No. 126014

IN THE
SUPREME COURT OF ILLINOIS

GUNS SAVE LIFE, INC. et al.,

Plaintiffs-Appellants

v.

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

Defendants-Appellees.

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

BRIEF OF DEFENDANTS-APPELLEES COUNTY OF COOK AND ZAHRA ALI AND THOMAS J. DART, IN THEIR OFFICIAL CAPACITIES

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TABLE OF CONTENTS and POINTS AND AUTHORITIES

POINTS AND AUTHORITIES ii

NATURE OF THE CASE 1

ISSUES PRESENTED FOR REVIEW 3

STATEMENT OF JURISDICTION 4

PROVISIONS INVOLVED 4

STATEMENT OF FACTS 5

I. The County Taxes Set Off And Mitigate Expenses That The County Annually Incurs Due To Gun Violence 5

Cook County Code of Ord, ch. 74, art. XX, §§ 74-665 5

Cook County Code of Ord, ch. 74, art. XX, §§ 74-668 6

Cook County Code of Ord, ch. 74, art. XX, §§ 74-677 6

Cook County Code of Ord, ch. 74, art. XX, §§ 74-678 6

II. Procedural History 7

A. The Parties 7

Ill. Const. 1970, art. VII, § 6 7

B. Circuit Court Proceedings 7

Ill. Const. 1970, art. IX, § 2 7

Ill. Const. 1970, art. I, § 22 7

430 ILCS 65/13.1 .... 7, 8

430 ILCS 66/90 .... 7, 8

United States Constitution, Second Amendment 7

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

C. Appellate Court Proceedings 9

Kwong v. Bloomberg, 723 F.3d 160 (2d Cir. 2013) 10

District of Columbia v. Heller, 554 U.S. 570 (2008) 9

Illinois Supreme Court Rule 315 11

Ill. Const. 1970, art. IX, § 2 10

Ill. Const. 1970, art. I, § 22 9

430 ILCS 65/13.1 10

430 ILCS 66/90 10

United States Constitution, Second Amendment 9

STANDARD OF REVIEW 11

Jones v. Mun. Employees Annuity & Ben. Fund of Chi., 2016 IL 119618 11

Tzakis v. Berger Excavating Contractors, Inc., 2019 IL App (1st) 170859 11

Van Meter v. Darien Park Dist., 207 Ill. 2d 359 (2003) 11

ARGUMENT 11

I. The County Taxes Fall Under Cook County's Broad Home Rule Taxing Authority 11

Ill. Const. 1970, art. VII, § 6 .... 11, 12

Mulligan v. Dunne, 61 Ill. 2d 544 (1975) 11, 12

Palm v. 2800 Lake Shore Drive Condominium Ass'n, 2013 IL 110505 12

Scadron v. City of Des Plaines, 153 Ill. 2d 164 (1992) 12

Evanston v. County of Cook, 53 Ill. 2d 312 (1972) 13

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

Midwest Gaming & Entm't, LLC v. County of Cook,
2015 IL App (1st) 142786; 12

National Firearms Act, ch. 757, 48 Stat. 1236 (1934) 13

26 U.S.C. §5811 13

26 U.S.C. §5821 13

Sonzinsky v. United States, 300 U.S. 506 (1937) 13

Watson v. City of Seattle,
189 Wn.2d 149, 401 P.3d 1 (2017) 13

United States Constitution, Second Amendment 14

II. The County Taxes Withstand Scrutiny Under The Second Amendment To The Constitution Of The United States And Article I, Section 22 of the Illinois Constitution 14

United States Constitution, Second Amendment 14

A. The Taxes Are Presumed To Be Constitutional 14

People v. Hollins, 2012 IL 112754 14

Napleton v. Vill. of Hinsdale, 229 Ill. 2d 296 (2008) 14, 15

Hiroshi Hayashi v. Illinois Dept. of Financial and Professional Regulation, 2014 IL 116023 14

Gatz v. Brown, 2017 IL App (1st) 160579 15

B. The County Taxes Do Not Burden Constitutionally Protected Rights 15

Wilson v. County of Cook, 2012 IL 112026 .... 15,16, 18, 19

Coverdale v. Arkansas-Louisiana Pipe Line Co.
303 U.S. 604 (1938) 18

People v. Chairez, 2018 IL 121417 .... 15, 18

Sonzinsky v. United States, 300 U.S. 506 (1937) 16

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

Watson v. City of Seattle,
189 Wn.2d 149, 401 P.3d 1 (2017)..16

Kwong v. Bloomberg, 723 F.3d 160 (2d Cir. 2013) 17

National Firearms Act, ch. 757, 48 Stat. 1236 (1934).......................... 17

26 U.S.C. §5811 17

26 U.S.C. §5821..17

Ezell v. City of Chi., 651 F.3d 684 (7th Cir. 2011)............................... 15

Ill. Const. 1970, art. I, § 22.. 16

United States Constitution, Second Amendment 16, 17, 19

C. The County Taxes Survive Heightened Scrutiny................................. 19

People v. Chairez, 2018 IL 121417 20

Cook County Code of Ord., Ch. 74, art. XX, § 74-677...................... 21, 22

Ezell v. City of Chi., 846 F.3d 888 (7th Cir. 2017).......................... 19, 20

Culp v. Raoul, 921 F.3d 646 (7th Cir. 2019), *cert. denied*, 141 S.
Ct. 109 (2020)... 20

United States v. Skoien, 614 F.3d 638 (7th Cir. 2010) 20, 21

People v. R.L., 158 Ill. 2d 432 (1994)... 23

Exxon Mobile Corp. v. Allapattah Servs., Inc.,
545 U.S. 546 (2005)... 23

Kwong v. Bloomberg, 723 F.3d 160 (2d Cir. 2013) 20

Gould v. Lipson,
907 F.3d 659 (1st Cir. 2018), *cert. denied*, 141 S. Ct. 108 (2020).......... 21

Schall v. Martin, 467 U.S. 253 (1984).. 20

Cook County Code of Ord., Ch. 74, art. XX, § 74-668..................... 21, 22

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

United States v. Redwood,
2016 U.S. Dist. LEXIS 109735 (N.D. Ill. Aug. 18, 2016)....................... 21

Ezell v. City of Chi., 651 F.3d 684 (7th Cir. 2011)................................ 21

United States Constitution, Second Amendment 19-21

D. Plaintiffs' Invocation of Inapplicable Fundamental Rights Jurisprudence Is Mistaken... 23

Bowman v. Continental Oil Co., 256 U.S. 642 (1921) 27

United States v. Guest, 383 U.S. 745 (1966) 27

Ezell v. City of Chi., 651 F.3d 684 (7th Cir. 2011)................................ 24

District of Columbia v. Heller, 554 U.S. 570 (2008) 24, 26

McDonald v. City of Chicago, 561 U.S. 742 (2010)................................ 24

Minneapolis Star & Tribune Co., v. Minnesota Comm'r of Revenue, 460 U.S. 575 (1983) 25

Boynton v. Kusper, 112 Ill. 2d 356 (1986) 25, 26

Harper v. Virginia State Board of Elections,
383 U.S. 663 (1966)... 26

Murdock v. Pennsylvania, 319 U.S. 105 (1943) 26, 27

United States Constitution, Second Amendment 23, 24

E. Article I, Section 22 of the Illinois Constitution Does Not Negate The County's Proper Exercise Of Its Taxing Power.............................. 28

Ill. Const. 1970, art. VII, § 6.. 30

430 ILCS 66/90 .... 29, 30

430 ILCS 65/13.1 30

Ill. Const. 1970, art. I, § 22 .... 28, 30

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

Kalodimos v. Village of Morton Grove,
103 Ill.2d 483 (1984) 28

People v. Marshall, 242 Ill. 2d 285 (2011) 29

6 Record of Proceedings,
Sixth Illinois Constitutional Convention 88 (1970) 29

III. The FOID Act And FCAA Do Not Preempt The County Taxes 30

Ill. Const. 1970, art. VII, § 6 31

430 ILCS 66/90 30-32

430 ILCS 65/13.1 30-32

Mulligan v. Dunne, 61 Ill. 2d 544 (1975) 31

City of Rockford v. Gill, 75 Ill. 2d 334 (1979) 31

Stryker v. Village of Oak Park, 62 Ill.2d 523 (1976) 31

IV. Plaintiffs' Uniformity Clause Claim Fails 32

Ill. Const. 1970, art. IX, § 2 .... 32, 34

Grand Chapter, Order of E. Star of Ill. v. Topinka,
2015 IL 117083 34

Marks v. Vanderventer, 2015 IL 116226 .... 35, 37

Arangold Corp. v. Zehnder, 204 Ill.2d 142 (2003) 32

Empress Casino Joliet Corp. v. Giannoulias, 231 Ill. 2d 62 (2008) 33

Geja's Café v. Metropolitan Pier & Exposition Authority,
153 Ill.2d 239 (1992) 33

