No. 129453

IN THE
SUPREME COURT OF ILLINOIS

DAN CAULKINS; PERRY LEWIN; DECATUR JEWELRY & ANTIQUES INC.; and LAW-ABIDING GUN OWNERS OF MACON COUNTY, a voluntary unincorporated association,	)	On Direct Appeal from the Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois
Plaintiffs-Appellees,	)	
v.	)	No. 2023-CH-3
Governor JAY ROBERT PRITZKER, in his official capacity; KWAME RAOUL in his capacity as Attorney General; EMANUEL CHRISTOPHER WELCH, in in his capacity as Speaker of the House; and DONALD F. HARMON, in his capacity as Senate President,	)	The Honorable RODNEY S. FORBES, Judge Presiding.
Defendants-Appellants.	)	

BRIEF OF PLAINTIFFS-APPELLEES

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ADDITIONAL STATEMENT OF FACTS

Public Act 102-1116 §25 added two provisions to the Criminal Code, to wit: 720 ILCS 5/24-1.9 and 720 ILCS 5/24-1.10. (C. 26-33, 129-146). The effective date for two additions to the Criminal Code was January 10, 2023. (C. 24,146) [Hereinafter in this Brief, said Criminal Code provisions shall be referred to as: The Act.]

The Act prohibits a specific class of firearms described as "assault weapons." (C. 27, 129-136) [For purposes of this Brief, all specified firearms shall be referred to as "assault weapons."] The Act also prohibited large capacity magazines and other items [collectively referred to as "LCM"]. (C. 30-31, 143) The prohibition against the purchase or sale of assault weapons and LCM was effective January 10, 2023. (C. 24, 137, 143, 146)

The Act next excepts classes of persons from the prohibition on purchase, possession or sale of assault weapons, inclusive of LCM, subjecting some excepted persons to additional regulation to escape the prohibition. (C. 27-33, 137-146) The regulation to escape prohibition requires an indorsement affidavit. (C. 27, 137)

The text of the Act first classifies persons possessing an assault weapon on the effective date as subject to different treatment from persons who did not possess an assault weapon on the effective date of the Act. (C. 27, 137) [For purposes of this Brief, those persons possessing an assault weapon on or prior to the effective date of the Act are referred to as "grandfathered".] Under the Act, the grandfathered may retain the assault weapons possessed as of effective date subject to the execution and submission to the Illinois State Police of an indorsement affidavit. (C. 27-28, 137-138) Otherwise, the grandfathered class is prohibited from acquiring any additional assault weapons as of the effective date for the Act. (C. 27, 137) The grandfathered, with respect to assault weapons

for which the indorsement affidavit is required, are restricted in terms of the transfer or sale of the assault weapon possessed. (C. 28-29, 139) The restriction on sale identifies a select class of transferees or purchasers of the grandfathered's assault weapon. (C. 28-29, 139) An heir may succeed to the grandfathered to own the assault weapon. (C. 28, 139)

The Act classifies persons who are entitled to acquire, possess and sell assault weapons, irrespective of whether said excepted person owned or possessed an assault weapon as of the effective date. (C. 29-30, 139-140) [For purposes of this Brief, these persons collectively may be referred to as "excepted" or "immunized, benefitted or privileged."] Peace officers are excepted from the prohibitions of the Act and are free to possess assault weapons. (C. 29, 140) Retired peace officers meeting a definition under federal law are excepted from the prohibitions of the Act. (C. 29, 32, 140, 145) Private security contractors are excepted from the prohibitions of the Act, including its employees, while said employee is acting in the course of his employment. (C. 29-30, 32, 140, 145) However, the private security contractor employee is not excepted from the prohibitions of the Act outside the course of employment. (C. 30, 32, 140, 145) Military personnel are excepted from the prohibitions of the Act while on military duty. (C. 29, 32, 140, 145) However, military personnel are not excepted from the prohibitions of the Act when off duty. (C. 29, 32, 140, 145)

All persons not owning or possessing an assault weapon as of the effective date for the Act are prohibited from acquiring or possessing assault weapons. (C. 27, 137)

Plaintiff, Dan Caulkins is an individual holder of a valid firearm owner identification card [FOID] who owns an assault weapon or desires to purchase an assault weapon. (C. 11) In either respect, Caulkins is prohibited as of the effective date for the

Act to acquire an assault weapon or additional assault weapon. (C. 27, 137) Perry Lewin is situated similarly to Caulkins. (C. 11) Plaintiff Law Abiding Gun Owners of Macon Count is a voluntary unincorporated association comprised of valid FOID card holders organized for the common purpose of protecting the Second Amendment rights of its members. (C. 11-12) The members are comprised of persons who own an assault weapon, persons who do not own an assault weapon seeking to acquire an assault weapon, and persons who possessed an assault weapon on the effective date that desire to acquire another assault weapon after the effective date for the Act. (C. 11) Plaintiff, Decatur Jewelry and Antiques, Inc., holds a validly issued federal firearms license, is a licensed pawn broker engaged in intrastate and interstate commerce involving the sale, possession and transfer of firearms that desires to deliver, sell, import or purchase assault weapons for with and between its customers or patrons of its services, including one or more of the members of Law Abiding Gun Owners of Macon County. (C. 10-12)

The Complaint for Declaratory Judgment was filed January 26, 2023. (C. 10) The Complaint alleged the facts related to the enactment of the legislation and attached the text of the legislation as an exhibit incorporated into the Complaint. (C. 13-15, 67-146) The Complaint invoked as part of its challenge to the Act the following constitutional provisions, Illinois Constitution Article IV, §8(d); Illinois Constitution Article IV §13; Illinois Constitution Article 1, §2; Illinois Constitution Article I §22; United States Constitution, Second Amendment; and United States Constitution, Fourteenth Amendment as implicated on the face of the challenged Act. (C. 15, 23, 26, 34, 37, 38) Specifically, the Complaint identifies the Second Amendment, including but not limited to, the allegation of the United States Supreme Court authority finding that the Second

Amendment codified a fundamental right to keep and bear arms for defense of self, family and property in the home, *McDonald v. City of Chicago*, 561 U.S. 742 (2010) (C. 34) Assault weapons are alleged to be in common use. (C. 11) From the outset and prior to any appearance or argument by the Defendants, the Plaintiffs raised, argued and sought the application of the Second Amendment to the analysis of this case. (C. 34, 38) Defendants acknowledged and responded to Second Amendment assertions by the Plaintiffs before the Trial Court. (C. 326-331)

Public Act 102-116 began as House Bill 5471, which, when originally introduced, was referred to as the "INS CODE-PUBLIC ADJUSTERS." (C. 13) It was originally introduced in the Illinois House of Representatives on January 28, 2022. (C. 13) The original title of the bill was "An Act concerning Regulation" and, as introduced, modestly amended the Illinois Insurance Code. (C. 13) The original version of HB 5471 received three readings in the House and was passed on March 4, 2022. (C. 13) It then received two readings in the Senate. (C. 13) At 3:00 p.m. on or about January 8, 2023, a Sunday, Senator Don Harmon filed an amendment to HB 5471 which stripped the insurance-related provisions from the bill and replaced them with substantive proposed changes governing weapons and human and drug trafficking. (C. 13-14) HB 5471, as amended, was read in the Senate one time. (C. 19) On January 9, 2023, HB 5471, as amended, was passed in the Senate and was returned to the House. (C. 14) The House passed HB 5471, as amended, on January 10, 2023. (C. 15) Hours later, it was signed into law by Governor Pritzker. (C. 15)

