PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-1945

STEPHEN V. KOLBE; ANDREW C. TURNER; WINK'S SPORTING GOODS, INCORPORATED; ATLANTIC GUNS, INCORPORATED; ASSOCIATED GUN CLUBS OF BALTIMORE, INCORPORATED; MARYLAND SHALL ISSUE, INCORPORATED; MARYLAND STATE RIFLE AND PISTOL ASSOCIATION, INCORPORATED; NATIONAL SHOOTING SPORTS FOUNDATION, INCORPORATED; MARYLAND LICENSED FIREARMS DEALERS ASSOCIATION, INCORPORATED,

Plaintiffs – Appellants,

and

SHAWN J. TARDY; MATTHEW GODWIN,

Plaintiffs,

v.

LAWRENCE J. HOGAN, Jr., in his official capacity as Governor of the State of Maryland; BRIAN E. FROSH, in his official capacity as Attorney General of the State of Maryland; COLONEL WILLIAM M. PALLOZZI, in his official capacity as Secretary of the Department of State Police and Superintendent of the Maryland State Police; MARYLAND STATE POLICE,

Defendants – Appellees.

STATE OF WEST VIRGINIA; STATE OF ALABAMA; STATE OF ALASKA; STATE OF ARIZONA; STATE OF FLORIDA; STATE OF IDAHO; STATE OF KANSAS; STATE OF LOUISIANA; STATE OF MICHIGAN; STATE OF MISSOURI; STATE OF MONTANA; STATE OF NEBRASKA; STATE OF NEW MEXICO; STATE OF NORTH DAKOTA; STATE OF OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF SOUTH DAKOTA; STATE OF TEXAS; STATE OF UTAH; STATE OF WYOMING; COMMONWEALTH OF KENTUCKY; TRADITIONALIST YOUTH NETWORK, LLC; NATIONAL RIFLE

ASSOCIATION OF AMERICA; CRPA FOUNDATION; GUN OWNERS OF CALIFORNIA; COLORADO STATE SHOOTING ASSOCIATION; IDAHO STATE RIFLE & PISTOL ASSOCIATION; ILLINOIS STATE RIFLE ASSOCIATION; KANSAS STATE RIFLE ASSOCIATION; LEAGUE OF KENTUCKY SPORTSMEN, INC.; NEVADA FIREARMS COALITION; ASSOCIATION OF NEW JERSEY RIFLE & PISTOL CLUBS; NEW MEXICO SHOOTING SPORTS ASSOCIATION; NEW YORK RIFLE & PISTOL ASSOCIATION; TEXAS STATE RIFLE ASSOCIATION; VERMONT FEDERATION OF SPORTSMAN'S CLUBS; VERMONT RIFLE & PISTOL ASSOCIATION; GUN OWNERS OF AMERICA, INC.; GUN OWNERS FOUNDATION; U.S. JUSTICE FOUNDATION; THE LINCOLN INSTITUTE FOR RESEARCH AND EDUCATION; THE ABRAHAM LINCOLN FOUNDATION FOR PUBLIC POLICY RESEARCH, INC.; CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND; INSTITUTE ON THE CONSTITUTION; CONGRESS OF RACIAL EQUALITY; NATIONAL CENTER FOR PUBLIC POLICY RESEARCH; PROJECT 21; PINK PISTOLS; WOMEN AGAINST GUN CONTROL; THE DISABLED SPORTSMEN OF NORTH AMERICA; LAW ENFORCEMENT LEGAL DEFENSE FUND; LAW ENFORCEMENT ACTION NETWORK; LAW ENFORCEMENT ALLIANCE OF AMERICA; INTERNATIONAL LAW ENFORCEMENT EDUCATORS AND TRAINERS ASSOCIATION; WESTERN STATES SHERIFFS' ASSOCIATION,

Amici Supporting Appellants,

LAW CENTER TO PREVENT GUN VIOLENCE; MARYLANDERS TO PREVENT GUN VIOLENCE, INCORPORATED; BRADY CENTER TO PREVENT GUN VIOLENCE; STATE OF NEW YORK; STATE OF CALIFORNIA; STATE OF CONNECTICUT; STATE OF HAWAII; STATE OF ILLINOIS; STATE OF IOWA; STATE OF MASSACHUSETTS; STATE OF OREGON; DISTRICT OF COLUMBIA,

Amici Supporting Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore. Catherine C. Blake, District Judge. (1:13-cv-02841-CCB)

Argued: May 11, 2016 Decided: February 21, 2017

Before GREGORY, Chief Judge, and WILKINSON, NIEMEYER, MOTZ, TRAXLER, KING, SHEDD, AGEE, KEENAN, WYNN, DIAZ, FLOYD, THACKER, and HARRIS, Circuit Judges.

