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

ACCURACY FIREARMS, LLC, et al.,

Plaintiffs,

v.

JB PRITZKER, Governor of Illinois, in his official capacity, et al.,

Defendants.

Case No. 2023-MR-4

THE GOVERNOR AND THE ATTORNEY GENERAL'S RESPONSE TO PLAINTIFFS' EMERGENCY MOTION FOR A TEMPORARY RESTRAINING ORDER

Dated: January 18, 2023

Christopher G. Wells
Darren Kinkead
Illinois Attorney General's Office
100 W. Randolph St.
Chicago, Illinois 60601

Laura K. Bautista
Illinois Attorney General's Office
500 S. Second St.
Springfield, Illinois 62701

Counsel for Attorney General Kwame Raoul
& Governor JB Pritzker

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INTRODUCTION

Plaintiffs ask this Court to enjoin Public Act 102-1116 ("the Act"), which restricts the sale of assault weapons and large capacity magazines and requires current owners of these items to register them with the Illinois State Police before next year. Plaintiffs—businesses that sell assault weapons and individuals who own them—do not challenge the Act based on the Second Amendment to the U.S. Constitution or the analogous provision under the Illinois Constitution. Instead, they bring three claims attacking the legislative process, and a fourth claim alleging an equal protection violation based on certain exceptions in the Act. None of Plaintiffs' claims have merit. Their request for a temporary restraining order ("TRO") must be denied.

Plaintiffs fault the passage of the Act for alleged non-compliance with the single-subject and three-readings clauses in the Illinois Constitution. Their single-subject challenge fails because every provision in the Act relates to a single subject: the regulation of firearms. Similarly, Plaintiffs' three-readings clause claim is foreclosed by the enrolled bill doctrine. Conceding as much in their complaint, Plaintiffs attempt to repackage their three-readings claim as a procedural due process claim. But this novel attempt at bootstrapping has no basis in law and fares no better.

Plaintiffs' equal protection claim is equally flawed. Although Plaintiffs try to shoehorn their way into strict scrutiny, they can point to neither a protected class nor a fundamental right recognized under Illinois law that is implicated by the Act. The Act's exceptions for professionals with specialized firearms training and experience, such as law enforcement and members of the military, easily survive rational basis scrutiny.

Plaintiffs have also failed to demonstrate irreparable harm in the absence of injunctive relief. Plaintiffs retain the right to possess any weapons they lawfully possessed when the Act took effect. At most, the Act has led to a reduction in lawful sales by gun stores. But this type of

economic harm, which is compensable in readily calculable damages, cannot be the basis for a TRO. The motion should be denied for this additional reason.

BACKGROUND

Public Act 102-1116 became law on January 10, 2023. Governor JB Pritzker signed the Act shortly after its final passage by the General Assembly. Prior to transmitting the legislation to the Governor, both the Speaker of the Illinois House of Representatives and the President of the Illinois Senate signed the Act to certify the procedural requirements for passage had been met.

Although the Act became law on January 10, different provisions become operative at different times. Beginning January 10, the Act prohibits the sale, manufacture, delivery, or importation of "assault weapon[s]" and "large capacity ammunition feeding device[s]" (*i.e.*, large capacity magazines) in Illinois subject to certain exceptions for law enforcement, members of the military, and other professionals with similar firearms training and experience. *See generally* 720 ILCS 5/24-1.9 (new) & 1.10 (new). Individuals who lawfully possessed assault weapons and large capacity magazines covered by the Act as of the effective date can continue to possess them, although they must register their assault weapons with the Illinois State Police ("ISP") by January 1, 2024 in order to continue lawfully possessing them after that date. *Id.* §§ 1.9(c)-(d) & 1.10(c)-(d).

Plaintiffs apparently filed this lawsuit challenging the Act on January 18, 2023, although Defendants have not been served. At 12:04 p.m. on January 17, Plaintiffs' counsel emailed a non-file-stamped complaint and emergency motion for a temporary restraining order to two members of the Attorney General's Office, and indicated that an emergency hearing had been set for 11:00 a.m. on January 18.

