E-FILED
4/14/2023 11:35 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

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,	)	
Plaintiff-Appellees,	)	Direct Appeal from the Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois
v.	)	
Governor JAY ROBERT PRITZKER, in his official capacity; KWAME RAOUL, in his capacity as Attorney General; EMANUEL CHRISTOPHER WELCH, in his capacity as Speaker of the House; and DONALD F. HARMON, in his capacity as Senate President,	)	No. 2023-CH-3
Defendant-Appellants.	)	Hon. Rodney S. Forbes, Judge Presiding

MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE* PARTY PLAINTIFFS IN EFFINGHAM COUNTY CAUSE 2023-MR-04 IN SUPPORT OF PLAINTIFF – APPELLEES

The undersigned, pursuant to Illinois Supreme Court Rule 345(a), respectfully request leave to file a brief in this matter as *Amici Curiae*, Party Plaintiffs in Effingham County, IL Cause 2023-MR-04, in support of the Plaintiff-Appellees. In support of this Motion, *Amici* state the following:

1. This appeal concerns the constitutionality of Public Act 102-1116 (the so-called "Assault Weapons Ban," and hereinafter, "the Act").

2. The *Amici* are the in excess of 7,000 party plaintiffs in the consolidated matter in Effingham County, IL which is captioned Accuracy Firearms, LLC et al. v. Pritzker et al. 2023-MR-04.

3. The matter currently under appeal is virtually identical to the matter pending in Effingham County, IL and as such the *Amici* have a legal interest identical those of the Plaintiffs-Appellees.

4. Therefore, each of the *Amici* has an inherent interest in the outcome of this matter.

5. This brief will assist the Court in understanding and considering the position of the *Amici* on an important constitutional matter not being raised by the Plaintiffs-Appellees, thereby providing this Honorable Court with a meaningful position regarding the constitutionality of this law from the procedural and not just substantive position.

6. This brief develops the argument that the Act is unconstitutional because it was passed in blatant violation of procedural constitutional safeguards. This brief supports that argument by a close examination of relevant Supreme Court precedent with a particular review of the legislatures continued disregard of clear warnings from this Honorable Court.

7. In sum, the *Amici* have a substantial interest in this matter which is identical to their pending matter in Effingham County and can assist this Court by presenting ideas and insights not being presented by the parties to this case.

8. This motion is filed and the proposed brief is submitted on or before the due date of Plaintiffs-Appellee's brief in this case.

9. A proposed Order and copy of the undersigned's proposed brief as *Amici Curiae* is attached hereto.

Wherefore, the aforementioned *Amici* respectfully request this Court grant leave to file the proposed brief as *Amici Curiae*, in support of Plaintiffs-Appellees in this matter.

Respectfully submitted,

By: /s/ Thomas G. DeVore
Thomas G. DeVore
Silver Lake Group, Ltd.
Attorney for *Amici Curiae*
ARDC #06305737
314 N. Monroe St.
Litchfield, Illinois 62056
(217) 324-6147

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,	)	
Plaintiff-Appellees,	)	Direct Appeal from the Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois
v.	)	
Governor JAY ROBERT PRITZKER, in his official capacity; KWAME RAOUL, in his capacity as Attorney General; EMANUEL CHRISTOPHER WELCH, in his capacity as Speaker of the House; and DONALD F. HARMON, in his capacity as Senate President,	)	No. 2023-CH-3
Defendant-Appellants.	)	Hon. Rodney S. Forbes, Judge Presiding

DECLARATION OF ATTORNEY THOMAS G. DEVORE

I, Thomas G. DeVore, certify pursuant to 735 ILCS 5/1-109 as follows:

1. I am the duly sworn attorney and am licensed to practice law in Illinois.

2. I serve as lead counsel to the *Amici Curiae* who are the in excess of 7,000 party plaintiffs in the pending Effingham County, IL consolidated gun case which is identical to this matter, whom submit this Brief in Support of Plaintiffs-Appellees.

