
No. 23-1353

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

ROBERT BEVIS; LAW WEAPONS, INC.,
an Illinois corporation doing business as
Law Weapons & Supply; and NATIONAL
ASSOCIATION FOR GUN RIGHTS,

Plaintiffs-Appellants,

v.

CITY OF NAPERVILLE, a municipal
Corporation and JASON ARRES,

Defendants-Appellees,

and

STATE OF ILLINOIS,

Intervenor-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division,
Case No. 22-cv-04775
Hon. Virginia M. Kendall, Judge Presiding

**BRIEF OF THE CITY OF CHICAGO AS *AMICUS CURIAE*
IN SUPPORT OF APPELLEES AND AFFIRMANCE**

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STATEMENT OF INTEREST OF THE *AMICUS CURIAE*

The City of Chicago, the third largest city in the United States, faces a serious problem of firearms violence and leads the nation in mass shootings.¹ Assault weapons and large-capacity magazines (“LCMs”) have greatly contributed to recent spikes in violent crime. Between 2018 and 2022, the Chicago Police Department (“CPD”) recovered more than 3,500 assault weapons, including hundreds of semiautomatic weapons that have been modified to be automatic or automatic-capable. Unfortunately, the numbers reflect an upward trend; in 2022, CPD recovered more than 1,713 assault weapons, a five-fold increase from 2018.

Chicago is also a thriving metropolis with a population of more than 2.7 million and tens of millions of visitors each year. It is home to numerous public gathering places, like schools, places of worship, restaurants, nightclubs, theaters, concert halls, sports arenas, public parks, and other large venues. Hundreds of thousands of people also gather for festivals, parades, rallies, and other special events every year. Public spaces like these have become targets for mass shootings carried out with assault weapons and LCMs. Most infamously, 21 children and teachers were killed and 17 wounded at Robb Elementary School in Uvalde, Texas, in 2022; 58 people were killed and hundreds more wounded at a concert in Las Vegas in 2017; 50 people were killed and 53 wounded at Pulse Nightclub in Orlando

¹ All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, no counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than *amicus curiae* and its counsel made a monetary contribution to its preparation or submission.

in 2016; and 28 children and teachers were killed at Sandy Hook Elementary School in Newtown, Connecticut, in 2012. And just four days before the filing of this brief, eight people were killed and seven wounded at a mall in a suburb of Dallas. In our own backyard, four people were killed at Chicago Mercy Hospital in 2018, and seven were killed and 46 wounded at a July 4th parade in suburban Highland Park in 2022. And many more have been killed or injured in public parks, near schools, and at vigils and other community events across Chicago's South and West sides.

In 1992, Chicago City Council enacted an ordinance banning assault weapons, see Chicago City Council Journal of Proceedings, July 7, 1992, p. 19196, which has been amended from time to time, and now includes a ban on LCMs, Municipal Code of Chicago, Ill. § 8-20-085. These regulations continue to play an important role in law enforcement, but this regulatory scheme alone cannot prevent the flow of deadly firearms and magazines into Chicago's borders. The additional coverage provided by the State and City of Naperville laws will guard against even more assault weapons entering Chicago and help protect the physical safety and peace of mind of Chicago residents. Chicago, therefore, has a strong interest in ensuring that it and other state and local governments are able to maintain effective regulations in response to increasing firearm danger. Chicago's interest is particularly acute because its assault weapon and LCM restrictions are also the subject of pending litigation, Herrera v. City of Chicago, No. 23-cv-532 (N.D. Ill.).²

² As of the filing of this brief, this court was considering, but had not yet decided, whether to consolidate this case with Herrera.

ARGUMENT

Assault weapons and LCMs are instruments of war. In the hands of civilians, they unleash unimaginable carnage by perpetrators of mass shootings, pose a grave threat to law enforcement officers, instill terror in citizens, disrupt public life, undermine democracy, and impose significant economic and social costs on communities and municipal governments. While these effects are felt nationwide, dense urban environments have particularly suffered.

In Chicago, the growing availability of assault weapons and LCMs nationwide has collided with the epidemic of local gun violence that has long plagued the City, resulting in a rash of attacks in public parks, near schools, and at vigils and other community events. Regulation of these deadly firearms and magazines is critical. And such regulation passes constitutional muster. Assault weapons and LCMs are neither commonly used for, nor facilitate, self-defense, but instead are dangerous and unusual. Naperville's ban on their commercial sale and the State's ban on their commercial sale and possession are also consistent with the nation's historical tradition of weapons regulation, which has embraced restrictive regulations to abate public terror caused by dangerous and unusual weapons.

