No. _____

In the Supreme Court of the United States

CUTBERTO VIRAMONTES, *et al.*,

Petitioners,

v.

COOK COUNTY, *et al.*,

Respondents.

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

PETITION FOR WRIT OF CERTIORARI

DAVID H. THOMPSON
Counsel of Record
PETER A. PATTERSON
WILLIAM V. BERGSTROM
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com

Counsel for Petitioners

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QUESTION PRESENTED

Whether the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles.

PARTIES TO THE PROCEEDING

Petitioners Cutberto Viramontes, Christopher Khaya, Firearms Policy Coalition, Inc., and Second Amendment Foundation were the plaintiffs before the District Court and the plaintiffs-appellants in the Court of Appeals.

Respondents Cook County, Ill., Toni Preckwinkle, in her official capacity as County Board President and Chief Executive Officer of Cook County, Eileen O'Neill Burke, in her official capacity as State's Attorney for Cook County, and Thomas Dart, in his official capacity as Sheriff of Cook County were the defendants before the District Court and the defendants-appellees in the Court of Appeals. The Court of Appeals substituted Burke as a defendant to this proceeding after she became State's Attorney for Cook County, replacing Kimberly M. Foxx who was originally named as a defendant and then defendant-appellee below in her official capacity. *See* Order, *Viramontes v. County of Cook*, No. 24-1437 (7th Cir. June 6, 2025), Doc. 59.

CORPORATE DISCLOSURE STATEMENT

Firearms Policy Coalition, Inc., has no parent corporation, and there is no publicly held corporation that owns 10% or more of its stock.

Second Amendment Foundation has no parent corporation, and there is no publicly held corporation that owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *Viramontes v. Cook County*, No. 24-1437 (7th Cir. June 2, 2025)

- *Viramontes v. Cook County*, No. 21-cv-04595 (N.D. Ill. Mar. 1, 2024)

There are no other proceedings in state or federal court, or in this Court, directly related to this case under Supreme Court Rule 14.1(b)(iii).

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Last term, this Court denied certiorari in *Snope v. Brown*, a case raising the constitutionality of Maryland's ban on the AR-15 platform rifle. 145 S. Ct. 1534 (2025) (Mem.) In his statement respecting denial, Justice Kavanaugh pointed out that there is a "strong argument that AR-15s are in 'common use' by law-abiding citizens and therefore are protected by the Second Amendment" and that it is "analytically difficult to distinguish the AR-15[] … from the handguns at issue in *Heller*." *Id.* at 1534 (Kavanaugh, J., statement respecting denial). Justice Kavanaugh noted that there were several other cases pending in the Courts of Appeals raising the same issue, including this one, and stated that "this Court should and presumably will address the AR-15 issue soon, in the next Term or two." *Id.*

This case provides the Court with a vehicle for following through on Justice Kavanaugh's recommendation. Shortly after this Court denied cert in *Snope*, the Seventh Circuit issued its decision ratifying Cook County's AR-15 ban. The Seventh Circuit's decision confirms that this Court's intervention is warranted to guarantee fundamental Second Amendment rights and to address the confusion in the lower courts over how to apply this Court's precedent in arms bans cases—precedent that is straightforward but that the lower courts have proven incapable of applying correctly.

Just three terms ago, in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), this Court intervened to correct a widespread misinterpretation of the Second Amendment and this Court's foundational decision in *District of Columbia v. Heller*, 554 U.S. 570

(2008). In the intervening 14 years, the lower courts had uniformly misconstrued *Heller* as endorsing a two-step interest balancing approach that left the Second Amendment rights of most Americans largely unguarded against intrusions by lawmakers and dependent upon the degree of respect accorded to the right by their state legislatures. Now, three years on, the lower courts are failing to abide by this Court's rulings and professing deep confusion about how to properly analyze laws for consistency with the Second Amendment. Though not uniform in manner as before *Bruen*, the lower courts are still uniform in result, as not *one* circuit has yet concluded that a ban on the AR-15 rifle—a type of firearm that this Court unanimously has recognized is "the most popular rifle" in America, *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025)—is inconsistent with the Constitution's promise that "the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II.

The need for guidance by the lower courts is not the only reason to take this case, though it is an important one. Aside from the doctrinal consequences of widespread confusion, the question posed by this case "is of critical importance to tens of millions of law-abiding AR-15 owners throughout the country." *Snope*, 145 S. Ct. at 1538 (Thomas, J., dissenting from denial of certiorari). From the founding of this country, the rifle has been a paradigmatic American arm, facilitating the struggle for independence from the British and serving as "the companion" and "tutelary protector" of the westward pioneers. *Heller*, 554 U.S. at 609 (citation omitted). The AR-15 platform rifle is the modern descendant of the rifles that were borne by the militiamen of the Revolution and the pioneers

who struck out West in search of a better life. The question can be fairly asked, if the Second Amendment does not protect it, *what could it possibly protect*? It is not hyperbole to suggest that the question presented by this case is whether *Heller* identified the test to apply to determine what arms are protected by the Second Amendment or identified the only class of arms that actually do merit protection.

This case is a good vehicle for this Court to answer that question. It is a final decision, from one of the several circuits that have erred in concluding that AR-15 bans are constitutional by distorting *Heller* and *Bruen*. The specific firearm at the center of the case, the AR-15 rifle, is *unquestionably* in common use, so there are no thorny factual questions on which this Court's analysis will depend. The Court should grant the petition.

OPINIONS BELOW

The order of the Court of Appeals is unpublished but can be found at 2025 WL 1553896 and is reproduced at Pet.App.1a–5a.

The District Court's opinion is unpublished but can be found at 2024 WL 897455 and is reproduced at Pet.App.6a–26a.

JURISDICTION

The Court of Appeals issued its judgment on June 2, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional provisions and portions of the Code of Ordinances of Cook County,

Illinois, are reproduced in the Appendix beginning at Pet.App.27a.

STATEMENT

I. Cook County's weapons ban.

Cook County, Illinois bans, under the guise of restricting so-called "assault weapons," several of the most popular firearms in America, including the AR-15 platform rifle, the most popular long gun in the country.

Subject to a few minor exceptions, Code of Ordinances of Cook Cnty., Ill., § 54-212(a)(1), Cook County criminalizes the sale, transfer, or possession of any "assault weapon." Cook County identifies semiautomatic rifles as part of this category both by feature and by name. The lengthy list of over 100 specific rifles banned by name (as well as "copies or duplicates thereof") includes the popular AR-15 and AK-47 platforms. *Id.* § 54-211, *Assault weapon* ¶ (7). The features-based ban covers those same rifles in their standard configurations, banning any semiautomatic rifle with the ability to accept a magazine holding more than ten rounds of ammunition if it has one or more of the following 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 break or muzzle compensator[.]

Id. § 54-211, *Assault weapon* ¶ (1); *see also id.* § 54-211, *Large-capacity magazine.* The Ordinance also bans any "[c]onversion 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.* § 54-211, *Assault weapon* ¶ (6).

If an ordinary, peaceable citizen possesses a rifle banned by Cook County, Respondents may seize and dispose of that arm, *id.* §§ 54-212(b) & 54-213, and the individual may be convicted of a criminal offense punishable by imprisonment for up to six months and a minimum fine of $5,000 for the first offense. *Id.* § 54-214(a).

II. Cook County's ban extends to the most popular rifle in America.

Cook County's "assault weapons" laws restrict many perfectly ordinary and common firearms, like the AR-15 rifle. These firearms are not distinct from other rifles in their design or their function. Indeed, the very term "assault weapon" is a political slogan masquerading as a meaningful designation, designed to exploit "the public's confusion over fully automatic machine guns versus semi-automatic" firearms. JOSH SUGARMANN, ASSAULT WEAPONS AND ACCESSORIES IN AMERICA (1988), https://perma.cc/WX5B-XUJY. These firearms are mechanically and functionally identical to every other semiautomatic firearm in the way they fire—arms that are exceedingly common and fully protected by the Second Amendment. *See Friedman v.*

City of Highland Park, 136 S. Ct. 447, 449 (2015) (Mem.) (Thomas, J., dissenting from the denial of certiorari). Unlike an automatic firearm, which continues to fire until its magazine is empty so long as its trigger is depressed, every *semiautomatic* firearm, including the ones banned by Cook County, fires only a single shot for each pull of the trigger. *See Staples v. United States*, 511 U.S. 600, 602 n.1 (1994).

These firearms "traditionally have been widely accepted as lawful possessions." *Id.* at 612. Arms capable of firing multiple shots were well known to the Founding generation. In 1777, Joseph Belton demonstrated a repeating rifle that could hold 16 rounds of ammunition to members of the Continental Congress. David B. Kopel & Joseph G.S. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. LEGIS. 223, 255 (2024). And Meriwether Lewis carried a Girandoni air rifle, with a 22-round tubular magazine, on his expedition with William Clark. JAMES B. GARRY, WEAPONS OF THE LEWIS AND CLARK EXPEDITION 100–01 (2012).

"Modern" semiautomatic firearm technology has been around for 140 years, dating to 1885. *See* Kopel & Greenlee, *supra*, at 282. That is as long as we have had gasoline-powered cars (which Karl Benz invented that same year). Ken W. Purdy & Christopher G. Foster, *History of the automobile*, ENCYCLOPÆDIA BRITANNICA (last updated July 19, 2025), https://perma.cc/SL57-BHTR. And they have been accepted as lawful possessions virtually everywhere in America across that entire time period. There were a small number of laws that restricted certain types of semiautomatic firearms in a few jurisdictions in the 1920s and 1930s, *see, e.g.*, 1927 Mich. Pub. Acts 887,

888–89 (restricting semiautomatic firearms capable of firing 16 rounds without reloading), but those were short-lived aberrations, *see* 1959 Mich. Pub. Acts 249, 250. As was the federal assault weapons ban, which prohibited new semiautomatic rifles in certain configurations from 1994 to 2004. *See* Violent Crime Control and Law Enforcement Act, Pub. L. 103-322, § 110102, 108 Stat. 1796 (1994).

The AR-15 rifle itself has been available to civilians since the 1960s. *See* STEPHEN P. HALBROOK, AMERICA'S RIFLE: THE CASE FOR THE AR-15 14–15 (2022). Today, this iconic American firearm is legal in the vast majority of states and is "the most popular rifle in the country," while other firearms banned by the County are "both widely legal and bought by many ordinary consumers." *Smith & Wesson*, 605 U.S. at 297. Those statements are unassailable fact and attested by a variety of sources.

Consumer surveys. Several consumer surveys demonstrate the commonality of AR-15 and similar semiautomatic rifles. In 2022, Washington Post-Ipsos conducted a survey of a random sample of 2,104 gun owners. *Poll of current gun owners* at 1, WASH. POST-IPSOS (2022), https://perma.cc/YSJ5-STNS ("Wash-Post Poll"). The survey asked whether individuals owned AR-15-style rifles. Twenty percent answered yes, *id.*, which indicates that "about 16 million Americans own an AR-15." Emily Guskin et al., *Why do Americans own AR-15s?*, WASH. POST (Mar. 27, 2023), https://perma.cc/U6M6-QRDG. The survey also asked *why* individuals owned AR-15s. Reasons given included to protect self, family and property (91%, with 65% stating this was a major reason), target shooting (90%), in case law and order breaks down (74%), and

hunting (48%). WashPost Poll at 1–2. Sixty-two percent of AR-15 owners reported firing their AR-15 rifles at least a few times a year. *Id*. at 2.