LEGAL STANDARD

Plaintiffs seek a TRO enjoining a duly enacted statute. Granting a preliminary injunction, such as a TRO, is "an extraordinary remedy" and courts "do not favor their issuance." *Guns Save Life, Inc. v. Raoul*, 2019 IL App (4th) 190334, ¶ 36 (citation and internal quotation marks omitted). "The purpose of a preliminary injunction is to preserve the status quo pending a decision on the merits of a case." *Hartlein v. Illinois Power Co.*, 151 Ill. 2d 142, 156 (1992). Use of this extraordinary remedy is only appropriate in "situations where an extreme emergency exists and serious harm would result if it is not issued." *Id.*

To obtain preliminary injunctive relief, a party must show: "(1) a clearly ascertained right in need of protection, (2) irreparable injury in the absence of an injunction, (3) no adequate remedy at law, and (4) a likelihood of success on the merits of the case." *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006); *accord Guns Save Life*, 2019 IL App (4th) 190334, ¶ 37. The party seeking the injunction must raise a "fair question" that each of the elements is satisfied. *Guns Save Life*, 2019 IL App (4th) 190334, ¶ 37. Even if a party meets these elements, a court must still "balance the hardships and consider the public interests involved." *Id.* (cleaned up). "If the circuit court finds that the harm to the public or to the opposing party outweighs the benefits of granting the injunction, it must deny the motion for a preliminary injunction, even if all of the other requirements for granting a preliminary injunction are met." *JL Properties Grp. B, LLC v. Pritzker*, 2021 IL App (3d) 200305, ¶ 57 (collecting cases).

ARGUMENT

Plaintiffs' TRO motion fails for two principal reasons: their claims are unlikely to succeed, and Plaintiffs will not suffer irreparable harm without a TRO.

I. Plaintiffs are unlikely to succeed on the merits of their claims.

A. Plaintiffs' single-subject challenge fails because the Act's provisions all relate to the regulation of firearms.

Plaintiffs are unlikely to succeed on their claim that the Act violates the single-subject clause in Article IV, section 8(d) of the Illinois Constitution. Plaintiffs focus their analysis on the wrong place: rather than looking at the bill as originally introduced, the Court must look at the face of the law that was actually passed. *See People v. Sypien*, 198 Ill. 2d 334, 339 (2001) (requiring review of "the act, on its face"). The face of the Act makes clear that each of its provisions relate to the regulation of firearms. The regulation of firearms is well within the "wide latitude" courts allow for a single subject, and each provision in the Act has a "natural and logical connection" to firearms regulation. *Johnson v. Edgar*, 176 Ill. 2d 499, 515 (1997); *accord Arangold Corp. v. Zehnder*, 187 Ill. 2d 341, 352 (1999). Plaintiffs' single-subject challenge will not succeed on the merits and cannot be the basis for a TRO.

The purpose of the "single subject rule" is "to prevent the combination of unrelated subjects in one bill to obtain support for the package as a whole, when the separate parts could not succeed on their individual merits." *Kane Cnty. v. Carlson*, 116 Ill. 2d 186, 214 (1987). The rule "does not impose an onerous restriction on the legislature's actions" but, to the contrary, "leaves the legislature with wide latitude in determining the content of bills." *Johnson*, 176 Ill. 2d at 515. "[T]he legislature must indeed go very far to cross the line to a violation of the single subject rule." *Id.* at 515–16. Thus, "courts have often upheld legislation involving comprehensive subjects." *Cutinello v. Whitley*, 161 Ill. 2d 409, 424 (1994).

"A determination of whether a public act runs afoul of the single subject rule necessitates a two-step analysis." *People v. Boclair*, 202 Ill. 2d 89, 109 (2002). "First, [the court] must determine whether the act, on its face, involves a legitimate single subject." *Sypien*, 198 Ill. 2d at

339. "[T]he term 'subject' is to be liberally construed in favor of upholding the legislation, and the subject may be as comprehensive as the legislature chooses." *People v. Cervantes*, 189 Ill. 2d 80, 84 (1999). "Second, [the court] must discern whether the various provisions within an act all relate to the proper subject at issue." *Sypien*, 198 Ill. 2d at 339. "What is dispositive [at this step] is whether the contents included within the enactment have a natural and logical connection to a single subject." *Arangold*, 187 Ill. 2d at 352. The single subject rule does not impose any "additional requirement that the provisions within an enactment be related to each other." *Id.* at 356.

