No. _____

In The
Supreme Court of the United States

DAN CAULKINS; PERRY LEWIN;
DECATUR JEWELRY & ANTIQUES INC.; and
LAW-ABIDING GUN OWNERS OF MACON COUNTY,
a voluntary unincorporated association,

Petitioners,

v.

Governor JAY ROBERT PRITZKER, in his official capacity; KWAME RAOUL in his capacity as Attorney General; EMANUEL CHRISTOPHER WELCH, in in his capacity as Speaker of the House; and DONALD F. HARMON, in his capacity as Senate President,

Respondents.

On Petition For A Writ Of Certiorari To The Illinois Supreme Court

PETITION FOR WRIT OF CERTIORARI

JERROLD H. STOCKS
(*Counsel of Record*)
BRIAN D. ECK
PATRICK C. SULLIVAN
FEATHERSTUN, GAUMER, STOCKS, FLYNN & ECK, LLP
101 South State Street, Suite 240
P.O. Box 1760
Decatur, IL 62525-1760
Telephone: (217) 429-4453
Email: jstocks@decatur.legal
Email: beck@decatur.legal
Email: psullivan@decatur.legal

Counsel for Petitioners

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTIONS PRESENTED

Fourteenth Amendment Due Process Right to Fair Hearing and Guarantees Clause, Article IV, Sec. 4:

1. Does a self-evaluative review applying no objective standards under *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009) by a Justice(s) on the state's highest court challenged for disqualification deny the basic due process right to a fair hearing under the Fourteenth Amendment when the Justice(s) participated in the consideration of this case involving the constitutionality of the Illinois Assault Weapons Partial Ban[1] given the 2.6 Million Dollars disproportionate campaign contributions at the immediately preceding election from Defendants, leaders of the legislative and executive branches, directly to the campaign funds for the Justices, shared publicly represented commitment with Defendants to ban assault weapons when the General Assembly convened after the election, and when the issues in the case required the Court to judicially review the constitutionality of the process Defendants employed to enact the assault weapon ban?

2. Does a litigant's basic due process right to a fair hearing before the judiciary, including the appearance of a fair hearing, under the Fourteenth Amendment and the public's interest in the appearance of an independent judiciary prevail over any First Amendment

[1] As hereafter defined.

QUESTIONS PRESENTED – Continued

right of the leaders of the executive and/or legislative branches to contribute to a judicial campaign or judicial candidates right to accept campaign contributions and announce positions on issues likely to present before them to have required recusal under the circumstances?

3. Does the acceptance of disproportionately large campaign contributions from the leaders of the executive or legislative branches of government dilute the independence of a judiciary serially abdicating the constitutional function to check constitutional abuse by other branches respecting constitutional procedures to enact a valid law to such extent to present an existential threat to the form of republican government to which the citizens consented to invoke justiciable relief under the Guarantees Clause, Article IV, Section 4.

Second Amendment and Equal Protection:

The Assault Weapons Partial Ban criminalized possession/acquisition of firearms based on categories that classified firearms ("assault weapons" vs. other bearable arms) and classified persons across numerous groupings which for purposes of this Petition will focus on provisions that prohibit assault weapons to some in their home unavailable for self-defense and allow assault weapons for others in their home available for self-defense ("grand-fathered") with prohibited and grandfathered distinguished only by date of

QUESTIONS PRESENTED – Continued

acquisition of the assault weapon and not by any differences between the grandfathered and prohibited posing a serious risk of harm to themselves or others.

1. Does the classification of grandfathered persons immunized from criminal penalty and allowed to keep assault weapons for use in defense of home under the Assault Weapons Partial Ban confess, if not codify, that the assault weapons are bearable arms in common use (and would remain so) so as to render the prohibition of said assault weapons to any citizen entitled to keep and bear arms in defense of home unconstitutional under the Second Amendment?

2. If a classification of weapons is assumed constitutional, must the classification of persons be supported by the historical tradition of firearm regulation or comport with equal protection under the Fourteenth Amendment?

3. Does the disparate treatment of similarly situated ordinary law-abiding citizens relative to the possession of assault weapons in the home based on the date an assault weapon was acquired comport with equal protection under the Fourteenth Amendment?

PARTIES TO THE PROCEEDING

Petitioners are Dan Caulkins, Perry Lewin, Decatur Jewelry & Antiques, Inc., an Illinois corporation, and Law-Abiding Gun Owners of Macon County, a voluntary unincorporated association without equity holders. Petitioners were Plaintiffs in the Circuit Court and Appellees in the Illinois Supreme Court.[2]

Respondents are Jay Robert Pritzker, in his capacity as Governor of the State of Illinois; Kwame Raoul, in his capacity as Attorney General of the State of Illinois; Emmanuel C. Welch, in his capacity as Speaker of the House of Representatives; and Donald F. Harmon, in his capacity as President of the Illinois Senate.[3] Each Respondent was a Defendant in the Circuit Court and Appellant in the Illinois Supreme Court.

CORPORATE DISCLOSURE STATEMENT

In accordance with Supreme Court Rule 29.6, Petitioners state as follows:

Petitioner Decatur Jewelry & Antiques, Inc. has no parent corporation and no publicly held corporation owns more than 10% or more of its stock. Petitioners Dan Caulkins and Perry Lewin are individuals. Law-Abiding Gun Owners of Macon County is a voluntary unincorporated association of individuals.

---

[2] Collectively, "*Caulkins*" hereafter.

[3] The legislative power of the State of Illinois is vested in a Senate and a House of Representatives, collectively known as a General Assembly. ILL. CONST. art. IV, § 1.

RELATED PROCEEDINGS

This case arises from the following proceedings.

Macon County, Illinois Circuit Court

Dan Caulkins, Perry Lewin, Decatur Jewelry & Antiques, Inc. and Law-Abiding Gun Owners of Macon County, a voluntary unincorporated association v. Governor Jay Robert Pritzker, in his official capacity, Emanuel Christopher Welch, in his capacity as Speaker of the House, Donald F. Harmon, in his capacity as Senate President, and Kwame Raoul, in his capacity as Attorney General, No. 2023-CH-3, Macon County, Illinois Circuit Court. Judgment entered Mar. 3, 2023.

Illinois Supreme Court

Dan Caulkins, Perry Lewin, Decatur Jewelry & Antiques, Inc. and Law-Abiding Gun Owners of Macon County, a voluntary unincorporated association v. Governor Jay Robert Pritzker, in his official capacity, Emanuel Christopher Welch, in his capacity as Speaker of the House, Donald F. Harmon, in his capacity as Senate President, and Kwame Raoul, in his capacity as Attorney General, No. 129453, Ill. Supreme Court. Judgment entered Aug. 11, 2023.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the Illinois Supreme Court.

OPINIONS BELOW

The opinion of the Illinois Supreme Court is reported at 2023 IL 129453 and is reproduced in the Appendix ("App.") at App. 1. The order of Justice Overstreet issued April 14, 2023, for the Illinois Supreme Court denying Petitioners' Motion to Disqualify Justice Rochford and Justice O'Brien is available at App. 54. The order of Justice Rochford issued April 14, 2023, declining to recuse herself is available at App. 61. The order of Justice O'Brien issued April 14, 2023, declining to recuse herself is available at App. 56. The circuit court's final judgment is available at App. 70.

