

3. That a response to said motion was tendered on April 9, 2024, but rejected as untimely, as stated supra.
4. That Plaintiff-Appellee does wish to object to the motion to dismiss, and comment on the alternative relief requested.

WHEREFORE, Plaintiff-Appellee humbly requests this Court grant them leave to file their response to said Motion to Dismiss Counterclaim, *instanter*.

VERIFICATION

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

Dated: April 10, 2024

s/Thomas G. Maag
Appellant's Attorney

Thomas G. Maag #6272640
Maag Law Firm, LLC
22 West Lorena Avenue
Wood River, IL 62095

Phone: 618-216-5291
tmaag@maaglaw.com

CERTIFICATE OF FILING AND SERVICE

I certify that on April 10, 2024, I electronically filed the Motion for Leave to File Instant Response to Motion to Dismiss with the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that counsel for the other participants in this matter, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served by the Odyssey eFileIL system.

Counsel for Defendant-Cross-Appellee
Alex Hemmer
Deputy Solicitor General
CivilAppeals@ilag.gov (primary)
Alex.Hemmer@ilag.gov (secondary)

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. Maag

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No. 130539

IN THE
SUPREME COURT OF ILLINOIS

PIASA ARMORY, LLC, Plaintiff-Cross-Appellant, v. KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, Defendant-Cross-Appellee,) Appeal from the Circuit Court of the) Third Judicial Circuit, Madison County,) Illinois.)) No. 2023-LA-1129)) Date of Notice of Appeal:) The Honorable) RONALD J. FOSTER, JR.,) Judge Presiding)) Date of Judgment: March 4, 2024) Supreme Court Rule: Rules 302(a) and) 304(a).
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**RESPONSE AND OBJECTION TO MOTION TO DISMISS CROSS-APPEAL,
OR, IN THE ALTERNATIVE., TO CLARIFY THAT BRIEFING WILL PROCEED
UNDER RULE 343(a)**

Plaintiff-appellee Piasa Armory, LLC, hereby respectfully responds to Defendant-appellant's Motion to Dismiss Cross Appeal, as follows:

Motion to Dismiss Cross Appeal

Defendant moves to dismiss this cross-appeal, based on an understandable, but based on the most recent pronouncements of this Court, ultimately incorrect understanding of law. While Plaintiff agrees, that Count V challenges Illinois Pub. Act No. 103-5 (2023)(codified at 735 ILCS 5/2-101.5)("section 2-101.5") for violation of federal constitutional rights, not a violation of the Illinois Constitution's three readings rule, this court nonetheless has the subject matter

jurisdiction to hear the cross appeal, which raises the Illinois Constitution's three readings rule.

To wit:

The trial Court's order makes clear that the issue of the Three Readings Rule was actually raised and argued to the trial court. (SR238). While the trial Court did, indeed, deny the Motion to Transfer, it expressly did not do so based on any violation of the Three Readings Rule of the Illinois Constitution, as it denied that claim. (SR238-SR239). Notably, Defendant does not appear to have actually appealed or tried to appeal the denial of its Motion to Transfer. (SR227).

As stated in *Armstead v. Nat Freight, Inc.*, 2021 IL 126730 para. 23, "[T]o be considered final and appealable for purposes of Rule 304(a), a judgment or order must terminate the litigation between the parties on the merits of the cause, so that, if affirmed, the trial court only has to proceed with execution of the judgment." *Id.* Although the order need not dispose of all claims presented by the pleadings, "it must be final in the sense that it disposes of the rights of the parties, either upon the entire controversy or upon some definite and separate part thereof." *Id.*

The Motion to Transfer, which was denied, resulted in argument by the litigants and a ruling by the trial court. (SR59, SR238-SR239). That trial court ruling disposed of any claim that section 2-101-5 violated Article IV, Section 8 of the Illinois Constitution (i.e the three readings rule). Thus, as to the rights of the parties under the three readings rule, the rights of the parties were established.

This very court, in *Caulkins v. Pritzker*, 2023 IL 129453, para. 4, Supreme Court 2023, stated, over dissent, that "plaintiffs' failure to cross-appeal is a jurisdictional bar to renewing their three-readings claim." This Court made crystal clear that "... a party seeking to modify a

partially adverse judgment must file a cross-appeal within 30 days of the judgment.” *Caulkins*, para. 77. Further, in *Caulkins*, this Court stated, “The judgment was partially adverse to plaintiffs because it did not invalidate the entire Act as requested in count II.”. *Caulkins*, para.79. This is why the Notice of Cross Appeal was filed.

In this case, Plaintiff asked that *all* of section 2-101.5 be declared facially unconstitutional under the three readings rule. (SR59-SR61). The Defendant argued the three readings rule. (SR107). The trial court ruled on, and *denied* the three readings rule challenge. (SR223-SR224).

Accordingly, under *Caulkins*, a Notice of Cross Appeal is mandatory to preserve the issue on appeal. *Supra*. The trial Court’s order ended any claim in the trial court under the three readings rule, under *Armstead*. The order was and is certified under Rule 304. Defendant has filed a Notice of Appeal. Thus, to preserve the issue on appeal, it is necessary that Plaintiff cross appeal. It would also be in the interests of judicial economy to rule on this issue once, and out to bed whatever the end result is.

Briefing Matters

As to whether this matter proceeds under Rule 343(a) or 343(b), is, frankly, contingent on the outcome of this motion. By the plain language of Rule 343(b), it applies if a cross appeal is pending. There is no compelling reason why this Court should deviate from the existing rules on the topic, and Defendant cites to none, other than an argument that Plaintiff is really seeking an affirmance on another ground, but no, Plaintiff wishes this Court to overrule the trial court, and hold not just that a given order is affirmed, but that the order upholding the statute under the three readings rule, would be overturned, resulting in *facial* unconstitutionality, not just as applied.

CONCLUSION

For the foregoing reasons, this Court should *deny* Defendant's Motion to Dismiss Cross Appeal, as well as *deny* Defendant's Motion to Apply Rule 343(b), as opposed to Rule 343(a).

Dated: April 10, 2024

s/Thomas G. Maag
Appellant's Attorney

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Counsel for Defendant-Cross-Appellee

Alex Hemmer

Deputy Solicitor General

CivilAppeals@ilag.gov (primary)

Alex.Hemmer@ilag.gov (secondary)

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. Maag

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No. 130539

IN THE
SUPREME COURT OF ILLINOIS

PIASA ARMORY, LLC,

Plaintiff-Cross-Appellant,

v.

**KWAME RAOUL, in his official
capacity as Attorney General of the
State of Illinois,**

Defendant-Cross-Appellee,

) **Appeal from the Circuit Court of the
Third Judicial Circuit, Madison County,
Illinois.**

) **No. 2023-LA-1129**

) **Date of Notice of Appeal:
The Honorable**

) **RONALD J. FOSTER, JR.,
Judge Presiding**

) **Date of Judgment: March 4, 2024**

) **Supreme Court Rule: Rules 302(a) and
304(a).**

ORDER

Plaintiff-Appellee Piasa Armory, LLC’s Motion for Leave to File Instanter Response and
Objection to Moton to Dismiss Cross-Appeal, Or In the Alternative, to Clarify that Briefing Will
Proceed Under Rule 343(a), is:

_____ Allowed

_____ Denied

Dated _____
