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# *In the*
# *Supreme Court of Illinois*

Case 18 CH 427

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

*Plaintiffs-Appellants*,

v.

VILLAGE OF DEERFIELD, ILLINOIS, a municipal corporation,

*Defendant-Appellee*.

Case 18 CH 498

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

*Plaintiffs-Appellants*,

v.

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

*Defendants-Appellees*.

Appeal from the Appellate Court of Illinois, Second District
No. 2-19-0320
There heard on Appeal from the Circuit Court of Lake County, Illinois,
No. 18 CH 498, cons. into 18 CH 427.
The Honorable **Luis A. Berrones**, Judge Presiding

## BRIEF AND APPENDIX OF PLAINTIFFS-APPELLANTS DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION AND SECOND AMENDMENT FOUNDATION, INC.

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**ORAL ARGUMENT REQUESTED**

## POINTS AND AUTHORITIES

## NATURE OF THE CASE[1]

This appeal presents the question of whether the Defendant's Ordinances banning assault weapons and large capacity magazines from within its municipal limits, with heavy penalties for non-compliance, are preempted by State law, specifically the Illinois FOID Card Act and the Firearm Concealed Carry Act.

### 2013 Village Ordinance (O-13-24)

On July 1, 2013, the Defendant home-rule municipality enacted Ordinance O-13-24 – *An Ordinance Regulating the Ownership and Possession of Assault Weapons in the Village of Deerfield*. The Ordinance defined assault weapons (Sec. 15-86), required safe storage as a condition for possessing assault weapons possessed in the Village (Sec. 15-87(a)), provided for a lawful self-defense exception for violation of the safe storage requirement (Sec. 15-87(b)), and listed requirements for the possession, carrying, and transportation of assault weapons (Sec. 15-88). *See* A-3 at ¶ 5.

### 2018 Village Ordinance (O-18-06)

On April 2, 2018, the Defendant's Board of Trustees enacted 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*

[1] Plaintiffs will cite to materials in the Appendix as "A-," to the Report of Proceedings as "R," and the Common-Law Record as "C."

*the Village of Deerfield to Regulate the Possession, Manufacture, and Sale of Assault Weapons in the Village of Deerfield*. O-18-06 was labeled as an "amendment" to Ordinance O-13-24. *See* A-70.

Whereas O-13-24 allowed the possession of assault weapons under certain conditions, and even contained a lawful self-defense exception for using them, O-18-06 bans them entirely (Sec. 15-87(a)). There is also no lawful self-defense exception.

Further, while O-18-06 provides that large capacity magazines are to be confiscated and destroyed, the original ordinance O-13-24 did not restrict or regulate the possession or use of large capacity magazines at all, except as they may have been used in conjunction with an assault weapon.

The Ordinance O-18-06 requires that residents had 60 days after passage to remove all affected firearms and accessories from the Village. As of now, the Plaintiffs must comply with O-18-06 or face prosecution, confiscation, and fines of up to $1,000.00/day. *See* A-77.

2018 Village Ordinance II (O-18-19)

On June 18, 2018, Defendant passed Ordinance O-18-19 (C.201), which was styled as an "amendment" to Section 15-87 of O-18-06 in order to ban large capacity magazines (in addition to assault weapons).

While the original Section 15-91 of O-18-06 called for the confiscation and destruction of large capacity magazines, they were not actually banned by any other section in O-18-06.

Because the original ordinance O-13-24 did not restrict or regulate the possession or use of large capacity magazines at all, except as they may be used in conjunction with an assault weapon, the first explicit ban of large capacity magazines in the Defendant's Municipal Code was pursuant to O-18-19.

Procedural History

On June 12, 2018, the circuit court entered a temporary restraining order against the enforcement of Defendant's Ordinance O-18-06 "relating to the ownership, possession, storage or transportation of assault weapons or large capacity magazines within the Village of Deerfield," ruling it was pre-empted by state statute (*See* Order of June 12, 2018, (A-107-108) referencing the simultaneous Order in *Guns Save Life, Inc., et al v. Village of Deerfield, Illinois, et al*, No. 18 CH 498) (A-87-106)).

On October 12, 2018, the circuit court held a hearing on the *Easterday* Plaintiffs' Motion for Preliminary Injunction and the *GSL* Plaintiffs' Motion for Summary Judgment. The Defendant presented witnesses at the hearing over all Plaintiffs' objections. The circuit court ruled their testimony was irrelevant (A-36-37), and that ruling is not at issue in this appeal.

On August 17, 2018, the *Easterday* Plaintiffs amended their Complaint to address the new issues raised by the Defendant's passage of O-18-19 (A.57-85).

On October 30, 2018, the *Easterday* Plaintiffs joined the *GSL*

Plaintiffs' Motion for Summary Judgment.

On March 22, 2019, the circuit court granted summary judgment to the Plaintiffs in *Easterday*, and entered a permanent injunction against both O-18-06 and O-18-19 (A-33-34).

Also on March 22, 2019, the circuit court granted summary judgment to the Plaintiffs on the preemption claim in the *GSL* case, and entered a permanent injunction against both O-18-06 and O-18-19, but denied summary judgment in four of the *GSL* case's other claims (denying the claims under the Wildlife Code, and setting the matter for a future status hearing regarding the *GSL* Plaintiffs' "Takings Clause" and "Eminent Domain" claims). The *Easterday* Plaintiffs are not involved in that proceeding (A-35-56).

The Defendant filed a Notice of Interlocutory Appeal pursuant to Sup.Ct. Rule 307(a) on April 22, 2019. This Court dismissed that appeal for lack of jurisdiction on June 12, 2019 (2019 IL App (2d) 190320-U) (unpublished Order) (A-21).

On or about June 21, 2019, the Defendant filed in the circuit court a *Motion for a Finding Pursuant to Rule 304(A)*. (C.1300). The Defendant also sought a finding that the *Easterday* and *GSL* cases were merged when the circuit court consolidated them on July 27, 2018. On September 6, 2019, the circuit court granted that request and entered a Rule 304(A) finding in both cases. A-31-32.

On December 7, 2020, the appellate court issued an opinion reversing in part and affirming in part the order of the circuit court, and which held the Defendant's ordinances prohibiting assault weapons and large capacity magazines were a valid amendment of a previous ordinance regulating the possession of assault weapons, and which therefore were not preempted by Section 13.1 of the Firearm Owners Identification Card Act. The appellate court affirmed the prohibition on the enforcement of Defendant's large capacity magazine ban insofar as it regulates ammunition for handguns. *Easterday v. Village of Deerfield*, 2020 IL App (2d) 190879, ¶ 78 (A-1, 17).

The Plaintiffs then petitioned for leave to appeal in this Court, and said petitions were granted, and the *Easterday* and *GSL* cases consolidated in this Court, on March 24, 2021 (A-29-30).

## ISSUES PRESENTED

I. Whether the appellate court committed reversible error in holding the Illinois FOID Card Act and the Firearm Concealed Carry Act did not preempt Defendant's 2018 ordinances banning firearms labeled as assault weapons and large capacity magazines.

II. Whether the appellate court committed reversible error in holding the Defendant's 2018 ordinances were merely "amendments" of its original 2013 ordinance regulating the possession of assault weapons, and were therefore legally valid.

III. Whether the appellate court committed reversible error in holding that the two cases presented here were consolidated below such that they were merged and lost their individual identities, which therefore gave the appellate court jurisdiction to rule on Defendant's appeal below.

## JURISDICTION

Plaintiffs filed a timely Petition for Leave to Appeal following the December 7, 2020 decision by the Second District Appellate Court, which this Court granted on March 24, 2021. Accordingly, this Court has jurisdiction pursuant to Illinois Supreme Court Rule 315.

However, Plaintiffs assert there was no jurisdiction for the appeal below, and request the appellate court Opinion be vacated, as this Court should when jurisdiction is lacking. *See Houghtaylen v. Russell D. Houghtaylen By-Pass Trust*, 2017 IL App (2d) 170195, ¶ 12. "[A] reviewing court has a duty to consider its jurisdiction and to dismiss the appeal if it determines that jurisdiction is wanting." *Archer Daniels Midland Co. v. Barth*, 103 Ill.2d 536, 539 (1984); *See also Lebron v. Gottlieb Memorial Hospital,* 237 Ill.2d 217, 251-52 (2010). The circuit court's judgment should then be reinstated.

This is an issue that affects not just this matter, but the appellate court's ruling on this issue upends settled law regarding the difference

between consolidations and mergers, thus potentially impacting countless cases throughout Illinois.

In the Court's Rule 23 Order regarding the first appeal of this matter of June 12, 2019 (A-21), this Court noted that the Defendant was actually trying to appeal a permanent injunction *via* a Supreme Court Rule 307(a)(1) interlocutory appeal, which did not give this Court jurisdiction over the appeal. A-25-26, ¶ 33. This Court then held that since there was no Supreme Court Rule 304(a) language entered in either this *Easterday* or the consolidated *GSL* case, Rule 304 could not provide appellate jurisdiction. A-26, ¶ 35.

This Court then noted two lingering questions due to the lack of a record from the Circuit Court: (1.) Did the Circuit Court's Order of March 22, 2019 grant the *Easterday* Plaintiffs all the relief they sought (A-26-27, ¶ 39), and (2.) what type of consolidation did the record reflect was entered in the circuit court? A-27, ¶ 40.

**All the relief requested by the *Easterday* Plaintiffs was granted.**

Based on the *Easterday* Plaintiffs' Amended Complaint (A-57-85), the *Easterday* Plaintiffs sought declaratory and permanent injunctive relief. (A-67-68). The only relief granted to the *Easterday* Plaintiffs, *via* both the circuit court's order of March 22, 2019 in its own case and incorporation of the Court's findings at the end of the *GSL* Order of the same date (A-33-34; A-35-56), was the requested declaratory and injunctive relief against the

challenged ordinances. Therefore, the Order of March 22, 2019 in *Easterday* was a final Order requiring a Supreme Court Rule 301 Notice of Appeal within 30 days, which did not happen.

The consolidation was not a merger.

Thus, the only way the appellate court could have had jurisdiction over this appeal as to the *Easterday* Plaintiffs, is if the circuit court's consolidation order doubled as a merger.

As this Court held:

> 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.)

A-28, ¶ 45.

The facts reveal this a merger did not occur, and a review of this case leads only to the conclusion that this case was consolidated for convenience and judicial economy, but not merged with the *GSL* case.

On June 12, 2018, this court entered a temporary restraining order (TRO) in Plaintiffs' favor and against the Defendant as to Defendant's ordinance banning assault weapons and purportedly banning large capacity magazines. A similar order was entered in the GSL case. In entering said TRO, the circuit court took the time to write two separate opinions, each with

its own distinct caption so that the reader would know exactly which case to which the TRO pertained, even though the relief granted was the same for both cases. Notably, the court *could* have written one opinion with both captions, and added a sentence at the end: "This TRO applies in both *Easterday* and *GSL*." But the court did not do so.

On July 27, 2018, the *Easterday* case (18 CH 427) and the *GSL* case (18 CH 498) were consolidated in the circuit court *sua sponte*. No party asked for it, and no explanation was given by the circuit court as to the type or effect of the consolidation, beyond the language the parties wrote in the Order (C.862).

On March 22, 2019, in *Easterday*, Plaintiffs were granted summary judgment on their only count, and no future date was set. On that date, the *Easterday* case was over.

In contrast, on March 22, 2019, in the *GSL* case one of the three counts for summary judgment was denied, and a future status date was set.

In making the two rulings on March 22, 2019, this court again issued separate Orders, with separate captions. Indeed, the *Easterday* ruling was only two pages long, and the court *could* have saved the two pages by adding a paragraph to the 22-page *GSL* opinion and doubling up the caption. Yet the court did not.

This Court discussed the two relevant forms of consolidation bearing on this appeal:

> . . . (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."

A-27, ¶ 40 (quoting *Busch v. Mison*, 385 Ill. App. 3d 620, 624 (1st Dist. 2008)).

This Court then discussed how either type of consolidation affects 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. 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.
>
> 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.

A-27, ¶ 41 (internal citations omitted).

The second form of consolidation is the correct form in this case. "Where a consolidation concerns several actions involving an inquiry into the same event in its general aspects and is limited to a joint trial, with separate docket entries, verdicts and judgments, an order dismissing one of the actions is deemed final and immediately appealable." *Nationwide Mut. Ins. Co. v. Filos*, 285 Ill. App. 3d 528, 532 (1st Dist. 1996) (citing *Heritage Pullman Bank v. American National Bank & Trust Co.*, 164 Ill. App. 3d 680, 683-84

(1st Dist. 1987); *Kassnel v. Village of Rosemont*, 135 Ill. App. 3d 361, 364 (1st Dist. 1985) (separate case numbers were retained and separate judgments were entered in each case, so consolidation did not result in case being merged into single suit).

On September 6, 2019, the circuit court heard argument on Defendant's Motion for Rule 304(a) language, and ruled that the consolidation was a merger. A-31-32.

The circuit court referenced "certain matters dealing with the procedures that are followed by the clerk's office that are not public, that are internal policies." (R.283.) The circuit court discussed the CRIMS system - heretofore unknown by the parties - which is the Circuit Clerk's recordkeeping system. The system "has very limited capabilities," (*Id.)*, and "does not have the capabilities of taking a case that has been filed and merge it or put it together under one case number if they've been consolidated. The clerk treats these cases and maintains two separate files on these cases." *Id.* The circuit court said the fact the cases had two different docket numbers "is really more a function of a policy and procedure of the clerk's file more so than anything that this Court intended as far as two separate cases." R.285. The court then discussed expenses, and bids, and the County Board. *Id.*

The court then ruled that "judicial economy, convenience of the parties could be rectified by the Court scheduling both matters at the same time without consolidating. So the fact that, you know, consolidation that may

occur for purposes of judicial economy and convenience of the parties is really a nonstarter as far as looking at these two cases because that from a practical perspective could have been done without consolidation." R.286.

