No. 23-510

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.

Emergency Application for Stay Enjoining Enforcement of Illinois Assault Weapons Partial Ban Pending Final Disposition of Case Docket No. 23-510 Directed to the Honorable Amy Coney Barrett, Associate Justice of the United States Supreme Court and Circuit Justice for the Seventh Circuit

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PARTIES TO THE PROCEEDING

Applicants/Petitioners: 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. Applicants were Plaintiffs in the Circuit Court and Appellees in the Illinois Supreme Court. [collectively: *Caulkins*]

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. Each Respondent was a Defendant in the Circuit Court and Appellant in the Illinois Supreme Court. [collectively: *Pritzker* or Defendants]

CORPORATE DISCLOSURE STATEMENT

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

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

JURISDICTION

This Court has jurisdiction to review the Illinois Supreme Court's judgment overruling the Final Judgment of the Macon County Circuit Court under Supreme Court Rule 23, 28 U.S.C. § 1651, and 28 U.S.C. § 2101(f).

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Rules

Other Authorities

To the Honorable Amy Coney Barrett, Associate Justice of the United States Supreme Court and Circuit Justice for the Seventh Circuit:

Emergency Application for Stay Enjoining Enforcement of Illinois Assault Weapons Partial Ban[1] Pending Final Disposition of Case Docket No. 23-510

I. Summary of Facts/Procedural Status[2]

> [By waiving their right to respond to Applicants' Petition for Writ of Certiorari, *Pritzker* waived Response or Objection to a misstatement of fact or law, or objection to consideration of a question presented in the Petition for Writ of Certiorari and said Petition for Writ of Certiorari is distributed for Conference January 5, 2024, and available for review in support of this Application and, as such, incorporated herein. SUP. CT. R. 15.2-15.3.]

On January 8, 2023, HB 5471, entitled INSURANCE CODE-PUBLIC ADJUSTERS and limited to insurance, wholly was gutted and replaced by new content which would become, on January 10, 2023 (the final day of Session for the General Assembly), the Protect Illinois Communities Act [P.A. 102-116], that included new Criminal Code provisions herein referred to as the Illinois Assault Weapons Partial Ban[3] (or the "Ban"). No legislative purpose for the Ban was stated in the statutory language. The Presentment of the Bill to Defendant Pritzker for signature to complete enactment of the Ban was enabled by a false certification of compliance with Illinois constitutional provisions necessary to enact a valid law executed by Defendants Welch and Harmon. The prohibition of assault weapon acquisition by non-exempted FOID holders took effect immediately.

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[1] 720 ILCS 5/24-1.9 – 1.10 (West Supp. 2023) are added offenses to the Illinois Criminal Code by which the prohibition and indorsement of "assault weapons" is achieved.

[2] *Pritzker* demurred to Complaint to admit facts. Further, *Pritzker* waived response to Petition for Writ of Certiorari.

[3] The text of the Illinois Assault Weapons Partial Ban is reproduced as pages 74-103 of the Appendix to the Petition for Writ of Certiorari.

The Ban was not a general law applicable to all FOID holders in like manner and segregated the lawfulness of possession of assault weapons into two categories. Grandfathered FOID holders lawfully possessing an assault weapon on January 10, 2023, are immunized from criminal penalty for the possession of the assault weapon, including any heir succeeding to possess the assault weapon. FOID holders not possessing a specific assault weapon on January 10, 2023, cannot lawfully acquire or possess an assault weapon after January 10, 2023, and are subject to criminal prosecution for the same conduct as the grandfathered, to wit: possession of an assault weapon. Those persons lawful to possess assault weapons on January 10, 2023, are required, subject to criminal penalty, to indorse the specific assault weapons possessed to the Illinois State Police between October 1, 2023, and January 1, 2024.