I. ASSAULT WEAPONS AND LCMS ARE NOT IN COMMON USE FOR SELF-DEFENSE AND ARE DANGEROUS AND UNUSUAL.

In District of Columbia v. Heller, 554 U.S. 570 (2008), the United States Supreme Court recognized an "important limitation on the right to keep and carry arms." Id. at 627. The Court explained that the Second Amendment protects only

the possession and use of weapons that are “in common use at the time.” Id. (quoting United States v. Miller, 307 U.S. 174, 179 (1939)). The Court further explained that this “limitation is fairly supported by the historical tradition of prohibiting the carrying of dangerous and unusual weapons.” Id. (quotations omitted). Indeed, William Blackstone – whom the Court deemed “the preeminent authority on English law for the founding generation,” id. at 593-94 (quoting Alden v. Maine, 527 U.S. 706, 715 (1999)) – described “[t]he offense of riding or going armed, with dangerous or unusual weapons,” as “a crime against the public peace, by terrifying the good people of the land,” 4 William Blackstone, Commentaries on the Laws of England 85 (1769). The Court again recognized this founding-era limitation on the right to bear arms in New York State Rifle & Pistol Association v. Bruen, 142 S. Ct. 2111 (2022), where it explained that “the Second Amendment protects only the carrying of weapons that are those ‘in common use at the time.’” Id. at 2143 (quoting Heller, 554 U.S. at 627). The Court further explained that the Second Amendment does not protect weapons that “‘are highly unusual in society at large.’” Id. (quoting Heller, 554 U.S. at 627). Under these principles, the State’s and Naperville’s restrictions on assault weapons and LCMs must be upheld because those instruments are not in common use and, in fact, are dangerous and unusual.

A. Assault Weapons And LCMs Are Not In Common Use For Self-Defense.

The Second Amendment protects arms that are in common use for purposes of self-defense. As Heller explained, the right that the founders adopted from the English Bill of Rights was the “right of self-preservation,” 554 U.S. at 595 (quoting

Blackstone, supra, at 145-46 n.42), meaning the “the inherent right of self-defense” is “central to the Second Amendment,” id. at 628, and is its “core” purpose, id. at 630. Bruen clarified that the definition of arms “covers modern instruments that facilitate armed self-defense.” 142 S. Ct. at 2132. Thus, the arms protected by the Second Amendment must be both widely accepted and well-suited for the purpose of defending one’s person and home. In Heller, the Court considered a handgun to be the “quintessential” weapon for that purpose. 554 U.S. at 629.

Assault weapons and LCMs, however, are neither commonly used for, nor facilitate, self-defense. Only a small number of Americans even own an assault weapon. Of all firearms in circulation, only 5.3% are assault weapons, R. 57-7 ¶ 27, while 50% are handguns, id. ¶ 28.³ Less than 8% of all gun owners have an assault weapon, and less than 2% of all Americans own one. Id. ¶ 27. An even smaller number of Americans purport to own assault weapons for the purpose of self-defense – approximately one-third of AR-15 owners, according to plaintiffs. Brief of Plaintiffs-Appellants 19. This means, even accepting the self-serving statements of AR-15 owners, less than 1% of Americans own an assault weapon for self-defense. That is hardly “common use.”

Indeed, assault weapons and LCMs do not facilitate self-defense. Assault weapons offer none of the advantages of handguns; they are more complex, less intuitive, and less reliable. R. 61-1 at 44 (23-1793). They are also unnecessary. Most defensive shootings occur “in close quarters, in places such as rooms, hallways,

³ We cite the record in this case as R. _____. We also cite to the record in Herrera, and do so as R. ____ (23-1793).

parking lots, and common areas in buildings,” *id.* at 64, so there is no need for a weapon with a range of 400-500 yards, like that of an AR-15, R. 57-9 ¶ 26. And the average number of shots fired in self-defense is 2.2, R. 54-5 at 8, 22 (23-1793), so there is no need for a firearm or magazine that can rapidly shoot a large number of rounds. Critically, assault weapons are more likely to kill or injure, not just an offender, but innocent bystanders. Their high-velocity bullets can penetrate walls, threatening the lives of neighbors, especially in densely populated areas, and they are more lethal, further increasing the likelihood of unintended victims. R. 61-1 at 64 (23-1793); R. 54-8 ¶ 9 (23-1793). Plainly, “[t]he purpose of assault weapons is not self-defense, but to kill multiple people with extreme speed and efficiency.” R. 54-8 ¶ 7 (23-1793).

B. Assault Weapons And LCMs Are Dangerous And Unusual.

In Heller, the Court explained that “weapons that are most useful in military service,” such as M-16 rifles, are not the type of weapons ordinary citizens would maintain for self-defense. 554 U.S. at 627. The Court also explained that such weapons are “highly unusual in society at large,” *id.*, no doubt for the very reason that they are weapons of war and serve no lawful purpose in civilian life.

Assault weapons and LCMs, like M-16 rifles, are military-grade instruments. They are increasingly employed by perpetrators of mass shootings, are exceedingly lethal, and pose a grave threat to law enforcement. Indeed, the AR-15, the very weapon that the plaintiff in Herrera owns, Brief of Amicus Curiae Dr. Javier Herrera 1, is a close cousin of the M-16, sharing its military origins, R. 57-4 ¶ 32;

