

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

NATIONAL ASSOCIATION FOR GUN  
RIGHTS, ROBERT C. BEVIS, and LAW  
WEAPONS, INC., d/b/a LAW WEAPONS &  
SUPPLY, an Illinois corporation,

Plaintiffs,

v.

CITY OF NAPERVILLE, ILLINOIS, and  
JASON ARRES,

Defendants,

and

ILLINOIS ATTORNEY GENERAL KWAME  
RAOUL, in his official capacity and on behalf  
of the STATE OF ILLINOIS,

Intervenor.

No. 1:22-CV-04775

Honorable Virginia M. Kendall

**JOINT MOTION TO STAY THE LITIGATION PENDING THE SEVENTH CIRCUIT’S  
DECISION IN *BARNETT V. RAOUL***

Plaintiffs National Association for Gun Rights, Robert C. Bevis, and Law Weapons, Inc., d/b/a Law Weapons & Supply, and Defendants City of Naperville, Illinois and Jason Arres, by and through their respective attorneys, jointly seek a stay of this litigation pending the Seventh Circuit’s resolution of *Barnett v. Raoul*, No. 24-3060 (7th Cir. filed Nov. 12, 2024). Intervenor, Illinois Attorney General Kwame Raoul in his official capacity and on behalf of the State of Illinois, does not oppose this Motion.

### Introduction

In *Barnett v. Raoul*, No. 24-3060, the Court of Appeals for the Seventh Circuit is poised to decide the legal and factual questions at the heart of this case: whether the weapons, attachments, and ammunition feeding devices regulated by the City of Naperville Ordinance No. 22 – 099 (the “Ordinance”) and the Protect Illinois Communities Act, Pub. Act 102-1116 (“PICA”) are “Arms” within the meaning of the Second Amendment, and whether there is a history and tradition supporting the regulations of such items. Rather than litigating this case to a final judgment now—a process that, in the wake of *New York State Pistol & Rifle Ass’n v. Bruen*, 597 U.S. 1 (2022), places an extraordinary burden on the time and resources of both the parties and the Court—the parties jointly ask that the Court exercise its inherent power to stay the litigation until the Seventh Circuit issues its ruling in *Barnett*. A stay here will not prejudice any of the litigants, who do not stand to benefit from pursuing a final judgment in this Court before the Seventh Circuit issues binding precedent on the same questions that will decide the outcome in this case. Instead, a stay will spare unnecessary expense and drastically narrow the remaining issues in dispute, if not eliminate the need for further litigation altogether. Allowing the Seventh Circuit to first adjudicate *Barnett* will therefore avoid undue hardship on all parties and promote judicial economy. Further, given the time it will take to conclude fact and expert discovery and to brief dispositive motions in this case, it is unlikely that this case will be in a posture for resolution prior to the Seventh Circuit’s ruling in *Barnett*.

### Background

In September 2022, Plaintiffs filed this lawsuit challenging the Ordinance’s prohibition of the commercial sale of “assault rifles” within the City of Naperville. ECF 1.<sup>1</sup> In January 2023, Plaintiffs filed an amended complaint that expanded the scope of this lawsuit. In addition to the Ordinance, Plaintiffs also seek to invalidate PICA, which prohibits, *inter alia*, the possession and sale of “assault weapons” and “large capacity ammunition feeding devices.” ECF 48. Plaintiffs contend that the Ordinance and PICA violate their Second Amendment rights, and seek relief that would allow them to continue selling and acquiring the items that these laws prohibit. *Id.* at 6–7.

This case is just one of several that challenge assault weapons<sup>2</sup> regulations in Illinois. *See Herrera v. Raoul*, No. 1:23-cv-532 (N.D. Ill.); *Viramontes v. Cook County*, No. 1:21-cv-4595 (N.D. Ill.); *Barnett v. Raoul*, No. 3:23-cv-209 (S.D. Ill.); *Harrel v. Raoul*, No. 3:23-cv-141 (S.D. Ill.); *Langley v. Kelly*, No. 3:23-cv-192 (S.D. Ill.); *Federal Firearms Licensees of Ill. v. Pritzker*, No. 3:23-cv-215 (S.D. Ill.). The four Southern District cases are consolidated, with *Barnett* as the lead case.