The circuit court noted that it was its own suggestion to consolidate the cases (R.284-85), and there was no motion to consolidate filed. R.284. In its consolidation ruling, the court did not order a merger, or even discuss the issue. The circuit court referred to the *Easterday* case as "the companion case" to the *GSL* case (A-33). Nothing was said or written regarding the concept of merger until the *Easterday* Plaintiffs mentioned it in arguing *against* the idea, when they opposed jurisdiction in the first appeal. *See* Response Brief of *Easterday* Plaintiffs in 2-19-0320 at p.3.

The trial court noted that "the cases, they all talk about the parties' intent." (R.297), and then stated that "it was the Court who suggested or I guess strongly suggested consolidating the cases once the case that was before Judge Marcouiller had been transferred to this Court after being granted, after one of the parties being granted a substitution of judge." (R.298). This alone distinguishes this case from *Busch* and *Northwest Water Comm'n v. Carlo v. Santucci, Inc.*, 162 Ill. App. 3d 877 (1st Dist. 1987), where the *defendants* requested the consolidations upon facing a multitude of lawsuits.

The circuit court also recognized that "the actions may be tied together but with separate docket entries which we do have here, verdicts and

judgments. I guess one may argue that there were two different judgments entered by the Court because there were two separate orders, and there is no dispute that there are two separate docket entries because the clerk has maintained the two court files" (R.299).

However, the circuit court went on to say that "judicial economy and convenience of the parties really is not a relevant issue in this court since both cases were before this Court, that could have very easily been accomplished just by scheduling orders. And I have done that before where I have two cases that are very related and there's no formal consolidation, but one needs to keep track of the other so we don't have any inconsistent verdicts or judgments or orders, and that's done through a scheduling order." (R.301).

Notwithstanding the circuit court's after-the-fact discussion about the Clerk's computer system, and the assertion that consolidation is never about judicial economy, because such can be achieved without consolidation, which flies in the face of the case law that explicitly lists judicial economy as a basis for consolidation, the record shows judicial economy was exactly the situation in this matter. Even after consolidation, when Plaintiffs in both cases filed Amended Complaints, they did it separately and under their own captions (*See GSL* First Amended Complaint, filed August 12, 2019 (C.897-939), and *Easterday* Amended Complaint for Declaratory and Injunctive Relief, filed August 17, 2018 (A-57-85). When the court entered a TRO in the cases pre-

consolidation (A-87-106; A-107-108), and a permanent injunction in the cases post-consolidation (A-33-34; A-35-56), both times the court entered two Opinions using the separate captions.

Further, had the matters been merged but separate captions and court orders written for computer system and Clerk's office purposes, the circuit court could easily have written a line at the end of the injunction Orders reflecting that. But nothing of the sort was done, or stated, nor was any indication of such given to the parties. Such a consequential ruling, made in secret, and only revealed when the jurisdiction of the appeal may hinge on the answer, works a terrible prejudice against both sets of Plaintiffs, who would certainly have addressed the issue, even opposing consolidation, had they been informed in any way.

In contrast to what happened in this case, in *Dowe v. Birmingham Steel Corp.*, 2011 IL App (1st) 091997 (1st Dist. 2011), where thirty-two personal injury cases against the same steel corporation for the same truck accident were consolidated and merged as one action when the court entered one summary judgment ruling that disposed of all cases, there was left one judgment from which to appeal. *Id.* at ¶ 23.

This simply did not happen here. First, there are not "several" cases, there are two. And in those two cases, the plaintiffs were not identical, the Defendants are not identical, and there were not nearly identical claims. Plaintiffs made one claim, and the *GSL* plaintiffs made multiple. One of them

happened to overlap.

Defendant has argued that the consolidation Order of July 27, 2018 "for all purposes" transformed this case from a consolidation to a merger, but in fact the consolidation ended, with "all purposes" for consolidation fulfilled, the instant the court ruled in Plaintiffs' favor, granted them a permanent injunction on their one claim, and ended this case on March 22, 2019. *See*, *e.g.*, *Hixson v. S.G. (In re S.G.)*, 401 Ill. App. 3d 775, 782-783 (4th Dist. 2010).

Therefore, there was no indication the two cases were merged to the point that one of the cases lost its identity. Indeed, this court took steps to ensure the opposite. In short, if this matter was consolidated to the point of a merger, no one knew about it. *See*, *e.g.*, *In re S.G.*, 401 Ill. App. 3d at 782-783; *See also Kassnel*, 135 Ill. App. 3d 361 (where separate case numbers were retained and separate judgments were entered in each case, consolidation did not result in case being merged into single suit).

In *In re S.G.* a child's parents' rights were terminated. The child's grandparents and foster parents each filed a petition for adoption, which the circuit court consolidated under the foster parents' case number. The grandparents' petition was dismissed, but they did not appeal until after the 30-day period of Sup.Ct. Rule 303 had expired, waiting to appeal until the petitions were severed and Sup.Ct. Rule 304(a) language was entered in the foster parents' petition, at which time they appealed the decisions in both cases. *Id.* at 779. The Appellate Court dismissed the appeal in the

grandparents' petition, because the cases had separate identities, and the grandparents were required to appeal within 30 days of the dismissal of their case, regardless of the status of the foster parents' case. *Id.* at 782-83. Notably, the Court found that "[t]he record suggests that, even after consolidation, the two cases continued to have separate identities in the trial court. Besides the filing of all documents in one case, the record contains little evidence the trial court treated the two cases as one single suit. Accordingly, we find consolidation is more like the first form with the cases maintaining separate identities." *In re S.G.*, 401 Ill. App. 3d at 783.

The *Nationwide* Court in part found the consolidation was not a merger because "[t]he motion for consolidation of Nationwide's declaratory judgment action and Filos' law action stated that because both cases involved the same parties and common questions of fact, judicial economy, the convenience of the parties, and the avoidance of inconsistent results required consolidation. Because the consolidation was done only for convenience and economy, 'it did not merge the causes into a single suit, or change the rights of the parties, or make those who were parties in one suit parties in another.'" *Nationwide*, 285 Ill. App. 3d at 532 (quoting *Shannon v. Stookey*, 59 Ill. App. 3d 573, 577 (5th Dist. 1978). Though the last is critically important, none of the *Shannon* factors are present in this case.

There was no formal motion to consolidate in this case. But if Plaintiffs had been required to write one, it would have *only* been for the reasons noted

in *Nationwide*, most notably convenience and judicial economy. In fact, as this Court considers the Plaintiffs' motivations for proposing consolidation (*See S.G.*, 401 Ill. App. 3d at 782), Plaintiffs did not actually propose consolidation at all. They simply did not oppose consolidation, acquiescing (or so they believed) to the circuit court's judicial economy of having this case and *GSL* tracked together on the court's docket.

As another example, in *In re Marriage of Harnack*, 2014 IL App (1st) 121424 (1st Dist. 2014), where the Court found a non-merger consolidation, the Court stated:

> The consolidation did not merge the two causes into a single suit, change the rights of the parties to each suit or make the parties in one suit parties in the other suit. The two actions did not merge into a single suit and, thus, Harnack did not become a party in the contract action between Israelov and Fanady/Alpha and Israelov did not become a party in the dissolution action between Harnack and Fanady. *Shannon*, 59 Ill. App. 3d at 577. The fact that Israelov's action remained unresolved thus had no impact on the finality of the judgment for dissolution of marriage as to the rights between the parties to the dissolution action, Harnack and Fanady.

*Harnack*, 2014 IL App (1st) 121424 at *P42.

This situation therefore is completely opposite to that of *Busch*, where the Court's finding of a merger consolidation was based in part on the arbitrators entering one order with three findings, and "not separate arbitration awards." Busch, 385 Ill. App. 3d at 625. Further, in *Busch*, the Court stated that "Mison's motion to consolidate contended that since 'both cases arise from the same set of facts and involve the same witnesses,' both

lawsuits should "be consolidated into one." (Emphasis added.) In response, the trial court consolidated the law division suit and the municipal division suit "for the purposes of discovery and trial." We find the trial court's consolidation order indicates "the rights of all of the parties would be finally litigated and settled in one action." *Id.*

This case and *GSL* were not like that. The cases, while both challenging the same ordinance, involved different parties and different legal claims (some of which, in the *GSL* case, are still pending). The rights of the parties could not be decided in one action, as this case has concluded and the *GSL* case is still pending, but for the circuit court's Rule 304(a) language on September 6, 2019 (A-31-32). But regardless of what is currently being litigated in the *GSL* case, the issue of the *Easterday* case has been resolved.

The *Easterday* Plaintiffs also did not join in *GSL*'s takings, Wildlife Code, and eminent domain claims. Plaintiffs amended their Complaint two months prior to summary judgment, with only the one preemption claim they had advanced since the beginning (A-57-85). Had they wanted to add additional claims (such as the *GSL* claims or others) they would have done so, or at least sought leave to do so. They did not. When Plaintiffs joined in the *GSL* summary judgment Motion, they were obviously only joining in the portion that involved the preemption claim, because that was the only claim Plaintiffs were actually making.

The court ruled in Plaintiffs' favor on their one claim and did not set

any future date. The court partially ruled in the *GSL* plaintiffs' favor and set a status date as to the still-pending claim. The court adopted the reasoning of its preemption ruling in *GSL* in granting the permanent injunction in *Easterday* (that was the overlap), but notably, while it wrote the same order portion from *GSL* which granted the permanent injunction in the *Easterday* Order (comparing page 1 of March 22, 2019 Order in *Easterday* (A-33) and page 22 of March 22, 2019 Order in *GSL* (A-56), the court did **not** copy the *GSL* requirement of a future status date into the *Easterday* Order. The reason, of course, is that *Easterday* with its one claim was over as of that date. Plaintiffs presume that if the court wanted them in court on the next court date with the *GSL* plaintiffs, such as if the two cases were merged such that the cases had lost all their individual identity and now existed as only one resulting proceeding, it would have said so. This is another reason why the record reveals no evidence of a merger of cases, and why the parties had no idea that had happened until after summary judgment and just before this appeal.

Defendants have made much that the two cases have had the same hearing dates and briefing dates, but that was the point of the consolidation. If that was all that was needed to turn a consolidation into a merger, then that would happen *every time* consolidation occurs, which it obviously does not. Further, if a secret court clerk computer system makes a consolidation a merger, then every consolidated case in Lake County has been merged,

though it is likely that virtually none of the parties involved know it. This creates confusion in all consolidated cases, not just in Lake County, and should be addressed by this Court.

Though the two cases were consolidated and maintained a similar schedule, they were not merged. As such, this situation is much more like *In re S.G.* than *Busch*. The Plaintiffs, the *GSL* plaintiffs, and the court all repeatedly took steps to make clear that the two cases had their own individual identities.

Because the cases did not merge, a final Order was entered in this case on Plaintiffs' only claim on March 22, 2019. It was not appealed within thirty days, and therefore there was no jurisdiction for the second appeal to the appellate court.

In contrast, in the *GSL* case one of the three counts for summary judgment was denied, and a future status date was set. The trial court issued separate Orders, with separate captions, to make the two rulings. The *Easterday* Plaintiffs had no involvement in any future *GSL* proceedings, until they were informed months later – to their great surprise - that the cases had been merged.

In *Hall v. Hall*, 138 S. Ct. 1118 (2018), the United States Supreme Court addressed an analogous situation under F.R. Civ. P. 42, where there were two consolidated cases, and a final order was entered in only one of them. The issue was whether the final order in the first case was ripe for

appeal, or was the right to appeal contingent on an eventual final ruling in the other case. The Supreme Court held "[t]he history against which Rule 42(a) was adopted resolves any ambiguity regarding the meaning of 'consolidate' in subsection (a)(2). It makes clear that one of multiple cases consolidated under the Rule retains its independent character, at least to the extent it is appealable when finally resolved, *regardless of any ongoing proceedings in the other cases*." *Hall*, 138 S. Ct. at 1125 (emphasis added).

"[C]onstituent cases retain their separate identities at least to the extent that a final decision in one is immediately appealable by the losing party. That is, after all, the point at which, by definition, a 'district court disassociates itself from a case.'" *Hall*, 138 S. Ct. at 1131 (quoting *Swint v. Chambers County Comm'n*, 514 U.S. 35, 42 (1995)). It is no different here.

It is clear from all the circumstances surrounding this appeal that the final order of a permanent injunction in *Easterday* was not appealed, and the Defendant wanted a second bite at the apple *via* the *GSL* case. "[W]hen a question could have been raised on a prior appeal but was not, that question is deemed forfeited." *Pace Communs. Servs. Corp. v. Express Prods.*, 2014 IL App (2d) 131058, ¶ 26 (2nd Dist. 2014). Plaintiffs assert this applies equally to an appeal where the issue was not raised and to a case where no appeal was filed at all.

In contrast, the appellate court affirmed the finding of merger because that is what the circuit court said. *Easterday*, 2020 IL App (2d) 190879 at ¶

24. This is so even though the appellate court "recognize[d] that the court clarified its intent only after the jurisdictional implications became apparent to both the court and the parties . . . [and] 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." *Id.* When the entire circuit court record supports the conclusion that no merger occurred, that should not be overridden by the court's contradictory, 13th-hour statements.

Therefore, the second appeal of the *GSL* Order was lacking in jurisdiction, as was the appeal of this (*Easterday*) case, and the appellate court opinion should be vacated and the circuit court Orders reinstated.

Without waiving this issue, however, (*See S.G.*, 401 Ill. App. 3d at 780) (appellate jurisdiction cannot be conferred by agreement, waiver, or estoppel)), the *Easterday* Plaintiffs respond here to the Defendant's arguments, and the appellate court's holdings, in this matter. In the alternative to dismissal, the *Easterday* Plaintiffs assert the appellate court should be reversed as to the issues in which it entered rulings in Defendant's favor.

## STATUTORY PROVISIONS INVOLVED

Effective July 9, 2013, Section 65/13.1 of the FOID Card Act (430 ILCS 65/13,1) stated:

> (b) . . . 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 [P.A. 98-63] 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 [430 ILCS 65/13.3]. 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 [430 ILCS 66/5].

(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 [Ill. Const. Art. VII, § 6].

