

**IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
LAKE COUNTY, ILLINOIS  
CHANCERY DIVISION**

GUNS SAVE LIFE, INC. and JOHN  
WILLIAM WOMBACHER III,

Plaintiffs,

v.

VILLAGE OF DEERFIELD, ILLINOIS, and  
HARRIET ROSENTHAL, solely in her  
official capacity as Mayor of the Village of  
Deerfield,

Defendants.

Case No.

**COMPLAINT**

1. Plaintiffs are a law-abiding resident of the Village of Deerfield and Guns Save Life, Inc., an organization dedicated to defending the right to self-defense, and they bring this action to challenge a Deerfield ordinance that purportedly bans the possession of popular firearms that the ordinance inaccurately labels “assault weapons” despite the fact that these items are entirely permissible under Illinois law. Plaintiffs file this suit seeking a declaratory judgment and permanent injunction against enforcement of Deerfield’s ordinance on the ground that it is preempted by Illinois law and violates the Illinois Constitution’s guarantee that private property shall not be taken for public use without just compensation. Plaintiffs also seek a declaratory judgment that the ordinance does not ban the standard ammunition magazines that it inaccurately defines to be “large capacity.” If the ordinance does ban such items, Plaintiffs alternatively seek a declaratory judgment and permanent injunction against enforcement for the same reasons they oppose enforcement with respect to the assault weapon ban.

## JURISDICTION AND VENUE

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

3. Venue is proper in Lake County under 735 ILL. COMP. STAT. 5/2-101 and 5/2-103 because it is the county where the Village of Deerfield's principal office is located, and the transactions out of which this action arise occurred in Lake County.

## PARTIES

4. Plaintiff Guns Save Life, Inc. is an independent not-for-profit organization that is dedicated to protecting the gun rights of law-abiding Illinois citizens. Guns Save Life has one or more members who reside in the Village of Deerfield and who: (a) own firearms defined by Deerfield Ordinance O-18-06 as "assault weapons"; (b) own magazines defined by Deerfield Ordinance O-18-06 as "large capacity magazines"; and (c) hold valid Illinois hunting licenses. Some Guns Save Life members are Deerfield residents who would continue to possess assault weapons and large capacity magazines within Deerfield if permitted to do so by Deerfield law.

5. Plaintiff John "Jack" William Wombacher III is a law-abiding United States citizen who resides in the Village of Deerfield in Lake County. He is a member of Guns Save Life.

6. Defendant Village of Deerfield is a home rule municipality in the State of Illinois, with its principal office in Lake County.

7. Defendant Harriet Rosenthal is the mayor of Deerfield. She is the chief executive officer of Deerfield, the President of the Deerfield Board of Trustees, and has supervisory authority over all employees of Deerfield. Ms. Rosenthal is named solely in her official capacity.

## FACTUAL ALLEGATIONS

### “Assault Weapons” and “Large Capacity” Magazines Are Ubiquitous and Overwhelmingly Used for Self-Defense and Other Lawful Purposes

8. This case is a challenge under Illinois law to Deerfield’s efforts to regulate firearms it deems “assault weapons” and magazines it deems “large capacity.” Deerfield Ordinance O-18-06, § 15-86 (Exhibit A). But these terms are misnomers. There is no class of firearms known as “semiautomatic assault weapons.” “Prior to 1989, the term ‘assault weapon’ did not exist in the lexicon of firearms. It is a political term, developed by anti-gun publicists.” *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting). Anti-gun publicists promoting “assault weapons” bans have sought to exploit the public’s confusion over fully automatic machine guns versus semiautomatic “assault weapons” to increase the chance of public support for restrictions on these firearms.

9. While “semiautomatic assault weapons” is not a recognized category of firearms, “semiautomatic” is. The “automatic” part of “semiautomatic” refers to the fact that the user need not manipulate the firearm to place another round in the chamber after each round is fired. But unlike an automatic firearm, a semiautomatic firearm will *not* fire continuously on one pull of the trigger; rather, a semiautomatic firearm requires the user to pull the trigger each time he or she wants to discharge a round. Ownership of semiautomatic firearms is exceedingly common among law-abiding citizens.

