

No. 15-133

**In the
Supreme Court of the United States**

**ARIE S. FRIEDMAN AND
THE ILLINOIS STATE RIFLE ASSOCIATION,**
Petitioners,

v.

CITY OF HIGHLAND PARK,
Respondent.

On Petition for Writ of Certiorari to the United States
Court of Appeals for the Seventh Circuit

**BRIEF OF *AMICI CURIAE* NEW YORK STATE
SHERIFFS' ASSOCIATION, WESTERN STATES
SHERIFFS' ASSOCIATION, LAW ENFORCEMENT
LEGAL DEFENSE FUND, LAW ENFORCEMENT
ACTION NETWORK, GUN OWNERS OF CALIFORNIA,
LAW ENFORCEMENT ALLIANCE OF AMERICA, AND
INTERNATIONAL LAW ENFORCEMENT
EDUCATORS AND TRAINERS
ASSOCIATION IN SUPPORT OF PETITIONERS**

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August 28, 2015

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INTEREST OF *AMICI CURIAE*¹**New York State Sheriffs' Association**

The New York State Sheriffs' Association, Inc. ("NYSSA") is a not-for-profit corporation, formed in 1934, for the purpose of assisting Sheriffs in the efficient and effective delivery of Sheriffs' services to the public. It comprises all of the elected and appointed Sheriffs of New York State. It has been the experience of New York State Sheriffs that the majority of gun crimes they encounter are committed with illegally obtained handguns, not "assault weapons," and that the overwhelming majority of citizens affected by assault weapon bans are law-abiding.

Western States Sheriffs' Association

The Western States Sheriffs' Association ("WSSA") was established in 1993, and now consists of hundreds of members from 15 member states throughout the Western United States (Arizona, California, Colorado, Idaho, Montana, North Dakota, New Mexico, Nevada, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming). The mission of WSSA is to assist Sheriffs and their

¹ No party's counsel authored this brief in whole or in part. No party or party's counsel, and no person other than *amici*, their members, or their counsel contributed money that was intended to fund preparation or submission of this brief. Counsel of record for all parties received timely notice of intent to file this brief under Rule 37.2(a) and consent was granted by all parties.

offices with federal and state legislative issues, address policy and procedural matters, develop guidelines to promote uniformity in matters that are important to Sheriffs of the Western United States, and to work together to keep the office of Sheriff strong.

Law Enforcement Legal Defense Fund

Law Enforcement Legal Defense Fund (“LELDF”) is a 501(c)(3) non-profit organization, headquartered in Alexandria, Virginia, that provides legal assistance to law enforcement officers. LELDF has aided nearly one hundred officers, many of whom have been acquitted, mostly in cases where officers have faced legal action for otherwise authorized and legal activity in the line of duty. While LELDF supports measures that will further legitimate public safety interests and protection of law enforcement officers, it does not support laws that will infringe upon constitutional rights while providing no public safety benefit.

Law Enforcement Action Network

Law Enforcement Action Network (“LEAN”) is a sister organization of LELDF, headquartered in Alexandria, Virginia, which has received 501(c)(4) status. LEAN promotes policies that protect law enforcement officers’ personal and professional safety. It has filed numerous *amicus* briefs in cases involving the Second Amendment, law enforcement issues, and “assault weapon” and magazine bans.

Gun Owners of California

Gun Owners of California (“GOC”) is a California non-profit organization formed in 1974. It is the leading voice in the state of California supporting the rights to self-defense and to keep and bear arms. GOC supports crime control, not gun control. Its founder, Senator H.L. Richardson, during his tenure in the Legislature was the author of some of the toughest anti-crime legislation and was honored by many law enforcement groups as one of the top leaders in the fight against crime. GOC has previously filed *amicus curiae* briefs in federal court, including a brief in this Court supporting respondents in *District of Columbia v. Heller*.

Law Enforcement Alliance of America, Inc.

Law Enforcement Alliance of America, Inc. (“LEAA”) is a non-profit, non-partisan advocacy and public education organization founded in 1992 and made up of thousands of law enforcement professionals, crime victims, and concerned citizens. LEAA represents its members’ interests by assisting law enforcement professionals and seeking criminal justice reforms that target violent criminals, rather than imposing criminal liability on otherwise law abiding citizens. LEAA has been an *amicus curiae* in numerous federal and state cases, and was on the prevailing side in two United States Supreme Court cases.

