No. 129453

IN THE
SUPREME COURT OF ILLINOIS

DAN CAULKINS; PERRY LEWIN; DECATUR JEWELRY & ANTIQUES INC.; and LAW-ABIDING GUN OWNERS OF MACON COUNTY, a voluntary unincorporated association, Plaintiffs-Appellees, v. Governor JAY ROBERT PRITZKER, in his official capacity; KWAME RAOUL, in his capacity as Attorney General; EMANUEL CHRISTOPHER WELCH, in his capacity as Speaker of the House; and DONALD F. HARMON, in his capacity as Senate President, Defendants-Appellants.	)	On Direct Appeal from the Circuit Court of the Sixth Judicial Circuit, Macon County, Illinois No. 2023-CH-3 The Honorable RODNEY S. FORBES, Judge Presiding.

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ARGUMENT

Plaintiffs' response brief offers no reason to affirm the circuit court's judgment. Rather than defend the court's ruling that the exemptions to the assault weapons and LCM restrictions violate equal protection, plaintiffs assert a new claim — that the restrictions violate the Second Amendment — that was not raised below. They then rehash these Second Amendment arguments in support of their equal protection and special legislation claims, seeking to escape their pleading choices and avoid the requirements of the claims actually raised. And, without cross-appealing, they ask this Court to expand the judgment in their favor, and declare that the Act violates the three readings rule, contravening the Illinois Constitution's text and purpose.

Plaintiffs cannot raise these claims now. Their limited responses to defendants' arguments on the claims that are actually before this Court amount to speculative and unsupported assertions, and would have the Court depart from its longstanding precedents across multiple areas of law. This Court should reverse.

I. Plaintiffs waived any Second Amendment claim by not raising, and expressly disclaiming, such a claim in the circuit court.

Second Amendment and equal protection claims are analyzed under different standards. Equal protection claims typically receive rational basis review, which asks whether a statutory classification is rationally related to a legitimate government interest. *People v. Masterson*, 2011 IL 110072, ¶ 24. In

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rare cases, they receive strict scrutiny, assessing whether the classification is narrowly tailored to serve a compelling government interest. *Id.*

For Second Amendment claims, in contrast, courts do not examine the end that the government seeks to achieve and whether the means of doing so is an appropriate fit. *See N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2127 (2022). Instead, such claims involve a fact-intensive inquiry asking whether: (1) a plaintiff has shown that the regulated items fall in the category of "bearable arms," *id.* at 2132, that are "commonly used" for self-defense today, *id.* at 2138; *see also id.* at 2132 (Second Amendment protects only "instruments that facilitate armed self-defense"), and, if so, (2) the restrictions are consistent with "this Nation's historical tradition of firearm regulation," *id.* at 2126. Thus, for example, in four consolidated cases challenging the Act currently pending in federal court, the parties, including defendants here, presented more than two dozen exhibits and declarations comprising hundreds of pages to develop the evidentiary and historical record that a Second Amendment challenge demands. *See* Exhibits to State Response in Opposition to Motions for Preliminary Injunction, *Barnett v. Raoul*, No. 3:23-cv-209 ("*Barnett*") (S.D. Ill. Mar. 2, 2023) (Docs. 37-1 to 37-14); Exhibits to McHenry County Response to Motion for Preliminary Injunction, *Barnett* (S.D. Ill. Mar. 2, 2023) (Docs. 39-1 to 39-12); Exhibits to Fed. Firearms Licensees Reply to Motion for Preliminary Injunction, *Barnett* (S.D. Ill. Mar.

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23, 2023) (Docs. 69-1 to 69-5); *see also City of Chi. v. Pooh Bah Enters., Inc.*, 224 Ill. 2d 390, 396 n.3 (2006) (Court may take judicial notice of court records).

None of this occurred here, as plaintiffs did not include a Second Amendment claim in their complaint. *See* C10-42. They mentioned the Second Amendment only to contend that their equal protection claim should be evaluated under strict scrutiny because the restrictions purportedly impacted a fundamental right. *E.g.*, C34 ("Classifications based on race or national origin or affecting fundamental rights are strictly scrutinized. . . . The right to bear arms is a fundamental right."). This was insufficient to raise a Second Amendment claim. *See Jones v. Chi. HMO Ltd. of Ill.*, 191 Ill. 2d 278, 306 (2000) (rejecting plaintiff's request to "construe[ ]" complaint as raising waived claim); *Daniels v. Anderson*, 162 Ill. 2d 47, 58-59 (1994) (counter-plaintiff could not avoid "label[s]" of his claims).