The single-subject rule also does not impose any requirements regarding the legislation's breadth. "Neither the length of an act nor the number of provisions in an act is determinative of its compliance with the single subject rule." *Wirtz v. Quinn*, 2011 IL 111903, ¶ 15. "That the enactment happens to amend a number of acts already in effect is also not determinative." *Arangold*, 187 Ill. 2d at 352.

The Act does not violate the single-subject clause because all of the Act's provisions relate to the regulation of firearms. The core provisions of the Act limit the sale of a particularly dangerous class of firearms—assault weapons—and large capacity magazines that can be used to multiply a firearm's lethality. The General Assembly enacted these provisions in response to the use of assault weapons and large capacity magazines in mass shootings in Illinois and throughout the country. By enacting restrictions on the sale of assault weapons and large capacity magazines, the General Assembly sought to reduce the prevalence of these weapons in Illinois because of their distinct ability to inflict catastrophic injury on large numbers of people in mere seconds—before law enforcement can respond.

The Act also includes registration requirements for existing owners of assault weapons requiring these weapons to be registered with the Illinois State Police by January 1, 2024. The registration requirements strike a careful balance between the property interest existing owners have in these weapons, and the need to ensure that law enforcement can track the current stock of assault weapons in circulation. The registration requirement helps law enforcement prevent these existing weapons from entering a black market or otherwise getting transferred to individuals intent on criminal activity like a mass shooting. In other words, the registration requirements facilitate enforcement of the sale restrictions, and likewise reduce the prevalence of and access to these potent weapons. In doing so, the registration requirements have a "natural and logical connection" to the regulation of firearms. *Arangold*, 187 Ill. 2d 341 at 352.

Plaintiffs attempt to cherry-pick other provisions in the Act to suggest that they violate the single-subject rule, but Plaintiffs fall far short of demonstrating any single-subject violation given the "wide latitude" the General Assembly has to define the scope of its enactments. *Johnson*, 176 Ill. 2d at 515. Plaintiffs reference four provisions in the Act (albeit without citation) as potential violations of the single subject rule, but none of them are.

First, Plaintiffs object to amendments giving a division of ISP authority to conduct "investigations of human trafficking, illegal drug trafficking, and illegal firearms trafficking," and requiring ISP to "provide statewide coordination and strategy pertaining to firearm-related intelligence, firearms trafficking interdiction, and investigations reaching across all divisions of the Illinois State Police, including providing crime gun intelligence support . . . ." Compl. ¶ 42(a)); 20 ILCS 2605/2605-35(a)(7) & (c)(new). On their face, these provisions unambiguously relate to the regulation of firearms by empowering ISP to lead a coordinated response to illegal gun trafficking and firearms-related crimes throughout Illinois. Unsurprisingly, the amendments also

reference human and drug trafficking because those crimes are frequently perpetrated with firearms. It is no secret that international drug cartels and other criminal organizations have been known to use firearms to facilitate illegal trafficking in people, drugs, and guns. By ensuring a coordinated, state-wide response to firearm and related trafficking, these provisions give law enforcement critical tools to reduce illegal firearms in Illinois and to prevent criminal organizations from obtaining them. No Illinois court has ever read the single-subject clause in a way that would stop the General Assembly from grouping authority to combat firearms trafficking with authority to combat drug and human tracking. Doing so would vitiate the "wide latitude" to which the General Assembly is entitled. *Johnson*, 176 Ill. 2d at 515.

