No. 126014

In the

Supreme Court of Illinois

GUNS SAVE LIFE, INC., *et al.*,

Plaintiffs-Appellants,

v.

ZAHRA ALI, solely in her official capacity as Director of the Department of Revenue of Cook County, *et al.*,

Defendants-Appellees.

Appeal from the Appellate Court of Illinois
First Judicial District, No. 1-18-1846.
There on Appeal from the Circuit Court of
Cook County, Illinois, No. 15-CH-18217.
The Honorable David B. Atkins, Presiding

BRIEF AND APPENDIX OF PLAINTIFFS-APPELLANTS

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

David H. Thompson (ARDC No. 6316017)*
Peter A. Patterson (ARDC No. 6316019)*
Cooper & Kirk, PLLC
1523 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com

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

Attorneys for Plaintiffs-Appellants

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TABLE OF CONTENTS
AND
POINTS AND AUTHORITIES

NATURE OF THE ACTION

In December 2015, Plaintiffs—Guns Save Life, Inc. (an association dedicated to defending Second Amendment rights in Illinois), Maxon Shooter's Supplies (a firearm and ammunition retailer), and Marilyn Smolenski (a citizen and member of Guns Save Life)—brought this action to challenge two taxes that Defendant Cook County has imposed on Second Amendment rights. The first levies a $25 tax on each firearm purchased from a retailer within the County. COOK CNTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-668(a). The second imposes a tax on the purchase of ammunition, at a rate of $0.05 per cartridge of centerfire ammunition and $0.01 per cartridge of rimfire ammunition. *Id.* sec. 74-668(b). Plaintiffs allege that these taxes (1) are unconstitutional under the Second Amendment to the U.S. Constitution and Article I, Section 22 of the Illinois Constitution because they *single out* and *target* constitutionally protected conduct for special taxation, (2) violate Article I, Section 22 because that provision does not permit the government to burden the right to bear arms by operation of the tax power, (3) violate the Illinois Constitution's requirement that local taxes must be uniform and rational, and (4) are preempted by two state laws, the FOID Card Act and the Firearm Concealed Carry Act.

In October 2016, the Circuit Court granted Defendants' motion to dismiss Plaintiffs Smolenski's and Maxon's claims against the Firearm Tax for lack of standing, but it otherwise allowed the litigation to go forward. (R. C337).[1] In its consideration of cross-motions for summary judgment, the Circuit Court denied Plaintiffs' motion and granted summary judgment on all claims to Defendants in August 2018. (R. C1124). Plaintiffs appealed both rulings. In March 2020, the First District affirmed in part and reversed in

[1] The record on appeal is cited as "R. C__." The appendix to this brief is cited as "App. __."

part the Circuit Court's dismissal order and affirmed its summary judgment order. Plaintiffs petitioned this Court for leave to appeal pursuant to Supreme Court Rule 315, which was granted on September 30, 2020. No question is raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the challenged taxes violate the Second Amendment to the United States Constitution.

2. Whether the challenged taxes violate Article I, Section 22 of the Illinois Constitution.

3. Whether the challenged taxes violate the Illinois Constitution's Uniformity Clause, ILL. CONST. art. IX, § 2.

4. Whether the challenged taxes are preempted by the FOID Card Act, 430 ILCS 65/13.1.

5. Whether the challenged taxes are preempted by the Firearm Concealed Carry Act, 430 ILCS 66/90.

6. Whether Plaintiff Maxon Shooter's Supplies has standing.

STANDARD OF REVIEW

The questions of whether the challenged taxes are unconstitutional or preempted by statewide law are issues of law subject to *de novo* review. *People v. Aguilar*, 2013 IL 112116, ¶ 15 (constitutionality); *Hawthorne v. Vill. of Olympia Fields*, 204 Ill.2d 243, 254–55 (2003) (preemption). The Court likewise reviews the entry of summary judgment and the issue of Maxon's standing *de novo*. *See People ex rel. Birkett v. City of Chicago*, 202 Ill.2d 36, 32 (2002) (summary judgment); *Wexler v. Wirtz Corp.*, 211 Ill.2d 18, 23 (2004).

JURISDICTION

The Court has jurisdiction under Supreme Court Rule 315. On September 30, 2020, this Court allowed Plaintiffs' timely petition for leave to appeal. *Guns Save Life, Inc. v. Ali*, No. 126014, 2020 WL 5941359 (Ill. Sept. 30, 2020) (App. 295).

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED

The Second Amendment to the United States Constitution provides:

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article I, section 22 of the Illinois Constitution provides:

Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.

Article IX, section 2 of the Illinois Constitution of 1970 provides:

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

Cook County Code of Ordinances chapter 74, article XX, section 74-668 provides:

(a) *Firearm Tax Rate*. A tax is hereby imposed on the retail purchase of a firearm as defined in this Article in the amount of $25.00 for each firearm purchased.

(b) *Firearm Ammunition Tax Rate*. Effective June 1, 2016, a tax is hereby imposed on the retail purchase of firearm ammunition as defined in this article at the following rates:

(1) Centerfire ammunition shall be taxed at a rate of $0.05 per cartridge.

(2) Rimfire ammunition shall be taxed at a rate of $0.01 per cartridge.

(c) *Tax Included in Sales Price*. It shall be deemed a violation of this Article for a retail dealer to fail to include the tax imposed in this Article in the sale price of firearms and/or firearm ammunition to otherwise absorb such tax. The tax levied in this article shall be imposed is in addition to all other taxes imposed by the County of Cook, the State of Illinois, or any municipal corporation or political subdivision of any of the foregoing.

Cook County Code of Ordinances chapter 74, article XX, section 74-669 provides, in relevant part:

(a) Notwithstanding any other provision of this article, in accordance with rules that shall be promulgated by the department in regards to tax exempt purchases, retail dealers shall not collect the firearm and/or firearm ammunition tax when the firearm and/or firearm ammunition is being sold to the following:

(1) An office, division, or agency of the United States, the State of Illinois, or any municipal corporation or political subdivision, including the Armed Forces of the United States or National Guard.

(2) A bona fide veterans organization which receive firearms and/or firearm ammunition directly from the Armed Forces of the United States and uses said firearms and/or firearm ammunition strictly and solely for ceremonial purposes with blank ammunition.

(3) Any active sworn law enforcement officer purchasing a firearm and/or firearm ammunition for official or training related purposes presenting an official law enforcement identification card at the time of purchase.

Cook County Code of Ordinances chapter 74, article XX, section 74-670 provides, in relevant part:

(a) Tax Collection. Any retail dealer shall collect the taxes imposed by this Article from any purchaser to whom the sale of said firearms and/or firearm ammunition is made within the County of Cook and shall remit to the Department the tax levied by this Article.

. . .

(c) If for any reason a retailer dealer fails to collect the tax imposed by this article from the purchaser, the purchaser shall file a return and pay the tax directly to the department, on or before the date required by Subsection (b) of this Section.

Cook County Code of Ordinances chapter 74, article XX, section 74-677 provides:

The revenue generated as the result of the collection and remittance of the tax on firearm ammunition set forth herein shall be directed to the Public Safety Fund to fund operations related to public safety.

STATEMENT OF THE FACTS

I. The Second Amendment Tax

On November 9, 2012, the Cook County Board of Commissioners, by a vote of nine to seven, passed an ordinance entitled the "Cook County Firearm Tax," which imposes a $25 tax, borne by the consumer, on each firearm purchased at a firearms retail business in Cook County (hereinafter, the "Firearm Tax"). (R. C150–53). As the legislative history of the tax makes clear, the aim of the Ordinance was to reduce the level of legal gun ownership in Cook County. The preamble of the Ordinance itself declares that "the . . . presence . . . of firearms in the County . . . detracts from the public health, safety, and welfare." (R. C150). As Commissioner Sims explained, the $25 tax would "make it difficult for people to have guns." Meeting of the Cook County Board of Commissioners at 1:18:56 (Nov. 2, 2012), *available at* https://bit.ly/34BRbFh ("2012 Hearing"). (R. C291). Put simply: "If you can't afford it, you won't buy it." *Id.* (R. C291). Commissioner Suffredin, another supporter of the bill, emphasized that "there are way too many guns in this community." *Id.* at 1:09:25. (R. C291). Commissioner Reyes, who also voted in favor of the Ordinance, nonetheless stated that it would not affect crime in Cook County "[b]ecause the reality is, not one convicted felon is going to pay a penny of this tax ladies and gentlemen. Not one." *Id.* at 1:19:34. (R. C291).

Although the Firearm Tax Ordinance imposed a levy on the sale of firearms, it left the sale of ammunition untaxed. As Commissioner Suffredin explained at the time, while some of the Commissioners would have preferred to have also taxed ammunition, "political realities" had forced them to remove a proposed tax on ammunition. (R. C291). This concession to "political realities" was withdrawn in 2015, however, when the County enacted an amended ordinance that is now known as the "Cook County Firearm and

Firearm Ammunition Tax Ordinance." (R. C137–40). The 2015 amendment, which was adopted on November 18, 2015, by a vote of nine to six, added a tax (hereinafter, the "Ammunition Tax," and together with the Firearm Tax, the "Second Amendment Tax") on the retail sale of ammunition in Cook County, again borne by the consumer, in the amounts of $0.05 per cartridge of centerfire ammunition, COOK CNTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-668(b)(1),[2] and $0.01 per cartridge of rimfire ammunition, *id.* § 74-668(b)(2).[3]

The motivations behind the Ammunition Tax closely tracked the motivations of the Firearm Tax. As Commissioner Boykin explained in the November 13, 2015 meeting that considered that provision, this tax would "require those who purvey these instruments of death to bear a slightly larger share of the costs than the rest of us." Meeting of the Cook County Board of Commissioners at 1:43:25 (Nov. 13, 2015), *available at* https://bit.ly/35LfKyD ("2015 Hearing"). (R. C293). Commissioner Boykin further expressed his belief that imposing the tax would make the Board an "instrument of justice" for children killed by gunfire and that the children's "blood cries out" for them to "add[ ] to the costs of the instruments of death." *id.* at 1:44:31 (alteration omitted). (R. C293).

The Ordinance provides that the revenue generated by the Ammunition Tax "shall be directed to the Public Safety Fund to fund operations related to public safety." COOK CNTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-677. But Cook County law does not

[2] The Second Amendment Tax Ordinance defines centerfire ammunition to mean "firearm ammunition that is characterized by a primer in the center of the base of the cartridge" commonly used in rifles, pistols, and revolvers. *Id.* § 74-666.

[3] The Second Amendment Tax Ordinance defines rimfire ammunition to mean "firearm ammunition that is characterized by a primer that completely encircles the rim of the cartridge," including, but not limited to .22 caliber ammunition. *Id.* § 74-666.

similarly designate where the proceeds of the Firearm Tax are to be directed, and those tax revenues therefore simply flow into the County's general revenue. *Id.*

II. The Second Amendment Tax's Impact on Plaintiffs

Guns Save Life ("GSL") is an independent, not-for-profit organization that is dedicated to protecting the Second Amendment rights of Illinois citizens to defend themselves. (R. C420). GSL has many members who reside in Cook County, and the organization holds monthly meetings in Cook County. (R. C420). Its members are subject to the Second Amendment Tax and have paid both the Firearm Tax and the Ammunition Tax. (R. C420, C424–25, C434). Although they have continued to purchase firearms and ammunition in Cook County since the Firearm and Ammunition Taxes came into effect, they nevertheless report doing so at reduced rates because of those taxes. (R. C420–21, C425). Indeed, some members purposefully avoid purchasing firearms and ammunition in Cook County to avoid paying the Second Amendment Tax. (R. C420, C425). GSL members will, however, continue to pay the Firearm Tax and Ammunition Tax on the purchases that they do make in Cook County. (R. C420).

Maxon Shooter's Supplies and Indoor Range is a registered retail dealer in firearms and firearm ammunition. (R. C438). It operates a retail gun shop and indoor shooting range in Cook County. (R. C437–38). Maxon sells a full range of rifles and handguns, as well as ammunition for rifles and handguns, including both centerfire and rimfire ammunition. (R. C438). Maxon is owned and operated by Plaintiff DPE Services, Inc. (R. C437–38). The Second Amendment Tax Ordinance has placed Maxon under a legal obligation to register with the Department of Revenue, (R. C438), to collect and remit the Tax to the Department of Revenue, (R. C438–39), to refrain from absorbing the costs of the Tax, (R. C438–39), and to keep books and records as required by the Ordinance, (R. C438–39). The

Ordinance costs Maxon thousands of dollars per year and places Maxon at a competitive disadvantage to retailers outside Cook County. (R. C438–39).

Marilyn Smolenski is a resident of Cook County, a member of GSL, and a holder of a valid Illinois Firearm Owner's Identification Card ("FOID Card") and a valid Illinois Concealed Carry license. (R. C424). Ms. Smolenski frequently engages in firearms transactions, and she has previously considered purchasing a Glock 42 in Cook County but declined to do so because of the Firearm Tax. (R. C288, C425). On June 7, 2016, Ms. Smolenski purchased 100 rounds of 9mm ammunition from Maxon. (R. C425). She paid the Ammunition Tax in the amount of $5.00. (R. C428). Ms. Smolenski paid the tax under protest, and on June 8 counsel for Ms. Smolenski submitted her protest of payment of the Ammunition Tax to the Cook County Department of Revenue. (R. C425, C430). Ms. Smolenski intends to continue purchasing ammunition in Cook County in the future, but because of the Ammunition Tax does not intend to purchase as much ammunition in the County as she otherwise would have. (R. C425).

III. Procedural history

GSL, Maxon, and Ms. Smolenski filed a four-count Complaint for Declaratory and Injunctive Relief challenging the Second Amendment Tax on December 17, 2015. (R. C20). The Complaint alleged that the Second Amendment Tax violates the Second Amendment to the federal Constitution, that it violates Section 22 of Article I and the Uniformity Clause of the Illinois Constitution, and that it is preempted by Section 13.1(b) of the Firearm Owner's Identification ("FOID") Act and Section 90 of the Firearm Concealed Carry Act ("FCCA") insofar as the tax applies to handguns and handgun ammunition. (R. C36–38). The Complaint brought suit against Zahra Ali, in her official

capacity as Director of the Cook County Department of Revenue, Thomas Dart, in his official capacity as the Cook County Sheriff, and Cook County itself.

Defendants moved to dismiss the Complaint on January 29, 2016, arguing that Plaintiffs GSL, Maxon, and Smolenski all lacked standing and that they had failed to state any claim upon which relief could be granted. Plaintiffs filed an Amended Complaint for Declaratory and Injunctive Relief on February 22, 2016. (R. C180). Pursuant to the court's Order of March 16, 2016 (R. C208), they then filed their response to the motion to dismiss on April 6, 2016, (R. C210).

On June 1, 2016, the Ammunition Tax became effective. On July 21, 2016, GSL, Maxon, and Smolenski filed a motion for leave of court to file a supplemental complaint pursuant to 735 ILCS 5/2-609, in order to present matters relevant to the pending motions to dismiss that arose after the filing of the Amended Complaint. (R. C267). On July 28, 2016, the Circuit Court ordered them to file a Second Amended Complaint by August 4, 2016, and the parties to complete their supplemental briefing in response to the Second Amended complaint by August 18, 2016. (R. C283).

Plaintiffs filed their Second Amended Complaint on August 4, 2016. (R. C285). Defendants filed their supplemental reply in support of their motion to dismiss on August 17, 2018, while Plaintiffs filed their supplemental brief in opposition on August 18, 2016. On October 17, 2016, the trial court issued a Memorandum Opinion and Order granting in part and denying in part Defendants' motion to dismiss. (R. C332). The court dismissed Ms. Smolenski's and Maxon's challenges to the Firearm Tax (but not the Ammunition Tax) on standing grounds. (R. C337). But it declined to dismiss GSL's challenge to either tax, allowing the claims against both taxes to go forward. (R. C337).

Following the denial of Defendants' motion to dismiss in principal part, and after a period of limited discovery, the parties cross-moved for summary judgment on the remaining claims. On August 17, 2018, without hearing oral argument on the cross-motions, the Circuit Court denied Plaintiffs' motion and granted summary judgment to Defendants on all claims. (R. C1121).

On August 23, 2018, Plaintiffs noticed an appeal of the Circuit Court's judgment. On March 13, 2020, after briefing and a hearing, the First District affirmed in part and reversed in part the Circuit Court's dismissal order and affirmed its summary judgment order. The court noted that Defendants "conceded that GSL had associational standing" to challenge both taxes, *Guns Save Life, Inc. v. Ali*, 2020 IL App (1st) 181846, ¶ 22 (App. 162), but it affirmed the Circuit Court's conclusion that Maxon and Ms. Smolenski lacked standing to challenge the Firearm Tax—reasoning that Maxon was not injured by the tax because it was ultimately "paid by the consumer" and that Smolenski had no standing because she "has not paid the firearm tax," *id.* at ¶¶ 33, 37 (App. 165, 166). The First District reversed the Circuit Court's conclusion that Maxon had standing to challenge the Ammunition Tax, concluding that the burden of reporting and collecting this tax caused Maxon no "real injury" because it purportedly "already had a system in place that could do the required reporting." *Id.* at ¶ 38 (App. 167).

On the merits, the Appellate Court rejected Plaintiffs' claims that the taxes violated the federal and state rights to keep and bear arms, reasoning that "the challenged taxes . . . do not restrict the ownership of firearms or ammunition" and "could reasonably be considered a condition on the commercial sale of arms." *Id.* at ¶ 57 (App. 172). It likewise affirmed the trial court's rejection of Plaintiffs' Uniformity Clause challenge, reasoning

that "the classifications [drawn by the taxes] are reasonably related to the objectives of the ordinances." *Id.* at ¶ 70 (App. 176). And finally, the Appellate Court also affirmed the Circuit Court's judgment on preemption, concluding that the challenged provisions constituted exercises of the taxing power, rather than the power to regulate, and were thus exempt from both the FOID Act and FCCA's preemption provisions. *Id.* at ¶¶ 71–82 (App. 176–79).

On May 22, 2020, Plaintiffs petitioned this Court for leave to appeal the First District's order pursuant to Supreme Court Rule 315, which the Court granted on September 30, 2020. *Guns Save Life, Inc.*, No. 126014, 2020 WL 5941359 (Ill. Sept. 30, 2020) (App. 295).

ARGUMENT

Because "the power to tax involves the power to destroy," *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819), it is black-letter law that a law-abiding citizen cannot "be required to pay a tax for the exercise of . . . a high constitutional privilege," *Follett v. Town of McCormick*, 321 U.S. 573, 578 (1944). Else, the Government could use its taxing power as a means to brazenly skirt all constitutional limits on its authority, saddling constitutionally protected conduct with onerous taxes and surcharges that effectively nullify the very constitutional rights it is otherwise barred from regulating. To prevent the Government from infringing constitutional rights in this manner through "the guise of a tax," *Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936), both the United States Supreme Court and this Court have long made clear that a tax that *singles out* constitutionally protected conduct must pass strict constitutional scrutiny—and that if the purpose of the tax is to raise general revenue, it cannot stand. *See Minneapolis Star &*

Tribune Co. v. Minn. Comm'r of Revenue, 460 U.S. 575, 593 (1983); *Boynton v. Kusper*, 112 Ill. 2d 356, 370–71 (1986).

Those settled principles dispose of this case. There can be no dispute the only legitimate governmental interest even conceivably served by the challenged tax is the interest in raising revenue—revenue that could obviously be generated instead by a neutral tax that *does not* single out the lawful purchase of firearms. Given that there is a fundamental constitutional right to possess firearms, *see* U.S. CONST. amend. II; ILL. CONST. art. I, § 22, that is the end of the matter, under the binding precedent from this Court and the U.S. Supreme Court. Nor can there be any dispute that the purpose behind the challenged taxes is *precisely* the one these binding precedents meant to bar: Appellee Cook County designed the challenged tax ordinance as a "deliberate and calculated device" to suppress the constitutional right to keep and bear arms. *Grosjean*, 297 U.S. at 250. Indeed, the County *openly and brazenly declares* that purpose in the Ordinance's preamble, stating the belief that the "presence . . . of firearms in the County . . . detracts from the public health, safety, and welfare." (R. C150). The Commissioners made no attempt to disguise that purpose during the public debate over the measure, explaining that it would "make it difficult for people to have guns." (R. C291). And before the Appellate Court, the County sought to defend the taxes with the remarkable assertion—directly in the teeth of binding precedent from this Court and the U.S. Supreme Court—that the Second Amendment *is not a fundamental right in the first place*. *See* Oral Argument at 40:38, *Guns Save Life, Inc. v. Ali* No. 1-18-1846 (1st Dist. Jan. 14, 2020), https://bit.ly/37RtieV (counsel for Appellees: "The Second Amendment is not a fundamental right.").

Astonishingly, the Appellate Court *made no attempt* to distinguish those binding precedents, including the decisions in *Boynton*, 112 Ill. 2d 356, and *Minneapolis Star & Tribune*, 460 U.S. 575. Even more astonishing, the Appellate Court *did not even cite either case*. Instead, in a conclusory three-sentence section buried near the end of its opinion, the court simply "decline[d] to reach plaintiffs' argument" that the challenged taxes are unconstitutional under the square holdings of these precedents. *Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 62 (App. 173–74). That refusal to *even treat with* binding Supreme Court precedent that is squarely on point was an error of the plainest kind—so plain that it can only be explained by an unspoken determination to treat the right to keep and bear arms "as a second-class right," a determination that *is itself* directly contrary to binding precedent. *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality); *see also Aguilar*, 2013 IL 112116, ¶ 21.

The First District's only explanation for its refusal to grapple with the binding precedent in *Boynton* and *Minneapolis Star & Tribune* was a reference to its earlier determination that "the challenged ordinances do not violate the Second Amendment under *Heller* and its progeny, but are instead permissible conditions on the exercise of one's Second Amendment rights." *Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 62 (App. 173–74). That determination was itself based on a dramatic misunderstanding of the scope of the right to keep and bear arms. As every court to face the issue has held, the right to keep and bear arms obviously must protect the right to *acquire* arms suitable for keeping and bearing—else a State could enact a de facto ban on possessing firearms by prohibiting anyone from *buying* firearms or the ammunition they need to operate them. The First District utterly failed to come to terms with that obvious and indisputable proposition. And

its cursory conclusion that the challenged tax "could reasonably be considered a condition on the commercial sale of arms," *id.* at ¶ 57 (App. 172), both misconstrues the nature of the challenged Ordinance (which taxes *firearm purchasers*, not commercial firearm retailers) and misunderstands the scope of this purported exception to the Second Amendment's scope (which obviously cannot be understood as creating a blanket exception for any gun control measure that can be cast as sufficiently "commercial" in nature).

The First District's decision to uphold the challenged taxes was erroneous for another reason, too: while the court held that the challenged measures are exercises of the County's taxing power, rather than its regulatory or "police" power, *Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 81 (App. 179), the Illinois Constitution expressly provides that the right to keep and bear arms *is not subject to taxation*; it is "[s]ubject only to the police power." ILL. CONST. art. I, § 22. Once again, because the Appellate Court had no answer to this point, it simply ignored it.

The challenged Ordinance thus cannot be sustained as an exercise of the taxing power for multiple reasons. But it is equally doomed if it is understood as an exercise of the County's *regulatory* power. Two statewide laws—the FOID Card Act and the Firearm Concealed Carry Act—explicitly preempt local laws touching on "[t]he regulation, licensing, possession, registration, and transportation of handguns and ammunition." 430 ILCS 66/90; *see also* 430 ILCS 65/13.1. Accordingly, if the Second Amendment Tax is understood as effectively *regulating* the possession of handguns and ammunition—by making such possession more difficult—it is thus plainly preempted by these state statutes and cannot stand.

In sum, the Appellate Court erred in sustaining this unconstitutional Ordinance, and this Court should reverse.

I. The Second Amendment Tax burdens conduct protected by the Second Amendment and Article I, Section 22 of the Illinois Constitution.

Courts analyzing challenges under the federal and Illinois constitutional right to keep and bear arms have generally applied a two-step analysis. First, they conduct "a textual and historical inquiry" to determine whether the challenged law "restrict[s] activity protected by the [right]." *Ezell v. City of Chicago*, 651 F.3d 684, 701 (7th Cir. 2011). Second, if the challenged provision falls within the scope of the right to keep and bear arms, courts scrutinize "the regulatory means the government has chosen and the public-benefits end it seeks to achieve." *Id.* at 703*; see also Wilson v. Cnty. of Cook*, 2012 IL 112026, ¶¶ 41–42 (adopting similar "two-pronged approach"). Here, the Second Amendment Tax fails this analysis as a matter of law, for it plainly burdens conduct protected by the right to keep and bear arms and it cannot withstand any level of constitutional scrutiny. The First District erred in concluding otherwise.

A. The United States and Illinois Constitutions both protect the right to acquire firearms and ammunition.

Both the Firearm Tax and the Ammunition Tax directly and indisputably burden the fundamental, constitutional right to keep and bear arms.

The Second Amendment to the federal Constitution protects "the right of the people to keep and bear Arms," U.S. CONST. amend. II, and the Constitution of this State similarly provides that "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed," ILL. CONST. art. I, § 22. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the U.S. Supreme Court held that the Second Amendment to the United States Constitution protects an individual right to keep and bear arms and that

the "central component" of that right is "individual self-defense," *id.* at 599. Following *Heller*, the U.S. Supreme Court in *McDonald* confirmed that the Second Amendment right is fundamental and that it is fully applicable to the States. *See McDonald*, 561 U.S. at 750 (plurality); *id*. at 805 (Thomas, J., concurring in part and concurring in judgment). And in *Aguilar*, 2013 IL 112116, this Court held that the Second Amendment also "protects the right to possess and use a firearm for self-defense outside the home." *Id.* ¶ 21.

Following *Heller*, courts have held that "the right to possess firearms for protection implies . . . corresponding right[s]" without which "the core right wouldn't mean much." *Ezell*, 651 F.3d at 704 (addressing right to train with firearms). And courts have also repeatedly recognized the obvious: that the right to keep and bear arms would mean little indeed without the corresponding right to acquire arms and the ammunition they need to function. Indeed, if the core right to possess a firearm "operable for the purpose of immediate self-defense," *Heller*, 554 U.S. at 635, "is to have any meaning," *Radich v. Guerrero*, No. 1:14-V-00020, 2016 WL 1212437, at *7 (D. N. Mar. I. Mar. 28, 2016), it necessarily "must also include the right to *acquire* a firearm"—making the right of acquisition the "*most fundamental* prerequisite of legal gun ownership," *Ill. Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930, 938 (N.D. Ill. 2014); *see also, e.g.*, *United States v. Marzzarella*, 614 F.3d 85, 92 n.8 (3d Cir. 2010) ("[P]rohibiting the commercial sale of firearms . . . would be untenable under *Heller*.").

Likewise, "without bullets, the right to bear arms would be meaningless." *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014). Accordingly, courts have uniformly held that "the right to possess firearms for protection implies a corresponding right to obtain the bullets necessary to use them." *Id.* (quotation marks

omitted); *see also Duncan v. Becerra*, 970 F.3d 1133, 1146 (9th Cir. 2020) ("Firearm magazines are 'arms' under the Second Amendment. Magazines enjoy Second Amendment protection for a simple reason: Without a magazine, many weapons would be useless, including 'quintessential' self-defense weapons like the handgun."); *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Att'y Gen. of N.J.*, 910 F.3d 106, 116 (3d Cir. 2018) ("Because magazines feed ammunition into certain guns, and ammunition is necessary for such a gun to function as intended, magazines are 'arms' within the meaning of the Second Amendment.").

These conclusions are consistent with the traditional understanding and practices of the People of this Nation, as "[t]he right to keep arms, necessarily involves the right to purchase them . . . and to purchase and provide ammunition suitable for such arms." *Andrews v. State*, 50 Tenn. (3 Heisk.) 165, 178 (1871); *Heller*, 554 U.S. at 583 n.7 ("What law forbids the veriest pauper, if he can raise a sum sufficient for the purchase of it, from mounting his Gun on his Chimney Piece . . . ?" (quoting SOME CONSIDERATIONS ON THE GAME LAWS 54 (1796)).

Accordingly, the Firearm and Ammunition Taxes burden rights protected by the Second Amendment and Article I, Section 22—the rights to acquire firearms and the ammunition they need to function. The First District mischaracterized this uncontroversial position, stating that "plaintiffs argue that because the right to keep and bear arms (and impliedly the right to acquire ammunition) is a constitutionally protected fundamental right, there can never be any government restriction or limitation on such right." *Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 49 (App. 170). But we have never contended that

any law that limits conduct within the scope of the right to keep and bear arms must be automatically invalidated, nor is such a conclusion necessary to our challenge.

B. The First District erred in concluding that the Second Amendment Tax does not burden constitutionally protected conduct.

The First District refused to acknowledge that the challenged ordinance burdens the right to keep and bear arms, instead holding that the ordinance "do[es] not infringe upon any protected Second Amendment right under the federal constitution or section 22 of Article I of the Illinois constitution." *Id.* at ¶ 59 (App. 173). The court attempted to support that conclusion in three ways: (1) by arguing that the tax falls within *Heller*'s exception for "laws imposing conditions and qualifications on the commercial sale of arms," *id.* at ¶¶ 56, 59 (quotation marks omitted) (App. 172–73); (2) by opaquely claiming that the tax is "akin to various other types of sales taxes imposed on the purchase of goods and services," *id.* at ¶ 58 (App. 172); and (3) by asserting that the tax does not "substantially burden" the right to keep and bear arms because it is not "prohibitive or exclusionary" and only makes the exercise of the right "more expensive or difficult," *id.* at ¶ 59 (App. 172–73). None of these arguments holds water.

1. In *Heller*, the U.S. Supreme Court identified a handful of "presumptively lawful regulatory measures" that, based on its reading of the Second Amendment's text and history, it took to be *prima facie* outside "the full scope of the Second Amendment." 554 U.S. at 626–27 & n.26. One of those presumptive exceptions is comprised of "laws imposing conditions and qualifications on the commercial sale of arms," *id.* at 626–27, and the First District invoked this language in determining that the challenged taxes "do not restrict the ownership of firearms or ammunition," *Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 57 (App. 172). But whatever the scope of this category of presumptively lawful

regulations, it simply cannot create a blanket exception for "commercial"-type restrictions that a State may exploit by casting all manner of restrictions on the right to keep and bear arms as restrictions on their "commercial sale." After all, "[i]f there were somehow a categorical exception for these restrictions, it would follow that there would be no constitutional defect in prohibiting the commercial sale of firearms. Such a result would be untenable under *Heller*." *Marzzarella*, 614 F.3d at 92 n.8; *see also Ill. Ass'n of Firearms Retailer*, 961 F. Supp. 2d at 930, 937.

The Appellate Court's invocation of this exception fails out of the starting gates because the challenged taxes are *not* "conditions [or] qualifications on the commercial sale of arms," *Heller*, 554 U.S. at 627—they are *taxes* that *directly target their purchase*. While the Second Amendment Tax is *collected* by firearm and ammunition retailers, COOK CNTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-670, by law it must be *borne* by *the buyer*, *id.* sec. 74-668—making it wholly unlike conditions or qualifications of sale, which directly bind *retailers*. The challenged Ordinance does not limit *who may engage in the business of selling* firearms or ammunition. Nor does it speak to *how an individual may qualify* to sell these items—by obtaining a license, for example. And individual purchasers must pay the Second Amendment Tax *even if the retailers fail to collect it*. COOK CNTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-670(c). Thus, the Second Amendment Tax does not constitute a "condition" or "qualification" on commercial firearm and ammunition sales under any plausible definition.

Moreover, *Heller*'s presumption applies only to "longstanding" laws. *See* 554 U.S. at 626–27. Indeed, both the U.S. Supreme Court and this Court, in considering challenges to laws that may fall within this exception, have evaluated whether such laws are grounded

in the history and tradition of firearms regulation in this Nation. *See Heller*, 554 U.S. at 626–27; *see also Aguilar*, 2013 IL 112116, ¶¶ 26–27. But laws targeting the purchase of firearms or ammunition with taxes are not longstanding; they are novel and rare, and the County has not shown otherwise. Indeed, as demonstrated below, *see supra* part II.A, it is well settled across the entire universe of constitutional rights that a tax that *singles out* the exercise of a constitutional right, far from enjoying a presumption of validity, must satisfy the highest level of constitutional scrutiny.

Even if the Ordinance fell within the language in *Heller* that the First District relied upon, that would not end the constitutional inquiry. Instead, this Court held in *People v. Chairez*, 2018 IL 121417, that heightened scrutiny applies "to *Heller*'s presumptively lawful regulations." *Id.* at ¶¶ 30–31. In *Chairez*, the Court determined that it did not need to decide whether a restriction on carrying arms within 1,000 feet of a public park was a presumptively lawful regulation under *Heller* because, even if it was, heightened scrutiny would be required. *Id.* at ¶¶ 30–31. Thus, the Appellate Court's invocation of this exception—even if it applied—does not support granting summary judgment to Defendants on Plaintiffs' Second Amendment claim.

The Appellate Court's conclusion that the taxes are exempt from constitutional scrutiny because they constitute "a condition on the commercial sale of arms" is patently erroneous.

2. The First District's next argument—that the challenged taxes are somehow exempt from constitutional scrutiny because they are akin to "sales taxes imposed on the purchase of goods and services," *Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 58 (App. 172)—fares no better. For while the Second Amendment Tax is "akin" to generally

applicable sales taxes in the sense that both sets of taxes are, in fact, taxes, it differs in one dispositive way: it singles out, and only applies to, the lawful exercise of a *fundamental* right. As discussed at greater length below, binding case law makes clear that an attempt to add costs to law-abiding citizens' acquisition of constitutionally protected goods or services through taxation triggers heightened constitutional scrutiny. For example, in *Boynton*, this Court struck down a $10 tax on the issuance of marriage licenses, explaining that while "[i]t may be argued that the amount of the tax . . . does not . . . impose a significant interference with the fundamental right to marry," strict scrutiny is nonetheless required because "[o]nce it is conceded that the State has the *power* to . . . single out marriage for special tax consideration, there is no limit on the amount of the tax that may be imposed." 112 Ill. 2d at 369–70. The U.S. Supreme Court employed the same reasoning in striking down a $1.50 poll tax. *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 668 (1966) ("The degree of the discrimination is irrelevant . . . ."); *see also Minneapolis Star & Tribune Co.*, 460 U.S. 575 (invalidating tax that burdened freedom of the press); *Murdock v. Pennsylvania,* 319 U.S. 105, 113 (1943) (invalidating tax that burdened religious expression).

The Appellate Court erroneously disregarded these principles in concluding that the "taxes at issue are nothing more than a tax on the sale of tangible personal property." *Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 58 (App. 172). The court cited a case involving a five-cent tax on bottles of water to support its conclusion that the Second Amendment Tax is merely a tax on "tangible personal property." *See id.* (citing *Am. Beverage Ass'n v. City of Chicago*, 937 N.E.2d 261, 264 (1st Dist. 2010)). But that case is

clearly inapplicable because such a tax does not burden the exercise of a *fundamental* right, unlike the taxes challenged here.

The Appellate Court's assertion that the challenged taxes are "akin to various other types of sales taxes imposed on the purchase of goods and services," *id.*, could *equally* be said of the marriage-license tax struck down in *Boynton*, or the tax on newspaper and ink struck down in *Minneapolis Star & Tribune Co.*, so this reasoning could only be correct if *both those cases were wrongly decided*. Yet, again, the Appellate Court *did not even try* to distinguish these binding precedents. It did not try to distinguish them because they cannot be distinguished.

Finally, the First District reasoned that the Second Amendment Tax does not "substantially burden" the right to keep and bear arms because it is not "prohibitive or exclusionary" nor is it "anything more than a 'marginal, incremental or even appreciable restraint' on one's Second Amendment rights." *Id.* at ¶ 59 (quoting *Kwong v. Bloomberg*, 723 F.3d 160, 167 (2d Cir. 2013)) (App. 172–73). The court asserted that "while it is clear that the firearms tax and the ammunition tax increase the costs of purchasing firearms or ammunition in Cook County, a law does not substantially burden a constitutional right simply because it makes the right more expensive or difficult to exercise." *Id.* (App. 173). That line of reasoning, too, is directly refuted by binding precedent.

The court should not have undertaken a "substantial burden" analysis to begin with, because this Court has specifically rejected any such analysis. In *People v. Chairez*, the Court expressly rejected any rule requiring a plaintiff to show "that the regulation operates as a substantial burden on the ability of law-abiding citizens to possess and use a firearm for self-defense . . . before a heightened scrutiny is triggered." 2018 IL 121417, ¶ 35 n.3

(quotation marks omitted). This Court recognized that the federal Second Circuit Court of Appeals applied such a substantial burden test to Second Amendment claims, *see id.* (citing *United States v. Decastro*, 682 F.3d 160, 166 (2d Cir. 2012))—in the *very line of cases that the First District cited for support*, *see Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 59 (citing *Kwong*, 723 F.3d at 167 and *Decastro*, 682 F.3d at 166) (App. 172–73)—but it *deliberately declined* to follow that course. Instead, this Court has made clear that heightened scrutiny applies whenever a "challenged law imposes a burden on conduct falling within the scope of the second amendment guarantee," *Wilson*, 2012 IL 112026 ¶¶ 41–42—whether or not that burden is deemed "substantial" enough by a court. The Appellate Court plainly had no warrant to *follow* the non-binding case law that this Court has *specifically and deliberately rejected*.

Even setting this threshold point aside, the case law makes clear that an attempt to add costs to law-abiding citizens' acquisition of constitutionally protected goods or services *does* constitute a sufficient burden to trigger constitutional scrutiny. In *Boynton v. Kusper*, for example, this Court rejected *precisely* the same argument embraced by the First District—that taxes are not subject to constitutional challenge unless they are "prohibitive or exclusionary," *Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 59 (App. 172)—in striking down a $10 tax that the State had imposed on the issuance of marriage licenses. "It may be argued," the Court acknowledged, "that the amount of the tax . . . does not . . . impose a significant interference with the fundamental right to marry." *Boynton*, 112 Ill. 2d at 369. Indeed, as the dissent in the case pointed out, the plaintiffs did not "allege that their decision to marry, *or that of anyone else*, was affected by the license fee." *Id.* at 372 (emphasis added). But that consideration was *irrelevant*, the Court held, since "[o]nce it is

conceded that the State has the *power* to . . . single out marriage for special tax consideration, there is no limit on the amount of the tax that may be imposed," and "long before political considerations limit the amount of this tax some people will be forced by the tax imposed to alter their marriage plans and will have suffered a serious intrusion into their freedom of choice in an area in which we have held such freedom to be fundamental." *Id.* at 369–70 (quotation marks and brackets omitted). Once again, on the First District's reasoning, *Boynton* should have been decided the other way—or, at the very least, this Court should have engaged in an analysis of whether the plaintiffs could afford the $10 tax such that it was "prohibitive or exclusionary." *See Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 59 (App. 172). The Appellate Court made no attempt to distinguish *Boynton* on this point—again, it did not cite the case a single time—yet it is fatal to its conclusion that the Second Amendment Tax does not meaningfully burden Plaintiffs' constitutional rights.

Here, Plaintiffs' rights have been burdened at least as much as the rights in *Boynton*. The $25 Firearm Tax is more costly than the $10 marriage tax at issue in that case. And the Ammunition Tax adds a substantial amount to the cost of ammunition. (R. C428) (Ammunition Tax added $5.00—or 12.5%—to the cost of $39.98 ammunition purchase).

On the First District's faulty logic, a plaintiff can *never* challenge *any* tax as constitutionally invalid, unless he can show that the tax is so high that it prices out some (undefined) portion of the citizenry. *See Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 59 (App. 172–73). State and local governments cannot be allowed to insulate taxes from judicial scrutiny in this way. *See Boynton*, 112 Ill. 2d at 369–70; *see also City of Blue Island v. Kozul*, 379 Ill. 511, 517 (1942) ("[I]f a small license fee or license tax may be lawfully imposed on the publication or circulation of printed matter, it may be increased to such a

high degree that publication or circulation would be effectively prohibited." (citation omitted)).

The United States Supreme Court has likewise not required plaintiffs to show that a tax on a constitutional right is "prohibitory or exclusionary," such that it would prevent them from exercising the right, before challenging it. In *Minneapolis Star & Tribune*, for example, the Supreme Court held that "differential treatment" of the press by a discriminatory tax alone imposed a heavy burden of justification on the state. 460 U.S. at 583. "Differential taxation of the press," the Court reasoned, "places such a burden on the interests protected by the First Amendment that we cannot countenance such treatment unless the State asserts a counterbalancing interest of compelling importance that it cannot achieve without differential taxation." *Id*. at 585. Indeed, in *Minneapolis Star & Tribune*, the plaintiff's tax burden was actually *lighter* than it would have been had it been subject to the generally applicable sales tax in the state, *id*. at 598 (Rehnquist, J., dissenting), but the Court struck it down all the same.

Similarly, in *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966), the U.S. Supreme Court struck down a poll tax facially without regard to whether a person could afford to pay the tax. *Id.* at 668. And in *Murdock v. Pennsylvania,* 319 U.S. 105 (1943), the Court reasoned that "it may not be said that proof is lacking that [the challenged] license taxes either separately or cumulatively have restricted or are likely to restrict petitioners' religious activities. On their face they are a restriction of the free exercise of those freedoms which are protected by the First Amendment." *Id.* at 114. These cases dispel the notion that the amount of a tax on the exercise of a fundamental right—or

whether it has an impact on behavior—is somehow relevant to the analysis of its constitutionality.

The First District sought support in *Kwong v. Bloomberg*, 723 F.3d 160 (2d Cir. 2013), which it cited for the proposition that "a law does not substantially burden a constitutional right simply because it makes the right more expensive or difficult to exercise." *Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 59 (App. 173). But even if that proposition could be squared with the precedent cited above, *Kwong* does not support it.[4] While the *Kwong* court did reject a Second Amendment challenge to a handgun licensing fee, it *did not* rest its decision on the reasoning adopted below that imposing additional costs on exercising the right through taxation does not "infringe upon any protected Second Amendment right." *Id.* Rather, the court *applied heightened scrutiny*—ultimately upholding the fee because it found it was "designed to allow the City of New York to recover the costs incurred through operating its licensing scheme . . . ." *Kwong,* 723 F.3d at 168.

That holding is irrelevant here. Courts have held that where a fee on constitutionally protected conduct serves only "to defray costs associated" with valid licensing schemes

[4] The Appellate Court also cited *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), to support this proposition. But that case has no bearing here. First, as explained above, this Court has explicitly rejected the application of an undue burden standard—which is central to *Casey* and abortion jurisprudence—to the inquiry of whether a challenged law involves conduct protected by the right to keep and bear arms. *See Chairez*, 2018 IL 121417, ¶ 35 n.3. Second, the portion of *Casey* the First District cited—which was only joined by Justices O'Connor, Kennedy, and Souter—noted that "[t]he fact that a law which serves a valid purpose, one not designed to strike at the right itself, has the incidental effect of making it . . . more expensive to procure an abortion cannot be enough to invalidate it." *Casey*, 505 U.S. at 874. That certainly does not describe the Ordinance here, as the Second Amendment Tax directly and by design imposes additional costs on acquiring firearms and ammunition.

and "[t]here is no indication that [it] was imposed for any other purpose," the fee is constitutional. *Justice v. Town of Cicero*, 827 F. Supp. 2d 835, 842 (N.D. Ill. 2011); *see also Heller v. District of Columbia*, 698 F. Supp. 2d 179, 192 (D.D.C. 2010). The distinction between *fees* incident to the administration of a valid *licensing* scheme and *taxes* intended to generate *revenue* is critical. The U.S. Supreme Court has drawn a bright line between a "revenue tax" and a fee "incident to the administration of the act and to the maintenance of public order in the matter licensed." *Cox v. New Hampshire*, 312 U.S. 569, 577 (1941). And this Court also emphasized the difference between administration fees and taxes intended to raise revenue in *Boynton* when it explained that the challenged portion of the marriage license fee had "no relation to the county clerk's service of issuing, sealing, filing, or recording the marriage license. Its sole purpose [was] to raise revenue," making that "portion of the fee . . . a tax." 112 Ill.2d at 364–65. The U.S. Supreme Court explained this principle in upholding a parade licensing fee in *Cox*: by preventing chaos in the streets, a nondiscriminatory licensing system "maintain[s] [the] public order without which liberty itself would be lost in the excess[ ] of unrestrained abuses." *Id.* at 574. By contrast, a tax or fee crosses the constitutional line when it singles out constitutionally protected conduct for the purpose of *raising revenue*.

The Second Amendment Tax is of this latter variety. It does not merely defray the costs of some licensing regime or public good that *facilitates* the exercise of the Second Amendment right; indeed, Cook County has no firearm licensing or registration system and is preempted by State law from establishing one. *See* 430 ILCS 65/13.1; 430 ILCS 66/90. Instead, the Second Amendment Tax *singles out* the Second Amendment right for taxes that go to fund unrelated government programs. *See* COOK CNTY. CODE OF

ORDINANCES ch. 74, art. XX, sec. 74-677 (tax proceeds go to fund crime prevention programs or into the general revenue). And while not in any way necessary to establish a constitutional violation, the undisputed evidence shows that a purpose of the tax is the illegitimate one of "mak[ing] it difficult for people to have guns." 2012 Hearing at 1:18:56, (R. C291). Thus, far from *fostering* the right to keep and bear arms, the Second Amendment Tax *discourages* it.

Finally, the dicta in *Kwong*—cited by the First District—suggesting that the registration fee there was merely "a marginal, incremental or even appreciable restraint on one's Second Amendment rights" is also inapplicable here. 723 F.3d at 173 n.2 (quotation marks omitted). Again, the Second Circuit *expressly did not rest its holding* on that reasoning. *Id.* at 168. Indeed, a concurrence in *Kwong* argued at length that heightened scrutiny necessarily applied because "[a]ny non-nominal licensing fee necessarily constitutes a substantial burden on [the Second Amendment] right," *id.* at 173 (Walker, J., concurring), and the majority responded by clarifying that "we need not and do not decide whether heightened scrutiny is appropriate here because we conclude that [the fee] survives 'intermediate scrutiny,' " *id.* at 168 n.15 (majority opinion). To the extent the decision in *Kwong* has any persuasive authority on this issue, then, it further indicates that *heightened scrutiny does apply*.

The Appellate Court thus erred in concluding that the Second Amendment Tax does not burden constitutionally protected conduct.

II. The Second Amendment Tax is unconstitutional under the Second Amendment and Article I, Section 22 of the Illinois Constitution.

As just shown, the Firearm and Ammunition Taxes squarely burden constitutionally protected conduct—the right to *acquire* the arms that the federal and state

constitutions say citizens must be allowed to keep and bear—and they do not fall within any exception to the scope of those constitutional guarantees. The First District and the County framed the Second Amendment Tax as an exercise of the County's *taxing* power, as opposed to its *regulatory* power, and Plaintiffs agree that this is the proper reading of the Ordinance. But the First District failed to recognize that reading *dooms* the constitutionality of the challenged provisions under the right to keep and bear arms, for two reasons: (A) because a long line of binding Illinois and U.S. Supreme Court case law holds that the government may not impose a tax that targets constitutionally protected conduct, unless that tax satisfies strict scrutiny—a test the Second Amendment Tax cannot pass, *see, e.g., Boynton*, 112 Ill. 2d 356; *Minneapolis Star & Tribune Co.*, 460 U.S. 575 (1983); and (B) because the Illinois Constitution makes clear by its plain text that the right to keep and bear arms *is not subject to the government's tax power*, but rather is "[s]ubject only to the police power," ILL. CONST. art. I, § 22. We address both reasons in turn.

A. The Second Amendment Tax must be subjected to strict scrutiny.

Given the Appellate Court's determination that the challenged provisions constitute an exercise of the County's *taxing* power, ascertaining the appropriate standard of scrutiny in this case is an easy question. For a clear line of binding case law dictates that "the imposition of [a] special tax" on "the exercise of [a] fundamental right . . . *must be subjected to the heightened test of strict scrutiny*." *Boynton*, 112 Ill. 2d at 369 (second emphasis added).

As noted above, in *Boynton* this Court dealt with an additional $10 fee the State had imposed on top of the ordinary fee for issuing a marriage license, the proceeds of which were paid "into the Domestic Violence Shelter and Service Fund." *Id.* at 359. This Court

concluded that because the additional $10 charge's "sole purpose is to raise revenue which is deposited in the Domestic Violence Shelter and Service Fund," rather than to reimburse local governments for their "service of issuing, sealing, filing, or recording the marriage license," "this portion of the fee is a tax." *Id.* at 365. And that tax, the Court held, was subject to strict scrutiny, because it "singled out" and "impose[d] a *direct* impediment to the exercise of the fundamental right to marry." *Id.* at 369. Reasoning that the tax was not narrowly tailored to advance a compelling government interest, the court concluded that it "does not meet the strict-scrutiny test," and it struck the tax down. *Id.*

The decision in *Boynton* disposes of this case. Like the right to marry, it is beyond dispute that the right to keep and bear arms is "a fundamental right," *People v. Mosley*, 2015 IL 115872, ¶ 41, one inherent "to our scheme of ordered liberty and system of justice," that cannot "be singled out for special—and specially unfavorable—treatment," *McDonald*, 561 U.S. at 764, 778–79. Indeed, both the U.S. Supreme Court and this Court have explained that the Second Amendment must not be treated as a second-class right. *See McDonald*, 561 U.S. at 780 (refusing "to treat the right recognized in *Heller* as a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees"); *Aguilar*, 2013 IL 112116, ¶ 21 (The ban on carrying firearms outside the home "amounts to a wholesale statutory ban on the exercise of a personal right that is specifically named in and guaranteed by the United States Constitution, as construed by the United States Supreme Court. In no other context would we permit this, and we will not permit it here either."). And just like the marriage tax in *Boynton*, the Second Amendment Tax *singles out* the exercise of the right to keep and bear arms by "imposing a special tax" on the purchase of firearms and ammunition that is paid by those seeking to

exercise their Second Amendment rights. *Boynton*, 112 Ill. 2d at 369–70. It thus must pass strict scrutiny, or it cannot stand.

These principles of Illinois law are in accord with *decades* of federal Supreme Court decisions holding that the government may not single out the exercise of fundamental constitutional rights for special taxes unless that discriminatory tax treatment is necessary to advance government interests of the highest import. Because, as Chief Justice Marshall famously observed, the power to tax is the "power to destroy," *McCulloch*, 17 U.S. (4 Wheat.) at 431, taxation is "a powerful weapon against the taxpayer selected," *Minneapolis Star & Tribune Co.*, 460 U.S. at 585. Accordingly, as the Court put it in 1944, law-abiding citizens cannot "be required to pay a tax for the exercise of . . . a high constitutional privilege." *Follett*, 321 U.S. at 578.

In *Grosjean v. American Press Company*, for instance, the United States Supreme Court struck down a state tax on the publication of advertisements in newspapers or magazines, which, it concluded, amounted to "a deliberate and calculated device in the guise of a tax to limit the circulation of information." 297 U.S. at 250. The Court reaffirmed this holding more recently, in *Minneapolis Star & Tribune*, striking down a state tax on the paper and ink used by newspapers. 460 U.S. 575. That tax, the Court reasoned, "singled out the press for special treatment," and "[a] tax that burdens rights protected by the First Amendment cannot stand unless the burden is necessary to achieve an overriding governmental interest." *Id.* at 582. Similarly, in *Arkansas Writers' Project, Incorporated v. Ragland*, the Court again reiterated the rule, striking down "Arkansas' system of selective taxation" of certain magazines because "[o]ur cases clearly establish that a discriminatory tax on the press burdens rights protected by the First Amendment" and thus

must be "necessary to serve a compelling state interest." 481 U.S. 221, 227, 230, 231 (1987).

Other cases illustrate that the principles that undergird *Minneapolis Star & Tribune* and *Arkansas Writers' Project* extend well beyond the First Amendment freedom of the press. The United States Supreme Court has, for example, struck down taxes that targeted religious practice. *See Follett*, 321 U.S. at 577–78; *Murdock*, 319 U.S. at 113. It has also held unconstitutional certain fees on standing for and voting in elections. *See generally Lubin v. Panish*, 415 U.S. 709 (1974); *Harper*, 383 U.S. 663.

Although these decisions rest on different constitutional provisions, a single overarching principle unites them: "[a] state may not impose a charge for the enjoyment of a right granted by the federal constitution" absent a compelling justification. *Murdock*, 319 U.S. at 113. Here, the County has enacted a discriminatory tax that specially burdens the exercise of a fundamental right protected by both the federal and state constitutions: the right to keep and bear arms. On the reasoning of these cases, that tax cannot stand unless it satisfies strict constitutional scrutiny.

The Appellate Court did not address—*and in fact could not even bring itself to cite—any* of these binding precedents. Instead, the court peremptorily refused to reach this step in the analysis because it had (wrongly) concluded that the Ordinance does not substantially burden the right to keep and bear arms. *See Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶¶ 61–62 (App. 173–74). The Appellate Court's refusal to *even cite or discuss* the on-point binding precedent from this Court and the U.S. Supreme Court was error. *Boynton*, *Minneapolis Star & Tribune*, and the other cases we have cited are controlling, and under them the challenged taxes must be subjected to strict scrutiny.

B. The Second Amendment Tax fails any level of heightened constitutional scrutiny.

As we have explained, the Firearm and Ammunition Taxes must be subjected to strict scrutiny. And even if this Court applied intermediate scrutiny,[5] the challenged taxes must be struck down for multiple reasons.

1. The Second Amendment Tax fails any heightened constitutional scrutiny. Although the Appellate Court did not address the County's justifications for the Second Amendment Tax, Defendants have defended the Ordinance by contending that it furthers the governmental interest of public safety. But while public safety is, without question, an important government interest, that interest does not justify this tax.

The only explanation Defendants have put forward for how the challenged tax purportedly furthers its interest in public safety is that it generates funds for programs designed to combat violence. *See* (App. 93–94). This reasoning fails to pass muster for several reasons. As an initial matter, only funds generated by the Ammunition Tax are required to "be directed to the Public Safety Fund to fund operations related to public safety." COOK CNTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-677. Cook County law does not similarly designate where the proceeds of the Firearm Tax are to be directed, and those tax revenues therefore simply flow into the County's general revenue. *Id.* The Firearm Tax thus cannot even conceivably be upheld on this basis.

More fundamentally, Defendants' justification ignores the fact that the funding for public safety programs can be generated *in any number of ways*. Or, put conversely, the revenue from a tax on *any* goods or services could be directed to the County's Public Safety

[5] It is well settled that where a law burdens Second Amendment rights, "some form of heightened scrutiny" is required. *Wilson*, 2012 IL 112026, ¶ 42; *see also Heller*, 554 U.S. at 628 n.27; *Ezell*, 651 F.3d at 706.

Fund and thereby could make *precisely the same* contribution to public safety as the challenged taxes. The County's justification for the Second Amendment Tax thus suffers from the key defect that the U.S. Supreme Court identified in *Minneapolis Star & Tribune*: "an alternative means of achieving the same interest without raising concerns under the [Constitution] is clearly available: the [Government] could raise the revenue by taxing businesses generally." 460 U.S. at 586. Because whatever additional revenue is remitted into the Public Safety Fund under the Second Amendment Tax could instead be raised through a general, non-discriminatory tax increase that *does not* single out constitutionally protected conduct, the challenged tax is not a "narrowly tailored" or "substantially related" means of advancing any government interest in raising revenue to fund public-safety programs.

This defect in Defendants' reasoning can also be seen by noting that if their theory is right, it would justify *any* tax on *any* conduct. By this logic, a special tax on newspaper ink, marriage licenses, or voting *could also* be justified as substantially related to the government's interest in public safety, so long as the proceeds of the tax were directed into a fund dedicated to that purpose. That cannot be, and is not, the law. Indeed, this Court rejected precisely this type of argument in *Boynton*, when it struck down a tax on marriage licenses that was used to fund a program combating domestic violence.

2. While the foregoing argument fully suffices to render the challenged taxes unconstitutional under binding precedent, the Second Amendment Tax fails any level of heightened scrutiny for an additional, independent reason as well: its text and history show that it was enacted with the *specific purpose* of *suppressing Second Amendment rights*, and that purpose, far from substantial or compelling, is flatly illegitimate.

The true design and purpose of the Firearm Tax is evident from the very preamble of the ordinance that enacted it, which baldly declares that the "presence . . . of firearms in the County . . . detracts from the public health, safety, and welfare." (R. C150). And the statements of the officials who enacted the challenged tax remove any conceivable doubt about their motivation. In the November 2, 2012, meeting at which the Board of Commissioners considered the Firearm Tax, Commissioner Sims, one of the tax's sponsors, could not have been clearer: "At least we can make it difficult for people to have guns . . . . If you can't afford it, you won't buy it." 2012 Hearing at 1:18:56. (R. C291). And Commissioner Suffredin, another supporter of the bill, emphasized that "there are way too many guns in this community." *Id.* at 1:09:25. (R. C291). The Ammunition Tax suffers from the same illegitimate motive. As Commissioner Boykin explained when supporting the measure, that tax was designed to "add[ ] to the costs of the instruments of death." 2015 Hearing at 1:44:31. (R. C293).

