

IN THE
Supreme Court of the United States

NATIONAL ASSOCIATION FOR GUN RIGHTS; ROBERT C. BEVIS; AND LAW WEAPONS,
INC., D/B/A LAW WEAPONS & SUPPLY, AN ILLINOIS CORPORATION,

Plaintiffs-Applicants,

v.

CITY OF NAPERVILLE, ILLINOIS, AND JASON ARRES,

Defendants-Respondents,

and

THE STATE OF ILLINOIS

Intervenor-Respondent.

**TO THE HONORABLE AMY CONEY BARRETT, ASSOCIATE JUSTICE OF THE UNITED
STATES SUPREME COURT AND CIRCUIT JUSTICE FOR THE SEVENTH CIRCUIT**

RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION FOR INJUNCTION PENDING
APPELLATE REVIEW

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**TO THE HONORABLE AMY CONEY BARRETT,
ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED
STATES AND CIRCUIT JUSTICE FOR THE SEVENTH CIRCUIT:**

INTRODUCTION

Applicants seek the same type of extraordinary interim relief that the courts below have three times refused to grant them. They now face an even higher burden than during their prior attempts for injunctive relief. They must demonstrate that the “legal rights at issue are indisputably clear” to justify that this Court “suspend judicial alteration of the status quo” and “grant[] judicial intervention that has been withheld by lower courts.” *Lux v. Rodrigues*, 561 U.S. 1306, 1307 (2010) (Roberts, C.J., in chambers) (internal citations omitted).

Applicants object that neither the district court nor the Seventh Circuit granted their requested relief and allowed them to continue to sell assault weapons despite the restrictions imposed by the State of Illinois and the City of Naperville. But simply because Applicants assert that this presents an issue of Constitutional import is not a reason for sidestepping the ordinary appellate process. Indeed, if this Court were to grant Applicants’ request—without the benefit of a record (as in *District of Columbia v. Heller*, 554 U.S. 570 (2008)), final judgment (as in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022)), or ongoing non-monetary harm (as in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (2020) (per curiam))—it would suggest that emergency relief is the rule, not the exception. Litigants would be incentivized to ignore the purpose of appellate review, short-circuit its structure and process, and interject an expedited merits review into this Court. That alone is reason enough to deny the application.

Defendant-Respondent City of Naperville, a suburb west of Chicago, joins the opposition of Intervenor-Respondent the State of Illinois (the “State”). Naperville submits this brief, however, to address certain issues unique to its citizens, its ordinance at issue, and the vital need to protect its population from the horrible carnage caused by assault weapons. Specifically, Naperville’s ordinance (the “Sale Ordinance”) bars the commercial sale of certain assault rifles within city limits. Naperville adopted its Sale Ordinance in the wake of the mass shooting during Highland Park, Illinois’ Independence Day parade. In the weeks following the July 4, 2022 attack in Highland Park, Naperville’s Mayor and its City Council members, like those in other municipalities across this country, assessed “the variety of tools for combating th[e] problem” of mass shootings, being mindful to legislate consistent with guidance from this Court’s decisions in *Heller* and *Bruen*.

After carefully listening to the concerns of its citizens, and the parents, teachers, and students of Naperville, the City Council voted 8-1 to adopt restrictions on the commercial sale of assault rifles—a specific category of weapon of war used frequently in mass shootings and almost never for lawful civilian self-defense.

Applicants—a Naperville resident, his gun store, and an advocacy organization—failed at every level below to establish sufficiently any irreparable harm or any inadequate remedy at law from Naperville’s restriction on the commercial sale of assault rifles. And even if they had done so, the balance of the harms at issue here, at the preliminary injunction stage, falls overwhelmingly in favor of Naperville. The loss of business from being unable to sell one category of one

possible product line at a gun store simply cannot carry sufficient weight against the danger of a murdered or permanently maimed Naperville resident, senselessly shot by an assault rifle. That would be irreparable injury in the starkest terms.

