No. 23-1353

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NATIONAL ASSOCIATION FOR GUN RIGHTS, et al

Plaintiffs-Appellants

v.

CITY OF NAPERVILLE, ILLINOIS, et al

Defendants-Appellee

and

THE STATE OF ILLINOIS,

Intervening-Appellee

On Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
Case No. 1:22-cv-04775, Hon. Virginia M. Kendall, District Judge

BRIEF OF ILLINOIS GUN VIOLENCE PREVENTION ACTION COMMITTEE AS AMICUS CURIAE IN SUPPORT OF APPELLEES AND AFFIRMANCE

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 23-1353

Short Caption: National Association For Gun Rights v. City of Naperville, Illinois

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Illinois Gun Violence Prevention Action Committee

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ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

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(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

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Attorney's Signature: /s/ John R. Schmidt Date: May 10, 2023

Attorney's Printed Name: John R. Schmidt

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☑ **No** ☐

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

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None

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

None

Attorney's Signature: /s/ Darrius Atkins Date: May 10, 2023

Attorney's Printed Name: Darrius K. Atkins

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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None

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

None

Attorney's Signature: /s/ Grant Anderson Date: May 10, 2023

Attorney's Printed Name: Grant A. Anderson

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ☐ **No** ☑

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the Illinois Gun Violence Prevention Action Committee, amicus curiae, states that it is not a publicly held corporation, does not issue stock and has no parent corporation.

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INTEREST OF AMICUS CURIAE

The Illinois Gun Violence Prevention Action Committee (G-PAC), amicus curiae, is a 501(c)(4) not-for-profit corporation that advocates for Illinois laws to reduce gun violence.[1] In recent years, we have led successful legislative efforts to license Illinois gun dealers; extend background checks to all private gun sales in the state; and prohibit the sale of "ghost guns" that can be assembled without compliance with applicable gun laws.

G-PAC began to focus its efforts on the dangers of large-capacity magazines that enable rapid shooting of huge numbers of bullets without reloading after hearing reports from Chicago police officials on the increasing use of such magazines attached to handguns and their impact in increasing fatalities and reducing the capacity of the police to respond to gun violence in Chicago neighborhoods.

The damage a single shooter could cause by combining such a large capacity magazine with a semi-automatic rifle with enhanced lethal features designed for military purposes was then tragically and graphically demonstrated by the mass shooting at the 2022 Fourth of July parade in Highland Park, in which the shooter fired 83 rounds, killing 7 people and injuring 48 others, in about 60 seconds.

[1] Pursuant to F.R.A.P. 29(a)(4)(E), the Committee states that the parties in this case have consented to the filing of the brief, no counsel for a party has authored this brief, in whole or in part, and no person, other than *amici* or their counsel, has made a monetary contribution to the preparation or submission of this brief.

In September of last year, G-PAC embarked on a public statewide campaign to urge the Illinois legislature to ban the sale in Illinois of such large-capacity magazines and guns with such military-style lethal features. The effort included working with legislators and staff in drafting and testifying in support of what became the Protect Illinois Communities Act (the "Act"), Public Act 102-1116. The Act, passed by the General Assembly and immediately signed by Governor Pritzker on January 10, 2023, banned the sale of large-capacity magazines ("large-capacity magazines") and weapons with lethal identified features designed for military purposes ("assault weapons") effective immediately. References herein are to those categories defined in the Act.

G-PAC believes Judge Kendall correctly denied a preliminary injunction against the Act because it is "constitutionally sound" and does not impair the Second Amendment right to bear arms of any Illinois citizens. *Bevis v. City of Naperville,* No. 22-cv-4775, 2023 WL 2077392 (N.D. Ill. Feb. 17, 2023) (Kendall, J.). We have a strong interest in this Court affirming that denial so the Act will continue to reduce fatalities from gun violence in Illinois.

SUMMARY OF ARGUMENT

The District Court's denial of a preliminary injunction should be affirmed because plaintiffs are not likely to succeed on the merits.

Neither large-capacity magazines nor assault weapons with the military features identified in the Act are protected by the text of the Second Amendment. Magazines are accessories attached to guns, not arms; magazines with the large capacity banned by the Act are not needed or used in self-defense. Guns with the specified lethal features under the Act are for military purposes, not weapons commonly used for self-defense that *Heller, McDonald* and *Bruen* identify as arms protected by the Second Amendment.

