In the
United States Court of Appeals
For the Seventh Circuit

No. 18-2686

MATTHEW D. WILSON, *et al.*,

Plaintiffs-Appellants,

v.

COOK COUNTY, *et al.*,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:17-cv-07002 – **Manish S. Shah**, *Judge.*

ARGUED APRIL 4, 2019 – DECIDED AUGUST 29, 2019

Before RIPPLE, HAMILTON, and ST. EVE, *Circuit Judges.*

PER CURIAM. Two Cook County residents appeal the dismissal of their complaint, which raises a Second Amendment challenge to Cook County's ban on assault rifles and large-capacity magazines. Less than five years ago, we upheld a materially indistinguishable ordinance against a Second Amendment challenge. *See Friedman v. City of Highland Park*, 784 F.3d 406 (7th

Cir. 2015). The district court dismissed the plaintiffs' complaint on the basis of *Friedman*. We agree with the district court that *Friedman* is controlling. Because the plaintiffs have not come forward with a compelling reason to revisit our previous decision, we affirm the judgment of the district court.

I.

BACKGROUND

In November 2006, the Commissioners of Cook County enacted the Blair Holt Assault Weapons Ban ("the County Ordinance"), an amendment to the Cook County Deadly Weapons Dealer Control Ordinance. The amendment defines "assault weapon" and "large-capacity magazine," and makes it illegal to "manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire, carry or possess" either item in Cook County. Cook County, Ill. Code §§ 54-211, 54-212(a). Any person who legally possessed an assault weapon or large-capacity magazine prior to enactment of the amendment must remove it from county limits, modify it to render it permanently inoperable, or surrender it to the Sheriff. *Id.* § 54-212(c). When a weapon or magazine is surrendered or confiscated, the ordinance requires the Sheriff to determine if it is needed as evidence, and, if not, to destroy it. *Id.* § 54-213(a)-(b). Violation of the County Ordinance is a misdemeanor; it carries a fine ranging from $5,000 to $10,000 and a term of imprisonment of up to six months. *Id.* § 54-214(a).

In September 2007, three Cook County residents, including the plaintiffs, brought a preenforcement action in Illinois state court, challenging the County Ordinance and seeking declaratory and injunctive relief. The complaint named as defendants the County, the individual commissioners of the Cook County Board of Commissioners, and the Cook County Sheriff. The plaintiffs alleged that the ordinance violates the Due Process Clause because the definition of assault weapons is unconstitutionally vague (Count I); the ordinance fails to provide a scienter requirement and fails to give fair warning of the conduct proscribed (Count II); the ordinance is overbroad (Count III); the ordinance violates their right to bear arms under the Second Amendment (Count IV); the ordinance is an unconstitutional exercise of the County's police powers (Count V); and the ordinance violates the Equal Protection Clause because it arbitrarily classifies certain firearms (Count VI). The Circuit Court of Cook County dismissed the complaint, and the Illinois Appellate Court upheld the dismissal. The Supreme Court of Illinois affirmed the dismissal of the due process and equal protection claims; however, it remanded for further proceedings the plaintiffs' Second Amendment claim. *See Wilson v. Cty. of Cook*, 968 N.E.2d 641, 658 (Ill. 2012). Plaintiffs then voluntarily non-suited their Second Amendment claim prior to resolution on the merits.

In June 2013, the City of Highland Park, Illinois, also enacted an ordinance banning assault weapons and large-capacity magazines within city limits

("Highland Park Ordinance"). The Highland Park Ordinance defines "assault weapon" and "large-capacity magazine" in virtually identical terms as the County Ordinance does and proscribes the same conduct: it penalizes those who "manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess" any assault weapon or large-capacity magazine. Highland Park, Ill. Code § 136.005. The Highland Park Ordinance also requires those in possession of a banned item to remove it from city limits; to render it permanently inoperable or permanently alter it so that it no longer meets the definition of assault weapon or large-capacity magazine; or to surrender it to the Chief of Police. *Id.* § 136.020. The Chief of Police, like the Cook County Sheriff, must destroy any assault weapon or large-capacity magazine not needed as evidence. *Id.* § 136.025. Highland Park punishes a violation of its ordinance as a misdemeanor, and the violation carries a fine of $500 to $1,000 and a maximum term of six months' imprisonment. *Id.* § 136.999. Shortly after the Highland Park Ordinance was adopted, a resident challenged the ordinance on Second Amendment grounds, and we upheld the Highland Park Ordinance against the constitutional challenge. *See Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015).

On July 28, 2017, Matthew Wilson and Troy Edhlund refiled their challenge to the County Ordinance in Illinois state court. As they had in their original complaint, they pleaded a Second Amendment claim as well as the previously dismissed due process and equal protection claims to "preserve[]" those

claims "for appeal."[1] The defendants removed the action to federal court on September 28, 2017.

Once in federal court, the district court granted the defendants' motion to dismiss the complaint under Federal Rule of Civil Procedure 12(b)(6). The court observed that the Cook County Ordinance is "materially identical" to the Highland Park Ordinance at issue in *Friedman*[2] and that *Friedman*, therefore, required the dismissal of the plaintiffs' Second Amendment claim.[3] The plaintiffs filed a timely notice of appeal.[4]

---

[1] R.2-1 at 6. It is not clear to us why the plaintiffs repleaded their claims under the Due Process and Equal Protection Clauses. The Supreme Court of Illinois affirmed the dismissal of those claims. *See Wilson v. Cty. of Cook*, 968 N.E.2d 641, 658 (Ill. 2012). Any further review of those claims must be sought in the Supreme Court of the United States. *See* 28 U.S.C. § 1257(a).

[2] R.30 at 3.

[3] *Id.* at 7. Although the district court did not mention the plaintiffs' other claims in its memorandum opinion, it dismissed the plaintiffs' complaint in its entirety and entered a final judgment. *See* R.31. As previously noted, it is unclear what the plaintiffs were trying to accomplish by repleading their due process and equal protection claims. They made no mention of them either in their opposition to the defendants' motion to dismiss the complaint in the district court or in their briefing before this court.