In short, Applicants cannot demonstrate the factors required for extraordinary and emergency relief from this Court.

Whether the Second Amendment protects the commercial sale of a limited category of assault rifles within one municipality's borders has never been addressed by this Court, let alone resolved in Applicants' favor. Indeed, lower courts have consistently ruled that the Second Amendment does not confer a right to *sell* firearms. Naperville's Sale Ordinance does not infringe on Applicants' ability to sell the broad array of firearms that are not assault rifles. Nor does the Sale Ordinance deprive Applicants or their customers of the right this Court has articulated—to arm themselves with handguns for lawful self-defense, consistent with *Heller*. Nor does it have any effect on the ability to obtain a firearm license, the issue addressed in *Bruen*.

Even if Applicants could prove they were indisputably entitled to relief, they plainly fail to show that leaving the Sale Ordinance intact while the litigation proceeds through the normal appellate process would lead to “irreparable harm” or run counter to public policy. Any claimed financial losses are quantifiable. Applicants have not explained why the alleged harm to a *single* businessperson justifies *immediately enjoining* a presumptively valid and democratically enacted municipal ordinance on a matter of overwhelming local importance.

For the reasons set forth below, and the arguments presented by the State, Naperville respectfully asks that Your Honor reject Applicants' highly extraordinary request for emergency relief.

STATEMENT OF THE CASE

On July 4, 2022, a gunman with a Smith & Wesson M&P15, an AR-15-style assault rifle, opened fire on a crowded Independence Day parade in Highland Park, Illinois, killing seven people and wounding 48 others in less than 90 seconds.¹ That killer snuck out of Highland Park, with the apparent intent to commit more murders not far away in Madison, Wisconsin.² He instead returned to Highland Park and was later arrested, but his actions revealed that residents of other communities near Highland Park could just as easily have been killed or maimed by an assault rifle.

The Fourth of July shooting alarmed citizens in Naperville, a city of nearly 150,000 people about an hour's drive from Highland Park. In response to residents' concerns, the City Council introduced the Sale Ordinance regulating the commercial sale of certain assault rifles within Naperville.³ After considering hundreds of public comments, the City Council passed the Sale Ordinance by an 8-1 vote.

The City Council recognized that "it has become an unacceptable fact of life that no municipality is exempt from the reality that its citizens are at risk" from mass

¹ Frank Main, *Illinois State Police Director Defends Decision to Give Suspected Highland Park Killer a Gun Permit in 2020*, Chi. Sun Times (July 6, 2022), <https://bit.ly/44A9IEe>.

² *The Highland Park Shooting Suspect Considered a Second Attack in Wisconsin, Police Say*, NPR (July 7, 2022), <https://bit.ly/41cKhAq>.

³ City of Naperville, *City Council Meeting Minutes*, 16 (July 19, 2022), <https://bit.ly/3B16IxR>; City of Naperville, *City Council Meeting Minutes*, 26 (Aug. 16, 2022), <https://bit.ly/3B16IxR>.

shootings. Appx. 059.⁴ Mass shooters attack in public spaces—schools, supermarkets, churches and synagogues, parades, and music festivals—in cities like Uvalde, Buffalo, El Paso, Pittsburgh, Parkland, Sutherland Springs, Las Vegas, San Bernadino, Orlando, and Newtown. *Id.* at 058–59. And “[c]ommonplace in [these] mass shootings are the use of lawfully purchased assault rifles.” *Id.* at 059. “At the end of the day, we have to do what’s right to protect the public and that’s our job,” said then Naperville Mayor Steve Chirico.⁵

As the table below makes clear, criminals who engage in mass shootings overwhelmingly use assault weapons—not other firearms.⁶ Indeed, perpetrators used

⁴ The emergency application is cited as “App. ___.” The appendix attached to that application is cited as “Appx. ___.” Citations to the district court docket are identified by the docket number and page number if applicable, *e.g.*, “Dkt. 2 at ___.” Similarly, the Seventh Circuit docket is cited as “7th Cir. Dkt. ___ at ___.”

