

Nos. 23-1825, 23-1826, 23-1827 & 23-1828 (consol.)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

CALEB BARNETT, BRIAN NORMAN,	)	Appeal from the United States
HOOD'S GUNS & MORE, PRO GUN	)	District Court for the Southern
AND INDOOR RANGE, and	)	District of Illinois
NATIONAL SPORTS SHOOTING)	
FOUNDATION, INC.,)	
)	
Plaintiffs-Appellees,)	
)	
v.	)	No. 3:23-cv-00209-SPM
)	
KWAME RAOUL, Attorney General of)	
the State of Illinois, and BRENDAN F.)	
KELLY, Director of the Illinois State)	
Police,	)	The Honorable
	)	STEPHEN P. McGLYNN,
Defendants-Appellants.	)	Judge Presiding.

DANE HARREL; C4 GUN STORE,	)	Appeal from the United States
LLC; MARENGO GUNS, INC.;	)	District Court for the Southern
ILLINOIS STATE RIFLE	)	District of Illinois
ASSOCIATION; FIREARMS POLICY)	
COALITION, INC.; and SECOND)	
AMENDMENT FOUNDATION,)	
)	
Plaintiffs-Appellees,)	
)	
v.)	
)	
KWAME RAOUL, in his official)	
capacity as Attorney General of Illinois;)	
BRENDAN F. KELLY, in his official)	
capacity as Director of the Illinois State)	
Police,)	
)	
Defendants-Appellants,)	
	)	No. 3:23-cv-00141-SPM
and)	
)	

JAMES GOMRIC, in his official)
 capacity as State’s Attorney of St. Clair)
 County, Illinois; JEREMY WALKER, in)
 his official capacity as State’s Attorney)
 of Randolph County, Illinois; PATRICK)
 D. KENNEALLY, in his official)
 capacity as State’s Attorney of)
 McHenry County, Illinois; RICHARD)
 WATSON, in his official capacity as)
 Sheriff of St. Clair County, Illinois;)
 JARROD PETERS, in his official)
 capacity as Sheriff of Randolph County,)
 Illinois; ROBB TADELMAN, in his)
 official capacity as Sheriff of McHenry)
 County, Illinois,) The Honorable
) STEPHEN P. McGLYNN,
 Defendants.) Judge Presiding.

JEREMY W. LANGLEY, TIMOTHY B.) Appeal from the United States
 JONES, and MATTHEW WILSON,) District Court for the Southern
) District of Illinois

Plaintiffs-Appellees,)

v.)

BRENDAN KELLY, in his official)
 capacity as Director of the Illinois State)
 Police,) No. 3:23-cv-00192-SPM

Defendant-Appellant,)

and)

COLE PRICE SHANER, in his official)
 capacity as State’s Attorney of)
 Crawford County, Illinois,) The Honorable
) STEPHEN P. McGLYNN,
 Defendant.) Judge Presiding.

FEDERAL FIREARMS LICENSEES	)	Appeal from the United States
OF ILLINOIS, an Illinois not-for-profit	)	District Court for the Southern
corporation; GUNS SAVE LIFE, an	)	District of Illinois
Illinois not-for-profit corporation; GUN)	
OWNERS OF AMERICA, a California)	
non-stock corporation and a not-for-)	
profit membership organization; GUN)	
OWNERS FOUNDATION, a Virginia)	
non-stock corporation and a not-for-)	
profit legal defense and educational)	
foundation; PIASA ARMORY, a)	
Missouri corporation; DEBRA CLARK;)	
JASMINE YOUNG; and CHRIS)	
MOORE,	)	No. 3:23-cv-00215-SPM
)	
Plaintiffs-Appellees,)	
)	
v.)	
)	
JAY ROBERT “J.B.” PRITZKER, in his)	
official capacity as Governor of the)	
State of Illinois; KWAME RAOUL, in)	
his official capacity as Attorney General)	
of the State of Illinois, and BRENDAN)	
F. KELLY, in his official capacity as)	
Director of the Illinois State Police,	)	The Honorable
	)	STEPHEN P. McGLYNN,
Defendants-Appellants.	)	Judge Presiding.

