meaning originalism or the basis of the dissent's position. Only the conclusions of the majority are important. First, the majority found that the original understanding of the amendment was grounded in the belief that the right to bear arms ensured not only that a militia could easily be formed if needed, but inherently that it provided protection from tyranny. *Heller*, 554 U.S. at __, 128 S. Ct. at 2801-02. The majority concluded that it was also popularly understood as an individual right to self-defense- -unconnected to militia service- -particularly for the defense of one's home and hearth. *Heller*, 554 U.S. at __, 128 S. Ct. at 2802-12.

Looking to precedents covering the second amendment, the Court concluded that its holding that an individual right to self-defense was not foreclosed by its earlier holdings in *United States v. Cruikshank*, 92 U.S. 542 (1875), *Presser v. Illinois*, 116 U.S. 252 (1886), and *Miller v. Texas*, 153 U.S. 535 (1894). As in those cases, the Court did not examine the meaning or scope of the second amendment. *Heller*, 554 U.S. at__, 128 S. Ct. at 2812-13. The *Heller* majority held that the second amendment provides the individual right to bear arms typically possessed by law-abiding citizens for lawful purposes, such as self-defense in the home. *Heller*, 554 U.S. at__, __, 128 S. Ct. at 2801-02, 2815-16. The court concluded that the ban at issue amounted to a prohibition of an entire class of arms that was "overwhelmingly" accepted and properly utilized for self-defense in the home by the general population. *Heller*, 554 U.S. at__, 128 S. Ct. at 2821-22. As such, the District of Columbia's ban on handgun possession in the home, as well as its requirement that any lawful firearm be rendered inoperable while in the home, was found to be unconstitutional. *Heller*, 554 U.S. at__, 128 S. Ct. at 2817-22.

It is important to note that the Court explicitly acknowledged and stated that this was its first in-depth analysis of the second amendment and that "one should not expect it to clarify the entire field." *Heller*, 554 U.S. at__, 128 S. Ct. at 2821. Along those lines, the opinion allowed that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by [a nonexhaustive list of categories such as] felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Heller*, 554 U.S. at__, 128 S. Ct. at 2816-17. These types of measures were further identified as "presumptively lawful regulatory measures." *Heller*, 554 U.S. at__ n.26, 128 S. Ct. at 2817 n.26.

The Supreme Court recently considered its holding in *Heller* when it issued its decision in *McDonald*. In *McDonald*, a plurality of the Court followed *Heller* in holding that the right to possess a handgun in the home for the purpose of self-defense is protected by the second amendment as a fundamental right. As foreshadowed by *Heller*, the *McDonald* Court found that the right was applicable to the states under the due process clause of the fourteenth amendment. *McDonald*, __ U.S. __, 130 S. Ct. at 3050. Therefore, the Supreme Court struck down ordinances from the City of Chicago and City of Oak Park, Illinois. The ordinances prohibited any person within the city to possess any handgun unless the handgun had been registered by the owner. For Chicago, the handgun had to be registered with the city prior to March 30, 1982, and the handgun had to have trigger lock and load indicator devices. The *McDonald* Court focused on the incorporation issue, refusing to expand the *Heller* Court's interpretation and leaving unclear the appropriate standard of review to follow for reviewing restrictions of the second amendment right.

B. The Standard of Review

Several federal district courts and courts of appeal have addressed the proper standard of review to apply to legal prohibitions which might violate a citizen's rights under the second amendment. In *United States v. Chester*, No. 09-4084, (4th Cir. Dec. 30, 2010), the Fourth Circuit Court of Appeals considered a federal statute prohibiting persons convicted of a misdemeanor crime of domestic violence from possessing firearms. 18 U.S.C. §922(g)(9) (2006). In upholding the ban, the *Chester* court held:

"Thus, a two-part approach to Second Amendment claims seems appropriate under *Heller*, as explained by the Third Circuit Court of Appeals, [*United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010)] ***. The first question is 'whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee.' *Id.* This historical inquiry seeks to determine whether the conduct at issue was understood to be within the scope of the right at the time of ratification. *See Heller*, 128 S. Ct. at 2816. If it was not, then the challenged law is valid. *See Marzzarella*, 614 F.3d at 89. If the challenged regulation burdens conduct that was within the scope of the Second Amendment as historically understood, then we move to the second step of applying an appropriate form of means-end scrutiny. *See id. Heller* left open the issue of the standard of review, rejecting only rational-basis review. Accordingly, unless the conduct at issue is not protected by the Second Amendment at all, the Government bears the burden of justifying the constitutional validity of the law." *Chester*, slip op. at 11-12.

In upholding a federal statute prohibiting the possession of firearms with obliterated serial numbers, the *Marzzarella* court found that the proper standard of review depended on the type of law challenged and the extent of the restriction imposed. *Marzzarella*, 614 F.3d at 96-97. In *United States v. Reese*, 627 F.3d 792 (10th Cir. 2010), the Tenth Circuit Court of Appeals upheld a section of the same statute considered in *Chester*. In doing so, the court also extensively cited to *Marzzarella*:

"In recent months, both the Third and Seventh Circuits have applied intermediate scrutiny to Second Amendment challenges to federal firearm laws. In *Marzzarella*, the Third Circuit, citing analogous First Amendment cases, concluded that '[w]hether or not strict scrutiny may apply to particular Second Amendment challenges, it is not the case that it must be applied to all Second Amendment challenges.' [*Marzzarella*, 614 F.3d at 96.] In other words, the Third Circuit concluded, 'the Second Amendment can trigger more than one particular standard of scrutiny,' depending, at least in part, upon 'the type of law challenged and the type of [Second Amendment restriction] at issue.' [*Marzzarella*, 614 F.3d at 97.] The Third Circuit in turn concluded that the specific statute it was reviewing, 18 U.S.C. § 922(k), which prohibits the possession of firearms with obliterated serial numbers, 'should be evaluated under intermediate scrutiny' because '[t]he burden imposed by the law [did] not severely limit the possession of firearms,' as did '[t]he District of Columbia's handgun ban' that was at issue in *Heller*. *Id.* Turning again to analogous First Amendment cases, the Third Circuit framed the intermediate scrutiny inquiry in this way: whether the challenged law served a 'significant,' 'substantial,' or 'important' governmental interest, and, if so, whether the 'fit between the challenged [law] and the asserted objective [wa]s reasonable, not perfect.' [Citation.]" *Reese*, 627 F.3d at 801.

The Seventh Circuit utilized a similar test when it considered the prohibitions of 18 U.S.C. §922(g)(9) in *United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010). The statute prohibits any person convicted of a misdemeanor crime of domestic violence from possessing firearms. *Skoien*, 614 F.3d at 642. In applying intermediate scrutiny to its review of the law, the *Skoien* court took from *Heller* "the message that exclusions need not mirror limits that were on the books in 1791." *Skoien*, 614 F.3d at 641. The court added that "some categorical disqualifications are permissible: Congress is not limited to case-by-case exclusions of persons who have been shown to be untrustworthy with weapons, nor need these limits be established by evidence presented in court. *Heller* did not suggest that disqualifications would be effective only if the statute's benefits are first established by admissible evidence." *Skoien*, 614 F.3d at 641. Noting that categorical limits on the possession of firearms would not be a constitutional anomaly by citing categorical limits on free speech such as obscenity and defamation, the court found that both "logic and data establish a substantial relation between" the statute and the objective of preventing armed mayhem. *Skoien*, 614 F.3d at 642. The Seventh Circuit also applied intermediate scrutiny to a statute barring felons from firearm possession, *United States v. Williams*, 616 F.3d 685 (7th Cir. 2010) and to a statute barring controlled substance addicts from possessing firearms in *United States v. Yancey*, 621 F.3d 681 (7th Cir. 2010).

We adopt the District of Columbia District Court's overview provided in *Heller v. District of Columbia*, 698 F. Supp. 2d 179 (D.D.C. 2010) (*Heller II*), where the plaintiffs' challenged the firearm restrictions passed by the District of Columbia council in response to *Heller*:

> "[T]he majority of courts to have considered this issue [hold] that intermediate scrutiny is the most appropriate standard of review to apply to the challenged laws. This standard satisfies the *Heller* Court's directive that courts apply an exacting measure of scrutiny to laws limiting the exercise of this specific, constitutionally

enumerated right, *see Heller*, [554 U.S. at__ & n.27, 128 S. Ct. at 2817 & n.27], while avoiding the inconsistencies that would arise were it to apply strict scrutiny, *see, e.g., Marzzarella*, 595 F. Supp. 2d at 604. Intermediate scrutiny will come into play, of course, only in cases in which the law implicates the core Second Amendment right, namely, 'the right of law-abiding, responsible citizens to use arms in defense of hearth and home.' [Citation.]

In sum, to assess the constitutionality of each of the challenged provisions, the court will begin by determining whether the provision at issue implicates the core Second Amendment right. If it does not, then the court will uphold the regulation. If the regulation does, however, implicate the core Second Amendment right, the court will apply intermediate scrutiny to determine whether the measure is substantially related to an important governmental interest." *Heller II*, 698 F. Supp. 2d at 188.

C. The Scope of Protected Conduct Under *Heller* and *McDonald*

Unlike the blanket prohibitions of handguns in *Heller* and *McDonald*, the Ordinance bans a smaller subgroup of firearms and attachments. Applying the rationales found in the aforementioned federal cases, we first consider "whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee." *Marzzarella*, 614 F.3d at 89. In doing so, we need to determine whether the conduct at issue was understood to be within the scope of the right at the time the second amendment was ratified. *Chester*, slip op. at 12, citing *Heller*, 554 U.S. at__, 128 S. Ct. at 2816.

Heller addressed which types of firearms may be protected by the second amendment as follows:

> "The 18th-Century meaning [of "arms"] is no different than the meaning today. ***
>
> The term was applied, then as now, to weapons that were not specifically designed for military use and were not employed in a military capacity. ***
>
> *** Just as the First Amendment protects modern forms of communications, *e.g.*, *Reno v. American Civil Liberties Union*, 521 U.S. 844, 849 (1997), and the Fourth Amendment applies to modern forms of search, *e.g.*, *Kyllo v. United States*, 533 U.S. 27, 35-36 (2001), the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller*, 554 U.S. at__, 128 S.Ct. at 2791-92.

Therefore, the *Heller* Court "read *Miller* to say only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns." *Heller*, 554 U.S. at__, 128 S. Ct. at 2815-16, citing *Miller*, 307 U.S. 174, 179 (1939). The *Heller* Court specifically mentioned that M-16 rifles and other weapons most useful in military service may be banned. *Heller*, 554 U.S. at__, 128 S. Ct. at 2817.

In *United States v. Fincher*, 538 F.3d 868 (8th Cir. 2008), the Eighth Circuit Court of Appeals reviewed the defendant's conviction for possessing a machine gun and a sawed-off shotgun, holding: "Accordingly, under *Heller* [, 554 U.S. at__, 128 S. Ct. at 2815-16], Fincher's possession of the guns is not protected by the Second Amendment. Machine guns are not in common use by law-abiding citizens for lawful purposes and therefore fall within the category of dangerous and unusual weapons that the government can prohibit for individual use." *Fincher*, 538 F.3d at 874.

In *People v. James*, 94 Cal. Rptr. 3d 576 (Cal. Ct. App. 2009), the Court of Appeal of California considered *Heller*'s impact on California's Roberti-Roos Assault Weapons Control Act of 1989. (Cal. Penal Code §§12280(b), (c) (West 2006) (Act). Section 12276 of the Act defined "assault weapon" in the same manner as the Ordinance - mentioning weapons by both manufacturer and model and by type. Section 12276.1(5) included "a semiautomatic pistol with a fixed magazine that has the capacity to accept more than 10 rounds." Cal. Penal Code §12276.1(5) (West 2006). In interpreting *Heller*, the *James* court held:

> "Accordingly, 'the right secured by the Second Amendment is not...a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.' [*Heller*, 554 U.S. at__, 128 S. Ct. at 2816.] Rather, it is the right to possess and carry weapons typically possessed by law-abiding citizens for lawful purposes such as self defense. [*Heller*, 554 U.S. at__, 128 S. Ct. at 2816.] It protects the right to possess a handgun in one's home because handguns are a 'class of "arms" that is overwhelmingly chosen by American society' for the lawful purpose of self-defense. [*Heller*, 554 U.S. at__, 128 S. Ct. at 2817.]" *James*, 94 Cal. Rptr. 3d at 585.

The court then considered that, in enacting the Act, "the Legislature was specifically concerned with the unusual and dangerous nature of these weapons. An assault weapon 'has such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings.' *** These are not the types of weapons that are typically possessed by law-abiding citizens for lawful purposes such as sport hunting or self-defense; rather, these are weapons of war." *James*, 94 Cal. Rptr. 3d at 585-86, quoting Cal. Penal Code §75.5(a) (West 2006). The court continued:

> "While the fully-automatic nature of a machine gun renders such a weapon arguably more dangerous and unusual than a semiautomatic assault weapon, that observation does not negate the fact that assault weapons, like machine guns, are not in common use by law-abiding citizens for lawful purposes and likewise fall within the category of dangerous and unusual weapons that the government can prohibit for individual use." *James*, 94 Cal. Rptr. 3d at 586.

Therefore, the *James* court concluded that the relevant portion of the Act did not prohibit conduct protected by the second amendment as defined in *Heller*. *James*, 94 Cal. Rptr. 3d at 586.

In *Heller II*, the court considered the challenge to new restrictions passed by the council of District of the Columbia in response to the holding in *Heller*. The laws at issue were very similar to the Ordinance before us, as well as the statute considered in *James*. The *Heller II* plaintiffs pursued a similar challenge to the new laws containing: (1) firearm registration procedures; (2) a prohibition on assault weapons; and (3) a prohibition on large capacity ammunition feeding devices. *Heller II*, 698 F. Supp. 2d 179. While the *Heller II* court upheld all of the challenged provisions, we will review only its holding as to the prohibitions on assault weapons and large capacity ammunition feeding devices.

The District of Columbia law defined "large capacity ammunition feeding device" as including magazines that have " 'a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition.' " *Heller II*, 698 F. Supp. 2d at 193 n.14 (quoting D.C. Code §7-2506.01(b) (2009)). As the plaintiffs do before us, the plaintiffs in *Heller II* argued that assault weapons " 'are not made or designed for offensive military use,' " " 'are not disproportionately used in crime,' " and in fact are commonly used for lawful purposes, such as target shooting, hunting and personal protection. *Heller II*, 698 F. Supp. 2d at 194. However, the court noted that the right defined in *Heller* was not conferred to any type of firearm in self-defense, but those " 'in common use' " and " 'typically possessed by law-abiding citizens for lawful purposes' " as opposed to "dangerous and unusual weapons." *Heller II*, 698 F. Supp. 2d at 193 (quoting *Heller*, 554 U.S. at __, 128 S. Ct. at 2815-16). The court continued:

> "The plaintiffs also analogize the ban on large capacity ammunition feeding devices to the District's previous requirement, invalidated in *Heller*, that firearms be bound by a trigger lock and unloaded at all times. Pls.' Opp'n at 30. The plaintiffs assert that requiring an individual to pause to reload a firearm after discharging ten rounds of ammunition, like the invalidated trigger lock regulation, 'makes it impossible for citizens to use [firearms] for the core lawful purpose of self-defense and is hence unconstitutional.' *Id.* (quoting *Heller*, 128 S. Ct. at 2818). This argument borders on the absurd. The trigger lock regulation made it functionally impossible to exercise the right of armed self-defense by 'rendering

[the firearm] inoperable.' *Heller*, 128 S. Ct. at 2817. The ban on large capacity ammunition feeding devices, on the other hand, imposes a slight burden on individuals seeking to fire more than ten rounds of ammunition by requiring them to pause for a few seconds to reload the weapon. This plainly does not render a firearm 'inoperable,' any more than the burden of having to pull the trigger repeatedly to discharge each successive round of ammunition renders a semiautomatic firearm 'inoperable' in comparison to a fully automatic machine gun." *Heller II*, 698 F. Supp. 2d at 194.

The court concluded that it would not overrule the council's findings that "assault weapons and large capacity ammunition feeding devices constitute weapons that are not in common use, are not typically possessed by law-abiding citizens for lawful purposes and are 'dangerous and unusual' within the meaning of *Heller*." *Heller II*, 698 F. Supp. 2d at 194. Therefore, on this issue, the *Heller II* court cited the holdings in *Fincher*, *James*, and *Marzzarella* and concluded that intermediate scrutiny review was unnecessary. However, it added that, as it is "beyond dispute" that public safety is a compelling government interest, the committee report detailing the dangers of assault weapons demonstrated a substantial fit between the ban and the compelling goal. *Heller II*, 698 F. Supp. 2d at 194-95.

D. Plaintiffs' Due Process and Overbreadth Challenges of the Ordinance

Plaintiffs' challenges do not result from a specific conviction for possession of a certain firearm as in *Fincher* and *James*. Nor are plaintiffs' challenges the same as in *Heller* or *McDonald* where a categorical ban of all handguns was overturned. Plaintiffs argue that the term "assault weapon" is a relatively recent pejorative term created by legislators in efforts to demonize guns and gun owners. They assert that the Ordinance improperly implicates commonly used handguns and it is therefore violative of the protections of the second amendment as defined in *Heller* and *McDonald* under either strict or intermediate scrutiny. As such, plaintiffs argue that the Ordinance violates the second amendment, is overbroad and violates their due process rights as vague and undefined.

Protection of the public from the brutality and expense that can occur from the proliferation of assault weaponry is the stated purpose of the Ordinance as laid out in its prefatory statements. As addressed above, courts from *Heller* down have made clear the obvious harm certain weaponry and citizens may cause and restricting some categories is not only an important governmental objective, but may be presumptively valid. We follow these holdings and consider whether the scope of the right announced in *Heller* reaches the Ordinance's restrictions such that they are an improper ban of protected firearms which are not substantially related to an important government interest.

Plaintiffs contend that the Ordinance is not narrowly tailored or substantially related to the stated goal. They cite to studies that note the minimal use of assault weapons in gun crimes as well as how many of the defined guns and gun attributes that are banned under the ordinance are not the type of advanced weaponry utilized by the military. Plaintiffs conclude that many of the banned guns are commonly owned and utilized in homes as part of the deeply rooted history of our country for the fundamental right of self-defense that is fundamental to our scheme of ordered liberty.

Plaintiffs also argue that the Ordinance is so vague and overbroad that it must be stricken generally under the overbreadth doctrine. Plaintiffs contend that no evidence was provided to support defendants' claim that firearms for hunting, recreational use and protection were allowed. Conversely, plaintiffs argue that their pleadings fully demonstrated that commonly used firearms were banned and that the Ordinance violates due process due to being unconstitutionally vague as arbitrary, and capricious in its content and enforcement. *Kolender v. Lawson*, 461 U.S. 352, 358 (1983).

Plaintiffs argue that the ordinance is void on its face. As our supreme court has explained, "a statute is normally not unconstitutional on its face unless it provides no standard of conduct at all, *i.e.*, the ambiguity is so pervasive that it is incapable of any valid application. [Citation.] Facial challenges to legislation are generally disfavored." *City of Chicago v. Pooh Bah Enterprises, Inc.*, 224 Ill. 2d 390, 442 (2006). However, plaintiffs assert that the Ordinance may be found impermissibly vague, even if it does not reach protected conduct, if it does not establish sufficient enforcement standards. *Kolender*, 461 U.S. at 358. Plaintiffs claim that they established before the trial court that the list of banned firearms and other definitions are vague and, as a result, they cannot determine whether certain firearms are banned. They contend that the inclusion of "copies" or "duplicates" does not provide any clarity or eliminate the vagueness of the Ordinance, but adds to the confusion as to what firearms are actually banned. Plaintiffs also argue that the Ordinance lacks guidelines for enforcement.

The Ordinance is similar to those that withstood challenges in *Heller II* and *James*. The *Heller* Court and subsequent interpretations of that decision made clear that the second amendment in no way provides protections from restrictions on uncommon or unusually dangerous weapons. As found in *James*, *Heller II*, and *Fincher*, the second amendment right does not extend to assault weapons. Whether or not this is a recently manufactured pejorative term, the Ordinance withstands challenge as long as it is sufficiently tailored like the restrictions in these cases.

As detailed above, the Ordinance is not a blanket prohibition on common handguns as that before the *Heller* and *McDonald* courts. Rather, the Ordinance is a ban on a subcategory of weapons that advance beyond ordinary handguns utilized for self-defense in an attempt to reduce the rate and intensity of crimes and associated costs. The *James* and *Heller II* courts reviewed bans on nearly identical weapons as in the Ordinance, and the legislative findings in *James* and *Heller II* mirror those cited in the Ordinance. In the instant case, the trial court reviewed and detailed the Ordinance's specific list of weapons and detailed definitions of what constitutes an assault weapon in its extensive 14-page order.

The aforementioned definitions and examples constitute objective criteria for enforcement. We agree with the trial court that the terms "copies" and "duplicates" in the Ordinance are not vague, but have plain and ordinary meanings. These weapons, or attributes of weaponry, advance beyond the common handgun, rifle, or shotgun, and are substantially related to the purpose of the Ordinance. The fundamental right to firearm ownership for self-defense purposes in the home is subject to "important" limitations, such as the "historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.' " *Heller*, 554 U.S. at__, 128 S. Ct. at 2817. As in *James* and *Heller II*, the restrictions of the Ordinance are fairly supported by this historical tradition and allow for continued protected use of common firearms and do not violate plaintiffs' constitutional rights.

As for plaintiffs' other claims, the overbreadth doctrine was judicially created as an extraordinary tool to protect first amendment rights from the chilling effect of an overbroad statute. *City of Chicago v. Pooh Bah Enterprises, Inc.*, 224 Ill. 2d 390, 436 (2006). Under this doctrine, the challenger to a statute has the burden of proving that substantial overbreadth exists based on the text of that particular law and facts as well as proving that a substantial amount of protected conduct is impacted. *Pooh Bah*, 224 Ill. 2d at 437, 442. However, as defendants argue, even if plaintiffs could prove this, Illinois courts have not recognized this doctrine outside of the first amendment context. *People v. Greco*, 204 Ill. 2d 400, 407 (2003).

We will not extend this doctrine in the instant matter. Further, plaintiffs' assertion that it should be applied in this case in light of *Heller* also fails. As described above, *Heller* did not pronounce the second amendment right as fundamental for any and all weaponry. As discussed, the Ordinance properly limits its restriction to delineated arms that are rapid-firing or high-capacity. Accordingly, plaintiffs' overbreadth argument fails.

The trial court properly reviewed the language of the Ordinance and found it sufficiently tailored to not be considered impermissibly vague to violate due process. Furthermore, the important consideration on a vagueness review is whether the Ordinance provided specific standards such that a person of ordinary intelligence could understand the prohibitions and it could be properly enforced. Defendants admit that the Ordinance is broadly drawn, and it is, but that does not make it impermissibly vague. The trial court properly found that plaintiffs did not state a cause of action based on the plain meaning and adequate detail provided in the Ordinance. The Ordinance is sufficiently detailed and substantially related to an important government objective.

E. Equal Protection Claim

Plaintiffs next contend that the Ordinance violates the equal protection clause of the fourteenth amendment. Plaintiffs argue that the Ordinance treats similarly situated persons differently based on the type of firearms owned. Plaintiffs conclude that, because the second amendment right is a fundamental right, examination of the claim that disparate treatment of similarly situated persons requires more than the rational basis analysis utilized by the trial court.

However, plaintiffs' argument here is insufficient to require such review. Citing *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992), the trial court noted that not all classifications are barred by the equal protection clause. Rather, the equal protection clause "simply keeps governmental decision[-]makers from treating differently persons who are in all relevant respects alike." *Nordlinger*, 505 U.S. at 10. Suspect classifications include race, national origin, sex and illegitimacy. *People v. Botruff*, 212 Ill. 2d 166, 176-77 (2004). Assault weapons owners do not comprise a suspect classification. While a fundamental right to possess handguns in the home for the purposes of self-defense has been announced, the Ordinance provides a nonexhaustive list of weapons and the copies or duplicates of those weapons that are banned. Importantly, the Ordinance also provides further specific guidelines and attributes to determine what types of weapons are covered. Plaintiffs failed to allege any facts that two owners of similar firearms would be treated differently under the Ordinance, the trial court properly dismissed plaintiffs' equal protection claim.

F. Waiver

Finally, the trial court also considered in detail plaintiffs' argument that the Ordinance failed to provide a *scienter* requirement and whether the Ordinance violates article I, section 22, of the Illinois Constitution. Defendants argue that plaintiffs forfeited these arguments on appeal for failing to raise the issues under Rule 341(h)(7). Ill. S. Ct. R. 341(h)(7) (eff. Sept. 1, 2006). Plaintiffs respond that they appealed the entire dismissal order, the trial court discussed the *scienter* issue extensively for four pages and they fully argued the Illinois Constitution before the trial court. Plaintiffs claim that they "clearly addressed" these issues by arguing that *Kalodimos* was overruled, citing to the Illinois Constitution in the appendix to their brief, and asserting the trial court misconstrued their arguments on the *scienter* issue.

