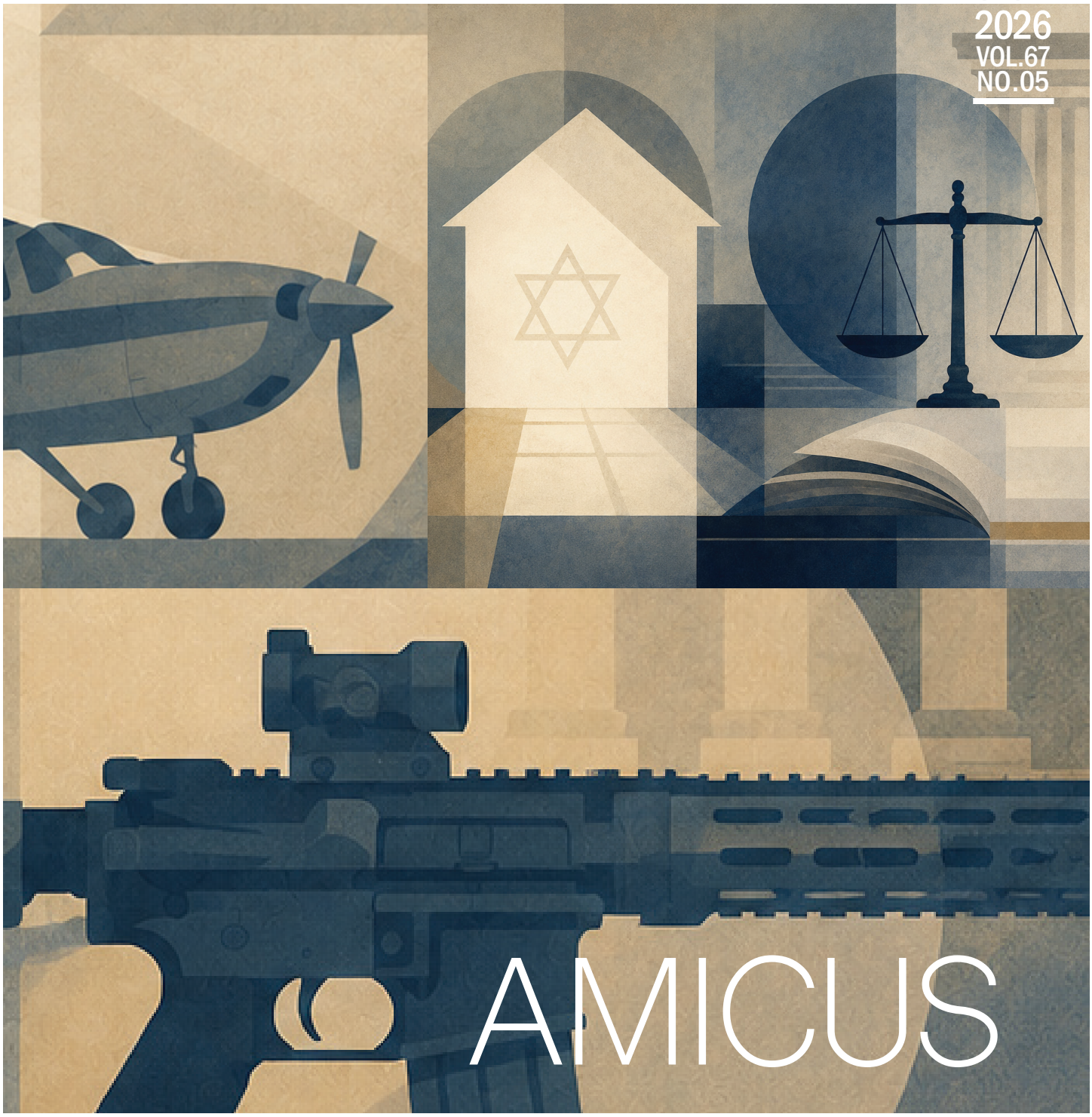
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Looking Ahead: Forfeiture, Finality, and Firearms.

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The Supreme Court's 2025 Term yielded blockbuster national decisions including *Slaughter* and *Cook*, defining expansive executive power, and *Barbara*, confirming birthright citizenship. But the Court also delivered critical guidance to local governments, rebuffing fair market value as just compensation in local real property tax sales (*Pung*), authorizing warrantless entry based on objectively reasonable grounds (*Case*), and protecting the expectation of privacy by users of app-based location services (*Chatrie*).