[4] The district court had jurisdiction over the plaintiffs' constitutional claims pursuant to 28 U.S.C. §§ 1331, 1343. Our jurisdiction is secure under 28 U.S.C. § 1291.

II.

DISCUSSION

The plaintiffs now submit to us that the district court should not have relied on *Friedman*. In their view, their situation is materially different from that of the *Friedman* plaintiffs, and they believe that they should have the opportunity to develop a factual record establishing those differences. In the alternative, they contend that *Friedman* was wrongly decided and that their claim should be evaluated under a test that tracks more closely the language that the Supreme Court employed in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and that we employed in *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011). We begin our consideration of the plaintiffs' claim by reviewing *Heller, Ezell*, and *Friedman* in the developing landscape of Second Amendment jurisprudence.

A.

In *Heller*, the Supreme Court considered the constitutionality of the District of Columbia's ban on handguns. After reviewing the history of the Second Amendment, the Court explained that the right to bear arms "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *Heller*, 554 U.S. at 592. The Court further stated that the right was not unlimited: it "was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626. Consequently, the Court's holding did not "cast doubt on longstanding

prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27.

Moreover, the Court explained, the Second Amendment was meant to protect the possession of weapons "in common use at the time" the Amendment was adopted. *Id.* at 627 (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)). It therefore did not preclude a ban on "the carrying of dangerous and unusual weapons." *Id.* (internal quotation marks omitted). The District of Columbia's ban, however, did not fall into one of these categories. Instead, "[t]he handgun ban amount[ed] to a prohibition of an entire class of 'arms' that [wa]s overwhelmingly chosen by American society" for the lawful purpose of self-defense. *Id.* at 628. Additionally, the prohibition extended to possession and use in the home, "where the need for defense of self, family, and property is most acute." *Id.* Consequently, the Court concluded that the District's ban could not be reconciled with the guarantees of the Second Amendment.[5]

---

[5] In *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010), the Court held "that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*" and, consequently, states' attempts to regulate the use of firearms must conform to the requirements of the Second Amendment.

In *Ezell*, we applied *Heller* to the City of Chicago's treatment of firing ranges. At the outset, we acknowledged that, although *Heller* provided "general direction," *Ezell*, 651 F.3d at 700, "the standards for evaluating Second Amendment claims [we]re just emerging," *id.* at 690. We nevertheless took from *Heller* "several key insights about judicial review of laws alleged to infringe Second Amendment rights. First, the threshold inquiry in some Second Amendment cases will be a 'scope' question: Is the restricted activity protected by the Second Amendment in the first place?" *Id.* at 701.

> [I]f the government can establish that a challenged firearms law regulates activity falling outside the scope of the Second Amendment right as it was understood at the relevant historical moment . . . the analysis can stop there; the regulated activity is categorically unprotected, and the law is not subject to further Second Amendment review.

Id. at 702-03. If, however, the government cannot meet this burden, then the court must "inquir[e] into the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights." *Id.* at 703. The rigor of this inquiry "will depend on how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right." *Id.* "[A] severe burden on the core Second Amendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government's means and its end." *Id.* at 708. However,

> laws restricting activity lying closer to the margins of the Second Amendment right, laws that merely regulate rather than restrict, and modest burdens on the right may be more easily justified. How much more easily depends on the relative severity of the burden and its proximity to the core of the right.

Id.

Applying this framework, we could not conclude that "range training is categorically unprotected by the Second Amendment." *Id.* at 704. Moving to the second inquiry, we observed that "[t]he City's firing-range ban is not merely regulatory; it *prohibits* the 'law-abiding, responsible citizens' of Chicago from engaging in target practice in the controlled environment of a firing range." *Id.* at 708. "This," we explained, "[wa]s a serious encroachment on the right to maintain proficiency in firearm use, an important corollary to the meaningful exercise of the core right to possess firearms for self-defense." *Id.* The ban was especially problematic given that the City itself had placed special import on range training by making it a requirement for obtaining a permit to possess a firearm. *Id.* We concluded, therefore, that "a more rigorous showing . . . should be required, if not quite 'strict scrutiny.'" *Id.* The City, however, had "not come close to satisfying" its "burden of establishing a strong public-interest justification for its ban on range training" and a "close fit between the range ban and the actual public interests it serves." *Id.* at 708-09.

Following *Ezell*, the question of the constitutionality of assault-weapons bans arose in two of our sister circuits, and those courts upheld the bans against Second Amendment challenges. As we had in *Ezell*, these courts considered "(1) how closely the law c[ame] to the core of the Second Amendment right; and (2) how severely, if at all, the law burden[ed] that right." *Fyock v. Sunnyvale*, 779 F.3d 991, 998 (9th Cir. 2015); *see also Heller v. District of Columbia* (*Heller II*), 670 F.3d 1244, 1257 (D.C. Cir. 2011) (noting that "the level of scrutiny applicable under the Second Amendment surely depends on the nature of the conduct being regulated and the degree to which the challenged law burdens the right" (internal quotation marks omitted)). Although these bans may have "implicate[d] the core of the Second Amendment," the bans were "simply not as sweeping as the complete handgun ban at issue in *Heller*" and did "not affect the ability of law-abiding citizens to possess the quintessential self-defense weapon – the handgun." *Fyock*, 779 F.3d at 999 (internal quotation marks omitted). These courts therefore concluded that intermediate scrutiny was appropriate and, applying that level of scrutiny, further concluded that the ordinance was "substantially related to the compelling government interest in public safety." *Id.* at 1000 (internal quotation marks omitted); *see also Heller II*, 670 F.3d at 1262-63 (noting a lack of evidence "that semi-automatic rifles and magazines . . . are well-suited to or preferred for the purpose of self-defense or sport," therefore applying intermediate scrutiny, and concluding that the evidence demonstrated that the ban was "likely to promote the Government's interest in crime

control in the densely populated urban area that is the District of Columbia").