Plaintiffs do not raise these issues on their own merits or provide authority to support their arguments. We will not conduct research or provide arguments for parties. Failure to establish the facts and authority for an argument supports a finding that an issue is waived under Rule 341. *Feret v. Schillerstrom*, 363 Ill. App. 3d 534, 541 (2006). Plaintiffs' only mention of our constitution is with respect to the argument involving *Kalodimos*. Likewise, plaintiffs' only mention of this issue is limited at best. In one sentence on page 14 of their brief, they claim that the trial court "clearly misconstrued Plaintiffs['] arguments regarding *Staples v. U.S.*, 511 U.S. 600 (1993), as it distinguished *U.S. v. Freed*, 401 U.S. 601 (1971)," followed by citation to the amended complaint and court order in the record. No discussion of the issue or these cases or any analysis to support the contention that the court erred is provided. Plaintiffs' one-sentence statement is inadequate, and their failure to provide support or analysis of these issues constitutes waiver pursuant to the rules of our court.

III. CONCLUSION

For the foregoing reasons, the order of the trial court is affirmed.

Affirmed.

ILLINOIS SUPREME COURT SUPERVISORY ORDER OF 9/29/10

A-II

Supreme Court of Illinois
Clerk of the Court
Supreme Court Building
Springfield, Illinois 62701
(217) 782-2035

109314

September 29, 2010

Mr. Victor D. Quilici
Attorney at Law
P. O. Box 428
River Grove, IL 60171

No. 109314 - Matthew D. Wilson et al., petitioners, v. Cook County, etc., et al., respondents. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave to appeal in the above entitled cause and entered the enclosed supervisory order.

The mandate of this Court will issue to the Appellate Court on November 3, 2010.

NO.109314 - SUPERVISORY ORDER

In the exercise of this Court's supervisory authority, the Appellate Court, First District, is directed to vacate its order in Wilson v. Cook County, case No. 1-08-1202 (08/19/09), and reconsider the matter in light of McDonald, et al. v. City of Chicago, 130 S.Ct. 3020 (06/28/10), to determine if another result is warranted.

Paintiff-Appellant's Exhibit A (Page 2 Of 2)

COOK COUNTY
AMMENDED ORDINANCE
06-0-50
(Certified Nov. 14, 2006)

[See following Name Change and re-numbering of Sections, 07-0-36 BLAIR HOLT.] at A-III(a)

06-O-50
ORDINANCE

Sponsored by

THE HONORABLE LARRY SUFFREDIN, COUNTY COMMISSIONER

Co-Sponsored by

THE HONORABLE JOHN P. DALEY AND JOAN PATRICIA MURPHY

COUNTY COMMISSIONERS

AMENDMENT TO THE "COOK COUNTY DEADLY WEAPONS DEALER CONTROL ORDINANCE"

WHEREAS, the Federal assault weapons ban, of the Violent Crime Control and Law Enforcement Act of 1994, as amended, 18 USC Sec. 921 et seq. expired on September 13, 2004; and

WHEREAS, the County Board desires to (1) amend Ordinance 93-O-37, as amended by Ordinance 93-O-46 and Ordinance 99-O-27, Article I, Section 1-2 by striking and deleting language in section 1-2; and (2) amend Ordinance 93-O-37, as amended by Ordinance 93-O-46 and Ordinance 99-O-27, Article VI, by deleting and adding language as stricken through and underlined below.

NOW, THEREFORE, PURSUANT TO THE HOME RULE AUTHORITY OF THE COOK COUNTY BOARD OF COMMISSIONERS, AS VESTED IN IT BY THE ILLINOIS CONSTITUTION OF 1970, HEREBY AMEND PORTIONS OF THE ORDINANCE, AS FOLLOWS:

ARTICLE I. GENERAL PROVISIONS

Section 1-2 Applicability.

(a) This article shall control the licensing of all firearms dealers within Cook County except in home rule municipalities which have a separate municipal ordinance specifically regulating the licensing of firearms dealers.

(b) Pursuant to Article VII, Section 6(c) of the 1970 Constitution of the State of Illinois, if this article conflicts with an ordinance of a home rule municipality, the municipal ordinance shall prevail within its jurisdiction.

ARTICLE VI. ASSAULT WEAPONS BAN

Section 6-1 Definitions.

As used in Article VI of this Ordinance, the following terms shall have the following meaning:

(a) "Assault weapon" means:

(1) A semiautomatic rifle that has the capacity to accept a large capacitv magazine detachable or otherwise and one or more of the following:

(A) Only a pistol grip without a stock attached;

(B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;

(C) A folding, telescoping or thumbhole stock;

(D) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel; or

(E) A muzzle brake or muzzle compensator;

(2) A semiautomatic pistol or any semi-automatic rifle that has a fixed magazine, that has the capacity to accept more than 10 rounds of ammunition;

(3) A semiautomatic pistol that has the capacity to accept a detachable magazine and has one or more of the following:

(A) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;

(B) A folding, telescoping or thumbhole stock;

(C) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel;

(D) A muzzle brake or muzzle compensator; or

(E) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(4) A semiautomatic shotgun that has one or more of the following:

(A) Only a pistol grip without a stock attached;

(B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;

(C) A folding, telescoping or thumbhole stock;

(D) A fixed magazine capacity in excess of 5 rounds; or

(E) An ability to accept a detachable magazine;

(5) Any shotgun with a revolving cylinder.

(6) Conversion kit, part or combination of parts, from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person;

(7) Shall include, but not be limited to, the assault weapons models identified as follows:

(A) The following rifles or copies or duplicates thereof:

(i) AK, AKM, AKS, AK-47, AK-74, ARM, MAK90, Misr, NHM 90, NHM 91, SA 85, SA 93, VEPR;

(ii) AR-10;

(iii) AR-15, Bushmaster XM15, Armalite M15, or Olympic Arms PCR;

(iv) AR70;

(v) Calico Liberty;

(vi) Dragunov SVD Sniper Rifle or Dragunov SVU;

(vii) Fabrique National FN/FAL, FN/LAR, or FNC;

(viii) Hi-Point Carbine;

(ix) HK-91, HK-93, HK-94, or HK-PSG-1;

(x) Kel-Tec Sub Rifle;

(xi) Saiga;

(xii) SAR-8, SAR-4800;

(xiii) SKS with detachable magazine;

(xiv) SLG 95;

(xv) SLR 95 or 96;

(xvi) Steyr AUG;

(xvii) Sturm, Ruger Mini-14;

(xviii) Tavor;

(xix) Thompson 1927, Thompson M1, or Thompson 1927 Commando; or

(xx) Uzi, Galil and Uzi Sporter, Galil Sporter, or Galil Sniper Rifle (Galatz).

(B) The following pistols or copies or duplicates thereof:

(i) Calico M-110;

(ii) MAC-10, MAC-11, or MPA3;

(iii) Olympic Arms OA;

(iv) TEC-9, TEC-DC9, TEC-22 Scorpion, or AB-10; or

(v) Uzi.

(C) The following shotguns or copies or duplicates thereof:

(i) Armscor 30 BG;

(ii) SPAS 12 or LAW 12;

(iii) Striker 12; or

(iv) Streetsweeper.

(b) "Assault weapon" does not include any firearm that has been made permanently inoperable, or satisfies the definition of "antique firearm," stated in this Ordinance, or weapons designed for Olympic target shooting events.

(c) "Detachable magazine" means any ammunition feeding device, the function of which is to deliver one or more ammunition cartridges into the firing chamber, which can be removed from the firearm without the use of any tool, including a bullet or ammunition cartridge.

(d) "Large capacity magazine" means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include the following:

(1) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

(2) A 22 caliber tube ammunition feeding device.

(3) A tubular magazine that is contained in a lever-action firearm.

(e) "Muzzle brake" means a device attached to the muzzle of a weapon that utilizes escaping gas to reduce recoil.

(f) "Muzzle compensator" means a device attached to the muzzle of a weapon that utilizes escaping gas to control muzzle movement.

Section 6-2 Assault weapons and large capacity magazines - Sale prohibited - Exceptions.

(a) No person shall manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess any assault weapon or large capacity magazine. This subsection shall not apply to:

(1) the sale or transfer to, or possession by any officer, agent, or employee of Cook County or any other municipality or state or of the United States, members of the armed forces of the United States; or the organized militia of this or any other state; or peace officers to the extent that any such person named in this subsection is otherwise authorized to acquire or possess an assault weapon and/or large capacity magazine and does so while acting within the scope of his or her duties;

(2) transportation of assault weapons or large capacity magazine if such weapons are broken down and in a non-functioning state and are not immediately accessible to any person.

(b) Any assault weapon or large capacity magazine possessed, sold or transferred in violation of subsection (a) of this section is hereby declared to be contraband and shall be seized and disposed of in accordance with the provisions of Section 6-2 of this Ordinance.

(c) Any person found in violation of this section shall be sentenced to not more than six months imprisonment or fined not less than $500.00 and not more than $1,000.00, or both.

(d) Any person who, prior to the effective date of the ordinance codified in this Ordinance, was legally in possession of an assault weapon or large capacity magazine prohibited by this section shall have 90 days from the effective date of the ordinance to do any of the following without being subject to prosecution hereunder:

(1) To remove the assault weapon or large capacity magazine from within the limits of the County of Cook; or

(2) To modify the assault weapon or large capacity magazine either to render it permanently inoperable or to permanently make it a device no longer defined as an assault weapon or large capacity magazine; or

(3) To surrender the assault weapon or large capacity magazine to the Sheriff or his designee for disposal as provided below.

Section 6-3 Destruction of weapons confiscated.

Whenever any firearm or large capacity magazine is surrendered or confiscated pursuant to the terms of this Ordinance, the Sheriff shall ascertain whether such firearm is needed as evidence in any matter.

If such firearm or large capacity magazine is not required for evidence it shall be destroyed at the direction of the Sheriff. A record of the date and method of destruction an inventory or the firearm or large capacity magazine so destroyed shall be maintained.

Approved and adopted this 14th day of November 2006.

Bobbie L. Steele

BOBBIE L. STEELE, President
Cook County Board of Commissioners

(S E A L)

Attest: David Orr

DAVID ORR, County Clerk

APPROVED AS AMENDED
BY THE BOARD OF COOK COUNTY COMMISSIONERS

NOV 1 4 2006

COM 272836

A29

07-O-36
ORDINANCE

Sponsored by

THE HONORABLE DEBORAH *SIMS AND* LARRY *SUFFREDIN*

COUNTY COMMISSIONERS

ORDINANCE AMENDMENT CREATING THE BLAIR HOLT ASSAULT WEAPONS BAN

BE IT ORDAINED, by the Cook County Board of Commissioners that Chapter 54 Licenses, Permits and Miscellaneous Business Regulations, Article III, Division 4, beginning with Section 54-211 is hereby amended to read as follows:

Division 4. **Blair Holt Assault Weapons Ban**

Approved and adopted this 19th day of June 2007.

AIII(a)

DIVISION 4. - BLAIR HOLT ASSAULT WEAPONS BAN

[11]

Sec. 54-211. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Assault weapon means:

(1) A semiautomatic rifle that has the capacity to accept a large capacity magazine detachable or otherwise and one or more of the following:
- (A) Only a pistol grip without a stock attached;
- (B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
- (C) A folding, telescoping or thumbhole stock;
- (D) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel; or
- (E) A muzzle brake or muzzle compensator;

(2) A semiautomatic pistol or any semi-automatic rifle that has a fixed magazine, that has the capacity to accept more than ten rounds of ammunition;

(3) A semiautomatic pistol that has the capacity to accept a detachable magazine and has one or more of the following:
- (A) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
- (B) A folding, telescoping or thumbhole stock;
- (C) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel;
- (D) A muzzle brake or muzzle compensator; or
- (E) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(4) A semiautomatic shotgun that has one or more of the following:
- (A) Only a pistol grip without a stock attached;
- (B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
- (C) A folding, telescoping or thumbhole stock;
- (D) A fixed magazine capacity in excess of five rounds; or
- (E) An ability to accept a detachable magazine;

(5) Any shotgun with a revolving cylinder.

(6) Conversion kit, part or combination of parts, from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person;

(7) Shall include, but not be limited to, the assault weapons models identified as follows:
- (A) The following rifles or copies or duplicates thereof:
  - (i)

AIII(a)(1)

EXHIBIT

A-1

AK, AKM, AKS, AK-47, AK-74, ARM, MAK90, Misr, NHM 90, NHM 91, SA 85, SA 93, VEPR;
- **(ii)** AR-10;
- **(iii)** AR-15, Bushmaster XM15, Armalite M15, or Olympic Arms PCR;
- **(iv)** AR70;
- **(v)** Calico Liberty;
- **(vi)** Dragunov SVD Sniper Rifle or Dragunov SVU;
- **(vii)** Fabrique National FN/FAL, FN/LAR, or FNC;
- **(viii)** Hi-Point Carbine;
- **(ix)** HK-91, HK-93, HK-94, or HK-PSG-1;
- **(x)** Kel-Tec Sub Rifle;
- **(xi)** Saiga;
- **(xii)** SAR-8, SAR-4800;
- **(xiii)** SKS with detachable magazine;
- **(xiv)** SLG 95;
- **(xv)** SLR 95 or 96;
- **(xvi)** Steyr AUG;
- **(xvii)** Sturm, Ruger Mini-14;
- **(xviii)** Tavor;
- **(xix)** Thompson 1927, Thompson M1, or Thompson 1927 Commando; or
- **(xx)** Uzi, Galil and Uzi Sporter, Galil Sporter, or Galil Sniper Rifle (Galatz).

(B) The following pistols or copies or duplicates thereof:
- **(i)** Calico M-110;
- **(ii)** MAC-10, MAC-11, or MPA3;
- **(iii)** Olympic Arms OA;
- **(iv)** TEC-9, TEC-DC9, TEC-22 Scorpion, or AB-10; or
- **(v)** Uzi.

(C) The following shotguns or copies or duplicates thereof:
- **(i)** Armscor 30 BG;
- **(ii)** SPAS 12 or LAW 12;
- **(iii)** Striker 12; or
- **(iv)** Streetsweeper.

"Assault weapon" does not include any firearm that has been made permanently inoperable, or satisfies the definition of "antique firearm," stated in this section, or weapons designed for Olympic target shooting events.

Detachable magazine means any ammunition feeding device, the function of which is to deliver one or more ammunition cartridges into the firing chamber, which can be removed from the firearm without the use of any tool, including a bullet or ammunition cartridge.

Large capacity magazine means any ammunition feeding device with the capacity to accept more than ten rounds, but shall not be construed to include the following:

- **(1)** A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds.
- **(2)** A 22 caliber tube ammunition feeding device.
- **(3)** A tubular magazine that is contained in a lever-action firearm.

Muzzle brake means a device attached to the muzzle of a weapon that utilizes escaping gas to reduce recoil.

Muzzle compensator means a device attached to the muzzle of a weapon that utilizes escaping gas to control muzzle movement.

(Ord. No. 93-O-37, § 6-1, 10-19-1993; Ord. No. 93-O-46, § 6-1, 11-16-1993; Ord. No. 94-O-33, 7-6-1994; Ord. No. 99-O-27, Pt. 3(6-1), 11-23-1999; Ord. No. 06-O-50, 11-14-2006.)

Sec. 54-212. - Assault weapons and large capacity magazines; sale prohibited; exceptions.

(a) No person shall manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess any assault weapon or large capacity magazine. This subsection shall not apply to:

AIII(a)(2)

EXHIBIT

(1) The sale or transfer to, or possession by any officer, agent, or employee of Cook County or any other municipality or state or of the United States, members of the armed forces of the United States; or the organized militia of this or any other state; or peace officers to the extent that any such person named in this subsection is otherwise authorized to acquire or possess an assault weapon and/or large capacity magazine and does so while acting within the scope of his or her duties;

(2) Transportation of assault weapons or large capacity magazine if such weapons are broken down and in a nonfunctioning state and are not immediately accessible to any person.

(b) Any assault weapon or large capacity magazine possessed, sold or transferred in violation of Subsection (a) of this section is hereby declared to be contraband and shall be seized and disposed of in accordance with the provisions of Section 54-213.

(c) Any person found in violation of this section shall be sentenced to not more than six months imprisonment or fined not less than $500.00 and not more than $1,000.00, or both.

(d) Any person who, prior to the effective date of the ordinance codified in this section, was legally in possession of an assault weapon or large capacity magazine prohibited by this section shall have 90 days from the effective date of the ordinance to do any of the following without being subject to prosecution hereunder:

(1) To remove the assault weapon or large capacity magazine from within the limits of the County of Cook; or

(2) To modify the assault weapon or large capacity magazine either to render it permanently inoperable or to permanently make it a device no longer defined as an assault weapon or large capacity magazine; or

(3) To surrender the assault weapon or large capacity magazine to the Sheriff or his designee for disposal as provided below.

(Ord. No. 93-O-37, § 6-2, 10-19-1993; Ord. No. 93-O-46, § 6-2, 11-16-1993; Ord. No. 94-O-33, 7-6-1994; Ord. No. 99-O-27, Pt. 3(6-2), 11-23-1999; Ord. No. 06-O-50, 11-14-2006.)

Sec. 54-213. - Destruction of weapons confiscated.

(a) Whenever any firearm or large capacity magazine is surrendered or confiscated pursuant to the terms of this article, the Sheriff shall ascertain whether such firearm is needed as evidence in any matter.

(b) If such firearm or large capacity magazine is not required for evidence it shall be destroyed at the direction of the Sheriff. A record of the date and method of destruction an inventory or the firearm or large capacity magazine so destroyed shall be maintained.

(Ord. No. 93-O-37, § 6-3, 10-19-1993; Ord. No. 94-O-33, 7-6-1994; Ord. No. 99-O-27, Pt. 3(6-3), 11-23-1999; Ord. No. 06-O-50, 11-14-2006.)

Secs. 54-214—54-240. - Reserved.

FOOTNOTE(S):

[11] **Editor's note**— Ord. No. 07-O-36, adopted June 19, 2007, amended the title of Div. 4, Assault Weapons, to read as herein set out. (Back)

EXHIBIT

CONSTITUTIONAL AMENDMENTS, AND STATUTES

A-IV

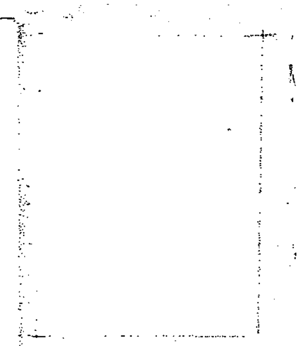
CONSTITUTIONAL AMENDMENTS,
STATUTES AND ORDINANCES INVOLVED

Second Amendment to the United States Constitution:

A well regulated militia being necessary to the security of a free state, the right To keep and bear arms shall not be infringed,

Text

Fourteenth Amendment to the United States Constitution



Amendment XIV in the National Archives

" *__Section 1.__ All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*

__Section 2.__ Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

__Section 3.__ No one shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

__Section 4.__ The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

__Section 5.__ The Congress shall have power to enforce, by appropriate legislation, the provisions of this article. "

Article I, Section 22, Illinois Constitution

Subject only to the police power, the right of the individual citizen to Keep and bear arms shall not be infringed.

Illinois Criminal Code (1961); Illinois Revised Statutes, Article 7

ARTICLE 7. JUSTIFIABLE USE OF FORCE; EXONERATION

(720 ILCS 5/7-1) (from Ch. 38, par. 7-1)
Sec. 7-1. Use of force in defense of person.

(a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.

(b) In no case shall any act involving the use of force justified under this Section give rise to any claim or liability brought by or on behalf of any person acting within the definition of "aggressor" set forth in Section 7-4 of this Article, or the estate, spouse, or other family member of such a person, against the person or estate of the person using such justified force, unless the use of force involves willful or wanton misconduct.
(Source: P.A. 93-832, eff. 7-28-04.)

(720 ILCS 5/7-2) (from Ch. 38, par. 7-2)
Sec. 7-2. Use of force in defense of dwelling.

(a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon a dwelling. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if:

(1) The entry is made or attempted in a violent, riotous, or tumultuous manner, and he reasonably believes that such force is necessary to prevent an assault upon, or offer of personal violence to, him or another then in the dwelling, or

(2) He reasonably believes that such force is necessary to prevent the commission of a felony in the dwelling.

(b) In no case shall any act involving the use of force justified under this Section give rise to any claim or liability brought by or on behalf of any person acting within the definition of "aggressor" set forth in Section 7-4 of this Article, or the estate, spouse, or other family member of such a person, against the person or estate of the person using such justified force, unless the use of force involves willful or wanton misconduct.
(Source: P.A. 93-832, eff. 7-28-04.)

(720 ILCS 5/7-3) (from Ch. 38, par. 7-3)
Sec. 7-3. Use of force in defense of other property.

(a) A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than a dwelling) or personal property, lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.

(b) In no case shall any act involving the use of force justified under this Section give rise to any claim or liability brought by or on behalf of any person acting within the definition of "aggressor" set forth in Section 7-4 of this Article, or the estate, spouse, or other family member of such a person, against the person or estate of the person using such justified

force, unless the use of force involves willful or wanton misconduct.
(Source: P.A. 93-832, eff. 7-28-04.)

(720 ILCS 5/7-5) (from Ch. 38, par. 7-5)
Sec. 7-5. Peace officer's use of force in making arrest.
(a) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person, or when he reasonably believes both that:

(1) Such force is necessary to prevent the arrest from being defeated by resistance or escape; and

(2) The person to be arrested has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

(b) A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which he would be justified in using if the warrant were valid, unless he knows that the warrant is invalid.
(Source: P.A. 84-1426.)

(720 ILCS 5/7-6) (from Ch. 38, par. 7-6)
Sec. 7-6. Private person's use of force in making arrest.
(a) A private person who makes, or assists another private person in making a lawful arrest is justified in the use of any force which he would be justified in using if he were summoned or directed by a peace officer to make such arrest, except that he is justified in the use of force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or another.

(b) A private person who is summoned or directed by a peace officer to assist in making an arrest which is unlawful, is justified in the use of any force which he would be justified in using if the arrest were lawful, unless he knows that the arrest is unlawful.
(Source: Laws 1961, p. 1983.)

(720 ILCS 5/7-8) (from Ch. 38, par. 7-8)
Sec. 7-8. Force likely to cause death or great bodily harm.
(a) Force which is likely to cause death or great bodily harm, within the meaning of Sections 7-5 and 7-6 includes:

(1) The firing of a firearm in the direction of the person to be arrested, even though no intent exists to kill or inflict great bodily harm; and

(2) The firing of a firearm at a vehicle in which the person to be arrested is riding.

(b) A peace officer's discharge of a firearm using ammunition designed to disable or control an individual without creating the likelihood of death or great bodily harm shall not be considered force likely to cause death or great bodily harm within the meaning of Sections 7-5 and 7-6.
(Source: P.A. 90-138, eff. 1-1-98.)

(720 ILCS 5/7-14) (from Ch. 38, par. 7-14)
Sec. 7-14. Affirmative defense.
A defense of justifiable use of force, or of exoneration, based on the provisions of this Article is an affirmative defense.
(Source: Laws 1961, p. 1983.)

5/2–615. Motions with respect to pleadings

§ 2–615. Motions with respect to pleadings. (a) All objections to pleadings shall be raised by motion. The motion shall point out specifically the defects complained of, and shall ask for appropriate relief, such as: that a pleading or portion thereof be stricken because substantially insufficient in law, or that the action be dismissed, or that a pleading be made more definite and certain in a specified particular, or that designated immaterial matter be stricken out, or that necessary parties be added, or that designated misjoined parties be dismissed, and so forth.

(b) If a pleading or a division thereof is objected to by a motion to dismiss or for judgment or to strike out the pleading, because it is substantially insufficient in law, the motion must specify wherein the pleading or division thereof is insufficient.

(c) Upon motions based upon defects in pleadings, substantial defects in prior pleadings may be considered.

(d) After rulings on motions, the court may enter appropriate orders either to permit or require pleading over or amending or to terminate the litigation in whole or in part.

(e) Any party may seasonably move for judgment on the pleadings.

P.A. 82–280, § 2–615, eff. July 1, 1982.

Formerly Ill.Rev.Stat.1991, ch. 110, ¶ 2–615.