In 2021, Georgetown Professor William English conducted a survey of 16,708 gun owners. William English, *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned* at 1, GEORGETOWN UNIV. RSCH. PAPER NO. 4109494 (May 13, 2022), https://perma.cc/E8H9-N6RZ. The English survey asked whether gun owners had "ever owned an AR-15 or similarly styled rifle[.]" *Id*. at 33. "30.2% of gun owners, about 24.6 million people, indicated that they" had owned such a rifle. *Id*. Of those who owned such rifles, the average person had owned 1.8 and the median 1. *Id*. The English survey asked why gun owners had owned such a rifle. Answers included recreational target shooting (66%), home defense (61.9%), hunting (50.5%), and defense outside the home (34.6%). *Id*. English also asked about defensive use of firearms. The survey responses indicated that gun owners engage in 1.67 million defensive gun uses a year. *Id*. at 9. This is consistent with other survey data; "[a]lmost all national survey estimates indicate[d] that defensive gun uses by victims are at least as common as offensive uses by criminals, with estimates of annual uses ranging from about 500,000 to more than 3 million[.]" Alan I. Leshner et al., *Priorities for Research to Reduce the Threat of Firearm-Related Violence* 15, NAT'L RSCH. COUNCIL (2013), *available at* https://perma.cc/V36E-6KNC. English found that 13.1% of defensive gun users used a rifle, English, *supra*, at 14–15, which amounts to over 200,000 defensive uses of rifles a year.

Also in 2021, the National Shooting Sports Foundation (NSSF), the Firearm Industry Trade Association, conducted a survey of 2,185 owners of AR- and AK-platform rifles. *Modern Sporting Rifle: Comprehensive Consumer Report* at 10, NSSF (July 14, 2022), https://perma.cc/TAY2-CG2X. Owners were asked to rate on a scale of 1 to 10 (with 1 being not at all important and 10 very important) how important various reasons were for owning the rifles. Responses included recreational target shooting (8.7), home/self-defense (8.3), and varmint hunting (5.8). *Id.* at 18. Sixty-seven percent of respondents indicated that they had used their rifle at least five times in the previous twelve months. *Id.* at 41. Another NSSF survey estimated that over 21 million Americans had trained with these types of rifles in 2020. *Sport Shooting Participation in the U.S. in 2020* at *iii*, NSSF (2021), https://perma.cc/P549-STFN.

Firearm Dealer Surveys. NSSF also conducts surveys of firearm dealers. *See 2021 Firearms Retailer: Survey Report*, NSSF (2021), https://perma.cc/N59Q-6UJJ. Retailers were asked what percentage of firearms they sold were of various types. For 2020, at the top was semiautomatic pistols, at 44.2%. *Id.* at 9. AR/modern sporting rifle was second, at 20.3%, followed by shotgun (12.4%), traditional rifle (11.3%), and revolver (7.2%). *Id.* And that year was not an outlier. NSSF's 2019 retailer survey indicated that ARs and other similar rifles constituted between 17.7% and 20.3% of firearm sales in every year from 2011 to 2018 (excepting 2017, when no results were reported). *2019 Firearms Retailer: Survey Report* at 10, NSSF (2019), *available at* Ex. to Prelim. Inj. Mot. at 109, *Miller v. Becerra*, No. 3:19-cv-1537, Doc. 22-13 (S.D. Cal. Dec. 16, 2019).

Firearm Production Data. NSSF has analyzed firearm production data to determine how many AR- and AK-style rifles have been produced for the American market. *Firearm Production in the United States With Firearm Import and Export Data* at 7, NSSF (2023), https://perma.cc/P6A8-DZK2. Domestic production of AR- and similar rifles accounted for approximately 20% of all domestic firearms produced for the American market for the decade of 2012 to 2021. *See id.* at 2–7. And for the period from 1990 to 2022, it estimates that 30,711,000 such rifles have been produced for the American market. *NSSF Releases Most Recent Firearm Production Figures*, NSSF (Jan. 15, 2025), https://perma.cc/HJQ9-MHLV.

In sum, semiautomatic rifles like the AR-15 are in common use for lawful purposes: millions of Americans own tens of millions of them; they account for approximately 20% of all firearm sales in the past decade, and leading reasons for owning them include owning self-defense, target shooting, and hunting.

> AR-style rifles are popular with civilians … around the world because they're accurate, light, portable, and modular. … [The AR-style rifle is] also easy to shoot and has little recoil, making it popular with women. The AR-15 is so user-friendly that a group called 'Disabled Americans for Firearms Rights' … says the AR-15 makes it possible for people who can't handle a bolt-action or other rifle type to shoot and protect themselves.

FRANK MINITER, THE FUTURE OF THE GUN 46–47 (2014).

It is notable that, despite their widespread popularity, use of these firearms for unlawful purposes is exceedingly rare. From 2014 to 2023, rifles of any kind were used in an average of 380 homicides per year. *Crime Data Explorer: Expanded Homicide Offenses Characteristics in the United States*, U.S. DEP'T OF JUSTICE, FBI, https://bit.ly/3IF5A6M (select time frame "custom," start date "January 2014," end date "January 2023"). Assuming every one of these rifles was an AR-15 or a similar semiautomatic rifle, that would mean that approximately 99.999% of them are not used in a homicide in any given year. Other items used much more frequently in homicide include handguns (an average of 7,043 handgun murders from 2014 through 2023); knives (an average of 1,592), and personal weapons like hands and feet (an average of 691). *Id*. Thus, handguns are used in homicides in this country nearly *eighteen times* more frequently than rifles. "[I]f we are constrained to use [Cook County's] rhetoric, we would have to say that *handguns* are the quintessential 'assault weapons' in today's society." *Heller v. District of Columbia*, 670 F.3d 1244, 1290 (D.C. Cir. 2011) ("*Heller II*") (Kavanaugh, J., dissenting).

III. The ban's effect on Petitioners

Petitioners Viramontes and Khaya are ordinary, peaceable, adult citizens of the United States who reside in Cook County, Illinois. Pet.App.8a. They both want to acquire semiautomatic rifles that Cook County has banned and would do so if it were lawful—Viramontes an AR-15 platform rifle, and Khaya an IMI Galil semiautomatic rifle. Pet.App.8a–9a. Similarly, Firearms Policy Coalition, Inc., and Second Amendment Foundation have members in Cook

County, including Petitioners Viramontes and Khaya, who are otherwise eligible to acquire the banned firearms and would acquire them if lawful. Pet.App.8a–9a.

IV. Procedural history

A. On August 27, 2021, Petitioners filed this suit in the Northern District of Illinois, arguing that Cook County's ban on the sale, possession, transfer, and carriage of common semiautomatic rifles violated the Second and Fourteenth Amendments to the United States Constitution. Pet.App.9a. Plaintiffs sought both equitable relief and nominal damages. Pet.App.9a, 20a. The district court had subject-matter jurisdiction to adjudicate this federal question under 28 U.S.C. §§ 1331 and 1343.

At the time they filed their complaint, Seventh Circuit precedent foreclosed Petitioners' claims, but Petitioners sought to have that precedent overturned. *See Wilson v. Cook* County, 937 F.3d 1028 (7th Cir. 2019) (per curiam); *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015). Petitioners accordingly sought judgment on the pleadings while acknowledging that the Court was bound to rule in favor of the County under binding precedent. Pet.App.10a. At the County's request, the district court declined to grant judgment and instead ordered the parties to engage in discovery. Pet.App.10a–11a.

B. While this case was in discovery and moving through summary judgment briefing, it was impacted by three significant legal developments. First, and most importantly, this Court decided *Bruen*, which overturned circuit court precedent that had misread *Heller* to permit an "interest balancing" form of

analysis in Second Amendment suits and established that all Second Amendment challenges must be judged against the same text-and-history criteria. *Bruen*, 597 U.S. at 26. Second, following *Bruen*, Illinois passed a statewide assault-weapons ban that largely overlaps with Cook County's (for instance, it also bans AR-15-platform rifles). *See* 720 Ill. Comp. Stat. 5/24-1.9. And third, following the parties' filing and briefing cross-motions for summary judgment, the Seventh Circuit issued a decision on several consolidated appeals from preliminary injunction proceedings challenging the statewide ban. *See Bevis. v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023).

Bevis concluded that the statewide ban was likely constitutional, purporting to apply a *Bruen* style analysis to reach that result. Beginning with the text, however, the *Bevis* analysis was deeply confused. Although *Heller* stated that "arms" in the Second Amendment refers to "all instruments that constitute bearable arms, even those that were not in existence at the time of the founding," including all "[w]eapons of offense, or armour of defence," 554 U.S. at 581–82 (internal quotation marks and citation omitted), the *Bevis* majority failed to apply that definition to find that, plainly, AR-15s and similar rifles are "arms." Rather, it considered the phrase "bearable arms" to imply additional limitations on the scope of the right, suggesting the phrase must "mean more than [arms that are] 'transportable,' or 'capable of being held,' " and decided that it must have meant to exclude "weapons that may be reserved for military use." *Bevis*, 85 F.4th at 1193–94. That was dispositive, because the Seventh Circuit found, on the basis of the preliminary injunction record before it, that the banned firearms, especially the AR-15, fell "on the

military side of th[e] line" between "military" and "civilian" arms that it held to be the dividing line between those arms that were entitled to presumptive protection and those that fell entirely outside of the Second Amendment's scope. *Id.* at 1182–83, 1195. Despite AR-15s having "only semiautomatic capability," the *Bevis* panel posited that the AR-15 "is almost the same gun as the M16 machinegun," which is, itself, a "weapon[] that may be reserved for military use." *Id.* at 1194–95.

In light of this putatively textual conclusion, the *Bevis* panel did not need to conduct the historical analysis prescribed by *Bruen*, but it did so anyway, finding that, in its view, history *also* draws a line between military and civilian arms and permits the banning of military arms such that the Illinois law was constitutional. *Id.* at 1201. In so holding it specifically "decline[d] to base [its] assessment of the constitutionality of these laws" on the fact that the banned arms are commonly owned, claiming that "[s]uch an analysis would have anomalous consequences," like implying that an arm's constitutionally protected status could change over time. *Id.* at 1198–99.

Importantly for this case, *Bevis* also addressed the continuing vitality of *Friedman* and *Wilson*, the Seventh Circuit's pre-*Bruen* cases holding bans on so-called "assault weapons" constitutional. The Seventh Circuit viewed at least "*Friedman* as basically compatible with *Bruen*, insofar as *Friedman* anticipated the need to rest the analysis on history, not on a free-form balancing test," although it declined to embrace *Wilson* (and in fact rejected *Wilson*'s reading of *Friedman* as essentially conducting an interest-balancing analysis). *Id.* at 1189, 1191. These statements were,

however, in considerable tension with the rest of the opinion in *Bevis*. Indeed, the Seventh Circuit said that the conclusion that Illinois's ban is likely constitutional "would have been an easy conclusion under our decision in *Friedman*" but then declined to merely apply *Friedman* itself and instead undertook a fulsome (if flawed) *Bruen* analysis. *Id.* at 1184.

C. Following *Bevis*, the district court granted summary judgment to the County and denied it to Petitioners. Despite all the intervening changes, it held that *Wilson* and *Friedman* were directly controlling and required judgment in the County's favor. Pet.App.22a–23a, 26a.

D. Petitioners appealed to the Seventh Circuit, arguing primarily that it should overrule *Bevis* as inconsistent with *Heller* and *Bruen*. On the same day that this Court denied certiorari in *Snope*, the court issued a summary order declining to overrule its prior precedent and affirming the district court's grant of summary judgment to Respondents. Pet.App.4a–5a.