Litigation challenging the constitutionality of the process by which the Ban was enacted and challenging the constitutionality of the Ban's substance developed nearly immediately, including this action filed January 26, 2023, and, notably, two other proceedings: (1) *Accuracy Firearms, LLC v. Pritzker*, 2023 IL App (5th) 230035; and (2) Federal cases (consolidated) and referenced collectively as *Bevis*[4]. *Accuracy* resulted in a Circuit Court Temporary Restraining Order enjoining enforcement of the Ban. The Illinois Appellate Court for the Fifth District affirmed the interlocutory injunctive relief. *Accuracy Firearms*, 2023 IL App (5th) 230035, ¶ 68. Meanwhile, the

[4] *Bevis v. City of Naperville*, 2023 U.S. App LEXIS 29332 (7th Cir. 2023).

Bevis litigation resulted in a denial of interlocutory relief which now is the subject of an Application in Case Docket No. 23A486.

On March 3, 2023, the Illinois Circuit Court entered Final Judgment in favor of *Caulkins* and against *Pritzker* invalidating the Criminal Code provisions of P.A. 102-116, the Ban, as facially unconstitutional on Second Amendment and equal protection grounds. App. 70-74.[5] No stay of enforcement of the Circuit Court Final Judgment was entered. *Pritzker* appealed the Final Judgment invalidating the Ban directly to the Illinois Supreme Court, the mandatory court for review,[6] requesting *de novo* review.

On March 29, 2023, to protect their Fourteenth Amendment rights, *Caulkins* moved the Illinois Supreme Court, including two individual Justices, Justice Rochford and Justice O'Brien, for disqualification for bias in favor of Defendants arising from disproportionately large, non-remote campaign contributions from Defendants[7] and shared prior commitment with the Defendants to the specific

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[5] Any citation herein to "App." shall be to the Appendix to the Petition for Writ of Certiorari. Any citation herein to "Supp. App." shall be to the appendix to the Supplemental Brief in Support of Petition for Writ of Certiorari.

[6] ILL. CONST. art. VI, § 4(b); ILL. S. CT. R. 302(a)(1).

[7] 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 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

outcome of an assault weapons ban. App. 104-123. The Illinois Supreme Court declined to act collectively and reposed the decision on recusal to the individual Justices challenged. App. 54-55. The two Justices denied recusal on self-evaluative Orders. App. 56-69.

On August 12, 2023, the Illinois Supreme Court, in a 4-3 Opinion authored by one of the Justices challenged for disqualification, reversed the Circuit Court Final Judgment, effectively re-instating the prohibitions of the Ban. App. 1-53.

During the effective period of the non-stayed Circuit Court Final Judgment invalidating the Ban, FOID holders in the State of Illinois, including one or more members of Applicant Law-Abiding Gun Owners of Macon County, could lawfully acquire "assault weapons." These same individuals cannot lawfully indorse said arms under the Ban's indorsement (registration) regimen, which indorsement regimen commenced October 1, 2023, and will end on January 1, 2024.

On September 12, 2023, a Justice of the Illinois Supreme Court stayed the return of Mandate to the Circuit Court pending disposition of *Caulkins'* Petition for Writ of Certiorari, filed November 9, 2023, and now docketed as case No. 23-510. On December 1, 2023, *Pritzker* waived their right to file a response to the Petition for Writ of Certiorari. Thus, *Pritzker* waived objection to the consideration of questions

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respective firms/partners appearing for one or more Defendants on the appeal contributed $117,750.00 to Justices Rochford and O'Brien, combined. 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.

raised in the *Caulkins* Petition for Writ of Certiorari based on proceedings below. See SUP. CT. R. 15.2. *Caulkins* filed a Supplement to their Petition for Writ of Certiorari on December 6, 2023, setting forth newly-discovered material showing massive campaign expenditures originating with a committee Defendant Harmon funded heavily and his attorney managed supporting the Justices, which expenditures were not previously disclosed.[8] Despite this ongoing challenge to the Ban, *Pritzker* are enforcing or threatening to enforce the Ban, including the imminent deadlines for indorsement before January 1, 2024, before the disposition of these proceedings.

Caulkins did not seek a stay of enforcement of the Assault Weapons Partial Ban or a stay of the Illinois Supreme Court's Opinion for the reasons set forth in Part V.C of this Application and because, the Illinois Supreme Court having overruled the Circuit Court's Judgment finding the Assault Weapons Partial Ban unconstitutional (effectively reinstating the Ban), such a motion would have been futile.