Affirmed by published opinion. Judge King wrote the opinion for the en banc majority, in which Chief Judge Gregory and Judges Wilkinson, Motz, Keenan, Wynn, Floyd, Thacker, and Harris joined in full; Judge Diaz joined in part as to the Second Amendment claims and joined as to the Fourteenth Amendment equal protection and due process claims; and Judges Niemeyer, Shedd, and Agee joined as to the Fourteenth Amendment claims only. Judge Wilkinson wrote a concurring opinion, in which Judge Wynn joined. Judge Diaz wrote an opinion concurring in part and concurring in the judgment as to the Second Amendment claims. Judge Traxler wrote a dissenting opinion as to the Second Amendment claims, in which Judges Niemeyer, Shedd, and Agee joined. Judge Traxler also wrote an opinion dissenting as to the Fourteenth Amendment equal protection claim and concurring in the judgment as to the Fourteenth Amendment due process claim.

ARGUED: John Parker Sweeney, BRADLEY ARANT BOULT CUMMINGS LLP, Washington, D.C., for Appellants. Matthew John Fader, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellees. **ON BRIEF:** T. Sky Woodward, James W. Porter, III, Marc A. Nardone, BRADLEY ARANT BOULT CUMMINGS LLP, Washington, D.C., for Appellants. Brian E. Frosh, Attorney General of Maryland, Jennifer L. Katz, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF MARYLAND, Baltimore, Maryland, for Appellees. Kyle J. Bristow, BRISTOW LAW, PLLC, Clarkston, Michigan; Jason Van Dyke, THE VAN DYKE LAW FIRM, PLLC, Plano, Texas, for Amicus Traditionalist Youth Network, LLC. Patrick Morrisey, Attorney General, Elbert Lin, Solicitor General, Julie Marie Blake, Erica N. Peterson, Gilbert Dickey, Assistant Attorneys General, OFFICE OF THE ATTORNEY GENERAL OF WEST VIRGINIA, Charleston, West Virginia, for Amicus State of West Virginia; Luther Strange, Attorney General of Alabama, Montgomery, Alabama, for Amicus State of Alabama; Michael C. Geraghty, Attorney General of Alaska, Juneau, Alaska, for Amicus State of Alaska; Thomas C. Horne, Attorney General of Arizona, Phoenix, Arizona, for Amicus State of Arizona; Pam Bondi, Attorney General of Florida, Tallahassee, Florida, for Amicus State of Florida; Lawrence G. Wasden, Attorney General of Idaho, Boise, Idaho, for Amicus State of Idaho; Derek Schmidt, Attorney General of Kansas, Topeka, Kansas, for Amicus State of Kansas; James D. Caldwell, Attorney General of Louisiana, Baton Rouge, Louisiana, for Amicus State of Louisiana; Bill Schuette, Attorney General of Michigan, Lansing, Michigan, for Amicus State of Michigan; Chris Koster, Attorney General of Missouri,