3. I certify that upon information and belief, the facts set forth in the accompanying Motion for Leave to File a Brief as *Amici Curiae* in Support of Plaintiffs-Appellees are true and correct.

Under penalties as provided by law pursuant to Section 5/1-109 of the Code of Civil Procedure, the undersigned counsel certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

By: /s/ Thomas G. DeVore
Thomas G. DeVore
Silver Lake Group, Ltd.
Attorney for *Amici Curiae*
ARDC #06305737
314 N. Monroe St.
Litchfield, Illinois 62056
(217) 324-6147

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,	)	
Plaintiff-Appellees,	)	Direct Appeal from the Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois
v.	)	
Governor JAY ROBERT PRITZKER, in his official capacity; KWAME RAOUL, in his capacity as Attorney General; EMANUEL CHRISTOPHER WELCH, in his capacity as Speaker of the House; and DONALD F. HARMON, in his capacity as Senate President,	)	No. 2023-CH-3
Defendant-Appellants.	)	Hon. Rodney S. Forbes, Judge Presiding

NOTICE OF FILING

To: See attached service list

PLEASE TAKE NOTICE that on April 14, 2023, Party Plaintiffs of Effingham County Cause, 2023-MR-04, as proposed *Amici Curiae*, filed via the Court approved E-File system in the Supreme Court of Illinois the **Motion for Leave to File Brief of *Amici Curiae* and the attached Brief of *Amici Curiae*, in Support of Plaintiff Appellees**, a copy of which is hereby served upon you.

By: /s/ Thomas G. DeVore
Thomas G. DeVore
Silver Lake Group, Ltd.
Attorney for *Amici Curiae*
ARDC #06305737
314 N. Monroe St.
Litchfield, Illinois 62056
(217) 324-6147

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on April 14, 2023, I caused the foregoing **Motion for Leave to File a Brief as *Amici Curiae* in Support of Plaintiffs-Appellees and the attached Brief of *Amici Curiae*, in Support of Plaintiffs-Appellees** to be submitted to the Clerk of the Supreme Court of Illinois using the Court's electronic filing system. The undersigned further certifies that on April 14, 2023, I caused a copy of the above-referenced Motion and Brief to be served upon the parties listed in the attached service list through the Court approved electronic-filing and service system.

Upon acceptance of the Brief by the Court's electronic-filing system, the undersigned will mail the original Brief, plus twelve copies via the United States Postal Service to:

Clerk of the Supreme Court of Illinois
Supreme Court Building
200 E. Capitol Ave.
Springfield, IL 62701

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

By: /s/ Thomas G. DeVore
Thomas G. DeVore
Silver Lake Group, Ltd.
Attorney for *Amici Curiae*
ARDC #06305737
314 N. Monroe St.
Litchfield, Illinois 62056
(217) 324-6147

Service List:

Counsel for Defendant-Appellants

Counsel for Governor Pritzker and Attorney General Raoul
Leigh J. Jahnig
Assistant Attorney General
100 West Randolph St.
12th Floor
Chicago, IL 60601
(312) 793-1473 (office)
(773) 590-7877 (cell)
Leigh.Jahnig@ilag.gov

Counsel for Speaker of the House Welch
Adam R. Vaught
Special Assistant Attorney General
Kilbride & Vaught, LLC
82 South LaGrange Rd.
Suite 208
LaGrange, Illinois 60525
(217) 720-1961
avaught@killbridevaught.com

Counsel for Senate President Harmon
Luke A. Casson
Special Assistant Attorney General
Andreou & Casson, Ltd.
661 West Lake St.
Suite 2N
Chicago, Illinois 60661
(312) 935-2000
lcasson@andreou-casson.com

Devon C. Bruce
Special Assistant Attorney General
Power Rogers, LLP
70 West Madison Street
Suite 5500
Chicago, Illinois 60602

