No. ________

In The
Supreme Court of the United States

ARIE S. FRIEDMAN AND THE
ILLINOIS STATE RIFLE ASSOCIATION,

Petitioners,

v.

CITY OF HIGHLAND PARK,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Constitution allows the government to prohibit law-abiding, responsible citizens from protecting themselves, their families, and their homes with a class of constitutionally protected "Arms" that includes the most popular rifles in the Nation.

2. Whether the Constitution allows the government to prohibit law-abiding, responsible citizens from protecting themselves, their families, and their homes with ammunition magazines that number in the tens of millions and make up nearly half of the Nation's total stock of privately owned ammunition magazines for handguns and rifles.

PARTIES TO THE PROCEEDING

Petitioners Arie S. Friedman, M.D., and the Illinois State Rifle Association were the plaintiffs and appellants below.

Respondent City of Highland Park was the defendant and appellee below.

CORPORATE DISCLOSURE STATEMENT

The Illinois State Rifle Association has no parent corporation, and no publicly held company owns 10% or more of its stock.

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PETITION FOR WRIT OF CERTIORARI

In *District of Columbia v. Heller*, this Court held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation," and that the District of Columbia's ordinance banning the possession of handguns was flatly inconsistent with that constitutional provision's "core protection": the "right of law-abiding, responsible citizens to use arms in defense of hearth and home." 554 U.S. 570, 592, 634, 635 (2008). In the seven years since that opinion was handed down, the lower courts have assiduously worked to sap it of any real meaning. They have upheld severe restrictions on the right to keep and bear arms that would be unthinkable in the context of any other constitutional right. And they have done so based on reasoning that is not reconcilable with this Court's teaching and, in some cases, does not even pretend to be. The lower courts might apply *Heller* today to invalidate an attempt by the District of Columbia to ban Dick Anthony Heller's possession of handguns in his home, but they have read the significance of that case as, essentially, limited to that narrow circumstance.

The courts have been united, however, by little more than what they oppose. While they have coalesced in rejecting *Heller*'s reasoning, they have not been able to agree on a single alternative to replace it. The result has been a chaotic flurry of doctrinal tests that vary from circuit to circuit. A few judges have recognized that *Heller* eschewed "a judge-empowering 'interest-balancing inquiry,'" *id.* at 634, in favor of an inquiry into the Second Amendment's "text, history, and tradition," *Heller v. District of Columbia ("Heller II")*, 670 F.3d 1244, 1271 (D.C. Cir. 2011) (Kavanaugh, J., dissenting), but they have generally articulated that view in dissenting opinions or in panel opinions that were later vacated en banc. Other cases have adopted a two-part interest-balancing test that turns out to be essentially indistinguishable from the very "judge-empowering" approach specifically rejected by this Court. And still others have set up a threshold inquiry that demands a showing that the challenged law "substantially burdens" the Second Amendment before engaging in any constitutional scrutiny at all.

The Seventh Circuit's opinion in this case exemplifies each of these pathologies. The frame of inquiry articulated by the panel majority is the *fourth* distinct Second Amendment test applied by the Seventh Circuit since *Heller*. And of the four, it is the most nakedly inconsistent with that case. The opinion below hinges on a freshly-minted three-part inquiry that contradicts *Heller* at every turn. First, the panel asked "whether a regulation bans weapons that were common at the time of ratification. . . ." App.8a. But *Heller* rejected as "bordering on the frivolous" the argument "that only those arms in existence in the 18th century are protected by the Second Amendment." 554 U.S. at 582. Second, the court asked whether the regulation affected firearms "that have some reasonable relationship to the preservation or efficiency of a well regulated militia." App.8a (quotation marks omitted). But *Heller*'s central teaching is that the Second Amendment protects "an individual right *unconnected* with militia service." 554 U.S. at 582 (emphasis added). Finally, the majority inquired "whether law-abiding citizens retain adequate means of self-defense." App.8a. But again, this Court in *Heller* resoundingly rejected the District of Columbia's argument "that it is permissible to ban the possession of handguns so long as the possession of other firearms . . . is allowed." 554 U.S. at 629.

To be sure, *Heller* also recognized that "the right secured by the Second Amendment is not unlimited," noting that it does not extend to "dangerous and unusual weapons." *Id.* at 626-27. The firearms at issue here are neither. In the ordinance challenged by the plaintiffs in this case, Highland Park has banned the possession of a class of arms that includes some of the most commonplace firearms in the Nation – including the immensely popular AR-15, which is "the best-selling rifle type in the United States," Nicholas J. Johnson, *Supply Restrictions at the Margins of* Heller *and the Abortion Analogue*, 60 HASTINGS L.J. 1285, 1296 (2009), and which "traditionally" has been "widely accepted as [a] lawful possession[ ]," as this Court has recognized, *Staples v. United States*, 511 U.S. 600, 612 (1994). Indeed, the only thing the class of firearms Highland Park has singled out share is certain features which have no effect on the firearms' basic function but only serve to make those arms *safer*.

Highland Park has also banned the sale or possession of standard ammunition magazines that it incorrectly deems "large-capacity." The banned magazines are ubiquitous in the United States – as of 2012, there were approximately 75 million of them in possession by consumers in this country, fully 47% of the total stock of pistol and rifle magazines. App.133a.

There is thus simply no plausible dispute that the firearms and magazines banned by Highland Park are "typically possessed by law-abiding citizens for lawful purposes." *Heller*, 554 U.S. at 625. Under *Heller*, that alone is enough to make Highland Park's bans categorically unconstitutional.

In a passage that the lower courts have quoted perhaps more frequently than any other, this Court wrote in *Heller* that it did not mean that opinion "to clarify the entire field" of Second Amendment jurisprudence. *Id.* at 635. "[T]here will be time enough" to chart that provision's scope and expound upon the exceptions to its reach, this Court continued, "if and when those exceptions come before us." *Id.* One can sense in this language the faintly articulated hope that the lower federal courts would fruitfully contribute to this endeavor of fashioning the contours of the Second Amendment right – an echo of Justice Frankfurter's reflection that it is often "desirable to have different aspects of an issue further illumined by the lower courts. Wise adjudication has its own time for ripening." *Maryland v. Baltimore Radio Show*, 338 U.S. 912, 918 (1950) (opinion of Frankfurter, J., respecting the denial of the petition for writ of certiorari). That hope has proved illusory. To the extent the lower courts have collaborated in a shared enterprise, it has been to empty *Heller* of significance; and not only have they issued scores of opinions that starkly depart from *Heller*'s guidance, those opinions have failed to coalesce around a single plausible alternative to the path staked out by *Heller*.

If the field of Second Amendment jurisprudence is to advance beyond the narrow facts of *Heller*, it is now clear that the next word must come from this Court.

OPINIONS BELOW

The panel opinion of the Court of Appeals is reported at 784 F.3d 406 and reproduced at App.1a. The order of the District Court granting summary judgment to Respondent is reported at 68 F. Supp. 3d 895 and reproduced at App.34a.

JURISDICTION

The Court of Appeals issued its judgment on April 27, 2015. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED

The relevant portions of the Second and Fourteenth Amendments to the United States Constitution and Chapter 136 of the Highland Park City Code are reproduced at App.63a.

STATEMENT OF THE CASE

I. Highland Park's Bans

In 2013, the City of Highland Park, Illinois ("the City" or "Highland Park"), categorically barred its residents from possessing some of the most widely-owned firearms in the Nation. Ordinance 68-13 amended Chapter 136 of Highland Park's City Code to prohibit the sale, purchase, and possession of certain semi-automatic firearms, most centrally including those semi-automatic rifles that accept magazines containing more than ten rounds of ammunition and possess one or more of five enumerated features:

(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. . . .

CITY CODE § 136.001(C)(1). The ordinance also bans by stipulative definition numerous named rifle models, including the popular AR-15, *id.* § 136.001(C)(7)(iii). In addition, the ordinance flatly prohibits what it calls "Large Capacity Magazines" – any magazine (except tubular magazines for 22 caliber rifles and lever-action firearms) "with the capacity to accept more than ten rounds." *Id.* § 136.001(G).

The City calls the disparate collection of semiautomatic firearms it has banned "assault weapons." That is an imaginary and pejorative category. "Prior to 1989, the term 'assault weapon' did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists." *Stenberg v. Carhart*, 530 U.S. 1001 n.16 (2000) (Thomas, J., dissenting) (quoting Bruce H. Kobayashi & Joseph E. Olson, In Re 101 California Street, 8 STAN L. & POL'Y REV. 41, 43 (1997)). Indeed, the anti-gun Violence Policy Center has candidly acknowledged that the debate over "assault weapons" exploits "the public's confusion over fully automatic machine guns versus semiautomatic assault weapons." JOSH SUGARMAN, ASSAULT WEAPONS AND ACCESSORIES IN AMERICA (1988), http://goo.gl/i9r8Nn. The fact that it took the city three pages of text *even to define* the class of firearms it sought to prohibit – including a list of over 60 types of firearms that were included by mere fiat, CITY CODE § 136.001(C)(7) – underscores the extent to which the gerrymandered category of "assault weapons" is simply not grounded in the actual design or functionality of the disfavored firearms.

The firearms banned by the City are not machine guns – which have long been strictly regulated under federal law. As this Court recognized in *Staples*, while machine guns are *fully* automatic and "fire[ ] repeatedly with a single pull of the trigger," a *semi*-automatic firearm, like those Highland Park has banned, "fires only one shot with each pull of the trigger." 511 U.S. at 602 n.1. Nor are they otherwise disproportionately dangerous. Indeed, the features singled out by the City in its attempt to demarcate the category of "assault weapons" *enhance* the safe use of those firearms and do not affect their basic function of firing one shot with each trigger pull. For example, a telescoping stock permits users to adjust the length of the rifle to fit their stature. App.139a. A rifle that is either too long or too short for its user will result in inaccurate and unsafe shots. *Id.* A barrel shroud simply serves as a place for users to place their non-trigger hand and protect it from barrel heat. App.139a-140a. Nearly all rifles and shotguns have a barrel shroud of some type. App.139a. Protruding grips that can be grasped by the second hand enable users to better control the firearms, improving their accuracy – and diminishing the likelihood that they will hit something other than their intended target. App.140a. Similarly, a muzzle brake or compensator is designed to channel the gases expelled when a firearm is shot, reducing recoil and enhancing the accuracy of the firearm in the event a second shot needs to be taken. App.140a-141a.

Highland Park's ban includes some of the most popular firearms in the Nation. Between 1990 and 2012, over 5 million AR-platform firearms were manufactured for the domestic commercial market – and another 3.4 million AR- and AK-type firearms (both explicitly banned by Highland Park) – were imported for commercial sale. App.93a-94a. In the five years between 2008 and 2012 alone, 3.46 million AR-type firearms were manufactured for domestic sale, *id.*; that is over 11% of *all* firearms produced for the domestic market, and it exceeds the number of revolvers domestically manufactured (a little under 2.8 million), and nearly equals the number of shotguns (3.9 million), App.96a-104a. The semi-automatic firearms the City has banned are legal in the vast majority of the country – less than 15% of the States ban semi-automatic "assault weapons," with varying definitions of that term. And outside of those outlier jurisdictions, they are sold by virtually every firearm retailer. According to a recent survey, over 92% of firearm retailers nationwide keep AR-style firearms in stock – more than sell traditional rifles. App.118a.

The millions of Americans who own so-called "assault weapons" use them for the same lawful purposes as any other type of firearm: hunting, recreational shooting, and self-defense. App.115a. For example, in 2012 nearly as many Americans went to the range to shoot an "assault weapon" like the AR-15 as to shoot skeet. App.131a. And AR-15 rifles are particularly appropriate for home defense because they are typically chambered for .223 caliber bullets, which lose velocity relatively quickly after passing through walls and thus pose a reduced risk to innocent people in the home. App.136a. By contrast, these firearms are almost never used for crime. According to most studies, less than 2% of firearms used in the commission of crime are so-called "assault weapons." App.146a. And even that 2% principally is composed of handguns classified as "assault weapons," not the semi-automatic rifles that are at issue in this case. *See*, *e.g.*, CHRISTOPHER S. KOPER, UPDATED ASSESSMENT OF THE FEDERAL ASSAULT WEAPONS BAN 16 (July 2004), https://goo.gl/iVZvt; App.146a ("well under 1%" of firearms used in crime are "assault rifles"). Criminals by far prefer ordinary handguns, which are both cheaper and easier to carry and conceal. Indeed, even in mass shootings – which were apparently the primary motivation behind the City's ban – "semi-automatic handguns are far more prevalent . . . than firearms that would typically be classified as assault weapons." James Alan Fox & Monica J. DeLateur, *Mass Shootings in America*, 18 HOMICIDE STUD. 125, 136 (2014), http://goo.gl/Ji7Yyp.

The magazines that Highland Park has separately banned are, if anything, even more ubiquitous;

indeed, so common are magazines capable of holding more than ten rounds that they are best thought of as *standard*-capacity magazines. According to a 2013 study, approximately 75 million pistol and rifle magazines capable of holding more than ten rounds were possessed by American consumers – over 47% of the total civilian stock of 158 million such magazines. App.133a. Magazines that are lawfully held in this massive volume – and that make up *nearly half* of the total magazine stock – are the very opposite of "unusual."

II. Parties and Proceedings Below

1. Petitioners are Dr. Arie S. Friedman, M.D., and the Illinois State Rifle Association ("ISRA"), a non-profit educational foundation established with the goals of protecting the rights of citizens to keep and bear arms for lawful self-defense and promoting public safety and law and order. Before Highland Park's ordinance took effect, Dr. Friedman owned both semi-automatic firearms and magazines that fall within the City's bans, which he stored securely in his home in Highland Park for the purpose of defending himself and his family. App.2a, 76a-77a, 82a-83a.

Dr. Friedman brought suit against Highland Park in Illinois state court, contending that the City's ordinance infringed his right, under the Second Amendment as incorporated by the Fourteenth, to keep arms commonly owned for lawful purposes in his home for self-defense; ISRA brought the same claim on behalf of those of its members that reside in Highland Park. Highland Park removed the case to the United States District Court for the Northern District of Illinois, which took jurisdiction pursuant to 28 U.S.C. § 1331.

2. The plaintiffs promptly moved for a preliminary injunction. The City opposed, but before the district court ruled on the motion, the parties cross-moved for summary judgment. Accordingly, the district court denied the motion for a preliminary injunction as mooted by the subsequent dispositive motions. A week later, on September 18, 2014, it granted summary judgment to Highland Park.

The district court applied the "two-part inquiry" used by the Seventh Circuit in *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011), asking first whether the firearms and magazines banned by Highland Park "fall within the scope of Second Amendment protection," and if so whether the City can "present evidence sufficient to demonstrate that the restriction is justified." App.48a-49a. The court declined to resolve the first question, since it concluded that the ordinance in any event amounts to only "a marginal burden upon the Second Amendment core right to armed self-defense," which it deemed adequately justified by the City's interest in public safety. App.58a-62a.

3. The plaintiffs timely appealed, and on April 27, 2015, the Seventh Circuit affirmed. Like the district court, the panel majority declined to answer

the questions about the Second Amendment's scope that *Heller* itself makes dispositive. Whether limits like those imposed by Highland Park were supported by history or tradition was irrelevant, according to the majority, since "[i]f Highland Park's ordinance stays on the books for a few years, that shouldn't make it either more or less open to challenge under the Second Amendment." App.4a.

Similarly, the panel majority refused to decide whether the firearms and magazines banned by the City are "commonly owned for lawful purposes" or, instead, are "dangerous and unusual" and thus unprotected by the Second Amendment. App.2a-7a. "[R]elying on how common a weapon is at the time of litigation would be circular," according to the majority, since in its view *Heller* "contemplated that the weapons properly in private hands . . . might change through legal regulation." App.5a. "During Prohibition the Thompson submachine gun (the 'Tommy gun') was all too common in Chicago," the majority mused, "but that popularity didn't give it a constitutional immunity from the federal prohibition enacted in 1934." App.4a. Indeed, the panel majority read *Heller* as implicitly embracing the "rule that the Second Amendment does not authorize private persons to possess weapons . . . that the government would not expect (or allow) citizens to bring with them when the militia is called to service." *Id.*

After repudiating these inquiries into the scope of the Second Amendment's protection – inquiries that were crucial to this Court's reasoning in *Heller* – the panel majority turned to the task of articulating the framework it thought *should* govern. But while the district court – and the Seventh Circuit itself, in *Ezell* – had concluded that restrictions on Second Amendment rights ought to be subjected to a sliding scale of heightened scrutiny that varies with "the relative severity of the burden and its proximity to the core of the right," *Ezell*, 651 F.3d at 708, the panel majority below, again, set off on a path of its own. Such inquiries into "what 'level' of scrutiny applies . . . do not resolve any concrete dispute." App.8a. Instead, "we think it better to ask whether [1] a regulation bans weapons that were common at the time of ratification or [2] those that have some reasonable relationship to the preservation or efficiency of a well regulated militia, and [3] whether law-abiding citizens retain adequate means of self-defense." *Id.* (citations and quotation marks omitted).

Beginning with the first prong, the majority easily concluded that "[t]he features prohibited by Highland Park's ordinance were not common in 1791." App.9a. And while, turning to the second prong, "[s]ome of the weapons prohibited by the ordinance are commonly used for military and police functions" and "therefore bear a relation to the preservation and effectiveness of state militias," "states, which are in charge of militias, should be allowed to decide when civilians can possess military-grade firearms, so as to have them available when the militia is called to duty." *Id.* The first two prongs of the majority's test thus turn out to be illusory. The government will likely *never* seek to ban the flintlocks and muskets that were common in 1791. And since the majority's test leaves it up to *States* to decide what firearms bear a "reasonable relationship to the preservation or efficiency of a well regulated militia," App.8a, it makes the government the judge of whether its own regulations transgress the Second Amendment – "giving to" each State "a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits." *Marbury v. Madison*, 5 U.S. 137, 178 (1803).

Arriving, finally, at the question "whether the ordinance leaves residents of Highland Park ample means to exercise the inherent right of self-defense that the Second Amendment protects," the panel majority conceded that the banned firearms "*can* be beneficial for self-defense because they are lighter than many rifles and *less dangerous* per shot than large-caliber pistols or revolvers." App.10a (emphases added) (quotation marks omitted). Thus, the Court acknowledged, "[h]ouseholders too frightened or infirm to aim carefully may be able to wield them more effectively than the pistols James Bond preferred." *Id.* But rather than deferring to the choices of law-abiding citizens who for these reasons "may prefer a [banned firearm] for home defense," the panel majority, in essence, wrongly concluded that a ban like Highland Park's is constitutional "so long as the possession of other firearms . . . is allowed," *Heller*, 554 U.S. at 629. Because "law-abiding homeowners" can "find substitutes" for the banned arms, the panel majority reasoned, the ordinance "leaves residents with many self-defense options." App.10a.

Moreover, while "[a] ban on assault weapons won't eliminate gun violence in Highland Park," the panel majority surmised that it "may reduce the overall dangerousness of crime that does occur." App.12a. But the panel majority, apparently unwittingly, undermined its own assertion on this subject. Again, the panel majority recognized that the banned firearms are "*less dangerous* per shot than large-caliber pistols or revolvers" that are left untouched by the City's ban. App.10a (emphasis added). It is only when the banned firearms are coupled with the magazines that Highland Park separately bans that, the panel majority speculated, they could be "more dangerous in aggregate" than handguns. App.11a. But even if that reasoning could justify banning the standard-capacity *magazines* the City has singled out – which it cannot, given the lack of any empirical evidence establishing that such bans advance public safety – the City's *separate* ban on "assault weapons" certainly should not be held *constitutional by association*. And under the panel majority's own reasoning, the likely effect of Highland Park's firearm ban, as distinct from its magazine ban, is to encourage citizens to opt for more dangerous, less accurate firearms.

Finally, the panel majority relied upon the supposed benefit of bringing an illusion of safety to the public: "[i]f it has no other effect, Highland Park's ordinance may increase the public's sense of safety."

App.12a. "If a ban on semiautomatic guns and large-capacity magazines reduces the perceived risk from a mass shooting, and makes the public feel safer as a result, that's a substantial benefit." App.13a.

4. Judge Manion dissented. While acknowledging that "[n]either *Heller* nor *McDonald* [*v. City of Chicago*, 561 U.S. 742 (2010)] purported to resolve every matter involving the regulation of weapons," Judge Manion recognized that "they are clear about one thing: the right to keep arms in the home for self-defense is central to the Second Amendment." App.33a (Manion, J., dissenting). And Highland Park's bans cannot be reconciled with that "clear principle," because they prohibit law-abiding, responsible citizens from "defending themselves, their families, and their property" with "a class of weapons commonly used throughout the country." App.14a, 33a. The majority's opinion to the contrary, Judge Manion concluded, was based on "a gerrymandered reading of [*Heller* and *McDonald*]" and resulted in a holding "directly contrary to their precedents." App.33a.

REASONS FOR GRANTING THE WRIT

I. Review Is Needed Because the Seventh Circuit's Decision Cannot Be Reconciled with *Heller*.

In *Heller*, this Court held that the Second Amendment "guarantee[s] the individual right to possess and carry weapons." 554 U.S. at 592. Based on the text and structure of the Second Amendment – and on an exhaustive survey of its history – the Court concluded that this right is centrally concerned with "individual self-defense," not just "preserving the militia." *Id.* at 599. And it applies with the highest clarity and insistence in "the home, where the need for defense of self, family, and property is most acute." *Id.* at 628.

Heller was "this Court's first in-depth examination of the Second Amendment," and it did not purport "to clarify the entire field." *Id.* at 635. But neither did it leave future courts directionless in "a vast *terra incognita*" of Second Amendment jurisprudence, *United States v. Masciandaro*, 638 F.3d 458, 475 (4th Cir. 2011), nor give them carte blanche to chart their own meandering course through that terrain. Indeed, this Court was quite explicit about the guiding test for determining the Second Amendment's application to laws that ban "an entire class of 'arms' ": has the government banned firearms "typically possessed by law-abiding citizens for lawful purposes," or has it instead banned "dangerous and unusual weapons" that are "highly unusual in society at large"? *Heller*, 554 U.S. at 625, 627. And if the answer is the former, the ban must be struck down, because when the Second Amendment "right *applies* to" certain types of firearms, "citizens *must* be permitted to use [them] for the core lawful purpose of self-defense." *McDonald*, 561 U.S. at 767-68 (emphases added) (quotation marks omitted). The court below upheld Highland Park's bans only by straying from these clear directions.

The firearms and magazines banned by Highland Park are "in common use" by any definition. The firearms the ordinance bans are owned by millions of Americans. App.93a-94a. AR-type rifles alone made up over 10% of the firearm market between 2008 and 2012. App.93a-104a. And in 2012 alone, 1.5 million AR- or AK-type rifles were sold domestically – more than double the number of Ford F-150s, the most commonly-sold vehicle in the country. App.88a. No one would dream of suggesting that traditional rifles or revolvers are not "in common use," or that shotguns are "unusual" firearms; yet between 2008 and 2012, AR-type rifles outsold revolvers and nearly equaled shotguns, App.89a, and according to a 2013 survey, 2012 sales of AR-platform and similar-type rifles made up over 20% of all firearms sold, *far surpassing* traditional rifles (14%), shotguns (13%), and revolvers (11.4%), App.121a. Moreover, they are overwhelmingly used for the same "lawful purposes" as other commonly-owned firearms: hunting, target shooting, and home defense. App.115a. Indeed, if anything is "unusual" about these firearms, it is when they are used in crime. Handguns "are the overwhelmingly favorite weapon of armed criminals," *Heller*, 554 U.S. at 682 (Breyer, J., dissenting), and a vanishingly small number of criminals choose "assault weapons" to commit their crimes: less than 2% in most studies. App.146a. This Court was thus on firm evidentiary ground in *Staples* when it explained that "traditionally" these types of firearms have been "widely accepted as lawful possessions," 511 U.S. at 612. And over 7.6 million additional "assault weapons" have been sold on the domestic market since then. App.93a-94a.

Magazines with a capacity of more than ten rounds are, if anything, even more popular than the banned firearms. Indeed, they make up nearly half of the total stock of pistol and rifle magazines owned by Americans – a level of ownership that surely suffices to make them "common." App.133a.

The Seventh Circuit did not really dispute these facts – it concluded that "perhaps 9% of the nation's firearms owners have assault weapons," and that the City had failed to prove that "the banned weapons are 'dangerous' compared with handguns, which are responsible for the vast majority of gun violence in the United States." App.6a. Yet it declined to definitively determine whether the firearms and magazines banned by Highland Park are typically possessed for lawful purposes, rejecting that inquiry as irrelevant. "During Prohibition the Thompson submachine gun (the 'Tommy gun') was all too common in Chicago, but that popularity didn't give it a constitutional immunity from the federal prohibition enacted in 1934." App.4a. Indeed, the panel majority found this inquiry "circular to boot," since "it would be absurd to say that the reason why a particular weapon can be banned is that there is a statute banning it, so that it isn't commonly owned." App.5a. The majority drew from all of this the broad conclusion "that the weapons properly in private hands . . . might change through legal regulation." *Id.*

This reasoning strings together a series of non-sequiturs. The majority's observation that the "Tommy gun" was frequently used for *unlawful* purposes by gangsters in Prohibition-era Chicago does not establish that such weapons were constitutionally protected at the time Congress restricted their ownership in the 1930s, and it has simply no bearing on whether semi-automatic rifles or standard-capacity magazines are commonly used for *lawful* purposes *nine decades* later. And *Heller flatly contradicts* the notion that "the weapons properly in private hands" can "change through legal regulation." *Id.* Else, the District of Columbia's ban – which, whatever else it accomplished, no doubt reduced the number of handguns "properly in private hands" – would necessarily have been upheld by this Court.

Rather than follow *Heller*, the Seventh Circuit undertook a three-part inquiry of its own making. That newly-minted test could not be harder to square with this Court's teaching in *Heller* if it had been lifted directly from the District of Columbia's brief or the dissenting opinions in that case. The panel first asked "whether [the] regulation bans weapons that were common at the time of ratification." App.8a. Unsurprisingly, it concluded that Highland Park's ordinance did not; only one possible answer is what the wrong question begets. *Cf.* ALEXANDER M. BICKEL, THE LEAST DANGEROUS BRANCH 103 (1962). But more importantly, this Court in *Heller* rejected *precisely* *this argument* – "that only those arms in existence in the 18th century are protected by the Second Amendment" – as "bordering on the frivolous" since we simply "do not interpret constitutional rights that way." 554 U.S. at 582.

Second, the Seventh Circuit asked whether the City's ordinance banned "weapons . . . that have some reasonable relationship to the preservation or efficiency of a well regulated militia." App.8a (quotation marks omitted). But *Heller* spent over 50 pages of text *dismantling* the view that the Second Amendment "protects only the right to possess and carry a firearm in connection with militia service." 554 U.S. at 577-628. And it *specifically rejected* the proposition "that only those weapons useful in warfare are protected," concluding instead that the Second Amendment protects those weapons "typically possessed by law-abiding citizens for lawful purposes," *id.* at 624, 625 – the very test that the Seventh Circuit discarded.

Finally, the panel majority asked "whether law-abiding citizens retain adequate means of self-defense," concluding that because "law-abiding homeowners" could "find substitutes" for the banned firearms, they were left "with many self-defense options." App.8a, 10a. Yet again, this inquiry was affirmatively considered and rejected by this Court in *Heller*. There, too, the District of Columbia made the argument "that it is permissible to ban the possession of" a class of firearms – handguns, in that case – "so long as the possession of other firearms . . . is allowed." *Heller*, 554 U.S. at 629. In response, this Court rejected the central premise of this argument – that the government has any business telling law-abiding citizens which types of arms they can and cannot choose for self-defense. "*Whatever the reason*, handguns are the most popular weapon chosen by Americans for self-defense in the home," and that fact alone made the District of Columbia's ban unconstitutional. *Id.* (emphasis added). *McDonald* similarly rejected the suggestion that resolving Second Amendment claims would require courts to evaluate "[w]hat sort of guns are necessary for self-defense[ ]." 561 U.S. at 923 (Breyer, J., dissenting). *See id.* at 790-91 (plurality). The same reasoning applies here. Because of millions of independent, private choices, the semi-automatic firearms and standard-capacity magazines singled out by the City are "in common use," and that means the City's attempt to ban their possession is unconstitutional no matter how many other types of firearms its Code blesses.

The Seventh Circuit's holding and reasoning are so patently erroneous – so openly contrary to this Court's precedent – that this, standing alone, would justify the grant of the writ. *See Jackson v. City and Cnty. of San Francisco*, 135 S.Ct. 2799, 2802 (2015) (Thomas, J., dissenting from the denial of certiorari) (collecting cases where this Court has been "willing[ ] to review splitless decisions involving alleged violations of other constitutional rights"). And the Seventh Circuit's error does not stand alone; it joins – indeed, it *exemplifies* – a growing pattern of massive resistance by the lower courts to *Heller*'s teaching.

II. Review Is Needed To Correct the Lower Courts' Massive Resistance to *Heller* and Their Refusal To Treat Second Amendment Rights as Deserving Respect Equal to Other Constitutional Rights.

This Court has long insisted that there is "no principled basis on which to create a hierarchy of constitutional values." *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 484 (1982). And in *McDonald*, it considered and rejected the view that the Second Amendment was somehow "a second-class right." 561 U.S. at 780 (plurality opinion). To the contrary, this Court insisted that the right protected by the Second Amendment, like the other guarantees that the Framers enshrined in the first ten amendments, is "among those fundamental rights necessary to our system of ordered liberty." *Id.* at 778.

But in the years since *McDonald*, the lower federal courts have acted in the teeth of these directions, upholding limitations on Second-Amendment conduct that would be unimaginable in any other context. Moreover, though it is well-settled that "[w]hen an opinion issues for the Court," lower courts are bound by "not only the result but also those portions of the opinion necessary to that result," *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 67

(1996), lower courts have snubbed the essential reasoning of *Heller* and *McDonald*, narrowing those decisions to their facts. In effect, the federal courts have created the very "hierarchy of constitutional values" forbidden by this Court, and they have relegated the Second Amendment to the lowest rung.

In many cases, for example, lower courts have upheld draconian restrictions on the rights of law-abiding citizens to carry firearms outside the home, notwithstanding the Second Amendment's unequivocal protection of "the right of the people to keep *and bear* arms," U.S. CONST. amend. II (emphasis added), and this Court's conclusion that these words "guarantee the individual right to possess *and carry* weapons in case of confrontation," *Heller*, 554 U.S. at 592 (emphasis added). The vast majority of States – over 40 – respect the constitutional right to bear arms in public, USA CARRY, *Concealed Carry Permit Information by State*, http://goo.gl/bF0gnd, but a handful of States still impose severe limitations on this right. And when faced with challenges to those laws, many courts have flatly ruled that "the Second Amendment does not confer a right that extends beyond the home." *NRA v. McCraw*, No. 10-cv-141, slip op. at 12 (N.D. Tex. Jan. 19, 2012), ECF Doc. 82, *aff'd*, 719 F.3d 338 (5th Cir. 2013); *see also*, *e.g.*, *Kachalsky v. Cacace*, 817 F. Supp. 2d 235, 264-65 (S.D.N.Y. 2011), *aff'd sub nom. Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012); *Moreno v. N.Y.C. Police Dep't*, 2011 WL 2748652, at *3 (S.D.N.Y. May 7, 2011); *Gonzalez v. Village of W. Milwaukee*, 2010 WL

1904977, at *4 (E.D. Wis. May 11, 2010), *aff'd*, 671 F.3d 649 (7th Cir. 2012); *accord Shepard v. Madigan*, 863 F. Supp. 2d 774, 782 & n.7 (S.D. Ill. 2012), *rev'd sub nom. Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012); *Moore v. Madigan*, 842 F. Supp. 2d 1092, 1102 (C.D. Ill. 2012), *rev'd*, 702 F.3d 933; *People v. Williams*, 962 N.E.2d 1148, 1153-54 (Ill. App. Ct. 2011); *Commonwealth v. Perez*, 952 N.E.2d 441, 451 (Mass. App. Ct. 2011).

Other cases have stopped short of formally holding that the Second Amendment has no application outside the home, relying on a deferential form of intermediate scrutiny to validate restrictions on the public carriage of firearms. *See*, *e.g.*, *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013); *Kachalsky*, 701 F.3d at 96-97; *Masciandaro*, 638 F.3d at 475. Perhaps the most extreme example comes from the Third Circuit in a case raising a Second Amendment challenge to New Jersey's regime requiring a showing of "justifiable need" for issuing handgun-carry permits. This regime amounts to a straightforward infringement of the right to bear arms because it places in "the hands of the government . . . the power to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Heller*, 554 U.S. at 634. Nevertheless, the federal district court treated the Second Amendment issue as a nuisance:

> Given the considerable uncertainty regarding if and when the Second Amendment rights should apply outside the home, this Court does not intend to place a burden on

> the government to endlessly litigate and justify every individual limitation on the right to carry a gun in any location for any purpose.

Piszczatoski v. Filko, 840 F. Supp. 2d 813, 829 (D.N.J. 2012), *aff'd sub nom. Drake v. Filko*, 724 F.3d 426 (3d Cir. 2013). On appeal, a divided Third Circuit panel affirmed, likewise concluding that it was "not inclined to address [the plaintiffs' claim of a historic right to carry arms in public] by engaging in a round of full-blown historical analysis." *Drake*, 724 F.3d at 431.

These cases generally conclude that even if bearing arms in public is constitutionally protected, it is outside the Second Amendment's "core" guarantee, which they read as extending no further than the "right to possess firearms for self-defense within the home." *Masciandaro*, 638 F.3d at 467. But even in the home – where according to the lower courts "Second Amendment guarantees are at their zenith," *Kachalsky*, 701 F.3d at 89 – the courts have still upheld severe restrictions.