II. Relief Requested:

[8] Newly discovered material (by Caulkins) discloses Seven Million Three Hundred Thousand Dollars additional (to the $2.6 Million direct financial contributions in the original Petition) indirect campaign expenditures supporting the candidacies of Justices Rochford and O'Brien by a political committee backed by Defendant, Illinois Senate President Don Harmon. The sole officer of the political committee, All for Justice, is Luke Casson, counsel of record for Defendant Harmon in the proceedings below in this case. The expenditures for the benefit of Justices Rochford and O'Brien were concealed from the public until several months after the election. Supp. App. 6, 19-51. On November 21, 2023, All for Justice was fined $99,500.00 for violating campaign disclosure laws with the delayed public disclosure of the expenditures supporting Justices Rochford and O'Brien. Supp. App. 10. Funds controlled by Defendant Harmon contributed $700,000 to All for Justice. Supp. App. 6. Neither Justice Rochford, nor Justice O'Brien, disclosed or otherwise acknowledged the All for Justice expenditures supporting their campaigns originating with one of the Defendants, including his counsel of record in this case, when issuing their Orders denying the Motion for Recusal/Disqualification. App. 56-69.

For the reasons hereinafter stated, Applicants respectfully request an injunction against *Pritzker* barring enforcement of the Illinois Assault Weapons Partial Ban until final disposition of Case No. 23-510 and a stay of the August 11, 2023, Illinois Supreme Court Opinion reversing the March 3, 2023, Circuit Court Final Judgment invalidating the Ban.

III. Grounds Presented in Docket No. 23-510 in Support of Application and Likelihood for Success on Each:

[By waiving their right to respond to Applicants' Petition for Writ of Certiorari, *Pritzker* waived Response or Objection to a misstatement of fact or law, or objection to consideration of a question presented in the Petition for Writ of Certiorari and said Petition for Writ of Certiorari is subject to distribution and available for review in support of this Application and, as such, incorporated herein. SUP. CT. R. 15.2-15.3.]

A. Fourteenth Amendment Due Process Grounds to Vacate Illinois Supreme Court August 11, 2023, Opinion reversing the Circuit Court Final Judgment, which invalidated the Ban on Second Amendment and Equal Protection Grounds.[9]

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

[9] This portion of the Application corresponds to Parts I. A-C of the Petition for Writ of Certiorari, Reasons to Grant Petition for Writ of Certiorari and to the Supplement to Petition for Writ of Certiorari in No. 23-510.

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.

Caulkins seek review to vacate the August 11, 2023, Illinois Supreme Court Judgment reversing the Final Judgment invalidating the Ban because, under this Court's precedent in *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009), the participation of two Illinois Supreme Court Justices, Justice Rochford and Justice O'Brien, in the consideration of the case denied *Caulkins* due process under the Fourteenth Amendment. The circumstances presented are magnitudes more

"extreme" than those circumstances presented in *Caperton* that this Court found constitutionally intolerable:

> **Campaign Money**: Here, Defendants, their respective campaign committees, and their attorneys, transferred or paid, in excess of $2,500,000 in direct campaign contributions in the November 2022 General Election cycle to Justices Rochford and O'Brien. In *Caperton*, the direct contribution was $1,000. *Caperton*, 556 US. at 873. In *Caperton*, indirect expenditure supporting the Justice was $3,000,000. *Id.* Here, indirect expenditures by a political committee controlled and significantly funded by Defendants or attorneys in this case was $7,300,000. Here, the direct and indirect support tied to Defendants surpassed the total spending supporting opponents. Noteworthy, the indirect support of Justices Rochford and O'Brien was concealed from timely public disclosure in accordance with law and was not disclosed by the Justices when issuing Orders denying recusal contrary to duties under the Illinois Code of Judicial Conduct. Ill. Code Jud. Conduct, R. 2.11, cmt 5. ("A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification."). If *Caperton* is the test, then the non-remote and substantially disproportionate contributions originating from Defendants clear the intolerable threshold. The likelihood for success is high.

