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APPELLATE COURT 5TH DISTRICT

No. 5-23-0035

IN THE
APPELLATE COURT OF ILLINOIS
FIFTH JUDICIAL DISTRICT

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