

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

JAVIER HERRERA,

*Plaintiff,*

v.

KWAME RAOUL, *in his official capacity as Attorney General for the State of Illinois*, BRENDAN F. KELLY, *in his official capacity as Director of the Illinois State Police*, COOK COUNTY, *a body politic and corporate*, TONI PRECKWINKLE, *in her official capacity County Board of Commissioners President*, KIMBERLY M. FOXX, *in her official capacity as Cook County State's Attorney*, THOMAS J. DART, *in his official capacity as Sheriff of Cook County*, CITY OF CHICAGO, *a body politic and corporate*, DAVID O'NEAL BROWN, *in his official capacity as Superintendent of Police for the Chicago Police Department*,

*Defendants.*

No. 23 CV 532

Judge Lindsay C. Jenkins

**MEMORANDUM OPINION AND ORDER**

Laws enacted by the City of Chicago, Cook County, and, most recently, the State of Illinois restrict Illinois residents' ability to possess or purchase certain firearms and large-capacity magazines (defined as more than ten rounds for a semiautomatic rifle and more than fifteen rounds for a handgun). Javier Herrera, a Chicago resident, local emergency room doctor, and owner of several restricted firearms and large-capacity magazines, sued the City of Chicago, Cook County, and

the State of Illinois, alleging that these laws violate the Second and Fourteenth Amendments. [Dkt. No. 1]. He simultaneously moved for a temporary restraining order and preliminary injunction to enjoin the enforcement of these laws. [Dkt. No. 4]. The Court held a hearing on April 17, 2023. [Dkt. No. 72]. For the reasons detailed below, Herrera’s motion for a temporary restraining order and preliminary injunction is denied. [Dkt. No. 4].

## **I. Background**

### **A. Factual Background**

In response to widespread mass shootings nationally, including the mass shooting in Highland Park, Illinois on July 4, 2022, the State of Illinois passed the “Protect Illinois Communities Act,” HB 5471 (“the Illinois Act”). Ill. Pub. Act 102-1116, § 1; [Dkt. No. 1 at ¶ 40]. The Illinois Act made three changes to state law at issue in this case.

Under the Act, Illinois residents can no longer carry, possess, or purchase certain “assault weapon[s].” 720 ILCS 5/24-1(a)(15)–(16). The Act defines an “assault weapon” to include various models of firearms with various features, including a “semiautomatic rifle” with a “pistol grip.” 720 ILCS 5/24-1.9(a)(1)(A)(i). This definition encompasses an AR-15 rifle. *See* 720 ILCS 5/24-1.9(a)(1)(J)(ii)(II). Additionally, Illinois residents can no longer purchase or possess any “large capacity ammunition feeding device” (“large-capacity magazine”). 720 ILCS 5/24-1.10(a). For rifles, the Illinois Act defines a “large capacity ammunition feeding device” as a “magazine . . . that can [be] readily restored or converted to accept, more than [ten]

rounds of ammunition.” *See* 720 ILCS 5/24-1.10(a)(1). For handguns, it is defined as a magazine of more than fifteen rounds. *Id.* The restrictions on firearms and large-capacity magazines took effect on January 10, 2023. *See* 720 Ill. Comp. Stat. (“ILCS”) 5/24-1.

The Illinois Act allows any owner of a restricted firearm who acquired the firearm prior to the Illinois Act’s effective date to continue to lawfully possess that firearm if they provide an “endorsement affidavit” by October 1, 2023 (“registration requirement”). 720 ILCS 5/24-1.9(d). The affidavit must include the affiant’s Illinois firearm owner’s identification (“FOID”) number, an affirmation that the affiant lawfully owned the restricted firearm before October 1, 2023, and the make, model, caliber, and serial number of the restricted firearm. *Id.* Owners of restricted large-capacity magazines may similarly retain all magazines acquired before the effective date. *See* 720 ILCS 5/24-1.10(d). The Illinois Act does not allow for the purchase of new restricted weapons or large-capacity magazines after its effective date. *See* 720 ILCS 5/24-1.9(d); 720 ILCS 5/24-1.10(d).

The Illinois Act mirrors county and city enactments already in place.<sup>1</sup> *See* Cook County, Ill., Code §§ 54-210–215 (2006); Chi., Ill., Mun. Code §§ 8-20-010, 8-20-075, 8-20-85 (2013); *see also* *Wilson v. Cook County*, 937 F.3d 1028, 1029 (7th Cir. 2019). Since 2006, the Cook County Code (“County Code”) has prohibited county residents from purchasing, carrying, or possessing certain semiautomatic rifles, including an

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<sup>1</sup> Because the challenged laws all contain substantively the same restrictions, the Court often treats them together in its analysis below. The Court notes differences between the three enactments when necessary.

AR-15 rifle, and large-capacity magazines, defined as any magazine that can accept more than ten rounds. Cook County, Ill., Code §§ 54-211(7)(A)(iii), 54-212(a). Owners of restricted firearms or large-capacity magazines who possessed either prior to the County Code's enactment are required to remove them from the county, render them "permanently inoperable," or surrender them to the Cook County Sheriff. *Id.* at § 54-212(c).

Since 2013, the City Code of Chicago ("City Code") similarly prohibited city residents from purchasing, carrying, or possessing certain semiautomatic rifles, which included the AR-15 rifle, and large-capacity magazines, defined as magazines of fifteen or more rounds for semiautomatic handguns and ten or more rounds for semiautomatic rifles. Chi., Ill., Mun. Code §§ 8-20-010(a)(10)(B)(ii), 8-20-075, 8-20-085. Much like the County Code, the City Code requires that all restricted firearms or large-capacity magazines possessed before the enactment date be disposed of or removed from city limits. *Id.* at §§ 8-20-075(c)(1), 8-20-085(b).

Plaintiff Javier Herrera is an emergency room doctor, Chicago resident, and owner of multiple firearms. [Dkt. No. 1 at ¶ 5]. Herrera owns a Glock 45, Glock 43x, and two AR-15 rifles. [*Id.* at ¶¶ 20, 23–24]. Herrera keeps his Glock 45 and Glock 43x at his Chicago home and his AR-15 rifle "beyond county lines." [*Id.* at ¶ 22–24]. Herrera alleges that he owns these firearms for self-defense, hunting, and sport shooting. [*Id.* at ¶¶ 19, 37]. Herrera has both a FOID card and a concealed carry license. [*Id.* at ¶¶ 5, 19, 23].

