

## At Risk – Gun Safety

By Brent Adams

The 4th of July massacre in affluent Highland Park this year destroyed the idea of “safe communities” in Illinois. Many communities across Illinois were already no stranger to gun violence. Majority Black and Brown communities, in particular, have experience a disproportionate amount of gun-related deaths. Now the epidemic of mass shooting has spread to a town that previously seemed immune to the uniquely American problem of too many guns in the hands of too many violent people. It seems likely that the Illinois General Assembly will pass legislation in response to the Highland Park tragedy but whether new gun laws in Illinois will survive a legal challenge may directly depend on the outcome of the 2022 election for Illinois Supreme Court.

In recent years, the U.S. Supreme Court has been increasingly supportive of the pro-gun lobby. In 2010, the Court struck down Chicago’s handgun ban in *McDonald v. City of Chicago*. Most recently, on June 23, 2022, the Court in *New York State Rifle and Pistol Association v. Bruen* struck down a New York law that required people to show a specific need to carry a firearm in public. Even though this decision was not directly applicable to an Illinois law, pro-gun decisions like *NY State Rifle & Pistol Assoc.* give the green light to judges who are inclined to strike down state limitations on the possession and sale of guns even when the guns, like assault weapons, are intended to kill as many people as quickly as possible.

Illinois currently has some of the nation’s strongest protections against gun violence. According to the Giffords Law Center, Illinois requires universal background checks, gunowner licensing, lost and stolen firearms reporting, waiting periods and minimum age laws, open carry reporting, community violence intervention funding, risk protection order and domestic violence gun laws.<sup>1</sup> This year, Illinois became one of only a few states to ban so-called “ghost guns” -- homemade weapons without a serial number. Such guns cannot be traced and the owner doesn’t have to submit to a background check or obtain a Firearm Owner’s Identification (FOID) card. While ghost guns are only a small fraction of the total number of guns on the streets, Illinois has seen a 400% increase in ghost guns in the last five years.<sup>2</sup> There is no ghost gun litigation yet in Illinois, but, given the novel nature of the issue, there is a good chance that appellate and supreme courts will consider ghost guns at some point.

At least one other gun safety measure has been recently struck down by the Illinois Supreme Court. In an October 21, 2021 decision, the Supreme Court overruled an Appellate Court finding and struck down a Cook County tax on gun and ammunition purchases. While the majority opinion rejected the county ordinance on narrow tax purpose grounds, sitting Justice Michael

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<sup>1</sup> “Fact-check: Abbot misfires with half-cocked shots about Chicago’s ‘tougher’ gun laws”, *Chicago Sun-Times* (June 7, 2022).

<sup>2</sup> “[‘We’re seeing an explosion:’ Sheriff Tom Dart, state Sen. Jacqueline Collins take aim at ghost guns, propose legislation to ban the untraceable weapons](#),” *Chicago Tribune* (Oct. 14, 2021).

Burke filed a special concurrence disagreeing with the majority's analysis. He argued that any tax would infringe on the "right of the individual to keep and bear arms", a position posited by the "Guns Save Life, Inc." trade group.<sup>3</sup> Michael Burke is currently seeking election to the Illinois Supreme Court from the 3<sup>rd</sup> Judicial District after being appointed to the seat in another in district in 2020.

Even more likely to be considered by the Illinois Supreme Court are any laws passed by the Illinois General Assembly in response to the shooting in Highland Park. There is now considerable public momentum to pass significant legislation to strengthen Illinois's gun laws.<sup>4</sup> Banning assault weapons and high-capacity ammunition magazines are the primary policy proposals that the Illinois General Assembly is likely to consider soon. High-capacity magazines and assault weapons drastically reduce the number of times that a shooter must reload, increasing the shooter's ability to harm large numbers of people quickly, as happened at the Highland Park parade.

The federal assault weapons ban, which was in effect from 1994-2004, was upheld by the courts, but the makeup of the courts is profoundly different now. And, pro-gun activists can point to Supreme Court decisions since 2004 that have strengthened their position considerably. The outcome of the 2022 elections for Illinois court could directly determine whether Illinois is able to ban assault weapons and high-capacity ammunition magazines.

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<sup>3</sup> "Illinois Supreme Court strikes down Cook County tax on guns", *Capitol News Illinois* (Oct 21, 2021) .

<sup>4</sup> ["Proposed assault weapons ban gaining momentum in wake of Highland Park shooting; 'I \(get\) calls every day to please, please, please get this done,"](#) *Lake News Sun* (Jul. 20, 2022).