

No. 126840

In the  
**Supreme Court of Illinois**

---

GUNS SAVE LIFE, INC., *et al.*,*Plaintiffs-Appellants,*

v.

VILLAGE OF DEERFIELD, ILLINOIS, *et al.**Defendants-Appellees.*


---

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

---

**BRIEF OF PLAINTIFFS-APPELLANTS**

David H. Thompson (ARDC No. 6316017)\*  
 Peter A. Patterson (ARDC No. 6316019)\*  
 Brian W. Barnes (ARDC No. 6328826)\*  
 COOPER & KIRK, PLLC  
 1523 New Hampshire Avenue, N.W.  
 Washington, DC 20036  
 (202) 202-9600  
 dthompson@cooperkirk.com  
 ppatterson@cooperkirk.com  
 bbarnes@cooperkirk.com

Christian D. Ambler (ARDC No. 6228749)  
 STONE & JOHNSON, CHTD.  
 111 West Washington Street  
 Suite 1800a  
 Chicago, Illinois 60602  
 (312) 332-5656  
 cambler@stonejohnsonlaw.com

\*Appearance entered pursuant to Ill. S. Ct.  
 Rule 707

*Attorneys for Plaintiffs-Appellants*

ORAL ARGUMENT REQUESTED

---

E-FILED  
 5/19/2021 4:57 PM  
 Carolyn Taft Grosboll  
 SUPREME COURT CLERK

**TABLE OF CONTENTS**  
**AND**  
**POINTS AND AUTHORITIES**

|  |        |
|--|--------|
| POINTS AND AUTHORITIES .....   | i      |
| NATURE OF THE ACTION .....   | 1      |
| ISSUE PRESENTED FOR REVIEW .....   | 2      |
| STANDARD OF REVIEW .....   | 2      |
| JURISDICTION .....   | 2      |
| CONSTITUTIONAL PROVISIONS, STATUTES, AND<br>ORDINANCES INVOLVED .....  | 4      |
| STATEMENT OF THE FACTS .....   | 6      |
| I. Deerfield’s Ordinances .....  | 6      |
| II. Procedural History .....   | 11     |
| ARGUMENT .....   | 14     |
| I. Assuming Home Rule Units Can Exercise Limited Concurrent<br>Jurisdiction, Deerfield’s 2018 Ordinances Are Invalid. .... | 14     |
| A. Deerfield’s 2018 Ordinances Are Entirely New Substantive Laws<br>and Not Mere “Amendments” to the 2013 Ordinance. ....  | 14     |
| <i>Amendment</i> , BLACK’S LAW DICTIONARY (11th ed. 2019) .....  | 14     |
| <i>Easterday v. Vill. of Deerfield</i> , 2020 IL App (2d) 190879 .....   | 15, 16 |
| ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF<br>LEGAL TEXTS (2012) .....                           | 15     |
| <i>Michigan Ave. Nat’l Bank v. Cnty. of Cook</i> , 191 Ill. 2d 493 (2000) .....  | 15     |
| <i>Brotherhood of R.R. Trainmen v. Baltimore &amp; Ohio R.R. Co.</i> ,<br>331 U.S. 519 (1947) .....                        | 15     |
| <i>Vill. of Park Forest v. Wojciechowski</i> , 29 Ill. 2d 435 (1963) .....   | 16     |
| <i>City of Metropolis v. Gibbons</i> , 334 Ill. 431 (1929) .....   | 16     |
| <i>Culver v. Third Nat. Bank of Chicago</i> , 64 Ill. 528 (1871) .....   | 16, 17 |

|  |                |
|--|----------------|
| <i>Athey v. City of Peru</i> , 22 Ill. App.3d 363 (3d Dist. 1974) .....  | 16, 17, 18     |
| ILL. CONST. art. VII, § 6(h) .....   | 18             |
| 430 ILL. COMP. STAT. 65/13.1(c) .....  | 18             |
| 430 ILL. COMP. STAT. 65/13.1(e) .....  | 18             |
| <i>Murphy-Hylton v. Lieberman Mgmt. Servs, Inc.</i> , 2016 IL 120394.....  | 18             |
| <b>B. Because Deerfield’s 2013 Ordinance Regulated Possession But Not Ownership of So-Called “Assault Weapons,” Deerfield’s Authority to Ban Ownership Has Lapsed.</b> .....     | 19             |
| 430 ILL. COMP. STAT. 65/13.1(c) .....  | 19, 20         |
| <i>Easterday v. Vill. of Deerfield</i> , 2020 IL App (2d) 190879 .....   | 20, 21, 22, 23 |
| 430 ILL. COMP. STAT. 65/3.....   | 21             |
| 430 ILL. COMP. STAT. 65/3(a-15).....   | 21, 22         |
| <i>People v. Adams</i> , 144 Ill. 2d 381 (1991).....   | 23             |
| <i>City of Chicago v. Roman</i> , 184 Ill. 2d 504 (1998).....  | 23             |
| <i>Burns v. Mun. Officers Electoral Bd. of Vill. of Elk Grove Vill.</i> ,<br>2020 IL 125714.....   | 23             |
| <b>II. The FOID Card Act and Article VII, Section 6(h) of the Illinois Constitution Completely Displace Deerfield’s Authority to Regulate So-Called “Assault Weapons.”</b> ..... | 23             |
| ILL. CONST. art. VII, § 6(h) .....   | 24             |
| <i>Schillerstrom Homes, Inc. v. City of Naperville</i> , 198 Ill. 2d 281 (2001) .....  | 24             |
| <i>City of Chicago v. Roman</i> , 184 Ill. 2d 504 (1998).....  | 24             |
| <i>Vill. of Bolingbrook v. Citizens Utilities Co. of Ill.</i> , 158 Ill. 2d 133 (1994).....  | 24             |
| <i>Bd. of Trs. of the Barrington Police Pension Fund v. Vill. of Barrington Ethics Bd.</i> , 287 Ill. App.3d 614 (1st Dist. 1997).....   | 24             |
| <i>City of Chicago v. StubHub, Inc.</i> , 2011 IL 111127.....  | 24             |

|  |        |
|--|--------|
| ILL. CONST. art. VII, § 6(i) .....   | 25     |
| David C. Baum, <i>A Tentative Survey of Illinois Home Rule (Part II): Legislative Control, Transition Problems, and Intergovernmental Conflict</i> , 1972 U. ILL. L.F. 559 ..... | 25     |
| <i>Burns v. Mun. Officers Electoral Bd. of Vill. of Elk Grove Vill.</i> , 2020 IL 125714.....  | 25     |
| 520 ILL. COMP. STAT. 5/2.1 .....   | 25     |
| 510 ILL. COMP. STAT. 45/8.....   | 25, 26 |
| <i>City of Chicago v. Roman</i> , 184 Ill. 2d 504 (1998).....  | 26, 27 |
| 430 ILL. COMP. STAT. 65/13.1(c) .....  | 26, 27 |
| 430 ILL. COMP. STAT. 65/13.1(e) .....  | 26     |
| <i>Scadron v. City of Des Plaines</i> , 153 Ill. 2d 164 (1992) .....   | 27     |
| <b>CONCLUSION</b> .....  | 28     |

## NATURE OF THE ACTION

The General Assembly decided in 2013 that the regulation of “assault weapons” was an issue of statewide importance to be handled on a statewide basis under law applicable statewide. Accordingly, the General Assembly preempted local regulation of the ownership and possession of “assault weapons.” In 2018, the Village of Deerfield decided to establish its own policy for its municipality—contrary to state law. Through two ordinances, Deerfield attempted to effectively ban the ownership and possession of assault weapons and certain “large capacity magazines” for all but a select few within its borders. Plaintiffs—Guns Save Life, Inc. and John William Wombacher III—brought this suit, alleging that Deerfield’s 2018 ban violated, *inter alia*, the General Assembly’s decision to preempt such local regulations.

The issues raised by Plaintiffs in this appeal are not about whether Deerfield’s ban makes for good policy or even whether Deerfield’s ban is consistent with the guarantees found in the federal and state constitutions for the right to keep and bear arms. Instead, the issue before the Court is who decides the policy regarding assault weapons in Illinois. Invoking its prerogative under Article VII, Section 6(h) of the Illinois Constitution, the General Assembly took on that responsibility for itself when it amended the FOID Card Act in 2013, stating that “the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State.” 430 ILL. COMP. STAT. 65/13.1(c); *see also id.* at 65/13.1(e). Under the FOID Card Act as amended, Deerfield cannot assume regulatory authority for itself that the General Assembly did not allow. Nevertheless, that is what Deerfield attempted to do with its 2018 ban.

In March 2019, the Circuit Court of the Nineteenth Judicial Circuit granted summary judgment in favor of Plaintiffs’ preemption claim and entered an order permanently enjoining Deerfield from enforcing any provision of its ordinances that purport to make it “unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances.” App. 22. A divided Second District affirmed in part and reversed in part. Plaintiffs petitioned this Court for leave to appeal pursuant to Supreme Court Rule 315, which was granted on March 24, 2021. No question is raised on the pleadings.

### **ISSUE PRESENTED FOR REVIEW**

1. Whether the Village of Deerfield’s 2018 Ordinances are preempted by the FOID Card Act 430 ILL. COMP. STAT. 65/13.1.

### **STANDARD OF REVIEW**

Whether Deerfield’s 2018 ordinances are preempted by statewide law is a question of the “interpretation of statutes and ordinances” that the Court reviews *de novo*. *Hawthorne v. Vill. of Olympia Fields*, 204 Ill.2d 243, 254–55 (2003). Similarly, the Court “review[s] summary judgment orders *de novo*.” *State Farm Mut. Auto. Ins. Co. v. Elmore*, 2020 IL 125441, ¶ 19.

### **JURISDICTION**

The Court has jurisdiction under Supreme Court Rule 315. On March 24, 2021, this Court allowed Plaintiffs’ timely petition for leave to appeal and consolidated this case with *Easterday v. Village of Deerfield*, No. 126840. *See Guns Save Life, Inc. v. Vill. of Deerfield*, No. 126849, 2021 WL 1226740 (Ill. March 24, 2021) (App. 23).

The Plaintiffs in this action took the position below that the Second District lacked appellate jurisdiction. In short, Plaintiffs argued that Deerfield failed to timely appeal the final judgment in *Easterday*, which was “fatal” to review of the permanent injunction in that action and consequently in *Guns Save Life*. App. 131. The circuit court issued its permanent injunction in *Easterday* and *Guns Save Life* on the same day in two separate orders. But the summary judgment order in *Easterday* resolved all claims in that lawsuit; it was thus final and needed to be immediately appealed. Deerfield failed to follow the proper procedure to appeal *Easterday*, and its appeal was dismissed. App. 128–32. Deerfield’s failure to properly appeal the judgment in *Easterday* rendered it unappealable. Plaintiffs thus argued that because the *Easterday* permanent injunction would remain in place irrespective of any proceedings in *Guns Save Life*, it was “impossible for the reviewing court to grant effectual relief to” Deerfield. *In re Andrea F.*, 208 Ill. 2d 148, 156 (2003). The *Guns Save Life* appeal was mooted by the unappealable permanent injunction in *Easterday*.

The Second District held otherwise, ruling that the two cases merged into a single action when they were consolidated. App. 141–44. The Second District held that this merger allowed Deerfield to *still* appeal the *Easterday* judgment after the circuit court’s Rule 304 certification for an interlocutory appeal. App. 143–44. Plaintiffs argued below that the *Easterday* and *Guns Save Life* actions did not merge into one suit, but instead any “consolidation” was to simplify administrative matters like scheduling as the two cases maintained their separate identities with two different summary judgment orders for two different cases with two different docket numbers and two different sets of claims. The

Easterday plaintiffs raised the issue of the Second District's appellate jurisdiction in their Rule 315 Petition to this Court.

Plaintiffs continue to believe the Second District lacked appellate jurisdiction. The Second District's lack of jurisdiction would be an independent basis to vacate its decision.

**CONSTITUTIONAL PROVISIONS, STATUTES,  
AND ORDINANCES INVOLVED**

Article VII, Section 6 of the Illinois Constitution provides, in relevant part:

(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.

(i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.

Section 13.1 of the FOID Card Act provides, in relevant part:

(c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly. Any ordinance or regulation described in this subsection (c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid. An

ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended. The enactment or amendment of ordinances under this subsection (c) are subject to the submission requirements of Section 13.3. For the purposes of this subsection, “assault weapons” means firearms designated by either make or model or by a test or list of cosmetic features that cumulatively would place the firearm into a definition of “assault weapon” under the ordinance.

. . .

(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.

Section 1 of Deerfield Ordinance No. O-13-24 provides, in relevant part:

Sec. 15-87. Safe Storage of Assault Weapons; Exceptions.

(a) Safe Storage. It shall be unlawful to store or keep any assault weapon in the Village unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.

(b) Self defense exception. No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self-defense or in defense of another.

Section 1 of Deerfield Ordinance No. O-18-06 provides, in relevant part:

Sec. 15-87. Safe Storage of Assault Weapons; Exceptions.

(a) ~~Safe Storage.~~ It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon in the Village. ~~unless such weapon is secured in a locked container or equipped with a tamper resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.~~

(b) ~~Self defense exception.~~ No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self defense or in defense of another.

Section 1 of Deerfield Ordinance No. O-18-19 provides, in relevant part:

Sec. 15-87. ~~Safe Storage of~~ Assault Weapons **and Large Capacity Magazines Prohibited**; Exceptions.

(a) It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon **or large capacity magazine** in the Village.

## STATEMENT OF THE FACTS

### **I. Deerfield's Ordinances**

On July 9, 2013, Public Act 98-63 became effective. In this Act, the General Assembly added language to the FOID Card Act and enacted the Firearm Concealed Carry Act. Among the provisions added to the FOID Card Act, the General Assembly provided

that “the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State.” 430 ILL. COMP. STAT. 65/13.1(c). The Act continued to provide that

[a]ny ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly.”

*Id.* The Act also included language that “[a]n ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended.” *Id.* But to eliminate any uncertainty as to the division of authority in the State with respect to “assault weapon” regulation, the General Assembly reiterated in a subsequent subsection that “[t]his 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.” *Id.* at 65/13.1(e).

In the Firearm Concealed Carry Act, the General Assembly similarly sought to preempt home rule unit regulation of handguns. In Section 90, the General Assembly stated that “[t]he regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State.” 430 ILL. COMP. STAT. 66/90. Accordingly, “[t]his 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.” *Id.* Thus, with these twin provisions, the General Assembly established that the regulation of so-called “assault weapons” and handguns would be the exclusive province of the General Assembly and regulated on a statewide basis.

Shortly before Public Act 98-63 went into effect, the Village of Deerfield, a home rule unit, enacted its first ever “assault weapon” regulation in ordinance No. O-13-24 (the “2013 Ordinance”) on July 1, 2013. App. 107. The ordinance defined “assault weapon” to include a subset of semiautomatic firearms denoted by model or particular feature and defined “large capacity magazines” to include, with limited exceptions, any magazine capable of holding more than ten rounds of ammunition. App. 109–11. Plaintiffs will use these terms because those are the terms that are defined in the statutes and ordinances at issue here. But it bears emphasis that “[p]rior to 1989, the term ‘assault weapon’ did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists.” *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting). Anti-gun publicists promoting “assault weapons” bans have exploited the public’s confusion over the difference between fully automatic machine guns, which have been heavily regulated under federal law since 1934 and banned outright for civilians, with very limited exceptions, since 1986, *see* 18 U.S.C. § 922(o), versus semiautomatic “assault weapons,” which is an invented category that includes many of the nation’s most popular rifles. The difference is that unlike a fully automatic machine gun, semiautomatic “assault weapons” will not fire continuously with one pull of the trigger. Rather, a semiautomatic firearm requires the user to pull the trigger each time he or she wants to discharge a round, and semiautomatic firearms “traditionally have been widely accepted as lawful possessions.” *Staples v. United States*, 511 U.S. 600, 602 n.1, 612 (1994).

It is similarly misleading to label magazines that are a standard feature on many of the nation’s most popular firearms as “large capacity.” *Duncan v. Becerra*, 366 F. Supp. 3d 1131, 1143 (S.D. Cal. 2019), *aff’d*, 970 F.3d 1133 (9th Cir. 2020), *reh’g en banc*

granted, opinion vacated, 988 F.3d 1209 (9th Cir. 2021). In fact, “half of all magazines in America hold more than ten rounds.” *Duncan*, 970 F.3d at 1142; *see also* David B. Kopel, *The History of Firearm Magazines and Magazine Prohibitions*, 78 ALB. L. REV. 849, 872 (2015) (“[M]agazines of more than ten rounds are more common than ever before. They comprise about forty-seven percent of magazines currently possessed by Americans today.”). There are many reasons why a law-abiding citizen would not want to be limited to substandard capacity ammunition magazines. The most obvious is that a criminal chooses the time and place of a violent attack and the means of that attack. By definition, a criminal is not following the law and consequently is highly unlikely to respect a municipal ban on magazine size—particularly when standard capacity magazines are lawful, and therefore available for purchase, in surrounding jurisdictions. A ban on “large capacity” magazines therefore puts law-abiding citizens at a disadvantage if they must defend themselves. It is not surprising then that Deerfield’s 2013 Ordinance did not ban or otherwise regulate what it called “large capacity magazines”—the 2013 Ordinance only defined them.

The 2013 Ordinance did regulate what it termed “assault weapons.” Implicitly recognizing that Deerfield’s residents could both own and possess what it termed “assault weapons,” the 2013 Ordinance set out certain requirements for the storage and transportation of those firearms within the Village. Specifically, the 2013 Ordinance provided with respect to storage:

Sec. 15-87 Safe Storage of Assault Weapons; Exceptions

Safe Storage. It shall be unlawful to store or keep any assault weapons in the Village, unless such a weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such a weapon inoperable by any person

other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.

App. 111–12. The transportation regulation largely mirrored State law on transporting firearms, *see* 720 ILL. COMP. STAT. 5/24-1.6(c), thus the key operative provision of the ordinance was the storage provision. Under the above-specifications, Deerfield regulated the storage of firearms that its residents could lawfully own and possess. After all, the 2013 Ordinance specifically requires that a gun lock or locked container “render such weapon inoperable by any person *other than the owner* or other lawfully authorized user.” App. 111–12 (emphasis added). And the storage requirement does not apply when “such weapon” is “being carried by or under the control of the owner or other lawfully authorized user.” App. 112. In other words, Deerfield did not extend its storage and locking requirements when *owners* themselves were physically in control of their firearms. And Deerfield also included an exception for self-defense. App. 112. During this same time period, “at least 16 municipalities” enacted ordinances purporting to regulate or outright ban so-called “assault weapons.” *By Deadline, Few Towns Pass Assault Weapons Bans*, NBC 5 CHICAGO (July 20, 2013), <https://bit.ly/3bjeBTI>.

Nearly five years later, Deerfield enacted a wholesale change in its firearm regulation in two ordinances, No. O-18-06 and No. O-18-19 (collectively, the “2018 Ordinances”). App. 91–106. No. O-18-06 made it unlawful for village residents, other than members of the military and law enforcement personnel, to “possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon in the Village.” App. 98; Deerfield Municipal Code § 15-87(a). Deerfield also eliminated the self-defense exception. App. 98. After enactment of O-18-06, the original safe storage regulation from 2013 was repealed

in all but name and replaced with a ban. That is graphically illustrated by the changes in the ordinance itself:

Sec. 15-87 Safe Storage of Assault Weapons; Exceptions

~~(a) Safe Storage.—It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon in the Village. unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.~~

~~(b) Self defense exception. No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self defense or in defense of another.~~

App. 98. The subsequent ordinance O-18-19 then departed even further from the 2013 ordinance, adding a ban on “large capacity magazines” and striking the vestigial “Safe Storage of Assault Weapons” title. *See* App. 104. In Deerfield, regulation of how ordinary residents may store or transport so-called “assault weapons” and large capacity magazines was no longer needed because the 2018 Ordinances make it illegal for all but a select few to even have them. As the new section title from O-18-19 made clear, these items were “[p]rohibited.” App. 104.

## **II. Procedural History**

Two groups of plaintiffs brought separate lawsuits challenging Deerfield’s 2018 Ordinances and their ban on so-called “assault weapons” and “large capacity magazines.” In this action (“*Guns Save Life*”), the Plaintiffs alleged that Deerfield’s 2018 Ordinances were preempted by state law and also raised claims under the Takings Clause and Eminent Domain Act, App. 71, 82–89. The plaintiffs in the other action (“*Easterday*”) only raised preemption. On July 27, 2018, the circuit court ordered the cases to be consolidated “for

all future proceedings.” App. 114. The cases retained, however, separate docket numbers and separate filings.

In separate orders, the circuit court granted summary judgment to the plaintiffs in both cases on March 22, 2019. App. 22. The court found that the General Assembly preempted Deerfield’s ban on so-called “assault weapons” and large capacity magazines. Accordingly, the circuit court entered a permanent injunction “enjoining defendant Village of Deerfield, its agents, officials or police department from enforcing any provision of Ordinance No. O-18-06 and Ordinance No. O-18-19 making it unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances.” App. 22. While the circuit court’s orders resolved all claims in the *Easterday* case, the *Guns Save Life* case remained in an interlocutory posture because the circuit court denied summary judgment on the *Guns Save Life* plaintiffs’ takings and eminent domain claims. App. 22. Nonetheless, Deerfield purported to appeal both orders to the Appellate Court of Illinois, Second District.

The Second District dismissed Deerfield’s first appeal for lack of jurisdiction on June 12, 2019 and remanded the case. App. 131–32. Back in the circuit court, Deerfield filed a Rule 304(a) motion to immediately appeal, and the circuit court granted that motion on September 6, 2019. App. 333–34. After determining that the circuit court’s Rule 304(a) order provided a basis for jurisdiction in a second appeal, a divided Second District affirmed in part, and reversed in part. *Easterday v. Vill. of Deerfield*, 2020 IL App (2d) 190879, ¶¶ 19–25, 78–81 (App. 141–44, 167–68).

In its ruling, the Second District unanimously agreed that the Firearm Concealed Carry Act preempted Deerfield’s ban of large capacity magazines “to the extent that

Deerfield's ban . . . regulates ammunition for handguns,” and thus affirmed the permanent injunction in that respect. *Id.* ¶ 78 (App. 167). By contrast, the Second District was divided on Deerfield's ban of so-called “assault weapons” and large capacity magazines for long guns.

The majority found that Deerfield's 2018 ban had not been preempted by the FOID Card Act and thus vacated the circuit court's injunction with respect to Deerfield's “assault weapon” and long gun large capacity magazine ban. *Id.* ¶ 78–81 (App. 167–68). Justice McLaren dissented in part and would have affirmed the circuit court's permanent injunction in full. *Id.* ¶ 83 (App. 168). Justice McLaren agreed that home rule units like Deerfield retain a limited authority to regulate the ownership or possession of “assault weapons.” Yet since Deerfield's 2013 Ordinance only regulated *possession* of “assault weapons,” Deerfield lacked authority to rewrite and expand that ordinance to effectively regulate *ownership* in 2018. *Id.* ¶¶ 84–87 (App. 168–70). As Justice McLaren explained,

“[T]he legislature gave home-rule municipalities the opportunity to regulate ownership of assault weapons, possession of assault weapons, or both. Such regulation had to occur within a specific 10-day period. Deerfield regulated possession *only* of assault weapons within that period. It did not restrict, let alone prohibit, ownership of assault weapons in Deerfield. . . . Deerfield's attempt to ban ownership of assault weapons in 2018 was late and outside the intent of the legislature.”

*Id.* ¶ 94 (App. 174). Deerfield's ban thus fell outside the scope of the limited authority granted to home rule units. Justice McLaren also argued that the 2018 Ordinances were no mere amendments. *Id.* ¶¶ 90–92 (App. 172–73). Accordingly, Justice McLaren would have affirmed the circuit court's permanent injunction. *Id.* ¶ 94 (App. 174).

On January 8, 2021, Plaintiffs petitioned this Court for leave to appeal the Second District's order pursuant to Supreme Court Rule 315 (App. 176), which the Court granted

on March 24, 2021. *See Guns Save Life, Inc. v. Vill. of Deerfield*, No. 126849, 2021 WL 1226740 (Ill. March 24, 2021) (App. 23).

## ARGUMENT

### **I. Assuming Home Rule Units Can Exercise Limited Concurrent Jurisdiction, Deerfield’s 2018 Ordinances Are Invalid.**

Under the Second District’s interpretation, the FOID Card Act allows home rule units to regulate so-called “assault weapons” when two conditions are met. First, the home rule unit must have only *amended* an existing predicate ordinance. Second, that predicate ordinance must have regulated possession or ownership of assault weapons in a manner that was *inconsistent* with the FOID Card Act on, before, or within 10 days of July 9, 2013. Assuming the Second District’s interpretation of the FOID Card Act is correct, the Second District misapplied those limits to Deerfield’s 2018 Ordinances. First, Deerfield’s 2018 Ordinances were not mere amendments to the Village’s 2013 Ordinance. Second, Deerfield’s 2013 Ordinance did not regulate ownership in a manner inconsistent with the FOID Card Act.

#### **A. Deerfield’s 2018 Ordinances Are Entirely New Substantive Laws and Not Mere “Amendments” to the 2013 Ordinance.**

The 2018 Ordinances are invalid because these ordinances did not *amend* the 2013 Ordinance. An amendment, properly understood, is ordinarily “a formal, usually minor revision or addition proposed or made to a statute, constitution, pleading, order, or other instrument.” *Amendment*, BLACK’S LAW DICTIONARY (11th ed. 2019). But the 2018 Ordinances are in no way a “minor revision or addition” to what came before. *Id.* Instead, Deerfield wrought a wholesale substitution of its assault weapon regulations and upended the basic premise that residents could both own and possess so-called “assault weapons” in the municipality.

In coming to the contrary conclusion, the Second District engaged in an erroneous analysis that elevated form over substance. The Second District concluded that “there is no need to undertake a comparative analysis of Deerfield’s ordinance” because Deerfield’s intent to enact an amendment was clear from “the titles of the 2018 ordinances” and their “introductory paragraphs.” *Easterday v. Vill. of Deerfield*, 2020 IL App (2d) 190879, ¶ 59 (App. 159). Further, “[a]ll changes were reflected by striking through language that was to be removed from the municipal code and underlining language to be added.” *Id.*

But the Second District approached the analysis of the 2018 Ordinances from the mistaken premise that the substance of the operative clauses did not matter. “A title or heading should never be allowed to override the plain words of a text.” ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 222 (2012). As this Court and the United States Supreme Court have stressed repeatedly, courts should not interpret titles so as to overrule the substance of the enacted text. “When the legislature enacts an official title or heading to accompany a statutory provision, that title or heading is considered only as a ‘short-hand reference to the general subject matter involved’ in that statutory section, and ‘cannot limit the plain meaning of the text.’” *Michigan Ave. Nat’l Bank v. Cnty. of Cook*, 191 Ill. 2d 493, 505–06 (2000) (quoting *Brotherhood of R.R. Trainmen v. Baltimore & Ohio R.R. Co.*, 331 U.S. 519, 528–29 (1947)). Titles cannot “undo or limit that which the text makes plain.” *Id.* at 506. Although Deerfield claimed to be amending its 2013 ordinance with its title, that title cannot undo the substantial changes wrought by the 2018 Ordinances’ actual text. As Justice McLaren stated in his partial dissent, “the simple act of calling the 2018 ordinance an amendment of the 2013 ordinance

does not make it one.” *Easterday*, 2020 IL App (2d) 190879, ¶ 89 (McLaren, J., concurring in part and dissenting in part) (App. 171).

The Second District erred by not assessing these substantive provisions. As this Court has said for over a century, the substance of a legislative enactment is what counts. *See, e.g., Vill. of Park Forest v. Wojciechowski*, 29 Ill. 2d 435, 439 (1963) (assessing whether a traffic ordinance amended previous ordinance or repealed and replaced it by considering enacted text and changes); *City of Metropolis v. Gibbons*, 334 Ill. 431, 434–35 (1929) (“[W]here two laws or ordinances are so inconsistent that the provisions of both cannot reasonably be construed to be in effect at the same time, the later law or ordinance repeals the earlier to the extent of the inconsistency, even though the later contains no repealing clause.”); *Culver v. Third Nat. Bank of Chicago*, 64 Ill. 528, 534 (1871) (“[A] subsequent statute revising the whole subject of a former one, and intended as a substitute for it, although it contains no express words to that effect, operates as a repeal of the former.”).

This Court’s substantive approach is further echoed in the Third District’s decision in *Athey v. City of Peru*, 22 Ill. App.3d 363 (3d Dist. 1974). In *Athey*, the court was faced with the question whether a municipal zoning ordinance should be considered an amendment or a new enactment. The distinction mattered because the General Assembly prescribed different procedures for an ordinance’s enactment based on whether it was considered an amendment. *Id.* at 365. Unlike the Second District decision in this case, the Third District concluded that the question “is not determined by [an enactment’s] title,” but rather by a “comparative analysis” between the new ordinance and the law it replaced. *Id.* at 367–68. Even though an ordinance may be labeled an “amendment,” a “subsequent

statute revising the whole subject matter of a former statute and intended as substitute for it, although it contains no express words to that effect, operates as a repeal of the former act.” *Id.* at 367. The Third District then concluded the ordinance in question, despite being called an amendment, actually was no such thing, in part, because “[n]o area covered by ordinance number 1497 is left unregulated by [ordinance number] 1699 . . . The new enactment totally displac[e] the former provision.” *Id.* at 368.

Under a proper analysis of the substance of the 2018 Ordinances, it is apparent that the 2018 Ordinances were no mere amendments. Simply put, the 2018 Ordinances “revis[ed] the whole subject” of the 2013 Ordinance and were “intended as a substitute for it.” *Culver*, 64 Ill. at 534. Consider the changes. Under the 2013 Ordinance, an individual could own an “assault weapon” and possess that assault weapon for self-defense. App. 108–113. Assault weapons simply were required to be stored in a certain manner when not in the immediate possession of the owner—and even the storage requirement provided a self-defense exception. App. 112. By contrast, the 2018 Ordinances eliminate any mention of owner possession or a self-defense exception for an understandable reason: the ownership of assault weapons is prohibited for all but a few, and gunowners cannot defend themselves with firearms they are prohibited from owning or possessing. App. 98. Under the 2013 Ordinance, there is no mention of restrictions on the ability for an owner to transfer or sell an assault weapon in Deerfield because an owner could do so. Under the 2018 Ordinances, no sale or transfer can be made at all, except of course, to “remove . . . the assault weapon or large capacity magazine from within the limits of the village” within 60 days. App. 99. And the 2013 Ordinance provided that the firearm needed to be locked or in a locked container when not under the control of the owner or other authorized person.

But under the 2018 Ordinances, one cannot legally store what one cannot legally have. Under the 2013 Ordinance, there is no regulation of the large capacity magazines. Under the 2018 Ordinances, they are banned.

As the circuit court held, “[t]he banning of assault weapons is substantively different than regulations regarding the transportation and storage of such weapons,” App. 19, and the banning of large-capacity magazines is substantively different than simply defining them. It is clear then that Deerfield’s 2018 Ordinances can in no way be considered mere amendments to the 2013 Ordinance. The 2018 Ordinances “revise[ ] the whole subject matter” and “totally displace[ ] the former provision.” *Athey*, 22 Ill. App. 3d at 367–68.

In the end, the Court must consider the fact that any amendatory power that a home rule unit has is subject to the General Assembly’s enacted decision to invoke its power under the Illinois Constitution to totally exclude home rule unit legislation under Section 6(h). *See* ILL. CONST. art. VII, § 6(h) (“The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit.”); 430 ILL. COMP. STAT. 65/13.1(c), 13.1(e). Thus, the provision that a home rule unit’s existing local regulation “may be amended,” 430 ILL. COMP. STAT. 65/13.1(c), cannot be read so as to undo the General Assembly’s enacted intent to preempt and limit home rule authority. Instead, the Court “must view the statute as a whole, construing words and phrases in context to other relevant statutory provisions and not in isolation.” *Murphy-Hylton v. Lieberman Mgmt. Servs, Inc.*, 2016 IL 120394, ¶ 25 (emphasis added). In other words, Deerfield’s power to amend must be read narrowly in order to give effect to all

provisions of the FOID Card Act and ensure home rule authority is exercised in a manner consistent with the General Assembly's commands.

**B. Because Deerfield's 2013 Ordinance Regulated Possession But Not Ownership of So-Called "Assault Weapons," Deerfield's Authority to Ban Ownership Has Lapsed.**

Even if the 2018 Ordinances were mere amendments of the 2013 Ordinance, they still would be preempted by the FOID Card Act. The FOID Card Act states that "any ordinance or regulation . . . that purports to regulate the possession or ownership of assault weapons in a manner that is *inconsistent* with this Act, shall be invalid unless the ordinance or regulation is enacted" before July 20, 2013. 430 ILL. COMP. STAT. 65/13.1(c) (emphasis added). The key language is not that a municipality needed to merely enact any ordinance or regulation about assault weapons. If that were true, then much of 65/13.1(c) would be rendered superfluous. Instead, whichever ordinance was enacted within that ten-day window needed to regulate possession or ownership of assault weapons in a manner inconsistent with the FOID Card Act. And while Deerfield's 2013 Ordinance regulated the *possession* of assault weapons in a manner inconsistent with the FOID Card Act, it did not regulate the *ownership* of assault weapons at all. The 2013 Ordinance therefore provided no predicate for Deerfield to later ban ownership of assault weapons.

Deerfield's 2013 Ordinance did not ban assault weapons or limit magazine capacity; rather, the 2013 Ordinance defined the terms "assault weapon" and "large-capacity magazine," and regulated merely the storage and transport of the former. To begin with, merely defining a set of terms is not, of its own accord, a regulation of the subjects covered by those definitions. This is readily apparent from the 2013 Ordinance itself, which defines "large-capacity magazine" and then subsequently never uses the term in any

operative provision. *But see* App. 104 (O-18-19 incorporates “large capacity magazine” into ban). It then follows that the mere fact Deerfield defined “assault weapon” in its 2013 Ordinance was not an act of regulating “the possession or ownership of assault weapons in a manner that is inconsistent with” the FOID Card Act. 430 ILL. COMP. STAT. 65/13.1(c). Instead, the Court must evaluate what the 2013 Ordinance actually does in its operative provisions with respect to “assault weapons.”

As Justice McLaren noted in his partial dissent in the Second District, Deerfield’s 2013 Ordinance “regulated the possession of assault weapons, imposing restrictions on how assault weapons may be stored, kept, and transported.” *Easterday*, 2020 IL App (2d) 190879, ¶ 86 (McLaren, J., concurring in part and dissenting in part) (App. 169). It did not regulate ownership at all. As discussed above, the 2013 Ordinance itself mandates specifically that the lock or the locked container for the assault weapon “render such weapon inoperable by any person *other than the owner* or other lawfully authorized user.” App. 111–12 (emphasis added). Further, consider the exception: “For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.” App. 112. The locking requirements do not apply when the owner is exercising a particular form of possession: personal control or personal carry. The 2013 Ordinance not only presupposes that Deerfield residents will lawfully own assault weapons, but the manner in which the 2013 Ordinance regulated possession is limited so that owners can, in fact, possess assault weapons in Deerfield. The Village only placed certain transportation and storage requirements on these firearms when not under personal control.

While Deerfield may have enacted a regulation pertaining to *possession* that was inconsistent with the FOID Card Act, Deerfield had nothing on its books that “impose[d] any greater restrictions on *ownership* of assault weapons than the FOID [Card] Act imposed.” *Easterday*, 2020 IL App (2d) 190879, ¶87 (McLaren, J., concurring in part and dissenting in part) (App. 170). Accordingly, Deerfield did not have a predicate ordinance, inconsistent with the FOID Card act, that it could later amend to further regulate *ownership* of assault weapons. Since the 2018 Ordinances effectively ban ownership of “assault weapons” but Deerfield lacked the requisite predicate ordinance, the 2018 Ordinances are invalid.

The Second District majority worried that “as a practical matter, it is not clear how courts could distinguish between regulations that affect only possession and regulations that affect both possession and ownership.” *Id.* ¶ 52 (App. 157). But the Court need not engage in such line-drawing exercises in this case or decide future hypothetical cases where the distinction between possession and ownership might be unclear. In this instance, Deerfield’s prior ordinance unambiguously regulated only possession. As Justice McLaren explained, Deerfield’s 2013 Ordinance is akin to the following:

Assume that, in 2013, Deerfield passed an ordinance requiring that the owners of pickup trucks park their trucks in a driveway or garage when they are not using the trucks. Then, in 2018, Deerfield passed a new ordinance prohibiting the ownership of pickup trucks in the Village. Would the [Second District] majority consider the parking restrictions on pickup trucks to be a regulation of ownership?

*Id.* ¶ 92 (App. 173). The answer is obviously no. So too here.

It is also apparent from other sections of the FOID Card Act that ownership and possession are two distinct concepts in firearm regulation. This distinction is apparent in Section 65/3, for example, which regulates transfers of firearms. *See* 430 ILL. COMP. STAT.

65/3. Subsection a-15 exempts “temporary transfers” from certain procedural prerequisites to “unlicensed transferees” in the home when the “unlicensed transferee reasonably believes that *possession* of the firearm is necessary to prevent imminent death or great bodily harm to the unlicensed transferee.” *Id.* at 65/3(a-15) (emphasis added). A bill of sale is not being drawn up in a self-defense situation. Instead, the transferee is possessing, not owning, the firearm to prevent imminent death or harm. This self-defense exception, in fact, echoes the 2013 Ordinance’s self-defense provision, which similarly exempted from punishment any violations if “an assault weapon is used in a lawful act of self-defense or in defense of another.” App. 112. In a self-defense situation, Deerfield exempted otherwise unlawful *possession* in its 2013 Ordinance.

Deerfield’s policy decision in 2013 to only regulate possession has consequences under the FOID Card Act. As Deerfield has argued, the Village allegedly believed that the FOID Card Act’s ten-day window was a “use it or lose it” proposition. Answer to Plaintiffs’ Petition For Leave to Appeal at 3, *Guns Save Life, Inc. v. Vill. of Deerfield*, No. 126840 (Feb. 1, 2021). The Second District agreed. *Easterday*, 2020 IL App (2d) 190879, ¶ 4 (App. 134). If that is true, then the question naturally follows, what authority did Deerfield use and what did Deerfield lose? Deerfield had four options in 2013: (1) Do nothing inconsistent with the FOID Card Act, (2) regulate ownership, (3) regulate possession, or (4) regulate both ownership and possession. As Justice McLaren explained, Deerfield used its authority to regulate possession only. Accordingly, “[h]aving regulated the storage and transportation of assault weapons in 2013, Deerfield could have changed or modified those restrictions, either increasing or decreasing the severity of the restrictions in the 2018 ordinance.” *Easterday*, 2020 IL App (2d) 190879, ¶ 88 (McLaren, J., concurring in part

and dissenting in part) (App. 171). “However, Deerfield did not regulate ownership, and one cannot amend a regulation that does not exist.” *Id.* In other words, the 2013 Ordinance cannot serve as a predicate ordinance with respect to ownership that can be amended later. Deerfield lost that authority.

It is true that in general a municipality need not address all parts of a particular issue “in one fell swoop.” *People v. Adams*, 144 Ill. 2d 381, 391 (1991). Thus, in the ordinary course, Deerfield would not have to address ownership and possession of certain subjects within its regulatory remit at the same time to preserve the authority to do so later. But, even under the Second District’s theory of concurrent home rule authority, it cannot be disputed that the General Assembly “restrict[ed] the nature and extent of concurrent” home rule unit legislation. *See City of Chicago v. Roman*, 184 Ill. 2d 504, 519 (1998). In this way, it does not matter that Deerfield “was not ready to impose a total ban on assault weapons” in 2013. *Easterday*, 2020 IL App (2d) 190879, ¶ 4 (App. 134). The General Assembly “ha[d] chosen to place a limitation” of 10 days for Deerfield to exercise that concurrent authority. *Burns v. Mun. Officers Electoral Bd. of Vill. of Elk Grove Vill.*, 2020 IL 125714, ¶ 21. And, at least with respect to ownership of so-called “assault weapons,” Deerfield did not use it.

## **II. The FOID Card Act and Article VII, Section 6(h) of the Illinois Constitution Completely Displace Deerfield’s Authority to Regulate So-Called “Assault Weapons.”**

In addition to being invalid under the Second District’s interpretation of the FOID Card Act, Deerfield’s 2018 Ordinances are also invalid for an independent reason: Deerfield has no valid authority to regulate so-called “assault weapons” at all. While it would be unnecessary for the Court to reach this issue should it conclude that Deerfield’s

2018 Ordinances are invalid for one of the reasons already discussed, the Court cannot rule for Deerfield without deciding it.

In the division of authority in the Illinois Constitution between the General Assembly and home rule units, the Constitution grants to the General Assembly alone the final say over whether to preempt local regulation of matters of statewide importance. When the General Assembly so preempts a home rule unit, the General Assembly assumes for itself the exclusive authority to regulate those statewide matters on a statewide basis through statewide legislation. That is precisely what the General Assembly did when amending the FOID Card Act in 2013.

The General Assembly has two mechanisms to preempt and thus circumscribe the authority of home rule units. First, the General Assembly may expressly and completely preempt home rule regulation under Article VII, Section 6(h) of the Illinois Constitution. ILL. CONST. art. VII, § 6(h) (“The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit.”). As this Court has repeatedly made clear, the General Assembly completely preempts home rule regulation when it includes specific language invoking its Section 6(h) power in the statute. *See, e.g., Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill. 2d 281, 287 (2001); *Roman*, 184 Ill. 2d at 517; *Vill. of Bolingbrook v. Citizens Utilities Co. of Ill.*, 158 Ill. 2d 133, 138 (1994). By contrast, when the General Assembly fails to cite Section 6(h), home rule authority generally persists no matter how “comprehensive” the statewide regulation. *Bd. of Trs. of the Barrington Police Pension Fund v. Vill. of Barrington Ethics Bd.*, 287 Ill. App.3d 614, 620 (1st Dist. 1997); *accord City of Chicago v. StubHub, Inc.*, 2011 IL 111127 ¶ 25 (finding City of Chicago lacked home rule authority to tax under a separate Section

6(a) analysis); *id.* ¶¶ 66–67 (Thomas, J., dissenting) (noting state legislature failed to cite § 6(h), which would have expressly preempted City’s tax). In other words, whether the General Assembly includes a Section 6(h) statement in a statute is dispositive in determining complete preemption.

The second mechanism the General Assembly has to preempt home rule regulation is to “specifically limit by law the home rule unit’s concurrent exercise of power” under Article VII, Section 6(i) of the Illinois Constitution. ILL. CONST. art. VII, § 6(i). This is partial preemption. It is this provision, not Section 6(h), that the legislature generally must invoke when it “intends to permit concurrent local legislation, but only within limits that are consistent with the state statutory scheme.” David C. Baum, *A Tentative Survey of Illinois Home Rule (Part II): Legislative Control, Transition Problems, and Intergovernmental Conflict*, 1972 U. ILL. L.F. 559, 574; *see also Burns*, 2020 IL 125714, ¶¶ 19–21. And just as in the Section 6(h) context, when the General Assembly “has not expressly preempted an area” and has instead “limit[ed] the power of home rule units to act concurrently with the State,” then “the General Assembly wish[ing] to limit the power of home rule units in this way . . . must also do so with express language to that effect.” *Burns*, 2020 IL 125714, ¶ 19.

The primacy of legislative text in determining what authority the General Assembly has left to home rule units is apparent in the different language that the General Assembly uses. In countless statutes, the General Assembly has recognized the distinction between a Section 6(h) displacement of local regulatory authority and a Section 6(i) limitation on that authority and taken great care to specify which of its preemption powers it was exercising. *Compare, e.g.*, 520 ILL. COMP. STAT. 5/2.1 (“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.”), *with* 510 ILL. COMP. STAT. 45/8 (“[P]ursuant to paragraph (i) of Section 6 of Article VII of the Constitution, this Act is a limitation upon the power of home rule units to enact ordinances contrary to this Act.”). Thus, when the General Assembly intends to “totally exclude” home rule unit legislation under Section 6(h), it says so. *See Roman*, 184 Ill. 2d at 519. And when it merely seeks to “restrict the nature and extent of concurrent” home rule unit legislation under Section 6(i), it says so too. *Id.*

When the General Assembly enacted Public Act 98-63, it added language to the FOID Card Act that made clear it intended to completely preempt local regulation of so-called “assault weapons.” The FOID Card Act states that “the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State.” 430 ILL. COMP. STAT. 65/13.1(c). And, presumably acting with full awareness of this Court’s precedents about the need for an express reference to Section 6(h) to completely displace local authority, the General Assembly further provided that “[t]his 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.” *Id.* at 65/13.1(e). As the circuit court correctly concluded, by invoking Section 6(h) of the Illinois Constitution—and not Section 6(i)—the General Assembly made state regulation in this area exclusive, and home rule units therefore may not exercise concurrent regulatory authority. *See Roman*, 184 Ill. 2d at 516 (home rule units may regulate a particular subject only “to the extent that the General Assembly by law does not . . . specifically declare the State’s exercise to be exclusive”). Because the FOID Card Act “clearly deprives home rule units of the authority to regulate the possession or ownership of assault weapons,” App. 16 (circuit court decision), Deerfield’s attempt to ban

assault weapons—and to limit the capacity of ammunition magazines that can be used with such firearms, which itself regulates their possession—is preempted.

This Court has repeatedly held that Article VII, Section 6 “places almost exclusive reliance on the legislature rather than the courts to keep home rule units in line.” *Roman*, 184 Ill. 2d at 517 (quoting *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 188 (1992)). Yet, notwithstanding the plain text of the Illinois Constitution and this Court’s jurisprudence, the Second District erroneously held that the FOID Card Act did not expressly preempt Deerfield’s ban of “assault weapons.” It did so despite the clear language in Sections 13.1(e) and 13.1(c) of the FOID Card Act. Under this Court’s precedents, these provisions mean the General Assembly “totally exclude[d]” home rule unit regulation of so-called “assault weapons.” *Roman*, 184 Ill. 2d at 519. The Second District erred in holding otherwise.

The Second District asserted that a contrary interpretation would render nugatory the General Assembly’s declaration that local assault-weapons regulations would be invalid only if “enacted more than 10 days after [July 9, 2013]” and that ordinances enacted before that deadline “may be amended.” 430 ILL. COMP. STAT. 65/13.1(c). But it is the Second District’s interpretation that does more damage to the statute. The upshot of the Second District’s decision is that state courts henceforward should ignore the first sentence of Section 13.1(c) or delete it. Then courts should either delete Section 13.1(e) entirely or instead delete Section 13.1(e)’s citation to Article VII, Section 6(h) and insert a citation to Article VII, Section 6(i) in its place. This interpretation does not make the provisions of the statute as written work together as a cohesive whole, but rather rewrites the provisions that speak most directly to the scope of the statute’s preemptive effect. Nor does the Second

District's interpretation respect the constitutional division of power between State and local authority, but rather arrogates to localities powers and functions the General Assembly has expressly determined to be exclusively its own.

### CONCLUSION

For the foregoing reasons, the Court should reverse the Second District.

Dated: May 19, 2021

Respectfully submitted,

By: \_\_\_\_\_  
Christian D. Ambler  
One of the Plaintiffs' Attorneys

Christian D. Ambler (ARDC No. 6228749)  
STONE & JOHNSON, Chtd.  
111 West Washington Street  
Suite 1800a  
Chicago, Illinois 60602  
(312) 332-5656  
cambler@stonejohnsonlaw.com

David H. Thompson (ARDC No. 6316017)\*  
Peter A. Patterson (ARDC No. 6316019)\*  
Brian W. Barnes (ARDC No. 6328826)\*  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, DC 20036  
(202) 202-9600  
dthompson@cooperkirk.com  
ppatterson@cooperkirk.com  
bbarnes@cooperkirk.com

\*Appearance entered pursuant to Ill. S. Ct.  
Rule 707

*Attorneys for Plaintiffs-Appellants*

**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 containing 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 28 pages.

---

Christian D. Ambler

Christian D. Ambler (ARDC No. 6228749)  
STONE & JOHNSON, CHTD.  
111 West Washington Street  
Suite 1800a  
Chicago, IL 60602  
(312) 223-5656  
cambler@stonejohnsonlaw.com

No. 126840

In the  
**Supreme Court of Illinois**

---

GUNS SAVE LIFE, INC., *et al.*,*Plaintiffs-Appellants,*

v.

VILLAGE OF DEERFIELD, ILLINOIS, *et al.**Defendants-Appellees.*


---

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

---

**APPENDIX OF PLAINTIFFS-APPELLANTS**

---

David H. Thompson (ARDC No. 6316017)\*  
 Peter A. Patterson (ARDC No. 6316019)\*  
 Brian W. Barnes (ARDC No. 6328826)\*  
 COOPER & KIRK, PLLC  
 1523 New Hampshire Avenue, N.W.  
 Washington, DC 20036  
 (202) 202-9600  
 dthompson@cooperkirk.com  
 ppatterson@cooperkirk.com  
 bbarnes@cooperkirk.com

Christian D. Ambler (ARDC No. 6228749)  
 STONE & JOHNSON, CHTD.  
 111 West Washington Street  
 Suite 1800a  
 Chicago, Illinois 60602  
 (312) 332-5656  
 cambler@stonejohnsonlaw.com

\*Appearance entered pursuant to Ill. S. Ct.  
 Rule 707

*Attorneys for Plaintiffs-Appellants*

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS TO THE APPENDIX

| <u>Document</u>   | <u>Date</u> | <u>Page No.</u> |
|---|-------------|-----------------|
| Circuit Court Order granting Summary Judgment   | 03/22/19    | APP 001         |
| Supreme Court Order allowing Petition for Leave to Appeal<br>and consolidating with Case No. 126840 | 03/24/21    | APP 023         |
| Brief of Plaintiffs-Appellees in the Appellate Court  | 02/10/20    | APP 025         |
| First Amended Complaint   | 08/17/18    | APP 071         |
| Ordinance No. O-18-06   | 04/02/18    | APP 091         |
| Ordinance No. O-18-19   | 06/18/18    | APP 102         |
| Ordinance No. O-13-24   | 07/01/13    | APP 107         |
| Circuit Court Order consolidating with Case No. 18-CH-427   | 07/27/18    | APP 114         |
| Rule 23 Order of Appellate Court  | 06/12/19    | APP 115         |
| Opinion of Appellate Court  | 12/07/20    | APP 133         |
| Petition for Leave to Appeal  | 01/08/21    | APP 176         |
| Circuit Court Order on Rule 304(a) and Consolidation  | 09/06/19    | APP 333         |
| Common Law Record – Table of Contents   |             | APP 335         |
| Report of Proceedings – Table of Contents   |             | APP 343         |

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
LAKE COUNTY, ILLINOIS**

**FILED**

MAR 22 2019

*Eric Caraballo*  
CIRCUIT CLERK

Guns Save Life, Inc. and John William  
Wombacher, Ill.,

Plaintiffs,

v.

18CH498

Village of Deerfield, Illinois, and Harriet  
Rosenthal, solely in her official capacity as  
Mayor of the Village of Deerfield,

Defendants.

**MEMORANDUM ORDER**

Before the Court are plaintiffs' motion for a preliminary injunction and motion for summary judgment.<sup>1</sup> Plaintiffs initially sought a preliminary injunction but later filed a motion for summary judgment requesting a permanent injunction to permanently enjoin defendant Village of Deerfield from enforcing Ordinance No. 0-18-06 and Ordinance No. 0-18-19 which ban the ownership and possession of assault weapons and large capacity magazines.<sup>2</sup> The plaintiffs' seven count complaint challenges the validity of Deerfield's ordinances and alleges that: (1) Ordinance No. 0-18-06 is preempted by Illinois' Firearm Owners Identification Card Act (FOICA) and Firearm Concealed Carry Act (FCCA); (2) Ordinance No. 0-18-06 is preempted by

<sup>1</sup> The plaintiffs in the companion case of Daniel D. Easterday, Illinois State Rifle Association and Second Amendment Foundation, Inc. v. Village of Deerfield, Illinois, a municipal corporation, in case number 18CH427 join plaintiff Guns Save Life's motion for a preliminary injunction and motion for summary judgment.

<sup>2</sup> Plaintiffs identify Deerfield's ordinance as Ordinance No. 0-18-24-3, however, the Village of Deerfield attached a copy of the relevant ordinance as an exhibit to its response brief and the exhibit reflects that the correct number is 0-18-19. Ordinance No. 0-18-19 was passed by the Village of Deerfield following the Court's finding that Ordinance No. 0-18-06 did not ban firearm magazines that accept more than ten rounds. Deerfield stayed enforcement of Ordinance No. 0-18-19 pending the hearing and ruling on plaintiffs' request for a preliminary injunction. Plaintiffs did not file an amended complaint to challenge this new ordinance, however, the parties agreed that the hearing for a preliminary injunction should include a determination of the validity of Ordinance No. 0-18-19.

the Illinois Wildlife Code (Wildlife Code); (3) they are entitled to a declaratory judgment that Ordinance No. 0-18-06 does not ban large capacity magazines;<sup>3</sup> (4) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 banning large capacity magazines are preempted by FOICA and the FCCA; (5) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 banning large capacity magazines are preempted by the Wildlife Code; (6) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 violate the Takings Clause of the Illinois Constitution; and (7) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 violate the Eminent Domain Act.<sup>4</sup>

The defendants presented testimony in opposition to plaintiffs' request for a preliminary injunction. The Court heard the testimony of two witnesses, Harriet Rosenthal, the Village of Deerfield's President, and Kent S. Street, the Village Manager for the Village of Deerfield. President Rosenthal's and Mr. Kent's testimony related to of Deerfield's ability to regulate firearms under the state statutes and Deerfield's intent and reasons for passing the ordinances challenged by plaintiffs. The defendants' evidence also included a video clip of a June 17, 2013 Village Board meeting in which State Representative Scott Drury spoke during the public comments session and spoke about pending House Bill 183 relating to the State's regulation of firearms and firearm components. Plaintiffs objected to this evidence as being irrelevant because the issues before the Court can be decided as a matter of law and the Court need only consider the ordinances, the various state statutes and the Illinois Constitution. The Court reserved ruling on plaintiffs' objection. The Court now finds that the evidence presented by defendants at the October 12,

<sup>3</sup> This issue is now moot due to the passage of Ordinance No. 0-18-19.

<sup>4</sup> Plaintiffs in the Easterday case only raise a preemption challenge under the FOICA and FCCA to Deerfield's ordinances.

2018 preliminary injunction hearing is irrelevant to resolving the preemption issue. The preemption challenge only raises questions of law. The Court will therefore not consider the witnesses' testimony or the video recording with respect to plaintiffs' preemption challenges. For the following reasons, the Court grants plaintiffs' request for a summary judgment and enters a permanent injunction enjoining Deerfield from enforcing Ordinance No. 0-18-06 and Ordinance No. 0-18-19.

### FACTS

The relevant facts are not in dispute. On July 1, 2013, Deerfield passed Ordinance No. 0-13-24 titled "AN ORDINANCE REGULATING THE OWNERSHIP AND POSSESSION OF ASSAULT WEAPONS IN THE VILLAGE OF DEERFIELD". Ordinance No. 0-13-24: (1) defines what constitutes an assault weapon (§15-86); (2) defines what constitutes a large capacity magazine (§15-86); (3) mandates how assault weapons should be stored (§15-87); (4) mandates how assault weapons should be transported within Deerfield's village limits (§15-88); (5) makes it unlawful to carry or possess an assault weapon within Deerfield's corporate limits unless the person is on his land, his abode, legal dwelling or fixed place of business or unless the person is on the land or in the dwelling of another person as an invitee with that person's permission (§15-88); and (6) provides for a fine between \$250.00 to \$1,000.00 for each violation (§15-89). Ordinance No. 0-13-24 did not prohibit ownership or possession of an assault weapon or high capacity magazine within Deerfield's corporate limits. The purpose of Ordinance No. 0-13-24 is stated on page two in the final "Whereas" clause which provides: "[A]ssault weapons should be subject to safe storage and security requirements as provided herein to limit the opportunity for access and use of firearms by untrained or unauthorized users[.]"

On July 9, 2013, the Illinois legislature amended §13.1 of the FOICA. Section 13.1 of

FOICA provides:

**Preemption.**

(a) Except as otherwise provided in the Firearm Concealed Carry Act and subsections (b) and (c) of this Section, the provisions of any ordinance enacted by any municipality which requires registration or imposes greater restrictions or limitations on the acquisition, possession and transfer of firearms than are imposed by this Act, are not invalidated or affected by this Act.

(b) Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, enacted on or before the effective date of this amendatory Act of the 98th General Assembly that purports to impose regulations or restrictions on a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act, on the effective date of this amendatory Act of the 98th General Assembly, shall be invalid in its application to a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act.

(c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly. Any ordinance or regulation described in this subsection (c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid. An ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended. The enactment or amendment of ordinances under this subsection (c) are subject to the submission requirements of Section 13.3. For the purposes of this subsection, "assault weapons" means firearms designated by either make or model or by a test or list of cosmetic features that cumulatively would place the firearm into a definition of "assault weapon" under the ordinance.

(d) For the purposes of this Section, "handgun" has the meaning ascribed to it in Section 5 of the Firearm Concealed Carry Act.

(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.

430 ILCS 65/13.1 (West 2018).

On July 9, 2013, the Illinois legislature also passed the FCCA. The FCCA provides in part:

**Preemption.**

The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. 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.

430 ILCS 66/90 (West 2018).

"Handgun" means any device which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas that is designed to be held and fired by the use of a single hand."

430 ILCS 66/5 (West 2018).

On April 2, 2018 Deerfield passed Ordinance No. O-18-06 titled "AN ORDINANCE AMENDING CHAPTER 15 (MORALS AND CONDUCT), ARTICLE 11 (ASSAULT WEAPONS), SECTION 15-87 (SAFE STORAGE OF ASSAULT WEAPONS) AND SECTION 15-88 (TRANSPORTATION OF ASSAULT WEAPONS) OF THE MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD TO REGULATE THE POSSESSION, MANUFACTURE AND SALE OF ASSAULT WEAPONS IN THE VILLAGE OF DEERFIELD". Ordinance No. O-18-06 made minor changes to §15-86 dealing with definitions and made more extensive changes to: (1) §15-87 Safe Storage of Assault Weapons; (2) §15-88 Transportation of Assault Weapons; and (3) §15-89 Penalty. Ordinance No. O-18-06 adopted two new sections, §15-90 addressing Disposition of Assault Weapon and Large Capacity

Magazine and §15-91 addressing Destruction of Assault Weapons and Large Capacity Magazines.

The additional provisions of Ordinance No. 0-18-06 that plaintiffs challenge are as follows:<sup>5</sup>

Sec. 15-87. Safe Storage of Assault Weapons; Exceptions

(a) ~~Safe Storage.~~ It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon in the Village, unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or either safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.

(b) ~~Self-defense exception.~~ No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self-defense or in defense of another.

(c) ~~The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any~~

<sup>5</sup> All changes to the challenged ordinances are reflected by showing the additions with underscoring and the deletions with strikeouts in the text.

such law enforcement officer, service member or qualified retired law enforcement officer.

Section 15-88. Transportation of Assault Weapons; Exceptions.

(a) It is unlawful and a violation of this section for any person to carry, keep, bear, transport or possess an assault weapon in the Village, ~~except when on his land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another as an invitee with that person's permission,~~ except that this section does not apply to or affect transportation of assault weapons that meet one of the following conditions:

- (i) are broken down in a non-functioning state; ~~or~~ and
- (ii) are not immediately accessible to any person; or
- (iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card; ~~or~~

(b) The provisions of this section do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

Section 15-89. Penalty.

Any person who is found to have violated this Article shall be fined not less than \$250 and not more than \$1,000 for each offense, ~~and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.~~ Every person convicted of any violation under this Article shall, in addition to any penalty provided in this Code, forfeit to the Village any assault weapon.

Section 15-90. Disposition of Assault Weapon and Large Capacity Magazine.

Any person who, prior to the effective date of Ordinance No. \_\_\_\_\_, was legally in possession of an Assault Weapon or Large Capacity Magazine prohibited by this Article, shall have 60 days from the effective date of Ordinance No. \_\_\_\_\_, to do any of the following without being subject to prosecution hereunder:

(a) Remove, sell or transfer the Assault Weapon or Large Capacity Magazine from within the limits of the Village;

(b) Modify the Assault Weapon or Large Capacity Magazine either to render it permanently inoperable or to permanently make it a device no longer defined as an Assault Weapon or large capacity Magazine; or

(c) Surrender the Assault Weapon or Large Capacity Magazine to the Chief of Police or his or her designee for disposal as provided in Section 15-91 of this Article.

Section 15-91. Destruction of Assault Weapons and Large Capacity Magazines.

The Chief of Police or his or her designee shall have the power to confiscate any assault Weapon of any person charged with a violation under this Article. The Chief of Police shall cause to be destroyed each Assault Weapon or Large Capacity Magazine surrendered or confiscated pursuant to this Article; provided, however, that no Assault Weapon or Large Capacity Magazine shall be destroyed until such time as the Chief of Police determines that the assault Weapon or Large Capacity Magazine is not needed as evidence in any matter. The Chief of Police shall cause to be kept a record of the date and method of destruction of each Assault Weapon or Large Capacity Magazine destroyed pursuant to this Article.

On June 12, 2018, this Court entered a temporary restraining order enjoining the Village of Deerfield, its agents, officials or police department from enforcing any provision of Ordinance No. 0-18-06 relating to the ownership, possession, storage or transportation of assault weapons or large capacity magazines within the Village of Deerfield. On June 18, 2018, the Village of Deerfield passed Ordinance No. 0-18-19 to correct an omission in §15-87 of

Ordinance No. 0-18-06 relating to high capacity magazines.<sup>6</sup> Deerfield also renamed §15-87 to reflect that this section no longer addressed the safe storage of assault weapons, but that Deerfield was now banning assault weapons and large capacity magazines. Section 15-87 now reads as follows:

**SECTION 2: AMENDMENT.** Section 15-87 of Article 11 of Chapter 15 of the Village Code is hereby re-titled and amended further to read as follows:

"Sec. 15-87, ~~Safe Storage Of Assault Weapons and Large Capacity Magazines~~ Prohibited; Exceptions:

- (a) It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon or large capacity magazine in the village.
- (b) The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon or large capacity magazine in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

The Village of Deerfield delayed enforcement of Ordinance No. 0-18-19 pending resolution of

<sup>6</sup> Deerfield characterizes Ordinance No. 0-18-19 as a clarification of that portion of Ordinance No. 0-18-06 that Deerfield claims bans ownership and possession of high capacity magazines. Deerfield's characterization of Ordinance No. 0-18-19 is wholly without merit as Ordinance No. 0-18-06 clearly failed to ban ownership or possession of high capacity magazines.

plaintiffs' challenge to Deerfield's authority to regulate possession or ownership of large capacity magazines.

Plaintiffs raise the following challenges to the validity of the ordinances: (1) Whether the State preempted Deerfield's authority to exercise concurrent power to regulate assault weapons or large capacity magazines pursuant to the Home Rule provisions of the Illinois Constitution. (2) Whether the changes to Ordinance No. 0-13-24 made by Ordinance No. 0-18-06 and Ordinance No. 0-18-19 are amendments to Ordinance No. 0-13-24 or new ordinances that are preempted by the provisions of FOICA, FCCA and the Wildlife Code. and (3) Whether Ordinance No. 0-18-16 and Ordinance No. 0-18-19 violate the takings clause of Article 1, Section 15 of the Illinois Constitution and §10-5-5 of the Eminent Domain Act.

#### ANALYSIS

Plaintiffs originally sought a preliminary injunction but after the evidentiary hearing plaintiffs filed a motion for summary judgment and now seek a permanent injunction. Summary judgment is appropriate when the pleadings, depositions, affidavits and the admissions of record when construed strictly against the moving party and liberally in favor of the opponent show that no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter of law. *Seymour v. Collins*, 2015 IL 118432, ¶42, 39 N.E.3d 961, 974; *Old Kent Bank – St. Charles, N.A. v. Surwood Corp.*, 256 Ill. App.3d 221, 229, 627 N.E.2d 1192, 1198 (2d Dist. 1994). The party moving for summary judgment has the burden to show that no genuine issue of material fact exists with respect to all issues including those issues raised by the pleading of affirmative defenses. *Old Kent Bank – St. Charles, N.A. v. Surwood Corp.*, 256 Ill. App.3d at 230, 627 N.E.2d at 1199; *West Suburban Mass Transit Dist. v.*

*Consolidated Rail Corp.*, 210 Ill. App.3d 484, 488-89, 569 N.E.2d 187, 190 (1<sup>st</sup> Dist. 1991). A party seeking a permanent injunction to preserve the status quo indefinitely "must show that he possesses a clear, protectable interest for which there is no adequate remedy at law and that irreparable injury would result if the relief is not granted." *Sheehy v. Sheehy*, 299 Ill. App. 3d 996, 1003-04, 702 N.E.2d 200, 206 (1<sup>st</sup> Dist. 1998).

### **I. Preemption**

Deerfield in the exercise of its home rule powers adopted Ordinance No. O-13-24.

As a home rule unit, Deerfield's home rule power and the State's authority to limit such home rule authority is derived from Article 7, §6 of the Illinois Constitution which provides in relevant part:

(a) ... Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.

(i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.

ILL. CONST. art. VII, § 6 (a), (h), and (i) (West 2018). Section 6(a) authorizes a home rule unit to exercise any power and perform any function pertaining to its government affairs except as limited by the State pursuant to Article 7, §6(h). Section 6(h) empowers the General Assembly to deprive home rule units from exercising any powers that the General Assembly determines should be exercised exclusively by the State. This preemption of home rule authority occurs

under Section 6(h) of the Illinois Constitution when the State specifically declares that the State's exercise of such power or function is exclusive.

Our Supreme Court in a comprehensive preemption opinion in *City of Chicago v. Roman*, 184 Ill.2d 504, 705 N.E.2d 81 (1998), discussed how the State preempts a home rule unit from acting on a subject that the State asserts exclusive power to regulate and how the State can limit the home rule unit's concurrent exercise of power without preempting that exercise of power. The Court held that: "[To] meet the requirements of section 6(h), legislation must contain express language that the area covered by the legislation is to be exclusively controlled by the State. *Id.*, 184 Ill.2d at 517, 705 N.E.2 at 89. The Court also stated that:

When the General Assembly intends to preempt or exclude home rule units from exercising power over a matter, that body knows how to do so. In many statutes that touch on countless areas of our lives, the legislature has expressly stated that, pursuant to section 6(h) or 6(i), or both, of article VII of the Illinois Constitution, a statute is declared to be an exclusive exercise of power by the state and that such power shall not be exercised by home rule units.

*Id.* The Court then went on to discuss several examples of legislation where the legislature totally excluded or preempted home rule authority to regulate. These statutory provisions are:

1. Section 17 of the Illinois Health Facilities Planning Act which provides:

It is hereby specifically declared that the powers and functions exercised and performed by the State pursuant to this Act **are exclusive to the State of Illinois** and that these powers and functions shall not be exercised, either independently or concurrently, by any home rule unit. 20 ILCS 3960/17 (West 1992) (emphasis added).

2. Section 2.1 of the Illinois Insurance Code which provides:

Public Policy. It is declared to be the public policy of this State, **pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970**, that any power or function set forth in this Act to be **exercised by the State is an exclusive State power or function**. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act. ... [A]nd said Section 415 of this Act is declared to be a

**denial and limitation of the powers of home rule units** pursuant to paragraph (g) of Section 6 of Article VII of the Illinois Constitution of 1970. 215 ILCS 5/2.1 (West 1992) (emphasis added).

