No. 126840 (consolidated with No. 126849)

IN THE
SUPREME COURT OF ILLINOIS

GUNS SAVE LIFE, INC. and
JOHN WILLIAM WOMBACHER III

Plaintiffs-Appellants,

v.

VILLAGE OF DEERFIELD, ILLINOIS,
and HARRIET ROSENTHAL, in her
official capacity as Mayor of the Village of
Deerfield,

Defendants-Appellees.

DANIEL D. EASTERDAY, ILLINOIS
STATE RIFLE ASSOCIATION, and
SECOND AMENDMENT FOUNDATION,

Plaintiffs-Appellants,

v.

VILLAGE OF DEERFIELD, ILLINOIS,

Defendant-Appellee.

Appeal from the Appellate Court of Illinois, Second District,
No. 2-19-0879
There Heard on Appeal from the Circuit Court of Lake County, Illinois
No. 18 CH 498, consolidated into 18 CH 427,
The Honorable Luis A. Berrones, Judge Presiding.

BRIEF OF *AMICI CURIAE* CITY OF EVANSTON, ILLINOIS, CITY OF HIGHLAND PARK, ILLINOIS, CITY OF HIGHWOOD, ILLINOIS, CITY OF MARKHAM, ILLINOIS, CITY OF NORTH CHICAGO, ILLINOIS, AND VILLAGE OF SKOKIE, ILLINOIS IN SUPPORT OF DEFENDANTS-APPELLEES VILLAGE OF DEERFIELD, ET AL.

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7/6/2021 3:46 PM
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STATEMENT OF INTEREST

This appeal presents the question of whether home rule units may amend a lawfully enacted ordinance that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with the Firearm Owners Identification Card Act, 430 ILCS 65/1, *et seq.* (the "FOID Act").

Amici are home rule municipalities that lawfully enacted ordinances regulating the possession or ownership of assault weapons in a manner that is inconsistent with the FOID Act. See EVANSTON, ILL., CODE § 9-8-14, *et seq.* (added July 15, 2013, amended Mar. 23, 2015); HIGHLAND PARK, ILL., CODE § 136.001, *et seq.* (2021); HIGHWOOD, ILL., CODE § 6-7-1, *et seq.* (added June 18, 2013); MARKHAM, ILL., CODE § 137.40, *et seq.* (added July 18, 2013); NORTH CHICAGO, ILL., CODE § 8-10-1, *et seq.* (added July 1, 2013); SKOKIE, ILL., CODE § 70-188, *et seq.* (added July 1, 2013). *Amici* either amended, or may wish to amend, their assault weapons ordinances to address the problems of mass shootings and gun violence with solutions tailored to their local needs. *Amici* either amended, or may wish to amend, their assault weapons regulations to be more or less restrictive than the FOID Act's current and future provisions. Accordingly, *Amici* possess a direct and substantial interest in the outcome of this appeal.

Amici are also in a unique position to assist this Court because they considered the issue in this appeal when they enacted their assault weapons ordinances. Furthermore, *Amici* may assist this Court because

they regularly address issues involving home rule authority, amendments of ordinances, and repeals of ordinances.

ARGUMENT

Amici concur with the arguments set forth in Appellees' brief and the Appellate Court's majority opinion. The purpose of this brief is to highlight that Appellants' statutory construction: (1) prevents home rule units from amending or repealing their lawfully enacted assault weapons bans to allow for *less* restrictive assault weapons regulations; (2) contravenes the FOID Act's exception from home rule preemption for timely-enacted home rule ordinances and amendments; (3) ignores this Court's well-established presumptions against (a) invalidating ordinances, (b) free-wheeling judicial preemption of concurrent home rule authority, and (c) implied repeals of ordinances; and (4) misconstrues Appellees' amended ordinance as prohibiting the ownership of assault weapons.

Home rule units should be allowed to amend their lawfully enacted assault weapons ordinances to address new problems, such as the disturbing trend of mass shootings involving assault weapons, with solutions tailored to their local needs. See *Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 2013 IL 110505, ¶ 29. Like Appellees, some home rule units may amend their assault weapons regulations to be more restrictive by prohibiting additional persons from possessing assault weapons or banning additional assault weapons. Other home rule units may amend their ordinances to be less restrictive by allowing "assault weapons

sanctuary zones" in schools and other targets of mass shootings. But if the constitutional design of home rule is to be respected, courts should allow this "reasonable experimentation to meet local needs, free from veto by voters and elected representatives of other parts of the State who might disagree with the particular approach advanced by the representatives of the locality involved or fail to appreciate the local perception of the problem." See *Kalodimos v. Village of Morton Grove*, 103 Ill.2d 483, 502 (1983).