REASONS FOR GRANTING THE PETITION

I. The lower courts need guidance in applying *Heller* and *Bruen* to arms ban cases.

This Court has frequently been solicitous of circuit court judges who are in apparent need of help in parsing this Court's precedents. Just last term in *Medina v. Planned Parenthood South Atlantic*, this Court granted certiorari in response to "calls for clarification" and concern from circuit judges that they "continued to lack the guidance" to implement this Court's precedents regarding the enforceability of statutes under Section 1983. 145 S. Ct. 2219, 2228–29 (2025)

(cleaned up). Two terms ago, in *Rahimi*, three justices of this Court acknowledged the need for ongoing guidance to the lower courts in Second Amendment cases. *United States v. Rahimi*, 602 U.S. 680, 736 (2024) (Kavanaugh, J., concurring) ("Second Amendment jurisprudence is still in the relatively early innings."); *id.* at 739 (Barrett, J., concurring) ("Courts have struggled with th[e] use of history in the wake of *Bruen*."); *id.* at 742–43, 747 (Jackson, J., concurring) ("[C]ourts, which are currently at sea when it comes to evaluating firearms legislation, need a solid anchor for grounding their constitutional pronouncements."). And the specific question posed by this case, the question of "what types of weapons are 'Arms' protected by the Second Amendment," *Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024) (Mem.) (statement of Thomas, J.), is among those on which the lower courts are most in need of guidance. As Justice Thomas noted in *Harrel*, there are "essential questions" that lower courts are wrestling with in this area of the law, including "what makes a weapon 'bearable,' 'dangerous,' or 'unusual.' " *Id.*

A. Indeed, the first question on which the courts of appeals require assistance is even more fundamental than those Justice Thomas highlighted: what is an "arm" in the first place? After this Court repudiated the courts of appeals' interest-balancing regime in *Bruen*, courts, like the Seventh Circuit here, have expressed confusion and consternation at "what exactly falls within the scope of 'bearable' Arms" as a matter of plain text. *Bevis*, 85 F.4th at 1193. The Seventh Circuit's reading of the Amendment to exclude arms that the court judges "can be dedicated exclusively to military use" from the scope of the term "arms" at all is just one manifestation of the confusion. *Id.*

The Second Circuit very recently joined the chorus. In fact, it declined to decide whether "assault weapons" were "arms" at all, "prefer[ring] not to venture into an area in which such uncertainty abounds" when, it concluded, it could resolve the case (it thought) through application of the historical analysis. *Nat'l Ass'n for Gun Rts. v. Lamont*, Nos. 23-1162, 23-1344, 2025 WL 2423599, at *13 (2d Cir. Aug. 22, 2025). The scope of that "uncertainty" for the Second Circuit was remarkable. It noted that it viewed "common use" as part of the plain text analysis, but it complained "the Supreme Court has not made clear how and at what point in the analysis we are to consider whether weapons are unusually dangerous. Nor has the Court clarified how we are to evaluate a weapon's 'common use.' " *Id.* at *12. In its view, "[t]he Court's opinions may reasonably be read" in contradictory ways, and this "lack of clarity has led to disagreement among the parties in this case and confusion among courts generally." *Id.*

The Fourth Circuit, in *Bianchi v. Brown*, similar to the Seventh, *did* attempt to answer the question and concluded that the AR-15 is "not within the ambit of the 'right to keep and bear arms' as codified within the plain text of the Second Amendment." 111 F.4th 438, 452 (4th Cir. 2024) (en banc). While the court acknowledged that "[a]t first blush, it may appear that these assault weapons fit comfortably within the term 'arms' as used in the Second Amendment," it ultimately concluded they did not by collapsing the textual and historical questions into one and concluding that, rather than adopting *Heller*'s straightforward reading, it was required to "assess the historical scope of the right to keep and bear arms to determine whether the text of the Second Amendment

encompasses the right to possess the assault weapons at issue." *Id.* at 447–48.

By contrast, the Sixth Circuit, in *United States v. Bridges*, recently concluded, in just two brief paragraphs that largely just reiterated *Heller*'s exposition of the term, that a "machinegun" "is undoubtedly an 'Arm[]' that one can 'keep and bear.' Thus, the Second Amendment's plain text covers [an individual's] possession of a machinegun." No. 24-5874, 2025 WL 2250109, at *5 (6th Cir. Aug. 7, 2025). Notably, this straightforward textual conclusion that the Seventh and the Fourth Circuits have resisted in the case of semiautomatic firearms did not entail the invalidity of the prohibition on possessing unregistered machineguns, since the Sixth Circuit went on to conclude that the historical tradition of restricting "dangerous and unusual weapons" justified the ban. *Id.* at *9.

The division here, between circuits that have "taken *Bruen*'s guidance to mean there is an extensive first-step, arm-or-not inquiry," *Duncan v. Bonta*, 133 F.4th 852, 916 (9th Cir. 2025) (en banc) (VanDyke, J., dissenting), and those that have resolved the question with little difficulty based on *Heller*'s work construing the term, betrays a fundamental misunderstanding of how to apply *Bruen* on behalf of the former. This divide is also visible in cases, like *Duncan*, that deal with bans on certain semiautomatic magazines as well. *Compare Duncan*, 133 F.4th at 865 (majority op.) (concluding that so-called "large-capacity magazines" are not within the plain text based on an implied limitation that the text excludes "accessories that are [not] necessary to the operation of a weapon"), *with Hanson v. District of Columbia*, 120 F.4th 223, 232 (D.C. Cir. 2024) (concluding magazines "very likely

are 'Arms' " because "[a] magazine is necessary to make meaningful an individual's right to carry a handgun for self-defense" and "[t]o hold otherwise would allow the government to sidestep the Second Amendment with a regulation prohibiting possession at the component level").

The correct approach here should be clear. This Court already did the work of defining the terms of the Second Amendment's plain text, in great detail, in *Heller*. All that is left is for the courts of appeals to apply it, as the Sixth Circuit properly did in *Bridges* in reaching the obvious conclusion that a "firearm" is an "arm" that at least *triggers* Second Amendment scrutiny. That this Court in *Bruen* and *Rahimi* spent almost no time on the straightforward threshold textual issues posed by those cases is a strong indicator that the courts that have attempted to turn the textual analysis into a robust way to filter out Second Amendment cases without conducting a historical analysis have gone astray. But the continued confusion among courts on that front indicates that they apparently need a clearer statement on this issue than the Court has provided to date.

B. The courts of appeals are likewise in deep confusion over the relevance and meaning of an arm being in "common use." Start with its relevance—where does it fit into the analysis? A straightforward reading of *Bruen* and *Heller* demonstrates that "common use" is a historical rule of decision tied to the historical tradition of restricting "dangerous and unusual weapons" and so it comes into play at the historical analysis in *Bruen*. *See, e.g.*, Peter A. Patterson, *Common Use Is Not A Plain-Text Question*, PER CURIAM, HARV. J.L. & PUB. POL'Y (Aug. 4, 2025), https://perma.cc/3W4D-

JG26; Mark W. Smith, *What Part of "In Common Use" Don't You Understand?: How Courts Have Defied* Heller *In Arms-Ban-Cases—Again*, PER CURIAM, HARV. J.L. & PUB. POL'Y (Sept. 27, 2023), https://perma.cc/N6LY-3EMQ; J. Joel Alicea, Bruen *Was Right*, 174 U. PA. L. REV. __, 12–14 (forthcoming 2025). But for all its support in this Court's precedent, that view is far from uniformly shared.

The Seventh Circuit said it clearly: "[t]here is no consensus [in the lower courts] on whether the common-use issue belongs at *Bruen* step one or *Bruen* step two." *Bevis*, 85 F.4th at 1198. And judges have been vocal about their difficulties in applying the analysis. In *Bianchi*, Judge Gregory complained that "[m]y colleagues in the majority suggest that … the plain text of the Second Amendment limits its purview to weapons 'in common use today for self-defense,' " while "[a]t the other end of the spectrum, my colleagues in the dissent … posit that any weapon in common use for lawful purposes is necessarily … protected by the Second Amendment." 111 F.4th at 476 (Gregory, J., concurring in the judgment). For his part, Judge Gregory was persuaded by neither group, but bemoaned that "[t]he Supreme Court has not yet defined the purview or instructed on the proper placement of the dangerous and unusual analysis. In that vacuum, courts have struggled to interpret the scope of the constitutional right to bear arms as informed by *Bruen* and other Supreme Court precedent." *Id.* at 477. In *Duncan*, Judge Bumatay noted that his own view of the matter had shifted over the course of that litigation, having originally treated it as an element of the "plain text," he was persuaded that was incorrect and was instead "borne from the 'historical understanding of the Amendment.' " *See Duncan*, 133 F.4th at 900–01

(quoting *Bruen*, 597 U.S. at 21) (Bumatay, J., dissenting). Other courts have wrestled with the question to inconsistent results. *See Lamont*, 2025 WL 2423599, at *12–13; *United States v. Rahimi*, 61 F.4th 443, 454 (5th Cir. 2023) (text), *rev'd* 602 U.S. 680 (2024); *United States v. Alaniz*, 69 F.4th 1124, 1128–29 (9th Cir. 2023) (text); *Teter v. Lopez*, 76 F.4th 938, 949–50 (9th Cir. 2023), *reh'g en banc granted, op. vacated*, 93 F.4th 1150 (9th Cir. 2024) (history).

Wholly apart from the important point of *where* in the analysis "common use" goes, exactly *what* it means is also a subject of significant confusion for courts across the country. In *Hanson*, the D.C. Circuit warned that the question of whether magazines were in common use was "deceptively simple," noting that both *where* it should look for common usage, and *at what* were unresolved questions. 120 F.4th at 232–33. It settled on the conclusion that "the answer is not to be found solely by looking to the number of a certain weapon in private hands" but it did ultimately presume the magazines at issue were likely "in common use" because they "are in sufficiently wide circulation and given the disputed facts in the record about [their use] for self-defense." *Id.* Other common points of disagreement include whether a firearm must be "in common use" for *any* lawful purpose or must be in common use *for self-defense* specifically. *Compare Bianchi*, 111 F.4th at 460 (for self-defense specifically), *with Hanson*, 120 F.4th at 269 n.171 (Walker, J., dissenting) (noting the disagreement and explaining "why it seems to me that the 'lawful purposes' formulation is more faithful to the Supreme Court's precedents"). Another point of contention is whether common use is a necessary, *see Duncan*, 133 F.4th at 865; *Lamont*, 2025 WL 2423599, at *11, or a sufficient

condition for constitutional protection, *see Bridges*, 2025 WL 2250109, at *9 ("Machineguns are both dangerous and unusual—not weapons typically possessed by law-abiding citizens for lawful purposes.").

Once again, despite the lower-court confusion the answers to these questions have been clearly provided by this Court's precedents. As Justice Kavanaugh's statement that, "[g]iven that millions of Americans own AR-15s and that a significant majority of the States allow possession of those rifles, petitioners have a strong argument that AR-15s are in 'common use' by law-abiding citizens and therefore are protected by the Second Amendment under *Heller*," implies, if an arm is "in common use," under *Heller*, it should be viewed as *per se* protected. And an arm, like the AR-15, that is owned in large numbers by law-abiding people across the country and restricted only in a small minority of jurisdictions cannot possibly be "dangerous and unusual" under binding precedent. Nevertheless, just as *Bruen* was required to make *Heller*'s rejection of interest balancing more explicit, it is apparent that more explicit guidance also is needed to assist the lower courts in cases turning on "common use." *See, e.g.*, Br. for the United States as Amicus Curiae in Support of Petitioners at 19–20, *Wolford v. Lopez*, No. 24-1046 (U.S. May 1, 2025) (calling upon this Court to "provide much-needed guidance to lower courts" because, absent "a developed body of precedent on which to rely, lower courts have struggled to interpret the Second Amendment.") (internal quotation marks and citations omitted).

II. The issues presented by this case are critically important.

A. The decision below blesses a ban on the most popular rifles in America.

The issue raised by this case is exceptionally important. The AR-15 platform rifle is the most popular rifle in the country, and modern semiautomatic rifles like the AR-15 are the second-best selling type of firearm in the country behind only semiautomatic handguns. If the Second Amendment does not protect the most popular rifles in the country, it is hard to see how it protects any firearms at all other than the handguns this Court held protected in *Heller*.

