

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

3 ACCURACY FIREARMS, LLC, et al. )  
4 Plaintiffs, )  
5 Vs. )  
6 GOVERNOR JAY ROBERT PRITZKER, )  
7 In his official capacity, ) 23-MR-4  
8 EMANUEL CHRISTOPHER WELCH, in )  
9 His capacity as Speaker of the )  
10 House, DONALD F. HARMON, in his )  
Capacity as Senate President, )  
KWAME RAOUL, in his capacity as )  
Attorney General, )  
Defendants. )

11 HEARING

12 REPORT OF PROCEEDINGS held in the above mentioned cause on  
13 the 18th day of January, 2023, before the Honorable JOSHUA  
C. MORRISON

14 APPEARANCES:

15 MR. THOMAS G. DEVORE  
16 Silver Lake Law Group  
17 118 North Second Street  
Greenville, IL 62246

18 On behalf of the Plaintiffs

19 MR. DARREN KINKEAD MISS LAURA K. BAUTISTA  
20 Deputy Bureau Chief Deputy Chief  
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500 South Second Street 500 South Second Street  
21 Springfield, IL 62701 Springfield, IL 62701

22 On behalf of Defendants Pritzker and Raoul

23 PREPARED BY: Lori A. Hess, CSR  
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1 THE COURT: 2023-MR-4, Accuracy Firearms versus Jay  
2 Robert Pritzker, Donald Harmon, Emanuel Welch, Kwame Raoul.  
3 Show present Tom DeVore.

4 MR. DEVORE: Yes, Your Honor. Tom DeVore on behalf  
5 of the Plaintiffs in this matter, Accuracy Firearms, LLC are  
6 sitting here with me, and we also represent the other 865  
7 Plaintiffs in this matter.

8 THE COURT: And forgive me if I don't read them all  
9 off.

10 MR. DEVORE: There is a list attached for your  
11 information.

12 THE COURT: I saw the list. I'll say et al.

13 MISS BAUTISTA: Good morning. Laura Bautista and  
14 Darren Kinhead on behalf of the Governor and Kwame Raoul.

15 THE COURT: Good morning.

16 MISS BAUTISTA: We filed a brief this morning at  
17 10:00 a.m. I don't know if you have been able to see that or  
18 not.

19 THE COURT: I have been in court all morning, so no,  
20 I did not see that.

21 MISS BAUTISTA: Would Your Honor prefer to continue  
22 the hearing to later this afternoon and have time to  
23 consider our brief?

24 THE COURT: This is an emergency hearing so I will

1 read it. I don't know that I'm going to be the Judge  
2 assigned to it for sure, but I'm ready to proceed. I've  
3 read the complaint. That's the posture that I would like to  
4 take.

5 MR. DEVORE: I have a quick question, and maybe I  
6 misheard, that Counsel is appearing on behalf of two of the  
7 named Defendants. Are they not representing Mr. Harmon or  
8 Mr. Welch?

9 MISS BAUTISTA: That's correct.

10 THE COURT: Are you ready to proceed?

11 MR. DEVORE: I'm ready when the Court is ready.

12 THE COURT: The floor is your's.

13 MR. DEVORE: Thank you, Your Honor. We are here  
14 today on behalf of many clients, 866 to be exact. Four of  
15 them are LLC's. One of which, Accuracy Firearms, is  
16 included, who is currently a Federal firearms licensee. The  
17 other 842 Plaintiffs are citizens of the State of Illinois  
18 across approximately 87 counties.

19 This cause of action, Your Honor, was filed as a  
20 declaratory judgment action and also seeking emergency  
21 injunctive relief and permanent injunctive relief based upon  
22 among other things, procedural and substantive defects based  
23 upon the Illinois Constitution.

24 We've raised four different arguments in this cause

1 of action that ultimately the Court will be asked to draw  
2 conclusions on the merits as to whether or not Article 4  
3 Section 8(d) of the Illinois Constitution has been violated  
4 due to the single issue rule, the three readings rule, and  
5 also Article 1 Section 2 of the Constitution for due process  
6 and equal protection violations.

7 As Your Honor has seen in the pleading, we have a  
8 House bill that was signed on January 10 by Governor  
9 Pritzker, 5471. House bill 5471 started it's life in the  
10 Illinois General Assembly back in January of 2022, with a  
11 title, subject, let's call it a subject, be specific, an Act  
12 Regarding Regulation. That's all it says. And it started  
13 as pretty much a one paragraph modification to the Illinois  
14 Insurance Code, but for all intense and purposes said  
15 gestures have to add their email to certain contracts, et  
16 cetera.

17 It passed through the House of Representatives quite  
18 expeditiously with a little bit of bipartisan support. One  
19 of those members is in the room today, and it went to the  
20 Senate and it sat in the Senate. Didn't move at all until  
21 late November. It eventually gets through two readings of  
22 the Senate, I'll get to those procedural issues in a second,  
23 and then on 3:00 Sunday afternoon, January 8, 2023,  
24 President of the Senate, Don Harmon, grabs a hold of that

1 bill and does what's known as a gut replace and converts an  
2 innocuous insurance regulation into what we will now call a  
3 weapons ban. And from that point in time, less than 48  
4 hours, it is signed into law by Governor Pritzger and has  
5 become a Public Act that we are now questioning in front of  
6 this court today.

7 I've read the response briefly of my colleagues and  
8 they really take issue with likelihood of success on the  
9 merits and irreparable harm. They don't even address the  
10 rights and need of protection, nor do they address the  
11 balancing of the equities.

12 I want to read something, Your Honor, if I could, as  
13 I start with what they have put that I think gives credence  
14 to my client's arguments. And when they are talking about  
15 why my clients have not met their burden of showing they've  
16 suffered irreparable harm, my clients have alleged that each  
17 and everyday for which this law applies against them, their  
18 right to bare arms are being infringed.

19 But, of course, the Defendants, at least two of them  
20 because two of them are not here today, say that we  
21 misunderstand what the Act is doing. It says that the  
22 Plaintiffs can lawfully possess what they have defined,  
23 arbitrarily I would say, assault weapons and large capacity  
24 magazines as long as they owned them before the law took

1 effect, they have the right to possess them so we are not  
2 infringing upon their rights to bare arms.

3           They can't go buy one today if they wanted to. They  
4 can't transfer it to somebody else unless they are exempt  
5 persons. We'll get to that. They can't import them into  
6 the State of Illinois. And guess what, it's worth  
7 mentioning, we'll let you keep it and not be subject to  
8 felony offenses if you register it with us and tell us the  
9 name, make, model, serial number, et cetera, but your right  
10 to bare arms are not being infringed.

11           Now, when I get to some of the strict scrutiny that  
12 I'll talk about in a second, and the Court is likely, and I  
13 know it's aware, that when you start balancing the public's  
14 interest with the interest of citizens, what is the  
15 compelling interest of which the government is trying to  
16 satisfy when they enact laws like this? What is the public  
17 interest? Is it compelling?

18           You know where we typically look for those types of  
19 pieces of information, Your Honor? We look to the public  
20 record of the General Assembly. But guess what? There is  
21 nothing there for this Act because of the gamesmanship that  
22 they played. Because 345 days of the 347 days it was in the  
23 General Assembly, it was one paragraph about an insurance  
24 regulation. So the record that they would have to rely upon

1 to satisfy what they are trying to achieve with this law,  
2 it's not there.

3 But here's what they say. Since this Act took  
4 effect what has changed is that there are fewer people in  
5 Illinois who can lawfully possess assault weapons and large  
6 capacity feeding devices. Is that the purpose of the Act?  
7 I don't know. It says -- but then they go on to say, is  
8 that certain gun stores, like the four that are listed here,  
9 they are free to sell these weapons and these magazines to  
10 multiple customers, such as current retired law enforcement,  
11 they leave out many of the categories, members of the  
12 military and then they say veterans.

13 I find it odd that they would put that in their  
14 pleading because if you read the statute, military veterans  
15 are not included as an exempt category. You have to be  
16 current active duty. I find it odd that our Legislature  
17 would tell a navy seal who has been honorably discharged,  
18 possibly one of the most fierce warriors on the planet, once  
19 you retire and you're a veteran, you can't have this weapon  
20 unless you registered it, but a retired city cop could.  
21 That's one of the ridiculous propositions. They talk about  
22 how there is less people that can buy them is what they are  
23 trying to accomplish.

24 So my clients do have a right, Judge. They have a

1 right to bare arms. There is no doubt about that. We are  
2 not making Second Amendment Constitutional arguments here  
3 because those are for a different day and a different court,  
4 but my clients rights to bare arms is what this is doing.  
5 They acknowledge they are trying to limit their ability to  
6 purchase them and possess them. And they don't even argue  
7 that it's not a right in need of protection. They argue  
8 it's not irreparable harm.

9 I really want to get into the substance of their  
10 response as it relates to the likelihood of success because  
11 that's where the Court should focus it's attention. It's  
12 clear that right is being harmed every day that goes by.  
13 Any of these folks are not free to go, I want to go buy a  
14 weapon today. I want to go buy a large capacity magazine.  
15 You can't do that. That's irreparable.

16 Let's talk about now the issues, Judge, of  
17 likelihood of success. We don't have to prove these issues  
18 to you. You just have to look at any one of the four of  
19 these independent violations that we've raised and say is  
20 there a likelihood that my clients will be successful.

21 The first one I start with is the single issue rule  
22 of Article 4 Section 8(d). Single issue rule. The single  
23 issue rule is really the subject of two components. Does  
24 the subject on it's face, the wording, is it a legitimate



1 single subject? They even cite a case to you, the Sypien  
2 case, where they try to suggest, inappropriately, what that  
3 law stands for. But what it does stand for and what the  
4 cases that my client have given you, is there is a two  
5 tiered analysis. First one, is there a legitimate single  
6 subject? And that subject can be very broad. An act  
7 concerning criminal law has been deemed sufficient by our  
8 courts. You know what has never been deemed sufficient,  
9 sir? An Act Regarding Regulation. What does that even  
10 mean? An Act Regarding Regulation is a subject that is so  
11 broad, it could be about anything. There is no meaningful  
12 way to discern as the public or as representatives what that  
13 might mean. You can regulate and pass a law regarding any  
14 topic you want in the Illinois Compiled Statutes. So it  
15 doesn't even pass muster on the first of the two steps  
16 because regulation is so broad.

