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CYNTHIA A. GRANT
SUPREME COURT CLERK

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 LEAVE TO FILE AN OVERSIZE PETITION FOR LEAVE TO APPEAL

Defendants-Petitioners Governor Pritzker and Attorney General Raoul ("Petitioners"), in their official capacities, respectfully move this Court, on an emergency basis, for an order allowing them to file a petition for leave to appeal ("PLA") under Illinois Supreme Court Rule 315 that does not exceed 12,000 words in length, and allowing Plaintiffs-Respondents ("Respondents") to file any answer to

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

the petition up to 15,000 words or 50 pages. Petitioners' proposed oversize PLA, and the petition's appendix, are attached as exhibits to this motion. In support of this motion, Petitioners attach a verification by certification and state the following.

1. On January 20, 2023, the circuit court entered a temporary restraining order ("TRO") in this matter. On January 31, 2023, the appellate court issued a decision affirming the TRO.

2. Petitioners are filing a PLA to this Court from the appellate court's order under Illinois Supreme Court Rule 315. Based on Illinois Supreme Court Rule 315(d), a PLA "shall be limited to 20 pages or, alternatively, 6,000 words, excluding any items identified as excluded from the length limitation in Rule 341(b)(1)."

3. Petitioners also are filing a motion with this Court requesting that, if their PLA is granted, the Court then hear this appeal on an expedited schedule, as contemplated by Illinois Supreme Court Rule 311(b). *See* Defendants-Petitioners' Motion for Expedited Consideration. As part of that expedited schedule, and because the reasons for granting the petition overlap with the merits of the appeal, Petitioners are electing that their PLA also stand as their opening brief. *See id.* Therefore, Petitioners request that they be allowed to file the oversize PLA attached as Exhibit A, which consists of 11,685 words, to fully and efficiently address both the reasons for granting review and the merits of the appeal in the event this Court grants the petition.

4. Also in its motion requesting that this Court hear this appeal on an expedited schedule, Petitioners similarly request that any answer that Respondents

file to Petitioners' petition should stand as Respondents' response brief if the petition is granted by this Court. *See id.* Petitioners therefore request that plaintiffs be permitted to file any answer to the petition for leave to appeal that does not exceed 15,000 words or 50 pages. *See* Ill. S. Ct. R. 341(b) (providing that brief of appellee shall be limited to 15,000 words or 50 pages).

WHEREFORE, Defendants-Petitioners request that this Court grant them, on an emergency basis, leave to file an oversize petition for leave to appeal and allow any answer to that petition to be oversize as well.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

By: /s/ Leigh J. Jahnig
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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 leave to file an oversize petition for leave to appeal. 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
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IN THE
SUPREME COURT OF ILLINOIS

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

ORDER

THIS CAUSE COMING TO BE HEARD on motion of Defendants-Petitioners for an emergency order allowing them to file a petition for leave to appeal under Illinois Supreme Court Rule 315, that does not exceed 12,000 words in length, and allowing Plaintiffs-Respondents to file an answer to the petition that does not exceed 15,000 words or 50 pages;

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

ENTER:

_____ JUSTICE

_____ JUSTICE

_____ JUSTICE

_____ JUSTICE

_____
JUSTICE

_____
JUSTICE

_____
JUSTICE

DATED: _____

LEIGH J. JAHNIG
100 West Randolph Street, Chicago, Illinois 60601
CivilAppeals@ilag.gov (primary)
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CERTIFICATE OF FILING AND SERVICE

I certify that on February 24, 2023, I electronically filed the foregoing **Emergency Motion for Leave to File an Oversize Petition for Leave to Appeal, and the accompanying Petition for Leave to Appeal and Appendix,** 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
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PETITION FOR LEAVE TO APPEAL

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PRAYER FOR LEAVE TO APPEAL

On July 4, 2022, a shooter opened fire at an Independence Day parade in Highland Park, Illinois, killing 7 and wounding 48.[2] In response to this tragedy, the Illinois General Assembly determined that statewide measures were needed to protect Illinois residents from the ever-increasing dangers of such mass shootings, and began the process of researching, drafting, and debating legislation.[3] The result was the Protect Illinois Communities Act, P.A. 102-1116 ("Act"), which regulates the possession, sale, and manufacture of assault weapons and "large capacity ammunition feeding device[s]" ("LCMs"). With the Act, the General Assembly sought to balance the rights of existing owners of lawfully owned assault weapons and LCMs — by allowing owners to continue possessing these weapons, so long as they obtain an endorsement affidavit from the Illinois State Police for previously owned assault weapons by January 1, 2024 — against the significant public health and safety concerns associated with these weapons and, in particular, their use

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[2] *Gov. Pritzker Signs Legislation Banning Assault Weapons and Sale of High-Capacity Magazines*, Illinois.gov, https://www.illinois.gov/news/press-release.25890.html#:~:text=SPRINGFIELD%20%2D%20Standing%20alongside%20lawmakers%20and,switches%20in%20Illinois%2C%20effective%20immediately (Jan. 10, 2023). This court may take judicial notice of the information on government websites cited herein, as well as from mainstream internet sources. *See, e.g., People v. Johnson*, 2021 IL 125738, ¶ 54; *Kopnick v. JL Woode Mgmt. Co.*, 2017 IL App (1st) 152054, ¶ 26.

[3] *Hearings For Illinois' Proposed Assault Weapons Ban Begin Monday. Here's What the Bill Says*, NBC5 Chicago, https://www.nbcchicago.com/news/local/chicago-politics/hearings-for-hb-5855-illinois-sweeping-gun-control-bill-begins-monday-heres-what-the-legislation-says/3019713/ (updated Dec. 12, 2022) (discussing an earlier iteration of the Act).

in mass shootings, by limiting the number of assault weapons and LCMs in circulation going forward.

Shortly thereafter, plaintiffs — businesses that seek to sell assault weapons and LCMs and individuals who either own or wish to obtain them — filed a lawsuit and moved for a temporary restraining order ("TRO") based on purported procedural flaws in the legislative process and an alleged equal protection violation under the Illinois Constitution. The circuit court granted the motion upon concluding that plaintiffs satisfied the TRO standard, including that they were likely to succeed on all their claims, and enjoined defendants from enforcing the Act against plaintiffs. SR2015.[4] In a 2-1 decision, the appellate court affirmed the entry of the TRO, but based its finding of a likelihood of success only on the equal protection claim. *See Accuracy Firearms, LLC v. Pritzker*, 2023 IL App (5th) 230035. Review of that decision is warranted for several reasons.

To start, the appellate majority's determination that plaintiffs were likely to succeed on their equal protection claim conflicts with this court's binding precedent in at least two respects. 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. *Id.* ¶ 57. But this Court held precisely the

[4] The supporting record filed in the appellate court is cited as "SR__," and the appendix to this petition is cited as "A__."

opposite in *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483 (1984). In that case, this Court concluded that the right to bear arms secured by the Illinois Constitution is not fundamental and rejected an equal protection challenge to a municipality's firearms regulation after applying rational basis review. *See id.* at 509-11. The appellate court majority disregarded *Kalodimos* by finding not only that it was wrongly decided, but also that this Court had silently "abandoned" it. *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 56. As the dissenting justice pointed out, however, the majority lacked authority to reach either of these conclusions because this Court alone has the authority to decide whether its decisions remain good law. *Id.* ¶¶ 78-83. By flouting this well-established principle, the appellate court injected uncertainty into the law that only this Court, by granting review, may resolve.

Second, as the dissenting justice also noted, the majority departed from this Court's equal protection precedent by not assessing whether plaintiffs were similarly situated to the relevant comparison group (here, the individuals exempted from the Act's regulations on possessing assault weapons and LCMs), notwithstanding this Court's repeated directives that such a showing is a necessary element of an equal protection claim. *Id.* ¶ 77. And plaintiffs are not similarly situated to the individuals exempted from the Act, whom consist of those who are required by law to either undergo certain firearms training (*e.g.*, peace officers) or possess assault weapons in the scope of their official duties (*e.g.*, members of the military). In this way, too, the majority's

decision has created confusion as to the applicable legal standard for equal protection claims that may be remedied only by this Court's review.

The appellate court majority also held that plaintiffs made the showings necessary to satisfy the remaining requirements for a TRO, but, here, too, the majority's reasoning was riddled with legal errors. The majority held that plaintiffs — individuals who need only provide an endorsement affidavit by January 1, 2024, for assault weapons they already own and who may purchase additional weapons not covered by the Act, and gun stores that would, at most, experience a reduction in sales of assault weapons and LCMs, which could be compensated in monetary damages — established irreparable harm only by impermissibly shifting the burden to defendants to present evidence negating the possibility that plaintiffs would suffer irreparable harm if a TRO did not issue. *Id.* ¶ 63; *see Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006) (burden is on plaintiffs to demonstrate that requirements for TRO, including irreparable harm, are satisfied). And the majority similarly departed from this Court's precedents when finding that the balancing of the equities favored plaintiffs, *id.* ¶¶ 64-65, by downplaying the significant threat to the public health and safety associated with the continued proliferation of assault weapons and LCMs, and by ignoring that any harm to plaintiffs associated with enforcing the Act while its merits are litigated is minimal.

Finally, this Court's review is warranted at this time because of the far-reaching ramifications of the appellate court's decision. In the approximately

three weeks since that decision, 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, so long as the appellate court's decision remains unreviewed by this Court. As noted, however, when enacting the Act and making it effective immediately, the General Assembly sought to limit the number of these dangerous weapons in circulation, while respecting the rights of existing legal owners. The continued proliferation of these weapons while the appellate court's erroneous decision is allowed to stand not only undermines the Act's goals of preventing mass shootings and otherwise enhancing public safety, it squarely conflicts with the General Assembly's careful balancing of public and private interests.

Furthermore, many of the cases in which circuit courts have entered TROs have yielded sprawling discovery requests directed at State officials. *E.g.*, A86-103. For example, some plaintiffs issued subpoenas to every legislator who co-sponsored the Act, and are seeking to schedule depositions of at least five members of the Illinois House and Senate, including the Speaker of the House. A86. This discovery — which is proceeding based on the appellate court's incorrect ruling that plaintiffs' equal protection claim is subject to strict scrutiny instead of rational basis review — may force State officials to "'divert their time, energy, and attention from their legislative tasks.'" *Am. Trucking Assocs., Inc. v. Alviti*, 14 F.4th 76, 86 (1st Cir. 2021).

In light of these considerations, review of the appellate court's decision, despite its interlocutory posture, is warranted. While the pool of plaintiffs obtaining relief from circuit courts has grown exponentially since the appellate court issued its decision, and can be expected to continue to grow, no case has yet been filed in any other appellate district, and so a split among the appellate courts has not developed and is not likely to develop. And as the case is litigated on the merits, thousands of new assault weapons and LCMs may be sold throughout the State to individuals who would not otherwise be able to purchase them. The Court should thus review the appellate court's decision now, without waiting for a final judgment.

Accordingly, Defendants-Petitioners Governor Pritzker and Attorney General Raoul, in their official capacities, petition this Court under Illinois Supreme Court Rule 315 for leave to appeal from the appellate court's decision so this Court may address these matters of great importance to the State and the public and resolve the conflict between the appellate court's opinion and this Court's binding precedent. This Court should grant this petition, reverse the appellate court's decision, and vacate the TRO.

STATEMENT REGARDING JUDGMENT AND REHEARING

On January 31, 2023, the appellate court issued a decision affirming the circuit court's entry of a TRO, which was modified on February 10, 2023. A1-48. No party sought rehearing.

POINTS RELIED UPON FOR SEEKING REVIEW

1. The appellate court erred in ruling that plaintiffs would likely succeed on their equal protection claim, where it held, in direct contradiction of this Court's precedent, that (1) the Illinois Constitution's right to bear arms is a fundamental right for purposes of an equal protection claim, thus requiring application of strict scrutiny rather than rational basis review; and that (2) plaintiffs did not need to show that they are similarly situated to the relevant comparison group (individuals within the Act's exemptions) to proceed on their equal protection claim.

2. The appellate court erred in ruling that the individual plaintiffs, who retain the right to possess any assault weapons and LCMs they lawfully possessed when the Act took effect, and also to purchase new firearms and magazines not covered by the Act, and the gun store plaintiffs, who at most will experience a reduction in lawful sales of assault weapons and LCMs, which is compensable in damages, would suffer irreparable harm absent a TRO.

3. The appellate court erred in ruling that the balance of equities favored plaintiffs, where the continued proliferation of assault weapons and LCMs, the weapons most associated with mass shootings, presents a

substantial threat to the public safety, and where any harm to plaintiffs associated with enforcing the Act while its merits are litigated is minimal.

STATEMENT OF FACTS

The Protect Illinois Communities Act, P.A. 102-1116

The Act contains various provisions concerning the regulation of firearms.[5] Relevant here, the Act implemented new restrictions on the sale and possession of assault weapon and LCMs, which take effect at different times. *See* 720 ILCS 5/24-1.9 (new) & 1.10 (new). 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 to those authorized to possess them pursuant to the Act's enumerated exceptions. *Id.* 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 Illinois 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 exempts those who fall into certain professions from the prohibitions on possession and purchase of assault weapons and LCMs. Those exemptions fall into two categories: (1) those in certain professions (peace officers, corrections officials, and those current and retired law enforcement

[5] The Act's text can be found at https://ilga.gov/legislation/publicacts/102/PDF/102-1116.pdf.

officers qualified under the federal Law Enforcement Officers Safety Act, as implemented by Illinois law) who are required by law to receive firearms training and qualifications; and (2) those in certain professions (members of the military and National Guard, private security guards, and guards at nuclear facilities) only to the extent they use assault weapons or LCMs in the scope of their official duties. *Id.* 5/24-1.9(e) & 1.10(e).

The circuit court proceedings

On January 17, 2023, plaintiffs — who appear to be four gun stores and hundreds of individuals who own assault weapons and LCMs or wish to obtain them — filed an action in the circuit court against petitioners, along with Emanuel "Chris" Welch, as Speaker of the House, and Donald Harmon, as Senate President. SR11-21, SR1919. Plaintiffs sought declaratory and injunctive relief based on four claims that the Act violates the Illinois Constitution. SR24-49. Their first three claims asserted purported defects in the legislative process: plaintiffs alleged that the Act violates the single subject rule in Article IV, Section 8(d); the three readings requirement in Article IV, Section 8(d); and their procedural due process rights allegedly encompassed by those legislative requirements. SR24-36.

In count IV, plaintiffs challenged the exemptions to the possession restrictions in 720 ILCS 5/24-1.9(e) and 1.10(e). Specifically, they alleged the exemptions violate the Illinois Constitution's equal protection clause, SR36-47, and argued that the exemptions warrant strict scrutiny because they burden

the "right to bear arms as guaranteed by the Illinois constitution," SR43, which, they claimed, was fundamental for an equal protection analysis, SR44. That same day, plaintiffs filed a TRO motion to prevent enforcement of the Act against them. SR1044-1912; *see also* SR1913-15, SR1919. During the TRO hearing, plaintiffs reaffirmed that their only claimed "fundamental" right for the equal protection analysis was the right to bear arms in the Illinois Constitution: their counsel stated that they "[we]re not making Second Amendment Constitutional arguments [in this case] because those are for a different day and a different court." SR1944.

In response, defendants argued that plaintiffs did not satisfy the standards for a TRO: they were not likely to succeed on the merits of any of their four claims; and they made none of the other showings required for such extraordinary relief. SR1921-35. Relevant here, defendants argued that plaintiffs would likely not succeed on their equal protection claim because, first, they failed to show the threshold requirement that they were similarly situated to the relevant comparison group (here, individuals exempted from the Act's regulations on possession). SR1931-32. Second, plaintiffs could point to neither a protected class nor a fundamental right recognized under Illinois law implicated by the Act, because, as this Court held in *Kalodimos* when deciding the equal protection claim there, the Illinois Constitution's right to bear arms is not fundamental. SR1932-33. Thus, defendants explained, rational basis review applied to plaintiffs' equal protection claim,

and the challenged exemptions for professionals with firearms training and experience easily survived this review. SR1930-33.

Defendants also explained that plaintiffs demonstrated no irreparable harm or that they lacked an adequate remedy at law. SR1933-35. Indeed, the individual plaintiffs retain the right to possess any assault weapon and LCM they lawfully possessed when the Act took effect and could obtain additional firearms and magazines not covered by the Act. SR1933-35. And at most, the Act will lead to a reduction in lawful sales of assault weapons and LCMs by the gun store plaintiffs, which could be compensated by damages. SR1933-35.

On January 20, 2023, the circuit court entered a TRO that enjoined defendants from enforcing the Act against plaintiffs. SR2015. Although the claim was one of equal protection, the court determined that plaintiffs showed a clear right needing protection based on the Act's purported impairment of their right to bear arms. SR2007. It also found that plaintiffs showed irreparable harm and lacked an adequate legal remedy, notwithstanding its recognition that the individual plaintiffs have "ample time" to complete the endorsement affidavit and that, with respect to the gun stores, "monetary damages do not qualify as irreparable." SR2008-09.

The circuit court also ruled that plaintiffs were likely to succeed on all of their claims. Relevant here, the court acknowledged that the exemptions challenged in the equal protection claim were reviewed for a rational basis but determined that the exemptions were not "logical." SR2013. And although

the court applied rational basis review in the equal protection section of its decision, it suggested elsewhere that strict scrutiny would apply because this Court had "made it clear" that its decision in *Kalodimos* was no longer good law. SR2007. Finally, the court determined that the balancing of harms favored plaintiffs by reiterating its conclusion that they were likely to succeed on the merits and showed irreparable harm. SR2014.

The appellate court proceedings

Defendants appealed, SR2017-42, arguing that the circuit court erred at each step of the TRO analysis. Counts I through III, defendants explained, were foreclosed by this Court's precedent. A55-58. As for count IV (the equal protection claim), defendants explained that the Act's exemptions were rational because they applied only to those who are required by law to undergo firearms training or who are required to possess certain firearms in the scope of their official duties. A59-61. And although the circuit court did not apply strict scrutiny, defendants explained that its suggestion that the right to bear arms was "fundamental" in the equal protection context was foreclosed by this Court's decision in *Kalodimos*, which held the opposite. A61-62.

Defendants also explained that plaintiffs were not irreparably harmed because their claimed harm was speculative and could be compensated by money damages. A62-65. As defendants noted, the individual plaintiffs could continue to possess the assault weapons and LCMs they legally owned before the Act and could obtain new firearms and magazines not covered by the Act,

and the gun store plaintiffs similarly could sell and purchase other types of firearm and magazines, and also could sell their existing stock of assault weapons and LCMs to Illinois residents exempted from the Act or to out-of-state customers. A63-65. Finally, defendants argued, the circuit court did not properly balance the harms or considered the public interest. A65-66.

In a 2-1 decision, the appellate court affirmed the TRO.[6] The majority first disagreed with the circuit court that plaintiffs were likely to succeed on the merits of counts I through III. *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶¶ 21-47. But it agreed that plaintiffs would likely succeed on the equal protection claim, albeit for different reasons than those given by the circuit court. The majority expressly declined to follow this Court's decision in *Kalodimos*, stating first that it was wrongly decided and, second, that the Court "abandoned" it in subsequent decisions. *Id.* ¶¶ 51-57. As support, the majority cited four decisions applying the United States Constitution's Second Amendment, not the Illinois Constitution's right to bear arms. *Id.* ¶¶ 52-56. In particular, the majority reasoned that this Court's decision in *Guns Save Life, Inc. v. Ali*, which held that the Second Amendment was a fundamental right for a uniformity clause analysis, 2021 IL 126014, ¶ 28, meant that the Second Amendment was also a fundamental right for purposes of equal protection. *Id.* ¶¶ 53-56. Based on this conclusion, the majority then held that

[6] Although the appellate court described its decision as "affirm[ing] in part," it left the TRO in place in its entirety. *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 67.

the right to bear arms secured by the Illinois Constitution was also a fundamental right for purposes of an equal protection claim because, in its view, otherwise the Illinois Constitution would afford less protection than the federal one. *Id.* ¶ 56. For the same reasons that the appellate majority found that plaintiffs were likely to succeed on the merits of their equal protection claim, the majority found that they showed a clearly ascertainable right in need of protection. *Id.* ¶¶ 20, 63.

The appellate majority also found that the remaining requirements for a TRO were satisfied. Relevant here, the majority appeared to find irreparable harm, stating: "we have no facts that would allow us to find that money damages would eliminate the potential constitutional violation alleged by plaintiffs." *Id.* ¶ 63. And the majority determined that the balancing of the equities favored plaintiffs, despite its recognition that both defendants and the public share an interest in "protect[ing] the citizens of this state from the random atrocities associated with mass shootings." *Id.* ¶¶ 64-65. But it concluded that this interest was outweighed by flaws that it perceived to have occurred in the legislative process giving rise to the Act, without identifying any legally cognizable errors in that process or any hardship particular to plaintiffs. *Id.* ¶ 65.

One justice dissented. Relevant here, the dissent first noted that the majority failed to apply this Court's controlling precedent by not considering whether plaintiffs were similarly situated to those in the Act's exempted

categories, a threshold issue in an equal protection claim. *Id.* ¶ 77 (citing *People v. Masterson*, 2011 IL 110072). As the dissent explained, although plaintiffs hypothesized that some individuals might have similar firearms training to those in the exemptions, they did not allege that they were such individuals. *Id.* Thus, their equal protection claim should have failed at the outset.

Second, the dissent disagreed that this Court has silently overruled *Kalodimos*, and noted that the appellate court "d[id] not have the authority" to make such a pronouncement. *Id.* ¶ 83. The dissent reiterated that the only purported fundamental right at issue was the Illinois Constitution's right to bear arms, the text of which is "markedly different" from that of the Second Amendment. *Id.* ¶ 78. Namely, unlike the federal right, the Illinois right to bear arms is "[s]ubject to the police power." *Id.* Thus, the discussion of the Second Amendment right in *Ali*, or in any other case, provided no basis for the majority to unilaterally disregard well-established law concerning the Illinois Constitution's right to bear arms. *Id.* ¶¶ 78-80. And while these decisions suggest that the federal Constitution offers stronger protections than the Illinois Constitution with respect to the right to bear arms, plaintiffs "emphatically," "clearly," and "unequivocally" chose to proceed under the Illinois Constitution only. *Id.* ¶ 81. And because this Court in *Kalodimos* had squarely held that, for an equal protection claim, such a right is not fundamental, it did not trigger strict scrutiny. *Id.* ¶ 82.

ARGUMENT

I. A TRO is an Extraordinary Remedy.

A TRO with notice is subject to the same standards that apply to a preliminary injunction. *Kable Printing Co. v. Mt. Morris Bookbinders Union*, 63 Ill. 2d 514, 523-24 (1976). Namely, "[i]t is an extraordinary remedy which should apply only in situations where an extreme emergency exists." *Beahringer v. Page*, 204 Ill. 2d 363, 379 (2003); *see Delgado v. Bd. of Election Comm'rs*, 224 Ill. 2d 481, 483 (2007). Plaintiffs thus were required to show that: (1) they had a clearly ascertainable right in need of protection; (2) they were likely to succeed on the merits of one or more of their claims; (3) they would suffer irreparable injury without the TRO; and (4) they had no adequate remedy at law. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006).

The first two requirements — a clearly ascertainable right in need of protection and likelihood of success on the merits — involve the "same analysis." *Makindu v. Ill. High Sch. Ass'n*, 2015 IL App (2d) 141201, ¶ 38; *see also Scheffel Fin. Servs., Inc. v. Heil*, 2014 IL App (5th) 130600, ¶ 10 ("To establish that it has a clearly ascertainable right in need of protection, and a likelihood of success on the merits, the plaintiff need only raise a fair question as to the existence of the right and lead the court to believe that it will probably be entitled to the relief requested if the proof sustains its allegations."). The third and fourth requirements — that plaintiffs would

suffer irreparable harm and lack an adequate remedy at law without a TRO — are likewise closely related. *See Happy R Sec., LLC v. Agri-Sources, LLC*, 2013 IL App (3d) 120509, ¶ 36.

Finally, if plaintiffs successfully satisfied the four TRO requirements, the circuit court still had to balance "the relative hardships imposed on the parties" if the TRO is granted or denied, *Buzz Barton & Assocs., Inc. v. Giannone*, 108 Ill. 2d 373, 387 (1985) (internal quotations omitted), as well as its effect on the public, *JL Props. Grp. B, LLC v. Pritzker*, 2021 IL App (3d) 200305, ¶ 57; *Guns Save Life, Inc. v. Raoul*, 2019 IL App (4th) 190334, ¶ 68.

Here, *de novo* review applies to the appellate court's ruling that plaintiffs were likely to prevail on the merits of their equal protection claim (and therefore that they had a clearly ascertainable right in need of protection) because it presents questions of law regarding whether (1) plaintiffs must show that they are similarly situated to the exempted groups, (2) the Illinois Constitution's right to bear arms is fundamental for purposes of an equal protection analysis, and (3) the Act satisfies rational basis. *See Mohanty*, 225 Ill. 2d at 63 (applying *de novo* review where preliminary injunction's validity depended on legal question). This Court reviews the other factors, and the ultimate decision to enter a TRO, for an abuse of discretion. *Id.* at 62-63. "It is always an abuse of discretion for a [lower] court to base a decision on an incorrect view of the law." *A&R Janitorial v. Pepper Constr. Co.*, 2018 IL 123220, ¶ 15.

II. The Appellate Court Erred in Ruling that Plaintiffs Were Likely to Succeed on the Merits of Their Equal Protection Claim.

The equal protection clause of the Illinois Constitution "guarantees that similarly situated individuals will be treated in a similar fashion unless the government can demonstrate an appropriate reason to treat them differently." *In re Destiny P.*, 2017 IL 120796, ¶ 14; *see* Ill. Const. art. I, § 2. That clause "does not forbid the legislature from drawing proper distinctions between different categories of people, but it does prohibit the government from doing so on the basis of criteria wholly unrelated to the legislation's purpose." *Destiny P.*, 2017 IL 120796, ¶ 14. When evaluating an equal protection claim, the court first considers as a threshold matter "whether the individual is similarly situated to the comparison group." *Id.* ¶ 15. If the law does in fact treat similarly situated groups differently, the court examines whether it does so based on a suspect class or if a fundamental right is burdened; in such cases, the Court applies strict scrutiny. *People v. Masterson*, 2011 IL 110072, ¶ 24. Other classifications are examined for a rational basis, which asks whether "the statute bears a rational relationship to a legitimate government purpose." *Id.* Because the federal and Illinois equal protection clauses contain materially indistinguishable language, the Illinois provision is interpreted in lockstep with the federal provision. *See Destiny P.*, 2017 IL 120796, ¶ 14; *People v. Mosley*, 2015 IL 115872, ¶ 40; *Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶¶ 92-94; *Nevitt v. Langfelder*, 157 Ill. 2d 116, 124 (1993).

As the dissenting justice explained, the appellate majority's ruling that plaintiffs would likely succeed on their equal protection claim contravened binding precedent for two reasons, each of which independently warrants reversal. First, the majority declined to hold plaintiffs to their burden of alleging facts sufficient to show that they were similarly situated to the relevant comparison group (that is, individuals exempted from the Act). Second, the majority erred in holding that the Illinois Constitution's right to bear arms is a fundamental right for purposes of an equal protection claim, thus requiring application of strict scrutiny rather than rational basis review. On the contrary, federal cases make clear that the right to bear arms secured by the Second Amendment is not fundamental for equal protection purposes. But, even if it were, the Illinois Constitution's right to bear arms — with its materially different, and more limited, language — is not. Thus, an equal protection challenge to a state firearms regulation like the Act is subject to rational basis review, which the Act's exemptions would readily satisfy.

