

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

GUNS SAVE LIFE, INC., DPE SERVICES,)
 INC. d/b/a MAXON SHOOTER'S)
 SUPPLIES AND INDOOR RANGE, and)
 MARILYN SMOLENSKI,)
)
 Plaintiffs,)

v.)

ZAHRA ALI, solely in her capacity as)
 Director of the Department of Revenue of)
 Cook County, THOMAS J. DART, solely in)
 his official capacity as Cook County Sheriff,)
 and the COUNTY OF COOK, ILLINOIS, a)
 county in the State of Illinois.)
)
 Defendants.)

2015CH18217
 CALENDAR/ROOM 16
 TIME 00:00
 Declaratory Jdgmt

Case No. _____

2015 DEC 17 AM 10:48
 CIRCUIT COURT OF COOK COUNTY
 CHANCERY DIV.
 CLERK
 COURT REPORTER

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

NOW COME Plaintiffs, Guns Save Life, Inc., DPE Services, Inc. d/b/a Maxon Shooter's Supplies and Indoor Range, and Marilyn Smolenski, by and through their attorneys, as and for their Complaint against Defendants, Zahra Ali, solely in her capacity as Director of the Department of Revenue of Cook County, Thomas J. Dart, solely in his official capacity as Cook County Sherriff, and County of Cook, Illinois ("Cook County" or the "County"), and state as follows:

1. The law-abiding citizens of Cook County may not "be required to pay a tax for the exercise of . . . a high constitutional privilege." *Follett v. Town of McCormick*, 321 U.S. 573, 578 (1944). Yet, in the latest stages of its long-running campaign against the rights of its law-abiding citizens to defend themselves, the Cook County Board of Commissioners has enacted a discriminatory tax ordinance that directly and exclusively targets the exercise of the

fundamental right to keep and bear arms. The ordinance here challenged, far from having been drafted so as to respect constitutionally protected conduct, has been narrowly tailored to do *nothing but* target constitutionally protected conduct. As such, it is patently unconstitutional; the ordinance should accordingly be so declared and its enforcement enjoined.

2. On November 9, 2012, the Cook County Board of Commissioners passed a tax entitled the “Cook County Firearms Tax” (the “Firearms Tax”), which imposes a \$25 fee for each firearm purchased by a citizen at a firearms retail business located in Cook County, Illinois.

3. On November 18, 2015, the Cook County Board of Commissioners amended the Cook County Code to impose a tax on the retail purchase of firearm ammunition at the rate of \$0.05 per cartridge of centerfire ammunition and \$0.01 per cartridge of rimfire ammunition (the “Ammunition Tax”).

4. Together, these two taxes (collectively, “the Second Amendment Tax”) have been imposed on the lawful activity of law-abiding citizens and retailers of Cook County and target, directly and exclusively, activity that is constitutionally protected by the Second and Fourteenth Amendments to the United States Constitution, as well as by Section 22 of Article I of the Illinois Constitution.

5. The Second Amendment Tax thus constitutes an impermissible burden on the fundamental right to keep and bear arms.

6. In addition, because the Second Amendment Tax purports to be an exercise of the Commission’s taxing power, and not a regulation enacted as an exercise of the Commission’s police power, it independently infringes the right of Illinois citizens to keep and bear arms

granted to them by Section 22, Article I, of the Illinois Constitution, a right that is explicitly made “[s]ubject only to the police power,” *not* to the taxing power.

7. Because the Second Amendment Tax bears no reasonable relationship to its purported governmental aim and relies upon arbitrary classifications, it also violates the Uniformity Clause of the Illinois Constitution.

8. Finally, should the Court conclude that the Second Amendment Tax were not prohibited by the Second Amendment of the United States Constitution, by Section 22 of Article I of the Illinois Constitution, or by the Illinois Uniformity Clause, it would be preempted by the Firearm Owners Identification Act, codified at 430 ILCS 65/1 through /16-3 (“the FOID Act”), and by the Firearms Concealed Carry Act, codified at 430 ILCS 66/1 through /999 (“the FCCA”).

PARTIES

9. Plaintiff Guns Save Life, Inc. is an independent not-for-profit organization that is dedicated to protecting the Second Amendment rights of Illinois citizens to defend themselves. Guns Save Life has many members who reside in Cook County, and the organization has monthly meetings in Cook County. Guns Save Life members purchase firearms and firearm ammunition in Cook County, and some of its members will continue to do so in the future, albeit at reduced rates. Some members purposefully avoid purchasing firearms in Cook County to avoid paying the Firearm Tax, and some members will avoid purchasing ammunition in Cook County to avoid paying the Ammunition Tax.

10. Plaintiff DPE Services, Inc. owns and operates Maxon Shooter’s Supplies and Indoor Range. (DPE Services, Inc. and Maxon Shooter’s Supplies and Indoor Range are hereinafter collectively referred to as “Maxon.”) Maxon is a retail dealer in firearms and firearm

ammunition. It operates a retail gun shop and indoor shooting range in Cook County at 75 E. Bradrock Drive, Des Plaines, IL 60018. Maxon sells a full range of rifles and handguns, as well as ammunition for rifles and handguns, including centerfire and rimfire ammunition.