Because the General Assembly expressly provided that timely-enacted home rule ordinances regulating the ownership or possession of assault weapons "may be amended", see 430 ILCS 65/13.1(c), this Court should affirm that it is the responsibility of "the legislature rather than the courts to keep home rule units in line." See *Palm*, 2013 IL 110505, ¶ 34 (citations, quotations omitted). If Appellees' amended ordinance affects vital State interests, the General Assembly may enact a statute to deny Appellees' home rule exercise at its next legislative session. See *id.* ¶ 44.

Accordingly, this Court should uphold the validity of Appellees' amended assault weapons ordinance. Home rule units may amend a timely-enacted assault weapons ordinance. See 430 ILCS 65/13.1(c). This Court should not, under the guise of statutory construction, hold home rule units "hostage to an ordinance so as to preclude it against future modification or repeal". See *Chicago Limousine Service, Inc. v. City of*

Chicago, 335 Ill.App.3d 489, 498 (1st Dist. 2002). Therefore, this Court should affirm the Appellate Court's decision for the following reasons.

I. THE FOID ACT'S HOME RULE PREEMPTION EXPRESSLY EXCEPTS TIMELY-ENACTED HOME RULE ORDINANCES AND AMENDED ORDINANCES THAT REGULATE THE POSSESSION OR OWNERSHIP OF ASSAULT WEAPONS.

To assist this Court's construction of Section 13.1 of the FOID Act, *Amici* provide some background about the presumed validity of municipal ordinances, Section 13.1 of the FOID Act, and this Court's home rule jurisprudence.

A. APPELLANTS HAVE NOT CLEARLY ESTABLISHED THAT APPELLEES' AMENDED ORDINANCE IS INVALID.

"Municipal ordinances are presumed constitutional, and the challenging party has the burden of establishing a clear constitutional violation." *Accel Entm't Gaming, LLC v. Village of Elmwood Park*, 2015 IL App (1st) 143822, ¶ 28 (citations omitted). "In construing the validity of a municipal ordinance, the same rules are applied as those which govern the construction of statutes." *Napleton v. Village of Hinsdale*, 229 Ill.2d 296, 306 (2008). "This court has a duty to uphold the constitutionality of a statute when reasonably possible, and, therefore, if a statute's construction is doubtful, a court will resolve the doubt in favor of the statute's validity." *Id.* at 306-307 (citations omitted).

Here, this Court should favor Appellees' construction because it is reasonably possible to construe Appellees' amended ordinance as an amendment that merely narrows the scope of persons who may possess

assault weapons within Appellees' corporate limits, and not as an implied repeal or new enactment that prohibits Appellees' residents from owning assault weapons. Prior to the amendment, a person could not possess an assault weapon within Appellees' corporate limits unless s/he complied with the safe storage regulations. After the amendment, a person cannot possess an assault weapon within Appellees' corporate limits unless (1) s/he falls within an excepted class (*e.g.*, law enforcement officer, service member, or qualified retired law enforcement officer), and (2) s/he complies with the safe storage regulations. Thus, the amended ordinance merely narrows the scope of persons who may possess an assault weapon within Appellees' corporate limits.

The Appellate Court's dissenting opinion (at ¶ 86) that Appellees' amended ordinance impermissibly regulates the "ownership" of assault weapons is a red herring. The plain language of Appellees' amended ordinance is (1) expressly limited to regulating the possession of assault weapons, (2) silent about the ownership of assault weapons, and (3) capable of being complied with by removing or transferring an assault weapon from Appellees' corporate limits. Indeed, it is reasonably possible to construe Appellees' amended ordinance as permitting the ownership of assault weapons, so long as such assault weapons are possessed outside of Appellees' corporate limits.

Accordingly, this Court has a duty to uphold the constitutionality of Appellees' amended ordinance because it is reasonably possible to

construe it as an amendment that regulates the possession of assault weapons within Appellees' corporate limits.

B. SECTION 13.1 OF THE FOID ACT IS A LEGISLATIVE COMPROMISE THAT ALLOWS HOME RULE UNITS TO AMEND THEIR TIMELY-ENACTED ASSAULT WEAPONS ORDINANCES.