Shortly after PICA took effect, the plaintiffs in this case, *Herrera*, and *Barnett* filed motions for preliminary injunctions. This Court and the court in *Herrera* denied those motions, while the district judge in *Barnett* granted the motion and entered an injunction. ECF 63; *Herrera* ECF 75; *Barnett* ECF 101. The Seventh Circuit consolidated the appeals from these rulings, vacated the preliminary injunction entered in *Barnett*, and held that none of the plaintiffs had

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<sup>1</sup> In this motion, citations to the docket in this case use only the abbreviation “ECF” followed by the docket number. Citations to the district court dockets in the other pending assault-weapons litigation are preceded by the italicized, shortened case name (*e.g.*, “*Barnett* ECF 63”).

<sup>2</sup> The parties agree that the terms “assault weapon(s)” and “assault rifle(s)” have the same meanings as the terms are defined in PICA and the Ordinance, respectively. Plaintiffs generally do not agree with the use of such terms to describe the weapons regulated by PICA and the Ordinance.

shown a likelihood of success on the merits. *See Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023). Specifically, the court found that the plaintiffs were unlikely to prevail on their claims that the regulated items are “Arms” protected by the text of the Second Amendment under the first step of the *Bruen* analysis. *Id.* at 1192–97. The court also held that the challenged provisions were supported by a history and tradition of similar regulations, including laws that reserved especially dangerous weapons for use only by the military and law enforcement. *Id.* at 1201.

On remand, the cases that had been consolidated on appeal took divergent paths. In both Northern District cases, the litigation remained on hold while the various plaintiffs pursued certiorari in the United States Supreme Court. *See* ECF 92; *Herrera* ECF 93. After that petition was denied in July 2024, *see* ECF 96, the Court, in this case, set a fact discovery deadline of April 30, 2025, ECF 105. No trial date has been set.

In *Barnett*, by contrast, Judge McGlynn fast-tracked the litigation, and a bench trial was completed in September 2024. Before trial, the *Barnett* parties conducted extensive fact and expert discovery in a period of just six months. *See Barnett* ECF 169, 179, 189, 195. Despite efforts to streamline discovery to accommodate the accelerated case schedule, the litigation nonetheless proved extraordinarily complex and resource-intensive. All told, the parties produced nearly 24,000 pages of documents; took 12 depositions (notwithstanding a stipulation to significantly curtail oral discovery); and disclosed 26 expert witnesses who submitted 24 reports (including opening and rebuttal reports). During the bench trial held in September 2024, the parties called several witnesses from each side to present parts of their case, while the remaining evidence was submitted in writing after trial. In October 2024, the parties filed written findings of fact and conclusions of law. Each side was afforded just one set of submissions (with no responses or replies allowed), which totaled 330 pages. Finally, on November 8, 2024, Judge McGlynn issued a 168-

page memorandum opinion and order in favor of the plaintiffs and entered final judgment. *Barnett* ECF 258 & 259.<sup>3</sup>

The defendants in *Barnett* appealed. On December 5, 2024, the Seventh Circuit entered a stay of the district court's permanent injunction, noting that it "already has held that the laws in question survive motions seeking preliminary injunctions" and citing the consensus among federal Courts of Appeal that similar legislation is constitutional under *Bruen*. Ex. 1 at 2 (Order Staying District Court Judgment in *Barnett v. Raoul*, No. 24-3060 (7th Cir.), ECF 22). The court also explained that its decision in *Barnett* will determine the constitutionality of PICA as challenged in both this case and *Herrera*:

[a]t least two other essentially identical suits are pending in other district courts within the Seventh Circuit. The three suits were addressed jointly in *Bevis*, and they must be resolved the same way eventually. (The state laws cannot be valid in some parts of Illinois and invalid elsewhere.) This does not necessarily imply that the three cases will again be consolidated on appeal; we are reluctant to delay disposition of this appeal indefinitely just because similar litigation is pending in other districts.

