No. 19-704

IN THE

# Supreme Court of the United States

MATTHEW D. WILSON AND TROY EDHLUND,

*Petitioners,*

*v.*

COUNTY OF COOK, A BODY PUBLIC AND MUNICIPAL CORPORATION, *et al.*,

*Respondents.*

**ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

## BRIEF IN OPPOSITION


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## COUNTER STATEMENT OF QUESTIONS PRESENTED

Petitioners seek review of the Blair Holt Assault Weapon and Large-Capacity Magazine Ban (the "County Assault Weapons Ban" or "the County Ordinance") that respondent Cook County, Illinois (the "County") enacted and that the United States Court of Appeals for the Seventh Circuit deemed constitutional in *Wilson v. Cook County*, 937 F.3d 1028 (7th Cir. 2019) (*per curiam*).

The counter statement of questions presented are:

1. Whether Petitioners present a compelling reason for review pursuant to S. Ct. R. 10(a) when the case does not include a United States court of appeals decision in conflict with another United States court of appeals on the same important matter.

2. Whether Petitioners present a compelling reason for review pursuant to S. Ct. R. 10(c) when this Court declined to grant review of *Friedman v. Village of Highland Park*, 784 F.3d 406 (7th Cir. 2015) or *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (*en banc*).

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**CONSTITUTIONAL PROVISIONS**

## STATEMENT OF THE CASE

The County Ordinance under review is materially identical to an ordinance that the City of Highland Park, Illinois ("Highland Park") enacted on June 24, 2013 (the "Highland Park Ordinance"). Both prohibit the same conduct: the manufacture, sale, offer or display for sale, giving, lending, transferring ownership, acquisition or possession of any assault weapon or large-capacity magazine. (App. 37-40);[1] Highland Park, Ill. Code § 136.005-999. A violation of either ordinance is punishable as a misdemeanor. *Id*. The ordinances both provide for the destruction of confiscated assault weapons or large-capacity magazines. *Id.* As such, both the district court and the Seventh Circuit found that that the County Assault Weapons Ban and the Highland Park Ordinance are materially indistinguishable. (App. 1, 14, 20.)

In December 2013, a Highland Park resident and the Illinois State Rifle Association filed a Second Amendment challenge to the Highland Park Ordinance. The district court entered summary judgment in favor of Highland Park and the Seventh Circuit affirmed. *Friedman v. City of Highland Park*, 68 F. Supp. 3d 895 (N.D. Ill. 2014), *aff'd*, 784 F.3d 406 (7th Cir. 2015). Plaintiffs then filed a petition for writ of certiorari to this Court. The Court declined to hear the matter for review. *See Friedman v. City of Highland Park*, 136 S. Ct. 447 (2015) (Thomas, J., dissenting).

In the instant case, petitioners Matthew D. Wilson and Troy Edhlund ("Petitioners") filed a Second Amendment challenge to the County Assault Weapons Ban. Petitioners,

1. Citations to the Petitioners' appendix will be to "App. __."

however, concede that the County Ordinance is "materially indistinguishable" from the Highland Park Ordinance at issue in *Friedman*. (App. 13-14.) The district court dismissed Petitioners' lawsuit for this reason, finding *Friedman* dispositive. *Id*. at 23, 26-27. On appeal, Petitioners asked the Seventh Circuit to reconsider *Friedman*, yet offered no post-*Friedman* authority or developments to justify their request. To the contrary, in the wake of *Friedman more* circuits have held that bans on assault weapons and large capacity magazines comport with the Second Amendment.[2] Accordingly, in a *per curiam* decision, the Seventh Circuit affirmed the district court's dismissal of Petitioners' complaint. *Id.* at 1-19.

By requesting review of an ordinance that Petitioners concede is "materially indistinguishable" from the Highland Park Ordinance, this petition now seeks a "second bite" at the proverbial apple in *Friedman*. Petitioners fail to offer a single new issue or legal argument to justify this extraordinary request. The petition for writ of certiorari should be denied.