Ill. R. Evid. 201(b) 36

Boynton v. Kusper, 112 Ill. 2d 356 (1986) 33, 34

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

V. Maxon Shooter's Supplies Lacks Standing To Challenge The Cook County Taxes 37

Cook County Code of Ord., Ch. 74, art. XX, § 74-668 41

Wexler v. Wirtz Corp., 211 Ill. 2d 18 (2004) 38

City of Champaign v. Torres, 214 Ill. 2d 234 (2005) 39

Eisenstadt v. Baird, 405 U.S. 438 (1972) 39, 40

Craig v. Boren, 429 U.S. 190 (1976) 40

Springfield Rare Coin Galleries, Inc. v. Johnson, 115 Ill.2d 221 (1986).................... 40, 41

CONCLUSION 41

CERTIFICATE OF COMPLIANCE.................... 41

CERTIFICATE OF SERVICE 41

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

NATURE OF THE CASE

Plaintiffs 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 to challenge two sets of taxes relating to the purchase of firearms ("Firearms Tax") and ammunition ("Ammunition Tax") (collectively "County Taxes" or "Taxes") that Defendant County of Cook ("Cook County" or the "County") enacted. (R. C285-313.)[1] The Firearm Tax levies a $25 tax on each firearm purchased from a retailer in Cook County. Cook County Code of Ord., Ch. 74, art. XX, § 74-668(a). The Ammunition tax imposes a tax on the purchase of ammunition, at a rate of $0.01 per cartridge of rimfire ammunition and $0.05 per cartridge of centerfire ammunition. *Id.* at § 74-668(b). Both taxes direct their revenue to the County's Public Safety Fund to support public safety operations. *Id.* at § 74-677.

In their Second Amended Complaint, Plaintiffs allege that the Taxes: (1) are facially unconstitutional under the Second Amendment to the United States Constitution and Article I, Section 22 of the Illinois Constitution; (2) violate the Uniformity Clause of the Illinois Constitution, Ill. Const. 1970, art. IX, § 2; and (3) are preempted by the FOID Card Act ("FOID Act"), 430 ILCS 65/13.1, and the Firearm Concealed Carry Act ("FCCA"), 430 ILCS

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[1] Defendants cite to the record on appeal as "R. C__." The appendix to Plaintiffs-Appellants' Brief and Appendix is cited as "App. __." Plaintiffs-Appellants' Brief is cited as "Br., p. __."

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

66/90. (R. C285-313.) On January 29, 2016, Defendants Cook County, Zahra Ali, Director of the Department of Revenue of Cook County, and Thomas J. Dart, Cook County Sheriff (collectively "Defendants") filed a motion to dismiss Plaintiffs' Second Amended Complaint for lack of standing and failure to state a claim.

(R. C103-32.) 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. C332-37.) As to GSL, the court held that GSL had standing to challenge both Taxes. *Id.* The parties subsequently filed cross-motions for summary judgment; on August 17, 2018, the court granted summary judgement in favor of Defendants on all claims. (R. C1121-24.) Plaintiffs appealed both rulings. (R. C1127.)

The appellate court upheld the circuit court's opinion on March 13, 2020, finding that: (1) Maxon and Smolenski lacked standing to challenge the Firearm Tax; (2) Maxon lacked standing to challenge the Ammunition Tax, reversing the circuit court's finding; (3) Smolenski had standing to challenge the Ammunition Tax; (4) GSL had associational standing to challenge both taxes; and (5) the circuit court properly granted summary judgment in favor of Defendants on all claims. (App. 156-80.)

Plaintiffs petitioned this Court for leave to appeal pursuant to Supreme Court Rule 315, which was granted on September 30, 2020. (App.

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

181-203) (petition for leave to appeal); (App. 295) (order allowing petition for leave to appeal).

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

ISSUES PRESENTED FOR REVIEW

1. Whether the circuit and appellate courts correctly held that the Cook County Firearms and Firearms Ammunition Tax did not facially violate the Second Amendment to the Constitution of the United States.

2. Whether the circuit and appellate courts correctly held that the Cook County Firearms and Firearms Ammunition Tax did not facially violate Section 22 of Article I of the Illinois Constitution.

3. Whether the circuit and appellate courts correctly held that the County of Cook reasonably imposed a tax on purchasers of firearms and firearms ammunition, rather than on non-purchasers, such that there was no violation of the Uniformity Clause of the Illinois Constitution, Ill. Const. 1970, art. IX, § 2.

4. Whether the circuit and appellate courts correctly held that neither the FOID Card Act, 430 ILCS 65/13.1, nor the Firearm Concealed Carry Act, 430 ILCS 66/90, preempted the County Firearms and Firearms Ammunition Tax.

5. Whether the appellate court correctly held that Plaintiff Maxon Shooter's Supplies lacked standing to challenge the Cook County Firearms and Firearms Ammunition Tax.

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

STATEMENT OF JURISDICTION

This Court has jurisdiction over this appeal pursuant to Illinois Supreme Court Rule 315. This Court granted Plaintiffs' petition for leave to appeal on September 30, 2020. *Guns Save Life, Inc., et al. v. Ali, et al.*, No. 126014, 2020 WL 5491359 (Ill. Sept. 30, 2020); (App. 295.)

PROVISIONS INVOLVED

Consistent with Supreme Court Rule 341(i), the following provisions involved in this appeal have been reproduced in Plaintiffs' Appendix:

Cook County Code of Ordinances, Chapter 74, article XX, § 74-668

Cook County Code of Ordinances, Chapter 74, article XX, § 74-669

Cook County Code of Ordinances, Chapter 74, article XX, § 74-670

Cook County Code of Ordinances, Chapter 74, article XX, § 74-677

Firearm Owners Identification Card Act, 430 ILCS 65/13.1

Firearm Concealed Carry Act, 430 ILCS 66/90

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.

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.

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

STATEMENT OF FACTS

I. The County Taxes Set Off And Mitigate Expenses That The County Annually Incurs Due To Gun Violence.

Gun violence in Cook County strains the County's already-limited fiscal resources. In 2017 alone, the Cook County Health and Hospitals System ("CCHHS") treated more than 1,100 patients with gunshot wounds, spending $30,000 to $50,000 on each patient.[2] In total, CCHHS spends approximately $30-40 million annually to treat gunshot wound patients, 25% of whom lack health insurance entirely.[3] In fact, during the first six months of 2020, the number of gunshot wound victims that CCHHS treated increased by 20% compared to the same time frame in 2019.[4]

The County Taxes aim to raise revenue to offset the costs of funding important public safety operations designed to combat gun violence. On November 9, 2012, the Cook County Board of Commissioners ("Cook County Board") enacted an ordinance establishing the Firearms Tax in Cook County. *See* Cook County Code of Ord., Ch. 74, art. XX, §§ 74-665, *et seq*. The

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[2] *Gun Violence: A Public Health Crisis*, Cook County Health & Hospitals System, https://www.cookcountyil.gov/file/6237/download?token=-ETdUwAn (last visited Mar. 5, 2021). *See also Edward Sims Jr. Trust v. Henry Cty. Bd. of Review*, 2020 IL App (3d) 190397, ¶ 26 n. 6 ("It is generally accepted that a court may take judicial notice of the information on a government website."). *See also* App. 81-82, n.3.

[3] *Id.*

[4] Matt Masterson, *Cook County Health: Number of Gunshot Victims Up 20% in 2020*, WTTW NEWS, (June 5, 2020) https://news.wttw.com/2020/06/05/cook-county-health-number-gunshot-victims-20-2020 (last visited Mar. 5, 2021).