Looking ahead, local prerogative will continue to generate ample Supreme Court discussion in the upcoming Term, judging from numerous petitions already granted cert. Three such cases in which IMLA will file amicus briefs provide interesting issues: One debates the appropriate penalty for violating a locality's choice to remain alcohol-free, one stems from a city's prohibition against places of worship in residential areas, and the third begins with a local ban on assault weapons.



FORFEITURE

Jouppi v. State of Alaska: Should courts consider the gravity of a specific defendant's conduct when evaluating the proportionality of a fine?

Jouppi involves a much-publicized attempt by Alaska to seize a $95,000 Cessna airplane from a pilot who was prepared to transport a passenger to a native "dry village" despite her loading a visible six-pack of beer. The optics make for great tabloid fodder, but as in many cases, there are nuances behind the headlines.

The History: Alaska's Dry Villages.

In 1937 the State of Alaska authorized its incorporated municipalities to determine whether they would prohibit alcohol within their boundaries, a choice extended to unincorporated communities and villages in 1981. The local option reflected legislative findings that Alaska's mortality rate due to alcoholism was more than four times the national average[1] and that the alcohol-based economic drain on the State was debilitating, costing an estimated $2 billion per year in today's dollars.[2] Most significantly, that scourge disproportionately burdened Alaska's rural communities which had few law enforcement or public health resources, and where more than 80% of violent crime was alcohol-related.[3]

Many Alaska jurisdictions voted to remain "wet" communities, allowing sale and possession of alcohol. Others chose to regulate alcohol, limiting sales to restaurants, package stores, and the like.[4] Some--so-called "damp" localities--prohibited commercial sale of alcohol but not personal possession.[5] And more than two dozen opted to become "dry" communities, banning the sale, importation, and possession of alcohol altogether.[6]

The Alaska criminal code protects these local options, making it a state-level crime to "knowingly send, transport, or bring an alcoholic beverage" into a dry village.[7] The penalties depend primarily on the quantity of alcohol and whether the defendant is a repeat offender. Transporting under 10.5 liters of distilled spirits (roughly 14 bottles), 24 liters of wine (about 32 bottles) or 12 gallons of beer (21-plus six-packs) is a Class A misdemeanor, which carries a maximum penalty of up to a year in prison and a fine up to $10,000.[8] Bringing those amounts or more is a Class C felony, which triggers fines of up to $25,000 and up to five years' in prison for a third-time offense.[9] The

means of illegal transport-"vehicles" (including cars, trucks, all-terrain vehicles, and snowmobiles), boats, and airplanes-are all subject to criminal forfeiture,[10] but the Alaska legislature has allowed leniency for vehicles and boats, which are only subject to taking if additional factors are at play, such as other felony convictions by the operator, transport of more than twice the Class A misdemeanor alcohol quantities, or if the conveyance is the sole means of transport for a family in the village.[11]

Airplanes enjoy no such moderation under the law. Recognizing that aircraft are the only means by which bootleggers can reach many remote dry villages, in 2004 the Alaska legislature amended the forfeiture hierarchy to provide that airplanes are subject to mandatory forfeiture—without any leniency for first-time offenders and irrespective of the quantity of alcohol involved.[12]

The Crime.

Meet Kenneth Jouppi. In April 2012, air taxi pilot Ken Jouppi was readying his plane for the 110-mile flight due north from Fairbanks to Beaver, a hamlet of about 80 residents that voted in 2004 to become a fully dry village. His passenger was headed to join her husband, the village postmaster, bringing groceries and three cases of Budweiser. All were loaded onto Jouppi's 1969 Cessna 206 Stationair, although only a single six pack was visible in a separate bag. Before the plane could take flight, Alaska State troopers, brandishing a warrant based on suspicions of Jouppi's prior bootlegging activity, searched the Cessna. Discovering the alcohol, they arrested both the pilot and passenger for violation of Alaska's dry village laws.