17           There is no case law in Illinois that says that just  
18 saying an Act Regarding Regulation is deemed a sufficient  
19 category that passes muster on a single issue. It doesn't  
20 exist.

21           Secondly, if you get past that hurdle, then you have  
22 to look at what are the subjects? They are going to suggest  
23 to you that you have to look at the law as it was passed to  
24 determine whether it satisfies the single subject rule.

1 There is no case law that follows that. And what I'm  
2 proposing to you, Your Honor, is what happened here is that  
3 the subject of which this bill originated, an insurance  
4 regulation modification, is not remotely related to these  
5 last minute amendments that they changed it to. They  
6 changed it to guns.

7 Now they'll say to you they are both about  
8 regulation. That's true. But that takes you back to the  
9 first step of the analysis going well, that doesn't do any  
10 good because you could have made this bill about anything  
11 you want and could have said well, it's about regulation.

12 But the Court should still consider the propriety of  
13 looking at this and saying if the single issue rule is going  
14 to be completely torn down to the point that we can create  
15 not only a broad category, but we can have a law that starts  
16 it's life and lives most of it's life as one subject and  
17 then completely rip it out and replace it to a completely  
18 unrelated subject as long as it kind of matches the category  
19 we've given at the top, it's okay. You've defeated the  
20 purpose of the single issue rule. It means nothing any  
21 longer. Because I go back to this case and the specific  
22 example that only two days of it's 347 days of life did it  
23 have any relation to the regulation of firearms. So there  
24 is a likelihood of success that the single issue rule has

1       been violated by the General Assembly.

2                       And I would point out to Your Honor that the General  
3       Assembly, Mr. Welch and Mr. Harmon who were the ones that  
4       did this, they are not even here to defend what I just  
5       argued to you about the single issue rule.   The Attorney  
6       General has not entered their appearance on behalf of them  
7       to defend that issue.   And when they try to do it, Judge,  
8       I'm going to be wondering if they are going to say we are  
9       not here representing them, but they are going to argue that  
10      that was proper.   I don't know how they are going to do  
11      that.

12                     Now as to the three readings rule.   Let's talk about  
13      the three readings rule.   The law in Illinois is clear on a  
14      couple of things.   When a bill starts off as a subject and  
15      they holly gut it and replace it to a new subject, that is  
16      absolutely triggering of a requirement for the three  
17      readings rule to have to happen.   You can use that as a  
18      parallel too, Judge, as to the single issue rule that we  
19      just argued.

20                     So again, after this went through three readings of  
21      the House, the one paragraph insurance code, two readings in  
22      the Senate, they gut and replace, read it one time in the  
23      Senate, send it back to the House for concerns.   It is  
24      crystal clear that is a violation of the three readings

1 rule. No doubt about it. They want to argue that it's not.

2 What they are going to argue is well the Enrolled  
3 Bill Doctrine forecloses the ability for a citizen to argue  
4 that. And there is case law where the Illinois Supreme  
5 Court has said most recently only about 20 years ago that we  
6 are going to for now, the courts are going to give deference  
7 to this clear abuse. They say it's a clear abuse, and then  
8 if the Legislature doesn't start by policing itself, we will  
9 revisit this issue. That's what they said.

10 And so I'm presenting to this court right now today  
11 that it revisit that issue because if we are not going to  
12 police the Legislature through the Court on this issue, they  
13 are going to do whatever they want. They are going to  
14 acknowledge it's a violation of three readings rule, but you  
15 can't do anything about it. Well that renders that  
16 provision meaningless. It renders it meaningless.

17 THE COURT: Mr. DeVore, are you suggesting that  
18 after it was, after the bill was changed, that there were  
19 three more readings that were required?

20 MR. DEVORE: The law actually says that, Judge.

21 THE COURT: I want that on the record.

22 MR. DEVORE: It says once there is a whole  
23 replacement, that re-triggers the three readings rule. It  
24 would say once the Senate did that, it requires three

1 readings in the Senate, back to the House, three readings in  
2 the House. That's what the law says. But what the cases  
3 that have so far given deference to the Legislature says  
4 under the Enrolled Bill Doctrine once Speaker Welch, who is  
5 not here, and once President Harmon, who is not here, have  
6 certified to the Governor for signature that they've  
7 complied with these requirements, that the Court is not  
8 going to invade that issue.

9 But they said crystal clear in the cases that we've  
10 cited, that if you continue this abuse, we will be back.  
11 And I'm suggesting and asking this Court respectfully right  
12 now it's time to be back because if we are not going to put  
13 an end to that with these types of invasion of rights of our  
14 citizens, we don't have any due process, Judge, and I'm  
15 going to get to that in a second.

16 Third issue I want to talk about on likelihood of  
17 success is due process. And they try to suggest to Your  
18 Honor in their reply, well this is me recasting single issue  
19 and due process. I disagree. Article 1 Section 2 of the  
20 Illinois Constitution is a separate and independent  
21 requirement that these legislative procedures give the  
22 citizens of this state an opportunity to participate and an  
23 opportunity to have notice and to be involved in their  
24 government. That's what due process is all about. We

1 learned it in law school. Our first year law students each  
2 of us in here with law degrees would be ashamed we have to  
3 stand here and have this conversation.

4 So they are going to acknowledge that there has been  
5 a violation of the three readings rule and suggest to you  
6 that the Court shouldn't review it. The single issue rule  
7 they'll say, well, it's an Act Regarding Regulation and they  
8 are going to go around about that, but what is certain and  
9 what is something that they cannot get around is that those  
10 are violations of due process.

11 The people of this State, regardless of their  
12 positions and beliefs on the subject of firearms control,  
13 all have a right to participate effectively and meaningfully  
14 in their government.

15 My representative is sitting in this room and what I  
16 had to accept is that for 345 days he had no idea what was  
17 going on. And for two days when it got pushed through,  
18 there was no meaningful way for my representatives or me or  
19 my 12 and a half fellow citizens to participate in whether  
20 or not this law should have been passed as it was passed.  
21 That is a violation of due process of law under Article 1  
22 Section 2 of the Illinois Constitution which is completely  
23 independent of Article 4 Section 8. If they want to suggest  
24 to you well the Enrolled Bill Doctrine forecloses the three

1 readings argument Article 4 Section 8, it does not foreclose  
2 an independent argument under Article 1 Section 2.

3 I've saved the best for last, Judge, because you  
4 know what happens when you push legislation through the  
5 General Assembly the way that they are doing it? Make no  
6 doubt about it, this would be the same argument that would  
7 be made and should be made in this court if the politics of  
8 our General Assembly were different. Equal protection under  
9 the law.

10 You read through, and I know Your Honor has, the  
11 exempt categories that we have here. You'll see current and  
12 retired law enforcement, department of corrections, jailers,  
13 county jailers, the prison wardens, the prison  
14 superintendent, administrative people appointed by the  
15 Governor are exempt. Military exempt. Current. Not  
16 retired. Go back to my navy seal. Sorry, you're out.

17 They have cited some case law to you and it's old  
18 case law and it's only in the Federal courts that say well,  
19 the right to bare arms is not a fundamental right under  
20 Federal or State law because an equal protection analysis in  
21 the State of Illinois is subjected to both equal protection  
22 under the Federal and State.

23 The case they cited also talks about the Illinois  
24 Supreme Court from 1984 talking about how well, at that

1 point in time, the Federal nor State court found the right  
2 to bare arms was a fundamental right. That was 38 years  
3 ago. The case law, most recently the Bruen case, June of  
4 2022, made it crystal clear that the Second Amendment is a  
5 fundamental right. So the right to bare arms under equal  
6 protection analysis under Illinois law looks at whether it's  
7 a fundamental right under either of those provisions.

8           And I would quibble with my colleagues that the  
9 right to bare arms, even under the Illinois Constitution, is  
10 a fundamental right. Certainly Illinois law, Illinois  
11 Supreme Court authority has allowed some types of  
12 limitations on weapons that the Federal Court probably will  
13 have a problem with coming up sometime in the future.  
14 That's not the argument for today. That's a red herring.  
15 Under equal protection, my clients are in here arguing in  
16 this courtroom about a right that is absolutely fundamental.

17           So have these classifications of citizens violate  
18 equal protection? I would ask you first to consider how did  
19 those categories even make it in there in the first place?  
20 And I struggle with this. I struggled with this for two  
21 weeks now since I have been going through this of those  
22 categories of people made their way into the exempt status.  
23 You've read my brief. You know what my clients have argued.  
24 But I'm still -- this is one of the biggest issues I've got



1 with this law.

2 And again, anybody that knows me knows I have fought  
3 and I continue to fight to this day for our law enforcement  
4 in the State of Illinois, but how is it that a retired law  
5 enforcement officer has more individual rights to bare arms  
6 for self-defense than a retired military guy? Any of the  
7 people sitting in this room that don't enjoy the exempt  
8 status. My clients who don't enjoy the exempt status, how  
9 are their rights to bare arms inferior to those listed? It  
10 doesn't make any sense. It makes no sense whatsoever. So  
11 for them to cite old law out of Federal courts that again,  
12 they at least acknowledge a little bit has likely been  
13 superceded by the Bruen case, but to suggest that the  
14 training of these individuals somehow or another gives them  
15 superior rights.

16 You know where they caught themselves, Judge, they  
17 try to say this is about limiting the weapons in the hands  
18 of people. Let's assume for conversation that that is their  
19 purpose they are trying to satisfy. How does allowing  
20 people that may have some training further the purpose of  
21 limiting the firearms? They are inconsistent. They are  
22 talking out of both sides of their mouth.