## I. Background.

### A. The Cook County Ordinance.

Petitioners sued respondents the County, Thomas J. Dart, Sheriff of Cook County, Toni Preckwinkle, President of the Cook County Board of Commissioners, and Cook County Board of Commissioners Jerry Butler, Deborah

2. *See* discussion of the appellate circuits' pre- and post-*Friedman* decisions, *infra,* at 13-14.

Sims, Peter N. Silvestri, John F. Daley, Larry Suffredin, Gregg Goslin, Timothy O. Schneider, Luis Arroyo Jr., Richard R. Boykin, Dennis Deer, John A. Fritchey, Bridget Gainer, Jesus G. Garcia, Edward M. Moody, Stanley Moore, Sean M. Morrison, and Jeffrey R. Tobolski (collectively "Respondents"),[3] seeking declaratory and injunctive relief to halt the implementation of the County Ordinance banning assault weapons and large-capacity magazines. In November 2006, the Commissioners of Cook County enacted the operative ban — the County Ordinance — as an amendment to the Cook County Deadly Weapons Dealer Control Ordinance. Cook County, Ill. Code §§ 54-210, et seq.; (*see also* App. 28.)

In relevant part, the County Ordinance 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. *Id*. at §§ 54-211, 54-212(a); (*see also* App. 29-37.) Any person who legally possessed an assault weapon or large-capacity magazine prior to enactment of the amendment must remove it

3. As of December 3, 2018, Cook County Commissioners Kevin B. Morrison, Donna Miller, Bill Lowry, Brandon Johnson, Bridget Degnan, Scott R. Britton and Alma E. Anaya replaced Commissioners Jerry Butler, Gregg Goslin, Timothy O. Schneider, Richard Boykin, John Fritchey, Jesus G. Garcia and Edward Moody on the Cook County Board. Pursuant to Federal Rule of Civil Procedure 25(d), the new commissioners automatically replaced the former commissioners as defendants-appellees in this lawsuit. *See Vasquez v. Foxx*, 895 F.3d 515, 518, n. 1 (7th Cir. 2018) (recognizing that upon being sworn into office, the new State's Attorney became a defendant in a pending federal case pursuant to Federal Rule 25(d)).

from county limits, modify it to render it permanently inoperable, or surrender it to the Cook County Sheriff. *Id*. at § 54-212(c); (*see also* App. 38-39.) Upon receipt of a surrendered or confiscated weapon or magazine, the Sheriff must determine if it constitutes necessary evidence, and, if not, destroy it. *Id*. at § 54-213(a)-(b); (*see also* App. 39.) A violation of the County Ordinance is a misdemeanor carrying a fine ranging from $5,000 to $10,000 and a term of imprisonment of up to six months. *Id*. at § 54-214(a); (*see also* App. 39-40.)

### B. The Highland Park Ordinance and *Friedman*.

On June 24, 2013, the City of Highland Park, Illinois also enacted an ordinance (the "Highland Park Ordinance") banning assault weapons and large-capacity magazines. In the present case, both the district court and Seventh Circuit found the Cook County Ordinance to be substantively identical to the Highland Park Ordinance. (App. 1, 14) (finding the two ordinances "materially indistinguishable"); *id*. at 20 (finding the two ordinances "materially identical"). Specifically, the Highland Park Ordinance defines "assault weapon" and "large-capacity magazine" in terms virtually identical to the County Ordinance and contains the same prohibition against 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; render it permanently inoperable or permanently alter it so that it no longer meets the definition of assault weapon or large-capacity magazine; or surrender it to the Chief of Police. *Id*. at § 136.020. And

like the Cook County Sheriff, the Chief of Police must destroy any assault weapon or large-capacity magazine not needed as evidence. *Id.* at § 136.025. A violation of the Ordinance carries a fine of $500 to $1,000 and a maximum term of six months' imprisonment. *Id.* at § 136.999.