For instance, in *Jackson v. City and County of San Francisco*, the Ninth Circuit upheld an ordinance that required every resident who possessed a firearm in the home for self-defense to keep it either disabled or locked away whenever they were not physically carrying it. 746 F.3d 953, 958 (9th Cir. 2014). In *Heller*, this Court struck down a functionally indistinguishable requirement "that firearms in the home be rendered and kept inoperable at all times," as "mak[ing] it impossible for citizens to use them for the core lawful purpose of self-defense." 554 U.S. at 630. But the Ninth Circuit upheld the *nearly identical* (from a practical perspective) restriction imposed by San Francisco under a watered-down form of intermediate scrutiny. *Jackson*, 746 F.3d at 965-66. Similarly, the Fifth Circuit has upheld federal laws that bar adults between 18 and 21 years of age from even acquiring handguns from a federally licensed dealer. *NRA v. BATFE*, 700 F.3d 185, 189 (5th Cir. 2012). That court concluded that this ban likely fell outside the Second Amendment's scope entirely because it purportedly was "consistent with a longstanding tradition of targeting select groups' ability to access and to use arms for the sake of public safety" and that in all events, it would be subject to "nothing more than 'intermediate' scrutiny," which the Fifth Circuit held it surmounted under a toothless version of that test irreconcilable with this Court's precedents. *Id.* at 203, 205; *see NRA v. BATFE*, 714 F.3d 334, 346-47 (5th Cir. 2013) (Jones, J., dissental). The Fifth Circuit's conclusion – "that a whole class of adult citizens, who are not as a class felons or mentally ill, can have its constitutional rights truncated because Congress considers the class 'irresponsible'" – would be unimaginable in the context of any other enumerated, fundamental constitutional right. *Id*. at 335.

In like form, categorical bans on popular semiautomatic firearms and standard-capacity ammunition magazines like those at issue in this case cut to the very heart of the Second Amendment – "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Heller*, 554 U.S. at 635. The firearms singled out by these bans are both legal and commonplace in the vast majority of the country. But the handful of bans that have been enacted have so far been eagerly upheld by the federal courts, under the variety of toothless interest-balancing standards that have come to govern the field of Second Amendment jurisprudence. *See Heller II*, 670 F.3d at 1260-64; *Kolbe v. O'Malley*, 42 F. Supp. 3d 768 (D. Md. 2014), *appeal pending*, No. 14-1945 (4th Cir.); *Shew v. Malloy*, 994 F. Supp. 2d 234, 246-50 (D. Conn. 2014), *appeal pending*, No. 14-319 (2d Cir. argued Dec. 9, 2014); *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 990 F. Supp. 2d 349, 365-71 (W.D.N.Y. 2013), *appeal pending*, Nos. 14-36, -37 (2d Cir. argued Dec. 9, 2014). In upholding Highland Park's ban, then, the decision below joins – indeed, typifies – a large and growing trend of massive resistance by the lower courts to the clear instructions in *Heller* and *McDonald*.

Some of these courts have barely concealed their resistance to extending *Heller* beyond its narrow facts, absent further action from this Court, and some of them have not even tried. "We do not think it profitable," the en banc Seventh Circuit intoned in *United States v. Skoien*, "to parse . . . passages of *Heller* as if they contained an answer to the question . . . we must confront." 614 F.3d 638, 640 (7th Cir. 2010) (en banc). "Judicial opinions," after all, "must not be confused with statutes." *Id.* More colorfully, a panel majority of the Fourth Circuit refused to even *address* whether the Second Amendment applies outside the home, without further "direction from the Court itself," because "[t]he whole matter strikes us as a vast *terra incognita* that courts should enter only upon necessity and only then by small degree." *Masciandaro*, 638 F.3d at 475. Maryland's highest court has put the point the most bluntly: "If the Supreme Court . . . meant its holding to extend beyond home possession, it will need to say so more plainly." *Williams v. State*, 10 A.3d 1167, 1177 (Md. 2011).

Once again, the panel majority's opinion below exemplifies this stubborn resistance to *Heller* and *McDonald*'s emphatic directions. *Heller*, the court insisted, "should not be read as if it were part of the Constitution or answered all possible questions." App.7a. "*Heller* and *McDonald* set limits on the regulation of firearms; but within those limits, they leave matters open." App.13a. "Whether those limits should be extended is in the end a question for the Justices." App.14a.

III. Review Is Needed To Clear Up the Conflict and Doctrinal Confusion That Have Prevailed in the Lower Courts in the Wake of *Heller*.

"*Heller* has left in its wake a morass of conflicting lower court opinions regarding the proper analysis to apply to challenged firearms regulations." *United States v. Chester*, 628 F.3d 673, 688-89 (4th Cir. 2010)

(Davis, J., concurring in the judgment). The vast majority of courts "have grappled with varying sliding-scale and tiered-scrutiny approaches." *Peruta v. County of San Diego*, 742 F.3d 1144, 1167 (9th Cir. 2014), *reh'g en banc granted*, 781 F.3d 1106 (9th Cir. 2015). But the path this Court charted out in *Heller* itself is clear. Because the Second Amendment "elevates" the rights it protects "above all other interests," laws that burden its "core protection" must be held unconstitutional categorically, not "subjected to a freestanding 'interest-balancing' approach." *Heller*, 554 U.S. at 634, 635; *see also McDonald*, 561 U.S. at 785 (plurality opinion).

At least one circuit opinion has largely followed *Heller* and *McDonald*'s methodological cues – and ironically enough, it was handed down by a previous panel from the Seventh Circuit. In *Moore v. Madigan*, that court struck down Illinois's ban on carrying firearms in public. 702 F.3d 933. And in doing so it declined to base its analysis "on degrees of scrutiny," except to note that the ban "can't be upheld merely on the ground that it's not irrational." *Id.* at 939, 941. Instead, it undertook an inquiry grounded in the Second Amendment's text ("To speak of 'bearing' arms within one's home would at all times have been an awkward usage," *id.* at 936), history ("[O]ne doesn't have to be a historian to realize that a right to keep and bear arms for personal self-defense in the eighteenth century could not rationally have been limited to the home," *id.*), and purpose ("To confine the right to be armed to the home is to divorce the Second

Amendment from the right of self-defense described in *Heller* and *McDonald*," *id.* at 937).

A few other judges have recognized that *Heller* and *McDonald* demand a textual and historical analysis, but they have for the most part written in dissent, or in cases that were later reheard en banc. For example, Judge Kavanaugh, writing in *Heller II*, noted that "*Heller* and *McDonald* leave little doubt that courts are to assess gun bans and regulations based on text, history, and tradition, not by a balancing test such as strict or intermediate scrutiny." 670 F.3d at 1271 (Kavanaugh, J., dissenting). *See also Houston v. City of New Orleans*, 675 F.3d 441, 448 (5th Cir.) (Elrod, J., dissenting) ("Judge Kavanaugh is correct. . . ."), *withdrawn and superseded on reh'g*, 682 F.3d 361 (5th Cir. 2012). But he was unable to convince the majority. Similarly, a panel of the Ninth Circuit struck down a San Diego policy restricting the right to bear arms in public based on an "analysis of text and history," and it expressly declined to "apply a particular standard of heightened scrutiny," since the regulation at issue "effect[ed] a *destruction* of the [Second Amendment] right" requiring "*Heller*-style per se invalidation." *Peruta*, 742 F.3d at 1166-75 (quotation marks omitted). But the Ninth Circuit subsequently decided to rehear that case en banc. And a panel of the Sixth Circuit acknowledged that "[t]here is significant language in *Heller* itself . . . that would indicate that lower courts should not conduct interest balancing or apply levels of scrutiny," but was constrained by circuit precedent to conduct such an analysis. *Tyler v. Hillsdale Cnty. Sheriff's Dep't*, 775 F.3d 308, 318 (6th Cir. 2014), *vacated for reh'g en banc*, No. 13-1876 (6th Cir. Apr. 21, 2015). That case also is currently under en banc review.

The great mass of lower courts who have faced the issue have instead rejected this Court's guidance. But they have failed to coalesce around anything like a single, coherent alternative. Some courts conduct a "substantial burden" inquiry before considering the traditional tiers of scrutiny. *See United States v. Decastro*, 682 F.3d 160, 165-68 (2d Cir. 2012). A few opinions indicate that strict scrutiny should apply across the board, *see*, *e.g.*, *Tyler*, 775 F.3d at 328-29; *United States v. Engstrum*, 609 F. Supp. 2d 1227, 1231 (D. Utah 2009); but most circuits to consider the question have rejected that approach, *see*, *e.g.*, *Kachalsky*, 701 F.3d at 93. And some cases do their best to avoid "the 'levels of scrutiny' quagmire" altogether. *Skoien*, 614 F.3d at 642; *see also Masciandaro*, 638 F.3d at 475 ("The whole matter strikes us as a vast *terra incognita* that courts should enter only upon necessity and only then by small degree.").

To the extent any trend has emerged out of this doctrinal morass, it is towards the use of a "two-part approach," *Chester*, 628 F.3d at 680, that in application looks a great deal like the "judge-empowering 'interest-balancing inquiry'" specifically rejected by this Court, *Heller*, 554 U.S. at 634. *See*, *e.g.*, Allen Rostron, *Justice Breyer's Triumph in the Third Battle over the Second Amendment*, 80 GEO. WASH. L. REV. 703, 706-07 (2012) (former Brady Center attorney celebrating that the lower courts "have effectively embraced the sort of interest-balancing approach . . . condemned" by *Heller*). Courts following the "two-part" approach look, first, at "whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee," and second, at whether it "passes muster" "under some form of means-end scrutiny." *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010). But even this apparent pattern masks a great deal of conflict and confusion just below the surface.

The circuits deeply disagree over the nature of the first step. Some determine whether "the restricted activity [is] protected by the Second Amendment" through "a textual and historical inquiry into original meaning" at "the relevant historical moment." *Ezell*, 651 F.3d at 700-03; *see also Chester*, 628 F.3d at 680 ("This historical inquiry seeks to determine whether the conduct at issue was understood to be within the scope of the right *at the time of ratification*." (emphasis added)). But others would extend the historical frame considerably, deeming whole categories of "longstanding" restrictions to be "outside the ambit of the Second Amendment" even if they "cannot boast a precise founding-era analogue," *BATFE*, 700 F.3d at 196. Indeed, there is even considerable confusion over whether the "longstanding" "regulatory measures" that *Heller* deemed to be "presumptively lawful" – such as "prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings," 554 U.S. at 626-27 & n.26 – belong at the first step, where they inform the scope of the Second Amendment, *see*, *e.g.*, *Drake*, 724 F.3d at 432; *Heller II*, 670 F.3d at 1253, at the second step, where they "bear[ ] . . . on the level of scrutiny applicable," *Masciandaro*, 638 F.3d at 470; *see also Kachalsky*, 701 F.3d at 93-101; *United States v. Williams*, 616 F.3d 685, 692 (7th Cir. 2010), or at both steps, *see BATFE*, 700 F.3d at 196.

There is also a great deal of disagreement when it comes to the second step. Several circuits have concluded that "[a] regulation that threatens a right at the core of the Second Amendment – for example, the right of a law-abiding, responsible adult to possess and use a handgun to defend his or her home and family – triggers strict scrutiny." *Id.* at 195 (citation omitted); *see also Masciandaro*, 638 F.3d at 471. But at least one court has upheld a law that it conceded "burdens the core of the Second Amendment right" under merely *intermediate* scrutiny. *Jackson*, 746 F.3d at 963-65. And while some circuits have demanded "actual, reliable evidence" substantiating the government's claim that its interest in public safety is sufficiently furthered by the challenged restriction, *see Ezell*, 651 F.3d at 709, others have carelessly deferred to the government's "policy judgment" about how "the state can best protect public safety," *Drake*, 724 F.3d at 439; *see also Kachalsky*, 701 F.3d at 97-99 ("In the context of firearm regulation, the legislature is far better equipped than the judiciary to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks." (quotation marks omitted)).

Yet again, the panel opinion in this case is the very embodiment of the confusion and conflict that has engulfed the lower courts after *Heller* and *McDonald*. Strikingly, the test announced by the majority below is no less than the *fourth* doctrinal frame employed by the Seventh Circuit in the past five years. In *Skoien*, the en banc court upheld a federal law banning individuals previously convicted of misdemeanor domestic violence offenses from possessing firearms because "logic and data establish a substantial relation" between the federal ban and the "important governmental objective" of "preventing armed mayhem," but it explicitly declined to delve "into the 'levels of scrutiny' quagmire." 614 F.3d at 642. In *Ezell*, a panel of the same court – though disclaiming any intention to "undermine *Skoien*" – adopted a "two-part" approach similar to that employed by other courts and subjected Chicago's ban on the operation of firing ranges within the city to "not quite 'strict scrutiny.'" 651 F.3d at 703-04, 708. In *Moore*, the court struck down Illinois's comprehensive ban on public firearm carriage based on a textual and historical inquiry, announcing that "our analysis is not based on degrees of scrutiny, but on Illinois's failure to justify the most restrictive gun law of any of the 50 states." *Moore*, 702 F.3d at 941. And in this case, the court below became the first in the Nation to conclude that the three-factor inquiry it concocted –

whether a law regulates firearms that were "common at the time of ratification" or are "relat[ed] to the preservation or efficiency of a well regulated militia" and "whether law-abiding citizens retain adequate means of self-defense" – should be the touchstone of Second Amendment analysis. App.16a.

"Liberty finds no refuge in a jurisprudence of doubt." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 844 (1992). The better part of a decade after this Court's landmark decision in *Heller*, the lower courts remain deeply divided over how to assess Second-Amendment claims, and that confusion poses a serious threat to liberty. While most States respect the right to keep and bear arms, a minority of outlier jurisdictions continue to impose severe restrictions on Second-Amendment rights. Critically, a law-abiding citizen of Illinois who challenges one of those restrictions in federal court may face a dramatically different inquiry than a citizen of New York or California. And *no* court will guarantee that citizen the level of protection that *Heller* and *McDonald* demand. This Court should grant certiorari to restore order to this field of constitutional jurisprudence and reiterate that Second-Amendment rights are not to "be singled out for special – and specially unfavorable – treatment." *McDonald*, 561 U.S. at 778-79.

CONCLUSION

For the reasons set forth above, a writ should issue and this Court should reverse the judgment below.

July 27, 2015

Respectfully submitted,

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APPENDIX

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In the
United States Court of Appeals
For the Seventh Circuit

No. 14-3091

ARIE S. FRIEDMAN and ILLINOIS STATE RIFLE ASSOCIATION,
Plaintiffs-Appellants,

v.

CITY OF HIGHLAND PARK, ILLINOIS,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 13 C 9073 – **John W. Darrah**, *Judge.*

ARGUED JANUARY 22, 2015 – DECIDED APRIL 27, 2015

Before EASTERBROOK, MANION, and WILLIAMS, *Circuit Judges.*

EASTERBROOK, *Circuit Judge.* The City of Highland Park has an ordinance (§136.005 of the City Code) that prohibits possession of assault weapons or large-capacity magazines (those that can accept more than ten rounds). The ordinance defines an assault weapon as any semi-automatic gun that can accept a large-capacity magazine and has one of five other features: a pistol grip without a stock (for semi-automatic pistols, the capacity to accept a magazine outside the pistol grip); a folding, telescoping, or thumbhole stock; a grip for the non-trigger hand; a barrel shroud; or a muzzle brake or compensator. Some weapons, such as AR-15s and AK-47s, are prohibited by name. Arie Friedman, who lives in Highland Park, owned a banned rifle and several large-capacity magazines before the ordinance took effect, and he wants to own these items again; likewise members of the Illinois State Rifle Association, some of whom live in Highland Park. Plaintiffs asked the district court to enjoin enforcement of the ordinance, arguing that it violates the Constitution's Second Amendment, *see District of Columbia v. Heller*, 554 U.S. 570 (2008), applied to the states by the Fourteenth. *See McDonald v. Chicago*, 561 U.S. 742 (2010).

Heller holds that a law banning the possession of handguns in the home (or making their use in the home infeasible) violates the individual right to keep and bear arms secured by the Second Amendment. But the Court added that this is not a "right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." 554 U.S. at 626. It cautioned against interpreting the decision to cast doubt on "longstanding prohibitions", including the "historical tradition of prohibiting the carrying of 'dangerous and unusual weapons' ". *Id.* at 623, 627. It observed that state militias, when called to service, often had asked members to come armed with the sort of weapons that were "in common use at the time", *id.* at 624, and it thought these kinds of weapons (which have changed over the years) are protected by the Second Amendment in private hands, while military-grade weapons (the sort that would be in a militia's armory), such as machine guns, and weapons especially attractive to criminals, such as short-barreled shotguns, are not. *Id.* at 624-25.

Plaintiffs contend that there is no "historical tradition" of banning possession of semi-automatic guns and large-capacity magazines. Semi-automatic rifles have been marketed for civilian use for over a hundred years; Highland Park's ordinance was enacted in 2013. But this argument proves too much: its logic extends to bans on machine guns (which can fire more than one round with a single pull of the trigger, unlike semi-automatic weapons that chamber a new round automatically but require a new pull to fire). *Heller* deemed a ban on private possession of machine guns to be obviously valid. 554 U.S. at 624. But states didn't begin to regulate private use of machine guns until 1927. *See* Notes to Uniform Machine Gun Act, *Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings of the Forty-Second Annual Conference* 427-28 (1932). The National Firearms Act, 48 Stat. 1236, regulating machine guns at the federal level, followed in 1934.

How weapons are sorted between private and military uses has changed over time. From the perspective of 2008, when *Heller* was decided, laws dating to the 1920s may seem to belong to a "historical tradition" of regulation. But they were enacted more than 130 years after the states ratified the Second

Amendment. Why should regulations enacted 130 years after the Second Amendment's adoption (and nearly 60 years after the Fourteenth's) have more validity than those enacted another 90 years later? Nothing in *Heller* suggests that a constitutional challenge to bans on private possession of machine guns brought during the 1930s, soon after their enactment, should have succeeded – that the passage of time creates an easement across the Second Amendment. *See United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010) (en banc). If Highland Park's ordinance stays on the books for a few years, that shouldn't make it either more or less open to challenge under the Second Amendment.

Plaintiffs ask us to distinguish machine guns from semiautomatic weapons on the ground that the latter are commonly owned for lawful purposes. Cf. *Heller*, 554 U.S. at 625. This does not track the way *Heller* distinguished *United States v. Miller*, 307 U.S. 174 (1939): The Court took from *Miller* the rule that the Second Amendment does not authorize private persons to possess weapons such as machine guns and sawed-off shotguns that the government would not expect (or allow) citizens to bring with them when the militia is called to service. During Prohibition the Thompson submachine gun (the "Tommy gun") was all too common in Chicago, but that popularity didn't give it a constitutional immunity from the federal prohibition enacted in 1934. (The Tommy gun is a machine gun, as defined by 18 U.S.C. §921(23) and 26 U.S.C. §5845(b), and generally forbidden by 18 U.S.C.

§922(a)(4), because it fires multiple rounds with a single pull of the trigger; like the Uzi it is called a "submachine gun" to indicate that it is smaller and more mobile than other machine guns. The AK-47 and AR-15 (M16) rifles in military use also are submachine guns, though civilian versions are restricted to semi-automatic fire.) Both *Heller* and *Miller* contemplated that the weapons properly in private hands for militia use might change through legal regulation as well as innovation by firearms manufacturers.

And relying on how common a weapon is at the time of litigation would be circular to boot. Machine guns aren't commonly owned for lawful purposes today because they are illegal; semi-automatic weapons with large-capacity magazines are owned more commonly because, until recently (in some jurisdictions), they have been legal. Yet it would be absurd to say that the reason why a particular weapon can be banned is that there is a statute banning that it, so that it isn't commonly owned. A law's existence can't be the source of its own constitutional validity.

Highland Park contends that the ordinance must be valid because weapons with large-capacity magazines are "dangerous and unusual" as *Heller* used that phrase. Yet Highland Park concedes uncertainty whether the banned weapons are commonly owned; if they are (or were before it enacted the ordinance), then they are not unusual. The record shows that perhaps 9% of the nation's firearms owners have assault weapons, but what line separates "common" from "uncommon" ownership is something the Court did not say. And the record does not show whether the banned weapons are "dangerous" compared with handguns, which are responsible for the vast majority of gun violence in the United States: nearly as many people are killed annually with handguns in Chicago alone as have been killed in mass shootings (where use of a banned weapon might make a difference) nationwide in more than a decade. *See* Research and Development Division, *2011 Chicago Murder Analysis*, Chicago Police Department 23 (2012); J. Pete Blair & Katherine W. Schweit, *A Study of Active Shooter Incidents in the United States Between 2000 and 2013*, Federal Bureau of Investigation, United States Department of Justice 9 (2014).

The large fraction of murders committed by handguns may reflect the fact that they are much more numerous than assault weapons. What should matter to the "danger" question is how deadly a single weapon of one kind is compared with a single weapon of a different kind. On that subject the record provides some evidence. We know, for example, that semi-automatic guns with large-capacity magazines enable shooters to fire bullets faster than handguns equipped with smaller magazines. We also know that assault weapons generally are chambered for small rounds (compared with a large-caliber handgun or rifle), which emerge from the barrel with less momentum and are lethal only at (relatively) short range. This suggests that they are less dangerous per bullet – but they can fire more bullets. And they are designed to spray fire rather than to be aimed carefully.

That makes them simultaneously more dangerous to bystanders (and targets of aspiring mass murderers) yet more useful to elderly householders and others who are too frightened to draw a careful bead on an intruder or physically unable to do so. Where does the balance of danger lie?

The problems that would be created by treating such empirical issues as for the judiciary rather than the legislature – and the possibility that different judges might reach dramatically different conclusions about relative risks and their constitutional significance – illustrate why courts should not read *Heller* like a statute rather than an explanation of the Court's disposition. The language from *Heller* that we have quoted is precautionary: it warns against readings that go beyond the scope of *Heller*'s holding that "the Second Amendment creates individual rights, one of which is keeping operable handguns at home for self-defense." *Skoien*, 614 F.3d at 640.

Heller does not purport to define the full scope of the Second Amendment. The Court has not told us what other entitlements the Second Amendment creates or what kinds of gun regulations legislatures may enact. Instead the Court has alerted other judges, in *Heller* and again in *McDonald*, that the Second Amendment "does not imperil every law regulating firearms." *McDonald*, 561 U.S. at 786 (plurality opinion); *Heller*, 554 U.S. at 626-27 & n.26. Cautionary language about what has been left open should not be read as if it were part of the Constitution or answered all possible questions. It is enough to say, as we did in *Skoien*, 614 F.3d at 641, that at least some categorical limits on the kinds of weapons that can be possessed are proper, and that they need not mirror restrictions that were on the books in 1791.

This does not imply that a law about firearms is proper if it passes the rational-basis test – that is, as long as it serves some conceivable valid function. *See*, *e.g.*, *Vance v. Bradley*, 440 U.S. 93 (1979). *All* legislation requires a rational basis; if the Second Amendment imposed only a rational basis requirement, it wouldn't do anything. So far, however, the Justices have declined to specify how much substantive review the Second Amendment requires. Two courts of appeals have applied a version of "intermediate scrutiny" and sustained limits on assault weapons and large-capacity magazines. *See Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) (a law materially identical to Highland Park's is valid); *Fyock v. Sunnyvale*, 779 F.3d 991 (9th Cir. 2015) (a ban on magazines holding more than ten rounds is valid). But instead of trying to decide what "level" of scrutiny applies, and how it works, inquiries that do not resolve any concrete dispute, we think it better to ask whether a regulation bans weapons that were common at the time of ratification or those that have "some reasonable relationship to the preservation or efficiency of a well regulated militia," *see Heller*, 554 U.S. at 622-25; *Miller*, 307 U.S. at 178-79, and whether law-abiding citizens retain adequate means of self-defense.

The features prohibited by Highland Park's ordinance were not common in 1791. Most guns available then could not fire more than one shot without being reloaded; revolvers with rotating cylinders weren't widely available until the early 19th century. Semi-automatic guns and large-capacity magazines are more recent developments. Barrel shrouds, which make guns easier to operate even if they overheat, also are new; slow-loading guns available in 1791 did not overheat. And muzzle brakes, which prevent a gun's barrel from rising in recoil, are an early 20th century innovation.

Some of the weapons prohibited by the ordinance are commonly used for military and police functions; they therefore bear a relation to the preservation and effectiveness of state militias. But states, which are in charge of militias, should be allowed to decide when civilians can possess military-grade firearms, so as to have them available when the militia is called to duty. (Recall that this is how *Heller* understood *Miller*.) And since plaintiffs do not distinguish between states and other units of local government – according to them, an identical ban enacted by the State of Illinois would also run afoul of the Second Amendment – we need not decide whether *only* states, which traditionally regulate militias, have the power to determine what kinds of weapons citizens should have available. (Such an argument might anyway have been foreclosed by Illinois' recognition that local assault-weapon bans enacted before July 19, 2013, are valid; *see* 430 ILCS 65/13.1(c).)

Since the banned weapons can be used for self-defense, we must consider whether the ordinance leaves residents of Highland Park ample means to exercise the "inherent right of self-defense" that the Second Amendment protects. *Heller*, 554 U.S. at 628. *Heller* held that the availability of long guns does not save a ban on handgun ownership. The Justices took note of some of the reasons, including ease of accessibility and use, that citizens might prefer handguns to long guns for self-defense. But *Heller* did not foreclose the possibility that allowing the use of most long guns plus pistols and revolvers, as Highland Park's ordinance does, gives householders adequate means of defense.

Plaintiffs argue that the ordinance substantially restricts their options for armed self-defense. But that contention is undermined by their argument, in the same breath, that the ordinance serves no purpose, because (they say) criminals will just substitute permitted firearms functionally identical to the banned guns. If criminals can find substitutes for banned assault weapons, then so can law-abiding homeowners. Unlike the District of Columbia's ban on handguns, Highland Park's ordinance leaves residents with many self-defense options.

True enough, assault weapons can be beneficial for self-defense because they are lighter than many rifles and less dangerous per shot than large-caliber pistols or revolvers. Householders too frightened or infirm to aim carefully may be able to wield them more effectively than the pistols James Bond preferred.

But assault weapons with large-capacity magazines can fire more shots, faster, and thus can be more dangerous in aggregate. Why else are they the weapons of choice in mass shootings? A ban on assault weapons and large-capacity magazines might not prevent shootings in Highland Park (where they are already rare), but it may reduce the carnage if a mass shooting occurs.

That laws similar to Highland Park's reduce the share of gun crimes involving assault weapons is established by data. *See* Christopher S. Koper, Daniel J. Woods & Jeffery A. Roth, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, Report to the National Institute of Justice, United States Department of Justice 39-60 (June 2004). There is also some evidence linking the availability of assault weapons to gun-related homicides. *See* Arindrajit Dube, Oeindrila Dube & Omar García-Ponce, *Cross-Border Spillover: U.S. Gun Laws and Violence in Mexico*, 107 Am. Pol. Sci. Rev. 397 (2013) (finding that Mexican municipalities bordering American states without assault weapons bans experienced more gun-related homicides than those bordering California, which had a ban).

Plaintiffs nonetheless contend that the ordinance will have no effect on gun violence because the sort of firearms banned in Highland Park are available elsewhere in Illinois and in adjacent states. But data show that most criminals commit crimes close to home. *See* Elizabeth Groff & Tom McEwen, *Exploring* *the Spatial Configuration of Places Related to Homicide Events*, Report to the National Institute of Justice, United States Department of Justice 5-10, 48-56 (March 2006) (homicide); Christophe Vandeviver, Stijn Van Daele & Tom Vander Beken, *What Makes Long Crime Trips Worth Undertaking? Balancing Costs and Benefits in Burglars' Journey to Crime*, 55 Brit. J. Criminology 399, 401, 406-07 (2015) (burglary). Local crimes are most likely to be committed by local residents, who are less likely to have access to firearms banned by a local ordinance. A ban on assault weapons won't eliminate gun violence in Highland Park, but it may reduce the overall dangerousness of crime that does occur. Plaintiffs' argument proves far too much: it would imply that no jurisdiction other than the United States as a whole can regulate firearms. But that's not what *Heller* concluded, and not what we have held for local bans on other substances. *See National Paint & Coatings Ass'n v. Chicago*, 45 F.3d 1124 (7th Cir. 1995) (spray paint).

If it has no other effect, Highland Park's ordinance may increase the public's sense of safety. Mass shootings are rare, but they are highly salient, and people tend to overestimate the likelihood of salient events. *See* George F. Loewenstein, Christopher K. Hsee, Elke U. Weber & Ned Welch, *Risk as Feelings*, 127 Psychological Bulletin 267, 275-76 (2001); Eric J. Johnson, John Hershey, Jacqueline Meszaros & Howard Kunreuther, *Framing, Probability Distortions, and Insurance Decisions,* 7 J. Risk & Uncertainty 35

(1993). If a ban on semiautomatic guns and large-capacity magazines reduces the perceived risk from a mass shooting, and makes the public feel safer as a result, that's a substantial benefit. Cf. *Frank v. Walker*, 768 F.3d 744, 751 (7th Cir. 2014).

McDonald holds that the Second Amendment creates individual rights that can be asserted against state and local governments. But neither it nor *Heller* attempts to define the entire scope of the Second Amendment – to take all questions about which weapons are appropriate for self-defense out of the people's hands. *Heller* and *McDonald* set limits on the regulation of firearms; but within those limits, they leave matters open. The best way to evaluate the relation among assault weapons, crime, and self-defense is through the political process and scholarly debate, not by parsing ambiguous passages in the Supreme Court's opinions. The central role of representative democracy is no less part of the Constitution than is the Second Amendment: when there is no definitive constitutional rule, matters are left to the legislative process. *See McCulloch v. Maryland*, 17 U.S. 316, 407 (1819).

Another constitutional principle is relevant: the Constitution establishes a federal republic where local differences are cherished as elements of liberty, rather than eliminated in a search for national uniformity. *McDonald* circumscribes the scope of permissible experimentation by state and local governments, but it does not foreclose *all* possibility of experimentation. Within the limits established by the Justices in *Heller* and *McDonald*, federalism and diversity still have a claim. Whether those limits should be extended is in the end a question for the Justices. Given our understanding of existing limits, the judgment is

AFFIRMED.

MANION, *Circuit Judge*, dissenting.

By prohibiting a class of weapons commonly used throughout the country, Highland Park's ordinance infringes upon the rights of its citizens to keep weapons in their homes for the purpose of defending themselves, their families, and their property. Both the ordinance and this court's opinion upholding it are directly at odds with the central holdings of *Heller* and *McDonald:* that the Second Amendment protects a personal right to keep arms for lawful purposes, most notably for self-defense within the home. *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008); *McDonald v. City of Chicago*, 561 U.S. 767, 780 (2010). For the following reasons, I respectfully dissent.

Unlike public life where the cities and states have broad authority to regulate, the ultimate decision for what constitutes the most effective means of defending one's home, family, and property resides in individual citizens and not in the government. The *Heller* and *McDonald* opinions could not be clearer on this matter. *Heller*, 554 U.S. at 635; *McDonald*, 561

U.S. at 780. The extent of danger – real or imagined – that a citizen faces at home is a matter only that person can assess in full.

To be sure, assault rifles and large capacity magazines are dangerous. But their ability to project large amounts of force accurately is exactly why they are an attractive means of self-defense. While most persons do not require extraordinary means to defend their homes, the fact remains that some do. Ultimately, it is up to the lawful gun owner and not the government to decide these matters. To limit self-defense to only those methods acceptable to the government is to effect an enormous transfer of authority from the citizens of this country to the government – a result directly contrary to our constitution and to our political tradition. The rights contained in the Second Amendment are "fundamental" and "necessary to our system of ordered liberty." *McDonald*, 561 U.S. at 778. The government recognizes these rights; it does not confer them.

Fundamentally, I disagree with the court's reading of *United States v. Miller*, 307 U.S. 174 (1939), as it pertains to the nature of the rights recognized by the Second Amendment. Long ago, in *Miller*, the Supreme Court expressly tied Second Amendment rights to one's association with a state militia. In *Heller*, the District of Columbia relied on this holding from *Miller* as justification for an ordinance restricting the rights of its citizens to keep and use handguns. 554 U.S. at 577, 587. The Supreme Court disagreed. *Id.* at 622. Indeed, the central holding of *Heller* is that citizens have an individual right to keep and bear firearms that does not depend upon any association with a militia. In so holding, *Heller* effectively laid to rest the notion of collective Second Amendment rights, and then *McDonald* placed a wreath on its grave.

Here, the court comes not to bury *Miller* but to exhume it. To that end, it surveys the landscape of firearm regulations as if *Miller* were still the controlling authority and *Heller* were a mere gloss on it. The court's reading culminates in a novel test: whether the weapons in question were "common at the time of ratification" or have "some reasonable relationship to the preservation or efficiency of a well regulated militia," and "whether law-abiding citizens retain adequate means of self-defense." *Ante* at 7-8.

The problem is *Heller* expressly disclaimed two of the three aspects of this test; and it did so not as a matter of simple housekeeping, but as an immediate consequence of its central holding. It held as "bordering on the frivolous" arguments that recognized a right to bear only those arms in existence at the time of ratification. *Heller*, 554 U.S. at 582 ("Some have made the argument, bordering on the frivolous, that only those arms in existence in the 18th century are protected by the Second Amendment."). Likewise, it expressly overruled any reading of the Second Amendment that conditioned the rights to keep and bear arms on one's association with a militia. *Id.* at 612. ("It is not possible to read this as discussing anything other than an individual right unconnected to militia service."). For this reason, there is no way to square this court's holding with the clear precedents of *Heller* and *McDonald.*

Heller and *McDonald*

We turn to the controlling precedents. Although the *Heller* decision is of recent vintage, the rights recognized by it – for individual citizens to keep and bear arms lawfully – are not. *Heller* certainly did not create them in 2008, nor did the Second Amendment in 1791. These rights are "fundamental" and "deeply rooted in this Nation's history and tradition." *McDonald*, 561 U.S. at 768. They are natural rights that pre-existed the Second Amendment. *Heller*, 554 U.S. at 592 (quoting *United States v. Cruikshank*, 92 U.S. 542, 553 (1876) that the right to carry weapons is not "dependent upon [the Second Amendment] for its existence."); *Ezell v. City of Chicago*, 651 F.3d 684, 700 (7th Cir. 2011). This understanding persisted and was shared by the Framers of the Fourteenth Amendment, who counted these among the "fundamental rights necessary to our system of ordered liberty." *McDonald*, 561 U.S. at 778. These rights exist not merely in the abstract, but are exercised on a daily basis; indeed, a detailed list of the various ways in which Americans use weapons lawfully would be prohibitively long.