While Cook County, like the several states that have "assault weapon" bans, lumps together a variety of semiautomatic firearms under that moniker, the paradigmatic "assault weapon" that Cook County seeks to ban is the AR-15 platform rifle. The AR-15 is the most popular rifle, and among the most popular firearm of any type, in the country. *See Smith & Wesson*, 605 U.S. at 297 (finding that semiautomatic rifles like the AR-15 and AK-47 are "both widely legal and bought by many ordinary consumers" and that the AR-15 platform rifle specifically "is the most popular rifle in the country"); *Harrel*, 144 S. Ct. at 2493 (statement of Thomas, J.) (calling the AR-15 "America's most common civilian rifle"); *Garland v. Cargill*, 602 U.S. 406, 429–30 (2024) (Sotomayor, J., dissenting) (referring to AR-15 style rifles as "commonly available, semiautomatic rifles"); *Heller II*, 670 F.3d at 1287 (Kavanaugh, J., dissenting) ("The AR-15 is the most popular semi-automatic rifle."); *Duncan v. Becerra*, 970 F.3d 1133, 1148 (9th Cir. 2020), *reh'g en banc granted, op. vacated sub nom. Duncan v. Bonta*, 19

F.4th 1087 (9th Cir. 2021) (calling the AR-15 the "most popular rifle in American history"). ATF, the federal agency charged with regulating the commercial firearms industry, has described the AR-15 as "one of the most popular firearms in the United States" for "civilian use." *Definition of 'Frame or Receiver' and Identification of Firearms*, 87 Fed. Reg. 24,652-01, 24,652, 24,655 (Apr. 26, 2022) (to be codified at 27 C.F.R. pts. 447, 478, and 479).

The popularity of the AR-15 is among the most well-evidenced, and frequently discussed, facts about firearms in the country. *See, e.g.*, *How the AR-15 became America's gun* (Washington Post Podcasts, Mar. 28, 2023), https://perma.cc/P7YM-U7AG. There are, by almost all estimates, considerably more modern semiautomatic rifles like the AR-15 in this country than there are Ford F-150s, America's most popular automobile. *Compare Commonly Owned: NSSF Announces Over 24 Million MSRs in Circulation*, NSSF (July 20, 2022), https://perma.cc/A3P7-GE4M, *with* Brett Foote, *There Are Currently 16.1 Million Ford F-Series Pickups on U.S. Roads*, FORD AUTH. (Apr. 9, 2021), https://perma.cc/8TBM-HVEU. And that is despite the outlier laws, like Cook County's here, that prohibit millions of Americans from some of our most populous states and counties from possessing them.

Yet, in the Seventh Circuit to date this exceptionally popular semiautomatic firearm can be banned without the slightest Second Amendment scrutiny, a tacit blessing on the jurisdictions that have perversely responded to *Bruen* by enacting new restrictions of this kind—exactly as Illinois did. *See Protect Illinois Communities Act*, Pub. Act. 102-1116 (Ill. 2023). If for no other reason than to review the "surprising

conclusion" that a county may turn a firearm possessed for lawful purposes by millions of Americans into an item with not even presumptive constitutional protection, the Court should grant certiorari to review this case. *Snope*, 145 S. Ct. at 1535 (Thomas, J., dissenting from denial of certiorari).

B. Under the rationale of the decision below, the Second Amendment permits anything short of a complete ban on all firearms.

Given that Cook County's ban reaches the most popular rifle in the country, if the Seventh Circuit's precedent is correct, then it is hard to see how any modern firearm is protected except for the handguns that this Court squarely considered in *Heller*.

The Seventh Circuit's test is even more toothless in this regard than the old interest balancing regime. Before *Bruen*, courts would at least purport to scrutinize modern laws to ensure there was some relationship between a ban and the aims of public safety. Not so here. Under the decision below—and the circuit precedent on which it relies—"the plaintiffs" in a Second Amendment case, "have the burden of showing that the weapons addressed in the pertinent legislation are Arms that ordinary people would keep at home for purposes of self-defense, not weapons that are exclusively or predominantly useful in military service, or weapons that are not possessed for lawful purposes." *Bevis*, 85 F.4th at 1194. If they cannot make that showing—perhaps because precisely what is "predominantly useful in military service" is a malleable and ill-defined standard—then the restriction challenged gets *no scrutiny* whatsoever.

It is hard to imagine a court of appeals treating any other provision of the Bill of Rights this way. If the Second Amendment is not to be relegated to second-class status, and if it truly is intended to " 'elevate[] above all other interests the right of law-abiding, responsible citizens to use arms' for self-defense," then the decision below must be overturned. *Bruen*, 597 U.S. at 26 (quoting *Heller*, 554 U.S. at 635).

III. The decision below irreconcilably conflicts with *Heller* and *Bruen*.

Under *Bruen* and *Heller*, this case should have been straightforward. Indeed, the correct resolution of the case could be summarized in two sentences: Petitioners "seek to own weapons that are indisputably 'Arms' within the plain text of the Second Amendment. While history and tradition support the banning of weapons that are both dangerous *and* unusual, [Cook County]'s ban cannot pass constitutional muster as it prohibits the possession of arms commonly possessed by law-abiding citizens for lawful purposes." *Bianchi*, 111 F.4th at 483 (Richardson, J., dissenting).

Instead, the Seventh Circuit's governing approach veers far astray of this Court's precedents. In holding that the Second Amendment's plain text does not extend to all firearms, limiting the Second Amendment to a mere purposive declaration that the military's acquisition choices dictate the means by which civilians may engage in individual self-defense, rejecting the historic principle that arms in common use are protected and cannot be banned, and purporting to derive from history a novel "military-like" standard, the Seventh Circuit's reasoning is squarely at odds with the pronouncements of this Court.

A. *Heller* requires finding that the banned rifles are "arms" within the meaning of the Second Amendment's plain text.

As discussed above, the Seventh Circuit has reached the "remarkable conclusion" that semiautomatic rifles "are not 'Arms' under the Second Amendment." *Bevis*, 85 F.4th at 1206–07 (Brennan, J., dissenting). It did so because, in its judgment, such firearms "share the same core design [as the M16], and both rely on the same patented operating system." *Id.* at 1195–96 (majority op.). The "only meaningful distinction" between them, that the "AR-15 has only semiautomatic capability," while the M16 has automatic capability, was irrelevant to the court's bottom line that "the AR-15 is almost the same gun as the M16 machinegun." *Id.* at 1195. Therefore, just like the M16, the AR-15 "may be reserved for military use." *Id.* at 1194.

This reasoning is wrong. There is no "reserved for military use" exception to the Second Amendment's text. The claim to the contrary is based on two fundamental misinterpretations of *Heller*. *Heller* did not treat a firearm's utility to the military as a limitation on the plain text meaning of "arms." Rather, it made clear that at a minimum all firearms are "arms" within the meaning of the Second Amendment's plain text, *Heller*, 554 U.S. at 581–82, and only suggested that certain "weapons that are most useful in military service—M-16 rifles and the like—may be banned" consistent with the Second Amendment as part of its *historical analysis*, *id.* at 627. Furthermore, it never suggested that history supported banning certain arms *because* of their utility to the military, but rather acknowledged that some weapons may be "dangerous

and unusual" (and hence, historically proscribable) *despite* it. *See id.* (quotation marks and citations omitted). *Bevis*—and, by extension, the decision below—erred in reading *Heller*'s explanation of that incongruous outcome (incongruous because the Amendment itself declares it was intended to preserve the militia, a military-style fighting force) as a *reason* to limit the Amendment's application to certain firearms today.

These errors were made before *Bruen* too, and they were bad enough then. *See Kolbe v. Hogan*, 849 F.3d 114, 142 (4th Cir. 2017) (en banc) ("There is no Second Amendment protection for … 'weapons that are most useful in military service.' " (quoting *Heller*, 554 U.S. at 627)). But they are inexcusable following *Bruen*, which made *Heller*'s text-and-history approach explicit and made clear that the *only* threshold showing Plaintiffs need to make is that their conduct is covered by the Amendment's "plain text," which makes no military/civilian arm distinction. *Bruen*, 597 U.S. at 26. The point was reaffirmed in *Rahimi*: When determining the constitutionality of modern restrictions on the right to keep and bear arms, there are no hidden carve-outs to the Second Amendment's text. Laws impacting activity within the plain text are only permissible if *history* demonstrates that they are consistent with "the principles underlying the Second Amendment." *Rahimi*, 602 U.S. at 692. The Seventh Circuit erred in placing so much emphasis on, and adding so much convolution to, the textual analysis.

The Seventh Circuit arrived at this point in its analysis only by announcing at the outset that "the constitutional protection [of the Second Amendment] exists to protect the individual right to self-defense, and so that will be our focus." *Bevis*, 85 F.4th at 1192.

But the court developed tunnel-vision, as its focus quickly became the whole of the right, as it found an implied limitation in the text restricting "arms" to include only those "Arms that [in the court's judgment] ordinary people would keep at home for purposes of self-defense." *Id.* at 1194. Although the *Bruen* analysis requires reading the Second Amendment in light of its history and the principles underlying it, neither history nor purpose can trump the plain text. "[A] court may not 'extrapolate' from the Constitution's text and history 'the values behind [that right], and then … enforce its guarantees only to the extent they serve (in the courts' views) those underlying values." *Rahimi*, 602 U.S. at 710 (Gorsuch, J., concurring) (quoting *Giles v. California*, 554 U.S. 353, 375 (2008)); *see also Bianchi*, 111 F.4th at 521 (Richardson, J., dissenting) ("[T]he Supreme Court rejected this exact approach to constitutional interpretation in *Giles v. California*, 554 U.S. 353 (2008).").

The Seventh Circuit was also wrong to read the Second Amendment as relevant solely to the preservation of individual self-defense. That was just one purpose among many for which the right was included in the Constitution, and other purposes—germane to the possession of the banned rifles—included "defense of the community at large against violence and government tyranny." *Bianchi*, 111 F.4th at 494–95 (Richardson, J., dissenting). As *Heller* explained, the right to keep and bear arms "was by the time of the founding understood to be an individual right protecting against *both* public *and* private violence." 554 U.S. at 594 (emphases added). The text of the Second Amendment itself proclaims that one of its purposes was to preserve the "militia" and, to state the obvious, the militia did not exist solely to promote individual

self-defense but rather was "useful in repelling invasions and suppressing insurrections," "render[ed] large standing armies unnecessary," and enabled the people to be "better able to resist tyranny," *Id.* at 597–98. Indeed, to the extent there is a historical tradition with respect to "military" arms, it is to afford them especially strong protection. *Cf.* 1 Stat. 271, 271 (1792) (requiring possession of a militia-quality "musket or firelock" and sufficient other equipment).

The Seventh Circuit ignored this guidance and claimed additional support for reading certain arms" out of the plain text by purportedly relying on *Heller*'s treatment of machineguns. Surely if *Heller* permitted bans on machineguns, the court reasoned, then "the definition of 'bearable Arms' extends only to weapons in common use for a lawful purpose." *Bevis*, 85 F.4th at 1193. But as discussed above, "common use" is not an element of the Amendment's plain text, but a rule of decision derived from the history of restricting dangerous and unusual weapons. *Heller* never purported to ground its observation about machineguns in the *plain text* of the Second Amendment. *See* 554 U.S. at 581–82. It certainly did not suggest that machineguns were not "bearable Arms." Rather, the only sensible interpretation of *Heller* and *Bruen* is that if machineguns can be banned at all, it is because of the *historical tradition* of regulating "dangerous and unusual" weapons. *See Bridges*, 2025 WL 2250109, at *6–8.

Finally, even if there were a "military use" exception, it would not apply to modern *semi*automatic rifles, which lack the fully automatic or select fire capability of the rifles used by the military, like the M16. The military *once* used the semiautomatic M1 Garand

before adopting the automatic M16. Notably, that rifle—according to General Patton, "[t]he best battle implement ever devised," *Springfield Armory: The Best Battle Implement Ever Devised*, NAT'L PARK SERV., https://perma.cc/TRF9-KFFF—is *not* banned by Cook County, while the semiautomatic AR-15, which *never* has been a standard infantry rifle, is banned.

B. History demonstrates that only arms that are both dangerous and unusual may be banned.

The Seventh Circuit's historical analysis is similarly flawed and contrary to the decisions of this Court. As noted above, in *Heller*, this Court explained that the only tradition of historical regulation that can excuse a wholesale ban on a type of arms is the tradition of restricting "dangerous and unusual weapons." 554 U.S. at 627 (quotation marks and citations omitted). And there is no question that AR-15s are not "dangerous and unusual weapons." As Justice Kavanaugh explained in *Snope*, "[g]iven that millions of Americans own AR-15s and that a significant majority of the States allow possession of those rifles, [there is] a strong argument that AR-15s are in 'common use' by law-abiding citizens and therefore are protected by the Second Amendment under *Heller*." 145 S. Ct. at 1534 (Kavanaugh, J.).

