

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
WHITE COUNTY, ILLINOIS**

DARREN BAILEY, et al.,

Plaintiffs,

V.

J.B. PRITZKER, et al.,

Defendants.

No. 2023-MR-1

ORDER ON MOTION FOR TEMPORARY RESTRAINING ORDER

Now comes the Court, having heard arguments of counsel and reviewed the Plaintiffs' Complaint and Motion for Temporary Restraining Order and the Defendants' Response thereto, and enters the following ORDER ON MOTION FOR TEMPORARY RESTRAINING ORDER.

PROCEDURAL POSTURE

On January 23, 2023, the Plaintiffs filed their Complaint for Declaratory Judgment and Injunctive Relief ("Complaint") and a Motion for Temporary Restraining Order ("Motion"). The Complaint alleges 4 (four) separate counts. Count I alleges that the Illinois State Legislature in passing HB 5471, violated the Single Subject Rule of Article 4, Section 8(d) of the Illinois Constitution. In Count II of the Complaint, the Plaintiffs allege that Illinois State Legislature, in passing House Bill 5471, violated the Three Readings Clause of Article 4, Section 8(d) of the Illinois Constitution. Count III alleges that House Bill 5471 violates the Due Process Clause of the

Illinois Constitution. Finally, the Plaintiffs allege in Count IV that House Bill 5471 violates the Equal Protection clause of the Illinois Constitution. On even date therewith, the Plaintiffs also filed Motion for Temporary Restraining Order.

On January 24, 2023, the Defendants filed a Response to Plaintiffs' Verified Emergency Motion for a Temporary Restraining Order. This Court conducted a hearing on the Motion on January 25, 2023.

HISTORY

On December 1, 2022, the Illinois House of Representatives ("House") introduced House Bill 5855 ("HB 5855"). It was referred to the Rules Committee the same day. No other actions were taken on HB 5855 except adding co-sponsors. The text of HB 5855, among other things, provided for a ban on what the bill termed as "assault weapons". Moreover, the contents of HB 5855 mirrored the text of HB 5471, which was ultimately passed and signed into law by Governor Pritzker on January 10, 2023.

House Bill 5471 ("HB 5471") was introduced on January 28, 2022, as "An Act Concerning Regulation". The primary purpose of the bill was to amend the Illinois Insurance Code. It was first read in the House on January 31, 2022. Then it was read for the second time on March 1, 2022. A third reading occurred on March 4, 2022 and was passed by the House that same day. The bill was then sent to the Illinois Senate ("Senate") where it was first read on March 7, 2022. The bill's second reading occurred in the Senate on November 30, 2022. No substantive actions were taken with respect to the bill until January 8, 2023. Beginning on Sunday, January 8, 2023, the bill underwent a litany of amendments whereby the insurance provisions were removed and replaced with the contents of HB 5855. The bill then went through its third reading in the

Senate and was subsequently passed by the Senate on January 9, 2023, with no debate or legislative history.

HB 5471, now Public Act 102-1116 (“the Act”), among other things, restricts the possession and sale of what it defines as “assault weapons” and large capacity ammunition feeding devices (high-capacity magazines). Individuals who lawfully possess assault weapons and/or high-capacity magazines must register them with the Illinois State Police by January 1, 2024, in order to comply with The Act. Additionally, The Act bans the sale or transfer of assault weapons effective upon passage of The Act.

LEGAL ANALYSIS

The party seeking a preliminary injunction or temporary restraining order must establish (1) that it has a protectible right, (2) that it will suffer irreparable harm if injunctive relief is not granted, (3) that its remedy at law is inadequate, and (4) that there is a likelihood of success on the merits. *Jacob v. C & M Video*, 248 Ill. App. 3d 654 (5th Dist. 1993). “A TRO should not be refused...merely because the court may not be absolutely certain the plaintiff has the right he claims.” *Stocker Hinge Manufacturing Co. v. Darnel Industries, Inc.*, 94 Ill. 2d 535, 541-42 (1983). “The plaintiff is not required to make out a case which would entitle him to judgment at trial” *Id.* at 542. “All that is necessary is that the plaintiff raise a fair question as to the existence of a right needing protection, leading the court to believe that the plaintiff will be entitled to the prayed-for relief if the proof presented at trial should sustain its allegations.” (Internal quotations marks omitted.) *Hutsonville Community Unit School District No. 1 v. Illinois High School Ass’n*, 2021 IL App (5th) 210308, ¶ 11.

