NO. 112116

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ALBERTO AGUILAR, Defendant-Appellant.	On Appeal from the Appellate Court of Illinois, First District, Third Division, No. 1-09-0840 There Heard on Appeal from the Circuit Court of Cook County, Criminal Division, No. 08 CR 12474 Honorable Charles P. Burns Judge Presiding.

SUPPLEMENTAL BRIEF AND ARGUMENT FOR PLAINTIFF-APPELLEE

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POINTS AND AUTHORITIES

SUPPLEMENTAL STATEMENT OF FACTS

On December 13, 2012, this Court, on its own motion, issued an order directing the parties "to file supplemental briefs addressing the effect, if any, the decision by the United States Court of Appeals for the Seventh Circuit on December 11, 2012, in cases Nos. 12-1269, 12-1788, *Michael Moore et al., and Mary E. Shepard, et al., plaintiffs-appellants, v. Lisa Madigan, Attorney General of Illinois, et al., defendants-appellees*[hereinafter "*Moore/Shepard*"], has on this appeal." (Brackets added.) (*See* People's Appendix A) On January 8, 2012, the Attorney General filed a petition for rehearing *en banc* in *Moore/Shepard.* Subsequently, on January 9, 2013, the Seventh Circuit ordered the plaintiffs-appellants in *Moore/Shepard* to file an answer to the petition for rehearing *en banc*. (*See* People's Appendix B) On January 17, 2013, defendant filed a supplemental brief in this case. At the time of the filing of this brief (February 21, 2013), the Seventh Circuit has yet to rule on the Attorney General's petition for rehearing *en banc*.

ARGUMENT

THE UNSOUND MAJORITY OPINION IN *MOORE/SHEPARD* IS NOT PERSUASIVE AUTHORITY IN THIS CASE.

In *Moore/Shepard*, the United States Court of Appeals for the Seventh Circuit reviewed two appeals that challenged the denials of declaratory and injunctive relief on the ground that certain subsections of the Unlawful Use of A Weapon statute ("UUW") (720 ILCS 5/24-1(a)(4), (10) and the Aggravated Unlawful Use of A Weapon statue ("AUUW") (720 ILCS 5/24-1.6(a)) prohibited the public carry of handguns for self-defense in violation of the Second Amendment as interpreted in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and made applicable to the states in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010). *Moore and Shepard v. Madigan*, 702 F.3d 933, 934 (7th Cir. 2012). The United States District Courts for the Central District and Southern District of Illinois had found that the UUW and AUUW statutes did fall within the scope of the Second Amendment pursuant to *Heller* and as reflected by our founding-era state constitutions and gun laws. *Moore v. Madigan*, 842 F. Supp. 2d 1092, 1110-1106 (C.D. Ill. 2012); *Shepard v. Madigan*, 863 F. Supp. 2d 774, 782-785 (S.D. Ill. 2012). Alternatively, the district courts held that, even assuming that the challenged portions of the statutes fall within the scope of the Second Amendment, the statutes were, nevertheless, constitutional under an intermediate scrutiny analysis. *Moore* , 842 F. Supp. 2d at 1110-1106; *Shepard*, 863 F. Supp. 2d at 784. The district courts found that the Illinois General Assembly's goal in ensuring public safety served an important

governmental objective and that there was a substantial relationship between the "means employed" by the statutes and its "intended effect of ensuring public safety." *Moore*, 842 F. Supp. 2d at 1110-1106; *see also Shepard*, 863 F. Supp. 2d at 784.

In a split decision, the Seventh Circuit reversed the district courts, holding that the Second Amendment included a right to carry firearms in public for self-defense purposes, and that Illinois failed to provide constitutional justification for the UUW and AUUW statutes' "blanket prohibition" of this right. *Moore/ Shepard*, 702 F.3d at 935-942. Accordingly, the majority remanded the cases to their respective district courts "for the entry of unconstitutionality and permanent injunctions." *Id.* at 942. However, the majority "order[ed] [its] mandate stayed for 180 days to allow the Illinois legislature to craft a new gun law that will impose reasonable limitations, consistent with the public safety and the Second Amendment as interpreted in [its] opinion, on the carrying of guns in public." *Id.*

The dissent in *Moore/Shepard* found that relevant historical evidence failed to clearly prove that the Second Amendment "codified a generally recognized right to carry arms in public for self-defense." *Id.* at 954 (Williams, J. dissenting). It also determined that "the State of Illinois has a significant interest in maintaining the safety of its citizens and police officers and that the legislature acted within its authority when it concluded that its interest in reducing gun-related deaths and injuries would not be as effectively served through a licensing system," and instead chose to enact a statutory scheme that prohibited most forms of public carry of ready-to-use guns. *Id.* at 953-954. Thus, the dissent

concluded that it would leave the judgment of permitting the public carry of handguns "in the hands of the State of Illinois." *Id.* 954.

In his supplemental brief, defendant initially argues that the *Moore/Shepard* majority decision refutes the People's argument that he lacks standing to challenge the constitutionality of the law under which he was convicted. (Deft. Supp. Br. 3-5) Defendant also contends that the *Moore/Shepard* decision is "highly persuasive" because it "was correctly decided on the substantive Second Amendment issue." (Deft. Supp. Br. 5-9) Consequently, defendant contends that "[c]omity strongly favors this Court issuing a decision in harmony" with *Moore/Shepard.* (Deft. Supp. Br. 9-14).

However, *Moore/Shepard* does not compel a particular outcome in this case. Defendant here was found not guilty of possessing a handgun on public land and, as a consequence, he cannot show that the AUUW statute is unconstitutional as applied to him. Moreover, even assuming that *Moore/Shepard* was properly decided, defendant does not have a valid Second Amendment claim because he failed to establish that he was a law-abiding citizen, qualified to possess a handgun or that he possessed the handgun for the lawful purpose of self-defense—essential components of a Second Amendment claim as interpreted under *Heller* and established by the plaintiffs in *Moore* and *Shepard.* Furthermore, even if this Court were to find that defendant has standing and that he has established he was a law-abiding citizen who possessed the instant handgun for self-defense, the *Moore/Shepard* decision's substantive analysis of the Second Amendment departs from the analytical framework adopted by *Heller*, resulting in an erroneous decision that should be rejected by this Court. As a result, the doctrine of comity is an

insufficient basis to issue an opinion in harmony with the unsound majority decision in *Moore/Shepard.*

A. The *Moore/Shepard* Case Does Not Cure Defendant's Lack Of Standing To Challenge 720 ILCS 5/24-1.6(a)(1)(3)(A) On The Theory That It Unconstitutionally Infringes The Right To Carry A Handgun In Public In Violation Of The Second Amendment.

Defendant's supplemental brief makes clear that he "only challenges the subsection of the AUUW statute under which he was convicted: 720 ILCS 5/24-1.6(a)(1)(3)(A) (2008)." (Deft. Supp. Br. 3) He asks this Court to issue a broad opinion declaring the AUUW statute unconstitutional because it violates the right to publically carry handguns for self-defense under the Second Amendment as interpreted by *Heller* and *McDonald.* However, defendant totally disregards the fact that, unlike *Moore/Shepard*, this is not a public carry case. Defendant was found *not guilty* of knowingly possessing a handgun, which was loaded, uncased, and immediately accessible, when he was *on public land* in violation 720 ILCS 5/5-24-1.6(a)(2),(3)(A)(2008). His AUUW conviction under subsection 5-24-1.6(a)(1)(3)(A) is based solely on his possession of a handgun in his friend's backyard, which is a situation not covered in *Moore/Shepard.* (R. G176-181) Hence, defendant is not similarly-situated to the plaintiffs in *Moore/Shepard*, and the statute is constitutional as applied to him.

While the plaintiffs in *Moore* and *Shepard* demonstrated that they faced potential prosecution under the UUW and AUUW statutes for carrying handguns in public, defendant is unable to show that his actual conviction was in violation of the purported right to public carry since he was found guilty of possessing a handgun on the private land of another person. This Court's precedent is clear: "One who would attack a statute as

unconstitutional must bring himself within the class as to whom the law is unconstitutional." *People v. Bombacino*, 51 Ill. 2d 17, 20 (1972). The possession of a handgun on someone else's private property does not constitute public carry by definition. Significantly, defendant cannot cite to any authority that interprets the possession of a handgun on another person's private property as a public carry act. Defendant cannot bootstrap his case to Second Amendment public carry cases in order to invalidate his conviction for possessing a handgun on someone else's private property. Defendant has the right to challenge the constitutionality of his conviction, but his theory of unconstitutionality must be pertinent to his case. Put another way, defendant cannot claim the statute is unconstitutional as applied to him simply because it is unconstitutional as applied in different circumstances.