**International Law Enforcement Educators and
Trainers Association**

International Law Enforcement Educators and Trainers Association (“ILEETA”), is a professional association of 4,000 persons committed to the reduction of law enforcement risk and to saving lives of police officers and the general citizenry through the provision of training enhancements for criminal justice practitioners. ILEETA has joined this brief because as an organization that trains law enforcement professionals in (among other things) weapons and tactics, it understands the advantages and disadvantages of particular classes of firearms, their function, and their legitimate uses for law enforcement and defense of the lives of officers and citizens.

Amici believe that the perspective of front line law enforcement personnel and law enforcement organizations should be of assistance to this Court in evaluating whether the firearms and magazines at issue are “dangerous and unusual,” and whether any interest in public safety is served by bans on these commonly possessed firearms and magazines.

INTRODUCTION

The City of Highland Park has made it a crime for any person to “manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess” a large number of firearms, commonly possessed by law abiding citizens for lawful purposes, that it calls “assault weapons.” Highland Park City Code, §§ 136.001(C), 136.005; *see generally* §§ 136.001-136.025. It has also banned most firearm magazines capable of holding more than ten rounds. *Id.*, §§ 136.001(G), 136.005. Firearms not disposed of by their owners will be seized and destroyed as contraband. *Id.*, § 136.015.

Amici strongly agree with the petitioners that not only do these bans on ordinary firearms and magazines plainly violate the Second Amendment to the United States Constitution, but it is critical for this Court to say so. As law enforcement officers and groups, *amici* are well aware that the firearms and magazines banned by Highland Park are routinely possessed and used by law enforcement and civilians for lawful purposes. Nothing distinguishes them functionally from other common semi-automatic firearms that have been legitimately possessed in this country since they were first invented over a century ago.

Strangely, after this Court clarified that the Second Amendment protects individually enforceable rights,² and that those constitutional

² *District of Columbia v. Heller*, 554 U.S. 570 (2008).

rights cannot be violated by states and municipalities,³ there has been a flurry of legislation stripping citizens of their Second Amendment rights to possess these ordinary firearms and magazines. Far from faithfully applying *Heller* and *McDonald* to strike down these infringements, the lower courts have assiduously circumvented the plain holdings and rationales of those decisions.

This law enforcement amicus brief focuses on the fact that the firearms and magazines banned by Highland Park are not “dangerous and unusual,” that they are lawfully used both by citizens and law enforcement because of their superiority for many defensive situations, and that banning them will not reduce crime. However, as petitioners assert, there is really no need or warrant for the courts to determine the relative utility of particular firearms, or to decide whether they serve to increase or decrease public safety. No “balancing test” should be applied. Because these ordinary semi-automatic firearms are of a type commonly possessed for lawful purposes, they are protected under *Heller*’s analysis of the Second Amendment. Accordingly, this Court should grant certiorari and reverse the decision below.

SUMMARY OF ARGUMENT

Under *Heller*, the test for whether a weapon is protected under the Second Amendment is whether it is commonly possessed by law-abiding citizens for

³ *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

lawful purposes. The firearms and magazines at issue in this case meet that test.

Semi-automatic rifles, shotguns, and handguns have been commonly used by citizens for lawful purposes since they were first invented well over a century ago. These function in the same manner as the semi-automatic “assault weapons” banned by Highland Park. All semi-automatics fire only one shot for each trigger pull. The banned “assault weapons” are not fully automatic machine guns.

The term “assault weapon” is a political device for restricting firearms ownership, and is based on a firearm’s appearance rather than its function. Anti-Second Amendment activists have deliberately capitalized on the public’s confusion between fully automatic machine guns and semi-automatics to pass “assault weapons” bans.

The banned firearms are not “designed to kill human beings as quickly and efficiently as possible,” as opponents claim. Instead, countless local, state, and national law enforcement agencies use the banned AR-15 platform to defend the public and themselves. The same is true of civilians who use these firearms to defend themselves, their loved ones, and their homes. The fact that some of the banned firearms have military analogs means nothing, because firearms development goals are similar for civilian, military and law enforcement purposes.

The reasons that the AR-15 platform is preferred for law enforcement use are similar to the reasons that civilians have purchased and used AR-15s in large numbers. These include sufficient stopping power, accuracy, availability of sufficient rounds, superiority over other rifles for defensive use indoors, reduced recoil, muzzle flash, and muzzle blast, and reduced risk of harm to bystanders.

Very few crimes are committed with the firearms that Highland Park has banned. Over the period 2009-2013, only 2.5% of homicides were committed with rifles of all types. Far more people were murdered with blunt objects (4.0%), personal weapons such as hands, fists, and feet (5.8%), and knives or cutting instruments (12.9%).

