

In the
Supreme Court of Illinois

DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, and SECOND AMENDMENT FOUNDATION,

Plaintiffs-Petitioners

vs.

VILLAGE OF DEERFIELD, ILLINOIS, a municipal corporation,

Defendants-Respondents.

On Appeal from the Appellate Court of Illinois,
Second Judicial District, No. 2-19-0879,
There heard on appeal from the Circuit Court of
Lake County, Illinois, No. 18 CH 427
The Honorable Luis A. Berrones, Judge Presiding.

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
IN SUPPORT OF APPELLEE CITY OF DEERFIELD**

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Pursuant to Illinois Supreme Court Rules 345 and 361, the Gun Violence Prevention Action Committee, Everytown for Gun Safety Support Fund, and Giffords Law Center to Prevent Gun Violence (“Amici”), respectfully request leave of this Court to file the brief submitted herewith as *amici curiae* in support of the position of appellee Village of Deerfield, Illinois (“Deerfield”), and urge affirmance of the Appellate Court of Illinois, Second District’s opinion in *Easterday v. Village of Deerfield*, --- N.E.3d ----, 2020 WL 7224314 (Dec. 7, 2020). In support of this motion, Amici describe below their interest in this case and how the proposed brief will assist the Court. Ill. S. Ct. R. 345(a).

I. Identity and Interest of the Proposed *Amici Curiae*

Everytown for Gun Safety (“Everytown”) is the nation’s largest gun violence prevention organization, with nearly six million supporters across the country, including over 300,000 in Illinois. Everytown was founded in 2014 as the combined effort of Mayors Against Illegal Guns, a national, bipartisan coalition of mayors combating illegal guns and gun trafficking, and Moms Demand Action for Gun Sense in America, an organization formed after a 20-year-old gunman murdered twenty children and six adults at an elementary school in Newtown, Connecticut with an AR-15 rifle—one type of assault weapon regulated by the law challenged here. The mayors of 28 Illinois cities are members of Mayors Against Illegal Guns. Everytown also includes a large network of gun-violence survivors who are empowered to share their stories and advocate for responsible gun laws.

Everytown’s mission includes defending common-sense gun safety laws by filing amicus briefs that provide historical context and doctrinal analysis that might otherwise be overlooked. Everytown has drawn on its expertise to file briefs in numerous cases involving gun safety legislation, including in cases, like this one, involving challenges to

assault weapon and large capacity magazine prohibitions. *See, e.g., Duncan v. Becerra*, No. 19-55376 (9th Cir.); *Wilson v. Cook County*, No. 18-2686 (7th Cir.); *Worman v. Healey*, No. 18-1545 (1st Cir.); *Kolbe v. Hogan*, No. 14-1945 (4th Cir.) (en banc). Several courts have also cited and expressly relied on Everytown’s amicus briefs in deciding Second Amendment and other gun cases. *See, e.g., Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.*, 910 F.3d 106, 112 n.8 (3d Cir. 2018); *Rupp v. Becerra*, 401 F. Supp. 3d 978, 991-92 & n.11 (C.D. Cal. 2019), appeal docketed, No. 19-56004 (9th Cir. Aug. 28, 2019); *see also Rehaif v. United States*, 139 S. Ct. 2191, 2210-11, nn.4 & 7 (2019) (Alito, J., dissenting).

Amicus curiae Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit policy organization dedicated to researching, writing, enacting, and defending laws and programs proven to effectively reduce gun violence. The organization was founded more than a quarter-century ago following a gun massacre at a San Francisco law firm and was renamed Giffords Law Center in October 2017 after joining forces with the gun-safety organization founded by former Congresswoman Gabrielle Giffords. Today, Giffords Law Center provides free assistance and expertise to lawmakers, advocates, legal professionals, law enforcement officials, and citizens who seek to improve the safety of their communities. Giffords Law Center has provided informed analysis in a variety of firearm-related cases, including *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), as well as numerous cases relating to assault weapons restrictions, including *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015), concerning a challenge to Highland Park’s substantially similar ordinance banning assault weapons. Several courts have cited

research and information from Giffords Law Center’s amicus briefs in Second Amendment rulings. *See, e.g., Ass’n of N.J. Rifle & Pistol Clubs v. Att’y Gen. N.J.*, 910 F.3d 106, 121-22 (3d Cir. 2018); *Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 417 F. Supp. 3d 747, 754, 759 (W.D. Va. 2019); *Md. Shall Issue v. Hogan*, 353 F. Supp. 3d 400, 403-05 (D. Md. 2018). Giffords Law Center has a particular interest in this litigation because it was formed in the wake of an assault weapon massacre at a San Francisco law firm in 1993. The shooter in that rampage was armed with two assault weapons and multiple large capacity ammunition magazines, some capable of holding up to 50 rounds of ammunition.

The Gun Violence Prevention Action Committee (“GVPAC”) advocates for common sense, evidence-based, gun violence prevention measures that will save lives in Illinois. The Committee pursues this mission by (1) encouraging grassroots activism through community outreach and legislative action, 2) sharing information and resources, 3) fostering collaboration and connections among advocates who are working to reduce all types of violence, and (4) working in partnership with key stakeholders, including faith and community groups, families and survivors of gun violence, law enforcement and elected officials to end the gun violence crisis in Illinois.

