No. 15-133

In The
Supreme Court of the United States

ARIE S. FRIEDMAN AND THE
ILLINOIS STATE RIFLE ASSOCIATION,

Petitioners,

v.

CITY OF HIGHLAND PARK,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit**

AMICUS CURIAE BRIEF OF NATIONAL SHOOTING SPORTS FOUNDATION IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

1. Whether the Constitution allows the government to prohibit law-abiding, responsible citizens from protecting themselves, their families, and their homes with a class of constitutionally protected "Arms" that includes the most popular rifles in the Nation.

2. Whether the Constitution allows the government to prohibit law-abiding, responsible citizens from protecting themselves, their families, and their homes with ammunition magazines that number in the tens of millions and make up nearly half of the Nation's total stock of privately owned ammunition magazines for handguns and rifles.

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AMICUS CURIAE BRIEF OF NATIONAL SHOOTING SPORTS FOUNDATION IN SUPPORT OF PETITIONERS

Pursuant to Supreme Court Rule 37.2, National Shooting Sports Foundation ("NSSF") respectfully submits this *amicus curiae* brief in support of Petitioners.[1]

IDENTITY AND INTEREST OF *AMICUS CURIAE*

Amicus Curiae NSSF is the national trade association for the firearms, ammunition, and hunting and shooting sports industry. It is a non-profit, tax-exempt corporation that is comprised of almost 13,000 federally-licensed firearms manufacturers, distributers, and retailers. Its members manufacture, distribute and sell at retail, after a background check, the firearms that are prohibited by Highland Park, Ill., City Code § 136.005(1) (the "Ordinance"). NSSF has unique knowledge of the history and utility of the Modern Sporting Rifles outlawed by the Ordinance

[1] Pursuant to Supreme Court Rule 37.2(a), notice of NSSF's intent to file this *amicus curiae* brief was received by counsel of record for all parties at least 10 days prior to the due date of this brief, and all parties consent to the filing of this *amicus curiae* brief. The undersigned further affirms that no counsel for a party authored this brief in whole or in part, and no person or entity, other than NSSF, its members, or its counsel, made a monetary contribution specifically for the preparation or submission of this brief.

and can provide the Court essential information regarding the widespread use of these versatile firearms for a variety of lawful purposes, and the essential functions these popular firearms perform for millions of Americans. This information is vital to the Court's understanding of the usefulness of the banned Modern Sporting Rifles for home defense, as well as other lawful uses.

SUMMARY OF THE ARGUMENT

This Court should grant the Petition in order to ensure that the fundamental, natural right of self-defense is not unconstitutionally infringed by Highland Park's arbitrary and misguided restrictions on the types of popular firearms that law-abiding, responsible citizens can choose for self-defense in their homes.

This Court's clear pronouncement that firearms commonly owned for lawful purposes are protected by the Second Amendment has been met with a wave of new restrictions around the country. Courts hearing challenges to these firearms bans have refused to apply the Second Amendment's protections with the same vigor and robustness that they use when applying the protections of any other constitutional right. A number of federal courts, now including two circuit courts of appeals, have upheld state or municipal bans on the possession of Modern Sporting Rifles,

including what is currently the most popular style of rifle in the country: the AR-15.

Modern Sporting Rifles are so popular not because, as those who advocate for the banning of these firearms either implicitly or expressly argue, some fringe criminal element of our society prefers them, but because they are a nearly-perfect blend of safety, reliability, accuracy, effectiveness, and ease of use. Because of the Modern Sporting Rifle's ergonomic features and adjustability, women and men of all sizes, backgrounds, and experience levels can use them comfortably, operate them easily, and become proficient quickly. They are by far the most popular rifles being sold in the United States today.

Prohibitions of Modern Sporting Rifles such as Highland Park's strike at the very heart of this Court's holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008), by significantly restricting citizens' fundamental right to choose popular, safe, and versatile firearms for home self-defense. If this Court does not grant this Petition to correct the pervasive errors of the lower courts that have approved these bans, governments will continue to infringe on the fundamental, natural rights of law-abiding, responsible citizens in direct contravention of the Second Amendment's core protections.