A. Under this Court's binding precedent, the appellate court should have held plaintiffs to their burden of sufficiently alleging that they were similarly situated to the relevant comparison group.

"As a threshold matter, . . . [i]t is axiomatic that an equal protection claim requires a showing that the individual raising it is similarly situated to the comparison group." *Masterson*, 2011 IL 110072, ¶ 25; *accord Jenkins v. Wu*, 102 Ill. 2d 468, 477 (1984). "In fact, when a party fails to make that showing, his equal protection challenge fails." *Masterson,* 2011 IL 110072, ¶

25; *see also Destiny P.*, 2017 IL 120796, ¶ 21 (to be similarly situated, "the classes must be 'in all relevant respects alike'") (citation omitted). As the dissent noted, plaintiffs failed to satisfy this "crucial threshold" requirement: their "complaint failed to allege how each, or even any, of the plaintiffs are similarly situated to the exempted group set forth in the Act." *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 77.

The Act's exemptions fall into two categories, consisting of those who: (1) have received extensive firearms training and qualifications (such as law enforcement, retired law enforcement qualified under federal law, and corrections officers);[7] or (2) are limited to carrying assault weapons and LCMs in the scope of their employment. *See* 720 ILCS 5/24-1.9(e) & 1.10(e) (listing exceptions). Here, plaintiffs did not provide any showing, or even allege in their complaint, that they either (1) have received extensive firearms training similar to that undertaken by law enforcement, or (2) are required to possess assault weapons in order to perform official duties. Indeed, as the dissent observed, although plaintiffs hypothesized that some retired military officers might also have similar training and thus might be similarly situated, A80, they nowhere alleged that any plaintiff could be described this way, *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 77. Without allegations that plaintiffs

[7] These professions are required to receive firearms training and certification. *See* 20 Ill. Admin. Code §§ 1730.20 (peace officers), 1750.202(c)(1) (corrections officers); 1720.220 (qualified retired law enforcement pursuant to 18 U.S.C. § 926C).

themselves were similarly situated to the exempted individuals, this Court's precedent required the appellate court to reject their equal protection claim at the threshold. *See Callis, Papa, Jackstadt & Halloran, P.C. v. Norfolk & W. Ry. Co.*, 195 Ill. 2d 356, 372 (2001) (plaintiffs' "remote and speculative" allegations insufficient to support preliminary injunctive relief); *Bridgeview Bank Grp. v. Meyer*, 2016 IL App (1st) 160042, ¶ 15 (similar); *Capstone Fin. Advisors, Inc. v. Plywaczynski*, 2015 IL App (2d) 150957, ¶ 10 (similar); *see also State v. Funches*, 212 Ill. 2d 334, 346 (2004) (party may seek to vindicate only his or her own rights, not rights of others, when challenging statute's constitutionality).

The appellate court bypassed this requirement, suggesting instead the Act was required to expressly state, in its text, why those who fell into the exemptions were not similarly situated to those in the general public. *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 61. But this flips the burden on its head. It is plaintiffs who must "make that showing," *Masterson*, 2011 IL 110072, ¶ 25, as the dissent recognized, *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 77. They did not do so. As defendants explained, SR1931-32, courts that have evaluated similar challenges under the federal equal protection clause have recognized that law enforcement officers and those in similar professions "are not similarly situated to the general public with respect to [possessing assault weapons and LCMs]." *Kolbe v. Hogan*, 849 F.3d 114, 147 (4th Cir. 2017) (en banc), *abrogated on other grounds by N.Y. State Rifle &*

Pistol Ass'n v. Bruen, 142 S. Ct. 2111 (2022); *see also Shew v. Malloy*, 994 F. Supp. 2d 234, 252 (D. Conn. 2014), *aff'd in relevant part, rev'd in part sub nom. N.Y. State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015) ("The charge of protecting the public, and the training that accompanies that charge, is what differentiates the exempted personnel from the rest of the population."). Without allegations that plaintiffs had received extensive firearms training similar to that undertaken by law enforcement, or were required to possess assault weapons to perform official duties, plaintiffs' equal protection claim was not likely to succeed on the merits.

B. Under this Court's binding precedent, the appellate court should have recognized that the Illinois Constitution's guarantee of the right to bear arms does not trigger strict scrutiny for an equal protection claim.

In an equal protection claim, the Court reviews a statutory classification for a rational basis unless the classification is based on a protected characteristic or burdens a fundamental right. *Destiny P.*, 2017 IL 120796, ¶ 14. As plaintiffs alleged in their complaint and confirmed at the TRO hearing, their equal protection claim rests solely on an alleged violation of their right to bear arms under the Illinois Constitution. SR43; *see* SR1944.

But as this Court held in *Kalodimos*, this right is not "fundamental" for purposes of equal protection. 103 Ill. 2d at 509. In rejecting the equal protection claim in that case, this Court explained that "[n]ot every right secured by the State or Federal constitutions is fundamental"; instead "only those which 'lie at the heart of the relationship between the individual and a

republican form of nationally integrated government'" qualify. *Id.* (citation omitted). And although the right to bear arms "may be necessary to protect important personal liberties from encroachment by other individuals, it does not lie at the heart of the relationship between individuals and their government." *Id.* Thus, the Court concluded, rational basis review applies to an equal protection challenge to a state law regulating firearms. In so holding, the Court also distinguished the right to bear arms secured by the Illinois Constitution from the Second Amendment right; the former, the Court explained, "did not exist prior to 1970 [and] is subject . . . to substantial infringement in the exercise of the police power even though it operates at the individual level." *Id.*; *see also id.* at 491 (Illinois Constitution's right to bear arms "does not mirror" Second Amendment right, because, among other things, Illinois right adds the words "[s]ubject only to the police power").

The appellate court recognized that *Kalodimos* foreclosed plaintiffs' argument that the right to bear arms secured by the Illinois Constitution is fundamental for purposes of their equal protection claim, and therefore precluded their argument that strict scrutiny, rather than rational basis review, applies to that claim. *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 51. That should have ended the analysis because there is no plausible argument that the challenged exemptions do not survive rational basis review. *See infra* pp. 34-38. Stunningly, however, the appellate court declined to follow *Kalodimos*, based on the majority's view that it was wrongly decided,

Accuracy Firearms, 2023 IL App (5th) 230035¶ 54, or had been silently "abandoned" in this Court's subsequent decisions, *id.* ¶¶ 52, 56. But, as the dissenting justice noted, the appellate court "d[id] not have the authority" to make such a pronouncement because only this Court "can overrule or modify its precedent." *Id.* ¶ 79 (citing *Yakich v. Aulds*, 2019 IL 123667, ¶ 13). And, in any event, *Kalodimos* was correctly decided, as explained below.

C. *Kalodimos* was correctly decided because the right to bear arms under the Illinois Constitution is, like the Second Amendment, not fundamental for equal protection purposes.

Not only did the appellate court discard this Court's binding precedent, its ruling that plaintiffs' equal protection challenge to a state firearms regulation is subject to strict scrutiny because the right to bear arms is fundamental for purposes of equal protection was wrong.

1. The same standards apply to equal protection claims under the federal and Illinois Constitutions, and courts have unanimously held that the right to bear arms is not fundamental for equal protection purposes under the United States Constitution.

As *Kalodimos* recognized, *see supra* pp. 23-24, and subsequent decisions of the appellate court reiterated, "[t]he term 'fundamental right' is a term of art and creature of constitutional construction subject to a body of precedent that limits judicial review under the standard of strict scrutiny," *Jenkins v. Leininger*, 277 Ill. App. 3d 313, 322 (1st Dist. 1995). "The fundamental rights recognized for purposes of . . . equal protection concerns are limited to 'those that lie at the heart of the relationship between the individual and a

republican form of nationally integrated government.'" *Napleton v. Vill. of Hinsdale*, 374 Ill. App. 3d 1098, 1102 (2d Dist. 2007) (quoting *People ex rel. Tucker v. Kotsos*, 68 Ill. 2d 88, 97 (1977)). "Fundamental rights include the expression of ideas (*i.e.*, speech), participation in the political process, interstate travel, and intimate personal privacy interests." *Id.* Although "almost every state statute affects an important right, courts must refrain from characterizing all important rights as fundamental" for equal protection purposes "such that in the process they become 'super-legislatures.'" *Jenkins*, 277 Ill. App. 3d at 322.

Although since *Kalodimos*, this Court has not had the opportunity to reconsider whether the right to bear arms secured by the Illinois Constitution is fundamental for purposes of equal protection, federal courts have held that the Second Amendment is not. *See Culp v. Raoul*, 921 F.3d 646, 658 (7th Cir. 2019) (equal protection claim based on allegedly disparate burdens on right to bear arms was not cognizable, but "even if we were to consider this claim independent of the plaintiffs' Second Amendment claim," law did not burden a fundamental right); *Nordyke v. King*, 681 F.3d 1041, 1043 n.2 (9th Cir. 2012) (rational basis would apply to equal protection challenge to law that allegedly burdened Second Amendment right to bear arms); *Sibley v. Watches*, 460 F. Supp. 3d 302, 318 (W.D.N.Y. 2020) ("courts have generally concluded that the Second Amendment analysis is sufficient to protect these rights and have either declined to conduct a separate equal protection analysis or have

subjected the equal protection challenge to rational basis review") (cleaned up). These federal decisions are relevant, because, as explained, when evaluating equal protection claims, the same standards apply to claims under the Illinois Constitution as to claims under the United States Constitution. *See Destiny P.*, 2017 IL 120796, ¶ 14; *Mosley*, 2015 IL 115872, ¶ 40; *Hope Clinic*, 2013 IL 112673, ¶¶ 92-94; *Nevitt*, 157 Ill. 2d at 124.

And these federal decisions are consistent with the United States Supreme Court's general principle that rights explicitly protected in the federal Constitution as enumerated rights are distinct from "fundamental" rights, which are not explicit in text and are instead protected by less specific provisions, such as the equal protection clause. When "a particular Amendment provides an explicit textual source of constitutional protection," that Amendment, not more "generalized" protections, must be the basis for a cause of action. *Albright v. Oliver*, 510 U.S. 266, 273 (1994) (cleaned up); *see United States v. Lanier*, 520 U.S. 259, 272 n.7 (1997) (similar). This makes good sense: if a statute violates an enumerated right expressly protected by the Constitution — even if it does so only for one group of people — those who are burdened can simply bring a cause of action based on that enumerated right.

Thus, the Seventh Circuit has rejected an attempt to "usurp" a Second Amendment analysis by "repackaging" a Second Amendment claim as an equal protection claim. *Culp*, 921 F.3d at 658. The Second Circuit similarly

noted that "*every* Circuit to have addressed this issue" has determined that "plaintiffs should not be allowed to use the Equal Protection Clause 'to obtain review under a more stringent standard' than the standard applicable to their Second Amendment claim." *Kwong v. Bloomberg*, 723 F.3d 160, 170 n.19 (2d Cir. 2013) (quoting *Woollard v. Gallagher*, 712 F.3d 865, 873 n.4 (4th Cir. 2013)) (emphasis in original); *see also United States v. Carey*, 602 F.3d 738, 741 & n.2 (6th Cir. 2010) (claim that "conflate[d]" Second Amendment and equal protection claims should be analyzed as Second Amendment claim); *United States v. Carbajal-Flores*, No. 20-CR-00613, 2022 WL 1104226, at *2 (N.D. Ill. Apr. 13, 2022) (same); *Sibley*, 460 F. Supp. 3d at 318 ("courts have generally concluded that the Second Amendment analysis is sufficient to protect these rights and have either declined to conduct a separate equal protection analysis or have subjected the equal protection challenge to rational basis review") (cleaned up). As the Ninth Circuit put it, such claims are merely "Second Amendment claim[s] dressed in equal protection clothing," and are thus "not cognizable" as equal protection claims. *Teixeira v. Cnty. of Alameda*, 822 F.3d 1047, 1052 (9th Cir. 2016), *aff'd in relevant part en banc*, 873 F.3d 670, 676 n.7 (9th Cir. 2017) (cleaned up).

Indeed, plaintiffs' arguments confirm that they are impermissibly seeking to "repackage[e]" a claim based on the right to bear arms as an equal protection claim. *Culp*, 921 F.3d at 658. First, to show a clearly ascertainable right in need of protection, which is the first requirement for a TRO, *Mohanty*,

225 Ill. 2d at 62, plaintiffs pointed to the right to bear arms, not the right to equal protection of the laws, *see* SR1044 ("Plaintiffs have a protectable interest in not being subjected to a law impairing their fundamental right to bear arms which was enacted in violation of the Illinois Constitution."); *see also* SR48 (similar). Second, plaintiffs stated that they "desire" to "sell," "purchase," and "possess" assault weapons and LCMs. SR11, SR21. But curing the equal protection violation alleged by plaintiffs would not necessarily produce this relief. The General Assembly could respond by narrowing or eliminating the Act's exemptions rather than expanding them to include plaintiffs. To obtain the relief that they seek, plaintiffs need to plead and prove that the Act's restrictions on the sale and purchase of assault weapons and LCMs violate the right to bear arms, but they have scrupulously avoided pressing this claim.

In short, federal courts have consistently held that plaintiffs cannot use an equal protection claim to bypass the legal framework for a claim alleging a violation of the right to bear arms, which is precisely what plaintiffs seek to do here. And because Illinois's equal protection clause is interpreted in lockstep with the analogous federal clause, *see supra* p. 19, this Court should reaffirm its holding in *Kalodimos* that the right to bear arms is not fundamental for purposes of Illinois equal protection law.

2. Regardless of the federal right's nature, the right to bear arms under the Illinois Constitution is not fundamental because it is phrased in meaningfully different, and more limited, language.

In any event, there is even less reason for the Court to hold that the right to bear arms secured by the Illinois Constitution is fundamental for equal protection purposes. Unlike the state and federal equal protection clauses, the right to bear arms in the Illinois and United States Constitutions do not contain materially indistinguishable language. On the contrary, the state firearms right, unlike the federal right, is expressly cabined by the caveat that it is "[s]ubject only to the police power." Ill. Const. art. I, § 22; *see also Kalodimos*, 103 Ill. 2d at 509 (state right to bear arms is, unlike federal right, by its plain text "subject . . . to substantial infringement in the exercise of the police power").

Where, as here, the state and federal constitutional provisions contain meaningfully different language, they are not interpreted in lockstep. Instead, this Court gives meaning to their plain text. *See Hampton v. Metro. Water Reclamation Dist. of Greater Chi.*, 2016 IL 119861, ¶¶ 11-12, 27-28 (state takings clause provides different protection than federal one because state clause covers "damage[ ]" to property, unlike federal clause); *People ex rel. Daley v. Joyce*, 126 Ill. 2d 209, 213-15 (1988) (state right to jury trial in criminal cases differs from federal right because "there is a difference in the language of our State constitution from that of the Federal Constitution, and the difference is one of substance and not merely one of form"). And even if,

"after consulting the language of the constitutional provision its meaning is in doubt," the Court then "consult[s] the drafting history of the provision, including the debates of the delegates to the constitutional convention." *Walker v. McGuire*, 2015 IL 117138, ¶ 14.

In *Kalodimos*, the Court undertook this analysis and held that "the explicit recognition of 'the police power' as a limitation on [the Illinois right to bear arms]" reflected the "common understanding" of voters that the state firearms right would allow state and local governments, when exercising their police powers, to completely ban categories of firearms. 103 Ill. 2d at 491-92. This "common meaning of the words used," the Court explained, was confirmed by the drafting history of the Illinois right to bear arms, which showed that the delegates to the 1970 Constitutional Convention similarly understood the provision to authorize governments to completely ban categories of firearms. *Id.* at 493-96. Thus, the Court concluded: "Based on the floor debates and the official explanation, as well as on the language of the provision, it is apparent to us that section 22, as submitted to the voters, meant that a ban on all firearms that an individual citizen might use would not be permissible, but a ban on discrete categories of firearms, such as handguns, would be." *Id.* at 498; *cf. District of Columbia v. Heller*, 554 U.S. 570 (2008) (District of Columbia ordinance banning handguns violates Second Amendment). The text and history of the Illinois right to bear arms thus establish that the state firearms right is more limited than the federal right.

Accordingly, even if this Court were to hold, in conflict with all federal courts to have addressed the issue, that as a matter of federal law, the right to bear arms is fundamental for purposes of equal protection, the same would not be true with respect to Illinois law.

D. The appellate court majority's holding that *Kalodimos* was "abandoned" in subsequent decisions of this Court is incorrect.

The appellate court majority's holding otherwise was based on its misunderstanding of four cases: *People v. Aguilar*, 2013 IL 112116; *People v. Burns*, 2015 IL 117387; *People v. Chairez*, 2018 IL 121417; and *Guns Save Life, Inc. v. Ali*, 2021 IL 126014. *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 56. But each is readily distinguishable. None involved an equal protection claim, or even a claim under the Illinois Constitution's right to bear arms. *Aguilar*, *Burns*, and *Chairez* merely held that certain state firearms regulations that operate differently from the Act violated the Second Amendment. *See Aguilar*, 2013 IL 112116, ¶ 22 (statute criminalizing carrying of any loaded firearm in public); *Burns*, 2015 IL 117387 (same), ¶ 32; *Chairez*, 2018 IL 121417, ¶ 56 (statute prohibiting carrying any firearm within 1000 feet of public park). But plaintiffs here have disclaimed any reliance on the Second Amendment. SR1944. As for *Ali*, it addressed a claim that a local ordinance imposing a tax on all firearms and ammunition violated the Illinois Constitution's uniformity clause, 2021 IL 126014, ¶¶ 3-5, 18; plaintiffs have not alleged a uniformity clause violation (nor could they, because the Act does

not impose a tax or fee, which the uniformity clause requires, *see* Ill. Const. art. IX, § 2). And although *Ali* discussed the concept of "fundamental rights" in the context of a uniformity clause claim, it also explained that the uniformity clause is a "broader limitation on legislative power" than the equal protection clause. 2021 IL 126014, ¶¶ 35-36 (cleaned up). Equally important, as the dissent noted, *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 78, *Ali*'s discussion of "fundamental rights" was limited to the Second Amendment, 2021 IL 126014, ¶ 28. "At no point did the court state that *Kalodimos* was no longer good law, or in any way imply that the right to bear arms is now a fundamental right under the Illinois Constitution." *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 78.

Similarly, and contrary to the majority's suggestion, *id.* ¶¶ 52-32, the United States Supreme Court's decision in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), on which *Ali* relied, 2021 IL 126014, ¶ 28, does not hold that the Second Amendment triggers strict scrutiny for an equal protection claim. *McDonald* merely determined that the Second Amendment's individual right to keep and bear arms for self-defense, which was first recognized in *Heller*, 554 U.S. at 636, was "fully applicable to the States," *McDonald*, 561 U.S. at 750. Though the test for incorporating a federal right to apply to the States asks whether the right is "fundamental to our scheme of ordered liberty," *id.* at 767, this is not equivalent to a "fundamental" right in the equal protection context. Unsurprisingly, then, even after *McDonald*, federal courts, including

the Seventh Circuit in *Culp*, have unanimously held that rational basis applies to an equal protection challenge to a law that purportedly burdens the Second Amendment right to bear arms, or that such claims are not cognizable at all. *See supra* pp. 26-28.

In sum, the appellate court majority purported to reverse this Court's binding precedent, and did so based on its misapplication of cases that have no relevance here. As the Court in *Kaldomos* correctly held, a challenge to a state firearms regulation does not implicate a fundamental right for purposes of equal protection, and therefore is subject to rational basis review. And, as explained below, because the challenged exemptions are rationally related to the State's legitimate interest in reducing mass shootings and firearms deaths, the appellate court erred in ruling that plaintiffs were likely to succeed on the merits of their equal protection claim.

E. The Act satisfies rational basis review.

Rational basis review is "limited and deferential," and legislation will be upheld if it is rationally related to a legitimate state interest. *Destiny P.*, 2017 IL 120796, ¶ 14; *accord People v. Tosch*, 114 Ill. 2d 474, 481 (1986) (consistent with equal protection, government may "differentiate between persons similarly situated if there is a rational basis for doing so"). "[A]ny set of facts" that one can "reasonably conceive" will suffice "to justify the statutory classification," *Arvia v. Madigan*, 209 Ill. 2d 520, 537 (2004), even if

"'unarticulated'" at the time the legislation was enacted, *Segers v. Indus. Comm'n*, 191 Ill. 2d 421, 436 (2000) (citation omitted).

Thus, a "court may hypothesize reasons for the" classification, "even if the reasoning advanced did not motivate the legislative action." *People ex rel. Lumpkin v. Cassidy*, 184 Ill. 2d 117, 124 (1998); *Jones v. City of Calumet City*, 2017 IL App (1st) 170236, ¶ 29. The government need not "produce evidence to sustain the rationality of the classification"; instead, "there is a weighty burden on the challenger, who must negative every basis which might support the law because it should be upheld if there is any reasonably conceivable set of facts supporting the classification." *AFSCME, Council 31 v. State*, 2015 IL App (1st) 133454, ¶ 32 (cleaned up); *accord Ill. Hous. Dev. Auth. v. Van Meter*, 82 Ill. 2d 116, 122 (1980) (party challenging statute has burden of showing its invalidity). And "[r]ational-basis review tolerates overinclusive classifications, underinclusive ones, and other imperfect means-ends fits." *St. Joan Antida High Sch. Inc. v. Milwaukee Pub. Sch. Dist.*, 919 F.3d 1003, 1010 (7th Cir. 2019); *see also Lumpkin*, 184 Ill. 2d at 124 ("The statute need not be the best means of accomplishing the legislature's objectives."); *People v. Anderson*, 148 Ill. 2d 15, 31 (1992) ("The legislature need not deal with all conceivable evils at once; it may proceed one step at a time.").

The Act easily satisfies rational basis review. Reducing mass shootings and firearm casualties, which are more likely to result from assault weapons and LCMs than from other types of firearms and magazines, is a legitimate

government interest. *Kalodimos*, 103 Ill. 2d at 510; *see also Mosley*, 2015 IL 115872, ¶ 42 ("[T]he state has a legitimate interest in protecting the public and the police from the possession and use of dangerous weapons."). And limiting the number of firearms and magazines most likely to result in a mass shooting — except to individuals who already lawfully own them, and who complete an endorsement affidavit that allows the Illinois State Police to ensure that dangerous weapons do not fall into the hands of those prohibited from using them — is a reasonable way to achieve that goal.

That is why many courts have held that banning assault weapons is a reasonable means of furthering public safety. *See Benjamin v. Bailey*, 662 A.2d 1226, 1238 (Conn. 1995) ("[T]he state has a legitimate interest in regulating assault weapons. The legislature's decision to prohibit the possession of some weapons and not others does not render the ban on assault weapons irrational."); *Coal. of N.J. Sportsmen, Inc. v. Whitman*, 44 F. Supp. 2d 666, 686 (D.N.J. 1999), *aff'd*, 263 F.3d 157 (3d Cir. 2001) ("Clearly . . . the government has a legitimate state interest in the regulation of assault weapons. . . . The rational link between public safety and a law proscribing possession of assault weapons is so obvious that it would seem to merit little serious discussion."); *see also Worman v. Healey*, 922 F.3d 26, 39-40 (1st Cir. 2019), *abrogated on other grounds by Bruen*, 142 S. Ct. 2111; *Kolbe*, 849 F.3d at 140; *N.Y. State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242, 262-63 (2d Cir. 2015); *Olympic Arms v. Buckles*, 301 F.3d 384, 390 (6th Cir. 2002).

The limited exceptions in the Act do not change this outcome because they reasonably differentiate between professionals with extensive firearms training and experience and the public at large. *See supra* p. 21. Indeed, several of the exceptions are expressly limited to these professionals while they are acting within the scope of their official duties. *See supra* p. 21.

The appellate court did not hold that the challenged exemptions were unlikely to survive rational basis review. And the majority's criticisms of the exemptions, which were made in the context of applying strict scrutiny, do not call the Act into question.

First, the majority noted that no "purpose or basis for the exempted categories is found in the record." *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 60; *see also id.* ¶ 61 (deeming it "extremely relevant that no purpose of the legislation and no basis for the classifications provided at the time plaintiffs' pleadings were filed"). But on rational basis review, the government interest need not be express in the statute's text, *Srail v. Vill. of Lisle*, 588 F.3d 940, 946-47 (7th Cir. 2009); *see also Lumpkin*, 184 Ill. 2d at 124; *Dotty's Cafe v. Ill. Gaming Bd.*, 2019 IL App (1st) 173207, ¶ 34, and the government need not "produce evidence to sustain the rationality of the classification," *AFSCME*, 2015 IL App (1st) 133454, ¶ 32 (cleaned up). On the contrary, a "court may hypothesize reasons for the" classification. *Lumpkin*, 184 Ill. 2d at 124; *Jones*, 2017 IL App (1st) 170236, ¶ 29.

Second, the majority speculated that the Act is overinclusive because some non-exempt individuals — perhaps even plaintiffs, though they offered no evidence to this effect — might have the specialized employment or training to "render them more or equally qualified to possess and purchase [assault weapons and LCMs]" than persons in the exempted categories. *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 62. Again, under rational basis review, classifications need not be drawn with mathematical precision. *Lumpkin*, 184 Ill. 2d at 124; *Anderson*, 148 Ill. 2d 15, 31 (1992); *St. Joan Antida High Sch.*, 919 F.3d at 1010. Rather, the classifications need only be rational, as the Act's are.

Finally, the majority suggested that the Act is underinclusive because it does not dis-possess individuals who lawfully owned assault weapons before the Act's effective date of the weapons, so long as they obtain an endorsement affidavit from the Illinois State Police by January 1, 2024. *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 62. On the contrary, the General Assembly reasonably balanced the property rights of existing owners of assault weapons and LCMs against the significant public health and safety concerns associated with these weapons and, in particular, their use in mass shootings, by limiting the number in circulation going forward. Under rational basis review, the legislature was well within its authority to address the dangers presented by assault weapons and LCMs "one step at a time." *Anderson*, 148 Ill. 2d at 31.

Thus, the appellate court incorrectly held that plaintiffs were likely to succeed on the merits of their equal protection claim. The court's decision to uphold the TRO should be reversed, and the TRO vacated, on this basis alone.

III. The Appellate Court Erred in Ruling that Plaintiffs Established Irreparable Harm for which They Have No Adequate Legal Remedy.

Not only did the appellate court mistakenly conclude that plaintiffs were likely to succeed on the merits of their equal protection claim, that error was compounded by its ruling that plaintiffs showed that they would suffer irreparable harm if a TRO did not issue and that they lacked an adequate remedy at law. *See Happy R Sec.*, 2013 IL App (3d) 120509, ¶ 36 (noting that these two elements are closely related).

It was plaintiffs' burden to "demonstrate" that they would suffer irreparable harm and that a legal remedy is not adequate. *See Mohanty*, 225 Ill. 2d at 62. And "remote and speculative" allegations are insufficient to satisfy this burden. *Callis, Papa, Jackstadt & Halloran*, 195 Ill. 2d at 372; *accord Smith v. Dep't of Nat. Res.*, 2015 IL App (5th) 140583, ¶ 27 (irreparable harm "not satisfied by proof of a speculative possibility of injury") (cleaned up); *In re Marriage of Slomka & Lenehan-Slomka*, 397 Ill. App. 3d 137, 145 (1st Dist. 2009) ("unsupported conclusion" could not establish irreparable harm or lack of legal remedy); *Int'l Ass'n of Firefighters Loc. No. 23 v. City of E. St. Louis*, 206 Ill. App. 3d 580, 587 (5th Dist. 1990) ("speculative" harm not irreparable). Moreover, irreparable harm and a lack of an adequate legal

remedy exist only when "monetary damages cannot compensate the injury and the injury cannot be measured by pecuniary standards." *Happy R Sec.*, 2013 IL App (3d) 120509, ¶ 36 (cleaned up); *accord Ajax Eng'g Corp. v. Sentry Ins.*, 143 Ill. App. 3d 81, 84 (5th Dist. 1986) (similar); *see also Kanter & Eisenberg v. Madison Assocs.*, 116 Ill. 2d 506, 510-11 (1987) ("If there is an adequate legal or equitable remedy which will make the plaintiff whole after trial, a preliminary injunction should not issue.").