3. Section 21 of the Citizens Utility Board Act which provides:

Home rule preemption. The provisions of this Act are declared to be **an exclusive exercise of power by the State of Illinois pursuant to paragraphs (h) or (i) of Section 6 of Article VII of the Illinois Constitution**. No home rule unit may impose any requirement or regulation on any public utility inconsistent with or in addition to the requirements or regulations set forth in this Act. 220 ILCS 10/21 (West 1992) (emphasis added).

4. Section 6 of the Medical Practice Act of 1987 which provides:

It is declared to be the public policy of this State, **pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970**, that any power or function set forth in this Act to be exercised by the State **is an exclusive State power or function**. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act. 225 ILCS 60/6 (West 1992) (emphasis added).

5. Section 6-18 of the Liquor Control Act of 1934 which provides:

No home rule unit, as defined in Article VII of the Illinois Constitution, may amend or alter or in any way change the legal age at which persons may purchase, consume or possess alcoholic liquors as provided in this Act, and it is declared to be the law of this State, **pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Constitution**, that the establishment of such legal age is an **exercise of exclusive State power** which may not be exercised concurrently by a home rule unit. 235 ILCS 5/6-18 (West 1992) (emphasis added).

6. Section 7 of the Missing Children Registration Law which provides:

Home rule. This Article shall constitute the **exercise of the State's exclusive jurisdiction** pursuant to **subsection (h) of Section 6 of Article VII of the Illinois Constitution** and **shall preempt the jurisdiction of any home rule unit**. 325 ILCS 55/7 (West 1992) (emphasis added).

7. Section 2 of the Burial of Dead Bodies Act which provides;

No home rule unit, as defined in Section 6 of Article VII of the Illinois Constitution, may

change, alter or amend in any way the provisions contained in this Act, and it is declared to be the law of this State, **pursuant to subsections (h) and (i) of Section 6 of Article VII of the Illinois Constitution**, that powers and functions authorized by this Act **are the subjects of exclusive State jurisdiction**, and no such powers or functions may be exercised concurrently, either directly or indirectly, by any home rule unit. 410 ILCS 5/2(c) (West 1992) (emphasis added).

8. Section 2 of the Wildlife Code which provides:

The regulation and licensing of the taking of wildlife in Illinois are **exclusive powers and functions of the State**. A home rule unit may not regulate or license the taking of wildlife. 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**. 410 ILCS 5/2 (West 1992) (emphasis added).

9. Section 11-208.2 of the Illinois Vehicle Code which provides:

Limitation on home rule units. The provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations inconsistent herewith except pursuant to Sections 11-208, 11-209, 11-1005.1, 11-1412.1, and 11-1412.2 of this Chapter of this Act. 625 ILCS 5/11-208.2 (West 1992) (emphasis added).

The General Assembly may limit a home rule unit's concurrent exercise of power without completely preempting such power through partial exclusion or conformity. *City of Chicago v. Roman*, 184 Ill.2d at 519, 705 N.E.2d at 90. "[T]he General Assembly knows how to accomplish this, and has done so countless times, expressly stating that, pursuant to article VII, section 6(i), of the Illinois Constitution, a statute constitutes a limitation on the power of home rule units to enact ordinances that are contrary to or inconsistent with the statute". *Id.*, 184 Ill.2d at 520, 705 N.E.2d at 90. Examples of statutes in which the State through its expression in the statute provided for partial exclusion or conformity of a home rule unit's authority to exercise its power to regulate over those matters are:

1. Section 5-919 of the Illinois Highway Code which provides:

Home Rule Preemption. A home rule unit may not impose road improvement impact fees in a manner inconsistent with this Division. This Division is a limitation under

subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State. 605 ILCS 5/5-919 (West 1992).

2. Section 8 of the Carrier and Racing Pigeon Act of 1984 which provides:

This Act applies to all municipalities and counties and pursuant to paragraph (i) of Section 6 of Article VII of the Constitution, this Act is a limitation upon the power of home rule units to enact ordinances contrary to this Act. 510 ILCS 45/8 (West 1992).

The preemption language in the FOICA and the FCCA mirrors the language in those statutes our Supreme Court has stated have totally excluded or preempted a home rule unit's authority to regulate. The preemption language in FOICA states:

(b) Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act **are exclusive powers and functions of this State.** (emphasis added).

c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons **are exclusive powers and functions of this State.** (emphasis added).

(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.** (emphasis added).

The language in the FCCA states:

Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. **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.** (emphasis added).

The language in FOICA and FCCA clearly state that home rule units no longer have the authority to regulate or restrict the licensing and possession of handguns and handgun ammunition with respect to a holder of a valid Firearm Owner's Identification Card or a holder of a license to

carry a concealed firearm. In addition, §13.1(c) of FOICA clearly deprives home rule units of the authority to regulate the possession or ownership of assault weapons. Deerfield, therefore, may no longer regulate in these areas.

The plaintiffs also claim that the Wildlife Code preempts Deerfield's ability to regulate assault weapons and large capacity magazines. The Wildlife Code provides:

The regulation and licensing of the taking of wildlife in Illinois are exclusive powers and functions of the State. A home rule unit may not regulate or license the taking of wildlife. 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.

410 ILCS 5/2 (West 1992). The Wildlife Code does specifically preempt regulation and licensing of the taking of wildlife and references what types of firearms may be used to accomplish the taking of wildlife. The Wildlife Code, however, is a statute regulating the hunting and taking of game in Illinois and not a statute regulating ownership and possession of firearms. Any regulation as to what firearms may be used to hunt is secondary to the subject matter the State is preempting in the Wildlife Code. Moreover, nothing presented to the Court shows that the taking of wildlife occurs within Deerfield's borders or that the challenged ordinances have any impact on the taking of wildlife outside of Deerfield's borders.

Deerfield claims that the language in §13.1 allowing for inconsistent ordinances and amendments shows the legislature did not intend to preempt this area. The Court does not agree. The specific language in §13.1(e) of FOICA repeats and emphasizes the General Assembly's intent to preempt by stating: "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. 430 ILCS 65/13.1(e) (West 2018). This final provision in the statute's preemption section leaves no doubt what the General Assembly intended to do; and that is to preempt the regulation of

this subject matter. The Illinois Constitution prescribes the extent of a home rule unit's authority to exercise power over matters preempted by the State. When the State preempts an area by declaring that it is exercising exclusive power to regulate specific matters as provided for in the Illinois Constitution, and passes a law that incorporates and declares that it is exercising that exclusive power pursuant to Section 6(h) of Article VII of the Illinois Constitution, the only result that can follow from the use of this Constitutional language is to deprive the home rule unit of all authority to regulate in that area. To accept Deerfield's argument requires this Court to dilute the State's constitutional authority and the mandate of our Illinois Constitution under Article 7, §6(h). The legislature is presumed to know the law and if the State wished to allow home rule units to have authority to regulate in this area through partial exclusion or conformity it has the knowledge and ability to do so.

Deerfield also asserts that in interpreting statutes the Court should give all statutory provisions meaning and effect; however, the cases relied upon by Deerfield make clear that the Court is to interpret statutes this way "if possible". In this case it is not possible to accept Deerfield's argument without diminishing the language in Section 6(h), Art. VII of the Illinois Constitution. Deerfield's position requires the Court to hold that Section 6(h) doesn't mean what it says. If the General Assembly did not wish to preempt regulation of this subject matter, the General Assembly can amend its statute. This Court will not ignore the meaning and consequences of our Illinois Constitution's provisions to accommodate Deerfield's statutory interpretation. Thus, Deerfield lost its authority to regulate possession or ownership of assault weapons and large capacity magazines when the State passed §13.1 of FOICA and the FCCA.

Deerfield also claims that Ordinance No. 0-18-06 is an amendment to Ordinance No. 0-

13-24 which was validly enacted in accordance with the ten-day window FOICA provided home rule units to pass inconsistent ordinances. Plaintiffs assert that the changes to Deerfield's ordinance was not an amendment but was an entirely new ordinance that does not comply with the preemption exception in the FOICA. In determining whether changes to an ordinance are amendments or a new ordinance repealing the prior ordinance, our Supreme Court and Appellate Court have provided clear guidelines for the trial courts. Deerfield's characterization of Ordinance No. O-18-06 as an amendment of Ordinance No. O-13-24 is not dispositive of whether it is an amendment or a new ordinance that repealed the prior ordinance. "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 [the] repeal of the former ordinance." *Village of Park Forest v. Wojciechowski*, 29 Ill.2d 435, 438, 194 N.E.2d 346, 348 (1963); *Athey v. City of Peru*, 22 Ill. App.3d 363, 367, 317 N.E.2d 294, 297 (3d Dist. 1974). If, however, there is a clear conflict between the two ordinances where both cannot be carried out, then an intention to repeal will be presumed. *Nolan v. City of Granite City*, 162 Ill. App.3d 187, 188, 514 N.E.2d 1196, 1199 (5<sup>th</sup> Dist. 1987). To resolve the issue of whether the changes are an amendment or a new ordinance, the court must perform a comparative analysis of the ordinances and analyze all its terms. *Athey v. City of Peru*, 22 Ill. App.3d at 367-368, 317 N.E.2d at 297-298.

In comparing the language of Ordinance No. O-13-24 to the language of Ordinance No. O-18-06 there exists significant differences between the two ordinances. Ordinance No. O-13-24 only regulated transportation and storage of assault weapons within Deerfield's village limits

and provided for penalties for improperly transporting or storing such weapons. While §§15-87 and 15-88 of Ordinance No. 0-18-06 keep the same titles these sections had in Ordinance No. 0-13-24 (§15-87 Safe Storage of Assault Weapons; Exceptions, §15-88 Transportation of Assault Weapons; Exceptions); the new text in Ordinance No. 0-18-06 under these sections does not deal with transporting or storing assault weapons but instead bans such weapons. Ordinance No. 0-13-24 did not ban ownership or possession of assault weapons or large capacity magazines within Deerfield's village limits. The banning of assault weapons is substantively different than regulations regarding the transportation and storage of such weapons by one who owns or possesses assault weapons. In addition, there are two sections that are entirely new. Section 15-90 Disposition of Assault Weapon and Large Capacity Magazine and §15-91 Destruction of Assault Weapons and Large Capacity Magazines in Ordinance No. 0-18-06 that are not found in Ordinance No. 0-13-24. These additional sections in Ordinance No. 0-18-06 supports plaintiffs' claim that the changes to Ordinance No. 0-13-24 resulted in a new ordinance and not an amended ordinance. For these reasons Ordinance No. 0-18-06 is a new ordinance and not an amendment.

Even if the Court agreed with Deerfield's interpretation of §13.1 of FOICA that the General Assembly only meant to partially exclude a home rule unit's authority to regulate possession and ownership of large capacity magazines and assault weapons; and that Deerfield's Ordinance No. 0-18-06 is an amendment of Ordinance No. 0-13-24, Deerfield's Ordinance No. 0-18-06 is still unenforceable under plaintiffs' preemption argument because Deerfield missed the 10-day window provided under §13.1(c) of FOICA. This section of FOICA clearly states that the 10-day window is to allow home rule units an opportunity to pass

ordinances that regulate possession or ownership of assault weapons that are "inconsistent" with FOICA. FOICA allows possession or ownership of assault weapons by any person who has been previously issued a Firearm Owner's Identification Card by the State Police. 430 ILCS 65/2(a)(1) (Firearm Owner's Identification Card required; exceptions.) and 430 ILCS 65/1.1 (defining firearm). Nothing in Ordinance No. 0-13-24 is "inconsistent" with any provision of FOICA as this ordinance merely regulates the transportation and storage of assault weapons. In giving the language of §13.1(c) its plain meaning FOICA provided home rule units a one-time 10-day window from the date of this section's effective date to ban ownership or possession of assault weapons. Deerfield clearly failed to enact such a ban within this ten-day window and therefore, lost its opportunity to do so and cannot later amend its ordinance to impose such a ban. Deerfield's assertion that this interpretation of §13.1(c) effectively deletes the language permitting amendments to ordinances passed during this 10-day window is not persuasive. The purpose of the amendment provision in §13.1(c) is to allow a home rule unit to expand its timely ban of assault weapons if the initial ordinance did not address all weapons that could have been classified as assault weapons, or if new assault type weapons not fitting into the ordinance's assault weapon definition began to be manufactured or became available for purchase. For example, if Ordinance No. 0-13-24 had banned the assault weapon defined in §15-86(2) and several years later a manufacturer came out with a semiautomatic rifle that had a fixed magazine that only accepted ten rounds of ammunition such a weapon would not be an assault weapon as defined in the ordinance. Deerfield could arguably amend Ordinance No. 0-13-24 to redefine assault weapons to include semiautomatic rifles that have fixed magazines that accept ten rounds if Deerfield determined that these new semiautomatic rifles posed the

same threat to safety as those semiautomatic rifles that have fixed magazines that accept more than ten rounds. In this scenario, an amendment might be authorized.

## **II. Takings Clause and Eminent Domain**

Plaintiff's last challenge to Ordinance No. 0-18-06 and Ordinance No. 0-18-19 is that the ordinances violate Article 1, Section 15 of the Illinois Constitution and §10-5-5 of the Eminent Domain Act, 735 ILCS 30/10-5-5 (West 2018). For the reasons stated in this Court's order of June 12, 2018, plaintiffs have not met their burden for the issuance of a preliminary injunction under these theories and genuine issues of material fact exist that preclude the entry of a summary judgment and permanent injunction under these theories.

## **III. THE COURT'S FINDINGS**

The Court finds that: (1) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 are preempted by the FOICA and the FCCA and therefore unenforceable. (2) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 are new ordinances and not amendments to Ordinance No. 0-13-24 and are therefore preempted by FOICA and FCCA. (3) FOICA provided home rule units up to ten days from the effective date of FOICA's preemption provision to pass ordinances that regulate possession or ownership of assault weapons that are inconsistent with the regulations of assault weapons in FOICA. Nothing in Ordinance No. 0-13-24 is inconsistent with FOICA's regulation of assault weapons, therefore, Deerfield missed its opportunity to ban assault weapons and cannot do so now with Ordinance No. 0-18-06. (4) There is no genuine issue of material fact that Deerfield's ordinances are preempted and that plaintiffs: (a) have a clearly ascertainable right to not be subject to a preempted and unenforceable ordinance's prohibitions, fines, penalties and confiscation of property; (b) will suffer irreparable harm if an

injunction is not entered; and (c) do not have an adequate remedy at law. (5) Genuine issues of material fact exist with respect to plaintiffs' takings claim under the Illinois Constitution and the Eminent domain statute. and (6) The Wildlife Code does not preempt Deerfield's regulation of assault weapons or large capacity magazines.

**IT IS HEREBY ORDERED THAT:**

1. A permanent injunction is issued enjoining defendant Village of Deerfield, its agents, officials or police department from enforcing any provision of Ordinance No. 0-18-06 and Ordinance No. 0-18-19 making it unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances.

2. A status hearing is scheduled on May 3, 2019 at 9:00 a.m. in courtroom C-204.

Entered this 22<sup>nd</sup> day of March 2019.

ENTER:



Judge



## SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING  
200 East Capitol Avenue  
SPRINGFIELD, ILLINOIS 62701-1721  
(217) 782-2035

FIRST DISTRICT OFFICE  
160 North LaSalle Street, 20th Floor  
Chicago, IL 60601-3103  
(312) 793-1332  
TDD: (312) 793-6185

March 24, 2021

In re: Daniel D. Easterday et al., Appellants (Guns Save Life, Inc., et al.,  
Appellees, v. The Village of Deerfield et al., etc., Appellees).  
Appeal, Appellate Court, Second District.  
126849

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause.

The Court also ordered that this cause be consolidated with:

126840 Guns Save Life, Inc. v. The Village of Deerfield

A list of all counsel on these appeals is enclosed.

We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed.

Very truly yours,

A handwritten signature in cursive script that reads "Carolyn Taft Gusboell".

Clerk of the Supreme Court

## Attorneys for Consolidated Cases:

126840

Christian D. Ambler  
Stone & Johnson, Chartered  
111 West Washington Street, Suite 1800  
Chicago, IL 60602

Steven Michael Elrod  
Elrod Friedman LLP  
325 N. LaSalle St., Suite 450  
Chicago, IL 60654

Elrod Friedman LLP  
325 N. LaSalle St., Suite 450  
Chicago, IL 60654

Hart Manning Passman  
Elrod Friedman LLP  
325 N. LaSalle St., Suite 450  
Chicago, IL 60654

Perkins Coie LLP  
131 South Dearborn Street  
Suite 1700  
Chicago, IL 60603

Stone & Johnson, Chartered  
Attorneys at Law  
111 West Washington Street, Suite 1800  
Chicago, IL 60602

Christopher Brennan Wilson  
Perkins Coie LLP  
131 S. Dearborn Street, Suite 1700  
Chicago, IL 60603



126840  
2-19-0879

E-FILED  
Transaction ID: 2-19-0879  
File Date: 2/10/2020 3:32 PM  
Jeffrey H. Kaplan, Clerk of the Court  
APPELLATE COURT 2ND DISTRICT

No. 2-19-0879

---

**IN THE APPELLATE COURT OF ILLINOIS  
SECOND JUDICIAL DISTRICT**

---

|  |   |                                    |
|--|---|------------------------------------|
| VILLAGE OF DEERFIELD, ILLINOIS, and            | ) |                                    |
| HARRIET ROSENTHAL, solely in her official      | ) |                                    |
| Capacity as Mayor of the Village of Deerfield, | ) | Appeal from the Circuit Court of   |
|  | ) | the Nineteenth Judicial Circuit of |
| Defendants-Appellants,                         | ) | Illinois, Lake County, Illinois    |
|  | ) |                                    |
| v.   | ) | Case No. 18 CH 498                 |
|  | ) | [Consol. with Case 18 CH 427]      |
| GUNS SAVE LIFE, INC., and                      | ) |                                    |
| JOHN WILLIAM WOMBACHER, III,                   | ) |                                    |
|  | ) | No. 18 CH 427                      |
| Plaintiffs-Appellees.                          | ) |                                    |
|  | ) |                                    |
| <hr/>  |   |                                    |
| VILLAGE OF DEERFIELD, ILLINOIS,                | ) |                                    |
| a municipal corporation,                       | ) |                                    |
| Defendants-Appellant,                          | ) |                                    |
| v.   | ) |                                    |
| DANIEL D. EASTERDAY,                           | ) |                                    |
| ILLINOIS STATE RIFLE ASSOCIATION,              | ) |                                    |
| and SECOND AMENDMENT                           | ) |                                    |
| FOUNDATION, INC.,                              | ) |                                    |
| Plaintiffs-Appellees.                          | ) |                                    |

---

**BRIEF OF PLAINTIFFS-APPELLEES**

---

Christian D. Ambler  
Store & Johnson, Chtd.  
Attorneys for Plaintiff-Appellees  
111 West Washington St., Suite 1800  
Chicago, Illinois 60602  
(312)332-5656

Brian W. Barnes (ARDC No. 6328826)\*  
Cooper & Kirk, PLLC  
1523 New Hampshire Ave., N.W.  
Washington, D.C. 20036  
(202) 220-9600

\*Appearance entered pursuant to Ill. S. Ct. Rule 707

**ORAL ARGUMENT REQUESTED**

**APP 025**

POINTS AND AUTHORITIES

|  | <u>Page</u> |
|--|-------------|
| ARGUMENT .....   | 10          |
| I. This Court Lacks Appellate Jurisdiction Because Deerfield Failed to Timely<br>Appeal from the Final Judgment in <i>Easterday</i> .....  | 10          |
| A. The <i>Easterday</i> and <i>Guns Save Life</i> Cases Did Not Merge into A Single<br>Action .....  | 10          |
| <i>People v. Tenner</i> , 206 Ill. 2d 381 (2002) .....   | 11          |
| <i>In re Marriage of Harnack &amp; Fanady</i> , 2014 IL App (1st) 121424 .....   | 11          |
| <i>First Robinson Sav. &amp; Loan v. Ledo Const. Co.</i> ,<br>210 Ill. App. 3d 889 (5th Dist. 1991) .....  | 11          |
| <i>Kassnel v. Village of Rosemont</i> , 135 Ill. App. 3d 361 (1st Dist. 1985) .....  | 11          |
| <i>Busch v. Mison</i> , 385 Ill. App. 3d 620 (1st Dist. 2008) .....  | 12          |
| <i>Adoption of S.G. v. S.G.</i> , 401 Ill. App. 3d 775 (4th Dist. 2010) .....  | 12, 13      |
| B. The Circuit Court Erred By Relying on Previously Undisclosed<br>Information to Determine Whether <i>Easterday</i> and <i>Guns Save</i><br><i>Life</i> Merged Into A Single Action ..... | 15          |
| <i>Toomey v. Toomey</i> , 350 Ill. 162 (1932) .....  | 18          |
| <i>Unity Ventures v. Pollution Control Bd.</i> , 132 Ill. App. 3d 421 (2d Dist. 1985) .....  | 18          |
| <i>LB Steel, LLC, v. Carlo Steel Corporation</i> , 428 Ill. Dec. 265 (1st Dist.) .....   | 18          |
| C. Whether <i>Easterday</i> and <i>Guns Save Life</i> Merged Does Not<br>Turn Exclusively on Whether These Two Cases Could<br>Have Been Filed as a Single Lawsuit .....                    | 18          |
| <i>People v. Tenner</i> , 206 Ill. 2d 381 (2002) .....   | 19          |
| <i>Busch v. Mison</i> , 385 Ill. App. 3d 620 (1st Dist. 2008) .....  | 19          |
| <i>Vitale v. Dorgan</i> , 25 Ill. App. 3d 941 (1975) .....   | 19, 20      |
| <i>Lake County Forest Preserve District v. Keefe</i> , 53 Ill. App. 3d 736 (2d Dist. 1977) .....   | 20          |
| <i>Farmers Automobile Insurance Association v. Neumann</i> , 2015 IL App (3d) 140026 ....  | 21          |
| <i>Dowe v. Birmingham Steel Corp.</i> , 2011 IL App (1st) 091997 .....   | 21          |
| D. Deerfield's Failure to Timely Appeal in <i>Easterday</i> is Fatal to<br>Its Appeal in <i>Guns Save Life</i> . .....   | 21          |
| <i>In re Andrea F.</i> , 208 Ill. 2d 148 (2003) .....  | 22          |
| <i>In re Adoption of Walgreen</i> , 186 Ill. 2d 362 (1999) .....   | 22          |
| <i>Du Page Forklift Serv. v. Material Handling Servs.</i> , 195 Ill. 2d 71 (2001) .....  | 23          |
| <i>Kassnel v. Village of Rosemont</i> , 135 Ill. App. 3d 361 (1st Dist. 1985) .....  | 23          |

|      |   |                |
|------|---|----------------|
| II.  | State Law Preempts Deerfield's Attempt to Ban So-Called Assault Weapons and to Limit the Capacity of Ammunition Magazines Used in Assault Weapons .....   | 24             |
| A.   | State Law Expressly Preempts All Local Regulation of Assault Weapons .....  | 24             |
|      | 430 ILL. COMP. STAT. 65/13.1(c) .....   | 24, 25, 27, 28 |
|      | 430 ILL. COMP. STAT. 65/13.1(e) .....   | 24, 27         |
|      | <i>City of Chicago v. Roman</i> , 184 Ill. 2d 504, 519 (1998) .....   | 24, 25, 26     |
|      | ILL. CONST. art. VII, § 6(i) .....  | 26, 27         |
|      | David C. Baum, <i>A Tentative Survey of Illinois Home Rule (Part II): Legislative Control, Transition Problems, and Intergovernmental Conflict</i> , 1972 U. ILL. L.F. 559 .....                                | 26, 27         |
|      | 520 ILL. COMP. STAT. 5/2.1 .....  | 26             |
|      | 510 ILL. COMP. STAT. 45/8 .....   | 26             |
|      | <i>City of Chicago v. StubHub, Inc.</i> , 2011 IL 111127 .....  | 27             |
| B.   | Even if State Law Preserves Some Local Authority Over Assault Weapons, Deerfield's Ban is Outside the Scope of that Authority .....   | 28             |
|      | 430 ILL. COMP. STAT. 65/13.1(c) .....   | 28             |
|      | <i>Lundy v. Farmers Grp., Inc.</i> , 322 Ill. App.3d 214 (2d Dist. 2001) .....  | 29             |
|      | Ill. Sup. Ct. R. 341(a) .....   | 29             |
|      | 720 ILL. COMP. STAT. 5/24-1.6(c) .....  | 29             |
|      | <i>Athey v. City of Peru</i> , 22 Ill. App.3d 363 (3d Dist. 1974) .....   | 30, 31         |
|      | <i>Amendment</i> , BLACK'S LAW DICTIONARY (10th ed. 2014) .....   | 30             |
|      | Deerfield, Illinois Village Code § 1-7 (1976) .....   | 30             |
|      | <i>Village of Park Forest v. Wojciechowski</i> , 29 Ill.2d 435 (1963) .....   | 31             |
|      | <i>Nolan v. City of Granite City</i> , 162 Ill. App.3d 187 (5th Dist. 1987) .....   | 31             |
|      | Abner J. Mikva, <i>A Reply to Judge Starr's Observations</i> , 1987 DUKE L.J. 380 (1987) .....  | 32             |
| C.   | The Wildlife Code Independently Preempts Deerfield's Ban .....  | 32             |
|      | 520 ILL. COMP. STAT. 5/2.1 .....  | 32             |
|      | <i>Illinois Digest of Hunting and Trapping Regulations 2018-2019</i> , ILLINOIS DEP'T OF NAT. RES. at 47 (2018), <a href="https://bit.ly/2GZQN6l">https://bit.ly/2GZQN6l</a> (last visited Feb. 10, 2020) ..... | 32, 33         |
|      | <i>State Bank of Waterloo v. City of Waterloo</i> , 339 Ill. App. 3d 767 (5th Dist. 2003) ....  | 33             |
| III. | Deerfield's Defense of Its Ban on Large Capacity Magazines Is Forfeited and Meritless .....   | 34             |
|      | 430 ILL. COMP. STAT. 65/13.1(b) .....   | 34, 35         |
|      | 430 ILL. COMP. STAT. 66/90 .....  | 34             |
|      | <i>Int'l Union of Operating Engineers, Local 150 v. Lowe Excavating Co.</i> , 225 Ill. 2d 456 (2006) .....  | 34             |

|   |    |
|---|----|
| GUN DIGEST 2018 (Jerry Lee ed., 72d ed. 2018) ..... | 35 |
| 430 ILL. COMP. STAT. 65/13.1(c) .....               | 35 |
| CONCLUSION .....                                    | 36 |

## INTRODUCTION

The issue of what types of firearms law-abiding, responsible citizens are entitled to own is an increasingly controversial one in some segments of society. While this case involves a challenge by residents of the Village of Deerfield to the Village's attempt to ban some of the most popular firearms and ammunition magazines in the Nation, this appeal is not about the wisdom of such bans or whether they are consistent with federal and state guaranties of the right to keep and bear arms. Rather, this appeal presents a threshold jurisdictional question whether Deerfield waited too long to appeal from summary judgment orders the circuit court entered in two consolidated cases in March 2019. To the extent that the Court determines that it has jurisdiction to hear Deerfield's appeal, the principal merits question is not whether banning certain firearms and ammunition magazines is good policy but who gets to make that decision. As the circuit court correctly concluded, the regulation of so-called "assault weapons" and "large capacity" magazines are matters of statewide concern that the People's representatives have reserved for determination at the statewide level; these are not proper subjects of local authority. The Court should dismiss this appeal for lack of jurisdiction, but if it reaches the merits it should affirm.

**ISSUES PRESENTED FOR REVIEW**

1. Whether the *Easterday* and *Guns Save Life* cases retained their identities as two separate cases after the circuit court consolidated them, thus making the present appeal untimely with respect to *Easterday* and moot with respect to *Guns Save Life*.
2. Whether the FOID Card Act and the Firearm Concealed Carry Act preempt Deerfield's attempt to ban popular semiautomatic firearms and ammunition magazines.
3. As an alternative basis for affirmance, whether the Wildlife Code preempts Deerfield's attempt to ban popular semiautomatic firearms and ammunition magazines.

## JURISDICTION

For the reasons explained at length in the argument section of this brief, this Court lacks appellate jurisdiction. The *Easterday* and *Guns Save Life* cases did not merge into a single action when the circuit court consolidated them. As a result, Deerfield was required to file a notice of appeal within 30 days of March 22, 2019, when the circuit court entered final judgment in *Easterday*, C237; ILL. S. CT. R. 303(a). Although Deerfield was deemed to have filed a notice of appeal within the proscribed time limit, it failed to include in the record on appeal the materials that were necessary to establish this Court's jurisdiction. C588–89. As a consequence, this Court dismissed Deerfield's first appeal. C590. Thus, there is an unappealable final judgment in *Easterday* enjoining Deerfield from enforcing its bans on so-called "assault weapons" and "large capacity magazines."

The permanent injunction in *Guns Save Life* is materially identical to the injunction in *Easterday*, C237; C1281. Because this Court lacks jurisdiction to disturb the injunction in *Easterday*, it cannot grant Deerfield effectual relief by overturning the permanent injunction in *Guns Save Life*. Accordingly, Deerfield's appeal of the permanent injunction in *Guns Save Life* is moot. *In re Andrea F.*, 208 Ill. 2d 148, 156 (2003).

**ADDITIONAL CONSTITUTIONAL PROVISIONS, STATUTES, AND  
ORDINANCES INVOLVED**

**Firearm Concealed Carry Act, 430 ILL. COMP. STAT. 66/90. Preemption.**

The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. 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.

**Deerfield, Illinois Village Code**

**Sec. 1-7. Code provisions as continuance of existing ordinances.**

The provisions appearing in this Code, insofar as they relate to the same subject matter and are substantially the same as those ordinance provisions previously adopted by the Village and existing at the effective date of this Code, shall be considered as restatements and continuations thereof and not as new enactments.

## STATEMENT OF FACTS

### A. Factual Background

This case concerns firearms that the Village of Deerfield has deemed to be “assault weapons” and magazines that the Village has deemed to be “large capacity,” *see* C921–24, but these terms are utter misnomers. “Prior to 1989, the term ‘assault weapon’ did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists.” *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting). Anti-gun publicists promoting “assault weapons” bans have exploited the public’s confusion over the difference between fully automatic machine guns, which have been illegal under federal law since 1934 with very limited exceptions, *see* 18 U.S.C. § 922(o), versus semiautomatic “assault weapons,” which is an invented category that includes many of the nation’s most popular rifles. The difference is that unlike a fully automatic machine gun, semiautomatic “assault weapons” will *not* fire continuously with one pull of the trigger. Rather, a semiautomatic firearm requires the user to pull the trigger each time he or she wants to discharge a round, and semiautomatic firearms “traditionally have been widely accepted as lawful possessions.” *Staples v. United States*, 511 U.S. 600, 602 n.1, 612 (1994).

Deerfield’s ordinance does not ban all semiautomatic firearms but only a subset of them, some specified by model and others by particular prohibited features. But to the extent the features that make a firearm an “assault weapon” under Deerfield’s ordinance make a functional difference at all, they promote accuracy and, thus, make firearms safer and more effective to use. *See generally* David B. Kopel, *Rational Basis Analysis of “Assault Weapon” Prohibition*, 20 J. CONTEMP. L. 381, 395–403 (1994).

With limited exceptions, Deerfield's ordinance also defines magazines capable of holding more than ten rounds of ammunition as "large capacity." C923. But calling these devices "large capacity" is highly misleading—they are a standard feature on many of the nation's most popular firearms. *See Duncan v. Becerra*, 366 F. Supp. 3d 1131, 1143–45 (S.D. Cal. 2019); *see also* GUN DIGEST 2018, 109, 372–416, 441–49, 481 (Jerry Lee ed., 72d ed. 2018); David B. Kopel, *The History of Firearm Magazines and Magazine Prohibitions*, 78 ALB. L. REV. 849, 872 (2014–15). There are many reasons why a law-abiding citizen would not want to be limited to substandard capacity ammunition magazines. The most obvious is to decrease the risk of running out of ammunition before being able to repel a criminal attack.

#### **B. Procedural History**

This appeal arises out of two separate lawsuits brought by two distinct groups of plaintiffs challenging the Village of Deerfield's ordinances prohibiting so-called "assault weapons" and "large capacity magazines." Both lawsuits were filed in April 2018 and alleged that Deerfield's ordinances were preempted by state law, but whereas preemption was the only type of claim raised in *Easterday*, C17–18, the *Guns Save Life* plaintiffs also raised claims under the Takings Clause and Eminent Domain Act, C668–77. On July 27, 2018, the circuit court ordered the cases be consolidated "for all future proceedings," C862, even though no party had filed a written motion for consolidation. Nonetheless, the cases retained separate docket numbers and separate docket entries.

On August 17, 2018, the *Guns Save Life* plaintiffs filed an amended complaint and a motion for summary judgment (or, alternatively, for a preliminary injunction). C897. That same day, the *Easterday* plaintiffs also filed an amended complaint and a

renewed motion for a preliminary injunction. C101. Two months later, on October 26, the *Guns Save Life* plaintiffs once again moved for summary judgment, C998, and four days after that, the *Easterday* plaintiffs likewise moved for summary judgment, C230. Thus, the plaintiffs in the two cases continued to file separate complaints and separate dispositive motions even after the circuit court's consolidation order.

The circuit court granted summary judgment to the plaintiffs in both cases on March 22, 2019. C236–37; C1260–81. First, in an order that applied only to *Guns Save Life*, the circuit court granted the plaintiffs summary judgment on the preemption claims and entered a permanent injunction “enjoining defendant Village of Deerfield, its agents, officials or police department from enforcing any provision of Ordinance No. 0-18-06 and Ordinance No. 0-18-19 making it unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances.” C1281. Second, by way of a separate order applicable only to *Easterday*—which the circuit court described as a “companion case” to *Guns Save Life*—the circuit court granted summary judgment to the plaintiffs “[f]or the reasons stated in” the *Guns Save Life* order, which the circuit court “attached and incorporated” into the *Easterday* order. C236. The circuit court entered the same permanent injunction in *Easterday* that it had entered in *Guns Save Life*. Whereas the circuit court's order resolved all claims in the *Easterday* case, the *Guns Save Life* case remained in an interlocutory posture because the circuit court denied summary judgment on the *Guns Save Life* plaintiffs' takings and eminent domain claims. C1280. Nonetheless, Deerfield purported to appeal both orders to this Court.

This Court dismissed Deerfield's first appeal for lack of jurisdiction on June 12, 2019. C451–68. The circuit court's consolidation order played an important role in this Court's analysis. As this Court explained:

Illinois courts have recognized three distinct forms of consolidation: (1) where several actions are pending involving the same subject matter, the court may stay proceedings in all but one of the cases and determine whether the disposition of one action may settle the others; (2) where several actions involve an inquiry into the same event in its general aspects, the actions may be tied together, but with separate docket entries, verdicts and judgment, the consolidation being limited to a joint trial; and (3) where several actions are pending which might have been brought as a single action, the cases may be merged into one action, thereby losing their individual identity, to be disposed of as one suit.

C464–65. “The difference between those forms can affect appellate jurisdiction.” C465. For example, “[w]here the second form of consolidation applies, a final judgment entered in one of the actions is immediately appealable without a Rule 304(a) finding. In fact, the aggrieved party *must* immediately appeal the final order in that first action, as opposed to waiting until the companion action is resolved.” *Id.* (emphasis in original) (citations omitted). “Where, however, the third form of consolidation applies and the two actions merge into one, unless the trial court makes a Rule 304(a) finding, the aggrieved party may not appeal until all claims have been adjudicated.” *Id.*

It was clear that, due to the interlocutory posture of *Guns Save Life*, the circuit court's summary judgment order was not immediately appealable, and this Court held that the appeal from the *Guns Save Life* order was premature. C466–67. Accordingly, either Deerfield had to await the conclusion of the *Guns Save Life* proceedings to appeal a final judgment or it had to seek a Rule 304(a) order permitting an interlocutory appeal, which it had not done. *Id.*

By contrast, whether the *Easterday* order was immediately appealable depended on whether it had merged with *Guns Save Life*. If it had merged, Deerfield was in the same position with respect to *Easterday* that it was in with respect to *Guns Save Life*; it could either await the conclusion of proceedings in *Guns Save Life* and take an appeal from a final judgment, or it could obtain a Rule 304(a) order permitting an interlocutory appeal. C467. Crucially, however, this Court also made clear that, “[i]f the two actions did *not* merge, Deerfield’s failure to establish that fact in the present appeal is fatal to *any* appeal in the *Easterday* action.” C590 (emphases added). The record that Deerfield had filed with this Court, however, did not contain sufficient information for the Court to resolve whether the two cases had merged. C465–66. With the *Guns Save Life* appeal being premature and the *Easterday* appeal being of uncertain jurisdictional propriety, this Court dismissed the appeal. C467.

Back in the circuit court, Deerfield moved for a determination that the two cases had been merged and for a Rule 304(a) finding allowing them to appeal both cases. On September 6, 2019, the circuit court granted Deerfield’s motion, concluding—based on the trial judge’s previously undisclosed subjective intent about the purpose of the consolidation and non-public facts about the internal procedures of the circuit court clerk’s office—that the cases had merged. C283–302; C616–17. Deerfield filed its Notice of Appeal on October 3, 2019. C618.

## ARGUMENT

### **I. This Court Lacks Appellate Jurisdiction Because Deerfield Failed to Timely Appeal from the Final Judgment in *Easterday*.**

As Deerfield recognizes in its Statement of Jurisdiction, this Court's jurisdiction over the present appeal depends on whether the *Easterday* and *Guns Save Life* cases merged into a single action when the trial court consolidated them in an order that was issued on July 27, 2018. *See* Deerfield Br. 4–5. This Court's opinion in the prior appeal made the point directly with respect to *Easterday*: "If the two actions did not merge, Deerfield's failure to establish that fact in the present appeal is fatal to *any* appeal in the *Easterday* action." C590 (emphasis added); *see also* C264. Because the cases did not merge, Deerfield cannot now appeal from the summary judgment ruling in *Easterday*. Furthermore, as explained below, the unappealable final judgment in *Easterday* also prevents this Court from reaching the merits of Deerfield's appeal of the permanent injunction in *Guns Save Life*.

#### **A. The *Easterday* and *Guns Save Life* Cases Did Not Merge into A Single Action.**

This Court does not write on a blank slate when deciding whether the *Easterday* and *Guns Save Life* cases merged. In its opinion dismissing Deerfield's previous appeal, the Court articulated the test for deciding the merger question in this case:

In considering which form of consolidation applies in a given case, reviewing courts have looked to the reasons for consolidation proposed by the litigants in their motions for consolidation. Other relevant considerations may include the wording of the consolidation order, whether the cases maintained separate docket entries after consolidation, and whether the litigants were treated as parties in both cases.

C588–89 (citations omitted). Deerfield did not file a timely petition for rehearing from this Court's prior opinion, and this articulation of the relevant legal standard is therefore

law of the case. *See People v. Tenner*, 206 Ill. 2d 381, 395 (2002), *as modified on denial of reh'g* (Mar. 31, 2003) (“the law of the case doctrine bars relitigation of an issue already decided in the same case”).

Under the test this Court announced in its previous opinion in this case, *Easterday* and *Guns Save Life* did not merge into a single action when they were consolidated. As the record demonstrates, the parties did not file written motions for consolidation, and there is no transcript of the hearing at which the trial court consolidated the cases. *See* R298. That leaves the Court to weigh the “[o]ther relevant considerations” identified in its previous opinion. C588. As the trial court observed, “two docket numbers exist,” R284; “there were two separate [summary judgment] orders,” R299; and “there is no dispute that there are two separate docket entries,” *id.* Under this Court’s opinion in the previous appeal and prevailing consolidation jurisprudence, these facts conclusively demonstrate that *Easterday* and *Guns Save Life* did not merge.

Indeed, in three different published decisions, the First and Fifth Districts have held that, where two cases (1) retained separate case numbers and (2) either separate docket sheets or separate judgments, that was sufficient to establish that the cases had not merged. *See In re Marriage of Harnack & Fanady*, 2014 IL App (1st) 121424, ¶ 41 (holding that no merger occurred because “[s]eparate case numbers were retained and . . . separate judgments would be entered in each case”); *First Robinson Sav. & Loan v. Ledo Const. Co.*, 210 Ill. App. 3d 889, 891 (5th Dist. 1991) (no merger because “[t]he circuit court . . . kept separate docket sheets and case numbers for each pending case”); *Kassnel v. Village of Rosemont*, 135 Ill. App. 3d 361, 364–65 (1st Dist. 1985).

*Kassnel v. Village of Rosemont* is especially instructive. In that case, the circuit court had consolidated a declaratory judgment action and a condemnation action. *Id.* at 363. After the circuit court entered judgment in favor of Rosemont in the declaratory judgment action, Kassnel failed to appeal that judgment while the condemnation action proceeded to trial. *Id.* Kassnel argued that, because the two actions had been merged, “no appeal was required [in the declaratory judgment action] until after all the issues in both suits had been resolved, at least in the absence of any Supreme Court Rule 304(a) finding supporting an interlocutory appeal.” *Id.* at 364. The First District held that, because “separate case numbers were retained and separate judgments were entered in each case,” it was “[c]lear[ ]” that “the consolidation of the actions was only to permit a single hearing of evidence relating to common issues and did not result in the merging of the two matters into a single suit.” *Id.* at 364. As a result, Kassnel’s failure to appeal the judgment in the declaratory judgment action resulted in that judgment becoming final and non-appealable. *Id.* at 364–65. The same is true here: because *Easterday* and *Guns Save Life* retained separate case numbers and had separate summary judgment orders, they did not merge, and Deerfield’s failure to timely appeal the *Easterday* order means that it has become final and non-appealable.

Perhaps the most significant fact for purposes of resolving the merger issue in this case is the circuit court’s entry of two separate summary judgment orders. *See Busch v. Mison*, 385 Ill. App. 3d 620, 625 (1st Dist. 2008) (concluding cases had merged in part because arbitrators “entered only one award . . . , not separate arbitration awards”); *Adoption of S.G. v. S.G.*, 401 Ill. App. 3d 775, 782 (4th Dist. 2010) (holding no merger occurred in part because a key order had only applied to one case). Notably, in those

orders, the circuit court described *Easterday* as “the companion case” to *Guns Save Life*—a statement that makes no sense if the two cases in fact had merged into a single action. C236. Moreover, the two summary judgment orders are not identical. While the circuit court’s order in *Easterday* incorporated by reference the legal reasoning in the *Guns Save Life* order, the court also scheduled a status conference in *Guns Save Life* but not *Easterday*. See *Adoption of S.G.*, 401 Ill. App. 3d at 782 (holding no merger occurred in part because “each set of [plaintiffs] was not treated as parties in the other case”). These events show that *Guns Save Life* and *Easterday* maintained their separate identities even after they were consolidated.

Other entries on the dockets further confirm that consolidation did not merge the cases into one action. Following consolidation, the plaintiffs in the two cases filed separate amended complaints, with the *Guns Save Life* plaintiffs asserting claims not pressed by the *Easterday* plaintiffs. See C101; C897. The plaintiffs in each case also separately moved for preliminary injunctive relief and for summary judgment. C133; C230; C863; C998. And although both case captions appeared on some (but not all) of the parties’ filings following consolidation, the more relevant consideration—as *Harnack & Fanady*, *First Robinson*, and *Kassnel* make clear—is that the case captions continued to use *two separate docket numbers* even after the cases were consolidated. See, e.g., C998; C1220.

Moreover, although the circuit court’s consolidation order does not explain why the cases were consolidated, the information in the record gave the parties every reason to think that the cases were consolidated for judicial economy and the convenience of the parties. The dockets in *Guns Save Life* and *Easterday* reflect that one week prior to the

entry of the consolidation order, on July 20, 2018, the circuit court held a status conference in *Guns Save Life* but not *Easterday*. C1460, C1463. No transcript of the July 20 hearing was prepared, but counsel for the *Guns Save Life* plaintiffs sent an email to both Deerfield's counsel and counsel for the *Easterday* plaintiffs shortly after the hearing ended describing the substance of what happened. With the circuit court having recently issued temporary restraining orders in both cases, it was time to set a schedule for briefing on motions for preliminary injunctions or summary judgment. But counsel for the *Easterday* plaintiffs was not present at the July 20 hearing, and so the trial court set status conferences for both cases to take place one week later, on July 27. As counsel for the *Guns Save Life* plaintiffs explained—and Deerfield's counsel did not dispute—the circuit court indicated on July 20 that it “wanted the *Easterday* matter to be up at the same time next week to discuss any scheduling issues.” C1468.

With this context in view, the apparent purpose of the circuit court's order consolidating the cases “for all future proceedings” on July 27 becomes evident. The circuit court's consolidation order would avoid future proceedings like the July 20 status conference in *Guns Save Life*, where progress in one of the cases was hampered by the absence of counsel for the plaintiffs in the other. Consolidation ensured that the schedules in the two cases would stay on the same track—that is, it promoted the convenience of the court and the parties. In consolidating the cases under these circumstances, the trial court gave the parties good reason to believe that the cases had not merged into a single action—a conclusion that was confirmed by the fact that, in the ensuing months, the cases continued to have two separate docket numbers and had separate summary judgment orders.

**B. The Circuit Court Erred By Relying on Previously Undisclosed Information to Determine Whether *Easterday* and *Guns Save Life* Merged Into A Single Action.**

The fundamental question the merger issue presents is whether Deerfield was obliged to notice an appeal within 30 days of March 22, 2019—the date on which the circuit court entered summary judgment on all the counts in the *Easterday* complaint. Under this Court’s precedents and as a matter of fundamental fairness, the answer to this question must depend exclusively on information that was available to Deerfield at the time it determined whether it was necessary to separately appeal from the summary judgment ruling in *Easterday*. Indeed, Plaintiffs are aware of no case in which an Illinois appellate court has decided whether two cases merged by relying on facts known to the court but not to the parties.

Following this Court’s dismissal of Deerfield’s first appeal, the trial court nevertheless concluded that *Easterday* and *Guns Save Life* had merged because it gave dispositive weight to two considerations that the parties previously knew nothing about. First, the trial court mistakenly believed that this Court’s previous opinion called for an inquiry into the trial judge’s own “subjective intent,” *see* R288–89, even though it acknowledged that such an intent was not memorialized anywhere in the existing record, R298. But this Court’s statement that it had “no way of knowing why the parties and/or the trial court believed that consolidation was appropriate or whether the court’s intent was to merge the actions” did *not* make the trial judge’s previously undisclosed, subjective intentions relevant to the merger analysis. C588. Rather, in the two sentences preceding its allusion to the trial court’s “intent,” this Court stated: “The supporting record does not contain a motion for consolidation. Nor does the record contain any reports of proceedings.” *Id.* In the same paragraph, the Court expressed its “concern that

the [circuit] court may have made relevant findings or comments that we do not have in front of us.” C589. Thus, this Court made clear that the relevant inquiry was whether the lower court’s intent *was disclosed in the existing trial court record* in materials that Deerfield had omitted from the record on appeal. Nothing in this Court’s opinion—or in any Illinois caselaw of which Plaintiffs are aware—permits the merger determination to be based on a trial judge’s post-hoc explanation of his or her subjective intent, announced many months after the losing party had to decide whether to file a notice of appeal in one of two consolidated cases.

The circuit court also based its merger determination on facts about the clerk’s office’s “internal policies” that, as the trial court acknowledged, “are not public.” R283. The court explained that it would disregard the (usually dispositive) fact that the two cases had separate case numbers, docket entries, and summary judgment orders because “[t]he Court’s recordkeeping computer system . . . has very limited capabilities” that made it necessary for the court to maintain such a separation, even though the trial court subjectively intended the cases to merge. R284. The circuit court admitted that, by relying on the internal policies of its clerk’s office, it was making its merger determination based on “underlying factors that may not be known to the public” and that were certainly not in the record at the time the court entered summary judgment in *Easterday*. R300. Yet the circuit court pointed to no Illinois authority—and Plaintiffs are aware of none—permitting a court to determine whether merger occurred based on extra-record facts that are *not known to the parties*.

The approach adopted by the trial court would make the scope of appellate jurisdiction hinge on facts that neither the parties nor the appeals court has any way of

knowing at the time the losing party is deciding whether it is necessary to notice an appeal in one of two consolidated cases. Such a result is untenable for two reasons.

First, because merger analysis can affect when and how parties must appeal from orders in the circuit court, it is essential that parties be able to determine whether a merger has taken place based on the information that is available to them. A hypothetical illustrates the fundamental problem with the circuit court's contrary reasoning. Suppose that, after the circuit court consolidated the two cases, it used a single case number, a single docket sheet, and entered only one summary judgment order. Suppose further that, based on those publicly available facts, Deerfield concluded that the cases had merged, and after the trial court entered summary judgment, it moved for a Rule 304(a) certification to allow for interlocutory review of both cases, allowing the 30-day period for filing a notice of appeal in *Easterday* to lapse in the meantime. In that hypothetical scenario, it would obviously be highly prejudicial and unfair to Deerfield for the circuit court to subsequently hold that the cases retained their distinct identities because, regardless of what the *facts available to the parties* suggested, its own subjective intent had been *not* to merge the cases and it had only used a single case number, docket sheet, and order because of previously undisclosed facts about the clerk's office's computer system. The result of this hypothetical scenario would be that Deerfield would have lost its ability to appeal in *Easterday* because it had determined—correctly, based on the facts available to it at the time—that the two actions had merged. This is the jurisdictional trap created by the trial court's decision on merger. Basic rule-of-law norms strongly condemn such a result.

Second, because appellate jurisdiction is about the scope of this Court's power, it cannot depend on such contingent and idiosyncratic factors as a trial judge's undisclosed intent and non-public aspects of the computer system used by a circuit court clerk's office. An appellate court either has jurisdiction or it does not; there is no coherent third alternative in which this Court *lacks* jurisdiction based on facts known to the parties but *has* jurisdiction based on facts locked away in the mind of a trial judge or on the hard drive of a computer in the circuit court clerk's office. That is why, as Illinois courts have repeatedly held, "the transcript *of the record* must show some ground for the jurisdiction of [the reviewing] court." *Toomey v. Toomey*, 350 Ill. 162, 164 (1932) (emphasis added); *Unity Ventures v. Pollution Control Bd.*, 132 Ill. App. 3d 421, 430 (2d Dist. 1985); *LB Steel, LLC, v. Carlo Steel Corporation*, 428 Ill. Dec. 265, 278 (1st Dist.).

The trial court erred by basing its merger ruling on facts not present in the record or even available to the parties. This Court's merger analysis should examine only those facts that were included in the trial court record and available to Deerfield when it decided whether to proceed with an appeal within 30 days of the summary judgment ruling in *Easterday*.

**C. Whether *Easterday* and *Guns Save Life Merged* Does Not Turn Exclusively on Whether These Two Cases Could Have Been Filed as a Single Lawsuit.**

Apparently recognizing that it could not establish merger under the test this Court articulated in its prior opinion, in the proceedings below Deerfield argued that the merger issue should turn exclusively on whether *Easterday* and *Guns Save Life* could have initially been filed as a single lawsuit. There are several problems with Deerfield's new test.

First, Deerfield's test is flatly contrary to the way this Court, in the previous appeal, articulated the test for whether cases have merged, and this Court's previous articulation of the test is binding as law-of-the-case. Nowhere in its previous opinion did this Court embrace Deerfield's test, which makes the merger question depend *solely* on whether the cases could have been brought as a single action. If Deerfield believed that this Court's previous articulation of the relevant test was wrong or inconsistent with precedent, it had an obligation to raise that point before this Court in a petition for rehearing or through some other procedural device. Having failed to do so, this Court's previous articulation of the relevant legal standard governs by virtue of law-of-the-case, and Deerfield cannot now be heard to complain. *See Tenner*, 206 Ill. 2d at 395.

Second, even if law-of-case did not apply, Deerfield's test is inconsistent with consolidation jurisprudence. In the proceedings below, Deerfield relied on *Busch*'s statement that "where several actions are pending which might have been brought as a single action, the cases *may be merged* into one action, thereby losing their individual identity, to be disposed of as one suit." 385 Ill. App. 3d at 624 (emphasis added). But as the italicized language shows, whether two actions "might have been brought as a single action" is a relevant, but not sufficient, condition for merger. *Id.* In other words, where two cases could have been brought as a single action, "the cases *may be*"—but *need not necessarily be*—"merged," *id.* (emphasis added). And that makes sense: it could very well be that two cases could have been brought as a single action but that a circuit court would want to consolidate them solely for purposes of convenience and would *not* want to merge them. Deerfield's test would rob trial courts of the discretion to order a more

limited form of consolidation in instances in which two cases could have been brought as a single action.

In the proceedings below, Deerfield also relied on this Court's decision in *Vitale v. Dorgan*, 25 Ill. App. 3d 941, 944 (1975), but *Vitale* cannot carry the weight Deerfield assigns to it. *Vitale* did *not* base its holding about merger *solely* on the fact that the two cases could have been brought as a single action. Rather, it also relied on "the legislative purpose embodied in the Forcible Entry and Detainer Act," which would have been "subvert[ed]" had this Court held that the cases had *not* merged. *Id.* Importantly, both *First Robinson* and *Kassnel*—which strongly support a holding that *Easterday* and *Guns Save Life* did not merge—cited and relied on *Vitale*'s description of the consolidation test, even though they applied the traditional test for merger articulated by this Court in its opinion in the previous appeal. *Vitale*, then, is best understood as being consistent with the test this Court embraced during Deerfield's previous appeal and that prevails across the consolidation caselaw, one in which multiple factors—not just whether cases could have been brought as a single action—are taken into account to determine whether cases merged.

Deerfield's test is also inconsistent with *Lake County Forest Preserve District v. Keefe*, 53 Ill. App. 3d 736, 740 (2d Dist. 1977). In that case, this Court applied *Vitale* and held that two cases involving "the same parties and the same property" were not even suitable for consolidation (let alone merger) because they did not "have the same issues." 53 Ill. App. 3d at 740. The two cases in *Lake County* clearly *could* have been brought as a single action since they both concerned past-due rent relating to the same property and involved the same parties, yet they were not appropriate for consolidation given the

different *additional* issues raised by the two cases. *Id.* Here, although the preemption claims are common to *Easterday* and *Guns Save Life*, plaintiffs in *Guns Save Life* also brought *additional* claims for violation of the Takings Clause and the Eminent Domain Act, which would involve “entirely separate” evidence from the evidence at issue in *Easterday*. *Id.* Indeed, *Easterday* and *Guns Save Life* do not even involve the same parties, which makes them even further removed from *Vitale* than *Lake County* was. Thus, just as in *Lake County*, even under Deerfield’s incorrect interpretation of *Vitale*, the cases below did not merge.

In the proceedings below, Deerfield also relied on two additional cases that are inapposite. First, it emphasized *Farmers Automobile Insurance Association v. Neumann*, but that case involved a consolidation order “stat[ing] that all filings would be filed in the first case number,” thus effectively applying a single case number and a single docket sheet to both cases. 2015 IL App (3d) 140026, ¶ 11. That is clearly not the situation here, where the circuit court acknowledged that the cases below had separate case numbers and separate docket sheets. Second, Deerfield relied on *Dowe v. Birmingham Steel Corp.*, 2011 IL App (1st) 091997. That was a case in which “the original stated purposes for the consolidation was to conduct discovery and motion practice,” yet the First District held that “the consolidation was much broader” and led to merger. *Id.* ¶ 22. Unfortunately, the First District did not explain *why* it believed that the consolidation was “much broader,” *id.*, and it is simply not possible to determine with confidence the basis for the First District’s holding in that case, so it cannot help Deerfield here.

**D. Deerfield's Failure to Timely Appeal in *Easterday* is Fatal to Its Appeal in *Guns Save Life*.**

Because *Easterday* and *Guns Save Life* did not merge, there is an unappealable final judgment in *Easterday* “enjoining defendant Village of Deerfield, its agents, officials or police department from enforcing any provision of Ordinance No. 0-18-06 and Ordinance No. 0-18-19 making it unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances.” C236–37. That injunction is identical in substance to the permanent injunction that issued in *Guns Save Life*, C1281. For two reasons, Deerfield’s failure to timely appeal in *Easterday* is also fatal to its appeal of the permanent injunction in *Guns Save Life*.

First, Deerfield’s appeal of the permanent injunction in *Guns Safe Life* is moot. Because the *Easterday* injunction is no longer appealable and will remain in place irrespective of any proceedings in *Guns Save Life*, it is “impossible for the reviewing court to grant effectual relief to the complaining party.” *In re Andrea F.*, 208 Ill. 2d at 156. The mootness of the appeal in *Guns Save Life* is demonstrated by the Illinois Supreme Court’s decision in *In re Adoption of Walgreen*, 186 Ill. 2d 362 (1999). In that case, a pair of children’s grandparents petitioned for adoption, claiming that the biological mother was unfit. *Id.* at 363–64. The trial court denied the petition, and the grandparents appealed directly to the Supreme Court. *Id.* at 364. In the meantime, the biological mother consented to the adoption by the grandparents; a new adoption proceeding occurred in the circuit court; and a final judgment was entered in that separate proceeding by which the grandparents became the children’s adopted parents. *Id.* In light

of the separate, final judgment in favor of the grandparents, the Illinois Supreme Court held that the appeal from the denial of the original adoption petition was moot:

Because the Walgreens have succeeded in adopting the children, the issue of whether the circuit court acted correctly in denying the adoption petition at issue here is no longer of any consequence. Even if the circuit court was wrong, a decision by our court could not grant the Walgreens any relief that they have not already received. The case has therefore become moot.

*Id.* The same reasoning applies here: “[e]ven if the circuit court was wrong [in entering a permanent injunction in *Guns Save Life*], a decision by [this] court could not grant [Deerfield] any relief . . . . The case has therefore become moot.” *Id.*

Second, even if this Court were to conclude that it has jurisdiction to hear Deerfield’s appeal in *Guns Save Life*, it should affirm the trial court’s ruling in *Guns Save Life* based on collateral estoppel. There are three factors that must be satisfied for collateral estoppel to apply:

(1) the issue decided in the prior adjudication is identical with the one presented in the current action, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party to, or in privity with a party to, the prior adjudication.

*Du Page Forklift Serv. v. Material Handling Servs.*, 195 Ill. 2d 71, 81 (2001). All three factors are present here. There is no dispute that the preemption issues in this appeal are identical to the issues decided in *Easterday*; there was a final judgment on the merits in *Easterday*; and the defendants in *Guns Save Life* are identical to (i.e., Village of Deerfield), or in privity with (i.e., Harriet Rosenthal, in her official capacity as Deerfield’s Mayor), the defendant in *Easterday* (i.e., Village of Deerfield).

*Kassnel* supports this result. As described above, that appeal involved two cases that had been consolidated in the trial court, one of which had gone to final judgment while the other remained in an interlocutory posture. *Kassnel* allowed the time to appeal

the final judgment to lapse while the interlocutory case concluded, and he argued on appeal that, because the two cases had merged, his appeal of both cases was timely. The First District rejected that argument, holding that the cases had not merged and, as a result, that the final judgment in the first case had become final and non-appealable. The court then held that “under principles of *res judicata* Kassnel is precluded from relitigating those issues that were the subject of the final order in that prior case.” *Kassnel*, 135 Ill. App. 3d at 365 (citations omitted). Just as in *Kassnel*, Deerfield allowed the time to appeal *Easterday* to lapse, and as a result, it is precluded from re-litigating the issues decided in *Easterday*, which includes all issues raised in their appeal of the permanent injunction in *Guns Save Life*.

**II. State Law Preempts Deerfield’s Attempt to Ban So-Called Assault Weapons and to Limit the Capacity of Ammunition Magazines Used in Assault Weapons.**

**A. State Law Expressly Preempts All Local Regulation of Assault Weapons.**

On July 9, 2013, the General Assembly enacted Public Act 98-63, which added language to the FOID Card Act. That Act now says that “the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State.” 430 ILL. COMP. STAT. 65/13.1(c). To eliminate any possible uncertainty as to whether the State’s authority to regulate these firearms is exclusive, the General Assembly further provided that “[t]his 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.” *Id.* at 65/13.1(e). As the circuit court correctly concluded, by invoking Article VII, § 6(h) of the Illinois Constitution—and not Article VII, § 6(i)—the General Assembly made state regulation in this area exclusive, and home rule units therefore may not exercise

concurrent regulatory authority on this topic. *See City of Chicago v. Roman*, 184 Ill. 2d 504, 519 (1998) (home rule units may regulate a particular subject *only* “to the extent that the General Assembly by law does not . . . specifically declare the State’s exercise to be exclusive”). Because the FOID Card Act “clearly deprives home rule units of the authority to regulate the possession or ownership of assault weapons,” C253, Deerfield’s attempt to ban assault weapons—and to limit the capacity of ammunition magazines that can be used with such firearms, which itself regulates their possession—is preempted.

Deerfield’s arguments in favor of its ban lack merit. The Village contends that the circuit court’s interpretation renders nugatory the General Assembly’s declaration that local assault-weapons regulations would be invalid only if “enacted more than 10 days after [July 9, 2013]” and that ordinances enacted before that deadline “may be amended.” 430 ILL. COMP. STAT. 65/13.1(c). Such an interpretation, Deerfield insists, runs counter to the maxim that statutes must be interpreted as a whole, such that, “if possible, no term is rendered superfluous or meaningless.” *Deerfield Br. 25* (quoting *Land v. Board of Education of the City of Chicago*, 202 Ill.2d 414, 422 (2002)). Deerfield also argues that the circuit court’s interpretation devalues the “ ‘critical role’ of home rule units in Illinois’ constitutional system.” *Deerfield Br. 26–30*.

The problem with these arguments is that it is Deerfield’s position, not Plaintiffs’ and the circuit court’s, that would do more damage to the statute and to the constitutional separation of powers between the State of Illinois and its localities. Indeed, the upshot of Deerfield’s position is that the Court should ignore the first sentence of Section 13.1(c) and rewrite Section 13.1(e) by striking its citation to Article VII, Section 6(h) and inserting a citation to Article VII, Section 6(i) in its place. This interpretation does not

make the provisions of the statute as written work together as a cohesive whole, but rather rewrites it to Deerfield's liking. Nor does it respect the constitutional division of power between State and local authority, but rather arrogates to localities powers and functions the General Assembly has expressly determined to be exclusively the State's.

Article 7, Sections 6(h) and (i) of the Illinois Constitution give the General Assembly two distinct powers to preempt legislation by home rule units. First, with exceptions not relevant here, Section 6(h) allows the General Assembly to "provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit." This is a power to "totally exclude" home rule unit regulation of a given field, *Roman*, 184 Ill. 2d at 519, and the Constitution says what happens when the General Assembly exercises its power under Section 6(h): home rule units may regulate a particular subject *only* "to the extent that the General Assembly by law does not . . . specifically declare the State's exercise to be exclusive." ILL. CONST. art. VII, § 6(i).

Second and wholly distinct from the General Assembly's authority to expressly occupy a field of regulation under Section 6(h), Section 6(i) gives the General Assembly authority to "limit the concurrent exercise" of home rule unit regulation on a subject without completely excluding all local legislation. It is this provision, not Section 6(h), that the legislature must invoke when it "intends to permit concurrent local legislation, but only within limits that are consistent with the state statutory scheme." David C. Baum, *A Tentative Survey of Illinois Home Rule (Part II): Legislative Control, Transition Problems, and Intergovernmental Conflict*, 1972 U. ILL. L.F. 559, 574.

The difference between express preemption provisions that "totally exclude" home rule unit legislation under Section 6(h) and those that merely "restrict the nature

and extent of concurrent” home rule unit legislation under Section 6(i) is important and well established. *See Roman*, 184 Ill. 2d at 515–20. In countless statutes, the General Assembly has recognized this distinction and taken great care to specify which of its preemption powers it was exercising. *Compare, e.g.*, 520 ILL. COMP. STAT. 5/2.1 (“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.”), *with* 510 ILL. COMP. STAT. 45/8 (“[P]ursuant to paragraph (i) of Section 6 of Article VII of the Constitution, this Act is a limitation upon the power of home rule units to enact ordinances contrary to this Act.”).

In the Firearm Concealed Carry Act, the General Assembly said unequivocally that it was exercising its power under Section 6(h) to occupy the field of assault weapons regulation. “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,” 430 ILL. COMP. STAT. 65/13.1(e), and “the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State,” 430 ILL. COMP. STAT. 65/13.1(c). With the General Assembly having thus “specifically declare[d] the State’s exercise to be exclusive,” ILL. CONST. art. VII, § 6(i), the Constitution’s plain text does not permit Deerfield to adopt new legislation on this subject.

It follows that Deerfield’s assault weapons ban is invalid notwithstanding the Firearm Concealed Carry Act’s statement that local assault weapons regulations adopted before the statutory deadline “may be amended.” 430 ILL. COMP. STAT. 65/13.1(c). Irrespective of whether this provision and the Illinois Constitution would permit a home rule unit to amend its existing laws to make them more closely conform to state firearms policy, Deerfield cannot adopt a new ban on assault weapons when the legislature has

declined to adopt such a ban and exercised its power to expressly occupy the field under Section 6(h).

The framers of the 1970 Constitution sought to give the legislature and not the courts the central role in resolving preemption issues, *see* Baum, 1972 U. ILL. L.F. at 572, and to that end “section 6 as a whole was designed to prevent implied preemption, or preemption by judicial interpretation,” *City of Chicago v. StubHub, Inc.*, 2011 IL 111127 ¶ 21. Honoring that purpose requires that the courts follow clear rules when interpreting express preemption provisions enacted by the General Assembly. Accordingly, this Court is not free to disregard the General Assembly’s decision to invoke its power to totally exclude home rule unit legislation under Section 6(h) or to limit the consequences of preemption under that provision in order to give broader effect to the statute’s statement that existing local regulation of assault weapons “may be amended.” 430 ILL. COMP. STAT. 65/13.1(c).

In sum, by proclaiming that “the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State” and invoking Article VII, Section 6(h), the General Assembly deprived localities such as Deerfield of all authority to regulate assault weapons. *Id.* Deerfield’s attempt to do just that therefore is preempted.

**B. Even if State Law Preserves Some Local Authority Over Assault Weapons, Deerfield’s Ban is Outside the Scope of that Authority.**

This Court ultimately need not determine whether the General Assembly stripped localities of the authority to regulate assault weapons altogether, for Deerfield’s ban falls outside the scope even of the reserved authority it claims to have. As explained, the FOID Card Act, as amended by the Firearm Concealed Carry Act, states that “any ordinance or

regulation . . . that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted” before July 20, 2013, and ordinances or regulations enacted before that date “may be amended.” 430 ILL. COMP. STAT. 65/13.1(c). Deerfield’s assault weapon ban is outside the scope of these provisions for two reasons: Deerfield did not enact a predicate statute before July 20, 2013, and its 2018 assault weapon ban did not merely amend prior law.

1. Deerfield first enacted an ordinance regulating assault weapons on July 1, 2013. *See* C934–39. That ordinance, however, did not ban assault weapons or limit magazine capacity; rather, it defined the terms “assault weapon” and “large-capacity magazine,” but regulated merely the storage and transport of the former. *See id.* The circuit court held that because it did not ban assault weapons this ordinance was not “inconsistent with” the FOID Card Act—which, like Deerfield law after this initial ordinance, allowed FOID card holders to own and possess firearms Deerfield defined as assault weapons—and therefore was not a timely predicate ordinance that Deerfield could later amend. *See* C256–58. Deerfield confines its response to this argument to a footnote. *See* Deerfield Br. 33 n.4. But “substantive material” belongs “in the body of briefs,” not in footnotes. *Lundy v. Farmers Grp., Inc.*, 322 Ill. App.3d 214, 218 (2d Dist. 2001); *see also* Ill. Sup. Ct. R. 341(a) (discouraging footnotes). This Court repeatedly has warned that “ ‘adherence to the . . . guidelines for footnote usage is not an inconsequential matter,’ and parties who ignore these rules do so at their peril.” *Lundy*, 322 Ill. App.3d at 218 (alteration omitted) (quoting *Kerger v. Board of Trs. of Cmty. Coll. Dist. No. 502*, 295 Ill. App. 272, 275 (2d Cir. 1997)). This Court should disregard footnote four of

Deerfield's brief and consider the Village's challenge to this aspect of the circuit court's ruling forfeited.