Second, Plaintiffs object to the inclusion of what they call amendments to the "law regarding the procurement of bids for certain services related to purchases of certain technology by the Illinois State Police," Compl. ¶ 42(b). If Plaintiffs had included any citation to or quotation from these provisions, the connection to the regulation of firearms would be apparent. The "technology" in question is:

> software, software licenses, or software maintenance agreements that support the efforts of the Illinois State Police to enforce, regulate, and administer the Firearm Owners Identification Card Act, the Firearm Concealed Carry Act, the Firearms Restraining Order Act, the Firearm Dealer License Certification Act, the Law Enforcement Agencies Data System (LEADS), the Uniform Crime Reporting Act, the Criminal Identification Act, the Uniform Conviction Information Act, and the Gun Trafficking Information Act, or establish or maintain record management systems necessary to conduct human trafficking investigations or other stolen firearm investigations.

30 ILCS 500/1-10(b)(21)(new). In other words, these provisions streamline the procurement process for ISP to purchase software to administrate the firearms regulations and licensing requirements that exist in Illinois. Better and more efficient software systems will enable ISP to carry out its critical responsibility of enabling law enforcement to distinguish between who is lawfully entitled to own a firearm and who is not. Given that convicted felons are frequently barred

from lawfully owning firearms, it is "natural and logical" for the General Assembly to have anticipated a necessary linkage between software databases reflecting firearm ownership eligibility, on the one hand, and criminal history, on the other. *Arangold*, 187 Ill. 2d at 352. Ensuring that people who have perpetrated violent felonies in the past cannot lawfully obtain firearms relates to the regulation of firearms.

Third, Plaintiffs object that the Act extends the time period for firearms restraining orders from six months to up to one year. Compl. ¶ 42(c); 430 ILCS 67/40 (amended). Firearms restraining orders allow law enforcement, family members, and intimate partners to seek an emergency court order prohibiting a person from possessing firearms when there is "clear and convincing evidence" that the person "poses an immediate and present danger of causing personal injury to himself, herself, or another" because of his or her access to firearms. 430 ILCS 67/35(f). Establishing a judicially administered process for taking firearms out of the hands of individuals who pose "immediate" danger to themselves or others is a valid regulation of who can possess a firearm. Likewise, giving judges greater latitude to fashion a restraining order of adequate duration promotes firearm safety by ensuring firearms are not prematurely returned to individuals who still pose an acute risk to themselves or others.

Fourth, Plaintiffs object that the Act "[c]reated new provisions in the law regarding the ban on certain semi-automatic weapons." Compl. ¶ 42(d). Plaintiffs do not cite to any specific provision of the Act to support this objection. The references to "semiautomatic rifle[s]," and "semiautomatic pistol[s]," and "semiautomatic shotgun[s]" in the Act arise from the two-fold manner in which the Act defines an "assault weapon". *See generally* 720 ILCS 5/24-1.9 (new) & 1.10 (new). In addition to classifying specific firearm models as "assault weapon[s]" subject to the Act's sale restrictions and registration requirements, 720 ILCS 5/24-1.9(a)(1)(J)-(L), the Act also

identifies specific features that, when incorporated in a semiautomatic rifle, pistol, or shotgun, render that weapon an "assault weapon" for purposes of the Act, 720 ILCS 5/24-1.9(a)(1)(A)-(D), (F)-(G). These definitions reflect the General Assembly's conclusions about particular weapon types and characteristics that are particularly lethal and dangerous. Plaintiffs may disagree with those conclusions, but that does not change the fact that the Act's restrictions on what it classifies as "assault weapons" are sufficiently related to the regulation of firearms to survive a single-subject challenge.

Plaintiffs do not identify any other provisions in the Act that supposedly violate the single subject rule; instead, they offer broad critiques of the General Assembly's use of "shell bills" and late-breaking amendments. *See, e.g.*, Compl. ¶¶ 37-44, 88-95. But the Illinois Supreme Court has not treated the single subject rule as a mechanism for probing the underlying legislative process preceding the enactment of a law. Instead, a court applying the single subject rule looks at "the act, on its face"—not prior versions of the bill as introduced or as it made its way through the legislative process. *Sypien*, 198 Ill. 2d at 339. As a result, Plaintiffs' arguments about how the original content of House Bill 5471 pertained to insurance regulation are simply irrelevant. What matters is that the Act as ultimately approved, both as a whole and in its constituent parts, has a "natural and logical connection" to a single subject: the regulation of firearms. *Arangold*, 187 Ill. 2d at 352. Plaintiffs' single-subject challenge to the Act will fail and cannot be the basis for a TRO.