(312) 236-9381
dbruce@powerrogers.com

Counsel for Plaintiffs-Appellees

Counsel on Appeal for Appellees
Jerrold H. Stocks
Featherstun, Gaumer, Stocks, Flynn & Eck, LLP
101 South State Street, Suite 240
Post Office Box 1760
Decatur, IL 62525
(217) 429-4453
jstocks@Decatur.legal

Brian D. Eck
Featherstun, Gaumer, Stocks, Flynn & Eck, LLP
101 South State Street, Suite 240
Post Office Box 1760
Decatur, IL 62525
(217) 429-4453
beck@Decatur.legal

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,	)	
Plaintiff-Appellees,	)	Direct Appeal from the Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois
v.	)	
Governor JAY ROBERT PRITZKER, in his official capacity; KWAME RAOUL, in his capacity as Attorney General; EMANUEL CHRISTOPHER WELCH, in his capacity as Speaker of the House; and DONALD F. HARMON, in his capacity as Senate President,	)	No. 2023-CH-3
Defendant-Appellants.	)	Hon. Rodney S. Forbes, Judge Presiding

ORDER

Cause coming before the Court on the Motion for Leave to File Brief of *Amici Curiae* Party Plaintiffs of Effingham County, IL cause 2023-MR-04 in Support of Plaintiff-Appellees, due notice having been given, and the Court having been advised,

IT IS HEREBY ORDERED that this Motion is:

_____ Granted

_____ Denied

Date:_____

ENTERED:

_____

Justice

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,	)	
Plaintiff-Appellees,	)	Direct Appeal from the Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois
v.	)	
Governor JAY ROBERT PRITZKER, in his official capacity; KWAME RAOUL, in his capacity as Attorney General; EMANUEL CHRISTOPHER WELCH, in his capacity as Speaker of the House; and DONALD F. HARMON, in his capacity as Senate President,	)	No. 2023-CH-3
Defendant-Appellants.	)	Hon. Rodney S. Forbes, Judge Presiding

BRIEF OF *AMICI CURIAE* PARTY PLAINTIFFS IN EFFINGHAM COUNTY CAUSE 2023-MR-04 IN SUPPORT OF PLAINTIFFS – APPELLEES

Thomas G. DeVore
Silver Lake Law Group, Ltd.
Lead Attorney for *Amici Curiae*
314 N. Monroe
Litchfield, IL 62056
217-324-6147
tom@silverlakelaw.com

TABLE OF CONTENTS AND POINTS OF AUTHORITY

SUPREME COURT RULE 341(C) CERTIFICATE OF COMPLIANCE

CERTIFICATE OF FILING AND SERVICE

INTEREST OF *AMICI CURIAE*

This brief is filed on behalf of the in excess of 7,000 party plaintiffs in the consolidated matter currently pending in Effingham County, IL being 2023-MR-04.

The matter pending in Effingham County was filed prior to this matter. The Plaintiffs-Appellees in this cause merely copied and pasted the Effingham County case and filed it in Macon County, IL. For reasons unknown to the *Amici*, the Plaintiffs-Appellees have abandoned the procedural violations which are raised in all these cases in regard to how the Act was adopted. These blatant procedural violations deserve the attention of this Honorable Court as this law is unconstitutional on procedural grounds independently of the substantive violations raised to be raised by the Plaintiffs-Appellees as well as the 2nd Amendment issue raised by other Amici. Given this Court can affirm the Circuit Court ruling on any grounds in the record, judicial economy would be served by the Court considering this procedural claim now instead of waiting for it to present itself in the Effingham County appeal at a later date.

The Circuit Court, following binding precedent established in the *Amici's* Effingham County cause, struck down the Act on Equal Protection but did not address the issue of the procedural violation under the three readings rule of the Illinois Constitution because the Plaintiffs-Appellees chose not to raise it during summary judgment. Nonetheless, we focus this brief on the procedural violation because "a reviewing court can uphold the decision of the circuit court on any grounds which are called for by the record regardless of whether the circuit court relied on the grounds …." *Ultsch v. Illinois Mun. Ret. Fund*, 226 Ill. 2d 169, 192 (2007).