23 If limiting the possession of these weapons was  
24 their purpose, which I don't believe carries the day but

1 it's not for you, sir, today. The training of individuals  
2 to exercise that right has nothing to do with that. So what  
3 they are trying to do again with another red herring is to  
4 say we've exempted all of these people out because of their  
5 training. Okay, Legislature, put a training requirement in  
6 for the citizens of the State of Illinois before they can  
7 retain this right. There is an easy fix.

8 That's not what they are trying to accomplish,  
9 Judge. That's not what they are trying to accomplish. The  
10 exemptions they've created in this law, crystal clear  
11 violate equal protection of my clients. All you have to  
12 find today, sir, is that there is a likelihood of success on  
13 that argument or any of the other three arguments to grant  
14 the relief that my clients are asking for.

15 What my clients are asking for is for you to enter  
16 an injunction today on their behalf that says during the  
17 pendency of this case, they maintain their rights that have  
18 been afforded to the tens of thousands of exempt persons in  
19 the statute. No more. No less. They want to be treated  
20 the same, that's all, while you or whoever this case might  
21 be assigned to consider the merits of all of these arguments  
22 raised. That's not too much to ask, sir, that they be  
23 afforded their same rights as the people that have been  
24 exempt out.

1           And for those reasons, we are asking the Court to  
2 enter a temporary restraining order that says during the  
3 pendency of this case, we have satisfied there is a right in  
4 need of protection. I don't think there is a doubt about  
5 that. There is irreparable injury when you're trying to  
6 limit that right every day that goes by. There is no doubt  
7 about that. I've cited the case law to you. There is no  
8 remedy at law, and the likelihood and success of the merits  
9 on one of the four things that we've raised exist and  
10 balancing the equities demands that the Court protect their  
11 fundamental rights during this pendency which again puts  
12 them in the same status as all the exempt persons. Thank  
13 you. Plaintiffs rests.

14           THE COURT: Counsel.

15           MR. KINKEAD: Darren Kinkead on behalf of the two  
16 Defendants, the Governor and the Attorney General. Miss  
17 Bautista and I have divided up how we are going to approach  
18 the argument. I'll be addressing likelihood of the success  
19 on the merits. She will be addressing all the other.  
20 Unless you prefer otherwise, I'll start off.

21           THE COURT: You have the floor.

22           MR. KINKEAD: Thank you, Your Honor, I'm going to  
23 start by noting the question before the Court today and the  
24 question before the Court throughout the rest of this

1 litigation is not whether or not this is a good law. The  
2 question before the Court is not whether any of us in this  
3 room agree or disagree that these types of weapons should be  
4 banned or should not be banned. That's not the question  
5 before the Court. Our personal views on this law don't  
6 matter for the purposes of the motion that has been  
7 presented here today. The question is whether or not the  
8 Plaintiffs have satisfied each of the four essential  
9 elements as required for this Court to grant the  
10 extraordinary emergency remedy that they are seeking, and  
11 they have not satisfied those elements.

12 I'm going to address likelihood of success on the  
13 merits, and what I'm going to demonstrate that each of the  
14 four claims, not only are they unlikely to succeed on but  
15 they'll fail as a matter of law. The question here is not  
16 whether or not we agree with this law. It's whether or not  
17 the law violates the Illinois Constitution. And in order to  
18 determine whether or not the law violates the Illinois  
19 Constitution, we have to look at the specific claims that  
20 have been brought, the Illinois case law that tells us what  
21 elements those claims require, the other persuasive  
22 authority from Judges who have heard these same questions  
23 before, and take a look at them closely and determine  
24 whether or not a claim can be stated.

1 I'm going start with the single subject claim.  
2 Mr. DeVore referred to it as single issue. It's actually  
3 single subject. In 8(d) Article 4 of the Illinois  
4 Constitution, the Supreme Court has told us what the purpose  
5 of the single subject rule is, Your Honor. The purpose of  
6 the single subject rule is quote to prevent the combination  
7 of unrelated subjects in one bill to gain support for the  
8 package as a whole when the separate parts could not succeed  
9 on the individual merits. That is Kane County v. Carlson  
10 116 Ill.2d 186.

11 THE COURT: Mr. Kinkead, let me ask you this. Isn't  
12 the bill as it's proposed completely different than as it  
13 was passed?

14 MR. KINKEAD: You are correct. But as I'm going to  
15 explain, that's not relevant for single subject purposes.

16 THE COURT: Please continue.

17 MR. KINKEAD: Your Honor, one more from the Illinois  
18 Supreme Court. I think this is important. The single  
19 subject quote does not impose onerous restrictions on the  
20 Legislative actions. On the contrary, quote it leaves the  
21 Legislature with wide latitude in determining the concept of  
22 bills. That's from Johnson v. Edgar 176 Ill.2d 499 quote  
23 the Legislature must go very far indeed to cross the line to  
24 a violation of the single subject rule. Also from Johnson.

1           As Mr. DeVore pointed out, there is, this is a two  
2 step analysis. The first question for you is does the  
3 legislation on it's face involve a legitimate single  
4 subject? The key point here, Your Honor, and this is the  
5 first area of disagreement between myself and Mr. DeVore,  
6 the key point here is that the State is not limited to the  
7 title of the Act in offering a legitimate single subject.  
8 The Act, Mr. DeVore is correct, as the very topic says. It  
9 says an Act Concerning Regulation. That doesn't matter for  
10 single subject purposes. Legitimate single subject maybe  
11 something different than what it says in the legislation.  
12 That's from the Illinois Supreme Court Wirtz v. Quinn. This  
13 is the most recent Illinois Supreme Court case on single  
14 subject.

15           THE COURT: Do you have a courtesy copy?

16           MR. KINKEAD: Unfortunately, I don't. We found out  
17 about this --

18           THE COURT: I would be glad to read it if you have  
19 one.

20           MR. KINKEAD: We did submit it in the brief. 2011  
21 Ill 8903 Paragraph 32 Wirtz v. Quinn. It's a key case, Your  
22 Honor. It's in the brief, Mr. DeVore.

23           MR. DEVORE: Thank you.

24           MR. KINKEAD: Here as we talked about, Your Honor,

1 the Act is entitled an Act Regarding Regulation. For single  
2 subject purposes, it doesn't matter. I get to tell you  
3 today for the first time what the single subject of the bill  
4 is, and it's Firearm Regulation. That's from Wirtz. In  
5 Wirtz, Your Honor and I'll give you a little summary because  
6 you haven't had a chance to read it because I just told you  
7 what it was.

8 In Wirtz, the Act was titled an Act Concerning  
9 Revenue. But the State once litigation started said no,  
10 that's not the single subject we are going to defend. The  
11 single subject we are going to defend is something  
12 completely different. Capitol projects. And the Illinois  
13 Supreme Court said that's fine. We'll determine whether or  
14 not this Act satisfies single subject using capitol projects  
15 as a single subject, not revenue, which is what it says in  
16 the title.

17 The State can identify the single subject for the  
18 first time in litigation. That's what I've done today  
19 consistent with the Wirtz case from the Illinois Supreme  
20 Court. The single subject is Firearm Regulation.

21 The Court's task at step one, only task at step one  
22 is to ask whether the single subject I've identified,  
23 Firearm Regulation, is a legitimate single subject. Is it a  
24 legitimate single subject? So how do you know if it's

1 legitimate? Wirtz again provides the answer. The question  
2 to ask is, is the subject identified by the State quote so  
3 broad that the single subject rule is evaded as a meaningful  
4 check on the Legislatures actions.

5           And there is another Supreme Court case that I want  
6 to cite to you for the standard of review, Your Honor,  
7 People v. Cervantes 189 Ill.2d 80. Cervantes says in  
8 conducting the analysis, the term subject is to be liberally  
9 construed in favor of upholding the legislation. That's in  
10 Cervantes. Another Illinois Supreme Court case. There is  
11 no case directly on point. There is no case that I could  
12 find in the 24 hours I have been aware of that says Firearm  
13 Regulation is or is not a legitimate subject. We have some  
14 guide posts from prior Illinois Supreme Court cases that  
15 tell us what is and what isn't a legitimate single subject.

16           Here are some examples. Here are some examples the  
17 Supreme Court says are legitimate. The criminal justice  
18 system. That's from People v. Boclair 202 Ill.2d 89. Very,  
19 very broad. The criminal justice system is a legitimate  
20 single subject. Another example from Wirtz, capitol  
21 projects. Very, very broad. That's a legitimate single  
22 subject from the Illinois Supreme Court.

23           And from the other side what is not a legitimate  
24 single subject, we have examples of that as well. This is



1 from People v. Reedy 186 Ill.2d 1. The single subject  
2 proposed there was governmental matters, and the Illinois  
3 Supreme Court said no. That's too broad. Governmental  
4 matters could encompass almost anything.

5 Another example, People v. Olender 222 Ill.2d 123.  
6 Revenue to the State and it's subdivisions. The Supreme  
7 Court said that could encompass any sort of economic  
8 activities. Too broad. So those are the guide posts of  
9 what counts as a legitimate single subject and what doesn't.

10 Firearm Regulation easily satisfies the standard  
11 because it's much narrower than the criminal justice system  
12 which is a legitimate single subject. Much narrower than  
13 capitol projects. It stands in stark contrast to  
14 governmental matters or revenue to the State. Firearm  
15 Regulation is a legitimate single subject under Illinois  
16 single subject precedent. And because it is a legitimate  
17 single subject, we proceed to step two of the analysis.

18 Step two of the analysis says, do each of the  
19 individual provisions of the legislation that Plaintiffs  
20 challenge, do each of those individual provisions have a  
21 natural and logical connection to a legitimate single  
22 subject of Firearm Regulation? Do each of the provisions  
23 that they've identified flow naturally and logically to  
24 Firearm Regulation? They don't have to relate to each

1 other. They just have to relate to the legitimate single  
2 subject at the heart of the bill.

3 So what's the Court's role here again? The answer  
4 is provided in the Wirtz case. And I wish I had brought  
5 that courtesy copy because it's a very important case.

6 You're looking for a provision that "stands out as being  
7 constitutionally unrelated to a single subject." That's  
8 Paragraph 38 of Wirtz.