Furthermore, the *Moore/Shepard* majority decision does not change the fact that defendant was not a law-abiding citizen punished for exercising his right to possess a handgun for the lawful purpose of self-defense—essential elements of a Second Amendment claim even under a public carry theory. At the time of the instant offense, defendant was a 17-year-old gang member who had no FOID card but, nonetheless, possessed a defaced semiautomatic handgun, which was altered for a silencer or suppressor, in his friend's backyard. To date, defendant has not claimed he possessed this illicit handgun for the purpose of self-defense or that defendant's possession of that handgun was protected by the Second Amendment. *See Heller*, 554 U.S. at 625-628((Second Amendment "does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes") The *Moore/Shepard* decision should not, and

cannot, be interpreted to extend Second Amendment protection to these circumstances. There is no indication that the *Moore/Shepard* majority's finding of unconstitutionality and permanent injunctions went beyond what was requested by the plaintiffs in their pleadings. Indeed, a review of these pleadings establishes that the majority opinion found the UUW and AUUW statutes to be unconstitutional only to the extent that they prevent qualified law-abiding citizens from carrying handguns in public. [1]

The amended complaint in *Moore* stated that it was an action that "challenges Illinois' statutory prohibitions on 'Unlawful Use of Weapons' (720 ILCS 5/24-1) and 'Aggravated Unlawful Use of Weapons' (720 ILCS 5/24-1.6) to the extent that they prohibit otherwise *qualified* private citizens from carrying handguns for the purpose of self-defense." (Emphasis added) (*See* People's Appendix C, *Moore*, Amended Compl., p. 1, ¶ 1.) This amended complaint specified that "Plaintiff Moore holds a valid Firearm Owners Identification Card ("FOID") issued pursuant to the Illinois Firearm Owners Identification Card Act" and that he "would carry a loaded and functional handgun in public for self-defense, but refrains from doing so because he fears arrest, prosecution, fine, and imprisonment as he understands it is unlawful to carry a handgun in Illinois." (*See* People's Appendix C, *Moore* Amended Compl. p. 3, ¶¶ 12, 13) Co-plaintiffs

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[1] The People ask this Court to take judicial notice of the pleadings filed by the plaintiffs in *Moore* and *Shepard* in order to accurately determine the scope of the *Moore/Shepard* decision. This Court has held that it may take judicial notice of public documents which are included in the records of other courts and administrative tribunals. *May Dep't Stores Co. v. Teamsters Union*, 64 Ill. 2d 153, 159 (1976). Likewise, judicial notice may be taken of documents that are readily verifiable from sources of indisputable accuracy. *People v. Mata*, 217 Ill. 2d 535, 539-540 (2006), citing *People v. Henderson*, 171 Ill. 2d 124, 134 (1996). The practice of taking judicial notice of public records has been recognized in both civil and criminal cases. *In re W.S.*, 81 Ill. 2d 252, 257(1980).

Charles Hooks, Peggy Fechter, and Jon Maier also alleged that they were issued valid FOID cards and refrained from carrying a loaded and functional handgun in public for self-defense for fear of arrest, prosecution, fine and imprisonment. (*See* People's Appendix C, *Moore*, Amended Compl., pp. 4-5, ¶¶ 15, 16, 20, 21, 23, 24)

In their prayer for relief, the *Moore* plaintiffs requested entry of a declaratory judgment that the UUW and AUUW statutes "are invalid in that and to the extent that they are applied to prohibit *private citizens who are otherwise qualified to possess handguns from carrying for self-defense.*" (Emphasis added.) (*See* People's Appendix, *Moore*, Amended Compl. p. 10, i) They also requested injunctive relief "restraining [the State of Illinois] . . . from enforcing [the UUW and AUUW statutes] against *private citizens who are otherwise qualified to possess handguns . . . .*" (Brackets and emphasis added.) (*See* People's Appendix C, *Moore*, Amended Compl., p. 10, ii.)

As in the *Moore* case, the complaint filed in *Shepard* is also restricted to law-abiding citizens claiming a right to possess a handgun for self-defense. Although it provided a broad prayer for relief requesting that the AUUW and UUW provisions at issue be found null and void, the *Shepard* complaint made it clear that it was "an action to vindicate the rights of citizens of the State of Illinois to bear arms, as guaranteed by the Second Amendment and the Fourteenth Amendment to the United States Constitution, which guarantee the right of *law-abiding citizens* to bear arms for their own lawful defense and for other lawful purposes." (Emphasis added.) (*See* Appendix D, *Shepard*, Compl., p. 1-2, ¶ 1) The *Shepard* complaint also alleged that "Mrs. Shepard, like many Members of the ISRA and other law-abiding citizens, possesses valid [FOID] cards" and that "[l]ike

Members of the ISRA and many Illinois citizens, she is a *law-abiding citizen and has no criminal record.*" (Emphasis added.) (*See* Appendix D, *Shepard*, Compl. pp. 6, ¶ 18)

In light of the pleadings in *Moore* and *Shepard*, it is clear that the relief granted in the *Moore/Shepard* decision was limited to the facts of these plaintiffs, and it only mandates that Illinois permit qualified law-abiding citizens to carry handguns in public for the *lawful* purpose of self-defense. Nothing in the Seventh Circuit's decision suggests that the declaratory and injunctive judgments granted in the case directed Illinois to permit a 17-year-old gang member with no FOID card to possess an illegal, defaced handgun, which was altered for a silencer or suppressor, on another person's private property, or elsewhere. Consequently, *Moore/Shepard* has no application to, or effect on, an AUUW conviction where, as here, the defendant cannot establish that (1) he was a law-abiding citizen who was otherwise qualified to possess a lawful handgun and (2) he possessed a lawful handgun for the lawful purpose of self-defense.

Defendant attempts to minimize the significance of the facts of his case by pointing out that the factual background of the plaintiffs was not discussed in the *Moore/Shepard* decision. (Deft. Supp. Br. 4) However, *Heller* made clear that the Second Amendment right to keep and bear arms belongs to law-abiding responsible citizens. *See Heller*, 554 U.S. at 625, 635 (Court concluded that the Second Amendment "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home" and, thereby, held that "[a]ssuming that Heller is not disqualified from the exercise of Second Amendment rights, the District [of Columbia] must permit him to register his gun and must issue him a license to carry it in the home.") Accordingly, the

plaintiffs in *Moore* and *Shepard* averred that they possessed FOID cards and were law-abiding citizens otherwise qualified to possess handguns in Illinois because these were key elements in establishing a valid Second Amendment cause of action. These facts were not discussed in the Seventh Circuit simply because they were not in dispute. The disputed issues before the Seventh Circuit involved only the public carry of handguns.

Hence, even under the holding of *Moore/Shepard,* defendant cannot establish a valid Second Amendment claim. At the time of the offense, he was a 17-year-old without a FOID card and a gang member, who was in possession of an illicit handgun. Defendant, however, claims that his gang member status is based on un-confronted hearsay elicited at his preliminary hearing. (Deft. Supp. Br. 4) It must be initially noted that this position overlooks the fact that defendant's failure to raise his Second Amendment claim at the trial level deprived the trial court of the opportunity to hold an evidentiary hearing wherein the People would have had the chance to present evidence of defendant's gang status that was germane to his Second Amendment claim but irrelevant to the issue of his guilt. Additionally, and more importantly, the record refutes the allegation that the People's characterization of defendant as a gang member is solely based on un-confronted hearsay. Defendant completely disregards the fact that his gang member status was an issue at his sentencing hearing where defendant was present with counsel. In fact, the trial court ultimately sentenced defendant to Gang Unit Probation (C.L. 105, 107), a sentence which he did not challenge via a motion to reconsider or on direct appeal. Therefore, defendant's gang member status is of record and a historical fact in this case.