B. The Illinois Supreme Court's enrolled billed doctrine forecloses Plaintiffs' challenge under the three-readings clause.

Plaintiffs allege in Count II that the Act failed to comply with the requirement that bills must "be read by title on three different days in each house." Ill. Const. art. IV, § 8(d). This claim is foreclosed by Illinois Supreme Court precedent and the Constitution itself.

The "three readings requirement" in Article IV, section 8(d) of the Illinois Constitution is a procedural requirement intended to ensure legislators have adequate notice of pending legislation. *Geja's Cafe v. Metro. Pier & Exposition Auth.*, 153 Ill. 2d 239, 258–60 (1992). The Constitution 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*, 153 Ill. 2d at 259.

The Illinois Supreme Court has consistently held that the enrolled bill doctrine forecloses all litigation challenging certified legislation for failure to comply with the three readings requirement. *Friends of Parks v. Chi. Park Dist.*, 203 Ill. 2d 312, 328–29 (2003) ("[W]e will not invalidate legislation on the basis of the three-readings requirement if the legislation has been certified."); *People v. Dunigan*, 165 Ill. 2d 235, 251–54 (1995) ("Because the Act shows, on its face, that it was certified by the presiding officers of both houses, the enrolled-bill rule precludes this court from considering whether the legislature complied with the three-readings requirement set forth in article IV, section 8."); *Cutinello*, 161 Ill. 2d at 424–25 ("the 1970 Constitutional Convention specifically contemplated the use of the enrolled bill doctrine to prevent the invalidation of legislation on technical or procedural grounds" and "determined that the legislature would police itself with respect to procedure"); *Geja's Cafe*, 153 Ill. 2d at 258–60 (significant separation of powers problems would arise from judicial interference in legislative procedure); *Polich v. Chi. Sch. Fin. Auth.*, 79 Ill. 2d 188, 208–12 (1980) ("clear intent of the framers of the Constitution" was to foreclose litigation raising three readings challenge); *Fuehrmeyer v. City of*

Chicago, 57 Ill. 2d 193, 198 (1974) ("Whether or not a bill has been read by title, as the Constitution commands, seems fairly to be characterized as a procedural matter, the determination of which was deliberately left to the presiding officers of the two Houses of the General Assembly."); *see also Doe v. Lyft, Inc.*, 2020 IL App (1st) 191328, ¶ 54 (three-readings claim foreclosed); *McGinley v. Madigan*, 366 Ill. App. 3d 974, 991–92 (1st Dist. 2006) (same); *New Heights Recovery & Power, LLC v. Bower*, 347 Ill. App. 3d 89, 100 (1st Dist. 2004) (same).

In this case, Plaintiffs do not and cannot dispute that the Speaker of the Illinois House of Representatives and the President of the Illinois Senate signed the Act to certify the procedural requirements for passage had been met. While Plaintiffs may question the propriety of that certification, they must address their concern to the General Assembly, not this Court. Through the enrolled bill doctrine, the Illinois Supreme Court has made clear that certification by the legislative leaders is conclusive for purposes of the three-readings requirement—a reviewing court cannot look past the face of that certification to probe the underlying legislative process. Plaintiffs' three-readings challenge to the Act fails as a matter of binding precedent and cannot be the basis for a TRO.

C. Plaintiffs' attempt to recycle their single-subject and three-readings challenges as a procedural due process claim fails as a matter of law.

Plaintiffs allege that they were deprived of procedural due process because they "were denied any meaningful opportunity to participate in the passage of HB 5471," Compl. ¶ 83. According to Plaintiffs, this violation is based on "the complete and total failure of Defendants to comply with express constitutional procedural guarantees afforded the Plaintiffs under [the Illinois Constitution]" by the single-subject and three-readings clauses. Compl. ¶¶ 86, 100. This claim fails for multiple reasons. At the threshold, a constitutional claim cannot be based entirely on the failure to comply with *another* constitutional provision. *E.g.*, *In re A.C.*, 2016 IL App (1st) 153047,

¶ 60 ("A constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision.") (cleaned up). But that is precisely what Plaintiffs seek to do here: their procedural due process claim rests entirely on the General Assembly's alleged failure to comply with the single-subject and three-readings clauses of the Illinois Constitution. Compl. ¶ 101.