Most mass killings in the United States are not committed with “assault weapons.” The three largest intentional mass killings were carried out using airplanes, a truck bomb, and gasoline. The largest school killing was committed with explosives. From 1999-2013 there was only a very slight rise in mass shootings. Firearms that “could be” characterized as “assault weapons” were used in fewer than one in ten of those mass shootings.

A recent large scale, nationwide survey of law enforcement professionals revealed that 91.5% believed that a federal ban on semi-automatic weapons described as “assault weapons” would have no effect or a negative effect in reducing violent crime. In the same survey, 95.7% believed that a federal ban on manufacture and sale of magazines

that hold over ten rounds would not reduce violent crime.

In states that have recently enacted “assault weapon” and magazine capacity legislation, rank and file law enforcement officers and elected law enforcement officials have opposed such legislation, chiefly because those measures will not reduce crime. Such bans will also not promote the safety of law enforcement officers.

ARGUMENT

I. THE BANNED FIREARMS AND MAGAZINES ARE COMMONLY POSSESSED BY LAW-ABIDING CITIZENS FOR LAWFUL PURPOSES, AND ARE NOT “DANGEROUS AND UNUSUAL” UNDER *HELLER*.

Heller recognized a distinction between weapons “in common use at the time” and therefore protected, *Heller*, 554 U.S. at 627, citing *United States v. Miller*, 307 U.S. 174, 179 (1939), and the carrying of “dangerous and unusual weapons,” which might not be protected. *Id.* (citing Blackstone and other authorities). In deciding what types of weapons are protected, the Court read *Miller* “to say only that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns. That accords with the historical understanding of the scope of the right [cross reference and footnote omitted].” *Heller*, 554 U.S. at

625. The issue in this case is whether the firearms and magazines banned by Highland Park are commonly possessed by law-abiding citizens for lawful purposes. Unquestionably, they are.

A. Semi-automatic rifles, shotguns, and handguns have been in common use by civilians and law enforcement for more than a century.

There is nothing new about semi-automatic rifles, shotguns, and handguns, or their capabilities. They have been in common use by citizens for lawful purposes since the opening years of the twentieth century, when they were first commercially produced. A.20.⁴ In 1903 and 1905, Winchester introduced semi-automatic rifles designed specifically for the civilian market. *Id.* In 1906, Remington introduced the “Remington Auto-loading Repeating Rifle” for civilian sporting purposes, and other manufacturers also produced semi-automatics for civilian use in the early 20th century. *Id.* They have remained popular and in widespread use ever since.

Semi-automatic shotguns for civilian and law enforcement use also go back to the very early 20th century. As one example of many, the Browning Auto 5 shotgun was first produced in 1902 and continued to be manufactured until 1999.⁵

⁴ References in the format “A.#” are to Appellants’ Appendix, Doc. 16-1 *et. seq.*, in the Seventh Circuit.

⁵ Date your Firearm: Auto-5 Semi-Automatic Shotgun, available at <http://www.browning.com/customerservice/>

Semi-automatic handguns by Colt and other manufacturers were also in widespread production at the same time. Models such as the Colt Model 1903 Pocket, Model 1908 Pocket, and Vest Pocket Model 1908 Hammerless were produced in the hundreds of thousands during the first few decades of the twentieth century. S.P. Fjestad, BLUE BOOK OF GUN VALUES 548-49 (29th ed. 2008). The Colt Model 1911 .45 caliber semi-automatic handgun served as the primary military sidearm for U.S. forces throughout World War I, World War II, the Korean War, and the Vietnam War. Many law enforcement agencies and officers have used the Model 1911 and its variants over the decades, and it is still in production by a number of manufacturers and is popular among civilians. Despite its military origins, it has never been classified as an “assault weapon.” Neither has its U.S. military sidearm successor, the 9mm Beretta M9, which is available to civilians as the Beretta 92.

B. The term “assault weapons” does not describe any class of firearms functionally, but consists of firearms chosen for political purposes by anti-Second Amendment activists.

Jim Supica, Director of NRA Museums and one of the world’s leading experts on firearms history and design, testified by affidavit below that “Historically, there is no such thing as a “semi-

automatic assault weapon.” A.21. Instead, that label has served “as a political device for those seeking to restrict firearms ownership.” *Id.* He continues: “Public confusion over the actual function of semi-automatic firearms has been fostered for political purposes and has resulted in nonsensical prohibitions on firearms ownership based on a firearm’s appearance rather than function.” *Id.*

The firearms at issue in this case are all semi-automatic; that is, they fire one shot for each trigger pull, just like other common firearms. As noted by Mr. Supica in his affidavit below:

[S]emi-automatic firearms are in no way fully automatic firearms, which are commonly referred to as “machine guns.”...The one common feature inherent in all semi-automatic firearms is that they are expressly designed to not fire automatically. Semi-automatic firearms will fire only one round when the trigger is pulled, as is the case with bolt-action, lever action, pump or slide action, single-shot firearms and revolvers.