STATE DEFENDANTS-APPELLANTS’ STATEMENT ON CONSOLIDATION

State Defendants-Appellants Illinois Attorney General Kwame Raoul, Illinois State Police Director Brendan F. Kelly, and Governor JB Pritzker state as follows in response to this court’s May 5, 2023 order instructing the parties to provide a statement on whether this court should consolidate *Herrera v. Raoul*, No. 23-1793, with the four consolidated appeals in *Barnett v. Raoul*, Nos. 23-1825, 23-1826, 23-1827 & 23-1828 (consol.):

1. On January 10, 2023, the State of Illinois passed the Protect Illinois Communities Act (“Act”), which restricts the sale, purchase, manufacture, delivery, or importation of “assault weapons” and “large capacity ammunition feeding devices” (“LCMs”), subject to certain exceptions. 720 ILCS 5/24-1.9, 1.10. Individuals who lawfully possessed assault weapons and LCMs prior to the Act can continue to do so. *Id.* 5/1.9(c)-(d) & 1.10(c)-(d). To continue lawfully possessing an assault weapon, an individual must submit to the State Police an endorsement affidavit by January 1, 2024. *Id.* 5/24-1.9(d). This requirement does not extend to LCMs. *Id.* 5/24-1.10(d).

2. Shortly thereafter, the plaintiffs in *Barnett* and *Herrera* brought suit challenging the validity of various provisions in the Act. *Barnett* arose from four separate actions (*Barnett v. Raoul*, No. 3:23-cv-209 (S.D. Ill.); *Harrel v. Raoul*, 3:23-cv-141 (S.D. Ill.); *Langley v. Kelly*, No. 3:23-cv-192 (S.D. Ill.); and *Fed. Firearms Licensees of Ill. v. Pritzker*, No. 3:23-cv-215 (S.D. Ill.)) claiming the Act’s restrictions on assault weapons and LCMs violated the Second Amendment. *See Langley* Doc. 1; *Harrel* Doc. 1; *Barnett* Doc. 1; *Fed. Firearms* Doc. 1.¹ In each action, plaintiffs filed a motion for preliminary injunction. *Barnett* Doc. 10; *Harrel* Doc. 16; *Langley* Doc. 6; *Fed. Firearms* Doc. 28.

¹ The district court dockets in the four actions giving rise to the consolidated *Barnett* appeal are cited as “*Barnett* Doc. __,” “*Harrel* Doc. __,” “*Langley* Doc. __,” and “*Fed. Firearms* Doc. __,” and this court’s docket is cited as “*Barnett* 7th Cir. Doc. __.” The *Herrera* district court’s docket is cited as “*Herrera* Doc. __,” and this court’s docket in the *Herrera* appeal as “*Herrera* 7th Cir. Doc. __.” Finally, this court’s docket in *Bevis v. City of Naperville*, No. 23-1353, is cited as “*Bevis* 7th Cir. Doc. __.”

3. The district court consolidated the four cases for purposes of briefing and a decision on the pending preliminary injunction motions. *Barnett* Doc. 32 at 3-4. Relevant here, the district court indicated that the preliminary injunction proceedings would focus only on the parties' Second Amendment challenges to the Act's restrictions on assault weapons and LCMs, and all remaining claims—including, for example, the *Langley* plaintiffs' challenge to the endorsement affidavit requirement, *Langley* Doc. 1-1 at 2-3—would be resolved at a later date, *Barnett* Doc. 32 at 2-3 n.2. On April 28, the district court granted plaintiffs' motions for preliminary injunction. *Barnett* Doc. 101. State Defendants appealed and moved for a stay of the district court's injunction. *Barnett* Docs. 102-03; *Barnett* 7th Cir. Doc. 6. On May 4, this court entered a stay of the preliminary injunction pending further order of the court. *Barnett* 7th Cir. Doc. 9.

4. Meanwhile, on January 27, the plaintiff in *Herrera* brought suit against State Defendants Raoul and Kelly, Cook County, County Board of Commissioners President Toni Preckwinkle, Cook County State's Attorney Kimberly M. Foxx, Cook County Sheriff Thomas J. Dart, the City of Chicago, and Superintendent of Police for the Chicago Police Department David O'Neal Brown. *Herrera* Doc. 1. With respect to the State Defendants, *Herrera* alleged that the Act's provisions regulating assault weapons and LCMs, as well as the requirement of an endorsement affidavit, violated the Second Amendment. *Id.* at 22-26. *Herrera* further alleged that regulations on assault weapons and LCMs enacted by Cook

County in 2006 and the City of Chicago in 2013 violated the Second Amendment. *Id.* at 30.

5. That same day, Herrera moved for a temporary restraining order and preliminary injunction, *Herrera* Doc. 4, which the district court denied on April 25, *Herrera* Doc. 75. On April 26, Herrera appealed from the denial of his preliminary injunction motion, *Herrera* Doc. 77, and moved to consolidate his appeal with *Bevis v. Naperville*, No. 23-1353, pending before this court, and expedite the briefing schedule, if necessary, so that the two appeals can be argued and decided together, *Herrera* 7th Cir. Doc. 5. On May 9, the State Defendants filed a response objecting to Herrera's motion, explaining that Herrera's requested relief was impracticable given the respective postures of *Herrera* and *Bevis*. *Herrera* 7th Cir. Doc. 16. In particular, Herrera had not (and as of the filing of this statement, has not) filed his opening brief, while the appellees in *Bevis* had filed their response briefs on May 3. *Id.*; see also *Bevis* 7th Cir. Docs. 56, 59.