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International Law Enforcement Educators and Trainers Association, and Western States Sheriffs' Association. Jonathan K. Baum, Chicago, Illinois, Mark T. Ciani, KATTEN MUCHIN ROSENMAN LLP, New York, New York, for Amici Law Center to Prevent Gun Violence and Marylanders to Prevent Gun Violence, Inc. Jonathan E. Lowy, Kelly Sampson, BRADY CENTER TO PREVENT GUN VIOLENCE, Washington, D.C.; Elliott Schulder, Suzan F. Charlton, Amit R. Vora, Catlin Meade, Stephen Kiehl, COVINGTON & BURLING LLP, Washington, D.C., for Amicus Brady Center To Prevent Gun Violence. Barbara D. Underwood, Solicitor General, Anisha S. Dasgupta, Deputy Solicitor General, Claude S. Platton, Assistant Solicitor General, Eric T. Schneiderman, Attorney General of the State of New York, for Amicus State of New York; Kamala D. Harris, Attorney General of California, Sacramento, California, for Amicus State of California; George Jepsen, Attorney General of Connecticut, Hartford, Connecticut, for Amicus State of Connecticut; Russell A. Suzuki, Attorney General of Hawaii, Honolulu, Hawaii, for Amicus State of Hawaii; Lisa Madigan, Attorney General of Illinois, Chicago, Illinois, for Amicus State of Illinois; Thomas J. Miller, Attorney General of Iowa, Des Moines, Iowa, for Amicus State of Iowa; Martha Coakley, Attorney General of Massachusetts, Boston, Massachusetts, for Amicus Commonwealth of Massachusetts; Ellen F. Rosenblum, Attorney General of Oregon, Salem, Oregon, for Amicus State of Oregon; Karl A. Racine, Attorney General of The District of Columbia, Washington, D.C., for Amicus The District of Columbia. J. Adam Skaggs, Mark Anthony Frasetto, EVERYTOWN FOR GUN SAFETY, New York, New York; Deepak Gupta, Jonathan E. Taylor, Neil K. Sawhney, GUPTA WESSLER PLLC, Washington, D.C., for Amicus Everytown for Gun Safety.

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seek reversal of the adverse summary judgment award and entry of judgment in their favor. We review de novo the district court's summary judgment decision. See Libertarian Party of Va. v. Judd, 718 F.3d 308, 312 (4th Cir. 2013). With respect to each side's motion, "we are required to view the facts and all justifiable inferences arising therefrom in the light most favorable to the nonmoving party, in order to determine whether 'there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.'" Id. at 312-13 (quoting Fed. R. Civ. P. 56(a)).

III.

We begin with the plaintiffs' claims that the FSA's assault weapons ban and its prohibition against large-capacity magazines contravene the Second Amendment. According to the plaintiffs, they are entitled to summary judgment on the simple premise that the banned assault weapons and large-capacity magazines are protected by the Second Amendment and, thus, the FSA is unconstitutional per se. We conclude, to the contrary, that the banned assault weapons and large-capacity magazines are not constitutionally protected arms. Even assuming the Second Amendment reaches those weapons and magazines, however, the FSA is subject to — and readily survives — the intermediate scrutiny standard of review. Consequently, as to the Second

Amendment claims, we must affirm the district court's award of summary judgment to the State.

A.

The Second Amendment provides, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." See U.S. Const. amend. II. In District of Columbia v. Heller, the Supreme Court recognized that the Second Amendment is divided into a prefatory clause ("A well regulated Militia, being necessary to the security of a free State, . . .") and an operative clause (". . . the right of the people to keep and bear Arms, shall not be infringed."). See 554 U.S. 570, 577 (2008). The Heller majority rejected the proposition that, because of its prefatory clause, the Second Amendment "protects only the right to possess and carry a firearm in connection with militia service." Id. Rather, the Court determined that, by its operative clause, the Second Amendment guarantees "the individual right to possess and carry weapons in case of confrontation." Id. at 592. The Court also explained that the operative clause "fits perfectly" with the prefatory clause, in that creating the individual right to keep and bear arms served to preserve the militia that consisted of self-armed citizens at the time of the Second Amendment's ratification. Id. at 598.

The Second Amendment's "core protection," the Heller Court announced, is "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." See 554 U.S. at 634-35. Concomitantly, the Court emphasized that "the right secured by the Second Amendment is not unlimited," in that it is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." Id. at 626. The Court cautioned, for example, that it was not "cast[ing] doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." Id.