In addition to his day job, as of 2018, Herrera has served as a volunteer medic on a local Special Weapons and Tactics (“SWAT”) team, which carries out high-risk law-enforcement missions. [*Id.* at ¶ 25]. As a volunteer medic, Herrera renders medical aid to SWAT team officers, bystanders, or anyone else who may be injured on these missions. [*Id.* at ¶ 28]. Herrera is not a law enforcement officer on the SWAT team and does not carry a firearm on these missions. [*Id.*] During his volunteer shifts, Herrera is stationed inside the command vehicle until called upon to render medical aid. [*Id.*] Herrera also attends monthly SWAT trainings, which include shooting drills. [Dkt. No. 5-1 at ¶ 10]. He has participated in these trainings in the past with his personal AR-15 to maintain confidence and proficiency with the weapon. [*Id.* at ¶¶ 10, 12].

## **B. Procedural Background**

On January 27, 2023, Herrera sued Illinois Attorney General Kwame Raoul, Illinois State Police Director Brendan F. Kelly (the “State Defendants”), County Board of Commissioners President Toni Preckwinkle, Cook County State’s Attorney Kim Foxx, Sheriff of Cook County Thomas J. Dart, Cook County (the “County Defendants”), Chicago Police Department Superintendent David O’Neal Brown, and the City of Chicago (the “City Defendants”). [Dkt. No. 1]. Herrera moved for a temporary restraining order and preliminary injunction the same day.<sup>2</sup> [Dkt. No. 4]. In his complaint, Herrera alleges that the City Code, County Code, and Illinois Act

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<sup>2</sup> Herrera’s complaint additionally seeks declaratory judgment that these statutes are unconstitutional and a permanent injunction. [Dkt. No. 1 at 30–31].

violate the Second and Fourteenth Amendments. [Dkt. No. 1 at ¶¶ 105–173]. Herrera charges that these laws infringe on his right to armed self-defense in several ways. [*Id.* at ¶¶ 97–103].

In particular, Herrera alleges that his right to self-defense is threatened by his inability to keep his AR-15 rifle, his Glock 45, or their accompanying standard magazine in his home due to the City and County Code. [*Id.* at ¶¶ 97–98]. As part and parcel of this harm, because Herrera cannot keep his AR-15 rifle in his home, he must commute over four hours round trip to complete shooting drills with his SWAT team. [Dkt. No. 1 at ¶¶ 31–34, 99; Dkt. No. 5-1 at ¶ 12]. Herrera contends that he must be prepared to handle or secure the AR-15 rifle of an injured officer in the event an officer hands that weapon to Herrera while the officer uses another tool. [Dkt. No. 5-1 at ¶ 8]. Herrera has not alleged that he has ever needed to handle the AR-15 of an injured officer or shoot such a weapon. [Dkt. No. 1, 5-1, 63-3]. But Herrera alleges that on one mission in 2021, a SWAT officer handed him an AR-15 rifle for him to secure. [Dkt. No. 63-3 at ¶ 13]. As a result, Herrera contends that he is effectively precluded from SWAT training shooting drills, given the long commute and his hours as an emergency doctor.<sup>3</sup> [Dkt. No. 1 at ¶ 99; Dkt. No. 5-1 at ¶ 12].

Herrera further alleges injury from the inability to purchase additional AR-15 rifles, rifle components, or large-capacity magazines for any of his weapons in

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<sup>3</sup> Herrera additionally alleges that “County and City ordinances deny Dr. Herrera easy access to his rifles for hunting and sport shooting in his off time. As a result, Dr. Herrera engages in these hobbies less than he otherwise would.” [Dkt. No. 1 at ¶ 100]. Because this argument does not appear in the parties’ briefs regarding a preliminary injunction, the Court need not address it further. *See generally* [Dkt. No. 5, 52, 54, 61, 63].

furtherance of his right to self-defense. [Dkt. No. 1 at ¶¶ 101–102]. Herrera argues that because certain large-capacity magazines come standard with his AR-15 rifle and Glock 45, his inability to purchase those items render the weapons inoperable and causes the weapons to wear out with disuse. [*Id.* at ¶¶ 98, 101].

Finally, Herrera contends that the Illinois Act “will soon prohibit [him] from possessing his AR-15 rifles anywhere in Illinois, even far away from [his] home, unless he complies with its intrusive and ahistorical registration requirement.” [*Id.* at ¶ 103]. Herrera fears that the Illinois Act’s requirement is but a “prelude to gun confiscation” and risks exposing his personal information in the event of a data breach. [*Id.* at ¶ 103].

## II. Legal Standard

Because the standard for granting a temporary restraining order and a preliminary injunction is the same, the Court proceeds under the familiar *Winter v. National Resources Defense Council, Incorporated* framework. *USA-Halal Chamber of Com., Inc. v. Best Choice Meats, Inc.*, 402 F. Supp. 3d 427, 433 n.5 (N.D. Ill. 2019). “A preliminary injunction is an extraordinary equitable remedy that is available only when the movant shows clear need.” *Turnell v. CentiMark Corp.*, 796 F.3d 656, 661 (7th Cir. 2015). As such, one is “never awarded as of right.” *Doe v. Univ. of S. Ind.*, 43 F.4th 784, 791 (7th Cir. 2022) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). To be awarded such relief, a plaintiff “must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of

preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Id.* (quoting *Winter*, 555 U.S. at 20).

### **III. Analysis**

#### **A. Likelihood of Success on the Merits**

To meet the likelihood of success on the merits prong, Herrera must show that his challenge has “some likelihood of success on the merits, not merely a better than negligible chance.” *Doe*, 43 F.4th at 791 (quoting *Mays v. Dart*, 974 F.3d 810, 822 (7th Cir. 2020)); *see also Ill. Republican Party v. Pritzker*, 973 F.3d 760, 762 (7th Cir. 2020) (cleaned up) (noting that showing a “better than negligible chance” or “a mere possibility of success” are both insufficient to demonstrate a likelihood of success on the merits sufficient for a preliminary injunction). This prong serves as “an early measurement of the quality of the underlying lawsuit.” *Michigan v. U.S. Army Corps. of Eng’rs*, 667 F.3d 765, 788 (7th Cir. 2011).

Having considered the preliminary record at this stage, the Court concludes that Herrera is unlikely to succeed on the merits of his claim. *Doe*, 43 F.4th at 791. The challenged restrictions on semiautomatic weapons and large-capacity magazines in the City Code, County Code, and Illinois Act are consistent with “the Nation’s historical tradition of firearm regulation,” namely the history and tradition of regulating particularly “dangerous” weapons. *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S. Ct. 2111, 2130 (2022); *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008).