ARGUMENT

I. MODERN SPORTING RIFLES ARE THE QUINTESSENTIAL MODERN AMERICAN FIREARM.

In *Heller*, this Court held that a government cannot prohibit law-abiding, responsible citizens from exercising their fundamental, natural right of self-defense through choosing to keep a handgun in their homes. 554 U.S. at 635-636. In rejecting the District's argument that it should be permitted to ban handguns because citizens could lawfully possess other firearms, this Court held, "[i]t is enough to note, as we have observed, that the American people have considered the handgun to be the quintessential self-defense weapon." *Id.* at 629.

Instead of embracing this Court's teaching, legislatures around the country began chipping away at it almost immediately. Certain states, cities, and the District of Columbia have enacted laws specifically designed to prohibit law-abiding, responsible citizens from possessing commonly owned, safe, and versatile firearms for use in defense of their homes, in direct contravention of this Court's mandate. The most glaring example of this phenomenon is the push to prohibit the possession of Modern Sporting Rifles. Modern Sporting Rifles represent the pinnacle of modern materials, technology, engineering, safety, and utility, and are precisely the rifles most suited to the many and varying needs of responsible, law-abiding citizens. Law-abiding citizens agree, which is why Modern Sporting Rifles are far and away the

most popular rifle sold in America and are commonly owned all across our Nation.

While this Court recognized the handgun's place as the quintessential self-defense weapon, it is the Modern Sporting Rifle that has become the quintessential modern American firearm.[2] That both a rifle and a handgun could both be "quintessential" is nothing new to American history; in fact, this is more common than not.

In the latter half of the 1800s, firearms technology rapidly progressed, and both the Winchester Model 1873 and the Colt "Peacemaker" revolver became the iconic firearms of the era, because they were reliable and used the most modern technology of the time to fire multiple rounds as quickly as practicable. In fact, both firearms were so prevalent that *both* are called "The Gun that Won the West." *See* COLT, COLT SINGLE ACTION ARMY REVOLVER, http://www.colt.com/Catalog/Revolvers/SingleActionArmy%C2%AE.aspx (last visited August 18, 2015); WINCHESTER, WINCHESTER REPEATING ARMS, MODEL 1873, http://www.winchesterguns.com/products/catalog/category.asp?family=027c (last visited August 18, 2015).

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[2] This Court has recognized that fundamental rights are not limited to the technology available at the time of an amendment's enactment. *See*, *e.g.*, *Heller*, 554 U.S. at 582 (the argument that the Second Amendment applies only to those firearms available at the time of its passage is "bordering on the frivolous.").

The 1900s saw vast improvements in technology that led to the development and perfection of semi-automatic firearms. The end result of these technological developments is that semiautomatic firearms such as the handguns at issue in *Heller* and the Modern Sporting Rifles banned by the Ordinance and similar legislation have become the modern quintessential American firearms because they are easy to use, easy to modify, and are accurate and reliable – everything the user would want them to be. Modern Sporting Rifles are to firearms what modern cars are to wheeled transportation: the culmination of centuries-worth of research, development, trial-and-error, innovation, and improvements. They are safe, reliable tools in the hands of the citizen.

Modern Sporting Rifles are also only rarely used in crime. Research conducted by Dr. Christopher Koper, working under a grant from the U.S. Department of Justice, indicated that "[Assault Weapons] were used in only a small fraction of gun crimes prior to the [federal] ban: about 2% according to most studies and no more than 8%. Most of the [Assault Weapons] used in crime are assault pistols rather than assault rifles." CHRISTOPHER S. KOPER, UPDATED ASSESSMENT OF THE FEDERAL ASSAULT WEAPONS BAN at 2 (July 2004). Even among mass shootings, the tragic events that have given rise to prohibitions of Modern Sporting Rifles, the use of Modern Sporting Rifles is not as prevalent as Highland Park would have this Court think. The Congressional Research Service reports the overall use of "rifles or pistols capable of

accepting detachable magazines," WILLIAM J. KROUSE & DANIEL RICHARDSON, CONG. RESEARCH SERV., MASS MURDER WITH FIREARMS: INCIDENTS AND VICTIMS, 1999-2013 at 16 (2015), occurs in less than 10 percent of mass shootings. *Id.* at 29 (stating that these firearms were used in 31 out of 317 mass shooting incidents). Handguns make up the lion's share, 62 percent of the firearms used in mass shootings, about triple the number of rifles used in these crimes. James Alan Fox & Monica J. DeLateur, *Mass Shootings in America: Moving Beyond Newtown*, 18 HOMICIDE STUDIES at 125, 136 (2014).