JURISDICTION

The Illinois Supreme Court issued its opinion on August 11, 2023. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The provisions of the United States Constitution involved in this petition are:

(1) The Second Amendment, which states:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

(2) The Due Process Clause and Equal Protection Clause of the Fourteenth Amendment, set forth in Section One of that Amendment, which states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(3) Article IV, section 4, which states, in relevant part:

> The United States shall guarantee to every State in this Union a Republican Form of Government[.]

(4) Article VI, section 6, which states, in relevant part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The provisions of the Illinois Constitution involved in this petition are:

(1) Article IV, section 8(d), which states, in relevant part:

> A bill shall be read by title on three different days in each house. . . .
>
> The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirements for passage have been met.

(2) Article IV, section 13, which states:

> The General Assembly shall pass no special or local law when a general law is or can be made applicable. Whether a general law is or can be made applicable shall be a matter for judicial determination.

(3) Article I, section 2, which states:

> No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

(4) Article I, section 22, which states:

> Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.

(5) Article VI, section 3, which states, in relevant part:

> The Supreme Court shall consist of seven Judges. Three shall be selected from the First Judicial District and one from each of the other Judicial Districts. Four Judges constitute a quorum and the concurrence of four is necessary for a decision.

The provisions of Illinois statutes involved in this petition are:

(1) 720 ILCS 5/24-1.9

This provision is reproduced in the Appendix.

(2) 720 ILCS 5/24-1.10

This provision is reproduced in the Appendix.

(3) 10 ILCS 5/9-8.5(b-5)(1.1)

> (1.1) In addition to any other provision of this Section, a political committee that is self-funding, as described in subsection (h) of this Section, and is established to support or oppose a candidate seeking nomination,

> election, or retention to the Supreme Court, the Appellate Court, or the Circuit Court may not accept contributions from any single person, other than the judicial candidate or the candidate's immediate family, in a cumulative amount that exceeds $500,000 in any election cycle. Any contribution in excess of the limits in this paragraph (1.1) shall escheat to the State of Illinois. Any political committee that receives such a contribution shall immediately forward the amount that exceeds $500,000 to the State Treasurer who shall deposit the funds into the State Treasury.

The provision of the Illinois Supreme Court Rules involved in this petition is:

> Illinois Supreme Court Rule 302(a)(1), which states, in relevant part:
>
> Appeals from final judgments of circuit courts shall be taken directly to the Supreme Court (1) in cases in which a statute of the United States or of this state has been held invalid[.]

The provision of the Illinois Code of Judicial Conduct involved in this petition is:

> Illinois Code of Judicial Conduct Rule 4.1(C), which states, in relevant part:
>
> (C) A judicial candidate: . . . (3) except to the extent permitted by Paragraph (E), shall not authorize, encourage, or knowingly permit members of the judicial candidate's family* or other persons to do for the candidate what the candidate is prohibited from doing under the

> provisions of this Rule; (4) shall not: (a) make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office with respect to cases, controversies, or issues that are likely to come before the court[.]

INTRODUCTION

The Circuit Court entered Judgment against Defendants declaring the Illinois Assault Weapons Partial Ban[1] passed in January 2023 unconstitutional for denying equal protection of the laws and infringing on the Second Amendment fundamental right to bear arms rendering the law void. While not a basis for the Circuit Court's Judgment invalidating the law, the *Caulkins* claim included a challenge attacking the law for violating Illinois constitutional provisions[2] necessary to the passage of a bill, which alleged false certifications by Harmon and Welch that the constitutionally required procedures were satisfied. Defendants appealed directly to the Illinois Supreme Court because

[1] For purposes of this Petition, the specific provisions of the Act challenged, including the prohibition of large capacity magazines, are the added offenses to the Criminal Code, 720 ILCS 5/24-1.9 – 1.10 (West 2022), by which the prohibition is achieved. See App. 74; App. 98.

[2] Article IV, Section 8(d) of the of the Illinois Constitution provides that "The Speaker of the House of Representatives and the President of the Senate shall sign each bill that passes both houses to certify that the procedural requirement for passage have been met." ILL. CONST. art IV, § 8(d).

the Judgment invalidated a state law on constitutional grounds.[3]

The Illinois Supreme Court, comprised of seven members[4], included Justices Rochford and O'Brien, who were elected to office November 2022 and assumed office December 2022. *Caulkins* filed a Petition to Disqualify/Recuse Justices Rochford and O'Brien based on *Caperton v. A.T. Massey Coal Co*., 556 U.S. 868 (2009), and the due process right to a fair hearing protected by the Fourteenth Amendment. The Motion was informed by (1) unreasonable and disproportionate campaign contributions from Defendants and their respective attorneys appearing in the case, an aggregate sum exceeding 2.6 Million Dollars; (2) the identity of the Defendants/campaign contributors as the leaders of the other branches of government whose actions were at issue in falsely certifying constitutional compliance and were the parties whose conduct and enactments an independent judiciary must review; and (3) evidence of shared commitment as judicial candidates with Defendants to support the specific outcome banning assault weapons imminently when the General Assembly re-convened after the election, exactly what ensued.

The Illinois Supreme Court denied the Motion to Disqualify, stating no procedure to assure due process

---

[3] Only jurisdictional basis for direct appeal to Illinois Supreme Court was the Judgment that invalidated the law on constitutional grounds. ILL. SUP. CT. R. 302(a)(1).

[4] The concurrence of four justices is necessary for a decision by the Illinois Supreme Court. ILL. CONST. art VI, § 3.

existed for action by the Court, and ruling that each Justice must determine, on her own, whether recusal was required. Justices Rochford and O'Brien, declined recusal based on subjective self-evaluation of the challenge to their independence and further concluded that *Caulkins* had not proven actual bias or commitment. Ultimately, Justice Rochford authored the 4-3 majority opinion reversing the Circuit Court Judgment that had invalidated the Assault Weapons Partial Ban. The impact of the Illinois Supreme Court reversal delivered the outcome shared with Defendants – an assault weapons prohibition.

The Assault Weapons Partial Ban criminalized possession/acquisition of firearms based on categories that classified firearms ("assault weapons" vs. other bearable arms) and classified persons across numerous groupings which for purposes of this Petition will focus on provisions that prohibit assault weapons to some in their home unavailable for self-defense and allow assault weapons for others in their home available for self-defense ("grandfathered") with prohibited and grandfathered distinguished only by date of acquisition of the assault weapon and not by any differences between the grandfathered and prohibited posing a serious risk of harm to themselves or others.

STATEMENT OF THE CASE

Section 25 of the Protect Illinois Communities Act, Public Act 102-116 (the "Act"), codified at 720 ILCS

5/24-1.9 and 720 ILCS 5/24-1.10, added two new provisions to the Criminal Code that prohibited purchases, sales, and possession of assault weapons and large capacity magazines ("LCMs") (herein, said criminal provisions are referred to as the "Assault Weapons Partial Ban").[5] The Assault Weapons Partial Ban described a list of firearms to be classified as "assault weapons." App. 74-86. The Assault Weapons Partial Ban prohibits the possession of assault weapons in Illinois beginning January 1, 2024, unless the citizen lawfully possessed the weapon before January 10, 2023, the effective date for the Act. The sale and purchase of assault weapons was restricted and permitted to only "exempted" classes of persons effective January 10, 2023. App. 88-93. For purposes of this Petition, those Illinois citizens possessing "assault weapons" before January 10, 2023, are referred to as "grandfathered" and those Illinois citizens seeking to acquire or possess a first or additional "assault weapon" after January 10, 2023, are referred to as "prohibited" citizens.