In subsequent filings, plaintiffs confirmed that they did not bring a Second Amendment claim. They stated that that their case did not involve the "fact intensive dispute regarding historical understandings" that a Second Amendment claim requires because "that debate is engaged in federal court." C236. Instead, they attacked the "legislation's classification of similarly situated able-bodied Illinois residents" into groups that were treated differently. *Id.* They continually identified the Second Amendment only to argue that "[s]trict scrutiny" was "required" for their equal protection claim. C238; *see* C508 (same); *see also* C507 (plaintiffs sought "equal[ ]" treatment in

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the exercise of "Second Amendment rights"). And they acknowledged that the Act could potentially be challenged on "other grounds" not presented here, including under the Second Amendment. C513 n.13.

The reason for plaintiffs' pleading choice seems clear: they wished to avoid removal to federal court and marshalling the substantial evidence needed for a Second Amendment claim. They should not be able to now "choose again." *Geise v. Phoenix Co. of Chi.*, 159 Ill. 2d 507, 515 (1994). Because plaintiffs did not include a Second Amendment claim in their complaint, and expressly recognized that their case did *not* present a Second Amendment claim, they cannot raise it now. *E.g.*, *In re Marriage of Schneider*, 214 Ill. 2d 152, 172-73 (2005) (party cannot raise claim on appeal not presented to circuit court); *Jones*, 191 Ill. 2d at 306 (same). Reaching plaintiffs' new claim for the first time on appeal "would weaken the adversarial process and the system of appellate jurisdiction, and could also prejudice [defendants], who did not have an opportunity to respond to that theory in the trial court." *Schneider*, 214 Ill. 2d at 172; *accord Daniels*, 162 Ill. 2d at 59; *Bd. of Educ. of Twp. High Sch. Dist. No. 211 v. Kusper*, 92 Ill. 2d 333, 343 (1982); *Kravis v. Smith Marine, Inc.*, 60 Ill. 2d 141, 148-49 (1975).

For their part, plaintiffs attempt to rewrite the record to evade their pleading choices. They point to various parts of their complaint and circuit court memoranda, AE Br. 5-6, 10, but these passages advanced their assertion that their equal protection claim warranted strict scrutiny because the Act

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purportedly implicates a fundamental right, not a Second Amendment claim, *e.g.*, C34, C236-39, C508, R30-31. Moreover, despite their suggestion, AE Br. 6 (citing C11), a footnote in the complaint asserting that assault weapons are "commonly owned" could not put defendants or the circuit court on notice that they intended to assert a Second Amendment claim. Plaintiffs cite no authority that would allow them to raise a constitutional claim in a footnote, abandon it for the remainder of the litigation in the circuit court, and then advance it for the first time on appeal. *Cf. Kravis*, 60 Ill. 2d at 148 ("background information" in complaint did not suffice to raise claim).

Plaintiffs also argue that defendants "acknowledged and responded to" a Second Amendment claim, AE Br. 6 (citing C326-31), but this is incorrect. The cited pages contain defendants' arguments — echoed in their opening brief on appeal — that the Second Amendment is not fundamental for equal protection purposes. C326-31. Nor did the circuit court decide a Second Amendment claim. *See* AE Br. 10 (citing C840). It could not, as no such claim was raised. The circuit court ruled on the claims pleaded, which were violations of the Illinois Constitution's due process, equal protection, and special legislation clauses, and single subject and three readings rules. C840-41.

Plaintiffs identify no reason for this Court to reach their waived claim, and none exists. Because plaintiffs did not file a cross-appeal, their belated request for a declaration that restricting assault weapons and LCMs violates

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the Second Amendment — regardless of the exemptions — would impermissibly expand the judgment. *See infra* pp. 18-19. More fundamentally, the parties did not develop in the circuit court the substantial factual and historical record required to evaluate a Second Amendment challenge. *See supra* pp. 2-3. Defendants did not do so because plaintiffs did not pursue a Second Amendment claim. And plaintiffs simply assert on appeal, without factual support, that the *Bruen* test is satisfied. AE Br. 14-19. They cite no case holding that a law restricting assault weapons or LCMs violates the Second Amendment — to the contrary, they cite authorities upholding such restrictions. *See id*. at 16-17 (citing *N.Y State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015); *Heller v. Dist. of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011)).

To be sure, defendants disagree with plaintiffs' unsupported Second Amendment arguments, and instead agree with the many courts, both before and after *Bruen*, that have determined that statutes like the Act do not violate the Second Amendment. *See* AT Br. 32 n.10; *Herrera v. Raoul*, No. 23 CV 532, 2023 WL 3074799, *7 (N.D. Ill. Apr. 25, 2023); *Hanson v. Dist. of Columbia*, No. CV 22-2256 (RC), 2023 WL 3019777, *17 (D.D.C. Apr. 20, 2023). But again, that claim is not before this Court.