Here, plaintiffs did not demonstrate that they would suffer a non-speculative irreparable harm that could not be compensated by pecuniary damages if a TRO was not granted. The Act allows the individual plaintiffs to continue to possess the assault weapons and LCMs that they lawfully owned before January 10, 2023; they must merely obtain an endorsement affidavit from the Illinois State Police before January 1, 2024. *See supra* p. 9. The Act also does not regulate the individual plaintiffs' ability to possess and use firearms and magazines other than assault weapons and LCMs. Thus, plaintiffs' right to possess and use arms for self-defense — assuming it even extends to assault weapons and LCMs[8] — is not undermined, because plaintiffs

[8] Even if plaintiffs had not disclaimed reliance on the Second Amendment, SR1944, many courts, both before and after *Bruen*, have held that bans on assault weapons and LCMs do not violate the right to bear arms secured by the United States Constitution. *E.g, Bevis v. City of Naperville*, No. 22 C 4775, 2023 WL 2077392, at *16 (N.D. Ill. Feb. 17, 2023); *Ocean State Tactical, LLC v. Rhode Island*, No. 22-CV-246 JJM-PAS, 2022 WL 17721175, at *11-16 (D.R.I. Dec. 14, 2022); *Oregon Firearms Fed'n, Inc. v. Brown*, No. 2:22-CV-01815-IM, 2022 WL 17454829, at *8-14 (D. Or. Dec. 6, 2022); *Worman*, 922 F.3d at 41; *N.Y. State Rifle & Pistol Ass'n*, 804 F.3d at 269; *Kolbe*, 849 F.3d at

may continue to possess and use their previously obtained assault weapons and LCMs, as well as all other firearms and magazines not subject to the Act.

As for the gun store plaintiffs, while they can no longer sell assault weapons and LCMs to Illinois residents who are not within the Act's exempted categories, these plaintiffs will, at most, face a reduction in sales, which could be compensated by money damages. Moreover, even this alleged harm is speculative because the gun store plaintiffs alleged merely that they "desire" to sell assault weapons or LCMs, SR11, not that they are actually in the business of doing so. In any event, even if the gun store plaintiffs had shown that the Act obstructed their ability to do business, the inability to work in a particular job is not an "extreme emergency situation that poses serious harm," as required to show irreparable harm to justify a TRO. *Clinton Landfill, Inc. v. Mahomet Valley Water Auth.*, 406 Ill. App. 3d 374, 380 (4th Dist. 2010). On the contrary, Illinois courts have held that consequences to employment are not irreparable, *McMann v. Pucinski*, 218 Ill. App. 3d 101, 108 (1st Dist. 1991), and that money damages can provide sufficient compensation, *Webb v. Cty. of Cook*, 275 Ill. App. 3d 674, 677 (1st Dist. 1995); *Hess v. Clarcor, Inc.*, 237 Ill. App. 3d 434, 452 (2d Dist. 1992).

136-37; *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Att'y Gen. N.J.*, 910 F.3d 106, 122 (3d Cir. 2018), *abrogated on other grounds by Bruen*, 142 S. Ct. 2111; *Heller v. District of Columbia*, 670 F.3d 1244, 1264 (D.C. Cir. 2011); *Friedman v. City of Highland Park*, 784 F.3d 406, 412 (7th Cir. 2015). And, as noted *supra* pp. 30-31, the right to bear arms in the Illinois Constitution is phrased in more limited language, and thus confers a more limited right, than the Second Amendment.

For these reasons, this case is no different than the many cases in which courts have held that the challengers to a state or local restriction on assault weapons and LCMs had not shown irreparable harm for purposes of obtaining preliminary injunctive relief. *See Bevis*, 2023 WL 2077392, at *16; (denying preliminary injunction in Second Amendment challenge to Act); *see also Ocean State Tactical*, 2022 WL 17721175, at *23-24; *Oregon Firearms Fed'n*, 2022 WL 17454829, at *18-19.

For its part, the appellate court appeared to find irreparable harm based on its statement that: "Defendants' response only claimed monetary damages for the business owners, and we have no facts that would allow us to find that money damages would eliminate the potential constitutional violation alleged by plaintiffs." *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 63. But this gets the irreparable harm inquiry exactly backwards. It was plaintiffs' burden to demonstrate that they satisfied each requirement for a TRO, including that they would suffer irreparable harm if a TRO was not granted. *See Mohanty*, 225 Ill. 2d at 62.

The appellate court also referred to *Makindu v. Illinois High School Ass'n,* 2015 IL App (2d) 141201, in finding that the irreparable harm element was satisfied. *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 63. But *Makindu* is inapposite. There, the restraint at issue — which would have prevented a high school student from playing basketball during his senior year — was immediately effective and any harm resulting from it could not be

rectified after graduation if the student prevailed on the merits. *Makindu*, 2015 IL App (2d) 141201 ¶¶ 10, 44. Here, by contrast, the Act does not require the individual plaintiffs to dis-possess themselves of any assault weapons or LCMs, and insofar as it requires them to obtain an endorsement affidavit for their assault weapons, they need not do so for nearly a year. In addition, the Act does not regulate the individual plaintiffs' ability to possess and use all firearms and magazines not covered by the Act, and any loss in sales experienced by the gun store plaintiffs could be compensable in monetary damages. The dissenting justice's suggestion that "under the *Makindu* analysis," plaintiffs' allegations were sufficient to establish irreparable harm for their equal protection claim is incorrect for the same reasons. *See Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 76.

"It is always an abuse of discretion for a [ ] court to base a decision on an incorrect view of the law." *A&R Janitorial*, 2018 IL 123220, ¶ 15. Here, only by impermissibly shifting the burden to defendants and citing an inapposite case was the appellate court able to conclude that plaintiffs had established irreparable harm. Because the appellate court's ruling on this element rested on a legal error, it was an abuse of discretion, providing yet another reason to reverse the decision below and vacate the TRO.

IV. The Appellate Court Erred in Holding that a Balancing of the Equities Favored Plaintiffs.

Finally, the appellate court erred in concluding that a balancing of the equities favored plaintiffs, providing yet another basis to reverse the decision

below and vacate the TRO. "In balancing the equities, the court must weigh the benefits of granting the injunction against the possible injury to the opposing party from the injunction," *Guns Save Life*, 2019 IL App (4th) 190334, ¶ 68 (quotations omitted), as well as the effect on the public, *Clinton Landfill*, 406 Ill. App. 3d at 378. Moreover, "even if a plaintiff makes a *prima facie* showing as to [the other] elements, the circuit court may not issue a preliminary injunction unless the balance of hardships and public interests weighs in favor of granting the injunction," *JL Props.*, 2021 IL App (3d) 200305, ¶ 60; *accord Buzz Barton*, 108 Ill. 2d at 387; *see also Guns Save Life*, 2019 IL App (4th) 190334, ¶¶ 68-70 (although plaintiffs satisfied other preliminary injunction requirements, affirming denial of such relief because balancing of equities and public interest favored the State).

Here, balancing the equities and considering the effect of a TRO on the public favored defendants. By limiting the number of assault weapons and LCMs, which are the firearms and magazines most often used in mass shootings, in circulation, the Act protects the public from the substantial health and safety risks that are associated with mass shootings and other criminal uses of these deadly weapons. As courts have recognized, "assault weapons have been understood to pose unusual risks" because they "are disproportionately used in crime, and particularly in criminal mass shootings," they "tend to result in more numerous wounds, more serious wounds, and more victims," and they are "disproportionately used to kill law enforcement

officers." *N.Y. State Rifle & Pistol Ass'n*, 804 F.3d at 262. Similarly, "[l]arge-capacity magazines are disproportionately used in mass shootings," as they result in "more shots fired, persons wounded, and wounds per victim than do other gun attacks." *Id.* at 263; *see also Bevis*, 2023 WL 2077392, at *14-15 (describing "exceptional danger" of assault weapons and LCMs, as compared to other firearms and magazines); *Worman*, 922 F.3d at 39 (describing "unique dangers posed" by assault weapons compared to other firearms).

Meanwhile, the Act allows the individual plaintiffs to continue to possess and use their assault weapons, so long as they obtain an endorsement affidavit from the Illinois State Police for any assault weapons by January 1, 2024, and LCMs, and also to possess and use other firearms and magazines not covered by the Act. And the gun store plaintiffs may continue to sell assault weapons and LCMs to out-of-state customers and Illinois residents within the Act's exemptions, as well as to sell other firearms and accessories to in- and out-of-state residents alike. The possible injury inuring to the State and the public as a result of the TRO is not capable of measurement; by contrast, any injury to plaintiffs absent a TRO is minimal (and, insofar as the gun store plaintiffs are concerned, compensable in monetary damages). For these reasons, courts have held that the balancing of the equities, including the public interest, disfavors granting preliminary injunctive relief in challenges to laws, including the Act, that regulate assault weapons and LCMs. *See Bevis*, 2023 WL 2077392, at *17; *see also Ocean State Tactical*, 2022 WL 17721175, at

*24 ("plaintiffs' proffered harm caused to them by an injunction pales in comparison to the unspeakable devastation caused by mass shooters wildly spraying bullets without end into a crowd of bystanders"). The appellate court here should have done the same.

To be sure, the appellate court appropriately acknowledged the interest, which is shared by both the State and the public, in "protect[ing] the citizens of this state from the random atrocities associated with mass shootings." *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 64. But it held that this interest was outweighed by flaws that it perceived to have occurred in the legislative process giving rise to the Act. *Id.* ¶ 65 (positing that no "opportunity for discourse was provided" nor "does it appear that the legislative process allowed for even a moment of debate" before the Act's passage). Whatever the merit to this description (and there is none, *see supra* p. 1), any perceived defects in the legislative process work no hardship on plaintiffs. Rather, plaintiffs' "hardship," as explained, is the inability to purchase new assault weapons or LCMs while the case is litigated on the merits, and, insofar as the gun store plaintiffs are concerned, a potential loss of sales, which is compensable in monetary damages. Thus, contrary to the appellate court's determination, the balancing of the equities did not favor plaintiffs.

If this Court concludes, as it should, that the appellate court erred in ruling that plaintiffs were likely to succeed on the merits of their equal

protection claim, or that plaintiffs demonstrated that they would suffer irreparable harm if a TRO were not entered, the Court need not consider whether the balancing of the equities, including the public interest, favor a TRO. But, regardless, the appellate court's error in finding that the balancing of the equities favors plaintiffs is yet another basis for reversal.

CONCLUSION

For these reasons, Defendants-Petitioners request that this Court grant their petition for leave to appeal, reverse the appellate court's decision, and vacate the TRO entered by the circuit court.

Respectfully submitted,

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February 24, 2023

CERTIFICATE OF COMPLIANCE

I certify that this Petition conforms to the requirements of Supreme Court Rules 341 through 343 made applicable by Supreme Court Rule 315(d). The length of this Petition, not including the items identified as excluded from the length limitation in Rule 341(b)(1), is 11,685 words.

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CERTIFICATE OF FILING AND SERVICE

I certify that on February 24, 2023, I electronically filed the foregoing **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 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.

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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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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.

SEPARATE APPENDIX TO PETITION FOR LEAVE TO APPEAL

KWAME RAOUL
Attorney General
State of Illinois

JANE ELINOR NOTZ
Solicitor General

Counsel for Defendants-Petitioners Governor JB Pritzker and Attorney General Kwame Raoul

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Assistant Attorney General
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[1] The caption to the appellate court decision, which is in the appendix, contains a complete list of plaintiffs-respondents. A1-12.

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2023 IL App (5th) 230035

NO. 5-23-0035

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

ACCURACY FIREARMS, LLC, AARON CARTER, AARON WERNZ, ABIGAIL GUZMAN, ADAM DAVIS, ADAM DIEPHOLZ, ADAM FORTNER, ADAM GRAY, ADAM ROTH, ADAM STONE, ADRIAN ZGAMA, ALAN CAZZATO, ALAN RICHARDSON, ALBERT BARKER, ALEX CHAMBERS, ALFREDO DIAZ, ALICE OLIVER, ALISON ROCK, AMANDA MOLL, AMANDA PROPST, AMANDA STOTTS, AMBER BAILEYGAINES, AMBER BAUMAN, AMOS KAFFENBARGER, ANDREW BOWMAN, ANDREW CRAIG, ANDREW STEINBACH, ANDREW ZASADNY, ANDY SHAW, ANGEL CARDONA, ANGIE KNAPP, ANN MARIE SUTER, ANTHONY CONIGLIO, ANTHONY COOK, ANTHONY CRAVEN, ANTHONY GALLES, ANTHONY KANIK, APRIL PETERSON, APRIL SCHWEITZER, ARTHUR DUBIEL, ASHLEY ESSLINGER, ASHLEY FLUECHTLING, ASHLEY STRYKER, BARBARA STEIN, BEN HAMILTON, BENJAMIN BANGERT, BENJAMIN BEHRENS, BENJAMIN DILLARD, BENJAMIN KOWALSKI, BETH NORWICK, BEVERLY BERBERET, BILL LALEZAS, BLAKE CALLAWAY, BLAKE KUHL, BOGUSLAW SOJKA, BRAD BUYSSE, BRAD LEMAN, BRAD PETERSON,	)	Appeal from the Circuit Court of Effingham County.

BRADICK YOUNG, BRADLEY)
SCHWARZ, BRADLEY SHEMLUCK,)
BRANDI SCHLIEPER, BRANDON)
DURBIN, BRANDON HANKS,)
BRANDON PRESTIN, BRANDON)
VANDER MEERSCH, BRANDON)
WADDELL, BRENDA STOETZER,)
BRENT WIETTING, BRETT CLARK,)
BRIAN BAHR, BRIAN BOLLEGAR,)
BRIAN EAKER, BRIAN INGRAM,)
BRIAN LASKEY, BRIAN McQUEEN,)
BRIAN ROBBINS, BRIAN SCHULTZ,)
BRIAN SULLIVAN, BRUCE GRAFTON,)
BRUCE KARSTEN, BRYAN ALFORD,)
BRYNT MONTGOMERY, CALEB)
ANDREATTA, CALLIE CAULK,)
CARRIE RICE, CATHERINE A. O'SHEA,)
CHAD CARPENTER, CHAD FORMAN,)
CHAD JEWETT, CHAD LANPHIERD,)
CHAD MAYNARD, CHAD McGINNIS,)
CHAD McNAUGHTON, CHAD RUOT,)
CHADRICK LAWRENCE, CHARLES)
ATWATER, CHARLES BARBOUR,)
CHARLES CLINE, CHARLES)
JOHNSON, CHERYL KOZLOV, CHRIS)
DILULLO, CHRIS METCALFE, CHRIS)
OLIVER, CHRIS ROSE, CHRIS W COX,)
CHRISTINA BASTILLA, CHRISTINA)
CLAUSEN, CHRISTINE WATSON,)
CHRISTOPHER BACHMAN,)
CHRISTOPHER DOHERTY,)
CHRISTOPHER HUGHES,)
CHRISTOPHER JOHNSON,)
CHRISTOPHER KINDRED,)
CHRISTOPHER KORGER,)
CHRISTOPHER REICH,)
CHRISTOPHER SOUKUP,)
CHRISTOPHER UZELLA,)
CHRISTOPHER VIEBACH,)
CHRISTOPHER VOSS, CHRISTY)
FOSTER, CINDI KLENKE, CINDY)
BRAGG, CLAUDIA GRUBER, CLAY)
SIDWELL, CLAYTON WELLS,)

CLINTON TULL, CODY ROSE, COLIN)
PATTON, CONNIE LARGE, COREY)
DASENBROCK, CORINNE NANCE,)
COURTNEY PERIDORE, CRAIG)
FOSTER, CRAIG HAMRICK, CRAIG)
MACHUGA, CRAIG NUNNALLY,)
CRAIG PETERSEN, CRYSTAL KINDER,)
CRYSTAL MEEKS, CURT)
HENDERSON, CURTIS JACOBS,)
CURTIS WAGENBACH, CYNTHIA)
MULLER, CYNTHIA WILLIAMS, DALE)
VOSS, DALLAS CARON, DAN)
ALBERTI, DAN GILMORE, DAN)
SCOTT, DANA M. BOYER, DANIEL)
BALOUN, DANIEL BOHNENSTIEHL,)
DANIEL COLE, DANIEL GLOMB,)
DANIEL GUSTAFSON, DANIEL)
HERDA, DANIEL IHRKE, DANIEL)
JEWETT, DANIEL STAAB, DANIEL)
WOLSEY, DANIELLE PENMAN, DARIN)
BAZZELL, DARIN MILLER, DARIN)
PETERSON, DARRELL JOHNSON,)
DARRYL WHITMORE, DAVE)
ECKERTY, DAVID ACCATHARA,)
DAVID CAULK, DAVID CLARK, DAVID)
DIPRIMA, DAVID EARP, DAVID)
GRIMESTAD, DAVID GUSS, DAVID)
JANSEN, DAVID KOSTERS JR., DAVID)
MARTIN, DAVID McKEIGHEN, DAVID)
MOTHKOVICH, DAVID PAUL)
BLUMENSHINE, DAVID SCHLIEPER,)
DAVID DEBORAH BRYANT, DEBORAH)
LEMKE, DEBRA PERRY, DEBRA)
WOLSEY, DEBRA WOMBLES, DEENA)
KRIEGER, DENNIS CARLOCK,)
DENNIS MEIER, DENNIS SCHULTZ,)
DENZEL JINES, DEVIN KURFMAN,)
DILLON DARBYSHIRE, DILLON)
FORTNER, DOMINIC SABATINA,)
DONALD BAYLES, DONALD FOSTER,)
DONALD GILBERT, DONALD KALINA,)
DONALD RIENTS, DONNA BUSS,)
DONNA WESTER, DOUGLAS)

ECKROTE, DOUGLAS J MORRISSEY,)
DOUGLAS ROOSEVELT, DOUGLAS)
RYAN, DUANE CERRITO, DUSTIN)
PRATHER, DUSTIN RIGHTNOWAR,)
ED RODRIGUEZ, EDVIN KUMI,)
EDWARD MUSIAL, EDWIN ROLDAN,)
ELAINE LORINCZI, ELIZABETH)
LUBBEN, ERIC BREEZE, ERIC)
CINNAMON, ERIC DIEDRICK, ERIC)
DUBIEL, ERIC SHIRLEY, ERIC)
WEBER, ERIK BAILEYGAINES, ERIK)
FINKLE, ERIK SHELDON, EVERETT)
McCULLEY, FRANCISCO LOPEZ,)
FRANK SMITH, FRANK WILLIAMS,)
FRANK WILSON, FRANKLIN STONER,)
FRED SNODGRASS, GARY AMES,)
GARY ELLIS, GARY FRY, GARY)
McCULLOUGH, GARY PHELPS, GARY)
SMITH, GEOFFERY BEATTY,)
GEOFFREY CRABTREE, GEOFFREY)
MONARI, GEOFFREY PRESTON,)
GEOFFREY STARR, GEORGE IHRKE,)
GEORGENA OTTOLINI, GERARD)
AVELLONE, GILBERT JIMENEZ,)
GLENDA GARRETT, GLENN)
MULLALLY, GLENN REED, GORDON)
GULLEY JR., GRACE GRAY, GREG)
BUBAN, GREG CHEAURE, GREG)
HALE JR., GREG REBMAN, GREG)
RICHARDSON, GREG SANTAY, GREG)
SCHMIDT, GREG WICINSKI,)
GREGORY GIPSON, GREGORY)
ICENOGLE, GREGORY MOFFITT,)
GREGORY SHUFF, GRZEGORZ)
GANCARZ, GUY MERKER II, GWYNNE)
ANDERSON-BECK, HAL LANGHAM,)
HASSEN DRISSI, HAYDEN NORRIS,)
HEIDIJO ELYEA, HUNTER FLORES,)
IAN GEBBIA, ILENE BRINER, JACEK)
SEK, JACK LOMBARDI II, JACOB)
ALLEN, JACOB HODEL, JACOB)
JOHNSON, JACOB KRUPOWICZ,)
JACOB MANNING, JACOB MURPHY,)

JACOB PEIPER, JACOB SMITH,)
JACQUELINE GARRETSON, JADE)
HAMER, JAIMIE BAKER, JAKE)
GLASNOVICH, JAMES BUNCH, JAMES)
C. SELLERS, JAMES CARROLL, JAMES)
CLINTON, JAMES COOK, JAMES COX,)
JAMES GRIFFIN, JAMES HASKETT,)
JAMES JODISON, JAMES JONES,)
JAMES LEE, JAMES LEIPART, JAMES)
LOGSDON, JAMES LOLAN, JAMES)
MUHICH, JAMES PARKER, JAMES)
RATZ, JAMES WALKER, JAMIE)
HARRIS, JAMIE KOCH, JAMIE)
MILTON, JAN JAREK, JANET BLADE,)
JANET GESELL, JANET MEYER,)
JARED BARKER, JARED HARRIS,)
JARED HELLER, JARED McCAMMON,)
JAROSLAW WORWA, JASON)
BANGERT, JASON DODD, JASON)
DONOVAN, JASON DZIEDZIC, JASON)
FLOYD, JASON GOODWIN, JASON)
HAAG, JASON HODEL, JASON KERR,)
JASON LANGSTON, JASON)
MARQUES, JASON MERRILL, JASON)
NOE, JASON SHARP, JASON)
SORENSEN, JASON TRYBOM, JAY)
ANDERSON, JEFF REHKEMPER, JEFF)
BROWN, JEFF WRIGHT, JEFFERSON)
PERKINS, JEFFERY RANDECKER,)
JEFFREY FURTEK, JEFFREY)
GOETZEN, JEFFREY HODEL,)
JEFFREY KEITHLEY, JEFFREY)
KINDGREN, JEN MARTIN, JENNIFER)
CENTOLA, JENNIFER)
CHROSTOWSKI, JENNIFER HERDA,)
JENNIFER PERHAM, JENNIFER)
PETERSON, JEREMIAH SIMMONS,)
JEREMY ALLEN, JEREMY RAKERS,)
JERRY BONEY, JERRY LUTKER,)
JERRY STONEBURNER, JERRY)
WOKER, JIM KRUTA JR., JIM)
McILROY, JODY BENSON, JOEL)
HOHBEIN, JOHN ARMSTRONG, JOHN)

BARHAM, JOHN BELL, JOHN BOONE,)
JOHN CARON, JOHN FOWLER, JOHN)
FRANZEN, JOHN FREEMAN, JOHN)
GALLAGHER, JOHN HARMON, JOHN)
KIESLAR, JOHN KRENZ, JOHN M.)
ODLE, JOHN McLAUGHLIN, JOHN)
MILLER, JOHN REYNOLDS, JOHN)
SCHACKMANN, JOHN SIEMENS,)
JOHN STRAIN JR., JOHN THOMAS)
HOWES, JOHN WALTERS, JOHN)
WEAVER, JOHNATHAN SEIDEL, JON)
BECKER, JON BLY, JONATHAN)
BEHRENS, JONATHAN LYONS,)
JONATHAN METCALF, JONATHAN)
PARDO, JONATHON HOLLAND,)
JORDAN CREEK FIREARMS, LLC,)
JORDAN CUNNINGHAM, JOSEPH)
BAUER, JOSEPH MEYERS, JOSEPH)
O'KEEFE, JOSEPH ROSSI, JOSH)
RICKEY, JOSHUA EVANS, JOSHUA)
FULK, JOSHUA MAURER, JOSHUA)
McDOWELL, JOSHUA WHITE, JR)
MAY, JULIE ARMSTRONG, JULIE)
LYONS, JUSTIN BROOKS, JUSTIN)
BUERSTER, JUSTIN COUCH, JUSTIN)
NORRIS, JUSTIN WEISS, JUSTIN)
ZELKOWSKI, JUSTYNA WRONKA, K.)
DUSTIN COOPER, KAREN)
KELLEHER, KAREN LALAGOS,)
KAREN TIRIO, KARL ZAWADZKI,)
KATHLEEN LEAF, KATHLEEN)
RAMSEY, KAZIMIERZ MISIASZEK,)
KEITH HAMANN, KEITH KUHL,)
KELLY HARMS, KELLY STICH, KELLY)
WOLAK, KEN HALL, KENDALL)
TUCKER, KENNETH BRYANT,)
KENNETH HOUSTON, KENNETH)
KLENKE, KENNETH NEILSEN,)
KENNETH SMITH, KENNETH)
STROPNIK, KENNETH WALTHER,)
KENNY BRAGG, KENT KARWOSKI,)
KENT WILLIAMS, KEVIN BROUK,)
KEVIN CARTWRIGHT, KEVIN)

HALEMEYER, KEVIN HARPER, KEVIN)
KOTH, KEVIN KOUTSKY, KEVIN)
McKITTRICK, KEVIN MOUNTJOY,)
KEVIN SAWATZKY, KEVIN SENNOTT,)
KEVIN STOLL, KHAALIS)
ALEXANDER, KIM IAFFALDANO, KIM)
RIGOR, KIMBERLEY SZALKUS,)
KIMBERLY ABATANGELO, KIMBERLY)
ADKINSON, KIMBERLY NORWOOD,)
KIRK ALLEN, KIRK ORELUP, KORI)
DUNCAN, KRISTI HICKAM, KRISTIN)
OTTOLINO, KRISTIN PLINER,)
KRISTIN STROM, KRZYSZTOF)
BARTOSZEK, KURT DUEHR, KURT)
PEPPERELL, KYLE NEMETH, KYLE)
SCHROEDER, KYLE SCHULTZ, KYRA)
DAVENPORT, LANCE BRISTOW,)
LANCE MARCZAK, LARRY AGERS,)
LARRY NATTIER, LARRY WILLIAM)
STAMMER JR., LAURA BECKMANN,)
LAURA DeYOUNG, LAURA DIAZ,)
LAURA HOIS, LAURA HUGHES,)
LAURA PACKWOOD, LAURA REECE,)
LAURA RUSSELL, LAUREN MILLER,)
LAWRENCE McKENNA, LEE)
TANNER, LES HESS, LEWIS BLEVINS,)
LINDA BROCKMAN, LINDA FUHR,)
LINDA SABO, LISA CICHONSKI, LISA)
L. BOWMAN, LISA PECK, LLOYD)
WOLFORD, LOGAN FIFER, LUKE)
MAYNARD, LYLE PROSSER, LYNDELL)
WAGGENER, LYNDLE WEDDING,)
LYNETTE DECKER, MANDY)
CULVERLUCAS, MARC JACOBS, MARCELLO)
VALLE, MARGARET HEDLUND,)
MARIUSZ PYCZ, MARK BILLHARTZ,)
MARK HANUSIN, MARK JAKOB,)
MARK LEJA, MARK MAZMAN, MARK)
OLAUGHLIN, MARK PEARSON, MARK)
PINGSTERHAUS, MARK STEEN,)
MARSHALL HALE, MARTIN)
HENDERSON, MARTIN MAGGIO,)
MARTIN MOHR, MARVIN HAYDEN,)