10. Deerfield’s ordinance does not ban all semiautomatic firearms but only a subset of such firearms of specified models or with specified features. Deerfield Ordinance O-18-06, § 15-86. But to the extent the features that make a firearm an “assault weapon” under Deerfield’s ordinance make a functional difference at all, they promote accuracy and hence make firearms safer and more effective to use. For example:

- a. A pistol grip makes it easier to hold and stabilize a rifle when fired from the shoulder and therefore promotes accuracy. A pistol grip can also assist with retention, making it more difficult for an assailant to wrest a firearm away from a law-abiding citizen. It does not promote firing from the hip; indeed, a rifle with a straight grip and no pistol grip would be more conducive to firing from the hip.
- b. A thumbhole stock is a hole carved into the stock of a firearm through which a user inserts his or her thumb. It promotes accuracy by improving comfort and stability in handling a firearm.
- c. A telescoping stock promotes accuracy by allowing the stock to be adjusted to fit the individual user's physique, thickness of clothing, and shooting position.
- d. A muzzle compensator reduces the recoil and muzzle movement that result from the discharge of each shot. Making the muzzle and the shooter less likely to move out of position results in a firearm that is both more accurate and more comfortable to shoot.

11. Deerfield's "assault weapons" ban also specifically prohibits the AR-15. The AR-15 is America's most popular semiautomatic rifle, and in recent years it has been the best-selling rifle type in the United States. By a conservative estimate, nearly four million were manufactured in the United States for the commercial market from 1986 through 2013. The top reasons for owning an AR-15 include self-defense, hunting, and recreational and competitive target shooting—lawful purposes all. Indeed, AR-15s are likely the most ergonomic, safe, and effective firearm for civilian self-defense.

12. With limited exceptions, Deerfield's ordinance also defines magazines capable of holding more than ten rounds of ammunition as "large capacity." Deerfield Ordinance O-18-06,

§ 15-86. But calling these devices “large capacity” is an utter misnomer—they are a standard feature on many of the nation’s most popular firearms. For example, in the 2013 edition of *Gun Digest*, a standard reference work that includes specifications of currently available firearms, about two-thirds of the distinct models of semiautomatic centerfire rifles are normally sold with standard magazines that hold more than ten rounds of ammunition. *GUN DIGEST* 2013 455–64, 497–99 (Jerry Lee ed., 67th ed. 2013). This is consistent with the fact that the AR-15, one of this nation’s most popular rifles, typically comes standard with a 20- or 30-round magazine.

13. Magazines capable of holding more than ten rounds are also standard on many of this nation’s most popular handgun models. For example, annual ATF manufacturing and export statistics indicate that in 2011 about 61.5% of the 2.6 million semiautomatic handguns made in the United States were in calibers typically using magazines that hold over ten rounds. The total number of magazines capable of holding more than ten rounds in this country is at least in the tens of millions.

14. There are many reasons why a law-abiding citizen would not want to be limited to substandard capacity ammunition magazines. The most obvious is to decrease the risk of running out of ammunition before being able to repel a criminal attack. Police department practices make clear that standard capacity magazines holding more than ten rounds have defensive benefits. Police departments typically issue handguns with magazines that hold more than ten rounds. *See MASSAD AYOUB, THE COMPLETE BOOK OF HANDGUNS* 50, 87–90 (2013). And they do so for good reason. For example, in 2011 New York City police officers fired more than ten rounds in 29% of incidents in which they fired their weapons to defend themselves and others.

15. Furthermore, the most obvious alternatives to standard capacity magazines—carrying multiple firearms or multiple magazines—are poor substitutes for equipping a firearm

with a standard capacity magazine. Criminals, not their targets, choose when and where to attempt a crime. While criminals can ensure that they are equipped with whatever weapons they deem necessary, it is implausible to expect citizens to have multiple firearms available at all times in the event they are attacked. And while carrying multiple magazines may be less burdensome than carrying multiple firearms, the need to replace an empty magazine—particularly when under the stress of a criminal attack—can significantly impair a person’s capacity for self-defense. Replacing a spent magazine while under the stress of a criminal attack is even more unrealistic for individuals with disabilities or other physical limitations that prevent them from changing magazines quickly.