The trial court sentenced Jouppi to the minimum possible penalty--180 days' imprisonment with 177 days suspended and a $3,000 fine with $1,500 suspended. The State also sought to seize Jouppi's Cessna under the mandatory forfeiture law, but the trial court declined to allow the seizure. It held that taking the plane would be an excessive fine prohibited by the Eighth Amendment, because a $95,000 seizure for a minor first-time misdemeanor failed constitutional proportionality principles: Jouppi's "culpability relative to other potential violators of the [law]"[13] was low. The Alaska alcohol statute, the trial court noted, "recognize[s] a hierarchy of seriousness among . . . offenses" based on the amount of alcohol involved and the recidivism of the offender, yet the airplane-forfeiture provision applies "with equal force to all." And "[t]he gravity of the harm" was "low relative to other [alcohol code] offenses."[14]

After a lengthy remand journey from the Alaska Court of Appeals to the trial court and back again, the case reached the Alaska Supreme Court, which unanimously held in 2025 that the forfeiture of Jouppi's Cessna was constitutional "as a matter of law." Despite the fact that many gallons of Budweiser had been loaded into the plane and a trooper's testimony at trial that he saw Jouppi opening the boxes of alcohol, the court based its analysis of Jouppi's infraction only as to one six-pack of beer, because whether Jouppi was aware of the larger quantity required further fact finding. And although the original warrant which allowed troopers to search Jouppi's plane was based on suspicions of repeated prior bootlegging, the court stated that "Jouppi was convicted of only one instance of alcohol importation unconnected to other criminal activity."[15] Furthermore, it was "not particularly relevant whether Jouppi's offense was part of a larger pattern of criminal activity" because, whatever the degree of his wrongdoing, "a pilot knowingly transporting a passenger's alcohol to a dry village is precisely the kind of person and conduct that the legislature was concerned about."[16]

In comparing the value of the seizure to the gravity of the crime, the Alaska Supreme Court noted that the maximum fine for Class A offenders under the dry-village statute was $10,000, meaning the plane's value was "only" nine and a half times that maximum, which "suggests that the forfeiture is not grossly disproportional." The court found further support for its holding in the legislative history behind the dry-village statute: "It is clear to us that the legislature determined that the harm from even a six-pack of beer knowingly imported into a dry village is severe enough to warrant forfeiture of an aircraft."[17] On that basis, the court held that "the forfeiture of Jouppi's airplane is not grossly disproportional to the gravity of the offense for which he has been convicted and, therefore, the forfeiture does not violate the Excessive Fines Clause of the Eighth Amendment."[18]

The Eighth Amendment and Proportionality.

In their protracted review of the Jouppi forfeiture, Alaska's courts have grappled with the Constitution's succinct bar against abuse of criminal defendants: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."19 Implicit in that phrasing is the concept of proportionality—the pain inflicted on the wrongdoer must bear a relationship to the wrong committed. Nearly 30 years ago, the Court found for the first time that a fine failed the Eighth Amendment's proportionality requirements. In *United States v. Bajakajian*, 524 U.S. 321 (1998), the US attempted to seize $357,000 in cash from a departing Syrian immigrant who failed to report the currency as required by the federal Bank Secrecy Act. Writing for a 5-4 majority, Justice Thomas held that the forfeiture was

subject to the Eighth Amendment's excessive fines limitation and flunked its proportionality mandate:

> Comparing the gravity of respondent's crime with the $357,144 forfeiture the Government seeks, we conclude that such a forfeiture would be grossly disproportional to the gravity of his offense. It is larger than the $5,000 fine imposed by the District Court by many orders of magnitude, and it bears no articulable correlation to any injury suffered by the Government.[20]

Important in the Court's consideration was the fact that Bajakajian's currency did not derive from any criminal activity.

More recently, in *Timbs v. Indiana*, 586 U.S. 46 (2019), the Hoosier State attempted to seize a $42,000 Land Rover in a civil *in rem* forfeiture after the owner sold four grams of heroin to undercover agents. Justice Ginsburg authored a unanimous *Timbs* opinion holding that the Eighth Amendment's excessive fines clause also applies to state and local governments via the Fourteenth Amendment. That holding required the Indiana Supreme Court to reverse its stance that excessive fines were a federal concern only, ultimately resulting in the return of Mr. Timbs' vehicle. But beyond those guideposts, the Court has provided little guidance about Eighth Amendment excessive fines, leading to varying analyses among the Circuits.

Proportionality Reexamined: Mr. Jouppi Goes to Washington.