Article VII, Section 6 of the Illinois Constitution states, 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.

## STATEMENT OF FACTS

### 2013 Village Ordinance (O-13-24)

On July 1, 2013, the Village enacted Ordinance O-13-24 – *An Ordinance Regulating the Ownership and Possession of Assault Weapons in the Village of Deerfield*. The Ordinance, which was valid because it was passed in the proper timeframe as stated in 430 ILCS 65/13.1(c)[2], defined assault weapons (Sec. 15-86), required safe storage as a condition for possessing assault weapons possessed in the Village (Sec. 15-87(a)), provided for a lawful self-defense exception for violation of the safe storage requirement (Sec. 15-87(b)), and listed requirements for the possession,

[2] The *Easterday* Plaintiffs are not appealing the appellate court's conclusion that O-13-24 was "inconsistent" with the FOID Card Act for purposes of 430 ILCS 65/13.1(c).

carrying, and transportation of assault weapons (Sec. 15-88).

(*See* A-63.)

2018 Village Ordinance (O-18-06)

On April 2, 2018, the Village's Board of Trustees enacted 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*. O-18-06 was labeled as an "amendment" to Ordinance O-13-24. *See* A-70-79.

Whereas O-13-24 allowed the possession of assault weapons under certain conditions, and even contained a lawful self-defense exception for using them, O-18-06 bans them entirely (Sec. 15-87(a)). There is also no lawful self-defense exception.

Further, while Defendant may have intended that large capacity magazines should be confiscated and destroyed pursuant to O-18-06, the original ordinance O-13-24 does not restrict or regulate the possession or use of large capacity magazines at all, except as they may be used in conjunction with an assault weapon.

The Ordinance O-18-06 requires that residents have 60 days after passage to remove all affected firearms and accessories from the Village. But for the circuit court's temporary restraining order and eventual permanent

injunction, the Plaintiffs had until June 13, 2018 to comply with O-18-06 or face prosecution, confiscation, and fines of up to $1,000.00/day (*See* A-77). Presumably with the appellate court's Opinion vacating the injunctions, the Ordinances are currently being enforced.

2018 Village Ordinance II (O-18-19) [3]

On June 18, 2018, and after the court's temporary restraining order in this matter, Deerfield passed Ordinance O-18-19 (A-48), which was styled as an "amendment" to Section 15-87 of O-18-06 in order to ban large capacity magazines (in addition to assault weapons) in Deerfield.

While the original Section 15-91 of O-18-06 called for the confiscation and destruction of large capacity magazines, they were not actually banned by any other section in O-18-06.

Further, while Defendant may have intended that large capacity magazines should be banned, and thus subject to confiscation and destruction pursuant to O-18-06, and while Defendant has explicitly stated as such with the passage of O-18-19, the original ordinance O-13-24 did not restrict or regulate the possession or use of large capacity magazines at all, except as they may be used in conjunction with an assault weapon.

Therefore, the first explicit ban of large capacity magazines in the Defendant's Municipal Code was pursuant to O-18-19 (*See* A-43, fn.6).

[3] Plaintiffs attached the Defendant's agenda version of what would become O-18-19 (Agenda Item 18-24-3) to their Amended Complaint (A-80-85). Though the text is the same, the official version of O-18-19 is included in the plaintiffs' Appendix in the consolidated case at App.102-106.

## STANDARD OF REVIEW

"The standard of review on questions of law is *de novo*." *Krywin v. Chi. Transit Auth.*, 238 Ill. 2d 215, 226 (2010).

## ARGUMENT

### I. The Illinois FOID Card Act preempted Defendant's 2018 ordinances banning firearms labeled as assault weapons and large capacity magazines.

The Defendant's Ordinances banning assault weapons and large capacity magazines from within its municipal limits, with heavy penalties for non-compliance, are preempted by Illinois statute, specifically the Illinois FOID Card Act, despite Defendant's efforts to expand its home-rule authority beyond that granted by the General Assembly.

The ultimate issue in this case is whether the Defendant followed State law in passing its 2018 Ordinances. The appellate court said it did, an erroneous conclusion that not only potentially impacts the residents of any municipality with a pre-July, 2013, assault weapon regulation (this, according to the appellate court (A-11, ¶ 46), but also completely changes the definition of a legislative amendment, and which could have far-reaching consequences beyond the issues addressed here.

"When construing a statute, the goal of this court is to ascertain and give effect to the intent of the legislature. The most reliable indicator of the legislature's intent is the plain and ordinary meaning of the statutory

language. This court reviews the statute as a whole, construing words and phrases in the context of the entire statute and not in isolation. We also remain mindful of the subject it addresses and the legislature's apparent purpose in enacting the statute." *Iwan Ries & Co. v. City of Chi.*, 2019 IL 124469, ¶ 19 (internal citations omitted). "Although the constitutional grant of power to home rule units is deliberately broad (*Blanchard* [*v. Berrios*], 2016 IL 120315, ¶ 27 [(2016)]), the General Assembly nonetheless retains the constitutional authority to "preempt the exercise of a municipality's home rule powers by expressly limiting that authority." *Palm* [*v. Lake Shore Drive Condominium Ass'n.*], 2013 IL 110505, ¶ 31 [(2019)]; see also Ill. Const. 1970, Art. VII, § 6(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')." *Iwan Ries*, 2019 IL 124469 at ¶ 22 (2019).

In *Iwan Ries*, the Legislature only allowed municipal taxes on tobacco products enacted prior to July 1, 1993. This Court ruled, in striking down the subsequent local taxing efforts:

> Assigning the plain meaning to that language, it is readily apparent from the first sentence that the legislature intended to exercise its constitutional authority to preempt a home rule unit from imposing a broad range of taxes. Eliminating all ambiguity, the legislature stated in the last sentence that "[t]his Section is a limitation, pursuant to subsection (g) of section 6 of Article VII of the Illinois Constitution, on the power of

> home rule units to tax." 65 ILCS 5/8-11-6a (West 2016).
>
> In other words, section 8-11-6a begins and ends with clear legislative intent to limit a home rule unit's authority to impose certain taxes. That unambiguous statutory language demonstrates legislative intent to preempt the home rule unit's power on those taxing issues.

*Iwan Ries*, 2019 IL 124469, *PP23-24.

In this case, the same reasoning applies as against the Defendant's Ordinances. The plain language of 430 ILCS 65/13.1(c) provided home rule units a one-time 10-day window from the date of the section's effective date to ban ownership or possession of assault weapons. The Defendant did not enact such a ban within this ten-day window and therefore lost its opportunity to do so. Since that is the case, Defendant could not later completely rewrite its ordinance, label it an "amendment," and impose such a ban. The only way the Defendant's argument works is to completely ignore the statutory provisions.

The appellate court misstated Plaintiffs' argument regarding what was and is allowed as to home rule units under Section 13.1(c), regarding restrictions on assault weapons and large capacity magazines. The General Assembly, by the plain language of Section 13.1(c), intended to allow home rule units **ten days** to ban assault weapons. Whether one calls this hybrid or concurrent jurisdiction (as Defendant has) is irrelevant. The label attached to the 10-day window is unimportant; what is important is what Defendant did with that opportunity.

Defendant chose to use that opening not to ban assault weapons or

large capacity magazines, but instead to regulate how assault weapons could be possessed within municipal limit. Plaintiffs are not challenging the restrictions of O-13-24, as that ordinance was properly enacted within the 10-day window. However, Defendant *chose* not to ban assault weapons or large capacity magazines during that ten-day window. The purpose of Ordinance No. O-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[.]" (C.933).

The express language in the FOID Card Act shows the State's intent to preempt and have exclusive authority to regulate the ownership and possession of assault weapons and their ammunition, including large capacity magazines, with the narrow exclusion of the 10-day window, which is why the Defendant's 2018 bans of these items is now beyond its home rule power.

*City of Chicago v. Roman*, 184 Ill.2d 504 (1998) also makes clear that the General Assembly can limit home rule authority on a subject without complete preemption through partial exclusion or conformity, and has done so many times pursuant to Art. VII, § 6(i) of the Illinois Constitution. *See Roman*, 184 Ill.2d at 519-520; *See also*, *e.g.*, 605 ILCS 5/5-919. However, the General Assembly specifically did not do this in the FOID Card Act (430 ILCS 65/13.1(e)).

Defendant's actions must be viewed through the lens that "the

regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State" (430 ILCS 65/13.1(c)). Further, both the FOID Card Act and FCCA state: "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 [Ill. Const. Art. VII, § 6]. 430 ILCS 65/13.1(e). There is no hybrid jurisdiction, or "unique tension" between State and local home rule authorities, and there is no concurrent jurisdiction. The Defendant's effort to read into the statute some unique relationship is completely incorrect. There was only, in the case of the FOID Card Act, a ten-day delay regarding assault weapons and their ammunition before the total preemption became effective.

And even if the Defendant's argument regarding "hybrid jurisdiction" had merit, and some special unique relationship was created by virtue of the 10-day window in 430 ILCS 65/13.1(c), that unique relationship only applies as to O-13-24, the ordinance that was actually passed within the 10-day window. The 10-day window was not *carte blanche* for the Defendant to pass whatever it wanted, in perpetuity, no matter how much it altered the meaning of its original ordinance.

Further, while home rule certainly has its place of importance, state preemption has a critical role in ensuring uniformity of the law regarding subjects the Legislature deems necessary. And because the statutes in question are unambiguous, the "role" each unit of government plays in

following them is irrelevant, except to note that Defendant must follow them.

Any argument that this interpretation of § 65/13.1(c) effectively deletes the language permitting amendments to ordinances passed during this 10-day window is incorrect. For example, the circuit court found the purpose of the amendment provision in § 65/13.1(c) to be 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. 013-24 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. (A-54-55).

Whether the circuit court's interpretation of what is allowable under 430 ILCS 65/13.1(c) turns out to be the case, there is no question that the Defendant's Ordinances O-18-06 and O-18-19 are *not* allowable.

Further, while Plaintiffs are not asserting that preemption of assault weapons was total, as the Legislature included the 10-day window exception written into 430 ILCS 65/13.1(c), of which the Village availed itself, it is the next step where Defendant acted in violation of State law.

## II. The Defendant's 2018 ordinances were not "amendments" of its original 2013 ordinance regulating the possession of assault weapons, and are therefore legally invalid.

When the appellate court found the Defendant's 2018 bans to be mere amendments, and therefore allowed under the preemption statute, it based that finding simply on the Defendant's say-so, rather than on the language of the ordinances themselves. A-14 at ¶ 59. This was reversible error.

While Defendant was (and is) allowed to pass and *properly* amend O-13-24, State preemption means the Village was not allowed to pass new Ordinances regarding assault weapons and large capacity magazines. Declining to heed that prohibition, the Village passed O-18-06 and O-18-19, anyway.

"[V]iewing 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." A-19 at ¶ 89 (McLaren, J., dissenting). The dissenting appellate judge correctly noted that while O-13-24 was a valid regulation on the *possession* of assault weapons, which could be amended, the Defendant did not pass any prior law regarding the *ownership* of such firearms. Thus, the 2018 ban on ownership of assault weapons was not an amendment of the existing possession ordinance, but a new ordinance altogether. A-19 at ¶ 86, 88 (McLaren, J., dissenting).

Even though Plaintiffs do not challenge that the original Ordinance O-

13-24 regulated the possession of assault weapons in a manner "inconsistent" with 430 ILCS 65/13.1(c), the assault weapon ban in the 2018 Ordinance O-18-06 is not a valid "amendment" of the 2013 Ordinance O-13-24. That the appellate court found to the contrary turns the definition of "amendment" on its head, and the Court should correct this error, which has implications far beyond this particular issue.

There is a dispositive difference between drafting a new ordinance, and simply amending an existing ordinance. *See* 65 ILCS 5/11-13-2 [Zoning Commission] (discussing adoption of new ordinances) and 65 ILCS 5/11-13-3.1 [Change in zoning ordinance; variation] (discussing amendments). Clearly, the two terms are not synonymous.

The Village itself recognizes when an ordinance is a new enactment versus a continuance of an existing ordinance – when the provisions relate to the same subject matter and are substantially the same (*See* Deerfield Municipal Code Sec. 1-7). Since O-18-06 is *not* substantially the same as O-13-24 as regards the possession of the affected firearms and accessories, and neither is O-18-19, by the Village's own definition they are new enactments, and not merely amendments. If "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, 190 (1st Dist. 1987)).

The ban of O-18-06 is not merely an amendment of O-13-24, s*ee Nolan*,

162 Ill. App. 3d at 190, for the further reason that one day the assault weapons and large capacity magazines were allowed, the next day they were not. By the very language of the FOID Card Act, that was not allowed.

The appellate court cited to *Nolan* (A-14, ¶¶ 60-61), but the court misapplied that precedent. In *Nolan*, the Court considered an amendment which was merely "increasing the percentages of unused accumulated sick leave collectible by city hall employees. All other provisions of the sick leave benefit plan found in ordinance No. 2574 are still in existence and applicable to city hall employees," which demonstrates the *opposite* of the situation in this case. Rather, the holding the appellate court should have taken from *Nolan* is that if "there is a clear conflict between the two ordinances where both cannot be carried out, then an intention to repeal will be presumed." *Nolan*, 162 Ill. App. 3d at 190.

Or, as the dissent succinctly noted: "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." A-38 at ¶ 88 (McLaren, J., dissenting).

The other case cited by the appellate court - *Village of Park Forest v. Wojciechowski*, 29 Ill.2d 435 (1963), referenced the legislative intent of the ordinances at issue, but that intent was determined by reviewing the ordinances themselves (*Id.* at 439-40), not by taking the word of the legislators even when the language of the ordinance completely contradicted

said explanation. "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. *See also Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 16 ("The most reliable indicator of the legislative intent is the language of the statute itself, which must be given its plain and ordinary meaning"). Clearly, the new statute is a repeal and substitute for the old. Therefore, regardless of how Defendant characterizes the large capacity magazine ban of O-18-19, it violates state law and the appellate court erred in failing to enjoin the ordinance. This error affects not only the residents of all municipalities with assault weapon regulations on the books, but also impacts preemption law generally.