Following the adoption of the Highland Park Ordinance, a Highland Park resident and the Illinois State Rifle Association brought a Second Amendment challenge against the City in the Northern District of Illinois. *Friedman*, 68 F. Supp. 3d at 895. The district court granted Highland Park's motion for summary judgment and denied the plaintiffs' motion. *Id.* at 909. The plaintiffs appealed.

The Seventh Circuit affirmed the district court decision, applying a two-step test[4] to conclude that the assault weapon and large-capacity magazine ban did not run afoul of the Second Amendment. *Friedman*, 784 F.3d at 412. This Court subsequently declined to hear the matter for review. *Friedman*, 136 S. Ct. at 447.

## II. Proceedings Below.

### A. State Court and Federal District Court Proceedings.

This lawsuit began in state court in 2007, when Petitioners challenged the County Ordinance on Second Amendment, Due Process, and Equal Protection grounds. (App. 22.) Subsequently, Petitioners litigated their due process and equal protection claims through a final

4. *See* discussion of the *Friedman* two-part test, *infra.*

judgment that the Illinois Supreme Court affirmed. *Id.* (citing *Wilson v. County of Cook*, 2012 IL 112026 (Ill. 2012) (remanding Second Amendment claim, but affirming dismissal of due process and equal protection claims)). Given that the Illinois Supreme Court has already ruled on Petitioners' Due Process and Equal Protection claims, *Wilson*, 2012 IL 112026 at ¶¶ 19-33 and 54-56, this Court is the sole remaining court with jurisdiction to hear any furhter appeal of Petitioners' Due Process and Equal Protection claims. *See* 28 USCS § 1257(a). Petitioners, however, did not timely seek review of these claims and have not raised them in their petition. (App. 5 n.3) ("[Plaintiffs] made no mention of [either claim] in their opposition to the defendants' motion to dismiss the complaint in the district court or in their briefing before this court."); *see also id.* at 22. Following the Illinois Supreme Court order remanding Petitioners' Second Amendment challenge to the trial court, Petitioners voluntarily non-suited the case and refiled it in 2017, whereupon Respondents removed the case to federal court. *Id.* at 4, 22.

In the federal district court, Respondents filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), arguing that *Friedman* disposed of the case given how closely the Cook County Ordinance mirrors that of Highland Park. (App. 23.) The district court granted Respondents' motion to dismiss and entered judgment in their favor. *Id.* at 27. From this judgment, Petitioners sought review in the Seventh Circuit Court of Appeals. *Id.* at 1.

### B. The Court of Appeals' Decision.

On appeal, Petitioners first asserted that the district court denied them the opportunity to develop a factual record about the differences in demographics between Highland Park and Cook County. *Id.* at 12-13. The Seventh Circuit, however, rejected this argument. *Id.* at 13-14. Rather, it limited its review to the questions presented by Petitioners, explaining that "[w]e 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*." *Id.* at 18.

Notably, the Seventh Circuit limited its review in this manner because it found the development of an evidentiary record irrelevant to its decision, as the "result in *Friedman* did not turn on any factual findings unique to Highland Park." *Id.* at 13 (noting, for example, that the *Friedman* decision considered: a national statistic concerning common ownership, 784 F.3d at 409; general evidence of the features of semi-automatic guns and large-capacity magazines, *id.*; and crime data outside of Highland Park, *id.* at 411). Moreover, Petitioners conceded "that the prohibitions imposed by the County Ordinance and the Highland Park Ordinance are materially indistinguishable." (App. 13-14.) Accordingly, the Seventh Circuit found "no need for County-specific discovery regarding the plaintiffs' Second Amendment challenge." *Id.*

Similarly, the Seventh Circuit rejected Petitioners' second argument: that *Friedman* was wrongly decided. In doing so, the court explained that it has "stated

repeatedly, and recently, that, absent a compelling reason, we will not overturn circuit precedent." *Id*. at 15; *see also United States v. Wolfe,* 701 F.3d 1206, 1217 (7th Cir. 2012)). Petitioners, however, failed to produce "*any* authority or developments that postdate[d] [the] *Friedman* decision" to justify reconsideration. (App. 15.) Accordingly, absent a materially new ordinance or compelling reason for reconsideration, the Seventh Circuit rejected Petitioners' request and applied well-settled circuit precedent to affirm the district court. *Id*. at 16-18 (discussing *Friedman*, 784 F.3d 406; *Ezell v. City of Chicago*, 651 F. 3d 684 (7th Cir. 2011)).