The Court does not consider this case in isolation. There are two other matters within this district that challenge the Illinois Act as well as similar city restrictions on the possession, carry, and sale of semiautomatic weapons and large-capacity magazines. *See Goldman v. City of Highland Park, Ill.*, No. 22-cv-4774 (N.D. Ill. filed Sept. 7, 2022), ECF No. 1 (challenging the Illinois Act and a Highland Park ordinance that restricts possession and purchase of certain semiautomatic rifles and large-capacity magazines); *Bevis v. v. City of Naperville, Ill.*, No. 22-cv-4775 (N.D. Ill. filed Sept. 7, 2022), ECF No. 1 (challenging the Illinois Act and a Naperville City ordinance that restricts sale of certain semiautomatic rifles and large-capacity magazines). Most recently, the *Bevis* Court denied a motion for preliminary injunction of the Illinois Act and a Naperville City ordinance, both restricting the sale of certain semiautomatic rifles and large-capacity magazines.<sup>4</sup> *See Bevis*, 2023 WL 2077392, at \*3. This Court agrees with the *Bevis* Court’s analysis and incorporates it into this order as applicable.

### **1. Second Amendment History and Jurisprudence**

The Second Amendment 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.” U.S. Const. amend. II. In *District of Columbia v. Heller*, the Supreme

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<sup>4</sup> After the *Bevis* Court denied the request for a temporary restraining order and preliminary injunction, plaintiffs appealed. *Bevis v. v. City of Naperville, Ill.*, No. 22-cv-4775 (N.D. Ill. filed Sept. 7, 2022), ECF No. 64. On appeal, the *Bevis* plaintiffs requested a stay of the Illinois Act during the pendency of their appeal. *Bevis, et al. v. City of Naperville, et al.*, 23-1353 (7th Cir. filed Feb. 23, 2023), ECF. No. 8. On April 18, 2023, the Seventh Circuit denied the request for a stay. *Bevis, et al. v. City of Naperville, et al.*, 23-1353 (7th Cir. filed Feb. 23, 2023), ECF No. 51. As such, this Court can rule on the pending motion for a temporary restraining order and preliminary injunction in the present case. [Dkt. No. 4].

Court first recognized the Second Amendment right to keep and bear arms for the purpose of self-defense. 554 U.S. 570, 628–29 (2008). In *Heller*, the Court confronted a challenge to a District of Columbia law that restricted handgun possession without a license and imposed a trigger-lock requirement, which rendered such firearms inoperable. *Id.* at 574–75. The Court ultimately struck down the law, finding that it violated the Second Amendment “individual right to possess and carry weapons in case of confrontation.” *Id.* at 592. The Court emphasized that “self-defense” was a “central component” of the right. *Id.* at 599.

Notwithstanding the Court’s central holding, the Court in *Heller* underscored that the Second Amendment right is not “unlimited.” *Id.* at 626. Indeed, “[f]rom Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* The Court gave a few examples of limits on the Second Amendment right. First, as set out in *United States v. Miller*, 307 U.S. 174, 178 (1939), the right does not extend to “weapons not typically possessed by law-abiding citizens for lawful purposes.” *Id.* at 625. Furthermore, laws related to “longstanding prohibitions on the possession of firearms by felons and the mentally ill, . . . laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, [and] laws imposing conditions and qualifications on the commercial sale of arms” are all presumptively lawful, *id.* at 626–27.

Two years later, in *McDonald v. City of Chicago*, the Court incorporated this right against the states through the Fourteenth Amendment. 561 U.S. 742, 767

(2010). In that vein, the Court noted that “[f]rom the early days of the Republic, through the Reconstruction era, to the present day, States and municipalities . . . banned altogether the possession of especially dangerous weapons.” *Id.* at 899–900. The Court remarked that “[t]his history of intrusive regulation is not surprising given that the very text of the Second Amendment calls out for regulation, and the ability to respond to the social ills associated with dangerous weapons goes to the very core of the States’ police powers.” *Id.* at 900–01.

Thereafter, federal courts were left to formulate a test to determine whether a gun regulation was constitutional. *Bruen*, 142 S. Ct. at 2125. The Courts of Appeals generally adhered to a two-step test doing just that. *Id.*; *see, e.g., Kanter v. Barr*, 919 F.3d 437, 441 (7th Cir. 2019). In 2022, however, the Supreme Court in *New York State Rifle & Pistol Association, Inc. v. Bruen* rejected those efforts and set out a new framework for lower courts to evaluate gun laws. 142 S. Ct. at 2126–34; *see also United States v. Rahimi*, 61 F.4th 443, 450–51 (5th Cir. 2023) (acknowledging that “*Bruen* clearly fundamentally changed our analysis of laws that implicate the Second Amendment, rendering our prior precedent obsolete” (cleaned up and internal citation omitted)). With that history in mind, as the *Bevis* Court succinctly explained, “*Bruen* is now the starting point” for this Court’s analysis of a challenged gun regulation. *Bevis*, 2023 WL 2077392, at \*9.

The *Bruen* Court outlined a two-step analysis to determine whether a challenged gun regulation is constitutional. *Bruen*, 142 S. Ct. at 2126–34. The Court must first determine whether “the Second Amendment’s plain text covers an

individual’s conduct.” *Id.* at 2129–30. If the plain text does not cover the challenged regulation, then the regulation is outside of the Second Amendment’s scope and is unprotected. *Id.* However, if the text does include such conduct, “the Constitution presumptively protects that conduct.” *Id.* at 2130. As such, for the regulation to be upheld as constitutional, “[t]he government must . . . justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.*

To demonstrate that a regulation is “consistent with the Nation’s historical tradition of firearm regulation,” the government must engage in “analogical reasoning” by pointing to “a well-established and representative historical analogue.” *Id.* at 2133 (emphasis removed). The government can utilize analogues from a range of historical periods, including English statutes from late 1600s, colonial-, Revolutionary- and Founding-era sources, and post-ratification practices, specifically from the late 18th and early 19th centuries. *Id.* at 2135–56; *Heller*, 554 U.S. at 605–626; *Rahimi*, 61 F.4th at 455–59. *Bruen* took special note that the Second Amendment is not a “regulatory straightjacket.” 142 S. Ct. at 2133. The government’s proposed analogue need not be “a historical twin” and the “modern-day regulation” need not be “a dead ringer for historical precursors” to “pass constitutional muster.” *Bruen*, 142 S. Ct. at 2133.