Which brings us to Friedman, our plaintiff. He is a resident of Highland Park who owns an AR rifle and large capacity magazines of the types prohibited by the ordinance. Friedman contends – and the city does not contest – that he keeps the weapons in his home for the defense of his family. Prior to the passage of the ordinance, he used these weapons lawfully. Now, under the terms of the ordinance, Friedman has ninety days to remove the weapons beyond Highland Park's city limits or to surrender them to the Chief of Police. §136.005(D)(1), (3). Should he fail to do so, he faces a misdemeanor conviction punishable by up to six months in jail and a fine of between $500 and $1,000. *Id.* at § (F).

The Framework

In *Ezell*, we stated that a court must first identify whether the regulated activity falls within the scope of the Second Amendment. 651 F.3d at 701. However, where, as here, the activity is directly tied to specific classes of weapons, we are faced with an additional threshold matter: whether the classes of weapons regulated are commonly used by law-abiding citizens. If the weapons in question (assault rifles and high-capacity magazines) are not commonly used by law-abiding citizens, then our inquiry ends as there is no Second Amendment protection and the regulation is presumed to be lawful.[1]

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[1] This question is best viewed as a separate, threshold matter than as an aspect of the regulated activity. An example bears this out: because hand grenades have never been commonly used by law-abiding citizens for lawful purposes, it matters not whether the regulation is an ordinance prohibiting ownership of

(Continued on following page)

If the weapons are covered by the Second Amendment, we then examine whether the asserted right (i.e., the activity affected by the regulation) is likewise covered. To do this, we examine how the asserted right was publicly understood when the Fourteenth Amendment was ratified (or Second Amendment in the case of federal regulation) to discern whether the right (or some analogue) has been exercised historically. *Id.* at 702. This answer requires a textual and historical inquiry into the original meaning of the Second Amendment. *Id.* (citing *Heller*, 554 U.S. at 634-35). Significantly, the plaintiff need not demonstrate the absence of regulation in order to prevail; the burden rests squarely on the government to establish that the activity has been subject to some measure of regulation. *Id.*

Finally, if we conclude that the weapons and asserted right at issue are covered by the Second Amendment, then we must assign a level of scrutiny appropriate to the right regulated and determine whether the regulation survives such scrutiny. *Ezell*, 651 F.3d at 702-03. Conversely, if the activity falls outside of the scope of the Second Amendment as understood at the relevant historical moment (1868 with the passage of the Fourteenth Amendment), the

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such weapons, a licensing scheme impeding access to them, or a regulation setting conditions on their manufacture or sale: the Second Amendment does not apply to such inquiry because the type of weapon is not covered by it.

regulated activity is categorically unprotected and our inquiry ends. *Id.* at 703.

In summary, this framework involves up to three separate steps for a reviewing court. A shorthand of it runs as follows:

1. determine whether the weapon is commonly used by law-abiding citizens;
2. review the original public meaning of the asserted right (i.e. the regulated activity); and, if both the weapon and asserted right are covered;
3. assign and apply a standard of scrutiny.

Having established the appropriate framework, it is time to examine Highland Park's ordinance in light of the Second Amendment.

Common Use

The regulated weapons: In *Miller*, the Supreme Court upheld a prohibition against short-barreled shotguns because the Second Amendment did not protect those weapons that were not typically possessed as ordinary military equipment for use in a state militia. 307 U.S. at 178. The "common use" test is the offspring of this decision and asks whether a particular weapon is commonly used by law-abiding citizens for lawful purposes.[2] *Heller* jettisoned *Miller*'s requirement of a nexus between the weapon and military equipment, but otherwise adopted the test with a focus on whether the weapon in question has obtained common use by law abiding citizens. *Heller*, 554 U.S. 623, 627.

Here, the evidentiary record is unequivocal: a statistically significant amount of gun owners such as Friedman use semiautomatic weapons and high-capacity magazines for lawful purposes.[3] This evidence is sufficient to demonstrate that these weapons are commonly used and are not unusual. In other words, they are covered by the Second Amendment. Whether or how people might use these weapons for illegal purposes provides a basis for a state to

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[2] It is of no significance that other courts have worded this inquiry differently, asking whether the regulated weapons are "dangerous and unusual." All weapons are presumably dangerous. To say that a weapon is unusual is to say that it is not commonly used for lawful purposes.

[3] Insofar as the evidentiary record addresses the matter, it supports the proposition that AR-rifles are commonly used by law-abiding citizens. Out of 57 million firearm owners in the United States, it is estimated that 5 million own AR-type rifles. (A. 66). Firearm industry analysts estimate that 5,128,000 AR-type rifles were produced in the United States for domestic sale, while an additional 3,415,000 were imported. (A. 65; 73). Between 2008 and 2012, approximately 11.4% of firearms manufactured in the United States were AR-type rifles. A survey of randomly selected United States residents demonstrated that an estimated 11,976,702 million persons participated in target shooting with an AR-type rifle in 2012. (A. 68; 102). The evidentiary record contains no entries disputing these estimates.

regulate them, but it has no bearing on whether the Second Amendment covers them. Unfortunately, the court effectively inverts this equation and considers first the potential illegal uses (here: catastrophic public shootings) and then doubles back to determine whether attendant lawful use by ordinary citizens might be sufficient to warrant some type of Second Amendment protection.

An example: At oral argument, there was much discussion about various longstanding regulations prohibiting such weapons as machine guns. The crux of this discussion was whether machine guns would have satisfied the common use test during the 1930s when they were the weapon of choice among gangsters in Chicago. But this misses the point: it matters not whether fifty or five thousand mob enforcers used a particular weapon, the question is whether a critical mass of law-abiding citizens did. In the case of machine guns, nobody has argued, before or since, that ordinary citizens used these weapons for lawful purposes, and so they have been rightly deemed not to fall within the ambit of the Second Amendment. Had there been even a small amount of citizens who used them for lawful purposes, then the Second Amendment might have covered them. The fact that gangsters used them to terrorize people might have served as ample justification to regulate them (or even prohibit them outright), but it has no bearing on whether they are covered under the Second Amendment.[4]

The court also objected because the common-use test is a circular one.[5] Perhaps so, but the law is full of such tests, and this one is no more circular than the "reasonable expectation of privacy" or the "reasonable juror." The fact that a statistically significant number of Americans use AR-type rifles and large-size magazines demonstrates *ipso facto* that they are used for lawful purposes. Our inquiry should have

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[4] Weapons can be commonly used by both criminals and law-abiding citizens. For example, the court correctly notes that handguns have long been the preferred weapon for criminals and are "responsible for the vast majority of gun violence in the United States. . . ." *Ante* at 5. This, of course, is the same type of weapon that *McDonald* recognized as covered under the Second Amendment because it was (and still is) "the most preferred firearm in the nation." 561 U.S. 767. In evaluating common use, *McDonald* considered as relevant only use by law-abiding citizens.

[5] Circularity results from the obvious fact that common use is aided when a weapon is legal and precluded when it is not. The argument goes that authorities are free to regulate irrespective of the Second Amendment until a weapon obtains a certain quotient of use by law-abiding citizens. After that, they are too late as Second Amendment protections obtain. Under this view, common use is the effect of law rather than the cause. But this scenario overstates the evolution of technology among weapons. Overwhelmingly, newly developed weapons are merely updated versions of weapons already in the marketplace. It is rare to have a weapon come to market in such form that it has no precursors subject to regulation. Weapon manufacturers are unlikely to expend funds to develop and bring to market variations on classes of weapons that are currently prohibited.

ended here: the Second Amendment covers these weapons.

Original Meaning of Asserted Rights

We follow *Heller*'s example examining the original meaning of the right asserted. 554 U.S. at 576. *Heller* examined the right to keep arms as it was understood in 1791 when the Second Amendment was ratified. Significantly, *Heller* expressly rejected the view that the Second Amendment contained a unitary right and instead noted that lawmakers of the founding period routinely grouped multiple, related, rights under a singular right. *Heller*, 554 U.S. at 591. Because the rights in the Second Amendment are many and varied, a court must identify the specific right implicated by a regulation.

To examine the scope of the right, we must first identify the regulated activity. Here, the relevant section of the ordinance provides that: "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." § 136.005(B). Plaintiffs do not challenge the provisions associated with the manufacture or sale of such weapons in Highland Park and so we need not address the scope of those rights. Instead, we isolate our attention on the language in the statute that forbids a citizen from acquiring or possessing any assault weapon or large-capacity magazine.

The Right to Keep Arms v. The Right to Bear Arms

Heller defined the term "to keep arms" to mean to "have weapons," and "to bear arms" as to "carr[y]" weapons. 554 U.S. at 582; 589. Though similar, these activities are not identical; for instance, an ordinance that prohibits the carriage or use of weapons but not outright possession would not implicate the right to keep arms, but only the right to bear them in certain locations. Highland Park's ordinance implicates both rights. Leaving aside the other prohibitions, the ordinance prohibits the "acqui[sition] or possess[ion of] any assault weapon or large capacity magazine." §136.005 (B). Notably absent from this provision is any qualifying language: *all* forms of possession are summarily prohibited. Other laws notwithstanding, the ordinance makes no distinction between storing large-capacity magazines in a locked safe at home and carrying a loaded assault rifle while walking down Main Street. Both constitute "possession" and are prohibited outright.

Of course, our inquiry centers on the understanding of the right to keep arms in 1868 when the Fourteenth Amendment became law. Fortunately, we need not engage in original historical analysis because the Supreme Court in *McDonald* has done so on this exact question – albeit in the context of an ordinance restricting the right to keep handguns in the home. *McDonald* concluded that the right to keep a weapon in one's home for the purposes of self-defense is the broadest right under the Second Amendment. It noted:

> Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is 'the *central component*' of the Second Amendment right. . . . Explaining that 'the need for defense of self, family, and property is most acute' in the home . . . we found that this right applies to handguns because they are 'the most preferred firearm in the nation to 'keep' and use for the protection of one's home and family. . . . Thus, we concluded, citizens must be permitted to use [handguns] for the core lawful purpose of self-defense.

McDonald, 561 U.S. at 767-68 (citing *Heller*, 554 U.S. at 630) (emphasis in original).

Rather than merely regulate how weapons are to be stored at home, Highland Park's ordinance goes further than the one that the Court found unconstitutional in *Heller*: it prohibits any form of possession of these weapons. It is immaterial to this inquiry that the regulations targeted different classes of weapons (handguns versus assault rifles and large-capacity magazines) because the issue at this step involves the scope of the protected activity – the right to keep arms for self-defense – not the class of weapons involved with such activity; that inquiry is relevant at the final step in examining the purpose for the regulation.

If the right to keep arms in the home for the purpose of self-defense obtains the broadest protections under the Second Amendment, it follows by implication that regulations affecting the rights to carry (bear) arms outside of the home are given greater deference. Indeed, the vast majority of the longstanding regulations deemed "presumptively lawful" by *Heller* and *McDonald* are regulations against the use and carriage of weapons. *See, e.g.*, *Heller*, 554 U.S. at 626-27; *Heller v. District of Columbia*, 670 F.3d 1244, 1253 (D.C. Cir. 2011) ("*Heller II*"); *United States v. Rene E.*, 583 F.3d 8, 12 (1st Cir. 2009). Traditionally, these regulations limited the carriage of weapons in sensitive locations such as courthouses or banned dueling or carrying concealed weapons such as pocket pistols or bowie knives. *See* Robert Leider, *Our Non-Originalist Right to Bear Arms*, 89 Ind. L. J. 1587, 1601 (2014). In contrast, those regulations prohibiting ownership of weapons outright focused on the status of the regulated party as a felon or a person ill-suited for gun ownership due to mental infirmities. *Id.* In short, outside of weapons deemed dangerous or unusual, there is no historical tradition supporting wholesale prohibitions of entire classes of weapons.

Standards of Scrutiny

Insofar as Highland Park's ordinance implicates Friedman's right to keep assault rifles and large-capacity magazines in his home for the purposes of self-defense, it implicates a fundamental right and is subject to strict scrutiny. *See Clark v. Jeter*, 486 U.S. 456, 461 (1988) ("classifications affecting fundamental rights are given the most exacting scrutiny") (citation omitted). Of course, other courts have applied lower standards of review even in cases where they recognized that the regulation impinged upon a fundamental right under the Second Amendment. *See, e.g.*, *Heller II*, 670 F.3d at 1256.

The distinction here is a matter of kind and not degree; rather than limiting the terms under which a fundamental right might be exercised, Highland Park's ordinance serves as a total prohibition of a class of weapons that Friedman used to defend his home and family. The right to self-defense is largely meaningless if it does not include the right to choose the most effective means of defending oneself. For this reason, *Heller* struck down a District of Columbia ordinance requiring that firearms in the home be rendered and kept inoperable at all times because the ordinance "makes it impossible for citizens to use [the regulated weapons] for the core lawful purpose of self-defense. . . ." *Heller*, 554 U.S. at 630. Because Highland Park's ordinance cuts right to the heart of the Second Amendment, it deserves the highest level of scrutiny.

Under strict scrutiny, Highland Park must prove that its law furthers a compelling government interest and must employ the least restrictive means to achieve that end. *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 813 (2000). Accordingly, Highland Park claims that the law furthers the compelling interest of preventing public shootings such as those witnessed at the movie theater in Aurora, Colorado and at Sandy Hook Elementary

School in Connecticut. No problem so far: public safety is an obvious compelling interest in this case. That the regulated weapons are capable of inflicting substantial force is no doubt relevant in forming a basis for the City to regulate their use within its public spaces.

The difficulties arise in the next prong; rather than being the least restrictive means to address these particular public safety issues, Highland Park's ordinance serves as the bluntest of instruments, banning a class of weapons outright, and restricting the rights of its citizens to select the means by which they defend their homes and families. Here, one need not parse out the various alternatives that Highland Park could have chosen to achieve these ends; *any* alternative would have been less restrictive. This can only yield one conclusion: the provisions in Highland Park's ordinance prohibiting its citizens from acquiring or possessing assault rifles or large-capacity magazines are unconstitutional insofar as they prohibit citizens from lawfully keeping such weapons in their homes.

Insofar as Highland Park's ordinance implicates the right to carry or use these weapons outside of one's property, it is subject to intermediate scrutiny. To satisfy this standard, Highland Park must show that the restrictions are "substantially related to an important government objective." *Clark*, 486 U.S. at 461. As noted earlier, restricting the use and carriage of assault rifles and large-capacity magazines in Highland Park is related to an important government objective – protecting the safety of its citizens. Unlike strict scrutiny analysis, intermediate scrutiny does not require that the ordinance be the least restrictive means, but that it serve an important government interest in a way that is substantially related to that interest. *Univ. of N.Y. v. Fox*, 492 U.S. 469, 477 (1989).

As other courts have noted, restrictions against assault weapons and large capacity magazines can survive intermediate scrutiny. *Heller II*, 670 F.3d at 1244. Here, Highland Park has a legitimate interest in ensuring the safety of its citizens in schools and other public places. For this reason, there is no problem concluding that the ordinance, insofar as it regulates the possession and use of the weapons in public places, coheres with the Second Amendment.

Several other matters require attention as well.

The rights in the Second Amendment: The court treats these rights as unitary and undifferentiated. In so doing, it makes no distinction between the right to keep arms to defend one's home and the right to use those arms in a constitutionally permissible manner. But the Supreme Court has established clear parameters: the right to keep arms in the home for self-defense obtains the broadest protection, *McDonald*, 561 U.S. at 767 (noting that the "need for defense of self, family, and property is most acute in the home . . .), while other rights under the Second Amendment are "not unlimited" but are subject to appropriate regulation. Here, the court makes no attempt to parse out the various activities prohibited by Highland Park's ordinance; instead it treats as identical activities as diverse as keeping weapons in the home and manufacturing them for sale. *Heller* requires courts to identify the specific activity regulated; the court here failed to do this.

The effect of longstanding regulations: It is important to note that *Heller*, for good reasons, did not seek to dismantle in whole the nexus of existing firearms regulations. Instead, it sought to recast the focus of courts away from policy considerations and towards the original meaning of the Second Amendment. In so doing, it left intact existing regulations and stated that longstanding ones are accorded a presumption of constitutionality. *Heller*, 554 U.S. at 626-27.

But a presumption is a very different thing from an assertion: we presume that laws are constitutional until and unless the regulation is challenged and a competent court informs us otherwise. In other words, it is a very different thing to presume a statute to be constitutional than to positively assert that it is. Here the court outlines various longstanding regulations and then proceeds to use them as a navigational chart to determine the confines of permissible firearm regulation. All of this culminates in a syllogism that runs, roughly speaking, as follows: machine guns have been illegal under law; assault weapons are similar to machine guns; therefore, assault rifles may be prohibited under law. Nothing in

Heller or *McDonald* supports this as an appropriate framework.

The evidentiary record: The court ignores the central piece of evidence in this case: that millions of Americans own and use AR-type rifles lawfully. (A.65-73). Instead, it adopts – as the final word on the matter and with no discussion – Highland Park's position that the evidence is inconclusive on this question; and it does this notwithstanding the fact that *all* of the relevant evidence supports defendant's contention that AR-type rifles are commonly used throughout this nation. Additionally, it posits as self-evident a comparison between semiautomatic weapons and machine guns despite the fact that the existing science is, at best, contested on this. More significantly, the only relevant evidence in record disputes this contention.[6]

The post-Heller framework: The court wholly disregards the (albeit still nascent) *post-Heller* framework established in this and our sister courts in favor of its own, unique path. In so doing, it offers a methodology in direct conflict to that offered by this circuit *in* previous cases, *see, e.g.*, *Ezell*, 651 F.3d 684, and

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[6] Plaintiffs submitted a video demonstration highlighting some of the differences between semiautomatic, AR-type rifles and automatic rifles. (A. 63). Automatic weapons are selective-fire weapons where a single pull of the trigger will fire continuously until all ammunition is exhausted. (A. 21) In contrast, a semiautomatic weapon only allows for one round per pull. (A. 19).

out of step with other circuits, *United States v. Marzzarella*, 614 F.3d 85 (3d Cir. 2010); *Heller II*, 670 F.3d 1244.

Judicial findings: Finally, the court justifies the ordinance as valid because it "may increase the public's sense of safety." Perhaps so, but there is no evidentiary basis for this finding. The court is not empowered to uphold a regulation as constitutional based solely on its ability to divine public sentiment about the matter.

As noted earlier, the *post-Heller* framework is very much a work in progress and will continue to be refined in subsequent litigation. Neither *Heller* nor *McDonald* purported to resolve every matter involving the regulation of weapons; but they are clear about one thing: the right to keep arms in the home for self-defense is central to the Second Amendment and is not conditioned on any association with a militia. Instead of following this clear principle, the court engages in a gerrymandered reading of those cases to hold directly contrary to their precedents. In so doing, it upholds an ordinance that violates the Second Amendment rights of its citizens to keep arms in their homes for the purpose of defending themselves, their families, and their property.

I respectfully dissent.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ARIE S. FRIEDMAN, M.D. and THE ILLINOIS STATE RIFLE ASSOCIATION, Plaintiffs, v. THE CITY OF HIGHLAND PARK, Defendant.	Case No. 1:13-cv-9073 Judge John W. Darrah

MEMORANDUM OPINION AND ORDER

(Filed Sep. 18, 2014)

On June 24, 2013, the City of Highland Park ("Highland Park") passed an ordinance, prohibiting the possession, sale, or manufacture of certain types of weapons and large capacity magazines. On December 12, 2013, two days before the ordinance became effective, Plaintiffs Dr. Arie S. Friedman and the Illinois State Rifle Association ("ISRA") (collectively, "Plaintiffs") brought this action, seeking a determination by the Court that the ordinance is unconstitutional and an injunction barring its enforcement. Plaintiffs filed a Motion for Preliminary Injunction that was consolidated for trial on the issue of the issuance of a permanent injunction, set for October 27, 2014, pursuant to Federal Rule of Civil Procedure 65(a)(2). The parties have also filed cross-motions for summary judgment and briefs in support of and in opposition thereto.

BACKGROUND

Highland Park is a municipal corporation located in Lake County, Illinois. (Dkt. No. 42 ¶ 4.) Within Highland Park are fifteen schools, including Highland Park High School and numerous elementary schools, four community centers, and three nursing homes. (Dkt. No. 45 ¶¶ 21-22.) Additionally, Highland Park features multiple locations where large numbers of people frequently congregate, like the Ravinia Festival; the Port Clinton retail and office development; the Renaissance Place retail and residential development; and the Crossroads Shopping Center. (*Id.* ¶ 23.) The City Council of Highland Park adopted Chapter 136 of the Highland Park City Code (the "Ordinance") based on the belief that certain designated weapons pose an undue threat to public safety. (*Id.* ¶ 4.) The Ordinance was particularly intended to address the potential threat of mass shootings involving semi-automatic weapons like those in Aurora, Colorado (12 killed, 58 injured); Newtown, Connecticut (28 killed); Casas Adobes, Arizona (6 killed, 14 injured); and Santa Monica College in Santa Monica, California (6 killed, 2 injured). (*Id.* ¶ 9; Dkt. No. 44 at 3-4.)

The Ordinance provides that "[n]o person shall manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess any Assault

Weapon or Large Capacity Magazine, unless expressly exempted in Section 136.006 of this Chapter." Highland Park, Ill., City Code § 136.005.[1] The Ordinance defines Assault Weapons as any of the following:

> (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;

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[1] The Ordinance is nearly identical to a ban in neighboring Cook County, Cook County, Ill. Ordinance No. 06-O-50 (2006), and similar to those passed by numerous other governments. *See Colo. Outfitters Ass'n v. Hickenlooper*, Civil Action No. 13-cv-01300-MSK-MJW, 2014 WL 3058518, at *16 (D. Colo. June 26, 2014) ("According to Colorado, the General Assembly's objective in passing [the LCMs ban] was to reduce the number and magnitude of injuries caused by gun violence, specifically in mass shootings.") (emphasis added); *Kolbe v. O'Malley*, Civil No. CCB-13-2841, 2014 WL 4243633, *15-18 (D. Md. Aug. 22, 2014); *Fyock v. City of Sunnyvale*, Case No. C-13-5807-RMW, 2014 WL 984162, at *7 (N.D. Cal. Mar. 5, 2014); *Heller v. Dist. of Columbia*, 670 F.3d 1244, 1264 (D.C. Cir. 2011).

(2) A semiautomatic pistol or any semiautomatic 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. . . .

Id. § 136.001(C)(1)-(6).[2] Weapons made permanently inoperable and weapons "designed for Olympic target shooting events" are not Assault Weapons. *Id.* § 136.001(C)(7). The Ordinance goes on to define Large Capacity Magazines ("LCMs") as:

> 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

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[2] The Ordinance also includes specific weapons in its definition of Assault Weapons: "(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, TECDC9, 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." Highland Park, Ill., City Code § 136.001(C)(7).

> caliber tube Ammunition feeding device. (3) A tubular magazine that is contained in a lever-action Firearm.

Id. § 136.001(G).

Violation of any provision of the Ordinance "is a misdemeanor, punishable by not more than six months imprisonment or a fine of not less than $500 and not more than $1000, or both." *Id.* § 136.999. Officers, agents, or employees of any municipality or state or the United States, members of the United States Armed Forces or state militias, and peace officers are exempt from the Ordinance to the extent such a person "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." *Id.* § 136.006(A). "Qualified retired law enforcement officers"[3] are likewise exempt from the ban. *Id.* § 136.006(B).

The Ordinance requires that any person who lawfully possessed any Assault Weapon or LCM is required within Sixty days of the effective date (December 14, 2013) to do one of the following:

> (A) Remove the Assault Weapon or Large Capacity Magazine from within the limits of the City;

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[3] As defined by 18 U.S.C. § 926C(c).

> (B) 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;
>
> (C) Surrender the Assault Weapon or Large Capacity Magazine to the Chief of Police or his or her designee for disposal as provided in Section 136.025 of this Chapter; or
>
> (D) Take the steps necessary to cause the Assault Weapon or Large Capacity Magazine to fall within one of the exemptions set forth in Section 136.006 of this Chapter.

Id. § 136.020. The Chief of Police shall cause to be destroyed any Assault Weapon or LCM turned over to police or confiscated. *Id.* § 136.025.

Dr. Friedman owns and possesses firearms in Highland Park that fall within the Ordinance's definition of Assault Weapons. (Compl. ¶ 4.) The IRSA has members who live in Highland Park and own firearms and magazines prohibited by the Ordinance. (Compl. ¶ 5.) Plaintiffs seek a declaration that the Ordinance is unconstitutional as an infringement of their Second Amendment rights.

LEGAL STANDARD

Summary judgment is appropriate when there remains "no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *See Parent v. Home Depot*

U.S.A., Inc., 694 F.3d 919, 922 (7th Cir. 2012). The party seeking summary judgment must first identify those portions of the record that establish there is no genuine issue of material fact. *U.S. v. King-Vassel*, 728 F.3d 707, 711 (7th Cir. 2013) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). To survive such a showing, the nonmoving party must "present sufficient evidence to show the existence of each element of its case on which it will bear the burden at trial." *Tri-Gen Inc. v. Int'l Union of Operating Eng'rs, Local 150, AFL-CIO*, 433 F.3d 1024, 1030-31 (7th Cir. 2006) (citing *Serfecz v. Jewel Food Stores*, 67 F.3d 591, 596 (7th Cir. 1995)). Opposition to summary judgment requires more than a scintilla of evidence or some metaphysical doubt. *Nat'l Inspection Repairs, Inc. v. George S. May Int'l Co.*, 600 F.3d 878, 882 (7th Cir. 2010) (citations omitted). The evidence must be such "that a reasonable jury could return a verdict for the nonmoving party." *Wells v. Coker*, 707 F.3d 756, 760 (7th Cir. 2013) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

When considering a motion for summary judgment, the court must construe the evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in the nonmoving party's favor. *Ogden v. Atterholt*, 606 F.3d 355, 358 (7th Cir. 2010) (citations omitted). The court does not make credibility determinations or weigh conflicting evidence. *George v. Kraft Foods Global, Inc.*, 641 F.3d 786, 799 (7th Cir. 2011) (citations omitted).

Summary judgment is particularly appropriate when facts in dispute are "legislative," or "tied to legal reasoning and the law making process," rather than "adjudicative," concerning the conduct of the parties. See Fed. R. Evid. 201(a) advisory committee's note. Inasmuch as "[o]nly adjudicative facts are determined in trials, and only legislative facts are relevant to the constitutionality of . . . gun law[s]," the instant case is better suited for resolution through summary judgment than proceeding to trial. *See Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012); *Ill. Ass'n of Firearms Retailers v. City of Chi.*, 961 F. Supp. 2d 928, 932 (N.D. Ill. 2014).

Local Rule 56.1(a) requires the party moving for summary judgment to provide "a statement of material facts as to which the moving party contends there is no genuine issue" and to cite to the relevant admissible evidence supporting each fact. Local Rule 56.1(b)(3)(B) then requires the nonmoving party to admit or deny each factual statement proffered by the moving party and to concisely designate any material facts that establish a genuine dispute for trial. *Martin v. Gonzalez*, 526 F. App'x 681, 682 (7th Cir. 2013). Under Local Rule 56.1(b)(3)(C), the nonmoving party may file a statement of additional facts, and the moving party may submit a concise reply under Local Rule 56.1(a)(3). To the extent that a purported fact is merely a legal conclusion, it is disregarded. *See Judson Atkinson Candies, Inc. v. Latini-Hohberger Dhimantec*, 529 F.3d 371 (7th Cir. 2008).

A litigant's failure to respond to a Rule 56.1 statement, or to dispute the statement without "specific references to the affidavits, parts of the record, and other supporting material," results in the court's admitting the uncontroverted statement as true. *Banks v. Fuentes*, 545 F. App'x 518, 520 (7th Cir.2013). Similarly, responses containing argumentative denials or extraneous information do not properly dispute a fact. *See Graziano v. Village of Oak Park*, 401 F. Supp. 2d 918, 937 (N.D. Ill. 2005).[4]

ANALYSIS

Plaintiffs argue, as more fully discussed below, that firearms banned by the Ordinance are commonly used for lawful purposes and, therefore, are "categorically protected" by the Second Amendment to the United States Constitution and that any prohibition should be held unconstitutional without reaching further analysis. (Pls.' Mot. for Summary Judgment ("Pls.' MSJ") at 14.) Plaintiffs argue in the alternative that, if the Ordinance is subjected to further analysis, it does not survive this scrutiny. (Pls.' MSJ at 21.) Both of these arguments rely on interpretation of a body of law that is recently developing. *See Ezell v.*

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[4] On August 7, 2014, Plaintiffs filed a Motion to Strike certain of Defendant's material facts. (Dkt. No. 61.) On August 20, 2014, that Motion was denied. Provided, however, Plaintiffs' arguments regarding striking these facts are considered, discussed and resolved herein when necessary.

City of Chi., 651 F.3d 684, 690 (7th Cir. 2011) (noting Second Amendment litigation is "quite new").

The Second Amendment provides that "[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. This right is also "fully applicable to the States." *McDonald v. City of Chi.*, 130 S.Ct. 3020, 3026 (2010).

In *District of Columbia v. Heller ("Heller I")* the Supreme Court determined that there is a guaranteed "individual right to possess and carry weapons in case of confrontation," based on the Second Amendment. 554 U.S. 570, 592, 635 (2008). More particularly, *Heller I* held that a law banning handguns would fail at any level of constitutional scrutiny because it "amounts to a prohibition of an entire class of 'arms' that is overwhelmingly chosen by American society for [the] lawful purpose [of self-defense] . . . [and] extends, moreover, to the home, where the need for defense of self, family, and property is most acute." *Id.* at 628. Thus, *Heller I* recognized Second Amendment protection against restrictions by the District of Columbia on use of "the quintessential self-defense weapon" for the "core lawful purpose of self-defense." *Id.* at 629-630.

However, the Court made it clear that there are limitations on this right. *See id.* at 626 (explaining that the holding should not "cast doubt on longstanding prohibitions on the possession of firearms by 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."). The protection afforded by the Second Amendment to a class of weapons as ubiquitous as handguns does not create "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* Indeed, the extensive possession of handguns among weapons used for self-defense distinguished them from "weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns." *Id.* at 625. In *McDonald*, the Court reiterated the primacy of the individual right to possess handguns in the home. 130 S.Ct. at 3050.

The Seventh Circuit addressed Second Amendment Protection when it reversed the district court's denial of a preliminary injunction against a City of Chicago ordinance conditioning lawful gun ownership on completing one hour of firing range training, while simultaneously banning firing ranges within Chicago city limits. *Ezell v. City of Chi.*, 651 F.3d 684, 689, 711 (7th Cir. 2011). Analyzing the ordinance required a two-part approach. First, the Seventh Circuit drew from *Heller I* and *McDonald* a "textual and historical inquiry" to determine whether the restricted activity is protected by the Second Amendment. *Id.* at 701-702 (citing *Heller I*, 554 U.S. at 634-35; *McDonald*, 130 S.Ct. at 3047). This inquiry is conducted in light of the circumstances present for the ratification of the Second Amendment (1791) if a federal law is at issue or the Fourteenth Amendment (1868) if a state law is at issue:

> Accordingly, if the government can establish that a challenged firearms law regulates activity falling outside the scope of the Second Amendment right as it was understood at the relevant historical moment – 1791 or 1868 – then the analysis can stop there; the regulated activity is categorically unprotected, and the law is not subject to further Second Amendment review.

Ezell, 651 F.3d at 702-3. The City of Chicago was unable to make such a showing, and the Seventh Circuit proceeded to the second step of its analysis: examination of the government's justification for the restriction. "[T]he rigor of this judicial review will depend on how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right." *Id.* The Seventh Circuit found range training to be "an important corollary to the meaningful exercise of the core right to possess firearms for self-defense"; and, therefore, a complete prohibition was subject to "not quite strict scrutiny." *Id.* at 708 (internal quotation marks omitted). To meet its burden, the City of Chicago was required to "demonstrate that civilian target practice at a firing range creates such genuine and serious risks to public safety that prohibiting range training throughout the city is justified." *Id.* at 709. The City of Chicago presented no data or expert opinion supporting its ban and did "not come close to meeting this standard." *Id.*

This same analysis was present in the Seventh Circuit's consideration of a firearms ban after *Ezell.* In *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), the Seventh Circuit ruled an Illinois law unconstitutional that prohibited carrying ready-to-use firearms outside of a person's home, fixed place of business, or the property of another who had given permission because the right to bear arms in self-defense is "as important outside the home as inside." *Id.* at 942. The Court reached this conclusion after determining the historical evidence supporting a tradition of public carriage of firearms was more persuasive than evidence to the contrary. *Id.* at 939 ("In sum, the empirical literature on the effects of allowing the carriage of guns in public fails to establish a pragmatic defense of the Illinois law."). The Seventh Circuit then proceeded to analyze Illinois's justification for enacting the ban. In doing so, the Court again discussed the application of varying degrees of justification:

> A blanket prohibition on carrying gun[s] in public prevents a person from defending himself anywhere except inside his home; and so substantial a curtailment of the right of armed self-defense requires a greater showing of justification than merely that the public *might* benefit on balance from such a curtailment, though there is no proof it would. In contrast, when a state bans guns merely in particular places, such as public

> schools, a person can preserve an undiminished right of self-defense by not entering those places; since that's a lesser burden, the state doesn't need to prove so strong a need.

Id. at 940 (emphasis in original). It is clear that once a restriction implicates Second Amendment rights, it requires "more than merely a rational basis." *Id.* at 942. In *Moore*, the Seventh Circuit determined that Illinois needed to show much more to justify "the most restrictive gun law of any of the 50 states." *Id.* at 941.