R. 52-2 ¶ 16 (23-1793); Todd C. Frankel, et al., The Gun That Divides a Nation, Wash. Post, March 27, 2023.⁴ The AR-15 traces its roots to the ArmaLite AR-15, which was developed by the U.S. Army in the late 1950s and used in the Vietnam War. R. 57-4 ¶¶ 25-26; R. 52-2 ¶ 16 (23-1793); Frankel, supra. The weapon was lauded for its light weight, maneuverability, and ability to shoot bullets at an extremely high velocity, R. 57-4 ¶¶ 30-34, between four and 19 times the velocity of a bullet fired by a handgun, R. 57-6 ¶ 26. Designed for “maximum wound effect,” the bullets “travel nearly three times the speed of sound,” R. 57-4 ¶ 34, creating “catastrophic injuries” when they penetrate the human body, id. ¶ 27. “[A]s the bullet strikes the body, the payload of kinetic energy rips open a cavity inside the flesh,” thereby “destroying the inelastic tissues, including nerves, blood vessels and vital organs.” Id. ¶ 34. Details of the weapon’s carnage in Vietnam are “harrowing” – single rounds caused abdominal and thoracic cavities to explode and completely took off heads and limbs. Id. ¶ 27. Consequently, the ArmaLite AR-15 was described as having “phenomenal lethality,” id. ¶ 32, and as the “perfect killing machine,” id. ¶ 34. It was eventually rebranded as the M-16 with minimal modifications, and today there is little difference between the M-16s Heller described as useful for military purposes, but not self-defense, and the AR-15s now used by civilians, like Herrera. Id. ¶¶ 32, 35; R. 52-2 ¶ 16 (23-1793). These military-grade weapons are particularly dangerous in the hands of civilians because of their extraordinary lethality, as well as the extraordinary challenges they present

⁴ <https://www.washingtonpost.com/nation/interactive/2023/ar-15-america-gun-culture-politics/> (last visited May 10, 2023).

to law enforcement officers attempting to prevent and respond to shooting incidents involving such weapons.

Extraordinary Lethality. The marketing of AR-15s and other assault weapons for civilian use certainly did not diminish their phenomenal lethality. Trauma surgeons have been shocked by the “unbelievable devastation” caused by assault weapons, R. 57-6 ¶ 33, likening the carnage to a “war zone,” R. 57-9 ¶ 29. “[A]ssault weapon blasts to the head, neck, or trunk are usually lethal,” *id.* ¶ 34, and survivors routinely suffer injuries to multiple organs and major blood vessels, experience “tremendous blood loss,” “require a series of operations” and “prolonged hospitalizations,” undergo amputations, and live with permanent disabilities, *id.* ¶¶ 36-37. A single round can destroy organs, shatter bones, and shred soft tissue “in a way that looks like an explosion happened.” *Id.* ¶ 35. See also R. 57-6 ¶ 32 (assault weapons more likely to cause “severely lacerated” organs, “catastrophic bleeding,” and “significant damage to bones and skeletal structure”); R. 54-10 at 5 (23-1793) (“[b]ones are more likely shattered and soft tissue more likely destroyed”). And assault weapons are even more lethal to children, who have smaller torsos, more compressed vital organs, and smaller blood reserves. R. 57-6 ¶ 35. Indeed, “[n]ot a single child wounded by an assault weapon at Sandy Hook survived.” *Id.*

LCMs “increase this destructive potential” of firearms “by increasing the number of bullets that can be fired during a given time period.” R. 57-6 ¶ 30. For example, in Highland Park, the perpetrator fired 83 rounds in under 60 seconds, striking 55 parade attendees – seven fatally. R. 52-2 ¶ 19 (23-1793). And in Las

Vegas, the perpetrator fired hundreds of rounds per minute, for ten minutes, killing 58 concertgoers and wounding several hundred more. R. 57-9 ¶ 29. As these incidents illustrate, assault weapons equipped with LCMs “are deadly accurate weapons with enormous destructive capacity” that “can be fired at a rate of hundreds of rounds per minute” and “are designed for the purpose of maximum killing in wartime settings.” Id. ¶ 41.

It is the military character of assault weapons and LCMs that makes them increasingly attractive to perpetrators of mass shootings. The light weight and high maneuverability of assault weapons, along with their low recoil, allow perpetrators to move around easily and continue firing without having to re-aim. R. 57-9 ¶ 27. They also have an effective range of 400-500 yards, compared to 50 for a typical handgun, allowing mass shooters to attack unseen from windows or rooftops. Id. ¶ 26. That is how the Las Vegas shooter struck several hundred people from the 32nd floor of a hotel. Id. ¶ 29. And these instruments play a disproportionate role in mass shootings. While assault weapons make up only 5.3% of firearms in circulation in the United States, R. 57-7 ¶ 13, nearly two-thirds of all mass shootings in the past four years have involved assault weapons, and all have involved LCMs, id. ¶ 12. Not only do assault weapons and LCMs play an outsize role in mass shootings, but they cause an outsize number of fatalities – mass shootings involving assault weapons and LCMs resulted in 67% and 58% more fatalities, respectively, than those not involving such instruments. Id. ¶ 15; R. 54-13 at 16 (23-1793). “The combination of high kinetic energy, the ability to fire

rounds rapidly, deadly accuracy at great distance, a high degree of maneuverability, and low recoil results in maximum killing potential.” R. 57-9 ¶ 28.