Because of its wholly illegitimate motive, the Second Amendment Tax bears the same infirmities as the tax struck down in *Grosjean*. The U.S. Supreme Court analyzed the "history and . . . present setting," 297 U.S. at 250, of the Louisiana tax struck down in that case—history which included evidence that the tax had been targeted at a number of large Louisiana papers that had been critical of Senator Huey Long, who had advocated for the tax in the State Legislature by describing those newspapers as "lying newspapers" and characterizing the tax "as 'a tax on lying,' " *Minneapolis Star & Tribune*, 460 U.S. at 579–80. This history indicated that the measure was "a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties," *Grosjean*, 297 U.S. at 250. Courts have applied similar

reasoning in the Second Amendment context, reasoning that "it is not a permissible strategy to reduce the alleged negative effects of a constitutionally protected right by simply reducing the number of people exercising the right," *Grace v. District of Columbia*, 187 F. Supp. 3d 124, 148 (D.D.C. 2016) (quotation marks omitted), *aff'd sub nom. Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017), and that the hypothesis "that more guns lead to more gun theft, more gun accidents, more gun suicides, and more gun crimes" cannot justify a deliberate attempt to "limit[ ] the number of guns in circulation," *Heller v. District of Columbia*, 801 F.3d 264, 280 (D.C. Cir. 2015) (*Heller III*).

So too here, the history of the Second Amendment Tax demonstrates that it is a deliberate and calculated device to *suppress the quantity* of firearms and ammunition present in Cook County, out of the constitutionally impermissible belief that the "presence . . . of firearms in the County . . . detracts from the public health, safety, and welfare." (R. C150). For this reason alone, the Ordinance fails any level of heightened constitutional scrutiny.

C. Under Article I, Section 22, the right to keep and bear arms is not subject to the taxing power.

Alternatively, the Second Amendment Tax must be invalidated categorically for imposing a *tax* on the right to keep and bear arms that is *flatly prohibited* by the Illinois Constitution.

Article I, Section 22 of the Illinois Constitution declares that "the right of the individual citizen to keep and bear arms" is "[s]ubject only to the police power." ILL. CONST. art. I, § 22. As numerous cases explain, under the state Constitution, "[t]he power to regulate and the power to tax are distinct powers," *Rozner v. Korshak*, 55 Ill. 2d 430, 432 (1973); *see also Greater Chi. Indoor Tennis Clubs, Inc. v. Vill. of Willowbrook*,

63 Ill. 2d 400, 403 (1976); *Paper Supply Co. v. City of Chicago*, 57 Ill. 2d 553, 576 (1974); *see also* ILL. CONST. art. VII, § 6(a) (distinguishing the power "to regulate for the protection of the public health, safety, morals and welfare" and "to tax"). Indeed, the First District elsewhere acknowledged precisely this proposition, expressly stating that "[t]he power to regulate and the power to tax and separate and distinct powers," and determining that the Ordinance falls under the County's taxing power. *Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 81 (App. 179). But while the government may regulate the right to keep and bear arms, within constitutional limits, in pursuance of its police power, by the plain terms of the Constitution it has *no authority* to single out the exercise of that right for taxation.

Plaintiffs have squarely raised this argument in their briefing at every stage, and counsel emphasized the argument to the Appellate Court at oral argument. Yet, the Appellate Court did not even *address* the argument or *mention* the Illinois Constitution's bar on taxing, as opposed to regulating, the right to keep and bear arms. That was error, and this Court should reverse.

III. The Second Amendment Tax is also invalid under the Uniformity Clause.

Finally, the challenged Ordinance is also unconstitutional under the Uniformity Clause. ILL. CONST. art. IX, § 2. That provision requires that a "tax classification must (1) be based on a real and substantial difference between the people taxed and those not taxed, and (2) bear some reasonable relationship to the object of the legislation or to public policy." *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 153 (2003). As with much else in this case, the challenged tax's invalidity under the Uniformity Clause follows directly from this Court's decision in *Boynton*.

In addition to invalidating the marriage-license tax at issue in that case because it singled out for special taxation the exercise of a fundamental right, *Boynton* also struck the

tax down on Uniformity Clause grounds. The Court concluded that "the relationship asserted" between those taxed (applicants for marriage licenses) and the use of the tax proceeds (to fund benefits for domestic violence victims) was "simply too remote." *Boynton*, 112 Ill. 2d at 366. As the Court framed the inquiry, the issue before it was "whether our legislature may impose a 'fee' upon a class of people based only on the fact that they have applied for marriage licenses, where the money collected is used to fund a general welfare program." *Id.* at 362. And the Court answered with a resounding "No," concluding that a tax on the fundamental right to marry was not "a reasonable means of accomplishing the desired objective." *Id.* at 368. Here, Cook County has attempted to do precisely what this Court has said it cannot do: tax the exercise of a fundamental right to fund a general welfare program. There can be no question that the Second Amendment Tax applies to the exercise of a fundamental right, and its proceeds are used for general welfare purposes. COOK CNTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-677. Accordingly, it violates the Uniformity Clause under *Boynton*'s square holding.

The Second Amendment Tax further violates the Uniformity Clause because while the Ordinance purportedly targets criminals, the tax falls only on the law-abiding citizens of Illinois who possess a valid FOID card and are legally entitled to purchase firearms and firearm ammunition. These law-abiding citizens are not to blame for criminal gun violence. Yet they alone pay the Tax. The Second Amendment Tax has no effect, by contrast, on violent felons who do not (and lawfully cannot) purchase their firearms and ammunition at retail. *See* 2012 Hearing at 1:19:34 ("[T]he reality is, not one convicted felon is going to pay a penny of this tax ladies and gentleman. Not one.") (R. C291); *see also* CAROLINE WOLF HARLOW, BUREAU OF JUSTICE STATISTICS, *Special Report, Firearm Use by*

Offenders, US DEP'T OF JUSTICE 1 (Nov. 2001, revised Feb. 4, 2002), https://bit.ly/3e2VAEg (showing overwhelming majority of guns used in violent crime are not acquired from the retail market); JAMES D. WRIGHT & PETER H. ROSSI, ARMED & CONSIDERED DANGEROUS xxx (2d ed. 2008) (same); BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, CRIME GUN TRACE REPORTS (2000): *Chicago* 8 (July 2002), https://bit.ly/34EJTRb (over 97% of those who possessed guns that had been used in crimes in Chicago in 2000 did not buy the guns at retail).

It was patently unreasonable for Defendants to single out law-abiding firearm purchasers, even if it is difficult or may be impossible to tax the criminals who are responsible for the violence that the Commission purports to target. Imposing a tax solely on those lawfully exercising constitutional rights to remedy the harms caused by criminals is no more reasonable under the Uniformity Clause than it is constitutional under the Second Amendment. Once again, Plaintiffs squarely raised this argument in the Appellate Court, citing the clear precedent established by *Boynton* and the evidence demonstrating that the Second Amendment Tax imposes unreasonable classifications; but once again, the First District completely failed to engage with the argument. Instead, it rejected Plaintiffs' Uniformity Clause claims with nothing more than the conclusory assertion that "[t]he County's proffered reasons for the classifications are reasonably related to the objectives of the ordinances." *Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 70 (App. 176). That plainly does not satisfy the judicial duty to ensure that the lines drawn by a challenged tax are "based on a real and substantial difference between the [objects] taxed and those not taxed," *Milwaukee Safeguard Ins. Co. v. Selcke*, 179 Ill. 2d 94, 98 (1997), and this Court should reverse.

IV. If the Second Amendment Tax is understood as a regulatory measure, it is preempted by the FOID Card Act and the Firearm Concealed Carry Act.

The First District adopted Defendants' position that the Ordinance is best understood as an exercise of the County's *taxing* rather than *regulatory* power. And again, we agree with this assessment. But in the event the County defends the Ordinance under its power to regulate the purchase of firearms and ammunition, that basis likewise fails because it runs headlong into preemption under two statewide laws: the FOID Card Act and the Firearm Concealed Carry Act.

The FOID Card Act expressly preempts local laws regulating the possession of handguns and handgun ammunition by FOID card holders:

> [T]he regulation, licensing, possession, and registration of handguns and ammunition for a handgun . . . by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act are exclusive powers and functions of this 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.

430 ILCS 65/13.1.

In like form, the Firearm Concealed Carry Act preempts a similar set of local laws:

> 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.

If the challenged Ordinance is understood as an exercise of regulatory power, then it is plainly preempted by these provisions. The Ordinance applies to precisely the same conduct as the FCCA and the FOID Card Act: the possession of handguns and handgun

ammunition by FOID Card holders and concealed carry license holders. And the Ordinance's focus on transfers heightens the conflict with State law, as law-abiding citizens generally are required to possess either a FOID card or a concealed carry license before they can acquire a firearm or ammunition for a firearm. *See* 430 ILCS 65/3(a). The class of persons regulated by Cook County is thus precisely the class of persons that State law provides cannot be regulated.

The Appellate Court concluded that the challenged provisions were not preempted because the Second Amendment Tax is *not* regulatory and falls under the County's taxing power. *Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 81 (App. 179). We agree with this characterization of the Tax. But while that might rescue the challenged taxes *as a matter of preemption*, it *cements* their invalidity under the Second Amendment and Article I, Section 22 of the Illinois Constitution, for the reasons discussed above.

V. The First District erred in concluding that Maxon lacks standing.

Although it is not essential to disposing of this case, the Court should also correct the First District's erroneous and wholly gratuitous holding that Maxon lacks standing. *Id.* at ¶¶ 35–39 (App. 165–67). To be clear, both Defendants and the Appellate Court agreed that Guns Save Life has standing to raise all claims presented in this case. *See Id.* at ¶ 22 (acknowledging that the County conceded GSL has standing) (App. 162). However, the Appellate Court went *out of its way* to incorrectly rule on the issue of Maxon's standing, in the teeth of the well-established rule that a court must only determine that one party has standing for the case to proceed. *See Buettell v. Walker*, 59 Ill. 2d 146, 152 (1974). Indeed, the U.S. Supreme Court has held that it is *error* for courts to require a litigant to establish standing if the court's jurisdiction is secure by virtue of another party's standing. *See Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2367, 2379 n.6

(2020). And having erred in reaching out to decide the issue, the First District proceeded to err again in resolving it.

Maxon has standing to challenge both taxes, under the rule that a vendor of constitutionally protected goods or services has standing to vindicate the Second Amendment rights of its customers. This doctrine of "vendor standing" is well established in the federal courts. *See Eisenstadt v. Baird*, 405 U.S. 438, 446 (1972) (vendor of contraceptives had standing to assert the rights of unmarried persons who were denied access to contraceptives); *Craig v. Boren*, 429 U.S. 190, 196–97 (1976) (vendor of alcoholic beverages had third-party standing to assert its customers' constitutional claims); *see also, e.g.*, *Kaahumanu v. Hawaii*, 682 F.3d 789, 797 (9th Cir. 2012); *Ezell*, 651 F.3d at 696; *Reliable Consultants, Inc. v. Earle*, 517 F.3d 738, 743 (5th Cir. 2008); 13A CHARLES ALAN WRIGHT ET AL., FED. PRAC. & PROC. § 3531.9.3 (3d ed. 2020) ("Vendors are routinely accorded standing to assert the constitutional rights of customers and prospective customers," and this rule "has become firmly established."). "Moreover, to the extent that the State law of standing varies from Federal law, it tends to vary in the direction of greater liberality." *Greer v. Ill. Hous. Dev. Auth.*, 122 Ill. 2d 462, 491 (1988).

Maxon has standing under this doctrine because it is injured by the Second Amendment Tax in multiple ways. First, it is injured by the very fact that it must *collect* the tax. COOK CNTY. CODE OF ORDINANCES ch. 74, art. XX, secs. 74-668, 74-670. Illinois courts have repeatedly held that retail dealers who are charged with collecting a tax suffer a concrete injury that permits them to challenge the legality of the tax, even when they pass the tax on to their customers. *See Springfield Rare Coin Galleries, Inc. v. Johnson*, 115 Ill. 2d 221, 229 (1986) (holding that coin dealer had standing to challenge the constitutionality

of tax on certain legal tender coins even though the taxes could be passed on to the dealer's customers); *P & S Grain, LLC v. Cnty. of Williamson*, 399 Ill. App. 3d 836, 844 (5th Dist. 2010) (similar). The Appellate Court failed to even consider this argument and erroneously concluded that Maxon lacked standing to challenge taxes ultimately paid by the consumer. *See Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶¶ 35–39 (App. 165–67).

Even if these cases are set aside, Maxon *still* has standing to challenge both the Firearm Tax and the Ammunition Tax, because the Taxes tangibly injure Maxon itself in two additional ways: by imposing burdensome compliance costs and by reducing Maxon's revenue. *See Chi. Park Dist. v. City of Chicago*, 127 Ill. App. 3d 215, 218–19 (1st Dist. 1984) (holding that Park District had standing to challenge boat-mooring tax because application of the tax to park users would affect the Park District's revenues). And those injuries exist even though the ultimate cost of the taxes themselves are passed along to the consumer. The record evidence shows that Maxon's "costs for complying with the Firearms Tax are substantial, and it expects that its costs for complying with the Ammunition Tax to be even greater." (R. C438). Indeed, because the County requires Maxon to report individual *rounds* of rimfire and centerfire ammunition sold, while the record keeping software Maxon uses tracks *boxes* of ammunition but not *rounds*, Maxon's employees must spend many hours each month independently collecting and tabulating its ammunition inventory and sales by round, for the sole purpose of complying with the Ammunition Tax, at the cost of thousands of dollars each year. (R. C439). The Second Amendment Tax has also placed Maxon at a competitive disadvantage compared to retailers located outside Cook County (R. C421, C423) (out-of-county advertisement for firearm and ammunition sales free from the "Crook county tax"), with the result that Maxon

estimates, based on its past sales, that it lost $51,000 in potential ammunition sales revenue during the first six months of the Ammunition Tax's operation. (R. C1055–56). Both the costs of complying with the Ordinance and lost revenue amount to injury-in-fact under Illinois case law. *See, e.g.*, *Greer*, 122 Ill. 2d at 493.

The First District refused to acknowledge this uncontroverted evidence demonstrating the impact of the taxes on Maxon's business, instead asserting that Maxon has not suffered any "adverse economic consequences" or "real injury" from either tax. *See Guns Save Life, Inc.*, 2020 IL App (1st) 181846, ¶ 38 (App. 167). The court rested its analysis *entirely* on the County's incorrect assertion that Maxon's reporting system already tracks the necessary information for complying with the Ordinance, *see id.*, without even *mentioning*, much less rebutting, the undisputed record evidence conclusively showing that this is false, and despite Plaintiffs' discussion of this evidence in their briefing. Given that the First District went out of its way to decide this issue incorrectly, this Court should correct its error.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the First District holding that Plaintiff Maxon lacks standing to challenge the Firearm Tax, reverse the decision of the First District's affirmance of the Circuit Court's summary judgment order in favor of Defendants, and remand with instructions to enter summary judgment in favor of Plaintiffs on all claims.

Dated: November 4, 2020

Respectfully submitted,

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

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

David H. Thompson (ARDC No. 6316017)*
Peter A. Patterson (ARDC No. 6316019)*
COOPER & KIRK, PLLC
1523 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com

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

Certificate of Compliance

Pursuant to Supreme Court Rule 341(c), I hereby certify that this Brief conforms to the requirements of Supreme Court Rule 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 45 pages.

/s/ Christian D. Ambler
Christian D. Ambler

No. 126014

In the

Supreme Court of Illinois

GUNS SAVE LIFE, INC., *et al.*,

Plaintiffs-Appellants,

v.

ZAHRA ALI, solely in her official capacity as Director of the Department of Revenue of Cook County, *et al.*,

Defendants-Appellees.

Appeal from the Appellate Court of Illinois
First Judicial District, No. 1-18-1846.
There on Appeal from the Circuit Court of
Cook County, Illinois, No. 15-CH-18217.
The Honorable David B. Atkins, Presiding

APPENDIX OF PLAINTIFFS-APPELLANTS

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

David H. Thompson (ARDC No. 6316017)*
Peter A. Patterson (ARDC No. 6316019)*
Cooper & Kirk, PLLC
1523 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com

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Attorneys for Plaintiffs-Appellants

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS TO THE APPENDIX

APPEAL TO THE ILLINOIS APPELLATE COURT, FIRST DISTRICT
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

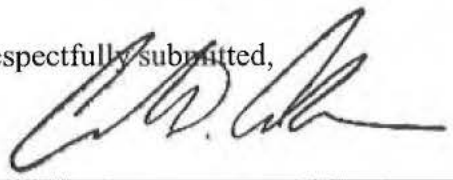
GUNS SAVE LIFE, INC., DPE SERVICES, INC. d/b/a MAXON SHOOTER'S SUPPLIES AND INDOOR RANGE, and MARILYN SMOLENSKI,	)	
Plaintiffs-Appellants,	)	Case No. 15 CH 18217
v.	)	
ZAHRA ALI, solely in her capacity as Director of the Department of Revenue of Cook County, THOMAS J. DART, solely in his official capacity as Cook County Sheriff, and the COUNTY OF COOK, ILLINOIS, a county in the State of Illinois,	)	
Defendants-Appellees.	)	

NOTICE OF APPEAL

Notice is hereby given that Plaintiffs Guns Save Life, Inc., DPE Services, Inc. d/b/a Maxon Shooter's Supplies and Indoor Range, and Marilyn Smolenski hereby appeal to the Illinois Appellate Court, First District, from the Court's August 17, 2018 Memorandum Opinion and Order denying Plaintiffs' motion for summary judgment, granting Defendants' cross motion for summary judgment, and entering judgment in favor of Defendants and against Plaintiffs. Plaintiffs also appeal from the Court's October 17, 2016 Memorandum Opinion and Order to the extent that it granted Defendants' motion to dismiss in part. Plaintiffs seek reversal of all rulings against them, a ruling that summary judgment should be entered in favor of Plaintiffs, and such further relief as the Appellate Court deems fit to grant.

Dated: August 23, 2018

Respectfully submitted,



Christian D. Ambler

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

David H. Thompson (ARDC No. 6316017)
Peter A. Patterson (ARDC No. 6316019)
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com

Attorneys for Plaintiffs-Appellants

CERTIFICATE OF SERVICE

Christian D. Ambler, an attorney, hereby certifies that he caused a copy of the foregoing Plaintiffs' Notice of Appeal to be served via U. S. Mail, postage prepaid, on August 23, 2018, upon:

Hailey M. Golds, Esq.- Hailey.Golds@CookCountyIL.gov
Cristin Duffy, Esq. – Cristin.Duffy@CookCountyIL.gov
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602

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Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-18-1846

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GUNS SAVE LIFE, INC., *et al.*,

Plaintiffs-Appellants,

v.

ZAHRA ALI, solely in in her capacity as Director of the Department of Revenue of Cook County, *et al.*,

Defendants-Appellees.

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BRIEF AND ARGUMENT OF PLAINTIFFS-APPELLANTS

Christian D. Ambler
Stone & Johnson, Chartered
111 West Washington Street
Suite 1800
Chicago, IL 60602
(312) 223-5656
cambler@stonejohnsonlaw.com

David H. Thompson
Peter A. Patterson
John D. Ohlendorf
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com

Attorneys for Plaintiffs-Appellants

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE CASE

Plaintiffs—Guns Save Life, Inc. (an association dedicated to defending Second Amendment rights in Illinois), Maxon's Shooter's Supplies (a firearm and ammunition retailer), and Marilyn Smolenski (a citizen and member of Guns Save Life)—brought this action to challenge two taxes that Defendants Cook County, its Sheriff, and the Director of its Department of Revenue (together, the "County") have imposed on the Second Amendment rights of the County's residents. The first levies a $25 tax on each firearm purchased from a retailer within the County. COOK CTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-668(a). The second imposes a tax on the purchase of ammunition, at a rate of $0.05 per cartridge of centerfire ammunition and $0.01 per cartridge of rimfire ammunition. *Id.* sec. 74-668(b). Plaintiffs allege that these taxes (1) are unconstitutional under the Second Amendment to the U.S. Constitution and Article I, Section 22 of the Illinois Constitution because they *single out* and *target* constitutionally protected conduct for special taxation, (2) violate Article I, Section 22 because that provision does not permit the government to burden the right to bear arms by operation of the tax power, (3) are preempted by two state laws, the FOID Card Act and the Concealed Carry Act, and (4) violate the Illinois Constitution's requirement that local taxes must be uniform and rational. After Defendants moved to dismiss the case, the Circuit Court Plaintiffs Smolenski's and Maxon's claims against the Firearms Tax for lack of standing, but it otherwise allowed the litigation to go forward. (R. C337). After limited discovery, the parties filed cross-motions for summary judgment, and on August 17, the Circuit Court denied Plaintiffs' motion and granted summary judgment on all claims to Defendants. (R. C1124). Plaintiffs now appeal both rulings. No questions are raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether Plaintiffs have standing.

2. Whether the challenged taxes violate the Second Amendment to the United States Constitution.

3. Whether the challenged taxes violate Section 22 of the Illinois Constitution.

4. Whether the challenged taxes are preempted by the FOID Card Act, 430 ILCS 65/13.1.

5. Whether the challenged taxes are preempted by the Concealed Carry Act, 430 ILCS 66/90.

6. Whether the challenged taxes violate the Illinois Constitution's Uniformity Clause, ILL. CONST. art. IX, § 2.

JURISDICTION

Jurisdiction lies in this Court under Supreme Court Rule 303, because the Circuit Court entered final judgment granting summary judgment to Defendants on all pending claims on August 17, 2018 (R. C1124), and Plaintiffs filed a timely notice of appeal on August 23, 2018 (R. C1127).

STATUTES INVOLVED

The pertinent provisions of U.S. CONST. amend. II; ILL. CONST. art. I, § 22; ILL. CONST. art. IX, § 2; 430 ILCS 65/13.1; 430 ILCS 66/90; and Chapter 74 of the Cook County Code of Ordinances are set forth in the Appendix.

STATEMENT OF FACTS

I. The Second Amendment Tax

On November 9, 2012, the Cook County Board of Commissioners, by a vote of nine to seven, passed an ordinance entitled the "Cook County Firearms Tax," which imposes a $25 fee for each firearm purchased at a firearms retail business in Cook County (hereinafter, the "Firearm Tax"). (R. C150–53). As the legislative history of the tax makes clear, the aim of the Ordinance was to reduce the level of legal gun ownership in Cook County. The preamble of the Ordinance itself declares that "the . . . presence . . . of firearms in the County . . . detracts from the public health, safety, and welfare." (R. C150). As Commissioner Sims explained, the $25 tax would "make it difficult for people to have guns." Meeting of the Cook County Board of Commissioners at 1:18:56 (Nov. 2, 2012), *available at* https://goo.gl/1CJgew ("2012 Hearing"). (R. C291). Put simply: "If you can't afford it, you won't buy it." *Id.* (R. C291). Commissioner Suffredin, another supporter of the bill, emphasized that "there are way too many guns in this community." *Id.* at 1:09:25. (R. C291). Commissioner Reyes, who also voted in favor of the Ordinance, nonetheless stated that it would not affect crime in Cook County "[b]ecause the reality is, not one convicted felon is going to pay a penny of this tax ladies and gentlemen. Not one." *Id.* at 1:19:34. (R. C291).

Although the Firearms Tax Ordinance imposed a levy on the sale of firearms, it left the sale of ammunition untaxed. As Commissioner Suffredin explained at the time, while some of the Commissioners would have preferred to have also taxed ammunition, "political realities" had forced them to remove a proposed tax on ammunition. (R. C291). Commissioner Fritchey also confirmed that this proposed tax on ammunition had been removed from the ordinance as the result of negotiation and compromise. (R. C291). This

concession to "political realities" was withdrawn in 2015, however, when the County enacted an amended ordinance that is now known as the "Cook County Firearm and Firearm Ammunition Tax Ordinance." (R. C137–40). The 2015 amendment, which was adopted on November 18, 2015, by a vote of nine to six, added a tax (hereinafter, the "Ammunition Tax," and together with the Firearm Tax, the "Second Amendment Tax") on the retail sale of ammunition in Cook County in the amounts of $0.05 per cartridge of centerfire ammunition, COOK CTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-668(b)(1),[1] and $0.01 per cartridge of rimfire ammunition, *id.* § 74-668(b)(2).[2]

The motivations behind the Ammunition Tax closely tracked the motivations of the Firearm Tax. As Commissioner Boykin explained in the November 12, 2015, meeting that considered that provision, the purpose of this "gun violence tax" was to "curb[ ] the cost of the widespread and senseless gun violence that has gripped Chicago and Cook County in the year 2015." Meeting of the Cook County Board of Commissioners at 1:42:50 (Nov. 12, 2015), *available at* https://goo.gl/1CJgew ("2015 Hearing"). (R. C293). "This tax," he continued, "will require those who purvey these instruments of death to bear a slightly larger share of the costs than the rest of us." *id.* at 1:43:25. (R. C293). Commissioner Boykin further expressed his belief that imposing the tax would make the Board an "instrument of justice" for children killed by gunfire and that the

[1] The Second Amendment Tax Ordinance defines centerfire ammunition to mean "firearm ammunition that is characterized by a primer in the center of the base of the cartridge" commonly used in rifles, pistols, and revolvers. *Id.* § 74-666.

[2] The Second Amendment Tax Ordinance defines rimfire ammunition to mean "firearm ammunition that is characterized by a primer that completely encircles the rim of the cartridge," including, but not limited to .22 caliber ammunition. *Id.* § 74-666.

children's "blood cries out" for them to "add to the costs of the instruments of death." *id.* at 1:44:31 (alteration omitted). (R. C293).

The Ordinance provides that the revenue generated by the Ammunition Tax "shall be directed to the Public Safety Fund to fund operations related to public safety." COOK CTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-677. But Cook County law does not similarly designate where the proceeds of the Firearm Tax are to be directed, and those tax revenues therefore simply flow into the County's general revenue. *Id.*

II. The Second Amendment Tax's effect on Plaintiffs

Guns Save Life ("GSL") is an independent, not-for-profit organization that is dedicated to protecting the Second Amendment rights of Illinois citizens to defend themselves. (R. C420). GSL has many members who reside in Cook County, and the organization holds monthly meetings in Cook County. (R. C420). Its members are subject to the Second Amendment Tax and have paid both the Firearms Tax and the Ammunition Tax. (R. C420, C424–25, C434). Although they have continued to purchase firearms and ammunition in Cook County since the Firearms and Ammunition Taxes came into effect, they nevertheless report doing so at reduced rates because of those taxes. (R. C420–21, C425). Indeed, some members purposefully avoid purchasing firearms and ammunition in Cook County in order to avoid paying the Second Amendment Tax. (R. C420, C425). GSL members will, however, continue to pay the Firearms Tax and Ammunition Tax on the purchases that they do make in Cook County. (R. C420).

Maxon Shooter's Supplies and Indoor Range is a registered retail dealer in firearms and firearm ammunition. (R. C438). It operates a retail gun shop and indoor shooting range in Cook County. (R. C437–38). Maxon sells a full range of rifles and handguns, as well as ammunition for rifles and handguns, including both centerfire and

rimfire ammunition. (R. C438). Maxon is owned and operated by Plaintiff DPE Services, Inc. (R. C437–38). The Second Amendment Tax Ordinance has placed Maxon under a legal obligation to register with the Department of Revenue, (R. C438), to collect and remit the Tax to the Department of Revenue, (R. C438–39), to refrain from absorbing the costs of those taxes, (R. C438–39), and to keep books and records as required by the Ordinance, (R. C438–39). The Ordinance costs Maxon thousands of dollars per year and places Maxon at a competitive disadvantage. (R. C438–39).

Marilyn Smolenski is a resident of Cook County, a member of GSL, and a holder of a valid Illinois Firearm Owner's Identification Card ("FOID Card") and a valid Illinois Concealed Carry license. (R. C424). Ms. Smolenski frequently engages in firearms transactions, and she has previously considered purchasing a Glock 42 in Cook County but declined to do so because of the Firearm Tax. (R. C288, C425). On June 7, 2016, Ms. Smolenski purchased 100 rounds of 9mm ammunition from Maxon. (R. C425). She paid the Ammunition Tax in the amount of $5.00. (R. C428). Ms. Smolenski paid the tax under protest, and on June 8 counsel for Ms. Smolenski submitted her protest of payment of the Ammunition Tax to the Cook County Department of Revenue. (R. C425, C430). Ms. Smolenski intends to continue purchasing ammunition in Cook County in the future, but because of the Ammunition Tax does not intend to purchase as much ammunition in the County as she otherwise would have. (R. C425).

III. Procedural history

GSL, Maxon, and Ms. Smolenski filed a four-count Complaint for Declaratory and Injunctive Relief challenging the Second Amendment Tax on December 17, 2015. (R. C20). The Complaint alleged that the Second Amendment Tax violates the Second Amendment to the federal Constitution, that it violates Section 22 of Article I and the

Uniformity Clause of the Illinois Constitution, and that it is preempted by Section 13.1(b) of the Firearm Owner's Identification ("FOID") Act and Section 90 of the Firearms Concealed Carry Act ("FCCA") insofar as it applies to handguns and handgun ammunition. (R. C36–38). The Complaint brought suit against Zahra Ali, in her official capacity as Director of the Cook County Department of Revenue, Thomas Dart, in his official capacity as the Cook County Sherriff, and Cook County itself.

Defendants moved to dismiss the Complaint on January 29, 2016, arguing that Plaintiffs GSL, Maxon, and Smolenski all lacked standing and that they had failed to state any claim upon which relief could be granted. The Plaintiffs filed an Amended Complaint for Declaratory and Injunctive Relief on February 22, 2016. (R. C180). Pursuant to the court's Order of March 16, 2016 (R. C208), they then filed their response to the motion to dismiss on April 6, 2016, (R. C210).

On June 1, 2016, the Ammunition Tax became effective. On July 21, 2016, GSL, Maxon, and Smolenski filed a motion for leave of court to file a supplemental complaint pursuant to 735 ILCS 5/2-609, in order to present matters relevant to the pending motions to dismiss that arose after the filing of the Amended Complaint. (R. C267). On July 28, 2016, the Circuit Court ordered them to file a Second Amended Complaint by August 4, 2016, and the parties to complete their supplemental briefing in response to the Second Amended complaint by August 18, 2016. (R. C283).

Plaintiffs filed their Second Amended Complaint on August 4, 2016. (R. C285). Defendants filed their supplemental reply in support of their motion to dismiss on August 17, 2018, while Plaintiffs filed their supplemental brief in opposition on August 18, 2016. On October 17, 2016, the trial court issued a Memorandum Opinion and Order granting

in part and denying in part Defendants' motion to dismiss. (R. C332). The court dismissed Ms. Smolenski's and Maxon's challenges to the Firearms Tax (but not the Ammunition Tax) on standing grounds. (R. C337). But it declined to dismiss GSL's challenge to both taxes, allowing the claims against both taxes to go forward. (R. C337).

Following the denial of Defendants' motion to dismiss in principal part, and after a period of limited discovery, the parties cross-moved for summary judgment on the remaining claims. On August 17, 2018, without hearing oral argument on the cross-motions, the Circuit Court denied Plaintiffs' motion and granted summary judgment to Defendants on all claims. (R. C1121). In a brief opinion, the court concluded that the Firearm and Ammunition Taxes did not infringe Plaintiffs' federal and state constitutional rights to bear arms because the taxes "are proper exercises of Cook County's Home Rule taxing powers and do not in any meaningful way impede plaintiffs' ability to exercise their 2nd Amendment right to bear arms." (R. C1123). "Plaintiffs provide no evidence that the Tax will have the effect of preventing their ownership or possession of firearms or that it affects the ability of law-abiding citizens to retain sufficient means of self-defense." (R. C1123).

Even assuming that the tax did burden constitutionally protected conduct, the court determined that it is "substantially related to the important government interest of public safety" because it "provides funds to implement specific policies and programs designed to combat violence." (R. C1123). The court did not address Plaintiffs' argument that the tax was not properly tailored to this goal because *any* revenue measure could provide the same funding, nor did it mention that the proceeds of the Firearm Tax are remitted into the County's general revenue, rather than being directed to any public safety

or crime-prevention purpose. (R. C1123).

The court also rejected Plaintiffs' argument that the taxes are preempted by the Firearms Concealed Carry Act and the FOID Act, reasoning that the Second Amendment Tax was "a valid exercise of Cook County's home rule power to tax" and therefore outside the scope of preemption under those state laws. (R. C1124). Finally, the court held that "Plaintiffs have failed to carry their burden of demonstrating that the different rates of classification [adopted by the challenged tax] violate the Uniformity Clause. (R. C1124).

On August 23, 2018, Plaintiffs timely noticed this appeal. (R. C1127).

ARGUMENT

In the preamble to the challenged Ordinance, the Cook County Board of Commissioners stated its belief that the "presence . . . of firearms in the County . . . detracts from the public health, safety, and welfare." (R. C150). This premise is not one that was acceptable for Cook County to adopt, for both the United States and the Illinois Constitutions protect a fundamental, individual right to possess firearms. *See* U.S. CONST. amend. II; ILL. CONST. art. I, § 22. Starting from this unconstitutional premise, the Board of Commissioners enacted an unconstitutional ordinance. Indeed, the unconstitutionality of Cook County's Firearm and Ammunition Taxes flows directly from binding precedent of the United States and Illinois Supreme Courts. Both courts have struck down taxes on the exercise of a fundamental constitutional right, *see Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 593 (1983); *Boynton v. Kusper*, 112 Ill. 2d 356, 370–71 (1986), and both courts have held that the Second Amendment right is not to be treated as second-class, *see McDonald v. City of Chicago*,

561 U.S. 742, 780 (2010) (plurality); *People v. Aguilar*, 2013 IL 112116, ¶ 21. In light of this binding authority, Cook County's Second Amendment tax plainly violates the right to keep and bear arms.

The Circuit Court upheld the Second Amendment Tax only by dramatically misunderstanding the scope of the right to keep and bear arms. As every court to face the issue has held, the right to *keep and bear* arms obviously must protect the right to *acquire* arms suitable for keeping and bearing—else a State could enact a de facto ban on possessing firearms by prohibiting anyone from *buying* firearms or the ammunition they need to operate them. Such a ban can be no more constitutional under the Second Amendment than a ban on purchasing ink and paper would be under the First. Instead of hewing to these well-established principles, the court below adopted a narrow understanding of what the federal and Illinois constitutions protect. On the theory adopted below, no firearms-related restriction *even triggers* constitutional scrutiny unless it has "the effect of preventing th[e] ownership or possession of firearms" or otherwise deprives law-abiding citizens of "sufficient means of self-defense." (R. C1123). That cramped theory of the Second Amendment and Article I, Section 22 *guts* the right to keep and bear arms, blessing restrictions on the right that have been struck down by courts all across the country. The theory cannot stand.

Because the Second Amendment Tax burdens conduct protected by the right to keep and bear arms, it rests on the horns of a dilemma. The challenged ordinance may be understood in two ways: (1) as an exercise of the County's *taxing* power, or (2) as an exercise of its *regulatory* power. If it is an exercise of the power to tax—as it most naturally reads—then it is plainly unconstitutional for multiple independent reasons.

First, Under the Illinois Constitution, the right to keep and bear arms *is not subject to taxation*; it is "[s]ubject only to the police power." ILL. CONST. art. I, § 22. *Second*, a long line of binding Illinois and U.S. Supreme Court case law holds that the government may not impose a tax that falls *only* on constitutionally protected conduct, unless that tax satisfies strict scrutiny—a test the Second Amendment Tax cannot pass. *See Boynton*, 112 Ill. 2d 356; *Minneapolis Star & Tribune Co.*, 460 U.S. 575. *Finally*, because the lines the Second Amendment Tax draws are arbitrary in numerous ways, the tax is also invalid under the Uniformity Clause, ILL. CONST. art. IX, § 2.

The challenged Ordinance thus cannot be sustained as an exercise of the taxing power. But it is equally doomed if it is understood as an exercise of the County's *regulatory* power. For two statewide laws—the FOID Card Act and the Concealed Carry Act—explicitly preempt local laws touching on "[t]he regulation, licensing, possession, registration, and transportation of handguns and ammunition." 430 ILCS 66/90; *see also* 430 ILCS 65/13.1. Accordingly, if the Second Amendment Tax is understood as effectively *regulating* the possession of handguns and ammunition—by making such possession more difficult—it is thus plainly preempted by these state statutes and cannot stand.

Finally, while the County challenged Plaintiffs' standing below, that challenge fails, and each Plaintiff has demonstrated standing to challenge both the Firearm Tax and the Ammunition Tax. Because the question of standing is a threshold one, we begin our analysis there.

The court below erred in sustaining this unconstitutional Ordinance, and this Court should reverse.

I. Applicable Standards of Review.

This Court "review[s] the trial court's decision as to cross-motions for summary judgment *de novo*." *Schroeder v. Sullivan*, 2018 IL App (1st) 163210, ¶ 25. Whether the undisputed facts show that Plaintiffs have standing to sue is a legal question that this Court reviews *de novo*. *People v. Chatman*, 2016 IL App (1st) 152395, ¶ 27. Likewise, the questions whether the challenged taxes are unconstitutional or preempted by statewide law are issues of law subject to *de novo* review. *See Village of Northfield v. BP America, Inc.*, 403 Ill. App. 3d 55, 57–58 (1st Dist. 2010) (preemption); *People v. Arguello*, 327 Ill. App. 3d 984, 986 (1st Dist. 2002) (constitutional challenges).

II. Plaintiffs have standing to challenge the Second Amendment Tax.

The "central principle" of standing under Illinois law is "very simple: One who is adversely affected in fact by governmental action has standing to challenge its legality . . . ." *Greer v. Illinois Hous. Dev. Auth.*, 122 Ill. 2d 462, 488 (1988) (quotation marks omitted). A plaintiff must be injured by a defendant in such a way that there exists a genuine case or controversy for which a judicial decision would provide a remedy. *Id.* at 488. The injury "must be: (1) distinct and palpable, (2) fairly traceable to the defendant's actions, and (3) substantially likely to be prevented or redressed by the grant of the requested relief." *Id.* at 493 (citations and quotation marks omitted). It is well-settled under Illinois law, moreover, that under circumstances that are satisfied in this action, an association may bring suit on behalf of its members. The Circuit Court was thus right to conclude that Plaintiff GSL has standing, and that determination is sufficient to allow the case to go forward. And for the reasons set forth below, Plaintiffs Maxon and Smolenski also established their standing to challenge both the Firearm and Ammunition Taxes.

A. The Circuit Court correctly held that Guns Save Life has standing, which is sufficient to allow the case to go forward.

Under Illinois Supreme Court precedent, a membership organization has "associational standing" to "bring suit on behalf of its members" if it meets three factors: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *International Union of Operating Eng'rs v. Illinois Dep't of Emp't Sec.*, 215 Ill. 2d 37, 47 (2005) (quoting *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)). As the court below correctly held, Plaintiff GSL satisfies each prong of this tripartite test.

1. The individual members of Guns Save Life would have standing to bring suit in their own right because they have suffered a distinct injury that is traceable to the County's challenged ordinance and would be redressed by the requested declaratory and injunctive relief setting that ordinance aside. As demonstrated by the record evidence below, the members of Guns Save Life "have purchased firearms in Cook County since the passage of the Firearms Tax and have paid the Firearms Tax" and have also "purchased ammunition in Cook County since the passage of the Ammunition Tax and have paid the Ammunition Tax." (R. C420, C425, C434). Its members will continue to do so in the future, albeit at reduced rates. (R. C420, C425). Some members—including Plaintiff Smolenski—likewise now "purposefully avoid purchasing firearms in Cook County to avoid paying the Firearm Tax," (R. C420, C425), and some members "will avoid purchasing ammunition in Cook County to avoid paying the Ammunition Tax" (R. C420, C425).

These harms—paying the Firearm and Ammunition Taxes and refraining from engaging in constitutionally protected conduct because of them—plainly amount to "distinct and palpable" injuries for purposes of the standing analysis. *Greer*, 122 Ill. 2d at 494; *cf. Harris v. City of Zion*, 927 F.2d 1401, 1405 (7th Cir. 1991) (individual who utilized "alternative travel routes" to avoid seeing religious display had standing to bring Establishment Clause challenge). Moreover, the injuries are obviously caused by the challenged Ordinance—the taxes solely and directly exist because of the Ordinance imposing them—and therefore would be redressed if the Ordinance were declared unlawful and struck down. GSL's members would have standing to challenge the Second Amendment Tax in their own right.

2. The interests advanced by this suit are also germane to GSL's purpose. *See International Union of Operating Eng'rs*, 215 Ill. 2d at 47. The purpose of Guns Save Life is to promote and protect "the Second Amendment rights of Illinois Citizens to keep and bear firearms and to defend themselves." (R. C420). As the Circuit Court held, assuming that the challenged taxes "violate the Second Amendment and therefore the elimination of them is . . . germane to the purpose of protecting Illinois citizen's Second Amendment rights"—an assumption Plaintiffs must be granted for purposes of the standing analysis, *Warth v. Seldin*, 422 U.S. 490, 501–02 (1975)—this challenge to their validity "is germane to GSL's stated purpose." (R. C335).

3. Finally, because this suit seeks only declaratory and injunctive relief, judgment may be granted to Plaintiffs without requiring the participation of GSL's individual members. As the United States Supreme Court has explained, " 'individual participation' is not normally necessary when an association seeks prospective or

injunctive relief for its members," *United Food & Commercial Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 546 (1996), for in such a case "it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured," *Warth*, 422 U.S. at 515. Plaintiffs' facial challenge to the Second Amendment Tax is a textbook example of a suit that can be decided without the participation of an association's individual members.

* * * * *

Accordingly, Plaintiff GSL meets all three requirements the Illinois Supreme Court's binding precedent sets out for associational standing, and the Circuit Court was right to conclude that GSL has standing to sue. Because the presence of a single Plaintiff with standing is sufficient to allow the case to go forward, this Court can end its analysis here and need not proceed to examine the standing of the other plaintiffs. *See Bowsher v. Synar*, 478 U.S. 714, 721 (1986); *Arlington Heights v. Metropolitan Hous. Dev. Corp.*, 429 U.S. 252, 264 (1977). Nonetheless, as we show below, the other Plaintiffs also have standing.

B. Plaintiff Smolenski has standing.

Plaintiff Smolenski has suffered distinct and palpable injuries as a result of both of Defendants' taxes. Ms. Smolenski frequently engages in firearms transactions, and she has already sought to purchase a Glock 42 in Cook County but did not do so because of the Firearm Tax. (R. C288, C425). Furthermore, Ms. Smolenski has both (1) purchased firearm ammunition in Cook County in the past and paid the challenged Ammunition Tax (under protest) as part of the purchase, (R. C425); and (2) will purchase firearm ammunition in Cook County in the future, but in reduced amounts, precisely because of the Ammunition Tax (R. C425).

The Circuit Court correctly concluded that these facts give Ms. Smolenski standing to challenge the Ammunition Tax. Payment of the challenged tax under protest clearly suffices to create an injury that is distinct and palpable rather than theoretical or hypothetical. *See DeWoskin v. Loew's Chi. Cinema, Inc.*, 306 Ill. App. 3d 504, 513 (1st Dist. 1999) (plaintiff who "under protest, . . . paid the tax imposed by the [challenged] Ordinance" had demonstrated an injury that was not "theoretical or hypothetical" and had "standing to challenge the constitutionality of the Ordinance on any theory"). And as with Plaintiff GSL's members, because this injury is directly caused by the challenged Ordinance—and would be redressed by judicial relief invalidating it—the other prongs of the standing analysis are met as well. *Greer*, 122 Ill.2d at 492.

The Circuit Court erred, however, in concluding that Plaintiff Smolenski lacked standing to challenge the Firearm Tax because she has not yet paid it. This Court has squarely held that tax ordinances may be challenged on a pre-enforcement basis, before the tax in question has been assessed, collected, or paid. In *Chicago Park Dist. v. City of Chicago*, for instance, this Court allowed the Chicago Park District to challenge a recently enacted tax on boat mooring. 127 Ill. App. 3d 215 (1st Dist. 1984). The tax had not yet been collected or paid—indeed, the lower court had "enjoined the City from collecting the mooring tax" during the suit. *Id.* at 218. Yet this Court concluded the Park District had standing to challenge the tax on a pre-enforcement basis, based on its allegations that the tax "interferes with its bond contracts and regulatory functions" and would "cause an irreplaceable loss of boaters affecting its revenues." *Id.* at 218–19.

As in *Chicago Park District*, so too here. While Ms. Smolenski, like the Park District, has not paid the challenged Firearm Tax yet, it has nonetheless injured her in a

distinct and palpable way, by causing her to refrain from purchasing a firearm she was otherwise interested in buying. (R. C288). The Circuit Court tried to distinguish *Chicago Park District* on the basis that the plaintiff in that case "had a 'real interest' in the case because the tax . . . interfered with bond contracts and regulatory functions, as well as caused an irreplaceable loss of boaters," while Ms. Smolenski does not similarly have "a 'real interest' in the Firearm Tax." (R. C334). But this merely restates *Chicago Park District*'s facts *as though* it is distinguishing them; it does not point to any meaningful difference between that case and this one. Ms. Smolenski has a "real interest" in this case, too—she has declined to purchase a firearm in Cook County because of the challenged tax. (R. C288). That plainly gives her standing to challenge it.

C. Plaintiff Maxon has standing.

Plaintiff Maxon also has standing to challenge both taxes at issue in this case. As the court below recognized, where a company that *sells* goods or services that its customers have a constitutional right to *buy* is itself injured by a restriction on those constitutionally protected sales, it has standing challenge the restriction. (R. C336). This doctrine of "vendor standing" is well established in the federal courts. *See Eisenstadt v. Baird*, 405 U.S. 438, 446 (1972) (vendor of contraceptives had standing to assert the rights of unmarried persons who were denied access to contraceptives); *Craig v. Boren*, 429 U.S. 190, 196–97 (1976) (vendor of alcoholic beverages had third-party standing to assert its customers' constitutional claims); *see also, e.g.*, *Kaahumanu v. Hawaii*, 682 F.3d 789, 797 (9th Cir. 2012); *Ezell v. City of Chicago*, 651 F.3d 684, 696 (7th Cir. 2011); *Reliable Consultants, Inc. v. Earle*, 517 F.3d 738, 743 (5th Cir. 2008); 13A CHARLES ALAN WRIGHT ET AL., FED. PRAC. & PROC. § 3531.9.3 ("Vendors are routinely accorded standing to assert the constitutional rights of customers and prospective

customers," and this rule "has become firmly established."). And it applies here because, as shown below in the discussion of the merits, individual Illinois citizens plainly have a constitutional right to purchase firearms and firearm ammunition. *See infra* part III.A.

Maxon has standing under this doctrine because it is injured by the Second Amendment Tax in multiple ways. First, it is injured by the very fact that it must *collect* the tax. COOK CTY. CODE OF ORDINANCES ch. 74, art. XX, secs. 74-668, 74-670. Illinois courts have repeatedly held that retail dealers, who are charged with collecting a tax, suffer a concrete injury that permits them to challenge the legality of the tax, even when they pass the tax on to their customers. In *Springfield Rare Coin Galleries, Inc. v. Johnson*, for instance, the Supreme Court held that a coin dealer had standing to challenge the constitutionality of a state statute that exempted certain legal tender coins—but not others—from the State's Occupation and Use taxes. 115 Ill. 2d 221, 229 (1986). Although the structure of the taxes in question allowed the coin dealers to pass the taxes on to their customers, the Supreme Court rejected the argument that this "cost-shifting" deprived them of standing. *Id.* at 229–30. Similarly, in *P & S Grain, LLC v. County of Williamson*, the Appellate Court, Fifth District held that local businesses could challenge a recently-enacted sales tax because "as retailers" there were "subject to the tax they are challenging," and thus "they have a real interest in the outcome of the lawsuit." 399 Ill. App. 3d 836, 844 (5th Dist. 2010). And following the rule laid down by the Supreme Court in *Springfield Rare Coin Galleries*, the court rejected the argument that the retailers lacked standing because they could "reimburse themselves for their sales tax liability by charging the sales taxes to their customers," concluding that "that right does not defeat their standing to challenge the imposition of the tax" since "the supreme court has ruled

that a corporation has standing to challenge retail sales taxes even though it might have passed that tax along to its customers." *Id.* at 845–46.

The Circuit Court thought *Springfield Rare Coin Galleries* and *P&S Grain* were distinguishable because in those cases "the taxes at issue were taxes on the retailers themselves as opposed to sales taxes on specific items sold by those retailers," whereas the taxes challenged in this case "are not on the occupation of being a firearm retailer." (R. C335). That was error. As an initial matter, the court's reading of *P&S Grain* is simply incorrect: the tax in that case was a sales tax, not an occupation tax. 399 Ill. App. 3d at 837, 838, 839, 840, 841, 842, 844, 845, 846, 848. To be sure, the sales tax there was on *all* sales within the County, not just the sales of specific items, but it is hard to see how the number of purchases a sales tax covers can make a meaningful difference to the standing analysis. And in any event, the Circuit Court's distinction between a "sales tax" on specific goods and an "occupation tax" on the business of selling them is itself irrelevant to the standing analysis. The question for standing purposes is not what the tax in question is called, but rather whether the retailer challenging it is injured thereby. Where the retailer must collect and remit it, the binding precedent in *Springfield Rare Coin Galleries* holds that it has suffered sufficient injury to give it standing—even if it may "pass[ ] the burden to the buyer by means of a price increase." 115 Ill.2d at 229. The same reasoning applies here, no matter whether the tax is called an "occupation tax" or a "sales tax."

Finally, Maxon has standing to challenge both the Firearm Tax and the Ammunition Tax even under the Circuit Court's stingy view of vendor standing, because it is independently injured by the taxes—apart from the collection and remittance of the

taxes themselves. Relying on this Court's decision in *Chicago Park District*, the court below held that a vendor has standing to challenge a tax that causes it an "adverse economic impact." (R. C336). *See Chicago Park Dist.*, 127 Ill. App. 3d at 218–19 (Park District had standing to challenge boat-mooring tax because it would "cause an irreplaceable loss of boaters affecting its revenues"). Here the challenged ordinance injures Maxon in two ways: by imposing burdensome compliance costs and by reducing Maxon's revenue.

The record evidence shows that Maxon's "costs for complying with the Firearms Tax are substantial, and it expects that its costs for complying with the Ammunition Tax to be even greater." (R. C438). Indeed, because the County requires Maxon to report individual *rounds* of rimfire and centerfire ammunition sold, while Maxon's software tracks *boxes* of ammunition but not *rounds*, Maxon's employees must spend many hours each month independently collecting and tabulating its ammunition inventory and sales by round, for the sole purpose of complying with the Ammunition Tax, at the cost of thousands of dollars each year. (R. C439). The tax has also placed Maxon at a competitive disadvantage compared to retailers located outside Cook County (R. C421, C423) (out-of-county advertisement for firearm and ammunition sales free from the "[Cook] county tax"), with the result that since the Ammunition Tax went into effect through December 2016, Maxon lost an estimated $51,000 in potential revenue. (R. C1055–56). The Circuit Court correctly ruled that these economic injuries beyond question give Maxon standing to challenge the Ammunition Tax. (R. C336). It held that Maxon did not have standing to challenge the Firearm Tax because "plaintiffs do not allege any . . . compliance costs" related to that tax, (R. C336), but that was incorrect.

Maxon has averred that the "costs for complying with the Firearms Tax are substantial," (R. C438), and it thus has standing to challenge that tax, too, under the Circuit Court's own reasoning.

Accordingly, while GSL's standing is alone enough to allow this case to go forward, all three Plaintiffs have standing to challenge both the Firearm and Ammunition Taxes.

III. The Second Amendment Tax burdens conduct protected by the Second Amendment and Article I, Section 22 of the Illinois Constitution.

Courts analyzing challenges under the federal and Illinois constitutional right to keep and bear arms have generally applied a two-step analysis. First, they conduct "a textual and historical inquiry" to determine whether the challenged law "restrict[s] activity protected by the [right]." *Ezell*, 651 F.3d at 701. Second, if the challenged provision falls within the scope of the right to keep and bear arms, courts scrutinize "the regulatory means the government has chosen and the public-benefits end it seeks to achieve." *Id.* at 703. *See also Wilson v. County of Cook*, 2012 IL 112026, ¶¶ 41–42 (adopting similar "two-pronged approach"). Here, the Second Amendment Tax fails this analysis as a matter of law, for it plainly burdens conduct protected by the right to keep and bear arms and it cannot withstand any level of constitutional scrutiny. The Circuit Court should have granted summary judgment to Plaintiffs.

A. The United States and Illinois Constitutions both protect the right to acquire firearms and ammunition.

The Firearm Tax burdens the acquisition of firearms, and the Ammunition Tax burdens the acquisition of ammunition, by increasing the cost of both types of purchases. COOK CTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-668. Both taxes thus directly burden the right to keep and bear arms—for there can be no question that the federal

Second Amendment, and Article I, Section 22 of the Illinois Constitution, protect the fundamental constitutional right of individuals to acquire firearms and ammunition for firearms.

The Second Amendment to the federal Constitution protects "the right of the people to keep and bear Arms," U.S. CONST. amend. II, and the Constitution of this State similarly provides that "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed," ILL. CONST. art. I, § 22. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court held that the Second Amendment to the United States Constitution protects an individual right to keep and bear arms and that the "central component" of that right is "individual self-defense," *id.* at 599. Following *Heller*, the Supreme Court in *McDonald* confirmed that the Second Amendment right is fundamental and that it is fully applicable to the States. *See McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010) (plurality); *id.* at 805 (Thomas, J., concurring in part and concurring in judgment). And in *Aguilar*, 2013 IL 112116, the Illinois Supreme Court held that the Second Amendment also "protects the right to possess and use a firearm for self-defense outside the home." *Id.* ¶ 21.

Following *Heller*, courts have recognized that "the right to possess firearms for protection implies . . . corresponding right[s]" without which "the core right wouldn't mean much." *Ezell*, 651 F.3d at 704 (addressing right to train with firearms). And the right to keep and bear arms would mean little indeed without the corresponding right to acquire arms—and the ammunition they need to function. Indeed, if the core right to possess a firearm "operable for the purpose of immediate self-defense," *Heller*, 554 U.S. at 635, "is to have any meaning," *Radich v. Guerrero*, 2016 WL 1212437, at *7 (D. N.

Mar. I. Mar. 28, 2016), it necessarily "must also include the right to *acquire* a firearm"—making the right of acquisition the "*most fundamental* prerequisite of legal gun ownership," *Illinois Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930, 938 (N.D. Ill. 2014); *see also, e.g.*, *United States v. Marzzarella*, 614 F.3d 85, 92 n.8 (3d Cir. 2010) ("[P]rohibiting the commercial sale of firearms . . . would be untenable under *Heller*.").

Likewise, "without bullets, the right to bear arms would be meaningless." *Jackson v. City & Cty. of S.F.*, 746 F.3d 953, 967 (9th Cir. 2014). Accordingly, the courts have uniformly held that "the right to possess firearms for protection implies a corresponding right to obtain the bullets necessary to use them." *Id.* (quotation marks omitted); *see also Association of N.J. Rifle & Pistol Clubs, Inc. v. Grewal*, 2018 WL 4688345, at *9 (D.N.J. Sept. 28, 2018) (holding that "the Second Amendment protects firearms and the ammunition and magazines that enable arms to fire" because "a regulation eliminating a person's ability to obtain or use ammunition could . . . make it impossible to use firearms for their core purpose" (brackets and quotation marks omitted)); *Duncan v. Becerra*, 265 F. Supp. 3d 1106, 1117 (S.D. Cal. 2017), *aff'd*, 742 Fed. App'x 218 (9th Cir. 2018) ("Without protection for the closely related right to keep and bear ammunition magazines for use with the arms designed to use such magazines, the Second Amendment would be toothless." (quotation marks omitted)).

These conclusions are consistent with the traditional understanding and practices of the People of this Nation, as "[t]he right to keep arms, necessarily involves the right to purchase them . . . and to purchase and provide ammunition suitable for such arms." *Andrews v. State*, 50 Tenn. 165, 178 (1871); *Heller*, 554 U.S. at 583 n.7 ("What law

forbids the veriest pauper, if he can raise a sum sufficient for the purchase of it, from mounting his Gun on his Chimney Piece . . . ?" (quoting SOME CONSIDERATIONS ON THE GAME LAWS 54 (1796)).

Accordingly, the Firearm and Ammunition Taxes burden rights protected by the Second Amendment and Article I, Section 22—the rights to acquire firearms and the ammunition they need to function.

B. The Circuit Court erred in concluding that the Second Amendment Tax does not burden constitutionally protected conduct.

