

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

ACCURACY FIREARMS, LLC, STEVE
HOLSTE,

Plaintiffs,

vs.

BRENDAN F. KELLY, in his capacity as Director
of the Illinois State Police.

KWAME RAOUL, in his capacity as Attorney
General.

Defendants.

~~2024-MR-~~

2024MR2

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES, Plaintiffs, by and through their attorneys Thomas G. DeVore and Bryan Drew, and for their Verified Complaint for Declaratory Judgment against Defendants, hereby allege as follows:

PARTY PLAINTIFFS

1. ACCURACY FIREARMS, LLC, is an Illinois Limited Liability Companies and duly licensed federal firearms licensee which, *inter alia*, desires to purchase, deliver and sell assault weapons, large capacity magazines, and assault weapon attachments as defined in 720 ILCS 5/24-1.9(a) and/or 720 ILCS 5/24-1.10(a) to STEVE HOLSTE.
2. STEVE HOLSTE is a resident and citizens of the State of Illinois, Effingham County, who currently possesses a FOID card and CCL license, and desires to purchase and possess assault weapons, large capacity magazines, and assault weapon attachments as defined in 720 ILCS 5/24-1.9(a) and/or 720 ILCS 5/24-1.10(a) from ACCURACY FIREARMS, LLC.

PARTY DEFENDANTS

3. Defendant Brendan Kelly is the duly appointed Director of the Illinois State Police.
4. As the Director of the Illinois State Police, Director Kelly has the duty and responsibility to oversee the Plaintiff, Accuracy Firearms, LLC compliance with, *inter alia*, Illinois law in regard to Accuracy Firearms, LLC holding of a Federal Firearms license.
5. As the Director of the Illinois State Police, Director Kelly has the duty and responsibility to investigate and charge citizens within the State of Illinois for crimes such as those defined in Public Act 102-1116.
6. Defendant Kwame Raoul is the duly elected Attorney General of the State of Illinois.
7. As Attorney General, he has publicly proclaimed he will enforce the provisions of Public Act 102-1116 against the citizens of Illinois. (See https://www.thecentersquare.com/illinois/attorney-general-says-if-sheriffs-wont-enforce-gun-ban-there-are-other-people-there-to/article_8b6d435c-938f-11ed-bf51-3b89f7f861d3.html)
<https://www.mystateline.com/news/illinois-ag-echoes-pritzkers-threat-to-fire-police-for-not-enforcing-gun-ban/>

FACTUAL BASIS

8. On January 10, 2023, Governor Pritzker signed Public Act 102-1116. (hereinafter referred to as "AWB")
9. The AWB added the following provision to the Illinois Criminal Code.
Sec. 24-1. Unlawful use of weapons. (a) A person commits the offense of unlawful use of weapons when he knowingly:
 - (15) Carries or possesses any assault weapon or .50 caliber rifle in violation of Section 24-1.9; or
 - (16) Manufactures, sells, delivers, imports, or purchases any assault weapon or .50 caliber rifle in violation of Section 24-1.9.

(See 720 ILCS 5/24-1(15) and 720 ILCS 5/24-1(16))

10. A person convicted of 720 ILCS 5/24-1(15) commits a Class A misdemeanor on their first offense and a Class 3 felony on any subsequent offense.
11. A person convicted of 720 ILCS 5/24-1(16) commits a Class 3 felony.
12. The provision of this Section regarding the purchase or possession of assault weapons, assault weapons attachments, .50 caliber rifles, and .50 caliber cartridges, as well as those provisions of this Section that prohibit causing those items to be purchased or possessed, do not apply to:
 - 1) peace officers as defined by Section 2-13 of this Code.
 - 2) Qualified law enforcement officers and qualified retired law enforcement officers as defined in the Law Enforcement Officers Safety Act of 2004 (18 U.S.C. 926B and 926C) and as recognized under Illinois law.
 - 3) Acquisition and possession by a federal, State, or local law enforcement agency for the purpose of equipping the agency's peace officers as defined in paragraph (1) or (2) of this subsection (e).
 - 4) Wardens, superintendents, and keepers of prisons, penitentiaries, jails, and other institutions for the detention of persons accused or convicted of an offense.
 - 5) Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard, while performing their official duties or while traveling to or from their places of duty.
 - 6) Any company that employs armed security officers in this State at a nuclear energy, storage, weapons, or development site or facility regulated by the federal Nuclear Regulatory Commission and any person employed as an armed security force member at a nuclear energy, storage, weapons, or development site or facility regulated by the federal