The Act began as House Bill 5471, which, when originally introduced, was referred to as the "INS CODE-PUBLIC ADJUSTERS" without any content related to the prohibition or regulation of assault weapons. The bill originally was introduced in the Illinois House of Representatives on January 28, 2022. The original title for the bill was "An Act concerning Regulation" and, as introduced, amended the Illinois Insurance Code. The original version of HB 5471, contained

[5] 720 ILCS 5/24-1.9 and 720 ILCS 24/1.10 are reproduced as Appendix 74; App. 98.

no content on assault weapons prohibition, received three readings in the House and was passed on March 4, 2022. The original version of the bill then received two readings in the Senate. At 3:00 p.m. on January 8, 2023, a Sunday, Defendant, Senate President Don Harmon, filed an amendment to HB 5471 that removed the insurance- related provisions from the bill and replaced those provisions with substantive content governing weapons and human and drug trafficking, including the Assault Weapons Partial Ban. HB 5471, as amended, was read in the Senate one time. On January 9, 2023, HB 5471, as amended, passed the Senate and returned to the House. The House passed HB 5471, as amended, on January 10, 2023. Hours later, it was signed into law by Governor Pritzker and, by its terms, was effective immediately. The Illinois Constitution requires Three Readings before each chamber of the General Assembly and the certification of both the Senate President and Speaker of the House that all procedural requirements have been met. ILL. CONST. art IV, § 8(d). The Defendants Harmon and Welch executed the certification falsely. See *Caulkins v. Pritzker*, 2023 IL 129453, ¶¶ 102, 109 (Holder-White, J., dissenting)..

The Act states no legislative intent. Defendants argued that the Act was a response to the July 4, 2022, Highland Park Independence Day Parade shootings and a measure to protect Illinois residents from the ever-increasing dangers of mass shootings. Brief for Appellants at 38-44, *Caulkins v. Pritzker*, 2023 IL 129453 (No. 129453). If the Highland Park shooter first

actuated his heinous criminal intent on July 4, 2023, then the shooter would not have been prohibited from possessing the "assault weapon." See *Caulkins v. Pritzker*, 2023 IL 129453, ¶ 125 (O'Brien, J., dissenting). No legislative history distinguished the "grandfathered" from the "prohibited" on a basis that the "prohibited" presented an increased danger or risk for mass shootings compared to the "grandfathered." The Defendants argued a possible basis for "exempted" persons immunized from criminal prosecution under the Assault Weapons Partial Ban on the basis that "training" made those persons safe to possess an "assault weapon." Brief for Appellants at 21-23, *Caulkins v. Pritzker*, 2023 IL 129453 (No. 129453).[6] However, no legislative history supports "accidental" discharge of assault weapons as the legislative intent, nor was it argued below.

All *Caulkins* Plaintiffs are holders of a valid FOID[7] who own an assault weapon, don't own or desire to purchase an assault weapon who are prohibited as of the effective date from acquisition or possession of their first or additional assault weapon. All Caulkins Plaintiffs, including Law Abiding Gun Owners of

---

[6] Of course, the well-trained can form the heinous criminal intent to use any weapon, including "assault weapons" to perpetrate a mass shooting. See, *e.g.*, David Sharp, *et.al.*, *Army Reservist Suspected in Maine Mass Shooting Found Dead*, ARMY TIMES, Oct. 29, 2023.

[7] In Illinois, law-abiding citizens obtain Firearm Owner's Identification Cards ("FOID") to establish that they are not subject to any firearm prohibitor. 430 ILCS 65/1 (West 2022). All plaintiffs are Illinois citizens in the class of FOID holders.

Macon County, joined for the common purpose of protecting Second Amendment rights.

Caulkins filed their Complaint for Declaratory Judgment seeking invalidation of the Assault Weapons Partial Ban on January 26, 2023. The Complaint, at multiple counts where each count was cumulative and inclusive of previous counts, invoked, as part of its challenge to the Assault Weapons Partial Ban, the following constitutional provisions: Illinois Constitution Article IV, §8(d); Illinois Constitution Article IV §13 (proscription of Special Legislation); Illinois Constitution Article 1, §2 (due process and equal protection); Illinois Constitution Article I, §22 (Illinois right to keep and bear arms); United States Constitution, Second Amendment; and United States Constitution, Fourteenth Amendment as rights infringed on the face of the challenged Act. Specifically, the Complaint identified the Second Amendment, including but not limited to, the allegations that the law infringed the Second Amendment codified fundamental right to keep and bear arms for defense of self, family and property in the home, *McDonald v. City of Chi.*, 561 U.S. 742 (2010). Assault weapons were alleged to be in common use, an allegation admitted by Defendants' demurrer. Motions and briefing between the parties expounded on each of the foregoing Constitutional protections against the facial content of the Assault Weapons Partial Ban to support infringement. *Caulkins* contended that it was not necessary to develop the historical tradition of firearm regulation *as it related to the weapon's classification* because whatever tolerance the Second

Amendment had for distinguishing types of firearms for the classification of weapons, the classification of persons under the Assault Weapons Partial Ban could not survive challenge because the fundamental preexisting individual right to keep and arms in the home must extend to all FOID holders. That is, a two tier Second Amendment right criminalizing some and immunizing others for possession in the home of the same "assault weapon" cannot withstand Second Amendment, Equal Protection and Special Legislation analysis. Complaint at 17-29, *Caulkins v. Pritzker* (No. 2023-CH-3). As of the effective date for the Act, *Caulkins* plaintiffs that attempted to obtain or possess an assault weapon were in immediate danger of criminal prosecution arising from the enforcement of the Act sufficient to support standing for a pre-enforcement challenge. See, *e.g.*, *Ezell v. City of Chicago*, 651 F.3d 684, 695-96 (7th Cir., 2011).

In the interim between the effective date of the Act and *Caulkins'* date of filing, other litigants succeeded in procuring interlocutory injunctive relief against Defendants from a circuit judge in another Illinois county, which interlocutory order the Defendants were appealing to an intermediate Court of Appeals in Illinois because the interlocutory injunctive relief was not a Final Judgment to mandate appeal to the Illinois Supreme Court. See *Accuracy Firearms, LLC v. Pritzker*, 2023 IL App (5th) 230035; ILL. SUP. CT. R. 302(a)(1). During the pendency of *Caulkins* before the Circuit Court and before final judgment, the intermediate Court of Appeals affirmed the restraining order

enjoining enforcement of the Assault Weapons Partial Ban. See *Accuracy Firearms*, 2023 IL App (5th) 230035. The determinations of law in *Accuracy* were binding on the circuit judge in *Caulkins*. App. 70-71. Accordingly, based on precedent from *Accuracy* and the additional issues briefed before the Circuit Court, final judgment in favor of *Caulkins* invalidating the Assault Weapons Partial Ban on constitutional grounds was entered March 3, 2023. App. 70.