Highland Park's Ordinance is, therefore, subject to the two-part inquiry established by *Ezell* and *Moore*. It is Highland Park's burden to show that regulated activity falls outside of the scope of the Second Amendment. If such a showing cannot be made, Highland Park must present evidence sufficient to demonstrate that the restriction is justified. The greater the burden to the core Second Amendment right to armed self-defense, the greater the burden on Highland Park to justify the restriction. If Highland Park cannot meet this burden, the Ordinance is unconstitutional.

Second Amendment Protection

First, it must be determined whether the Assault Weapons and LCMs, as they are defined in the Ordinance,[5] fall within the scope of Second Amendment protection. When a particular class of weapons is at issue, the threshold question is whether those weapons are commonly used for lawful purposes. *See Heller I*, 554 U.S. at 624-25, 627. If the answer is no, restricting the possession of such weapons is consistent with the "historical tradition of prohibiting the carrying of dangerous and unusual weapons," and the law should be considered valid. *Id.* at 627 (internal quotation marks and citations omitted). The parties agree that "common use" is determined on a national, not local, basis.

Plaintiffs argue that "the only limitation [*Heller I*] recognized on the type of firearm that can be possessed by a law-abiding person in the home for self-defense use is that the firearm be one that is in common use at the time." (Dkt. No. 52 at 7 (quotation marks and citations omitted).) Therefore, Plaintiffs

[5] Plaintiffs argue that the term "Assault Weapon" is not defined and, therefore, its use is "argumentative and misleading." (Dkt. No. 51 at 1-2.) Plaintiffs moved to strike all thirteen of Defendant's material facts that use the term. (*See* Dkt No. 64.) Although Plaintiffs have offered some support for this argument that Assault Weapons is a poor choice of words to describe the weapons at issue in this case, they fail to demonstrate how this is relevant to a determination of the Ordinance's constitutionality. As used in this opinion, Assault Weapons are those weapons defined by the Ordinance.

assert the Ordinance represents a categorical ban like the ban in *Heller I* and should be held unconstitutional without further scrutiny.

Plaintiffs assert an "overwhelming popularity and common ownership of AR-type[6] rifles among law abiding citizens." (Dkt. No. 41 at 17.) According to the estimates of the National Shooting Sports Foundation ("NSSF"), between 1990 and 2012, approximately 5,128,000 AR-type rifles were manufactured domestically; and approximately 3,145,000 AR-type and AK-type rifles were imported into the United States. (*See* Dkt. No. 42, Ex. 6 ¶ 4.) From 2008 to 2012 alone, approximately 3,457,230 AR-type rifles were manufactured domestically for domestic consumption, accounting for 11.4 percent of all firearms manufactured in the United States for domestic sale in that time period. (*Id.* ¶ 5.) Finally, Plaintiffs assert that, based on a 2012 online survey of firearms dealers, 92.5 percent stocked AR-type rifles and 20.3 percent of all new firearms sold were AR-type rifles. (*Id.* ¶ 8.)

[6] Without explanation, Plaintiffs initially confine their arguments of common use to a particular type of gun banned by the Ordinance: the "AR-type rifle." (Dkt. No. 41 at 5.) It is unclear whether Plaintiffs refer specifically to the two rifles in the Ordinance named AR (the AR-10 and the AR-15) or to any rifle with characteristics common to the named AR rifles, e.g., modular design. This confusion is compounded when Plaintiffs also include "AK-type rifles" in various statements of fact.

With respect to LCMs,[7] Plaintiffs contend that of approximately 158,000,000 magazines possessed by consumers in the United States, approximately 75,000,000 of those are capable of holding more than 10 rounds of ammunition. (*Id.* ¶ 10.) Of rifle owners responding to an NSSF survey regarding modern sporting rifles[8] ("MSR Survey"), 83 percent reported use of a magazine capable of holding in excess of 10 rounds. (*Id.* ¶ 6.) Based on these estimated manufacturing numbers and survey results, Plaintiffs argue that AR-type rifles and LCMs are in common use.

Plaintiffs argue that the popularity of AR-type rifles is evident among members of the firearms owners' community because the rifles are frequently used at firing ranges. (*Id.* Ex. 3 ¶ 5 ("I regularly observe [Aurora Sportsmen's Club] members on the range and the firearms they use; and modern sporting rifles, including AR-type rifles, have been the most commonly used rifles on the range over the past five to ten years.").) The MSR Survey respondents identified recreational target shooting as the "number one" reason to own a modern sporting rifle. (*Id.* Ex. 6

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[7] Although Plaintiffs do mention LCMs in their argument, it is primarily only in conjunction with rifles. (*See, e.g.*, Dkt. No. 41 at 14 ("Whether the banned firearms *and magazines* are typically possessed by law-abiding citizens. . . .) (emphasis added).) However, Plaintiffs have submitted some statements of fact in support of LCMs' common use; and they are considered here.

[8] Plaintiff asserts that AR-type rifles are among the category known as modern sporting rifles.

¶ 7.) An additional survey estimated that approximately 11,977,000 people participated in target shooting with a modern sporting rifle. (*Id.* Ex. 6 ¶ 9.) Furthermore, "the fastest growing shooting sport in the country" features competitors using a pistol, shotgun, and AR-type rifle to shoot various targets. (*Id.* Ex. 3 ¶ 8.) AR-type rifles are also commonly used for small game hunting. (*Id.*)

Plaintiffs argue that Assault Weapons are predominantly used for these lawful purposes as criminals prefer to use concealable handguns in the commission of crimes. (*Id.* Ex. 10 ¶ 9.) Plaintiffs cite a nine-study composite that indicates Assault Weapons account for just .038 percent of guns used in the commission of crimes. (*Id.* Ex. 10 ¶ 38.) With specific regard to firearms-related homicides, rifles are infrequently used. (*Id.* Ex. 11 (Chicago Police Department data reflecting that rifles were used in just 22 of 2,215 homicides in Chicago from 2006 through 2011 in which a firearm was involved); Ex. 4 at 160.)

As further discussed below, Highland Park disputes both of Plaintiffs' contentions: that Assault Weapons are commonly used and that they are used for lawful purposes. Preliminarily, Highland Park asserts that it is difficult to determine the number of Assault Weapons currently in the United States because gun manufacturers do not generally release their sales data. (Dkt. No. 45, Ex. C ¶35.) However, the NRA has estimated that semi-automatic firearms make up 15 percent of privately owned firearms in the United States and that Assault Weapons make up approximately 15 percent of all semi-automatic firearms. (*Id.* ¶ 36.) Based on these estimates, 4,905,000 out of 218,000,000 (or approximately 2.25 percent) privately owned firearms are Assault Weapons. (*Id.*) Additionally, Highland Park points out that accepting Plaintiffs' estimates that 5,128,000 AR-type rifles were manufactured between 1990 and 2012 and that 3,457,230 AR-type rifles were manufactured between 2008 and 2012 necessarily implies that an average of less than 100,000 AR-type rifles were manufactured domestically per year between 1990 and 2007. (Dkt. No. 53 at 5, 9.)

Highland Park next asserts that Assault Weapons are not designed for and, in fact, would be ineffective for self-defense in the home. (*Id.*) AR-type rifles are powerful and relatively large compared to other firearms, making their use in close quarters potentially difficult. (Dkt. No. 45, Ex. D ¶¶ 46, 48 ("To tout the semi-automatic assault weapon as the best or even second best tool for home defense is specious and disingenuous.").) In addition, responsible firearms owners will lock and store their firearms for safety. (*Id.* ¶ 47.) Properly storing a rifle typically requires using a gun safe built for that purpose, which renders the rifle not immediately accessible in the event of a need to defend oneself in a threatening emergency. (*Id.* ("Safes require time to unlock and open, obviating the rifle as the [best self-defense firearm].") With respect to LCMs, Highland Park asserts that ten rounds are typically sufficient for self-defense. (*Id.* ¶ 40 ("In police involved shootings[,] the number of shots fired is [on average, less than four]").)

Finally, Highland Park argues that Assault Weapons and LCMs are the types of "dangerous and unusual weapons" specifically excepted from Second Amendment protection. Primarily, this argument is based on the AR-type rifle's similarity to – and even derivation from – military-grade weapons with offensive purposes. Accordingly, Assault Weapons typically have features that allow a user to shoot multiple targets in a short period of time. (Dkt. No. 45, Ex. B ¶ 20.)

The evidence submitted by the parties does not resolve the question of whether Assault Weapons and LCMs are "commonly used for lawful purposes." The facts submitted by both parties show, at best, only how many AR-type rifles were *manufactured* over a given period of time; and even these numbers are highly disputed. But knowing how many *people possess* an Assault Weapon, rather than how many *Assault Weapons* are in use, is far more probative in determining common use. Highland Park argues that these numbers are difficult to ascertain because, as mentioned above, gun manufacturers typically do not release sales data. Rather, the vast majority of the parties' data is made up of approximations and surveys. Further, Highland Park persuasively argues that the Assault Weapon is not appropriate for home defense. The features of an Assault Weapon, as set out in the Ordinance, appear to be more valuable in an offensive capacity than a defensive one. Therefore, it is apparent that the question of common use is far from settled. Moreover, *Heller I* made clear that "dangerous or unusual" weapons are also unprotected. Therefore, the Ordinance implicates consideration of Plaintiffs' Second Amendment rights and must be subjected to further analysis.

Level of Scrutiny

As mentioned, the Seventh Circuit has prescribed a sliding-scale approach to levels of scrutiny within the Second Amendment context:

> First, a severe burden on the core Second Amendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government's means and its end. Second, laws restricting activity lying closer to the margins of the Second Amendment right, laws that merely regulate rather than restrict, and modest burdens on the right may be more easily justified. How much more easily depends on the relative severity of the burden and its proximity to the core of the right.

Ezell, 651 F.3d at 708.[9] In arriving at this approach, the Seventh Circuit drew upon the levels of scrutiny

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[9] Other Circuit Courts have generally agreed with this analysis, albeit employing a less stringent standard. *See, e.g.*, *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 93 (2d Cir. 2012) ("[W]e believe that applying less than strict scrutiny when the regulation does not burden the "core" protection of self-defense

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in the home makes eminent sense in this context and is in line with the approach taken by our sister circuits."); *Heller II*, 670 F.3d at 1262 (applying intermediate scrutiny, noting, "Although we cannot be confident the prohibitions impinge at all upon the core right protected by the Second Amendment, we are reasonably certain the prohibitions do not impose a substantial burden upon that right"); *United States v. Marzzarella*, 614 F.3d 85, 97 (3rd Cir. 2010) (applying intermediate scrutiny after finding that the law at issue did "not severely limit the possession of firearms."); *Peruta v. Cnty. of San Diego*, 742 F.3d 1144, 1167-68 (9th Cir. 2014) ("[S]evere restrictions on the 'core' right have been thought to trigger a kind of strict scrutiny, while less severe burdens have been reviewed under some lesser form of heightened scrutiny.") No case has been found that applied a standard other than intermediate scrutiny to a case involving restrictions of Assault Weapons or LCMs. *See Kolbe v. O'Malley*, Civil No. CCB-13-2841, 2014 WL 4243633 (D. Md. Aug. 22, 2014) (finding "intermediate scrutiny is appropriate for assessing the constitutionality of Maryland's [Assault Weapons and LCMs] ban because it does not seriously impact a person's ability to defend himself in the home, the Second Amendment's core protection."); *Colo. Outfitters Ass'n*, 2014 WL 3058518, at *15 (holding of an LCMs ban that "the burden is not severe . . . [a]s a result, the Court will examine the statute under the intermediate scrutiny test"); *Fyock*, 2014 WL 984162, at *7 ("Considering both how close the [LCMs ban] comes to the core of the Second Amendment right and the law's burden on that right, the court finds that intermediate scrutiny is appropriate."); *S.F. Veteran Police Officers Ass'n v. City and Cnty. of S.F.*, No. C 13-05351 WHA, 2014 WL 644395, at *5 (N.D. Cal. Feb. 19, 2014) (holding an LCMs ban "does not 'destroy' the right to self-defense; it 'merely burdens' it . . . In turn, the degree of scrutiny required is less severe."); *Shew v. Malloy*, (intermediate scrutiny held appropriate because "[t]he challenged legislation provides alternate access to similar firearms and does not categorically ban a universally recognized class of firearms."); *Heller II*, 670 F.3d at 1262 (applying intermediate scrutiny because the Assault Weapons and LCMs ban at issue did "not effectively

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associated with claims of infringements on the right of free speech. *Ezell*, 651 F.3d at 707 (explaining content-based speech regulations are presumptively invalid, while speech lying farther from the core free speech rights, like commercial speech, need only be reasonably justified); *see also*, *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) ("Categorical limits on the possession of firearms would not be a constitutional anomaly. Think of the First Amendment, which has long had categorical limits: obscenity, defamation, incitement to crime, and others.").

Plaintiffs argue that any analysis of the constitutionality of the Ordinance by analogy to the First Amendment should be undertaken by analogy to the standard of strict scrutiny imposed when considering content-based speech. (Dkt. No. 52 at 9.) However, *Heller I* did not simply recognize a right to possess commonly owned firearms, but to do so in furtherance of "the *core* lawful purpose of self-defense." 554 U.S. at 630 (emphasis added). "It is not a property right. . . ." *Moore*, 702 F.3d at 937. Therefore, to require strict scrutiny, the Ordinance must be shown to severely burden the right to armed self-defense.

Based on the evidence presented by the parties, as discussed above, a severe burden on the right to armed self-defense has not been demonstrated. Plaintiffs have not provided a single instance of an

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disarm individuals or substantially affect their ability to defend themselves.").

Assault Weapon used in self-defense. Nor have they submitted evidence that a prohibition on the banned weapons and magazines limits, in any meaningful way, Highland Park residents' ability to defend themselves. Indeed, the only evidence that even arguably shows Assault Weapons possess defensive capabilities greater than other, permitted firearms is the claim by a majority of survey respondents, stating self-defense as a reason for owning AR-type rifles.

Although the Ordinance provides a marginal burden upon the Second Amendment core right to armed self-defense, it does not severely burden the right. The Ordinance allows residents of Highland Park to keep an exceedingly large number of types of weapons (including the handguns at issue in *Heller I*, "overwhelmingly chosen by American society for that lawful purpose") and an unlimited number of magazines, holding 10 rounds or less, for self-defense. The Ordinance, therefore, need not be subject to strict scrutiny.

The "not quite strict scrutiny" standard requires Highland Park to "establish a close fit between the [Ordinance] and the actual public interests it serves, and also that the public's interests are strong enough to justify so substantial an encumbrance on individual Second Amendment rights." *Ezell*, 651 F.3d at 708-09. That is, Highland Park must show that otherwise lawful ownership of Assault Weapons and LCMs increases the risk to the public to a degree that prohibiting them is justified. *Id.* at 709.

Highland Park asserts an "important, if not compelling[,] interest[ ] in the public safety of its citizens and police officers alike." (Dkt. No. 44 at 13.) Specifically, Highland Park passed the Ordinance "to address the potential threat of mass shootings involving a semi-automatic assault weapon." (Dkt. No. 45 ¶ 9; *see* Dkt. No. 45, Ex. C ¶ 9.) There can be little doubt that any government's interest in public safety is important,[10] and Plaintiffs do not dispute this contention. Instead, Plaintiffs argue that Highland Park has not shown that the Ordinance is related to public safety.

However, the evidence discussed demonstrates that Assault Weapons have a military heritage that makes them particularly effective for combat situations. (Dkt. No. 45 ¶ 27; *see* Dkt. No. 45, Ex. C ¶¶ 15-23.) Indeed, the particular features banned by the Ordinance were developed for or by militaries to increase lethality. (*See* Dkt. No. 45, Ex. C ¶ 33; ("Protruding foregrips allow increased stability . . . thus increasing the hit probability of successive shots. . . . [I]t was not until . . . acceptance by the U.S. Military . . . that foregrips for semiautomatic rifles have grown in popularity."); ("Folding and/or telescoping stocks allow the operator to more easily conceal or maneuver the rifle in a confined space. [They] also facilitate[ ]

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[10] *See, e.g.*, *Schenk v. Pro-Choice Network of Western New York*, 519 U.S. 357, 375-76 (1997); *McCullen v. Coakley*, 134 S. Ct. 2518, 2535, 189 L. Ed. 2d 502 (2014).

easier . . . firing from positions other than the shoulder. . . . Military origins for this type of stock can be found on the M1 carbine in W[orld War II] when modified for paratrooper use."); ("The M1 'Garand' Rifle utilized by the U.S. Military . . . [featured] . . . a wooden handguard . . . to steady and control the rifle during rapid, repeat firing without getting burned by the hot barrel."); ("A muzzle brake . . . allow[s] the operator to control the rifle during rapid, repeat firing without taking time to reacquire the target").) Likewise, LCMs were developed to serve military goals. (Dkt. No. 45, Ex. C ¶ 33 ("Less time required to reload can equate to more time spent acquiring targets or shooting.").) The military weapons from which consumer Assault Weapons derive have a decidedly offensive function. (*Id.* ¶ 53; *see* Dkt. No. 45, Ex. D ¶ 39 ("Ultimately, the purpose of military assault rifles and submachine guns (the analog for a civilian assault pistol) is offensive – to facilitate the assault and capture of a military objective.").)

The record also demonstrates that these shared components are not simply historical. Many Assault Weapons differ from their military counterparts only in their lack of a setting that allows a user to fire more than one round with a single pull of the trigger. (*Id.* ¶ 32.) Because of the insubstantial differences between the military and consumer versions, Assault Weapons may be converted to the functional equivalent of a military weapon, and many such illegally converted weapons are recovered annually in the United States. (Dkt. No. 45 ¶ 48.) Even without conversion, a semi-automatic AR-15 will fire at nearly the same rate of speed as a fully automatic rifle. (*Id.* ¶ 49)[11] As the District of Columbia Circuit noted in *Heller II*, the 30-round magazine of an UZI submachine gun "was emptied in slightly less than two seconds on full automatic, while the same magazine was emptied in just five seconds on semi-automatic." 670 F.3d at 1263.

The record is clear that the features of the prohibited firearms, including LCMs, derive from military weapons with the decidedly offensive purpose of quickly acquiring multiple targets and firing at those targets without a frequent need to reload. Highland Park maintains a strong interest in protecting the public against this potential use. Therefore, Highland Park has established a close fit between the Ordinance and its stated objective of providing for the

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[11] Highland Park has also submitted evidence demonstrating how assault weapons are used in mass shootings. Between January 2009 and September 2013, 93 mass shootings occurred. (Dkt. No. 45 ¶ 58.) In the 14 of these events in which the shooter used a semiautomatic or fully automatic Assault Weapon, 151 percent more casualties and 63 percent more deaths occurred. (*Id.*; Dkt. No. 45, Ex. G at 3.) Relative to the period between 2000 and 2008, "active shooter events" (defined as "an individual actively engaged in killing or attempting to kill people in a confined and populated area, typically through use of a firearm") have doubled in the period from 2009 to 2013. (Dkt. No. 45 ¶ 61.) However, these statements were properly objected to by Plaintiffs as inadmissible hearsay and will not be considered.

protection and safety of its inhabitants. The Ordinance does not violate Plaintiffs' Second Amendment rights.

CONCLUSION

For the reasons discussed above, Highland Park's Motion for Summary Judgment [43] is granted and Plaintiffs' Motion for Summary Judgment [40] is denied. Highland Park City Code Section 136 shall remain in full force and effect.

Date: September 18, 2014 /s/ John W. Darrah

JOHN W. DARRAH
United States District Court Judge

U.S. Const. amend. II

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. XIV, § 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.

HIGHLAND PARK CITY CODE

CHAPTER 136: ASSAULT WEAPONS

Sec. 136.001 Definitions.

Whenever the following words and phrases are used, they shall, for purposes of this Chapter, have the meanings ascribed to them in this Section 136.001, except when the context otherwise indicates.

(A) "Ammunition" means any self-contained cartridge, shot, bullet or projectile by whatever name known, which is designed to be used, or adaptable to use, in a Firearm and shot or discharged therefrom.

(B) "Antique Firearm" means:

(1) Any Firearm (including any Firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898; and

(2) Any replica of any Firearm described in Paragraph (1) of this definition, but only if such replica;

(a) Is not designed or redesigned for using rimfire or conventional centerfire Ammunition; or

(b) Uses rimfire or conventional centerfire fixed Ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels or commercial trade.

(C) "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 semiautomatic 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 Ml, 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 weapons designed for Olympic target shooting events.

(D) "Curios or Relics" has the meaning set forth in 27 C.F.R. § 478.11, as may be amended.

(E) "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.

(F) "Firearm" means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas, excluding however:

(1) Any pneumatic gun, spring gun or B-B gun which expels a single globular projectile not exceeding .18 inches in diameter;

(2) Any device used exclusively for signaling or safety and required or recommended by the

United States Coast Guard or the Interstate Commerce Commission;

(3) Any device used exclusively for the firing of stud cartridges, explosive rivets or similar industrial Ammunition; and

(4) Model rockets used to propel a model vehicle in a vertical direction.

(G) "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.

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

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

Sec. 136.005 Possession and Sale Prohibited.

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, unless expressly exempted in Section 136.006 of this Chapter.

Sec. 136.006 Exemptions

The prohibitions set forth in Section 136.005 of this Chapter shall not apply to:

(A) The sale or transfer to, or possession by any officer, agent, or employee of the City 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, but only to the extent that any such person named in this Section 136.006(A) 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;

(B) Any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c), but only to the extent that the Assault Weapon and/or Large Capacity Magazine is safely stored or displayed by the officer in compliance with Section 136.010 of this Chapter;

(C) 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;

(D) Antique Firearms, but only to the extent that the Antique Firearm is safely stored or displayed in compliance with Section 136.010 of this Chapter; or

(E) Curios or Relics, but only to the extent that both: (a) the owner of the Curio or relic has obtained a federal license for collectors of Curios or Relics; and (b) the Curio or relic is safely stored or displayed in compliance with Section 136.010 of this Chapter.

Sec. 136.010 Safe Storage or Display of Weapons and Magazines.

Any Assault Weapon or Large Capacity Magazine that is exempt from the requirements of Section 136.005 of this Chapter, and that must be safely stored or displayed pursuant to Section 136.006 of this Chapter, must be secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon or magazine inoperable by any person other than the owner or other lawfully authorized user. Specifically, and without limitation of the foregoing, any Assault Weapon or Large Capacity Magazine that may be kept within the City pursuant to this Chapter must be secured from access by minors. For purposes of this Section 136.010, such weapon or magazine shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.

Sec. 136.015 Possession or Sale in Violation of Chapter.

Any Assault Weapon or Large Capacity Magazine possessed, sold or transferred in violation of Section 136.005 of this Chapter is hereby declared to be contraband and shall be seized and destroyed of in accordance with the provisions of Section 136.025 of this Chapter.

Sec. 136.020 Disposition of Weapons and Magazines.

Any person who, prior to the effective date of this Chapter, was legally in possession of an Assault Weapon or Large Capacity Magazine prohibited by this Chapter shall have 60 days from the effective date of this Chapter to do any of the following without being subject to prosecution hereunder:

(A) Remove the Assault Weapon or Large Capacity Magazine from within the limits of the City;

(B) 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;

(C) Surrender the Assault Weapon or Large Capacity Magazine to the Chief of Police or his or her designee for disposal as provided in Section 136.025 of this Chapter; or

(D) Take the steps necessary to cause the Assault Weapon or Large Capacity Magazine to fall within one of the exemptions set forth in Section 136.006 of this Chapter.

Sec. 136.025 Destruction of Weapons and Magazines.

The Chief of Police shall cause to be destroyed each Assault Weapon or Large Capacity Magazine surrendered or confiscated pursuant to this Chapter; provided, however, that no Assault Weapon or Large Capacity Magazine shall be destroyed until such time as the Chief of Police determines that the Assault Weapon or Large Capacity Magazine is not needed as evidence in any matter. The Chief of Police shall cause to be kept a record of the date and method of destruction of each Assault Weapon or Large Capacity Magazine destroyed pursuant to this Chapter.

Sec. 136.999 Penalty.

The violation of any provision of this Chapter is a misdemeanor, punishable by not more than six months imprisonment or a fine of not less than $500 and not more than $1000, or both.

IN THE CIRCUIT COURT FOR THE NINETEENTH JUDICIAL CIRCUIT LAKE COUNTY, ILLINOIS

ARIE S. FRIEDMAN, M.D. and the ILLINOIS STATE RIFLE ASSOCIATION	)	
Plaintiffs,	)	No: 13 CH 3414
v.	)	
CITY OF HIGHLAND PARK	)	
Defendant.	)	

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

NOW COME the Plaintiffs, Dr. Arie S. Friedman and the Illinois State Rifle Association, by their attorneys, and for their Verified Complaint for Declaratory Judgment and Injunctive Relief against the Defendant City of Highland Park state that the Defendant has by City Code §136.001 *et seq.* unconstitutionally infringed the fundamental right of law-abiding citizens under the Second Amendment of the United States Constitution to keep and bear arms for lawful purposes, including the defense of his home and family.

THE PARTIES

1. Dr. Arie S. Friedman ("Dr. Friedman") is an adult resident of Highland Park, Illinois. He is a

law-abiding citizen, who is lawfully entitled to own and possess firearms under all applicable Federal and State laws and regulations. Plaintiff owns and possesses firearms in Highland Park for lawful purposes, including the defense of his home and family. Neither Plaintiff nor his firearms pose a threat to the community.

2. The Illinois State Rifle Association ("ISRA") is a non-profit educational foundation incorporated under the laws of Illinois, with its principal place of business in Chatsworth, Illinois. ISRA has more than 30,000 members residing throughout the State of Illinois, including Highland Park. The purposes of the ISRA include the protection of the rights of citizens to keep and bear arms for the lawful defense of their families, persons and property, and to promote public safety and law and order.

3. Highland Park is a municipal corporation located in Lake County, Illinois. Defendant is governed by a Mayor and an elected six-member City Council, which, among other things, is empowered to enact Ordinances under its home rule authority.

STANDING

4. Dr. Friedman owns and possesses firearms in Highland Park that are banned under the Highland Park City Code §136.001 *et seq.* ("Ordinance"). Plaintiff must take certain actions by December 14, 2014 to be in compliance with the Ordinance, including removing the firearms from Highland Park,

rendering them inoperable or surrendering them to the Chief of Police. The actions required of Plaintiff under the Ordinance constitute continuing harm to his constitutional right to keep and bear arms under the Second Amendment to the United States Constitution.

5. ISRA brings this action on behalf of its members residing in Highland Park, who own firearms and ammunition magazines prohibited by the Ordinance, desire to acquire prohibited for lawful purposes and would otherwise have standing to bring this action in their own right. The claims made in this action and the interests this action advances are germane to ISRA's organizational purpose. The relief requested in this action does not require participation of individual ISRA members

THE ORDINANCE

6. On June 24, 2013, the Highland Park City Council passed an ordinance titled, "Assault Weapons", which in part provided:

> 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, unless expressly exempted in Section 136.0006 of this Chapter.

City Code §136.010.

7. An "Assault Weapon" is defined under the Ordinance to include certain specific models of semiautomatic rifles, shotguns and pistols and duplicates thereof; and semiautomatic firearms having certain features, including a pistol grip without an attached stock; a protruding grip; a folding, telescoping or thumbhole stock; a barrel shroud; a muzzle brake; and a muzzle compensator. City Code §136.001(C).

8. A "Large Capacity Magazine" is defined under the Ordinance as an ammunition feeding device with the capacity to accept more than ten rounds. City Code § 136.001(G).

9. Effective December 14, 2103, any person in possession of an "Assault Weapon or Large Capacity Magazine" is required by the Ordinance to (a) "remove" it from "the limits of the City;" (b) "modify" it to make them "permanently inoperable;" (c) "surrender" it to the Chief of Police of his designee for "disposal;" or (d) "take the steps necessary" to cause it to fall within one of the exemptions set forth in Section 136.006. City Code § 136.020.

10. Failure to take any of the above actions by December 14, 2013 shall constitute a "misdemeanor, punishable by not more than six months in prison or a fine of not less than $500 and not more than $1,000, or both." City Code §136.999.

COMMON OWNERSHP OF FIREARMS AND MAGAZINES BANNED UNDER THE ORDINANCE.

11. Some of the most commonly owned firearms in the United States are among the firearms banned under the "Assault Weapons" Ordinance. Between 1990 and 2012 approximately 4.8 million semiautomatic rifles built on the AR-style platform have been produced in the United States for commercial sale to law-abiding citizens. Additionally, approximately 3.4 million AR-style and AK-style firearms have been imported into the United States for commercial sale and civilian use. AR-style firearms are manufactured by 37 federally-licensed firearms manufacturers in the United States, including Smith & Wesson, Colt's, Remington, Sig Sauer and Sturm, Ruger. AR-style semiautomatic rifles are sold by nearly every federally-licensed retail seller in the United States, and more than one out of every five firearms sold today is an AR-style semiautomatic rifle. Referred to by many as modern sporting rifles, AR-style rifles are sold today in greater numbers than traditionally-styled rifles. Modern sporting rifles are owned by more than 4.8 million persons in the United States.

12. The common ownership and popularity of modern sporting rifles is based on their ready adaptability for different lawful uses, including home defense, hunting and target shooting. They are also lighter in weight, shorter in length and have less recoil than most traditionally-styled wooden stock rifles, making them easier to handle and shoot.

AR-style semiautomatic rifles are also very accurate and reliable, and typically have greater ammunition capacity than more traditionally-styled rifles. Most are sold with ammunition capacities of greater than ten rounds.

13. Most AR-style rifles and many of the other firearms banned by Defendant by model designation or type have features prohibited by the Ordinance. None of the prohibited features make the firearm a dangerous and unusual weapon. A "pistol grip without a stock attached" is the by-product of the raised butt-stock design of AR-style rifles, which serves to reduce muzzle flip during recoil, allowing the shooter to have better control of the firearm and achieve better accuracy. A "protruding grip that can be held by the non-trigger hand" also serves to enhance control of the firearm and improve accuracy. A "folding stock" simply makes a gun more compact for storage or transport. A "telescoping stock" permits the firearm to be adjusted to fit persons of different stature. A "thumbhole stock", which is present on many target competition firearms, merely allows for a more comfortable grip and better control of the firearm. A "barrel shroud" is present in most firearms to protect the non-trigger hand from heat build-up in the firearm's barrel. A "muzzle break" redirects muzzle gas to reduce recoil. A "muzzle compensator" also redirects muzzle gas but does so to keep the muzzle down and provide better control of the firearm for successive shots. Each of these features contributes to the accuracy and safety of the firearm for use

in situations where safety and accuracy are paramount concerns, including a home defense situation.

14. Most AR-style rifles are chambered for .223 ammunition, a relatively inexpensive cartridge that is particularly well-suited for home defense purposes because it has sufficient stopping power in the event a home intruder is encountered but loses velocity relatively quickly after passing through a target and other objects, thus decreasing the chance that an errant shot will strike an unintended target. Although most pistol rounds have less muzzle velocity than a .223 round, they have greater mass, maintain velocity after passing through walls and other objects and pose substantially greater risk to unintended targets in the home. There is a consensus among those with expertise in home defense and ballistics that an AR-15 rifle chambered for .223 ammunition is an optimal firearm to rely on in a home defense encounter.

15. A survey of more than 20,000 owners of AR-style and AK-style firearms across the country revealed that recreational target shooting was the number one ranked reason for owning a modern sporting rifle, followed closely by home defense. A survey of firearm owners in Northern Illinois revealed that more than 50% of those surveyed owned a semiautomatic rifle with a detachable magazine for the purpose of personal protection.

16. Encounters with criminal intruders in the home are not uncommon. The United States Department of Justice, Bureau of Justice Statistics reported

that approximately 1 million residential burglaries occur each year while a household member is present. Household members became victims of violent crimes in 266,560 of those home invasions. Studies on the frequency of defensive gun uses in the United States have determined that there are up to 2.5 million instances each year in which civilians use firearms defend themselves or their property.

OWNERSHIP AND POSSESSION OF PROHIBITED FIREARMS AND MAGAZINES

17. Dr. Friedman owns and keeps in Highland Park certain semiautomatic firearms and ammunition magazines that are subject to the prohibition set forth in the Ordinance, including a Smith & Wesson M & P 15 rifle, a Springfield M1A rifle and multiple magazines capable of holding more than ten rounds of ammunition. Dr. Friedman's Smith & Wesson M & P 15 rifle is an AR-style rifle, and has a pistol grip without a stock attached, a barrel shroud and a collapsible, telescoping stock. Dr. Friedman's Springfield M1A rifle has a barrel shroud and a muzzle brake.

18. Dr. Friedman keeps and maintains the firearms and ammunition magazines described above for lawful purposes, including recreational target shooting and defense of his home and family. Plaintiff is trained on their use and stores them safely. He keeps the Smith & Wesson M & P 15 rifle available

for defense of his home and family should the need arise.

COUNT I – DECLARATORY JUDGMENT

19. The allegations set forth in paragraphs 1 through 18 are re-alleged as though fully set forth herein.

20. Ownership of firearms that are commonly possessed by law-abiding citizens for lawful purposes, including self-defense in the home against a criminal intruder, is a fundamental right under the Second Amendment to the United States Constitution.

21. Defendant has infringed the fundamental Second Amendment right of Plaintiff Friedman and Plaintiff ISRA members to keep and bear arms by prohibiting his ownership and of possession of firearms in his home that are commonly possessed by law-abiding citizens for lawful purposes, including self-defense in the home.

22. Defendant does not have a compelling governmental interest in depriving Plaintiff of his Second Amendment right to own and possess firearms that are commonly possessed by law-abiding citizens for lawful purposes, including self-defense in the home.

WHEREFORE, Plaintiffs respectfully request that City of Highland Park City Code § 136.001 *et seq.* be declared unconstitutional and that judgment be entered in their favor and against the Defendant, including an award of costs.

