

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

**Matthew D. Wilson, Troy Edhlund ,  
and Joseph Messineo**

**Plaintiffs-Appellants**

**vs.**

**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**

**Appeal from the  
Circuit Court  
of Cook County, Illinois,  
County Department  
Chancery Division  
07 CH 04848**

**Calendar 5**

**The Honorable  
Mary K. Rochford  
Judge President**

**STEVEN M. RAVID  
CLERK OF COURT**

**2010 DEC -1 AM 10:10**

**FILED APPELLATE COURT  
1ST DIST.**

**SEPARATE APPENDIX TO SUPPLEMENTAL BRIEF OF  
PLAINTIFFS-APPELLANTS**

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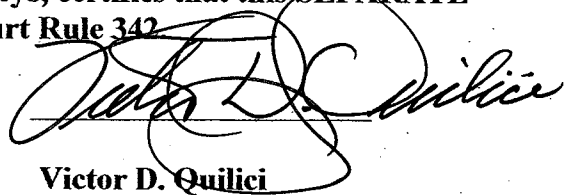
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# SEPARATE APPENDIX

**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**

A handwritten signature in black ink, appearing to read "Victor D. Quilici", is written over a horizontal line.

**Victor D. Quilici**

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**A**

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

**A-I**

**No. 1-08-1202**

**MATTHEW D. WILSON, TROY EDHLUND,  
and JOSEPH MESSINEO,**

Plaintiffs-Appellants,

**V.**

**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.**

**Appeal from the Circuit Court  
of Cook County, Illinois.**

No. 07 CH 4848

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

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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

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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.

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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 2006 Ordinance also included additional prefatory language to support the ban, stating that it was necessary in order 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. 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).

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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."

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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 disassembled 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 facie*, 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

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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

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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.

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*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

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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

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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

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of these issues constitutes waiver pursuant to the rules of our court.

Complete  
TITLE  
of Case

### III. CONCLUSION

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

Affirmed.

QUINN and COLEMAN, JJ., concur.

#### REPORTER OF DECISIONS – ILLINOIS APPELLATE COURT

(Front Sheet to be Attached to Each Case)

MATTHEW D. WILSON, TROY EDHLUND, and JOSEPH MESSINEO,

Plaintiffs-

Docket No.

Appellants,

COURT

v.

Opinion  
Filed

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,

JUSTICES

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.

APPEAL from  
the Circuit Ct. of  
Cook County,  
Criminal Div.

Nos. 1-08-1202

Appellate Court of Illinois  
First District, THIRD Division

August 19, 2009

(Give month, day and year)

For  
APPELLANTS,  
John Doe, of  
Chicago.

PRESIDING JUSTICE MURPHY delivered the opinion of the court:

Quinn and Coleman, JJ.,

concur

[s]

Lower Court and Trial Judge(s) in form indicated in the margin:

The Honorable

Mary K. Rochford

, Judge Presiding.

For  
APPELLEES,  
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of Chicago,  
Joseph Brown,  
(of Counsel)

Indicate if attorney represents APPELLANTS or APPELLEES and include  
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APPELLATE COURT  
OPINION OF 8/19/09

“CORRETED COPY”

[Mailed by App.Ct. Clerk on 10/9/09  
See attachment copy of postmarked  
envelope at A-II(a)].

A-II

**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.**

**corrected copy**

**MATTHEW D. WILSON, TROY EDHLUND,  
and JOSEPH MESSINEO,**

**Plaintiffs-Appellants,**

V.

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.**

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

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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

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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;

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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

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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 disassembled 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

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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

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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 facie, 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

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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

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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

No. 1-08-1202

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.

**APPELLATE COURT ORDER**  
**DENYING REHEARING**

**A-II(a)**

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

MATTHEW D. WILSON, TROY EDHLUND, and JOSEPH MESSINEO,)

Plaintiffs-Appellants, )

v. )

No. 08-1202

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. )

**ORDER**

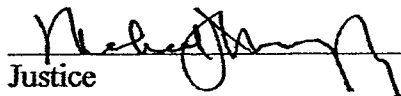
This cause coming to be heard on Appellant's Petition for Rehearing, and the court  
being fully advised in the premises,

IT IS HEREBY ORDERED that the Petition for Rehearing is DENIED.

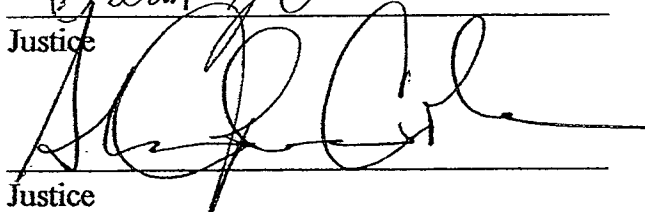
**ORDER ENTERED**

SEP 25 2009

APPELLATE COURT, FIRST DISTRICT

  
Justice

  
Justice

  
Justice

AII-(a)