That should have made this case a very straightforward one. As discussed above, even accepting Cook County's tendentious "assault weapon" framing, modern semiautomatic rifles like the AR-15 indisputably are in common use. Indeed, the AR-15 is in common use *by itself*. *See Smith & Wesson*, 605 U.S. at 297. But the Court should reject that framing. The banned

rifles are not a discrete subset of firearms, but rather just particular semiautomatic firearms that Cook County has singled out, and this Court has long held that semiautomatic firearms are common and "traditionally have been widely accepted as lawful possessions." *Staples*, 511 U.S. at 612; *see also Smith & Wesson*, 605 U.S. at 297. Indeed, semiautomatic firearms have been commercially available for over a century without any enduring history of restriction on their possession or use. *See Heller II*, 670 F.3d at 1287 (Kavanaugh, J., dissenting); David B. Kopel, *Rational Basis Analysis of "Assault Weapon" Prohibition*, 20 J. CONTEMP. L. 381, 413 (1994). According to industry estimates, there were over 43 million semiautomatic rifles sold in the United States between 1990 and 2018. *See Firearm Production in the United States With Firearm Import and Export Data* at 17, NSSF (2020), https://perma.cc/2HZU-4G49. And legal restrictions on these arms are rare. AR-15s are legally available in 41 states. *Snope*, 145 S. Ct. at 1534 (Kavanaugh, J.). Indeed, just last term, this Court *unanimously* found that the semiautomatic rifles at issue here are "both widely legal and bought by many ordinary consumers" and that "[t]he AR-15 is the most popular rifle in the country." *Smith & Wesson*, 605 U.S. at 297. They are, therefore, not "unusual" in any sense of the word. Although the Seventh Circuit was not silent about common use, it treated it as an inessential, certainly not dispositive, part of its analysis, deriding it as "a slippery concept." *Bevis*, 85 F.4th at 1198.

In place of "dangerous and unusual," the Seventh Circuit attempted to cobble together a different historical tradition, of confining certain weapons to "military and law enforcement" uses, provided that

"[m]any other weapons remain that are more universally available." *Id.* at 1201. But this exceptionally broad principle, in addition to being duplicative of the Seventh Circuit's textual conclusion, and just as malleable, has no basis in history. The Seventh Circuit purported to derive it from historical regulations ranging from gunpowder storage laws at the Founding to the National Firearms Act of 1934, but as the dissent explained, these laws were neither like a modern "assault weapon" ban in "how" or "why" they restricted exercise of the right, *id.* at 1226–28 (Brennan, J., dissenting)—and they certainly do not show a military/civilian distinction on which the Seventh Circuit relied.

IV. This case is a good vehicle.

Just two Terms ago, Justice Thomas called for this Court to review a case that "ultimately allows [a state] to ban America's most common civilian rifle … once the case[] reach[es] a final judgment." *Harrel*, 144 S. Ct. at 2493 (statement of Thomas, J.). And, last Term, Justice Kavanaugh noted that "in [his] view, this Court should and presumably will address the AR-15 issue soon, in the next Term or two." *Snope*, 145 S. Ct. at 1534 (Kavanaugh, J.). This case offers a clean vehicle in which to do just that in review of a final judgment. Though the Seventh Circuit below criticized Petitioners for not "build[ing] an adequate record" to show that the Cook County ordinance was unconstitutional *under the Bevis standard* (which was announced after the close of summary judgment briefing in this case), Pet.App.5a, that is of no moment for this Court, which instead must answer the prior question: is the *Bevis* standard legitimate? This case cleanly presents that question for review.

As demonstrated above, further percolation in the lower courts is unlikely to do more than aggravate the confusion over how properly to apply this Court's Second Amendment precedents to bans on types of "Arms" (an important category of cases, implicating not just laws restricting so-called "assault weapons" like this one but also laws restricting other common firearms, electronic arms like stun guns, or firearm components such as ammunition magazines), and cause further muddying of the doctrinal waters in Second Amendment litigation more generally. *See Harrel*, 144 S. Ct. at 2492 (statement of Thomas, J.).

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted,

DAVID H. THOMPSON
Counsel of Record
PETER A. PATTERSON
WILLIAM V. BERGSTROM
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com

Counsel for Petitioners

APPENDIX

TABLE OF APPENDICES

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT, FILED JUNE 2, 2025

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 24-1437

CUTBERTO VIRAMONTES, *et al.*,

Plaintiffs-Appellants,

v.

COOK COUNTY, *et al.*,

Defendants-Appellees.

Argued November 12, 2024
Decided June 2, 2025

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 21 CV 4595. Rebecca R. Pallmeyer, *Judge.*

Before DIANE S. SYKES, Chief Judge, MICHAEL B. BRENNAN, Circuit Judge, AMY J. ST. EVE, Circuit Judge.

Appendix A

ORDER

Cutberto Viramontes and Christopher Khaya, together with the Firearms Policy Coalition and the Second Amendment Foundation, appeal the dismissal of their constitutional challenge to Cook County's assault weapons ban. Relying on *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), and *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), they argue that the ordinance is facially invalid under the Second Amendment.

We addressed a similar challenge to the ordinance in a case that was before us on appeal from the denial of a preliminary injunction. *Bevis v. City of Naperville*, 85 F.4th 1175, 1185 (7th Cir. 2023). We rejected the challenge based on the record the plaintiffs had compiled at that early stage of the litigation. *Id.* at 1197. The challengers here have failed to develop a record sufficient to justify a different result. We therefore affirm.

Cook County's ordinance prohibits the possession, acquisition, and transfer of assault weapons. COOK COUNTY, ILL. CODE § 54-212(a) (2024). The law applies to a variety of firearms, including semiautomatic rifles capable of accepting large-capacity magazines and possessing certain features. *Id.* § 54-211(1). The ordinance also specifies by name some 125 prohibited rifles, such as AR-15s. *Id.* § 54-211(7). Viramontes and the other plaintiffs (we'll refer to them collectively as "Viramontes") initiated this suit in 2021 seeking declaratory and injunctive relief from the ban as it relates to semiautomatic rifles.

Appendix A

This is not our first encounter with Cook County's ban and others like it. In *Bevis* we addressed a set of consolidated appeals in cases challenging Illinois state and local assault-weapons bans under *Bruen*—including the Cook County ordinance at issue here. *Bevis*, 85 F.4th at 1184-87. We held that the plaintiffs had failed to show, at the preliminary-injunction stage, that the covered firearms materially differed from machineguns and military-grade weaponry, which the Supreme Court instructed can be banned under the Second Amendment. *Id.* at 1194-97, 1203.

This suit predated *Bruen* and our decision in *Bevis*, but Viramontes conceded from the outset that his claims were foreclosed by pre-*Bruen* circuit precedent—namely *Wilson v. Cook County*, 937 F.3d 1028, 1029 (7th Cir. 2019) (per curiam), and *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015). Viramontes sought judgment on the pleadings in favor of the County, asserting that no factual development was necessary. The district judge denied the motion. The Supreme Court decided *Bruen* a few months later, and in response the judge extended discovery.

Over the following months, while the County retained expert witnesses and obtained reports to support its view of the Second Amendment's scope, Viramontes declined to do the same. Both sides then moved for summary judgment after the close of discovery. In response to the County's statement of undisputed material facts, Viramontes submitted 105 exhibits, ranging from articles to surveys, in an apparent attempt to supplement the record that he had previously elected not to build. The judge entered

judgment for the County, expressing concern about the admissibility of Viramontes's eleventh-hour submissions and concluding that his claims were foreclosed by *Bevis*.

Viramontes appealed, but his challenge falters for want of an adequate record. *Bruen* instructs that Second Amendment litigation adheres to the "principle of party presentation," explaining that courts may evaluate claims "based on the historical record compiled by the parties." 597 U.S. at 25 n.6 (internal quotation marks omitted). We held in *Bevis* that it is the plaintiff's burden to demonstrate that the text of the Second Amendment, viewed through the lens of historical tradition, protects the regulated conduct. 85 F.4th at 1192, 1194.

Viramontes principally argues that we should overrule *Bevis* as inconsistent with *Heller* and *Bruen*. We require a compelling reason to revisit our precedent. *United States v. Rivers*, 108 F.4th 973, 979 (7th Cir. 2024). In the past we have identified three circumstances that satisfy this standard: (1) when a subsequent Supreme Court opinion has undermined our precedent; (2) when our own caselaw is internally inconsistent; and (3) when we find ourselves in the minority among circuits to have considered the issue. *Glaser v. Wound Care Consultants, Inc.*, 570 F.3d 907, 915 (7th Cir. 2009).

Viramontes invokes none of these reasons and instead simply disagrees with *Bevis*. But "[n]either simple disagreement with a rule nor the possibility that a rule is debatable constitutes a compelling reason" for reconsidering precedent. *Rivers*, 108 F.4th at 979.

Although *Bevis* was resolved at the preliminary-injunction stage, Viramontes has not developed the arguments or record necessary to justify overruling it. *See United States v. Rush*, 130 F.4th 633, 639-40 (7th Cir. 2025) (noting that "[n]o intervening Supreme Court case has called *Bevis* into doubt" and declining to overturn it based on the arguments advanced by the challenger). Viramontes's fallback position—that the Cook County ordinance is unconstitutional under *Bevis*—fares no better. *Bevis* upheld the constitutionality of this very ordinance, at least preliminarily. 85 F.4th at 1182. Though it left open the possibility that a better-developed record might affect the final analysis, *id.* at 1197, Viramontes's failure to build an adequate record here dooms his challenge.

AFFIRMED

APPENDIX B — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, FILED MARCH 1, 2024

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

No. 21 C 4595

CUTBERTO VIRAMONTES, AN INDIVIDUAL AND RESIDENT OF COOK COUNTY, ILLINOIS; CHRISTOPHER KHAYA, AN INDIVIDUAL AND RESIDENT OF COOK COUNTY, ILLINOIS; SECOND AMENDMENT FOUNDATION; AND FIREARMS POLICY COALITION, INC.,

Plaintiffs,

v.

THE COUNTY OF COOK, A BODY POLITIC AND CORPORATE; TONI PRECKWINKLE, IN HER OFFICIAL CAPACITY AS COUNTY BOARD PRESIDENT AND CHIEF EXECUTIVE OFFICER OF COOK COUNTY; KIMBERLY M. FOXX, IN HER OFFICIAL CAPACITY AS STATE'S ATTORNEY; AND THOMAS DART, IN HIS OFFICIAL CAPACITY AS SHERIFF,

Defendants.

Signed March 1, 2024

Appendix B

REBECCA R. PALLMEYER, United States District Judge.

MEMORANDUM OPINION AND ORDER

In several recent cases, gun-rights advocates have challenged Illinois state and local regulations on certain semiautomatic rifles defined by law as "assault weapons." This is one of those cases. Plaintiffs Cutberto Viramontes, Christopher Khaya, the Second Amendment Foundation, and Firearms Policy Coalition, Inc.[1] challenge the constitutionality of Cook County's assault-weapons ban, naming as Defendants Cook County and county officials Toni Preckwinkle, Kimberly M. Foxx, and Thomas Dart. Before the court are the parties' competing motions for summary judgment [80, 100], as well as Defendants' motion to strike Plaintiffs' responses to Defendants' Rule 56.1 statements [104]. During the pendency of this case, and while the parties engaged in discovery on the merits, the Seventh Circuit decided *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023), rejecting a preliminary injunction against enforcement of the State of Illinois's assault-weapons ban. Although this case presents a different procedural posture, the Seventh Circuit's *Bevis* opinion has greatly simplified the question presented for this court.

For the reasons discussed below, the court grants Defendants' summary judgment motion, denies Plaintiffs', and denies Defendants' motion to strike as moot.

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1. Rubi Joyal, a former Plaintiff in the case, was removed in April 2022. (*See* Minute Entry [34].)