11. Plaintiff Marilyn Smolenski is a citizen of the United States and, at all relevant times, has been a resident of Cook County, Illinois. She is a member of Guns Save Life. Mrs. Smolenski is a law-abiding holder of a valid Illinois Firearm Owners Identification Card (“FOID Card”) and of a valid Illinois Concealed Carry license. Mrs. Smolenski was the victim of stalking by her ex-husband, who broke into her house in 1999. Although Mrs. Smolenski did not use a firearm during this incident, the incident is one of the reasons she now carries a firearm for self-defense. Mrs. Smolenski is a member of a shooting club in Aurora, Illinois, where she frequently goes to shoot. She and her husband also go to shooting ranges, such as Maxon, to practice and to take courses to develop their proficiency with firearms. Mrs. Smolenski and her husband engage in frequent firearm transactions, and they commonly sell a firearm to upgrade to a newer model. Mrs. Smolenski visited Maxon on December 15, 2015 and inquired about purchasing a Glock 42 handgun. The General Manager of the store informed her that under Cook County law she could not purchase the Glock 42 without paying the Firearm Tax. Mrs. Smolenski therefore declined to make the purchase. But for the requirement to pay the Firearm Tax, Mrs. Smolenski would purchase the Glock 42 from Maxon. Mrs. Smolenski also purchased ammunition from Maxon on December 16, 2015. She intends to purchase ammunition in Cook County in the future, albeit at reduced rates once the Ammunition Tax is in effect.

12. Defendant Zahra Ali is being sued solely in her official capacity as Director of the Department of Revenue of Cook County. The Department is charged with the duty of collecting the Second Amendment Tax and with enforcing the Second Amendment Tax.

13. Defendant Thomas Dart is being sued solely in his official capacity as Sheriff of Cook County, the local authority in Cook County, Illinois. The Sheriff's Office is responsible, in part, for assisting the Department of Revenue in enforcing the Second Amendment Tax.

14. Defendant Cook County is a county in the State of Illinois, with its county seat in Chicago, Illinois.

JURISDICTION AND VENUE

15. This Court has subject matter jurisdiction under ILL. CONST. art. 6, § 9.

16. Venue is proper in Cook County pursuant to 735 ILCS 5/2-101 and 735 ILCS 5/2-103 because it is the County of residence of a defendant joined in good faith and some part of the transactions out of which this action arise occurred in Cook County.

GENERAL ALLEGATIONS

17. Cook County is a home-rule unit of local government, pursuant to Article VII, Section 6(a) of the Illinois Constitution.

18. To legally purchase firearms or firearm ammunition in Illinois, the purchaser must possess a FOID Card. Felons, drug addicts, the mentally ill, undocumented immigrants, and domestic abusers are barred from receiving a FOID Card and thus cannot legally purchase firearms or firearm ammunition in Cook County, or anywhere else in the State of Illinois.

The Adoption of the Second Amendment Tax Ordinance

19. On November 9, 2012, the Cook County Board of Commissioners passed a tax ordinance entitled the "Cook County Firearms Tax" (the "Firearms Tax Ordinance"), which

imposes a \$25 fee for each firearm purchased by a citizen at a firearms retail business located in Cook County, Illinois.

20. On November 2, 2012, the Cook County Board of Commissioners took up a proposed ordinance that would have created a “Firearms and Firearm Ammunition Tax.”

21. As originally proposed, the Firearms Tax Ordinance would have levied a tax on the sale not only of firearms, but on the sale of firearm ammunition as well. Commissioner Fritchey, seconded by Commissioner Garcia, moved to amend the proposed ordinance to remove the tax on the sale of firearms ammunition. On a voice vote, the Commission voted to remove the tax on the sale of retail ammunition prior to voting to adopt the Ordinance; Commissioners Beavers, Butler, Suffredin, and Tobolski voted against the amendment.

22. The Firearm Tax Ordinance was sponsored by Commissioners Preckwinkle, Butler, Daley, Fritchey, Garcia, Reyes, and Sims.

23. Commissioner Suffredin, who explained that he had been in an anti-gun group with Commissioner Preckwinkle in the 1970s, stated that he would have preferred to have taxed ammunition as well as firearms, but that “political realities” required the Commission to remove the tax on ammunition from the Ordinance. He expressed his opinion that “there are way too many guns in this community.”

24. Commissioner Fritchey confirmed that the amendment removing the ammunition tax was the result of negotiation and compromise. He spoke in support of the Ordinance, describing it as “a tax aimed at dealing with the social cost of gun violence.”

25. Commissioner Collins spoke in opposition to the Ordinance, affirming that it would deny “people their constitutional right to protect their families. Because if someone breaks into my house . . . to steal, or to kill, or to maim me I want to have something there

to protect myself, and that's how most of the good law-abiding citizens feel about it. And these things give the illusion that we're now trying to protect them." She asserted that the Commission would be "illegally taxing people." She concluded that "[f]or the protection of the people in my communities, and where I have many people who are poor and where most of the crimes have taken place, I vote no."

26. Commissioner Sims spoke in support of the Ordinance, stating that: "At least we can make it difficult for people to have guns. . . . If you can't afford it, you won't buy it."