Major cities, like Chicago, have acutely suffered from the rise in assault weapons and LCMs. While Chicago’s homicide rate fell in the late 1990s and early 2000s with the enactment of the federal assault weapons ban, it has spiked again over the last decade as AR-15s and other assault weapons have flooded the market. Kyle Bente, et al., 40,000 Homicides: Retracing 63 Years of Murder in Chicago, Chicago Tribune, Apr. 27, 2021.⁵ As for mass shootings, Chicago leads the nation; between 2019 and 2021, the City saw 124 incidents where at least four people were shot, averaging roughly one per week. Odette Yousef, Chicago Leads the Nation in Mass Shootings, WBEZ Chicago, June 17, 2021.⁶ And, as we further explain in Part II, a growing number of these shootings involve assault weapons. According to CPD, “[d]emand for assault weapons” has “risen in recent years,” R. 54-8 ¶ 13 (23-1793), in large part because gang members are procuring more assault weapons, which they use to intimidate other gangs or to respond in kind to shootings involving assault weapons, id. ¶ 14. Between 2018 and 2022, CPD recovered more than 3,500 firearms that constitute assault weapons under the City’s ordinance, including hundreds of semiautomatic weapons that have been modified to be automatic or automatic-capable. Id. ¶¶ 11, 13. And the number recovered each

⁵ <https://www.chicagotribune.com/news/breaking/ct-history-of-chicago-homicides-htmlstory.html> (last visited May 10, 2023).

⁶ <https://www.wbez.org/stories/chicago-leads-the-nation-in-mass-shootings-averaging-about-one-per-week/4bbb8057-71d3-4551-99d2-efc9fd65a17d> (last visited May 10, 2023).

year has continued to trend upward; in 2022 alone, CPD recovered 1,713 assault weapons, a five-fold increase from 2018. Id. ¶ 13.

Law Enforcement Challenges. As deadly as assault weapons and LCMs are to average citizens, they “pose a disproportionate risk to law enforcement.” R. 57-4 ¶ 52. One in five officers slain in the line of duty is killed with an assault weapon. Id. ¶ 52; R. 54-4 ¶ 44 (23-1793). In Chicago, most police officers do not use or train with assault weapons, meaning “most of the time, the officer first responding to an active shooter incident involving an assault weapon will usually have weaker firepower than the assailant.” R. 54-8 ¶ 16 (23-1793). On top of that, “the high velocity of bullets fired by assault weapons” enables them “to defeat standard protective equipment.” Id. ¶ 17. In fact, in nearly 25% of the incidents in which officers were slain by assault rifles in the line of duty, the “bullet penetrated the officer’s body armor.” R. 57-4 ¶ 52. Even the highest level of protective equipment, which includes ballistic helmets and bullet-proof vests outfitted with trauma plates, R. 54-8 ¶ 18 (23-1793), “would not ensure that officers are protected from” an assault weapon, id. ¶ 21. The “equipment still leaves some parts of the body vulnerable,” and even where a bullet “is stopped by the vest plate,” the body can still suffer “major trauma.” Id. Moreover, this heavy-duty protective gear is expensive, bulky, limits mobility, and requires specialized training, making it impractical for officers to wear on their daily beats. Id. ¶ 19. And implementing training alone “would be a huge logistical and financial undertaking” and would “reduce the time that officers otherwise have available for protecting public safety

through their normal policing routines.” Id. ¶ 22. See also R. 57-4 ¶ 49 (“standard-issue ballistic vests are not rifle-rated” and “do not protect the body against bullets fired by assault rifles”; high-level protective gear “takes time to put on and limits the movement of the responding officers”; and “many assault weapons are able to fire rounds that pierce even ceramic and metal-plated vests and body armor”).

What is more, “[t]raditional law enforcement tactics” are “inadequate to mitigate the threat posed by assault weapons.” R. 57-4 ¶ 54. Law enforcement officers must have “significant skills, training, practice, and coordinated movement and action to defend against and eliminate” an active shooter, id. ¶ 55, but most local governments do not have the resources for that training, or for equipment that could help with such responses, like armored vehicles, explosives, robots, and drones, id. ¶ 54. In any event, no matter how well-trained, an officer “still rarely has the opportunity to respond under the surprise circumstances” of a mass shooting. Id. ¶ 55. As demonstrated by the Highland Park and Las Vegas shootings – where the perpetrators shot numerous rounds, in mere minutes, before they were interrupted – “a well-placed attacker with an assault weapon is devastatingly effective and decreases the opportunity for effective law enforcement response.” Id. ¶ 56. Thus, such attacks are deadly, even where law enforcement officers, armed security, and lawfully armed citizens are present. Id. ¶ 53.

Advanced planning for large public events presents even greater challenges. Law enforcement agencies rarely have the means to implement the “rigorous safety plans” necessary to lessen the impact of an attack. R. 61-1 at 62 (23-1793). Such

plans require barricading roadways, clearing and securing large areas and rooftops, constant monitoring by drones and video cameras, establishing a command center, gathering intelligence, and maintaining a significant law enforcement presence, ideally tactically trained SWAT teams with special weapons, protective gear, and armored vehicles. Id. ¶ 72; R. 57-4 ¶ 47. Only “a handful of entities with substantial resources” are able to provide this level of security. R. 61-1 at 62 (23-1793).

CPD, for its part, has “adjusted its large-event and domestic terrorism preparations to address assault weapons and mass shootings,” and has dedicated “increasingly large amounts of resources and time to securing public events,” R. 54-8 ¶ 24 (23-1793), thereby “depleting the resources available for other activities, including routine policing in neighborhoods,” id. ¶ 25. Nevertheless, traditional safety plans and countermeasures are no match for an attack with an assault weapon at a public event. At Chicago’s 2022 Lollapalooza, for example, an event that attracts close to 400,000 attendees, CPD received a report of a threat, which caused it “to evaluate whether to evacuate everyone,” an extremely difficult “operational decision[]” that could have led to a loss of life either way. Id. ¶ 26. It is virtually impossible in such a situation – where the park is surrounded by high-rise apartment buildings, offices, and hotels – to know where a shooter is located. In fact, a shooter armed with an assault rifle could take advantage of an evacuation by lying in wait outside a secured perimeter. Id. ¶ 26.