Appendix B

BACKGROUND

Cutberto Viramontes and Christopher Khaya both live in Cook County. (Pls.' Rule 56.1 Statement of Material Facts in Supp. of Summ. J. (hereinafter "PSOF") [101] ¶¶ 1, 4.)[2] They are members of Firearms Policy Coalition, Inc., a nonprofit dedicated to using "legislative advocacy, grassroots advocacy, litigation and legal efforts" to, in its view, "defend and promote the People's rights—including the right to keep and bear arms—advance individual liberty, and restore freedom." (*Id.* ¶¶ 7-8, 10.) Viramontes and Khaya are also members of the Second Amendment Foundation, a nonprofit devoted to similar educational and legal advocacy concerning gun rights. (*Id.* ¶¶ 12-13, 15.) Viramontes stated in his deposition that he hopes "to own a Smith & Wesson M&P 15 rifle," which is an "AR-15 style rifle" that he intends to use for self-defense. (*Id.* ¶¶ 2-3.) Khaya wants an "IMI [Israeli Military Industries] Galil semiautomatic rifle"[3] (*id.* at ¶ 5), which, he testified, he is "most likely to use at the range, to be honest." (Tr. of the Dep. of Christopher Khaya, Ex. 2 to PSOF [101-2]

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2. The court broadly relies on the parties' Rule 56.1 statements for its factual recounting. Where a fact or characterization of part of the record is disputed, the court cites directly to the record.

3. In their response to Defendant's Rule 56.1 statements, Plaintiffs agreed with Defendants' description of this weapon as an "Israel Military Industries Galil AR-15 style semiautomatic rifle". (Pl.'s Responses & Objections to Def.'s Rule 56.1 Statement of Material Facts [98] at 8.) Plaintiffs then amended their response in a footnote to their own Rule 56.1 statement, clarifying that "[t]he firearm in question is not an AR-15 style rifle but is largely based on the AK-47 design . . . ." (PSOF ¶ 6 n.1.)

at 82:7-10.) He went on to say that if the other two guns he owns—a handgun and different (permitted) semi-automatic rifle—"are out of commission, then [he] would have to use" the Galil for self-defense. (*Id.* at 82:11-15.)

Cook County's Blair Holt Assault Weapons Ban (the "Ordinance"), enacted in November of 2006 and revised in July 2013, makes it "unlawful for any person to manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire, carry or possess any assault weapon or large capacity magazine in Cook County." (Cook County, Ill. Code §§ 54-212(a); Defs.' Local Rule 56.1 Statement of Undisputed Material Facts in Supp. of their Mot. for Summ. J. (hereinafter "DSOF") [81] ¶¶ 130-31.) The weapons Viramontes and Khaya would like to own are among those banned by the Ordinance. (DSOF ¶¶ 12, 15.)

Plaintiffs filed this lawsuit on August 27, 2021 arguing that the Ordinance violated the Second Amendment and seeking declaratory and injunctive relief. (Compl. [1] ¶ 71.) In their Complaint, Plaintiffs acknowledged the hurdle they faced: their claims were, in Plaintiffs' own words, "contrary to" Seventh Circuit precedent. (*Id.* ¶ 5.) Specifically, in *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015), the Seventh Circuit held that Highland Park, Illinois's assault-weapons ban did not violate the Second Amendment. More recently, in *Wilson v. Cook County*, 937 F.3d 1028, 1029, 1034 (7th Cir. 2019), the Seventh Circuit rejected a Second Amendment challenge to the very same Cook County Ordinance at issue in this case, which the court and parties agreed

was "materially indistinguishable" from the Highland Park ban at issue in *Friedman*. Plaintiffs "institute[d] this litigation to . . . seek to have *Wilson* and *Friedman* overruled." (Compl. ¶ 5.)

Eager to achieve that goal, Plaintiffs in early December 2021 moved for judgment on the pleadings in favor of *Defendants*. (Pls.' Mot. for J. on the Pleadings [20].) Recognizing that their claims "are foreclosed by *Wilson* . . . and *Friedman*," which themselves relied on general national evidence in upholding the weapons ban, Plaintiffs saw no need to "'develop a factual record on which to distinguish *Friedman* . . . .'" (Pls.' Brief in Supp. of J. on the Pleadings [21] at 1, 4, (quoting *Wilson*, 937 F.3d at 1036).) Plaintiffs noted that if the Seventh Circuit were to reverse *Friedman* and *Wilson*, Defendants could always ask to remand for "further factual development under correct legal standards." (*Id.* at 6.)

For their part, Defendants declined the offer of an easy victory. In a hearing on December 8, 2021, Defendants asked the court to deny Plaintiffs' request for a judgment in Defendants' favor. Instead, Defendants asked that discovery proceed on the issue of whether assault weapons (as defined by the Ordinance) were "dangerous and unusual"—and thus outside the Second Amendment's ambit. (Tr. of Proceedings held on Dec. 8, 2021 (hereinafter "Hearing Tr.") [24] at 4-5; *see also Friedman*, 784 F.3d at 407-08 (noting the longstanding practice of banning dangerous and unusual weapons).) They pointed out that *Friedman* declined to answer that threshold question, instead assuming that the Second Amendment was implicated, but nevertheless upholding

the ban. (Hearing Tr. at 4-5; *see also Friedman*, 784 F.3d at 411 ("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." (quotation omitted)).) In other words, in the case before this court, Defendants hoped to develop a record on assault weapons' dangerousness and use this record as "an additional basis pursuant to which we could potentially win on the merits." (Hearing Tr. at 5.) Plaintiffs countered that the relevant evidence bearing on that question amounted to "legislative facts"—in other words, universal facts about the weapons having nothing to do specifically with Cook County—and that to engage in discovery would be "a waste of judicial resources." (*Id.* at 7-8.) Ultimately, recognizing "powerful arguments in both directions," the court granted Defendants' request to develop a record in this respect, and discovery commenced. (*Id.* at 15.)

The subsequent two years saw numerous twists and turns. First, as discovery was ongoing, the Supreme Court decided *New York State Rifle & Pistol Association v. Bruen*, which announced a new standard applicable to Second Amendment claims:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation.

597 U.S. 1, 24, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022). Importantly, this new test explicitly rejected subjecting such laws to means-end scrutiny, holding instead that to justify a restriction, "the government must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 19.

On January 10, 2023, Illinois passed its own statewide assault-weapons ban. (Mem. of Law in Supp. of Pls.' Mot. to Stay (hereinafter "Stay Motion") [70] at 1; *see also* 720 Ill. Comp. Stat. 5/24-1.9.) That state law spawned challenges in several district courts across the Seventh Circuit. Plaintiffs asked the court to stay this case pending resolution of the Illinois ban's constitutionality, recognizing that the new law's scope, "while not identical" to that of the Cook County ordinance, "would equally bar Plaintiffs from acquiring their chosen firearms." (Stay Motion at 1.) The court set a hearing date in March of 2023 to decide whether to grant Plaintiffs' request (*see* Ord. [77]), but in the intervening months Judge Virginia M. Kendall issued an order denying a preliminary injunction that would have prevented enforcement of both the Illinois ban and a similar ban employed by the City of Naperville, finding that both the state law and the local ordinance would likely survive constitutional scrutiny, *see Bevis v. City of Naperville, Illinois*, 657 F. Supp. 3d 1052 (N.D. Ill. 2023), *aff'd*, 85 F.4th 1175 (7th Cir. 2023). On March 3, 2023, Defendants filed their motion for summary judgment. (*See* Def.'s Mot. for Summ. J. [80].) Five days later, after a hearing, the court declined to stay this case, noting the possibility that the Seventh Circuit's ruling in

the appeal from *Bevis* (and other cases addressing assault weapons bans) might not resolve this one. (Ord. [88] at 1.) The court also observed that this case is the only one where the parties were developing a factual record. (*Id.*)

Briefing on Defendants' motion for summary judgment and on Plaintiffs' own motion for summary judgment (*see* Pl.'s Mot. for Summ. J. [100]) continued and was complete by mid-June. In September 2023, declining a motion for reassignment of a yet another assault-weapons-ban challenge case pending before Judge Harry D. Leinenweber, the court observed that the Seventh Circuit had by then heard oral argument in *Bevis*, and its decision there "may well have substantial influence on, or control, this one." (Ord. [120] at 1-2.)

Then on November 3, 2023, the Seventh Circuit issued a single opinion addressing *Bevis* and the other consolidated cases challenging Illinois' statewide and local assault-weapons bans on appeal. The Court of Appeals refused to enjoin enforcement of any of these laws. *Bevis v. City of Naperville, Illinois*, 85 F.4th 1175, 1182, 1203 (7th Cir. 2023) (addressing the Illinois state law, a City of Chicago ordinance, a City of Naperville ordinance, and the Cook County Ordinance). In doing so, the court affirmed the "continuing vitality" of *Friedman. Id.* at 1184. The court noted that *Friedman* was "basically compatible with *Bruen*, insofar as *Friedman* anticipated the need to rest the analysis on history, not on a free-form balancing test." *Id.* at 1189. In defending this conclusion, the court noted that *Wilson* included a "gloss" on *Friedman*; that is, *Wilson* suggested that *Friedman* had done some sort

of means-end scrutiny when upholding Highland Park's assault-weapons ban. That suggestion, the *Bevis* court said, was *dicta*; *Wilson* never explicitly characterized *Friedman* as having applied means-end scrutiny. *Id.* at 1191. That *Friedman* included a "fleeting reference to the city's reasons for adopting [its] ordinance" was not enough to "undermine the central analysis in the case," which focused on history. *Id.*

On the merits, *Bevis* considered whether challenges to these state and local assault-weapons bans were likely to succeed—a showing necessary for entry of a preliminary injunction against their enforcement. The court's Second Amendment analysis involved two successive inquiries: first, whether the weapons regulated by these laws are "Arms" within the meaning of the Second Amendment; and second, if so, whether the regulation comported with the history and tradition of firearms regulation.

At the first step, the court noted that the Amendment only applies to "bearable arms," which the court defined as "weapons in common use for a lawful purpose . . . [which] is at its core the right to individual self-defense." *Id.* at 1193 (relying on *District of Columbia v. Heller*, 554 U.S. 570, 624-25, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008)). Plaintiffs therefore must show "that the weapons addressed in the pertinent legislation are Arms that ordinary people would keep at home for purposes of self-defense, not weapons that are exclusively or predominantly useful in military service, or weapons that are not possessed for lawful purposes." *Id.* at 1194. Plaintiffs were not likely to meet that burden, the court concluded, pointing out that *Heller*

"stated that M16s [military machineguns] are not among the Arms covered by the Second Amendment," and that the AR-15 (and similar weapons) were more like military weapons than those useful for self-defense. *Id.* at 1195 (citing *Heller*, 554 U.S. at 624, 627). Comparing the AR-15 and the M16, the court stressed that "[b]oth models use the same ammunition, deliver the same kinetic energy . . . the same muzzle velocity . . . and the same effective range . . . ." *Id.* at 1196. The "only meaningful distinction" the court found between the two weapons "is that the AR-15 has only semiautomatic capability (unless the user takes advantage of some simple modifications that essentially make it fully automatic), while the M16 operates both ways." *Id.* at 1195. The court also found irrelevant the fact that the "M16 has an automatic firing rate of 700 rounds per minute, while the [unmodified] AR-15 has a semiautomatic rate of 'only' 300 rounds per minute . . . ." *Id.* at 1196. This distinction made no difference for numerous reasons. For one, AR-15s could easily be modified with a bump stock to "mak[e] it, in essence, a fully automatic weapon." *Id.* And there was "a serious question" whether it would make sense to consider the AR-15 an Arm "as sold" if it could easily be modified to a military-like weapon; calling the AR-15 an Arm protected by the Amendment would, thus, "be a road map for assembling machineguns and avoiding legitimate regulations of their private use and carry." *Id.*

Importantly, the court concluded this threshold inquiry with a caveat:

> Better data on firing rates might change the analysis of whether the AR-15 and comparable

> weapons fall on the military or civilian side of the line. We note in this connection that it is one thing to say that the AR-15 is capable of firing at a rate of 300 rounds per minute and the comparable rate for the M16 is 700 rounds per minute, but quite another to address actual firing capacity, which accounts for the need to change magazines. No one here has suggested that the M16 comes with a 700-round magazine, or for that matter that the AR-15 comes with a 300-round magazine. Either one must be reloaded multiple times to fire so many rounds. Factoring in the reloading time, the record may show that the two weapons differ more—or less—than it appears here.