The General Assembly passed Section 13.1 of the FOID Act in the wake of the Seventh Circuit's decision in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), which held that then-existing Illinois laws generally banning the carrying of firearms in public violated the Second Amendment to the United States Constitution. See *Moore*, 702 F.3d at 942. But *Moore* stayed its mandate to give the General Assembly 180 days to pass legislation consistent with its opinion. See *id.*

Yet the validity of assault weapons bans was left unresolved by *Moore* and the United States Supreme Court's Second Amendment jurisprudence. See generally *Wilson v. County of Cook*, 2012 IL 112026, ¶¶ 35-52 (discussing the legal uncertainty of assault weapons bans). Shortly before the Seventh Circuit announced its decision in *Moore*, this Court considered the validity of Cook County's assault weapons ban. See *Wilson*, 2012 IL 112026. In *Wilson*, this Court held that Cook County's assault weapons ban was not void for vagueness or a denial of equal protection, but directed the Appellate Court to reconsider whether Cook County's assault weapons ban violated the Second Amendment in light of the United States Supreme Court's decision in *McDonald v. City of Chicago*, 561 U.S. 742 (2010). *Id.* at ¶ 58. After several years of litigation, the Federal courts

upheld the validity of Cook County's assault weapon ban. See *Wilson v. Cook Cnty.*, 937 F.3d 1028 (7th Cir. 2019), *cert. denied*, 141 S. Ct. 110 (U.S. June 15, 2020).

Against this backdrop, the General Assembly considered whether to enact uniform statewide assault weapons regulations during the 180-day window imposed by *Moore*. The State's most populous home rule units — Cook County, the City of Chicago, and the City of Aurora — had previously enacted assault weapons bans. But other home rule units had not enacted assault weapons regulations for various reasons. Some relied upon the State's prior restrictions. Others wanted less restrictive assault weapons regulations. And many others desired greater legal clarity before considering any assault weapons regulations.

Not surprisingly, these various competing interests formed the legislative compromise that is the FOID Act's (limited) preemption of home rule assault weapons regulations. See 430 ILCS 65/13.1, which provided in pertinent part that:

> (c) … [T]he regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State. Any ordinance or regulation … that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with [the FOID Act], shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after [July 9, 2013]. … An ordinance or regulation enacted on, before, or within 10 days after [July 9, 2013] may be amended. ….
>
> (e) This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

Thus, section 13.1 of the FOID Act provided that: (1) home rule units may enact ordinances, on or before July 19, 2013, that purport to regulate the ownership or possession of assault weapons in a manner that is inconsistent with the FOID Act; (2) such ordinances may operate concurrently with the State's regulations; (3) such ordinances may be amended; (4) such amendments may be made at any time; and (5) except for such ordinances and amendments, all other home rule measures regulating the possession or ownership of assault weapons are expressly preempted as the exclusive powers and functions of the State. See *id.*

While the General Assembly had 180 days to consider the State's assault weapons regulations before it essentially punted at the last second, it only gave home rule units 10 days to make this same consideration. Ten days was an especially tight window to consider the myriad complex legal, political and policy considerations involved with assault weapons regulations. If home rule units wished to act, they necessarily had to do so in haste among many legal uncertainties. Consequently, the General Assembly expressly provided that any timely-enacted home rule assault weapons ordinance "may be amended." See *id.* The power to make such amendments gave home rule units the necessary flexibility and time to adapt to changing circumstances and to reconsider or improve upon their initial assault weapons regulations.

And consistent with home rule's intended purpose to allow reasonable experimentation to meet local needs, home rule units enacted

various different assault weapons regulations during this 10-day window. Some enacted assault weapons bans that they vigorously defended against subsequent legal challenges. See, e.g., HIGHLAND PARK, ILL., CODE § 136.001, *et seq.* (2021); *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015). Others enacted assault weapons bans that were patterned after Cook County's assault weapons ban, but were subsequently amended to better fit their local needs. See, e.g., EVANSTON, ILL., CODE § 9-8-14, *et seq.* (added July 15, 2013, amended Mar. 23, 2015). Others enacted "faux" assault weapons bans by, for example, banning fully automatic machine guns prohibited by Federal law under their assault weapons ordinances. See, e.g., BUFFALO GROVE, ILL., CODE § 9.92, *et seq.* (added July 15, 2013). These "faux" assault weapons bans were intended to avoid a legal challenge upon enactment, preserve home rule regulatory authority, and be amended later, if necessary.