9 And again from Wirtz, appropriate deference to the  
10 Legislature requires the Court to limit it's review to  
11 "smoking gun provisions that clearly violate the intent and  
12 purpose of the single subject rule." That's Paragraph 42 of  
13 Wirtz.

14 So to sum it up, Your Honor, you're looking for a  
15 smoking gun provision that stands out as bearing no natural  
16 and logical connection to Firearm Regulation. That's what  
17 you're looking for. You didn't hear a lot about that from  
18 Mr. DeVore, but that's the actual standard for a single  
19 subject rule claim.

20 To the point, Your Honor, it is Plaintiffs  
21 substantial burden to make this showing. That's from the  
22 Supreme Court, again, People v. Malchow 193 Ill.2d 413. The  
23 pen cite is 429. It's their substantial burden to make a  
24 showing that one of the provisions identified does not

1 relate naturally and logically to Firearm Regulation.

2 So what have they identified? You didn't hear about  
3 it today but in the complaint which I know you've read,  
4 Paragraph 42 tells us, I think the provisions that they  
5 believe are not naturally and logically related. So I'm  
6 going to go through those one by one and explain why they  
7 are.

8 The first one I believe is a reference to Section 5  
9 of the legislation which is an amendment to 20 ILCS, this is  
10 a mouthful, 2605/2605-35(a)(7). This is the State Police  
11 Act. And the amendment to that Act in the legislation  
12 allows division of criminal investigation in the State  
13 Police to conduct investigations of illegal firearms  
14 trafficking as well as human trafficking and drug  
15 trafficking, and all of this relates to firearm legislation.

16 The Legislature was correct, Your Honor, to  
17 determine that there is a connection between firearms and  
18 all of the illegal trafficking. **Illegal firearms are used**  
19 **to commit these crimes. They are also part of the economy**  
20 **related to these crimes. They are traded in the illegal**  
21 **network.** The single subject permits the Legislature to  
22 articulate a purpose and provide the means necessary to  
23 accomplish that purpose. Increased investigatory power over  
24 crimes in which firearms are used unlawfully relates

1 naturally and logically to Firearm Regulation.

2 I'll turn next to the second one. I believe that is  
3 a reference to Section 7 of the legislation which is an  
4 amendment to 30 ILCS 500/1-10(b) (21). This is the  
5 Procurement Code. And the amendment says the code shall not  
6 apply to the State Police when they make expenditures on  
7 certain software to enforce the FOID Act, to enforce the  
8 Firearms Concealed Carry Act, the Firearms Restraining Order  
9 Act, et cetera, it goes on. But everything that the State  
10 Police are allowed to spend money or allowed to avoid  
11 procurement for relates naturally and logically to firearms.  
12 There is a natural and logical connection between each of  
13 the acts supported by the software and Firearm Regulation.

14 Section 3, the third one that's being challenged is  
15 Section 15 of the legislation which are amendments to 430  
16 ILCS 67/40, 45, and 55, and this is all of the Firearm  
17 Restraining Order Act. I think it goes without saying so I  
18 won't spend too much time on it, a natural and logical  
19 connection between keeping firearms out of certain peoples  
20 hands, which is what the legislation does in the amendment,  
21 and the legitimate subject of firearm regulation. I don't  
22 have anything more to say on that.

23 THE COURT: You're suggesting that this legislation  
24 of keeping firearms out of the hands of the average citizen

1 is a good thing?

2 MR. KINKEAD: Two points. Well, three points. One  
3 is that's not the specific thing I'm referring to here.  
4 What I'm referring to here is not the provisions of the  
5 Criminal Code which now makes it unlawful to possess or  
6 makes it unlawful to sell, in the future will make it  
7 unlawful to possess certain types of weapons. That's not  
8 what this refers to.

9 THE COURT: You agree this Act keeps firearms out of  
10 the hands of the average citizen except those otherwise  
11 enumerated?

12 MR. KINKEAD: Yes. This particular section I'm  
13 talking about, the Firearm Restraining Order Act, which  
14 keeps the firearms out of the hands of people with mental  
15 illness or are in crisis. And all I'm saying here is that  
16 that relates naturally and logically to firearms. But the  
17 question that you originally asked, do I think this is a  
18 good thing? My answer as I said, it's irrelevant because  
19 I'm an employee of the Attorney General's Office in the  
20 executive branch. Our obligation is to defend the laws that  
21 have been passed by the Legislature. It's in the  
22 Constitution of the State.

23 THE COURT: I understand. I was asking for  
24 clarification.

1           MR. KINKEAD: Thank you, Your Honor. The final part  
2 on the subject of single subject, we talked about it a  
3 little bit and it's very clear, it does relate naturally and  
4 logically, and that's the matter of the Criminal Code.  
5 That's the real meat of this bill, right? And again, as we  
6 discussed, that does keep certain weapons out of peoples  
7 hands. Whether it's a good thing or a bad thing is beside  
8 the point right now. The point right now is the single  
9 subject analysis. It obviously relates to Firearm  
10 Regulation. Each of the provisions that Mr. DeVore has  
11 noted in his complaint do have that natural and logical  
12 connection to firearms regulation for the reasons I've  
13 explained.

14           He talked a lot about other aspects and you asked  
15 about one of those at the very beginning. For example, the  
16 fact that the entire bill was substituted out. That doesn't  
17 matter for single subject purposes. It just doesn't. It  
18 may be a good thing. It may be a bad thing, but it doesn't  
19 matter for single subject analysis. The Illinois Supreme  
20 Court is clear. First step, whether the single subject I've  
21 identified is legitimate, and the second step, you look just  
22 at the plain language of the legislation that passed and you  
23 make that determination if there is that natural and logical  
24 connection. Everything else is not supported by Illinois

1 Supreme Court law. It is just not relevant. So I'm going  
2 to sum up real quickly Count I.

3 THE COURT: Please.

4 MR. KINKEAD: The single subject of the legislation  
5 is firearms regulation. That is a legitimate single  
6 subject. It's not so broad that the single subject rule is  
7 invaded as a meaningful check on the Legislature's actions.  
8 And Plaintiffs are highly unlikely to carry their  
9 substantial burden that any of the four provisions they've  
10 identified in their complaint bare no natural or logical  
11 connection to firearms regulation. There are no smoking  
12 guns in this legislation. There is nothing that stands out  
13 as being unrelated to firearms regulation. There is simply  
14 no likelihood of success that Plaintiffs are going to  
15 succeed on Count I which alleges the single subject  
16 violation. If Your Honor has any questions, I'm happy to  
17 answer or I can move onto Count II.

18 THE COURT: No.

19 MR. KINKEAD: So the same is true for Count II. No  
20 likelihood of success on the merits. Count II was the three  
21 readings rule violation and Mr. DeVore is correct. Article  
22 4 Section 8(d) of our Constitution does say that all bills  
23 must be read by title on three different days in each house.  
24 That is the three readings rule.

1           But as Mr. DeVore alluded, Section 8(d) continues.  
2           It goes on to say that the Speaker of the House and the  
3           President of the Senate shall sign each bill that passes  
4           both houses to certificate that the procedural requirements  
5           have been met. That's the doctrine that he talks about.

6           And it's important to emphasize, Your Honor, that  
7           the Enrolled Bill Doctrine is in the Constitution. It is in  
8           the Constitution of this State. It is not something that  
9           the Illinois Supreme Court made up. It's not judicially  
10          created law. It's in the Constitution of this State. It is  
11          itself a Constitutional provision.

12          And it's interesting, if you take a look at the  
13          Supreme Court cases on this topic, and many were cited by  
14          Mr. DeVore in his complaint, others by us in the brief we  
15          cited this morning. The Enrolled Bill Doctrine was a  
16          deliberate choice made by the men and women who participated  
17          in the 1970 Constitutional convention that gave birth to our  
18          current Constitution.

19          The Enrolled Bill Doctrine was not always a part of  
20          our Constitution. In prior constitutions, the judiciary was  
21          allowed to inspect legislative process to make sure the  
22          Legislature complied with all of the procedural  
23          requirements. If this were 1940, 1950, or 1960, you might  
24          actually have the authority that Mr. DeVore wants you to



1 invoke here. You might have the authority to do what they  
2 are asking, to look behind the curtain and see if the  
3 Legislature did what it said it did. But as --

4 THE COURT: Are you suggesting that we no longer  
5 have the right to look behind the curtain?

6 MR. KINKEAD: Yes. And I'll explain why. The 1970  
7 Constitutional Convention, the men and women who  
8 participated, deliberately made a different choice. They  
9 deliberately made the choices in that convention to take  
10 this authority away from the judiciary. And this is not me  
11 making this up. This comes from the Illinois Supreme Court  
12 which explains to us what happened at that convention.

13 And I can quote from the case that explains exactly  
14 how it went down. The case is Cutinello. For some reason I  
15 only wrote down the Plaintiffs name. 161 Ill.2d at 424.  
16 It's referenced in our brief, of course. Quote the 1970  
17 Constitutional Convention specifically contemplated the use  
18 of the Enrolled Bill Doctrine to prevent the invalidation of  
19 legislation on technical or procedural grounds. It quote  
20 determined that the Legislature would police itself with  
21 respect to procedure.

22 That is why time and time again the Illinois Supreme  
23 Court has held that the Enrolled Bill Doctrine precludes  
24 three readings claims like the one here. So there is many

1 examples. The most recent is Friends of Parks v. Chicago  
2 Park District 203 Ill.2d 312. "We will not invalidate  
3 legislation on the basis of the three readings rule if the  
4 legislation has been certified". And I think there is no  
5 dispute. It has been certified. Here you can go to the  
6 Illinois General Assembly website and see that it has been  
7 certified.

8 So what does this mean for Plaintiffs success on the  
9 merits? There is two points I want to make. First is that  
10 Plaintiffs are certainly 100 percent not going to succeed on  
11 this claim because there is binding Illinois Supreme Court  
12 precedent that says these claims cannot proceed. These  
13 claims are not cognizable. There is binding Illinois  
14 Supreme Court precedent that says that. And as Your Honor  
15 knows, you are bound to follow, or the Judge that hears this  
16 case, is bound to follow Illinois Supreme Court precedent.