Importantly, “*Bruen* does not displace the limiting examples provided in *Heller*.” 2023 WL 2077392, at \*9. As set out in *Heller*, states may still enact (1) “prohibitions on the possession of firearms by felons and the mentally ill”; (2) “laws

forbidding the carrying of firearms in sensitive places”; (3) “laws imposing conditions and qualifications on the commercial sale of arms”; and (4) bans on “dangerous” weapons that are not “in common use.” *Id.* at 2162 (Kavanaugh, J., concurring) (citation omitted). The list itself “does not purport to be exhaustive.” *Id.* (quoting *Heller*, 554 U.S. at 626 n.26).

## **2. Restrictions on Semiautomatic Rifles and Large-Capacity Magazines under the Challenged Laws**

The Court holds that the restrictions on possession of certain semiautomatic rifles and large-capacity magazines in the City Code, County Code, and Illinois Act are consistent with the Nation’s “history and tradition” of treating particularly “dangerous” weapons as unprotected. *Bruen*, 142 S. Ct. at 2130.

Because the Court ultimately agrees with *Bevis* and its conclusion, only a brief discussion of that opinion is necessary.<sup>5</sup> In *Bevis*, a Naperville gun shop owner and the National Association for Gun Rights (“NAGR”) challenged a Naperville City ordinance and the Illinois Act’s restrictions on sale of certain semiautomatic weapons and large-capacity magazines as unconstitutional under the Second Amendment. *Bevis*, 2023 WL 2077392, at \*1–2. The *Bevis* Court denied the plaintiffs’ request for

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<sup>5</sup> While *Bevis* dealt principally with sale of restricted firearms, its analysis extends to gun possession, as is challenged in the present case. *See Bevis*, 2023 WL 2077392, at \*1–2. The *Bevis* Court principally concluded that “Naperville and Illinois lawfully exercised their authority to control the[] *possession*, transfer, sale, and manufacture [of certain semiautomatic weapons] by enacting a ban on commercial sales.” *Id.* at \*16 (emphasis added). The *Bevis* Court explicitly noted that while the parties only challenged laws as they applied to sales, nonetheless, “the state[] [has] general authority to regulate assault weapons because logically if a state can prohibit the weapons altogether, it can also control their sales.” *Id.* at \*9 n.8. Otherwise, “a right to own a weapon that can never be purchased would be meaningless.” *Id.* (citing *Drummond v. Robinson Township*, 9 F.4th 217, 229 (3d Cir. 2021)). This Court agrees and applies *Bevis*’s analysis to the question of possession presented here.

a preliminary injunction, concluding that “history and tradition demonstrate that particularly ‘dangerous’ weapons are unprotected” and thus, the plaintiffs were unlikely to succeed on the merits sufficient for a preliminary injunction. *Id.* at \*9.

To reach this conclusion, the *Bevis* Court detailed the regulatory history of “Bowie kni[ves],” clubs, trap guns, and gun silencers. *Id.* at \*10–14. The Court utilized over fifty examples, ranging from the Colonial Era to the early 20th century, showing a clear trend that when weapons became “prevalent,” so too would “the laws governing the most dangerous of them.” *Id.* at \*10. The Court noted that as firearms proved more reliable, states similarly regulated them, including “gun silencers” and “semiautomatic weapons.” *Id.* at \*12. As to the latter, the Court noted that “semiautomatic weapons themselves, which assault weapons fall under, were directly controlled in the early 20th century.” *Id.* From this body of evidence, the Court concluded that “[t]he history of firearm regulation . . . establishes that governments enjoy the ability to regulate highly dangerous arms (and related dangerous accessories).”<sup>6</sup> *Id.* at \*14–16.

In response to the Defendants’ citation to similar statutes in this case, Herrera argues that his suit does not concern public carry, but rather defense of the home. [Dkt. No. 63 at 1]. This argument is unavailing. The Supreme Court was clear in its instruction that “analogical reasoning” is not a “regulatory straightjacket” and “even

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<sup>6</sup> The State Defendants in this case similarly point to the history of regulations regarding “concealable [firearms], Bowie knives, clubs, and, later, machine guns and semi-automatic weapons” and conclude that “[b]ecause the Act regulates ‘dangerous and unusual weapons’ for a purpose and in a manner relevantly similar to comparable historical regulations, it does not violate the Second Amendment.” [Dkt. No. 52 at 42–43]. The County and City Defendants do the same. [Dkt. 54 at 36, 45–50; Dkt. No. 61-1 at 15–17].

if a modern-day regulation is not a dead ringer for historical precursors,” the government’s chosen analogue “may be analogous enough to pass constitutional muster.” *Bruen*, 142 S. Ct. at 2133. While the government’s analogue may not be identical, it need not be. *Id.* *Bruen* also expressly observed that “dramatic technological changes” or “unprecedented societal concerns” may require a “more nuanced approach.” *Id.* at 2132.

Such an approach is applicable here. As the State Defendants put forth at oral argument, laws regulating weapons, including various firearms, developed over time in response to the type of harm that those weapons presented, as in the present case. Transcript of Oral Argument at 82–84, *Herrera et al. v. Kwame Raoul et al*, No. 23-cv-532 (N.D. Ill. Jan. 27, 2023), ECF No. 73; *see also* [Dkt. No. 52 at 58 (“Throughout American history, when lawmakers have confronted new or escalating forms of societal violence, they have frequently responded by regulating the instruments of that violence in an effort to reduce it.”)]. Here, the City Code, County Code, and Illinois Act similarly responded to “dramatic technological changes” and “unprecedented societal concerns” of increasing mass shootings by regulating the sale of weapons and magazines used to perpetrate them. *Bruen*, 142 S. Ct. at 2132. This is well in line with earlier laws regulating carry and progressing to restrictions on sale and possession, in and out the home. [See Dkt. No. 52 at 60–63].