#### **Illinois Law Restricts Local Authority to Regulate Firearms and Ammunition**

16. Because firearms and ammunition are readily transported across the unmarked boundaries that separate Illinois municipalities, local regulation of firearms and ammunition does little to protect the public from armed criminals. Such regulations do, however, impose substantial burdens on lawful firearm ownership by restricting the types of firearms and ammunition that law-abiding local residents may possess. In recognition of these realities and to prevent the development of a confusing patchwork of potentially conflicting local laws, the Illinois General Assembly has enacted several statutes that preempt the authority of home rule municipalities to regulate firearms and ammunition.

17. Among the most significant provisions of Illinois law that preempt local regulation of firearms is 430 ILL. COMP. STAT. 65/13.1(c), which became law on July 9, 2013 as part of the Firearm Concealed Carry Act, Public Act 98-63. Under this provision, “[a]ny ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall

be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act.” 430 ILL. COMP. STAT. 65/13.1(c). Municipal ordinances enacted after July 19, 2013 that regulate the possession and ownership of so-called “assault weapons” are thus preempted. Although local ordinances concerning assault weapons adopted on or before July 19, 2013 “may be amended,” *id.*, a municipality may not adopt an entirely new such ordinance under the guise of “amending” its prior ordinance.

18. The Firearm Concealed Carry Act also included 430 ILL. COMP. STAT. 65/13.1(b), which states that “the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner’s Identification Card issued by the Department of State Police . . . are exclusive powers and functions of this State.” This provision reinforces another provision of Illinois law, which states that “[t]he regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by [concealed carry] licensees are exclusive powers and functions of the State.” 430 ILL. COMP. STAT. 66/90. Illinois law thus preempts local regulation of handguns, ammunition for handguns, and transportation of firearms and ammunition by holders of valid Firearm Owner’s Identification Cards and Concealed Carry Licenses.

19. The Illinois Wildlife Code places further restrictions on the authority of home rule municipalities to regulate firearms and ammunition. Under 520 ILL. COMP. STAT. 5/2.1, “[t]he regulation and licensing of the taking of wildlife in Illinois are exclusive powers and functions of the State.” While the types of firearms and ammunition that are lawful for use in hunting in Illinois vary by species and season, it is lawful to hunt coyotes on private property using “any type of legal rifle including large capacity semi-automatic rifles.” Illinois Dep’t of Nat. Res.,

ILLINOIS DIGEST OF HUNTING AND TRAPPING REGULATIONS 2017–2018, at 28. In addition, it is lawful in Illinois to use any type of long rifle with a caliber of no more than .22 to remove a beaver, river otter, weasel, mink, muskrat, raccoon, opossum, striped skunk, red fox, gray fox, coyote, badger, bobcat, or woodchuck from a trap, 520 ILL. COMP. STAT. 5/2.30; 17 ILL. ADMIN. CODE 650.10, 660.10, 680.10, and it is generally lawful during Conservation Order Light Goose Season to hunt goose using a semiautomatic shotgun that holds more than five shells. It is also lawful to hunt waterfowl at a game breeding and hunting preserve area using a semi-automatic shotgun that holds more than five shells. 520 ILL. COMP. STAT. 5/2.33(m).

20. In sum, Illinois law leaves little room for local regulation of firearms and ammunition, and the preemptive effect of Illinois law is especially broad with respect to ordinances adopted after July 19, 2013 that purport to regulate assault weapons.

**The Village of Deerfield Adopts Ordinances that are Preempted by Illinois Law**

21. Anticipating that passage of the Concealed Carry Act would restrict its ability to regulate the possession and ownership of firearms in the future, the Village of Deerfield adopted Ordinance O-13-24 on July 1, 2013. (Exhibit B.) This ordinance did not ban possession of so-called “assault weapons.” Instead, Deerfield’s 2013 ordinance only required that such firearms be kept “in a locked container or equipped with a tamper-resistant mechanical lock or other safety device” when not being carried by or otherwise in the control of the owner or other lawfully authorized user. Deerfield Ordinance O-13-24, § 15-87. The ordinance’s storage requirement included an exception for use of one of the regulated firearms “in a lawful act of self-defense or in defense of another.” *Id.* § 15-87(b). With limited exceptions, the ordinance also required that assault weapons transported in Deerfield be “broken down in a non-functioning



state; or . . . not immediately accessible; or . . . unloaded and enclosed in a case, firearm carrying box, shipping box, or other container.” *Id.* § 15-88.