**NOTICE OF FILING WITH  
ILLINOIS SUPREME COURT**

**A-II(b)**



SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING

SPRINGFIELD 62701

JULEANN HORNYAK

CLERK OF THE COURT

(217) 782-2035

TELECOMMUNICATIONS DEVICE

FOR THE DEAF

(217) 524-8132

FIRST DISTRICT OFFICE

20TH FLOOR

160 N. LASALLE ST.

CHICAGO 60601

(312) 793-1332

October 20, 2009

TELECOMMUNICATIONS DEVICE

FOR THE DEAF

(312) 793-6185

Mr. Victor D. Quilici

Attorney at Law

Box 428

River Grove, IL 60171

In Re: Wilson v. Cook County  
109314 (1-08-1202)

Attn:

This office has received and filed as of October 20, 2009  
the following in the above entitled cause:

- ☒ Petition for Leave to Appeal.
- ☐ Motion for Extension of Time to File Petition.
- ☐ Motion to File Petition Instantly.
- ☐ Notice of Appeal (docketing statement due within 14 days).
- ☐ Motion for Direct Appeal (Rule 302(b)).
- ☐ Motion for Supervisory Order (Rule 383).
- ☐ Motion for Mandamus (Rule 381).
- ☐ Motion for Consolidation (Rule 384).

Please include the Supreme Court case number in all  
correspondence and documents.

ALL(b)

**ILLINOIS SUPREME COURT  
SUPERVISORY ORDER OF 9/29/10**

**A-II-(c)**

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)

AII-(c)-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)

A-III

**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.

(SEAL)

Attest:

DAVID ORR, County Clerk

  
BOBBIE L. STEELE, President  
Cook County Board of Commissioners

APPROVED AS AMENDED  
BY THE BOARD OF COOK COUNTY COMMISSIONERS

NOV 14 2006

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COM

**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.

**A-III(a)**

## **DIVISION 4. BLAIR HOLT ASSAULT WEAPONS BAN\***

**\*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.

### **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) 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:

(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.

CONSTITUTIONAL AMENDMENTS,  
AND STATUTES

A-III(b)

## 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,

### Fourteenth Amendment to the United States Constitution

Text

“ *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.*

”

Amendment XIV in the  
National Archives

### 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

## **SUPPLEMENT 1**

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.)

**Illinois Code of Civil Procedure. 735 ILCS 5/2-615**

**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.

APPELLATE MAIN BRIEF  
EXCERPT, pp. 8,9

A-IV

The subject amended Ordinance is set forth in the Record at R.C-90 and at R.C-367. [To clarify amended ordinance references, Plaintiffs have shown its paragraph numbers as reflected in the certified copy provided by the Cook County Clerk, David Orr, thus reflected in all their pleadings. Since the ordinance was re-named "Blair Holt Assault Weapons Ban," and paragraphs re-numbered (Amendment to title of Div. 4, Assault Weapons, 6/19/07), Plaintiffs have shown said re-numbered paragraphs in brackets—anticipating the County Defendants will continue to reference same under the re-numbered scheme. See also, Appendix A-23 and A-28.

PARTIES: The parties are citizens of Illinois, and all reside in the county of Cook.

Troy Edhlund is a citizen/resident of Rolling Meadows, in Cook County, Illinois, and is the owner of several firearms magazines and gun parts which he legally purchased, including: (a.) M-1 Carbine, which is a semi-automatic rifle with a detachable magazine; (b.) M-1 Garand with a fixed magazine; c.) Smith & Wesson P99 pistol; (d.) French MAS 49/56 semi-automatic rifle; and (e.) Romak III Romanian semi-automatic 8 mm. rifle (R.C-342-343). In addition to the firearms that Troy Edhlund owns, he desired to legally purchase additional firearms, parts and accessories, including some for the firearms he now owns, but refrained from doing so because of his inability to determine with certainty if the subject amended ordinance in fact bans both the firearms he owns and the parts and accessories (R.C-342).

Troy Edhlund is a law-abiding citizen who has never been convicted of a crime, 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 has a FOID card issued per the Illinois FOID ACT, 430 ILCS 65/1 et. seq. (R.C-343); A-19.

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, and a S&W 22A pistol. In addition to the firearms that Plaintiff Matthew D. Wilson owns, he desired to legally purchase additional firearms, parts and accessories, including some for the firearms he now owns, but refrained from doing so because he was unable to determine with certainty if the subject amended ordinance in fact bans both his firearms and the parts and accessories (R.C-343, 344).

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 FOID Act, 430 ILCS 65/1 et. seq. (R.C-344; A-19).

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: an M-1 Carbine and an M-1 Garand with a fixed magazine. In addition to the firearms that Plaintiff Joseph Messineo owns, he desired to legally purchase additional firearms, parts and accessories, including some for the firearms he now owns, but refrained from doing so because he was unable to determine with certainty if the subject amended ordinance bans both his firearm and the parts and accessories (R.C-344-345). Joseph Messineo 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 reenactments with a re-enactment club of which he is a member, and for target shooting. He has a FOID card issued by the State Police pursuant to FOID Act, 430 ILCS 65/1 et.seq. (R.C-345).

PLAINTIFFS' PETITION  
FOR REHEARING

A-V

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

Matthew D. Wilson, Troy Edhlund,  
and Joseph Messineo

Plaintiffs-Appellants

vs.