The legislative prohibitions targeting Modern Sporting Rifles are particularly offensive to the Constitution because they target what has become the quintessential modern American firearm in the same way that the prohibition at issue in *Heller* targeted the "quintessential self-defense weapon." The Modern Sporting Rifles banned by Highland Park are among the most popular firearms being sold today, with the AR-15 being the single most popular semiautomatic rifle on the market. The number of Modern Sporting Rifles that were imported or manufactured in 2012 was more than double the number of Ford F-150 pickup trucks, the most popular passenger vehicle sold in America, sold that year.

Declaration of James Curcuruto at ¶4, 7th Cir. ECF No. 16-2 at 29.[3]

A. Modern Sporting Rifles Have a Long History.

In 1954, the Fairchild Engine and Airplane Corporation created the Armalite division to develop small arms. Armalite, Inc., History: 60 Years of Armalite, https://armalite.com/about-us/history/ (last visited August 15, 2015). Armalite developed numerous rifles based on the work of Eugene Stoner, a decorated Marine who served in World War II and was an expert in firearms. *Id.* Armalite developed its model AR-10 based on radically different designs and made with radically different materials than the rifles used in World War II. *Id.* These choices made the rifle lighter and easier to use. *Id.*

Armalite's AR-10 design was seen by the Army as promising, and the Army asked Armalite to produce a smaller caliber prototype model. Armalite complied, creating the AR-15. The AR-15 was not accepted by the military, *id.*, however, and in 1959, Armalite licensed the design for the AR-15 to Colt. Colt retained the designation AR-15 for its civilian rifles, *id.*, honoring Armalite's role in designing what has

[3] *Heller* clearly holds that the government cannot ban popular firearms commonly kept for lawful purposes by responsible, law-abiding citizens.

become the most popular semiautomatic rifle in America.[4]

The AR-15 differs significantly from its later-produced military cousin, the M16. The M16 was designed, and is manufactured, for fully automatic fire. Colt Manufacturing, LLC, History, http://www.colt.com/Company/History.aspx (last visited August 19, 2015). The capability for fully automatic fire is what differentiates military firearms, such as the M16, from semiautomatic civilian firearms, like the modern AR-15, that are now banned in Highland Park.[5]

The federal government has recognized the critical distinction between fully automatic fire and semiautomatic fire. Fully automatic firearms (defined in the National Firearms Act, 26 U.S.C. § 5845, as

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[4] "AR" stands for "Armalite Rifle," not "assault rifle." Armalite, Inc., History: 60 Years of Armalite, https://armalite.com/about-us/history/ (last visited August 15, 2015). True "assault rifles" are fully automatic. Categorizing Modern Sporting Rifles as "assault weapons" is a political misnomer, not an accurate technical characterization. *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting).

[5] As this Court has acknowledged, Modern Sporting Rifles are not readily convertible to fully automatic fire. Because of additional parts required to implement fully automatic fire, an AR-15 lower receiver would have to be significantly machined to accommodate this modification. *See Staples v. U.S.*, 511 U.S. 600, 603 (1999) (discussing distinctions between AR-15 and M16, and differences in design and manufacture of lower receiver for each). Converting a Modern Sporting Rifle to automatic fire is a felony. 26 U.S.C. § 5861.

"machine guns") are heavily regulated by the federal government, and require a special background check and expensive tax stamp for their purchase. 26 U.S.C. § 5811. This Court has recognized Modern Sporting Rifles as a class of firearms that "traditionally have been widely accepted as lawful possessions." *Staples v. U.S.*, 511 U.S. 600, 612 (1999). Modern Sporting Rifles have been designed, manufactured, marketed and sold to the civilian market since the 1960s.

B. Modern Sporting Rifles Have Become Ubiquitous.

Today, many manufacturers produce Modern Sporting Rifles. Over 50 different manufacturers make their own version of Armalite's 50-year-old design. Well-known, established companies manufacture Modern Sporting Rifles because the law-abiding public demands these firearms for their self-defense, target shooting, and hunting needs.

The reason that so many different companies have created their own Modern Sporting Rifles is that these firearms are immensely popular with the civilian market. Millions of law-abiding citizens have chosen Modern Sporting Rifles for home defense, competitive shooting, and hunting, and there are at least eight million Modern Sporting Rifles in circulation today. *Friedman v. City of Highland Park*, 784 F.3d 406, 416 n.3 (7th Cir. 2015) (Manion, J., dissenting) (*citing* Declaration of James Curcuruto, Director, NSSF, at 2).