⁵ Christian Piekos, *Ban on Sale of High-Powered Rifles in Hours-Long Naperville City Council Meeting*, ABC7 Chi. (Aug. 18, 2022), <https://bit.ly/3HM77Yy>.

⁶ *Colorado Theater Shooting Fast Facts*, CNN (July 14, 2022), <https://bit.ly/42tqsq1>; *Sandy Hook School Shootings Fast Facts*, CNN (Nov. 28, 2022), <https://cnn.it/3VG3tVP>; Ortiz, et al., *San Bernardino Massacre Suspects Appear to Have Been Radicalized*, NBC News (Dec. 4, 2015), <https://bit.ly/3M1R7Eq>; Zambelich et al., *3 Hours In Orlando: Piecing Together An Attack And Its Aftermath* (Jun. 26, 2016), <https://bit.ly/41d6nT5>; Hutchinson et al., *The Anatomy of the Las Vegas Mass Shooting, the Deadliest in Modern US History*, ABC News (Dec. 23, 2018), <https://bit.ly/41f3Zv6>; Montgomery et al., *Gunman Kills at Least 26 in Attack on Rural Texas Church*, N.Y. Times (Nov. 5, 2017), <https://bit.ly/42sJvA6>; Chuck et al., *17 killed in Mass Shooting at High School in Parkland, Florida*, NBC News (Feb. 15, 2018), <https://bit.ly/3nGwGik>; Robertson et al., *11 Killed in Synagogue Massacre; Suspect Charged With 29 Counts*, N.Y. Times (Oct. 27, 2018), <https://bit.ly/42sJyvM>; Chas Danner, *Everything We Know About the El Paso Walmart Massacre*, N.Y. Mag. (Aug. 7, 2019), <https://bit.ly/3M4sNSf>; Prokupecz et al., *What We Know About Buffalo Supermarket Shooting Suspect Payton Gendron*, CNN (June 2, 2022), <https://bit.ly/42fBpLs>; Jacobo et al., *Timeline: How the Shooting at a Texas Elementary School Unfolded*, ABC News (Dec. 12, 2022), <https://bit.ly/3LP8bMK>; *Smith & Wesson Sued Over Link to July 4 Highland Park Parade Mass Shooting*, CBS News (Sept. 29, 2022), <https://bit.ly/3pgkeLo>; Peipert et al., *Police: Gunman Kills 5 at Gay Club, Is Subdued by Patrons*, AP News (Nov. 20, 2022), <https://bit.ly/42qrPp2>; Levenson et al., *Covenant School Shooter Was Under Care for Emotional Disorder and Hid Guns at Home, Police Say*, CNN (Mar. 29, 2023), <https://bit.ly/429uF1I>; Jennifer Calfas, *Louisville, Ky., Gunman Bought AR-15 Rifle Legally*

assault weapons in the most deadly mass shootings in recent years—including the Fourth of July Highland Park parade massacre that prompted Naperville’s City Council to pass the Sale Ordinance and the Allen, Texas mall shooting just two days before this filing.

Date	Mass Shooting	Deaths	Injured	Weapon(s) Used
May 6, 2023	Allen, Texas Mall Shooting	8	7	AR-15-style rifle
April 10, 2023	Louisville Bank Shooting	5	8	AR-15-style rifle
March 27, 2023	Nashville Christian School Shooting	6	1	AR-15-style rifle; semi-automatic carbine; semi-automatic pistol
November 19–20, 2022	Colorado Springs Nightclub Shooting	5	25	AR-15-style rifle, handgun
July 4, 2022	Highland Park Parade Shooting	7	48	AR-15-style rifle
May 24, 2022	Uvalde, Texas Elementary School Shooting	21	17	AR-15-style rifle
May 14, 2022	Buffalo, New York Supermarket Shooting	10	3	AR-15-style rifle
August 3, 2019	El Paso Wal-Mart Shooting	22	24	WASR-10-style rifle
October 27, 2018	Pittsburgh Synagogue Shooting	11	6	AR-15-style rifle; Glocks

Last Week, Police Say, Wall Street J. (Apr. 11, 2023), <https://bit.ly/3pkIGwl>; Chowdhury et al., *At Least 8 Killed, 7 Wounded in Shooting At Texas Outlet Mall*, CNN (May 7, 2023), <https://bit.ly/42AiASS>.