PLAINTIFFS' 1ST AMENDED COMPLAINT

A-V

IN THE CIRCUIT COURT OF COOK COUNTY. ILLINOIS
COUNTY DEPARTMENT—CHANCERY DIVISION

Matthew D. Wilson,
Troy Edhlund and
Joseph Messineo

Plaintiffs,

vs. **Case No 07 CH 04848**

Cook County, a public body and corporate, Todd Stroger, Board President, in his official capacity, and its Board of Commissioners in their official capacities, namely: Earlean Collins, Robert Steele, Jerry Butler, William M. Beavers, Deborah Sims, Joan Patricia Murphy, Joseph Mario Moreno, Robert Maldonado, Peter N. Silvestri, Mike Quigley, John P. Daley, Forest Claypool, Larry Suffredin, Gregg Goslin, Timothy O.Schneider, Anthony J. Peraica, Elizabeth Ann Doody Gorman ,and Thomas Dart, Sheriff of Cook County, in his official capacity,

Hon. Judge
Philip Bronstein

Calendar 9

Defendants

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Matthew D. Wilson, Troy Edhlund, and Joseph Messineo, by and through their attorneys, Victor D. Quilici, Eric Swanson, Edward Ronkowski ,and Ciardelli & Cummings , seek a declaratory Judgment, permanent injunction, and other relief, against the County of Cook, and in support thereof state as follows:

INTRODUCTION

Facts:

On November 14, 2006, the County Commissioners of County of Cook, a public body as defined in 5 ILCS 120/1 et seq., enacted an Amendment to the Cook County Deadly Weapons Dealer Control Ordinance ("the Ordinance"), setting forth therein its own definitions of "Assault Weapons" and making it a crime for any person who "shall manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess any assault weapon or large capacity magazine." As a penalty, the Ordinance provides that "[a]ny person found in violation of this section shall be sentenced to not more than six months imprisonment, or fined not less than $500.00 and not more than $1,000.00, or both." The Ordinance further requires that persons who, prior to the enactment of this Amended Ordinance, legally possessed an assault weapon or large capacity magazine prohibited by this section "shall have ninety (90) days from the effective date of the Ordinance to do any of the following without being subject to prosecution:

(a.) To remove the assault weapon or large capacity magazine from within the limits of the County of Cook;

b.) To modify the assault weapon or large capacity magazine either to render it permanently inoperative or to permanently make it a device no longer defined as an assault weapon or large capacity magazine;

(c.) To surrender the assault weapon or large capacity magazine to the Sheriff or his designee for disposal as provided below."

The Ordinance provides further for the destruction of weapons confiscated upon direction of the Sheriff if he ascertains that said firearm is not required for evidence, thereby treating such confiscated weapons as contraband *per se.*

A copy of the Ordinance Amendment is attached hereto as Plaintiffs' Exhibit A

PARTIES

1. Troy Edhlund is a citizen/resident of Rolling Meadows, in Cook County, Illinois, and the owner of several firearms magazines, and gun parts which he legally purchased, including (a.) M1 Carbine, a semiautomatic .30 caliber rifle with a detachable magazine; (b.) M1 Garand, a semiautomatic .30 caliber rifle with a fixed magazine, (c.) French MAS 49/56 semi-automatic 7.5x54 caliber rifle with a detachable magazine, (d.) Egyptian Hakim semi-automatic .8mm. rifle with a 10 round detachable magazine, (e.) Swedish AG42B semi-automatic rifle with a 10 round detachable magazine. (f.) Romak 3 Romanian semi-automatic 8 mm. rifle, and (g.) S&W 99 in .40 caliber. See Plaintiffs Edhlund's firearms types at Group Exhibit B.

2. Troy Edhlund is a man of ordinary intelligence, and he is unsure upon reading the aforementioned ordinance as amended, and must guess whether his firearms are "assault weapons" within the vague language of the amended ordinance's definitions.

3. Troy Edhlund must guess whether his firearms may be considered to be "assault weapons" by law enforcement officials under the subject amended Ordinance's vague language, and he is unsure whether his ownership of these firearms subjects him to imprisonment and fines.

4. In addition to the firearms that Plaintiff Troy Edhlund owns, he desires to legally purchase additional firearms, parts and accessories, including some parts and accessories for the firearms he now owns, but cannot because he must guess whether they may be banned by the subject amended ordinance.

5. Troy Edhlund is a law-abiding citizen who has never been convicted of a crime, and who possesses the said firearms for self-protection and protection of his wife and two children in their home, as part of a collection, and for target shooting and hunting. He possesses a FOID card issued by the Illinois State Police pursuant to the Illinois FOID ACT, 430 ILCS 65/1 et. seq.

6. Matthew D. Wilson is a citizen/resident of the Village of Brookfield, in Cook County. Illinois, and owns several firearms which he legally purchased, including a.) Walther P99 pistol in 9 mm, and b.) S&W 22A Sport [target] pistol, both with 10 round detachable magazines. See Plaintiff Wilson's firearms types at Group Exhibit B.

7. Matthew Wilson D. Wilson is a man of ordinary intelligence, and he is unsure upon reading the aforementioned ordinance as amended, and must guess whether his firearms are "assault weapons" within the vague language of the amended ordinance's definitions.

8. Matthew D. Wilson must guess whether his firearms may be considered to be "assault weapons" by law enforcement officials under the subject amended Ordinance's vague language, and he is unsure whether the ownership of these firearms subjects him to imprisonment and fines.

9. In addition to the firearms that Plaintiff Matthew D. Wilson owns, he desires to legally purchase additional firearms, parts and accessories, including some parts and accessories for the firearms he now owns, but cannot because he must guess whether they may be banned by the subject amended ordinance.

10. Matthew D. Wilson is a law-abiding citizen having never been convicted of a crime, and who possesses the said firearms for self-protection and protection of himself and his wife in their home, and for target shooting. He has a FOID card issued by the Illinois State Police pursuant to the Illinois FOID Act, 430 ILCS 65/1 et. seq.

11. Joseph Messineo is a citizen/resident of the Village of Melrose Park in Cook County, Illinois, and the owner of several firearms and magazines which he legally purchased, including: a.) an M1 Carbine and b.) an M1 Garand with a fixed magazine. See Plaintiff Messineo's firearms types at Plaintiffs Group Exhibit B.

12. Joseph Messineo is a man of ordinary intelligence, and he is unsure upon reading the aforementioned ordinance as amended, and must guess whether his firearms are "assault weapons" within the vague language of the amended ordinance's definitions.

13. Joseph Messineo must guess whether his firearms may be considered to be "assault weapons" by law enforcement officials under the subject amended ordinance's vague language, and he is unsure whether his ownership of these firearms subjects him to imprisonment and fines.

14. In addition to the firearms that Plaintiff Joseph Messineo owns, he desires to legally purchase additional firearms, parts and accessories, including some parts and accessories for the firearms he now owns, but cannot because he must guess whether they may be banned by the subject amended ordinance.

15. Joseph Messino is a law-abiding citizen who has never been convicted of a crime, and who possesses the firearms for self-protection and protection of himself and his son in their home. He also uses his firearms for World War II reenact-ments with a reenactment club of which he is a member, and for target shooting. He possesses a FOID card issued to him by the Illinois State Police pursuant to the Illinois FOID Act, 430 ILCS 65/1 et.seq.

IRREPARABLE HARM AND INADEQUATE REMEDY AT LAW

16. Plaintiffs will suffer Irreparable harm if the Ordinance is enforced. Unless relief is granted herein, Plaintiffs will incur irreparable harm in that despite their aforesaid legal possession of firearms and magazines, and without any intent on their part to engage in any illegal activity they will be subject to arrest, prosecution and imprisonment, and be caused to expend great sums of money for their defense and face imprisonment and fine.

17. The Plaintiffs will have no adequate remedy at law, their being no forum to recover damages, the County most likely being immune from liability for tortious conduct and resulting losses. Money damages, in an event, could never compensate the Plaintiffs for the infringement of their fundamental rights as hereinafter alleged.

18. While care should be used in granting injunctions to avoid prospective injuries, there is no requirement that the Court must wait until the injury occurs before granting relief, and Plaintiffs have demonstrated both irreparable harm is imminent, and their remedy at law would be inadequate.

19. Because the 90 day time-limit set forth in the Ordinance has passed, within which Plaintiffs must conform to the amended ordinance's requirements to avoid being prosecuted, damages resulting from enforcement of the subject ordinance as amended are likely and not merely possible.

COUNT I
THE ORDINANCE DEFINITION OF "ASSAULT WEAPON" IS UNCONSTITUTIONALLY VAGUE

1—19. Plaintiffs reassert and re-allege paragraphs 1 through 19, above, as paragraphs 1 through 19 of this Count I.

20. The Cook County Assault Weapons Ordinance, as amended and adopted on November 14, 2006, violates the due process clause of the U.S. Constitution, as applied to the States by the 14th Amendment, because of vagueness in its definition language of "assault weapons."

21. This ordinance as amended violates the "due process" clause in that it purportedly defines "assault weapons" only by an arbitrary and ill-defined subset of these weapons without providing any explanation for its selections, and the language employed to describe various features or components of firearms that make them "assault Weapons" is both vague and arbitrary, to wit:

22. Section 6-(a)(1) is unconstitutionally vague and arbitrary by use of the language "A semiautomatic rifle *that has the capacity to accept* a large capacity magazine *detachable or otherwise*, and one or more of the following [listing various vague features or components of firearms]" [Underscoring added.]

23. It has been determined by Plaintiffs' experts that any semiautomatic rifle that accepts a magazine adapted to it having a capacity of ten rounds will accept and employ a magazine adapted to it containing 11 or more rounds which may exist anywhere in the world.

24. So long as a magazine exists anywhere in the world with a capacity of more than ten rounds, anyone who possesses a semiautomatic rifle with a detachable magazine (with any accessory, part or component banned by the vague language in sub-paragraphs A through E of Section 6-1(a)(1)), that will accept that magazine, is subject to arrest, prosecution and imprisonment as that individual then would have a firearm which "has the capacity to accept a large capacity magazine." even if he does not possess a large capacity magazine, and has no intention of acquiring a large capacity magazine.

25. A person of ordinary intelligence need not know whether the subject Ordinance bans their firearm, since the Ordinance contains no scienter requirement of an owner's knowledge as to whether a large capacity magazine, which could be accepted by his firearm, is in fact in existence.

26. Although Plaintiff Edhlund's M1 Garand, and Plaintiff Messineo's M1 Garand, when purchased were not manufactured to accept a large capacity magazine (defined in the Ordinance as one holding in excess of ten rounds), Plaintiffs' experts have

determined that there is available in the marketplace a since manufactured modified trigger guard/floor plate assembly which can be interchanged with trigger guard/floor plate assembly of the M1 Garand so as to make it capable of accepting a 20 round magazine.

27. Most of Plaintiff Edhlund's semiautomatic rifles, including the French MAS 49/56 semi-automatic rifle , Egyptian Hakim 8 mm. semiautomatic and Romak 3 Romanian semiautomatic were manufactured to accept 10 round detachable magazines.

28. Plaintiff Edhlund does not possess, and do not know of any other magazines which would fit his respective rifles, but would, nevertheless, face arrest and prosecution because said rifles would accept a detachable magazine adapted to them with a capacity of 11 rounds or more, if one has ever been manufactured anywhere, or will be in the future.

29. Section 6-1(a) (1)(B)) is unconstitutionally vague and arbitrary as it makes illegal anyone's possession of a semi-automatic rifle [as described in (1)] ***that has "[a]ny feature capable of functioning as a protruding grip that can be held by the non-trigger hand."*** **[Italics added.]**

30. This language, as aforesaid, would encompass a sling attachment usually found attached to the bottom or side of the forend on countless, ordinary sporting rifles, including former military-style rifles, used in competition matches sponsored by the Civilian Marksmanship Program and/or for hunting. These would include the M1 Carbine and M1 Garand, commonly used both in competition shooting and hunting.

31. Such sporting rifles would in no way be considered "assault weapons" by persons of ordinary intelligence, but under the ordinance as amended anyone possessing such semi-automatic sporting rifles will be subject to prosecution and imprisonment

32. Plaintiff Troy Edhlund's M-1 Garand, MAS 49/56, M1Carbine, and his Egyptian Hakim rifle all have this feature, and Plaintiff, Joseph Messineo's M1 Carbine and his M1 Garand have the sling attachment feature, and thus neither Plaintiff can determine with certainty, and must guess, if that feature is a "protruding grip" within the amended Ordinance definition, and if law enforcement officials would consider that feature to be a " protruding grip" within said definition

33. Section 6-1(a)(1)(D) is unconstitutionally vague and arbitrary in that it makes it illegal to possess a semi-automatic rifle [as described in (1)] with "[a] shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encircles the barrel..."

34. Almost any long –arm rifle has a forend component that at least partially encircles the barrel, and this feature is found on virtually hundreds of sporting semi-automatic rifles used for hunting or target competition shooting, and include those dating as far back as the 1900's, such as the Winchester 1905, 1907 and 1910 models. See Plaintiffs' Group Exhibit B-(a).

35. Firearms owned by plaintiff Troy Edhlund's, specifically his M1 Garand, M1 Carbine, French MAS 49/56 and his Egyptian Hakim have this feature, and he must

guess at whether those firearms have "shrouds" within the amended Ordinance's definition thereof, and if law enforcement officials would consider this feature a "shroud."

36. Plaintiff Messineo's M1 Carbine and his M1 Garand have this feature, and he must guess at whether it is a "shroud" within the amended ordinance definition thereof, and if law enforcement officials would consider this feature to be a "shroud."

37. Section 6-1(a)(3) by use of the language "[a] ***semiautomatic pistol that has the capacity to accept a detachable magazine and has one or more of the following . . .*** **" [Italics added.] and thereafter listing subparagraphs "A, B, C, D and E " sets forth almost identical features as those stated in Section 6-1(a)(1), and as herein noted are unconstitutionally vague features.**

38. Section 6-1(a)(3)(D) is unconstitutionally vague and arbitrary in that it makes it illegal to possess a semi-automatic pistol that has the capacity to accept a detachable magazine and has "[a] muzzle brake or muzzle compensator, . . "

39. Section 6-1(a)(1)(E) makes it illegal to possess a s semiautomatic rifle that has the capacity to accept a large capacity magazine detachable or otherwise and has "[a] muzzle brake or muzzle compensator." Unlike federal law which banned "flash suppressors" the "muzzle brake" and "muzzle compensator" are not used to prevent one from determining where a shot is coming from (as it may concern law enforcement officials) but, instead (by the very definitions stated in the amended ordinance at 6-1 (d(e)) to "reduce recoil" (muzzle brake) or to "control muzzle movement" (muzzle compensator), both features commonly employed in target competition matches

including Olympic target shooting events, the latter purportedly exempt under Section 6-1(B). of the subject ordinance as amended.

40. Section 6-1(a)(3)(A), is unconstitutionally vague and arbitrary in that it makes it illegal to possess a semiautomatic pistol that has the capacity to accept a detachable magazine and "[a]ny feature capable of functioning as a protruding grip that can be held by the non-trigger hand."

41. Many manufacturers have made pistols that can accept a accessories such as flashlights and lasers attached to a forward rail or grooves below the barrel and in front of the trigger guard, and that feature may be considered by law enforcement officials to be a "protruding grip."

42. Plaintiff Wilson has a Walther P99 pistol in 9mm with rails for mounting special accessories under the barrel in front of the trigger guard, and he desires to place a laser or a flashlight onto the forward rail of his handgun, both for accuracy in target shooting and for the purpose of assuring his aim at an intruder in his home, but he cannot determine with certainty, and must guess, if either of these accessories placed onto the forward rail is a "pistol grip" within the meaning of the amended ordinance definition thereof, and if law enforcement officials would consider same a "pistol grip" within said definition.

43. Plaintiff Edhlund owns a S & W P99 with rails for mounting special accessories under the barrel in front of the trigger guard , and he desires to place a laser or a flashlight onto the forward rail of his handgun for the purpose of assuring his aim at an intruder in his home, but he cannot determine with certainty, and must guess, if

either of said accessories placed onto the forward rail is a "protruding grip" within the meaning of the definition thereof in the amended ordinance, and if law enforcement officials would consider this a "protruding grip" within said definition.

44. Section 6-1(a)(4)(B) is unconstitutionally vague and arbitrary in that it makes it illegal to possess a semi-automatic shotgun with "[a]ny feature functioning as a protruding grip that can be held by the non-trigger hand." Almost all semi-automatic shotguns have a forend that at least partially encircles the barrel, and is found on virtually hundreds of sporting shotguns used for hunting or trap and skeet shooting, including competitive matches. See various semi-automatic shotguns with typical forends at Plaintiffs Group Exhibit C.

45. The forend component of a shotgun, that is held by the non-trigger hand, may be considered by law enforcement officials as a "feature functioning as a "protruding grip."

46. Section 6-1(a)(4)(D) is unconstitutionally vague and arbitrary in that it makes it illegal to possess a shotgun with "[a] fixed magazine capacity in excess of 5 rounds." Since most shotgun rounds are available in different lengths, a shotgun's magazine *capacity* may increase to more than five rounds, and this language would impose criminal liability regardless of whether the owner knows of the existence of shorter length rounds that would fit in his or her semi-automatic shotgun.

47. Section 6-1(a)(6) is unconstitutionally vague and arbitrary in that it makes it illegal to possess a "Conversion kit, part or combination of parts, from which an assault

weapon can be assembled, if those parts are in the possession or under the control of the same person.

48. The amendment at this Section conflicts with federal law regarding a so-called "conversion kit" that requires a "mens rea" element to constitute a violation.

49. Plaintiffs experts have determined that there exists in the firearm market "parts kits" that can be purchased by Plaintiffs, without any knowledge that they can assemble an "assault weapon from said part or parts within the vague meaning thereof in the amended ordinance, so that they, and others similarly situated, upon purchase of these "kits, or parts" would be subjected to arrest and criminal prosecution because the amendment language defining "assault weapons" fails to provide sufficient information to enable a person of average intelligence to determine whether a particular combination of parts is within the ordinance amendment's coverage.

50. Section 6-1(a)(7) of the amended Ordinance is unconstitutionally vague and arbitrary by use of the language: "Shall include but not be limited to, the assault weapons models identified as follows: (A) The following rifles or *copies* or *duplicates* thereof." [Underscoring added.]

51. Plaintiffs, persons of normal intelligence, must guess at the meanings of "copies" or "duplicates" as applied to firearms.

(i) The standard Webster unabridged dictionary definition of "copy" and of "duplicate" while showing some similarity in the words as verbs, adjectives or nouns, defines "copy: "to make something so that it resembles an existing thing, whereas

"duplicate" is defined as "either of two things exactly alike and usually produced at the same time or by the same process. (ii) Black's Law Dictionary treats both words in the context of writings or documents, in its principal definition of the words used as nouns, and when "duplicate is used as a verb it means: "To double, repeat, make or add a thing <u>exactly</u> like a preceding one; reproduce <u>exactly</u> [Underscoring added.] (iii) These terms can be extremely difficult to apply to firearms that may have similarity in function, but can be totally different in outward features, and inside components.

52. Plaintiff, Edhlund, has a Romak 3, a Romanian rifle in 7.62x54 caliber which has features similar to several of the firearms listed at Sec. 6-1(a)(7)(A)(i), and while it should not be a copy or duplicate of the firearms listed at sub-paragraph (i), because of the vague language in the amended ordinance language defining "assault weapons" he must "guess" whether this rifle would be considered a copy or duplicate by law enforcement officials, thereby subjecting him to arrest and prosecution.

53. Section 6-1(a)(7)(A)(xi) is unconstitutionally vague and arbitrary in that it contains only the term "saiga." The "Saiga" can be a rifle or a shotgun, and without specifying either, Plaintiffs must guess the vague meaning of this term.

54. Section 6-1(a)(7)(A)(xiv) is unconstitutionally vague and arbitrary in that it contains only the term "SLG 95." Failure to name the manufacturer or the caliber of the firearm make it impossible to know what is proscribed, and Plaintiffs must guess at the vague meaning of this term.

55. Section 6-1(a)(7)(A)(xv) is unconstitutionally vague and arbitrary in that it contains only the term "SLR 95 or 96." The failure to name manufacturers, model or caliber makes it impossible to know what is proscribed, and Plaintiffs must guess at the vague meaning of this term.

56. The amended ordinance provides for three (3) methods of complying with its provisions—provided they are effectuated within ninety (90) days from the effective date of the ordinance as amended. Section 6-2(d)(1)(2)(3).

57. Because there is no stated effective date of the ordinance as amended, as a matter of law, the effective date is that date the law was passed—that is, November 14, 2007.

58. The amount of time given within which a "modification" can be effectuated is insufficient, and plaintiffs did not learn of the passage of the amendments until after ninety (90) days had passed.

59. The amended ordinance sub-section (d)(2) at Section 6-2 is unconstitutionally vague and underinclusive in that it states one of the acts a citizen must perform to avoid arrest and prosecution for possession of an "assault weapon," or "large capacity magazine" (as purportedly defined in the amended language), to wit:

> **To *modify* the assault weapon or large capacity magazine either to render it permanently inoperable or to permanently make it a device no longer defined as an assault weapon or large capacity magazine . . ." [Underscoring added.]**

60. "To modify" is underinclusive and vague in that "modification" of a firearm can involve a myriad of components, and skill not possessed by persons of ordinary

intelligence, such as Plaintiffs, and the amended ordinance fails to state whether the "modification" may be effectuated by a gunsmith, whereby, in many cases the owner would have to wait weeks to months before retrieving a "modified" firearm.

61. Because plaintiffs are unable to determine with exactness, and must "guess" at the meaning of the amended ordinance definitions as they may apply to the various firearms they own, including some of those previously stated: (i) M-I Carbine, (ii) M-1 Garand (iii) MAS 49/56 rifle, (iv) Romak 3 rifle, (v) Walther P99 pistol, (vi) Smith & Wesson 99 pistol, (vii) Egyptian Hakim rifle, and (viii) Swedish AG42B rifle, each of them has to "guess" whether or not his firearms require "modification, " and what "modification" would satisfy the ordinance language to "make it a device no longer *defined* as an *assault weapon* or *large capacity magazine.*" [Emphasis added.]

COUNT II

THE ORDINANCE AS AMENDED VIOLATES DUE PROCESS IN THAT IT FAILS TO PROVIDE A SCIENTER REQUIREMENT, THEREBY IMPOSING STRICT LIABILITY TO ITS VAGUE "ASSAULT WEAPON" DEFINITION

1—19. Plaintiffs reassert and re-allege paragraphs 1 through 19, above, as Plaintiffs' paragraphs 1 through 19 of this Count II.

20. The Cook County Assault Weapons Ordinance, as amended and adopted on November 14, 2006, violates the due process clause of the U.S. Constitution, as applied to the States by the 14th Amendment, by (i) failing to provide a scienter requirement, thereby imposing "strict liability" for possession of firearms included under its vague

definition of "assault weapon. (ii) Said ordinance further violates the constitutional requirement that a law give fair warning of that which it prohibits.

21. The subject Ordinance as amended at Section 6-1(a)(6) conflicts with federal law regarding a "conversion kit" that require a "mens rea" element to constitute a violation.

22. There exists in the firearm market various firearm parts that are called "parts kits" that can be purchased by Plaintiffs, without any knowledge that they can assemble an "assault weapon from said part or parts within the vague meaning thereof in the amended ordinance, so that they, and others similarly situated, upon purchase of these so-called "conversion kit, part, or parts" would be subjected to arrest and criminal prosecution because the amendment language defining "assault weapons" fails to provide sufficient information to enable a person of average intelligence to determine whether a particular combination of parts is within the ordinance coverage.

23. Because of its criminal proscriptions, without a scienter requirement, relatively stringent review of the County's assault weapon ban is necessary.

24. Because the amended ordinance imposes strict liability, and its definitions of "assault weapon" are vague, as hereinabove noted, it violates the constitutional requirement that a law give fair warning of that which it prohibits.

COUNT III
THE ORDINANCE IS OVERBROAD IN ITS APPLICATIONS AND THEREBY VIOLATES DUE PROCESS

1—19. Plaintiffs reassert and re-allege paragraphs 1 through 19, above, as paragraphs 1 through 19 of this Count III.

20. Cook County Assault Weapons Ordinance, as amended and adopted on November 14, 2006, violates the due process clause of the U.S. Constitution, , as applied to the States by the 14th Amendment, because it is overbroad so as to render it arbitrary, capricious and unreasonable in its application, to wit:

21. The amended ordinance reaches far beyond the evil which it purportedly addresses—that is, the use of certain firearms by criminals who constitute a narrow class of such users, as compared to the multitude of users, such as the Plaintiffs, who legally possess these type of firearms for lawful purposes of self-defense in their homes, and for hunting and shooting competition.

23. The ordinance as amended is so overbroad that it will by virtue of the vague definitions contained therein, prohibit the possession of various firearms that could not rationally be considered to be "assault weapons" and that would presumably fall outside the scope of the Ordinance's intended purpose. For instance, the M1 Carbine possessed by Plaintiffs Edhlund and Messineo is s semi-automatic rifle with a detachable magazine. and due to the vague definitions in the ordinance, it could be considered to have both a pistol grip and a shroud over the barrel, potentially resulting in the M1 Carbine being a prohibited firearm. See Plaintiffs Exhibit E(a).