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

Appeal from the  
Circuit Court  
of Cook County, Illinois,  
County Department  
Chancery Division  
No. 07 CH 04848

Calendar 5

The Honorable  
Mary K. Rochford,  
Judge Presiding

PLAINTIFFS-APPELLANTS PETITION FOR REHEARING

Co-Counsel:

|                   |                  |                     |                        |
|-------------------|------------------|---------------------|------------------------|
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| Atty # 20060      | Atty # 38198     | Atty # 43306        | Atty # 22333           |

ORAL ARGUMENT REQUESTED

IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

Matthew D. Wilson, Troy Edhlund,  
and Joseph Messineo

Plaintiffs/Appellants

Appeal from the  
Circuit Court of  
of Cook County, Illinois,  
County department,  
Chancery Division  
No. 07 CH 04848

vs.

Cook County, a public body and corporate,  
et al.

Defendants/Appellees

Calendar 5  
The Honorable  
Mary K. Rochford,  
Judge Presiding

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### JURISDICTION

Pursuant to Supreme Court Rule 367, Plaintiffs/Appellants respectfully Petition this Honorable Court for Rehearing in this matter. On August 19, 2009, a Tribunal of the Third Division of this Court entered its Judgment affirming the decision of the Circuit Court of Cook County, Chancery Division, in favor of the Defendants/Appellees. This Petition is filed within 21 days of the entry of the Judgment in this matter.

### NATURE OF CASE

The Plaintiffs are citizens and residents of the County of Cook, State of Illinois.

Pursuant to an amendment of the Cook County Deadly Weapons Dealer Control Ordinance (since re-named “Blair Holt Assault Weapons Ban”), enacted on November 14, 2006, each of the said parties were subject to arrest and prosecution for the possession of various firearms and/or magazines they owned, and possessed within Cook County, and thereby subject to fines and imprisonment. See amended ordinance in Plaintiffs main Brief at R. C-90; R. C-367; A-23 and A-28.

On February 21, 2007, Plaintiffs filed suit for Declaratory Judgment and

Injunctive Relief in the Chancery Division of the Circuit Court of Cook County, Illinois, against the County of Cook, its County Board members and the Sheriff of Cook County, Thomas Dart, in his official capacity (R. C-03). Plaintiffs filed an Emergency Motion for Injunctive Relief on March 1, 2007 (R.C-75), and on March 28, 2007, the Defendants filed a 2-619.1 Motion pursuant to the Illinois Code of Civil Procedure, 737 ILCS 2-619 (R.C-228). After briefs were filed by the parties, and oral argument heard on 6/8/07 (R. 02), the Honorable Philip Bronstein entered an Order on 8/17/07 dismissing the initial Complaint with leave to amend (R. C-333). On September 26, 2007, Plaintiffs filed an Amended Complaint (R.C-340). On November 27, 2007, the Defendants filed a 2-619 Motion to Dismiss (R.C-406), and on December 3, 2007, Plaintiffs filed a Motion to Dismiss the 2-619 Motion on technical grounds (R. C-412). On December 6, 2007, the Honorable Philip L. Bronstein entered an Order clarifying the Defendants' Motion as mislabeled and in fact a 2-615 motion (R. C-432); A-18. Shortly thereafter, Judge Bronstein retired from the bench. Subsequent to briefs filed by the parties, and oral argument heard on April 1, 2008 ( R. 53), on April 29, 2008, Her Honor, Mary K. Rochford entered an Order dismissing the Amended Complaint with prejudice (R. C-489). It is from the 4/29/08 Order of Dismissal that the Plaintiffs appeal. Brief Appendix (A-1): On 5/14/08, Motion to Stay enforcement was filed by Plaintiffs-Appellants ( A-40 ), responded to by Defendants on 6/3/08 (A-49), and denied by this Court on June 4, 2008 (A-61). This Court heard oral argument on June 17, 2009, and on August 19, 1009, entered its Opinion affirming the decision of the lower court for the Defendants. Plaintiffs filed this Petition for Reharing within 21 days of the Judgment. Note: All references to the Appendix relate to those attached to Plaintiffs' main Brief.

## STATEMENT OF 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"). The Amendment sets forth therein its own definitions of "Assault Weapons" and makes 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." R.C-370. 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." R.C-371. 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." R.C-371.

The Ordinance provides further for the destruction of confiscated firearms upon direction of the Sheriff if he ascertains that same is not required for evidence (R.C-371).

The subject amended Ordinance is set forth in the Record at R.C-90 and at R.C-367.

[To clarify amended ordinance references, Plaintiffs have shown its paragraph numbers in their Min Brief as reflected in the certified copy provided by the Cook County Clerk, David Orr, thus reflected in all their pleadings. Since the ordinance was re-named "Blair Holt Assault Weapons Ban," and paragraphs re-numbered (Amendment to title of Div. 4, Assault Weapons, 6/19/07), Plaintiffs have shown said re-numbered paragraphs in brackets—anticipating the County Defendants will continue to reference same under the re-numbered scheme.]

PARTIES: The plaintiffs are citizens of Illinois, and all reside in the county of Cook.