A.19.

Yet, based on appearance and other extraneous factors, advocates of banning “assault weapons” have sought to capitalize on “the public’s confusion over fully automatic machine guns versus semiautomatic assault weapons.” Josh Sugarmann, ASSAULT WEAPONS AND ACCESSORIES IN AMERICA

(1988). As Mr. Sugarmann noted:

Although the opportunity to restrict assault weapons exists, a question remains for the handgun restriction movement: How? Defining an assault weapon—in legal terms—is not easy. It's not merely a matter of going after guns that are "black and wicked looking"... [I]t's extremely difficult to develop a legal definition that restricts the availability of assault weapons without affecting legitimate semi-automatic guns.

Id. That is because there is no functional difference between ordinary semi-automatic rifles and those that gun control advocates want to ban as so-called "assault weapons."

California, the first state to pass an "assault weapon" statute, had enormous difficulty in trying to define them, either by features or by make and model. An article recounting the history leading up to the passage of the bill reveals that just before passage in the spring of 1989:

Efforts to use a generic definition of so-called assault rifles are abandoned and the firearms now pejoratively referred to as "assault weapons" are specifically prohibited individually by name. The good gun/bad gun list continue[s] to change, resulting in an odd collection of

firearms, including many long out of production or exorbitantly expensive. A California D.O.J. official notes that efforts to draw rational distinctions were hampered by: 1) the absence of a specifically defined problem; 2) artificial distinctions made between semi-automatic weapons, such as targeting the semi-automatic AK look-alikes but exempting the functionally-identical Ruger Mini-14; 3) lack of firearms knowledge on the part of the principal drafters of the legislation; and 4) the fact that most of the weapons on the list constitute "no conceivable threat."

Bruce H. Kobayashi & Joseph E. Olson, *In Re 101 California Street: A Legal and Economic Analysis of Strict Liability for the Manufacture and Sale of "Assault Weapons,"* 8 STAN. L. & POL'Y REV. 44 (1997). Then, as now, "Many law enforcement groups oppose the proposed legislation, instead preferring stepped-up enforcement of current firearms regulations and sentence enhancements for criminals who use firearms, thus focusing on the criminal." *Id.*

Assertions that "assault weapons" are somehow more powerful, or particularly dangerous and unusual, or constitute an identifiable functional class, are not backed up by the facts.

- C. Both law enforcement officers and civilians have widely chosen some models of the banned firearms because of their superior characteristics for many defensive situations.**

Highland Park argued in the Seventh Circuit that “Assault weapons are adapted from military applications and therefore are offensive in nature.” Appellee’s Br., Doc. 27, at 17. It asserted that “these terrible weapons” are “designed to kill human beings as quickly and efficiently as possible.” *Id.* at 17-18.

Amici respectfully differ. Countless local, state, and national law enforcement agencies employ rifles that Highland Park classifies as “assault weapons,” the most popular being the AR-15 platform. Law enforcement officers do not possess these firearms because they want “to kill human beings as quickly and efficiently as possible.” Even in scenarios where weapons are fired, it is the desire and purpose of law enforcement officers *not* to kill human beings, even armed and dangerous ones, but rather to incapacitate criminals immediately, thereby preventing them from committing further harm. Law enforcement officers rarely engage in any type of action which can tactically be described as “offensive”; when they do, it is only against criminals known to pose a present threat. Most of their actions involving firearms are tactically defensive, and all are for the purpose of defending themselves or the public. The same is true of millions of honest, law-abiding citizens who own these firearms to defend themselves, their loved

ones, and their homes.

The fact that some semi-automatics that Highland Park calls “assault weapons” have military analogs means nothing. As noted by Mr. Supica in his sworn affidavit below:

Firearm development goals have largely been the same for civilian, military, and law enforcement firearms from the earliest period of firearms design and construction until today—to safely, accurately, and reliably discharge rounds with the greatest ease of operation possible. Improvements made in military firearms have been rapidly adopted for civilian firearms and vice versa.

A.20.