22. On April 2, 2018—almost five years after the statutory deadline for enacting such an ordinance—Deerfield adopted Ordinance O-18-06, which makes it “unlawful to possess, bear, manufacture, sell, transfer, transport, store or keep any assault weapon in the Village.” Deerfield Ordinance O-18-06, § 15-87. The new ordinance includes no self-defense exception, and, like the 2013 ordinance, defines “assault weapon” to include not only popular semiautomatic rifles but also some handguns as well as semiautomatic shotguns capable of holding more than five shells. The 2018 ordinance also purports to further restrict transportation of these firearms in Deerfield by requiring that they *both* be broken down in a non-functioning state *and* not be immediately accessible unless they are unloaded and enclosed in a case or other container. *Id.* § 15-88.

23. Deerfield’s 2018 ordinance also includes provisions under which the Deerfield Chief of Police is instructed to confiscate and destroy assault weapons and “large capacity magazines”—a term that includes most magazines capable of holding more than ten rounds, which are utterly ubiquitous and come standard with many popular firearms. Deerfield Ordinance O-18-06, §§ 15-90, 15-91, 15-86. Yet despite referring in Section 15-90 to “Large Capacity Magazine[s] prohibited by this Article,” the ordinance nowhere states that the possession of large capacity magazines is unlawful.

24. Notwithstanding the fact that the text of Ordinance O-18-06 fails to prohibit the possession of so-called large capacity magazines, Deerfield issued a press release on April 3, 2018 stating that the Village Board “unanimously approved an ordinance that bans the possession, sale and manufacture of . . . large capacity magazines in the Village.” Press Release,

Village of Deerfield, Village Approves Ban Of Assault Weapons And Large Capacity Magazines (Apr. 3, 2018) (Exhibit C). At the April 2, 2018 Village Board meeting at which the ordinance was adopted, a Deerfield official similarly stated that the ordinance would “ban the possession, sale, and manufacture of . . . large capacity magazines in the Village.” A Frequently Asked Questions document issued by Deerfield concerning the ordinance says that “large capacity magazines must be removed from within the limits of the Village or surrendered to the Police Department for disposal.” Village of Deerfield, Village of Deerfield Assault Weapons Ban Frequently Asked Questions, *available at* <https://goo.gl/h3h2YS>. And Deerfield’s website states that that the ordinance “ban[s] . . . large capacity magazines.” *Village Board Passes Assault Weapons Ban*, THE VILLAGE OF DEERFIELD, <https://goo.gl/ZW3TBB>. These statements have been echoed in press coverage of the 2018 ordinance and suggest that Deerfield officials would take the position that the ordinance forbids possession of large capacity magazines even though the text of the ordinance does not purport to impose such a ban.

25. The 2018 ordinance gives Deerfield residents 60 days from its effective date to remove banned assault weapons and large capacity magazines from the Village, modify them to make them permanently inoperable or no longer assault weapons or large capacity magazines as defined by the ordinance, or surrender their assault weapons and large capacity magazines to the Chief of Police or his or her designee. Deerfield Ordinance O-18-06, § 15-90. (Of course, as explained above, it is Plaintiffs’ position that the ordinance does not actually ban large capacity magazines.) But the ordinance makes no provision for the payment of just compensation for this deprivation of private property. Thus, absent intervention by the courts, Deerfield residents will soon be required to give up firearms and magazines that are entirely lawful under Illinois law without any just compensation.