Even if the Act did on its face regulate conduct protected by the Second Amendment, the Illinois legislature's response to law enforcement and public concerns by banning the sale of large-capacity magazines and assault weapons stands squarely in the history and tradition of U.S. legislative judgments banning dangerous weapons. The Illinois legislative judgment was exercised carefully in the Act in response to evident justification. Nothing in that historical tradition or in Supreme Court decisions applying the Second Amendment would support a court substituting for that legislative judgment its own assessment of particular gun features or their danger.

In excluding carefully identified dangerous items from sale in Illinois, the Act leaves Illinois dealers free to sell, and Illinois citizens free to buy and own, a wide variety of guns, as well as magazines for attachment, that fully enable Illinois

citizens to exercise their right to keep and bear arms for self-defense under the Second Amendment.

ARGUMENT

The District Court's denial of a preliminary injunction should be affirmed because plaintiffs are not likely to succeed on the merits.

I. The Act Does Not Ban Arms That Are Protected By the Text of the Second Amendment

A. Magazines Are Not Arms and Large-Capacity Magazines Are Not Used For Self-Defense

The Second Amendment protects the right of citizens to bear arms, not the right of gun dealers to stock their shelves with any particular variety of accessories, attachments, and accoutrements. Magazines clearly fall into the latter category. They are not themselves weapons. They cannot be fired at anyone or otherwise used for self-defense. They are not "bear[able] [a]rms" or any kind of "[a]rms". U.S. Const. amend. II.

The conclusion that magazines are not protected by the text of the Second Amendment is a matter of straightforward language. That is as true today as it was when the Second Amendment was adopted. The *Heller* decision cites the 1773 Samuel Johnson Dictionary of the English Language (4th ed. 1773) (reprinted 1978) that defines "arms" as "[w]eapons of offence, or armour of defence". *D.C. v. Heller*, 554 U.S. 570, 581 (2008). Magazines do not fall within that definition.

See *Ocean State Tactical, LLC v. Rhode Island,* No. 22-CV-246, 2022 WL 17721175, at *13 (D.R.I. Dec. 14, 2022) (McConnell, J.):

> In interpreting the word "[a]rms," we look to the word's ordinary meaning, guided by the principle that "the constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *Heller*, 554 U.S. at 5[76-]77. To the ordinary reader, magazines themselves are neither firearms nor ammunition. They are *holders* of ammunition, as a quiver holds arrows, or a tank holds water for a water pistol, or a pouch probably held the stones for David's sling.

Id. (internal quotation marks omitted).

Courts have held that other types of accessories are not covered by the term "arms" in the Second Amendment. See *United States v. Cox*, 906 F. 3d 1170, 1186 (10th Cir. 2018) (holding that a silencer is unprotected because it is "a firearm accessory . . . not a weapon in itself" and "can't be a bearable arm protected by the Second Amendment") (internal quotation marks omitted). Magazines are comparable.

> [Large capacity magazines], like other accessories to weapons, are not used in a way that "cast[s] at or strike[s] another." What one judge has said of silencers is equally apt when applied to [large capacity magazines]: they "generally have no use independent of their attachment to a gun" and "you can't hurt anybody with [one] unless you hit them over the head with it."

Ocean State Tactical, 2022 WL 17721175, at *12 (quoting *United States v. Hasson*, No. GJH-19-96, 2019 WL 4573424, at *2 (D. Md. Sept. 20, 2019), *aff'd,* 26 F.4th 610 (4h Cir. 2022), *cert. denied*, 143 S. Ct. 310 (Oct. 11, 2022)).

Of course, if a state banned the sale of all types of magazines, it would make it impossible to use guns of all kinds and that action would impair the right to bear arms, not because the magazines themselves are arms but because the ban would impair the right to use those guns. Illinois has not banned all magazines or anything close to that. It has excluded from sale only a specific dangerous category of magazines with a capacity of over 10 (for rifles) and 15 (for pistols). All firearms that can accept large capacity magazines can also accept magazines that hold fewer rounds and those magazines continue to be readily available.