24. The Winchester Super X rifle and the Browning BAR rifle are semi-automatic rifles with detachable magazines, and because of the vague definitions in the ordinance as amended, they could be considered "assault weapons" since they arguably have both a protruding grip and a shroud that partially encircles the barrel. A citizen possessing

either of these rifles would not likely believe he or she owned as "assault riflle" subjecting one to prosecution under the amended ordinance. See Plaintiffs Exhibit E(b).

COUNT IV
THE ORDINANCE IN ITS APPLICATION VIOLATES PLAINTIFFS' INDIVIDUAL RIGHT TO KEEP AND BEAR ARMS

1—19. Plaintiffs reassert and re-allege paragraphs 1 through 19, above, as paragraphs 1 through 19 of this Count IV.

20. Prior to the enactment of the subject Ordinance as amended, and currently, the Plaintiff gun owners, within Cook County's jurisdiction, have abided by the existing gun laws within their respective municipalities, the County and the State of Illinois, and all have been law-abiding gun owners exercising their fundamental right to keep and bear arms, and to protect their person and that of their respective family members, within the confines of their homes by retaining in their respective possession and control various firearms legally acquired in compliance with the Illinois' FOID Act (430 ILCS 65/1 et. seq.), and as guaranteed under state and federal law. See 720 ILCS 5/7-1 (Use of force in defense of person); 720 ILCS 5/7-2 (Use of force in defense of dwelling); 720 ILCS 5/7-3 (Use of force in defense of other property);720 ILCS 5/7-6 Private person's use of force in making arrest); 720 ILCS 5/7-8 (Force likely to cause death or great bodily harm); 720 ILCS 5/7-14 (Affirmative defense); Article 1, Section 22, Illinois Constitution; 2nd Amendment U.S. Constitution.

COUNT V.
THE COUNTY'S UNCONSTITUTIONAL EXERCISE OF ITS POLICE POWERS VIOLATES DUE PROCESS

1—19. Plaintiffs reassert and re-allege paragraphs 1 through 19, above, as paragraphs 1 through 19 of this Count V.

20. The Due Process rights of Plaintiffs have been violated in that the subject Ordinance as amended, pursuant to the County's *unconstitutional exercise* of its police powers, mandates Plaintiffs' removing, modifying, rendering permanent inoperable or otherwise forfeiting conventional *semi-automatic* firearms to satisfy the capricious and arbitrary provisions of said amended ordinance, absent any reasonable guidance for enforcement by law enforcement personnel.

21. The Plaintiffs are denied due process in that the provisions of the Ordinance relating to definitions of "Assault weapons" and their varied components, including definitions herein above enumerated, are so vague that the Ordinance arbitrarily and capriciously bans ordinary rifles and shotguns that are types of firearms that have been in use for almost 150 years, and the Plaintiffs as owners of those types of firearms must guess at the meaning of the Ordinance amendments.

22. The Ordinance is unconstitutionally vague in that (i) it fails to give notice to persons of ordinary intelligence, Plaintiffs, and others similarly situated, that certain conduct is prohibited under its provisions, and (ii) it fails to give any guidance to the interpretation of the various "assault weapon" components, and in

that regard it fails to provide sufficiently definite standards for law enforcement officers fact finders that its application does not depend merely on their private conceptions

23. Because of the complexities involved in gunsmithing, even those firearms that may have been modified by a Plaintiff, or others similarly situated, in an attempt to satisfy the Ordinance provisions, are likely to be deemed illegal bylaw enforcement personnel.

24. The average law enforcement officers—absent any guidance in the text of the amended ordinance-- viewing such "modified" firearms, without special knowledge, may focus their attention, and thereby their perception, on outward appearances, and either have to confiscate the firearm for further scrutiny, or otherwise guess at whether its modification satisfies or does not satisfy the Ordinance's definition of an "assault weapon."

25. The problems law enforcement officers will encounter when viewing a firearm that has *not* been modified by a Plaintiff, or other similarly situated citizen, because of the vagueness in the statute, will likely lead him or her to mistakenly believe the subject firearm is an "assault weapon."

26. Without any standards, or guidance in the text of the amended ordinance, for law enforcement officers to support their private conceptions, they are left with just that—private conceptions, and nothing more, leaving the gun owner to the mercy of the law enforcement officers "perceived" finding as to whether or not the long rifle, shotgun or other firearm is in fact an "assault weapon."

27. The Ordinance, in failing to provide a reasonable method of achieving

its stated objectives, is not a legitimate exercise of the police power under the Illinois Constitution.

COUNT VI
EQUAL PROTECTION

1—19 Plaintiffs reassert and re-allege paragraphs 1 through 19, above, as pargraphs 1 through 19 of this Count VI.

20. Section 6-1(a)(7) of the amended Ordinance contains the language "Shall include but not be limited to, the assault weapons models identified as follows: (A) The following rifles or copies or duplicates thereof."

21. This section prohibits certain firearms based not on any particular characteristics, but by name. Certain named firearms are banned along with any firearms that may be determined to be "copies or duplicates" of the named firearms.

22. This Section violates the equal protection clause of the U.S. Constitution, as applied by the States by the 14th Amendment, by arbitrarily differentiating between identical situated persons by banning specifically listed assault weapons but not banning ownership of other identical firearms, to wit:

a.) AR-15, Bushmaster XM-15, Armalite M15, or Olympic Arms PCR: there are a number of firearms which are not "copies or duplicates" of these banned firearms, yet identical in function. The Stag Arms Company makes a line of rifles which appear to be identical to an AR-15, but feature modifications which make them easier for left-handed

shooters to use. See Plaintiffs' Exhibit D. These include a modification that ejects spent casings to the left, as opposed to the right.

b.) Functionally, the Stag Arms rifle is identical to a standard AR-15, yet the Stag Arms rifle could not be considered a "Copy or duplicate" of a standard AR-15, thus, a person who owns a Stag Arms rifle is treated differently under this section than a person who owns a functionally identical Bushmaster.

c.) Various manufacturers are making rifles that are visually and functionally identical to banned AR-15's, yet use different caliber ammunition. Since such a rifle could not be considered a "copy or duplicate", the owner thereof would not run afoul of this section, while the owner of a visually and functionally identical AR-15 would face criminal prosecution.

d.) Some manufacturers, such as the Land Warfare Resources Corporation, are producing rifles that are visually identical to a standard AR-15, and use the same caliber ammunition, yet employ a different internal mechanism (a "gas piston") that allows the rifle to fire semi-automatically (See Plaintiffs' Exhibit E). Due to the different operating mechanism, these rifles could not be considered copies or duplicates, and would not be prohibited by this section despite having the same appearance, firing the same ammunition, and using the same magazines as the prohibited firearms.

e.) Sturm, Ruger Mini-14: while the Mini-14 is banned by name, the Ruger Mini-30 is not. The Mini-30 is visually identical to, and mechanically very similar to, the Mini-14, yet employs different caliber ammunition, and thus, it could not be

considered a "copy or duplicate". An owner of a Mini-14 would face prosecution under this section, yet the owner of a Mini-30 would not. See Plaintiffs Exhibit F.

23. Owners of specifically enumerated firearms will suffer the indignities of prosecution and confiscation of firearms owned or possessed in compliance with the State of Illinois FOID Act, (430 ILCS 65/1 et. seq.), because of the arbitrary classification of their firearms under this Section that is not rationally related to any legitimate government purpose.

24. Unlike those statutes and/or Ordinances that may classify or otherwise draw a distinction between violent felony offenders and non-violent offenders that have been held non-offensive of the doctrine of equal protection under the laws, Section 6-1(a)(7) arbitrarily creates two classes of gun owners; those who own firearms that are specifically named as prohibited, and those who own firearms that are functionally identical yet not specifically named. Gun owners whose firearms are named will be forced to give up their previously legally-possessed firearms or face criminal sanctions, while the owners of firearms that are not named will not run afoul of this section.

WHEREFORE: Plaintiffs pray that it would serve the public interest best if this Honorable Court would issue a permanent injunction, without bond required of the Plaintiffs, inasmuch as the Ordinance as it stands is an unconstitutional exercise of Cook County's Home Rule police powers, depriving the Plaintiffs and cotless law-abiding citizens of their Constitutional rights, and:

1. Enter its Order declaring the subject Ordinance unconstitutional and unenforceable;

2. Issue its Order permanently , enjoining the County of Cook from enforcing the subject Ordinance;

3. Enter its Order awarding the Plaintiffs their costs incurred herein, and

4. Enter its Order granting such other and further relief as this Court deems necessary and appropriate.

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PLAINTIFFS' EXHIBIT A

5 Pages

PLAINTIFFS' EX. A

06-O-50
ORDINANCE

Sponsored by

THE HONORABLE LARRY SUFFREDIN, COUNTY COMMISSIONER

Co-Sponsored by

THE HONORABLE JOHN P. DALEY AND JOAN PATRICIA MURPHY

COUNTY COMMISSIONERS

AMENDMENT TO THE "COOK COUNTY DEADLY WEAPONS DEALER CONTROL ORDINANCE"

WHEREAS, the Federal assault weapons ban, of the Violent Crime Control and Law Enforcement Act of 1994, as amended, 18 USC Sec. 921 et seq. expired on September 13, 2004; and

WHEREAS, the County Board desires to (1) amend Ordinance 93-O-37, as amended by Ordinance 93-O-46 and Ordinance 99-O-27, Article I, Section 1-2 by striking and deleting language in section 1-2; and (2) amend Ordinance 93-O-37, as amended by Ordinance 93-O-46 and Ordinance 99-O-27, Article VI, by deleting and adding language as stricken through and underlined below.

NOW, THEREFORE, PURSUANT TO THE HOME RULE AUTHORITY OF THE COOK COUNTY BOARD OF COMMISSIONERS, AS VESTED IN IT BY THE ILLINOIS CONSTITUTION OF 1970, HEREBY AMEND PORTIONS OF THE ORDINANCE, AS FOLLOWS:

ARTICLE I. GENERAL PROVISIONS

Section 1-2 Applicability.

(a) This article shall control the licensing of all firearms dealers within Cook County except in home rule municipalities which have a separate municipal ordinance specifically regulating the licensing of firearms dealers.

(b) Pursuant to Article VII, Section 6(c) of the 1970 Constitution of the State of Illinois, if this article conflicts with an ordinance of a home rule municipality, the municipal ordinance shall prevail within its jurisdiction.

ARTICLE VI. ASSAULT WEAPONS BAN

Section 6-1 Definitions.

As used in Article VI of this Ordinance, the following terms shall have the following meaning:

(a) "Assault weapon" means:

(1) A semiautomatic rifle that has the capacity to accept a large capacity magazine detachable or otherwise and one or more of the following:

(A) Only a pistol grip without a stock attached;

(B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;

(C) A folding, telescoping or thumbhole stock;

(D) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel; or

(E) A muzzle brake or muzzle compensator;

(2) A semiautomatic pistol or any semi-automatic rifle that has a fixed magazine, that has the capacity to accept more than 10 rounds of ammunition;

(3) A semiautomatic pistol that has the capacity to accept a detachable magazine and has one or more of the following:

(A) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;

(B) A folding, telescoping or thumbhole stock;

(C) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel;

(D) A muzzle brake or muzzle compensator; or

(E) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(4) A semiautomatic shotgun that has one or more of the following:

(A) Only a pistol grip without a stock attached;

(B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;

(C) A folding, telescoping or thumbhole stock;

(D) A fixed magazine capacity in excess of 5 rounds; or

(E) An ability to accept a detachable magazine;

(5) Any shotgun with a revolving cylinder.

(6) Conversion kit, part or combination of parts, from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person;

(7) Shall include, but not be limited to, the assault weapons models identified as follows:

(A) The following rifles or copies or duplicates thereof:

(i) AK, AKM, AKS, AK-47, AK-74, ARM, MAK90, Misr, NHM 90, NHM 91, SA 85, SA 93, VEPR;

(ii) AR-10;

(iii) AR-15, Bushmaster XM15, Armalite M15, or Olympic Arms PCR;

(iv) AR70;

(v) Calico Liberty;

(vi) Dragunov SVD Sniper Rifle or Dragunov SVU;

(vii) Fabrique National FN/FAL, FN/LAR, or FNC;

(viii) Hi-Point Carbine;

(ix) HK-91, HK-93, HK-94, or HK-PSG-1;

(x) Kel-Tec Sub Rifle;

(xi) Saiga;

(xii) SAR-8, SAR-4800;

(xiii) SKS with detachable magazine;

(xiv) SLG 95;

(xv) SLR 95 or 96;

(xvi) Steyr AUG;

(xvii) Sturm, Ruger Mini-14;

(xviii) Tavor;

(xix) Thompson 1927, Thompson M1, or Thompson 1927 Commando; or

(xx) Uzi, Galil and Uzi Sporter, Galil Sporter, or Galil Sniper Rifle (Galatz).

(B) The following pistols or copies or duplicates thereof:

(i) Calico M-110;

(ii) MAC-10, MAC-11, or MPA3;

(iii) Olympic Arms OA;

(iv) TEC-9, TEC-DC9, TEC-22 Scorpion, or AB-10; or

(v) Uzi.

(C) The following shotguns or copies or duplicates thereof:

(i) Armscor 30 BG;

(ii) SPAS 12 or LAW 12;

(iii) Striker 12; or

(iv) Streetsweeper.

(b) "Assault weapon" does not include any firearm that has been made permanently inoperable, or satisfies the definition of "antique firearm," stated in this Ordinance, or weapons designed for Olympic target shooting events.

(c) "Detachable magazine" means any ammunition feeding device, the function of which is to deliver one or more ammunition cartridges into the firing chamber, which can be removed from the firearm without the use of any tool, including a bullet or ammunition cartridge.

(d) "Large capacity magazine" means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include the following:

(1) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

(2) A 22 caliber tube ammunition feeding device.

(3) A tubular magazine that is contained in a lever-action firearm.

(e) "Muzzle brake" means a device attached to the muzzle of a weapon that utilizes escaping gas to reduce recoil.

(f) "Muzzle compensator" means a device attached to the muzzle of a weapon that utilizes escaping gas to control muzzle movement.

Section 6-2 Assault weapons and large capacity magazines - Sale prohibited - Exceptions.

(a) No person shall manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess any assault weapon or large capacity magazine. This subsection shall not apply to:

(1) the sale or transfer to, or possession by any officer, agent, or employee of Cook County or any other municipality or state or of the United States, members of the armed forces of the United States; or the organized militia of this or any other state; or peace officers to the extent that any such person named in this subsection is otherwise authorized to acquire or possess an assault weapon and/or large capacity magazine and does so while acting within the scope of his or her duties;

(2) transportation of assault weapons or large capacity magazine if such weapons are broken down and in a non-functioning state and are not immediately accessible to any person.

(b) Any assault weapon or large capacity magazine possessed, sold or transferred in violation of subsection (a) of this section is hereby declared to be contraband and shall be seized and disposed of in accordance with the provisions of Section 6-2 of this Ordinance.

(c) Any person found in violation of this section shall be sentenced to not more than six months imprisonment or fined not less than $500.00 and not more than $1,000.00, or both.

(d) Any person who, prior to the effective date of the ordinance codified in this Ordinance, was legally in possession of an assault weapon or large capacity magazine prohibited by this section shall have 90 days from the effective date of the ordinance to do any of the following without being subject to prosecution hereunder:

(1) To remove the assault weapon or large capacity magazine from within the limits of the County of Cook; or

(2) To modify the assault weapon or large capacity magazine either to render it permanently inoperable or to permanently make it a device no longer defined as an assault weapon or large capacity magazine; or

(3) To surrender the assault weapon or large capacity magazine to the Sheriff or his designee for disposal as provided below.

Section 6-3 Destruction of weapons confiscated.

Whenever any firearm or large capacity magazine is surrendered or confiscated pursuant to the terms of this Ordinance, the Sheriff shall ascertain whether such firearm is needed as evidence in any matter.

If such firearm or large capacity magazine is not required for evidence it shall be destroyed at the direction of the Sheriff. A record of the date and method of destruction an inventory or the firearm or large capacity magazine so destroyed shall be maintained.

Approved and adopted this 14th day of November 2006.

Bobbie L. Steele

BOBBIE L. STEELE, President
Cook County Board of Commissioners

(S E A L)

Attest: David Orr

DAVID ORR, County Clerk

APPROVED AS AMENDED
BY THE BOARD OF COOK COUNTY COMMISSIONERS

NOV 1 4 2006

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PLAINTIFFS GROUP EXHIBIT B

9 Pages

Image:M1 Carbine.jpg

From Wikipedia, the free encyclopedia

- Image
- File history
- File links

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M1_Carbine.jpg (617 × 138 pixel, file size: 14 KB, MIME type: image/jpeg)

Image:Garand.jpg

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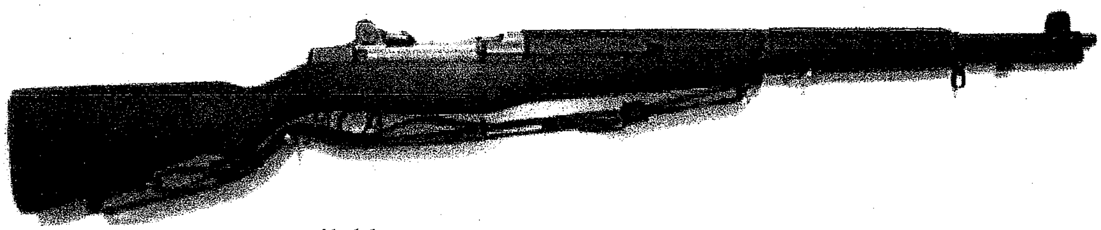
- Image
- File history
- File links



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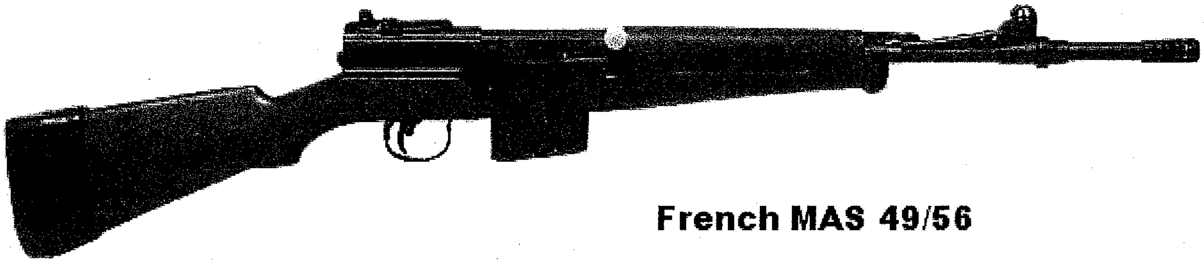
Garand.jpg (549 × 105 pixel, file size: 9 KB, MIME type: image/jpeg)

M1 GARAND 30 CAL. SEMI-AUTOMATIC RIFLE



French MAS 49/56

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Image:Rifle Hakim.jpg

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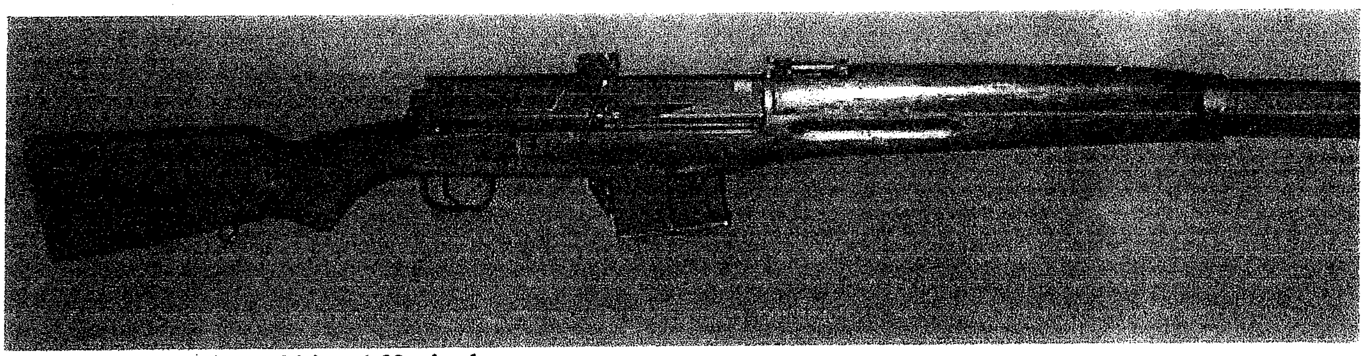

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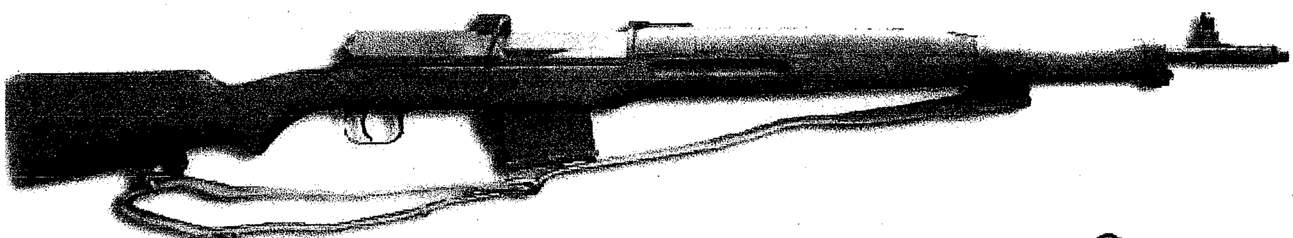
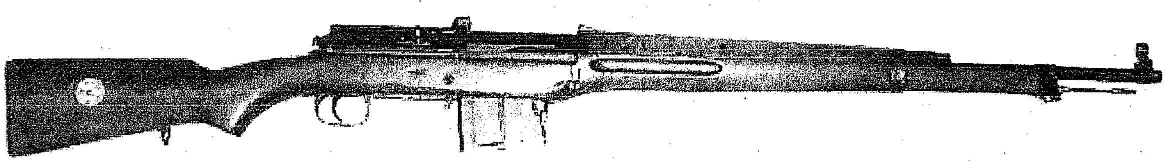
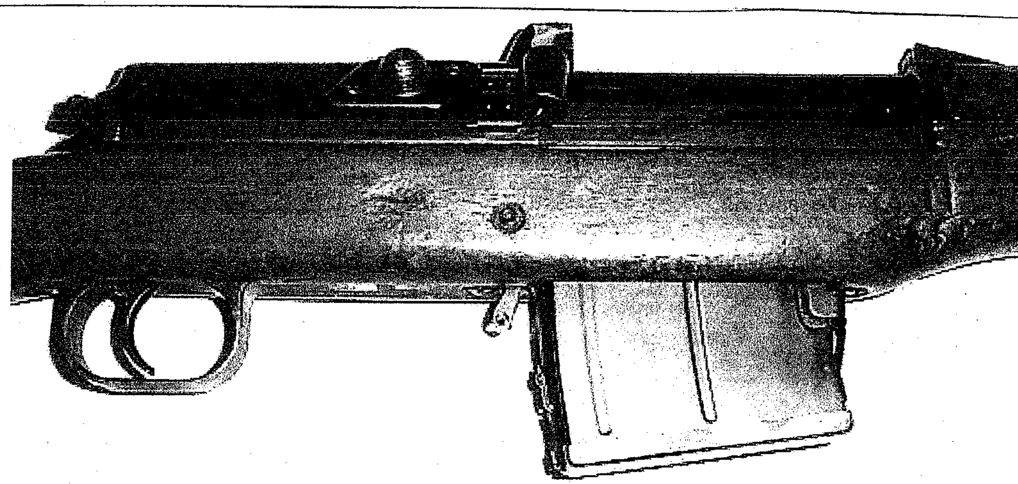


figure 1

SWEDISH AG42B SEMI AUTO RIFLE CAL. 6.5x55 mm.

Caliber:	6.5x55 mm
System of operation:	Semi-Auto
Length overall:	47.48 inches
Barrel length:	24.5 inches
Feed device:	10 shot Detachable Box magazine
Sight Front:	Blade type with hood
Sight Rear:	Drum type sight
Weight:	8.15 lb
Muzzle velocity:	2460 f.p.s.





AG42B Rifle another view.

