

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

FILED

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2023-MR-04

Timmy Kueke
CLERK OF THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
EFFINGHAM COUNTY, ILLINOIS

ACCURACY FIREARMS, LLC *et al.*)
)
)
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.)

TEMPORARY RESTRAINING ORDER

THIS MATTER, having come in front of the Court on an Emergency Motion for Temporary Restraining Order by Plaintiffs, the Court having considered the pleadings of the parties, oral argument of counsel finds as follows:

INTRODUCTION

The matter before the court is one of significant importance. At issue is whether the Defendants have fulfilled their obligation to enact legislation that furthers the legitimate issues of the public while following Constitutionally required regulations.

As the Court addresses each element of the requested Temporary Restraining Order (TRO), it is worth noting that Defendants presented no evidence of legislative intent for the Court to consider. Furthermore, an examination of the Illinois Legislative

General Assembly history of the bill provided no further information. From January 28, 2022 to January 8, 2023, HB 5471 (also known as Public Act 102-1116) was a change to the Illinois Insurance Code. Within two days the bill was entirely “gutted and replaced” (as referred to in oral arguments by both Parties) with an entirely different subject and was immediately signed by Governor Pritzker. Except for the record of actions, the public record regarding this bill, including the hearings that were held, was almost entirely regarding the bill as an insurance regulation.

The Plaintiffs all appeared by Counsel for the hearing. Attorney General Raoul, and Governor Pritzker, both appeared by Counsel as well. Defendants Christopher Welch and Don Harmon failed to appear for the hearing. Attorneys for the Defendants Raoul and Pritzker argued the Court should deny the request for temporary restraining order for the Plaintiffs failure to meet the requirements of irreparable harm and likelihood of success on the merits.

STANDARD FOR A TEMPORARY RESTRAINING ORDER

A temporary restraining order is an emergency remedy intended to maintain the status quo, which is the “last, actual, peaceable uncontested status that preceded the pending controversy.” *Makindu v. Illinois High School Ass’n*. 2015 IL App (2d) 141201 ¶ 45. A party satisfies the standard for obtaining a temporary restraining order if its motion, pleadings, and supporting affidavits establish that: (1) they possess a clear and ascertainable right that is in need of protection; (2) they will suffer irreparable injury if injunctive relief is not granted; (3) there is no adequate remedy at law for the injury they are going to suffer; and (4) they are likely to succeed on the merits of their claim. *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006); *Bradford v. Wynstone*

Property Owners' Ass'n, 355 Ill. App. 3d 736, 739 (2nd Dist. 2005). To obtain the injunction, the party must “raise a fair question as to each element required to obtain the injunction.” *Makindu*, 2015 IL App (2d) 141201 at ¶ 31.

I. Plaintiff Possesses A Clear Right In Need Of Protection

The Plaintiffs argue that HB 5471 impairs their fundamental right to bear arms, and that the law was enacted in violation of the Illinois Constitution.

HB 5471 is a restraint on Plaintiffs’ rights to deliver, sell, import, or purchase an certain weapons, attachments, and ammunition and/or manufacture, deliver, sell, or purchase large capacity ammunition feeding devices. Defendants Raoul and Pritzker argue that a gun regulation such as HB 5471 does not impact a fundamental right and in doing so they cite *Kalodimos v. Vill. Of Morton Grove*, 103 Ill. 2d 483, 509 (1984). Since that time, the Illinois Supreme Court has considered this issue and found gun regulation is, in fact, subject to strict scrutiny. When *Kaladimos* was issued in 1984, the Courts had yet to develop their current jurisprudence regarding gun rights. However, subsequent to significant jurisprudence which occurred after 1984, in *Guns Save Live, Inc. v. Ali*, 2021 IL 126014, the Illinois Supreme Court considered an ordinance which taxed the purchases of certain ammunition. In its analysis, the Illinois Supreme Court made it clear that strict scrutiny applies to alleged Constitutional violations of regulations, such as HB 5471.

This Court finds that Plaintiffs in fact have a Constitutional fundamental right that is subject to strict scrutiny and is protected by the Constitution of Illinois and the Constitution of the United States.

II. Plaintiffs Will Suffer Irreparable Injury

Plaintiffs are 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. When a violation of Constitutional rights has been alleged, a further showing of irreparable injury is not required. *Makindu*, 2015 IL App (2d) 141201 at ¶ 42.

“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).

Although the changes to the statute give ample time to register Plaintiffs’ firearms with the State Police, the changes to the requirements for transfer, sale, purchase, and importation began on effective date of the bill, January 10, 2023, resulting in the loss of fundamental rights as per that date. While the Defendants rightly argue that monetary damages do not qualify as irreparable, they fail to consider that the owners of gun stores and other litigants who suffer monetary damages due to commerce are not necessarily included in the exempted persons category and therefore have their personal rights limited. This causes a perplexing legal issue that may restrict their ability to pursue their current profession.