## REASONS FOR DENYING THE PETITION

The Petition faces two insurmountable hurdles: (1) like *Friedman*, the decision below is faithful to *Heller I*; and (2) the decision below does not deviate from the decisions of its sister circuits, which have considered whether the Second Amendment prohibits a ban on semi-automatic assault weapons and high capacity magazines. Petitioners ask the Court to reconsider its 2015 declination in *Friedman*, yet offer no new issue or legal argument for it to consider. As a result, the Petition does not present a question that warrants the Court's review.

### I. Petitioners Offer No Compelling Reason for Review Pursuant to S. Ct. R. 10.

Petitioners contend that review is required because the Seventh Circuit's decision in *Wilson* strays too far from the rubric that this Court established in *District of Columbia v. Heller*, 554 U.S. 570 (2008) ("*Heller I*").

(Petition at 13-20.)[5] Alternatively, Petitioners assert that the lower court failed to properly apply the two-part *Ezell I* test in both *Friedman* and this case. (Petition at 20-22.) Neither argument, however, warrants review under the standards set forth in Supreme Court Rule 10.

First, Supreme Court Rule 10(c) provides that review may be appropriate when a United States appellate court has "decided an important federal question in a way that conflicts with relevant decisions of this Court." This matter does not present such a conflict. Indeed, the Cook County Ordinance remains "materially indistinguishable" from the very ordinance that the Seventh Circuit upheld against a Second Amendment challenge in *Friedman*, and that this Court declined to review in 2015. (App. 1.)

Petitioners similarly do not make a compelling case for review pursuant to S. Ct. R. 10(a), which proposes review when federal appellate courts enter conflicting decisions on the same important matter. *Heller I* explicitly recognized that the right to bear arms is not unlimited. 554 U.S. at 595. In light of this recognition, each federal circuit presented with the opportunity to consider prohibitions upon assault weapons and large-capacity magazines similar to the Cook County Ordinance has agreed with the court below. No conflict between the circuits exists on this issue now, and if one subsequently develops, the Court can determine whether review is appropriate at that point.

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5. Citations to the Petition for a Writ of Certiorari will be to "Petition __."

### A. The Seventh Circuit Developed Its Doctrinal Approach In Accordance with *Heller I* and *McDonald*.

The Seventh Circuit properly concluded that the District Court's decision affirming the Cook County Ordinance's ban on assault weapons and large capacity magazines did not violate Petitioners' rights under the Second Amendment. Over eighty years ago, in *United States v. Miller*, 307 U.S. 174, 178 (1939), this Court determined that the Second Amendment does not provide a limitless right to keep and bear arms. The Court reaffirmed this limitation in *Heller I* when it held that the Second Amendment protects "an individual right to keep and bear arms," 554 U.S. at 595, but not a right "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose," *id.* at 626.

In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), this Court extended Second Amendment rights to the States. In doing so, the Court recognized that the Second Amendment "does not imperil every law regulating firearms," *id.* at 786, and that "[s]tate and local experimentation with reasonable firearm regulations will continue under the Second Amendment," *id.* at 785. In other words, this Court did "not read the Second Amendment to protect the right of citizens to carry arms *for any sort* of confrontation." *Heller I*, 554 U.S. at 595. Rather, the "*central component* of the right" recognized in *Heller* concerned armed self-defense, most notably in the home. *Id.* at 595, 599-600. As such, gun regulations may continue to prohibit "the carrying of dangerous and unusual weapons." *Id.* at 627.