Defendants appealed directly to the Illinois Supreme Court because the adverse judgment appealed was a final judgment invalidating a statute. Jurisdiction for direct appeal was prescribed by Illinois Supreme Court Rule 302(a)(1) pursuant to article VI, section 4(b) of the Illinois Constitution. See ILL. CONST. art. VI, § 4(b). Illinois Supreme Court jurisdiction for appeal under IL S. Ct. R. 302(a)(1) was the prescribed court of review for Defendants' appeal and jurisdiction extended only to final judgments of circuit courts in cases in which a statute of this state has been held invalid.

The Illinois Supreme Court is comprised of seven members elected by judicial district. ILL. CONST. art. VI, §§ 2-3, 12. Two districts had non-elected vacancy appointments that were open seats for election at the November 8, 2022, General Election.[8] The successful

[8] The elected predecessors in the respective districts had joined or written, in the majority, in: (A) *People v. Webb*, 2019 IL 122951, 131 N.E.3d 93 (2019) where the Illinois Supreme Court adopted Second Amendment protection for bearable arms in common use today; and (B) *Guns Save Life, Inc. v. Ali*, 2021 IL

judicial candidates elected to those open seats were Justice Rochford and Justice O'Brien. Each took office on the Illinois Supreme Court on December 5, 2022. As candidates for office, both Justice Rochford and Justice O'Brien committed support to banning assault weapons as a legislative priority when the General Assembly was called into Session.[9] App. 124-135. Each of the Defendants also shared the commitment to the outcome. App. 124-135.

The leaders of the other branches of government were the largest financial contributors to the respective judicial campaigns of Justices Rochford and O'Brien. More specifically: Contributions to Rochford Campaign Committee pursuant to Illinois State Board of Elections for the election cycle, July 1, 2021 to December 31, 2022 : Total Individualized Contributions: $2,113,122.80. Total Transfer-In Contributions (from other Committees): $1,401,475.00. On September 23, 2022, JB for Governor Transferred In the sum of $500,000.00. On October 27, 2022, Jay Robert Pritzker Revocable Trust, Individually Contributed $500,000.00. On October 13, 2022, the campaign committee for

---

126014, 190 N.E.3d 139 (2021), recognizing Second Amendment as a fundamental right.

[9] The Session for the newly elected General Assembly commenced second Wednesday of January. Thus, January 11, 2023. ILL. CONST. art. IV, § 5. Here, the lame duck General Assembly was called into Special Session to "gut, replace and enact" under the previous Session of the General Assembly, ostensibly, to avoid re-setting the legislative process which would have permitted debate or adequate public notice of the legislative intent to ban assault weapons.

Defendant Welch Transferred In $150,000.00. Contributions to O'Brien Campaign Committee for July 1, 2021 to December 31, 2022: Total Individualized Contributions: $1,459,061.78. Total Transfer-In Contributions (from other Committees): $2,203,725.00. On May 24, 2022, JB Exploratory committee (Pritzker) Transferred In the sum of $500.00. On September 29, 2022, JB for Governor Transferred In the sum of $500,000.00. On October 28, 2022, Jay Robert Pritzker Revocable Trust, Individually Contributed $500,000.00. In October 2022, the campaign committee for Defendant Welch Transferred In the sum of $350,000.00. Attorneys, inclusive of respective firms/partners appearing for one or more Defendants on the appeal contributed $117,750.00 to Justices Rochford and O'Brien, combined.[10] Illinois law caps the maximum contribution from a single contributor to a judicial candidate at $500,000. 10 ILCS 5/9-8.5(b-5)(1.1) (West 2022). Pritzker's split contributions, if splitting lawful to trigger another maximum limit, were the maximum contributions allowed under Illinois law. *Id.* Excepting Welch, Governor Pritzker's contributions approximate 5 to 10 times the amount of the next closest individual contributor for either candidate.

On March 29, 2023, *Caulkins* filed a Motion for Recusal/Disqualification to object to Justices Rochford and O'Brien participating in the matter because the cash contributions from the Defendants to their

[10] All contributions identified in this paragraph are included in the supplemental record which *Caulkins* filed with its Motion for Recusal/Disqualification.

judicial campaigns were unreasonable and disproportionately excessive, the shared commitment to a legislative outcome to ban assault weapons, and the commands for an independent judiciary to review the acts and conduct of the legislative and executive branches given the nature of the questions presented would deny due process under the Fourteenth Amendment to a fair and impartial consideration of the case and contrary to the standards established in *Caperton v. A.T. Massey Coal Co*., 556 U.S. 868 (2009). App. 104. On April 14, 2023, the Illinois Supreme Court issued an Order on the Motion to Disqualify (App. 54), Justice Rochford issued an Order denying her recusal (App. 61) and Justice O'Brien issued an Order denying her recusal. (App. 56).

Each Order on the Motion for Recusal/Disqualification conceded no process existed to address the subject matter and that the question to recuse resided with the justice subject to challenge. App. 54-69. Each Order failed to cite or apply any standard stated in *Caperton* or, for that matter, even acknowledge its existence. App. 54-69. Both the Justice Rochford and Justice O'Brien Orders acknowledged that the case involved review of firearm regulations under portions of the Act and both placed a burden of proof upon *Caulkins* for actual proof of bias or pledge to support an assault weapons ban. App. 57-59; App. 62, 63, 65, 67, 68. Both denied that the reported pledge to support an assault weapons ban was evidence of such pledge. App. 58; App. 68. Justice Rochford admitted that Canons of Judicial Conduct would require disqualification but

denied that the pledge was made by way of any "public statement" by her. App. 68. Justice O'Brien did not deny making any pledge. App. 56. Neither Justice Rochford nor Justice O'Brien disclosed the content of their respective communications that yielded the endorsement reporting the commitment to an assault weapons ban when the General Assembly returned to Session. As of the date of the Motion, including to the date of this Petition, Justices Rochford and O'Brien have permitted the reporting party to continue publishing to the public their respective commitments to an assault weapons ban. See *2022 Gun Safety Candidates Endorsed Illinois General Election 2022*, G-PAC, https://gpacillinois.com/2022-generalendorsements/ (last visited Nov. 5, 2023); Press Release, G-Pac, G-Pac and Giffords PAC Celebrate 88 Victories in General Election (Nov. 9, 2022) https://gpacillinois.com/g-pac-and-giffords-pac-celebrate-88-victories-in-general-election/ (last visited Nov. 5, 2023).[11] Both Justice Rochford and Justice O'Brien cited an order entered in *Philip Morris USA Inc. v. Appellate Court, Fifth Dist.*, No. 117689 (Ill. Sept. 24, 2014) for the proposition that a judge's campaign is free to solicit and accept *reasonable* campaign contributions and Justice O'Brien cited a 1993 Illinois Judicial Ethics Commission Opinion for the proposition that a judge has no obligation to disqualify *merely* because the party appearing before the judge was a campaign contributor. App. 59-60; App. 66. Each

[11] Both documents available as App. 124 and App. 131.

Justice characterized the Motion as casting sinister aspersions with no factual basis. App. 59-60; App. 67.