Furthermore, other home rule units enacted ordinances that regulated the storage, possession and carrying of assault weapons, but did not generally ban assault weapons. See, e.g., ROSEMONT, ILL., CODE § 7-11A-1, *et seq.* (added July 10, 2013). This latter approach was intended to offer a less restrictive policy option than a full assault weapons ban, avoid a legal challenge upon enactment, preserve home rule regulatory authority, and be amended later, if necessary.

Accordingly, the FOID Act's home rule preemption and exceptions were a legislative compromise forged against the background of significant

legal uncertainty concerning the validity of assault weapons bans. If, as Appellants contend, the General Assembly intended for home rule units to be held hostage to the ordinances that they enacted within the prescribed 10-day window, then it would not have expressly allowed that such ordinances "may be amended." See 430 ILCS 65/13.1(c). Thus, the plain language of the FOID Act's home rule preemption is clear: If home rule units enacted *any* ordinance that purports to regulate the ownership or possession of assault weapons within the prescribed 10-day window, they could freely amend such ordinances any time in the future; however, if they failed to enact any such ordinances within the 10-day window, they would be preempted from doing so in the future.

C. THE GENERAL ASSEMBLY MAY CREATE EXCEPTIONS TO HOME RULE PREEMPTION.

The general principles governing this Court's home rule jurisprudence are set forth in *Palm*, 2013 IL 110505, ¶¶ 29-44, and the Appellate Court's opinion at ¶¶ 30-31.

"Home rule is based on the assumption that municipalities should be allowed to address problems with solutions tailored to their local needs." *Palm*, 2013 IL 110505, ¶ 29. "Thus, the Illinois Constitution provides home rule units with the same powers as the sovereign, except when those powers are limited by the General Assembly." *Id.* at ¶ 32. "To restrict the concurrent exercise of home rule power, the General Assembly must enact a law *specifically* stating home rule authority is limited." *Id.*

(original emphasis). Absent the Generally Assembly's use of specific language to limit or deny the concurrent exercise of home rule power, "an ordinance may supersede or limit a conflicting statute." *Id.* at ¶ 41. "In sum, the constitutional framework places almost exclusive reliance on the General Assembly to determine whether home rule authority should be preempted." *Id.* at ¶ 44.

Here, the parties seem to agree that: (1) home rule units that timely-enacted assault weapons ordinances may exercise and perform concurrently with the State; (2) such ordinances may be amended; and (3) the General Assembly may allow for such a concurrent exercise while also specifically denying all other home rule powers and functions. The parties appear to dispute whether the General Assembly's preemption of home rule powers and functions in 430 ILCS 65/13.1(e) effectively overrides the General Assembly's exceptions to said preemption provided by 430 ILCS 65/13.1(c).

The Appellate Court's application (at ¶¶ 39-41) of standard principles of statutory construction, which require that courts give a reasonable meaning to the entire statutory language of the FOID Act, should be sufficient to resolve this question in Appellees' favor.

Moreover, *Amici* observe that the General Assembly commonly makes exceptions to home rule preemption, most typically for Cook County and the City of Chicago. See, e.g., S.B. 539, 102nd Leg. (Ill. 2021) (amending 25 ILCS 170/11.2 to specifically limit or deny home rule powers

"Other than a municipality with a population over 500,000"); 510 ILCS 45/7-8 (West 2021) (allowing home rule municipalities within a county having 3,000,000 or more inhabitants to prohibit or regulate the keeping of pigeons, but allowing all other home rule municipalities to only regulate the keeping of pigeons); see generally *City of Burbank v. Czaja*, 331 Ill.App.3d 369, 374-378 (1st Dist. 2002) (explaining the effect of the legislature's exceptions to home rule preemption on ordinances).

When the legislature makes express exceptions to home rule preemption, courts should give effect to the statutory language providing for both the preemption and the exceptions to said preemption. See, e.g., *Czaja*, 331 Ill.App.3d at 378. "Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *Chicago Teachers Union, Local No. 1 v. Board of Education of the City of Chicago*, 2012 IL 112566, ¶ 15. This Court should not "apply a free-wheeling preemption rule to the exercise of home rule power" by reading the General Assembly's express exceptions to home rule preemption out of the statute. See *Kalodimos*, 103 Ill.2d at 502. If the General Assembly wishes to deny or limit Appellees' amended assault weapons ordinance, it may enact a statute expressly providing for that action at its next session. See *Palm*, 2013 IL 110505, ¶ 44.