Our decision in *Friedman* built upon the experience of our sister circuits in applying *Heller* to assault-weapons bans. We began our consideration of the constitutionality of the Highland Park Ordinance by noting that, although "*Heller* d[id] not purport to define the full scope of the Second Amendment," it did make clear "that the Second Amendment 'does not imperil every law regulating firearms.'" *Friedman*, 784 F.3d at 410 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010)). Moreover, we were able to deduce that, under *Heller*, "at least some categorical limits on the kinds of weapons that can be possessed are proper, and that they need not mirror restrictions that were on the books in 1791." *Id.* We observed that, in considering equivalent weapons bans, our sister circuits had attempted to discern what level of scrutiny should apply to an assault-weapons ban. *See id.* Their inquiries had been posed in the abstract, asking "(1) how closely the law comes to the core of the Second Amendment right; and (2) how severely, if at all, the law burdens that right." *Fyock*, 779 F.3d at 998. We, however, attempted to evaluate the Highland Park Ordinance in more "concrete" terms by asking: "whether a regulation bans weapons that were common at the time of ratification or those that have 'some reasonable relationship to the preservation or efficiency of a well regulated militia,' and whether law-abiding citizens retain adequate means of self-defense." *Friedman*, 784 F.3d at 410 (quoting *Heller*, 554 U.S. at 622) (citations omitted). We

then observed that "[t]he features prohibited by Highland Park's ordinance were not common in 1791." *Id.* However, "[s]ome of the weapons prohibited by the ordinance are commonly used for military and police functions; they therefore bear a relation to the preservation and effectiveness of state militias." *Id.* We turned then to the question "whether the ordinance leaves residents of Highland Park ample means to exercise the 'inherent right of self-defense' that the Second Amendment protects." *Id.* at 411 (quoting *Heller*, 554 U.S. at 628). We noted that "*Heller* did not foreclose the possibility that allowing the use of most long guns plus pistols and revolvers, as Highland Park's ordinance does, gives householders adequate means of defense." *Id.* Moreover, we explained that, "[w]ithin the limits established by the Justices in *Heller* and *McDonald*, federalism and diversity still have a claim," and "[t]he best way to evaluate the relation among assault weapons, crime, and self-defense is through the political process and scholarly debate." *Id.* at 412. In short, because the Highland Park Ordinance did not strike at the heart of the Second Amendment, and because the residents of Highland Park were not left without a means of self-defense, the Constitution did not foreclose Cook County's efforts to preserve public safety.

B.

Returning to the plaintiffs' arguments, they contend that, in *Friedman*, the court was "able to, and did, consider facts specific to Highland Park, as well as the

findings of the City Council, that provided the basis for its holding."[6] The same record, they assert, does not support the district court's judgment here. Moreover, they maintain that, if they were allowed to develop a factual record, it would reveal important, material distinctions between the residents of Highland Park and the residents of Cook County.

We are unpersuaded. The result in *Friedman* did not turn on any factual findings unique to Highland Park. For example, to address whether the ordinance banned weapons that are commonly owned, we referenced a national statistic. *Friedman*, 784 F.3d at 409 ("The record shows that perhaps 9% of the nation's firearms owners have assault weapons. . . ."). We also assessed the dangerousness of the prohibited weapons by discussing general evidence of the features of semi-automatic guns and large-capacity magazines. *Id.* Moreover, we did not limit our analysis to crime trends in Highland Park. *See id.* at 411 ("That laws similar to Highland Park's reduce the share of gun crimes involving assault weapons is established by data."). We did undertake inquiries specific to Highland Park's *ordinance. See, e.g.*, *id.* at 410 (determining that "[t]he features prohibited by Highland Park's ordinance were not common in 1791"); *id.* at 411 (concluding that "Highland Park's ordinance leaves residents with many self-defense options"). However, the plaintiffs admit that the prohibitions imposed by the County Ordinance and the Highland Park Ordinance are

[6] Appellants' Br. 15.

materially indistinguishable. Consequently, there is no need for County-specific discovery regarding the plaintiffs' Second Amendment challenge.

The plaintiffs further argue that, to determine whether a particular ordinance impinges on residents' right to bear arms, we must consider crime statistics, population density, and demographics of the locality. Because "[t]he type, magnitude and frequency of the criminal threats faced by the 5 million plus residents of Cook County . . . are likely to be very different from those confronted by the 29,000 residents of Highland Park,"[7] they submit that discovery is necessary to explore these disparities.

The failing in this argument is that our analysis in *Friedman* did not rest *at all* on the types or frequency of crime that a Highland Park resident may face. Such considerations never are mentioned, much less analyzed, in our decision. Our discussion of self-defense focused instead on the availability of other means for citizens to defend themselves. This is a question answered by the particular locality's laws, not by its crime rates. The plaintiffs have not come forward with *any* legal authority establishing that Cook County regulates the possession of firearms to a greater extent than was present in Highland Park.

---

[7] Appellants' Reply Br. 22.

C.

Perhaps realizing the weakness in their initial argument, the plaintiffs dedicate the bulk of their brief to their second argument: *Friedman* was wrongly decided. They maintain that *Friedman* cannot be reconciled with *Heller* or *Ezell*.

We have stated repeatedly, and recently, that, absent a compelling reason, we will not overturn circuit precedent. *See, e.g.*, *Sotelo v. United States*, 922 F.3d 848, 852 (7th Cir. 2019); *United States v. Wolfe*, 701 F.3d 1206, 1217 (7th Cir. 2012) (reiterating that a "compelling reason" is required to overrule a circuit precedent). "[P]rinciples of stare decisis require that we give considerable weight to prior decisions unless and until they have been overruled or undermined by the decisions of a higher court, or other supervening developments, such as a statutory overruling." *McClain v. Retail Food Emp'rs Joint Pension Plan*, 413 F.3d 582, 586 (7th Cir. 2005) (internal quotation marks omitted).