Having concluded that Defendants demonstrated a tradition of regulating “particularly dangerous weapons,” *id.* at \*9, the *Bevis* Court next considered “whether assault weapons and large-capacity magazines fall under this category” of “highly

dangerous arms (and related dangerous accessories),” and answered with a resounding yes. *Id.* at \*14. The Court considered ample record evidence of the vastly destructive injuries that semiautomatic weapons cause and their “disproportionate[]” use in “mass shootings, police killings, and gang activity. *Id.* at \*14–15. The Court observed that large-capacity magazines “share similar dangers,” with studies showing that the use of such magazines lead to an increased number of fatalities in mass-shooting scenarios. *Id.* at \*15 (“[R]esearchers examining almost thirty years of mass-shooting data [have] determined that high-capacity magazines resulted in a 62 percent higher death toll.”). The Court rejected any argument that regulations on semiautomatic weapons and large-capacity magazines are not “unusual,” given the ten-year federal ban on assault weapons and eight bans on semiautomatic weapons and large-capacity magazines in jurisdictions such as Illinois. *Id.* at \*16. As such, the Court concluded that “[b]ecause assault weapons are particularly dangerous weapons and high-capacity magazines are particularly dangerous weapon accessories, their regulation accords with history and tradition.” *Id.*

This Court concurs with the *Bevis* analysis, including its analysis and conclusions regarding large-capacity magazines, and adopts it here. *See Bevis*, 2023 WL 2077392, at \*14–16. Herrera is unlikely to be successful in his challenge to the semiautomatic weapons and large-capacity magazine restrictions in the City Code, County Code, and Illinois Act. *Doe*, 43 F.4th at 791.



### 3. Registration Requirement Under the Illinois Act

The Court next turns to Herrera’s challenge to the Illinois Act’s registration requirement to determine his likelihood of success on the merits.

#### a) Ripeness

Before doing so, the Court first concludes that the question is ripe for adjudication and Herrera has alleged sufficient imminent injury in a pre-enforcement challenge context. To establish Article III standing, the plaintiff must allege injury-in-fact traceable to the defendant and capable of being redressed by the requested relief. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). The injury alleged must be “concrete and particularized,” as well as “actual or imminent,” rather than “conjectural or hypothetical.” *Id.* at 560.

“Much like standing, ripeness gives effect to Article III’s Case or Controversy requirement by preventing the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” *Sweeney v. Raoul*, 990 F.3d 555, 559 (7th Cir. 2021) (cleaned up). In evaluating ripeness, courts consider “the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” *Id.* at 560. In the context of a pre-enforcement challenge, like the present case, ripeness and standing often plumb the same concept: “timing.” *Id.*

When a plaintiff faces a realistic threat that a law will be enforced against him, “a party may advance a preenforcement challenge before suffering an injury—so long as the threatened enforcement is sufficiently imminent.” *Sweeney*, 990 F.3d at 559 (internal quotation marks omitted) (quoting *Susan B. Anthony List v. Driehaus*, 573

U.S. 149, 159 (2014)). The plaintiff need not suffer “an actual arrest, prosecution, or other enforcement action,” nor does the plaintiff need “to confess that he will in fact violate the law.” *Driehaus*, 573 U.S. at 158, 163. Rather, a plaintiff may bring a pre-enforcement challenge where (1) he intends to perform conduct that is arguably constitutionally protected, (2) the conduct is prohibited by the rule or statute challenged, and (3) there is a credible threat of enforcement. *Id.* at 159.

These criteria are met in the present case. Herrera avers an intent to disobey any law that he perceives to be unconstitutional, like the Illinois Act’s registration requirement. [Dkt. No. 63-3 at ¶ 18]. While the parties dispute whether the regulations are constitutional, failure to register in compliance with the Illinois Act at the very least implicates the Second Amendment and is “arguably constitutionally protected.” See *Heller*, 554 U.S. at 635 (directing that the district court permit the plaintiff “to register his handgun” in compliance with District law). Finally, there seems to be a credible threat of enforcement, given that Herrera’s “intended conduct runs afoul of a criminal statute and the Government fails to indicate affirmatively that it will not enforce the statute.” *Commodity Trend Serv., Inc. v. Commodity Futures Trading Comm’n*, 149 F.3d 679, 687 (7th Cir. 1998); see also 720 ILCS 5/24-1(b) (stating that an individual who possesses a restricted firearm in violation of 720 ILCS 5/24-1(a)(15) commits a Class A misdemeanor, with second or subsequent violation classified as a Class 3 felony). As such, Herrera can advance his suit before suffering his alleged injury. To delay adjudication of these issues until the Illinois

Act's registration requirement is in effect would cause undue "hardship" to Herrera and as such, the issue is similarly ripe. *Sweeney*, 990 F.3d at 560.

**b) Analysis**

While Herrera can challenge the Illinois Act's registration requirement before its effective date, he is unlikely to succeed on the merits of his claim. *Doe*, 43 F.4th at 791. The Court holds that the Illinois Act's registration requirement is "consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 142 S. Ct. at 2130. As discussed below, Defendants have put forth a "representative historical analogue" to demonstrate a tradition vindicating the Illinois Act's registration requirement. *Id.* at 1233; [Dkt. No. 52 at 40 n.24; Dkt. No. 52-14].

Pre-colonial evidence suggests that colonies required gun registration in a variety of ways. For instance, in 1631, Virginia implemented a "muster" requirement, necessitating inhabitants to annually account for their "arms and ammunition" to the "commanders" under which they served. [Dkt. No. 52-15 at 69]. As other district courts have similarly noted, American colonies in the 17th century had firearm owners register their guns through mandatory "muster" laws, taxes requiring identification of firearms, and as part of broader legislative programs regarding the sale, transfer, and taxation of firearms. See *United States v. Holton*, 2022 WL 16701935, at \*5 (N.D. Tex. Nov. 3, 2022) (noting that multiple colonial governments required registration of arms through mandatory "muster" laws and taxes imposed from "as early as 1607 and well into the 1800s"); see also *United States v. Tita*, 2022 WL 17850250, at \*7 (D. Md. Dec. 22, 2022) (noting that "many of the colonies enacted

laws regarding the registration of firearms as part of legislative schemes regarding the sale, transfer, and taxation of firearms,” citing laws from 17th century New York, Virginia, and Connecticut). Indeed, the *Holton* Court relied on many of the same registration and taxation statutes as cited in this case to hold that 18 U.S.C. § 922(k), the statute prohibiting receipt of a firearm with the manufacturer’s serial number obliterated or removed, “pass[ed] constitutional muster under *Bruen*.” *Compare Holton*, 2022 WL 16701935, at \*4–5 (cleaned up) *with* [Dkt. No. 52 at 40 n.24; Dkt. No. 52-15 at 69–71].