Once the plaintiff establishes a fair question that his or her rights were violated, the plaintiff has also established a fair question that he or she would likely prevail on his claim. *Makindu v. Illinois High School Ass'n*, 2015 IL App (2d) 141201, ¶ 38. "The purpose of preliminary injunctive relief is not to determine controverted rights or decide the merits of the case, but to prevent a threatened wrong or continuing injury and preserve the status quo with the least injury to the parties concerned." *Hutsonville*, 2021 IL App (5th) 210308, ¶ 11.

I. COUNT I (Single Subject Rule)

Courts give wide latitude to legislators with respect to the subject of bills. *Johnson v. Edgar*, 176 Ill. 2d 499, 515 (1997). The requirement of singleness of subject has been frequently construed, and the applicable principles are settled. The term "subject" is comprehensive in its scope and may be as broad as the legislature chooses, so long as the matters included have a natural or logical connection. *Cutinello v. Whitley*, 161 Ill. 2d 409, 423 (1994). Additionally, defendants are not limited solely to the contents of the title of an act in offering a single subject rationale. *Wirtz v. Quinn*, 2011 Ill 111903, P. 32.

Plaintiffs allege that the Act violates the Single Subject Rule as set forth in Article IV, section 8 of the Illinois Constitution. Plaintiffs claim that the title of the Act, "an Act Regarding Regulation" is overly broad and renders the Illinois Constitution's provision meaningless. More specifically, they contend that the Act runs afoul of the Single Subject Rule because it:

- a) Ordered the criminal investigations unit to conduct investigations regarding human trafficking, illegal drug trafficking and illegal firearms tracking;
- b) Amended the law regarding the procurement of bids for certain services related to purchases of certain technology by the Illinois State Police;

c) Modifies the provision of firearms restraining orders;

d) Created new provisions in the law regarding the ban on certain semi-automatic weapons

Conversely, Defendants argue that the Single Subject Rule does not necessitate the subject be confined to the title. Additionally, Defendants submit that the proper subject of the Act can be elicited from the text of the Act. As such, Defendants claim that the subject of the Act is regulation of firearms.

While this Court agrees that the proposed subject of the Act (regulation of firearms) is broad, it does not find that it is so broad as to avoid a meaningful constitutional check on the legislature's actions. See *Wirtz*, 2011 IL 111903, ¶ 32.

The Court, therefore, DENIES Plaintiff's Motion for Temporary Restraining Order with Respect to Count I.

II. COUNT II (Three Readings)

Plaintiffs contend that the Act violates the three readings requirement of Article IV, Sec. 8 of the Illinois Constitution. More particularly, because the original text of HB 5471 addressed insurance regulation and was replaced with the text from HB 5855 without being read three times in each house after said amendments, it runs afoul of the Illinois Constitution.

Defendants counter that the enrolled-bill doctrine, which is also found in Article IV, Sec. 8 of the Illinois Constitution cures any procedural defects. In addition, Defendants argue that this Court lacks jurisdiction to hear the matter pursuant to Illinois Supreme Court precedent, and the issue may only be revisited by the Illinois Supreme Court.

This Court finds the procedural defects in the passing of the Act most concerning. The fact that the original text of the Act was introduced as HB 5855 is disconcerting at best. It is apparent that the legislature knew that it would not have time to follow the correct procedures, i.e., three readings, and pass the bill. In what seems to be a clear attempt to avoid debate and ensure lightning-like passage, they gutted the original contents of HB 5471 (insurance regulation) and replaced it with the contents of HB 5855. This Court views the actions of the legislature a blatant violation of the three readings requirement of the Illinois Constitution. However, in light of the 5th Dist. Appellate Court's recent opinion¹ on the same question, this Court finds that it lacks the authority to decide the issue in the Plaintiffs' favor. To that end, the Court DENIES Plaintiffs' Motion for Temporary Restraining Order as to Count II.