The plaintiffs have not come forward with *any* authority or developments that postdate our *Friedman* decision that require us to reconsider that decision. Indeed, since *Friedman*, every court of appeals to have considered the issue has reached the same conclusion that we did: bans on assault weapons and large-capacity magazines do not contravene the Second Amendment. *See Worman v. Healey*, 922 F.3d 26 (1st Cir. 2019); *Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Att'y Gen. New Jersey*, 910 F.3d 106 (3d Cir. 2018) (large-capacity magazines); *Kolbe v. Hogan*, 849 F.3d

114 (4th Cir. 2017) (en banc) (assault weapons); *New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015).[8]

Moreover, *Friedman* does not run afoul of *Heller*. The Court in *Heller* made clear that it was not "undertak[ing] an exhaustive historical analysis . . . of the full scope of the Second Amendment." *Heller*, 554 U.S. at 626. Consequently, it "was not explicit about how Second Amendment challenges should be adjudicated." *Ezell*, 651 F.3d at 701. Nevertheless, the questions we posed in *Friedman* to assess the constitutionality of the assault-weapons ban track the general guidance provided by the Court in *Heller*. For instance, in *Friedman*, we asked whether "a regulation bans weapons that were common at the time of ratification or those that have 'some reasonable relationship to the preservation or efficiency of a well regulated militia.'" 784 F.3d at 410 (quoting *Heller*, 554 U.S. at 622). This question embodies the recognition – set forth in *Heller* – "that the Second Amendment confers an individual right to keep and bear arms (though only arms that 'have some reasonable relationship to the preservation or efficiency of a well regulated militia')." *Heller*, 554 U.S. at 622.

Finally, we believe *Friedman* fits comfortably under the umbrella of *Ezell*. As outlined above, *Ezell*

---

[8] The decisions of the Ninth and District of Columbia Circuits in *Fyock v. Sunnyvale*, 779 F.3d 991 (9th Cir. 2015), and *Heller v. District of Columbia* (*Heller II*), 670 F.3d 1244 (D.C. Cir. 2011), respectively, also are consonant with *Friedman*, but predated that decision.

followed closely on the heels of *Heller* and *McDonald* at a time when "Second Amendment litigation [wa]s new." *Ezell*, 651 F.3d at 700. We endeavored therefore to set forth the "threshold" inquiries that would govern in "*some* Second Amendment cases." *Id.* at 701 (emphasis added). Specifically, we first ask whether the restricted activity is protected by the Second Amendment. If so, we inquire whether the strength of the government's reasons justifies the restriction of rights at issue, with the rigor of this second inquiry "depend[ing] on how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right." *Id.* at 703. Shortly after *Ezell*, when the question of the constitutionality of assault-weapons bans arose in other circuits, those courts employed this approach to conclude that intermediate scrutiny should be applied and to uphold those bans under that level of scrutiny. *See Heller II*, 670 F.3d at 1252 ("adopt[ing], as have other circuits, a two-step approach to determining the constitutionality of the District's gun laws" and specifically citing *Ezell*); *Fyock*, 779 F.3d at 998. When *Friedman* came before us, we were able to draw upon the experience of those circuits in addressing, specifically, assault-weapons bans. Under those circumstances, we were able to pretermit discussion of more general principles concerning level of scrutiny and focus on the "concrete" inquiries that had informed those courts' analysis of whether the bans violated the Second Amendment. *Friedman*, 784 F.3d at 410. Thus, for instance, our inquiry "whether law-abiding citizens retain adequate means of self-defense," *id.*, finds a parallel in *Heller II*'s consideration

of whether "the ban on certain semi-automatic rifles prevent[s] a person from keeping a suitable and commonly used weapon for protection in the home," 670 F.3d at 1262. Also like our sister circuits, in *Friedman* we evaluated the importance of the reasons for the Highland Park Ordinance to determine whether they justified the ban's intrusion on Second Amendment rights. We concluded, as our sister circuits had, that "reduc[ing] the overall dangerousness of crime" and making the public feel safer were "substantial" interests that justified the city's action in adopting the Highland Park Ordinance. *Friedman*, 784 F.3d at 412; *see also Fyock*, 779 F.3d at 1000-01 (noting that ban reasonably promoted the municipality's "substantial and important government interests" of "promoting public safety," "reducing violent crime," and "reducing the harm and lethality of gun injuries in general"). Our decision in *Friedman*, therefore, did not "shun[]" *Ezell,*[9] but merely represents the application and extension of its principles to the specific context of a ban on assault weapons and large-capacity magazines.

Conclusion

As the Court did in *Heller*, it is important to note the limitations of our holding. We answer only the two questions presented by the appellants: should the district court have given the plaintiffs an opportunity to develop a factual record on which to distinguish *Friedman*, and should we revisit our holding in *Friedman.*

---

[9] Appellants' Br. 29.

Our answer to both questions is no. Our holding in *Friedman* did not depend upon the kinds of facts that the plaintiffs seek to gather, and the plaintiffs have come forward with no reason – much less a compelling one – for us to revisit *Friedman*. We do not establish here a comprehensive approach to Second Amendment challenges, and we leave for other cases further development and refinement of standards in this emerging area of the law.

For the foregoing reasons, the judgment of the district court dismissing the plaintiffs' complaint under Federal Rule of Civil Procedure 12(b)(6) is affirmed. The defendants may recover their costs in this court.

AFFIRMED.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MATTHEW D. WILSON and TROY EDHLUND,

Plaintiffs,

v.

COOK COUNTY, et al.,

Defendants.