The everyday gang violence with assault rifles, along with the threat of mass shootings at large public events, places enormous stress on CPD officers and has other, indirect but profound, effects on law enforcement. An officer can never know in advance if an individual will have an assault weapon, nor guarantee that an attack with an assault weapon can be stopped. R. 54-8 ¶ 27 (23-1793). For these reasons, encountering an individual armed with an assault weapon “is one of the most stressful situations” for an officer. Id. This undermines officer health, recruitment, retention, performance, and overall well-being, to the detriment of the officers, as well as the communities they serve and protect. R. 57-4 ¶ 57.

II. THE CHALLENGED LAWS ARE CONSISTENT WITH THE HISTORICAL TRADITION OF REGULATING WEAPONS THAT STRIKE TERROR IN PUBLIC PLACES.

The State’s and Naperville’s restrictions are also analogous to historical regulation of weapons as necessary to quell terror in public places. As the Court explained in Bruen, these laws are subject to “analogical reasoning,” id. at 2132, which means the government need only identify a “historical *analogue*, not a historical *twin*,” id. at 2133. A historical regulation “is a proper analogue for a distinctly modern firearm regulation” if the two “are relevantly similar.” Id. at 2132 (quotation omitted). Proper considerations are “how and why the regulations burden a law-abiding citizen’s right to armed self-defense,” id. at 2133, and whether the two regulations address the same “general societal problem,” id. at 2131. And where the challenged laws implicate “unprecedented societal concerns or dramatic technological changes,” the analysis requires “a more nuanced approach.” Id. at

2132. Analogical reasoning is not “a regulatory straightjacket,” *id.* at 2133; “the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated,” *id.* at 2132.

There are many crucial analogies to be drawn from historical weapons regulations, many of which are addressed in the briefs of the State, Naperville, and other amici. Here, we focus on one of these critical analogies – in both the founding era and now, stringent restrictions on carrying firearms and other weapons have been enacted to address the fear and disturbance to the public peace caused by the mere possession of these weapons. Bans on assault weapons and LCM’s address the same concerns. As we explain further below, assault weapons and LCMs are so dangerous that a person need not even carry or brandish such an instrument in public in order to incite terror; the mere possession of assault weapons and LCMs in private spaces threatens the public peace.

Historical Regulations on Threats to the Public. As we explain above, the right to bear arms enshrined in the Second Amendment was understood to protect the right of self-preservation found within the English Bill of Rights, and, as Blackstone described, that right was properly limited by the prohibition on “riding or going armed, with dangerous or unusual weapons.” Blackstone, *supra*, at 85. That limitation originated in the Statute of Northampton of 1328, which sought to prevent “the terror of the King’s People.” Mark A. Frassetto, To the Terror of the People: Public Disorder Crimes and the Original Public Understanding of the Second Amendment, 43 S. Ill. U. L.J. 61, 62, 68 (2018). Under the statute, “a

passive” threat to the public was all that was required to show a breach of the peace. *Id.* at 68. “The act of traveling with an offensive weapon by its very nature provoked a ‘fear of the people’ – there was no need to establish a specific intent to terrify or prove that an action was an actual breach of the peace to meet the terror requirement.” Saul Cornell, The Long Arc of Arms Regulation in Public: From Surety to Permitting, 1328-1928, 55 U. C. Davis L. Rev. 2545, 2556 (2022). In other words, “[t]he ‘peace’ that the law protected encompassed more than physical safety” – merely riding armed to “fairs and markets was an offense to the crown itself.” Joseph Blocker & Reva B. Siegel, When Guns Threaten the Public Sphere: A New Account of Public Safety Regulation Under *Heller*, 116 Nw. U. L. Rev. 139, 165 (2021). This much is undisputed among scholars: “*terror*, not just physical violence, could justify regulating the carrying of weapons.” *Id.* at 166. In other words, the fear of violence by weapons was itself the “general societal problem,” *Bruen*, 142 S. Ct. at 2131, that the statute was designed to address.

As cases and treatises from the late-sixteenth through the nineteenth centuries reveal, the justification for numerous restrictive laws was that carrying certain weapons, or in a certain manner, was “deemed to automatically incite public terror,” Frassetto, *supra*, at 65, even without any other threatening conduct or corresponding act, Blocker & Siegel, *supra*, at 166; *see* Frassetto, *supra*, at 68-89. For example, in *State v. Huntley*, 25 N.C. (3 Ired.) 418 (1843), the court explained that the defendant’s actions – “riding upon the public highway” with a double-barreled shotgun – “attack directly that public order and sense of security.” *Id.* at

421. While one may use a gun for “business or amusement,” he cannot “carr[y] it about with him, as one of his every day accoutrements,” because “when any deadly weapon” is “worn or wielded” in such a way, it serves only “to terrify and alarm” the people. *Id.* at 422-23. And in *Aymette v. State*, 21 Tenn. (2 Hum.) 154 (1840), the court confirmed that public carry restrictions were aimed at preserving citizens’ freedom to gather peacefully in public places, and that the legislature has the authority to prohibit individuals armed with “drawn swords, guns, and fixed bayonets” from entering a theater or church and “break[ing] up” these “public assemblages.” *Id.* at 159. Treatises of the era point in the same direction. For example, several nineteenth-century scholars agreed that a show of arms alone, without any overt act, was sufficient to constitute a breach of the peace because “a show of arms is naturally apt to strike a terror into the people.” Frassetto, *supra*, at 83 (quotation omitted).