During the era of the Fourteenth Amendment’s ratification, many state legislatures taxed firearms, which in essence required that firearms be identified and disclosed to the government. Mississippi required a “tax of two dollars on each dueling or pocket pistol” in 1848. [Dkt. No. 52-15 at 69]. In 1856, North Carolina similarly required that “every pistol, except such as are used exclusively for mustering” that was “used, worn or carried” be taxed. [*Id.*] This law was reenacted in a similar form the next congressional session. [*Id.*] Georgia, in 1866, enacted a similar tax, requiring “one dollar apiece on every gun or pistol, musket or rifle over the number of three kept or owned on any plantation in the counties,” with the firearm owner required to render an “oath” of any such “gun, pistol, musket, or rifle.” [*Id.* at 69–70]. Alabama did much the same a year later. [*Id.* at 70]. The state imposed a “tax of two dollars each” for “[a]ll pistols or revolvers in the possession of private persons,” for which the taxpayer would receive “a special receipt” in order to prove payment. [*Id.*] The Court

finds that these historical regulations sufficiently analogous to the Illinois Act's registration requirement to satisfy *Bruen*. 142 S. Ct. at 2134.

Herrera complains that the statutes Defendants identify “mostly targeted certain kinds of pistols and arms like the Bowie knife,” and “did not generally target rifles,” such that they are not sufficiently analogous. [Dkt. No. 63 at 41]. Again, *Bruen* does not require a “historical twin.” 142 S. Ct. at 2133. Rather, the inquiry is whether the modern statute and the historical regulations are sufficiently analogous. *Id.* (“[A]nalogical reasoning requires only that the government identify a well-established and representative historical *analogue*, not a historical *twin*.”).

Late-19th and 20th century laws, while not themselves dispositive of a history or tradition of gun registration laws, can serve as “confirmation” of the same, as they do here. *Gamble v. United States*, 139 S. Ct. 1960, 1976 (2019); see *Heller*, 554 U.S. at 614, 621–25 (utilizing 19th and 20th century sources in its analysis); see also *Bruen*, 142 S. Ct. at 2154 n. 28 (noting that “late-19th-century evidence” and “20th-century evidence . . . does not provide insight into the meaning of the Second Amendment *when it contradicts earlier evidence*” (emphasis added)). This sort of evidence confirms what the Court has already concluded: the registration requirement in the Illinois Act is “consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2130.

A review of the legislation during this period shows a continuing tradition of state and national registration requirements. For example, starting in 1885, Illinois kept a “register of all such [deadly] weapons sold or given away” with various

identifying information, including the date of the sale or gift, the name and age of the person to whom the weapon is sold or given, the price of the weapon, and the purpose for which it is purchased or obtained.” [Dkt. No. 52-15 at 70–71]. Failure to comply with the register resulted in a fine. [*Id.*] In 1918, Montana required that any individual who possessed a “fire arm” to register it with the local sheriff. [*Id.* at 71]. Indeed, as the Supreme Court in *United States v. Miller* noted, the National Firearms Act of 1934 imposed registration requirements on owners of certain firearms, imposing a fine for failure to do so. *See Miller*, 307 U.S. at 175, 175 n.1 (noting that the National Firearms Act of 1934 required owners of grandfathered weapons to register their weapons within 60 days by providing “the number or other mark identifying such firearm, together with [the owner’s] name, address, place where such firearm is usually kept, and place of business or employment”).

*Bruen* itself suggests that the Illinois Act’s registration requirement is permissible. In concluding that there is no “historical tradition limiting public carry only to those law-abiding citizens who demonstrate a special need for self-defense,” *Bruen*, 142 S. Ct. at 2138, the *Bruen* Court took special note that “nothing in our analysis should be interpreted to suggest the unconstitutionality” of existing “shall-issue” licensing laws, *id.* at 2138 n.9. In so doing, the Court distinguished New York’s problematic statute from other shall-issue licensing regimes because the latter did not require an “appraisal of facts, the exercise of judgment,” or “the formation of an opinion” on the part of the licensing official. *Id.*; *see also id.* at 2162 (Kavanaugh, J., concurring) (noting that “shall-issue regimes” are “constitutionally permissible,” even

if they require an individual to “undergo fingerprinting, a background check, a mental health records check, and training in firearms handling and in laws regarding the use of force, among other possible requirements”).

Of course, licensing regimes and registration requirements are not the same thing, as each serves a different purpose. But the Illinois Act’s registration requirement remains far less invasive than the presumptively constitutional regulations described in *Bruen*. The shall-issue licensing schemes discussed in *Bruen* involved a “background check” or the passage of a “firearms safety course,” *Bruen*, 142 S. Ct. at 2138 n.9, which are *more* onerous than the relatively mechanical registration process required by the Illinois Act, *see* 720 ILCS 5/24-1.9(d). Nor does the Act permit state officials to have “open-ended discretion” to deny or allow a firearm to be registered. *Bruen*, 142 S. Ct. at 2161 (Kavanaugh, J., concurring). Rather, owners of semiautomatic rifles before the Act’s effective date must provide the affiant’s FOID number, report the make, model, caliber, and serial number of the weapon, and thereafter affirm that he or she lawfully owned the weapon before January 10, 2023.<sup>7</sup> *See* 720 ILCS 5/24-1.9(d).

Citing *Heller v. District of Columbia* (“*Heller II*”), 670 F.3d 1244 (D.C. Cir. 2011), Herrera argues that the “fundamental problem with [the] gun registration law

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<sup>7</sup> FOID cards and concealed carry licenses are arguably even more intrusive than the Illinois Act’s registration requirement. *See* 430 ILCS 65/4(a) (requiring an applicant’s name, birth date, home address, driver’s license information, and a color photograph for the issuance of a FOID card); *see also* 430 ILCS 66/10(a), 430 ILCS 66/25, 430 ILCS 66/35 (requiring an applicant’s FOID license, background check, and completion of a firearms training program). Herrera has already applied and received both a FOID card and a concealed carry license. [Dkt. No. 1 at ¶¶ 5, 19, 23].

is that registration of lawfully possessed guns is not ‘longstanding.’” [Dkt. No. 5 at 3, 27–28]. This argument is unpersuasive for at least two reasons. Herrera cites to then-Judge, now-Justice Kavanaugh’s dissent in *Heller II* on remand. The opinion is not controlling, as both out-of-circuit caselaw and a dissenting opinion. *Heller II*, 670 F.3d at 1269–96 (Kavanaugh, J., dissenting). Second, the challenged registration requirement in *Heller II* is factually distinguishable from the present case. In *Heller II*, the District of Columbia required that an applicant provide his “name, address, and occupation,” submit “for a ballistics identification procedure,” appear in person to register (with a limit of one pistol allowed to be registered every thirty days), and renew each registration every three years with a renewed certificate of his compliance with the law. *Id.* at 1248. These are far afield from the requirements at issue here.