Based on the importance of the issues presented, expedited briefing was ordered by the Illinois Supreme Court. Defendants/Appellants filed their Appellate Brief on March 20, 2023 identifying two "Issues Presented for Review," including:

> "1. Whether the Act's provisions restricting the purchase, sale, and possession of assault weapons and LCMs violate the equal protection clause of the Illinois Constitution because: (1) plaintiffs did not show they were treated differently from, or similarly situated to, individuals within the Act's exemptions; (2) neither the Second Amendment to the United States Constitution nor the Illinois Constitution's right to bear arms in Article 1, Section 22 is a fundamental right for purposes of an equal protection claim, meaning that rational basis review rather than strict scrutiny should apply; and (3) the assault weapons and LCM restrictions, and their exemptions, satisfy rational basis review." Brief for Appellants at 4, *Caulkins v. Pritzker*, 2023 IL 129453 (No. 129453).

On April 5, 2023, with leave of Court, the Brief Amici Curiae from thirty-three Illinois County State's Attorneys supporting the affirmance of the Circuit Court Final Judgment invalidating the Assault Weapons Partial Ban was filed wherein the Amici argued that the Act constituted a ban on an entire class of arms in common use for self-defense unconstitutionally infringing on the Second Amendment. Brief for State's Attorneys as Amici Curiae Supporting

Petitioner, *Caulkins v. Pritzker*, 2023 IL 129453 129453 (No. 129453).

On April 13, 2023, *Caulkins* filed their Brief requesting affirmance of the Circuit Court Judgment granting Declaratory Judgment on any basis in the record to include, Second Amendment, Equal Protection, Due Process, Special Legislation and Three Readings under article IV, section 8(d).

On August 11, 2023, the Illinois Supreme Court issued its 4-3 Opinion, delivered by Justice Rochford, reversing the Circuit Court judgment invalidating the Assault Weapons Partial Ban. App. 1. The majority Opinion held that the Act did not offend equal protection and the majority did not express directly an opinion on the Second Amendment.[12] Justice Holder White, joined by Justice Overstreet, dissented, holding that the Act was not constitutionally enacted under Illinois Constitution, Art. IV, Sec. 8(d) which invalidated the Act before consideration of the Second Amendment claim. The dissent of Justice O'Brien held that the Act was unconstitutional special legislation because the classifications of persons allowed to retain assault weapons had no rational connection to the purpose of

[12] The majority conflated a reference by counsel in *Accuracy Firearms*, *LLC v. Pritzker*, 2023 IL App (5th) 230035, declining a Second Amendment basis. However, Caulkins expressly alleged, briefed, argued and secured the Circuit Court judgment invoking the Second Amendment. On Appeal the issue was briefed by both sides and Amici briefed the Second Amendment. The Second Amendment federal claim is ripe for consideration notwithstanding the Illinois Supreme Court's burking the issue. See *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 677 (1930).

the Act and that a general law prohibiting assault weapons was required.

REASONS FOR GRANTING WRIT

I. *Caulkins* was denied due process under the Fourteenth Amendment by the Illinois Supreme Court under facts and appearances far more compelling and extensive than those in *Caperton* and the result was infringement of fundamental rights to keep and bear arms.

It is axiomatic that a fair hearing before a fair tribunal is a basic requirement of due process. *In re Murchison*, 349 U.S. 133, 136 (1955). Politicians must be responsive to their supporters. This Court has recognized that "such responsiveness is key to the very concept of self-governance through elected officials." *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 446 (2015) (citation omitted). The same is not true of judges. Quoting John Marshall, this Court recently reiterated that "in deciding cases, a judge is not to follow the preferences of his supporters, or provide any special consideration to his campaign donors. A judge instead must 'observe the utmost fairness,' striving to be 'perfectly and completely independent, with nothing to influence or control him but God and his conscience.' " *Id.* at 446-47 (quoting Address of John Marshall, in Proceedings and Debates of the Virginia State Convention of 1829-1830, p. 616 (1830)). There are circumstances "in which experience teaches that the probability of actual bias on

the part of the judge or decisionmaker is too high to be constitutionally tolerable." *Caperton v. A.T. Massey Coal Co*., 556 U.S. 868, 877 (2009). A judge cannot have an interest in the outcome of a case. *Murchison*, 349 U.S. at 136. That "interest" cannot be defined with precision; the circumstances and relationships between the judge and the outcome must be considered. *Id.* This case presents a combination of circumstances and relationships between Justice Rochford, Justice O'Brien, the Defendants as campaign contributors, the Defendants as leaders of co-equal branches of government, and the Defendants co-committing with the challenged justices to an outcome banning assault weapons likely to offer a possible temptation to the average person as a judge not to hold the balance nice, clear and true. *Caperton*, 556 U.S. at 885.

A. The Illinois Supreme Court, in conflict with this Court's due process precedent, does not follow objective standards to determine circumstances where recusal is constitutionally required and this case presents the opportunity to impel each state to set standards.

This Court has determined that a judge must conduct an objective review of relevant factors to determine whether recusal may be appropriate.

> "[O]bjective standards may . . . require recusal whether or not actual bias exists or can be proved. Due process may sometimes bar [review] by judges who have no actual bias and who would do their

> very best to weigh the scales of justice equally between the contending parties. The failure to consider objective standards requiring recusal is not consistent with the imperatives of due process." *Caperton*, 556 U.S. at 886 (citation omitted).

The Disqualification Orders (App. 54-69) confessed no objective procedures existed, only that the recusal decision is left to the subjective determination of the challenged judge. However, letting the challenged justice "judge" her own recusal remains subject to the same fears for bias and cannot be easily "superintend[ed] or review[ed]" by the law. *Id*. at 883. Those concerns are particularly true where, as here, "there is no procedure for judicial fact-finding and the sole trier of fact is one accused of bias." *Id*. at 885. Here, Justices Rochford and O'Brien denied recusal, proffering little more than their respective subjective defense that *Caulkins* did not prove an actual bias. The Justices did not apply the objective test stated in *Caperton*. Reposing the recusal determination to the challenged justice risks invalidating any action by the Court, even if the majority of the remaining justices concur in the determination of the appeal. *Williams v. Pa.*, 579 U.S. 1, 15 (2016). The Illinois Supreme Court took no instruction from *Caperton* to assure the implementation of due process recusal standards for those matters pending before it. Exclusive self-review by the challenged justice does not satisfy due process standards under the Fourteenth Amendment. *Caperton*, 556 U.S. at 883.

B. The Judiciary must be impelled to guard zealously its independence, actually and apparently, regarding campaign contributions, and the personal interests of judicial candidates must yield to the litigant's right to a fair hearing and the public interest in an independent judiciary.