The appellate court's reasoning is essentially a "placeholder" theory – that as long as Defendant passed *anything* that mentioned assault weapons in the 10-day window, it was free to forever pass whatever it wanted, no matter how much it changed the original ordinance, and no matter if it added magazines where no such provision existed before. A-13-14 at ¶ 56. The dissent in the appellate court pointed out the majority's logical fallacy (in relevant part) with an analogy that illuminates the issue with pinpoint clarity:

> 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 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?

A-20, ¶ 92 (McLaren, J., dissenting).

"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." A-19 at ¶ 88 (McLaren, J., dissenting).

Additionally, O-18-06 provides that assault weapons and large capacity magazines in Deerfield will be confiscated and destroyed (Secs. 15-89; 15-91). The former O-13-24, in contrast, contains no such provision. This is comparable to *State v. Cain*, 8 W.Va. 720 (1875), involving successive statutes prohibiting selling alcoholic beverages on Sunday. There, the Court noted that "[a] statute which provides a new punishment for an old offense operates as a repeal of so much only of the old law as relates to the punishment." *Id.* at 739. In this case, O-13-24 contains no penalty at all for possession of the subject firearms and accessories, while in O-18-06 residents face confiscation, prosecution, and fines of up to $1000.00/day. This

completely forecloses the argument that, as pertains to these items, the Village is merely amending O-13-24 as opposed to passing new legislation altogether. This is true when considering either O-18-06 or O-18-19. Clearly, the new statute is a repeal and substitute for the old.

Defendant claims that O-18-19 is a "clarification" of its ban on large capacity magazines. It is not. It is a ban where none previously existed. There was no large capacity magazine ban in the 2013 ordinance O-13-24. There was likewise no large capacity magazine ban in the 2018 ordinance O-18-06. Therefore, O-18-19 is not a "clarification" of anything, at least not in the legal sense of what constitutes a legally valid "amendment."

And even if O-18-19 *was* a clarification of O-18-06 in its large capacity magazine ban, it does not matter because a large capacity magazine ban in O-18-06 would have illegally violated state law as well. To the extent the now-banned large capacity magazines are for assault weapons, the ban violates Section 65/13.1(c) of the FOID Card Act (430 ILCS 65/13.1(c)) because it was not passed within the ten-day window allowed by that section in 2013.

The appellate court further erred in holding, as pertains to these items, the Defendant was merely amending O-13-24 as opposed to passing new legislation altogether. This is true when considering either O-18-06 or O-18-19. Regardless of whether Defendant paints the large capacity magazine ban of O-18-19 as an "amendment" or "clarification," it is still a

violation of state preemption law.

## III. *Athey v. Peru* is directly on point with the instant case.

The appellate court erroneously dismissed the precedential nature of *Athey v. Peru*, 22 Ill. App. 3d 363, 367 (3rd Dist. 1974) in favor of just accepting the Defendant's labeling as conclusive, but that case is directly on point and demands reversal. In *Athey*, when a Village "amended" its zoning ordinance to reclassify a subject property from residential to commercial, it was correctly identified as a "new" ordinance, and not an "amendatory" ordinance. *Athey*, 22 Ill.App.3d at 367. The Court noted:

> Whether an ordinance is amendatory is not determined by its title; nor is the reference to another ordinance in the title of the new provision determinative. (*People ex rel. Abt v. Bowman* (1911), 253 Ill. 234, 245.) An act is complete in itself as to the subject with which it deals when it is intelligent and when upon examination without reference to other acts it discloses its purposes and its methods of carrying out those purposes. (*People ex rel. Rusch v. Ladwig* (1937), 365 Ill. 574, 581.) A subsequent statute revising the whole subject matter of a former statute and intended as a substitute for it, although it contains no express words to that effect, operates as a repeal of the former act.

*Athey*, 22 Ill.App.3d at 367-368 (citing *City of Metropolis v. Gibbons*, 334 Ill. 431, 434 (1929)). Where the new enactment totally displaced the former provision, it cannot be considered an amendment. *Athey*, 22 Ill.App.3d at 368.

The principle articulated in *Athey* is neither new nor unique to Illinois, and has been part of American law for more than 100 years. *See*, *e.g.*,

*Opinion of the Justices*, 66 N.H. 629, 668 (1891); *State v. Allison*, 146 La. 495, 500 (1919); *Madison v. Southern W. R. Co.*, 156 Wis. 352, 360 (1914).

It makes no difference that *Athey* is a zoning case, or that the facts are not exactly the same as in this case. The principle is the same. The scope of the difference between O-13-24 and O-18-06/O-18-19 is not minor. Defendant passed Ordinance O-13-24 in 2013, which allowed "assault weapons" with certain restrictions, and then passed O-18-06, under which they are banned entirely, and with that ban comes new and severe penalties for non-compliance. Then the Village added further new prohibitions to O-18-06 by passing O-18-19.

Per *Athey*, this constituted a repeal of O-13-24 and its substitution with O-18-06. The appellate court called O-18-06 a permissible amendment of O-13-24, but this was reversible error, as it violated the preemption provision of 430 ILCS 65/13.1(c). It is the text of the Ordinances that matter, not the Defendant's characterization of them. When analyzing a subsequent ordinance, if a provision is the same as the previous version, it is a continuation of the old ordinance. If it is not the same, then it is a repeal and replace of the old ordinance. *See Athey*, 22 Ill. App. 3d at 367-68. The appellate court committed reversible error in concluding otherwise.

The appellate court worked around *Athey* by simply taking the Defendant's word for it. The Defendant called O-18-06 and O-18-24 "amendments" of O-13-24, so according to the appellate court there was no

need to look any deeper. But that is not the law, and the appellate court should be reversed.

## IV. Large capacity magazines are not a category of assault weapons.

Though the appellate court accepted the large capacity magazine ordinance O-18-19 as an amendment on the same "placeholder" theory as for O-18-06, (A-13-14, ¶ 56) it was error for the court to consider magazines as synonymous as assault weapons. Even the cases of *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) (*Heller II*) and *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015), both cited by Defendant, recognize that an assault weapon, and ammunition that can be used in an assault weapon, are two different things.

In *Heller II*, the District of Columbia banned both assault weapons and large-capacity magazines (LCM). This was done in two ordinances. The LCM ordinance, D.C. Code § 7-2506.01(b), states that "No person in the District shall possess, sell, or transfer any large capacity ammunition feeding device regardless of whether the device is attached to a firearm." In other words, the ban on LCMs in Washington, D.C. has nothing to do with whether the owner also has an assault weapon, any other type of firearm, or even ammunition. LCMs are banned objects in and of themselves. Further, in *Heller II*, the Court performed separate analyses as to the bans on the firearms and the LCMs (*Id.* at 1263-64).

In *Friedman*, LCM is defined as "any Ammunition feeding device with the capacity to accept more than ten rounds." HPO § 136.001. The Highland Park Ordinance at issue in *Friedman*, HPO § 136.005, states that "No person shall manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess any Assault Weapon or Large Capacity Magazine . . . ." While *Friedman* did not do a separate constitutional scrutiny analysis, it did not actually do any analysis at all, leaving that to the dissent (*Friedman*, 784 F.3d 406, 418-19 (Manion, J., dissenting)).

LCMs and assault weapons are not synonymous, not subsets of one another (especially since LCMs can also be used in handguns (A-16-17, ¶ 71), and if the Defendants wanted to ban both in 2013 it could have done so. Instead, it heavily regulated assault weapons and said nothing about LCMs. Then in 2018, it (wrongfully) banned assault weapons, while not banning LCMs. After the circuit court noted this significant flaw to the Defendant in its June 12, 2018 temporary restraining order (A-99-100), the Defendant amended the ordinance (*via* O-18-19) for the second time in 2018 to list LCMs as a banned item. This was the very first time that had been done, five years after the ten-day pre-preemption window of 430 ILCS 65/13.1(c) closed.

Defendant wishes the Court to equate assault weapons and LCMs to get around the apparent errors of O-18-06 as pertains to LCMs, but the language considering them separate items is unambiguous, and, even if this Court were inclined to simply lump them all together, the attempt to ban

LCMs in O-18-06 and O-18-19 should fail for the same reason as the assault weapon ban in O-18-06 - Defendant is preempted from doing so by State law. The appellate court's holding to the contrary should be reversed.

## CONCLUSION

In light of the above, the Plaintiffs-Appellees, DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, and SECOND AMENDMENT FOUNDATION, INC., respectfully request this Honorable Court to:

1. Dismiss the Defendants' appellate court appeal for lack of jurisdiction;
2. In the alternative, reverse the judgment of the appellate court that Defendants' Ordinances O-18-06 and O-18-19 are not preempted by State law, and are enforceable;
3. Grant Plaintiffs any and all further relief as this Court deems just and proper.

Dated: May 19, 2021

Respectfully submitted,

/s/ David G. Sigale
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**CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages 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 forty-three pages.

/s/ David G. Sigale
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Second Amendment Foundation, Inc.

# ILLINOIS SUPREME COURT RULE 342 APPENDIX TO BRIEF OF PLAINTIFFS-APPELLANTS

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# Easterday v. Vill. of Deerfield

Appellate Court of Illinois, Second District

December 4, 2020, Opinion Filed

No. 2-19-0879

**Reporter**
2020 IL App (2d) 190879 *; 2020 Ill. App. LEXIS 831 **

DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, and SECOND AMENDMENT FOUNDATION, INC., Plaintiffs-Appellees, v. THE VILLAGE OF DEERFIELD, Defendant-Appellant.GUNS SAVE LIFE, INC., and JOHN WILLIAM WOMBACHER III, Plaintiffs-Appellees, v. THE VILLAGE OF DEERFIELD and HARRIET ROSENTHAL, in Her Official Capacity as Mayor of the Village of Deerfield, Defendants-Appellants.

**Subsequent History:** As Amended December 7, 2020.

**Prior History: [**1]** Appeal from the Circuit Court of Lake County. No. 18-CH-427. Honorable Luis A. Berrones, Judge, Presiding. Appeal from the Circuit Court of Lake County. No. 18-CH-498. Honorable Luis A. Berrones, Judge, Presiding.

*Easterday v. Deerfield, 2019 IL App (2d) 190320-U, 2019 Ill. App. Unpub. LEXIS 1052 (June 12, 2019)*

**Disposition:** Affirmed in part and reversed in part. Permanent injunctions vacated in part. Cause remanded.

## Core Terms

ordinance, assault weapon, regulation, Guns, ownership, Card, home rule, ban, trial court, magazines, handguns, Firearm, ammunition, merged, municipal code, effective date, preempted, consolidation, weapons, Concealed, window, permanent injunction, amend, transportation, Village, amended complaint, concurrently, invalid, cases, summary judgment

## Case Summary

### Overview

HOLDINGS: [1]-The trial court erred in determining that *§ 13.1* of the Illinois Firearm Owners Identification Card Act (FOID Card Act), *430 ILCS 65/13.1(c)* (2018), preempted all regulation of assault weapons by home rule units; the legislature intended that home rule units would be precluded from regulating assault weapons unless they took steps, within the prescribed time-frame, to regulate the possession or ownership of assault weapons in a manner that was inconsistent with the FOID Card Act; [2]-To the extent that the village's ban of large capacity magazines regulated ammunition for handguns, it was preempted in its application to holders of valid FOID cards and concealed carry licenses by *§ 13.1(b)* of the FOID Card Act and § 90 of the Illinois Concealed Carry Act, *430 ILCS 66/90*.

### Outcome

Affirmed in part, reversed in part, and remanded. Permanent injunctions vacated in part.

## LexisNexis® Headnotes

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > Judgments > Summary Judgment > Entitlement as Matter of Law

Civil Procedure > Appeals > Summary Judgment Review > Standards of Review

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Genuine Disputes

**HN1[] Entitlement as Matter of Law, Appropriateness**

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) (2018). An appellate court reviews de novo a trial court's decision.

Governments > Legislation > Interpretation

**HN2[] Legislation, Interpretation**

When interpreting a statute, a court's goal is to ascertain and effectuate the legislature's intent. The plain and ordinary meaning of the statutory language is the most reliable indicator of that intent. The court must consider the statute as a whole, construing words and phrases in their proper context rather than in isolation. The court may consider both the subject of the statute and the legislature's apparent purpose in enacting it. If it is possible to do so, the court should embrace an interpretation that gives a reasonable meaning to each word, clause, and sentence of the statute without rendering any language superfluous. Where a statute's language is clear and unambiguous, a court applies it as written without resorting to extrinsic aids of construction.

Governments > Local Governments > Home Rule

Governments > State & Territorial Governments > Legislatures

**HN3[] Local Governments, Home Rule**

The legislature retains the authority to restrict the powers of home rule units. Ill. Const. art. VII, § 6(i) establishes that home rule units may exercise their powers 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. Thus, the legislature must expressly limit or deny home rule authority whenever it intends to do so. 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.

Governments > Legislation > Interpretation

**HN4[] Legislation, Interpretation**

If it is possible to do so, a court should embrace an interpretation that gives a reasonable meaning to each word, clause, and sentence of a statute without rendering any language superfluous.

Governments > Legislation > Interpretation

**HN5[] Legislation, Interpretation**

A court must consider a statute as a whole, construing words and phrases in their proper context rather than in isolation.

Criminal Law & Procedure > ... > Weapons Offenses > Firearms Licenses > Holders

**HN6[] Firearms Licenses, Holders**

The primary concern of the Illinois Firearm Owners Identification Card Act (FOID Card Act) is to regulate who may acquire or possess firearms, not which firearms those individuals may acquire or possess. 430 ILCS 65/1 (2018). The FOID Card Act defines "firearm"

broadly, without excluding assault weapons. 430 ILCS 65/1.1. The FOID Card 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). Therefore, the FOID Card Act regulates assault weapons, insofar as it requires anyone who acquires or possesses such firearms to have a FOID card.