III. COUNT III (Due Process)

Plaintiffs claim that the Act violates the Due Process Clause of the Illinois Constitution. More specifically, the Plaintiffs argue that the legislature's failure to comply with the procedural safeguards of Article IV, Sec. 8 of the Illinois Constitution violates their due process rights.

Since this Court is obligated to follow the precedent of the 5th Dist. Appellate Court as set forth in Count II above, it DENIES Plaintiffs' Motion for a Temporary Restraining Order as to Count III.

IV. COUNT IV (Equal Protection)

The Equal Protection clause requires that the government treat similarly situated individuals in a similar fashion, unless the government can demonstrate

¹ 2023-MR-4, Effingham County, Illinois.

an appropriate reason to treat them differently. *People v. Ramsey*, 239 Ill. 2d 342, 409 (2010). The applicable level of scrutiny applied to an equal protection challenge is determined by the nature of the right impacted. *People v. Alcozer*, 241 Ill. 2d 248, 262 (2011). Strict scrutiny analysis applies when a fundamental right or suspect classification based on race or national origin is involved and requires a showing that the statute is narrowly tailored to serve a compelling state interest. *People v. Masterson*, 2011 IL 110072, ¶ 24. When a recognized fundamental right or suspect classification is not implicated, courts apply the rational basis standard, requiring a determination of whether the statute bears a rational relationship to a legitimate government purpose. *Alcozer*, 241 Ill. 2d at 262.

Plaintiffs allege that the Act violates the Equal Protection Clause of the Illinois Constitution because it exempts certain people without exempting others.

More precisely, the Act exempts the following individuals:

- 1) peace officers as defined by Section 2-13 of this Code.
- 2) Qualified law enforcement officers and qualified retired law enforcement officers as defined in the Law Enforcement Officers Safety Act of 2004 (18 U.S.C. 926B and 926C) and as recognized under Illinois law.
- 3) Acquisition and possession by a federal, State, or local law enforcement agency for the purpose of equipping the agency's peace officers as defined in paragraph (1) or (2) of this subsection (e).
- 4) Wardens, superintendents, and keepers of prisons, penitentiaries, jails, and other institutions for the detention of persons accused or convicted of an offense.
- 5) Members of the Armed Services or Reserve Forces of the United States or the Illinois National Guard, while performing their official duties or while traveling to or from their places of duty.

6) Any company that employs armed security officers in this State at a nuclear energy, storage, weapons, or development site or facility regulated by the federal Nuclear Regulatory Commission and any person employed as an armed security force member at a nuclear energy, storage, weapons, or development site or facility regulated by the federal Nuclear Regulatory Commission who has completed the background screening and training mandated by the rules and regulations of the federal Nuclear Regulatory Commission and while performing official duties.

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

Plaintiffs further claim that because the Act infringes on a fundamental right (right to bear arms) this Court must use strict scrutiny as the proper standard of review.

Defendants contend that Plaintiffs were obligated to bring the claim as an attack on their Second Amendment right to bear arms and not as an equal protection claim. Moreover, the Defendants even go so far as to assert that equal protection claims may *never* be brought where there exists an option to bring a claim based on the alleged violation of a constitutional right (in this case, the Second Amendment).

To say that a plaintiff could only bring a claim pursuant to a specific amendment and not as an equal protection claim would vitiate most all fundamental right claims for equal protection purposes. Equal protection claims with strict scrutiny analysis would apply only to suspect classifications claims. Moreover, plaintiffs would be forced to attack a violation of a fundamental right only under the requisite constitutional amendment. This simply cannot be the case.

Additionally, the cases cited by Defendant for the proposition that equal protection claims must be brought as attacks on a specific constitutional amendment violation are readily

distinguishable. *Culp v. Raoul*, 921 F.3d 646 (7th Cir. 2019), and its progeny are distinguishable in that they actually litigated the underlying fundamental right claim (Second Amendment). The *Culp* Court found against the plaintiffs on their Second Amendment claim prior to determining that the analysis would be the same with respect to their equal protection claim. *Id.* at 658.