The Sixth Judicial Circuit from which the instant case arises is in the Fifth Appellate District such that the opinion in *Accuracy Firearms v. Pritzker*, presented precedent

applicable to one or more issues before the Trial Court. (C. 354, 840) Based on the *Accuracy Firearms v. Pritzker* opinion, with the acknowledgement and acquiescence of the Defendants, restraining orders were issued and, ultimately, a declaratory judgment that the Act was invalid pursuant to a facial constitutional challenge. (C. 354, 840) The judgment declaring the facial invalidity of the Act relied, in part, upon the fundamental rights protected by the Second Amendment as presented below and as included in the *Accuracy Firearms v. Pritzker* opinion. (C. 840)

ARGUMENT

> "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other **fundamental rights** may not be submitted to vote; they depend on the outcome of no elections." *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943).

Effective, January 10, 2023, the Act criminalized the possession, ownership, and sale of a subset of firearms characterized as "assault weapons"[1] effectively prohibiting firearms of common use for the defense of hearth and home by law-abiding citizens to protect self, family and property. The Act immunized sub-classes of persons from the criminal sanction and extended privileges and benefits to sub-classes of persons to acquire, trade and possess for defense of hearth and home by the privileged. None of the classifications arising from the text of the Act are limited to sensitive places nor are the classifications of persons defined by any historical tradition regulating the Second Amendment rights of the mentally infirm, felons or those not qualified to acquire or possess firearms. The resulting patchwork of classifications of the firearms and disparate grouping of persons, each possessed with the same fundamental rights as law-abiding citizens to acquire, possess and use firearms of common usage for the defense of hearth and home, facially offends the United States Constitution and Illinois Constitution in one or more ways stated in the Judgment below or supported by the Record. The Declaratory

[1] For purposes of this Brief, the term "assault weapons" includes "LCM" as defined in Appellants' Brief. The right to keep and bear arms necessarily includes the right to keep and bear the components (such as ammunition and magazines) without which the arms cannot function. *U.S. v. Miller*, 307 U.S. 174, 180 (1939); *Guns Save Life, Inc. v. Ali*, 2021 IL 126014 *P29.

Judgment that the Act is unconstitutional on its face should be affirmed for the reasons hereinafter stated:

STANDARD AND SCOPE OF REVIEW

Plaintiffs concur with Defendants' contention that the standard for review is *de novo*. The Judgment reviewed is a declaratory judgment under 735 ILCS 5/2-701 invalidating the Act facially on constitutional grounds. (C505-15; 840-41). A complaint for declaratory judgment must recite in sufficient detail an actual and legal controversy between the parties and must demonstrate that the plaintiff is interested in the controversy. *Best v. Taylor Machine Works*, 179 Ill.2d 367, 382-83 (1997). Declaratory judgment permits early resolution to fix rights of parties before a change in positions and the remedy should be construed liberally unrestricted by technical interpretations. *Id*. Defendants elected not to answer or raise any affirmative defenses in opposition to the declaratory judgment relief, effectively demurring to the facts and all reasonable inferences drawn therefrom in the Complaint. See: *Gillen v. State farm Mut. Auto. Ins. Co*., 215 Ill.2d 381, 383 (2005). As a facial challenge to the Act, it is enough that the statute itself, a basis for its promulgation and standing appear from the Complaint. *Guns Save Life, Inc. v. Raoul*, 2019 IL App (4th) 190334 *P43-44, 15-16. "Facial challenges are to constitutional law what *res ipsa loquiter* is to facts- in a facial challenge, *lex ipsa loquiter*, the law speaks for itself." Id. at *P43.

Defendants present the issues in this appeal as if review is limited to a collateral attack on *Accuracy Firearms v. Pritzker,* 2023 IL App (5th) 230035. It is true that *Accuracy Firearms* provided the basis upon which the trial court entered the Judgment below and *Accuracy Firearms* could be cited as support for many (not all) contentions

raised in this Brief. Before any Motion herein, the opinion in *Accuracy Firearms* issued and controlled one aspect of a facial challenge supporting judgment, thus, precedent supporting the relief declaring the Act invalid. However, this case, including record, is *Accuracy Firearms*, **Plus**, in the issues drawn. In a *de novo* review of a circuit court declaration of statutory unconstitutionality, the reviewing court is not bound by or limited to reviewing the reasons proffered by the trial court for the Judgment. *People v. Cornelius,* 213 Ill.2d 178, 192 (2004). This Court may affirm a declaration of constitutional invalidity on any basis in the record below, including those grounds specifically and implicitly raised before the trial court. *People v. Greco*, 204 Ill.2d 400, 414 (2003) (appeal pursuant to Supreme Court Rule 302(a)); also see: Illinois Supreme Court Rule 366(a). Here, Second Amendment, Equal Protection, Special Legislation and Constitutional processes for valid enactment of the Act are available grounds to affirm the Judgment.

Counsel in *Accuracy Firearms*, for reasons unknown, disavowed asserting fundamental rights arising from the Second Amendment.. *Accuracy Firearms v. Pritzker,* 2023 IL App (5th) 230035 *P71. Not here. Plaintiffs herein, expressly alleged the **fundamental** right to keep and bear arms as stated in *McDonald v. City of Chicago, IL*, 561 U.S 742 (2010), briefed and argued orally that, unlike *Accuracy,* the fundamental rights burdened by the Act are protected by the Second Amendment. (C. 11, 12, 33-34, 37-38, 236-238, 240-41, 326-31, 350, 505, 507 n.2, 513 n.13; R.30-31). Defendants well understood that the claims herein based relief on the Second Amendment protection of a fundamental right. (C.331, fn 6) and the Final Judgment Order adopted the fundamental right under the Second Amendment. (C. 840). In this respect, Defendants' assertions in

the Appellants' Brief (P.14, 30 fn 9)[2] that Second Amendment analysis is not before this Court departs from the record below and conflates this case with the counsel imposed limitation unique to *Accuracy Firearms.* Defendants' efforts to restrict proper review of all grounds to affirm the judgment declaring the Act invalid on its face lack merit.

STANDING

Appellants seek to avoid a review on the merits of the constitutional questions by arguing all Plaintiffs lack standing or that a Plaintiff has not proven standing. Under Illinois law, a plaintiff need not allege facts establishing standing. *Wexler v. Wirtz Corp.*, 211 Ill.2d 18, 22 (2004). Standing is an affirmative defense for which Defendants have the burden to plead and prove. *Ill. Rd & Transp. Builders Ass'n v. County of Cook*, 2022 IL 127126 *P12. Before the trial court, Defendants retreated from an objection to standing. (R. 27-28). A defense based on standing is forfeited if not raised in a timely manner in the trial court. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill.2d 217, 253 (2010). Notwithstanding forfeiture, the standing contention raised in the Appellants' Brief lacks merit.