Modern Restrictions on Assault Weapons and LCMs. These laws preventing “terror to the people” provide a critical analog to modern laws banning the sale and possession of assault weapons and LCMs. In addition to preventing injury and death, these early laws sought to protect citizens’ freedom to gather in shared public places. The Statute of Northampton specifically identified “fairs” and “markets,” which were “important sites of community life” in fourteenth-century England, as places where citizens should be able to gather without fear. Blocker & Siegel, *supra*, at 165. And early American courts identified the need to protect citizens’ ability congregate without fear in churches, theaters, and other such places

of “public assemblage.” E.g., Aymette, 21 Tenn. (2 Hum.) at 159. Heller recognized this longstanding tradition of protecting public life from threats of gun violence, by certifying Blackstone as the preeminent authority on English law in the founding era, 554 U.S. at 593, and confirming the ability of legislatures to pass laws “forbidding the carrying of firearms in sensitive places,” id. at 627. “In these ways, Heller affirms that a constitutional democracy has authority to regulate guns to promote public safety and to protect against weapons threats which it can exercise to protect valued civic activities and the ability of all citizens to live free of terror and intimidation.” Blocker & Siegel, supra, at 176.

The close analogy to founding era regulation is further reinforced by properly understanding the “how,” “why,” and “general societal problems” behind those early regulations. To be sure, the founders did not have firearms or magazines with the same deadly features of assault weapons and LCMs; nor did they have the understanding of the psychology of trauma that we do today or the constant exposure through social and mass media to harrowing events unfolding across the nation. But all of these things feed the same kind of terror that threatens the public peace – the same concerns the founding-era regulations were designed to abate. “Public mass shootings are particularly high-visibility events that are quite shocking to the public and unsettling to the sense of public safety,” R. 54-4 ¶ 58 (23-1793), and they “occupy an outsize space in the public consciousness,” Zara Abrams, Stress of Mass Shootings Causing Cascade of Collective Traumas, Am. Psychol.

Ass'n, Sept. 1, 2022.⁷ They “cause profound social damage,” R. 54-4 ¶ 58 (23-1793), and “[b]ecause they are seemingly random and unpredictable, these events cause helplessness, making them more traumatic than nearly all other causes of injury and death in healthy populations that are exposed,” R. 54-13 at 18 (23-1793). “The more catastrophic events we’re exposed to as a nation, the more impacted we’re going to be on a psychological level.” Abrams, supra.

The state and local regulations challenged in this case similarly serve to allay fears of particular weapons in public places. In 1994, Congress passed the federal assault weapons ban; but after the federal ban expired in 2004, gun manufacturers began heavily marketing AR-15s to civilians. Frankel, supra. Now, a new generation is being terrorized by the same military-grade weapons that terrorized Chicago and other communities more than 30 years ago. Mass shootings with assault weapons and LCMs have claimed hundreds of lives, and injured thousands more, in schools, houses of worship, theaters, nightclubs, concert venues, shopping centers, and parks – all important sites of community life. See Violence Policy Center, Mass Shootings in the United States Involving Large Capacity Ammunition Magazines, Apr. 17, 2023.⁸ Assault weapons have also been used to intimidate lawmakers, voters, and protestors. Blocker & Siegel, supra, at 147-48; see generally R. 54-15 (23-1793). Like the early laws, modern bans on assault weapons and LCMs secure “people’s freedom and confidence to participate in every domain of our

⁷ <https://www.apa.org/monitor/2022/09/news-mass-shootings-collective-traumas> (last visited May 10, 2023).

⁸ https://vpc.org/fact_sht/VPCshootinglist.pdf (last visited May 10, 2023).

shared life, from attending school to shopping, going to concerts, gathering for prayer, voting, assembling in peaceable debate, [and] counting electoral votes.” Blocker & Siegel, supra, at 141.

In short, people all across the United States are being terrorized by mass shootings with assault weapons, and the challenged laws, like those in the historical period, seek to prevent this terror and restore the safety and security of public life. Importantly, that the historical laws and modern laws use different means to achieve that result does not diminish the relevance of the analog; it merely reflects the fact that new technological advancements and other societal changes have necessitated a more robust response today. Again, Bruen allows for a “nuanced approach” where the challenged laws implicate “unprecedented societal concerns or dramatic technological changes.” 142 S. Ct. at 2132. This is certainly such a circumstance.

Even though firearms and magazines with the killing power of today’s assault weapons did not exist in the eighteenth and nineteenth centuries, R. 34-3 ¶ 27; R. 34-4 ¶¶ 18-31, they have since become the ultimate weapons striking fear in public places. In the 1920s, semiautomatic and fully automatic weapons grew to become the “preferred weapon for gangsters.” R. 54-14 at 23 (23-1793). Around that time, “[f]ears about gangster weapons echoed earlier fears about weapons of ‘bravado and affray’ associated with earlier periods of intensive firearms regulation.” R. 54-14 at 22 (23-1793). Much like the eighteenth- and nineteenth-century laws before them, that fear prompted states to enact firearms restrictions.

