**No. 129421**

**IN THE**
**SUPREME COURT OF ILLINOIS**

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| **ACCURACY FIREARMS, LLC *et al.*** | ) | **Petition for Leave to Appeal from** |
| | ) | **the Appellate Court of Illinois** |
| **Plaintiffs-Respondents,** | ) | **Fifth Judicial District** |
| | ) | **No. 5-23-0035** |
| **Vs.** | ) | |
| | ) | |
| **Governor JAY ROBERT PRITZKER, in his official capacity; and KWAME RAOUL, in his capacity as Attorney General,** | ) | |
| | ) | **Interlocutory Appeal from the** |
| | ) | **Circuit Court for the Fourth** |
| **Defendants-Petitioners.** | ) | **Judicial Circuit, Effingham** |
| | ) | **County, Illinois** |
| | ) | **No. 2023-MR-04** |
| **and** | ) | |
| | ) | |
| **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.** |

# PLAINTFFS-RESPONDENTS ANSWER TO PETITION FOR LEAVE TO APPEAL

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## INTRODUCTION

1) The lengthy request for appeal filed by the Defendants-Petitioners can be summarized as just another attempt by them to short-circuit any effort by the People of Illinois to thoroughly develop their case against HB 5471 as well as the unconstitutional procedures continually used by them to pass legislation.
2) As this Court is aware there are currently two matters pending in the state courts regarding the constitutionality of HB5471.
3) This matter which has now been consolidated with two others by order of this Court as well as the Macon County matter which has been appealed to this Court and is case no. 129453. [1]
4) Given the Defendants-Petitioners rushed this law through the legislature within two days there is absolutely no public record for this Court to review.
5) Given the Defendants-Petitioners have never filed any affidavits or other sworn pleadings in this case, there is no factual basis other than the verified allegations of the Plaintiffs-Respondents.
6) This Court should also note that Defendants Welch and Harmon are not present in this Court, nor have they filed anything but an entry of appearance in the trial court.

## ARGUMENT

7) There is only one reason, and one reason only, why leave to appeal is being sought in this Court and it is not for the reasons cited by the Defendants-Petitioners.

[1] The Macon County case currently under appeal in this Court is just a replica of this matter. In that case, the Plaintiff, an Illinois politician, merely copied and pasted the complaint in this matter and refiled it as his own.

8) That is to foreclose the Plaintiffs-Respondents efforts to adequately develop the record in this matter which will assuredly bring to light for this Court, and more importantly the People of Illinois, the glaring constitutional violations regarding lawmaking being undertaken in our state.

9) The Defendants-Petitioners filed document after document in the trial court and now filed a 59-page document in this Court making grand propositions about the public policy of this law, and public purpose of the exempt categories, yet none of that conjecture is supported in the public record or in any sworn pleadings in this case. [2]

10) The reason none of it is supported by the record is due to the fact that the Defendants passed this law, just as they passed the SAFE-T Act and other legislation, using the unconstitutional "gut and replace" procedures in violation of the Three-Readings Rule of the Illinois Constitution.

11) At 3:00 P.M. on a Sunday Senate President Don Harmon pushed through this gun legislation by gutting and replacing an insurance bill.

12) Within around 48-hours, the following Tuesday evening, the law was signed by the Governor.

13) This Court will have no committee debates, no floor debates, nor any other public record for which it can deduce the public interest which the legislature was seeking to further.

14) This Court will have no committee debates, no floor debates, nor any other public record for which it can deduce any facts in regard to the categories of exempt persons who are not subjected to this law. [3]

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[2] This Court is left to speculate about everything argued by the Defendants-Petitioners.
[3] In its brief, the Defendants-Petitioners cite newspaper articles to this Court about matters of great importance such as this law as the legislative record is devoid of any information.

15) While the attorneys for the Defendants-Petitioners have adduced conjecture regarding these matters, these are not facts.