SUMMARY OF ARGUMENT

The argument presented by the *Amici* is straightforward and succinct. Quite simply, the time has come, just as it has come recently for many other states in our nation, for this Honorable Court to put an end to the blatant and utter disregard by the Illinois Legislature for the constitutional procedural safeguards put in place regarding the passage of legislation. Just as another pending appeal which is being considered by this Honorable Court regarding the SAFE-T Act, contains a legislative record evidencing the blatant disregard for the procedural requirements mandated upon lawmakers by the Illinois Constitution, the legislative record in this case also evidences the same. There is no better explanation as to why this Honorable Court should revisit this issue now than has been laid out in the Appellate Court opinion issued in the *Amici's* case being *Accuracy Firearms, LLC v. Pritzker*, 2023 IL App (5th) 230035, 2023 WL 1930130, and their reasoning will be discussed in more detail herein.

ARGUMENT

I. PUBLIC ACT 102-1116, IS VOID FOR BEING PASSED IN VIOLATION OF ARTICLE IV, SECTION 8(d) OF THE ILLINOIS CONSTITUTION

Article IV, Section 8 of the Illinois Constitution provides, in pertinent part, that "a bill shall be read by title on three different days in each house." Ill. Const. 1970, art. IV, § 8(d). The Three Readings rule applies not only to the original bill, but to amendments when they represent a substantial departure from the original bill. In *Giebelhausen v. Daley*, 407 Ill. 25, 48 (1950), our supreme court held that the "complete substitution of a new bill under the original number, dealing with a subject which was not akin or closely allied to the original bill, and which was not read three times in each House, after it has

been so altered, [was a] clear violation of' a similar three-readings rule in the 1870 Constitution. See Ill. Const. 1870, art. IV, § 13 ("Every bill shall be read at large on three different days, in each house***.")." *Doe v. Lyft*, Inc., 2020 IL App (1st) 191328, ¶ 53 (1st Dist. 2021). [1]

The Enrolled Bill Doctrine has been subject to significant abuse by the General Assembly, which has not escaped the notice of this Court. In *Geja's Cafe v. Metro. Pier & Exposition Auth.*, 153 Ill. 2d 239, 260 (1992), this Court explained that, "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." Once again in *Friends of Parks v. Chicago Park Dist.*, 203 Ill. 2d 312, 329 (2003), this Court reiterated their concern, citing previous instances where it "noted . . . that the legislature had shown remarkably poor self-discipline in policing itself in regard to the three-readings requirement." This Court went on to say that while separation of powers concerns militate in favor of the enrolled-bill doctrine, our responsibility to ensure obedience to the constitution remains an equally important concern. *Id*.

Should this Court choose to address the issue, it ought to review the transcript of Effingham County, IL in which the *Amici* are the party plaintiffs, the record of which this Court can take judicial notice. In the transcript from the hearing on January 18, 2023, counsel for the Governor and Attorney General acknowledge the three-readings rule had

[1] There can be no doubt the state parties would argue that in fact the title of the Act was read three time. The suggestion will be the title never changes and as such the three-readings requirement was satisfied. This gamesmanship overlooks the fact that 100% of the substance changed thereby turning an insurance bill titled as such into a gun ban that has absolutely nothing to do with the continuing insurance title. Surely this Honorable Court would not allow such a game to be played in their Court making a mockery of the procedural mandates of the Illinois Constitution.

been violated in the passage of this Act, and then proclaim outright there is nothing the judiciary can do about it. [2]

The *Amici* respectfully request this Honorable Court find the time is now to address these significant constitutional violations. In *Accuracy* the Appellate Court stated, "we question the sagacity of continued adherence to the Illinois Supreme Court precedent in light of the legislature's continued blatant disregard of the court's warnings and the constitutional mandates." *Accuracy Firearms, LLC v. Pritzker*, 2023 IL App (5th) at 9. 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. *Id*. 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. *Id*. Taken together, two foundations of the bedrock of democracy are decimated by failing to require the lawmakers to adhere to the constitutional principle. *Id*. Allowing lawmakers to continue to ignore constitutional mandates under the enrolled-bill doctrine, knowing full well the constitutional requirements were not met, belittles the language of the oaths, ignores the need for transparency in government, and undermines the language of this state's constitution. *Id*. What more needs to be said than what was so eloquently articulated by the Appellate Court in *Accuracy* as to why this Honorable Court must now take up this issue.