2. Even if O-13-24 were a valid predicate ordinance, Deerfield's assault weapons ban would still be preempted because it did not merely "amend" O-13-24 but wholly transformed it. As explained above, O-13-24 regulated the storage and transportation of assault weapons. And because the transportation regulation mirrored State law on transporting firearms, *see* 720 ILL. COMP. STAT. 5/24-1.6(c), the key operative provision of the ordinance was the storage provision. But after enactment of O-18-06, the safe storage regulation was repealed in all but name and replaced with a ban. That is graphically illustrated by the ordinance itself:

Sec. 15-97 Safe Storage of Assault Weapons; Exceptions

- (a) Safe Storage. It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapons in the Village, ~~unless such a weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such a weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.~~

C924. Ordinance O-18-19 then departed even further from O-13-24, adding the magazine ban and striking the vestigial "Safe Storage" title. *See* C930.

Because of the wholesale change in law accomplished by Deerfield's assault weapons and magazine bans, the circuit court correctly concluded that the bans were not mere amendments of preexisting law and, therefore, are preempted by the FOID Card Act. Whether a legislative enactment is to be considered an amendment or a new law is a matter of substance. The question "is not determined by [an enactment's] title," but rather

by a “comparative analysis” between it and the law it replaced. *Athey v. City of Peru*, 22 Ill. App.3d 363, 367–68 (3d Dist. 1974). An “amendment” is “usu[ally] [a] minor revision or addition proposed or made to a statute.” *Amendment*, BLACK’S LAW DICTIONARY (10th ed. 2014). This understanding is reflected in Deerfield’s Municipal Code, which provides that “provisions appearing in this Code” are not to be considered “new enactments” “insofar as they relate to the same subject matter *and are substantially the same as* those ordinance provisions previously adopted by the Village and existing at the effective date of this Code.” Deerfield, Illinois Village Code § 1–7 (1976) (emphasis added). Ordinances O-18-06 and O-18-19 are not substantially the same as O-13-24, but rather “revise[ ] the whole subject matter” and “totally displace[ ] the former provision.” *Athey*, 363 Ill. App. 3d at 367–68. “The banning of assault weapons is substantively different than regulations regarding the transportation and storage of such weapons,” C1278, and the banning of large-capacity magazines is substantively different than simply defining them.

Deerfield claims that the “facts and circumstances of *Athey* are not present here.” Deerfield Br. 35. But the point is not that the factual circumstances in *Athey* are indistinguishable from those here. The point is that the legal principles described by *Athey* lead to the same ultimate conclusion—that the lawmaking body in question has adopted a new enactment, not merely amended an old one. And at any rate, many of the same facts and circumstances are present: the “new provision” is “complete and independent in itself”; “[n]o area covered by” the old ordinance is “left unregulated by” the new; and “the new enactment totally displaces the former provision.” *Athey*, 22 Ill. App. 3d at 368. And contrary to Deerfield’s assertion, the Village has made “wholesale

changes,” Deerfield Br. 35; it has gone from mere definition and modest regulation to an outright ban.

Deerfield also appeals to *Village of Park Forest v. Wojciechowski*, 29 Ill.2d 435 (1963), and *Nolan v. City of Granite City*, 162 Ill. App.3d 187 (5th Dist. 1987), but those cases are inapposite. Both involved individuals unsuccessfully attempting to escape the force of a prior legal restriction by claiming a new law repealed it. In the former, the restriction in question had been “re-enacted” “in substance, although by different wording,” *Wojciechowski*, 29 Ill.2d at 436; in the latter, it had not been altered at all and could be “construed harmoniously with little difficulty” with the purportedly repealing enactment, *Nolan*, 162 Ill. App.3d at 190. Both situations are a far cry from that here, as Deerfield’s new ordinance reflects a sharp break with prior policy by purporting to ban assault weapons.

Deerfield also insists that the Mayor and Village Manager attested to Deerfield’s intent to amend O-13-24. Deerfield Br. 33. But regardless of the subjective intent of Deerfield officials, under established Illinois law what they did resulted in a new enactment, not a mere amendment. Still less persuasive is Deerfield’s citation to various statements made by Deerfield residents, including one member of the General Assembly, at a 2013 Deerfield Board of Trustees meeting. Deerfield Br. 16–17, 31–32. Even advocates of frequent use of legislative history admit that statements made on the floor of a legislature are weak evidence of statutory meaning given that such statements are often manipulated and do not necessarily reflect the views of anyone other than the speaker. *See* Abner J. Mikva, *A Reply to Judge Starr’s Observations*, 1987 DUKE L.J. 380, 384–85 (1987). No reasonable inference about a statute’s meaning can be drawn from the

statements of a lone legislator who was speaking two hundred miles from the floor of the General Assembly, where other members of the legislature could not contradict him, much less from the statements of random members of the public who had no role in the legislative process.

**C. The Wildlife Code Independently Preempts Deerfield's Ban.**

The Wildlife Code is an alternative basis for affirming the circuit court's conclusion that state law preempts Deerfield's assault weapon and ammunition magazine bans. The Wildlife Code extensively regulates the types of firearms that may be used for taking specific types of wildlife and provides that "[t]he regulation and licensing of the taking of wildlife in Illinois are exclusive powers and functions of the State." 520 ILL. COMP. STAT. 5/2.1. Under the Wildlife Code, it is lawful to hunt coyotes on private property using "any type of legal rifle including large capacity semi-automatic rifles." *Illinois Digest of Hunting and Trapping Regulations 2018–2019*, ILLINOIS DEP'T OF NAT. RES. at 47 (2018), <https://bit.ly/2GZQN6l> (last visited Feb. 10, 2020). Yet Ordinance O-18-06 specifically bans many such rifles, including the AR-15—the nation's most popular semi-automatic rifle. The Wildlife Code broadly preempts local regulation of firearms, and Deerfield cannot ban the possession of firearms that may be used for hunting under the Wildlife Code. *See State Bank of Waterloo v. City of Waterloo*, 339 Ill. App. 3d 767, 775–76 (5th Dist. 2003) (conflict between state law and local ordinance will be found "where an ordinance seeks to prohibit that which a statute expressly permits").

The circuit court disagreed, reasoning that "[a]ny regulation as to what firearms may be used to hunt is secondary to the subject matter the State is preempting in the Wildlife Code." C1275. But regulation of the means for taking game is integral to the regulation of hunting. This is evident in the Illinois's Department of Natural Resources'

Digest of Hunting and Trapping Regulations 2018-2019. “Firearm” appears in that publication 173 times; plus “shotgun” 53 times, “rifle” 31 times, and “handgun” 24 times. By banning firearms that are authorized for use in hunting in certain circumstances, Deerfield improperly asserts authority over a matter reserved for the State.

The circuit court also insisted that “nothing presented to the Court shows that the taking of wildlife occurs within Deerfield’s borders or that the challenged ordinances have any impact on the taking of wildlife outside of Deerfield’s borders.” C1275. But Deerfield’s ban on firearms authorized for the taking of wildlife impermissibly burdens the ability of Deerfield residents to keep such firearms in their homes for use elsewhere; that is why the General Assembly made the regulation of such firearms an exclusive power and function of the State—even prohibiting regulation by local governments in places where little or no hunting takes place. For these reasons, the Wildlife Code is an alternative basis to find preemption and affirm in this case.

### **III. Deerfield’s Defense of Its Ban on Large Capacity Magazines Is Forfeited and Meritless.**

The FOID Card Act and the Firearm Concealed Carry Act preempt all local regulation of the possession of “handguns and ammunition for a handgun” by FOID card holders and concealed carry licensees, respectively. 430 ILL. COMP. STAT. 65/13.1(b), 66/90. Deerfield’s ordinance transgresses this express limit on local authority by purporting to ban all ammunition magazines, including those used in handguns, with a capacity above 10 rounds. *See* C930. The circuit court accordingly, and properly, held that Deerfield’s magazine ban is preempted on this basis:

The language in FOICA and FCCA clearly state that home rule units no longer have the authority to regulate or restrict the licensing and possession of handguns and handgun ammunition with respect to a holder of a valid Firearm Owner’s Identification Card or a holder of a license to

carry a concealed firearm. . . . Deerfield, therefore, may no longer regulate in these areas.

C1274–75.

Plaintiffs moved for summary judgment on this issue, C1008–09, and Deerfield offered no response in its opposition to Plaintiffs’ motion, *see* C1220–36. As Plaintiffs noted in their reply brief in support of the summary judgment motion, Deerfield thus forfeited any argument in defense of its prohibition on so-called “large capacity” magazines. C1251. Having defaulted on this issue in the circuit court, Deerfield should not now be heard to complain that the circuit court erred by entering summary judgment, as Plaintiffs requested. *See Int’l Union of Operating Engineers, Local 150 v. Lowe Excavating Co.*, 225 Ill. 2d 456, 491 (2006) (party that fails to raise issue below forfeits appellate review).

In any event, Deerfield’s new argument in support of its large capacity magazine ban is meritless. Deerfield attempts to bootstrap its claimed authority to regulate assault weapons into a basis for also regulating magazines, reasoning that if it can ban assault weapons it can also ban “large capacity” magazines because such magazines “are universally considered one of the characteristics of an assault weapon.” Deerfield Br. 38. As an initial matter, the premise of this argument is wrong; for the reasons explained in the preceding sections, Deerfield cannot regulate assault weapons.

But even if the Court concludes that Deerfield’s ban on assault weapons is valid, the prohibition on magazines capable of holding more than 10 rounds still must fall. So-called “large capacity” magazines come standard with many of America’s most popular handguns, the vast majority of which do not qualify as “assault weapons” under Deerfield’s ordinance. GUN DIGEST 2018, 109, 372–416, 441–49, 481 (Jerry Lee ed., 72d

ed. 2018); *see* C922 (provision of Deerfield ordinance specifying extremely narrow category of handguns that fit within definition of “assault weapons”). Whatever the scope of Deerfield’s authority to regulate assault weapons under 430 ILL. COMP. STAT. 65/13.1(c), it does not include authority to ban magazines designed for use in firearms that not even Deerfield categorizes as “assault weapons.”

Moreover, Deerfield’s argument conflicts with the plain text of 430 ILL. COMP. STAT. 65/13.1(b), which says that “the regulation, licensing, possession, and registration of handguns and ammunition for a handgun . . . are exclusive powers and functions of this State.” Unlike the language in subsection (c) addressing local regulation of assault weapons, subsection (b) contains no text that even arguably permits concurrent state and local regulation of handguns and handgun ammunition. If the General Assembly had intended to preserve a role for local regulation of handguns and handgun ammunition, it would have said so in subsection (b). Thus, even if the Court accepts Deerfield’s interpretation of subsection (c), the fact that the General Assembly did not include parallel language authorizing local regulation in subsection (b) establishes that Deerfield’s attempt to regulate magazines—including magazines used in handguns—is preempted.

### CONCLUSION

For the foregoing reasons, this appeal should be dismissed for lack of jurisdiction. In the alternative, the circuit court’s summary judgment ruling should be affirmed.

Dated: February 10, 2020

Respectfully submitted,

/s/ Christian D. Ambler  
Christian D. Ambler

Christian D. Ambler  
STONE & JOHNSON, CHTD.  
111 West Washington Street  
Suite 1800  
Chicago, IL 60602  
(312) 332-5656

Brian W. Barnes  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 220-9600

*Attorneys for Plaintiffs-Appellees*

**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) statement of points and authorities, the Rule 341 (c) certificate of compliance, the certificate of service, and those matter to be appended to the brief under Rule 342 (a), is 36 pages.

By /s/ Christian D. Ambler  
Christian D. Ambler

No. 2-19-0879

IN THE APPELLATE COURT OF ILLINOIS  
SECOND JUDICIAL DISTRICT

VILLAGE OF DEERFIELD, ILLINOIS, and  
HARRIET ROSENTHAL, solely in her official  
Capacity as Mayor of the Village of Deerfield,  
  
Defendant-Appellants,  
  
v.  
  
GUNS SAVE LIFE, INC., and  
JOHN WILLIAM WOMBACHER, III,  
  
Plaintiffs-Appellees.  

---

VILLAGE OF DEERFIELD, ILLINOIS,  
a municipal corporation,  
  
Defendant-Appellant,  
  
v.  
  
DANIEL D. EASTERDAY,  
ILLINOIS STATE RIFLE ASSOCIATION,  
and SECOND AMENDMENT  
FOUNDATION, INC.,  
  
Plaintiffs-Appellees.

## NOTICE OF FILING

To: See Certificate of Service

PLEASE TAKE NOTICE that on February 10, 2020, we caused to be electronically filed with the Clerk of the Illinois Appellate Court for the Second Judicial District, the attached Brief of Plaintiffs-Appellees, a copy of which is hereby served upon you.

Respectfully submitted,

**STONE & JOHNSON, CHTD.**

By /s/ Christian D. Ambler  
Christian D. Ambler, One of  
Plaintiffs-Appellees

APP 067



Christian D. Ambler (ARDC No. 6228749)  
Stone & Johnson, Chtd.  
111 West Washington Street  
Suite 1800  
Chicago, Illinois 60602  
(312) 332-5656  
[cambler@stonejohnsonlaw.com](mailto:cambler@stonejohnsonlaw.com)

Brian W. Barnes (ARDC No. 6328826)\*  
Cooper & Kirk, PLLC  
1523 New Hampshire Ave., N.W.  
Washington, D.C. 20036  
(202) 220-9600 - [bbarnes@cooperkirk.com](mailto:bbarnes@cooperkirk.com)  
\*Appearance entered pursuant to Ill. S. Ct. Rule 707.

*Attorneys for Plaintiffs, Guns Save Life, Inc. and William Wombacher III*

**CERTIFICATE OF SERVICE**

Under penalties as provided by law, pursuant to Section -109 of the Illinois Code of Civil Procedures, the undersigned attorney certifies that this Notice of Filing and Brief were served via the efileIL system with consent of the recipient where permissible under Ill. Sup Ct. R. 11, at the e-mail addresses as indicated below on February 10, 2020. Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

Christopher B. Wilson, ARDC No. 6202139  
John B. Sample, ARDC No. 6321438  
PERKINS COIE LLP  
131 South Dearborn Street, Suite 1700  
Chicago, IL 60603  
Telephone: 312.324.8400 [cwilson@perkinscoie.com](mailto:cwilson@perkinscoie.com) [jsample@perkinscoie.com](mailto:jsample@perkinscoie.com)

Steven M. Elrod, ARDC No. 6183239  
Hart M. Passman, ARDC No. 6287062  
Holland & Knight, LLP  
131 South Dearborn Street, 30th Floor  
Chicago, Illinois 60603  
(312) 263-3600  
[Steven.elrod@hklaw.com](mailto:Steven.elrod@hklaw.com) [Hart.passman@hklaw.com](mailto:Hart.passman@hklaw.com)

Jonathan E. Lowy  
Brady Center to Prevent Gun Violence  
840 First Street, N.E., Suite 400  
Washington, D.C. 20002  
*New Direct Dial:* (202) 370-8104 [jlowy@bradyunited.org](mailto:jlowy@bradyunited.org) [jlowy@bradymail.org](mailto:jlowy@bradymail.org)

David G. Sigale  
LAW FIRM OF DAVID G. SIGALE, P.C.  
799 Roosevelt Road, Suite 207  
Glen Ellyn, IL 60137  
[dsigale@sigalelaw.com](mailto:dsigale@sigalelaw.com)

/s/ Christian D. Ambler  
Christian D. Ambler

Christian D. Ambler  
Stone & Johnson, Chtd.  
Attorneys for Plaintiff-Appellees  
111 West Washington St., Suite 1800  
Chicago, Illinois 60602  
(312)332-5656



FILED  
8/17/2018 9:12 AM  
ERIN CARTWRIGHT WEINSTEIN  
Clerk of the Circuit Court  
Lake County, Illinois

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
LAKE COUNTY, ILLINOIS  
CHANCERY DIVISION

GUNS SAVE LIFE, INC. and JOHN  
WILLIAM WOMBACHER III,

Plaintiffs,

v.

Case No. 18CH498

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

Defendants.

**FIRST AMENDED COMPLAINT**

1. Plaintiffs are a law-abiding resident of the Village of Deerfield and Guns Save Life, Inc., an organization dedicated to defending the right to self-defense, and they bring this action to challenge Deerfield ordinances that purport to ban the possession of popular firearms and ammunition magazines that Deerfield inaccurately labels "assault weapons" and "large capacity" magazines. Despite these misleading labels, the items banned by Deerfield's ordinances are entirely permissible under Illinois law. Plaintiffs file this suit seeking a declaratory judgment and permanent injunction against enforcement of the ordinances on the grounds that they are preempted by Illinois law and violate the Illinois Constitution's guarantee that private property shall not be taken or damaged for public use without just compensation.

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction under ILL. CONST. art. 6, § 9.

3. Venue is proper in Lake County under 735 ILL. COMP. STAT. 5/2-101 and 5/2-103 because it is the county where the Village of Deerfield's principal office is located, and the transactions out of which this action arise occurred in Lake County.

### **PARTIES**

4. Plaintiff Guns Save Life, Inc. is an independent not-for-profit organization that is dedicated to protecting the gun rights of law-abiding Illinois citizens. Guns Save Life has one or more members who reside in the Village of Deerfield and who: (a) own firearms defined by Deerfield Ordinance O-18-06 as "assault weapons"; (b) own magazines defined by Deerfield Ordinance O-18-06 as "large capacity magazines"; and (c) hold valid Illinois hunting licenses. Some Guns Save Life members are Deerfield residents who would continue to possess assault weapons and large capacity magazines within Deerfield if permitted to do so by Deerfield law.

5. Plaintiff John "Jack" William Wombacher III is a law-abiding United States citizen who resides in the Village of Deerfield in Lake County. He is a member of Guns Save Life.

6. Defendant Village of Deerfield is a home rule municipality in the State of Illinois, with its principal office in Lake County.

7. Defendant Harriet Rosenthal is the mayor of Deerfield. She is the chief executive officer of Deerfield, the President of the Deerfield Board of Trustees, and has supervisory authority over all employees of Deerfield. Ms. Rosenthal is named solely in her official capacity.

### **FACTUAL ALLEGATIONS**

#### **"Assault Weapons" and "Large Capacity" Magazines Are Ubiquitous and Overwhelmingly Used for Self-Defense and Other Lawful Purposes**

8. This case is a challenge under Illinois law to Deerfield's efforts to regulate firearms it deems "assault weapons" and magazines it deems "large capacity." Deerfield

Ordinance O-18-06, § 15-86 (Exhibit A); Deerfield Ordinance O-18-19 (Exhibit B). These terms are misnomers. There is no class of firearms known as "semiautomatic assault weapons." "Prior to 1989, the term 'assault weapon' did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists." *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting). Anti-gun publicists promoting "assault weapons" bans have sought to exploit the public's confusion over fully automatic machine guns versus semiautomatic "assault weapons" to increase the chance of public support for restrictions on these firearms.

9. While "semiautomatic assault weapons" is not a recognized category of firearms, "semiautomatic" is. The "automatic" part of "semiautomatic" refers to the fact that the user need not manipulate the firearm to place another round in the chamber after each round is fired. But unlike an automatic firearm, a semiautomatic firearm will *not* fire continuously on one pull of the trigger; rather, a semiautomatic firearm requires the user to pull the trigger each time he or she wants to discharge a round. Ownership of semiautomatic firearms is exceedingly common among law-abiding citizens.

10. Deerfield does not ban all semiautomatic firearms but only a subset of such firearms of specified models or with specified features. Deerfield Ordinance O-18-06, § 15-86. But to the extent the features that make a firearm an "assault weapon" under Deerfield's ordinance have any functional significance, they promote accuracy and hence make firearms safer and more effective to use. For example:

- a. A pistol grip makes it easier to hold and stabilize a rifle when fired from the shoulder and therefore promotes accuracy. A pistol grip can also assist with retention, making it more difficult for an assailant to wrest a firearm away from a

law-abiding citizen. It does not promote firing from the hip; indeed, a rifle with a straight grip and no pistol grip would be more conducive to firing from the hip.

- b. A thumbhole stock is a hole carved into the stock of a firearm through which a user inserts his or her thumb. It promotes accuracy by improving comfort and stability in handling a firearm.
- c. A telescoping stock promotes accuracy by allowing the stock to be adjusted to fit the individual user's physique, thickness of clothing, and shooting position.
- d. A muzzle compensator reduces the recoil and muzzle movement that result from the discharge of each shot. Making the muzzle and the shooter less likely to move out of position results in a firearm that is both more accurate and more comfortable to shoot.

11. Deerfield's "assault weapons" ban also specifically prohibits the AR-15. The AR-15 is America's most popular semiautomatic rifle, and in recent years it has been the best-selling rifle type in the United States. By a conservative estimate, nearly four million were manufactured in the United States for the commercial market from 1986 through 2013. The top reasons for owning an AR-15 include self-defense, hunting, and recreational and competitive target shooting—lawful purposes all. Indeed, AR-15s are likely the most ergonomic, safe, and effective firearm for civilian self-defense.

12. With limited exceptions, Deerfield also defines magazines capable of holding more than ten rounds of ammunition as "large capacity." Deerfield Ordinance O-18-06, § 15-86. But calling these devices "large capacity" is an utter misnomer; they are a standard feature on many of the nation's most popular firearms. For example, in the 2018 edition of Gun Digest, a standard reference work that includes specifications of currently available firearms, they come

standard on many of the nation's most popular firearms. GUN DIGEST 2018 109, 372–416, 441–49, 481 (Jerry Lee ed., 72d ed. 2018). This is consistent with the fact that the AR-15, one of this nation's most popular rifles, typically comes with a 20- or 30-round magazine.

13. Magazines capable of holding more than ten rounds are also standard on many of this nation's most popular handgun models. For example, annual ATF manufacturing and export statistics indicate that in 2011 about 61.5% of the 2.6 million semiautomatic handguns made in the United States were in calibers typically using magazines that hold over ten rounds. The total number of magazines capable of holding more than ten rounds in this country is at least in the tens of millions.

14. There are many reasons why a law-abiding citizen would not want to be limited to substandard capacity ammunition magazines. The most obvious is to decrease the risk of running out of ammunition before being able to repel a criminal attack. Police department practices make clear that standard capacity magazines holding more than ten rounds have defensive benefits. Police departments typically issue handguns with magazines that hold more than ten rounds. *See MASSAD AYOGB, THE COMPLETE BOOK OF HANDGUNS* 50, 87–90 (2013). And they do so for good reason. For example, in 2011 New York City police officers fired more than ten rounds in 29% of incidents in which they fired their weapons to defend themselves and others.

15. Furthermore, the most obvious alternatives to standard capacity magazines—carrying multiple firearms or multiple magazines—are poor substitutes for equipping a firearm with a standard capacity magazine. Criminals, not their targets, choose when and where to attempt a crime. While criminals can ensure that they are equipped with whatever weapons they deem necessary, it is unreasonable to expect citizens to have multiple firearms available at all times in the event they are attacked. And while carrying multiple magazines may be less

burdensome than carrying multiple firearms, the need to replace an empty magazine—particularly when under the stress of a criminal attack—can significantly impair a person's capacity for self-defense. Replacing a spent magazine while under the stress of a criminal attack is even more unrealistic for individuals with disabilities or other physical limitations that prevent them from changing magazines quickly.

**Illinois Law Restricts Local Authority to Regulate Firearms and Ammunition**

16. Because firearms and ammunition are readily transported across the unmarked boundaries that separate Illinois municipalities, local regulation of firearms and ammunition does little to protect the public from armed criminals. Such regulations do, however, impose substantial burdens on lawful firearm ownership by restricting the types of firearms and ammunition that law-abiding local residents may possess. In recognition of these realities and to prevent the development of a confusing patchwork of potentially conflicting local laws, the Illinois General Assembly has enacted several statutes that preempt the authority of home rule municipalities to regulate firearms and ammunition.

17. Among the most significant provisions of Illinois law that preempt local regulation of firearms and ammunition is 430 ILL. COMP. STAT. 65/13.1, which became law in its current form on July 9, 2013 as part of Public Act 98-63. That provision says that “the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's Identification Card . . . are exclusive powers and functions of this State.” 430 ILL. COMP. STAT. 65/13.1(b). Likewise, “the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State.” *Id.* at 65/13.1(c).

18. To eliminate any possible uncertainty as to whether the State's authority to regulate with respect to the topics listed in Sections 13.1(b) and (c) was meant to be exclusive, the provision further states that "[t]his 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." *Id.* at 65/13.1(e). By invoking Article VII, § 6(h) of the Illinois Constitution—and not Article VII, § 6(i)—the General Assembly made state regulation in this area is exclusive, and home rule units therefore may not exercise concurrent regulatory authority on these topics.

19. 430 ILL. COMP. STAT. 65/13.1(c) further provides that "[a]ny ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act." Accordingly, even if the General Assembly had not otherwise made state regulation of so-called "assault weapons" exclusive, local ordinances enacted after July 19, 2013 that regulate these firearms would still be preempted. Although the statute says that local ordinances concerning assault weapons adopted on or before July 19, 2013 "may be amended," *id.*, this provision does not permit a municipality to adopt an entirely new ordinance under the guise of "amending" its prior ordinance.

20. In addition to 430 ILL. COMP. STAT. 65/13.1(b), which states that "the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police . . . are exclusive powers and functions of this State," Illinois law separately provides that "[t]he regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by

[concealed carry] licensees are exclusive powers and functions of the State,” 430 ILL. COMP. STAT. 66/90. Illinois law thus preempts all local regulation of handguns, ammunition for handguns, and transportation of firearms and ammunition by holders of valid Firearm Owner’s Identification Cards and Concealed Carry Licenses.

21. The Illinois Wildlife Code places further restrictions on the authority of home rule municipalities to regulate firearms and ammunition. Under 520 ILL. COMP. STAT. 5/2.1, “[t]he regulation and licensing of the taking of wildlife in Illinois are exclusive powers and functions of the State.” While the types of firearms and ammunition that are lawful for use in hunting in Illinois vary by species and season, it is lawful to hunt coyotes on private property using “any type of legal rifle including large capacity semi-automatic rifles.” Illinois Dep’t of Nat. Res., ILLINOIS DIGEST OF HUNTING AND TRAPPING REGULATIONS 2017–2018, at 28. In addition, it is lawful in Illinois to use any type of long rifle with a caliber of no more than .22 to remove a beaver, river otter, weasel, mink, muskrat, raccoon, opossum, striped skunk, red fox, gray fox, coyote, badger, bobcat, or woodchuck from a trap, 520 ILL. COMP. STAT. 5/2.30; 17 ILL. ADMIN. CODE 650.10, 660.10, 680.10, and it is generally lawful during Conservation Order Light Goose Season to hunt goose using a semiautomatic shotgun that holds more than five shells. It is also lawful to hunt waterfowl at a game breeding and hunting preserve area using a semi-automatic shotgun that holds more than five shells. 520 ILL. COMP. STAT. 5/2.33(m).

22. In sum, Illinois law leaves little room for local regulation of firearms and ammunition, and the preemptive effect of Illinois law is especially broad with respect to ordinances adopted after July 19, 2013 that purport to regulate so-called “assault weapons.”

**The Village of Deerfield Adopts Ordinances that are Preempted by Illinois Law**

23. Anticipating that passage of Public Act 98-63 would restrict its ability to regulate the possession and ownership of firearms in the future, the Village of Deerfield adopted Ordinance O-13-24 on July 1, 2013. (Exhibit C.) This ordinance did not ban possession of so-called "assault weapons." Instead, Deerfield's 2013 ordinance only required that such firearms be kept "in a locked container or equipped with a tamper-resistant mechanical lock or other safety device" when not being carried by or otherwise in the control of the owner or other lawfully authorized user. Deerfield Ordinance O-13-24, § 15-87. The ordinance's storage requirement included an exception for use of one of the regulated firearms "in a lawful act of self-defense or in defense of another." *Id.* § 15-87(b). With limited exceptions, the ordinance also required that assault weapons transported in Deerfield be "broken down in a non-functioning state; or . . . not immediately accessible; or . . . unloaded and enclosed in a case, firearm carrying box, shipping box, or other container." *Id.* § 15-88.

24. On April 2, 2018—almost five years after the statutory deadline for enacting such an ordinance—Deerfield adopted Ordinance O-18-06, which makes it "unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon in the Village." Deerfield Ordinance O-18-06, § 15-87. The new ordinance includes no self-defense exception, and, like the 2013 ordinance, defines "assault weapon" to include not only popular semiautomatic rifles but also some handguns as well as semiautomatic shotguns capable of holding more than five shells. The 2018 ordinance also purports to further restrict transportation of these firearms in Deerfield by requiring that they *both* be broken down in a non-functioning state *and* not be immediately accessible unless they are unloaded and enclosed in a case or other container. *Id.* § 15-88.

25. Ordinance O-18-06 also includes provisions under which the Deerfield Chief of Police is instructed to confiscate and destroy assault weapons and “large capacity magazines”—a term that includes most magazines capable of holding more than ten rounds, which are utterly ubiquitous and come standard with many popular firearms. Deerfield Ordinance O-18-06, §§ 15-90, 15-91, 15-86. Yet despite referring in Section 15-90 to “Large Capacity Magazine[s] prohibited by this Article,” Ordinance O-18-06 nowhere states that the possession of large capacity magazines is unlawful.

26. Notwithstanding the fact that the text of Ordinance O-18-06 failed to prohibit the possession of so-called large capacity magazines, Deerfield issued a press release on April 3, 2018 stating that the Village Board “unanimously approved an ordinance that bans the possession, sale and manufacture of . . . large capacity magazines in the Village.” Press Release, Village of Deerfield, Village Approves Ban Of Assault Weapons And Large Capacity Magazines (Apr. 3, 2018).

27. On June 18, 2018—in the wake of a ruling by this Court that Ordinance O-18-06 does not ban possession of magazines capable of holding more than ten rounds—Deerfield adopted Ordinance O-18-19. That ordinance states explicitly that “[i]t shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any . . . large capacity magazine in the village.” Deerfield’s Board of Trustees summarily adopted this ordinance following a closed session. The public was not afforded an opportunity to comment on the decision to ban large capacity magazines before this ordinance was approved.

28. Ordinances O-18-06 and O-18-19 require Deerfield residents to remove banned assault weapons and large capacity magazines from the Village, modify them to make them permanently inoperable or no longer assault weapons or large capacity magazines as defined by

the ordinances, or surrender their assault weapons and large capacity magazines to the Chief of Police or his or her designee. Deerfield Ordinance O-18-06, § 15-90. But neither Ordinance O-18-06 nor Ordinance O-18-19 makes provision for the payment of just compensation for this deprivation of private property. Thus, absent intervention by the courts, Deerfield residents will be required to give up firearms and magazines that are entirely lawful under Illinois law without any just compensation.

29. Wombacher and other members of Guns Save Life own and keep in Deerfield firearms that qualify as "assault weapons" under Deerfield Ordinance O-18-06, § 15-86, including semiautomatic rifles that are "assault weapons" under Section 15-86. Wombacher would also purchase one or more additional firearms that qualify as "assault weapons" under Deerfield Ordinance O-18-06, § 15-86 and keep them in Deerfield if lawfully permitted to do so. Wombacher and other members of Guns Save Life also own and keep in Deerfield magazines that qualify as "large capacity magazines" under Deerfield Ordinance O-18-06, § 15-86. One or more members of Guns Save Life own handguns that accept these large capacity magazines. Wombacher would purchase one or more additional large capacity magazines and keep them in Deerfield if lawfully permitted to do so. Wombacher also possesses a hunting license, and if permitted to do so would maintain an assault weapon and large capacity magazines in Deerfield for use in hunting. Wombacher is not a law enforcement officer or agent or employee of any government, a member of the military, or a retired law enforcement officer. Wombacher and other members of Guns Save Life who reside in Deerfield and own firearms hold valid Firearm Owner's Identification Cards issued by the Department of State Police. Members of Guns Save Life, including members in Deerfield who own large capacity magazines for their handguns, hold valid Illinois Concealed Carry Licenses.

**CLAIMS FOR RELIEF**

**COUNT I**

**Preemption of Ban on Popular Firearms Under 430 ILL. COMP. STAT. 65/13.1(c).**

30. Plaintiffs incorporate the preceding paragraphs by reference.
31. Ordinance O-18-06 purports to regulate the possession and ownership of assault weapons even though such local regulations are preempted under 430 ILL. COMP. STAT. 65/13.1(c). Accordingly, Ordinances O-18-06 and O-18-19 are preempted.
32. By exercising its power under Article VII, § 6(h) of the Illinois Constitution, the General Assembly made regulation of so-called "assault weapons" the exclusive domain of the state. All local regulation of such firearms is therefore preempted.
33. To the extent that 430 ILL. COMP. STAT. 65/13.1(c) permits a home rule municipality to amend an ordinance enacted on or before July 19, 2013 that regulates the possession and ownership of assault weapons, Ordinance O-18-06 is nevertheless preempted because it is in substance an entirely new ordinance that bears no resemblance to Deerfield's prior regulation of storage of assault weapons under Ordinance O-13-24. Unlike Deerfield's prior assault weapons ordinance, Ordinance O-18-06 entirely bans the possession and sale of assault weapons and includes no exception for self-defense.
34. Plaintiff Wombacher and other members of Plaintiff Guns Save Life own firearms that are banned by Ordinance O-18-06 and would continue to keep such firearms in Deerfield if not for Ordinance O-18-06.
35. Wherefore, Plaintiffs pray that the Court:
  - a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that Ordinances O-18-06 and O-18-19 are preempted under 430 ILL. COMP. STAT. 65/13.1(c), and enjoin enforcement of Ordinances O-18-06 and O-18-19;

- b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

## COUNT II

### Preemption of Ban on Popular Firearms Under the Illinois Wildlife Code

- 36. Plaintiffs incorporate the preceding paragraphs by reference.
- 37. Ordinance O-18-06 prohibits possession of firearms that, under some circumstances, may be lawfully used to take wildlife under the Illinois Wildlife Code. Yet under the Illinois Wildlife Code, "[t]he regulation and licensing of the taking of wildlife in Illinois are exclusive powers and functions of the State." 520 ILL. COMP. STAT. 5/2.1. Accordingly, Ordinances O-18-06 and O-18-19 are preempted.
- 38. Plaintiff Wombacher is a member of Plaintiff Guns Save Life and holds a hunting license and owns firearms that are banned by Ordinance O-18-06 but that may be lawfully used to take wildlife under the Illinois Wildlife Code.
- 39. Wherefore, Plaintiffs pray that the Court:
  - a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that Ordinances O-18-06 and O-18-19 are preempted under 520 ILL. COMP. STAT. 5/2.1 of the Illinois Wildlife Code and enjoin enforcement of Ordinances O-18-06 and O-18-19;
  - b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and

- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

### COUNT III

#### Preemption of Ban on Popular Magazines Under 430 ILL. COMP. STAT. 65/13.1(b) and 430 ILL. COMP. STAT. 66/90

40. Plaintiffs incorporate the preceding paragraphs by reference.

41. Because Ordinances O-18-06 and O-18-19 ban possession and sale of magazines capable of holding more than ten rounds that can be used in a handgun, they are preempted by 430 ILL. COMP. STAT. 65/13.1(b). That provision states that "the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, . . . by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police . . . are exclusive powers and functions of this State."

42. Because Ordinances O-18-06 and O-18-19 ban possession and sale of magazines capable of holding more than ten rounds that can be used in a handgun, they are also preempted by 430 ILL. COMP. STAT. 66/90. That provision preempts any local regulation or ordinance "that purports to impose regulations or restrictions on [a person issued a license to carry a concealed handgun] or handguns and ammunition for handguns in a manner inconsistent with this Act." See *id.* 66/5.

43. One or more members of Plaintiff Guns Save Life are holders of valid Firearm Owner's Identification Cards and licenses to carry concealed handguns who possess magazines capable of holding more than ten rounds as well as handguns that accept these magazines in Deerfield. One or more of these Guns Save Life members would continue to possess these magazines in Deerfield if legally permitted to do so.

44. Wherefore, Plaintiffs pray that the Court:

- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that provisions of Ordinances O-18-06 and O-18-19 that purport to regulate magazines capable of holding more than 10 rounds of ammunition are preempted under 430 ILL. COMP. STAT. 65/13.1(b) and 430 ILL. COMP. STAT. 66/90, and enjoin enforcement of these aspects of Ordinances O-18-06 and O-18-19;
- b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

#### COUNT IV

##### Preemption of Ban on Popular Magazines Under the Illinois Wildlife Code

- 45. Plaintiffs incorporate the preceding paragraphs by reference.
- 46. Ordinances O-18-06 and O-18-19 ban possession or sale of magazines capable of holding more than 10 rounds of ammunition that, under some circumstances, may be lawfully used to take wildlife under the Illinois Wildlife Code. These ordinances are therefore preempted by 520 ILL. COMP. STAT. 5/2.1, which states that "[t]he regulation and licensing of the taking of wildlife in Illinois are exclusive powers and functions of the State." *Id.*
- 47. Plaintiff Wombacher is a member of Plaintiff Guns Save Life and holds a valid Firearm Owner's Identification Card and a valid hunting license. Wombacher possesses magazines capable of holding more than 10 rounds of ammunition that may be lawfully used to take wildlife under the Illinois Wildlife Code. Wombacher would continue to possess these magazines in Deerfield if legally permitted to do so.
- 48. Wherefore, Plaintiffs pray that the Court:

- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that provisions of Ordinances O-18-06 and O-18-19 that purport to regulate magazines capable of holding more than 10 rounds of ammunition are preempted under 520 ILL. COMP. STAT. 5/2.1 of the Illinois Wildlife Code, and enjoin enforcement of these aspects of Ordinances O-18-06 and O-18-19;
- b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

#### **COUNT V**

#### **Bans on Popular Firearms and Magazines Without Just Compensation Violate the Takings Clause of the Illinois Constitution**

49. Plaintiffs incorporate the preceding paragraphs by reference.
50. The Illinois Constitution provides that "[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law," ILL. CONST. art. 1, § 15.
51. Ordinances O-18-06 and O-18-19 take property by requiring the owners of specified firearms and magazines to turn their property over to Deerfield officials for destruction, to permanently alter their property so that it no longer qualifies under Deerfield's definitions of "assault weapons" and "large capacity" magazines, or remove these articles from Deerfield.
52. In the alternative, Ordinances O-18-06 and O-18-19 damage banned firearms and magazines by preventing owners from accessing their property within Deerfield's boundaries.
53. Ordinances O-18-06 and O-18-19 do not provide just compensation for the surrender, destruction, or removal of banned firearms and magazines.

54. Under the Illinois Constitution, Deerfield may only exercise the power of eminent domain "for public use." Ordinances O-18-06 and O-18-19 do not take and damage property for public use within the meaning of the Illinois Constitution because the ordinances provide for the destruction of firearms and magazines rather than their use.

55. Plaintiff Wombacher and other members of Plaintiff Guns Safe Life own firearms included within Deerfield's definitions of banned "assault weapons" and "large capacity" magazines. Accordingly, Ordinances O-18-06 and O-18-19 violate the rights of Wombacher and other Guns Safe Life members under the Illinois Constitution's Takings Clause.

56. Wherefore, Plaintiffs pray that the Court:

- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that provisions of Ordinances O-18-06 and O-18-19 that purport to ban specified firearms and magazines violate the Illinois Constitution's Takings Clause and enjoin enforcement of Ordinances O-18-06 and O-18-19;
- b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

#### COUNT VI

#### Deerfield Firearms and Magazine Bans Violate the Eminent Domain Act

57. Plaintiffs incorporate the preceding paragraphs by reference.

58. The Illinois Constitution provides that "[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law." ILL. CONST. art. 1, § 15.

59. The Eminent Domain Act provides that “the use of eminent domain proceedings to take or damage property is an exclusive power and function of the State.” 735 ILL. COMP. STAT. 30/90-5-20. It prohibits home rule units from exercising the power of eminent domain “otherwise than as provided in this Act.” *Id.*

60. Ordinances O-18-06 and O-18-19 exercise the eminent domain power because they take property by requiring the owners of specified firearms and magazines to turn these firearms and magazines over to Deerfield officials for destruction, permanently alter these firearms and magazines so that they no longer qualify under the ordinance’s definitions of “assault weapons” and “large capacity” magazines, or remove these articles from Deerfield.

61. In the alternative, Ordinances O-18-06 and O-18-19 damage banned firearms and magazines by preventing owners from accessing their property within Deerfield’s boundaries.

62. Ordinances O-18-06 and O-18-19 do not lawfully exercise the power of eminent domain under the Eminent Domain Act because they do not fall within the scope of any authorization for home rule units to exercise the eminent domain power.

63. Although home rule municipalities may exercise the right of eminent domain “for the acquirement of property useful, advantageous or desirable for municipal purposes or public welfare,” 65 ILL. COMP. STAT. 5/11-61-1, this power does not permit the exercise of the eminent domain power to acquire personal property such as firearms and magazines. Furthermore, the ordinances do not treat banned firearms and magazines as “useful, advantageous or desirable for municipal purposes or public welfare” but instead provides that the confiscated property will be destroyed.

64. Plaintiff Wombacher and other members of Plaintiff Guns Save Life own firearms and magazines included within Deerfield’s definitions of “assault weapons” and “large capacity”

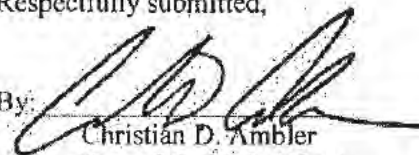
magazines. Accordingly, Ordinances O-18-06 and O-18-19 violate the rights of Wombacher and other Guns Save Life members under the Eminent Domain Act.

65. Wherefore, Plaintiffs pray that the Court:

- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that provisions of Ordinances O-18-06 and O-18-19 that purport to ban specified firearms and magazines violate the Eminent Domain Act and enjoin enforcement of Ordinances O-18-06 and O-18-19;
- b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

Respectfully submitted,

By:



Christian D. Ambler  
One of the Plaintiffs' Attorneys

Christian D. Ambler (ARDC No. 6228749)  
Stone & Johnson, Chtd.  
111 West Washington Street  
Suite 1800  
Chicago, Illinois 60602  
(312) 332-5656  
cambler@stonejohnsonlaw.com

David H. Thompson (ARDC No. 6316017)\*  
Peter A. Patterson (ARDC No. 6316019)\*  
Brian W. Barnes (ARDC No. 6328826)\*  
Cooper & Kirk, PLLC

1523 New Hampshire Ave., N.W.  
Washington, D.C. 20036  
(202) 220-9600  
dthompson@cooperkirk.com  
ppatterson@cooperkirk.com  
bbarnes@cooperkirk.com

\*Appearance entered pursuant to Ill. S. Ct. Rule 707.

**VILLAGE OF DEERFIELD  
LAKE AND COOK COUNTIES, ILLINOIS**

---

**ORDINANCE NO. O-18-06**

**AN ORDINANCE AMENDING CHAPTER 15 (MORALS AND CONDUCT),  
ARTICLE 11 (ASSAULT WEAPONS), SECTION 15-87 (SAFE STORAGE OF  
ASSAULT WEAPONS) AND SECTION 15-88 (TRANSPORTATION OF ASSAULT  
WEAPONS) OF THE MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD  
TO REGULATE THE POSSESSION, MANUFACTURE AND SALE OF ASSAULT  
WEAPONS IN THE VILLAGE OF DEERFIELD**

---

**PASSED AND APPROVED BY THE  
PRESIDENT AND BOARD OF TRUSTEES  
OF THE VILLAGE OF DEERFIELD, LAKE  
AND COOK COUNTIES, ILLINOIS, this**

**2nd day of April, 2018.**

**Published in pamphlet form  
by authority of the President  
and Board of Trustees of the  
Village of Deerfield, Lake and  
Cook Counties, Illinois, this  
2nd day of April, 2018.**



**APP 091**

C 917

**VILLAGE OF DEERFIELD  
LAKE AND COOK COUNTIES, ILLINOIS**

ORDINANCE NO. O-18-06

**AN ORDINANCE AMENDING CHAPTER 15 (MORALS AND CONDUCT),  
ARTICLE 11 (ASSAULT WEAPONS), SECTION 15-87 (SAFE STORAGE OF  
ASSAULT WEAPONS) AND SECTION 15-88 (TRANSPORTATION OF ASSAULT  
WEAPONS) OF THE MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD  
TO REGULATE THE POSSESSION, MANUFACTURE AND SALE OF ASSAULT  
WEAPONS IN THE VILLAGE OF DEERFIELD**

WHEREAS, Chapter 15 (Morals and Conduct), Article 11 (Assault Weapons), Section 15-87 (Safe Storage of Assault Weapons; Exceptions) and Section 15-88 (Transportation of Assault Weapons; Exceptions) of the Municipal Code of the Village of Deerfield, as enacted by Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), regulate the possession, storage and transportation of assault weapons in the Village of Deerfield; and

WHEREAS, the Firearm Concealed Carry Act, 430 ILCS 65/13.1(c), as amended by Public Act 98-63, § 150 (eff. July 9, 2013), provides that the Village of Deerfield, as a home rule unit of local government under the provisions of Article VII, Section 6 of the Illinois Constitution of 1970, may amend Village of Deerfield Ordinance No. 0-13-24, which was enacted on, before or within ten (10) days after the effective date of Public Act 98-63, § 150, pursuant to the Village's home rule exercise of any power and performance of any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), assault weapons have been increasingly used in an alarming number of notorious mass shooting incidents at public

schools, public venues, places of worship and places of public accommodation including, but not limited to, the recent mass shooting incidents in Parkland, Florida (Margery Stoneman Douglas High School; 17 people killed), Sutherland Springs, Texas (First Baptist Church; 26 people killed), Las Vegas, Nevada (Music Festival; 58 people killed), and Orlando, Florida (Pulse Nightclub; 49 people killed); and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that assault weapons are dangerous and unusual weapons which are commonly associated with military or antipersonnel use, capable of a rapid rate of fire, have the capacity to fire a large number of rounds due to large capacity fixed magazines or the ability to use detachable magazines, present unique dangers to law enforcement, and are easily customizable to become even more dangerous weapons of mass casualties and destruction; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture and sale of assault weapons in the Village of Deerfield may increase the public's sense of safety at the public schools, public venues, places of worship and places of public accommodation located in the Village of Deerfield; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture and sale of assault weapons in the Village of Deerfield may increase the public's sense of safety by deterring and preventing a mass shooting incident in the Village of Deerfield, notwithstanding potential objections regarding the availability of alternative weaponry or the enforceability of such a ban; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture

and sale of assault weapons in the Village of Deerfield may increase the public's sense of safety by effecting a cultural change which communicates the normative value that assault weapons should have no role or purpose in civil society in the Village of Deerfield; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), the possession, manufacture and sale of assault weapons in the Village of Deerfield is not reasonably necessary to protect an individual's right of self-defense or the preservation or efficiency of a well-regulated militia; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), courts throughout our State and Nation have uniformly upheld the constitutionality of local ordinances and legislation prohibiting the possession, manufacture and sale of assault weapons including, but not limited to, an ordinance enacted by the City of Highland Park, Illinois; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), State and Federal authorities have failed to regulate the possession, manufacture and sale of assault weapons in the best interests for the protection of the public health, safety, morals and welfare of the Village of Deerfield; and

**WHEREAS**, the corporate authorities of the Village of Deerfield request that State and Federal authorities enact Statewide or Nationwide regulations to prohibit the possession, manufacture or sale of assault weapons; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture

and sale of assault weapons in the Village of Deerfield is in the Village's best interests for the protection of the public health, safety, morals and welfare of the Village of Deerfield;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF DEERFIELD, LAKE AND COOK COUNTIES, ILLINOIS, in the exercise of its home rule powers, as follows:

**SECTION 1:** The recitals to this Ordinance are incorporated into and made a part of this Ordinance as if fully set forth herein.

**SECTION 2:** Chapter 15 (Morals and Conduct), Article 11 (Assault Weapons), Section 15-86 (Definitions), Section 15-87 (Safe Storage of Assault Weapons; Exceptions) and Section 15-88 (Transportation of Assault Weapons; Exceptions) of the Municipal Code of the Village of Deerfield, as enacted by Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), shall be amended to read as follows (additions are indicated by underlining and deletions are indicated by ~~strikeout~~ markings):

#### Article 11. Assault Weapons.

##### Sec. 15-86. Definitions.

The following words, terms and phrases, when used in this Article, 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 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) The capacity to accept a detachable magazine at some location outside of the pistol grip.
- (4) A semiautomatic shotgun that has one or more of the following:
  - (A) Only a pistol grip without a stock attached;
  - (B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
  - (C) A folding, telescoping or thumbhole stock;
  - (D) A fixed magazine capacity in excess of five rounds; or
  - (E) An ability to accept a detachable magazine.
- (5) Any shotgun with a revolving cylinder.
- (6) Conversion kit, part or combination of parts, from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person.
- (7) Shall include, but not be limited to, the assault weapons models identified as follows:
  - (A) The following rifles or copies or duplicates thereof:
    - (i) AK, AKM, AKS, AK-47, AK-74, ARM, MAK90, Misr, NHM 90, NHM 91, SA 85, SA 93, VEPR;
    - (ii) AR-10;
    - (iii) AR-15, Bushmaster XM15, Armalite M15, or Olympic Arms PCR;
    - (iv) AR70;
    - (v) Calico Liberty;
    - (vi) Dragunov SVD Sniper Rifle or Dragunov SVU;
    - (viii) Fabrique National FN/PAL, FN/LAR, or FNC;
    - (viii) Hi-Point Carbine;
    - (ix) HK-91, HK-93, HK-94, or HK-PSG-1;
    - (x) Kel-Tec Sub Rifle;

- (xi) Saiga;
- (xii) SAR-8, SAR-4800;
- (xiii) SKS with detachable magazine;
- (xiv) SLG 95;
- (xv) SLR 95 or 96;
- (xvi) Steyr AUG;
- (xvii) Sturm, Ruger Mini-14;
- (xviii) Tavor;
- (xix) Thompson 1927, Thompson M1, or Thompson 1927 Commando; or
- (xx) Uzi, Galil and Uzi Sporter, Galil Sporter, or Galil Sniper Rifle (Galatz).

(B) The following pistols or copies or duplicates thereof, when not designed to be held and fired by the use of a single hand:

- (i) Calico M-110;
- (ii) MAC-10, MAC-11, or MPA3;
- (iii) Olympic Arms OA;
- (iv) TEC-9, TEC-DC9, TEC-22 Scorpion, or AB-10; or
- (v) Uzi.

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

- (i) Armscor 30 BG;
- (ii) SPAS 12 or LAW 12;
- (iii) Striker 12; or
- (iv) Streetsweeper.

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

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

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

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

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

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

**Sec. 15-87. Safe Storage of Assault Weapons; Exceptions.**

(a) Safe Storage. It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon in the Village, unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.

(b) Self-defense exception. No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self-defense or in defense of another.

(c) The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

**Section 15-88. Transportation of Assault Weapons; Exceptions.**

(a) It is unlawful and a violation of this section for any person to carry, keep, bear, transport or possess an assault weapon in the Village, except when on his land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, except that this section does not apply to or affect transportation of assault weapons that meet one of the following conditions:

- (i) are broken down in a non-functioning state; or and
- (ii) are not immediately accessible to any person; or

(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, or

(b) The provisions of this section do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves officer, agent or employee of any municipality of the commonwealth, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely transported in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

#### **Section 15-89. Penalty.**

Any person who is found to have violated this Article shall be fined not less than \$250 and not more than \$1,000 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. Every person convicted of any violation under this Article shall, in addition to any penalty provided in this Code, forfeit to the Village any assault weapon.

#### **Section 15-90. Disposition of Assault Weapon and Large Capacity Magazine.**

Any person who, prior to the effective date of Ordinance No. \_\_\_\_\_, was legally in possession of an Assault Weapon or Large Capacity Magazine prohibited by this Article, shall have 60 days from the effective date of Ordinance No. \_\_\_\_\_ to do any of the following without being subject to prosecution hereunder:

(a) Remove, sell or transfer the Assault Weapon or Large Capacity Magazine from within the limits of the Village;

(b) Modify the Assault Weapon or Large Capacity Magazine either to render it permanently inoperable or to permanently make it a device no longer defined as an Assault Weapon or Large Capacity Magazine; or

(c) Surrender the Assault Weapon or Large Capacity Magazine to the Chief of Police or his or her designee for disposal as provided in Section 15-91 of this Article.

**Section 15-91. Destruction of Assault Weapons and Large Capacity Magazines.**

The Chief of Police or his or her designee shall have the power to confiscate any assault weapon of any person charged with a violation under this Article. The Chief of Police shall cause to be destroyed each Assault Weapon or Large Capacity Magazine surrendered or confiscated pursuant to this Article; provided, however, that no Assault Weapon or Large Capacity Magazine shall be destroyed until such time as the Chief of Police determines that the Assault Weapon or Large Capacity Magazine is not needed as evidence in any matter. The Chief of Police shall cause to be kept a record of the date and method of destruction of each Assault Weapon or Large Capacity Magazine destroyed pursuant to this Article.

**SECTION 3:** The Village Manager, or his designee, is authorized and directed to submit to the Illinois Department of State Police a copy of this Ordinance, 30 days after its adoption, and any such other measures as may be necessary to effect the requirements of 430 ILCS 65/13.3.

**SECTION 4:** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

**SECTION 5:** This Ordinance, and each of its terms, shall be the effective legislative act of a home rule municipality without regard to whether such Ordinance should: (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law; or, (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Deerfield that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

**SECTION 6:** This Ordinance shall be in full force and effect upon its passage and approval and shall subsequently be published in pamphlet form as provided by law.

PASSED this 2nd day of April, 2018.

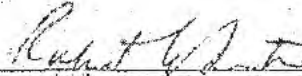
AYES: Benton, Jester, Oppenheim, Seiden, Shapiro, Struthers

NAYS: None

ABSENT: None

ABSTAIN: None

APPROVED this 2nd day of April, 2018.



Village President Pro Tem

ATTEST:



Village Clerk

**VILLAGE OF DEERFIELD  
LAKE AND COOK COUNTIES, ILLINOIS**

---

**ORDINANCE NO. O-18-19**

**AN ORDINANCE APPROVING AMENDMENTS TO SECTION 15-87 OF THE  
MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD**

---

**PASSED AND APPROVED BY THE  
PRESIDENT AND BOARD OF TRUSTEES  
OF THE VILLAGE OF DEERFIELD, LAKE  
AND COOK COUNTIES, ILLINOIS, this**

**18th day of June, 2018.**

**Published in pamphlet form  
by authority of the President  
and Board of Trustees of the  
Village of Deerfield, Lake  
and Cook Counties, Illinois,  
this  
18th day of June, 2018.**



**VILLAGE OF DEERFIELD  
LAKE AND COOK COUNTIES, ILLINOIS**

---

**ORDINANCE NO. O-18-19**

**AN ORDINANCE APPROVING AMENDMENTS TO SECTION 15-87 OF THE  
MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD**

---

**WHEREAS**, on July 1, 2013, the Village President and Board of Trustees adopted Ordinance No. O-13-24, amending Chapter 18 of the Municipal Code of the Village of Deerfield ("*Village Code*") to adopt a new Article 11 of Chapter 15, which Article 11 regulates the ownership and possession of assault weapons in the Village; and

**WHEREAS**, on April 2, 2018, the President and Board of Trustees adopted Ordinance No. O-18-06, amending Article 11 of Chapter 15 of the Village Code to further regulate the ownership and possession of assault weapons in the Village, pursuant to the authority set forth in Section 13.1(c) of the Illinois Firearms Owners Identification Card Act, 430 ILCS 65/13.1(c) ("*Act*"); and

**WHEREAS**, the President and Board of Trustees now desire to further amend Section 15-87 of Article 11 of Chapter 15 of the Village Code, pursuant to the authority set forth in Section 13.1(c) of the Act; and

**WHEREAS**, the President and Board of Trustees have determined that the amendment of Section 15-87 of the Village Code is in the best interests of the Village;

**NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF DEERFIELD, LAKE AND COOK COUNTIES, ILLINOIS,**  
in the exercise of its home rule powers, as follows:

#58367735\_v1

**SECTION 1: RECITALS.** The recitals to this Ordinance are hereby incorporated into and made a part of this Ordinance as if fully set forth herein.

**SECTION 2: AMENDMENT.** Section 15-87 of Article 11 of Chapter 15 of the Village Code is hereby re-titled and amended further to read as follows:

**"Sec. 15-87. Safe Storage Of Assault Weapons and Large Capacity Magazines Prohibited; Exceptions:**

(a) It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon or large capacity magazine in the village.

(b) The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon or large capacity magazine in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the state of Illinois (ii) any law enforcement officer, agent or employee of the state of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C; however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer."

**SECTION 3: DELIVERY.** The Village Manager, or his designee, is authorized and directed to submit to the Illinois Department of State Police a copy of this Ordinance, 30 days after its adoption, and any such other measures as may be necessary to effect the requirements of 430 ILCS 65/13.3.

#58367735\_v1

**SECTION 4: SEVERABILITY.** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

**SECTION 5: EXERCISE OF HOME AUTHORITY.** The President and Board of Trustees declare that this Ordinance, and each of its terms, are and shall be the effective legislative act of a home rule municipality without regard to whether such Ordinance should: (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law; or, (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Deerfield that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

**SECTION 6: EFFECTIVE DATE.** In accordance with Section 5/1-2-4 of the Illinois Municipal Code, 65 ILCS 5/1-2-4, the President and Board of Trustees have determined that the adoption of this Ordinance and its effectiveness is urgent for the public welfare of the Village and, therefore, upon the vote of two-thirds of the corporate authorities approving the Ordinance, it shall be in full force and take immediate effect.

[SIGNATURE PAGE FOLLOWS]

PASSED this 18th day of June, 2018.

AYES: Benton, Jester, Oppenheim, Seiden, Shapiro, Struthers

NAYS: None

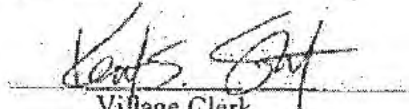
ABSENT: None

ABSTAIN: None

APPROVED this 18th day of June, 2018.

  
Village President

ATTEST:

  
Village Clerk

#58367736\_v1

VILLAGE OF DEERFIELD  
LAKE AND COOK COUNTIES, ILLINOIS

---

ORDINANCE NO. 0-13-24

AN ORDINANCE REGULATING THE OWNERSHIP  
AND POSSESSION OF ASSAULT WEAPONS  
IN THE VILLAGE OF DEERFIELD

---

PASSED AND APPROVED BY THE  
PRESIDENT AND BOARD OF TRUSTEES  
OF THE VILLAGE OF DEERFIELD, LAKE  
AND COOK COUNTIES, ILLINOIS, this

1st day of July, 2013.

Published in pamphlet form  
by authority of the President  
and Board of Trustees of the  
Village of Deerfield, Lake and  
Cook Counties, Illinois, this  
1st day of July, 2013.



APP 107

VILLAGE OF DEERFIELD  
LAKE AND COOK COUNTIES, ILLINOIS

---

ORDINANCE NO. 0-13-24

AN ORDINANCE REGULATING THE OWNERSHIP  
AND POSSESSION OF ASSAULT WEAPONS  
IN THE VILLAGE OF DEERFIELD

---

WHEREAS, the Illinois General Assembly has adopted House Bill 183, the "Firearm Concealed Carry Act," which will become effective upon signature by the Governor of the State of Illinois; and

WHEREAS, the Firearm Concealed Carry Act will preempt the authority of home rule units of government in the State of Illinois, including the Village of Deerfield, to regulate assault weapons unless such a home rule ordinance or regulation is enacted on, before or within ten (10) days after the effective date of the Firearm Concealed Carry Act; and

WHEREAS, the corporate authorities of the Village of Deerfield are of the opinion that assault weapons, as defined in this Ordinance, are subject to regulation as provided herein, and should be regulated as provided herein within the corporate limits of the Village of Deerfield; and

WHEREAS, the corporate authorities of the Village of Deerfield find that assault weapons are capable of a rapid rate of fire and have the capacity to fire a large number of rounds due to large capacity fixed magazines or the ability to use detachable magazines; and,

WHEREAS, the corporate authorities of the Village of Deerfield find that assault weapons have been used in a number of notorious mass shooting incidents in venues such as public schools, including recent shooting incidents in Newtown, Connecticut, and Santa Monica, California, and are commonly associated with military or antipersonnel use; and

WHEREAS, the corporate authorities of the Village of Deerfield find that assault weapons should be subject to safe storage and security requirements as provided herein to limit the opportunity for access and use of these firearms by untrained or unauthorized users;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF DEERFIELD, LAKE AND COOK COUNTIES, ILLINOIS, in the exercise of its home rule powers, as follows:

**SECTION 1:** That Chapter 15 ("Morals and Conduct") of the Municipal Code of the Village of Deerfield be and the same is hereby amended to add the following as Article 11 thereof entitled "Assault Weapons":

#### Article 11. Assault Weapons.

##### Sec. 15-86. Definitions.

The following words, terms and phrases, when used in this Article, 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 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) The capacity to accept a detachable magazine at some location outside of the pistol grip.
- (4) A semiautomatic shotgun that has one or more of the following:
- (A) Only a pistol grip without a stock attached;
  - (B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
  - (C) A folding, telescoping or thumbhole stock;
  - (D) A fixed magazine capacity in excess of five rounds; or
  - (E) An ability to accept a detachable magazine.
- (5) Any shotgun with a revolving cylinder.
- (6) Conversion kit, part or combination of parts, from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person.
- (7) Shall include, but not be limited to, the assault weapons models identified as follows:
- (A) The following rifles or copies or duplicates thereof:
    - (i) AK, AKM, AKS, AK-47, AK-74, ARM, MAK90, Misr, NHM 90, NHM 91, SA 85, SA 93, VEPR;
    - (ii) AR-10;
    - (iii) AR-15, Bushmaster XM15, Armalite M15, or Olympic Arms PCR;
    - (iv) AR70;
    - (v) Calico Liberty;
    - (vi) Dragunov SVD Sniper Rifle or Dragunov SVU;
    - (viii) Fabrique National FN/FAL, FN/LAR, or FNC;
    - (viii) Hi-Point Carbine;
    - (ix) HK-91, HK-93, HK-94, or HK-PSG-1;
    - (x) Kel-Tec Sub Rifle;
    - (xi) Saiga;
    - (xii) SAR-8, SAR-4800;
    - (xiii) SKS with detachable magazine;
    - (xiv) SLG 95;
    - (xv) SLR 95 or 96;
    - (xvi) Steyr AUG;
    - (xvii) Sturm, Ruger Mini-14;
    - (xviii) Tavor;

- (xix) Thompson 1927, Thompson M1, or Thompson 1927 Commando; or
- (xx) Uzi, Galil and Uzi Sporter, Galil Sporter, or Galil Sniper Rifle (Galatz).

(B) The following pistols or copies or duplicates thereof, when not designed to be held and fired by the use of a single hand:

- (i) Calico M-110;
- (ii) MAC-10, MAC-11, or MPA3;
- (iii) Olympic Arms OA;
- (iv) TEC-9, TEC-DC9, TEC-22 Scorpion, or AB-10; or
- (v) Uzi.

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

- (i) Armscor 30 BG;
- (ii) SPAS 12 or LAW 12;
- (iii) Striker 12; or
- (iv) Streetsweeper.

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

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

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

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

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

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

#### Sec. 15-87. Safe Storage of Assault Weapons; Exceptions.

(a) Safe Storage. It shall be unlawful to store or keep any assault weapon in the Village unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such

weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.

(b) Self defense exception. No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self-defense or in defense of another.

(c) The provisions of this section do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training.

#### **Section 15-88. Transportation of Assault Weapons; Exceptions.**

(a) It is unlawful and a violation of this section for any person to carry or possess an assault weapon in the Village, except when on his land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, except that this section does not apply to or affect transportation of assault weapons that meet one of the following conditions:

- (i) are broken down in a non-functioning state; or
- (ii) are not immediately accessible; or
- (iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card; or

(b) The provisions of this section do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves officer, agent or employee of any municipality of the commonwealth, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training.

**Section 15-89. Penalty.** Any person who is found to have violated this Article shall be fined not less than \$250 and not more than \$1,000 for each offense.

**SECTION 2:** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

**SECTION 3:** That this Ordinance, and each of its terms, shall be the effective legislative act of a home rule municipality without regard to whether such Ordinance should: (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law; or, (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Deerfield that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

**SECTION 4:** This Ordinance shall be in full force and effect upon its passage and approval and shall subsequently be published in pamphlet form as provided by law.

PASSED this 1st day of July, 2013.

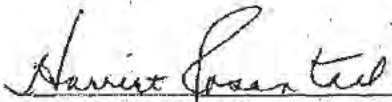
AYES: Benton, Jester, Seiden, Struthers

NAYS: None

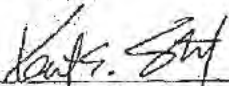
ABSENT: Farkas, Nadler

ABSTAIN:

APPROVED this 1st day of July, 2013.

  
Village President

ATTEST:

  
Village Clerk

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
LAKE COUNTY, ILLINOIS**FILED**

JUL 27 2018

Eric Cartwright Weinstein  
CIRCUIT CLERKGUNS SAVE LIFE, et al  
VS.  
VILLAGE OF DEERFIELD, et alCase No. 18 CH 498

ORDER (p. 2 of 2)

This matter, before the court for status, due notice to all parties, the court fully closed in the premises. It is hereby ordered:

This matter is consolidated with 18 CH 427 (Easterday v. Village of Deerfield) for all future proceedings.

ENTER:

Luis A. Berrones  
JUDGE

Dated this 27<sup>th</sup> day of July, 2018.Prepared by: DAVID G. SIGALE  
Attorney's Name: DAVID G. SIGALEAddress: 799 RANSFORD BL, STE. 207City: GLEN ELLEN State: ILPhone: 630 452 4547 Zip Code: 60137Fax: 630 596 4445ARDC: 6238103**Luis A. Berrones**

2019 IL App (2d) 190320-U  
No. 2-19-0320  
Order filed June 12, 2019

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

|                                       |                               |
|---------------------------------------|-------------------------------|
| DANIEL D. EASTERDAY, ILLINOIS STATE ) | Appeal from the Circuit Court |
| RIFLE ASSOCIATION, and SECOND )       | of Lake County.               |
| AMENDMENT FOUNDATION, INC., )         |                               |
| )                                     |                               |
| Plaintiffs-Appellees, )               |                               |
| )                                     |                               |
| v. )                                  | No. 18-CH-427                 |
| )                                     |                               |
| VILLAGE OF DEERFIELD, )               | Honorable                     |
| )                                     | Luis A. Berrones,             |
| Defendant-Appellant. )                | Judge, Presiding.             |

|   |   |   |
|---|---|---|
| GUNS SAVE LIFE, INC. and JOHN WILLIAM WOMBACHER III,  | ) | Appeal from the Circuit Court of Lake County. |
|   | ) |   |
| Plaintiffs-Appellees,   | ) |   |
|   | ) |   |
| v.  | ) | No. 18-CH-498                                 |
|   | ) |   |
| VILLAGE OF DEERFIELD and HARRIET ROSENTHAL, in her capacity as Mayor of the Village of Deerfield, | ) |   |
|   | ) | Honorable                                     |
|   | ) | Luis A. Berrones,                             |
| Defendants-Appellants.  | ) | Judge, Presiding.                             |

JUSTICE ZENOFF delivered the judgment of the court.  
Justices Jorgensen and Burke concurred in the judgment.

