

No. 22A948

In the
SUPREME COURT OF THE UNITED STATES

NATIONAL ASSOCIATION FOR GUN RIGHTS, et al.,
Applicants,

v.

CITY OF NAPERVILLE, ILLINOIS, et al.,
Respondents.

**On Emergency Application for Emergency Injunction to the
Honorable Amy Coney Barrett, Associate Justice of the United States
Supreme Court and Circuit Justice for the Seventh Circuit**

**BRIEF OF AMICUS CURIAE FEDERAL FIREARMS LICENSEES OF
ILLINOIS, GUNS SAVE LIFE, GUN OWNERS OF AMERICA, INC., AND
GUN OWNERS FOUNDATION IN SUPPORT OF APPLICANTS**

C.D. Michel
Counsel of Record
Anna M. Barvir
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
(562) 216-4444
cmichel@michellawyers.com

Counsel for Amicus Curiae

May 8, 2023

CORPORATE DISCLOSURE STATEMENT

Federal Firearms Licensees of Illinois (“FFL-IL”) is an Illinois nonprofit organization. FFL-IL is not a publicly held corporation, does not have a parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

Guns Save Life is an Illinois nonprofit organization. Guns Save Life is not a publicly held corporation, does not have a parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

Gun Owners of America, Inc. (“GOA”) is a California nonprofit organization. GOA is not a publicly held corporation, does not have a parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

Gun Owners Foundation (“GOF”) is a Virginia nonprofit organization. GOF is not a publicly held corporation, does not have a parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

TABLE OF CONTENTS

	Page(s)
Corporate Disclosure Statement.....	i
Table of Contents.....	ii
Table of Authorities.....	iii
Interest of Amici Curiae.....	1
Argument.....	1
Conclusion.....	7

TABLE OF AUTHORITIES

Cases

<i>Antonyuk v. Hochul</i> , 2022 U.S. App. LEXIS 36240 (2d Cir. 2022)	2
<i>Antonyuk v. Nigrelli</i> , 143 S. Ct. 481 (2023)	2
<i>Barnett v. Raoul</i> , 2023 U.S. Dist. LEXIS 74756 (S.D. Ill. Apr. 28, 2023)	2, 3, 4, 5, 6
<i>Cnty. Pharmacies of Ind., Inc. v. Ind. Family</i> , 801 F. Supp. 2d 802 (S.D. Ind. 2011).....	5
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	2, 6
<i>Does v. City of Indianapolis</i> , Case No. 1:06-cv-865, 2006 WL 2927598 (S.D. Ind. Oct. 5, 2006).....	5
<i>Fed. Firearms Licensees of Ill. v. Pritzker</i> , No. 3:23-cv-00215 (S.D. Ill. Jan. 24, 2023)	1, 5
<i>Feinerman v. Bernardi</i> , 558 F. Supp. 2d 36 (D.D.C. 2008)	5
<i>Ill. Ass'n of Firearms Retailers v. City of Chi.</i> , 961 F. Supp. 2d 928 (N.D. Ill. 2014).....	3
<i>Joelner v. Vill. of Wash. Park</i> , 378 F.3d 613 (7th Cir. 2004)	5
<i>McDonald v. Chicago</i> , 561 U.S. 742 (2010)	6
<i>New York State Rifle & Pistol Ass'n, Inc. v. Bruen</i> , 142 S. Ct. 2111 (2022)	2, 6

Statutes

Protect Illinois Communities Act, 720 ILCS 5/24-1.9	1, 3, 4
---	---------

INTEREST OF AMICI CURIAE¹

Amicus Curiae Firearms Licensees of Illinois (“FFL-IL”) is an organization that represents the interests of Federal Firearms Licenses (FFLs) throughout Illinois. Amici Guns Save Life, Gun Owners of America, and Gun Owners Foundation are Second Amendment civil rights organizations founded to protect and defend the rights of law-abiding Americans to keep and bear arms.

Like amicus National Shooting Sports Foundation, Amici are parties in a related appeal challenging Illinois’s recently enacted Protect Illinois Communities Act, 720 ILCS 5/24-1.9 (“PICA”). See Compl., *Fed. Firearms Licensees of Ill. v. Pritzker*, No. 3:23-cv-00215 (S.D. Ill. Jan. 24, 2023), Dkt. 1.

Amici thus join the arguments made by the National Shooting Sports Foundation in its amicus brief filed on May 5, 2023. They write separately, however, to briefly detail the distinct harms faced by their members and supporters should this Court withhold the relief sought by Applicants.

ARGUMENT

The Illinois state law at issue in *FFL-IL v. Pritzker*, like the Naperville ordinance here, bans some of the most popular firearms in the country—firearms that are commonly possessed, lawfully owned, and safely operated by millions of Americans in every state, save for a handful where they are banned. As a matter of fact, until just a few short months ago, residents of Illinois could freely purchase and possess the very firearms the state now restricts. Amici seek a return to that status quo while the many challenges to the related Illinois and Naperville laws make their way through the courts.