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

Firearms Tax imposes a $25.00 tax on the retail purchase of any firearm within Cook County and specifically directs this tax revenue to the Public Safety Fund to support public safety operations. *See id.* at § 74-668(a); *id.* at § 74-677. Specifically, the Public Safety Fund supports the Cook County Sheriff's Office, the Cook County State's Attorney's Office, the Cook County Public Defender's Office, the Office of the Chief Judge, and the Juvenile Temporary Detention Center.[5] 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 rimfire ammunition.[6] *Id.* at § 74-678(b). The Ammunition Tax similarly directs funds to the Public Safety Fund to support public safety efforts. *Id.* at § 74-677. In 2021, the Taxes are estimated to generate $1.2 million in revenue for the Public Safety Fund.[7]

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[5] *2021 Cook County Annual Appropriation Bill Volume 1 Executive Summary*, Office of the President, 6, 34, https://www.cookcountyil.gov/sites/default/files/service/volume-i-budget-overview-fy21-annual-appropriation.pdf (last visited Mar. 5, 2021).

[6] The Taxes' enacting ordinance defines "centerfire ammunition" as "firearm ammunition that is characterized by a primer in the center of the base of the cartridge," and "rimfire ammunition" as "firearm ammunition that is characterized by a primer that completely encircles the rim of the cartridge." Cook County Code of Ord., Ch. 74, art. XX, § 74-666.

[7] *Supra* note 5, at 42.

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

II. Procedural History.

A. The Parties.

GSL is a not-for-profit "gun rights advocacy group."[8] (R. C287, ¶ 9.) Maxon operates a firearms and ammunition shop in Des Plaines, Illinois. (R. C288, ¶ 10.) Smolenski resides in Cook County and owns several firearms; while she has never paid the Firearms Tax, she once paid the Ammunition Tax in the amount of $5.00. (R. C288-89, ¶ 11.)

Defendant Cook County is an Illinois governmental entity and home rule unit of local government. Ill. Const. 1970, art. VII, § 6(a).

B. Circuit Court Proceedings

Plaintiffs filed a four-count complaint seeking declaratory and injunctive relief, challenging the County Taxes as unenforceable because they violate the Second Amendment to the United States Constitution as well as Article I, Section 22 and Article IX, section 2 of the Illinois Constitution (the Uniformity Clause). Plaintiffs also allege that Section 13.1(b) of the FOID Act,

430 ILCS 65/13.1, and Section 90 of the FCC Act, 430 ILCS 66/90, preempt the Taxes. (R. C285-313.)

Defendants filed a motion to dismiss for lack of standing and failure to state a claim on January 29, 2016. (R. C103-32.) The circuit court granted Defendants' Motion to Dismiss in part, holding that while Plaintiffs Maxon

[8] *See About GSL*, GunsSaveLife.com, https://www.gunssavelife.com/sample-page/ (last visited Mar. 5, 2021).

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

and Smolenski lacked standing to bring constitutional challenges to the Firearm Tax, they had standing to challenge the Ammunition Tax. (R. C332-37.) As to GSL, the court found that it had standing to challenge both Taxes. (R. C334-35.)

The parties subsequently filed cross-motions for summary judgment on the remaining claims. (R. C343) (Plaintiffs' motion); (R. C724) (Defendants' motion). The circuit court denied Plaintiffs' motion and granted summary judgment in favor of Defendants on all claims. (R. C1121-24.) Specifically, the court determined that the Taxes did not infringe upon any federal or state constitutional right to bear arms because they: (1) constitute proper exercises of Cook County's home rule taxing powers; and (2) in any event, do not meaningfully impede plaintiffs' ability to exercise their right to bear arms. (R. C1122-23.) Indeed, the court noted that Plaintiffs provided no evidence that the Taxes would prevent ownership or possession of firearms, or that the Taxes affect the ability of law-abiding individuals to retain firearms for self-defense. (R. C1123.) The court went on to say that even if the Taxes burdened constitutionally protected conduct, they nonetheless survive scrutiny because they direct revenue to specific policies and programs designed to combat gun violence and thus are substantially related to the important governmental interest of public safety. *Id.* With respect to preemption, the circuit court held that because the neither the FOID Act nor the FCCA's plain language preempted taxing powers, Plaintiffs' preemption

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

claim necessarily failed. (R. C1124.) Lastly, the court determined that Plaintiffs failed to carry their burden of showing that the different rates of ammunition classification in the Ammunition Tax violate the Uniformity Clause. *Id.*

C. Appellate Court Proceedings.

Plaintiffs appealed, arguing that the circuit court erred in partially granting Defendants' motion to dismiss and in granting Defendants' cross-motion for summary judgment. (R. C1127.)

As to standing, the appellate court largely upheld the circuit court's ruling. It agreed that both Maxon and Smolenski lacked standing to challenge the Firearms Tax, but reversed the circuit court's finding that Maxon had established standing to challenge the Ammunition Tax. (App. 217-19, ¶¶ 33, 38–39.) Specifically, Maxon failed to show that the tax's requirement that it collect and remit the tax caused any real injury. (App. 219, ¶ 38.) With respect to GSL, the appellate court upheld the circuit court's finding that GSL had associational standing to challenge both taxes. (App. 219, ¶ 39.)

As to the merits, the appellate court upheld the circuit court's order in its entirety. First, the court found that Plaintiffs "pleaded no facts to support its conclusion" that the County Taxes "impermissibly restrict the right to keep and bear arms" under the Second Amendment and Article I, Section 22 of the Illinois Constitution. (App. 224-25, ¶ 59.) Instead, it opined that the

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

taxes could be considered a condition on the commercial sale of arms such that they would not run afoul of *District of Columbia v. Heller,* 554 U.S. 570 (2008), and its progeny. (App. 224, ¶ 57.) Ultimately, the appellate court found the Taxes "more akin to various other types of sales taxes." (App. 224, ¶ 58.) Significantly, it found no case law to suggest that imposing such a tax violated the Second Amendment, nor could it find the Taxes "anything more than a 'marginal, incremental or even appreciable restraint'" on Plaintiffs' Second Amendment rights. (App. 224-25, ¶¶ 58–59, quoting *Kwong v. Bloomberg*, 723 F.3d 160, 167 (2d Cir. 2013)). Absent any fact to show that a marginal sales tax could impermissibly burden the right to keep and bear arms, the appellate court upheld the Taxes and deemed it unnecessary to address Plaintiffs' argument as to the strength of the County's justification for enacting the Taxes. (App. 225-26, ¶¶ 61–62.)

Further, as did the circuit court, the appellate court rejected Plaintiffs' argument that the Taxes violate article IX, section 2 of the Illinois Constitution (the Uniformity Clause). (App. 228, ¶ 70.) Specifically, it found that Plaintiffs failed to carry their burden of proving the County Taxes are arbitrary or unreasonable because a rational relationship exists between the Taxes' classifications and the County's need to raise revenue to address costs resulting from gun violence. *Id.*

Finally, the appellate court rejected Plaintiffs' argument that the FOID And FCAA Acts preempted the County Taxes. (App. 231, ¶ 81.)

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

Instead, it agreed with the circuit court that this case concerns taxes, rather than regulatory ordinances, and thus that home rule preemption cannot apply. *Id.*

Following the appellate court's order, Plaintiffs filed a timely notice of appeal to this Court pursuant to pursuant to Illinois Supreme Court Rule 315. (App. 181-203.)

STANDARD OF REVIEW

The circuit court granted Defendant's 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*. *Tzakis v. Berger Excavating Contractors, Inc.*, 2019 IL App (1st) 170859, ¶20; *Van Meter v. Darien Park Dist.*, 207 Ill. 2d 359, 368 (2003) (same).

Further, 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. Thus, this Court's standard of review is *de novo*. *Jones v. Mun. Employees Annuity & Ben. Fund of Chi.*, 2016 IL 119618, ¶ 26.

ARGUMENT

I. The County Taxes Fall Under Cook County's Broad Home Rule Taxing Authority.

Cook County operates as a home rule unit of local government. *See, e.g.*, *Mulligan v. Dunne*, 61 Ill. 2d 544, 548 (1975). Under the

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

Illinois Constitution, except as limited by article VII, a home rule unit "may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; *to tax*; and to incur debt." Ill. Const. 1970, art. VII, § 6(a) (emphasis added). The Illinois Constitution expressly provides that the "[p]owers and functions of home rule units shall be construed liberally." *Id.* at art. VII, § 6(m). Indeed, "Section 6(a) was written with the intention to give home rule units the broadest powers possible" so as to craft local solutions for local issues and problems. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505, ¶ 30 (citing *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 174 (1992)). With respect to taxation in particular, "[t]he framers of the 1970 Constitution considered the power to tax as essential to effective home rule and intended that power to be broad." *Mulligan*, 61 Ill. 2d at 548. And as both lower courts noted, Section 6 of Article VII of the Illinois Constitution provides that the General Assembly can limit any power or function of a home rule unit "other than a taxing power." Ill. Const. 1970, art. VII, § 6(h).