*Id.*

### Legal Standard

District courts have the inherent power to stay proceedings before them. *Clinton v. Jones*, 520 U.S. 681, 706 (1997); *Munson v. Butler*, 776 F. App'x 339, 342 (7th Cir. 2019). In determining whether to enter a stay, a court should consider "(1) whether a stay will simplify the issues in question and streamline the trial; (2) whether a stay will reduce the burden of litigation on the parties and on the court; and (3) whether a stay will unduly prejudice or tactically disadvantage the non-moving party." *Bell v. SDH Servs. W., LLC*, No. 20 C 3181, 2020 WL 9812014, at \*1 (N.D.

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<sup>3</sup> After the Seventh Circuit identified deficiencies in the district court's judgment, Judge McGlynn entered an amended judgment on December 9, 2024. *Barnett* ECF 272.

Ill. Aug. 27, 2020) (quoting *Berkeley\*IEOR v. Teradata Operations, Inc.*, No. 17 C 7472, 2019 WL 1077124, at \*5 (N.D. Ill. Mar. 7, 2019)). A stay is particularly appropriate when the court will be bound by another court’s resolution of the same legal or factual issues. *See Bell*, 2020 WL 9812014, at \*2 (granting a stay because “the Illinois Appellate Court’s decisions . . . could control the Court’s resolution”); *see also Vaughan v. Biomat USA, Inc.*, No. 1:20 CV 04241, 2020 WL 6262359, at \*2 (N.D. Ill. Oct. 23, 2020); *Frey v. Nigrelli*, 661 F. Supp. 3d 176, 200 (S.D.N.Y. 2023) (staying litigation challenging New York’s assault weapons ban because the statute’s constitutionality was “currently being reviewed by the Second Circuit”).

### **Argument**

The Seventh Circuit’s decision in *Barnett* will resolve the issues at the heart of Plaintiffs’ claims in this case. A temporary stay will therefore avoid unnecessary, costly litigation to resolve complex factual and constitutional questions. And because the Seventh Circuit has made clear that it will preserve the status quo pending its decision in *Barnett*, no party will suffer prejudice if this Court defers full adjudication on the merits until after the Seventh Circuit issues its decision.

#### **A. The *Barnett* appeal will decide the essential issues in this case.**

The defendants’ appeal of the district court’s judgment in *Barnett* squarely presents the legal and factual questions central to this lawsuit. In his opinion, Judge McGlynn addressed whether the firearms and magazines regulated by PICA are “Arms” within the meaning of the Second Amendment (*Barnett* ECF 258 at 100); whether weapons like the AR-15 and the AK-47 are predominantly useful in military service (*id.* at 107); and whether restrictions on assault weapons are supported by a history and tradition of comparable regulations (*id.* at 149). These same questions form the basis of Plaintiffs’ claims in this case. *See, e.g.*, ECF 48 ¶ 27 (“The Ordinance and the State Law infringe on Plaintiffs’ right to keep and bear arms under the Second

Amendment.”); *id.* ¶ 30 (“These laws are not consistent with the nation’s history and tradition of firearm regulation.”). Indeed, Plaintiffs *must* prevail on each of these issues to succeed on their Second Amendment challenge. *See Bruen*, 597 U.S. at 24; *Bevis*, 85 F.4th at 1192.