II. The Court Should Allow the Proposed Amicus Brief

Appellants’ petition asks whether a Village of Deerfield gun-safety ordinance prohibiting assault weapons is preempted by state law. Amici submit the Appellate Court of Illinois, Second District reached the correct result in upholding the ordinance. A conclusion to the contrary could have significant adverse implications for the exercise of home rule authority, particularly as it relates to localized gun safety legislation. Amici’s proposed brief will provide the Court with a unique perspective on home rule authority

jurisprudence and its significance in the context of gun laws, both generally and specifically as it relates to assault weapons.

The proposed amicus brief argues the Second District correctly examined Illinois law and the exception permitted for home rule units, such as Deerfield, to adopt—and if needed, amend—their own ordinances concerning assault weapons. The proposed amicus brief explains why the strong presumptions in favor of home rule authority, and the longstanding application of home rule authority or other local governance in the context of gun safety legislation, is particularly appropriate concerning assault weapons. Gun safety regulation is a demonstrably important area of public health, safety and welfare and the concurrent jurisdiction for assault weapons regulation granted by the State should be respected.

Proposed Amici have a strong interest in ensuring the proper application of the law of Illinois, and supporting municipalities, such as Deerfield, in protecting their authority to enact gun safety legislation. Amici’s unique expertise and perspective will provide important context for the Court.

III. Conclusion

For the foregoing reasons, Amici respectfully request leave to file the attached proposed *amicus curiae* brief.

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No. 126849

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CERTIFICATE OF SERVICE

Under penalties as provided by law, pursuant to Section 1-109 of the Illinois Code of Civil Procedures, the undersigned attorney certifies that he has caused to be served the foregoing Motion For Leave To File *Amicus Curiae* Brief In Support of Appellee City of Deerfield and the document(s) referred to herein by electronically filing the document and supporting documents with the Clerk of the Illinois Supreme Court via the Court's ECF system and emailing same to all counsel of record indicated below on June 23, 2021:

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NOTICE OF FILING

TO: See attached Certificate of Service

PLEASE TAKE NOTICE that on June 23, 2021, we electronically filed with the Clerk of the Illinois Supreme Court, 200 East Capitol, Springfield, IL 62701, the attached Motion For Leave To File *Amicus Curiae* Brief In Support of Appellee City of Deerfield, a copy of which is hereby served upon you.

Dated: June 23, 2021

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BRIEF FOR *AMICI CURIAE* EVERYTOWN FOR GUN SAFETY, GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, AND GUN VIOLENCE PREVENTION ACTION COMMITTEE

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I. INTEREST OF AMICI CURIAE

Amici curiae Gun Violence Prevention Action Committee (“GVP Action”), Everytown for Gun Safety (“Everytown”), and Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) are interested in the outcome of this lawsuit because they are organizations focused on preventing gun violence and assisting jurisdictions in Illinois and across the country to defend against challenges to their gun safety laws. *Amici*’s interests are set forth more fully in the Motion for Leave to File an *Amicus Curiae* Brief, filed concurrently with this brief in accordance with Illinois Supreme Court Rule 345(a).

I. INTRODUCTION

In 2013, the Illinois General Assembly enacted the Illinois FOID Card Act, 430 ILCS 65. The law created certain statewide regulations concerning firearm ownership and possession. It expressly exempted, however, local ordinances regulating the possession and ownership of assault weapons if such ordinances conflicted with state law and were enacted within 10 days of the effective date of the Act. 430 ILCS 65/13.1. The FOID Card Act also expressly provided that any ordinance so adopted could later be amended—without any limitations on what constitutes an amendment. *Id.* Consistent with principles of home rule authority extant in Illinois, the State legislature thereby permitted concurrent jurisdiction concerning the regulation of assault weapons.

Within the 10-day period provided by the FOID Card Act, the Village of Deerfield passed its own ordinance imposing certain gun safety restrictions on the possession and ownership of assault weapons that were inconsistent with Illinois law. Village of Deerfield Ordinance No. 0-13-24 (July 1, 2013) (the “Ordinance”). In 2018, a gunman wielding an AR-15 assault weapon murdered 17 people at Marjory Stoneman

Douglas High School in Parkland, Florida. Sadly, the Parkland massacre was only one of many mass shooting tragedies involving assault weapons in the intervening years. In response to these tragedies, the Deerfield city council determined that the town's gun safety regulations of assault weapons needed to be strengthened. Deerfield took preemptive action to help avoid a mass shooting within its jurisdiction by amending its 2013 Ordinance to prohibit assault weapons and large capacity magazines in Deerfield (the "2018 Amendment").

Appellants contend the 2018 Amendment is preempted by the FOID Card Act because the original 2013 Ordinance was not inconsistent with the Act, and thus did not preserve Deerfield's right to subsequently amend the Ordinance. They argue, further, that the 2018 Amendment is not properly viewed as an amendment of the Ordinance because its prohibition on firearms extends beyond the scope of the Ordinance. The Second District correctly rejected Appellants' challenge to the 2018 Amendment. It determined that, in the absence of more specific legislation saying otherwise, the presumption in favor of home rule warranted the findings that: (i) the Ordinance was inconsistent with state law; and (ii) the 2018 Amendment is properly viewed as an amendment of the existing Ordinance, and therefore within the scope of the State's exemption for local assault weapons legislation.