Millions of M-1 Garand semi-automatic rifles, the main rifle of the U.S. Army during World War II, have been sold to American citizens through the Congressionally-mandated Civilian Marksmanship Program. Conversely, rifles originally developed for civilian use are sometimes adapted for military or law enforcement use. An example is the bolt action Remington Model 700, which was originally developed as a hunting rifle, but was later adopted by the United States military and many law enforcement agencies as a sniper rifle.⁶ Rifles are

⁶ <http://www.remingtonmilitary.com/firearms/sniper%20rifles/m700.aspx>

neither inherently “offensive” nor “defensive.” That depends on the intentions of the individual using it.

AR-15 platform rifles are preferred by law enforcement for several important reasons. A training course in the Patrol Rifle (AR-15) for Massachusetts Municipal Police points out advantages of that rifle in a number of common circumstances. The materials for the course state that:

The [AR-15] rifle is a superior tool. It allows the officer to either stand off from the threat or, if the situation requires, advance to the threat with the confidence that the tool in their hands can deal with almost any perceived threat.⁷

After noting that the AR-15 platform has sufficient power and “a larger magazine capacity than our service pistol or shotgun,” the course manual states that “The longer sight radius makes it potentially a more accurate weapon which lowers the liability to the department.” *Id.* The .223 (5.56 mm) round for which most AR platform rifles are chambered also is adequate but not too powerful for home defense, and additional rounds may sometimes be needed by civilians as well. The longer sight radius and increased accuracy provide

⁷ Massachusetts Municipal Police Training Committee, BASIC FIREARMS INSTRUCTOR COURSE: PATROL RIFLE 3 (2007), available at http://www.mlefiaa.org/files/MPTC_NEWS/Patrol_Rifle_Student_Manual_2010.pdf

the same benefit to civilians as to law enforcement.

Additional reasons that both law enforcement and civilians prefer the AR-15 platform include:

They are generally lighter in weight and shorter than traditional wood-stocked hunting rifles, Pet. 136a, or most shotguns. That makes them more maneuverable, for both law enforcement officers and civilian home defense, inside rooms and hallways.

The .223 round for which most AR-15 platform rifles are chambered is on the low side of the power range for rifle cartridges. Thus, recoil is less than with more powerful rifle cartridges. Pet. 136a. Recoil is also less than with handguns of adequate stopping power, because AR-15 rifles weigh more than handguns. Muzzle flash (light from powder burning outside the barrel) and muzzle blast (noise) will also be less than with more powerful rifle cartridges, and less than with handguns with adequate stopping power. This minimizes temporary blindness in dark conditions and disorientation caused by a firearm's loud report in an enclosed area.

Because of the relatively light projectile fired in most AR-15s, there is less risk of overpenetration of walls than with heavier bullets or heavy shotgun buckshot, thus minimizing risk to bystanders. App. 136a. This is an important consideration in law enforcement work, and to citizens acting in defense of their homes where there may be other family

members present.⁸

Another reason why both law enforcement and civilians choose the AR-15 platform is that it is adaptable, versatile, and easily customizable. Unlike many other rifles, barrel lengths and barrel weights on the AR-15 can be easily changed by the owner, as can the caliber of cartridge that it shoots. Pet. 136a. For law enforcement, different calibers or configurations may be appropriate for different tactical situations. For the homeowner, a single firearm may be customized to be used for home defense, for target shooting, and for small or large game hunting. Pet. 135a.

For these reasons, large numbers of law enforcement officers purchase AR-15 platform or AK pattern rifles for their own private ownership at home. According to a large scale survey conducted by the National Shooting Sports Foundation (“NSSF”), 11% of private owners of modern sporting rifles or MSRs (a category that includes AR-15 and AK pattern rifles) had a law enforcement background. NSSF, MODERN SPORTING RIFLE (MSR) COMPREHENSIVE CONSUMER REPORT 12 (2013). Of these, half were active law enforcement officers, and half were retired. *Id.* For respondents with a military or law enforcement background, “home

⁸ One of the reasons offered by a municipal police department when it adopted the AR-15 was that it “posed less risks of hitting bystanders.” Jeff Holtz, *For the Police, a Move to More Firepower*, NEW YORK TIMES (Nov. 2, 2003), available at <http://www.nytimes.com/2003/11/02/nyregion/for-the-police-a-move-to-more-firepower.html>

defense” was the second most important reason (8.35 on a scale of 10) for owning an MSR, just slightly lower than “recreational target shooting” (8.86). *Id.* (unpaginated cross-tabulation tables).⁹

In the Seventh Circuit, it was claimed that the banned firearms are “weapons for mass slaughter” and that “assault weapons and large capacity magazines are instruments of war and are designed to kill and maim multiple human beings at close range.” Brief of *Amicus Curiae* the Brady Center to Prevent Gun Violence, Doc. 34 at 2. Despite this hysterical and inaccurate rhetoric, the truth is more mundane: the banned firearms are just a subset of ordinary semi-automatic weapons, and are owned and used by millions of law-abiding citizens and thousands of law enforcement agencies and officers for lawful purposes.