In order to support his position that the facts surrounding his conviction are irrelevant, defendant points out that the Seventh Circuit refused to remand the cases for further proceedings because the "'constitutionality of the challenged statutory provisions does not present factual questions for determination in a trial.'" (Deft. Supp. Br. 4), quoting *Moore/ Shepard*, 702 F.3d at 942. However, defendant takes this statement out of context. In making this determination, the Seventh Circuit was not addressing the issue of whether the plaintiffs sufficiently alleged a valid Second Amendment claim or cause of action. Nor was the court addressing the issue of whether the plaintiffs had standing under their theory of unconstitutionality. *Id.* As demonstrated earlier, there was no dispute among the parties that the *Moore* and *Shepard* plaintiffs were law-abiding citizens otherwise qualified to possess a handgun in Illinois. The discussion of the validity of a remand involved the question of whether the statutes survived constitutional scrutiny. The refusal to remand the case was based on the fact that only "legislative facts" had a bearing on whether the UUW and AUUW statutes survived constitutional scrutiny, rendering a trial unnecessary. *Id.* However, the Seventh Circuit explained that "legislative facts" that "bear on the justification for legislation" were "distinct from facts concerning the conduct of parties in particular." *Id.* Unlike the situation in *Moore/Shepard*, defendant's conduct here is crucial in determining whether he possesses a valid Second Amendment claim. *Id.*

Additionally, defendant assures this Court that, if it were to find subsection 5-24-1.6(a)(1)(3)(A) unconstitutional, it would have no impact on Illinois' ability to either prohibit disqualified persons from possessing handguns or prohibit the possession of guns in schools, government buildings, or other sensitive places. (Deft. Supp. Br. 3)

Defendant makes these assurances while, at the same time, asking this Court to uproot his AUUW conviction on Second Amendment grounds even though he was eminently disqualified to possess an illicit handgun in his friend's backyard or elsewhere. In other words, he wants this Court to expand Moore/Shepard to apply to his circumstances, while assuring the court it should not apply to any other circumstances. However, if this Court were to find standing here and analyze this case under a Second Amendment public carry scenario, it would establish precedent that would place at risk every UUW and AUUW conviction where the defendant is neither a law-abiding citizen nor qualified to possess a handgun and is found with a loaded handgun outside his home, including schools, government buildings, and other sensitive places. However, as established, the *Moore/Shepard* decision fails to provide a legitimate basis to set aside a AUUW conviction where, as here, a defendant fails to set forth the threshold elements of a Second Amendment claim or lacks standing to do so. This Court should not permit defendant to divert its attention from the facts in the record, which negate the existence of a viable Second Amendment claim in his case and demonstrate that defendant lacks standing to challenge Subsection 5-24-1.6(a)(1)(3)(A) of the AUUW statute. Accordingly, this Court should refuse to consider defendant's Second Amendment challenge to his AUUW conviction based on standing grounds as well as the fact that he cannot even allege a valid Second Amendment cause of action.

B. The *Moore/Shepard* Majority's Analysis Failed To Comport With The Analytical Framework Established In *Heller*, Resulting In An Unsound Decision.

This Court is not bound to the *Moore/Shepard* decision. It is well-settled that "[b]ecause lower Federal courts exercise no appellate jurisdiction over State courts, decisions of lower Federal courts are not conclusive on State courts, except insofar as the decision of the lower Federal court may become the law of the case." *People v. Kokoraleis*, 132 Ill. 2d 235, 293-294 (1989). This Court has recognized that "[u]ntil the Supreme Court of the United States has spoken, State courts are not precluded from exercising their own judgments on Federal constitutional questions. *Kokoraleis*, citing *United States ex rel. Lawrence v. Woods*, 432 F.2d 1072 (7th Cir. 1979). Accordingly, this Court should conduct an independent Second Amendment analysis in this case. Such an analysis establishes that *Moore/Shepard* was wrongly decided, and that it does not control the outcome of this case.

Defendant points out that the *Moore/Shepard* majority "agreed with every argument [he] made before this Court" when it held that the AUUW statute's prohibition on possessing ready-to-use handguns in public violated the Second Amendment as purportedly interpreted in *Heller*. (Deft. Supp. Br.5) As a consequence, the majority decision is plagued with the same infirmities that are found in defendant's Second Amendment analysis. In light of the fact that the majority's decision is based on grounds that defendant argued before this Court, the People's initial brief effectively negates the validity of the *Moore/Shepard* decision. (People's Br. 27-72) However, the majority's flawed and internally inconsistent analytical approach to interpreting the Second Amendment bears discussion.

As stated in the People's initial brief, in *Heller*, the Court noted "the historical reality that the Second Amendment was not intended to lay down a 'novel principl[e]' but rather codified a right 'inherited from our English ancestors[.]'" *Heller*, 554 U.S. at 599-600, quoting *Robertson v. Baldwin*, 165 U.S. 275, 281 (1897). The *Heller* court, therefore, examined the text of the Second Amendment as well engaged in a historical analysis of the amendment in order to determine whether, at the time of the Second Amendment's ratification, it was understood to encompass an individual right to possess a handgun in the home for self-defense or whether it was limited to protecting a collective right aimed at securing the existence of a militia. *Heller*, 554 U.S. at 579-619. The Court's historical analysis included an in-depth examination of English laws and legal writings as well as our founding-era state constitutions and gun laws. *Id.* In keeping with this analytical framework, this Court has recognized that the question of "whether the challenged law imposes a burden on conduct falling within the scope of the second amendment guarantee. . . . involves a textual and historical inquiry to determine whether the conduct was understood to be within the scope of the right at the time of ratification." *Wilson v. Cook County*, 2011 IL 112026, ¶41. This analytical framework is imperative in addressing Second Amendment claims because *Heller* explicitly warned "we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment." *Heller*, 554 U.S. at 626.

However, like defendant in this case, the *Moore/Shepard* majority wrongly rejects this analytical framework and instead takes language found in *Heller* and *McDonald* out of context to conclude that the historical evidence discussed in *Heller* already indicates that

the Second Amendment extends outside the home. *Moore/ Shepard*, 702 F.3d at 935-936, *compare* (People's Br. 31)("Defendant keys on snippets of [*Heller's*] textual and historical analysis, taking them entirely out of context to support his claim that *Heller*, in fact, extended the operative reach of the Second Amendment to include a right to public carry.") The majority did so even though it initially acknowledged that "the Supreme Court has not yet addressed the question whether the Second Amendment creates a right of self-defense outside the home." *Moore/ Shepard*, 702 F.3d at 935. Nevertheless, the majority declined to consider historical evidence that directly spoke to the question of public carry, stating:

> "The parties and the amici curiae have treated us to hundreds of pages of argument, in nine briefs. The main focus of these submissions is history. The supporters of the Illinois law present historical evidence that there was no generally recognized private right to carry arms in public in 1791, the year the Second Amendment was ratified—the critical year for determining the amendment's historical meaning, according to *McDonald v. City of Chicago, supra*, 130 S. Ct. at 3035 and n. 14. Similar evidence against the existence of an eighteenth-century right to have weapons in the home for purposes of self-defense rather than just militia duty had of course been presented to the Supreme Court in the *Heller* case. * * * The District of Columbia had argued that 'the original understanding of the Second Amendment was neither an individual right of self-defense nor a collective right of the states, but rather a civic right that guaranteed that citizens would be able to keep and bear those arms needed to meet their legal obligation to participate in a well-regulated militia' * * * The Supreme Court rejected the argument. The appellees ask us to repudiate the Court's historical analysis. That we can't do." 702 F.3d at 935.

However, historical evidence that the Second Amendment protects an individual right for self-defense in the home as opposed to a collective right aimed at securing a militia in no way answers the question of whether the Second Amendment, during the founding era, was

understood to protect the right to bear arms in public. As pointed out by the dissent in *Moore/Shepard*:

> "The historical inquiry here is a very different one. *Heller* did not assess whether there was a pre-existing right to carry guns in public for self-defense. By asking us to make that assessment, the State is not asking us to reject the Court's historical analysis in *Heller*; rather, it is being true to it. As I see it, the State embraces *Heller's* method of analysis and asks us to conduct it for the different right that is being asserted." *Id.* at 943 .

The majority's failure to engage in an independent historical analysis is at odds with this Court's opinion in *Wilson, supra.* It also creates a conflict within the Seventh Circuit because it cannot be reconciled with the *en banc* opinion in *Unites States v. Skoein*, 614 F.3d 85 (7th Cir. 2010). In *Skoien*, the criminal defendant challenged the constitutionality of 18 U.S.C. § 922(g)(9), which prohibits possession of a firearm *anywhere* by a person who has been convicted of misdemeanor domestic violence. 614 F.3d at 639. Both parties argued that *Heller* controlled the issue on review. *Id.* at 639-40. The government argued that *Heller* recognized several historical exceptions to the Second Amendment right, while the defendant argued that a misdemeanor offense was not an historical exception. *Id.* On review, the Seventh Circuit recognized that *Heller* left this question, among others, unanswered and then undertook an historical analysis of whether government may enact laws that categorically limit the right to possess firearms, including by persons convicted of misdemeanors. *Id.* at 640-41. Thus, the majority's holding in *Moore/Shepard*—that *Heller* rendered a comprehensive review of the historical evidence unnecessary—cannot be reconciled with *Skoien*. Notably, the *Moore/Shepard* decision is also in conflict with the analytical approach taken by the Second Circuit. *See Kachalsky v. County of Westchester*, 701 F.3d 81 (2d Cir. 2012) (recognizing that *Heller*'s historical analysis was

not exhaustive, court engaged an independent historical analysis to uphold a New York state law that required an applicant to show "proper cause" in order to obtain a concealed weapon permit). *Skoien* and *Kachalsy* provide a further basis for this Court to reject the flawed approach found in the *Moore/Shepard* majority decision and adhere to the analytical framework set forth *Heller* and followed in *Wilson.*

Furthermore, the majority's determination that *Heller*'s holding must be read to extend outside the home is unsustainable. *See Moore/ Shepard*, 702 F.3d at 935-936. In so concluding, the majority explained:

> "Both *Heller* and *McDonald* do say that 'the need for defense of self, family, and property is *most* acute' in the home, *id.* at 3036 (emphasis added); 554 U.S. at 628, but that doesn't mean it is not acute outside the home. *Heller* repeatedly invokes a broader Second Amendment right than the right to have a gun in one's home, as when it says that the amendment 'guarantee[s] the individual right to possess and carry weapons in case of confrontation.' 554 U.S. at 592. Confrontations are not limited to the home." *Id.* at 935-936.