16) Attorneys cannot create their own evidence. *Champion v. Knasiak*, 25 Ill.App.3d 192, 323 N.E.2d 62 (1974)

17) None of the Defendants-Petitioners conjecture is even supported by any affidavits from anyone who might have knowledge of any such facts.

18) Quite simply the same legislative gamesmanship which gave birth to recent laws such as this one, and the SAFE-T Act, is being deployed by the Defendants-Petitioners in the judicial branch to try and preserve their unconstitutional legislative tactics which have disenfranchised the citizens of Illinois from being able to participate in the legislative process for decades.

19) Two legal matters need to be addressed by this Court in this case: 1) procedural violations of lawmaking for violations of the three-readings clause and 2) equal protection for arbitrarily creating seven exempt categories of persons.

20) In order for this Court to do justice in this cause, it must have a thorough and complete record.

21) The last time this Court addressed the three readings clause was in 2003 where the Court continued to acknowledge the legislature is violating the constitution but the Court felt the record had not been adequately developed. *Friends of Parks v. Chicago Park Dist.*, 203 Ill.2d 312, 786 N.E.2d 161, 271 Ill.Dec. 903 (2003)

22) While the same poor discipline is of violating the three-readings clause is alleged in this case, the record below has not, however, been sufficiently developed to support or contradict this claim. *Id*.

23) The Court in *Friends of Parks* once again as it has many times in the last 30 years, "urged" the legislature to follow the three readings rule. *Id*.

24) In an attempt to sufficiently create a record for this Courts review, the Plaintiffs-Respondents propounded very straightforward requests to admit upon Speaker Welch and President Harmon to admit under oath the procedural manner of which this law proceeded through each of their chambers, yet each of them is objecting and refusing to answer to delay those discovery efforts in hopes this Court will foreclose them having to acknowledge their conduct. [4]

25) As for the three readings issues, this Court made it clear in *Friends of Parks* that it wants a record before it addresses this important constitutional issue, and that is exactly what the Plaintiffs-Respondents are trying to develop.

26) As for the equal protection issue, the Defendants-Petitioners gamesmanship should be even more glaringly obvious.

27) When this case was filed, the trial court only gave the Defendants-Petitioners one day to prepare for the TRO hearing.

28) In such a short amount of time, the Defendants-Petitioners had to come up with some reason for excluding seven categories of citizens from this law.

29) In such a short time, the Defendants-Petitioners had to come up with something to argue and the choice was made by someone to argue training was the distinction.

[4] The tactics being deployed by the Defendants-Petitioners are going on in this case as well as the Macon County case in their efforts to not have to answer for their conduct. Their "fast-tracked" efforts in this case and the Macon County case without creating a record is to try and get a ruling out of this Court which forecloses any opportunity by the Plaintiffs-Respondents in this case to make their best case. Whether this Court chooses to allow that or not, it must be noted this is what is really going on.

30) At some point, this Court will need to decide the standard of review in regard to equal protection.

31) Is it strict scrutiny or is it rational basis?

32) While the Appellate Court has concluded its strict scrutiny, the Defendants-Petitioners proffer is should be rational basis.

33) Therein in lies the very reason why this Court should not take this issue up now as the record needs to be completed before this Court addresses this issue.

34) The record in this case (nor the Macon County case for that matter) is adequate for adjudication should this Court rule that rational basis is the standard and here is why.

35) Under the rational basis standard, a court must determine whether the classification at issue is rationally related to a legitimate state interest. *Cutinello v. Whitley*, 161 Ill.2d 409, 641 N.E.2d 360, 204 Ill.Dec. 136 (1994)

36) Under rational basis, a statute will be upheld if any set of facts can be reasonably conceived which justify distinguishing the class to which the law applies from the class to which the statute is inapplicable. *Id*.

37) Under rational basis, the plaintiffs have the burden of establishing the unreasonableness of the legislative action. *Id*.