The Circuit Court nonetheless held that the Second Amendment Tax "does not burden the right" protected by the Second Amendment and Article I, Section 22 of the Illinois Constitution. (R. C1123). That conclusion was based on three considerations: (1) that the challenged tax somehow falls within *Heller*'s exception for "long-standing laws imposing conditions and qualifications on the commercial sale of arms," (R. C1122); (2) that "[n]o constitutionally relevant burden exists" because the tax "neither takes away firearms nor restricts their ownership or possession," (R. C1123); and (3) that the marginal "additional costs" the tax imposes on firearm and ammunition acquisition "do not in any meaningful way impede plaintiffs' ability to exercise their 2nd Amendment right to bear arms" because there is "no evidence that the Tax will have the effect of preventing their ownership or possession of firearms or that it affects the ability of law-abiding citizens to retain sufficient means of self-defense," (R. C1123). None of these arguments holds water.

1. In *Heller*, the U.S. Supreme Court identified a handful of "presumptively lawful regulatory measures" that, based on its reading of the Second Amendment's text and history, it took to be *prima facie* outside "the full scope of the Second Amendment."

554 U.S. at 626–27 & n.26. One of those presumptive exceptions is comprised of "laws imposing conditions and qualifications on the commercial sale of arms," *id.* at 626–27, and the Circuit Court invoked this language as giving the Second Amendment Tax a "presumption of validity," (R. C1122). But whatever the scope of this category of presumptively lawful regulations, it simply cannot create a blanket exception for "commercial"-type restrictions that a State may enjoy merely by casting all manner of restrictions on the right to keep and bear arms as restrictions on their "commercial sale." After all, "[i]f there were somehow a categorical exception for these restrictions, it would follow that there would be no constitutional defect in prohibiting the commercial sale of firearms. Such a result would be untenable under *Heller*." *Marzzarella*, 614 F.3d at 92 n.8.

In any event, the Court need not determine the scope of *Heller*'s exception in this case, since the Second Amendment Tax is *not* a "condition[ ] [or] qualification[ ] on the commercial sale of arms," *Heller*, 554 U.S. at 627—it is a *tax* that *directly targets* their sale. While the Second Amendment Tax is *collected* by firearms and ammunition retailers, COOK CTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-670, by law it must be *borne* by *the buyer*, *id.* sec. 74-668—making it wholly unlike conditions or qualifications of sale, which directly bind retailers. As shown below, *see supra* part IV.B, it is well settled across the entire universe of constitutional rights that a tax that *singles out* and *directly impedes* the exercise of a constitutional right, far from enjoying a presumption of validity, must satisfy the highest level of constitutional scrutiny to be valid.

2. The Circuit Court also seemed to conclude that the challenged taxes were constitutional because they did not amount to "a weapons ban," suggesting that the scope of the constitutional right to keep and bear arms was limited to a restriction that either "takes away firearms" or "restricts their ownership or possession." (R. C1123). That understanding of the constitutional guarantee is insupportable.

There is no basis for the conclusion that the Second Amendment and Article I, Section 22 may only be invoked to challenge a flat "weapons ban." (R. C1123). While the law struck down in *Heller* itself was a flat ban on the possession of handguns in the home, the courts have repeatedly struck down restrictions on the right to keep and bear arms that fall short of an outright ban. The Seventh Circuit, for example, has invalidated zoning regulations that "severely limit where shooting ranges may locate" under the Second Amendment, *Ezell v. City of Chicago*, 846 F.3d 888, 894, 896 (7th Cir. 2017); and it has also struck down a Chicago ordinance preventing anyone "under age 18 from entering a firing range," *Id.* at 896, 898. The U.S. District Court for the Northern District of Illinois declared unconstitutional under the Second Amendment a law prohibiting "virtually all sales and transfers of firearms inside [Chicago's] limits," *Illinois Ass'n of Firearms Retailers*, 961 F. Supp. 2d at 930—even though that measure no more "t[ook] away firearms" than the Second Amendment Tax, (R. C1123). Likewise, the D.C. Circuit has struck down as unconstitutional under the Second Amendment several restrictions related to the registration of firearms—including the requirement that an application for firearm registration must bring the firearm in for inspection, *Heller v. District of Columbia ("Heller III")*, 801 F.3d 264, 277 (D.C. Cir. 2015); the requirement that a gun owner must re-register his or her firearms every three years, *id.* at 277–78; the

requirement that applicants must pass "a test of knowledge about local gun laws," *id.* at 279; and the rule that a gun owner may not register "more than one pistol . . . during any 30–day period," *id.* at 280. None of these restrictions amounted to "a weapons ban," (R. C1123), but that did not exempt them from constitutional scrutiny. It cannot exempt the Second Amendment Tax from scrutiny either.

The Circuit Court cited the federal-court decisions in *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015), and *Wollschlaeger v. Governor of Florida*, 848 F.3d 1293 (11th Cir. 2017), in support of its understanding of the scope of the right to keep and bear arms, but those cases are completely irrelevant. While *Friedman* did involve "a weapons ban," (R. C1123), it did not hold or suggest that the Second Amendment *only* applies to such bans—nor could it have, given the Seventh Circuit's previous decision in *Ezell*, 651 F.3d 684 (preliminarily enjoining Chicago Ordinance preventing the establishment of target ranges within city limits). Plaintiffs have not invoked *Friedman* in support of their challenge, and the case simply has no relevance. And *Wollschlaeger* not only did not involve "a weapons ban," (R. C1123), it did not involve a Second Amendment challenge *at all*. Rather, it concerned a *First* Amendment challenge to certain restrictions Florida had placed on the questions physicians may ask patients about firearms.

In any event, the Circuit Court's conclusion that the Second Amendment Tax "neither takes away firearms nor restricts their ownership or possession" is simply false. (R. C1123). While the challenged ordinance does not confiscate any firearms, it *does* restrict their ownership and possession—for in the ordinary case one cannot own or possess constitutionally protected arms without *purchasing* them, *see supra* part III.A,

and the Second Amendment Tax obviously *does* effect and indeed restrict the marginal ability to purchase firearms and ammunition by raising their cost. Indeed, that is the very purpose and design of the tax: too "make it difficult for people to have guns," 2012 Hearing at 1:18:56, (R. C.291), by "add[ing] to the costs of the instruments of death," 2015 Hearing at 1:44:31, (R.C293).

A tax that singles out the purchase of firearms—with the aim of making it "difficult for people to have guns"—is not exempt from constitutional scrutiny. (R. C.291).

3. Finally, the Circuit Court thought the Firearm and Ammunition Taxes were outside the scope of the right to keep and bear arms because the amount of the taxes is so low that they will not "have the effect of preventing [Plaintiffs'] ownership or possession of firearms" and therefore "law-abiding citizens . . . retain sufficient means of self-defense." (R. C1123). This line of reasoning is directly refuted by binding precedent.

In *Boynton v. Kusper*, for example, the Supreme Court rejected *precisely* this argument in striking down a $10 tax that the State had imposed on the issuance of marriage licenses. "It may be argued," the court acknowledged, "that the amount of the tax . . . does not . . . impose a significant interference with the fundamental right to marry." 112 Ill. 2d 356, 369 (1986). But that consideration was *irrelevant*, the court held, since "[o]nce it is conceded that the State has the *power* to . . . single out marriage for special tax consideration, there is no limit on the amount of the tax that may be imposed," and "long before political considerations limit the amount of this tax some people will be forced by the tax imposed to alter their marriage plans and will have suffered a serious intrusion into their freedom of choice in an area in which we have held such freedom to

be fundamental." *Id.* at 369–70 (quotation marks and brackets omitted). On the Circuit Court's reasoning, *Boynton* should have been decided the other way—or, at the very least, the Supreme Court should have engaged in an analysis of whether the plaintiffs could afford the $10 tax, and whether enough citizens could pay it that it did not "in any meaningful way impede" the right to marry. (R. C1123). The court below made no attempt to distinguish *Boynton* on this point—indeed, it did not cite the case a single time—yet it is fatal to its conclusion that the Second Amendment Tax does not meaningfully burden Plaintiffs' constitutional rights.

Here, Plaintiffs' rights have been burdened at least as much as they were in *Boynton*. The $25 Firearm Tax is more costly than the $10 marriage tax at issue in that case. And the Ammunition Tax adds a substantial amount to the cost of ammunition. (R. C428) (Ammunition Tax added $5.00—or 12.5%—to the cost of $39.98 ammunition purchase).

On the Circuit Court's faulty logic, a plaintiff can *never* challenge *any* tax as constitutionally invalid, unless he can show that the tax is so high that it prices out some (undefined) portion of the citizenry. (R. C1123). State and local governments cannot be allowed to insulate taxes from judicial scrutiny in this way. *See Boynton*, 112 Ill. 2d at 369–70; *see also Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 668 (1966) (holding that the government may not tax the right to vote and that "[t]he degree of the discrimination is irrelevant."); *City of Blue Island v. Kozul*, 379 Ill. 511, 517 (1942) ("[I]f a small license fee or license tax may be lawfully imposed on the publication or circulation of printed matter, it may be increased to such a high degree that publication or circulation would be effectively prohibited." (citation omitted)).

The Circuit Court asserted that "courts have consistently understood that [the] additional costs" imposed by a tax "by themselves do not render a tax unconstitutional." (R. C1123). But the case it cites for this proposition concerns the constitutional limits on state taxation imposed by the dormant commerce clause, *Coverdale v. Arkansas-Louisiana Pipe Line Co.*, 303 U.S. 604, 612 (1938)—limits that are entirely irrelevant, in this case, which does not involve any dormant commerce clause challenge. Whatever the rule in the commerce clause context, as shown below, where a tax *singles out* constitutionally protected conduct for taxation, that *does* render it unconstitutional (unless it can satisfy strict scrutiny)—no matter how marginal the amount of the additional costs. *See infra* Part IV.B; *see also Boynton*, 112 Ill. 2d at 369–70; *Harper*, 383 U.S. at 668; *Kozul*, 379 Ill. at 517.

The court below also cited the federal Second Circuit's decision in *Kwong v. Bloomberg*, 723 F.3d 160 (2d Cir. 2013), but that case provides it with no support. While *Kwong* did reject a Second Amendment challenge to a handgun licensing fee—and the case is thus at least closer to the mark than *Coverdale*—the court in *Kwong did not* rest its decision on the reasoning adopted below that the "additional costs" imposed by a tax or fee "by themselves do not render a tax unconstitutional." (R. C1123). Rather, the court *applied heightened scrutiny*—ultimately upholding the fee because it found it was "designed to allow the City of New York to recover the costs incurred through operating its licensing scheme . . . ." *Kwong*, 723 F.3d at 168. Where a tax or fee on constitutionally protected conduct serves only "to defray costs associated with registration" and "[t]here is no indication that [it] was imposed for any other purpose," courts have held that the tax is constitutional. *Justice v. Town of Cicero*, 827 F. Supp. 2d 835, 842 (N.D. Ill. 2011); *see*

also Heller v. District of Columbia, 698 F. Supp. 2d 179, 192 (D.D.C. 2010). But the revenue from the Second Amendment Tax does not go to defray such registration costs; indeed, Cook County has no firearm licensing or registration system and is preempted by State law from establishing one. 430 ILCS 65/13.1; 430 ILCS 66/90. The tax proceeds rather go to fund crime prevention programs or into the general revenue. COOK CTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-677. And the undisputed evidence shows that the purpose of the tax is the illegitimate one of "mak[ing] it difficult for people to have guns." 2012 Hearing at 1:18:56, (R. C.291).

To be sure, there is dicta in *Kwong* suggesting that the registration fee there was merely "a marginal, incremental or even appreciable restraint on one's Second Amendment rights." 723 F.3d at 173 n.2 (quotation marks omitted). But the Second Circuit *expressly did not rest its holding* on that reasoning. *Id.* at 168. Indeed, a concurrence in *Kwong* argued at length that heightened scrutiny necessarily applied because "[a]ny non-nominal licensing fee necessarily constitutes a substantial burden on [the Second Amendment] right," *id.* at 173 (Walker, J., concurring), and the majority responded by clarifying that "we need not and do not decide whether heightened scrutiny is appropriate here because we conclude that [the fee] survives 'intermediate scrutiny,' " *id.* at 168 n.15 (majority opinion). To the extent the decision in *Kwong* has any persuasive authority on this issue, then, it further indicates that *heightened scrutiny does apply*.

Finally, the Circuit Court's contention that the challenged taxes do not infringe the right to keep and bear arms because "law-abiding citizens . . . retain sufficient means of self-defense," (R. C1123), is flatly contrary to the U.S. Supreme Court's holding in

Heller. There, too, the government argued that it could restrict the right to keep and bear so long as citizens retained sufficient means of self-defense—arguing that "it is permissible to ban the possession of handguns so long as the possession of other firearms (*i.e.*, long guns) is allowed." 554 U.S. at 629. The U.S. Supreme Court rejected that argument out of hand, *id.*, foreclosing the Circuit Court's suggestion Chicago is free to restrict the right to keep and bear arms in any way it wants, so long as "sufficient means of self-defense" remain available, by some vague and unarticulated standard.

IV. If the Second Amendment Tax is understood as an exercise of the taxing power, as the Circuit Court concluded, it is unconstitutional under the Second Amendment, Article I, Section 22 of the Illinois Constitution, and the Uniformity Clause.

As demonstrated in the previous part, the Firearm and Ammunition Taxes squarely burden constitutionally protected conduct—the right to *acquire* the arms that the federal and state constitutions say citizens must be allowed to keep and bear—and they do not fall within any exception to the scope of those constitutional guarantees. Because that is so, the challenged taxes rest on the horns of a dilemma. As the Circuit Court recognized, (R. C1124), and as we elaborate in the following Part, if the challenged Ordinance is understood as a *regulatory* measure, it is plainly preempted by two state-wide laws: the Firearm Owners Identification ("FOID") Card Act, which preempts any local ordinances governing "the regulation, licensing, possession, and registration of handguns and ammunition for a handgun . . . by a holder of a valid Firearm Owner's Identification Card," 430 ILCS 65/13.1(b), and the Firearms Concealed Carry Act ("FCCA"), which similarly makes the "regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns" "exclusive powers and

functions of the State," 430 ILCS 66/90. To escape preemption under these provisions, the challenged Ordinance *must* be understood as an exercise of the *taxing* power.

But while understanding the challenged law as a tax may save it from *preemption*, it is *fatal* to its constitutionality. For understood as an exercise of the taxing power, the ordinance is plainly unconstitutional for three reasons: (A) because the Illinois Constitution makes clear by its plain text that the right to keep and bear arms *is not subject to taxation*, but rather is "[s]ubject only to the police power," ILL. CONST. art. I, § 22; (B) because a long line of binding Illinois and U.S. Supreme Court case law holds that the government may not impose a tax that falls *only* upon constitutionally protected conduct, unless that tax satisfies strict scrutiny—a test the Second Amendment Tax cannot pass, *see Boynton*, 112 Ill. 2d 356; *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575 (1983); and (C) because the Second Amendment Tax draws arbitrary and unreasonable lines, rendering it unconstitutional under the Uniformity Clause, ILL. CONST. art. IX, § 2. We address these reasons in turn.

A. Under Article I, Section 22, the right to keep and bear arms is not subject to the taxing power.

Because the Second Amendment Tax "imposes a burden on conduct falling within the scope of the second amendment guarantee," the next step would ordinarily be to "determine the appropriate standard of scrutiny" applicable to the tax. *Wilson*, 2012 IL 112026, at ¶¶ 40–41. If it is understood as an exercise of the taxing power, however, the challenged Ordinance must be invalidated categorically before the question of the correct standard of scrutiny even arises, for imposing a *tax* on the right to keep and bear arms is *flatly prohibited* by the Illinois Constitution.

Article I, Section 22 of the state Constitution declares that "the right of the individual citizen to keep and bear arms" is "[s]ubject *only to the police power*." ILL. CONST. art. I, § 22 (emphasis added). As numerous cases explain, under the state Constitution, "[t]he power to regulate and the power to tax are distinct powers," *Rozner v. Korshak*, 55 Ill. 2d 430, 432 (1973); *see also Greater Chi. Indoor Tennis Clubs, Inc. v. Village of Willowbrook*, 63 Ill. 2d 400, 403 (1976); *Paper Supply Co. v. City of Chicago*, 57 Ill. 2d 553, 576 (1974); *see also* ILL. CONST. art. 7, § 6(a) (distinguishing the power "to regulate for the protection of the public health, safety, morals and welfare" and "to tax"). While the government may regulate the right to keep and bear arms, within constitutional limits, in pursuance of its police power, by the plain terms of the Constitution it has no authority to single out the exercise of that right for taxation.

The Circuit Court did not rebut—or even mention—the Illinois Constitution's bar on targeting the right to keep and bear arms for special taxation, and it is fatal to the Second Amendment Tax. This alone demands reversal.

B. In the Alternative, the Second Amendment Tax must be subjected to strict scrutiny.

Even setting aside the categorical invalidity of the Second Amendment Tax under the Illinois Constitution, determining the appropriate standard of scrutiny in this case is an easy question. For a clear line of binding case law dictates that "the imposition of [a] special tax" that poses "a *direct* impediment to the exercise of [a] fundamental right . . . *must be subjected to the heightened test of strict scrutiny*." *Boynton*, 112 Ill. 2d. at 369 (second emphasis added).

As noted above, in *Boynton* the Illinois Supreme Court dealt with an additional $10 fee the State had imposed on top of the ordinary fee for issuing a marriage license,

the proceeds of which were paid "into the Domestic Violence Shelter and Service Fund." *Id.* at 359. The Supreme Court concluded that because the additional $10 charge's "sole purpose is to raise revenue which is deposited in the Domestic Violence Shelter and Service Fund," rather than to reimburse local governments for their "service of issuing, sealing, filing, or recording the marriage license," "this portion of the fee is a tax." *Id.* at 365. And that tax, the court held, was subject to strict scrutiny, because it "singled out" and "impose[d] a *direct* impediment to the exercise of the fundamental right to marry." *Id.* at 369. Reasoning that the tax was not narrowly tailored to advance a compelling government interest, the court concluded that it "does not meet the strict-scrutiny test," and it struck the tax down. *Id.* at 369.

The decision in *Boynton* disposes of this case. Like the right to marry, it is now beyond dispute that the right to keep and bear arms is "fundamental to our scheme of ordered liberty" and cannot "be singled out for special—and specially unfavorable—treatment." *McDonald v. City of Chicago*, 561 U.S. 742, 743, 767, 778–79 (2010) (emphasis omitted). And just like the marriage tax in *Boynton*, the Second Amendment Tax *singles out* and *directly impedes* the exercise of the right to keep and bear arms by "imposing a special tax" on the purchase of firearms and ammunition that is paid by those seeking to exercise their Second Amendment rights and *no one else*. *Boynton*, 112 Ill. 2d at 369–70.

These principles of Illinois law are in accord with *decades* of federal Supreme Court decisions holding that the government may not single out the exercise of fundamental constitutional rights for special tax penalties unless that discriminatory tax treatment is necessary to advance government interests of the highest import. Because, as

Chief Justice Marshall famously observed, the power to tax is the "power to destroy," *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819), taxation is "a powerful weapon against the taxpayer selected," *Minneapolis Star & Tribune Co.*, 460 U.S. at 585. Accordingly, as the Court put it in 1944, law-abiding citizens cannot "be required to pay a tax for the exercise of . . . a high constitutional privilege." *Follett v. Town of McCormick*, 321 U.S. 573, 578 (1944).

In *Grosjean v. American Press Co.*, for instance, the Supreme Court struck down a state tax on the publication of advertisements in newspapers or magazines, which, it concluded, amounted to "a deliberate and calculated device in the guise of a tax to limit the circulation of information." 297 U.S. 233, 250 (1936). The Court reaffirmed this holding more recently, in *Minneapolis Star & Tribune*, where it struck down a state tax on the paper and ink used by newspapers. 460 U.S. 575. That tax, the Court reasoned, "singled out the press for special treatment," and "[a] tax that burdens rights protected by the First Amendment cannot stand unless the burden is necessary to achieve an overriding governmental interest." *Id.* at 582. Similarly, in *Arkansas Writers' Project, Inc. v. Ragland*, the Court again reiterated the rule, striking down "Arkansas' system of selective taxation" of certain magazines because "[o]ur cases clearly establish that a discriminatory tax on the press burdens rights protected by the First Amendment" and thus must be "necessary to serve a compelling state interest." 481 U.S. 221, 227, 230, 231 (1987).

Other cases illustrate that the principles that undergird *Minneapolis Star & Tribune* and *Arkansas Writers' Project* extend well beyond the First Amendment freedom of the press. The United States Supreme Court has, for example, struck down

taxes that targeted religious practice. *See Follett*, 321 U.S. at 577–78; *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943). It has also held unconstitutional fees with no indigency exception that are imposed on standing for and voting in elections. *See generally Lubin v. Panish*, 415 U.S. 709 (1974); *Harper*, 383 U.S. 663.

Although these decisions rest on different constitutional provisions, a single overarching principle unites them: "[a] state may not impose a charge for the enjoyment of a right granted by the federal constitution" absent a compelling justification. *Murdock*, 319 U.S. at 113. Here, the County has enacted a discriminatory tax that specially burdens the exercise of a fundamental right protected by both the federal and state constitutions: the right to keep and bear arms. On the reasoning of these cases, that tax cannot stand unless it satisfies strict constitutional scrutiny.

Although it concluded that the challenged Ordinance was an "exercise of Cook County's . . . power to tax," (R. C1124), the Circuit Court did not address—or even cite—*any* of these binding Illinois and U.S. Supreme Court cases. Instead, the court, inexplicably and without any analysis whatsoever, applied *intermediate* scrutiny, asking only whether the challenged tax is "substantially related to the important government interest of public safety." (R. C1123). For the reasons we turn to next, the answer to that question is plainly no, and the Second Amendment Tax flunks even intermediate scrutiny. But the decision to apply intermediate scrutiny was itself reversible error, given the binding precedent holding that "the imposition of [a] special tax" that poses "a *direct* impediment to the exercise of [a] fundamental right . . . must be subjected to the heightened test *of strict scrutiny*." *Boynton*, 112 Ill. 2d. at 369 (second emphasis added).

C. The Second Amendment Tax fails any level of heightened constitutional scrutiny.

Accordingly, under binding precedent that the court below made no effort to rebut or distinguish, the Firearm and Ammunition Taxes must be subjected to strict scrutiny. But even under the intermediate scrutiny applied by the Circuit Court,[3] the challenged taxes must be struck down for multiple reasons.

1. To begin, the Second Amendment Tax fails any level of heightened scrutiny because its text and history show that it was enacted with the *specific purpose* of *suppressing Second Amendment rights*, and that purpose, far from substantial or compelling, is illegitimate.

The true design and purpose of the Firearm Tax is evident from the very preamble of the ordinance that enacted it, which baldly declares that the "presence . . . of firearms in the County . . . detracts from the public health, safety, and welfare." (R. C150). And the statements of the officials who enacted the challenged tax remove any conceivable doubt about their motivation. In the November 2, 2012, meeting at which the Board of Commissioners considered the Firearm Tax, Commissioner Sims, one of the tax's sponsors, could not have been clearer: "At least we can make it difficult for people to have guns . . . . If you can't afford it, you won't buy it." 2012 Hearing at 1:18:56. (R. C291). And Commissioner Suffredin, another supporter of the bill, emphasized that "there are way too many guns in this community." *Id.* at 1:09:25. (R. C291). The Ammunition Tax suffers from the same illegitimate motive. As Commissioner Boykin

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[3] It is well settled that where a law burdens Second Amendment rights, "some form of heightened scrutiny" is required. *Wilson*, 2012 IL 112026, at ¶ 42; *see also Heller*, 554 U.S. at 628 n.27; *Ezell*, 651 F.3d at 706.

explained when supporting the measure, that tax was designed to "add[ ] to the costs of the instruments of death." 2015 Hearing at 1:44:31. (R. C293).

Because of its wholly illegitimate motive, the Second Amendment Tax is unconstitutional for the same reason as the tax struck down in *Grosjean*. The U.S. Supreme Court struck down the Louisiana tax at issue in that case because its "history and . . . present setting," 297 U.S. at 250—history which included evidence that the tax had been targeted at a number of large Louisiana papers that had been critical of Senator Huey Long, who had advocated for the tax in the State Legislature by describing those newspapers as "lying newspapers" and characterizing the tax "as 'a tax on lying,' " *Minneapolis Star & Tribune*, 460 U.S. at 579–80—indicated that it was "a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public is entitled in virtue of the constitutional guaranties," *Grosjean*, 297 U.S. at 250. Courts have already applied similar reasoning in the Second Amendment context, reasoning that "it is not a permissible strategy to reduce the alleged negative effects of a constitutionally protected right by simply reducing the number of people exercising the right," *Grace v. District of Columbia*, 187 F. Supp. 3d 124, 148 (D.D.C. 2016) (quotation marks omitted), *aff'd sub nom. Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017), and that the hypothesis "that more guns lead to more gun theft, more gun accidents, more gun suicides, and more gun crimes" cannot justify a deliberate attempt to "limit[ ] the number of guns in circulation," *Heller III*, 801 F.3d at 280.

So too here, the history of the Second Amendment Tax demonstrates that it is a deliberate and calculated device to *suppress the quantity* of firearms and ammunition present in Cook County, out of the constitutionally impermissible belief that the

"presence . . . of firearms in the County . . . detracts from the public health, safety, and welfare." (R. C150). Once again, the Circuit Court did not even address this argument—alone a sufficient reason to reverse.

2. Even setting the tax's plainly unconstitutional purpose aside, the tax still fails any heightened constitutional scrutiny. The Circuit Court held that the Second Amendment Tax passes constitutional muster because it is "substantially related to the important government interest of public safety." (R. C1123). But while public safety is, without question, an important government interest, that interest does not justify this tax.

As an initial matter, the Circuit Court made no effort to defend the justification that the Second Amendment Tax itself expressly adopts: that the tax will increase "the public health, safety, and welfare" by nakedly reducing the "presence . . . of firearms in the County." (R. C150). The court was wise not to adopt this justification, for even setting aside its constitutional illegitimacy, *see supra* part IV.C.1, this justification makes no sense. The overwhelming majority of guns used in violent crime are not acquired from the retail market. *See, e.g.*, CAROLINE WOLF HARLOW, BUREAU OF JUSTICE STATISTICS, SPECIAL REPORT, FIREARM USE BY OFFENDERS 1 (Nov. 2001, revised Feb. 4, 2002), http://goo.gl/zOYo7d; JAMES D. WRIGHT & PETER H. ROSSI, ARMED & CONSIDERED DANGEROUS xxx (2d ed. 2008); BUREAU OF ALCOHOL, TOBACCO, AND FIREARMS, CRIME GUN TRACE REPORTS (2000): *Chicago* 8 (July 2002), https://goo.gl/MUXuzN (over 97% of those who possessed guns that had been used in crimes in Chicago in 2000 did not buy the guns at retail). The County's taxes thus can have only a *minuscule effect* on the quantity of crime guns. And even supposing that the tax *could* cause some minor reduction in the number of firearms in the hands of criminals—and further supposing that

this reduction would lead to a reduction in crime rates—that supposed public safety benefit would have to be balanced against the challenged tax's very real public safety *costs*: the diminished ability of law-abiding citizens to *defend* themselves, their homes, and their families from violent crime. The Circuit Court made *no* effort to determine whether, taking all this into account, the Second Amendment Tax yields *any net* public safety benefit.

Instead, although the court below cast the justification of the ban in terms of public safety, the interest it *actually* found sufficient was nothing more than the interest in raising revenue. That is so because the only public-safety benefit the court actually found was that the challenged taxes "provide[ ] funds to implement specific policies and programs designed to combat violence" and thus "[d]efray the societal costs of guns in Cook County." (R. C1123). But of course, the "funds to implement specific policies and programs designed to combat violence" could be generated *in any number of ways*. Or, put conversely, the revenue from a tax on *any* goods or services could be directed to the County's Public Safety Fund and thereby could make *precisely the same* contribution to public safety that the Circuit Court found sufficient to justify the challenged taxes.

The justification the Court accepted thus suffers from the key defect that the U.S. Supreme Court identified in *Minneapolis Star & Tribune*: "an alternative means of achieving the same interest without raising concerns under the [Constitution] is clearly available: the [Government] could raise the revenue by taxing businesses generally." 460 U.S. at 586. Because whatever additional revenue is remitted into the Public Safety Fund under the Second Amendment Tax could instead be raised through a general, non-discriminatory tax increase that *does not* single out constitutionally protected conduct, the

challenged tax is not a "narrowly tailored" or "substantially related" means of advancing the revenue-raising interest identified by the court below.

This defect in the Circuit Court's reasoning can also be seen by noting that if the court's theory is right, it would justify *any* tax on *any* conduct. By the logic adopted below, a special tax on newspaper ink, marriage licenses, or voting *could also* be justified as "substantially related to the important government interest of public safety," (R. C1123), so long as the proceeds of the tax were directed into a fund dedicated to public safety. That cannot be, and is not, the law. Indeed, the Illinois Supreme Court rejected precisely this argument in *Boynton*, when it struck down a tax on marriage licenses that was used to fund a program combating domestic violence.

The Circuit Court sought to brush this problem aside by noting that "there is no constitutional requirement 'that the amount of general revenue taxes collected from a particular activity must be reasonably related to the value of the services provided to the activity.' " (R. C1123) (quoting *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 622 (1981)). But the case the court cited for this principal reveals its utter irrelevance in this case. *Commonwealth Edison* announced that rule in turning away a *due process* challenge to a state tax; the full quote from *Commonwealth Edison*—including the introductory phrase edited out by the Circuit Court—is that "*there is no requirement under the Due Process Clause* that the amount of general revenue taxes collected from a particular activity must be reasonably related to the value of the services provided to the activity." 453 U.S. at 622 (emphasis added). This case is not brought under the Due Process Clause; it is brought under the Second Amendment and Article I, Section 22 of the Illinois Constitution, and the rule, established in *Boynton*, *Minneapolis Star &*

Tribune, and many other cases, that where a tax *singles out* a fundamental right for *disparate taxation*, it must pass strict scrutiny. Plaintiffs' claim that the tax violates the right to keep and bear arms cannot be defeated by pointing out that the tax *does not* violate the Due Process Clause.

D. The Second Amendment Tax is also invalid under the Uniformity Clause.

Finally, if the challenged Ordinance is understood as an exercise of the taxing power, it is also unconstitutional under the Uniformity Clause, ILL. CONST. art. IX, § 2. That provision requires that a "tax classification must (1) be based on a real and substantial difference between the people taxed and those not taxed, and (2) bear some reasonable relationship to the object of the legislation or to public policy." *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 153 (2003). As with much else in this case, the challenged tax's invalidity under the Uniformity Clause follows directly from the Supreme Court's decision in *Boynton*.

In addition to invalidating the marriage-license tax at issue in that case because it singled out for special taxation the exercise of a fundamental right, *Boynton* also struck the tax down on Uniformity Clause grounds. The court concluded that "the relationship asserted" between those taxed (applicants for marriage licenses) and the use of the tax proceeds (to fund benefits for domestic violence victims) was "simply too remote." *Boynton*, 112 Ill. 2d at 366. As the Court framed the inquiry, the issue before it was "whether our legislature may impose a 'fee' upon a class of people based only on the fact that they have applied for marriage licenses, where the money collected is used to fund a general welfare program." *Id.* at 362. And the Court answered with a resounding "No," concluding that a tax on the fundamental right to marry was not "a reasonable means of

accomplishing the desired objective." *Id.* at 368. Here, Cook County has attempted to do precisely what the Illinois Supreme Court has said it cannot do: tax the exercise of a fundamental right to fund a general welfare program. There can be no question that the Second Amendment Tax applies to the exercise of a fundamental right, and its proceeds are used for general welfare purposes. COOK CTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-677. Accordingly, it violates the Uniformity Clause under *Boynton*'s square holding.

The Second Amendment Tax violates the Uniformity Clause for at least three additional reasons, as well. *First*, although the Ordinance purportedly targets criminals, the tax falls only on the law-abiding citizens of Illinois who possess a valid FOID card and are legally entitled to purchase firearms and firearm ammunition. These law-abiding citizens are not to blame for criminal gun violence. Yet they alone pay the Tax. The Second Amendment Tax has no effect, however, on violent felons who do not (and lawfully cannot) purchase their firearms and ammunition at retail. *See* 2012 Hearing at 1:19:34 ("[T]he reality is, not one convicted felon is going to pay a penny of this tax ladies and gentleman. Not one.") (R. C.291). It was patently unreasonable for the Commission to single out one group of law-abiding citizens, even if it is impossible to tax the criminals who are responsible for the violence that the Commission purports to target. Imposing a tax solely on those lawfully exercising constitutional rights to remedy the harms caused by criminals is no more reasonable under the Uniformity Clause than it is constitutional under the Second Amendment.

Second, and for similar reasons, the Second Amendment Tax violates the Uniformity Clause because it draws an irrational distinction between firearms and

ammunition purchased *within* the County and firearms and ammunition purchased elsewhere but *transported into* the County for use there. The Second Amendment Tax applies only to firearms and ammunition purchased within Cook County, but no effort is made to tax firearms and ammunition brought into the county from elsewhere. There is no rational basis for drawing this distinction—firearms and ammunition brought into the county are no less dangerous than those purchased there. It follows that Cook County's tax violates the Uniformity Clause because it is not "based on a real and substantial difference between the [objects] taxed and those not taxed." *Milwaukee Safeguard Ins. Co. v. Selcke*, 179 Ill. 2d 94, 98 (1997).

Third, there is no rational distinction related to the aim of the Second Amendment Tax between law-abiding citizen purchasers of firearms and firearm ammunition, who are subjected to the tax, and the federal and state personnel, the veterans organizations, and the law enforcement personnel who are exempted from it. COOK CTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-669. All are law-abiding purchasers of firearms and ammunition. All of these purchasers are equally unrelated to the commission of gun violence, and exempting certain classes of individuals is inconsistent with the (erroneous) justification for Cook County's Tax: that the mere "presence" of firearms in the County threatens public safety. (R. C150). If that were true, there would be no basis for exempting certain classes of individuals from the effects of the Tax.

The Circuit Court did not address *any* of these arguments. Instead, it rejected Plaintiffs' Uniformity Clause claims with nothing more than the conclusory assertion that

"the classifications in the tax are valid."[4] (R. C1124). That does not satisfy the judicial duty under the Uniformity Clause to ensure that the lines drawn by a challenged tax are "based on a real and substantial difference between the [objects] taxed and those not taxed," *Milwaukee Safeguard Ins. Co.*, 179 Ill. 2d at 98, and this Court should reverse.

V. If the Second Amendment Tax is understood as a regulatory measure, it is preempted by the FOID Card Act and the Firearms Concealed Carry Act.

For the reasons just given, under binding U.S. and Illinois Supreme Court case law, if the Second Amendment Tax is viewed as *a tax*, it is plainly unconstitutional for multiple independent reasons. Alternatively, if the challenged provisions of Cook County law are instead viewed as *regulatory* measures, rather than *taxes*, they run headlong into preemption under two statewide laws: the FOID Card Act and the Firearm Concealed Carry Act.

The FOID Card Act expressly preempts local laws regulating the possession of handguns and handgun ammunition by FOID card holders:

> [T]he regulation, licensing, possession, and registration of handguns and ammunition for a handgun . . . by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act are exclusive powers and functions of this 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.

430 ILCS 65/13.1.

In like form, the Firearms Concealed Carry Act preempts a similar set of local laws:

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[4] The court also rejected Plaintiffs' argument that the Ammunition Tax's distinction between the tax rates for centerfire and rimfire ammunition violated the Uniformity Clause, asserting without any reasoning or citation to authority that the distinction was "arguably based on the amount of damage each is capable of inflicting." (R. C1124). There is no record evidence supporting this conjecture.

> 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.

If the challenged Ordinance is understood as an exercise of regulatory power, rather than taxing power, then it is plainly preempted by these provisions. The Ordinance applies to precisely the same conduct as the FCCA and the FOID Card Act: the possession of handguns and handgun ammunition by FOID Card holders and concealed carry license holders. And the Ordinance's focus on transfers heightens the conflict with State law, as law-abiding citizens generally are required to possess either a FOID card or a concealed carry license before they can acquire a firearm or ammunition for a firearm. *See* 430 ILCS 65/3(a). The class of persons regulated by Cook County is thus precisely the class of persons that State law provides cannot be regulated.

The Circuit Court concluded the challenged provisions were not preempted based solely on its determination that the FOID Act and FCCA were "not intended to preempt taxation" and the challenged Ordinance "is a valid exercise of Cook County's home rule power to tax." (R. C1124). But while that might rescue the challenged tax *as a matter of preemption*, it *cements* its invalidity under the Second Amendment and Article I, Section 22 of the Illinois Constitution, for the reasons discussed in Part IV above. Accordingly, the Circuit Court's justification for upholding the challenged law from preemption dooms it as a matter of constitutional law.

CONCLUSION

For the foregoing reasons, this Court should reverse the decision of the Circuit Court holding that Plaintiffs Maxon and Smolenski lack standing to challenge the Firearm Tax, reverse the decision of the Circuit Court granting summary judgment to Defendants, and remand with instructions to enter summary judgment in favor of Plaintiffs on all claims.

Dated: January 4, 2019

Respectfully submitted,

Christian D. Ambler
STONE & JOHNSON, CHTD.
111 West Washington Street
Suite 1800
Chicago, Illinois 60602
(312) 332-5656
cambler@stonejohnsonlaw.com

/s/ David H. Thompson
David H. Thompson
Peter A. Patterson
John D. Ohlendorf
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com

Attorneys for Plaintiffs-Appellants

Certificate of Compliance

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 48 pages.

By: _____
Christian D. Ambler

One of the Attorneys for Plaintiffs-Appellants

STATUTES INVOLVED

U.S. CONST. amend. II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

ILL. CONST. art. I, § 22

Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.

ILL. CONST. art. IX, § 2

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

430 ILCS 65/3

(a) Except as provided in Section 3a, no person may knowingly transfer, or cause to be transferred, any firearm, firearm ammunition, stun gun, or taser to any person within this State unless the transferee with whom he deals displays either: (1) a currently valid Firearm Owner's Identification Card which has previously been issued in his or her name by the Department of State Police under the provisions of this Act; or (2) a currently valid license to carry a concealed firearm which has previously been issued in his or her name by the Department of State Police under the Firearm Concealed Carry Act. In addition, all firearm, stun gun, and taser transfers by federally licensed firearm dealers are subject to Section 3.1.

. . . .

430 ILCS 65/13.1

(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.

. . . .

(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 66/90

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.

Cook County Code of Ordinances, ch. 74, art. XX

Sec. 74-665. Short title.

This Ordinance shall be known and may be cited as the "Cook County Firearm and Firearm Ammunition Tax Ordinance."

Sec. 74-666. 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:

Firearm shall have the same meaning as set forth in the Illinois Firearm Owners Identification Act, 430 ILCS 65/1.1, or any successor statute.

Firearm ammunition shall have the same meaning as set forth m the Illinois Firearm Owners Identification Card Act, 430 ILCS 65/1.1, or any successor statute.

Centerfire ammunition means firearm ammunition that is characterized by a primer in the center of the base of the cartridge.

Department means the Department of Revenue in the Bureau of Finance of Cook County.

Director means the Director of the Department of Revenue.

Person means any means any individual, corporation, limited liability corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity.

Purchaser means any person who purchases a firearm or firearm ammunition in a retail purchase in the county.

Retail dealer means any person who engages in the business of selling firearms or firearm ammunition on a retail level in the county or to a person in the county.

Retail purchase means any transaction in which a person in the county acquires ownership by tendering consideration on a retail level.

Rimfire ammunition means firearm ammunition that is characterized by a primer that completely encircles the rim of the cartridge.

Sheriff means the Sheriff's Office of Cook County, Illinois.

Sec. 74-667. Registration.

Any retail dealer as defined in this article shall register with the Department in the form and manner as prescribed by the Department. Policies, rules and procedures for the registration process and forms shall be prescribed by the Department.

Sec. 74-668. Tax Imposed, Rates.

(a) *Firearm Tax Rate.* A tax is hereby imposed on the retail purchase of a firearm as defined in this article in the amount of $25.00 for each firearm purchased.

(b) *Firearm Ammunition Tax Rate.* Effective June 1, 2016, a tax is hereby imposed on the retail purchase of firearm ammunition as defined in this article at the following rates:

(1) Centerfire ammunition shall be taxed at a rate of $0.05 per cartridge.

(2) Rimfire ammunition shall be taxed at a rate of $0.01 per cartridge.

Tax Included in Sales Price. It shall be deemed a violation of this Article for a retail dealer to fail to include the tax imposed in this Article in the sale price of firearms and/or firearm ammunition to otherwise absorb such tax. The tax levied in this article shall be imposed is in addition to all other taxes imposed by the County of Cook, the State of Illinois, or any municipal corporation or political subdivision of any of the foregoing.

Sec. 74-669. Tax-Exempt purchases and refunds.

(a) Notwithstanding any other provision of this article, in accordance with rules that shall be promulgated by the department in regards to tax exempt purchases, retail dealers shall not collect the firearm and/or firearm ammunition tax when the firearm and/or firearm ammunition is being sold to the following:

(1) An office, division, or agency of the United States, the State of Illinois, or any municipal corporation or political subdivision, including the Armed Forces of the United States or National Guard.

(2) A bona fide veterans organization which receive firearms and/or firearm ammunition directly from the Armed Forces of the United States and uses said firearms and/or firearm ammunition strictly and solely for ceremonial purposes with blank ammunition.

(3) Any active sworn law enforcement officer purchasing a firearm and/or firearm ammunition for official or training related purposes presenting an official law enforcement identification card at the time of purchase.

(b) In accordance with rules to be promulgated by the department, an active member of the Armed Forces of the United States, National Guard or deputized law enforcement officer may apply for a refund from the department for the tax paid on a firearm and/or firearm ammunition that was purchased for official use or training related purposes.

(c)Notwithstanding any other provision in this Article, in accordance with rules that shall be promulgated by the department in regards to tax-exempt purchases, retail dealers shall not collect firearm ammunition tax on blank ammunition.

Sec. 74-670. Collection and remittance.

(a) Tax Collection. Any retail dealer shall collect the taxes imposed by this Article from any purchaser to whom the sale of said firearms and/or firearm ammunition is made within the County of Cook and shall remit to the Department the tax levied by this Article.

(b) Tax Remittance. It shall be the duty of every retail dealer to remit the tax due on the sales of firearms and/or firearm ammunition purchased in Cook County, on forms prescribed by the Department, on or before the 20th day of the month following the month in which the firearm and/or firearm ammunition sale occurred on a form and in the manner required by the department.

(c) If for any reason a retailer dealer fails to collect the tax imposed by this article from the purchaser, the purchaser shall file a return and pay the tax directly to the department, on or before the date required by Subsection (b) of this Section.

Sec. 74-671. Violations and penalties.

(a) It shall be a violation of this Article for any retail dealer to sell firearms and/or firearm ammunition without collecting and remitting the tax imposed in this Article.

(b) It shall be a violation of this Article for any retail dealer fail to keep books and records as required in this Article.

(c) It shall be a violation of this Article for any purchaser to fail to remit the tax imposed in this Article when not collected by the retail dealer.

(d) Any person determined to have violated this Article, shall be subject to a fine in the amount of $1,000.00 for the first offense, and a fine of $2,000.00 for the second and each subsequent offense. Separate and distinct offense shall be regarded as committed each day upon which said person shall continue any such violation, or permit any such violation to exist after notification thereof. It shall be deemed a violation of this Article for any person to knowingly furnish false or inaccurate information to the Department.

Sec. 74-672. Required books and records.

Every person who is subject to this tax shall keep and maintain accurate and complete documents, books, and records of each transaction or activity subject to or exempted by this Ordinance, from start to complete, including all original source documents. All such books and records shall be kept as provided in Chapter 34, Article III, of the Uniform Penalties, Interest, and Procedures Ordinance, and shall, at all reasonable times during normal business hours, be open to inspection, audit, or copying by the department and its agents.

Sec. 74-673. Inspection; audits.

Books and records kept in compliance with this Article shall be made available to the Department upon request for inspection, audit and/or copying during regular business hours. Representatives of the Department shall be permitted to inspect or audit firearm and/or firearm ammunition inventory in or upon any premises. It shall be unlawful for any person to prevent, or hinder a duly authorized Department representative from performing the enforcement duties provided in this Article.

Sec. 74-674. Application of uniform penalties, interest, and procedures ordinance.

Whenever not inconsistent with the provisions of this Article, or whenever this Article is silent, the provisions of the Uniform Penalties, Interest, and Procedures Ordinance, Chapter 34, Article III, of the Cook County Code of Ordinances, shall apply to and supplement this Article.

Sec. 74-675. Rulemaking; policies, procedures, rules, forms.

The department may promulgate policies, procedures, rules, definitions and forms to carry out the duties imposed by this Article as well as pertaining to the administration and enforcement of this Article.

Sec. 74-676. Enforcement, Department and Sheriff.

The department is authorized to enforce this Article, and the Sheriff is authorized to assist the department in said enforcement.

Sec. 74-677. Dedication of funds.

The revenue generated as the result of the collection and remittance of the tax on firearm ammunition set forth herein shall be directed to the Public Safety Fund to fund operations related to public safety.

No. 1-18-1846

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GUNS SAVE LIFE, INC., DPE SERVICES, INC. d/b/a MAXON SHOOTER'S SUPPLIES AND INDOOR RANGE, and MARILYN SMOLENSKI, Plaintiffs-Appellants, v. ZAHRA ALI, solely in her capacity as Director of the Department of Revenue of Cook County, THOMAS J. DART, solely in his official capacity as Cook County Sheriff, and the COUNTY OF COOK, ILLINOIS, a county in the State of Illinois, Defendants-Appellees.	Appeal from the Circuit Court Of Cook County, Illinois Case No. 15 CH 18217 Judge David B. Atkins

NOTICE OF FILING

To: Hailey M. Golds, Esq.- Hailey.Golds@CookCountyIL.gov
Cristin Duffy, Esq. – Cristin.Duffy@CookCountyIL.gov
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on January 4, 2019, we have electronically filed with the Clerk of the Appellate Court of Illinois, First Judicial District, Brief and Argument of Plaintiffs-Appellants, a copy of which is attached hereto and served upon you.

Christian D. Ambler, Esq.
STONE & JOHNSON, CHARTERED
111 West Washington St.
Suite 1800
Chicago, Illinois 60602
Telephone (312) 332-5656
cambler@stonejohnsonlaw.com

David H. Thompson (ARDC No. 6316017)
Peter A. Patterson (ARDC No. 6316019)
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D. C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com

CERTIFICATE OF SERVICE

Christian D. Ambler, an attorney, hereby certifies that on January 4, 2019, he caused a copy of the foregoing Notice of Filing and Brief and Argument of Plaintiffs-Appellants upon counsel by e-mail in the e-mail address listed below.

Hailey M. Golds, Esq.- Hailey.Golds@CookCountyIL.gov
Cristin Duffy, Esq. – Cristin.Duffy@CookCountyIL.gov
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602

/s/ Christian D. Ambler
Christian D. Ambler

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IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

Guns Save Life, Inc., DPE Services, Inc. d/b/a Maxon Shooter's Supplies and Indoor Range and Marilyn Smolenski Plaintiffs-Appellants, v. Zahra Ali, solely in her capacity as Director of the Department of Revenue of Cook County, Thomas J. Dart solely in his capacity as Cook County Sheriff, and the County of Cook, Defendants-Appellees.	Appeal from the Circuit Court of Cook County, Illinois, County Department, Chancery Division, No. 15 CH 18217 Hon. David Atkins, Judge Presiding

BRIEF OF DEFENDANTS-APPELLEES

KIMBERLY M. FOXX
State's Attorney of Cook County
500 Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-4385
cristin.duffy@cookcountyil.gov

Attorneys for Defendants-Appellees

CATHY MCNEIL STEIN
Assistant State's Attorney
Chief, Civil Actions Bureau

CRISTIN DUFFY
PAUL A. CASTIGLIONE
Assistant State's Attorneys

Of Counsel

ORAL ARGUMENT REQUESTED

Table of Contents
and
Points and Authorities

NATURE OF THE ACTION

Plaintiffs-appellants Guns Save Life, Inc. ("GSL"), DPE Services, Inc., d/b/a/ Maxon Shooter's Supplies and Indoor Range ("Maxon"), and Marilyn Smolenski ("Smolenski") (collectively "Plaintiffs") filed a complaint for declaratory and injunctive relief alleging that defendant-appellee County of Cook ("Cook County" or the "County") had enacted two sets of taxes relating to the purchase of firearms ("Firearms Tax") and ammunition ("Ammunition Tax") (collectively "Taxes" or "Combined Taxes") that were facially unconstitutional. (R. C285-313.)

Plaintiffs' Second Amended Complaint asserted that the Taxes violate the Second and Fourteenth Amendments to the U.S. Constitution, as well as article I, section 22 ("Right to Bear Arms Clause") and article IX, section 2 (the "Uniformity Clause") of the Illinois Constitution. Plaintiffs also asserted that both the Firearm Owners Identification ("FOID") Act and the Federal Concealed Carry Act ("FCCA") preempt the Taxes. (R. C285-313.)

On January 29, 2016, the County and Defendants-appellees Zahra Ali, Director of the Department of Revenue of Cook County, and Thomas J. Dart, Cook County Sheriff (collectively "Defendants"), moved to dismiss Plaintiffs' Second Amended Complaint. (R. C103.) The circuit court granted the motion to dismiss in part, holding that Maxon and Smolenski lacked standing to challenge the Firearms Tax, but that both had standing to challenge the Ammunition Tax. (R. C337.) The court denied the motion to dismiss as to GSL, holding that GSL had standing to challenge both Taxes. (R. C337.)

After some limited discovery, the parties filed cross-motions for summary judgment. (R. C345, C724.) In its ruling on summary judgment, the circuit court found:

(1) that the Plaintiffs failed to carry the burden in their facial challenges to the Combined Taxes; (2) that the Taxes violated neither the United States Constitution, nor the Illinois Constitution; and (3) that neither the FOID Act nor the FCCA preempted the ordinance establishing the Taxes. (R. C1124.)

Plaintiffs now appeal the circuit court's summary judgment ruling and the previous order dismissing the challenge that Maxon and Smolenski made against the Firearms Tax for lack of standing. (R. C1127.)

ISSUES PRESENTED FOR REVIEW

1. Whether the circuit court properly found that plaintiffs Maxon and Smolenski lacked standing to challenge the Firearm Tax.

2. Whether plaintiff Maxon lacked standing to challenge the Ammunition Tax.

3. Whether the circuit court correctly determined the Taxes do not violate the Second and Fourteenth Amendments to the United States Constitution or article 1, section 22 of the Illinois State Constitution.

4. Whether the circuit court correctly determined that the Taxes do not violate the Uniformity Clause of the Illinois State Constitution.

5. Whether the circuit court correctly determined that the Illinois FOID Act and the Firearms Concealed Carry Act do not preempt the Taxes.

STANDARD OF REVIEW

The circuit court granted Defendants' Section 2-619(a)(9) motion to dismiss in part for lack of standing. This Court's review of a Section 2-619 dismissal is *de novo*. *Van Meter v. Darien Park Dist.*, 207 Ill. 2d 359, 368 (2003).

The parties filed cross-motions for summary judgment. Noting that the parties "agree that no genuine issue of material fact exists [and] only a question of law is involved," (R. C1122), the circuit court entered judgment in favor of Defendants. This Court's standard of review is *de novo. Jones v. Mun. Emp. Annuity & Ben. Fund of Chi*., 2016 IL 119618, ¶26.

ORDINANCES, STATUTES, AND CONSTITUTIONAL PROVISIONS INVOLVED

The following ordinances, statutes and constitutional provisions are involved in this case: Ill. Const. 1970, art. I, § 22, Ill. Const. 1970, art. VII, § 6(a), Ill. Const. 1970, art. VII, § 6(g), Ill. Const. 1970, art VII, § 6(h), Ill. Const. 1970, art. IX, § 2, 430 ILCS 65/13.1(e) (2019), 430 ILCS 66/90 (2019), Cook County Code of Ordinances ("County Code"), §§ 74-665 – 74-675, U.S. Const. amends. II, XIV.

Copies of the above ordinances, statutes and constitutional provisions are attached to the Appendix at A1-A16.

STATEMENT OF FACTS

A. Cook County Enacts Taxes on the Sale of Firearms and Ammunition.

On November 9, 2012, the Cook County Board of Commissioners ("Cook County Board") enacted an ordinance establishing a Firearms Tax in Cook County. County Code, art. XX, §§ 74-665 – 74-675. The Firearms Tax imposes a $25.00 tax on the retail purchase of any firearm within Cook County. *See id.* at § 74-668; (R. C150-153.) Three years later, the Cook County Board passed an amendment to the Firearms Tax to include

an Ammunition Tax at the rate of $0.05 per cartridge of centerfire ammunition and $0.01 per cartridge of rim-fire ammunition.[1] County Code, article XX, § 74-676.

B. Plaintiffs File Suit.

GSL is a not-for-profit, Second Amendment advocacy organization. (R. C287.) Maxon operates a firearms and ammunition shop in Des Plaines, Illinois. (R. C288.) Smolenski owns several firearms but testified that she has never paid the Firearms Tax; she did pay the Ammunition Tax once under protest. (R. C288.)

Plaintiffs filed a complaint seeking declaratory and injunctive relief requesting a finding from the circuit court that the Taxes were unenforceable as they either violated Plaintiffs' constitutional rights or were otherwise preempted and unenforceable. (R. C285-313.) After various amendments and briefing, the circuit court granted Defendants' motion to dismiss in part, finding that Plaintiffs Smolenski and Maxon[2]

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1 The ordinance defines "centerfire ammunition" as "firearm ammunition that is characterized by a primer in the center of the base of the cartridge," and "rim-fire ammunition" as "firearm ammunition that is characterized by a primer that completely encircles the rim of the cartridge." County Code, article XX, § 74-676.

2 The County submitted the deposition of Sarah Natalie, the general manager of Maxon, as evidence in support of their position that Maxon also lacked standing to challenge the Firearms Tax and the Ammunition Tax. ((R. C947.) Plaintiffs argue that Maxon has standing because of the additional costs it would allegedly incur to be able to properly collect the Taxes. (Plaintiffs' Br. at 17-19.) In their second amended complaint, for example, Maxon alleges that this obligation will cost the company thousands of dollars per year. (R. C348-49.) As a seller of firearms, Maxon is required to register with the Department of Revenue and to keep books and records of sales as required. (R. C385.) Natalie testified that Maxon owns a module program which can automatically track sales data based on the type of firearm and ammunition. (R. C956-959.) This computerized software provides efficient and cost-effective assistance to employees; it keeps a record of sales; it can generate a report of the store's inventory and it can provide the dates of purchases. (R. C957.) It can also generate a report of all firearms and ammunition sold in a one-month period. (R. C958.) For tracking of ammunition sales, the software automatically separates types of ammunition based on four categories: centerfire pistol ammunition, centerfire rifle ammunition, shotgun ammunition, and rim-

lacked standing to bring a constitutional challenge to the Firearms Tax. (R. C332-337). However, the court found that GSL had standing to challenge the Combined Taxes and that Maxon and Smolenski had standing to challenge the Ammunition Tax. (R. C337).

C. The Circuit Court Grants Summary Judgment for Defendants.

On November 15, 2016, Plaintiffs filed their motion for summary judgment on the remaining claims in their Second Amended Complaint. In order to respond to Plaintiffs' Motion for Summary Judgment, the County filed a Rule 191(b) affidavit to conduct discovery. (R. C388.) After the parties conducted limited discovery, Defendants filed a response as well as their cross-motion for summary judgment. (C345-390, C398-469, C982-1010, C1016-1050, C1061-1080.) On August 17, 2016, the circuit court summarily denied Plaintiffs' Motion and granted summary judgment in favor of Defendants on all counts. (R. C1124.)

The circuit court rejected Plaintiffs' arguments that the Taxes were burdensome, finding that the Taxes are "minimal." (R. C1123). The court found that the Taxes would not have the effect of preventing Plaintiffs' ownership or possession of firearms, nor would the Taxes impair the ability of citizens to defend themselves. *Id.* Furthermore, for the sake of argument, the court then applied intermediate scrutiny to the ordinance and determined that the Tax is "substantially related to the important government interest of public safety" because it provides funds to implement specific policies and programs designed to combat violence.[3] *Id*. The court also noted "the use of guns creates

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fire ammunition. *Id*. Based upon this evidence, the County argued below that these alleged costs were illusory.

3 Under Illinois Rule of Evidence 201(b), this Court may take judicial notice that Defendant Cook County owns and operates Stroger Hospital and the County Health Bureau. The County funds this health system, which routinely treats patients for gun

significant expenditures of public safety resources."[4] *Id*. The court went on to find that the Taxes "do not in any meaningful way impede plaintiffs' ability to exercise their [Second] Amendment right to bear arms" and, thus, are not in violation of the Second or Fourteenth Amendments of the United States Constitution, nor Article 1, Section 22 of the Illinois State Constitution. (R. C1123-24.)