These broad home rule powers authorize the County to tax the sale of goods and services. Courts routinely have upheld such taxes as constitutional exercises of a home rule unit's power to tax. For example, this Court upheld Cook County's tax on the sale of packaged alcoholic beverages, rejecting the argument that the State's extensive taxation and regulation of

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

the liquor industry rendered its sale a matter of state interest rather than local concern. *Mulligan*, 61 Ill.2d at 549–50. An appellate court similarly upheld the County's tax on gambling machines as a proper exercise of Cook County's home rule power to tax. *Midwest Gaming & Entm't, LLC v. County of Cook*, 2015 IL App (1st) 142786; *see also, e.g.*, *Evanston v. County of Cook*, 53 Ill. 2d 312 (1972) (upholding the County's tax on new motor vehicles).

Defendants point to no authority or facts that distinguish the County Taxes from these routine exercises of home rule taxing authority. Indeed, taxes on firearms are neither novel nor uncommon. Since 1934, the federal government has imposed a $200 tax on the making and transfer of certain firearms. *See* National Firearms Act, ch. 757, 48 Stat. 1236 (1934) (codified as amended at 26 U.S.C. §§ 5811, 5821); *see also Sonzinsky v. United States,* 300 U.S. 506, 513–14 (1937) (upholding the $200 tax as a constitutional exercise of Congress's taxation power and declining to speculate as to the motives behind the tax). As recently as 2017, the Washington Supreme Court upheld the City of Seattle's firearms and ammunition ordinance, which similarly imposes a $25 tax on each firearm sold and a $0.02 to $0.05 tax per round of ammunition, against a preemption challenge. *Watson v. City of Seattle*, 189 Wn.2d 149, 159, 401 P.3d 1, 6 (2017) (finding the ordinance was not preempted because it is a tax that "raise[s] revenue for public services" and thus falls under the City's "broad taxing authority").

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

Here, Plaintiffs fail to show that the County Taxes restrict ownership of firearms or ammunition any more than commonplace alcohol or cigarette taxes burden the purchase of those items. *See, e.g.*, *Sonzinsky*, 300 U.S. at 513 (explaining that "[t]o some extent, [every tax] interposes an economic impediment to the activity taxed as compared with others not taxed."). For this reason, the Taxes constitute permissible exercises of the County's extensive home rule taxing authority, and Plaintiffs cannot demonstrate any burden on the Second Amendment right to bear arms.

II. The Cook County Taxes Withstand Scrutiny Under The Second Amendment To The Constitution Of The United States And Article I, Section 22 Of The Illinois Constitution.

Defendants seek to create a Second Amendment issue where none exists. Both the circuit court and appellate court correctly recognized the County Taxes for what they are: *de minimis* sales taxes that place no burden on the substantive legal right. And even if a full Second Amendment inquiry were necessary (it is not), the Taxes withstand heightened scrutiny given their close relationship to the County's interest in reducing the fiscal burden that gun violence creates for the County.

A. The Taxes Are Presumed To Be Constitutional.

As an initial matter, municipal ordinances, like statutes, are presumed constitutional. *People v. Hollins*, 2012 IL 112754, ¶13; *Napleton v. Vill. of Hinsdale*, 229 Ill. 2d 296, 306 (2008) (same). The party challenging the constitutionality of an ordinance carries the burden of proving that it is

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

unconstitutional. *Id*. Moreover, courts are duty-bound to construe legislative enactments so as to uphold their validity if reasonably possible. *Hiroshi Hayashi v. Illinois Dept. of Financial and Professional Regulation*, 2014 IL 116023, ¶ 22. To overcome this presumption, a party that challenges the constitutionality of an ordinance has the burden to clearly establish that it violates the constitution. *Napleton*, 229 Ill. 2d at 06. Here, Plaintiffs fail to meet this burden.

Significantly, Plaintiffs filed facial challenges to the Cook County Firearms and Ammunition Taxes. It is well-established that "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 (2017) (citing *Napleton*, 229 Ill. 2d at 305–06). In other words, "[t]he fact that an enactment can be found unconstitutional under some set of circumstances does not establish its facial invalidity." *Napleton*, 229 Ill.2d at 306.

B. The County Taxes Do Not Burden Constitutionally Protected Rights.

Following the Supreme Court's decision in *Heller*, courts employ a two-pronged test to determine the constitutionality of a law implicating Second Amendment activity. *See Ezell v. City of Chi.*, 651 F.3d 684, 701–03 (7th Cir. 2011) [hereinafter *Ezell I*]; *Wilson v. County of Cook*, 2012 IL 112026, ¶ 41; *see also People v. Chairez*, 2018 IL 121417, ¶ 35, n.3 (electing to follow the

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

Seventh Circuit framework). Under this inquiry, courts must first ask "whether the challenged law imposes a burden on conduct falling within the scope of the second amendment guarantee." *Wilson*, 2012 IL 112026, ¶ 41. If after this first step the historical evidence remains inconclusive or suggests that the regulated category "is not categorically unprotected," courts must complete "a second inquiry into the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights." *Id.* ¶ 42. Here, this second inquiry is unnecessary, as Plaintiffs fail to show that the Taxes burden any protected Second Amendment right under the federal constitution Article I § 22 of the Illinois Constitution.

Plaintiffs offer no legal support for the premise that *de minimis* sales taxes burden the acquisition of guns and ammunition so as to trigger Second Amendment protections. As the appellate court correctly noted, it could not find, nor could Plaintiffs identify, *any* authority for the premise that taxes on firearms and ammunition "impose a burden on conduct falling within the scope of the Second Amendment guarantee." *Wilson*, 2012 IL 112026, ¶ 41; (App. 172, ¶ 58.) Here, Plaintiffs offer no new case law or reasoning to disrupt the appellate court's ruling. Rather, to the extent courts have considered taxes on firearms and ammunition generally, they have been universally upheld.

Upon consideration of the National Firearms Act, 26 U.S.C. § 5801 *et seq*., for example, the United States Supreme Court upheld the Act's $200

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

licensing tax on certain firearms as a constitutional exercise of Congress's taxation power. *Sonzinsky*, 300 U.S. at 513–14. Similarly, in *Watson v. City of Seattle*, the Washington Supreme Court upheld the City of Seattle's firearms and ammunition tax—substantively identical to the County Taxes in its $25 firearm tax and $.02 and $.05 ammunition tax—against a preemption challenge. 189 Wn.2d at 159, 401 P.3d at 6. That neither *Sonzinsky* nor *Watson* even raised Second Amendment concerns is instructive: Plaintiffs can point to no case law in which courts have *considered*, much less struck down, a comparably *de minimis* tax on Second Amendment grounds.

The appellate court recognized as much, emphasizing that in *Heller*, the Supreme Court envisioned this precise scenario when it clarified that it did not intend to "cast doubt on . . . laws imposing conditions and qualifications" on firearm sales. (App. 171-72, ¶ 56) (citing 554 U.S. at 626–27). Plaintiffs' squabble over the semantics of who "collects" versus "bears" the County Taxes' cost—proffered with no citation to case law or other persuasive authority—cannot refute the appellate court's sound reasoning. *See* Br., p. 19. Nor can this Court accept Plaintiffs' assertion, Br., p. 20, that taxes on firearms or ammunition are not sufficiently "longstanding" for purposes of *Heller*'s exclusion. *See* National Firearms Act, ch. 757, 48 Stat. 1236 (1934) (codified as amended at 26 U.S.C. §§ 5811, 5821).

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

Plaintiffs similarly take aim at the appellate court's conclusion that the County Taxes "are more akin to various other types of sales taxes" and not "prohibitive or exclusionary" in substance. Br., p. 20 (citing App. 172-73, ¶¶ 58–59.) Specifically, Plaintiffs take issue with the court's proper invocation of *Kwong v. Bloomberg*, which clarified that "a law does not substantially burden a constitutional right simply because it makes the right more expensive or difficult to exercise." Br., pp. 22–23 (citing *Kwong*, 723 F.3d at 167–68 (upholding New York City residential handgun licensing fee of $340 against a Second Amendment challenge)); *see also, 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). According to Plaintiffs, the Second Circuit applies a different approach when addressing Second Amendment claims,[9] and thus this Court must proceed to the Second Amendment framework's second prong "whenever a challenged law imposes a burden on [protected Second Amendment] conduct . . . whether or not that burden is deemed 'substantial' enough by a court." Br., p. 23 (internal quotations and citation omitted).