In further support of its interpretation, the majority points out that the first sentence in the *McDonald* opinion states that "two years ago, in *District of Columbia v. Heller*, we held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense." *Id.* at 935, quoting *McDonald*, 130 S. Ct. at 3026. Yet the majority only quotes the first part of this sentence and omits its second part that states "and struck down a District of Columbia law that banned the possession of handguns *in the home.*" (Emphasis added.) *McDonald*, 130 S. Ct. 3026. The majority also disregards *McDonald*'s later acknowledgement that "[i]n *Heller*, we held that the Second Amendment protects the right to possess a handgun *in the home* for the purpose of self-defense." (Emphasis added) *Id.* at 3050. Interpreting these and other general statements out of context, the

majority concludes that Illinois could not rely on the Statute of Northampton and *Sir John Knight's Case* as evidence that our English ancestors did not recognize the right bear arms in public because they conflict with *Heller* and *McDonald*. *Moore/ Shepard*, 702 F.3d at 936-937. However, this reasoning does not pass scrutiny because *Heller* and *McDonald* did not address the question of public carry.

Furthermore, the Supreme Court has repeatedly warned lower courts and litigants that:

> "[W]e recall Chief Justice Marshall's sage observation that 'general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit when the very point is presented for decision.'" *Ark. Game & Fish Comm'n v. United States*, 133 S. Ct. 511, 520 (2012), quoting *Cohens* v. *Virginia*, 19 U.S. 264, 400 (1821).

The *Moore/Shepard* majority should have heeded the Court's advice and conducted a proper historical analysis. As established in the People's initial brief, such a historical analysis establishes our English ancestors' laws and legal writings concerning public carry and our founding-era state constitutions and gun laws provide historical evidence that the Second Amendment did not extend outside the home and that the States were within their authority to regulate public carry of arms to suit their local needs and values. (People's Br. at 45-49)

Although the *Moore/Shepard* dissent was "not convinced that the implication of the *Heller* and *McDonald* decisions is that the Second Amendment right to have ready-to-use firearms for potential self-defense extends beyond the home," it noted that among the sources and authorities that it examined "there was not a clear historical consensus that

persons could carry guns in public for self-defense." *Moore/ Shepard*, 702 F.3d at 945-946. (Williams. J. dissenting). The dissent pointed out that "unlike the ban on handguns in the home at issue in *Heller*, '[h]istory and tradition do not speak with one voice' regarding scope of right to bear arms in public and that '[w]hat history demonstrates is that states often disagreed as to the scope of the right to bear arms [in public]'). *Id.* 946, quoting *Kachalsky*, 701 F.3d at 91. The dissent failed to recognize the actual significance of the varying approaches to the public carry of arms. It does not indicate a lack of consensus in the understanding of the scope of the Second Amendment. As established in the People's initial brief, the different approaches to public carry of arms among the States, during the founding era, constitutes a clear indication that the public carry of arms did not fall within the scope of Second Amendment and, therefore, was subject to the police powers of each individual State. (People's Br.42-49) Hence, being in the best position to balance the interests of its citizenry and particular locality, each individual State, including Ohio with its vast frontier, had the freedom to regulate the public carry of firearms unencumbered by the Second Amendment.

Even assuming arguendo that the Second Amendment protects the public carry of arms for the lawful purpose of self-defense, the *Moore/Shepard* majority's constitutional scrutiny of the AUUW statute is also flawed. In particular, the majority erred in rejecting a rational basis showing but rather required Illinois to make a "strong showing" that its public carry prohibitions were "vital to public safety." *Moore/ Shepard*, 702 F.3d at 940. In *Heller*, the Court found that the need for self-defense is "most acute" in the home and indicated that rational basis is an inadequate level of scrutiny for a categorical ban of

handguns in the home. 554 U.S. at 628, 629 n27. The same does not hold true to handgun bans in public. Clearly, the government possesses a greater interest in regulating guns in public. The need for self-defense cannot be simultaneously "most acute" at home and in public. As pointed out by the Second District:

> "But while the state's ability to regulate firearms is circumscribed in the home, 'outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense.'" *Kachalsky*, 701 F.3d at 94, quoting *United States v. Masciandaro*, 638 F.3d 458, 470 (4th Cir. 2011).

As demonstrated in the People's initial brief, unlike the gun bans at issue in *Heller* and *McDonald*, the AUUW statute does not interfere with the core of the Second Amendment -- the right to possess a handgun in the home for self-protection. (People's Br. 58) As a result, a lower level of scrutiny is appropriate.

Additionally, the *Moore/Shepard* majority was wrong in concluding Illinois failed to justify the enactment of the UUW and AUUW statutes. 702 F.3d at 941-942. The People's initial brief presented this Court with extensive empirical evidence that the AUUW statute protects police officers and the public in general, thereby justifying its enactment under any level of scrutiny. Like defendant, the majority opinion incorrectly marginalizes the significance of the extensive empirical evidence that supports a ban on the public carry of guns by arguing that *Heller* made clear "it wasn't going to make the right to bear arms depend on casualty counts." *Id.* at 939-940. (Deft. Supp. Br. 9) However, public safety was not a central concern in *Heller* where it involved the right to possess a gun for self-defense at home. Neither defendant, nor the majority, dispute the fact that public safety is a relevant factor to be considered in evaluating the validity of

public carry laws. Their position, though, disregards that fact that public safety, by definition, entails an assessment of whether the conduct sought to be regulated or banned places police officers and the public in general at risk of injury or death. As the dissent aptly recognized:

> The Illinois statutes safeguard the core right to bear arms for self-defense in the home, as well as the carry of ready-to-use firearms on other private property when permitted by the owner, along with the corollary right to transport weapons from place to place. *See* 720 Ill. Comp. Stat. 5/24-2; 720 Ill. Comp. Stat. 5/24-1.6(a)(1). Guns in public expose all nearby to risk, and the risk of accidental discharge or bad aim has lethal consequences. Allowing public carry of ready-to-use guns means that risk is borne by all in Illinois, including the vast majority of its citizens who choose not to have guns. The State of Illinois has a significant interest in maintaining the safety of its citizens and police officers." *Id.* at 953.

The dissent, thus, properly found that the Illinois General Assembly "acted within its authority to conclude that its interest in reducing gun-related deaths and injuries would not be as effectively served through a licensing system," and instead enacted a statutory scheme that prohibited most forms of public carry of ready-to-use guns. *Id.* at 953-954. Accordingly, this Court should hold that the AUUW statute passes constitutional muster under any level of scrutiny.

C. The Doctrine Of Comity Does Not Provide Basis For This Court To Issue An Opinion In Harmony With The Seventh Circuit's Erroneous Decision.

Defendant acknowledges that this Court is not bound by *Moore/Shepard's* declaration that Illinois public carry prohibitions is unconstitutional, but asks that it be considered as persuasive authority. (Deft. Supp. Br. 9); See *Wilson*, 2012 Ill. LEXIS 337, ¶ 30 (lower federal court decisions are not binding on Illinois courts, but may be considered persuasive authority). Consequently, defendant contends that the doctrine of comity

favors this Court issuing a decision in harmony with the *Moore/Shepard* majority. In particular, defendant asserts that the *Moore/Shepard* majority should be accorded significant persuasive weight in a criminal case because "persuasive weight is at its peak in cases involving criminal statutes." (Deft. Supp. 10) Hence, defendant urges this Court "to harmonize this decision to ensure the fair and orderly administration of justice in Illinois" (Deft. Supp. Br. 10) Defendant warns that "[a] decision adverse with [*Moore/Shepard*] would result in Illinois citizens having to vindicate their constitutional right by way of habeas corpus proceedings, a duplicative and wasteful route." (Deft. Br. 10)

Contrary to defendant's position, comity does not provide a basis for this Court to issue an opinion in harmony with *Moore/Shepard.* It is well established that comity "is not a constitutional command." *Schoeberlein v. Purdue University*, 129 Ill. 2d 373, 377 (1989); *see also Mast, Foos & Co. v. Stover Mfg. Co.,* 177 U.S. 485, 488-489 (1900) (comity is "a rule of practice, convenience and expediency;" it "persuades" not commands"). Comity, therefore, gives effect to the judicial decisions of another jurisdiction "not as a matter of obligation, but out of deference and respect." *Id.* at 378; *see also Rollins v. Ellwood*, 141 Ill. 2d 244, 256 (1990 "This court will not enforce law from another jurisdiction on the basis of comity if it is clearly contrary to Illinois public policy or the 'general interest of the citizens of this State.'" *People v. Nance*, 189 Ill. 2d 142, 149 (2000), *quoting* Schoeberlein, 129 Ill. 2d 379.