The Seventh Circuit’s decision in the *Barnett* appeal is likely to decide the same issues that underpin Plaintiffs’ claims. *See* Ex. 1 at 2 (“The three suits . . . addressed jointly in *Bevis* . . . must be resolved the same way eventually.”). Moreover, *Barnett* presents these core questions in light of a substantial evidentiary record developed in the trial court, as described above. *See supra* at 4–5. Under these circumstances, a stay is appropriate to await a disposition from the Court of Appeals and avoid unnecessary, wasteful, and inefficient litigation. *See, e.g., Obrzut v. LVNV Funding, LLC*, No. 19-CV-01780, 2020 WL 3055958, at \*2 (N.D. Ill. June 8, 2020) (noting the typical practice in the Northern District of “stay[ing] litigation while awaiting the resolution of appeals that could affect even some claims”); *Dawoudi v. Nationstar Mortg., LLC*, No. 16-CV-2356, 2016 WL 8711604, at \*2 (N.D. Ill. Sept. 16, 2016) (granting a stay of the litigation where an anticipated Seventh Circuit ruling would be either “instructive” or “dispositive”); *Banos v. City of Chicago*, No. 98 C 7629, 2002 WL 31870152, at \*1 (N.D. Ill. Dec. 17, 2002) (staying the case because “a pending appeal may alter the legal landscape of the issues involved in this matter”); *Roberson v. Maestro Consulting Servs. LLC*, No. 20-CV-00895-NJR, 2021 WL 1017127, at \*2 (S.D. Ill. Mar. 17, 2021) (granting a stay pending the disposition of a separate appeal because “the Seventh Circuit’s decision could guide the parties’ positions in this litigation”).

Importantly, the issues in this case are not only limited to the Ordinance. Plaintiffs also seek to challenge PICA, which is much broader, and the commercial sale of assault weapons is also a central issue in that challenge. ECF 48. That issue will be adjudicated in the *Barnett* appeal. *See Barnett* ECF 253 (Pls.’ Proposed Findings of Fact & Conclusions of Law) at 62 (contending

that PICA violates the Second Amendment by prohibiting the purchase, sale, or transfer of assault weapons). The *Barnett* appeal will therefore adjudicate the critical issues in this case.

**B. Litigating this case would be time-consuming and costly for the parties and the Court.**

In light of the pending appeal in *Barnett*, litigating this case to a final judgment would impose unjustifiable costs. After *Bruen*, the burden on district courts adjudicating Second Amendment challenges has expanded dramatically. *See United States v. Rahimi*, 602 U.S. 680, 743 & n.1 (2024) (Jackson, J., concurring) (collecting state and federal court decisions describing the complexity and burden of deciding Second Amendment cases). The second step of *Bruen* alone “saddl[es]” district courts “with a Ph.D.-level historical inquiry.” *Atkinson v. Garland*, 70 F.4th 1018, 1025 (7th Cir. 2023) (Wood, J., dissenting). In this case, the parties and the Court must also grapple with whether the regulated items are “Arms” under the Second Amendment at *Bruen*’s first step—an inquiry that introduces further factual and legal complexity. *See, e.g., Bevis*, 85 F.4th at 1175, 1192–97; *Barnett* ECF 258 at 9–118.

Resolving these questions represents the most difficult and resource-intensive aspect of this litigation. Previously submitted expert materials during the preliminary-injunction stage, *see, e.g.,* ECF 34, 57, will have to be updated and supplemented to align with the Seventh Circuit’s intervening decision in *Bevis*, while the parties must also submit rebuttal reports, conduct depositions, issue additional written discovery if needed, and contest admissibility under *Daubert* and Rule 702. Briefing and/or a trial to reach a final judgment will impose similar burdens. In *Barnett*, in addition to conducting a bench trial, the parties submitted lengthy post-trial briefs that included more than 800 numbered paragraphs constituting the parties’ competing proposed findings of fact. *See Barnett* ECF 247, 253.