Even if magazines were regarded as "arms", the large-capacity magazines banned by the Act would still fall outside the protected category because (as discussed in the following section) the Second Amendment protects only arms commonly used for self-defense. In considering and rejecting a claim for relief against a District of Columbia ban on large-capacity magazines, the D.C. District Court recently reviewed evidence on the possible use of large-capacity magazines for self-defense and found incidents where a civilian expends more than ten bullets in self-defense to be "vanishingly rare". *Hanson v. District of Columbia,* C.A. No. 22-2256, at 9, 13 (D.D.C. April 20, 2023) ("[T]he District's . . . ban, which limits

magazine capacity to ten bullets, enables law-abiding people in D.C. to possess magazines with ample ammunition to defend themselves."). An Oregon District Court reached the same conclusion in *Oregon Firearms Federation, Inc. v. Brown,* where "[p]laintiffs [f]ail[ed] to [d]emonstrate [that] [m]agazines [c]apable of [a]ccepting [m]ore than [10] [r]ounds are [n]ecessary to [u]se [f]irearms for [s]elf-[d]efense". No. 22-cv-01815, ---F. Supp. 3d---, 2022 WL 17454829, at *8 (D. Or. Dec. 6, 2022) (Immergut, J.). Plaintiffs have presented no evidence to support a different conclusion about the use of large-capacity magazines in self-defense by Illinois citizens.

B. Guns With the Added Lethal Features Specified in the Act Are For Military Use and Not Commonly Used For Self-Defense

In all three Supreme Court cases interpreting and applying the Second Amendment, the Court repeatedly emphasizes that the Second Amendment protects the right to bear arms *for self-defense.* "[T]he Second Amendment protects the right to keep and bear arms for the purpose of self-defense." *McDonald v. City of Chicago,* 561 U.S. 742, 749-50 (2010). The Second Amendment protects "instruments that facilitate armed self-defense" such as handguns which are the "quintessential self-defense weapon." *N.Y. State Rifle & Pistol Ass'n v. Bruen,* 142 S. Ct. 2111, 2119, 2132 (2022). As the Court stated in *Heller* and repeated in *McDonald*, "[i]ndividual self-defense is the '*central component*' of the Second Amendment right." *McDonald,* 561 U.S. at 767 (quoting *Heller,* 554 U.S. at 599).

In *Heller*, the Court was explicit about the corollary principle that the Second Amendment excludes from protection weapons that are designed primarily for other purposes. "[W]eapons that are most useful in military service—M-16 rifles and the like—may be banned." *Heller,* 554 U.S. at 627.

The assault weapons banned by the Act are guns with lethal features specifically designed for military purposes. These military-style weapons fall outside the category of arms protected by the Second Amendment. Indeed, the AR-15, the most common of the assault weapons that fall into the banned category under the Act, is a variation of the M-16 to which the Court in *Heller* makes specific reference. *See* Greg Myre, *A Brief History of the AR-15*, NPR (February 28, 2018) ("In 1963, the U.S. military selected Colt to manufacture the automatic rifle that soon became standard issue for U.S. troops in the Vietnam War. It was known as the M-16. Armed with that success, Colt ramped up productions of a semiautomatic version of the M-16 that it sold to law enforcement and the public, marketed as the AR-15.")

Instead of confronting the Supreme Court's application of the Second Amendment to weapons of self-defense and not those most useful in military service, plaintiffs repeatedly cite alleged sales data showing that assault weapons banned by the Act are owned by some significant number of individuals. But a marketing

campaign does not change the nature of a weapon or grant it some form of constitutional immunity from regulation.

In the *Friedman* case eight years ago, this Court rejected as "circular" and "absurd" the idea that constitutionality of gun regulation might turn on its timing in relation to a weapon's marketing and consequent level of ownership. *Friedman v. City of Highland Park,* 784 F.3d 406, 409 (7th Cir. 2015) (Easterbrook, J.).

> [R]elying on how common a weapon is at the time of litigation would be circular to boot. Machine guns aren't commonly owned for lawful purposes today because they are illegal; semi-automatic weapons with large-capacity magazines are owned more commonly because, until recently (in some jurisdictions), they have been legal. Yet it would be absurd to say that the reason why a particular weapon can be banned is that there is a statute banning it, so that it isn't commonly owned.

Id.

As noted earlier, the AR-15 is a variation of the M-16. As the State of Illinois notes, "AR-15 rifles are M-16s in every way except one: the ability the toggle between semiautomatic and automatic fire. [C]ivilian AR-type rifles 'retain the identical performance capabilities (save full automatic capability) as initially intended for use in combat[.]'" Brief of Intervening Appellee at 26, ECF No. 56. The massive amount of kinetic energy delivered by guns with this combination of features far exceeds the impact of typical handguns or rifles and they inflict far more immediate damage to a human body. *See* N. Kirkpatrick, Atthar Mirza and Manuel

Cavales, *The Blast Effect: This is how bullets from an AR-15 blow the body apart*, WASH. POST, March 27, 2023 ("The AR-15 fires bullets at such a high velocity—often in a barrage of 30 or even 100 in rapid succession—that it can eviscerate multiple people in seconds.") These features are designed to facilitate lethal accuracy and impact during rapid fire in combat.