Last fall, Ken Jouppi resurfaced his forfeiture argument, this time in an appeal for United States Supreme Court review. After multiple relistings the Court granted cert in July 2026. Its Question Presented seeks to clarify the appropriate inquiry for gauging proportionality of fines under criminal statutes like the Alaska airplane forfeiture rule:

> Whether, in determining if a fine contravenes the excessive fines clause – which holds the amount of the fine "must bear some relationship to the gravity of the offense that it is designed to punish" – courts may consider the gravity of the underlying offense purely in the abstract or must consider the gravity of the specific defendant's wrongdoing.[21]

Jouppi's petition, authored by frequent Supreme Court participant Institute for Justice, argues that the Eighth Amendment's proportionality mandate requires an inquiry into the specifics of an individual defendant's conduct. And here, because of the Alaska Supreme Court's explicit focus on only a single six-pack of beer, Jouppi avers that the disproportionality in taking a $95,000 aircraft is manifest—a claim spawning numerous headlines decrying governmental overreach. While the actual Question Presented is nuanced, asking about judicial discretion when evaluating a defendant's offense, the case is now viewed as a referendum on proportionality itself: as one *New York Times* opinion piece puts it, "[T]he Supreme Court agreed to take up his case to answer an important and neglected question: When is a fine so excessive that it becomes unconstitutional?"[22]

To File or Not to File as Amicus.

Amicus participation in *Jouppi* raises interesting questions. On one level, there is curiosity about why the Court granted cert, given what appears to be symmetry between the parties on the question of gravity. The petition argues against a rigid ("abstract") application of a criminal statute, counseling a broader review of the gravity of the specific defendant's wrongdoing. In response, the State asserts that the Alaska Supreme Court did in fact analyze the specifics of Jouppi's misdeed (a single six pack of beer and a first-time offense) and nevertheless found that the gravity of the crime still met the proportionality criteria in *Bajakajian,* given the serious harm caused by alcohol. And if that court were truly to evaluate the full gravity of Jouppi's behavior, such inquiry might bring into focus the far larger amount of on-boarded beer and his prior suspected bootlegging.

Aside from reasons which might counsel voiding the cert grant, there are good grounds for local government supporting the narrow application of a criminal statute as written. True, this is not a case of civil *in rem* forfeiture--a far more prevalent version at the local level than the mostly state-based *in personam* criminal seizure – it has been held that civil forfeiture can also involve punitive purposes, bringing proportionality to the fore. An extended inquiry into considerations countering the gravity of an offense could undermine the force of those sanctions. More importantly, a court's search for factors which might debilitate an otherwise absolute statute arguably violates separation of powers, second-guessing a clear legislative mandate based on ample evidence that remedial action was needed. And most significantly, an expanded foray into individual criminal gravity strays from the basic principle motivating the airplane forfeiture law to begin with: the prerogative of Alaska's local populations to defend themselves from an externally-imported element that has inflicted grievous harm. As always, while the issue is framed narrowly, there is the possibility that the Court's holding may have a broader reach, making it important to confine the ultimate decision to the Question Presented.

With those caveats, IMLA will be filing in support of the State in *Jouppi*, promoting the importance of protecting the right of local constituents to determine their own alcohol laws. Oral argument will likely occur before the end of 2026.



FINALITY

Grand v. City of University City: Do claims of chilling religious expression preempt local zoning review processes?

Grand presents another of the often-challenging battles waged against local governments whenever they take actions which can be characterized as impinging on religious exercise.

A House of Worship?

In 2021, Daniel Grand, an Orthodox Jew residing in University Heights, Ohio, decided to hold minyans (prayer sessions of ten or more men) at his home. He invited a dozen friends, encouraging them to bring others, referring to his residence as the "shul." Neighbors complained to the City that Grand was violating local zoning laws which prohibit places of worship in U-1 residential zones. At the Mayor's behest, the City's Law Director drafted a letter demanding that Grand immediately cease and desist using his home as "a place of religious assembly, shul or synagogue," adding that Grand could be cited for building code violations. In response, Grand applied to the City's Planning Commission for a Special Use Permit which would allow him to operate a "house of worship" in the U-1 residential zone, diagramming 21 chairs and 11 tables in his rec room.

No Meeting of the Minds.