## ORDER

¶ 1 *Held:* The appeal in these consolidated cases was dismissed for lack of jurisdiction. Supreme Court Rule 307 did not allow for appeals from permanent injunctions. There were claims still pending in the trial court in one of the consolidated actions, and the trial court never made Supreme Court Rule 304(a) findings in either of the actions. Although one set of plaintiffs mentioned the possibility that an order in their case was final and separately appealable even in the absence of a Rule 304(a) finding, the appellants specifically rejected that possibility, and the record was not conducive to resolving the issue.

¶ 2 The plaintiffs in these consolidated actions challenge the Village of Deerfield's (Village) bans on "assault weapons" and "large-capacity magazines." The trial court entered permanent injunctions in both actions, prohibiting the Village from enforcing the bans. The Village and its mayor, Harriet Rosenthal, appeal pursuant to Supreme Court Rule 307 (eff. Nov. 1, 2017). We dismiss the appeal for lack of jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 On April 2, 2018, the Village passed ordinance No. O-18-06. Village of Deerfield Ordinance No. O-18-06 (approved Apr. 2, 2018). With limited exceptions, that ordinance banned specified assault weapons within municipal limits. Any person who already possessed such weapons or large-capacity magazines was given a 60-day grace period to either (1) remove, sell, or transfer those items from the limits of the Village, (2) render the items permanently inoperable or otherwise modify them so that they no longer fell within the definitions of prohibited items, or (3) surrender the items to the chief of police.

¶ 5 On April 5, 2018, Daniel D. Easterday, the Illinois State Rifle Association, and the Second Amendment Foundation, Inc. (the Easterday plaintiffs) filed a one-count complaint against the Village seeking injunctive and declaratory relief. They alleged that ordinance No. O-18-06 was preempted by section 13.1 of the Firearm Owners Identification Card Act (430 ILCS 65/13.1 (West 2018)) and section 90 of the Firearm Concealed Carry Act (430 ILCS 66/90 (West 2018)). The Easterday action was designated in the trial court as case No. 18-CH-427.

2019 IL App (2d) 190320-U

¶ 6 On April 19, 2018, Guns Save Life, Inc. and John William Wombacher III (the Guns Save Life plaintiffs) filed a seven-count complaint against the Village and Rosenthal seeking injunctive and declaratory relief. The Guns Save Life plaintiffs alleged that ordinance No. O-18-06 was preempted by section 13.1 of the Firearm Owners Identification Card Act (count I) and section 2.1 of the Wildlife Code (520 ILCS 5/2.1 (West 2018)) (count II). Although the Guns Save Life plaintiffs maintained that the ordinance did not expressly ban large-capacity magazines (count III), to the extent that it did, they alleged that the ordinance was preempted by section 13.1 of the Firearm Owners Identification Card Act (count IV), section 90 of the Firearm Concealed Carry Act (also count IV), and section 2.1 of the Wildlife Code (count V). In count VI, the Guns Save Life plaintiffs alleged that the ordinance violated the takings clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 15). In count VII, they alleged that the ordinance violated the Eminent Domain Act (735 ILCS 30/90-5-20 (West 2018)). The Guns Save Life action was designated in the trial court as No. 18-CH-498.

¶ 7 On June 12, 2018, the court entered a temporary restraining order in the Guns Save Life action. The court enjoined enforcement of “any provision of [ordinance No. O-18-06] relating to the ownership, possession, storage or transportation of assault weapons or large capacity magazines within the Village of Deerfield.” The court reasoned, *inter alia*, that “[t]he language in the [Firearm Owners Identification Card Act] and the [Firearm Concealed Carry Act] show the State’s intent to preempt and have exclusive authority to regulate the ownership, possession, and carrying of handguns and assault weapons.” The court further found that ordinance No. O-18-06 did “not contain specific language prohibiting all large capacity magazines.” To the extent that it did, however, the court ruled that such prohibition was preempted by the Firearm Concealed Carry Act. The court nevertheless rejected the Guns Save Life plaintiffs’ contention that the

2019 IL App (2d) 190320-U

Wildlife Code preempted the ordinance. The court also disagreed with the Guns Save Life plaintiffs' arguments that the ordinance constituted an improper taking for purposes of the Illinois Constitution and the Eminent Domain Act.

¶ 8 By separate order entered on June 12, 2018, the court granted an identical temporary restraining order in the Easterday action. The court incorporated by reference the order that it had entered in the Guns Save Life action.

¶ 9 On June 18, 2018, evidently in response to the court's determination that ordinance No. O-18-06 did not expressly ban large-capacity magazines, the Village passed ordinance No. O-18-19. Village of Deerfield Ordinance No. O-18-19 (approved June 18, 2018). That ordinance explicitly banned large-capacity magazines.

¶ 10 On July 27, 2018, the court consolidated the Easterday action and the Guns Save Life action "for all future proceedings."

¶ 11 On August 17, 2018, the Guns Save Life plaintiffs filed a six-count amended complaint challenging ordinances Nos. O-18-06 and O-18-19. They alleged that the ban on assault weapons was preempted by section 13.1 of the Firearm Owners Identification Card Act (count I) and section 2.1 of the Wildlife Code (count II). They alleged that the ban on large-capacity magazines was preempted by section 13.1 of the Firearm Owners Identification Card Act (count III), section 90 of the Firearm Concealed Carry Act (also count III), and section 2.1 of the Wildlife Code (count IV). Count V alleged that the bans on assault weapons and large-capacity magazines violated the takings clause of the Illinois Constitution. Count VI alleged that the bans violated the Eminent Domain Act. That same day, the Guns Save Life plaintiffs filed a motion for summary judgment or, in the alternative, a preliminary injunction.

2019 IL App (2d) 190320-U

¶ 12 Also on August 17, 2018, the Easterday plaintiffs apparently filed both an amended complaint and a renewed motion for a preliminary injunction, neither of which are included in the supporting record.<sup>1</sup>

¶ 13 On October 12, 2018, the court apparently held an evidentiary hearing on the plaintiffs' respective requests for preliminary injunctive relief. Although the supporting record does not include any reports of proceedings or any order entered on October 12, it seems that the court may have reserved ruling on the plaintiffs' requests for preliminary injunctions.

¶ 14 On October 26, 2018, the Guns Save Life plaintiffs filed another motion for summary judgment. The Easterday plaintiffs purportedly filed a separate motion for summary judgment four days later, indicating that they would join the arguments made by the Guns Save Life plaintiffs. The supporting record does not contain the Easterday plaintiffs' motion for summary judgment.

¶ 15 On March 22, 2019, the court entered a permanent injunction in the Guns Save Life action. The court enjoined enforcement of "any provision of Ordinance No. O-18-06 and Ordinance No. O-18-19 making it unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances." The court's rulings and rationale were consistent with its rulings and rationale in the June 12, 2018,

---

<sup>1</sup> The Easterday plaintiffs included a copy of their August 17, 2018, amended complaint in the appendix to their brief. They did not, however, file a supplemental supporting record in accordance with Supreme Court Rule 307(c) (eff. Nov. 1, 2017). "[I]t is well established that attachments to briefs which are not included as part of the record are not properly before the reviewing court and may not be considered to supplement the record." *Tunca v. Painter*, 2012 IL App (1st) 093384, ¶ 25.

2019 IL App (2d) 190320-U

temporary restraining orders. For example, the court again found that the ordinances were preempted by the Firearm Owners Identification Card Act and the Firearm Concealed Carry Act but not the Wildlife Code. The court also determined that genuine issues of material fact precluded summary judgment in favor of the Guns Save Life plaintiffs on their constitutional and statutory takings claims. The court set a status date for May 3, 2019.

¶ 16 Also on March 22, 2019, the court entered a separate order granting an identical permanent injunction in the Easterday action. The court incorporated by reference the order that it had entered in the Guns Save Life action.

¶ 17 On April 22, 2019, the Village and Rosenthal filed a “Notice of Interlocutory Appeal” in this court. There is ambiguity as to whether the Village and Rosenthal meant to appeal *both* the March 22, 2019, order that was entered in the Guns Save Life action *and* the order of the same date that was entered in the Easterday action, or *just* the order that was entered in the Guns Save Life action.<sup>2</sup> The caption in the notice of appeal included both the Guns Save Life action and the Easterday action, and both sets of plaintiffs were designated as “Respondents-Appellees.” However, the Village and Rosenthal asserted that they intended to appeal, pursuant to Supreme Court Rule 307(a) (eff. Nov. 1, 2017), “the March 22, 2019 permanent injunction issued by the Circuit Court of Lake County, which was memorialized in *a written order* on March 22, 2019.” (Emphasis added.) The Village and Rosenthal did not attach a copy of any order to their notice of appeal, but instead indicated that “[a] copy of the court’s March 22 *order* is contained in the accompanying supporting record.” (Emphasis added.) As noted above, the supporting record contains a March 22, 2019, order that was entered in the Guns Save Life action and a separate order of the same day that was entered in the Easterday action.

---

<sup>2</sup> As mentioned above, Rosenthal was not a defendant in the Easterday action.

2019 IL App (2d) 190320-U

¶ 18 On April 25, 2019, the Village and Rosenthal filed an identical “Notice of Interlocutory Appeal” in the circuit court of Lake County. This time, adding to the confusion about which order or orders were subject to the appeal, the Village and Rosenthal attached a copy of the March 22, 2019, order that was entered in the Guns Save Life action. The Village and Rosenthal did not attach the order that was entered in the Easterday action.

¶ 19

## II. ANALYSIS

¶ 20

### A. Motions Taken With the Case

¶ 21 The Village and Rosenthal filed their notice of appeal on April 22, 2019—30 days after the entry of the March 22 orders—with the clerk of the *appellate court*. Supreme Court Rule 303(a)(1) (eff. July 1, 2017) provides that “[t]he notice of appeal must be filed with the clerk of the *circuit court*.” (Emphasis added.) The Village and Rosenthal did not file their notice of appeal in the circuit court until April 25, 2019.

¶ 22 In their appellee’s brief, the Guns Save Life plaintiffs argue that the failure to file a timely notice of appeal with the clerk of the circuit court deprived this court of jurisdiction. In support of their position, the Guns Save Life plaintiffs rely primarily on *First Bank v. Phillips*, 379 Ill. App. 3d 186 (2008) (appeal dismissed for lack of jurisdiction where a notice of appeal was filed in the appellate court on day 30 but the notice was not filed in the circuit court until one week later), and *Swinkle v. Illinois Civil Service Commission*, 387 Ill. App. 3d 806 (2009) (following *First Bank*).

¶ 23 In their reply brief, the Village and Rosenthal explain that, on the evening of April 22, 2019, their counsel e-filed the supporting record in the appellate court and then also “inadvertently” filed the notice of appeal in the appellate court “rather than opening a second electronic filing in the Circuit Court.” According to the Village and Rosenthal, when their

2019 IL App (2d) 190320-U

counsel learned of his error the next morning, he “worked with the Clerk of the Appellate Court to correct it.” Addressing the authority cited by the Guns Save Life plaintiffs, the Village and Rosenthal maintain that those cases failed to account for *Harrisburg-Raleigh Airport Authority v. Department of Revenue*, 126 Ill. 2d 326 (1989) (a notice of appeal that is mailed within 30 days of a final judgment will be deemed timely filed even though the circuit court receives that notice outside of the 30-day window), and *People v. White*, 333 Ill. App. 3d 777 (2002) (a notice of appeal that was mailed to the appellate court within the 30-day window was deemed timely filed, even though it was not stamped in the circuit court until a week and a half later). The Village and Rosenthal claim that *Harrisburg-Raleigh* and *White* “affirm the principle that a timely but erroneous filing in the appellate court does not divest the appellate court of jurisdiction.”

¶ 24 On May 16, 2019, contemporaneously with the filing of their reply brief, the Village and Rosenthal filed a “Rule 303(d) motion for extension of time in certain circumstances.” Supreme Court Rule 303(d) (eff. July 1, 2017) provides, in relevant portion:

“On motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time, accompanied by the proposed notice of appeal and the filing fee, filed in the reviewing court within 30 days after expiration of the time for filing a notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing.”

The Village and Rosenthal request in their motion that we enter an order “excusing the erroneous filing in this Court, accepting the Notice of Interlocutory Appeal as timely and establishing the jurisdiction of this Court.” In addition to reiterating the arguments that they present in their reply brief, the Village and Rosenthal submit an affidavit from their counsel. He avers as follows. He prepared and filed the notice of appeal in the appellate court on April 22, 2019. That same

2019 IL App (2d) 190320-U

evening, he ensured that all parties were served with copies of the notice of appeal. In his haste to ensure that the notice of appeal was timely filed, he neglected to make sure that it was filed in the correct court. On the morning of April 23, 2019, he contacted an unnamed appellate court clerk and informed her of the error. The clerk informed him that “she would contact the Circuit Court of Lake County and apprise them [*sic*] of the appeal.” He again spoke with the clerk in the appellate court on the afternoon of April 23, 2019, and she informed him that she had contacted the circuit court and “made them [*sic*] aware of the error.” Based on his discussions with the clerk in the appellate court, he was under the impression that he need not take any further action as it pertained to the notice of appeal. He was then made aware that his understanding was incorrect, and he subsequently filed the notice of appeal with the circuit court on April 25, 2019.

¶ 25 The Guns Save Life plaintiffs object to the motion. They argue that the Village and Rosenthal failed to comply with Rule 303(d)’s requirement to submit a motion “accompanied by the proposed notice of appeal.” Moreover, the Guns Save Life plaintiffs assert that opposing counsel acknowledged having realized his mistake on April 23, 2019, yet he “attempted to sweep the issue under the rug” by submitting an appellant’s brief on April 29 with “a carefully worded Statement of Jurisdiction that said nothing about the matter.” According to the Guns Save Life plaintiffs, the Village and Rosenthal may not invoke the grace of this court pursuant to Rule 303(d) when their counsel failed to transparently identify in the appellant’s brief his clients’ “novel” jurisdictional theory. The Guns Save Life plaintiffs further argue that opposing counsel’s proffered reason for filing the notice of appeal in the wrong court—acting with too much haste—is a “flimsy excuse.” According to the Guns Save Life plaintiffs, *First Bank* and its progeny are well-reasoned and ought to have more precedential value than the older cases that

2019 IL App (2d) 190320-U

the Village and Rosenthal cite. The Guns Save Life plaintiffs also contend that *White* is factually distinguishable.

¶ 26 On May 22, 2019, we ordered the Village's and Rosenthal's motion to be taken with the case.

¶ 27 Later that day, the Village and Rosenthal filed an "amended Rule 303(d) motion for extension of time in certain circumstances." Unlike their original motion, the amended motion is indeed accompanied by a proposed notice of appeal. The proposed notice of appeal is identical to the ones which were filed in the appellate court on April 22, 2019, and in the circuit court on April 25—except that it does not include the following sentence: "A copy of the court's March 22 order is contained in the accompanying supporting record." No copy of any court order is attached to the proposed notice of appeal accompanying the amended Rule 303(d) motion.

¶ 28 We did not receive any response to the amended Rule 303(d) motion. On June 3, 2019, we ordered the amended motion taken with the case.

¶ 29 Having considered the parties' respective arguments, we now grant the Village's and Rosenthal's amended Rule 303(d) motion, and we deny their original motion as moot. The amended motion was timely filed within 60 days of March 22, 2019. It appears that counsel made an honest mistake in his attempt to file a notice of appeal, albeit at the 11th hour. See *Bank of Herrin v. Peoples Bank of Marion*, 105 Ill. 2d 305, 308 (1985) (the rule governing late notices of appeal encompasses "an honest mistake of counsel."). We have no reason to believe that the Village, Rosenthal, or their counsel recognized the potential jurisdictional ramifications of the mistake until the Guns Save Life plaintiffs raised the issue in their appellee's brief. Counsel is an officer of the court, and we will grant him the benefit of presuming that he did not mean to "sweep the issue under the rug."

2019 IL App (2d) 190320-U

¶ 30 We need not comment on any tension in the caselaw that the parties cite in support of their respective positions. Assuming that the Village’s and Rosenthal’s failure to file a notice of appeal in the correct court was initially an impediment to our jurisdiction, we have now removed that particular impediment by granting the amended Rule 303(d) motion. Neither *First Bank, Swinkle, Harrisburg-Raleigh*, nor *White* involved a motion for leave to file a late notice of appeal.

¶ 31 B. Remaining Jurisdictional Issues

¶ 32 Notwithstanding a valid notice of appeal, we are powerless to address the merits of the parties’ dispute as to the propriety of the permanent injunctions. The Illinois Constitution establishes that the appellate court has jurisdiction over “final judgments” entered in the circuit courts, and it empowers our supreme court to enact rules providing for other types of appeals. Ill. Const. 1970, art. VI, § 6. “[A]bsent a supreme court rule, the appellate court is without jurisdiction to review judgments, orders, or decrees that are not final.” *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 22. Even if the Easterday plaintiffs had not flagged the following jurisdictional issues for us, we would still have an independent duty to consider our jurisdiction and to dismiss the appeal if jurisdiction were lacking. *Houghtaylen v. Russell D. Houghtaylen By-Pass Trust*, 2017 IL App (2d) 170195, ¶ 12.

¶ 33 The Village and Rosenthal propose that we have jurisdiction pursuant to Supreme Court Rule 307 (eff. Nov. 1, 2017). Presumably, they are relying on Rule 307(a)(1), which allows for appeals from *interlocutory* orders “granting, modifying, dissolving, or refusing to dissolve or modify an injunction.” Both of the orders that the court entered on March 22, 2019, however, were permanent injunctions, not interlocutory orders. “[A] permanent injunction is a final order, appealable only pursuant to Supreme Court Rules 301 or 304.” *Skolnick v. Alzheimer & Gray*,

2019 IL App (2d) 190320-U

191 Ill. 2d 214, 222 (2000); see also *Steel City Bank v. Village of Orland Hills*, 224 Ill. App. 3d 412, 416-17 (1991) (“Because [Rule 307] is addressed only to interlocutory orders, the order appealed from must not be in the nature of a permanent injunction. \*\*\* If an injunction is permanent in nature, it is a final order appealable only under Rules 301 or 304(a), if those rules are otherwise applicable.”). Rule 307 thus does not give us jurisdiction over this appeal.

¶ 34 Although the March 22, 2019, order in the Guns Save Life action was a permanent injunction, there was plainly no “final judgment” in the action within the meaning of the Illinois Constitution and Supreme Court Rule 301 (eff. Feb. 1, 1994). A judgment is final where the trial court has determined the issues presented by the pleadings and fixed absolutely the parties’ respective rights. See *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 395 Ill. App. 3d 501, 504 (2009). The trial court found that genuine issues of material fact precluded summary judgment on the takings and Eminent Domain Act claims presented in counts V and VI of the Guns Save Life plaintiffs’ amended complaint. It likewise appears that the court did not enter a final order with respect to counts II and IV of the amended complaint, which alleged preemption under the Wildlife Code. Although the court rejected the plaintiffs’ legal theories presented in counts II and IV, the Village and Rosenthal did not file a cross-motion for summary judgment. The court set a status date for further proceedings. There was thus no final judgment entered in the Guns Save Life action that would have rendered the permanent injunction appealable pursuant to Supreme Court Rule 301.

¶ 35 We next look to Supreme Court Rule 304(a) (eff. Mar. 8, 2016) to see if we have jurisdiction. That rule provides:

“If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or

2019 IL App (2d) 190320-U

claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both.”

Neither the March 22, 2019, order in the Guns Save Life action nor the separate order entered that day in the Easterday action contained Rule 304(a) language. That rule thus does not provide a basis for our jurisdiction.

¶ 36 The Easterday plaintiffs suggest that the court’s March 22, 2019, order in their case was immediately appealable pursuant to Supreme Court Rule 301. According to the Easterday plaintiffs, although the two actions were consolidated in the trial court, they did not merge into a single action. Therefore, the Easterday plaintiffs propose, the judgment resolving all claims in their action was immediately appealable, even though there was no final judgment entered in the Guns Save Life action. From that premise, the Easterday plaintiffs then argue that the Village missed its opportunity to appeal the final order (“It is clear from all the circumstances surrounding this appeal that the final order of a permanent injunction in *Easterday* is not being, and has not been, appealed.”).

¶ 37 In their reply brief, without any meaningful analysis, and without citing authority regarding the effects of consolidation, the Village and Rosenthal reject the possibility that there was a final judgment in the Easterday action. They continue erroneously to invoke Rule 307 as the basis for our jurisdiction, and they argue that the March 22, 2019, order in the Easterday action is indeed part of this purported interlocutory appeal.

¶ 38 As mentioned above, there is ambiguity as to whether the Village meant to include as part of this appeal the March 22, 2019, order that was entered in the Easterday action. We must construe the notice of appeal liberally and as a whole. *Henderson v. Lofts at Lake Arlington Towne Condominium Ass’n*, 2018 IL App (1st) 162744, ¶ 61. Given that all three versions of the

2019 IL App (2d) 190320-U

notice of appeal that the Village and Rosenthal filed designated the Easterday plaintiffs as “Respondents-Appellees” and purported to appeal from a permanent injunction entered on March 22, 2019, we conclude that the Village indeed attempted to appeal the permanent injunction that was entered in the Easterday action.

¶ 39 With that said, we cannot determine from the record before us whether the March 22, 2019, order in the Easterday action was appealable without a Rule 304(a) finding. Given that the Village and Rosenthal mistakenly pursued this appeal as an accelerated interlocutory matter, they filed a supporting record pursuant to Supreme Court Rule 328 (eff. July 1, 2017), rather than the more comprehensive record required by Rule 321 (eff. Feb. 1, 1994). The supporting record does not contain, for example, the Easterday plaintiffs’ amended complaint or their motion for summary judgment. We therefore cannot independently verify that the March 22, 2019, order resolved all of these plaintiffs’ claims.

¶ 40 That is not the only problem. The Easterday plaintiffs insist that the two actions did not merge, even though they were consolidated. The supporting record, however, does not allow us to determine which form of consolidation the trial court intended.

“Illinois courts have recognized three distinct forms of consolidation: (1) where several actions are pending involving the same subject matter, the court may stay proceedings in all but one of the cases and determine whether the disposition of one action may settle the others; (2) where several actions involve an inquiry into the same event in its general aspects, the actions may be tied together, but with separate docket entries, verdicts and judgment, the consolidation being limited to a joint trial; and (3) where several actions are pending which might have been brought as a single action, the cases may be merged into one action, thereby losing their individual identity, to be

disposed of as one suit.” *Busch v. Mison*, 385 Ill. App. 3d 620, 624 (2008).

The first form of consolidation is not at issue here, as the trial court did not stay any proceedings. That leaves the second and third forms.

¶ 41 The difference between those forms can affect appellate jurisdiction. Where the second form of consolidation applies, a final judgment entered in one of the actions is immediately appealable without a Rule 304(a) finding. See *In re Adoption of S.G.*, 401 Ill. App. 3d 775, 781 (2010). In fact, the aggrieved party *must* immediately appeal the final order in that first action, as opposed to waiting until the companion action is resolved. See *S.G.*, 401 Ill. App. 3d at 783; *Kassnel v. Village of Rosemont*, 135 Ill. App. 3d 361, 364-65 (1985). Where, however, the third form of consolidation applies and the two actions merge into one, unless the trial court makes a Rule 304(a) finding, the aggrieved party may not appeal until all claims have been adjudicated. See *S.G.*, 401 Ill. App. 3d at 781; *Nationwide Mutual Insurance Co. v. Filos*, 285 Ill. App. 3d 528, 532 (1996). In considering which form of consolidation applies in a given case, reviewing courts have looked to the reasons for consolidation proposed by the litigants in their motions for consolidation. See *S.G.*, 401 Ill. App. 3d at 782; *Busch*, 385 Ill. App. 3d at 625; *Filos*, 285 Ill. App. 3d at 532. Other relevant considerations may include the wording of the consolidation order (*Busch*, 385 Ill. App. 3d at 625), whether the cases maintained separate docket entries after consolidation, and whether the litigants were treated as parties in both cases (*S.G.*, 401 Ill. App. 3d at 782-83).

¶ 42 The supporting record does not contain a motion for consolidation. Nor does the record contain any reports of proceedings. Thus, we have no way of knowing why the parties and/or the trial court believed that consolidation was appropriate or whether the court’s intent was to merge the actions. The supporting record does contain the second page of a July 27, 2018, order

2019 IL App (2d) 190320-U

indicating that the Guns Save Life action was consolidated with the Easterday action “for all future proceedings.” In some of their trial court memoranda, however, the Village and Rosenthal recounted that the court consolidated the actions on July 20, 2018. The supporting record does not contain a July 20 order, so this reinforces our concern that the court may have made relevant findings or comments that we do not have in front of us. Absent a complete record of the trial court proceedings, we lack sufficient information to determine whether the two actions merged or whether the order purportedly resolving all claims in the Easterday action was appealable without a Rule 304(a) finding. See *Tunca v. Painter*, 2012 IL App (1st) 093384, ¶ 25 (“Generally, in a direct appeal from the trial court, the transcript of the record must reveal the basis for the jurisdiction of the appellate court.”); *Foutch v. O’Bryant*, 99 Ill. 2d 389, 392 (1984) (“Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.”).

¶ 43 In summary, Rule 307 does not allow for appeals from permanent injunctions. There are claims still pending in the trial court in the Guns Save Life action, and the trial court never made Rule 304(a) findings in either of the consolidated actions. Although the Easterday plaintiffs mention the possibility that the March 22, 2019, order in their case was final and separately appealable even in the absence of a Rule 304(a) finding, the Village and Rosenthal specifically reject that possibility, and the record is not conducive to resolving the issue. We thus discern no basis for our jurisdiction.

¶ 44 Irrespective of whether the two actions merged, Deerfield’s and Rosenthal’s appeal of the permanent injunction that was entered in the Guns Save Life action is premature. If the two actions merged, Deerfield and Rosenthal may not appeal until the resolution of all claims in both actions (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the

2019 IL App (2d) 190320-U

Guns Save Life action). If the two actions did not merge, Deerfield and Rosenthal may not appeal until the resolution of all claims in the Guns Save Life action (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Guns Save Life action). We presume that, in either event, Deerfield and Rosenthal can timely file a new notice of appeal. If, however, all claims have now been resolved and the time to file a new notice of appeal has expired, Deerfield and Rosenthal may invoke the saving provisions of Rule 303(a)(2). See *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1050 (2007). Under that rule, we may give effect to Deerfield's and Rosenthal's premature notice of appeal upon the resolution of all claims. Thus, if Deerfield and Rosenthal cannot file a timely notice of appeal, they may move within 21 days to establish our jurisdiction by supplementing the record to show that all claims have been resolved. Should Deerfield's and Rosenthal's motion be well founded, we may grant it, vacate this order, and proceed to the merits.

¶ 45 With respect to Deerfield's appeal of the permanent injunction that was entered in the Easterday action, however, the appeal is premature only if the two actions merged. If the two actions merged, Deerfield may not appeal until the resolution of all claims in both actions (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Easterday action). (If the two actions did not merge, Deerfield's failure to establish that fact in the present appeal is fatal to any appeal in the Easterday action.) Again, if the two actions merged, we presume that Deerfield can timely file a new notice of appeal. If, however, all claims have now been resolved and the time to file a new notice of appeal has expired, Deerfield may invoke Rule 303(a)(2) as outlined above.

¶ 46

### III. CONCLUSION

¶ 47 For the forgoing reasons, we hereby dismiss this appeal for lack of jurisdiction.

2019 IL App (2d) 190320-U

¶ 48 Appeal dismissed.

2020 IL App (2d) 190879  
 No. 2-19-0879  
 Opinion filed December 7, 2020

IN THE  
 APPELLATE COURT OF ILLINOIS  
 SECOND DISTRICT

|                                     |   |                               |
|-------------------------------------|---|-------------------------------|
| DANIEL D. EASTERDAY, ILLINOIS STATE | ) | Appeal from the Circuit Court |
| RIFLE ASSOCIATION, and SECOND       | ) | of Lake County.               |
| AMENDMENT FOUNDATION, INC.,         | ) |                               |
|                                     | ) |                               |
| Plaintiffs-Appellees,               | ) |                               |
|                                     | ) |                               |
| v.                                  | ) | No. 18-CH-427                 |
|                                     | ) |                               |
| THE VILLAGE OF DEERFIELD,           | ) | Honorable                     |
|                                     | ) | Luis A. Berrones,             |
| Defendant-Appellant.                | ) | Judge, Presiding.             |

|  |   |                               |
|--|---|-------------------------------|
| GUNS SAVE LIFE, INC., and JOHN                 | ) | Appeal from the Circuit Court |
| WILLIAM WOMBACHER III,                         | ) | of Lake County.               |
|  | ) |                               |
| Plaintiffs-Appellees,                          | ) |                               |
|  | ) |                               |
| v.   | ) | No. 18-CH-498                 |
|  | ) |                               |
| THE VILLAGE OF DEERFIELD and                   | ) |                               |
| HARRIET ROSENTHAL, in Her Official             | ) |                               |
| Capacity as Mayor of the Village of Deerfield, | ) | Honorable                     |
|  | ) | Luis A. Berrones,             |
| Defendants-Appellants.                         | ) | Judge, Presiding.             |

JUSTICE ZENOFF delivered the judgment of the court, with opinion.  
 Justice Hudson concurred in the judgment and opinion.  
 Justice McLaren concurred in part and dissented in part, with opinion.

**OPINION**

¶ 1 The plaintiffs in these consolidated actions challenge the Village of Deerfield’s bans of “assault weapons” and “large capacity magazines.” One set of plaintiffs—Daniel D. Easterday, the Illinois State Rifle Association, and the Second Amendment Foundation, Inc. (collectively, Easterday)—sued Deerfield. The other set of plaintiffs—Guns Save Life, Inc. and John William Wombacher III (collectively, Guns Save Life)—sued both Deerfield and its mayor, Harriet Rosenthal. For the sake of simplicity, we will refer to both defendants collectively as Deerfield. The trial court granted summary judgment in favor of plaintiffs and permanently enjoined Deerfield from enforcing its bans of assault weapons and large capacity magazines. Deerfield appeals. For the following reasons, we affirm in part and reverse in part the trial court’s orders granting summary judgment in favor of plaintiffs. We vacate the permanent injunctions in part and remand the cause for further proceedings consistent with this opinion.

¶ 2

## I. BACKGROUND

¶ 3 Deerfield is a home rule unit. Before 2013, it did not have an ordinance in place regulating assault weapons or large capacity magazines.

¶ 4 Effective July 9, 2013, the Illinois legislature enacted the Firearm Concealed Carry Act (Concealed Carry Act) (430 ILCS 66/1 *et seq.* (West 2018)) and amended section 13.1 of the Firearm Owners Identification Card Act (FOID Card Act) (430 ILCS 65/13.1 (West 2018)). Deerfield interpreted this legislation as providing a brief window for home rule units to regulate assault weapons. Deerfield understood that if it failed to regulate such weapons by July 20, 2013, it would forever lose its power to do so. Although Deerfield was not ready to impose a total ban on assault weapons, it did not want to lose its regulatory authority on this matter. Deerfield believed that if it timely regulated assault weapons, it could amend those regulations at any time and in any manner it wished.

2020 IL App (2d) 190879

¶ 5 Consistent with its interpretation of the relevant legislation, on July 1, 2013, Deerfield enacted ordinance No. O-13-24 (the 2013 ordinance), which regulated the storage and transportation of assault weapons within the village. Deerfield defined “assault weapon” by reference to a list of both physical characteristics of firearms and specified models. See Deerfield Municipal Code § 15-86 (added July 1, 2013). Deerfield defined “large capacity magazine” as

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

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

(2) A 22 caliber tube ammunition feeding device.

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

Deerfield Municipal Code § 15-86 (added July 1, 2013).

Deerfield specified certain requirements for the safe storage and transportation of assault weapons. See Deerfield Municipal Code §§ 15-87, 15-88 (added July 1, 2013). Failure to comply with those requirements would result in a fine between \$250 and \$1000. Deerfield Municipal Code § 15-89 (added July 1, 2013).

¶ 6 In 2018, following numerous highly publicized mass shootings across the country, Deerfield decided to enact what amounted to a total civilian ban on assault weapons and large capacity magazines. This was accomplished through two ordinances: Deerfield Ordinance No. O- 18-06 (eff. Apr. 2, 2018) and Deerfield Ordinance No. O-18-19 (eff. June 18, 2018)(collectively,

the 2018 ordinances).<sup>1</sup> The 2018 ordinances amended the sections of the municipal code that were added by the 2013 ordinance. Changes to the text of the municipal code were reflected by striking out language that was to be removed and underlining language to be added. Specifically, Deerfield made it unlawful for persons other than military or law enforcement personnel to “possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon or large capacity magazine in the Village.” Deerfield Municipal Code § 15-87(a) (amended June 18, 2018). Deerfield provided a 60-day grace period for persons in possession of assault weapons or large capacity magazines to either (1) remove, sell, or transfer those items from the limits of the village, (2) render the items permanently inoperable or otherwise modify them so that they no longer fell within the definitions of prohibited items, or (3) surrender the items to the chief of police for disposal and destruction. Deerfield Municipal Code §§ 15-90, 15-91 (added Apr. 2, 2018).

¶ 7 Easterday and Guns Save Life filed separate lawsuits challenging the validity of the 2018 ordinances.<sup>2</sup> The Easterday action was designated in the trial court as case No. 18-CH-427 and the Guns Save Life action was designated as No. 18-CH-498. The trial court entered temporary restraining orders in both cases prohibiting Deerfield from enforcing the bans. On July 27, 2018, the court consolidated the two actions “for all future proceedings.”

---

<sup>1</sup> Early in this litigation, the trial court determined that, contrary to what Deerfield claimed, ordinance No. O-18-06 did not ban large capacity magazines. In response to that ruling, Deerfield enacted ordinance No. O-18-19, which explicitly banned large capacity magazines.

<sup>2</sup> In their original complaints, Easterday and Guns Save Life challenged ordinance No. O-18-06. When Deerfield subsequently enacted ordinance No. O-18-19, Easterday and Guns Save Life amended their complaints to challenge that ordinance as well. In its amended complaint, Easterday misidentified ordinance No. O-18-19 as ordinance No. O-18-24-3.

2020 IL App (2d) 190879

¶ 8 In their respective amended complaints, Easterday and Guns Save Life alleged that the bans imposed by the 2018 ordinances were preempted by section 13.1 of the FOID Card Act (430 ILCS 65/13.1 (West 2018)) and section 90 of the Concealed Carry Act (430 ILCS 66/90 (West 2018)). Easterday advanced this theory in a single count, whereas Guns Save Life advanced this theory in two counts (counts I and III of its amended complaint). Guns Save Life further alleged that the ordinances (1) were preempted by section 2.1 of the Wildlife Code (520 ILCS 5/2.1 (West 2018)) (counts II and IV of Guns Save Life’s amended complaint) and (2) amounted to improper “takings” in violation of the Illinois Constitution (Ill. Const. 1970, art. I, § 15) (count V) and the Eminent Domain Act (735 ILCS 30/90-5-20 (West 2018)) (count VI).

¶ 9 On March 22, 2019, in response to Easterday’s and Guns Save Life’s motions for summary judgment, the trial court entered permanent injunctions in both cases enjoining Deerfield from “enforcing any provision of [the 2018 ordinances] making it unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances.” The court determined that the bans imposed by the 2018 ordinances were preempted by section 13.1 of the FOID Card Act and section 90 of the Concealed Carry Act. The court found, however, that genuine issues of material fact precluded summary judgment on Guns Save Life’s claims that the bans amounted to improper “takings.” The court also rejected Guns Save Life’s argument that the bans were preempted by the Wildlife Code. The effect of these orders was to (1) grant summary judgment to Easterday as to the only claim that was at issue in its amended complaint, (2) grant summary judgment to Guns Save Life as to counts I and III of its amended complaint, and (3) deny Guns Save Life’s motion for summary judgment as to counts II, IV, V, and VI of its amended complaint. Neither of the court’s orders entered on March 22, 2019,

2020 IL App (2d) 190879

included language rendering the matters immediately appealable pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016).

¶ 10 Deerfield attempted to appeal the permanent injunctions pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017). On June 12, 2019, we dismissed that appeal for lack of jurisdiction, because (1) Rule 307(a)(1) does not apply to permanent injunctions, (2) no final judgment was entered with respect to Guns Save Life’s amended complaint, as the trial court did not resolve all claims, and (3) due to the lack of a complete record, we could not determine whether a final and independently appealable judgment had been entered with respect to Easterday’s amended complaint. See *Easterday v. Village of Deerfield*, 2019 IL App (2d) 190320-U, ¶ 43 (*Easterday I*).

¶ 11 On that last point, we explained:

“ ‘Illinois courts have recognized three distinct forms of consolidation: (1) where several actions are pending involving the same subject matter, the court may stay proceedings in all but one of the cases and determine whether the disposition of one action may settle the others; (2) where several actions involve an inquiry into the same event in its general aspects, the actions may be tied together, but with separate docket entries, verdicts and judgment, the consolidation being limited to a joint trial; and (3) where several actions are pending which might have been brought as a single action, the cases may be merged into one action, thereby losing their individual identity, to be disposed of as one suit.’ ” *Easterday I*, 2019 IL App (2d) 190320-U, ¶ 40 (quoting *Busch v. Mison*, 385 Ill. App. 3d 620, 624 (2008)).

Because the trial court did not stay any proceedings, we ruled out the first form of consolidation.

*Easterday I*, 2019 IL App (2d) 190320-U, ¶ 40.

¶ 12 We noted that the difference between the second and third forms of consolidation had jurisdictional implications:

“Where the second form of consolidation applies, a final judgment entered in one of the actions is immediately appealable without a Rule 304(a) finding. [Citation.] In fact, the aggrieved party *must* immediately appeal the final order in that first action, as opposed to waiting until the companion action is resolved. [Citations.] Where, however, the third form of consolidation applies and the two actions merge into one, unless the trial court makes a Rule 304(a) finding, the aggrieved party may not appeal until all claims have been adjudicated. [Citations.] In considering which form of consolidation applies in a given case, reviewing courts have looked to the reasons for consolidation proposed by the litigants in their motions for consolidation. [Citations.] Other relevant considerations may include the wording of the consolidation order [citation], whether the cases maintained separate docket entries after consolidation, and whether the litigants were treated as parties in both cases.” (Emphasis in original.) *Easterday I*, 2019 IL App (2d) 190320-U, ¶ 41.

¶ 13 Given that Deerfield erroneously pursued its appeal under Rule 307(a)—which contemplates a more limited supporting record as compared to appeals from final judgments—we were unable “to determine which form of consolidation the trial court intended.” *Easterday I*, 2019 IL App (2d) 190320-U, ¶ 40. We concluded:

“Irrespective of whether the two actions merged, Deerfield’s \*\*\* appeal of the permanent injunction that was entered in the Guns Save Life action is premature. If the two actions merged, Deerfield \*\*\* may not appeal until the resolution of all claims in both actions (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Guns Save Life action). If the two actions did not merge, Deerfield \*\*\* may not

2020 IL App (2d) 190879

appeal until the resolution of all claims in the Guns Save Life action (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Guns Save Life action).

\*\*\*.

With respect to Deerfield's appeal of the permanent injunction that was entered in the Easterday action, however, the appeal is premature only if the two actions merged. If the two actions merged, Deerfield may not appeal until the resolution of all claims in both actions (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Easterday action). (If the two actions did not merge, Deerfield's failure to establish that fact in the present appeal is fatal to any appeal in the Easterday action.)" *Easterday I*, 2019 IL App (2d) 190320-U, ¶¶ 44-45.

¶ 14 Following our decision in *Easterday I*, Deerfield filed a motion in the trial court requesting Rule 304(a) findings with respect to the March 22, 2019, orders entered in both the Easterday action and the Guns Save Life action. As noted above, on March 22, 2019, the court had resolved the only claim that was at issue in the Easterday action. Concerning the Guns Save Life action, Deerfield requested Rule 304(a) findings as to the court's rulings only on counts I through IV of the amended complaint (the preemption claims, not the takings claims). Deerfield also asked the court to find that the July 27, 2018, consolidation order merged the two cases. In their responses to Deerfield's motion, both Easterday and Guns Save Life argued that the consolidation order had not merged the actions.

¶ 15 On September 6, 2019, the court made Rule 304(a) findings as requested by Deerfield. The court also clarified that it had intended to merge the two actions when it entered the consolidation order. In explaining its decision, the court mentioned that certain limitations in the court clerk's case management system prevented multiple cases from being merged into one case number.

¶ 16 On October 3, 2019, Deerfield filed a notice of appeal, specifying its intent to challenge the permanent injunctions that the court entered on March 22, 2019, which were rendered appealable by the September 6, 2019, order.

¶ 17

## II. ANALYSIS

¶ 18

### A. Jurisdiction

¶ 19 Easterday and Guns Save Life both contend that we lack jurisdiction.

¶ 20 Easterday argues as follows. There are numerous objective indications from the record that suggest that the trial court's July 27, 2018, consolidation order was for judicial convenience and economy, not to merge the cases. Because Deerfield failed to appeal the final order entered in the Easterday action within 30 days of March 22, 2019, we lack jurisdiction of the present appeal.<sup>3</sup>

¶ 21 Guns Save Life presents a very similar jurisdictional argument. Guns Save Life emphasizes the unfairness of the trial court's after-the-fact explanation about its intent to merge the actions. Like Easterday, Guns Save Life argues that the cases did not merge and Deerfield, therefore, failed to timely appeal the final judgment in the Easterday action. According to Guns Save Life, because its action involves a permanent injunction that is identical to the one that was entered in the Easterday action, any appeal of the Guns Save Life action is moot and barred by collateral estoppel.

¶ 22 Deerfield maintains that we have jurisdiction under Rule 304(a). According to Deerfield, Easterday and Guns Save Life did not file cross-appeals, so they may not challenge the trial court's

---

<sup>3</sup> Deerfield *did* file a notice of appeal within 30 days of the March 22, 2019, orders. As explained above, we dismissed Deerfield's first appeal for lack of jurisdiction. Thus, it appears that Easterday's argument is that we lack jurisdiction of the present appeal because we had jurisdiction in the prior appeal of a final judgment in the Easterday action, and Deerfield failed to establish that fact at the time.

2020 IL App (2d) 190879

finding that the actions merged. Deerfield further notes that the trial court expressly stated that it intended to merge the actions. Deerfield argues that this distinguishes the matter from the various cases cited by Easterday and Guns Save Life, where the appellate court was tasked with ascertaining trial judges' intent from the circumstantial evidence in the record.

¶ 23 In our view, contrary to Deerfield's suggestions, Easterday and Guns Save Life did not need to file cross-appeals to raise this issue. It would have been inappropriate for them to file cross-appeals because they obtained by summary judgment all the relief that they requested: a declaratory judgment in their favor as to the invalidity of the bans imposed by the 2018 ordinances and a permanent injunction barring Deerfield from enforcing those bans. See *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 387 (1983) (an appellee may challenge specific findings made by the trial court without filing a cross-appeal, so long as "the judgment of the trial court was not at least in part against the appellee"); *Chicago Tribune v. College of Du Page*, 2017 IL App (2d) 160274, ¶ 28 (although it was improper for the appellee to file a cross-appeal from an order granting summary judgment in its favor, we noted that we could consider the appellee's contention that portions of the trial court's reasoning were erroneous, because an appellee may defend the judgment on any basis appearing in the record). Moreover, the issue that Easterday and Guns Save Life raise implicates our jurisdiction, so it is not subject to waiver or forfeiture. See *Ruff v. Industrial Comm'n*, 149 Ill. App. 3d 73, 78 (1986) (even without filing a cross-appeal, the employer-appellee was permitted to argue that the appellant did not file a timely petition before the Industrial Commission, as that argument raised questions regarding the jurisdiction of both the Industrial Commission and the appellate court).

¶ 24 We determine that there is no basis to overturn the trial court's finding that the actions merged. This case is unusual. In the more typical case, the appellate court must ascertain the trial

2020 IL App (2d) 190879

court's intent by looking at circumstantial factors in the record, such as the ones that we outlined in *Easterday I*. Here, however, there is no room to argue about the trial court's intent because the court expressly stated that it intended to merge the actions. We recognize that the court clarified its intent only after the jurisdictional implications became apparent to both the court and the parties. We also recognize that the court mentioned certain limitations in Lake County's case management system that the parties may have had no reason to know about when the consolidation order was entered. Nevertheless, we find no prejudice to any party. Guns Save Life poses a hypothetical scenario in which a trial judge leads the parties to believe that two matters merged, only to later explain, once it was too late for the losing party to appeal, that the matters did not merge. Here, however, there is no unfairness, as the litigants are being granted access to the appellate court rather than foreclosed from such access.

¶ 25 Having no basis to disturb the trial court's finding that the two actions merged, Easterday's and Guns Save Life's jurisdictional challenges fail. Specifically, because the actions merged, Deerfield did not miss its opportunity to appeal the March 22, 2019, final judgment in the Easterday action. Because Deerfield did not miss its opportunity to appeal the final judgment in the Easterday action, the appeal of the March 22, 2019, order entered in the Guns Save Life action is neither moot nor barred by collateral estoppel. The March 22, 2019, order in the Easterday action was rendered appealable on September 6, 2019, when the trial court made findings under Rule 304(a). The court's March 22, 2019, rulings on counts I and III of Guns Save Life's amended complaint likewise were rendered appealable on September 6, 2019, when the court made findings

2020 IL App (2d) 190879

under Rule 304(a).<sup>4</sup> Deerfield appealed within 30 days of September 6, 2019. Accordingly, we have jurisdiction of the appeal under Rule 304(a).

¶ 26

#### B. Preemption

¶ 27 The trial court granted summary judgment in favor of Easterday and Guns Save Life, determining that the bans imposed by the 2018 ordinances were preempted by section 13.1 of the FOID Card Act and section 90 of the Concealed Carry Act. Summary judgment is appropriate where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2018). We review *de novo* the trial court’s decision. *Guns Save Life, Inc. v. Ali*, 2020 IL App (1st) 181846, ¶ 43.

¶ 28 When interpreting a statute, our goal is to ascertain and effectuate the legislature’s intent. *Iwan Ries & Co. v. City of Chicago*, 2019 IL 124469, ¶ 19. The plain and ordinary meaning of the statutory language is the most reliable indicator of that intent. *Iwan Ries*, 2019 IL 124469, ¶ 19. We must consider the statute as a whole, construing words and phrases in their proper context rather than in isolation. *Iwan Ries*, 2019 IL 124469, ¶ 19. We may consider both the subject of the statute and the legislature’s apparent purpose in enacting it. *Iwan Ries*, 2019 IL 124469, ¶ 19. If it is possible to do so, we should embrace an interpretation that gives a reasonable meaning to each word, clause, and sentence of the statute without rendering any language superfluous. *Murphy-Hylton v. Lieberman Management Services, Inc.*, 2016 IL 120394, ¶ 25. Where the statute’s language is clear and unambiguous, we apply it as written without resorting to extrinsic aids of construction. *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶ 16.

---

<sup>4</sup> As explained below in section II.B.7., the court’s Rule 304(a) findings did not render appealable the nonfinal orders as to counts II and IV of Guns Save Life’s amended complaint.

¶ 29

1. *Nature of Home Rule Authority*

¶ 30 Before turning to the statutes at issue, we will provide some background about the nature of home rule authority, as it will inform our analysis. “Under the 1870 Illinois Constitution, the balance of power between our state and local governments was heavily weighted toward the state.” *City of Chicago v. Stubhub, Inc.*, 2011 IL 111127, ¶ 18. With the adoption of the current Constitution in 1970, that balance of power was drastically altered, such that local governments “now enjoy ‘the broadest powers possible.’ ” *Stubhub*, 2011 IL 111127, ¶ 18 (quoting *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 174 (1992)). The impetus for this power transfer was “the assumption that municipalities should be allowed to address their problems by tailoring solutions to local needs.” *Iwan Ries*, 2019 IL 124469, ¶ 21. To that end, article 7, section 6(a) of the Illinois Constitution provides, in relevant portion:

“Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.” Ill. Const. 1970, art. VII, § 6(a).

The Constitution indicates that the “[p]owers and functions of home rule units shall be construed liberally.” Ill. Const. 1970, art. VII, § 6(m).

¶ 31 Nevertheless, the legislature retains the authority to restrict the powers of home rule units. Article 7, section 6(h), for example, allows the legislature to “provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit.”<sup>5</sup> Ill. Const. 1970, art. VII, § 6(h). Article 7, section 6(i) establishes that home rule units may exercise their powers

---

<sup>5</sup> This rule is subject to certain exceptions relating to taxing powers. Those exceptions are not relevant to this appeal.

2020 IL App (2d) 190879

concurrently with the State, to the extent that the legislature “does not specifically limit the concurrent exercise or specifically declare the State’s exercise to be exclusive.” Ill. Const. 1970, art. VII, § 6(i). Thus, the legislature must expressly limit or deny home rule authority whenever it intends to do so. *Palm v. 2800 Lake Shore Drive Condominium Ass’n*, 2013 IL 110505, ¶ 31; see also 5 ILCS 70/7 (West 2018) (“No law enacted after January 12, 1977, denies or limits any power or function of a home rule unit \*\*\* unless there is specific language limiting or denying the power or function and the language specifically sets forth in what manner and to what extent it is a limitation on or denial of the power or function of a home rule unit.”). “In other words, the default position for a home rule unit is to be able to legislate local matters,” and “the legislature’s silence on the power of home rule units is actually evidence of the home rule unit’s power.” *Accel Entertainment Gaming, LLC v. Village of Elmwood Park*, 2015 IL App (1st) 143822, ¶ 47.

¶ 32

## 2. *The Governing Statutes*

¶ 33 As mentioned above, the Concealed Carry Act went into effect on July 9, 2013. Section 90 of that Act provides:

“The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. 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.” 430 ILCS 66/90 (West 2018).

“Handgun” is defined as

“any device which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas that is designed to be held and fired by the use of a single hand. ‘Handgun’ does not include:

(1) a stun gun or taser;

(2) a machine gun as defined in item (i) of paragraph (7) of subsection (a) of Section 24-1 of the Criminal Code of 2012;

(3) a short-barreled rifle or shotgun as defined in item (ii) of paragraph (7) of subsection (a) of Section 24-1 of the Criminal Code of 2012; or

(4) any pneumatic gun, spring gun, paint ball gun, or B-B gun which expels a single globular projectile not exceeding .18 inch in diameter, or which has a maximum muzzle velocity of less than 700 feet per second, or which expels breakable paint balls containing washable marking colors.” 430 ILCS 66/5 (West 2018).

¶ 34 Effective July 9, 2013, the legislature also amended section 13.1 of the FOID Card Act. That provision now reads as follows:

“(a) Except as otherwise provided in the Firearm Concealed Carry Act and subsections (b) and (c) of this Section, the provisions of any ordinance enacted by any municipality which requires registration or imposes greater restrictions or limitations on the acquisition, possession and transfer of firearms than are imposed by this Act, are not invalidated or affected by this Act.

(b) Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner’s

Identification Card issued by the Department of State Police under this Act are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, enacted on or before the effective date of this amendatory Act of the 98th General Assembly that purports to impose regulations or restrictions on a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act, on the effective date of this amendatory Act of the 98th General Assembly, shall be invalid in its application to a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act.

(c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly. Any ordinance or regulation described in this subsection (c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid. An ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended. The enactment or amendment of ordinances under this subsection (c) are subject to the submission requirements of Section 13.3. For the purposes of this subsection, 'assault weapons' means firearms designated by either make or model or by a test or list of cosmetic features that cumulatively would place the firearm into a definition of 'assault weapon' under the ordinance.

2020 IL App (2d) 190879

(d) For the purposes of this Section, ‘handgun’ has the meaning ascribed to it in Section 5 of the Firearm Concealed Carry Act.

(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.” 430 ILCS 65/13.1 (West 2018).

¶ 35 This appeal presents four questions with respect to Deerfield’s bans of assault weapons and large capacity magazines: (1) does section 13.1 of the FOID Card Act preempt all regulation of assault weapons by home rule units; (2) if not, was Deerfield’s 2013 ordinance “inconsistent with” the FOID Card Act, within the meaning of section 13.1(c) of that Act; (3) if Deerfield’s 2013 ordinance was inconsistent with the FOID Card Act, were Deerfield’s 2018 ordinances mere amendments to the 2013 ordinance, as allowed by section 13.1(c); and (4) to the extent that Deerfield’s ban of large capacity magazines regulates ammunition for handguns, is such a ban preempted by section 13.1(b) of the FOID Card Act and section 90 of the Concealed Carry Act?

¶ 36                   3. *Section 13.1 of the FOID Card Act Does Not Preempt All*

*Regulation of Assault Weapons by Home Rule Units*

¶ 37 The trial court determined that section 13.1 of the FOID Card Act preempts all regulation by home rule units relating to the possession or ownership of assault weapons. Easterday and Guns Save Life defend the court’s conclusion on this point. In doing so, they focus heavily on the language of section 13.1(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.” (430 ILCS 65/13.1(e) (West 2018))), along with the first sentence of section 13.1(c) (“[T]he regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State.” (430 ILCS 65/13.1(c) (West 2018))).

2020 IL App (2d) 190879

¶ 38 Deerfield, on the other hand, argues that the interpretation espoused by Easterday, *Guns Save Life*, and the trial court fails to give effect to the following language in section 13.1(c):

“Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid *unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly*. Any ordinance or regulation described in this subsection (c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid.” (Emphasis added.) 430 ILCS 65/13.1(c) (West 2018).

Taking this language into account, Deerfield maintains that the legislature adopted a “unique, hybrid form of concurrent jurisdiction over assault weapons.” According to Deerfield, home rule units that regulated assault weapons within the window specified in section 13.1(c) retain their concurrent regulatory power; home rule units that failed to regulate assault weapons within this window, on the other hand, are prohibited from regulating on this subject.

¶ 39 Deerfield’s interpretation of the statute prevails. As noted above, if it is possible to do so, we should embrace an interpretation that gives a reasonable meaning to each word, clause, and sentence of the statute without rendering any language superfluous. *Murphy-Hylton*, 2016 IL 120394, ¶ 25. Contrary to what the trial court concluded, we believe that it is possible to give effect to all of the language of section 13.1.

¶ 40 To be sure, section 13.1(e) and the first sentence of section 13.1(c) contain language that, if isolated from the rest of the statute, would generally be interpreted as preempting all local regulation of assault weapons. See *City of Chicago v. Roman*, 184 Ill. 2d 504, 517-18 (1998) (collecting examples of statutes where the legislature evinced its intent to preempt all regulation

2020 IL App (2d) 190879

by home rule units on various topics). Nevertheless, we must consider the statute as a whole, construing words and phrases in their proper context rather than in isolation. *Iwan Ries*, 2019 IL 124469, ¶ 19. Immediately after declaring that “the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State,” the statute carves out an exception for ordinances and regulations that were enacted on, before, or within 10 days of the statute’s effective date. 430 ILCS 65/13.1(c) (West 2018). The statute adds that such ordinances may be amended outside the 10-day window. 430 ILCS 65/13.1(c) (West 2018).

¶ 41 Construing these provisions together, it is apparent that the legislature did not intend to preempt all regulation of assault weapons by home rule units. Instead, as Deerfield suggests, the legislature contemplated a hybrid balance of regulatory power between the State and local governments, whereby certain home rule units would have the authority to concurrently regulate assault weapons and others would not. In other words, the legislature intended that home rule units would be precluded from regulating assault weapons unless they took steps, within the prescribed timeframe, to regulate the possession or ownership of assault weapons in a manner that is inconsistent with the FOID Card Act.

¶ 42 For these reasons, we hold that the trial court erred in determining that section 13.1 of the FOID Card Act preempts all regulation of assault weapons by home rule units.

¶ 43           4. *Deerfield’s 2013 Ordinance Was “Inconsistent With” the FOID Card Act*

¶ 44 The next issue is whether Deerfield retained its authority to regulate assault weapons concurrently with the State. There is no dispute that Deerfield enacted its 2013 ordinance within the window specified in section 13.1(c) of the FOID Card Act. The parties disagree, however, as to whether Deerfield’s 2013 ordinance was “inconsistent with” the FOID Card Act. See 430 ILCS 65/13.1(c) (West 2018) (“[a]ny ordinance \*\*\* that purports to regulate the possession or ownership

2020 IL App (2d) 190879

of assault weapons in a manner that is inconsistent with this Act[ ] shall be invalid” unless it is enacted within the specified window).

¶ 45 In the alternative to its conclusion that section 13.1 of the FOID Card Act categorically preempts local regulation of assault weapons, the trial court determined that, because Deerfield’s 2013 ordinance merely regulated the transportation and storage of assault weapons, it was not inconsistent with the FOID Card Act. In the court’s view, section 13.1(c) of the FOID Card Act “provided home rule units a one-time 10-day window from the date of this section’s effective date to ban ownership or possession of assault weapons.” The court reasoned that, because Deerfield failed to enact such a ban within this window, it “lost its opportunity to do so and cannot later amend its ordinance to impose such a ban.”

¶ 46 On appeal, both Easterday and Guns Save Life defend the trial court’s interpretation. Deerfield addresses this issue in a single footnote of its appellant’s brief. Guns Save Life asks us to ignore Deerfield’s argument because substantive material should not appear in footnotes. See *Lundy v. Farmers Group, Inc.*, 322 Ill. App. 3d 214, 218 (2001) (striking footnotes from a brief that used footnotes (1) excessively, (2) to convey substantive arguments, and (3) to circumvent page limits). Although Deerfield should not have included substantive material in a footnote, we decline to strike the subject footnote or otherwise ignore Deerfield’s argument. Deerfield did not use footnotes excessively in its brief, nor did it use footnotes to circumvent page limits. Additionally, this appeal might have legal implications for other home rule units that enacted regulations within the 10-day window short of assault-weapon bans, which is another reason not to ignore Deerfield’s argument.

¶ 47 Deerfield argues as follows:

“The term ‘inconsistent with’ refers to actions by a home-rule unit inconsistent with the State’s exclusive jurisdiction absent action by a home-rule unit. The [FOID Card Act] merely asserted that the State now had exclusive jurisdiction. It did not impose any regulation beyond that. There was, despite the Circuit Court’s assertion, no legislative or regulatory scheme with which to conflict. The only ‘inconsistency’ to which the provision refers would be the assertion of home-rule authority itself.”

For the following reasons, we conclude that, although Deerfield comes closer to the proper interpretation, neither the parties nor the trial court accurately identified what the legislature intended when it allowed for local regulations of assault weapons that are “inconsistent with” the FOID Card Act.

¶ 48 The primary concern of the FOID Card Act is to regulate who may acquire or possess firearms, not which firearms those individuals may acquire or possess. See 430 ILCS 65/1 (West 2018). The Act defines “firearm” broadly, without excluding assault weapons. See 430 ILCS 65/1.1 (West 2018). Indeed, the only mention of assault weapons in the Act is in section 13.1(c). The Act’s general rule, which is subject to numerous exceptions, is that no person who lacks a FOID card may acquire or possess within the State any firearm ammunition or any firearm, stun gun, or taser. 430 ILCS 65/2(a) (West 2018). Therefore, contrary to what Deerfield suggests, the FOID Card Act does regulate assault weapons, insofar as it requires anyone who acquires or possesses such firearms to have a FOID card.

¶ 49 To ascertain what the legislature intended in section 13.1(c) of the FOID Card Act when it created a window for home rule units to “regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act,” we must read section 13.1(c) within the context of the entire section. Section 13.1(a) sets forth the general rule that the Act is not intended to

2020 IL App (2d) 190879

invalidate local regulations that require registration or impose “greater restrictions or limitations on the acquisition, possession and transfer of firearms than are imposed by this Act.” 430 ILCS 65/13.1(a) (West 2018). Section 13.1(c) is designated as an exception to the rule outlined in section 13.1(a). The first sentence of section 13.1(c) provides: “Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive matters and functions of this State.” 430 ILCS 65/13.1(c) (West 2018). The next sentence of section 13.1(c) creates an exception to the first sentence:

“Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly.” 430 ILCS 65/13.1(c) (West 2018).

Accordingly, when the legislature used the phrase “inconsistent with this Act” in section 13.1(c), it was in the context of providing an exception to an exception to the general rule that ordinances are not invalid merely because they require registration or impose greater restrictions on the acquisition, possession, or transfer of firearms than those which are imposed by the Act. Thus, a home rule unit’s regulation is “inconsistent with” the Act where such regulation imposes greater restrictions on assault weapons than the Act imposes. Any regulation of assault weapons beyond the mere requirement to possess a FOID card is inconsistent with the Act.

¶ 50 With this understanding, we hold that Deerfield’s 2013 ordinance was inconsistent with the FOID Card Act because it regulated the possession and ownership of assault weapons beyond what was required by the Act. Specifically, the 2013 ordinance provided:

“It shall be unlawful to store or keep any assault weapon in the Village unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.” Deerfield Municipal Code § 15-87(a) (added July 1, 2013).<sup>6</sup>

Additionally, the 2013 ordinance stated:

“It is unlawful and a violation of this section for any person to carry or possess an assault weapon in the Village, except when on his land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person’s permission, except that this section does not apply to or affect transportation of assault weapons that meet one of the following conditions:

- (i) are broken down in a non-functioning state; or
- (ii) are not immediately accessible; or

---

<sup>6</sup> This rule was subject to a self-defense exception: “No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self-defense or in defense of another.” Deerfield Municipal Code § 15-87(b) (added July 1, 2013).

(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card." Deerfield Municipal Code § 15-88(a) (added July 1, 2013).<sup>7</sup>

Having regulated the possession and ownership of assault weapons in a manner that was inconsistent with the FOID Card Act, Deerfield preserved its power to regulate assault weapons concurrently with the State.

¶ 51 The dissent disagrees with the majority's conclusion that Deerfield regulated both possession and ownership of assault weapons in its 2013 ordinance. In the dissent's view, Deerfield timely regulated only the possession of assault weapons, so it lacked authority under section 13.1(c) of the FOID Card Act to amend its ordinance in 2018 to regulate the ownership of assault weapons. We note that neither the trial court nor the parties embraced this rationale. One need look only to the title of Deerfield's 2013 ordinance to understand why. That ordinance was entitled: "An Ordinance Regulating the Ownership and Possession of Assault Weapons in the Village of Deerfield." Aside from the title, the restrictions outlined in Deerfield's 2013 ordinance applied equally to persons who both possessed and owned assault weapons and to persons who possessed such weapons but did not own them. By the plain terms of the 2013 ordinance, whenever an assault weapon was not under the control of or being carried by the owner or some other lawfully authorized user, the weapon had to be secured by them in a locked container or equipped with a tamper-resistant mechanical lock or another safety device. In the majority's view, Deerfield plainly regulated both the possession and ownership of assault weapons within the 10-day window specified in section 13.1(c) of the FOID Card Act.

---

<sup>7</sup> The requirements of sections 15-87 and 15-88 did not apply to law enforcement or military personnel. Deerfield Municipal Code §§ 15-87(c), 15-88(b) (added July 1, 2013).

2020 IL App (2d) 190879

¶ 52 Furthermore, as a practical matter, it is not clear how courts could distinguish between regulations that affect only possession and regulations that affect both possession and ownership. Ownership and possession are interrelated concepts. For example, one definition of “owner” is “[s]omeone who has the right to possess, use, and convey something.” Black’s Law Dictionary (11th ed. 2019). One definition of “possession” is “[s]omething that a person owns or controls.” Black’s Law Dictionary (11th ed. 2019). In a similar vein, Deerfield defines “owner” in its municipal code as, in relevant portion, “one who has complete *dominion* over particular property and who is the one in whom legal or equitable title rests.” (Emphasis added.) Deerfield Municipal Code § 1-2(a)(25) (added 1963). “Dominion,” in turn, is defined as “[c]ontrol; possession.” Black’s Law Dictionary (11th ed. 2019). In light of these overlapping definitions, it is not clear how an assault weapon ordinance could regulate possession without also regulating ownership. When Deerfield told its residents in 2013 how they had to store and transport their assault weapons, such regulations affected residents’ rights as owners of such weapons.

¶ 53 Even if the dissent were correct that “[p]ossession and ownership are completely distinct concepts” (*infra* ¶ 87), at the very least, in its 2013 ordinance, Deerfield timely regulated either the “possession or ownership of assault weapons in a manner that is inconsistent with” the FOID Card Act. 430 ILCS 65/13.1(c) (West 2018). For example, as explained above, Deerfield’s 2013 rules relating to storing assault weapons went beyond the requirements of the FOID Card Act. Under the plain language of the statute, that was all that Deerfield needed to do to preserve its authority to regulate assault weapons concurrently with the State.

¶ 54 *5. Deerfield Amended Its 2013 Ordinance*

¶ 55 The next question is whether Deerfield’s 2018 ordinances were amendments to the 2013 ordinance, as allowed by section 13.1(c) of the FOID Card Act. We hold that they were.

2020 IL App (2d) 190879

¶ 56 Our analysis is straightforward. As explained above, by amending section 13.1 of the FOID Card Act in 2013, the legislature created a hybrid balance of regulatory power between the State and local governments, whereby certain home rule units would have the authority to concurrently regulate assault weapons and others would not. Deerfield preserved its power to regulate assault weapons concurrently with the State when it enacted its 2013 ordinance. The legislature explicitly declared that home rule units that preserved their power to regulate assault weapons concurrently with the State could amend their ordinances. See 430 ILCS 65/13.1(c) (West 2018) (“An ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended.”). In 2018, Deerfield twice purported to amend its 2013 ordinance and imposed a complete civilian ban on assault weapons and large capacity magazines. Because Deerfield had the power to regulate assault weapons concurrently with the State, it was Deerfield’s prerogative to ban such weapons, and there were no time limitations for doing so.

¶ 57 Relying on *Athey v. City of Peru*, 22 Ill. App. 3d 363 (1974), the trial court nevertheless conducted a “comparative analysis” of the 2013 and 2018 ordinances to evaluate the extent of the changes. Noting the “significant differences” between the 2013 ordinance and the 2018 ordinances, the court accepted Easterday’s and Guns Save Life’s arguments that the 2018 ordinances were new ordinances rather than mere amendments to the 2013 ordinance.

¶ 58 In *Athey*, the plaintiff property owners filed an action challenging the City of Peru’s ordinance No. 1699, which rezoned an adjacent property from residential to commercial. *Athey*, 22 Ill. App. 3d at 365-66. One disputed issue in the action was whether ordinance No. 1699 was a new ordinance or whether it was an amendment of ordinance No. 1497. *Athey*, 22 Ill. App. 3d at 366. That issue was significant to the litigation because amendments to existing ordinances required a two-thirds vote of the city council to pass, whereas new ordinances could be enacted by

2020 IL App (2d) 190879

a majority vote. *Athey*, 22 Ill. App. 3d at 366. The appellate court recognized that it was called upon to ascertain the city council’s intent. See *Athey*, 22 Ill. App. 3d at 367 (“The primary purpose of construction of ordinances is to determine and give full effect to the intent of the law-making body as revealed by the language used.”). Ascertaining that intent was complicated, however, by the fact that ordinance No. 1699’s introductory clause was ambiguous: “ ‘Whereas the City of Peru, Illinois now desires to amend comprehensively its existing ordinance by adopting a new ordinance.’ ” *Athey*, 22 Ill. App. 3d at 367. Additionally, during the legislative process, the city council interchangeably referred to ordinance No. 1699 as a “comprehensive amendment” and a “new ordinance.” *Athey*, 22 Ill. App. 3d at 367. Under those circumstances, the court undertook a “comparative analysis” of the two ordinances. *Athey*, 22 Ill. App. 3d at 368. Upon doing so, the court determined that ordinance No. 1699 was a new ordinance rather than an amendment of ordinance No. 1497. *Athey*, 22 Ill. App. 3d at 368.