Defendants cannot agree to forego any of these steps if this case is not stayed and proceeds toward final judgment. Defendants are obligated to present a complete factual record, not least because they bear the burden of proof with respect to some of the disputed issues. *See Bevis*, 85 F.4th at 1192. Defendants will also need to contest Plaintiffs’ proffered evidence, including by challenging the sufficiency or reliability of any reports, studies, or surveys on which they intend to rely. *See, e.g., Barnett* ECF 257 at 16, 22 (declining to consider secondary-source materials that the defendants showed contained “methodological errors and inherent biases”). And even if the parties could somehow stipulate to reduce their own burden in discovery, that would do nothing to alleviate the burden on the Court, which would consider the parties’ submissions afresh. Defendants believe that it would be improper and wasteful to ask this Court to adjudicate complex and pressing questions of constitutional law while refusing to prepare a complete evidentiary record. *See Bevis*, 85 F.4th at 1197 (remanding this case to develop a complete factual record on disputed issues). For example, the plaintiff in *Viramontes* recently attempted to short-circuit the discovery process in the district court. During the oral argument on appeal, judges on the Seventh Circuit panel expressed concerns about the plaintiff’s failure to properly develop the district court record. Recording of Oral Argument in *Viramontes v. Cook County*, No. 24-1437 (7th Cir.) (Nov. 12, 2024), at 1:15–2:11; 2:46–4:21; 4:40–4:54 ([https://media.ca7.uscourts.gov/sound/2024/ch.24-1437.24-1437\\_11\\_12\\_2024.mp3](https://media.ca7.uscourts.gov/sound/2024/ch.24-1437.24-1437_11_12_2024.mp3)). Circumventing complete discovery in this case would raise the same concerns by failing to adequately develop the evidentiary basis for a final judgment.

**C. No party would be prejudiced by a stay of the litigation.**

Staying the litigation will not delay resolution of the merits or adversely affect any party, as indicated by the fact that the Parties jointly present this Motion. As discussed above, *Barnett* will decide the essential questions in this case, and any issues that remain for this Court to decide—

if in fact there are any—will be limited in scope. The parties could expeditiously address those questions in legal briefs and proceed to final judgment without additional burdensome discovery into the complex factual questions that *Barnett* is already poised to decide. Moreover, even if staying the proceedings might increase the total time needed to reach final judgment, “[d]elay alone is not enough to tip the balance or to constitute unfair prejudice.” *Gamon Plus, Inc. v. Campbell Soup Co.*, No. 15-CV-8940, 2018 WL 11471814, at \*2 (N.D. Ill. Nov. 29, 2018) (quoting *Riddell, Inc. v. Kranos Corp.*, No. 16 C 4496, 2017 WL 959019, at \*2 (N.D. Ill. 2017)).

In addition, a stay would not impair any party’s rights or ability to obtain relief. In *Barnett*, in staying the district court’s judgment pending appeal, the Seventh Circuit chose to leave PICA in effect, *see* Ex. 1 at 2, meaning that the challenged regulations of assault weapons and large capacity magazines will remain in place until the *Barnett* appeal is decided. Thus, even if the parties litigated this case to a final judgment and Plaintiffs prevailed on their claims for declaratory or injunctive relief, Plaintiffs would be unable to realize any benefit unless and until the *Barnett* appeal is resolved in the *Barnett* plaintiffs’ favor. As a result, there is no advantage from a practical standpoint in continuing to litigate this case, and any benefit to proceeding with this litigation cannot outweigh the hardship on the Defendants of being subjected “to a considerable hardship—having to defend [themselves] against claims that might have been resolved,” while “risk[ing] having this court and the parties expend considerable time and effort on a suit that could prove entirely fruitless.” *Freed v. Friedman*, 215 F. Supp. 3d 642, 658 (N.D. Ill. 2016).

For these reasons, the Parties respectfully request that this Court exercise its inherent power to stay this litigation pending the Seventh Circuit’s resolution of *Barnett v. Raoul*, No. 24-3060.

Dated: April 1, 2025

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**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing **Joint Motion to Stay the Litigation Pending the Seventh Circuit's Decision in *Barnett v. Raoul*** has been filed electronically on April 1, 2025 with the United States District Court for the Northern District of Illinois. Notice of the filing will be sent by email to all counsel by operation of the Court's electronic filing system, and all parties may access this filing through that system.

*s/ Kahin Gabriel Tong*

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One of Defendants' Attorneys