For these reasons, Defendants have put forth “representative historical analogue” to demonstrate a tradition of registration regulation in line with the registration requirement of the Illinois Act. *Bruen*, 142 S. Ct. at 2133. The registration requirement is “consistent with this Nation’s historical tradition of firearm regulation” and therefore, likely constitutional. *Id.* at 2130. Accordingly, Herrera is unlikely to succeed on the merits of his claim and is not due the “extraordinary equitable remedy [of a preliminary injunction] that is available only when the movant shows clear need.” *Turnell*, 796 F.3d at 661.



## B. Irreparable Harm

While the Court need not address the remaining preliminary injunction factors, the Court additionally concludes that Herrera has not shown that he will suffer irreparable harm absent a preliminary injunction, *see Doe*, 43 F.4th at 791.

Harm is “irreparable” when “legal remedies are inadequate to cure it.” *Life Spine Inc. v. Aegis Spine, Inc.*, 8 F.4th 531, 545 (7th Cir. 2021). “Inadequate” does not denote that such remedies would be “wholly ineffectual,” only that such a remedy would be “seriously deficient as compared to the harm suffered.” *Id.* (quoting *Foodcomm Intern. v. Barry*, 328 F.3d 300, 304 (7th Cir. 2003)). In determining whether Herrera will suffer irreparable harm absent a preliminary injunction, the Court must weigh “how urgent the need for equitable relief really is.” *U.S. Army Corps of Engineers*, 667 F.3d at 788.

Harm stemming from a constitutional violation can constitute irreparable harm. *See Int’l Ass’n of Fire Fighters, Loc. 365 v. City of East Chicago*, 56 F.4th 437, 450 (7th Cir. 2022); *see also Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion). However, a presumption of irreparable harm is not applicable to all alleged constitutional violations. *Compare Int’l Ass’n of Fire Fighters, Loc. 365*, 56 F.4th at 450–51 (“Under Seventh Circuit law, irreparable harm is presumed in *First Amendment* cases.”) (emphasis added); *and Ezell v. City of Chicago*, 651 F.3d 684, 699 (7th Cir. 2011) (describing that “[t]he loss of a *First Amendment right* is frequently presumed to cause irreparable harm”) (emphasis added); *with Campbell v. Miller*, 373

F.3d 834, 835 (7th Cir. 2004) (rejecting plaintiff’s argument that “money never is an adequate remedy for a constitutional wrong”).

Herrera, much like the *Bevis* plaintiffs, cites *Ezell* for the proposition that there is a presumption of irreparable harm in all Second Amendment challenges. [Dkt No. 5 at 28; Dkt. No. 63 at 44]. The Court rejects this argument. *See Bevis*, 2023 WL 2077392, at \*16. While the Seventh Circuit in *Ezell* likened the plaintiff’s alleged Second Amendment harm to a First Amendment challenge, where harm can be presumed, the Seventh Circuit declined to create such a wide-ranging presumption for Second Amendment cases. *Ezell*, 651 F.3d at 699; *see also Bevis*, 2023 WL 2077392, at \*16 (cleaned up) (observing that “the Seventh Circuit [in *Ezell*] stopped short of holding that injury in the Second Amendment context unquestionably constitutes irreparable harm,” as stated in *Elrod*).

Apart from a presumption, Herrera alleges two sources of harm: (1) his inability to possess his AR-15 rifle, its corresponding standard large-capacity magazine, and additional large-capacity magazines for his Glock 45 impinges on his capacity to protect himself in his home, and (2) the commute time to retrieve his personal AR-15 rifle renders his monthly SWAT training a “practical impossibility.” [Dkt. No. 1 at ¶¶ 31, 97–103; Dkt. No. 5-1 at ¶ 12]. The Court takes each argument in turn.<sup>8</sup>

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<sup>8</sup> The Court has its doubts about the time-sensitive nature of Herrera’s emergency request for preliminary injunction, given his delayed challenge to the City and County Codes. Since 2006, Herrera has been prohibited from keeping his AR-15 rifle, its assorted components, and any large-capacity magazine for his Glock 45 or AR-15 rifle in his Chicago home. *See Cook County, Ill.*, Code §§ 54-211, 54-212(a), (c)(2); *Chi., Ill.*, Mun. Code

Herrera’s alleged inability to protect himself in his home is unsupported by the record. Herrera does not dispute that he currently has two firearms in his home—a Glock 43x and Glock 45—that he can use for self-defense. [Dkt. No. 1 at ¶¶ 20, 23–24.] While Herrera prefers to use his standard seventeen-round magazine for his Glock 45 due to fear of it malfunctioning or jamming [Dkt. No. 5 at ¶ 5], he does not dispute that his firearm can accept a magazine of less than fifteen rounds to operate, [Dkt. No. 63-3 at ¶ 17]. Indeed, Herrera utilizes a ten-round magazine for his Glock 43x, which is compliant with city, county, and state law. [Dkt. No. 1 at ¶ 23]. Additionally, none of the challenged laws seek to take from Herrera his two AR-15 rifles or existing large-capacity magazines. He need only register such accoutrements and he may continue to keep them in his out-of-county storage location. *See* 720 ILCS 5/24-1.9(d); 720 ILCS 5/24-1.10(d). Herrera’s contention that without “standard” magazines for his firearms, his weapons will “wear out” is unsupported by the record. [Dkt. No. 52-7 at ¶ 25 (“Despite the recent proliferation of large capacity magazines, it is important to note that there is no known firearm that requires a large-capacity magazine to function as designed.”)].

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§§ 8-20-010, 8-20-075, 8-20-085. He has been subject to a lengthy round-trip commute to retrieve his personal AR-15 rifle since he became a volunteer medic in 2018. [Dkt. No. 5-1 at ¶¶ 8, 10, 12]. Yet, Herrera did not request a preliminary injunction seeking to enjoin either law until 2023. [Dkt. No. 4]. Herrera says that he held off on challenging these laws before now because he understood that he would likely be denied such relief given Seventh Circuit law. [Dkt. No. 63-3 at ¶ 19]. He cites to no caselaw showing that his reasoning constitutes sufficient grounds to delay filing a challenge or that he was reasonably diligent in doing so. As a result, Herrera’s apparent delay weighs against his request. *See Benisek v. Lamone*, 138 S. Ct. 1942, 1944 (2018) (noting that “a party requesting a preliminary injunction must generally show reasonable diligence” and the “plaintiffs’ unnecessary, years-long delay in asking for preliminary injunctive relief weighed against their request” for preliminary injunction).