None of these lethal features are needed for civilian self-defense and plaintiffs have presented no evidence that weapons with such features are commonly used for self-defense today. They are not arms protected by the text of the Second Amendment.

II. The Act is Consistent With the Nation's Long-Standing Historical Tradition of Legislative Bans of Dangerous Weapons

Even if large-capacity magazines and assault weapons were protected by the text of the Second Amendment, the Illinois legislature's judgment to respond to law enforcement and public concerns by banning their sale in Illinois stands squarely in the historical tradition of state and federal legislatures banning dangerous weapons.

As noted earlier, G-PAC's focus on the dangers of large-capacity magazines was initially provoked by Chicago police reports on the increasing use of such large-capacity magazines attached to handguns by gang members and others engaged in criminal activity in Chicago neighborhoods. The result was an escalation in fatalities from shootings and an increased threat to police that impaired their ability to respond to criminal activity. *See* Frank Main, Tom Schuba, Matt Keifer & Cheryl W.

Thompson, *In Chicago, handguns easily turned into high-capacity machine guns fuel growing violence*, CHI. SUN-TIMES, October 28, 2022; Chuck Goudie, Barb Markoff, Christine Tressel & Ross Weidner, *Drum magazines bring throwback threat to Chicago violence,* ABC 7 EYEWITNESS NEWS I-TEAM WATCH (June 28, 2021) ("Chicago police seized numerous weapons with drum magazines, capable of unloading 30 to 60 shots in a few seconds."); Alex Yablon, *Bullets-Per-Body Rise in Chicago as High-Capacity Handguns Gain Criminal Following*, THE TRACE (January 2, 2018).

At a legislative hearing on the proposed Act in December of last year, Chicago police officials and the Cook County Sheriff described the increasing prevalence of such large capacity magazines and assault weapons in Chicago neighborhoods and the threat they presented to effective law enforcement. *See* Peter Hancock, *Law enforcement officials push for ban on high-power, high-capacity weapons*, CAPITAL NEWS ILLINOIS (December 20, 2022): Angel Novalez, Chicago Police Department Chief of Constitutional Policing and Reform, said, "We are up against an ever-growing threat and it's making protecting our neighborhoods more difficult and dangerous for all our police officers. . . It is making residents feel more unsafe. They are living in the crosshairs of needless violence every day."

Tom Dart, Sheriff of Cook County, stated, "What the public asks members of the law enforcement community to do each and every day is stunning, knowing full

well that the cars we're approaching, the houses we're entering, have some of the most lethal weapons you've ever seen, ever."

Elena Gottreich, Chicago Deputy Mayor for Public Safety, said, "These weapons have entered our schools, our places of worship, our theaters, our parades and our peaceful community spaces with one objective—to create mass carnage. . . Assault weapons are designed to inflict maximum tissue damage in the shortest amount of time."

In responding to law enforcement concerns about the impact of these dangerous weapons, the Illinois legislature's action parallels directly the response of legislatures at both state and federal levels to the spread of automatic machine guns in the early decades of the 20th century. A number of states banned such weapons, and then, in 1934, the federal government imposed severe restrictions on their sale and ownership. The pleas for Illinois legislative action last year by Chicago police and the Cook County Sheriff echo Attorney General Homer Cummings's 1934 plea to Congress: "We must, if we are going to be successful in this effort to suppress crime in America, take these machine guns out of the hands of the criminal class." *National Firearms Act: Hearing on H.R. 9066 Before the H. Comm. On Ways and Means*, 73d Cong. 2d Sess. 4–6 (1934) (statement of the Hon. Homer S. Cummings Attorney General of the United States); Ronald G. Shafer, *They were killers with submachine guns. Then the President went after their weapon*s, WASH. POST,

August 9, 2019. *See also* David Welna, *The Decades-Old Gun Ban That's Still On The Books*, NPR (January 16, 2013) (describing how the 1934 Act restrictions were later turned into a total ban on the sale of new machine guns).