Sales data demonstrate that these firearms are increasing in popularity with the law-abiding public, despite Highland Park's protestations to the contrary. "Between 2008 and 2012, approximately 11.4% of firearms manufactured in the United States were AR-type rifles." *Id.* In 2014, retailers reported that Modern Sporting Rifles were the most popular long guns they sold and accounted for nearly 20 percent of the firearms sold that year. NSSF, FIREARMS RETAILER SURVEY REPORT at 9 (2015). Retailer-level data also shows that the popularity of these firearms is increasing year-over-year, with retailers reporting that they derived approximately 18 percent of their revenue from Modern Sporting Rifles in 2011, and 24 percent of their revenue from these sales in 2014. *Id.* at 17.

Perhaps most indicative of the ubiquity of Modern Sporting Rifles is the fact that recent data shows that Modern Sporting Rifles were used by over 16 million sport shooters in 2014, NSSF, NSSF REPORT: SPORT SHOOTING PARTICIPATION IN THE UNITED STATES IN 2014 at ii (2015), meaning that Modern Sporting Rifles were used by 32 percent of all shooters. Judged by any standard, the fact that nearly one-third of target shooting participants engaged in one lawful activity used a Modern Sporting Rifle demonstrates that these firearms are common, popular, safe, and versatile tools used by millions of law-abiding Americans, just as were the handguns at issue in *Heller*.

II. THERE ARE MANY REASONS MILLIONS OF LAW-ABIDING AMERICANS CHOOSE MODERN SPORTING RIFLES.

This Court declared that the handgun's popularity with citizens demonstrated it to be the "quintessential self-defense weapon." *Heller*, 554 U.S. at 629. The Court referenced a number of attributes that may make a handgun attractive to law-abiding citizens:

> It is easier to store in a location that is readily accessible in an emergency; it cannot easily be redirected or wrestled away by an attacker; it is easier to use for those without the upper-body strength to lift and aim a long gun; it can be pointed at a burglar with one hand while the other hand dials the police.

Id. at 629. While this Court was correct that handguns have particular characteristics that make them attractive to citizens for self-defense, a properly configured Modern Sporting Rifle is unquestionably the most useful tool for self-defense in the home. *See* Declaration of Gary Roberts, 7th Cir. ECF No. 16-2, at 73 ("[T]he AR-15 chambered for .223/5.56 ammunition is the most ergonomic, safe and effective firearm for law enforcement general purpose use and for civilian self-defense."). Moreover, the versatility, adaptability, and customizability of Modern Sporting Rifles have made them the firearms of choice for competitive and recreational shooters, as well as for hunters, in addition to home defenders.

A. Modern Sporting Rifles Are Commonly Chosen by Law-Abiding, Responsible Citizens for Many Lawful Purposes.

Market research has shown that the primary reasons for which law-abiding, responsible citizens purchase these firearms are for self-defense, competitive shooting, recreational shooting, and hunting.

In 2013, NSSF conducted a survey of 21,942 confirmed owners of Modern Sporting Rifles. Participants were asked to rank, on a scale of 1 to 10, how important a particular use was to their owning a Modern Sporting Rifle. The options were recreational target shooting, home defense, collecting, varmint hunting, competition shooting, big game hunting, and job related. NSSF MODERN SPORTING RIFLE (MSR) COMPREHENSIVE CONSUMER REPORT 2013 OWNERSHIP, USAGE AND ATTITUDES TOWARD MODERN SPORTING RIFLES at 34 (2013). The most important reason for owning these firearms was recreational target shooting, followed closely by home defense (scoring 8.99 and 8.15, respectively). *Id.* These two purposes go hand-in-hand because target shooting is the most common means of developing and maintaining proficiency for self-defense. *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011).

NSSF also collected data regarding participants' frequency of use of Modern Sporting Rifles. The results indicated that 94 percent of owners of these firearms used them within the last year. *Id.* at 37. Further analysis of the data showed that over 40

percent of owners used their Modern Sporting Rifles between 4 and 11 times per year, and 18 percent of owners used them more than 24 times per year. *Id.* at 38. A full 78 percent of owners used their rifles more than four times per year. *Id*. Despite this relatively frequent use, 82 percent of owners indicated they did not shoot their Modern Sporting Rifles as often as they wanted to shoot them. *Id.* at 39.