Governments > Local Governments > Home Rule

Governments > Local Governments > Ordinances & Regulations

**HN7** **Local Governments, Home Rule**

When the Illinois Legislature uses the phrase "inconsistent with this Act" in 430 ILCS 65/13.1(c) (2018), it is 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 Illinois Firearm Owners Identification Card Act (FOID Card Act). Thus, a home rule unit's regulation is inconsistent with the FOID Card Act where such regulation imposes greater restrictions on assault weapons than the FOID Card Act imposes. Any regulation of assault weapons beyond the mere requirement to possess a FOID card is inconsistent with the FOID Card Act.

Governments > Legislation > Interpretation

**HN8** **Legislation, Interpretation**

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.

Governments > Legislation > Interpretation

**HN9** **Legislation, Interpretation**

It is the judiciary's role to enforce statutes as written, not to question the wisdom of the legislature. The wisdom of the state's regulatory system is a matter for the legislature, not a 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.

Civil Procedure > ... > Summary Judgment > Motions for Summary Judgment > Cross Motions

Civil Procedure > Appeals > Appellate Jurisdiction > Final Judgment Rule

**HN10** **Motions for Summary Judgment, Cross Motions**

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 Ill. Sup. Ct. R. 304(a). The exception to the 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.

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Christian D. Ambler, of Stone & Johnson, Chtrd., of Chicago, and Brian W. Barnes, of Cooper & Kirk, PLLC, of Washington, D.C., for other appellees.

**Judges:** 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 by:** ZENOFF

## Opinion

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 **[**2]** opinion.

**OPINION**

**[*P1]** 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.

**[*P2]** I. BACKGROUND

**[*P3]** Deerfield is a home rule unit. Before 2013, it did not have an ordinance in place regulating assault weapons or large capacity magazines.

**[*P4]** Effective July 9, 2013, the Illinois legislature **[**3]** 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.

**[*P5]** 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 **[**4]** 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).

**[*P6]** 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).[1] 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

[1] 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.

language **[**5]** 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).

**[*P7]** Easterday and Guns Save Life filed separate lawsuits challenging the validity of the 2018 ordinances.[2] 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 **[**6]** consolidated the two actions "for all future proceedings."

**[*P8]** 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).

**[*P9]** 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 **[**7]** 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).

**[*P10]** 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 **[**8]** (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*).

**[*P11]** 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

[2] 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.

> 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, 895 N.E.2d 1017, 324 Ill. Dec. 302 (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*.

**[*P12]** We noted that the difference between the second and third forms of consolidation had jurisdictional implications:

> "Where the second form **[**9]** 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*.

**[*P13]** 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 **[**10]** 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*.

**[*P14]** Following our decision in *Easterday* ***[**11]*** *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.

**[*P15]** 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.

**[*P16]** On October 3, 2019, Deerfield filed a notice of appeal, specifying its intent to challenge the permanent **[**12]** injunctions that the court entered on March 22, 2019, which were rendered appealable by the September 6, 2019, order.

**[*P17]** II. ANALYSIS

**[*P18]** A. Jurisdiction

**[*P19]** Easterday and Guns Save Life both contend that we lack jurisdiction.

**[*P20]** 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.[3]

**[*P21]** 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.

**[*P22]** Deerfield **[**13]** 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 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.

**[*P23]** 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, 457 N.E.2d 9, 75 Ill. Dec. 219 (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, 414 Ill. Dec. 59, 79 N.E.3d 694* (although **[**14]** 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, 500 N.E.2d 553, 102 Ill. Dec. 660 (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).

**[*P24]** 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 **[**15]** 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.

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[3] 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.

**[*P25]** 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 **[**16]** 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).[4] Deerfield appealed within 30 days of September 6, 2019. Accordingly, we have jurisdiction of the appeal under Rule 304(a).

**[*P26]** B. Preemption

**[*P27]** 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. **HN1**[↑] 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.

**[*P28]** **HN2**[↑] 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 **[**17]** 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, 410 Ill. Dec. 937, 72 N.E.3d 323. 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, 390 Ill. Dec. 94, 28 N.E.3d 747.

**[*P29]** 1. *Nature of Home Rule Authority*

**[*P30]** 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, 979 N.E.2d 844, 366 Ill. Dec. 43*. 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, 979 N.E.2d 844, 366 Ill. Dec. 43* (quoting Scadron v. City of Des Plaines, 153 Ill. 2d 164, 174, 606 N.E.2d 1154, 180 Ill. Dec. 77 (1992)). The impetus for this power transfer was "the assumption that municipalities **[**18]** 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).

**[*P31]** **HN3**[↑] 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

[4] 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.

of a home rule unit."[5] *Ill. Const. 1970, art. VII, § 6(h). Article 7, section 6(i)* establishes that home rule units may exercise their powers 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, 988 N.E.2d 75, 370 Ill. Dec. 299*; see also *5 ILCS 70/7* (West 2018) ("No law enacted after **[**19]** 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, 399 Ill. Dec. 651, 46 N.E.3d 1151*.

**[*P32]** 2. *The Governing Statutes*

**[*P33]** 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 **[**20]** 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).

**[*P34]** 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, **[**21]** 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

[5] This rule is subject to certain exceptions relating to taxing powers. Those exceptions are not relevant to this appeal.

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 **[**22]** 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 **[**23]** rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution." 430 ILCS 65/13.1 (West 2018).

**[*P35]** 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?

**[*P36]** 3. *Section 13.1 of the FOID Card Act Does Not Preempt All Regulation of Assault Weapons by Home Rule Units*

**[*P37]** 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) **[**24]** (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)).

**[*P38]** 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 **[**25]** from regulating on this subject.

**[*P39]** Deerfield's interpretation of the statute prevails.

HN4[↑] 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, 410 Ill. Dec. 937, 72 N.E.3d 323. 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.

**[*P40]** 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, 705 N.E.2d 81, 235 Ill. Dec. 468 (1998) (collecting examples of statutes where the legislature evinced its intent to preempt all regulation by home rule units on various topics). HN5[↑] 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 **[**26]** adds that such ordinances may be amended outside the 10-day window. 430 ILCS 65/13.1(c) (West 2018).

**[*P41]** 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.

**[*P42]** 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.

**[*P43]** 4. *Deerfield's 2013 Ordinance Was "Inconsistent With" the FOID Card Act*

**[*P44]** 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 **[**27]** 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).

**[*P45]** 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."

**[*P46]** On appeal, both Easterday and Guns Save Life defend the trial court's interpretation. Deerfield addresses this issue in a single **[**28]** 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, 750 N.E.2d 314, 255 Ill. Dec. 733 (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.

**[*P47]** 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 **[**29]** 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.

**[*P48]** *HN6*[] 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.

**[*P49]** To ascertain what the legislature intended in **[**30]** *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, **[**31]** *HN7*[] 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.

**[*P50]** 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 **[**32]** 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).[6]

Additionally, the 2013 ordinance stated:

> "It is unlawful and a violation of this section for any

[6] 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).

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." Deerfield Municipal Code § 15-88(a) (added July 1, 2013).[7]

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 **[**33]** concurrently with the State.

**[*P51]** 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. **[**34]** 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.

**[*P52]** 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 **[**35]** 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.

**[*P53]** 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.

**[*P54]** 5. *Deerfield Amended Its 2013 Ordinance*

**[*P55]** 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.

**[*P56]** 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

[7] 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).

governments, whereby certain home **[**36]** 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.

**[*P57]** Relying on Athey v. City of Peru, 22 Ill. App. 3d 363, 317 N.E.2d 294 (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 **[**37]** 2018 ordinances were new ordinances rather than mere amendments to the 2013 ordinance.

**[*P58]** 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 **[**38]** 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.

**[*P59]** 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 cannons of interpretation to ascertain that intent.

**[*P60]** The other cases that the trial court cited—Village of Park Forest v. Wojciechowski, 29 Ill. 2d 435, 194 N.E.2d 346 (1963), and Nolan v. City of Granite City, 162 Ill. App. 3d 187, 514 N.E.2d 1196, 113 Ill. Dec. 185 (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 **[**39]** or dispute as to which portions of the 2013 ordinance remained in effect after the enactment of the 2018 ordinances.

**[*P61]** 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).

**[*P62]** 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 **[**40]** 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.

**[*P63]** 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 **[**41]** 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). HN8[↑] 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, 417 Ill. Dec. 743, 89 N.E.3d 391. 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.

**[*P64]** 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.

**[*P65]** To the contrary, the legislative **[**42]** 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, Muños, 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.

**[*P66]** 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*

**[*P67]** 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 **[**43]** 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.

**[*P68]** 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 **[**44]** 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, 414 Ill. Dec. 600, 80 N.E.3d 743*.

**[*P69]** *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 **[**45]** 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 Cary 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).

**[*P70]** 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 **[**46]** 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."

**[*P71]** 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 **[**47]** 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. HN9[↑] 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, 419 Ill. Dec. 1, 92 N.E.3d 412* ("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, 418 Ill. Dec. 290, 90 N.E.3d 448*: "[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 **[**48]** this limited point, we affirm the trial court's grant of summary judgment in favor of Easterday and Guns Save Life.

**[*P72]** 7. *Proposed Alternative Basis to Affirm*

**[*P73]** 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.

**[*P74]** 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.

**[*P75]** 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 **[**49]** I through IV of Guns Save Life's amended complaint.

**[*P76]** HN10[↑] "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, 411 Ill. Dec. 877, 74 N.E.3d 186*. 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.

**[*P77]** 8. *Summary of Holdings*

**[*P78]** 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; **[**50]** (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.

**[*P79]** III. CONCLUSION

**[*P80]** 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 **[**51]** remand the cause for further proceedings consistent with this opinion.

**[*P81]** Affirmed in part and reversed in part. Permanent injunctions vacated in part. Cause remanded.

**Concur by:** McLAREN (In Part)

**Dissent by:** McLAREN (In Part)

## Dissent

**[*P82]** JUSTICE McLAREN, concurring in part and dissenting in part.

**[*P83]** I dissent from the majority's conclusion that Deerfield, in its 2013 ordinance, regulated ownership of assault weapons, and that Deerfield's 2018 ordinance[8] prohibiting the ownership of assault weapons was an amendment allowed by the legislature.

**[*P84]** 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 **[**52]** 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).

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).

**[*P85]** 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].

**[*P86]** 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 **[**53]** 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).

**[*P87]** 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[9] and irrelevant. To

[8] While Deerfield passed two 2018 ordinances relevant to the case, I will refer to them as a singular ordinance.

[9] For example, you cannot legally sell your friend's car when he merely loans it to you.

"regulate" ownership involves limiting who may own some item, even to the point of prohibiting ownership of the item. The **[**54]** 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.

**[*P88]** 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 **[**55]** 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.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" **[**56]** 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.

**[*P89]** 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 cannons 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 **[**57]** (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, 959 N.E.2d 621, 355 Ill. Dec. 207*. 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, 766 N.E.2d 641, 262 Ill. Dec. 721 (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.

**[*P90]** 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 **[**58]** 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.

**[*P91]** 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.[10]

**[*P92]** Perhaps an analogy to a more mundane issue of governance will more clearly demonstrate the majority's analysis is faulty. Assume that, in 2013, **[**59]** 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?

**[*P93]** "[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, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010)*. This right also extends to self-defense outside the home. See *People v. Aguilar, 2013 IL 112116, ¶ 21, 377 Ill. Dec. 405, 2 N.E.3d 321*. 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 **[**60]** 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* rights, Illinois courts apply heightened means-ends scrutiny to the government's justification for its regulations. See *People v. Chairez, 2018 Il 121417, ¶ 21, 423 Ill. Dec. 69, 104 N.E.3d 1158*. 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.

**[*P94]** 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 **[**61]** ban ownership of assault weapons in 2018 was late and outside the intent of the legislature. The trial court should be affirmed.

End of Document

[10] 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.

# *Easterday v. Deerfield*

Appellate Court of Illinois, Second District

June 12, 2019, Order Filed

No. 2-19-0320

**Reporter**
2019 IL App (2d) 190320-U *; 2019 Ill. App. Unpub. LEXIS 1052 **

DANIEL D. ***EASTERDAY***, ILLINOIS STATE RIFLE ASSOCIATION, and SECOND AMENDMENT FOUNDATION, INC., Plaintiffs-Appellees, v. VILLAGE OF DEERFIELD, Defendant-Appellant.GUNS SAVE LIFE, INC. and JOHN WILLIAM WOMBACHER III, Plaintiffs-Appellees, v. VILLAGE OF DEERFIELD and HARRIET ROSENTHAL, in her capacity as Mayor of the Village of Deerfield, Defendants-Appellants.

**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)*.

**Subsequent History:** Decision reached on appeal by, Remanded by ***Easterday*** *v. Vill. of Deerfield, 2020 IL App (2d) 190879, 2020 Ill. App. LEXIS 831 (Dec. 4, 2020)*

**Prior History:** **[**1]** Appeal from the Circuit Court of Lake County. No. 18-CH-427. Honorable Luis A. Berrones, Judge, Presiding.

Appeal from the Circuit Court of Lake County. No. 18-CH-498. Honorable Luis A. Berrones, Judge, Presiding.

**Disposition:** Appeal dismissed.

## Core Terms

Save, notice of appeal, consolidation, ordinance, trial court, permanent injunction, appellate court, circuit court, merged, magazines, ban, plaintiffs', preempted, notice, summary judgment, final judgment, interlocutory, proceedings, injunction, assault weapon, large-capacity, orders, cases, final order, timely file, parties, amended complaint, Carry Act

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

**Opinion by:** ZENOFF

## Opinion

**ORDER**

**[*P1]** *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.

**[*P2]** 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 **[**2]** Rosenthal, appeal pursuant to *Supreme Court Rule 307* (eff. Nov. 1, 2017). We dismiss the appeal for lack of jurisdiction.

**[*P3]** I. BACKGROUND

**[*P4]** 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.

**[*P5]** 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.

**[*P6]** On April **[**3]** 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.

**[*P7]** 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] **[**4]** 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.

**[*P8]** 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 **[**5]** Guns Save Life action.

**[*P9]** 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.

**[*P10]** On July 27, 2018, the court consolidated the ***Easterday*** action and the Guns Save Life action "for all future proceedings."