27. Commissioner Reyes spoke in support of the Ordinance, although, initially, he "was steadfast against it. Because the reality is, not one convicted felon is going to pay a penny of this tax ladies and gentlemen. Not one. It's been said convicted felons do not have the legal right to purchase ammunitions or weapons. They're going to keep buying them on the street."

28. Commissioner Schneider spoke in opposition to the Ordinance on the ground that it would burden only poor, law-abiding citizens—"the indigent and the most vulnerable in our county"—and Cook County businesses; the wealthy would simply drive to another county to make their purchases and the criminal element would continue to purchase their guns illegally.

29. Commissioner Steele spoke in support of the Ordinance.

30. Commissioner Tobolski spoke in opposition to the Ordinance on the ground it would most harm the poorest citizens of Cook County: "People come up and say 'Listen, . . . the banks are taking my home, the government is taxing on everything else, and now the one thing that I have left, a gun to protect my family, you want to make that unaffordable as well.' "

31. Commissioner Beavers spoke in opposition to the Ordinance, stating: "Praise the lord and pass the ammunition. I'm voting no."

32. Commissioner Gorman explained her opposition to the Ordinance as follows: “This is a message tax that is directed at a group of people who are not getting the message and they’re ultimately not paying the tax. It’s law-abiding citizens . . . that are paying the tax and not the violent offenders.”

33. Commissioner Silvestry spoke last, opposing the Ordinance, that he did not “believe that there’s been a convincing argument that this tax on law-abiding citizens will establish any better safety in our communities.”

34. None of the other Commissioners spoke either in support of or against the Ammunition Tax.

35. At the conclusion of the debate, the Commission voted to approve the Firearms Tax Ordinance by a vote of nine to seven, with one commissioner being absent.

36. On November 18, 2015, the Cook County Board of Commissioners amended the Firearms Tax Ordinance to create an amended article known as the “Cook County Firearm and Firearm Ammunition Tax Ordinance” (hereinafter, the “Second Amendment Tax Ordinance”).

37. The 2015 amendment added a tax on the retail sale of ammunition in Cook County to the previously adopted tax on the retail sale of firearms in Cook County.

38. The 2015 amendment was sponsored by Commissioners Boykin and Preckwinkle.

39. The Commissioners accepted public testimony on the proposed Ammunition Tax on November 13, 2015. Supporters of the Ammunition Tax testified that it would help “get guns off the streets” as a “smart violence prevention policy” and that bullets “endanger public health.” Opponents of the Ordinance argued that previous efforts to ban gun sales in the county directly had been ruled unconstitutional.

40. Of the Cook County Commissioners, Commissioner Boykin spoke first, expressing his support for the bill. He described the ammunition tax as a “gun violence tax.” He described the purpose of the tax as “curbing the cost of the widespread and senseless gun violence that has gripped Chicago and Cook County in the year 2015,” and he stated that “this tax will require those who purvey these instruments of death to bear a slightly larger share of the costs than the rest of us.” He expressed his belief that imposing a tax on ammunition will make the Commissioners “instruments of justice” for children killed by gunfire and that the children’s “blood cries out” for them to “add[] to the costs of the instruments of death.”

41. Commissioner Arroyo stated that the Ammunition Tax “is not symbolic, this is our stand to say we will do something to keep our neighborhoods safe.” He also stated that he supported restrictions such as the Ammunition Tax because without them “all of our communities are not going to be safe.”

42. Commissioner Butler explained his vote in support of the bill as follows:

I vote aye, and I’m going to take my minute. The people have sent us to the store but they didn’t give us enough money to buy all that’s needed. So now we got to be clever enough to take the money that we have and use it to the best of our ability. And so that’s why I’m voting the way I’m voting and you won’t hear me say too much because it’s redundant, redundant, redundant.

43. Commissioner Fritchey spoke against the Ammunition Tax on the ground that it would do nothing to address the problem of gun violence in Cook County but would impose a burden solely on law-abiding gun owners. He observed that a FOID card is needed to buy ammunition lawfully in the county, “and if you think that any criminals or gang bangers are going to, first of all have a FOID card, let alone go and buy ammunition using their FOID card and having it recorded, that’s just not how it works . . . You are going to be taxing the lawful gun owners who we’ve been trying to distinguish and not punish as a matter of policy.”

44. Commissioner Snyder spoke against the Ammunition Tax on the ground that the County's tax on firearms had failed to curtail gun violence. The tax on firearms had produced no positive result, but had instead simply created an incentive for businesses to relocate to adjacent counties, thereby decreasing sales tax revenue for Cook County, while having no positive effect on reducing violence. Commissioner Snyder concluded his remarks by observing that "the long term effect will be less ammunition tax collected over time and huge amounts of sales tax lost that could have gone to support public safety and anti-violence programs"

45. Commissioner Morrison explained that he would vote against the Ammunition Tax because he believed it would have no effect on gun violence and would simply add to the County's litigation costs.