MARY KOSTERS, MATT CRAIG, MATT)
HOXTELL, MATT LISNICH, MATT)
SUTTON, MATTHEW BARRICK,)
MATTHEW BOWMAN, MATTHEW)
DUBIEL, MATTHEW HAMANN,)
MATTHEW HUBER, MATTHEW KERN,)
MATTHEW MEYER, MATTHEW)
NEWTON, MATTHEW PALMER,)
MATTHEW PETERSON, MATTHEW)
SCHLACHTER, MATTHEW)
SINNOKRAK, MATTHEW WHITCOMB,)
MATTHEW WIEG AND, MELISSA)
HINKAMPER, MELODY SEIDEL,)
MICHAEL BAKER, MICHAEL BALL,)
MICHAEL CLAUSEN, MICHAEL)
CUMMINGS, MICHAEL DANIELSON,)
MICHAEL E. KACKERT, MICHAEL)
ESPOSITO, MICHAEL FOLSOM,)
MICHAEL HARLA, MICHAEL)
JENNINGS, MICHAEL JORDAN,)
MICHAEL KELLY, MICHAEL)
KESSLER, MICHAEL KRAEMER,)
MICHAEL KRUSE, MICHAEL)
LAWRENCE, MICHAEL LAYNE,)
MICHAEL McKENNA, MICHAEL)
MEYER, MICHAEL MITCHELL,)
MICHAEL MOODY, MICHAEL)
MORLEY, MICHAEL MOSSMAN,)
MICHAEL MUFF, MICHAEL NICOSON,)
MICHAEL NIELSEN, MICHAEL)
PETRUCCI, MICHAEL SCHIEK,)
MICHAEL SHUFF, MICHAEL STARE,)
MICHAEL STIERN, MICHAEL)
THOMPSON, MICHELE BRANNAN,)
MICHELE KESSLER, MICHELLE FESI,)
MICHELLE TRCKA, MIKE MOLLYANN)
HESSER, MONIKA CASEY, N JILL JAY,)
NATALIE ENGELBRECHT, NATASHA)
MALDONADO, NATHAN CAMPBELL,)
NATHAN GRISSOM, NATHAN)
PRASUN, NATHAN STEWART,)
NATHEN BEASLEY, NEAL STOLLER,)
NEIL LUALLEN, NICHOLAS BYERS,)

NICHOLAS STIPANOVICH, NICOLE)
DONOVAN, NORMAN ROSE, ORVILLE)
BRETTMAN, OSCAR CASEY, OSCAR)
WORWA, PATRICIA EDMONDS,)
PATRICIA IMHOFF, PATRICIA)
MAYOKATSION, PATRICIA POTOCKI,)
PATRICK GANNON, PATRICK)
HARDIEK, PATRICK McDOUGAL,)
PATRICK SENORSKI, PATRICK)
SMITH, PAUL ESTELL, PAUL J. RUIZ,)
PAUL JENSEN, PAUL MULLER, PAUL)
SANDERS, PAUL SLOCUM, PAWEL)
LESNIAK, PAWEL SZUBA, PEGGY)
BRANDON, PENNY MARKS, PETER)
DINKLAGE, PETER TRENKENSCHUH,)
PHILIP J HEPP, PHILLIP HUSTON,)
PIOTR CISON, PIOTR DOROSZ,)
PRECISION PRODUCTS LLC,)
PRESTON PETERSEN, QUENTIN)
MYERS, RANDY BLANKENSHIP,)
RANDY HARVEY, RANDY KOHNERT,)
RANDY RHEINECKER, RAUL)
LARACUENTE, RAYMOND BLADE,)
RAYMOND CROMPTON, RAYMOND)
DUBIEL, RAYMOND LUEBBERT,)
REBECCA LaPORTA, REBECCA VANT,)
REGAN DEERING, RICH MARTIN,)
RICHARD GOODWIN, RICHARD)
KLIBER, RICHARD KORALLUS,)
RICHARD MILLER, RICHARD MIX,)
RICHARD MORTON, RICHARD)
PESLAK, RICHARD POWERS,)
RICHARD PROSSER, RICHARD)
SIMMERT, RICKY BOXX JR., RICKY)
SCHNETZLER, RICKY WILLIAMS, ROB)
SPENCER, ROBBIE STOUT, ROBERT)
BEVIS, ROBERT BIANCHETTA,)
ROBERT BUNNELL, ROBERT)
CARLTON, ROBERT CARPENTER,)
ROBERT CRIPPEN, ROBERT FIENE,)
ROBERT JENSEN, ROBERT KING,)
ROBERT LESSER, ROBERT)
PIERPOINT, ROBERT PITCHFORD,)

ROBERT RADO, ROBERT ROY,)
ROBERT RYMSZA, ROBERT)
STEVENSON, ROBERT WAGNER,)
ROBERT WALTERS, ROBERT WEBB,)
ROBERT WILLIAMS, ROBIN MARTIN,)
ROBIN OTTOLINI, RODNEY JUDY,)
RODNEY WASHAUSEN SR., ROGER)
RICHARDSON, ROGER ROBERTS,)
ROLAND LISCHALK, RON)
PROMISSON, RONALD HESSER JR.,)
RONALD KASKOVICH JR., RONALD)
LEMKE, ROSS PARLAPIANO, RUBEN)
PAZMINO, RYAN ASHLEY, RYAN)
HILL, RYAN LOGSDON, RYAN)
MOONEY, RYAN RUPPEL, RYNE)
SCOTT, S RYAN GANNAWAY,)
SALVATORE A CIANFLONE, SAMUEL)
DERRICKSON, SANDRA BACHAR,)
SANDRA EARP, SARAH ZIEGLER,)
SCOT DECKER, SCOTT COLLINS,)
SCOTT CORLEY, SCOTT FITZGERALD,)
SCOTT FOSTER, SCOTT HARPER,)
SCOTT HUNT, SCOTT KASPAR,)
SCOTT KOCHANEY, SCOTT MALONE,)
SCOTT McCORD, SCOTT)
MEINHARDT, SCOTT SHAFFER,)
SCOTT SHOUP, SCOTT STANOWSKI,)
SCOTT SWIDLER, SHANE)
McDERMOTT, SHANE MENNINGA,)
SHANE YEARIAN, SHAWN GOODWIN,)
SHERI TUCKER, SHERRI AKERS,)
SHERRY RAMEY, SHON BAKER,)
SONNY ROSS, STACEY HAGAN,)
STACY SEVERINS, STANISLAW)
WRONKA, STANISLAW ZEGLIN,)
STAVEN HOWARD, STEPHAN)
BJELKE, STEPHANIE DOOLEY,)
STEPHANIE NENN, STEPHEN)
AUSTIN, STEPHEN BRUNET,)
STEPHEN HARNEY, STEPHEN)
HASSEMAN, STEPHEN LANGHEIM,)
STEPHEN RICHARDSON, STEPHEN)
SENNOTT, STEVE ATWOOD, STEVE)

BENTLAGE, STEVE BOSNIACK,)
STEVE DURBIN, STEVE GARITE,)
STEVE GLASCOCK, STEVE PLOCHER,)
STEVEN ABBA, STEVEN ACRED,)
STEVEN BRUNS, STEVEN CROSSLEY,)
STEVEN EDENBURN, STEVEN)
ELLER, STEVEN GREENE, STEVEN)
MAY, STEVEN SAWATZKY, STEVEN)
SMITH, STEVEN WASHBURN, SUSAN)
DEMMA, SUSAN ELLSWORTH, SUSAN)
FRY, SUSAN HEAVIN, SUSAN)
MORRISSEY, SUSAN WILKEN, TAD)
PUTRICH, TAMARA ALLEN, TAMARA)
EFSEN, TAMMY BURNHAM, TANNER)
THOELE, TARA BANGERT, TARA)
BROWN, TED AHNER, TERRENCE J.)
RONCZKOWSKI, TERRY MOORE,)
TERRY WILKEN, JASON BRAGG,)
THOMAS COSTELLO, THOMAS)
DILLON, THOMAS E SPARENBERG,)
THOMAS JONES, THOMAS KOCH,)
THOMAS SENNOTT, THOMAS)
TUCKER, TIFFANY SABATINA, TIM)
BRUCE, TIM HOESLI, TIM MILLER,)
TIM WEISS, TIMOTHY BALL,)
TIMOTHY BURLINGAME, TIMOTHY)
SCHROEDER, TIMOTHY SIEKMANN,)
TIMOTHY TAYLOR, TIMOTHY WOOD,)
TINA SUSA, TODD APATO, TODD)
DEEDRICK, TODD GREEN, TOM)
KOPACZ, TOM LENTZ, TOM)
WOMBLES, TOMASZ SMALEC, TONY)
RHODES, TRACI GOLDSCHMIDT,)
TRACI WOOD, TRACY MANNS, TRACY)
PLEIN, TRAVIS BECK, TRAVIS)
LINGAFELTER, TRAVIS PHELPS,)
TRAVIS UTTERBACK, TRAVIS)
WILHITE, TRENT ARVIN, TRENT)
ROBINSON, TRISHA BRAGG, TROY)
HARMS, TROY KRIGBAUM, TROY)
SMITH, TRUMAN SELLERS, TYLER)
ROYSE, TYLER SIMS, VALERIE)
NICOSON, VICKI PASKERT, VICTORIA)

LOPEZ, VINCE HAMER, VINCENT ROMANO, VIRGINIA BARNARD, VITO LIROSI, VOODOO FIREARMS LLC, WALDEMAR SARAT, WALLACE McDUFFEY, WENDI ARLIS, WENDIE LUDWIG, WENDY MENIGOZ, WENDY MILLER, WESLEY KEMPER, WILLIAM ALBRECHT, WILLIAM B. GRAY, WILLIAM CURRAN, WILLIAM HAMPTON, WILLIAM HARDY, WILLIAM HEFFERNAN, WILLIAM KERTH, WILLIAM KEYES, WILLIAM KLINOWSKI, WILLIAM LAPP, WILLIAM REED, WILLIAM SWANSON, WILLIAM WEINMAN, WILLIAM WONCH, WOJCIECH RECZEK, WOJCIECH TARCHALA, WYATT ROGERS, ZACH ROSE, ZACHARY KALVE, ZACHARY ROBERTS, ZACHARY SARVER, ZACHARY SCHEETZ, RYAN CUNNINGHAM, and CHRIS STEVENS,	)	
Plaintiffs-Appellees,	)	
v.	)	No. 23-MR-4
JAY ROBERT PRITZKER, in His Capacity as Governor; 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,	)	
Defendants	)	
(Jay Robert Pritzker, in His Capacity as Governor; and Kwame Raoul, in His Capacity as Attorney General, Defendants-Appellants).	)	Honorable Joshua C. Morrison, Judge, presiding.

JUSTICE VAUGHAN delivered the judgment of the court, with opinion.
Presiding Justice Boie concurred in the judgment and opinion.
Justice Moore concurred in part and dissented in part, with opinion.

OPINION

¶ 1 The narrow issue before us in this case is whether the circuit court of Effingham County properly granted a temporary restraining order (TRO) in favor of plaintiffs under Illinois law. In counts I, II, and III of plaintiffs' verified complaint, plaintiffs alleged that the procedure by which Public Act 102-1116 (eff. Jan. 10, 2023) (Protect Illinois Communities Act (Act)) became law violated the Illinois Constitution and therefore denied them due process of law. In count IV, plaintiffs alleged that the exemptions provided for in the Act violate the equal protection clause of the Illinois Constitution, based on their right to keep and bear arms.

¶ 2 I. BACKGROUND

¶ 3 On January 17, 2023, plaintiffs filed a verified five-count complaint against the defendants. Counts I through IV sought a declaratory judgment; count V requested injunctive relief.

¶ 4 The relevant facts common to all counts of the complaint are as follows. Plaintiffs alleged that they "desire to deliver, sell, import, or purchase an assault weapon, assault weapon attachment, .50 caliber rifle, or .50 caliber cartridge and/or manufacture, deliver, sell or purchase large capacity ammunition feeding devices as defined in 720 ILCS 5/24-1.9(a) and/or 720 ILCS 5/24-1.10(a)." The common facts also alleged that House Bill 5471 (HB 5471) (102d Ill. Gen. Assem., House Bill 5471, 2022 Sess.) was first introduced in the Illinois House of Representatives (House) on January 28, 2022, entitled as "An Act concerning Regulation." When introduced, HB 5471 was nine pages in length and sought to amend provisions of the Illinois Insurance Code (215 ILCS 5/1 *et seq.* (West 2020)). The synopsis for HB 5471 indicated the subject of the bill was focused on providing the e-mail address of an insurance adjuster, as well as other provisions regarding an insurance contract. On March 4, 2022, HB 5471 received three readings in the House.

¶ 5 On March 7, 2022, HB 5471 arrived in the Illinois Senate. The first reading occurred the same day and the bill was referred to the Assignments Committee. The second reading of HB 5471 took place on November 30, 2022. The common facts also alleged that

> "[o]n or about January 8, 2023, which was a Sunday afternoon at 3:00 P.M., before the third reading occurred in the Senate, Senator Don Harmon filed Senate Floor Amendment No. 1 which completely stripped the insurance provisions of the bill, which were being considered by the legislature all the way up until this time, and completely replaced them with new substantive proposed changes governing weapons, human[,] and drug trafficking."

The following day, Amendments 2, 3, 4, and 5 were presented in the Senate, which addressed Amendment 1. The amendments passed the Senate on January 9, 2023, and the bill was sent back to the House on January 10, 2023.

¶ 6 After returning to the House, HB 5471 was not read three times prior to voting on the bill. On January 10, 2023, the House voted to concur with the Senate amendments. After passing both the Senate and the House, Governor J.B. Pritzker signed the Act into law. The Act, which comprised 111 pages, included new legislation found at 5 ILCS 100/5-45.35; 430 ILCS 65/4.1; and 720 ILCS 5/24-1.9(a), 24-1.10(a), as well as amendments that included and/or removed text in the following statutes: 5 ILCS 140/7.5; 20 ILCS 2605/2605-35, 2605-51.1; 30 ILCS 500/1-10; 430 ILCS 65/2, 3, 4, 8; 430 ILCS 67/40, 45, 55; and 720 ILCS 5/24-1.

¶ 7 Count I of plaintiffs' verified complaint alleged that HB 5471, which became the Act once it was signed by Governor Pritzker, violated the single subject rule, and thus should be declared unconstitutional. Article IV, section 8 of the Illinois Constitution states that "[b]ills, except bills

for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject." Ill. Const. 1970, art. IV, § 8(d). The plaintiffs alleged

> "the subjects for which the amendments modified HB 5471 included, but were not limited to;
>
> a) Ordered the criminal investigations unit to conduct investigations regarding human trafficking, illegal drug trafficking and illegal firearms trafficking;
>
> b) Amended the law regarding the procurement of bids for certain services related to purchases of certain technology by the Illinois State Police;
>
> c) Modifies the provision of firearms restraining orders;
>
> d) Created new provisions in the law regarding the ban on certain semi-automatic weapons."

¶ 8 Count II alleged that the Act violated the three-readings rule, which is required by article IV, section 8 of the Illinois Constitution, and thus should be declared unconstitutional. The relevant section of the Illinois Constitution states as follows:

> "(d) A bill shall be read by title on three different days in each house. A bill and each amendment thereto shall be reproduced and placed on the desk of each member before final passage.
>
> Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject. Appropriation bills shall be limited to the subject of appropriations.
>
> A bill expressly amending a law shall set forth completely the sections amended.

> The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met." Ill. Const. 1970, art. IV, § 8(d).

In count II, plaintiffs acknowledged the enrolled-bill doctrine, which will be discussed in further detail in the analysis, and asserted the enrolled-bill doctrine should be abandoned and/or abrogated.

¶ 9 Count III alleged that the passage of the Act violated due process, as required by article I, section 2 of the Illinois Constitution, and that the Act should be declared unconstitutional. Specifically, plaintiffs alleged they "were denied any meaningful opportunity to participate in the passage of HB 5471 which attempts to materially impair their fundamental rights to bear arms." As further explanation, plaintiffs alleged the "due process violation being complained of herein is the complete and total failure of the [d]efendants to comply with express constitutional procedural guarantees afforded the [p]laintiffs under Ill. Const. 1970, art. IV, § 8(d)."

¶ 10 Count IV alleged that the passage of the Act violated the equal protection clause of article I, section 2 of the Illinois Constitution, and the Act should be declared unconstitutional. Plaintiffs alleged that the "constitutional guarantee of equal protection requires that the government treat similarly situated individuals in a similar manner." Plaintiffs also alleged that 720 ILCS 5/24-1.9 and 720 ILCS 5/24-1.10 created different categories of citizens who are subjected to the requirements of these statutes. The plaintiffs further alleged that within the above-mentioned statutes, there were seven enumerated classifications of persons who were exempt from compliance with the provisions of those sections. Plaintiffs alleged that "[c]reating an exempt status for those persons is not only irrational and completely lacking anything approaching common sense, there are no set of facts wherein it can survive a constitutional attack based upon equal protection regardless of the standard of review."

¶ 11 Count V alleged that because of the alleged unconstitutional actions set forth in counts I, II, III, and IV, an injunction should be entered that permanently enjoined defendants, and anyone under their direction and control, from enforcing the Act. Count V is not relevant to our review because count V seeks a permanent injunction, and we are only reviewing the TRO.

¶ 12 On the same day they filed their complaint, plaintiffs simultaneously filed a verified emergency motion for a TRO, which incorporated the verified complaint. Plaintiffs also filed a notice of hearing, setting the motion for hearing the following day, January 18, 2023.

¶ 13 Prior to the hearing, defendants Pritzker and Kwame Raoul, in his capacity as Attorney General of Illinois, filed a response to plaintiffs' emergency motion for a TRO. The circuit court conducted a hearing on the emergency motion for TRO on January 18, 2023, as noticed. Counsel for plaintiffs, as well as counsel for Pritzker and Raoul, were present at the hearing. No response, nor any appearance, was filed for defendants Emanuel Welch, in his capacity as Speaker of the House, or Donald Harmon, in his capacity as Senate President.

¶ 14 We review this matter based on the pleadings; however, we note the following relevant statements by both counsels provided at the hearing on the emergency motion for TRO. Plaintiffs' counsel advised the court, regarding all four counts, "We are not making Second Amendment Constitutional arguments here because those are for a different day and a different court ***." Defense counsel stated, regarding count I, that, "The State can identify the single subject for the first time in litigation. That's what I've done today consistent with the *Wirtz* case from the Illinois Supreme Court [*Wirtz v. Quinn*, 2011 IL 111903]. The single subject is Firearm Regulation."

¶ 15 On January 20, 2023, the circuit court entered a TRO. In its order, the circuit court found plaintiffs met each of the four required elements to grant a TRO for counts I, II, III, and IV. Relevant to count II, the circuit court order stated that although the Illinois Supreme Court has

> "found that they would not invalidate legislation on the basis of the three[-]readings rule if it has been certified, they went on to say 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.' "

The circuit court thereafter stated, "the time to revisit this practice is now."

¶ 16 Following the entry of the TRO, defendants Pritzker and Raoul timely filed a petition for review of the TRO pursuant to Illinois Supreme Court Rule 307(d) (eff. Nov. 1, 2017). If necessary, additional facts will be presented as part of the analysis below.

¶ 17 II. ANALYSIS

¶ 18 As a preliminary matter, plaintiffs' response to defendants' petition for review of the TRO asserted that defendants' response to the emergency motion for a TRO should be considered a nullity because it was not verified. Upon review, we find the record devoid of any similar objection made before the circuit court. Failure to object to the unverified pleading in the circuit court results in forfeiture. *In re Application of the County Collector*, 295 Ill. App. 3d 711, 718 (1998). The purpose of requiring a party to raise pleading defects before the circuit court is to allow the opposing party the opportunity to cure the alleged defects in the circuit court. *Id.* Because plaintiffs did not object in the circuit court, we conclude this contention is forfeited.

¶ 19 Accordingly, we turn to the narrow issue before us: whether the circuit court erred in granting the TRO. "A temporary restraining order *** is an emergency remedy issued to maintain the status quo while the court is hearing evidence to determine whether a preliminary injunction should issue." *Delgado v. Board of Election Commissioners of Chicago*, 224 Ill. 2d 481, 483 (2007). In order to obtain a TRO, plaintiffs are required to demonstrate the following elements: "(1) a clearly ascertained right in need of protection, (2) irreparable injury in the absence of an

injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case." (Internal quotation marks omitted.) *Hutsonville Community Unit School District No. 1 v. Illinois High School Ass'n*, 2021 IL App (5th) 210308, ¶ 8. "A TRO should not be refused *** merely because the court may not be absolutely certain the plaintiff has the right he claims." *Stocker Hinge Manufacturing Co. v. Darnel Industries, Inc.*, 94 Ill. 2d 535, 541-42 (1983). "The plaintiff is not required to make out a case which would entitle him to judgment at trial ***." *Id.* at 542. "All that is necessary is that the plaintiff raise a fair question as to the existence of a right needing protection, leading the court to believe that the plaintiff will be entitled to the prayed-for relief if the proof presented at trial should sustain its allegations." (Internal quotations marks omitted.) *Hutsonville*, 2021 IL App (5th) 210308, ¶ 11.

¶ 20 Once the plaintiff establishes a fair question that his or her rights were violated, the plaintiff has also established a fair question that he or she would likely prevail on his claim. *Makindu v. Illinois High School Ass'n*, 2015 IL App (2d) 141201, ¶ 38. "The purpose of preliminary injunctive relief is not to determine controverted rights or decide the merits of the case, but to prevent a threatened wrong or continuing injury and preserve the status quo with the least injury to the parties concerned." *Hutsonville*, 2021 IL App (5th) 210308, ¶ 11. A circuit court's order granting or denying a TRO is generally reviewed for an abuse of discretion (*Fox Fire Tavern, LLC v. Pritzker*, 2020 IL App (2d) 200623, ¶ 11), but where the propriety of the TRO rests on a purely legal issue, our review is *de novo*. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 63 (2006). "On review, 'we examine only whether the party seeking the injunction has demonstrated a *prima facie* case that there is a fair question concerning the existence of the claimed rights.' " *Hutsonville*, 2021 IL App (5th) 210308, ¶ 11 (quoting *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164, 177 (2002)). *Prima facie* means "at first sight" and is "a fact presumed to be true

unless disproved by some evidence to the contrary." (Internal quotation marks omitted.) *People v. Howard*, 2022 IL App (3d) 210134, ¶ 14.

¶ 21 With regard to count I, plaintiffs alleged that the Act violated the "single subject rule" and therefore should be declared unconstitutional. "Legislative enactments are presumed to be constitutional ***." *Wirtz v. Quinn*, 2011 IL 111903, ¶ 17. The "party challenging the constitutionality of a statute bears the burden of clearly establishing a constitutional violation." *Id.* A court's finding that a statute is unconstitutional is reviewed *de novo*. *Id.* The "single subject rule"—as articulated in article IV, section 8 of the Illinois Constitution—states that "[b]ills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject." Ill. Const. 1970, art. IV, § 8(d). The purpose of the language is "to prevent surprise in the enactment of legislation" (*People v. Olender*, 222 Ill. 2d 123, 127 (2005) (citing *Meister v. Carbaugh*, 310 Ill. 486, 489 (1923))) and "to prevent the combination of unrelated subjects in one bill to obtain support for the package as a whole, when the separate parts could not succeed on their individual merits" (*County of Kane v. Carlson*, 116 Ill. 2d 186, 214 (1987)).

¶ 22 The Illinois Supreme Court enunciated a two-tier test to determine whether an act runs afoul of the single subject rule. *People v. Sypien*, 198 Ill. 2d 334, 339 (2001). The court determines first whether the act involves a legitimate single subject and then whether the various provisions within an act all relate to the proper subject at issue. *Arangold Corp. v. Zehnder*, 187 Ill. 2d 341, 361-62 (1999) (Freeman, J., specially concurring). "[W]hile the legislature is free to choose subjects comprehensive in scope, the single subject requirement may not be circumvented by selecting a topic so broad that the rule is evaded as 'a meaningful constitutional check on the legislature's actions.' " *Sypien*, 198 Ill. 2d at 338-39 (quoting *Johnson v. Edgar*, 176 Ill. 2d 499, 515-18 (1997)). "The term 'subject,' in this context, is to be liberally construed and the subject

may be as broad as the legislature chooses." *Edgar*, 176 Ill. 2d at 515. The rule "does not impose an onerous restriction on the legislature's actions" but "leaves the legislature with wide latitude in determining the content of bills." *Id.* "Nonetheless, the matters included in the enactment must have a natural and logical connection." *Id.* While the legislature may pass legislation that amends several acts, the amendments must relate to the single subject at issue. See *People v. Wooters*, 188 Ill. 2d 500, 512-13 (1999).

¶ 23 Defendants argue that the Act addresses a single subject and classified that subject as the "regulation of firearms." They argue that the title is not controlling and does not overcome the fact that the entirety of the bill's content deals with the regulation of firearms and implementation of said regulation.

¶ 24 Plaintiffs are correct that the title of the Act does not mention firearm regulation. However, the Illinois Supreme Court has clearly held that "an act's title is not necessarily dispositive of its content or its relationship to a single subject." *People v. Boclair*, 202 Ill. 2d 89, 109 (2002). The supreme court reiterated this point in *Wirtz*, 2011 IL 111903, ¶ 32, stating, "Defendants are not limited solely to the contents of the title of an act in offering a single subject rationale." Here, most likely the "subject" was changed for the reasons seen in *Olender*, in that defendants recognized that the court would reject such a sweeping category and created a new "subject" for the Act. *Olender*, 222 Ill. 2d at 140. Given precedent placing little value on the title, any argument regarding the title has little, if any, merit.

¶ 25 The plaintiffs also argued that the description of the bill while it was being argued in the legislature was "INS CODE-PUBLIC ADJUSTERS." The record confirms that the legislation's description throughout the legislative process, and continuing through today, fails to address, in any way, the regulation of firearms. The legislative description, as compared with the newly

articulated subject of the "regulation of firearms" by the executive branch, is somewhat more problematic. One could presume such dichotomy between the description and the actual legislation could result in "surprise in the enactment of legislation" if a member of the legislature read only the title before voting on the legislation. *Id.* at 127.

¶ 26 While defendants provided no argument on this issue, either before the circuit court or on appeal, it is unlikely that "surprise" would occur, given additional constitutional safeguards addressed later in this opinion. Further, we do not see, and plaintiffs fail to explain beyond their claim that this confusion reveals a likelihood of success on the merits, how an erroneous description would affect whether the Act was constrained to the single subject rule dictated by the Illinois Constitution. This is particularly true because defendants are allowed to articulate the single subject based upon the content of the act once a single subject rule challenge has been made. See *Wirtz*, 2011 IL 111903, ¶ 32. As such, we limit our review to the provisions of the Act argued by the plaintiffs in conjunction with the executive branch's claim that the subject is "the regulation of firearms."

¶ 27 The plaintiffs point to four provisions they believe are outside of the subject matter of, and unrelated to, the regulation of firearms. These provisions include portions of the Act that:

> "a) Ordered the criminal investigations unit to conduct investigations regarding human trafficking, illegal drug trafficking and illegal firearms trafficking;
>
> b) Amended the law regarding the procurement of bids for certain services related to purchases of certain technology by the Illinois State Police;
>
> c) Modifie[d] the provision of firearms restraining orders; [and]
>
> d) Created new provisions in the law regarding the ban on certain semi-automatic weapons."