NSSF's data regarding civilian sport shooting demonstrates that not only are Modern Sporting Rifles popular for target shooting, their popularity is increasing greatly. In 2014, 16.2 million individuals engaged in target shooting with one of these firearms. NSSF REPORT: SPORT SHOOTING PARTICIPATION IN THE UNITED STATES IN 2014 at iii. This represented an increase of over 83 percent from the number of participants using these rifles in 2009. *Id.* This 83 percent increase was well above the 49 percent increase in the number of individuals engaged in shooting sports generally, *id.*, demonstrating that not only are these rifles popular with the American public, they are becoming more popular every year.

B. Modern Sporting Rifles Are Beneficial for Home Defense.

The Circuit Court correctly ascertained that Modern Sporting Rifles "can be beneficial for self-defense because they are lighter than many rifles and less dangerous per shot than large-caliber pistols or revolvers." *Friedman*, 784 F.3d at 411.

Despite recognizing the utility of these firearms for self-defense, the Seventh Circuit blithely ignored its own factual finding when it cavalierly dismissed the notion that Modern Sporting Rifles should be as protected as handguns. In fact, when all attributes are considered, Modern Sporting Rifles are the ideal firearms for self-defense in the home and should be afforded the same constitutional protection as the "quintessential self-defense" firearm because they are popularly chosen for that lawful purpose. *See Heller*, 554 U.S. at 629 ("Whatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid.").

The task of choosing a firearm for self-defense in the home is literally a life-or-death decision. One must consider appropriate stopping power, ease of use, adaptability to the differing statures of multiple residents in the house, etc. As millions of Americans have discovered, a Modern Sporting Rifle provides the ideal balance among the available firearms because of its reliability, ease of use, lightweight frame, relatively small caliber, and customizability. *See* Tiger McKee, *AR-15: The Ideal Home Defense Gun?*, Gun Digest, *available at* http://www.gundigest.com/tactical-gear/ar-15-ideal-home-defense-guns (May 29, 2014). No law-abiding citizen preparing to defend herself wishes to use deadly force unless it is absolutely necessary. The mere sight of any long arm can be enough to deter an aggressor, making it even more valuable of a home-defense tool. *Id*.

The basic Modern Sporting Rifle is a design that has been refined and improved for over 50 years. CHRISTOPHER R. BARTOCCI, BLACK RIFLE II at 234 (2004) ("On January 2, 1964, the initial "Original First Issue" Colt AR-15 Sporter rifles were released for commercial sale.") As a result, the modern iteration of this firearm is exceedingly reliable and simple to use. Coupled with its ergonomic features, the result is a nearly intuitive firearm, with increased safety, reliability, ease of use, accuracy and effectiveness over nearly any other firearm available today.

Modern Sporting Rifles are predominantly chambered in a relatively small caliber that unquestionably has sufficient force to stop an aggressor, while also having a light recoil as compared to other rifles. WALT KULECK & GREG KING, THE NEW AR-15 COMPLETE OWNER'S GUIDE at 83 (2014). This is a critical concern because, if necessary, a lighter recoiling firearm will permit more accurate follow-up shots and will permit smaller statured individuals to more easily use the firearm.

Modern Sporting Rifles have become the firearm of choice for millions of Americans because they permit customization to an extent other firearms do not. This includes the addition of certain features and fixtures that enhance the safety, accuracy, and versatility of the firearms.

The most readily visible standard feature of Modern Sporting Rifles is the protruding pistol grip that extends below the action. Much more ergonomic

than traditional straight or semi-pistol stocks, pistol grips permit more accurate and consistent firing from the shoulder position. Pistol grips also position the shooters' hands below the moving action of the rifles so that they are not in danger of contacting any of the rifles' moving parts when the action cycles. All of these functions increase the safety of the firearm. Declaration of James Supica, 7th Cir. ECF No. 16-1, at 24-25 (stating that the pistol grip on a Modern Sporting Rifle "improve[es] reliability, controllability, accuracy and down range safety").