The circuit court also rejected Plaintiffs' argument that the FCCA and the FOID Act preempt the Taxes, reasoning that the Taxes are "a valid exercise of Cook County's home rule power to tax." (R. C1124.) Finally, the circuit court found that the classifications of ammunition in the ordinance enacting the Ammunition Tax do not violate the Uniformity Clause of the Illinois State Constitution because the types of ammunition are clearly defined and differentiated. *Id*.

On August 23, 2018, Plaintiffs filed their Notice of Appeal. (R. C1127.) Plaintiffs now appeal the rulings partially granting Defendants' Motion to Dismiss, granting Defendants' Motion for Summary Judgment, and denying Plaintiffs' Motion for Summary Judgment.

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trauma. *See* Becker Hospital Review, "*Fewer people are dying from gunshots in Chicago: Stroger Hospital is a Big Reason Why*," Jessica Kim Cohen, Morgan Haefner and Brian Zimmerman, September 24, 2018. https://www.beckershospitalreview.com/hospital-management-administration/fewer-people-are-dying-from-gunshots-in-chicago-stroger-hospital-is-a-big-reason-why.html, (last visited 6/12/19).

4 *See* Time, "*They Survived Mass Shootings. Years Later, The Bullets Are Still Trying to Kill Them,*" Melissa Chan, May 31, 2019. http://time.com/longform/gun-violence-survivors-lead-poisoning/, (last visited 6/12/19).

ARGUMENT

I. This Court Should Affirm The Dismissal of Smolenski's Firearm Tax Challenge, The Dismissal of Maxon's Challenges to The Firearms And Ammunitions Tax, And The Dismissal of GSL's Challenges to The Firearms And Ammunitions Tax for Lack of Standing.

The circuit court found that Smolenski lacked standing to challenge the Firearms Tax. (R. C334.) The record shows that this Court may affirm the dismissal of Smolenski's claims on this basis. The circuit court correctly held that Smolenski lacks standing to challenge the Firearms Tax because she has not paid that tax. (R. C334.) As the court succinctly explained, "without [Smolenski] paying the tax, the controversy is merely hypothetical and therefore there is no standing" to challenge the Firearms Tax. *Id*.

This Court should also affirm the dismissal of Maxon's challenge to the Firearms and Ammunitions Taxes for lack of standing. The circuit court was correct in its assessment that, Maxon has no real interest in the Firearm Tax because the burden of paying the tax falls on the retailer's patrons, not the retailer itself. (R. C335).

Moreover, Maxon lacks standing to challenge to the Ammunitions Tax. Though the circuit court ultimately dismissed Maxon's claims attacking the Ammunitions Tax on the merits, it could have done so for lack of standing. The record below establishes that Maxon did not incur any additional expense computing and reporting in compliance with the Ammunition Tax. (*See* R. C956-959.) In the absence of that alleged concrete injury, Maxon's claim of standing to challenge the Ammunitions Tax collapses.

Finally, this Court should also affirm the circuit court's dismissal of GSL's claims for lack of standing[5] because associations who represent a class of individuals subject to a tax generally do not have standing to sue, as such associations themselves are unable to show direct injury. *See Forsberg v. City of Chi.*, 151 Ill. App. 3d 354, 370 (1st Dist. 1986) (holding that a voluntary associations of boat owners challenging a boat mooring tax were "not subject to the tax" when "[n]either association owns moorings or pays mooring fees in Chicago."); *see also Underground Contrs. Ass'n v. Chicago*, 66 Ill. 2d 371, 377 (1977) (association had no standing because it did not have a "recognizable interest in the dispute, peculiar to itself and capable of being affected."); *Owner-Operated Indep. Drivers Ass'n v. Bower*, 325 Ill. App. 3d 1045, 1050-51 (1st Dist. 2001) (where association of owners and operators challenged a tax on commercial carriers on the basis that it violated the Commerce Clause, there was no standing because it was the individual members themselves, not the association, who were injured by payment of the tax).

GSL cannot claim any recognizable interest that is harmed by the Taxes. Rather, GSL claims that its members, most of whom are not located in Cook County, may avoid purchasing firearms and ammunition in Cook County. (R. C420, 425, 938.) As in *Forsberg* and *Bower*, GSL, as an association, is under no obligation to pay the tax and does not have a legal interest in the dispute. Further, as the Seventh Circuit explained most recently in *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015), the Second Amendment creates *individual* rights, nothing more. 784 F.3d at 410. GSL cannot claim injury from the violation of a right they do not possess. *See Id.*at 410 (citing *United*

5 The dismissal of the GSL claims may be affirmed for any basis present in the record. *See Acevedo v. Cook County Sheriff's Merit Board*, 2019 IL App (1st) 181128, ¶17 (stating that the appellate court "may affirm on any basis found in the record, regardless of whether the trial court relied on that basis or its reasoning was correct").

States v. Skoien, 614 F.3d 638 (7th Cir. 2010)). GSL therefore, lacks standing to challenge the Taxes at issue in this case.

Thus, the dismissal of Smolenski's Firearms Tax challenge and all of Maxon's and claimsGSL's claims may be affirmed on the grounds of lack of standing. Nonetheless. if this Court were to reach the merits of all of Plaintiffs' facial challenges to the Firearms and Ammunition Taxes, they would all fail on the merits.

II. Neither Tax Violates the Second Amendment to the United States Constitution or Article I, Section 22 of the Illinois Constitution.

Municipal ordinances, like statutes, are presumed constitutional, and the party challenging the constitutionality of an ordinance carries the burden of proving that it is unconstitutional. *People v. Hollins*, 2012 IL 112754, ¶ 13; *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306 (2008). Moreover, this Court "has a duty to construe the [enactment] in a manner that upholds the [its] validity and constitutionality, if it can reasonably be done." *People v. Aguilar*, 2013 IL 112116, ¶ 15 (citing *Hollins*, 2012 IL 112754, ¶ 13). Plaintiffs have not come close to meeting their burden here.

Significantly, Plaintiffs filed facial challenges to the Firearms and Ammunition Taxes. A "facial challenge to the constitutionality of a legislative enactment is the most difficult challenge to mount successfully, because an enactment is facially invalid only if no set of circumstances exists under which it would be valid." *Gatz v. Brown*, 2017 IL App (1st) 160579, ¶ 15 (citing *Napleton*, 229 Ill. 2d at 305-06). Facial invalidation, to be sure, is "manifestly, strong medicine that has been employed by the court sparingly and only as a last resort." *Id*. (quoting *Pooh-Bah Enter. v. County of Cook*, 232 Ill. 2d 463, 473 (2009)). "The invalidity of the statute in one particular set of circumstances is insufficient to prove its facial invalidity." *In re M.T.*, 221 Ill. 2d 517, 536-37 (2006);

accord Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 449 (2008) (plaintiffs must establish that a "law is unconstitutional in all of its applications"); *People v. Burns*, 2015 IL 117387, ¶ 27 (same).

While the Second Amendment confers upon citizens an individual right to keep and bear arms, it is not without limits. *District of Columbia v. Heller*, 554 U.S. 570, 626, 635 (2008) ("*Heller I*"). Rather, as the circuit court observed, (R. C1122), the Supreme Court in *Heller I* noted that "nothing in our opinion should be taken to cast doubt on long-standing laws imposing conditions and qualifications on the commercial sale of arms." *Heller I*, 554 U.S. at 626-27. The circuit court correctly found that "Plaintiffs have failed to show that the Tax is more than an inconsequential burden so as to overcome this presumption of validity." (R. C1122.)

As the circuit court astutely noted, Plaintiffs here have chosen to mount a facial challenge to the Taxes and "a facial challenge to a statute will fail if it has any constitutional application." (R. C1122 (citing *United States v. Salerno*, 481 US 739, 745 (1987)). The circuit court correctly found that Plaintiffs failed to make this showing. *Id*.

A. Neither Tax Burdens Second Amendment Rights.

Plaintiffs have not and cannot establish any kind of Second Amendment challenge here. In their complaint, Plaintiffs assume that the Second Amendment applies to the Taxes. It does not.

1. The Taxes Should Not Be Subject to a Second Amendment Analysis.

Taxes on firearms are nothing new; what is novel is the notion that they might be infirm under a Second Amendment analysis. The federal government has imposed a firearms registration requirement and a $200 tax on the making and transfer of firearms

since 1934. *See* National Firearms Act, ch. 757, 48 Stat. 1236 (1934) (codified as amended at 26 U.S.C. §§ 5801-5802). That tax was upheld as constitutional three years later in *Sonzinsky v. United States*, 300 U.S. 506, 513 (1937).

In *Sonzinsky*, the Court held that the $200 tax in the National Firearms Act was a constitutional exercise of Congress's taxation power – but it did not engage in any Second Amendment analysis. *Id*. Far more recently, the Washington Supreme Court in *Watson v. City of Seattle*, 401 P.3d 1 (Wash. 2017), upheld Seattle's firearms and ammunition tax against a preemption challenge, but gave no consideration to Second Amendment issues. Because the Taxes do not restrict ownership of firearms and ammunition any more than alcohol or cigarette taxes burden the purchase of those items, a Second Amendment analysis is arguably not even triggered.

2. The Taxes Do Not Burden The Acquisition of Firearms or Ammunition.

Even if a Second Amendment analysis were appropriate, Plaintiffs would have to establish that "the law impose[s] a burden on conduct falling within the scope of the Second Amendment guarantee." *Wilson v. County of Cook*, 2012 IL 112026 ¶ 41; *see also Ezell v. City of Chicago*, 651 F.3d 684, 700 (7th Cir. 2011) ("*Ezell I*"); *Burns*, 2015 IL 117387 at ¶ 38. While ownership and acquisition of firearms and ammunition are conduct falling within the scope of the Second Amendment, Plaintiffs provide no legal support for the premise that the Taxes burden the acquisition of those products so as to trigger Second Amendment protections. (Plaintiffs' Br. at 21-22.)

The circuit court below conducted the "burden" analysis and properly determined that the Taxes did not impinge upon the Second Amendment. (R. C1121-1124.) Relying upon United States Supreme Court precedent, the circuit court determined that "[w]hile

any tax on goods or services adds to the cost of such items, these additional costs, by themselves, do not render a tax unconstitutional." (R. C1123 ("*See*, *e.g.*, *Coverdale v. Arkansas-Louisiana Pipe Line Co.*, 303 U.S. 604, 612 (1938) (holding that "increased cost alone is not sufficient to invalidate a tax as an interference with interstate commerce" in violation of the Commerce Clause)); *see also Kwong v. Bloomberg*, 723 F.3d 160, 167-70 (2d Cir. 2013) (upholding New York City residential handgun licensing fee of $340 against a Second Amendment challenge). Notably, the United States Supreme Court, in reviewing the Patient Protection and Affordable Care Act, stated, "[e]very tax is in some measure regulatory. To some extent it interposes an economic impediment to the activity taxed as compared with others not taxed." *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 567 (2012) (citing *Sonzinsky,* 300 U.S. at 513). The circuit court correctly noted that "the plaintiffs' provide no evidence that the Tax[es] will have the effect of preventing their ownership or possession of firearms or that it affects the ability of law-abiding citizens to retain sufficient means of self-defense," (R. C1123), and that the $25 Firearms Tax and $.01 or $ .05 Ammunition Tax are proper exercises of Cook County's Home Rule taxing powers that do not impede "Plaintiff's ability to exercise their 2nd Amendment right to bear arms" in any meaningful way. (R. C1121-1124.)

Contrary to Plaintiffs' assertion, the taxation of firearms and firearm ammunition does not rise to the level of a regulation that diminishes the ability of law-abiding citizens to retain sufficient means of self-defense, and it is therefore unnecessary to consider whether the tax is properly tailored to the relevant level of governmental interest. (*See* R. C1123); *see also Friedman*, 784 F.3d at 410. The circuit court correctly relied on *Friedman* and the Eleventh Circuit decision in *Wollschlaeger v. Governor*, 848 F.3d 1293

(11th Cir. 2017) (*en banc*) in finding that the Taxes neither take away nor restricts citizens' Second Amendment rights. (R. C1123.)

In *Wollschaeger,* the Eleventh Circuit provided additional guidance as to when a restriction burdens Second Amendment rights. *Wollschlaeger*, 848 F.3d at 1313. There, the court considered a law that restricted physicians' ability to question or advise patients about the ownership and use of firearms. *Id*. At 1300-01. The court found that there was no infringement on patients' Second Amendment rights because there was no evidence that doctors or medical professionals had taken away or restricted the ownership or possession of firearms. *Id*.at 1313.

In the instant case, Plaintiffs do not allege that the tax impedes citizens from attaining adequate means of self-defense; they merely state that a tax would impose some additional monetary requirements. The circuit court here specifically remarked that "Plaintiffs provided no evidence that the Tax will take away or restrict the ownership or possession of firearms." (R. C1123.) *Heller I* and subsequent cases have continued to make clear that the regulation and other limitations on firearms are perfectly constitutional within limits. The Taxes are therefore outside the scope of the first prong of the inquiry under *Wilson* and, contrary to Plaintiffs' argument, do not prevent law-abiding citizens from retaining adequate means of self-defense as proscribed in *Friedman*. The circuit court properly held that "unlike those cases involving a weapons ban, the tax in this case neither takes away firearms nor restricts their ownership or possession and thus does not burden the right." (R. C1123.)

3. The Taxes Do Not Unconstitutionally Burden a "Fundamental Right."

Plaintiffs contend that the Firearms and Ammunitions Taxes unconstitutionally burden a fundamental right. (Plaintiffs' Br. at 28-29). They do not.

Plaintiffs rely on *Boynton v. Kusper*, 112 Ill. 2d 356 (1986), a case striking down a tax that would have required clerks in counties with a population exceeding one million to pay $10 of the $25 marriage license fee into a domestic violence shelter and service fund. The Court concluded that this provision constituted a tax on the marriage license that did not bear a reasonable relation to the public interest sought to be protected, and found that the tax impermissibly burdened the fundamental right to marry. *Id*. at 369.

Boynton is inapposite to the present case and any attempt to draw an analogy between the right to bear arms and the right to marry is misguided. The right to bear firearms under the Illinois and United States Constitutions is not comparable to the fundamental right of marriage. *Compare Heller I*, 554 U.S. at 626 ("the right secured by the Second Amendment is not unlimited."), *with Boynton*, 112 Ill. 2d at 369-70, *Zablocki v. Redhail*, 434 U.S. 374, 386 (1978) (reaffirming the fundamental character of the right to marry), *and People v. Walker*, 409 Ill. 413, 418 (1951) ("It is the policy of this State to foster and protect marriage and to encourage parties to live together . . . preservation of the marriage relationship is essential to our society . . . .").

Moreover, *Boynton* and a second case Plaintiffs rely on, *Crocker v. Finley*, 99 Ill. 2d 444 (1984) (striking down a $5 fee charged to all petitioners for dissolution of marriage for purposes of funding shelters and other services for victims of domestic violence), should be viewed in the context of the remoteness between the marriage

license and dissolution fees and the domestic violence fund at issue in those cases.[6] *See Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 150 (2003) ("In *Crocker* and *Boynton*, this court found the relationship between dissolution actions and marriage licenses on the one hand and domestic violence programs on the other to be too remote to permit the tax to stand."). In contrast, in *Arangold*, the Illinois Supreme Court upheld the tax imposed by the Tobacco Products Act of 1995, revenues from which are used to pay the cost of long-term medical care for persons unable to afford it. The Court noted that the General Assembly "could have believed that 'cigars, pipes, chewing tobacco, and other tobacco products cause any number of health problems and that those problems require care in long-term health care facilities.'….Accordingly, we do not have the same remoteness problem here as existed in *Crocker* and *Boynton*." *Id*. at 150-51.

While *Boynton* and *Crocker* are inapposite, *Arangold* is instructive here. Just as the tobacco taxes in *Arangold* helped offset the cost of long-term medical care, the Firearm and Ammunitions Taxes help offset the County's cost of providing costly medical care resulting from gun violence.

The Firearm and Ammunition Taxes, to be sure, are substantially related to the important government interest of public safety.[7] The use of firearms and ammunition in Cook County creates public safety costs that are, in part, off set from the revenue that the Firearm and Ammunition Taxes raise. One need only turn on the nightly news or open a

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6 The fact that *Crocker*, which preceded *Boynton*, struck down a tax on the *dissolution* of marriage, which has hardly been regarded as a fundamental right on par with that of marriage itself, underscores that both cases revolve around the remoteness issue more than the notion of taxation on a fundamental right.

7 Both the Firearm Tax and Firearm Ammunition Tax are deposited into the Public Safety Fund to help alleviate the cost of gun violence. *See* Cook County 2018 Executive Budget Recommendation at 34, available at https://www.cookcountyil.gov/sites/default/files/v1-rev_est_presrec_web-lndscp.pdf.

newspaper to see examples of crimes committed with legally purchased weapons that create significant public safety expenditures. Law enforcement and the criminal justice system in Cook County are both funded through this tax, and both bear significant costs as a result of the use of firearms purchased in Cook County.

The Firearm and Ammunition Taxes are far more analogous to the tobacco tax in *Arangold* than the marriage taxes in *Boynton* and *Crocker*. The Firearm and Ammunition Taxes are likewise analogous to road maintenance taxes. No one doubts that Americans have a constitutional right to engage in interstate travel. *See*, *e.g.*, *Shapiro v. Thompson*, 394 U.S. 618 (1969) (declaring the right of interstate travel to be a fundamental right requiring strict scrutiny). And yet, the fundamental right to interstate travel recognized in *Shapiro* did not and does not invalidate ordinances and statutes that impose taxes on drivers to raise revenue to maintain roads. It is, after all, only fair for those who use the roads to pay the taxes for road maintenance.

The Firearm and Ammunition Taxes here operate under a similar principle. Firearms cause serious, life threatening injuries that the County's health bureau must address every day. The County has to fund those medical services. It is not unfair—and it is certainly not unconstitutional—to ask purchasers of firearms and ammunition to help pay for these services through their payment of the Taxes.

As discussed further below, the circuit court correctly held that the "[d]efraying the societal cost of guns in Cook County is significant, substantial, and an important governmental objective." (R. C1123.) Referring to ownership of firearms and ammunition as a "fundamental right" does not provide a purchaser of those products with some absolute constitutional immunity from taxation.

4. Even If The Taxes Constituted an Impingement, The Taxes Further a Substantial Governmental Interest.

Even if this Court found that the Taxes impinge upon Plaintiffs' Second Amendment rights—which they do not—they should still be upheld because they further a substantial government interest. Plaintiffs incorrectly argue that the Taxes "cannot withstand any level of scrutiny." (Plaintiffs' Br. at 21.) Plaintiffs further submit that this taxing authority "must satisfy the highest level of constitutional scrutiny to be valid." (Plaintiffs' Br. at 25.) It is no wonder that these statements are unaccompanied by legal citation, because they lack support in the law.

"The Court resolved the Second Amendment challenge in *Heller I* without specifying any doctrinal 'test' for resolving future claims." *Ezell I*, 651 F.3d at 701. In the absence of *Heller I* articulating a "test," the circuits were left to fashion tests of their own. This Seventh Circuit crafted a test in *Ezell I* which it again followed in *Ezell v. City of Chi*., 846 F.3d 888, 892 (7th Cir. 2017) ("*Ezell II*"). The threshold question is whether the regulated activity falls within the scope of the Second Amendment. *Ezell I*, 651 F.3d at 701. If yes, then the government must show a relationship between the prohibition and a governmental interest. *Id*. at 703. The rigor of this means-end review is at some level of heightened scrutiny, dependent upon "how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right." *Id*.; *see also Ezell II*, 846 F.3d at 892.

Assuming, *arguendo*, that the minimal Taxes at issue here create a burden impinging upon Second Amendment protections, *Ezell I* would require some level of intermediate scrutiny, depending upon how closely the Taxes go to the core Second Amendment right. The circuit court here conducted this analysis, noting that the Taxes

are "substantially related to the important government interest of public safety. The use of guns creates significant expenditures of public safety resources. The Tax addresses some of those costs, and provides funds to implement specific policies and a program designed to combat violence." (R. C1124.) As the United States Supreme Court has ruled, there is no constitutional requirement "that the amount of general revenue taxes collected from a particular activity must be reasonably related to the value of the services provided to the activity." *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 622 (1981). Plaintiffs argue that under "the circuit court's faulty logic, a plaintiff can never challenge any tax as constitutionally invalid, unless he can show that the tax is so high that it prices out some portion of the citizenry." (Plaintiffs' Br. at 29.) However, this Court, like the circuit court, should conclude that this argument is unavailing. "A general revenue tax is not a fee for specific services, but is a means of distributing the burden of the cost of government, and there is no constitutional imperative that the specific benefits to a given taxpayer achieve a certain proportion to the burden on that taxpayer." *N. Pole Corp. v. Vill. of E. Dundee*, 263 Ill. App. 3d 327, 337, (1994) (citing *Commonwealth Edison Co.,* 453 U.S. at 622-23, in turn citing *Carmichael v. Southern Coal and Coke Co.*, 301 U.S. 495, 521-23 (1937)). Contrary to Plaintiffs' arguments here, the circuit court found that "[d]efraying the societal cost of guns in Cook County is significant, substantial, and an important governmental objective." (R. C 1123.)

Plaintiffs failed to demonstrate more than a *de minimis* burden on any arguable Second Amendment rights, thereby failing to challenge the rebuttable presumption of validity afforded to long-standing regulations. See *Heller v. District of Columbia*, 670 F.3d 1244, 1253 (D.C. Cir. 2011) ("*Heller II*"). To the extent that the Taxes' burden on

the Second Amendment is *de minimis* and merely continues a longstanding and constitutional practice of taxing firearms, it does not rise to the level of a constitutional burden necessitating further review. *See Kwong*, 723 F.3d at 167; *see also Justice v. Town of Cicero*, 827 F. Supp. 2d 835, 844 (N.D. Ill. 2011) ("In addition to being longstanding, registration requirements like the one Cicero has imposed do not severely burden the practical exercise of the right to possess firearms for self-defense.") (*emphasis added*); *but cf. Murphy v. Guerrero*, No, 1:14-CV-00026, 2016 U.S. Dist. LEXIS 135684, at *80 (D. N. Mar. I. Sep. 28, 2016) (holding that, while taxation of firearms may be longstanding, a $1000 tax is not *de minimis* and therefore warranted heightened scrutiny).

Because the Taxes, at most, place a *de minimis* burden on Plaintiffs' Second Amendment rights and are the type of longstanding law allowable under *Heller I*, the Taxes pass constitutional muster and should be upheld.

III. The Taxes Do Not Violate The Uniformity Clause of The Illinois Constitution.

The circuit court correctly held that "the classification in the tax is valid under the Illinois Uniformity Clause." (R. C1124.) "Plaintiffs have failed to carry their burden of demonstrating that the different rates of classification violate of the Uniformity Clause." *Id*. The Firearm and Ammunition Tax is not constitutionally infirm under the Uniformity Clause merely because it taxes the retail purchase of firearms and ammunition but does not tax other retail purchases. *See, e.g.*, *North Pole Corp.,* 263 Ill. App. 3d at 336 ("amusement tax does not offend uniformity… merely because it taxes amusements and not other businesses or activities. Few if any taxes could survive scrutiny were such an

argument available."). Despite Plaintiffs' protestations to the contrary, the Uniformity Clause is not implicated here.

Article IX § 2 of the Illinois Constitution, otherwise known as the Uniformity Clause, provides:

> In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

Ill. Const. 1970, art. IX, §2.

Illinois courts have held that to survive scrutiny under the Uniformity Clause, a non-property tax classification, such as the one at issue in the case at bar, must satisfy a two-pronged test. *See Arangold*, 204 Ill. 2d at 153. First, the tax classification must be based on a "real and substantial difference" between the items taxed and those not taxed. Second, the classification must be reasonably related to the object of the legislation or to public policy. *Id*.

The first prong of the Uniformity Clause analysis requires the taxing body to "produce a justification for its classifications." *Id*. at 156 (quoting *Geja's Cafe v. Metropolitan Pier & Exposition Authority*, 153 Ill. 2d 239, 248 (1992)). This does not mean, however, that the taxing body has an evidentiary burden or is required to produce facts to justify the classification. *Id*.; *Midwest Gaming & Entm't, LLC v. County of Cook*, 2015 IL App (1st) 142786, ¶ 102. A minimum standard of reasonableness is all that is required. *See Allegro Serv. v. Metro. Pier & Exposition Auth.*, 172 Ill. 2d 243, 253 (1996). The court's inquiry regarding the proffered justification is narrow, and "[i]f a set of facts 'can be reasonably conceived that would sustain it, the classification must be upheld.'" *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62, 73 (2008) (quoting *Geja's Cafe*, 153

Ill. 2d at 248). Once the taxing body has offered a justification for the classification, the plaintiff then has the burden to persuade the court that the defendant's explanation is insufficient as a matter of law or unsupported by the facts. *Sun Life Assurance Co. of Can. v. Manna*, 227 Ill. 2d 128, 136-37 (2007); *Arangold*, 204 Ill. 2d at 156;; *Midwest Gaming*, 2015 IL App (1st) 142786 at ¶ 102.

Legislative enactments bear a strong presumption of constitutionality and the party challenging the enactment has the burden of demonstrating its unconstitutionality. *Arangold,* 204 Ill. 2d at 157. Because there is a presumption favoring the validity of classifications made by legislative bodies in taxing matters, one who attacks them has the burden of proving that such classifications are arbitrary. *Jacobs v. City of Chi.*, 53 Ill. 2d 421, 425-26 (1973), The classification must be upheld if a state of facts may reasonably be conceived that would sustain it. *Dep't of Revenue v. Warren Petroleum Corp.*, 2 Ill. 2d 483, 490 (1954); *see also Ill. Gasoline Dealers Ass'n. v. City of Chi.*, 119 Ill. 2d 391, 403 (1988) (applying the uniformity clause to the Chicago Vehicle Fuel Tax Ordinance).

Here, the Firearm and Firearm Ammunition Tax Ordinance does classify between rim-fire and centerfire. But the classification has a reasonable basis: lethality. The County taxes rim-fire ammunition at the rate of $0.01 per cartridge. Cook County Ordinance, § 74-668(b)(IV). On the hand, the County taxes centerfire ammunition at the rate of $0.05 per cartridge. Cook County Ordinance, § 74-668(b)(III). Centerfire ammunition is more lethal than rim-fire ammunition and, as it causes more serious injuries, the County had a reasonable basis for taxing this ammunition at a higher rate and raising more revenue to finance the medical services that the County provides for victims of gun violence.

Moreover, a real and substantial difference exists between purchasers and non-purchasers of firearms and ammunition. *See*, *e.g., Ball v. Village of Streamwood*, 281 Ill. App. 3d 679, 685 (1st Dist. 1996) (holding that "a difference clearly exists between those taxed (those relocating outside the Village) and those not taxed (those remaining in the Village)" in applying the Uniformity Clause). Plaintiff incorrectly attempts to characterize the tax classification as between in-County purchasers on the one hand and out-of-County purchasers and criminals on the other. (Plaintiffs' Br. at 43-44.) Nevertheless, Cook County has applied the tax uniformly within the limits of its territorial jurisdiction consistent with the extent of its home rule powers. See, *e.g.*, *Ill. Wine & Spirits Co. v. County of Cook,* 191 Ill. App. 3d 924, 930-31 (1st Dist. 1989) (noting that although a home rule unit has the power to tax pursuant to Ill. Const. 1970, art. VII, § 6(a), home rule units do not have extraterritorial governmental powers). This Court is not required to accept Plaintiff's self-serving characterization.

Plaintiffs' position that the Taxes are not uniform as they "fall[] only on the law abiding citizens" is without merit. (Plaintiffs' Br. at 44.) The Taxes presume, as they must, that all who purchase firearms will do so legally. Courts have held that a tax is valid under the Uniformity Clause regardless of whether the individuals taxed purport to not be the cause of the problem which the tax seeks to remedy. *See Marks v. Vanderventer*, 2015 IL 116226, ¶ 21 (where plaintiffs argued that a surcharge to fund a rental housing support program that was collected on the recording of any real estate related document in a county was unreasonable because they neither directly benefitted nor caused the harms sought to be remedied, the court found it reasonable to conclude any party with a legal interest in real estate would benefit from the stability of the market

caused by the program so a rational relationship existed and the surcharge did not violate the Uniformity Clause). Therefore, despite the fact that the burden of the taxes in this case may fall on law abiding citizens who Plaintiffs claim may not be responsible for the societal costs relating to gun violence, the tax remains valid because a rational relationship exists between the purchase of firearms and ammunition and the need to ameliorate the harms that gun violence causes in Cook County.

Moreover, there is a rational distinction between those subjected to the Taxes and the federal and state personnel, veterans' organizations, and law enforcement personnel who are exempt from the tax under section 74-669. The legislature is free to exempt a subclass so long as there is some real and substantial difference between those taxed and those not taxed. *DeWoskin v. Loew's Chi. Cinema*, 306 Ill. App. 3d 504, 519 (1st Dist. 1999) (citing *Klein v. Hulman*, 34 Ill. 2d 343, 346-47 (1966)).

Federal and state personnel, veterans' organizations using firearms and ammunition for ceremonial purposes, and law enforcement personnel are organizations whose primary purpose in the use of firearms is to serve the community. This distinction demonstrates a substantial difference between the exempt parties and taxed parties, and therefore does not violate the Uniformity Clause. *DeWoskin,* 306 Ill. App. 3d at 520 (holding that where an exemption to an amusement tax was held constitutional for non-profit organizations and civic organizations, "[g]overnmental and non-governmental organizations the purpose of which is to serve, benefit, and improve the community in general are sufficiently different from traditional commercial enterprises to constitute a rational basis for the exemption of their patrons from an amusement tax.").

The Taxes are also reasonably related to an important governmental interest as detailed in Section I above. *See, e.g., Arangold*, 204 Ill. 2d at 157 (holding that the government's justification for a statute taxing tobacco products was found to be reasonably related because these products cause diseases that conceivably require long-term care was sufficient to shift the burden to the plaintiff to come forward with evidence showing that the asserted justification was unsupported by the facts); *see also Grand Chapter, Order of E. Star of Ill. v. Topinka*, , 2015 IL 117083, ¶¶ 14-15 (holding that the government's justification that a bed fee in a private hospital was reasonably related to supporting Illinois' Long-Term Care Provider Fund despite the fact that these funds did not directly benefit the private hospital). Thus, for the foregoing reasons, the Taxes do not violate Illinois' Uniformity Clause and the circuit court's decision must stand.

IV. Section 13.1 of The FOID Act and Section 90 of The FCCA Do Not Preempt The Taxes.

Plaintiffs argue that Section 13.1 of the FOID Act and Section 90 of the FCCA preempt the Taxes. See 430 ILCS 65/13.1(e) (2019) and 430 ILCS 66/90 (2019). This argument fails for two reasons.

First, the Illinois Constitution confers upon home rule entities a broad authority to enact taxes, subject to narrow limitations not at issue here. Try as Plaintiffs might to categorize the Taxes as "regulations," they cannot escape that they are taxes.[8]

8 Plaintiffs' reliance on the comments of a handful of legislators to prove the legislative intent of the seventeen person Cook County Board of Commissioners is similarly misplaced. Specifically, they cite statements by Commissioner Sims, Commissioner Suffredin, and Commissioner Boykin as evidence of the "wholly illegitimate motive" of the entire Board of Both the Firearm Tax and Firearm Ammunition Tax and that the funds are deposited into the Public Safety Fund to help alleviate the cost of gun violence in enacting the Firearm Tax.[1] *See* Plaintiffs' Br. at 3-5; 28; R. C291-293.

Second, even under the narrowest home rule analysis (applicable to non-tax ordinances), the plain language of the FOID Act and FCCA only prohibit enactments that are "inconsistent" with these statutes.

The Taxes are perfectly consistent with the state statutes, and thus must stand.

A. The Taxes Are a Valid Exercise of the County's Home Rule Power.

In Illinois, "[t]he power to regulate and the power to tax are distinct powers." *Rozner v. Korshak*, 55 Ill. 2d 430, 432 (1973). As the Illinois Supreme Court has consistently observed, the framers of the 1970 Constitution viewed the power to tax to be essential to effective home rule. *City of Chicago v. StubHub, Inc.*, 2011 IL 111127, ¶ 62 (citing 7 Record of Proceedings, Sixth Illinois Constitutional Convention 1625); *Mulligan v. Dunne*, 61 Ill. 2d 544, 548 (1975) (citing 7 Record of Proceedings, Sixth Illinois Constitutional Convention 1625–28, 1639–41). As such, they intended home rule units' power to tax to be broad. *Mulligan*, 61 Ill. 2d at 548 (citing 7 Record of Proceedings, Sixth Illinois Constitutional Convention 1625–28, 1639–41). They

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Plaintiffs' attempt to divine the intent of the entire Cook County Board of Commissioners from the comments of only three members is without merit. *See People v. R.L.*, 158 Ill. 2d 432, 442 (1994) ("courts generally give statements by individual legislators in a floor debate little weight when searching for the intent of the entire legislative body."), *see also Morel v. Coronet Insurance Co.*, 117 Ill. 2d 18, 24 (1987) (holding that "'legislative intent' speaks to the will of the legislature as a collective body, rather than the will of individual legislators."). This is especially true where Plaintiffs are ascribing an unconstitutional purpose to an entire legislative enactment and not merely turning to legislative history to interpret a vague or incomplete ordinance.

Plaintiffs also extract a line from the preamble of the enacting ordinance, which states that "the presence...of firearms in the County...detracts from the public health, safety, and welfare" and interpret its purpose to suppress Second Amendment rights. *See*Plaintiffs' Br. at 3-4; R. C291-293. Plaintiffs' assertion that the County Board was intentionally infringing upon Cook County residents' Second Amendment rights based upon such one line in the enacting ordinance is simply a stretch. The mention of the cost borne by Cook County citizens due to gun violence cannot be sufficient evidence of an unconstitutional intent.

fashioned the Illinois Constitution accordingly. *See StubHub*, 2011 IL 111127, ¶ 62 ("For this reason, the committee chose to specifically list the revenue . . . powers in section 6(a) and also to make it difficult for the legislature to deny these powers.").

Thus, the General Assembly can only limit home rule units' taxing power "if it is approved by a three-fifths majority of both houses (Ill. Const. 1970, art. VII, sec. 6(g)) and specifically expresses a restrictive purpose." *City of Rockford v. Gill*, 75 Ill. 2d 334, 341(1979) (citing *Stryker v. Village of Oak Park*, 62 Ill.2d 523, 528 (1976)); *Mulligan*, 61 Ill.2d at 550; *Rozner*, 55 Ill.2d at 435.) Conversely, article VII, section 6(h) of the Illinois Constitution allows that "[t]he 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*** . . . ." Ill. Const. 1970, art. VII, § 6(h) (emphasis added). Thus, Illinois law treats home rule units' power to regulate and power to tax as distinct.

Try as they might, Plaintiffs cannot escape the Illinois Constitution's broad grant of home rule authority by calling the Taxes a "regulation" instead of a tax. As discussed above, every tax can be construed as regulatory in some way. *See Sebelius*, 567 U.S. at 567. However, that does not take an enactment out of the realm of a tax and into that of a regulation. *See, e.g.*, *City of Evanston v. County of Cook*, 53 Ill. 2d 312, 317-18 (1972) (interpreting Ill. Const. 1970, art. VII, § 6(c), concluding that tax measures were distinguishable from regulatory measures and that while Section 6(c) applied to conflicting regulatory measures between a municipality and a home rule county, it did not apply to tax measures); *County of Cook v. Village of Rosemont*, 303 Ill. App. 3d 403, 408-09 (1st Dist. 1999) (same).

The language of the Firearm and Ammunition Tax Ordinance is clear and unambiguous in that it is a tax measure that clearly articulates the imposition of a tax and the amount of taxation.[9]

In any event, Plaintiffs fail to explain how even a "regulation" might be preempted by the FOID Act or the FCCA. In order for the preemption language in those two statutes to preclude the Taxes, the Taxes would have to be "inconsistent" with those statutes. The Taxes are not inconsistent with those statutes.

B. The FOID and the FCCA Do Not Preempt Tax Ordinances.

Neither the FOID Act nor FCCA preempt tax ordinances – and do not even preempt regulatory ordinances, so long as those ordinances are not inconsistent with their provisions.

Section 13.1(a) of the FOID Act actually reinforces the notion that municipalities can enact regulatory ordinances which are ***more stringent*** than the provisions of the FOID Act:

> Except as otherwise provided in the Firearm Concealed Carry Act [430 ILCS 66/1 *et seq*.] 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.

430 ILCS 65/13.1(a) (emphasis added).

Section 13.1(b) goes on to expressly preempt regulations that are ***inconsistent*** with the FOID Act:

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9 Any collateral motives or effects of the ordinance are irrelevant. *See Illinois Gasoline Dealers Ass'n*, 141 Ill. App. 3d at 979 (holding that plain language of ordinance taxing the purchase of leaded gasoline indicated that the ordinance was a tax, and that collateral motives behind or resultant effects of the ordinance, such as the discouragement of the purchase of leaded gasoline or to affect air quality control standards, were beyond the scope of judicial inquiry.)

> 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.

430 ILCS 65/13.1(b) (emphasis added).

Underscoring that the preemption language applies only to ***regulations*** and not at all to taxes is 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) (emphasis added.) Again, subsection (h) explicitly does not apply to the taxing power. Ill. Const. 1970, art. VII, § 6(h) ("The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit ***other than a taxing power*** . . . .") (emphasis added).

Similarly, Section 90 of the FCCA states:

> 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 (emphasis added).

Thus, the preemption language that the FCCA, like the FOID Act, refers to explicitly does not apply to the taxing power.

Beyond the Acts' specific reference to section 6(h), the precise language of both Acts reflects that the Illinois General Assembly intended to preempt the regulatory powers of home rule entities, not their taxation powers. The FOID Act and the FCCA specifically preempt "regulations or restrictions on licensees or handguns and ammunition for handguns" inconsistent with these acts. *See* 430 ILCS 65/1.1 (2019); 430 ILCS 66/5 (2019). As the circuit court noted, "[t]axes are conspicuously absent from the measures preempted." (R. C1124.)

Plaintiffs' assertion that the terms "regulation" and "restriction" in the Acts could apply to the Taxes strains credulity as well as the plain language of the statutes themselves. *See Alvarez v. Pappas*, 229 Ill. 2d 217, 228 (2008) (where statutory language is clear and unambiguous, the statute must be given effect as written). While dictionary definitions are hardly needed here, they further support the notion that a "tax" is different from a "regulation" or "restriction." Merriam-Webster defines a "regulation" as "an official rule or law that says how something should be done." Merriam–Webster Dictionary, http://www.merriam-webster.com/dictionary/regulation (last visited May 31, 2019). Similarly, "restriction" is defined as "a law or rule that limits or controls something." Merriam–Webster Dictionary, http://www.merriam-webster.com/dictionary/restriction (last visited May 31, 2019). In marked contrast, "taxation" is defined as "the action of taxing; *especially*: the imposition of taxes" and

"revenue obtained from taxes." Merriam–Webster Dictionary, http://www.merriam-webster.com/dictionary/regulation (last visited May 31, 2019).

Thus, the plain language of both section 13.1(e) of the FOID Act and section 90 of the FCCA must be read not to preempt taxes on firearms or ammunition.[10] As such, Cook County's Firearm and Ammunition Tax is not precluded by either state statute, and the circuit court's decision should stand.

10 However, even if it was necessary to look to the legislative history, as the circuit court noted, the legislative history of the FCCA further suggests that the General Assembly did not intent to preempt taxation. (R. C1124.)

CONCLUSION

For the foregoing reasons, the County respectfully requests that this Honorable Court: (1) affirm the decision of the circuit to grant in part the Defendants' Motion to Dismiss; and (2) affirm the decision of the circuit court denying the Plaintiffs' Motion for Summary Judgment and granting the Defendants' Cross Motion for Summary Judgment.

Dated: June 14, 2019

KIMBERLY M. FOXX
State's Attorney of Cook County

By: /s/ Cristin Duffy
Cristin Duffy
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602

Cathy McNeil Stein
Assistant State's Attorney
Chief, Civil Actions Bureau

Cristin Duffy
Paul A. Castiglione
Savannah Berger*
Assistant State's Attorneys
Of counsel

* Ms. Berger is a law student at the Northwestern University School of Law, Class of 2021. Ms. Berger assisted with the writing and the preparation of this brief

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is attached.

/s/ Cristin Duffy
Cristin Duffy
Assistant State's Attorney

APPENDIX

TABLE OF CONTENTS TO THE APPENDIX

Ill. Const. Art. I, §22 (1970), Right to Arms

Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.

Ill. Const. 1970, art. VII, § 6(a), Section 6. Powers of Home Rule Units

(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.

(b) A home rule unit by referendum may elect not to be a home rule unit.

(c) If a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.

(d) A home rule unit does not have the power (1) to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred or (2) to define and provide for the punishment of a felony.

(e) A home rule unit shall have only the power that the General Assembly may provide by law (1) to punish by imprisonment for more than six months or (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations.

(f) A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. A home rule county shall have the power to provide for its officers, their manner of selection and terms of office in the manner set forth in Section 4 of this Article.

(g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (l) of this section.

(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.

(j) The General Assembly may limit by law the amount of debt which home rule counties may incur and may limit by law approved by three-fifths of the members elected to each house the amount of debt, other than debt payable from ad valorem property tax receipts, which home rule municipalities may incur.

(k) The General Assembly may limit by law the amount and require referendum approval of debt to be incurred by home rule municipalities, payable from ad valorem property tax receipts, only in excess of the following percentages of the assessed value of its taxable property: (1) if its population is 500,000 or more, an aggregate of three percent; (2) if its population is more than 25,000 and less than 500,000, an aggregate of one percent; and (3) if its population is 25,000 or less, an aggregate of one-half percent. Indebtedness which is outstanding on the effective date of this Constitution or which is thereafter approved by referendum or assumed from another unit of local government shall not be included in the foregoing percentage amounts.

(l) The General Assembly may not deny or limit the power of home rule units (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government or (2) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

(m) Powers and functions of home rule units shall be construed liberally.

Ill. Const. 1970, art. VII, § 6(g), Section 6. Powers of Home Rule Units

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Ill. Const. Art. IX, §2 (1970), Powers of Home Rule Units

(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.

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(c) If a home rule county ordinance conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.

(d) A home rule unit does not have the power (1) to incur debt payable from ad valorem property tax receipts maturing more than 40 years from the time it is incurred or (2) to define and provide for the punishment of a felony.

(e) A home rule unit shall have only the power that the General Assembly may provide by law (1) to punish by imprisonment for more than six months or (2) to license for revenue or impose taxes upon or measured by income or earnings or upon occupations.

(f) A home rule unit shall have the power subject to approval by referendum to adopt, alter or repeal a form of government provided by law, except that the form of government of Cook County shall be subject to the provisions of Section 3 of this Article. A home rule municipality shall have the power to provide for its officers, their manner of selection and terms of office only as approved by referendum or as otherwise authorized by law. A home rule county shall have the power to provide for its officers, their manner of selection and terms of office in the manner set forth in Section 4 of this Article.

(g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (l) of this section.

(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.

(j) The General Assembly may limit by law the amount of debt which home rule counties may incur and may limit by law approved by three-fifths of the members elected to each house the amount of debt, other than debt payable from ad valorem property tax receipts, which home rule municipalities may incur.

(k) The General Assembly may limit by law the amount and require referendum approval of debt to be incurred by home rule municipalities, payable from ad valorem property tax receipts, only in excess of the following percentages of the assessed value of its taxable property: (1) if its population is 500,000 or more, an aggregate of three percent; (2) if its population is more than 25,000 and less than 500,000, an aggregate of one percent; and (3) if its population is 25,000 or less, an aggregate of one-half percent. Indebtedness which is outstanding on the effective date of this Constitution or which is thereafter approved by referendum or assumed from another unit of local government shall not be included in the foregoing percentage amounts.

(l) The General Assembly may not deny or limit the power of home rule units (1) to make local improvements by special assessment and to exercise this power jointly with other counties and municipalities, and other classes of units of local government having that power on the effective date of this Constitution unless that power is subsequently denied by law to any such other units of local government or (2) to levy or impose additional taxes upon areas within their boundaries in the manner provided by law for the provision of special services to those areas and for the payment of debt incurred in order to provide those special services.

(m) Powers and functions of home rule units shall be construed liberally.

Illinois Rule of Evidence 201(b), **Judicial Notice of Adjudicative Facts**

(a) *Scope of Rule.* This rule governs only judicial notice of adjudicative facts.

(b) *Kinds of Facts.* A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

4**30 ILCS 65/13.1(e) (2019) Preemption(a)** Except as otherwise provided in the Firearm Concealed Carry Act [430 ILCS 66/1 et seq.] 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 [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].

430 ILCS 66/90 (2019), 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 [Ill. Const., Art. VII, § 6].

Cook County Code of Ordinances, §§ 74-665 – 74-676,

ARTICLE XX. - FIREARM AND FIREARM AMMUNITION TAX

- **Sec. 74-665. - Short title.**

This Article shall be known and may be cited as the "Cook County Firearm and Firearm Ammunition Tax Ordinance."

(Ord. No. 15-6469, 11-18-2015.)

- **Sec. 74-666. - 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:

Firearm shall have the same meaning as set forth in the Illinois Firearm Owners Identification Act, 430 ILCS 65/1.1, or any successor statute.

Firearm ammunition shall have the same meaning as set forth m the Illinois Firearm Owners Identification Card Act, 430 ILCS 65/1.1, or any successor statute.

Centerfire ammunition means firearm ammunition that is characterized by a primer in the center of the base of the cartridge.

Department means the Department of Revenue in the Bureau of Finance of Cook County.

Director means the Director of the Department of Revenue.

Person means any means any individual, corporation, limited liability corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity.

Purchaser means any person who purchases a firearm or firearm ammunition in a retail purchase in the county.

Retail dealer means any person who engages in the business of selling firearms or firearm ammunition on a retail level in the county or to a person in the county.

Retail purchase means any transaction in which a person in the county acquires ownership by tendering consideration on a retail level.

Rimfire ammunition means firearm ammunition that is characterized by a primer that completely encircles the rim of the cartridge.

Sheriff means the Sheriff's Office of Cook County, Illinois.

(Ord. No. 15-6469, 11-18-2015.)

- **Sec. 74-667. - Registration.**

Any retail dealer as defined in this article shall register with the Department in the form and manner as prescribed by the Department. Policies, rules and procedures for the registration process and forms shall be prescribed by the Department. (Ord. No. 15-6469, 11-18-2015.)

- **Sec. 74-668. - Tax imposed, rates.**

(a) *Firearm Tax Rate.* A tax is hereby imposed on the retail purchase of a firearm as defined in this Article in the amount of $25.00 for each firearm purchases.

(b) *Firearm Ammunition Tax Rate.* Effective June 1, 2016, a tax is hereby imposed on the retail purchase of firearm ammunition as defined in this article at the following rates:

(1) Centerfire ammunition shall be taxed at a rate of $0.05 per cartridge.

(2) Rimfire ammunition shall be taxed at a rate of $0.01 per cartridge.

(c)*Tax Included in Sales Price.* It shall be deemed a violation of this Article for a retail dealer to fail to include the tax imposed in this Article in the sale price of firearms and/or firearm ammunition to otherwise absorb such tax. The tax levied in this article shall be imposed is in addition to all other taxes imposed by the County of Cook, the State of Illinois, or any municipal corporation or political subdivision of any of the foregoing.

(Ord. No. 15-6469, 11-18-2015.)

- **Sec. 74-669. - Tax-exempt purchases and refunds.**

(a) Notwithstanding any other provision of this article, in accordance with rules that shall be promulgated by the department in regards to tax exempt purchases, retail dealers shall not collect the firearm and/or firearm ammunition tax when the firearm and/or firearm ammunition is being sold to the following:

(1) An office, division, or agency of the United States, the State of Illinois, or any municipal corporation or political subdivision, including the Armed Forces of the United States or National Guard.

(2) A bona fide veterans organization which receive firearms and/or firearm ammunition directly from the Armed Forces of the United States and uses said firearms and/or firearm ammunition strictly and solely for ceremonial purposes with blank ammunition.

(3) Any active sworn law enforcement officer purchasing a firearm and/or firearm ammunition for official or training related purposes presenting an official law enforcement identification card at the time of purchase.

(b) In accordance with rules to be promulgated by the department, an active member of the Armed Forces of the United States, National Guard or deputized law enforcement officer may apply for a refund from the department for the tax paid on a firearm and/or firearm ammunition that was purchased for official use or training related purposes.

(c) Notwithstanding any other provision in this Article, in accordance with rules that shall be promulgated by the department in regards to tax-exempt purchases, retail dealers shall not collect firearm ammunition tax on blank ammunition.

(Ord. No. 15-6469, 11-18-2015.)

(a) Tax Collection. Any retail dealer shall collect the taxes imposed by this Article from any purchaser to whom the sale of said firearms and/or firearm ammunition is made within the County of Cook and shall remit to the Department the tax levied by this Article.

(b) Tax Remittance. It shall be the duty of every retail dealer to remit the tax due on the sales of firearms and/or firearm ammunition purchased in Cook County, on forms prescribed by the Department, on or before the 20th day of the month following the month in which the firearm and/or firearm ammunition sale occurred on a form and in the manner required by the department.

(c) If for any reason a retailer dealer fails to collect the tax imposed by this article from the purchaser, the purchaser shall file a return and pay the tax directly to the department, on or before the date required by Subsection (b) of this Section.

(Ord. No. 15-6469, 11-18-2015.)

- **Sec. 74-671. - Violations and penalties.**

  (a) It shall be a violation of this Article for any retail dealer to sell firearms and/or firearm ammunition without collecting and remitting the tax imposed in this Article.

  (b) It shall be a violation of this Article for any retail dealer fail to keep books and records as required in this Article.

  (c) It shall be a violation of this Article for any purchaser to fail to remit the tax imposed in this Article when not collected by the retail dealer.

  (d) Any person determined to have violated this Article, shall be subject to a fine in the amount of $1,000.00 for the first offense, and a fine of $2,000.00 for the second and each subsequent offense. Separate and distinct offense shall be regarded as committed each day upon which said person shall continue any such violation, or permit any such violation to exist after notification thereof. It shall be deemed a violation of this Article for any person to knowingly furnish false or inaccurate information to the Department.

  (Ord. No. 15-6469, 11-18-2015.)

- **Sec. 74-672. - Required books and records.**

  Every person who is subject to this tax shall keep and maintain accurate and complete documents, books, and records of each transaction or activity subject to or exempted by this Ordinance, from start to complete, including all original source documents. All such books and records shall be kept as provided in Chapter 34, Article III, of the Uniform Penalties, Interest, and Procedures Ordinance, and shall, at all reasonable times during normal business hours, be open to inspection, audit, or copying by the department and its agents. (Ord. No. 15-6469, 11-18-2015.)

- **Sec. 74-673. - Inspection; audits.**

  Books and records kept in compliance with this Article shall be made available to the Department upon request for inspection, audit and/or copying during regular business hours. Representatives of the Department shall be permitted to inspect or audit firearm and/or firearm ammunition inventory in or upon any premises. It shall be unlawful for any person to prevent, or hinder a duly authorized Department representative from performing the enforcement duties provided in this Article. (Ord. No. 15-6469, 11-18-2015.)

- **Sec. 74-674. - Application of uniform penalties, interest, and procedures ordinance.**

  Whenever not inconsistent with the provisions of this Article, or whenever this Article is silent, the provisions of the Uniform Penalties, Interest, and Procedures Ordinance, Chapter 34, Article III, of the Cook County Code of Ordinances, shall apply to and supplement this Article. (Ord. No. 15-6469, 11-18-2015.)

- **Sec. 74-675. - Rulemaking; policies, procedures, rules, forms.**

  The department may promulgate policies, procedures, rules, definitions and forms to carry out the duties imposed by this Article as well as pertaining to the administration and enforcement of this Article. (Ord. No. 15-6469, 11-18-2015.)

- **Sec. 74-676. - Enforcement, department and sheriff.**

  The department is authorized to enforce this Article, and the Sheriff is authorized to assist the department in said enforcement. (Ord. No. 15-6469, 11-18-2015.)

- **Sec. 74-677. - Dedication of funds.**

  The revenue generated as the result of the collection and remittance of the tax on firearm ammunition set forth herein shall be directed to the Public Safety Fund to fund operations related to public safety. (Ord. No. 15-6469, 11-18-2015.)

- **Secs. 74-678—74-799. - Reserved.**

U.S. Const. amend. II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Const. amend. XIV, §1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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No. 1-18-1846

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GUNS SAVE LIFE, INC., *et al.*,

Plaintiffs-Appellants,

v.

ZAHRA ALI, solely in in her capacity as Director of the Department of Revenue of Cook County, *et al.*,

Defendants-Appellees.

Appeal from the Circuit Court of Cook County, Illinois
Case No. 15 CH 18217
The Honorable David B. Atkins, Presiding

PLAINTIFFS-APPELLANTS' REPLY BRIEF

Christian D. Ambler
Stone & Johnson, Chartered
111 West Washington Street
Suite 1800
Chicago, IL 60602
(312) 223-5656
cambler@stonejohnsonlaw.com

David H. Thompson
Peter A. Patterson
John D. Ohlendorf
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com

Attorneys for Plaintiffs-Appellants

ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

ARGUMENT

Article 1, Section 22 of the Illinois Constitution protects "the right of the individual citizen to keep and bear arms" and provides that this right shall be "[s]ubject only to the police power." As Cook County concedes in its brief before this Court, "Illinois law treats home rule units' power to regulate and power to tax as distinct." Br. of Defendants-Appellees 26 (June 14, 2019) ("Appellees' Br."). Accordingly, while the government pursuant to the police power may *regulate* the right to keep and bear arms, within constitutional limits, under Article 1, Section 22 it *may not tax it*—for that provision does not make the right subject to the *taxing* power. Cook County *does not contest this point* in its brief, effectively conceding it.

The Firearm and Ammunition Taxes challenged here can thus be squared with the Illinois Constitution only if they are understood as *regulations* of the right to acquire firearms and the ammunition needed to operate them—an exercise of the police power costumed as a tax. But Defendants explicitly disavow any such understanding of the challenged provisions. Recognizing that any attempt by the County to *regulate* the purchase of firearms and ammunition would be preempted by both the Firearm Concealed Carry Act and the FOID Card Act, which reserve regulation of this subject to the "exclusive powers and functions of the State," 430 ILCS 66/90; *see also id.* 65/13.1, Defendants instead assert that "[t]he language of the Firearm and Ammunition Tax Ordinance is clear and unambiguous in that it is a tax measure," Appellees' Br. 27. While this may be enough to remove the challenged provisions from the preemptive scope of these two statewide laws, it renders them flatly unconstitutional under Article 1, Section 22.

Even if the right to keep and bear arms *could* be subject to taxation under the Illinois Constitution, Cook County's Second Amendment Tax would still be invalid. For as explained in our opening brief, under a long line of United States and Illinois Supreme Court case law, any tax that *singles out* the exercise of a constitutional right for special taxes and fees—as the taxes challenged here do—must be subject to strict scrutiny. Cook County's only meaningful response to this settled jurisprudence is an attempt to dispute the fundamental status of the right to keep and bear arms: that right, it insists, "is not comparable to the fundamental right[s]" at issue in these cases. Appellees' Br. 14. But the People who ratified the Second Amendment and codified Article 1, Section 22 into this State's highest law have solemnly declared that "the right of the individual citizen to keep and bear arms" *is* a fundamental right at least on the same plane as the right to marry, to vote, and to speak and worship freely. Cook County has made no attempt to disguise its contempt for this choice—or its desire to suppress this fundamental right by every means available. But it has no warrant to veto the People's choice to enshrine this right in their fundamental law.

Defendants' efforts to undermine Plaintiffs' standing also fail. Plaintiff Marilyn Smolenski—and other members of associational Plaintiff Guns Save Life ("GSL")—have standing to challenge both taxes because they have either (1) *paid the taxes* under protest, or (2) foregone the exercise of their constitutional right to purchase firearms and ammunition to *avoid* paying the taxes. Either form of injury suffices to create a case or controversy. Indeed, the County does not even dispute that Plaintiff Smolenski—who paid the Ammunition Tax under protest—has standing to challenge that tax. And Maxon Shooters Supplies and Indoor Range ("Maxon") also has standing because it has suffered

significant economic injury as a direct result of the challenged taxes—losing an estimated $51,000 in revenue in the first few years of after their enactment and incurring thousands of dollars in compliance costs each year.

Just as the IRS could not impose a special sales tax on any publication that criticizes the current administration—and a predominantly Protestant community could not impose a surcharge on each Mass conducted at the local cathedral—Cook County cannot raise revenue through a discriminatory tax that singles out the purchase of firearms. The Second Amendment Tax must be struck down.

I. All three Plaintiffs have standing to challenge the Firearm and Ammunition Taxes.

Cook County argues that Plaintiffs lack standing to challenge the Second Amendment Tax, but it ultimately says nothing that calls the existence of a live case or controversy into question.