Accordingly, this Court should conclude that section 13.1 of the FOID Act: (1) permits timely-enacted concurrent home rule ordinances and amendments that regulate the possession or ownership of assault

weapons in a manner that is inconsistent with the FOID Act; and (2) denies all other home rule powers and functions to regulate the possession or ownership of assault weapons.

II. APPELLEES' AMENDED ORDINANCE IS A PERMITTED AMENDMENT, AND NOT A REPEAL.

The central question in this appeal is whether Appellees' amended assault weapons ordinance is an amendment or an implied repeal of the original assault weapons ordinance. In their zeal to overturn Appellees' amended assault weapons ordinance, Appellants advocate for a construction that would prohibit home rule units from enacting (1) amended ordinances that provide for less restrictive measures, and (2) repeals of assault weapons bans. Appellants' construction also ignores the FOID Act's intent to freely allow amendments of timely-enacted home rule assault weapons ordinances. Furthermore, this Court should reject Appellants' arbitrary distinction between amendments and implied repeals. *Amici* argue these points as set forth below.

A. APPELLANTS' CONSTRUCTION PROHIBITS AMENDMENTS AND REPEALS THAT ENACT LESS RESTRICTIVE ASSAULT WEAPONS REGULATIONS.

Amici observe that the practical import of Appellants' contention — that Appellees' amended ordinance is a prohibited implied repeal of Appellees' original assault weapons ordinance, and not a permitted amendment under 430 ILCS 65/13.1(c) — necessarily means that home rule units cannot: (1) amend assault weapons ordinances to be less restrictive; and (2) repeal an existing assault weapons ban. For example,

if a home rule unit wanted to amend its assault weapons ban to only regulate the safe possession of assault weapons (*i.e.*, the opposite of Appellees' amended ordinance), then it could not do so under Appellants' construction. Instead, it would be forever held hostage to its original ordinance. This cannot be the law. See *Chicago Limousine Service, Inc.*, 335 Ill.App.3d at 498 ("In construing an ordinance, we are mindful that a municipality cannot be held hostage to an ordinance so as to preclude it against future modification or repeal because of anticipated reliance, when the ordinance itself does not preclude such modification or repeal.").

Moreover, it is not entirely clear from Appellants' briefs and the Appellate Court's dissenting opinion what amendments may be permissible under their construction. Inevitably, any construction that permits some amendments and not others is bound to draw arbitrary lines that will only result in further litigation. Thus, *Amici* respectfully request that Appellants clarify the scope of permissible amendments under Section 13.1(c) of the FOID Act.

B. THE FOID ACT INTENDED FOR HOME RULE UNITS TO HAVE BROAD AND LIBERAL POWERS TO FREELY AMEND THEIR ASSAULT WEAPONS ORDINANCES.

The legislative text and history of the FOID Act's home rule preemption demonstrate that the General Assembly intended for home rule units to possess broad and liberal powers to freely amend their home rule ordinances for several reasons.

First, unlike the express conditions and limitations that the General Assembly put on the enactment of an initial home rule assault weapons ordinance (*i.e.*, the strict time deadline for enacting an ordinance; the requirement that such ordinances be inconsistent with the FOID Act), the General Assembly did not put any conditions or limitations on the power to amend such ordinances, except for the submission requirements of Section 13.3 of the FOID Act. See 430 ILCS 65/13.1(c). There is no time deadline imposed for such amendments. And if the General Assembly intended to preempt home rule units that initially regulated only the safe possession of assault weapons from later banning assault weapons, then the General Assembly knew how to draft language providing that some home rule units may both regulate and ban a subject, while others could only regulate the same subject. See, e.g., 510 ILCS 45/7.

"It is well settled that courts cannot depart from the plain language of a statute by reading into it exceptions, limitations, or conditions not expressed by the legislature." *In re Haley D.*, 2011 IL 110886, ¶ 73. The FOID Act does not provide for any exceptions, limitations, or conditions on the home rule power to amend a lawfully enacted assault weapons ordinance. See 430 ILCS 65/13.1(c). Thus, this Court should reject Appellants' request to depart from the plain language of the FOID Act to read into it exceptions, limitations, or conditions that the legislature did not express.