In the context of self-defense, a pistol grip provides for a much more secure grip on the firearm, making it much more difficult to have the rifle redirected or taken away by an aggressor. Moreover, holding a firearm by the pistol grip naturally positions the rifle in the proper location when looking down the sight. This is an important consideration when using a rifle in defense, because a citizen defending against an attack will be under great stress and otherwise could have difficulty properly aligning the firearm. Finally, the pistol grip provides a defensive shooter more control over the firearm, as it is easier to maintain control of the rifle after firing because the pistol grip provides another measure of support during recoil. This permits more accurate and rapid repeat fire, which may be of paramount importance in the short amount of time available to the potential victim in a home defense situation.

In addition to the added control that a pistol grip provides, many Modern Sporting Rifles can accept

accessory attachments that further enhance one's ability to control and direct the firearm. Modern Sporting Rifles can be equipped with rails along the foregrip that permit a user to attach equipment such as vertical foregrips, flashlights, and laser sights, each of which increases a homeowner's ability to safely and accurately use a firearm in self-defense should the need arise. DUNCAN LONG, AR-15/M16 SOURCEBOOK, WHAT EVERY SHOOTER NEEDS TO KNOW at 163 (1992) ("It's safe to say that there are more accessories for the AR-15 than for any other firearm.").

A citizen choosing a Modern Sporting Rifle for home defense may consider adding a vertical grip, which aids shooters by providing a sturdy, secure location to grip a firearm with the non-trigger hand. This allows shooters to manage recoil more easily and to retain the firearm if confronted by an aggressor. A vertical grip also provides a location for defensive users to attach a flashlight, to better enable them to accurately and safely use their firearms in the dark. This is an important concern because it minimizes the risk of errant shots in low-light conditions. KULECK & KING at 85. For these reasons, many Modern Sporting Rifles designed specifically for home defense are equipped with a vertical grip.

Another common attachment is a laser sight. A laser sight allows for easier aiming, especially in low-light situations, such as defensive users might face if encountering an intruder at night. Second, a laser sighting system can be intimidating to some

intruders, *id.*, and may prevent an encounter with an aggressor from escalating to the point of firing the rifle.

Modern Sporting Rifles are also manufactured to accept a variety of sights that improve the ability of individuals to accurately fire at their targets. *See* RICHARD A. MANN, GUNDIGEST SHOOTER'S GUIDE TO THE AR-15 at 81 (2014) ("Your optical sighting options for the AR are endless."). Because errant shots can pose a hazard to other occupants of a home, while simultaneously failing to stop an intruder, many Modern Sporting Rifle owners choose precise optics. *Id.* at 82 (recommending a red-dot sight for personal defense in the home).

Finally, a critical concern when choosing a home defense firearm is the overall length of the firearm. Generally, "[t]he shortest overall length is considered a 'good thing.'" KULECK & KING at 81. Shortening the length of a rifle, however, is constrained by ensuring that the stock is sufficiently long to properly seat the rifle against the shoulder. To this end, nearly all Modern Sporting Rifles come equipped with telescoping stocks. A telescoping stock extends or retracts a few inches to accommodate an individual's particular build and arm's length. This is essential because it impacts the ability of shooters crisply to pull the trigger and to keep the firearm safely stabilized during firing.

A telescoping stock also allows individuals of differing size to use the same firearm. This is a

critical concern for families, because either a husband or wife may be called upon to use their family rifle to defend his or her children. A telescoping stock allows each of them to adjust the firearm to fit them personally, thus obviating the need to purchase another expensive firearm in order to shoot safely and accurately. Given that many families cannot afford to purchase multiple firearms to fit each member specifically, a telescoping stock allows all members of the family to engage in effective self-defense, should the need arise.

This is hardly a novel approach to a common problem; adjustable fit is standard in modern cars, office chairs, exercise equipment, baseball caps, and so on. The argument that a feature that adjusts the stock of a Modern Sporting Rifle a few inches to accommodate people of different sizes makes these firearms "unusually dangerous" is manifestly irrational, and should cause any reasonable person to question the legitimacy, or even desirability, of the "substantial benefit," *Friedman*, 784 F.3d at 412, of a (wrongly) perceived sense of safety created by laws like those enacted by Highland Park.

As millions of Americans have already realized, Modern Sporting Rifles are ideal for home defense for all of these reasons. This Court should grant certiorari in this case to make clear that the firearms most suited to self-defense in the home, and chosen for that lawful purpose every day by millions of Americans, are protected to the same extent as handguns.