In deciding *Heller I*, this Court "resolved the Second Amendment challenge . . . without specifying any doctrinal 'test' for resolving future claims." *Ezell I*, 651 F.3d at 701. The federal circuits then fashioned tests of their own, taking guidance from *Heller I*. The Seventh Circuit joined this effort when it set forth a two-step inquiry to determine the constitutionality firearm regulations under the Second Amendment. *Id.* at 701-02. Under this inquiry, courts in the Seventh Circuit must first ask whether the regulated activity falls within the scope of the Second Amendment. *Ezell v. City of Chicago*, 846 F.3d 888, 892 (7th Cir. 2017) ("*Ezell II*") (citing *Ezell I*, 651 F.3d at 701-02). This step requires a textual and historical inquiry into whether the "challenged law regulates activity falling outside the scope of the right as originally understood." *Id.* (citing *Ezell I*, 651 F.3d at 703). If after this first step the historical evidence remains inconclusive or suggests that the regulated category "is *not* categorically unprotected," then courts must complete a "second inquiry into the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights." *Id.* The rigor of this review rests at some level of heightened scrutiny, dependent upon "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.*

### B. The Seventh Circuit's Reliance Upon *Friedman* Is Consistent With Both *Heller I* and the post-*Heller I* Jurisprudence Of Its Sister Circuits.

Petitioners do not dispute that the Seventh Circuit's doctrinal test aligns with *Heller*. Rather, Petitioners contend that in both *Friedman*—which this Court declined to review—and in this present case, the lower courts improperly deviated from *Heller*. Not so.

In *Friedman*, the Seventh Circuit posed two guiding questions: (1) "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 (2) "whether law-abiding citizens maintain adequate means of self-defense." 784 F.3d at 410 (quoting *Heller I*, 554 U.S. at 622-25; *Miller*, 307 U.S. at 178-79). And in answering these queries, the court found: (1) the weapons that the Highland Park Ordinance regulated were not common in 1791; and (2) while the banned weaponry bears a relation to the preservation of militias, the states—which are in charge of militias—should be allowed to determine when citizens may possess military-grade firearms so as to have them available when the militia is called to action. *Id*. at 410-11. The Seventh Circuit further observed that the Highland Park Ordinance left homeowners with "many self-defense options" to exercise the "inherent right of self-defense" first acknowledged in *Heller. Id.* at 411 (citing *Heller I*, 554 U.S. at 628).

Respondents cannot, and do not, point to case law contradicting this approach. Rather, to support their assertion that *Friedman* "departed from" or otherwise "violated" *Heller I,* Petitioners first rely upon Justice Thomas' dissent from the denial of certiorari in *Friedman.* (Petition at 18) (citing 136 S. Ct. at 449) ("[I]t was doubly wrong for the Seventh Circuit to delegate to States and localities the power to decide which firearms people may possess.")). In this dissent, Justice Thomas noted his dissatisfaction with the use of "categorical bans" on certain firearms. *Friedman*, 136 S. Ct. at 484 (Thomas, J., dissenting).

Notwithstanding Justice Thomas's dissent, this Court rejected the *Friedman* petitioners' request to review Highland Park's materially identical restrictions on semi-automatic assault weapons and large-capacity magazines. *Id.* at 447. Moreover, the text of the dissent itself counsels against the grant of *certiorari* in this case, as it notes that "several Courts of Appeals—including the Court of Appeals for the Seventh Circuit in the decision below—have upheld" such bans. *Id.*

As demonstrated below, the Seventh Circuit remains consistent with *Heller I* and the decisions of its sister circuits that have considered Second Amendment challenges to assault weapons and large-capacity magazine bans. Review was not warranted in *Friedman*, or now.

