

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CALEB BARNETT et al.,

Plaintiffs,

v.

KWAME RAOUL, Attorney General of
Illinois et al.,

Defendants.

No. 3:23-cv-209-SPM

MOTION FOR EXTENSION OF TIME

Defendants Kwame Raoul, Attorney General of the State of Illinois, and Brendan F. Kelly, Director of the Illinois State Police, by and through their attorney, Kwame Raoul, move pursuant to Federal Rule of Civil Procedure 6(b) for a 21-day extension, up to and including March 2, 2023, of the deadline to respond to Plaintiffs' motion for preliminary injunction, and state as follows:

1. Plaintiffs filed this lawsuit on January 24, 2023, challenging provisions in Public Act 102-1116, the Protect Illinois Communities Act ("the Act"), which was signed and took effect on January 10, 2023. Plaintiffs allege that the Act's restrictions on the purchase and sale of assault weapons and large capacity magazines violate their rights under the Second Amendment, as incorporated by the Fourteenth. ECF 1. Attorney General Raoul and Director Kelly have not received service of the complaint and summons, but have indicated to Plaintiffs' counsel their willingness to execute a waiver of service under Rule 4(d).

2. On January 26, 2023, Plaintiffs filed a 20-page motion for preliminary injunction. Doc. 10. Under Local Rule 7.1(g), Defendants' response is due February 9, 2023. SDIL-LR 7.1(g).

3. This case is one of at least four (to Defendants' knowledge) currently pending in this Court bringing the same or similar Second Amendment challenge to the purchase and sale

restrictions in the Act. *See Langley v. Kelly*, Case No. 23-cv-00192-SPM; *Federal Firearms Licensees of Illinois v. Pritzker*, Case No. 23-cv-00215-SPM; *Harrel v. Raoul*, Case No. 23-cv-00141-SPM. On January 30, 2023, this case, along with *Langley* and *Federal Firearms Licensees*, were all transferred to Your Honor. ECF 12.

4. The Attorney General and Director Kelly seek a 21-day extension to file a response to Plaintiffs' preliminary injunction motion on or before March 2, 2023. The Attorney General and Director Kelly are in the process of retaining experts and preparing expert declarations to demonstrate that Plaintiffs have no reasonable likelihood of success of proving that the challenged provisions in the Act violate the Second Amendment under *N.Y. State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022). As in other cases applying the *Bruen* standard, the Attorney General and Director Kelly intend to introduce expert declarations demonstrating that the assault weapons and large capacity magazines regulated by the Act are not "arms" within the meaning of the Second Amendment because they are not commonly used for self-defense and they are "dangerous and unusual," *see Bruen*, 142 S. Ct. at 2128, 2132, 2134. In addition, even if the Act regulates "arms" covered by the Second Amendment, the Attorney General and Director Kelly also intend to demonstrate, with supporting expert declarations, that the Act's regulations of assault weapons and large capacity magazines are "consistent with the Nation's historical tradition of firearm regulation," *id.* at 2130.

5. The Attorney General and Director Kelly seek additional time to allow them to obtain expert declarations in support of their response to the preliminary injunction motion.

6. On January 26, 2023, the Attorney General and Director Kelly retained Professor Robert J. Spitzer, an expert regarding the history of firearms regulation in this country. Dr. Spitzer is traveling, however, from January 26 until February 3, 2023. Given Dr. Spitzer's travel schedule,

the Attorney General and Director Kelly do not have sufficient time to obtain his declaration and incorporate its contents into a response brief by the February 9 deadline.

7. Similarly, on January 25, 2023, the Attorney General and Director Kelly retained Professor Louis Klarevas, an expert regarding mass shootings and their interrelationship with assault weapons and large capacity magazines. Professor Klarevas has been completing pre-existing assignments from litigation in other jurisdictions, which has limited his availability to assist in this case and the related cases pending in this Court.

8. The Attorney General and Director Kelly are also working with additional experts to prepare declarations in support of the brief responding to Plaintiffs' motion. The Attorney General and Director Kelly respectfully request additional time in order to facilitate the completion of these declarations and incorporate their contents into Defendants' response.

9. In the related *Langley* matter, the Court granted Defendants' unopposed motion for a 21-day extension to respond to the preliminary injunction motion on February 1, 2023, making Defendants' response in *Langley* due on February 28, 2023.

10. On February 1, 2023, counsel for the Attorney General and Director Kelly contacted Plaintiffs' counsel to ask whether Plaintiffs would consent to the extension Defendants seek. Plaintiffs' counsel stated that they do not oppose the proposed extension.

WHEREFORE, for the above and foregoing reasons, Defendants request that this Court extend the deadline to respond to Plaintiffs' motion for preliminary injunction to March 2, 2023.

Dated: February 1, 2023

Respectfully submitted,

/s/ Christopher G. Wells
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Barnett et al. v. Raoul et al., No. 3:23-cv-209-SPM (S.D. Ill.)

CERTIFICATE OF SERVICE

I certify that on February 1, 2023, I caused a copy of the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification to all counsel of record.

/s/ Christopher G. Wells
Chief, Public Interest Division
Office of the Illinois Attorney General