No. 17 CV 7002

Judge Manish S. Shah

MEMORANDUM OPINION AND ORDER

(Filed Aug. 3, 2018)

Cook County and the city of Highland Park, Illinois, each enacted legislation effectively banning assault weapons within their borders. The court of appeals upheld Highland Park's law against a facial challenge under the Second Amendment. *Friedman v. City of Highland Park, Ill.*, 784 F.3d 406 (7th Cir. 2015), *cert. denied* 136 S.Ct. 447 (2015). Plaintiffs Matthew D. Wilson and Troy Edhlund challenge the county's ordinance and argue that it infringes on their Second Amendment rights. But there is no meaningful difference between the county's ordinance and Highland Park's, and no reason to develop a factual record when the court of appeals has held that a local government's categorical regulation of assault weapons falls outside the scope of the Second Amendment's individual right

to keep and bear arms. Defendants' motion to dismiss is granted.[1]

The county ordinance, an amendment to the Cook County Deadly Weapons Dealer Control Ordinance, defines "Assault Weapons," and makes it a crime for any person to "manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire or possess any assault weapon or large capacity magazine." [17] ¶ 1 (quoting Cook County Code §§ 54-211, 54-212).[2] As penalties, the ordinance includes a monetary fine or a term of imprisonment; it requires people who possess such prohibited weapons to either remove the weapon from county limits, modify it to render it permanently inoperative or beyond-the-scope of the ordinance, or surrender it; and the ordinance provides that the Sheriff may destroy such a weapon if one is confiscated. *Id.* Plaintiffs live in Cook County and they possess and want to acquire weapons that they believe this ordinance prohibits. *Id.* ¶¶ 2–11. They say that the ordinance violates their fundamental right to self-defense and defense of family with firearms that are commonly

---

[1] A complaint must contain factual allegations that plausibly suggest a right to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). The court must accept all factual allegations as true and draw all reasonable inferences in the plaintiff's favor, but the court need not accept legal conclusions or conclusory allegations. *Id.* at 678–79.

[2] Bracketed numbers refer to entries on the district court docket. Page numbers are taken from the CM/ECF header at the top of filings. The facts are taken from the operative complaint, [17].

used by law-abiding persons for lawful purposes. *Id.* at 21, ¶ 17.

Count IV of the amended complaint—a facial challenge to the amended ordinance under the Second and Fourteenth Amendments—is the only claim before this court. The complaint states that Counts I, II, III, and V are alleged solely for purposes of an appeal. *See* [17]. Plaintiffs first filed this action against defendants in state court and litigated their due process and equal protection claims through a final judgment that was affirmed by the Illinois Supreme Court. *Wilson v. Cty. of Cook*, 2012 IL 112026 (2012) (remanding Second Amendment claim, but affirming dismissal of due process and equal protection claims). Once back in the trial court, plaintiffs voluntarily non-suited the case in the Circuit Court of Cook County, and then refiled it. [17] at 2. Defendants do not dispute that plaintiffs timely refiled this action. They do, however, dispute that plaintiffs have preserved an appeal on Counts I, II, III, and V. The Illinois Supreme Court affirmed the dismissal of those counts in the earlier phase of the litigation, so defendants believe that plaintiffs can only appeal those claims to the United States Supreme Court. [18] at 12 n.6 (citing 28 U.S.C. § 1257(a)). Whether or not plaintiffs have preserved a challenge to the dismissals of Counts I, II, III, and V, plaintiffs agree that those counts have been dismissed and they do not ask this court to adjudicate them. The same parties litigated those claims to conclusion on the merits and they are dismissed with prejudice.

The ordinance plaintiffs challenge here is materially identical to the ordinance at issue in *Friedman*. As such, defendants contend that plaintiffs cannot prevail on their facial challenge to the ordinance. *See Ezell v. City of Chi.*, 651 F.3d 684, 698 (7th Cir. 2011) ("a law is not facially unconstitutional unless it 'is unconstitutional in all of its applications.'") (citations omitted). Plaintiffs do not dispute that the Highland Park ordinance is virtually the same as the county's ordinance or that *Friedman* is controlling authority on this court. Instead, plaintiffs argue that the court in *Friedman*, having the benefit of a fully-developed record,[3] reached a fact-specific holding that is distinguishable here.

The Second Amendment does not guarantee a private right to possess a type of weapon (such as a machine gun or a sawed-off shotgun) that the government would not expect citizens to bring with them when called to serve in the militia. *Friedman*, 784 F.3d at 408 (citing *District of Columbia v. Heller*, 554 U.S. 570, 624–25 (2008); *United States v. Miller*, 307 U.S. 174 (1939)). And because, as *Heller* and *Miller* acknowledged, the types of weapons individuals have at home

---

[3] Plaintiffs note that the out-of-circuit cases defendants rely on were not decided on the pleadings. [23] at 12 (citing *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011); *N.Y. State Rifle & Pistol Ass'n v. Cuomo*, 804 F.3d 242 (2d Cir. 2015); *Peruta v. Cty. of San Diego*, 824 F.3d 919 (9th Cir. 2016); and *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017)). In 2012, before *Friedman*, the Illinois Supreme Court held that it could not decide on the pleadings whether assault weapons, as defined in the ordinance, categorically fell outside the scope of the rights protected by the Second Amendment. *Wilson*, 2012 IL 112026 at ¶ 46 (2012).

for militia use might change over time, it would be circular to consider how common a weapon is at the time of a lawsuit in deciding the constitutionality of a ban on that weapon. *Id.* at 409 ("A law's existence can't be the source of its own constitutional validity."). Instead, the relevant questions are: (1) whether a regulation bans weapons that were common at the time of ratification or if it bans weapons that have "some reasonable relationship to the preservation or efficiency of a well regulated militia," and (2) whether law-abiding citizens maintain adequate means of self-defense. *Id.* at 410 (quoting *Heller*, 554 U.S. at 622–25).