The Second Amendment codified the preexisting right for all individual citizens to keep and bear arms for self-defense and defense of hearth and home. *McDonald v City of Chicago, IL*, 561 U.S. 742, 778 (2010); *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). All Plaintiffs, including members and customers, are Firearm Owner Identification card holders. Thus, each is qualified to acquire or possess firearms and firearm ammunition in the State of Illinois. 430 ILCS 65/1 (valid FOID means not non-

[2] Defendants' litigation decision not to seek removal was Defendants' decision. That Defendants now regret that litigation decision is not a basis to limit the scope of review or the grounds available to affirm the judgment below.

qualified). In this respect, all Plaintiffs, members and customers, are similar to all grandfathered, excepted [immunized] classifications of persons under the Act and each has a preexisting fundamental right codified in the Second Amendment to self-defense in the home. Facially, the prohibitions of the Act reach the home and are not limited to sensitive places. Plaintiffs present a sufficient interest in the subject matter of the prohibition of firearms and classification of persons with respect to the exercise of Second Amendment rights to establish standing.

"An association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977). Law-Abiding Gun Owners of Macon County is a voluntary unincorporated association comprised of members possessing validly issued FOID cards organized for the purpose of protecting the Second Amendment rights of its members. (C.11). Its members are comprised of those who (1) possess assault weapons on or before effective date of Act, **OR;** (2) those who possess no assault weapon that desire to own or possess one after effective date; **OR**; those who seek to own another assault weapon after effective date. (**emphasis** on the disjunctive). (C.10-12). As of the effective date for the Act, members that attempt to obtain or possess an assault weapon were in immediate danger criminal prosecution arising from the enforcement of the Act sufficient to support standing for a pre-enforcement challenge. *Ezell v. City of Chicago*, 651 F.3d 684, 95-96 (7th Cir., 2011). As of the effective date, members were burdened in the exercise of

fundamental individual Second Amendment rights demonstrating a direct injury to a legally cognizable interest remedied by a declaration that the Act is unconstitutional, facially. The interests the association seeks to protect are germane to the association's purpose. A facial challenge does not require the participation of individual members. Associational standing serves an important function in recognition of one of the primary reasons people join an organization-the creation of an effective tool for vindicating interests they share in common. *Guns Save Life, Inc v. Raoul,* 2019 IL App (4th) 190334 *P15. The pooling of resources, expertise, and capital under a name identifying their collective interests is seen as an effective way for individuals who may not otherwise have the resources to pursue their own causes of action to do so as part of an association. *International Union of Operating Engineers v. Illinois Dep't of Empl. Sec.*, 215 Ill.2d 37, 50 (2005). Standing exists.

Defendants proffer a lame contrivance that implies that Plaintiffs plead themselves out of standing because of an "admission' they all own an assault weapon. First, Plaintiffs make no such admission. Defendants ignore the **disjunctive** ["OR"] pleading that expressly (or, at least, inferentially) included the interests of those members who did not own an assault weapon on the effective date. As used in its ordinary sense, the term "or" is disjunctive and indicates that in a sentence the various words which it connects are to be taken separately. *Hedrick v. Bathon*, 319 Ill. App. 3d 599, 605 (5th, 2001). The disjunctive "or" connotes two different alternatives. *Mosby v. Ingalls Memorial Hospital*, 2022 IL App (1st) 200822, ¶ 24.[3] Second, Defendants presume that

[3] Disjunctive: expressing an alternative or opposition between the meanings of the words connected; expressed by mutually exclusive alternatives joined by *or* *disjunctive* pleading. https://www.merriam-webster.com/dictionary/disjunctive

prohibition on future acquisition of another assault weapon by those already possessing one on effective date is beyond standing to challenge, as if the disparate rationing of assault weapons transcends any right to audience before the court. The individual Plaintiffs, Caulkins and Lewin, fall into this second category to support standing, too.

Standing also is established through Plaintiff Decatur Jewelry & Antiques, Inc [DJAI] because it has standing to vindicate the rights of its customers seeking access to DJAI services similarly to the association. *Craig v. Boren*, 429 U.S. 190, 195 (1976); *Pierce v. Society of Siste*rs, 268 U.S. 510, 536 (1925); *Ezell v. City of Chicago,* 651 F. 3d 684, 696 (7th Cir.2011). DJAI suffers the direct injury of prohibited buyers, sellers and vendors to support its business, including its criminal prosecution for such sales or purchases (not to mention licensure suspensions etc). The declaration of unconstitutionality of the prohibitions applicable to DJAI customers, provides remedy for the direct injury suffered by DJAI.

THE PROHIBITIONS OF "ASSAULT WEAPONS" BY THE ACT INFRINGE FUNDAMENTAL INDIVIDUAL RIGHTS OF LAW-ABIDING CITIZENS TO KEEP AND BEAR ARMS FOR DEFENSE OF SELF, FAMILY, AND PROPERTY AT HOME.

The contours of the right of law-abiding citizens to keep and bear arms informs every issue on appeal because it is inescapable to the determination of standards to test the constitutionality of the Act. If a ***fundamental*** right, then it appears that Defendants concede that the Act is constitutionally invalid. Defendants are correct in that concession. All roads to sustaining constitutional validity of the Act argued by Defendants require deference to a legislature free to burden individual Second Amendment rights on a speculative *post hoc* rational basis. However, all roads are closed.

The Second Amendment ***codified a pre-existing individual right*** to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed." … [t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence. The Second Amendment declares that it shall not be infringed." *Heller*, 554 U.S. at 592. The Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Heller*, 554 U.S. at 635. "[I]t is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those ***fundamental*** rights necessary to our system of ordered liberty." *McDonald v City of Chicago, IL*, 561 U.S. 742, 778 (2010). The Second Amendment protects the right to keep and bear arms for the purpose of self-defense, individual self-defense is the central component of the Second Amendment right, and self-defense is a ***basic right***, recognized by many legal systems from ancient times to the present. *People v. Aguilar*, 2013 IL 112116, ¶ 17.

This Court has declared Second Amendment rights as ***fundamental*** in *Guns Save Life, Inc. v. Ali*, 2021 IL 126014, ¶¶ 27-29. "We agree that the ordinances impose a burden on the exercise of a ***fundamental right*** protected by the second amendment. At its core, the second amendment protects the right of law-abiding citizens to keep and bear arms for self-defense in the home. *District of Columbia v. Heller*, 554 U.S. 570, 635, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). In *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010), the United States Supreme Court stated that "it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among

those ***fundamental*** rights necessary to our system of ordered liberty." See also *Johnson v. Department of State Police*, 2020 IL 124213, ¶ 37, 443 Ill. Dec. 37, 161 N.E.3d 161 ("the second amendment right recognized in *Heller* is a personal liberty guaranteed by the United States Constitution and the fourteenth amendment" (citing *McDonald*, 561 U.S. at 791))". *Ali* at 2021 IL 126014, ¶¶ 27-29. The right includes acquisition of firearms and access to learn to use and handle. *District of Columbia v. Heller*, 554 U.S. 570, 617-18 (2008); *Ill Ass'n Firearms Retailers v. City of Chicago*, 961 F.Supp.2d 928, 930 (ND IL, 2014).