Date	Mass Shooting	Deaths	Injured	Weapon(s) Used
February 14, 2018	Stoneman Douglas High School Shooting	17	17	AR-15-style rifle
November 5, 2017	Sutherland Springs Church Shooting	26	22	AR-15-style rifle; semi-automatic pistols
October 1, 2017	Las Vegas Strip Shooting	58	Over 850	AR-15-style rifle; AR-10-style rifle; bolt-action rifle; revolver
June 12, 2016	Orlando Pulse Nightclub Shooting	49	58	Sig Sauer MCX; Glock
December 2, 2015	San Bernardino Shooting	14	21	AR-15-style rifle; semi-automatic pistols
December 14, 2012	Sandy Hook Elementary School Shooting	26	2	AR-15-style rifle Glock; bolt-action rifle
July 20, 2012	Aurora, Colorado Movie-Plex Shooting	12	70	AR-15-style rifle; shotgun; Glock

This is not an accident. Assault weapons were originally created as weapons of war during the Cold War. Dkt. 57-4 ¶ 25; Dkt. 57-5 ¶ 24; Dkt. 57-8 ¶ 49. When AR-15s were tested on the Vietnam battlefield, they were deemed “ideal” because of their “[e]xcellent” killing power, and their capacity to rip human bodies apart. Dkt. 57-4 ¶¶ 31, 34. For example, a single shot to the “bottom of the right foot” of an enemy soldier caused “the leg to split from the foot to the hip,” resulting in “instantaneous death”—prompting military reports to remark on the weapons’ “phenomenal lethality.” *Id.* ¶¶ 26–32. As one surgeon and retired Navy captain put it: “It’s a perfect killing machine.” *Id.* ¶ 34. “A handgun [wound] is simply a stabbing with a bullet,” and “[i]t goes in like

a nail.” *Id.* But “[w]ith the high-velocity rounds of the AR-15 . . . it’s as if you shot somebody with a Coke can.” *Id.*

Ironically, the military nature of assault weapons makes them a worse choice than handguns for personal self-defense in the civilian world. Their features are unnecessary when “most confrontations involving gunfire are at close range,” and therefore do not require the long-distance accuracy of assault weapons. *Id.* ¶ 59 (“most armed defense takes place within 3-7 yards”); 7th Cir. Dkt. 58 at A598 (“Home defense and/or self-defense situations are rarely, if ever, lengthy shootouts at long ranges with extensive exchanges of gunfire.”). And unlike most handgun-caliber bullets, assault-weapon bullets penetrate walls. 7th Cir. Dkt. 15 at A599. Tests on assault-weapon bullets show they “explode one-gallon water jugs” placed three feet behind gypsum board, sheet rock, or wooden 2x4 stud wall. *Id.* A misfire in a home-defense scenario could kill innocent bystanders in another room. *Id.* And as compared with handguns, assault weapons produce much larger cavities in the body, making them especially catastrophic for children, given the relative proximity of vital organs in their smaller bodies. Dkt. 57-6 ¶¶ 32–35.