C. Modern Sporting Rifles Are Well-Suited to Other Lawful Purposes.

As this Court has recognized, self-defense in the home is not the only lawful purpose that must be considered when determining whether a firearm is protected by the Second Amendment. *Heller*, 554 U.S. at 625 (interpreting *United States v. Miller*, 307 U.S. 174 (1939) to stand for the notion that the firearms protected by the Second Amendment are those "typically possessed by law-abiding citizens for lawful purposes"). Traditional lawful purposes for firearms include self-defense and hunting, *id.* at 599 (recognizing that Americans at the time of the enactment of the Second Amendment would have thought its protections "more important for self-defense and hunting" than militia service); target shooting, *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011) (explaining that practicing, which would include target shooting, with firearms must be protected by the Second Amendment if the core right of self-defense is to have meaning); and sport shooting, *Chow v. State*, 393 Md. 431, 461 (2006) (interpreting Maryland law regarding the definition of a "transfer" of a firearm not to include temporary loans while hunting and sport shooting because holding otherwise "would . . . impose additional restrictions upon the use of firearms for lawful purposes").

1. Modern Sporting Rifles are both comfortable and economical for recreational and proficiency shooting.

Recreational shooting is an important component of the right secured by the Second Amendment because "the core right [of the Second Amendment] wouldn't mean much without the training and practice that make it effective." *Ezell*, 651 at 704.

Good marksmanship skills take a great deal of patience, time, and practice to develop. A novice must spend hours at the range practicing with her firearm to perfect the proper technique, including how to breathe properly, how to align the sights properly, and how to squeeze the trigger properly. Mastering all of these skills takes time, and, more importantly, hundreds, if not thousands, of rounds of practice firing.

The larger the caliber of the firearm, the more recoil, generally, will be felt by the shooter. Thus, it is important to select a firearm that has a manageable recoil that will be comfortable while firing many rounds. As noted above, a Modern Sporting Rifle has a very light recoil among rifle-caliber firearms, so it is ideal for extended use in practicing the fundamentals of good marksmanship for men and women alike.

Another important concern for training is the cost and availability of ammunition. Because a shooter will be firing many rounds to maintain proficiency with a firearm, it is important to keep the costs low and have access to readily available ammunition. In

this, too, Modern Sporting Rifles, excel. The standard .223 rounds are widely available in a number of different configurations (such as bullet weight, powder type and amount, etc.) and are relatively inexpensive. For example, Cabela's, a well-known ammunition retailer, is selling .223 and .308 (a very popular hunting caliber) ammunition, made by the same company, for $1.05 and $1.45 per round, respectively. CABELA'S, HORNADY CUSTOM RIFLE AMMUNITION, http://www.cabelas.com/product/Shooting/Ammunition/Rifle-Ammunition%7C/pc/104792580/c/104691780/sc/104532480/Hornadyreg-Custom-Rifle-Ammunition-150-Per-Box/731751.uts?destination=%2Fcatalog%2Fbrowse%2Frifle-ammunition%2F_%2FN-1100190%2FNs-CATEGORY_SEQ_104532480 (last visited Aug. 25, 2015). While the difference does not seem like much, $0.40 per round equates to 400 dollars for every 1000 rounds fired. Modern Sporting Rifles can also be chambered in .22 Long Rifle, which is the most commonly used target shooting ammunition because it is the least expensive, and one of the smallest, rounds. *See, e.g.*, Jorge Amselle, *Choosing the Best Caliber for Self-Defense*, AMERICAN RIFLEMAN, *available at* http://www.americanrifleman.org/articles/2011/5/4/choosing-the-best-caliber-for-self-defense/ (Mar. 4, 2011) ("[The .22] is super cheap, fun and easy to shoot with almost no recoil. . . . [and] excellent for target practice[.]").

It is necessary to practice and maintain proficiency with the firearms that are used for other lawful purposes, especially self-defense. Because defensive situations are likely to be stressful and

unexpected, it is manifestly important that one be well-practiced and familiar with the firearms she will use. Thus, in addition to the usefulness of Modern Sporting Rifles for self-defense, hunting, and competitive shooting, using Modern Sporting Rifles for recreational shooting has the added benefit of preparing a citizen for other lawful uses, should the need arise.

2. Modern Sporting Rifles are ideal for competitive shooting.

The key to competitive shooting is adapting a firearm to suit an individual's personal needs and preferences. This adaptability is the defining attribute of the Modern Sporting Rifle.