The Defendants' implicit argument is that "assault weapons" are outside the scope of the fundamental rights each law-abiding citizen enjoys that is codified by the Second Amendment. The argument has no merit. "The Second Amendment extends, ***prima facie***, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *People v. Webb*, 2019 IL122951 *P10 (citing: *Heller*, 554 U.S at 582). (**emphasis** added). "Bearable arms" include any thing a man may take into his hands and used for defense or to cast at or strike another. *Id*. at *P10-11. The definition of arms covers modern instruments that facilitate armed self-defense. *N.Y. State Rifle & Pistol Ass'n v. Bruen,* 597 U.S.__, 142 S. Ct. 2111, 2132 (2022). The definition of firearms under 430 ILCS 65/1.1 encompasses an "assault weapon." "Firearm" means any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas, a definition that includes assault weapons. 430 ILCS 65/1.1. Assault weapons are in common use today (C. 11, *Compl*. fn. 1); also see: *N.Y State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 255 (2d Cir.,2015) ("even accepting the most conservative estimates… assault weapons at

issue are in 'common use' as that term was used in *Heller"*)[4]. "This much is clear: Americans own millions of the firearms [AR-15, LCM] the challenged legislation prohibits." *Id*. at 255. Procedurally, Defendants admitted the ***prima facie*** case inclusive of assault weapons as within the scope of Second Amendment protection by electing not to deny in an answer, to assert facts that assault weapons are not bearable arms or to rebut that the firearms subjected to prohibition or regulation are in common use. Unrebutted *prima facie* evidence is sufficient to support the judgment. See: *Virginia v. Black*, 538 U.S. 343, 369 (2003). "Any attempt by the State to rebut the *prima facie* presumption of second amendment protection afforded stun guns and tasers [here, assault weapons] on the grounds that the weapons are uncommon or not typically possessed by law-abiding citizens for lawful purposes would be futile," because "[h]undreds of thousands [here, millions] of Tasers and stun guns [here, assault weapons] have been sold to private citizens . . . ." *People v. Webb*, 2019 IL 122951, ¶ 13 (citing *Caetano v. Massacusetts*, 577 U.S. 411, 420). Likewise, any attempt by Defendants to rebut common use of assault weapons would be futile. The prohibition of a class of bearable arms by the Act under the purview of the Second Amendment fails facial constitutional challenge. see: *Id*. at *P21.

[4] *"*We think it clear enough in the record that semi-automatic rifles and magazines holding more than ten rounds are indeed in "common use," as the plaintiffs contend. Approximately 1.6 million AR-15s alone have been manufactured since 1986, and in 2007 this one popular model accounted for 5.5 percent of all firearms, and 14.4 percent of all rifles, produced in the U.S. for the domestic market. As for magazines, fully 18 percent of all firearms owned by civilians in 1994 were equipped with magazines holding more than ten rounds, and approximately 4.7 million more such magazines were imported into the United States between 1995 and 2000". *Heller v. District of Columbia*, 399 U.S. App. D.C. 314, 331 (D.C. Cir. 2011).

DEFENDANTS DID NOT MEET THEIR BURDEN TO DEMONSTRATE THAT THE PROHIBITIONS OF THE ACT ARE CONSISTENT WITH HISTORICAL TRADITION IN THE REGULATION OF FIREARMS

Plaintiffs reject the Defendants' contention that Plaintiffs must establish the Second Amendment infringement resulting from the Act. The burden is on the Defendants to establish that the prohibitions/regulations of the Act are consistent with the Nation's historical tradition of firearm regulation. *N.Y. State Rifle & Pistol Ass'n v. Bruen,* 597 U.S.__, 142 S.Ct. 2111, 2135 (2022). Only then does the classification of the object (here, assault weapons) survive. *Id*. Defendants make no attempt to satisfy any burden to establish a historical tradition of assault weapons' prohibition/regulation. Defendants seek to hide from Second Amendment analysis under the meritless pretext that it was not implicated by the issues before the trial court. It was not Plaintiffs' burden to raise or meet this burden before the trial court. The prohibitions created by the Act are not consistent with or limited to any historical tradition to regulate the mentally infirm, felons or to sensitive places. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. __; 142 S. Ct. 2111, 2162 (2022) (citing *McDonald* and *Heller*). Below, Plaintiffs affirmatively asserted that Plaintiffs did not fall into these categories. (C.10-12, 238). Rather, the Act prohibits assault weapon possession in the home and criminalizes possessors and those who would transfer to prohibited possessors otherwise qualified to acquire and possess firearms.

Defendants prove that assault weapons regulation IS NOT consistent with the tradition of firearm regulation in their Brief. Defendants construct a "reliance" basis to justify treating persons disparately under the Act, arguing that the legislature intended to immunize from criminal penalty for possession those persons that *relied* on the state of

law to acquire or possess assault weapons before effective date for the Act. Thus, the assault weapons were acquired under an absence of historical tradition regulating the assault weapon and so much so that the assault weapon is a common firearm available for home defense. Moreover, the sampling of a minority of states attempting regulation of a class of assault weapons enacted in last part of 20th century comes far too late to serve as an indicator of a historical tradition to save the Act. See: *N.Y. State Rifle & Pistol Ass'n v. Bruen,* 597 U.S.__, 142 S.Ct. 2111, 2135-38 (2022) -the belated innovations of the mid to late 19th century courts come too late to provide insight into the issue. This Court already has extended Second Amendment protection to all bearable arms in common use today. See: *People v. Webb*, 2019 IL 122951 *P21. Defendants cannot meet **their burden** to establish that the historical tradition of firearm regulation sustains the prohibition of this class of weapons disparately to the several classes of persons created under the Act. The Judgment below may be affirmed at this point in the analysis.

THE FACIAL CLASSIFICATIONS OF PERSONS BY THE ACT DENY EQUAL PROTECTION OF THE LAW AND CONSTITUE SPECIAL LEGISLATION.

The Act also fails scrutiny from the disparate treatment of individuals with the same codified fundamental individual right to defense of hearth and home under Equal Protection [Illinois Constitution (1970) Article 1, Section 2] and Special Legislation [Illinois Constitution (1970) Article IV, Section 13] provisions of the Illinois Constitution and under the 14th amendment of the United States Constitution.