38) Under rational basis, the legislature does not have to make legislative findings or state its rational basis in the record. *Id*.

39) The *Cutinello* Court explained this standard by citing the federal jurisprudence on the topic.

40) The rational basis test does not require an explanation as it requires only that there be a reasonable relationship between the challenged legislation and a conceivable, and perhaps

unarticulated, governmental interest. *Nordlinger v. Hahn*, 505 U.S. 1, 112 S.Ct. 2326, 120 L.Ed.2d 1, 60 USLW 4563

41) Said another way, the equal protection clause does not demand for purposes of rational-basis review that a legislature or governing decisionmaker actually articulate at any time the purpose or rationale supporting its classification. *United States R.R. Retirement Board v. Fritz* (1980), 449 U.S. 166, 179, 101 S.Ct. 453, 461, 66 L.Ed.2d 368; *McDonald v. Board of Election Commissioners* (1969), 394 U.S. 802, 809, 89 S.Ct. 1404, 1408, 22 L.Ed.2d 739, 745–46.

42) However, here is where it gets tricky and explains why the Defendants-Petitioners desire review by this Court now without a developed record. [5]

43) While the legislative record can be silent and not actually articulate its rational basis, a Court's review does require that a purpose may conceivably or "may reasonably have been the purpose and policy" of the relevant governmental decisionmaker. (Emphasis Added) See *Nordlinger v. Hahn*, 505 U.S. at 15.

44) Under rational basis, the classificatory scheme chosen by legislative body should rationally advance a reasonable and identifiable governmental objective. *Schweiker v. Wilson*, 450 U.S. 221, 101 S.Ct. 1074, 67 L.Ed.2d 186.

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[5] Developing this record is how the Plaintiffs-Respondents are still successful in this Court even if it finds rational basis is the standard. A developed record will provide evidence that the classification scheme had nothing to do with training. The developed record will show that many of those in the classification scheme are not even trained with firearms, let alone the types of firearms banned in this law. The developed record will evidence the classification scheme was arbitrary and capricious and moreover will likely show the use of "training" as the justification for this Court was made up on the fly at a moment's notice. That is how the Plaintiffs-Respondents are successful in this Court even if rational basis is the standard of review which is why the Defendants-Petitioners desperately want this Court to intervene now.

45) The burden would be on the Plaintiffs-Respondents to show the classificatory scheme chosen by the Defendants-Petitioners does not rationally advance a reasonable and identifiable government objective. *Matthew v. Lucas*, 427 U.S. 495, 96 S.Ct. 2755, 49 L.Ed.2d 651

46) One of the ways in which the Plaintiffs-Respondents would satisfy that burden would be by providing proof that many in the classifications have no training whatsoever, or have no training on the types of weapons in the ban.

47) This Court would have facts in front of it which prove training had nothing to do with the exempt classification and it was in fact some other arbitrary reason for excluding them. [6]

48) That type of evidence is not only necessary for the Plaintiffs-Respondents to meet its burden should rational basis be the standard of review, this Court has a duty to ensure itself that training is an actual legitimate classification.

49) While there is an argument to be made on another day that training does not even further the alleged public purpose, the threshold question is to first conclude whether the training classification is even legitimate as applied to these categories.[7]

50) Without discovery being completed, this Court cannot even satisfy itself that the training classification is even legitimate.

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[6] While counsel for the Plaintiffs-Respondents is no more able to create his own evidence than counsel for the Defendants-Petitioners, it is worth noting for this Court that subpoenas have been issues to several politically connected organizations which will likely adduce the real reasons why these groups were exempt from this law. It is those communications which the Defendants-Petitioners don't want this Court to see.

[7] Again, while it's an argument for another day, under this classification scheme which is allegedly about training, a retired police officer is adequately trained to continue buying all of these types of banned weapons for the rest of his or her natural life but a retired Navy Seal, the greatest warriors on the planet, once he retires cannot exercise the same rights as the retired police officer. It is ridiculous. How could a training classification scheme ever make any sense of that.