¶ 28 As noted above, the two-part test first determines whether the Act involves a legitimate single subject and then whether the various provisions within an act relate to the proper subject at issue. *Arangold Corp.*, 187 Ill. 2d at 361-62. To pass the first test, the act in question simply must be not "so broad that the rule is evaded as 'a meaningful constitutional check on the legislature's actions.' " *Boclair*, 202 Ill. 2d at 109 (quoting *Edgar*, 176 Ill. 2d at 515-18). Examples of acts that passed muster under this test are found in the following cases: *Cutinello v. Whitley*, 161 Ill. 2d 409, 423-24 (1994) (all provisions of challenged act pertained to the subject of transportation); *Geja's Cafe v. Metropolitan Pier & Exposition Authority*, 153 Ill. 2d 239, 257-59 (1992) (all provisions of challenged act pertained to the McCormick Place Expansion Project); *Stein v. Howlett*, 52 Ill. 2d 570, 582-83 (1972) (all provisions of challenged act related to the subject of ethics); and *People ex rel. Ogilvie v. Lewis*, 49 Ill. 2d 476, 487-88 (1971) (all provisions of challenged legislation pertained to the subject of transportation bonds). "Regulation of firearms" is just as—if not more—specific than the subjects of "transportation" or "ethics," which have been found to be sufficient. Accordingly, the State asserted a legitimate single subject.

¶ 29 Step two of the two-tiered analysis set out in *Sypien*, 198 Ill. 2d at 339, requires the court to "discern whether the various provisions within an act all relate to the proper subject at issue." As shown above, plaintiffs pointed to four provisions of the Act that they believed were beyond the subject of the regulation of firearms.

¶ 30 The first provision involved language that the Division of Criminal Investigation shall "[c]onduct other investigations as provided by law, *including, but not limited to, investigations of human trafficking, illegal drug trafficking, and illegal firearms trafficking*." (Emphasis added.) The portion emphasized is that which was complained of by plaintiffs. Plaintiffs argued that human trafficking and drug trafficking were separate and distinct from firearm regulation. However, the

Illinois Supreme Court has "continually adhered to the natural and logical connection test" and "has never held that the single subject rule imposes a second and additional requirement that the provisions within an enactment be related to each other." *Arangold Corp.*, 187 Ill. 2d at 356. Accordingly, for this provision of the Act to pass constitutional muster, all that is required is that the investigation of human trafficking and illegal drug trafficking be naturally and logically connected to the investigation of firearm trafficking.

¶ 31 The language about which plaintiffs complained shows that the General Assembly is not expanding or restricting the scope of investigations; it is instead offering clarification of some of the types of "other investigations" that are interrelated. We cannot say there is no natural or logical connection between these types of investigations, as we conclude that while investigating human trafficking or illegal drug trafficking, illegal firearms trafficking activity might be discovered as well. It would defy reason to conclude that illegal firearms trafficking is never connected to human trafficking or illegal drug trafficking to such an extent that such investigations might overlap. Thus, in light of the test before the court, and the liberal construction afforded to the single subject rule (*Cutinello*, 161 Ill. 2d at 423), we cannot conclude that inclusion of these clarifications offends the subject matter so much as to violate the single subject rule.

¶ 32 Plaintiffs also alleged that the Act's inclusion of an amendment "regarding the procurement of bids for certain services related to purchases of certain technology by the Illinois State Police" violated the single subject rule. Plaintiffs did not argue how the provision violated the rule, but simply alleged that it did. When the provision is viewed in context with the other portions of the Act, it clearly deals with the implementation of the newly created laws pertaining to firearms because, specifically, it directs the Illinois State Police to secure bids for the technology which will be used to

> "enforce, regulate, and administer the Firearm Owners Identification Card Act, the Firearm Concealed Carry Act, the Firearms Restraining Order Act, the Firearm Dealer License Certification Act, the Law Enforcement Agencies Data System (LEADS), the Uniform Crime Reporting Act, the Criminal Identification Act, the Uniform Conviction Information Act, and the Gun Trafficking Information Act, or establish or maintain record management systems necessary to conduct human trafficking investigations or gun trafficking or other stolen firearm investigations." Pub. Act 102-1116 (eff. Jan. 10, 2023) (adding 30 ILCS 500/1-10(b)(21)).

Thus, it is clear this provision intends to provide for technology allowing for enforcement of the statutes related to firearms. There is no way to reasonably conclude this runs afoul of the single subject rule.

¶ 33 Plaintiffs further alleged that the Act's modification of the law regarding firearm restraining orders violated the single subject rule. Again, plaintiffs do not argue how inclusion of this language violated the rule, but merely conclude that it does. This provision clearly falls under the regulation of firearms because it modifies the duration someone may be restricted from purchasing firearms or when a person may be restricted from selling firearms to a person who has a firearm restraining order entered against them. Accordingly, we cannot reasonably conclude this language runs afoul of the single subject rule.

¶ 34 Finally, plaintiffs argued that the Act "[c]reated new provisions in the law regarding the ban on certain semi-automatic weapons." Again, no argument was made as to how this provision did not fall under the single subject addressing the regulation of firearms. The new provisions contained within the Act which (1) make certain types of firearms illegal, unless registered, (2) make certain magazines and attachments illegal, and (3) limit the ability of persons within

Illinois to manufacture, purchase, and sell certain types of firearms (see 720 ILCS 5/24-1.9, 24-1.10) are naturally and logically connected to the single subject of regulation of firearms.

¶ 35 For all of these reasons, plaintiffs cannot demonstrate that a fair question exists that they are likely to succeed on the merits as to count I of the complaint. Therefore, we find that the circuit court erred in finding "the [p]laintiffs have raised a question that has a fair likelihood of success of proving the [d]efendants violated the single subject requirement." As plaintiffs have not established a likelihood of success on the merits for count I, we need not address the other three elements for a TRO for this count.

¶ 36 We turn now to count II of the complaint, which alleged the Act violated the three-readings rule found in article IV, section 8 of the Illinois Constitution. Ill. Const. 1970, art. IV, § 8(d). Of relevance to this allegation, the Illinois Supreme Court has unequivocally stated that "Illinois follows the enrolled-bill doctrine." *Friends of the Parks v. Chicago Park District*, 203 Ill. 2d 312, 328 (2003) (citing cases going back to 1992). As the court explained, the enrolled-bill doctrine "provides that once the Speaker of the House of Representatives and the President of the Senate certify that the procedural requirements for passing a bill have been met, a bill is conclusively presumed to have met all procedural requirements for passage." *Id.* at 328-29. The court added that, "[u]nder this precedent, we will not invalidate legislation on the basis of the three-readings requirement if the legislation has been certified," which means that when a bill has been certified, the act of certification has the effect of "precluding judicial review." *Id.* at 329.

¶ 37 Plaintiffs acknowledged the enrolled-bill doctrine before the circuit court, and that the legislation at issue was certified pursuant to the doctrine. However, plaintiffs asserted the enrolled-bill doctrine should be abandoned and/or abrogated. The circuit court agreed, specifically stating that "the time to revisit this practice is now."

¶ 38 Before this court, plaintiffs acknowledged that although the Illinois Supreme Court has repeatedly threatened "to revisit this issue," it has not yet done so. Nevertheless, plaintiffs point out that in *Friends of the Parks*, the Illinois Supreme Court clearly stated the following: "We noted in [prior decisions] that the legislature had shown remarkably poor self-discipline in policing itself in regard to the three-readings requirement." *Id.* Plaintiffs then state that "because this court is ever mindful of its duty to enforce the constitution of this state, we take the opportunity to urge the legislature to follow the three-readings rule," because although "separation of powers concerns militate in favor of the enrolled-bill doctrine," nevertheless the court's "responsibility to ensure obedience to the constitution remains an equally important concern." *Id.*

¶ 39 Plaintiffs posited that, in light of these pronouncements, the circuit or appellate courts, being part of the judicial branch, have the power to invalidate the enrolled-bill doctrine and demand actual, rather than presumed, compliance with the three-readings rule. We cannot agree.

¶ 40 The circuit and appellate courts of the State of Illinois are required to apply binding precedent from the Illinois Supreme Court to the facts of the cases before the circuit and appellate courts. See, *e.g.*, *Yakich v. Aulds*, 2019 IL 123667, ¶ 13. When the Illinois Supreme Court has declared the law on a point, only the Illinois Supreme Court can overrule or modify its precedent on that point. *Id.* Lower judicial tribunals, such as the circuit and appellate courts, are bound by the decisions of the Illinois Supreme Court and must follow those decisions. *Id.* Although a lower court "is free to question the continued vitality of [a case], it lacks the authority to declare that precedent a dead letter." *Id.*

¶ 41 Accordingly, in this case, the circuit court did not have the authority to decide if or when the Illinois Supreme Court should revisit the issue raised by the plaintiffs in count II, and this court does not have that authority either. *Blumenthal v. Brewer*, 2016 IL 118781, ¶ 28. Because the

circuit court lacked the authority to grant the plaintiffs relief pursuant to count II, the circuit court erred when it found that a likelihood of success on the merits existed as to count II. Put another way, plaintiffs simply could not prevail on count II unless and until the Illinois Supreme Court overrules or abrogates its existing, binding precedent with regard to the enrolled-bill doctrine.

¶ 42 That said, we are not unsympathetic to the serious concerns raised by plaintiffs with regard to the issue raised in count II. Unfortunately, the Illinois Supreme Court's warnings regarding past legislative nonconformance with constitutional boundaries (see *Friends of the Parks*, 203 Ill. 2d at 328-29) appear to have gone unheeded and, instead, are now interpreted as the judiciary's acceptance of, or the judiciary's acquiescence in, the legislature's continued failure to adhere to constitutional procedures when enacting legislation. While compliance with the enrolled-bill doctrine presumes the legislative procedure adhered to constitutional requirements (see *Geja's Cafe*, 153 Ill. 2d at 259), such presumption is readily overcome by evidence revealing the contrary posted on the General Assembly website.

¶ 43 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. 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.

¶ 44 To be sure, Illinois is not the only state that has faced or endured repeated ethical lapses associated with gut and replace legislation. However, other states have addressed this issue and demand compliance with the state constitutional mandates. See *Washington v. Department of Public Welfare of Pennsylvania*, 188 A.3d 1135 (Pa. 2018); *State ex rel. Ohio AFL-CIO v. Voinovich*, 631 N.E.2d 582, 1994-Ohio-1 (Ohio 1994); *Bevin v. Commonwealth ex rel. Beshear*, 563 S.W.3d 74 (Ky. 2018); *League of Women Voters of Honolulu v. State*, 499 P.3d 382 (Haw. 2021).

¶ 45 Our lawmakers take an oath of office to " 'support the constitution of the United States, and the constitution of the state of Illinois.' " 25 ILCS 5/2 (West 2020); Ill. Const. 1970, art. XIII, § 3. The same is required for the circuit court judiciary (705 ILCS 35/2 (West 2020)), as well as the appellate and supreme courts and certain members of the executive branch. Ill. Const. 1970, art. XIII, § 3. 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.

¶ 46 We further note that our ruling herein provides plaintiffs with the opportunity to attempt to present this issue to the one court with authority to determine if now is the appropriate time to revisit this: the Illinois Supreme Court itself. See, *e.g.*, *Gardner v. Mullins*, 234 Ill. 2d 503 (2009) (allowing appeal, via Illinois Supreme Court Rule 315 (eff. Oct. 15, 2007), of appellate court's ruling on a TRO); see also *Austin v. Board of Education of Community Unit School District 300*, 2022 IL 128205 (majority of Illinois Supreme Court members denying, as moot, petition for leave to appeal decision of appellate court regarding TRO; two members of Illinois Supreme Court dissenting from decision to deny petition for leave to appeal appellate court's TRO ruling). In light

of the egregious violations that have been alleged in this case—which, at this point, must be taken as true—we encourage the Illinois Supreme Court to revisit this issue in light of its earlier warnings that the actions of the General Assembly might force it to do so.

¶ 47 With regard to count III, plaintiffs alleged that the manner in which the Act was passed violated due process—which is required by article I, section 2 of the Illinois Constitution—and that, accordingly, the Act should be declared unconstitutional. Specifically, plaintiffs alleged they "were denied any meaningful opportunity to participate in the passage of [the Act] which attempts to materially impair their fundamental rights to bear arms." As further explanation, plaintiffs alleged that the "due process violation being complained of herein is the complete and total failure of the [d]efendants to comply with express constitutional procedural guarantees afforded the [p]laintiffs under Ill. Const. 1970, art. IV, § 8(d)." In the response filed with this court, plaintiffs stated that the crux of count III is that plaintiffs "demand the legislative process comply with the procedural requirements of the Illinois Constitution, particularly the single subject rule and the three-readings rule." However, because we have found there is no likelihood of success on the merits with regard to counts I and II, we must likewise conclude that there is no likelihood of success on the merits of count III because, by its plain language, count III is contingent upon the existence of potentially meritorious claims on counts I and II. As such, we find the trial court erred in granting a TRO on this basis.

¶ 48 With regard to count IV, plaintiffs present an equal protection claim, based not upon the process by which the Act was passed, but upon the groups created by the enumerated exemptions found in the Act. The Illinois Constitution provides that "[n]o person shall *** be denied the equal protection of the laws." Ill. Const. 1970, art. I, § 2.

¶ 49 "The analysis applied by this court in assessing equal protection claims is the same under both the United States and Illinois Constitutions." *Jacobson v. Department of Public Aid*, 171 Ill. 2d 314, 322 (1996). "The guarantee of equal protection requires that the government treat similarly situated individuals in a similar manner." *Id.*

> "It does not preclude the State from enacting legislation that draws distinctions between different categories of people, but it does 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.*

¶ 50 "We begin with the presumption that the statute is constitutional." *In re D.W.*, 214 Ill. 2d 289, 310 (2005). "In reviewing a claim that a statute violates equal protection, the court applies different levels of scrutiny depending on the nature of the statutory classification involved." *Jacobson*, 171 Ill. 2d at 322-23. "[W]here the constitutional right at issue is one considered 'fundamental' the presumption of constitutionality is weaker, and courts must subject the statute to the more rigorous requirements of strict scrutiny analysis." *In re D.W.*, 214 Ill. 2d at 310.

¶ 51 Defendants claim there is no fundamental right at issue here, and so the level of scrutiny is rational basis. This standard requires the court to determine whether the statute bears a rational relationship to a legitimate government purpose. *People v. Masterson*, 2011 IL 110072, ¶ 24. Defendants' argument is premised on the Illinois Supreme Court's decision in *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483 (1984). In *Kalodimos*, the court found the right to bear arms was never seen as an individual right under the federal Constitution (*id.* at 509 (citing *United States v. Miller*, 307 U.S. 174 (1939))) and the same right under the Illinois Constitution was subject to "substantial infringement in the exercise of the police power even though it operates on the individual level." *Id.* As such, the court found that the right to bear arms in Illinois was not a

fundamental right and, therefore, review of firearm legislation was required only to pass a rational-basis scrutiny test. *Id.*

¶ 52 While compelling, it is more recent pronouncements from the Illinois Supreme Court that foregoes our reliance on *Kalodimos* in this case. In *People v. Aguilar*, 2013 IL 112116, ¶¶ 16-19, the Illinois Supreme Court addressed the second amendment to the United States Constitution (U.S. Const., amend. II), as well as United States Supreme Court decisions addressing the right to bear arms in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and the Seventh Circuit's decision in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012). After considering these decisions, the Illinois Supreme Court found that section 24-1.6(a)(1), (a)(3)(A), (d) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d) (West 2008)), which "categorically prohibits the possession and use of an operable firearm for self-defense outside the home" and was the statute upon which the defendant's aggravated unlawful use of weapons conviction was based, violated the second amendment and reversed the conviction. *Aguilar*, 2013 IL 112116, ¶¶ 21-22. Similar rulings based thereon were issued. See *People v. Burns*, 2015 IL 117387 (addressing 720 ILCS 5/24-1.6 (West 2008)); *People v. Chairez*, 2018 IL 121417, ¶ 56 (addressing 720 ILCS 5/24-1(a)(4), (c)(1.5) (West 2012)).

¶ 53 More recently, the Illinois Supreme Court specifically pronounced that the right to bear arms was a fundamental right under the second amendment of the United States Constitution. See *Guns Save Life, Inc. v. Ali*, 2021 IL 126014, ¶ 28. In *Ali*, the court was addressing the constitutionality of ordinances under the uniformity clause of the Illinois Constitution. *Id.* ¶ 18. Plaintiffs challenged the firearm and ammunition taxes set forth in those ordinances. *Id.* ¶ 14. The county argued that the tax classification was justified "to fund the staggering economic and social cost of gun violence in Cook County." *Id.* ¶ 22. Plaintiffs argued that the court must, when

considering whether the tax classification was justified in relation to the object of the legislation, recognize the "unique nature of the classification," which burdened "the fundamental right to keep and bear arms for self-defense." *Id.* ¶ 26. In response, the *Ali* court stated:

> "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 (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 ('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))." *Id.* ¶ 28.

¶ 54 While there is no dispute that the Illinois Supreme Court did not find the right to bear arms under the Illinois Constitution was a fundamental right in 1984 when deciding *Kalodimos*, it is equally undisputable that the Illinois Supreme Court now accepts the second amendment as a "fundamental right" guaranteed by the United States Constitution and the fourteenth amendment. *Id.* We cannot ignore the fact that adherence to *Kalodimos*, in light of the more recent Illinois Supreme Court decisions, runs afoul of the both the supremacy clause and the fourteenth amendment.

¶ 55 The supremacy clause of the United States Constitution (U.S. Const., art. VI) establishes that the United States Constitution constitutes the "supreme Law of the Land." The fourteenth amendment to the United States Constitution states, "No State shall make or enforce any law which

shall abridge the privileges or immunities of citizens of the United States ***." U.S. Const., amend. XIV.

¶ 56 Our Illinois Supreme Court held that the fourteenth amendment applies to the States. *Chairez*, 2018 IL 121417, ¶ 23. That court also pronounced in *Ali* that the second amendment was a fundamental right and twice addressed the fourteenth amendment. *Ali*, 2021 IL 126014, ¶ 28. It is well established that while a state may impose a greater protection of rights under its state constitution, it cannot reduce protection of individual rights below the minimum required under the federal Constitution. See *Oregon v. Hass*, 420 U.S. 714, 719 (1975); *Williams v. Georgia*, 349 U.S. 375, 399 (1955). The Illinois Supreme Court is well aware of these principles. *Ali*, 2021 IL 126014, ¶ 28. As such, the only logical conclusion is that the Illinois Supreme Court abandoned *Kalodimos*, by its decisions in *Aguilar*, *Burns*, *Chairez*, and *Ali*. To conclude otherwise would provide a lesser right of protection under article I, section 22 (Ill. Const. 1970, art. I, § 22) than that proclaimed by the second amendment to the United States Constitution.

¶ 57 As such, we find that the rights set forth in article I, section 22 of the Illinois Constitution represent a fundamental right and next address plaintiffs' contention that the Act violates their rights to keep and bear arms by creating untenable classifications pursuant to the equal protection clause of the Illinois Constitution. This section, which mirrors the language of the fourteenth amendment to the United States Constitution, states, "No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws." Ill. Const. 1970, art. I, § 2.

¶ 58 Under the strict scrutiny analysis, legislation that significantly interferes with the exercise of a fundamental right will be upheld only if it is "necessary to serve a compelling state interest"

and is "narrowly tailored" to effectuate that purpose. *In re D.W.*, 214 Ill. 2d at 310. "[T]he legislature must use the least restrictive means consistent with the attainment of its goal." *Id.*

¶ 59 Defendants have argued that plaintiffs have no right in need of protection and are unlikely to succeed on the merits; however, defendants' arguments were based on an erroneous perception that plaintiffs' right to keep and bear arms was not a fundamental right. As such, we find that plaintiffs' allegation that the Act infringes on their rights as Illinois citizens to keep and bear arms is a sufficiently alleged right in need of protection. Here, plaintiffs' complaint alleged that the legislation's exemption of seven categories of persons from the now prohibited purchase and/or possession of assault weapons, assault weapons attachments, .50-caliber rifles, and .50-caliber cartridges had no basis and therefore violated equal protection guarantees.

¶ 60 In response, defendants claimed the purpose of the Act was to reduce firearm deaths and mass shooting casualties and the exempted categories were based on employment and/or training. We note, however, that no such purpose or basis for the exempted categories is found in the record. The closest this record comes is the naming of the Act as the Protect Illinois Communities Act. While intent of legislation can be found by reviewing the legislative history, based on the legislative procedures utilized for this Act, there is no legislative history. We only have post-enactment statements. Comments issued after legislation is passed is "subsequent legislative history," not "legislative history," and is entitled to little, if any, weight. See *Sullivan v. Finkelstein*, 496 U.S. 617, 631-32 (1990) (Scalia, J., concurring in part) ("Arguments based on subsequent legislative history, like arguments based on antecedent futurity, should not be taken seriously, not even in a footnote."); *Bruesewitz v. Wyeth LLC*, 562 U.S. 223, 242 (2011).

¶ 61 Defendants also argue that the TRO for this count should be denied because plaintiffs failed to allege that any of them were similarly situated to the comparison group, and therefore the equal

protection challenge fails, citing *Masterson*, 2011 IL 110072, ¶ 25. We disagree. Here, it is extremely relevant that no purpose of the legislation and no basis for the classifications was provided at the time plaintiffs' pleadings were filed. As such, any allegation regarding similarity would be speculative, at best. Based on the common facts, the legislative process consisted of a frenzied "gut and replace" that failed to comply with our state's constitution. As the basis for the exempted classification was unavailable, it is undeniable that a specific allegation as to how any plaintiff might be similarly situated to one of the exempted classes would be pure conjecture, beyond the fact that each plaintiff and all those now in an exempted class were similarly situated, and indeed possessed the same rights, prior to January 23, 2023.

¶ 62 Regardless, accepting defendants' recent proclamations as to Act's underlying purpose and the basis for the exemptions, plaintiffs' oral argument that "other rational and logical exemptions" should have been included, assuming the criteria was based solely on employment and/or training, is both compelling and sufficient. The fundamental rights at stake require lawmakers to "narrowly tailor" legislation to effectuate its purpose. *In re D.W.*, 214 Ill. 2d at 313. Perhaps, as suggested during the circuit court hearing, some of the plaintiffs' employment render them more or equally qualified to possess and purchase weapons than the qualifications required for the exempted classes. Perhaps, some of the plaintiffs' training is equal to, or superior to, that of the exempted classes. We note, however, even if plaintiffs' training is not, it would seem logical—given that the plaintiffs are allowed to retain the now prohibited weapons, if properly registered—that the legislation would allow such plaintiffs to obtain sufficient training so that the legislative prohibitions would be equally unnecessary for them. In any event, we find plaintiffs' oral allegations sufficient to address this issue. "A TRO should not be refused *** merely because the

court may not be absolutely certain the plaintiff has the right he claims." *Stocker Hinge*, 94 Ill. 2d at 541-42.

¶ 63 Here, we need only determine if plaintiffs presented a fair question regarding the four requirements for a TRO: (1) a clear and ascertainable right in need of protection, (2) no adequate remedy at law, (3) irreparable harm without the TRO, and (4) a likelihood of success on the merits. *Mohanty*, 225 Ill. 2d at 62. For the reasons set forth above, we find plaintiffs alleged sufficient facts to establish a *prima facie* case addressing both the first and fourth requirements. Defendants' response only claimed monetary damages for the business owners, and we have no facts that would allow us to find that money damages would eliminate the potential constitutional violation alleged by plaintiffs. "[W]hen a violation of constitutional rights has been alleged, a further showing of irreparable injury is not required if what is at stake is not monetary damages." *Makindu*, 2015 IL App (2d) 141201, ¶ 42. Accordingly, we find that plaintiffs alleged sufficient facts for a TRO to issue on count IV.

¶ 64 Our analysis, however, is not complete without considering whether the "equities warrant the entry of such an order." *Id.* ¶ 47. This balancing analysis weighs the benefits of granting the injunction against the possible injury to the opposing party and its effect on the public interest. *Id.* Here, weighing a fundamental right against potentially bruised egos or political pride is no contest. However, the effect on public interest is more challenging as we grapple with a fundamental right to bear and keep arms that allows plaintiffs to defend themselves or their families against a desire to protect the citizens of this state from the random atrocities associated with mass shootings. We hold no crystal ball allowing us to determine the likelihood of potential harm if the TRO is granted, but we temper our lack of prescience with recognition that both interests—whether through the regulation of firearms or through the fundamental right to keep and bear arms—are based on the

increased desire to protect and defend loved ones in light of these horrifying and devastating shootings.

¶ 65 Here, we find it extremely relevant that no opportunity for discourse was provided to the citizens of this state that would allow for recognition of the competing interests in accomplishing what we believe is likely a common goal. Nor does it appear that the legislative process allowed for even a moment of debate between the lawmakers to ensure that the enactment of this law was "narrowly tailored" to effectuate the Act's purpose in any manner that would allow a larger exempted group to retain their fundamental rights. For these reasons, we find that balancing the equities favors the issuance of a TRO for count IV. Therefore, we affirm the trial court's order granting the TRO for count IV.

¶ 66 III. CONCLUSION

¶ 67 For the foregoing reasons, we conclude that the circuit court erred when it found that a fair question existed as to whether plaintiffs would be entitled to the relief sought under counts I, II, and III, if the evidence presented at a trial were sufficient to sustain the party's factual allegations. Therefore, we reverse the judgment of the circuit court of Effingham County as to those counts. However, for the reasons set forth above, we affirm the TRO issued for count IV. Mandate to issue *instanter*.

¶ 68 Affirmed in part and reversed in part.

¶ 69 JUSTICE MOORE, concurring in part and dissenting in part:

¶ 70 Because I agree with the majority that the plaintiffs have waived any objection to the defendants' failure to verify pleadings in the circuit court, and because I agree that there exists no likelihood of success on the merits of the plaintiffs' first three counts, I concur in the majority's disposition of those claims. However, because I believe the plaintiffs' fourth count also must fail,

and therefore the circuit court's granting of the TRO must be reversed in its entirety, I respectfully dissent from the majority's ruling and analysis with regard to count IV.

¶ 71 I begin by stressing that in my view, this appeal does not allow us to address whether Public Act 102-1116 (eff. Jan. 10, 2023) (Protect Illinois Communities Act (Act)) infringes upon any rights granted by the United States Constitution, specifically the second amendment. This significant point was expressly stated to the circuit court by counsel for the plaintiffs during the hearing on the emergency motion for a temporary restraining order (TRO) when he stated, "We are not making second amendment constitutional arguments here because those are for a different day and a different court ***." Because no issues related to the second amendment of the United States Constitution are before us, as they were not pleaded and were notably disclaimed by counsel for the plaintiffs, I believe our ruling on the grant of the TRO should in no way be interpreted as instruction or guidance as to any issues that may in the future be raised under the second amendment of the United States Constitution.

¶ 72 Turning to the merits of the plaintiffs' complaint, I begin by noting a second reason why I believe that count I fails, not addressed by the majority. I believe that even if this court were able to conclude that the plaintiffs have presented a fair question as to the likelihood of success on the merits on their count I claims, we could not find that they have presented a fair question as to the element of irreparable harm with regard to count I. "A TRO is an extraordinary remedy and the party seeking it must meet the high burden of demonstrating, through well-pled facts, that it is entitled to the relief sought." *Capstone Financial Advisors, Inc. v. Plywaczynski,* 2015 IL App (2d) 150957, ¶ 10. For purposes of a TRO, "to be considered 'well-pleaded,' a party's factual allegations must be supported by allegations of *specific* facts." (Emphasis in original.) *Id.* Allegations that are "conclusory," or "inexplicably lacking in specifics," are not sufficient to

support the granting of a TRO. *Id.* ¶ 11. This is true because "the standard for injunctive relief is far too high for a court to rely solely on the moving party's innuendo." *Id.* As a result, "broad, conclusory allegations are insufficient to establish a plaintiff's entitlement to temporary injunctive relief." *Bridgeview Bank Group v. Meyer*, 2016 IL App (1st) 160042, ¶ 15. Moreover, although additional evidence may be developed at the preliminary injunction stage of proceedings, its absence from the record at the time of seeking a TRO "supports the denial of the extraordinary remedy of a [TRO]." *Id.* ¶ 20.