Amici submit this brief to explain why the Second District's reasoning is in accord with home rule authority, as provided by the Illinois State Constitution and over fifty years of Illinois jurisprudence, and why the exercise of that authority should be afforded broad deference. The Second District's opinion is consistent with home rule principles: Local governments need legislative authority to protect the unique interests of their own

constituents, and the needs of those constituents may vary greatly among urban and rural areas. Moreover, the presumption in favor of Deerfield’s 2018 Amendment furthers the home rule public policy objectives by enabling Deerfield and other localities to regulate firearms—and as relevant here, assault weapons in particular—at the local level. *Amici* describe how permitting home rule units to regulate assault weapons within their own jurisdictions follows a long history of local firearm regulation. And, as a matter of public health and safety, Deerfield’s regulation is a measured, evidence-based response to the spate of mass murders committed with assault weapons. The Second District’s decision should be affirmed.

II. ARGUMENT

A. Upholding the 2018 Amendment Is Consistent with Illinois Law Requiring Deference to Home Rule Jurisdictions.

The Second District correctly provided broad deference to home rule authority as required under Illinois law. Home rule jurisdictions in Illinois derive their power directly from Article VII of the 1970 Constitution. Under the prior constitution, power was concentrated with the state, and local governments relied on enabling acts or charters from the legislature for authority to act. By 1970, the emergence of a large number of fragmented local governments, the rapid growth of cities and corresponding increase in demand for municipal services, and the inability of local governments to respond quickly and efficiently to local needs convinced the Illinois legislature that it was necessary to shift power to local governments. Frank Kopecky & Mary Sherman Harris, UNDERSTANDING THE ILLINOIS CONSTITUTION 11, 46 (2001 ed. 1986). This desire to empower local governments to legislate broadly in the best interests of their communities is reflected in the express language of the Illinois Constitution’s home rule provisions: “a

home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt.” Ill. Const. 1970, art. VII, § 6(a). The Constitution also specifically provides that the powers and functions of home rule units are to be construed liberally. *Id.* § 6(m). Accordingly, this Court has consistently held that section 6(a) “gives home rule units the broadest powers possible.” *See Palm v. 2800 Lake Shore Drive Condominium Ass’n*, 2013 IL 110505, ¶ 30 (2013); *City of Chicago v. Roman*, 184 Ill. 2d 504, 512 (1998); *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 174 (1992).

Further exemplifying the broad policy in favor of home rule authority, the Illinois Constitution “favor[s] concurrent exercise of power by the state and by home rule units.” *Scadron*, 153 Ill. 2d at 187–88 (the constitution “attempt[s] to avoid implied ‘preemption’ by judicial decisions”). Home rule units may exercise concurrent jurisdiction with the State in any area where the legislature does not specifically limit by statute the concurrent jurisdiction or declare the State’s exercise to be exclusive. Ill. Const. 1970, art. VII, § 6(i). To overcome the presumption in favor of home rule, a statute must include express language that the legislature intended to occupy the whole field—comprehensive state legislation that conflicts with an ordinance alone is insufficient to limit or restrict home rule authority. *See* 5 ILCS 70/7 (West 2018) (“No law enacted after January 12, 1977, denies or limits any power or function of a home rule unit, pursuant to *** the Illinois Constitution, unless there is specific language limiting or denying the power or function and the language specifically sets forth in what manner and to what extent it is a limitation on or denial of the power or function of a home rule unit.”); *Palm*, 2013 IL

110505, ¶¶ 42–44 (“[T]he conflict between the City’s ordinance and the state statutes here does not render the ordinance invalid or beyond home rule power. *** If the General Assembly wishes to deny or restrict the City’s home rule authority, it may enact a statute expressly providing for that action at its next session.”). Thus, where not *expressly* preempted, Illinois courts have uniformly upheld the validity of home rule ordinances in the face of state law preemption challenges. *See, e.g., Roman*, 184 Ill. 2d at 518 (finding City was not preempted from exercising concurrent jurisdiction with “comprehensive” state criminal law where there was no express statement of preemption); *Scadron*, 153 Ill. 2d at 187–88 (finding the Illinois Highway Advertising Control Act did not preempt home rule municipality’s ability to regulate outdoor advertising signs in areas subject to the Act); *Page v. City of Chicago*, 299 Ill. App. 3d 450, 460–61 (1st Dist. 1998) (finding the legislature did not preempt the City’s home rule authority to prohibit sexual harassment and discrimination by small employers). This deference respects the vision of the 1970 Constitutional Convention that the legislature—rather than the courts—has the primary role in limiting home rule units’ police powers. *Scadron*, 153 Ill. 2d at 187–88.