Id. at 1197. The court also found that "large-capacity magazines . . . can lawfully be reserved for military use," and that "[a]nyone who wants greater firepower" could buy "three 10-round magazines" instead of one 30-round magazine. *Id.* The court concluded by stating that "there thus will be more to come, and we do not rule out the possibility that the plaintiffs will find other evidence that shows a sharper distinction between AR-15s and M16s (and each one's relatives) than the present record reveals." *Id.*

For the sake of completeness, the court also considered the second step "of the *Bruen* framework"—namely, whether "these laws [are] consistent with the history and tradition of firearms regulation . . . ." *Id.* at 1197-98. Here, too, the court concluded that plaintiffs were unlikely to

succeed on the merits. The court began by tackling the question of whether assault weapons were in "common use" for self-defense—an inquiry it chose to conduct at the second step as opposed to the first. *Id.* at 1198. On that question, the court found "the analysis in *Friedman* to be particularly useful," in recognizing that "common use" was not tied to "numbers alone" concerning how many people owned the weapons, as this would make a ban constitutional at one time and unconstitutional at another. *Id.* at 1198-99. Instead, *Bevis* decided that "the relevant question is what are the modern analogues to the weapons people used for individual self-defense in 1791, and perhaps as late as 1868," and concluded those modern analogues include the non-military weapons that cases like *Heller* had in mind, "not a militaristic weapon such as the AR-15, which is capable of inflicting the grisly damage described in some of the briefs." *Id.* at 1199.

The *Bevis* court also addressed the history of regulation of dangerous weapons to protect the public. *Id.* at 1200. There is, the court held, a "long-standing tradition of regulating the especially dangerous weapons of the time, whether they were firearms, explosives, Bowie knives, or other like devices." *Id.* at 1199, 1201. The slate of assault-weapons bans at issue in *Bevis* thus "respect[ed] and rel[ied] on" what the court deemed "a long tradition, unchanged from the time when the Second Amendment was added to the Constitution, supporting a distinction between weapons and accessories designed for military or law-enforcement use, and weapons designed for personal use." *Id.* at 1202.

Appendix B

After the *Bevis* decision issued, Defendants in this case filed a notice of supplemental authority, noting that *Bevis* "relied upon the analysis in *Friedman*" in reaching its conclusion as to *Bruen*'s second (history-minded) step. (*See* Notice of Supp. Authority [122] at 2.) Plaintiffs responded, admitting that "the legal conclusions in *Bevis* are binding here," but arguing that *Bevis* leaves open the possibility that further evidence, especially concerning the differences between AR-15s and M16s, could change its analysis. (Pls.' Resp. to Defs.' Supp. Authority (hereinafter "Pls.' *Bevis* Resp.") [123] at 1.) They contend that "[b]etter data" is available here, noting certain of their responses to Defendants' Rule 56.1 statements. (*Id.* at 2.) Specifically, they challenge *Bevis*' assumption that AR-15s shoot at a maximum rate of 300 rounds per minute (as compared with M16s' supposed rate of 700 per minute):

> The effective rate of fire of the M-16 rifle is 45-65 rounds per minute in semiautomatic mode and 150-200 rounds per minute in automatic mode. Unlike the M-16, the AR-15 is solely semiautomatic. It thus has an effective rate of fire that is one-third of the rate of the M-16 in automatic mode, and one-fifth of the rate posited by the Seventh Circuit.

(*Id.* at 2 (citations omitted).) This data, Plaintiffs argue, effectively distinguishes their case from *Bevis* on both prongs of the test identified by the Seventh Circuit, as both prongs rely to some extent on the distinction between military and civilian weapons. In other words, "[b]ecause the record in this case distinguishes AR-15s from M-16s,

this tradition cannot support banning the AR-15 and other semiautomatic firearms." (*Id.*) Finally, *Bevis*' having left Illinois' assault-weapons ban intact left the court with questions about this case's justiciability. Accordingly, the court asked the parties to brief the issue of how Plaintiffs still have standing to challenge Cook County's ban. (Minute Ord. [125].)

DISCUSSION

This case presents an awkward procedural puzzle with a simple solution. On the one hand, *Bevis* made clear that *Friedman* and *Wilson* remain good law, all but foreclosing Plaintiffs' claim. On the other hand, *Bevis* also suggested that on remand, its merits analysis on the bans at issue (including Cook County's) might change based on a more fully developed factual record. In theory, this case—which has proceeded through discovery—might present just such a record to pick up where *Bevis* left off. But because Plaintiffs surface nothing from this record that might justify departing from binding precedent, the court grants summary judgment for Defendants.

The standards governing this case are familiar. Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). The court views the facts "in the light most favorable" to the nonmoving party when making this determination. *Lord v. Beahm*, 952 F.3d 902, 903 (7th Cir. 2020). And the "substantive law will identify which facts are material." *Id.* (quoting *Anderson v. Liberty*

Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986)).

I. Whether Plaintiffs Have Standing

Illinois' assault-weapons ban, which is unchallenged here, prohibits Plaintiffs from owning the same weapons that the challenged Cook County Ordinance does. The court thus asked the parties to explain how Plaintiffs' injuries are redressable by a ruling in their favor. Both parties urged that Plaintiffs do retain standing. Plaintiffs argue (1) that they have asked for nominal damages, which entitle them to *some* relief; and (2) that Defendant Foxx (the Cook County State's Attorney) is tasked with enforcing both state and county law. Thus, Plaintiffs assert, a ruling in their favor concerning the county's ban would strongly imply that the state ban is also unconstitutional, and would likely dissuade Foxx from enforcing the state law while independent challenges to its constitutionality proceed elsewhere. (*See* Pl.'s Resp. to Ord. to Show Cause [128].)

Defendants also argue that standing exists, for different reasons. First, Defendants contend that the Ordinance fully prohibits ownership of assault weapons, while Illinois' ban "allows gun owners to retain possession of assault weapons purchased prior to October 1, 2023, if registered." (Def.'s Mem. in Resp. to ECF No. 125 [127] at 4.) Defendants tacitly admit that neither side has shown that any Plaintiff in fact owned covered weapons before October of 2023, but they make the common-sense assumption that the organizational "Plaintiffs here likely

represent" such people. (*Id.* at 5.) Secondly, Defendants note that the Ordinance allows for larger penalties than Illinois' ban does, such that a ruling in Plaintiffs' favor would insulate them from harsher forms of punishment. (*Id.* at 6-7.)

The fact that the Plaintiffs seek nominal damages, and that the two bans are similar enough that the unconstitutionality of one would likely fall with the other, persuade the court that the case remains justiciable. *See N.Y. State Rifle & Pistol Ass'n, Inc. v. City of New York, New York*, 590 U.S. 336, 140 S. Ct. 1525, 1536, 206 L. Ed. 2d 798 (2020) (Alito, J., dissenting) ("[I]t is widely recognized that a claim for nominal damages precludes mootness."). Accordingly, the court proceeds to the merits.

II. Whether *Friedman* and *Wilson* control this case

It is undisputed that this court is bound by Seventh Circuit precedent "unless 'powerfully convinced that the [Seventh Circuit] would overrule it at the first opportunity.'" *Brenner v. Brown*, 814 F. Supp. 717, 718 (N.D. Ill. 1993) (quoting *Colby v. J.C. Penney Co.*, 811 F.2d 1119, 1123 (7th Cir. 1987)). The court follows Seventh Circuit precedent even if it believes those decisions are wrong or mistaken. *Reiser v. Residential Funding Corp.*, 380 F.3d 1027, 1029 (7th Cir. 2004).

Friedman affirmed a grant of summary judgment in favor of Highland Park and held that its assault-weapons ban did not violate the Second Amendment. 784 F.3d at 406. And in 2019, *Wilson* affirmed dismissal of a complaint

challenging the same Cook County Ordinance at issue in this case,[4] holding that *Friedman* was controlling because the two ordinances were "materially indistinguishable" and "the plaintiffs ha[d] not come forward with a compelling reason to revisit" that earlier decision. 937 F.3d at 1029. If this were not enough, the parties have expressly agreed that, if they are still good law, *Friedman* and *Wilson* control the case. Plaintiffs themselves made this point in their December 2021 motion for judgment on the pleadings (in favor of Defendants), admitting that "the claims at issue in this case are foreclosed by *Wilson* . . . and *Friedman*," and that "[a]ll parties agree that the Court is bound by these decisions . . . ." (Pls.' Brief in Supp. of J. on the Pleadings at 1.) Defendants see it in the same way. In their March 2023 motion for summary judgment, Defendants argue that Plaintiffs' "claims are foreclosed by the Seventh Circuit's decisions in *Wilson* . . . and *Friedman* . . . ." (Defs.' Mem. of Law in Supp. of Their Mot. for Summ. J. [82] at 46.)

The only hope for Plaintiffs' claim was that the Seventh Circuit would hold that *Friedman* and *Wilson* are inconsistent with *Bruen* and thus call them into serious doubt or overrule them. But crucially, the court in *Bevins* went well beyond simply refusing to overrule *Friedman* (and *Wilson* by extension); *Bevis* made a point of stressing *Friedman*'s "continuing vitality . . . ." 85 F.4th at 1184, 1190-91. And Plaintiffs conceded after *Bevins* came down that its legal conclusions are binding on this court. (Pls.'

4. The Ordinance has not been amended in the interim; it has remained the same since July 2013. *See* Cook County, Ill. Code §§ 54-210 *et seq.*

Bevis Resp. at 1.) Plaintiffs' claims are thus squarely foreclosed by binding precedent.

III. Whether Any Evidence Distinguishes this Case from *Bevis, Friedman*, or *Wilson*

Nor, to the extent dicta in *Bevis* suggests that firing-rate differentials between M16s and AR-15s could change the calculus, have Plaintiffs offered evidence meaningfully doing so. First, it is not at all clear that the papers, surveys, and other online sources to which Plaintiffs cite are even admissible in this case. (*See* Defs.' Reply Filed in Supp. of Defs.' Mot. to Strike [117] at 5 (noting that Plaintiffs rely largely on "opinions set forth by alleged experts" without disclosing them in discovery and thus "circumvent[ing] th[e] court's discovery orders").)