**[*P11]** 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 **[**6]** filed a motion for summary judgment or, in the alternative, a preliminary injunction.

**[*P12]** 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.[1]

**[*P13]** 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.

**[*P14]** 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.

**[*P15]** 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. **[**7]** 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, 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.

**[*P16]** 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.

**[*P17]** 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 **[**8]** of the same date that was entered in the ***Easterday*** action, or *just* the order that was entered in the Guns Save Life action.[2] 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.

**[*P18]** 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 **[**9]** to the appeal, the Village and Rosenthal attached a copy of the March 22, 2019, order that was

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[1] 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, 965 N.E.2d 1237, 358 Ill. Dec. 758*.

[2] As mentioned above, Rosenthal was not a defendant in the ***Easterday*** action.

entered in the Guns Save Life action. The Village and Rosenthal did not attach the order that was entered in the ***Easterday*** action.

**[*P19]** II. ANALYSIS

**[*P20]** A. Motions Taken With the Case

**[*P21]** 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.

**[*P22]** 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, 882 N.E.2d 1265, 318 Ill. Dec. 142 (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, 903 N.E.2d 746, 328 Ill. Dec. 86 (2009) (following *First Bank*).

**[*P23]** In their reply brief, the Village and Rosenthal explain that, **[**10]** 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, 533 N.E.2d 1072, 127 Ill. Dec. 944 (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, 776 N.E.2d 836, 267 Ill. Dec. 464 (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."

**[*P24]** On May 16, 2019, contemporaneously with the filing of their reply brief, **[**11]** 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 **[**12]** 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.

**[*P25]** 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 **[**13]** 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.

**[*P26]** On May 22, 2019, we ordered the Village's and Rosenthal's motion to be taken with the case.

**[*P27]** 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 **[**14]** 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.

**[*P28]** 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.

**[*P29]** 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, 473 N.E.2d 1298, 85 Ill. Dec. 493 (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 **[**15]** to "sweep the issue under the rug."

**[*P30]** 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.

**[*P31]** B. Remaining Jurisdictional Issues

**[*P32]** 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, 410 Ill. Dec. 289, 69 N.E.3d 834*. Even if the ***Easterday*** plaintiffs had not flagged the following jurisdictional issues for us, we would still have an independent duty to consider our **[**16]** jurisdiction and to dismiss the appeal if jurisdiction were lacking. *Houghtaylen v. Russell D. Houghtaylen By-Pass Trust, 2017 IL App (2d) 170195, ¶ 12, 420 Ill. Dec. 157, 95 N.E.3d 1253*.

**[*P33]** 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. Altheimer & Gray, 191 Ill. 2d 214, 222, 730 N.E.2d 4, 246 Ill. Dec. 324 (2000)*; see also *Steel City Bank v.*

Village of Orland Hills, 224 Ill. App. 3d 412, 416-17, 586 N.E.2d 625, 166 Ill. Dec. 667 (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.

**[*P34]** 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 **[**17]** the parties' respective rights. See Lamar Whiteco Outdoor Corp. v. City of West Chicago, 395 Ill. App. 3d 501, 504, 916 N.E.2d 886, 334 Ill. Dec. 246 (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.

**[*P35]** 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." **[**18]**

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.

**[*P36]** 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.").

**[*P37]** 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. **[**19]** 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.

**[*P38]** 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, 423 Ill. Dec. 196, 105 N.E.3d 1. 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.

**[*P39]** 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 **[**20]** 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.

**[*P40]** 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 **[**21]** one suit." *Busch v. Mison, 385 Ill. App. 3d 620, 624, 895 N.E.2d 1017, 324 Ill. Dec. 302 (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.

**[*P41]** 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, 929 N.E.2d 78, 340 Ill. Dec. 774 (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, 481 N.E.2d 849, 90 Ill. Dec. 49 (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, 673 N.E.2d 1099, 220 Ill. Dec. 678 (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*).

**[*P42]** The supporting record **[**22]** 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, 965 N.E.2d 1237, 358 Ill. Dec. 758* ("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, 459 N.E.2d 958, 76 Ill. Dec. 823 (1984)* ("Any doubts **[**23]** which may arise from the incompleteness of the record will be resolved against the appellant.").

**[*P43]** 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.

**[*P44]** 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 **[**24]** 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, 879 N.E.2d 1053, 316 Ill. Dec. 665 (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.

**[*P45]** 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). **[**25]** (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.

**[*P46]** III. CONCLUSION

**[*P47]** For the forgoing reasons, we hereby dismiss this appeal for lack of jurisdiction.

**[*P48]** Appeal dismissed.

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End of Document

# SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
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SPRINGFIELD, ILLINOIS 62701-1721
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FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
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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,

Carolyn Taft Grosboll

Clerk of the Supreme Court

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126840

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

| | |
|---|---|
| DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, and SECOND AMENDMENT FOUNDATION, INC.,<br><br>Plaintiffs,<br><br>v.<br><br>VILLAGE OF DEERFIELD, ILLINOIS, a municipal corporation,<br><br>Defendant. | Case No. 18 CH 427 |
| GUNS SAVE LIFE, INC. and JOHN WILLIAM WOMBACHER III,<br><br>Plaintiffs,<br><br>v.<br><br>VILLAGE OF DEERFIELD, ILLINOIS, and HARRIET ROSENTHAL, solely in her official capacity as Mayor of the Village of Deerfield,<br><br>Defendants. | Case No. 18 CH 498<br><br>***[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 set for October 4, 2019 at 9:00 am ~~shall include all parties in the Easterday and Guns Save Life cases.~~ is stricken and reset for February 28, 2019 at 9:00am.

Dated: _____

ENTER:

Judge A. Busconi

JUDGE

**Order Prepared by**:
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**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT**
**LAKE COUNTY, ILLINOIS**



| | | |
|---|---|---|
| Daniel D. Easterday, Illinois State Rifle Association, and Second Amendment Foundation, Inc., | ) | |
| Plaintiffs, | ) | No. 18CH427 |
| v. | ) | |
| Village of Deerfield, Illinois, a Municipal Corporation, | ) | |
| Defendant. | ) | |

**ORDER**

This case is the companion case to Guns Save Life, Inc. v. Village of Deerfield, Illinois, and Harriet Rosenthal, solely in her official capacity as Mayor of the Village of Deerfield, case No. 18CH498. Plaintiffs in this case join the Guns Save Life plaintiffs' preemption arguments under the Illinois Firearm Owners Identification Act and the Firearm Concealed Carry Act in case No. 18CH498 and seek a summary judgment and permanent injunction against the Village of Deerfield. For the reasons stated in this Court's order of March 22, 2019 in case 18CH498, which is attached and incorporated into this order, plaintiffs' motion for summary judgment and permanent injunction is granted.

**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.

**Entered this 22nd day of March 2019.**

**ENTERED:**

Luis A. Berrones
Judge

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



| | | |
|---|---|---|
| Guns Save Life, Inc. and John William Wombacher, III., | ) | |
| Plaintiffs, | ) | |
| v. | ) | 18CH498 |
| Village of Deerfield, Illinois, and Harriet Rosenthal, solely in her official capacity as Mayor of the Village of Deerfield, | ) | |
| Defenants. | ) | |

**MEMORANDUM ORDER**

Before the Court are plaintiffs' motion for a preliminary injunction and motion for summary judgment.[1] 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.[2] 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

[1] 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.

[2] 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;[3] (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.[4]

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,

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[3] This issue is now moot due to the passage of Ordinance No. 0-18-19.

[4] 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 enjoying 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. O-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 MUNICPAL CODE OF THE VILLAGE OF DEERFIED TO REGULATE THE POSSESSION, MANUFACTURE AND SALE OF ASSAULT WEAPONS IN THE VILLAGE OF DEERFIELD". Ordinance No. 0-18-06 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. 0-18-06 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:[5]

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

[5] All changes to the challenged ordnances 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.[6] 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

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[6] 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 (1st 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 (1st 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, th**at 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 (5th 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. 0-13-24 to the language of Ordinance No. 0-18-06 there exists significant differences between the two ordinances. Ordinance No. 0-13-24 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 ordnances 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 22nd day of March 2019.**

**ENTER:**

_____

Judge

FILED
8/17/2018 4:37 PM
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

| | | |
|---|---|---|
| DANIEL D. EASTERDAY,<br>ILLINOIS STATE RIFLE ASSOCIATION, and<br>SECOND AMENDMENT FOUNDATION, INC.,<br><br>Plaintiffs,<br><br>v.<br><br>VILLAGE OF DEERFIELD, ILLINOIS,<br>a municipal corporation,<br><br>Defendant. | ) | Case No. 18 CH 427 |

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, and SECOND AMENDMENT FOUNDATION. INC., by and through LAW FIRM OF DAVID G. SIGALE, P.C., their attorney, and as and for their Amended Complaint against the Defendant, VILLAGE OF DEERFIELD, ILLINOIS, seeking a declaratory Judgment, permanent injunction, and other relief, in support thereof state as follows:

INTRODUCTION

This legal action is a challenge to the Defendant's Ordinance O-18-06, passed on April 2, 2018, which bans assault weapons (used specifically as that term is defined in O-18-06) within the Defendant's municipal limits. This action is also a challenge to the Defendant's Ordinance O-18-24-3, passed on June 18, 2018, which bans large capacity magazines (used specifically as that term is defined in O-18-06) within the Defendant's municipal limits.

The passage and enforcement of the Ordinances O-18-06 and O-18-24-3 violate the Defendant's statutory authority, as the issues with which the Ordinances are concerned are preempted by Illinois state law as stated in the Illinois Firearm Owners Identification Card Act and the Illinois Firearm Concealed Carry Act. Therefore, the Ordinances O-18-06 and O-18-24-3 are invalid and must be enjoined, as described more fully herein.

## STATEMENT OF FACTS

### Plaintiffs

1. Daniel D. Easterday is a natural person, and a citizen and resident of the Village of Deerfield, in Lake County, Illinois. Easterday owns several firearms which he legally purchased that are considered assault weapons under O-18-06, as well as large capacity magazines, also as defined in O-18-06.

2. In addition to the firearms that Easterday owns, he desires to legally purchase additional firearms, parts and accessories, including some parts and accessories for the firearms he now owns, but cannot because they would be banned by the subject Ordinances O-18-06 and O-18-24-3.

3. Easterday is a law-abiding citizen who possesses the said firearms for self-protection and protection of himself and his family in their home, and for target shooting. He has a FOID card issued by the Illinois State Police pursuant to the Illinois FOID Act, 430 ILCS 65/1 *et seq.* He also has a concealed carry license issued by the Illinois State Police pursuant to the Illinois Firearm Concealed Carry Act, 430 ILCS 66/1, *et seq.*

4. SAF is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF's membership includes residents of the Village of Deerfield, Illinois. SAF has over 650,000 members and supporters nationwide. The purposes of SAF include education, research, publishing and legal action focusing on the Constitutional right privately to own and possess firearms. SAF brings this action on behalf of itself and its members.

5. Members of SAF who reside in Deerfield, Illinois would possess assault weapons and large capacity magazines for self-defense, but refrain from doing so because of the penalties in Section 15-89 of Ordinance O-18-06, and the confiscation/destruction provisions in Section 15-91 of Ordinance O-18-06.

6. ISRA is a non-profit membership organization incorporated under the laws of Illinois with its principal place of business in Chatsworth, Illinois. ISRA has over 17,000 members and supporters in Illinois, and many members outside the State of Illinois. The purposes of ISRA include securing the Constitutional right to privately own and possess firearms within Illinois, through education, outreach, and litigation. ISRA brings this action on behalf of itself and its members.

7. Members of ISRA who reside in Deerfield, Illinois would possess assault weapons and large capacity magazines for self-defense, but refrain from doing so because of the penalties in Section 15-89 of Ordinance O-18-06, and the confiscation/destruction provisions in Section 15-91 of Ordinance O-18-06.

8. Easterday is a member of SAF and ISRA.

Defendant

9. Defendant Village of Deerfield is a municipal entity organized under the Constitution and laws of the State of Illinois. It lies in Lake County, with a small portion lying within Cook County.

10. Deerfield is governed by a Mayor and Board of Trustees. The Deerfield Board of Trustees is composed of six Trustees who serve four-year staggered terms.

11. Harriet Rosenthal is the Mayor of the Village of Deerfield. She is the chief executive officer of the Village, the President of the Board of Trustees, and has supervisory authority over all employees of the Village. She has served as Mayor since 2009.

12. The Board of Trustees is the legislative department of the village government. At all relevant times, the Trustees were: Robert "Bob" Benton, Tom Jester, Bill Seiden, Dan Shapiro, Barbara Struthers, and Mary M. Oppenheim.

State Law

13. Effective July 9, 2013, the Illinois Legislature amended the Firearm Owners Identification Card Act (430 ILCS 65/1, *et seq.*). Specifically, Section 65/13.1 of the amended FOID Card Act stated at all relevant times:

> (b) . . . 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 [P.A. 98-63] 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 [430 ILCS 65/13.3]. 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 [430 ILCS 66/5].

(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 [Ill. Const. Art. VII, § 6].

14. 430 ILCS 66/5 states that:

"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. "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 [720 ILCS 5/24-1];
>
> (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.

15. Additionally, at all relevant times, Section 66/90 of the Firearm Concealed Carry Act (430 ILCS 66/90) stated as follows:

> 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 [Ill. Const., Art. VII, § 6].

16. While the 2013 amended FOID Card Act at 430 ILCS 65/13.1(c) allowed home rule municipalities until July 19, 2013 to regulate the possession or ownership of assault weapons, the 2013 amended FOID Card Act at 430 ILCS 65/13.1(b) specifically did *not* allow home rule municipalities, such as the Village, that same window as applied to handguns.