Candidate/Justice Commitment: In *Caperton*, this Court found that there was implied bias between a state supreme court Justice in favor of a donor-litigant in a single case, which case raised no issue impacting a federally protected right. Here, both Justices Rochford and O'Brien committed to the specific outcome shared with Defendants, to enact an assault weapon ban when the General Assembly returned to Session after the election. See App. 124-136[10]. At issue in this case when it was before the Illinois Supreme Court was not only the substance of the Ban and its impact on a federally protected right, but also the process by which the Ban was enacted, to include false certifications by Defendants Harmon and Welch (both of whom contributed to Justices Rochford and O'Brien's campaigns) to facilitate enactment of the "gut and replace" legislation. 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 that are incompatible with the conclusion to which she committed. Here, the shared outcome to which Justices Rochford and O'Brien

[10] 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 legislative session after the election, namely, "banning assault weapons and large-capacity magazines." App. 124. The content of the statement was for a specific outcome, including the process and timing thereof. In their Orders, 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).

committed yielded Defendants a free pass regarding the process by which the Ban became law, in addition to the assault weapon ban.

Bias or the appearance of bias by a Justice is inescapable when campaigning on the endorsed course of action to enact an assault weapon ban when the General Assembly convenes… exactly what happened and exactly what was subject to review. The commitment infected the review to undermine legitimacy of the Opinion issued. Notwithstanding the self-evaluative denials of bias by the Justices,

> "objective 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).

Here, objective standards were absent. The Illinois Supreme Court took no lessons from *Caperton* to assure an objective evaluation of the disqualification request. Here, the circumstances are less tolerable than the unconstitutional circumstances in *Caperton* indicating a high likelihood for success under the standards this Court established in *Caperton*.

Public Interest: In *Caperton*, the appearance of lack of impartiality from a Justice for a private litigant in a claim presenting no underlying adjudication of a federally protected right was sufficient to deny due process. Here, the appearance or actuality of bias inconsistent with impartiality impacted the contours of a fundamental right extending to all citizens in Illinois. Here, the independence of the Judiciary relative to the other branches of state

> government was eroded. The public perception created by the circumstances was that the Illinois Supreme Court yielded to the abuses of the Illinois Constitution and United States Constitution by the leaders of the Legislative and Executive Branches disproportionately responsible for securing the election of the challenged Justices—all to achieve the commonly shared political end, an assault weapon ban. Under the totality of circumstances, would the average citizen perceive the Illinois Supreme Court, or the challenged Justices, to be biased for or dependent on the leaders of the other branches of government? Here, the identity of the contributors, Defendants all, whose conduct is under review with the content of the shared policy challenged gravely undermines public confidence in the Illinois Supreme Court.

If the Opinion is vacated or void because the Illinois Supreme Court denied *Caulkins* due process to sweep away Second Amendment rights, then the Circuit Court Final Judgment facially invalidating the Ban is the final Illinois adjudication[11] that operates to bar the enforcement of the law in all applications in the State. *In re NG*, 2018 IL 121939, ¶ 50-51; *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill.2d 474, 498 (2008). While the Circuit Court Final Judgment may not be "precedent," it would stand as *res judicata*, collateral estoppel, or both to the enforcement of the Ban by the State. Potentially, federal litigation could be dismissed as moot or *Pritzker* collaterally estopped from enforcement in *Bevis* by the Final Judgment in favor of *Caulkins*. *Allen v. McCurry*, 449 U.S. 90, 94 (1980).

[11] Ill. Const. art. VI, §§ 1, 3.

B. The Illinois Supreme Court Swept Away Federally Protected Second Amendment Rights Affecting All Citizens of Illinois[12]

The Second and Fourteenth Amendments protect the right of ordinary, law-abiding citizens to possess 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 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).

Caulkins seeks review of the August 11, 2023 Illinois Supreme Court Judgment because the impact of the Opinion infringes fundamental Second

[12] This portion of the Application corresponds to Part II A-B of the Petition for Writ of Certiorari, Reasons to Grant Petition for Writ of Certiorari.