The Illinois legislative action was of course also a response to the shock sent throughout the state by the terrifying mass shooting at the Highland Park Fourth of July parade. That shock was enhanced because the Highland Park shooting followed others around the country in which similar massive damage was inflicted by the same combination of a large-capacity magazine and an assault weapon with military features. Mass shootings with assault weapons last year prior to Highland Park included the shooting at a Uvalde, Texas elementary school (21 deaths) and the shooting at a Buffalo, New York supermarket (10 deaths). Earlier mass shootings included the August 2019 shooting at an El Paso Walmart (23 deaths), the October 2018 shooting at a Pittsburgh Synagogue (11 deaths), the February 2018 shooting at Marjory Stoneman Douglas High School in Parkland, Florida (17 deaths), the October 2017 shooting on the Las Vegas strip (60 deaths), the June 2016 shooting at an Orlando nightclub (49 deaths), and the December 2012 shooting at Sandy Hook Elementary School in Connecticut (26 deaths). Unfortunately, this deadly nightmare continues every day. In fact, within the last 30 days, there have been at least six separate shootings resulting in at least 29 deaths, including the April 10th Louisville, Kentucky bank shooting (5 deaths), the April 15th Dadeville, Alabama shooting at

a birthday party (4 deaths), the April 28th shooting of an entire family in Cleveland, Texas (5 deaths), the May 1st shooting at a ranch in Henryetta, Oklahoma (6 deaths), the May 3rd shooting at a medical office in Atlanta, Georgia (1 death), and the May 6th shooting at a mall in Allen, Texas (8 deaths).

The fact that legislative action against dangerous weapons was galvanized by the widespread fears caused by their use in these highly publicized shootings, brought home to Illinois by July 4th devastation in Highland Park, in no way diminishes the legislation's strength and constitutionality. In acting to calm public fears and respond to concerns of law enforcement by banning assault weapons and large-capacity magazines, the Illinois legislature was acting squarely in the longstanding tradition of United States gun regulation, just as state legislatures and then Congress responded to similar public fears and law enforcement concerns about a wave of highly publicized crimes committed with machine guns a century ago. *See* Joseph Connor, *How 1930s American Gang Violence Paved The Way For Gun Control*, HISTORYNET (August 23, 2021) (describing the political impact of incidents such as the 1934 machine gun killing of federal agents in Northern Wisconsin by John Dillinger and his criminal gang).

As was also true of earlier state decisions cited by Judge Kendall to ban Bowie knives, clubs and other weapons that predated the widespread availability and use of guns, the Illinois legislative judgment naturally and appropriately reflected a variety

of factors. These included the national revulsion at the use of assault weapons with large-capacity magazines in a succession of mass shootings following the expiration of the federal assault weapon ban in 2004. They included more particular local concerns, such as those conveyed forcefully by Chicago police and the Cook County Sheriff about the impact of large-capacity magazines and assault weapons on their ability to deal effectively with Chicago gang violence. And they included the singular tragic shooting in Highland Park. Nothing in *Bruen* or any other Supreme Court decision suggests that it is the job of this court or any other court to second-guess or weigh for itself the relative significance of the factors that went into a legislative judgment of this kind that falls squarely in the longstanding historical pattern of U.S. regulation.

One important consideration for the Illinois legislature—and one that a court can also readily assess—is whether a ban on particularly dangerous guns or accessories will have an adverse impact on the ready availability of weapons commonly needed and used by citizens in self-defense. In the case of the Illinois Act, there is clearly no such adverse impact. The Illinois legislature discussed at length, at hearings, and in debate on the floor of both the House and Senate, the fact that banning the future sale of large-capacity magazines and assault weapons in the state would not impair the ability of Illinois citizens to obtain a wide range of rifles and handguns and magazines for attachment that are commonly used for self-

defense. The Act was written to allow current owners of large-capacity magazines and assault weapons to continue to own and use them on their own property. Illinois citizens who choose to do so can continue to buy new semi-automatic rifles and handguns of a wide variety and magazines for attachment to fully enable their use, excluding only those magazines with a capacity beyond the specific limits and guns with the specific military features identified in the Act.

The Act limits in narrow respects the range of models of guns and magazines that Illinois dealers can display and sell. But there is no credible argument that the Act denies the right of any Illinois citizen to obtain the guns and accessories needed to exercise fully their right to keep and bear arms for purposes of self-defense.

CONCLUSION

Plaintiffs are not likely to succeed on the merits of their claim and Judge Kendall correctly denied a preliminary injunction against the Act. G-PAC strongly believes that her decision should be affirmed and that continued enforcement of the Act will reduce Illinois gun violence.

Dated: May 10, 2023

Respectfully submitted,
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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Circuit Rule 29 because it contains 3,724 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

The brief complies with the typeface requirements and type-style requirements of Fed. R. App. P. 32(a) and Circuit Rule 32(b) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2016 in a 14-point Times New Roman font.

Dated: May 10, 2023

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on May 10, 2023, I electronically filed the foregoing Amicus Brief on behalf of the Illinois Gun Violence Prevention Action Committee 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.

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