Local regulation to promote gun safety plainly falls well within the broad constitutional grant of home rule authority to protect “public health, safety, morals and welfare.” Ill. Const. 1970, art. VII, § 6(a). Moreover, the constitutional delegates explicitly contemplated that Illinois’ home rule authority would apply in the context of local firearm regulations. As explained by the Court in *Kalodimos v. Village of Morton Grove*:

“[T]he delegates to the constitutional convention acknowledged that weapons control was a field suitable for local regulation pursuant to home rule authority. After the right-to-arms provision emerged from the Bill of Rights Committee prefaced by

the words “[s]ubject * * * to the police powers *of the State*” (emphasis added) (Report of the Bill of Rights Committee on the Preamble and Bill of Rights, 6 Proceedings 84), the words “of the State” were stricken by vote of the full convention following an objection that their presence might be construed to rule out the exercise of police powers by municipalities and other units of local government. 3 Proceedings 1702–03.”

103 Ill. 2d 483, 504 (1984). Considered in the context of the sweeping grant of power to home rule jurisdictions discussed above, this legislative history reflects the constitutional delegates’ intention to empower home rule units with constitutional authority to enact broad-reaching gun safety legislation within their jurisdictions, limited only where expressly preempted by the General Assembly.

The Second District’s ruling upholding Deerfield’s assault weapons prohibition is consistent with constitutional and controlling case authority permitting local concurrent regulation over any government affairs, including gun regulation. The legislature demonstrated that it “did not intend to preempt all regulation of assault weapons by home rule units,” but rather intended that home rule units would be precluded from regulating assault weapons only *if* they failed to act within the prescribed timeframe. *Easterday, et al. v. Village of Deerfield et al.*, --- N.E. 3d ---, 2020 Ill. App. (2d) 190879, ¶ 41 (Dec. 7, 2020). “When the General Assembly intends to preempt or exclude home rule units from exercising power over a matter, that body knows how to do so.” *Roman*, 184 Ill. 2d at 517 (home rule unit properly exercised concurrent jurisdiction with “comprehensive” state statute where there was “no express statement that home rule units are excluded from exercising power”). Here, the legislature expressly provided for concurrent jurisdiction.

The presumption in favor of home rule further demands that Deerfield’s 2018 Amendment be construed in Deerfield’s favor—as a valid amendment to the original

Ordinance, which created concurrent jurisdiction by conflicting with the existing Illinois law. As the statute provides, and the legislative history confirms, the General Assembly intended that any timely enacted regulation of assault weapons could later be amended by the home rule unit, without limitation. *Easterday*, 2020 IL App (2d) 190879, ¶ 65.

Construing the statute to permit amendment as to possession and ownership, even if the original ordinance were deemed to regulate only storage and transportation, accords with providing home rule units the “broadest powers possible.”

This Court has stated that “[s]ince the state always can vindicate its interests by legislating in the proper form, it seems unwise to sustain state legislation at the expense of home rule ordinances,” except “in those few cases where vital state interests would be sacrificed by permitting the local legislation to prevail until the next session of the General Assembly.” *Roman*, 184 Ill. 2d at 519; *Palm*, 2013 IL 110505, ¶ 42. This case does not present one of those rare instances. The Illinois legislature has had ample opportunity to vindicate its interests by amending section 13.1 but it has chosen not to do so. Upholding Deerfield’s Ordinance, including the 2018 Amendment, puts no vital state interest at risk. Moreover, there can be no sacrifice of a vital state interest because the General Assembly expressly permitted home rule units to regulate possession and ownership of assault weapons within their jurisdiction—exactly what Deerfield’s amended Ordinance does. Accordingly, the Second District properly permitted Deerfield’s concurrent jurisdiction over assault weapons. Its decision should be upheld.

B. Local Gun Ordinances Have Regularly Been Found to Further the Principles Underlying Home Rule Authority, Including in Illinois.

Local gun safety legislation comports with the principles underlying home rule authority. Local gun regulations are an effective method of addressing disparate needs

and interests of diverse communities within a state, whether driven by localized concerns regarding gun violence, or simply by local politics. As a result, many localities have implemented gun safety legislation at the local level. Such regulation has repeatedly been found to be a valid use of home rule authority in Illinois.

1. Challenges in Enacting Appropriate Statewide Gun Safety Legislation are Well-Addressed Through Local Legislation.

Local ordinances have long been used to regulate local problems for the benefit of public health, including ordinances covering smoking in public places, the fluoridation of water supplies, traffic safety, building codes, food inspection, and air pollution. Public health and safety issues concerning the ownership and use of guns are no exception. To accommodate disparities in firearm crimes between rural and urban areas, where legitimate recreational uses of guns are fewer, gun safety regulation can be a localized solution to a localized problem. “Firearm localism,” as it has been called, gives urban areas more freedom to address gun violence within their jurisdictions while preserving rural gun culture. Joseph Blocher, *Firearm Localism*, 123 Yale L.J. 82, 104 (2013).

