

No. _____

IN THE
SUPREME COURT OF ILLINOIS

ACCURACY FIREARMS, LLC, et al., ¹	)	Petition for Leave to Appeal from
	)	the Appellate Court of Illinois,
Plaintiffs-Respondents,	)	Fifth Judicial District,
	)	No. 5-23-0035
v.)	
)	
Governor JAY ROBERT PRITZKER,)	
and Attorney General KWAME RAOUL,)	
in their official capacities,	)	Interlocutory Appeal from the
	)	Circuit Court for the Fourth
Defendants-Petitioners,	)	Judicial Circuit, Effingham
	)	County, Illinois,
and	)	No. 2023-MR-4
)	
EMANUEL CHRISTOPHER WELCH,)	
in his capacity as Speaker of the House;)	
and DONALD F. HARMON, in his)	
capacity as Senate President,	)	The Honorable
	)	JOSHUA MORRISON,
Defendants.	)	Judge Presiding.

**EMERGENCY MOTION FOR EXPEDITED CONSIDERATION
OF PETITION FOR LEAVE TO APPEAL AND ANY
SUBSEQUENT PROCEEDINGS ON APPEAL**

Defendants-Petitioners Governor Pritzker and Attorney General Raoul (“Petitioners”), in their official capacities, respectfully move this Court, on an emergency basis, pursuant to Illinois Supreme Court Rule 311(b), for an order expediting the Court’s consideration of their concurrently submitted petition for

¹ The caption to the appellate court decision, which is in the appendix to the petition for leave to appeal, contains a complete list of plaintiffs-respondents. A1-12.

leave to appeal (“PLA”) and all ensuing proceedings. In support of this motion, Petitioners attach a verification by certification and state the following.

BACKGROUND

1. As described more fully in Petitioners’ PLA, this appeal concerns the constitutionality of Public Act 102-1116, and specifically its restrictions on the possession and sale of assault weapons and “large capacity ammunition feeding device[s]” (“LCMs”).

2. As relevant here, beginning January 10, 2023, the Act prohibits the knowing manufacture, delivery, sale, import, or purchase of assault weapons or LCMs, except sales to persons in other States or authorized to possess them. 720 ILCS 5/24-1.9(b) & 1.10(b). The Act also prohibits possession of assault weapons beginning on January 1, 2024, though persons who lawfully possessed them as of January 10, 2023, may continue to possess as long as they provide an endorsement affidavit to the State Police by January 1, 2024, *id.* 5/24-1.9(c)-(d). Similarly, while the Act prohibits possession of LCMs as of April 10, 2023, those who already possessed them may continue to do so. *Id.* 5/24-1.10(c)-(d). The Act also contains exemptions for those who either (1) are in certain professions that are required by law to obtain certain firearms training and qualifications, or (2) must use firearms in the course of their official duties. *Id.* 5/24-1.9(e), 1.10(e).

3. Respondents, businesses that seek to sell assault weapons and LCMs, and individuals who either own or wish to obtain them, filed an action in the circuit court alleging that the Act violates the Illinois Constitution. On January 20, 2023,

the circuit court entered a temporary restraining order (“TRO”) enjoining enforcement of the Act as to Respondents. SR2015.² In a 2-1 decision, the appellate court affirmed the TRO on January 31, 2023, holding that Respondents showed that they were likely to succeed on the merits of their equal protection challenge to the Act and had otherwise satisfied the requirements for a TRO. A1-47. Since the appellate court’s decision, other circuit courts have entered similar TROs in reliance on that decision, such that the Act is now enjoined against approximately 6,438 individuals and 158 businesses. A85. As the dissenting justice noted, however, the majority’s determination that Respondents were likely to succeed on their equal protection claim conflicts with this Court’s binding precedent in at least two respects.