Nuclear Regulatory Commission who has completed the background screening and training mandated by the rules and regulations of the federal Nuclear Regulatory Commission and while performing official duties.

- 7) Any private security contractor agency licensed under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 that employs private security contractors and any private security contractor who is licensed and has been issued a firearm control card under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 while performing official duties.

(See 720 ILCS 5/24-1.9(e)).

13. Sentence. A person who knowingly manufactures, delivers, sells, purchases, possesses, or causes to be manufactured, delivered, sold, possessed, or purchased in violation of this Section a large capacity ammunition feeding device capable of holding more than 10 rounds of ammunition for long guns or more than 15 rounds of ammunition for handguns commits a petty offense with a fine of \$1,000 for each violation. (See 720 ILCS 5/24-1.10(g)).
14. Under the clear and unambiguous provisions of the AWB, any person who falls within any of the seven exempt categories is not bound by prohibitions contained in the AWB.
15. Plaintiff, Steve Holste, desires to purchase and possess assault weapons, large capacity magazines, and assault weapons attachments, from Accuracy Firearms, LLC.
16. Absent a declaration from this Court, Plaintiff Steve Holste is under risk and threat of prosecution for a crime by Defendants.
17. Plaintiff, Accuracy Firearms, LLC desires purchase and sell to Steve Holste, assault weapons, large capacity magazines, and assault weapons attachments.

18. Absent a declaration from this Court, Plaintiff Accuracy Firearms, LLC is subject to being prosecuted for a crime by Defendants as well as having their federal firearms licensee be put at risk.

**DECLARATORY JUDGMENT
PLAINTIFF STEVE HOLSTE IS AN EXEMPT PERSON
UNDER THE EXPRESS PROVISIONS OF THE STATUTE**

19. Plaintiffs incorporate paragraphs 1 through 18 as if each had been specifically plead herein.

20. Plaintiffs have a right to engage in the transaction of business wherein Plaintiff Steve Holste desires to purchase and possess an assault weapon, large capacity magazines, and assault weapons attachments, and Plaintiff Accuracy Firearms, LLC desires to purchase and then sell the same to Steve Holste.

21. The AWB contains a provision regarding the purchase or possession of assault weapons, assault weapons attachments, .50 caliber rifles, and .50 caliber cartridges, as well as those provisions of this Section that prohibit causing those items to be purchased or possessed, do not apply to:

8) peace officers as defined by Section 2-13 of this Code.

9) Qualified law enforcement officers and qualified retired law enforcement officers as defined in the Law Enforcement Officers Safety Act of 2004 (18 U.S.C. 926B and 926C) and as recognized under Illinois law.

10) Acquisition and possession by a federal, State, or local law enforcement agency for the purpose of equipping the agency's peace officers as defined in paragraph (1) or (2) of this subsection (e).

11) Wardens, superintendents, and keepers of prisons, penitentiaries, jails, and other institutions for the detention of persons accused or convicted of an offense.