26. Wombacher and other members of Guns Save Life own and keep in Deerfield firearms that qualify as “assault weapons” under Deerfield Ordinance O-18-06, § 15-86, including semiautomatic rifles that qualify as “assault weapons” under Section 15-86. Wombacher would also purchase one or more additional firearms that qualify as “assault weapons” under Deerfield Ordinance O-18-06, § 15-86 and keep them in Deerfield if lawfully permitted to do so. Wombacher and other members of Guns Save Life also own and keep in Deerfield magazines that qualify as “large capacity magazines” under Deerfield Ordinance O-18-06, § 15-86. One or more members of Guns Save Life own handguns that accept these large capacity magazines. Wombacher would purchase one or more additional large capacity magazines and keep them in Deerfield if lawfully permitted to do so. Wombacher also possesses a hunting license, and if permitted to do so would maintain an assault weapon and large capacity magazines in Deerfield for use in hunting. Wombacher is not a law enforcement officer or agent or employee of any government, a member of the military, or a retired law enforcement officer. Wombacher and other members of Guns Save Life who reside in Deerfield and own firearms hold valid Firearm Owner’s Identification Cards issued by the Department of State Police. Members of Guns Save Life, including members in Deerfield who own large capacity magazines for their handguns, hold valid Illinois Concealed Carry Licenses.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

#### **Preemption of Ordinance O-18-06 Under the Illinois Firearm Concealed Carry Act**

27. Plaintiffs incorporate the preceding paragraphs by reference.
28. Ordinance O-18-06 purports to regulate the possession and ownership of assault weapons even though such local regulations are preempted under 430 ILL. COMP. STAT. 65/13.1(c). Accordingly, Ordinance O-18-06 is preempted in its entirety.

29. Although 430 ILL. COMP. STAT. 65/13.1(c) permits a home rule municipality to amend an ordinance enacted on or before July 19, 2013 that regulates the possession and ownership of assault weapons, Ordinance O-18-06 is in fact an entirely new ordinance that bears no resemblance to Deerfield's prior regulation of storage of assault weapons under Ordinance O-13-24. Unlike Deerfield's prior assault weapons ordinance, Ordinance O-18-06 entirely bans the possession and sale of assault weapons and includes no exception for self-defense.

30. Plaintiff Wombacher and other members of Plaintiff Guns Save Life own firearms that are banned by Ordinance O-18-06 and would continue to keep such firearms in Deerfield if not for Ordinance O-18-06.

31. Wherefore, Plaintiffs pray that the Court:

- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that Ordinance O-18-06 is preempted under 430 ILL. COMP. STAT. 65/13.1(c), and enjoin enforcement of Ordinance O-18-06;
- b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

## **COUNT II**

### **Preemption of Ordinance O-18-06 Under the Illinois Wildlife Code**

32. Plaintiffs incorporate the preceding paragraphs by reference.

33. Ordinance O-18-06 prohibits possession of firearms that, under some circumstances, may be lawfully used to take wildlife under the Illinois Wildlife Code. Yet under the Illinois Wildlife Code, "[t]he regulation and licensing of the taking of wildlife in Illinois are

exclusive powers and functions of the State.” 520 ILL. COMP. STAT. 5/2.1. Accordingly, Ordinance O-18-06 is preempted in its entirety.

34. Plaintiff Wombacher is a member of Plaintiff Guns Save Life and holds a hunting license and owns firearms that are banned by Ordinance O-18-06 but that may be lawfully used to take wildlife under the Illinois Wildlife Code.

35. Wherefore, Plaintiffs pray that the Court:

- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that Ordinance O-18-06 is preempted under 520 ILL. COMP. STAT. 5/2.1 of the Illinois Wildlife Code and enjoin enforcement of Ordinance O-18-06;
- b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys’ fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

### **COUNT III**

#### **Declaratory Judgment: Ordinance O-18-06 Does Not Ban Large Capacity Magazines**

36. Plaintiffs incorporate the preceding paragraphs by reference.

37. Although the text of Ordinance O-18-06 does not ban large capacity magazines, Deerfield has publicly stated that this ordinance prohibits the possession and sale of large capacity magazines.