II. THE FIREARM AND MAGAZINE BANS WILL NOT REDUCE CRIME.

A. Very few crimes are committed with the firearms that Highland Park has banned.

Of the firearms banned as “assault weapons” by Highland Park, nearly all the firearms actually affected will be rifles.¹⁰ According to the Federal

⁹ 91% of all MSR owners responding to the survey owned at least one AR platform weapon. *Id.* at 5. That is why this brief focuses on ARs—they are by far the most numerous of the banned firearms.

¹⁰ The shotguns and pistols listed in the ordinance have not

Bureau of Investigation, the annual average number of homicides committed in the United States during the years 2009 through 2013 was 12,970. Only 327, or 2.5%, were committed with rifles of all types.¹¹ Though commonly and legally possessed in the millions, rifles defined as “assault weapons” by Highland Park are probably used to commit fewer than 1% of the homicides in this country.¹² By contrast, far more homicides were committed during this period with “blunt objects” such as clubs and hammers (525, or 4.0%) than with all rifles. *Id.* Over twice as many were committed with “personal weapons” such as hands, fists, and feet (746, or 5.8%), and more than five times as many using “knives or cutting instruments” (1676, or 12.9%) than with all rifles. *Id.*

In Illinois, the percentage of murders with rifles is even fewer. Of 433 Illinois homicides in 2013, only three (.69%) were committed with rifles of any kind. Nine murders were committed with hands, fists, and feet, three times the rate for rifles.

been produced in numbers even remotely comparable to the popular AR-15 platform and other rifles listed or described by features.

¹¹ Uniform Crime Reports, Murder Victims by Weapon, 2009-2013, available at https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/offenses-known-to-law-enforcement/expanded-omicide/expanded_homicide_data_table_8_murder_victims_by_weapon_2009-2013.xls.

¹² The number of AR-15 and AK pattern rifles in this country is probably in the vicinity of ten million. Pet. 9. As of 2009, the total number of rifles in civilian hands was about 110 million. William J. Krouse, Congressional Research Service, *Gun Control Legislation* 8 (Nov. 14, 2012).

More than 13 times as many homicides (41) were committed with cutting instruments than with all rifles in Illinois that year.¹³

Thus, Highland Park is depriving its residents of their enumerated constitutional rights in a futile attempt to reduce one of the very smallest classes of crime.

B. Most mass killings are not committed with the banned firearms.

The Mayor of Highland Park stated below that the City Council was concerned that a mass shooting tragedy could occur in Highland Park “unless proper public safety measures are taken.” A.16. Law enforcement officers such as *amici* are especially concerned with protecting public safety and preventing mass murders. The question is whether Highland Park’s ordinance does anything to accomplish those goals. It does not.

The biggest intentional mass killings in the United States (apart from war) have not been carried out with firearms, but with other instruments. The 9-11 attacks (resulting in 2,977 deaths) were committed with commercial airliners.¹⁴

¹³ Uniform Crime Reports, Table 20, Murder by State, Types of Weapons, 2013, available at https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/table-20/table_20_murder_by_state_types_of_weapons_2013.xls

¹⁴ CNN Library, *September 11th Fast Facts*, available at <http://www.cnn.com/2013/07/27/us/september-11-anniversary-fast-facts/>

The next largest intentional mass killing was the Oklahoma City attack, in which Timothy McVeigh used a truck bomb constructed from kerosene and fertilizer (168 deaths).¹⁵ The third largest mass murder was the Happy Land Social Club arson, committed with gasoline by Julio Gonzalez in the Bronx in 1990 (87 deaths).¹⁶ The largest killing of schoolchildren was by Andrew Kehoe, an embittered farmer who bombed a school in Bath, Michigan in 1927, killing 45 people including 37 schoolchildren.¹⁷ The point here is not to minimize the horror and grief of mass killings, but to observe that the instrument is not the problem, but the evil, depravity, and often mental derangement of those who plan to kill large numbers of people. If they are intent on killing, they will find the means to do so.