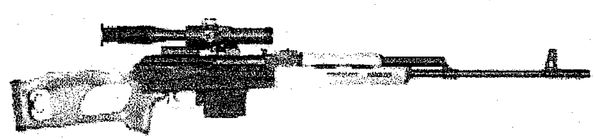
AG42B SEMI-AUTO RIFLE

ROMAK 3 SEMI-AUTOMATIC RIFLE WITH TARGET SCOPE

- Markings Database
- Trouble Shooting
- Links

- TUTORIALS -

- Bolt Disassembly
- Butt Stock Tool Kit



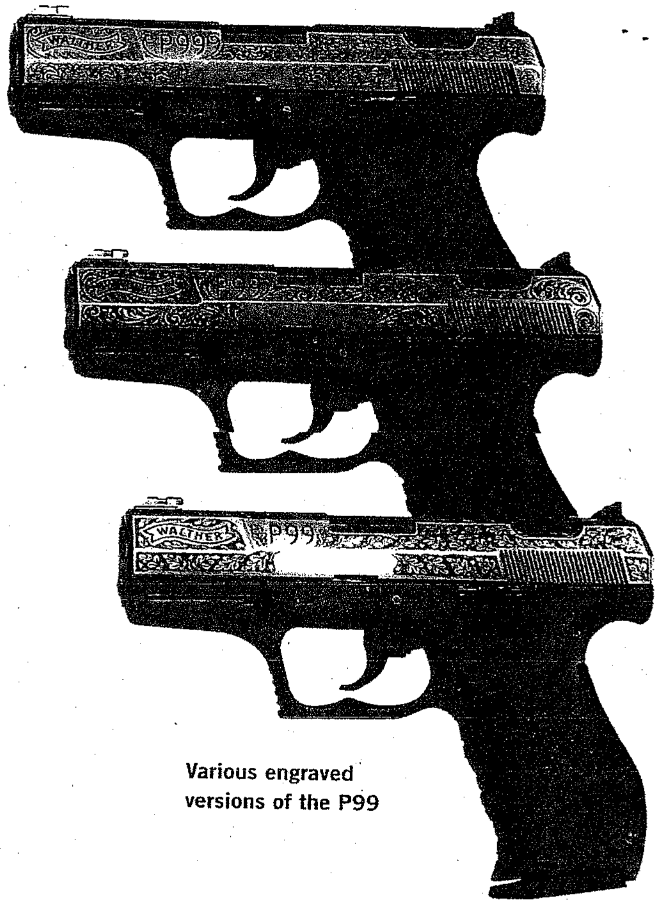
A Romak 3 with 10 round magazine

Caliber: 7.62*5

Double Stack: -------

SMITH & WESSON . 99 IN .40 CALIBER

The hunting version of the P99



Various engraved versions of the P99

WALTHER P99

The double-action Walther P99 pistol originates from 1996. This weapon is available in 9 mm Para (16 rounds) and .40 S&W (12 rounds) caliber. The P99 has a number of special distinguishing features. A large button is located at the back of the slide to uncock the cocked firing pin after loading. The cartridge extractor is on the right-hand side of the slide. When a cartridge is in the chamber, the cartridge extractor stands slightly proud, displaying a red dot. When the firing pin is cocked, a pin carrying a red dot protrudes from the back of the slide. Finally the back of the grip on the composite frame can be altered using interchangeable adapter pieces of different sizes. The ambidextrous magazine release is at in the back of the trigger guard. The takedown lever and slide catch are on the left-hand side of the frame. Rails for mounting special accessories are fitted at the front and on both sides of the composite frame. This pistol has an improved Browning-Petter locking, with a locking lug under the barrel chamber block. The chamber block locks into the ejection port in the slide. The standard P99 has a mat black finish and has been designed as a police pistol. The P99 in 9 mm Para caliber has a total length of 180 mm (7 in). The height of this weapon is 135 mm (5¼ in) and the width is 29 mm (1¼ in). The barrel length is 102 mm (4 in) and this weapon weighs 630 g (22¼ oz). The trigger pressure is 4000 g (8¾ lb) in double-action and 2000 g (4½ lb) in single-action. The same weapon in .40 S&W caliber has slightly different dimensions. The total length is 184 mm (7¼ in) and the barrel length is 106 mm (4¼ in). The weight is 655 g (23 oz).

Model 22A Sport with
Hi-Viz bead of 2001

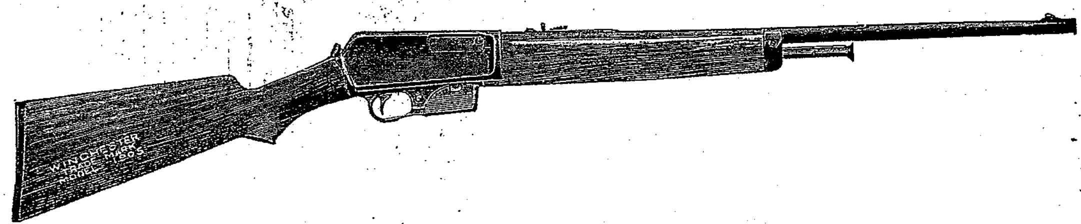
Model 22A Sport: The Smith & Wesson 22A Sport is the successor of the model 2214 and came on the market in 1997. This 10-shot pistol in .22 LR caliber is available with a 102 (4 in), 140 (5½ in) or a 178 mm (7 in) barrel. The total length is 203, 241 or 279 mm (8, 9½ or 11 in) respectively. The weights according to the barrel lengths are 794, 907 or 936 g (28, 32 or 33 oz) respectively. This totally blued weapon has an alloy frame and a blued stainless steel slide. The safety catch is located on the left-hand side of the frame, above the grip. In addition, it has an adjustable rear sight and a two-part polymer grip. Around the same time, the Target version was introduced with a heavier, so-called bull barrel of 140 mm (5½ in). The total length of the Target is 241 mm (9½ in) and it weighs 1106 g (39 oz). The grip of this target model has a wood laminate or composite grip with a rib for a thumb support. The model 22A Sport is still manufactured. In 2001, Smith & Wesson introduced a new version of the 22A Sport Target. This type is almost identical to the older Target, but has a Hi-Viz front sight, with a special green composite light sensitive sighting bar.

PLAINTIFFS' GROUP EXHIBIT B

3 Pages

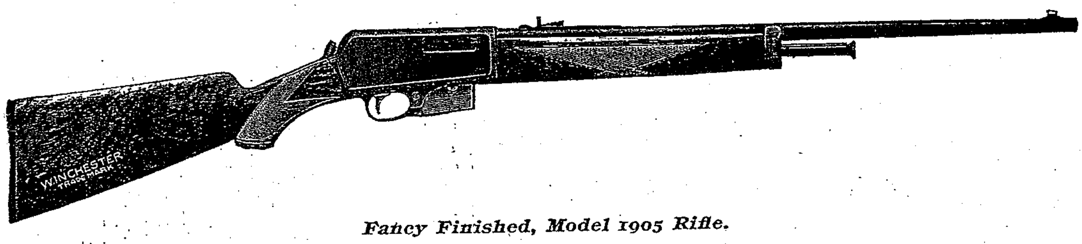
Winchester Self-Loading Rifle, Model 1905.

"Take Down." Made For .32 And .35 Caliber Winchester S. L. Cartridges.



Plain Finished, Model 1905 Rifle.

Twenty-two Inch Round Barrel, Plain Trigger, Pistol Grip Stock of Plain Walnut not Checked, Weight about 7½ pounds, Magazine Capacity 5, ... $26.00 77



Fancy Finished, Model 1905 Rifle.

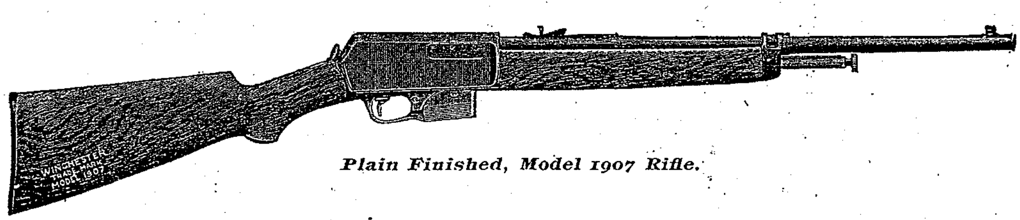
Twenty-two Inch Round Barrel, Plain Trigger, Pistol Grip Stock and Forearm of Fancy Walnut, Checked, Weight about 8 pounds, Magazine Capacity 5, ... $44.00

MODEL 1905

Winchester Self-Loading Rifle, Model 1907.

MODEL 1907

"Take-Down," Made For .351 Winchester Self-Loading Cartridges.



Plain Finished, Model 1907 Rifle.

Twenty Inch Round Nickel Steel Barrel, Plain Trigger, Pistol Grip Stock of Plain Walnut, not Checked, Weight about 7¾ pounds, Magazine Capacity 5, ... $28.00 84

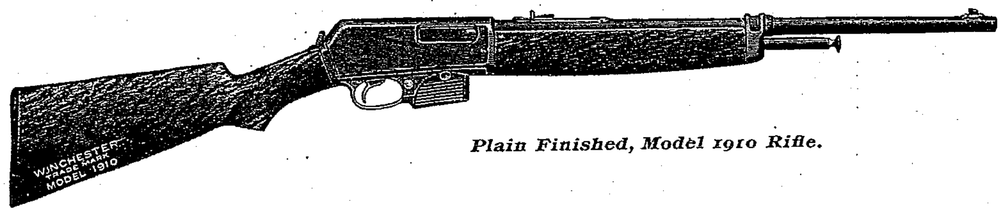
Fancy Finished, Model 1907 Rifle.

Twenty Inch Round Nickel Steel Barrel, Plain Trigger, Pistol Grip Stock and Forearm of Fancy Walnut, Checked, Weight about 8 pounds, Magazine Capacity 5, ... $46.00

For Extras, see page 96

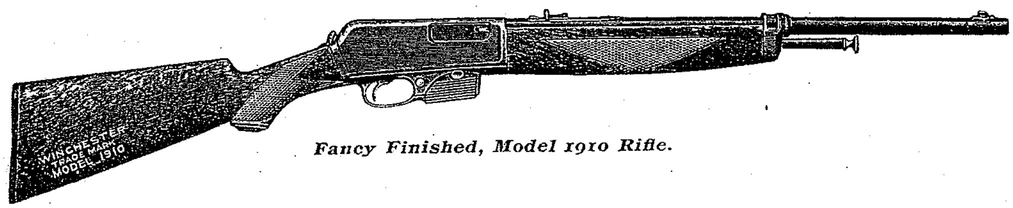
Winchester Self-Loading Rifle, Model 1910.

"Take-Down," Made For .401 Winchester Self-Loading Cartridges.



Plain Finished, Model 1910 Rifle.

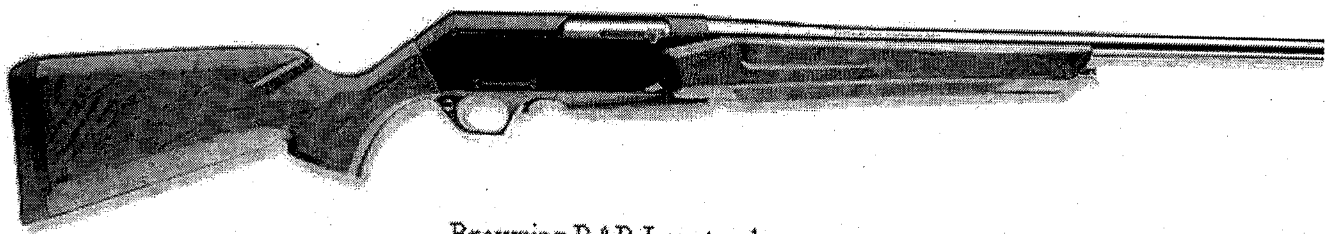
Twenty Inch Round Nickel Steel Barrel, Plain Trigger, Pistol Grip Stock of Plain Walnut, not Checked, Weight about 8¼ pounds, Magazine Capacity 4, ... $30.00



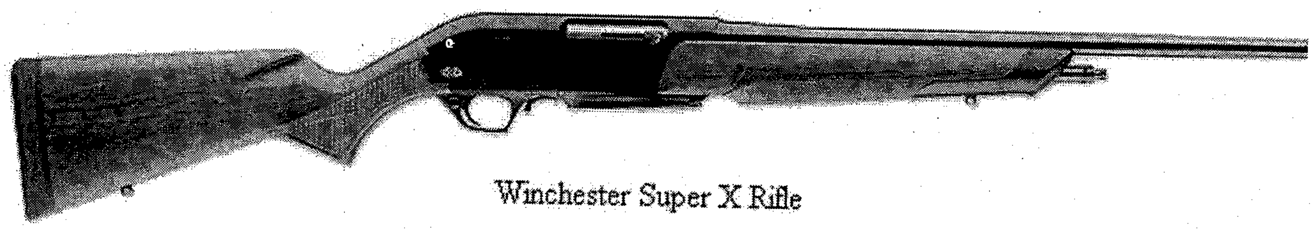
Fancy Finished, Model 1910 Rifle.

Twenty Inch Round Nickel Steel Barrel, Plain Trigger, Pistol Grip Stock and Forearm of Fancy Walnut, Checked, Weight about 8½ pounds, Magazine Capacity 4, ... $48.00

For Extras, see page 96.



Browning BAR Longtrack



Winchester Super X Rifle

A-V, Ex. B-p 3 of 3

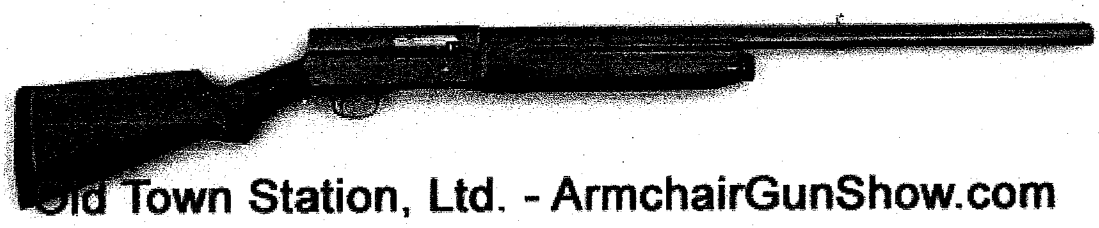
PLAINTIFFS' GROUP EXHIBIT C

5 Pages

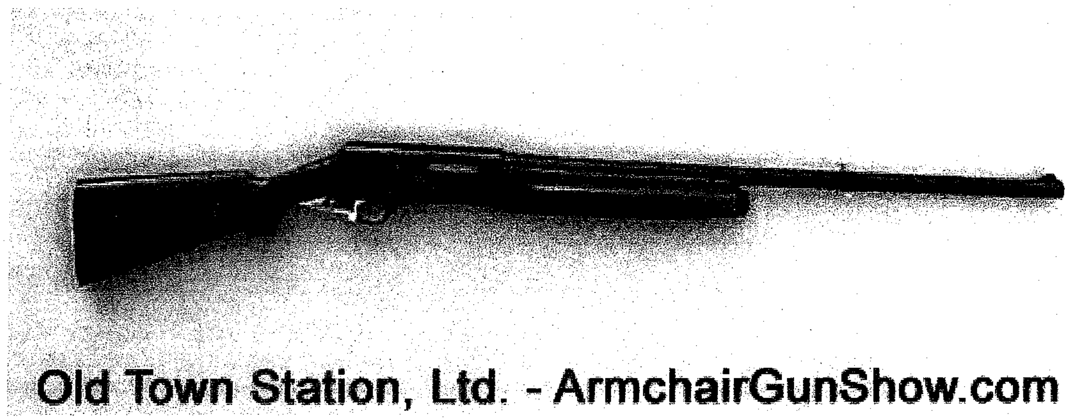
BROWNING SEMI-AUTO 5 LIGHTWEIGHT 20 GUAGE SHOTGUN

A-V, Ex. C-p. 1 of 5

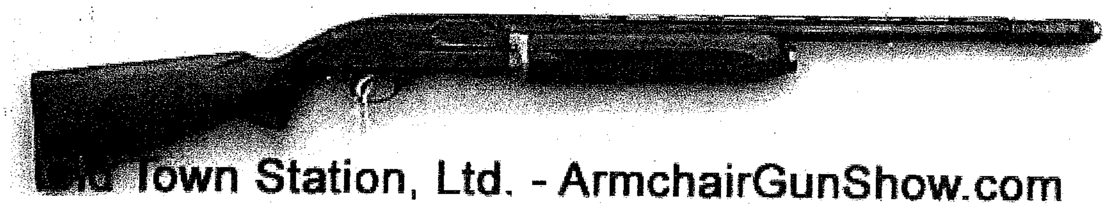
PLAINTIFFS' GROUP EXHIBIT C (SEMI-AUTO SHOTGUNS)



REMINGTON MODEL 11 SEMI-AUTO SHOTGUN



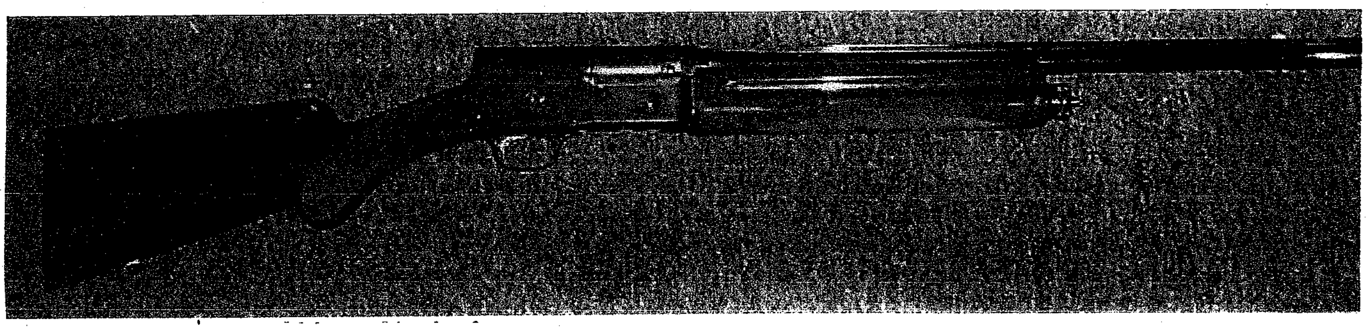
COLT SEMI-AUTO 12 GUAGE SHOTGUN



J.C HIGGINS MODEL 60 SEARS SEMI-AUTO SHOTGUN

Image:Browning Auto-5 20g Mag.jpg

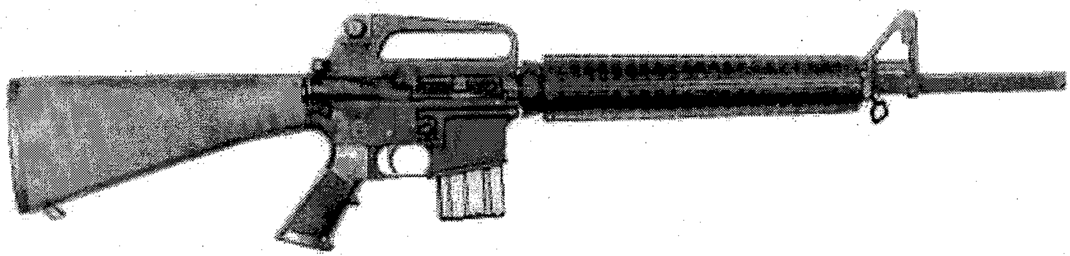
- Image
- File history
- File links
- Metadata



A-V, Ex. C-p. 5 of 5

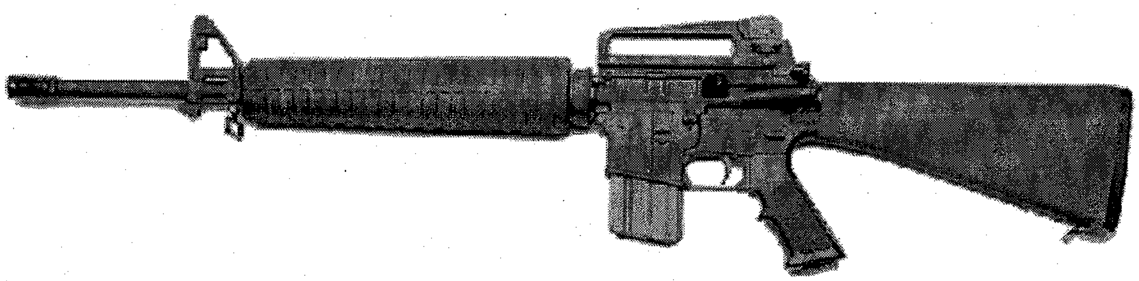
PLAINTIFFS' GROUP EXHIBIT C (SEMI-AUTO SHOTGUNS)

PLAINTIFFS' EXHIBIT D



Bushmaster XM15

Stag Arms Stag-15L



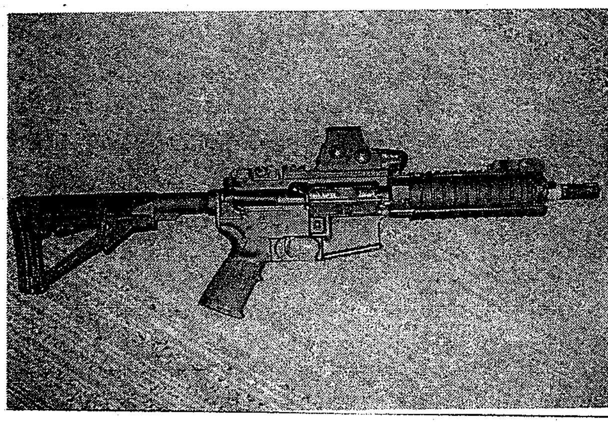
A-V, Ex. D-p. 1

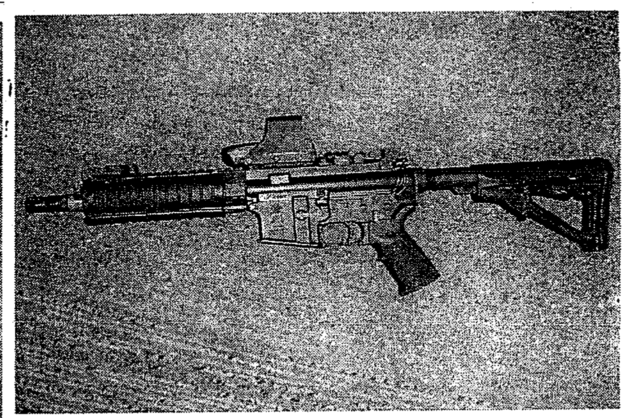
PLAINTIFFFS' EXHIBIT D

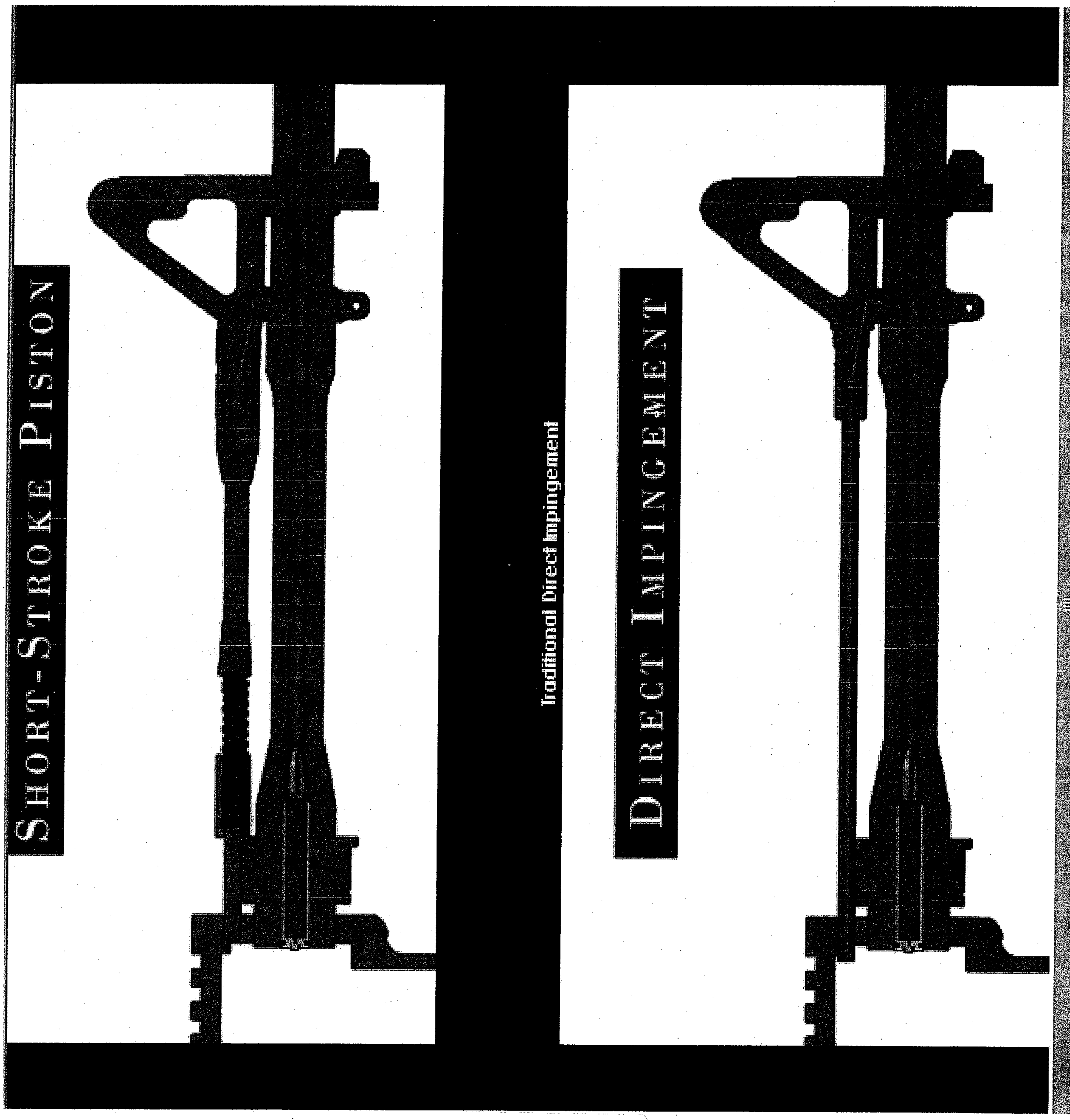
PLAINTIFFS' EXHIBIT E

2 Pages

LWRC M6A2 GAS PISTON SEMIAUTOMATIC RIFLE



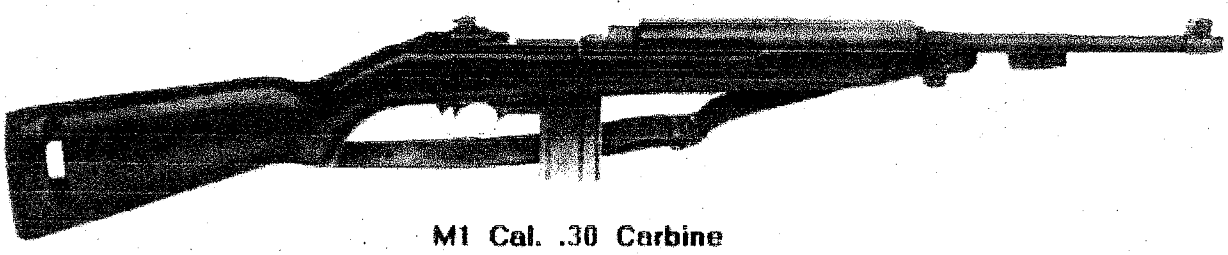



Short-Stroke Piston
Traditional Direct Impingement
Direct Impingement

PLAINTIFFS' EXHIBIT E(a)

Image:M1 Carbine.