II. The Act's exemptions do not violate equal protection.

Plaintiffs recycle their unsupported and waived Second Amendment contentions throughout their equal protection and special legislation

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arguments. *E.g.*, AE Br. 22, 26, 30-31, 34. But plaintiffs cannot escape the requirements of the claims that they actually brought by impermissibly reframing them as a Second Amendment claim.

A. Plaintiffs are not similarly situated to individuals in the exempted professions.

Governments may treat "'unlike groups'" — that is, ones not similarly situated — differently. *In re Destiny P.*, 2017 IL 120796, ¶ 15 (citation omitted). Here, individuals in the Act's exempted professions are not similarly situated to the general public, including plaintiffs, because they are required by law to receive firearms training, and in some cases are limited to using assault weapons and LCMs for official duties. AT Br. 21-24.

Plaintiffs offer three unavailing responses. First, they note that they hold FOID cards, and are not "felons or mentally infirm." AE Br. 22. But this does not make them similarly situated to individuals with firearms training. Holding a FOID card requires no firearms training. AT Br. 23.

Second, plaintiffs argue that they need not "identify a comparator" who is treated more favorably because the exemptions appear on the face of the Act. AE Br. 21-22 (citing *Monarch Beverage Co. v. Cook*, 861 F.3d 678, 681-82 (7th Cir. 2017)). This conflates the similarly situated requirement with a separate requirement applicable when a plaintiff "doesn't challenge a statute or ordinance," but argues that a public official selectively enforced a neutral law. *Monarch Beverage*, 861 F.3d at 68182 (plaintiff bringing this kind of claim must identify a "comparator" who receives preferential treatment "to

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show that disparate treatment in fact has occurred"). But plaintiffs do "challenge a statute or ordinance," and defendants have never suggested that they must identify a specific person within the exempted professions as a "comparator." Rather, plaintiffs must show that the two relevant groups — those in the exempted professions and the general public — are "'in all relevant respects alike.'" *Destiny P.*, 2017 IL 120796, ¶ 17 (citation omitted). Plaintiffs' suggestion that they need not make this showing conflicts with this Court's precedent. *E.g.*, *id.* at ¶ 16 (equal protection challenge to statutory classification failed because groups were not similarly situated); *Masterson*, 2011 IL 110072, ¶ 36 (same).

Third, plaintiffs argue that their "particularized circumstances" should be immaterial because they brought a facial challenge. AE Br. 22. Defendants agree: As defendants explained, plaintiffs cannot show that they are similarly situated to individuals in the exempted professions because members of "'the general public'" are not similarly situated to those whose professions demand firearms training. AT Br. 22 (quoting *Kolbe v. Hogan*, 849 F.3d 114, 147 (4th Cir. 2017) (en banc), *abrogated on other grounds by Bruen*, 142 S. Ct. 2111, and collecting cases to same effect). Plaintiffs offer no meaningful response to this argument. Their equal protection challenge to the Act's exemptions for certain professions thus fails.

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B. Plaintiffs are treated the same as those covered by the "grandfather" provision, and even if some are not, those groups are not similarly situated.

Plaintiffs alleged that each plaintiff either already "possess[ed]" assault weapons or LCMs or "desire[d]" to purchase or sell them. C10-11. So, defendants explained, plaintiffs are treated just like individuals covered by the grandfather provision: plaintiffs who already possessed assault weapons or LCMs may keep them, and to the extent that they wish to purchase or sell new ones, they face the same restrictions as individuals within the grandfather provision. AT Br. 7-8. As a result, plaintiffs' equal protection challenge to the provision fails because plaintiffs and individuals covered by the grandfather provision receive the same treatment. AT Br. 24-26; *see Destiny P.*, 2017 IL 120796, ¶ 14 (equal protection claim challenges law that treats groups "differently"); *Masterson*, 2011 IL 110072, ¶ 24 (same).

Plaintiffs recast this as a "standing" argument, and assert that defendants "presume" that no one could challenge the purchase restrictions. AE Br. 13-14. Defendants make no such argument. Individuals prohibited from acquiring assault weapons and LCMs can challenge the purchase restrictions — indeed, plaintiffs have done so by challenging the exemptions for certain professions, though, as explained, that challenge fails for other reasons. But plaintiffs cannot claim that they are treated differently from those in the grandfather provision.