The Commission convened a public hearing where Grand's counsel explained that the small group of men would meet for prayer only once a week and on high holidays, that Grand's home was not a "formal synagogue," and that auto traffic would not be an issue because attendees would be walking. Several neighbors attended the hearing and argued that Grand was underselling the size of the proposed gatherings and that his plan would create congestion and other issues. The Commission then tabled the discussion, requesting more information from Grand and scheduling another hearing a few days later. But Grand withdrew his application shortly before the second meeting. The hearing proceeded nonetheless, with the Mayor reiterating that Grand could not "operate a house of worship" without a permit and stating on the record, "[l]et there be no confusion, congregating [at the address] or any other address located in a residence zoned U-1 without a special permit is a violation of the law." The Commission never acted on Grand's withdrawn application, and the City's Board of Zoning Approvals was never called upon to construe whether his proposed gatherings would constitute a "house of worship." Subsequent discussion and comment by various City officials strongly suggest that Grand would have been granted the Special Use Permit.

Silence is Not Acquiescence: The Litigation.

More than 18 months later, Grand commenced a Section 1983 action against the City, the Mayor, Law Director and others, alleging violations of RLUIPA and various federal and state laws--and asserting that the governmental behavior had chilled his First Amendment rights of religious expression. He cited the cease-and-desist letter, the Mayor's statements including the suggestion that neighbors report any violations, law enforcement's drive-by scrutiny of Grand's home, and a housing inspector's visit.

Affirming the district court, the Sixth Circuit declined to consider Grand's First Amendment claims, holding that they were not ripe for review because local authorities had not issued a concrete final decision regarding his permit request:

> [Grand] contends that the cease-and-desist letter counts as a final decision. The problem with the argument is that it misapprehends the finality requirement. To ripen his claims, Grand needed a final decision from the agency with authority over the challenged regulations. That final decision would come from the Board of Zoning Appeals. McConville, the University Heights Law Director who sent the zoning-violation letter, has no role in the relevant agencies. And Mayor Brennan neither

> controls the Planning Commission nor sits on the Board of Zoning Appeals. Grand's case, at bottom, turns on whether his proposed gatherings would render his home a "house[] of worship" under the ordinance. UHCO § 1274.01(b)(1). Only the zoning board, not Brennan or McConville, can answer that question. Due to Grand's decision to withdraw his special use application, the zoning board had no application to act on, leaving us with "no idea" how the ordinance works in this setting.[23]

The court also questioned whether there had been an actual impairment of Grand's religious expression, given that he had held a minyan at least once after withdrawing his application, which to the court did not "sound like chill." Because Grand chose not to obtain a final decision "he [was] the author of any chilling effect on his First Amendment interests, not the City."[24]

Grand petitioned the Supreme Court in February 2026. Cert was granted on June 30, the last day of the October 2025 Term. The Question Presented is:

> Whether the First Amendment's established chilling-effect doctrine, under which a credible government threat that deters the exercise of fundamental rights constitutes a complete and independently actionable constitutional injury, is displaced by Williamson Cty. Planning v. Hamilton Bank's land-use finality requirement when a plaintiff alleges that government threats both before and after a Planning Commission meeting chilled religious exercise, worship, and assembly.[25]

The Finality Precedents.

Williamson County[26] was a Fifth Amendment takings action brought by a developer due to a zoning-based reduction in permitted density. While the Sixth Circuit had upheld the trial court's award of $350,000 in compensation for a regulatory taking of the developer's property, the *Williamson* Supreme Court reversed, holding that the claim was not ripe because the owner had not exhausted his opportunity for relief by seeking a possible variance-- meaning that the government had not reached a "final decision" applying the regulation to the subject property. One unanticipated detriment resulting from *Williamson* was that when property owners complied with the finality rule and sued first in state court, the state court decision would give rise to findings of *res judicata* or issue preclusion at subsequent federal proceedings, so the owner's federal takings claim might never be heard in federal court.

Three decades after *Williamson County*, the Court again considered finality in *Knick v. Township of Scott*.[27] There, plaintiff Rosemary Knick was faced with a Township ordinance requiring public access to cemeteries, including access to the small graveyard located within her 90-acre farm. Bypassing state inverse condemnation proceedings, Knick brought a Fifth Amendment regulatory takings claim directly in federal court, where the action was dismissed on *Williamson County* grounds. The Third Circuit affirmed dismissal, but the Supreme Court did not, reversing *Williamson* insofar as it required exhaustion of state court takings proceedings: "We now conclude that the state-litigation requirement imposes an unjustifiable burden on takings plaintiffs, conflicts with the rest of our takings jurisprudence, and must be overruled."[28] Importantly, the Court left in place the requirement that the state have made a final decision about how its regulation applies to the property in question.