4. First, the majority concluded that the guarantee of the right to bear arms the Illinois Constitution, Ill. Const. art. I, § 22, is “fundamental” for purposes of an equal protection claim, and thus subjects the Act to strict scrutiny. A34. But this Court held precisely the opposite in *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483 (1984). Specifically, the Court concluded that the right to bear arms secured by the Illinois Constitution is not fundamental and rejected an equal protection claim challenge to a municipality’s firearms regulation after applying rational basis review. *See id.* at 509-11. The majority disregarded *Kalodimos* by concluding not only that it was wrongly decided, but also that this Court had silently “abandoned” it. A34. As the dissent pointed out, however, the majority lacked authority to reach either of

² The supporting record filed in the appellate court is cited as “SR__,” and the appendix to the petition for leave to appeal is cited as “A__.”

these conclusions because this Court alone has the authority to decide whether its decisions remain good law. A44-47.

5. Second, as the dissent also noted, the majority departed from this Court's equal protection precedent, including *People v. Masterson*, 2011 IL 110072, ¶ 24, by not assessing whether Respondents were similarly situated to the relevant comparison group (here, individuals exempted from the Act's regulations on possessing assault weapons and LCMs), notwithstanding this Court's directives that such a showing is a necessary element of an equal protection claim. A43. And Respondents were not similarly situated to the individuals exempted from the Act, which consist of either those who are required by law to undergo certain firearms training (*e.g.*, peace officers) or who are required to possess assault weapons in the scope of their official duties (*e.g.*, members of the military).

6. Petitioners have filed a PLA to this Court from the appellate court's opinion under Illinois Supreme Court Rule 315. They have also filed an emergency motion for leave to file an oversize PLA and for the petition to stand as their opening brief in the event the petition is granted.

DISCUSSION

7. The Court should expedite its consideration of Petitioners' PLA and any ensuing proceedings in this matter. Through the Act, the Illinois General Assembly sought to protect the public from the dangers of mass shootings by limiting the number of new assault weapons and LCMs, the weapons and magazines most responsible for such shootings, in circulation, while respecting the property interests

of existing legal owners of assault weapons and LCMs. In the approximately three weeks since the appellate court's decision, however, approximately 6,438 individuals and 158 gun stores in four lawsuits have obtained TROs that allow them to purchase or sell new assault weapons and LCMs. A85. That number is likely to grow if the appellate court's decision remains unreviewed by this Court. The continued proliferation of these weapons and magazines while the appellate court's erroneous decision is allowed to stand undermines the Act's goals of preventing mass shootings and otherwise enhancing public safety.

8. Given the seriousness of the issues raised by this case and the urgency associated with resolving the questions presented by it, Petitioners request that the Court enter an order providing for expedited consideration of the PLA and any subsequent proceedings on appeal.

9. To facilitate this process, Petitioners have concurrently filed a motion for leave to file an oversize PLA, which they ask this Court to accept as their opening brief on appeal if the petition is granted. Petitioners also request that the Court direct Respondents to file an answer on an expedited basis and provide that any such answer, not to exceed 15,000 words or 50 pages, would then stand as Respondents' response brief on appeal if the petition is granted. In addition, Petitioners stand prepared to file a reply brief on a date that would allow the scheduling of oral argument in this appeal during the May 2023 term of this Court.

10. Petitioners specifically suggest that the Court enter an order providing that their opening brief be filed *instanter* as of the date that, and in the event that,

this Court grants their PLA; and entering the following schedule: Respondent's answer (to stand as a response brief) due by April 3, 2023, Petitioners' reply brief due by April 24, 2023, and oral argument during the May 2023 term of this Court.

CONCLUSION

WHEREFORE, Defendants-Petitioners ask this Court to enter an order under Illinois Supreme Court Rule 311(b) providing for expedited consideration of the petition for leave to appeal as specifically set forth in paragraph 10 above, or on any other schedule the Court deems appropriate.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

By: /s/ Leigh J. Jahnig
LEIGH J. JAHNIG
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 793-1473 (office)
(773) 590-7877 (cell)
CivilAppeals@ilag.gov (primary)
Leigh.Jahnig@ilag.gov (secondary)

VERIFICATION BY CERTIFICATION

I, LEIGH J. JAHNIG, state the following:

1. I am a citizen of the United States over the age of 18. My current business address is 100 West Randolph Street, 12th Floor, Chicago, Illinois 60601. I have personal knowledge of the facts stated in this verification by certification. If called upon, I could testify competently to these facts.