COUNT II – INJUNCTIVE RELIEF

23. The allegations set forth in paragraphs 1 through 22 are re-alleged as though fully set forth herein.

24. Plaintiffs have a clear and ascertainable right to own and possess firearms in their homes that are commonly possessed by law-abiding citizens for lawful purposes, including self-defense in the home.

25. Plaintiffs will suffer irreparable harm if Defendant is not enjoined from enforcing City Code §136.001 *et seq.* and they are prohibited from owning and possessing firearms in their home that are commonly possessed by law-abiding citizens for lawful purposes, including self-defense in the home.

26. Plaintiffs have no adequate remedy at law for Defendant's infringement of their fundamental right under the Second Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully request that an order be entered permanently enjoining the Defendant from enforcing City of Highland Park City Code §136.001 *et seq.* and that judgment be entered in their favor and against the Defendant, including an award of costs.

by: /s/ Brett M. Henne
One of Plaintiffs' Attorneys

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Verified Complaint for Declaratory and Injunctive Relief are true and correct.

/s/ Arie S. Friedman
DR. ARIE S. FRIEDMAN

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

ARIE S. FRIEDMAN, M.D. and the Illinois State Rifle Association	)	
Plaintiffs,	)	No: 13-cv-9073
v.	)	
CITY OF HIGHLAND PARK,	)	
Defendant.	)	

AFFIDAVIT OF JAMES CURCURUTO

If sworn as a witness, I could competently testify to the following:

1. I am the Director, Industry Research and Analysis, at the National Shooting Sports Foundation (NSSF). The NSSF is the trade association for the firearms industry. Its mission is to promote, protect and preserve hunting and the shooting sports. The NSSF has a membership of more than 10,000 manufacturers, distributors, firearm retailers, shooting ranges, sportsmen's organizations and publishers.

2. In my position as Director, Industry Research and Analysis, I am responsible for most of the research activities at NSSF, and I direct the activities of an internal research coordinator and outside companies retained to conduct research and gather market and consumer information useful to NSSF members.

3. Many NSSF members manufacture, distribute and/or sell firearms, and as is usual and customary for trade associations, the NSSF collects and disseminates industry-specific, non-sensitive data reflecting consumer preferences, market trends and other information for use in their business decisions. Among the firearm products sold by NSSF members are modern sporting rifles, a category of firearms comprised primarily of semiautomatic rifles built on the AR- and AK-platforms.[1] A "semiautomatic," or self-loading, rifle is a firearm which fires, extracts, ejects and reloads a cartridge once for each pull and release of the trigger.[2] These rifles have the capacity to accept a detachable box magazine. Additionally, they come in a range of calibers, including 22 rimfire, 223 Remington, and larger calibers used for hunting big game (e.g., white-tailed deer). Research conducted by the NSSF and under my direction demonstrates that modern sporting rifles are very popular and are

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[1] The AR in "AR-platform" rifle stands for ArmaLite, the company that in the 1950s developed this style of rifle, which eventually became both the military's M16 rifle and the civilian semi-automatic sporting rifle known as the AR-15, or modern sporting rifle. "AR" does not stand for "assault rifle" or "automatic rifle." http://www.nssfblog.com/%E2%80%98ar%E2%80%99-stands-for-armalite/.

[2] "Semiautomatic" rifles should not be confused with "automatic" rifles, which fire when the trigger is pulled and continue to fire until the trigger is released or ammunition is exhausted. Sporting Arms and Ammunition ("SAAMI") Glossary of Industry Terms, http://www.saami.org/Glossary/display.cfm?letter=S

commonly owned by millions of persons in the United States for a variety of lawful purposes, including, but not limited to, recreational and competitive target shooting, home defense, collecting and hunting.

4. Between 1990 and 2012, United States manufacturers produced approximately 5,128,000 AR-type rifles for sale in the United States commercial marketplace. Approximately fifty different manufacturers produced these rifles, including Smith & Wesson, Colt, Remington, Sig Sauer and Sturm, Ruger. During those same years, approximately 3,415,000 AR-type and AK-type rifles were imported into the United States for sale in the commercial marketplace. In 2012 alone, more than 1.5 million of these rifles were manufactured and imported for sale. By way of comparison, in 2012, the number of modern sporting rifles manufactured in or imported to the U.S. was more than double the number of the most commonly sold vehicle in the United States, the Ford F-150. See www.edmunds.com/car-reviews/top-10-top-10-bestsellin-vehicles-for-2012. (434,585 sold). Modern sporting rifles have been available to civilians since at least the late 1950s.[3] Thus, many more AR- and AK-platform rifles were either manufactured in the U.S. or imported to the U.S. for sale in the commercial marketplace prior to 1990. A true and correct

[3] http://world.guns.ru/civil/usa/ar-15-e.html. The original AR-15 Sporter rifles were manufactured for the civilian market by Colt's Firearms since 1963. *See* advertisement Attached as Exhibit A.

copy of the NSSF Report – 1990-2012 Data for US Firearm Production is attached as Exhibit B. More than 5 million people in the United States own AR-type or AK-type rifles.

5. According to Bureau of Alcohol. Tobacco, Firearms & Explosives Annual Firearms Manufacturing and Export Reports (AFMER), 30,433,751 firearms of all types were manufactured in the United States for domestic sale from 2008 to 2012. (2008-2012 AMFER reports are attached as Exhibit C). During that same five year period, approximately 3,457,230 AR-type modern sporting rifles were manufactured in the United States for domestic sale. (Exhibit B). Thus, during the years 2008 to 2012, 11.4% of all firearms produced in the United States for domestic sale were AR-type modern sporting rifles. During the same years more AR-type modern sporting rifles were manufactured in the United States for domestic sale (3,457,230) than the number of revolvers produced for domestic sale (2,778,089). (Exhibit C). The number of AR-type modern sporting rifles manufactured in the United States for domestic sale from 2008 to 2012 (3,457,230), nearly equals the number of shotguns produced in the United States for domestic sale (3,938,198) during the same period.

6. In 2013, the NSSF published its Modern Sporting Rifle (MSR) Comprehensive Consumer Report 2013. The purpose of the report was to gather information for the NSSF's members from persons who own modern sporting rifles, including demographic information, purchasing decisions, product

use and other subject matters. The findings in the report were based on on-line responses from 21,942 owners of modern sporting rifles, whose participation in the survey was solicited on 13 firearm-related websites and electronic publications. Included among the findings were that the typical survey respondent was male, over 35 years old, married with a household income above $75,000 and has some college education. Approximately 35 percent of the survey respondents were current or former members of the military or law enforcement. The survey found that three out of every four recently purchased modern sporting rifles were chambered for 223 Remington ammunition. Standard capacity magazines capable of holding 30 rounds of ammunition were determined to be the most popular magazines used in modern sporting rifles among the 21,942 survey respondents, with 83% reporting use of a magazine holding in excess of ten rounds. Collapsible or folding stocks were present on 66% of the most recently purchased modern sporting rifle, and muzzle brakes were present on 23% of those rifles. Applicable true and correct excerpts from the Modern Sporting Rifle Comprehensive Consumer Report 2103 are attached as Exhibit D.

7. Seventy-eight percent (78%) of those responding to the survey reported using their modern sporting rifle more than 4 times in the preceding 12 months, with 38% reporting using their rifle more than 12 twelve times. Survey respondents considered accuracy and reliability to be the most important

attributes of a modern sporting rifle. Other reasons cited by survey respondents for their purchase of modern sporting rifles include ergonomics, low recoil, ease with which they can be shot and their light weight. Recreational target shooting was ranked as the number one reason why owners purchased a modern sporting rifle, followed closely by home defense. Other reasons for owning a modern sporting rifle included varmint hunting, big game hunting, competitive target shooting and collecting. The average price paid for a modern sporting rifle by survey respondents was $1,058.00. Applicable true and correct excerpts from the Modern Sporting Rifle Comprehensive Consumer Report 2103 are attached as Exhibit D.

8. In 2013, the NSSF published its Firearms Retailer Survey Report. The report set forth findings based on an on-line survey of 752 firearm retailers located in all 50 states. Among the findings were that 92.5% of those responding to the survey currently sell new modern sporting rifles compared to 91.5% who sell new traditionally-styled rifles. Of the modern sporting rifles sold, those chambered for 223 Remington ammunition were by far the most commonly purchased. Respondents reported that 20.3% of the firearms they sold in 2012 were a modern sporting rifle. In contrast, 14% of the firearms sold were traditionally styled rifles. Applicable true and correct excerpts from the Firearms Retailer Survey Report, 2013 Edition, are attached as Exhibit E.

9. In 2013, the NSSF published its Sports Shooting Participation in the United States in 2012 report. The purpose of the survey was to determine national and regional participation rates in the shooting sports. The survey, based on telephone interviews of 8,335 randomly selected U.S. residents age 18 or older, indicates that participation in any target shooting or sport shooting increased 18.6 percent from 34.4 million participants in 2009 to 40.8 million participants in 2012, an increase of 6.4 million participants. The survey also showed that participation in target shooting with a modern sporting rifle increased 35.0 percent from approximately 8.9 million participants in 2009 to nearly 12.0 million participants in 2012. Applicable true and correct excerpts from the Sports Shooting Participation in the United States report, are attached as Exhibit F.

10. In 2013, NSSF compiled and released a report estimating 158 million pistol and rifle magazines were in U.S. consumer possession between 1990 and 2012. The supporting data shows that magazines capable of holding more than 10 rounds of ammunition accounted for approximately 75 million or 46 percent of all magazines owned.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 17, 2014.

/s/ James Curcuruto
James Curcuruto

[Exhibit A Omitted]

EXHIBIT B

NSSF® Report. 1990-2012 estimated US firearm production – export + imports of MSR/AR, AK Platform Semi-automatic Rifles			
YEAR	US Production less exports of MSR/AR platform	US Import less exports of MSR/AR, AK platform	ANNUAL TOTAL
1990	43,000	24,000	67,000
1991	45,800	62,000	107,800
1992	33,100	68,000	101,100
1993	61,700	236,000	297,700
1994	102,600	172,000	274,600
1995	54,500	76,000	130,500
1996	27,000	41,000	68,000
1997	44,300	80,000	124,300
1998	69,800	74,000	143,800
1999	113,000	123,000	236,000
2000	86,300	135,000	221,300
2001	60,500	122,000	182,500
2002	97,200	149,000	246,200
2003	117,900	273,000	390,900
2004	107,300	215,000	322,300
2005	141,400	166,000	307,400
2006	195,900	203,000	398,900
2007	269,470	228,000	497,470
2008	443,960	183,000	626,960

2009	692,440	321,000	1,013,440
2010	420,630	135,000	555,630
2011	632,400	80,000	712,400
2012	1,267,800	249,000	1,516,800
TOTALS	5,128,000	3,415,000	8,543,000

Sources: ATF AFMER, US ITC, Industry contacts
4/21/2014

Top 50 US Manufacturers of MSR's	
1	Adams Arms, Inc
2	Adcor Defense Inc
3	Aero Precision
4	American Tactical Imports
5	Armalite
6	Barnes Precision Machine Inc
7	Black Rain Ordnance
8	Bravo Company Mfg Inc
9	Bushmaster
10	Colt
11	CMMG
12	Daniel Defense
13	Diamondback Firearms LLC
14	Double Star
15	Del-ton
16	DPMS
17	DS Arms Inc.

18	FMK Firearms Inc
19	FN Manufacturing LLC
20	Good Times Outdoors, Inc
21	Heckler & Koch Inc
22	High Standard Firearms Ltd
23	Hogan Manufacturing
24	I.O. Inc
25	JP Enterprises, Inc
26	Just Right Carbines
27	Kel-Tec CNC Industries
28	Knights Manufacturing
29	Lewis Machine & Tool Co
30	LRB of Long Island Inc
31	LWRC
32	Maverick
33	O F Mossberg & Sons
34	Mega Arms LLC – lowers
35	Noveske
36	Olympic Arms
37	Patriot Ordn.
38	PTR Industries
39	Remington
40	Rock River
41	Sig Sauer Inc/SIGARMS
42	Smith & Wesson
43	Stag Arms

44	Sturm, Ruger & Co., Inc.
45	TNW Firearms inc.
46	Tactical Weapons Solutions (TWS)
47	Troy Industries Inc
48	Wilsons Gun Shop (Wilson Combat)
49	Windham Weapondry Inc
50	WM C Anderson Inc

EXHIBIT C

ANNUAL FIREARMS MANUFACTURING AND EXPORT REPORT

YEAR 2008 **

MANUFACTURED

PISTOLS		REVOLVERS	
TO .22	195,633	TO .22	115,511
TO .25	14,586#	TO .32	6,681
TO .32	40,485	TO .357 MAG	105,944
TO .380	278,945	TO .38 SPEC	133,621
TO .9MM	421,746	TO .44 MAG	31,135
TO .50	435,876#	TO .50	38,861
TOTAL	1,387,271#	TOTAL	431,753

RIFLES	**1,746,139 #**
SHOTGUNS	**630,710 #**
MISC. FIREARMS	**102,324 #**

EXPORTED

PISTOLS	**54,030**
REVOLVERS	**28,205**
RIFLES	**104,544**
SHOTGUNS	**41,186**
MISC. FIREARMS	**523**

PREPARED BY TBD 03/08/2011 REVISED 1/14/10 REPORT

**** FOR PURPOSES OF THIS REPORT ONLY, "PRODUCTION" IS DEFINED AS: FIREARMS, INCLUDING SEPARATE FRAMES OR RECEIVERS, ACTIONS OR BARRELED ACTIONS, MANUFACTURED AND DISPOSED OF IN COMMERCE DURING THE CALENDAR YEAR.**

 # REVISIONS WERE MADE TO FIREARMS TOTAL PRODUCTION

ANNUAL FIREARMS MANUFACTURING AND EXPORT REPORT

YEAR 2009 **

MANUFACTURED

PISTOLS		REVOLVERS	
TO .22	320,697	TO .22	141,840
TO .25	15,053	TO .32	7,590
TO .32	47,396	TO .357 MAG	107,834
TO .380	390,897	TO .38 SPEC	232,339
TO .9MM	586,364	TO .44 MAG	29,967
TO .50	507,851	TO .50	27,625
TOTAL	1,868,258	TOTAL	547,195

RIFLES	2,248,851
SHOTGUNS	752,699
MISC. FIREARMS	138,815

EXPORTED

PISTOLS	56,402
REVOLVERS	32,377

RIFLES	61,072
SHOTGUNS	36,455
MISC. FIREARMS	8,438

PREPARED BY EYR 01/20/2011

**** FOR PURPOSES OF THIS REPORT ONLY, "PRODUCTION" IS DEFINED AS: FIREARMS, INCLUDING SEPARATE FRAMES OR RECEIVERS, ACTIONS OR BARRELED ACTIONS, MANUFACTURED AND DISPOSED OF IN COMMERCE DURING THE CALENDAR YEAR.**

ANNUAL FIREARMS MANUFACTURING AND EXPORT REPORT

YEAR 2010 *

MANUFACTURED

PISTOLS		REVOLVERS	
TO .22	374,505	TO .22	131,543
TO .25	21,722	TO .32	8,605
TO .32	39,792	TO .357 MAG	126,525
TO .380	665,512	TO .38 SPEC	210,762

TO .9MM	630,217	TO .44 MAG	45,361
TO .50	526,702	TO .50	36,131
TOTAL	2,258,450	TOTAL	558,927

RIFLES	1,830,556 #
SHOTGUNS	743,378
MISC. FIREARMS	67,929

EXPORTED

PISTOLS	80,041
REVOLVERS	25,286
RIFLES	76,518
SHOTGUNS	43,361
MISC. FIREARMS	16,771

PREPARED BY TBD 01/30/2012
REPORT DATA AS OF 1/30/2012

*** FOR PURPOSES OF THIS REPORT ONLY, "PRODUCTION" IS DEFINED AS: FIREARMS, INCLUDING SEPARATE FRAMES OR RECEIVERS, ACTIONS OR BARRELED ACTIONS, MANUFACTURED AND DISPOSED OF IN COMMERCE DURING THE CALENDAR YEAR.**

 # REVISIONS WERE MADE TO FIREARMS TOTAL

ANNUAL FIREARMS MANUFACTURING AND EXPORT REPORT

YEAR 2011 *

MANUFACTURED

PISTOLS		REVOLVERS	
TO .22	427,448	TO .22	153,749
TO .25	19,182	TO .32	5,182
TO .32	13,890	TO .357 MAG	125,237
TO .380	537,063	TO .38 SPEC	206,191
TO .9MM	888,379	TO .44 MAG	35,791
TO .50	712,171	TO .50	46,707
TOTAL	2,598,133	TOTAL	572,857

RIFLES 2,318,088

SHOTGUNS	**862,401**
MISC. FIREARMS	**190,407**

EXPORTED

PISTOLS	**121,035**
REVOLVERS	**23,221**
RIFLES	**79,256**
SHOTGUNS	**54,878**
MISC. FIREARMS	**18,498**

PREPARED BY TBD 1/07/2013 REPORT DATA AS OF 1/7/2013

*** FOR PURPOSES OF THIS REPORT ONLY, "PRODUCTION" IS DEFINED AS: FIREARMS, INCLUDING SEPARATE FRAMES OR RECEIVERS, ACTIONS OR BARRELED ACTIONS, MANUFACTURED AND DISPOSED OF IN COMMERCE DURING THE CALENDAR YEAR.**

ANNUAL FIREARMS MANUFACTURING AND EXPORT REPORT

YEAR 2012 *

MANUFACTURED

PISTOLS		REVOLVERS	
TO .22	675,737	TO .22	234,164
TO .25	9,853	TO .32	1,717
TO .32	11,248	TO .357 MAG	126,594
TO .380	582,645	TO .38 SPEC	203,005
TO .9MM	1,226,756	TO .44 MAG	36,116
TO .50	981,644	TO .50	65,761
TOTAL	3,487,883	TOTAL	667,357

RIFLES	3,168,206
SHOTGUNS	949,010
MISC. FIREARMS	306,154

EXPORTED

PISTOLS	128,313
REVOLVERS	19,643

RIFLES	**81,355**	
SHOTGUNS	**42,858**	**PREPARED BY TBD 1/17/2014 REPORT DATA AS OF 1/17/2014**
MISC. FIREARMS	**15,385**	

*** FOR PURPOSES OF THIS REPORT ONLY, "PRODUCTION" IS DEFINED AS: FIREARMS, INCLUDING SEPARATE FRAMES OR RECEIVERS, ACTIONS OR BARRELED ACTIONS, MANUFACTURED AND DISPOSED OF IN COMMERCE DURING THE CALENDAR YEAR.**

EXHIBIT D

NSSF® REPORT

MODERN SPORTING RIFLE (MSR) COMPREHENSIVE CONSUMER REPORT 2013

Ownership, Usage and Attitudes Toward AR- and AK-Platform Modern Sporting Rifles

Conducted for National Shooting Sports Foundation by Sports Marketing Surveys

SPORTS MARKETING SURVEYS USA.

NSSF.ORG [LOGO]

* * *

1 METHODOLOGY

The MSR Consumer Study employed an online survey methodology. With no database available of known MSR owners, NSSF promoted participation in this study via online banner ads on various websites, blogs and e-newsletters geared toward firearms ownership and hunting such as:

- AR-15.com e-newsletter
- Bushmaster Website and Facebook page
- DPMS Website and Facebook page
- Field & Stream blog
- Gun Digest website
- Guns and Ammo website
- NSSF Facebook page & Twitter post
- NSSF/GunBroker *Pull the Trigger* e-newsletter
- Remington Facebook page
- Smith & Wesson Facebook page & Twitter post
- 3-Gun Nation website and Facebook page
- Tapco website and Facebook page
- Winchester ammunition e-newsletter

A contest to win one of three $500 Cabela's gift cards was included as an incentive to complete the survey in full. The term "Modern Sporting Rifle" was clearly defined as AR- or AK-platform rifles such as an AR-15, AR-10, AK-47 or other semi-automatic rifles with detachable magazines. Photographs of both AR- and AK-platform MSR's were shown on the survey landing page. To further pair down response to those that would correctly complete the survey, the survey's initial question asked "Do you own at least one Modern Sporting Rifle? (If you do not own a MSR but would still like to be entered in the contest, select "No".) These safeguards narrowed the usable responses from 26,719 to 21,942.

This gives a very high confidence level. The Confidence Interval for the full "MSR Owner" sample ranges from +/- 0.29 percentage points to +/- 0.68 percentage points at the 95% confidence level. So, for example, if the survey shows 50% of MSR owners shoot at ranges, we can be confident 95 times out of 100 that the real value lies within +/- 0.68 percentage points so between 49.32% and 50.68%. Or to put it another way: Less than 5 times out of 100 would we expect to find a difference of more than 0.68 percentage points due to sampling.

Survey was live April and May 2013.

2 EXECUTIVE SUMMARY

In the spring of 2013, The National Shooting Sports Foundation (NSSF) contracted with Sports Marketing Surveys (SMS) of Jupiter, Florida to conduct a large consumer study to learn more about the growing category of MSR Modern Sporting Rifle (MSR) ownership. This survey was formatted to follow the 2010 MSR Consumer Report from NSSF and SMS first collaboration in 2010. In the 2013 survey, MSRs were specified as either an AR platform, AK platform or other semi-automatic rifle with a detachable magazine. Prior to the start of the survey, the NSSF gathered together a panel of industry leaders and experts from the manufacturing, retailing and law enforcement/military backgrounds to ensure that right questions were asked to provide the most amount of information possible.

The survey was conducted using an Internet based methodology. Links were posted on many of the popular consumer oriented web sites in the industry in order to solicit responses. An incentive was used in order to facilitate this process. At the end of the fielding period, well over 26,000 total responses were received of which over 21,942 came from MSR owners. This response was a significant increase from the 2010 study of 11,400 respondents. This large sample meant that we were able to perform a number of very specific survey cross tabs to look at some differences among MSR owners.

MSRs owners are predominantly male (99%). Over 75% of male MSR owners are married, of those married, more than half indicated their wife went target shooting with them and 14% own her own MSR. Even though only 1% of respondents were female, there appeared to be a large interest in MSRs and MSR related recreational shooting activities within the female population.

Most owners are older, with 61% over the age of 45 and most don't have children living in the home (58%). The more MSR's owned, the more likely they are to lock up their weapons.

35% reported having either military or law enforcement background. This is down from the 44% reported in 2010. Although the veteran status has increased slightly, the 2013 survey seemed to tap more into the civilian MSR population.

Although Range membership is down from 51% in 2010 to 48% in 2013, members have increased the usage of their MSRs compared to 2010. Range members tend to be older and have an income greater than $75,000. In regards to weapon and accessory purchase, the Range and Non-Range member have relatively the same habits with the exception of price. Over 60% are recent MSR buyers and plan on purchasing accessories in the next 12 months.

The rate of ownership has increased dramatically since 2010. Those who only own one MSR, 49% purchased their first in 2012 and 2013. Overall, 2012 was the highest (17%) for new ownership since prior to 1994. 91% of all MSR owners own at least one AR Platform weapon. Just over a quarter of owners report having 4 or more MSR's, with 14% being only AR Platforms. Most own only one AK Platform (67%). Those who one multiple MSR's (2 or more) tend to be more active with almost half of them hunting, 92% target shooting and 19% shoot in competitions with an MSR.

MSR ownership is not limited to one category of guns. Many MSR owners own at least one other non-MSR weapon. Handguns are the most popular at 90%, followed by the traditional rifle and shotgun (82%). Muzzleloaders (28%) and Paintball guns (15%) are less favorable. Those under the age of 35 are more likely to own a paintball gun and less likely to own a muzzleloader. Only 1% of MSR owners, whether a single or multiple owner, own only MSRs.

Over a third of MSR owners first gain interest in MSRs through a friend and a quarter through the military. Most MSR owners target shoot with at least one other person (84%) which mimics the 2010 report. MSRs are mostly used for rifle target shooting (89%), either at a public range (52%) or private range (51%). Almost half of all MSR owners target shoot on family land, which could indicate target shooting as a family activity. 94% of MSR owners used at least one MSR in the past 12 months. Most (40%) used their MSR on average once a month. Frequency of use increases with number of MSR owned.

Most MSRs were bought from an independent retail store. The average cost of a MSR was $1,058, $25 less than the average spent in 2010. .223/5.56mm was the prefer caliber for the AR Platform, where the AK platform was usual 7.62mm x 39mm caliber. Almost two thirds of MSR owners have at least a few accessories, added within 12 months of purchase, on their most recent MSR with an average of $400 dollars spent.

[Figure Omitted]

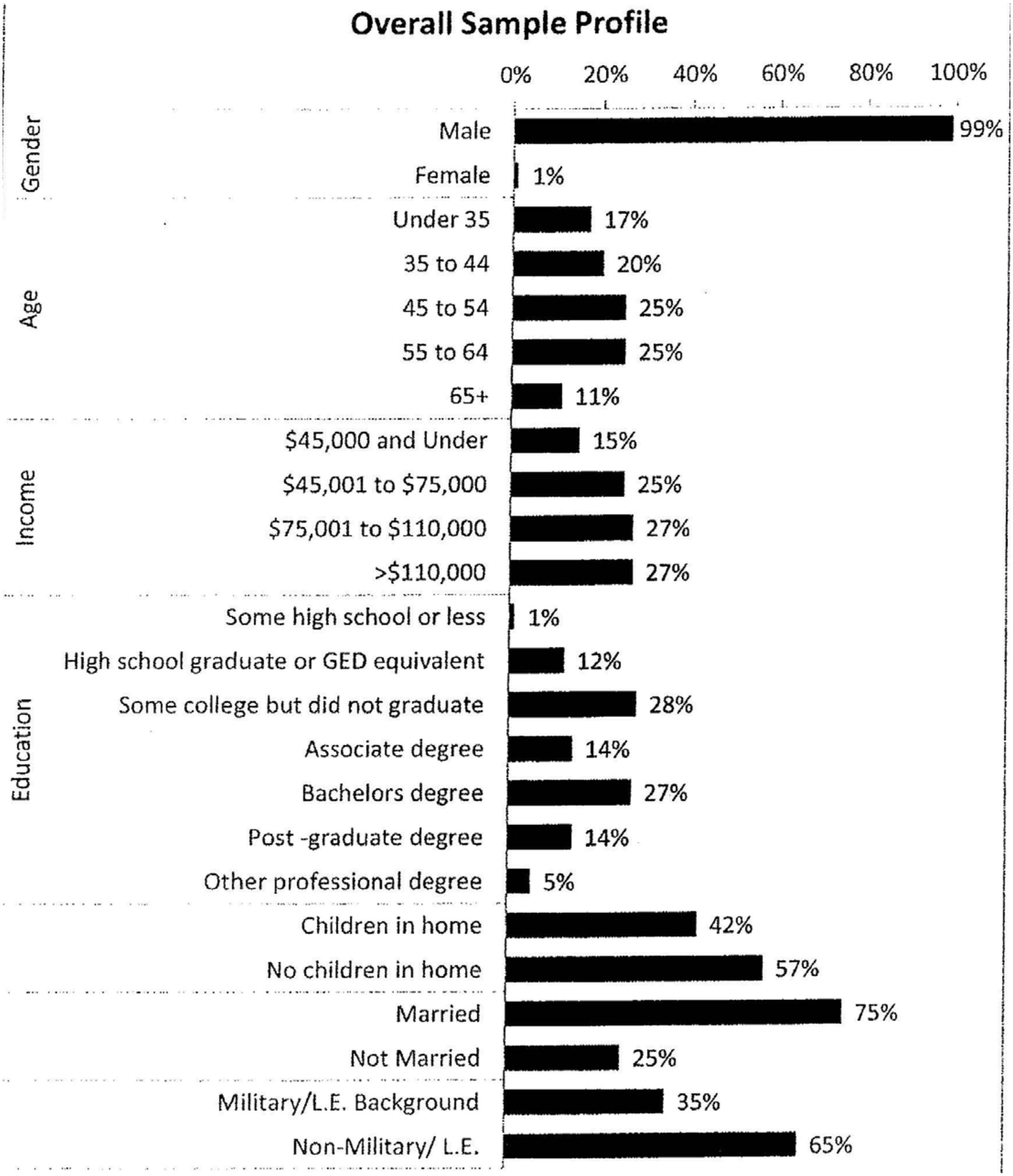
*NOTE: 2013 NSSF Survey identified AR and AK platforms separately. 2010 NSSF Survey included AK but was tailored more toward the AR platform owner.

* * *

4 SAMPLE PROFILE

4.1 Overall profile of MSR owners

- N= 21,942

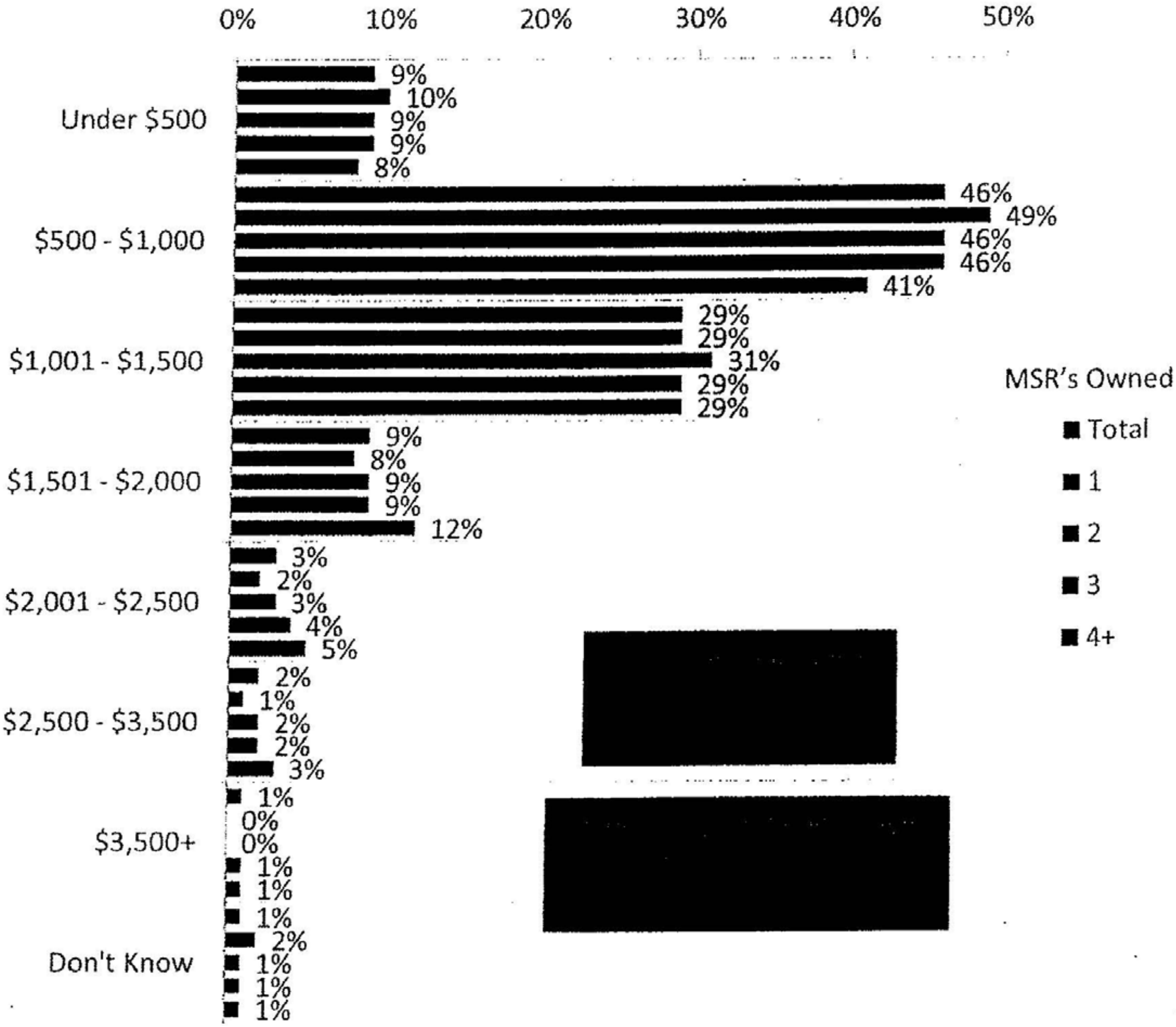


* * *

5.7 Price paid

- N= 21,942

What was the initial price of your most recent MSR (new out of the box cost)?



- 55% of MSR owners paid under $1,000 for their most recent MSR.
- The more MSR's owned, the more likely the owner would pay more for another gun.