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[9] The Second Circuit "require[s] a showing that a regulation operates as a *substantial burden* on the ability of law-abiding citizens to possess and use a firearm for self-defense (or for other lawful purposes) before a heightened scrutiny is triggered." *Chairez*, 2018 IL 121417, ¶ 35, n.3 (internal quotations omitted) (emphasis added).

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

But Plaintiffs misinterpret the appellate court's ruling in the instant case. Plaintiffs failed to show that the County Taxes impose *any* burden on their right to keep and bear arms, much less a "substantial" burden. *See* App. 172, ¶ 59 ("Plaintiffs have not pleaded any facts to support [their] conclusion that such taxes impermissibly restrict the right to keep and bear arms."); *see also* 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."). In other words, this Court need not proceed to the second step because the County Taxes pose *no* burden whatsoever on "conduct falling within the scope of the second amendment guarantee." *Wilson*, 2012 IL 112026, ¶ 41. Whether the burden is "substantial" is thus beside the point.

Absent any showing that the County Taxes restrict their right to keep and bear arms, nor any Second Amendment case law contradicting the lower courts' decisive rulings, Plaintiffs failed to prove that the Taxes "impose a burden on conduct falling within the scope of the Second Amendment guarantee," *Wilson*, 2012 IL 112026, ¶ 41. Accordingly, this Court need not proceed to the second prong of the Second Amendment analysis.

C. The County Taxes Survive Heightened Scrutiny.

As is discussed above, this Court need not proceed to the Second Amendment framework's second step because the Taxes do not burden any constitutionally protected right to bear arms. However, even if the Court

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

does consider the strength of the County's justification for the Ordinance, well-settled case law instructs that the Taxes survive heightened scrutiny.

As an initial matter, Plaintiffs cite to imported legal tests from unrelated fundamental rights doctrines to argue that this Court should apply strict scrutiny. *See* Br., pp. 29–32. But this ignores this Court's well-established Second Amendment jurisprudence, under which the applicable level of heightened scrutiny depends upon a two-part question: courts must determine "how close" a given law "comes to the core" of the Second Amendment right; and (2) the severity of the law's burden on this right. *Ezell v. City of Chicago*, 846 F.3d 888, 892 (7th Cir. 2017) [hereinafter *Ezell II*]; *see also Chairez*, 2018 IL 121417, ¶ 45.

Assuming, *arguendo*, that the County Taxes burden protected Second Amendment conduct (they do not), any encroachment is minimal such that intermediate scrutiny must apply. The appellate court struggled to categorize the Taxes as a "marginal, incremental or even appreciable restraint" on one's Second amendment rights. (App. 172-73, ¶ 59) (citing *Kwong*, 723 F.3d at 167). And in *Kwong*—which Plaintiffs invoke to argue that heightened scrutiny must apply, Br., p. 28—the Second Circuit considered and upheld a $340 handgun licensing fee under *intermediate* scrutiny. 723 F.3d at 167–68. Indeed, the Second Circuit found it difficult to decide whether the $340 fee was sufficiently non-nominal such that it even needed to apply heightened scrutiny under its Second Amendment

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

framework. *Id.* at 167. Surely the County Taxes' *de minimis* cost, in comparison, does not warrant greater scrutiny than a $340 fee.

Moreover, applying intermediate scrutiny conforms with the Seventh Circuit's review of other legislation that imposed much greater burdens on one's Second Amendment rights. *See, e.g.*, *Culp v. Raoul*, 921 F.3d 646, 655 (7th Cir. 2019) (applying intermediate scrutiny to the FCCA's licensing scheme), *cert. denied*, 141 S. Ct. 109 (2020); *United States v. Skoien*, 614 F.3d 638, 641–42 (7th Cir. 2010) (applying intermediate scrutiny to statute prohibiting possession of firearms by persons convicted of a domestic-violence misdemeanor); *United States v. Redwood*, No. 16 CR 00080, 2016 U.S. Dist. LEXIS 109735, at *8–9 (N.D. Ill. Aug. 18, 2016) (applying intermediate scrutiny to "blanket ban on firearm possession within 1,000 feet of a school zone"). Accordingly, Plaintiffs' novel request for strict scrutiny asks for nothing less than a total rejection of this Court's Second Amendment framework.

In any event, the County Taxes are so closely tied to their public safety objective that they survive any level of heightened scrutiny. *See, e.g.*, *Skoien*, 614 F.3d at 641 (intermediate scrutiny requires that a law be "substantially related to an important governmental objective."); *Ezell I*, 651 F.3d at 708 (strict scrutiny requires that a law is "narrowly tailored to serve a compelling governmental interest"). Courts have long recognized that public safety constitutes a compelling governmental objective. *See e.g.*, *Schall v. Martin*,

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

467 U.S. 253, 264 (1984) ("The legitimate and compelling state interest in protecting the community from crime cannot be doubted.") (internal quotations omitted); *Gould v. Lipson*, 907 F.3d 659 (1st Cir. 2018), *cert. denied*, 141 S. Ct. 108 (2020) ("It cannot be gainsaid that [defendant] Massachusetts has compelling governmental interests in both public safety and crime prevention."). The County directs all revenue from the Taxes to the Public Safety Fund, which in turn supports the criminal justice agencies charged with combatting gun violence.[10] *See* Cook County Code of Ord., Ch. 74, art. XX, § 74-677. As the circuit court found, "[d]efraying the societal cost of guns in Cook County is significant, substantial, and an important governmental objective" and the Taxes are "substantially related" to the important government interest of public safety. (R. C1123.) For this reason, and because the County Taxes place at most a *de minimis* burden on Plaintiffs' Second Amendment rights, they pass constitutional muster and must be upheld.

In an effort to evade these dispositive conclusions, Plaintiffs argue that the County Taxes must nonetheless fail because their "text and history" reveal an "illegitimate" purpose. Br., p. 34. First, Plaintiffs' contention that the enacting ordinance's preamble—which states that "the presence . . . of firearms in the County . . . detracts from the public health, safety, and welfare"—reveals improper intent is simply a fallacy with no basis in law or

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[10] *See supra* note 5.

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

fact. *Id.* at 35 (citing (R. C150)). This preamble merely reflects the obvious: the use of firearms and ammunition in Cook County creates public safety costs that are, in part, offset by revenue that the Taxes raise. *See, e.g.*, R. C150 (stating that "the presence . . . of firearms in the [C]ounty detrimentally affects the provision of personnel, services, and equipment associated with the public health, safety, and welfare.") The text of the enacting ordinance makes clear that the Taxes impose nothing more than a *de minimis* tax akin to a sales tax, making any additional inquiry into intent both unnecessary and improper. *See* Cook County Code of Ord., Ch. 74, art. XX, §§ 668(a)–(b).

Moreover, Plaintiffs' legislative history theory ignores the well-settled principle that when analyzing statutory text, "the authoritative statement is the statutory text, not the legislative history or any other extrinsic material." *Exxon Mobile Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 568 (2005); *see also People v. R.L.*, 158 Ill. 2d 432, 442 (1994) ("[C]ourts generally give statements by individual legislators in a floor debate little weight when searching for the intent of the entire legislative body."). Indeed, the United States Supreme Court has rejected the "[j]udicial investigation of legislative history" that Plaintiffs request precisely because it "has a tendency to become . . . an exercise in looking over a crowd and picking out your friends." *Exxon Mobile*, 545 U.S. at 568 (internal quotations omitted). For these reasons, Plaintiffs' novel theory cannot undermine the County's routine and permissible exercise of its home rule taxing authority.