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Regardless, to the extent that any plaintiffs do not possess assault weapons and LCMs and wish to challenge the grandfather provision on the basis that they are treated differently from those covered by the provision, their equal protection claim would still fail. Such plaintiffs could not show that they are similarly situated to those in the grandfather provision because they did not acquire assault weapons or LCMs in reliance on the premise that they were legal. AT Br. 26. Plaintiffs have no response to defendants' argument that this reliance renders those in the grandfather provision an "'unlike group[ ]'" from plaintiffs, *Destiny P.*, 2017 IL 120796, ¶ 15 (citation omitted), precluding an equal protection challenge.

C. The Second Amendment does not trigger strict scrutiny for plaintiffs' equal protection claim.

The circuit court held that the Illinois Constitution's right to bear arms is fundamental for purposes of equal protection, and applied strict scrutiny on that basis; it did not decide whether the Second Amendment was fundamental for equal protection purposes. C840-41. Plaintiffs appear to abandon their contention that the Illinois Constitution's right to bear arms is a fundamental right, and with good reason, as its text and drafting history demonstrate that it is not. AT Br. 32-34.[1] Instead, plaintiffs maintain that the Second

[1] Though plaintiffs argue that the Illinois Constitution does not "diminish" the Second Amendment, AE Br. 24-25, defendants have not contended that it does, *see* AT Br. 38 (United States Constitution's supremacy clause not implicated here because federal and state equal protection clauses are interpreted the same way).

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Amendment is a fundamental right and their equal protection claim therefore warrants strict scrutiny. Plaintiffs are wrong.

Although all rights are important, the class of rights considered "fundamental" for equal protection purposes is limited. AT Br. 26-28. To hold otherwise would transform courts into "'super-legislatures'" reevaluating every policy choice made by the legislative branch. *Jenkins v. Leininger*, 277 Ill. App. 3d 313, 323 (1st Dist. 1995) (citation omitted). Thus, fundamental rights for equal protection purposes are "only those which lie at the heart of the relationship between the individual and a republican form of nationally integrated government." *Kalodimos v. Vill. of Morton Grove*, 103 Ill. 2d 483, 509 (1984) (cleaned up).

The Second Amendment is not one of those rights. AT Br. 28-32. Although that right "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." *Kalodimos*, 103 Ill. 2d at 509. This conclusion has been reinforced by federal courts, which decline to apply strict scrutiny to equal protection claims challenging firearms regulations that treat groups differently. AT Br. 28-30 (collecting cases). Such claims are reviewed under rational basis, or properly brought as a claim under the Second Amendment, not the equal protection clause. *Id.*

In response, plaintiffs reiterate *Accuracy Firearms*'s statement that this Court abandoned *Kalodimos*. AE Br. 23-24 (citing *Accuracy Firearms v.*

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Pritzker, 2023 IL App (5th) 230035, ¶¶ 51-57). But defendants explained that *Accuracy Firearms* was wrongly decided, AT Br. 35-38, and plaintiffs do not respond to this argument. Plaintiffs instead repeat the same authorities that *Accuracy Firearms* cited. AE Br. 15, 20, 23. These cases remain inapposite, because none concerned equal protection. AT Br. 35-37. Plaintiffs' reliance on additional Second Amendment cases, which likewise do not present equal protection claims, is similarly misplaced. *See* AE Br. 16, 23 (citing *Johnson v. Dep't of State Police*, 2020 IL 124213, ¶ 37; *Ill Ass'n Firearms Retailers v. City of Chi.*, 961 F. Supp. 2d 928, 930 (N.D. Ill. 2014); *People v. Webb*, 2019 IL122951; *Coram v. State*, 2013 IL 113867, ¶¶ 46-49)).[2]

Plaintiffs also assert that following the federal cases that reject strict scrutiny for equal protection challenges to firearms restrictions would mean the challenged restrictions "escape any test," AE Br. 20, but this is wrong. As explained, because plaintiffs' equal protection claim does not implicate a suspect class, it is subject to rational basis review. *See* AT Br. 38-46; C826-29.

Finally, plaintiffs imply that these federal authorities allow the Court to overlook their waiver of a Second Amendment claim. *See* AE Br. 24-25; *see also id.* at 20 (noting that federal decisions "applied the Second Amendment test"). This, too, is incorrect. The plaintiffs in those cases brought Second Amendment claims. *E.g.*, *Culp v. Raoul*, 921 F.3d 646, 653-56 (resolving

[2] The *Coram* plaintiff brought an equal protection claim, but this Court did not address that claim. 2013 IL 113867, ¶¶ 15-17, 21, 74.