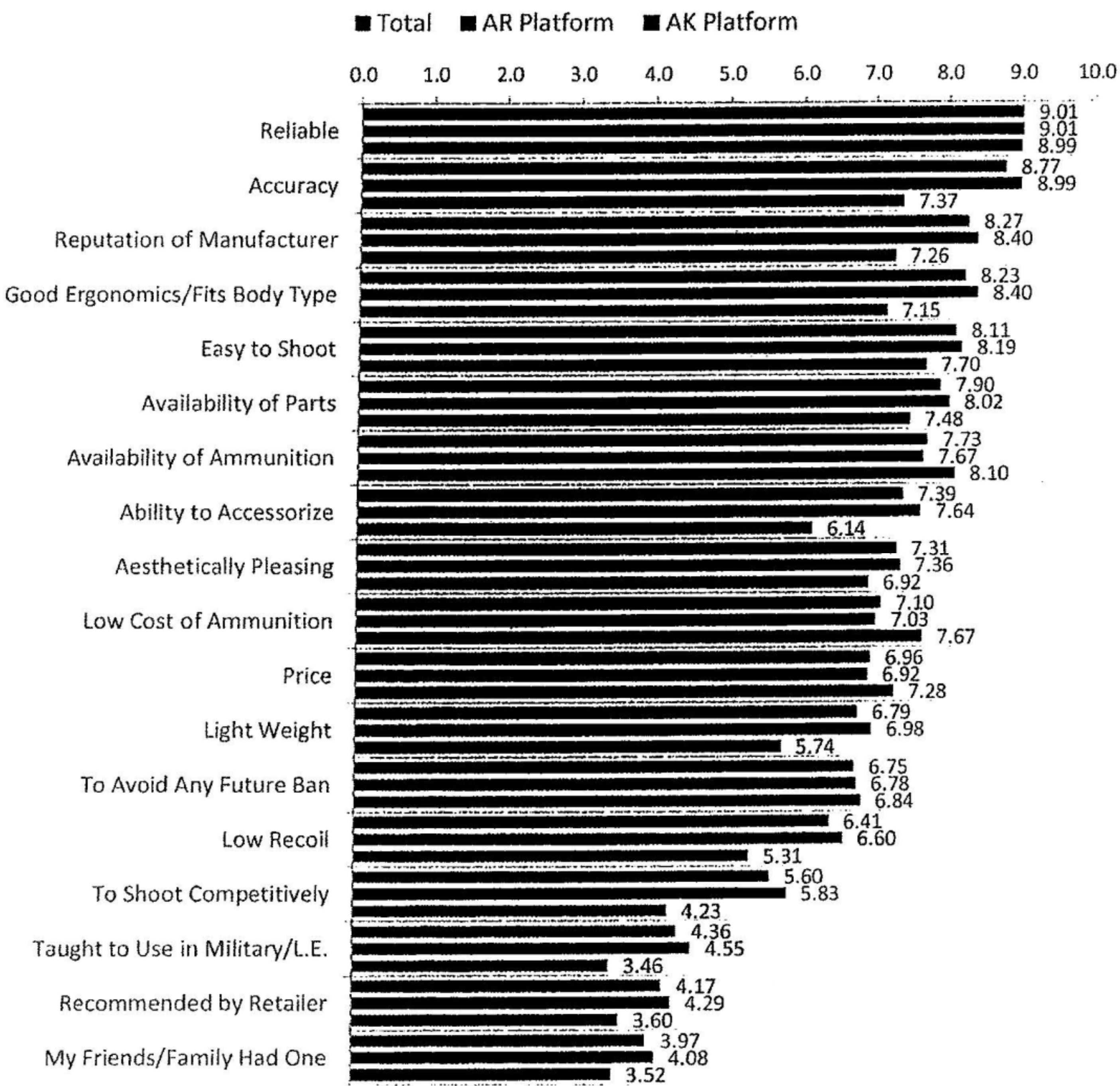
* * *

5.9 Reasons for purchase

How important were each of the following reasons for buying your most recent MSR?

- On a scale of 1=Not at all important to 10=Very important

Top 5 Reason for buying their most recent MSR			
	Total	**Military/L.E.**	**Non-Military/L.E.**
Reliable	9.01	9.10	8.96
Accuracy	8.77	8.88	8.72
Reputation of Manufacturer	8.27	8.32	8.24
Fits Body Type/Good Ergonomics	8.23	8.32	8.18
Easy to Shoot	8.11	8.13	8.09



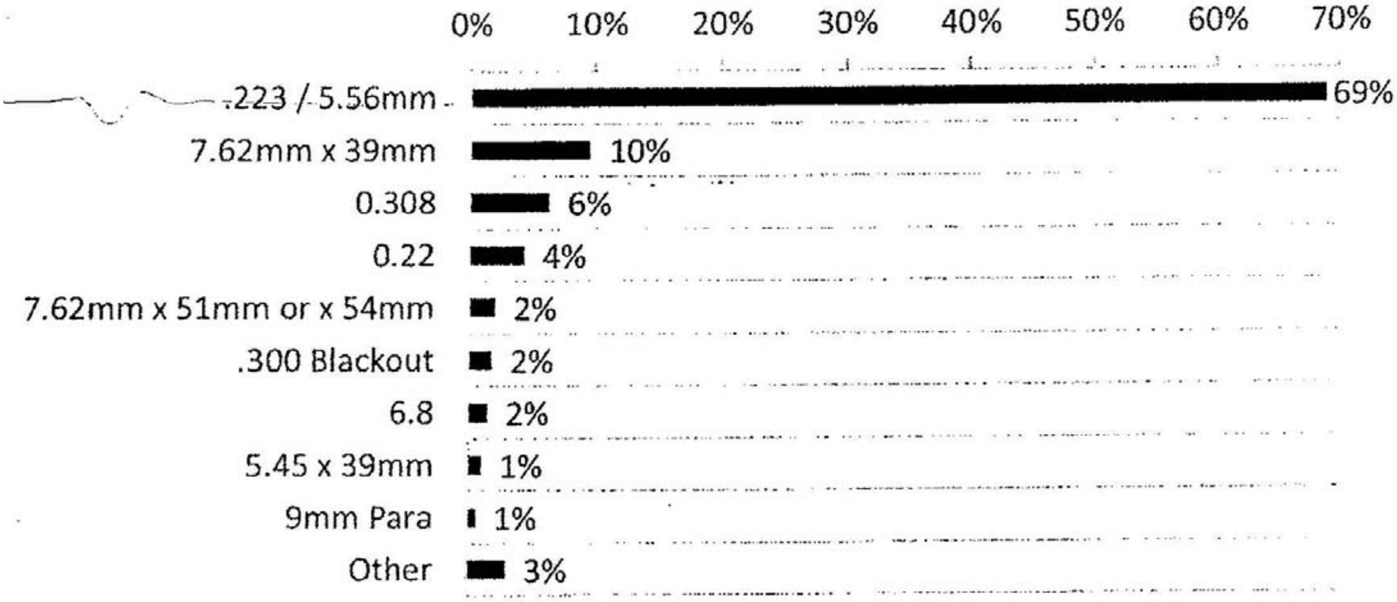
* * *

6 MSR AND ACCESSORY SPECIFICATION

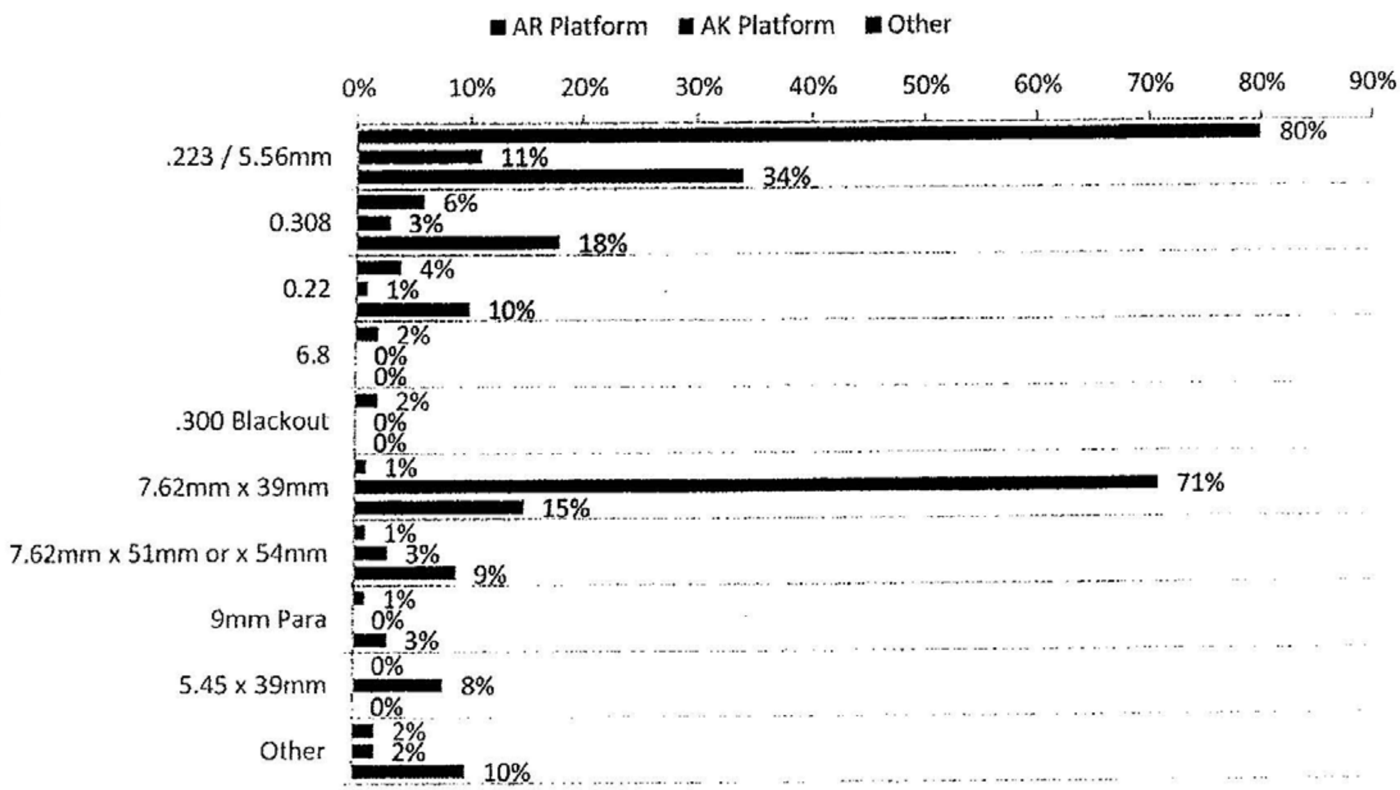
6.1 MSR Caliber

- N= 21,942

What caliber is your most recent MSR?

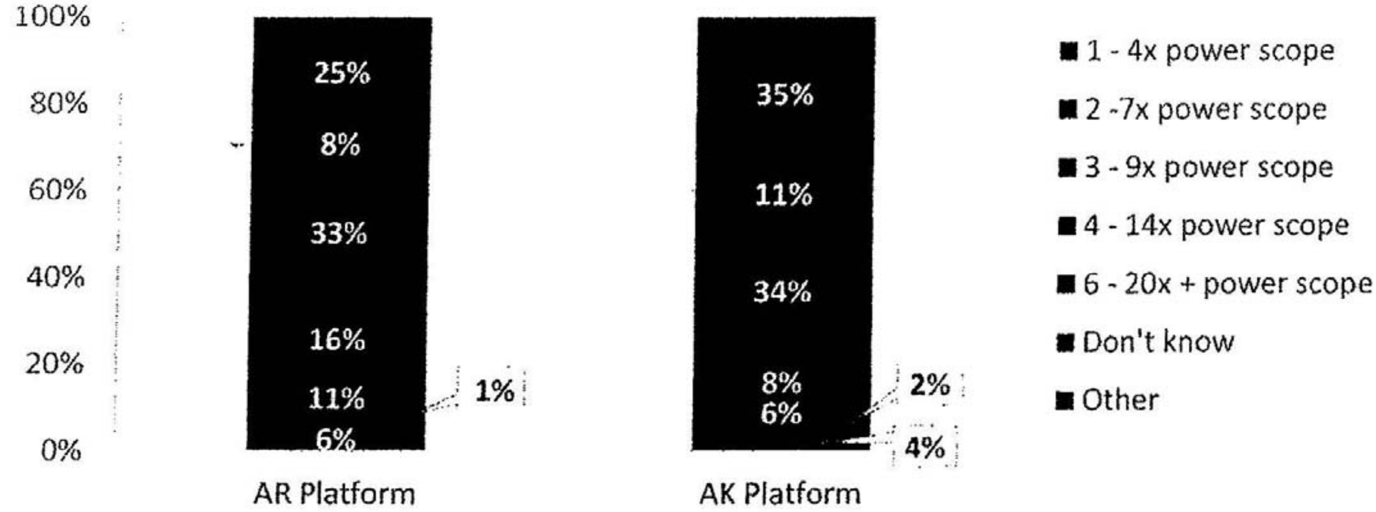


- Over half of recent MSR purchases were chambered in .223 / 5.56mm.



* * *

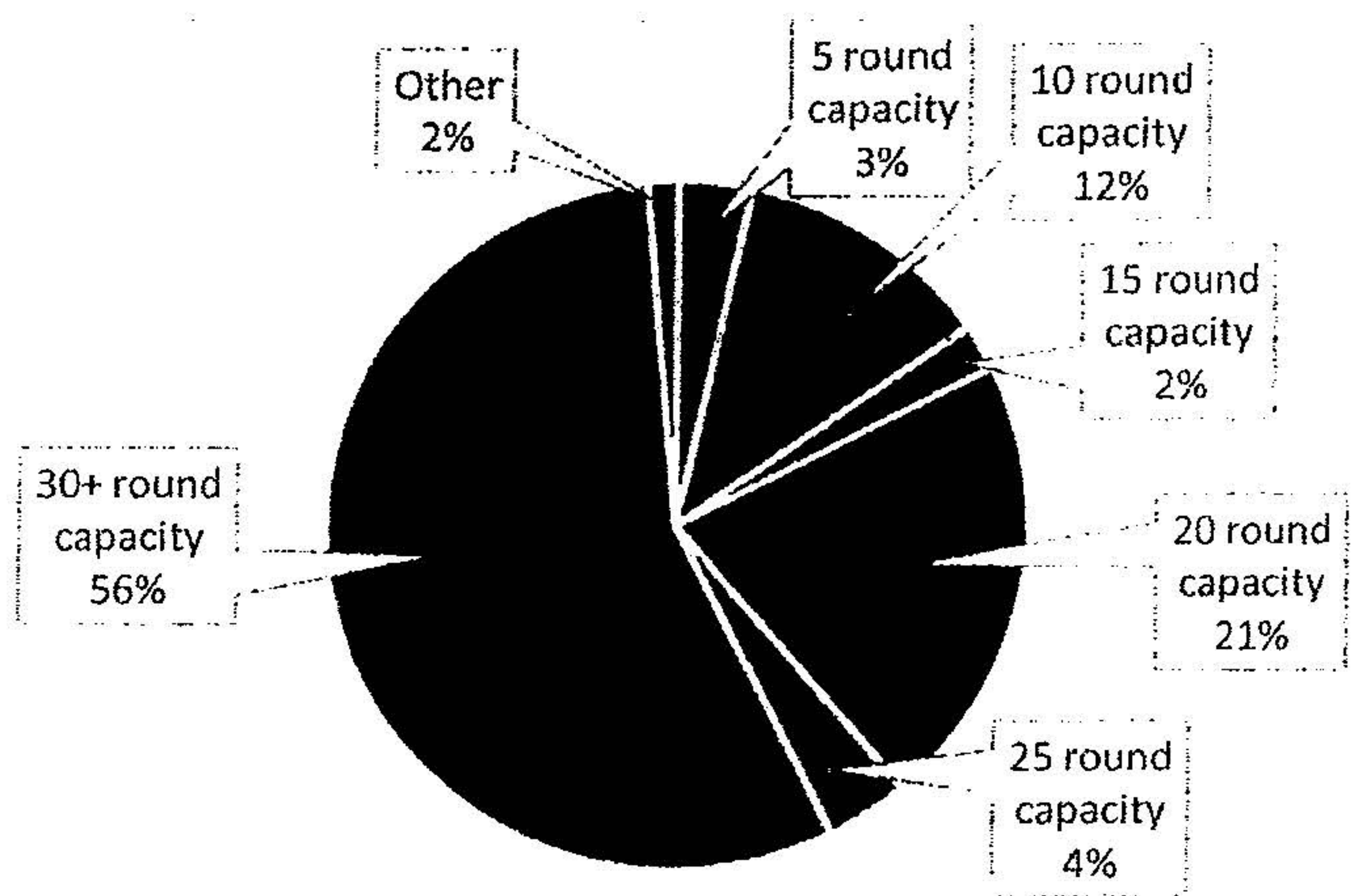
What type of scope do you have on your most recent MSR purchase?



6.7 Magazine capacity

Which magazine capacity do you use the most in your most recent MSR?

- 2013 N= 21,942



- 56% of all MSR owners use 30+ round capacity magazines in their most recent MSR purchase.
- The next most popular magazine capacity is 20 round.

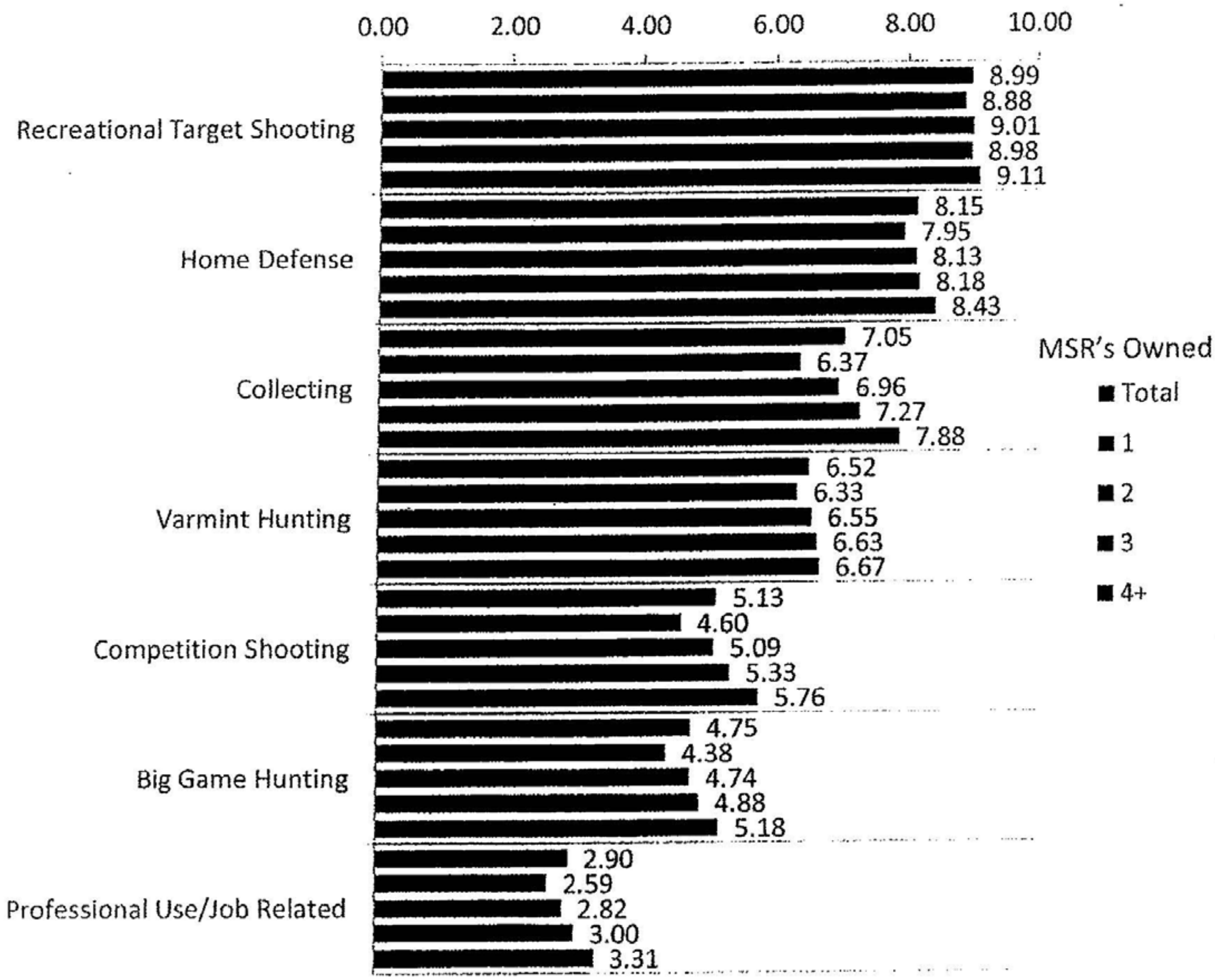
* * *

8 MSR USAGE

8.1 Reasons for owning a MSR

- 2013 N= 21,942

Please rank the following reasons for owning a MSR.
(1=Not Important to 10=Very Important)



Multiple (4+) MSR owners gave higher importance ratings for:

- Recreational Target Shooting
- Home Defense
- Collecting
- Varmint Hunting

* * *

EXHIBIT E

FIFTH ANNUAL

NSSF®
FIREARMS RETAILER SURVEY REPORT
2013 EDITION TREND DATA 2008-2012

NATIONAL SHOOTING
SPORTS FOUNDATION

SA SOUTHWICK
ASSOCIATES

Prepared by: Southwick Associates,
P.O. Box 6435, Fernandina Beach, FL 32035
Phone: (904) 277-9765, Fax: (904) 261-1145

WWW.NSSF.ORG [LOGO]

OVERVIEW

This report is the result of an in-depth analysis of the U.S. firearms retail industry sponsored by the National Shooting Sports Foundation. The information for the report was collected through an online survey of retailers that was conducted in April, 2013. The survey respondents included 752 retail establishments located in all 50 states. They range in size from single proprietors to large outdoor specialty retailers.

Figure 1. Locations of retailers who responded to the survey.

[Figure Omitted]

*   *   *

Which type(s) of NEW rifles do you currently sell (check all that apply)?

[Figure Omitted]

Item	2008 Percent	2009 Percent	2010 Percent	2011 Percent	2012 Percent	# of 2012 Responses
AR-style/modern sporting rifles	88.1%	87.8%	85.6%	91.4%	92.5%	596
Traditional rifles	90.3%	93.7%	88.5%	89.2%	89.2%	589
	Total 2012 responses to this question: N=644					

Please check the top three calibers sold for NEW modern sporting rifles (AR platforms).

[Figure Omitted]

120a

Item	2009 Percent	2010 Percent	2011 Percent	2012 Percent	# of 2012 Responses
223 cal	92.7%	94.9%	96.8%	96.8%	451
308 cal	60.4%	69.0%	66.5%	66.5%	310
22 cal	43.8%	39.7%	43.1%	43.1%	201
7.62x39 Soviet	18.5%	16.8%	17.2%	17.2%	80
30-06 Springfield	10.0%	9.8%	9.2%	9.2%	43
243 cal	3.8%	7.4%	6.4%	6.4%	30
300 Win Mag	n/a	1.7%	3.9%	3.9%	18
270 Remington	n/a	3.0%	3.4%	3.4%	16
17 cal	3.8%	3.4%	2.8%	2.8%	13
204 Ruger	6.9%	7.4%	2.6%	2.6%	12
22-250 cal	3.8%	2.7%	2.1%	2.1%	10
30-30 cal	0.8%	1.3%	2.1%	2.1%	10
7mm Remington Mag	1.5%	1.7%	1.7%	1.7%	8
300 WSM	n/a	n/a	1.3%	1.3%	6
270 Winchester	n/a	n/a	n/a	1.3%	6
7 mm-08	n/a	1.3%	1.3%	1.3%	6
270 WSM	0.8%	1.3%	0.6%	0.6%	3
44 Rem	n/a	n/a	0.6%	0.6%	3
300 Rem. Magnum	n/a	1.3%	0.4%	0.4%	3
300 Savage	n/a	n/a	n/a	0.4%	2
30 Carbine	n/a	n/a	n/a	0.2%	2
300 Weatherby Magnum	n/a	n/a	n/a	0.2%	1
375 H&H Magnum	n/a	n/a	n/a	0.2%	1
7 mm Mauser	n/a	n/a	n/a	0.2%	1
Other	10.4%	7.1%	12.0%	12.0%	56

Total 2012 responses to this question: N=596

*   *   *

Out of every 100 firearms you sold, approximately how many were new vs. used?

[Figures Omitted]

	2011 Avg. Response	2012 Avg. Response	# of 2012 Responses
Semi-auto pistol	40.0	39.0	585
AR/ modern sporting rifle	18.9	20.3	585
Traditional rifle	15.0	14.0	585
Shotgun	12.4	13.0	585
Revolver	11.4	11.4	585
Muzzleloader	1.3	1.5	585
Other	0.9	0.8	585

EXHIBIT F

NSSF REPORT®
SPORTS SHOOTING PARTICIPATION IN THE UNITED STATES IN 2012

NATIONAL SHOOTING
SPORTS FOUNDATION

Conducted for the National Shooting Sports Foundation by Responsive Management

Responsive Management

WWW.NSSF.ORG [LOGO]

INTRODUCTION AND METHODOLOGY

This study was conducted for the National Shooting Sports Foundation (NSSF) to determine the national participation rates in target shooting and sport shooting. The study entailed a telephone survey of 8,335 U.S. residents ages 18 years old and older. Specific aspects of the research methodology are discussed below.

For the survey, telephones were selected as the preferred sampling medium because of the almost universal ownership of telephones among U.S. residents (both landlines and cell phones were called in their proper proportions relative to all telephones owned in the general population). Additionally, telephone surveys, relative to mail or Internet surveys, allow for more scientific sampling and data collection, provide higher quality data, obtain higher response rates, are more timely, and are more cost-effective. Telephone surveys also have fewer negative effects on the environment than do mail surveys because of reduced use of paper and reduced energy consumption for delivering and returning the questionnaires.

A central polling site at the Responsive Management office allowed for rigorous quality control over the interviews and data collection. Responsive Management maintains its own in-house telephone interviewing facilities. These facilities are staffed by interviewers with experience conducting computer-assisted telephone interviews on the subjects of natural resources and outdoor recreation.

The telephone survey questionnaire was developed cooperatively by Responsive Management and the NSSF. Responsive Management conducted a pre-test of the questionnaire to ensure proper wording, flow, and logic in the survey.

Because the main objective of the survey was to determine regional and national participation rates in the shooting sports, a strategy was devised in the survey questioning to avoid bias that would arise from the tendency for those who do *not* shoot to refuse to participate in a survey about shooting. Therefore, the survey starts by asking about some general activities, mixing shooting and hunting participation in with participation in other non-shooting activities. In this way, the respondent would not know that the survey was about shooting. Some of the activities were those that large majorities were expected to have done (e.g., watching television with a friend, eating a meal in a sit-down restaurant) and some were those that hardly anybody at all was expected to have done (e.g., play lacrosse, play racquetball) as a way to calibrate the results. Starting with an activity (the first in the survey was "watching TV with a friend") that almost all would have done helps ensure that non-shooters continue with the survey. Shooting participation was gleaned from that first question in which shooting and hunting were mixed with those other non-shooting activities.

To ensure the integrity of the telephone survey data, Responsive Management has interviewers who have been trained according to the standards established by the Council of American Survey Research Organizations. Methods of instruction included lecture and role-playing. The Survey Center Managers and other professional staff conducted project briefings with the interviewers prior to the administration of this survey. Interviewers were instructed on type of study, study goals and objectives, handling of survey questions, interview length, termination points and qualifiers for participation, interviewer instructions within the survey instrument, reading of the survey instrument, skip patterns, and probing and clarifying techniques necessary for specific questions on the survey instrument. The Survey Center Managers and statisticians monitored the data collection, including monitoring of the actual telephone interviews without the interviewers' knowledge, to evaluate the performance of each interviewer and ensure the integrity of the data. After the surveys were obtained by the interviewers, the Survey Center Managers and/or statisticians checked each completed survey to ensure clarity and completeness.

The sampling methodology entailed random digit dialing, which ensures that all telephone numbers have an equal chance of being called, and the sample included both landlines and cell phones. The sample was obtained from Survey Sampling International and DatabaseUSA, companies specializing in providing scientific telephone samples. Calling times were Monday through Friday from 9:00 a.m. to 9:00 p.m., Saturday from noon to 5:00 p.m., and Sunday from 5:00 p.m. to 9:00 p.m., local time. A five-callback design was used to maintain the representativeness of the sample, to avoid bias toward people easy to reach by telephone, and to provide an equal opportunity for all to participate. When a respondent could not be reached on the first call, subsequent calls were placed on different days of the week and at different times of the day. The survey was conducted in January and February 2013. Responsive Management obtained a total of 8,335 completed interviews.

The software used for data collection was Questionnaire Programming Language (QPL). The survey data were entered into the computer as each interview was being conducted, eliminating manual data entry after the completion of the survey and the concomitant data entry errors that may occur with manual data entry. The survey instrument was programmed so that QPL branched, coded, and substituted phrases in the survey based on previous responses to ensure the integrity and consistency of the data collection. The analysis of data was performed using Statistical Package for the Social Sciences as well as proprietary software developed by Responsive Management. The results were weighted slightly by age and gender to be exactly proportional to the total population of each region and of the United States as a whole. Note that each state was sampled proportionately to preserve proper distribution within each region and in the U.S. as a whole, and each respondent was then assigned a region based on the state; the analysis was conducted on a regional basis and on the U.S. as a whole, but not at the state level. The number of completed interviews from each state is shown in the tabulation below:

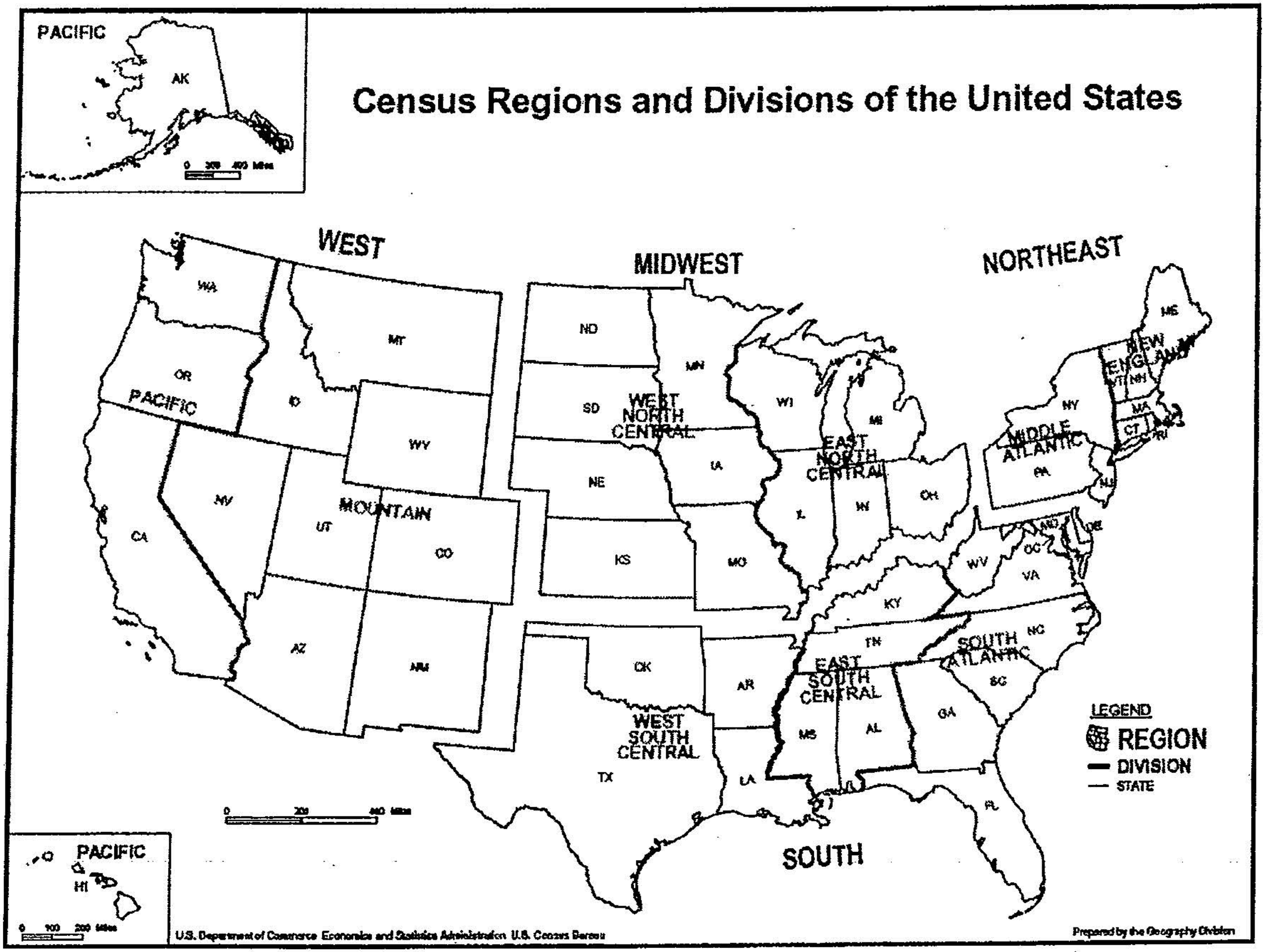
State of Residence	**Completed Interviews**
Alabama	127
Alaska	18
Arizona	162
Arkansas	75
California	972
Colorado	139
Connecticut	95
Delaware	22
Florida	514
Georgia	249
Hawaii	42

Idaho	42
Illinois	393
Indiana	166
Iowa	93
Kansas	79
Kentucky	118

State of Residence	**Completed Interviews**
Louisiana	118
Maine	43
Maryland	159
Massachusetts	175
Michigan	265
Minnesota	139
Mississippi	76
Missouri	165
Montana	28
Nebraska	55
Nevada	70
New Hampshire	38
New Jersey	237
New Mexico	54
New York	521
North Carolina	253
North Dakota	20

State of Residence	Completed Interviews
Ohio	301
Oklahoma	101
Oregon	110
Pennsylvania	346
Rhode Island	28
South Carolina	121
South Dakota	21
Tennessee	171
Texas	625
Utah	66
Vermont	17
Virginia	226
Washington	244
West Virginia	49
Wisconsin	151
Wyoming	14
Washington D.C.	22
TOTAL	8,335

As mentioned, the states were also grouped into regions to aid in comparison and analysis. The four main U.S. Census Bureau regions were used. The following map from the U.S. Census Bureau website shows each region:


Census Regions and Divisions of the United States
PACIFIC
AK
WEST
MIDWEST
NORTHEAST
SOUTH
PACIFIC
MOUNTAIN
WEST NORTH CENTRAL
EAST NORTH CENTRAL
NEW ENGLAND
MIDDLE ATLANTIC
SOUTH ATLANTIC
EAST SOUTH CENTRAL
WEST SOUTH CENTRAL
WA
OR
CA
ID
NV
MT
WY
UT
CO
AZ
NM
ND
SD
NE
KS
MN
IA
MO
WI
IL
MI
IN
OH
NY
PA
NJ
ME
VT
NH
MA
CT
RI
MD
DE
DC
WV
VA
KY
TN
NC
SC
GA
FL
AL
MS
AR
LA
OK
TX
HI
LEGEND
REGION
DIVISION
STATE
U.S. Department of Commerce Economics and Statistics Administration U.S. Census Bureau
Prepared by the Geography Division

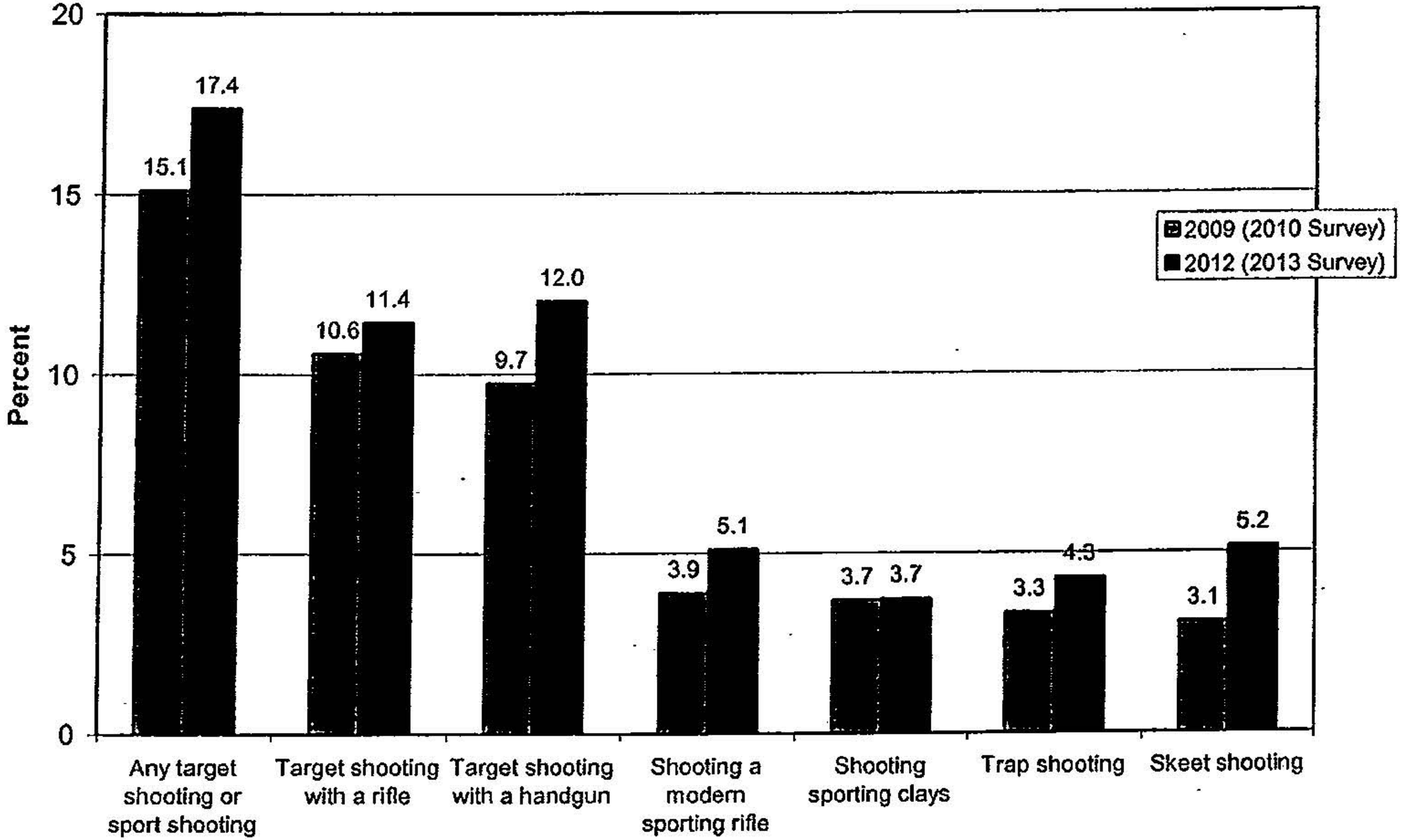
The sampling error on the entire sample is 1.07 percentage points at the 95% confidence interval.