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

D. Plaintiffs' Invocation of Inapplicable Fundamental Rights Jurisprudence Is Mistaken.

In an effort to circumvent the appellate court's finding that the County Taxes do not burden protected Second Amendment conduct, Plaintiffs invoke unrelated doctrines interpreting other fundamental rights. *See* Br., pp. 21–28. But while Plaintiffs are correct that the Appellate Court "*made no attempt* to distinguish" those cases that relate to other fundamental rights, *id.* at 13 (emphasis in original), this omission weighs in Defendants' favor: the cases are irrelevant, and ignoring them as inapplicable does not constitute error. Simply put, in over 200 years of American jurisprudence, the United States Supreme Court has fashioned different rules and tests for various fundamental rights. Thus, while all fundamental rights are co-equal, each is subject to its own carefully-crafted jurisprudence. To be sure, courts may draw inspiration from other amendments when working out new theories and tests. *See, e.g.*, *Ezell I*, 651 F.3d at 702–03 ("Both *Heller* and *McDonald*[11] suggest that First Amendment analogies are more appropriate, and on the strength of that suggestion, we and other circuits have already begun to adapt First Amendment doctrine to the Second Amendment context.") (internal citations omitted). But parties cannot, as Plaintiffs suggest, act as courts themselves to cherry-pick favorable cases from the jurisprudence of one fundamental right to another.

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11 *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

Further, the United States Supreme Court has recognized the great expense that all level of governments—and society at large—bear as a result of gun violence. *See, e.g.*, *Heller*, 554 U.S. at 636 (explaining that while it could not uphold an absolute prohibition of handguns, the Constitution left the District of Columbia "a variety of tools" to combat "the problem of handgun violence in this country."). For this reason, it has explained "that the [Second Amendment] right [is] not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626. Instead, the Court has expressly clarified that its Second Amendment jurisprudence does not "cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill," in sensitive places "such as schools and government buildings," or "conditions and qualifications on the commercial sale of arms." *Id.* at 626–27. In short, Defendants' invocation of unrelated fundamental rights is not tenable where, as here, courts have tailored the Second Amendment framework to accommodate both the right to keep and bear arms and public safety concerns.

In any event, Plaintiffs' attempt to import other fundamental rights cannot move the needle in this case. In *Minneapolis Star & Tribune Co., v. Minnesota Comm'r of Revenue*, 460 U.S. 575 (1983), for example, the United States Supreme Court struck down a "use tax" that the State of Minnesota imposed on the cost of ink and paper products consumed in the production of a publication. Ultimately, the Court found the tax violated the First

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

Amendment because it not only "single[d] out the press," but also "target[ed] a small group of newspapers." *Id.* at 591. But here, Plaintiffs do not, and cannot, explain how *Minnesota Star* is relevant given that the County Taxes apply equally to *all* purchasers.

Plaintiffs' attempt to invoke *Boynton v. Kusper*, 112 Ill. 2d 356 (1986), similarly fails. In *Boynton*, this Court held that a $10 state tax on marriage licenses, used to fund shelters and services for domestic violence victims, violated the fundamental right to marry. *Id.* at 369. Specifically, the Court struck down the tax because it was not rationally related to funding shelters and services for domestic violence victims. *Id.* at 366–68. In other words, the "relation between the procurement of a marriage license and domestic violence" was too attenuated. *Id.* at 367. Again, this outcome remains inapplicable given the Supreme Court's express acknowledgment that the right to keep and bear arms "is not unlimited." *Heller*, 554 U.S. at 626. Nevertheless, the County Taxes' proceeds go into Cook County's Public Safety Fund, thus "provid[ing] funds to implement specific policies and programs designed to combat violence." (R. C1123.) For this reason, the taxes are surely rationally related to the important goal of offsetting the fiscal drain caused by gun violence.

Further, Plaintiffs' comparison to *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966), is unavailing for the simple reason that "the interest of the State, when it comes to voting, is limited to the power to fix

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

qualifications." *Id.* at 668. Accordingly, the Supreme Court in *Harper* rightly found that "introduce[ing] wealth or payment of a [poll tax] as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor." *Id.* 668. But no parallel restriction exists on local and state governments' ability to impose a *de minimis* firearms and ammunitions tax; to the contrary, the County retains broad home rule taxing authority, *see supra* pp. 11–14, and *Heller* expressly provides for such state and local restrictions on conditions of sale, *see* 554 U.S. at 626–27.

Finally, Plaintiffs' analogy to *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), cannot create a Second Amendment burden where none exists. In *Murdock*, the Supreme Court invalidated under the First Amendment a municipal canvassing ordinance that imposed a licensing fee on "all persons canvassing for or soliciting within" the municipality. *Id.* at 106, 113–14. But Plaintiffs overlook a critical portion of the Court's reasoning: in analyzing the ordinance, the Court explained that while a municipality "may not exact a license tax for the privilege of carrying on interstate commerce," it can "tax the property used in, or the income derived from, that commerce." *Id.* at 113. The County Taxes follow this directive, as the County is simply taxing the property used in exercising one's Second Amendment right. *See also, e.g.*, *Bowman v. Continental Oil Co.*, 256 U.S. 642, 648–49 (1921) (upholding New Mexico's excise tax on the use of gasoline); *see also United States v. Guest*, 383 U.S. 745, 757 (1966) (explaining that the "constitutional right to travel

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

from one State to another" is a "right that has been firmly established and repeatedly recognized.").

Accordingly, Plaintiff's misplaced analogies to other fundamental rights jurisprudence are unavailing. The County Taxes do not burden Plaintiffs' right to keep and bear arms. And while this Court need not proceed to the Second Amendment framework's second step, the Taxes nonetheless survive heightened scrutiny.

E. Article I, Section 22 of the Illinois Constitution Does Not Negate The County's Proper Exercise Of Its Taxing Power.

In a final attempt to invalidate the County Taxes as unconstitutional, Plaintiffs maintain that Article I, Section 22 of the Illinois Constitution "flatly prohibits" imposing a tax on the right to keep and bear arms. Br., p. 36. Section 22 states 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 (emphasis added). According to Plaintiffs, this language thus precludes the County from imposing any tax related to firearms. Br., pp. 36–37. Not so.

First, the language of Section 22 makes clear that "the right to keep and bear arms shall not be *infringed*" except for as necessary pursuant to the

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

police power. Ill. Const. 1970, art. I, § 22 (emphasis added). Here, both lower courts properly explained that no such infringement has occurred where, as here, the County Taxes impose nothing more than a *de minimis* tax akin to a sales tax. (App. 172, ¶ 58); (R. C1123.) Absent any infringement, Plaintiffs' theory must fail.

Further, Plaintiffs' reading of section 22 theory leads to an unworkable conclusion. This Court has held that "the right to arms secured by the Illinois Constitution . . . is subject . . . to *substantial* infringement in the exercise of the police power." *Kalodimos v. Village of Morton Grove*, 103 Ill.2d 483, 509 (1984) (emphasis added). Indeed, the Bill of Rights Committee of the 1970 Constitutional Convention recognized that "[b]ecause arms pose an extraordinary threat to the safety and good order of society, the possession and use of arms is subject to an extraordinary degree of control under the police power." *Id.* at 491–92 (quoting 6 Record of Proceedings, Sixth Illinois Constitutional Convention 88 (1970)). Simply put, it does not stand to reason that the General Assembly would have subjected the right to bear arms to broad police power yet shielded it from any taxation whatsoever, particularly in light of comprehensive home rule unit taxing authority, discussed *supra* pp. 11–14. In other words, Plaintiffs' reading of section 22 would bring about the untenable result wherein a home rule entity can substantially infringe the right to bear arms pursuant to the police power, yet cannot impose a *de minimis* tax. *See People v. Marshall*, 242 Ill. 2d 285, 292–93 (2011)

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

(explaining that courts do not "view words and phrases in isolation, but consider them in light of other relevant provisions of the statute" and must "also consider the consequences that would result from construing the statute one way or the other" and "[i]n doing so, presume that the legislature did not intend absurd, inconvenient, or unjust consequences.").

Further, as is discussed *infra* pp. 30–32, both the FCCA and FOID Act specifically reference home rule units' taxing authority with respect to firearms. 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); *see also* 430 ILCS 65/13.1(e) (same). And subsection (h), in turn, clarifies that 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) (emphasis added). Thus, the General Assembly has made clear that the preemption language applies only to handgun regulations, not handgun taxes.

Plaintiffs do not, and cannot, explain why the General Assembly would

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

specifically preserve for home rule units a power to tax handguns if Article I, Section 22 of the Illinois Constitution prohibits such taxation. Rather, the legislature's clear language further reflects that the framers of the 1970 Illinois Constitution intended to authorize home rule taxation of firearms.