A Recent Weathervane?

Knick would seem to require finality in other contexts such as the First Amendment religious chill issue raised by petitioner Daniel Grand. But one indication that winds may blow in Grand's favor came last Term, in *First Choice Women's Resource Centers v. Davenport*.[29] *First Choice* involved an administrative subpoena served by New Jersey's Attorney General on a pro-life group suspected of misleading donors. Although New Jersey law affords recipients of such subpoenas ample opportunity to quash in state court before complying, First Choice preemptively brought a First Amendment action in federal court, arguing that the mere inquiry into its donor base impaired membership and violated the organization's constitutional right of association.

The district court denied First Choice's motion for a preliminary injunction and dismissed, holding that the group failed to state a justiciable claim as a matter of law because, absent any state court order compelling production, First Choice had yet to suffer an injury from the subpoena and lacked Article III standing. The Third Circuit affirmed, but a 9-0 unanimous Supreme Court, in an opinion by Justice Gorsuch, reversed and remanded. While the Question Presented was whether First Choice had Article III standing to bring suit, the underlying analysis may encourage the argument that finality of state proceedings, whether in a courtroom or in an administrative setting, will be subordinate to federal actions claiming impairment of First Amendment religious freedoms.

The Amicus Question.

On one hand, the current Supreme Court composition and above-described analysis make success challenging, a task made more difficult by facts selectively argued in Grand's filings which portray the City in an unflattering light. On the other hand, it remains an important mission to protect local government regulatory authority in land use matters, resisting the short-circuiting of finality when confronted by a federal constitutional claim. IMLA will be advocating for local autonomy while bypassing Grand's assertions about specific conduct.



FIREARMS

Viramontes v. Cook County: May a local government ban assault weapons?

Viramontes brings front and center a question that the Supreme Court has long declined to tackle: what exactly are the "dangerous and unusual" weapons that can be limited without violating the Second Amendment.

The Cook County Ordinance.

On the morning of January 17, 1989, 24-year-old Patrick Purdy entered the grounds of Cleveland Park Elementary School in Stockton, California carrying an AK-47 assault rifle. More than 300 children were in attendance. Within seconds, he had fired a total of 135 rounds in the school playground, killing five children and injuring 30 others including a teacher, before turning the weapon on himself. In the wake of that massacre, Cook County passed an ordinance banning assault weapons.[30] In 2006, following the expiration of the federal ban on automatic weapons, the County reissued its ordinance, making it illegal to "manufacture, sell, offer or display for sale, give, lend, transfer ownership of, acquire, carry or possess" assault weapons and large-capacity magazines in the County.[31] An "assault weapon" is defined as a semiautomatic firearm that can accept a detachable magazine and has one or more military style features, such as a folding or telescoping stock, a pistol grip without a stock, a barrel shroud, or a muzzle brake.[32]

A Wider Lens: The Assault Weapons Saga.

In 1994, in the wake of the Cleveland Park School massacre that first instigated Cook County's ordinance, Congress passed the Public Safety and Recreational Use Firearms Protection Act,[33] popularly known as the Assault Weapons Ban. Signed into law by President Clinton, the Act prohibited "the manufacture of military-style assault weapons, assault weapons with specific combat features, 'copy-cat' models, and certain high-capacity ammunition magazines of more than ten rounds."[34] The prohibited weapons were identified by make and model such as AR-15s and AK-47s and by other characteristics such as pistol grips, folding stocks, and threaded barrels, in each case with exceptions for sale to government, law enforcement or military.[35]

The Act Sunsets: The "Common Use" Rabbit Hole Emerges.

In 2004, under the George Bush presidency and a GOP-controlled Congress, it was not renewed. The firearms industry, which had already found ways to exploit loopholes in the Act, then dramatically expanded its marketing and manufacturing activities. Sales of AR-15 type weapons—repositioned by the industry as "Modern Sporting Rifles"—rapidly supplanted flagging legacy sales, growing to nearly 25 percent of today's firearm production.[36] Net domestic manufacture soared from 107,000 units in 2004 to more than 3.1 million in 2021.[37]

Sales of AR-15 type weapons ...[grew] to nearly 25 percent of today's firearm production. Net domestic manufacture soared from 107,000 units in 2004 to more than 3.1 million in 2021.