Between 1925 and 1934, at least 32 states and the District of Columbia enacted laws restricting automatic weapons, R. 34-4 ¶ 5, and at least seven states and the District of Columbia enacted laws restricting semiautomatic weapons, id. ¶ 10.

And mass shootings themselves are a modern phenomenon. The first known shooting resulting in ten or more deaths occurred in 1949. R. 57-7 ¶ 18. Over the next few decades, they occurred relatively infrequently – between 1949 and 2004, there were a total of ten mass shootings resulting in fatalities in the double digits, id. ¶ 21, or one every 5.6 years. After the federal assault weapons ban expired in 2004, “mass shooting violence increased substantially.” Id. Since 2004, there have been 20 mass shootings with fatalities in the double digits, id., or one every 0.9 years. Moreover, assault weapons and LCMs play a disproportionate role in mass shootings, particularly those resulting in ten or more deaths. Id. ¶ 13.

The trauma reaches beyond those directly involved in a mass shooting. R. 54-13 at 14-15 (23-1793). Approximately 80% of adults “report feeling stressed about mass shootings,” while 75% of youth “report mass shootings [as] being a primary source of stress.” Id. at 15. In a recent survey, 33% of participants responded they would no longer go to certain public places for fear of mass shootings, nearly as many responded that “they could not go anywhere without worrying about being shot,” and 24% responded that “they had made changes in their lives due to their fear of mass shootings.” Lenny Bernstein, et al., Mass Violence Takes Toll On Americans’ Psyches, Wash. Post, May 27, 2022.⁹ This

⁹ <https://www.washingtonpost.com/health/2022/05/26/mass-shootings-trauma->

survey affirms the experts’ “belief that repeated exposure to shocking acts of violence that happen with horrific regularity in this country, alone among its peers, is affecting people’s health.” Id. If a ban on assault weapons and LCMs “reduces the perceived risk from a mass shooting, and makes the public feel safer as a result, that’s a substantial benefit.” Friedman v. City of Highland Park, 784 F.3d 406, 412 (7th Cir. 2015).

In short, the nature of modern firearms and magazines has given rise to a new kind of fear, unknown in the founding era, but certainly no less significant than the fears that prompted the restrictions of that era. Where assault weapons and LCMs are concerned, a person need not even carry or brandish such an instrument in public in order to strike fear in the people; even mere possession of assault weapons and LCMs in private spaces threatens the public peace. In fact, the very reason these mass shootings are so terrifying, so deadly, and so hard for law enforcement officers to prevent is that perpetrators are able to conceal themselves on rooftops and in interior rooms. As we note above, the perpetrator of the Las Vegas shooting caused dozens of deaths and hundreds of injuries, all from the 32nd floor of a nearby hotel room. Assault weapon restrictions must reach both public *and* private spaces to effectively address the unique and extreme terror created by those weapons.

Chicago’s Assault Weapons and LCM Regulations. Chicago’s experience with assault weapons and LCMs illustrates the same point. In 1992, Dantrell

effects/ (last visited May 10, 2023).

Davis, a seven-year-old child was shot and killed walking with his mother to his elementary school, just across the street from his Cabrini-Green apartment building in Chicago. He was killed when a man on the tenth floor of another building 300 yards away shot an AR-15 semiautomatic rifle into a group of rival gang members gathered outside Dantrell's building. Mick Dumke, The Shot that Brought the Projects Down, Chicago Reader, Oct. 12, 2012.¹⁰ Dantrell was shot in the head and pronounced dead before reaching the hospital. Id. The shooting "devastated" and "horrified" the community, Charlie O'Brien, The Tragic Shooting of Dantrell Davis, Medium, Dec. 27, 2022, because it "exposed just how routine and random the violence had become," and how easily an innocent bystander, especially a child, "could get slain" by a stray bullet from a "sniper attack," Dumke, supra.¹¹ And, given the nature of the shooting – that it occurred from a concealed vantage point high above the street and hundreds of yards from Dantrell's building – the police officers patrolling the area around the school that morning were unable to provide any protection. Joseph A. Kirby, The Death of Dantrell Davis, Chicago Tribune, Mar. 7, 2015.¹²

Chicago continues to be vulnerable to these types of shootings. It has experienced a rise in attacks with assault weapons in public places, particularly on

¹⁰ <https://chicagoreader.com/blogs/the-shot-that-brought-the-projects-down-part-one-of-five/> (last visited May 10, 2023).

¹¹ https://medium.com/@Charlie_OBrien/the-tragic-shooting-of-dantrell-davis-b0805ca36c72 (last visited May 10, 2023).