¹ Pursuant to Supreme Court Rule 37.6, Amici state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from Amici, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

The Southern District of Illinois—relying on this Court’s decisions in *Heller* and *Bruen*—granted that relief on April 28, 2023. See *Barnett v. Raoul*, 2023 U.S. Dist. LEXIS 74756, at *1 (S.D. Ill. Apr. 28, 2023) (“*Barnett*”). Defendants sought a stay in the District Court on April 28, 2023, but before plaintiffs could file a response as the court instructed, and before that request could be heard by the district court, defendants sought “emergency” relief from the Seventh Circuit, in blatant violation of Rule 8(a)(2)(A) of the Federal Rules of Appellate Procedure. A single judge of the Seventh Circuit soon undid the injunction, granting the state’s “emergency” motion for a stay of the district court’s preliminary injunction without even awaiting a response from the plaintiffs.

This is not the first time that a circuit court has acted in extreme haste, and without providing “any explanation for its ruling,” in order to undo an injunction entered by a district court in a “thorough opinion” that enjoined enforcement of unconstitutional laws that violated the Second Amendment. See *Antonyuk v. Hochul*, 2022 U.S. App. LEXIS 36240 (2d Cir. 2022); see also *Antonyuk v. Nigrelli*, 143 S. Ct. 481 (2023) (statement of Alito, J. and Thomas, J., (respecting the denial of the application to vacate stay”). Here, as in the New York cases, the injunction did not stop the enforcement of any longstanding laws, but rather a very recently enacted law, making the decision to stay the injunction all the more perplexing. It is evident that, while many courts got the message after *Bruen*, other courts still harbor an entrenched recalcitrance to recognize and protect Second Amendment rights. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

This Court should intercede and yet again restore the pre-ban status quo. Indeed, immediate relief is plainly necessary because the individual, fundamental rights of countless Illinoisans are at stake, including thousands of members and supporters of amici organizations.

Naperville’s ordinance is a broad-based ban on a category of firearms – magazine fed semi-automatic rifles, the most commonly used and possessed today. Naperville’s ordinance should be enjoined for the reasons stated in NSSF’s brief, and also “because if all cities and municipalities can prohibit gun sales and transfers within their own borders, then all gun sales and transfers may be banned across a wide swath of the country if this principle is carried forward to its natural conclusion...so too here: the fact that Chicagoans may travel outside the City to acquire a firearm does not bear on the validity of the ordinance inside the City.” *Ill. Ass’n of Firearms Retailers v. City of Chi.*, 961 F. Supp. 2d 928, 939 (N.D. Ill. 2014).

The violation of a constitutional right—even for a minute—is the very definition of irreparable harm that warrants preliminary injunctive relief. As explained in National Shooting Sports Foundation’s amicus brief, both Illinois’ statewide ban on so-called “assault weapons” and Naperville’s related local ordinance ban violate the Second Amendment rights of law-abiding Americans to possess these common arms for lawful purposes, including self-defense. The district court’s order holding otherwise is “profoundly out of step with this Court’s precedent”. Amicus Br. of Nat’l Shooting Sports Found. 21 (May 5, 2023).

The infringement of Applicants’ and amici’s rights is real and imminent. Acquisition of many of the most commonly owned firearms in America is now illegal in Naperville and throughout Illinois. And the continued possession of the now-banned firearms lawfully acquired and already owned has become severely restricted, because the Illinois law not only requires gun owners to register their firearms by January 1, 2024, or dispossess themselves of them altogether, but also it restricts the ability even to travel with previously owned firearms. 720 ILCS 5/24-1.9(C) and (D). As the Southern District of Illinois understood, “[a] constitutional right is at stake. Some [p]laintiffs cannot purchase their firearm of choice, nor can

they exercise their right to self-defense in the manner they choose. They are bound by the State's limitations." *Barnett*, 2023 U.S. Dist. LEXIS 74756, at *37.

By banning commonly owned firearms and many related activities, the law also has a devastating effect on those engaged in the sale of firearms in Illinois. If this Court denies the relief Applicants and amici seek, licensed dealers cannot so much as return firearms on consignment or entrusted to them for repairs. Dealers cannot deliver customer ordered firearms on sales not yet completed while a background check is performed. And they can no longer sell any firearm in their inventory that the state now classifies as an "assault weapon." 720 ILCS 5/24-1.9(b); *see Barnett*, 2023 U.S. Dist. LEXIS 74756, at *37 ("Moreover, other [p]laintiffs cannot sell their inventory, even to residents of other states that do not ban the 'arms' identified in PICA.").