The Reasons Behind Such Dramatic Growth are Complex.

Some purchasers cite sporting use, or hunting, or self-defense. One factor spurring the increase is hugely ironic--the very atrocities committed via those weapons drive usage even higher as enthusiasts fear regulatory crackdown. And to some, AR-15s have become an essential symbol of Second Amendment freedom. Regardless, Americans now own more than 32 million AR-15 type semiautomatic firearms.[38]

Parallel Litigations.

Cutberto Viramontes is among the MSR owners in that massive number. He and several others challenged the Cook County ordinance in 2021 as facially invalid under the Second Amendment. In so doing, they entered a debate central to the assault weapons discussion: what features make a firearm sufficiently unusual and dangerous, or analogous to instrumentalities prohibited at the nation's that they can be banned today? At trial, the County developed an extensive factual record demonstrating the lethality and dangerousness of assault weapons, while the plaintiffs provided little evidence to the contrary. In 2022, as that suit was ongoing, the Supreme Court issued its directive in *Bruen*[39] that, in order to survive Second Amendment scrutiny, any impairment in the right to bear arms must be comparable to a restriction which existed at the nation's founding. But *Bruen* continued the Court's balancing in *Heller*,[40] protecting arms "in common use . . . for lawful purposes," but allowing bans against "dangerous and unusual" weapons.

Bruen informed the Seventh Circuit's 2023 holding in *Bevis v. City of Naperville*,[41] where it denied a preliminary injunction against Illinois' assault weapon ban because plaintiffs failed to show that firearms covered by the ban were materially different from machine guns and military grade weaponry that can still be barred without violating the Second Amendment. Two years later, the Seventh Circuit similarly concluded that the *Viramontes* plaintiffs had not developed the arguments or record needed to distinguish assault weapons from those already prohibited.[42] But in a landmark ruling on July 17, 2026, that line of analysis was contradicted by the Third Circuit in *Association of New Jersey Pistol & Rifle Clubs v. Platkin*.[43] There, Circuit Judge Arianna Freeman wrote for a 10-5 en banc majority in the first federal case to strike a statewide assault weapon ban:

> Together, *Heller* and *Bruen* teach that bans or broad prohibitions on possessing or carrying of a class of weapons in common use for lawful purposes fail to find support in our Nation's tradition of firearm regulation. . . That is so even when the regulations are passed with the intention of reducing gun violence.[44]

Two weeks prior to *Platkin*, the Supreme Court had granted cert to Cutberto Viramontes and his fellow plaintiffs, consolidated with an appeal from the Second Circuit's decision in *Grant v. Higgins*,[45] which upheld a Connecticut assault weapons ban enacted in the wake of the Sandy Hook massacre. *Viramontes* will finally answer a question which has long been on the horizon: whether semiautomatic weapons are protected by the Second Amendment or can be restricted post-*Bruen*, as the Second, Fourth, Seventh, and Ninth Circuits have held. The Question Presented is direct:

> Whether the Second and 14th Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles.[46]

The Regulatory Response: Daunting, but not without Substance.

The odds of preserving semiautomatic firearm bans, now on the books in eleven states and the District of Columbia, seem formidable given the weapons' prevalence, with an estimated one in twenty American adults possessing an MSR. *Heller* and *Bruen* create a difficult gauntlet; if "common use" was measured in 1994 when the Cook County ordinance first emerged and semiautomatic weapons were still a rarity, a stronger argument could be made. But a measurement circa 2026, with Americans owning 32 million-plus MSRs, enables Judge Freeman's Third Circuit "common usage" analysis. However, a broader reading of Justice Scalia's pronouncement in *Heller,* that the nation's history and tradition allow prohibiting "dangerous and unusual weapons,"undeniably opens the discussion. While the "unusual" element may depend upon the year of measurement, the "dangerous" characteristic is far more complex: if fully automatic machine guns have been restricted since 1934 virtually without debate, why are semiautomatic weapons different enough to escape regulation?

The Data: "Dangerous" in Plain Sight.