Naperville’s Sale Ordinance restricting the commercial sale of this horrific type of weapon is not unique. For many years, municipalities in Illinois and across the country have regulated the sale of semiautomatic assault rifles, as well as the possession of such weapons.⁷

⁷ In Illinois, *see, e.g.*, Deerfield, Ill., Code § 15-87; Evanston, Ill., Code § 9-8-14; Highland Park, Ill., Code §136.005; Skokie, Ill., Village Code §70-189. Nationally, *see, e.g.*, An Act Relative to Assault Weapons in the City of Boston, Mass., Ch. 596; Denver, Colo., Code § 38-

Under the Sale Ordinance, a “commercial sale” of an assault rifle is a sale that requires the seller to have a valid certificate of license issued pursuant to the Illinois Firearm Dealer Certification Act. Appx. 065. The Sale Ordinance provides an exemption for commercial sales to sworn police employees, police agencies, and military agencies. *Id.* at 065–66. It provides that weapons with one or more of the following features are considered an “Assault Rifle,” the sale of which is prohibited in the city:

(1) A semiautomatic rifle that has a magazine that is not a fixed magazine and has any of the following:

(A) A pistol grip.

(B) A forward grip.

(C) A folding, telescoping, or detachable stock, or is otherwise foldable or adjustable in a manner that operates to reduce the length, size, or any other dimension, or otherwise enhances the concealability, of the weapon.

(D) A grenade launcher.

(E) A barrel shroud.

(F) A threaded barrel.

(2) A semiautomatic rifle that has a fixed magazine with the capacity to accept more than 10 rounds, except for an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

(3) Any part, combination of parts, component, device, attachment, or accessory that is designed or functions to accelerate the rate of fire of a semiautomatic rifle but not convert the semiautomatic rifle into a machinegun.

Id. at 062.

121; Boulder, Colo., Ordinance No. 2022-5 § 2; Gary, Ind., Code § 28-108; New York City, N.Y., Code § 10-303.1.

The Sale Ordinance also regulates the sale of specific assault rifles, named by make and model, along with their replicas and duplicates. *Id.* at 062–64. The Sale Ordinance does not restrict the sale of semiautomatic pistols or shotguns.

In September 2022, Applicants Robert Bevis, his store Law Weapons, Inc., and National Association for Gun Rights (“NAGR”) sued Naperville. The relevant procedural history is extensively covered in the State’s opposition, and Naperville adopts the State’s recounting herein.⁸

ARGUMENT

I. Applicants have not shown that this Court is likely to grant certiorari on their request for interim relief or that an injunction would be in aid of the Court’s jurisdiction.

For the reasons explained in the State’s opposition, Applicants cannot make the “exceptional” showing that this Court is likely to grant certiorari before judgment, to review either the district court’s denial of a preliminary injunction or the court of appeals’ forthcoming decision on the appeal from that denial. *See Certain Named & Unnamed Non-citizen Child. v. Texas*, 448 U.S. 1327, 1331 (1980) (Powell, J., in chambers). And it is exceptionally unlikely that this Court would grant certiorari before judgment to review the Sale Ordinance independently—in part, because it regulates only commercial sales and not individual possession (Appx. 058–67); it involves a smaller category of weapons than the State’s Act does (7th Cir. Dkt. 59 at

⁸ Plaintiffs also seek to enjoin Naperville Police Chief Jason Arres from enforcing the State’s Protect Illinois Communities Act, Illinois Public Act 102-1116 (eff. Jan. 10, 2023) (the “Act”). Naperville and Arres incorporate and rely on the arguments and positions of the State regarding the Act, and request that this Court deny Applicants’ request to enjoin Arres from enforcing the Act.

6); it specifically excludes handguns like those at issue in *Heller* (Appx. 058–67); it mirrors similar restrictions imposed in municipalities in Illinois and across the country (*supra* pp. 8, n. 7); and its reach ends at the borders of a small city whose population barely exceeds 3 percent of NAGR’s claimed membership.⁹

Applicants also wholly fail to explain why an injunction pending appeal would be in aid of this Court’s jurisdiction, as required by 28 U.S.C. § 1651(a). As the State argues, an injunction is not necessary to this Court’s exercise of jurisdiction—declining to enjoin the Sale Ordinance now will not preclude this Court from later exercising its jurisdiction, if it so chooses, when the record and arguments have been more fully developed.

