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August 14, 2023

Christopher G. Conway
Clerk of the Court
United States' Court of Appeals for the Seventh Circuit
219 S. Dearborn Street
Chicago, IL 60604

VIA E-FILING

Re: ***Herrera v. Raoul*, Nos. 23-1793, 23-1825, 23-1826, 23-1827 & 23-1828 (consol.), letter submitted pursuant to Fed. R. App. P. 28(j).**

Mr. Conway:

Defendants-Appellees Cook County and Toni Preckwinkle submit as supplemental authority *Caulkins v. Pritzker*, 2023 IL 129453, upholding Illinois' assault weapons ban. Specifically, *Caulkins* supports the County's position that (1) the first step of *Bruen* requires plaintiffs to prove that the weapons they seek are commonly used; and (2) injunctive relief is inappropriate absent proof of such common use. County Reply 2-8.

In *Caulkins*, plaintiffs obtained summary judgment on the theory that Illinois' assault weapons ban violates the equal-protection clause of the Illinois Constitution. Op. ¶23. But before the Illinois Supreme Court, they argued that the court could affirm on the ground that the ban violated the Second Amendment. *Id.* ¶¶31-32. The supreme court rejected this argument, explaining that "equal protection and second amendment challenges are analyzed under different standards." *Id.* ¶35. Unlike Illinois equal-protection claims, the Second Amendment "does not concern the end that the government seeks to achieve and whether the means of doing so is an appropriate fit." *Id.* ¶34. Rather, it requires "a fact-intensive inquiry," the first step of which asks "whether a plaintiff has shown that the regulated items fall in the category of bearable arms that are commonly used for self-defense today." *Id.* (cleaned up).

Refusing to allow the plaintiffs "to circumvent the fact-intensive *Bruen* analysis," the court held that they had waived their Second Amendment claim. Op. ¶¶41-42. But even were that claim not waived, the court explained, it still could not affirm on Second Amendment grounds because *Bruen* requires proof that "the regulated items are bearable arms that are commonly used for self-defense," and "the record contains no evidence – beyond news articles – relevant to" that question. *Id.* ¶43.

Under *Caulkins*, plaintiffs cannot obtain injunctive relief. Although *Caulkins* held that the Second Amendment claim there was waived, it expressly rested that conclusion on its determination that *Bruen*'s first step requires affirmative proof of common use. Like the *Caulkins* plaintiffs, the plaintiffs here have failed to show that assault weapons are commonly used; absent such evidence, they have not shown a likelihood of success on the merits, foreclosing injunctive relief.

Sincerely,

KIMBERLY M. FOXX
State's Attorney of Cook County

By: */s/ Jessica M. Scheller*
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CERTIFICATE OF COMPLIANCE

I certify that the above letter complies with the word limitation provided in Fed. R. App. P. 28(j). The body of this letter, beginning with "Defendants-Appellees" and ending with "relief," contains 345 words as recorded by the word count of the Microsoft Word word-processing system used to prepare the letter.

/s/ Jessica M. Scheller
Jessica M. Scheller

CERTIFICATE OF SERVICE

The foregoing Rule 28(j) letter has been electronically filed on August 14, 2023. I certify that I have caused the foregoing letter to be served on all counsel of record via CM/ECF electronic notice on August 14, 2023.

/s/ Jessica M. Scheller
Jessica M. Scheller