17 The Illinois Supreme Court did say they are leaving  
18 open the door, but that was for them to make a decision.  
19 Not circuit courts to make a decision on their own. Circuit  
20 courts will continue to follow the Illinois Supreme Court  
21 cases until the Illinois Supreme Court says otherwise.

22 Plaintiffs are not at all likely to convince the  
23 Supreme Court to revisit the Enrolled Bill Doctrine to over  
24 turn the Enrolled Bill Doctrine because the Enrolled Bill

1 Doctrine is part of our Constitution. It is in the  
2 constitution itself. It was put there deliberately by the  
3 1970 Constitutional Convention as explained in the Illinois  
4 Supreme Court Case I referenced earlier.

5 And I think we can all agree that the Supreme Court  
6 does not have the authority to overturn any part of the  
7 Constitution, this or any other, even if it's a very, very  
8 bad idea. Even if the Legislature has not done a good job  
9 of policing themselves it's in the constitution and the way  
10 to change this if the People of Illinois aren't happy about  
11 it, is to amend the constitution. That's the only way and  
12 that's the rule of law. That's how it works. The  
13 Plaintiffs have not shown that they are likely to succeed on  
14 Count II. Did Your Honor have any questions or should I  
15 move onto Count III.

16 THE COURT: No questions.

17 MR. KINKEAD: Count III is a procedural due process  
18 claim, and once again, Plaintiffs are highly unlikely to  
19 proceed on the merits here because this claim is  
20 specifically foreclosed by the Illinois Supreme Court case  
21 law. So the gist of the claim as you heard from Mr. DeVore,  
22 the Plaintiffs were denied the opportunity to participate in  
23 the legislative process that led to the passage of House  
24 Bill 5471, but the Illinois Supreme Court has held that the

1 legislative process itself is the only process that anyone  
2 is entitled to when it comes to legislation. There is no  
3 right belonging to an individual to participate in the  
4 legislative process. That is from the Illinois Supreme  
5 Court and the cite is Fumarolo v. Chicago Board of Education  
6 142 Ill.2d 54. There is no individual right to participate  
7 in the legislative process, due process or otherwise.

8 Fumarolo cites and adopts the reasoning that was set  
9 forth by the United States Supreme Court in two cases that  
10 are worth quoting to give a flavor or of what it means.  
11 United States v. Locke 471 U.S. 84. At Page 108, the  
12 Legislature "provides Constitutional adequate process simply  
13 by enacting the statute, publishing it, and to the extent  
14 the statute regulates private conduct affording those within  
15 the State a reasonable opportunity both to familiarize  
16 itself with the general requirements imposed, and to comply  
17 with those requirements or punishment imposed."

18 THE COURT: Let me stop you right there. How are  
19 citizens or Legislatures themselves suppose to familiarize  
20 themselves with something that has been on the books for  
21 almost a year and was changed within two days and had no  
22 public hearings or opinions, or how are we suppose to get  
23 legislative intent out of that? There is nothing. How are  
24 we suppose to get there?

1 MR. KINKEAD: That's a good question. I thought you  
2 might ask it. I have an answer ready. What the U.S.  
3 Supreme Court is referring to here is the opportunity of  
4 people to familiarize themselves with how they are being  
5 regulated before they are punished for their conduct for not  
6 complying with regulation.

7 THE COURT: How are they suppose to become familiar  
8 with it in two days?

9 MR. KINKEAD: They are all familiar with it. They  
10 hired Mr. DeVore and filed a lawsuit within less than two  
11 weeks. To the extent there is any concerns, that's a  
12 defense for an individual to raise in a criminal prosecution  
13 to say that my due process rights have been denied because I  
14 didn't know that the conduct that you are now trying to hold  
15 me liable for is conduct that I can be held liable for.  
16 That is the due process that's being referred to here with  
17 familiarity.

18 THE COURT: Is that a different due process?

19 MR. KINKEAD: It's all under the umbrella of due  
20 process. Due process requires different things in different  
21 circumstances. There is no due process to participate in  
22 the legislative process. After the legislation becomes law,  
23 there is a due process right and this is recognized in many  
24 cases. There is a due process right to know whether or not

1 your conduct violates the law. That's also to know what the  
2 law is. So there has to be extraordinary circumstances for  
3 there to be a due process violation.

4 For example, the legislation passes at midnight at  
5 12:01 while someone is asleep. They are arrested for  
6 violating it. That's would be a due process concern. But  
7 the fact that Plaintiffs have organized against this in such  
8 a short time, they know very well what rights are being  
9 taken away from them and what rights they think have been  
10 violated. They hired a lawyer to represent them. I think  
11 that pretty clearly shows familiarity with what this  
12 legislation is. They have taken steps today to protect  
13 themselves from what they say is an undue process under the  
14 law. That's all that's required under due process.

15 THE COURT: Okay.

16 MR. KINKEAD: So as I said, there was one other case  
17 that was cited, U.S. Supreme Court case that's worth  
18 pointing out to Your Honor. This case of Atkins v. Parker  
19 472 U.S. 115. The quote is at 130, quote the Legislative  
20 determination in the law what has passed provides all the  
21 process that is due. The process that's due before the law  
22 is passed is simply the Legislature passing it. Afterwards,  
23 the due process we just talked about to know to a certain  
24 extent what's being criminalized. That's the due process.

1           The important thing the Plaintiff brought here is  
2 what happened before the Act was passed. It's actually the  
3 essence of our representatives of democracy that we elect  
4 representatives to go to Springfield and participate in that  
5 process for us. We don't have an individual right to show  
6 up and be present. This claim is squarely foreclosed by  
7 Illinois Supreme Court precedent.

8           I'm going to try to speed things a little bit here,  
9 Your Honor, and move onto Count IV, which is the Equal  
10 Protection Act, unless Your Honor has any further questions  
11 about Count III?

12           THE COURT: No.

13           MR. KINKEAD: One final count, Count IV, and this is  
14 an equal protection claim. That boils down essentially to  
15 this, so the ban is on possessing and selling these weapons  
16 that are the subject of this legislation, and the magazines  
17 that are the subject of this legislation. It exempts, it  
18 doesn't apply to certain people; peace officers, retired law  
19 enforcement, members of the armed services, prison wardens.

20           The Plaintiffs argument, as you heard, is that this  
21 differential treatment between peace officers on the one  
22 hand and everyone else on the other hand, this differential  
23 treatment is subject to strict scrutiny under the equal  
24 protection clause because it infringes on the fundamental

1 right to bare arms secured by the U.S. Constitution. So  
2 like the others, Your Honor, this is squarely foreclosed by  
3 precedent. "Repackaging a claim that is more appropriately  
4 brought under a different Constitutional provision, here the  
5 Second Amendment as an equal protection claim, will not  
6 usurp the legal framework that is traditionally implied."  
7 That is Culp v. Raoul, the Attorney General, 921 F.3rd 646.  
8 It's a case from the 7th Circuit Court of Appeals 2019, and  
9 the essence of that holding put another way is that an equal  
10 protection claim premised on a violation of a Second  
11 Amendment to the U.S. Constitution, is not cognizable as an  
12 equal protection claim. It cannot proceed as an equal  
13 protection claim. If it is brought at all, it must be  
14 brought under the Second Amendment.

15 A equal protection claim based on an infringement of  
16 Second Amendment rights is no equal protection claim at all.  
17 If those rights are to be vindicated, they are to be  
18 vindicated under the Second Amendment. The Culp case I  
19 mentioned is just one in a long string of cases that stand  
20 for a pretty clear Constitutional principle, and that is  
21 that a claim based on a violation of the Constitution must  
22 be brought under the most specific applicable amendment.

23 I'll give you two cites for that proposition Graham  
24 v. Connor 490 U.S. 386. It's a 1989 U.S Supreme Court case.



1 And Conyers v. Abitz. That's 416 F.3rd 580, and it's a 2005  
2 case from the 7th Circuit Court of Appeals. Both of those  
3 cases along with the other one I've cited stand for the  
4 proposition that a Constitutional claim must be brought  
5 under the most specific applicable amendment. Here, that is  
6 the Second Amendment to the U.S. Constitution but there is  
7 no Second Amendment claim in the litigation. Regardless,  
8 the equal protection claim cannot go forward. It's not  
9 cognizable under the case law.

10 By the way, Your Honor, I'm sure you know this, the  
11 reason why I'm citing these Federal cases to you is because  
12 our Supreme Court, the Illinois Supreme Court, has told us  
13 that for equal protection purposes as well as due process  
14 purposes, we follow the U.S. Constitution in lock step. So  
15 Federal cases are just as persuasive as any other because  
16 Federal equal protection law is the same as Illinois equal  
17 protection laws.

18 THE COURT: You are saying that the Illinois  
19 Constitution is following the Federal Constitution. Where  
20 is this in the Federal Constitution for this type of gun  
21 ban?

22 MR. KINKEAD: Where did the authority to do this  
23 come from?

24 THE COURT: Where is there a gun ban similar to this

1 in the Federal Constitution?

2 MR. KINKEAD: The Constitution doesn't ban anything.  
3 But there was, Federal Congress, Federal Legislature banned,  
4 I know it's a controversial term, but they banned those  
5 weapons for a good ten years in the 1980's.

6 THE COURT: Where is it now? Is there a Federal  
7 Constitutional ban similar to this one that we are talking  
8 about in the Federal Constitution?

9 MR. KINKEAD: I'm not sure what you're asking. If  
10 what you're asking is if a Second Amendment claim challenge  
11 to this legislation has been filed would we be defending it  
12 as not violative to the Second Amendment, yes, we would be  
13 saying this does not violate the Second Amendment. In fact,  
14 I believe we will be in court in the next few days making  
15 exactly that argument. So yes, this is our position that  
16 this law does not infringe on the Second Amendment to the  
17 Constitution.