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Second Amendment claim), 658 (7th Cir. 2019) (cited at AT Br. 29-30). Plaintiffs did not. When plaintiffs do not bring a claim based on the more specific constitutional protection, courts — including the United States Supreme Court — have refused to do it for them. *Albright v. Oliver*, 510 U.S. 266, 273-75 (1994) (plaintiff could not bring Fourth Amendment claim under more "generalized" protection of substantive due process, and refusing to recast plaintiff's claim as one under the Fourth Amendment).

Ultimately, plaintiffs ask this Court to do what federal courts have uniformly prohibited: disguise a claim based on an enumerated constitutional right as an equal protection claim to obtain what they perceive to be a more favorable legal standard. But accepting this invitation would require the Court to overrule decades of precedent holding that the Illinois Constitution's equal protection clause is interpreted in lockstep with its federal counterpart. *See* AT Br. 21, 29.

D. The Act's exemptions satisfy rational basis review.

Defendants have explained that the Act's restrictions on assault weapons and LCMs, including its exemptions for certain professions and for those who purchased these items in reliance on the understanding that they were legal, were rationally related to legitimate state interests. AT Br. 40-46.

Plaintiffs do not dispute that restricting assault weapons and LCMs furthers a legitimate interest. Nor could they: "[t]he rational link between public safety and a law proscribing possession of assault weapons is so obvious

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that it would seem to merit little serious discussion." *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); AT Br. 40-42 (collecting cases). Instead, plaintiffs complain that there is no legislative history in the record, citing cases applying strict or intermediate scrutiny. AE Br. 21 (citing *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 60; *United States v. Virginia*, 518 U.S. 515, 533 (1996)); *see also id.* at 29 (reciting strict scrutiny standard). But they do not dispute that legislative history is not required under rational basis review. *See* AT Br. 39, 44-45.

Plaintiffs then attack the grandfather provision. But defendants identified numerous cases upholding similar provisions on rational basis review, AT Br. 43-44, and plaintiffs do not cite a single case holding otherwise. Instead, they argue that the Act's grandfather provision is irrational because it has no connection to firearms training. AE Br. 27. But defendants do not argue that it does. Rather, the grandfather provision reasonably balances two interests: reducing the number of assault weapons and LCMs in circulation to protect the public, on the one hand, and respecting those who acquired these items in reliance on the prior law, on the other. AT Br. 43-44.

Relatedly, plaintiffs complain that those who previously owned assault weapons may be as likely to commit a mass shooting as the average person. AE Br. 27, 33-34. The Seventh Circuit rejected this argument in *Sklar v. Byrne*, 727 F.2d 633 (7th Cir. 1984). There, a municipality enacted a firearms

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restriction "to prevent deaths and injuries," but did not extend it those who acquired firearms in reliance on the prior law. *Id.* at 641-42. Although the challenger argued that restriction irrationally did not "classify people in terms of their ability to handle handguns safely," the court held that it was rational for the city to "freez[e] the current supply" of firearms to accomplish its public safety goal. *Id.* (citing *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976)); *see also People v. Hagen*, 191 Ill. App. 3d 265, 269 (4th Dist. 1989) (grandfather clause did not violate equal protection because legislature may address problem "a step at a time"). Respecting those who "invest[ed] their money and time" and "arrange[d] their affairs in reliance upon [prior] laws" is both reasonable and a "matter of simple fairness." *Sklar*, 727 F.2d at 641-42.

Next, plaintiffs challenge the exemptions for certain professionals. They argue that the exempted professionals are not more qualified than the average person because their training is not specific to assault weapons and, in any event, forestalls "accidental shootings" only, and that plaintiffs are equally "qualified" because they have FOID cards. AE Br. 28-30, 33. Plaintiffs are wrong at every turn. The exempted professionals are trained in firearms safety in part to prevent weapons from being waylaid and misused by others. *Cf.*, *e.g.*, 20 Ill. Admin. Code § 1730.30 (peace offers must be trained in "the dangers of misuse of the firearm," "safety rules," and a "forceful presentation of the ethical and moral considerations assumed by any person who uses a firearm"). For this reason, courts — including this one — have recognized

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that the exempted professionals are more likely "to exercise greater responsibility" when possessing firearms, and thus it is rational to exempt them from certain firearms regulations. *See* AT Br. 42-43 (collecting cases). Finally, firearms training is not a prerequisite for a FOID card. *Supra* p. 7.