6. On May 5, this court entered an order instructing the parties to the *Herrera* and *Barnett* appeals to provide a statement on whether these five appeals should be consolidated. Because briefing has yet to begin in any of these appeals and because all appeals involve Second Amendment challenges to the Act's restrictions on assault weapons and LCMs, State Defendants believe the *Herrera* and *Barnett* appeals may be suitable for consolidation.

7. State Defendants note, however, that the *Herrera* appeal presents legal theories (and involves evidence) not set forth in the *Barnett* appeals. For

instance, the *Herrera* appeal includes a challenge to the validity of the Act's requirement that individuals who wish to continue lawfully possessing assault weapons they obtained prior to the Act's enactment submit to the State Police an endorsement affidavit by January 1, 2024, which is a distinct claim not resolved by the *Barnett* district court in its preliminary injunction order. *Compare Herrera* Doc. 1 at 25-26 (Count III), *with Barnett* Docs. 32, 101. Indeed, the district court in *Herrera* conducted a separate analysis of Herrera's likelihood of success on the endorsement affidavit claim that spanned eight pages and canvassed a substantial amount of historical and other evidence relevant only to that claim. *Herrera*, Doc. 75 at 17-24. Similarly, Herrera—a volunteer medic on an area SWAT team who has been subject to assault weapon and LCM restrictions for years as a resident of Cook County and Chicago, *Herrera* 7th Cir. Doc. 5 at 2—is differently situated than the plaintiffs in *Barnett*. State Defendants anticipate that Herrera will argue, as he did in the district court, *e.g.*, *Herrera*, Doc. 75 at 27-28, that these differences are relevant to the preliminary injunction analysis, including irreparable harm.

8. Because the claims and arguments in the *Barnett* and *Herrera* appeals are not entirely overlapping, State Defendants anticipate that preparing their briefs in *Barnett* and *Herrera* will require separate review, research, and briefing. Accordingly, State Defendants request that any consolidation order afford State Defendants sufficient time to prepare a thorough opening brief in *Barnett* and a thorough response brief in *Herrera*. To that end, State Defendants join in the suggestion by the Cook County and City of Chicago defendants, *Herrera* 7th Cir.

Doc. 17, that this court adopt for *Herrera* the briefing schedule set forth in the *Barnett* appeals, with the opening brief due on June 12, the response brief on July 12, and any reply brief on August 2. *Barnett* 7th Cir. Doc. 7. State Defendants anticipate that, absent a true emergency, they will be able to file their briefs in these appeals pursuant to this schedule without an extension of time.

9. Furthermore, to the extent that plaintiffs in *Barnett* and *Herrera* renew their request that their appeals should be expedited and aligned for oral argument with *Bevis v. City of Naperville*, No. 23-1353, see *Barnett* 7th Cir. Doc. 24; *Herrera* 7th Cir. Doc. 5, State Defendants continue to object because that request would have the effect of delaying scheduling oral argument in *Bevis*. As noted, the appellees in *Bevis* filed their response briefs on May 3, *Bevis* 7th Cir. Doc. 56, 59, and, consistent with this court's usual practice, State Defendants expect that the court will now schedule an argument date. In addition to pursuing their appeal in this court, the *Bevis* plaintiffs have filed an emergency application for injunction pending appeal in the Supreme Court, in which they argue that they are suffering irreparable harm. See *National Ass'n of Gun Rights v. City of Naperville*, No. 22A948. Although the State disagrees with that characterization and has filed a response to that effect, it also has committed to avoiding any delay in the *Bevis* appeal. The State thus filed its response brief in *Bevis* without an extension of time on May 3, and is available to present oral argument at the court's earliest convenience.

10. In light of the foregoing, State Defendants do not oppose consolidation of the *Herrera* appeal with the *Barnett* appeals. State Defendants suggest that, if this court consolidates the appeals, the court adopt for *Herrera* the briefing schedule set forth in the *Barnett* appeals, with the opening brief due on June 12, the response brief on July 12, and any reply brief on August 2.

Dated: May 10, 2023

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that on May 10, 2023, I electronically filed State Defendants-Appellants' Statement on Consolidation with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit using the CM/ECF system. All other participants in this case are CM/ECF users and will be served by that system.

/s/ Sarah A. Hunger
SARAH A. HUNGER