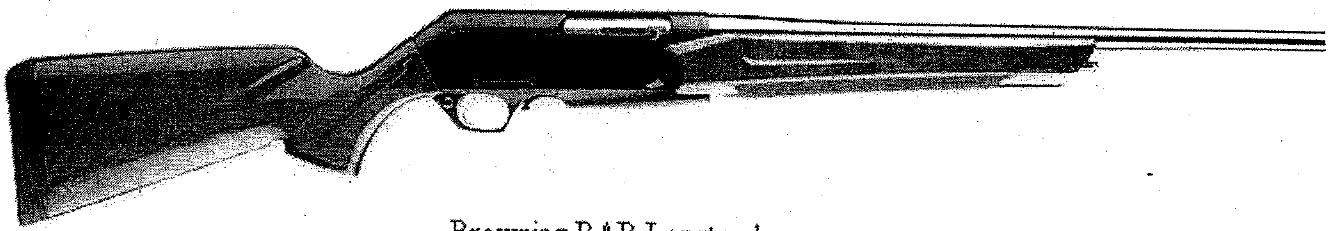
- Image
- File history
- File links



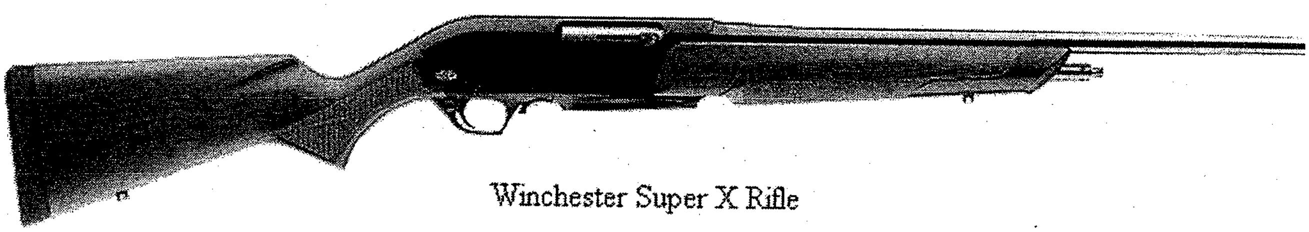
M1 Cal. .30 Carbine

Plaintiffs Exhibit E(a)

PLAINTIFFS' EXHIBIT E(b)



Browning BAR Longtrack



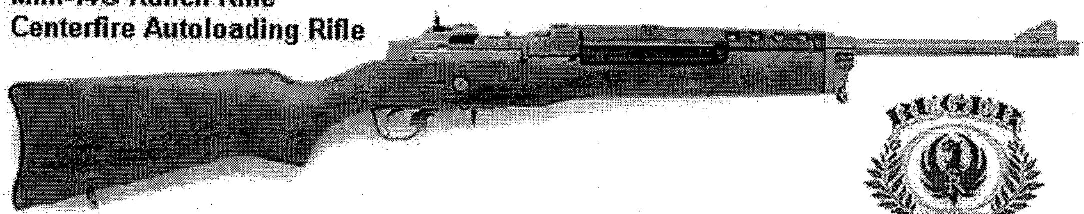
Winchester Super X Rifle

Plaintiffs Exhibit E(b)

PLAINTIFFS' EXHIBIT F

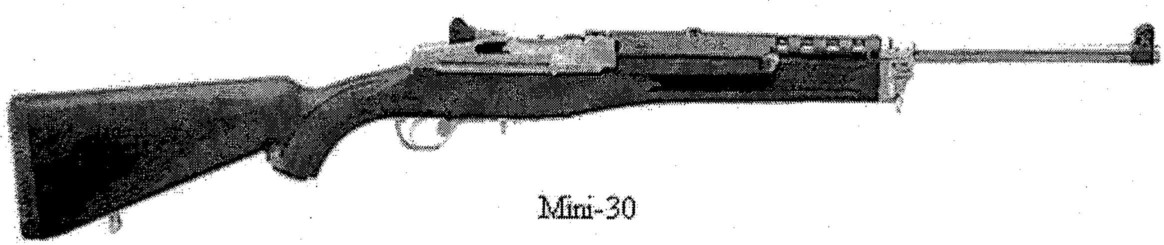
2 Pages

Mini-14® Ranch Rifle
Centerfire Autoloading Rifle



Features:

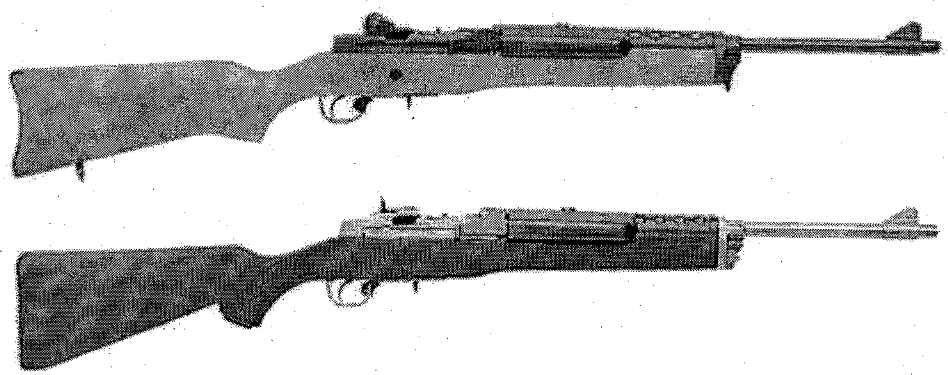
- Integral scope mounts and 1 inch medium height scope rings
- Patented recoil buffer system.
- Side ejection to clear a low-mounted scope.
- Chambered in the popular and proven 223 Rem. cartridge.
- Integral sling mounts.
- 5 Shot



Mini-30

PLAINTIFFFS' EXHIBIT F PAGE 1 OF 2

Ruger Mini-14 and Mini Thirty



Sturm, Ruger & Co., Inc.
Southport, CT UCAS
.223 Remington, 7.62x39mm
Operation: Gas
Safety: Garand typ two position sliding
Sights: Adjustable aperture rear or folding rear, blade front
Barrel: 18.5" (470mm)
Weight: 6.75 lbs. (3.1 kg)
Magazine Capacit 5 rounds, detachabl box
Modes of fire: Safe, semi-automat

PLAINTIFFFS' EXHIBIT F
PAGE 2 OF 2

Model	Caliber	Range	Conceal	Ammo	Mode	Damage	Weight	Avai
Mini-14/5	.223 Rem	Assault Rifle	3	5 clip	SA	9M	3.1	2/24
Mini-14/5R	.223 Rem	Assault Rifle	3	5 clip	SA	9M	3.1	2/24
Mini-30/5R	7.62x39mm	Assault Rifle	3	5 clip	SA	9M	3.1	2/24

- Mini-14 includes a Garand-style rear sight, adjustable for windage and elevation. provisions for mounting a scope.
- Ranch Rifle (R) includes a folding adjustable rear sight. Scope mounts are machi receiver and 1" scope rings are provided.
- Available in stainless steel. (+50¥)
- Available with synthetic stock. (+50¥)
- 10, 20 and 30-round magazines are available for the Mini-14 and Mini-30 rifles.

JUDGE ROCHFORD MEMO AND ORDER OF 4/29/08 GRANTING DEFENDANTS' 2-615 MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

A-VI

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MATTHEW WILSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	07 CH 4848
	)	
COOK COUNTY, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER

Defendants have filed a Motion to Dismiss Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief which has been fully briefed and argued. Plaintiffs' Complaint challenges the constitutionality of the Cook County ordinance relating to assault weapons and large capacity magazines.

The Ordinance

In 1993, the Cook County Board of Commissioners ("the Board") enacted the "Cook County Firearms Dealer's License and Assault Weapons and Ammunition Ban Ordinance." (Motion, Ex. A-1). In the Preamble, the Board found that in 1993, almost one-quarter of the trauma cases at Cook County Hospital were injuries suffered from gun shot wounds, there was no legitimate sporting purpose for military style assault weapons, and that assault weapons were twenty times more likely to be used during a crime than any other weapon. (Id.) This ordinance was amended in 1998. At that time, the Board noted that firearms were the cause of approximately three-quarters of all homicides in the county and that 71% of defendants charged in unlawful weapons cases had some form of gang affiliation. (Motion, Ex. B).

On November 14, 2006, the Board enacted Ordinance No. 06-O-50 ("the Ordinance") which amended the Cook County Deadly Weapons Control Ordinance. On June 19, 2007, the Board enacted Ordinance No. 07-O-36 which changed the title of Ordinance No. 06-O-50 to the Blair Holt Assault Weapons Ban. This is the legislation at issue. (Motion, Ex. C). The Ordinance prohibits the manufacture, sale, offer or display for sale, transfer acquisition or possession of assault weapons and large capacity magazines. A person found in violation of the Ordinance is subject to a jail sentence up to six months and fines between $500.00 and $1,000.00. (Id.). The Ordinance allowed persons who lawfully possessed assault weapons 90 days from the effective date to surrender the weapons to the Sheriff, remove the weapons from the county or to modify the weapons so that they were no longer assault weapons. (Id.).

The Parties

Plaintiffs, Matthew Wilson, Troy Edhlund, and Joseph Messineo, have filed suit against the County of Cook and, in their official capacities, Todd Stroger, President of the Board, the members of the Board, and Thomas Dart, Sheriff of Cook County. Plaintiffs allege that they are "law abiding citizens" and residents of Cook County who own "firearms," "firearms magazines," and "gun parts" which were legally purchased. (1st Am. Compl. ¶¶1, 6, 8). Plaintiffs allege that the 90-day time limit for conforming with the Ordinance has passed. (1st Am. Compl. ¶19). Plaintiffs further allege that they are "m[e]n of ordinary intelligence . . . unsure upon reading the aforementioned ordinance as amended, and must guess whether [their] firearms are 'assault weapons' within the vague language of the amended ordinance's definitions." (1st Am. Compl. ¶¶2, 7 and 12). Plaintiffs also allege that they wish to purchase additional firearms, parts and accessories, including parts and accessories for firearms they now own, and cannot because they must guess as to whether they will be banned by the Ordinance. (1st Am. Compl. ¶¶4, 9 and 15).

Procedural History

Defendants previously filed a motion to dismiss Plaintiff's original complaint pursuant to §2-619.1 before Judge Philip L. Bronstein. On August 17, 2007, Judge Bronstein granted Defendants' motion and dismissed Counts I and II (Due Process) and III (Equal Protection) pursuant to §2-615 with leave to amend within 28 days. Count IV (Open Meetings Act) was dismissed with prejudice pursuant to §2-619.

Plaintiffs subsequently filed their First Amended Complaint which alleges: (1) the Ordinance's definition of "assault weapon" is unconstitutionally vague; (2) the Ordinance violates due process by imposing strict liability; (3) the Ordinance violates due process because it is overbroad in its application; (4) the Ordinance violates Plaintiffs' individual right to keep and bear arms; and (5) the ordinance is an unconstitutional exercise of the County's police powers. Plaintiffs attached pictures of firearms which they own to their First Amended Complaint. (1st Am. Compl. ¶¶1, 6, 11; Group Exs. B, B(a), C, D, E(a) and (b) and Ex. F).

Defendants filed a motion to dismiss the First Amended Complaint stating it was being brought pursuant to §2-619.1. Plaintiffs moved to strike and dismiss the motion to dismiss on the grounds that the motion was not properly brought pursuant to §2-619.1. On December 6, 2007, Judge Bronstein denied Plaintiffs' motion to strike and dismiss based upon defense counsel's representation that the motion to dismiss was mislabeled and was actually being brought as a §2-615 motion to dismiss. Defendants' motion to dismiss the First Amended Complaint will be considered pursuant to §2-615.

"A section 2-615 motion admits as true all well-pleaded facts and reasonable inferences that can be drawn from those facts, but not conclusions of law or conclusions of fact unsupported by allegations of specific facts." Talbert v. Home Savings of

America, 265 Ill. App. 3d 376, 379-80 (1st Dist. 1994). "Exhibits attached to the pleadings are considered part of the pleadings for all purposes where the pleading is founded on such exhibits." Evers v. Edwards Hosp. Ass'n, 247 Ill. App. 3d 717 (2d Dist. 1993).

Questions Presented

1. Whether the Ordinance is unconstitutionally vague. (Count I).

2. Whether the Ordinance violates due process because it does not contain a scienter requirement. (Count II).

3. Whether the Ordinance violates due process as overbroad. (Count III).

4. Whether the Ordinance violates Article 1, Section 22 of the Illinois Constitution and the Second Amendment to the United States Constitution. (Count IV).

5. Whether the Ordinance violates due process as an unlawful exercise of the County's police power. (Count V).

6. Whether the Ordinance violates equal protection. (Count VI).

Count I

In Count I, Plaintiffs allege that the Ordinance is unconstitutional under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution because of the "vague" definitions given "assault weapons" and assault weapons components. Plaintiffs then set forth specific objections to various words and phrases in the Ordinance. (Count I, ¶¶21-22, 29, 33, 37-40, 50, 53-55 and 59). Plaintiffs do not allege that they have been prosecuted under the Ordinance, but rather challenge the facial validity of the Ordinance.

Laws are presumed to be constitutional. People v. Einoder, 209 Ill. 2d 443, 450 (2004). "If reasonably possible, a court must construe a [law] so as to affirm its constitutionality." Id. "The constitutional principle of due process of law requires that a statute 'give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.'" Russell v. Department of Natural Resources, 183 Ill. 2d 434, 442 (1998) quoting Grayned v. City of Rockford, 408 U.S. 104, 108 (1072). "In addition, a statute must provide explicit standards for those police officers, judges, and juries who apply them, in order to prevent arbitrary and discriminatory enforcement." Id. "A statute violates due process 'on the basis of vagueness only if its terms are so ill-defined that the ultimate decision as to its meaning rests on the opinions and whims of the trier of fact rather than any objective criteria or facts.'" People v. Einoder, 209 Ill. 2d 443, 451 (2004) quoting People ex rel. Sherman v. Cyrns, 203 Ill. 2d 264, 291 (2003).

Where a party challenges a law as being facially void, the law is "normally not unconstitutional on its face unless it provides no standard of conduct at all, *i.e.*, the ambiguity is so pervasive that it is incapable of any valid application." City of Chicago v. Pooh Bah Enterprises, 224 Ill. 2d 390, 442 (2006). The only exception is where the statute applies to fundamental protected rights such as First Amendment rights. Id.; Coalition of New Jersey Sportsmen v. Whitman, 44 F. Supp. 2d 666 (D.C. N.J. 1999), aff'd, 253 F.3d 157 (3d Cir. 2001). The right to bear arms is not a fundamental right. Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 509 (1984). "A mere hypothetical involving a disputed meaning of some terms of a statute does not make the statute unconstitutionally vague." Einoder, 209 Ill. 2d at 451. "The fact that the [statute] might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid." Id.

The Ordinance at issue classifies and defines assault weapons in two ways. The Ordinance sets forth a list of specific makes and models of firearms which are automatically categorized as assault weapons under the Ordinance. (Ordinance, Sec. 54-211(7)). The Ordinance also provides specific detailed definitions of what constitutes an assault weapon. (Ordinance, Sec. 54-211(1)-(6)). The definition of assault weapons is broken down according to types of weapons, rifles, pistols, and shot guns. The Ordinance further defines certain terms contained in the definitions of assault weapons, e.g. detachable magazine, muzzle brake, and muzzle compensator. (Ordinance, Sec. 54-211(7)). The Ordinance contains objective criteria for enforcement, provides specific standards and is not so ambiguous on its face "that it is incapable of any valid application." Pooh Bah, 224 Ill. 2d at 442.

Count I alleges many hypothetical situations which Plaintiffs claim render the statute unconstitutionally vague. However, a law is not unconstitutionally vague simply because Plaintiffs can think of hypothetical situations "involving a disputed meaning" of any of the Ordinance's terms. Einoder, 209 Ill. 2d at 451; see also Richmond Boro Gun Club, Inc. v. City of New York, 97 F.3d 681, 685 (2nd Cir. 1996)(Rejecting plaintiffs' argument that terms such as "bayonet mount," "barrel shroud," "flash suppressors" or "grenade launcher" were unconstitutionally vague, finding that for purposes of deciding facial vagueness the question is whether all applications are impermissibly vague, not whether "the plaintiffs can posit some application not clearly defined by the legislation."); accord National Rifle Ass'n of America v. Magaw, 132 F.3d 272, 293 (6th Cir. 1997)(holding that the terms "flash suppressor" and "protrudes conspicuously" were not unconstitutionally vague because not all applications of the terms were unconstitutionally vague); Coalition of New Jersey, 44 F. Supp. 2d at 676 (holding that "so long as the disputed law encompasses some of the 'core' conduct in which plaintiffs wish to engage, a court will not entertain a facial vagueness challenge to other hypothetical conduct"). The terms of the Ordinance are not so ill-defined as to be unconstitutionally vague. Einoder, 209 Ill. 2d at 461.

In response, Plaintiffs cite to City of Chicago v. Morales, 527 U.S. 41 (1999), suggesting that Morales sets forth a different standard for determining whether a law is unconstitutionally vague than the cases cited by Defendants. The standard set forth in Morales, however, does not differ from the standard set forth in the Illinois cases cited by Defendants. The ordinance at issue in Morales, targeting "gang loitering," allowed police officers to approach two or more persons on the street if they reasonably believed at least one was a "criminal street gang member." The persons had to be loitering which was defined as remaining in one place "with no apparent purpose." The officer was required to then order all persons to leave and any person, whether a gang member or not, who disobeyed was to be charged with violation of the ordinance. The ordinance in Morales was found to be unconstitutionally vague because: (1) it failed to set forth any standards by which an ordinary citizen would be able to determine if he or she was violating the ordinance; and (2) it failed to set forth even minimal guidelines for law enforcement, particularly as to the "no apparent purpose" to be present provision and as to the unfettered discretion to order persons to disperse. Id. at 58-61. The Ordinance at issue in the instant case does not suffer from these defects.

In their briefs, the parties specifically address Section 54-211(7) which lists specific weapons which are prohibited under the Ordinance as well as "copies or duplicates thereof." Plaintiffs argue that "copies or duplicates" are vague terms rendering the Ordinance void. Defendants argue that these terms have plain and ordinary meanings.

When interpreting a statute, Illinois courts "give language its plain and ordinary meaning, and, where the language is clear and unambiguous, [a court] must apply the statute without resort to further aids of statutory construction." Town & Country Utilities, Inc. v. Ill. Pollution Control. Bd., 225 Ill. 2d 103, 117 (2007). The same principle applies to the interpretation of ordinances. In re Application of County Collector, 132 Ill. 2d 64, 72 (1989).

The terms "copies" and "duplicates" are not vague but have plain and ordinary meanings used in everyday life. As noted by Defendants, the *American Heritage Dictionary* defines "copy" as "an imitation or reproduction of an original; a duplicate" and defines "duplicate" as "identically copied from an original." These dictionary definitions are reinforced by Hayes v. Wagner, 220 Ill. 256 (1906), which defines a duplicate document as one "which is the same, in all respects, as another instrument from which it is indistinguishable in operation." Plaintiffs are incorrect that Defendants' arguments showing that duplicate and copy are not vague terms contradict well pled facts in Paragraphs 50 through 52 of the First Amended Complaint. Those paragraphs are legal conclusions. A person of ordinary intelligence would understand that Section 54-211(7) includes the specific models listed and any imitations or reproductions of the specific models. The terms "copies" and "duplicates" have plain meanings and may be read together with the list of prohibited weapons without confusion. See, Coalition of New Jersey, 44 F. Supp. 2d at 679 (rejecting vagueness challenge to the use of term "substantially identical" when referring to a list of prohibited weapons).

Plaintiffs appear to be arguing for the application of a subjective standard in determining a vagueness challenge, but the question before the court is not whether

Plaintiffs understand the Ordinance. The question is whether the Ordinance gives a "'person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.'" Russell, 183 Ill. 2d at 442. Plaintiffs' allegations that they are persons of ordinary intelligence and cannot understand the Ordinance, (1st Am. Compl. ¶¶2, 7, and 12), are insufficient to state a due process claim on the basis of vagueness. Whether Plaintiffs themselves comprehend the Ordinance is not at issue. People v. Conlan, 189 Ill. 2d 286, 293 (2000)(Statute not unconstitutionally vague because a person earnestly attempting to understand the statute could fully comprehend its terms).

The Ordinance is not unconstitutionally vague and Count I does not state a cause of action for violation of due process.

Count II

In Count II, Plaintiffs allege that the Ordinance violates due process because it does not contain a scienter requirement. This argument appears to have two prongs. Plaintiffs argue that the lack of scienter buttresses their assertions that the Ordinance is vague and is a separate basis for declaring the Ordinance unconstitutional on its face. Plaintiffs' allegations fail.

Generally, silence in a statute as to a scienter requirement is not controlling as to whether knowledge is a provable element of the offense. Staples v. U.S., 511 U.S. 600, 619 (1993). The scienter requirement may differ for different elements of the offense. Liparota v. U.S., 471 U.S. 419, 423, fn. 5 (1985). The determination of what, if any, scienter may be required is a question of law to be determined by the court. Staples, 511 U.S. at 604-05. The decision as to the required mental state is generally made in the context of an actual prosecution as to proper instructions and burden of proof. See, e.g., Id. (Reversing conviction of plaintiff on basis that the prosecution was required to prove that petitioner knew the features of his firearm fell within the prohibitions of the statute at issue despite lack of specific scienter requirement in statute.); Liparota, 471 U.S. at 433-434 (Reversing conviction based on finding that the government was required to prove that the defendant knew his acquisition or possession of food stamps was unauthorized under the statute at issue); U.S. v. Freed, 401 U.S. 601, 607-08 (1971)(Finding that prosecution was not required to allege scienter in charging defendants for possession of hand grenades as the statute at issue was a regulatory measure in the interest of public safety); but see Peoples Rights Organization, Inc. v. City of Columbus, 152 F.3d 522 (6th Cir. 1998)(where court considered various facial challenges to an assault weapon ordinance including an allegation that a lack of scienter rendered the ordinance unconstitutional). Defendants, however, appear to agree, for purposes of this motion, that the Ordinance does not provide for *mens rea*. Defendants state that the Ordinance is a regulatory measure which addresses issue of public safety.

Although historically at common law criminal responsibility required *mens rea*, exceptions have been made, "especially in the expanding regulatory area involving activities affecting public health, safety, and welfare." Freed, 401 U.S. at 607. The

Illinois Supreme Court has held that a legislature may create strict liability offenses. People v. Brown, 98 Ill. 2d 374, 376 (1983). Statutory provisions which seek to promote public safety may be valid without scienter. Id. at 379 citing Freed. A public welfare offense generally has two characteristics. First, the legislature has acted to prohibit conduct that a reasonable person would know is subject to stringent regulation and may seriously threaten the community's health and safety. Liparota, 471 U.S. at 433. Second, the legislation "provide[s] for only light penalties such as fines or short jail sentences, not imprisonment in the state penitentiary." Staples, 511 U.S. at 616. The Ordinance here meets both factors.