18 If you are asking whether or not there is currently  
19 in law a Federal ban on these types of weapons, the answer  
20 is no, but there use to be one. And there is currently a  
21 ban on these types of weapons in I think eight or nine other  
22 states. So we are not by any means an outlier on this type  
23 of legislation.

24 THE COURT: Just trying to following your argument.

1 You were arguing that the Federal Constitution and the  
2 Illinois Constitution were consistent. I'm asking where  
3 this one would be found, but there is currently not one,  
4 correct?

5 MR. KINKEAD: I'm not understanding the question.

6 THE COURT: There is currently not a similar ban on  
7 the books on the Federal Constitution side similar to this,  
8 correct?

9 MR. KINKEAD: You're correct. The Federal  
10 Constitution doesn't ban anything. It's a series of rights  
11 enumerated, one of which is the Second Amendment that  
12 enumerates the right to bare arms. And there are many  
13 arguments we have about why this legislation does not  
14 infringe --

15 THE COURT: I'm pointing out the inconsistency is  
16 all I'm doing. The Federal Constitution does not ban these  
17 types of weapons, yes or no?

18 MR. KINKEAD: The Federal Constitution permits a ban  
19 on these type of weapons.

20 THE COURT: But it does not ban them?

21 MR. KINKEAD: No.

22 THE COURT: Go on.

23 MR. KINKEAD: So that's the first problem it's not  
24 cognizable as an equal protection claim, but there is a

1 second problem with it as well. "When a party bringing an  
2 equal protection claim fails to show that he is similarly  
3 situated to the comparison group, his equal protection  
4 challenge fails." That case is In Re M.A. 2015 IL 118049  
5 Paragraph 26. That's the Illinois Supreme Court of course.

6 What that case stands for is an uncontested  
7 proposition that when you're bringing an equal protection  
8 claim, you have the burden in the first instance before  
9 anything else happens in that claim to make a showing that  
10 you are similarly situated to the comparison group. The  
11 people being treated differently that you think should be  
12 treated the same as you, or you should be treated the same  
13 as them.

14 There is no attempt made by Mr. DeVore to make this  
15 showing. He did not attempt to show that his clients are  
16 similarly situated to the exempt categories of people in the  
17 legislation. He didn't say anything about it. That was his  
18 burden. He did not make the showing. For that reason alone  
19 he hasn't shown there is a likely success on the merits. I  
20 think the reason why he didn't bother to try to make that  
21 showing is because there is no way that they can succeed.  
22 This also is addressed by precedent. So the people in the  
23 professions that are exempted from these provisions of the  
24 legislation, they are in professions that anything else

1 entails substantial firearm training. How to safely handle  
2 and store what the Legislature has defined as assault  
3 weapons.

4 There is several other states that have a ban on  
5 these types of weapons. Many of these bans have been in  
6 effect for a long period of time, and most of the other  
7 states exempt the same categories of people that we do in  
8 Illinois. And so that's given rise to litigation making  
9 similar claims to the one that Mr. DeVore mentioned and  
10 those courts have resoundingly rejected that argument.

11 He referenced a few of the cases, Kolbe v. Hogan 849  
12 F.3rd 114, the Fourth Circuit Federal case from 2017  
13 involving a challenge to the Maryland assault weapons ban.  
14 The exempted professions quote are not similarly situated to  
15 the general public with respect to the assault weapon and  
16 large capacity magazine ban by the statute.

17 THE COURT: Other states are advisory at best, so  
18 I'm not interested in what other states are doing. If the  
19 U.S. Supreme Court had a case on point, I would love to hear  
20 that.

21 MR. KINKEAD: I don't believe any of these have  
22 reached the U.S. Supreme Court. I think Bruen was the first  
23 in about ten years. These cases are still persuasive. As I  
24 told you, the Illinois Constitution equal protection claim

1 moves in lock step with the Federal. So these cases involve  
2 the Federal equal protection clause are persuasive authority  
3 to the extent you find them persuasive, for the claim  
4 brought here. I do think it's relevant, Your Honor, that I  
5 can cite these cases, you're not bound by them, but I can  
6 cite these cases finding in favor of our position, but he  
7 can't cite any cases in his favor. I think that is relevant  
8 to the success on the merits.

9 I'm going to sum up real quickly on the equal  
10 protection and then I'll sit down. Two reasons why the  
11 equal protection claim will not succeed, first, equal  
12 protection claim based on an infringement of a Second  
13 Amendment right is not cognizable as an equal protection  
14 claim. Instead, it must be brought under the Second  
15 Amendment or not brought at all.

16 The second point, even if the Court were to apply  
17 the equal protection analysis to this claim, it will still  
18 fail because Plaintiffs do not bother to make the showing  
19 that the Illinois Supreme Court requires them to make. They  
20 didn't even bother to attempt to show that they are  
21 similarly situated to the people that are exempt to the  
22 possession. Multiple courts have rejected that argument.  
23 No court has found in favor of what the Plaintiffs seek  
24 here. Unless you have any further questions, I'm happen to

1 sit down.

2 THE COURT: No further questions.

3 MISS BAUTISTA: I'm going to address irreparable  
4 harm and inadequate remedy at law which courts have  
5 regularly addressed those together, so both are applicable  
6 here. Plaintiff has not shown that they are subject to  
7 irreparable harm by the passage of the Act and, you know, in  
8 Plaintiffs TRO motion, which is only three pages, Paragraph  
9 3 is the only one that addresses what irreparable harm the  
10 Court is suppose to consider.

11 And they say Plaintiffs are being immediately and  
12 irreparably harmed each and every day in which they continue  
13 to be subjected to the Act and these harms are continuing  
14 transgressions against their fundamental rights to bare  
15 arms. But the Act hasn't affected the right to bare arms.

16 Those individual Plaintiffs who already possessed  
17 the assault weapons that are listed in this Act can continue  
18 to possess the assault weapons and don't even have to  
19 register that they own these assault weapons until January 1  
20 of 2024. So even if someone was going to argue that that is  
21 a harm in and of itself having to register the weapon,  
22 that's not in effect yet. They are not at risk of eminent  
23 harm as a result, and that doesn't necessitate emergency  
24 relief.

1           And for those who sell assault weapons, at most, we  
2 would be looking at a reduction in sales but notably, Your  
3 Honor, we don't have any affidavits in front of you with any  
4 information or even any allegations in either the verified  
5 TRO or the verified complaint arguing how many of these  
6 assault weapons do they sell a year? How many do they sell  
7 to individuals versus to the United States Government? We  
8 don't have any of that information to be able to assess  
9 that, and it's Plaintiffs burden here to show that they  
10 would be irreparably harmed.

11           THE COURT: Counsel, isn't a reduction in sales an  
12 immediate and irreparable harm?

13           MISS BAUTISTA: No, Your Honor, because it would  
14 have to be a reduction so great that it essentially puts the  
15 Plaintiff out of business. When money can adequately  
16 compensate one for our harm, then that is, that is not  
17 irreparable, and we've cited this in our brief. Irreparable  
18 harm only exist when monetary damages cannot adequately  
19 compensate the injury and the injury cannot be measured by  
20 pecuniary standards. And that is Happy R Securities v.  
21 Agri-Sources.

22           And then a Fifth District case which stated that an  
23 injunction cannot be granted when the harm can be  
24 compensated adequately with monetary damages with a



1 reasonable degree of certainty. Ajax Engineering v. Sentry  
2 Insurance.

3 So if you look at the Act, and Plaintiffs attach  
4 this to their complaint, it's not that gun stores cannot  
5 sell assault weapons, they can sell them or transfer them to  
6 any of the categories of people that Mr. Kinkead just  
7 discussed, the law enforcement individuals who are exempted  
8 from the Act, but they can also sell them and transfer them  
9 to the United States or any department or agency thereof,  
10 and they can sell and transfer them in another state or for  
11 export.

12 There are any number of categories of both  
13 individuals and the governmental entities and states and  
14 individuals out of the state that these guns can be sold to.  
15 And again, there is no information stating that these, they  
16 are at eminent risk of being put out of business because of  
17 the Act that's at issue here.

18 THE COURT: Counsel, isn't taking part of their  
19 market away damage to their business? Won't that  
20 necessarily take away from their bottom line?

21 MISS BAUTISTA: The harm would have to be  
22 irreparable in order to warrant a TRO. It cannot be  
23 compensated by monetary damages. First of all, we have no  
24 information saying that their businesses will be harmed in

1 any way, shape, or form.

2 We don't know that there will be a reduction in  
3 their bottom line. We don't know that there will be reduced  
4 profits, because there is no information before Your Honor  
5 regarding that.

6 THE COURT: Counsel, wouldn't that be the purpose of  
7 having an emergency to prevent a business from going out of  
8 business before that happens? Because once a business is  
9 out of business, there is no way to fix it. There is  
10 absolutely nothing to change, wouldn't you agree?

11 MISS BAUTISTA: Yes, Your Honor. However, the Fifth  
12 District has told us that we cannot just speculate on the  
13 possibility of injury. In Smith v. Department of Natural  
14 Resources 2015 Ill.App.5th 140583 Paragraph 27, the  
15 necessary showing of irreparable injury "is not satisfied by  
16 proof of a speculative possibility of injury and such relief  
17 will not be granted to allay ungrounded fears or  
18 misapprehension".

19 There is a First District case In Re Marriage of  
20 Slocum, allegations of mere opinion, conclusion, or belief  
21 are not sufficient to show a need for injunctive relief.  
22 Here we don't even have conclusions or beliefs or fears.  
23 All we have is a statement that they are subject to  
24 immediate and irreparable harm to their fundamental right to

1 bare arms. We don't have any information alleging any  
2 possibility of a decrease in sales or profits or that their  
3 businesses will be put out of business as a result of this  
4 Act. It has not been alleged.

5 So even if we are going to speculate as to a  
6 possible injury, which the Fifth District tells us not to  
7 do, but even if we are to speculate and say well, it makes  
8 sense that they won't make as much money because they sell  
9 the weapons now and they won't be able to sell them to as  
10 many people, they'll still be able to sell them, just not to  
11 as many people. Sure, there maybe will be some harm to  
12 their bottom line. That can be compensated by money and  
13 therefore is not irreparable harm. It's not irreparable  
14 harm because first, we are speculating regarding any  
15 possible injury; and second, because any possible injury to  
16 the bottom line can be compensated with monetary damages.