Of utmost significance here, the Heller Court recognized that "another important limitation on the right to keep and carry arms" is that the right "extends only to certain types of weapons." See 554 U.S. at 623, 627 (discussing United States v. Miller, 307 U.S. 174 (1939)). The Court explained that "the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes," including "short-barreled shotguns" and "machineguns." Id. at 624-25. The Court elsewhere described "the sorts of weapons protected" as being "those in common use at the time," and observed that such "limitation is fairly supported by the

historical tradition of prohibiting the carrying of dangerous and unusual weapons." Id. at 627 (internal quotation marks omitted) (citing, inter alia, 4 Blackstone 148-49 (1769)).[9]

Continuing on, the Heller Court specified that "weapons that are most useful in military service — M-16 rifles and the like — may be banned" without infringement upon the Second Amendment right. See 554 U.S. at 627. The Court recognized that the lack of constitutional protection for today's military weapons might inspire the argument that "the Second Amendment right is completely detached from the prefatory clause." Id. The Court explained, however, that the fit between the prefatory and operative clauses is properly measured "at the time of the Second Amendment's ratification," when "the conception of the militia . . . was the body of all citizens capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty." Id. The fit is not measured today, when a militia may "require sophisticated arms that are highly unusual in society at large," including arms that "could be useful against modern-day bombers and tanks." Id. It was therefore immaterial to the Court's interpretation

[9] Although the Heller Court invoked Blackstone for the proposition that "dangerous and unusual" weapons have historically been prohibited, Blackstone referred to the crime of carrying "dangerous or unusual weapons." See 4 Blackstone 148-49 (1769) (emphasis added).

of the Second Amendment that "modern developments have limited the degree of fit between the prefatory clause and the protected right." Id. at 627-28. And thus, there was simply no inconsistency between the Court's interpretation of the Second Amendment and its pronouncement that some of today's weapons lack constitutional protection precisely because they "are most useful in military service."

Deciding the particular Second Amendment issues before it, the Heller Court deemed the District of Columbia's prohibition against the possession of handguns in the home to be unconstitutional. See 554 U.S. at 628-29. Without identifying and utilizing a particular standard for its review, the Court concluded that, "[u]nder any of the standards of scrutiny that we have applied to enumerated constitutional rights, banning from the home the most preferred firearm in the nation to keep and use for protection of one's home and family would fail constitutional muster." Id. (footnote and internal quotation marks omitted).

The Heller Court clearly was concerned that the District of Columbia's ban extended "to the home, where the need for defense of self, family, and property is most acute." See 554 U.S. at 628. Significantly, however, the Court also was troubled by the particular type of weapon prohibited — handguns. Indeed, the Court repeatedly made comments underscoring the status of

handguns as "the most preferred firearm in the nation to keep and use for protection of one's home and family," including the following:

- "The handgun ban amounts to a prohibition of an entire class of arms that is overwhelmingly chosen by American society for [the] lawful purpose [of self-defense]";
- "It is no answer to say . . . that it is permissible to ban the possession of handguns so long as the possession of other firearms (i.e., long guns) is allowed. It is enough to note . . . that the American people have considered the handgun to be the quintessential self-defense weapon"; and,
- "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."

See id. at 628-29 (internal quotation marks omitted).

As explained therein, the Heller decision was not intended "to clarify the entire field" of Second Amendment jurisprudence. See 554 U.S. at 635. Since then, the Supreme Court decided in McDonald v. City of Chicago "that the Second Amendment right is fully applicable to the States," but did not otherwise amplify Heller's analysis. See 561 U.S. 742, 750 (2010). Just recently, in Caetano v. Massachusetts, the Court reiterated two points made by Heller: first, "that the Second Amendment 'extends . . . to . . . arms . . . that were not in existence at the time of the founding'"; and, second, that there is no merit to "the proposition 'that only those weapons useful in warfare

are protected.'" See Caetano, 136 S. Ct. 1027, 1028 (2016) (per curiam) (alterations in original) (quoting Heller, 554 U.S. at 582, 624-25) (remanding for further consideration of whether Second Amendment protects stun guns).