Plaintiffs further posit that the exemptions are both under- and over-inclusive. They are under-inclusive, plaintiffs speculate, because wealthy people can hire security guards to use assault weapons to defend their homes, AE Br. 30-31;[3] and, in an apparent concession that the exempted professionals are skilled in firearms use, one of them might someday commit a mass shooting, *id*. at 29-30 ("skilled use rationally means more effective and efficient killing"). Speculation aside, under-inclusive classifications are permitted under rational basis review. AT Br. 39-40, 45-46. Alternately, plaintiffs argue that the exemptions are over-inclusive because there is no "pathway" for those not in the exempted professions to receive similar training. AE Br. 29. However, as defendants explained, rational basis review does not require the legislature to draw classifications with "mathematical precision." AT Br. 45.

Finally, plaintiffs suggest that it was "emotional" and "not rational" for the General Assembly to legislate in response to prior mass shootings. AE Br.

[3] To the extent that plaintiffs suggest that this creates an impermissible classification based on wealth, they raised no such claim in the circuit court, and regardless, such classifications are also reviewed for rational basis. *See Ill. Hous. Dev. Auth. v. Van Meter*, 82 Ill. 2d 116, 120-21 (1980).

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28. Plaintiffs cite no support for the notion that legislatures may not enact prophylactic measures to prevent or mitigate future tragedies. Under rational basis review, courts "will not sit as a superlegislature 'to judge the wisdom or desirability of legislative policy determinations.'" *Triple A Servs., Inc. v. Rice*, 131 Ill. 2d 217, 234 (1989) (quoting *Dukes*, 427 U.S. at 303-04). Plaintiffs have not shown, and cannot show, that the Act's exemptions do not satisfy rational basis review.

III. The Act's exemptions are not special legislation.

Plaintiffs appear to acknowledge that their special legislation claim is judged by the same standard as their equal protection claim, AE Br. 32; *see* AT Br. 46, yet simultaneously assert that the standards are "not coterminous," AE Br. 32. Their only support, *Grasse v. Dealer's Transport Co.*, decided before the 1970 Constitution, remarked that the constitutional guarantees of equal protection and *due process* are "not coterminous" and found a violation of the special legislation clause for the same reason the statute violated equal protection. 412 Ill. 179, 194, 200 (1952). To the extent that plaintiffs suggest that equal protection and special legislation claims are not judged by the same standard, they offer no support for overruling this Court's longstanding precedent. AT Br. 46 (collecting cases); *see also Best v. Taylor Mach. Works*, 179 Ill. 2d 367, 393 (1997); *Nevitt v. Langfelder*, 157 Ill. 2d 116, 125 (1993). Their special legislation claim fails for the same reasons as their equal protection claim.

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IV. Plaintiffs abandoned their three readings claim because they did not cross-appeal, and regardless, that claim fails.

A. Plaintiffs were required to cross-appeal their three readings claim.

Plaintiffs' three readings argument is not before the Court. Rule 303(a) requires a party seeking to modify a partially adverse judgment to file a cross-appeal within 30 days of the judgment. *See* Ill. S. Ct. R. 303(a)(3). That rule is mandatory and jurisdictional; indeed, "[n]o other step is jurisdictional" other than filing a notice of appeal. Ill. S. Ct. R. 301. But plaintiffs did not file a cross-appeal. Thus, they cannot modify the judgment on appeal.

Plaintiffs' failure to cross-appeal cannot be excused under the rule that a party need not cross-appeal to seek affirmance on alternate grounds. *See Material Serv. Corp. v. Dep't of Revenue*, 98 Ill. 2d 382, 386-87 (1983). The circuit court's judgment here declared unconstitutional only the assault weapons and LCM restrictions. C840-41. The three readings claim, however, challenged the entire Act, which contains several other firearms regulations — including (for example) modifying the permissible duration of firearms restraining orders, and enabling the Illinois State Police to purchase software to better enforce firearms statutes. *See* Pub. Act. 102-1116 §§ 7, 15; *see also Friends of Parks v. Chi. Park Dist.*, 203 Ill. 2d 312, 328 (2003) (three readings challenge would invalidate public act); *Giebelhausen v. Daley*, 407 Ill. 25, 46 (1950) (violation of three readings rule in 1870 Constitution would invalidate entire act). Plaintiffs do not ask this Court to merely preserve the judgment as

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to the assault weapons and LCM restrictions; rather, they seek a broader judgment that declares the Act unconstitutional as a whole. This is more than advancing an alternate ground for affirmance. *See People v. Castleberry*, 2015 IL 116916, ¶ 22.