17 Now turning to the individual Plaintiffs, Your  
18 Honor, I've already discussed briefly that those who possess  
19 the assault weapons listed in the Act can still continue to  
20 possess the weapons. Those who wish to purchase assault  
21 weapons can still bare arms, and that's an important point,  
22 Your Honor, because what they alleged is that they are being  
23 harmed by their right to bare arms, but District of Columbia  
24 v. Heller says that the Second Amendment does not provide

1 quote a right to keep and carry any weapon whatsoever in any  
2 manner whatsoever and for whatever purpose. And that's 554  
3 U.S. 570 at 626.

4 The collection of a particular weapon is not what's  
5 protected by the Second Amendment. It's the right to keep  
6 and bare arms generally. Not a specific weapon. And in  
7 Pena v. Lindley, which is an Eastern District of California  
8 Court from 2015, stated that the selection of particular  
9 arms is not part of the right to bare arms. And that's 2015  
10 WL 854684. So even those who don't currently possess an  
11 assault weapon that is prohibited under the Act still have a  
12 right to bare arms.

13 So therefore, it is not irreparable harm to allow  
14 this to go forward. The gun stores are still able to sell  
15 assault weapons, just not to specific people. They are able  
16 to sell them to people in the State of Illinois who are law  
17 enforcement officers. Mr. Kinkead discussed the category of  
18 those people they are allowed to sell them to. The United  
19 States Government and it's agencies. They are allowed to  
20 sell them out of state. They are allowed to export them.  
21 So it doesn't mean that they are holding assault weapons  
22 that they can't possibly sell. The people who already  
23 possess assault weapons can continue to possess assault  
24 weapons, and those who wish to purchase assault weapons

1 still can purchase arms, just not these specific ones.

2 THE COURT: Counsel, since you and co-counsel wish  
3 to compare to the U.S. Constitution, where in the U.S.  
4 Constitution does it differentiate which arms you can bare?

5 MISS BAUTISTA: That would be done through  
6 legislation not the U.S. Constitution. The Second Amendment  
7 specifically says there is a right to keep and bare arms.  
8 And then as Bruen has stated and Heller, that states are not  
9 prohibited from regulating which guns people can buy, how  
10 they can buy them, whether they need a license to purchase  
11 the guns, whether there is a point of purchase background  
12 check.

13 Bruen specifically says that regulation is allowed  
14 under the Second Amendment as long as it is not so  
15 exorbitant that it essentially takes away the right to bare  
16 arms. And that's the same thing the Heller court said in  
17 regards to the D.C. laws that the Court found ultimately led  
18 on a ban of an operable handgun in the home. No, you need  
19 to have an operable handgun in the home in order to be able  
20 to exercise your right to possess a gun because an  
21 inoperable handgun is essentially not being able to exercise  
22 your Second Amendment rights.

23 Here people can still possess any number of  
24 firearms. It's just specific ones that they cannot possess.

1 It does not amount to a total prohibition on exercising your  
2 Second Amendment rights. But this leads back to the point  
3 that Mr. DeVore acknowledged in his argument and Mr. Kinhead  
4 accurately in his, that you can't bury a Second Amendment  
5 claim in a due process claim or equal protection claim.  
6 Plaintiffs are not bringing a Second Amendment claim in this  
7 case. If they were, we would be happy to discuss that. And  
8 we have gone partially down the path of discussing that, but  
9 Plaintiffs are not bringing a Second Amendment claim. They  
10 are bringing single subject claims, an Enrolled Bill  
11 Doctrine claim, a due process claim, and equal protection  
12 claim. And we've still shown that their right to bare arms  
13 is not being infringed here by the Act.

14 But for the reasons that we've discussed, Your  
15 Honor, Plaintiffs have not shown irreparable harm from the  
16 Act. They can still possess the weapons that they own.  
17 They can still purchase any number of weapons that are  
18 currently on the market, and gun sellers can still sell  
19 these guns, albeit to a select group of people. And for  
20 those reasons, Your Honor, we believe the TRO should be  
21 denied.

22 THE COURT: Mr. DeVore, would you like to comment?

23 MR. DEVORE: Please, Judge. I actually agree with  
24 my colleague, even though they tried desperately to go down

1 that rabbit hole. We are not bringing a Second Amendment  
2 claim today. This statute is attempting to implicate those  
3 rights so it is a fundamental right that is at issue. When  
4 you deal with equal protection analysis, what type of right  
5 is being impacted by that legislation determines the level  
6 of scrutiny.

7 But Mr. Kinkead went way off the rails when he was  
8 trying to say that we are obligated to bring a Second  
9 Amendment claim. No. We are not. And he, I think they may  
10 disagree with each other because there was an  
11 acknowledgement this is not a Second Amendment claim, but it  
12 is what's at play. It's a very important distinguishing  
13 characteristic, Judge.

14 I'm going to go back and deal with, before I get to  
15 irreparable harm and issues at the end, I want to go back to  
16 some of the things that Mr. Kinkead talked about. Let's go  
17 to the single issue rule. Without providing -- and you  
18 should take a quick look at the Wirtz case, Judge. You'll  
19 make quick disposal of it. He says well, this is an Act  
20 regarding Firearm Regulation. That's what he said. And I'm  
21 scouring through the documents, the public record because  
22 Your Honor actually said, where do we find intent? We don't  
23 find it in the record. Mr. Kinkead doesn't get to come here  
24 on behalf of his clients and arbitrarily say this is what we

1 were doing. If you go into the record and actually look at  
2 the Act that was passed, it says at the top, it's subject is  
3 an Act Regarding Regulation. It started that way and it  
4 ended that way. They did not change this Act. Which we  
5 could have argued and quibbled about. They didn't change  
6 the subject at the last minute. They left the subject the  
7 same. So if you look at it, it says an Act Regarding  
8 Regulation.

9 I don't know where the Firearm Regulation comes  
10 from. It's nowhere in the public record. It's a  
11 conveniently, and I think I even pled it, self-serving  
12 choice by the Defendants to try to pigeon hole the single  
13 subject issue. The record speaks for itself. The Court can  
14 look at it. Exhibit E as passed Line 1 an Act Concerning  
15 Regulation. That is an overbroad topic because in the Wirtz  
16 case, if you actually read it, they ended up finding a  
17 violation of the single issue rule. An Act Concerning  
18 Regulation cannot stand. It cannot stand. It doesn't pass  
19 the first threshold.

20 And since it can't pass the first threshold, the  
21 Court can't even get to the second threshold of whether  
22 these drug trafficking investigations, human trafficking  
23 investigations. They try to argue human trafficking and  
24 drug trafficking involves firearms. Is that in the record



1 anywhere? No. You won't find anything in the record of the  
2 Legislature, which is why they are not here. I'm going to  
3 keep pointing it out. They are not here. It fails because  
4 the subject is an Act Regarding Regulation. Started that  
5 way. Ended that way.

6 Now there was a suggestion that you look at the  
7 subject as a final product. You don't look at it as it  
8 started. So you look at all of the various changes to the  
9 law that was made and say well, they relate to each other.  
10 I think we can quibble about that but for today's purposes,  
11 the Court doesn't get there. There is no authority that  
12 says you do not when it comes to single subjects on the  
13 second tear of the analysis compare how the Act originated  
14 to how it ended. There is no authority that says that on  
15 point. I hope the Supreme Court will clarify that given the  
16 gamesmanship that the Legislature has engaged upon, but as  
17 of today, there is no authority that tells you that you  
18 can't say that changing the subject matter of the original  
19 bill to something completely unrelated to the final product  
20 violates single subject on the second tear of the analysis.  
21 There is nothing binding that says you can't.

22 But as to the first point, the first tear of the  
23 analysis, is it a legitimate subject? Because the case law  
24 says -- let me go back to it, sir, the case law actually

1 says while the Legislature is free to choose subjects  
2 comprehensive in scope, which is true, the single subject  
3 requirement may not be circumvented by selecting a topic  
4 that is so broad that the rule is evaded as a meaningful  
5 Constitutional check. If this bill would have started as a  
6 regulation concerning firearms, and it ended that way, I  
7 think they would probably be okay. But it didn't, Judge.  
8 Do not take Mr. Kinkead's word for what this is an Act  
9 regarding regulation of. I ask you to look to the record  
10 itself. If you look at the exhibit as it started on January  
11 28, and if you look at the exhibit as it ended on January 10  
12 of 2023, it says an Act Concerning Regulation. We have  
13 established that likelihood, Judge.

14 And again, I'm going to point out again when we are  
15 talking about intent, and you brought it up, Judge, what is  
16 the intent? What is the purpose of this bill? I don't  
17 know. I don't know. I know what I read in their pleading,  
18 which again is not something, I've never seen any juris  
19 prudence that says this Court should glean the intent of the  
20 bill based on what the attorneys defending the bill says  
21 that it is. They write in their pleading that you have  
22 before you it's to try to limit the number of people that  
23 have access to these weapons.

24 When we get to equal protection, what does training

1 have to do with that? What does limiting the number of  
2 people that have access due to whether they are trained or  
3 not because if training is an indication of your right to  
4 have them is retained, then just put a training requirement  
5 in. Because trained people can do bad things just like  
6 untrained people. You can't determine the intent, Judge.  
7 You can't do it.

8 As to the three readings rule, I've honestly asked  
9 myself this question. I understand my colleague's argument  
10 that you are absolutely foreclosed. They didn't provide any  
11 authority to that, but the Supreme Court said it and I have  
12 it here because it's the Geja's Cafe case of 1992. If the  
13 General Assembly continues it's poor record of policing  
14 itself, we reserve the right to revisit the issue on another  
15 day to decide the continued propriety of ignoring this  
16 violation.

17 And in the 2003 case of Friends of Parks v. Chicago  
18 Park District the Supreme Court said again, the Legislature  
19 did show remarkably poor self-discipline but the record they  
20 had in front of them on that day was not sufficient to which  
21 they could potentially reconsider this issue.