[2] Not only are the prior warnings of this Court not being heeded, they are in fact being scoffed at as meaningless.

The absurdity of the continued deference to the blatant violations of Ill. Const. 1970, art. IV, § 8(d) under the enrolled bill doctrine can be gleaned by looking at another equally important procedural requirement. Ill. Const. 1970, art. IV, § 8(c) states in part, "No bill shall become a law without the concurrence of a majority of the members elected to each house." What if a bill did not receive a majority of votes in each chamber of the house, but was nonetheless certified by the Speaker of the House and Senate President. Would this Honorable Court still sit by and proclaim the enrolled bill doctrine precluded review and allow such a law to stand? There is no doubt in the eyes of the *Amici* this Court would not allow the legislature to hide behind the enrolled bill doctrine to defend a law which had not even received a majority vote in each chamber. The three-readings rule under 8(d) and the majority vote of each chamber of the house under 8(c) are equally demanding constitutional principles which this Court cannot continue to allow blatant and conscious disregard. Our foundational principles enshrined in the Illinois Constitution are being made a mockery by the Illinois Legislature and this Court is the only civilized redress available to the *Amici* to defend their rights.

Illinois is not the only state which has continued to face repeated ethical lapses associated with gut and replace legislation. In the recent past, many other states have addressed this issue and now demand compliance with the state constitutional mandates. See *Washington v. Department of Public Welfare of Pennsylvania*, 647 Pa. 220, 188 A.3d 1135 (2018); *State ex rel. Ohio AFL-CIO v. Voinovich*, 69 Ohio St.3d 225, 631 N.E.2d 582 (1994); *Bevin v. Commonwealth ex rel. Beshear*, 563 S.W.3d 74 (Ky. 2018); *League of Women Voters of Honolulu v. State*, 150 Hawai'i 182, 499 P.3d 382 (2021). It has been over two decades since this Court last warned the Illinois Legislature and not only has it

failed to listen, but it has become more emboldened and continues to pass "gut and replace" legislation on significant matters of public policy, and openly scoffs at the suggestion this Court can, or maybe it should be said would, do anything about it.

II. CONCLUSION

There is no doubt the subject matter of this Act is important. Gun legislation is a topic of serious debate and the equal protection violation found by the Appellate Court deserves serious attention in this appeal. However, there is an equally important issue present in this matter which impacts each and every citizen of Illinois regardless of his or her views on the substance of this bill. The manner in which important legislation is passed cannot and should be short-circuited in violation of constitutional mandates when it might be politically expedient for the political party in control of the process. Whether this law is substantively constitutional or not is a separate issue apart from the procedural issues raised by the *Amici*. The 5th Appellate District in *Accuracy* requested this Court address this continued abuse of the Illinois Legislature and the *Amici* also ask this Court to take the matter up in this cause should it become necessary.

If the Illinois Legislature believed the substance of this Act was good public policy, then why wait until two days before the final passage of the bill and gut and replace an innocuous insurance bill into a sweeping gun regulation of significant magnitude. Instead, for 345 days of the 347 days of this Acts life, it was a "nothingburger" change to the insurance code which assuredly got little to no attention by the general assembly or the general public. Specifically in this case, the public record shows the "gut and replace" occurred on a Sunday afternoon and by the following Tuesday evening, barely 48-hours later, the Governor signed this sweeping legislation into law.