Second, the Illinois Constitution provides that the "[p]owers and functions of home rule units shall be construed liberally." Ill. Const. 1970, art. VII, § 6(m). Thus, the General Assembly similarly intended that the powers and functions of home rule units to amend their assault weapons ordinances should be "construed liberally." See *id.* If any home rule amendment falls out of line with vital State interests, the General Assembly may pass the appropriate legislation to restrict or deny said amendment at its next legislative session. See *Palm*, 2013 IL 110505, ¶ 42.

Third, Appellants' briefs ignore that Appellees' "placeholder theory" is supported by both the plain language of the FOID Act. The General Assembly provided that home rule units may enact an ordinance that "*purports* to regulate the ownership or possession of assault weapons …" See 430 ILCS 65/13.1(c) (emphasis added). The common meaning of "purport" is "to have the often specious appearance of being, intending, or claiming (something implied or inferred)." See https://www.merriam-webster.com/dictionary/purport (last visited June 21, 2021). Thus, the General Assembly expressly intended for the "faux" assault weapons regulations enacted by home rule units like the Village of Buffalo Grove's "assault weapons ban" of machine guns. Therefore, it is illogical to conclude that the General Assembly did not intend for home rule units to later amend any "faux" regulations.

Fourth, the history of the FOID Act supports that a broad and liberal construction should be given to home rule powers to amend assault

weapons ordinances. The Appellate Court's opinion at ¶ 65 sets forth the pertinent legislative history demonstrating the intent to freely allow such amendments. Moreover, the circumstances encompassing the FOID Act's limited 10-day window for home rule units to adopt their initial assault weapons ordinances combined with the FOID Act's unlimited power to amend show that the legislature wanted to give home rule units the necessary power and flexibility to amend their hastily enacted ordinances in light of changing legal, policy or political events.

Fifth, the General Assembly expressly allowed for home rule units to enact various different solutions for their assault weapons regulations. It seems absurd and antithetical to the very purpose of home rule to prohibit home rule units from amending their assault weapons regulations to apply the benefits of such local experimentations. If a home rule unit believes that its assault weapons ban no longer makes sound policy, but still wants to regulate the safe storage of assault weapons to prevent the accidental use of assault weapons, then it should be able to look to the Village of Rosemont's regulations and amend its assault weapons ban accordingly. And conversely, if a home rule unit believes that the only safe storage and carrying of assault weapons is to ban the possession of assault weapons in light of the disturbing trend of mass shootings, then it should be able to look to various assault weapons bans and amend its ordinance.

Accordingly, the FOID Act's text and history support a broad and liberally construed home rule power to amend timely-enacted assault weapons ordinances.

C. THIS COURT SHOULD REJECT APPELLANTS' ARBITRARY DISTINCTION BETWEEN AMENDMENTS AND IMPLIED REPEALS.

This Court should hold that an amendment purports to amend a prior statute by altering, adding or removing the prior statutory text; whereas, a repeal should expressly abrogate, recall or revoke a prior statute so as to effectuate the end of its existence. See, e.g., *Village of Forest Park v. Wojchiechowski*, 29 Ill.2d 435, 438 (1963); 1A Sutherland Statutory Construction § 23:2 (7th ed.); compare 82 C.J.S. Statutes § 288 (June 2021) with 82 C.J.S. Statutes § 336 (June 2021); 6 McQuillin Mun. Corp. § 21:18 (3d ed.) (Aug. 2020) ("Implied … repeals are not favored by the courts and are to be avoided, where possible, by any reasonable construction; the rule is applicable to municipal ordinances … Indeed, it is a cardinal rule of construction that repeals by implication are not favored, and it is presumed that an ordinance or statute has not been repealed. Accordingly, in the absence of an express repealer, the indication of an intention to effect a repeal of prior legislation must be clear and compelling.").

"It is impossible to define satisfactorily the nature of an amendatory act." 1A Sutherland Statutory Construction § 22:1 (7th ed.). "An amendment as applied to statutes means an alteration in the draft of a bill

proposed or in a law already passed, or a legislative act designed to change some prior and existing law by adding to or taking from it some particular provision." 82 C.J.S. Statutes § 288 (June 2021). By contrast, "the repeal of a statute, is the recalling or revoking of the statute, effectuating its end or nonexistence. It signifies the abrogation of one statute by another." 82 C.J.S. Statutes § 336 (June 2021).