If for one second, I personally thought that imposing a sales tax on ammunition would save one life, I would be jumping up on this desk yelling "yay." The fact of the matter is that the gang bangers that commit the crimes, the criminals that commit the crimes, the vast majority, 80%–90% probably more do not even possess a [] FOID card. It's a very limited amount of funds that we're going to bring in through this.

46. None of the other Commissioners spoke either in support of or against the Ammunition Tax.

47. The Ammunition Tax passed by a vote of nine to six, with two recorded absences.

The Second Amendment Tax Ordinance

48. The Firearms Tax imposes a tax in the amount of \$25 on firearms purchased in Cook County. Section 74-668(a) of the Cook County Code provides that "[a] tax is hereby imposed on the retail purchase of a firearm . . . in the amount of \$25.00 for each firearm purchased."

49. The Firearms Tax imposed by Section 74-668(a) became effective on April 1, 2013. Cook County Ordinance 12-O-64.

50. The Ammunition Tax imposes a tax on the retail sale of centerfire ammunition of \$0.05 per cartridge. Cook County Code § 74-668(b)(1). It defines centerfire ammunition to mean “firearm ammunition that is characterized by a primer in the center of the base of the cartridge commonly used in rifles, pistols, and revolvers.” *Id.* § 74-666.

51. The Ammunition Tax imposes a tax on retail purchases of rimfire ammunition of \$0.01 per cartridge. *Id.* § 74-668(b)(2). It defines rimfire ammunition to mean “firearm ammunition that is characterized by a primer that completely encircles the rim of the cartridge, including, but not limited to .22 caliber ammunition.” *Id.* § 74-666.

52. The Ammunition Tax imposed by Sections 74-668(b)(1) and (2) becomes effective on June 1, 2016. *Id.* § 74-668(b).

53. The Second Amendment Tax Ordinance provides that the taxes on firearms and on firearm ammunition are to be included in the sale price of the firearm or ammunition, providing that: “It shall be deemed a violation of this Article for a retail dealer to fail to include the tax imposed in this Article in the sale price of firearms and/or firearm ammunition [or] to otherwise absorb such tax.” *Id.* § 74-668(c).

54. The Second Amendment Tax Ordinance exempts several classes of firearms sales and ammunition sales from the tax. *Id.* § 74-669. The tax is not to be collected when the firearm or firearm ammunition is being sold to:

- a. An office, division, or agency of the United States, the State of Illinois, or any municipal corporation or political subdivision, including the Armed Forces of the United States or National Guard, *id.* § 74-669(a)(1);
- b. A bona fide veterans organization which receives firearms and/or firearm ammunition directly from the Armed Forces of the United States and uses said

firearms and/or firearm ammunition strictly and solely for ceremonial purposes, *id.* § 74-669(a)(2); or

- c. Any active sworn law enforcement officer purchasing a firearm and/or firearm ammunition for official or training related purposes, *id.* § 74-669(a)(3).

55. The Second Amendment Tax Ordinance provides that a department, an active member of the Armed Forces, the National Guard, or a deputized law enforcement officer may apply for a refund for any tax paid on the purchase of a firearm or firearm ammunition that was made for official use or training purposes. *Id.* § 74-669(b).

56. The money collected as a result specifically of the Ammunition Tax is dedicated to the Public Safety Fund. Section 74-677 provides that: “The Revenue generated as the result of the collection and remittance of the tax on firearm ammunition set forth herein shall be directed to the Public Safety Fund to fund operations related to public safety.”

The Duties and Obligations of Retail Dealers

57. The Second Amendment Tax Ordinance requires retail dealers to collect the Second Amendment Tax from the purchasers of firearms and/or of firearm ammunition in Cook County, to remit the tax to the Cook County Department of Revenue, and to maintain records of each transaction involving the sale of a firearm and/or of firearm ammunition; it also imposes a variety of penalties for failure to perform these functions.

58. A “retail dealer” is defined as “any person who engages in the business of selling firearms or firearm ammunition on a retail level in [Cook County] or to a person in [Cook County].” *Id.* § 74-666.

59. A retail purchase is defined as “any transaction in which a person in [Cook County] acquires ownership by tendering consideration on a retail level.” *Id.* § 74-666.

60. The Second Amendment Tax Ordinance requires a retail dealer to collect the taxes set forth in Section 74-668(b) “from any purchaser to whom the sale of said firearms and/or firearm ammunition is made within the County of Cook” *Id.* § 74-670(a).

61. After collecting the tax from the purchaser, the retail dealer is required “to remit the tax due on the sales of firearms and/or firearm ammunition purchased in Cook County, on forms prescribed by the Department, on or before the 20th day of the month following the month in which the firearm and/or firearm ammunition sale occurred on a form and in the manner required by the department.” *Id.* § 74-670(b).

62. The Second Amendment Tax Ordinance requires retail sellers of firearms and of firearm ammunition to “keep and maintain accurate and complete documents, books, and records of each transaction or activity subject to or exempted by this ordinance, from start to complete, including all original source documents.” *Id.* § 74-672. The Ordinance prescribes how these records are to be kept and requires that, “at all reasonable times during normal business hours, be open to inspection, audit, or copying by the department and its agents.” *Id.* §§ 74-672, 74-673.

