Written by **Bob Adelmann** on April 11, 2023

State's Attorneys Ask Illinois Supreme Court to Uphold Ruling Against Assault Weapons Ban

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Within days of Illinois passing the most restrictive firearms law in the nation in January, a number of pro-gun groups filed suit challenging its constitutionality. In March, a lower court ruled that it was indeed unconstitutional, and the state immediately appealed the ruling to the state's high court.

Last week, more than 30 of Illinois' state's attorneys filed an amicus brief reminding the state's high court of the U.S. Supreme Court's rulings in *Heller* and *Bruen* that abruptly and significantly changed the jurisdictional landscape in favor of the Second Amendment.

The new Illinois statute bans the possession of nearly every modern semiautomatic rifle and pistol, as well as all ammunition-feeding devices (magazines) capable of holding "more than 10 rounds of ammunition for long guns and more than 15 rounds of ammunition for handguns." Anyone still owning such weapons by the end of the year must register them with the state.

As Madison County State's Attorney Thomas Haine, among those filing the brief, noted: "We have a statute, and we have a constitution, and the constitution is the law of the land."

The brief is crystal clear:

> The Supreme Court of the United States has declared that when it comes to arms in "common use" for "self-defense" today, a flat ban on an "entire class" of such arms is categorically unconstitutional.…
>
> Because the Act challenged here is a flat ban on a large class of firearms — and essential components of firearms — widely used for self-defense today, the Act is unconstitutional under *Heller*. [*District of Columbia v. Heller*, decided in 2008]

The brief added the Supreme Court's recent ruling in *Bruen*:

> If a law burdens conduct covered the "the Second Amendment's plain text," the law is unconstitutional.…
>
> Bruen's single-step, historical analysis is simple, straightforward, and devastating to the constitutionality of the Act's categorical ban on nearly every modern semi-automatic firearm, including the most commonly owned rifles currently possessed for lawful purposes throughout the United States.…
>
> The historical record makes the constitutional conclusion inescapable: the [Illinois] Act

> violates the Second Amendment and cannot stand.

The state has no chance to defend the act based on the new ruling in *Bruen*:

> *Bruen* declared that a government hoping to defend a gun regulation "must affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms."
>
> Under this historical test, regulation of conduct falling within "the Second Amendment's plain text" is unconstitutional unless it has a "proper analogue" in the "Nation's historical tradition of firearm regulation."

Unfortunately for Illinois and fortunately for Illinois' law-abiding gun owners, there is no "proper analogue" (i.e., historical record) of such restrictions going back to the founding of the Republic.

The amicus brief seals its argument:

> In short, there is no "enduring American tradition of state regulation" forbidding the purchase or possession of semiautomatic rifles and pistols by law-abiding citizens for lawful purposes.
>
> To the contrary, the American tradition is one of protecting the right of the people to possess firearms that, like semiautomatic rifles and pistols, are "typically possessed by law-abiding citizens for lawful purposes." [Quoting *Heller*]
>
> Because Illinois cannot "affirmatively prove" that such an extensive regulation "is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms," [quoting *Bruen*], the Act unconstitutionally infringes upon Second Amendment rights.

The more than 30 state's attorneys asked the high court simply to affirm the lower court's ruling that the law in unconstitutional and thus unenforceable:

> Amici pray that the Honorable Court affirm the Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois, and hold the Act unconstitutional under the Second Amendment to the U.S. Constitution, thus securing the constitutional rights of law-abiding, responsible citizens in the counties represented by Amici, and throughout Illinois.

Unspoken by those state's attorneys is the threat that if the Illinois Supreme Court doesn't affirm, then the case will be appealed to the U.S. Supreme Court where it will suffer its final and well-deserved demise.