Gun deaths are not uniform across or within different states. Similarly, within a given state, firearm homicides are typically highest in urban areas. One analysis found that in 2015, half of all gun homicides in the U.S. took place in just 127 cities, which together contain less than a quarter of the country’s population. Aliza Aufrichtig et al., *Want to fix gun violence in America? Go local.*, The Guardian (January 9, 2017), <https://www.theguardian.com/us-news/ng-interactive/2017/jan/09/special-report-fixing-gun-violence-in-america>. Moreover, 31 percent of gun murders occurred in the 50 cities with the highest murder rates, though only 6 percent of Americans live in these cities—individuals in these cities are 5 times more likely to be murdered with a gun than

Americans overall. *Gun Violence in Cities*, Everytown Research & Policy (Apr. 24, 2019), <https://everytownresearch.org/report/gun-violence-in-cities/>. Other recent research has shown that children between 15 and 19 in urban areas are hospitalized for firearms assaults at eight times the rate of their peers in rural areas, and are five times more likely to die from intentional gunshot wounds in the most urban counties than in the most rural counties. See Bradley Herrin et al., *Rural Versus Urban Hospitalizations for Firearm Injuries in Children and Adolescents*, 142 *Pediatrics* 2 (2018); Michael L. Nance et al., The rural-urban continuum: variability in statewide serious firearm injuries in children and adolescents. 156 *Archives of Pediatrics & Adolescent Med.* 8 (2002); Children's Hospital of Philadelphia, *Types of Child Firearm Deaths Different in Rural vs. Urban Areas* (May 25, 2010), <https://www.chop.edu/news/types-child-firearm-deaths-different-rural-vs-urban-areas>, last accessed June 6, 2021. Ninety-two percent of all hospitalizations of children for firearm injuries occur in urban areas (counties with over 50,000 residents). Bradley Herrin et al., *Rural Versus Urban Hospitalizations for Firearm Injuries in Children and Adolescents*, 142 *Pediatrics* 2 (2018). These are persistent trends.

Illinois, unsurprisingly, experiences similarly distributed rates of gun violence. The Village of Deerfield is a Chicago suburb. Cook County, where a portion of the Village of Deerfield is located, has the highest overall number of gun fatalities of all of Illinois's 102 counties, by a significant margin. *Firearm Fatalities in Illinois*, County Health Rankings & Roadmaps, <https://www.countyhealthrankings.org/app/illinois/2019/measure/factors/148/data?sort=d-esc-3> (last accessed June 6, 2021). Deerfield is otherwise located in Lake County, which

has the fourth highest number of gun fatalities in Illinois. *Id.* To address these alarming and unique circumstances, areas like Deerfield may reasonably seek to regulate firearms—in the interest of public health and safety—by different means than Illinois’ rural jurisdictions.

There are also deep political and sociological divisions between urban and rural gun cultures that often can better be accommodated by a framework that permits local jurisdictions to enact gun laws that account for, and respect, these differences. Far more people own guns in rural areas than in urban areas, but people in urban areas suffer a disproportionate amount of the nation’s gun violence. Blocher, 123 Yale L.J. at 93–94. People in rural areas are more likely to have more positive associations with guns, gun ownership, and other gun owners, than urban residents. *Id.* at 93. By contrast, people in urban areas are more likely to support stronger gun safety measures and view guns and gun ownership as antithetical to their own values. *Id.* at 98–100. And, while many view gun policy as a strictly partisan issue, a recent 2021 survey suggested that the trend toward Americans in rural areas typically supporting more expansive gun access, and Americans in urban areas favoring stronger gun restrictions, cuts across party affiliations. Katherine Schaeffer, *Key facts about Americans and guns*, Pew Research Center (May 11, 2021), <https://pewrsr.ch/2REmF9D>. Specifically, the 2021 survey showed that Republicans who live in urban communities are more likely to favor assault weapons prohibitions than those in more rural areas. *Id.*

Home rule authority permits regulation that is tailored to address these demographic disparities. Indeed, home rule authority embraces the concept that local governments “are closely connected to their constituents and thus may be better able to

experiment with solutions to a variety of issues affecting local communities.” Lauren E. Phillips, *Impending Innovation: State Preemption of Progressive Local Regulations*, 117 Colum. L. Rev. 2225, 2238 (2017). As Illinois courts have recognized when applying home rule principles, local problems should be “open to local solution and reasonable experimentation to meet local needs.” *Scadron*, 153 Ill. 2d at 176 (citations omitted). When confronted with issues that affect the health and safety of local jurisdictions differently and that are perceived differently by disparate jurisdictions, and where state-level negotiations are often unable to bridge these divides, Illinois’ presumption in favor of broad home rule powers should not be diminished. This is particularly the case when it comes to firearm safety.

2. Illinois Has a Longstanding History of Permitting Gun Regulation at the Local Level.

Deerfield’s decision to enact its own Ordinance concerning assault weapons follows a long tradition of local regulation of firearms. The Supreme Court in *Heller* noted that historical practice and tradition aids in determining the scope of the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008) (“Like most rights, the right secured by the Second Amendment is not unlimited. . . . nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms . . .”). Particularly in urban areas, the practice of local governments regulating guns has been a part of our legal tradition since colonial America. Saul Cornell, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 Ford. L. Rev. 487, 505 (2004) (noting a variety of firearms regulations were in place during the Founding Era, some of which were “quite intrusive”). The tradition of local regulation has been continued in Illinois. Under the broad protections afforded for home rule authority, courts

have repeatedly upheld local gun laws in view of the disparate needs and interests across local jurisdictions.