The *Moore/Shepard* decision should not be considered as persuasive authority under the doctrine of comity for several compelling reasons. It is a divided decision on a

constitutional issue that has not been addressed by the Supreme Court. Moreover, as established *supra*, the majority opinion was wrongly decided and rests on an analytical approach that is at odds with *Heller*, and in conflict with *Skoein*, another Seventh Circuit case, and *Kachalsky*, a Second Circuit case. This Court has held that it need not follow a particular federal circuit court decision where "the Supreme Court has not ruled on the precise question presented, there is uncertainty among the federal circuit courts of appeals, and [the Court] believe[s] a case is wrongly decided." *Bishop v. Burgard*, 198 Ill. 2d 495, 507 (2002); *see also Bowman v. Am. River Transp. Co.*, 217 Ill. 2d 75, 92 (2005) (this court found it was not bound to federal court decisions in interpreting whether in a suite under the Jones Act (46 U.S.C.S. app. § 688), a defendant is entitled to demand a trial by jury).

Although harmony and uniformity in precedent are important in ensuring the fair and orderly administration of justice in criminal cases, the correctness of precedent is more critical in reaching that goal. Moreover, the acceptance of the erroneous *Moore/Shepard* decision would only serve to jeopardize the finality of constitutionally valid UUW and AUUW convictions. Accordingly, the People ask this Court to reject the *Moore/Shepard's* majority decision as unsound precedent. For the reasons stated in their briefs and at oral argument, the People ask this Court to affirm defendant's AUUW conviction.

CONCLUSION

The People of the State of Illinois respectfully request that this Honorable Court affirm defendant's conviction for Aggravated Unlawful Use of a Weapon.

Respectfully submitted,

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Attorney for Plaintiff-Appellee.

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Assistant State's Attorneys,
Of Counsel.

APPENDIX A

Illinois Supreme Court Order, *People v. Alberto Aguilar*, No. 112116 (December 13, 2012)

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

December 13, 2012

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, Illinois 60601-3103
(312) 793-1332
TDD: (312) 793-6185

Mr. David C. Holland
Assistant Appellate Defender
Office of the State Appellate Defender
203 N. LaSalle Street, 24th Floor
Chicago, IL 60601

In re: People State of Illinois, appellee, v. Alberto Aguilar, appellant.
Case No. 112116

Dear Mr. Holland:

Enclosed is a copy of an order entered by the Supreme Court of Illinois on December 13, 2012, in the above-entitled cause.

Thank you.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

CTG:lgr
Enclosure
cc: AG CrMadigan
Mr. Victor D. Quilici
Mr. Alan J. Spellberg
Ms. Suzanne M. Loose
Ms. Veronica Calderon Malavia
Mr. William N. Howard
Mr. Stephen A. Kolodziej
Mr. Ranjit J. Hakim
Mr. Alexander D. Marks
Mr. Stephen P. Halbrook
Prof. Michael P. O'Shea
Ms. Janet Melissa Garetto

No. 112116

IN THE

SUPREME COURT OF ILLINOIS

People State of Illinois,	)	
	)	
Appellee	)	Appeal from
	)	Appellate Court
v.	)	First District
	)	1-09-0840
Alberto Aguilar,	)	08 CR 12069
	)	
Appellant	)	
	)	

ORDER

On the Court's own motion, the parties are directed to file supplemental briefs addressing the effect, if any, the decision by the United States Court of Appeals for the Seventh Circuit on December 11, 2012, in case Nos. 12-1269, 12-1788, *Michael Moore, et al., and Mary E. Shepard, et al., plaintiffs-appellants, v. Lisa Madigan, Attorney General of Illinois, et al., defendants-appellees*, has on this appeal. The supplemental brief of appellant is due on or before January 17, 2013. Remaining supplemental briefs to be filed pursuant to Supreme Court Rule 343.

Order entered by the Court.

APPENDIX B

Illinois Attorney General's Request to File an Answer to Petition for Rehearing *En Banc*, *Michael Moore, et al., and Mary E. Shepard, et al., Plaintiffs-Appellants, v. Lisa Madigan, Attorney General of Illinois, et al., Defendants-Appellees*, Nos. 12-1269, 12-1788 (January 9, 2013)

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

REQUEST TO FILE AN ANSWER TO PETITION FOR REHEARING EN BANC

January 9, 2013

No.: 12-1269	MICHAEL MOORE, et al., Plaintiffs - Appellants v. LISA MADIGAN and HIRAM GRAU, Defendants - Appellees
Originating Case Information:	
District Court No: 3:11-cv-03134-SEM-BGC Central District of Illinois District Judge Sue E. Myerscough	
No.: 12-1788	MARY E. SHEPARD and ILLINOIS STATE RIFLE ASSOCIATION, Plaintiffs - Appellants v. LISA MADIGAN, et al., Defendants - Appellees
Originating Case Information:	
District Court No: 3:11-cv-00405-WDS-PMF Southern District of Illinois District Judge William D. Stiehl	

A Petition for Rehearing and Petition for Rehearing En Banc was filed by counsel for the State Defendants-Appellees on January 8, 2013.

Counsel for the Plaintiffs-Appellants are requested to file an answer to the petition by January 23, 2013. Counsel shall file thirty (30) copies of the answer, which shall not exceed fifteen (15) pages. *Fed. R. App. P. 40(b)*. The cover of the answer, if used, must be white. *Fed. R. App. P. 32(c)(2)(A)*.

APPENDIX C

Amended Complaint, *Michael Moore, et al., Plaintiffs, v. Lisa Madigan, Attorney General of Illinois, et al., Defendants*, No. 3:11-cv-3134 (E-Filed May 19, 2011, U.S. District Court)

E-FILED
Thursday, 19 May, 2011 10:00:28 PM
Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

MICHAEL MOORE; CHARLES HOOKS; PEGGY FECHTER; JON MAIER; SECOND AMENDMENT FOUNDATION, INC.; and ILLINOIS CARRY,

Plaintiffs,

-against-

LISA MADIGAN, in her Official Capacity as Attorney General of the State of Illinois; and HIRAM GRAU, in his Official Capacity as Director of the Illinois State Police,

Defendants.

Case No. 3:11-cv-3134

AMENDED COMPLAINT

Plaintiffs MICHAEL MOORE; CHARLES HOOKS; PEGGY FECHTER; JON MAIER; SECOND AMENDMENT FOUNDATION, INC.; and ILLINOIS CARRY, as and for their Complaint against Defendants LISA MADIGAN and HIRAM GRAU, allege as follows:

INTRODUCTION

1. This action for deprivation of civil rights under color of law challenges Illinois' statutory prohibitions on "Unlawful Use of Weapons" (720 ILCS 5/24-1) and "Aggravated Unlawful Use of Weapons" (720 ILCS 5/24-1.6) to the extent that they prohibit otherwise qualified private citizens from carrying handguns for the purpose of self-defense. Plaintiffs seek a declaratory judgment, injunctive relief, and attorney's fees and costs.

2. The Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation," District of Columbia v. Heller, 554 U.S. 570, 592 (2008), and is "fully applicable against the States," McDonald v. Chicago, 561 U.S. ___, 130 S. Ct. 3020, 3026 (2010).

3. However, the laws of Illinois completely prohibit people from carrying guns, in public, for the purpose of self-defense. Illinois is the *only* State in the United States that completely prohibits its citizens from carrying firearms. Other States impose various conditions and regulations on the carry of firearms – such as background requirements, license requirements, training and qualification standards, and requirements that firearms be carried in particular manners – but they all make some provision that allows law-abiding citizens to carry guns. In Illinois, only private citizens who can afford licensed private security details may have the benefit of an armed defense.

4. Plaintiffs do not seek to establish how the State of Illinois should regulate the carry of handguns in public. For example, Plaintiffs do not seek to establish that the State should enact a licensing program, or any particular licensing program, nor do Plaintiffs contend that the State should in some other manner amend its laws.

5. Rather, Plaintiffs seek to establish that the recognition and incorporation of the Second Amendment – the right to possess and carry weapons in case of confrontation – renders the State's present regulatory choice unconstitutional. Whatever the contours of a constitutional scheme might be, the Second Amendment renders a *ban* on carrying guns impermissible.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. § 1983.

7. This Court has personal jurisdiction over each of the Defendants because, *inter alia*, they acted under the color of laws, policies, customs, and/or practices of the State of Illinois and/or within the geographic confines of the State of Illinois.

