

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

DANE HARREL, an individual and resident of
St. Clair Count, Illinois, et al.,

Plaintiffs,

v.

KWAME RAOUL, in his official capacity as
Attorney General of Illinois, et al.,

Defendants.

Case No. 23-141-SPM

MOTION FOR EXTENSION OF TIME

Defendants Kwame Raoul, in his official capacity as Attorney General of the State of Illinois, and Brendan Kelly, in his official capacity as Director of the Illinois State Police, by and through their attorney, Kwame Raoul, Attorney General of the State of Illinois, move pursuant to Federal Rule of Civil Procedure 6(b) for a 21-day extension, up to and including March 1, 2023, of the deadlines to respond to Plaintiffs' motion for preliminary injunction, and state as follows:

1. Plaintiffs filed this lawsuit on January 17, 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. Doc. 1. Attorney General Raoul and Director Kelly received formal service of the complaint and summons on January 24, 2023.

2. On January 25, 2023, Plaintiffs filed a 22-page motion for preliminary injunction. Doc. 16. Under Local Rule 7.1(g), Defendants' response is due February 8, 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-NJR (before Chief Judge Rosentengel); *Federal Firearms Licensees of Illinois v. Pritzker*, Case No. 23-cv-00215-NJR (also before Chief Judge Rosentengel); *Barnett v. Raoul*, Case No. 23-cv-00209-RJD (before Magistrate Judge Daly). Given the common, controlling question of law in these cases—whether the challenged provisions in the Act comport with the Second Amendment—Director Kelly filed a motion under Rule 42(a)(2) to consolidate all four cases, including this one, in *Langley* on January 25, 2023. *See* Case No. 23-cv-00192-NJR, Doc. 8. The motion to consolidate in *Langley* remains pending.

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 1, 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 7 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 is currently completing pre-existing assignments from litigation in other jurisdictions, which will limit his availability prior to February 7.

8. The Attorney General and Director Kelly are also in the process of identifying and retaining numerous 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 complete the process of retaining these experts, facilitating the completion of their declarations, and incorporating their opinions in Defendants' response brief.

9. Additionally, an extension of time is necessary because of undersigned counsel's schedule and workload. From January 28 through February 3, 2023, the undersigned will be out of the country and unable to work on this case. There have also been several other cases filed in state and federal court challenging the Act, some of which are seeking emergency injunctive relief including *Langley, et al. v. Kelly, et al.*, Case No. 23-192-NJR, and *Bailey, et al. Pritzker, et al.*, White County No. 23-MR-1.

10. On January 26, 2023, counsel for the Attorney General and Director Kelly contacted Plaintiffs' counsel to ask whether Plaintiffs would consent to this motion. On January 26, 2023, Plaintiffs' counsel indicated by email that Plaintiffs would oppose this motion. By contrast, in the *Langley* matter, counsel for plaintiffs in that case have indicated that the *Langley* plaintiffs do not oppose the 21-day extension sought by Director Kelly to respond on or before February 28, 2023. Case No. 23-192-NJR, Doc. 12.

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 1, 2023.

Dated: January 27, 2023

Respectfully submitted,

/s/ Laura K. Bautista
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CERTIFICATE OF SERVICE

I certify that on January 27, 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/ Laura K. Bautista
Laura K. Bautista
Assistant Chief Deputy Attorney General