2013 Village Ordinance (O-13-24)

17. On July 1, 2013, the Village of Deerfield enacted Ordinance O-13-24 – *An Ordinance Regulating the Ownership and Possession of Assault Weapons in the Village of Deerfield*. The Ordinance, which was valid because it was passed in the proper timeframe as stated in 430 ILCS 65/13.1, defined assault weapons (Sec. 15-86), required safe storage as a condition for possessing assault weapons possessed in the Village (Sec. 15-87(a)), provided for a lawful self-defense exception for violation of the safe storage requirement (Sec. 15-87(b)), and listed requirements for the possession, carrying, and transportation of assault weapons (Sec. 15-88).

2018 Village Ordinance (O-18-06)

18. On April 2, 2018, the Board of Trustees of the Village of Deerfield, Illinois, enacted 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*. O-18-06 was labeled as an "amendment" to Ordinance O-13-24. The text of O-18-06 is attached hereto as Exhibit "A."

19. Rather than being a mere amendment to O-13-24, however, O-18-06 is actually a new ordinance.

20. Whereas O-13-24 allowed the possession of assault weapons under certain conditions, and even contained a lawful self-defense exception for using

them, O-18-06 bans them entirely (Sec. 15-87(a)). There is also no lawful self-defense exception.

21. Though these new restrictions have limited exceptions for law enforcement, retired law enforcement, and military personnel, they are not relevant to Plaintiffs in this action.

22. O-18-06 provides that assault weapons and large capacity magazines in Deerfield will be confiscated and destroyed (Secs. 15-89; 15-91). O-13-24, in contrast, contains no such provision.

2018 Village Ordinance II (O-18-24-3)

23. On June 18, 2018, and after the court's temporary restraining order in this matter, Deerfield passed Ordinance O-18-24-3, which was styled as an "amendment" to Section 15-87 of O-18-06 in order to ban large capacity magazines (in addition to assault weapons) in Deerfield. The text of O-18-24-03 is attached hereto as Exhibit "B."

24. O-18-24-3, like O-18-06, is not a mere amendment to either O-13-24 or O-18-06, and like O-18-06 is actually a new ordinance.

25. While the original Section 15-91 of O-18-06 called for the confiscation and destruction of large capacity magazines, they were not actually banned by any other section in O-18-06.

26. Further, while Deerfield may have intended that large capacity magazines should be banned, and thus subject to confiscation and destruction pursuant to O-18-06, and while Deerfield has explicitly stated as such with the

passage of O-18-24-3, the original ordinance O-13-24 did not restrict or regulate the possession or use of large capacity magazines at all, except as they may be used in conjunction with an assault weapon.

27. The first explicit ban of large capacity magazines in the Deerfield Municipal Code was pursuant to O-18-24-03.

**IRREPARABLE HARM AND INADEQUATE REMEDY AT LAW**

28. Plaintiffs will suffer irreparable harm if the Ordinances are enforced. Unless relief is granted herein, Plaintiffs will incur irreparable harm in that despite their aforesaid legal possession of firearms and magazines, and without any intent on their part to engage in any illegal activity they will be subject to penalties and loss of property.

29. The Plaintiffs will have no adequate remedy at law, there being no forum to recover damages, the Village most likely being immune from liability for tortious conduct and resulting losses.

30. While care should be used in granting injunctions to avoid prospective injuries, there is no requirement that the Court must wait until the injury occurs before granting relief, and Plaintiffs have demonstrated both irreparable harm is imminent, and their remedy at law would be inadequate.

31. Pursuant to Section 15-90 of O-18-06, Plaintiffs and/or their members had until June 13, 2018 to remove assault weapons and large capacity magazines from the Village, or to modify them, or to surrender them to the Deerfield Chief of Police. If this was not done, Plaintiffs would be prosecuted, and damages resulting

from enforcement of O-18-06 and O-18-24-3 are likely and not merely possible. The only thing that has so far stopped these events from occurring is a currently-in-effect temporary restraining order entered by the court on June 12, 2018.

## COUNT I – PREEMPTION UNDER STATE LAW

1-31. Plaintiffs reassert and reallege paragraphs 1 through 31, above, as paragraphs 1 through 31 of this Count I.

32. The Village only has authority to exercise its home rule powers to the extent the Illinois Legislature has not preempted those powers.

33. 430 ILCS 65/13.1(e) states that the FOID preemption statute is a "denial and limitation of home rule powers and functions."

34. Further, 430 ILCS 66/90 states that the concealed carry preemption statute is a "denial and limitation of home rule powers and functions."

35. While 430 ILCS 65/13.1(c) allowed for a validly-passed municipal ordinance regarding assault weapons to be amended, the statute does not allow the municipality to broaden the ordinance to the point where it is no longer the same ordinance. That is what the Village has done with O-18-06 and O-18-24-3.

36. Therefore, the provisions of O-18-06 and O-18-24-3 that are an improper broadening of O-13-24 must be invalidated by the preemption doctrine as effected by 430 ILCS 65/13.1 and/or 430 ILCS 66/90. Those provisions include:

a. The banning of the possession of assault weapons and large capacity magazines, even if following safe storage requirements, as described in Section 15-87 of O-18-06 and O-18-24-3;

b. The banning of handguns and ammunition that the Village was defined as assault weapons to concealed carry license-holders, as described in Section 15-87 of O-18-06 and O-18-24-3;

c. The elimination of a lawful self-defense exception to the violation of Section 15-87 of O-18-06 and O-18-24-3;

d. The banning of Deerfield residents from being able to "carry, keep, bear, transport, or possess an assault weapon in the Village" unless said firearm is merely being transported through the Village in either a broken-down non-functioning state, and is not immediately accessible to any person, or is unloaded and encased (Sec. 15-88 of O-18-06);

e. The confiscation and destruction of assault weapons (Sec. 15-91 of O-18-06);

f. The confiscation and destruction of large capacity magazines (Sec. 15-91 of O-18-06);

WHEREFORE, the Plaintiffs, DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, and SECOND AMENDMENT FOUNDATION. INC., request this honorable court to enter judgment in their favor and against the Defendant, and to grant Plaintiffs the following relief:

1. Enter a declaratory judgment that the subject Ordinance O-18-06 is preempted by state law and unenforceable, with regard to the following provisions:

a. The banning of the possession of assault weapons and large capacity magazines, even if following safe storage requirements, as described in Section 15-87 of O-18-06 and O-18-24-3;

b. The banning of handguns and ammunition that the Village has defined as assault weapons, as applied to concealed carry license-holders, as described in Section 15-87 of O-18-06 and O-18-24-3;

c. The elimination of a lawful self-defense exception to the violation of Section 15-87 of O-18-06 and O-18-24-3;

d. The banning of Deerfield residents from being able to "carry, keep, bear, transport, or possess an assault weapon in the Village" unless said firearm is merely being transported through the Village in either a broken-down non-functioning state, and is not immediately accessible to any person, or is unloaded and encased (Sec. 15-88 of O-18-06);

e. The confiscation and destruction of assault weapons and large capacity magazines (Sec. 15-91 of O-18-06);

f. The confiscation and destruction of large capacity magazines (Sec. 15-91 of O-18-06);

2. Issue a permanent injunction, without bond required of the Plaintiffs, enjoining the Defendant from enforcing the challenged provisions of O-18-06 and O-18-24-3;

3. Grant Plaintiffs a recoupment of the costs expended prosecuting this action and

4. Grant Plaintiffs any and all further relief as this court deems just and proper.

Date: August 17, 2018

/s/ David G. Sigale
Attorney for Plaintiffs

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

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**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**

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**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**

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**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/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~~ 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 Lage 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

# REQUEST FOR BOARD ACTION

18-24-3

**Agenda Item**: _____

**Subject:** Ordinance Approving Amendments to Chapter 15-87 of the Municipal Code of the Village of Deerfield (Assault Weapons and Large Capacity Magazines)

**Action Requested**: Waiver of First Reading/Approval

**Originated By**: Village Attorney

**Referred To:** Mayor and Board of Trustees

**Summary of Background and Reason for Request**

The Village attorney is recommending certain provisions of Ordinance O-18-06 adopted on April 2, 2018, be amended to reflect the intentions of the Board of Trustees at that time regarding assault weapons and large capacity magazines.

Staff is seeking a waiver of the First Reading so that final passage of the ordinance can occur on June 18.

**Reports and Documents Attached:**
Ordinance

June 18, 2018

**Date Referred to Board**: _____

**Action Taken**: _____

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

---

**ORDINANCE NO. ____**

**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**

**__-- day of _____, 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**
**__-- day of _____, 2018.**

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

---

**ORDINANCE NO. _____**

**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:

**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.

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**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 _____ day of _____, 2018.

AYES:

NAYS:

ABSENT:

ABSTAIN:

APPROVED this _____ day of _____, 2018.

_____
Village President

ATTEST:

_____
Village Clerk

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

FILED
JUL 27 2018
Eric Cartwright Weinstein
CIRCUIT CLERK

Guns Save Life, et al

vs.

Village of Deerfield, et al

Case No. 18 CH 498

ORDER (p 2 of 2)

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

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

ENTER:

Luis A. Berrones
JUDGE

Dated this 27th day of July, 2018.

Luis A. Berrones

Prepared by:
Attorney's Name: David G. Sigale
Address: 799 Roosevelt Rd, Ste. 207
City: Glen Ellyn State: IL
Phone: 630.452.4547 Zip Code: 60137
Fax: 630.596.4445
ARDC: 6238103

171-94 (Rev. 10/11)

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

| | | |
|---|---|---|
| Guns Save Life, Inc. and John William Wombacher, III., | ) | |
| Plaintiffs, | ) | |
| v. | ) | 18CH498 |
| Village of Deerfield, Illinois, and Harriet Rosenthal, solely in her official capacity as Mayor of the Village of Deerfield, | ) | |
| Defenants. | ) | |

## MEMORANDUM ORDER

This case is before the Court for hearing and ruling on plaintiffs Guns Save Life, Inc.'s and John William Wombacher, III's (collectively plaintiff) Motion for Temporary Restraining Order and Preliminary Injunction. In its petition, plaintiff requests that the Court enjoin the defendant Village of Deerfield from enforcing Ordinance No. 0-18-06 banning the ownership and possession of assault weapons and large capacity magazines. The Court has considered the parties' briefs, the Home Rule provisions of the Illinois Constitution, the relevant statutory provisions, the cases cited by the parties and the arguments of counsel. For the following reasons, the Court grants plaintiff's request for a temporary restraining order.[1]

## FACTS

The relevant facts are not in dispute. On July 1, 2013, Deerfield adopted Ordinance No.

[1] Also, before the Court is another lawsuit filed against Deerfield in a case captioned Daniel D. Easterday, Illinois State Rifle Association and Second Amendment Foundation, Inc. v. Village of Deerfield, Illinois, a municipal corporation, under case number 18CH427. Plaintiffs in the Easterfield case only raise a preemption challenge to Deerfield's ordinance. The preemption challenge raised by all plaintiffs will be addressed in this Memorandum Order.

O-13-24 titled "AN ORDINANCE REGULATING THE OWNERSHIP AND POSSESSION OF ASSAULT WEAPONS IN THE VILLAGE OF DEERFIELD". The 2013 Ordinance: 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 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).

On July 9, 2013, the Illinois legislature amended §13.1 of the Firearm Owner's Identification Card Act (FOIDCA). 430 ILCS 65/13.1 (West 2018). Section 13.1 of FOIDCA 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). That same day, the Illinois legislature also passed the Firearm Concealed Carry Act (the FCCA). 430 ILCS 66/1, *et seq.* (West 2018). The FCCA provides:

> Preemption.
>
> 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).

Sometime in 2018, Deerfield revisited the issue of whether assault weapons and large capacity magazines should be banned and on April 2, 2018 Deerfield adopted 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 MUNICPAL CODE OF THE VILLAGE OF DEERFIED TO REGULATE THE POSSESSION, MANUFACTURE AND SALE OF ASSAULT WEAPONS IN THE VILLAGE OF DEERFIELD". The 2018 Ordinance 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. The 2018 Ordinance 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 text of the 2018 Ordinance provisions that plaintiff challenges are set out in their entirety with the additions indicated by underscoring and the deletions indicated by strikeouts as reflected in the copy of the 2018 Ordinance attached as Exhibit A to plaintiff's motion.

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 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 of 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.

Plaintiff raises several challenges to the validity of the 2018 Ordinance and the Court requested that the parties brief an additional issue. The Court will address the following issues. (1) Whether the State preempted and stripped Deerfield's power 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 the 2013 Ordinance resulting in the 2018 Ordinance are amendments to the2013 Ordinance or a new ordinance that is preempted by the provisions of FOIDCA, FCCA and the Wildlife Code. (3) Whether the language of the 2018 Ordinance prohibits ownership and possession of large capacity magazines. and (4) Whether the 2018 Ordinance violates the takings clause in Article 1, Section 15 of the Illinois Constitution and §10-5-5 of the Eminent Domain Act.

**ANALYSIS**

Plaintiffs seek a temporary restraining order and a preliminary injunction.[2] A temporary restraining order or preliminary injunction may issue when plaintiff establishes that: 1. he has a clearly ascertainable right that needs protection; 2. he will suffer irreparable harm in the absence of an injunction; 3. he lacks an adequate remedy at law; and 4. he has a likelihood of success on the merits. *Makindu v. Illinois High Sch. Ass'n,* 2015 IL App. (2d) 141201, ¶31, 40 N.E.2d 182, 190; *Village of Westmont v. Lenihan,* 301 Ill. App.3d 1050, 1055, 704 N.E.2d 891,

[2] Generally, there is a distinction as to how the Court and the parties proceed when requesting a temporary restraining order or a preliminary injunction. A proceeding for a temporary restraining order is a summary proceeding even when the party opposing the request for a temporary restraining order files a verified answer the Court still proceeds in a summary fashion hearing only oral argument to determine whether a temporary restraining order should be entered. *Passon v. TCR, Inc.*, 242 Ill. App.3d 259, 263, 608 N.E.2d 1346, 1349 (2d Dist. 1993); *People Gas Light and Coke Co. v City of Chicago,* 117 Ill. App.3d 353, 355, 453 N.E.2d 740, 742 (1st Dist.1983). A request for a preliminary injunction when a verified answer is filed, generally requires an evidentiary hearing. *Id.* The distinction between these procedures is inconsequential in this case as this case involves the interpretation, application and interplay of Deerfield's ordinance, State statutory provisions and provisions of the Illinois Constitution.