51) The Plaintiffs-Respondents are confident this Court will find strict scrutiny is the standard of review for the equal protection matter; however, it is imperative they be afforded the opportunity to develop an adequate record to satisfy their burden should this Court rule rational basis is the standard.

52) The Defendants-Petitioners have hung their hat on training as the basis for the classification scheme.

53) Should it become the burden of Plaintiffs-Respondents to refute that basis, it can only do so by developing the record.

54) Given the chance to develop the record, the Plaintiffs-Respondents can prove this classification scheme had nothing to do with training and the Defendants-Petitioners know it which is why they are desperately trying to foreclose any opportunity for discovery.

55) Defendants-Petitioners have filed in the trial court motions to stay any further proceedings in the case while they are seeking this leave to appeal.

56) Defendants-Petitioners are also trying to stay the proceedings in this case by arguing in the trial court that it should wait until this Courts review of the Macon County matter has concluded.

57) There tactics are so glaringly obvious from the vantage point of the Plaintiffs-Respondents and they respectfully ask this Court to see them for what they are.

58) Should this Court deny interlocutory review, this matter can proceed through the discovery phase and still be presented to this Court for full and final review by the end of the summer.

59) The record would then be complete and regardless of the basis for review the Court would have a complete record. [8]

60) Whether it be in this case, or even the Macon County Case, this Court will be left to remand the matter back to the trial court for further proceedings should it conclude rational basis is the standard of review as without any record whatsoever this Court is unable to have any appreciation for what if any training has been completed by any of those in the classification schemes. [9]

61) In the interest of justice, this Court should deny interlocutory review of this case and allow it to proceed expeditiously in the trial court and in the very near future it will have in front of it full and complete record for its review of not only equal protection but the procedural violation of the three-readings clause.

62) Should the Court grant leave to appeal this interlocutory matter, the Plaintiffs-Respondents ask this Court to set a briefing schedule providing adequate opportunity for the Plaintiffs-Respondents to fully brief the legal issues while appreciating the lack of a record prejudices the Plaintiffs-Respondents ability to defend themselves against the possibility that rational basis is the chosen standard of review by this Court.

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[8] One example for this Court which discovery will show is that prison wardens have no mandatory training requirement for firearms. It will show that less than 50% of the prison wardens have any training with firearms and that none of them with training have any training with "assault weapons". Yet each of them can continue to buy all they assault weapons and high capacity magazines he or she chooses. Such facts to be provided to this Court in due course will show this training argument being made by the Defendants-Petitioners is but a ruse.

[9] The Defendants-Petitioners can't just merely adduce to this Court as conjecture that training is the basis for the classification and demand this Court accept it. This Court has no idea what training is completed, IF ANY, by those in the exempt categories. This Court has no idea what type of training is mandated on those categories. This Court cannot deduce if any such required training actually furthers a legitimate government purpose without knowing more. The Court will have to ask itself too once it knows more about the training is why can't other citizens of this state just complete the same training and retain their rights.

WHEREFORE, the Plaintiffs-Respondents respectfully request this Court deny the Defendants-Respondents Leave for Appeal and for such other and further relief as this Court deems just and proper.

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**CERTIFICATE OF COMPLIANCE**
**WITH SUPREME COURT RULES 341**

The undersigned, and attorney, certified that this brief conforms to the requirements of Supreme Court Rules 341 through 343 made applicable by Supreme Court Rule 315(d). The length of this Answer excluding the items identified as excluded from the length limitation in Rule 341(b(1) is 2,789 words.

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## CERTIFICATE OF FILING SERVICE

I certify that on March 20, 2023, I electronically filed the foregoing Answer to Petition for Leave to Appeal, 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 case, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system. As a courtesy, the other participants also will be served via e-mail.

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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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