But even considering the sources the Plaintiffs *do* cite, their evidence falls far short of meaningfully distinguishing AR-15s from M16s. Plaintiffs claim that the M16 and AR-15 both have a lower "effective" rate of fire than the rates contemplated by the Seventh Circuit in *Bevis*. Recall that *Bevis* appeared to assume that the M16 as an automatic weapon was capable of firing a maximum of 700 rounds per minute while the semiautomatic AR-15's comparable maximum rate was 300 rounds per minute. 85 F.4th at 1196. Plaintiffs note, contrarily, that the *effective* rate of fire of the M16 rifle is 'only' 150-200 (not 700) rounds per minute in automatic mode and 45-65 (not 300) rounds per minute in semiautomatic mode, which would be the same for the AR-15, as it is semiautomatic. (Pls.' *Bevis* Resp. at 2.) This leads Plaintiffs to claim that the AR-15

"has an effective rate of fire that is one-third of the rate of the M-16 in automatic mode, and one-fifth of the rate posited by the Seventh Circuit." (*Id.*)

This is truly a distinction without a difference. *Bevis* made clear that the relevant distinction is not how fast the AR-15 shot in isolation, but how its firing rate compares with that of an M16, which (as recognized in *Heller*) was appropriately subject to regulation. *Id.* at 1197 ("[W]e do not rule out the possibility that the plaintiffs will find other evidence that shows a sharper distinction between AR-15s and M16s . . . than the present record reveals.") By the court's math, pre-modification with bump stocks or other devices, the AR-15 shot about 40% as many rounds in a minute as did the M16 (300 versus 700). The difference is similar, though, using Plaintiffs' numbers: if the M16 can "effective[ly]" shoot at 150-200 rounds a minute and the AR-15 can, pre-modification, shoot at 45-65 rounds a minute, then the AR-15 can shoot about 33% as many rounds in a minute as the M16 does. There is no indication in *Bevis* that this percentage difference in minute-to-minute firing capacity would render AR-15s different enough from M16s (which the court assumed were military weapons) to render them subject to Second Amendment protection. Moreover, the court in *Bevis* made a point of stressing that AR-15s can easily be modified with bump stocks or other devices to at least "double the rate at which" they can fire, further demonstrating the practical similarity between the two weapons. *See id.* at 1196. Nothing Plaintiffs have presented casts this into doubt. Additionally, *Bevis* appeared more concerned with whether the firing-rate differentials between AR-15s

and M16s were exacerbated by things like "[f]actoring in reloading time" and the size of the typical magazines used with each weapon, and Plaintiffs point to no evidence suggesting any such difference. *See id.* at 1197; *see also generally* Pls.' Resps. & Objections to Defs.' Rule 56.1 Statement of Material Facts [98].[5]

More importantly, it appears that the Seventh Circuit had this evidence before it in some form when deciding *Bevis*. In his dissent, Judge Manion points to a report from one of the compiled cases "listing the M16's maximum semiautomatic effective rate at 45 rounds per minute" to argue that the AR-15, which would have that same semiautomatic firing rate, was significantly lower than the M16 firing in automatic mode. *Bevis*, 85 F.4th at 1224 (Manion, J., dissenting). The *Bevis* majority was evidently unmoved by this distinction.

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5. Indeed, Plaintiffs' evidence in this case appears to have been broadly similar to that addressed in *Bevis*, as Plaintiffs seem to have relied on publicly available studies and information as opposed to producing expert reports during discovery. (*See* Motion to Strike at 6-7 (pointing out that Plaintiffs did not disclose exhibits they use to challenge Defendants' Rule 56.1 statements during discovery).) For example, in addition to the firing-rate evidence discussed above, *Bevis* was not troubled by statistics about the apparent popularity of the weapons at issue including "[o]ne brief['s] assert[ion] that at least 20 million AR-15s and similar rifles are owned by some 16 million citizens," and Plaintiffs stress similar figures here. (*Bevis*, 85 F.4th at 1198; Pls.' Mem. of Law in Supp. of Summ. J. [102] at 8.)

Appendix B

CONCLUSION

For the foregoing reasons, the court grants Defendants' motion for summary judgment [80] and denies Plaintiffs' [100]; it also denies Defendants' motion to strike [104] as moot. The Clerk is directed to enter judgment in favor of Defendants. This ruling is final and appealable.

APPENDIX C — CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

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.

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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.

Appendix C

Code of Ordinances of Cook County §§ 54-210–54-215

Sec. 54-210. - Applicability.

(a) The provisions included in this division apply to all persons in Cook County including, but not limited to, persons licensed under this article. (b)As provided in Article VII, Section 6(c), of the State of Illinois Constitution of 1970, if this article conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.

Sec. 54-211. - Definitions.

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

Assault weapon means:

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

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

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

(C) A folding, telescoping or thumbhole stock;

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

(E) A muzzle brake or muzzle compensator;

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

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

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

(B) A folding, telescoping or thumbhole stock;

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

(D) A muzzle brake or muzzle compensator; or

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

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

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

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

(C) A folding, telescoping or thumbhole stock;

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

(E) An ability to accept a detachable magazine; or

(F) A grenade, flare or rocket launcher.

(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, Rock River Arms LAR-47, Vector Arms AK-47, VEPR, WASR-10, WUM, MAADI, Norinco 56S, 56S2, 84S, and 86S;

(ii) AR-10;

(iii) AR-15, Bushmaster XM15, Bushmaster Carbon 15, Bushmaster ACR, Bushmaster MOE series, Armalite M15, Armalite M15-T and 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, HK-USC and HK-PSG-1;

(x) Kel-Tec Sub Rifle, Kel-Tec Sub-2000, SU-16, and RFB;

(xi) Saiga;

(xii) SAR-8, SAR-4800;

(xiii) KS with detachable magazine;

(xiv) SLG 95;

(xv) SLR 95 or 96;

(xvi) Steyr AUG;

(xvii) Sturm, Ruger Mini-14, and Sturm, Ruger & Co. SR556;

(xviii) Tavor;

(xix) All Thompson rifles, including Thompson 1927, Thompson M1, Thompson M1SB, Thompson T1100D, Thompson T150D, Thompson T1B, Thompson T1B100D, Thompson T1B50D, Thompson T1BSB, Thompson T1-C, Thompson T1D, Thompson T1SB, Thompson T5, Thompson T5100D, Thompson TM1, Thompson TM1C and Thompson 1927 Commando;

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

(xxi) Barret REC7, Barrett M82A1, Barrett M107A1;

(xxii) Colt Match Target Rifles;

(xxiii) Double Star AR Rifles;

(xxiv) DPMS Tactical Rifles;

(xxv) Heckler & Koch MR556;

(xxvi) Remington R-15 Rifles;

(xxvii) Rock River Arms LAR-15;

(xxviii) Sig Sauer SIG516 Rifles, SIG AMT, SIG PE 57, Sig Saucer SG 550, and Sig Saucer SG 551;

(xxix) Smith & Wesson M&P15;

(xxx) Stag Arms AR;

(xxxi) Baretta CX4 Storm;

(xxxii) CETME Sporter;

(xxxiii) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR 110C;

(xxxiv) Fabrique Nationale/FN Herstal FAL, LAR, 22 FNC, 308 Match, L1A1 Sporter, PS90, SCAR, and FS2000;

(xxxv) Feather Industries AT-9;

(xxxvi) Galil Model AR and Model ARM;

(xxxvii) Springfield Armory SAR-48;

(xxxviii) Steyr AUG;

(xxxix) UMAREX UZI Rifle;

(xl) UZI Mini Carbine, UZI Model A Carbine, and UZI Model B Carbine;

(xli) Valmet M62S. M71S, and M78;

(xlii) Vector Arms UZI Type;

(xliii) Weaver Arms Nighthawk; and

(xliv) Wilkinson Arms Linda Carbine

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

(i) All AK-47 types, including Centurion 39 AK handgun, Draco AK-47 handgun, HCR AK-47 handgun, 10 Inc. Hellpup, AK-47 handgun, Krinkov handgun, Mini Draco AK-47 handgun, and Yugo Krebs Krink handgun.

(ii) All AR-15 types, including American Spirit AR-15 handgun, Bushmaster Carbon 15 handgun, DoubleStar Corporation AR handgun, DPMS AR-15 handgun, Olympic Arms AR-15 handgun and Rock River Arms LAR 15 handgun;

(iii) Calico Liberty handguns;

(iv) DSA SA58 PKP FAL handgun;

(v) Encom MP-9 and MP-45;

(vi) Heckler & Koch model SP-89 handgun;

(vii) Intratec AB-10, TEC-22 Scorpion, TEC-9 and TEC-DC9;

(viii) Kel-Tec PLR 16 handgun;

(ix) MAC-IO, MAC-11, Masterpiece Arms MPA A930 Mini Pistol, MPA460 Pistol, MPA Tactical Pistol, MPA 3 and MPA Mini Tactical Pistol;

(x) Military Armament Corp. Ingram M-11 and Velocity Arms VMAC;

(xi) Sig Sauer P556 handgun;

(xii) Sites Spectre;

(xiii) All Thompson types, including the Thompson TA510D and Thompson TA5;

(xiv) Olympic Arms OA;

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

(xvi) All UZI types, including Micro-UZI.

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

(i) Armscor 30 BG;

(ii) SPAS 12 or LAW 12;

(iii) Striker 12;

(iv) Streetsweeper;

(v) All IZHMASH Saiga 12 types, including the IZHMASH Saiga 12, IZHMASH Saiga 12S, IZHMASH Saiga 12S EXP-01, IZHMASH Saiga 12K, IZHMASH Saiga 12K-030, and IZHMASH Saiga 12K-040 Taktika.

(D) All belt-fed semiautomatic firearms, including TNWM2HB.

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

Barrel Shroud means a shroud that is attached to, or partially or completely encircles, the barrel of a firearm so that the shroud protects the user of the firearm from heat generated by the barrel. The term does not include (i) a slide that partially or completely encloses the barrel: or (ii) an extension of the stock along the bottom of the barrel which does not completely or substantially encircle the barrel.

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

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

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

(2) A 22-caliber tube ammunition feeding device.

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

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

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

Rocket means any simple or complex tube-like device containing combustibles that on being ignited liberate gases whose action propels the device through the air and has a propellant charge of not more than four ounces.

Grenade, flare or *rocket launcher* means an attachment for use on a firearm that is designed to propel a grenade, flare, rocket, or other similar destructive device.

Belt-fed semiautomatic firearm means any repeating firearm that: (i) utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round: (ii) requires a separate pull of the trigger to fire each cartridge: and (iii) has the capacity to accept a belt ammunition feeding device.

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

(a) It shall be unlawful for any person to manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire, carry or possess any assault weapon or large capacity magazine in Cook County. This subsection shall not apply to: (1) The sale or transfer to, or possession

by any officer, agent, or employee of Cook County or any other municipality or state or of the United States, members of the armed forces of the United States; or the organized militia of this or any other state; or peace officers to the extent that any such person named in this subsection is otherwise authorized to acquire or possess an assault weapon and/or large capacity magazine and does so while acting within the scope of his or her duties; (2) Transportation of assault weapons or large capacity magazine if such weapons are broken down and in a nonfunctioning state and are not immediately accessible to any person. (b) Any assault weapon or large capacity magazine possessed, carried, sold or transferred in violation of Subsection (a) of this section is hereby declared to be contraband and shall be seized and disposed of in accordance with the provisions of Section 54-213. (c) Any person including persons who are a qualified retired law enforcement officer as defined in 18 U.S.C. § 926C who, prior to the effective date of the ordinance codified in this section, was legally in possession of an assault weapon or large capacity magazine prohibited by this division shall have 60 days from the effective date of the ordinance to do any of the following without being subject to prosecution hereunder: (1) To legally remove the assault weapon or large capacity magazine from within the limits of the County of Cook; or (2) To modify the assault weapon or large capacity magazine either to render it permanently inoperable; or(3)To surrender the assault weapon or large capacity magazine to the Sheriff or his designee for disposal as provided below.

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

(a) Whenever any firearm, assault weapon, or large capacity magazine is surrendered or confiscated pursuant to the terms of this article, the Sheriff shall ascertain whether such firearm is needed as evidence in any matter. (b)If such firearm, assault weapon, or large capacity magazine is not required for evidence it shall be destroyed at the direction of the Sheriff. A record of the date and method of destruction and inventory of the firearm, assault weapon, or large capacity magazine so destroyed shall be maintained.

Sec. 54-214. - Violation; penalty.

(a) Any person found in violation of this division shall be fined not less than $5,000.00 and not more than $10,000.00 and may be sentenced for a term not to exceed more than six months imprisonment. Any subsequent violation of this division shall be punishable by a fine of not less than $10,000.00 and not more than $15,000.00 and may be sentenced for a term not to exceed more than six months imprisonment. (b) It shall not be a violation of this division if a person transporting an assault weapon firearm or ammunition while engaged in interstate travel is in compliance with 18 U.S.C.A. § 926A. There shall be a rebuttable presumption that any person within the county for more than 24 hours is not engaged in interstate travel, and is subject to the provisions of this chapter.

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Sec. 54-215. - Severability.

If any subsection, paragraph, sentence or clause of this division or the application thereof to any person is for any reason deemed to be invalid or unconstitutional, such decision shall not affect, impair or invalidate any remaining subsection, paragraph, sentence or clause hereof or the application of this Section to any other person.