EQUAL PROTECTION

FUNDAMENTAL RIGHTS REQUIRE STRICT SCRUTINY

No person shall be denied equal protection of the laws. Ill. Const. (1970) Art. I, Section 2; U.S. Const. amend. 14. The guarantee of equal protection requires that the

government treat similarly situated individuals in a similar manner. *Jacobson v. Dep't of Public Aid*, 171 Ill.2d 314, 322 (1996). Equal protection guarantees prohibit the government from according different treatment to persons who have been placed by a statute into different classes on the basis of criteria wholly unrelated to the purpose of the legislation. *Id*. As recent Second Amendment litigation establishes, the individual rights protected under the Second Amendment are fundamental. *Guns Save life, Inc. v. Ali*, 2021 IL 126016 *P28. Accordingly, the classification of persons, if tolerated at all, requires strict scrutiny. *In re D.W*. 214 Ill.2d 289, 310 (2005). Under strict scrutiny, the Act may be upheld only if the law is necessary to serve a compelling state interest and is narrowly tailored to effectuate that purpose. *Id.* at 310. The legislature must use the least restrictive means consistent with the attainment of its goal. *Id.*

If Defendants' assertion that no equal protection scrutiny should apply and that the standard for reviewing the constitutional infringement should be the Second Amendment historical tradition of firearm regulation test under *Heller* and *Bruen*, then the discussion above invalidates the Act. Defendants cannot reconcile their quest for rational basis analysis and say that the *Heller* and *Bruen* standards are dispositive. A close reading of authority cited by Defendants either addressed substantive due process substituting for an explicit amendment (not a classification of persons) (eg: *Albright v. Oliver*, 510 U. S. 266; *U.S. v. Lanier*, 520 U.S. 259) or subsumed Second Amendment with equal protection and applied the Second Amendment test (eg: *U.S. v. Carey*, 602 F.3d 738; *Culp v. Raoul*, 921 F.3d 646; *Kwong v Bloomberg*, 723 F.3d 160; *Teixara v. County of Alameda*, 822 F.3d 1047). None permitted the government to escape any test,

altogether. Notwithstanding, even if a basis to prohibit/regulate could survive under Second Amendment standards, the laws must apply equally and not specially.

ABSENCE OF LEGISLATIVE HISTORY TO SUPPORT GOVERNMENTAL INTEREST

The Act has no legislative history to support a legitimate governmental interest. *Accuracy Firearms v. Pritzker*, 2023 IL App (5th) 230035 *P60.[5] Defendants' post enactment "legislative history" is not entitled to weight. *Id*. (citing: *Sullivan v. Finkelstein*, 496 U.S 617, 631-32 (1990). *Post hoc* justifications cannot be considered to uphold the constitutionality of the challenged statute under strict or intermediate (heightened) scrutiny. See: *United States v. Virginia*, 518 U.S. 515, 533 (1996) ("The justification must be genuine, not hypothesized or invented *post hoc* in response to litigation."). Further, insofar as a regulation of the Second Amendment, the government may not simply posit that the regulation promotes an important interest. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. __, 142 S. Ct. 2111, 2126 (2022) Defendants make no argument that the Act survives strict scrutiny or, for that matter, heightened scrutiny. Accordingly, Defendants forfeit any contention that the Act withstands heightened or strict scrutiny. Defendants seek a rational basis test to reverse the Judgment below.

CLASSIFICATIONS APPEAR FACIALLY IN STATUTORY TEXT

Defendants' contentions that Plaintiffs fail to allege a similarly situated comparator is meritless for at least two reasons: (1) When a statute by its terms imposes burdens on a specific class of persons, there is no need to identify a comparator as the

[5] The Defendants expand the record on appeal with hearsay articles to argue a *post hoc* governmental interest supporting the Act, to wit: public safety threatened by assault weapons used in intentional mass shootings. While these materials may exceed proper subjects for judicial notice, they are not germane to heightened or strict scrutiny.

classification appears in the text of the statute. *Monarch Bev. Co v. Cook*, 861 F.3d 678, 681-82 (7th Cir., 2017); and (2) the similarly situated comparator here are law-abiding gun-owners holding valid FOID cards qualified to acquire or possess firearms (bearable arms) in the home for defense under the preexisting fundamental right codified by the Second Amendment. This group includes persons of every category under the Act for whom the law does not operate equally. Contrary to the argument of the Defendants, the particularized circumstances of an individual plaintiff cease to be necessary when addressing a facial challenge to a statute. *Guns Save Life, Inc v. Raoul*, 2019 IL App (4th) 190334 *P44. Further, it is important to note that the Act invades the home with its prohibitions. Distinctions between citizens in the public provide no basis to discriminate between the citizen's Second Amendment rights to defense of self, family and property at home. The contours of the Second Amendment are undisputed in this latter context.

The facial classification under the Act criminalizes acquisition or possession by some law-abiding citizens qualified to acquire or possess a firearm/ bearable arm under the Second Amendment and immunizes from criminal penalty other law-abiding citizens qualified to acquire or possess under the Second Amendment. All are FOID card holders. The Plaintiffs are not felons or mentally infirm, historical grounds to classify persons under the Second Amendment. see: *McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010). Each Plaintiff, including members and customers, enjoys the same preexisting fundamental rights codified by the Second Amendment in common with all the groups of persons immunized under the Act. Nonetheless, the Act effectively "amends" the Second Amendment codification to achieve disparate treatment amongst the law-abiding citizens.

KALODIMOS DOES NOT CONTROL

Irreconcilable with recognition of fundamental rights, Defendants argue that *Kalodimos v. Village of Morton Grove*, 103 Ill.2d 483 (1984) supports Defendants' contention that the proper standard to review the classifications of persons under the Act is rational basis. Defendants argue that the Second Amendment and Illinois Constitution, Article I, Section 22, do not create/codify fundamental individual rights informing the level of scrutiny to test the Act. These contentions were rejected correctly in *Accuracy Firearms v. Pritzker*, 2023 IL App (5th) 230035, *P51-57. The Court in *Accuracy Firearms v. Pritzker* concluded that this Court abandoned *Kalodimos* in its later opinions, to include: *Guns Save Life, Inc. v. Ali*, 2021 IL 126014, ¶ 28; *People v. Chairez*, 2018 IL 121417, ¶ 23; *People v. Burns*, 2015 IL 117387; *People v. Aguilar*, 2013 IL 112116, ¶¶ 19-21. *Accuracy Firearms v. Pritzker*, 2023 IL App (5th) 230035, *P51-57. *Kalodimos,* decided nearly forty years ago, is pre-*Heller*, pre-*McDonald* and pre-*Bruen*; -federal Second Amendment jurisprudence where the Second Amendment was defined as codifying a preexisting fundamental right. "[W]e [this Court] cannot ignore what appears to be an ascendancy of second amendment rights in federal jurisprudence. At the core of resurgent second amendment jurisprudence are the Supreme Court's landmark decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. __, 130 S. Ct. 3020 (2010)". *Coram v. State (Ill. Department of State Police)*, 2013 IL 113867, ¶¶ 46-49. In *People v Webb,* 2019 IL 122951, this Court relied on the federal jurisprudence on the Second Amendment and its prior holding in *Aguilar* to invalidate a categorical ban on bearable arms. *Kalodimos* did not consider the Second Amendment to guarantee a fundamental individual right. [103 Ill.2d at 509]. Stunningly, Defendants contend, without merit, that the Second Amendment is not a "fundamental

individual right" for purposes of testing an ***individual's*** right to equal protection of the laws (but, would be **fundamental** for other purposes?). It is inescapable that individuals are treated differently under the Act despite the same individual Second Amendment right. "We cannot ignore the fact that adherence to *Kalodimos,* in light of the more recent Illinois Supreme Court decisions, runs afoul of both the supremacy clause and the fourteenth amendment." *Accuracy Firearms v. Pritzker*, 2023 IL App (5th) 230035, *P54.