There is no doubt the controlling party of the Illinois Legislature, being in the super-majority, can pass any legislation which it deems prudent. That being the case the only justification for their blatant disregard for the constitutional procedural requirements is for the nefarious purposes laid out by the Appellate Court in *Accuracy*. It is to inhibit the whole legislature, including the minority party, from being fully aware of the contents of the bills upon which they will vote. It is to disallow all duly elected lawmakers from being able to debate the legislation on each of the days in which it is read in each chamber. Most egregiously, it is to avoid giving full opportunity for the public to view and read a bill prior to its passage and allowing the public an opportunity to communicate either their concern or support for proposed legislation with their elected representatives and senators. Every member of this Honorable Court, and every intellectually honest adult to consider the matter, knows full well this is the underlying purpose of this gamesmanship, and it is far past time for this Court to put an end to it. [3]

The *Amici* respectfully asks this Court to end this practice, follow the lead of several other States, and abandon the enrolled bill doctrine in favor of demanding compliance with the procedural mandates of the Illinois Constitution. It has been over two decades since this Court last considered this issue, and its warnings have continued to be ignored, so if the time is not now, then perhaps it is best to advise the People of Illinois that the time will

[3] The full legislature, and even the public, had barely 48 hours to digest and consider this Act. Should the Court demand compliance with the Illinois Constitution this timeframe is extended to six days. The three-readings rule contemplates and in fact demands this six day time frame to prohibit the very abuses being engaged in by the controlling party. If this Court is to continue in its refusal to stop this abuse, the foundational principles of this Republic are being rendered meaningless and Illinois national reputation as a corrupt state will continue to be bolstered by the actions or inactions of all our branches of government.

never be. As such, if this Honorable Court is not prepared to take this step and invalidate this law based upon the open and blatant disregard for the compulsory mandates of Illinois Constitution, then the *Amici* respectfully ask this Court to proclaim as much so the people can be certain no recourse will ever exist in their co-equal judicial branch to enforce these Constitutional procedural demands placed upon their legislature.

Finally, should this Court agree with the trial court, which followed the binding precedent of *Accuracy*, and find strict scrutiny applies to the pending equal protection matter then it seems readily apparent the law would be unconstitutional and the procedural claim raised by the *Amici* may not even need to be addressed at least for now. For what it's worth to this Court, it seems undisputable that the Act implicates a fundamental right and as such strict scrutiny applies. The analysis by the *Accuracy* court, which the trial court in this matter had to follow, analyzed as to how the implication of a fundamental right is clear in this case. [4] Regardless, should this Court somehow overturn *Accuracy* and find the law does not implicate a fundamental right, its only recourse is to send the matter back to the trial court. [5] If, for some reason this Court finds rational basis is the standard of

[4] It defies comprehension as to how the state parties can present an argument that this Act does not implicate a fundamental right. It's the substance of the Act and the rights it implicates which determines that issue. It is irrelevant this cause was not directly brought as a gun claim. As the trial court stated in the White County case, now consolidated into the *Amici's* case, if the state parties argument made any sense, it would vitiate any strict scrutiny analysis on an equal protection claim.

[5] The procedural posture of this case is inconsistent with traditional jurisprudence. There were not cross motions for summary judgment filed by both sides on all issues. The Defendants-Appellants did not ask for summary judgment on the equal protection claim. As such, this Court review is limited at this stage to ruling whether or not summary judgment was proper in favor of the Plaintiffs-Appellees, and it is currently not considering whether any denial of relief against the Defendants-Appellants was in error. If this Court finds the grant of summary judgment in favor of the Plaintiffs-Appellees was in error, and summary judgment cannot be upheld on any legal grounds as the *Amici*