Some technical information is useful in that colloquy. The federal definition of "machine gun" has no direct linkage to rate of fire—it is simply "any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger," as well as "any part . . . or combination of parts, designed and intended, for use in converting a weapon into a machinegun."[47] One such machine gun, the M249 SAW ("Squad Automatic Weapon") currently used by the US Army can fire upwards of 775 rounds per minute without additional trigger action by the user,[48] clearly making it a lethal, military-grade armament which does not fit within a "history and tradition" safe harbor. In contrast, an AR-15 is not "automatic"—its rate of fire is limited by how quickly the shooter can depress the trigger. But the most popular semiautomatic mechanisms facilitate lightning-fast response to a light touch: according to one gun enthusiast source, an AR-15 or AK-47 in the hands of an experienced professional can fire more than 300 rounds a minute.[49] And while a handful of states limit magazine size to ten rounds, others have no limits, making possible the purchase and deployment of 100-round magazines, readily available from various manufacturers.[50]

That danger can be further amplified. A variety of devices, including a "Forced Reset Trigger," can be added to AR-15s to override the manual triggering feature, making the weapon fire automatically, achieving machine gun rates. The government took notice as those devices were increasingly being used by criminals, the Bureau of Alcohol, Tobacco, Firearms, and Explosives moved to characterize them as "machine guns" under federal law, setting off aggressive crackdown efforts. But in May 2025, after the Supreme Court had ruled the prior year that the ATF exceeded its authority in defining bump stocks as "machine guns,"[51] and in concert with the President's Executive Order "Protecting Second Amendment Rights,"[52] the Department of Justice signed a settlement agreement with FRT maker Rare Breed Triggers. The DOJ not only agreed to stop enforcement, but to return more than 12,000 FRTs that had been confiscated, in exchange for Rare Breed agreeing not to produce FRTs for pistols.[53] As Attorney General Pam Bondi phrased it, "The Department of Justice believes that the Second Amendment is not a second-class right. . . And we are glad to end a needless cycle of litigation with a settlement that will enhance public safety."[54] The settlement did nothing to stop the spread of FRTs for use in semiautomatic rifles.

Amicus: Exercise in Finesse.

Cook County and the states in other assault weapon cases argue that the AR-15's rate of fire creates a devastatingly effective firearm—not for target practice, not for hunting, and not even for self-defense, but for taking lives. The addition of FRTs and similar automation makes those rates even more problematic. Added to that blinding pace is the fact that the bullets fired by AR-15s can pierce police body armor, creating obvious threats to law enforcement when responding to mass shootings. Regardless, the battle over rapid-fire weaponry shows no signs of slowing: on August 14, a group including the Second Amendment Foundation filed suit in the Western District of New York seeking to overturn the State's ban on Glock-type pistols which can readily be converted to automatic firing, arguing that, even if easily modifiable to become automatic weapons, the guns cannot be prohibited.[55]

The mission of an amicus brief in *Viramontes* will not be to litigate the now-certain right to own firearms, but to support the power of states and localities to enact responsible measures aimed at protecting their residents. A victory for Cook County and other governments will not force change on other jurisdictions that choose otherwise, but the opposite result will foreclose any such protections, nationwide. In its responsive pleadings, the County lists many of the massacres facilitated by semiautomatic weapons, with the argument that it be allowed to take some action in response. That proposition will be ably challenged by the *Viramontes* plaintiffs and many others who see a violation of their Second Amendment rights, regardless of the laudable intentions behind proposals for reform.

In sum.

Each of these cases presents significant hurdles for the governmental parties. Each was discussed among IMLA's diverse Legal Advocacy Committee, and in each, the majority view was that amicus participation was warranted. As always, the challenge, and the opportunity, is to promote local government authority on behalf of constituents without transgressing the constitutional or statutory rights of others.

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Notes:

1. Harrison v. State, 687 P.2d 332, 335 (Alaska Ct. App. 1984) (citing *Analysis of Alcohol Problems Project, Working Papers: Descriptive Analysis of the Impact of Alcoholism and Alcohol Abuse in Alaska*, 1975, vol. V at 14 (1977)).
2. McDowell Group, *The Economic Costs of Alcohol Misuse in Alaska: 2019 Update* (prepared for Alaska Mental Health Trust Authority, Jan. 2020).
3. *Harrison*, 687 P.2d at 335 (citing *Alaska Judicial Council, Alaska Felony Sentences: 1976-1979* at 45-48, 65-67 (1980)).
4. Alaska Stat. § 04.11.491(a)(2)-(3).
5. *Id.* § 04.11.491(a)(1).
6. *Id.* § 04.11.491(a)(5).

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