Troy Edhlund is a citizen/resident of Rolling Meadows, in Cook County, Illinois, and is the owner of several firearms magazines and gun parts which he legally purchased, including: (a.) M-1 Carbine, which is a semi-automatic rifle with a detachable magazine; (b.) M-1 Garand with a fixed magazine; c.) Smith & Wesson P99 pistol; (d.) French MAS 49/56 semi-automatic rifle; and (e.) Romak III Romanian semi-automatic 8 mm. rifle (R.C-342-343). In addition to the firearms that Troy Edhlund owns, he desired to legally purchase additional firearms, parts and accessories, including some for the firearms he now owns, but refrained from doing so because of his inability to determine with certainty if the subject amended ordinance in fact bans both the firearms he owns and the parts and accessories (R.C-342).

Troy Edhlund is a law-abiding citizen who has never been convicted of a crime, 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 has a FOID card issued per the Illinois FOID ACT, 430 ILCS 65/1 et. seq. (R.C-343); A-19.

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, and a S&W 22A pistol. In addition to the firearms that Plaintiff Matthew D. Wilson owns, he desired to legally purchase additional firearms, parts and accessories, including some for the firearms he now owns, but refrained from doing so because he was unable to determine with certainty if the subject amended ordinance in fact bans both his firearms and the parts and accessories (R.C-343, 344).

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 FOID Act, 430 ILCS 65/1 et. seq. (R.C-344; A-19).

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: an M-1 Carbine and an M-1 Garand with a fixed magazine. In addition to the firearms that Plaintiff Joseph Messineo owns, he desired to legally purchase additional firearms, parts and accessories, including some for the firearms he now owns, but refrained from doing so because he was unable to determine with certainty if the subject amended ordinance bans both his firearm and the parts and accessories (R.C-344-345). Joseph Messineo 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 reenactments with a re-enactment club of which he is a member, and for target shooting. He has a FOID card issued by the State Police pursuant to FOID Act, 430 ILCS 65/1 et.seq. (R.C-345).

## **ARGUMENT**

### **A. STANDARD OF REVIEW.**

The trial court's decision of a 2-615 motion is reviewed *de novo*, Lykowski v. Bergman, 299 Ill. App. 2d 157,162 (1998). A motion to dismiss under 2-615 of the Code attacks the legal sufficiency of a complaint, does not raise affirmative defenses, and alleges only defects on the face of the complaint, Bryson v. News America Publications, Inc., 174 Ill. 2d 77 (1996). The question on appeal from a 2-615 motion is whether the allegations in the complaint, when viewed in light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted, Lykowski at 162, 163. In ruling on a 2-615 motion to dismiss, the Court will construe pleadings liberally. Pfendler v. Anshe Emet Day School, 81 Ill. App. 3d 818, 821 ((1980). Exhibits attached to the complaint are part of the complaint and must be considered, Brock v. Anderson Road Ass'n, 287 Ill. App. 3d 16, 21 (1997). Additionally, the court may consider matters subject to judicial notice. Chicago v. American National Bank & Trust Co., 233 Ill. App. 3d 1031, 1038 (1992). All well pleaded facts are taken as true, and all reasonable inferences from those facts are drawn in favor of the plaintiff, Connick v. Suzuki Motors Co., 174 Ill. 2d 482, 490 (1996). Lastly, a plaintiff is not required to prove his case in the pleadings stage; rather, he must merely allege sufficient facts to state all the elements which are necessary to constitute his cause of action, Visvardis v. Ferleger, 375 Ill. App. 3d 719, 724 (2007)..

### **B. POINTS OVERLOOKED OR MISAPPREHENDED BY THE COURT**

**I. THIS COURT INCORRECTLY FOUND THAT THE 2006 AMENDMENT TO THE SUBJECT ORDINANCE ADDRESSED IN PLAINTIFFS' COMPLAINT CONTAINED A PREAMBLE NECESSITATING ITS PASSAGE.**

At page four (4) of its Opinion, the Court addressed the preamble contained in the original Ordinance dating back to 1993, and Ordinance preamble to amendments in 1994 and 1999, and then pointed out an alleged preamble to the 2006 amendment which contained the subject ordinance language attacked in the Plaintiffs' Complaint. That finding by this Court was totally erroneous, the preamble language stated in the Court's Opinion as noted was garnered from the 1999 amendment as found in Defendants' Appendix to its Brief ( A-30-31); C-393-394.

What makes this error so damaging to Plaintiffs' case is that the Court did not discover that Defendants Brief not only failed to include a copy of the subject Ordinance as amended November 14, 2006, and which was unchanged when Plaintiff's lawsuit was filed, but instead opted to exhibit it as re-numbered and re-named in 2007 (Blair Holt Assault Weapon Ban), and, in effect, this Court committed the same error that the lower Court Judge had when Plaintiffs pointed this out, but their arguments were ignored. Plaintiffs do not reargue their position on this point in accordance with the dictates of Supreme Court Rule 367, but find it necessary to elaborate to some extent since this Court also failed to address the "scienter" issue because of Plaintiffs short reference to their Complaint and to the Order of the lower Court which is addressed specifically below at Paragraph II.. Without rearguing, Plaintiffs ask this Tribunal to revisit the facts presented and arguments made at their Reply Brief, paragraph III, pages 4—5 regarding the Preambles, and reference thereto in their main Brief at p.16, where they also point out their oral argument on this point in the lower court at R. 77-79.