Even broad firearm regulations have been upheld based in part on theories of home rule authority. *See Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483 (1984); *Quilici v. Village of Morton Grove*, 532 F. Supp. 1169, 1178 (N.D. Ill. 1981), *aff'd* 695 F.2d 261 (7th Cir. 1982).¹ As the Seventh Circuit observed, home rule authority is premised on local governments being “in the best position to assess the needs and desires of the community and, thus, [to] most wisely enact legislation addressing local concerns.” *Quilici*, 695 F.2d at 267–78. In light of the “*expansive powers*” of home rule jurisdictions, the Court of Appeals recognized that, barring *specific* preemption, home rule units may properly enact gun restrictions that different from or even inconsistent with state law. *Id.* at 268 (emphasis added).

In *Kalodimos*, this Court expounded on home rule principles, explaining that home rule authority is predicated on the assumption that local problems may warrant local solutions, without regard for the views of voters and elected representatives of other parts of the State. 103 Ill. 2d at 502. In response to the plaintiffs’ contention that gun safety and crime prevention are matters of statewide concern, this Court recognized the “obvious” local interest in reducing premeditated crime, minimizing the effects of domestic violence, and reducing the likelihood of serious accidents resulting from curious children’s access to dangerous instruments such as handguns. *Id.* at 503. The Court

¹ While these decisions may have issued prior to the Supreme Court’s landmark Second Amendment decision in *Heller*, 554 U.S. 570 (2008), that fact bears no relevance here as plaintiffs assert only that the Ordinance is preempted, not that it is unconstitutional under the U.S. Constitution.

dismissed alleged concerns that local weapons regulations might “incidentally cause people who wish to carry a handgun while traveling to route themselves through other communities rather than Morton Grove.” *Id.* at 504. As the Court concluded, such an outcome would be no different than a local village speed regulation that might cause people who wish to go faster to travel another route. *Id.* The ordinance was accordingly deemed a permissible exercise of the village’s home rule powers.

Similarly, in *City of Chicago v. Taylor*, 332 Ill. App. 3d 583 (2002), the Appellate Court of Illinois, First District, upheld Chicago’s ordinance requiring destruction of unregistered firearms surrendered or confiscated pursuant to law. Like the *Kalimodos* Court, the appellate court recognized that gun safety was an area in which local governments had a legitimate and substantial interest in adopting localized solutions. *Id.* at 587. The court also recognized that home rule units, unless specifically preempted, can exercise their powers concurrently with the state. *Id.* at 587–88. Given the “expansive powers [of home rule units] to govern as they deem proper,” the court held the gun safety ordinance “clearly pertains to the City’s interest in reducing firearm-related deaths and injuries” and was a permissible exercise of home rule authority. *Id.* at 588–89.

Other Illinois cases are in accord. *See, e.g., Justice v. Town of Cicero, Ill.*, No. 10 C 5331, 2011 WL 5042055, at *1 (N.D. Ill. Mar. 11, 2011) (upholding firearms registration ordinance and recognizing “the Illinois Constitution gives home rule units *wide latitude* to regulate the private possession of firearms in order to protect the public health, safety, and welfare”) (emphasis added); *Illinois Sporting Goods Ass’n v. Cty. of Cook*, 845 F. Supp. 582, 587 (N.D. Ill. 1994) (dismissing claim challenging local assault weapons ordinance under Illinois Constitution and finding it was a proper exercise of

home rule authority given local jurisdiction's ability to enact legislation "to protect and promote the general welfare of its citizens").

More recently, the City of Highland Park enacted a prohibition on assault weapons, upon which Deerfield's Ordinance is based. As discussed in more detail below, Highland Park's assault weapons prohibition was upheld in the face of a constitutional challenge. The Seventh Circuit recognized the localized interests and public safety concerns inherent in the grant of home rule authority, and that solutions to concerns regarding accessibility of assault weapons might best be implemented by local government. *See generally Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015).

3. Home Rule Authority Makes Particular Sense in the Context of Assault Weapons.

The Illinois General Assembly recognized that assault weapons are appropriate for regulation at the local level by expressly including a carve-out in the FOID Card Act to allow home rule units to exercise concurrent jurisdiction with respect to assault weapons. The Illinois legislature's decision is in accord with other jurisdictions across the country where local regulation of assault weapons has repeatedly been upheld. State and local governments have successfully implemented assault weapons prohibitions since before the enactment of the former federal prohibition of assault weapons, and have continued to do so after the law expired. Brian Roth, *Reconsidering a Federal Assault Weapons Ban in the Wake of the Aurora, Oak Creek, and Portland Shootings: Is It Constitutional in the Post-Heller Era?*, 37 *Nova L. Rev.* 405, 415 n.67 (2013) (collecting cases). Local jurisdictions that have regulated assault weapons include Boston, New York City, Denver, Cincinnati, and Cleveland, among others.

Legal opinions upholding many of these laws have considered the propriety and need for local regulation in the assault weapon arena,² and state legislators have recognized the importance of local firearm legislation with regard to assault weapons. Colorado’s highest court upheld a Denver ordinance banning the manufacture, sale or possession of assault weapons as a valid exercise of the police power that did not violate the right to bear arms in self-defense. *Robertson v. City & Cty. of Denver*, 874 P.2d 325 (Colo. 1994). The court recognized the City and County of Denver found the use of assault weapons posed a threat to the health, safety and security of its citizens, and that the assault weapons prohibition was premised on the government’s interest in curbing crime—particularly homicides. *Id.* at 332; *see also id.* at 346 n.18 (referencing the presumption of constitutionality for legislation designed to protect the public health and safety) (Vollack, J., concurring). These concerns reflected the government’s legitimate interest in the public health, safety and welfare of its citizenry. *Id.* at 331–32.