Amendment rights of a sub-set of law-abiding citizens possessing Firearms Owners Identification Card [FOID][13] from "assault weapon" possession and acquisition for use in the home. *Caulkins* contended that the case was first a test of the classification of persons as opposed to the classification of weapons, and if the Second Amendment did not condemn the Ban, equal protection invalidated the law.[14] The Ban criminalizes possession and acquisition of assault weapons for use in the home for some FOID holders and immunizes from criminal sanction "grand-fathered" FOID holders as it relates to the possession of assault weapons in the home. *Caulkins* asserted that the challenged law codified the continued "common possession[15] of assault weapons for lawful purposes" for the grand-fathered, thus, the Second Amendment extended *prima facie* to cover the assault weapons based on statutory construction. *Caulkins* further asserted that *Pritzker* presented no justification to treat law-abiding FOID card holding citizens disparately. The home is not a sensitive place as the "individual right to self-defense in the home is elevated before all other rights." *Heller*, 554 U.S. at 635. Simply put, there is no historic tradition to prohibit law-abiding citizens from possession for use in the home based on date of assault weapon acquisition. The law-abiding FOID holder prohibited from possession in his home is no more "dangerous" than the grand-fathered FOID holder possessing the

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[13] 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).

[14] 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).

[15] Regulated to those then possessed.

assault weapon to defend his home merely because the grand-fathered already possessed the 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. By all measures, the classification of persons finds no analogic historical tradition and facially is arbitrary. Before engaging the protracted analysis of firearm descriptors and projecting what was contemplated historically, the Ban fails because it codifies continued common possession for lawful purposes for some and arbitrarily prohibits for others entitled to exercise Second Amendment rights. Any valid regulation requires a general law applying the contours of the Second Amendment in like manner to all FOID holders.

Pritzker argued "reliance" as a *post hoc* justification for excepting the grandfathered FOID holders from the prohibition of the Ban. The grandfathered relied on the Second Amendment to acquire and possess the assault weapon. The prohibited no longer can rely on the Second Amendment because the Illinois General Assembly arrogated to itself the authority to amend the Second Amendment. The resulting two tiers of the Second Amendment right and the disparate criminal treatment of the same conduct measured by a date on the calendar and not any difference in conduct fail both Second Amendment and Fourteenth Amendment equal protection. *Pritzker* cannot meet the state's burden to justify the Ban. The classification of persons addressed in *Caulkins* complements the challenge in *Bevis* (see Part V.A, below) but also stands distinct from the challenge in *Bevis*.

C. Guarantees Clause, U.S. Constitution Article IV, Sec. 4.[16]

Historically, the Guarantees Clause has proven to be an elusive basis for relief, and its justiciability has been questioned, but not necessarily foreclosed. See *New York v. United States*, 505 U.S. 144, 185 (1992); *Democratic Party of Wis. v. Vos*, 966 F.3d 581, 589 (7th Cir., 2020). However, this case presents an "Illinois Story" exposing the existential threat to a republican form of government in Illinois. Applicant does not contend that this ground presents a likelihood for success based on precedent and includes for a good faith argument to recognize justiciability under the specific circumstances presented. Here, the "Illinois Story" reveals rule by faction to oppress fundamental rights, the effects of which a true republican form of government should control. See THE FEDERALIST NO. 10 (James Madison). The instant circumstances test much more than the partisan intentions of legislators, rather, the legitimacy of the means by which those partisan ends are achieved.

The Ban was enabled by an abuse of article IV, section 8(d) of Illinois Constitution, which section defined the process by which the legislative branch may present a passed Bill to the Governor. The Illinois Constitution requires a ministerial act by the Senate President and Speaker of the House certifying that the constitutionally mandated legislative process was satisfied. ILL. CONST. art. IV, § 8(d). Here, the fact is admitted that Defendants Harmon and Welch falsely certified constitutional compliance.[17] The Illinois Supreme Court has a history of abdicating

[16] This portion of the Application corresponds to Part I.D of Reasons to Grant Petition for Writ of Certiorari.