In addition to being able to accept multiple sights, scopes, and stocks, Modern Sporting Rifles themselves are easily modified and are capable of being transformed into precise, championship-level tools. *See generally* KULECK & KING at 99-135 (describing modifications available to Modern Sporting Rifles). As just one example, the Civilian Marksmanship Program, created by an act of Congress (36 U.S.C. §§ 40701, *et seq.*), includes numerous events in which Modern Sporting Rifles are the most used firearms. *Shew v. Malloy*, 994 F.Supp. 2d 234, 245 n.41 (D. Conn. 2014) ("[t]he AR-15 type rifle . . . is the leading type of firearm used in national matches and in other matches sponsored by the congressionally established Civilian Marksmanship Program").

For example, a high-level competitive shooter will replace the standard barrel with a longer, heavier barrel to improve accuracy. He will also replace the standard pistol grip with a custom grip contoured specifically for his hand and with a trigger tuned to his preferences. He will also replace the standard stock with a precision stock that permits multiple adjustments to length, height, and padding. *See generally* MANN, *supra*, at 96-102 (describing different triggers and stocks). Modern Sporting Rifles also permit attachment of nearly any kind of optics, allowing for both standard "iron" sights as well as long-range, custom scopes. *Id.* at 81-95. This customizability allows Modern Sporting Rifles to be configured to the exact specifications of an individual shooter at a reasonable cost.

3. Modern Sporting Rifles are appropriate for hunting.

Hunters choose Modern Sporting Rifles not only for their high level of accuracy, but also because of their adaptability and ease of use. Ironically, Highland Park's own expert, Mark Jones, owns a Modern Sporting Rifle, which he uses for hunting prairie dogs, further underscoring the legitimate use of these firearms for lawful purposes. Jones Dep., 55:24-56:7, April 30, 2013 (7th Cir. ECF No. 16-7 at 3). For example, a pistol grip is useful for hunting because it allows a hunter to quickly bring the rifle on target with the sights properly aligned. This is highly advantageous when hunting because the opportunity to

take a safe, accurate shot is often fleeting. Additionally, the ability to accept sights and scopes of differing sizes and magnifications is extremely important because different types of terrain and locations will call for longer or shorter ranged shots, and, thus, sights of differing power. *See supra*, at p. 19.

Modern Sporting Rifles are also particularly well suited to hunting because they are made of lightweight materials, such as aluminum and plastics, and are much lighter than traditional hunting rifles. *See* LONG, *supra*, at 1 ("[T]he rifle was designed to be light and handy[.]"). This allows hunters more easily to carry them long distances when tracking game, or when traveling to a hunting location. Moreover, the compact design of Modern Sporting Rifles enables a hunter to utilize his or her rifle more easily in heavy brush or challenging terrain.

Additionally, hunters in particular benefit from telescoping stocks. Because hunters spend hours (if not days) in the outdoors when hunting, they must dress for the weather of a particular season. This means that they must wear many layers of clothes during the winter, and fewer during the summer, changing the bulk of the clothing against which the firearm rests when a hunter aims. A hunter can adjust the firearm to suit his or her needs all year long, or even as layers are removed or added as a result of the variability of the weather during a single hunt. This improves not only accuracy, but also safety; a firearm that properly fits the hunter allows for better control when shooting.

Modern Sporting Rifles are also well-suited to hunting because they easily can be adapted to firing different caliber rounds. While the standard round fired from a Modern Sporting Rifle is not powerful enough to hunt game much bigger than a deer, a hunter can replace the upper assembly on a Modern Sporting Rifle to convert it to a larger caliber and use the firearm for hunting larger game, such as elk, moose, and bears. *See*, *e.g.*, MIKE SCHOBY, HOW TO CHOOSE THE PERFECT HUNTING AR, http://www.petersenshunting.com/gear-accessories/rifles/ar-15/how-to-choose-the-perfect-hunting-ar/ (June 11, 2013). This permits a hunter to use his Modern Sporting Rifle for any lawful purpose, thus obviating the need for purchasing multiple firearms in differing calibers.

CONCLUSION

Modern Sporting Rifles are iconic longarms that represent the contemporary zenith of technological development and that are chosen by law-abiding citizens throughout the country every day for lawful purposes. This Court should grant certiorari to ensure that these popular American firearms are as protected and available for lawful use by law-abiding,

responsible citizens as the handguns at issue in *Heller*.

Dated this 28th day of August.

Respectfully submitted,

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