Furthermore, Plaintiffs have not satisfied the procedural due process standard. "A procedural due process claim challenges the constitutionality of specific procedures used to deny a person's life, liberty or property." *In re M.A.*, 2015 IL 118049, ¶ 35. "The fundamental requirements of due process are notice of the proceeding and an opportunity to present any objections." *Id.* To assess a procedural due process violation, courts "examine (1) whether a life, liberty or property interest has been interfered with by the State; (2) the risk of erroneous deprivation of this interest under the current procedures and the value of additional safeguards; and (3) the administrative and financial burden additional procedures would have on the state's interest." *In re A.C.*, 2016 IL App (1st) 153047, ¶ 61.

Here, Plaintiffs have failed to identify any life, liberty, or property interest that has been interfered with by Defendants. Plaintiffs have no such interest in the single-subject or three-readings clauses of the Illinois Constitution, and, even assuming they did, Illinois courts have recognized that the legislative process affords individuals any process that they would be due. *E.g.*, *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."); *Cheetah Enterprises, Inc. v. Lake Cnty.*, 22 Ill. App. 3d 306, 314 (1974) ("Procedural due process provides safeguards to persons whose property or other rights may be deprived pursuant to powers conferred by general

acts of government; it does not apply to actions which are political in their nature and which lie within the legislative province.").

Finally, courts have rejected attempts to base due process claims on an alleged infringement of the right to bear arms, as Plaintiffs do here. Compl. ¶ 84; *e.g.*, *Culp v. Raoul*, 921 F.3d 646, 658 (7th Cir. 2019) ("without any authority for their proposition that the Due Process Clause independently confers a right to carry a concealed firearm in Illinois, the plaintiffs cannot show that they have been deprived of a liberty interest without due process"). Plaintiffs are unlikely to succeed in their attempt to use a procedural due process claim to repackage their already-deficient single-subject and three-readings objections.

D. Plaintiffs' equal protection challenge fails because the Act's exceptions draw a rational distinction based on military and law enforcement training and experience.

In Count IV, Plaintiffs challenge the Act on equal protection grounds because it includes exceptions to the limitations on the purchase and sale of assault weapons and large capacity magazines for certain categories of current and retired professionals, such as law enforcement and members of the military. Count IV is unlikely to succeed for multiple reasons: Plaintiffs have not shown that they are similarly situated to the comparison group, *i.e.*, the professionals who remain eligible to purchase assault weapons and large capacity magazines; the Act does not implicate a fundamental right under the Illinois Constitution or a protected class; and the exceptions are supported by a rational basis because the covered professionals have greater training and experience with firearms than the public at large.

The equal protection clause of the Illinois Constitution "guarantees that similarly situated individuals will be treated in a similar fashion unless the government can demonstrate an appropriate reason to treat them differently." *In re Destiny P.*, 2017 IL 120796, ¶ 14; *see* Ill. Const. art. I, § 2. "The equal protection clause does not forbid the legislature from drawing proper

distinctions between different categories of people, but it does prohibit the government from doing so on the basis of criteria wholly unrelated to the legislation's purpose." *Destiny P.*, 2017 IL 120796, ¶ 14. When evaluating an equal protection claim, the court first considers as a threshold matter "whether the individual is similarly situated to the comparison group." *Id.* ¶ 15. This is because it does not violate equal protection to treat *different* groups differently. *Id.* Whether groups are similar is not determined in the abstract; rather, "the court must consider the purpose of the particular legislation." *Id.* "Two classes are similarly situated only when they are in *all* relevant respects alike." *Id.* (emphasis added).