III. The FOID Act And FCAA Do Not Preempt The County Taxes.

Plaintiffs concede, consistent with the appellate court's ruling, that the County Taxes are properly viewed as taxes, rather than regulations. (App. 179, ¶ 81); Br., p. 40. Nonetheless, Plaintiffs continue to maintain that the FOID Act and FCAA preempt the County Taxes. This argument must fail, however, for the simple reason that the plain language of both the FOID Act and FCAA only prohibit enactments "inconsistent" with these statutes. 430 ILCS 65/13.1(b)–(c); 430 ILCS 66/90. The Taxes remain consistent with both the FOID Act and FCAA, and thus cannot be preempted.

As this Court has observed, "[t]he framers of the 1970 Constitution considered the power to tax as essential to effective home rule and intended that power to be broad." *Mulligan*, 61 Ill. 2d at 548. For this reason, the General Assembly can limit home rule units' taxing authority only "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)). Relatedly, article VII, section 6(h) of the Illinois Constitution clarifies that "[t]he General Assembly may provide specifically

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

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).

Consistent with section 6(h), neither the FOID Act nor the FCAA preempt the Cook County Taxes. Instead, both statutes expressly clarify that their preemption provisions apply only to those "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); 430 ILCS 66/90 (same). As such, just as section 6(h) carves out home rule taxing authority, the FOID Act and FCAA, by incorporating section 6(h), do the same.

And even if the County Taxes are considered regulations (they are not), both statutes preempt only those "regulations or restrictions" that are "issued . . . in a manner that is inconsistent" inconsistent with their provisions. 430 ILCS 65/13.1(b)–(c); 430 ILCS 66/90 (same). Here, Plaintiffs fail to explain or even address how the County Taxes, as regulations, would be "inconsistent" with either statute. *See* Br., pp. 40–41. Thus, as the circuit court held, and the appellate court agreed, "plaintiffs' argument that the County's firearms and ammunition taxes are preempted by the FOID Act and the FCCA are without merit." (App. 179, ¶ 81); (R. C1123-24.)

IV. Plaintiffs' Uniformity Clause Claim Fails.

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

Plaintiffs' attempt to invalidate the County Taxes under the Uniformity Clause must also fail. Article IX, section 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. To survive scrutiny under the Uniformity Clause, this Court requires that a tax classification: (1) be based upon a "real and substantial difference" between the items taxed and those not taxed; and (2) the classification must be reasonably related to the object of the legislation or to public policy. *Arangold Corp. v. Zehnder*, 204 Ill.2d 142, 153 (2003). Plaintiffs' burden under this test remains high. While the County must "produce a justification" for its classification, the Uniformity Clause is intended only "to enforce minimum standards of reasonableness and fairness as between groups of taxpayers." *Id.* The reviewing court's inquiry into the 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 Café v. Metropolitan Pier & Exposition Authority*, 153 Ill.2d 239, 248 (1992)).

On appeal to this Court, Plaintiffs abandon any argument as to the County Taxes' distinction between rim-fire and centerfire. Br., pp. 37–39. Nonetheless, the circuit court's finding that taxing the two types of

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

ammunition based upon their differing lethality—a finding that the appellate court upheld—remains proper. (R. C1124); (App. 176, ¶ 70.)[12]

Instead, Plaintiffs' again invoke *Boynton* to argue that the County Taxes are not "a sufficiently reasonable means of accomplishing the desired objective." Br., p. 38 (quoting *Boynton*, 112 Ill.2d at 368). But in *Boynton*, this Court found the relationship between the $10 marriage license tax and funding purpose (domestic violence shelters and services) "too remote" because the "relation between the procurement of a marriage license and domestic violence" was too attenuated. *Boynton*, 112 Ill.2d at 366, 367. Here, the relationship between gun sales and County agencies that address gun violence is not so attenuated. Unlike the marriage license tax, the County Taxes' proceeds go towards the County's Public Safety Fund to "provide funds to implement specific policies and programs designed to combat violence." (R. C1123.) Specifically, the Fund supports those County agencies that deal *directly* with gun violence and its consequences: Cook County Sheriff's Office, the Cook County State's Attorney's Office, the Cook County Public Defender's Office, the Office of the Chief Judge, and the Juvenile Temporary Detention

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[12] Plaintiffs also omit any argument as to the distinction between in-County and out-of-County purchasers, as well the distinction between citizens subjected to them and the federal and state personnel, veterans' organizations, and law enforcement personnel who are exempt from the County Taxes—both of which they raised before the appellate court. *Compare* Br., pp. 37–39 *with* (App. 54-55.) To the extent Plaintiffs intend to maintain those theories, Defendants incorporate by reference the arguments made in their response on appeal in the First District. (App. 98-99.)

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

Center.[13] Surely, offsetting the fiscal drain faced by these agencies—agencies that feel the direct impact of gun violence through increasing criminal and civil cases, the prosecution of gun violence, and the housing and care of individuals charged with gun crimes—constitutes a minimally reasonable justification such that the Taxes do not run afoul of the Uniformity Clause. *See also Grand Chapter, Order of E. Star of Ill. v. Topinka*, 2015 IL 117083, ¶¶ 14–15 (finding the State's bed fee tax in a private hospital reasonably related to supporting Illinois' Long-Term Care Provider Fund under the Uniformity Clause, even though the Fund did not directly benefit the private hospital).

According to Plaintiffs, the County Taxes also violate the Uniformity Clause because "while the Ordinance purportedly targets criminals, the tax falls only on law-abiding citizens who possess a valid FOID card and are legally entitled to purchase firearms and firearms ammunition." Br., p.38. But this argument overlooks plain logic and data. First, Plaintiffs' theory falsely assumes that "law-abiding" FOID card owners and members of their household are never *victims*—or even potential victims—of gun crimes. To the contrary, all Cook County residents benefit from the proactive and reactive public safety work to which the County Taxes direct their revenue. *See Marks v. Vanderventer*, 2015 IL 116226, ¶ 21 (where plaintiffs argued that a surcharge to fund a rental housing support program, collected on the

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[13] *See supra* note 5.

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

recording of any county real estate document, was unreasonable because plaintiffs neither directly benefitted nor caused the harms sought to be remedied, the court found a rational relationship existed because any party with a legal interest in real estate would benefit from the program's stabilizing effect on the market).

Second, Plaintiffs ignore the fact that legal gun ownership rates are nonetheless tied to domestic homicide rates.[14] And while it is true that those who are legally entitled to purchase ammunition pay the County Taxes, no record evidence exists to show that gun owners with valid FOID cards do not commit gun crimes for which Cook County must expend monies. In fact, this Court can take judicial notice of the instances in which valid FOID card holders commit gun crimes.[15] *See* Ill. R. Evid. 201(b) (indicating that a judicially noticed fact may be one that is not subject to reasonable dispute

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[14] Sarah Mervosh, *Gun Ownership Rates Tied to Domestic Homicides, but Not Other Killings, Study Finds,* N.Y. TIMES, (July 22, 2019), https://www.nytimes.com/2019/07/22/us/gun-ownership-violence-statistics.html (last visited Mar. 5, 2021).

[15] Katherine Rosenberg-Douglas, *As a man shined a flashlight into cars on his block, a FOID card holder called 911, loaded his gun and waited. Now he's charged with second-degree murder*, CHI. TRIBUNE, (Mar. 3, 2020) https://www.chicagotribune.com/news/breaking/ct-foid-shooting-murder-charge-20200227-puvho7duuzd47dn246aqet7hk4-story.html (last visited Mar. 5, 2021). *See also* Katherine Rosenberg-Douglas, *Explore: Shootings by CCL holders in Illinois since concealed carry law went into effect in 2014*, CHI. TRIBUNE, (Mar. 01, 2020), https://www.chicagotribune.com/news/breaking/ct-viz-illinois-ccl-shootings-tracker-20200227-ww4ldqwdjrd2ze63w3vzewioiy-htmlstory.html (last visited Mar. 5, 2021) (reporting 71 incidents involving CCL holders and related shootings or threats through February, 2020).

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

because it is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."). Relatedly, when a FOID card is revoked, the State lacks an effective mechanism for dispossessing revoked FOID card owners of their firearms.[16] Moreover, before selling a purchaser ammunition, nothing in the law currently requires that gun shop owners check to see if that individual's FOID card is valid.[17] Finally, Plaintiffs' argument ignores the well-documented fact that thousands of guns are stolen every year, many of which are inevitably stolen from lawful gun owners. In 2016 alone, 6,043 guns were reported stolen in Illinois.[18] In short, well-settled data and common sense demonstrate that the County Taxes represent a small, but important, cost borne by the people who either contribute to gun violence in Cook County, or benefit from the County's anti-gun violence efforts.