¶ 73 A recent decision from this court, *Hutsonville Community Unit School District No. 1 v. Illinois High School Ass'n*, 2021 IL App (5th) 210308, is illustrative of the significance of these principles with regard to the element of irreparable harm. In that case, the court held that the "[p]etitioners provided undisputed facts raising a *prima facie* case with respect to," *inter alia*, the irreparable harm element, because the petitioners "alleged that preclusion from the State Series removed any possibility for Hutsonville or its students to compete for that year, and because I.S. is a senior, she would never again be able to participate in the State Series." *Id.* ¶ 9. Likewise, in *Belden v. Tri-Star Producing Co.*, 106 Ill. App. 3d 192, 202 (1982), a panel of judges from this district held that "[b]ecause an injunction is an extraordinary remedy, the complaint must allege facts which entitle the plaintiff to the remedy, and cannot present mere conclusions unsubstantiated by facts." The court ruled that in that case, "[e]ven a cursory examination of [one count of the complaint] reveals that it is deficient in the allegation of facts which could support either claim" made in the case. *Id.* The court held that the deficiencies in the complaint left "the reader to guess not only what activities *** should be enjoined, but also why money damages would be inappropriate, and what injury would occur without the injunction." *Id.* Accordingly, the court held

that the count in question could not "support any injunctive relief" and that the trial court did not err when it denied injunctive relief as to that count. *Id.*

¶ 74 In the present case, the circuit court, at the outset of section II of the order granting the TRO, stated that the plaintiffs were "being immediately and irreparably harmed each day in which their fundamental right to bear arms is being denied and that this harm is continuing in nature." The circuit court did not explain how it reached this conclusion based upon the factual allegations in the pleadings before it. Instead, the circuit court stated that "[w]hen a violation of Constitutional rights has been alleged, a further showing of irreparable injury is not required" if what is at stake is not monetary damages. In support of this proposition, the circuit court cited *Makindu v. Illinois High School Ass'n*, 2015 IL App (2d) 141201, ¶ 42, wherein our colleagues in the Second District did indeed make such an assertion. However, *Makindu* involved allegations that the defendant in question violated the plaintiff's "equal protection rights under both the United States and the Illinois Constitutions." *Id.* ¶ 9. As the majority notes above, the analysis applied in assessing equal protection claims is the same under both the United States and Illinois Constitutions (see, *e.g.*, *Nevitt v. Langfelder*, 157 Ill. 2d 116, 124 (1993)); thus, it is not surprising that, throughout the remainder of its opinion, the *Makindu* court analyzed the federal and state equal protections claims together, without ever differentiating between the two, and sometimes cited federal law, while other times citing Illinois law. 2015 IL App (2d) 141201, ¶¶ 9-50.

¶ 75 In support of the assertion adopted by the circuit court in this case—that when a violation of constitutional rights has been alleged, a further showing of irreparable injury is not required if what is at stake is not monetary damages—the *Makindu* court cited two federal cases, which in turn cited additional federal cases. All of these cases pertained to alleged violations of the United States Constitution, and none of them discussed or analyzed pleading requirements in cases arising

in Illinois and invoking only Illinois law. *Id.* ¶ 42 (citing *Preston v. Thompson*, 589 F.2d 300, 303 (7th Cir. 1978), and *Baskin v. Bogan*, 983 F. Supp. 2d 1021, 1028 (S.D. Ind. 2014)). As explained above, in this case, the plaintiffs have not invoked the protections of the United States Constitution, only the Illinois Constitution. Only one count—count IV—makes an equal protection claim under the Illinois Constitution. Accordingly, I do not believe the *Makindu* analysis of the irreparable harm element is apposite to count I of this case, and I do not believe it can be used to excuse the pleading requirements discussed above. As explained above, count I seeks redress for an alleged violation of the single subject rule. I am aware of no Illinois precedent that applies a *Makindu* irreparable harm pleading analysis to such a claim.

¶ 76 In this case, the plaintiffs' verified emergency motion for a TRO alleged, with regard to all four counts of the complaint and the element of irreparable harm, that the "[p]laintiffs are being immediately and irreparably harmed each and every day in which they continue to be subjected [to the Act] and these harms are a continuing transgression against their fundamental rights to bear arms." They further alleged that "at any given moment[,] they could be arrested for misdemeanor and/or felony offenses while engaging in their constitutionally guaranteed rights to bear arms." Although I agree with the majority that, under the *Makindu* analysis, these allegations are sufficient to meet the irreparable harm element for the equal protection claim raised in count IV, I nevertheless believe that the allegations are too vague, cursory, and conclusory to satisfy the element for purposes of count I. Accordingly, even if we were to conclude that the plaintiffs have presented a fair question as to the likelihood of success on the merits on their count I claims—which we cannot—I believe we could not find that they have presented a fair question as to the element of irreparable harm with regard to count I.

¶ 77 Turning to count IV, as noted by the majority, in this count the plaintiffs present an equal protection claim, based not upon the process by which the Act was passed, but upon the group created by the enumerated exemptions found in the Act. However, I believe the majority has failed to adequately address a crucial threshold matter relating to count IV. As the Illinois Supreme Court has stated, "it is axiomatic that an equal protection claim requires a showing that the individual raising it is similarly situated to the comparison group." *People v. Masterson*, 2011 IL 110072, ¶ 25. If a party fails to show that he is similarly situated to the comparison group, his equal protection challenge fails. *Id.* The plaintiffs' complaint failed to allege how each, or even any, of the plaintiffs are similarly situated to the exempted group set forth in the Act. The plaintiffs' complaint and arguments point to a hypothetical Navy SEAL, but failed to allege this scenario was applicable to the plaintiffs. As set forth above, "to be considered 'well-pleaded,' a party's factual allegations must be supported by allegations of *specific* facts." (Emphasis in original.) *Capstone Financial Advisors, Inc. v. Plywaczynski*, 2015 IL App (2d) 150957, ¶ 10. Allegations that are "conclusory," or "inexplicably lacking in specifics," are not sufficient to support the granting of a TRO. *Id.* ¶ 11. This is true because "the standard for injunctive relief is far too high for a court to rely solely on the moving party's innuendo." *Id.* As a result, "broad, conclusory allegations are insufficient to establish a plaintiff's entitlement to temporary injunctive relief." *Bridgeview Bank Group v. Meyer*, 2016 IL App (1st) 160042, ¶ 15. Therefore, because the plaintiffs have failed to allege facts demonstrating that they are similarly situated to the exempt group complained of, their equal protection challenge fails, and the circuit court's granting of the TRO must be reversed in its entirety.

¶ 78 I also cannot agree with the majority that if we were to further analyze count IV, strict scrutiny would apply. The plaintiffs contended that the equal protection claim should have been

examined under strict scrutiny because "the right being implicated in [the Act] is the fundamental right to bear arms and as such any analysis of due process or equal protection must pass strict scrutiny." With regard to the status of the right in question as a fundamental right, the plaintiffs acknowledged that in *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483, 491, 509 (1984), the Illinois Supreme Court ruled that for purposes of the provisions of the Illinois Constitution that address the right to bear arms—which are markedly different from the provisions of the second amendment to the United States Constitution, because the Illinois provisions begin with the statement that the right is "[s]ubject only to the police power" (Ill. Const. 1970, art. I, § 22)—the right to bear arms is not a fundamental right, and thus due process and equal protection claims brought in an attempt to remedy alleged infringements of that right are assessed under the rational basis test, not strict scrutiny. The plaintiffs contended, however, that in light of subsequent "federal jurisprudence, the holding in *Kalodimos* no longer applies." In support of this proposition, the plaintiffs asked this court to consider the recent Illinois Supreme Court decision in *Guns Save Life, Inc. v. Ali*, 2021 IL 126014, in which the court ruled that county tax ordinances on firearms and ammunition violated the uniformity clause of the Illinois Constitution. In *Ali*, the Illinois Supreme Court stated that it "agree[d] that the ordinances impose a burden on the exercise of a fundamental right protected by the second amendment." *Id.* ¶ 28. As a factual matter, *Ali* involved a claim under, *inter alia*, both the second amendment to the United States Constitution and the Illinois constitutional provisions regarding the right to bear arms. *Id.* ¶ 6. Accordingly, it is not surprising that the court would mention "a fundamental right protected by the second amendment." *Id.* ¶ 28. At no point did the court state that *Kalodimos* was no longer good law, or in any other way imply that the right to bear arms is now a fundamental right under the Illinois Constitution. Thus, I cannot attribute to *Ali* the significance the plaintiffs desire.

¶ 79 Accordingly, in light of the only extant precedent on this question, the only way this court could find that a fair question existed that the plaintiffs had a likelihood of success on the merits of this claim under a strict scrutiny equal protection analysis would be to find that *Kalodimos* has been overruled by a case or cases other than *Ali*. There is no evidence to support such a conclusion, and, as explained above with regard to the other counts before us in this appeal, the circuit and appellate courts of the State of Illinois are required to apply binding precedent from the Illinois Supreme Court to the facts of the cases before the circuit and appellate courts. See, *e.g.*, *Yakich v. Aulds*, 2019 IL 123667, ¶ 13. Also as explained above, when the Illinois Supreme Court has declared the law on a point, only the Illinois Supreme Court can overrule or modify its precedent on that point. *Id.* Put another way, only the Illinois Supreme Court could rule that in a case such as this one—where the plaintiffs pointedly do not invoke the protections of the second amendment to the United States Constitution, and in fact pointedly disclaimed, in the circuit court, "making second amendment constitutional arguments [in this case]"—the development of federal precedent related to the second amendment to the United States Constitution nevertheless has rendered untenable the Illinois Supreme Court's previous holding that the right to bear arms under our state constitution is not a fundamental right.

¶ 80 I believe the analysis employed by the majority with regard to this point is flawed. The United States Constitution and the Illinois Constitution are separate documents, enacted by separate constituencies at separate times. Sometimes these two documents offer the same level of protection, sometimes they do not. In this case, they do not. With regard to the right to bear arms, the United States Constitution offers a stronger level of protection because the right to bear arms under the second amendment is a fundamental right. The Illinois Constitution—unless or until

Kalodimos is overruled—offers a weaker level of protection because the right to bear arms has not been declared to be a fundamental right.

¶ 81 The majority is certainly correct that the supremacy clause of the United States Constitution (U.S. Const., art. VI) establishes that the United States Constitution constitutes the "supreme Law of the Land" and is correct that a state may impose a greater protection of rights under its state constitution, but cannot reduce protection of individual rights below the minimum required under the federal Constitution (see, *e.g.*, *Oregon v. Hass*, 420 U.S. 714, 719 (1975); *Williams v. Georgia*, 349 U.S. 375, 399 (1955)). In this case, however, the plaintiffs have stated emphatically that they are not proceeding under the United States Constitution. Thus, they have clearly and unequivocally chosen not to avail themselves of the level of protection offered by the second amendment. That leaves only the protection offered by the Illinois Constitution, which pursuant to *Kalodimos* does not afford to the plaintiffs a fundamental right and does not entitle them to strict scrutiny analysis of their count IV equal protection claim.

¶ 82 Put another way, when a party appears before an Illinois court and claims that the party possesses a right that the party claims has been violated, the court is obliged to consider what the *source* of the purported right is. In this case, the plaintiffs have affirmatively proclaimed that the source of their rights is not the second amendment, but is instead the provisions of the Illinois Constitution that address the right to bear arms. Again, the Illinois Constitution—unless or until *Kalodimos* is overruled—does not afford to the plaintiffs a fundamental right and does not entitle them to strict scrutiny analysis of their count IV equal protection claim.

¶ 83 Accordingly, because the circuit court did not have the authority to decide that *Kalodimos* has been overruled, and because this court does not have that authority either, I do not believe we would be able to consider, for purposes of determining whether a fair question existed as to the

plaintiffs' likelihood of succeeding on the merits of count IV, the allegations in count IV under strict scrutiny analysis. That said, I hasten to add that I, too, am not unsympathetic to the plaintiffs' position with regard to this question. In fact, if we were reversing the circuit court entirely, as I believe we are compelled by the law to do, I would encourage the plaintiffs to appeal our decision and ask the Illinois Supreme Court to revisit this issue, in light of the changing landscape of federal jurisprudence referenced by the plaintiffs and the potential impact that evolving jurisprudence might have on the court's view of whether the right to bear arms is a fundamental right under the Illinois Constitution.

¶ 84 For the foregoing reasons, I respectfully dissent from the decision of the majority to affirm the circuit court.

Accuracy Firearms, LLC v. Pritzker, 2023 IL App (5th) 230035

Decision Under Review:	Appeal from the Circuit Court of Effingham County, No. 23-MR-4; the Hon. Joshua C. Morrison, Judge, presiding.
Attorneys for Appellant:	Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and Leigh J. Jahnig, Assistant Attorney General, of counsel), for appellants.
Attorneys for Appellee:	Thomas G. DeVore, of Silver Lake Group, Ltd., of Greenville, for appellees.

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IN THE
APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

ACCURACY FIREARMS, LLC, *et al.*,	)	Interlocutory Appeal from the
	)	Circuit Court for the Fourth
Plaintiffs-Respondents,	)	Judicial Circuit, Effingham
	)	County, Illinois
v.	)	
	)	
Governor JAY ROBERT PRITZKER, in his official capacity; and KWAME RAOUL, in his capacity as Attorney General,	)	
	)	No. 2023-MR-4
Defendants-Petitioners.	)	
	)	
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.

MEMORANDUM BY THE GOVERNOR AND ATTORNEY GENERAL IN SUPPORT OF RULE 307(d) PETITION FOR REVIEW OF TEMPORARY RESTRAINING ORDER

On January 10, 2023, Public Act 102-116, which protects public safety by reducing the number of firearms most associated with mass shootings (assault weapons and large capacity magazines, or "LCMs") in circulation, became law. Shortly thereafter, plaintiffs—businesses that seek to sell these firearms and individuals who own them—brought suit and moved for a temporary restraining order enjoining enforcement of the Act based on purported procedural flaws in the

legislative process and an alleged equal protection violation under the Illinois Constitution. But as Defendants-Petitioners, Governor JB Pritzker and Attorney General Kwame Raoul, explained in their opposition to plaintiffs' TRO motion, plaintiffs' claims based on the legislative process are foreclosed by Illinois Supreme Court precedent, and the alleged equal protection violation fails because plaintiffs did not (and cannot) show that the Act fails rational basis review. The circuit court recognized these obstacles, but nevertheless concluded that the plaintiffs were likely to succeed on the merits because of its view that it was "time to revisit" the doctrines precluding relief on the procedural claims and because the exceptions to the Act were not "logical." SR2009-14. The court also held that plaintiffs had established irreparable harm, even though, as petitioners explained, the Act does not require any plaintiff to give up any assault weapons or LCMs, and harm compensable through money damages (such as a reduction in sales by the gun store plaintiffs) is not a proper basis for a TRO. Because the court's analysis was legally flawed, its decision must be reversed and the TRO vacated.

BACKGROUND

The Act contains various provisions concerning the regulation of firearms.[1] Relevant here, the Act implemented new restrictions on the sale and possession of "assault weapon[s]" and "large capacity ammunition feeding device[s]" (*i.e.*, LCMs),

[1] The Act's text can be found at https://ilga.gov/legislation/publicacts/102/PDF/102-1116.pdf.

which take effect at different times. *See* 720 ILCS 5/24-1.9 (new) & 1.10 (new). 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. *Id.* 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 complete an endorsement affidavit from 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).

On January 17, 2023, plaintiffs—who appear to be four gun stores and hundreds of individuals—filed an action against petitioners, along with Emanuel "Chris" Welch, as Speaker of the House, and Donald Harmon, as Senate President. SR11-21, SR1919. Plaintiffs sought declaratory and injunctive relief based on four claims that the Act violates the Illinois Constitution. SR28, SR31, SR36, SR47-49. The first three claims attacked the legislative process: plaintiffs alleged that the Act violated the single-subject rule in Article IV, Section 8(d); the three-readings requirement in Article IV, Section 8(d); and their procedural due process rights allegedly encompassed by those legislative requirements. SR24-26. In Count IV, plaintiffs claimed that by making certain professionals exempt from the Act's restrictions, the Act violated the Illinois Constitution's equal protection clause.

SR26-37. That same day, plaintiffs filed a TRO motion to prevent enforcement of the Act against them. SR1044-1912; *see also* SR1913-15, SR1919.

In response, petitioners argued that plaintiffs had not satisfied the standards for a TRO. SR1921-35. As petitioners explained, Count I, the single-subject claim, fails because every provision in the Act relates to firearms regulation. SR1921-26. Count II, the three-readings clause claim, is foreclosed by Illinois Supreme Court precedent. SR1926-28. Count III violates the well-established principle that a due process violation cannot be based on alleged violations of *another* constitutional provision, among other flaws. SR1928-30. Finally, Count IV, the equal protection claim, is flawed because plaintiffs can point to neither a protected class nor a fundamental right recognized under Illinois law implicated by the Act, and the challenged exceptions for professionals with firearms training and experience easily survive rational basis scrutiny. SR1930-33. Petitioners also explained that plaintiffs demonstrated no irreparable harm or that they lacked an adequate remedy at law: the individual plaintiffs retain the right to possess any weapons they lawfully possessed when the Act took effect, and at most, the Act will lead to a reduction in lawful sales by gun stores, which is compensable in readily calculable damages. SR1933-35.

On January 20, 2023, the circuit court entered a TRO, prohibiting defendants from enforcing the Act against plaintiffs. SR2005-15. Although plaintiffs brought this action solely based on their rights under due process, equal protection, and the legislative process, *see* SR24-49, and disclaimed a cause of action based on a right to

bear arms, SR1944, SR1991, the court determined that they had shown a clear right needing protection based on the Act's purported impairment of the right to bear arms, SR2007. It also found that plaintiffs had shown irreparable harm and lacked an adequate legal remedy, notwithstanding its recognition that the individual plaintiffs have "ample time" to complete the endorsement affidavit and that, with respect to the gun stores, "monetary damages do not qualify as irreparable." SR2008. According to the court, this element was satisfied because the Act "may restrict [plaintiffs'] ability to pursue their current profession." SR2008.

The court then determined that plaintiffs were likely to succeed on their claims. First, it concluded that the Act likely violated the single-subject rule because the Act's title was too broad. SR2009-10. Second, the court recognized that the three-readings claim was foreclosed by the enrolled bill doctrine as interpreted by Illinois Supreme Court precedent, but nevertheless determined that claim was also likely to succeed because it was "time to revisit" that doctrine. SR2010-11. Regarding Count III, the court recognized that Illinois law does not permit litigants to use procedural due process to contest the legislative process, or vindicate other rights specifically protected by the Illinois Constitution. SR2012-13. Nevertheless, the court declined to follow these rules, suggesting that they were abrogated by "doubt" about the enrolled bill doctrine. SR2012. As for equal protection, the court acknowledged that the Act's exceptions for certain professionals was reviewed for rational basis, but determined that the exceptions were not "logical." SR2013.

Finally, the court suggested the equities favored plaintiffs by reiterating its conclusion that plaintiffs were likely to succeed on the merits and had shown irreparable harm. SR2014.

On January 20, 2023, petitioners filed a notice of appeal. SR2017-42.

DISCUSSION

To obtain a TRO, a party must establish that he or she has a protected right, would suffer irreparable harm if injunctive relief is not granted, has no adequate legal remedy, and is likely to succeed on the merits. *Lo v. Provena Covenant Med. Ctr.*, 342 Ill. App. 3d 975, 987 (4th Dist. 2003). The court must also balance the hardships, *Kanter & Eisenberg v. Madison Assocs.*, 116 Ill. 2d 506, 516 (1987), and in doing so, consider the public interests involved, *Clinton Landfill, Inc. v. Mahomet Valley Water Auth.*, 406 Ill. App. 3d 374, 378 (4th Dist. 2010).

"[W]here the propriety of a TRO rests on a purely legal issue, that issue should be reviewed *de novo*." *Fox Fire Tavern, LLC v. Pritzker*, 2020 IL App (2d) 200623, ¶ 11. This court should review the circuit court's other determinations, and its ultimate decision to enter a TRO, for an abuse of discretion. *Id.* A circuit court abuses its discretion by "applying the wrong legal standard," *Shulte v. Flowers*, 2013 IL App (4th) 120132, ¶ 23, or basing its decision on "an incorrect view of the law," *Campbell v. Autenrieb*, 2018 IL App (5th) 170148, ¶ 26 (quotations omitted).

I. Plaintiffs have no right in need of protection and are unlikely to succeed on the merits.

The circuit court's determination that plaintiffs had a clear right in need of protection and were likely to succeed on the merits was based on an incorrect view of the law. Accordingly, the court necessarily abused its discretion.

First, the court incorrectly held that the Act likely violates the single-subject rule. That rule prevents "the combination of unrelated subjects in one bill to obtain support for the package as a whole, when the separate parts could not succeed on their individual merits." *Kane Cnty. v. Carlson*, 116 Ill. 2d 186, 214 (1987). It "does not impose an onerous restriction on the legislature's actions" but "leaves the legislature with wide latitude in determining the content of bills." *Johnson v. Edgar*, 176 Ill. 2d 499, 515 (1997). Indeed, the legislature must "go very far to cross the line to a violation of the single subject rule." *Id.* at 515-16.

Courts use a two-step analysis to determine whether a public act violates the rule. *People v. Sypien*, 198 Ill. 2d 334, 339 (2001). First, the court "must determine whether the act, on its face, involves a legitimate single subject." *Id.* The subject need not be identified in the act's title, *Wirtz v. Quinn*, 2011 IL 111903, ¶ 32, should be "liberally construed" in favor of upholding the legislation, *Sypien*, 198 Ill. 2d at 338, and may be "comprehensive in scope," *id.* Second, the court "must discern whether the various provisions within an act all relate to the proper subject at issue." *Id.* at 339. Both steps require an examination of the act's contents: the court must examine "the act, on its face," and "the various provisions within the act." *Id.* As petitioners explained below, the Act satisfies this standard because it involves a

legitimate single subject—the regulation of firearms—that was reflected in the contents of the Act. SR1921-26.

In holding otherwise, the circuit court failed to undertake the appropriate analysis. Rather than examine the provisions of the Act, it looked primarily to the Act's title and concluded that because the title did not explicitly mention firearms, the Act violated the single-subject rule. SR2010. As support, the court relied on *People v. Boclair*, 202 Ill. 2d 89 (2002). But in *Boclair*, the Illinois Supreme Court rejected the circuit court's approach: the Court explained that "an act's title is not necessarily dispositive of its content or its relationship to a single subject," and on this basis "reject[ed]" the "heavy reliance on [the act's] title to support [the single-subject] claim." *Id.* at 109. The circuit court also incorrectly suggested that the Act violates the single-subject rule because it references human and illegal drug trafficking alongside illegal firearms trafficking. SR2010. On the contrary, the trafficking provision relates to the regulation of firearms because all of the crimes identified are frequently perpetrated with firearms. 20 ILCS 2605/2605–35.

Second, the circuit court wrongly held that plaintiffs were likely to succeed on their claim that the Act violates the three-readings requirement in Article IV, section 8(d) of the Illinois Constitution. But section 8(d) further provides: "The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met." Ill. Const. art. IV, § 8(d). This is known as the "enrolled bill doctrine"; it "mean[s] that, upon certification by the Speaker and the Senate President, a bill is

conclusively presumed to have met all procedural requirements for passage," including the three-readings requirement. *Geja's Cafe v. Metro. Pier & Exposition Auth.*, 153 Ill. 2d 239, 259 (1992).

The Illinois Supreme Court has consistently held that the enrolled bill doctrine precludes litigation challenging certified legislation for failure to comply with the three-readings requirement. *E.g.*, *Friends of Parks v. Chi. Park Dist.*, 203 Ill. 2d 312, 328-29 (2003) (collecting cases). The circuit court recognized that the enrolled bill doctrine foreclosed this claim, but declared it was "time to revisit this practice," and concluded plaintiffs were likely to succeed on this claim based on the Illinois Supreme Court's decades-old remark that it "'reserve[d] the right to revisit this issue.'" SR2011 (quoting *Geja's Cafe*, 153 Ill. 2d at 260). But while the Illinois Supreme Court reserved *its* right to revisit this issue, circuit courts cannot declare "precedent a dead letter." *Yakich v. Aulds*, 2019 IL 123667, ¶ 13. Because the enrolled bill doctrine unambiguously remains good law, "the [circuit] court committed serious error by not applying it." *Id.*

Third, the circuit court's conclusion that plaintiffs are likely to succeed on their procedural due process claim represents another misapplication of the law. A plaintiff may not base a due process claim on the alleged violation of a *different* constitutional provision. *See People v. Patterson*, 2014 IL 115102, ¶ 97; *In re A.C.*, 2016 IL App (1st) 153047, ¶ 60. But that is precisely what plaintiffs are doing here: their due process claim rests entirely on the legislature's alleged failure to comply with the single-subject and three-readings clauses of the Illinois Constitution. SR33-

36. Furthermore, plaintiffs have failed to identify an individual property interest, which is a necessary element of a procedural due process claim. *Vill. of Vernon Hills v. Heelan*, 2015 IL 118170, ¶ 31. Plaintiffs have no such interest in the single-subject or three-readings clauses. Not only that, Illinois courts have recognized that the legislative process itself affords any process due. *E.g., id.* ¶ 34 ("the enactment of a statute itself generally affords all of the process that is due"); *Illinois Collaboration on Youth v. Dimas*, 2017 IL App (1st) 162471, ¶ 87 ("[E]ven assuming plaintiffs had a property interest in receiving payments under their contracts, the legislative process of making appropriations provides them with all the process they are due.").

The circuit court recognized these obstacles, yet declined to apply them based on its conclusion that the enrolled bill doctrine should be eliminated. SR2012. But as explained, only the Illinois Supreme Court may overrule its own interpretation of the Illinois Constitution, and the enrolled bill doctrine's place within it. The court was also incorrect that plaintiffs must be able to bring their due process claim if they are to have a remedy. *See* SR2012. On the contrary, as explained, their due process claim is foreclosed because they have claims directly based on the single-subject and three-readings requirements. *See Patterson*, 2014 IL 115102, ¶ 97 (rejecting attempt to "support [a] due process argument" with claims based on other constitutional provisions).

Finally, the circuit court's conclusion that plaintiffs would likely succeed on their equal protection claim was legally incorrect. The equal protection clause of the Illinois Constitution "guarantees that similarly situated individuals will be treated in

a similar fashion unless the government can demonstrate an appropriate reason to treat them differently." *In re Destiny P.*, 2017 IL 120796, ¶ 14. Where fundamental rights or a protected class are not at issue, the court examines whether the statutory classification "bears a rational relationship to a legitimate governmental purpose." *Id.* As petitioners explained below, rational basis review applies because the Act does not implicate a fundamental right or a protected class under the Illinois Constitution. SR1932-33. And the Act's exceptions readily survive rational basis review because the professionals exempt from the Act's restrictions have greater training and experience with firearms than the public at large and/or are limited to possessing these dangerous weapons as necessary to perform their official duties. SR1933.

The circuit court appeared to agree that rational basis was the appropriate standard, SR2013, but it erred in its application of that standard in at least two ways. First, it wrongly determined that the Act did not survive rational basis review because there are "other rational and logical exemptions" that *should* have been included in the Act. SR2013. But rational basis does not require the legislature to make the best possible classifications; all that is required is a rational relationship to a legitimate government objective. *People v. Anderson*, 148 Ill. 2d 15, 31 (1992); *Chicago Nat. League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 371 (1985).