Defendants in arguing that no scienter requirement or *mens rea* is required where as here the statutory provision at issue deals with public safety cite to Freed, supra. Plaintiffs rely on Staples, supra, in support of their argument that the lack of a scienter requirement renders the Ordinance void on its face. Neither case involves a facial challenge to a statute.

In Freed, the defendant was charged with the possession of hand grenades without registration. The statute at issue did not contain a requirement of a specific intent or knowledge that the grenades were unregistered. The Freed court held that scienter was not required where the prosecution involved "a regulatory measure in the interest of public safety" and a deadly weapon. Freed, 401 U.S. at 609. The Freed court said:

> This is a regulatory measure in the interest of the public safety, which may well be premised on the theory that one would hardly be surprised to learn that possession of hand grenades is not an innocent act. They are highly dangerous offensive weapons, no less dangerous than the narcotics involved in United States v. Balint, 258 U.S. 250,254, where a defendant was convicted of sale of narcotics against his claim that he did not know the drugs were covered by a federal act.

Id.

The Ordinance here similarly falls into the category of a regulatory provision seeking to secure the safety of the public. The purpose of the Ordinance is to prevent violent crimes associated with assault weapons and to prevent injury and death. As the court in Brown, 98 Ill. 2d at 381, quoting People v. Johnson, 288 Ill. 442, 445-46 (1919), declared:

> One may violate the law without any intent on his part to do so. Various statutes of this State punishing the doing of acts without requiring allegation or proof of criminal intent upon the part of the doer have been upheld on the ground that they were a valid exercise of police power. * * * Laws [cannot] be held invalid merely because some innocent person may possibly suffer. The principle of police regulation is, 'the greatest good to the greatest number.'

An individual "who attempts in earnest to understand the [Ordinance] . . . can fully comprehend its terms and, more importantly, understand what is prohibited." People v.

Conlan, 189 Ill. 2d 286, 293 (2000). The Ordinance addresses and is reasonably related to the dangers posed by the possession of assault weapons to society. See People v. Marin, 342 Ill. App. 3d 716, 724 (1st Dist. 2003)(where the court found that criminal statute of aggravated use of a weapon was valid even though it did not contain a culpable mental state "because access to a weapon can lead to criminal behavior despite lack of criminal intent").

The Ordinance is not a "trap for the unwary" as individuals should be alerted to the fact that assault weapons may be subject to regulation. Assault weapons have been the subject of restrictive legislation by the federal government, state governments and local governments. See, e.g., Silveira v. Lockyear, 312 F.3d 1052 (9th Cir. 2002)(upholding California assault weapon ban except for exemption for retired peace officers); Olympic Arms v. Buckles, 301 F.3d 384 (6th Cir. 2002)(upholding federal assault weapon ban); Richmond Boro Gun Club v. City of New York, 97 F.3d 681 (2d Cir. 1996)(upholding New York City assault weapon ban); Coalition of New Jersey Sportsmen, Inc. v. Whitman,, 44 F. Supp. 2d 666 (N.J. 1999)(upholding New Jersey assault weapon ban); City of Cincinnati v. Baskin, 859 N.E.2d 514 (Ohio 2005)(upholding Cincinnati Ordinance prohibiting semiautomatic rifle with capacity of more than 10 rounds); Arnold v. City of Cleveland, 616 N.E.2d 163 (Ohio 1993)(upholding Cleveland ban on assault weapons). Cook County's regulation of assault weapons is consistent with a widespread concern as to the danger assault weapons pose to society.

Defendants look to Staples for support. In Staples, the plaintiff was indicted for unlawful possession of a machine gun in violation of a federal statute requiring registration of such weapons. Staples, 501 U.S. at 603. Machine gun was defined as "any weapon which shoots, . . . or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." Id. at 601. The federal statute at issue in Staples was silent as to a *mens rea* requirement. Id. at 605. In searching Staples' home, police officers found a rifle which had been modified to be fully automatic. Id. at 603. Staples testified that he was unaware that the semi-automatic rifle he owned had been illegally modified into a fully automatic weapon and he had only fired the rifle as a semi-automatic weapon. Id. at 603-04.

Plaintiffs' position in Count II is that the Ordinance is void on its face because it is silent as to a scienter or *mens rea* requirement. Staples does not stand for this proposition. In Staples, the plaintiff appealed his conviction in which the prosecution was not required by the district court to establish *mens rea*. The United States Supreme Court reversed the decision affirming the conviction and remanded the case for further proceedings. The reversal was based on the Supreme Court's conclusion that the statute should have been interpreted as requiring the prosecution to prove that Staples knew that the gun he possessed had the characteristics that brought it within the definition of a machine gun, Staples, 511 U.S. at 602, although it contained no such requirement. Specifically, the Court held that the prosecution was required to prove that Staples knew his weapon could fire automatically. The Staples court did not hold that it was necessary to prove that the possession of the gun itself was unlawful. See, Rogers v. U.S., 522 U.S.

252, 255 (1988)(which interprets the holding in Staples). The Staples court did not hold or suggest that a law which does not contain an explicit *mens rea* requirement is void on its face as a violation of due process. The Ordinance, as shown, is not unconstitutionally vague. It clearly sets out and gives proper notice of its prohibited conduct. The lack of *mens rea* does not make the Ordinance vague.

The Staples court looked to guns as a whole and rejected the government's position that the public safety exception relied on in Freed could relieve the prosecution of proving *mens rea*. Id. at 610. The Supreme Court stated that although guns are "dangerous in some general sense," that is not enough to alert an individual to probable regulation to relieve that individual of *mens rea* in that prosecution. The court noted that there is a "tradition of widespread lawful gun ownership." Id. at 610. However, the Supreme Court specifically stated that certain types of guns, such as machine guns, sawed-off shot guns and artillery pieces, would be analogous to the grenade in Freed and have the "same quasi-suspect character." Id. at 611-12. Again, Staples did not hold a statutory provision void on its face but required *mens rea* for a conviction under the facts and circumstances in that case.

In this case, assault weapons are a specific category of guns which are closer in nature to the hand grenades in Freed and the narcotics in U.S. v. Balint, 258 U.S. 250, 254 (1922), than to guns in general given the well-publicized concerns regarding the danger to the public from assault weapons and a history of regulation in this county and elsewhere. The nature of assault weapons and large capacity magazines and a history of regulation puts individuals on notice of the likelihood of regulation.

Additionally, the Staples court distinguished Freed because of the severity of the criminal penalty attached. Staples, 501 U.S. at 616. The statute in Staples called for up to ten years imprisonment for violation of the statute. Id. In the instant the case, the Ordinance does not amount to a felony but contains a criminal penalty of only a $500-$1,000 fine and/or up to six months in jail, not the state penitentiary. Staples is again distinguishable given the nature of the objects being regulated and the much lighter criminal penalty at issue. The public safety and welfare exception would apply.

Count II does not state a cause of action for violation of due process.

Count III

Count III alleges that the Ordinance is overbroad in its applications and violates due process. Plaintiffs specifically allege that the Ordinance is overbroad because of its "vague definitions," (Count III, ¶23), and because the Ordinance is not limited to the use of assault weapons by criminals but applies also to those who possess assault weapons for hunting or self-defense. (Count III, ¶21).

Initially, "vagueness and overbreadth are two different legal principles. People v. Marin, 342 Ill. App. 3d 716, 721 (1st Dist. 2003). Plaintiffs' allegation that the statute is overbroad because it is vague does not support a claim of overbreadth. Rather, this allegation is another repetition of their vagueness claim raised in Count I. As such, the only issue raised by Count III is whether the statute is overbroad because its application is not limited to criminals.

Where no fundamental right is involved, the rational basis test applies. Marin, 342 Ill. App. 3d at 722. As stated earlier, the right to bear arms is not a fundamental right. Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 509 (1984). Applying the rational basis test, a law is overbroad where it does not bear a reasonable relationship to the public interest being served and the means adopted are not a reasonable method of accomplishing the public interest. Marin, 342 Ill. App. 3d at 721, citing People v. Wright, 194 Ill. 2d 1 (2000).

In enacting Cook County's original assault weapons ban, the Board set forth the rationale behind banning assault weapons. (Motion, Ex. A-1, Ordinance No. 93-0-37). Specifically, with regard to assault weapons, the Board stated that: (1) 1,000 of the 4,500 trauma cases at Cook County Hospital involved gun shot wounds; (2) assault weapons are twenty times more likely to be used in the commission of a crime than other weapons; and (3) there is no legitimate sporting purpose for assault weapons. (Motion, Ex. A-1, Ordinance No. 93-0-37). Given the public interest which led to the assault weapons ban, a complete ban on assault weapons bears a rational relationship to the public interest being served and is a reasonable method of accomplishing the public interest. The Ordinance is not overbroad.

The court in Arnold v. City of Cleveland, 616 N.E. 2d 163 (Ohio 1993), rejected an overbreadth challenge to an ordinance of the City of Cleveland banning assault weapons. The court's holding, although not controlling, is instructive:

> . . . The ordinance, while admittedly broad in its scope, is a reasonable exercise of the municipality's police power. The ultimate objective of the legislation appears to be public safety. To reach this end, the municipality is attempting to limit the accessibility of certain generally recognized dangerous firearms.

Id. at 173. The Cleveland prohibition against assault weapons was upheld as a proper limitation on a certain class of weapons which would maintain the safety and security of the public while allowing the "availability of certain firearms for purposes of hunting, recreational use and protection." Id. The same may be said as to the Ordinance here.

Plaintiffs argue that City of Chicago v. Morales, 527 U.S. 41 (1999), and U.S. v. Emerson, 270 F.3d 203 (5th Cir. 2001), require that this court apply strict scrutiny to the Ordinance. Morales and Emerson did not involve regulation of firearms. See, e.g. Lewis v. U.S., 445 U.S. 55 (1980)(applying rational basis standard in reviewing firearms restrictions); Bach v. Pataki, 408 F.3d 75 (2d Cir. 2004)(holding that courts review firearm restrictions using a rational basis standard). Plaintiffs also argue that the United States Supreme Court may decide in Parker v. District of Columbia, 478 F.3d 370 (D.C. Cir.), cert. granted sub nom., District of Columbia v. Heller, 128 S. Ct. 645 (2007), that strict scrutiny applies. As discussed below, the Second Amendment applies only to infringement by the federal government, not state governments or their subsidiaries. Therefore, even if the Supreme Court decides that there is a fundamental individual right to bear arms under the Second Amendment and applies a strict scrutiny test to the District of Columbia regulation at issue in Parker, that ruling will not apply to state and local laws.

Count IV

In Count IV, Plaintiffs allege that the Ordinance violates Plaintiffs' individual rights to keep and bear arms under Article 1, Section 22 of the Illinois Constitution and the Second Amendment to the U.S. Constitution. Defendants argue that Count IV should be dismissed because the Second Amendment to the U.S. Constitution does not apply to state or local governments and the Illinois Constitution does not prohibit regulation of firearms including reasonable prohibitions.

Second Amendment:

In Quilici v. Village of Morton Grove, 695 F.2d 261, 269-70 (7th Cir. 1982), the Seventh Circuit held that under Presser v. Illinois, 116 U.S. 252 (1886), the Second Amendment limits only the actions of Congress and the National government. The Second Amendment has never been incorporated into the Fourteenth Amendment and there is no incorporation by implication. Id. Therefore, the County's enactment of the Ordinance banning assault weapons and large capacity magazines does not violate the Second Amendment. Plaintiffs do not allege that any defendant in this action is a member of a federal agency or employed by the federal government in any capacity. Skar v. Byrne, 727 F.2d 633, 637 (7th Cir. 1984)(Second Amendment does not apply to states or their subdivisions); Manos v. Caira, 162 F. Supp. 2d 979, 989 (N.D. Ill. 2001)(Plaintiff failed to state a claim for violation of the Second Amendment as defendants were not part of the federal government or employed by the federal government).

Plaintiffs argue that they may have a Second Amendment claim citing to Parker v. District of Columbia, 478 F.3d 370 (D.C. Cir.), cert. granted sub nom., District of Columbia v. Heller, 128 S. Ct. 645 (2007), which is currently on appeal before the U.S. Supreme Court. Parker, however, involves an ordinance enacted by the District of Columbia which is a Federal District ultimately controlled by Congress. Id. at 401, n. 13. The Second Amendment applies to the District of Columbia because the District is "directly constrained by the Bill of Rights." Id. The Parker court specifically noted that the Second Amendment had not been incorporated through the Fourteenth Amendment and that the issue of incorporation was not relevant to the court's decision. Id. Even if the U.S. Supreme Court decides that there is an individual right to bear arms under the Second Amendment, the Second Amendment constrains only infringement by the federal government.

Article 1, Section 22:

In Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483 (1984), the Illinois Supreme Court considered the issue of whether Morton Grove's complete ban on handguns violated Article 1, Section 22 of the Illinois Constitution which provides: "Subject to only the police power, the right of the individual to keep and bear arms shall not be infringed." Following an extensive analysis of the language of the Section 22 and the legislative history, the Kalodimos court found that a reasonable prohibition of handguns is constitutional under Article 1, Section 22. Id. at 498. The right to possess firearms is not a fundamental right and "the right to arms secured by the Illinois Constitution . . . is subject to substantial infringement in the exercise of police power even though it operates on the individual level." Id. at 509.

Under Kalodimos, a flat ban on handguns, an entire category of firearms, by a home rule municipality is constitutional under Article 1, Section 22. Therefore, it logically follows that a flat ban of assault weapons and large capacity magazines by the County is also constitutional. As the Kalodimos court made clear, the right to bear arms under the Illinois Constitution is subject to substantial infringement and is not unfettered. Plaintiffs disagree with the holding of Kalodimos and would like this court to disregard it. This court, however, is bound by Illinois Supreme Court precedent. The Ordinance does not violate Article 1, Section 22 of the Illinois Constitution.

Count V

In Count V, Plaintiffs allege that Paragraph 7(a) of the Ordinance is an unconstitutional exercise of the County's police powers in violation of due process. Count V repeats Plaintiffs' vagueness arguments from Count I. As discussed in connection with Count I, the Ordinance is not unconstitutionally vague and provides specific guidance for law enforcement. An ordinance which bans a category of guns is a proper exercise of the police power. Kalodimos, 103 Ill. 2d at 508-09. The Ordinance is not an unconstitutional exercise of the County's police powers. See generally Coalition of New Jersey, 44 F. Supp. 2d 666 (D.C.N.J. 1999)(where court held regulation of assault weapons is a legitimate state interest). The County Board has exercised its police powers in a way that regulates a certain category of dangerous and destructive weapons, assault weapons, while balancing the Plaintiffs' and others use of guns for purposes of hunting and protection.

Count VI

In Count VI, Plaintiffs allege that Section 54-211(7) of the Ordinance violates the Equal Protection Clause because it bans specifically listed firearms, but does not ban other firearms identical in function. These allegations ignore the fact that the Ordinance's list of specific firearms in Section 54-211(7) is non-exhaustive. The Ordinance also bans firearms with certain enumerated features under Sections 54-211(1) through (6). Plaintiffs argue that Sections 54-211(1) through (6) of the Ordinance are flawed under the holding in Peoples Rights Organization v. City of Columbus, 152 F.3d 522 (6th Cir. 1998). In that case, the provisions of the City of Columbus's assault weapons ban were found to be vague. The Ordinance here and the Columbus Ordinance, however, are different. Furthermore, in that case, the court used a heightened standard of review. However, a heightened standard of review has been found to be inapplicable "when the statute neither reaches significant constitutionally protected conduct, nor provides unfettered discretion to law enforcement." Coalition of New Jersey Sportsmen v. Whitman, 44 F. Supp. 2d 666, 681 (D.C.N.J. 1999). Plaintiffs' argument has no merit.

Unless a fundamental right is involved or a classification is based on an inherently suspect characteristic, the Equal Protection Clause requires only that a classification rationally further a legitimate governmental interest. Nordlinger v. Hahn, 505 U.S. 1, 10 (1992)(citations omitted); Gun Owners' Action League v. Swift, 284 F.3d 198 (1st Cir. 2002). Regulating assault weapons is a legitimate governmental interest, Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483, 503-04, 509 (1984), and banning possession of such weapons is a rational method of furthering that legitimate interest. Under rational basis review, courts do not "pass judgment on the effectiveness of the classifications." Gun Owners', 284 F.3d at 214.

Plaintiffs claim that the Ordinance fails to ban virtually identical firearms, but an equal protection claim cannot be based on disparate classifications of weapons. A claim of equal protection "based on disparate classifications of similar weapons . . . is not cognizable. The equal protection clause applies to persons, not products." Coalition of New Jersey, 44 F. Supp. at 686. Moreover, even if such a claim could be stated, Plaintiffs do not allege any facts showing that there are two firearms with the same characteristics which are not both prohibited under the Ordinance as a whole. Nor do Plaintiffs claim that any such firearm exists. There is no basis for Plaintiffs' argument. Count VI does not allege a violation of the Equal Protection Clause.

Conclusion

Plaintiffs' First Amended Complaint challenges the Board's decision to regulate a particular category of weapons, assault weapons and large capacity magazines, which it has determined poses a particular danger to the safety and welfare of the public. The Plaintiffs have challenged the Ordinance based on their assertions that they are law abiding citizens who possess weapons lawfully and for lawful purposes and have longstanding rights to possess weapons. However, the Ordinance is rationally related to its asserted purpose, with clearly delineated terms, not overbroad in its prohibitions, fair in its classifications, and a correct exercise of the County's police power. The Ordinance addresses the grave and recognized dangers of assault weapons while allowing the possession of weapons for legal recreational and protective purposes.

IT IS HEREBY ORDERED that Defendants' motion to dismiss the First Amended Complaint is granted with prejudice.

ENTERED
JUDGE MARY K. ROCHFORD-1570
APR 29 2008
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Mary Rochford

Judge Mary K. Rochford

APPELLATE COURT
OPINION OF 8/19/09(*)

"CORRECTED COPY"
[Mailed by App.Ct. Clerk on 10/9/09]

Note: This is the Ist Appellate Court
Opinion which was vacated
By Supervisory Order of
this Supreme Court of 9/29/10.

A-VII

THIRD DIVISION
August 19, 2009

corrected copy

No. 1-08-1202

MATTHEW D. WILSON, TROY EDHLUND, and JOSEPH MESSINEO, Plaintiffs-Appellants,	) Appeal from the Circuit Court of Cook County, Illinois.
v.	) No. 07 CH 4848
COOK COUNTY, a public body and corporate, TODD STROGER, Board President, in his official capacity, and its Board of Commissioners in their official capacities, namely: EARLEAN COLLINS, ROBERT STEELE, JERRY BUTLER, WILLIAM M. BEAVERS, DEBORAH SIMS, JOAN PATRICIA MURPHY, JOSEPH MARIO MORENO, ROBERT MALDONADO, PETER N. SILVESTRI, MIKE QUIGLEY, JOHN P. DALEY, FOREST CLAYPOOL, LARRY SUFFREDIN, GREGG GOSLIN, TIMOTHY O. SCHNEIDER, ANTHONY J. PERAICA, ELIZABETH ANN DOODY GORMAN, and THOMAS DART, Sheriff of Cook County, in his official capacity, Defendants-Appellees.	) Honorable Mary K. Rochford, Judge Presiding.

PRESIDING JUSTICE MURPHY delivered the opinion of the court:

This appeal arises from the dismissal of plaintiffs', Matthew D. Wilson, Troy Edhlund, and Joseph Messineo's, amended complaint seeking declaratory judgment and injunctive relief against defendants, Cook County, the Cook County commissioners, and Cook County Sheriff Tom Dart. Specifically, plaintiffs sought a declaration that the Blair Holt Assault Weapons Ban (Cook County Ordinance No. 06-O-50 (November 14, 2006), amending Cook County Code of Ordinances §54–211 *et seq.* (eff. January 1, 1994)) (Ordinance) was unconstitutional. On April 29, 2008, the trial court dismissed the plaintiffs' first amended complaint pursuant to section 2-615 of the Code of Civil Procedure. 735 ILCS 5/2-615 (West 2006). The trial court found that: (1) the Ordinance is not unconstitutionally vague or overbroad; (2) plaintiffs did not state a cause of action for violation of the due process and equal protection clauses; (3) the Ordinance did not violate article I, section 22 of the Illinois Constitution (Ill. Const. 1970, art. I, §22) or the second amendment of the United States Constitution (U.S. Const., amend. II); and the county properly exercised its police powers in enacting the Ordinance.

Plaintiffs timely filed this appeal and arranged their arguments into seven issues. Plaintiffs' first two arguments involve the application of the United States Supreme Court's holding in *District of Columbia v. Heller*, __U.S.__, 171 L. Ed. 2d 637, 128 S. Ct. 2783 (2008). Plaintiffs argue that *Heller* virtually overruled authority relied on by the trial court. Plaintiffs contend that their facial challenge to the Ordinance on due process and equal protection grounds was sufficient to withstand defendants' motion to dismiss. Plaintiffs also argue that the *Heller* Court found that the second amendment provides a fundamental right to bear arms. They contend that this right must be incorporated into the fourteenth amendment and applied to the states. For the following reasons, we affirm the trial court's dismissal of plaintiffs' complaint.

I. BACKGROUND

The Ordinance was originally enacted in 1993 by the Cook County Board of Commissioners (Commissioners) as the Cook County Deadly Weapons Dealer Control Ordinance to ban certain assault weapons and assault ammunition. Cook County Ordinance No. 93-O-37 (eff. January 1, 1994). In the prefatory clauses, the Commissioners cited to the public health, safety, and welfare concerns caused by both assault weapons and guns in general. The Ordinance set 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; there were more federally licensed gun dealers in Cook County than gas stations; 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. In addition, the Commissioners stated that there was no legitimate sporting purpose for the military-style assault weapons used on the streets.

Prior to its effective date, the Ordinance was amended to remove the prohibitions on the sale, transfer, acquisition, or possession of assault ammunition. Cook County Ordinance No. 93-O-46 (amended November 16, 1993). The Ordinance prohibited the sale, transfer, acquisition, ownership, or possession of assault weapons, defined as 1 of a list of 60 types or models of high capacity, rapid-fire rifles or pistols. The Ordinance required any owners of the defined assault weapons to remove them from Cook County or modify or surrender them to the Cook County sheriff within 14 days of the enactment. Failure to comply with the Ordinance would result in criminal penalty including a fine and possible imprisonment.

The Ordinance was amended again in 1999 to modify sections not at issue in this appeal;

however, additional prefatory language was included to support the ban as necessary to protect the public welfare by reducing violent crime and the huge costs associated with those crimes. The Commissioners indicated that the revisions were based not only on the prolific black-market sales of weapons, but those by licensed dealers. The Commissioners cited 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, which indicated that weapons utilized in the commission of crimes are traced to licensed gun dealerships. Cook County Ordinance No. 99-O-27 (amended November 23, 1999).

On November 14, 2006, the Ordinance was amended to apply to both assault weapons and large capacity magazines and expand the list of banned weapons and definition of those weapons. In addition, the time period for removal, surrender, or rendering inoperable was expanded from 14 to 90 days. Cook County Ordinance No. 06-O-50 (amended November 14, 2006). The Ordinance was also amended in 2007 to change the name to the Blair Holt Assault Weapons Ban. Cook County Ordinance No. 07-O-36 (adopted June 19, 2007).

As for the specific provisions, section 54-211 of the Ordinance provides definitions of assault weapon, detachable magazine, large capacity magazine, muzzle brake and muzzle compensator. Cook County Code of Ordinances §54–211 (eff. January 1, 1994). The definition of "assault weapon" contains six subcategories that provide physical characteristics of semiautomatic rifles, pistols and shotguns, as well as conversion kits that are banned as assault weapons. Cook County Code of Ordinances §§54–211(1) through (6) (eff. January 1, 1994). The seventh subcategory contains a nonexhaustive list of banned rifles, pistols and shotguns, and copies or duplicates of these models. Cook County Code of Ordinances §54–211(7) (eff. January 1, 1994).

Plaintiffs filed the instant cause of action as law-abiding residents of Cook County. Each plaintiff indicated that he had never been convicted of a crime, had a properly issued firearm owner's identification card, and legally purchased guns that were subject to the Ordinance's ban. Plaintiffs indicated the guns were owned as part of collections, for self-defense, or for recreational purposes. This appeal followed the trial court's dismissal of plaintiffs' complaint pursuant to section 2-615 of the Code of Civil Procedure.