A. Guns Save Life has standing under binding precedent. In *International Union of Operating Engineers v. Illinois Department of Employment Security*, the Supreme Court squarely "adopt[ed] the doctrine of associational standing in Illinois," reasoning that "associational standing serves important functions in the vindication of the rights of members of associations and in the preservation of scarce judicial resources." 215 Ill. 2d 37, 50, 51 (2005). Under that doctrine, "[a]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Id.* at 47 (quoting *Hunt v. Washington State Advert. Comm'n*, 432 U.S. 333, 343 (1977)).

As demonstrated in our Opening Brief—and as the circuit court held (R. C335)—Guns Save Life meets each of these requirements with respect to both the Firearm Tax and Ammunition Tax. Cook County does not meaningfully dispute this conclusion. The County cryptically asserts that GSL's "members, most of whom are not located in Cook County, *may avoid* purchasing firearms and ammunition in Cook County." Appellees' Br. 8. But being forced to refrain from engaging in constitutionally protected conduct *is itself* an injury-in-fact sufficient to confer standing. *Meese v. Keene*, 481 U.S. 465, 472–77 (1987); *cf. Harris v. City of Zion*, 927 F.2d 1401, 1405 (7th Cir. 1991). And even if that were not so, this argument would do *nothing* to diminish the standing of the GSL members *who have already paid both taxes*, including at least one who has paid the Ammunition Tax under protest. (R. C420, C425, C434). *See DeWoskin v. Loew's Chicago Cinema, Inc.*, 306 Ill. App. 3d 504, 513 (1st Dist. 1999) (plaintiff who paid tax under protest had standing to challenge its constitutionality).

Instead of meaningfully arguing that Guns Save Life lacks standing under the associational standing test, the County's argument proceeds as though *International Union* had never been decided, and the doctrine of associational standing never adopted by the Illinois courts. According to the County, this Court should "affirm the circuit court's dismissal of GSL's claims for lack of standing"—an odd locution, given that the circuit court expressly *affirmed* GSL's standing (R. C335)—because Guns Save Life lacks a "recognizable interest that is harmed by the Taxes" and is thus "unable to show direct injury." Appellees' Br. 8. *International Union* flatly repudiated this very argument. There, too, the defendant argued that the associational plaintiff lacked standing because it was not itself "aggrieved by the [challenged] decision." 215 Ill. 2d at 57. The Supreme

Court rejected that contention, explaining that "it fails to take into consideration the derivative nature of an association's standing." *Id.*

> [T]he members of Engineers' Union were aggrieved by the [challenged agency] decision . . . . Consequently, the standing requirement limiting review to a party aggrieved by the agency's decision has been met *by the members of Engineers' Union.* It follows that Engineers' Union, as an organization meeting the requirements of the doctrine of associational standing, need not meet the standing requirement independently.

Id. Guns Save Life has standing under the very same principles.

The only authority cited by Cook County for its argument that Guns Save Life must *itself* "show direct injury" are cases that predate—and were necessarily abrogated by—the Supreme Court's decision in *International Union*. For instance, the County cites the Supreme Court's statement in *Underground Contractors Ass'n v. City of Chicago* that "an association's representational capacity alone is not enough to give it standing, absent a showing that it has a recognizable interest in the dispute, peculiar to itself and capable of being affected." 66 Ill.2d 371, 377 (1977). That statement in *Underground Contractors* was the purest of dicta, since the court ultimately held the associational plaintiff's "complaint [wa]s insufficient to give it standing even under the Federal rule." *Id* at 378. And whatever precedential force this statement may have had at the time, it was plainly overruled by the Supreme Court's subsequent decision in *International Union*.

For the same reason, this Court's cases cited by the County cannot change the result. Those cases merely followed *Underground Contractor*'s dictum. *See Owner-Operator Indep. Drivers Ass'n v. Bower*, 325 Ill. App. 3d 1045, 1050 (1st Dist. 2001); *Forsberg v. City of Chicago*, 151 Ill. App. 3d 354, 371 (1st Dist. 1986). Both cases predated the decision in *International Union* adopting associational standing, and both cases were plainly abrogated by that opinion.

B. Maxon also has standing to challenge both taxes, vindicating the Second Amendment rights of its customers. *See Eisenstadt v. Baird*, 405 U.S. 438, 446 (1972); *Ezell v. City of Chicago*, 651 F.3d 684, 696 (7th Cir. 2011). As explained in our opening brief, it is well settled that retailers charged by law with collecting a tax have standing to challenge it even if they may pass the cost of the tax on to their customers. *Springfield Rare Coin Galleries, Inc. v. Johnson*, 115 Ill. 2d 221, 229–30 (1986); *P & S Grain, LLC v. County of Williamson*, 399 Ill. App. 3d 836, 844–46 (5th Dist. 2010). Cook County does not even cite these cases, much less persuasively rebut them.

Maxon is additionally injured by the Ammunition Tax because it is forced to expend thousands of dollars each year complying with the recordkeeping requirements imposed by the tax. (R. C438–39). The County disputes this, claiming that "Maxon owns a module program which can automatically track sales data based on the type of firearm and ammunition," rendering Maxon's compliance costs "illusory." Appellees' Br. 4–5 n.2. Not so. As we explained in our Opening Brief, Maxon's computerized sales tracking program *cannot* be used to avoid Maxon's compliance costs because the program tracks the number of *boxes* of ammunition sold but does not (and cannot) track sales of individual *rounds*—and *this* is the information required by Defendants' reporting requirements. (R. C439).

Finally, because the challenged taxes place Maxon at a competitive disadvantage compared to retailers located elsewhere, it lost an estimated $51,000 in potential revenue in the first few years of the taxes' operation. (R. C1055–56). That amounts to injury-in-fact on any conceivable understanding. *See Chicago Park Dist. v. City of Chicago*, 127 Ill. App. 3d 215, 218–19 (1st Dist. 1984).

C. The individual plaintiff, Marilyn Smolenski, also has standing. She has standing to challenge the Firearm Tax because it has caused her to refrain from purchasing a firearm she was otherwise interested in buying. (R. C288). *See Chicago Park District*, 127 Ill. App. 3d at 218–19 (taxes may be challenged on a preenforcement basis). And, there can be no question that Ms. Smolenski has standing to challenge the Ammunition Tax, since (1) she *paid* that tax, under protest, in 2016 (R. C.425), giving her "standing to challenge the constitutionality of the [tax] on any theory," *DeWoskin*, 306 Ill.App.3d at 513, and (2) she will continue to pay the tax, since she plans "to purchase ammunition in Cook County in the future" (albeit in reduced amounts "because of the Ammunition Tax"). (R. C.425). Indeed, the County does not even *dispute* the circuit court's conclusion that Ms. Smolenski has standing to challenge the Ammunition Tax, so even by Defendants' lights, this portion of the case must go forward.

II. The Second Amendment Tax burdens conduct within the scope of the right to keep and bear arms.

Because Plaintiffs have standing, this Court must analyze the Second Amendment Tax under the two-step approach adopted by Illinois Courts—asking first "whether the challenged law imposes a burden on conduct falling within the scope of the second amendment guarantee." *Wilson v. County of Cook*, 2012 IL 112026, ¶ 41. As shown in our opening brief, the answer to that question in this case is yes.

A. The Second Amendment and Article I, Section 22 protect the right to purchase firearms and ammunition.

Cook County concedes, as it must, that "ownership and acquisition of firearms and ammunition are conduct falling within the scope of the Second Amendment." Appellees' Br. 11. But it argues that its taxes are nonetheless outside the Second Amendment's protections because they are merely "laws imposing conditions and

qualifications on the commercial sale of arms"—a class of restrictions that *District of Columbia v. Heller* suggested may fall outside the Second Amendment's protective sphere. 554 U.S. 570, 626–27 (2008); *see* Appellees' Br. 10. This contention fails for two independent reasons. First, the Second Amendment Tax *is not* a "condition" or "qualification" on firearm sales. The challenged Ordinances do not limit *who may engage in the business of selling* firearms or ammunition. Nor do they speak to *how an individual may qualify* to sell these items—by obtaining a license, for example. And individual purchasers must pay the Second Amendment Tax *even if the retailers fail to collect it.* COOK COUNTY CODE § 74-670(c). The Second Amendment Tax is is not a "condition" or "qualification" on commercial firearm and ammunition sales under any plausible definition.

In any event, the County's suggestion that "laws imposing conditions and qualifications on the commercial sale of arms" are automatically exempt from constitutional scrutiny obviously cannot be right, since such an exception would *hollow out* the Second Amendment guarantee entirely. As the Third Circuit has explained, "[i]f there were somehow a categorical exception for these restrictions, it would follow that there would be no constitutional defect in prohibiting the commercial sale of firearms. Such a result would be untenable under *Heller*." *United States v. Marzzarella*, 614 F.3d 85, 92 n.8 (3d Cir. 2010); *see also Illinois Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930, 937 (N.D. Ill. 2014). Indeed, that result would flatly contradict the County's concession in this very case that the "ownership and acquisition of firearms and ammunition are conduct falling within the scope of the Second Amendment." Appellees' Br. 11. Cook County never explains how the right to keep and bear arms can

both: (1) protect the purchase of firearms and ammunition, and (2) contain a categorical exception for any law that burdens their sale.

The County next maintains that "[t]he federal government has imposed a firearms registration requirement and a $200 tax on the making and transfer of firearms since 1934," and that this shows that Second Amendment scrutiny "is arguably not even triggered" here. Appellees' Br. 10–11. The County's reliance on the federal tax imposed by the National Firearms Act is utterly misplaced. What the County completely fails to mention is that although the National Firearms Act "was originally drafted to include all pistols and revolvers," Congress ultimately "amended its language to include only short-barreled shotguns, short-barreled rifles, machine guns, and silencers," due to the many comments "centered on legitimate uses for pistols and revolvers," *United States v. Gonzales*, 2011 WL 5288727, at *4 (D. Utah Nov. 2, 2011). Indeed, as the U.S. Supreme Court clarified in *Heller*, it upheld the Act's application to short-barreled shotguns only because "the type of weapon at issue was not eligible for Second Amendment protection." *Heller*, 554 U.S. at 622 (emphasis omitted). Indeed, *Heller* explained that the Act *might well have been struck down* had it applied to constitutionally protected firearms. *Id.* at 624 (any suggestion that the Second Amendment protects machineguns would lead to "startling" results "since it would mean that the National Firearms Act's restrictions on machineguns . . . might be unconstitutional").

Finally, the County also seeks to wrest support from the Washington Supreme Court decision in *Watson v. City of Seattle*, 401 P.3d 1 (Wash. 2017). Defendants' suggestion that *Watson* has some bearing here is refuted by its own description of the case. *Watson*, the County explains, "upheld Seattle's firearms and ammunition tax against

a preemption challenge, but gave no consideration to Second Amendment issues." Appellees' Br. 11. That case "gave no consideration" to the Second Amendment because *the plaintiffs in Watson did not raise any Second Amendment challenge*. *Watson*, 401 P.3d at 4. It is thus irrelevant.

B. The Second Amendment Tax burdens the right to keep and bear arms.

Switching gears, Cook County argues that the Firearm and Ammunition Taxes should escape constitutional scrutiny because they do not "impede Plaintiffs' ability to exercise their [Second] Amendment right to bear arms in any meaningful way." Appellees' Br. 6 (quotation marks omitted). But the challenged taxes *do* impede Plaintiffs' right to acquire firearms and ammunition: by raising the cost of these items, it has caused Ms. Smolenski and other GSL members *to forego* engaging in this constitutionally protected conduct. (R. C288, C420–21, C425). Indeed, that was the very *purpose* of the taxes: to "add to the costs of the instruments of death," Meeting of the Cook County Board of Commissioners at 1:44:31 (Nov. 12, 2015), *available at* https://goo.gl/1CJgew (R. C293) ("2015 Hearing"), and thereby "make it difficult for people to have guns," Meeting of the Cook County Board of Commissioners at 1:18:56 (Nov. 2, 2012), *available at* https://goo.gl/1CJgew ("2012 Hearing") (R. C291).

The case law makes clear that an attempt to add costs to law-abiding citizens' acquisition of constitutionally protected goods or services in this way constitutes a sufficient burden to trigger constitutional scrutiny. In *Boynton v. Kusper*, as discussed in our opening brief and in more detail below, the Supreme Court struck down a $10 tax on the issuance of marriage licenses, explaining that while "[i]t may be argued that the amount of the tax . . . does not . . . impose a significant interference with the fundamental

right to marry," strict scrutiny is nonetheless required because "[o]nce it is conceded that the State has the *power* to . . . single out marriage for special tax consideration, there is no limit on the amount of the tax that may be imposed." 112 Ill. 2d 356, 369–70 (1986). The U.S. Supreme Court employed the same reasoning in striking down a $1.50 poll tax. *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 668 (1966) ("The degree of the discrimination is irrelevant . . . .").

These cases also make quick work of the County's suggestion that the challenged taxes "do not restrict ownership of firearms and ammunition any more than alcohol or cigarette taxes burden the purchase of those items." Appellees' Br. 11. Until either the state or federal constitution is amended to create a fundamental right to drink and smoke, the permissibility of taxing these items is utterly irrelevant. One need only exchange "alcohol" and "cigarettes" in Defendants' statement for "marriage licenses" or "access to the voting booth" to see the flaw in the County's analogy.

The County next contends that the "additional costs" created by a tax "by themselves, do not render a tax unconstitutional," citing *Coverdale v. Arkansas-Louisiana Pipe Line Co.*, 303 U.S. 604 (1938). Appellees' Br. 12. The circuit court relied on *Coverdale* too, but as we explained in our opening brief, the case is utterly irrelevant, since it involves general dormant commerce clause principles—not the considerations that govern when a tax singles out a constitutional right. Defendants offer no response to this point. Nor do they explain why they think their position finds support in *Kwong v. Bloomberg*—a case which, as we also explained in our opening brief, *applied heightened scrutiny* to the fee at issue there *notwithstanding* the claim that the fee allegedly was

merely a "marginal" restraint on Second Amendment rights. 723 F.3d 160, 167, 168 n.15 (2d Cir. 2013).

Finally, while the County also cites *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015), and *Wollschlaeger v. Governor of Florida*, 848 F.3d 1293 (11th Cir. 2017), our opening brief likewise already explained why those cases are inapposite. *Friedman* merely set forth a special test governing challenges to bans on so-called "assault weapons." And the County misstates the holding of *Wollschlaeger*—that case concluded that "physicians' ability to question or advise patients about the ownership and use of firearms" did not "infringe[ ] [their] patient's Second Amendment rights," Appellees' Br. 13, *not* because the practice was insufficiently *burdensome*, but because doctors are "private actors" that do not meet the "state action" requirement that applies to all constitutional claims. *Wollschlaeger*, 848 F.3d at 1313. The County points to nothing in either case that brings any light to the analysis of the taxes challenged here.

III. If the challenged provisions are understood as imposing taxes, they are unconstitutional for multiple independent reasons.

Because the Second Amendment Tax burdens conduct within the scope of the right to keep and bear arms, this Court must proceed to the second prong of the Second Amendment analysis: whether "the strength of the government's justification" for the challenged law survives "some form of heightened scrutiny." *Wilson*, 2012 IL 112026, ¶42. And at this point, we reach a fork in the path. For as the County explains, "Illinois law treats [the] power to regulate and power to tax as distinct," Appellees' Br. 26, and the Second Amendment Tax potentially could be understood as an exercise of *either* power. Both paths, however, lead to the same destination: whether understood as a tax or a regulation, the Second Amendment Tax must fall.

A. Any tax on the right to keep and bear arms is categorically unconstitutional under Article I, Section 22 of the Illinois Constitution.

If they are understood as an exercise of the taxing power, the challenged Ordinances are unconstitutional categorically under the Illinois Constitution, because Article I, Section 22 unambiguously declares that "the right of the individual citizen to keep and bear arms" is "[s]ubject *only to the police power*" (emphasis added). Cook County *itself concedes* that "Illinois law treats [the] power to regulate and power to tax as distinct." Appellees' Br. 26. And Article I, Section 22 establishes, in plain English, that the right to keep and bear arms may only be restricted *through one* of those "distinct" powers: "the police power." ILL. CONST. art. 1, § 22.

We squarely presented this argument both below and in our opening brief, explaining that under the plain text of this constitutional provision and the settled distinction between the taxing power and police power, the challenged provisions, if understood as an exercise of the power to tax, simply cannot stand. Astonishingly, ***the County offers no response to this argument.*** It has thus implicitly conceded the point, and this Court need go no further to find the Second Amendment Tax unconstitutional and reverse the decision below.

B. Alternatively, the Second Amendment Tax is unconstitutional because it singles out constitutionally-protected conduct.

The challenged taxes also must fall under the ordinary analysis that applies whenever the government attempts to saddle the exercise of a constitutional right with special taxes or surcharges. The key case in Illinois is *Boynton v. Kusper*, which, as noted above, struck down a $10 fee the State had imposed on the issuance of a marriage license for the purpose of generating revenue to fund "the Domestic Violence Shelter and

Service Fund." 112 Ill. 2d at 359. The Supreme Court concluded that because that tax "singled out" and "impose[d] a *direct* impediment to the exercise of the fundamental right to marry," it was subject to strict scrutiny—scrutiny it was unable to survive. *Id.* at 369–70; *see also Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575 (1983) (invalidating tax that burdened free speech); *Harper*, 383 U.S. 663 (invalidating poll tax); *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943) (invalidating tax that burdened religious expression).

Cook County argues that "*Boynton* is inapposite to the present case" because "[t]he right to bear firearms . . . is not comparable to the fundamental right of marriage." Appellees' Br. 14. The People who expressly elevated the right to bear arms to both the state and federal constitutions—and who failed to do so for the right to marry—obviously disagreed with that assessment. One would have thought that the codification of these provisions in the highest law made sufficiently clear that the right to keep and bear arms is "a fundamental right," *People v. Mosley*, 2015 IL 115872, ¶ 41, one inherent "to our scheme of ordered liberty and system of justice," that cannot "be singled out for special—and specially unfavorable—treatment," *McDonald v. City of Chicago*, 561 U.S. 742, 764, 778–79 (2010). The County has made no secret that it believes the possession of firearms "detracts from the public health, safety, and welfare," (R. C150), and that it wants to "make it difficult for people to have guns," 2012 Hearing at 1:18:56 (R. C291). But Defendants have no authority to *strike the right to keep and bear arms out of the constitutional text.*

The County also argues that "*Boynton* should be viewed in the context of the remoteness between the marriage license and dissolution fees and the domestic violence

fund at issue," while there is a much tighter connection between the purchase of firearms and ammunition and "the cost of gun violence." Appellees' Br. 14–15 & n.6. But in reality, the relationship between lawful firearm purchases and gun crime is no stronger than the relationship between marriage and domestic violence. Like in *Boynton*, the conduct targeted for taxation is wildly *overinclusive*—since the vast majority of firearms *are not* used to commit crimes. For example, in 2013 over 99.9% of firearms in the United States *were not* used in violent crimes. *Compare* UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE, FIREARMS DATA 1(June 2016), http://bit.ly/2J9dfw3 ("As of 2013, there were an estimated 350 million firearms in the United States."), *with* BUREAU OF JUSTICE STATISTICS, CRIMINAL VICTIMIZATION, 2013 at 3 tbl.2 (2014), http://bit.ly/2FQESIb (290,620 incidents of firearm violence in 2013). And like in *Boynton*, the tax is also radically *underinclusive*—since the vast majority of criminals do not purchase their firearms from retailers like those subject to the tax. *See, e.g.*, BUREAU OF JUSTICE STATISTICS, SOURCE AND USE OF FIREARMS INVOLVED IN CRIMES: SURVEY OF PRISON INMATES, 2016 1 (2019), http://bit.ly/2NcGqm8 (only "[s]even percent [of prisoners who had possessed a firearm during their offense] had purchased it under their own name from a licensed firearm dealer"); CITY OF CHICAGO, GUN TRACE REPORT 11 (2017) (95% of crime gun possessors in Chicago from 2013-2016 were not original retail purchasers), https://bit.ly/2Jl3iM2.

Cook County seeks to bolster its argument by citing the decision in *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142 (2003), which distinguished *Boynton* in upholding a tax on tobacco. It neglects to note the *reason* why *Arangold* did not apply the relevant holding in *Boynton*: "the activities being taxed in . . . *Boynton* were constitutionally

protected, unlike Arangold's activities here." *Id.* at 151. Accordingly, *Arangold* upheld the cigarette tax under rational basis review, not strict scrutiny. *Id.* at 147.

The County's attempt to draw an analogy to the right to travel, Appellees' Br. 16, is equally unavailing. A general, nondiscriminatory tax or fee that no more than defrays the costs of road construction does not violate the constitutional right to interstate travel because the construction of highways "aids rather than hinders the right to travel." *Evansville-Vanderburgh Airport Auth. Dist. v. Delta Airlines, Inc.*, 405 U.S. 707, 714 (1972). Such a tax is constitutional for the same reason as the parade licensing fees upheld in *Cox v. New Hampshire*, 312 U.S. 569 (1941): by preventing chaos in the streets, a nondiscriminatory licensing system "maintain[s] [the] public order without which liberty itself would be lost in the excess[ ] of unrestrained abuses." *Id.* at 574. By contrast, a tax or fee crosses the constitutional line when it singles out constitutionally protected conduct for the purpose of *raising revenue*. Such fees have been struck down under both the First Amendment, *Minneapolis Star & Tribune*, 460 U.S. at 585, 586 (1983), and the right to travel, *Crandall v. Nevada*, 73 U.S. (6 Wall) 35, 43–46 (1867); *see Wallach v. Brezenoff*, 930 F.2d 1070, 1072 (3d Cir. 1991) (distinguishing the two types of taxes). The Second Amendment Tax is of this latter variety. It does not merely defray the costs of some licensing regime or public good that *facilitates* the exercise of the Second Amendment right. Indeed, Cook County *expressly abjures* any interest in "regulating" the keeping and bearing of arms. Appellees' Br. 24. Instead, the Second Amendment Tax *singles out* the Second Amendment right for taxes that go to fund unrelated government programs. And far from *fostering* the right to keep and bear arms, it *discourages* it.

Accordingly, *Boynton* is controlling, and the challenged taxes must be subjected to strict scrutiny. They cannot survive even the intermediate scrutiny the County would apply. *See* Appellees' Br. 17. That is so as an initial matter because the Government interest the challenged taxes were *actually* enacted to advance—"mak[ing] it difficult for people to have guns," 2012 Hearing at 1:18:56. (R. C291)—is simply an *illegitimate* one. *See Grosjean v American Press Co.*, 297 U.S. 233, 250 (1936); *Grace v. District of Columbia*, 187 F. Supp. 3d 124, 148 (D.D.C. 2016). The County disputes that this was its true purpose, Appellees' Br. 24 n.8, but it has no persuasive answer to the fact that this purpose is enshrined in *the very preamble of the challenged Ordinance*. (R. C150).

Defendants argue that the taxes instead further "the important government interest of public safety," but, like the circuit court, the only relationship they identify between the taxes and this interest is that the revenue they generate "provides funds to implement specific policies and a program designed to combat violence." Appellees' Br. 18 (quoting R. C1124).[1] That cannot possibly justify the tax, since the same funds could be generated by *any* tax—including a generally-applicable tax that does not single-out the right to keep and bear arms. If this argument worked, then the marriage tax in *Boynton*, the poll tax in *Harper*, and the newspaper-ink tax in *Minneapolis Star & Tribune* should *all* have been upheld—because the funds generated by *any* of those taxes could *also* have been used "to implement specific policies and a program designed to combat violence." *Id.*

[1] The County claims that "[b]oth the Firearm Tax and Firearm Ammunition Tax are deposited into the Public Safety Fund" *Id.* at 15 n.7. While revenue from the Ammunition Tax by law must go to that fund, the County is free to spend the proceeds of the Firearm Tax however it sees fit, COOK COUNTY CODE § 74-677—and the fact that it may have deposited these proceeds in the Fund in the past, *see* Appellees' Br. 15 n.6, does not require it to do so in the future.

C. The Second Amendment Tax also violates the Uniformity Clause.

Finally, the Second Amendment Tax—if understood as an exercise of the taxing power—is also unconstitutional under the Uniformity Clause. ILL. CONST. art. IX, § 2. This, too, follows from *Boynton*—which held that the relationship between the tax on marriage licenses and the interest asserted to justify it (a relationship no weaker than the one here) not only flunked strict scrutiny, but was even "too remote to satisfy the rational-relation test." 112 Ill.2d at 366. Moreover, the tax additionally violates the Uniformity Clause by irrationally discriminating between the ordinary, law-abiding residents of Cook County who must pay the tax and (1) those who purchase firearms and ammunition *outside* Cook County (and therefore *do not* pay the tax); (2) convicted felons (who by law cannot purchase firearms or ammunition and therefore *do not* pay the tax); and (3) federal and state personnel, veterans organizations, and law enforcement personnel (who are exempt from the tax by law, COOK COUNTY CODE § 74-669).

Cook County's defense of the first two distinctions is that it was *unable* to draw rational lines in either of these respects, since it has no power to impose a tax beyond its territorial jurisdiction, and it must "presume . . . that all who purchase firearms will do so legally." Appellees' Br. 22. But the inability to draw *rational* lines does nothing to diminish the *irrationality* of the lines the County *did* draw. After all, the County had available to it a course of action that both would have been consistent with these limits on its power and would have avoided the irrational lines drawn by the Second Amendment Tax: funding its public safety initiatives through nondiscriminatory general revenue measures.

Defendants attempt to justify the distinction between ordinary citizens and the various government personnel and organizations exempt from the tax by suggesting that

the "primary purpose in the use of firearms" by these exempt entities "is to serve the community." *Id.* at 23. But citizens who exercise their constitutional right of armed self-defense are *also* serving the community through the use of their firearms. The County cannot transform their exercise of that right into a reason for singling them out for special taxation.

IV. If the challenged provisions are understood as regulatory measures, they are preempted.

Because Cook County cannot constitutionally impose a discriminatory *tax* on the purchase of firearms and ammunition, that leaves only the second understanding of the challenged Ordinance: as an attempt to *regulate* the purchase of firearms and ammunition through an exercise of the County's police power. The County, however, explicitly disavows any such characterization of the Second Amendment Tax, insisting that the challenged provisions are exercises of its *taxing* power: "[t]he language of the Firearm and Ammunition Tax Ordinance is clear and unambiguous in that it is a tax measure." Appellees' Br. 27. It has thus explicitly waived any attempt to justify the challenged measures as *regulations* enacted pursuant to the police power.

The reasons for Illinois' insistence that the challenged provisions are taxes, rather than regulations, are not difficult to see: two statewide laws, the FOID Card Act and the Firearms Concealed Carry Act ("FCCA"), expressly preempt home-rule jurisdictions like Cook County from engaging in the "regulation, licensing, possession, and registration of handguns and ammunition for a handgun." 430 ILCS 65/13.1; *see also* 430 ILCS 66/90. The County thus disavows any attempt to regulate firearms because that power has been expressly denied it. The County briefly suggests that the challenged provisions may escape preemption under these Acts because they only preempt "inconsistent" laws.

Appellees' Br. 27. But the challenged Ordinance *is* "inconsistent" with both Acts: it imposes a discriminatory tax on the very purchases—of handguns and ammunition—that these state licenses entitled their holders to engage in as a matter of statewide law. *See Village of Wauconda v. Hutton*, 291 Ill. App. 3d 1058, 1063 (2d Dist. 1997) (local ordinance requiring sailboarders to wear flotation devices was "inconsistent with state law" and preempted because state boating-safety act did not impose such a requirement).

CONCLUSION

For the foregoing reasons, this Court should reverse the circuit court and remand with instructions to enter summary judgment in favor of Plaintiffs on all claims.

Dated: July 12, 2019

Respectfully submitted,

Christian D. Ambler
STONE & JOHNSON, CHTD.
111 West Washington Street
Suite 1800
Chicago, Illinois 60602
(312) 332-5656
cambler@stonejohnsonlaw.com

/s/ David H. Thompson
David H. Thompson
Peter A. Patterson
John D. Ohlendorf
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com

Attorneys for Plaintiffs-Appellants

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341 (a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341 (d) cover, the Rule 341 (h)(1) statement of points and authorities, the Rule 341 (c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342 (a), is 20 pages.

By:/s/ David H. Thompson

No. 1-18-1846

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GUNS SAVE LIFE, INC., *et al.*,

Plaintiffs-Appellants,

v.

ZAHRA ALI, solely in in her capacity as Director of the Department of Revenue of Cook County, *et al.*,

Defendants-Appellees.

NOTICE OF FILING

To: Hailey M. Golds, Esq.- Hailey.Golds@CookCountyIL.gov
Cristin Duffy, Esq. – Cristin.Duffy@CookCountyIL.gov
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on July 12, 2019, we have electronically filed with the Clerk of the Appellate Court of Illinois, First Judicial District, Plaintiffs-Appellants' Reply Brief, a copy of which is attached hereto and served upon you.

Christian D. Ambler, Esq.
STONE & JOHNSON, CHARTERED
111 West Washington St.
Suite 1800
Chicago, Illinois 60602
Telephone (312) 332-5656
cambler@stonejohnsonlaw.com

David H. Thompson (ARDC No. 6316017)
Peter A. Patterson (ARDC No. 6316019)
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D. C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com

CERTIFICATE OF SERVICE

Christian D. Ambler, an attorney, hereby certifies that on July 12, 2019, he caused a copy of the foregoing Notice of Filing and Reply Brief of Plaintiffs-Appellants upon counsel by e-mail in the e-mail address listed below.

Hailey M. Golds, Esq.- Hailey.Golds@CookCountyIL.gov
Cristin Duffy, Esq. – Cristin.Duffy@CookCountyIL.gov
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602

/s/ Christian D. Ambler
Christian D. Ambler

No. 1-18-1846

IN THE
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Cristin Duffy, Esq. Cristin.Duffy@CookCountyIL.gov
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602

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Christian D. Ambler, Esq.
STONE & JOHNSON, CHARTERED
111 West Washington St.
Suite 1800
Chicago, Illinois 60602
Telephone (312) 332-5656
cambler@stonejohnsonlaw.com

David H. Thompson (ARDC No. 6316017)
Peter A. Patterson (ARDC No. 6316019)
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D. C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com

PROOF OF SERVICE

I, Christian D. Ambler, an attorney certify that this Notice of Filing and the attached Reply Brief was served via the Clerk's Office E-filing system with consent of the recipient(s) where permissible under Ill. Sup Ct. R. 11, at the e-mail addresses as indicated before 5:00 p.m. on July 12, 2019. Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

Hailey M. Golds, Esq. Hailey.Golds@CookCountyIL.gov
Cristin Duffy, Esq. Cristin.Duffy@CookCountyIL.gov
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602

/s/ Christian D. Ambler
Christian D. Ambler

Lawyers

2020 IL App (1st) 181846

FIFTH DIVISION
Filing Date: March 13, 2020

No. 1-18-1846

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

GUNS SAVE LIFE, INC., DPE SERVICES, INC. d/b/a MAXON SHOOTER'S SUPPLIES AND INDOOR RANGE and MARILYN SMOLENSKI,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	No. 15 CH 18217
v.	)	Honorable David Atkins,
ZAHRA ALI, solely in her capacity as Director of the Department of Revenue of Cook County, THOMAS J. DART, solely in his capacity as Cook County Sheriff, and the COUNTY OF COOK, a county in the State of Illinois,	)	Judge, Presiding.
Defendants-Appellees.	)	

JUSTICE HALL delivered the judgment of the court, with opinion.
Justices Rochford and Delort concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiffs Guns Save Life, Inc. (GSL), DPE Services, Inc. d/b/a Maxon Shooter's Supplies and Indoor Range (Maxon), and Marilyn Smolenski (Smolenski) appeal the circuit court's grant of summary judgment in favor of defendants, Zahra Ali (Ali), Thomas J. Dart (Dart), and the

County of Cook (the County)[1] on their second amended complaint for declaratory judgment and injunctive relief. Plaintiffs sought to challenge the County's ordinance that imposed a tax on firearm sales and two types of ammunition sales (centerfire and rimfire) within the County.

¶ 2 Plaintiffs have raised the following issues on appeal: (1) whether the circuit court erred in partially granting defendants' section 2-619(a)(9) (735 ILCS 5/2-619(a)(9) (West 2016)) motion to dismiss because plaintiffs Maxon and Smolenski did not have standing to bring suit to challenge the firearms tax; and (2) whether the circuit court erred in granting summary judgment in favor of defendants on the remaining claims, namely: (a) whether the challenged firearms tax and ammunition tax violate the Second Amendment to the United States Constitution and Section 22 of Article I of the Illinois Constitution; (b) whether the classifications in the ammunition tax violate the Uniformity Clause in Section 2 of Article IX of the Illinois Constitution; and (c) whether the challenged firearms tax and ammunition tax are preempted by the Firearm Owners Identification (FOID) Card Act and the Firearm Concealed Carry Act (Concealed Carry Act).

¶ 3 For the reasons that follow, we affirm the judgment of the circuit court.

¶ 4 BACKGROUND

¶ 5 Plaintiffs filed their initial four-count complaint for declaratory judgment and injunctive relief challenging the firearms and ammunition taxes on December 17, 2015, alleging that defendants: (1) violated the Second Amendment (U.S. Const., amend. II) and Section 22 of Article I of the Illinois Constitution (Ill. Const.1970, art. I, § 22); (2) violated the Uniformity Clause of the Illinois Constitution (Ill. Const.1970, art. IX, § 2); and (3) were preempted by section 13.1(b)

[1] Zahra Ali is the Director of the Cook County Department of Revenue and Thomas J. Dart is the Sheriff of Cook County. They were named as defendants in their official capacities.

of the FOID Act (430 ILCS 65/13.1 (West 2016)) and section 90 of the Concealed Carry Act (430 ILCS 66/90 (West 2016)) as it applies to handguns and handgun ammunition.

¶ 6 Defendants moved to dismiss the complaint on January 29, 2016, alleging that plaintiffs lacked standing and that the complaint failed to state any claim on which relief could be granted.

¶ 7 Plaintiffs filed their first amended complaint on February 22, 2016, and a response to defendants' motion to dismiss on April 6, 2016, (pursuant to the circuit court's March 16, 2016, order).

¶ 8 According to the second amended complaint, on November 9, 2012, the County's Board of Commissioners (the Board) passed a tax entitled the "Cook County Firearms Tax" (firearms tax) which imposed a $25 fee for each firearm purchased by a citizen at a firearms retail business located in the County (the firearm tax). Cook County Code of Ordinances (County Code), art. XX, §§ 74-665- 74-675. The revenue from this tax was not directed to any specific fund. On November 18, 2015, the Board amended the County Code to impose a tax on the retail purchase of firearm ammunition at the rate of $0.01 per cartridge of rimfire ammunition and $0.05 per cartridge of centerfire ammunition (the ammunition tax). County Code, art. XX, § 74-676. The revenue from the ammunition tax was directed to the Public Safety Fund to fund operations related to public safety.

¶ 9 Plaintiffs alleged that GSL was a nonprofit corporation dedicated to protecting the Second Amendment rights of Illinois citizens to defend themselves. Some GSL members reside in the County and have paid both the firearm and ammunition taxes. GSL alleged however, that its members purchased firearms and ammunition less frequently in the County because of the taxes,

and that some members avoid purchasing firearms and ammunition in the County because of the taxes.

¶ 10 Plaintiffs alleged that Maxon was a registered retailer of firearms and ammunition in the County. It operates a retail gun shop and indoor shooting range in Des Plaines, Illinois. Maxon sells rifles and handguns and their corresponding ammunition, including centerfire and rimfire. Maxon is owned and operated by DPE Services, Inc.

¶ 11 Plaintiffs alleged that Smolenski was a resident of the County and member of GSL who possessed a valid FOID card and a valid Concealed Carry license. Smolenski "frequently" engaged in firearms transactions and decided not to purchase a firearm in the County because of the tax. Specifically, on June 7, 2016, Smolenski bought 100 rounds of 9mm (centerfire) ammunition from Maxon and paid the $5 ammunition tax under protest. On June 8, 2016, her counsel submitted her protest of payment to the County's Department of Revenue. While Smolenski intends to continue purchasing ammunition in the County, the second-amended complaint alleged that she did not intend to purchase as much as she otherwise would have. Further, Smolenski did not purchase a new firearm at Maxon because of the firearms tax.

¶ 12 On October 17, 2016, the circuit court issued a memorandum opinion and order granting in part and denying in part defendants' motion to dismiss. The order dismissed Smolenski's and Maxon's challenges to the firearms tax for lack of standing. The court found that Smolenski had no standing to challenge the firearms tax because she had not paid the tax and thus had not been injured by the tax. The court found that Maxon had no standing to challenge the firearms tax on behalf of its customers because there was no ban on the sale of the items at issue, nor was this a situation where the retailer passed a tax on to its customers. Rather the tax was borne by the

customers. The circuit court found that GSL had associational standing to challenge both taxes because it alleged that its members paid both taxes; Smolenski had standing to challenge the ammunition tax because she paid it under protest; and Maxon had standing to challenge the ammunition tax because the second amended complaint pleaded facts alleging that compliance with the reporting requirements associated with the ammunition tax would cost it thousands of dollars per year, which gave Maxon a real interest in challenging the ammunition tax.

¶ 13 The circuit court denied defendants' motion to dismiss for failure to state any claim on which relief could be granted because: (1) plaintiffs were not seeking a refund of taxes paid such as to implicate the voluntary payment doctrine and (2) whether the taxes were valid as a matter of law was the ultimate issue in the litigation and determination of those issues on a motion to dismiss would be premature.

¶ 14 The parties subsequently filed cross-motions for summary judgment on the remaining claims.

¶ 15 On August 17, 2018, the circuit court denied plaintiffs' motion and granted summary judgment in favor of defendants. In its memorandum opinion and order, the court concluded that the taxes did not infringe on plaintiffs' federal and state constitutional rights to bear arms because they were proper exercises of the County's home rule taxing powers and did not, in any meaningful way, impede plaintiffs' ability to exercise their right to bear arms. The court found that plaintiffs had no evidence that the taxes would have the effect of preventing ownership or possession of firearms or that they affected the ability of law-abiding citizens to retain sufficient means of self-defense. The circuit court further found that even if the taxes burdened constitutionally protected conduct, they were substantially related to the important government interest of public safety

because they provided funds to implement specific policies and programs designed to combat violence. Moreover, the taxes were outside the scope of preemption of the state laws because they were a valid exercise of the County's home rule power to tax. Finally, the court concluded that plaintiffs failed to carry their burden of demonstrating that the different rates of ammunition classification violated the Uniformity Clause.

¶ 16 This timely appeal followed, and oral argument was held on January 14, 2020.

¶ 17 ANALYSIS

¶ 18 Plaintiffs have raised the following issues on appeal: (1) whether the circuit court erred in partially granting defendants' section 2-619(a)(9) (735 ILCS 5/2-619(a)(9) (West 2016)) motion to dismiss because plaintiffs Maxon and Smolenski did not have standing to bring suit to challenge the firearms tax; and (2) whether the circuit court erred in granting summary judgment in favor of defendants on the remaining claims, namely: (a) whether the challenged firearms tax and ammunition tax violate the Second Amendment to the United States Constitution and Section 22 of Article I of the Illinois Constitution; (b) whether the classifications in the ammunition tax violate the Uniformity Clause in Section 2 of Article IX of the Illinois Constitution; and (c) whether the challenged firearms tax and ammunition tax are preempted by the FOID Card Act and the Firearm Concealed Carry Act.

¶ 19 A. Section 2-619(a)(9) Motion to Dismiss for Lack of Standing

¶ 20 Plaintiffs first contend that all three plaintiffs had standing to challenge both the firearms tax and the ammunition tax. They first contend that the circuit court correctly determined that GSL had standing to bring suit to challenge both taxes because an association may bring suit on behalf of its members. Plaintiffs further contend that Smolenski had standing to challenge both taxes

because she suffered distinct and palpable injuries as a result of both taxes, even though she has not yet paid the firearms tax. Additionally, plaintiffs contend that Maxon had standing to challenge both taxes as a vendor because it is injured by the fact that it must collect the taxes and remit them and because it is independently injured by the taxes in that they impose burdensome compliance costs and reduce Maxon's revenue. Thus, plaintiffs contend that the circuit court erred in determining that Smolenski and Maxon did not have standing to challenge the firearms tax and by granting defendants' section 2-619(a)(9) (735 ILCS 5/2-619(a)(9) (West 2016)) motion on that basis.

¶ 21 Here, defendants challenged plaintiffs' standing through a motion for involuntary dismissal under section 2-619(a)(9). Lack of standing is an affirmative defense (*Chicago Teachers Union, Local 1 v. Board of Education of City of Chicago*, 189 Ill. 2d 200, 206 (2000)), and a section 2-619(a)(9) motion is a proper avenue for asserting the affirmative defense of standing (*Crusius ex rel. Taxpayers of State of Illinois v. Illinois Gaming Board*, 348 Ill. App. 3d 44, 48 (2004)).

¶ 22 On appeal, defendants initially reasserted their argument that none of the plaintiffs have standing. However, at oral argument, defendants conceded that GSL had associational standing, but continued in their assertion that Maxon has no standing whatsoever and that Smolenski has no standing to challenge the firearms tax because she has not paid that tax. As to Maxon, defendants contend that it has no standing to contest the firearms tax because it has no real interest in the tax because it has no burden of paying it and further that there was no additional expense for Maxon to compute and report in compliance with the ammunition tax.

¶ 23 A motion to dismiss under section 2-619(a)(9) admits the legal sufficiency of the plaintiff's complaint but asserts that the claim against the defendant is barred by an affirmative matter that

avoids the legal effect of or defeats the claim. 735 ILCS 5/2-619(a)(9) (West 2016); *Kuykendall v. Schneidewind*, 2017 IL App (5th) 160013, ¶ 32. An "affirmative matter" is a type of defense that negates a cause of action completely or refutes critical conclusions of law or conclusions of material fact that are unsupported by specific factual allegations contained in or inferred from the complaint. *Id.* The "affirmative matter" must be apparent on the face of the complaint or supported by affidavits or other evidentiary materials, and it must do more than refute a well-pleaded fact in the complaint. *Id.* Section 2-619(a)(9) does not authorize defendant to submit affidavits or evidentiary matters for the purpose of contesting the plaintiff's factual allegations and presenting its version of the facts. *Id.* The defendant has the initial burden of establishing that an affirmative matter defeats the plaintiff's claim, and if satisfied, the burden shifts to the plaintiff to demonstrate that the proffered affirmative matter is either unfounded, or requires the resolution of a material fact. *Id.*

¶ 24 When ruling on a motion to dismiss under section 2-619(a)(9), the circuit court must accept as true all well-pleaded facts in the plaintiff's complaint and all reasonable inferences that may be drawn, and it must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *Id.* at ¶ 33. The motion should be granted only if the plaintiff can prove no set of facts that would support his cause of action. *Id.* A motion to dismiss under section 2-619(a)(9) presents a question of law that is reviewed *de novo*. *Id.*

¶ 25 The doctrine of standing, along with the doctrines of mootness, ripeness, and justiciability, are the methods by which courts preserve for consideration only those disputes which are truly adversarial and capable of resolution by judicial decision. *Martini v. Netsch*, 272 Ill. App. 3d 693, 695 (1995).

¶ 26 Under Illinois law, a plaintiff need not allege facts establishing standing. Rather, it is the defendant's burden to plead and prove lack of standing.

¶ 27 The pivotal factor in determining whether a plaintiff has standing is whether the party is entitled to have the court decide the merits of the dispute or particular issue. *Id.* Thus, the court must decide if the party asserting standing will benefit from the relief sought. *Id.*

¶ 28 In Illinois, to have standing to challenge the constitutionality of a statute, one must have sustained or be in immediate danger of sustaining a direct injury as a result of enforcement of the challenged statute. *Chicago Teachers Union, Local 1*, 189 Ill. 2d at 206. The claimed injury must be distinct and palpable, fairly traceable to defendant's actions, and substantially likely to be prevented or redressed by the grant of the requested relief. *Id.* Further, payment of a tax establishes standing to challenge the constitutionality of the statute under which the tax is imposed. *DeWoskin v. Loew's Chicago Cinema, Inc.*, 306 Ill. App. 3d 504, 513 (1999). Whether the plaintiff has standing to sue is to be determined from the allegations contained in the complaint. *Chicago Teachers Union, Local I*, 189 Ill. 2d at 206.

¶ 29 1. Smolenski's Standing

¶ 30 Plaintiffs contend that Smolenski also has standing to challenge the constitutionality of both taxes because she has suffered distinct and palpable injuries as a result of them. They allege that Smolenski frequently engages in firearms transactions and had sought to purchase a Glock 42 gun in Cook County but did not do so because of the firearm tax. Additionally, Smolenski alleges she has both: (1) purchased ammunition in Cook County and paid the challenged ammunition tax under protest as part of her purchase, and (2) will purchase ammunition in Cook County in the future in reduced amounts because of the ammunition tax. While the circuit court correctly

determined that Smolenski had standing to challenge the ammunition tax, plaintiffs contend that the court incorrectly determined that she did not have standing to challenge the firearm tax because she had not yet paid it.

¶ 31 Defendants contend that the circuit court's ruling that Smolenski lacked standing to challenge the firearm tax was correct.

¶ 32 A court will consider a constitutional challenge to a statute by a party who is affected by the statute or aggrieved by its operation. *Terra-Nova Investments v. Rosewell*, 235 Ill. App. 3d 330, 337 (1992). A plaintiff that pays certain fees mandated by an act has standing to challenge the constitutionality of the fees paid. *Id.* (citing *Milade v. Finley*, 112 Ill. App. 3d 914, 917 (1983)); *DeWoskin*, 306 Ill. App. 3d at 513.

¶ 33 Here, Smolenski has not paid the firearm tax and premises her claim of standing on a hypothetical firearm purchase in the future. We conclude that Smolenski has not satisfied the requirement for standing to challenge the firearm tax, and the circuit court properly found that she did not have such standing.

¶ 34 2. Maxon's Standing

¶ 35 Plaintiffs further contend that Maxon had standing to challenge both taxes at issue in this case on behalf of its customers under the doctrine of vendor standing, and that it is injured by the taxes in multiple ways. First, plaintiffs contend that Maxon is injured because it must collect the taxes and remit them to the County. They also argue that Maxon's costs for complying with the firearm and ammunition taxes are substantial. Plaintiffs further contend that Maxon has standing to challenge both taxes because they cause an adverse economic impact to Maxon's business.

¶ 36 Defendants contend that Maxon has no standing to challenge either tax. First, defendants assert that Maxon has no real interest in the firearm tax because the burden of paying the tax falls on its customers, not Maxon as a retailer. Similarly, defendants argue that Maxon has no standing to challenge the ammunition tax because Maxon did not incur any additional expense computing and reporting in compliance with the tax. Defendants note that in her deposition, Sarah Natalie, Maxon's general manager, testified that as a seller of firearms, Maxon is required to register with the Department of Revenue and keep books and records of sales. She further testified that Maxon owns a module program which automatically tracked sales data based on the type of firearm and ammunition sold, which provided efficient and cost-effective assistance to employees because it kept sales records and could generate reports of the store's inventory and could provide the dates of purchases. The program could also generate a report of all firearms and ammunition sold in a one-month period, and it automatically separated the type of ammunition based on four categories, two of which are included in the tax. Because Maxon suffered no concrete injury, defendants contend that its claim of standing to challenge the ammunition tax "collapses."

¶ 37 Here, the taxes in question are not paid by the retailer, Maxon, but are paid by the consumer. Maxon's only responsibility is to track the sales and remit the tax, similar to what it is already required to do as a retailer of firearms and ammunition. Maxon could in no way be considered the payer of the challenged taxes because it is the consumer alone who has that responsibility. See *Wexler v. Wirtz Corp.*, 211 Ill. 2d 18, 26 (2004). Maxon's legal status is not altered by virtue of its reporting obligations under the taxes. *Wexler*, 211 Ill. 2d at 27. As such, the circuit court properly concluded that Maxon lacked standing to challenge the firearm tax.

¶ 38 However, we find that the circuit court erred in concluding that Maxon had standing to challenge the ammunition tax because of the adverse economic consequences. While Maxon's general manager testified in her deposition that the retailer already had a system in place that could do the required reporting and that it was already required to track such sales and remit reports to the Department of Revenue. Thus, Maxon failed to establish any real injury by the ammunition tax's requirement that it collect and remit the tax to the Department of Revenue.

¶ 39 In conclusion, the circuit court properly determined that GSL had standing to challenge both taxes, that Smolenski had standing to challenge the ammunition tax, and that neither Smolenski nor Maxon had standing to challenge the firearm tax. The circuit court erred in finding that Maxon had standing to challenge the ammunition tax based on evidence in the record.

¶ 40 B. Summary Judgment

¶ 41 Plaintiffs next contend that the circuit court erred in granting defendants' motion for summary judgment on all counts.

¶ 42 The purpose of summary judgment is not to try a question of fact, but rather to determine whether a genuine issue of material fact exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). A motion for summary judgment should only be granted if the pleadings, depositions and affidavits on file demonstrate that no genuine issues of material fact exist, and the movant is entitled to judgment as a matter of law. *Barnard v. City of Chicago Heights*, 295 Ill. App. 3d 514, 519 (1998). In determining whether a genuine issue as to any material fact exists, a reviewing court must view the evidence in the light most favorable to the nonmoving party. *Barnard*, 295 Ill. App. 3d at 519. A genuine issue of material fact precluding summary judgment exists where the material facts are disputed, or if the material facts are undisputed, reasonable

persons might draw different inferences from the undisputed facts. *Hilgard v. 210 Mittel Drive Partnership*, 2012 IL App (2d) 110943, ¶ 19. On a summary judgment motion, once the moving party has demonstrated the right to judgment, the burden shifts to the nonmoving party to present evidence showing a genuine issue of material fact or that the moving party was not entitled to judgment as a matter of law. Mere argument is not enough to raise an issue of material fact. *Triple R Development, LLC v. Golfview Apartments I, L.P.*, 2012 IL App (4th) 100956, ¶ 16.

¶ 43 Because the parties filed cross-motions for summary judgment, they conceded that no material questions of fact existed and that only a question of law was involved that the court could decide on the record. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. Appellate review of the circuit court's decision as to cross-motions for summary judgment is *de novo*. *Id.* at ¶ 30.

¶ 44 Plaintiffs make two arguments concerning the constitutionality of the firearm and ammunition taxes: (1) the taxes burden conduct protected by the federal and state constitutions and (2) if imposition of the taxes are understood as an exercise of the County's taxing power, as the circuit court concluded, they are unconstitutional under the federal and state constitutions.

¶ 45 1. Impermissible Burdening of Constitutionally Protected Rights

¶ 46 Plaintiffs first contend that the Cook County firearms and ammunition taxes burden conduct protected by the Second Amendment (U.S. Const., amend. II) and Article I, Section 22 of the Illinois Constitution (Ill. Const.1970, art. I, § 22), namely the right to acquire firearms and ammunition by increasing the cost of both types of purchases. Plaintiffs maintain that the United States Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008) held that the Second Amendment protects an individual right to keep and bear arms and the central component of that right is individual self-defense. Further, plaintiffs contend that the Court's later

decision in *McDonald v. Chicago*, 561 U.S. 742, 750 (2010), "confirmed" that the Second Amendment right is fundamental and that it is fully applicable to the states, and courts have recognized that the right to possess firearms for protection implies the corresponding right to acquire arms and the ammunition they need to function. Accordingly, plaintiffs conclude that both taxes therefore directly burden the fundamental constitutional right of individuals to acquire firearms and ammunition for firearms. Plaintiffs are making a facial constitutional challenge to the tax ordinances at issue.

¶ 47 "A facial challenge to the constitutionality of a legislative enactment is the most difficult challenge to raise successfully [citation], because an enactment is facially invalid only if no set of circumstances exist under which it would be valid." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305-06 (2008). The fact that the enactment could be found unconstitutional under some set of circumstances does not establish its facial invalidity. *Napleton*, 229 Ill. 2d at 306. Once standing is established, the plaintiff's personal situation becomes irrelevant. *Guns Save Life*, 2019 IL App (4th) 190334, ¶ 44.

¶ 48 In construing the validity of a municipal ordinance, the same rules are applied as those which govern the construction of statutes. *Napleton*, 229 Il. 2d at 306. Like statutes, municipal ordinances are presumed constitutional. *City of Chicago v. Alexander*, 2015 IL App (1st) 122858-B, ¶ 18. Courts have a duty to construe legislative enactments so as to uphold their validity if reasonably possible. *Hayashi v. Illinois Dept. of Financial and Professional Regulation*, 2014 IL 116023, ¶ 22. To overcome this presumption, the party challenging the constitutionality of a statute has the burden of clearly establishing that it violates the constitution. *Id.* The question of

whether a municipal ordinance is unconstitutional is a question of law, subject to *de novo* review. *City of Chicago v. Taylor*, 332 Ill. App. 3d 583, 585 (2002).

¶ 49 Essentially, plaintiffs argue that because the right to keep and bear arms (and impliedly the right to acquire ammunition) is a constitutionally protected fundamental right, there can never be any government restriction or limitation on such right.

¶ 50 The Second Amendment provides that: "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II.

¶ 51 The United States Supreme Court has determined that the Second Amendment guarantees a personal right to keep and bear arms for lawful purposes. *McDonald v. Chicago*, 561 U.S. 742, 780 (2010). The central component of the right is the right of armed self-defense, most notably in the home. *Heller*, 554 U.S. at 595, 599-600. Our supreme court has held that the second amendment protects an individual's right to carry a ready-to-use gun outside the home, subject to certain regulations. See *People v. Chairez*, 2018 IL 121417, ¶ 26.

¶ 52 Similarly, article I, section 22, of the 1970 Illinois Constitution provides that: "[s]ubject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed." Ill. Const.1970, art. I, § 22. Our supreme court has held that the right to arms secured by the Illinois Constitution, which did not exist prior to 1970, is subject to substantial infringement in the exercise of the police power. *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483, 509 (1984).

¶ 53 The question in determining whether a regulation is lawful is whether the law impermissibly encroaches on conduct at the core of the second amendment. *Chairez*, 2018 IL

121417, ¶ 26. Since *Heller* and *McDonald*, courts have begun to develop a general framework for analyzing the newly enunciated second amendment right. *Wilson v. County of Cook*, 2012 IL 112026, ¶ 40. These courts have endeavored to: (1) outline the appropriate scope of the individual second amendment guarantees as defined in *Heller*; and (2) determine the appropriate standard of scrutiny for laws that burden these rights. *Id.* The Supreme Court has not definitively resolved the standard for evaluating second amendment claims. See *Heller*, 554 U.S. at 628.

¶ 54 Courts have generally employed a two-pronged test to determine whether statutes implicating the Second Amendment are constitutional. The first inquiry is whether the challenged law imposes a burden on conduct falling within the scope of the second amendment guarantee, which involves a textual and historical inquiry to determine whether the conduct was understood to be within the scope of the right at the time of ratification. *Heller*, 554 U.S. at 634-35; *Wilson*, 2012 IL 112026, ¶41. If the government can establish that the challenged law regulates activity falling outside the scope of the second amendment right, then the regulated activity is categorically unprotected. *Wilson*, 2012 IL 112026, ¶ 41. If the historical evidence is inconclusive or suggests that the regulated activity is not categorically unprotected, then there must be a second inquiry into the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights. *Heller*, 554 U.S. at 703; *Wilson*, 2012 IL 112026, ¶ 42.

¶ 55 Here, plaintiffs contend that the firearms and ammunition taxes place an impermissible burden on their Second Amendment right, which is the right to keep and bear arms as explained in *Heller*, *McDonald*, and their progeny.

¶ 56 When evaluating a facial constitutional challenge, a court must evaluate the challenged statue against the relevant constitutional doctrine independent of the statute's application to

particular cases. *Guns Save Life*, 2019 IL App (4th) 190334, ¶ 44. The Supreme Court noted in *Heller* that the "right secured by the Second Amendment is not unlimited." *Heller*, 554 U.S. at 626. Additionally, the Court noted that nothing in its decision "should be taken to cast doubt on longstanding prohibitions on * * * laws imposing conditions and qualifications on the commercial sale of arms." *Heller*, 554 U.S. at 626-27.

¶ 57 Turning to the ordinances at issue here, while they involve firearms and ammunition, it is clear that the challenged taxes on the purchases of firearms and certain types of ammunition within the County do not restrict the ownership of firearms or ammunition. It is the right of ownership of firearms and correspondingly, ammunition, that is at the core of the Second Amendment, which, as noted by *Heller*, is not itself unlimited. The taxes could reasonably be considered a condition on the commercial sale of arms. *Heller*, 554 U.S. at 626-27.