It would be unjust, indeed, if this Honorable Court would now consider the absence of a preamble to the Ordinance as amended in 2006 to be of little importance, especially in view of this Court's treatment of the rationale behind the passage of the Ordinance initially, and the County's rationale for the various amendments over the years. What impact or importance can be attached to findings by various studies done in 1993, 1994, or even 1999 when an Ordinance is amended in 2006 to such a magnitude as to include an expansion of banned weapons and the definitions, as well as application to both assault weapons and large capacity magazines? The answer should be obvious—that is, NONE. As Plaintiffs argued in the lower court, even if applying a "rational basis test" the Ordinance fails to pass muster as amended when there have been no current studies or

statistics cited to demonstrate its need to protect the health safety and welfare of the community, and Plaintiffs argued that the Defendants failed to demonstrate what it calls "assault weapons" were the firearms commonly used in crimes within the boundaries of Cook County (Oral argument recorded before this Court on June 17, 2009, and oral argument in lower Court. R. 77-79, addressed in Plaintiffs Main Brief at , p. 16).

**II. THIS COURT OVERLOOKED THE FACT THAT PLAINTIFFS SHORT REFERENCE TO SCIENTER IN THEIR MAIN BRIEF WAS SUPPORTED BY ARGUMENTS IN THE LOWER COURT, AND ARGUMENT BEFORE THIS TRIBUNAL, AND SHOULD NOT HAVE BEEN SET ASIDE PURSUANT TO SUPREME COURT RULE 341(h)(7).**

Although Plaintiffs admittedly stated their scienter position by short references, it was clear from the record, to which the Appellate Court had before it, that the lower court Judge had devoted almost one-fifth of his Opinion to Staples v. United States 511 U.S. 600 (1993), United States v. Freed, 401 U.S. 601 (1971) and the arguments of plaintiffs counsel regarding scienter—as pointed out to this Court in the short reference thereto—with page references, and the Plaintiffs argued this issue before the lower court ( R. 77—82; 130—132), and before this Court during oral argument (See recording of Oral Argument on June 17, 2009..

While Supreme Court Rule 341(e)(7)[now (h)(7)] has been strictly applied in many cases, the 1st District Appellate Court noted in Catalano v. Pechous, 69 Ill. App. 3d 797, 814 (1978):

**"[T]his rule is not jurisdictional and may be overridden by the need for a just result and uniform body of precedent," citing Hux v. Raben, 38 Ill. 2d 223,225 (1967) where our Supreme Court noted:**

**"There are limitations. '(A)n appellate court should not and will not, consider different theories, or new questions, if proof might have been offered to refute or overcome them had they been presented at the trial. (Citations omitted.)"**

Assuredly, Plaintiffs arguments regarding scienter were not offered as different theories or new questions, but were contained in their Amended Complaint, and in arguments before the lower court and before this Court, as noted above, and the Court's attention was surely drawn to it when viewing the lower Court's Opinion. Therefore,

this Court should have addressed the scienter issues in the interest of a just result. Time and again, over the years, Appellate Courts have not only addressed arguments brought by the parties as contained in their briefs, but have given credence to matters addressed in oral argument and shown in the record. As the Supreme Court noted in *Pechous* (supra):

**“Obviously, the matters in defendant’ *Pechous*’s post-opinion motion could have, yes, have been presented in the trial court or at the very latest before oral argument in this court.”**

Appellate Courts have gone so far as to address new matters brought before it in a Petition for Rehearing. The 1st District Appellate Court in *A.J. Maggio Co. v. Willis*, 316 Ill. App. 3d 1043, 1048 (2000), addressing an insurance subrogation matter had a party introduce a new argument for its position that a school never had a claim it could assign to the Plaintiff. First noting that Rule 341 (e)(7) applied to both appellants and appellees, the Court went on to say:

**Nevertheless, here, as elsewhere, the waiver rule is a limitation on the parties and *not* the courts. *People v. Walsh*, 101 Ill. App. 3d 1146, 1149 (1981). In this case we choose to proceed to the merits of the new issue. [Emphasis added].**

Arguing their position in the lower court, as set forth in the 1st Amended Complaint, at Count II (R.C. 340), the gist of Plaintiffs’ argument was that unlike in *Freed*, where the Court treated bazookas and hand-grenades as inherently dangerous weapons, as would be the case with a sawed-off shotgun barred under the Federal Firearms Act, that required no “*mens rea*” and would be known to the possessor as “deadly weapons,” the “firearms” covered in the Ordinance as amended could encompass any rifle, handgun or shotgun, not inherently dangerous as a sawed-off shotgun, and the onus attached to a prosecution for possessing an “assault weapon” would be no different than that if a person had been found guilty of a felony. (R. 127-130).

Again, the Staples’ court’s distinguishing of the *Freed* case was clearly argued by the Plaintiffs in the lower court and again before this Honorable Court, as cited above. Plaintiffs are not expecting the Court to do its research or to make its arguments, but, rather, in order to meet the ends of justice, that this Court revisit the matter by viewing

parts of the record noted herein clearly demonstrating the Plaintiffs treatment of the scienter issue.