Here, plaintiffs are unlikely to succeed on their equal protection claim because they have not even attempted to explain how they are similarly situated to the individuals who are permitted, by virtue of their professions, to continue purchasing assault weapons and large capacity magazines. Nor are they: the professions identified in the Act are professions that necessarily entail substantial firearms training, including on how to safely handle and store assault weapons. Indeed, numerous courts that have evaluated challenges to similar statutes under the federal Equal Protection Clause have recognized that law enforcement officers and those in similar professions "are not similarly situated to the general public with respect to the assault weapons and large-capacity magazines banned by the [relevant state law]." *Kolbe v. Hogan*, 849 F.3d 114, 147 (4th Cir. 2017) (en banc), *abrogated in part on other grounds by New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022); *see Shew v. Malloy*, 994 F. Supp. 2d 234, 252 (D. Conn. 2014), *aff'd in relevant part, rev'd in part sub nom. New York State Rifle & Pistol Ass'n, Inc. v. Cuomo*, 804 F.3d 242 (2d Cir. 2015) ("The charge of protecting the public, and the training that accompanies that charge, is what differentiates the exempted personnel from the rest of the population."). Allowing those in the enumerated professions to continue to purchase assault

weapons and large capacity magazines, therefore, is consistent with the Act's purpose of promoting public safety. *See Destiny P.*, 2017 IL 120796, ¶ 18 ("[T]he similarly situated determination must be made in light of the purposes of the statutes at issue.").

Even if plaintiffs could establish that they were similarly situated to those in the enumerated professions, yet treated differently, their equal protection claim would still not succeed. Critically, Plaintiffs are incorrect that the Act is subject to strict scrutiny. Compl. ¶¶ 133-40. Claims under the Equal Protection Clause of the Illinois Constitution are evaluated under strict scrutiny only if they are "suspect" classifications, such as those based on race, or if they impair "fundamental" rights. *People v. Shephard*, 152 Ill. 2d 489, 499 (1992). Other classifications are subject to "rational basis scrutiny," which asks whether "the challenged classification bears a rational relationship to a legitimate governmental purpose." *Destiny P.*, 2017 IL 120796, ¶ 14. "This review is limited and deferential, and the legislation will not be held to violate the equal protection clause if any set of facts can rationally be conceived to justify the classification." *Id.*

Plaintiffs do not identify a relevant "suspect" classification, though they do claim impairment of a fundamental right, specifically, the right to bear arms. The problem for Plaintiffs, however, is that the Illinois Supreme Court has indicated that the right to bear arms is not fundamental under the Illinois Constitution. *Kalodimos v. Vill. of Morton Grove*, 103 Ill. 2d 483, 509 (1984) ("[T]he right to arms secured by the Illinois Constitution, which did not exist prior to 1970, is subject, as we have explained, to substantial infringement in the exercise of the police power."). In *Kalodimos*, The Illinois Supreme Court explained that the Illinois right to bear arms, unlike the federal right, omits any reference to "the militia" and explicitly recognizes "'the police power' as a limitation on the liberty the provision affords." *Id.* at 491. The Illinois Supreme Court's

different characterization of the right to bear arms means that it is not a "fundamental right" for purposes of equal protection analysis and, as such, the Act need only satisfy rational basis review.[1]

The Act easily survives rational basis review because it has a reasonable relationship to a legitimate government purpose. Reducing firearms deaths and mass shooting casualties are clearly legitimate government purposes. *See Kalodimos*, 103 Ill. 2d at 510; *see also Hunt v. Daley*, 286 Ill. App. 3d 766, 771 (1997). And prohibiting the future acquisition of the particular firearms and magazines that are most likely to result in a mass shooting—except for those in particular professions related to public safety—is a reasonable way to achieve that goal. The limited exceptions in the Act do not change this outcome, because they reasonably differentiate between professionals with extensive firearms training and experience and the public at large. Plaintiffs' equal protection claim is unlikely to succeed on the merits and thus cannot be the basis for a TRO.