II. Applicants have not satisfied the high bar for an injunction pending appeal.

The application should be denied because Applicants have also failed to satisfy the high bar required for this Court to grant an injunction pending appeal. “A Circuit Justice’s issuance of an injunction ‘does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts,’ and therefore ‘demands a significantly higher justification’ than that required for a stay.” *Lux*, 561 U.S. at 1307 (quoting *Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regul. Comm’n*, 479 U.S. 1312, 1313 (1986) (Scalia, J., in chambers)). For that reason, an applicant seeking injunctive relief must demonstrate that the “legal

⁹ *About Us*, Nat. Ass’n for Gun Rights, <https://bit.ly/42amrX6> (noting a “rapidly expanding membership of 4.5 million grassroots activists”).

rights at issue are indisputably clear.” *Id.* (citing *Turner Broad. Sys., Inc. v. FCC*, 507 U.S. 1301, 1303 (1993)) (Rehnquist, C.J., in chambers) (cleaned up).

Applicants have failed to carry their burden. Specifically, they have not made indisputably clear that they would prevail on appeal to this Court. As a threshold matter, this Court has never addressed the validity of a law like the Sale Ordinance. And, as the State explains in discussing the statewide Act, Applicants have not shown that it is indisputably clear that they will prevail under either step of the test set forth in *Bruen*.

A. It is not “indisputably clear” that Applicants will prevail in this Court.

1. This Court has not addressed the validity of a law like Naperville’s Sale Ordinance.

This Court has not reviewed a regulation prohibiting the sale of a limited category of assault rifles within a city’s limits. As the State argues, lower courts have been almost uniform in rejecting Second Amendment challenges to far broader laws restricting the sale, manufacture, and possession of assault weapons and large-capacity magazines since *Bruen*. See, e.g., *Herrera v. Raoul*, No. 23 CV 532, 2023 U.S. Dist. LEXIS 71756 (N.D. Ill. Apr. 25, 2023) appeal docketed No. 23-1793 (7th Cir. Apr. 26, 2023); *Hanson v. Dist. Of Columbia*, No. CV 22-2256 (RC), 2023 U.S. Dist. LEXIS 68782 (D.D.C. Apr. 20, 2023); *Ocean State Tactical, LLC v. Rhode Island*, No. 22-CV-246 JJM-PAS, 2022 U.S. Dist. LEXIS 227097 (D.R.I. Dec. 14, 2022) appeal docketed No. 23-01072 (1st Cir. Jan. 23, 2023). It therefore cannot be “indisputably clear” that Applicants are entitled to relief on Naperville’s narrower Sale Ordinance, especially when this Court has never reviewed a similar law. See *Hobby Lobby Stores*,

Inc. v. Sebelius, 568 U.S. 1401, 1403 (2012) (Sotomayor, J., in chambers) (right to relief not indisputably clear where Court had not previously addressed issues raised in application).

2. Applicants will not indisputably prevail at either step of the *Bruen* analysis.

Bruen's first step asks whether the "Second Amendment's plain text covers an individual's conduct." *Bruen*, 142 S. Ct. at 2129–30. Applicants cannot credibly claim it is indisputably clear that the Second Amendment's plain text covers the act of selling firearms. This Court has found that the plain text protects an individual's right to "possess and carry weapons in case of confrontation." *Id.* at 2127 (quoting *Heller*, 554 U.S. at 592). And lower courts across the country—before and after *Bruen*—have repeatedly found that the Second Amendment does not protect the commercial sale of firearms. *See, e.g., Teixeira v. County of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017) (en banc) ("[T]he Second Amendment does not independently protect a proprietor's right to sell firearms."); *United States v. Chafin*, 423 F. App'x 342, 344 (4th Cir. 2011) ("[W]e have found [no authority], that remotely suggests that, at the time of its ratification, the Second Amendment was understood to protect an individual's right to *sell* a firearm."); *United States v. Tilotta*, No. 3:19-cr-04768-GPC, 2022 WL 3924282, at *5 (S.D. Cal. Aug. 30, 2022) ("The plain text of the Second Amendment does not cover Mr. Tilotta's proposed course of conduct to commercially sell and transfer firearms . . ."). Applicants do not point to any authority that says otherwise. Moreover, nothing in *Bruen* "should be taken to cast doubt on" laws regulating the commercial sale of firearms. *Bruen*, 142 S. Ct. at 2162 (Kavanaugh, J.

concurring) (quoting *Heller*, 554 U.S. at 626). For this reason, Applicants fail to carry their burden at *Bruen*'s first step and their right to relief is not indisputably clear.