¶ 59 Unlike in *Athey*, there is no need to undertake a comparative analysis of Deerfield’s ordinances. Deerfield indicated that it intended for the 2018 ordinances to serve as amendments to the 2013 ordinance. For example, the titles of the 2018 ordinances reflected that intent, as did the ordinances’ introductory paragraphs. All changes were reflected by striking through language that was to be removed from the municipal code and underlining language to be added. There was no ambiguity as to Deerfield’s intent, so we need not resort to additional canons of interpretation to ascertain that intent.

¶ 60 The other cases that the trial court cited—*Village of Park Forest v. Wojciechowski*, 29 Ill. 2d 435 (1963), and *Nolan v. City of Granite City*, 162 Ill. App. 3d 187 (1987)—are distinguishable. The issue in both of those cases was whether ordinances remained in effect after the respective municipal bodies enacted other ordinances touching on the same subjects. In the present case, by

2020 IL App (2d) 190879

contrast, there is no ambiguity or dispute as to which portions of the 2013 ordinance remained in effect after the enactment of the 2018 ordinances.

¶ 61 Even so, both *Wojciechowski* and *Nolan* recognized that the paramount consideration is whether the municipal body intended to amend versus repeal the earlier ordinance. See *Wojciechowski*, 29 Ill. 2d at 439 (“[T]here was no manifestation of an intent to entirely revise and repeal the original ordinance.”); *Nolan*, 162 Ill. App. 3d at 190 (“We find no intention to repeal ordinance No. 2574 in ordinance 2910 or any evidence of inconsistency between the two.”). Deerfield intended for its 2018 ordinances to serve as amendments to the 2013 ordinance, not to repeal the 2013 ordinance. The trial court essentially concluded that, notwithstanding this clearly expressed intent, the changes that Deerfield made were more drastic than the legislature contemplated when it enacted section 13.1(c) of the FOID Card Act. We find no support for the trial court’s decision on this point in the case law or the text of section 13.1(c).

¶ 62 Both *Easterday* and *Guns Save Life* note that section 1-7 of the Deerfield Municipal Code provides:

“The provisions appearing in this Code, insofar as they relate to the same subject matter and are substantially the same as those ordinance provisions previously adopted by the Village and existing at the effective date of this Code, shall be considered as restatements and continuations thereof and not as new enactments.” Deerfield Municipal Code § 1-7 (added 1963).

According to *Easterday* and *Guns Save Life*, Deerfield’s 2018 ordinances were not substantially the same as the 2013 ordinance, so they must be new enactments rather than amendments. We reject this reasoning. The provision that *Easterday* and *Guns Save Life* cite merely indicates that, when Deerfield enacted its municipal code, Deerfield generally intended to restate its ordinances

2020 IL App (2d) 190879

that were already in existence. Contrary to what Easterday and Guns Save Life argue, section 1-7 does not invite courts to second guess Deerfield's intent where, as here, it specifically declared that it intended to amend an ordinance.

¶ 63 We already outlined the majority's view that the dissent's analysis proceeds from the faulty premise that Deerfield regulated the possession but not ownership of assault weapons in its 2013 ordinance. See *supra* ¶¶ 51-53. Even if this premise were correct, however, we would find no support for the conclusion that a home rule unit that timely regulated the possession of assault weapons could not amend its statute outside the 10-day window to regulate ownership. The text of section 13.1(c) of the FOID Card Act certainly does not say that. As noted above, the statute merely says that an ordinance enacted within the 10-day window "may be amended." 430 ILCS 65/13.1(c) (West 2018). When interpreting a statute, a court "must not depart from the plain meaning of the statutory language by reading into it exceptions, limitations, or conditions not expressed by the legislature." *In re Estate of Shelton*, 2017 IL 121199, ¶ 36. We thus should not read an exception into section 13.1(c) by interpreting it to mean that a home rule unit may amend its ordinance so long as it does not switch from regulating possession to regulating ownership.

¶ 64 Moreover, we found nothing supporting the dissent's view in the lengthy floor debates of Public Act 98-63 (eff. July 9, 2013) (the 2013 legislation that enacted the Concealed Carry Act and amended section 13.1 of the FOID Card Act). At no point did any lawmaker mention or insinuate that the legislature intended to distinguish between possessing assault weapons and owning such weapons. Nor did any lawmaker mention or insinuate that home rule units had to ban assault weapons within the 10-day window or forever lose their power to do so.

¶ 65 To the contrary, the legislative history suggests that the legislature intended that home rule units could preserve their authority to regulate assault weapons concurrently with the State simply

2020 IL App (2d) 190879

by enacting a regulation within the 10-day window. The following excerpt from the exchange between Senators Raoul and Forby (Senator Forby was one of the bill’s sponsors) illustrates this point:

“SENATOR RAOUL: Can a—can a municipality or home rule unit that has enacted a regulation or ordinance either before or within ten days of the effective date that regulates assault weapons amend that regulation or ordinance in the future?

PRESIDING OFFICER (SENATOR MUÑOS): Senator Forby.

SENATOR FORBY: Yes.” 98th Ill. Gen. Assem., Senate Proceedings, May 31, 2013, at 21 (statements of Senators Raoul, Muñoz, and Forby).

Thus, even assuming that the dissent is correct that Deerfield initially regulated only the possession of assault weapons and then subsequently regulated ownership, that is consistent with the legislature’s intent.

¶ 66            *6. Impact of Section 13.1(b) of the FOID Card Act and Section 90 of the Concealed Carry Act on Deerfield’s Ban of Large Capacity Magazines*

¶ 67 The parties also disagree as to the impact of section 13.1(b) of the FOID Card Act and section 90 of the Concealed Carry Act on Deerfield’s ban of large capacity magazines. The trial court determined that, in light of these statutes, “home rule units no longer have the authority to regulate or restrict the licensing and possession of \*\*\* handgun ammunition with respect to a holder of a valid Firearm Owner’s Identification Card or a holder of a license to carry a concealed firearm.” On appeal, Deerfield maintains that large capacity magazines are commonly understood as components of assault weapons. Deerfield would have us believe that large capacity magazines are also exclusively components of assault weapons. To that end, Deerfield emphasizes that assault-weapon bans across the country traditionally have included bans of large capacity

2020 IL App (2d) 190879

magazines. Easterday and Guns Save Life assert that Deerfield forfeited its arguments on these points and that, forfeiture aside, Deerfield's arguments lack merit. Essentially, Easterday and Guns Save Life contend that large capacity magazines are not exclusive to assault weapons and can be used with handguns.

¶ 68 In its reply brief, Deerfield points to a four-page colloquy between its counsel and the trial court, which Deerfield maintains was sufficient to preserve this issue for appeal. During that colloquy, Deerfield's counsel mentioned some, but not all, of the points that Deerfield now raises in support of its argument on appeal. Under the circumstances, we choose to overlook any forfeiture and address the merits, as doing so is necessary to obtain a just result and to maintain a sound and uniform body of precedent. See *Jill Knowles Enterprises, Inc. v. Dunkin*, 2017 IL App (2d) 160811, ¶ 22.

¶ 69 Section 13.1(b) of the FOID Card Act unambiguously prohibits home rule units from regulating handgun ammunition in a manner that is inconsistent with the FOID Card Act:

“Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun \*\*\* are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, enacted on or before the effective date of this amendatory Act of the 98th General Assembly that purports to impose regulations or restrictions on a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act, on the effective date of this amendatory Act of the 98th General Assembly, shall be invalid in its application to a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act.” 430 ILCS 65/13.1(b) (West 2018).

2020 IL App (2d) 190879

Section 90 of the Concealed Carry Act similarly prohibits home rule units from regulating handgun ammunition in a manner that is inconsistent with the Concealed Carry Act:

“The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. 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.” 430 ILCS 66/90 (West 2018).

¶ 70 The question presented is whether Deerfield’s ban of large capacity magazines improperly regulates handgun ammunition. Deerfield defines “large capacity magazine” as

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

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

(2) A 22 caliber tube ammunition feeding device.

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

Deerfield Municipal Code § 15-86 (added July 1, 2013).

Guns Save Life asserts that many popular handguns that do not qualify as “assault weapons” under Deerfield’s definition of that term come standard with magazines that hold more than 10 rounds. Deerfield does not dispute that assertion. Moreover, when the trial court questioned Deerfield’s counsel about whether Deerfield’s definition of “large capacity magazine” was overbroad to the

2020 IL App (2d) 190879

extent that it applied to handgun ammunition, counsel acknowledged that Deerfield bans “any magazine ten rounds or more.”

¶ 71 Deerfield nevertheless insists that large capacity magazines are exclusively components of assault weapons. The plain language of Deerfield’s definition of “large capacity magazine,” however, does not exclude handgun ammunition. Deerfield also claims that its definitions of “assault weapon” and “large capacity magazine” are similar or identical to those that have been enacted across the country and which have withstood challenges on second amendment grounds. See, e.g., *Wilson v. Cook County*, 937 F.3d 1028 (7th Cir. 2019); *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015). Be that as it may, the plaintiffs here challenge Deerfield’s ban of large capacity magazines on preemption grounds, not second amendment grounds, and the Illinois legislature has indicated that home rule units may not regulate ammunition for handguns in a manner that is inconsistent with State law. It is the judiciary’s role to enforce statutes as written, not to question the wisdom of the legislature. See *Manago v. County of Cook*, 2017 IL 121078, ¶ 10 (“Whenever possible, courts must enforce clear and unambiguous statutory language as written, without reading in unstated exceptions, conditions, or limitations.”). As our supreme court explained in *Illinois Landowners Alliance, NFP v. Illinois Commerce Comm’n*, 2017 IL 121302, ¶ 50: “[T]he wisdom of this state’s regulatory system is a matter for the legislature, not our court. Of all the principles of statutory construction, few are more basic than that a court may not rewrite a statute to make it consistent with the court’s own idea of orderliness and public policy.” We thus hold that, to the extent that Deerfield’s ban of large capacity magazines regulates ammunition for handguns, it is preempted in its application to holders of valid FOID cards and concealed carry licenses by section 13.1(b) of the FOID Card Act and section 90 of the Concealed

Carry Act. Accordingly, on this limited point, we affirm the trial court's grant of summary judgment in favor of Easterday and Guns Save Life.

¶ 72 *7. Proposed Alternative Basis to Affirm*

¶ 73 Guns Save Life argues that, as an alternative basis to affirm the trial court's judgment, we should conclude that the Wildlife Code preempts Deerfield's bans of assault weapons and large capacity magazines. We lack jurisdiction to consider this issue because Guns Save Life's claims regarding the Wildlife Code remain pending in the trial court.

¶ 74 In counts II and IV of its amended complaint, Guns Save Life alleged that Deerfield's 2018 ordinances were preempted by the Wildlife Code insofar as they banned assault weapons and large capacity magazines. Guns Save Life moved for summary judgment on all of its claims. Deerfield opposed Guns Save Life's motion for summary judgment but did not file a cross-motion for summary judgment.

¶ 75 On March 22, 2019, the trial court determined that the Wildlife Code *did not* preempt Deerfield's 2018 ordinances. The effect of that ruling was to deny summary judgment with respect to counts II and IV of Guns Save Life's amended complaint. On September 6, 2019, the court made Rule 304(a) findings with respect to counts I through IV of Guns Save Life's amended complaint.

¶ 76 "The denial of a summary judgment motion is not a final order and is normally not appealable even where the court has made a finding pursuant to Illinois Supreme Court Rule 304(a)." *Fogt v. 1-800-Pack-Rat, LLC*, 2017 IL App (1st) 150383, ¶ 95. The exception to this rule is where the parties file cross-motions for summary judgment and the trial court disposes of all issues in the case by granting one motion and denying the other. *Fogt*, 2017 IL App (1st) 150383,

¶ 95. The parties here did not file cross-motions for summary judgment and the trial court did not

dispose of all issues in the case, so the exception does not apply. We lack jurisdiction to review the court's denial of summary judgment with respect to counts II and IV of Guns Save Life's amended complaint.

¶ 77

#### 8. *Summary of Holdings*

¶ 78 In summary, we hold that (1) section 13.1 of the FOID Card Act does not preempt all regulation of assault weapons by home rule units; (2) Deerfield, in its 2013 ordinance, regulated the possession and ownership of assault weapons in a manner that was inconsistent with the FOID Card Act, thus preserving its power to regulate assault weapons concurrently with the State; (3) Deerfield's 2018 ordinances were amendments to the 2013 ordinance, as allowed by section 13.1(c) of the FOID Card Act; (4) to the extent that Deerfield's ban of large capacity magazines regulates ammunition for handguns, it is preempted in its application to holders of valid FOID cards and concealed carry licenses by section 13.1(b) of the FOID Card Act and section 90 of the Concealed Carry Act; and (5) we lack jurisdiction to consider Guns Save Life's claims that Deerfield's bans of assault weapons and large capacity magazines are preempted by the Wildlife Code. Accordingly, we affirm in part and reverse in part the trial court's orders granting summary judgment in favor of Easterday and Guns Save Life. We affirm the orders granting the permanent injunctions only insofar as that, to the extent that Deerfield's ban of large capacity magazines regulates ammunition for handguns, Deerfield is prohibited from enforcing that regulation against persons who hold valid FOID cards or concealed carry licenses. In all other respects, the permanent injunctions are vacated. We remand the cause for further proceedings consistent with this opinion.

¶ 79

#### III. CONCLUSION

¶ 80 For the foregoing reasons, we affirm the judgments of the circuit court of Lake County in part and reverse the judgments in part. We vacate the permanent injunctions in part and remand the cause for further proceedings consistent with this opinion.

¶ 81 Affirmed in part and reversed in part. Permanent injunctions vacated in part. Cause remanded.

¶ 82 JUSTICE McLAREN, concurring in part and dissenting in part.

¶ 83 I dissent from the majority's conclusion that Deerfield, in its 2013 ordinance, regulated ownership of assault weapons, and that Deerfield's 2018 ordinance<sup>8</sup> prohibiting the ownership of assault weapons was an amendment allowed by the legislature.

¶ 84 In section 13.1(c) of the FOID Card Act, the legislature allowed home rule municipalities to "regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act." 430 ILCS 65/13.1(c) (West 2018). Such opportunity had to be exercised on, before, or within 10 days after the effective date of the amendatory Act. *Id.* Deerfield acted within this time frame, enacting the 2013 ordinance that provided:

"It shall be unlawful to store or keep any assault weapon in the Village unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user." Deerfield Municipal Code § 15-87(a) (added July 1, 2013).

---

<sup>8</sup> While Deerfield passed two 2018 ordinances relevant to the case, I will refer to them as a singular ordinance.

The ordinance also limited where in the Village a person could “carry or possess” an assault weapon and provided for various methods of transportation of assault weapons in otherwise-prohibited areas. See Deerfield Municipal Code § 15-88(a) (added July 1, 2013).

¶ 85 The majority makes the bald assertion that Deerfield’s 2013 ordinance “regulated the possession *and ownership* of assault weapons beyond what was required by the [FOID] Act.” (Emphasis added). *Supra* ¶ 50. “Regulate” is defined as “to govern or direct according to rule”; “to bring under the control of law or constituted authority”; “to make regulations for or concerning.” Merriam Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/regulate> (last visited Nov. 4, 2020) [<https://perma.cc/KJA4-CPQC>].

¶ 86 The 2013 ordinance regulated the *possession* of assault weapons, imposing restrictions on *how* assault weapons may be stored, kept, and transported. However, that ordinance in no way regulated the *ownership* of assault weapons. The 2013 ordinance allowed one to store or keep an assault weapon in the Village so long as it was secured in such a way as to make it inoperable by anyone other than the owner or an authorized user. Further, it provided that an assault weapon “shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.” Deerfield Municipal Code, § 15-87(a) (added July 1, 2013). The ordinance also limited where in the Village assault weapons could be carried or possessed and how they could be transported, but ownership of assault weapons was never addressed, let alone “in a manner that is inconsistent with this [FOID] Act.” See 430 ILCS 65/13.1(c) (West 2018).

¶ 87 However, the majority never explains how the ordinance regulated *ownership* of assault weapons. Possession and ownership are completely distinct concepts, and we must give meaning to the legislature’s use of these concepts separately. The majority’s claim that possession and

ownership are indistinguishable (see *supra* ¶ 52) is both weak<sup>9</sup> and irrelevant. To “regulate” ownership involves limiting who may own some item, even to the point of prohibiting ownership of the item. The 2013 ordinance did not prevent anyone eligible to own an assault weapon under state law from owning one. The 2013 ordinance did not regulate ownership; it *assumed* ownership of such weapons within the village. It specifically contemplated the carrying, control, and operation of assault weapons by owners and other authorized users. None of the requirements regarding securing an assault weapon or using a lock or other security device apply when the owner or any other authorized user is carrying or controlling the weapon. The ordinance did not impose any greater restrictions on *ownership* of assault weapons than the FOID Act imposed. It merely regulated where a person could carry or possess assault weapons, how the owner must store such weapons when they are not being carried, and how they may be transported.

¶ 88 The FOID Act allowed home-rule municipalities to “regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act.” 430 ILCS 65/13.1(c) (West 2018). It also allowed for the future amendment of an ordinance enacted on, before, or within 10 days after the effective date of the Act. Because Deerfield did not act to regulate ownership of assault weapons within the allotted 10-day window with its 2013 ordinance, the majority’s conclusion that the 2018 ordinance prohibiting ownership is an amendment allowed under the FOID Act is an enthymeme. A legislative enactment that explicitly recognizes the right to own an assault weapon is not “amended” by a later enactment that prohibits such ownership; it is superseded by it. The Law Dictionary (featuring Black’s Law Dictionary Free Online Legal Dictionary (2d Ed.)) defines “amend” as “To improve; to make better by change or modification.” The Law Dictionary, <https://thelawdictionary.org/amend/> (last visited Nov. 4, 2020) <https://perma>.

---

<sup>9</sup> For example, you cannot legally sell your friend’s car when he merely loans it to you.

cc/QT9T-AXMC. It defines “supersede” as “To annul; to stay; to suspend.” The Law Dictionary, <https://thelawdictionary.org/supersede/> (last visited Nov. 4, 2020)[<https://perma.cc/4M4T-L879>]. Having regulated the storage and transportation of assault weapons in 2013, Deerfield could have changed or modified those restrictions, either increasing or decreasing the severity of the restrictions in the 2018 ordinance. However, Deerfield did not regulate ownership, and one cannot amend a regulation that does not exist. Deerfield’s 2018 ordinance did not merely “improve” or “make better” the 2013 ordinance; it annulled the 2013 ordinance, wiping out the right to ownership of assault weapons that Deerfield had explicitly recognized in 2013. It was a complete reversal of its 2013 ordinance, now prohibiting that which had previously clearly been allowed.

¶ 89 Looking to the titles and introductory paragraphs of the 2018 ordinances, the majority posits that the 2018 ordinance was an amendment of the 2013 ordinance because:

“Deerfield indicated that it intended for the 2018 ordinances to serve as amendments to the 2013 ordinance. For example, the titles of the 2018 ordinances reflected that intent, as did the ordinances’ introductory paragraphs. All changes were reflected by striking through language that was to be removed from the municipal code and underlining language to be added. There was no ambiguity as to Deerfield’s intent, so we need not resort to additional canons of interpretation to ascertain that intent.” *Supra* ¶ 59.

There is a riddle attributed to Abraham Lincoln: how many legs does a dog have if you call his tail a leg? The answer, of course, is four; calling a tail a leg does not make it a leg. See BrainyQuote, [https://www.brainyquote.com/quotes/abraham\\_lincoln\\_107482](https://www.brainyquote.com/quotes/abraham_lincoln_107482) (last visited Nov. 4, 2020) [<https://perma.cc/6DYW-XXKF>]. Similarly, here, the simple act of calling the 2018 ordinance an amendment of the 2013 ordinance does not make it one. “We view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation.”

*People v. Gutman*, 2011 IL 110338, ¶ 12. Further, we assume that, whenever a legislative body enacts a provision, it has in mind previous statutes relating to the same subject matter such that they should all be construed together. See *People v. Davis*, 199 Ill. 2d 130, 137 (2002). The majority states that it believes that Deerfield “indicated” what it “intended” to do with the 2018 ordinance (*supra* ¶ 59); however, viewing the 2018 ordinance in the context of the 2013 ordinance, what Deerfield *did* in 2018 was to regulate the ownership of assault weapons, an issue that it did not regulate when it had the opportunity to do so in 2013.

¶ 90 I also find unpersuasive the majority’s assertion that the 2018 ordinance was an amendment because “changes were reflected by striking through language that was to be removed from the municipal code and underlining language to be added.” *Supra* ¶ 59. Had Deerfield struck any references to assault rifles and added underlined references to dogs, would that be an indication that the new ordinance was an amendment of Deerfield’s animal control ordinance? Again, Deerfield did not regulate ownership in 2013; its addition of ownership in the 2018 ordinance indicates an attempt to write new legislation, not to amend an ordinance that did not regulate ownership.

¶ 91 The majority’s use of the legislative history for support (*supra* ¶¶ 64-65) is puzzling. First, we already knew that amendments of ordinances passed within the 10-day window were allowed. See 430 ILCS 65/13.1 (West 2018). Second, the argument based on the quoted passage is a textbook exercise in tautology. In essence, the majority says, “Because Senator Forby said that municipalities can amend, this is an amendment.” I have argued that the 2018 ordinance was not an amendment of the 2013 ordinance but a supersedure of that ordinance. Nothing in the cited

legislative debate addresses, let alone refutes, my argument or can be used to support a claim that a municipality can use a new ordinance to nullify or supersede a previous ordinance.<sup>10</sup>

¶ 92 Perhaps an analogy to a more mundane issue of governance will more clearly demonstrate the majority’s analysis is faulty. Assume that, in 2013, Deerfield passed an ordinance requiring that the owners of pickup trucks park their trucks in a driveway or garage when they are not using the trucks. Then, in 2018, Deerfield passed a new ordinance prohibiting the ownership of pickup trucks in the Village. Would the majority consider the parking restrictions on pickup trucks to be a regulation of ownership? Would it consider the 2018 prohibition of ownership a mere “amendment” of the 2013 parking ordinance? Both the actual and the fictional 2013 ordinances assumed ownership of the items at issue and merely regulated how they must be stored and secured. The 2018 ordinances outlawed their possession. Would the majority really consider the outlawing of pickup trucks to be an amendment of parking regulations?

¶ 93 “[T]he Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home.” *McDonald v. City of Chicago, Illinois*, 561 U.S. 742, 780 (2010). This right also extends to self-defense outside the home. See *People v. Aguilar*, 2013 IL 112116, ¶ 21. Deerfield’s 2013 ordinance appears to have paid heed to this. It did not affect the right to own assault weapons; it merely addressed how such weapons had to be stored in the home when they were not being carried or under the control of the owner or another authorized user. However, the 2018 ordinance strikes at the very heart of the right to bear arms for self-defense. Where a government’s actions restrict or regulate the exercise of second amendment

---

<sup>10</sup> The majority’s whimsical exploration of the “lengthy floor debates” (*supra* ¶ 64) produces a single exchange—one question with a monosyllabic answer—that Baron von Munchausen could employ for support.

rights, Illinois courts apply heightened means-ends scrutiny to the government's justification for its regulations. See *People v. Chairez*, 2018 IL 121417, ¶ 21. While these cases were not brought on constitutional grounds, they do involve restrictions that affect second amendment rights. The flaccid foundation for the majority's conclusion ("Well, that is what the Village said that it wanted to do.") certainly falls well short of the scrutiny that should be applied in this case.

¶ 94 Ultimately, the legislature gave home-rule municipalities the opportunity to regulate ownership of assault weapons, possession of assault weapons, or both. Such regulation had to occur within a specific 10-day period. Deerfield regulated possession *only* of assault weapons within that period. It did not restrict, let alone prohibit, ownership of assault weapons in Deerfield. The majority's conclusion that "it was Deerfield's prerogative to ban such weapons, and there were no time limitations for doing so" (*supra* ¶ 56) is factually and legally wrong. Deerfield's attempt to ban ownership of assault weapons in 2018 was late and outside the intent of the legislature. The trial court should be affirmed.

---

**No. 2-19-0879**

---

**Cite as:** *Easterday v. Village of Deerfield*, 2020 IL App (2d) 190879

---

**Decision Under Review:** Appeal from the Circuit Court of Lake County, Nos. 18-CH-427, 18-CH-498; the Hon. Luis A. Berrones, Judge, presiding.

---

**Attorneys for Appellant:** Christopher B. Wilson, John B. Sample, and Christopher P. Eby, of Perkins Coie LLP, and Steven M. Elrod and Hart M. Passman, of Elrod Friedman LLP, both of Chicago, and Jonathan E. Lowy, of Washington, D.C., for appellants.

---

**Attorneys for Appellee:** David G. Sigale, of Law Firm of David G. Sigale, P.C., of Wheaton, for appellees Daniel D. Easterday, Illinois State Rifle Ass’n, and Second Amendment Foundation, Inc.

Christian D. Ambler, of Stone & Johnson, Chtrd., of Chicago, and Brian W. Barnes, of Cooper & Kirk, PLLC, of Washington, D.C., for other appellees.

---

In the  
**Supreme Court of Illinois**

---

GUNS SAVE LIFE, INC., and JOHN WILLIAM WOMBACHER III,

*Plaintiffs-Movants,*

v.

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

*Defendants-Respondents.*

---

On Petition for Leave to Appeal from the Appellate Court of Illinois  
Second Judicial District, No. 2-19-0879  
There on Appeal from the Circuit Court of  
Lake County, Illinois, No. 18 CH 498  
The Honorable Luis A. Berrones, Presiding

---

**PETITION FOR LEAVE TO APPEAL PURSUANT TO RULE 315**

---

Brian W. Barnes (ARDC No. \_\_\_\_)\*  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 220-9600  
bbarnes@cooperkirk.com

Christian D. Ambler  
Stone & Johnson, Chartered  
111 West Washington Street  
Suite 1800a  
Chicago, IL 60602  
(312) 223-5656  
cambler@stonejohnsonlaw.com

\*Appearance to be entered pursuant  
to ILL. S. CT. Rule 707

*Attorneys for Plaintiffs-Movants*

**ORAL ARGUMENT REQUESTED**

---

---

## TABLE OF CONTENTS

|   |   |
|---|---|
| PRAYER FOR LEAVE TO APPEAL .....                                      | 1 |
| JUDGMENT BELOW .....  | 1 |
| POINTS RELIED UPON FOR REVIEW OF JUDGMENT OF THE APPELLATE COURT..... | 1 |
| STATEMENT OF FACTS.....   | 4 |
| A.    Factual Background.....   | 4 |
| B.    Proceedings Below.....  | 6 |

## POINTS AND AUTHORITIES

|   |                |
|---|----------------|
| ARGUMENT .....  | 9              |
| I.    This Case Involves a Statute of Exceptional Public Importance that Requires a Uniform Interpretation Statewide.....   | 9              |
| a.    The Second District’s Decision is Contrary to the Illinois Constitution and this Court’s Precedent .....  | 10             |
| ILL. CONST. art. VII, § 6(h).....   | 10             |
| <i>Schillerstrom Homes, Inc. v. City of Naperville</i> , 198 Ill. 2d 281 (2001).....  | 10             |
| <i>City of Chicago v. Roman</i> , 184 Ill. 2d 504 (1998).....   | 10, 11, 12, 13 |
| <i>Vill. of Bolingbrook v. Citizens Utilities Co. of Ill.</i> , 158 Ill. 2d 133 (1994).....   | 10             |
| <i>Bd. of Trs. of the Barrington Police Pension Fund v. Vill. of Barrington Ethics Bd.</i> , 287 Ill. App. 3d 614 (1997).....   | 10             |
| <i>City of Chicago v. StubHub, Inc.</i> , 2011 IL 111127 .....  | 10, 13         |
| David C. Baum, <i>A Tentative Survey of Illinois Home Rule (Part II): Legislative Control, Transition Problems, and Intergovernmental Conflict</i> , 1972 U. ILL. L.F. 559..... | 11, 13         |
| 520 ILL. COMP. STAT. 5/2.1.....   | 11             |
| 510 ILL. COMP. STAT. 45/8.....  | 11             |
| 430 ILL. COMP. STAT. 65/13.1(c).....  | 11, 12, 13     |

|  |        |
|--|--------|
| 430 ILL. COMP. STAT. 65/13.1(e).....   | 4, 12  |
| II. The Second District Majority’s Decision is Not Only Erroneous, but In<br>Tension with the Third District and Over Century of this Court’s Case Law. .... | 14     |
| 430 ILL. COMP. STAT. 65/13.1(c).....   | 14, 19 |
| <i>Athey v. City of Peru</i> , 22 Ill. App.3d 363 (3d Dist. 1974).....   | 16, 17 |
| <i>Vill. of Park Forest v. Wojciechowski</i> , 29 Ill. 2d 435 (1963) .....   | 17     |
| <i>City of Metropolis v. Gibbons</i> , 334 Ill. 431 (1929).....  | 17     |
| <i>Culver v. Third Nat. Bank of Chicago</i> , 64 Ill. 528 (1871).....  | 17     |
| A. Scalia and B. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (2012).....   | 17     |
| <i>Michigan Ave. Nat. Bank v. Cnty. of Cook</i> , 191 Ill. 2d 493 (2000) .....   | 18     |
| <i>Murphy-Hylton v. Lieberman Mgmt. Servs, Inc.</i> , 2016 IL 120394.....  | 19     |
| CONCLUSION .....   | 20     |

## **PRAYER FOR LEAVE TO APPEAL**

Pursuant to Illinois Supreme Court Rule 315, Plaintiffs—Guns Save Life, Inc. (an association dedicated to defending Second Amendment rights in Illinois), and John William Wombacher III (a resident of Deerfield, Illinois and member of Guns Save Life)—respectfully petition for leave to appeal from the opinion and order of the Appellate Court of Illinois, Second District, entered on December 4, 2020.

## **JUDGMENT BELOW**

The opinion and order of the Appellate Court of Illinois was filed in this cause on December 4, 2020. A corrected opinion was filed on December 7, 2020. No petition for rehearing was filed. Plaintiffs file this petition consistent with the deadline to file a petition for leave to appeal within 35 days from entry of the appellate court judgment. Ill. S. Ct. R. 315(c).

## **POINTS RELIED UPON FOR REVIEW OF JUDGMENT OF THE APPELLATE COURT**

Review is needed because the Second District’s split decision upholding the Village of Deerfield’s ban on so-called “assault weapons” conflicts with this Court’s clear preemption precedents and dramatically undermines the General Assembly’s enacted decision to regulate firearms on a statewide basis.

First, the Second District erroneously held that Section 13.1 of the Firearm Owners Identification Card Act (“FOID Card Act”) does not completely preempt regulation of “assault weapons” by home rule units.<sup>1</sup> In the FOID Card Act, the General Assembly

---

<sup>1</sup> “Prior to 1989, the term ‘assault weapon’ did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists.” *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting). Anti-gun publicists promoting “assault weapons” bans have exploited the public’s confusion over the difference between fully

explicitly stated that “the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State.” 430 ILL. COMP. STAT. 65/13.1(c). And that “[t]his 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.” *Id.* at 65/13.1(e). Under this Court’s precedents, that language “specifically excludes home rule units from establishing” regulations of so-called “assault weapons.” *City of Chicago v. Roman*, 184 Ill. 2d 504, 518 (1998). The Second District erred in holding otherwise, setting a dubious new precedent to undermine statewide regulation of firearms by the General Assembly.

Second, even under the Second District’s interpretation of the FOID Card Act, Deerfield’s ban is preempted. According to the Second District, home rule units like Deerfield retain a limited authority to regulate so-called “assault weapons” when two conditions are met: (1) the home rule unit enacted an ordinance *inconsistent* with the FOID Card Act on, before, or within 10 days of July 9, 2013; and (2) the home rule unit *amends* that predicate ordinance. But as Justice McLaren noted in his partial dissent and as the circuit court held, Deerfield’s 2018 ban on assault weapons fails both conditions. Deerfield did not enact an ordinance in 2013 that was *inconsistent* with the FOID Card Act, and Deerfield’s 2018 ban was such a dramatic and wholesale change in Deerfield’s regulations that it could hardly be considered a mere amendment to Deerfield’s 2013 ordinance. In

---

automatic machine guns, which have been illegal under federal law since 1934 with very limited exceptions, see 18 U.S.C. § 922(o), versus semiautomatic “assault weapons,” which is an invented category that includes many of the nation’s most popular rifles. The difference is that unlike a fully automatic machine gun, semiautomatic “assault weapons” will not fire continuously with one pull of the trigger. Rather, a semiautomatic firearm requires the user to pull the trigger each time he or she wants to discharge a round, and semiautomatic firearms “traditionally have been widely accepted as lawful possessions.” *Staples v. United States*, 511 U.S. 600, 602 n.1, 612 (1994).

reaching its decision to the contrary, the Second District majority's analysis stands in tension with the Third District's careful and substantive analysis of municipal ordinances in *Athey v. City of Peru*, 22 Ill. App.3d 363 (3d Dist. 1974) and over a century of this Court's statutory interpretation precedents. As the Second District itself recognized, the impact of its decision may go beyond Deerfield to "other home rule units that enacted regulations within the 10-day window short of assault-weapon bans." This Court's review is needed to ensure consistent interpretations of the power of those home rule units across the state.

The issue of what types of firearms law-abiding, responsible citizens are entitled to own is an increasingly controversial one in some segments of society. While this case involves a challenge by residents of the Village of Deerfield to the Village's attempt to ban some of the most popular firearms in the Nation, this petition is not about whether Deerfield's ban is consistent with federal and state guarantees of the right to keep and bear arms or whether the ban makes for good policy. Instead, this petition presents a threshold issue of who in the state of Illinois gets to make firearm policy in the first place. As the circuit court correctly concluded, the regulation of so-called "assault weapons" is a matter of statewide concern that the People's representatives have reserved for determination at the statewide level; it is not a proper subject of local authority. This Court's review is urgently needed to enforce the General Assembly's enacted decision in the FOID Card Act to reserve for itself the prerogative to make firearm policy and to ensure home rule localities across the state are not emboldened to act beyond the narrow scope of authority granted them.

## STATEMENT OF FACTS

### A. Factual Background.

On July 9, 2013, Public Act 98-63 became effective. In this Act, the General Assembly added language to the FOID Card Act and enacted the Firearm Concealed Carry Act. Among the provisions added to the FOID Card Act, the General Assembly provided that “the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State.” 430 ILL. COMP. STAT. 65/13.1(c). The Act also included language that “[a]n ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended.” *Id.* But to eliminate any uncertainty as to the division of authority in the State with respect to “assault weapon” regulation, the General Assembly reiterated in a subsequent subsection that “[t]his 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.” *Id.* at 65/13.1(e).

In the Firearm Concealed Carry Act, the General Assembly similarly sought to preempt home rule unit regulation of handguns. In Section 90, the General Assembly stated that “[t]he regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State.” 430 ILL. COMP. STAT. 66/90. Accordingly, “[t]his 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.” *Id.* Thus, with these twin provisions, the General Assembly established that the regulation of so-called “assault weapons” and handguns would be the exclusive province of the General Assembly and regulated on a statewide basis.

Shortly before Public Act 98-63 went into effect, the Village of Deerfield, a home

rule unit, enacted its first ever “assault weapon” regulation in ordinance No. O-13-24 (the “2013 Ordinance”) on July 1, 2013. App. 80–86. The ordinance defined “assault weapon” and defined “large capacity magazines.” App. 82–84. Implicitly recognizing that Deerfield’s residents could both own and possess what it termed “assault weapons,” the 2013 Ordinance set out certain requirements for the storage and transportation of those firearms within the Village. Specifically, the 2013 Ordinance provided:

Sec. 15-87 Safe Storage of Assault Weapons; Exceptions

- (a) Safe Storage. It shall be unlawful to store or keep any assault weapons in the Village, unless such a weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such a weapon inoperable by any person other than the owner or other lawfully authorized user. For purposed of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.

App. 84–85. The transportation regulation largely mirrored State law on transporting firearms, *see* 720 ILL. COMP. STAT. 5/24-1.6(c), thus the key operative provision of the ordinance was the storage provision. Under the above-specifications, Deerfield regulated the storage of firearms that its residents could lawfully own and possess. Deerfield was one of “at least 16 municipalities” that enacted ordinances during this same time period. *By Deadline, Few Towns Pass Assault Weapons Bans*, NBC 5 CHICAGO (July 20, 2013), <https://bit.ly/3bjeBTI>.

Nearly five years later, Deerfield enacted a wholesale change in its firearm regulation in two ordinances, No. O-18-06 and No. O-18-19 (collectively, the “2018 Ordinances”). App. 65–79. No. O-18-06 made it unlawful for village residents, other than military members or law enforcement personnel to “possess, bear, manufacture, sell, transfer, transport, store, or keep any assault weapon in the Village.” App. 71; Deerfield

Municipal Code § 15-87(a). After enactment of O-18-06, the original safe storage regulation from 2013 was repealed in all but name and replaced with a ban. That is graphically illustrated by the changes in the ordinance itself:

Sec. 15-87 Safe Storage of Assault Weapons; Exceptions

(b) Safe Storage. It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapons in the Village, ~~unless such a weapon is secured in a locked container or equipped with a tamper resistant mechanical lock or other safety device, properly engaged so as to render such a weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.~~

App. 71. The subsequent ordinance O-18-19 then departed even further from the 2013 ordinance, adding a ban on “large capacity magazines” and striking the vestigial “Safe Storage” title. *See* App. 77. In Deerfield, regulation of how ordinary residents may store or transport so-called “assault weapons” and large capacity magazines was no longer needed because the 2018 Ordinances make it illegal for all but a select few to even have them.

**B. Proceedings Below.**

Below two distinct groups of plaintiffs brought separate lawsuits challenging Deerfield’s 2018 Ordinances and their ban on “assault weapons” and “large capacity magazines.” In this action (“*Guns Save Life*”), the Plaintiffs alleged that Deerfield’s 2018 Ordinances were preempted by state law and also raised claims under the Takings Clause and Eminent Domain Act, App. 55–62. The plaintiffs in the other action (“*Easterday*”) only raised preemption. On July 27, 2018, the circuit court ordered the cases to be consolidated “for all future proceedings.” App. 4. The cases retained, however, separate docket numbers and separate filings.

In separate orders, the circuit court granted summary judgment to the plaintiffs in both cases on March 22, 2019. App. 87–108. The court found that the General Assembly preempted Deerfield’s ban on so-called “assault weapons” and large capacity magazines. Accordingly, the circuit court entered a permanent injunction “enjoining defendant Village of Deerfield, its agents, officials or police department from enforcing any provision of Ordinance No. 0-18-06 and Ordinance No. 0-18-19 making it unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances.” App. 108. While the circuit court’s orders resolved all claims in the *Easterday* case, the *Guns Save Life* case remained in an interlocutory posture because the circuit court denied summary judgment on the *Guns Save Life* plaintiffs’ takings and eminent domain claims. App. 108. Nonetheless, Deerfield purported to appeal both orders to the Appellate Court of Illinois, Second District.

The Second District dismissed Deerfield’s first appeal for lack of jurisdiction on June 12, 2019 and remanded the case. App. 109–126. Back in the circuit court, Deerfield filed a Rule 304(a) motion to immediately appeal and the circuit court granted it on September 6, 2019. After determining that the circuit court’s Rule 304(a) order provided a basis for jurisdiction in a second appeal, a divided Second District affirmed in part, and reversed in part. App. 1, 9–12.

In its ruling, the Second District unanimously agreed that the Firearm Concealed Carry Act preempted Deerfield’s ban of large capacity magazines “to the extent that Deerfield’s ban . . . regulates ammunition for handguns,” and thus affirmed the permanent injunction in that respect. App. 34–35. By contrast, the Second District divided on Deerfield’s ban of so-called “assault weapons” and large capacity magazines for long guns.

The majority found that Deerfield’s 2018 ban had not been preempted by the FOID Card Act and thus vacated the circuit court’s injunction with respect to Deerfield’s “assault weapon” and long gun large capacity magazine ban. App. 34–35. In reaching its decision, the Second District exercised its discretion to review an argument that Deerfield potentially had forfeited. The court explained that, among other things, “this appeal might have legal implications for other home rule units that enacted regulations within the 10-day window short of assault weapons bans, which is another reason not to ignore Deerfield’s argument.” App. 20.

Justice McLaren dissented in part and would have affirmed the circuit court’s permanent injunction in full. App. 35–42. Justice McLaren agreed that home rule units like Deerfield retained a limited authority to regulate the ownership or possession of “assault weapons.” Yet since Deerfield’s 2013 Ordinance only regulated *possession* of “assault weapons,” Deerfield lacked authority to rewrite and expand that ordinance to effectively regulate *ownership* in 2018. App. 37–38. As Justice McLaren explained,

“[T]he legislature gave home-rule municipalities the opportunity to regulate ownership of assault weapons, possession of assault weapons, or both. Such regulation had to occur within a specific 10-day period. Deerfield regulated possession *only* of assault weapons within that period. It did not restrict, let alone prohibit, ownership of assault weapons in Deerfield . . . . Deerfield’s attempt to ban ownership of assault weapons in 2018 was late and outside the intent of the legislature.”

App. 42. Deerfield’s ban thus fell outside the scope of the limited authority granted to home rule units. Accordingly, Justice McLaren would have affirmed the circuit court’s permanent injunction. App. 42.

Plaintiffs now respectfully petition this Court for leave to appeal the Second District’s order pursuant to Supreme Court Rule 315.

## ARGUMENT

The Court should exercise its authority under Rule 315 to grant review here. This case involves the interpretation of the FOID Card Act, a statute of exceptional public importance. Plaintiffs have established that they are entitled to summary judgment on their claim that the FOID Card Act completely preempts home rule unit regulation of so-called “assault weapons.” Since the Second District’s decision flatly contradicts the General Assembly’s enacted statute and this Court’s preemption precedents, this Court’s intervention is needed to ensure the General Assembly’s enacted limits on home rule authority are enforced statewide. Additionally, to the extent home rule units do retain limited regulatory authority to regulate so-called “assault weapons,” the Second District’s decision upholding Deerfield’s ban under that authority is deeply flawed, in tension with an analogous Third District decision, and in conflict with over a century of this Court’s case law. As the Second District’s decision may influence the authority of home rule units across the state, this case warrants this Court’s review.

### **I. This Case Involves a Statute of Exceptional Public Importance that Requires a Uniform Interpretation Statewide.**

This case involves a matter of exceptional public importance: whether the General Assembly permitted home rule units like Deerfield to craft their own regulations of so-called “assault weapons” or whether the General Assembly reserved to itself the exclusive power to regulate “assault weapons” on a statewide basis. This Court should exercise its review to resolve this matter for home rule units across the State and correct the Second District’s erroneous decision.

**a. The Second District’s Decision is Contrary to the Illinois Constitution and this Court’s Precedent**

The Illinois Constitution divides authority between the General Assembly and home rule units. Yet the Illinois Constitution grants to the General Assembly the final say over whether to preempt home rule units on matters of statewide importance and exclusively regulate those matters on a statewide basis through statewide legislation. The General Assembly has two mechanisms to so preempt and limit the authority of home rule units. First, the General Assembly may expressly and completely preempt home rule regulation under Article VII, Section 6(h) of the Illinois Constitution. ILL. CONST. art. VII, § 6(h) (“The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit.”). Repeatedly, this Court has stated that the General Assembly accomplishes this complete preemption by including specific language that it was invoking its Section 6(h) power. *See, e.g., Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill. 2d 281, 287 (2001); *City of Chicago v. Roman*, 184 Ill. 2d 504, 517 (1998); *Vill. of Bolingbrook v. Citizens Utilities Co. of Ill.*, 158 Ill. 2d 133, 138 (1994). By contrast, when the General Assembly fails to cite Section 6(h), home rule authority generally persists no matter how “comprehensive” the statewide regulation. *Bd. of Trs. of the Barrington Police Pension Fund v. Vill. of Barrington Ethics Bd.*, 287 Ill. App.3d 614, 620 (1997); *accord City of Chicago v. StubHub, Inc.*, 2011 IL 111127 ¶ 25 (finding City of Chicago lacked home rule authority to tax under a separate Section 6(a) analysis); *id.* at ¶ 66–67 (Thomas, J., dissenting) (noting state legislature failed to cite § 6(h) which would have expressly preempted City’s tax). In other words, a Section 6(h) statement *vel non* by the General Assembly is dispositive in determining complete preemption.

The second course for the General Assembly to follow when preempting local regulation is to invoke Article VII, Section 6(i), which allows the General Assembly to “specifically limit by law the home rule unit’s concurrent exercise of power.” *Roman*, 184 Ill. 2d at 519. This is partial preemption. It is this provision, not Section 6(h), that the legislature must invoke when it “intends to permit concurrent local legislation, but only within limits that are consistent with the state statutory scheme.” David C. Baum, *A Tentative Survey of Illinois Home Rule (Part II): Legislative Control, Transition Problems, and Intergovernmental Conflict*, 1972 U. ILL. L.F. 559, 574.

The difference between the two forms of preemption, express preemption provisions that “totally exclude” home rule unit legislation under Section 6(h) and partial preemption provisions that merely “restrict the nature and extent of concurrent” home rule unit legislation under Section 6(i), is important and well established. *See Roman*, 184 Ill. 2d at 515–20. In countless statutes, the General Assembly has recognized this distinction and taken great care to specify which of its preemption powers it was exercising. *Compare, e.g.*, 520 ILL. COMP. STAT. 5/2.1 (“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.”), *with* 510 ILL. COMP. STAT. 45/8 (“[P]ursuant to paragraph (i) of Section 6 of Article VII of the Constitution, this Act is a limitation upon the power of home rule units to enact ordinances contrary to this Act.”).

When the General Assembly enacted Public Act 98-63, it added language to the FOID Card Act that made clear it intended to completely preempt local regulation of so-called “assault weapons.” The FOID Card Act states “the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State.” 430 ILL.

COMP. STAT. 65/13.1(c). And, presumably acting under this Court’s precedents about the need for a Section 6(h) provision, the General Assembly further provided that “[t]his 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.” *Id.* at 65/13.1(e). As the circuit court correctly concluded, by invoking Section 6(h) of the Illinois Constitution—and not Section 6(i)—the General Assembly made state regulation in this area exclusive, and home rule units therefore may not exercise concurrent regulatory authority. *See Roman*, 184 Ill. 2d at 516 (1998) (home rule units may regulate a particular subject *only* “to the extent that the General Assembly by law does not . . . specifically declare the State’s exercise to be exclusive”). Because the FOID Card Act “clearly deprives home rule units of the authority to regulate the possession or ownership of assault weapons,” App. 102 (circuit court decision), Deerfield’s attempt to ban assault weapons—and to limit the capacity of ammunition magazines that can be used with such firearms, which itself regulates their possession—is preempted.

Notwithstanding the plain text of the Illinois Constitution and this Court’s jurisprudence, the Second District erroneously held that the FOID Card Act did not expressly preempt Deerfield’s ban of “assault weapons.” This despite the clear language in Sections 13.1(e) and 13.1(c) of the FOID Card Act. Under this Court’s precedents, these provisions mean the General Assembly “totally exclude[d]” home rule unit regulation of so-called “assault weapons.” *Roman*, 184 Ill. 2d at 519. The Second District erred in holding otherwise.

The Second District asserted that a contrary interpretation would render nugatory the General Assembly’s declaration that local assault-weapons regulations would be

invalid only if “enacted more than 10 days after [July 9, 2013]” and that ordinances enacted before that deadline “may be amended.” 430 ILL. COMP. STAT. 65/13.1(c). But it is the Second District’s interpretation that does more damage to the statute. The upshot of the Second District’s decision is that state courts henceforward should ignore the first section of Section 13.1(c) or delete it. Then courts should either delete Section 13.1(e) entirely or instead delete Section 13.1(e)’s citation to Article VII, Section 6(h) and insert a citation to Article VII, Section 6(i) in its place. This interpretation does not make the provisions of the statute as written work together as a cohesive whole, but rather rewrites the provisions that speak most directly to the scope of the statute’s preemptive effect. Nor does the Second District’s interpretation respect the constitutional division of power between State and local authority, but rather arrogates to localities powers and functions the General Assembly has expressly determined to be exclusively its own.

This Court’s review is needed to ensure that the General Assembly’s decision to regulate firearms on a statewide basis is given statewide effect. The animating purpose behind the inclusion of Article VII, Section 6 in the Illinois Constitution was that the General Assembly, not lower state courts, establishes which policy matters will be regulated on a statewide basis. *See* Baum, 1972 U. ILL. L.F. at 572; *see also StubHub, Inc.*, 2011 IL 111127 ¶ 21 (“[S]ection 6 as a whole was designed to prevent implied preemption, or preemption by judicial interpretation.”). Thus, as this Court has long held, Section 6 “places almost exclusive reliance on the legislature rather than the courts to keep home rule units in line.” *Roman*, 184 Ill. 2d 504 at 517 (quoting *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 188 (1992)). This Court should exercise review to reaffirm this central principle of the Illinois Constitution.

**II. The Second District Majority’s Decision is Not Only Erroneous, but In Tension with the Third District and Over Century of this Court’s Case Law.**

The Second District interpreted the FOID Card Act to allow for limited home rule authority to regulate so-called “assault weapons” when two conditions are met. First, the home rule unit must have preserved the ability to regulate by passing a predicate ordinance *inconsistent* with the FOID Card Act on, before, or within 10 days of July 9, 2013. App. 19–20. Second, any subsequent regulation of so-called “assault weapons” is only valid if the home rule unit *amends* that same ordinance. App. 25–26. Even assuming that interpretation is correct (it is not), the Second District’s application of that interpretation to Deerfield’s ban is not only erroneous (as pointed out by Justice McLaren’s partial dissent), but also flies in the face of Third District precedent and over a century of this Court’s case law. This Court should exercise its discretion to review and correct the Second District majority’s flawed approach to statutory interpretation. Without this Court’s review, home rule units will be emboldened to far exceed any limited authority granted them, thus dramatically undermining the General Assembly’s enacted decision to regulate “assault weapons” on a statewide basis.

1. First, Deerfield’s 2018 ordinances are invalid because Deerfield did not have a predicate regulation that was “inconsistent” with the FOID Card Act “on, before, or within 10 days of July 9, 2013.” As explained above, the FOID Card Act states that “any ordinance or regulation . . . that purports to regulate the possession or ownership of assault weapons in a manner that is *inconsistent* with this Act, shall be invalid unless the ordinance or regulation is enacted” before July 20, 2013. 430 ILL. COMP. STAT. 65/13.1(c) (emphasis added). But as both Justice McLaren and the circuit court explained, Deerfield’s 2013 Ordinance was not inconsistent with the FOID Card Act.

Deerfield first enacted an ordinance regulating assault weapons on July 1, 2013. *See App.* 80–86. That ordinance, however, did not ban assault weapons or limit magazine capacity; rather, it defined the terms “assault weapon” and “large-capacity magazine,” and regulated merely the storage and transport of the former. *See App.* 82–84. As Justice McLaren explained, the 2013 Ordinance regulated only “the *possession* of assault weapons, imposing restrictions on how assault weapons may be stored, kept, and transported.” *App.* 37. Thus, while Deerfield may have enacted a regulation pertaining to possession that was inconsistent with the FOID Card Act, Deerfield had nothing on that books that “impose[d] any greater restrictions on *ownership* of assault weapons than the FOID Act imposed.” *App.* 38. Accordingly, Deerfield did not have a predicate ordinance, inconsistent with the FOID Card act, that it could later amend to further regulate ownership of assault weapons. Since the 2018 Ordinances effectively ban ownership of “assault weapons” but Deerfield lacked the requisite predicate 2013 ordinance, the 2018 Ordinances are invalid.<sup>2</sup>

2. Second, Deerfield’s ban is also invalid because the 2018 Ordinances are not merely amendments to Deerfield’s 2013 Ordinance. The Second District engaged in an erroneous analysis that elevated form over substance to conclude that Deerfield’s 2018 Ordinances should be considered amendments to the 2013 Ordinance. In fact, the Second District concluded that it did not need to consider the substance of Deerfield’s changes at all because Deerfield’s intent to enact an amendment was clear from “the titles of the 2018 ordinances” and their “introductory paragraphs.” *App.* 27. Further, “[a]ll changes were

---

<sup>2</sup> The circuit court similarly held that because Deerfield’s 2013 Ordinance did not ban assault weapons this ordinance was not “inconsistent with” the FOID Card Act—which, like Deerfield law after this initial ordinance, allowed FOID card holders to own and possess firearms Deerfield defined as assault weapons—and therefore was not a timely predicate ordinance that Deerfield could later amend. *See App.* 105–106.

reflected by striking through language that was to be removed from the municipal code and underlining language to be added.” App. 27. The Second District’s analysis is in tension with an on-point decision by the Third District and over a century of this Court’s statutory interpretation case law. This Court’s review is urgently needed.

The Second District’s analysis completely disregards the proper and careful analysis of municipal legislation elucidated by the Third District in *Athey v. City of Peru*, 22 Ill. App.3d 363 (3d Dist. 1974). In *Athey*, the court was faced with the question whether a municipal zoning ordinance should be considered an amendment or a new enactment. The distinction mattered because the General Assembly prescribed different procedures for an ordinance’s enactment based on whether it was considered an amendment or not. *Id.* at 365. Unlike the Second District decision in this case, the Third District concluded that the question “is not determined by [an enactment’s] title,” but rather by a “comparative analysis” between the new ordinance and the law it replaced. *Id.* at 367–68. Even though an ordinance may be called an “amendment,” a “subsequent statute revising the whole subject matter of a former statute and intended as substitute for it, although it contains no express words to that effect, operates as a repeal of the former act.” *Id.* at 367. The Third District then concluded the ordinance in question, despite being called an amendment, actually was no such thing, in part, because “[n]o area covered by ordinance number 1497 is left unregulated by [ordinance number] 1699 . . . The new enactment totally displace[d] the former provision.” *Id.* at 368.

Under the Third District’s comparative analysis framework, it is clear that Deerfield’s 2018 Ordinances can in no way be considered mere amendments to the 2013 Ordinance. The 2018 Ordinances are not substantially the same as the 2013 Ordinance, but

rather “revise[ ] the whole subject matter” and “totally displace[ ] the former provision.” *Athey*, 22 Ill. App. 3d at 367–68. “The banning of assault weapons is substantively different than regulations regarding the transportation and storage of such weapons,” App. 105 (circuit court decision), and the banning of large-capacity magazines is substantively different than simply defining them.

3. The Second District’s interpretation of what counts as an “amendment” not only contradicts the Third District’s decision in *Athey*, but it also is inconsistent with over a century of cases in this Court that engaged in substantive analysis of legislation to determine if legislative enactments were truly amendments to existing legislation or better considered implied repeals. *See, e.g., Vill. of Park Forest v. Wojciechowski*, 29 Ill. 2d 435, 439 (1963) (assessing whether a traffic ordinance amended previous ordinance or repealed and replaced it by considering enacted text and changes); *City of Metropolis v. Gibbons*, 334 Ill. 431, 434–35 (1929) (“[W]here two laws or ordinances are so inconsistent that the provisions of both cannot reasonably be construed to be in effect at the same time, the later law or ordinance repeals the earlier to the extent of the inconsistency, even though the later contains no repealing clause.”); *Culver v. Third Nat. Bank of Chicago*, 64 Ill. 528, 534 (1871) (“[A] subsequent statute revising the whole subject of a former one, and intended as a substitute for it, although it contains no express words to that effect, operates as a repeal of the former.”); *see also* A. Scalia and B. Garner, *Reading Law: The Interpretation of Legal Texts* 332 (2012) (“What, precisely is an express repeal? . . . Any language expressly stating that the prior provision is no longer operative will suffice—for example, a statement that a certain provision is ‘*amended to read as follows*’” (emphasis added)). Although these cases arise in different circumstances than those at bar, they unanimously

show this Court’s careful evaluation of the substance of legislative enactments to determine whether to consider such enactments as amendments. This Court should accept review of this case to ensure lower courts continue to engage in this longstanding textual analysis rather than embrace the Second District’s contrary approach.

4. The Second District majority also erred in relying on what Deerfield titled its 2018 Ordinances. As this Court and the United States Supreme Court have stressed repeatedly, courts should not interpret titles so as to overrule the substance of the enacted text. “When the legislature enacts an official title or heading to accompany a statutory provision, that title or heading is considered only as a ‘short-hand reference to the general subject matter involved’ in that statutory section, and ‘cannot limit the plain meaning of the text.’” *Michigan Ave. Nat. Bank v. Cnty. of Cook*, 191 Ill. 2d 493, 505–06 (2000) (quoting *Brotherhood of R.R. Trainmen v. Baltimore & Ohio R.R. Co.*, 331 U.S. 519, 528–29 (1947)). Titles cannot “undo or limit that which the text makes plain.” *Id.* at 506. Although Deerfield claimed to be amending its 2013 ordinance with its title, that title cannot undo the substantial changes wrought by the 2018 Ordinances’ actual text. As Justice McLaren stated in his partial dissent, “the simple act of calling the 2018 ordinance an amendment of the 2013 ordinance does not make it one.” This Court should accept review and clarify that merely titling an ordinance an “amendment” does not give home rule units free reign to regulate so-called “assault weapons” in whichever way they please.

5. The Second District majority’s stated goal was to “embrace an interpretation that gives a reasonable meaning to each word, clause, and sentence of the statute without rendering any language superfluous.” App. 12. But the majority’s interpretation flies in the face of its stated goal by creating an exception to the FOID Card

Act that swallows the rule and renders the FOID Card Act's limits on home rule authority meaningless. If Deerfield's wholesale changes enacted in the 2018 Ordinances are amendments, then it is not clear what limit, if any, exists on home rule authority to regulate so-called "assault weapons" in Illinois.

Instead, this Court should exercise review and affirm that a court is not free to disregard the General Assembly's decision to invoke its power to totally exclude home rule unit legislation under Section 6(h) or to limit the consequences of preemption under that provision in order to give broader effect to the statute's statement that existing local regulation of assault weapons "may be amended." 430 ILL. COMP. STAT. 65/13.1(c). Instead, this Court should make clear that courts "must view the statute as a whole, construing words and phrases *in context* to other relevant statutory provisions and not in isolation." *Murphy-Hylton v. Lieberman Mgmt. Servs, Inc.*, 2016 IL 120394, ¶ 25 (emphasis added). Thus, any interpretation of home rule units' power to "amend" must be consonant with the General Assembly's enacted intent to preempt and limit that power. In other words, any power granted to home rule units to amend their regulations of so-called "assault weapons" must be read narrowly to give effect to all provisions of the FOID Card Act. Since the Second District's erroneous reading may have implications for the authority of home rule units across the state, the Second District's decision merits review and reversal.

## CONCLUSION

For the foregoing reasons, the Court should grant appeal and reverse the Second District's decision upholding Deerfield's ban of so-called "assault weapons" and large capacity magazines.

Dated: January 8, 2020

Respectfully submitted,

By: \_\_\_\_\_  
Christian D. Ambler  
One of the Plaintiffs' Attorneys

Christian D. Ambler (ARDC No. 6228749)  
STONE & JOHNSON, CHTD.  
111 West Washington Street  
Suite 1800  
Chicago, IL 60602  
(312) 332-5656  
cambler@stonejohnsonlaw.com

Brian W. Barnes (ARDC No. \_\_\_\_\_)\*  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 220-9600  
bbarnes@cooperkirk.com

\*Appearance to be entered pursuant to Ill.  
S. Ct. Rule 707

### **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 containing 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 20 pages.

---

Christian D. Ambler

Christian D. Ambler  
STONE & JOHNSON, CHARTERED  
111 West Washington St.-Suite 1800  
Chicago, IL 60602  
Telephone (312) 223-5656  
CAmbler@stonejohnsonlaw.com

In the  
**Supreme Court of Illinois**

---

GUNS SAVE LIFE, INC., and JOHN WILLIAM WOMBACHER III,

*Plaintiffs-Movants,*

v.

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

*Defendants-Respondents.*

---

On Petition for Leave to Appeal from the Appellate Court of Illinois  
Second Judicial District, No. 2-19-0879  
There on Appeal from the Circuit Court of  
Lake County, Illinois, No. 18 CH 498  
The Honorable Luis A. Berrones, Presiding

---

**APPENDIX**

---

Brian W. Barnes (ARDC No.\_\_\_\_)\*  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 220-9600  
bbarnes@cooperkirk.com

Christian D. Ambler  
Stone & Johnson, Chartered  
111 West Washington Street  
Suite 1800a  
Chicago, IL 60602  
(312) 223-5656  
cambler@stonejohnsonlaw.com

\*Appearance to be entered pursuant  
to ILL. S. CT. Rule 707

*Attorneys for Plaintiffs-Movants*

ORAL ARGUMENT REQUESTED

---

---

# APPENDIX

## **TABLE OF CONTENTS**

|  | <b><u>Page</u></b> |
|--|--------------------|
| Opinion, Appellate Court of Illinois, Second District, December 4, 2020<br>(Corrected December 7, 2020)..... | APP001             |
| First Amended Complaint for Declaratory Judgment and Injunctive Relief .....                                 | APP044             |
| Ordinance O-18-06 .....  | APP064             |
| Ordinance O-18-19 .....  | APP075             |
| Ordinance O-13-24 .....  | APP080             |
| Memorandum Order, Circuit Court of the Nineteenth Judicial Circuit,<br>March 22, 2019 .....                  | APP087             |
| Rule 23 Order, Appellate Court of Illinois, Second District, June 12, 2019 .....                             | APP109             |

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

|                                     |   |                               |
|-------------------------------------|---|-------------------------------|
| DANIEL D. EASTERDAY, ILLINOIS STATE | ) | Appeal from the Circuit Court |
| RIFLE ASSOCIATION, and SECOND       | ) | of Lake County.               |
| AMENDMENT FOUNDATION, INC.,         | ) |                               |
|                                     | ) |                               |
| Plaintiffs-Appellees,               | ) |                               |
|                                     | ) |                               |
| v.                                  | ) | No. 18-CH-427                 |
|                                     | ) |                               |
| THE VILLAGE OF DEERFIELD,           | ) | Honorable                     |
|                                     | ) | Luis A. Berrones,             |
| Defendant-Appellant.                | ) | Judge, Presiding.             |

|  |   |                               |
|--|---|-------------------------------|
| GUNS SAVE LIFE, INC., and JOHN                 | ) | Appeal from the Circuit Court |
| WILLIAM WOMBACHER III,                         | ) | of Lake County.               |
|  | ) |                               |
| Plaintiffs-Appellees,                          | ) |                               |
|  | ) |                               |
| v.   | ) | No. 18-CH-498                 |
|  | ) |                               |
| THE VILLAGE OF DEERFIELD and                   | ) |                               |
| HARRIET ROSENTHAL, in Her Official             | ) |                               |
| Capacity as Mayor of the Village of Deerfield, | ) | Honorable                     |
|  | ) | Luis A. Berrones,             |
| Defendants-Appellants.                         | ) | Judge, Presiding.             |

JUSTICE ZENOFF delivered the judgment of the court, with opinion.  
Justice Hudson concurred in the judgment and opinion.  
Justice McLaren concurred in part and dissented in part, with opinion.

**OPINION**

¶ 1 The plaintiffs in these consolidated actions challenge the Village of Deerfield’s bans of “assault weapons” and “large capacity magazines.” One set of plaintiffs—Daniel D. Easterday, the Illinois State Rifle Association, and the Second Amendment Foundation, Inc. (collectively, Easterday)—sued Deerfield. The other set of plaintiffs—Guns Save Life, Inc. and John William Wombacher III (collectively, Guns Save Life)—sued both Deerfield and its mayor, Harriet Rosenthal. For the sake of simplicity, we will refer to both defendants collectively as Deerfield. The trial court granted summary judgment in favor of plaintiffs and permanently enjoined Deerfield from enforcing its bans of assault weapons and large capacity magazines. Deerfield appeals. For the following reasons, we affirm in part and reverse in part the trial court’s orders granting summary judgment in favor of plaintiffs. We vacate the permanent injunctions in part and remand the cause for further proceedings consistent with this opinion.

¶ 2 I. BACKGROUND

¶ 3 Deerfield is a home rule unit. Before 2013, it did not have an ordinance in place regulating assault weapons or large capacity magazines.

¶ 4 Effective July 9, 2013, the Illinois legislature enacted the Firearm Concealed Carry Act (Concealed Carry Act) (430 ILCS 66/1 *et seq.* (West 2018)) and amended section 13.1 of the Firearm Owners Identification Card Act (FOID Card Act) (430 ILCS 65/13.1 (West 2018)). Deerfield interpreted this legislation as providing a brief window for home rule units to regulate assault weapons. Deerfield understood that if it failed to regulate such weapons by July 20, 2013, it would forever lose its power to do so. Although Deerfield was not ready to impose a total ban on assault weapons, it did not want to lose its regulatory authority on this matter. Deerfield believed that if it timely regulated assault weapons, it could amend those regulations at any time and in any manner it wished.

¶ 5 Consistent with its interpretation of the relevant legislation, on July 1, 2013, Deerfield enacted ordinance No. O-13-24 (the 2013 ordinance), which regulated the storage and transportation of assault weapons within the village. Deerfield defined “assault weapon” by reference to a list of both physical characteristics of firearms and specified models. See Deerfield Municipal Code § 15-86 (added July 1, 2013). Deerfield defined “large capacity magazine” as

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

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

(2) A 22 caliber tube ammunition feeding device.

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

Deerfield Municipal Code § 15-86 (added July 1, 2013).

Deerfield specified certain requirements for the safe storage and transportation of assault weapons. See Deerfield Municipal Code §§ 15-87, 15-88 (added July 1, 2013). Failure to comply with those requirements would result in a fine between \$250 and \$1000. Deerfield Municipal Code § 15-89 (added July 1, 2013).

¶ 6 In 2018, following numerous highly publicized mass shootings across the country, Deerfield decided to enact what amounted to a total civilian ban on assault weapons and large capacity magazines. This was accomplished through two ordinances: Deerfield Ordinance No. O- 18-06 (eff. Apr. 2, 2018) and Deerfield Ordinance No. O-18-19 (eff. June 18, 2018)(collectively,

the 2018 ordinances).<sup>1</sup> The 2018 ordinances amended the sections of the municipal code that were added by the 2013 ordinance. Changes to the text of the municipal code were reflected by striking out language that was to be removed and underlining language to be added. Specifically, Deerfield made it unlawful for persons other than military or law enforcement personnel to “possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon or large capacity magazine in the Village.” Deerfield Municipal Code § 15-87(a) (amended June 18, 2018). Deerfield provided a 60-day grace period for persons in possession of assault weapons or large capacity magazines to either (1) remove, sell, or transfer those items from the limits of the village, (2) render the items permanently inoperable or otherwise modify them so that they no longer fell within the definitions of prohibited items, or (3) surrender the items to the chief of police for disposal and destruction. Deerfield Municipal Code §§ 15-90, 15-91 (added Apr. 2, 2018).

¶ 7 Easterday and Guns Save Life filed separate lawsuits challenging the validity of the 2018 ordinances.<sup>2</sup> The Easterday action was designated in the trial court as case No. 18-CH-427 and the Guns Save Life action was designated as No. 18-CH-498. The trial court entered temporary restraining orders in both cases prohibiting Deerfield from enforcing the bans. On July 27, 2018, the court consolidated the two actions “for all future proceedings.”