The risk that a contributor's cash would influence bias "must be forbidden if the guarantee of due process is to be adequately safeguarded." *Caperton*, 556 U.S. at 885 (citations omitted). The inquiry is not whether the amount of cash was a necessary and sufficient cause for election success. *Id.* Instead, the test asks whether a realistic appraisal of psychological tendencies support bias in favor of the disproportionately large contributors. *Id.* at 883-84. The contributions from the Defendants, 2.5 Million Dollars plus, were disproportionate and the largest by many multiples compared to the next closest donors, and possibly exceeded the maximum amount permitted by Illinois law.[13] The added dimension to this case, making it more "extreme" than *Caperton*, is the identity of the contributors as the leaders of the separate branches of government which yields the risk for lack of judicial independence not only in the role of fairly judging a litigant's case, but also with preserving the balance of power between the co-equal branches of government for all Illinois

[13] Under 10 ILCS 5/9-8.5(b-5)(1.1) (West 2022), contributions to Supreme Court candidates by a single contributor are capped at $500,000.

citizens. Given the public attention to this case impacting the fundamental right to keep and bear arms, confidence in the impartiality and independence of the Illinois judiciary has been injured not only by the facts impelling recusal, but also by the content of the Orders declining recusal. When a State Supreme Court creates the constitutional denial of due process by its actions, this honorable Court is the only recourse.

Justice Rochford implied in her denial of recusal that a legal contribution as defined by state law is a "reasonable"[14] contribution for due process purposes. In *Caperton*, the contributions to Justice Benjamin were not unlawful and, as such, lawfulness is not *ipso facto* reasonable or proportional. See *Caperton*, 556 U.S. at 901 (Roberts, J. dissenting). Moreover, depending on how contribution limits are defined, Justices Rochford and O'Brien very well may have received contributions exceeding the Illinois statutory limit.[15] Justice Rochford received One Million Dollars from Pritzker- $500,000 individually and $500,000 from his campaign fund. Justice O'Brien received[16] One Million

---

[14] ILL. SUP. CT. R. 67(B)(2) (repealed Jan. 1, 2023).

[15] Illinois statute 10 ILCS 5/9-8.5(b-5)(1.1) (West 2022) caps contributions to Supreme Court candidates by a single contributor to $500,000. Under section 10 ILCS 5/9-8.5(b-5)(2) (West 2022), the term "contribution" includes "expenditures made by any person in concert or cooperation with, or at request or suggestion of, a candidate, his or her designated committee, or their agents."

[16] Both Justice Rochford's and Justice O'Brien's campaign committees received the cash to spend as their respective campaigns decided. In *Caperton*, Justice Benjamin only received $1,000 for his campaign's control. *Caperton*, 556 U.S. at 901

Five Hundred Dollars from Pritzker- $500,000 individually and $500,500 split between two campaign funds. If left to the Illinois Supreme Court, such contribution splitting between Governor Pritzker's campaign fund and Governor Pritzker's trust may be called "legal" even though the real party perceived to influence the split contributions is Governor Pritzker, one of the Defendants. Yet, no matter how elastic Justices Rochford and O'Brien stretch the concept of "single contributor" under the law to construct a "reasonableness" argument, the test is whether the contributions, the temporal relationship of the election to the case, and all other circumstances, "would offer a possible temptation to the average . . . judge to . . . lead [her] not to hold the balance nice, clear and true." *Caperton*, 556 U.S. at 885 (citation omitted). No one asked this question here in an objective evaluation.

Nothing could be more injurious to the judiciary than the perception that its independence is for sale. The perception that contributions unduly influence the Illinois Supreme Court is not without history. See, *e.g.*, *Philip Morris USA, Inc. v. Appellate Court, Fifth Dist.*, No. 117689 (Ill. Sept. 24, 2014). Commentators observe that, post *Caperton*, the Illinois State Bar Association formally asked the Illinois Supreme Court to add a specific rule to the Code of Judicial Conduct for a justice to step aside in cases where contributions present

---

(Roberts, J. dissenting). Comparatively, the Defendants' (Pritzker et al) influence on the Justices would be heightened, logically, because it better enabled the justices to enjoy campaign messaging and control.

a probability of bias. Jonathan Bilyk, *Two New Dem IL Supreme Court Justices Asked to Step Aside from Hearing Challenge to IL 'Assault Weapons' Ban*, COOK CTY. REC. (Mar. 31, 2023), https://cookcountyrecord.com/stories/6405806 82-two-new-dem-il-supreme-court-justices-asked-to-step-aside-from-hearing-challenge-to-il-assault-weapons-ban. The Illinois Supreme Court cast a deaf ear to the request. *Id.* In the future, can one expect an Illinois Supreme Court Justice to deny recusal citing the Illinois Supreme Court Order in *Philip Morris* and the Recusal/Disqualification Orders below? In both instances, the Illinois Supreme Court ignored the command for due process or objective standards announced in *Caperton*. The integrity of the judiciary is eroded, one step at a time, until a hard stop is placed on the serial practices of the Illinois Supreme Court.

Justices Rochford and O'Brien contend that contributions are necessary to campaigns and the *mere* fact that contributions are accepted does not support bias. True. However, that statement is not sufficient analysis of the circumstances and relationships of this case to provide cover to avoid recusal. The reach of the rule sought in this case does not challenge any judicial candidate's or contributor's First Amendment rights to support a judicial candidate financially or accept a contribution. See, *e.g.*, *Williams-Yulee v. Fla. Bar*, 575 U.S. 433 (2015). Justices Rochford and O'Brien were free to accept contributions to conduct a campaign for election. However, the candidates were not exonerated from the consequences of their decision to accept unreasonable and disproportionate

contributions implying bias, that is, an obligation under *Caperton* to recuse as Judges to assure that the due process rights of litigants are protected and the public interest in an independent, impartial judiciary is preserved. If anything, the personal interest of the judge seeking office must yield to the public interest in an independent judiciary once elected. If Justices Rochford and O'Brien wanted to avoid the appearances of bias in cases involving Defendants based on cash contributions, then they could have instructed campaign committees to decline the contributions from those contributors or commanded proportionality to other contributors. A judge instead must observe the utmost fairness, striving to be perfectly and completely independent, with nothing to influence or control her but God and her conscience. *Williams-Yulee*, 575 U.S. at 447. Here, recusal was necessary.

C. Commitment to support an assault weapons ban was not consistent with the impartial performance of judicial office and cannot be reconciled with a litigant's right to fair hearing consistent with the Fourteenth Amendment.

Commitment to an outcome presents a pernicious threat to due process because the Justice is perceived to seek an end which informs the content of her opinion, to include re-framing, re-characterizing or disregarding issues below that are incompatible with the conclusion to which she committed. Justices Rochford and O'Brien (as well as all Defendants) allowed their

candidacies to be represented as supporting the "#1 legislative priority" of the Gun Violence Prevention Pac during the next legislative session, namely, "banning assault weapons and large-capacity magazines."[17] App. 124. The content of the statement was for a specific outcome, including the process and timing thereof. Justices Rochford and O'Brien effectively respond that "endorsers" said publicly that *they* committed, but *Caulkins* had no evidence that *they* "publicly" committed to ban assault weapons. The Justices imply that a disqualifying commitment requires their direct statement to the public. However, a judicial candidate cannot be permitted to allow other persons to do or say what the candidate is prohibited from doing, that is, commit to an outcome in a matter likely to appear for their consideration. Ill. Code Jud. Conduct., R. 4.1(C)(3), (4)(a). The published endorsement is evidence of commitment to an outcome shared with the Defendants, which manifested nearly immediately following the election. Contrary to *Caperton*, the Justices shifted the burden of proving an actual (not apparent) commitment to *Caulkins* in a forum that has no procedures to address the issue or compel disclosures. The Justices did not deny the commitment on the specific issue under review. Rather, they denied a "publicly" stated commitment directly by them. The parsed response is pregnant with the commitment. An objective evaluation of the *prima facie* evidence proffered by

[17] The Commitment remains publicly posted as of the date of writing this Petition. See *2022 Gun Safety Candidates Endorsed Illinois General Election 2022*, G-Pac, https://gpacillinois.com/2022-generalendorsements/ (last visited Nov. 5, 2023).