[17] The fact is admitted by *Pritzker's* demurring to Complaint and, besides, is subject to judicial notice. *Caulkins v. Pritzker*, 2023 IL 129453, ¶ 104 (Holder-White, J., dissenting).

review of the actions of the Legislature insofar as validly enacting laws in accordance with the process at Article IV, Section 8(d). The Illinois Supreme Court constructed a pretextual doctrine in past cases entitled the "enrolled bill doctrine" that accepts the ministerial certification as irrebuttable and conclusive because judicial review would violate separation of powers. See *Cutinello v. Whitley*, 161 Ill. 2d 409, 425 (1994). However, the "separation of powers" justification for abdicating judicial review is valid only if the ministerial act of the Speaker and Senate President is the exercise of the legislative power. Equating the legislative power to the ministerial act logically means that no vote by the elected representatives in each chamber in accordance with the Illinois Constitution need ever take place to support the Presentment of a Bill to the Governor. See *People v. Dunigan*, 165 Ill. 2d 235, 258 (1995) (Heiple, J. dissenting). Effectively, three people (two legislators and the Governor, all Defendants in this cause, and all large contributors to Justices Rochford and O'Brien) govern. This is not a representative republican form of government. Here, the crux of the challenge is not a shifted allocation of powers between branches as much as it is a shift of power away from the people and their elected representatives through constitutional process to the Defendants who control the majority political faction that also exerts disproportionate control over the judiciary to such extent as to erode the independence of the "co-equal" branch. Below, the *dissent* is based on the invalidity of the Ban because the Bill did not pass the General Assembly as required in the Illinois Constitution, rendering false the certification

that it did so pass. The majority refused to address the issue as it was inconvenient to the political end shared with Defendants--an interstitial tie to Part III.A., above.

In sum, the "Illinois Story," here, is a legislature of two and a judiciary abdicating its duty of judicial review to allow the well-funded co-committed political faction to infringe federally protected fundamental rights. If there is any role for federal courts under the Guarantees Clause to assure that a state's allocation of powers between the branches of government is a "republican form," then the role is restricted to real or existential threats. *Democratic Party of Wis.*, 966 F.3d 581. The totality of circumstances here animates the existential threat. Perhaps a different form of violence to the Illinois republican form of government—a form of violence from inside the government itself—but violence, nonetheless, sufficient to invoke justiciability of the Guarantees Clause for the protection of all Illinois citizens from a lawless state government.

IV. Harm to Law-Abiding Citizens from Enforcement During Pendency of Review

The deprivation of a fundamental constitutional right is an irreparable injury which may be enjoined pre-enforcement. *Ezell v. City of Chi.,* 651 F.3d 684, 695-96 (7th Cir. 2011). Each of the grounds raised for review invalidates the Ban and seeks to protect fundamental constitutional rights or to assure that the adjudication of those rights is fair in accordance with due process.

Here, *Caulkins* are subject to criminal prosecution for possession, acquisition, or inaccurate/failure to indorse an assault weapon before January 1, 2024. Further, from March 3, 2023, to August 11, 2023, the Ban was invalidated pursuant to Final

Judgment for which *Pritzker* requested no stay to enforcement. Accordingly, it was not unlawful to acquire assault weapons during the period for invalidity of the Ban pursuant to the Circuit Court Final Judgment. Now, *Pritzker* enforces the Ban, including the requirement for indorsements that are available only for assault weapons possessed on or before January 10, 2023. Any acquisitions between March 3, 2023, and August 11, 2023, are not eligible for indorsement under the plain language of the statute. See 720 ILCS 5/24-1.9 – 1.10 (West Supp. 2023). Lawful possession after January 1, 2024, requires indorsement. Anyone who unlawfully acquires, unlawfully possesses, or unlawfully fails to indorse an assault weapon is subject to prosecution and a felony conviction, which conviction would prohibit future possession. Thus, in violation of the Fifth Amendment, the required indorsement compels the lawful gun owner to disclose evidence against himself under circumstances where, so long as the issues in this cause remain unresolved, the lawfulness of the acquisition is unresolved. The procedural history of this case yields a patchwork of circumstances placing otherwise law-abiding citizens in criminal jeopardy. The Ban has informed a substantial measure of chaos in Illinois. In the proceedings below, thirty-three County State's Attorneys filed amicus joining the *Caulkins* position. Further, more than 80 of the 102 Illinois County Sheriffs have pledged not to enforce the Ban. Joe Barrett, *Most Illinois Sheriffs Say They Won't Enforce New Assault-Weapons Ban*, WALL STREET JOURNAL, Jan. 20, 2023. Compelling public interests justify a stay on the enforcement of the Ban until the challenges are exhausted finally. Presently, the Petition for Writ of Certiorari has

been distributed to the Court for January 5, 2024, Conference. The requested relief is not wholly open-ended or sought in a process not advancing towards potential final disposition. The public interest is better served by preserving the status quo as it existed before January 10, 2023.