The State cogently argues that Applicants additionally cannot meet their burden at step one because that the regulated items are not “bearable arms” commonly used for self-defense. The State marshals evidence from the record to show that the Sale Ordinance is “relevantly similar” to historical regulations with respect to dangerous and unusual weapons, satisfying *Bruen*'s second step. Naperville adopts and incorporates the State's arguments on those points.

B. Applicants have failed to establish that any irreparable harm would result from denying their application.

Applicants have failed to show that any irreparable harm would result from the enforcement of Naperville's Sale Ordinance pending resolution of their lawsuit. Applicants initially waited more than *two months* after filing their lawsuit to seek emergency relief against Naperville. Dkt. 10. Even then, the district court observed that Plaintiff Robert Bevis failed to “furnish[] any evidence that he will lose substantial sales” absent an injunction. Appx. 034. Moreover, lost sales are precisely the type of harm that can later be remedied with monetary damages, if needed and appropriate. *Cf. Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 572 U.S. 1301 (2014) (Roberts, C.J., in chambers). This is not the type of case where, for example, individuals will be denied communion or other “important religious traditions” that, for some, no amount of money could later remedy. *See Roman Cath. Diocese of Brooklyn*, 141 S. Ct. at 68. Additionally, as the State explains in its opposition, there is no “presumption” of irreparable harm here. This Court has determined that a

presumption of irreparable harm applies for alleged violations of the First Amendment—not the Second Amendment. In short, Applicants’ request is premised on a presumption that this Court has never established.

Moreover, what little “irreparable” harm Applicants proffer against the State, even if valid, would not also apply against Naperville. The Sale Ordinance prohibits the commercial sales of assault rifles. Appx. 058–67. The Sale Ordinance does not prohibit anyone, including Naperville’s own residents, from purchasing those weapons in another city or state, and it does not prohibit anyone from possessing them in Naperville. *Id.* At bottom, Applicants allege no purported harm caused by the Sale Ordinance other than lost commercial sales, which might support an eventual claim for monetary damages. On this basis alone, the application should be denied.

C. Naperville’s Sale Ordinance reflects the public policy choice of its citizens through their elected representatives.

Finally, the balance of equities and public interest tips heavily in Naperville’s favor. Applicants seek to enjoin, without full judicial review, the enforcement of a municipal ordinance passed by elected officials and reflecting the will of the people. A single businessperson claims he may, as this litigation proceeds, suffer financial losses because he cannot sell a limited category of extremely dangerous assault rifles of little practical use for self-defense. At the same time, absent the Sale Ordinance, the residents of Naperville and Illinois will be placed at additional risk of mass murder. Those consequences far outweigh Applicants’ speculative and purely monetary business concerns. Applicants could, while this litigation proceeds, sell an

assault rifle used in a mass murder in Naperville or other community. *That* truly would be irreparable injury. The “balance of equities” and “overall public interest” overwhelmingly favor Naperville here. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 26 (2008).

CONCLUSION

Since *Bruen*, lower courts have engaged in the difficult but important work of adjudicating disputes concerning the scope of states’ and municipalities’ rights to regulate aspects of the sale and ownership of firearms. Applicants seek to vitiate not one but two levels of review—effectively to divest both the district court and the circuit court of their authority to resolve the merits of the underlying claims. They fall far short of the high bar this Court has understandably set for emergency relief. The application should be denied.

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Respectfully submitted,

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