"The distinction between repeal and amendment, as these terms are used by courts, is arbitrary and based largely on legislative usage. When a section is added to an act or a provision added to a section, legislatures commonly entitle the act an amendment. … When a provision is withdrawn from a section, legislatures call the act an *amendment* particularly when a provision is added to replace the one withdrawn. However, when an entire act or section is abrogated and no new section is added to replace it, legislatures label the act accomplishing this result a *repeal.* … This arbitrary distinction has been followed by courts, and they have developed separate rules of construction for each. However, they have recognized that frequently an act purporting to be an amendment has the same qualitative effect as a repeal—the abrogation of an existing statutory provision—and have therefore applied the term "implied repeal" and the rules of construction applicable to repeals to such amendments. … Thus, as used by courts, repeal and amendment are not mutually exclusive terms, and both are frequently applied to the same act." 1A Sutherland Statutory Construction § 23:2 (7th ed.) (original emphasis).

Illinois law generally accords with these treatises. See, e.g., *Village of Forest Park*, 29 Ill.2d at 438. As this Court recognized long ago, "It is the general rule that an amendatory ordinance does not purport to repeal an ordinance as it previously existed but that it merely changes or alters the original ordinance, or some of its provisions, to read as stated in the amendment, with the original ordinance continuing to operate in its changed form. Thus, where an amendatory ordinance is enacted which re-enacts some of the provisions of the former ordinance, such portions of the old ordinance as are repeated or retained, either literally or substantially, are to be regarded as a continuation of the old ordinance and not as the enactment of a new ordinance on the subject or as her repeal of the former ordinance. The portions of the amended section which are merely copied without change are not to be considered as repealed and again enacted, but to have been the law all along; and the new parts or the changed portions are not to be taken to have been the law at any time prior to the passage of the amended act. The change takes place prospectively according to the general rule." *Id.*

Here, this Court should abandon the archaic, irrelevant and confusing distinction between amendments and implied repeals. See 1A Sutherland Statutory Construction § 23:2 (7th ed.) (original emphasis). Indeed, it seems quite probable that the General Assembly intended for the terms repeal and amendment to be used interchangeably under section 13.1(c) of the FOID Act, so that home rule units would not be

preempted from repealing their assault weapons ordinances. See *id.* But fundamentally, the arbitrary distinction between amendments and implied repeals was intended to uphold the validity of legislation. See *id.* It would be terribly ironic if, under the guise of statutory interpretation, this Court invalidated Appellees' clearly expressed intent to amend its assault weapons ordinance. To avoid future mischief, this Court should hold that any intended repeal must be expressly stated by the statutory text.

But even if this Court wishes to continue this arbitrary distinction, it is apparent that Appellees' amended ordinance is an amendment, and not an implied repeal. Appellees' amended ordinance purports to amend the prior ordinance by its title, preamble and operative text. It alters, adds or removes the prior statutory text that generally permitted the safe storage and carrying of assault weapons to an amended text that limits such safe storage and carrying of assault weapons to an excepted few. It does not expressly purport to repeal the prior ordinance whatsoever. And even if Appellants could establish that the amended ordinance impliedly repeals the prior ordinance, the amended ordinance replaces any such impliedly repealed provisions with new added provisions, so as to make it more like an amendment than an implied repeal. See *id.*

Accordingly, this Court should construe Appellees' amended ordinance to uphold its validity. Appellees' corporate authorities clearly intended that the amended ordinance be an amendment. If Appellants disagree with the wisdom of the amended ordinance, they should appeal

to Appellees' voters or the General Assembly. This Court should not, under the guise of statutory interpretation, usurp Appellees' home rule powers to amend their assault weapons regulations.

CONCLUSION

Therefore, for all of the foregoing reasons, this Court should affirm the judgment of the Appellate Court.

IN MEMORIAM

This brief is dedicated to the memory of Peter Coblentz, who served as the Village Attorney for the Village of Deerfield and the Village of Rosemont, until his disability and death from brain cancer in 2018.

Respectfully submitted,

The City of Evanston, Illinois, City of Highland Park, Illinois, City of Highwood, Illinois, City of Markham, Illinois, City of North Chicago, Illinois and Village of Skokie, Illinois

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 5,174 words.

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