**III. THIS COURT'S TREATMENT OF THE "FUNDAMENTAL RIGHT" ISSUE OVERLOOKED THE ALTERNATIVE ARGUMENTS RAISED IN PLAINTIFFS AMENDED COMPLAINT AND ARGUED IN ITS BRIEFS, INCLUDING DUE PROCESS VIOLATIONS.**

Plaintiffs cited *Kolender v. Lawson*, 461 U.S. 352 (1983) at page 16 of its main Brief, noting the failure of the ordinance to establish standards for its enforcement that were sufficient to guard against the "arbitrary deprivation of liberty interests." In their Amended Complaint, Plaintiffs set forth numerous examples of the vagueness permeating the subject amended ordinance as well as its overbroad features at Count I, pp. 1—17, Count V, pp. 21-22 (R.C.-340) and supplemented its well-pleaded facts with exhibits of various firearms, B through F ( R.C. 372—401).

This Court obviously overlooked these arguments and the references therein to pertinent Counts in the Plaintiffs Amended Complaint, not once referencing a single exhibit or findings specifically to the allegations made with particularity by Plaintiffs to certain vague language and features in the subject amended ordinance.

This Court singular treatment of City of Chicago v. Pooh Bah, 224 Ill. 2d 437 as the answer to all of Plaintiffs vagueness and overbreath challenges, buttressed with the findings in People v. Einoder, 209 Ill. 2d 443, ignore the specifics of the challenged portions of the subject amended ordinance which were attacked throughout Counts I and V, and factually bombarded in the Amended Complaint, as referenced in their Briefs, fails to address those issues. Also, the Court's references to Plaintiffs' "burden of proving that substantial overbreath exists based on the text of that particular law and facts, as well as proving that a substantial amount of protected conduct is impacted"(p. 16 of Opinion ) overlooks Plaintiffs' a basic element of a 2-615 motion that all well pleaded facts are taken as true, and all reasonable inferences from those facts are drawn in favor of the Plaintiffs, Connick v. Suzuki Motors Co., 174 Ill. 2d 482,490 (1996). A Plaintiff is not required to prove his case in the pleadings stage; rather he must merely allege

sufficient facts to state all the elements necessary to state his cause of action. *Visvardis v. Ferleger*, 375 Ill. App. 3d 719, 724 (2007).

#### **IV. THE COURT OVERLOOKED SEVERAL MATTERS WHEN ADDRESSING THE PLAINTIFFS' EQUAL RIGHTS ARGUMENTS.**

In discussing Plaintiffs' Equal Protection claim, the Illinois Appellate Court overlooked two things argued by Plaintiffs, first the specific reference to Plaintiffs' Amended Complaint, and second, two precedents directly on point. The Illinois Appellate Court's opinion on page 19 says,

**"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."**

But in fact, Plaintiffs' Reply Brief at page 5 cited exactly where in their Amended Complaint that they alleged the well pleaded facts regarding the Cook County Ordinance:

**"[It]violates the equal protection clause of the U.S. Constitution, as applied to the States by the 14<sup>th</sup> Amendment, by arbitrarily differentiating *between identical situated persons* by banning specifically listed assault weapons but not banning ownership of *other identical firearms*, to wit" (emphasis supplied)**

Plaintiffs' brief at paragraph V then correctly cited from the record Plaintiffs' well pleaded facts in their Amended Complaint that incorporated the above language in listing numerous specific firearms and categories of firearms not banned. (R.C362-364) with photo attachments E and F at 394-402 and cited Plaintiffs' Amended Complaint showing Plaintiffs' have ownership of other identical firearms banned under the Cook County Ordinance. Plaintiffs' contend that neither the Trial Court nor the Illinois Appellate Court can assume and make a finding contrary to Plaintiffs' Amended Complaint that alleges that Plaintiffs, by virtue of their ownership of banned firearms are treated differently than people who own identical firearms that are not banned.

The Illinois Appellate Court did not distinguish and must have overlooked the two cases cited by Plaintiffs' Reply Brief at page 5 and 6 that held that identical language as in the Cook, County Ordinance did in fact violate equal protection, Citizens for a Safer Community v. City of Rochester, 627 N.Y.S2d, 193, 203 (Supp. 1994), and Peoples Rights Organization v. City of Columbus, 152 F.3d 522 (6<sup>th</sup> Cir. 1998). Both precedents applied the rational basis analysis and ruled that this type wording did in fact violate equal protection. Had the Illinois Appellate Court not overlooked Plaintiffs' Amended Complaint coupled with attachments and photographs, and had not overlooked applied established precedents, the Illinois Appellate Court would reverse the Trial Court's dismissal of Plaintiffs' Complaint.

#### **V. THIS APPELLATE COURT MISAPREHENDED SEVERAL FOOTNOTE CITATIONS IN HELLER.**

Other points clearly misapprehended by this Appellate Court can be found at Page eight (8) of its Opinion. Referencing several footnotes in *Heller*, the Court Points out that the majority noted at footnote 23 that the incorporation question was not at issue and it did not disturb *Cruikshank*, *Presser*, or *Miller v. Texas*.