- 12) Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard, while performing their official duties or while traveling to or from their places of duty.
- 13) Any company that employs armed security officers in this State at a nuclear energy, storage, weapons, or development site or facility regulated by the federal Nuclear Regulatory Commission and any person employed as an armed security force member at a nuclear energy, storage, weapons, or development site or facility regulated by the federal Nuclear Regulatory Commission who has completed the background screening and training mandated by the rules and regulations of the federal Nuclear Regulatory Commission and while performing official duties.
- 14) Any private security contractor agency licensed under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 that employs private security contractors and any private security contractor who is licensed and has been issued a firearm control card under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 while performing official duties.

(See 720 ILCS 5/24-1.9(e)).

22. The provision of the AWB regarding the purchase or possession of large capacity ammunition feeding devices, do not apply to:

- 1) peace officers as defined by Section 2-13 of this Code.
- 2) Qualified law enforcement officers and qualified retired law enforcement officers as defined in the Law Enforcement Officers Safety Act of 2004 (18 U.S.C. 926B and 926C) and as recognized under Illinois law.

- 3) Acquisition and possession by a federal, State, or local law enforcement agency for the purpose of equipping the agency's peace officers as defined in paragraph (1) or (2) of this subsection (e).
 - 4) Wardens, superintendents, and keepers of prisons, penitentiaries, jails, and other institutions for the detention of persons accused or convicted of an offense.
 - 5) Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard, while performing their official duties or while traveling to or from their places of duty.
 - 6) Any company that employs armed security officers in this State at a nuclear energy, storage, weapons, or development site or facility regulated by the federal Nuclear Regulatory Commission and any person employed as an armed security force member at a nuclear energy, storage, weapons, or development site or facility regulated by the federal Nuclear Regulatory Commission who has completed the background screening and training mandated by the rules and regulations of the federal Nuclear Regulatory Commission and while performing official duties.
 - 7) Any private security contractor agency licensed under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 that employs private security contractors and any private security contractor who is licensed and has been issued a firearm control card under the Private Detective, Private Alarm, Private Security, Fingerprint Vendor, and Locksmith Act of 2004 while performing official duties.
- (See 720 ILCS 5/24-1.10(e)).

23. Sentence. A person who knowingly manufactures, delivers, sells, purchases, possesses, or causes to be manufactured, delivered, sold, possessed, or purchased in violation of this Section

a large capacity ammunition feeding device capable of holding more than 10 rounds of ammunition for long guns or more than 15 rounds of ammunition for handguns commits a petty offense with a fine of \$1,000 for each violation. (See 720 ILCS 5/24-1.10(g)).

24. At issue is this declaratory action is the interpretation of the AWB by the Court wherein it is necessary to define the legal relationship between the parties and rights and obligations of the parties.
25. At present there is uncertainty in the interpretation of the AWB wherein Plaintiffs seek clarity before consummating their transaction.
26. Without such clarity, the Plaintiffs are subject to civil and criminal prosecution by the Defendants who have a duty to uphold the laws of the State of Illinois.
27. The AWB is clear that peace officers as defined in Section 2-13 of this Code are exempt from the prohibitions regarding assault weapons, large capacity magazines, and assault weapons attachments.
28. As such, any person who is by definition a peace officer may purchase and possess assault weapons, large capacity magazines, and assault weapons attachments without fear of criminal prosecution.
29. Additionally, any federally licensed firearms dealer may purchase, sell and deliver assault weapons, large capacity magazines, and assault weapons attachments to peace officers without fear of criminal prosecution or otherwise having civil proceedings brought against their federal firearms license by the Defendants.
30. A peace officer is defined by statute which statutory definition has been interpreted by numerous Illinois Courts.