Applying that framework to Highland Park's ordinance, the court of appeals noted that the features prohibited by the law were not common in 1791, but that the ordinance prohibited some weapons that are commonly used for military functions and that might affect the preservation or effectiveness of the militia. *Id.* But because states are in charge of militias, the court reasoned that they should be allowed to decide when civilians can possess such military-grade weapons.[4] *Id.* (citing *Heller*, 554 U.S. 570; *Miller*, 307 U.S. 174). The court also decided that Highland Park's ordinance left adequate means for self-defense because, as in *Heller*, the residents would still have access to most long guns, pistols, and revolvers. *Id.* at 411. Nothing about that analysis was specific to Highland Park.

---

[4] That traditional power likely extends to local governments, too. *Friedman*, 784 F.3d at 410–11 (citing 430 ILCS 65/13.1(c)).

The court cited some general studies—(1) data establishes that laws similar to Highland Park's reduce the share of gun crimes involving assault weapons; and (2) some evidence links the availability of assault weapons to gun-related homicides. *Id.* at 411–12. Based on that information (as opposed to facts from the record concerning Highland Park, specifically), the court observed that although the ban would not eliminate gun violence in Highland Park, which was already rare, it might reduce the overall dangerousness of the crime that does occur.[5] *Id.* At the very least, the court estimated that the ban would increase the community's perception about their safety, which would be "a substantial benefit." *Id.* The court gave no indication that this conclusion was limited to Highland Park. Similar estimates or hypotheses about crime levels and the public perception of safety could be made about Cook County, and in any event, the justifications for Highland Park's law were not part of the court's

[5] Though plaintiffs describe Highland Park as "a tranquil town in Lake County," [23] at 10, with 29,000 residents, and they contrast it with Cook County, which has over five million residents, the town's tranquility was not decisive to the court. *See Friedman*, 784 F.3d at 411. Other than its observation that shootings were rare in Highland Park, the court did not focus on facts unique to Highland Park. Similarly, the assertions Highland Park included in its summary judgment briefs about the town's well-staffed police department and infrequent crime (in reference to the assertion that Highland Park residents do not need "[o]verwhelming firepower" for self-defense) did not appear in the court's opinion. *See* Brief for Defendants at 4, 11, *Friedman v. City of Highland Park*, 68 F.Supp.3d 895 (N.D. Ill. 2014) (No. 13-cv-9073).

decision that assault weapons are not the kinds of arms the Second Amendment protects.

Plaintiffs insist that the ordinance strikes at the core of the Second Amendment right to bear arms and that it cannot survive constitutional scrutiny under *Ezell's* framework. This is incorrect. *Ezell* instructs courts to address a threshold question, asking whether the regulated activity falls within the scope of the Second Amendment. 651 F.3d at 701. If the regulated activity is outside the reach of the Second Amendment, the law survives the constitutional challenge. *Id.* at 702–03; *Ezell v. City of Chicago*, 846 F.3d 888, 892 (7th Cir. 2017). In *Friedman*, the Seventh Circuit rejected the argument that the Second Amendment conferred a right to own assault weapons. As a result, this court cannot now conclude that the county's ordinance—a ban on assault weapons—regulates activity within the scope of the Second Amendment. The *Ezell* analysis, therefore, ends at the threshold question, and the conclusion remains the same: the Cook County ordinance is constitutional. The court need not consider plaintiffs' arguments about the appropriate level of scrutiny to apply or about the need for discovery to discern (and assess) defendants' justifications for the ban.

That the courts in *Friedman* and similar cases (*New York State Rifle & Pistol Association, Peruta*, and *Kolbe*) allowed the parties to exchange discovery before terminating those cases is not a basis for denying the motion to dismiss. Under *Friedman*, plaintiffs cannot challenge the ordinance under the Second Amendment. The motion to dismiss is granted.

Ordinarily, leave to amend the complaint should be freely given. *See Runnion ex rel. Runnion v. Girl Scouts of Greater Chi. & Nw. Ind.*, 786 F.3d 510, 518 (7th Cir. 2015) (there is a presumption in favor of giving plaintiffs at least one opportunity to amend the complaint). Here, however, *Friedman* forecloses a facial challenge to this ordinance under the Second Amendment, and it would be futile to give plaintiffs leave to amend the complaint. The dismissal is with prejudice. Enter judgment and terminate civil case.

ENTER:

/s/ Manish S. Shah
Manish S. Shah
United States District Judge

Date: August 3, 2018

DIVISION 4. - BLAIR HOLT ASSAULT WEAPONS BAN[1]

Sec. 54-210. - Applicability.

(a) The provisions included in this division apply to all persons in Cook County including, but not limited to, persons licensed under this article.

(b) As provided in Article VII, Section 6(c), of the State of Illinois Constitution of 1970, if this article conflicts with an ordinance of a municipality, the municipal ordinance shall prevail within its jurisdiction.

(Ord. No. 13-O-32, 7-17-2013.)

Sec. 54-211. - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

---

[1] ***Editor's note—****Ord. No. 13-O-32, adopted July 17, 2013, amended div. 4 in its entirety to read as herein set out. Former div. 4 consisted of §§ 54-211—54-213, pertained to the same subject matter, and derived from Ord. No. 93-O-37, adopted Oct. 19, 1993; Ord. No. 93-O-46, adopted Nov. 16, 1993; Ord. No. 94-O-33, adopted July 6, 1994; Ord. No. 99-O-27, adopted Nov. 23, 1999; and Ord. No. 06-O-50, adopted Nov. 14, 2006.*

Assault weapon means:

(1) A semiautomatic rifle that has the capacity to accept a large capacity magazine detachable or otherwise and one or more of the following:

(A) Only a pistol grip without a stock attached;

(B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;

(C) A folding, telescoping or thumbhole stock;

(D) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the non-trigger hand without being burned, but excluding a slide that encloses the barrel; or

(E) A muzzle brake or muzzle compensator;

(2) A semiautomatic pistol or any semi-automatic rifle that has a fixed magazine, that has the capacity to accept more than ten rounds of ammunition;

(3) A semiautomatic pistol that has the capacity to accept a detachable magazine and has one or more of the following:

(A) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;

(B) A folding, telescoping or thumbhole stock;

(C) A shroud attached to the barrel, or that partially or completely encircles the barrel, allowing the bearer to hold the firearm with the

non-trigger hand without being burned, but excluding a slide that encloses the barrel;

(D) A muzzle brake or muzzle compensator; or

(E) The capacity to accept a detachable magazine at some location outside of the pistol grip.