review, the record is incomplete as the circuit court did not even consider whether the Plaintiffs-Appellees could meet their burden of rational basis. Certainly, the Defendants-Appellants aren't asking this Court to consider a prayer for relief granting judgment in their favor finding the law constitutional under rational basis review when no such relief was ever asked for by them in the trial court. Justice would demand the Plaintiffs-Appellees be afforded the opportunity to do discovery and to develop a record and have their day in court to meet the rational basis standard. [6] This Court has no record to even remotely address a rational basis analysis and would have to remand. The Defendants-Appellants have not adduced one fact in support of presenting a rational basis for which the Plaintiffs-Appellees could have even responded if they had a chance. No affidavits, no sworn pleadings. Just the conjecture of their counsel and it is well established in jurisprudence that attorneys cannot create their own evidence. [7] The reason this is important to consider is due to the fact that the Court could circumvent all of that unnecessary use of judicial resources building a record for rational basis review, by finding the law is nonetheless unconstitutional for the reasons argued by the *Amici* rendering it a moot issue as to whether or not the Plaintiffs-Appellees could prove a rational basis does not exist if in fact this Court somehow concluded such to be the standard of review.

---

suggest, the only relief available to the Defendants-Appellants would be to send the matter back to the circuit court to proceed consistent with this Courts ruling.

[6] If rational basis is the standard, then Plaintiffs-Appellees have the burden to show the law is not rational, and is otherwise arbitrary and capricious. That question is presently impossible for this Court to even consider without any developed record.

[7] If this Court even got to rational basis review, there is nothing in the record to evidence the legitimate government purpose or the basis of the classification scheme. The attorneys arguments is not evidence and not one Defendant-Appellant has stepped forward to swear anything into the record for this Court.

WHEREFORE, *Amici* prays that the Honorable Court affirm the Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois, and hold the Act unconstitutional under Ill. Const. 1970, art. IV, § 8(d).

Respectfully submitted,

By: /s/ Thomas G. DeVore

Thomas G. DeVore
Silver Lake Group, Ltd.
Attorney for *Amici Curiae*
ARDC #06305737

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this 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 pages.

/s/ Thomas G. DeVore
Thomas G. DeVore

CERTIFICATE OF FILING & SERVICE

The undersigned certifies under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct and that the foregoing **Motion for Leave to File a Brief as *Amici Curiae* in Support of Plaintiffs-Appellees and the attached Brief of *Amici Curiae*, in Support of Plaintiffs-Appellees** was electronically filed with the Illinois Supreme Court using the court's Odyssey eFileIL system, and was served on all counsel of record, listed below, via Odyssey eFile system on April 14, 2023.

/s/ Thomas G. DeVore
Thomas G. DeVore

Service List:

Counsel for Defendant-Appellants

Counsel for Governor Pritzker and Attorney General Raoul
Leigh J. Jahnig
Assistant Attorney General
100 West Randolph St.
12th Floor
Chicago, IL 60601
(312) 793-1473 (office)
(773) 590-7877 (cell)
Leigh.Jahnig@ilag.gov

Counsel for Speaker of the House Welch
Adam R. Vaught
Special Assistant Attorney General
Kilbride & Vaught, LLC
82 South LaGrange Rd.
Suite 208
LaGrange, Illinois 60525
(217) 720-1961
avaught@killbridevaught.com

Counsel for Senate President Harmon
Luke A. Casson
Special Assistant Attorney General
Andreou & Casson, Ltd.
661 West Lake St.
Suite 2N
Chicago, Illinois 60661
(312) 935-2000
lcasson@andreou-casson.com

Devon C. Bruce
Special Assistant Attorney General
Power Rogers, LLP
70 West Madison Street
Suite 5500
Chicago, Illinois 60602
(312) 236-9381
dbruce@powerrogers.com

Counsel for Plaintiffs-Appellees

Counsel on Appeal for Appellees
Jerrold H. Stocks
Featherstun, Gaumer, Stocks, Flynn & Eck, LLP
101 South State Street, Suite 240
Post Office Box 1760
Decatur, IL 62525
(217) 429-4453
jstocks@Decatur.legal

Brian D. Eck
Featherstun, Gaumer, Stocks, Flynn & Eck, LLP
101 South State Street, Suite 240
Post Office Box 1760
Decatur, IL 62525
(217) 429-4453
beck@Decatur.legal