¶ 58 The taxes at issue are more akin to various other types of sales taxes imposed on the purchase of goods and services – the responsibility of paying such taxes falls on the consumer and are collected by the retailer because of the impracticality of the County collecting such tax from the consumer. See *Brown's Furniture, Inc. v. Wagner*, 171 Ill. 2d 410, 418 (1996). Plaintiffs have not cited, nor have we found, any case law which supports the position that imposing a sales tax on the purchase of firearms or ammunition violated the Second Amendment. The taxes at issue are nothing more than a tax on the sale of tangible personal property. See *American Beverage Association v. City of Chicago*, 404 Ill. App. 3d 682, 685 (2010) (The five-cent tax on each bottle of water purchased at retail is a tax on the sale of tangible personal property).

¶ 59 Nor are the taxes at issue prohibitive or exclusionary; we find it difficult to say that the taxes, $25 and $.05 per round respectively, are anything more than a "marginal, incremental or

even appreciable restraint" on one's Second Amendment rights. *Kwong v. Bloomberg*, 723 F.3d 160, 167 (2013); *United States v. DeCastro*, 682 F.3d 160, 166 (2012). To be sure, while it is clear that the firearms tax and the ammunition tax increase the costs of purchasing firearms or ammunition in Cook County, a law does not substantially burden a constitutional right simply because it makes the right more expensive or difficult to exercise. *Kwong*, 723 F.3d at 167-68; *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 874 (1992). Plaintiffs have not pleaded any facts to support its conclusion that such taxes impermissibly restrict the right to keep and bear arms. Plaintiffs, and any other purchasers of firearms and ammunition, are already subject to sales tax on the purchases. Plaintiffs do not argue that such sales tax on the purchase of firearms and ammunition violates their right to keep and bear arms. Similarly, we find that the additional County taxes on the purchase of guns and ammunition do not infringe upon any protected Second Amendment right under the federal constitution or section 22 of Article I of the Illinois constitution.

¶ 60 2. Invalid Exercise of the County's Taxing Power

¶ 61 Nevertheless, plaintiffs contend that the circuit court's erroneous conclusion that the firearms and ammunition taxes were valid exercises of the County's taxing power was in violation of the federal and state constitutions. This argument goes to the second prong of the analysis, namely the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights. *Heller*, 554 U.S. at 703.

¶ 62 We decline to reach plaintiffs' argument because we have determined that the challenged ordinances do not violate the Second Amendment under *Heller* and its progeny, but are instead

permissible conditions on the exercise of one's Second Amendment rights. *Heller*, 554 U.S. at 626-27.

¶ 63 3. Violation of the Uniformity Clause

¶ 64 Next, plaintiffs contend that the firearms and ammunition taxes are unconstitutional under article IX, section 2, of the Illinois Constitution (the uniformity clause) (Ill. Const. 1970, art. IX, § 2), because they only fall on the law-abiding citizens of Illinois who possess valid FOID cards and are legally entitled to purchase firearms and ammunition; they draw an irrational distinction between firearms and ammunition purchased within the County and those purchased elsewhere but transported into the County for use there; there is no rational distinction related to the purpose of the taxes between those citizens subjected to them and the federal and state personnel, veterans organizations and law enforcement personnel who are exempted from them. Plaintiffs conclude that the circuit court erred in granting summary judgment in favor of defendants on this issue.

¶ 65 In response to plaintiffs' argument, defendants acknowledge that the ammunition tax classifies between centerfire and rimfire ammunition, but argue that the classification is based on lethality. Because centerfire ammunition is more lethal than rimfire ammunition, the County had a reasonable basis for taxing it at a higher rate and raising more revenue to finance the medical services that the County provides for victims of gun violence. Defendants further contend that there is a real and substantial difference between purchasers and nonpurchasers of firearms and ammunition. They argue that the County has applied the taxes uniformly within the limits of its territorial jurisdiction, and that our supreme court has found a tax to be valid under the Uniformity Clause regardless of whether the individuals taxed are purportedly not the cause of the problem which the tax seeks to remedy, citing *Marks v. Vanderventer*, 2015 IL 116226, ¶ 21, in support.

Defendants conclude that a rational relationship exists between the purchase of firearms and ammunition and the need to ameliorate the harms that gun violence causes in the County. Further, defendants contend that there is a rational distinction between those subjected to the taxes and those exempted; namely that the exempted parties' primary purpose in using firearms is to serve the community.

¶ 66 We note that the scope of a court's inquiry when a tax has been challenged on uniformity grounds is relatively narrow. *Moran Transportation Corp. v. Stroger*, 303 Ill. App. 3d 459, 473 (1999). Statutes are presumed to be constitutional and broad latitude is afforded to legislative classifications for taxing purposes. *Id.*

¶ 67 The uniformity clause provides as follows:

> "In any law classifying the subjects or objects of nonproperty taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable." Ill. Const. 1970, art. IX, § 2.

¶ 68 " 'To survive scrutiny under the uniformity clause, a nonproperty tax classification must be based on a real and substantial difference between the people taxed and those not taxed, and the classification must bear some reasonable relationship to the object of the legislation or to public policy.' " *Moran Transportation Corp.*, 303 Ill. App. 3d at 473, (quoting *Allegro Services, Ltd. v. Metropolitan Pier & Exposition Authority*, 172 Ill. 2d 243, 250 (1996)).

¶ 69 A plaintiff challenging a tax classification has the burden of showing that it is arbitrary or unreasonable. *Moran Transportation Corp.*, 303 Ill. App. 3d at 473-74. Statutes are presumed constitutional, and broad latitude is afforded to legislative classifications for taxing purposes.

Geja's Café v. Metropolitan Pier & Exposition Authority, 153 Ill. 2d 239, 139 (1992). Moreover, a tax classification must be upheld if any statement of facts can be conceived that would reasonably sustain the classification. *Moran Transportation Corp.*, 303 Ill. App. 3d at 473-74.

¶ 70 Here, the circuit court correctly determined that the classifications in the taxes were valid. The County's proffered reasons for the classifications are reasonably related to the objectives of the ordinances. We conclude that plaintiffs' claims fail.

¶ 71 C. Preemption by FOID Card Act and Firearm Concealed Carry Act

¶ 72 Finally, plaintiffs next contend that the challenged taxes are preempted by the FOID Card Act (430 ILCS 65/13.1(e) (West 2018)) and the Concealed Carry Act (430 ILCS 66/90 (West 2018)) if they are construed as regulatory measures. Specifically, plaintiffs contend that the FOID Card Act expressly preempts local laws regulating the possession of handguns and handgun ammunition by FOID card holders, and that the Concealed Carry Act contains similarly preemptive language regarding any ordinance that purports to impose regulations or restrictions on licensees or handguns and ammunition.

¶ 73 Defendants contend that plaintiffs' arguments are without merit because home rule entities have a broad authority to enact taxes subject to narrow limitations not at issue here. Additionally, defendants contend that even under the narrowest home rule analysis (application to non-tax ordinances), the plain language of the FOID Act and Concealed Carry Act only prohibit enactments that are inconsistent with those statutes.

¶ 74 The doctrine of preemption is applied where enactments of two unequal legislative bodies are inconsistent. *Lily Lake Road Defenders v. County of McHenry*, 156 Ill. 2d 1, 8 (1993). Home rule is based on the assumption that municipalities should be allowed to address problems with

solutions tailored to their local needs. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505, ¶ 29.

¶ 75 As noted previously, the County is a home rule unit within the State of Illinois. See *Mulligan v. Dunne*, 61 Ill. 2d 544, 548 (1975). The powers of home rule units are derived from section 6(a) of Article VII of the 1970 Illinois Constitution: section 6(a) of Article VII of the 1970 Illinois Constitution:

> "[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 protection of the public health, safety, morals and welfare; to license, to tax; and to incur debt." Ill. Const.1970, art. VII, § 6(a).

Section 6(a) was written with the intention to give home rule units the broadest powers possible. *Palm*, 2013 IL 110505, ¶ 30. The General Assembly may, however, preempt the exercise of a unit's home rule powers by expressly limiting that authority. *Id.* at ¶ 31. To restrict the concurrent exercise of home rule power, the General Assembly must enact a law specifically stating that home rule authority is limited. *Id.* at ¶ 32.

¶ 76 The interpretation of state statutes and determining whether state law preempts a local ordinance is a question of law subject to *de novo* review. *Village of Northfield v. BP America, Inc.*, 403 Ill. App. 3d 55, 57-58 (2010).

¶ 77 Section 13.1(a) of the FOID Act provides that:

> "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." 430 ILCS 65/13.1(a) (West 2018).

¶ 78 Section 13.1(b) of the FOID Act provides that:

"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 any 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 [FOID] Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act * * * shall be invalid in its application to a holder of a valid [FOID] Card issued by the Department of State Police under this Act." 430 ILCS 65/13.1(b) (West 2018).

Section 13.1(e) of the FOID Act provides that: "[t]his Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution." 730 ILCS 65/13.1(e) (West 2018).

¶ 79 Similarly, Section 90 of the Concealed Carry Act states:

"The regulation, licensing, possession, registration, and transportation of

> handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. * * * This Section is a denial and limitation of home rule powers and functions under subsection (h) of Article VII of the Illinois Constitution." 730 ILCS 66/90 (West 2018).

¶ 80 Section 6 of Article VII of the Illinois Constitution provides that: "(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 * * *." Ill. Const.1970, art. VII, § 6(h).

¶ 81 Section 6 of Article VII specifically states that the General Assembly may limit any power or function of a home rule unit other than a taxing power. The power to regulate and the power to tax are separate and distinct powers. *Town of Cicero v. Fox Valley Trotting Club, Inc.*, 65 Ill. 2d 10, 16-17 (1976); *City of Chicago v. Stubhub, Inc.*, 2011 IL 111127, ¶ 62; *Midwest Gaming*, 2015 IL App (1st) 142786, ¶ 63. Here, it is taxes at issue and not any regulatory ordinance. *Midwest Gaming*, 2015 IL App (1st) 142786, ¶ 66. Accordingly, plaintiffs' argument that the County's firearms and ammunition taxes are preempted by the FOID Act and the FCCA are without merit.

¶ 82 We find that the circuit court properly granted summary judgment in favor of defendants.

¶ 83 CONCLUSION

¶ 84 In sum, we hold that: (1) Smolenski and Maxon lack standing to challenge the firearm tax; (2) Maxon lacks standing to challenge the ammunition tax; (3) Smolenski had standing to challenge the ammunition tax; and (4) GSL had associational standing to challenge both taxes. Accordingly, the circuit court erred in finding that Maxon had standing to challenge the ammunition tax and we reverse that finding. See *Matthews v. Chicago Transit Authority*, 2016 IL

117638, ¶ 103. Further, we find that the circuit court properly granted summary judgment in favor of defendants.

¶ 85 Affirmed in part and reversed in part.

In the

Supreme Court of Illinois

GUNS SAVE LIFE, INC., *et al.*,

Plaintiffs-Movants,

v.

ZAHRA ALI, solely in her official capacity as Director of the Department of Revenue of Cook County, *et al.*,

Defendants-Respondents.

On Petition for Leave to Appeal from the Appellate Court of Illinois
First Judicial District, No. 1-18-1846.
There on Appeal from the Circuit Court of
Cook County, Illinois, No. 15-CH-18217.
The Honorable David B. Atkins, Presiding

PETITION FOR LEAVE TO APPEAL PURSUANT TO RULE 315

David H. Thompson (ARDC No.___)*
Peter A. Patterson (ARDC No. ____)*
COOPER & KIRK, PLLC
1523 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com

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

*Appearance to be entered pursuant to ILL. S. CT. Rule 707

Attorneys for Plaintiffs-Movants

ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

PRAYER FOR LEAVE TO APPEAL

Pursuant to Illinois Supreme Court Rule 315, Plaintiffs—Guns Save Life, Inc. (an association dedicated to defending Second Amendment rights in Illinois), Maxon Shooter's Supplies (a firearm an ammunition retailer), and Marilyn Smolenski (a citizen and member of Guns Save Life)—respectfully petition for leave to appeal from the judgment and opinion of the Appellate Court of Illinois, First District, entered on March 13, 2020.

JUDGMENT BELOW

The opinion and order of the Appellate Court of Illinois was filed in this cause on March 13, 2020. No petition for rehearing was filed. Plaintiffs file this petition consistent with the Court's March 24, 2020 order extending the deadline to file a petition for leave to appeal to 70 days from the date of the appellate court judgment. *In re*: Illinois Courts Response to COVID-19 Emergency – Supreme Court Filing Deadlines (Mar. 24, 2020).

POINTS RELIED UPON FOR REVIEW OF JUDGMENT OF THE APPELLATE COURT

Review is needed because the First District's decision upholding Cook County's firearm and ammunition taxes conflicts with multiple decisions of this Court (and the United States Supreme Court) on important issues of constitutional law.

First, the First District erroneously held that Cook County's Second Amendment Taxes are consistent with the Second Amendment to the U.S. Constitution and Article I, § 22, of the Illinois Constitution. This Court and the U.S. Supreme Court repeatedly have struck down government attempts to tax constitutional rights—including the right to marry, *Boynton v. Kusper*, 112 Ill.2d 356 (1986), the right to access the courts, *Crocker v. Finley*, 99 Ill.2d 444 (1984), the free exercise of religion, *City of Blue Island v. Kozul*,

379 Ill. 511 (1942); *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), the freedom of the press, *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575 (1983), and the right to vote, *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966). Both courts, furthermore, have emphasized that the Second Amendment right is not second-class. *See McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality); *People v. Aguilar*, 2013 IL 112116, ¶ 21. It follows from these premises that Cook County's firearm and ammunition taxes—which have the *sole* purpose of raising revenue for government operations—are unconstitutional. Indeed, the constitutional violation is particularly clear in this context because the Illinois Constitution expressly states that the right to keep and bear arms is "[s]ubject *only* to the police power," ILL. CONST. art. I, § 22 (emphasis added), not the tax power that the County purports to exercise. Notwithstanding these clear legal principles, the First District erroneously held that Cook County's firearm and ammunition taxes violate neither Article I, § 22 nor the Second Amendment.[1]

Second, the First District also erroneously held that Cook County's firearm and ammunition taxes do not violate the Uniformity Clause of the Illinois Constitution, in conflict with *Boynton*. *Boynton* held not only that the marriage tax at issue in that case violated the right to marry but also that it violated the Uniformity Clause. The same principles apply to invalidate the taxes at issue here. Of course, if the Court holds that the

[1] Cook County insists that the taxes are properly considered as taxes rather than regulatory measures. If the Court were to disagree, that would raise an additional issue for the Court's consideration—whether the taxes are preempted by 13.1(b) of the Firearm Owner's Identification Act and Section 90 of the Firearms Concealed Carry Act insofar as they apply to handguns and handgun ammunition.

taxes violate the right to keep and bear arms, as it should, it need not reach the Uniformity Clause issue.

Third, despite agreeing that Guns Save Life has standing to raise all of the issues presented by this case, the First District erroneously and gratuitously held that Maxon lacks standing. The court reached this issue despite it having no impact on the resolution of the case, as GSL clearly provided standing for the court to reach the merits of Plaintiffs' claims on the cross-motions for summary judgment. *See Buettell v. Walker*, 59 Ill. 2d 146, 152 (1974) (once it is determined that one plaintiff has standing, there is no need to "consider whether the remaining plaintiffs also have standing"). Yet the court determined that Maxon cannot challenge the harm to its business caused by Cook County's infringement of its customers' constitutional rights, in conflict with the "firmly established" rule that "vendors are routinely accorded standing to assert the constitutional rights of customers." 13A CHARLES ALAN WRIGHT ET AL., FED. PRAC. & PROC. § 3531.9.3; *cf. Greer Illinois Hous. Dev. Auth.*, 122 Ill. 2d 462, 493 (1988) ("[T]o the extent that the State law of standing varies from Federal law, it tends to vary in the direction of greater liberality . . . ."). The First District also erroneously discounted the magnitude of the harm suffered by Maxon. To be clear, whether or not Maxon has standing is immaterial to this Court's ability to reach the merits, as all agree that GSL has standing. But if the Court takes up this case it should address Maxon's standing in addition to the merits to correct the First Department's egregious error.

This Court's review is urgently needed to restore consistency to the law of this State and to ensure localities and the State itself are not emboldened to pursue unconstitutional taxation of fundamental constitutional rights.

STATEMENT OF FACTS

I. The Second Amendment Taxes.

On November 9, 2012, the Cook County Board of Commissioners passed an ordinance entitled the "Cook County Firearms Tax," which imposes a $25 fee for each firearm purchased at a firearms retail business in Cook County (hereinafter, the "Firearm Tax"). App. 26–29. As the legislative history makes clear, one intended effect of requiring law-abiding citizens to pay a special tax to exercise their constitutional right to acquire a firearm was to discourage gun ownership in Cook County. *See* Meeting of the Cook County Board of Commissioners at 1:18:56 (Nov. 2, 2012), *available at* https://goo.gl/1CJgew ("2012 Hearing"); App. 36 (Commissioner Sims explaining that the $25 tax would "make it difficult for people to have guns"). Indeed, the preamble of the Ordinance itself declares that "the . . . presence . . . of firearms in the County . . . detracts from the public health, safety, and welfare." App. 26.

In 2015, the County enacted an amended ordinance that is now known as the "Cook County Firearm and Firearm Ammunition Tax Ordinance." App. 59–62. The 2015 amendment, which was adopted on November 18, 2015, added a tax (hereinafter, the "Ammunition Tax," and together with the Firearm Tax, the "Second Amendment Taxes") on the retail sale of ammunition in Cook County in the amounts of $0.05 per cartridge of centerfire ammunition, COOK CTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-668(b)(1), and $0.01 per cartridge of rimfire ammunition, *id.* § 74-668(b)(2). While the Ordinance provides that the revenue generated by the Ammunition Tax "shall be directed to the Public Safety Fund to fund operations related to public safety," it does not similarly earmark the proceeds of the Firearm Tax, causing those tax revenues to flow into the

County's general revenue. *See* COOK CTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-677.

II. The Second Amendment Taxes' Impact on Plaintiffs.

Guns Save Life ("GSL") is an independent, not-for-profit organization that is dedicated to protecting the Second Amendment rights of Illinois citizens to defend themselves. App. 64. GSL has many members who reside in Cook County, and its members are subject to the Second Amendment Taxes and have paid both the Firearm Tax and the Ammunition Tax. App. 64, 68–69, 75.

Maxon Shooter's Supplies and Indoor Range is a registered retail dealer in firearms and firearm ammunition. App. 79. It operates a retail gun shop and indoor shooting range in Cook County. App. 79–80. Maxon sells a full range of rifles and handguns, as well as ammunition for rifles and handguns, including both centerfire and rimfire ammunition. App. 79. The Second Amendment Taxes have placed Maxon under a legal obligation to register with the Department of Revenue, App. 79, to collect and remit the Tax to the Department of Revenue, App. 79–80, to refrain from absorbing the costs of those taxes, App. 79–80, and to keep books and records as required by the Ordinance, App. 79–80. The Tax costs Maxon thousands of dollars per year and places Maxon at a competitive disadvantage. App. 79–80.

Marilyn Smolenski is a resident of Cook County, a member of GSL, and a holder of a valid Illinois Firearm Owner's Identification Card ("FOID Card") and a valid Illinois Concealed Carry license. App. 68. Ms. Smolenski frequently engages in firearms transactions, and she has previously considered purchasing a Glock 42 in Cook County but declined to do so because of the Firearm Tax. App. 33, 69. On June 7, 2016, Ms.

Smolenski purchased 100 rounds of 9mm ammunition from Maxon. App. 69. She paid the Ammunition Tax in the amount of $5.00, App. 72, under protest, and on June 8 counsel for Ms. Smolenski submitted her protest of payment of the Ammunition Tax to the Cook County Department of Revenue. App. 69, 74.

III. The Proceedings Below.

Plaintiffs filed suit in the Circuit Court for Cook County on December 17, 2015, alleging that the Second Amendment Taxes violate the Second Amendment to the federal Constitution, that they violate Section 22 of Article I and the Uniformity Clause of the Illinois Constitution, and that they are preempted by Section 13.1(b) of the Firearm Owner's Identification ("FOID") Act and Section 90 of the Firearms Concealed Carry Act ("FCCA") insofar as they apply to handguns and handgun ammunition.

Defendants moved to dismiss the Complaint on January 29, 2016, arguing that Plaintiffs GSL, Maxon, and Smolenski all lacked standing and that they had failed to state any claim upon which relief could be granted. On October 17, 2016, the circuit court granted in part and denied in part Defendants' motion to dismiss. The court dismissed Smolenski's and Maxon's challenges to the Firearm Tax (but not the Ammunition Tax) on standing grounds. But it declined to dismiss GSL's challenge to both taxes, allowing the claims against both taxes to go forward. The parties subsequently filed cross-motions for summary judgment on the remaining claims. On August 17, 2018, the circuit court denied Plaintiffs' motion and granted summary judgment in favor of the County.

On August 23, 2018, Plaintiffs noticed an appeal of the circuit court's judgment. On March 13, 2020, after briefing and a hearing, the First District affirmed in part and reversed in part the circuit court's dismissal order and affirmed its summary judgment

order. Plaintiffs now respectfully petition this Court for leave to appeal the First District's order pursuant to Supreme Court Rule 315.

ARGUMENT

The Court should exercise its authority under Rule 315 to grant review here for two reasons. First, this case involves the violation of fundamental constitutional rights: a tax on the exercise of the right to keep and bear arms under the federal and Illinois constitutions. Plaintiffs have demonstrated that they are entitled to summary judgment on their claims challenging the validity of the Second Amendment Taxes regardless of whether the Ordinance is treated as a *tax* on or the *regulation* of the right to acquire firearms and the ammunition needed to operate them. Second, while the appellate court correctly concluded that GSL has standing to raise all of the issues in this case, if the Court takes up the case it should correct the appellate court's erroneous and gratuitous conclusion that Maxon does not have standing to challenge either tax.

I. This Case Involves Fundamental Constitutional Issues of Extraordinary Public Importance.

This case involves a matter of extraordinary public importance that demands this Court's review: taxation on the acquisition of the firearms and ammunition necessary for exercising one's *fundamental rights* under the Second Amendment to the federal constitution and Article I, Section 22 of the constitution of this State. The First District erroneously determined at the outset that that the Second Amendment Taxes do not burden this right. *See* App. 17–18. But they certainly do so, as every court to face a similar issue has held that the right to *keep and bear* arms obviously must protect the right to *acquire* arms suitable for keeping and bearing. Following *District of Columbia v. Heller*, 554 U.S. 570 (2008), courts have recognized that "the right to possess firearms

for protection implies . . . corresponding right[s]" without which "the core right wouldn't mean much." *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011) (addressing right to train with firearms). And the right to keep and bear arms would mean little indeed without the corresponding right to acquire arms, as well as the ammunition they need to function. *See Heller*, 554 U.S. at 635 (the core right includes possession of a firearm "operable for the purpose of immediate self-defense"); *Jackson v. City & Cty. of S.F.*, 746 F.3d 953, 967 (9th Cir. 2014) (holding that "the right to possess firearms for protection implies a corresponding right to obtain the bullets necessary to use them"); *see also Illinois Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d 928, 930, 938 (N.D. Ill. 2014) (explaining that the Second Amendment "must also include the right to *acquire* a firearm") (emphasis in original).

Because the Second Amendment Taxes burden conduct protected by the right to keep and bear arms, the County's defense rests on the horns of a dilemma. The challenged ordinance may be understood in two ways: (1) as an exercise of the County's *taxing* power, or (2) as an exercise of its *regulatory* power. If it is an exercise of the power to tax—as the County insists and as it most naturally reads—then it is plainly unconstitutional for multiple independent reasons. *First*, under the Illinois Constitution, the right to keep and bear arms *is not subject to the tax power*; it is "[s]ubject only to the police power." ILL. CONST. art. I, § 22. *Second*, a long line of binding Illinois and U.S. Supreme Court case law holds that the government may not impose a special tax on constitutionally protected conduct, unless that tax satisfies strict scrutiny—a test the Second Amendment Taxes cannot pass. *See Boynton*, 112 Ill. 2d at 370–71; *Minneapolis Star & Tribune Co.*, 460 U.S. at 593. *Finally*, because the lines the Second Amendment

Taxes draw are arbitrary in numerous ways, the Taxes are also invalid under the Uniformity Clause, ILL. CONST. art. IX, § 2.

The challenged Ordinance is equally doomed if it is understood as an exercise of the County's *regulatory* power. For two statewide laws—the FOID Card Act and the Concealed Carry Act—explicitly preempt local laws touching on "[t]he regulation, licensing, possession, registration, and transportation of handguns and ammunition." 430 ILCS 66/90; *see also* 430 ILCS 65/13.1.

1. At the outset, the First District erred in concluding that the Second Amendment Taxes do not infringe upon the right to bear arms under the federal or Illinois constitution. The court reasoned that the taxes do not "restrict the ownership of firearms or ammunition," as they "could reasonably be considered a condition on the commercial sale of firearms" the Supreme Court referenced in *District of Columbia v. Heller*, 554 U.S. 570 (2008). App. 17–18. The court also determined that the taxes at issue are constitutional because they are "more akin to various other types of sales tax on the purchase of goods and services." App. 17. Finally, the court seemingly adopted the "substantial burden" test for evaluating the applicable level of scrutiny, reasoning that "a law does not substantially burden a constitutional right simply because it makes the right more expensive or difficult to exercise." App. 18. As a result, it concluded that Plaintiffs "have not pleaded any facts to support its conclusion that such taxes impermissibly restrict the right to keep and bear arms." *Id.* But the court's analysis is wrong at every turn.

First, the appellate court mischaracterized the Second Amendment Taxes as merely a "condition on the commercial sale of firearms." App. 17–18. In *Heller*, the U.S.

Supreme Court identified a handful of "presumptively lawful regulatory measures" that, based on its reading of the Second Amendment's text and history, it took to be *prima facie* outside "the full scope of the Second Amendment." 554 U.S. at 626–27 & n.26. One of those presumptive exceptions is comprised of "laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626–27. Whatever the scope of this category of presumptively lawful regulations, it simply cannot create a blanket exception for "commercial"-type restrictions that a State may enact merely by casting all manner of restrictions on the right to keep and bear arms as restrictions on their "commercial sale." *See United States v. Marzzarella*, 614 F.3d 85, 92 n.8 (3d Cir. 2010). That said, the Court need not determine the scope of *Heller*'s exception in this case, since the Second Amendment Taxes are *not* a "condition[ ] [or] qualification[ ] on the commercial sale of arms," *Heller*, 554 U.S. at 627—they are *taxes* that *directly target* their sale. While the Second Amendment Taxes are *collected* by firearms and ammunition retailers, COOK CTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-670, by law they must be *borne* by *the buyer*, *id.* sec. 74-668—making them wholly unlike conditions or qualifications of sale, which directly bind retailers. As shown below, it is well settled across a wide spectrum of constitutional rights that a tax that *singles out* the exercise of a constitutional right, far from enjoying a presumption of validity, must satisfy the highest level of constitutional scrutiny to be valid.

Likewise, the court completely *ignored* ample case law making clear that an attempt to add costs to law-abiding citizens' acquisition of constitutionally protected goods or services through taxation constitutes a sufficient burden to trigger constitutional scrutiny. For example, in *Boynton*, this Court struck down a $10 tax on the issuance of

marriage licenses, explaining that while "[i]t may be argued that the amount of the tax . . . does not . . . impose a significant interference with the fundamental right to marry," strict scrutiny is nonetheless required because "[o]nce it is conceded that the State has the *power* to . . . single out marriage for special tax consideration, there is no limit on the amount of the tax that may be imposed." 112 Ill. 2d at 369–70. The U.S. Supreme Court employed the same reasoning in striking down a $1.50 poll tax. *Harper*, 383 U.S. at 668 ("The degree of the discrimination is irrelevant . . . ."); *see also Minneapolis Star & Tribune Co.*, 460 U.S. 575 (invalidating tax that burdened free speech); *Murdock*, 319 U.S. at 113 (invalidating tax that burdened religious expression). The court also erroneously disregarded the *dispositive* fact that the tax targets the exercise of *fundamental right* in concluding that the "taxes at issue are nothing more than a tax on the sale of tangible personal property." App. 17. Under no plausible interpretation could the Second Amendment Taxes constitute a generally applicable sales tax. To be clear, purchasers of firearms and ammunition in Cook County must pay the Second Amendment Taxes *in addition to* the generally applicable sales tax.

Finally, in concluding that the Second Amendment Taxes do not substantially burden the right to keep and bear arms, the court also failed to recognize that the challenged taxes *do* burden the right to acquire firearms and ammunition. In fact, a stated *purpose* of the tax is to "make it difficult for people to have guns." Meeting of the Cook County Board of Commissioners at 1:18:56 (Nov. 2, 2012), *available at* https://goo.gl/1CJgew ("2012 Hearing"); App. 36. What is more, the First District should not have undertaken a substantial burden analysis in the first place, as this Court has specifically rejected any requirement to show "that the regulation operates as a

substantial burden on the ability of law-abiding citizens to possess and use a firearm for self-defense . . . before a heightened scrutiny is triggered." *People v. Chairez*, 2018 IL 121417, ¶ 35 n.3. As a result, the appellate court's first step in evaluating the constitutionality of the Second Amendment Taxes began from an incorrect premise.

2. Because the Second Amendment Taxes "impose[ ] a burden on conduct falling within the scope of the second amendment guarantee," the next step would ordinarily be to "determine the appropriate standard of scrutiny" applicable to the taxes. *Wilson v. County of Cook*, 2012 IL 112026, at ¶¶ 40–41. If it is understood as an exercise of the taxing power, however, the challenged Ordinance must be invalidated *categorically* before the question of the correct standard of scrutiny even arises, for imposing a tax on the right to keep and bear arms is flatly prohibited by the Illinois Constitution.

Article I, Section 22 of the Illinois Constitution declares that "the right of the individual citizen to keep and bear arms" is "[s]ubject only to the police power." ILL. CONST. art. I, § 22 (emphasis added). As numerous cases explain, under the state Constitution, "[t]he power to regulate and the power to tax are distinct powers," *Rozner v. Korshak*, 55 Ill. 2d 430, 432 (1973); *see also Greater Chi. Indoor Tennis Clubs, Inc. v. Village of Willowbrook*, 63 Ill. 2d 400, 403 (1976); *Paper Supply Co. v. City of Chicago*, 57 Ill. 2d 553, 576 (1974); *see also* ILL. CONST. art. VII, § 6(a) (distinguishing the power "to regulate for the protection of the public health, safety, morals and welfare" and "to tax"). While the government may regulate the right to keep and bear arms, within constitutional limits, in pursuance of its police power, by the plain terms of the Constitution it has *no authority* to single out the exercise of that right for taxation.

Despite Plaintiffs raising this argument in its briefing and at oral argument, the appellate court did not even *address* the Illinois Constitution's bar on targeting the right to keep and bear arms for special taxation, and it is fatal to the Second Amendment Taxes. This alone warrants review and reversal by this Court.

3. Even setting aside the categorical invalidity of the Second Amendment Taxes under the Illinois Constitution, determining the appropriate standard of scrutiny in this case is an easy question if the Court considers the Taxes under the County's *taxing* power. For a clear line of binding case law dictates that "the imposition of [a] special tax" that poses "a *direct* impediment to the exercise of [a] fundamental right . . . *must be subjected to the heightened test of strict scrutiny*." *Boynton*, 112 Ill. 2d at 369 (second emphasis added).

As noted above, in *Boynton* this Court dealt with an additional $10 fee the State had imposed on top of the ordinary fee for issuing a marriage license, the proceeds of which were paid "into the Domestic Violence Shelter and Service Fund." *Id.* at 359. The Court concluded that because the additional $10 charge's "sole purpose is to raise revenue which is deposited in the Domestic Violence Shelter and Service Fund," rather than to reimburse local governments for their "service of issuing, sealing, filing, or recording the marriage license," "this portion of the fee is a tax." *Id.* at 365. And that tax, the court held, was subject to strict scrutiny, because it "singled out" and "impose[d] a *direct* impediment to the exercise of the fundamental right to marry." *Id.* at 369. Reasoning that the tax was not narrowly tailored to advance a compelling government interest, the court concluded that it "does not meet the strict-scrutiny test," and it struck the tax down. *Id.* at 369.

The decision in *Boynton* disposes of this case. Like the right to marry, it is now beyond dispute that the right to keep and bear arms is "fundamental to our scheme of ordered liberty" and cannot "be singled out for special—and specially unfavorable—treatment." *McDonald*, 561 U.S. at 743, 767, 778–79 (emphasis omitted). And just like the marriage tax in *Boynton*, the Second Amendment Taxes *single out* and *directly impede* the exercise of the right to keep and bear arms by "imposing a special tax" on the purchase of firearms and ammunition that is paid by those seeking to exercise their Second Amendment rights and *no one else*. *See Boynton*, 112 Ill. 2d at 369–70.

These principles of Illinois law are in accord with *decades* of federal Supreme Court decisions holding that the government may not single out the exercise of fundamental constitutional rights for special taxes unless that discriminatory tax treatment is necessary to advance government interests of the highest import. In *Grosjean v. American Press Co.*, for instance, the United States Supreme Court struck down a state tax on the publication of advertisements in newspapers or magazines, which, it concluded, amounted to "a deliberate and calculated device in the guise of a tax to limit the circulation of information." 297 U.S. 233, 250 (1936). It reaffirmed this holding more recently, in *Minneapolis Star & Tribune*, where it struck down a state tax on the paper and ink used by newspapers. 460 U.S. 575. That tax, the Supreme Court reasoned, "singled out the press for special treatment," and "[a] tax that burdens rights protected by the First Amendment cannot stand unless the burden is necessary to achieve an overriding governmental interest." *Id.* at 582. Indeed, the plaintiff's tax burden was *actually lighter* than it would have been had it been subject to the generally applicable sales tax in the state. *Id.* at 598 (Rehnquist, J., dissenting). Similarly, in *Arkansas*

Writers' Project, Inc. v. Ragland, the Supreme Court again reiterated the rule, striking down "Arkansas' system of selective taxation" of certain magazines because "[o]ur cases clearly establish that a discriminatory tax on the press burdens rights protected by the First Amendment" and thus must be "necessary to serve a compelling state interest." 481 U.S. 221, 227, 230, 231 (1987).

Other cases illustrate that the principles that undergird *Minneapolis Star & Tribune* and *Arkansas Writers' Project* extend well beyond the First Amendment freedom of the press. The United States Supreme Court has, for example, struck down taxes that targeted religious practice. *See Follett v. Town of McCormick*, 321 U.S. 573, 577–78 (1944); *Murdock*, 319 U.S. at 113. And *Murdock* followed the example of this Court in *City of Blue Island v. Kozul*, 379 Ill. 511 (1942). *See Murdock*, 319 U.S. at 115. The U.S. Supreme Court also has held unconstitutional the practice of using poll taxes as voting qualifications. *Harper*, 383 U.S. 663.

Although these decisions rest on different constitutional provisions, a single overarching principle unites them: "[a] state may not impose a charge for the enjoyment of a right granted by the federal constitution" absent a compelling justification. *Murdock*, 319 U.S. at 113. Here, the County has enacted a discriminatory tax that specially burdens the exercise of a fundamental right protected by both the federal and state constitutions: the right to keep and bear arms. On the reasoning of these cases, that tax cannot stand unless it satisfies strict constitutional scrutiny. But the Second Amendment Taxes cannot satisfy any standard of heightened scrutiny. The taxes suffer from the key defect that the U.S. Supreme Court identified regarding the tax on newspaper materials in *Minneapolis Star & Tribune*: "an alternative means of achieving the same interest without raising

concerns under the [Constitution] is clearly available: the [Government] could raise the revenue by taxing businesses generally." 460 U.S. at 586. Because whatever additional revenue the County raises under the Second Amendment Taxes could instead be raised through a general, non-discriminatory tax increase that *does not* single out constitutionally protected conduct, the challenged taxes are not a "narrowly tailored" or "substantially related" means of advancing the County's interest in raising revenue.[2]

The appellate court did not address—or even cite—*any* of these binding precedents. Instead, the court declined to reach this step in the analysis because it had (wrongly) concluded that the Ordinance does not substantially burden the right to keep and bear arms. *See* App. 18–19. Again, this Court should grant review to remedy this egregious error.

4. The Second Amendment Taxes are independently unconstitutional under the Uniformity Clause, ILL. CONST. art. IX, § 2. That provision requires that a "tax classification must (1) be based on a real and substantial difference between the people taxed and those not taxed, and (2) bear some reasonable relationship to the object of the legislation or to public policy." *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 153 (2003). This Court's decision in *Boynton* is again dispositive on this issue, as the Court in that case also struck down the marriage-license tax on Uniformity Clause grounds. The Court concluded that "the relationship asserted" between those taxed (applicants for marriage licenses) and the use of the tax proceeds (to fund benefits for domestic violence victims)

[2] The Taxes are also flatly unconstitutional because they have no grounding in the history and tradition of firearms regulation in this Nation. *See Heller*, 554 U.S. at 626–27; *see also People v. Aguilar*, 2013 IL 112116, ¶¶ 21, 27. In any event, Plaintiffs have shown that the Taxes fail any measure of heightened scrutiny.

was "simply too remote." *Boynton*, 112 Ill. 2d at 366. So too here. There can be no question that the Second Amendment Taxes apply to the exercise of a fundamental right, and its proceeds are used for general welfare purposes. *See* COOK CTY. CODE OF ORDINANCES ch. 74, art. XX, sec. 74-677. Moreover, the taxes additionally violate the Uniformity Clause by irrationally discriminating between the ordinary, law-abiding residents of Cook County who must pay the taxes and (1) those who purchase firearms and ammunition *outside* Cook County (and therefore *do not* pay the taxes); (2) convicted felons (who by law cannot purchase firearms or ammunition and therefore *do not* pay the tax); and (3) federal and state personnel, veterans organizations, and law enforcement personnel (who are exempt from the taxes by law, COOK COUNTY CODE § 74-669).

The First District did not engage with *any* of these arguments. Instead, it rejected Plaintiffs' Uniformity Clause claims with nothing more than the conclusory assertion that "[t]he County's proffered reasons for the classifications are reasonably related to the objectives of the ordinances." App. 21. That does not satisfy the judicial duty to ensure that the lines drawn by a challenged tax are "based on a real and substantial difference between the [objects] taxed and those not taxed," *Milwaukee Safeguard Ins. Co. v. Selcke*, 179 Ill. 2d 94, 98 (1997), and this Court should grant review and reverse.

5. Because the County cannot constitutionally impose a discriminatory *tax* on the purchase of firearms and ammunition, that leaves only the second understanding of the challenged Taxes: as an attempt to *regulate* the purchase of firearms and ammunition through an exercise of the County's police power. But two statewide laws, the FOID Card Act and the Firearms Concealed Carry Act ("FCCA"), expressly preempt home-rule jurisdictions like Cook County from engaging in the "regulation, licensing, possession,

and registration of handguns and ammunition for a handgun." 430 ILCS 65/13.1; *see also* 430 ILCS 66/90. Because a person cannot possess a firearm or ammunition without first acquiring them, the Taxes apply to the same conduct as the FCCA and the FOID Card Act: the possession of handguns and handgun ammunition by FOID Card holders and concealed carry license holders. And the Ordinance's focus on transfers heightens the conflict with State law because it regulates the same class of persons: law-abiding citizens generally are required to possess either a FOID card or a concealed carry license before they can acquire a firearm or ammunition for a firearm. *See* 430 ILCS 65/3(a).

The appellate court concluded that the challenged provisions were not preempted because the Second Amendment Taxes are *not* regulatory and fall under the County's taxing power. App. 24. And we agree with this characterization of the Taxes. But while that might rescue the challenged taxes *as a matter of preemption*, it *cements* their invalidity under the Second Amendment and Article I, Section 22 of the Illinois Constitution, for the reasons discussed above. In all, this Court should grant review because the Second Amendment Taxes are unlawful whether treated as a *tax* on or the *regulation* of the right to acquire firearms and the ammunition needed to operate them.

II. The First District's Standing Analysis Is Erroneous.

The Court should grant review to correct the First District's erroneous and wholly gratuitous holding that Maxon lacks standing. App. 10–12. To be clear, all parties and the appellate court agreed that Guns Save Life has standing to raise all of the issues presented by this case. *See* App. 7 (acknowledging that the County conceded GSL has standing). However, the court went *out of its way* to incorrectly rule on the issue of Maxon's standing, as it is well-established that a court must only determine that one party has standing for the case to proceed. *See Buettell*, 59 Ill. 2d at 152. But it is clear that Maxon

has standing to challenge both taxes, vindicating the Second Amendment rights of its customers. *See Eisenstadt v. Baird*, 405 U.S. 438, 446 (1972); *Ezell*, 651 F.3d at 696. The appellate court failed to even consider this argument and erroneously concluded that Maxon lacked standing to challenge taxes paid by the consumer. *See* App. 11.

Maxon also has standing to challenge both the Firearm Tax and the Ammunition Tax because the Taxes injure Maxon in two ways: by imposing burdensome compliance costs and by reducing Maxon's revenue. The record evidence shows that Maxon's "costs for complying with the Firearms Tax are substantial, and it expects that its costs for complying with the Ammunition Tax to be even greater." App. 79. Indeed, because the County requires Maxon to report individual *rounds* of rimfire and centerfire ammunition sold, while Maxon's software tracks *boxes* of ammunition but not *rounds*, Maxon's employees must spend many hours each month independently collecting and tabulating its ammunition inventory and sales by round, for the sole purpose of complying with the Ammunition Tax, at the cost of thousands of dollars each year. App. 80. The Second Amendment Taxes have also placed Maxon at a competitive disadvantage compared to retailers located outside Cook County App. 65, 67 (out-of-county advertisement for firearm and ammunition sales free from the "Crook county tax"), with the result that Maxon estimates, based on its past sales, that it lost $51,000 in potential ammunition sales revenue during the first six months of the Ammunition Tax's operation. App. 119–20. Both the costs of complying with the Ordinance and lost revenue amount to injury-in-fact under Illinois case law. *See, e.g.*, *Greer*, 122 Ill. 2d at 493.

But the First District refused to acknowledge this uncontroverted evidence demonstrating the impact of the taxes on Maxon's business when it determined that

Maxon has not established any "adverse economic consequences" or "real injury" suffered from either tax. *See* App. 12. Rather, the court rested its analysis *entirely* on the County's incorrect assertion that Maxon's reporting system already tracks the necessary information for complying with the Ordinance. *See id.* Thus, the First District's erroneous standing analysis merits review and reversal.

CONCLUSION

For the foregoing reasons, this Court should grant appeal and reverse the decision below.

Respectfully Submitted:

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

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

David H. Thompson (ARDC No. _____)*
Peter A. Patterson (ARDC No. _____)*
COOPER & KIRK, PLLC
1523 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com

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

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 20 pages.

Christian D. Ambler

Christian D. Ambler
Stone & Johnson, Chtd.
111 West Washington St., Suite 1800
Chicago, Illinois 60602
(312) 332-5656
CAmbler@stonejohnsonlaw.com

No.

In the

Supreme Court of Illinois

GUNS SAVE LIFE, INC., *et al.*,

Plaintiffs-Movants,

v.

ZAHRA ALI, solely in her official capacity as Director of the Department of Revenue of Cook County, *et al.*,

Defendants-Respondents.

On Petition for Leave to Appeal from the Appellate Court of Illinois
First Judicial District, No. 1-18-1846.
There on Appeal from the Circuit Court of
Cook County, Illinois, No. 15-CH-18217.
The Honorable David B. Atkins, Presiding

APPENDIX

Christian D. Ambler – ARDC #6228749
STONE & JOHNSON, CHARTERED
111 West Washington St. - Suite 1800
Chicago, Illinois 60602
Telephone (312) 332-5656

David H. Thompson - ARDC #_____*
Peter A. Patterson – ARDC #_____*
Cooper & Kirk, PLLC
1523 New Hampshire Ave., N. W.
Washington, D. C. 20036
(202) 220-9600

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

Attorneys for Plaintiffs-Movant

ORAL ARGUMENT REQUESTED

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APPENDIX

TABLE OF CONTENTS

Lawyers

2020 IL App (1st) 181846

FIFTH DIVISION
Filing Date: March 13, 2020

No. 1-18-1846

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

GUNS SAVE LIFE, INC., DPE SERVICES, INC. d/b/a MAXON SHOOTER'S SUPPLIES AND INDOOR RANGE and MARILYN SMOLENSKI,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	No. 15 CH 18217
v.	)	Honorable David Atkins,
ZAHRA ALI, solely in her capacity as Director of the Department of Revenue of Cook County, THOMAS J. DART, solely in his capacity as Cook County Sheriff, and the COUNTY OF COOK, a county in the State of Illinois,	)	Judge, Presiding.
Defendants-Appellees.	)	

JUSTICE HALL delivered the judgment of the court, with opinion.
Justices Rochford and Delort concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiffs Guns Save Life, Inc. (GSL), DPE Services, Inc. d/b/a Maxon Shooter's Supplies and Indoor Range (Maxon), and Marilyn Smolenski (Smolenski) appeal the circuit court's grant of summary judgment in favor of defendants, Zahra Ali (Ali), Thomas J. Dart (Dart), and the

County of Cook (the County)[1] on their second amended complaint for declaratory judgment and injunctive relief. Plaintiffs sought to challenge the County's ordinance that imposed a tax on firearm sales and two types of ammunition sales (centerfire and rimfire) within the County.

¶ 2 Plaintiffs have raised the following issues on appeal: (1) whether the circuit court erred in partially granting defendants' section 2-619(a)(9) (735 ILCS 5/2-619(a)(9) (West 2016)) motion to dismiss because plaintiffs Maxon and Smolenski did not have standing to bring suit to challenge the firearms tax; and (2) whether the circuit court erred in granting summary judgment in favor of defendants on the remaining claims, namely: (a) whether the challenged firearms tax and ammunition tax violate the Second Amendment to the United States Constitution and Section 22 of Article I of the Illinois Constitution; (b) whether the classifications in the ammunition tax violate the Uniformity Clause in Section 2 of Article IX of the Illinois Constitution; and (c) whether the challenged firearms tax and ammunition tax are preempted by the Firearm Owners Identification (FOID) Card Act and the Firearm Concealed Carry Act (Concealed Carry Act).

¶ 3 For the reasons that follow, we affirm the judgment of the circuit court.

¶ 4 BACKGROUND

¶ 5 Plaintiffs filed their initial four-count complaint for declaratory judgment and injunctive relief challenging the firearms and ammunition taxes on December 17, 2015, alleging that defendants: (1) violated the Second Amendment (U.S. Const., amend. II) and Section 22 of Article I of the Illinois Constitution (Ill. Const.1970, art. I, § 22); (2) violated the Uniformity Clause of the Illinois Constitution (Ill. Const.1970, art. IX, § 2); and (3) were preempted by section 13.1(b)

[1] Zahra Ali is the Director of the Cook County Department of Revenue and Thomas J. Dart is the Sheriff of Cook County. They were named as defendants in their official capacities.

of the FOID Act (430 ILCS 65/13.1 (West 2016)) and section 90 of the Concealed Carry Act (430 ILCS 66/90 (West 2016)) as it applies to handguns and handgun ammunition.

¶ 6 Defendants moved to dismiss the complaint on January 29, 2016, alleging that plaintiffs lacked standing and that the complaint failed to state any claim on which relief could be granted.

¶ 7 Plaintiffs filed their first amended complaint on February 22, 2016, and a response to defendants' motion to dismiss on April 6, 2016, (pursuant to the circuit court's March 16, 2016, order).

¶ 8 According to the second amended complaint, on November 9, 2012, the County's Board of Commissioners (the Board) passed a tax entitled the "Cook County Firearms Tax" (firearms tax) which imposed a $25 fee for each firearm purchased by a citizen at a firearms retail business located in the County (the firearm tax). Cook County Code of Ordinances (County Code), art. XX, §§ 74-665- 74-675. The revenue from this tax was not directed to any specific fund. On November 18, 2015, the Board amended the County Code to impose a tax on the retail purchase of firearm ammunition at the rate of $0.01 per cartridge of rimfire ammunition and $0.05 per cartridge of centerfire ammunition (the ammunition tax). County Code, art. XX, § 74-676. The revenue from the ammunition tax was directed to the Public Safety Fund to fund operations related to public safety.

¶ 9 Plaintiffs alleged that GSL was a nonprofit corporation dedicated to protecting the Second Amendment rights of Illinois citizens to defend themselves. Some GSL members reside in the County and have paid both the firearm and ammunition taxes. GSL alleged however, that its members purchased firearms and ammunition less frequently in the County because of the taxes,

and that some members avoid purchasing firearms and ammunition in the County because of the taxes.

¶ 10 Plaintiffs alleged that Maxon was a registered retailer of firearms and ammunition in the County. It operates a retail gun shop and indoor shooting range in Des Plaines, Illinois. Maxon sells rifles and handguns and their corresponding ammunition, including centerfire and rimfire. Maxon is owned and operated by DPE Services, Inc.

¶ 11 Plaintiffs alleged that Smolenski was a resident of the County and member of GSL who possessed a valid FOID card and a valid Concealed Carry license. Smolenski "frequently" engaged in firearms transactions and decided not to purchase a firearm in the County because of the tax. Specifically, on June 7, 2016, Smolenski bought 100 rounds of 9mm (centerfire) ammunition from Maxon and paid the $5 ammunition tax under protest. On June 8, 2016, her counsel submitted her protest of payment to the County's Department of Revenue. While Smolenski intends to continue purchasing ammunition in the County, the second-amended complaint alleged that she did not intend to purchase as much as she otherwise would have. Further, Smolenski did not purchase a new firearm at Maxon because of the firearms tax.

¶ 12 On October 17, 2016, the circuit court issued a memorandum opinion and order granting in part and denying in part defendants' motion to dismiss. The order dismissed Smolenski's and Maxon's challenges to the firearms tax for lack of standing. The court found that Smolenski had no standing to challenge the firearms tax because she had not paid the tax and thus had not been injured by the tax. The court found that Maxon had no standing to challenge the firearms tax on behalf of its customers because there was no ban on the sale of the items at issue, nor was this a situation where the retailer passed a tax on to its customers. Rather the tax was borne by the

customers. The circuit court found that GSL had associational standing to challenge both taxes because it alleged that its members paid both taxes; Smolenski had standing to challenge the ammunition tax because she paid it under protest; and Maxon had standing to challenge the ammunition tax because the second amended complaint pleaded facts alleging that compliance with the reporting requirements associated with the ammunition tax would cost it thousands of dollars per year, which gave Maxon a real interest in challenging the ammunition tax.

¶ 13 The circuit court denied defendants' motion to dismiss for failure to state any claim on which relief could be granted because: (1) plaintiffs were not seeking a refund of taxes paid such as to implicate the voluntary payment doctrine and (2) whether the taxes were valid as a matter of law was the ultimate issue in the litigation and determination of those issues on a motion to dismiss would be premature.

¶ 14 The parties subsequently filed cross-motions for summary judgment on the remaining claims.

¶ 15 On August 17, 2018, the circuit court denied plaintiffs' motion and granted summary judgment in favor of defendants. In its memorandum opinion and order, the court concluded that the taxes did not infringe on plaintiffs' federal and state constitutional rights to bear arms because they were proper exercises of the County's home rule taxing powers and did not, in any meaningful way, impede plaintiffs' ability to exercise their right to bear arms. The court found that plaintiffs had no evidence that the taxes would have the effect of preventing ownership or possession of firearms or that they affected the ability of law-abiding citizens to retain sufficient means of self-defense. The circuit court further found that even if the taxes burdened constitutionally protected conduct, they were substantially related to the important government interest of public safety

because they provided funds to implement specific policies and programs designed to combat violence. Moreover, the taxes were outside the scope of preemption of the state laws because they were a valid exercise of the County's home rule power to tax. Finally, the court concluded that plaintiffs failed to carry their burden of demonstrating that the different rates of ammunition classification violated the Uniformity Clause.

¶ 16 This timely appeal followed, and oral argument was held on January 14, 2020.

¶ 17 ANALYSIS

¶ 18 Plaintiffs have raised the following issues on appeal: (1) whether the circuit court erred in partially granting defendants' section 2-619(a)(9) (735 ILCS 5/2-619(a)(9) (West 2016)) motion to dismiss because plaintiffs Maxon and Smolenski did not have standing to bring suit to challenge the firearms tax; and (2) whether the circuit court erred in granting summary judgment in favor of defendants on the remaining claims, namely: (a) whether the challenged firearms tax and ammunition tax violate the Second Amendment to the United States Constitution and Section 22 of Article I of the Illinois Constitution; (b) whether the classifications in the ammunition tax violate the Uniformity Clause in Section 2 of Article IX of the Illinois Constitution; and (c) whether the challenged firearms tax and ammunition tax are preempted by the FOID Card Act and the Firearm Concealed Carry Act.

¶ 19 A. Section 2-619(a)(9) Motion to Dismiss for Lack of Standing

¶ 20 Plaintiffs first contend that all three plaintiffs had standing to challenge both the firearms tax and the ammunition tax. They first contend that the circuit court correctly determined that GSL had standing to bring suit to challenge both taxes because an association may bring suit on behalf of its members. Plaintiffs further contend that Smolenski had standing to challenge both taxes

because she suffered distinct and palpable injuries as a result of both taxes, even though she has not yet paid the firearms tax. Additionally, plaintiffs contend that Maxon had standing to challenge both taxes as a vendor because it is injured by the fact that it must collect the taxes and remit them and because it is independently injured by the taxes in that they impose burdensome compliance costs and reduce Maxon's revenue. Thus, plaintiffs contend that the circuit court erred in determining that Smolenski and Maxon did not have standing to challenge the firearms tax and by granting defendants' section 2-619(a)(9) (735 ILCS 5/2-619(a)(9) (West 2016)) motion on that basis.

¶ 21 Here, defendants challenged plaintiffs' standing through a motion for involuntary dismissal under section 2-619(a)(9). Lack of standing is an affirmative defense (*Chicago Teachers Union, Local 1 v. Board of Education of City of Chicago*, 189 Ill. 2d 200, 206 (2000)), and a section 2-619(a)(9) motion is a proper avenue for asserting the affirmative defense of standing (*Crusius ex rel. Taxpayers of State of Illinois v. Illinois Gaming Board*, 348 Ill. App. 3d 44, 48 (2004)).

¶ 22 On appeal, defendants initially reasserted their argument that none of the plaintiffs have standing. However, at oral argument, defendants conceded that GSL had associational standing, but continued in their assertion that Maxon has no standing whatsoever and that Smolenski has no standing to challenge the firearms tax because she has not paid that tax. As to Maxon, defendants contend that it has no standing to contest the firearms tax because it has no real interest in the tax because it has no burden of paying it and further that there was no additional expense for Maxon to compute and report in compliance with the ammunition tax.

¶ 23 A motion to dismiss under section 2-619(a)(9) admits the legal sufficiency of the plaintiff's complaint but asserts that the claim against the defendant is barred by an affirmative matter that

avoids the legal effect of or defeats the claim. 735 ILCS 5/2-619(a)(9) (West 2016); *Kuykendall v. Schneidewind*, 2017 IL App (5th) 160013, ¶ 32. An "affirmative matter" is a type of defense that negates a cause of action completely or refutes critical conclusions of law or conclusions of material fact that are unsupported by specific factual allegations contained in or inferred from the complaint. *Id.* The "affirmative matter" must be apparent on the face of the complaint or supported by affidavits or other evidentiary materials, and it must do more than refute a well-pleaded fact in the complaint. *Id.* Section 2-619(a)(9) does not authorize defendant to submit affidavits or evidentiary matters for the purpose of contesting the plaintiff's factual allegations and presenting its version of the facts. *Id.* The defendant has the initial burden of establishing that an affirmative matter defeats the plaintiff's claim, and if satisfied, the burden shifts to the plaintiff to demonstrate that the proffered affirmative matter is either unfounded, or requires the resolution of a material fact. *Id.*

¶ 24 When ruling on a motion to dismiss under section 2-619(a)(9), the circuit court must accept as true all well-pleaded facts in the plaintiff's complaint and all reasonable inferences that may be drawn, and it must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *Id.* at ¶ 33. The motion should be granted only if the plaintiff can prove no set of facts that would support his cause of action. *Id.* A motion to dismiss under section 2-619(a)(9) presents a question of law that is reviewed *de novo*. *Id.*

¶ 25 The doctrine of standing, along with the doctrines of mootness, ripeness, and justiciability, are the methods by which courts preserve for consideration only those disputes which are truly adversarial and capable of resolution by judicial decision. *Martini v. Netsch*, 272 Ill. App. 3d 693, 695 (1995).

¶ 26 Under Illinois law, a plaintiff need not allege facts establishing standing. Rather, it is the defendant's burden to plead and prove lack of standing.