Caulkins should require disclosure of the statement position communicated to the endorser by the Justices that yielded the endorser's public statement that the Justices were committed to the outcome of an assault weapons ban. The apparent "hearsay" objection to the published endorsement proffered by Justices Rochford and O'Brien does not remedy the appearance of bias and lack of independence, nor, more importantly, should a judge be permitted to stand behind that objection. An objective process requires transparency to assure the protection of a litigant's Fourteenth Amendment right to a fair hearing.

Justice Rochford acknowledged that, under Illinois Code of Judicial Conduct Canon 2, Rule 2.11(4), the content of the commitment to the outcome was "disqualifying" if attributed to her. Unlike in *Republican Party v. White*, 536 U.S. 765 (2002), the rule sought does not infringe on First Amendment rights to announce a position. Here, the content of the commitment is much more than announcing a view on a legal principle. Rather, the commitment endorsed a specific course of action to ban assault weapons when the General Assembly re-convened. The issues drawn in this case include the review of the content of the assault weapon ban *and* the constitutionality of the very process by which the General Assembly passed the ban when it re-convened. That a candidate enjoys free speech for election does not insulate that candidate from recusal as Justice. *Seifert v. Alexander*, 608 F.3d 974, 983 (7th Cir. 2010) (recusal is a remedy to resolve conflict). The countervailing right of the litigant to a

fair hearing and the public interest in an independent judiciary must prevail. This case presents a strong basis to set that balance clearly.

D. The acceptance of disproportionately large campaign contributions from the leaders of the executive or legislative branches of government dilutes the independence of a judiciary serially abdicating the constitutional function to check abuse by other branches respecting constitutional procedures to enact a valid law to such extent to present an existential threat to the form of republican government to which the citizens consented to invoke justiciable relief under the Guarantees Clause, Article IV, Section 4.

In Illinois, the appearance is that occupants of the offices in each branch disregard the state constitution when its provisions are inconvenient to the political ends of the majority faction. The facts of this case illustrate the point aptly. When the judicial branch abdicates its role to enforce the state constitution (effectively ceding its independence to the other branches) one fairly questions whether the form of government to which the citizens consented becomes an illusion. And, in this case, the effects transcend politics to invade the protection of fundamental rights codified in the Second Amendment, which that state judiciary is bound to protect under the United States

Constitution. U.S. CONST. art. VI. It is important that the judiciary preserve its independence and not abdicate its duty to check the unconstitutional actions of the other branches.

Article IV, Section 8(d) of the Illinois Constitution unequivocally requires that a bill receive three readings in each house and that the Senate President and House Speaker certify compliance as a procedural requirement to the exercise of legislative authority. ILL. CONST. art. IV, § 8(d). This requirement serves important functions.

> "The three-reading requirement ensures that the legislature is fully aware of the contents of the bills upon which they will vote and allows the lawmakers to debate the legislation. Equally relevant to the three-reading rule is the opportunity for the public to view and read a bill prior to its passage thereby allowing the public an opportunity to communicate either their concern or support for proposed legislation with their elected representatives and senators. Taken together, two foundations of the bedrock of democracy are decimated by failing to require the lawmakers to adhere to the constitutional principle." *Accuracy Firearms, LLC v. Pritzker*, 2023 IL App (5th) 230035, ¶ 43.

Here, the certification executed by Defendants was false. See *Caulkins v. Pritzker*, 2023 IL 129453, ¶¶ 102, 109 (Holder-White, J., dissenting). The Illinois Supreme Court has tolerated the "certification" as compliance with the constitutional mandated requirements to pass a law. *Geja's Café v. Metro. Pier and Exh.*

Auth., 153 Ill. 2d 239, 260 (1992) ("enrolled bill doctrine"). "A literal adherence to this . . . doctrine means that a bill need never be read or presented in either house, need never receive a majority vote, and need never even be voted on." *People v. Dunigan*, 165 Ill. 2d 235, 258 (1995) (Heiple, J. dissenting). The legislative power is shifted to two leaders, two Defendants in this cause, the second largest contributors and co-committed members with Justices Rochford and O'Brien to the assault weapons ban when the General Assembly next convened after the election. A legislative power in the hands of two and a majority of the judiciary abdicating its function to independently exercise judicial review does not reflect any form of republican government, let alone the specific constitutional form for Illinois. See, *e.g.*, *Democratic Party of Wis v. Vos*, 966 F. 3d 581, 588-90 (7th Cir. 2020). Disregard of Section 8(d) is inconsistent with the state's separation of powers regime. See *id*. at 590. Justice Holder White properly stated that the courts cannot turn a blind eye to repeated violations of the constitution or remain perpetually ignorant of what everybody else in the state knows. *Caulkins*, 2023 IL 129453, ¶ 109 (Holder-White, J., dissenting). Stunningly, everybody knows that the allocation of powers to which the citizens of Illinois consented in their constitution is ignored when inconvenient to the political ends. Thus, the State is injured.

First, failure to recuse was an abdication of judicial duty inconsistent with an independent judiciary and the separation of powers. Second, the serial refusal

to enforce the three readings clause denies the citizens of Illinois basic legitimacy for the enactment of laws. Mindful that the Guarantees Clause of the United States Constitution presents an elusive basis for justiciability and that the state high court decides issues under that state's constitution, here, the practices of the Illinois Supreme Court abdicating the enforcement of the Illinois Constitution to yield to the other branches does exhibit a *de facto* denial to Illinois citizens of the form of government prescribed by its constitution. The Illinois Supreme Court abdicated its constitutional duty for review by invoking an enlisted bill doctrine that invokes separation of powers as its basis. However, that doctrine presumes that the two leaders hold the legislative power. That presumption offends any notion of a form of republican government and abdicate the duty for judicial review. The court persists in rationalizing the appearances of a *dependent* judiciary influenced by external interests undermining its integrity with little more than suggesting that *things aren't really as they appear*. Even if the transgressions do not rise to the level of justiciability, the factors heavily support the need for recusal by the challenged Justices to assure due process.