---

<sup>1</sup> Early in this litigation, the trial court determined that, contrary to what Deerfield claimed, ordinance No. O-18-06 did not ban large capacity magazines. In response to that ruling, Deerfield enacted ordinance No. O-18-19, which explicitly banned large capacity magazines.

<sup>2</sup> In their original complaints, Easterday and Guns Save Life challenged ordinance No. O-18-06. When Deerfield subsequently enacted ordinance No. O-18-19, Easterday and Guns Save Life amended their complaints to challenge that ordinance as well. In its amended complaint, Easterday misidentified ordinance No. O-18-19 as ordinance No. O-18-24-3.

¶ 8 In their respective amended complaints, Easterday and Guns Save Life alleged that the bans imposed by the 2018 ordinances were preempted by section 13.1 of the FOID Card Act (430 ILCS 65/13.1 (West 2018)) and section 90 of the Concealed Carry Act (430 ILCS 66/90 (West 2018)). Easterday advanced this theory in a single count, whereas Guns Save Life advanced this theory in two counts (counts I and III of its amended complaint). Guns Save Life further alleged that the ordinances (1) were preempted by section 2.1 of the Wildlife Code (520 ILCS 5/2.1 (West 2018)) (counts II and IV of Guns Save Life’s amended complaint) and (2) amounted to improper “takings” in violation of the Illinois Constitution (Ill. Const. 1970, art. I, § 15) (count V) and the Eminent Domain Act (735 ILCS 30/90-5-20 (West 2018)) (count VI).

¶ 9 On March 22, 2019, in response to Easterday’s and Guns Save Life’s motions for summary judgment, the trial court entered permanent injunctions in both cases enjoining Deerfield from “enforcing any provision of [the 2018 ordinances] making it unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances.” The court determined that the bans imposed by the 2018 ordinances were preempted by section 13.1 of the FOID Card Act and section 90 of the Concealed Carry Act. The court found, however, that genuine issues of material fact precluded summary judgment on Guns Save Life’s claims that the bans amounted to improper “takings.” The court also rejected Guns Save Life’s argument that the bans were preempted by the Wildlife Code. The effect of these orders was to (1) grant summary judgment to Easterday as to the only claim that was at issue in its amended complaint, (2) grant summary judgment to Guns Save Life as to counts I and III of its amended complaint, and (3) deny Guns Save Life’s motion for summary judgment as to counts II, IV, V, and VI of its amended complaint. Neither of the court’s orders entered on March 22, 2019,

included language rendering the matters immediately appealable pursuant to Illinois Supreme Court Rule 304(a) (eff. Mar. 8, 2016).

¶ 10 Deerfield attempted to appeal the permanent injunctions pursuant to Illinois Supreme Court Rule 307(a)(1) (eff. Nov. 1, 2017). On June 12, 2019, we dismissed that appeal for lack of jurisdiction, because (1) Rule 307(a)(1) does not apply to permanent injunctions, (2) no final judgment was entered with respect to Guns Save Life’s amended complaint, as the trial court did not resolve all claims, and (3) due to the lack of a complete record, we could not determine whether a final and independently appealable judgment had been entered with respect to Easterday’s amended complaint. See *Easterday v. Village of Deerfield*, 2019 IL App (2d) 190320-U, ¶ 43 (*Easterday I*).

¶ 11 On that last point, we explained:

“ ‘Illinois courts have recognized three distinct forms of consolidation: (1) where several actions are pending involving the same subject matter, the court may stay proceedings in all but one of the cases and determine whether the disposition of one action may settle the others; (2) where several actions involve an inquiry into the same event in its general aspects, the actions may be tied together, but with separate docket entries, verdicts and judgment, the consolidation being limited to a joint trial; and (3) where several actions are pending which might have been brought as a single action, the cases may be merged into one action, thereby losing their individual identity, to be disposed of as one suit.’ ” *Easterday I*, 2019 IL App (2d) 190320-U, ¶ 40 (quoting *Busch v. Mison*, 385 Ill. App. 3d 620, 624 (2008)).

Because the trial court did not stay any proceedings, we ruled out the first form of consolidation.

*Easterday I*, 2019 IL App (2d) 190320-U, ¶ 40.

¶ 12 We noted that the difference between the second and third forms of consolidation had jurisdictional implications:

“Where the second form of consolidation applies, a final judgment entered in one of the actions is immediately appealable without a Rule 304(a) finding. [Citation.] In fact, the aggrieved party *must* immediately appeal the final order in that first action, as opposed to waiting until the companion action is resolved. [Citations.] Where, however, the third form of consolidation applies and the two actions merge into one, unless the trial court makes a Rule 304(a) finding, the aggrieved party may not appeal until all claims have been adjudicated. [Citations.] In considering which form of consolidation applies in a given case, reviewing courts have looked to the reasons for consolidation proposed by the litigants in their motions for consolidation. [Citations.] Other relevant considerations may include the wording of the consolidation order [citation], whether the cases maintained separate docket entries after consolidation, and whether the litigants were treated as parties in both cases.” (Emphasis in original.) *Easterday I*, 2019 IL App (2d) 190320-U, ¶ 41.

¶ 13 Given that Deerfield erroneously pursued its appeal under Rule 307(a)—which contemplates a more limited supporting record as compared to appeals from final judgments—we were unable “to determine which form of consolidation the trial court intended.” *Easterday I*, 2019 IL App (2d) 190320-U, ¶ 40. We concluded:

“Irrespective of whether the two actions merged, Deerfield’s \*\*\* appeal of the permanent injunction that was entered in the Guns Save Life action is premature. If the two actions merged, Deerfield \*\*\* may not appeal until the resolution of all claims in both actions (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Guns Save Life action). If the two actions did not merge, Deerfield \*\*\* may not

appeal until the resolution of all claims in the Guns Save Life action (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Guns Save Life action).

\*\*\*.

With respect to Deerfield's appeal of the permanent injunction that was entered in the Easterday action, however, the appeal is premature only if the two actions merged. If the two actions merged, Deerfield may not appeal until the resolution of all claims in both actions (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Easterday action). (If the two actions did not merge, Deerfield's failure to establish that fact in the present appeal is fatal to any appeal in the Easterday action.)" *Easterday I*, 2019 IL App (2d) 190320-U, ¶¶ 44-45.

¶ 14 Following our decision in *Easterday I*, Deerfield filed a motion in the trial court requesting Rule 304(a) findings with respect to the March 22, 2019, orders entered in both the Easterday action and the Guns Save Life action. As noted above, on March 22, 2019, the court had resolved the only claim that was at issue in the Easterday action. Concerning the Guns Save Life action, Deerfield requested Rule 304(a) findings as to the court's rulings only on counts I through IV of the amended complaint (the preemption claims, not the takings claims). Deerfield also asked the court to find that the July 27, 2018, consolidation order merged the two cases. In their responses to Deerfield's motion, both Easterday and Guns Save Life argued that the consolidation order had not merged the actions.

¶ 15 On September 6, 2019, the court made Rule 304(a) findings as requested by Deerfield. The court also clarified that it had intended to merge the two actions when it entered the consolidation order. In explaining its decision, the court mentioned that certain limitations in the court clerk's case management system prevented multiple cases from being merged into one case number.

¶ 16 On October 3, 2019, Deerfield filed a notice of appeal, specifying its intent to challenge the permanent injunctions that the court entered on March 22, 2019, which were rendered appealable by the September 6, 2019, order.

¶ 17

## II. ANALYSIS

¶ 18

### A. Jurisdiction

¶ 19 Easterday and Guns Save Life both contend that we lack jurisdiction.

¶ 20 Easterday argues as follows. There are numerous objective indications from the record that suggest that the trial court's July 27, 2018, consolidation order was for judicial convenience and economy, not to merge the cases. Because Deerfield failed to appeal the final order entered in the Easterday action within 30 days of March 22, 2019, we lack jurisdiction of the present appeal.<sup>3</sup>

¶ 21 Guns Save Life presents a very similar jurisdictional argument. Guns Save Life emphasizes the unfairness of the trial court's after-the-fact explanation about its intent to merge the actions. Like Easterday, Guns Save Life argues that the cases did not merge and Deerfield, therefore, failed to timely appeal the final judgment in the Easterday action. According to Guns Save Life, because its action involves a permanent injunction that is identical to the one that was entered in the Easterday action, any appeal of the Guns Save Life action is moot and barred by collateral estoppel.

¶ 22 Deerfield maintains that we have jurisdiction under Rule 304(a). According to Deerfield, Easterday and Guns Save Life did not file cross-appeals, so they may not challenge the trial court's

---

<sup>3</sup> Deerfield *did* file a notice of appeal within 30 days of the March 22, 2019, orders. As explained above, we dismissed Deerfield's first appeal for lack of jurisdiction. Thus, it appears that Easterday's argument is that we lack jurisdiction of the present appeal because we had jurisdiction in the prior appeal of a final judgment in the Easterday action, and Deerfield failed to establish that fact at the time.

finding that the actions merged. Deerfield further notes that the trial court expressly stated that it intended to merge the actions. Deerfield argues that this distinguishes the matter from the various cases cited by Easterday and Guns Save Life, where the appellate court was tasked with ascertaining trial judges' intent from the circumstantial evidence in the record.

¶ 23 In our view, contrary to Deerfield's suggestions, Easterday and Guns Save Life did not need to file cross-appeals to raise this issue. It would have been inappropriate for them to file cross-appeals because they obtained by summary judgment all the relief that they requested: a declaratory judgment in their favor as to the invalidity of the bans imposed by the 2018 ordinances and a permanent injunction barring Deerfield from enforcing those bans. See *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 387 (1983) (an appellee may challenge specific findings made by the trial court without filing a cross-appeal, so long as "the judgment of the trial court was not at least in part against the appellee"); *Chicago Tribune v. College of Du Page*, 2017 IL App (2d) 160274, ¶ 28 (although it was improper for the appellee to file a cross-appeal from an order granting summary judgment in its favor, we noted that we could consider the appellee's contention that portions of the trial court's reasoning were erroneous, because an appellee may defend the judgment on any basis appearing in the record). Moreover, the issue that Easterday and Guns Save Life raise implicates our jurisdiction, so it is not subject to waiver or forfeiture. See *Ruff v. Industrial Comm'n*, 149 Ill. App. 3d 73, 78 (1986) (even without filing a cross-appeal, the employer-appellee was permitted to argue that the appellant did not file a timely petition before the Industrial Commission, as that argument raised questions regarding the jurisdiction of both the Industrial Commission and the appellate court).

¶ 24 We determine that there is no basis to overturn the trial court's finding that the actions merged. This case is unusual. In the more typical case, the appellate court must ascertain the trial

court's intent by looking at circumstantial factors in the record, such as the ones that we outlined in *Easterday I*. Here, however, there is no room to argue about the trial court's intent because the court expressly stated that it intended to merge the actions. We recognize that the court clarified its intent only after the jurisdictional implications became apparent to both the court and the parties. We also recognize that the court mentioned certain limitations in Lake County's case management system that the parties may have had no reason to know about when the consolidation order was entered. Nevertheless, we find no prejudice to any party. Guns Save Life poses a hypothetical scenario in which a trial judge leads the parties to believe that two matters merged, only to later explain, once it was too late for the losing party to appeal, that the matters did not merge. Here, however, there is no unfairness, as the litigants are being granted access to the appellate court rather than foreclosed from such access.

¶ 25 Having no basis to disturb the trial court's finding that the two actions merged, Easterday's and Guns Save Life's jurisdictional challenges fail. Specifically, because the actions merged, Deerfield did not miss its opportunity to appeal the March 22, 2019, final judgment in the Easterday action. Because Deerfield did not miss its opportunity to appeal the final judgment in the Easterday action, the appeal of the March 22, 2019, order entered in the Guns Save Life action is neither moot nor barred by collateral estoppel. The March 22, 2019, order in the Easterday action was rendered appealable on September 6, 2019, when the trial court made findings under Rule 304(a). The court's March 22, 2019, rulings on counts I and III of Guns Save Life's amended complaint likewise were rendered appealable on September 6, 2019, when the court made findings

under Rule 304(a).<sup>4</sup> Deerfield appealed within 30 days of September 6, 2019. Accordingly, we have jurisdiction of the appeal under Rule 304(a).

¶ 26

B. Preemption

¶ 27 The trial court granted summary judgment in favor of Easterday and Guns Save Life, determining that the bans imposed by the 2018 ordinances were preempted by section 13.1 of the FOID Card Act and section 90 of the Concealed Carry Act. Summary judgment is appropriate where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2018). We review *de novo* the trial court’s decision. *Guns Save Life, Inc. v. Ali*, 2020 IL App (1st) 181846, ¶43.

¶ 28 When interpreting a statute, our goal is to ascertain and effectuate the legislature’s intent. *Iwan Ries & Co. v. City of Chicago*, 2019 IL 124469, ¶ 19. The plain and ordinary meaning of the statutory language is the most reliable indicator of that intent. *Iwan Ries*, 2019 IL 124469, ¶ 19. We must consider the statute as a whole, construing words and phrases in their proper context rather than in isolation. *Iwan Ries*, 2019 IL 124469, ¶ 19. We may consider both the subject of the statute and the legislature’s apparent purpose in enacting it. *Iwan Ries*, 2019 IL 124469, ¶ 19. If it is possible to do so, we should embrace an interpretation that gives a reasonable meaning to each word, clause, and sentence of the statute without rendering any language superfluous. *Murphy-Hylton v. Lieberman Management Services, Inc.*, 2016 IL 120394, ¶ 25. Where the statute’s language is clear and unambiguous, we apply it as written without resorting to extrinsic aids of construction. *Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶ 16.

---

<sup>4</sup> As explained below in section II.B.7., the court’s Rule 304(a) findings did not render appealable the nonfinal orders as to counts II and IV of Guns Save Life’s amended complaint.

¶ 29

1. *Nature of Home Rule Authority*

¶ 30 Before turning to the statutes at issue, we will provide some background about the nature of home rule authority, as it will inform our analysis. “Under the 1870 Illinois Constitution, the balance of power between our state and local governments was heavily weighted toward the state.” *City of Chicago v. Stubhub, Inc.*, 2011 IL 111127, ¶ 18. With the adoption of the current Constitution in 1970, that balance of power was drastically altered, such that local governments “now enjoy ‘the broadest powers possible.’ ” *Stubhub*, 2011 IL 111127, ¶ 18 (quoting *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 174 (1992)). The impetus for this power transfer was “the assumption that municipalities should be allowed to address their problems by tailoring solutions to local needs.” *Iwan Ries*, 2019 IL 124469, ¶ 21. To that end, article 7, section 6(a) of the Illinois Constitution provides, in relevant portion:

“Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.” Ill. Const. 1970, art. VII, § 6(a).

The Constitution indicates that the “[p]owers and functions of home rule units shall be construed liberally.” Ill. Const. 1970, art. VII, § 6(m).

¶ 31 Nevertheless, the legislature retains the authority to restrict the powers of home rule units. Article 7, section 6(h), for example, allows the legislature to “provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit.”<sup>5</sup> Ill. Const. 1970, art. VII, § 6(h). Article 7, section 6(i) establishes that home rule units may exercise their powers

---

<sup>5</sup> This rule is subject to certain exceptions relating to taxing powers. Those exceptions are not relevant to this appeal.

concurrently with the State, to the extent that the legislature “does not specifically limit the concurrent exercise or specifically declare the State’s exercise to be exclusive.” Ill. Const. 1970, art. VII, § 6(i). Thus, the legislature must expressly limit or deny home rule authority whenever it intends to do so. *Palm v. 2800 Lake Shore Drive Condominium Ass’n*, 2013 IL 110505, ¶ 31; see also 5 ILCS 70/7 (West 2018) (“No law enacted after January 12, 1977, denies or limits any power or function of a home rule unit \*\*\* unless there is specific language limiting or denying the power or function and the language specifically sets forth in what manner and to what extent it is a limitation on or denial of the power or function of a home rule unit.”). “In other words, the default position for a home rule unit is to be able to legislate local matters,” and “the legislature’s silence on the power of home rule units is actually evidence of the home rule unit’s power.” *Accel Entertainment Gaming, LLC v. Village of Elmwood Park*, 2015 IL App (1st) 143822, ¶ 47.

¶ 32

## *2. The Governing Statutes*

¶ 33 As mentioned above, the Concealed Carry Act went into effect on July 9, 2013. Section 90 of that Act provides:

“The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. 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.” 430 ILCS 66/90 (West 2018).

“Handgun” is defined as

“any device which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas that is designed to be held and fired by the use of a single hand. ‘Handgun’ does not include:

(1) a stun gun or taser;

(2) a machine gun as defined in item (i) of paragraph (7) of subsection (a) of Section 24-1 of the Criminal Code of 2012;

(3) a short-barreled rifle or shotgun as defined in item (ii) of paragraph (7) of subsection (a) of Section 24-1 of the Criminal Code of 2012; or

(4) any pneumatic gun, spring gun, paint ball gun, or B-B gun which expels a single globular projectile not exceeding .18 inch in diameter, or which has a maximum muzzle velocity of less than 700 feet per second, or which expels breakable paint balls containing washable marking colors.” 430 ILCS 66/5 (West 2018).

¶ 34 Effective July 9, 2013, the legislature also amended section 13.1 of the FOID Card Act. That provision now reads as follows:

“(a) Except as otherwise provided in the Firearm Concealed Carry Act and subsections (b) and (c) of this Section, the provisions of any ordinance enacted by any municipality which requires registration or imposes greater restrictions or limitations on the acquisition, possession and transfer of firearms than are imposed by this Act, are not invalidated or affected by this Act.

(b) Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner’s

Identification Card issued by the Department of State Police under this Act are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, enacted on or before the effective date of this amendatory Act of the 98th General Assembly that purports to impose regulations or restrictions on a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act, on the effective date of this amendatory Act of the 98th General Assembly, shall be invalid in its application to a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act.

(c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly. Any ordinance or regulation described in this subsection (c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid. An ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended. The enactment or amendment of ordinances under this subsection (c) are subject to the submission requirements of Section 13.3. For the purposes of this subsection, 'assault weapons' means firearms designated by either make or model or by a test or list of cosmetic features that cumulatively would place the firearm into a definition of 'assault weapon' under the ordinance.

(d) For the purposes of this Section, ‘handgun’ has the meaning ascribed to it in Section 5 of the Firearm Concealed Carry Act.

(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.” 430 ILCS 65/13.1 (West 2018).

¶ 35 This appeal presents four questions with respect to Deerfield’s bans of assault weapons and large capacity magazines: (1) does section 13.1 of the FOID Card Act preempt all regulation of assault weapons by home rule units; (2) if not, was Deerfield’s 2013 ordinance “inconsistent with” the FOID Card Act, within the meaning of section 13.1(c) of that Act; (3) if Deerfield’s 2013 ordinance was inconsistent with the FOID Card Act, were Deerfield’s 2018 ordinances mere amendments to the 2013 ordinance, as allowed by section 13.1(c); and (4) to the extent that Deerfield’s ban of large capacity magazines regulates ammunition for handguns, is such a ban preempted by section 13.1(b) of the FOID Card Act and section 90 of the Concealed Carry Act?

¶ 36                   3. *Section 13.1 of the FOID Card Act Does Not Preempt All*

*Regulation of Assault Weapons by Home Rule Units*

¶ 37 The trial court determined that section 13.1 of the FOID Card Act preempts all regulation by home rule units relating to the possession or ownership of assault weapons. Easterday and Guns Save Life defend the court’s conclusion on this point. In doing so, they focus heavily on the language of section 13.1(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.” (430 ILCS 65/13.1(e) (West 2018))), along with the first sentence of section 13.1(c) (“[T]he regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State.” (430 ILCS 65/13.1(c) (West 2018))).

¶ 38 Deerfield, on the other hand, argues that the interpretation espoused by Easterday, *Guns Save Life*, and the trial court fails to give effect to the following language in section 13.1(c):

“Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid *unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly*. Any ordinance or regulation described in this subsection (c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid.” (Emphasis added.) 430 ILCS 65/13.1(c) (West 2018).

Taking this language into account, Deerfield maintains that the legislature adopted a “unique, hybrid form of concurrent jurisdiction over assault weapons.” According to Deerfield, home rule units that regulated assault weapons within the window specified in section 13.1(c) retain their concurrent regulatory power; home rule units that failed to regulate assault weapons within this window, on the other hand, are prohibited from regulating on this subject.

¶ 39 Deerfield’s interpretation of the statute prevails. As noted above, if it is possible to do so, we should embrace an interpretation that gives a reasonable meaning to each word, clause, and sentence of the statute without rendering any language superfluous. *Murphy-Hylton*, 2016 IL 120394, ¶ 25. Contrary to what the trial court concluded, we believe that it is possible to give effect to all of the language of section 13.1.

¶ 40 To be sure, section 13.1(e) and the first sentence of section 13.1(c) contain language that, if isolated from the rest of the statute, would generally be interpreted as preempting all local regulation of assault weapons. See *City of Chicago v. Roman*, 184 Ill. 2d 504, 517-18 (1998) (collecting examples of statutes where the legislature evinced its intent to preempt all regulation

by home rule units on various topics). Nevertheless, we must consider the statute as a whole, construing words and phrases in their proper context rather than in isolation. *Iwan Ries*, 2019 IL 124469, ¶ 19. Immediately after declaring that “the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State,” the statute carves out an exception for ordinances and regulations that were enacted on, before, or within 10 days of the statute’s effective date. 430 ILCS 65/13.1(c) (West 2018). The statute adds that such ordinances may be amended outside the 10-day window. 430 ILCS 65/13.1(c) (West 2018).

¶ 41 Construing these provisions together, it is apparent that the legislature did not intend to preempt all regulation of assault weapons by home rule units. Instead, as Deerfield suggests, the legislature contemplated a hybrid balance of regulatory power between the State and local governments, whereby certain home rule units would have the authority to concurrently regulate assault weapons and others would not. In other words, the legislature intended that home rule units would be precluded from regulating assault weapons unless they took steps, within the prescribed timeframe, to regulate the possession or ownership of assault weapons in a manner that is inconsistent with the FOID Card Act.

¶ 42 For these reasons, we hold that the trial court erred in determining that section 13.1 of the FOID Card Act preempts all regulation of assault weapons by home rule units.

¶ 43           4. *Deerfield’s 2013 Ordinance Was “Inconsistent With” the FOID Card Act*

¶ 44 The next issue is whether Deerfield retained its authority to regulate assault weapons concurrently with the State. There is no dispute that Deerfield enacted its 2013 ordinance within the window specified in section 13.1(c) of the FOID Card Act. The parties disagree, however, as to whether Deerfield’s 2013 ordinance was “inconsistent with” the FOID Card Act. See 430 ILCS 65/13.1(c) (West 2018) (“[a]ny ordinance \*\*\* that purports to regulate the possession or ownership

of assault weapons in a manner that is inconsistent with this Act[ ] shall be invalid” unless it is enacted within the specified window).

¶ 45 In the alternative to its conclusion that section 13.1 of the FOID Card Act categorically preempts local regulation of assault weapons, the trial court determined that, because Deerfield’s 2013 ordinance merely regulated the transportation and storage of assault weapons, it was not inconsistent with the FOID Card Act. In the court’s view, section 13.1(c) of the FOID Card Act “provided home rule units a one-time 10-day window from the date of this section’s effective date to ban ownership or possession of assault weapons.” The court reasoned that, because Deerfield failed to enact such a ban within this window, it “lost its opportunity to do so and cannot later amend its ordinance to impose such a ban.”

¶ 46 On appeal, both Easterday and Guns Save Life defend the trial court’s interpretation. Deerfield addresses this issue in a single footnote of its appellant’s brief. Guns Save Life asks us to ignore Deerfield’s argument because substantive material should not appear in footnotes. See *Lundy v. Farmers Group, Inc.*, 322 Ill. App. 3d 214, 218 (2001) (striking footnotes from a brief that used footnotes (1) excessively, (2) to convey substantive arguments, and (3) to circumvent page limits). Although Deerfield should not have included substantive material in a footnote, we decline to strike the subject footnote or otherwise ignore Deerfield’s argument. Deerfield did not use footnotes excessively in its brief, nor did it use footnotes to circumvent page limits. Additionally, this appeal might have legal implications for other home rule units that enacted regulations within the 10-day window short of assault-weapon bans, which is another reason not to ignore Deerfield’s argument.

¶ 47 Deerfield argues as follows:

“The term ‘inconsistent with’ refers to actions by a home-rule unit inconsistent with the State’s exclusive jurisdiction absent action by a home-rule unit. The [FOID Card Act] merely asserted that the State now had exclusive jurisdiction. It did not impose any regulation beyond that. There was, despite the Circuit Court’s assertion, no legislative or regulatory scheme with which to conflict. The only ‘inconsistency’ to which the provision refers would be the assertion of home-rule authority itself.”

For the following reasons, we conclude that, although Deerfield comes closer to the proper interpretation, neither the parties nor the trial court accurately identified what the legislature intended when it allowed for local regulations of assault weapons that are “inconsistent with” the FOID Card Act.

¶ 48 The primary concern of the FOID Card Act is to regulate who may acquire or possess firearms, not which firearms those individuals may acquire or possess. See 430 ILCS 65/1 (West 2018). The Act defines “firearm” broadly, without excluding assault weapons. See 430 ILCS 65/1.1 (West 2018). Indeed, the only mention of assault weapons in the Act is in section 13.1(c). The Act’s general rule, which is subject to numerous exceptions, is that no person who lacks a FOID card may acquire or possess within the State any firearm ammunition or any firearm, stun gun, or taser. 430 ILCS 65/2(a) (West 2018). Therefore, contrary to what Deerfield suggests, the FOID Card Act does regulate assault weapons, insofar as it requires anyone who acquires or possesses such firearms to have a FOID card.

¶ 49 To ascertain what the legislature intended in section 13.1(c) of the FOID Card Act when it created a window for home rule units to “regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act,” we must read section 13.1(c) within the context of the entire section. Section 13.1(a) sets forth the general rule that the Act is not intended to

invalidate local regulations that require registration or impose “greater restrictions or limitations on the acquisition, possession and transfer of firearms than are imposed by this Act.” 430 ILCS 65/13.1(a) (West 2018). Section 13.1(c) is designated as an exception to the rule outlined in section 13.1(a). The first sentence of section 13.1(c) provides: “Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive matters and functions of this State.” 430 ILCS 65/13.1(c) (West 2018). The next sentence of section 13.1(c) creates an exception to the first sentence:

“Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly.” 430 ILCS 65/13.1(c) (West 2018).

Accordingly, when the legislature used the phrase “inconsistent with this Act” in section 13.1(c), it was in the context of providing an exception to an exception to the general rule that ordinances are not invalid merely because they require registration or impose greater restrictions on the acquisition, possession, or transfer of firearms than those which are imposed by the Act. Thus, a home rule unit’s regulation is “inconsistent with” the Act where such regulation imposes greater restrictions on assault weapons than the Act imposes. Any regulation of assault weapons beyond the mere requirement to possess a FOID card is inconsistent with the Act.

¶ 50 With this understanding, we hold that Deerfield’s 2013 ordinance was inconsistent with the FOID Card Act because it regulated the possession and ownership of assault weapons beyond what was required by the Act. Specifically, the 2013 ordinance provided:

“It shall be unlawful to store or keep any assault weapon in the Village unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.” Deerfield Municipal Code § 15-87(a) (added July 1, 2013).<sup>6</sup>

Additionally, the 2013 ordinance stated:

“It is unlawful and a violation of this section for any person to carry or possess an assault weapon in the Village, except when on his land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person’s permission, except that this section does not apply to or affect transportation of assault weapons that meet one of the following conditions:

- (i) are broken down in a non-functioning state; or
- (ii) are not immediately accessible; or

---

<sup>6</sup> This rule was subject to a self-defense exception: “No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self-defense or in defense of another.” Deerfield Municipal Code § 15-87(b) (added July 1, 2013).

(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card." Deerfield Municipal Code § 15-88(a) (added July 1, 2013).<sup>7</sup>

Having regulated the possession and ownership of assault weapons in a manner that was inconsistent with the FOID Card Act, Deerfield preserved its power to regulate assault weapons concurrently with the State.

¶ 51 The dissent disagrees with the majority's conclusion that Deerfield regulated both possession and ownership of assault weapons in its 2013 ordinance. In the dissent's view, Deerfield timely regulated only the possession of assault weapons, so it lacked authority under section 13.1(c) of the FOID Card Act to amend its ordinance in 2018 to regulate the ownership of assault weapons. We note that neither the trial court nor the parties embraced this rationale. One need look only to the title of Deerfield's 2013 ordinance to understand why. That ordinance was entitled: "An Ordinance Regulating the Ownership and Possession of Assault Weapons in the Village of Deerfield." Aside from the title, the restrictions outlined in Deerfield's 2013 ordinance applied equally to persons who both possessed and owned assault weapons and to persons who possessed such weapons but did not own them. By the plain terms of the 2013 ordinance, whenever an assault weapon was not under the control of or being carried by the owner or some other lawfully authorized user, the weapon had to be secured by them in a locked container or equipped with a tamper-resistant mechanical lock or another safety device. In the majority's view, Deerfield plainly regulated both the possession and ownership of assault weapons within the 10-day window specified in section 13.1(c) of the FOID Card Act.

---

<sup>7</sup> The requirements of sections 15-87 and 15-88 did not apply to law enforcement or military personnel. Deerfield Municipal Code §§ 15-87(c), 15-88(b) (added July 1, 2013).

¶ 52 Furthermore, as a practical matter, it is not clear how courts could distinguish between regulations that affect only possession and regulations that affect both possession and ownership. Ownership and possession are interrelated concepts. For example, one definition of “owner” is “[s]omeone who has the right to possess, use, and convey something.” Black’s Law Dictionary (11th ed. 2019). One definition of “possession” is “[s]omething that a person owns or controls.” Black’s Law Dictionary (11th ed. 2019). In a similar vein, Deerfield defines “owner” in its municipal code as, in relevant portion, “one who has complete *dominion* over particular property and who is the one in whom legal or equitable title rests.” (Emphasis added.) Deerfield Municipal Code § 1-2(a)(25) (added 1963). “Dominion,” in turn, is defined as “[c]ontrol; possession.” Black’s Law Dictionary (11th ed. 2019). In light of these overlapping definitions, it is not clear how an assault weapon ordinance could regulate possession without also regulating ownership. When Deerfield told its residents in 2013 how they had to store and transport their assault weapons, such regulations affected residents’ rights as owners of such weapons.

¶ 53 Even if the dissent were correct that “[p]ossession and ownership are completely distinct concepts” (*infra* ¶ 87), at the very least, in its 2013 ordinance, Deerfield timely regulated either the “possession or ownership of assault weapons in a manner that is inconsistent with” the FOID Card Act. 430 ILCS 65/13.1(c) (West 2018). For example, as explained above, Deerfield’s 2013 rules relating to storing assault weapons went beyond the requirements of the FOID Card Act. Under the plain language of the statute, that was all that Deerfield needed to do to preserve its authority to regulate assault weapons concurrently with the State.

¶ 54 *5. Deerfield Amended Its 2013 Ordinance*

¶ 55 The next question is whether Deerfield’s 2018 ordinances were amendments to the 2013 ordinance, as allowed by section 13.1(c) of the FOID Card Act. We hold that they were.

¶ 56 Our analysis is straightforward. As explained above, by amending section 13.1 of the FOID Card Act in 2013, the legislature created a hybrid balance of regulatory power between the State and local governments, whereby certain home rule units would have the authority to concurrently regulate assault weapons and others would not. Deerfield preserved its power to regulate assault weapons concurrently with the State when it enacted its 2013 ordinance. The legislature explicitly declared that home rule units that preserved their power to regulate assault weapons concurrently with the State could amend their ordinances. See 430 ILCS 65/13.1(c) (West 2018) (“An ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended.”). In 2018, Deerfield twice purported to amend its 2013 ordinance and imposed a complete civilian ban on assault weapons and large capacity magazines. Because Deerfield had the power to regulate assault weapons concurrently with the State, it was Deerfield’s prerogative to ban such weapons, and there were no time limitations for doing so.

¶ 57 Relying on *Athey v. City of Peru*, 22 Ill. App. 3d 363 (1974), the trial court nevertheless conducted a “comparative analysis” of the 2013 and 2018 ordinances to evaluate the extent of the changes. Noting the “significant differences” between the 2013 ordinance and the 2018 ordinances, the court accepted Easterday’s and Guns Save Life’s arguments that the 2018 ordinances were new ordinances rather than mere amendments to the 2013 ordinance.

¶ 58 In *Athey*, the plaintiff property owners filed an action challenging the City of Peru’s ordinance No. 1699, which rezoned an adjacent property from residential to commercial. *Athey*, 22 Ill. App. 3d at 365-66. One disputed issue in the action was whether ordinance No. 1699 was a new ordinance or whether it was an amendment of ordinance No. 1497. *Athey*, 22 Ill. App. 3d at 366. That issue was significant to the litigation because amendments to existing ordinances required a two-thirds vote of the city council to pass, whereas new ordinances could be enacted by

a majority vote. *Athey*, 22 Ill. App. 3d at 366. The appellate court recognized that it was called upon to ascertain the city council’s intent. See *Athey*, 22 Ill. App. 3d at 367 (“The primary purpose of construction of ordinances is to determine and give full effect to the intent of the law-making body as revealed by the language used.”). Ascertaining that intent was complicated, however, by the fact that ordinance No. 1699’s introductory clause was ambiguous: “ ‘Whereas the City of Peru, Illinois now desires to amend comprehensively its existing ordinance by adopting a new ordinance.’ ” *Athey*, 22 Ill. App. 3d at 367. Additionally, during the legislative process, the city council interchangeably referred to ordinance No. 1699 as a “comprehensive amendment” and a “new ordinance.” *Athey*, 22 Ill. App. 3d at 367. Under those circumstances, the court undertook a “comparative analysis” of the two ordinances. *Athey*, 22 Ill. App. 3d at 368. Upon doing so, the court determined that ordinance No. 1699 was a new ordinance rather than an amendment of ordinance No. 1497. *Athey*, 22 Ill. App. 3d at 368.

¶ 59 Unlike in *Athey*, there is no need to undertake a comparative analysis of Deerfield’s ordinances. Deerfield indicated that it intended for the 2018 ordinances to serve as amendments to the 2013 ordinance. For example, the titles of the 2018 ordinances reflected that intent, as did the ordinances’ introductory paragraphs. All changes were reflected by striking through language that was to be removed from the municipal code and underlining language to be added. There was no ambiguity as to Deerfield’s intent, so we need not resort to additional canons of interpretation to ascertain that intent.

¶ 60 The other cases that the trial court cited—*Village of Park Forest v. Wojciechowski*, 29 Ill. 2d 435 (1963), and *Nolan v. City of Granite City*, 162 Ill. App. 3d 187 (1987)—are distinguishable. The issue in both of those cases was whether ordinances remained in effect after the respective municipal bodies enacted other ordinances touching on the same subjects. In the present case, by

contrast, there is no ambiguity or dispute as to which portions of the 2013 ordinance remained in effect after the enactment of the 2018 ordinances.

¶ 61 Even so, both *Wojciechowski* and *Nolan* recognized that the paramount consideration is whether the municipal body intended to amend versus repeal the earlier ordinance. See *Wojciechowski*, 29 Ill. 2d at 439 (“[T]here was no manifestation of an intent to entirely revise and repeal the original ordinance.”); *Nolan*, 162 Ill. App. 3d at 190 (“We find no intention to repeal ordinance No. 2574 in ordinance 2910 or any evidence of inconsistency between the two.”). Deerfield intended for its 2018 ordinances to serve as amendments to the 2013 ordinance, not to repeal the 2013 ordinance. The trial court essentially concluded that, notwithstanding this clearly expressed intent, the changes that Deerfield made were more drastic than the legislature contemplated when it enacted section 13.1(c) of the FOID Card Act. We find no support for the trial court’s decision on this point in the case law or the text of section 13.1(c).

¶ 62 Both *Easterday* and *Guns Save Life* note that section 1-7 of the Deerfield Municipal Code provides:

“The provisions appearing in this Code, insofar as they relate to the same subject matter and are substantially the same as those ordinance provisions previously adopted by the Village and existing at the effective date of this Code, shall be considered as restatements and continuations thereof and not as new enactments.” Deerfield Municipal Code § 1-7 (added 1963).

According to *Easterday* and *Guns Save Life*, Deerfield’s 2018 ordinances were not substantially the same as the 2013 ordinance, so they must be new enactments rather than amendments. We reject this reasoning. The provision that *Easterday* and *Guns Save Life* cite merely indicates that, when Deerfield enacted its municipal code, Deerfield generally intended to restate its ordinances

that were already in existence. Contrary to what Easterday and Guns Save Life argue, section 1-7 does not invite courts to second guess Deerfield's intent where, as here, it specifically declared that it intended to amend an ordinance.

¶ 63 We already outlined the majority's view that the dissent's analysis proceeds from the faulty premise that Deerfield regulated the possession but not ownership of assault weapons in its 2013 ordinance. See *supra* ¶¶ 51-53. Even if this premise were correct, however, we would find no support for the conclusion that a home rule unit that timely regulated the possession of assault weapons could not amend its statute outside the 10-day window to regulate ownership. The text of section 13.1(c) of the FOID Card Act certainly does not say that. As noted above, the statute merely says that an ordinance enacted within the 10-day window "may be amended." 430 ILCS 65/13.1(c) (West 2018). When interpreting a statute, a court "must not depart from the plain meaning of the statutory language by reading into it exceptions, limitations, or conditions not expressed by the legislature." *In re Estate of Shelton*, 2017 IL 121199, ¶ 36. We thus should not read an exception into section 13.1(c) by interpreting it to mean that a home rule unit may amend its ordinance so long as it does not switch from regulating possession to regulating ownership.

¶ 64 Moreover, we found nothing supporting the dissent's view in the lengthy floor debates of Public Act 98-63 (eff. July 9, 2013) (the 2013 legislation that enacted the Concealed Carry Act and amended section 13.1 of the FOID Card Act). At no point did any lawmaker mention or insinuate that the legislature intended to distinguish between possessing assault weapons and owning such weapons. Nor did any lawmaker mention or insinuate that home rule units had to ban assault weapons within the 10-day window or forever lose their power to do so.

¶ 65 To the contrary, the legislative history suggests that the legislature intended that home rule units could preserve their authority to regulate assault weapons concurrently with the State simply

by enacting a regulation within the 10-day window. The following excerpt from the exchange between Senators Raoul and Forby (Senator Forby was one of the bill’s sponsors) illustrates this point:

“SENATOR RAOUL: Can a—can a municipality or home rule unit that has enacted a regulation or ordinance either before or within ten days of the effective date that regulates assault weapons amend that regulation or ordinance in the future?

PRESIDING OFFICER (SENATOR MUÑOS): Senator Forby.

SENATOR FORBY: Yes.” 98th Ill. Gen. Assem., Senate Proceedings, May 31, 2013, at 21 (statements of Senators Raoul, Muñoz, and Forby).

Thus, even assuming that the dissent is correct that Deerfield initially regulated only the possession of assault weapons and then subsequently regulated ownership, that is consistent with the legislature’s intent.

¶ 66            *6. Impact of Section 13.1(b) of the FOID Card Act and Section 90 of the Concealed Carry Act on Deerfield’s Ban of Large Capacity Magazines*

¶ 67 The parties also disagree as to the impact of section 13.1(b) of the FOID Card Act and section 90 of the Concealed Carry Act on Deerfield’s ban of large capacity magazines. The trial court determined that, in light of these statutes, “home rule units no longer have the authority to regulate or restrict the licensing and possession of \*\*\* handgun ammunition with respect to a holder of a valid Firearm Owner’s Identification Card or a holder of a license to carry a concealed firearm.” On appeal, Deerfield maintains that large capacity magazines are commonly understood as components of assault weapons. Deerfield would have us believe that large capacity magazines are also exclusively components of assault weapons. To that end, Deerfield emphasizes that assault-weapon bans across the country traditionally have included bans of large capacity

magazines. Easterday and Guns Save Life assert that Deerfield forfeited its arguments on these points and that, forfeiture aside, Deerfield's arguments lack merit. Essentially, Easterday and Guns Save Life contend that large capacity magazines are not exclusive to assault weapons and can be used with handguns.

¶ 68 In its reply brief, Deerfield points to a four-page colloquy between its counsel and the trial court, which Deerfield maintains was sufficient to preserve this issue for appeal. During that colloquy, Deerfield's counsel mentioned some, but not all, of the points that Deerfield now raises in support of its argument on appeal. Under the circumstances, we choose to overlook any forfeiture and address the merits, as doing so is necessary to obtain a just result and to maintain a sound and uniform body of precedent. See *Jill Knowles Enterprises, Inc. v. Dunkin*, 2017 IL App (2d) 160811, ¶ 22.

¶ 69 Section 13.1(b) of the FOID Card Act unambiguously prohibits home rule units from regulating handgun ammunition in a manner that is inconsistent with the FOID Card Act:

“Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun \*\*\* are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, enacted on or before the effective date of this amendatory Act of the 98th General Assembly that purports to impose regulations or restrictions on a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act, on the effective date of this amendatory Act of the 98th General Assembly, shall be invalid in its application to a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act.” 430 ILCS 65/13.1(b) (West 2018).

Section 90 of the Concealed Carry Act similarly prohibits home rule units from regulating handgun ammunition in a manner that is inconsistent with the Concealed Carry Act:

“The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. 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.” 430 ILCS 66/90 (West 2018).

¶ 70 The question presented is whether Deerfield’s ban of large capacity magazines improperly regulates handgun ammunition. Deerfield defines “large capacity magazine” as

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

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

Deerfield Municipal Code § 15-86 (added July 1, 2013).

Guns Save Life asserts that many popular handguns that do not qualify as “assault weapons” under Deerfield’s definition of that term come standard with magazines that hold more than 10 rounds. Deerfield does not dispute that assertion. Moreover, when the trial court questioned Deerfield’s counsel about whether Deerfield’s definition of “large capacity magazine” was overbroad to the

extent that it applied to handgun ammunition, counsel acknowledged that Deerfield bans “any magazine ten rounds or more.”

¶ 71 Deerfield nevertheless insists that large capacity magazines are exclusively components of assault weapons. The plain language of Deerfield’s definition of “large capacity magazine,” however, does not exclude handgun ammunition. Deerfield also claims that its definitions of “assault weapon” and “large capacity magazine” are similar or identical to those that have been enacted across the country and which have withstood challenges on second amendment grounds. See, e.g., *Wilson v. Cook County*, 937 F.3d 1028 (7th Cir. 2019); *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015). Be that as it may, the plaintiffs here challenge Deerfield’s ban of large capacity magazines on preemption grounds, not second amendment grounds, and the Illinois legislature has indicated that home rule units may not regulate ammunition for handguns in a manner that is inconsistent with State law. It is the judiciary’s role to enforce statutes as written, not to question the wisdom of the legislature. See *Manago v. County of Cook*, 2017 IL 121078, ¶ 10 (“Whenever possible, courts must enforce clear and unambiguous statutory language as written, without reading in unstated exceptions, conditions, or limitations.”). As our supreme court explained in *Illinois Landowners Alliance, NFP v. Illinois Commerce Comm’n*, 2017 IL 121302, ¶ 50: “[T]he wisdom of this state’s regulatory system is a matter for the legislature, not our court. Of all the principles of statutory construction, few are more basic than that a court may not rewrite a statute to make it consistent with the court’s own idea of orderliness and public policy.” We thus hold that, to the extent that Deerfield’s ban of large capacity magazines regulates ammunition for handguns, it is preempted in its application to holders of valid FOID cards and concealed carry licenses by section 13.1(b) of the FOID Card Act and section 90 of the Concealed

Carry Act. Accordingly, on this limited point, we affirm the trial court's grant of summary judgment in favor of Easterday and Guns Save Life.

¶ 72 *7. Proposed Alternative Basis to Affirm*

¶ 73 Guns Save Life argues that, as an alternative basis to affirm the trial court's judgment, we should conclude that the Wildlife Code preempts Deerfield's bans of assault weapons and large capacity magazines. We lack jurisdiction to consider this issue because Guns Save Life's claims regarding the Wildlife Code remain pending in the trial court.

¶ 74 In counts II and IV of its amended complaint, Guns Save Life alleged that Deerfield's 2018 ordinances were preempted by the Wildlife Code insofar as they banned assault weapons and large capacity magazines. Guns Save Life moved for summary judgment on all of its claims. Deerfield opposed Guns Save Life's motion for summary judgment but did not file a cross-motion for summary judgment.

¶ 75 On March 22, 2019, the trial court determined that the Wildlife Code *did not* preempt Deerfield's 2018 ordinances. The effect of that ruling was to deny summary judgment with respect to counts II and IV of Guns Save Life's amended complaint. On September 6, 2019, the court made Rule 304(a) findings with respect to counts I through IV of Guns Save Life's amended complaint.

¶ 76 "The denial of a summary judgment motion is not a final order and is normally not appealable even where the court has made a finding pursuant to Illinois Supreme Court Rule 304(a)." *Fogt v. 1-800-Pack-Rat, LLC*, 2017 IL App (1st) 150383, ¶ 95. The exception to this rule is where the parties file cross-motions for summary judgment and the trial court disposes of all issues in the case by granting one motion and denying the other. *Fogt*, 2017 IL App (1st) 150383,

¶ 95. The parties here did not file cross-motions for summary judgment and the trial court did not

dispose of all issues in the case, so the exception does not apply. We lack jurisdiction to review the court's denial of summary judgment with respect to counts II and IV of Guns Save Life's amended complaint.

¶ 77

#### 8. *Summary of Holdings*

¶ 78 In summary, we hold that (1) section 13.1 of the FOID Card Act does not preempt all regulation of assault weapons by home rule units; (2) Deerfield, in its 2013 ordinance, regulated the possession and ownership of assault weapons in a manner that was inconsistent with the FOID Card Act, thus preserving its power to regulate assault weapons concurrently with the State; (3) Deerfield's 2018 ordinances were amendments to the 2013 ordinance, as allowed by section 13.1(c) of the FOID Card Act; (4) to the extent that Deerfield's ban of large capacity magazines regulates ammunition for handguns, it is preempted in its application to holders of valid FOID cards and concealed carry licenses by section 13.1(b) of the FOID Card Act and section 90 of the Concealed Carry Act; and (5) we lack jurisdiction to consider Guns Save Life's claims that Deerfield's bans of assault weapons and large capacity magazines are preempted by the Wildlife Code. Accordingly, we affirm in part and reverse in part the trial court's orders granting summary judgment in favor of Easterday and Guns Save Life. We affirm the orders granting the permanent injunctions only insofar as that, to the extent that Deerfield's ban of large capacity magazines regulates ammunition for handguns, Deerfield is prohibited from enforcing that regulation against persons who hold valid FOID cards or concealed carry licenses. In all other respects, the permanent injunctions are vacated. We remand the cause for further proceedings consistent with this opinion.

¶ 79

#### III. CONCLUSION

¶ 80 For the foregoing reasons, we affirm the judgments of the circuit court of Lake County in part and reverse the judgments in part. We vacate the permanent injunctions in part and remand the cause for further proceedings consistent with this opinion.

¶ 81 Affirmed in part and reversed in part. Permanent injunctions vacated in part. Cause remanded.

¶ 82 JUSTICE McLAREN, concurring in part and dissenting in part.

¶ 83 I dissent from the majority's conclusion that Deerfield, in its 2013 ordinance, regulated ownership of assault weapons, and that Deerfield's 2018 ordinance<sup>8</sup> prohibiting the ownership of assault weapons was an amendment allowed by the legislature.

¶ 84 In section 13.1(c) of the FOID Card Act, the legislature allowed home rule municipalities to "regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act." 430 ILCS 65/13.1(c) (West 2018). Such opportunity had to be exercised on, before, or within 10 days after the effective date of the amendatory Act. *Id.* Deerfield acted within this time frame, enacting the 2013 ordinance that provided:

"It shall be unlawful to store or keep any assault weapon in the Village unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user." Deerfield Municipal Code § 15-87(a) (added July 1, 2013).

---

<sup>8</sup> While Deerfield passed two 2018 ordinances relevant to the case, I will refer to them as a singular ordinance.

The ordinance also limited where in the Village a person could “carry or possess” an assault weapon and provided for various methods of transportation of assault weapons in otherwise-prohibited areas. See Deerfield Municipal Code § 15-88(a) (added July 1, 2013).

¶ 85 The majority makes the bald assertion that Deerfield’s 2013 ordinance “regulated the possession *and ownership* of assault weapons beyond what was required by the [FOID] Act.” (Emphasis added). *Supra* ¶ 50. “Regulate” is defined as “to govern or direct according to rule”; “to bring under the control of law or constituted authority”; “to make regulations for or concerning.” Merriam Webster Online Dictionary, <https://www.merriam-webster.com/dictionary/regulate> (last visited Nov. 4, 2020) [<https://perma.cc/KJA4-CPQC>].

¶ 86 The 2013 ordinance regulated the *possession* of assault weapons, imposing restrictions on *how* assault weapons may be stored, kept, and transported. However, that ordinance in no way regulated the *ownership* of assault weapons. The 2013 ordinance allowed one to store or keep an assault weapon in the Village so long as it was secured in such a way as to make it inoperable by anyone other than the owner or an authorized user. Further, it provided that an assault weapon “shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.” Deerfield Municipal Code, § 15-87(a) (added July 1, 2013). The ordinance also limited where in the Village assault weapons could be carried or possessed and how they could be transported, but ownership of assault weapons was never addressed, let alone “in a manner that is inconsistent with this [FOID] Act.” See 430 ILCS 65/13.1(c) (West 2018).

¶ 87 However, the majority never explains how the ordinance regulated *ownership* of assault weapons. Possession and ownership are completely distinct concepts, and we must give meaning to the legislature’s use of these concepts separately. The majority’s claim that possession and

ownership are indistinguishable (see *supra* ¶ 52) is both weak<sup>9</sup> and irrelevant. To “regulate” ownership involves limiting who may own some item, even to the point of prohibiting ownership of the item. The 2013 ordinance did not prevent anyone eligible to own an assault weapon under state law from owning one. The 2013 ordinance did not regulate ownership; it *assumed* ownership of such weapons within the village. It specifically contemplated the carrying, control, and operation of assault weapons by owners and other authorized users. None of the requirements regarding securing an assault weapon or using a lock or other security device apply when the owner or any other authorized user is carrying or controlling the weapon. The ordinance did not impose any greater restrictions on *ownership* of assault weapons than the FOID Act imposed. It merely regulated where a person could carry or possess assault weapons, how the owner must store such weapons when they are not being carried, and how they may be transported.

¶ 88 The FOID Act allowed home-rule municipalities to “regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act.” 430 ILCS 65/13.1(c) (West 2018). It also allowed for the future amendment of an ordinance enacted on, before, or within 10 days after the effective date of the Act. Because Deerfield did not act to regulate ownership of assault weapons within the allotted 10-day window with its 2013 ordinance, the majority’s conclusion that the 2018 ordinance prohibiting ownership is an amendment allowed under the FOID Act is an enthymeme. A legislative enactment that explicitly recognizes the right to own an assault weapon is not “amended” by a later enactment that prohibits such ownership; it is superseded by it. The Law Dictionary (featuring Black’s Law Dictionary Free Online Legal Dictionary (2d Ed.)) defines “amend” as “To improve; to make better by change or modification.” The Law Dictionary, <https://thelawdictionary.org/amend/> (last visited Nov. 4, 2020) <https://perma>.

---

<sup>9</sup> For example, you cannot legally sell your friend’s car when he merely loans it to you.

cc/QT9T-AXMC. It defines “supersede” as “To annul; to stay; to suspend.” The Law Dictionary, <https://thelawdictionary.org/supersede/> (last visited Nov. 4, 2020)[<https://perma.cc/4M4T-L879>]. Having regulated the storage and transportation of assault weapons in 2013, Deerfield could have changed or modified those restrictions, either increasing or decreasing the severity of the restrictions in the 2018 ordinance. However, Deerfield did not regulate ownership, and one cannot amend a regulation that does not exist. Deerfield’s 2018 ordinance did not merely “improve” or “make better” the 2013 ordinance; it annulled the 2013 ordinance, wiping out the right to ownership of assault weapons that Deerfield had explicitly recognized in 2013. It was a complete reversal of its 2013 ordinance, now prohibiting that which had previously clearly been allowed.

¶ 89 Looking to the titles and introductory paragraphs of the 2018 ordinances, the majority posits that the 2018 ordinance was an amendment of the 2013 ordinance because:

“Deerfield indicated that it intended for the 2018 ordinances to serve as amendments to the 2013 ordinance. For example, the titles of the 2018 ordinances reflected that intent, as did the ordinances’ introductory paragraphs. All changes were reflected by striking through language that was to be removed from the municipal code and underlining language to be added. There was no ambiguity as to Deerfield’s intent, so we need not resort to additional canons of interpretation to ascertain that intent.” *Supra* ¶ 59.

There is a riddle attributed to Abraham Lincoln: how many legs does a dog have if you call his tail a leg? The answer, of course, is four; calling a tail a leg does not make it a leg. See BrainyQuote, [https://www.brainyquote.com/quotes/abraham\\_lincoln\\_107482](https://www.brainyquote.com/quotes/abraham_lincoln_107482) (last visited Nov. 4, 2020) [<https://perma.cc/6DYW-XXKF>]. Similarly, here, the simple act of calling the 2018 ordinance an amendment of the 2013 ordinance does not make it one. “We view the statute as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation.”

*People v. Gutman*, 2011 IL 110338, ¶ 12. Further, we assume that, whenever a legislative body enacts a provision, it has in mind previous statutes relating to the same subject matter such that they should all be construed together. See *People v. Davis*, 199 Ill. 2d 130, 137 (2002). The majority states that it believes that Deerfield “indicated” what it “intended” to do with the 2018 ordinance (*supra* ¶ 59); however, viewing the 2018 ordinance in the context of the 2013 ordinance, what Deerfield *did* in 2018 was to regulate the ownership of assault weapons, an issue that it did not regulate when it had the opportunity to do so in 2013.

¶ 90 I also find unpersuasive the majority’s assertion that the 2018 ordinance was an amendment because “changes were reflected by striking through language that was to be removed from the municipal code and underlining language to be added.” *Supra* ¶ 59. Had Deerfield struck any references to assault rifles and added underlined references to dogs, would that be an indication that the new ordinance was an amendment of Deerfield’s animal control ordinance? Again, Deerfield did not regulate ownership in 2013; its addition of ownership in the 2018 ordinance indicates an attempt to write new legislation, not to amend an ordinance that did not regulate ownership.

¶ 91 The majority’s use of the legislative history for support (*supra* ¶¶ 64-65) is puzzling. First, we already knew that amendments of ordinances passed within the 10-day window were allowed. See 430 ILCS 65/13.1 (West 2018). Second, the argument based on the quoted passage is a textbook exercise in tautology. In essence, the majority says, “Because Senator Forby said that municipalities can amend, this is an amendment.” I have argued that the 2018 ordinance was not an amendment of the 2013 ordinance but a supersedure of that ordinance. Nothing in the cited

legislative debate addresses, let alone refutes, my argument or can be used to support a claim that a municipality can use a new ordinance to nullify or supersede a previous ordinance.<sup>10</sup>

¶ 92 Perhaps an analogy to a more mundane issue of governance will more clearly demonstrate the majority’s analysis is faulty. Assume that, in 2013, Deerfield passed an ordinance requiring that the owners of pickup trucks park their trucks in a driveway or garage when they are not using the trucks. Then, in 2018, Deerfield passed a new ordinance prohibiting the ownership of pickup trucks in the Village. Would the majority consider the parking restrictions on pickup trucks to be a regulation of ownership? Would it consider the 2018 prohibition of ownership a mere “amendment” of the 2013 parking ordinance? Both the actual and the fictional 2013 ordinances assumed ownership of the items at issue and merely regulated how they must be stored and secured. The 2018 ordinances outlawed their possession. Would the majority really consider the outlawing of pickup trucks to be an amendment of parking regulations?

¶ 93 “[T]he Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home.” *McDonald v. City of Chicago, Illinois*, 561 U.S. 742, 780 (2010). This right also extends to self-defense outside the home. See *People v. Aguilar*, 2013 IL 112116, ¶ 21. Deerfield’s 2013 ordinance appears to have paid heed to this. It did not affect the right to own assault weapons; it merely addressed how such weapons had to be stored in the home when they were not being carried or under the control of the owner or another authorized user. However, the 2018 ordinance strikes at the very heart of the right to bear arms for self-defense. Where a government’s actions restrict or regulate the exercise of second amendment

---

<sup>10</sup> The majority’s whimsical exploration of the “lengthy floor debates” (*supra* ¶ 64) produces a single exchange—one question with a monosyllabic answer—that Baron von Munchausen could employ for support.

rights, Illinois courts apply heightened means-ends scrutiny to the government's justification for its regulations. See *People v. Chairez*, 2018 IL 121417, ¶ 21. While these cases were not brought on constitutional grounds, they do involve restrictions that affect second amendment rights. The flaccid foundation for the majority's conclusion ("Well, that is what the Village said that it wanted to do.") certainly falls well short of the scrutiny that should be applied in this case.

¶ 94 Ultimately, the legislature gave home-rule municipalities the opportunity to regulate ownership of assault weapons, possession of assault weapons, or both. Such regulation had to occur within a specific 10-day period. Deerfield regulated possession *only* of assault weapons within that period. It did not restrict, let alone prohibit, ownership of assault weapons in Deerfield. The majority's conclusion that "it was Deerfield's prerogative to ban such weapons, and there were no time limitations for doing so" (*supra* ¶ 56) is factually and legally wrong. Deerfield's attempt to ban ownership of assault weapons in 2018 was late and outside the intent of the legislature. The trial court should be affirmed.

---

**No. 2-19-0879**

---

**Cite as:** *Easterday v. Village of Deerfield*, 2020 IL App (2d) 190879

---

**Decision Under Review:** Appeal from the Circuit Court of Lake County, Nos. 18-CH-427, 18-CH-498; the Hon. Luis A. Berrones, Judge, presiding.

---

**Attorneys  
for  
Appellant:** Christopher B. Wilson, John B. Sample, and Christopher P. Eby, of Perkins Coie LLP, and Steven M. Elrod and Hart M. Passman, of Elrod Friedman LLP, both of Chicago, and Jonathan E. Lowy, of Washington, D.C., for appellants.

---

**Attorneys  
for  
Appellee:** David G. Sigale, of Law Firm of David G. Sigale, P.C., of Wheaton, for appellees Daniel D. Easterday, Illinois State Rifle Ass’n, and Second Amendment Foundation, Inc.

Christian D. Ambler, of Stone & Johnson, Chtrd., of Chicago, and Brian W. Barnes, of Cooper & Kirk, PLLC, of Washington, D.C., for other appellees.

---

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
LAKE COUNTY, ILLINOIS  
CHANCERY DIVISION

GUNS SAVE LIFE, INC. and JOHN  
WILLIAM WOMBACHER III,

Plaintiffs,

v.

Case No. 18CH498

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

Defendants.

**FIRST AMENDED COMPLAINT**

1. Plaintiffs are a law-abiding resident of the Village of Deerfield and Guns Save Life, Inc., an organization dedicated to defending the right to self-defense, and they bring this action to challenge Deerfield ordinances that purport to ban the possession of popular firearms and ammunition magazines that Deerfield inaccurately labels "assault weapons" and "large capacity" magazines. Despite these misleading labels, the items banned by Deerfield's ordinances are entirely permissible under Illinois law. Plaintiffs file this suit seeking a declaratory judgment and permanent injunction against enforcement of the ordinances on the grounds that they are preempted by Illinois law and violate the Illinois Constitution's guarantee that private property shall not be taken or damaged for public use without just compensation.

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction under ILL. CONST. art. 6, § 9.

3. Venue is proper in Lake County under 735 ILL. COMP. STAT. 5/2-101 and 5/2-103 because it is the county where the Village of Deerfield's principal office is located, and the transactions out of which this action arise occurred in Lake County.

#### **PARTIES**

4. Plaintiff Guns Save Life, Inc. is an independent not-for-profit organization that is dedicated to protecting the gun rights of law-abiding Illinois citizens. Guns Save Life has one or more members who reside in the Village of Deerfield and who: (a) own firearms defined by Deerfield Ordinance O-18-06 as "assault weapons"; (b) own magazines defined by Deerfield Ordinance O-18-06 as "large capacity magazines"; and (c) hold valid Illinois hunting licenses. Some Guns Save Life members are Deerfield residents who would continue to possess assault weapons and large capacity magazines within Deerfield if permitted to do so by Deerfield law.

5. Plaintiff John "Jack" William Wombacher III is a law-abiding United States citizen who resides in the Village of Deerfield in Lake County. He is a member of Guns Save Life.

6. Defendant Village of Deerfield is a home rule municipality in the State of Illinois, with its principal office in Lake County.

7. Defendant Harriet Rosenthal is the mayor of Deerfield. She is the chief executive officer of Deerfield, the President of the Deerfield Board of Trustees, and has supervisory authority over all employees of Deerfield. Ms. Rosenthal is named solely in her official capacity.

#### **FACTUAL ALLEGATIONS**

##### **"Assault Weapons" and "Large Capacity" Magazines Are Ubiquitous and Overwhelmingly Used for Self-Defense and Other Lawful Purposes**

8. This case is a challenge under Illinois law to Deerfield's efforts to regulate firearms it deems "assault weapons" and magazines it deems "large capacity." Deerfield

Ordinance O-18-06, § 15-86 (Exhibit A); Deerfield Ordinance O-18-19 (Exhibit B). These terms are misnomers. There is no class of firearms known as "semiautomatic assault weapons." "Prior to 1989, the term 'assault weapon' did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists." *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting). Anti-gun publicists promoting "assault weapons" bans have sought to exploit the public's confusion over fully automatic machine guns versus semiautomatic "assault weapons" to increase the chance of public support for restrictions on these firearms.

9. While "semiautomatic assault weapons" is not a recognized category of firearms, "semiautomatic" is. The "automatic" part of "semiautomatic" refers to the fact that the user need not manipulate the firearm to place another round in the chamber after each round is fired. But unlike an automatic firearm, a semiautomatic firearm will *not* fire continuously on one pull of the trigger; rather, a semiautomatic firearm requires the user to pull the trigger each time he or she wants to discharge a round. Ownership of semiautomatic firearms is exceedingly common among law-abiding citizens.

10. Deerfield does not ban all semiautomatic firearms but only a subset of such firearms of specified models or with specified features. Deerfield Ordinance O-18-06, § 15-86. But to the extent the features that make a firearm an "assault weapon" under Deerfield's ordinance have any functional significance, they promote accuracy and hence make firearms safer and more effective to use. For example:

- a. A pistol grip makes it easier to hold and stabilize a rifle when fired from the shoulder and therefore promotes accuracy. A pistol grip can also assist with retention, making it more difficult for an assailant to wrest a firearm away from a

law-abiding citizen. It does not promote firing from the hip; indeed, a rifle with a straight grip and no pistol grip would be more conducive to firing from the hip.

- b. A thumbhole stock is a hole carved into the stock of a firearm through which a user inserts his or her thumb. It promotes accuracy by improving comfort and stability in handling a firearm.
- c. A telescoping stock promotes accuracy by allowing the stock to be adjusted to fit the individual user's physique, thickness of clothing, and shooting position.
- d. A muzzle compensator reduces the recoil and muzzle movement that result from the discharge of each shot. Making the muzzle and the shooter less likely to move out of position results in a firearm that is both more accurate and more comfortable to shoot.

11. Deerfield's "assault weapons" ban also specifically prohibits the AR-15. The AR-15 is America's most popular semiautomatic rifle, and in recent years it has been the best-selling rifle type in the United States. By a conservative estimate, nearly four million were manufactured in the United States for the commercial market from 1986 through 2013. The top reasons for owning an AR-15 include self-defense, hunting, and recreational and competitive target shooting—lawful purposes all. Indeed, AR-15s are likely the most ergonomic, safe, and effective firearm for civilian self-defense.

12. With limited exceptions, Deerfield also defines magazines capable of holding more than ten rounds of ammunition as "large capacity." Deerfield Ordinance O-18-06, § 15-86. But calling these devices "large capacity" is an utter misnomer; they are a standard feature on many of the nation's most popular firearms. For example, in the 2018 edition of Gun Digest, a standard reference work that includes specifications of currently available firearms, they come

standard on many of the nation's most popular firearms. GUN DIGEST 2018 109, 372–416, 441–49, 481 (Jerry Lee ed., 72d ed. 2018). This is consistent with the fact that the AR-15, one of this nation's most popular rifles, typically comes with a 20- or 30-round magazine.

13. Magazines capable of holding more than ten rounds are also standard on many of this nation's most popular handgun models. For example, annual ATF manufacturing and export statistics indicate that in 2011 about 61.5% of the 2.6 million semiautomatic handguns made in the United States were in calibers typically using magazines that hold over ten rounds. The total number of magazines capable of holding more than ten rounds in this country is at least in the tens of millions.

14. There are many reasons why a law-abiding citizen would not want to be limited to substandard capacity ammunition magazines. The most obvious is to decrease the risk of running out of ammunition before being able to repel a criminal attack. Police department practices make clear that standard capacity magazines holding more than ten rounds have defensive benefits. Police departments typically issue handguns with magazines that hold more than ten rounds. See MASSAD AYOOB, THE COMPLETE BOOK OF HANDGUNS 50, 87–90 (2013). And they do so for good reason. For example, in 2011 New York City police officers fired more than ten rounds in 29% of incidents in which they fired their weapons to defend themselves and others.

15. Furthermore, the most obvious alternatives to standard capacity magazines—carrying multiple firearms or multiple magazines—are poor substitutes for equipping a firearm with a standard capacity magazine. Criminals, not their targets, choose when and where to attempt a crime. While criminals can ensure that they are equipped with whatever weapons they deem necessary, it is unreasonable to expect citizens to have multiple firearms available at all times in the event they are attacked. And while carrying multiple magazines may be less

burdensome than carrying multiple firearms, the need to replace an empty magazine—particularly when under the stress of a criminal attack—can significantly impair a person's capacity for self-defense. Replacing a spent magazine while under the stress of a criminal attack is even more unrealistic for individuals with disabilities or other physical limitations that prevent them from changing magazines quickly.

#### **Illinois Law Restricts Local Authority to Regulate Firearms and Ammunition**

16. Because firearms and ammunition are readily transported across the unmarked boundaries that separate Illinois municipalities, local regulation of firearms and ammunition does little to protect the public from armed criminals. Such regulations do, however, impose substantial burdens on lawful firearm ownership by restricting the types of firearms and ammunition that law-abiding local residents may possess. In recognition of these realities and to prevent the development of a confusing patchwork of potentially conflicting local laws, the Illinois General Assembly has enacted several statutes that preempt the authority of home rule municipalities to regulate firearms and ammunition.

17. Among the most significant provisions of Illinois law that preempt local regulation of firearms and ammunition is 430 ILL. COMP. STAT. 65/13.1, which became law in its current form on July 9, 2013 as part of Public Act 98-63. That provision says that “the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's Identification Card . . . are exclusive powers and functions of this State.” 430 ILL. COMP. STAT. 65/13.1(b). Likewise, “the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State.” *Id.* at 65/13.1(c).

18. To eliminate any possible uncertainty as to whether the State's authority to regulate with respect to the topics listed in Sections 13.1(b) and (c) was meant to be exclusive, the provision further states that "[t]his 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." *Id.* at 65/13.1(e). By invoking Article VII, § 6(h) of the Illinois Constitution—and not Article VII, § 6(i)—the General Assembly made state regulation in this area is exclusive, and home rule units therefore may not exercise concurrent regulatory authority on these topics.