ILLINOIS CONSTITUTION DOES NOT DIMINISH SECOND AMENDMENT RIGHT OR SUPPORT RATIONAL BASIS REVIEW

Further, the "police powers" clause of the Illinois Constitution, Article 1, Section 22, cannot be applied to diminish Second Amendment rights applicable to the states under the Fourteenth Amendment as suggested by Defendants. *Accuracy Firearms v. Pritzker*, 2023 IL App (5th) 230035, *P56-57. The claimed "balancing of interests" approach ("measured" response in Appellants' Brief) is not available to validate the Act. *N.Y. Rifle & Pistol Ass'n v. Bruen*, 597 U.S. __, 142 S. Ct. 2111, 2129 (2022). The assertion that rational basis classifications burdening Second Amendment rights can justify the Act cannot prevail. "Because the right to keep and bear arms is enumerated in the Constitution, courts cannot subject laws that burden it to mere rational-basis review. *District of Columbia* v. *Heller*, 554 U. S. 570, 628, n. 27." *Silvester v. Becerra*, __ U.S.__, 138 S. Ct. 945 (2018). Defendants' reliance on *Culp v. Raoul*, 921 F.3d 684 (7th Cir., 2019) does not support a rational basis approach. *Culp* rejected rational review as the court considered the Second Amendment and Equal Protection challenges together, in lock-step, opting for heightened scrutiny. [921 F.3d at 655]. *Culp* applied consistent regulation for all classifications of persons insofar as confirming fitness of persons to conceal carry. After *Culp*, intermediate scrutiny has been foreclosed as "one step too

many." *N.Y. Rifle & Pistol Ass'n v. Bruen*, 597 U.S. __, 142 S. Ct. 2111, 2127-29 (2022). Nonetheless, even if considered, the *post hoc* rationalizations proffered by the Defendants in support of the Act fail all levels of scrutiny[6].

CLASSIFICATIONS OF PERSONS ARE NOT NARROWLY TAILORED AND LEAST RESTRICTIVE NECESSARY TO SERVE COMPELLING GOVERNMENTAL INTEREST OR, ALTERNATIVELY, ARE ARBITRARY LACKING RATIONAL RELATION TO EVIL TO BE REMEDIED

The Defendants argue that the governmental interest served by the Act is public safety threatened by assault weapons used in mass shootings. The Act creates a patchwork of classifications of bearable arms and persons that are prohibited from lawfully acquiring, possessing or transferring those arms. *Assuming arguendo* a rational basis review, "[f]or classifications to be deemed constitutional, as in all cases involving classifications, it must appear that the particular classification is based upon some real and substantial difference in kind, situation or circumstance in the persons or objects on which the classification rests, and which bears a rational relation to the evil to be remedied and the purpose to be attained by the statute, otherwise the classification will be deemed arbitrary and in violation of the constitutional guaranties of due process and equal protection of the laws". *Grasse v. Dealer's Transport Co.*, 412 Ill. 179, 193-94 (1952)

The Act grandfathers existing assault weapon owners from the prohibition for the possession of existing arms compared to the citizens who are prohibited from acquiring or possessing the same arms arguing that the classification of persons is justified on a

[6] Plaintiffs do not concede that the speculative legislative intent should be accepted by this Court or that it would be dispositive for any issue, especially under the circumstances by which the Act became law as hereinafter discussed.

"reliance" factor. The authority proffered by Defendants applied a "reliance" justification that presupposed that the owner was relying on prior law, and only if relying on prior law, when he acquired the firearm. eg: *Sklar v. Byrne*, 727 F.2d 633, 641 (7th Cir., 1984)(prior city ordinance); *Peoples Rights Org. v. City of Columbus*, 152 F.3d. 522 (6th, 1998)(registered under prior city ordinance)[7]. Defendants fail to recognize a dispositive distinction between their authority and the situation presented in this case. The Second Amendment is a codification of preexisting fundamental rights, not a law or permission granted to the gun-owner by the state. *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). "The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it "shall not be infringed." … [t]his is not a right granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence". *Id.* The grandfathered possess the assault weapon because of the codified preexisting fundamental right to keep and bear arms for self-defense at home, not because of a legislative act upon which reliance was placed. The prohibited have no lesser right to keep and bear arms for self-defense at home under the Second Amendment than the grandfathered or the excepted/immunized. Here, the right to keep and bear arms is NOT protected equally under the law. Defendants erroneously presume that the legislature can re-write the Second Amendment. At this second point in the analysis, the judgment below can be affirmed without the need to evaluate the rationality of any other classification.

[7] Both cases Pre-*Heller*. Further, see *Sklar* at fn 13: "If the Ordinance had said that all residents of Chicago on the effective date could own handguns and all those who moved later to Chicago could not, the classifications would be unlikely to survive constitutional challenge".

The disparate treatment between grandfathered and prohibited based on "reliance" presents no real difference between the classes with a rational nexus to reducing the heinous criminal intent actuating mass shootings- in fact, the difference in the classes has no logical relationship at all to the mischief the Defendants claim the Act serves. On what basis does one conclude that only the prohibited will be the next mass shooter? It is not enough to support a legislative classification to point out a difference in the two classes. That difference must advance the alleged governmental interest. *Grasse v. Dealer's Transport Co.*, 412 Ill. 179, 193-94 (1952). Nonetheless, by no means can the classification survive a strict scrutiny test and by all reasonable review is arbitrary.

The patchwork of shifting *post hoc* rationalizations proffered by the Defendants speculatively posit that a lack of training justifies the prohibitions under the Act and informs the exceptions immunizing the excepted from criminal penalty. The starting point here is whether the prohibitions of acquisition or possession for home self-defense, a right shared by all, the prohibited and immunized included, has any rational nexus to reducing mass shootings in public, the governmental interest proffered by Defendants. The grandfathered that are outside an exception that are immunized from criminal liability for possession have no greater training than the prohibited merely because the grandfathered already possess an assault weapon. Or, if the grandfathered are presumed to be safe to possess the assault weapons by mere possession, then the prohibited would satisfy the same safety presumption if allowed to acquire and possess. The fortuity of time of acquisition bears no connection to "training." The resulting arbitrary classification reveals that the classification scheme is little more than a pretext to prohibit a whole class of bearable arms, one group of owners at a time. In determining whether

the Act violates special legislation and equal protection, the fact that a problem exists does not permit the adoption of an arbitrary or unrelated means of addressing the problem, ***one step at a time***, as argued by Defendants**.** See**:** *Best v. Taylor Machine Works*, 179 Ill.2d 367, 97-99 (1997) (citing: *Grace v. Howlett*, 51 Ill. 2d at 485) **.**The prohibition of a class of firearms in common use is unconstitutional (See: *People v. Webb*, 2019 IL 122951 *P21) no matter the number of steps Defendants plan to take to achieve that end.

The mischief alleged for abatement by the Act is prevention of mass shootings. The classification of the criminally immunized based on training presumes intended safe use of the assault weapons by the "trained." First, the Act (nor do Defendants in their Brief) does not identify *accidental shootings* as the governmental interest. The Act arbitrarily forecloses the prohibited from a pathway for training to enable the equal protection of the preexisting codified right to keep and bear arms for self-defense in the home. Rather, based on the content of the articles cited by Defendants improperly supplementing the record on appeal, the Act seems informed by an emotional[8], not rational, reaction to the most heinous manifestations of criminal intent by actors intentionally actuating an object to perpetrate mass shootings. The Act does not address the criminal intent behind the mass shooter nor do the prohibitions of the Act rationally

[8] "Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding." *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 330 (1990) (Brennan, J., dissenting) (quoting *Olmstead v. United States*, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting).

abate that mischief. Are Defendants suggesting that the "trained" or grandfathered class cannot manifest criminal intent like the prohibited? Unfortunately, criminal intent may arise across the whole spectrum of citizens, irrespective of employment, public duty, training, time of acquisition or any other distinguishing factor. Criminal intent understands no disparate treatment.