II. ANALYSIS

A motion to dismiss under section 2-615 of the Code of Civil Procedure challenges the legal sufficiency of a complaint based on facial defects of the complaint. *Borowiec v. Gateway 2000, Inc.*, 209 Ill. 2d 376, 413 (2004). This court conducts a *de novo* review of a trial court's ruling on the sufficiency of a motion to dismiss. *U.S. Bank National Ass'n v. Clark*, 216 Ill. 2d 334, 342 (2005). While allegations in the complaint are viewed in a light most favorable to the plaintiff, the decision to dismiss a case may be affirmed on any basis contained within the record. *Gallagher Corp. v. Russ*, 309 Ill. App. 3d 192, 196 (1999). We begin with a discussion of the holding in *Heller* and then address plaintiffs' arguments in turn.

A. *District of Columbia v. Heller*

The second amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II. In *Heller*, the Supreme Court considered the District of Columbia's handgun ban that "totally bans handgun possession in the home." *Heller*, __U.S. at__, 171 L. Ed. 2d at 679, 128 S. Ct. at 2817. The ban required that any lawful firearm in the home be either dissembled or rendered inoperable by a trigger lock. *Heller*, __U.S. at__, 171 L. Ed. 2d at 679, 128 S. Ct. at 2817. Both the majority and the dissent embarked on extensive reviews of the history and meaning of the second amendment in coming to opposite conclusions regarding the original meaning and understanding of the amendment.

For our purposes, only the conclusions of the majority's original-meaning originalist review are important. First, the majority found that the original understanding of the amendment was grounded in the belief that the right to bear arms ensured not only that a militia could easily be formed if needed, but inherently that it provided protection from tyranny. *Heller*, __U.S. at__, 171 L. Ed. 2d at 661-62, 128 S. Ct. at 2801-02. The majority concluded that it was also popularly understood as an individual right to self-defense- -unconnected to militia service- - particularly to the defense of one's home and hearth. *Heller*, __U.S. at__, 171 L. Ed. 2d at 662-73, 128 S. Ct. at 2802-12.

Looking to precedents covering the second amendment, the Court concluded that its holding that an individual right to self-defense was not foreclosed. In *United States v. Cruikshank*, 92 U.S. 542, 23 L. Ed. 588 (1876), *Presser v. Illinois*, 116 U.S. 252, 29 L. Ed. 615, 6 S. Ct. 580 (1886), and *Miller v. Texas*, 153 U.S. 535, 38 L. Ed. 812, 14 S. Ct. 874 (1894), the Court did not examine the meaning or scope of the second amendment, but held that the amendment could be infringed by Congress and that the states were free to restrict or protect the right under their police powers. *Heller*, __U.S. at__, 171 L. Ed. 2d at 674-75, 128 S. Ct. at

2812-13. In what has been cited as a telling piece of foreshadowing, the majority's discussion of *Cruikshank* includes a footnote where the majority states that the question of incorporation was not presented in the case, but adds that *Cruikshank* also held that the first amendment did not apply against the states without inquiry mandated by later cases. *Heller*, __U.S. at__ n.23, 171 L. Ed. 2d at 674 n.23, 128 S. Ct. at 2813 n.23.

Next, the majority found that *United States v. Miller*, 307 U.S. 174, 83 L. Ed. 1206, 59 S. Ct. 816 (1939), relied on heavily by the dissent, also did not foreclose its conclusion of an individual right. The *Miller* decision was the closest the Court had come to examining the scope of the second amendment when it determined that the second amendment right was a collective right that applied to weapons traditionally used by a well-regulated militia. The *Miller* Court found that, in the absence of evidence showing that a sawed-off shotgun bore a reasonable relationship to the preservation of the militia, there was no right to keep and bear that type of weapon. *Miller*, 307 U.S. at 178, 83 L. Ed. at 1209, 59 S. Ct. at 818. Therefore, based on the *Miller* Court's finding that this certain type of weapon could be freely regulated, the *Heller* Court found that *Miller* stood for the proposition that the right extended only to certain types of weapons. Despite a consensus of case law interpreting the right as being a collective one, the Court concluded that *Miller* did not find that the second amendment right was not an individual right. *Heller*, __U.S. at__, 171 L. Ed. 2d at 676, 128 S. Ct. at 2814-15.

Therefore, applying the original meaning analysis and the precedents, the Court held that the second amendment provides the individual right to bear arms typically possessed by law-abiding citizens for lawful purposes, such as self-defense. *Heller*, __U.S. at__, 171 L. Ed. 2d at

661-62, 677, 128 S. Ct. at 2801-02, 2815-16. The court concluded that the ban at issue amounted to a prohibition of an entire class of arms that was "overwhelmingly" accepted and properly utilized for self-defense purposes by the general population. *Heller*, __U.S. at__, 171 L. Ed. 2d at 679, 128 S. Ct. at 2817. As such, the District of Columbia's ban was found unconstitutional. *Heller*, __U.S. at__, 171 L. Ed. 2d at 679-84, 128 S. Ct. at 2817-2822.

It is important to note that the Court explicitly understood and stated that this was the Court's first in-depth analysis of the second amendment and that "one should not expect it to clarify the entire field." *Heller*, __U.S. at__, 171 L. Ed. 2d at 683, 128 S. Ct. at 2821. Along those lines, the opinion allowed that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by [a nonexhaustive list of categories such as] felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Heller*, __U.S. at__, 171 L. Ed. 2d at 678, 128 S. Ct. at 2816-17. Also, as noted above, in footnote 23, the Court noted that the incorporation question was not at issue and it did not disturb *Cruikshank*, *Presser*, or *Miller v. Texas*. Finally, the Court stated in footnote 27 that all gun bans would easily pass the rational basis test. *Heller*, __U.S. at__ n.27, 171 L. Ed. 2d at 679 n.27, 128 S. Ct. at 2817 n.27. However, it also declined to enumerate any standard for the review of whether gun control legislation is unconstitutional. *Heller*, __U.S. at__, 171 L. Ed. 2d at 682-83, 128 S. Ct. at 2821. These matters were clearly left for future, and certain, litigation. *Heller*, __U.S. at__, 171 L. Ed. 2d at 683, 128 S. Ct. at 2821.

B. The Scope of *Heller* and the Incorporation Doctrine

Accordingly, on its own, the holding in *Heller* does not support plaintiffs' argument that Cook County may not violate their second amendment rights by banning assault weapons. *Heller* involved a regulation by the District of Columbia, which is ultimately controlled by Congress and not a sovereign entity like the states. Plaintiffs argue that "*Heller* clearly enunciates the 'fundamental right' to keep and bear arms," and consequently, statutes restricting that right are subject to strict scrutiny review. Citing *Heller*, __U.S. at__, 171 L. Ed. 2d at 651, 657, 128 S. Ct. at 2791, 2797. While both cited pages refer to the right as an "individual right," neither page uses the word "fundamental." Further, as defendants argue, *Heller* specifically refused to make a declaration that the right to keep and bear arms is subject to strict scrutiny review. Therefore, defendants argue that the assault weapons ban at issue falls within the allowable restrictions the *Heller* majority conceded were constitutional and that incorporation is not only improper, but would not invalidate the ban.

As to which firearms are protected by the second amendment, the *Heller* majority said: "The 18th-century meaning [of 'arms'] is no different than the meaning today ***.

> The term was applied, then as now, to weapons that were not specifically designed for military use and were not employed in a military capacity.
>
> Just as the First Amendment protects modern forms of communications, *e.g. Reno v. American Civil Liberties Union*, 521 U.S. 844, 849[, 138 L. Ed. 2d 874, 883, 117 S. Ct. 2329, 2334] (1997), and the Fourth Amendment applies to modern forms of search, *e.g. Kyllo v. United States*, 533 U.S. 27, 35-36[, 150 L. Ed. 2d 94, 103, 121 S. Ct. 2038, 2044] (2001), the Second Amendment extends,

prima facia, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller*, __U.S. at__, 171 L. Ed. 2d at 651, 128 S. Ct. at 2791-92.

The Court further explained:

"We therefore read *Miller* to say only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns. ***

***

We also recognize another important limitation on the right to keep and carry arms. *Miller* said, as we have explained, that the sorts of weapons protected were those 'in common use at the time.' " *Heller*, __U.S. at__, 171 L. Ed. 2d at 677-78, 128 S. Ct. at 2815-17, quoting *Miller*, 307 U.S. at 179, 83 L. Ed. 2d at 1209, 59 S. Ct. at 818.

Finally, the Court noted that "It may be objected that if weapons that are most useful in military service--M-16 rifles and the like--may be banned, then the Second Amendment right is completely detached from the prefatory clause." *Heller*, __U.S. at__, 171 L. Ed. 2d at 679, 128 S. Ct. at 2817. We need not reach whether the restrictions recognized by *Heller* apply to the county ordinance at issue because we find that *Heller* does not support plaintiffs' argument that the second amendment is incorporated to be applicable to the states through the fourteenth amendment.

While, as noted above, the *Heller* majority implied that the clock is ticking on the question of whether the second amendment applies to the states through incorporation, it explicitly refused to overrule precedent on that issue. This issue of incorporation has been covered by a host of federal courts that were faced with challenges to gun control measures immediately following *Heller*. Most recently, the Seventh Circuit Court of Appeals considered and rejected the argument that the second amendment must be incorporated into the fourteenth amendment and applied to the states. *National Rifle Ass'n of America, Inc. v. City of Chicago*, 567 F.3d 856 (2009) (*NRA*).

In *NRA*, the plaintiffs challenged the City of Chicago's and Village of Oak Park's handgun bans as unconstitutional under *Heller*. The district court dismissed the complaints on the ground that *Heller* involved a law enacted under the authority of the federal government, not a subordinate of a state. *NRA*, 567 F.3d at 857. The Seventh Circuit affirmed, noting that despite the majority's hint, and building scholarship, the holdings of *Cruikshank*, *Presser*, and *Miller* may be ripe for review as "fossils," but the founding principle for the cases announced in the *Slaughter-House Cases* (*Butcher's Benevolent Ass'n v. Crescent City Live Stock Landing & Slaughter-House Co.*, 83 U.S. 36, 21 L. Ed. 394 (1873)), remains controlling precedent. *NRA*, 567 F.3d at 857-58. The court stated that the Supreme Court has maintained consistency in holding that the lower courts should follow directly controlling cases and leave to the Supreme Court the prerogative of overruling its own decisions. *NRA*, 567 F.3d at 857-58. Specifically, the *NRA* court stated:

> "Repeatedly, in decisions that no one thinks fossilized, the Justices have directed trial and appellate judges to implement the Supreme Court's holdings

even if the reasoning in later opinions has undermined their rationale. 'If a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions.' *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484, 104 L. Ed. 2d 526, 536, 109 S. Ct. 1917, 1921-22 (1989). *Cruikshank, Presser*, and *Miller* have 'direct application in [this] case.' Plaintiffs say that a decision of the Supreme Court has 'direct application' only if the opinion expressly considers the line of argument that has been offered to support a different approach. Yet few opinions address the ground that later opinions deem sufficient to reach a different result. If a court of appeals could disregard a decision of the Supreme Court by identifying, and accepting, one or another contention not expressly addressed by the Justices, the Court's decisions could be circumvented with ease. They would bind only judges too dim-witted to come up with a novel argument." *NRA*, 567 F.3d at 857-58.

The *NRA* court noted that in *Quilici v. Village of Morton Grove*, 695 F.2d 261 (7th Cir. 1982), it followed the approach that the second amendment did not apply to the states and that the Second Circuit followed that decision in *Maloney v. Cuomo*, 554 F.3d 56 (2d Cir. 2009), a post-*Heller* decision. Accordingly, the court rejected the Ninth Circuit's decision to ignore these cases and apply the "selective incorporation" approach followed in *Nordyke v. King*, 563 F.3d 439 (9th Cir. 2009). In *Nordyke*, the Ninth Circuit conducted its own review of the history of the second amendment and determined that the right enunciated in *Heller* is a fundamental right. Following *Duncan v. Louisiana*, 391 U.S. 145, 20 L. Ed. 2d 491, 88 S. Ct. 1444 (1968) (extending the right to a jury trial in criminal cases to the States), the *Nordyke* court found the right subject to incorporation under the due process clause of the fourteenth amendment. *Nordyke*, 563 F.3d at 447-57. Even with this finding, the *Nordyke* court found the Alameda County ordinance banning firearms and ammunition on municipal property was not a meaningful impediment to the plaintiffs' rights, but a permissible restriction as discussed in *Heller*. *Nordyke*, 563 F.3d at 460.

We agree with the *NRA* court's holding and find that plaintiffs' argument here also must fail. *Heller* does not stand for the creation of a broad fundamental right. The *Heller* Court explicitly refused to address the incorporation issue. As the *NRA* court held, if the *Slaughter-House Cases* and following line of cases are to be overruled, that is a matter for the United States Supreme Court, and not this court, to undertake.

C. Effect of *Heller* on Cases Relied on by Trial Court

Plaintiffs also assert that *Heller* overruled Illinois and federal precedent relied on by the trial court in dismissing the complaint because it found the second amendment right was a fundamental right. More specifically, plaintiffs attack *Quilici* and *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483 (1984). In both of these cases, the plaintiffs unsuccessfully challenged an ordinance of the Village of Morton Grove banning handguns. Based on the analysis of *Heller* above, these arguments must also fail.

The *Quilici* court held that the ordinance was properly directed at protecting the safety of residents and a valid exercise of police power under the Illinois Constitution. *Quilici*, 695 F.2d at 269. The court also found that, despite *Presser*'s tenuous support, it remained valid precedent and the second amendment did not apply to the states. *Quilici*, 695 F.2d at 270. In *dicta*, "for the sake of completeness," the court commented that, under the plain meaning of the second amendment and the holding in *Miller*, the amendment is "inextricably connected" to the maintenance of a well-regulated militia and the right to keep and bear handguns was not guaranteed. *Quilici*, 695 F.2d at 270-71.

Kalodimos involved consideration of the meaning and scope of the Illinois constitutional provision concerning the right to bear arms. Our supreme court considered whether the handgun ban was permissible under the home rule power and police power. *Kalodimos*, 103 Ill. 2d at 490. The Illinois Constitution provides: "[s]ubject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed." Ill. Const. 1970, art. I, §22. The court noted that discrepancies with the second amendment were purposefully intended to broaden the scope of a collective right, as widely understood under *Miller*, applicable only to traditional militia arms to an "*individual* right covering a wider variety of arms." (Emphasis added.) *Kalodimos*, 103 Ill. 2d at 491. Consequently, while *Heller* was the first pronouncement by the United States Supreme Court that the right to keep and bear arms was an individual right, this has been the law in Illinois since *Kalodimos*.

However, this expanded right was explicitly limited in the Illinois Constitution by the inclusion of "the police power." Ill. Const. 1970, art. I, §22. The *Kalodimos* court concurred with *Quilici* in finding that the ban on a discrete category of firearms was a reasonable response to the stated public welfare concerns. *Kalodimos*, 103 Ill. 2d at 498. The court also noted that, unlike the design of the first amendment to encourage the propagation and dissemination of views and ideas, the second amendment was designed not to encourage or discourage gun possession, but simply to protect from the confiscation of all arms. *Kalodimos*, 103 Ill. 2d at 499.

Plaintiffs again argue that the *Heller* Court determined that the second amendment affords a fundamental right and, as such, effectively overrules *Kalodimos* and *Quilici*. Plaintiffs argue that both of these cases allowed for the destruction and erosion of that right and merely employed rational basis scrutiny to the ban. They offer that it is obvious that if *Heller* preceded these cases, the courts would have utilized a strict scrutiny test, under which the ban "fails miserably." Again, this argument is dependent upon plaintiffs' overbroad reading of *Heller* and application of case law involving fundamental rights.

As we held above, *Heller* did not announce that the second amendment right is a fundamental right. We agree with the *NRA* court that only the Supreme Court may change its holdings. Similarly, our supreme court recently held, "we note that the one-act, one-crime doctrine was established by this court in [*People v.*] *King* [, 66 Ill. 2d 551 (1977)]. The appellate court lacks authority to overrule decisions of this court, which are binding on all lower courts. See *Rickey v. Chicago Transit Authority*, 98 Ill. 2d 546, 551-52 (1983). Thus, presentation of an argument by the State in the appellate court urging the abandonment of the one-act, one-crime doctrine would have been futile." *People v. Artis*, 232 Ill. 2d 156, 164 (2009). Accordingly, we do not hold that *Heller* overruled *Kalodimos*. *Kalodimos* remains the law in Illinois and the individual right to keep and bear arms in Illinois is subject to the police power.

D. Vagueness, Overbreadth and Due Process

Plaintiffs next argue that the Ordinance is so vague and overbroad that it must be stricken generally and also as violating due process. Plaintiffs contend that the language of the Ordinance is overbroad and it reaches protected categories as announced in *Heller*. Plaintiffs contend that no evidence was provided to support defendants' claim that firearms for hunting, recreational use and protection were allowed. Conversely, plaintiffs argue that their pleadings fully demonstrated that commonly used firearms were banned and that the Ordinance violates due process due to being unconstitutionally vague. Plaintiffs argue that the trial court's citation to cases defining the overbreadth doctrine as applying only to protected rights are meaningless because of *Heller*. Plaintiffs note that these arguments are very similar, in fact, intertwined, but dispute the trial court's statement that they are simply the same argument.

The overbreadth doctrine was judicially created as an extraordinary tool to protect first amendment rights from the chilling effect of an overbroad statute. *City of Chicago v. PoohBah Enterprises, Inc.*, 224 Ill. 2d 390, 436 (2006). Under this doctrine, the challenger to a statute has the burden of proving that substantial overbreadth exists based on the text of that particular law and facts as well as proving that a substantial amount of protected conduct is impacted. *PoohBah*, 224 Ill. 2d at 437, 442. However, as defendants argue, even if plaintiffs could prove this, Illinois courts have not recognized this doctrine outside of the first amendment context. *People v. Greco*, 204 Ill. 2d 400, 407 (2003). Further, plaintiffs' assertion that it should be applied in this case in light of *Heller* also fails. As described above, *Heller* did not pronounce the second amendment right as fundamental. Accordingly, plaintiffs' overbreadth argument fails as the second amendment right does not enjoy the same protection provided the first amendment.

Plaintiffs also argue that the Ordinance is so vague, arbitrary, and capricious in its content and enforcement that it violates due process. Plaintiffs assert that the Ordinance may be found impermissibly vague, even if it does not reach protected conduct, if it does not establish sufficient enforcement standards. *Kolender v. Lawson*, 461 U.S. 352, 358, 75 L. Ed. 2d 903, 909, 103 S. Ct. 1855, 1858 (1983). Plaintiffs claim that they established before the trial court that the list of banned firearms and other definitions are vague and, as a result, they cannot determine whether certain firearms are banned. They contend that the inclusion of "copies" or "duplicates" does not provide any clarity or eliminate the vagueness of the Ordinance, but adds to the confusion as to what firearms are actually banned. Plaintiffs also argue that the Ordinance lacks guidelines for enforcement. Therefore, under plaintiffs' theory that *Heller* requires that the strict scrutiny test and not the rational basis test must be applied, they conclude that the trial court erred in applying case law under the rational basis analysis in dismissing their challenge of the Ordinance.

Defendants argue that laws are presumed to be constitutional and a reviewing court must construe laws to affirm constitutionality whenever reasonably possible. *People v. Einoder*, 209 Ill. 2d 443, 450 (2004). They add that a statute may be unconstitutional as too vague only if it fails to provide a person of ordinary intelligence a reasonable opportunity to understand what it prohibits or if it allows arbitrary and discriminatory enforcement. *PoohBah*, 224 Ill. 2d at 442. Plaintiffs argue that the ordinance is void on its face. As our supreme court has explained, "a statute is normally not unconstitutional on its face unless it provides no standard of conduct at all, *i.e.*, the ambiguity is so pervasive that it is incapable of any valid application. [Citations.] Facial challenges to legislation are generally disfavored." *Pooh Bah*, 224 Ill. 2d at 442.

In the instant case, the trial court reviewed and detailed the Ordinance's specific list of weapons and detailed definitions of what constitutes an assault weapon and these constituted objective criteria for enforcement. Consequently, we agree with defendants that plaintiffs did not state a cause of action to support a facial due process challenge of the Ordinance. We agree with the trial court that the terms "copies" and "duplicates" in the Ordinance are not vague, but have plain and ordinary meanings. Furthermore, the important consideration on a vagueness review is whether the Ordinance provided specific standards such that a person of ordinary intelligence could understand the prohibitions and it could be properly enforced. Defendants admit that the Ordinance is broadly drawn, and it is, but that does not make it impermissibly vague. While there may not be perfect clarity in the wording, the broad language serves the legitimate purpose of protecting the public. Because *Heller* did not mandate strict scrutiny review, or any level of review, the trial court properly found that plaintiffs did not state a cause of action based on the plain meaning and adequate detail provided in the Ordinance.

E. Equal Protection Claim

Plaintiffs next contend that the Ordinance violates the equal protection clause of the fourteenth amendment. Plaintiffs argue that the Ordinance treats similarly situated persons differently based on the type of firearms owned. Plaintiffs conclude that, because the second amendment right is a fundamental right, examination of the claim that disparate treatment of similarly situated persons requires more than the rational basis analysis utilized by the trial court.

Citing *Nordlinger v. Hahn*, 505 U.S. 1, 10, 120 L. Ed. 2d 1, 12, 112 S. Ct. 2326, 2331

(1992), the trial court noted that not all classifications are barred by the equal protection clause. Rather, the equal protection clause "simply keeps governmental decision[-]makers from treating differently persons who are in all relevant respects alike." *Nordlinger*, 505 U.S. at 10, 120 L. Ed. 2d at 12, 112 S. Ct. at 2331. Also, if a fundamental right or suspect class is not involved, the classification only need further a legitimate state interest. *People v. Farmer*, 165 Ill. 2d 194, 207-08 (1995). Suspect classifications include race, national origin, sex and illegitimacy. *People v. Botruff*, 212 Ill. 2d 166, 176-77 (2004). Assault weapons owners do not comprise a suspect classification.

While plaintiffs are correct that the second amendment is an individual right, the regulation of these particular firearms clearly furthers a legitimate government interest under *Kalodimos*. The Ordinance provides a nonexhaustive list of weapons, and the copies or duplicates of those weapons that are banned. Importantly, the Ordinance also provides further specific guidelines and attributes to determine what types of weapons are covered. Accordingly, we reject plaintiffs' contention that we should use the strict scrutiny test in this case. Considering plaintiffs' complete failure to allege any facts that two owners of similar firearms would be treated differently under the rational basis test, the trial court properly dismissed plaintiffs' equal protection claim.

F. Waiver

Finally, the trial court also considered in detail plaintiffs' argument that the Ordinance failed to provide a *scienter* requirement and whether the Ordinance violates article I, section 22, of the Illinois Constitution. Defendants argue that plaintiffs forfeited these arguments on appeal for failing to raise the issues under Rule 341(h)(7). 210 Ill. 2d R.341(h)(7). Plaintiffs respond that they appealed the entire dismissal order, the trial court discussed the *scienter* issue extensively for four pages and they fully argued the Illinois Constitution before the trial court. Plaintiffs claim that they "clearly addressed" these issues by arguing that *Kalodimos* was overruled, citing to the Illinois Constitution in the appendix to their brief, and asserting the trial court misconstrued their arguments on the *scienter* issue.

Plaintiffs do not raise these issues on their own merits or provide authority to support their arguments. We will not conduct research or provide arguments for parties. Failure to establish the facts and authority for an argument supports a finding that an issue is waived under Rule 341. *Feret v. Schillerstrom*, 363 Ill. App. 3d 534, 541 (2006). Plaintiffs' only mention of our constitution is with respect to the argument involving *Kalodimos* as addressed above. Likewise, plaintiffs' only mention of this issue is limited at best. In one sentence on page 14 of their brief, they claim that the trial court "clearly misconstrued Plaintiffs['] arguments regarding *Staples v. U.S.*, 511 U.S. 600 (1993), as it distinguished *U.S. v. Freed*, 401 U.S. 601 (1971)," followed by citation to the amended complaint and court order in the record. No discussion of the issue or these cases or any analysis to support the contention that the court erred is provided. Plaintiffs' one-sentence statement is inadequate, and their failure to provide support or analysis of these issues constitutes waiver pursuant to the rules of our court.

III. CONCLUSION

For the foregoing reasons, the order of the trial court is affirmed.

Affirmed.

QUINN and COLEMAN, JJ., concur.

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No. 08-1202

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Matthew D. Wilson, et al. **Plaintiffs-Appellants** **vs.** **Cook County, a public body and corporate, et al.** **Defendants-Appellees**	**Appeal from the Circuit Court of Cook County, Il., County Department, Chancery Division No. 07 CH 04848 (Cal. 5) The Honorable Mary K. Rochford, Judge Presiding**

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Certification of Compliance with Supreme Court Rule 342

The undersigned, one of Plaintiffs' attorneys, certifies that this SEPARATE APPENDIX conforms with Supreme Court Rule 342.

____

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