*   *   *

TRENDS IN PARTICIPATION IN TARGET AND SPORT SHOOTING

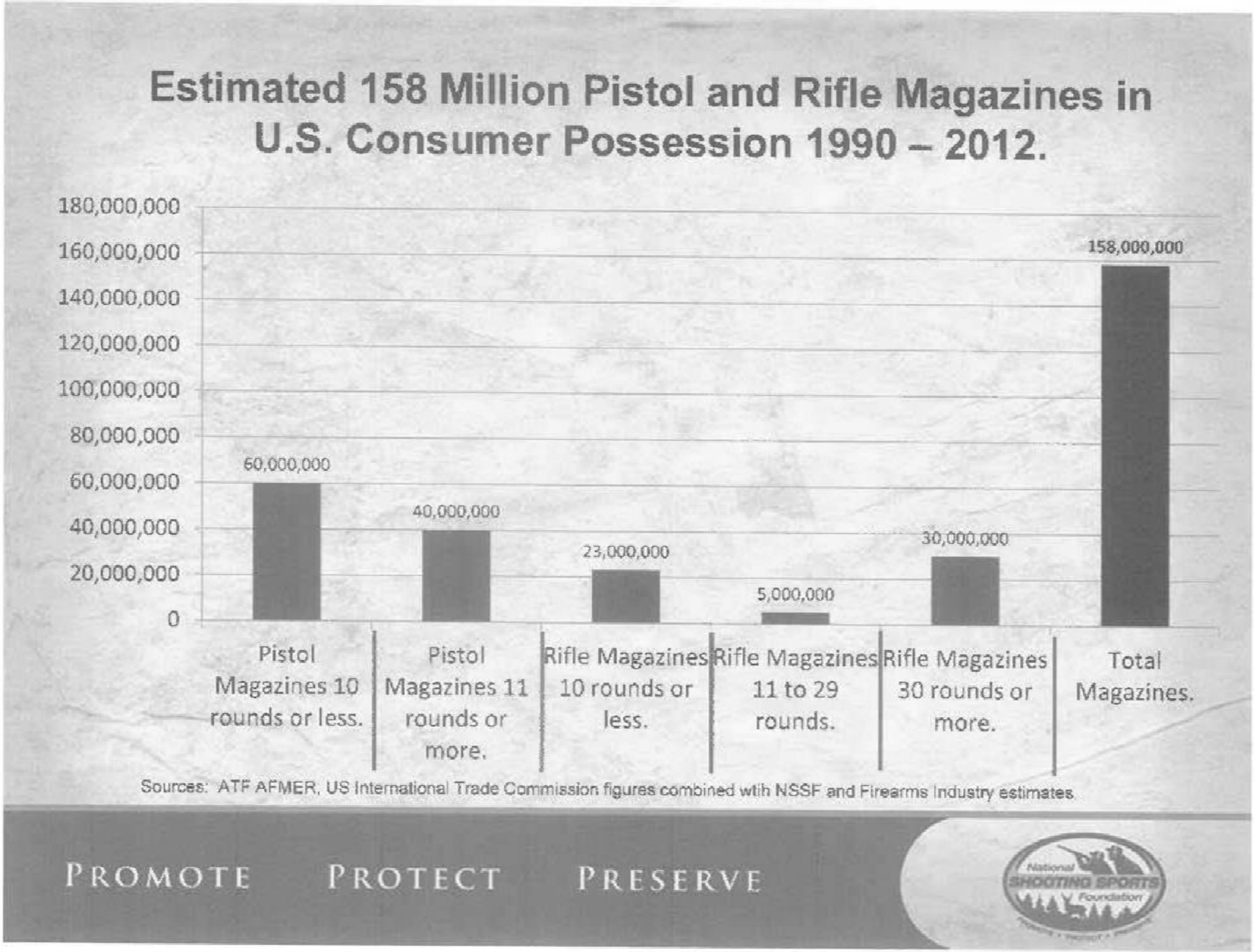
The current survey is similar to a survey conducted regarding Americans' target shooting activities in 2009, to which the current survey's results are compared. The current survey found a 17.4% participation rate in any type of target or sport shooting, which is a slight increase over the 15.1% rate among Americans in 2009. Additionally, as shown in the trends graph below, the participation rate in each shooting activity increased, with the exception of shooting sporting clays (its participation rate stayed essentially the same). The tabulation compares estimated numbers of participants; the estimated number of target/sport shooters in 2012 increased 18.61% over the 2009 number.

Comparison of Participation Rates in Shooting Activities 2009 to 2012.



Activity	**Estimated Total Participants (ages 18 years and older) in 2009**	**Estimated Total Participants (ages 18 years and older) in 2012**	**Percent Increase Over 2009 Number**
National			
Any target shooting or sport shooting	34,382,566	40,779,651	18.61%
Target shooting with a handgun	22,169,700	28,209,283	27.24%
Target shooting with a rifle	24,045,795	26,822,425	11.55%
Skeet shooting	6,979,680	12,090,346	73.22%
Target shooting with a modern sporting rifle	8,868,085	11,976,702	35.05%
Trap shooting	7,582,479	10,116,684	33.42%
Sporting clays	8,399,989	8,789,340	4.64%

EXHIBIT G


Estimated 158 Million Pistol and Rifle Magazines in U.S. Consumer Possession 1990 – 2012.
180,000,000
160,000,000
140,000,000
120,000,000
100,000,000
80,000,000
60,000,000
40,000,000
20,000,000
0
60,000,000
40,000,000
23,000,000
5,000,000
30,000,000
158,000,000
Pistol Magazines 10 rounds or less.
Pistol Magazines 11 rounds or more.
Rifle Magazines 10 rounds or less.
Rifle Magazines 11 to 29 rounds.
Rifle Magazines 30 rounds or more.
Total Magazines.
Sources: ATF AFMER, US International Trade Commission figures combined wtih NSSF and Firearms Industry estimates
PROMOTE PROTECT PRESERVE
National Shooting Sports Foundation

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

ARIE S. FRIEDMAN, M.D. and the Illinois State Rifle Association	)	
Plaintiffs,	)	No:13-cv-9073
v.	)	
CITY OF HIGHLAND PARK,	)	
Defendant.	)	

AFFIDAVIT OF DAVID A. LOMBARDO

If sworn as a witness, I could competently testify to the following:

1. I offer this Affidavit based on my expertise and experience in firearms training, safety and use.

2. I am the founder and President of Safer USA, an organization dedicated to providing knowledge and training on the safe and responsible use of firearms for self-defense and recreation by law-abiding citizens. I am also an Illinois Certified Firearms Instructor, an NRA Law Enforcement Instructor and an NRA Training Counselor on pistols, rifles, shotguns, home firearms safety, personal protection in the home and personal protection outside the home. I also serve as the Executive Director of the Clyde Howell NRA Youth Shooting Sports Camp and the President of the Aurora Sportsmen's Club. I have personally

taught firearms safety and firearms use to both experienced and novice shooters and have interacted with the gun owning public in a variety of ways for 25 years. I am qualified to testify on the types of firearms that are commonly and appropriately owned for lawful purposes, including home defense, hunting and recreational shooting. My qualifications are further described in my resume, attached to this Affidavit as Exhibit A.

3. I have reviewed City of Highland Park City Code section 136.001 *et seq*. Many of the firearms banned under the ordinance are commonly owned by residents of Illinois and elsewhere for lawful purposes, including home defense, hunting and recreational target shooting. For example, one of the most popular and commonly owned firearms today are rifles built on an AR-platform. The popularity of these rifles is based, in part, on their modular in design. They have an upper receiver into which the barrel is mounted and a lower receiver that holds the firing assembly and onto which the butt stock and lower grip are mounted. The two receivers can be disconnected easily, allowing the shooter to mount a different upper receiver and barrel and thus use a wide variety of rifle cartridges and change the length and weight of the barrel to suit the shooter's needs. Because of its adaptability, a single AR-type rifle can be used for target matches, home defense, and small and large game hunting.

4. The popularity of AR-platform rifles is based not only on their ready adaptability for different uses.

They are also generally lighter in weight, shorter in length and have less recoil than most traditionally-styled wooden stock semi-automatic rifles, making them easier to handle and shoot. They are also very accurate and reliable. Most AR-type rifles are chambered for .223 ammunition, a relatively inexpensive rifle cartridge that is particularly well-suited for home defense purposes. Although the .223 round has sufficient stopping power in the event a home intruder is encountered, the round loses velocity relatively quickly after passing through walls and other objects, thus decreasing the chance that errant shot inadvertently strikes an unintended target in a home defense situation. Although the right home defense firearm is the firearm with which an individual homeowner has most familiarity, AR-type rifles are an excellent and commonly made choice, and I instruct my students on their virtues and recommend their use for personal defense.

5. My opinion that many of the firearms banned under the ordinance are commonly owned by law-abiding citizens in Illinois and elsewhere is based, in part, on my extensive interaction with firearms owners. Since 2006, Safer USA has trained almost 6,000 persons to select and safely use firearms. I am also the President of the Aurora Sportsmen's Club, which currently has more than 1,500 members. I regularly observe members on the range and the firearms they use, and modern sporting rifles, including AR-type rifles, have been the most commonly used rifles on the range over the past five to ten

years. I also regularly attend firearms industry trade shows where products are displayed and have observed that the civilian marketplace for modern sporting rifles are without question the fastest growing firearms market.

6. The essential characteristic of the AR-type rifles banned under the ordinance is that they have gas operated semi-automatic actions. Rifles falling into this category of firearms are sold with magazines having a variety of capacities – typically 5, 10, 20 or 30 rounds – and many are sold without "large capacity magazines." For example, models of the Smith & Wesson M & P 10 (an AR-type rifle) are sold with 5 and 10 round magazines. (*See* Exhibit B, Smith & Wesson 2014 Product Catalog, p. 16). The Remington Model R-15 Predator and Varmint (AR-type rifles) are sold with 5 round magazines. (*See* Exhibit C, Remington 2104 Shot Show Featured Products, pp. 17 & 44). The Bushmaster Hunter, Predator and Varminter rifles (AR-type rifles) are each sold with 5 round magazines. (*See* Exhibit D, Bushmaster Firearms Product Catalog 2104, p. 28-31). Other examples of AR-type rifles sold with magazines with capacities of 10 rounds or less can be referenced. But the point is that the common characteristic of the semi-automatic rifles banned in Highland Park is decidedly not their large capacity magazines but their semi-automatic actions.

7. I have personally surveyed 779 students in the firearm classes I taught in 2013 through May 5, 2014 to determine what type of firearm they choose to

keep in their homes for self-defense purposes. Most of the persons I surveyed were enrolled in Safer USA's Home Protection and Concealed Carry Seminar and the NRA Basic Pistol class. Of those I surveyed, 58.2% keep a semi-automatic rifle with a detachable magazine available in the event it was needed defend them, their family of their property. If the person completing the survey did not choose to keep a firearm available for personal defense in his or her home, they had the option to answer "none of the above." Of those surveyed, 25% provided that answer.

8. AR-type rifles are also appropriately and commonly used for small game hunting for many of the same reasons – they are accurate, reliable and easy to handle. In Illinois, it is legal to use "any type of legal rifle including large capacity semi-automatic rifles" to hunt coyotes. (www.dnr.illinois.gov/hunting/documents/hunttrapdigest.pdf). In many other states, they are used for hunting varmints and small game of various kinds, as well as wild boar. These rifles are also used in the very popular "3 Gun" shooting competitions, the fastest growing shooting sport in the country, in which shooters use a pistol, a shotgun and an AR-type rifle to move through different stages and engage different targets from a variety of positions.

9. The firearm design features that Highland Park has chosen to ban, including pistol grips; protruding grips; folding, telescoping and thumbhole stocks; so-called "barrel shrouds;" and muzzle breaks and muzzle compensators, are typically integral to safe handling of the firearm and enable the shooter to

accurately and reliably use his gun. The presence on a firearm of one or more of the features that Highland Park has chosen to ban and criminalize do not make the firearm any more lethal or dangerous if it is misused than a firearm without them.

10. A "telescoping stock" allows the operator to adjust the stock's length to fit his or her physical stature and "length of pull." If the stock is too short, a right handed shooter will tend to pull shots to the right. If the stock is too long, shots will tend to go low and to the left. Thus, the purpose of an adjustable stock on a modern sporting rifle is to assist in the safe and accurate handling of the firearm. It is worth noting that the typical difference between a fully extended adjustable stock and one that is fully collapsed is only a few inches. For example, the telescoping stock on the Smith & Wesson M&P 15 rifle can change the overall length of the rifle just three inches – from 32 inches to 35 inches. (*See* Exhibit B, p. 20). This change in overall length does not in any sense turn a firearm that is difficult to carry in a concealed manner into a "concealable" firearm.

11. A "barrel shroud" under the Highland Park ordinance "partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand." This feature is present on nearly every type of rifle, whether semi-automatic, lever action, bolt-action or single shot. They serve as a place for the operator to support the firearm with the non-trigger hand for control and accuracy. They also serve to protect the operator's hand from barrel

heat build-up. Barrel shrouds on AR-type rifles typically encircle the entire barrel (unlike forestocks on traditionally styled rifles that serve as a bed for the barrel) and also serve as the place to include a rail system on which accessories can be mounted, such as a telescopic sight, an optical sight or a flashlight.

12. A "protruding grip" forward of the trigger guard is sometimes present on AR-type rifles. They permit the operator to have a more secure grip on the firearm, particularly rifles with rail-mounted mounted accessories that the make the barrel shroud more difficult to grasp firmly.

13. A "pistol grip" for the trigger hand is necessary on an AR-type rifle because the rifle's straight-line design does not permit the grip to be integral to the stock, as it is on traditionally-styled rifles. The straight-line design is an important feature of AR-type rifles because it serves to reduce muzzle rise associated with recoil. Some have wrongly suggested that the pistol grip makes it easier to fire an AR-type rifle "from the hip." However, virtually any firearm can be fired from the hip with or without a pistol grip. More importantly, nobody who is serious about hitting a target would choose to shoot from the hip. It is a grossly inaccurate way to aim and shoot a firearm.

14. Both "muzzle brakes" and "muzzle compensators" serve to re-channel the gases expelled from the muzzle of a firearm. A muzzle brake will reduce the amount of recoil felt by the operator. A muzzle

compensator will redirect muzzle gases and keep the muzzle down for better acquisition of a target in the event a second shot is taken. Muzzle brakes and compensators are found on a wide variety of firearms.

15. Attached to this Affidavit as Exhibit E is video in which I provide demonstrative support for the opinions I have in this case. The video demonstrates, among other things, live firing of firearms both banned and not banned under the Highland Park ordinance and visual explanations of the prohibited firearm features.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 17, 2014.

/s/ David A. Lombardo
David A. Lombardo

FIREARMS
AND THEIR
CONTROL

Gary Kleck

Second printing 2006

* * *

[110] ASSAULT RIFLES AND ASSAULT WEAPONS

Efforts to control semiautomatic firearms with large-capacity magazines date back at least as far as 1934 (Sherrill 1973:58-64), though the term "assault weapon" seems to be an invention of gun control advocates dating no farther back than 1985 (its first public appearance in print may have been a *Newsweek* cover story, 14 October 1985, p. 49). This term has no precise technical definition in firearms reference works, but usually refers to semiautomatic firearms with "military-style" cosmetic features. This amorphous category can encompass semiautomatic pistols, "assault rifles," and even some shotguns. Since most firearms, no matter what their current uses, derive directly or indirectly from firearms originally designed for the military, "military-style" probably more narrowly signifies a modern or contemporary military appearance. For example, plastic stocks are supposedly more "military" in appearance than wood stocks, a loop for a lanyard is military-style, having a nonreflective surface is more military than a shiny one, and so on. Likewise a gun that is shaped like a military machine gun or submachine gun is more "military-style" in appearance even if it cannot actually fire fully automatically.

Legislators and other policymakers have experienced serious difficulties defining "assault weapons" or "assault rifles," because they were [111] trying to develop a definition that simultaneously satisfied two conflicting requirements: (1) it identified the attributes that supposedly make the restricted guns more dangerous than other semiautomatic guns, and (2) it was sufficiently limited so as to not restrict gun models popular among large numbers of voters. The main attributes that are supposed to make AWs more dangerous than other guns are their semiautomatic capability, which provides a somewhat higher rate of fire than other guns (and allegedly makes it easy to convert the guns to a fully automatic capability), and their ability to accept large-capacity magazines. However, if a law restricted all guns with such attributes, millions of voters would be affected. About 300,000-400,000 semiautomatic center-fire rifles and about 400,000-800,000 semiautomatic pistols were sold each year in the United States in the 1970s and 1980s (U.S. Bureau of the Census 1989; Thurman 1994), and by the peak year of 1994, over two million semiautomatic pistols were produced or imported into the United States, less exports (Thurman 1996). A December 1989 national survey indicated that 27% of U.S. gun owners reported ownership of at least one semiautomatic gun (Quinley 1990:3), which would imply that about 13% of all U.S. households own such guns. Most of these semiautomatic firearms can accept large-capacity magazines.

As a way out of this dilemma, lawmakers have thrown up their hands and declined to identify the dangerous attributes of AWs. Instead, laws passed in California, New Jersey, and Connecticut and at the federal level included long lists of specific makes and models of banned guns that have little in common beyond (almost always) a semiautomatic loading mechanism and (usually) an arguably "military" appearance. Typical of such efforts was the Connecticut AW law, which listed no fewer than sixty-seven different banned models or series of guns. The list lumped together handguns, rifles, and shotguns, both those usually sold with large magazines and those sold with small ones, large caliber and small caliber, foreign-made and domestic. Although the guns on the list were almost all semiautomatic, so were a much larger number of guns left off the list, such as the very popular Colt Model 1911A1 .45-caliber pistol and the Beretta Model 92 9-mm pistol (Connecticut 1993). Other laws passed in California and New Jersey and at the federal level defined the restricted weapon category using similarly heterogeneous, but limited lists of specific gun models (Cox Newspapers 1989; U.S. Congressional Research Service 1992).

The difficulties with this political compromise are obvious. If semiautomatic fire and the ability to accept large magazines are not important in crime, there is little reason to focus regulations on AWs. On the other hand, if these *are* important crime-aggravating attributes, then it makes little crime control sense (though ample political sense) to systematically [112] exclude from restriction the most widely owned models that have these attributes, since this severely limits the impact of regulation by allowing an ample supply of legally available semiautomatic models to be substituted for the handful of banned models.

The Prevalence of AWs as Crime Weapons

It was commonplace for news sources in the late 1980s and 1990s to refer to either "assault weapons" or "assault rifles" as the "favored" weapon of criminals, or, more narrowly, of drug dealers and youth gangs (e.g., *New York Times*, 21 February 1989; *Newsweek*, 14 October 1985, p. 48). This claim was not true, either for criminals in general or for these specific types of criminals. This claim was largely based on guns the police agencies asked BATF to trace. In 1986-1990, 8.2% of BATF-traced guns were classified as "assault weapons" (reported in U.S. Congressional Research Service 1992:10). Unfortunately, the guns traced by BATF are not representative of guns used in crime, nor does BATF claim they are. Crime guns are rarely traced, and the few that are traced are not selected in a way that would ensure they are representative of all crime guns. In 1994, only 1.8% of homicides, robberies, and aggravated assaults known to the police and committed with a gun resulted in a

BATF gun trace (computed from data in U.S. BATF 1995:43; U.S. FBI 1995:18, 29, 32, 58). As the Congressional Research Service noted, "the firearms selected for tracing do not constitute a random sample and cannot be considered representative of the larger universe of all firearms used by criminals, or of any subset of that universe" (U.S. Congressional Research Service 1992: 65).

Table 4.1 summarizes the available evidence on the share of crime guns that are AWs. These studies are mostly analyses of guns recovered by police from criminals, and typically cover *all* of the guns recovered in a given period, rather than some small, unrepresentative subset. The findings indicate that less than 2% of crime guns are "assault weapons" (the median was about 1.8%) and well under 1% are "assault rifles." Only two estimates, of forty-seven total, were over 4.3%. The estimate based on guns traced by BATF was double that of the next highest one, and over four times the typical figure obtained in studies of complete populations of guns recovered by police, indicating that trace data grossly overstate AW involvement in crime. Since about 14% of violent crimes are committed with guns (U.S. Bureau of Justice Statistics 1994a:83), this means that only about 1 in 400 (1.8% x 14% = 0.25%) violent crimes are committed with AWs.

One can artificially increase the share of crime guns that are "AWs" [113] simply by expanding the definition of an AW. A New York bill proposed by then-governor Mario Cuomo defined AW as any center-fire semiautomatic rifle or shotgun capable of holding six or more rounds in its magazine, or any semiautomatic pistol capable of holding ten or more rounds (New York State 1994). This definition would probably encompass most of the new handguns sold in the United States since 1987 and a large share of rifles and shotguns. It would not, however, correspond to the meaning of the term in either common usage or in any existing state or federal statutory definitions. Use of this expansive definition allowed the authors of a New York State report to claim that 16% of New York City gun homicides in 1993 involved "assault weapons" (New York State 1994), a claim uncritically repeated in a U.S. Justice Department report (Zawitz 1995:6).

In the face of such consistently negative evidence, even a spokesman for Handgun Control, which advocated tighter restrictions on AWs, conceded in 1989 that assault weapons "play a small role in overall violent crime," while emphasizing that they could become a problem in the future (Philip McGuire, quoted in the *New York Times*, 7 April 1989, p. A15).

This spokesman's use of the term "overall violent crime" may have been intended to hint that "ARs" or AWs might be commonly used by special criminal subgroups such as drug dealers and gang members. For example, a spokesman for the U.S. Drug Enforcement Administration asserted that "you can count on coming across them on every single narcotics raid" (*Los Angeles Herald Examiner*, 23 January 1989, p. A-1). The available evidence contradicts the claim that "assault weapons" are favored by drug dealers. Records of a Chicago-area narcotics unit indicated that only 6 of 375 guns seized in drug raids, or 1.6%, were AWs (Mericle 1989). Likewise, only 2.9% of a statewide California sample of guns recovered from drug dealers were AWs (Table 4.1, note g).

In Los Angeles, beginning in 1983, police and newspapers reported an epidemic of so-called "drive-by" shootings allegedly involving youth gang members using "assault weapons" to fight over control of drug trafficking. However, when queried about the guns seized from gang members, the head of the city's largest police gang detail admitted that (as of 1985) the unit had not confiscated *any* AWs: "We've seized only shotguns and handguns, but I have heard about the purchase of Uzis and military assault rifles" (*Crime Control Digest*, 13 May 1985, p. 2). A later study of "drive-by shootings" of juveniles in Los Angeles indicated that AW use was documented in only 1 of 583 incidents (Hutson et al. 1994). Presumably AW use was even less common among gang members in cities lacking the vocal concern over gang use of AWs and "ARs" that characterized Los Angeles. Thus, AWs are virtually never used by drug dealers or juvenile gang members, just as is true of criminals in general.

[114] The 1994 federal ban on the possession, manufacture, and sale of "assault weapons" (Title XI, Subtitle A of the Violent Crime Control and Law Enforcement Act of 1994) covered only about nineteen specific named models or series of guns, though

among the more than seventy models included in the California, New Jersey, and Connecticut AW bans, the federal ban covered most of the models that were relatively more frequently used in crime (for the models, see *Congressional Record*, 21 August 1994, Senate, p. 8826; for their relative prevalence among traced guns, see U.S. Congressional Research Service 1992:10). The ban did not prohibit possession of AWs legally owned at the time of the law's effective date, so owners of existing guns could continue to own and transfer all they possessed as of September 1994.

How large a share of crime guns were covered by the ban? The two most extensive samples of all guns recovered by police are statewide samples from Connecticut, covering 1988-1993, and Pennsylvania, covering 1989-1994. Of the 24,252 crime guns in these samples, 337, or 1.39%, were models covered by the federal AW ban (author's computations based on data in Laroche 1993; Pennsylvania State Police 1994; see Table 4.1, notes j, B).

At the time this bill was passed, there were at least 387 distinct models of semiautomatic firearms being legally sold as newly manufactured guns (Warner 1993:282-310, 337-41, 371-75, 389-93, 417-20), most of them capable of accepting large-capacity magazines, in addition to hundreds of no-longer-manufactured models still circulating in the used-gun market. Thus, there was an enormous supply of semiautomatic guns capable of accepting large-capacity magazines that could serve as easily acquired substitutes for the nineteen banned models. It is hard to imagine how the federal AW ban could even hypothetically prevent a death or injury by banning further sales and manufacture of just nineteen models of semiautomatic guns that accounted for less than 1.4% of guns used by criminals and that possessed no violence-relevant attributes to distinguish them from over 380 semiautomatic models not banned.

The most likely effect of the federal AW ban – or, more properly, the public debate and related publicity preceding passage of the ban – was a huge short-term increase in the number of AWs and other semiautomatic guns in the civilian stock. From 1986, when media attention to these guns began to grow, through 1989, when the first state AW ban was passed in California, to 1994 when the federal ban was passed, a previously ailing U.S. gun industry got a new lease on life due to sales of semiautomatic guns that either were to be banned or that gun buyers thought *might* be banned. After steady declines from 5.6 million guns produced in 1980 to a trough of 3.0 million in 1986, U.S. gun production reached one temporary peak of 4.4 million in 1989, and then another peak while the federal ban [115] was being debated, with a total of 5.0 million guns produced in 1993 and 5.2 million in 1994 (Thurman 1996). The biggest production increases were in the category of semiautomatic pistols, which increased 228% from 1986 to 1993. The 1993 handgun production of 2.7 million was the highest in the recorded history of the U.S. firearms industry. The gun industry's trade magazine, *Shooting Industry*, described the 1993 experience as a "buying frenzy" and attributed it to the "threat of gun bans" (Thurman 1994; for further evidence of production increases, see Roth and Koper 1997:66-67).

Of course, the AW ban was intended to produce a long-term reduction in the stock of AWs, but it is doubtful whether this will ever be achieved. The law expires after ten years, in September 2004 and thus will not be in effect for the "long term" unless it is reenacted. Further, even if the law is renewed, if future prospective gun buyers simply buy mechanically equivalent unbanned semiautomatic guns instead of the few banned models, there will be no long-term reduction in availability of semiautomatic guns. In this case, the only lasting effects of the ban will be whatever consequences follow from the "excess" millions of semiautomatic guns that were added to the civilian stock in 1986-1994 in anticipation of AW bans.

It has been claimed that criminals "prefer" AWs in some sense, one source asserting that the fraction of traced guns that were AWs exceeded a rough guess from BATF that only 2% of all U.S. guns were AWs (Cox Newspapers 1989:4; for a source treating this claim as factual, see Roth and Koper 1997:17). Producing a meaningful estimate of this sort would require having gun ownership data by model. BATF does not gather gun data by model. Indeed, its data do not even distinguish semiautomatic rifles and shotguns from other types of rifles and shotguns, or, among imported handguns, semiautomatic pistols from other types of handguns. Consequently, their data cannot supply meaningful estimates of the number of AWs or "AR"s in the hands of the American public. Note, however, that if the BATF guess were even slightly too high, and the actual figure were just 1.8%, this would be identical to the median share of crime guns classified as AWs (Table 4.1), contradicting the claim that AWs are especially likely to be used in crime.

There are data on domestic production of semiautomatic pistols as a general category, though not the subset defined as AWs. Since 85% of the handguns added to the private U.S. stock in 1984-1993 were domestically manufactured (U.S. BATF 1994:14-15), the domestic production data provide a good picture of the handguns recently added to the national gun supply. Zimring (1976) showed that the majority of guns used by criminals are relatively recently manufactured guns, so these would be the appropriate set of guns to use in the comparison.

[116] Do criminals "prefer" semiautomatic pistols in the sense that their share of crime guns is greater than their share of the general stock of handguns recently manufactured in the United States? Among all handguns produced in the United States in the preceding ten years, less exports, 68.6% were semiautomatic pistols U.S. BATF 1994:14. Among handguns traced by BATF in 1994, 66.8% were semiautomatic pistols (U.S. BATF 1995a). Thus, semiautomatic pistols were actually slightly *less* common among traced guns than they were among handguns being distributed to the general population.

As noted, however, trace requests are misleading for judging the types of guns generally used by criminals. Unfortunately, no other national source covers all guns seized by police or a representative sample of seized guns. However, one can examine a large local police sample of all seized guns and compare it with guns recently added to the general U.S. gun stock. In a sample of guns seized in the first three months of 1989 by the Los Angeles Police Department, 49.8% of the handguns were semiautomatic pistols (Los Angeles Police Department 1989). Among the 7,438,603 handguns produced by U.S. manufacturers from 1984 to 1988, less exports, 3,993,517 were semiautomatic pistols (U.S. BATF 1994:15).[1] Thus, 53.7% of the domestically produced handguns bought by the general, largely noncriminal public were semiautomatic pistols, while 49.8% of those seized from criminals fell into this category. Los Angeles criminals in 1989 did not "prefer" semiautomatic weapons in the sense of going out of their way to obtain them in numbers disproportionate to their share of the recently sold handgun stock. Rather, criminals were just using the same kinds of handguns as recent noncriminal gun buyers had been obtaining.

Further, while 31% of the handguns used in juvenile "drive-by" shooting incidents in Los Angeles in 1991 were semiautomatic pistols (Hutson et al. 1994:326), 62% of the handguns produced by U.S. manufacturers in the preceding five years were semiautomatic pistols (Thurman 1994). Violent gang members in Los Angeles were only half as likely to use semiautomatic pistols as one would expect based on recent handgun production, and in this sense seemed to actually "disprefer" the semiautomatic pistols. If the higher rate of fire and larger magazines of these weapons were important to criminals, they were no more important, and perhaps even less so, to them than to noncriminal gun buyers.

A survey of a representative national sample of state prison inmates provided information on the guns that criminals owned in the month before the arrest that led to their imprisonment, as well as the guns they actually used in their crimes. Of those who owned a handgun of any kind in the preceding month, 71% were armed with a handgun when they committed the crime that got them sent to prison. However, of those who [117] possessed a "military-type" gun, only 16.7% were armed with such a gun when they committed their crimes (computed from U.S. Bureau of Justice Statistics 1993b:18-19, 33). Thus, compared to their availability, AWs were *under*represented among these felons' crime guns. These results were confirmed with respect to "assault rifles" by surveys of inmates in Virginia prisons in 1992-1993, which revealed that although 20% of the offenders had previously possessed "assault rifles," *none* had carried or fired one at their latest crime (Virginia 1994:63). Thus, criminals not only did not "prefer" military-style guns, they were strongly *dis*inclined to carry them during commission of their crimes, even when they owned one. In sum, under any meaningful interpretation of "preference," criminals do not prefer assault weapons.