38. There is an actual controversy between Plaintiffs and Defendants as to the proper construction of Ordinance O-18-06. Plaintiff Wombacher and other members of Plaintiff Guns Save Life possess large capacity magazines in Deerfield and would continue to possess large capacity magazines in Deerfield if lawfully permitted to do so. Granting a declaratory judgment

to Plaintiffs would resolve this controversy by making clear that Plaintiffs may continue to possess large capacity magazines in Deerfield.

39. Wherefore, Plaintiffs pray that the Court:
- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that Ordinance O-18-06 does not ban possession, sale, or manufacture of large capacity magazines;
  - b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
  - c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

#### **COUNT IV**

#### **Preemption of Ordinance O-18-06 Magazine Ban Under the Illinois Concealed Carry Act**

40. Plaintiffs allege this Count in the alternative to Count IV. Plaintiffs incorporate by reference all preceding paragraphs except those contained in Count IV.

41. To the extent that Ordinance O-18-06 bans possession or sale of large capacity magazines that can be used in a handgun, it is preempted by 430 ILL. COMP. STAT. 65/13.1(b), which states that “the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, . . . by a holder of a valid Firearm Owner’s Identification Card issued by the Department of State Police . . . are exclusive powers and functions of this State.”

42. To the extent that Ordinance O-18-06 bans possession or sale of large capacity magazines that can be used in a handgun, it is also preempted by 430 ILL. COMP. STAT. 66/90, which preempts any local regulation or ordinance “that purports to impose regulations or

restrictions on [a person issued a license to carry a concealed handgun] or handguns and ammunition for handguns in a manner inconsistent with this Act.” *See id.* 66/5.

43. One or more members of Plaintiff Guns Save Life are holders of valid Firearm Owner’s Identification Cards and licenses to carry concealed handguns who possess large capacity magazines as well as handguns that accept these magazines in Deerfield. Plaintiffs would continue to possess these magazines in Deerfield if legally permitted to do so.

44. Wherefore, Plaintiffs pray that the Court:

- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that provisions of Ordinance O-18-06 that purport to regulate large capacity magazines are preempted under 430 ILL. COMP. STAT. 65/13.1(b) and 430 ILL. COMP. STAT. 66/90, and enjoin enforcement of these aspects of Ordinance O-18-06;
- b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys’ fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

#### **COUNT V**

##### **Preemption of Ordinance O-18-06 Magazine Ban Under the Illinois Wildlife Code**

45. Plaintiffs allege this Count in the alternative to Count IV. Plaintiffs incorporate by reference all preceding paragraphs except those contained in Count IV.

46. To the extent that Ordinance O-18-06 bans possession or sale of large capacity magazines that, under some circumstances, may be lawfully used to take wildlife under the Illinois Wildlife Code, it is preempted by 520 ILL. COMP. STAT. 5/2.1, which states that “[t]he

regulation and licensing of the taking of wildlife in Illinois are exclusive powers and functions of the State.” *Id.*

47. Plaintiff Wombacher is a member of Plaintiff Guns Save Life and holds a valid Firearm Owner’s Identification Card and a valid hunting license. Wombacher possesses large capacity magazines that may be lawfully used to take wildlife under the Illinois Wildlife Code. Wombacher would continue to possess these magazines in Deerfield if legally permitted to do so.

48. Wherefore, Plaintiffs pray that the Court:

- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that provisions of Ordinance O-18-06 that purport to regulate large capacity magazines are preempted under 520 ILL. COMP. STAT. 5/2.1 of the Illinois Wildlife Code, and enjoin enforcement of these aspects of Ordinance O-18-06;
- b. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys’ fees and costs under 740 ILL. COMP. STAT. 23/5(c)(2); and
- c. Enter an order providing any other and further relief that the Court deems just and appropriate under the circumstances.

#### **COUNT VI**

##### **Ordinance O-18-06 Violates the Takings Clause of the Illinois Constitution**

49. Plaintiffs incorporate the preceding paragraphs by reference.

50. The Illinois Constitution provides that “[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law.” ILL. CONST. art. 1, § 15.