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[16] Annie Sweeney, et al., *More than 34,000 Illinoisans have lost their right to own a gun. Nearly 80% may still be armed*, CHI. TRIBUNE, (May 23, 2019) https://www.chicagotribune.com/news/ct-met-illinois-guns-foid-cards-revoked-20190520-story.html (last visited Mar. 22, 2021).

[17] *See Sheriff Dart Calls for Legislation to Require FOID Card Verification to Prevent Illegal Ammunition Purchases*, Cook County Sheriff (July 31, 2020), https://www.cookcountysheriff.org/sheriff-dart-calls-for-legislation-to-require-foid-card-verification-to-prevent-illegal-ammunition-purchases/ (last visited Mar. 5, 2021).

[18] Brian Freskos, *Record Gun Theft Poses Threat to Progress Against Violence in Chicago*, THE TRACE, (Oct. 17, 2018), https://www.thetrace.org/2018/10/stolen-guns-are-fueling-violence-in-chicago/ (last visited Mar. 5, 2021).

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

In any event, Plaintiffs continue to offer no explanation as to how the County could tax those who do not purchase firearms legally. Instead, the Taxes presume, as they must, that those who purchase firearms will do so legally. Further, courts have upheld a tax under the Uniformity Clause even where "the burden caused by imposition of [a tax] falls on a group who neither benefits from the [tax] nor caused the problems to be remedied by the [tax]." *Marks*, 2015 IL 116226, ¶ 22. Accordingly, even assuming *arguendo* that the burden of the taxes in this case may fall on citizens wholly unaffected by gun violence and the County's important work to combat it, the tax remains valid due to the rational relationship that exists between firearm and ammunition sales and the need to ameliorate the harms that firearms and ammunition cause in Cook County.

V. Maxon Shooter's Supplies Lacks Standing To Challenge The Cook County Taxes.

The appellate court correctly held that Maxon Shooter's Supplies lacked standing to challenge the County Taxes. As it noted, Maxon maintains no real interest in the Taxes, as the burden of paying them falls squarely on its customers, not Maxon as a retailer; Maxon is merely required to track the sales and remit the tax. *See* App. 166-67, ¶¶37–38, citing *Wexler v. Wirtz Corp.*, 211 Ill. 2d 18, 26 (2004). Further, the deposition testimony of Maxon's General Manager, Sarah Natalie, demonstrates that the retailer operates a module program that automatically tracks the County Taxes' required sales data and can generate a report of all firearms and ammunition

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

sold in a one-month period. (R. C956-58.) This report is separated by type of ammunition based upon four categories, two of which are included in the County Taxes. (R. C958.) Accordingly, Maxon did not incur any additional expense in computing and reporting compliance with the Taxes, leaving it with no concrete injury to challenge the Ammunition Tax.

Plaintiffs counter, based largely upon Natalie's affidavit, that while the County requires Maxon to report individual rounds of rimfire and centerfire ammunition sold, its software tracks boxes of ammunition sold, thus resulting in "many hours each month" spent on addressing this data discrepancy. Br., p. 43 (citing R. C437-39). The appellate court, however, rejected this argument, ultimately finding Natalie's deposition testimony as to the reporting system already in place instructive in clarifying that no real injury existed as to the Ammunition Tax. (App. 167, ¶ 38.) Nevertheless, even if this Court were to reject the appellate court's reasoning in this regard, it is not constrained by the appellate court's reasoning and may affirm on any basis supported by the record. *City of Champaign v. Torres*, 214 Ill. 2d 234, 241 (2005).

Moreover, Plaintiffs cannot salvage Maxon's standing based upon unrelated, distinguishable cases. For example, Plaintiffs invoke *Eisenstadt v. Baird*, 405 U.S. 438 (1972), for the principle that a vendor of contraceptives had standing to assert the rights of unmarried persons denied access to contraceptives. Br., p. 42. But in *Eisenstadt*, the party asserting standing

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

was not a "vendor" at all. Rather, plaintiff William Baird was a contraceptive advocate who, after giving a lecture at Boston University, distributed a contraceptive to a woman in violation of a Massachusetts statute that prohibited selling, lending, or giving away any contraceptive to unmarried persons. 405 U.S. at 440. Eisenstadt was subsequently arrested and convicted for his crime. *Id.* Ultimately, the Court found that Baird's role as an advocate for unmarried persons unable to access contraceptives gave him standing to challenge the statute. *Id.* at 445–46. Critically, the Court also found relevant the fact that unmarried persons denied access to contraceptives in Massachusetts could not have challenged the criminal statute at issue, as they were not subject to prosecution under the Act. *Id.* at 446. Thus, the interests of justice—in conjunction with Eisenstadt's relationship to those affected—conferred him with standing to challenge the Act. Here, Maxon is a business that has no advocacy relationship with those affected by the County Taxes. More importantly, unlike in *Eisenstadt*, those purchasers affected by the County Taxes have standing and can sue in their own right. Thus, the interests of justice so paramount in *Eisenstadt* cannot salvage Maxon's standing.

Similarly, *Craig v. Boren*, 429 U.S. 190 (1976), is inapplicable to Maxon's standing. Plaintiffs cite *Craig* for the principle that a vendor of alcoholic beverages had third-party standing to assert its customers' constitutional claims. Br., p. 42. But in *Craig*, Plaintiff Carolyn Whitener

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

was a liquor retailer who had demonstrated "a direct economic injury" as a result of Oklahoma laws prohibiting the sale of certain beer to males under 21 and females under 18 years of age. *Craig*, 429 U.S. at 191–92, 194. Further, the Court also found persuasive the fact that 18-to-21-year-olds would have difficulty establishing standing to challenge the laws, given that they were not subject to penalties and likely would attain the age of 21 during the course of litigation. *Id.* at 192–94. Here, in contrast, the law in question is a *de minimis* tax—rather than a full-scale prohibition—that the appellate court rightly found caused no concrete injury to Maxon. (App. 166-67, ¶¶ 37–38.) And again, purchasers affected by the County Taxes have standing to sue in their own right. Accordingly, Plaintiffs' reliance on *Craig v. Boren* cannot manufacture standing for Maxon where none exists.

Finally, Plaintiffs' citation to the retailers' occupation tax in *Springfield Rare Coin Galleries, Inc. v. Johnson*, 115 Ill.2d 221, 229 (1986) is also unavailing. There, the retailer plaintiff challenged an amendment to Illinois' occupation and use tax statutes. *Id.* at 225. Ultimately, this Court conferred standing on the retailer plaintiff precisely because plaintiff, by virtue of its status as an Illinois retailer, had tax liability under a retail tax directly affected by the contested amendment. *Id.* at 228–29. Here, in contrast, the County Taxes' plain language makes clear that firearm and ammunition purchases bear their cost, while retailers such as Maxon incur no tax liability whatsoever. *See* Cook County Code of Ord., Ch. 74, art. XX,

SUBMITTED - 12504819 - Marina Castanon - 3/9/2021 1:22 PM

§§ 74-668(c) (prohibiting retailers from failing to include the Taxes in the sale price of firearms or ammunition).

For all these reasons, the appellate court correctly held that Maxon Shooter's Supplies lacked standing to challenge the County Taxes.

CONCLUSION

For the above-stated reasons, Defendants respectfully request that the Court affirm the decision of the appellate court to: (1) uphold the circuit court's decision granting in part Defendants' Motion to Dismiss; (2) reverse the circuit court's decision as to Plaintiff Maxon's standing to challenge the Ammunition tax; and (3) affirm the circuit court order denying Plaintiffs' Motion for Summary Judgment and granting Defendants' Cross Motion for Summary Judgment.

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No. 126014

IN THE SUPREME COURT
OF THE STATE OF ILLINOIS

GUNS SAVE LIFE, INC. et al. Plaintiffs-Appellants, v. ZAHRA ALI, solely in her capacity as Director of the Department of Revenue of Cook County, et al. Defendants-Appellees.	Appeal from the Appellate Court of the First Judicial Circuit, No. 1-18-1846 There heard on appeal from the Circuit Court of County, Illinois, Chancery Division No. 15-CH-18217 The Honorable DAVID B. ATKINS, Judge Presiding.

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 42 pages.

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CERTIFICATE OF FILING AND SERVICE

I certify that on March 9, 2021, I had electronically filed the foregoing Defendants-Appellees' Brief with the Clerk of the Illinois Supreme Court by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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