Contrary to some popular misconceptions, mass shootings (defined as four or more homicide victims in one incident) have not risen dramatically in recent years. According to a recent report by the Congressional Research Service, during the 15 year

¹⁵ ENCYCLOPÆDIA BRITANNICA, “*Oklahoma City bombing*,” available at <http://www.britannica.com/event/Oklahoma-City-bombing>

¹⁶ Patrice O’Shaughnessy, *Jealous ex-boyfriend’s fury killed 87 in Happy Land fire 20 years ago*, NEW YORK DAILY NEWS (Mar. 24, 2010), available at <http://www.nydailynews.com/new-york/jealous-exboyfriend-fury-killed-87-happy-land-fire-20-years-article-1.173625>

¹⁷ Randy Dottinga, *America’s deadliest school violence? Not Columbine, but Bath, Mich., in 1927*, CHRISTIAN SCIENCE MONITOR (Jul. 24, 2012), available at <http://www.csmonitor.com/Books/chapter-and-verse/2012/0724/America-s-deadliest-school-violence-Not-Columbine-but-Bath-Mich.-in-1927>

period 1999-2013 there was only a very small increase in mass shootings: an annual average of 20.8 for the period 1999-2003; an average of 20.2 for 2004-2008; and an average of 22.4 for 2009-2013. William J. Krouse and Daniel J. Richardson, Congressional Research Service, *Mass Murder with Firearms: Incidents and Victims 1999-2013* 13 (Jul. 30, 2015) (“CRS Report”).¹⁸

A recent article on the frequency of mass shootings notes:

Grant Duwe, a criminologist with the Minnesota Department of Corrections who has written a history of mass murders in America, said that while mass shootings rose between the 1960s and the 1990s, they actually dropped in the 2000s. And mass killings actually reached their peak in 1929, according to his data. He estimates that there were 32 in the 1980s, 42 in the 1990s and 26 in the first decade of the century.¹⁹

The panel opinion below called “assault weapons” the “weapons of choice in mass shootings.” Pet. 11a. That is incorrect.

¹⁸ The CRS Report examined only mass shootings, not all mass killings including other means such as bombs or arson.

¹⁹ Associated Press, *Mass shootings are not growing in frequency, experts say*, NEW YORK DAILY NEWS (Dec. 15, 2012), available at <http://www.nydailynews.com/new-york/no-rise-mass-killings-impact-huge-article-1.1221062>

The CRS Report states that in only 31 out of 317 mass shootings were firearms that “could” be characterized as “assault weapons” carried or used. That is 9.7%, or *fewer than one in ten mass shootings*, even if the report’s apparently broad assumptions about what constitutes an “assault weapon” are accepted.²⁰ CRS Report 16, 29.

Instead, many of the most deadly and high profile public mass shootings were carried out using only handguns. The mentally disturbed Seung-Hui Cho, who at Virginia Tech in 2007 caused the highest number of mass shooting fatalities (32) in United States history, did so with two handguns.²¹ The recent mass murder in Charleston, South Carolina, by a fanatical racist already charged with illegal drug possession, was committed with a single handgun.²² The Laurie Dann school shooting

²⁰ The report does not define “assault weapon,” almost certainly because the category is political, not functional, so there is no accepted definition. However, the authors cast the net widely, including instances where the offenders used firearms “that *could* be characterized as ‘assault weapons’ in that they *carried* rifles or pistols *capable* of accepting detachable magazines that *might have* previously fallen under the 10-year, now-expired federal assault weapons ban....” (emphasis added). The authors do not state in how many cases the “assault weapons” were used to commit the homicides as opposed to simply being carried, or whether magazines of over ten rounds were actually used.

²¹ CNN Library, *Virginia Tech Shootings Fast Facts*, available at <http://www.cnn.com/2013/10/31/us/virginia-tech-shootings-fast-facts/>

²² Polly Mosendz, *Dylann Roof Purchased Handgun in Charleston Shooting Legally*, NEWSWEEK (Jun. 23, 2015), available at <http://www.newsweek.com/dylann-roof-purchased->

incident in 1988, relied on by Highland Park as a foundation for its ordinance (A.16), involved a crazy woman on psychoactive drugs who used multiple handguns, not “assault weapons,” and also poisoned children’s food and tried to set houses and a school on fire with gasoline.²³

The panel decision claiming that “assault weapons” are the “weapon of choice” in mass shootings is incorrect.