8. Venue is proper pursuant to 28 U.S.C. § 1391 because the Defendants may be found in this district, and because the events and omissions giving rise to this action are State laws enacted in the State capital of Springfield.

9. Pursuant to CDIL-LR 40.1(F), the Springfield Division is proper for this action because Defendants maintain their offices in Sangamon County and because the events and omissions giving rise to this action are State laws enacted in the State capital of Springfield.

PLAINTIFFS

10. Plaintiff Michael Moore is a citizen and resident of Illinois residing in Champaign, Champaign County, Illinois. Mr. Moore is 60 years old, married, and he has 4 adult children and 4 grandchildren. Mr. Moore worked as a Corrections Officer in Cook County for 30 years and now works as the Superintendent of the Champaign County Jail.

11. When he was a Corrections Officer, Plaintiff Mr. Moore was also a sworn Deputy Sheriff, and State law allowed him to carry firearms while off-duty. At that time, Mr. Moore did carry a handgun for self-defense from time to time. Now that he is a civilian Jail Superintendent, State law does not include any provision that would allow him to carry a handgun.

12. Plaintiff Mr. Moore holds a valid Firearm Owners Identification Card ("FOID") issued pursuant to the Illinois Firearm Owners Identification Card Act. As such, he is generally entitled to possess firearms in the State of Illinois. See 430 ILCS 65/2.

13. Plaintiff Mr. Moore would carry a loaded and functional handgun in public for self-defense, but he refrains from doing so because he fears arrest, prosecution, fine, and imprisonment as he understands it is unlawful to carry a handgun in Illinois.

14. Plaintiff Charles Hooks is a citizen and resident of Illinois residing in Percy, Randolph County, Illinois. Mr. Hooks is 62 years old, married, and he has three adult children. Mr. Hooks enlisted in the U.S. Army and served active duty from 1971 through 1974. Mr.

Hooks holds a master's degree in Forestry Production from the University of Illinois and runs a small farm in southern Illinois.

15. Plaintiff Mr. Hooks holds a valid FOID issued pursuant to the Illinois Firearm Owners Identification Card Act. As such, he is generally entitled to possess firearms in the State of Illinois. See 430 ILCS 65/2.

16. Plaintiff Mr. Hooks seeks to carry a handgun while he carries out business away from the farm. Plaintiff Mr. Hooks would carry a loaded and functional handgun in public for self-defense, but he refrains from doing so because he fears arrest, prosecution, fine, and imprisonment as he understands it is unlawful to carry a handgun in Illinois.

17. Plaintiff Peggy Fechter is a citizen and resident of Illinois residing in Carmi, White County, Illinois. Mrs. Fechter is 69 years old, married, and she has 3 adult children and 6 grandchildren. Mrs. Fechter and her husband are retired and live on their 1,800-acre farm in southern Illinois.

18. About two years ago, a truck came to the Fechters' family farm and drove suspiciously around the property, stopping intermittently, and apparently "casing" the farm. Some of the chemicals that the Fechters use in connection with their farm can be used to make illicit drugs, such as methamphetamine. Oftentimes, drug "cookers" will explore farms in rural areas in order to locate places that fertilizers and other chemical supplies are stored, for the purpose of stealing the chemicals and manufacturing drugs. Many of these "cooks" are themselves strung-out drug addicts who will resort to violence if caught. When confronted by Mr. Fechter, the men in the truck appeared to be under the influence of drugs, provided an incoherent explanation, and left quickly. After this incident, Plaintiff Mrs. Fechter obtained a

FOID and purchased a handgun for self-defense. Mrs. Fechter joined a local rifle and pistol club and trained in the safe use of firearms.

19. Mrs. Fechter must use public roads in order to check her family's 1,800-acre farm property. Often she will check the property by driving on public roads and observing whether anything is amiss. Mrs. Fechter would like to carry a loaded and functional firearm while traveling on public roads in Illinois. Mrs. Fechter also desires to carry a loaded and functional firearm while taking care of business in town.

20. Plaintiff Mrs. Fechter holds a valid FOID issued pursuant to the Illinois Firearm Owners Identification Card Act. As such, she is generally entitled to possess firearms in the State of Illinois. See 430 ILCS 65/2.

21. Plaintiff Mrs. Fechter would carry a loaded and functional handgun in public for self-defense, but refrains from doing so because she fears arrest, prosecution, fine, and imprisonment as she understands it is unlawful to carry a handgun in Illinois.

22. Plaintiff Jon Maier is a citizen and resident of Illinois residing in Bloomington, McLean County, Illinois. Mr. Maier is 60 years old, married, and he has 2 adult children and 5 grandchildren. Mr. Maier served in the U.S. Navy for four years. Mr. Maier recently retired from a career with State Farm Insurance Company.

23. Plaintiff Mr. Maier holds a valid FOID issued pursuant to the Illinois Firearm Owners Identification Card Act. As such, he is generally entitled to possess firearms in the State of Illinois. See 430 ILCS 65/2.

24. Plaintiff Mr. Maier would carry a loaded and functional handgun in public for self-defense, but he refrains from doing so because he fears arrest, prosecution, fine, and imprisonment as he understands it is unlawful to carry a handgun in Illinois.

25. Plaintiff Second Amendment Foundation, Inc. ("SAF") is a non-profit member organization incorporated under the laws of the State of Washington with its principal place of business in Bellevue, King County, Washington. SAF has over 650,000 members and supporters nationwide, including Illinois. The purposes of SAF include promoting both the exercise of the right to keep and bear arms and education, research, publishing, and legal action focusing on the constitutional right to privately own and possess firearms. SAF also promotes research and education on the consequences of abridging the right to keep and bear arms and on the historical grounding and importance of the right to keep and bear arms as one of the core civil rights of United States citizens.

26. Members of SAF would carry loaded and functional handguns in public for self-defense, but refrain from doing so because they understand it is unlawful to carry a handgun in Illinois and fear arrest, prosecution, fine, and imprisonment.

27. SAF brings this action on behalf of itself and its members. Plaintiffs Charles Hooks and Jon Maier are members of SAF.

28. Plaintiff Illinois Carry is an all-volunteer membership corporation incorporated under the laws of the State of Illinois with its principal place of business in Shelbyville, Shelby County, Illinois.

29. Illinois Carry is dedicated to the preservation of Second Amendment rights. Among Illinois Carry's purposes are educating the public about Illinois laws governing the purchase and transportation of firearms, aiding the public in every way within its power, and supporting and defending the people's right to keep and bear arms, including the right of its members and the public to purchase, possess, and carry firearms.

30. Illinois Carry's membership consists of individuals in Illinois and in other States.

31. Members of Illinois Carry would carry loaded and functional handguns in public for self-defense, but refrain from doing so because they understand it is unlawful to carry a handgun in Illinois and fear arrest, prosecution, fine, and imprisonment.

32. Illinois Carry brings this action on behalf of itself and its members. Plaintiff Jon Maier is a member of Illinois Carry.

DEFENDANTS

33. Defendant Attorney General Lisa Madigan is sued in her official capacity as the Attorney General of the State of Illinois, responsible for executing and administering the laws of the State of Illinois, including 720 ILCS 5/24-1 and 720 ILCS 5/24-1.6. Defendant Attorney General Madigan has enforced the challenged laws, customs and practices against Plaintiffs and is in fact presently enforcing the challenged laws, customs and practices against Plaintiffs.

34. Defendant Hiram Grau is sued in his official capacity as the Director of the Illinois State Police, responsible for executing and administering the laws of the State of Illinois, including 720 ILCS 5/24-1 and 720 ILCS 5/24-1.6. Defendant Director Grau has enforced the challenged laws, customs and practices against Plaintiffs and is in fact presently enforcing the challenged laws, customs and practices against Plaintiffs.

CONSTITUTIONAL PROVISIONS

35. The Second Amendment provides:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Const. amend. II.

36. The Second Amendment guarantees individuals a fundamental right to carry operable handguns in non-sensitive public places for the purpose of self-defense.

37. The Second Amendment "is fully applicable against the States." McDonald v. Chicago, 561 U.S. ___, 130 S. Ct. 3020, 3026 (2010).

38. The States retain the ability to regulate the manner of carrying handguns within constitutional parameters; to prohibit the carrying of handguns in specific, narrowly defined sensitive places; to prohibit the carrying of arms that are not within the scope of Second Amendment protection; and, to disqualify specific, particularly dangerous individuals from carrying handguns.

39. The States may not completely ban the carrying of handguns for self-defense, deny individuals the right to carry handguns in non-sensitive places, deprive individuals of the right to carry handguns in an arbitrary and capricious manner, or impose regulations on the right to carry handguns that are inconsistent with the Second Amendment.