63. The Second Amendment Tax Ordinance makes it a violation for any retail dealer to sell a firearm and/or firearm ammunition without collecting and remitting the Second Amendment Tax, *id.* § 74-671(a), to fail to include the tax in the sale price or otherwise absorb the tax, *id.* § 74-768(c), and to fail to keep books and records as required by the Ordinance, *id.* § 74-671(b).

64. A retail dealer who commits a violation “shall be subject to a fine in the amount of \$1,000.00 for the first offense, and a fine of \$2,000.00 for the second and each subsequent offense.” *Id.* § 74-671(d). A “[s]eparate and distinct offense shall be regarded as committed

each day upon which said person shall continue any such violation, or permit any such violation to exist after notification thereof.” *Id.*

65. As a retail dealer of firearms and ammunition in Cook County, Plaintiff Maxon is subject to the requirements of the Second Amendment Tax Ordinance. It pays Cook County thousands of dollars per month in firearm taxes, and it expects to pay thousands of dollars per month in ammunition taxes. Furthermore, it has incurred costs to comply with the Firearm Tax and will continue to incur such costs as long as the tax remains in effect. Maxon expects the cost of compliance with the Ammunition Tax to be even higher than that of the Firearm Tax. Furthermore, because Maxon is prohibited from absorbing the Firearm and Ammunition Taxes, the Second Amendment Tax Ordinance increases the price of its products relative to products sold by competitors outside of Cook County. Indeed, firearms retailers in surrounding counties attempt to attract business by advertising the fact that they are not subject to the Second Amendment Tax.

The Duties and Obligations of Purchasers

66. The Second Amendment Tax Ordinance defines a purchaser as “any person who purchases a firearm or firearm ammunition in a retail purchase in the county.” *Id.* § 74-666.

67. The Second Amendment Tax Ordinance provides that the tax imposed by the Ordinance is to be collected from any purchaser to whom a firearm and/or ammunition is sold by a retailer dealer in Cook County. *Id.* § 74-670(a).

68. The Second Amendment Tax Ordinance provides specifically that “[i]f for any reason a retail[] dealer fails to collect the tax imposed by this article from the purchaser, the purchaser shall file a return and pay the tax directly to the department, on or before the [20th

day of the month following the month in which the firearm ammunition sale occurred].” *Id.* § 74-670(c).

69. The Second Amendment Tax Ordinance makes it a violation for a purchaser “to fail to remit the tax imposed in this Article when not collected by the retail dealer.” *Id.* § 74-671(c).

70. A purchaser who fails to remit the Second Amendment Tax in any case where the retail dealer has failed to do so “shall be subject to a fine in the amount of \$1,000.00 for the first offense, and a fine of \$2,000.00 for the second and each subsequent offense.” *Id.* § 74-671(d).

There is no requirement in the Second Amendment Tax Ordinance that purchasers have knowledge of the tax or the fact that the retailer failed to collect it to be subject to the fine.

The Effects of the Second Amendment Tax Ordinance

71. The Second Amendment Tax Ordinance imposes significant burdens on law-abiding purchasers of firearms and ammunition and on retail firearm and ammunition dealers.

72. The right to keep and bear firearms for lawful purposes such as self-defense, hunting, and target shooting is a fundamental constitutional right. In order to exercise this right, of course, a person must first obtain firearms and firearm ammunition.

73. Purchasers of firearms and of firearm ammunition in Cook County are forced to pay a tax solely because they are exercising their fundamental constitutional rights.

74. Because Illinois law requires that anyone purchasing a firearm or firearm ammunition in the state of Illinois must possess and present a FOID card, and because felons, drug addicts, the mentally ill, undocumented immigrants, and domestic abusers are barred from receiving a FOID card, the burden of the Second Amendment Tax Ordinance falls disproportionately on law-abiding gun owners who choose to purchase firearms and/or firearm ammunition in Cook County using a valid FOID card. Even if a significant number of criminals

did purchase firearms and ammunition at retail, the burden of the tax still would fall disproportionately on law-abiding citizens. For example, individuals seeking to hone and maintain their skill in the use of firearms discharge millions of rounds of ammunition per year at firing ranges in Cook County, far more rounds than are discharged by criminals committing crimes. Because the Ammunition Tax will make range training more expensive, it will have the perverse effect of deterring law-abiding firearm owners from engaging in target practice.

75. What is more, the burden of the Second Amendment Tax Ordinance will be felt most acutely by lower-income individuals who, as compared to those with greater economic means, will, on average, live in neighborhoods with higher violent crime rates and have more difficulty paying the Second Amendment Tax or traveling outside of Cook County to avoid the Tax.

76. The Second Amendment Tax Ordinance requires retail dealers to keep extensive records of the number and type of firearms and of firearm ammunition being sold, to ascertain the purposes for which individual firearms and even of individual rounds of ammunition are sold, and to file monthly reports on the type, quantity, and purchasers of firearms and of firearm ammunition.

77. The Second Amendment Tax Ordinance places Cook County retail dealers at a significant competitive disadvantage to retail dealers in neighboring Lake, McHenry, Kane, DuPage, and Will counties. Maxon, for example, which operates in Cook County and is therefore subject to the Second Amendment Tax Ordinance, must compete with retail dealers a short distance away in neighboring DuPage County, which are not subject to the Ordinance.