### i. No Conflict Exists Among The Circuits.

The accord among federal appellate courts that have considered regulations similar to the Cook County Ordinance remains widespread and unanimous. For example, several circuits have sorted the constitutionality of bans on classes of weapons between handguns (unconstitutional) and submachine guns (constitutional), utilizing tests analogous to that articulated in the Seventh Circuit. *See Worman v. Healey*, 922 F.3d 26 (1st Cir. 2019)[6]; *Ass'n of New Jersey Rifle & Pistol Clubs, Inc.*

6. In *Worman*, the First Circuit likewise held that a Massachusetts law proscribing the sale, transfer, and possession of certain semi-automatic assault weapons and large capacity magazines did not violate the Second Amendment. 922 F.3d at 40-41. As of this writing, the petition for writ of certiorari in *Worman* is still pending.

*v. Att'y Gen. New Jersey*, 910 F.3d 106 (3d Cir. 2018) (large-capacity magazines); *Kolbe v. Hogan*, 849 F.3d 114, 135 (4th Cir. 2017) (*en banc*), *cert. denied* 138 S. Ct. 469 (2017) ("Because the banned assault weapons and large capacity magazines are 'like' 'M-16 rifles'—'weapons that are most useful in military service'—they are among those arms that the Second Amendment does not shield.") (citing *Heller I*, 554 U.S. at 627). These decisions join a collection of opinions from other circuits which predate resolution of *Friedman*, yet yield the same result. *See New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015), *cert. denied*, *Shew v. Malloy*, 136 S. Ct. 2486 (2016); *Heller v. District of* Columbia, 670 F.3d 1244, 1247-48 (D.C. Cir. 2011) ("*Heller II*") (regulations prohibiting assault weapons and possession of large-capacity magazines did not violate Second Amendment); *Fyock v. Sunnyvale*, 779 F.3d 991 (9th Cir. 2015) ("*Fyock*") (upholding denial of motion for preliminary injunction because large-capacity magazine ban was likely to survive against Second Amendment challenge).

Every court to have considered a ban similar to the Cook County Ordinance has concluded that assault weapons and large capacity magazines offer a close fit with the public's strong interest in public safety, and do not unnecessarily burden the rights of individual gunowners. In light of this accord, Petitioners fail to demonstrate why their request to reconsider *Friedman* warrants review now.

### ii. Petitioners' Reliance Upon *Caetano* Is Misplaced.

In addition to Justice Thomas's dissent from the denial of certiorari in *Friedman*, Petitioners rely upon just one

decision to justify their position that *Friedman* runs afoul of *Heller*: *Caetano v. Massachusetts*, 136 S. Ct. 1027 (2016) (*per curiam*). *Caetano* does not aid Petitioners' cause.

In *Caetano*, this Court held that the Supreme Judicial Court of Massachusetts erred in upholding a law prohibiting the possession of stun guns after examining "whether a stun gun is the type of weapon contemplated by Congress in 1789 as being protected by the Second Amendment." *Id.* at 1027. Relying upon *Caetano*, Petitioners urge this Court to adopt a more expansive view of the Second Amendment, one that prohibits bans on semi-automatic weapons, assault weapons and high capacity magazines. (Petition at 16-18.) But *Caetano* cannot bear the weight that Petitioners place upon it.

*Friedman* did not involve a stun gun, nor did it hinge upon an analysis of congressional intent. Rather, in reaching its decision in *Friedman*, the Seventh Circuit noted that "[*Heller I*] cautioned against interpreting the decision to cast doubt on 'longstanding prohibitions,' including the 'historical tradition of prohibiting the carrying or 'dangerous and unusual weapons.'" 784 F.3d at 407-08 (citing *Heller I*, 554 U.S. at 623, 627). Accordingly, the court properly concluded that states hold the ultimate power in deciding whether its residents can possess "military-grade firearms" such as those regulated by the Highland Park and Cook County ordinances. *Id.* at 410. And in doing so, it followed "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)." (App. 16) (citing *Heller I*, 554 U.S. at 662).