C. Experienced law enforcement personnel know that bans such as Highland Park’s will not reduce crime.

The national law enforcement organization PoliceOne conducted its Gun Policy & Law Enforcement survey in March 2013, receiving 15,595 responses from verified police professionals across all ranks and department sizes.²⁴ Respondents were asked, “What effect do you think a federal ban on manufacture and sale of some semi-automatic firearms, termed by some as ‘assault weapons,’

handgun-used-charleston-shooting-legally-345994

²³ Eric Zorn, *Case Is Closing On Laurie Dann*, CHICAGO TRIBUNE (May 21, 1991) available at http://articles.chicagotribune.com/1991-05-21/news/9102150460_1_mental-hospital-hubbard-woods-elementary-school-safe-deposit-box

²⁴ PoliceOne, *Gun Policy & Law Enforcement Survey* (2013) (reported at http://ddq74coujkl1.cloudfront.net/p1_gunsurveysummary_2013.pdf) (“PoliceOne Survey”). A description of the study is at <http://www.policeone.com/police/products/press-releases6188461-policeone-com-releases-survey-of-15-000-law-enforcement-professionals-about-u-s-gun-control-policies/>.

would have on reducing violent crime?” PoliceOne Survey, Question 5. The results were overwhelming: only 7.6% (1,112) believed such a nationwide ban would have a significant or moderate effect in reducing crime, 91.5% (13,401) believed a ban would have no effect or a negative effect in combating violent crime, and .9% (129) were unsure.

In the same survey, law enforcement officers were asked, “Do you think a federal ban on manufacture and sale of ammunition magazines that hold more than ten rounds would reduce violent crime?” PoliceOne Survey, Question 6. The officers were equally skeptical of the effects of a magazine ban: 95.7% (14,013) of the respondents said “no,” only 2.7% (391) said “yes,” and 1.6% (238) were unsure. This extraordinary consensus by police professionals that bans on commonly possessed semi-automatics and magazines holding more than ten rounds will not reduce violent crime is in stark contrast to Highland Park’s assumption that its ban would “protect” public safety. A.10.

When “assault weapon” and magazine bans have recently been imposed in some states, the reaction of rank and file law enforcement officers, as well as elected law enforcement officials, has been heavily negative, chiefly on grounds that such bans are ineffective in reducing crime. After no debate at all, the New York state legislature in 2013 imposed a ban on commonly possessed firearms and magazines similar to those banned by Highland Park. *See* NY SAFE Act, enacted by S2230-2013 and amended by

S2607D-2013. The SAFE Act prohibited possession by citizens generally, but not by law enforcement. The Albany Police Officers Union nevertheless wrote an open letter to the Governor and key legislators stating that it “condemns and opposes” the new law, that the law “violates fundamental constitutional rights,” and that it “will not deter criminals or mentally ill individuals from plotting and carrying out bloodshed and violence.”²⁵ They forcefully urged that the Act “will not improve public safety. Criminals and the mentally ill will not abide by it....” *Id.*

The New York State Sheriffs’ Association (an *amicus* in this case) not only opposed the Act publicly, but they submitted a brief in opposition to the Act in federal district court and on appeal. *New York State Rifle and Pistol Association v. Cuomo*, 1:13-cv-00291 (W.D.N.Y) (Doc. 47-1); *Nojay v. Cuomo*, 14-36-CV(L) (2d. Cir.) (Doc. 93).

In Colorado, a ban on magazines over fifteen rounds was passed in 2013. Fifty-five out of sixty-two elected sheriffs initially joined as plaintiffs in a lawsuit to have the ban declared unconstitutional. *Cooke v. Hickenlooper*, 2013 WL 6384218 (D. Colo), *appeal pending sub nom. Colorado Outfitters Ass’n v. Hickenlooper*, No. 14-1290 (10th Cir.).

There was also heavy law enforcement opposition to the recent “assault weapon” ban in Maryland. The Maryland Troopers Association and

²⁵Available at <http://www.nysrpa.org/files/SAFE/AlbanyPoliceUnionLetter.pdf>

the Maryland State Police Alumni Association actively opposed the bill when it was pending in the Maryland General Assembly. *See Kolbe v. O'Malley*, No. 13-2841 (D. Md. 2014) (Ex. 35 to Plaintiff's Cross Motion for Summary Judgment, Doc. 55-35). The Maryland Sheriffs Association voted to oppose it, and the President and Immediate Past President of that association testified against it while it was pending. *Id.* (Ex. 49 to Plaintiffs' Reply, Doc. 69-5).

Neither will the bans promote the safety of law enforcement officers. The vast majority of law enforcement officers who are slain on duty are killed with handguns, not rifles, shotguns, or other weapons. *See* FBI UCR (2013) (Table 27, Law Enforcement Officers Feloniously Killed, Type of Weapon, 2004–2013). While any law enforcement deaths are deeply regrettable, a ban on a subset of rifles is not an effectual means for protecting officers.

CONCLUSION

The petition for certiorari should be granted, and the decision below should be reversed.

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Respectfully submitted,

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August 28, 2015

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