78. The Second Amendment Tax Ordinance adversely affects Maxon's business. The Second Amendment Tax Ordinance puts all retail dealers in Cook County at a competitive disadvantage in relation to retailers outside of Cook County who do not have to charge and

collect the Second Amendment Tax. The Ordinance also interferes with the Second Amendment rights of Maxon's customers and Maxon's right to sell firearms.

79. The Second Amendment Tax Ordinance deprives retail dealers, purchasers, and the citizens of Cook County of the protection and security that results from the well-armed body of law-abiding citizenry that the Second Amendment guarantees for all Americans. By making it more difficult for law-abiding citizens to purchase firearms and ammunition in Cook County, the ordinance will inevitably result in an increase in the proportion of firearms and ammunition in Cook County that is in the hands of the "criminals or gang bangers" whom, as Commissioner Fritchey observed, will remain unaffected and unburdened by the Ordinance.

COUNT I
(United States Constitution Amendments II and XIV)

80. Plaintiffs restate and re-allege as if fully set forth herein the allegations of the preceding paragraphs.

81. 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."

82. The Second Amendment right to keep and bears arms is a fundamental right.

83. The Second Amendment right to keep and bear arms includes a corresponding right to acquire firearms and/or firearm ammunition. Indeed, any right to own and use firearms would be wholly illusory without a corresponding right to acquire firearms and firearm ammunition.

84. 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 protection of the laws.

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

86. The Second Amendment Tax Ordinance requires any law-abiding purchaser to pay a tax on any firearm and on every round of firearm ammunition purchased at retail in Cook County. The Ordinance prohibits a retail dealer from absorbing the cost of the Second Amendment Tax and, therefore, ensures that law-abiding citizens who elect to exercise their Second Amendment rights will bear the burden of the tax whenever they do so. The Second Amendment Tax Ordinance, therefore, imposes a direct and targeted burden on the exercise of a constitutionally protected right. It also impacts the rights of firearm and ammunition retailers as they will suffer diminished sales.

87. The Second Amendment Tax Ordinance is intended to, and will, discourage law-abiding citizens from exercising their fundamental rights, and it will reduce the purchase of firearms and of firearm ammunition by those citizens from retail dealers within Cook County.

88. The Second Amendment Tax Ordinance further provides that “[i]t shall be a violation of this article for any purchaser to fail to remit the tax imposed in this article when not collected by the retail dealer.” *See* Cook County Code § 74-671(a), (c). By subjecting law-abiding purchasers who seek to purchase a firearm and/or firearm ammunition to potential liability of up to \$2,000 per offense should they purchase said firearm or firearm ammunition upon the sale of which their retail dealer should, for whatever reason, fail to collect and remit the Second Amendment Tax, the Ordinance creates a significant burden and a corresponding chilling effect on the exercise of Second Amendment rights.

89. The monies obtained by Cook County through the Second Amendment Tax are not used to defray any administrative or regulatory costs relating to the lawful purchase and use of a

firearm by law-abiding, FOID-holding citizens exercising their fundamental right to keep and bear arms for the protection of themselves, their loved ones, and their homes.

90. The Second Amendment Tax Ordinance imposes a tax exclusively on the sale of firearms and/or of firearm ammunition. It thus imposes a burden directly and exclusively on conduct at the heart of the Second Amendment.

91. The Second Amendment Tax Ordinance is not narrowly, substantially, or rationally tailored to the aim of reducing the amount of violent crime in Cook County or to any other legitimate governmental interest. The Second Amendment Tax will do nothing to reduce the number of firearms or the amount of firearm ammunition that are available to those who engage in violent crime. The Second Amendment Tax Ordinance instead reduces the ability only of law-abiding citizens to defend themselves against violent crime.

92. The Second Amendment Tax Ordinance, therefore, violates Plaintiffs' Constitutional rights as set forth herein.

WHEREFORE, Plaintiffs pray that this Honorable Court:

- A. Enter a declaratory judgment pursuant to 735 ILCS 5/2-701 that the Second Amendment Tax Ordinance violates the Second and Fourteenth Amendments to the United States Constitution.
- B. Enter a preliminary and permanent injunction enjoining the Defendants and their officers, agents, and employees from enforcing the Second Amendment Tax Ordinance.
- C. Enter an Order awarding Plaintiffs their costs of suit including attorneys' fees and costs pursuant to 42 U.S.C. §§ 1983 and 1988; and

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

COUNT II
(Illinois Constitution, Article I, Section 22)

93. Plaintiffs restate and re-allege as if fully set forth herein the allegations of the preceding paragraphs.

94. Article I, Section 22 of the Illinois Constitution provides: “Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.”

95. The Cook County Board of Commissioners enacted the Second Amendment Tax Ordinance as an exercise of the Board’s taxing power, *not* of its police power.

96. The Second Amendment Tax Ordinance violates Article I, Section 22 of the Illinois Constitution by infringing the rights of individual citizens to keep and bear arms through an exercise of a power other than the police power.