STATE LAWS

40. 720 ILCS 5/24-1 provides in pertinent part:

> Sec. 24-1. Unlawful Use of Weapons
>
> (a) A person commits the offense of unlawful use of weapons when he knowingly: . . .
> (4) Carries or possesses in any vehicle or concealed on or about his person except when on his land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm . . . ; or . . .
> (10) Carries or possesses on or about his person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm. . . .
>
> (b) Sentence. A person convicted of a violation of subsection 24-1(a)(1) through (5), subsection 24-1(a)(10), subsection 24-1(a)(11), or subsection 24-1(a)(13) commits a Class A misdemeanor. . . .

41. 720 ILCS 5/24-1.6 provides in pertinent part:

Sec. 24-1.6. Aggravated unlawful use of a weapon

(a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:
(1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm; or
(2) Carries or possesses on or about his or her person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his or her own land or in his or her own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm; and
(3) One of the following factors is present:
(A) the firearm possessed was uncased, loaded and immediately accessible at the time of the offense; or
(B) the firearm possessed was uncased, unloaded and the ammunition for the weapon was immediately accessible at the time of the offense. . . .

(d) Sentence.
(1) Aggravated unlawful use of a weapon is a Class 4 felony; a second or subsequent offense is a Class 2 felony for which the person shall be sentenced to a term of imprisonment of not less than 3 years and not more than 7 years.

CAUSE OF ACTION

THE SECOND AMENDMENT INVALIDATES 720 ILCS 5/24-1 AND 7/20 ILCS 5/24-1.6 TO THE EXTENT THEY PREVENT QUALIFIED PRIVATE CITIZENS FROM CARRYING FIREARMS FOR SELF-DEFENSE

42. The Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." District of Columbia v. Heller, 554 U.S. 570, 592 (2008).

43. 720 ILCS 5/24-1(a)(4) is invalid as applied to prohibit a private citizen who is otherwise eligible to possess firearms from carrying a loaded and operable firearm for the purpose of self-defense.

44. 720 ILCS 5/24-1(a)(10) is invalid as applied to prohibit a private citizen who is otherwise eligible to possess firearms from carrying a loaded and operable firearm for the purpose of self-defense.

45. 720 ILCS 5/24-1.6(a) is invalid as applied to prohibit a private citizen who is otherwise eligible to possess firearms from carrying a loaded and operable firearm for the purpose of self-defense.

46. The invalidities of the aforesaid statutes, and Defendants' application of same, infringe Plaintiffs' Second and Fourteenth Amendments right and damage Plaintiffs in violation of 42 U.S.C. § 1983.

47. Plaintiffs' injuries are irreparable because Plaintiffs are entitled to enjoy their constitutional rights in fact.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

i. declaratory judgment that 720 ILCS 5/24-1(a)(4), 720 ILCS 5/24-1(a)(10), and 720 ILCS 5/24-1.6(a) are invalid in that and to the extent that they are applied to prohibit private citizens who are otherwise qualified to possess handguns from carrying handguns for self-defense;

ii. injunctive relief restraining Defendants and their officers, agents, servants, employees, and all persons in concert or participation with them who receive notice of this injunction, from enforcing 720 ILCS 5/24-1(a)(4), 720 ILCS 5/24-1(a)(10), and 720 ILCS 5/24-1.6(a) against private citizens who are otherwise qualified to possess handguns;

iii. such other and further relief, including further injunctive relief, against all Defendants, as may be necessary to effectuate the Court's judgment or otherwise grant relief, or as the Court otherwise deems just and equitable; and

iv. attorney's fees and costs pursuant to 42 U.S.C. § 1988.

Dated: May 19, 2011

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APPENDIX D

Complaint for Declaratory Judgment and Injunctive Relief, *Mary Shepard, et al., Plaintiffs, v. Lisa Madigan, Attorney General of Illinois, et al., Defendants*, No. 3:11-cv-00405-WDS-PMF (May 13, 2011, U.S. District Court)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
BENTON DIVISION

MARY E. SHEPARD and the ILLINOIS STATE RIFLE ASSOCIATION, Plaintiffs, v. LISA M. MADIGAN, solely in her official capacity as ATTORNEY GENERAL OF ILLINOIS, GOVERNOR PATRICK J. QUINN, solely in his official capacity as Governor of the State of Illinois, TYLER R. EDMONDS, solely in his official capacity as the State's Attorney of Union County, Illinois, and SHERIFF DAVID LIVESAY, solely in his official capacity as Sheriff of Union County, Defendants.	)	No. 3:11-cv-00405-WDS-PMF

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

NOW COME the Plaintiffs, MARY E. SHEPARD and the ILLINOIS STATE RIFLE ASSOCIATION, by and through their attorneys, William N. Howard and Jeffrey M. Cross of Freeborn & Peters LLP, as and for their Complaint against Defendants, LISA M. MADIGAN, solely in her official capacity as Attorney General of the State of Illinois, GOVERNOR PATRICK J. QUINN, solely in his capacity as Governor of the State of Illinois, TYLER R. EDMONDS, solely in his official capacity as the State's Attorney of Union County, Illinois, and SHERIFF DAVID LIVESAY, solely in his official capacity as Sheriff of Union County, Illinois, state as follows:

1. This is an action to vindicate the rights of citizens of the State of Illinois to bear arms, as guaranteed by the Second and the Fourteenth Amendments to the United States

Constitution, which guarantee the right of law-abiding citizens to bear arms for their own lawful defense and for other lawful purposes.

THE PARTIES

2. Plaintiff, Mary E. Shepard ("Mrs. Shepard") is a resident of Cobden, Illinois, a citizen of the United States and a member of the National Rifle Association ("NRA").

3. Plaintiff, Illinois State Rifle Association, ("ISRA"), is a non-profit association incorporated under the laws of Illinois in 1913, with its principal place of business in Chatsworth, Illinois. ISRA has Members residing throughout the State of Illinois. The purposes of the ISRA include the protection of the right of citizens to bear arms for the lawful defense of their families, persons and property, and to promote public safety and law and order. ISRA brings this action on behalf of itself and its Members.

4. Defendant, Lisa M. Madigan ("Madigan"), is being sued solely in her official capacity as the chief legal officer of the State of Illinois who is charged with enforcing the statutes of the State of Illinois. *See* 15 ILCS 205/4.

5. Defendant, Patrick J. Quinn ("Quinn"), is being sued solely in his official capacity as Governor of the State of Illinois. The Governor has the supreme executive power in the State and is responsible for the faithful execution of the laws of the State of Illinois. *See* Illinois Constitution, Article 5, Section 8.

6. Defendant, Tyler R. Edmonds ("Edmonds"), is being sued in his official capacity as the State's Attorney of Union County, Illinois and is charged with the prosecution of all actions, suits, indictments and prosecutions, civil and criminal, in the Circuit Court for his County. *See* 55 ILCS 5/3-9005(a)(1).

7. Defendant, David Livesay ("Livesay"), is being sued solely in his official capacity as Sheriff, the local authority in Union County, Illinois, responsible, in part, for enforcing the laws of the State of Illinois.

JURISDICTION

8. Jurisdiction is founded on 28 U.S.C. § 1331 in that this action arises under the Constitution of the laws of the United States.

9. This action seeks relief pursuant to 28 U.S.C. §§ 2201, 2202, and 42 U.S.C. §§ 1983 and 1988. Venue lies in this District pursuant to 28 U.S.C. § 1391(b).

BACKGROUND

10. The State of Illinois prohibits individuals like Mrs. Shepard, Members of the ISRA and other law-abiding citizens from the possession and carrying of a handgun pursuant to various Illinois statutes. Specifically, Illinois statute 720 ILCS 5/24-1 ("conceal carry law" or "CCW") provides, in part:

> (a) A person commits the offense of unlawful use of weapons when he knowingly:
>
> **********
>
> (4) Carries or possesses in any vehicle or concealed on or about his person except when on his land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm, except that this subsection (a) (4) does not apply to or affect transportation of weapons that meet one of the following conditions:
>
> (i) are broken down in a non-functioning state; or
>
> (ii) are not immediately accessible; or
>
> (iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card.

11. Additionally, Mrs. Shepard, Members of the ISRA and other law-abiding citizens are prohibited from the possession and carrying of a handgun pursuant to Illinois statute 720 ILCS 5/24-1(a)(10) which provides, in part:

(a) A person commits the offense of unlawful use of weapons when he knowingly:

****

(10) Carries or possesses on or about his person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm, except that this sub-section (a)(10) does not apply to or affect transportation of weapons that meet one of the following conditions:

(i) are broken down in a non-functioning state; or

(ii) are not immediately accessible; or

(iii) are unloaded and enclosed in a case, firearm carrying box, shipping box, or other container by a person who has been issued a currently valid Firearm Owner's Identification Card.