51. Ordinance O-18-06 takes property by requiring the owners of specified firearms to turn these firearms over to Deerfield officials for destruction, permanently alter these firearms



so that they no longer qualify under the ordinance's definition of "assault weapons," or remove these firearms from Deerfield. To the extent that the ordinance imposes similar obligations on owners of large capacity magazines, it also takes large capacity magazines. In the alternative, Ordinance O-18-06 damages banned firearms and magazines.

52. Ordinance O-18-06 does not provide just compensation for the surrender, destruction, or removal of firearms and magazines.

53. Under the Illinois Constitution, Deerfield may only exercise the power of eminent domain "for public use." Ordinance O-18-06 does not take and damage property for public use within the meaning of the Illinois Constitution because the ordinance provides for the destruction of firearms and magazines rather than their use.

54. Plaintiff Wombacher and other members of Plaintiff Guns Safe Life own firearms included within Ordinance O-18-06's definition of "assault weapons" as well as large capacity magazines. Accordingly, Ordinance O-18-06 violates Plaintiffs' rights under the Illinois Constitution's Takings Clause.

55. Wherefore, Plaintiffs pray that the Court:

- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that provisions of Ordinance O-18-06 that purport to ban specified firearms violate the Illinois Constitution's Takings Clause and enjoin enforcement of these aspects of Ordinance O-18-06;
- b. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that, to the extent that Ordinance O-18-06 bans large capacity magazines, it violates the Illinois Constitution's Takings Clause and enjoin enforcement of these aspects of Ordinance O-18-06;

- c. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys' fees and costs under 740 ILL. COMP. STAT. 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 VII**  
**Ordinance O-18-06 Violates the Eminent Domain Act**

56. Plaintiffs incorporate the preceding paragraphs by reference.

57. The Illinois Constitution provides that “[p]rivate property shall not be taken or damaged for public use without just compensation as provided by law.” ILL. CONST. art. 1, § 15.

58. The Eminent Domain Act provides that “the use of eminent domain proceedings to take or damage property is an exclusive power and function of the State.” 735 ILL. COMP. STAT. 30/90-5-20. It prohibits home rule units from exercising the power of eminent domain “otherwise than as provided in this Act.” *Id.*

59. Ordinance O-18-06 constitutes an exercise of the eminent domain power because it takes property by requiring the owners of specified firearms to turn these firearms over to Deerfield officials for destruction, permanently alter these firearms so that they no longer qualify under the ordinance’s definition of “assault weapons,” or remove these firearms from Deerfield. To the extent that the ordinance imposes similar obligations on owners of large capacity magazines, it also takes large capacity magazines. In the alternative, Ordinance O-18-06 damages banned firearms and magazines.

60. Ordinance O-18-06 is not a lawful exercise of the power of eminent domain under the Eminent Domain Act because it does not fall within the scope of any authorization for home rule units to exercise the eminent domain power.

61. Although home rule municipalities may exercise the right of eminent domain “for the acquirement of property useful, advantageous or desirable for municipal purposes or public welfare,” 65 ILL. COMP. STAT. 5/11-61-1, this power does not permit the exercise of the eminent domain power to acquire personal property such as firearms and magazines. Furthermore, the ordinance does not treat banned firearms and large capacity magazines as “useful, advantageous or desirable for municipal purposes or public welfare” but instead provides that the confiscated property will be destroyed.


62. Plaintiff Wombacher and other members of Plaintiff Guns Save Life own firearms included within Ordinance O-18-06’s definition of “assault weapons” as well as large capacity magazines. Accordingly, Ordinance O-18-06 violates Plaintiffs’ rights under the Eminent Domain Act.

63. Wherefore, Plaintiffs pray that the Court:

- a. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that provisions of Ordinance O-18-06 that purport to ban specified firearms violate the Eminent Domain Act and enjoin enforcement of these aspects of Ordinance O-18-06;
- b. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701 that, to the extent that Ordinance O-18-06 bans large capacity magazines, it violates the Eminent Domain Act and enjoin enforcement of these aspects of Ordinance O-18-06;
- c. Enter an order awarding Plaintiffs their costs of suit, including reasonable attorneys’ fees and costs under 740 ILL. COMP. STAT. 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,

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\*Verified Statements and Appearances pursuant to Illinois Supreme Court Rule 707 forthcoming