97. Furthermore, the Second Amendment Tax Ordinance requires any law-abiding purchaser to pay a tax on every firearm and every round of firearm ammunition purchased at retail in Cook County. The ordinance prohibits a retail dealer from absorbing the cost of the Second Amendment Tax and, therefore, ensures that law-abiding citizens who elect to exercise their Article I, Section 22 rights will bear the burden of the tax whenever they do so. The Second Amendment Tax Ordinance, therefore, imposes a direct and targeted burden on the exercise of a constitutionally protected right. It also impacts the rights of firearm and ammunition retailers as they will suffer diminished sales.

98. The Second Amendment Tax Ordinance is intended to, and will, discourage law-abiding citizens from exercising their rights under the Illinois Constitution, and will reduce the

purchase of firearms and of firearm ammunition by those citizens from retail dealers within Cook County.

99. The Second Amendment Tax Ordinance further provides that “[i]t shall be a violation of this article for any purchaser to fail to remit the tax imposed in this article when not collected by the retail dealer.” *See* Cook County Code § 74-671(a), (c). By subjecting law-abiding purchasers who seek to purchase firearms and/or firearm ammunition to potential liability of up to \$2,000 should they purchase a firearm and/or firearm ammunition upon the sale of which their retail dealer should, for whatever reason, fail to collect and remit the tax, the Second Amendment Tax Ordinance creates a significant burden and a corresponding chilling effect on the exercise of the right guaranteed by Article I, Section 22 of the Illinois Constitution.

100. The monies obtained by Cook County through the Second Amendment Tax are not used to defray any administrative or regulatory costs relating to the lawful purchase and use of a firearm by law-abiding, FOID-holding citizens exercising their fundamental right to keep and bear arms for the protection of themselves, their loved ones, and their homes.

101. The Second Amendment Tax Ordinance imposes a tax exclusively on the sale of firearms and/or of firearm ammunition. It thus imposes a burden directly and exclusively on conduct at the heart of Article I, Section 22 of the Illinois Constitution.

102. The Second Amendment Tax Ordinance is not narrowly, substantially, or rationally tailored to the aim of reducing the amount of violent crime in Cook County or to any other legitimate government interest. The Tax will do nothing to reduce the number of firearms or the amount of ammunition available to those who engage in violent crime. The Second Amendment Tax Ordinance reduces the ability only of law-abiding citizens to defend themselves against violent crime.

103. The Second Amendment Tax Ordinance, therefore, violates Plaintiffs' Constitutional rights as set forth herein.

WHEREFORE, Plaintiffs pray that this Honorable Court:

- A. Enter a declaratory judgment pursuant to 735 ILCS 5/2-701 that the Second Amendment Tax Ordinance violates Article I, Section 22 of the Illinois Constitution of 1970.
- B. Enter a preliminary and permanent injunction enjoining the Defendants and their officers, agents, and employees from enforcing the Second Amendment Tax Ordinance.
- C. Enter an Order awarding Plaintiffs their costs of suit including attorneys' fees and costs pursuant to 740 ILCS 23/5(c)(2); and
- D. Enter an Order providing any other and further relief that the Court deems just and appropriate under the circumstances.

COUNT III
(Illinois Constitution, Article IX, Section 2)

104. Plaintiffs restate and re-allege as if fully set forth herein the allegations of the preceding paragraphs.

105. Article IX, Section 2 of the Illinois Constitution of 1970 (the "Uniformity Clause") provides that "[i]n any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable."

106. The Second Amendment Tax Ordinance violates the Uniformity Clause.

107. The Second Amendment Tax Ordinance draws an unreasonable distinction between firearms and other consumer goods.

108. The Second Amendment Tax Ordinance draws an unreasonable distinction between ammunition and other consumer goods.

109. The Second Amendment Tax Ordinance draws an unreasonable distinction between retail sales and all other lawful sales of firearms and ammunition, including sales between two private, law-abiding citizens.

110. The Second Amendment Tax Ordinance is not based upon a reasonable distinction drawn between those who are to be taxed and those who are not to be taxed.

111. The Second Amendment Tax Ordinance does not bear a reasonable relationship to the public policy aims the Commissions seeks to promote.

112. There is no rational basis for the distinction that the Second Amendment Tax Ordinance draws between centerfire ammunition and rimfire ammunition to support the imposition of a tax five times as high on centerfire ammunition cartridges as it does on rimfire ammunition cartridges.

113. Moreover, the burden of the Second Amendment Tax Ordinance will be borne by law-abiding purchasers, who have obtained, possess, and have presented a valid FOID card to a Cook County retail dealer and who are able to purchase firearms and/or firearm ammunition legally within Cook County. Citizens who purchase, possess, and use firearms and/or firearm ammunition responsibly and legally, are not responsible for, or the cause of, societal costs relating to gun violence.

114. The Second Amendment Tax Ordinance will not be borne by the violent criminals who are responsible for the costs associated with violent crime. Many of these individuals are unable or unwilling to obtain a FOID card and, therefore, cannot lawfully purchase firearms or firearm ammunition from retail dealers in Cook County. Because a FOID

card is required to purchase a firearm and/or firearm ammunition in Illinois, such criminals cannot legally purchase a firearm and/or firearm ammunition and will never pay the Second Amendment Tax as compared to law-abiding, FOID-holding citizens who will be required to pay the Tax.