As stated in *Markindu* “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”. *Makindu v. Illinois High School Assn.*, 2015 IL App (2d) 141201 (2015) The Court finds the Plaintiffs will suffer irreparable injury if an injunction does not issue.

III. Plaintiff Has No Adequate Remedy At Law

In *Hough v. Weber*, 202 Ill. App. 3d 674 (1990), the Court found that 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, because the injury of the restriction of fundamental rights is one that is continuing in 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).

For these reasons, the Court finds the Plaintiffs have no adequate remedy at law.

IV. Plaintiff Is Likely To Succeed On The Merits Of Its Claim

A. Ill. Const. 1970, art. IV, § 8(d) for failure to comply with the Single Subject Rule. Article IV, Section 8 of the Illinois Constitution provides in pertinent part: “Bills, except bills for appropriations and for the codification, revision or rearrangement of laws, shall be confined to one subject.” (See Ill. Const. 1970, art. IV, § 8(d)).

The single subject rule ensures the structured and well-informed debate and passage of bills by “limiting each bill to a single subject, so each legislator can better understand and more intelligently debate the issues presented by a bill.” *People v. Cervantes*, 189 Ill. 2d 80, 83-84 (1999) (citing *People v. Reedy*, 295 Ill. App. 3d 34 (2d Dist. 1999)). However, the Legislature may not choose a topic so broad that the rule is evaded as ‘a meaningful constitutional check on the legislature's actions. *People v. Bocclair*, 202 Ill.2d 89, 109, 273 Ill.Dec. 560, 789 N.E.2d 734 2002 (quoting *Johnson*, 176 Ill.2d at 515-18, 224 Ill.Dec. 1, 680 N.E.2d 1372).

The Defendants argue the single issue rule is satisfied because the enacted provisions of HB 5471 all relate to the regulation of firearms. However, the name of the bill is The Protect Illinois Communities Act, which does not necessarily only refer to the regulation of firearms. In fact, one item in the bill is related to human trafficking and drug trafficking (section amending 20 ILCS 2605/2605-35). Additionally, according to the Illinois General Assembly web page, the short description is Insurance Code – Public Adjusters.

The Court has reviewed the public record and find that the nature of the bill is confusing at best and might hinder the debate regarding the bill, if it were allowed. In *Boclair*, which was cited by both parties, the Illinois Supreme Court states clearly the subject of the act is determined by at first looking at the title. *Boclair*, 202 Ill.2d 89 at 110. The title of HB 5471 as it originated in January 2022 and when it was signed into law was “an act concerning regulation.” The subject of regulation is so broad that it provided the opportunity for the Legislature to create substantively new legislation without any discourse. This Court finds the Plaintiffs have raised a question that has a fair likelihood of success of proving the Defendants violated the single subject requirement by choosing an overbroad original title that was used to allow them to circumvent normal Legislative processes.

B: Ill. Const. 1970, art. IV, § 8(d) for failure to comply with the Three Readings Requirement.

Article IV, Section 8 of the Illinois Constitution provides that “a bill shall be read by title on three different days in each house.” Ill. Const. 1970, art. IV, § 8(d). The Three Readings rule applies not only to the original bill, but to amendments when they represent a substantial departure from the original bill. In *Giebelhausen v. Daley*, 407 Ill. 25, 48 (1950), the Illinois Supreme Court held that the “complete substitution of a new bill under

the original number, dealing with a subject which was not akin or closely allied to the original bill, and which was not read three times in each House, after it has been so altered, [was a] clear violation of a similar three-readings rule in the 1870 Constitution. See Ill. Const. 1870, art. IV, § 13 (“Every bill shall be read at large on three different days, in each house***.”).” *Doe v. Lyft, Inc.*, 2020 IL App (1st) 191328, ¶ 53 (1st Dist. 2021):

Although in *Geja's Cafe v. Metro. Pier & Exposition Auth.*, 153 Ill. 2d 239, 260 (1992), the Supreme Court 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.” In *Friends of Parks v. Chicago Park Dist.*, 203 Ill. 2d 312, 329 (2003), the Illinois Supreme Court 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.”

This Court finds that the Defendants unequivocally and egregiously violated the Three Readings Rule of the Illinois Constitution in order to circumvent the Constitutional requirements and avoid public discourse. This Court finds that due to the strict scrutiny standard required when fundamental rights are restricted and because abuse of Supreme Court rules is so pervasive, the time to revisit this practice is now.

This Court finds that, due to the blatant disregard for Constitutional Law, the Plaintiff is likely to succeed on the merits of this claim.

C. Ill. Const. 1970, art. I, § 2 for failure to comply the Due Process Clause.

Both Parties agree that, “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). Although the Defendant makes a valid argument that “The Illinois Supreme Court has also expressed significant doubt about using a procedural process claim to contest aspects of the legislative process” in *Cheetah Enterprises, Inc. v. Lake Cnty., Ill. App. 3d 306, 314* (1974), this case occurred prior *Geja’s Café* (1992) and *Friends of Parks* (2003); which established doubt that the Legislature was adequately policing itself to avoid the danger of irreparable harm to Constitutional rights. Due process requires, at minimum, a meaningful opportunity to be heard. *Colquitt v. Rich Township High School District No. 227*, 298 Ill. App. 3d 856, 863, 232 Ill.Dec. 924, 699 N.E.2d 1109 (1998).