¹² <https://www.chicagotribune.com/nation-world/chi-chicagodays-dantrelldavis-story-story.html> (last visited May 10, 2023).

its South and West sides. On June 12, 2021, two perpetrators shot ten people, one fatally, during an outdoor community party on 75th Street in Chatham on Chicago's South Side, R. 54-8 ¶ 30 (23-1793), an area described as a "lively commercial district," "busy corridor" with heavy "foot traffic," and a "place people come to enjoy themselves." Manny Ramos & Sophie Sherry, 10 Shot, 1 Fatally, When Pair of Shooters Open Fire Along Lively Business District in Chatham, Chicago Sun-Times, June 12, 2021.¹³ A mass shooting with an assault rifle struck another community gathering in Washington Park, on September 14, 2022. Jermont Terry, et al., Two Killed, Seven Injured in Washington Park Shooting, CBS Chicago, Sept. 14, 2022.¹⁴ A shootout between rivals led to nine innocent victims being shot, two fatally, while playing a softball game on the other side of a field. Id. On October 31, 2022, 14 people, including a three-year-old, were shot with assault weapons from a moving vehicle during a vigil in Garfield Park. R. 54-8 ¶ 10 (23-1793). And, on December 16, 2022, four teenagers were shot with assault rifles, two fatally, outside a high school in Pilsen. Id. ¶ 12.

A few communities have been particularly hard hit. Over a nine-month period in 2017, 33 shootings with assault rifles occurred in the neighboring communities of Brighton Park and Back of the Yards. Mitch Smith, A Chicago

¹³ <https://chicago.suntimes.com/2021/6/12/22530678/shooting-75th-street-lens-bbq-chatham-roderick-sawyer> (last visited May 10, 2023).

¹⁴ <https://www.cbsnews.com/chicago/news/washington-park-mass-shooting-51st-champlain/> (last visited May 10, 2023).

Neighborhood Faces a New Fear: Assault-Style Rifles, N.Y. Times, May 11, 2017.¹⁵

Over one particularly violent five-day stretch, 13 people were shot in Brighton Park, including ten during a memorial service. Id. And this violence followed two earlier mass shootings with assault rifles – namely, a 2016 shooting of four people near a Brighton Park elementary school, id., and a 2013 shooting at a basketball tournament in a Back of the Yards park, Mark Konkol, et al., Back of the Yards Gunmen Wanted Revenge for Earlier Shootings, DNA Info, Sept. 24, 2013.¹⁶ In the latter shooting, 13 people were injured, including a three-year-old boy who was shot in the head. Id. The local alderman remarked of the spate of violence: “People are walking around traumatized. . . . It’s like they have that glazed look, like they’re not sure what to expect, not certain of what’s going to come out from behind the shadows at any given moment.” Smith, supra.

Boasting a population density of nearly 12,000 people per square mile, Chicago has many public spaces that are lined with high rises, particularly in the urban core, where tall buildings tower over lakefront parks and beaches that host concerts, festivals, rallies, and other special events, and are crowded daily with locals and tourists. At major events like Lollapalooza, as many as 400,000 attendees pack into Grant Park in the shadow of Michigan Avenue. While an individual walking into the festival brandishing an assault rifle would certainly

¹⁵ <https://www.nytimes.com/2017/05/11/us/guns-chicago-violence-rifles.html> (last visited May 10, 2023).

¹⁶ <https://www.dnainfo.com/chicago/20130924/back-of-yards/two-men-charged-back-of-yards-mass-shooting-but-not-gunmen/> (last visited May 10, 2023).

cause a panic, an equally significant threat comes from the possibility that a perpetrator could be perched undetectably in an upper floor of a Michigan Avenue high rise. Indeed, the Las Vegas shooter had reserved two hotel rooms overlooking Lollapalooza two months before he attacked the Las Vegas concert. Jeremy Gorner, Las Vegas Gunman Booked Chicago Hotel Rooms Overlooking Lollapalooza, Chicago Tribune, Oct. 6, 2017.¹⁷ The rooms would have given him a clear view of the entrance to the festival and a major exit across a bridge, but he never showed up. Id. And in July 2021, an individual was found with assault rifles in a “suspicious position” in a hotel room overlooking Ohio Street Beach and Navy Pier during the July 4th weekend. Kelly Bauer, Man Found With Guns in Hotel Room Overlooking Downtown Beach Gets \$10k Bond, Block Club Chicago, July 6, 2021.¹⁸ In the latter case, the CPD was able to confiscate the firearms and arrest the individual for violating State firearms restrictions. It is this sort of measure, empowering civilians to report and police officers to confiscate assault weapons in vulnerable places, that is necessary to reduce the terror that interferes with public life in Chicago.

¹⁷ <https://www.chicagotribune.com/news/breaking/ct-las-vegas-gunman-lollapalooza-20171005-story.html> (last visited May 10, 2023).

¹⁸ <https://blockclubchicago.org/2021/07/06/man-found-with-guns-in-hotel-room-overlooking-downtown-beach-gets-10k-bond/> (last visited May 10, 2023).

CONCLUSION

For the foregoing reasons, the judgment of the district court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Fed. R. App. P. 32(g)(1), I certify that the foregoing brief complies with the type-volume limitation provided by Fed. R. App. P. 29(a)(5) and Cir. R. 29. This brief contains 6,991 words, beginning with the words “Interests of the *Amicus Curiae*” and ending with the words “Respectfully submitted” in the Conclusion section, as recorded by the word count of the Microsoft Word word processing system used to prepare the brief.

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CERTIFICATE OF SERVICE

I certify that on May 10, 2023, I electronically filed the attached Brief of *Amicus Curiae* with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Elizabeth Mary Tisher
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