115. It was patently unreasonable for Cook County to impose a pointless tax only on the law-abiding citizens of Cook County simply because it lacks the power or ability to impose a tax on the County's law-breaking citizens who are responsible for the violence the County seeks to regulate.

116. There is no rational distinction to be drawn between law-abiding citizen purchasers of firearms and/or of firearm ammunition, who are subjected to the tax, and the federal and state personnel, the veterans organizations, and the law enforcement personnel who are exempted from the tax under Section 74-669.

117. The Second Amendment Tax Ordinance violates the Uniformity Clause, therefore, because it relies upon classifications of firearms and of firearm ammunition and classifications of taxpayers that are unreasonable, subjects ammunition to non-uniform taxation, and is not reasonably tailored to the purpose for which it was enacted.

WHEREFORE, Plaintiffs pray that this Honorable Court:

- A. Enter a declaratory judgment pursuant to 735 ILCS 5/2-701 that the Second Amendment Tax Ordinance violates Article IX, Section 2 of the Illinois Constitution of 1970.
- B. Enter a preliminary and permanent injunction enjoining the Defendants and their officers, agents, and employees from enforcing the Second Amendment Tax Ordinance.

- C. Enter an Order awarding Plaintiffs their costs of suit including attorneys' fees and costs pursuant to 740 ILCS 23/5(c)(2); and
- D. Enter an Order providing any other and further relief that the Court deems just and appropriate under the circumstances.

COUNT IV
(Preemption)

118. Plaintiffs restate and re-allege as if fully set forth herein the allegations of the preceding paragraphs.

119. The Second Amendment Tax Ordinance is preempted by both the FOID Act and the FCCA, because it impermissibly regulates the possession of handguns and handgun ammunition by the holders of FOID cards and of concealed carry permits.

120. Before possessing a handgun or handgun ammunition, of course, a person must first acquire a handgun and ammunition for the handgun. The imposition of a "tax" on the acquisition of firearms and ammunition thus amounts in practice to a burden on the possession of firearms and ammunition in addition to and in conflict with the requirements of the FOID Act and the FCCA.

121. The intent of the legislature in enacting the FOID Act and the FCCA was to "preempt[] all local ordinances applying to handguns" to the extent they apply to FOID card holders or concealed carry licensees.¹

122. The FOID Act completely preempts the regulation, licensing, possession, and registration of handguns and handgun ammunition by holders of FOID cards:

[T]he regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition

¹ See Transcript of 98th General Assembly Senate House Bill 183 at 18 (May 31, 2013), <http://goo.gl/6vQT2e>.

by a holder of a valid Firearm Owner's Identification Card issued by the Department of State Police under this Act are exclusive powers and functions of this State . . . This section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

430 ILCS 65/13.1(b), (e).

123. Because it seeks to regulate directly and exclusively the holders of valid FOID cards, the Second Amendment Tax Ordinance is invalid under Section 13.1(b) of the FOID Act. By regulating exclusively those whom the Illinois legislature expressly denied it the power to regulate, Cook County has directly contravened the purpose of the FOID Act.

124. Similar to the FOID Act, Section 90 of the FCCA, entitled "Preemption," provides specifically that:

The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. . . . This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution.

430 ILCS 66/90.

125. The Second Amendment Tax Ordinance, by imposing a tax on the sale of handguns and handgun ammunition to law-abiding customers, imposes a burden on the holders of FCCA cards seeking to exercise their legal right to possess and to carry a loaded handgun in addition to and in conflict with the requirements of State law. The Second Amendment Tax Ordinance, therefore, is preempted by Section 90 of the FCCA.

126. An express purpose of the Second Amendment Tax Ordinance was consistently stated to be the reduction of gun violence and, according to at least one Commissioner, to ultimately restrict the operation of retail dealers within Cook County.

127. The revenue generated by the Ammunition Tax is directed to the Public Safety Fund to fund operations related to public safety, not to the general fund. Cook County Code § 74-677.

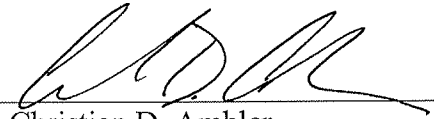
128. The Second Amendment Tax Ordinance is preempted by both the FCCA and the FOID Act and is, therefore, illegal, improper, and unenforceable, and should be stricken.

WHEREFORE, Plaintiffs pray that this Honorable Court:

- A. Enter a declaratory judgment, pursuant to 735 ILCS 5/2-701 that the Second Amendment Tax Ordinance is preempted by the FCCA and FOID Act.
- B. Enter a preliminary and permanent injunction enjoining the Defendants and their officers, agents, and employees from enforcing the Second Amendment Tax Ordinance.
- C. Enter an Order awarding Plaintiffs their costs of suit including attorneys' fees and costs pursuant to 740 ILCS 23/5(c)(2); and
- D. Enter an Order providing any other and further relief that the Court deems just and appropriate under the circumstances.

Respectfully Submitted:

By: _____



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