894-95 (2d Dist. 1998). If the moving party establishes these elements, the Court must then balance the hardships to the parties and consider the public interest involved. *Makindu v. Illinois High Sch. Ass'n,* 2015 IL App. (2d) 141201, ¶31, 40 N.E.2d at 190. The issuance of an injunction is within the sound discretion of the trial court when plaintiff demonstrates that there is a fair question as to the existence of the right claimed and that the circumstances lead to a reasonable belief that the moving party will be entitled to the relief sought. *Stenstrom Petroleum Services Group, Inc. v. Mesch,* 375 Ill. App.3d 1077, 1089, 874 N.E.2d 959, 971 (2d Dist. 2007); *Village of Westmont v. Lenihan,* 301 Ill. App.3d at 1055, 704 N.E.2d at 895. The Court must determine whether a fair question is raised as to the existence of a right that needs protection and is not to, at this time, decide controverted facts or the ultimate merits of the case. *Stenstrom Petroleum Services Group, Inc. v. Mesch,* 375 Ill. App.3d at 1089, 874 N.E.2d at 971.

**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 is derived from Article 7, §6 of the Illinois Constitution which provides in relevant part:

> (a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. 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 (I) 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.
>
> (m) Powers and functions of home rule units shall be construed liberally.

ILL. CONST. art. VII, § 6 (a), (h), (i), and (h) (West 2018). These home rule sections provide that a home rule unit has the right to exercise any power and perform any function pertaining to its government affairs except as limited by Article 7, §6. The home rule unit's authority includes concurrently exercising with the State any power or function of a home rule unit. Section 6 however, clearly provides that the General Assembly by law may deprive the home rule unit from exercising any power the General Assembly feels should be exercised exclusively by the State 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 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 statutory provisions that the Court used as examples of when the legislature preempted home rule authority to regulate, excluding the two statutes that have since been repealed, were:

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. Provided further that the fees, charges and taxes provided for by this Act shall, as provided for in Section 415 of this Act, be in lieu of all license fees or privilege or occupation taxes or other fees levied or assessed by any home rule unit and 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 Supreme Court also held that 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. The Court further stated: "[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. The Court then set-out those statutes in which the State through its expression in the statute provided for partial exclusion or conformity of the home rule unit's authority to exercise its power to regulate over those matters. The language of the statutory provisions that the Court used as examples of when there is partial exclusion or conformity were:

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 FOIDCA and the FCCA mirrors the language in those statutes our Supreme Court has stated have preempted a home rule unit's authority to regulate in the statute's subject area. The preemption language in the FOIDCA is:

> (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 is:

> 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 the FOIDCA and the FCCA show the State's intent to preempt and have exclusive authority to regulate the ownership, possession, and carrying of handguns and assault weapons.

The plaintiff's last preemption argument claims that the Wildlife Code preempts Deerfield's ability to regulate assault weapons and large capacity magazines. While the Wildlife Code does have specific language showing an intent to preempt, the Wildlife Code is a statute regulating the hunting and taking of game in Illinois. Any regulation as to what firearms may be used to hunt is consequential to the subject matter the State is preempting in the Wildlife Code. The Wildlife Code is meant to regulate hunting and taking of game which is the subject the State is preempting, not firearm ownership or possession.

Plaintiff also asserts that the 2018 Ordinance does not specifically prohibit large capacity magazines, however, Deerfield claims that when the entire text of the ordinance is read that ownership or possession of any large capacity magazine is prohibited. Deerfield's expanded reading of the 2018 Ordinance is not supported by the ordinance's text. No where in the 2018

Ordinance is there any text that specifically prohibits possessing or owning a large capacity magazine. The term large capacity magazine is defined in §15-86 and is then used to define assault weapon. The ordinance only references large capacity magazine as a component part of an assault weapon. At best, Deerfield only prohibited large capacity magazines to the extent that the magazine is a component part of an assault weapon as defined in §15-86. Deerfield's claim that the 2018 Ordinance prohibits ownership or possession of any large capacity magazine fails because the 2018 Ordinance does not contain specific language prohibiting all large capacity magazines; if the ordinance did effectuate a ban on all large capacity magazines such prohibition is beyond Deerfield's home rule power because the FCCA preempted Deerfield's exercise of such power.

Some of the language in the FOIDCA may appear to be inconsistent in asserting the State's intent to assert preemption over the regulation of the possession or ownership of assault weapons. 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 declaring that exclusive power, the only result that can follow from complying with these Constitutional requirements is to deprive the home rule unit of the authority to regulate that matter. The legislature is presumed to know the law and if the State wishes to allow home rule units to have concurrent jurisdiction through partial preemption or conformity it has the knowledge and ability to do so. The State's attempt to limit preempting the regulation of the possession or ownership of assault weapons fails in the face of the specific language in the FOIDCA granting the State the exclusive power to regulate these areas.

Deerfield claims that the language in §13.1 allowing for inconsistent ordinances and amendments to the FOIDCA creates an inconsistency that shows the legislature did not intend to preempt this area. The Court does not agree that this language has such an effect. The specific language in §13.1(e) of the FOIDCA, the last subsection in §13.1, 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). If any confusion or ambiguity exists, this final provision in the preemption section leaves no doubt what the General Assembly intended to do, preempt the regulation of this subject matter. The Illinois Constitution prescribes what happens to a home rule unit's authority to exercise power over matters preempted by the State. The General Assembly cannot expand the powers granted to home rule units by the Illinois Constitution. Thus, Deerfield lost its authority to regulate possession or ownership of assault weapons and large capacity magazines once the State passed §13.1 of FOIDCA.

Plaintiff also asserts 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 FOIDCA.[3] In determining whether changes to an ordinance are amendments or a new ordinance repealing the prior ordinance, our Supreme Court and Appellate Courts 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

[3] The Court believes its preemption analysis should end the inquiry regarding preemption. The Court however, will address all of plaintiff's alternative arguments to avoid the potential of piecemeal litigation and appeals.

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 (5th 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 the 2013 Ordinance to the language of the 2018 Ordinance there exists significant differences between the two ordinances. The 2013 Ordinance 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 the 2018 Ordinance keep the same titles these sections had in the 2013 Ordinance (§15-87 Safe Storage of Assault Weapons; Exceptions, §15-88 Transportation of Assault Weapons; Exceptions); the new text in the 2018 Ordinance sections does not deal with transporting or storing assault weapons but instead bans such weapons. The 2013 Ordinance did not ban ownership or possession of assault weapons or large capacity magazines within the Deerfield 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 the 2018 Ordinance are not found in the 2013 Ordinance which further supports the claim that the changes to the 2013 Ordinance resulted in a new ordinance and not an amended ordinance. For these reasons the 2018 Ordinance is a new ordinance and not an amendment.

**II. Eminent Domain**

Plaintiff's last challenge to the 2018 Ordinance is that the ordinance violates Article 1, Section 15 of the Illinois Constitution and §10-5-5 of the Eminent Domain Act. The Illinois Constitution provides: "Private property shall not be taken or damaged for public use without just compensation as provided by law." ILL CONST. Article 1, Section 15 (West 2018). Section 10-5-5 of the Eminent Domain Act provides in part: "Private property shall not be taken or damaged for public use without just compensation[.]" 735 ILCS 30/10-5-5 (West 2018). Plaintiff cites to *Duncan v. Becerra,* 265 F.Supp.3d 1106 (S.D. Cal. 2017) a California case addressing a takings challenge to California's ban on large capacity magazines that hold more than ten rounds in support of its position that provisions of the 2018 Ordinance constitute an uncompensated and an unconstitutional taking. Deerfield cites to *Rupp v. Becerra,* 2018 WL 2138452 (C.D. Cal. 2018) a California case addressing a taking challenge to California's ban on assault weapons in support of its position that provisions of the 2018 Ordinance do not result in an unconstitutional taking. While these two federal cases are not binding on this Court; these cases are helpful in evaluating plaintiff's takings claim.

The *Rupp* case cited by Deerfield is more persuasive than the *Duncan* case relied on by

plaintiff. In *Rupp*, the court analyzed whether the ban on assault weapons is a taking when California exercised its police powers to protect the health, morals, or safety of the community. Relying on *Mugler v. Kansas,* 123 U.S. 623 (1887), where the Court distinguished between a taking pursuant to eminent domain and a taking based on the government's other police powers the *Rupp* court found that no taking occurred when California banned assault weapons. *Mugler* dealt with the issue of whether Kansas' constitutional amendment prohibiting the manufacture and sale of intoxicating liquor except under limited circumstances constituted a taking under the U.S. Constitution when prior to the amendment Kansas statutes regulated but allowed the manufacture and sale of intoxicating liquor. In holding that a taking had not occurred the Court held:

> This court said it would be a very curious and unsatisfactory result, were it held that, 'if the government refrains from the absolute conversion of real *668 property to the uses of the public, it can destroy its value entirely, can inflict irreparable and permanent injury to any extent, can, in effect, subject it to total destruction, without making any compensation, because, in the narrowest sense of that word, it is not *taken* for the public use. Such a construction would pervert the constitutional provision[.]
>
> These principles have no application to the case under consideration. The question in *Pumpelly* v. *Green Bay Co.*, arose under the state's power of eminent domain; while the question now before us arises under what are, strictly, the police powers of the state, exerted for the protection of the health, morals, and safety of the people.
>
> As already stated, the present case must be governed by principles that do not involve the power of eminent domain, in the exercise of which property may not be taken for public use without compensation. A prohibition simply upon the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any just sense, be deemed a taking or an appropriation of property for the public benefit.

*Mugler v. Kansas,* 123 U.S. 623, 667–69, (1887). The *Duncan* Court did not address the takings claim from the perspective of the state exercising its police powers to protect the public health, morals, and safety instead of under the state's eminent domain powers. Here, Deerfield makes

it clear that the 2018 Ordinance is adopted pursuant to Deerfield's power to regulate for the protection of the public health, safety, morals and welfare, thus under the holding in *Mugler v. Kansas,* absent a finding that the 2018 Ordinance is not valid, there is no taking.

## III. THE COURT'S FINDINGS

The Court finds that: (1) The 2018 Ordinance is preempted by the FOIDCA and the FCCA and therefore unenforceable. (2) The 2018 Ordinance is a new ordnance and not an amendment of the 2013 Ordinance and is therefore preempted by FOIDCA and FCCA. (3) The 2018 Ordinance does not prohibit ownership or possession of large capacity magazines. The Court also finds that: (1) plaintiff has raised a fair question that he has a clearly ascertainable right to not be subject to an unenforceable ordinance's restrictions, prohibitions, fines, penalties and resulting deprivation of full use and enjoyment of his property; (2) plaintiff will suffer irreparable harm absent an injunction as he will not be able to pursue a remedy that will fully compensate him if he is subject to an unenforceable ordinance whose subject matter is preempted by the State; (3) plaintiff does not have an adequate remedy at law for the same reason that he will suffer irreparable harm; and (4) plaintiff has a likelihood of success on the merits by showing that the State has preempted the subject matter that the 2018 Ordinance seeks to regulate or that the language of the 2018 Ordinance does not prohibit possession or ownership of large capacity magazines. The Court also finds that the balance of hardships favors plaintiff because the irreparable harm plaintiff will suffer outweighs any harm to Deerfield in delaying the effective date and enforcement of the 2018 Ordinance.

The Court further finds that plaintiff has not raised a fair question with respect to his takings claim under the Illinois Constitution, the Eminent Domain claim or his Wildlife Code preemption claim.

**IT IS HEREBY ORDERED THAT:**

1. A temporary restraining order is issued enjoining defendant Village of Deerfield, its agents, officials or police department from enforcing any provision of the 2018 Ordinance relating to the ownership, possession, storage or transportation of assault weapons or large capacity magazines within the Village of Deerfield.

**Entered this 12th day of June 2018.**

**ENTER:**

**Luis A. Berrones**

Judge

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

| | | |
|---|---|---|
| Daniel D. Easterday, Illinois State Rifle Association, and Second Amendment Foundation, Inc., | ) | |
| Plaintiffs, | ) | No. 18CH427 |
| v. | ) | |
| Village of Deerfield, Illinois, a Municipal Corporation, | ) | |
| Defendant. | ) | |

**ORDER**

This case is before the Court for hearing and ruling on plaintiffs Daniel D. Easterday's, Illinois State Rifle Association's, and Second Amendment Foundation, Inc.'s (collectively referred to as Easterday) Petition for Temporary Restraining Order and Preliminary Injunction. In his petition, Easterday requests that the Court enjoin the defendant Village of Deerfield's Ordinance No. 0-18-06 banning the ownership and possession of assault weapons and large capacity magazines from taking effect and enjoining defendant Village of Deerfield from enforcing Ordinance No 0-18-06. The Court has considered the parties' briefs, the statutory provisions and cases cited by the parties and the arguments of counsel and for the reasons set forth in the Court's Memorandum Order in Guns Safe Life, Inc. v. Village of Deerfield, 18CH498, grants Easterday's request for a temporary restraining order. A copy of the Memorandum Order is attached and incorporated into this Order.

**IT IS HEREBY ORDERED THAT:**

1. A temporary restraining order is issued enjoining defendant Village of Deerfield, its agents, officials or police department from enforcing any provision of the 2018 Ordinance relating to the ownership, possession, storage or transportation of assault weapons or large capacity magazines within the Village of Deerfield.

**Entered this 12th day of June 2018.**

**ENTER:**

_____

Judge

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.

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VILLAGE OF DEERFIELD, ILLINOIS, A MUNICIPAL CORPORATION
Defendant/Respondent

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)

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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

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
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DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, AND SECOND AMENDMENT FOUNDATION, INC
Plaintiff/Petitioner

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## PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On May 19, 2021, the foregoing **Brief and Appendix of Plaintiffs-Appellants Daniel D. Easterday, Illinois State Rifle Association, and Second Amendment Foundation, Inc.**, was electronically filed with the Clerk, Illinois Supreme Court, and served upon the following by email:

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