An additional irrational anomaly present in the Defendants' proffered justification is that the Act presupposes that the lethality of mass shooting is reduced if the perpetrators are "trained" in the use of the assault weapon. First, if valid, then equal protection of the law would necessitate a pathway for training (or proof thereof) for the prohibited and a requirement for the grandfathered to be trained. However, skilled use rationally means more effective and efficient killing by a person forming the criminal intent to be a mass shooter, irrespective of the type of firearm or firearms used. The demarcation between unwise and arbitrary often is blurred *post hoc* to rationalize a desired conclusion. However, here, there is an arbitrary disconnect between "training" classifications and the alleged governmental interest and, certainly, the prohibitions are not narrowly tailored nor the least restrictive means to achieve a legitimate governmental interest.

Assault weapon training is more myth than actual. Again, Defendants expand the record on appeal. Nonetheless, examination of the "training" cited by Defendants discloses that there is no required assault weapons training for the excepted/immunized

classes (and none for the grandfathered). Service gun training (not assault weapon) is all that is required.[9] Thus, the "rational" argument collapses at this level, too.

When measured against the commonly shared right to self-defense in the home, the distinction between trained and untrained is arbitrary. For example, the "trained" military is a criminal if he acquires an assault weapon for home self-defense and defense of his family. Yet, while on duty, he conceivably could use an assault weapon against a family if duty so allowed. The same scenario applies to a private security contractor's employee. Chillingly, the effect of exceptions is to allow the state access to a weapon for use against the law-abiding citizen at his home, but, not an equal right to keep and bear arms by the citizen for the defense of self, family in that home. "The individual right to self-defense in the home is elevated before all other rights" *District of Columbia v. Heller*, 554 U.S. at 635--- except in Illinois if the Act is enforced.

The irrationality of the personal classifications arising from the face of the Act include disparately denying equal protection under the Act based on wealth and elevating the police to a higher Second Amendment right in the home. Private security is excepted while employed. 720 ILCS 5//24-1.9(e). Thus, the wealthy can procure full self-defense in the home equal to the weaponry that is available to threaten that safety by hiring

[9] Peace officers are required under 20 Ill. Adm. Code 1730.20(a)(2), (b)(3) to score "70% or above on a pistol course"). Correctional officers are required under 20 Ill.Adm.Code 1750.202(c)(1) and 50 ILCS 710/2 to complete "a 40 hour course of training in use of a suitable type of firearm." Private detectives are required under 68 Ill.Adm.Code 1240.510(a)(1) and 225 ILCS 447/35-40 to complete "20 hours of classroom-based or online Internet-based instruction and 8 hours firing range experience," including "in-holster weapon retention," "double-action shooting," and a "minimum score of 70% at the range.

private security imunized to acquire, possess and use assault weapons. In this respect, recognition that the police cannot be all places (except their own home), at all times, to protect a family supports the right to keep and bear arms for self-defense- not just for the wealthy able to hire private security or the police family, but for all citizens and undermines rationality for the classifications. In fact, historical tradition recognizes that the ordinary law-abiding citizen is entitled the right to protect themselves in the same manner as the police may protect citizens, including their own families, from lethal violence.

> *Heller* correctly recognized that the Second Amendment codifies the right of ordinary law-abiding Americans to protect themselves from lethal violence by possessing and, if necessary, using a gun. In 1791, when the Second Amendment was adopted, there were no police departments, and many families lived alone on isolated farms or on the frontiers. It is hard to imagine the furor that would have erupted if the Federal Government and the States had tried to take away the guns that these people needed for protection**.**

N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S __, 142 S. Ct. 2111, 2161 (2022) (Justice Alito, *concurring).*

While Defendants may wax dismissive of the safety concerns of those for whom police or private security is unavailable or remote, those persons have a fundamental right to protect themselves with weapons equal to the weapons available to others that may be used against them. "Equal protection" truly gets real in such circumstances- equal in law and equal in fact.

SPECIAL LEGISLATION

"The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination." Ill. Const. (1970), Art. IV, § 13**.** The clause is informed by the following principles: "Governments were not made to make the 'rich

richer and the poor poorer,' nor to advance the interest of the few against the many; but that the weak might be protected from the will of the strong; that the poor might enjoy the same rights with the rich; that one species of property might be as free as another-that one class or interest should not flourish by the aid of government, whilst another is oppressed with all the burdens." I Debates, at 578 (remarks of Delegate Anderson). *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 392, 689 N.E.2d 1057, 1070 (1997). These principles seek support in the issues permeating this appeal.

The Defendants concede that equal protection analysis applies to the Special Legislation challenge to the Act under Ill. Const. (1970), Art. IV, Sec.13. The prohibition against special legislation is the "one provision in the legislative articles that specifically limits the lawmaking power of the General Assembly." *Best v. Taylor Machine Works*, 179 Ill. 2d 367, 391 (1997). A special legislation challenge is generally judged under the same standards applicable to an equal protection challenge. *Moline School District No. 40 Board of Education v. Quinn*, 2016 IL 119704, *P24. Accordingly, Plaintiffs adopt all grounds discussed above on the issue of equal protection. Likewise, since a fundamental right is at issue, rational basis standards cannot uphold the Act.

Although these constitutional guaranties overlap, so that a violation of one may involve the violation of the other, the spheres of protection they offer are not coterminous. *Grasse v. Dealer's Transport Co*., 412 Ill. 179, 194, (1952). Moreover, [Ill. Const. (1970) Art. IV, Sec. 13] supplements equal protection by prohibiting the passage of a special law granting to any corporation or association or individual any special or exclusive privilege, immunity or franchise. See: *Id*. at 194. The special legislation clause prohibits the General Assembly from conferring a special benefit or privilege upon one

person or group of persons and excluding others that are similarly situated. *Moline School District No. 40 Board of Education v. Quinn*, 2016 IL 119704, *P18; *In re Petition of Village of Vernon Hills*, 168 Ill.2d 117, 127 (1995). The issue whether a general law is or can be made applicable is specifically provided to be a matter for judicial determination**.** *Moline School District No. 40 Board of Education v. Quinn*, 2016 IL 119704, *P20. Laws are considered "general" "when alike in their operation upon all persons in like situation," and that they are "special" if they impose a particular burden or confer a special right, privilege, or immunity upon only a portion of the people of our State. *Id.* at P22. "Unless this court is to abdicate its constitutional responsibility to determine whether a general law can be made applicable, the available scope for legislative experimentation with special legislation is limited, and this court cannot rule that the legislature is free to enact special legislation simply because 'reform may take one step at a time.' *Best v. Taylor Machine Works*, 179 Ill.2d 367, 97-99 (1997) (citing: *Grace v. Howlett*, 51 Ill. 2d at 485).