Moreover, Petitioners' reliance upon *Caetano* disregards this Court's denial of certiorari in *N.Y. State Rifle & Pistol Ass'n v. Cuomo*, 804 F.3d 242 (2nd Cir. 2015), *cert. denied Shew v. Malloy,* 136 S. Ct. 2486 (June 20, 2016), which followed *Caetano* and similarly upheld prohibitions of semi-automatic assault weapons and large-capacity magazines. In *Cuomo*, the Second Circuit adopted intermediate scrutiny to find that the challenged laws were "substantially related" to the achievement of the "substantial, indeed compelling, governmental interests in public safety and crime prevention." 804 F.3d at 261 (citing *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 97 (2d Cir. 2012)). In relevant part, the *Cuomo* court afforded "substantial deference to the predictive judgments of the legislature" because "[i]n the context of firearm regulation, the legislature is 'far better equipped than the judiciary' to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms and the manner to combat those risks." *Id.*; *see also Freidman*, at 412 ("The best way to evaluate the relation among assault weapons, crime, and self-defense is through the political process and scholarly debate, not by parsing ambiguous passages in the Supreme Court's opinions."). Petitioners' argument also ignores this Court's denial of certiorari in *Kolbe*, one year *after* its denial in *Cuomo*. 849 F.3d at 120 (4th Cir. 2017) (*en banc*), *cert. denied*, 138 S. Ct. 469 (2017) (upholding statewide ban on assault weapons and detachable large-capacity magazines against Second Amendment challenge).

This Court's decision to decline review of *Cuomo* mere months after *Caetano,* as well as *Kolbe* the following year, signals that the federal appellate precedents governing semi-automatic assault weapons and large-capacity

magazine bans — including *Friedman* and the present case — comport with the protections of the Second Amendment.

### C. *Friedman* Aligns With *Ezell I*.

Perhaps recognizing the futility in requesting reconsideration of *Friedman* based upon this Court's decision in *Heller I*, Petitioners put forth an alternative theory: that the Seventh Circuit improperly deviated from the two-part *Ezell* test in deciding *Friedman* and the case below. (Petition at 20-22.) This theory, however, also fails to warrant review.

As the Seventh Circuit properly noted in *Wilson*, a plain reading of *Friedman* reveals that it "fits comfortably under the umbrella of *Ezell* [*I*]." (App. 16-17.) *Ezell I*, which reviewed a City ordinance regulating firing ranges, "followed closely on the heels of *Heller* and *McDonald* at a time when 'Second Amendment litigation [wa]s new.'" *Id.* (quoting *Ezell I*, 651 F.3d at 700). Therefore, when confronted with the challenge in *Friedman* four years later, the Seventh Circuit informed its analysis by reviewing *Ezell I* in conjunction with those precedents specifically involving assault-weapons bans that had been established in the interim. *Id.* In *Heller II*, for example, the District of Columbia Circuit resolved the first assault weapon and large-capacity magazine regulation post-*Heller I*. 670 F.3d at 1261-62 ("Unlike the law held unconstitutional in *Heller*, the laws at issue here do not prohibit the possession of 'the quintessential self-defense weapon,' to wit, the handgun.") (quoting 554 U.S. at 629). In doing so, the court adopted a two-part approach informed, in part, by *Ezell I*, *id.* at 1252 (collecting cases), to ultimately uphold the prohibitions. *Id.* at 1260-1264.

In light of decisions such as *Heller II*, the Seventh Circuit in *Wilson* refined its *Ezell I* inquiry — consistent with analyses in other appellate circuits — for the limited purposes of considering assault-weapons bans. (App. 17-18) (discussing the parallels to be found in *Friedman, Heller II, Fyock,* and *Ezell I*). In other words, Petitioners fail to contradict the Seventh Circuit's explanation, one which this Court has already declined to review, that its "decision in *Friedman* . . . did not 'shun' *Ezell* [*I*], but merely represents the application and extension of its principles to the specific context of a ban on assault weapons and large-capacity magazines." *Id*. at 18 (quotations in original).