The exceptions here meet this lenient standard. Reducing firearm deaths and mass shooting casualties, which are more likely to result from the weapons restricted by the Act than from other weapons, is a legitimate government interest. *People v. Mosley*, 2015 IL 115872, ¶ 42 ("[T]he state has a legitimate interest in protecting the

public and the police from the possession and use of dangerous weapons."). And it was also rational for the legislature to determine that certain categories of people who either (1) have received extensive firearms training and qualifications or (2) are limited to carrying assault weapons and LCMs when in the scope of their employment pose a far lower risk than the public at large when handling these dangerous weapons. *See* 720 ILCS 5/24-1.9(e) & 1.10(e) (listing exceptions). Law enforcement officers and corrections officials, two categories of people exempted from the Act's restrictions, receive extensive training on the handling of firearms, including annual re-certification. *See* 20 Ill. Adm. Code §§ 1730.20(b), 1750.202(c)(1). Similarly, the exception for retired law enforcement is limited to those qualified under Illinois's process, established by federal law, to carry concealed firearms. *See* 18 U.S.C. § 926C; 50 ILCS 705/10.4; 720 ILCS 5/24-1.9(e)(2). The Act's other exceptions—for the military and National Guard, private security, and security at nuclear facilities—are limited to possessing weapons as needed to perform official duties. These exceptions are rational because they ensure that the Act does not hinder military readiness or those expressly charged with protecting life and property, but are tailored so that dangerous weapons may be used for those purposes, and will not inadvertently fall into the hands of others.

In any event, while the circuit court speculated that other "logical" exceptions might include retired military personnel and disabled individuals, plaintiffs did not allege that they fall within these groups. *See* SR36-47. A party seeking to invalidate a law as unconstitutional must assert his or her *own* rights, not the rights of non-

parties. *See, e.g., State v. Funches*, 212 Ill. 2d 334, 346 (2004) ("A party has standing to challenge the constitutionality of a statute only insofar as it adversely impacts his or her own rights."); *People v. Jaudon*, 307 Ill. App. 3d 427, 435-36 (1st Dist. 1999) ("A party does not have standing to assert the constitutional rights of others not before the court."). At any rate, rational basis review does not require the legislature to select the best possible classifications, *supra* p. 11; the classifications need merely be rational, as the Act's are.

The circuit court also suggested that the issues it addressed "could be considered moot" because the challenged exceptions are analogous to the concealed carry licensing law invalidated in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). SR2013-14. But *Bruen*, which clarified the standard for Second Amendment claims, is irrelevant to this case because plaintiffs disclaimed any such claim. *See* SR1944, SR1991. Furthermore, while *Bruen* struck down New York's "proper cause" standard for issuing concealed carry licenses, it expressly approved the concealed carry licensing program in Illinois, 142 S. Ct. at 2123-24 & n.1 (citing 430 ILCS 66/10), and there is no "proper cause" requirement in the Act at issue here.

Finally, to the extent that the circuit court elsewhere held that the right to bear arms is "fundamental," which would trigger strict scrutiny, *see* SR2007, that was error. As noted, plaintiffs chose to bring their claims based on alleged flaws in the legislative process, and not on the right to bear arms. Indeed, plaintiffs disclaimed any cause of action based on the federal right to bear arms. *See* SR1944, SR1991. Not only that, the Illinois Supreme Court has held that the Illinois

Constitution's right to bear arms is *not* fundamental and declined to apply strict scrutiny to an equal protection claim based on that right. *Kalodimos v. Vill. of Morton Grove*, 103 Ill. 2d 483, 509-10 (1984). That is because the text of the right to bear arms in the Illinois Constitution differs significantly from the federal right: the Illinois Constitution, unlike the U.S. Constitution, identifies the "'the police power' as a limitation on the liberty the provision affords." *Id.* at 491. The circuit court's holding that plaintiffs have a fundamental right to bear arms under the Illinois Constitution rests on the view that the Illinois Supreme Court abrogated *Kalodimos* in *Guns Save Life, Inc. v. Ali*, 2021 IL 126014, SR2007, but that misreads the latter case. In *Ali*, the Supreme Court addressed a claim under the Illinois Constitution's uniformity clause, not the right to bear arms. 2021 IL 126014, ¶ 18. Indeed, the Court expressly declined to consider the scope of the state or federal right to bear arms, and plaintiffs did not raise an equal protection claim. *Id.* ¶¶ 6, 18.

Because the circuit court's holding that plaintiffs are likely to succeed on the merits was replete with legal errors, it was by definition an abuse of discretion. The TRO should be reversed and vacated on this basis alone.

II. Plaintiffs failed to establish irreparable harm for which they have no adequate legal remedy.

The circuit court also incorrectly determined that plaintiffs had demonstrated irreparable harm and, relatedly, that money damages would not provide an adequate legal remedy. This error provides an independent ground for reversal.

In their TRO motion, plaintiffs asserted that they were "being immediately and irreparably harmed each and every day they continue to be subjected to [the Act]

and these harms are a continuing transgression against their fundamental right to bear arms." SR1045. This conclusory statement falls well short of what is required to demonstrate irreparable harm at the TRO stage. *In re Marriage of Slomka & Lenehan-Slomka*, 397 Ill. App. 3d 137, 145 (1st Dist. 2009) ("unsupported conclusion" could not establish irreparable harm or lack of legal remedy); *Int'l Ass'n of Firefighters Loc. No. 23 v. City of E. St. Louis*, 206 Ill. App. 3d 580, 587 (5th Dist. 1990) ("speculative" harm not irreparable).

Furthermore, plaintiffs misunderstand the Act. As explained, *supra* p. 3, to the extent plaintiffs lawfully possessed assault weapons or LCMs before the Act, they still may legally possess them and must merely complete an endorsement affidavit with the State Police within the year. Insofar as plaintiffs are concerned, the Act's restrictions at most may reduce sales of assault weapons and LCMs at gun stores. But the court may grant a TRO only when "monetary damages cannot adequately compensate the injury and the injury cannot be measured by pecuniary standards." *Happy R Sec., LLC v. Agri-Sources, LLC*, 2013 IL App (3d) 120509, ¶ 36 (cleaned up); *accord Ajax Eng'g Corp. v. Sentry Ins.*, 143 Ill. App. 3d 81, 84 (5th Dist. 1986) (similar).

The circuit court recognized that the Act did not impact plaintiffs' ability to possess any weapons they lawfully possessed on the Act's effective date, that they have "ample time" to complete an endorsement affidavit, and that injuries compensable by monetary damages cannot be the basis for a TRO. SR2008. The court nevertheless held that the individual plaintiffs would suffer irreparable harm

absent a TRO because of a loss of "their fundamental right to bear arms." SR2008. But as explained, *supra* pp. 4-5, 13, plaintiffs' complaint is not based on any infringement of their right to bear arms. And regardless, plaintiffs may continue to possess the assault weapons and LCMs they legally possessed before the Act's effective date; they must merely complete an endorsement affidavit before January 1, 2024. *Supra* p. 3. Thus, this case differs from *Makindu v. Illinois High School Ass'n,* 2015 IL App (2d) 141201, on which the circuit court relied. SR2008. There, the restraint at issue—which would have prevented a high school student from playing basketball during his senior year—was immediately effective and any harm resulting from it could not be rectified after graduation if the student prevailed on the merits. *Id.* ¶¶ 6, 44. Here, by contrast, the Act does not require the individual plaintiffs to dis-possess themselves of any weapons, and insofar as it requires them to complete an endorsement affidavit, they need not do so for nearly a year.

As for the gun store plaintiffs, the circuit court found irreparable harm because, in its view, "their ability to pursue their current profession" would be "restrict[ed]." SR2008. This holding is flawed in multiple respects. First, it impermissibly rests on speculation: plaintiffs did not allege that they are in the business of selling assault weapons or LCMs; instead, plaintiffs alleged merely that some of them "desire" to do so. SR11; *see also Slomka*, 397 Ill. App. 3d at 145; *Int'l Ass'n of Firefighters Loc. No. 23*, 206 Ill. App. 3d at 587. In any event, there is no allegation that an inability to sell assault weapons and LCMs will prevent any plaintiff from operating, nor could there be: under the Act, plaintiffs may still sell

other types of weapons and ammunition, and may sell assault weapons and LCMs to out-of-state buyers and in-state buyers within the exempted professions. *Supra* p. 3. Finally, not only did the gun store plaintiffs fail to show that the Act obstructed their ability to do business, the inability to work in a particular job is not an "extreme emergency situation that poses serious harm," as needed to satisfy the irreparable harm requirement for a TRO. *See Clinton Landfill*, 406 Ill. App. 3d at 380. On the contrary, Illinois courts have held that consequences to employment are not irreparable, *McMann v. Pucinski*, 218 Ill. App. 3d 101, 108 (1st Dist. 1991), and that money damages can provide sufficient compensation, *Webb v. Cty. of Cook*, 275 Ill. App. 3d 674, 677 (1st Dist. 1995); *Hess v. Clarcor, Inc.*, 237 Ill. App. 3d 434, 452 (2d Dist. 1992).

III. The circuit court abused its discretion in balancing the hardships.

Finally, the circuit court applied the incorrect standard in balancing the hardships, providing yet another basis to reverse. "In balancing the equities, the court must weigh the benefits of granting the injunction against the possible injury to the opposing party from the injunction," *Guns Save Life v. Raoul*, 2019 IL App (4th) 190334, ¶ 68 (quotations omitted), as well as the effect on the public, *Clinton Landfill*, 406 Ill. App. 3d at 378. Here, when undertaking the balancing analysis, the circuit court merely reiterated its conclusions that plaintiffs were likely to succeed on the merits and would suffer irreparable harm if a TRO was not granted. SR2014-15. But as explained, the only harms identified by the circuit court are speculative, not imminent, and can be compensated by money damages. By definition, then, the

balance of equities cannot favor plaintiffs. Moreover, the court did not consider the effect of a TRO on the public interest, which is required for a circuit court to grant emergency injunctive relief. *See JL Props. Grp. B, LLC v. Pritzker*, 2021 IL App (3d) 200305, ¶¶ 59-60.

CONCLUSION

Defendants-Petitioners request that this court grant the petition and reverse, vacate, and dissolve the TRO.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that on January 23, 2023, I electronically filed the foregoing **Defendants-Petitioners' Memorandum in Support of Petition for Review of Temporary Restraining Order Under Illinois Supreme Court Rule 307(d)** with the Clerk of the Court for the Illinois Appellate Court, Fifth Judicial District, by using the Odyssey eFileIL system.

I further certify that the other participant in this appeal, named below, is a registered service contact on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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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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IN THE
APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

ACCURACY FIREARMS, LLC *et al.*	)	**Interlocutory Appeal from the**
	)	**Circuit Court for the Fourth**
Plaintiffs-Respondents,	)	**Judicial Circuit, Effingham**
	)	**County, Illinois**
Vs.	)	
	)	
Governor JAY ROBERT PRITZKER, in his official capacity; and KWAME RAOUL, in his capacity as Attorney General,	)	**2023-MR-4**
	)	
Defendants-Petitioners.	)	
	)	
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, Judge Presiding.**
	)	
Defendants.	)	

PLAINTIFFS-APPELLEES RESPONSE TO DEFENDANT-APPELLANTS PETITION FOR REVIEW OF TEMPORARY RESTRAINING ORDER PURSUANT TO IL. SUP. CT. R. 307(D)

PRELIMINARY MATTERS

In the circuit court, the Petitioners in this case filed a response to the Respondents verified motion for temporary restraining order, which motion of Respondents was further supported by a verified complaint for declaratory and injunctive relief. The Court will find the response filed by the Petitioners was not verified. 735 ILCS 5/2-605 expressly provides that when a pleading has been verified, every subsequent pleading must also be verified except as excused by the Court. In this case, the unverified response to the verified complaint and verified motion for temporary

restraining order was not excused by the Court. The responsive pleading which attempts to adduce facts for the purpose of controverting facts plead by Respondents verified complaint for an injunction must be disregarded as if the Petitioner had filed no response. *Firkus v. Firkus*, 200 Ill.App.3d 982 (1990), (citing *Capitol Records Inc. v. Vee Jay Records*, 47 Ill.App.2d 468 (1964)) As such, as it relates to any factual matters, the Court is left with only with the verified pleadings filed by the Respondents in their request for a temporary restraining order. This issue is highly relevant to the Court's analysis of the single subject rule and equal protection.

RELEVANT FACTUAL ISSUES

The Petitioners proclaim the subject of the Public Act was "the regulation of firearms. At this stage, the Court is constrained to verified facts in the record and nowhere in the verified complaint, or the exhibits attached which contain the public record of HB5471, will the Court find any indicia of this act having a subject regarding the regulation of firearms. The bill as introduced states in the title that its an act regarding regulation. The bill as it passed out of the general assembly still states in its title that it's an act regarding regulation. Given there is no legislative debate, there is nothing else in the legislative record for which the Court might conclude any other legitimate subject of the bill. The Petitioners are foreclosed from appearing in this Court, or the circuit court for that matter, and providing unsupported factual allegations as to what the subject or public purpose of HB 5471 might be. The record adduced by the Respondents is what the Court must consider and on that record the Court only has "an act concerning regulation.

As it relates to equal protection, the Petitioners spend a great deal of time discussing the efficacy of this bill. Regardless of the standard of review applied in the equal protection analysis, which will be discussed later, the Petitioners make all kinds of unsubstantiated factual assertions not supported by the record. For example, the Petitioners aver that reducing firearms deaths and mass

shooting casualties is the legitimate government interest being furthered. This factual averment can be found nowhere in the record. Furthermore, to aver that those with certain firearms training or performing certain duties pose a smaller risk to the public at large when handling these weapons is complete conjecture not supported by the record. The Respondents cannot stress enough that as a result of the Petitioners own legislative errors they have backed themselves into a corner given no factual support exists for their contentions. Any facts they attempt to adduce must be disregarded.

I. Respondents have a right in need of protection.

Petitioners do not take the position Respondents don't have a right in need of protection. It seems they readily admit Respondents have a right to challenge the constitutionality of a statute when it impacts his or her rights. *People v. Jaundon*, 307 Ill. App. 3d 427 (1st Dist. 1990). There is no doubt this bill impacts the rights of Respondents for whether the bill is about regulation in general, regulation of firearms, or any other subjects the Petitioners might choose to throw out there as this case proceeds, the bill effects every person in the state and as such it impacts the rights of Respondents who are afforded the opportunity to seek redress in the Courts.

However, there is some conflating in the case in regard to rights of Respondents which needs to be clarified for the Court. Judge Morrison states correctly that while Petitioners argue HB 5471 impairs their fundamental right to bear arms, the law was enacted in violation of four enumerated requirements of the Illinois Constitution. In regard to the right in need of protection, solely as it relates to the elements of the restraining order, the right of Petitioners to not be subjected to a statute passed in violation of the Illinois constitution is the right being protected which the circuit court accurately determined.

Secondly, as mentioned by Judge Morrison, in regard to the due process and equal protection analysis which will be discussed later herein, the Court must consider what right is being

implicated within the body of the legislation itself in order to determine which level of scrutiny to apply in the due process and equal protection analysis. Given the substance of the regulation is in large part in regard to firearms restrictions, the Court has to take that into consideration when analyzing the due process and equal protection claims. Judge Morrison found the right being implicated in HB 5471 is the fundamental right to bear arms and as such any analysis of due process or equal protection must pass strict scrutiny.

The Petitioners refer to the *Kalodimos* case to support their proposition that regulations of firearms don't implicate a fundamental right in Illinois. The relevant provision of *Kalodimos* which the Petitioners rely on has long been outdated by Federal and State jurisprudence: "While the right to possess firearms for purposes of self-defense may be necessary to protect important personal liberties from encroachment by other individuals, it does not lie at the heart of the relationship between individuals and their government. The right to arms guaranteed by the Federal Constitution has never been thought to be an individual right, as distinguished from a collective right (United States v. Miller (1939), 307 U.S. 174, 83 L. Ed. 1206, 59 S. Ct. 816)". (See *Kalodimos v. Vill. of Morton Grove*, 103 Ill. 2d 483, 509 (1984)

However, since the time of *Kalodimos* which relied on *U.S. v. Miller*, numerous federal cases have held the right to bear arms is an individual right which is fundamental. In reliance upon that federal jurisprudence, the holding in *Kalodimos* no longer applies. This Court should review the holding of the Illinois Supreme Court *Guns Save Life, Inc. v. Ali* in regard to the constitutionality of an ordinance which placed a tax on firearms and ammunition, where the Illinois Supreme Court held:

"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, 130 S.Ct. 3020, 177 L.Ed.2d 894 (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 *Guns Save Life, Inc. v. Ali,*2021 IL 126014). The *Ali* Court went on to state that while the taxes do not directly burden a law-abiding citizen's right to use a firearm for self-defense, they do directly burden a law-abiding citizen's right to acquire a firearm and the necessary ammunition for self-defense. This Court will clearly find the purpose of HB 5471 is an attempt to regulate Respondents ability to purchase firearms and as such when it comes to due process and equal protection, the standard of review is strict scrutiny.

II. Irreparable Injury has been established.

Plaintiffs are being immediately and irreparably harmed each and every day in which they continue to be subjected 720 ILCS 5/24-1.09 *et seq*. and 720 ILCS 5/24-1.10 *et seq*. which were adopted in violation of constitutional principles. As a result of these violations a fundamental right has been impaired. When a violation of constitutional rights has been alleged, a further showing of irreparable injury is not required. *Makindu v. Illinois High School Assn.*, 2015 IL App (2d) 141201 (2015). This rule of law is even further defined in *Makindu* as it relates to equal protection in that equal-protection rights are so fundamental to our society that any violation of those rights causes irreparable harm. *Id*.

"To demonstrate irreparable injury, the moving party need not show an injury that is beyond repair or compensation in damages, but rather need show only transgressions of a continuing nature." *Victor Township Drainage Dist. 1 v. Lundeen Family Farm P'ship*, 2014 IL App (2d) 140009 ¶ 50.

The injury to a plaintiff "must be in the form of plaintiff's legal rights being sacrificed if plaintiff is forced to await a decision on the merits." *Hough v. Weber*, 202 Ill. App. 3d 674, 686 (2nd Dist. 1990). The legal rights being sacrificed are the rights to bear arms which is being restrained pursuant to the provisions of 720 ILCS 5/24-1.09 *et seq*. and 720 ILCS 5/24-1.10 *et seq*. which were adopted in violation of four separate and distinct constitutional requirements. When a right such as the one being violated here is alleged, irreparable injury is satisfied. *Makindu v. Illinois High School Assn.*, 2015 IL App (2d) 141201 (2015)

III. Respondents have no adequate remedy at law

There is no adequate remedy at law because the loss of the continuous sacrifice of legal rights that cannot be cured retroactively once the issues are decided on the merits. *Hough v. Weber*, 202 Ill. App. 3d 674 (1990). An "adequate remedy at law is one which is clear, complete and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy." *Cross Wood Products, Inc. v. Suter*, 97 Ill. App. 3d 282, 286 (1st Dist. 1981). Furthermore, where injuries are of a continuing nature, remedies at law are inadequate, and injunctions should be imposed. See *Fink v. Board of Trustees of Southern Illinois University*, 71 Ill. App. 2d 276, 281 (5th Dist. 1966).

As a result of this legislation, the rights of Respondents to engage in the delivery, sale, import, or purchase an assault weapon, assault weapon attachment, .50 caliber rifle, or .50 caliber cartridge and/or manufacture, deliver, sell, or purchase large capacity ammunition feeding devices as they might choose is restrained by 720 ILCS 5/24-1.09 *et seq*. and 720 ILCS 5/24-1.10 *et seq*. The losses are not easily, if at all, quantifiable as a remedy at law.

IV. Respondents have shown a likelihood of at least one of the following.

a. Single Subject Rule

What is the subject of this bill? The mere fact this question is uncertain at best should leave the Court to conclude the Petitioners have raised at least a likelihood of success at this stage. The Petitioners are all over the place with unsubstantiated conjecture as to what is the subject of this bill. It is worth noting Defendant Welch and Defendant Harmon did not appear and provide any sworn testimony as to the subject of this bill. In the unverified response to the request for restraining order, and in its filing in this Court, the Petitioners refer to a regulation regarding firearms. Nothing in the public records supports this was in fact the subject of the legislation. What this Court must consider is the record before it. The dearth of a legislative record was attached to the verified pleadings of Respondents in the circuit court for which the Petitioners provided nothing additional.

In that record, the bill as introduced was an act concerning regulation addressing the insurance code. In that record, the bill as it passed out of the general assembly was still titled an act regarding regulation which no longer addressed insurance, but the bill now dealt with the Illinois State Police shall conduct other investigations of human trafficking, illegal drug trafficking, and illegal firearms trafficking, amended the FOID act to allow a plenary firearms restraining order of up to one-year, but not less than 6 months, added all the provisions regarding restrictions of certain firearms, and amended the freedom of information act. Nowhere in the factual record can the Court find anything substantiating the subject is an act regarding regulation of firearms. The only place that exists in this record is from the unverified conjecture of Petitioners. It seems the Petitioners abandon the public record which states merely it's an act regarding regulation while providing no other substantive information for this Court to consider and tries to create a red-herring that the bill is really about firearm regulation. While the title alone is not dispositive, there is no additional legislative record to rely upon given the procedural abuses complained of herein. .

Petitioners try to aver the end result of the regulation concerns matters of firearms

regulations so that alone satisfies the single subject rule. The Petitioner cites the *Wirtz* case to defend itself against the single subject argument. (See *Wirtz v. Quinn*, 2011 IL 111903, 953 N.E.2d 899, 352 Ill.Dec. 218 (2011). It is true the *Wirtz* court states not to rely solely on the title of the act alone as it relied heavily on the extensive legislative debate to determine the subject. See *Wirtz,* 352 Ill.Dec. at 229. The *Wirz* court further distinguished the *Olender* court which found a violation of the single subject rule as in that case the public record was devoid of any in-depth discussion. *Id*. at 230. This case is more like *Olender* than *Wirtz*. In this case, there is no legislative record to determine if the legislator vetted the bill as something other than merely an act regarding regulation. In this case, there was not adequate consideration by the legislature for which the Court might deduce another subject being considered. As such, with this record, the subject of an act regarding regulation is what the Court has in front of it and that subject is overly broad and must fail in regard to the first step of analyzing the single subject rule

Should the Court get to step two, the Petitioners try and convince this Court that drug trafficking and human trafficking often involve weapons as a basis for combining these investigative requirements upon the Illinois State Police in an act allegedly concerning firearms regulation. No evidence is offered to support such a proposition and nothing is in the public record. Additionally, how does amending the FOID Act to allow for a plenary order of protection further the alleged subject of firearm regulation. While these amendments might address issues of public safety, such is not the alleged subject according to Petitioners. These amendments have no natural or logical connection to firearms regulations which means the Respondents have shown a fair likelihood of success in this regard as well.

Lastly, this act began a modification of the insurance code. It passed the house of representative as an insurance law amendment. Then with two days left in the senate, the bill was

altered into what is in front of the Court today. The bill which left the senate and returned to the house has a subject, or subjects, which bear no relation to the subject for which the bill left house. Insurance contracts and firearms regulations are wholly unrelated. There is absolutely no doubt had the legislature left the insurance amendment intact and passed the law with the senate amendments included, the bill would fail under single subject. Here the Petitioners stripped the insurance provisions out. Nonetheless, the Court should find the single subject rule is still violation as allowing the legislature to strip the original subject at the last minute as a work around to the single subject rule would render the constitutional provision meaningless. To allow such gamesmanship strips the people's elected representatives from being able to engage in fully structured and well-informed debate. *People v. Cervantes*, 189 Ill. 2d 80, 83-84 (1999) (citing *People v. Reedy*, 295 Ill. App. 3d 34 (2d Dist. 1999)).

b. Three Readings Rule

There is no doubt with the record in front of this Court Three Readings Rule has been violated. It shouldn't surprise the Court that Speaker Welch and President Harmon have yet to appear and file any verified response controverting the allegations. Each certified the procedural requirements, including the three readings rule, were complied with before sending HB 5471 to the Governor for signature. Petitioners come to this Court and proclaim it doesn't matter if there has been a violation as there is nothing the Court or Respondents can do about it. Their positions are almost one of arrogance that proclaims an acknowledge the requirements were violated but nonetheless the Court is precluded from addressing it. The Petitioners proclaim only the Illinois Supreme Court can revisit this matter and not a lower court.

In *Geja's Cafe v. Metro. Pier & Exposition Auth.*, 153 Ill. 2d 239, 260 (1992), the Supreme 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." In *Friends of Parks v. Chicago Park Dist.*, 203 Ill. 2d 312, 329 (2003), the Illinois Supreme Court once reiterated this 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." The Supreme Court went on to say while separation of powers concerns militates in favor of the enrolled-bill doctrine, our responsibility to ensure obedience to the constitution remains an equally important concern. *Id*.

When the Illinois Supreme Court refers to the separation of powers, they are obviously talking about the judiciary and the legislature. The judiciary clearly has the authority to demand obedience to the Three Readings Rule of the Illinois Constitution and the Illinois Supreme Court made that clear. The circuit court and this Court are a part of that judiciary and clearly the Illinois Supreme Court left the door open for the judiciary to intervene in the continued violations of the Three Readings Rule and as Judge Morrison stated, "the time is now."

c. Procedural Due Process

Both the federal and state constitutions provide that no individual shall be deprived of life, liberty, or property without the due process of law. U.S. Const., amend. XIV, § 1; Ill. Const. 1970, art. I, § 2. Where the right infringed upon is among those rights considered fundamental constitutional rights, the challenged statute is subject to strict scrutiny analysis. In re A.C., 2016 Il App (1st) 153407. Petitioners accurately state the Respondents are due no more than the legislative process itself. This is in fact all the Respondents demand. They demand the legislative process comply with the procedural requirements of the Illinois Constitution, particularly the single subject rule and the three readings rule.

The Petitioners aver a constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision. *People v. Patterson*, 2014 IL 115012 (2014). This is not what the Respondents are doing. The Respondents are not relying on up decisional law of the Single Subject Rule or the Three Readings Rule to support their procedural due process claims. In fact, that is what the Petitioners are trying to do in that they are trying to defeat the Respondents procedural due process claim by referring to the decisional law of the Single Subject Rule and the Three Readings Rule. Respondents agree this is inappropriate and their procedural due process claim must rise or fall on its own merits.

The procedural requirements of the Single Subject Rule or the Three Readings Rule ensure the Respondents, individually or through their elected representatives, have a meaningful opportunity to notice, to participate, and to be heard. HB 5471 spent 347 days in the legislature. For 345 days this bill was an innocuous change to the insurance code. Within the last 2 days of its life, the insurance amendment was gutted and replaced and converted to an extensive infringement on a fundamental right. The amendment was initiated on Sunday, January 08, 2023, at 3:00 P.M. By Tuesday evening, January 10, 2023, it was signed into law. Before the public even knew what is going on, the bill was passed. No reasonable person could conclude the Respondents, or their elected representatives, had any meaningful opportunity to engage in the legislative process as demanded by the procedural requirements of the constitution. Under no set of facts does this procedural gamesmanship comport with the constitutionally guaranteed rights of due process of law.

d. Equal Protection

The constitutional guarantee of equal protection requires that the government treat similarly situated individuals in a similar manner. *People v. Warren*, 173 Ill.2d 348, 361, 219 Ill.Dec. 533, 671 N.E.2d 700 (1996). The analysis applied in assessing equal protection claims is the same under both

the United States and Illinois Constitutions. *Nevitt v. Langfelder*, 157 Ill.2d 116, 124, 191 Ill.Dec. 36, 623 N.E.2d 281 (1993). It does not preclude the State from enacting legislation that draws distinctions between different categories of people, but it does prohibit the government from according to 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*.