Assuming arguendo, if assault weapons are uncommon and if assault weapons are amenable to prohibition, then why is special immunity, benefit and privilege allowed to the excepted/grandfathered classes? No basis to extend the special privileges exists and certainly the privilege has no nexus to abating mass shootings. Defendants claim that the Act was enacted to assure assault weapons do not get “into the wrong hands.” (Appellants’ Brief, page 17). The FOID Act already distinguishes the qualified to acquire or possess- yet, those similarly situated FOID card holders are now divided into “wrong hands” and “right hands” by the Act on the mere fortuity of date of acquisition. The difference is not because the hands are “truly wrong” in substance and the “immunized

hands are "truly right." There is, in fact, no material difference in the hands. The Act shifts the burden of its desired assault weapons ban to some, but, not others. The unburdened have a special benefit unrelated to the abatement of mass shooting and immunized still have the assault weapon to use for that purpose.

Bestowing economic benefit upon privileged/immunized classes to engage non-commercial sale or purchase, collection and subsequent testamentary rights of transfer to those allowed to possess has no connection to stemming mass shootings. In this sense, the Act extends economic franchise to the privileged class and a form of weapons nobility to pass assault weapons to heirs (not legatees or devisees?). If any prohibition of the firearm class or disparate treatment of persons under the Second Amendment is viable, then a general law on the subject matter would either prohibit all assault weapons or regulate assault weapons for the indorsement affidavit for all who own or possess or own or possess in the future to avoid the special classifications and apply the Second Amendment equally to all protected thereby. For reasons stated above, the ban on the class of bearable arms is unconstitutional. It is questionable whether the indorsement regulation would survive a Second Amendment test. See: *Guns Save Life, Inc. v. Ali,* 2021 IL 126014 *P 33, 51. (tax on ammunition was an undue burden on fundamental Second Amendment right). That stated, under no circumstance does a prohibition or regulation unavailable against all magically become constitutional against less than all. That is the whole point of prohibiting special legislation. The Act must be stricken in its entirety.

JUDICIAL DEFERENCE TO LEGISLATIVE CLASSIFICATIONS CANNOT BE RECONCILED WITH VIOLATION OF ILLINOIS CONSTITUTION (1970) ART. IV, SEC. 8(D).

Rational basis analysis is tethered to judicial deference to the legislative classifications. The special concurrence (*other grounds*) of Justice Garman in *People v Burns* (majority struck law on facial attack) implied the underpinnings to deference in the following: "Finally, facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being **implemented in a manner consistent with the Constitution**." *People v. Burns*, 2015 IL 117387, P.50.(*emphasis added*). While the trial court denied the challenge to the Act based on the three readings requirements of Ill. Const. (1970) Art. IV, Section 8(d), the fact that the Act was not implemented in a manner consistent with the Constitution undermines deference for purposes of testing equal protection and special legislation challenges, above. "The three-reading requirement ensures that the legislature is fully aware of the contents of the bills upon which they will vote and allows the lawmakers to debate the legislation. Equally relevant to the three-reading rule is the opportunity for the public to view and read a bill prior to its passage thereby allowing the public an opportunity to communicate either their concern or support for proposed legislation with their elected representatives and senators. Taken together, two foundations of the bedrock of democracy are decimated by failing to require the lawmakers to adhere to the constitutional principle." *Accuracy Firearms v. Pritzker*, 2023 IL App (5th) 230035, *P43. Here, Defendants seek deference to a legislature acting inconsistently with the Constitution. Any presumption of compliance with constitutional requirements in the passage of the Act is readily overcome. *Id.* at 42. (C.19-21) Here, the Act seeks to re-write fundamental rights under the guise of the will of the people when, in fact, that claim is false. For purposes of legislative deference, it is pure fiction to presume deliberative rationale for an enactment

to survive constitutional attack on another basis. Here, the legislature did not earn its deference. For purposes of rejecting deference to support the Act on equal protection or special legislation grounds, under any level of scrutiny, non-compliance with the constitutional requirements of Ill. Const. (1970) Art. IV, Section 8(d) should defeat deference or any presumption in favor of constitutionality.

Alternatively, the Ill. Const. (1970) Art. IV, Section 8(d), three readings violation presents an independent basis in the record to affirm the judgment below. (Count II of Complaint and, re-alleged in Counts IV and V upon which Judgment based). The majority in *Accuracy Firearms v. Pritzker*, [2023 IL App (5th) 230035 *46] invited this Court to revisit the issue with respect to the egregious violations alleged in the passage of this Act, as do Plaintiffs herein.

In *Geja's Café*, this Court stated:

> Plaintiffs urge us to abandon the enrolled bill doctrine because history has proven that there is no other way to enforce the constitutionally mandated three-readings requirement. While plaintiffs make a persuasive argument, we decline their invitation. We do so because, for today at least, we feel that the doctrine of separation of powers is more compelling. However, we defer to the legislature hesitantly, because we do not wish to understate the importance of complying with the Constitution when passing bills. If the General Assembly continues its poor record of policing itself, we reserve the right to revisit this issue on another day to decide the continued propriety of ignoring this constitutional violation.
> *Geja's Cafe v. Metropolitan Pier & Exposition Authority*, 153 Ill.2d 239, 260 (1992).

The General Assembly was not persuaded by the admonition in *Geja*, and its record of "blatant disregard" for the three-readings rule continues. (C.273). Indeed, Defendants cited eight cases, before and after *Geja*, in which the appellate courts witnessed the legislature simply ignore Article IV, section 8(d). (C.320-22) But, this law infringes a fundamental, individual, enumerated right. *Guns Save Life, Inc. v. Ali*, 2021 IL 126014, ¶¶ 27-29. Separation of powers should not be confused with absconding from the duty to

check the abuses of the legislative branch by the judicial branch. Article IV, Section 8(d) defines the legislative process to which the people consent. Few cases trigger the command of the people for fidelity to the Constitution more than a situation where the legislative branch abuses one constitutional mandate to enable the infringement of other constitutional mandates. At what point does "separation of powers" become tolerance of lawlessness? Legitimacy of government suffers and, along with it, the integrity of each of the respective branches of government. The record supports the declaration of the Acts' constitutional invalidity on this basis, as well.

CONCLUSION

For one or more of the reasons set forth above or for any reason appearing of Record, the Plaintiffs respectfully request that this Court affirm the declaration of facial invalidity of the Act, 720 ILCS 5/24- 1.9 and 1.10, and for such other relief authorized under Illinois Supreme Court Rule 366(a)(1) or (5).

Respectfully submitted,

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April 13, 2023

CERTIFICATE OF COMPLIANCE

I certify that this Brief conforms to the requirements of Rule 341(a) and (b). The length of the Brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the Brief under Rule 342(a), is 10,566 words.

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CERTIFICATE OF FILING AND SERVICE

I certify that on April 13. 2023, I electronically filed the foregoing **Brief of Plaintiffs-Appellees** with the Clerk of the Court for the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system and that they will thus be served by the Odyssey eFileIL system, with a courtesy copy transmitted by e-mail on April 13, 2023.

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VERIFICATION

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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