That is not the case with respect to the claims before this Court. The Plaintiffs have not made a claim that the Act violates their Second Amendment right to bear arms. Instead, they chose to fashion their claim under the Equal Protection clause of the Illinois Constitution.

Defendants posit that the Plaintiffs have not demonstrated that they are similarly situated with the exempted class of the Act. That becomes an almost impossible task because the legislature gave no reasoning as to why they chose to exempt the groups of people they exempted. Without knowing the basis for the classifications, Plaintiffs are left in the dark to determine whether they are similarly situated or not. It has been speculated that the legislature chose the classifications to exempt based upon firearms training. Again, this is mere speculation because there exists no legislative history or debate record to aid this Court in understanding the foundational basis for the exemptions. Moreover, as Plaintiffs pointed out during oral arguments, it is unclear at best whether prison wardens are required to undergo *any* firearms training that might justify their exemption from the Act. Additionally, the Act exempts active-duty military members but does not exempt veterans. One would think that veterans would be as qualified and trained in firearms safety as active-duty military members.

Defendants also assert that the right to bear arms is not a fundamental right under the Illinois Constitution and, as such, should apply the rational basis standard of review. However,

the Illinois Supreme Court recently pronounced that the right to bear arms was a fundamental right under the Second Amendment of the United States Constitution. See, *Guns Save Life, Inc. v. Ali*, 2021 IL 126014, ¶ 28. It simply cannot be the case that the Illinois Constitution offers less protection to its citizenry from government intrusion than the Federal Constitution. It is well settled in American jurisprudence that a state may not impose greater restrictions on individual rights than the federal constitutional law. *Oregon v. Hass*, 420 U.S. 714, 719 (1975).

Given the fact that the Illinois Supreme Court has acknowledged that the right to bear arms is a fundamental right protected by the Second Amendment under the federal constitution, this Court finds that strict scrutiny should be applied as the proper standard of review. As such, the legislation should be narrowly tailored to serve a compelling state interest.

Since there is no legislative history for this Court to review regarding the compelling state interest or how they claim the exclusions from the Act were narrowly tailored, this Court finds that the Act fails to meet the standard. To this end, this Court finds that the Plaintiffs have established a protectable right and are likely to succeed on the merits.

IRREPARABLE INJURY

Defendants contend that there is no irreparable injury and there is an adequate remedy at law in the form of money damages. Quite frankly, the Defendants oversimplify the issues. The issue is not about the value of the firearms or the high-capacity magazine. No, the issue is the erosion of a fundamental right, the right to bear arms, by treating what appears to be similarly situated people differently. Money cannot now, nor will ever serve as a proper remedy to allow the government to erode fundamental right. See, *Rodrigue Ceda Makindu v. Ill. High Sch. Ass'n*, 2015 IL App (2d) 141201, ¶ 42. Thus, this Court finds that there is no adequate

remedy at law. Additionally, since this involves an ongoing violation of a fundamental Constitutional right, this Court also finds that the Plaintiffs will suffer irreparable harm if injunctive relief is not granted.

BALANCING OF EQUITIES

This Court must now weigh the benefits of granting the Temporary Restraining Order against the possible injury to the opposing party and its effect on public interest. *Makindu*, 2015 IL App (2d) 141201, ¶147. The Defense argues that the Act was passed to curtail mass shootings, which have become a scourge on our nation. However, there is no legislative history to the Act that may shed light on that issue. Neither have any studies been submitted or even referenced that demonstrate a ban on assault weapons and high-capacity magazines would alleviate mass shootings. Moreover, this Court is left only to speculate as to how exempting certain individuals from the Act, while not exempting others, who seem to possess similar firearms training would further the deter mass shootings. To this end, this Court finds that the equities balance in favor of the Plaintiffs.

WHEREFORE, it is hereby ordered that a temporary restraining order is entered enjoining the Defendants from enforcing or attempting to enforce any and all provisions of Public Act 102-1116 against the named Plaintiffs in this cause.

This order is binding upon all parties to this action, including their agents, officers, employees and attorneys.

So ORDERED this 2nd day of February, 2023.



T. Scott Webb,
White County Resident Circuit Judge