¶ 27 The pivotal factor in determining whether a plaintiff has standing is whether the party is entitled to have the court decide the merits of the dispute or particular issue. *Id.* Thus, the court must decide if the party asserting standing will benefit from the relief sought. *Id.*

¶ 28 In Illinois, to have standing to challenge the constitutionality of a statute, one must have sustained or be in immediate danger of sustaining a direct injury as a result of enforcement of the challenged statute. *Chicago Teachers Union, Local 1*, 189 Ill. 2d at 206. The claimed injury must be distinct and palpable, fairly traceable to defendant's actions, and substantially likely to be prevented or redressed by the grant of the requested relief. *Id.* Further, payment of a tax establishes standing to challenge the constitutionality of the statute under which the tax is imposed. *DeWoskin v. Loew's Chicago Cinema, Inc.*, 306 Ill. App. 3d 504, 513 (1999). Whether the plaintiff has standing to sue is to be determined from the allegations contained in the complaint. *Chicago Teachers Union, Local I*, 189 Ill. 2d at 206.

¶ 29 1. Smolenski's Standing

¶ 30 Plaintiffs contend that Smolenski also has standing to challenge the constitutionality of both taxes because she has suffered distinct and palpable injuries as a result of them. They allege that Smolenski frequently engages in firearms transactions and had sought to purchase a Glock 42 gun in Cook County but did not do so because of the firearm tax. Additionally, Smolenski alleges she has both: (1) purchased ammunition in Cook County and paid the challenged ammunition tax under protest as part of her purchase, and (2) will purchase ammunition in Cook County in the future in reduced amounts because of the ammunition tax. While the circuit court correctly

determined that Smolenski had standing to challenge the ammunition tax, plaintiffs contend that the court incorrectly determined that she did not have standing to challenge the firearm tax because she had not yet paid it.

¶ 31 Defendants contend that the circuit court's ruling that Smolenski lacked standing to challenge the firearm tax was correct.

¶ 32 A court will consider a constitutional challenge to a statute by a party who is affected by the statute or aggrieved by its operation. *Terra-Nova Investments v. Rosewell*, 235 Ill. App. 3d 330, 337 (1992). A plaintiff that pays certain fees mandated by an act has standing to challenge the constitutionality of the fees paid. *Id.* (citing *Milade v. Finley*, 112 Ill. App. 3d 914, 917 (1983)); *DeWoskin*, 306 Ill. App. 3d at 513.

¶ 33 Here, Smolenski has not paid the firearm tax and premises her claim of standing on a hypothetical firearm purchase in the future. We conclude that Smolenski has not satisfied the requirement for standing to challenge the firearm tax, and the circuit court properly found that she did not have such standing.

¶ 34 2. Maxon's Standing

¶ 35 Plaintiffs further contend that Maxon had standing to challenge both taxes at issue in this case on behalf of its customers under the doctrine of vendor standing, and that it is injured by the taxes in multiple ways. First, plaintiffs contend that Maxon is injured because it must collect the taxes and remit them to the County. They also argue that Maxon's costs for complying with the firearm and ammunition taxes are substantial. Plaintiffs further contend that Maxon has standing to challenge both taxes because they cause an adverse economic impact to Maxon's business.

¶ 36 Defendants contend that Maxon has no standing to challenge either tax. First, defendants assert that Maxon has no real interest in the firearm tax because the burden of paying the tax falls on its customers, not Maxon as a retailer. Similarly, defendants argue that Maxon has no standing to challenge the ammunition tax because Maxon did not incur any additional expense computing and reporting in compliance with the tax. Defendants note that in her deposition, Sarah Natalie, Maxon's general manager, testified that as a seller of firearms, Maxon is required to register with the Department of Revenue and keep books and records of sales. She further testified that Maxon owns a module program which automatically tracked sales data based on the type of firearm and ammunition sold, which provided efficient and cost-effective assistance to employees because it kept sales records and could generate reports of the store's inventory and could provide the dates of purchases. The program could also generate a report of all firearms and ammunition sold in a one-month period, and it automatically separated the type of ammunition based on four categories, two of which are included in the tax. Because Maxon suffered no concrete injury, defendants contend that its claim of standing to challenge the ammunition tax "collapses."

¶ 37 Here, the taxes in question are not paid by the retailer, Maxon, but are paid by the consumer. Maxon's only responsibility is to track the sales and remit the tax, similar to what it is already required to do as a retailer of firearms and ammunition. Maxon could in no way be considered the payer of the challenged taxes because it is the consumer alone who has that responsibility. See *Wexler v. Wirtz Corp.*, 211 Ill. 2d 18, 26 (2004). Maxon's legal status is not altered by virtue of its reporting obligations under the taxes. *Wexler*, 211 Ill. 2d at 27. As such, the circuit court properly concluded that Maxon lacked standing to challenge the firearm tax.

¶ 38 However, we find that the circuit court erred in concluding that Maxon had standing to challenge the ammunition tax because of the adverse economic consequences. While Maxon's general manager testified in her deposition that the retailer already had a system in place that could do the required reporting and that it was already required to track such sales and remit reports to the Department of Revenue. Thus, Maxon failed to establish any real injury by the ammunition tax's requirement that it collect and remit the tax to the Department of Revenue.

¶ 39 In conclusion, the circuit court properly determined that GSL had standing to challenge both taxes, that Smolenski had standing to challenge the ammunition tax, and that neither Smolenski nor Maxon had standing to challenge the firearm tax. The circuit court erred in finding that Maxon had standing to challenge the ammunition tax based on evidence in the record.

¶ 40 B. Summary Judgment

¶ 41 Plaintiffs next contend that the circuit court erred in granting defendants' motion for summary judgment on all counts.

¶ 42 The purpose of summary judgment is not to try a question of fact, but rather to determine whether a genuine issue of material fact exists. *Adams v. Northern Illinois Gas Co.*, 211 Ill. 2d 32, 42-43 (2004). A motion for summary judgment should only be granted if the pleadings, depositions and affidavits on file demonstrate that no genuine issues of material fact exist, and the movant is entitled to judgment as a matter of law. *Barnard v. City of Chicago Heights*, 295 Ill. App. 3d 514, 519 (1998). In determining whether a genuine issue as to any material fact exists, a reviewing court must view the evidence in the light most favorable to the nonmoving party. *Barnard*, 295 Ill. App. 3d at 519. A genuine issue of material fact precluding summary judgment exists where the material facts are disputed, or if the material facts are undisputed, reasonable

persons might draw different inferences from the undisputed facts. *Hilgard v. 210 Mittel Drive Partnership*, 2012 IL App (2d) 110943, ¶ 19. On a summary judgment motion, once the moving party has demonstrated the right to judgment, the burden shifts to the nonmoving party to present evidence showing a genuine issue of material fact or that the moving party was not entitled to judgment as a matter of law. Mere argument is not enough to raise an issue of material fact. *Triple R Development, LLC v. Golfview Apartments I, L.P.*, 2012 IL App (4th) 100956, ¶ 16.

¶ 43 Because the parties filed cross-motions for summary judgment, they conceded that no material questions of fact existed and that only a question of law was involved that the court could decide on the record. *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. Appellate review of the circuit court's decision as to cross-motions for summary judgment is *de novo*. *Id.* at ¶ 30.

¶ 44 Plaintiffs make two arguments concerning the constitutionality of the firearm and ammunition taxes: (1) the taxes burden conduct protected by the federal and state constitutions and (2) if imposition of the taxes are understood as an exercise of the County's taxing power, as the circuit court concluded, they are unconstitutional under the federal and state constitutions.

¶ 45 1. Impermissible Burdening of Constitutionally Protected Rights

¶ 46 Plaintiffs first contend that the Cook County firearms and ammunition taxes burden conduct protected by the Second Amendment (U.S. Const., amend. II) and Article I, Section 22 of the Illinois Constitution (Ill. Const.1970, art. I, § 22), namely the right to acquire firearms and ammunition by increasing the cost of both types of purchases. Plaintiffs maintain that the United States Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008) held that the Second Amendment protects an individual right to keep and bear arms and the central component of that right is individual self-defense. Further, plaintiffs contend that the Court's later

decision in *McDonald v. Chicago*, 561 U.S. 742, 750 (2010), "confirmed" that the Second Amendment right is fundamental and that it is fully applicable to the states, and courts have recognized that the right to possess firearms for protection implies the corresponding right to acquire arms and the ammunition they need to function. Accordingly, plaintiffs conclude that both taxes therefore directly burden the fundamental constitutional right of individuals to acquire firearms and ammunition for firearms. Plaintiffs are making a facial constitutional challenge to the tax ordinances at issue.

¶ 47 "A facial challenge to the constitutionality of a legislative enactment is the most difficult challenge to raise successfully [citation], because an enactment is facially invalid only if no set of circumstances exist under which it would be valid." *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305-06 (2008). The fact that the enactment could be found unconstitutional under some set of circumstances does not establish its facial invalidity. *Napleton*, 229 Ill. 2d at 306. Once standing is established, the plaintiff's personal situation becomes irrelevant. *Guns Save Life*, 2019 IL App (4th) 190334, ¶ 44.

¶ 48 In construing the validity of a municipal ordinance, the same rules are applied as those which govern the construction of statutes. *Napleton*, 229 Il. 2d at 306. Like statutes, municipal ordinances are presumed constitutional. *City of Chicago v. Alexander*, 2015 IL App (1st) 122858-B, ¶ 18. Courts have a duty to construe legislative enactments so as to uphold their validity if reasonably possible. *Hayashi v. Illinois Dept. of Financial and Professional Regulation*, 2014 IL 116023, ¶ 22. To overcome this presumption, the party challenging the constitutionality of a statute has the burden of clearly establishing that it violates the constitution. *Id.* The question of

whether a municipal ordinance is unconstitutional is a question of law, subject to *de novo* review. *City of Chicago v. Taylor*, 332 Ill. App. 3d 583, 585 (2002).

¶ 49 Essentially, plaintiffs argue that because the right to keep and bear arms (and impliedly the right to acquire ammunition) is a constitutionally protected fundamental right, there can never be any government restriction or limitation on such right.

¶ 50 The Second Amendment provides that: "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II.

¶ 51 The United States Supreme Court has determined that the Second Amendment guarantees a personal right to keep and bear arms for lawful purposes. *McDonald v. Chicago*, 561 U.S. 742, 780 (2010). The central component of the right is the right of armed self-defense, most notably in the home. *Heller*, 554 U.S. at 595, 599-600. Our supreme court has held that the second amendment protects an individual's right to carry a ready-to-use gun outside the home, subject to certain regulations. See *People v. Chairez*, 2018 IL 121417, ¶ 26.

¶ 52 Similarly, article I, section 22, of the 1970 Illinois Constitution provides that: "[s]ubject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed." Ill. Const.1970, art. I, § 22. Our supreme court has held that the right to arms secured by the Illinois Constitution, which did not exist prior to 1970, is subject to substantial infringement in the exercise of the police power. *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483, 509 (1984).

¶ 53 The question in determining whether a regulation is lawful is whether the law impermissibly encroaches on conduct at the core of the second amendment. *Chairez*, 2018 IL

121417, ¶ 26. Since *Heller* and *McDonald*, courts have begun to develop a general framework for analyzing the newly enunciated second amendment right. *Wilson v. County of Cook*, 2012 IL 112026, ¶ 40. These courts have endeavored to: (1) outline the appropriate scope of the individual second amendment guarantees as defined in *Heller*; and (2) determine the appropriate standard of scrutiny for laws that burden these rights. *Id.* The Supreme Court has not definitively resolved the standard for evaluating second amendment claims. See *Heller*, 554 U.S. at 628.

¶ 54 Courts have generally employed a two-pronged test to determine whether statutes implicating the Second Amendment are constitutional. The first inquiry is whether the challenged law imposes a burden on conduct falling within the scope of the second amendment guarantee, which involves a textual and historical inquiry to determine whether the conduct was understood to be within the scope of the right at the time of ratification. *Heller*, 554 U.S. at 634-35; *Wilson*, 2012 IL 112026, ¶41. If the government can establish that the challenged law regulates activity falling outside the scope of the second amendment right, then the regulated activity is categorically unprotected. *Wilson*, 2012 IL 112026, ¶ 41. If the historical evidence is inconclusive or suggests that the regulated activity is not categorically unprotected, then there must be a second inquiry into the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights. *Heller*, 554 U.S. at 703; *Wilson*, 2012 IL 112026, ¶ 42.

¶ 55 Here, plaintiffs contend that the firearms and ammunition taxes place an impermissible burden on their Second Amendment right, which is the right to keep and bear arms as explained in *Heller*, *McDonald*, and their progeny.

¶ 56 When evaluating a facial constitutional challenge, a court must evaluate the challenged statue against the relevant constitutional doctrine independent of the statute's application to

particular cases. *Guns Save Life*, 2019 IL App (4th) 190334, ¶ 44. The Supreme Court noted in *Heller* that the "right secured by the Second Amendment is not unlimited." *Heller*, 554 U.S. at 626. Additionally, the Court noted that nothing in its decision "should be taken to cast doubt on longstanding prohibitions on * * * laws imposing conditions and qualifications on the commercial sale of arms." *Heller*, 554 U.S. at 626-27.

¶ 57 Turning to the ordinances at issue here, while they involve firearms and ammunition, it is clear that the challenged taxes on the purchases of firearms and certain types of ammunition within the County do not restrict the ownership of firearms or ammunition. It is the right of ownership of firearms and correspondingly, ammunition, that is at the core of the Second Amendment, which, as noted by *Heller*, is not itself unlimited. The taxes could reasonably be considered a condition on the commercial sale of arms. *Heller*, 554 U.S. at 626-27.

¶ 58 The taxes at issue are more akin to various other types of sales taxes imposed on the purchase of goods and services – the responsibility of paying such taxes falls on the consumer and are collected by the retailer because of the impracticality of the County collecting such tax from the consumer. See *Brown's Furniture, Inc. v. Wagner*, 171 Ill. 2d 410, 418 (1996). Plaintiffs have not cited, nor have we found, any case law which supports the position that imposing a sales tax on the purchase of firearms or ammunition violated the Second Amendment. The taxes at issue are nothing more than a tax on the sale of tangible personal property. See *American Beverage Association v. City of Chicago*, 404 Ill. App. 3d 682, 685 (2010) (The five-cent tax on each bottle of water purchased at retail is a tax on the sale of tangible personal property).

¶ 59 Nor are the taxes at issue prohibitive or exclusionary; we find it difficult to say that the taxes, $25 and $.05 per round respectively, are anything more than a "marginal, incremental or

even appreciable restraint" on one's Second Amendment rights. *Kwong v. Bloomberg*, 723 F.3d 160, 167 (2013); *United States v. DeCastro*, 682 F.3d 160, 166 (2012). To be sure, while it is clear that the firearms tax and the ammunition tax increase the costs of purchasing firearms or ammunition in Cook County, a law does not substantially burden a constitutional right simply because it makes the right more expensive or difficult to exercise. *Kwong*, 723 F.3d at 167-68; *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 874 (1992). Plaintiffs have not pleaded any facts to support its conclusion that such taxes impermissibly restrict the right to keep and bear arms. Plaintiffs, and any other purchasers of firearms and ammunition, are already subject to sales tax on the purchases. Plaintiffs do not argue that such sales tax on the purchase of firearms and ammunition violates their right to keep and bear arms. Similarly, we find that the additional County taxes on the purchase of guns and ammunition do not infringe upon any protected Second Amendment right under the federal constitution or section 22 of Article I of the Illinois constitution.

¶ 60 2. Invalid Exercise of the County's Taxing Power

¶ 61 Nevertheless, plaintiffs contend that the circuit court's erroneous conclusion that the firearms and ammunition taxes were valid exercises of the County's taxing power was in violation of the federal and state constitutions. This argument goes to the second prong of the analysis, namely the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights. *Heller*, 554 U.S. at 703.

¶ 62 We decline to reach plaintiffs' argument because we have determined that the challenged ordinances do not violate the Second Amendment under *Heller* and its progeny, but are instead

permissible conditions on the exercise of one's Second Amendment rights. *Heller*, 554 U.S. at 626-27.

¶ 63 3. Violation of the Uniformity Clause

¶ 64 Next, plaintiffs contend that the firearms and ammunition taxes are unconstitutional under article IX, section 2, of the Illinois Constitution (the uniformity clause) (Ill. Const. 1970, art. IX, § 2), because they only fall on the law-abiding citizens of Illinois who possess valid FOID cards and are legally entitled to purchase firearms and ammunition; they draw an irrational distinction between firearms and ammunition purchased within the County and those purchased elsewhere but transported into the County for use there; there is no rational distinction related to the purpose of the taxes between those citizens subjected to them and the federal and state personnel, veterans organizations and law enforcement personnel who are exempted from them. Plaintiffs conclude that the circuit court erred in granting summary judgment in favor of defendants on this issue.

¶ 65 In response to plaintiffs' argument, defendants acknowledge that the ammunition tax classifies between centerfire and rimfire ammunition, but argue that the classification is based on lethality. Because centerfire ammunition is more lethal than rimfire ammunition, the County had a reasonable basis for taxing it at a higher rate and raising more revenue to finance the medical services that the County provides for victims of gun violence. Defendants further contend that there is a real and substantial difference between purchasers and nonpurchasers of firearms and ammunition. They argue that the County has applied the taxes uniformly within the limits of its territorial jurisdiction, and that our supreme court has found a tax to be valid under the Uniformity Clause regardless of whether the individuals taxed are purportedly not the cause of the problem which the tax seeks to remedy, citing *Marks v. Vanderventer*, 2015 IL 116226, ¶ 21, in support.

Defendants conclude that a rational relationship exists between the purchase of firearms and ammunition and the need to ameliorate the harms that gun violence causes in the County. Further, defendants contend that there is a rational distinction between those subjected to the taxes and those exempted; namely that the exempted parties' primary purpose in using firearms is to serve the community.

¶ 66 We note that the scope of a court's inquiry when a tax has been challenged on uniformity grounds is relatively narrow. *Moran Transportation Corp. v. Stroger*, 303 Ill. App. 3d 459, 473 (1999). Statutes are presumed to be constitutional and broad latitude is afforded to legislative classifications for taxing purposes. *Id.*

¶ 67 The uniformity clause provides as follows:

> "In any law classifying the subjects or objects of nonproperty taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable." Ill. Const. 1970, art. IX, § 2.

¶ 68 " 'To survive scrutiny under the uniformity clause, a nonproperty tax classification must be based on a real and substantial difference between the people taxed and those not taxed, and the classification must bear some reasonable relationship to the object of the legislation or to public policy.' " *Moran Transportation Corp.*, 303 Ill. App. 3d at 473, (quoting *Allegro Services, Ltd. v. Metropolitan Pier & Exposition Authority*, 172 Ill. 2d 243, 250 (1996)).

¶ 69 A plaintiff challenging a tax classification has the burden of showing that it is arbitrary or unreasonable. *Moran Transportation Corp.*, 303 Ill. App. 3d at 473-74. Statutes are presumed constitutional, and broad latitude is afforded to legislative classifications for taxing purposes.

Geja's Café v. Metropolitan Pier & Exposition Authority, 153 Ill. 2d 239, 139 (1992). Moreover, a tax classification must be upheld if any statement of facts can be conceived that would reasonably sustain the classification. *Moran Transportation Corp.*, 303 Ill. App. 3d at 473-74.

¶ 70 Here, the circuit court correctly determined that the classifications in the taxes were valid. The County's proffered reasons for the classifications are reasonably related to the objectives of the ordinances. We conclude that plaintiffs' claims fail.

¶ 71 C. Preemption by FOID Card Act and Firearm Concealed Carry Act

¶ 72 Finally, plaintiffs next contend that the challenged taxes are preempted by the FOID Card Act (430 ILCS 65/13.1(e) (West 2018)) and the Concealed Carry Act (430 ILCS 66/90 (West 2018)) if they are construed as regulatory measures. Specifically, plaintiffs contend that the FOID Card Act expressly preempts local laws regulating the possession of handguns and handgun ammunition by FOID card holders, and that the Concealed Carry Act contains similarly preemptive language regarding any ordinance that purports to impose regulations or restrictions on licensees or handguns and ammunition.

¶ 73 Defendants contend that plaintiffs' arguments are without merit because home rule entities have a broad authority to enact taxes subject to narrow limitations not at issue here. Additionally, defendants contend that even under the narrowest home rule analysis (application to non-tax ordinances), the plain language of the FOID Act and Concealed Carry Act only prohibit enactments that are inconsistent with those statutes.

¶ 74 The doctrine of preemption is applied where enactments of two unequal legislative bodies are inconsistent. *Lily Lake Road Defenders v. County of McHenry*, 156 Ill. 2d 1, 8 (1993). Home rule is based on the assumption that municipalities should be allowed to address problems with

solutions tailored to their local needs. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505, ¶ 29.

¶ 75 As noted previously, the County is a home rule unit within the State of Illinois. See *Mulligan v. Dunne*, 61 Ill. 2d 544, 548 (1975). The powers of home rule units are derived from section 6(a) of Article VII of the 1970 Illinois Constitution: section 6(a) of Article VII of the 1970 Illinois Constitution:

> "[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 protection of the public health, safety, morals and welfare; to license, to tax; and to incur debt." Ill. Const.1970, art. VII, § 6(a).

Section 6(a) was written with the intention to give home rule units the broadest powers possible. *Palm*, 2013 IL 110505, ¶ 30. The General Assembly may, however, preempt the exercise of a unit's home rule powers by expressly limiting that authority. *Id.* at ¶ 31. To restrict the concurrent exercise of home rule power, the General Assembly must enact a law specifically stating that home rule authority is limited. *Id.* at ¶ 32.

¶ 76 The interpretation of state statutes and determining whether state law preempts a local ordinance is a question of law subject to *de novo* review. *Village of Northfield v. BP America, Inc.*, 403 Ill. App. 3d 55, 57-58 (2010).

¶ 77 Section 13.1(a) of the FOID Act provides that:

> "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." 430 ILCS 65/13.1(a) (West 2018).

¶ 78 Section 13.1(b) of the FOID Act provides that:

"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 any 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 [FOID] Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act * * * shall be invalid in its application to a holder of a valid [FOID] Card issued by the Department of State Police under this Act." 430 ILCS 65/13.1(b) (West 2018).

Section 13.1(e) of the FOID Act provides that: "[t]his Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution." 730 ILCS 65/13.1(e) (West 2018).

¶ 79 Similarly, Section 90 of the Concealed Carry Act states:

"The regulation, licensing, possession, registration, and transportation of

> handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. * * * This Section is a denial and limitation of home rule powers and functions under subsection (h) of Article VII of the Illinois Constitution." 730 ILCS 66/90 (West 2018).

¶ 80 Section 6 of Article VII of the Illinois Constitution provides that: "(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 * * *." Ill. Const.1970, art. VII, § 6(h).

¶ 81 Section 6 of Article VII specifically states that the General Assembly may limit any power or function of a home rule unit other than a taxing power. The power to regulate and the power to tax are separate and distinct powers. *Town of Cicero v. Fox Valley Trotting Club, Inc.*, 65 Ill. 2d 10, 16-17 (1976); *City of Chicago v. Stubhub, Inc.*, 2011 IL 111127, ¶ 62; *Midwest Gaming*, 2015 IL App (1st) 142786, ¶ 63. Here, it is taxes at issue and not any regulatory ordinance. *Midwest Gaming*, 2015 IL App (1st) 142786, ¶ 66. Accordingly, plaintiffs' argument that the County's firearms and ammunition taxes are preempted by the FOID Act and the FCCA are without merit.

¶ 82 We find that the circuit court properly granted summary judgment in favor of defendants.

¶ 83 CONCLUSION

¶ 84 In sum, we hold that: (1) Smolenski and Maxon lack standing to challenge the firearm tax; (2) Maxon lacks standing to challenge the ammunition tax; (3) Smolenski had standing to challenge the ammunition tax; and (4) GSL had associational standing to challenge both taxes. Accordingly, the circuit court erred in finding that Maxon had standing to challenge the ammunition tax and we reverse that finding. See *Matthews v. Chicago Transit Authority*, 2016 IL

117638, ¶ 103. Further, we find that the circuit court properly granted summary judgment in favor of defendants.

¶ 85 Affirmed in part and reversed in part.

12-O-64
ORDINANCE

Sponsored by

THE HO[illegible]ONI PRECKWINKLE, PRESIDENT, JERRY BUTLER, JOHN P. DALEY, [illegible]CHEY, JESUS G. GARCIA, EDWIN REYES AND DEBORAH SIMS
COUNTY COMMISSIONERS

FIREARM TAX

[illegible]County of Cook is a home-rule unit of local government, pursuant to Article VII, [illegible] Illinois Constitution; and

[illegible] a home-rule county, the County of Cook is authorized to impose and collect a tax on the [illegible] within the County of Cook (County); and

[illegible] the purchase, presence, flow, and use of firearms in the County exposes the general public [illegible] injury and harm, and detracts from the public health, safety, and welfare; and

[illegible]AS, the purchase, presence, flow, and use of firearms in the county detrimentally affects the provision of personnel, services, and equipment associated with the public health, safety, and

NOW, THEREFORE, BE IT ORDAINED, by the Cook County Board of Commissioners that Chapter 74 Taxation, Article XX Firearm Tax, Section 74-665 through 74-675 of the Cook County Code is hereby enacted as follows:

ARTICLE XX. FIREARM TAX.

Sec. 74-665. Short title.

This Ordinance shall be known and may be cited as the "Cook County Firearm Tax Ordinance."

Sec. 74-666. 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.

Firearm shall have the same meaning as set forth in the Illinois Firearm Owners Identification Act, 430 ILCS 65/1.1, or any successor statute.

Department means the Department of Revenue in the Bureau of Finance of Cook County.

Director means the Director of the Department of Revenue.

Person means any means any individual, corporation, limited liability corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity.

EXHIBIT
C

ns any person who purchases a firearm in a retail purchase in the county.

er means any person who engages in the business of selling firearms on a retail level in person in the county.

urchase means any transaction in which a person in the county acquires ownership by nderation on a retail level.

Sheriff means the Sheriff's Office of Cook County, Illinois.

-667. Registration.

Any retail dealer as defined in this article shall register with the Department in the form and as prescribed by the Department. Policies, rules and procedures for the registration process and hall be prescribed by the Department.

4-668. Tax Imposed, Rates.

(a) *Firearm Tax Rate*. A tax is hereby imposed on the retail purchase of a firearm as defined this article in the amount of $25.00 for each firearm purchased.

Tax Included in Sales Price. It shall be deemed a violation of this article for a retail dealer to fail to include the tax imposed in this article in the sale price of firearms to otherwise absorb such tax. The tax levied in this article shall be imposed is in addition to all other taxes imposed by the County of Cook, the State of Illinois, or any municipal corporation or political subdivision of any of the foregoing.

Sec. 74-669. Tax-Exempt purchases and refunds.

(a) Notwithstanding any other provision of this article, in accordance with rules that shall be promulgated by the department in regards to tax exempt purchases, retail dealers shall not collect the firearm tax when the firearm is being sold to the following:

(1) An office, division, or agency of the United States, the State of Illinois, or any municipal corporation or politieal subdivision, including the Armed Forces of the United States or National Guard.

(2) A bona fide veterans organization which receive firearms directly from the Armed Forces of the United States and uses said firearms strictly and solely for ceremonial purposes with blank ammunition.

(3) Any active sworn law enforcement officer purchasing a firearm for official or training related purposes presenting an official law enforcement identification card at the time of purchase.

(b) In accordance with rules to be promulgated by the department, an active member of the Armed Forces of the United States, National Guard or deputized law enforcement officer may apply for refund from the department for the tax paid on a firearm that was purchased for official use or traini related purposes.

Sec. 74-670. Collection and remittance.

(a) *Tax Collection.* Any retail dealer shall collect the taxes imposed by this article from any purchaser to whom the sale of said firearms is made within the County of Cook and shall remit to the Department the tax levied by this article.

(b) *Tax Remittance.* It shall be the duty of every retail dealer to remit the tax due on the sales of firearms purchased in Cook County, on forms prescribed by the Department, on or before the 20th day of the month following the month in which the firearm sale occurred on a form and in the manner required by the department.

(c) If for any reason a retailer dealer fails to collect the tax imposed by this article from the purchaser, the purchaser shall file a return and pay the tax directly to the department, on or before the date required by Subsection (b) of this Section.

Sec. 74-671. Violations and penalties.

(a) It shall be a violation of this article for any retail dealer to sell firearms without collecting and remitting the tax imposed in this article.

(b) It shall be a violation of this article for any retail dealer fail to keep books and records as required in this article.

(c) It shall be a violation of this article for any purchaser to fail to remit the tax imposed in this article when not collected by the retail dealer.

(d) Any person determined to have violated this article, shall be subject to a fine in the amount of $1,000.00 for the first offense, and a fine of $2,000.00 for the second and each subsequent offense. Separate and distinct offense shall be regarded as committed each day upon which said person shall continue any such violation, or permit any such violation to exist after notification thereof. It shall be deemed a violation of this article for any person to knowingly furnish false or inaccurate information to the Department.

Sec. 74-672. Required books and records.

Every person who is subject to this tax shall keep and maintain accurate and complete documents, books, and records of each transaction or activity subject to or exempted by this ordinance, from start to complete, including all original source documents. All such books and records shall be kept as provided in Chapter 34, Article III, of the Uniform Penalties, Interest, and Procedures Ordinance, and shall, at all reasonable times during normal business hours, be open to inspection, audit, or copying by the department and its agents.

Sec. 74-673. Inspection; audits.

Books and records kept in compliance with this article shall be made available to the Department upon request for inspection, audit and/or copying during regular business hours. Representatives of the Department shall be permitted to inspect or audit firearm inventory in or upon any premises. It shall be unlawful for any person to prevent, or hinder a duly authorized Department representative from performing the enforcement duties provided in this article.

Sec. 74-674. Application of uniform penalties, interest, and procedures ordinance.

Whenever not inconsistent with the provisions of this article, or whenever this article is silent, the provisions of the uniform penalties, interest, and procedures ordinance, Chapter 34, Article III of the Cook County Code of Ordinances, shall apply to and supplement this article.

Sec. 74-674. Rulemaking; policies, procedures, rules, forms.

The department may promulgate policies, procedures, rules, definitions and forms to carry out the duties imposed by this article as well as pertaining to the administration and enforcement of this article.

Sec. 74-675. Enforcement, Department and Sheriff.

The department is authorized to enforce this article, and the Sheriff is authorized to assist the department in said enforcement.

Effective Date: This Ordinance shall be effective on April 1, 2013.

Approved and adopted this 9th day of November 2012.

TONI PRECKWINKLE, President
Cook County Board of Commissioners

Attest: DAVID ORR, County Clerk

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GUNS SAVE LIFE, INC., DPE SERVICES, INC. d/b/a MAXON SHOOTER'S SUPPLIES AND INDOOR RANGE, and MARILYN SMOLENSKI,	)	
Plaintiffs,	)	
v.	)	
ZAHRA ALI, solely in her capacity as Director of the Department of Revenue of Cook County, THOMAS J. DART, solely in his official capacity as Cook County Sheriff, and the COUNTY OF COOK, ILLINOIS, a county in the State of Illinois.	)	Case No. 15 CH 18217
Defendants.	)	

SECOND AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

NOW COME Plaintiffs, Guns Save Life, Inc., DPE Services, Inc. d/b/a Maxon Shooter's Supplies and Indoor Range, and Marilyn Smolenski, by and through their attorneys, as and for their Complaint against Defendants, Zahra Ali, solely in her capacity as Director of the Department of Revenue of Cook County, Thomas J. Dart, solely in his official capacity as Cook County Sherriff, and County of Cook, Illinois ("Cook County" or the "County"), and state as follows:

1. The law-abiding citizens of Cook County may not "be required to pay a tax for the exercise of . . . a high constitutional privilege." *Follett v. Town of McCormick*, 321 U.S. 573, 578 (1944). Yet, in the latest stages of its long-running campaign against the rights of its law-abiding citizens to defend themselves, the Cook County Board of Commissioners has enacted a discriminatory tax ordinance that directly and exclusively targets the exercise of the

fundamental right to keep and bear arms. The ordinance here challenged, far from having been drafted so as to respect constitutionally protected conduct, has been narrowly tailored to do *nothing but* target constitutionally protected conduct. As such, it is patently unconstitutional; the ordinance should accordingly be so declared and its enforcement enjoined.

2. On November 9, 2012, the Cook County Board of Commissioners passed a tax entitled the "Cook County Firearms Tax" (the "Firearms Tax"), which imposes a $25 fee for each firearm purchased by a citizen at a firearms retail business located in Cook County, Illinois.

3. On November 18, 2015, the Cook County Board of Commissioners amended the Cook County Code to impose a tax on the retail purchase of firearm ammunition at the rate of $0.05 per cartridge of centerfire ammunition and $0.01 per cartridge of rimfire ammunition (the "Ammunition Tax").

4. Together, these two taxes (collectively, "the Second Amendment Tax") have been imposed on the lawful activity of law-abiding citizens and retailers of Cook County and target, directly and exclusively, activity that is constitutionally protected by the Second and Fourteenth Amendments to the United States Constitution, as well as by Section 22 of Article I of the Illinois Constitution.

5. The Second Amendment Tax thus constitutes an impermissible burden on the fundamental right to keep and bear arms.

6. In addition, because the Second Amendment Tax purports to be an exercise of the Commission's taxing power, and not a regulation enacted as an exercise of the Commission's police power, it independently infringes the right of Illinois citizens to keep and bear arms

granted to them by Section 22, Article I, of the Illinois Constitution, a right that is explicitly made "[s]ubject only to the police power," *not* to the taxing power.

7. Because the Second Amendment Tax bears no reasonable relationship to its purported governmental aim and relies upon arbitrary classifications, it also violates the Uniformity Clause of the Illinois Constitution.

8. Finally, should the Court conclude that the Second Amendment Tax were not prohibited by the Second Amendment of the United States Constitution, by Section 22 of Article I of the Illinois Constitution, or by the Illinois Uniformity Clause, it would be preempted by the Firearm Owners Identification Act, codified at 430 ILCS 65/1 through /16-3 ("the FOID Act"), and by the Firearms Concealed Carry Act, codified at 430 ILCS 66/1 through /999 ("the FCCA").

PARTIES

9. Plaintiff Guns Save Life, Inc. is an independent not-for-profit organization that is dedicated to protecting the Second Amendment rights of Illinois citizens to defend themselves. Guns Save Life has many members who reside in Cook County, and the organization has monthly meetings in Cook County. Guns Save Life members are subject to Cook County's Second Amendment Tax. Guns Save Life members purchase firearms and firearm ammunition in Cook County, and some of its members will continue to do so in the future, albeit at reduced rates. Some members purposefully avoid purchasing firearms and ammunition in Cook County to avoid paying the Second Amendment Tax. Guns Save Life members have paid the Firearm Tax and the Ammunition Tax. For example, on August 17, 2015, member Nickos Klementzos purchased a firearm at the Cabela's store located in Cook County. He paid the $25 Firearm Tax as part of the transaction. Another Guns Save Life member paid the Firearm Tax as recently as

February 10, 2016. Guns Save Life members will continue to pay the Firearm Tax and Ammunition Tax on firearm and ammunition purchases in Cook County.

10. Plaintiff DPE Services, Inc. owns and operates Maxon Shooter's Supplies and Indoor Range. (DPE Services, Inc. and Maxon Shooter's Supplies and Indoor Range are hereinafter collectively referred to as "Maxon.") Maxon is a retail dealer in firearms and firearm ammunition. It operates a retail gun shop and indoor shooting range in Cook County at 75 E. Bradrock Drive, Des Plaines, IL 60018. Maxon sells a full range of rifles and handguns, as well as ammunition for rifles and handguns, including centerfire and rimfire ammunition.

11. Plaintiff Marilyn Smolenski is a citizen of the United States and, at all relevant times, has been a resident of Cook County, Illinois. She is a member of Guns Save Life. Mrs. Smolenski is a law-abiding holder of a valid Illinois Firearm Owners Identification Card ("FOID Card") and of a valid Illinois Concealed Carry license. Mrs. Smolenski was the victim of stalking by her ex-husband, who broke into her house in 1999. Although Mrs. Smolenski did not use a firearm during this incident, the incident is one of the reasons she now carries a firearm for self-defense. Mrs. Smolenski is a member of a shooting club in Aurora, Illinois, where she frequently goes to shoot. She and her husband also go to shooting ranges, such as Maxon, to practice and to take courses to develop their proficiency with firearms. Mrs. Smolenski and her husband engage in frequent firearm transactions, and they commonly sell a firearm to upgrade to a newer model. Mrs. Smolenski visited Maxon on December 15, 2015 and inquired about purchasing a Glock 42 handgun. The General Manager of the store informed her that under Cook County law she could not purchase the Glock 42 without paying the Firearm Tax. Mrs. Smolenski therefore declined to make the purchase. But for the requirement to pay the Firearm Tax, Mrs. Smolenski would purchase the Glock 42 from Maxon. Mrs. Smolenski

also purchased ammunition from Maxon on December 16, 2015. On June 7, 2016, Mrs. Smolenski purchased 100 rounds of 9mm ammunition from Maxon. She paid $39.98 for two 50 round boxes of Federal 9mm 115 grain full metal jacket Champion ammunition. Mrs. Smolenski was informed that she would be required to pay the Ammunition Tax. She paid the Ammunition Tax in the amount of $5.00. She did so, under protest, upon Maxon's General Manager informing her that "Cook County requires Maxon to collect this tax from all customers that wish to purchase ammunition." On June 8, Mrs. Smolenski's counsel submitted her protest of payment of the Ammunition Tax to the Cook County Department of Revenue. Letter from Christian Ambler to Gary Michaels (June 8, 2016), Exhibit 1. Mrs. Smolenski will purchase ammunition in Cook County at reduced rates now that the Ammunition Tax is in effect.

12. Defendant Zahra Ali is being sued solely in her official capacity as Director of the Department of Revenue of Cook County. The Department is charged with the duty of collecting the Second Amendment Tax and with enforcing the Second Amendment Tax.

13. Defendant Thomas Dart is being sued solely in his official capacity as Sheriff of Cook County, the local authority in Cook County, Illinois. The Sheriff's Office is responsible, in part, for assisting the Department of Revenue in enforcing the Second Amendment Tax.

14. Defendant Cook County is a county in the State of Illinois, with its county seat in Chicago, Illinois.

JURISDICTION AND VENUE

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

16. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101 and 735 ILCS 5/2-103 because it is the County of residence of a defendant joined in good faith and some part of the transactions out of which this action arise occurred in Cook County.

GENERAL ALLEGATIONS

17. Cook County is a home-rule unit of local government, pursuant to Article VII, Section 6(a) of the Illinois Constitution.

18. To legally purchase firearms or firearm ammunition in Illinois, the purchaser must possess a FOID Card. Felons, drug addicts, the mentally ill, undocumented immigrants, and domestic abusers are barred from receiving a FOID Card and thus cannot legally purchase firearms or firearm ammunition in Cook County, or anywhere else in the State of Illinois.

The Adoption of the Second Amendment Tax Ordinance

19. On November 9, 2012, the Cook County Board of Commissioners passed a tax ordinance entitled the "Cook County Firearms Tax" (the "Firearms Tax Ordinance"), which imposes a $25 fee for each firearm purchased by a citizen at a firearms retail business located in Cook County, Illinois.

20. On November 2, 2012, the Cook County Board of Commissioners took up a proposed ordinance that would have created a "Firearms and Firearm Ammunition Tax."

21. As originally proposed, the Firearms Tax Ordinance would have levied a tax on the sale not only of firearms, but on the sale of firearm ammunition as well. Commissioner Fritchey, seconded by Commissioner Garcia, moved to amend the proposed ordinance to remove the tax on the sale of firearms ammunition. On a voice vote, the Commission voted to remove the tax on the sale of retail ammunition prior to voting to adopt the Ordinance; Commissioners Beavers, Butler, Suffredin, and Tobolski voted against the amendment.

22. The Firearm Tax Ordinance was sponsored by Commissioners Preckwinkle, Butler, Daley, Fritchey, Garcia, Reyes, and Sims.

23. Commissioner Suffredin, who explained that he had been in an anti-gun group with Commissioner Preckwinkle in the 1970s, stated that he would have preferred to have taxed ammunition as well as firearms, but that "political realities" required the Commission to remove the tax on ammunition from the Ordinance. He expressed his opinion that "there are way too many guns in this community."

24. Commissioner Fritchey confirmed that the amendment removing the ammunition tax was the result of negotiation and compromise. He spoke in support of the Ordinance, describing it as "a tax aimed at dealing with the social cost of gun violence."

25. Commissioner Collins spoke in opposition to the Ordinance, affirming that it would deny "people their constitutional right to protect their families. Because if someone breaks into my house . . . to steal, or to kill, or to maim me I want to have something there to protect myself, and that's how most of the good law-abiding citizens feel about it. And these things give the illusion that we're now trying to protect them." She asserted that the Commission would be "illegally taxing people." She concluded that "[f]or the protection of the people in my communities, and where I have many people who are poor and where most of the crimes have taken place, I vote no."

26. Commissioner Sims spoke in support of the Ordinance, stating that: "At least we can make it difficult for people to have guns. . . . If you can't afford it, you won't buy it."

27. Commissioner Reyes spoke in support of the Ordinance, although, initially, he "was steadfast against it. Because the reality is, not one convicted felon is going to pay a penny of this tax ladies and gentlemen. Not one. It's been said convicted felons do not have the legal right to purchase ammunitions or weapons. They're going to keep buying them on the street."

28. Commissioner Schneider spoke in opposition to the Ordinance on the ground that it would burden only poor, law-abiding citizens—"the indigent and the most vulnerable in our county"—and Cook County businesses; the wealthy would simply drive to another county to make their purchases and the criminal element would continue to purchase their guns illegally.

29. Commissioner Steele spoke in support of the Ordinance.

30. Commissioner Tobolski spoke in opposition to the Ordinance on the ground it would most harm the poorest citizens of Cook County: "People come up and say 'Listen, . . . the banks are taking my home, the government is taxing on everything else, and now the one thing that I have left, a gun to protect my family, you want to make that unaffordable as well.' "

31. Commissioner Beavers spoke in opposition to the Ordinance, stating: "Praise the lord and pass the ammunition. I'm voting no."

32. Commissioner Gorman explained her opposition to the Ordinance as follows: "This is a message tax that is directed at a group of people who are not getting the message and they're ultimately not paying the tax. It's law-abiding citizens . . . that are paying the tax and not the violent offenders."

33. Commissioner Silvestry spoke last, opposing the Ordinance, that he did not "believe that there's been a convincing argument that this tax on law-abiding citizens will establish any better safety in our communities."

34. None of the other Commissioners spoke either in support of or against the Ammunition Tax.

35. At the conclusion of the debate, the Commission voted to approve the Firearms Tax Ordinance by a vote of nine to seven, with one commissioner being absent.

36. On November 18, 2015, the Cook County Board of Commissioners amended the Firearms Tax Ordinance to create an amended article known as the "Cook County Firearm and Firearm Ammunition Tax Ordinance" (hereinafter, the "Second Amendment Tax Ordinance").

37. The 2015 amendment added a tax on the retail sale of ammunition in Cook County to the previously adopted tax on the retail sale of firearms in Cook County.

38. The 2015 amendment was sponsored by Commissioners Boykin and Preckwinkle.

39. The Commissioners accepted public testimony on the proposed Ammunition Tax on November 13, 2015. Supporters of the Ammunition Tax testified that it would help "get guns off the streets" as a "smart violence prevention policy" and that bullets "endanger public health." Opponents of the Ordinance argued that previous efforts to ban gun sales in the county directly had been ruled unconstitutional.

40. Of the Cook County Commissioners, Commissioner Boykin spoke first, expressing his support for the bill. He described the ammunition tax as a "gun violence tax." He described the purpose of the tax as "curbing the cost of the widespread and senseless gun violence that has gripped Chicago and Cook County in the year 2015," and he stated that "this tax will require those who purvey these instruments of death to bear a slightly larger share of the costs than the rest of us." He expressed his belief that imposing a tax on ammunition will make the Commissioners "instruments of justice" for children killed by gunfire and that the children's "blood cries out" for them to "add[ ] to the costs of the instruments of death."

41. Commissioner Arroyo stated that the Ammunition Tax "is not symbolic, this is our stand to say we will do something to keep our neighborhoods safe." He also stated that he supported restrictions such as the Ammunition Tax because without them "all of our communities are not going to be safe."

42. Commissioner Butler explained his vote in support of the bill as follows:

> I vote aye, and I'm going to take my minute. The people have sent us to the store but they didn't give us enough money to buy all that's needed. So now we got to be clever enough to take the money that we have and use it to the best of our ability. And so that's why I'm voting the way I'm voting and you won't hear me say too much because it's redundant, redundant, redundant.

43. Commissioner Fritchey spoke against the Ammunition Tax on the ground that it would do nothing to address the problem of gun violence in Cook County but would impose a burden solely on law-abiding gun owners. He observed that a FOID card is needed to buy ammunition lawfully in the county, "and if you think that any criminals or gang bangers are going to, first of all have a FOID card, let alone go and buy ammunition using their FOID card and having it recorded, that's just not how it works . . .You are going to be taxing the lawful gun owners who we've been trying to distinguish and not punish as a matter of policy."

44. Commissioner Snyder spoke against the Ammunition Tax on the ground that the County's tax on firearms had failed to curtail gun violence. The tax on firearms had produced no positive result, but had instead simply created an incentive for businesses to relocate to adjacent counties, thereby decreasing sales tax revenue for Cook County, while having no positive effect on reducing violence. Commissioner Snyder concluded his remarks by observing that "the long term effect will be less ammunition tax collected over time and huge amounts of sales tax lost that could have gone to support public safety and anti-violence programs . . . ."

45. Commissioner Morrison explained that he would vote against the Ammunition Tax because he believed it would have no effect on gun violence and would simply add to the County's litigation costs.

> If for one second, I personally thought that imposing a sales tax on ammunition would save one life, I would be jumping up on this desk yelling "yay." The fact of the matter is that the gang bangers that commit the crimes, the criminals that commit the crimes, the vast majority, 80%–90% probably more do not even

possess a[ ] FOID card. It's a very limited amount of funds that we're going to bring in through this.

46. None of the other Commissioners spoke either in support of or against the Ammunition Tax.

47. The Ammunition Tax passed by a vote of nine to six, with two recorded absences.

The Second Amendment Tax Ordinance

48. The Firearms Tax imposes a tax in the amount of $25 on firearms purchased in Cook County. Section 74-668(a) of the Cook County Code provides that "[a] tax is hereby imposed on the retail purchase of a firearm . . . in the amount of $25.00 for each firearm purchased."

49. The Firearms Tax imposed by Section 74-668(a) became effective on April 1, 2013. Cook County Ordinance 12-O-64.

50. The Ammunition Tax imposes a tax on the retail sale of centerfire ammunition of $0.05 per cartridge. Cook County Code § 74-668(b)(1). It defines centerfire ammunition to mean "firearm ammunition that is characterized by a primer in the center of the base of the cartridge commonly used in rifles, pistols, and revolvers." *Id.* § 74-666.

51. The Ammunition Tax imposes a tax on retail purchases of rimfire ammunition of $0.01 per cartridge. *Id.* § 74-668(b)(2). It defines rimfire ammunition to mean "firearm ammunition that is characterized by a primer that completely encircles the rim of the cartridge, including, but not limited to .22 caliber ammunition." *Id.* § 74-666.

52. The Ammunition Tax imposed by Sections 74-668(b)(1) and (2) became effective on June 1, 2016. *Id.* § 74-668(b).

53. The Second Amendment Tax Ordinance provides that the taxes on firearms and on firearm ammunition are to be included in the sale price of the firearm or ammunition, providing that: "It shall be deemed a violation of this Article for a retail dealer to fail to include the tax

imposed in this Article in the sale price of firearms and/or firearm ammunition [or] to otherwise absorb such tax." *Id.* § 74-668(c).

54. The Second Amendment Tax Ordinance exempts several classes of firearms sales and ammunition sales from the tax. *Id.* § 74-669. The tax is not to be collected when the firearm or firearm ammunition is being sold to:

a. An office, division, or agency of the United States, the State of Illinois, or any municipal corporation or political subdivision, including the Armed Forces of the United States or National Guard, *id.* § 74-669(a)(1);

b. A bona fide veterans organization which receives firearms and/or firearm ammunition directly from the Armed Forces of the United States and uses said firearms and/or firearm ammunition strictly and solely for ceremonial purposes, *id.* § 74-669(a)(2); or

c. Any active sworn law enforcement officer purchasing a firearm and/or firearm ammunition for official or training related purposes, *id.* § 74-669(a)(3).

55. The Second Amendment Tax Ordinance provides that a department, an active member of the Armed Forces, the National Guard, or a deputized law enforcement officer may apply for a refund for any tax paid on the purchase of a firearm or firearm ammunition that was made for official use or training purposes. *Id.* § 74-669(b).

56. The money collected as a result specifically of the Ammunition Tax is dedicated to the Public Safety Fund. Section 74-677 provides that: "The Revenue generated as the result of the collection and remittance of the tax on firearm ammunition set forth herein shall be directed to the Public Safety Fund to fund operations related to public safety."

The Duties and Obligations of Retail Dealers

57. The Second Amendment Tax Ordinance requires retail dealers to collect the Second Amendment Tax from the purchasers of firearms and/or of firearm ammunition in Cook County, to remit the tax to the Cook County Department of Revenue, and to maintain records of each transaction involving the sale of a firearm and/or of firearm ammunition; it also imposes a variety of penalties for failure to perform these functions.

58. A "retail dealer" is defined as "any person who engages in the business of selling firearms or firearm ammunition on a retail level in [Cook County] or to a person in [Cook County]." *Id.* § 74-666.

59. A retail purchase is defined as "any transaction in which a person in [Cook County] acquires ownership by tendering consideration on a retail level." *Id.* § 74-666.

60. The Second Amendment Tax Ordinance requires a retail dealer to collect the taxes set forth in Section 74-668(b) "from any purchaser to whom the sale of said firearms and/or firearm ammunition is made within the County of Cook . . . ." *Id.* § 74-670(a).

61. After collecting the tax from the purchaser, the retail dealer is required "to remit the tax due on the sales of firearms and/or firearm ammunition purchased in Cook County, on forms prescribed by the Department, on or before the 20th day of the month following the month in which the firearm and/or firearm ammunition sale occurred on a form and in the manner required by the department." *Id.* § 74-670(b).

62. The Second Amendment Tax Ordinance requires retail sellers of firearms and of firearm ammunition to "keep and maintain accurate and complete documents, books, and records of each transaction or activity subject to or exempted by this ordinance, from start to complete, including all original source documents." *Id.* § 74-672. The Ordinance prescribes how these records are to be kept and requires that, "at all reasonable times during normal business

hours, be open to inspection, audit, or copying by the department and its agents." *Id.* §§ 74-672, 74-673.

63. The Second Amendment Tax Ordinance makes it a violation for any retail dealer to sell a firearm and/or firearm ammunition without collecting and remitting the Second Amendment Tax, *id.* § 74-671(a), to fail to include the tax in the sale price or otherwise absorb the tax, *id.* § 74-768(c), and to fail to keep books and records as required by the Ordinance, *id.* § 74-671(b).

64. A retail dealer who commits a violation "shall be subject to a fine in the amount of $1,000.00 for the first offense, and a fine of $2,000.00 for the second and each subsequent offense." *Id.* § 74-671(d). A "[s]eparate and distinct offense shall be regarded as committed each day upon which said person shall continue any such violation, or permit any such violation to exist after notification thereof." *Id.*

65. As a retail dealer of firearms and ammunition in Cook County, Plaintiff Maxon is subject to the requirements of the Second Amendment Tax Ordinance. It pays Cook County thousands of dollars per month in firearm taxes, and it expects to pay thousands of dollars per month in ammunition taxes. Furthermore, it has incurred costs to comply with the Firearm Tax and will continue to incur such costs as long as the tax remains in effect.

66. Maxon expects the cost of compliance with the Ammunition Tax to be even higher than that of the Firearm Tax. On June 3, 2016, Maxon received a notice from the Cook County Department of Revenue announcing numerous recordkeeping and reporting requirements related to the Ammunition Tax. Maxon first learned of these requirements through the notice. A copy of the notice, and the accompanying "Firearm and Firearm Ammunition Tax Return," are attached hereto as Exhibit 2.

67. The notice states that "[f]ailure to correctly complete the return, and/or underpayment will give the Cook County Department of Revenue . . . cause to assess penalties, interest, and/or a processing fee pursuant to the Uniform Penalties, Interest and Procedures Ordinance found in Chapter 34 of the Cook County Code of Ordinances."

68. Maxon must now provide the Cook County Department of Revenue with a monthly tax return detailing, among other things, the number of rounds of rimfire and centerfire ammunition in its inventory at the beginning and end of each month.

69. These recordkeeping and reporting requirements have been imposed without regard for the recordkeeping practices that are standard practice in the ammunition industry and are unduly burdensome.

70. Ammunition typically is sold by the box, not by individual round. Accordingly, ordering, inventory, and point of sale systems used by Maxon and others in the ammunition industry are set up for units of "Boxes." There is no field for "rounds per box," or equivalent information, in Maxon's software systems. What is more, Maxon is not able to unilaterally alter those systems to include that information.

71. Because the inventory counts demanded by Cook County are not available through Maxon's automated systems, Maxon employees will be required to spend many hours every month collecting and tabulating the information required by Cook County. This will result in significant costs on Maxon and will be harmful to Maxon's business. Maxon expects that its costs to comply with Cook County's requirements will be thousands of dollars per year.

72. The inventory data required by Cook County is unnecessary for the accurate assessment of the Ammunition Tax.

73. Because Maxon is prohibited from absorbing the Firearm and Ammunition Taxes, the Second Amendment Tax Ordinance increases the price of its products relative to products sold by competitors outside of Cook County. Indeed, firearms retailers in surrounding counties attempt to attract business by advertising the fact that they are not subject to the Second Amendment Tax.

The Duties and Obligations of Purchasers

74. The Second Amendment Tax Ordinance defines a purchaser as "any person who purchases a firearm or firearm ammunition in a retail purchase in the county." *Id.* § 74-666.

75. The Second Amendment Tax Ordinance provides that the tax imposed by the Ordinance is to be collected from any purchaser to whom a firearm and/or ammunition is sold by a retailer dealer in Cook County. *Id.* § 74-670(a).

76. The Second Amendment Tax Ordinance provides specifically that "[i]f for any reason a retail[] dealer fails to collect the tax imposed by this article from the purchaser, the purchaser shall file a return and pay the tax directly to the department, on or before the [20th day of the month following the month in which the firearm ammunition sale occurred]." *Id.* § 74-670(c).

77. The Second Amendment Tax Ordinance makes it a violation for a purchaser "to fail to remit the tax imposed in this Article when not collected by the retail dealer." *Id.* § 74-671(c).

78. A purchaser who fails to remit the Second Amendment Tax in any case where the retail dealer has failed to do so "shall be subject to a fine in the amount of $1,000.00 for the first offense, and a fine of $2,000.00 for the second and each subsequent offense." *Id.* § 74-671(d). There is no requirement in the Second Amendment Tax Ordinance that purchasers have knowledge of the tax or the fact that the retailer failed to collect it to be subject to the fine.

The Effects of the Second Amendment Tax Ordinance

79. The Second Amendment Tax Ordinance imposes significant burdens on law-abiding purchasers of firearms and ammunition and on retail firearm and ammunition dealers.

80. The right to keep and bear firearms for lawful purposes such as self-defense, hunting, and target shooting is a fundamental constitutional right. In order to exercise this right, of course, a person must first obtain firearms and firearm ammunition.

81. Purchasers of firearms and of firearm ammunition in Cook County are forced to pay a tax solely because they are exercising their fundamental constitutional rights.

82. Because Illinois law requires that anyone purchasing a firearm or firearm ammunition in the state of Illinois must possess and present a FOID card, and because felons, drug addicts, the mentally ill, undocumented immigrants, and domestic abusers are barred from receiving a FOID card, the burden of the Second Amendment Tax Ordinance falls disproportionately on law-abiding gun owners who choose to purchase firearms and/or firearm ammunition in Cook County using a valid FOID card.

83. What is more, the burden of the Second Amendment Tax Ordinance will be felt most acutely by lower-income individuals who, as compared to those with greater economic means, will, on average, live in neighborhoods with higher violent crime rates and have more difficulty paying the Second Amendment Tax or traveling outside of Cook County to avoid the Tax.

84. The Second Amendment Tax Ordinance requires retail dealers to keep extensive records of the number and type of firearms and of firearm ammunition being sold, to ascertain the purposes for which individual firearms and even of individual rounds of ammunition are sold, and to file monthly reports on the type, quantity, and purchasers of firearms and of firearm ammunition.

85. The Second Amendment Tax Ordinance places Cook County retail dealers at a significant competitive disadvantage to retail dealers in neighboring Lake, McHenry, Kane, DuPage, and Will counties. Maxon, for example, which operates in Cook County and is therefore subject to the Second Amendment Tax Ordinance, must compete with retail dealers a short distance away in neighboring DuPage County, which are not subject to the Ordinance.

86. The Second Amendment Tax Ordinance adversely affects Maxon's business. The Second Amendment Tax Ordinance puts all retail dealers in Cook County at a competitive disadvantage in relation to retailers outside of Cook County who do not have to charge and collect the Second Amendment Tax. The Ordinance also interferes with the Second Amendment rights of Maxon's customers and Maxon's right to sell firearms.