This Court overlooked the additional clarifying language regarding *Cruikshank* where the Supreme Court further notes at n. 23: "...[W]e note that *Cruikshank* also said that the First Amendment did not apply against the States, and did not engage in the sort of Fourteenth Amendment inquiry required by our later cases. *Heller*, \_\_\_ U.S. \_\_\_ n. 23. Further addressing *Cruikshank*, the majority in *Heller* stated:

**The limited discussion of the Second Amendment in *Cruikshank* supports, if anything, the individual rights interpretation. *Heller* at 2813-14.**

Clarifying *Presser*, the majority went on to note:

***Presser* said nothing about the Second Amendment's meaning or scope, beyond the fact that it does not prevent the prohibition of private paramilitary organizations. *Heller* at 2815.**

This Appellate Court also overlookd part of footnote 27, which it cited at page eight (8) of its opinion. when it stated:

**"Finally, the Court stated in footnote 27 that all gun bans would easily pass the rational basis test.."**

However, at footnote 27, the majority in *Helller* noted further that rational basis scrutiny is a mode of analysis the Court has used when evaluating laws under constitutional commands that are themselves prohibitions on irrational laws, and further noted:

“Obviously, the same test could not be used to evaluate the extent to which a legislature may regulate a specific, enumerated right, be it the freedom of speech, the guarantee against double jeopardy, the right to counsel, or the right to keep and bear arms. See United States v. Carolene Products Co., 304 U.S. 144, 152, n. 4 (1938).

Reading further in this quoted footnote by the Appellate Court, it can be seen that the *Heller* majority further clarifies the misuse of “rational basis” review as stated in Carolene Products:

(“there may be a narrower scope for operation of the presumption of constitutionality [i.e., narrower than that provided by rational basis review] when legislation appears on its face to be within a prohibition of the Constitution, such as those of the first ten Amendments. . .”). “If all that was required to overcome the right to keep and bear arms was a rational basis, the Second Amendment would be redundant with the separate constitutional prohibitions on irrational laws, and would have no effect.”

Plaintiffs implore this Honorable Appellate Court to revisit its quoted footnotes, and apply the *Heller* majority’s findings therein to its ultimate findings in this case.

**VI. THIS COURT OVERLOOKED OR MISAPPREHENDED THE APPLICATION OF THE ORIGINAL MEANING OF THE 14<sup>TH</sup> AMENDMENT THAT INTENDED THE SECOND AMENDMENT BE INCORPORATED TO THE STATES..**

At page six (6) of this Court’s Opinion, the Court correctly cited that:

“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-meaning originalist review are important.”

Unfortunately, this Court never discussed or applied the original meaning of the 14<sup>th</sup> Amendment.

Plaintiffs argued in their Appellate Brief at pages 29 and 30 that the original meaning of the framers of the 14<sup>th</sup> Amendment intended that the 2<sup>nd</sup> Amendment be incorporated into the 14<sup>th</sup> Amendment. Plaintiffs' Brief described in detail together with citations to the *Heller* decision that showed the historical background of the 14<sup>th</sup> Amendment was intended by its drafters to incorporate the 2<sup>nd</sup> Amendment. Defendant's Brief does not contest Plaintiffs position on this issue. Unfortunately, the First District Appellate Court opinion overlooks the original meaning and never applied that essential part of the *Heller* decision. The original meaning of the 14<sup>th</sup> Amendment leads to only one conclusion—that is, the 2<sup>nd</sup> Amendment should be incorporated to the States.

## VII. THIS COURT MISAPPREHENDED A FACT CONCERNING THE HELLER MAJORITY AND THE WORD "FUNDAMENTAL"

In the Appellate Court Opinion, at page nine (9), the Court states:

Plaintiffs argue that *Heller* clearly enunciates the 'fundamental right' to keep and bear arms, and consequently, statutes restricting that right to strict scrutiny review, citing *Heller*, \_\_\_\_ U.S. at \_\_\_\_ . 171 L. Ed. 2d at 651,657, 128 S. Ct. at 27911, 2797. While both cited pages refer to the right as an 'individual right,' neither page uses the word 'fundamental.'

The Appellate Court overlooked the fact that the *Heller* majority did in fact spend most of its majority opinion lauding the importance of the right to bear arms as argued by Plaintiffs at page 9 of their Reply Brief. The Illinois Appellate Court overlooked the fact that the *Heller* majority did use the term "fundamental" twice in that regard as cited in page 9 of their Reply Brief.

"[B]y the time of the founding, the right to have arms had become *fundamental* for English subjects . . . Blackstone, whose works we have said, 'constituted the preeminent authority on English law for the founding generation,' *Alden v. Maine*, 527 U.S. 706.715 (1999), cited the arms provision of the Bill of rights as one of the *fundamental* rights of Englishmen. See Blackstone 136, 139-140 (1765) *Heller* at 2798."