Nor does Rule 318(a) permit plaintiffs to raise this issue without cross-appealing. That rule permits an appellee to seek cross-relief before this Court without a cross-appeal "[i]n all appeals . . . from the Appellate Court to" this Court. Ill. S. Ct. R. 318. But this is not an appeal from the appellate court; it is a direct appeal from the circuit court under Rule 302(a). In such a case, the plain text of the rules requires parties seeking cross-relief, like plaintiffs, to cross-appeal. *See Lake Env't, Inc. v. Arnold*, 2015 IL 118110, ¶ 12 ("language" in this Court's rules should be given its "plain and ordinary meaning"). Indeed, to defendants' knowledge, appellees seeking cross-relief in Rule 302(a) appeals have generally cross-appealed, consistent with the plain text of Rule 318(a). *See, e.g., Walker v. McGuire*, 2015 IL 117138, ¶¶ 7-8 (appellee in Rule 302(a) appeal filed cross-appeal); *Mark Twain Ill. Bank v. Hicks*, 174 Ill. 2d 433, 437 (1996) (same); *Furlong Const. Co. v. Indus. Comm'n*, 71 Ill. 2d 464, 465-66 (1978) (same); *People ex rel. Scott v. Briceland*, 65 Ill. 2d 485, 489-90 (1976) (same). Because plaintiffs did not do so, the three readings claim is not part of this appeal. The Court should reject this claim on this ground alone.

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B. Plaintiffs did not show a three readings violation, and in any event, the enrolled bill doctrine forecloses that claim.

Even if the Court were to consider this claim despite plaintiffs' lack of a cross-appeal, it lacks merit for two reasons. First, as defendants noted in the circuit court, C498-99, plaintiffs did not establish a violation of the three readings rule. That rule requires that bills be "read by title" on three different days in each chamber of the legislature. Ill. Const., art. IV § 8(d). Plaintiffs acknowledged that the Act's title was read on three different days in both the House and Senate, but they claimed that between readings, the Act was substantively amended and not read three times thereafter. C13-15. The title, however, did not change through the amendment process. C59 (reflecting title of "an act concerning regulation"); C67 (amendment preserving title). Thus, the three readings rule was satisfied.

Plaintiffs appear to contend that the three readings rule required reading the Act's text, but that does not comport with the Constitution. Although some cases have suggested that substantial amendments to a bill must be read three times, that authority relies on *Giebelhausen*. *E.g., People v. Gill*, 169 Ill. App. 3d 1049, 1056 (1st Dist. 1988) (citing *Giebelhausen*). *Giebelhausen* interpreted the three readings rule in the 1870, not the 1970, Constitution. *See* 407 Ill. at 46. The 1870 Constitution required a bill to be read "at large" on three different days in each house. Ill. Const. (1870), art. IV § 13.

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This change from requiring three readings "at large" to three readings "by title" was a deliberate choice by the Constitution's drafters. The Constitutional Convention's Committee on the Legislature explained that the three readings requirement in the 1870 Constitution — requiring that bills be read "at large" — was adopted to ensure that "those members of the General Assembly who could not read what was in a bill know its contents," and "the legislative process did not move with undue haste." 6 Record of Proceedings, Sixth Illinois Constitutional Convention 1385.

But in 1970, the committee noted, the rule was no longer needed to assist illiterate legislators. *Id.* The revised rule — that bills be read "by title" — struck the appropriate balance, avoiding "undue haste," but "without unnecessarily allowing the legislative process to be bogged down in the interminable delay of 'reading at large' on three separate days." *Id.* In other words, the drafters of the 1970 Constitution rejected the practice of reading the text of each bill, and recognized that, as a practical matter, legislators in the modern era were aware of the contents of bills. Plaintiffs' argument, demanding three readings of the entirety of each bill, ignores the constitutional text and thwarts the drafters' choice.

Second, and independently, the enrolled bill doctrine forecloses plaintiffs' three readings challenge. *See People v. Dunigan*, 165 Ill. 2d 235, 252-53 (1995) (declining to consider whether three readings requirement was satisfied because enrolled bill doctrine foreclosed that challenge). The enrolled

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bill doctrine arises from the Constitution's requirement that the House Speaker and Senate President "sign each bill that passes both houses to certify that the procedural requirements for passage have been met." Ill. Const., art. IV, § 8(d). These certifications "constitute conclusive proof that all constitutionally required procedures have been followed in the enactment of the bill." *Dunigan*, 165 Ill. 2d at 254. The doctrine bars the judiciary from invalidating a statute on procedural or technical grounds. *See id.* at 253-54; *Geja's Cafe v. Metro. Pier & Exposition Auth.*, 153 Ill. 2d 239, 259 (1992). Plaintiffs acknowledged in their complaint that the General Assembly's leadership certified the Act in compliance with Article IV, section 8(d), C12, and that the enrolled bill doctrine consequently foreclosed their three readings claim, C19.