19. 430 ILL. COMP. STAT. 65/13.1(c) further provides that "[a]ny ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act." Accordingly, even if the General Assembly had not otherwise made state regulation of so-called "assault weapons" exclusive, local ordinances enacted after July 19, 2013 that regulate these firearms would still be preempted. Although the statute says that local ordinances concerning assault weapons adopted on or before July 19, 2013 "may be amended," *id.*, this provision does not permit a municipality to adopt an entirely new ordinance under the guise of "amending" its prior ordinance.

20. In addition to 430 ILL. COMP. STAT. 65/13.1(b), which states that "the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police . . . are exclusive powers and functions of this State," Illinois law separately provides that "[t]he regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by

[concealed carry] licensees are exclusive powers and functions of the State,” 430 ILL. COMP. STAT. 66/90. Illinois law thus preempts all local regulation of handguns, ammunition for handguns, and transportation of firearms and ammunition by holders of valid Firearm Owner’s Identification Cards and Concealed Carry Licenses.

21. The Illinois Wildlife Code places further restrictions on the authority of home rule municipalities to regulate firearms and ammunition. Under 520 ILL. COMP. STAT. 5/2.1, “[t]he regulation and licensing of the taking of wildlife in Illinois are exclusive powers and functions of the State.” While the types of firearms and ammunition that are lawful for use in hunting in Illinois vary by species and season, it is lawful to hunt coyotes on private property using “any type of legal rifle including large capacity semi-automatic rifles.” Illinois Dep’t of Nat. Res., ILLINOIS DIGEST OF HUNTING AND TRAPPING REGULATIONS 2017–2018, at 28. In addition, it is lawful in Illinois to use any type of long rifle with a caliber of no more than .22 to remove a beaver, river otter, weasel, mink, muskrat, raccoon, opossum, striped skunk, red fox, gray fox, coyote, badger, bobcat, or woodchuck from a trap, 520 ILL. COMP. STAT. 5/2.30; 17 ILL. ADMIN. CODE 650.10, 660.10, 680.10, and it is generally lawful during Conservation Order Light Goose Season to hunt goose using a semiautomatic shotgun that holds more than five shells. It is also lawful to hunt waterfowl at a game breeding and hunting preserve area using a semi-automatic shotgun that holds more than five shells. 520 ILL. COMP. STAT. 5/2.33(m).

22. In sum, Illinois law leaves little room for local regulation of firearms and ammunition, and the preemptive effect of Illinois law is especially broad with respect to ordinances adopted after July 19, 2013 that purport to regulate so-called “assault weapons.”

**The Village of Deerfield Adopts Ordinances that are Preempted by Illinois Law**

23. Anticipating that passage of Public Act 98-63 would restrict its ability to regulate the possession and ownership of firearms in the future, the Village of Deerfield adopted Ordinance O-13-24 on July 1, 2013. (Exhibit C.) This ordinance did not ban possession of so-called “assault weapons.” Instead, Deerfield’s 2013 ordinance only required that such firearms be kept “in a locked container or equipped with a tamper-resistant mechanical lock or other safety device” when not being carried by or otherwise in the control of the owner or other lawfully authorized user. Deerfield Ordinance O-13-24, § 15-87. The ordinance’s storage requirement included an exception for use of one of the regulated firearms “in a lawful act of self-defense or in defense of another.” *Id.* § 15-87(b). With limited exceptions, the ordinance also required that assault weapons transported in Deerfield be “broken down in a non-functioning state; or . . . not immediately accessible; or . . . unloaded and enclosed in a case, firearm carrying box, shipping box, or other container.” *Id.* § 15-88.

24. On April 2, 2018—almost five years after the statutory deadline for enacting such an ordinance—Deerfield adopted Ordinance O-18-06, which makes it “unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon in the Village.” Deerfield Ordinance O-18-06, § 15-87. The new ordinance includes no self-defense exception, and, like the 2013 ordinance, defines “assault weapon” to include not only popular semiautomatic rifles but also some handguns as well as semiautomatic shotguns capable of holding more than five shells. The 2018 ordinance also purports to further restrict transportation of these firearms in Deerfield by requiring that they *both* be broken down in a non-functioning state *and* not be immediately accessible unless they are unloaded and enclosed in a case or other container. *Id.* § 15-88.

25. Ordinance O-18-06 also includes provisions under which the Deerfield Chief of Police is instructed to confiscate and destroy assault weapons and “large capacity magazines”—a term that includes most magazines capable of holding more than ten rounds, which are utterly ubiquitous and come standard with many popular firearms. Deerfield Ordinance O-18-06, §§ 15-90, 15-91, 15-86. Yet despite referring in Section 15-90 to “Large Capacity Magazine[s] prohibited by this Article,” Ordinance O-18-06 nowhere states that the possession of large capacity magazines is unlawful.

26. Notwithstanding the fact that the text of Ordinance O-18-06 failed to prohibit the possession of so-called large capacity magazines, Deerfield issued a press release on April 3, 2018 stating that the Village Board “unanimously approved an ordinance that bans the possession, sale and manufacture of . . . large capacity magazines in the Village.” Press Release, Village of Deerfield, Village Approves Ban Of Assault Weapons And Large Capacity Magazines (Apr. 3, 2018).

27. On June 18, 2018—in the wake of a ruling by this Court that Ordinance O-18-06 does not ban possession of magazines capable of holding more than ten rounds—Deerfield adopted Ordinance O-18-19. That ordinance states explicitly that “[i]t shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any . . . large capacity magazine in the village.” Deerfield’s Board of Trustees summarily adopted this ordinance following a closed session. The public was not afforded an opportunity to comment on the decision to ban large capacity magazines before this ordinance was approved.

28. Ordinances O-18-06 and O-18-19 require Deerfield residents to remove banned assault weapons and large capacity magazines from the Village, modify them to make them permanently inoperable or no longer assault weapons or large capacity magazines as defined by

the ordinances, or surrender their assault weapons and large capacity magazines to the Chief of Police or his or her designee. Deerfield Ordinance O-18-06, § 15-90. But neither Ordinance O-18-06 nor Ordinance O-18-19 makes provision for the payment of just compensation for this deprivation of private property. Thus, absent intervention by the courts, Deerfield residents will be required to give up firearms and magazines that are entirely lawful under Illinois law without any just compensation.

29. Wombacher and other members of Guns Save Life own and keep in Deerfield firearms that qualify as "assault weapons" under Deerfield Ordinance O-18-06, § 15-86, including semiautomatic rifles that are "assault weapons" under Section 15-86. Wombacher would also purchase one or more additional firearms that qualify as "assault weapons" under Deerfield Ordinance O-18-06, § 15-86 and keep them in Deerfield if lawfully permitted to do so. Wombacher and other members of Guns Save Life also own and keep in Deerfield magazines that qualify as "large capacity magazines" under Deerfield Ordinance O-18-06, § 15-86. One or more members of Guns Save Life own handguns that accept these large capacity magazines. Wombacher would purchase one or more additional large capacity magazines and keep them in Deerfield if lawfully permitted to do so. Wombacher also possesses a hunting license, and if permitted to do so would maintain an assault weapon and large capacity magazines in Deerfield for use in hunting. Wombacher is not a law enforcement officer or agent or employee of any government, a member of the military, or a retired law enforcement officer. Wombacher and other members of Guns Save Life who reside in Deerfield and own firearms hold valid Firearm Owner's Identification Cards issued by the Department of State Police. Members of Guns Save Life, including members in Deerfield who own large capacity magazines for their handguns, hold valid Illinois Concealed Carry Licenses.

## CLAIMS FOR RELIEF

### **COUNT I**

#### **Preemption of Ban on Popular Firearms Under 430 ILL. COMP. STAT. 65/13.1(c).**

30. Plaintiffs incorporate the preceding paragraphs by reference.
31. Ordinance O-18-06 purports to regulate the possession and ownership of assault weapons even though such local regulations are preempted under 430 ILL. COMP. STAT. 65/13.1(c). Accordingly, Ordinances O-18-06 and O-18-19 are preempted.
32. By exercising its power under Article VII, § 6(h) of the Illinois Constitution, the General Assembly made regulation of so-called "assault weapons" the exclusive domain of the state. All local regulation of such firearms is therefore preempted.
33. To the extent that 430 ILL. COMP. STAT. 65/13.1(c) permits a home rule municipality to amend an ordinance enacted on or before July 19, 2013 that regulates the possession and ownership of assault weapons, Ordinance O-18-06 is nevertheless preempted because it is in substance an entirely new ordinance that bears no resemblance to Deerfield's prior regulation of storage of assault weapons under Ordinance O-13-24. Unlike Deerfield's prior assault weapons ordinance, Ordinance O-18-06 entirely bans the possession and sale of assault weapons and includes no exception for self-defense.
34. Plaintiff Wombacher and other members of Plaintiff Guns Save Life own firearms that are banned by Ordinance O-18-06 and would continue to keep such firearms in Deerfield if not for Ordinance O-18-06.
35. Wherefore, Plaintiffs pray that the Court:
  - a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that Ordinances O-18-06 and O-18-19 are preempted under 430 ILL. COMP. STAT. 65/13.1(c), and enjoin enforcement of Ordinances O-18-06 and O-18-19;

- b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

## COUNT II

### Preemption of Ban on Popular Firearms Under the Illinois Wildlife Code

- 36. Plaintiffs incorporate the preceding paragraphs by reference.
- 37. Ordinance O-18-06 prohibits possession of firearms that, under some circumstances, may be lawfully used to take wildlife under the Illinois Wildlife Code. Yet under the Illinois Wildlife Code, "[t]he regulation and licensing of the taking of wildlife in Illinois are exclusive powers and functions of the State." 520 ILL. COMP. STAT. 5/2.1. Accordingly, Ordinances O-18-06 and O-18-19 are preempted.
- 38. Plaintiff Wombacher is a member of Plaintiff Guns Save Life and holds a hunting license and owns firearms that are banned by Ordinance O-18-06 but that may be lawfully used to take wildlife under the Illinois Wildlife Code.
- 39. Wherefore, Plaintiffs pray that the Court:
  - a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that Ordinances O-18-06 and O-18-19 are preempted under 520 ILL. COMP. STAT. 5/2.1 of the Illinois Wildlife Code and enjoin enforcement of Ordinances O-18-06 and O-18-19;
  - b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and

- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

### COUNT III

#### Preemption of Ban on Popular Magazines Under 430 ILL. COMP. STAT. 65/13.1(b) and 430 ILL. COMP. STAT. 66/90

40. Plaintiffs incorporate the preceding paragraphs by reference.

41. Because Ordinances O-18-06 and O-18-19 ban possession and sale of magazines capable of holding more than ten rounds that can be used in a handgun, they are preempted by 430 ILL. COMP. STAT. 65/13.1(b). That provision states that "the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, . . . by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police . . . are exclusive powers and functions of this State."

42. Because Ordinances O-18-06 and O-18-19 ban possession and sale of magazines capable of holding more than ten rounds that can be used in a handgun, they are also preempted by 430 ILL. COMP. STAT. 66/90. That provision preempts any local regulation or ordinance "that purports to impose regulations or restrictions on [a person issued a license to carry a concealed handgun] or handguns and ammunition for handguns in a manner inconsistent with this Act." See *id.* 66/5.

43. One or more members of Plaintiff Guns Save Life are holders of valid Firearm Owner's Identification Cards and licenses to carry concealed handguns who possess magazines capable of holding more than ten rounds as well as handguns that accept these magazines in Deerfield. One or more of these Guns Save Life members would continue to possess these magazines in Deerfield if legally permitted to do so.

44. Wherefore, Plaintiffs pray that the Court:

- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that provisions of Ordinances O-18-06 and O-18-19 that purport to regulate magazines capable of holding more than 10 rounds of ammunition are preempted under 430 ILL. COMP. STAT. 65/13.1(b) and 430 ILL. COMP. STAT. 66/90, and enjoin enforcement of these aspects of Ordinances O-18-06 and O-18-19;
- b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

#### COUNT IV

##### **Preemption of Ban on Popular Magazines Under the Illinois Wildlife Code**

45. Plaintiffs incorporate the preceding paragraphs by reference.

46. Ordinances O-18-06 and O-18-19 ban possession or sale of magazines capable of holding more than 10 rounds of ammunition that, under some circumstances, may be lawfully used to take wildlife under the Illinois Wildlife Code. These ordinances are therefore preempted by 520 ILL. COMP. STAT. 5/2.1, which states that "[t]he regulation and licensing of the taking of wildlife in Illinois are exclusive powers and functions of the State." *Id.*

47. Plaintiff Wombacher is a member of Plaintiff Guns Save Life and holds a valid Firearm Owner's Identification Card and a valid hunting license. Wombacher possesses magazines capable of holding more than 10 rounds of ammunition that may be lawfully used to take wildlife under the Illinois Wildlife Code. Wombacher would continue to possess these magazines in Deerfield if legally permitted to do so.

48. Wherefore, Plaintiffs pray that the Court:

- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that provisions of Ordinances O-18-06 and O-18-19 that purport to regulate magazines capable of holding more than 10 rounds of ammunition are preempted under 520 ILL. COMP. STAT. 5/2.1 of the Illinois Wildlife Code, and enjoin enforcement of these aspects of Ordinances O-18-06 and O-18-19;
- b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

#### **COUNT V**

##### **Bans on Popular Firearms and Magazines Without Just Compensation Violate the Takings Clause of the Illinois Constitution**

49. Plaintiffs incorporate the preceding paragraphs by reference.
50. The Illinois Constitution provides that "[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law." ILL. CONST. art. 1, § 15.
51. Ordinances O-18-06 and O-18-19 take property by requiring the owners of specified firearms and magazines to turn their property over to Deerfield officials for destruction, to permanently alter their property so that it no longer qualifies under Deerfield's definitions of "assault weapons" and "large capacity" magazines, or remove these articles from Deerfield.
52. In the alternative, Ordinances O-18-06 and O-18-19 damage banned firearms and magazines by preventing owners from accessing their property within Deerfield's boundaries.
53. Ordinances O-18-06 and O-18-19 do not provide just compensation for the surrender, destruction, or removal of banned firearms and magazines.

54. Under the Illinois Constitution, Deerfield may only exercise the power of eminent domain "for public use." Ordinances O-18-06 and O-18-19 do not take and damage property for public use within the meaning of the Illinois Constitution because the ordinances provide for the destruction of firearms and magazines rather than their use.

55. Plaintiff Wombacher and other members of Plaintiff Guns Safe Life own firearms included within Deerfield's definitions of banned "assault weapons" and "large capacity" magazines. Accordingly, Ordinances O-18-06 and O-18-19 violate the rights of Wombacher and other Guns Safe Life members under the Illinois Constitution's Takings Clause.

56. Wherefore, Plaintiffs pray that the Court:

- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that provisions of Ordinances O-18-06 and O-18-19 that purport to ban specified firearms and magazines violate the Illinois Constitution's Takings Clause and enjoin enforcement of Ordinances O-18-06 and O-18-19;
- b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

#### **COUNT VI**

##### **Deerfield Firearms and Magazine Bans Violate the Eminent Domain Act**

57. Plaintiffs incorporate the preceding paragraphs by reference.

58. The Illinois Constitution provides that "[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law." ILL. CONST. art. 1, § 15.

59. The Eminent Domain Act provides that "the use of eminent domain proceedings to take or damage property is an exclusive power and function of the State." 735 ILL. COMP. STAT. 30/90-5-20. It prohibits home rule units from exercising the power of eminent domain "otherwise than as provided in this Act." *Id.*

60. Ordinances O-18-06 and O-18-19 exercise the eminent domain power because they take property by requiring the owners of specified firearms and magazines to turn these firearms and magazines over to Deerfield officials for destruction, permanently alter these firearms and magazines so that they no longer qualify under the ordinance's definitions of "assault weapons" and "large capacity" magazines, or remove these articles from Deerfield.

61. In the alternative, Ordinances O-18-06 and O-18-19 damage banned firearms and magazines by preventing owners from accessing their property within Deerfield's boundaries.

62. Ordinances O-18-06 and O-18-19 do not lawfully exercise the power of eminent domain under the Eminent Domain Act because they do not fall within the scope of any authorization for home rule units to exercise the eminent domain power.

63. Although home rule municipalities may exercise the right of eminent domain "for the acquirement of property useful, advantageous or desirable for municipal purposes or public welfare," 65 ILL. COMP. STAT. 5/11-61-1, this power does not permit the exercise of the eminent domain power to acquire personal property such as firearms and magazines. Furthermore, the ordinances do not treat banned firearms and magazines as "useful, advantageous or desirable for municipal purposes or public welfare" but instead provides that the confiscated property will be destroyed.

64. Plaintiff Wombacher and other members of Plaintiff Guns Save Life own firearms and magazines included within Deerfield's definitions of "assault weapons" and "large capacity"

magazines. Accordingly, Ordinances O-18-06 and O-18-19 violate the rights of Wombacher and other Guns Save Life members under the Eminent Domain Act.

65. Wherefore, Plaintiffs pray that the Court:

- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that provisions of Ordinances O-18-06 and O-18-19 that purport to ban specified firearms and magazines violate the Eminent Domain Act and enjoin enforcement of Ordinances O-18-06 and O-18-19;
- b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

Respectfully submitted,

By: 

Christian D. Ambler  
One of the Plaintiffs' Attorneys

Christian D. Ambler (ARDC No. 6228749)  
Stone & Johnson, Chtd.  
111 West Washington Street  
Suite 1800  
Chicago, Illinois 60602  
(312) 332-5656  
cambler@stonejohnsonlaw.com

David H. Thompson (ARDC No. 6316017)\*  
Peter A. Patterson (ARDC No. 6316019)\*  
Brian W. Barnes (ARDC No. 6328826)\*  
Cooper & Kirk, PLLC

1523 New Hampshire Ave., N.W.  
Washington, D.C. 20036  
(202) 220-9600  
dthompson@cooperkirk.com  
ppatterson@cooperkirk.com  
bbarnes@cooperkirk.com

\*Appearance entered pursuant to Ill. S. Ct. Rule 707.

**VILLAGE OF DEERFIELD  
LAKE AND COOK COUNTIES, ILLINOIS**

---

**ORDINANCE NO. O-18-06**

**AN ORDINANCE AMENDING CHAPTER 15 (MORALS AND CONDUCT),  
ARTICLE 11 (ASSAULT WEAPONS), SECTION 15-87 (SAFE STORAGE OF  
ASSAULT WEAPONS) AND SECTION 15-88 (TRANSPORTATION OF ASSAULT  
WEAPONS) OF THE MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD  
TO REGULATE THE POSSESSION, MANUFACTURE AND SALE OF ASSAULT  
WEAPONS IN THE VILLAGE OF DEERFIELD**

---

**PASSED AND APPROVED BY THE  
PRESIDENT AND BOARD OF TRUSTEES  
OF THE VILLAGE OF DEERFIELD, LAKE  
AND COOK COUNTIES, ILLINOIS, this**

**2nd day of April, 2018.**

**Published in pamphlet form  
by authority of the President  
and Board of Trustees of the  
Village of Deerfield, Lake and  
Cook Counties, Illinois, this  
2nd day of April, 2018.**



**VILLAGE OF DEERFIELD  
LAKE AND COOK COUNTIES, ILLINOIS**

---

**ORDINANCE NO. O-18-06**

**AN ORDINANCE AMENDING CHAPTER 15 (MORALS AND CONDUCT),  
ARTICLE 11 (ASSAULT WEAPONS), SECTION 15-87 (SAFE STORAGE OF  
ASSAULT WEAPONS) AND SECTION 15-88 (TRANSPORTATION OF ASSAULT  
WEAPONS) OF THE MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD  
TO REGULATE THE POSSESSION, MANUFACTURE AND SALE OF ASSAULT  
WEAPONS IN THE VILLAGE OF DEERFIELD**

---

WHEREAS, Chapter 15 (Morals and Conduct), Article 11 (Assault Weapons), Section 15-87 (Safe Storage of Assault Weapons; Exceptions) and Section 15-88 (Transportation of Assault Weapons; Exceptions) of the Municipal Code of the Village of Deerfield, as enacted by Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), regulate the possession, storage and transportation of assault weapons in the Village of Deerfield; and

WHEREAS, the Firearm Concealed Carry Act, 430 ILCS 65/13.1(c), as amended by Public Act 98-63, § 150 (eff. July 9, 2013), provides that the Village of Deerfield, as a home rule unit of local government under the provisions of Article VII, Section 6 of the Illinois Constitution of 1970, may amend Village of Deerfield Ordinance No. 0-13-24, which was enacted on, before or within ten (10) days after the effective date of Public Act 98-63, § 150, pursuant to the Village's home rule exercise of any power and performance of any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; and

WHEREAS, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), assault weapons have been increasingly used in an alarming number of notorious mass shooting incidents at public

schools, public venues, places of worship and places of public accommodation including, but not limited to, the recent mass shooting incidents in Parkland, Florida (Margery Stoneman Douglas High School; 17 people killed), Sutherland Springs, Texas (First Baptist Church; 26 people killed), Las Vegas, Nevada (Music Festival; 58 people killed), and Orlando, Florida (Pulse Nightclub; 49 people killed); and

WHEREAS, the corporate authorities of the Village of Deerfield find that assault weapons are dangerous and unusual weapons which are commonly associated with military or antipersonnel use, capable of a rapid rate of fire, have the capacity to fire a large number of rounds due to large capacity fixed magazines or the ability to use detachable magazines, present unique dangers to law enforcement, and are easily customizable to become even more dangerous weapons of mass casualties and destruction; and

WHEREAS, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture and sale of assault weapons in the Village of Deerfield may increase the public's sense of safety at the public schools, public venues, places of worship and places of public accommodation located in the Village of Deerfield; and

WHEREAS, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture and sale of assault weapons in the Village of Deerfield may increase the public's sense of safety by deterring and preventing a mass shooting incident in the Village of Deerfield, notwithstanding potential objections regarding the availability of alternative weaponry or the enforceability of such a ban; and

WHEREAS, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture

and sale of assault weapons in the Village of Deerfield may increase the public's sense of safety by effecting a cultural change which communicates the normative value that assault weapons should have no role or purpose in civil society in the Village of Deerfield; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), the possession, manufacture and sale of assault weapons in the Village of Deerfield is not reasonably necessary to protect an individual's right of self-defense or the preservation or efficiency of a well-regulated militia; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), courts throughout our State and Nation have uniformly upheld the constitutionality of local ordinances and legislation prohibiting the possession, manufacture and sale of assault weapons including, but not limited to, an ordinance enacted by the City of Highland Park, Illinois; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that, since the enactment of Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), State and Federal authorities have failed to regulate the possession, manufacture and sale of assault weapons in the best interests for the protection of the public health, safety, morals and welfare of the Village of Deerfield; and

**WHEREAS**, the corporate authorities of the Village of Deerfield request that State and Federal authorities enact Statewide or Nationwide regulations to prohibit the possession, manufacture or sale of assault weapons; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that amending Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) to prohibit the possession, manufacture

and sale of assault weapons in the Village of Deerfield is in the Village's best interests for the protection of the public health, safety, morals and welfare of the Village of Deerfield;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF DEERFIELD, LAKE AND COOK COUNTIES, ILLINOIS, in the exercise of its home rule powers, as follows:

**SECTION 1:** The recitals to this Ordinance are incorporated into and made a part of this Ordinance as if fully set forth herein.

**SECTION 2:** Chapter 15 (Morals and Conduct), Article 11 (Assault Weapons), Section 15-86 (Definitions), Section 15-87 (Safe Storage of Assault Weapons; Exceptions) and Section 15-88 (Transportation of Assault Weapons; Exceptions) of the Municipal Code of the Village of Deerfield, as enacted by Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013), shall be amended to read as follows (additions are indicated by underlining and deletions are indicated by ~~strikeout~~ markings):

#### Article 11. Assault Weapons.

##### Sec. 15-86. Definitions.

The following words, terms and phrases, when used in this Article, 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 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) The capacity to accept a detachable magazine at some location outside of the pistol grip.
- (4) A semiautomatic shotgun that has one or more of the following:
  - (A) Only a pistol grip without a stock attached;
  - (B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
  - (C) A folding, telescoping or thumbhole stock;
  - (D) A fixed magazine capacity in excess of five rounds; or
  - (E) An ability to accept a detachable magazine.
- (5) Any shotgun with a revolving cylinder.
- (6) Conversion kit, part or combination of parts, from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person.
- (7) Shall include, but not be limited to, the assault weapons models identified as follows:
  - (A) The following rifles or copies or duplicates thereof:
    - (i) AK, AKM, AKS, AK-47, AK-74, ARM, MAK90, Misr, NHM 90, NHM 91, SA 85, SA 93, VEPR;
    - (ii) AR-10;
    - (iii) AR-15, Bushmaster XM15, Armalite M15, or Olympic Arms PCR;
    - (iv) AR70;
    - (v) Calico Liberty;
    - (vi) Dragunov SVD Sniper Rifle or Dragunov SVU;
    - (vii) Fabrique National FN/PAL, FN/LAR, or FNC;
    - (viii) Hi-Point Carbine;
    - (ix) HK-91, HK-93, HK-94, or HK-PSG-1;
    - (x) Kel-Tec Sub Rifle;

- (xi) Saiga;
- (xii) SAR-8, SAR-4800;
- (xiii) SKS with detachable magazine;
- (xiv) SLG 95;
- (xv) SLR 95 or 96;
- (xvi) Steyr AUG;
- (xvii) Sturm, Ruger Mini-14;
- (xviii) Tavor;
- (xix) Thompson 1927, Thompson M1, or Thompson 1927 Commando; or
- (xx) Uzi, Galil and Uzi Sporter, Galil Sporter, or Galil Sniper Rifle (Galatz).

(B) The following pistols or copies or duplicates thereof, when not designed to be held and fired by the use of a single hand:

- (i) Calico M-110;
- (ii) MAC-10, MAC-11, or MPA3;
- (iii) Olympic Arms OA;
- (iv) TEC-9, TEC-DC9, TEC-22 Scorpion, or AB-10; or
- (v) Uzi.

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

- (i) Armscor 30 BG;
- (ii) SPAS 12 or LAW 12;
- (iii) Striker 12; or
- (iv) Streetsweeper.

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

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

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

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

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

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

**Sec. 15-87. Safe Storage of Assault Weapons; Exceptions.**

(a) Safe Storage. It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon in the Village, unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.

(b) Self defense exception. No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self defense or in defense of another.

(c) The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

**Section 15-88. Transportation of Assault Weapons; Exceptions.**

(a) It is unlawful and a violation of this section for any person to carry, keep, bear, transport or possess an assault weapon in the Village, except when on his land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, except that this section does not apply to or affect transportation of assault weapons that meet one of the following conditions:

- (i) are broken down in a non-functioning state; or and
- (ii) are not immediately accessible to any person; or

(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, or

(b) The provisions of this section do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves officer, agent or employee of any municipality of the commonwealth, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely transported in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

#### **Section 15-89. Penalty.**

Any person who is found to have violated this Article shall be fined not less than \$250 and not more than \$1,000 for each offense, and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. Every person convicted of any violation under this Article shall, in addition to any penalty provided in this Code, forfeit to the Village any assault weapon.

#### **Section 15-90. Disposition of Assault Weapon and Large Capacity Magazine.**

Any person who, prior to the effective date of Ordinance No. \_\_\_\_\_, was legally in possession of an Assault Weapon or Large Capacity Magazine prohibited by this Article, shall have 60 days from the effective date of Ordinance No. \_\_\_\_\_ to do any of the following without being subject to prosecution hereunder:

(a) Remove, sell or transfer the Assault Weapon or Large Capacity Magazine from within the limits of the Village;

(b) Modify the Assault Weapon or Large Capacity Magazine either to render it permanently inoperable or to permanently make it a device no longer defined as an Assault Weapon or Large Capacity Magazine; or

(c) Surrender the Assault Weapon or Large Capacity Magazine to the Chief of Police or his or her designee for disposal as provided in Section 15-91 of this Article.

**Section 15-91. Destruction of Assault Weapons and Large Capacity Magazines.**

The Chief of Police or his or her designee shall have the power to confiscate any assault weapon of any person charged with a violation under this Article. The Chief of Police shall cause to be destroyed each Assault Weapon or Large Capacity Magazine surrendered or confiscated pursuant to this Article; provided, however, that no Assault Weapon or Large Capacity Magazine shall be destroyed until such time as the Chief of Police determines that the Assault Weapon or Large Capacity Magazine is not needed as evidence in any matter. The Chief of Police shall cause to be kept a record of the date and method of destruction of each Assault Weapon or Large Capacity Magazine destroyed pursuant to this Article.

**SECTION 3:** The Village Manager, or his designee, is authorized and directed to submit to the Illinois Department of State Police a copy of this Ordinance, 30 days after its adoption, and any such other measures as may be necessary to effect the requirements of 430 ILCS 65/13.3.

**SECTION 4:** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

**SECTION 5:** This Ordinance, and each of its terms, shall be the effective legislative act of a home rule municipality without regard to whether such Ordinance should: (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law; or, (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Deerfield that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

**SECTION 6:** This Ordinance shall be in full force and effect upon its passage and approval and shall subsequently be published in pamphlet form as provided by law.

PASSED this 2nd day of April, 2018.

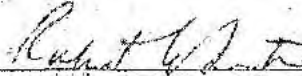
AYES: Benton, Jester, Oppenheim, Seiden, Shapiro, Struthers

NAYS: None

ABSENT: None

ABSTAIN: None

APPROVED this 2nd day of April, 2018.



Village President Pro Tem

ATTEST:



Village Clerk

**VILLAGE OF DEERFIELD  
LAKE AND COOK COUNTIES, ILLINOIS**

---

**ORDINANCE NO. O-18-19**

**AN ORDINANCE APPROVING AMENDMENTS TO SECTION 15-87 OF THE  
MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD**

---

**PASSED AND APPROVED BY THE  
PRESIDENT AND BOARD OF TRUSTEES  
OF THE VILLAGE OF DEERFIELD, LAKE  
AND COOK COUNTIES, ILLINOIS, this**

**18th day of June, 2018.**

**Published in pamphlet form  
by authority of the President  
and Board of Trustees of the  
Village of Deerfield, Lake  
and Cook Counties, Illinois,  
this  
18th day of June, 2018.**



**VILLAGE OF DEERFIELD  
LAKE AND COOK COUNTIES, ILLINOIS**

---

**ORDINANCE NO. O-18-19**

**AN ORDINANCE APPROVING AMENDMENTS TO SECTION 15-87 OF THE  
MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD**

---

**WHEREAS**, on July 1, 2013, the Village President and Board of Trustees adopted Ordinance No. O-13-24, amending Chapter 18 of the Municipal Code of the Village of Deerfield ("*Village Code*") to adopt a new Article 11 of Chapter 15, which Article 11 regulates the ownership and possession of assault weapons in the Village; and

**WHEREAS**, on April 2, 2018, the President and Board of Trustees adopted Ordinance No. O-18-06, amending Article 11 of Chapter 15 of the Village Code to further regulate the ownership and possession of assault weapons in the Village, pursuant to the authority set forth in Section 13.1(c) of the Illinois Firearms Owners Identification Card Act, 430 ILCS 65/13.1(c) ("*Act*"); and

**WHEREAS**, the President and Board of Trustees now desire to further amend Section 15-87 of Article 11 of Chapter 15 of the Village Code, pursuant to the authority set forth in Section 13.1(c) of the Act; and

**WHEREAS**, the President and Board of Trustees have determined that the amendment of Section 15-87 of the Village Code is in the best interests of the Village;

**NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF DEERFIELD, LAKE AND COOK COUNTIES, ILLINOIS,**  
in the exercise of its home rule powers, as follows:

#58367735\_v1

**SECTION 1: RECITALS.** The recitals to this Ordinance are hereby incorporated into and made a part of this Ordinance as if fully set forth herein.

**SECTION 2: AMENDMENT.** Section 15-87 of Article 11 of Chapter 15 of the Village Code is hereby re-titled and amended further to read as follows:

**"Sec. 15-87. Safe Storage Of Assault Weapons and Large Capacity Magazines Prohibited; Exceptions:**

(a) It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon or large capacity magazine in the village.

(b) The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon or large capacity magazine in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the state of Illinois (ii) any law enforcement officer, agent or employee of the state of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C; however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer."

**SECTION 3: DELIVERY.** The Village Manager, or his designee, is authorized and directed to submit to the Illinois Department of State Police a copy of this Ordinance, 30 days after its adoption, and any such other measures as may be necessary to effect the requirements of 430 ILCS 65/13.3.

**SECTION 4: SEVERABILITY.** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

**SECTION 5: EXERCISE OF HOME AUTHORITY.** The President and Board of Trustees declare that this Ordinance, and each of its terms, are and shall be the effective legislative act of a home rule municipality without regard to whether such Ordinance should: (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law; or, (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Deerfield that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

**SECTION 6: EFFECTIVE DATE.** In accordance with Section 5/1-2-4 of the Illinois Municipal Code, 65 ILCS 5/1-2-4, the President and Board of Trustees have determined that the adoption of this Ordinance and its effectiveness is urgent for the public welfare of the Village and, therefore, upon the vote of two-thirds of the corporate authorities approving the Ordinance, it shall be in full force and take immediate effect.

[SIGNATURE PAGE FOLLOWS]

PASSED this 18th day of June, 2018.


AYES: Benton, Jester, Oppenheim, Seiden, Shapiro, Struthers

NAYS: None

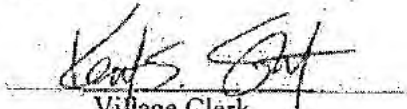
ABSENT: None

ABSTAIN: None

APPROVED this 18th day of June, 2018.

  
Village President

ATTEST:

  
Village Clerk

#58367735\_v1

VILLAGE OF DEERFIELD  
LAKE AND COOK COUNTIES, ILLINOIS

---

ORDINANCE NO. 0-13-24

AN ORDINANCE REGULATING THE OWNERSHIP  
AND POSSESSION OF ASSAULT WEAPONS  
IN THE VILLAGE OF DEERFIELD

---

PASSED AND APPROVED BY THE  
PRESIDENT AND BOARD OF TRUSTEES  
OF THE VILLAGE OF DEERFIELD, LAKE  
AND COOK COUNTIES, ILLINOIS, this

1st day of July, 2013.

Published in pamphlet form  
by authority of the President  
and Board of Trustees of the  
Village of Deerfield, Lake and  
Cook Counties, Illinois, this  
1st day of July, 2013.



**VILLAGE OF DEERFIELD  
LAKE AND COOK COUNTIES, ILLINOIS**

---

**ORDINANCE NO. 0-13-24**

**AN ORDINANCE REGULATING THE OWNERSHIP  
AND POSSESSION OF ASSAULT WEAPONS  
IN THE VILLAGE OF DEERFIELD**

---

**WHEREAS**, the Illinois General Assembly has adopted House Bill 183, the "Firearm Concealed Carry Act," which will become effective upon signature by the Governor of the State of Illinois; and

**WHEREAS**, the Firearm Concealed Carry Act will preempt the authority of home rule units of government in the State of Illinois, including the Village of Deerfield, to regulate assault weapons unless such a home rule ordinance or regulation is enacted on, before or within ten (10) days after the effective date of the Firearm Concealed Carry Act; and

**WHEREAS**, the corporate authorities of the Village of Deerfield are of the opinion that assault weapons, as defined in this Ordinance, are subject to regulation as provided herein, and should be regulated as provided herein within the corporate limits of the Village of Deerfield; and

**WHEREAS**, the corporate authorities of the Village of Deerfield find that assault weapons are capable of a rapid rate of fire and have the capacity to fire a large number of rounds due to large capacity fixed magazines or the ability to use detachable magazines; and,

**WHEREAS**, the corporate authorities of the Village of Deerfield find that assault weapons have been used in a number of notorious mass shooting incidents in venues such as public schools, including recent shooting incidents in Newtown, Connecticut, and Santa Monica, California, and are commonly associated with military or antipersonnel use; and

WHEREAS, the corporate authorities of the Village of Deerfield find that assault weapons should be subject to safe storage and security requirements as provided herein to limit the opportunity for access and use of these firearms by untrained or unauthorized users;

NOW, THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF DEERFIELD, LAKE AND COOK COUNTIES, ILLINOIS, in the exercise of its home rule powers, as follows:

**SECTION 1:** That Chapter 15 ("Morals and Conduct") of the Municipal Code of the Village of Deerfield be and the same is hereby amended to add the following as Article 11 thereof entitled "Assault Weapons":

**Article 11. Assault Weapons.**

**Sec. 15-86. Definitions.**

The following words, terms and phrases, when used in this Article, 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 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) The capacity to accept a detachable magazine at some location outside of the pistol grip.
- (4) A semiautomatic shotgun that has one or more of the following:
- (A) Only a pistol grip without a stock attached;
  - (B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;
  - (C) A folding, telescoping or thumbhole stock;
  - (D) A fixed magazine capacity in excess of five rounds; or
  - (E) An ability to accept a detachable magazine.
- (5) Any shotgun with a revolving cylinder.
- (6) Conversion kit, part or combination of parts, from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person.
- (7) Shall include, but not be limited to, the assault weapons models identified as follows:
- (A) The following rifles or copies or duplicates thereof:
    - (i) AK, AKM, AKS, AK-47, AK-74, ARM, MAK90, Misr, NHM 90, NHM 91, SA 85, SA 93, VEPR;
    - (ii) AR-10;
    - (iii) AR-15, Bushmaster XM15, Armalite M15, or Olympic Arms PCR;
    - (iv) AR70;
    - (v) Calico Liberty;
    - (vi) Dragunov SVD Sniper Rifle or Dragunov SVU;
    - (viii) Fabrique National FN/FAL, FN/LAR, or FNC;
    - (viii) Hi-Point Carbine;
    - (ix) HK-91, HK-93, HK-94, or HK-PSG-1;
    - (x) Kel-Tec Sub Rifle;
    - (xi) Saiga;
    - (xii) SAR-8, SAR-4800;
    - (xiii) SKS with detachable magazine;
    - (xiv) SLG 95;
    - (xv) SLR 95 or 96;
    - (xvi) Steyr AUG;
    - (xvii) Sturm, Ruger Mini-14;
    - (xviii) Tavor;

- (xix) Thompson 1927, Thompson M1, or Thompson 1927 Commando; or
- (xx) Uzi, Galil and Uzi Sporter, Galil Sporter, or Galil Sniper Rifle (Galatz).

(B) The following pistols or copies or duplicates thereof, when not designed to be held and fired by the use of a single hand:

- (i) Calico M-110;
- (ii) MAC-10, MAC-11, or MPA3;
- (iii) Olympic Arms OA;
- (iv) TEC-9, TEC-DC9, TEC-22 Scorpion, or AB-10; or
- (v) Uzi.

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

- (i) Armscor 30 BG;
- (ii) SPAS 12 or LAW 12;
- (iii) Striker 12; or
- (iv) Streetsweeper.

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

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

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

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

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

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

#### Sec. 15-87. Safe Storage of Assault Weapons; Exceptions.

(a) Safe Storage. It shall be unlawful to store or keep any assault weapon in the Village unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such

weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section, such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.

(b) Self defense exception. No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self-defense or in defense of another.

(c) The provisions of this section do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training.

#### **Section 15-88. Transportation of Assault Weapons; Exceptions.**

(a) It is unlawful and a violation of this section for any person to carry or possess an assault weapon in the Village, except when on his land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, except that this section does not apply to or affect transportation of assault weapons that meet one of the following conditions:

- (i) are broken down in a non-functioning state; or
- (ii) are not immediately accessible; or
- (iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card; or

(b) The provisions of this section do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves officer, agent or employee of any municipality of the commonwealth, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training.

**Section 15-89. Penalty.** Any person who is found to have violated this Article shall be fined not less than \$250 and not more than \$1,000 for each offense.

**SECTION 2:** If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

**SECTION 3:** That this Ordinance, and each of its terms, shall be the effective legislative act of a home rule municipality without regard to whether such Ordinance should: (a) contain terms contrary to the provisions of current or subsequent non-preemptive state law; or, (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the corporate authorities of the Village of Deerfield that to the extent that the terms of this Ordinance should be inconsistent with any non-preemptive state law, this Ordinance shall supersede state law in that regard within its jurisdiction.

**SECTION 4:** This Ordinance shall be in full force and effect upon its passage and approval and shall subsequently be published in pamphlet form as provided by law.

PASSED this 1st day of July, 2013.

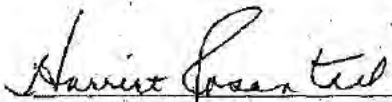
AYES: Benton, Jester, Seiden, Struthers

NAYS: None

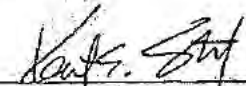
ABSENT: Farkas, Nadler

ABSTAIN:

APPROVED this 1st day of July, 2013.

  
Village President

ATTEST:

  
Village Clerk

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

FILED

MAR 22 2019

Eric Caraballo, Clerk  
CIRCUIT CLERK

Guns Save Life, Inc. and John William  
Wombacher, Ill.,

Plaintiffs,

v.

18CH498

Village of Deerfield, Illinois, and Harriet  
Rosenthal, solely in her official capacity as  
Mayor of the Village of Deerfield,

Defendants.

MEMORANDUM ORDER

Before the Court are plaintiffs' motion for a preliminary injunction and motion for summary judgment.<sup>1</sup> Plaintiffs initially sought a preliminary injunction but later filed a motion for summary judgment requesting a permanent injunction to permanently enjoin defendant Village of Deerfield from enforcing Ordinance No. 0-18-06 and Ordinance No. 0-18-19 which ban the ownership and possession of assault weapons and large capacity magazines.<sup>2</sup> The plaintiffs' seven count complaint challenges the validity of Deerfield's ordinances and alleges that: (1) Ordinance No. 0-18-06 is preempted by Illinois' Firearm Owners Identification Card Act (FOICA) and Firearm Concealed Carry Act (FCCA); (2) Ordinance No. 0-18-06 is preempted by

<sup>1</sup> The plaintiffs in the companion case of Daniel D. Easterday, Illinois State Rifle Association and Second Amendment Foundation, Inc. v. Village of Deerfield, Illinois, a municipal corporation, in case number 18CH427 join plaintiff Guns Save Life's motion for a preliminary injunction and motion for summary judgment.

<sup>2</sup> Plaintiffs identify Deerfield's ordinance as Ordinance No. 0-18-24-3, however, the Village of Deerfield attached a copy of the relevant ordinance as an exhibit to its response brief and the exhibit reflects that the correct number is 0-18-19. Ordinance No. 0-18-19 was passed by the Village of Deerfield following the Court's finding that Ordinance No. 0-18-06 did not ban firearm magazines that accept more than ten rounds. Deerfield stayed enforcement of Ordinance No. 0-18-19 pending the hearing and ruling on plaintiffs' request for a preliminary injunction. Plaintiffs did not file an amended complaint to challenge this new ordinance, however, the parties agreed that the hearing for a preliminary injunction should include a determination of the validity of Ordinance No. 0-18-19.

the Illinois Wildlife Code (Wildlife Code); (3) they are entitled to a declaratory judgment that Ordinance No. 0-18-06 does not ban large capacity magazines;<sup>3</sup> (4) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 banning large capacity magazines are preempted by FOICA and the FCCA; (5) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 banning large capacity magazines are preempted by the Wildlife Code; (6) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 violate the Takings Clause of the Illinois Constitution; and (7) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 violate the Eminent Domain Act.<sup>4</sup>

The defendants presented testimony in opposition to plaintiffs' request for a preliminary injunction. The Court heard the testimony of two witnesses, Harriet Rosenthal, the Village of Deerfield's President, and Kent S. Street, the Village Manager for the Village of Deerfield. President Rosenthal's and Mr. Kent's testimony related to of Deerfield's ability to regulate firearms under the state statutes and Deerfield's intent and reasons for passing the ordinances challenged by plaintiffs. The defendants' evidence also included a video clip of a June 17, 2013 Village Board meeting in which State Representative Scott Drury spoke during the public comments session and spoke about pending House Bill 183 relating to the State's regulation of firearms and firearm components. Plaintiffs objected to this evidence as being irrelevant because the issues before the Court can be decided as a matter of law and the Court need only consider the ordinances, the various state statutes and the Illinois Constitution. The Court reserved ruling on plaintiffs' objection. The Court now finds that the evidence presented by defendants at the October 12,

---

<sup>3</sup> This issue is now moot due to the passage of Ordinance No. 0-18-19.

<sup>4</sup> Plaintiffs in the Easterday case only raise a preemption challenge under the FOICA and FCCA to Deerfield's ordinances.

2018 preliminary injunction hearing is irrelevant to resolving the preemption issue. The preemption challenge only raises questions of law. The Court will therefore not consider the witnesses' testimony or the video recording with respect to plaintiffs' preemption challenges. For the following reasons, the Court grants plaintiffs' request for a summary judgment and enters a permanent injunction enjoining Deerfield from enforcing Ordinance No. 0-18-06 and Ordinance No. 0-18-19.

### FACTS

The relevant facts are not in dispute. On July 1, 2013, Deerfield passed Ordinance No. 0-13-24 titled "AN ORDINANCE REGULATING THE OWNERSHIP AND POSSESSION OF ASSAULT WEAPONS IN THE VILLAGE OF DEERFIELD". Ordinance No. 0-13-24: (1) defines what constitutes an assault weapon (§15-86); (2) defines what constitutes a large capacity magazine (§15-86); (3) mandates how assault weapons should be stored (§15-87); (4) mandates how assault weapons should be transported within Deerfield's village limits (§15-88); (5) makes it unlawful to carry or possess an assault weapon within Deerfield's corporate limits unless the person is on his land, his abode, legal dwelling or fixed place of business or unless the person is on the land or in the dwelling of another person as an invitee with that person's permission (§15-88); and (6) provides for a fine between \$250.00 to \$1,000.00 for each violation (§15-89). Ordinance No. 0-13-24 did not prohibit ownership or possession of an assault weapon or high capacity magazine within Deerfield's corporate limits. The purpose of Ordinance No. 0-13-24 is stated on page two in the final "Whereas" clause which provides: "[A]ssault weapons should be subject to safe storage and security requirements as provided herein to limit the opportunity for access and use of firearms by untrained or unauthorized users[.]"

On July 9, 2013, the Illinois legislature amended §13.1 of the FOICA. Section 13.1 of

FOICA provides:

**Preemption.**

(a) Except as otherwise provided in the Firearm Concealed Carry Act and subsections (b) and (c) of this Section, the provisions of any ordinance enacted by any municipality which requires registration or imposes greater restrictions or limitations on the acquisition, possession and transfer of firearms than are imposed by this Act, are not invalidated or affected by this Act.

(b) Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, enacted on or before the effective date of this amendatory Act of the 98th General Assembly that purports to impose regulations or restrictions on a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act, on the effective date of this amendatory Act of the 98th General Assembly, shall be invalid in its application to a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act.

(c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly. Any ordinance or regulation described in this subsection (c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid. An ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended. The enactment or amendment of ordinances under this subsection (c) are subject to the submission requirements of Section 13.3. For the purposes of this subsection, "assault weapons" means firearms designated by either make or model or by a test or list of cosmetic features that cumulatively would place the firearm into a definition of "assault weapon" under the ordinance.

(d) For the purposes of this Section, "handgun" has the meaning ascribed to it in Section 5 of the Firearm Concealed Carry Act.

(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.

430 ILCS 65/13.1 (West 2018).

On July 9, 2013, the Illinois legislature also passed the FCCA. The FCCA provides in part:

Preemption.

The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. 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.

430 ILCS 66/90 (West 2018).

"Handgun" means any device which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas that is designed to be held and fired by the use of a single hand."

430 ILCS 66/5 (West 2018).

On April 2, 2018 Deerfield passed Ordinance No. O-18-06 titled "AN ORDINANCE AMENDING CHAPTER 15 (MORALS AND CONDUCT), ARTICLE 11 (ASSAULT WEAPONS), SECTION 15-87 (SAFE STORAGE OF ASSAULT WEAPONS) AND SECTION 15-88 (TRANSPORTATION OF ASSAULT WEAPONS) OF THE MUNICIPAL CODE OF THE VILLAGE OF DEERFIELD TO REGULATE THE POSSESSION, MANUFACTURE AND SALE OF ASSAULT WEAPONS IN THE VILLAGE OF DEERFIELD". Ordinance No. O-18-06 made minor changes to §15-86 dealing with definitions and made more extensive changes to: (1) §15-87 Safe Storage of Assault Weapons; (2) §15-88 Transportation of Assault Weapons; and (3) §15-89 Penalty. Ordinance No. O-18-06 adopted two new sections, §15-90 addressing Disposition of Assault Weapon and Large Capacity

Magazine and §15-91 addressing Destruction of Assault Weapons and Large Capacity Magazines.

The additional provisions of Ordinance No. 0-18-06 that plaintiffs challenge are as follows:<sup>5</sup>

Sec. 15-87. Safe Storage of Assault Weapons; Exceptions

(a) ~~Safe Storage.~~ It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon in the Village, unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or either safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user. For purposes of this section such weapon shall not be deemed stored or kept when being carried by or under the control of the owner or other lawfully authorized user.

(b) ~~Self defense exception.~~ No person shall be punished for a violation of this section if an assault weapon is used in a lawful act of self-defense or in defense of another.

(c) ~~The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any~~

<sup>5</sup> All changes to the challenged ordinances are reflected by showing the additions with underscoring and the deletions with strikeouts in the text.

such law enforcement officer, service member or qualified retired law enforcement officer.

Section 15-88. Transportation of Assault Weapons; Exceptions.

(a) It is unlawful and a violation of this section for any person to carry, keep, bear, transport or possess an assault weapon in the Village, except when on his land or in his own abode, legal dwelling or fixed place of business, or on the land or in the legal dwelling of another as an invitee with that person's permission, except that this section does not apply to or affect transportation of assault weapons that meet one of the following conditions:

- (i) are broken down in a non-functioning state; ~~or and~~
- (ii) are not immediately accessible to any person; or
- (iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card; ~~or~~

(b) The provisions of this section do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

Section 15-89. Penalty.

Any person who is found to have violated this Article shall be fined not less than \$250 and not more than \$1,000 for each offense-and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues. Every person convicted of any violation under this Article shall, in addition to any penalty provided in this Code, forfeit to the Village any assault weapon.

Section 15-90. Disposition of Assault Weapon and Large Capacity Magazine.

Any person who, prior to the effective date of Ordinance No. \_\_\_\_\_, was legally in possession of an Assault Weapon or Large Capacity Magazine prohibited by this Article, shall have 60 days from the effective date of Ordinance No. \_\_\_\_\_, to do any of the following without being subject to prosecution hereunder:

(a) Remove, sell or transfer the Assault Weapon or Large Capacity Magazine from within the limits of the Village;

(b) Modify the Assault Weapon or Large Capacity Magazine either to render it permanently inoperable or to permanently make it a device no longer defined as an Assault Weapon or large capacity Magazine; or

(c) Surrender the Assault Weapon or Large Capacity Magazine to the Chief of Police or his or her designee for disposal as provided in Section 15-91 of this Article.

Section 15-91. Destruction of Assault Weapons and Large Capacity Magazines.

The Chief of Police or his or her designee shall have the power to confiscate any assault Weapon of any person charged with a violation under this Article. The Chief of Police shall cause to be destroyed each Assault Weapon or Large Capacity Magazine surrendered or confiscated pursuant to this Article; provided, however, that no Assault Weapon or Large Capacity Magazine shall be destroyed until such time as the Chief of Police determines that the assault Weapon or Large Capacity Magazine is not needed as evidence in any matter. The Chief of Police shall cause to be kept a record of the date and method of destruction of each Assault Weapon or Large Capacity Magazine destroyed pursuant to this Article.

On June 12, 2018, this Court entered a temporary restraining order enjoining the Village of Deerfield, its agents, officials or police department from enforcing any provision of Ordinance No. 0-18-06 relating to the ownership, possession, storage or transportation of assault weapons or large capacity magazines within the Village of Deerfield. On June 18, 2018, the Village of Deerfield passed Ordinance No. 0-18-19 to correct an omission in §15-87 of

Ordinance No. 0-18-06 relating to high capacity magazines.<sup>6</sup> Deerfield also renamed §15-87 to reflect that this section no longer addressed the safe storage of assault weapons, but that Deerfield was now banning assault weapons and large capacity magazines. Section 15-87 now reads as follows:

**SECTION 2: AMENDMENT.** Section 15-87 of Article 11 of Chapter 15 of the Village Code is hereby re-titled and amended further to read as follows:

**"Sec. 15-87, ~~Safe Storage Of Assault Weapons and Large Capacity Magazines Prohibited~~; Exceptions:**

- (a) It shall be unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon or large capacity magazine in the village.
- (b) The provisions of this section, excluding those pertaining to the manufacture and sale of any assault weapon or large capacity magazine in the Village, do not apply to (i) any law enforcement officer, agent or employee of any municipality of the State of Illinois (ii) any law enforcement officer, agent or employee of the State of Illinois, of the United States, or of any other state (iii) any member of the military or other service of any state or the United States, including national guard and reserves, if the persons described are authorized by a competent authority to so carry an assault weapon loaded on a public way and such person is acting within the scope of his duties or training, or (iv) any qualified retired law enforcement officer, as that term is defined in 18 U.S.C. § 926C(c); however, any such assault weapon subject to the aforesaid exceptions under this section shall be safely stored and secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user, or broken down in a nonfunctioning state and not immediately accessible to any person, or unloaded and enclosed in a case, firearm carrying box, shipping box or other container by a person who has been issued a currently valid Firearm Owner's Identification Card, except as may otherwise be lawfully provided by the rules, regulations, general orders, ordinances or laws regulating the conduct of any such law enforcement officer, service member or qualified retired law enforcement officer.

The Village of Deerfield delayed enforcement of Ordinance No. 0-18-19 pending resolution of

---

<sup>6</sup> Deerfield characterizes Ordinance No. 0-18-19 as a clarification of that portion of Ordinance No. 0-18-06 that Deerfield claims bans ownership and possession of high capacity magazines. Deerfield's characterization of Ordinance No. 0-18-19 is wholly without merit as Ordinance No. 0-18-06 clearly failed to ban ownership or possession of high capacity magazines.

plaintiffs' challenge to Deerfield's authority to regulate possession or ownership of large capacity magazines.

Plaintiffs raise the following challenges to the validity of the ordinances: (1) Whether the State preempted Deerfield's authority to exercise concurrent power to regulate assault weapons or large capacity magazines pursuant to the Home Rule provisions of the Illinois Constitution. (2) Whether the changes to Ordinance No. 0-13-24 made by Ordinance No. 0-18-06 and Ordinance No. 0-18-19 are amendments to Ordinance No. 0-13-24 or new ordinances that are preempted by the provisions of FOICA, FCCA and the Wildlife Code. and (3) Whether Ordinance No. 0-18-16 and Ordinance No. 0-18-19 violate the takings clause of Article 1, Section 15 of the Illinois Constitution and §10-5-5 of the Eminent Domain Act.

#### ANALYSIS

Plaintiffs originally sought a preliminary injunction but after the evidentiary hearing plaintiffs filed a motion for summary judgment and now seek a permanent injunction. Summary judgment is appropriate when the pleadings, depositions, affidavits and the admissions of record when construed strictly against the moving party and liberally in favor of the opponent show that no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter of law. *Seymour v. Collins*, 2015 IL 118432, ¶42, 39 N.E.3d 961, 974; *Old Kent Bank – St. Charles, N.A. v. Surwood Corp.*, 256 Ill. App.3d 221, 229, 627 N.E.2d 1192, 1198 (2d Dist. 1994). The party moving for summary judgment has the burden to show that no genuine issue of material fact exists with respect to all issues including those issues raised by the pleading of affirmative defenses. *Old Kent Bank – St. Charles, N.A. v. Surwood Corp.*, 256 Ill. App.3d at 230, 627 N.E.2d at 1199; *West Suburban Mass Transit Dist. v.*

*Consolidated Rail Corp.*, 210 Ill. App.3d 484, 488-89, 569 N.E.2d 187, 190 (1<sup>st</sup> Dist. 1991). A party seeking a permanent injunction to preserve the status quo indefinitely "must show that he possesses a clear, protectable interest for which there is no adequate remedy at law and that irreparable injury would result if the relief is not granted." *Sheehy v. Sheehy*, 299 Ill. App. 3d 996, 1003-04, 702 N.E.2d 200, 206 (1<sup>st</sup> Dist. 1998).

### **I. Preemption**

Deerfield in the exercise of its home rule powers adopted Ordinance No. O-13-24.

As a home rule unit, Deerfield's home rule power and the State's authority to limit such home rule authority is derived from Article 7, §6 of the Illinois Constitution which provides in relevant part:

(a) ... Except as limited by this Section, a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.

(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.

(i) Home rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive.

ILL. CONST. art. VII, § 6 (a), (h), and (i) (West 2018). Section 6(a) authorizes a home rule unit to exercise any power and perform any function pertaining to its government affairs except as limited by the State pursuant to Article 7, §6(h). Section 6(h) empowers the General Assembly to deprive home rule units from exercising any powers that the General Assembly determines should be exercised exclusively by the State. This preemption of home rule authority occurs

under Section 6(h) of the Illinois Constitution when the State specifically declares that the State's exercise of such power or function is exclusive.

Our Supreme Court in a comprehensive preemption opinion in *City of Chicago v. Roman*, 184 Ill.2d 504, 705 N.E.2d 81 (1998), discussed how the State preempts a home rule unit from acting on a subject that the State asserts exclusive power to regulate and how the State can limit the home rule unit's concurrent exercise of power without preempting that exercise of power. The Court held that: "[To] meet the requirements of section 6(h), legislation must contain express language that the area covered by the legislation is to be exclusively controlled by the State. *Id.*, 184 Ill.2d at 517, 705 N.E.2 at 89. The Court also stated that:

When the General Assembly intends to preempt or exclude home rule units from exercising power over a matter, that body knows how to do so. In many statutes that touch on countless areas of our lives, the legislature has expressly stated that, pursuant to section 6(h) or 6(i), or both, of article VII of the Illinois Constitution, a statute is declared to be an exclusive exercise of power by the state and that such power shall not be exercised by home rule units.

*Id.* The Court then went on to discuss several examples of legislation where the legislature totally excluded or preempted home rule authority to regulate. These statutory provisions are:

1. Section 17 of the Illinois Health Facilities Planning Act which provides:

It is hereby specifically declared that the powers and functions exercised and performed by the State pursuant to this Act **are exclusive to the State of Illinois** and that these powers and functions shall not be exercised, either independently or concurrently, by any home rule unit. 20 ILCS 3960/17 (West 1992) (emphasis added).

2. Section 2.1 of the Illinois Insurance Code which provides:

Public Policy. It is declared to be the public policy of this State, **pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970**, that any power or function set forth in this Act to be **exercised by the State is an exclusive State power or function**. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act. ... [A]nd said Section 415 of this Act is declared to be a

**denial and limitation of the powers of home rule units** pursuant to paragraph (g) of Section 6 of Article VII of the Illinois Constitution of 1970. 215 ILCS 5/2.1 (West 1992) (emphasis added).

3. Section 21 of the Citizens Utility Board Act which provides:

Home rule preemption. The provisions of this Act are declared to be **an exclusive exercise of power by the State of Illinois pursuant to paragraphs (h) or (i) of Section 6 of Article VII of the Illinois Constitution**. No home rule unit may impose any requirement or regulation on any public utility inconsistent with or in addition to the requirements or regulations set forth in this Act. 220 ILCS 10/21 (West 1992) (emphasis added).

4. Section 6 of the Medical Practice Act of 1987 which provides:

It is declared to be the public policy of this State, **pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Illinois Constitution of 1970**, that any power or function set forth in this Act to be exercised by the State is **an exclusive State power or function**. Such power or function shall not be exercised concurrently, either directly or indirectly, by any unit of local government, including home rule units, except as otherwise provided in this Act. 225 ILCS 60/6 (West 1992) (emphasis added).

5. Section 6-18 of the Liquor Control Act of 1934 which provides:

No home rule unit, as defined in Article VII of the Illinois Constitution, may amend or alter or in any way change the legal age at which persons may purchase, consume or possess alcoholic liquors as provided in this Act, and it is declared to be the law of this State, **pursuant to paragraphs (h) and (i) of Section 6 of Article VII of the Constitution**, that the establishment of such legal age is an **exercise of exclusive State power** which may not be exercised concurrently by a home rule unit. 235 ILCS 5/6-18 (West 1992) (emphasis added).

6. Section 7 of the Missing Children Registration Law which provides:

Home rule. This Article shall constitute the **exercise of the State's exclusive jurisdiction pursuant to subsection (h) of Section 6 of Article VII of the Illinois Constitution and shall preempt the jurisdiction of any home rule unit**. 325 ILCS 55/7 (West 1992) (emphasis added).

7. Section 2 of the Burial of Dead Bodies Act which provides;

No home rule unit, as defined in Section 6 of Article VII of the Illinois Constitution, may

change, alter or amend in any way the provisions contained in this Act, and it is declared to be the law of this State, **pursuant to subsections (h) and (i) of Section 6 of Article VII of the Illinois Constitution**, that powers and functions authorized by this Act **are the subjects of exclusive State jurisdiction**, and no such powers or functions may be exercised concurrently, either directly or indirectly, by any home rule unit. 410 ILCS 5/2(c) (West 1992) (emphasis added).

8. Section 2 of the Wildlife Code which provides:

The regulation and licensing of the taking of wildlife in Illinois are **exclusive powers and functions of the State**. A home rule unit may not regulate or license the taking of wildlife. 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**. 410 ILCS 5/2 (West 1992) (emphasis added).

9. Section 11-208.2 of the Illinois Vehicle Code which provides:

Limitation on home rule units. The provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations inconsistent herewith except pursuant to Sections 11-208, 11-209, 11-1005.1, 11-1412.1, and 11-1412.2 of this Chapter of this Act. 625 ILCS 5/11-208.2 (West 1992) (emphasis added).

The General Assembly may limit a home rule unit's concurrent exercise of power without completely preempting such power through partial exclusion or conformity. *City of Chicago v. Roman*, 184 Ill.2d at 519, 705 N.E.2d at 90. "[T]he General Assembly knows how to accomplish this, and has done so countless times, expressly stating that, pursuant to article VII, section 6(i), of the Illinois Constitution, a statute constitutes a limitation on the power of home rule units to enact ordinances that are contrary to or inconsistent with the statute". *Id.*, 184 Ill.2d at 520, 705 N.E.2d at 90. Examples of statutes in which the State through its expression in the statute provided for partial exclusion or conformity of a home rule unit's authority to exercise its power to regulate over those matters are:

1. Section 5-919 of the Illinois Highway Code which provides:

Home Rule Preemption. A home rule unit may not impose road improvement impact fees in a manner inconsistent with this Division. This Division is a limitation under

subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State. 605 ILCS 5/5-919 (West 1992).

2. Section 8 of the Carrier and Racing Pigeon Act of 1984 which provides:

This Act applies to all municipalities and counties and pursuant to paragraph (i) of Section 6 of Article VII of the Constitution, this Act is a limitation upon the power of home rule units to enact ordinances contrary to this Act. 510 ILCS 45/8 (West 1992).

The preemption language in the FOICA and the FCCA mirrors the language in those statutes our Supreme Court has stated have totally excluded or preempted a home rule unit's authority to regulate. The preemption language in FOICA states:

(b) Notwithstanding subsection (a) of this Section, the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act **are exclusive powers and functions of this State.** (emphasis added).

c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons **are exclusive powers and functions of this State.** (emphasis added).

(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.** (emphasis added).

The language in the FCCA states:

Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. **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.** (emphasis added).

The language in FOICA and FCCA clearly state that home rule units no longer have the authority to regulate or restrict the licensing and possession of handguns and handgun ammunition with respect to a holder of a valid Firearm Owner's Identification Card or a holder of a license to

carry a concealed firearm. In addition, §13.1(c) of FOICA clearly deprives home rule units of the authority to regulate the possession or ownership of assault weapons. Deerfield, therefore, may no longer regulate in these areas.

The plaintiffs also claim that the Wildlife Code preempts Deerfield's ability to regulate assault weapons and large capacity magazines. The Wildlife Code provides:

The regulation and licensing of the taking of wildlife in Illinois are exclusive powers and functions of the State. A home rule unit may not regulate or license the taking of wildlife. 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.

410 ILCS 5/2 (West 1992). The Wildlife Code does specifically preempt regulation and licensing of the taking of wildlife and references what types of firearms may be used to accomplish the taking of wildlife. The Wildlife Code, however, is a statute regulating the hunting and taking of game in Illinois and not a statute regulating ownership and possession of firearms. Any regulation as to what firearms may be used to hunt is secondary to the subject matter the State is preempting in the Wildlife Code. Moreover, nothing presented to the Court shows that the taking of wildlife occurs within Deerfield's borders or that the challenged ordinances have any impact on the taking of wildlife outside of Deerfield's borders.

Deerfield claims that the language in §13.1 allowing for inconsistent ordinances and amendments shows the legislature did not intend to preempt this area. The Court does not agree. The specific language in §13.1(e) of FOICA repeats and emphasizes the General Assembly's intent to preempt by stating: "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. 430 ILCS 65/13.1(e) (West 2018). This final provision in the statute's preemption section leaves no doubt what the General Assembly intended to do; and that is to preempt the regulation of

this subject matter. The Illinois Constitution prescribes the extent of a home rule unit's authority to exercise power over matters preempted by the State. When the State preempts an area by declaring that it is exercising exclusive power to regulate specific matters as provided for in the Illinois Constitution, and passes a law that incorporates and declares that it is exercising that exclusive power pursuant to Section 6(h) of Article VII of the Illinois Constitution, the only result that can follow from the use of this Constitutional language is to deprive the home rule unit of all authority to regulate in that area. To accept Deerfield's argument requires this Court to dilute the State's constitutional authority and the mandate of our Illinois Constitution under Article 7, §6(h). The legislature is presumed to know the law and if the State wished to allow home rule units to have authority to regulate in this area through partial exclusion or conformity it has the knowledge and ability to do so.

Deerfield also asserts that in interpreting statutes the Court should give all statutory provisions meaning and effect; however, the cases relied upon by Deerfield make clear that the Court is to interpret statutes this way "if possible". In this case it is not possible to accept Deerfield's argument without diminishing the language in Section 6(h), Art. VII of the Illinois Constitution. Deerfield's position requires the Court to hold that Section 6(h) doesn't mean what it says. If the General Assembly did not wish to preempt regulation of this subject matter, the General Assembly can amend its statute. This Court will not ignore the meaning and consequences of our Illinois Constitution's provisions to accommodate Deerfield's statutory interpretation. Thus, Deerfield lost its authority to regulate possession or ownership of assault weapons and large capacity magazines when the State passed §13.1 of FOICA and the FCCA.

Deerfield also claims that Ordinance No. 0-18-06 is an amendment to Ordinance No. 0-

13-24 which was validly enacted in accordance with the ten-day window FOICA provided home rule units to pass inconsistent ordinances. Plaintiffs assert that the changes to Deerfield's ordinance was not an amendment but was an entirely new ordinance that does not comply with the preemption exception in the FOICA. In determining whether changes to an ordinance are amendments or a new ordinance repealing the prior ordinance, our Supreme Court and Appellate Court have provided clear guidelines for the trial courts. Deerfield's characterization of Ordinance No. O-18-06 as an amendment of Ordinance No. O-13-24 is not dispositive of whether it is an amendment or a new ordinance that repealed the prior ordinance. "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 [the] repeal of the former ordinance." *Village of Park Forest v. Wojciechowski*, 29 Ill.2d 435, 438, 194 N.E.2d 346, 348 (1963); *Athey v. City of Peru*, 22 Ill. App.3d 363, 367, 317 N.E.2d 294, 297 (3d Dist. 1974). If, however, there is a clear conflict between the two ordinances where both cannot be carried out, then an intention to repeal will be presumed. *Nolan v. City of Granite City*, 162 Ill. App.3d 187, 188, 514 N.E.2d 1196, 1199 (5<sup>th</sup> Dist. 1987). To resolve the issue of whether the changes are an amendment or a new ordinance, the court must perform a comparative analysis of the ordinances and analyze all its terms. *Athey v. City of Peru*, 22 Ill. App.3d at 367-368, 317 N.E.2d at 297-298.