2. I am an Assistant Attorney General in the Civil Appeals Division of the Office of the Attorney General of the State of Illinois, and I am one of the attorneys representing Defendants-Petitioners in this matter. I submit this verification in support of Defendants-Petitioners emergency motion for expedited consideration of the petition for leave to appeal and any subsequent proceedings on appeal, pursuant to Illinois Supreme Court Rule 311(b). The factual statements made in the motion are true and correct to the best of my knowledge, information, and belief.

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.

Executed on February 24, 2023.

/s/ Leigh J. Jahnig
LEIGH J. JAHNIG
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 793-1473 (office)
(773) 590-7877 (cell)
CivilAppeals@ilag.gov (primary)
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IN THE
SUPREME COURT OF ILLINOIS

<p>ACCURACY FIREARMS, LLC, et al.,</p> <p style="padding-left: 40px;">Plaintiffs-Respondents,</p> <p style="padding-left: 80px;">v.</p> <p>Governor JAY ROBERT PRITZKER, and Attorney General KWAME RAOUL, in their official capacities,</p> <p style="padding-left: 40px;">Defendants-Petitioners,</p> <p style="padding-left: 80px;">and</p> <p>EMANUEL CHRISTOPHER WELCH, in his capacity as Speaker of the House; and DONALD F. HARMON, in his capacity as Senate President,</p> <p style="padding-left: 40px;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Petition for Leave to Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-23-0035</p> <p>Interlocutory Appeal from the Circuit Court for the Fourth Judicial Circuit, Effingham County, Illinois, No. 2023-MR-4</p> <p>The Honorable JOSHUA MORRISON, Judge Presiding.</p>
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ORDER

THIS CAUSE COMING TO BE HEARD on motion of Defendants-Petitioners to expedite consideration of the petition for leave to appeal,

IT IS HEREBY ORDERED that the motion is ALLOWED/ DENIED.

IT IS FURTHER ORDERED that the following schedule shall govern the proceedings in this appeal in the event the petition for leave to appeal is granted:

The petition for leave to appeal is deemed Defendants-Appellants' opening brief. Plaintiffs-Appellees shall file their answer to the petition for leave to appeal, which shall also serve as their response brief if the petition is granted, on or before April 3, 2023. Plaintiffs-Appellees' answer shall be limited to 15,000 words or 50 pages. Defendants-Appellants shall file any reply on or before April 24, 2023. If the petition is granted, oral argument will be scheduled for the May 2023 term of court.

ENTER:

JUSTICE

JUSTICE

JUSTICE

JUSTICE

JUSTICE

JUSTICE

JUSTICE

DATED: _____

LEIGH J. JAHNIG
100 West Randolph Street, Chicago, Illinois 60601
CivilAppeals@ilag.gov (primary)
Leigh.Jahnig@ilag.gov (secondary)

CERTIFICATE OF FILING AND SERVICE

I certify that on February 24, 2023, I electronically filed the foregoing **Emergency Motion to Expedite Consideration of Petition for Leave to Appeal and Any Subsequent Proceedings on Appeal**, with the Clerk of the Court for the Supreme Court of Illinois, by using the Odyssey eFileIL system.

I further certify that that the other participant in this appeal, named below, is not a registered service contact on the Odyssey eFileIL system, and that on February 24, 2023, I served him by transmitting a copy from my e-mail address to the primary and secondary e-mail addresses designated by that participant.

Thomas G. DeVore
tom@silverlakelaw.com

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.

/s/ Leigh J. Jahnig
LEIGH J. JAHNIG
Assistant Attorney General
100 West Randolph Street
12th Floor
Chicago, Illinois 60601
(312) 793-1473 (office)
(773) 590-7877 (cell)
CivilAppeals@ilag.gov (primary)
Leigh.Jahnig@ilag.gov (secondary)