II. The Illinois Supreme Court Swept Away Federally Protected Second Amendment Rights Affecting All Citizens of Illinois[18]

A. The Assault Weapons Partial Ban Facially Codifies Common Possession for Lawful Purposes Irreconcilable to a Prohibition Under the Second Amendment

The Second and Fourteenth Amendments protect the right of ordinary, law-abiding citizens to posses firearms in the home for self-defense. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. ___, 142 S. Ct. 2111 (2022); *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v City of Chi.*, 561 U.S. 742 (2010). The Second Amendment codified the preexisting right for all individual citizens to keep and bear arms for self-defense and defense of hearth and home. *Heller*, 554 U.S. at 592, 635. "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Bruen*, 142 S. Ct. at 2129-30. If covered, the government has the

---

[18] On Friday, November 3, 2023, the Seventh Circuit issued its decision in consolidated cases seeking interlocutory injunctive relief focused on "Arms" covered by the Second Amendment. *Bevis v. City of Naperville*, 2023 U.S. App LEXIS 29332 (7th Cir. 2023). However, *Caulkins* contends, for the reasons stated herein and below, that the continued possession of assault weapons by the grandfathered codified the common possession for lawful purpose test for the Second Amendment to cover the assault weapon. By analogy, it is understood that the General Assembly could not grandfather nuclear weapon possession because the grandfathered do not now possess nuclear weapons. See *id.*, at *6, *36 (acknowledging the "extremes" of handgun possession vs. possession of nuclear weapons).

burden to "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2130. Only then may a court conclude that the individual's conduct falls outside the Second Amendment. *Id.* "[T]he Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of founding" and covers "modern instruments that facilitate armed self-defense." *Id.* at 2132 (citation omitted). The pertinent inquiry is whether the class of firearm is commonly possessed for lawful purposes today. *Caetano v. Mass.*, 577 U.S. 411, 420 (2016) (Alito, J. concurring).

The Assault Weapons Partial Ban first classifies "assault weapons" from other firearms. At first impression, an analogic study of the historical tradition of the wide breadth of arms swept into the "assault weapons" definition by the statute is invited. However, *Caulkins* proceeded on the basis that litigation on this analogic study was unnecessary to invalidate the ban. The Assault Weapons Partial Ban codifies assault weapons for continued common possession for lawful purposes because the grandfathered (and their heirs and other exempted classes) keep the assault weapons. In fact, the Assault Weapons Partial Ban should be invalidated under the reasoning of a simply stated syllogism with the major premise that the Second Amendment extends *prima facie* to arms commonly possessed for lawful purposes and minor premise that assault weapons are (and will be) commonly possessed by the grandfathered class for lawful purposes. Thus, the

Second Amendment extends *prima facie* to cover "assault weapons" because they are commonly possessed for lawful purposes.[19] Thus, the "assault weapon", is accepted as within the protections of the Second Amendment by the statutory terms.

What remains is whether the prohibited vs. grandfathered classification of persons survives. All persons comprising the two categories are ordinary law-abiding citizens possessing or seeking to possess assault weapons for self-defense in the home. As such, the disparate treatment cannot be supported by any tradition that the "home" is a sensitive place. "The individual right to self-defense *in the home* is elevated before all other rights" *Heller*, 554 U.S. at 635 (*emphasis added*). The "tradition" would never tolerate the home as a sensitive place. The prohibited home is no more sensitive than the grandfathered home because of the date for acquisition of the assault weapon. Any historic tradition based on restricting possession by the dangerous, the infirm or persons who pose a danger to others[20] is not measured by the date one procured the firearm to equate the prohibited with the dangerous.

The Defendants offer a "reliance on prior law" argument to justify the prohibition in the Criminal Code. However, the prior "law" relied upon is not identified by the Defendants. Obviously, the prior "law" is the

---

[19] By electing not to answer the Complaint, Defendants technically admitted "commonly possessed for lawful purposes today."

[20] The State excludes the plaintiffs in the prohibited class from such traditional prohibitors because they hold valid FOID cards.

Second Amendment, the codified preexisting fundamental right, not any legislative grant to support reliance. The Defendants' premise is that the grandfathered relied on the Second Amendment to acquire the assault weapons, so possession may continue. On the other hand, the prohibited cannot rely on the Second Amendment to acquire or possess to avoid criminal prosecution because of a date on the calendar. The reasoning advanced by Defendants rely on historic tradition and deny historic tradition in the same breath. The Defendants failed to justify its "sunset" of the Second Amendment for future ordinary law-abiding citizens to possess assault weapons in the home for lawful purposes. This Petition must be granted to restore federally protected Second Amendment fundamental rights that the Illinois Supreme Court swept away.

B. Enforcement of the Assault Weapons Partial Ban Denies Equal Protection of the Laws

Defendants, expressly, and the majority of the Illinois Supreme Court, implicitly, rejected the notion that the right to keep and bear arms is a fundamental right. Assuming *arguend*o that assault weapons are not an arm falling within Second Amendment fundamental right protection,[21] then equal protection under the Fourteenth Amendment invalidates the Assault Weapons Partial Ban. Irrespective of the level of scrutiny, all

[21] A contention *Caulkins* rejects.

similarly situated ordinary law-abiding citizens are not treated equally in a manner that fails all levels. The classification of persons drawn between the grandfathered and prohibited bears no relationship to the speculative purpose for the law, reduction in mass shootings.

The Assault Weapons Partial Ban exposes lawful gun owners seeking to possess in their home to two strikingly different classifications unrelated to differences in conduct: one class is subject to criminal sanction, the other class immunized from criminal sanction for the for same conduct, possessing an assault weapon. The Fourteenth Amendment "requires that all persons subjected to . . . legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." *Engquist v. Or. Dep't of Agric.*, 553 U.S. 591, 602 (2008) (citation omitted).

> "In considering whether state legislation violates the Equal Protection Clause of the Fourteenth Amendment, U.S. Const. amend. XIV, § 1, [the U.S. Supreme Court applies] different levels of scrutiny to different types of classifications. At a minimum, a statutory classification must be rationally related to a legitimate governmental purpose. Classifications based on race or national origin, and classifications affecting fundamental rights, are given the most exacting scrutiny. Between these extremes of rational basis review and strict scrutiny lies a level of intermediate scrutiny." *Clark v. Jeter*, 486 U.S. 456, 461 (1988).

In *McDonald*, this Court determined that "the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty." 561 U.S. at 778. "When a statutory classification significantly interferes with the exercise of a fundamental right, it cannot be upheld unless it is supported by sufficiently important state interests and is closely tailored to effectuate only those interests." *Zablocki v. Redhail*, 434 U.S. 374, 388 (1978). Here, the Act fails to state its legislative intent, effectively foreclosing any validity to the classifications of persons if tested at strict or heightened scrutiny. The Defendants conceded below that the Act would fail strict and heightened scrutiny.

There exists no rational basis to criminalize one person indistinguishable in any manner based on conduct from another immunized from the criminal liability or to speculate that the prohibited present a greater risk for mass shootings than the grandfathered based on the date an assault weapon was acquired. The grandfathered who are immunized from criminal liability for possession have no greater training than the prohibited merely because the grandfathered already possess an assault weapon. Or, if the grandfathered are presumed to be safe (lawful) to possess assault weapons by mere possession, then the prohibited would satisfy the same safety presumption if allowed to acquire and possess. The fortuity of time of acquisition bears no connection to safety or danger. The resulting arbitrary classification on the face of the

Assault Weapons Partial Ban fails all levels of scrutiny test and should be invalidated on this additional basis.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JERROLD H. STOCKS
(*Counsel of Record*)
BRIAN D. ECK
PATRICK C. SULLIVAN
FEATHERSTUN, GAUMER, STOCKS, FLYNN & ECK, LLP
101 South State Street, Suite 240
P.O. Box 1760
Decatur, IL 62525-1760
Telephone: (217) 429-4453
Facsimile: (217) 425-8892
Email: jstocks@decatur.legal
Email: beck@decatur.legal
Email: psullivan@decatur.legal

Counsel for Petitioners

November 9, 2023