The lower courts have grappled with Heller in a variety of Second Amendment cases. Like most of our sister courts of appeals, we have concluded that "a two-part approach to Second Amendment claims seems appropriate under Heller." See United States v. Chester, 628 F.3d 673, 680 (4th Cir. 2010) (citing United States v. Marzzarella, 614 F.3d 85, 89 (3d Cir. 2010)); see also N.Y. State Rifle & Pistol Ass'n v. Cuomo, 804 F.3d 242, 254 (2d Cir. 2015); GeorgiaCarry.Org, Inc. v. U.S. Army Corps of Eng'rs, 788 F.3d 1318, 1322 (11th Cir. 2015); United States v. Chovan, 735 F.3d 1127, 1136 (9th Cir. 2013); Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives, 700 F.3d 185, 194 (5th Cir. 2012); United States v. Greeno, 679 F.3d 510, 518 (6th Cir. 2012); Heller v. District of Columbia, 670 F.3d 1244, 1252 (D.C. Cir. 2011) ("Heller II"); Ezell v. City of Chicago, 651 F.3d 684, 703-04 (7th Cir. 2011); United States v. Reese, 627 F.3d 792, 800-01 (10th Cir. 2010).

Pursuant to that two-part approach, we first ask "whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee." See Chester, 628 F.3d at 680 (internal quotation marks omitted). If the

answer is no, "then the challenged law is valid." Id. If, however, the challenged law imposes a burden on conduct protected by the Second Amendment, we next "apply[] an appropriate form of means-end scrutiny." Id. Because "Heller left open the level of scrutiny applicable to review a law that burdens conduct protected under the Second Amendment, other than to indicate that rational-basis review would not apply in this context," we must "select between strict scrutiny and intermediate scrutiny." Id. at 682. In pinpointing the applicable standard of review, we may "look[] to the First Amendment as a guide." Id. With respect to a claim made pursuant to the First or the Second Amendment, "the level of scrutiny we apply depends on the nature of the conduct being regulated and the degree to which the challenged law burdens the right." Id.

To satisfy strict scrutiny, the government must prove that the challenged law is "narrowly tailored to achieve a compelling governmental interest." See Abrams v. Johnson, 521 U.S. 74, 82 (1997). Strict scrutiny is thereby "the most demanding test known to constitutional law." See City of Boerne v. Flores, 521 U.S. 507, 534 (1997). The less onerous standard of intermediate scrutiny requires the government to show that the challenged law "is reasonably adapted to a substantial governmental interest." See United States v. Masciandaro, 638 F.3d 458, 471 (4th Cir.

2011); see also Chester, 628 F.3d at 683 ("[T]he government must demonstrate under the intermediate scrutiny standard that there is a reasonable fit between the challenged regulation and a substantial governmental objective." (internal quotation marks omitted)). Intermediate scrutiny does not demand that the challenged law "be the least intrusive means of achieving the relevant government objective, or that there be no burden whatsoever on the individual right in question." See Masciandaro, 638 F.3d at 474. In other words, there must be "a fit that is 'reasonable, not perfect.'" See Woollard v. Gallagher, 712 F.3d 865, 878 (4th Cir. 2013) (quoting United States v. Carter, 669 F.3d 411, 417 (4th Cir. 2012)).

Until this Second Amendment challenge to the FSA's bans on assault weapons and large-capacity magazines, we have not had occasion to identify the standard of review applicable to a law that bars law-abiding citizens from possessing arms in their homes. In Masciandaro, we "assume[d] that any law that would burden the 'fundamental,' core right of self-defense in the home by a law-abiding citizen would be subject to strict scrutiny." See 638 F.3d at 470. Thereafter, in Woollard, we noted that Masciandaro had "'assume[d]'" any inside-the-home regulation would be subject to strict scrutiny, and we described the plaintiff's related — and unsuccessful — contention that "the right to arm oneself in public [is] on equal footing with the

right to arm oneself at home, necessitating that we apply strict scrutiny in our review of [an outside-the-home regulation]." See Woollard, 712 F.3d at 876, 878 (4th Cir. 2013) (quoting Masciandaro, 638 F.3d at 470). Notably, however, neither Masciandaro nor Woollard purported to, or had reason to, decide whether strict scrutiny always, or even ever, applies to laws burdening the right of self-defense in the home. See also, e.g., United States v. Hosford, 843 F.3d 161, 168 (4th Cir. 2016) (declining to apply strict scrutiny to a firearms prohibition that "addresses only conduct occurring outside the home," without deciding if or when strict scrutiny applies to a law reaching inside the home).

B.