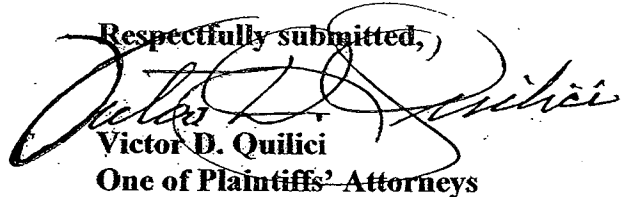
Plaintiffs also argued this point throughout Paragraph VIII of its main Brief, referencing *Heller* and other authorities regarding the fundamental right inherent in the right of self-defense, which pre-existed its application through the 2<sup>nd</sup> Amendment (Main

Brief, pp. 23—30). The Appellate Court's opinion overlooks these arguments, as well, and does not address any of the points raised by Plaintiffs with any specificity. Nothing in this Court's decision referencing *Heller* demonstrates its teaching, which it overlooks—that is, the inherent right of self-defense has been central to the Second Amendment right. *Heller*, 128 S. Ct. at 2817. Self-defense is stated as “the central component of the right itself.” *Heller*, 128 S. Ct. at 2801. ). See also Plaintiffs Brief at page 27, referencing their Amended Complaint.

Plaintiffs position is that had this Appellate Court followed *Heller* and used the original meaning of the 14<sup>th</sup> Amendment and followed *Heller* in describing the right to bear arms as a “fundamental right” the Court would then reverse the trial court's dismissal of Plaintiffs' well pleaded Amended Complaint.

### CONCLUSION

This Honorable Court should revisit the Opinion it rendered on August 19, 2009, and, based on the foregoing, grant the Plaintiffs their Petition for Rehearing in this matter.

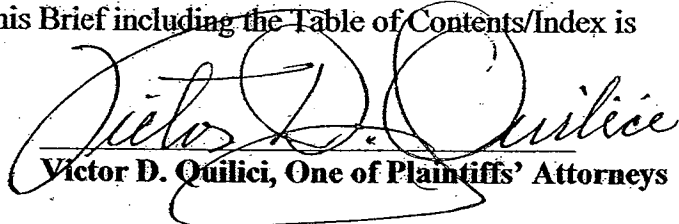
Respectfully submitted,  
  
Victor D. Quilici  
One of Plaintiffs' Attorneys

**Co-Counsel:**

|                          |                         |                            |                                 |
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| <b>Atty # 20060</b>      | <b>Atty # 38198</b>     | <b>Atty # 43306</b>        | <b>Atty # 22333</b>             |

### Certificate of Compliance in Accordance with Rule 341 (c)

The undersigned certifies that this Brief conforms to the requirements of Rules 341(a) and (b) and that the length of this Brief including the Table of Contents/Index is 17 pages.

  
Victor D. Quilici, One of Plaintiffs' Attorneys

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

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

MATTHEW WILSON, et al.,

Plaintiffs,

v.

COOK COUNTY, et al.,

Defendants.

07 CH 4848

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. (1<sup>st</sup> Am. Compl. ¶¶1, 6, 8). Plaintiffs allege that the 90-day time limit for conforming with the Ordinance has passed. (1<sup>st</sup> 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." (1<sup>st</sup> 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. (1<sup>st</sup> 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. (1<sup>st</sup> 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 (1<sup>st</sup> 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 (1972). "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 (2<sup>nd</sup> 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 (6<sup>th</sup> 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, (1<sup>st</sup> 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 (6<sup>th</sup> 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 (1<sup>st</sup> 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 (9<sup>th</sup> Cir. 2002)(upholding California assault weapon ban except for exemption for retired peace officers); Olympic Arms v. Buckles, 301 F.3d 384 (6<sup>th</sup> 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 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 (1<sup>st</sup> 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 (5<sup>th</sup> 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 I, 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 (7<sup>th</sup> 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 (7<sup>th</sup> Cir. 1984) (Second Amendment does not apply to states or their subdivisions); Manos v. Cairn, 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 (6<sup>th</sup> 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.

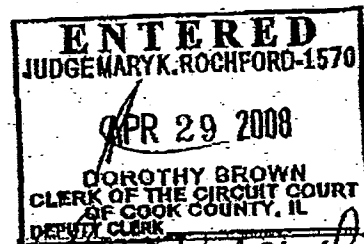
Unless a fundamental right is involved or a classification is based on an inherently suspect characteristic, the Equal Protection Clause requires only that a classification rationally further a legitimate governmental interest. Nordlinger v. Hahn, 505 U.S. 1, 10 (1992)(citations omitted); Gun Owners' Action League v. Swift, 284 F.3d 198 (1<sup>st</sup> 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.



Judge Mary K. Rochford

# Table of Contents of Record on Appeal

**No. 08-1202**

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

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**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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- C-90 Amended Cook County Ordinance No. 06-0-50
- C-101 Cook County Ordinance prior to Amendment
- C-118 Post Board Action Agenda (9-06/10-06)

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C-372 Plaintiffs' Group Exhibit B (Firearm photos)

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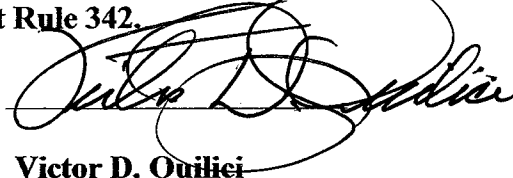
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**Certification of Compliance with Supreme Court Rule 342**

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

A handwritten signature in black ink, appearing to read "Victor D. Quilici", is written over a horizontal line.

**Victor D. Quilici**

**Victor D. Quilici**

**One of Plaintiffs Attorneys**

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