Herrera’s allegations regarding his training with the SWAT team are similarly undercut by record evidence. At the outset, Herrera expresses seemingly contradictory facts about his past and current efforts to bring his personal AR-15 rifle to SWAT team training. Herrera acknowledges that he has brought his personal AR-15 rifle to monthly trainings in the past but has now stopped. [*Compare* Dkt. No. 5-1 at ¶ 10 (“Similar to SWAT school, I have participated in those [SWAT] shooting drills in the past with my own AR-15.”) *with* Dkt. No. 63-3 at ¶ 5 (“I can’t feasibly bring my AR-15 to the training and participate in the weapons handling training or shooting drills with my other team members because I cannot keep that firearm and its standard magazines in my home.”)].

Herrera’s explanation for this change, in short, is that the drive is too long. But he alleges nothing in support of why the commute is *now* too long, as compared to his commute before. As the State Defendants noted at oral argument, for the past five years of training while only the City and County Codes were being enforced, Herrera faced no obstacle to bringing his personal AR-15 rifle with him, apart from the long commute. Transcript of Oral Argument at 53–54, 84–85, *Herrera et al. v. Kwame Raoul et al*, No. 23-cv-532 (N.D. Ill. Jan. 27, 2023), ECF No. 73. Even under the current state law, assuming that Herrera is completing SWAT training at a licensed firing range, he is expressly allowed to do so. *See* 720 ILCS 5/24-1.9(d) (allowing for “use of the assault weapon . . . at a properly licensed firing range”); 720 ILCS 5/24-1.10(d) (allowing for the “use of the large capacity ammunition feeding device at a properly licensed firing range”).

That aside, Herrera's allegations are speculative. While the requirement of access to "[r]ange training" lies "close to the core of the individual right of armed defense," *Ezell*, 846 F.3d at 893, Herrera's allegations regarding SWAT training seem to place him outside of the scope of that right. Herrera does not carry a firearm during SWAT missions. [Dkt. No. 1 at ¶ 28]. As a volunteer medic, Herrera is tasked with "provid[ing] medical care to the operators on my team, any injured perpetrators, or injured bystanders," not shooting a weapon offensively or defensively. [Dkt. No. 5-1 at ¶ 8]. Herrera's harm is predicated on the contingency that he might need to "act if a SWAT officer is not immediately present to assist with an injured officer or armed suspect." [Dkt. No. 63-3 at ¶ 7]. In essence, Herrera's allegations amount to speculation about what he might need to do, not about harm he is "*likely* to suffer . . . in the absence of preliminary relief." *See Winter*, 555 U.S. at 20 (emphasis added).

Herrera argues that his inability to "adequately train for SWAT duties . . . flies in the face of textbook standards of tactical medicine." [Dkt. No. 63 at 46]. Yet, the authority Herrera cites in support requires that any training volunteer medics receive should be "mutually agree[d] upon" with "the involved agencies" and "local law enforcement." [Dkt. No. 63-3 at 13]. The local agencies in the present case, however, contend that as a medic, Herrera "should not have any reason to handle an injured operator's AR-15 while rendering medical aid." [Dkt. No. 52-15 at ¶ 10]. Volunteer SWAT medics, like Herrera, are affirmatively not trained in deadly force protocols, given weapons, or put in a position that requires the use of deadly force. [*Id.* at 2-3]. Indeed, "the training that is most valuable for a civilian medic is not . . .

shooting drills, but rather being trained and knowledgeable about tactical medicine, including how to quickly remove a SWAT team member's uniform and equipment to render medical aid." [*Id.* at ¶ 11 (internal quotation marks omitted)].

Given this record and the early stage of this case, the Court cannot conclude that the alleged harm is "anything but speculative—too much so to warrant the extraordinary remedy of preliminary injunctive relief." *Halczenko v. Ascension Health, Inc.*, 37 F.4th 1321, 1325 (7th Cir. 2022). For these reasons, Herrera has additionally failed to demonstrate a "clear need" for the "extraordinary equitable remedy [of preliminary injunction]." *Turnell*, 796 F.3d at 661.

### **C. Public Interest and Balance of the Equities**

Finally, while not required given the Court's above conclusions, *see Turnell*, 796 F.3d at 662, the Court concludes that neither the public interest nor the equities favor Herrera's claim, *see Doe*, 43 F.4th at 791. *See also Nken v. Holder*, 556 U.S. 418, 435 (holding that the public interest and balance of the equities are considered together when the government is the party opposing injunctive relief). To balance the equities, the Court weighs "the degree of harm the nonmoving party would suffer if the injunction is granted against the degree of harm to the moving party if the injunction is denied." *Troogstad v. City of Chicago*, 576 F. Supp. 3d 578, 590 (citing *Cassell v. Snyders*, 990 F.3d 539, 545 (7th Cir. 2021)). The analysis also gauges the public interest, or "the consequences of granting or denying the injunction to non-parties." *Cassell*, 990 F.3d at 545 (quoting *Abbott Labs. v. Mead Johnson & Co.*, 971

F.2d 6, 11 (7th Cir. 1992)); *see id* (defining the public interest as the “interests of people and institutions that are not parties to the case”).

This Court, like the *Bevis* Court, finds that the challenged laws “protect public safety by removing particularly dangerous weapons from circulation” which would be “injured by the grant of injunctive relief.” *Bevis*, 2023 WL 2077392, at \*17 (quoting *Metalcraft of Mayville, Inc. v. The Toro Comp.*, 848 F.3d 1358, 1369 (Fed. Cir. 2017)). By contrast, Herrera seeks to prevent harm flowing from the enforcement of what he maintains is an unconstitutional law—an interest that is comparably weak given the conclusions above. [Dkt. No. 5 at 28–29]. None of the harms he identifies outweigh the overwhelming interest in public safety. *See United States v. Salerno*, 481 U.S. 739, 755 (1987) (observing that it is the “primary concern of every government” to protect “the safety and indeed the lives of its citizens”). In sum, he has failed to show a “clear need” for the extraordinary remedy he seeks. *Turnell*, 796 F.3d at 661.

#### **XIV. Conclusion**

For these reasons, Herrera’s motion for a temporary restraining order and preliminary injunction is denied. [Dkt. No. 4].

Enter: 23-cv-532

Date: April 25, 2023



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Lindsay C. Jenkins  
United States District Judge