"Assault rifles" are clearly much larger than the handguns criminals really do favor, and even "assault weapon" handguns such as Uzis are generally larger than other handguns. Since criminals say they favor more concealable handguns (Wright and Rossi 1986:163), this may largely explain why so few criminals use assault weapons.

"Assault Weapon" Trends

There is nothing new about either semiautomatic firearms in general or "assault rifles" or "assault weapons" in particular. Semiautomatic firearms were produced in large numbers beginning in the late nineteenth century, and true assault rifles were introduced into military use during World War II (Ezell 1983:17, 514-15). Semiautomatic "assault rifles" became more popular among civilians during the 1980s – gun catalogs indicate a substantial increase in the number of models of "paramilitary" rifles shown between 1973 and 1988 [compare Koumjian (1973) with Warner (1988)]. However, this was less significant regarding violence than it appears, because it reflects little more than a demand for guns with military-style cosmetic details, rather than a violence-relevant shift to mechanically different gun types. Mechanically, "assault rifles" are semiautomatic center-fire rifles. Trends in sales of semiautomatic center-fire rifles were basically flat in the period from 1982 to

1987, and were substantially lower in the 1980s than in the 1970s (PB:95). The major trend in recent years has not been a shift to mechanically different types of rifles, but rather a shift in consumer preferences regarding rifles' appearance, along with a substantial shift away from domestic sources to foreign sources of semiautomatic rifles. In light of this latter trend, President George Bush's move in 1989 to ban imports of foreign "assault rifles" made more sense as trade protectionism than as gun control.

In contrast, among handguns, there was a dramatic move away from [118] revolvers and toward semiautomatic pistols beginning in the late 1970s. In 1978, just 25% of handguns produced by U.S. manufacturers were semiautomatic pistols, compared to 80% in 1993 (Thurman 1994). This trend was characteristic of the general flow of guns into the general population's stock of guns, implying increases in the average magazine capacity of handguns.

A similar trend toward semiautomatic pistols probably occurred among criminals, though the trend was apparently no stronger among criminals than among noncriminals, and little of it involved the gun models defined as AWs. We know little about crime gun trends before 1985, but scattered data paint a fairly consistent picture of trends in the 1985-1990 period. BATF data on gun traces indicated an increase in the AW share from 1986 to 1988, followed by a decline from 1988 to 1990, back down to its 1986 level (U.S. Congressional Research Service 1992:8). Similarly, the AW share of killings of police officers increased from 1986 to 1988, then declined in the following two years (ibid.:11). Baltimore experienced increased police recoveries of AWs from 1985 to 1988, a decline in 1989 (ibid.:16) and then a return to the 1988 level in 1990 (Baltimore Police Department 1991). Oakland police confiscations of AWs increased from 1985 to 1988, then declined from 1988 to 1990 (U.S. Congressional Research Service 1992:20). Low-quality data from surveys of Florida police departments indicated that AW use in crime for increased in the period 1986 to 1989 (ibid.:15), and that Miami police recoveries of AWs increased from 1986 to 1988, then declined in 1989 and leveled off in 1990 (ibid.:19). On the other hand, a study of bullets removed from gunshot victims at a Newark hospital indicated no shift toward ammunition commonly used in "assault rifles" from 1981 to 1989 *(Newark Star-Ledger*, 16 May 1990, p. 15). Likewise, an informal 1990 survey of all seven firearms examiners in Dade County (Miami), Florida, yielded the unanimous opinion that AW use in shootings had been slowly and steadily declining since 1981 (Florida 1990:156-57). The general picture is that AW use in crime, always low, increased from 1985 to about 1988 in at least some locations, and then declined thereafter.

Trends in Number and Lethality of Gunshot Wounds

What were the consequences of the 1980s trend toward larger-capacity semiautomatic guns? In Washington, D.C., the number of wounds inflicted per GSW victim increased from 1985 to 1990 (Webster, Champion, Gainer, and Sykes 1992:696). There is no direct evidence that this increase was due to the increasing popularity of semiautomatic guns during the same period, and at least some of the increase in wounds per victim was [119] attributable to the changing nature of violence in this city: there was an enormous increase in the share of violence that was committed by criminals involved in the crack cocaine trade. As Webster and his colleagues noted, drug enforcers are likely to be "more deliberate in their efforts to kill their victims by shooting them multiple times" (p. 698). Regardless of the reasons for the increase in wounds per patient, it did not result in any consistent increase in the in-hospital GSW fatality rate in Washington during the period studied. The rate was about 18% in 1983, 26% in 1984, 21% in 1985, 18% in 1986, 14% in 1987, 23% in 1988, 21% in 1989, and 24% in 1990 (ibid.:696, Figure 4). Thus, the 1990 rate represents either a substantial increase over 1983 or a slight decrease over 1984, depending on which beginning base one chooses to focus on. In any case, these highly erratic patterns are not very consistent with trends in semiautomatic gun use, which increased continuously throughout the 1983-1990 period.

Why did the increased number of wounds not cause an increase in the fatality rate? Part of the explanation lies in the peculiar fatality measure used in the Webster study. The in-hospital mortality rate measures the percentage of GSW victims who die, of those who survived to reach the hospital. Most victims who die from gunshot wounds, however, do so before reaching the hospital. For example, even if one examines all homicides, not just gun homicides, only 41.8% of the victims died in the hospital (U.S. National Center for Health Statistics 1996a:379); among just gun homicide victims, this fraction would probably be substantially lower. The in-hospital mortality rate reflects the number of victims who were not killed immediately, an outcome associated with *less* lethal guns, yet who were wounded seriously enough that they did eventually die, an outcome associated with *more* lethal guns. Thus, this is a measure of "lingering death" with an uncertain relationship with the overall GSW mortality rate.

Further, if multiple-wound cases typically involve shooters firing rapidly, it would commonly mean that although one wound might be in a vital area, additional wounds are likely to be in nonvital areas, because the recoil from one shot throws off the aim of the next shot if it is fired in rapid succession. In such cases, the additional wounds would add little to the likelihood that the victim would die, since wounds in peripheral areas of the body are almost never fatal (Ordog et al. 1987:1274).

A study from Philadelphia provides solid evidence that something other than changes in gun choices caused increases in the number of shots fired per gun incident. McGonigal and his colleagues (1993) found that both the number of shots fired per gun incident and the share of incidents involving semiautomatic guns increased in the 1985-1990 period. However, their data also indicated that the number of shots fired per incident increased *within* gun type categories, i.e., controlling for gun type. For example, among revolver shootings, the number of shots fired increased [120] 63%, from 1.30 in 1985 to 2.12 in 1990, and among semiautomatic pistol incidents, it increased 69%, from 1.62 to 2.74 (ibid.:534). These data directly support the hypothesis that the average "lethal-mindedness" of Philadelphia gun attackers, as reflected in the number of shots they fired at their victims, increased during this period, independent of changes in handgun types used. Further, the assumption of a huge difference in shots fired between revolvers and pistols was not supported. For 1985 and 1990 combined, shots per victim was 2.04 for revolvers and 2.53 for pistols. Whether the gun type changes themselves increased fatalities, independent of changes in types of attackers (e.g., more killers involved in the drug trade), cannot be determined with these data.

In the 1980s and 1990s it was widely claimed that the shift toward semiautomatic guns and other developments in gun preferences had led to an increase in the fatality rate of gunshot wounds (Webster et al. 1992; Cook and Cole 1996; Wintemute 1996). National data, however, do not support the notion that gun violence became more lethal over this period. Among gun crimes known to the police, the share that were fatal (i.e., were homicides) declined from 4.3% in 1974 to 3.3% in 1985 and 2.9% in 1995 (Table 1.2). In short, during the 1974-1995 period, when semiautomatic guns were becoming more popular, the fatality rate of gun crimes was generally *decreasing*. Likewise, for an especially well-documented set of shootings, the fatality rate among police officers shot in the line of duty declined sharply over the period from 1988 to 1993 (Zawitz 1996:4).

Thus, even if one (1) chose to interpret the in-hospital mortality rates reported by Webster et al. for Washington, D.C., as meaningful indicators of trends in overall gunshot mortality levels, and (2) misread the highly erratic shifts in the rates as showing a generally upward trend (as Webster et al. did), the national data suggest that the Washington trends were not representative of trends in the United States as a whole. For the entire nation, the increased popularity of semiautomatic guns with larger magazines clearly could not have been responsible for an increase in the lethality of gun crime during this period [contrary to Wintemute (1996) and Cook and Cole (1996:1767)] for the simple reason that no such increase occurred. The percentage of reported gun crimes that resulted in the death of a victim steadily declined from 1974 to 1995, throughout the period of growing popularity of semiautomatic guns.

To summarize, the number of shots fired per incident and wounds inflicted per victim increased in two big cities in the 1983-1990 period, and perhaps in other big cities as well. This shift coincided with both increased popularity of semiautomatics and an increase in the share of violence linked with the drug trade. Given the evidence reviewed in this chapter, however, there is little reason to attribute the changes in gun violence patterns to the increased popularity of semiautomatic pistols. In any case, despite the increase in wounds inflicted per victim, this appar-[121]ently neither increased the GSW fatality rate nor contributed to an increase in either the total homicide or gun homicide rate.

The Relative Dangerousness of "Assault Weapons"

Advocates of strict controls over AWs have proposed a number of rationales for their claim that these guns are especially dangerous or useful for criminal purposes: (1) the allegedly greater lethality, shot for shot, of the guns or the ammunition they use, (2) the supposed ease with which the guns can be converted to fully automatic fire, (3) the high rate of fire of the guns even when left unconverted in their semiautomatic mode, and (4) their ability to accept large-capacity detachable magazines, and therefore to fire many times without reloading (Roth and Koper 1997:15-18).

One conclusion about banning AWs seems indisputable. The few dozen models of semiautomatic guns that have been banned as AWs are, as a group, mechanically identical to the hundreds of models not banned as AWs, with regard to all of the aforementioned attributes. Therefore, there is no basis for expecting that the outcomes of *any* shootings would be different (e.g., fewer lives lost or fewer persons shot) if unbanned semiautomatic guns capable of accepting detachable magazines were used instead of mechanically identical, though cosmetically different, banned AWs. On the other hand, there might be a more rational basis for believing that restricting *all* semiautomatic guns (or at least those capable of accepting detachable magazines), or limiting the capacity of magazines might save lives or prevent injuries.

AW pistols as a group are no more lethal, shot for shot, than either non-AW semiautomatic pistols (since they differ only cosmetically) or revolvers. However, based on scattered experience in treating wounds purportedly inflicted with "assault rifles," some emergency room physicians have asserted that these guns create especially devastating and lethal wounds that are unusually hard to treat (*New York Times*, 21 February 1989). However, specialists in the wounding effects of military rifle ammunition, experienced in treating battlefield wounds, contradict this claim (Fackler 1989; Mohler 1989), reporting that modern "assault rifles" are actually *less* lethal than ordinary civilian hunting rifles and the standard military rifles of the World War II era. Doctor Martin L. Fackler (1989), at that time director of the Wound Ballistics Laboratory at the Letterman Army Institute of Research, noted that typical "assault rifles" fire smaller-than-average ammunition, and demonstrated with ballistics experiments that this ammunition has milder wounding effects than civilian hunting ammunition or regular infantry rifle cartridges.

This is partly because the military cartridges commonly used in "as-[122]sault rifles" have smaller, pointed bullets, which do not flatten out and expand when they hit human flesh. They therefore tend to produce smaller wounds, which are correspondingly less lethal. The more lethal hollow-point or "dum-dum" bullet often used in civilian ammunition was forbidden for military use by the 1899 Hague Peace Conference.

Compared to the ammunition used in the middle-caliber *handguns* that criminals commonly use, "AR" ammunition is indeed more lethal, but only because rifle ammunition in general is more lethal than handgun ammunition. Fackler and his colleagues (1990) described "AR" ammunition as being intermediate in power between handgun ammunition and regular infantry rifle cartridges (and, by implication, civilian hunting ammunition).

Although AWs sold on the civilian market are not capable of fully automatic fire, it has been argued that this distinction is a minor one because AWs are so easily converted to fully automatic fire (e.g., *Newsweek*, 14 October 1985, pp. 48-49). The *New York Times* (2 August 1988), in an editorial, even told its readers that "many semiautomatics can be made fully automatic with a screwdriver, even a paperclip." Eight months later, in a news article about the federal ban on importation of "ARs," the *New York Times* gave its readers a rather different view of the "issue of whether or not such guns are easy to convert from semiautomatics to illegal fully automatics":

> The staff of technical experts at the [BATF] disassemble, test and examine samples of all semi-automatic weapons marketed in the United States to make formal determinations on this question. Any model found to be readily convertible to automatic fire would be declared illegal. None of the five types included in the import ban had been declared readily convertible, *nor have any domestic semi-automatics now on sale.* (3 April 1989; emphasis added)

Thus, none of the semiautomatic guns available for sale in the United States, whether AWs or not, was readily convertible to fully automatic fire as of 1989. Two semiautomatics, the MAC-10 and MAC-11, had previously been legally sold in the United States, but in 1982 were declared by the BATF to be "readily convertible" automatic fire and were banned (Hancock 1985).

It is technically true that almost any gun can be converted to fully automatic fire, given sufficient expertise, time, tools, and added parts. Given unlimited resources, one could fabricate an entire machine gun from scratch. However, data on weapons seized by police indicate that criminals almost never have both the resources and the inclination to perform a conversion. Of over 4000 guns confiscated by the Los Angeles Police Department in a one-year period, only a half-dozen (0.15%) were [123] formerly semiautomatic guns converted to fully automatic fire; only about a dozen showed evidence of even an attempt at conversion (Trahin 1989).

Advocates of bans on AWs have pointed to the high total volume of fire of which the weapons are capable without reloading, due to their large magazines. Magazines for these weapons are almost always detachable, and the weapons are usually capable of accepting many different common magazine sizes, whether one containing only three rounds, or one containing thirty or more (Warner 1993). Thus, the capability of a high volume of fire is not, strictly speaking, an attribute of the gun itself, but rather of the magazine. Consequently, the most significant element of the 1994 federal ban on some AWs was its ban on further production or sale of magazines with capacities over ten rounds.

It is unlikely that large-capacity magazines are currently relevant to the outcome of a large number of violent incidents, since few cases involve large numbers of shots fired. The rare mass killing notwithstanding, gun assaults usually involve either no shots (the victim is shot at in only 17% of gun assaults, and wounded in 3%; U.S. Bureau of Justice Statistics 1994b) or only a few shots being fired, typically fewer than the six rounds that ordinary revolvers hold. Even during the peak of the "crack wars" in Washington, D.C., in the late 1980s and early 1990s, less than 8% of the gunshot victims wounded seriously enough to be admitted to the city's main trauma center had suffered five or more wounds (Webster et al. 1992:696). Likewise, McGonigal et al. (1993) found an average of only 2.41 bullets fired per homicide gun in Philadelphia in 1990, near the peak of a similar period of drug-related violence. Only 7.7% of patients under age sixteen treated at the busiest trauma hospital in Los Angeles in 1973-1983 were wounded with more than two bullets (Ordog et al. 1987:1275), and only 15% of medically treated GSW assault victims in a three-city sample in 1992-1994 suffered more than one wound (Kellermann et al. 1996:1441). If one included victims who did not seek medical treatment at all, these fractions would almost certainly be still lower. Even in a sample of gun attacks on armed police officers, where the incidents are more likely to be mutual combat gunfights with many shots fired, the suspects fired an average of only 3.7 times (New York City Police Department 1994:9).

It is even less likely that rate of fire is significant in a large number of gun attacks. Semiautomatic firearms generally are capable of firing single shots as fast as the shooter can pull the trigger. The effective rate of fire of any gun, however, is limited by its recoil. When a shot is fired, the force of the bullet leaving the barrel causes the gun to move back toward the shooter and off its original aiming alignment. It cannot be fired at the same target again until the shooter puts its barrel back in line with the target. Thus the somewhat higher potential rate of fire of semiautoma-[124]tic weapons cannot be fully exploited in practice, reducing the effective difference between these weapons and revolvers.

Ordinary revolvers can easily fire six rounds in two seconds or less without any special skill on the part of the shooter or modification to the gun. Even if a semiautomatic gun could fire at a 50% higher rate, it would only mean that a shooter could fire six rounds in 1.33 instead of 2 seconds. The issue comes down to this: How many violent incidents occur each year in which a shooter has 1.33 seconds to fire six rounds, but not 2 seconds? Close examination of mass shootings may help shed some light on the significance of high rates of fire and large-capacity magazines, since these incidents involve unusually large numbers of rounds fired and wounded victims.

Semiautomatic Guns and Mass Shootings

Mass shootings are extreme test cases because, if one were to argue that some victims are killed or wounded who would not have been hurt had the attacker been armed with some type of gun other than a semiautomatic or one with a smaller capacity magazine, mass shootings provide the strongest evidence for the significance of rapid rates of fire and large magazine capacities. James Fox and Jack Levin have specifically based a case for "banning rapid-fire weaponry and oversized ammunition clips" on mass shootings, asserting that "the increased availability of high-powered, rapid-fire weapons like those used by James Huberty is also a *large* part of the reason why the death tolls in mass murders have climbed so dramatically in the recent past" (1994:236, emphasis added).

Oddly enough, mass killings are actually *less* likely to involve the use of guns of any kind than homicides involving small numbers of victims. For all murders and nonnegligent manslaughters covered in *Supplementary Homicide Reports* (about 90% of all U.S. killings) for the period 1976 to 1992, only 48.3% of victims killed in incidents with four or more victims were killed with guns, compared to 62.3% of those killed in incidents with three or fewer victims. This is mainly due to the large share of mass killings committed with arson, which is rarely involved in ordinary homicides.

Nevertheless, it is possible that rapid-fire guns with large magazines might have been essential to some mass murders resulting in as many deaths and injuries as they did. Table 4.2 summarizes information derived from press reports on all fifteen mass shootings known to have occurred during the period of greatest popularity of AWs among criminals, 1984-1993 [cases derived from Duwe (1996) and press reports]. A "mass shooting" is defined here, somewhat arbitrarily, as an incident in which six or more victims were shot dead with a gun, or twelve or more total were [125] wounded. There is usually much less information available from press accounts about incidents involving fewer victims, and it would be harder to argue for the significance of large magazine capacity in connection with cases with fewer victims, and thus presumably fewer shots fired.

Of the fifteen mass shootings, no more than four involved weapons banned under any existing federal or state AW bans: the Gian Luigi Ferri case, which involved two Intratec DC9 pistols; the Joseph Wesbecker case, involving a gun loosely described as an "AK-47," which might fall within the banned category; the Patrick Purdy case, which involved a Model 56S variant of an AKM-47; and the James Huberty incident, which involved a semiautomatic Uzi carbine. In all four of these cases the killer was also armed with other, non-AW guns, and it is therefore not clear how many of the wounds were inflicted with AWs. For example, it is not known if any of Huberty's victims were killed with the Uzi because he also used an ordinary Browning pistol, which used the same caliber ammunition (9 mm) as the Uzi and at least half of the dead victims were killed with a shotgun. In eleven of the seventeen mass shootings, the killer was armed with multiple guns, and in at least five cases it was known that the killers reloaded their guns at least once (Ferguson, Hennard, Purdy, Sherril, and Huberty). Both of these facts support the assertion that in these cases the killer did not require a single gun with a large magazine to kill or wound so many people.

For those incidents where the number of rounds fired and the duration of the shooting were both reported, the rate of fire never was faster than about one round every two seconds, and was usually much slower than that. Witnesses commonly reported that the killers went about their deadly work in a "calm," "matter-of-fact," or "almost methodical" fashion, taking careful aim at victims and seemingly taking their time (e.g., *Los Angeles Times*, 19 July 1984, p. 1,18 January 1989, p. 3; *Washington Post*, 15 September 1989, p. Al; *Houston Post*, 17 October 1991, p. A-1). For example, Joseph Wesbecker, who killed seven people and wounded seventeen over a period of thirty minutes, "showed extreme "shooting discipline," . . . firing directly at his human targets and taking few random shots" (*Louisville Courier Journal*, 15 September 1989). None of the mass killers maintained a sustained rate of fire that could not also have been maintained – even taking reloading time into account – with either multiple guns or with an ordinary six-shot revolver and the common loading devices known as "speedloaders." Further, there is no evidence that these killers could not have taken more time than they actually did.

Inflicting the number of casualties in even these extreme and rare cases did not require the large-capacity magazines and/or high rate of fire provided by either AWs or by semiautomatic guns in general. It therefore is highly unlikely that shootings with fewer rounds fired and fewer vic-[126]tims would require such capabilities. At this point, there is no empirical basis for believing that any wounds, fatal or nonfatal, are inflicted with semiautomatic guns that would not also have been inflicted had the shooters been armed instead with revolvers. Indeed, contrary to Fox and Levin's assertions, there is no evidence that even one death or injury in a mass shooting would have been averted had the killer been armed with guns, such as revolvers, with slower rates of fire or smaller magazines.

Fox and Levin were also mistaken in believing that the "death tolls in mass murders have climbed . . . dramatically in recent years." National *Supplementary Homicide Reports* data covering homicides for the period 1976-1992 indicate that there were seventeen gun homicide incidents with more than six victims, or one a year. It is of doubtful value to describe trends in such rare events, but there clearly was no upward trend in their rate. There were four such cases in each of 1982 and 1984, three in 1991, and zero or one in all other years. Further, the rate of killings with four or more victims was higher in 1976-1982, prior to the popularity of AWs, than in 1983-1992 (Fox 1994). Regardless of the numerical cutoff defining mass shootings, there was no increase in such incidents associated with the increased popularity of AWs after 1984.

Assault Weapons and Killings of Police Officers

One big-city police official was quoted in the *Los Angeles Times* (25 May 1990) as saying "We're tired of passing out flags to the widows of officers killed by drug dealers with Uzis." Taken literally, the implied claim that many officers were killed by Uzi-wielding drug dealers was clearly false. According to the chief of the FBI's Uniform Crime Reporting Program, from 1980 when the Uzi was first imported into the United States, through 1989, not one police officer in the

United States was killed by a drug dealer with an Uzi. Only one case in their files involved an officer killed with an Uzi under any circumstances, but this did not involve a drug dealer (letter from J. Harper Wilson, Chief, FBI Uniform Crime Reporting Program, 20 June 1990).

The police official's claim might, however, be interpreted to broadly refer to all AWs rather than just Uzis, and all criminals, not just drug dealers. For the ten-year period 1980-1989, of 810 officers feloniously killed in the United States and its territories, 33 (4%) were killed by "assault weapon" models covered by federal restrictions either passed or pending as of January 1991, or about three per year for the entire nation. For 1986-1990, of 350 killings, sixteen involved rifles and three involved handguns covered under such restrictions (U.S. Congressional Research Service 1992:11). Thus, 5% involved any kind of AW, averaging *less* than [127] for AW killings of police officers in the United States per year. Likewise, for the period 1992-1996, there were 4.5 AWs killings of officers per year, 7% of the total (Roth and Koper 1997:137).

"Assault rifles" are of special concern to police because some of these weapons, like civilian hunting rifles, are capable of penetrating police body armor, and these cases all involve long guns. "Assault weapon" handguns, on the other hand, are no more capable of penetrating body armor than ordinary revolvers. It is extremely rare for police officers to be killed by bullets that penetrated their body armor.

From 1984 to 1993, of 704 officers feloniously killed, 644 were killed with guns, 191 while wearing body armor, but only eleven involved bullets penetrating body armor (about one per year); the rest involved bullets hitting areas not protected by the vest (e.g., arm holes, spaces between armor panels). Of the eleven *vest* penetration cases, four involved guns of calibers common among AWs: one with a 9-mm handgun and three with .223-caliber rifles [U.S. FBI 1994 (*Law Enforcement Officers Killed and Assaulted 1993*):16]. In a report covering all police killings in 1985-1994, U.S. BATF (1997) reported that there was not a single instance of a police officer killed as a result of a handgun round penetrating body armor. The report of a 9-mm handgun round penetrating body armor in a 1986 shooting turned out to be erroneous (p. 19). Thus, an AW-involved killing of a police officer where the officer's body armor was penetrated occurred about once in three years during the peak period of AW use among criminals.

Have the very rare killings of police officers by assailants using "assault rifles" increased in recent years? Table 4.3 presents relevant data covering 1970-1993. The figures indicate that killings of police officers generally declined over this period, the number and fraction involving guns declined slightly, and the number and fraction involving rifles remained low and fairly stable (under 14% of the total). The maximum number that could have involved "ARs" (i.e., involved rifles with calibers common among "ARs") has always been very small (thirteen or fewer in any single year) and has shown no consistent trend.

Another claim is occasionally made that police officers are "outgunned" by criminals with AWs because the AWs have larger capacity magazines and criminals armed with them can fire more rounds without reloading than police officers armed with six-shot revolvers (e.g., *Newark Star-Ledger*, 18 July 1989, p. 15). The implication is that some significant number of officers are killed after exhausting their ammunition in gun battles with more heavily armed criminals. Such incidents are extremely rare. FBI data indicate that in 85% of police officer killings, the victim officers did not fire their guns even once, never mind exhaust their ammunition (U.S. FBI 1992a:5). The number who fired six or more rounds or who exhausted their ammunition is unknown, but would almost certainly [128] be a minority of the remaining 15%. Even in cases where police did fire at adversaries, the average number of rounds fired was 3.8 per incident in New York City in 1993 (New York City Police Department 1994:10). Thus, police officers rarely are killed in anything resembling a "gun battle," and almost never in one where their ammunition is exhausted in a fight with an adversary with an AW.

To summarize, "assault rifles" and assault weapons are rarely used by criminals in general or by drug dealers or youth gang members in particular, are almost never used to kill police officers, and are not readily converted to fully automatic fire. "AR"s are generally less lethal than ordinary hunting rifles, while AW pistols are no more lethal than non-AW handguns. Semiautomatic guns in general offer a rate of fire slightly higher than revolvers and can be used with magazines holding large numbers of cartridges, but there is at present no evidence that either attribute has affected the number of persons killed or wounded in any known gun crime.

*   *   *

[141] *Table 4.1.* Prevalence of "Assault Weapons" among Crime Guns

*Place "AW"***	*Years*	*Type of Sample Covered**	%
Akron, OH	1988[a]	Guns recovered by police	2
	1992[b]	Guns recovered by police	<1
Baltimore County	1990[c]	Guns recovered by police	1.53
		Guns connected with violent offenses	1.81
	1991-1994[c]	Guns recovered by police	3.05
Bexar (San Antonio) County, TX	1985-1992[d]	Guns recovered by police	0.1
	1987-1992[d]	Homicides	0.2
Boston	ca. 1988[c]	Guns recovered by police	11
	1992-1994[K]	Guns recovered by police	2.1
California	1990[f]	Homicides, aggravated assaults	3.7
	1990[g]	Guns recovered from drug dealers	2.9
Chicago	1988-1989[h]	Guns recovered by police	0.94
Chicago suburbs	1980-1989[i]	Guns recovered in drug raids	1.6
Connecticut	1988-1993[j]	Guns recovered by police	2.1
Dade (Miami) County	1989[k]	Guns recovered by police	3.3
		Homicides	1.4
Florida	1986-1989[k]	Guns recovered by police	<3.6
Los Angeles	1988[l]	Guns recovered by police	3
	1991[m]	"Drive-by shooting" incidents involving juveniles	0.17
Maryland	1989-1990[n]	Homicides	(0.1)
Massachusetts	1985-1991[o]	Shootings	(0.7)
Massachusetts, excl. Boston	1984-1988[e]	Fatal shootings	(1.0)
Miami	1989-1993[p]	Guns recovered by police	3.13
Minneapolis	1987-1989[q]	Guns recovered by police	0.41
Mobile County, AL	1985-1987[r]	Nonfatal gunshot victims admitted to a hospital	0
Nashville	1991-1992[s]	Gun homicides	(0)
New Jersey	1988[t]	Gun homicides	0
	1989[u]	Gun homicides	(0)
	1991[v]	Murders, armed robberies, and aggravated assaults	0.16
New York City	1988[w]	Guns recovered by police	(0.5)
	1993[K]	Guns used in homicides	4
New York State	1992[x]	Murders	(0.8)
Newark	1980-1989[u]	Bullets in gunshot victims	(0.3)
Oakland	1985-1990[y]	Guns recovered by police	4.3
	1991[z]	Homicides	3.7

Orange County (Orlando), FL	1993[A]	Guns recovered by police	1.9
Pennsylvania	1989-1994[B]	Guns used in violent crimes	2.5
		Guns recovered by police	1.7
St. Louis	1992-1994[K]	Guns recovered by police	1.4
	[142] 1992-1994[K]	Guns linked with homicides, assaults, robberies	1
San Diego	1988-1990[C]	Guns recovered by police	0.3
San Francisco	1988[D]	Guns recovered by police	2.2
Virginia	1989-1991[E]	Guns used in homicides	2.2
	1992[F]	Guns analyzed in state forensics labs	3.3
Washington, D.C.	1988[G]	Guns recovered by police	(0)
	1991[H]	Guns recovered by police	3.0
United States	1986-1990[I]	Guns traced by BATF	8.2***
	1991 and earlier[J]	Guns possessed in gun crimes committed by violent inmates	2.3

* These are almost all samples of guns. In some cases, however, the "% AW" pertains to the share of homicides (or gun homicides) committed with AWs. There has been a deliberate effort to exclude analyses of samples that entirely or largely overlap those already covered in this table. The review does not cover a 1993 New York State study of gun homicides, because it used an eccentrically broad definition of AWs that would encompass most of the handguns sold in the U.S. since 1987 (see text).

** Figures in parentheses pertain to "assault rifles" only, rather than the broader category of "assault weapons," which also encompasses some handguns and shotguns.

*** This is neither an unselected population nor a representative sample of crime guns, and thus is not comparable with the other estimates.

[a] *Akron Beacon-Journal*, 13 March 1989, p. A1.

[b] *Akron Beacon*, 6 January 1993, p. A1.

[c] Baltimore Police Department (1991); Mount Washington Rod and Gun Club (1995).

[d] DeMaio, Kalousdian, and Loeb (1992).

[e] *Boston Globe*, 16 March 1989, p. 12. "Assault weapon" was undefined. This newspaper story's figure of 11% is dubious because it is five times higher than that yielded by a more careful study of Boston covering 1992-1994 (see source *K*).

[f] Johnson (1992).

[g] Helsley (1991).

[h] *Southtown Economist*, 12 June 1990.

[i] Mericle (1989).

[j] Detective Lawrence A. Laroche, memorandum to Major Kenneth H. Kirschner, Commanding Officer, Bureau of Police Support, Connecticut State Police, 29 December 1993.

[k] Florida (1990).

[l] U.S. Senate (1989).

[m] Hutson, Anglin, and Pratts (1994).

[o] Trooper M. Arnold, Massachusetts State Police, Firearms Identification Section, "Massachusetts State Police Ballistics Records."

[p] Jess I. Galan, Criminalist, Crime Laboratory Bureau, letter to Richard Gardiner, National Rifle Association; cited in Kopel (1995:180, 224).

[q] Sergeant Wes Reins, memorandum to Chief J. Laux, Minneapolis Police Department, 3 April 1989.

[r] Riddick et al. (1993).

[143] [s] Sergeant Brooks Harris, Crime Analysis Section, Nashville Police Department, letter to Senator Harlan Mathews, 2 June 1993, p. 2.

[t] Testimony of Deputy Chief Joseph Constance, Trenton, New Jersey, Police Department, before the Maryland Senate Judicial Proceedings Committee, 7 March 1991, p. 3.

[u] Newark *Star-Ledger*, 16 May 1990, p. 15.

[v] *New York Times*, 20 June 1993.

[w] *White Plains Reporter Dispatch*, 27 March 1989, pp. A8, A9.

[x] *New York Post*, 10 January 1994, p. 14.

[y] Sergeant R. Zien, Oakland Police Department, *Homicide Section Weapons Unit – Year End Report 1990.*

[z] Oakland Police Dept., *Supplementary Homicide Reports* (1991).

[A] *Orlando Sentinel*, 8 February 1994, p. A-8.

[B] Pennsylvania State Police, *Weapons Database Report*, Chapter II Military-style guns listed in proposed Pennsylvania "AW" ban, as shale of firearms used in homicides, rapes, robberies, or aggravated assaults (but *not* including small-caliber, low-capacity guns also covered in proposed measure) (1994).

[C] *San Diego Union*, 29 August 1991.

[D] *Congressional Record* 135:68, Senate Hearings on the "Assault Weapon Import Control Act of 1989," 8 February 1989, p. S1368.

[E] Virginia (1994:64).

[F] *Virginia Pilot and Ledger-Star*, 4 August 1993.

[G] *New York Times*, 3 April 1989, p. A14, referring to "assault rifles" covered in 1989 federal "assault weapon" import ban.

[H] George Wilson, Firearms Identification Unit, Metropolitan Police Department, 21 January 1992; cited in U.S. Congressional Research Service (1992:18).

[I] U.S. Bureau of Alcohol Tobacco and Firearms, traces of over 28 models of "certain semiautomatic firearms" identified by BATF; reported in U.S. Congressional Research Service (1992:10).

[J] U.S. Bureau of Justice Statistics (1993b). Of 307,960 inmates incarcerated for violent crimes, an estimated 92,314 had been armed with guns in the crimes for which they were incarcerated. Of these, 2,100 (0.68% of all violent criminals, 2.3% of gun-armed violent criminals) were armed with "a military-type weapon, such as an Uzi, AK-47, AR-15, or M-16" (ibid., pp. 18, 33).

[K] Roth and Koper (1997:21, 102, 104, 105).

* * *