Plaintiffs, however, now urge this Court to abandon the enrolled bill doctrine. AE Br. 36-37. But the doctrine is enshrined in the Constitution's text and purpose. The committee "'proposed that Illinois adopt the "enrolled bill" rule.'" *Dunigan*, 165 Ill. 2d at 253 (quoting 6 Proceedings 1386-87). The committee explained that the doctrine "'would not permit a challenge to a bill on procedural or technical grounds regarding the manner of passage'" if the bill was certified. *Id.* (quoting 6 Proceedings 1386-87). This departed from the "journal entry" rule in the 1870 Constitution. That rule allowed a statute "'[duly] passed by the General Assembly and signed by the Governor'" to be "'attacked in the courts, not necessarily on the merits, but on some procedural

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error or technicality found in the legislative process.'" *Id.* (quoting 6 Proceedings 1386-87). By adopting the enrolled bill doctrine, the committee sought to avoid the "'complex litigation over procedures and technicalities'" that the journal entry rule had wrought. *Id.* (quoting 6 Proceedings 1386-87). The committee explained that the new language — "'to certify that the procedural requirements for passage have been met'" — would embed the doctrine within the Constitution itself. 6 Proceedings 1387. The enrolled bill doctrine thus affirms the separation of powers. *Friends of Parks*, 203 Ill. 2d at 329; *Geja's Cafe*, 153 Ill. 2d at 260.

The drafters' decision to adopt the enrolled bill doctrine echoes the other jurisdictions who adhere to that doctrine. Indeed, many States follow the doctrine. *See, e.g., Wash. State Grange v. Locke*, 105 P.3d 9, 22-23 (Wash. 2005); *Med. Soc'y of S.C. v. Med. Univ. of S.C.*, 513 S.E.2d 352, 356-57 (S.C. 1999); *Collins v. State*, 750 A.2d 1257, 1262 (Me. 2000) (Calkins, J., concurring) (citing *Weeks v. Smith*, 18 A. 325, 327 (Me. 1889)); *Ingersoll v. Rollins Broad. of Del., Inc.*, 269 A.2d 217, 219 (Del. 1970); *Hernandez v. Frohmiller*, 204 P.2d 854, 865 (Ariz. 1949). So does the federal government. *United States v. Munoz-Flores*, 495 U.S. 385, 408-10 (1990) (Scalia, J., concurring in judgment); *Marshall Field & Co. v. Clark*, 143 U.S. 649, 672 (1892).

Finally, this case does not warrant abandoning the enrolled bill doctrine because the purpose of the three readings rule was satisfied here. Legislators,

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and the public, were well aware of the substance of the Act before its passage. *See* AT Br. 6; A31-34, A45-47. The General Assembly held multiple hearings, spanning a month, about restricting assault weapons and LCMs, and these proposals were widely reported in the media. AT Br. 6; A31-34, A45-47. Both chambers rigorously debated the Act. 102d Ill. Gen. Assem., House Proceedings, Jan. 10, 2023, at 26-48; 102d Ill. Gen. Assem., Senate Proceedings, Jan. 9, 2023, at 18-34. Thus, the circumstances surrounding the Act's passage did not undermine the three readings rule's purpose, which is to inform legislators of proposed legislation. *See Giebelhausen*, 407 Ill. at 48.

Plaintiffs do not grapple with the fact that the enrolled bill doctrine is enshrined in the Illinois Constitution. Instead, they argue that this Court should abandon the doctrine because this case involves a "fundamental" right. AE Br. 36. As explained, that assertion is incorrect. *Supra* pp. 10-13. In any event, this court has applied the doctrine in cases that present constitutional questions — even the most serious cases, where doing so affirmed a sentence of life imprisonment. *Dunigan*, 165 Ill. 2d at 251-54. Alternately, plaintiffs assert that the purported violation of the three readings rule eliminates "deference" owed to the legislature for the equal protection and special legislation claims. AE Br. 35-36. They cite no authority for their novel argument, which again conflicts with this Court's decisions. *See* AT Br. 20-21. Plaintiffs do not explain how the claims here uniquely demand abandoning decades-old precedent. They ask the Court to disregard the will of the

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Constitution's drafters and of the people ratifying it. This Court should decline that invitation.

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CONCLUSION

For these reasons, Defendants-Appellants ask this Court to reverse the circuit court's judgment.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 5,966 words.

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CERTIFICATE OF FILING AND SERVICE

I certify that on April 27, 2023, I electronically filed the foregoing **Reply Brief of Defendants-Appellants** with the Clerk of the Court for the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that the other participants in this appeal, named below, are registered service contacts 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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