V. **A Stay is Proper by the Instant Application**

A. Related case:

There is pending the Application in *Bevis* seeking similar relief. There is a common position present in both cases that contends that the Second Amendment extends, *prima facie*, to all arms in common use for lawful purposes. *Bevis* engages the debate with the State on whether the defined "assault weapons" in the Ban are both uncommon and dangerous. *Caulkins* did not invite the "uncommon and dangerous" weapons debate because statutory construction of the Ban codified continued common use for lawful purposes for the grandfathered to the extent of weapons already possessed. Thus, the question presented is whether the classification of persons between grandfathered FOID holders and prohibited FOID holders falls within any historical tradition to allow a two-tiered Second Amendment. Illinois is attempting to re-write the Second Amendment with different terms for FOID holders. The challenge based on the disparate treatment of persons, under Second Amendment or equal protection standards, does not appear articulated in *Bevis*, and, at present, the Plaintiffs' Second Amendment challenge in *Bevis* regarding interlocutory relief has been unsuccessful. *Caulkins'* position regarding statutory construction and classification of persons immunized and/or subjected to criminal

penalties for the same conduct is antecedent to any "uncommon and dangerous" adjudications. Thus, action on *Bevis* potentially risks prejudice to *Caulkins*. *Caulkins* presents grounds to vacate the Illinois Supreme Court Opinion distinct from *Bevis*. If successful on one or more of those grounds, then the Final Judgment against Defendants invalidates the Ban as *res judicata* or under principles of collateral estoppel to prevent enforcement by the State.

B. Pending Petition for Writ of Certiorari and Supplemental Petition:

The proceedings in Illinois are concluded based on the Circuit Court Final Judgment and Reversal thereof by the Illinois Supreme Court. The relief sought is not interlocutory to a pending final judgment from a lower court. The relief sought is related to a pending Petition for Writ of Certiorari. *Pritzker* waived objection to the consideration of questions raised in the *Caulkins* Petition for Writ of Certiorari based on proceedings below by electing not to file a response. SUP. CT. R. 15.2 Thus, the Petition for Writ of Certiorari has been distributed to the Court for conference on January 5, 2024. SUP. CT. R. 15.5. Notwithstanding the stay of return of Mandate to the Illinois Circuit Court, Illinois continues to enforce the Ban and current indorsement regimen.

C. Due Process Futility to Seek Relief from Illinois Supreme Court.

As stated at Parts V. A. and B. above, *Caulkins*' Fourteenth Amendment/ *Caperton* challenge establishes an extraordinary circumstance under U.S. Supreme Court Rule 23.3, if applicable, to excuse the pursuit of additional relief from the Illinois Supreme Court. The substantive contention in the Fourteenth Amendment

challenge is that the Illinois Supreme Court is affected by conflict caused by the failure of each of two Justices to recuse herself or the Illinois Supreme Court to otherwise disqualify said Justices. The constitutionally intolerable participation of Justices Rochford and O'Brien disqualifies the entire panel comprising the Illinois Supreme Court. *Williams v. Pa.*, 579 U.S. 1, 15 (2016). Thus, the Illinois Supreme Court cannot afford *Caulkins* due process at this stage.

CONCLUSION

The Applicants have established all of the elements required to demonstrate that they are entitled to injunction against *Pritzker* barring enforcement of the Illinois Assault Weapons Partial Ban until final disposition of Case No. 23-510 and to a stay of the August 11, 2023, Illinois Supreme Court Opinion reversing the March 3, 2023, Circuit Court Final Judgment invalidating the Ban. Therefore, they respectfully request that the Circuit Justice grant this application or refer it to the full Court for consideration.

Respectfully submitted,

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