In comparing the language of Ordinance No. O-13-24 to the language of Ordinance No. O-18-06 there exists significant differences between the two ordinances. Ordinance No. O-13-24 only regulated transportation and storage of assault weapons within Deerfield's village limits

and provided for penalties for improperly transporting or storing such weapons. While §§15-87 and 15-88 of Ordinance No. 0-18-06 keep the same titles these sections had in Ordinance No. 0-13-24 (§15-87 Safe Storage of Assault Weapons; Exceptions, §15-88 Transportation of Assault Weapons; Exceptions); the new text in Ordinance No. 0-18-06 under these sections does not deal with transporting or storing assault weapons but instead bans such weapons. Ordinance No. 0-13-24 did not ban ownership or possession of assault weapons or large capacity magazines within Deerfield's village limits. The banning of assault weapons is substantively different than regulations regarding the transportation and storage of such weapons by one who owns or possesses assault weapons. In addition, there are two sections that are entirely new. Section 15-90 Disposition of Assault Weapon and Large Capacity Magazine and §15-91 Destruction of Assault Weapons and Large Capacity Magazines in Ordinance No. 0-18-06 that are not found in Ordinance No. 0-13-24. These additional sections in Ordinance No. 0-18-06 supports plaintiffs' claim that the changes to Ordinance No. 0-13-24 resulted in a new ordinance and not an amended ordinance. For these reasons Ordinance No. 0-18-06 is a new ordinance and not an amendment.

Even if the Court agreed with Deerfield's interpretation of §13.1 of FOICA that the General Assembly only meant to partially exclude a home rule unit's authority to regulate possession and ownership of large capacity magazines and assault weapons; and that Deerfield's Ordinance No. 0-18-06 is an amendment of Ordinance No. 0-13-24, Deerfield's Ordinance No. 0-18-06 is still unenforceable under plaintiffs' preemption argument because Deerfield missed the 10-day window provided under §13.1(c) of FOICA. This section of FOICA clearly states that the 10-day window is to allow home rule units an opportunity to pass

ordinances that regulate possession or ownership of assault weapons that are "inconsistent" with FOICA. FOICA allows possession or ownership of assault weapons by any person who has been previously issued a Firearm Owner's Identification Card by the State Police. 430 ILCS 65/2(a)(1) (Firearm Owner's Identification Card required; exceptions.) and 430 ILCS 65/1.1 (defining firearm). Nothing in Ordinance No. 0-13-24 is "inconsistent" with any provision of FOICA as this ordinance merely regulates the transportation and storage of assault weapons. In giving the language of §13.1(c) its plain meaning FOICA provided home rule units a one-time 10-day window from the date of this section's effective date to ban ownership or possession of assault weapons. Deerfield clearly failed to enact such a ban within this ten-day window and therefore, lost its opportunity to do so and cannot later amend its ordinance to impose such a ban. Deerfield's assertion that this interpretation of §13.1(c) effectively deletes the language permitting amendments to ordinances passed during this 10-day window is not persuasive. The purpose of the amendment provision in §13.1(c) is to allow a home rule unit to expand its timely ban of assault weapons if the initial ordinance did not address all weapons that could have been classified as assault weapons, or if new assault type weapons not fitting into the ordinance's assault weapon definition began to be manufactured or became available for purchase. For example, if Ordinance No. 0-13-24 had banned the assault weapon defined in §15-86(2) and several years later a manufacturer came out with a semiautomatic rifle that had a fixed magazine that only accepted ten rounds of ammunition such a weapon would not be an assault weapon as defined in the ordinance. Deerfield could arguably amend Ordinance No. 0-13-24 to redefine assault weapons to include semiautomatic rifles that have fixed magazines that accept ten rounds if Deerfield determined that these new semiautomatic rifles posed the

same threat to safety as those semiautomatic rifles that have fixed magazines that accept more than ten rounds. In this scenario, an amendment might be authorized.

## **II. Takings Clause and Eminent Domain**

Plaintiff's last challenge to Ordinance No. 0-18-06 and Ordinance No. 0-18-19 is that the ordinances violate Article 1, Section 15 of the Illinois Constitution and §10-5-5 of the Eminent Domain Act, 735 ILCS 30/10-5-5 (West 2018). For the reasons stated in this Court's order of June 12, 2018, plaintiffs have not met their burden for the issuance of a preliminary injunction under these theories and genuine issues of material fact exist that preclude the entry of a summary judgment and permanent injunction under these theories.

## **III. THE COURT'S FINDINGS**

The Court finds that: (1) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 are preempted by the FOICA and the FCCA and therefore unenforceable. (2) Ordinance No. 0-18-06 and Ordinance No. 0-18-19 are new ordinances and not amendments to Ordinance No. 0-13-24 and are therefore preempted by FOICA and FCCA. (3) FOICA provided home rule units up to ten days from the effective date of FOICA's preemption provision to pass ordinances that regulate possession or ownership of assault weapons that are inconsistent with the regulations of assault weapons in FOICA. Nothing in Ordinance No. 0-13-24 is inconsistent with FOICA's regulation of assault weapons, therefore, Deerfield missed its opportunity to ban assault weapons and cannot do so now with Ordinance No. 0-18-06. (4) There is no genuine issue of material fact that Deerfield's ordinances are preempted and that plaintiffs: (a) have a clearly ascertainable right to not be subject to a preempted and unenforceable ordinance's prohibitions, fines, penalties and confiscation of property; (b) will suffer irreparable harm if an

injunction is not entered; and (c) do not have an adequate remedy at law. (5) Genuine issues of material fact exist with respect to plaintiffs' takings claim under the Illinois Constitution and the Eminent domain statute. and (6) The Wildlife Code does not preempt Deerfield's regulation of assault weapons or large capacity magazines.

**IT IS HEREBY ORDERED THAT:**

1. A permanent injunction is issued enjoining defendant Village of Deerfield, its agents, officials or police department from enforcing any provision of Ordinance No. 0-18-06 and Ordinance No. 0-18-19 making it unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances.

2. A status hearing is scheduled on May 3, 2019 at 9:00 a.m. in courtroom C-204.

Entered this 22<sup>nd</sup> day of March 2019.

ENTER:

A handwritten signature in black ink, appearing to read "Julia A. Burrows", is written over a horizontal line.

Judge

2019 IL App (2d) 190320-U  
No. 2-19-0320  
Order filed June 12, 2019

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

---

|                                     |   |                               |
|-------------------------------------|---|-------------------------------|
| DANIEL D. EASTERDAY, ILLINOIS STATE | ) | Appeal from the Circuit Court |
| RIFLE ASSOCIATION, and SECOND       | ) | of Lake County.               |
| AMENDMENT FOUNDATION, INC.,         | ) |                               |
|                                     | ) |                               |
| Plaintiffs-Appellees,               | ) |                               |
|                                     | ) |                               |
| v.                                  | ) | No. 18-CH-427                 |
|                                     | ) |                               |
| VILLAGE OF DEERFIELD,               | ) | Honorable                     |
|                                     | ) | Luis A. Berrones,             |
| Defendant-Appellant.                | ) | Judge, Presiding.             |

---

|  |   |                               |
|--|---|-------------------------------|
| GUNS SAVE LIFE, INC. and JOHN              | ) | Appeal from the Circuit Court |
| WILLIAM WOMBACHER III,                     | ) | of Lake County.               |
|  | ) |                               |
| Plaintiffs-Appellees,                      | ) |                               |
|  | ) |                               |
| v.   | ) | No. 18-CH-498                 |
|  | ) |                               |
| VILLAGE OF DEERFIELD and HARRIET           | ) |                               |
| ROSENTHAL, in her capacity as Mayor of the | ) |                               |
| Village of Deerfield,                      | ) | Honorable                     |
|  | ) | Luis A. Berrones,             |
| Defendants-Appellants.                     | ) | Judge, Presiding.             |

---

JUSTICE ZENOFF delivered the judgment of the court.  
Justices Jorgensen and Burke concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appeal in these consolidated cases was dismissed for lack of jurisdiction. Supreme Court Rule 307 did not allow for appeals from permanent injunctions. There were claims still pending in the trial court in one of the consolidated actions, and the trial court never made Supreme Court Rule 304(a) findings in either of the actions. Although one set of plaintiffs mentioned the possibility that an order in their case was final and separately appealable even in the absence of a Rule 304(a) finding, the appellants specifically rejected that possibility, and the record was not conducive to resolving the issue.

¶ 2 The plaintiffs in these consolidated actions challenge the Village of Deerfield's (Village) bans on "assault weapons" and "large-capacity magazines." The trial court entered permanent injunctions in both actions, prohibiting the Village from enforcing the bans. The Village and its mayor, Harriet Rosenthal, appeal pursuant to Supreme Court Rule 307 (eff. Nov. 1, 2017). We dismiss the appeal for lack of jurisdiction.

¶ 3 I. BACKGROUND

¶ 4 On April 2, 2018, the Village passed ordinance No. O-18-06. Village of Deerfield Ordinance No. O-18-06 (approved Apr. 2, 2018). With limited exceptions, that ordinance banned specified assault weapons within municipal limits. Any person who already possessed such weapons or large-capacity magazines was given a 60-day grace period to either (1) remove, sell, or transfer those items from the limits of the Village, (2) render the items permanently inoperable or otherwise modify them so that they no longer fell within the definitions of prohibited items, or (3) surrender the items to the chief of police.

¶ 5 On April 5, 2018, Daniel D. Easterday, the Illinois State Rifle Association, and the Second Amendment Foundation, Inc. (the Easterday plaintiffs) filed a one-count complaint against the Village seeking injunctive and declaratory relief. They alleged that ordinance No. O-18-06 was preempted by section 13.1 of the Firearm Owners Identification Card Act (430 ILCS 65/13.1 (West 2018)) and section 90 of the Firearm Concealed Carry Act (430 ILCS 66/90 (West 2018)). The Easterday action was designated in the trial court as case No. 18-CH-427.

¶ 6 On April 19, 2018, Guns Save Life, Inc. and John William Wombacher III (the Guns Save Life plaintiffs) filed a seven-count complaint against the Village and Rosenthal seeking injunctive and declaratory relief. The Guns Save Life plaintiffs alleged that ordinance No. O-18-06 was preempted by section 13.1 of the Firearm Owners Identification Card Act (count I) and section 2.1 of the Wildlife Code (520 ILCS 5/2.1 (West 2018)) (count II). Although the Guns Save Life plaintiffs maintained that the ordinance did not expressly ban large-capacity magazines (count III), to the extent that it did, they alleged that the ordinance was preempted by section 13.1 of the Firearm Owners Identification Card Act (count IV), section 90 of the Firearm Concealed Carry Act (also count IV), and section 2.1 of the Wildlife Code (count V). In count VI, the Guns Save Life plaintiffs alleged that the ordinance violated the takings clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 15). In count VII, they alleged that the ordinance violated the Eminent Domain Act (735 ILCS 30/90-5-20 (West 2018)). The Guns Save Life action was designated in the trial court as No. 18-CH-498.

¶ 7 On June 12, 2018, the court entered a temporary restraining order in the Guns Save Life action. The court enjoined enforcement of “any provision of [ordinance No. O-18-06] relating to the ownership, possession, storage or transportation of assault weapons or large capacity magazines within the Village of Deerfield.” The court reasoned, *inter alia*, that “[t]he language in the [Firearm Owners Identification Card Act] and the [Firearm Concealed Carry Act] show the State’s intent to preempt and have exclusive authority to regulate the ownership, possession, and carrying of handguns and assault weapons.” The court further found that ordinance No. O-18-06 did “not contain specific language prohibiting all large capacity magazines.” To the extent that it did, however, the court ruled that such prohibition was preempted by the Firearm Concealed Carry Act. The court nevertheless rejected the Guns Save Life plaintiffs’ contention that the

Wildlife Code preempted the ordinance. The court also disagreed with the Guns Save Life plaintiffs' arguments that the ordinance constituted an improper taking for purposes of the Illinois Constitution and the Eminent Domain Act.

¶ 8 By separate order entered on June 12, 2018, the court granted an identical temporary restraining order in the Easterday action. The court incorporated by reference the order that it had entered in the Guns Save Life action.

¶ 9 On June 18, 2018, evidently in response to the court's determination that ordinance No. O-18-06 did not expressly ban large-capacity magazines, the Village passed ordinance No. O-18-19. Village of Deerfield Ordinance No. O-18-19 (approved June 18, 2018). That ordinance explicitly banned large-capacity magazines.

¶ 10 On July 27, 2018, the court consolidated the Easterday action and the Guns Save Life action "for all future proceedings."

¶ 11 On August 17, 2018, the Guns Save Life plaintiffs filed a six-count amended complaint challenging ordinances Nos. O-18-06 and O-18-19. They alleged that the ban on assault weapons was preempted by section 13.1 of the Firearm Owners Identification Card Act (count I) and section 2.1 of the Wildlife Code (count II). They alleged that the ban on large-capacity magazines was preempted by section 13.1 of the Firearm Owners Identification Card Act (count III), section 90 of the Firearm Concealed Carry Act (also count III), and section 2.1 of the Wildlife Code (count IV). Count V alleged that the bans on assault weapons and large-capacity magazines violated the takings clause of the Illinois Constitution. Count VI alleged that the bans violated the Eminent Domain Act. That same day, the Guns Save Life plaintiffs filed a motion for summary judgment or, in the alternative, a preliminary injunction.

¶ 12 Also on August 17, 2018, the Easterday plaintiffs apparently filed both an amended complaint and a renewed motion for a preliminary injunction, neither of which are included in the supporting record.<sup>1</sup>

¶ 13 On October 12, 2018, the court apparently held an evidentiary hearing on the plaintiffs' respective requests for preliminary injunctive relief. Although the supporting record does not include any reports of proceedings or any order entered on October 12, it seems that the court may have reserved ruling on the plaintiffs' requests for preliminary injunctions.

¶ 14 On October 26, 2018, the Guns Save Life plaintiffs filed another motion for summary judgment. The Easterday plaintiffs purportedly filed a separate motion for summary judgment four days later, indicating that they would join the arguments made by the Guns Save Life plaintiffs. The supporting record does not contain the Easterday plaintiffs' motion for summary judgment.

¶ 15 On March 22, 2019, the court entered a permanent injunction in the Guns Save Life action. The court enjoined enforcement of "any provision of Ordinance No. O-18-06 and Ordinance No. O-18-19 making it unlawful to keep, possess, bear, manufacture, sell, transfer or transport assault weapons or large capacity magazines as defined in these ordinances." The court's rulings and rationale were consistent with its rulings and rationale in the June 12, 2018,

---

<sup>1</sup> The Easterday plaintiffs included a copy of their August 17, 2018, amended complaint in the appendix to their brief. They did not, however, file a supplemental supporting record in accordance with Supreme Court Rule 307(c) (eff. Nov. 1, 2017). "[I]t is well established that attachments to briefs which are not included as part of the record are not properly before the reviewing court and may not be considered to supplement the record." *Tunca v. Painter*, 2012 IL App (1st) 093384, ¶ 25.

temporary restraining orders. For example, the court again found that the ordinances were preempted by the Firearm Owners Identification Card Act and the Firearm Concealed Carry Act but not the Wildlife Code. The court also determined that genuine issues of material fact precluded summary judgment in favor of the Guns Save Life plaintiffs on their constitutional and statutory takings claims. The court set a status date for May 3, 2019.

¶ 16 Also on March 22, 2019, the court entered a separate order granting an identical permanent injunction in the Easterday action. The court incorporated by reference the order that it had entered in the Guns Save Life action.

¶ 17 On April 22, 2019, the Village and Rosenthal filed a “Notice of Interlocutory Appeal” in this court. There is ambiguity as to whether the Village and Rosenthal meant to appeal *both* the March 22, 2019, order that was entered in the Guns Save Life action *and* the order of the same date that was entered in the Easterday action, or *just* the order that was entered in the Guns Save Life action.<sup>2</sup> The caption in the notice of appeal included both the Guns Save Life action and the Easterday action, and both sets of plaintiffs were designated as “Respondents-Appellees.” However, the Village and Rosenthal asserted that they intended to appeal, pursuant to Supreme Court Rule 307(a) (eff. Nov. 1, 2017), “the March 22, 2019 permanent injunction issued by the Circuit Court of Lake County, which was memorialized in *a written order* on March 22, 2019.” (Emphasis added.) The Village and Rosenthal did not attach a copy of any order to their notice of appeal, but instead indicated that “[a] copy of the court’s March 22 *order* is contained in the accompanying supporting record.” (Emphasis added.) As noted above, the supporting record contains a March 22, 2019, order that was entered in the Guns Save Life action and a separate order of the same day that was entered in the Easterday action.

---

<sup>2</sup> As mentioned above, Rosenthal was not a defendant in the Easterday action.

¶ 18 On April 25, 2019, the Village and Rosenthal filed an identical “Notice of Interlocutory Appeal” in the circuit court of Lake County. This time, adding to the confusion about which order or orders were subject to the appeal, the Village and Rosenthal attached a copy of the March 22, 2019, order that was entered in the Guns Save Life action. The Village and Rosenthal did not attach the order that was entered in the Easterday action.

¶ 19

## II. ANALYSIS

¶ 20

### A. Motions Taken With the Case

¶ 21 The Village and Rosenthal filed their notice of appeal on April 22, 2019—30 days after the entry of the March 22 orders—with the clerk of the *appellate court*. Supreme Court Rule 303(a)(1) (eff. July 1, 2017) provides that “[t]he notice of appeal must be filed with the clerk of the *circuit court*.” (Emphasis added.) The Village and Rosenthal did not file their notice of appeal in the circuit court until April 25, 2019.

¶ 22 In their appellee’s brief, the Guns Save Life plaintiffs argue that the failure to file a timely notice of appeal with the clerk of the circuit court deprived this court of jurisdiction. In support of their position, the Guns Save Life plaintiffs rely primarily on *First Bank v. Phillips*, 379 Ill. App. 3d 186 (2008) (appeal dismissed for lack of jurisdiction where a notice of appeal was filed in the appellate court on day 30 but the notice was not filed in the circuit court until one week later), and *Swinkle v. Illinois Civil Service Commission*, 387 Ill. App. 3d 806 (2009) (following *First Bank*).

¶ 23 In their reply brief, the Village and Rosenthal explain that, on the evening of April 22, 2019, their counsel e-filed the supporting record in the appellate court and then also “inadvertently” filed the notice of appeal in the appellate court “rather than opening a second electronic filing in the Circuit Court.” According to the Village and Rosenthal, when their

counsel learned of his error the next morning, he “worked with the Clerk of the Appellate Court to correct it.” Addressing the authority cited by the Guns Save Life plaintiffs, the Village and Rosenthal maintain that those cases failed to account for *Harrisburg-Raleigh Airport Authority v. Department of Revenue*, 126 Ill. 2d 326 (1989) (a notice of appeal that is mailed within 30 days of a final judgment will be deemed timely filed even though the circuit court receives that notice outside of the 30-day window), and *People v. White*, 333 Ill. App. 3d 777 (2002) (a notice of appeal that was mailed to the appellate court within the 30-day window was deemed timely filed, even though it was not stamped in the circuit court until a week and a half later). The Village and Rosenthal claim that *Harrisburg-Raleigh* and *White* “affirm the principle that a timely but erroneous filing in the appellate court does not divest the appellate court of jurisdiction.”

¶ 24 On May 16, 2019, contemporaneously with the filing of their reply brief, the Village and Rosenthal filed a “Rule 303(d) motion for extension of time in certain circumstances.” Supreme Court Rule 303(d) (eff. July 1, 2017) provides, in relevant portion:

“On motion supported by a showing of reasonable excuse for failure to file a notice of appeal on time, accompanied by the proposed notice of appeal and the filing fee, filed in the reviewing court within 30 days after expiration of the time for filing a notice of appeal, the reviewing court may grant leave to appeal and order the clerk to transmit the notice of appeal to the trial court for filing.”

The Village and Rosenthal request in their motion that we enter an order “excusing the erroneous filing in this Court, accepting the Notice of Interlocutory Appeal as timely and establishing the jurisdiction of this Court.” In addition to reiterating the arguments that they present in their reply brief, the Village and Rosenthal submit an affidavit from their counsel. He avers as follows. He prepared and filed the notice of appeal in the appellate court on April 22, 2019. That same

evening, he ensured that all parties were served with copies of the notice of appeal. In his haste to ensure that the notice of appeal was timely filed, he neglected to make sure that it was filed in the correct court. On the morning of April 23, 2019, he contacted an unnamed appellate court clerk and informed her of the error. The clerk informed him that “she would contact the Circuit Court of Lake County and apprise them [*sic*] of the appeal.” He again spoke with the clerk in the appellate court on the afternoon of April 23, 2019, and she informed him that she had contacted the circuit court and “made them [*sic*] aware of the error.” Based on his discussions with the clerk in the appellate court, he was under the impression that he need not take any further action as it pertained to the notice of appeal. He was then made aware that his understanding was incorrect, and he subsequently filed the notice of appeal with the circuit court on April 25, 2019.

¶ 25 The Guns Save Life plaintiffs object to the motion. They argue that the Village and Rosenthal failed to comply with Rule 303(d)’s requirement to submit a motion “accompanied by the proposed notice of appeal.” Moreover, the Guns Save Life plaintiffs assert that opposing counsel acknowledged having realized his mistake on April 23, 2019, yet he “attempted to sweep the issue under the rug” by submitting an appellant’s brief on April 29 with “a carefully worded Statement of Jurisdiction that said nothing about the matter.” According to the Guns Save Life plaintiffs, the Village and Rosenthal may not invoke the grace of this court pursuant to Rule 303(d) when their counsel failed to transparently identify in the appellant’s brief his clients’ “novel” jurisdictional theory. The Guns Save Life plaintiffs further argue that opposing counsel’s proffered reason for filing the notice of appeal in the wrong court—acting with too much haste—is a “flimsy excuse.” According to the Guns Save Life plaintiffs, *First Bank* and its progeny are well-reasoned and ought to have more precedential value than the older cases that

the Village and Rosenthal cite. The Guns Save Life plaintiffs also contend that *White* is factually distinguishable.

¶ 26 On May 22, 2019, we ordered the Village's and Rosenthal's motion to be taken with the case.

¶ 27 Later that day, the Village and Rosenthal filed an "amended Rule 303(d) motion for extension of time in certain circumstances." Unlike their original motion, the amended motion is indeed accompanied by a proposed notice of appeal. The proposed notice of appeal is identical to the ones which were filed in the appellate court on April 22, 2019, and in the circuit court on April 25—except that it does not include the following sentence: "A copy of the court's March 22 order is contained in the accompanying supporting record." No copy of any court order is attached to the proposed notice of appeal accompanying the amended Rule 303(d) motion.

¶ 28 We did not receive any response to the amended Rule 303(d) motion. On June 3, 2019, we ordered the amended motion taken with the case.

¶ 29 Having considered the parties' respective arguments, we now grant the Village's and Rosenthal's amended Rule 303(d) motion, and we deny their original motion as moot. The amended motion was timely filed within 60 days of March 22, 2019. It appears that counsel made an honest mistake in his attempt to file a notice of appeal, albeit at the 11th hour. See *Bank of Herrin v. Peoples Bank of Marion*, 105 Ill. 2d 305, 308 (1985) (the rule governing late notices of appeal encompasses "an honest mistake of counsel."). We have no reason to believe that the Village, Rosenthal, or their counsel recognized the potential jurisdictional ramifications of the mistake until the Guns Save Life plaintiffs raised the issue in their appellee's brief. Counsel is an officer of the court, and we will grant him the benefit of presuming that he did not mean to "sweep the issue under the rug."

¶ 30 We need not comment on any tension in the caselaw that the parties cite in support of their respective positions. Assuming that the Village's and Rosenthal's failure to file a notice of appeal in the correct court was initially an impediment to our jurisdiction, we have now removed that particular impediment by granting the amended Rule 303(d) motion. Neither *First Bank, Swinkle, Harrisburg-Raleigh*, nor *White* involved a motion for leave to file a late notice of appeal.

¶ 31 B. Remaining Jurisdictional Issues

¶ 32 Notwithstanding a valid notice of appeal, we are powerless to address the merits of the parties' dispute as to the propriety of the permanent injunctions. The Illinois Constitution establishes that the appellate court has jurisdiction over "final judgments" entered in the circuit courts, and it empowers our supreme court to enact rules providing for other types of appeals. Ill. Const. 1970, art. VI, § 6. "[A]bsent a supreme court rule, the appellate court is without jurisdiction to review judgments, orders, or decrees that are not final." *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 22. Even if the Easterday plaintiffs had not flagged the following jurisdictional issues for us, we would still have an independent duty to consider our jurisdiction and to dismiss the appeal if jurisdiction were lacking. *Houghtaylen v. Russell D. Houghtaylen By-Pass Trust*, 2017 IL App (2d) 170195, ¶ 12.

¶ 33 The Village and Rosenthal propose that we have jurisdiction pursuant to Supreme Court Rule 307 (eff. Nov. 1, 2017). Presumably, they are relying on Rule 307(a)(1), which allows for appeals from *interlocutory* orders "granting, modifying, dissolving, or refusing to dissolve or modify an injunction." Both of the orders that the court entered on March 22, 2019, however, were permanent injunctions, not interlocutory orders. "[A] permanent injunction is a final order, appealable only pursuant to Supreme Court Rules 301 or 304." *Skolnick v. Alzheimer & Gray*,

191 Ill. 2d 214, 222 (2000); see also *Steel City Bank v. Village of Orland Hills*, 224 Ill. App. 3d 412, 416-17 (1991) (“Because [Rule 307] is addressed only to interlocutory orders, the order appealed from must not be in the nature of a permanent injunction. \*\*\* If an injunction is permanent in nature, it is a final order appealable only under Rules 301 or 304(a), if those rules are otherwise applicable.”). Rule 307 thus does not give us jurisdiction over this appeal.

¶ 34 Although the March 22, 2019, order in the Guns Save Life action was a permanent injunction, there was plainly no “final judgment” in the action within the meaning of the Illinois Constitution and Supreme Court Rule 301 (eff. Feb. 1, 1994). A judgment is final where the trial court has determined the issues presented by the pleadings and fixed absolutely the parties’ respective rights. See *Lamar Whiteco Outdoor Corp. v. City of West Chicago*, 395 Ill. App. 3d 501, 504 (2009). The trial court found that genuine issues of material fact precluded summary judgment on the takings and Eminent Domain Act claims presented in counts V and VI of the Guns Save Life plaintiffs’ amended complaint. It likewise appears that the court did not enter a final order with respect to counts II and IV of the amended complaint, which alleged preemption under the Wildlife Code. Although the court rejected the plaintiffs’ legal theories presented in counts II and IV, the Village and Rosenthal did not file a cross-motion for summary judgment. The court set a status date for further proceedings. There was thus no final judgment entered in the Guns Save Life action that would have rendered the permanent injunction appealable pursuant to Supreme Court Rule 301.

¶ 35 We next look to Supreme Court Rule 304(a) (eff. Mar. 8, 2016) to see if we have jurisdiction. That rule provides:

“If multiple parties or multiple claims for relief are involved in an action, an appeal may be taken from a final judgment as to one or more but fewer than all of the parties or

claims only if the trial court has made an express written finding that there is no just reason for delaying either enforcement or appeal or both.”

Neither the March 22, 2019, order in the Guns Save Life action nor the separate order entered that day in the Easterday action contained Rule 304(a) language. That rule thus does not provide a basis for our jurisdiction.

¶ 36 The Easterday plaintiffs suggest that the court’s March 22, 2019, order in their case was immediately appealable pursuant to Supreme Court Rule 301. According to the Easterday plaintiffs, although the two actions were consolidated in the trial court, they did not merge into a single action. Therefore, the Easterday plaintiffs propose, the judgment resolving all claims in their action was immediately appealable, even though there was no final judgment entered in the Guns Save Life action. From that premise, the Easterday plaintiffs then argue that the Village missed its opportunity to appeal the final order (“It is clear from all the circumstances surrounding this appeal that the final order of a permanent injunction in *Easterday* is not being, and has not been, appealed.”).

¶ 37 In their reply brief, without any meaningful analysis, and without citing authority regarding the effects of consolidation, the Village and Rosenthal reject the possibility that there was a final judgment in the Easterday action. They continue erroneously to invoke Rule 307 as the basis for our jurisdiction, and they argue that the March 22, 2019, order in the Easterday action is indeed part of this purported interlocutory appeal.

¶ 38 As mentioned above, there is ambiguity as to whether the Village meant to include as part of this appeal the March 22, 2019, order that was entered in the Easterday action. We must construe the notice of appeal liberally and as a whole. *Henderson v. Lofts at Lake Arlington Towne Condominium Ass’n*, 2018 IL App (1st) 162744, ¶ 61. Given that all three versions of the

notice of appeal that the Village and Rosenthal filed designated the Easterday plaintiffs as “Respondents-Appellees” and purported to appeal from a permanent injunction entered on March 22, 2019, we conclude that the Village indeed attempted to appeal the permanent injunction that was entered in the Easterday action.

¶ 39 With that said, we cannot determine from the record before us whether the March 22, 2019, order in the Easterday action was appealable without a Rule 304(a) finding. Given that the Village and Rosenthal mistakenly pursued this appeal as an accelerated interlocutory matter, they filed a supporting record pursuant to Supreme Court Rule 328 (eff. July 1, 2017), rather than the more comprehensive record required by Rule 321 (eff. Feb. 1, 1994). The supporting record does not contain, for example, the Easterday plaintiffs’ amended complaint or their motion for summary judgment. We therefore cannot independently verify that the March 22, 2019, order resolved all of these plaintiffs’ claims.

¶ 40 That is not the only problem. The Easterday plaintiffs insist that the two actions did not merge, even though they were consolidated. The supporting record, however, does not allow us to determine which form of consolidation the trial court intended.

“Illinois courts have recognized three distinct forms of consolidation: (1) where several actions are pending involving the same subject matter, the court may stay proceedings in all but one of the cases and determine whether the disposition of one action may settle the others; (2) where several actions involve an inquiry into the same event in its general aspects, the actions may be tied together, but with separate docket entries, verdicts and judgment, the consolidation being limited to a joint trial; and (3) where several actions are pending which might have been brought as a single action, the cases may be merged into one action, thereby losing their individual identity, to be

disposed of as one suit.” *Busch v. Mison*, 385 Ill. App. 3d 620, 624 (2008).

The first form of consolidation is not at issue here, as the trial court did not stay any proceedings. That leaves the second and third forms.

¶ 41 The difference between those forms can affect appellate jurisdiction. Where the second form of consolidation applies, a final judgment entered in one of the actions is immediately appealable without a Rule 304(a) finding. See *In re Adoption of S.G.*, 401 Ill. App. 3d 775, 781 (2010). In fact, the aggrieved party *must* immediately appeal the final order in that first action, as opposed to waiting until the companion action is resolved. See *S.G.*, 401 Ill. App. 3d at 783; *Kassnel v. Village of Rosemont*, 135 Ill. App. 3d 361, 364-65 (1985). Where, however, the third form of consolidation applies and the two actions merge into one, unless the trial court makes a Rule 304(a) finding, the aggrieved party may not appeal until all claims have been adjudicated. See *S.G.*, 401 Ill. App. 3d at 781; *Nationwide Mutual Insurance Co. v. Filos*, 285 Ill. App. 3d 528, 532 (1996). In considering which form of consolidation applies in a given case, reviewing courts have looked to the reasons for consolidation proposed by the litigants in their motions for consolidation. See *S.G.*, 401 Ill. App. 3d at 782; *Busch*, 385 Ill. App. 3d at 625; *Filos*, 285 Ill. App. 3d at 532. Other relevant considerations may include the wording of the consolidation order (*Busch*, 385 Ill. App. 3d at 625), whether the cases maintained separate docket entries after consolidation, and whether the litigants were treated as parties in both cases (*S.G.*, 401 Ill. App. 3d at 782-83).

¶ 42 The supporting record does not contain a motion for consolidation. Nor does the record contain any reports of proceedings. Thus, we have no way of knowing why the parties and/or the trial court believed that consolidation was appropriate or whether the court’s intent was to merge the actions. The supporting record does contain the second page of a July 27, 2018, order

indicating that the Guns Save Life action was consolidated with the Easterday action “for all future proceedings.” In some of their trial court memoranda, however, the Village and Rosenthal recounted that the court consolidated the actions on July 20, 2018. The supporting record does not contain a July 20 order, so this reinforces our concern that the court may have made relevant findings or comments that we do not have in front of us. Absent a complete record of the trial court proceedings, we lack sufficient information to determine whether the two actions merged or whether the order purportedly resolving all claims in the Easterday action was appealable without a Rule 304(a) finding. See *Tunca v. Painter*, 2012 IL App (1st) 093384, ¶ 25 (“Generally, in a direct appeal from the trial court, the transcript of the record must reveal the basis for the jurisdiction of the appellate court.”); *Foutch v. O’Bryant*, 99 Ill. 2d 389, 392 (1984) (“Any doubts which may arise from the incompleteness of the record will be resolved against the appellant.”).

¶ 43 In summary, Rule 307 does not allow for appeals from permanent injunctions. There are claims still pending in the trial court in the Guns Save Life action, and the trial court never made Rule 304(a) findings in either of the consolidated actions. Although the Easterday plaintiffs mention the possibility that the March 22, 2019, order in their case was final and separately appealable even in the absence of a Rule 304(a) finding, the Village and Rosenthal specifically reject that possibility, and the record is not conducive to resolving the issue. We thus discern no basis for our jurisdiction.

¶ 44 Irrespective of whether the two actions merged, Deerfield’s and Rosenthal’s appeal of the permanent injunction that was entered in the Guns Save Life action is premature. If the two actions merged, Deerfield and Rosenthal may not appeal until the resolution of all claims in both actions (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the

Guns Save Life action). If the two actions did not merge, Deerfield and Rosenthal may not appeal until the resolution of all claims in the Guns Save Life action (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Guns Save Life action). We presume that, in either event, Deerfield and Rosenthal can timely file a new notice of appeal. If, however, all claims have now been resolved and the time to file a new notice of appeal has expired, Deerfield and Rosenthal may invoke the saving provisions of Rule 303(a)(2). See *In re Marriage of Knoerr*, 377 Ill. App. 3d 1042, 1050 (2007). Under that rule, we may give effect to Deerfield's and Rosenthal's premature notice of appeal upon the resolution of all claims. Thus, if Deerfield and Rosenthal cannot file a timely notice of appeal, they may move within 21 days to establish our jurisdiction by supplementing the record to show that all claims have been resolved. Should Deerfield's and Rosenthal's motion be well founded, we may grant it, vacate this order, and proceed to the merits.

¶ 45 With respect to Deerfield's appeal of the permanent injunction that was entered in the Easterday action, however, the appeal is premature only if the two actions merged. If the two actions merged, Deerfield may not appeal until the resolution of all claims in both actions (or until the trial court enters a Rule 304(a) finding as to the permanent injunction in the Easterday action). (If the two actions did not merge, Deerfield's failure to establish that fact in the present appeal is fatal to any appeal in the Easterday action.) Again, if the two actions merged, we presume that Deerfield can timely file a new notice of appeal. If, however, all claims have now been resolved and the time to file a new notice of appeal has expired, Deerfield may invoke Rule 303(a)(2) as outlined above.

¶ 46 III. CONCLUSION

¶ 47 For the forgoing reasons, we hereby dismiss this appeal for lack of jurisdiction.

¶ 48 Appeal dismissed.

In the  
**Supreme Court of Illinois**

---

GUNS SAVE LIFE, INC., and JOHN WILLIAM WOMBACHER III,

*Plaintiffs-Movants,*

v.

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

*Defendants-Respondents.*

---

On Petition for Leave to Appeal from the Appellate Court of Illinois  
Second Judicial District, No. 2-19-0879  
There on Appeal from the Circuit Court of  
Lake County, Illinois, No. 18 CH 498  
The Honorable Luis A. Berrones, Presiding

---

**NOTICE OF FILING**

---

To: Christopher B. Wilson - cwilson@perkinscoie.com  
John B. Sample - jsample@perkinscoie.com  
Christopher P. Eby – ceby@perkinscoie.com  
Perkins Coie, LLP  
131 South Dearborn St., Suite 1700  
Chicago, Illinois 60603

Steven M. Elrod - steven.elrod@ElrodFriedman.com  
Hart M. Passman - hart.passman@ElrodFriedman.com  
Elrod Friedman LLP  
325 N. LaSalle St.  
Suite 450  
Chicago, Illinois 60654

Jonathan E. Lowy - jlowy@bradymail.org  
Brady Center to Prevent Gun Violence  
840 First St., N.E., Suite 400  
Washington, D.C. 20002

David G. Sigale - dsigale@sigalelaw.com  
Law Firm of David G. Sigale, P.C.  
430 West Roosevelt Road  
Wheaton, Illinois 60187

PLEASE TAKE NOTICE that on January 8, 2021, the Plaintiffs-Movants submitted for filing by electronic means their Petition for Leave to Appeal with the Supreme Court of Illinois.

/s/ Christian D. Ambler  
Christian D. Ambler

Brian W. Barnes (ARDC No. \_\_\_\_)\*  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
Telephone (202) 220-9600

Christian D. Ambler  
STONE & JOHNSON, CHARTERED  
111 West Washington St.-Suite 1800  
Chicago, IL 60602  
Telephone (312) 223-5656

\*Appearance to be entered pursuant to Ill. S. Ct. Rule 707

In the  
**Supreme Court of Illinois**

---

GUNS SAVE LIFE, INC., and JOHN WILLIAM WOMBACHER III,

*Plaintiffs-Movants,*

v.

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

*Defendants-Respondents.*

---

On Petition for Leave to Appeal from the Appellate Court of Illinois  
Second Judicial District, No. 2-19-0879  
There on Appeal from the Circuit Court of  
Lake County, Illinois, No. 18 CH 498  
The Honorable Luis A. Berrones, Presiding

---

**CERTIFICATE OF SERVICE**

---

To: Christopher B. Wilson - cwilson@perkinscoie.com  
John B. Sample - jsample@perkinscoie.com  
Christopher P. Eby – ceby@perkinscoie.com  
Perkins Coie, LLP  
131 South Dearborn St., Suite 1700  
Chicago, Illinois 60603

Steven M. Elrod - steven.elrod@ElrodFriedman.com  
Hart M. Passman - hart.passman@ElrodFriedman.com  
Elrod Friedman LLP  
325 N. LaSalle St.  
Suite 450  
Chicago, Illinois 60654

Jonathan E. Lowy - jlowy@bradymail.org  
Brady Center to Prevent Gun Violence  
840 First St., N.E., Suite 400  
Washington, D.C. 20002

David G. Sigale - dsigale@sigalelaw.com  
Law Firm of David G. Sigale, P.C.  
430 West Roosevelt Road  
Wheaton, Illinois 60187

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I do hereby, certify that the statements set forth in the foregoing instrument are true and correct, except for statements therein made on information and belief and as to those I certify that I verily believe the same to be true and correct. On January 8, 2021, a copy of Plaintiffs-Movants' Notice of Filing, this Certificate of Service, and three copies of Petition for Leave to Appeal Pursuant to Rule 315 were served on the above attorneys of record, by electronic transmission on January 8, 2021.

/s/ Christian D. Ambler  
Christian D. Ambler

Brian W. Barnes (ARDC No. \_\_\_\_)\*  
COOPER & KIRK, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
Telephone (202) 220-9600

Christian D. Ambler  
STONE & JOHNSON, CHARTERED  
111 West Washington St.-Suite 1800  
Chicago, IL 60602  
Telephone (312) 223-5656

\*Appearance to be entered pursuant to Ill. S. Ct. Rule 707

FILED

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
LAKE COUNTY, ILLINOIS  
CHANCERY DIVISION

SEP 06 2019

*Erica Carls*  
CIRCUIT CLERK

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

Plaintiffs,

v.

VILLAGE OF DEERFIELD, ILLINOIS,  
a municipal corporation,

Defendant.

Case No. 18 CH 427

GUNS SAVE LIFE, INC. and  
JOHN WILLIAM WOMBACHER III,

Plaintiffs,

v.

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

Defendants.

Case No. 18 CH 498

*[consolidated with  
Case No. 18 CH 427]*

**[PROPOSED] ORDER**

This matter having come before the Court on Defendants' Motion for a Finding Pursuant to Rule 304(a), all parties having appeared and the Court being fully advised in the premises, it is hereby Ordered: *over Plaintiffs' Objections*

- (1) The Court's March 22, 2019 Memorandum Order in Guns Save Life, et al. v. Village of Deerfield, Case No. 18 CH 498, is amended to include a finding pursuant to Rule 304(a) of the Illinois Supreme Court Rules that the Court's Ruling was final and appealable for purposes of Rule 304(a) as to Counts I-IV of the Guns Save Life Plaintiffs' First Amended Complaint. Further the Court's entry of a permanent injunction is similarly final and appealable pursuant to Rule

304(a). There is no just reason for delaying either enforcement or appeal of those rulings.

- (2) The Court's March 22, 2019 Order concerning the companion case Easterday, et al. v. Village of Deerfield, et al., Case No. 18 CH 427, is also amended to include a finding pursuant to Rule 304(a) of the Illinois Supreme Court Rules that the Court's Ruling was final and appealable for purposes of Rule 304(a) as to the Court's entry of a permanent injunction. There is no just reason for delaying either enforcement or appeal of that ruling.
- (3) The Court's Order of July 27, 2018 consolidating these cases "for all purposes" addressed both of these cases which "might have been brought as a single action." The purpose and effect of that Order was to have them "merged into one action, thereby losing their individual identity, to be disposed of as a single suit." *Busch v. Mison*, 385 Ill. App. 3d 620, 624 (1st Dist. 2008).
- (4) The status hearing <sup>is struck</sup> set for October 4, 2019 at 9:00 am ~~shall include all parties in the Easterday and Guns Save Life cases.~~ and <sup>reset for</sup> February 20, 2019 at 9:00 am.

Dated: \_\_\_\_\_

ENTER:

  
JUDGE

**Order Prepared by:**

Christopher B. Wilson, ARDC No. 6202139  
131 South Dearborn Street, Suite 1700  
Chicago, IL 60603  
Phone: 312.324.8400  
Fax: 312.324.9400  
[cwilson@perkinscoie.com](mailto:cwilson@perkinscoie.com)

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
SECOND JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
LAKE COUNTY, ILLINOIS

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

Plaintiff/Petitioner

Reviewing Court No: 2-19-0879  
Circuit Court No: 2018CH000427  
Trial Judge: LUIS A. BERRONES

v.

10

VILLAGE OF DEERFIELD, ILLINOIS, A  
MUNICIPAL CORPORATION

Defendant/Respondent

E-FILED  
Transaction ID: 2-19-0879  
File Date: 12/2/2019 11:15 AM  
Robert J. Mangan, Clerk of the Court  
APPELLATE COURT 2ND DISTRICT

Consolidated Circuit Court No: 2018CH000498

**CERTIFICATION OF RECORD**

The record has been prepared and certified in the form required for transmission to the reviewing court. It consists of:

- 1 Volume(s) of the Common Law Record, containing 1569 pages
- 1 Volume(s) of the Report of Proceedings, containing 305 pages
- 1 Volume(s) of the Exhibits, containing 2 pages



I do further certify that this certification of the record pursuant to Supreme Court Rule 324, issued out of my office this 2 DAY OF DECEMBER, 2019

*Erin Cartwright Weinstein*

(Clerk of the Circuit Court or Administrative Agency)

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
 SECOND JUDICIAL DISTRICT  
 FROM THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
 LAKE COUNTY, ILLINOIS

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

Plaintiff/Petitioner

Reviewing Court No: 2-19-0879

Circuit Court No: 2018CH000427

Trial Judge: LUIS A. BERRONES

v.

VILLAGE OF DEERFIELD, ILLINOIS, A  
MUNICIPAL CORPORATION

Defendant/Respondent

**COMMON LAW RECORD - TABLE OF CONTENTS**

Page 1 of 7

| <u>Date Filed</u> | <u>Title/Description</u>   | <u>Page No.</u> |
|-------------------|--|-----------------|
| 04/05/2018        | <u>COMPLAINT FOR DECLARATORY AND</u><br><u>INJUNCTIVE RELIEF</u>   | C 9-C 31        |
| 04/05/2018        | <u>CERTIFICATE OF ATTORNEY CIVIL DIVISION</u>  | C 32            |
| 04/10/2018        | <u>735 ILCS 5-2-1001(A)(2) MOTION FOR</u><br><u>SUBSTITUTION OF JUDGE AS OF RIGHT</u>  | C 33-C 34       |
| 04/10/2018        | <u>NOTICE OF MOTION</u>  | C 35-C 36       |
| 04/11/2018        | <u>NOTICE OF FILING</u>  | C 37-C 38       |
| 04/11/2018        | <u>APPEARANCE</u>  | C 39            |
| 04/26/2018        | <u>CIVIL AND FAMILY DIVISION</u><br><u>REASSIGNMENT ORDER</u>  | C 40            |
| 04/26/2018        | <u>ORDER</u>   | C 41            |
| 05/04/2018        | <u>ORDER</u>   | C 42            |
| 05/25/2018        | <u>NOTICE OF MOTION</u>  | C 43-C 44       |
| 05/25/2018        | <u>PETITION FOR 735 ILCS 5-11-101</u><br><u>TEMPORARY RESTRAINING ORDER AND 735</u><br><u>ILCS 5-11-1-2 PRELIMINARY INJUNCTION</u> | C 45-C 59       |
| 05/25/2018        | <u>AFFIDAVIT OF DANIEL D. EASTERDAY</u>  | C 60-C 61       |
| 05/29/2018        | <u>CERTIFICATE OF SERVICE</u>  | C 62            |
| 05/29/2018        | <u>ADDITIONAL APPEARANCE</u>   | C 63            |

## COMMON LAW RECORD - TABLE OF CONTENTS

Page 2 of 7

| <u>Date Filed</u> | <u>Title/Description</u>   | <u>Page No.</u> |
|-------------------|--|-----------------|
| 05/29/2018        | <u>CERTIFICATE OF SERVICE 2</u>  | C 64            |
| 05/30/2018        | <u>ORDER</u>   | C 65-C 66       |
| 05/31/2018        | <u>ADDITIONAL APPEARANCE</u>   | C 67            |
| 05/31/2018        | <u>CERTIFICATE OF SERVICE</u>  | C 68            |
| 06/11/2018        | <u>NOTICE OF FILING</u>  | C 69-C 70       |
| 06/11/2018        | <u>PLAINTIFFS' REPLY TO DEFENDANT'S BRIEF<br/>IN OPPOSITION TO PLAINTIFFS' PETITION<br/>FOR 735 ILCS 5-11-101 TEMPORARY<br/>RESTRAINING ORDER...</u>   | C 71-C 78       |
| 06/12/2018        | <u>ORDER</u>   | C 79-C 100      |
| 08/17/2018        | <u>AMENDED COMPLAINT FOR DECLARATORY AND<br/>INJUNCTIVE RELIEF</u>   | C 101-C 129     |
| 08/15/2018        | <u>NOTICE OF FILING</u>  | C 130-C 132     |
| 08/17/2018        | <u>PLAINTIFF DANIEL D. EASTERDAY'S<br/>ILLINOIS STATE RIFLE ASSOCIATION'S AND<br/>SECOND AMENDMENT FOUNDATION, INC'S<br/>MEMORANDUM IN SUPPORT ...</u> | C 133-C 165     |
| 08/17/2018        | <u>NOTICE OF FILING</u>  | C 166-C 168     |
| 09/10/2018        | <u>DEFENDANT'S BRIEF IN OPPOSITION TO<br/>PLAINTIFF'S RENEWED MOTION FOR<br/>PRELIMINARY INJUNCTION</u>  | C 169-C 208     |
| 09/10/2018        | <u>NOTICE OF FILING</u>  | C 209-C 211     |
| 09/28/2018        | <u>PLAINTIFF'S REPLY TO DEFENDANTS' BRIEF<br/>IN OPPOSITION TO PLAINTIFFS' RENEWED<br/>MOTION FOR PRELIMINARY INJUNCTION</u>                           | C 212-C 221     |
| 09/28/2018        | <u>NOTICE OF FILING</u>  | C 222-C 223     |
| 10/12/2018        | <u>LETTER</u>  | C 224-C 225     |
| 10/12/2018        | <u>ORDER PLACING CASE UNDER ADVISEMENT</u>   | C 226           |
| 10/12/2018        | <u>ORDER</u>   | C 227           |
| 10/30/2018        | <u>NOTICE FILING</u>   | C 228-C 229     |
| 10/30/2018        | <u>PLAINTIFFS DANIEL D. EASTERDAY,<br/>ILLINOIS STATE RIFFLE ASSOCIATION, AND<br/>SECOND AMENDMENT FOUNDATION...</u>                                   | C 230-C 234     |
| 11/01/2018        | <u>EXHIBIT RECEIPT</u>   | C 235           |
| 03/22/2019        | <u>ORDER</u>   | C 236-C 259     |

## COMMON LAW RECORD - TABLE OF CONTENTS

Page 3 of 7

| <u>Date Filed</u>   | <u>Title/Description</u>   | <u>Page No.</u> |
|---------------------|--|-----------------|
| 04/25/2019          | <u>NOTICE OF INTERLOCUTORY APPEAL</u>  | C 260-C 263     |
| 06/14/2019          | <u>APPELLATE COURT ORDER</u>   | C 264           |
| 06/14/2019          | <u>NOTICE OF INTERLOCUTORY APPEAL<br/>(PROPOSED)</u>   | C 265-C 266     |
| 06/21/2019          | <u>DEFENDANTS' MOTION FOR A FINDING<br/>PURSUANT TO RULE 304(A)</u>  | C 267-C 409     |
| 06/21/2019          | <u>DEFENDANTS' MOTION FOR A FINDING<br/>PURSUANT TO RULE 304(A) 2</u>  | C 410-C 552     |
| 06/21/2019          | <u>NOTICE OF MOTION</u>  | C 553-C 555     |
| 06/28/2019          | <u>BREIFING SCHEDULE ORDER</u>   | C 556           |
| 07/26/2019          | <u>NOTICE OF FILING</u>  | C 557-C 559     |
| 07/26/2019          | <u>PLAINTIFFS DANIEL D. EATERDAY ILLINOIS<br/>STATE RIFFLE ASSOCIATION AND SECOND<br/>AMENDMENT FOUNDATION, INC'S RESPONSE</u> | C 560-C 571     |
| 07/26/2019          | <u>MANDATE</u>   | C 572-C 591     |
| 08/23/2019          | <u>DEFENDANTS' UNCONTESTED MOTION FOR<br/>LEAVE TO FILE BRIEF IN EXCESS OF PAGE<br/>LIMITATION</u>                             | C 592-C 596     |
| 08/23/2019          | <u>DEFENDANTS' REPLY IN SUPPORT OF THEIR<br/>MOTION FOR A FINDING PURSUANT TO RULE<br/>304(A)</u>                              | C 597-C 612     |
| 08/23/2019          | <u>NOTICE OF MOTION</u>  | C 613-C 615     |
| 09/06/2019          | <u>PROPOSED ORDER</u>  | C 616-C 617     |
| 10/03/2019          | <u>NOTICE OF APPEAL</u>  | C 618-C 650     |
| 10/07/2019          | <u>REQUEST FOR PREPARATION OF RECORD ON<br/>APPEAL</u>   | C 651-C 653     |
| 10/07/2019          | <u>NOTICE OF FILING</u>  | C 654-C 656     |
| 10/18/2019          | <u>APPELLATE COURT ORDER</u>   | C 657           |
| <b>2018CH000498</b> |  |                 |
| 04/19/2018          | <u>COMPLAINT</u>   | C 658-C 696     |
| 04/19/2018          | <u>CERTIFICATE OF ATTORNEY CIVIL DIVISION</u>  | C 697           |
| 05/03/2018          | <u>AFFIDAVIT OF SERVICE</u>  | C 698-C 699     |
| 05/03/2018          | <u>AFFIDAVIT OF SERVICE 2</u>  | C 700-C 701     |
| 05/08/2018          | <u>NOTICE OF FILING</u>  | C 702           |

## COMMON LAW RECORD - TABLE OF CONTENTS

Page 4 of 7

| <u>Date Filed</u> | <u>Title/Description</u>   | <u>Page No.</u> |
|-------------------|--|-----------------|
| 05/08/2018        | <u>VERIFIED STATEMENT OF OUT OF STATE ATTORNEY PURSUANT TO SUPREME COURT RULE 707</u>                                | C 703-C 709     |
| 05/08/2018        | <u>NOTICE OF FILING OF RULE 707 STATEMENT</u>  | C 710           |
| 05/08/2018        | <u>VERIFIED STATEMENT OF OUT OF STATE ATTORNEY PURSUANT TO SUPREME COURT RULE 707 2</u>                              | C 711-C 717     |
| 05/08/2018        | <u>NOTICE OF MOTION</u>  | C 718           |
| 05/08/2018        | <u>PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION</u>                                 | C 719-C 759     |
| 05/30/2018        | <u>CERTIFICATE OF SERVICE</u>  | C 760-C 761     |
| 05/30/2018        | <u>CERTIFICATE OF SERVICE 2</u>  | C 762-C 763     |
| 05/30/2018        | <u>ADDITIONAL APPEARANCE</u>   | C 764           |
| 05/30/2018        | <u>APPEARANCE</u>  | C 765           |
| 05/30/2018        | <u>ADDITIONAL APPEARANCE 2</u>   | C 766-C 767     |
| 05/30/2018        | <u>ADDITIONAL APPEARANCE 3</u>   | C 768-C 769     |
| 05/30/2018        | <u>ORDER 2</u>   | C 770-C 771     |
| 06/01/2018        | <u>NOTICE OF FILING</u>  | C 772-C 773     |
| 06/01/2018        | <u>APPEARANCE</u>  | C 774           |
| 06/05/2018        | <u>DEFENDANTS' BRIEF IN OPPOSITION TO MOTION FOR INJUNCTIVE RELIEF</u>   | C 775-C 791     |
| 06/05/2018        | <u>NOTICE OF FILING</u>  | C 792-C 794     |
| 06/06/2018        | <u>NOTICE OF FILING</u>  | C 795-C 797     |
| 06/06/2018        | <u>PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION</u> | C 798-C 804     |
| 06/11/2018        | <u>NOTICE OF FILING 2</u>  | C 805-C 807     |
| 06/11/2018        | <u>PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION</u>           | C 808-C 812     |
| 06/11/2018        | <u>NOTICE OF FILING 3</u>  | C 813-C 815     |
| 06/11/2018        | <u>DEFENDANTS' SUPPLEMENTAL BRIEF ON QUESTIONS RELATING TO PREEMPTION OF HOME RULE AUTHORITY</u>                     | C 816-C 829     |

## COMMON LAW RECORD - TABLE OF CONTENTS

Page 5 of 7

| <u>Date Filed</u> | <u>Title/Description</u>  | <u>Page No.</u> |
|-------------------|---|-----------------|
| 06/12/2018        | <u>MEMORANDUM ORDER</u>   | C 830-C 849     |
| 07/20/2018        | <u>ORDER</u>  | C 850           |
| 07/25/2018        | <u>VERIFIED STATEMENT OF OUT OF STATE ATTORNEY PURSUANT TO SUPREME COURT RULE 707</u>           | C 851-C 857     |
| 07/25/2018        | <u>NOTICE OF FILING OF RULE 707 STATEMENT</u>   | C 858-C 860     |
| 07/27/2018        | <u>ORDER</u>  | C 861           |
| 07/27/2018        | <u>ORDER 2</u>  | C 862           |
| 08/17/2018        | <u>PLAINTIFFS' BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT</u>                        | C 863-C 892     |
| 08/17/2018        | <u>NOTICE OF MOTION</u>   | C 893           |
| 08/17/2018        | <u>NOTICE OF FILING 2</u>   | C 894-C 896     |
| 08/17/2018        | <u>FIRST AMENDED COMPLAINT</u>  | C 897-C 939     |
| 09/10/2018        | <u>DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFF'S RENEWED MOTION FOR PRELIMINARY INJUNCTION</u> | C 940-C 979     |
| 09/10/2018        | <u>NOTICE OF FILING 2</u>   | C 980-C 982     |
| 09/28/2018        | <u>GUNS SAVE LIFE PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR INJUNCTIVE RELIEF</u>        | C 983-C 989     |
| 09/28/2018        | <u>NOTICE OF FILING 2</u>   | C 990-C 991     |
| 10/12/2018        | <u>LETTER 2</u>   | C 992-C 993     |
| 10/12/2018        | <u>ORDER PLACING CASE UNDER ADVISEMENT-2</u>  | C 994           |
| 10/12/2018        | <u>ORDER 2</u>  | C 995           |
| 10/26/2018        | <u>NOTICE OF FILING</u>   | C 996-C 997     |
| 10/26/2018        | <u>GUNS SAVE LIFE PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT</u>                                   | C 998-C 1034    |
| 11/01/2018        | <u>EXHIBIT RECEIPT 2</u>  | C 1035          |
| 11/30/2018        | <u>DEFENDANTS' STATEMENT OF UNCONTESTED FACTS THE VILLAGE OF DEERFIELD</u>                      | C 1036-C 1219   |
| 11/30/2018        | <u>DEFENDANTS' BRIEF IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT</u>               | C 1220-C 1238   |

## COMMON LAW RECORD - TABLE OF CONTENTS

Page 6 of 7

| <u>Date Filed</u> | <u>Title/Description</u>   | <u>Page No.</u> |
|-------------------|--|-----------------|
| 11/30/2018        | <u>DEFENDANTS' RESPONSE TO GUNS SAVE LIFE PLAINTIFFS' STATMENT OF UNCONTESTED FACTS</u>            | C 1239-C 1243   |
| 12/14/2018        | <u>NOTICE OF FILING</u>  | C 1244-C 1246   |
| 12/14/2018        | <u>GUNS SAVE LIFE PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT</u>            | C 1247-C 1253   |
| 01/18/2019        | <u>ORDER</u>   | C 1254          |
| 02/13/2019        | <u>NOTICE OF CHANGES</u>   | C 1255          |
| 02/13/2019        | <u>NOTICE OF CHANGES 2</u>   | C 1256          |
| 02/13/2019        | <u>NOTICE OF CHANGES 3</u>   | C 1257          |
| 02/13/2019        | <u>NOTICE OF CHANGES 4</u>   | C 1258          |
| 02/13/2019        | <u>NOTICE OF CHANGES 5</u>   | C 1259          |
| 03/22/2019        | <u>MEMORANDUM ORDER</u>  | C 1260-C 1281   |
| 04/25/2019        | <u>NOTICE OF INTERLOCUTORY APPEAL 2</u>  | C 1282-C 1285   |
| 04/26/2019        | <u>NOTICE OF FILING</u>  | C 1286-C 1292   |
| 05/03/2019        | <u>ORDER</u>   | C 1293          |
| 06/14/2019        | <u>APPELLATE COURT ORDER 2</u>   | C 1294          |
| 06/14/2019        | <u>NOTICE OF INTERLOCUTORY APPEAL (PROPOSED) 2</u>   | C 1295-C 1296   |
| 06/21/2019        | <u>NOTICE OF MOTION 2</u>  | C 1297-C 1299   |
| 06/21/2019        | <u>DEFENDANTS' MOTION FOR A FINDING PURSUANT TO RULE 304(A) 3</u>                                  | C 1300-C 1442   |
| 06/28/2019        | <u>BRIEFING SCHEDULE ORDER</u>   | C 1443          |
| 07/26/2019        | <u>GUNS SAVE LIFE PLAINTIFFS' PARTIAL OPPOSITION TO MOTION FOR FINDING PURSUANT TO RULE 304(A)</u> | C 1444-C 1501   |
| 07/26/2019        | <u>NOTICE OF FILING 2</u>  | C 1502-C 1503   |
| 08/23/2019        | <u>NOTICE OF FILING</u>  | C 1504-C 1506   |
| 08/23/2019        | <u>DEFENDANTS' UNCONTESTED MOTION FOR LEAVE TO FILE BRIEF IN EXCESS OF PAGE LIMITATION 2</u>       | C 1507-C 1511   |
| 08/23/2019        | <u>DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR A FINDING PURSUANT TO RULE 304(A) 2</u>        | C 1512-C 1527   |

COMMON LAW RECORD - TABLE OF CONTENTS

Page 7 of 7

| <u>Date Filed</u> | <u>Title/Description</u>                             | <u>Page No.</u> |
|-------------------|--|-----------------|
| 09/06/2019        | <u>PROPOSED ORDER 2</u>                              | C 1528-C 1529   |
| 10/03/2019        | <u>NOTICE OF APPEAL 2</u>                            | C 1530-C 1562   |
| 10/07/2019        | <u>NOTICE OF FILING 2</u>                            | C 1563-C 1565   |
| 10/07/2019        | <u>REQUEST FOR PREPARATION OF RECORD ON APPEAL 2</u> | C 1566-C 1568   |
| 10/18/2019        | <u>APPELLATE COURT ORDER 2</u>                       | C 1569          |

APPEAL TO THE APPELLATE COURT OF ILLINOIS  
SECOND JUDICIAL DISTRICT  
FROM THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
LAKE COUNTY, ILLINOIS

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

Plaintiff/Petitioner

Reviewing Court No: 2-19-0879

Circuit Court No: 2018CH000427

Trial Judge: LUIS A. BERRONES

v.

10

VILLAGE OF DEERFIELD, ILLINOIS, A  
MUNICIPAL CORPORATION

Defendant/Respondent

E-FILED  
Transaction ID: 2-19-0879  
File Date: 12/2/2019 11:17 AM  
Robert J. Mangan, Clerk of the Court  
APPELLATE COURT 2ND DISTRICT



REPORT OF PROCEEDINGS - TABLE OF CONTENTS

Page 1 of 1

Date of

| <u>Proceeding</u> | <u>Title/Description</u>     | <u>Page No.</u> |
|-------------------|------------------------------|-----------------|
| 06/12/2018        | <u>REPORT OF PROCEEDINGS</u> | R 2-R 148       |
| 10/12/2018        | <u>REPORT OF PROCEEDINGS</u> | R 149-R 271     |
| 03/22/2019        | <u>REPORT OF PROCEEDINGS</u> | R 272-R 279     |
| 09/06/2019        | <u>REPORT OF PROCEEDINGS</u> | R 280-R 305     |

---

In the  
**Supreme Court of Illinois**

---

|                                       |   |   |
|---------------------------------------|---|---|
| GUNS SAVE LIFE, INC., <i>et al.</i> , | ) |   |
|                                       | ) |   |
| Plaintiffs-Appellants,                | ) | From the Appellate Court                  |
|                                       | ) | Second Judicial District, No. 2-19-0879.  |
| v.                                    | ) |   |
|                                       | ) | There on Appeal from the Circuit Court of |
| VILLAGE OF DEERFIELD, ILLINOIS,       | ) | Lake County, Illinois, No. 18 CH 498.     |
| <i>et al.</i> ,                       | ) |   |
|                                       | ) | The Honorable Luis A. Berrones, Presiding |
| Defendants-Appellants.                | ) |   |
|                                       | ) |   |
|                                       | ) |   |
|                                       | ) |   |
|                                       | ) |   |

**NOTICE OF ELECTRONIC FILING**

To: See Attached Certificate of Service

PLEASE TAKE NOTICE that on May 19, 2021, the Plaintiffs-Appellants submitted for filing by electronic means **BRIEF AND APPENDIX OF PLAINTIFFS-APPELLANTS**, with the Supreme Court of Illinois.

Christian D. Ambler – ARDC #6228749  
STONE & JOHNSON, CHARTERED  
111 West Washington St. - Suite 1800  
Chicago, Illinois 60602  
(312) 332-5656

David H. Thompson - ARDC # 6316017\*  
Peter A. Patterson – ARDC # 6316019\*  
Brian W. Barnes (ARDC # 6328826)\*  
Cooper & Kirk, PLLC  
1523 New Hampshire Ave., N. W.  
Washington, D. C. 20036  
(202) 220-9600

\*Appearance entered pursuant to Ill. S. Ct. Rule 707

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Christian D. Ambler

In the  
**Supreme Court of Illinois**

---

|                                       |   |   |
|---------------------------------------|---|---|
| GUNS SAVE LIFE, INC., <i>et al.</i> , | ) |   |
|                                       | ) |   |
| Plaintiffs-Appellants,                | ) | From the Appellate Court                  |
|                                       | ) | Second Judicial District, No. 2-19-0879.  |
| v.                                    | ) |   |
|                                       | ) | There on Appeal from the Circuit Court of |
| VILLAGE OF DEERFIELD, ILLINOIS,       | ) | Lake County, Illinois, No. 18 CH 498.     |
| <i>et al.</i> ,                       | ) |   |
|                                       | ) | The Honorable Luis A. Berrones, Presiding |
| Defendants-Appellants.                | ) |   |
|                                       | ) |   |
|                                       | ) |   |
|                                       | ) |   |
|                                       | ) |   |

**CERTIFICATE OF SERVICE BY E-MAIL**

I, Christian D. Ambler, state that on May 19, 2021, I served the foregoing **BRIEF AND APPENDIX OF PLAINTIFFS-APPELLANTS** upon counsel listed above by e-mail.

Christopher B. Wilson, ARDC No. 6202139  
John B. Sample, ARDC No. 6321438  
PERKINS COIE LLP  
131 South Dearborn Street, Suite 1700  
Chicago, IL 60603  
Telephone: 312.324.8400  
[cwilson@perkinscoie.com](mailto:cwilson@perkinscoie.com)  
[jsample@perkinscoie.com](mailto:jsample@perkinscoie.com)

Steven M. Elrod, ARDC No. 6183239  
Hart M. Passman, ARDC No. 6287062  
Holland & Knight, LLP  
131 South Dearborn Street, 30th Floor  
Chicago, Illinois 60603  
(312) 263-3600  
[Steven.elrod@hklaw.com](mailto:Steven.elrod@hklaw.com)

[Hart.passman@hklaw.com](mailto:Hart.passman@hklaw.com)

Jonathan E. Lowy  
Brady Center to Prevent Gun Violence  
840 First Street, N.E., Suite 400  
Washington, D.C. 20002  
New Direct Dial: (202) 370-8104  
[jlowy@bradyunited.org](mailto:jlowy@bradyunited.org)  
[jlowy@bradymail.org](mailto:jlowy@bradymail.org)

David G. Sigale  
LAW FIRM OF DAVID G. SIGALE, P.C.  
430 West Roosevelt Road  
Wheaton, Illinois 60687  
630 452-4547  
[dsigale@sigalelaw.com](mailto:dsigale@sigalelaw.com)

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Christian D. Ambler

Christian D. Ambler – ARDC #6228749  
STONE & JOHNSON, CHARTERED  
111 West Washington St. - Suite 1800  
Chicago, Illinois 60602  
Telephone (312) 332-5656

David H. Thompson (ARDC No. 6316017)\*  
Peter A. Patterson (ARDC No. 6316019)\*  
Brian W. Barnes (ARDC No. 6328826)\*  
Cooper & Kirk, PLLC  
1523 New Hampshire Ave., N.W.  
Washington, D.C. 20036  
(202) 220-9600  
[dthompson@cooperkirk.com](mailto:dthompson@cooperkirk.com)  
[ppatterson@cooperkirk.com](mailto:ppatterson@cooperkirk.com)  
[bbarnes@cooperkirk.com](mailto:bbarnes@cooperkirk.com)

\* Appearance entered pursuant to Ill. S. Ct. Rule 707