87. The Second Amendment Tax Ordinance deprives retail dealers, purchasers, and the citizens of Cook County of the protection and security that results from the well-armed body of law-abiding citizenry that the Second Amendment guarantees for all Americans. By making it more difficult for law-abiding citizens to purchase firearms and ammunition in Cook County, the ordinance will inevitably result in an increase in the proportion of firearms and ammunition in Cook County that is in the hands of the "criminals or gang bangers" whom, as Commissioner Fritchey observed, will remain unaffected and unburdened by the Ordinance.

COUNT I
(United States Constitution Amendments II and XIV)

88. Plaintiffs restate and re-allege as if fully set forth herein the allegations of the preceding paragraphs.

89. The Second Amendment to the United States Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

90. The Second Amendment right to keep and bears arms is a fundamental right.

91. The Second Amendment right to keep and bear arms includes a corresponding right to acquire firearms and/or firearm ammunition. Indeed, any right to own and use firearms would be wholly illusory without a corresponding right to acquire firearms and firearm ammunition.

92. The Fourteenth Amendment to the United States Constitution provides, in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

93. The Second Amendment is applicable to the States and to the political subdivisions thereof through the Fourteenth Amendment.

94. The Second Amendment Tax Ordinance requires any law-abiding purchaser to pay a tax on any firearm and on every round of firearm ammunition purchased at retail in Cook County. The Ordinance prohibits a retail dealer from absorbing the cost of the Second Amendment Tax and, therefore, ensures that law-abiding citizens who elect to exercise their Second Amendment rights will bear the burden of the tax whenever they do so. The Second Amendment Tax Ordinance, therefore, imposes a direct and targeted burden on the exercise of a constitutionally protected right. It also impacts the rights of firearm and ammunition retailers as they will suffer diminished sales.

95. The Second Amendment Tax Ordinance is intended to, and will, discourage law-abiding citizens from exercising their fundamental rights, and it will reduce the purchase of firearms and of firearm ammunition by those citizens from retail dealers within Cook County.

96. The Second Amendment Tax Ordinance further provides that "[i]t shall be a violation of this article for any purchaser to fail to remit the tax imposed in this article when not collected by the retail dealer." *See* Cook County Code § 74-671(a), (c). By subjecting law-

abiding purchasers who seek to purchase a firearm and/or firearm ammunition to potential liability of up to $2,000 per offense should they purchase said firearm or firearm ammunition upon the sale of which their retail dealer should, for whatever reason, fail to collect and remit the Second Amendment Tax, the Ordinance creates a significant burden and a corresponding chilling effect on the exercise of Second Amendment rights.

97. The monies obtained by Cook County through the Second Amendment Tax are not used to defray any administrative or regulatory costs relating to the lawful purchase and use of a firearm by law-abiding, FOID-holding citizens exercising their fundamental right to keep and bear arms for the protection of themselves, their loved ones, and their homes.

98. The Second Amendment Tax Ordinance imposes a tax exclusively on the sale of firearms and/or of firearm ammunition. It thus imposes a burden directly and exclusively on conduct at the heart of the Second Amendment.

99. The Second Amendment Tax Ordinance is not narrowly, substantially, or rationally tailored to the aim of reducing the amount of violent crime in Cook County or to any other legitimate governmental interest. The Second Amendment Tax will do nothing to reduce the number of firearms or the amount of firearm ammunition that are available to those who engage in violent crime. The Second Amendment Tax Ordinance instead reduces the ability only of law-abiding citizens to defend themselves against violent crime.

100. The Second Amendment Tax Ordinance, therefore, violates Plaintiffs' Constitutional rights as set forth herein.

WHEREFORE, Plaintiffs pray that this Honorable Court:

A. Enter a declaratory judgment pursuant to 735 ILCS 5/2-701 that the Second Amendment Tax Ordinance violates the Second and Fourteenth Amendments to the United States Constitution.

B. Enter a preliminary and permanent injunction enjoining the Defendants and their officers, agents, and employees from enforcing the Second Amendment Tax Ordinance.

C. Enter an Order awarding Plaintiffs their costs of suit including attorneys' fees and costs pursuant to 42 U.S.C. §§ 1983 and 1988; and

D. Enter an Order providing any other and further relief that the Court deems just and appropriate under the circumstances.

COUNT II
(Illinois Constitution, Article I, Section 22)

101. Plaintiffs restate and re-allege as if fully set forth herein the allegations of the preceding paragraphs.

102. Article I, Section 22 of the Illinois Constitution provides: "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed."

103. The Cook County Board of Commissioners enacted the Second Amendment Tax Ordinance as an exercise of the Board's taxing power, *not* of its police power.

104. The Second Amendment Tax Ordinance violates Article I, Section 22 of the Illinois Constitution by infringing the rights of individual citizens to keep and bear arms through an exercise of a power other than the police power.

105. Furthermore, the Second Amendment Tax Ordinance requires any law-abiding purchaser to pay a tax on every firearm and every round of firearm ammunition purchased at retail in Cook County. The ordinance prohibits a retail dealer from absorbing the cost of the

Second Amendment Tax and, therefore, ensures that law-abiding citizens who elect to exercise their Article I, Section 22 rights will bear the burden of the tax whenever they do so. The Second Amendment Tax Ordinance, therefore, imposes a direct and targeted burden on the exercise of a constitutionally protected right. It also impacts the rights of firearm and ammunition retailers as they will suffer diminished sales.

106. The Second Amendment Tax Ordinance is intended to, and will, discourage law-abiding citizens from exercising their rights under the Illinois Constitution, and will reduce the purchase of firearms and of firearm ammunition by those citizens from retail dealers within Cook County.

107. The Second Amendment Tax Ordinance further provides that "[i]t shall be a violation of this article for any purchaser to fail to remit the tax imposed in this article when not collected by the retail dealer." *See* Cook County Code § 74-671(a), (c). By subjecting law-abiding purchasers who seek to purchase firearms and/or firearm ammunition to potential liability of up to $2,000 should they purchase a firearm and/or firearm ammunition upon the sale of which their retail dealer should, for whatever reason, fail to collect and remit the tax, the Second Amendment Tax Ordinance creates a significant burden and a corresponding chilling effect on the exercise of the right guaranteed by Article I, Section 22 of the Illinois Constitution.

108. The monies obtained by Cook County through the Second Amendment Tax are not used to defray any administrative or regulatory costs relating to the lawful purchase and use of a firearm by law-abiding, FOID-holding citizens exercising their fundamental right to keep and bear arms for the protection of themselves, their loved ones, and their homes.

109. The Second Amendment Tax Ordinance imposes a tax exclusively on the sale of firearms and/or of firearm ammunition. It thus imposes a burden directly and exclusively on conduct at the heart of Article I, Section 22 of the Illinois Constitution.

110. The Second Amendment Tax Ordinance is not narrowly, substantially, or rationally tailored to the aim of reducing the amount of violent crime in Cook County or to any other legitimate government interest. The Tax will do nothing to reduce the number of firearms or the amount of ammunition available to those who engage in violent crime. The Second Amendment Tax Ordinance reduces the ability only of law-abiding citizens to defend themselves against violent crime.

111. The Second Amendment Tax Ordinance, therefore, violates Plaintiffs' Constitutional rights as set forth herein.

WHEREFORE, Plaintiffs pray that this Honorable Court:

A. Enter a declaratory judgment pursuant to 735 ILCS 5/2-701 that the Second Amendment Tax Ordinance violates Article I, Section 22 of the Illinois Constitution of 1970.

B. Enter a preliminary and permanent injunction enjoining the Defendants and their officers, agents, and employees from enforcing the Second Amendment Tax Ordinance.

C. Enter an Order awarding Plaintiffs their costs of suit including attorneys' fees and costs pursuant to 740 ILCS 23/5(c)(2); and

D. Enter an Order providing any other and further relief that the Court deems just and appropriate under the circumstances.

COUNT III
(Illinois Constitution, Article IX, Section 2)

112. Plaintiffs restate and re-allege as if fully set forth herein the allegations of the preceding paragraphs.

113. Article IX, Section 2 of the Illinois Constitution of 1970 (the "Uniformity Clause") provides that "[i]n any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable."

114. The Second Amendment Tax Ordinance violates the Uniformity Clause.

115. The Second Amendment Tax Ordinance draws an unreasonable distinction between firearms and other consumer goods.

116. The Second Amendment Tax Ordinance draws an unreasonable distinction between ammunition and other consumer goods.

117. The Second Amendment Tax Ordinance draws an unreasonable distinction between retail sales and all other lawful sales of firearms and ammunition, including sales between two private, law-abiding citizens.

118. The Second Amendment Tax Ordinance is not based upon a reasonable distinction drawn between those who are to be taxed and those who are not to be taxed.

119. The Second Amendment Tax Ordinance does not bear a reasonable relationship to the public policy aims the Commissions seeks to promote.

120. There is no rational basis for the distinction that the Second Amendment Tax Ordinance draws between centerfire ammunition and rimfire ammunition to support the imposition of a tax five times as high on centerfire ammunition cartridges as it does on rimfire ammunition cartridges.

121. Moreover, the burden of the Second Amendment Tax Ordinance will be borne by law-abiding purchasers, who have obtained, possess, and have presented a valid FOID card to a Cook County retail dealer and who are able to purchase firearms and/or firearm ammunition legally within Cook County. Citizens who purchase, possess, and use firearms and/or firearm ammunition responsibly and legally, are not responsible for, or the cause of, societal costs relating to gun violence.

122. The Second Amendment Tax Ordinance will not be borne by the violent criminals who are responsible for the costs associated with violent crime. Many of these individuals are unable or unwilling to obtain a FOID card and, therefore, cannot lawfully purchase firearms or firearm ammunition from retail dealers in Cook County. Because a FOID card is required to purchase a firearm and/or firearm ammunition in Illinois, such criminals cannot legally purchase a firearm and/or firearm ammunition and will never pay the Second Amendment Tax as compared to law-abiding, FOID-holding citizens who will be required to pay the Tax.

123. It was patently unreasonable for Cook County to impose a pointless tax only on the law-abiding citizens of Cook County simply because it lacks the power or ability to impose a tax on the County's law-breaking citizens who are responsible for the violence the County seeks to regulate.

124. There is no rational distinction to be drawn between law-abiding citizen purchasers of firearms and/or of firearm ammunition, who are subjected to the tax, and the federal and state personnel, the veterans organizations, and the law enforcement personnel who are exempted from the tax under Section 74-669.

125. The Second Amendment Tax Ordinance violates the Uniformity Clause, therefore, because it relies upon classifications of firearms and of firearm ammunition and classifications of taxpayers that are unreasonable, subjects ammunition to non-uniform taxation, and is not reasonably tailored to the purpose for which it was enacted.

WHEREFORE, Plaintiffs pray that this Honorable Court:

A. Enter a declaratory judgment pursuant to 735 ILCS 5/2-701 that the Second Amendment Tax Ordinance violates Article IX, Section 2 of the Illinois Constitution of 1970.

B. Enter a preliminary and permanent injunction enjoining the Defendants and their officers, agents, and employees from enforcing the Second Amendment Tax Ordinance.

C. Enter an Order awarding Plaintiffs their costs of suit including attorneys' fees and costs pursuant to 740 ILCS 23/5(c)(2); and

D. Enter an Order providing any other and further relief that the Court deems just and appropriate under the circumstances.

COUNT IV
(Preemption)

126. Plaintiffs restate and re-allege as if fully set forth herein the allegations of the preceding paragraphs.

127. The Second Amendment Tax Ordinance is preempted by both the FOID Act and the FCCA, because it impermissibly regulates the possession of handguns and handgun ammunition by the holders of FOID cards and of concealed carry permits.

128. Before possessing a handgun or handgun ammunition, of course, a person must first acquire a handgun and ammunition for the handgun. The imposition of a "tax" on the

acquisition of firearms and ammunition thus amounts in practice to a burden on the possession of firearms and ammunition in addition to and in conflict with the requirements of the FOID Act and the FCCA.

129. The intent of the legislature in enacting the FOID Act and the FCCA was to "preempt[ ] all local ordinances applying to handguns" to the extent they apply to FOID card holders or concealed carry licensees.[1]

130. The FOID Act completely preempts the regulation, licensing, possession, and registration of handguns and handgun ammunition by holders of FOID cards:

> [T]he 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 . . . 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(b), (e).

131. Because it seeks to regulate directly and exclusively the holders of valid FOID cards, the Second Amendment Tax Ordinance is invalid under Section 13.1(b) of the FOID Act. By regulating exclusively those whom the Illinois legislature expressly denied it the power to regulate, Cook County has directly contravened the purpose of the FOID Act.

132. Similar to the FOID Act, Section 90 of the FCCA, entitled "Preemption," provides specifically that:

> The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the 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.

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[1] *See* Transcript of 98th General Assembly Senate House Bill 183 at 18 (May 31, 2013), http://goo.gl/6vQT2e.

430 ILCS 66/90.

133. The Second Amendment Tax Ordinance, by imposing a tax on the sale of handguns and handgun ammunition to law-abiding customers, imposes a burden on the holders of FCCA cards seeking to exercise their legal right to possess and to carry a loaded handgun in addition to and in conflict with the requirements of State law. The Second Amendment Tax Ordinance, therefore, is preempted by Section 90 of the FCCA.

134. An express purpose of the Second Amendment Tax Ordinance was consistently stated to be the reduction of gun violence and, according to at least one Commissioner, to ultimately restrict the operation of retail dealers within Cook County.

135. The revenue generated by the Ammunition Tax is directed to the Public Safety Fund to fund operations related to public safety, not to the general fund. Cook County Code § 74-677.

136. The Second Amendment Tax Ordinance is preempted by both the FCCA and the FOID Act and is, therefore, illegal, improper, and unenforceable, and should be stricken.

WHEREFORE, Plaintiffs pray that this Honorable Court:

A. Enter a declaratory judgment, pursuant to 735 ILCS 5/2-701 that the Second Amendment Tax Ordinance is preempted by the FCCA and FOID Act.

B. Enter a preliminary and permanent injunction enjoining the Defendants and their officers, agents, and employees from enforcing the Second Amendment Tax Ordinance.

C. Enter an Order awarding Plaintiffs their costs of suit including attorneys' fees and costs pursuant to 740 ILCS 23/5(c)(2); and

D. Enter an Order providing any other and further relief that the Court deems just and appropriate under the circumstances.

Respectfully Submitted:

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

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

David H. Thompson (ARDC No. 6316017)
Peter A. Patterson (ARDC No. 6316019)
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com

15-6469
ORDINANCE

Sponsored by

THE HONORABLE RICHARD R. BOYKIN, COUNTY COMMISSIONER, PRESIDENT TONI PRECKWINKLE, LARRY SUFFREDIN, DEBORAH SIMS, JOAN PATRICIA MURPHY, JESÚS G. GARCÍA, STANLEY MOORE, JOHN P. DALEY, LUIS ARROYO JR. AND JERRY BUTLER, COUNTY COMMISSIONERS

FIREARM AND FIREARM AMMUNITION TAX

NOW THEREFORE BE IT ORDAINED, by the Cook County Board of Commissioners that Chapter 74 - Taxation, Artiele XX. Firearm Tax, Seetion 74-665 through 74-676 be enacted as follows:

ARTICLE XX. - FIREARM AND FIREARM AMMUNITION TAX

Sec. 74-665. Short title.

This Article shall be known and may be cited as the "Cook County Firearm and Firearm Ammunition Tax Ordinance."

Sec. 74-666. 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:

Firearm shall have the same meaning as set forth in the Illinois Firearm Owners Identification Act, 430 ILCS 65/I. I, or any successor statute.

Firearm ammunition shall have the same meaning as set forth m the Illinois Firearm Owners Identification Card Act, 430 ILCS 65/ 1. I, or any successor statute.

Centerfire ammunition means firearm ammunition that is characterized by a primer in the center of the base of the cartridge.

Department means the Department of Revenue in the Bureau of Finance of Cook County.

Director means the Director of the Department of Revenue.

Person means any means any individual, corporation, limited liability corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity.

Purchaser means any person who purchases a fireann or firearm ammunition in a retail purchase in the county.

Retail dealer means any person who engages in the business of selling fircarms or firearm ammunition on a retail level in the county or to a person in the county.

Retail purchase means any transaction in which a person in the county acquires ownership by tendering consideration on a retail level.

Rimfire ammunition means firearm ammunition that is characterized by a primer that completely encircles the rim of the cartridge.

Sheriff means the Sheriff's Office of Cook County, Illinois.

Sec. 74-667. Registration.

Any retail dealer as defined in this article shall register with the Department in the form and manner as prescribed by the Department. Policies, rules and procedures for the registration process and forms shall be prescribed by the Department.

Sec. 74-668. Tax imposed, rates.

(a) Firearm Tax Rate. A tax is hereby imposed on the retail purchase of a firearm as defined in this Article in the amount of $25.00 for each firearm purchased.

(b) Firearm Ammunition Tax Rate. Effective June 1, 2016 a tax is hereby imposed on the retail purchase of firearm ammunition as defined in this article at the following rates:

(III) Centerfire ammunition shall be taxed at a rate of $0.05 per cartridge.

(IV) Rimfire ammunition shall be taxed at a rate of $0.01 per cartridge.

(c) Tax Included in Sales Price. It shall be deemed a violation of this Article for a retail dealer to fail to include the tax imposed in this Article in the sale price of firearms and/or firearm ammunition to otherwise absorb such tax. The tax levied in this article shall be imposed is in addition to all other taxes imposed by the County of Cook, the State of Illinois, or any municipal corporation or political subdivision of any of the foregoing.

Sec. 74-669. Tax-exempt purchases and refunds.

(a) Notwithstanding any other provision of this article, in accordance with rules that shall be promulgated by the department in regards to tax exempt purchases, retail dealers shall not collect the firearm and/or firearm ammunition tax when the firearm and/or firearm ammunition is being sold to the following:

(1) An office, division, or agency of the United States, the State of Illinois, or any municipal corporation or political subdivision, including the Armed Forces of the United States or National Guard.

(2) A bona fide veterans organization which receive firearms and/or fircarm ammunition directly from the Armed Forces of the United States and uses said firearms and/or firearm ammunition strictly and solely for ceremonial purposes with blank ammunition.

(3) Any active sworn law enforcement officer purchasing a firearm and/or firearm ammunition for official or training related purposes presenting an official law enforcement identification card at the time of purchase.

(b) In accordance with rules to be promulgated by the department, an active member of the Armed Forces of the United States, National Guard or deputized law enforcement officer may apply for a refund from the department for the tax paid on a firearm and/or firearm ammunition that was purchased for official use or training related purposes.

(c) Notwithstanding any other provision in this Article, in accordance with rules that shall be promulgated by the department in regards to tax exempt purchase, retail dealers shall not collect firearm ammunition tax on blank ammunition.

Sec. 74-670. Collection and remittance.

(a) Tax Collection. Any retail dealer shall collect the taxes imposed by this Article from any purchaser to whom the sale of said firearms and/or firearm ammunition is made within the County of Cook and shall remit to the Department the tax levied by this Article.

(b) Tax Remittance. It shall be the duty of every retail dealer to remit the tax due on the sales of firearms and/or firearm ammunition purchased in Cook County, on forms prescribed by the Department, on or before the 20th day of the month following the month in which the firearm and/or firearm ammunition sale occurred on a form and in the manner required by the department.

(c) If for any reason a retailer dealer fails to collect the tax imposed by this article from the purchaser, the purchaser shall file a return and pay the tax directly to the department, on or before the date required by Subsection (b) of this Section.

Sec. 74-671. Violations and penalties.

(a) It shall be a violation of this Article for any retail dealer to sell firearms and/or firearm ammunition without collecting and remitting the tax imposed in this Article.

b) It shall be a violation of this Article for any retail dealer fail to keep books and records as required in this Article.

(c) It shall be a violation of this Article for any purchaser to fail to remit the tax imposed in this Article when not collected by the retail dealer.

(d) Any person determined to have violated this Article, shall be subject to a fine in the amount of $1,000.00 for the first offense, and a fine of $2,000.00 for the second and each subsequent offense. Separate and distinct offense shall be regarded as committed each day upon which said person shall continue any such violation, or permit any such violation to exist after notification thereof. It shall be deemed a violation of this Article for any person to knowingly furnish false or inaccurate information to the Department.

Sec. 74-672. Required books and records.

Every person who is subject to this tax shall keep and maintain accurate and complete documents, books, and records of each transaction or activity subject to or exempted by this Ordinance, from start to complete, including all original source documents. All such books and records shall be kept as provided in Chapter 34, Article III, of the Uniform Penalties, Interest, and Procedures Ordinance, and shall, at all reasonable times during normal business hours, be open to inspection, audit, or copying by the department and its agents.

Sec. 74-673. Inspection; audits.

Books and records kept in compliance with this Article shall be made available to the Department upon request for inspection, audit and/or copying during regular business hours. Representatives of the Department shall be permitted to inspect or audit firearm and/or firearm ammunition inventory in or upon any premises. It shall be unlawful for any person to prevent, or hinder a duly authorized Department representative from performing the enforcement duties provided in this Article.

Sec. 74-674. Application of uniform penalties, interest, and procedures Ordinance.

Whenever not inconsistent with the provisions of this Article, or whenever this Article is silent, the provisions of the Uniform Penalties, Interest, and Procedures Ordinance, Chapter 34, Article III, of the Cook County Code of Ordinances, shall apply to and supplement this Article.

Sec. 74-675. Rulemaking; policies, procedures, rules, forms.

The department may promulgate policies, procedures, rules, definitions and forms to carry out the duties imposed by this Article as well as pertaining to the administration and enforcement of this Article.

Sec. 74-676. Enforcement, department and sheriff.

The department is authorized to enforce this Article, and the Sheriff is authorized to assist the department in said enforcement.

Sec. 74-677. Dedication of Funds

The revenue generated as the result of the collection and remittance of the tax on firearm ammunition set forth herein shall be directed to the Public Safety Fund to fund operations related to public safety.

Effective Date: Ordinance Amendments effective upon passage.

Approved and adopted this 18th of November 2015.

TONI PRECKWINKLE, President
Cook County Board of Commissioners

(S E A L)

Attest: David Orr
DAVID ORR, County Clerk

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GUNS SAVE LIFE, INC., DPE SERVICES, INC., d/b/a MAXON SHOOTERS' SUPPLIES AND INDOOR RANGE, and MARILYN SMOLENSKI,

Plaintiffs

v.

No. 15 CH 18217

ZAHRA ALI, solely in her capacity as Director of the Department of Revenue of Cook County, THOMAS J. DART, solely in his capacity as Cook County Sheriff, and the COUNTY OF COOK, ILLINOIS, a county in the State of Illinois,

Defendants.

AFFIDAVIT OF JOHN BOCH

I, John Boch, pursuant to 735 ILCS 5/2-1005, ILL. SUP. CT. R. 191, and 735 ILCS 5/1-109, state as follows:

1. I am a resident and citizen of the State of Illinois.

2. I am the Executive Director of Guns Save Life, Inc. ("GSL"), and have held this position since 2015; I served as the president of GSL from 2010 to 2014 and as vice president for over a dozen years prior to that. I am the editor emeritus of GunNews Magazine, the monthly journal of GSL, which has a circulation of roughly 20,000+ copies. I am also a member of GSL.

3. I possess a valid Illinois Firearm Owners Identification Card and a valid Illinois Firearms Concealed Carry License.

EXHIBIT 1

4. Guns Save Life, Inc., is an independent not-for-profit organization that is dedicated to protecting the Second Amendment rights of Illinois citizens to keep and bear firearms and to defend themselves.

5. GSL has many members who reside in Cook County and hosts monthly meetings in Cook County. GSL members who purchase firearms and ammunition in Cook County are subject to the Cook County Firearms Tax and Ammunition Tax.

6. GSL members have purchased firearms in Cook County since the passage of the Firearms Tax and have paid the Firearms Tax. GSL members also have purchased ammunition in Cook County since the passage of the Ammunition Tax and have paid the Ammunition Tax.

7. On February 17, 2016, I myself purchased a firearm at Chuck's Gun Shop and Pistol Range, 14310 S. Indiana Avenue, Riverdale, IL 60827 and paid the Cook County Firearms Tax of $25. A copy of the receipt for this purchase is attached hereto as Exhibit A.

8. GSL members purchase ammunition in Cook County and have already paid the Ammunition Tax. They report that they expect to purchase ammunition at reduced rates, however, now that the Ammunition Tax has gone into effect.

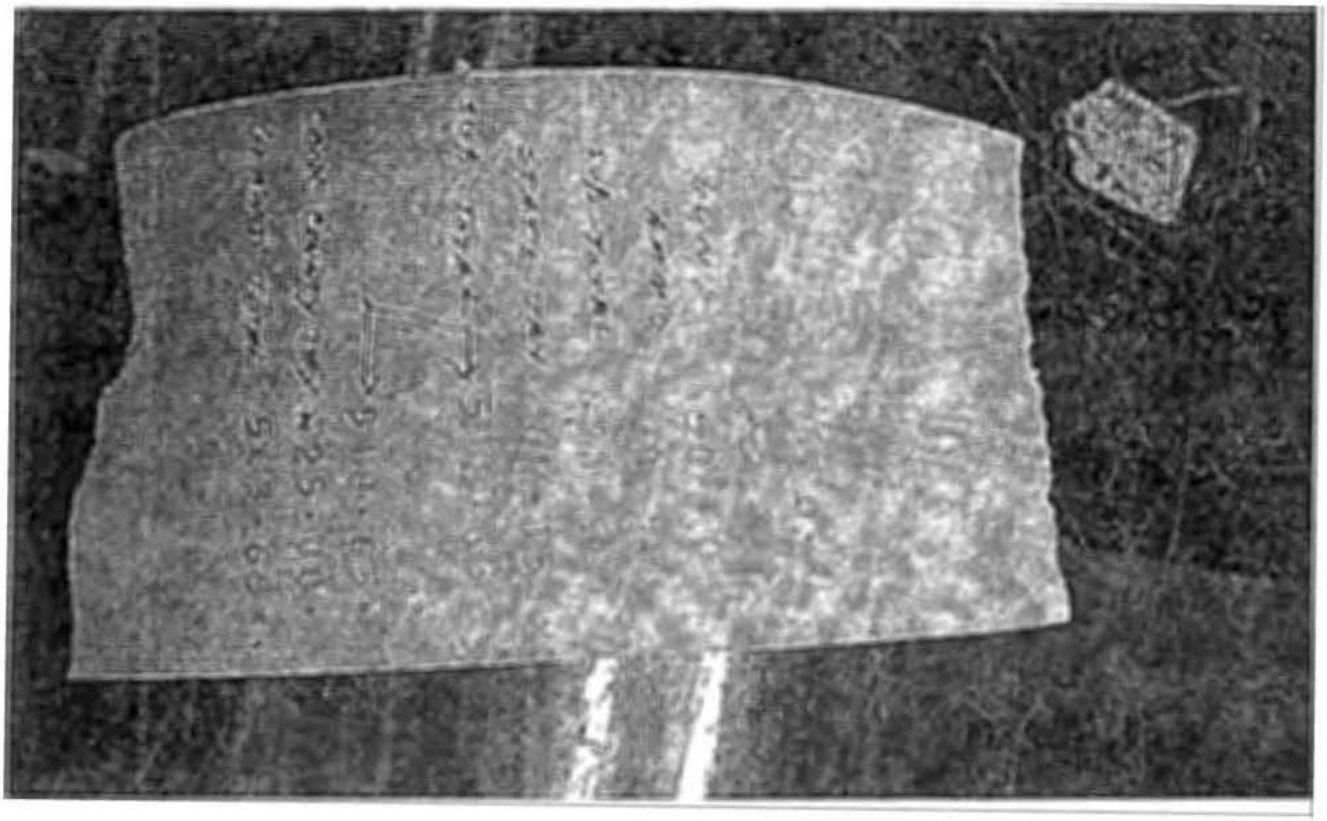
9. Although GSL members have paid the Cook County Firearms Tax, GSL members have purposely avoided purchasing firearms in Cook County to avoid paying the Firearms Tax. And although GSL members have paid the Cook County Ammunition Tax, GSL members also have purposely avoided purchasing ammunition in Cook County to avoid paying the Ammunition Tax. Thus, GSL members would purchase firearms and ammunition in Cook County at a greater rate but for the Second Amendment Tax.

10 Firearms retailers outside of Cook County frequently advertise that they are not subject to Cook County's Firearms Tax. A copy of one such advertisement that ran in GSL's monthly journal is attached as Exhibit B.

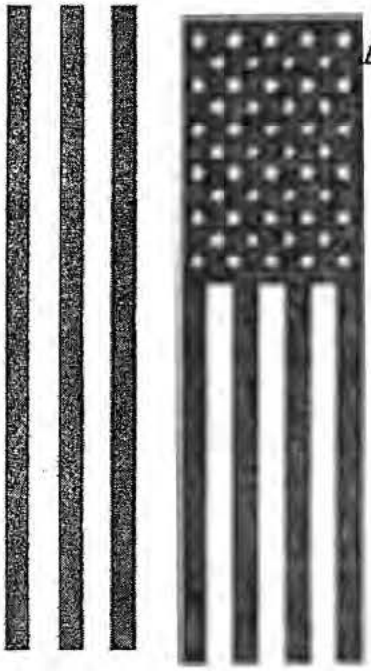
Under penalties as provided by law pursuant to Section 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

11/12/16

John Boch



Ex. A



AlmostWholeSaleGuns.com

Dupage County Gun Retailer

Your Source For Guns & Supplies

We Buy, Sell & Transfer

No Crook county tax!

7545 South Madison Street Ste. 11

Burr Ridge, IL 60527

Phone 630-863-1379

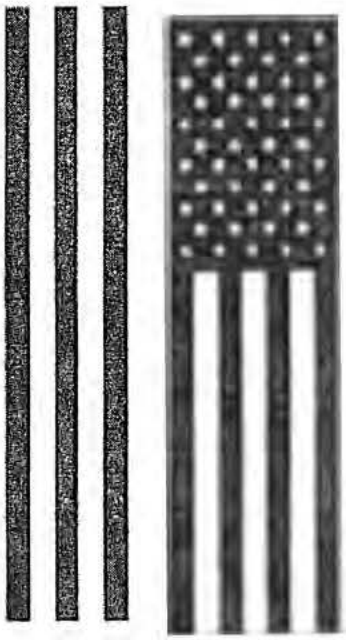
No Crook county tax!

CCW Classes Illinois, Utah, Arizona.

Buy online and SAVE!

http://www.almostwholesaleguns.com/

S&W and FN Blue Deale



Ex. B

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GUNS SAVE LIFE, INC., DPE SERVICES, INC., d/b/a MAXON SHOOTERS' SUPPLIES AND INDOOR RANGE, and MARILYN SMOLENSKI, Plaintiffs v. ZAHRA ALI, solely in her capacity as Director of the Department of Revenue of Cook County, THOMAS J. DART, solely in his capacity as Cook County Sheriff, and the COUNTY OF COOK, ILLINOIS, a county in the State of Illinois, Defendants.	No. 15 CH 18217

AFFIDAVIT OF MARILYN SMOLENSKI

I, Marilyn Smolenski, pursuant to 735 ILCS 5/2-1005, ILL. SUP. CT. R. 191, and 735 ILCS 5/1-109, state as follows:

1. I am a resident of Cook County, Illinois and a citizen of the State of Illinois.

2. I am a member of Guns Save Life.

3. I hold a valid Illinois Firearm Owners Identification Card and a valid Illinois Concealed Carry license.

4. I was stalked by my ex-husband in the late 1990s. In 1999, he broke into my house. I have thus learned from experience of the need to be able to defend myself. Indeed, this incident is one of the reasons I now carry a firearm for self-defense.

EXHIBIT
2

5. I am a member of a shooting club in Aurora, Illinois, where I often practice shooting. My husband and I frequently visit other shooting ranges, including Maxon Shooter's Supplies and Indoor Range, to practice and develop our shooting skills. We also take courses to improve our proficiency with firearms.

6. My husband and I engage in frequent firearm transactions; we generally sell one of our older firearms when we purchase a newer model.

7. I have purchased ammunition in Cook County in the past. On December 16, 2015, I purchased ammunition from Maxon Shooter's Supplies and Indoor Range. A copy of the receipt from that purchase is attached as Exhibit A.

8. On June 7, 2016, I purchased 100 rounds of 9mm ammunition from Maxon. I paid $39.98 for two 50 round boxes of Federal 9mm 115 grain full metal jacket Champion ammunition. I was informed that I would be required to pay the Ammunition Tax. I paid the Ammunition Tax in the amount of $5.00. A copy of the receipt from that purchase is attached as Exhibit B. I did so, however, under protest, after Maxon's General Manager told me that Cook County requires Maxon to collect this tax from all customers that wish to purchase ammunition.

9. On June 8, my attorney submitted my protest of payment of the Ammunition Tax to the Cook County Department of Revenue. Letter from Christian Ambler to Gary Michaels (June 8, 2016), Exhibit C.

10. I will continue to purchase ammunition in Cook County in the future, but because of the Ammunition Tax, I will purchase less ammunition in the County than I otherwise would have. I sometimes will purposely purchase ammunition outside of Cook County to avoid paying the Ammunition Tax when I am able to do so.

Under penalties as provided by law pursuant to Section 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

Marilyn Smolenski

Marilyn Smolenski

Date: 11/11/16

Maxon Shooters Supplies

750 E Bradford Drive
Des Plaines,IL 60018
TEL 847-298-4667 FAX 847-298-4885
info@maxonshooters.com,www.maxonshooters.com

RECEIPT NO: 134615

Sale Type	STANDARD		
Sale Status	COMPLETE	Reg	POS-02-RTL
Purchase Date	12/16/2015	12:29 PM	
Clerk ID	45	Close Date	12/16/2015

Customer Info: MARILYN UNDERWOOD SMOLENSKI		Ship To:	
Customer No: 5745	Company:	Customer No: 0	Company
Address: 1855 NORMAN BLVD		Address	
Suite/Apt.		Suite/Apt	
City: PARK RIDGE	State: IL	City	State
Home: 312-919-8875	Work	Home	Work
Zip: 60068	Cell:	Zip	Cell

Purchase Summary

Pl	Part No	Description	Serial No:	Qty	Unit Price	% Disc	Disc	SubTotal	Tax
S	80264	ESTATE 9MM FMJ 115 GR.		1	$19.99	0	$0.00	$19.99	9

Payment Summary

Tender Type	Pay Date	Amt. Tendered	Amt Paid	Change	Approval #/Other Info	Tender No.	Tender Date
Credit Card	12/16/2015	$21.79	$21.79	$0.00	Manual	XX0000	

Receipt Summary

SUBTOTAL (UnTaxed):	$0.00
SUBTOTAL(Taxed):	$19.99
Receipt Discount:	$0.00
TAX:	$1.80
RECEIPT TOTAL:	$21.79
TOTAL TENDERED:	$21.79
CHANGE DUE	$0.00

Payment Completely Satisfied. Balance: $ 0.00

N.C.S No:
Tracking Number:
NICS Status:

CHANGE TYPE:NONE

Comments

Fee Comment:
Void Reason

Receipt Disclaimer

All Sales Are Final

Thank you for your business.

Ex. A

Maxon Shooters Supplies

75 E Bradrock Drive
Des Plaines,IL,60018
TEL:847-299-4007 FAX:847-298-4885
info@maxonshooters.com,www.maxonshooters.com

RECEIPT NO. 156777

Sale Type: STANDARD
Sale Status: COMPLETE | Reg: POS 02 (RT)
Purchase Date: 6/7/2016 9:56:37 PM
Clerk ID: 45 | Close Date: 6/7/2016

Customer Info: MARILYN UNDERWOOD SMOLENSKI
Customer No: 6745 Company:
Address: 1855 NORMAN BLVD
Suite/Apt:
City: PARK RIDGE State: IL Zip: 60068
Home: 312-919-8875 Work: - - Cell:

Ship To:
Customer No: 0 Company:
Address:
Suite/Apt:
City: State: Zip:
Home: Work: Cell:

Purchase Summary

PT	Part No	Description	Serial No:	Qty	Unit Price	% Disc	Disc	SubTotal	Tax
S	WM5199	FED 9MM 115GR FMJ 50RD/BOX		1	$19.99	0	$0.00	$19.99	10
S	WM5199	FED 9MM 115GR FMJ 50RD/BOX		1	$19.99	0	$0.00	$19.99	10
S	ATAX0	AMMO TAX CENTER-FIRE .05 PER ROUND		100	$0.05	0	$0.00	$5.00	-

Payment Summary

Tender Type	Pay Date	Amt Tendered	Amt. Paid	Change	Approval #/Other Info	Tender No	Tender Date
Credit Card	6/7/2016	$48.98	$48.98	$0.00	Manual	XX0000	

Receipt Summary

SUBTOTAL (UnTaxed):	$0.00
SUBTOTAL (Taxed):	$39.98
Receipt Discount:	$0.00
TAX:	$4.00
RECEIPT TOTAL	$48.98
TOTAL TENDERED:	$48.98
CHANGE DUE	$0.00
CHANGE TYPE:	NONE

Payment Completely Satisfied. Balance: $ 0.00
NICS No:
NICS Status:
Tracking Number:

Comments

Fee Comment:
Void Reason:

Receipt Disclaimer

All Sales Are Final

Thank you for your business

Ex. B

Date/Time Printed: 6/7/2016 9:57:07 PM ORIGINAL Page: 1

MAXON SHOOTERS SUPPLIES
75 BRADROCK DR
DES PLAINES, IL 60018
(847) 298-4867

Bank ID: 1340
Merchant ID: 000014716944
Term ID: 011

Sale

XXXXXXXXXXXX6409
VISA Entry Method: Chip

Total: $ 48.98

06/07/16 14:52:37
Inv #: 000006 Appr Code: 014050
Apprvd: Online Batch#: 159001
Retrieval Ref.#: 011175981

CHASE VISA
AID: A0000000031010
TSI: F800
TVR: 0080008000

Customer Copy

STONE & JOHNSON CHARTERED
ATTORNEYS AND COUNSELORS AT LAW

111 West Washington Street
Suite 1800
Chicago, Illinois 60602
Tel 312.332.5656
Fax 312.332.1856
Stonejohnsonlaw.com

June 8, 2016

Gary Michaels
c/o Cristin Duffy
Tax Compliance Administrator
Cook County Department of Revenue
Compliance Division
Department of Revenue of Cook County
118 N. Clark Street, Room 1160
Chicago, IL 60602

Re: *Protest*

Dear Mr Michaels

I am writing to inform you that my client, Marilyn Smolenski of 1855 Norman Blvd., Park Ridge, IL 60068, hereby protests imposition of the Cook County Firearm Ammunition Tax in the amount of $5.00. Ms. Smolenski paid the tax on June 7, 2016 at Maxon Shooter's Supplies & Indoor Range, 75 E. Bradrock Dr., Des Plaines, IL 60018, and she informed Maxon that she was making the payment under protest. Copies of the receipts for her purchase and a letter from Maxon confirming she was charged the tax and paid it under protest are attached hereto. The basis for her protest is the belief that the Firearm Ammunition Tax: violates the Second Amendment to the United States Constitution; violates Article I, Section 22 of the Illinois Constitution. violates Article IX, Section 2 of the Illinois Constitution: and is preempted by State law.

Sincerely,

Christian D. Ambler
Stone & Johnson, Chtd.
111 West Washington Street
Chicago, IL 60602
(312) 332-5656

Attorney for Marilyn Smolenski

Cc Zahra Ali, Director, Cook County Department of Revenue
c/o Cristin Duffy

Ex. C

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GUNS SAVE LIFE, INC., DFF SERVICES, INC., d/b/a MAXON SHOOTERS' SUPPLIES AND INDOOR RANGE, and MARILYN SMOLENSKI, Plaintiffs v. ZAHRA ALI, solely in her capacity as Director of the Department of Revenue of Cook County, THOMAS J. DART, solely in his capacity as Cook County Sheriff, and the COUNTY OF COOK, ILLINOIS, a county in the State of Illinois, Defendants.	No. 15 CH 18217

AFFIDAVIT OF NICKOS KLEMENTZOS

I, Nickos Klementzos, pursuant to 735 ILCS 5/2-1005, Ill. Sup. Ct. R. 191, and 735 ILCS 5/1-109, state as follows:

1 I am a resident and citizen of the State of Illinois.

2 I possess a valid Illinois Firearm Owners Identification Card and a valid Illinois Concealed Carry license.

3 I am a member of Guns Save Life.

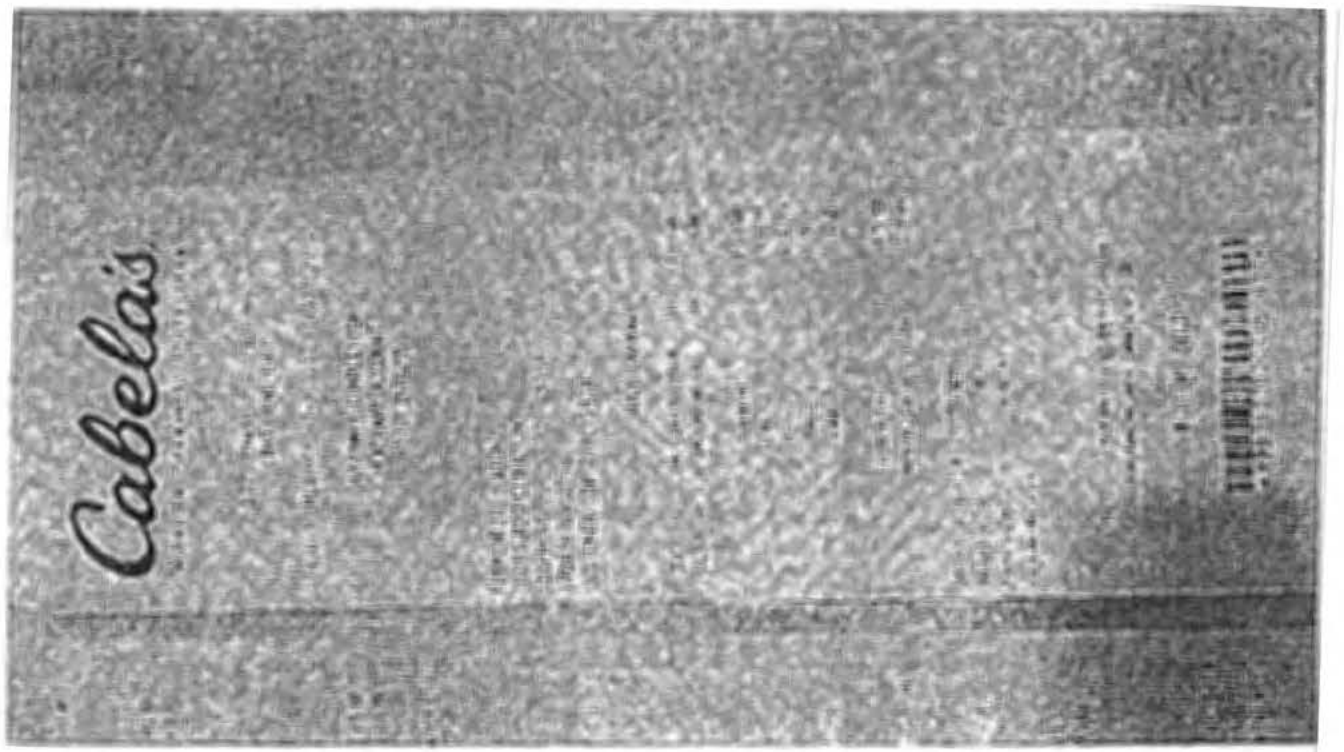
4 On July 17, 2015, I purchased a firearm at the Cabela's Store located at 5225 Prairie Stone Pkwy, Hoffman Estates, IL 60192. I paid the $25 Cook County Firearm Tax in connection with this purchase. A copy of the receipt for this purchase is attached hereto as Exhibit A.

EXHIBIT
3

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct

Date: 5-1-2016

Nickos Klementzos



Ex. A

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GUNS SAVE LIFE, INC., DPE SERVICES, INC., d/b/a MAXON SHOOTERS' SUPPLIES AND INDOOR RANGE, and MARILYN SMOLENSKI. Plaintiffs v. ZAIRA ALI, solely in her capacity as Director of the Department of Revenue of Cook County, THOMAS J. DART, solely in his capacity as Cook County Sheriff, and the COUNTY OF COOK, ILLINOIS, a county in the State of Illinois, Defendants.	No. 15 CH 182.7

AFFIDAVIT OF SARAH NATALIE

I, Sarah Natalie, pursuant to 735 ILCS 5/2-1005, ILL. SUP. CT. R. 191, and 735 ILCS 5/1-109, state as follows:

1. I am a resident and citizen of the State of Illinois.

2. I am the General Manager of Maxon Shooters' Supplies and Indoor Range. As General Manager, I oversee the day-to-day operations of the business and am responsible for ensuring that we remain in compliance with local, state, and federal laws, including the sales tax ordinances of Cook County.

3. Maxon Shooter's Supplies and Indoor Range ("Maxon") is owned and operated by DPE Services, Inc., an Illinois corporation. It operates a retail store at 75 E. Bradrock Drive,

EXHIBIT
4

Des Plaines, IL 60018. Maxon has been owned and operated by DPE Services, Inc., since July 28, 2015.

4. With over 4,000 feet of showroom floor space, Maxon sells a variety of handguns and rifles at retail, stocking firearms manufactured by, among others, Beretta, Colt, Daniel Defense, FN, Glock, Heckler & Koch, Kel-Tec, Kimber, Mossberg, Remington, Ruger, Sig Sauer, Smith & Wesson, Springfield, and Walther. Maxon also stocks a broad range of target and self-defense ammunition, both centerfire and rimfire ammunition.

5. Maxon operates a shooting range with twenty 75-foot lanes: 10 of these are for pistols, and 10 for rifles and shotguns. Customers who use the shooting range often purchase the ammunition they use on the range at Maxon.

6. Maxon is registered with the Department of Revenue as a retail seller of firearms. As a retail seller of firearms, Maxon must comply with the provisions of the Cook County Second Amendment Tax. Maxon's costs for complying with the Firearms Tax are substantial, and it expects that its costs for complying with the Ammunition Tax to be even greater.

7. On June 3, 2016, Maxon received a notice from the Cook County Department of Revenue announcing numerous recordkeeping and reporting requirements related to the Ammunition Tax. Maxon first learned of these requirements through the notice. A copy of the notice, and the accompanying "Firearm and Firearm Ammunition Tax Return," are attached hereto as Exhibit A.

8. Pursuant to the notice, Maxon must now provide the Cook County Department of Revenue with a monthly tax return detailing, among other things, the number of rounds of rimfire and centerfire ammunition in its inventory at the beginning and end of each month.

9. These recordkeeping and reporting requirements have been imposed without regard for the recordkeeping practices that are standard practice in the ammunition industry and are very burdensome.

10. Ammunition typically is sold by the box, not by individual round. Accordingly, ordering, inventory, and point of sale systems used by Maxon are set up for units of "Boxes." There is no field for "round per box," or equivalent information, in Maxon's software systems. What is more, Maxon is not able to unilaterally alter those systems to include that information.

11. Because the inventory counts demanded by Cook County are not available through Maxon's automated systems, Maxon employees will be required to spend many hours every month collecting and tabulating the information required by Cook County. This will result in significant costs to Maxon and will be harmful to Maxon's business. Maxon expects that its costs to comply with Cook County's requirements will be thousands of dollars per year.

12. Because Maxon is prohibited from absorbing the Ammunition Tax, and because of the costs the Tax imposes on Maxon, the Tax increases the price of Maxon's products relative to products sold by competitors outside of Cook County and harms Maxon's business.

13. The Ammunition Tax has placed Maxon at a competitive disadvantage with retail sellers of ammunition who operate outside the jurisdiction of Cook County.

14. Maxon collects and remits to Cook County thousands of dollars in Ammunition Taxes per month.

Under penalties as provided by law pursuant to Section 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

Sarah Natalic

11/11/16

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GUNS SAVE LIFE, INC., DPE SERVICES, INC. d/b/a MAXON SHOOTER'S SUPPLIES AND INDOOR RANGE, and MARILYN SMOLENSKI,	)	
Plaintiffs,	)	
v.	)	
ZAHRA ALI, solely in her capacity as Director of the Department of Revenue of Cook County, THOMAS J. DART, solely in his official capacity as Cook County Sheriff, and the COUNTY OF COOK, ILLINOIS, a county in the State of Illinois.	)	Case No. 15 CH 18217 Hon. David B. Adkins
Defendants.	)	

PLAINTIFF DPE SERVICES, INC. DBA MAXON SHOOTER'S SUPPLIES AND INDOOR RANGE'S CONFIDENTIAL OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES

Plaintiff DPE Services, Inc. d/b/a Maxon Shooter's Supplies and Indoor Range ("Plaintiff"), by and through its attorneys, hereby submits its objections and responses to Defendants' First Set of Interrogatories.

GENERAL OBJECTIONS

1. Plaintiff objects to each definition, instruction, and interrogatory to the extent that it attempts to impose discovery obligations greater than those required under the Illinois Code of Civil Procedure, the Rules of the Illinois Supreme Court, the Local Rules of the Circuit Court of Cook County, and/or the orders of the Court in this case.

2. Plaintiff objects to each definition, instruction, and interrogatory to the extent that it

[redacted]

INTERROGATORY NO. 15. Specify each fact which, in any manner, evidences or tends to support or refute your position that consumers will purposefully avoid purchasing firearms and ammunition in Cook County in order to avoid paying the Cook County Firearms and Ammunition tax. Include the name and last known address and phone number of each person who has personal knowledge of each such fact, and identify each specific fact of which each such person has personal knowledge.

ANSWER: Plaintiff reiterates its General Objections as if specifically set forth below in response to this Interrogatory. Plaintiff further Plaintiff objects to this Interrogatory as overbroad and unduly burdensome. Plaintiff further objects to this interrogatory as it is vague and ambiguous.

Subject to and without waiving these objections, Plaintiff states that from July 2015 to December 2015 ammunition sales represented 16% of Plaintiff's total sales for that time period. From Jan 2016-May 2016 ammunition sales represented 16% of Plaintiff's total sales for that

time period. The Cook County Firearms and Ammunition tax took effect June 1 of 2016. From June 2016 through Dec 2016 ammunition sales dipped to 14% of total sales. This dip represents approximately $51,000 in lost revenue for Plaintiff. From Jan 2017 to the present ammunition sales represent 14% of total sales.

Plaintiff further states that Sarah Natalie has knowledge of the above facts.

Plaintiff refers to the evidence and arguments submitted in pleadings and briefing in this case.

Christian D. Ambler
Attorney for all Plaintiffs
Stone & Johnson, Chtd.
111 West Washington St.
Suite 1800
Chicago, Illinois 60602
(312) 332-5656
cambler@stonejohnsonlaw.com

David H. Thompson (ARDC No. 6316017)
Peter A. Patterson (ARDC No. 6316019)
Attorneys for all Plaintiffs
Cooper & Kirk, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com

No.

In the

Supreme Court of Illinois

GUNS SAVE LIFE, INC., *et al.*,

Plaintiffs-Movants,

v.

ZAHRA ALI, solely in her official capacity as Director of the Department of Revenue of Cook County, *et al.*,

Defendants-Respondents.

On Petition for Leave to Appeal from the Appellate Court of Illinois
First Judicial District, No. 1-18-1846.
There on Appeal from the Circuit Court of
Cook County, Illinois, No. 15-CH-18217.
The Honorable David B. Atkins, Presiding

NOTICE OF FILING

To: Hailey M. Golds, Esq.- Hailey.Golds@CookCountyIL.gov
Cristin Duffy, Esq. – Cristin.Duffy@CookCountyIL.gov
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on May 22, 2020, the Plaintiffs-Movants submitted for filing by electronic means their Petition for Leave to Appeal with the Supreme Court of Illinois.

/s/ Christian D. Ambler
Christian D. Ambler

Christian D. Ambler – ARDC #6228749
STONE & JOHNSON, CHARTERED
111 West Washington St. - Suite 1800
Chicago, Illinois 60602
Telephone (312) 332-5656

David H. Thompson - ARDC #_____*
Peter A. Patterson – ARDC #_____*
Cooper & Kirk, PLLC
1523 New Hampshire Ave., N. W.
Washington, D. C. 20036
(202) 220-9600
*Appearance to be entered pursuant to Ill. S. Ct. Rule 707

No.

In the

Supreme Court of Illinois

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v.

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Cook County, Illinois, No. 15-CH-18217.
The Honorable David B. Atkins, Presiding

CERTIFICATE OF SERVICE

To: Hailey M. Golds, Esq.- Hailey.Golds@CookCountyIL.gov
Cristin Duffy, Esq. – Cristin.Duffy@CookCountyIL.gov
Assistant State's Attorney
500 Richard J. Daley Center
Chicago, Illinois 60602

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, I do hereby, certify that the statements set forth in the foregoing instrument are true and correct, except for statements therein made on information and belief and as to those I certify that I verily believe the same to be true and correct. On May 22, 2020, a copy of Plaintiffs-Movants' Notice of Filing, this Certificate of Service, and three copies of Petition for Leave to

Appeal were served on the above attorney of record, by electronic transmission on May 22, 2020.

/s/ Christian D. Ambler
Christian D. Ambler

Christian D. Ambler – ARDC #6228749
STONE & JOHNSON, CHARTERED
111 West Washington St. - Suite 1800
Chicago, Illinois 60602
Telephone (312) 332-5656

David H. Thompson - ARDC #_____*
Peter A. Patterson – ARDC #_____*
Cooper & Kirk, PLLC
1523 New Hampshire Ave., N. W.
Washington, D. C. 20036
(202) 220-9600

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

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

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

September 30, 2020

In re: Guns Save Life, Inc., et al., etc., Appellants, v. Zahra Ali, etc., et al., Appellees. Appeal, Appellate Court, First District.
126014

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

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

TABLE OF CONTENTS OF RECORD ON APPEAL

No. 126014

In the

Supreme Court of Illinois

GUNS SAVE LIFE, INC., *et al.*,	)	
	)	
Plaintiffs-Appellants,	)	From the Appellate Court
	)	First Judicial District, No. 1-18-1846.
v.	)	
	)	There on Appeal from the Circuit Court of
ZAHRA ALI, solely in her official capacity as Director	)	Cook County, Illinois, No. 15-CH-18217.
	)	
of the Department of Revenue of Cook County, *et al.*,	)	The Honorable David B. Atkins, Presiding
	)	
	)	
Defendants-Appellants.	)	

NOTICE OF ELECTRONIC FILING

To: **Martha-Victoria Jimenez** - MarthaVictoria.Jimenez@CookCountyil.gov
Supervisor - Municipal Litigation
Civil Actions Bureau
Cook County State's Attorney's Office
500 Richard J. Daley Center
Chicago, IL 60602

PLEASE TAKE NOTICE that on November 4, 2020 the Plaintiffs-Appellants submitted for filing by electronic means **BRIEF AND APPENDIX OF PLAINTIFFS-APPELLANTS**, with the Supreme Court of Illinois.

Christian D. Ambler – ARDC #6228749
STONE & JOHNSON, CHARTERED
111 West Washington St. - Suite 1800
Chicago, Illinois 60602
Telephone (312) 332-5656

David H. Thompson - ARDC # 6316017*
Peter A. Patterson – ARDC # 6316019*
Cooper & Kirk, PLLC
1523 New Hampshire Ave., N. W.
Washington, D. C. 20036
(202) 220-9600

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

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Christian D. Ambler

No. 126014

In the

Supreme Court of Illinois

GUNS SAVE LIFE, INC., *et al.*,	)	
	)	
Plaintiffs-Appellants,	)	From the Appellate Court
	)	First Judicial District, No. 1-18-1846.
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	)	
of the Department of Revenue of Cook County, *et al.*,	)	The Honorable David B. Atkins, Presiding
	)	
	)	
Defendants-Appellants.	)	

CERTIFICATE OF SERVICE BY E-MAIL

To: **Martha-Victoria Jimenez** - MarthaVictoria.Jimenez@CookCountyil.gov
Supervisor - Municipal Litigation
Civil Actions Bureau
Cook County State's Attorney's Office
500 Richard J. Daley Center
Chicago, IL 60602

I, Christian D. Ambler, state that on November 4, 2020, I served the foregoing **BRIEF ANDAPPENDIX OF PLAINTIFFS-APPELLANTS** upon counsel listed above by e-mail.

Under penalties as provided by law pursuant to section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ Christian D. Ambler

Christian D. Ambler – ARDC #6228749
STONE & JOHNSON, CHARTERED
111 West Washington St. - Suite 1800
Chicago, Illinois 60602
Telephone (312) 332-5656

David H. Thompson - ARDC # 6316017*
Peter A. Patterson – ARDC # 6316019*
Cooper & Kirk, PLLC
1523 New Hampshire Ave., N. W.
Washington, D. C. 20036
(202) 220-9600
*Appearance entered pursuant to Ill. S. Ct. Rule 707