(4) A semiautomatic shotgun that has one or more of the following:

(A) Only a pistol grip without a stock attached;

(B) Any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;

(C) A folding, telescoping or thumbhole stock;

(D) A fixed magazine capacity in excess of five rounds;

(E) An ability to accept a detachable magazine; or

(F) A grenade, flare or rocket launcher.

(5) Any shotgun with a revolving cylinder.

(6) Conversion kit, part or combination of parts, from which an assault weapon can be assembled if those parts are in the possession or under the control of the same person;

(7) Shall include, but not be limited to, the assault weapons models identified as follows:

(A) The following rifles or copies or duplicates thereof:

(i) AK, AKM, AKS, AK-47, AK-74, ARM, MAK90, Misr, NHM 90, NHM 91, SA 85, SA 93, VEPR, Rock River Arms LAR-47, Vector Arms AK-47, VEPR, WASR-10, WUM, MAADI, Norinco 56S, 56S2, 84S, and 86S;

(ii) AR-10;

(iii) AR-15, Bushmaster XM15, Bushmaster Carbon 15, Bushmaster ACR, Bushmaster MOE series, Armalite M15, Armalite M15-T and Olympic Arms PCR;

(iv) AR70;

(v) Calico Liberty;

(vi) Dragunov SVD Sniper Rifle or Dragunov SVU;

(vii) Fabrique National FN/FAL, FN/LAR, or FNC;

(viii) Hi-Point Carbine;

(ix) HK-91, HK-93, HK-94, HK-USC and HK-PSG-1;

(x) Kel-Tec Sub Rifle, Kel-Tec Sub-2000, SU-16, and RFB;

(xi) Saiga;

(xii) SAR-8, SAR-4800;

(xiii) KS with detachable magazine;

(xiv) SLG 95;

(xv) SLR 95 or 96;

(xvi) Steyr AUG;

(xvii) Sturm, Ruger Mini-14, and Sturm, Ruger & Co. SR556;

(xviii) Tavor;

(xix) All Thompson rifles, including Thompson 1927, Thompson M1, Thompson M1SB, Thompson T1100D, Thompson T150D, Thompson T1B, Thompson T1B100D, Thompson T1B50D, Thompson T1BSB, Thompson T1-C, Thompson T1D, Thompson T1SB, Thompson T5, Thompson T5100D, Thompson TM1, Thompson TM1C and Thompson 1927 Commando;

(xx) Uzi, Galil and Uzi Sporter, Galil Sporter, or Galil Sniper Rifle (Galatz)

(xxi) Barrett REC7, Barrett M82A1, Barrett M107A1;

(xxii) Colt Match Target Rifles;

(xxiii) Double Star AR Rifles;

(xxiv) DPMS Tactical Rifles;

(xxv) Heckler & Koch MR556;

(xxvi) Remington R-15 Rifles;

(xxvii) Rock River Arms LAR-15;

(xxviii) Sig Sauer SIG516 Rifles, SIG AMT, SIG PE 57, Sig Saucer [sic] SG 550, and Sig Saucer [sic] SG 551;

(xxix) Smith & Wesson M&P15;

(xxx) Stag Arms AR;

(xxxi) Baretta CX4 Storm;

(xxxii) CETME Sporter;

(xxxiii) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR 110C;

(xxxiv) Fabrique Nationale/FN Herstal FAL, LAR, 22 FNC, 308 Match, L1A1 Sporter, PS90, SCAR, and FS2000;

(xxxv) Feather Industries AT-9;

(xxxvi) Galil Model AR and Model ARM;

(xxxvii) Springfield Armory SAR-48;

(xxxviii) Steyr AUG;

(xxxix) UMAREX UZI Rifle;

(xl) UZI Mini Carbine, UZI Model A Carbine, and UZI Model B Carbine;

(xli) Valmet M62S, M71S, and M78;

(xlii) Vector Arms UZI Type;

(xliii) Weaver Arms Nighthawk; and

(xliv) Wilkinson Arms Linda Carbine

(B) The following handguns, pistols or copies or duplicates thereof:

(i) All AK-47 types, including Centurion 39 AK handgun, Draco AK-47 handgun, HCR AK-47 handgun, 10 Inc. Hellpup, AK-47 handgun, Krinkov handgun, Mini Draco AK-47 handgun, and Yugo Krebs Krink handgun.

(ii) All AR-15 types, including American Spirit AR-15 handgun, Bushmaster Carbon 15 handgun, DoubleStar Corporation AR handgun, DPMS AR-15 handgun, Olympic Arms AR-15 handgun and Rock River Arms LAR 15 handgun;

(iii) Calico Liberty handguns;

(iv) DSA SA58 PKP FAL handgun;

(v) Encom MP-9 and MP-45;

(vi) Heckler & Koch model SP-89 handgun;

(vii) Intratec AB-10, TEC-22 Scorpion, TEC-9 and TEC-DC9;

(viii) Kel-Tec PLR 16 handgun;

(ix) MAC-IO, MAC-11, Masterpiece Arms MPA A930 Mini Pistol, MPA460 Pistol, MPA Tactical Pistol, MPA 3 and MPA Mini Tactical Pistol;

(x) Military Armament Corp. Ingram M-11 and Velocity Arms VMAC;

(xi) Sig Sauer P556 handgun;

(xii) Sites Spectre;

(xiii) All Thompson types, including the Thompson TA510D and Thompson TA5;

(xiv) Olympic Arms OA;

(xv) TEC-9, TEC-DC9, TEC-22 Scorpion, or AB-10; and

(xvi) All UZI types, including Micro-UZI.