Guided by our two-part approach to Second Amendment claims, but lacking precedent of this Court or the Supreme Court examining the constitutionality of a law substantively similar to the FSA, the district court began its analysis by questioning whether the banned assault weapons and large-capacity magazines are protected by the Second Amendment. Addressing assault weapons in particular, the Opinion disclosed the court's "inclin[ation] to find the weapons fall outside Second Amendment protection as dangerous and unusual," based on "serious[] doubts that [they] are commonly possessed for lawful purposes, particularly self-defense in the home." See Kolbe v. O'Malley,

42 F. Supp. 3d 768, 788 (D. Md. 2014). The Opinion further observed that, "[g]iven that assault rifles like the AR-15 are essentially the functional equivalent of M-16s — and arguably more effective — the [reasoning of Heller that M-16s could be banned as dangerous and unusual] would seem to apply here." Id. at 789 n.29 (citing Heller, 554 U.S. at 627).

Ultimately, however, the district court elected to assume that the banned assault weapons and large-capacity magazines are constitutionally protected, and thus that the FSA "places some burden on the Second Amendment right." See Kolbe, 42 F. Supp. 3d at 789. The Opinion then identified intermediate scrutiny as the appropriate standard of review, because the FSA "does not seriously impact a person's ability to defend himself in the home." Id. at 790. In so ruling, the court recognized that the FSA "does not ban the quintessential weapon — the handgun — used for self-defense in the home" or "prevent an individual from keeping a suitable weapon for protection in the home." Id. at 790. Finally, applying the intermediate scrutiny standard, the Opinion recognized that the State of Maryland possesses an interest that is not just substantial — but compelling — "in providing for public safety and preventing crime." Id. at 792. A reasonable fit between that interest and the FSA was shown, according to the Opinion, by evidence of the heightened risks that the banned assault weapons and large-capacity magazines

pose to civilians and law enforcement officers. See id. at 793-97. Accordingly, the district court concluded that the FSA "does not violate the Second Amendment." Id. at 797.

In its analysis, the district court relied in part on the 2011 decision of the District of Columbia Circuit in Heller II. The Heller II court assumed that the District's prohibitions against military-style assault rifles and large-capacity magazines impinge upon the Second Amendment right and then upheld the bans under the intermediate scrutiny standard. See 670 F.3d at 1261-64. After the district court issued its Opinion, statewide bans on the AR-15 and semiautomatic AK-47, other assault weapons, and large-capacity magazines in New York and Connecticut were similarly sustained by the Second Circuit's 2015 decision in N.Y. State Rifle & Pistol Ass'n. There, the court of appeals proceeded "on the assumption that [the challenged] laws ban weapons protected by the Second Amendment"; determined "that intermediate, rather than strict, scrutiny is appropriate"; and concluded "that New York and Connecticut have adequately established a substantial relationship between the prohibition of both semiautomatic assault weapons and large-capacity magazines and the important — indeed, compelling — state interest in controlling crime." See N.Y. State Rifle & Pistol Ass'n, 804 F.3d at 257, 260, 264. The Supreme Court recently denied the Connecticut plaintiffs' petition for a writ

of certiorari in that matter. See Shew v. Malloy, 136 S. Ct. 2486 (2016).

In the time period between Heller II and N.Y. State Rifle & Pistol Ass'n, two other courts of appeals refused to enjoin or strike down bans on assault weapons or large-capacity magazines. Affirming the denial of a preliminary injunction in Fyock v. City of Sunnyvale, the Ninth Circuit concluded that the district court neither "clearly err[ed] in finding, based on the record before it, that a regulation restricting possession of [large-capacity magazines] burdens conduct falling within the scope of the Second Amendment," nor "abused its discretion by applying intermediate scrutiny or by finding that [the regulation] survived intermediate scrutiny." See 779 F.3d 991, 998-99 (9th Cir. 2015). Thereafter, in Friedman v. City of Highland Park, the Seventh Circuit upheld prohibitions against assault weapons and large-capacity magazines, albeit without applying either intermediate or strict scrutiny. Under Friedman's reasoning, "instead of trying to decide what 'level' of scrutiny applies, and how it works," it is more suitable "to ask whether a regulation bans weapons that were common at the time of ratification or those that have some reasonable relationship to the preservation or efficiency of a well regulated militia, and whether law-abiding citizens retain adequate means of self-