Despite this sound reasoning, the Colorado General Assembly later enacted a firearm preemption law. *See* C.R.S. § 29-11.7-103. But following a mass shooting—with an assault weapon—at Boulder supermarket, the Legislature repudiated that law and

² While not all of the decisions are grounded in home rule authority, similar laws have been upheld in other local jurisdictions. *See, e.g., Richmond Boro Gun Club, Inc. v. City of New York*, 97 F.3d 681, 683, 689 (2d Cir. 1996) (local law criminalizing possession and transfer within the city of assault weapons, as defined by the law, was not unconstitutionally vague or preempted by federal legislation, nor did it violate due process); *City of Cincinnati v. Baskin*, 859 N.E.2d 514, 519 (Ohio 2006) (municipal ordinance prohibiting the possession of any semiautomatic rifle with a magazine capacity of more than ten rounds was an appropriate exercise of concurrent jurisdiction with the State); *Heller v. District of Columbia*, 670 F.3d 1244, 1263–64 (D.C. Cir. 2011) (recognizing the local government’s interest in crime control in a densely populated urban area, and protecting innocent people and police officers from the dangers of large-capacity magazines in upholding D.C.’s assault weapons prohibition); *Arnold v. City of Cleveland*, 616 N.E.2d 163 (Ohio 1993).

reaffirmed municipalities' broad authority to regulate guns and promote public safety: A bill the Colorado governor recently signed into law repeals the state's firearm preemption law and reaffirms local government authority to regulate firearms, including assault weapons, in just the manner the City of Deerfield has sought to do here. *See* S.B. 256 (Co. 2021).

In 2015, the Seventh Circuit rejected a Second Amendment challenge to an assault weapons prohibition enacted by the City of Highland Park—Deerfield's Lake County neighbor. *Friedman*, 784 F.3d at 412. The court's reasoning is instructive with respect to the importance of local regulation of firearms. The court rejected the plaintiffs' argument that the ordinance would have no effect on gun violence in the community, finding that there was a "substantial benefit" to the public if the ordinance reduced the perceived risk from a mass shooting and made the local community feel safer as a result. *Id.* Moreover, the court found the ordinance was responsive to the local community because "[l]ocal crimes are most likely to be committed by local residents, who are less likely to have access to firearms banned by a local ordinance. A ban on assault weapons won't eliminate gun violence in Highland Park, but it may reduce the overall dangerousness of crime that does occur." *Id.*

These decisions are consistent with the principles undergirding home rule authority and its application to firearm regulations. They implicitly, if not explicitly, recognize that different jurisdictions within a state may view the need to regulate assault weapons differently to meet their own public health and safety needs, including the local citizenry's sense of safety and security. *See, e.g., Friedman*, 784 F.3d at 412. The cases support localized approaches to the regulation of assault weapons, consistent with what

was expressly authorized by the Illinois legislature when it created concurrent jurisdiction for home rule units.

C. Local Assault Weapons Prohibitions Address Community Concerns Regarding Public Safety and Mass Shootings.

Many local governments have enacted assault weapons prohibitions in response to their constituents' dissatisfaction with the inaction of state and federal governments to protect against the misuse of assault weapons, which have been repeatedly used in senseless mass shootings. Deerfield, like many other local governments, enacted its assault weapons prohibition in response to the 2018 Parkland, Florida mass shooting, where the shooter killed seventeen people and injured seventeen more with an AR-15 rifle.

Assault weapons are increasingly the weapon of choice in mass shootings because they have several design features that make them particularly deadly. Semi-automatic rifles or assault-style pistols and shotguns with large-capacity magazines enable shooters to fire more bullets, more quickly, and with more firepower, than firearms equipped with smaller magazines. *Friedman*, 748 F.3d at 409. They are also designed to fire more bullets quickly and with greater accuracy than fully automatic weapons, making them more dangerous to potential victims of a mass shooter. *Id.* One only has to look at the ever-increasing casualty count of mass shootings perpetrated with assault weapons to know this is true—between 2009 and 2020, the five deadliest mass shooting incidents in the US all involved the use of assault weapons and/or high capacity magazines. *Mass shootings involving assault weapons or high-capacity magazines were far deadlier—Mass Shootings in America*, Everytown Research & Policy, <https://everytownresearch.org/maps/mass-shootings-in-america-2009-2019/#strong-mass->

shootings-involving-assault-weapons-or-high-capacity-magazines-were-far-deadlier-strong. And it is not just high-capacity magazines that make assault weapons so deadly.