22 The fact that the Supreme Court left that door open  
23 does that stand for the proposition that this Court can't  
24 consider it and it has to just eventually say, we deny your

1 relief. Let the Supreme Court bring it up? You can answer  
2 that question. It's only one of four reasons we are arguing  
3 likelihood of success.

4 Procedural due process. Once again, my colleague is  
5 not wrong when he says the legislative process is, in fact,  
6 the process that we as citizens are entitled to under  
7 procedural due process. It's true. The legislative process  
8 is what we as citizens have a right to expect. And to  
9 suggest that well, any other due process only triggers after  
10 they pass a law, the proposition is they can do whatever  
11 they want to pass a law. No matter how violative it is, and  
12 you can go argue about that after the fact like we are  
13 sitting here today arguing to you. We don't have a right as  
14 citizens of the State of this Nation to be able to  
15 adequately through our representatives or otherwise  
16 participate in the passage of laws. That's what they are  
17 saying.

18 This bill can go through the Legislature for 345  
19 days and as an innocuous insurance bill and at 3:00 on a  
20 Sunday afternoon, strip it, and replace it, and pass it  
21 within 48 hours. We don't have any right to expect that our  
22 legislative process is more in conformity with  
23 Constitutional principles. I disagree, Judge. There is no  
24 authority that they can cite that says we don't have a right

1 to expect that they follow those principles. None. They  
2 skirt around it. And they try again. They only have 24  
3 hours. But none of that case law says it's not a violation  
4 of due process. A meaningful opportunity for citizens to  
5 participate in the legislative process.

6 When I say participate, that doesn't mean them  
7 directly. It could mean their representatives, because  
8 citizens do have a right to participate. They can present  
9 witness slips. Things of that nature once a committee gets  
10 ahold of a bill. They got ahold of this bill Sunday at  
11 3:00. They changed it a few times, et cetera. There is no  
12 doubt that there is an absolute intentional effort by the  
13 Legislature of the State of Illinois to circumvent the  
14 legislative process. And I have argued on behalf of my  
15 clients to you that it is violative of their procedural due  
16 process rights. If the Supreme Court of this State wants to  
17 say otherwise, let them say otherwise. For now, Judge, I  
18 think it's crystal clear we all understand the gamesmanship  
19 that our legislative process has turned into. It's  
20 disparaging and in violation of everything that we know  
21 about due process of law.

22 Again, as to the equal protection claim, they cite a  
23 bunch of -- they don't cite a 7th Circuit case to you, which  
24 would be a little bit more persuasive. They cite some out

1 of other appellate courts of the Federal circuit. But all  
2 of these cases were before Bruen. You ought to read the  
3 Bruen case. What Bruen pretty much says is that you are  
4 going to have -- Bruen really made it clear that our Second  
5 Amendment rights are now not a second class right. And if  
6 you are going to have regulation on them, that regulation  
7 needs to comport to the history and traditions of our  
8 nation. We are not arguing that today, but these cases that  
9 they cite about well, these regulations from the past have  
10 allowed for these trained people to be exempt. Again, that  
11 was before Bruen and it's not really on point today.

12 Trained individuals we say. A prison warden is  
13 exempt. They get those jobs, those administrative jobs  
14 through political appointment. Are they trained like a navy  
15 seal? Are they trained like even a member of our drug task  
16 force for the Illinois State Police? No. The Department of  
17 Corrections employees, most of them aren't allowed to carry  
18 a weapon at work. Do they go through some training?  
19 Certainly.

20 Just for political, or not political, I'll save that  
21 word for later, conjecture, Judge. How many people are  
22 trained firearms conceal and carry men and women in this  
23 state are highly trained. They are not exempt so if  
24 training is really the indication that they are trying to

1 satisfy, which it's not, there is no intent that says  
2 training is the issue, how is that resolved by just carving  
3 them out and saying you can keep your rights because you  
4 have had some training maybe, but everybody else, your  
5 individual right to bare arms for self-defense is going to  
6 be impaired. It doesn't make any sense. It's absolutely  
7 irrational, and I've respectfully, again, my colleagues here  
8 are doing their job. I respect them, but I respectfully  
9 submit to the Court there is only one connection between  
10 those persons that are exempt, and you read what I thought  
11 it was. Is it true or not? I don't know. But how does  
12 someone, Judge, who works in a jail, not disrespecting that  
13 job at all. They work in a jail. How is their rights to  
14 bare arms different than this man sitting right here? It's  
15 not. It's not at all.

16 . This clearly violates equal protection which does  
17 not have to be brought before this court on a Second  
18 Amendment violation. All I have to say is what is the right  
19 that's being implicated in this case, and that is again, the  
20 right to bare arms which includes the right to purchase, the  
21 right to sell, the right to transfer, et cetera.

22 I'm getting to their -- there is no injury. I  
23 really like this one, Judge. No injury. For those  
24 Plaintiffs that have businesses, there is no injury. They

1 can still sell other stuff. Guess what? They can still  
2 sell these weapons to their exempt categories. There is no  
3 injury. Suggesting that we ought to quantify it somehow as  
4 to whether or not that injury needs to be quantified to  
5 dollars little alone the fact that they are being prohibited  
6 from a pure equal protection, they are being prohibited from  
7 selling those but exempt persons can sell all they want. A  
8 guy who works or girl who works in the county jail can sell  
9 all of the .50 calcs they want, but these businesses cannot.  
10 It's irrational. It makes no sense.

11 Individuals. Well if you have one right now, you  
12 can still possess it, and there is no immediate harm because  
13 you don't have to register it for a year. We are not  
14 arguing that's the immediate harm. Don't forget in 90 days,  
15 sir, you can only possess that weapon on your own private  
16 property, someone else's private property, a shooting range  
17 or a gun dealer. And be careful, because if you violate  
18 that, you're going to be a criminal. Potentially a felon.

19 You can't go by a new one. A citizen can't buy one.  
20 Because you're not trained at least for these categories. I  
21 think it's a misnomer to say it's because they have adequate  
22 training, these groups, because you're carving out all kind  
23 of other citizens regardless of their training, but you  
24 can't go buy one. Retired law enforcement officers. I love



1 law enforcement, you retired 30 years ago, go buy all you  
2 want. Need some .50 cal? Go buy a couple. It just doesn't  
3 make sense. It makes no sense whatsoever. It doesn't even  
4 survive rational basis let alone strict scrutiny.

5 You don't have to decide today those issues. You  
6 don't have to decide today. My clients have a right to be  
7 treated the same as every other citizen in this State when  
8 it comes to their individual rights to bare arms. That has  
9 been infringed. Every day it's infringed. It's  
10 irreparable. There is no adequate remedy except an  
11 injunction from you.

12 We have raised four separate and distinct legal  
13 issues for you. Single issue rule. Three readings. Due  
14 process. Equal protection. All you have to find, sir, is  
15 that there is a likelihood in your mind that one of those  
16 arguments will carry the day. I don't to prove to you today  
17 it carries the day. You just have to find there is a  
18 likelihood it carries the day.

19 I'm asking you to enter this injunction that allows  
20 them to maintain their rights. Maintain them. 866  
21 Plaintiffs to maintain their rights on par with the  
22 thousands of citizens that are still by the legislative fiat  
23 also exempt. Plaintiff rests.

24 THE COURT: Counsel, final word.

1           MISS BAUTISTA: I just ask that you take this under  
2 advisement until such time as you have had an opportunity to  
3 review our brief and the cases we cited therein. We filed  
4 it as soon as we could after receiving an email from Mr.  
5 DeVore that this would be up at 11:00 a.m. today. We  
6 apologize we didn't get it to Your Honor before you took the  
7 bench this morning.

8           THE COURT: Mr. DeVore, Counsel, I am going to take  
9 this under advisement. It's not going to be today. I will  
10 have a ruling for you before the end of the week. I realize  
11 this is Wednesday. I have been in court all day. I have  
12 court all day tomorrow. I will have a ruling by Friday. I  
13 want a chance to review case law. Whether or not I get to  
14 your brief, that was not part of this. I will try to get to  
15 that as well.

16           MR. DEVORE: Thank you, Judge.

17           THE COURT: Mr. DeVore, you have a proposed order?

18           MR. DEVORE: I presented one. It's in the record.  
19 You can take a quick look. We presented a proposed order.  
20 If we need to email it in a Word document if you might want  
21 to consider it in any capacity.

22           MR. KINKEAD: If I may, I think that was a proposed  
23 order for a TRO without notice.

24           MR. DEVORE: I sent a second one.

1 MR. KINKEAD: I'm sorry. I didn't see that.

2 MR. DEVORE: I'll send it to you.

3 MR. KINKEAD: I appreciate that.

4 MR. DEVORE: If I can send it in Word document.

5 THE COURT: I'm not seeing it in the record. It may  
6 be there.

7 MR. DEVORE: I'll email it to Your Honor and Counsel  
8 if that's okay.

9 MISS BAUTISTA: May we also have the opportunity to  
10 submit a proposed order?

11 THE COURT: You beat me to the punch. You were  
12 next. You're welcome to submit a proposed order as well. I  
13 will have a ruling by Friday at the close of business.

14 MR. DEVORE: Thank you, sir.

15 THE COURT: Any questions from any of the parties?

16 MISS BAUTISTA: Is there a time by which you need  
17 the proposed order and or an email?

18 THE COURT: I don't want to give my email to the  
19 world. Step forward and I'll write it down for you.  
20 Anything else from the parties?

21 MR. DEVORE: No, thank you, sir.

22 THE COURT: That will be all. Court is in recess.

23 (Hearing adjourned)  
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STATE OF ILLINOIS                    )  
  ) ss.  
FOURTH JUDICIAL CIRCUIT            )

I, Lori A. Hess, a court reporter for the Fourth  
Judicial Circuit of the State of Illinois, do hereby certify  
that the above and forgoing representation is a true and  
correct transcript of the proceedings had in the above  
designated cause on the date set forth therein.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_

Court Reporter