There are no facts in the record to even begin to support an argument in favor of the Petitioners which might justify exempting out the seven large categories of persons. While the Petitioners attempt to argue it's the "extensive" training of these individuals which justifies their exemption, that is pure conjecture at this stage of the proceedings. No facts in the legislative record exists to make this argument and no affidavits, or other verified facts, have been adduced in these proceedings to make this argument. Quite simply, the Petitioners have zero ability to make that argument at this stage. However, just for short measure, the Respondents will briefly evaluate the extensive training proposition. This brief evaluation will show the Court that training likely has nothing to do with exempting these groups.

Any private security contractor who is licensed and has been issued a firearm control card under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 while performing official duties is exempt. (See 720 ILCS 5/24-1.9(e) and See 720 ILCS 5/24-1.10(e).) The training requirements to be issued a firearm control card are as follows: Registered employees of the private alarm contractor agency who carry a firearm and respond to alarm systems shall complete, within 30 days of their employment, a minimum of 20 hours of classroom training provided by a qualified instructor and shall include all of the following subjects: (1) The law regarding arrest and search and seizure as it applies to the private alarm industry; (2) Civil and criminal liability for acts related to the private alarm industry; (3) The use of force, including

but not limited to the use of nonlethal force (i.e., disabling spray, baton, stun gun, or similar weapon); (4) Arrest and control techniques; (5) The offenses under the Criminal Code of 2012 that are directly related to the protection of persons and property; (6) The law on private alarm forces and on reporting to law enforcement agencies; (7) Fire prevention, fire equipment, and fire safety; (8) Civil rights and public relations; (9) The identification of terrorists, acts of terrorism, and terrorist organizations, as defined by federal and State statutes. (See 225 ILCS 447/20-20(a)) Nowhere to be found in the requirement to obtain a firearms control card is any training whatsoever regarding firearms. With training whatsoever, he or she is free to purchase as many "assault weapons, .50 caliber rifles and ammunition, and high-capacity magazines as desired as long as he or she has a valid firearms control card which requires no firearms training under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004. This classification couldn't even survive rational basis, let alone strict scrutiny.

Retired law enforcement officers are free to purchase as many "assault weapons, .50 caliber rifles and ammunition, and high-capacity magazines as desired but retired navy seal, being one of the most highly trained warriors on the planet, loses his rights upon being discharged. Is a retired police officer better trained than a navy seal? Of course not. This further supports training has nothing to do with these exempt classes.

As for these exempt categories, the record is devoid of what training they undergo exactly which adequately trains them in regard to "assault weapons" and .50 caliber rifles, or large capacity magazines, which training Respondents cannot also undergo? If training is in fact the standard, then Respondents should be afforded the same opportunity to undergo this training to be afforded the same privileges as the exempt class. This argument is for another time as for now the Petitioners argument must fail as there are no facts in the record to support their training argument. Especially in light of

the fact that the Court can look at the private security contractor statute and see that in fact no training is required for any weapons, let alone "assault weapons." As such, Respondents have easily shown a likelihood of success on the merits as to equal protection. Under no set of facts can these exempt categories survive a strict scrutiny analysis, and given the absence of any facts at this stage of the proceedings, even rational basis could not be overcome.

CONCLUSION

The Court has in front of a record which due to the complete abandonment of the legislative process as complained of by the Respondents contains no factual basis for which any of the arguments made by the Petitioners can be supported. Petitioners come to this Court freewheeling with self-serving factual assertions regarding the subject being regulated as well as the factual basis supporting its decision to exempt large groups. The only facts in the record have been adduced by the Respondents and the Petitioners failure to plead any verified facts, or otherwise provide any affidavits, leaves them wanting of any factual basis to support their claims.

The Respondents have more than satisfied at this stage the four elements of a temporary restraining order. They have a right to object to legislation passed in violation of constitutional principles which has impeded their ability to possess or otherwise desire to deliver, sell, import, or purchase an assault weapon, assault weapon attachment, .50 caliber rifle, or .50 caliber cartridge and/or manufacture, deliver, sell, or purchase large capacity ammunition feeding devices. Every day which this right is interfered with is irreparable and no amount of money can compensate them for this harm. Respondents have raised a likelihood of success on the merits of at least one of the four constitutional violations raised.

Prior to the enactment of this legislation, Plaintiffs were not restricted in their rights to possess or otherwise desire to deliver, sell, import, or purchase an assault weapon, assault weapon

attachment, .50 caliber rifle, or .50 caliber cartridge and/or manufacture, deliver, sell, or purchase large capacity ammunition feeding devices. After this legislation was enacted in less than 48 hours, without any meaningful opportunity for the Plaintiffs or their elected representatives to be heard, their fundamental rights were restricted notwithstanding large categories of exempt persons who enjoy the benefit of powerful lobbyists were allowed to keep their rights intact. As such equity demands the Respondents, while these proceedings are pending, be treated the same as the exempt classes of citizens not impacted by this law.

Plaintiffs-Appellees,

/s/ Thomas G. DeVore
By: Their Attorneys
Thomas G. DeVore
IL Bar Reg. No. 06305737
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tom@silverlakelaw.com

CERTIFICATE OF SERVICE

I certify that on January 25, 2023, I electronically filed the foregoing Plaintiffs-Appellees Response to Defendants-Appellants Petition for Review of Temporary Restraining Order Pursuant to Il. Sup. Ct. R. 307(d), with the Clerk of the Appellate Court of Illinois Fifth District, 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.

Leigh J. Jahnig
Civilappeals@ilag.gov
Leigh.Jahnig@ilag.gov

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/ Thomas G. DeVore

Thomas G. DeVore
IL Bar Reg. No. 06305737
118 N. 2nd St.
Greenville, IL 62246
tom@silverlakelaw.com

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 Governor JB Pritzker and Attorney General Kwame Raoul, in their official capacities, in this case, which the Illinois Appellate Court, Fifth Judicial District, docketed as 5-23-0035, in which Defendants-Petitioners are concurrently submitting a petition for leave to appeal before this Court (Illinois Supreme Court No. pending).

3. The circuit court in this case entered a TRO enjoining enforcement of Public Act 102-1116 against the plaintiffs. I am familiar with the documents that have been filed with the circuit court, and the order entered by the circuit court, in this case.

4. I am also familiar with the three other complaints filed in other circuit courts in this State in which plaintiffs have brought claims substantially similar to the claims in this case: *Bailey et al. v. Pritzker et al.*, in the Circuit Court of White County (No. 2023-MR-1), *Barclay et al. v. Pritzker et al.*, in the Circuit Court of Effingham County (No. 2023-MR-7), and *Caulkins et al. v. Pritzker et al.*, in the Circuit Court of Macon County (No. 2023-CH-3).

5. In each of those cases, the circuit court entered a TRO enjoining enforcement of 720 ILCS 5/24-1.9 and 720 ILCS 5/24-1.10, which are part of Public Act 102-1116, against those plaintiffs, based on the decision of the appellate court in this case.

6. I have used functions of Microsoft Word 2019 and Microsoft Excel 2019 to determine the approximate number of plaintiffs across these four cases who are now subject to TROs based on the appellate court's decision in this case. The plaintiffs in these cases comprise (1) individuals and (2) entities that allege they are in the business of selling firearms.

7. There are four entity plaintiffs and approximately 854 individual plaintiffs named in the complaint in this case, *Accuracy Firearms v. Pritzker*, who are subject to the TRO at issue.

8. There are approximately 69 entity plaintiffs and approximately 1,586 individual plaintiffs named in the complaint in *Bailey v. Pritzker* (White County No. 2023-MR-1) who are subject to the TRO in that case.

9. There are approximately 78 entity plaintiffs and approximately 2,130 individual plaintiffs named in the complaint in *Barclay v. Pritzker* (Effingham County No. 2023-MR-7) who are subject to the TRO in that case.

10. In *Caulkins v. Pritzker* (Macon County No. 2023-CH-3), there are three individually named plaintiffs, who comprise two individuals and one entity that alleges it is in the business of selling firearms. The other plaintiffs in that case are members of a voluntary unincorporated association who are listed in Exhibit A to the TRO in that case as being subject to the TRO. I used functions of Microsoft Word 2019 and Microsoft Excel 2019 to isolate each entry in that Exhibit A, remove duplicate entries, and count the approximate number of additional plaintiffs subject to that TRO. That yielded 1,872 additional plaintiffs, of which six appear to be entities engaged in the business of selling firearms and 1,866 appear to be individuals. There are accordingly approximately seven entity plaintiffs and approximately 1,868 individual plaintiffs subject to the TRO in that case.

11. Across the four cases, then, there are approximately 158 entity plaintiffs engaged in the business of selling firearms, and approximately 6,438 individual plaintiffs who are subject to TROs preventing enforcement of 720 ILCS 5/24-1.9 and 720 ILCS 5/24-1.10, based on the appellate court's decision in this case.

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
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VERIFICATION BY CERTIFICATION

I, DARREN KINKEAD, 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, 11th 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 the Deputy Chief of the Special Litigation Bureau in the Office of the Attorney General of the State of Illinois, and I represent Defendants-Respondents Governor JB Pritzker and Attorney General Kwame Raoul, in their official capacities, in *Bailey v. Pritzker* (No. 2023-MR-1), pending in the Circuit Court of White County. I am familiar with the discovery requests and non-party subpoenas that the plaintiffs in that case have propounded.

3. The requests for production and interrogatories included in the Appendix are true and correct copies of the discovery requests served on Governor Pritzker in *Bailey*.

4. The third-party subpoena included in the Appendix is a true and correct copy of the document subpoena served by the *Bailey* plaintiffs to a non-party State legislator. Plaintiffs have served materially similar non-party subpoenas on all State legislators who co-sponsored Public Act 102-1116.

5. In addition, counsel for plaintiffs in *Bailey* have asked counsel for Defendants-Respondents in that case for dates to schedule depositions of four non-party State legislators, as well as Defendant-Respondent Speaker Welch.

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/ Darren Kinkead
DARREN KINKEAD
Assistant Attorney General
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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
WHITE COUNTY, ILLINOIS

DARREN BAILEY, et al. Plaintiffs, vs. Governor JAY ROBERT PRITZKER, in his official capacity. EMANUEL CHRISTOPHER WELCH, in his capacity as Speaker of the House. DONALD F. HARMON, in his capacity as Senate President. KWAME RAOUL, in his capacity as Attorney General. Defendants.	2023-MR-1

PLAINTIFF'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS TO JAY ROBERT PRITZKER

YOU ARE HEREBY notified that, pursuant to Illinois Supreme Court Rule 214 , you are requested, within twenty-eight (28) days after receipt of this Request for Production of Documents, to produce the following documents, and have a signed and verified copy of the documents to be produced served on Plaintiffs at the offices of Thomas G. DeVore, Silver Lake Group Ltd., 314 N. Monroe St., Litchfield, IL 62056

DEFINITIONS AND INSTRUCTIONS

A. The term "document," as used herein, means and includes originals in each instance (or copies thereof if originals are unavailable) of all writings, records, graphic matter, and all

tangible things of every type, kind and description, however produced, copied or reproduced, whether draft or final, original or reproduction, signed or unsigned, including without limiting the generality of the foregoing, all of the following: abstracts, acknowledgements, agreements, analyses, audit materials, audit reports, contracts, correspondence, confirmations and responses to confirmations, court pleadings, entries, estimates, files, intra-office and inter-office communications, ledgers, letters, mail receipts (registered or certified), manuals, meeting reports, studies, research papers, memoranda, memoranda of all conversations including telephone calls, minutes, notes, opinions, records, sketches, specifications, and handwritten notes or transcripts of such notes.

B. Whenever and wherever appropriate, the singular form of any word contained in a particular request should also be interpreted in the plural. Each request is to be construed independently and not in reference to any other requests for the purpose of limiting any response.

C. When asking for any document which includes reports, studies and research, Plaintiffs are only interested in those documents which were actually made available to you and for which you had actually reviewed, analyzed and considered before January 10, 2023. If you had not reviewed, analzyed or consider any such Documents prior to your assent in favor of HB 5471, then no responsive Document should be provided and the answer should be NONE.

DOCUMENTS REQUESTED

1. Any and all documents which you relied upon in providing your answer to Interrogatories.

RESPONSE:

2. Any and all correspondence, including but limited to e-mails, text messages, social media communications, telegram, whatsapp, between you and anyone else regarding HB 5471 between November 01, 2022 to date.

RESPONSE:

3. Any and all reports, studies, research, or other documentation reviewed by you on or before January 10, 2023 which supports or denies any conclusion regarding whether the firearms regulations contained in HB 5471 will or will not reduce firearms related casualites in Illinois which casualties might otherwise result from the use of those types of firearms listed and identified as "assault weapons" within HB 54571.

RESPONSE:

4. Any and all reports, studies, research, or other documentation reviewed by you on or before January 10, 2023 which supports or denies any conclusion that only allowing persons with firearms training who might work within certain professions to be exempt from the firearms regulations contained in HB 5471 will or will not reduce firearms related casualties in Illinois from the use of those types of firearms listed and identified as "assault weapons" within HB 54571.

RESPONSE:

5. Any and all reports, studies, research, or other documentation reviewed by you on or before January 10, 2023 which supports or denies any conclusion that by restricting the sale of "assault weapons" and large capacity magazines as required by HB 5471 will or will not reduce the prevalence of these types of weapons or magazines in Illinois, particularly those weapons identified as "assault weapons" within HB 54571.

RESPONSE:

6. Any and all reports, studies, research, or other documentation reviewed by you on or before January 10, 2023 which supports or denies any conclusion that those weapons listed in HB 5471 and have been designated "assault weapons" have or don't have a distinct ability to inflict more catastrophic injury on larger number of people as compared to other semi-automatice rifles, shotguns, and handguns, not otherwise listed in the definition of "assault weapons" in HB 5471.

RESPONSE:

7. Any and all reports, studies, research, or other documentation reviewed by you on or before January 10, 2023 which supports or denies any conclusion that the registration requirement of "assault weapons" as defined in HB 5471 prevents or doesn't prevent existing weapons as defined "assault weapons" in HB 5471 from entering the black market or otherwise getting transferred to individuals intent on criminal activity.

RESPONSE:

8. Any and all reports, studies, research, or other documentation reviewed by you on or before January 10, 2023 which supports or denies any conclusion that the registration requirements of "assault weapons" as defined in HB 5471, except for those persons who are exempt from such requirements as provided in HB 5471, will or will not reduce firearms related casualties in Illinois resulting from the use of those types of firearms listed and identified as "assault weapons" within HB 54571.

RESPONSE:

9. Any and all reports, studies, research, or other documentation reviewed by you on or before January 10, 2023 which supports or denies any conclusion that the registration requirements of "assault weapons" as defined in HB 5471, except for those persons who are exempt from such requirements, will or will not reduce the access to these "assault weapons" as defined in HB 5471, by individuals intent on criminal activity.

RESPONSE:

10. Any and all correspondence, including but limited to e-mails, text messages, social media communications, telegram, whatsapp, from January 01, 2022 to date, between you and President Biden, or anyone from his administration, in regard to regulations on "assault weapons" as defined in HB 5471.

RESPONSE:

11. Any and all correspondence, including but limited to e-mails, text messages, social media communications, telegram, whatsapp, between you and Governors, or legislators, as well as all their staff, from any other state in the nation, from January 01, 2022 to date, in regard to regulations on "assault weapons" as defined in HB 5471.

RESPONSE:

12. A written statement under oath by you swearing the answers thereto are complete, true and accurate.

RESPONSE:

Respectfully submitted,

Thomas G. DeVore

By: /s/ Thomas G. DeVore
One of Plaintiffs Attorneys

Thomas G. DeVore
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Attorneys for Plaintiffs
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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
WHITE COUNTY, ILLINOIS

DARREN BAILEY, et al. Plaintiffs, vs. Governor JAY ROBERT PRITZKER, in his official capacity. EMANUEL CHRISTOPHER WELCH, in his capacity as Speaker of the House. DONALD F. HARMON, in his capacity as Senate President. KWAME RAOUL, in his capacity as Attorney General. Defendants.	2023-MR-1

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO JAY ROBERT PRITZKER

NOW COMES, Plaintiffs, by and through their attorneys, Thomas G. DeVore**,** and the law firm of Silver Lake Group, Ltd., and propounds its First Set of Interrogatories to be answered by Jay Robert Pritzker within twenty-eight (28) days hereof:

INTERROGATORIES

1. Identify any and all persons and or documents consulted or referenced in connection with your preparation of your Answers hereto.

ANSWER:

2. State the name, address, telephone number, title, and position for each person who you, or someone acting on your behalf, met with or discussed House Bill 5471 between November 01, 2022 and January 10, 2023.

ANSWER:

3. For each person listed in response to Interrogatory #2, please state the purpose of the meeting or discussion, who all attended the meeting, and the details of those conversations to the best of your recollection or as memorialized by any notetaker.

ANSWER:

4. Identify specifically what public purpose you believe was being furthered at the moment of your signing of HB 5471 into law.

ANSWER:

5. Identify specifically anywhere in the legislative record of HB 5471 where the public purpose identified in your answer to question #4 might be supported.

ANSWER:

6. 720 ILCS 5/24-1.09(e) and 720 ILCS 5/24-1.10(e) contains seven classifications of persons who are exempt from all or part of the firearms regulations contained within HB 5471. Please explain on what basis you believe the exempt classes of persons found within 720 ILCS 5/24-1.09(e) and 720 ILCS 5/24-1.10(e) furthers the public purpose you have identified in your answer to question #4.

ANSWER:

7. What specific required firearms training, and if not firearms training some other unique qualification, justifies creating an exemption from all or part of the regulations found within HB 5471 for any private security contractor agency licensed under the Private Detective, Private

Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 that employs private security contractors and any private security contractor who is licensed and has been issued a firearm control card under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 while performing official duties.

ANSWER:

8. What specific required firearms training, and if not firearms training some other unique qualification, justifies creating an exemption from all or part of the regulations found within HB 5471 for qualified law enforcement officers and qualified retired law enforcement officers as defined in the Law Enforcement Officers Safety Act of 2004 (18 U.S.C. 926B and 926C) and as recognized under Illinois law. To the extent your answer might be different for active versus retired law enforcement, please provide the separate reasoning.

ANSWER:

9. Identify each and every public job description in every unit of state or local government included in the definition of keepers of prisons, penitentiaries, jails, and other institutions for the detention of persons accused or convicted of an offense. For every job description listed, you must identify which of the categories listed herein it falls under.

ANSWER:

10. What specific required firearms training, and if not firearms training some other unique qualification, justifies creating an exemption from all or part of the regulations found within HB 5471 for each and every job description identified in question #9 for every unit of state or local government for keepers of prisons, penitentiaries, jails, and other institutions for the detention of persons accused or convicted of an offense.

ANSWER:

11. Explain in detail what steps you took, if any, to ensure that each and every job description identified in question #9 in fact is obligatged as a part of their job duties to undertake mandatory firearms training specifically for those types of weapons listed as “assault weapons” in HB 5471.

ANSWER:

12. What specific required firearms training, and if not firearms training some other unique qualification, justifies creating an exemption from the regulations found within HB 5471 for prison wardens and prison superintendents.

ANSWER:

13. As for prison wardens and prison superintendents, please provide the statutory or regulatory authority, or any other evidence, which provides that prison wardens and superintendents are required to undergo firearms training specifically for those types of weapons listed as “assault weapons” in HB 5471.

ANSWER:

14. What specific firearms training, and if not firearms training some other unique qualification, are Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard, missing which disqualifies them from continuing to be excluded from the regulations found within HB 5471 except when performing their official duties or while traveling to or from their places of duty. In this answer, please explain why retired law enforcement officers might continue to be excluded but retired military is not?

ANSWER:

15. To the extent you believe the firearms training of those classes of persons found within 720 ILCS 5/24-1.09(e) and 720 ILCS 5/24-1.10(e) is a sufficient basis for which to exempt them from all or part of the regulations found within HB 5471, do you believe other citizens not within those

enumerated categories should be allowed to undergo similar training in order for them to also be exempt from the regulations found within HB 5471? If the answer is no, then why not, and how is the public purpose which you provided in your answer to question #4 not furthered by refusing to allow others person not in the exempt categories to also undergo similar training?

16. Please identify in detail each and every study or report you reviewed, or any person or persons who you might have talked to, and relied upon if any, wherein the subject matter was in anyway related to the different types of firearms training available in Illinois and/or how that firearms training would justify exempting certain classifications of Illinois citizens from the regulatory requirements of HB 5471 as it would further the public purpose you have identified in the answer to question 4.

ANSWER:

17. Please explain why you believe Illinois citizens who are not otherwise employed in the classifications of employment contained within 720 ILCS 5/24-1.09(e) and 720 ILCS 5/24-1.10(e) should not be allowed the same opportunity to receive the same firearms training as those exempt persons and as a result be exempted from the regulatory requirements of HB 5471.

ANSWER:

18. To the extent you believe Illinois citizens who are not otherwise employed in the classifications of employment contained within 720 ILCS 5/24-1.09(e) and 720 ILCS 5/24-1.10(e) should not be allowed the same opportunity to receive the same firearms training as those exempt persons, and as a result of that training they too be exempted from the regulatory requirements of HB 5471, explain on what basis you have formed that conclusion by specifically providing any studyies or reports you relief upon, or any person or persons whose opinions you relied upon, as well as the specific timeframe for which you studied those reports and talked to those person(s).

ANSWER:

19. Identify any person or persons you, or anyone on your behalf in or outside your administration, talked to prior to your signing of HB 5471 from the Illionis Fraternal Order of Police, AFSCME 31, Illinois Sheriff's Association, Illinois Association of Police Chiefs, or any other similar organization, wherein the discussion were in any way in regard to 1) the regulations contained within HB 5471; 2) the exempt categories of persons within HB 5471; 3) sought obtaining support, or at a minimum remaining neutrality, from that organization in regard to HB 5471.

ANSWER:

20. Identify all studies either considered, reviewed or relied upon by you, or anyone in your administration advising you, which prior to your signing HB 5471, in any way supports a finding that the regulatory provisions within HB 5471 will further the public purpose which you provided in the answer to question #4.

ANSWER:

21. In your press conference on January 10, 2023, you refer to the weapons being prohibited from sale as "weapons of war". Please identify with specificity which weapons currently utilized by the U.S. military are included within the definition of assault weapons found within the newly added provision of the law being 720 ILCS 5/24-1.9(a)(1).

ANSWER:

22. In your press conference on January 10, 2023, you proclaim the passage of HB 5471 will save hundreds or potentially thousands of lives. Identify any specific studies relied upon by you, or anyone advising you, in making that statement which study empirically supports your conclusion that HB 5471 will result in lives being saved in Illinos. If you have no empirically

studies, please provide an answer which explains your conclusion that HB 5471 will in fact save lives.

ANSWER:

23. Identify any and all mass shootings, besides the most recent tragedy in Highland Park, which have occurred in Illinois for which you are aware wherein an "assault weapons" as defined in HB 5471 was utilized.

ANSWER:

24. A statement under oath by you answering these Interrogatories that the answers thereto are complete, true and accurate.

ANSWER:

Respectfully submitted,

Thomas G. DeVore

By: /s/ Thomas G. DeVore
One of Plaintiffs Attorneys

Thomas G. DeVore
IL Bar No. 6305737
silver lake group, ltd.
Attorneys for Plaintiffs
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IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
WHITE COUNTY, ILLINOIS

DARREN BAILEY, et al. Plaintiffs, vs. Governor JAY ROBERT PRITZKER, in his official capacity. EMANUEL CHRISTOPHER WELCH, in his capacity as Speaker of the House. DONALD F. HARMON, in his capacity as Senate President. KWAME RAOUL, in his capacity as Attorney General. Defendants.	2023-MR-1

SUBPOENA DUCES TECUM (RECORDS ONLY)

To: Cristina Castro
164 Division Street
Suite 102
Elgin, IL 60120

YOU ARE COMMANDED to appear to give your deposition before a notary public at Silver Lake Group Ltd., 314 N. Monroe St, Litchfield, IL 62056 on February 24, 2023 at 2:00 p.m.

YOU ARE COMMANDED TO BRING WITH YOU TO THE DEPOSITION THE FOLLOWING: See Exhibit A

NOTE: IN LIEU OF APPEARANCE, YOU MAY COMPLY BY FORWARDING COPIES OF ALL RECORDS REQUESTED IN THE ATTACHED EXHIBIT "A" AT LEAST THREE DAYS PRIOR TO THE DATE SET FORTH ABOVE.

YOUR FAILURE TO APPEAR, OR OTHERWISE RESPOND, TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

Witness: February 03, 2023

Thomas DeVore, Attorney at Law

Thomas G. DeVore
IL Bar No. 6305737
silver lake group, ltd.
Attorney for Plaintiffs
118 North Second Street
Greenville, Illinois 62246
Telephone 618.664.9439

I served this subpoena sent via certified mail as required by the deponent from Litchfield, IL on February 03, 2023.

Thomas DeVore, Attorney at Law

EXHIBIT A

YOU ARE COMMANDED TO BRING, or otherwise provide the following documentation:

1) **Copies of all e-mails between yourself and any other person wherein HB 5471, which was sponsored by you and ultimately signed by Governor Pritzker on January 10, 2023, was being discussed in any fashion.**

2) **Copies of all text messages between yourself and any other person wherein HB 5471, which was sponsored by you and ultimately signed by Governor Pritzker on January 10, 2023, was being discussed in any fashion.**

3) **Copies of all other electronic messages, inclnding but not limited to telegram, whatsapp, facebook, messenger, twitter, snapchat, and the like between yourself and any other person wherein HB 5471, which was sponsored by you and ultimately signed by Governor Pritzker on January 10, 2023, was being discussed in any fashion.**

4) **A complete copy all docnments in your possession which in any fashion related to HB 5471 which was sponsored by you and ultimately signed by Governor Pritzker on January 10, 2023.**

COMPLIANCE WITH THIS SUBPOENA MAY BE EFFECTED BY EMAILING, MAILING OR HAND DELIVERING COPIES OF THE REQUESTED DOCUMENTS TO:

Silver Lake Group, Ltd.
c/o Thomas DeVore
314 N. Monroe St.
Litchfield, IL 62056
Phone 217-324-6147
Cell 618-223-0737

BY Wednesday, February 22, 2023 at 12:00 NOON. IF SAID DOCUMENTS ARE RECEIVED BY SAID DATE, THEN YOUR APPEARANCE AT THE DEPOSITION IS NOT NECESSARY. SHOULD YOU HAVE ANY QUESTIONS, PLEASE FEEL FREE TO CONTACT THOMAS G. DEVORE AT 618-223-0737.

PLEASE ADVISE OF THE TOTAL COST OF THE DOCUMENTATION AND PAYMENT WILL BE MADE IMMEDIATELY.

CERTIFICATE OF SERVICE

PLEASE TAKE NOTICE that, the undersigned hereby certifies, that a true and correct copy of the foregoing was served upon the below named individuals by such method as is indicated above the individual's name and that the same was electronically filed with the Clerk of the Circuit Court wherein this cause is now pending on the date below written.

Laura Bautista
Counsel for Governor Pritzker and Attorney General Raoul
Laura.Bautista@ilag.gov

Darren Kinkead
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Michael Kasper
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Adam Vaught
Counsel for Speaker Welch
avaught@kilbridevaught.com

Dated: February 03, 2023 By: /s/ Thomas G. DeVore

CERTIFICATE OF FILING AND SERVICE

I certify that on February 24, 2023, I electronically filed the foregoing **Separate Appendix To Petition For Leave To Appeal** with the Clerk of 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
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