(C) The following shotguns or copies or duplicates thereof:

(i) Armscor 30 BG;

(ii) SPAS 12 or LAW 12;

(iii) Striker 12;

(iv) Streetsweeper;

(v) All IZHMASH Saiga 12 types, including the IZHMASH Saiga 12, IZHMASH Saiga 12S, IZHMASH Saiga 12S EXP-01, IZHMASH Saiga 12K, IZHMASH Saiga 12K-030, and IZHMASH Saiga 12K-040 Taktika.

(D) All belt-fed semiautomatic firearms, including TNWM2HB.

"Assault weapon" does not include any firearm that has been made permanently inoperable, or satisfies the definition of "antique firearm," stated in this section, or weapons designed for Olympic target shooting events.

Barrel Shroud means a shroud that is attached to, or partially or completely encircles, the barrel of a firearm so that the shroud protects the user of the firearm from heat generated by the barrel. The term does not include (i) a slide that partially or completely encloses the barrel: or (ii) an extension of the stock along the bottom of the barrel which does not completely or substantially encircle the barrel.

Detachable magazine means any ammunition feeding device, the function of which is to deliver one or more ammunition cartridges into the firing chamber, which can be removed from the firearm without the use of any tool, including a bullet or ammunition cartridge.

Large-capacity magazine means any ammunition feeding device with the capacity to accept more than ten rounds, but shall not be construed to include the following:

(1) A feeding device that has been permanently altered so that it cannot accommodate more than ten rounds.

(2) A 22-caliber tube ammunition feeding device.

(3) A tubular magazine that is contained in a lever-action firearm.

Muzzle brake means a device attached to the muzzle of a weapon that utilizes escaping gas to reduce recoil.

Muzzle compensator means a device attached to the muzzle of a weapon that utilizes escaping gas to control muzzle movement.

Rocket means any simple or complex tube-like device containing combustibles that on being ignited liberate gases whose action propels the device through the air and has a propellant charge of not more than four ounces.

Grenade, flare or *rocket launcher* means an attachment for use on a firearm that is designed to propel a grenade, flare, rocket, or other similar destructive device.

Belt-fed semiautomatic firearm means any repeating firearm that: (i) utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round: (ii) requires a separate pull of the trigger to fire each cartridge: and (iii) has the capacity to accept a belt ammunition feeding device.

(Ord. No. 13-O-32, 7-17-2013.)

Sec. 54-212. - Assault weapons, and large-capacity magazines; sale prohibited; exceptions.

(a) It shall be unlawful for any person to manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire, carry or possess any assault weapon or large capacity magazine in Cook County. This subsection shall not apply to:

(1) The sale or transfer to, or possession by any officer, agent, or employee of Cook County or

any other municipality or state or of the United States, members of the armed forces of the United States; or the organized militia of this or any other state; or peace officers to the extent that any such person named in this subsection is otherwise authorized to acquire or possess an assault weapon and/or large capacity magazine and does so while acting within the scope of his or her duties;

(2) Transportation of assault weapons or large capacity magazine if such weapons are broken down and in a nonfunctioning state and are not immediately accessible to any person.

(b) Any assault weapon or large capacity magazine possessed, carried, sold or transferred in violation of Subsection (a) of this section is hereby declared to be contraband and shall be seized and disposed of in accordance with the provisions of Section 54-213.

(c) Any person including persons who are a qualified retired law enforcement officer as defined in 18 U.S.C. § 926C who, prior to the effective date of the ordinance codified in this section, was legally in possession of an assault weapon or large capacity magazine prohibited by this division shall have 60 days from the effective date of the ordinance to do any of the following without being subject to prosecution hereunder:

(1) To legally remove the assault weapon or large capacity magazine from within the limits of the County of Cook; or

(2) To modify the assault weapon or large capacity magazine either to render it permanently inoperable; or

(3) To surrender the assault weapon or large capacity magazine to the Sheriff or his designee for disposal as provided below.

(Ord. No. 13-O-32, 7-17-2013.)

Sec. 54-213. - Destruction of weapons confiscated.

(a) Whenever any firearm, assault weapon, or large capacity magazine is surrendered or confiscated pursuant to the terms of this article, the Sheriff shall ascertain whether such firearm is needed as evidence in any matter.

(b) If such firearm, assault weapon, or large capacity magazine is not required for evidence it shall be destroyed at the direction of the Sheriff. A record of the date and method of destruction and inventory of the firearm, assault weapon, or large capacity magazine so destroyed shall be maintained.

(Ord. No. 13-O-32, 7-17-2013.)

Sec. 54-214. - Violation; penalty.

(a) Any person found in violation of this division shall be fined not less than $5,000.00 and not more than $10,000.00 and may be sentenced for a term not to exceed more than six months imprisonment. Any subsequent violation of this division shall be punishable by a fine of not less than $10,000.00 and

not more than $15,000.00 and may be sentenced for a term not to exceed more than six months imprisonment.

(b) It shall not be a violation of this division if a person transporting an assault weapon firearm or ammunition while engaged in interstate travel is in compliance with 18 U.S.C.A. § 926A. There shall be a rebuttable presumption that any person within the county for more than 24 hours is not engaged in interstate travel, and is subject to the provisions of this chapter.

(Ord. No. 13-O-32, 7-17-2013; Ord. No. 15-4167, 9-9-2015.)

Sec. 54-215. - Severability.

If any subsection, paragraph, sentence or clause of this division or the application thereof to any person is for any reason deemed to be invalid or unconstitutional, such decision shall not affect, impair or invalidate any remaining subsection, paragraph, sentence or clause hereof or the application of this Section to any other person.

(Ord. No. 13-O-32, 7-17-2013.)