Further, PICA bans "parts or any combinations of parts" 720 ILCS5/24-1.9 (I) making it impossible for a gun dealer, gunsmith or the firearm owner to repair a firearm banned under PICA. From a retaining spring, to a roll pin to a trigger, stock or barrel, all those parts are banned by PICA, and so broken firearms effectively cannot be repaired. Even if the parts weren't illegal to possess, PICA prevents the transfer of any banned firearm or part(s) after January 9th, 2023, except to heirs, people in other states, or a licensed dealer, who in turn can also then only transfer it to such people. 720 ILCS5/24-1.9(e). So, a person who had a firearm at a gunsmith for repair is unable to retrieve it from the FFL because the transfer back to the owner would be illegal. The right to repair a firearm must extend to commercial entities such as gun dealers and gunsmiths, and to the firearm owner, or it is meaningless.

As a result of these bans and restrictions, many FFLs and ranges have lost and will continue to lose substantial revenue absent a court order halting the enforcement of these clearly unconstitutional laws. Indeed, in the district court

amici presented evidence that some FFLs saw reductions of *up to 60%* in their business when the law went into effect, and the court acknowledged that harm as one of the reasons for granting the injunction. “[B]ecause Plaintiffs can never recover their financial losses irreparable harm exists.” *Barnett*, 2023 U.S. Dist. LEXIS 74756, at *18. Due to the sweeping nature of the state’s arms ban, which bans the sale of not only firearms, but many parts, accessories and magazines, many Illinois FFLs may soon be put out of business.

To be sure, economic injuries are generally not considered “irreparable” because such harm typically is compensated by damages. “But where, as here, the plaintiff in question cannot recover damages from the defendant due to the defendant’s sovereign immunity,” *Feinerman v. Bernardi*, 558 F. Supp. 2d 36, 51 (D.D.C. 2008), “any loss of income suffered by a plaintiff is irreparable per se.” *Id.*; *see also Cmty. Pharmacies of Ind., Inc. v. Ind. Family*, 801 F. Supp. 2d 802, 806 (S.D. Ind. 2011) (“because the State is the Defendant in this matter, the Plaintiffs cannot recover monetary damages due to the sovereign immunity afforded under the Eleventh Amendment.”). Immediate injunctive relief ending that harm is thus both necessary and appropriate.

Even if the Seventh Circuit ultimately lifts the current stay on the Southern District’s preliminary injunction, Applicants and amici’s members and supporters still require relief from the Naperville ordinance, which is not at issue in *Barnett* and *FFL-IL* and so was not specifically enjoined by the order issued in that case. At this point, the only way for residents and businesses in Naperville to get any relief from the unconstitutional ordinance in the short term is through this Court’s intervention.

Unlike the severe and irreparable harms that enforcement of the Illinois and Naperville arms bans invite upon Applicants and amici’s members and supporters, there can be “no harm to a [government body] when it is prevented from enforcing

an unconstitutional statute.” *Joelner v. Vill. of Wash. Park*, 378 F.3d 613, 620 (7th Cir. 2004); *see also Does v. City of Indianapolis*, Case No. 1:06-cv-865, 2006 WL 2927598, at *11 (S.D. Ind. Oct. 5, 2006) (“Defendants will not be harmed by having to conform to constitutional standards, and without an injunction, plaintiffs will continue to be denied their constitutional rights”).

Even still, Illinois (in its emergency stay motion below) has made little more than a now-forbidden interest-balancing argument, suggesting that a mass shooting could result if its ban on so-called “assault weapons” is enjoined even temporarily. Emergency Mot. to Stay Prelim. Inj. Pending Appeal, *Barnett v. Raoul*, No. 23-1825, at 19 (7th Cir. May 2, 2023). Unsurprisingly, the State provided no analysis of the potential self-defense benefits of such firearms. There is, of course, always a danger that deranged individuals will commit horrific crimes, whether with the firearms Illinois and Naperville have outlawed, with other firearms it still permits, or with different objects entirely. But the potential criminal abuse of a constitutional right alone cannot be reason enough to snuff out that right. *See McDonald v. Chicago*, 561 U.S. 742, 783 (2010) (“[t]he right to keep and bear arms ... is not the only constitutional right that has controversial public safety implications.”) *See also Bruen*, 2126 at n.3. As this Court made absolutely clear in *Heller*, it is “aware of the problem of handgun violence in this country. . . . The Constitution leaves the [government] a variety of tools for combating that problem. . . . But the enshrinement of constitutional rights necessarily takes certain policy choices off the table.” *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008).

///

///

///

CONCLUSION

For these reasons, and those further laid out in the amicus of National Shooting Sports Foundation, this Court should grant the application.

May 8, 2023

Respectfully Submitted,

C.D. Michel
Anna M. Barvir
Counsel of Record
MICHEL & ASSOCIATES, P.C.
180 East Ocean Blvd., Suite 200
Long Beach, CA 90802
(562) 216-4444
abarvir@michellawyers.com

Counsel for Amicus Curiae