II. Plaintiffs have not shown they will suffer irreparable harm without a TRO.

Plaintiffs have not met their burden of showing that they will suffer irreparable harm in the absence of a TRO. Plaintiffs make a conclusory assertion that they are "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." TRO Mot. ¶ 3. But this assertion fundamentally misunderstands what the Act has and has not done at this point. To the extent Plaintiffs lawfully possessed assault weapons or large capacity magazines before the

[1] Even if there were a fundamental right at issue under either the state or federal constitution (which, as explained, there is not), the challenged regulations do not infringe upon that right. *See, e.g.*, *Friedman v. City of Highland Park, Ill.*, 784 F.3d 406, 408 (7th Cir. 2015); *Oregon Firearms Fed'n, Inc. v. Brown*, 2022 U.S. Dist. Lexis 219391, No. 2:22-cv-1815 (D. Or. Dec. 6, 2022). Thus, rational basis review would still apply to Plaintiffs' equal protection claim. *See People v. Mosley*, 2015 IL 115872, ¶ 41 (when firearm regulation fell outside Second Amendment, rational basis applied to equal protection claim).

Act took effect, they still have the lawful right to possess them. As such, the Act has not impacted Plaintiffs' right to "*bear* arms" at all at this point.

Since the Act took effect, what has changed is that there are fewer people in Illinois who can lawfully purchase "assault weapon[s]" and "large capacity ammunition feeding device[s]" as defined in the Act. At most, these limitations on buying and selling certain types of weapons and accessories may reduce sales at gun stores. But irreparable harm exists 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). A court cannot grant a preliminary injunction when the harm at issue "can be compensated adequately by monetary damages calculable with a reasonable degree of certainty." *Ajax Eng'g Corp. v. Sentry Ins.*, 143 Ill. App. 3d 81, 84 (5th Dist. 1986).

The first group of Plaintiffs identified in the complaint appear to be gun stores based on their corporate status and names. Critically, these gun stores remain free to sell the assault weapons and large capacity magazines in their inventory to multiple customers, such as current and retired law enforcement, members of the military, and veterans. While it is true that there are now fewer potential customers for this inventory, whatever reduction in overall sales these gun stores may experience can be recouped through a successful claim for damages—the quintessential remedy at law. These alleged damages would be readily calculable through a comparison of sales prior to and after the Act's effective date. Thus, the only potentially cognizable harm attributable to the Act at this point—a reduction in sales of assault weapons and high capacity magazines—is not irreparable.

The individual Plaintiffs identified in the complaint face even less prospect of harm in the absence of a TRO. They can continue to possess any assault weapons and large capacity magazines

they lawfully possessed at the time the Act took effect; they need only register their assault weapons and large capacity magazines with the ISP at some point before January 1, 2024. A registration requirement that is not enforceable until a year from now does not translate into irreparable harm today, if ever.

Similarly, the inability to purchase more assault weapons and large capacity magazines is also not an impairment of Plaintiffs' right to bear arms. Plaintiffs do not bring a Second Amendment challenge, but even if they did, the right to bear arms does not provide "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). The selection of particular arms is not part of the right to bear arms. *See e.g. Pena v. Lindley*, 2015 WL 854684, at *12 (E.D. Cal. Feb. 26, 2015), *aff'd*, 898 F.3d 969 (9th Cir. 2018). The individual Plaintiffs can still bear arms, just not these particular arms, if they do not already possess them. That is not an infringement of their rights and, as a result, not a source of irreparable harm.

Neither category of plaintiffs—the gun stores or the individuals—has demonstrated irreparable harm and their TRO motion must be denied for this additional reason.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' motion for a TRO.

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Respectfully submitted,

GOVERNOR JB PRITZKER
ATTORNEY GENERAL KWAME RAOUL

By: /s/Christopher G. Wells

Christopher G. Wells, ARDC No. 6304265
Division Chief, Public Interest Division
Christopher.Wells@ilag.gov

Darren Kinkead, ARDC No. 6304847
Deputy Bureau Chief, Special Litigation Bureau
Darren.Kinkead@ilag.gov

Illinois Attorney General's Office
100 W. Randolph St.
Chicago, Illinois 60601
(312) 814-3000

Laura K. Bautista, ARDC No. 6289023
Assistant Chief Deputy Attorney General
Laura.Bautista@ilag.gov

Illinois Attorney General's Office
500 S. Second St.
Springfield, Illinois 62701

Counsel for Attorney General Kwame Raoul & Governor JB Pritzker