12. Finally, Mrs. Shepard, Members of the ISRA and other law-abiding citizens are prohibited from the possession and carrying of a handgun pursuant to Illinois statute 720 ILCS 5/24-1.6 which provides, in part:

(a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:

(1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm; or,

(2) Carries or possesses on or about his or her person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when

> on his or her own land or in his or her own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm; and
>
> (3) One of the following factors is present:
>
> > (A) the firearm possessed was uncased, loaded and immediately accessible at the time of the offense; or,
> >
> > (B) the firearm possessed was uncased, unloaded and the ammunition for the weapon was immediately accessible at the time of the offense; . . ..

13. The Second Amendment to the United States Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

14. The Fourteenth Amendment to the United States Constitution provides, in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the laws."

15. The Second Amendment is applicable to the States and political subdivisions thereof through the Fourteenth Amendment.

16. Because the Illinois statutes set forth above prohibit the right to keep and bear arms and the ability to carry handguns in Illinois, they infringe on the right of the People, including Mrs. Shepard, Members of the ISRA and other law-abiding citizens to keep and bear arms as guaranteed by the Second and Fourteenth Amendments to the United States Constitution and are thus null and void. *See District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010).

17. The above handgun prohibitions on Mrs. Shepard, Members of the ISRA and other law-abiding Illinois citizens' right to bear arms also violate the Second and Fourteenth Amendments to the United States Constitution as demonstrated by the recent United States Supreme Court's decisions in *Heller* and *McDonald.*

FACTS

18. Mrs. Shepard, like many Members of the ISRA and other law-abiding Illinois citizens, possesses valid Illinois Firearms Owner Identification ("FOID") cards. Like Members of the ISRA and many Illinois citizens, she is a law-abiding citizen and has no criminal record.

19. Mrs. Shepard has received training in the safe, lawful handling of handguns and has five (5) certifications in handgun safety and self-defense. As a result, Mrs. Shepard has received permits which allow her to carry a handgun in Florida and Pennsylvania.

20. Although legally and properly licensed in Florida and Pennsylvania to carry a handgun, Mrs. Shepard is prohibited from doing so due to Illinois statutes 720 ILCS 5/24-1(a)(4) and 720 ILCS 5/24-1.6(a)(1).

21. Although legally and properly licensed in Florida and Pennsylvania to carry a handgun, Mrs. Shepard is unable to do so lawfully in the State of Illinois due to Illinois statutes 720 ILCS 5/24-1(a)(10) and 720 ILCS 5/24-1.6(a)(2).

A DEFENSELESS MRS. SHEPARD SUFFERS A BRUTAL BEATING AND IS LEFT FOR DEAD

22. As a result of the Illinois statutes described above, when Mrs. Shepard was working at her church on September 28, 2009, she was unarmed. While peaceably performing her duties as treasurer of the church, her life was changed forever when she became the victim of a heinous and unconscionable criminal assault and battery. Despite her being licensed in two states to do so, Mrs. Shepard was not carrying a handgun on her person, and therefore was

unable to defend herself, when she was viciously attacked and brutalized at the hands of a six-foot-three-inch 245 pound man with a violent past and a criminal record. Mrs. Shepard would have been carrying a handgun at the time of this heinous attack had the aforementioned Illinois statutes not prevented her from doing so.

23. Defenseless, Mrs. Shepard was savagely beaten, and left for dead. She sustained skull fractures, fractures to both cheeks, brain swelling, shattered teeth, a concussion, a loss of hearing, injuries to the vertebrae in her neck requiring surgical implants, torn rotator cuffs in her shoulders, an injured clavicle and extensive reconstructive surgery to her upper arm (hereinafter "the Incident"). As a result of this brutal beating, Mrs. Shepard has undergone numerous surgeries, extensive physical therapy, was unable to drive for over eighteen months, and has severe and lasting injuries to her face, skull and body.

24. Mrs. Shepard's injuries demonstrate that she was simply unable to defend or protect herself. Indeed, Mrs. Shepard was prevented from defending or protecting herself because of the aforementioned Illinois statutes. Sadly, Mrs. Shepard was also unable to defend or protect her 83-year-old co-worker, a maintenance worker at the church, who also sustained significant injuries to her head, face and body on that same day.

25. This same man who had viciously beaten Mrs. Shepard and her co-worker had, just the week before, allegedly brutally battered an elderly gentleman.

26. But for the above Illinois statutes, Mrs. Shepard, ISRA Members and other law-abiding Illinois citizens would forthwith carry a handgun for self-defense.

27. The Illinois prohibition against carrying a handgun harms Mrs. Shepard, ISRA Members and other law-abiding Illinois citizens because they are at risk of loss of property, physical injury and death if assaulted and unable to defend themselves. Although Mrs. Shepard

was attacked in her church on the particular occasion described above, that Incident is but an illustration of the harms that befall innocent, law-abiding citizens when they are stripped of their constitutional right to bear arms. Mrs. Shepard could just as easily have been attacked and beaten in the parking lot outside the church, or while walking to the church on a public sidewalk, or while in her car on the way to her church (or to any other destination in Illinois). If she were permitted to do so, Mrs. Shepard would carry a handgun for self-defense in Illinois, just as she does (and is licensed to do) in Pennsylvania and Florida. If permitted to do so by Illinois law, Mrs. Shepard, ISRA Members and other law-abiding Illinois citizens would carry a loaded and accessible weapon in their motor vehicle for self-defense purposes. Alternatively, if Mrs. Shepard were to carry a handgun in an effort to protect herself from further violent attacks, she would risk arrest, felony prosecution, and conviction under the current laws in Illinois. All law-abiding Illinois citizens, including Members of ISRA, are similarly adversely affected by Illinois' prohibition on the carrying of handguns.

COUNT I

(U.S. Const. Amends. II and XIV, 42 U.S.C. § 1983)

28. Plaintiffs hereby reallege and incorporate by reference Paragraphs 1 through 27 as though fully set forth herein for their Paragraph 28 of Plaintiffs' Complaint.

29. The consequences of the prohibitions imposed by Illinois law are evident from the brutal beating Mrs. Shepard sustained on September 28, 2009.

30. Mrs. Shepard, Members of the ISRA and other law-abiding citizens of the State of Illinois lawfully own handguns. But for the Illinois statutes set forth above, they would forthwith carry their handguns with them so that they could be used for self-protection and other lawful purposes.

31. Mrs. Shepard, Members of the ISRA and other law-abiding citizens of the State of Illinois wish to carry their handguns for lawful defense from any unlawful, sudden, deadly attack such as was experienced by Mrs. Shepard and countless other defenseless, law-abiding citizens in this State every day. However, Mrs. Shepard and others like her face arrest, prosecution, and incarceration should they possess and carry a handgun in violation of the aforementioned Illinois statutes. But for the aforementioned Illinois statutes, Mrs. Shepard, Members of the ISRA and other law-abiding citizens of the State of Illinois would carry handguns pursuant to the laws and Constitution of the United States of America.

32. As a result of the aforementioned Illinois statutes, and the enforcement thereof by Defendants and their agents and employees, Mrs. Shepard, Members of the ISRA and other law-abiding citizens of the State of Illinois are subjected to irreparable harm in that they are unable to carry handguns to protect themselves outside of their homes, subjecting them to endangerment and vicious attacks, the likes of which Mrs. Shepard and her co-worker fell victim to, at the hands of criminals and other predators. The aforementioned Illinois statutes violate Plaintiffs' Constitutional rights as set forth herein.

WHEREFORE, Plaintiffs pray that this Honorable Court:

A. Enter a declaratory judgment, pursuant to 28 U.S.C. § 2201, that Illinois statutes 720 ILCS 5/24-1(a)(4), (a)(10) and 1.6 set forth above, and certain other of its sub-parts, are null and void because they are in violation of the United States Constitution and laws of the United States, specifically the Second and Fourteenth Amendments and 42 U.S.C. § 1983;

B. Enter a preliminary and permanent injunction enjoining the Defendants and their officers, agents and employees from enforcing the Illinois statutes 720 ILCS 5/24-1(a)(4), (a)(10) and 5/24-1.6 set forth above, and certain other of its sub-parts as set forth herein;

C. Enter an Order awarding Plaintiffs their costs of suit including attorneys fees and costs pursuant to 42 U.S.C. § 1988; and,

D. Enter an Order providing any other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

MARY E. SHEPARD and THE ILLINOIS STATE RIFLE ASSOCIATION,
Plaintiffs

BY: s/Jeffery M. Cross
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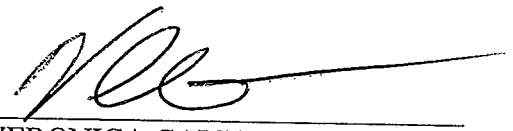
CERTIFICATE OF COMPLIANCE

I certify that this supplemental brief conforms to the requirements of Rules 341 (a) and (b). The length of this supplemental brief, excluding the pages containing the Rule 341 (d) cover, the Rule 341 (h)(1) statement of points and authorities, the Rule 341 (c) certificate of compliance, the certificate of service, and those matters to be appended to the supplemental brief under Rule 342(a), is 24 pages.

By: 

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