As a radiologist who treated victims from the Parkland shooting wrote:

“Routine handgun injuries leave entry and exit wounds and linear tracks through the victim’s body that are roughly the size of the bullet. If the bullet does not directly hit something crucial, *** chances are we can save [the victim]. The bullets fired by an AR-15 are different: They travel at a higher velocity and are far more lethal than routine bullets fired from a handgun. *** The high-velocity bullet causes a swath of tissue damages that extends several inches from its path. It does not have to actually hit an artery to damage it and cause catastrophic bleeding. Exit wounds can be the size of an orange.”

Heather Sher, *What I Saw Treating the Victims from Parkland Should Change the Debate on Guns*, The Atlantic (Feb. 22, 2018),

<https://www.theatlantic.com/politics/archive/2018/02/what-i-saw-treating-the-victims-from-parkland-should-change-the-debate-on-guns/553937/>. Thus, assault weapons are capable of causing death and destruction of a much higher magnitude than handguns, shotguns, or even rifles without military-style features—particularly when used in a mass shooting.

The destruction wrought by a mass shooting undeniably has significant impact locally. Jaeah Lee & Julia Lurie, *16 Charts That Show the Shocking Cost of Gun Violence in America*, Mother Jones (Apr. 15, 2015),

<https://www.motherjones.com/politics/2015/04/charts-show-cost-price-gun-violence-america/>. Municipal taxpayers and residents must bear the costs of responding to mass shootings. Moreover, mass shootings deeply traumatize communities, leaving wounds lasting a generation or more. In the wake of numerous mass shootings over recent years, localized assault weapons prohibitions make communities safer, and increase the

communities' sense of safety, even if the regulations operate only at the local level and restrict access only to certain guns. *Friedman*, 784 F.3d at 412. Given the unique burden mass shootings place on local communities, it is sound policy to empower home rule units like Deerfield to enact assault weapons prohibitions to protect their residents from similar suffering.

Local assault weapons prohibitions can have a real and appreciable effect on keeping dangerous weapons out of the hands of those who seek to cause this type of harm. A recent study published in the *Journal of the American Medical Association* found that 24.6% of active shooter incidents involved a semiautomatic rifle. This also meant that active shooting incidents involving a semiautomatic rifle constitute 80% of active shooter incidents in which any type of rifle was used. Elzerie de Jager et al., *Lethality of Civilian Active Shooter Incidents With and Without Semiautomatic Rifles in the United States*, *J. Am. Med. Ass'n* 1034 (Sept. 11, 2018) (providing data). These incidents resulted in 82% more people wounded and 71% more people killed than incidents that did not feature a semiautomatic rifle. *Id.* The deadlier the shooting, the higher the likelihood that the shooter used a semiautomatic rifle. *Id.*

A separate 2018 study found that mass shooting fatalities were 70 percent less likely to occur from 1994 to 2004, when the federal prohibition on assault weapons and high-capacity magazines was in effect, than during the 12 years studied before and after the prohibition. Researchers estimate a federal Assault Weapon Ban (AWB) would have prevented 314 of 448 mass shooting deaths that occurred during the studied periods where the AWB was not in effect. Charles DiMaggio et al., *Changes in US mass shooting*

deaths associated with the 1994-2004 federal assault weapons ban: Analysis of open-source data, 86 J. Trauma & Acute Care Surgery 1 (2019).

Consistent with the authority granted to it, Deerfield exercised its home rule powers to help it avoid becoming the next Newtown, Parkland, or Boulder. Deerfield's interest in helping to avoid similar violence should be respected.

III. CONCLUSION

For the reasons set forth in Deerfield's brief, and the further reasons set forth above, *Amici* respectfully request the Court permit Deerfield to exercise the authority granted to it by the Illinois Constitution and General Assembly, affirm the Second District, and help Deerfield prevent an unnecessary tragedy. This Court should uphold Deerfield's assault weapons prohibition.

DATE: June 23, 2021

Respectfully submitted,

By: /s/ David M. Hanna

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 20 pages.

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No. 126849

**In the
Supreme Court of Illinois**

DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, and SECOND
AMENDMENT FOUNDATION,

Plaintiffs-Petitioners

vs.

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Defendants-Respondents.

On Appeal from the Appellate Court of Illinois,
Second Judicial District, No. 2-19-0879,
There heard on appeal from the Circuit Court of
Lake County, Illinois, No. 18 CH 427
The Honorable Luis A. Berrones, Judge Presiding.

CERTIFICATE OF SERVICE

Under penalties as provided by law, pursuant to Section 1-109 of the Illinois Code of Civil Procedures, the undersigned attorney certifies that he caused to be served the foregoing *Amicus Curiae* Brief of Everytown for Gun Safety, Giffords Center for the Prevention of Gun Violence and Gun Violence Prevention Action Committee by electronically filing the document with the Clerk of the Illinois Supreme Court via the Court's ECF system and emailing same to all counsel of record indicated below on June 23, 2021:

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NOTICE OF FILING

TO: See attached Certificate of Service

PLEASE TAKE NOTICE that on June 23, 2021, we electronically filed with the Clerk of the Illinois Supreme Court, 200 East Capitol, Springfield, IL 62701, the attached *Amicus Curiae* Brief of Everytown for Gun Safety, Giffords Center for the Prevention of Gun Violence and Gun Violence Prevention Action Committee, a copy of which is hereby served upon you.

Dated: June 23, 2021

Amici Curiae

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