In this case, Plaintiffs are free to argue that the actions of the Legislature infringe upon their due process rights Ill. Const. 1970, art. I, § 2 to have a meaningful opportunity to be heard before their rights are impacted. Otherwise, especially as it relates to the three readings rule, the Plaintiffs would be left with no remedy in the Courts to seek redress.

In oral arguments, the Defendants stated that the only procedural right which Plaintiffs are afforded is the right to raise their arguments in Court after legislation has been passed. This argument is particularly concerning to the Court, implying that the Legislature has the right to pass any law that it deems fit without regard for the Constitutionality or the procedural process. This gives confers the responsibility of assessing the Constitutionality of the law to citizens and their attorneys.

The Defendant’s statements in oral arguments also indicate that their belief is that, because the bill has been certified, certification has automatically been done in good faith and cannot be reviewed by the Court. This Court finds that assumption to be in error and

that this case is worthy of review because of the serious nature of the violation of Constitutional standards and the limitation of rights. Further, it appears that there is a significant likelihood that the certification was not done in good faith, and is an abuse of prior Supreme Court decisions.

This Court finds the Plaintiffs have shown a likelihood of success in proving the failure of the General Assembly to abide by the due process clause of the Illinois Constitution.

D. Ill. Const. 1970, art. I, § 2 for failure to comply the Equal Protection Clause.

The Defendants stipulated in oral arguments that the equal protection claim is based on the rational basis review. *People v. Shephard*, 152 Ill. 2d 489, 499 (1992); *see also Kalodimos v. Vill. of Morton Grove*, 103 Ill. 2d 483, 509 (1984). However, this Court finds that their rational basis does not hold. The Court cannot find it logical that a warden of a prison (included in the exempted persons category) is necessarily better trained or more experienced in the handling of weapons than retired military personnel (not included in the exempted persons category). It also does not follow that a member of the National Guard would be less well trained or experienced in handling a firearm when they are not on active duty compared to when they are. Further, other rational and logical exemptions have been excluded, such as a person in a wheelchair who cannot use a shotgun due to recoil concerns, thus discriminating against a protected class.

This argument could be considered moot as the U.S. Supreme Court recently found, in *New York State Rifle Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022) that the State of New York violated the Constitution when requiring “proper cause” in order to obtain a license to carry a gun. As requirements for possession of a weapon in the home is generally and necessarily less restrictive than carrying a weapon outside of the home, it

follows that “proper cause” would be unallowable for possession as well. As training and experience are being used by the Defendant to justify who can and cannot possess these weapons, it is an example of a use of “proper cause” and is therefore Unconstitutional.

Due to the lack of procedural compliance of the Defendants, the Court is left with nothing to conclude what might be the compelling public purpose of this legislation. In oral arguments, the Defendants suggested that the goal of the legislation was to reduce firearms deaths and mass shooting casualties; however, they offered no evidence that the individuals in their newly created class based on training and experience were any more or less likely to commit these crimes, nor did they provide evidence that the individuals excluded from this class were more likely to commit crimes.

The Court finds the Plaintiffs have shown a likelihood of success in relation to the equal protection clause of the Illinois Constitution and that the Defendant’s use of criteria, especially those that is not evenly applied violates the face of the Supreme Court’s findings in *New York State Rifle Association, Inc. v. Bruen*.

BALANCING THE EQUITIES

Any legislation that has the potential to restrict fundamental Constitutional rights must be considered carefully. The Defendants in this case did not follow the procedural requirements necessary for this legislation to stand up to the strict scrutiny that is required when restricting rights to avoid definitional irreparable harm. Further, this legislation has used criteria to choose who can and cannot possess the weapons that without due consideration. Additionally, due to the speed with which this bill was passed, the effect to protected classes could not have been considered, nor could the Legislature have studied if this was the least restrictive way to meet their goal.

Based on the forgoing, and the finding in *Makindu* that established that a Plaintiff need only raise a fair question that is a violation of a fundamental right for injunctive relief, this Court find that the Defendant has met the burden to establish cause for a TRO.

WHEREFORE, IT IS HEREBY ORDERED:

- A) A temporary restraining order is entered enjoining Defendants, or any administrative agency or law enforcement agency under its control, from exercising any color of authority to enforce any and all elements of HB5471 (also known as Public Act 102-1116), 720 ILCS 5/24-1.9 *et seq*, and 720 ILCS 5/24-1.10 *et seq* against all Plaintiffs named in this action;
- B) This order is binding upon all the parties to this action, including all of their officers, agents, employees, and attorneys.
- C) This matter is set for preliminary injunction on 2-1-23 at 9:30.

DATE: 1-20-23


JUDGE JOSHUA MORRISON