Petitioners present nothing new for this Court to consider, yet invite this Court to review regulations that it has several times declined to inspect. This Court should continue to decline Petitioners' invitation and instead affirm the lower court's decision.

## II. Petitioners Are Not Entitled To Additional Discovery and the Discovery Rulings Below Do Not Warrant Review From This Court.

In addition to Petitioners' request to reconsider *Friedman*, they argue that this Court must review the lower court's decision because it "wrongfully and categorically banned a class of arms that are commonly used by law-abiding persons for lawful persons." (Petition at 28-39.) In particular, Petitioners argue at length that the district court denied them the opportunity to demonstrate that the firearms prohibited by the Cook County Ordinance are not "dangerous." *Id*. at 32-35. Indeed, Petitioners then proceed to suggest that the

assault weapons and large-capacity magazines at issue "are not otherwise disproportionately dangerous." *Id.* at 33. Not so.

Significant information exists of which this Court may take judicial notice concerning the mass shooting epidemic pervasive throughout our country. *See* Federal Rule of Evidence 201(b)(2) (courts may judicial notice facts not subject to reasonable dispute because they "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned."). Indeed, the Seventh Circuit already did so in considering the materially identical Highland Park Ordinance.

In *Friedman*, the Seventh Circuit recognized that "assault weapons with large-capacity magazines can fire more shots, faster, and thus can be more dangerous in aggregate", which is why they constitute "the weapons of choice in mass shootings." 784 F.3d at 411; *see also id.* ("That laws similar to Highland Park's reduce the share of gun crimes involving assault weapons is established by data."). Indeed, as the district court in *Friedman* noted, "the [Highland Park] Ordinance was particularly intended to address the potential threat of mass shootings involving semi-automatic weapons like those in Aurora, Colorado (12 killed, 58 injured); Newtown, Connecticut (28 killed); Casas Adobes, Arizona (6 killed, 14 injured); and Santa Monica College in Santa Monica, California (6 killed, 2 injured)." *Friedman*, 68 F. Supp. 3d at 898. And in any event, the Seventh Circuit recognized that even though mass shootings may be considered rare, they remain "highly salient." 784 F.3d at 412. As such, even if the Highland Park ban "ha[d] no other effect," the court recognized that "[i]f a ban on semiautomatic guns and large-capacity magazines reduces the perceived risk

from a mass shooting, and makes the public feel safer as a result, that's a substantial benefit." *Id.*

Further, in the wake of *Friedman*, it is beyond peradventure that mass shootings are no longer rare. In the few short years since *Friedman* was resolved, assault weapons and large-capacity magazines were used in numerous additional grisly mass shootings in Orlando, Florida; Las Vegas, Nevada; Sutherland Springs, Texas; Parkland, Florida; and Pittsburgh, Pennsylvania. Another such tragedy may, and will likely, occur before this matter concludes.

The relevant legislative bodies to which *Friedman* deferred have reviewed and considered these massacres and the related public outcry. Responsive legislation has been enacted. *Friedman*, 784 F.3d at 412; *see also Ass'n of N.J. Rifle & Pistol Clubs*, 910 F.3d at 110; *Kolbe*, 849 F.3d at 120; *Cuomo*, 804 F.3d at 262. And contrary to Petitioners' claim, Petition at 33, it is not "reversible error" to defer to the legislature to weigh public interest in certain measures, and determine the appropriate policies for the constituents of their respective districts. *Friedman,* 784 F.3d at 410-11; *Kimble v. Marvel Entertainment, LLC*, 135 S. Ct. 2401, 2414 (2015) ("[Courts] promote the rule-of-law values to which courts must attend while leaving matters of public policy to Congress."). In declining to review *Friedman*, this Court has already decided that local governments are entitled to make such judgments to protect the safety of its residents. 136 S. Ct. 447.

Here, Respondents request the same deference this Court previously afforded to the City of Highland Park. Petitioners fail to offer a single new issue or legal argument to warrant review of the decision below.

## CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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