31. Section 2-13 of the code defines “peace officer” as (i) any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, or (ii) any person who, by statute, is granted and authorized to exercise powers similar to those conferred upon any peace officer employed by a law enforcement agency of this State. (See 720 ILCS 5/2-13)
32. Plaintiffs concede Steve Holste is not a peace officer as defined in 720 ILCS 5/2-13(i).
33. The legal determination being asked by Plaintiffs is declaring that Steve Holste is a peace officer as defined in 720 ILCS 5/2-13(ii).
34. This finding by the Court should be fairly straightforward that Steve Holste is in fact a person who has been granted and authorized by statute to exercise powers similar to those conferred upon any peace officer employed by a law enforcement agency.
35. Steve Holste has been by statute been conferred the power to make arrests for offenses just as any peace officer employed by a law enforcement agency. (Emphasis Added)
36. Illinois law states: Any person may arrest another when he has reasonable grounds to believe that an offense other than an ordinance violation is being committed. (See 725 ILCS 5/107-3)
37. Several Appellate Courts and the Illinois Supreme Court have concluded that a private citizens arrest under 725 ILCS 5/107-3 easily satisfies the standard of a peace officer employed by a law enforcement agency, as law enforcement officers acting outside their jurisdiction have consistently found to be operating lawfully under 725 ILCS 5/107-3.
38. A comprehensive analysis of these decisions is unnecessary. In general, the courts reason that the assertion of official authority to effect an arrest is irrelevant to a determination of the validity of the arrest itself. The relevant inquiry is, rather, whether or not the person attempting

to arrest was authorized to do so by statute, in any capacity, even though that capacity may not be that which was claimed. *People v. Marino*, 80 Ill. App.3d 657 (2nd Dist. 1980)

39. We hold that an arrest effected by a police officer who asserts official authority to arrest which he does not in fact have is nevertheless valid if an arrest made by a private person under the same circumstances would have been valid. *Id.*
40. A private citizen has virtually the same authority to make an arrest as does a peace officer. *People v. Rowe*, 128 Ill. App.3d 721 (4th Dist. 1984)
41. 725 ILCS 5/107-3 of the Code of Criminal Procedure authorizes a private citizen to make an arrest when he has reasonable grounds to believe that an offense other than an ordinance violation is being committed so as such extraterritorial arrests by police officers have been upheld as citizen's arrests where the offense was committed in the officer's presence. *People v. O'Connor*, 167 Ill. App.3d 42 (1st Dist. 1988)
42. For these reasons, Steve Holste is unequivocally a peace officer as defined in 720 ILCS 5/2-13(ii) making him exempt from the AWB as expressly provided under See 720 ILCS 5/24-1.9(e)(1) and See 720 ILCS 5/24-1.10(e)(1).
43. Steve Holste has been statutorily granted the authority to make an arrest similar to those of a peace officer employed by a law enforcement agency and as such Steve Holste is by definition a peace officer pursuant to 720 ILCS 5/2-13(ii)
44. For this Court to find otherwise would run counter to each and every decision cited herein, as well as all others, which have held a peace officer employed by a law enforcement agency but acting outside his/her jurisdiction still held the power to arrest as does any ordinary private citizen.

45. An actual controversy exists between the parties which would be terminated in whole or in part by a declaratory judgment.

46. An immediate and definitive determination is necessary to clarify the rights and interests of all parties affected.

WHEREFORE, Plaintiffs, herein request that this court enter an Order:

- A. Plaintiffs pray this Honorable Court declare Plaintiff, Steve Holste, is a peace officer as defined under 720 ILCS 5/2-13(ii);
- B. Plaintiffs pray this Honorable Court declare Plaintiff, Steve Holste, a peace officer as defined under 720 ILCS 5/2-13(ii), is exempt from prohibitions of the AWB and as such is free to purchase any and all banned weapons, large capacity magazines, and assault weapons attachments free from prosecution of Defendants.
- C. That the Court grant such other and further relief as is just and proper.

Respectfully submitted,

/s/ Thomas G. DeVore
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VERIFICATION

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

Date: 01 / 25 / 2024

By:

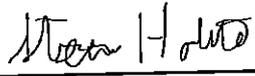


Accuracy Firearms LLC
(Kurt Davis)

VERIFICATION

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

Date: 01 / 25 / 2024

By: 
STEVE HOLSTE