No. 129965

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TYSHON THOMPSON, Defendant-Appellant.	)	Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-22-0429 There on Appeal from the Circuit Court of Cook County, Illinois, No. 20 CR 5154. The Honorable Vincent M. Gaughan, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
PEOPLE OF THE STATE OF ILLINOIS

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

GARSON S. FISCHER
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-6911
eserve.criminalappeals@ilag.gov

Attorneys for Plaintiff-Appellee
People of the State of Illinois

ORAL ARGUMENT REQUESTED

E-FILED
9/23/2024 1:41 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS

POINTS AND AUTHORITIES

NATURE OF THE CASE

Following a Cook County jury trial, defendant, Tyshon Thompson, was found guilty of aggravated unlawful use of a weapon (AUUW) under 720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5), for carrying a firearm in public without having been issued a concealed carry license (CCL), and he was sentenced to 30 months in prison. C264.[1] The appellate court affirmed the judgment, A33, and defendant appeals. No question is raised on the charging instrument.

ISSUES PRESENTED

1. Whether only Illinois's ban on unlicensed carriage, and not its ban on open carriage, is at issue because defendant was convicted under a section of the AUUW statute that prohibits unlicensed carriage, rather than open carriage.

2. Whether the section of the AUUW statute under which defendant was convicted, which bans the unlicensed carriage of firearms, is not facially unconstitutional under the Second Amendment, given that: (a) the United States Supreme Court has already explicitly recognized the constitutionality of Illinois's shall-issue licensing regime, (b) defendant has not shown that there is no set of circumstances under which the section

---

[1] Citations to defendant's appendix, the common law record, the report of proceedings, and defendant's opening brief appear as "A_," "C_," "R_," and "Def. Br. __," respectively.

would be constitutional, (c) the plain text of the Second Amendment does not presumptively protect the right to unlawfully carry firearms in public without a CCL, and (d) the CCL requirement is consistent with the Nation's history of firearm regulation.

3. Whether, even if the constitutionality of Illinois's prohibition on open carriage of firearms is before the Court, it likewise comports with the Second Amendment.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 602. This Court allowed defendant leave to appeal on November 29, 2023.

STATEMENT OF FACTS

Defendant was charged with two counts of aggravated discharge of a firearm and one count of AUUW. C18-23.

Trial

The trial evidence showed that on the night of February 25, 2020, while Alisha Addison was working at a gas station in Forest Park, Illinois, a woman spit at her and two other clerks. R485, 487-89, 492-93, 496-97. Police were called and pulled over a white SUV in front of the gas station: the woman who spit on the clerks was a passenger in the SUV, and the driver had a blue rag on his hand covering a cut he sustained while breaking up a fight between his girlfriend (the woman in the car) and the gas station employees. R488, 490, 497-98. Police took the woman into custody for battery. R488.

Alisha's aunt, Charise Rush, and her brother, Floyd Addison, picked up Alisha from the gas station. R467-72, 479. As they got on I-290 to head home, Charise realized that they were being "chased." R467, 474-75. From the passenger seat, Charise argued with the driver of the other car as they drove down the highway, R475; the other driver pulled out a gun and started shooting at them, R467, 475. Floyd swerved, nearly hit another car, and sped off. *Id.*

Alisha, Charise, and Floyd called 911 and were told to wait for police at the next exit. R467, 470, 475. There, they spoke with police and discovered bullet holes in their car. R476, 478, 480. Alisha had been grazed by one of the bullets. R478, 480.

When the officers who had earlier stopped the white SUV outside the gas station received the call about the shooting on I-290, they suspected the two incidents were related. R487. They again located and pulled over the white SUV, searched it, and found in the glove compartment a small silver handgun with blood on the trigger. R485, 486, 493-96. The driver still had the same bloody, blue rag in his left hand, and two male passengers were in the SUV with him. R490, 495.

The occupants of the SUV — including defendant, who was one of the passengers — were taken into custody and transported to the police station. R485, 523-24, 531. There, police tested defendant's hands for gunshot residue. R525. The swabs from the gunshot residue testing and swabs from

the gun were turned over to the Illinois State Police, R486, 527, who tested the gun for DNA evidence, R529-30.

Defendant's DNA was found on the gun's trigger. R558, 560-61. Moreover, the gun found in the white SUV was consistent with having fired a bullet recovered from the victims' car and cartridge cases found on the side of I-290, based on both caliber and markings on test-fired cartridge cases. R532-33, 536, 543, 578-81. The driver and both passengers of the SUV — including defendant — had gunshot residue on their hands. R589-92.

Defendant did not have a CCL and had never applied for one. R597-98. Defendant had been issued a Firearm Owners Identification (FOID) card, but it had been revoked at the time of trial based on the pending felony charges. R599-600.

Defendant presented no evidence, R606-08, and the jury found defendant guilty of AUUW, R657. The jury was unable to reach a verdict on the aggravated discharge counts, and the court declared a mistrial on those counts. R660-62. The trial court sentenced defendant to 30 months in prison, R679-80, and the People dismissed the remaining charges, R681-82.

Appeal

On appeal, defendant argued, in relevant part, that the AUUW statute violates the Second Amendment. A25 at ¶ 51. The appellate court rejected defendant's facial challenge to the statute because "the Supreme Court found that Illinois is a 'shall issue' state and the CCL Act comports with the second

and fourteenth amendments under *Bruen*," A29 at ¶ 60, and affirmed the trial court's judgment, A33 at ¶ 69.

STANDARD OF REVIEW

The constitutionality of a statute is reviewed *de novo*. *People v. Ligon*, 2016 IL 118023, ¶ 11. A statute is presumed constitutional, and defendant "bears the burden of demonstrating a clear constitutional violation." *In re Lakisha M.*, 227 Ill. 2d 259, 263 (2008).

ARGUMENT

Defendant's Second Amendment challenge to section 24-1.6(a)(1), (a)(3)(A-5), which bans the *unlicensed* carriage of firearms, fails because Illinois has a shall-issue licensing system, which the United States Supreme Court has explicitly recognized as constitutional. *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 38 n.9 (2022).

Even if it had not, a facial challenge would fail as a matter of first impression. For starters, defendant cannot show, as he must to prevail on his facial challenge, that there is no set of circumstances under which section 24-1.6(a)(1), (a)(3)(A-5) is constitutional. *See United States v. Rahimi*, 144 S. Ct. 1889, 1898 (2024). Next, the plain text of the Second Amendment guarantees a right to "keep and bear arms" but says nothing about a right to keep and bear arms in a particular manner, *see* U.S. Const. amend. II, and therefore does not "presumptively protect[ ]" the *unlicensed* carriage or possession of firearms, *Bruen*, 597 U.S. at 24. Moreover, even if defendant's

conduct were covered by the Second Amendment, Illinois's ban on unlicensed carriage, coupled with a shall-issue licensing regime, is consistent with the Nation's tradition of disarming categories of individuals believed to be dangerous. *See Rahimi*, 144 S. Ct. at 1902 ("Our tradition of firearm regulation allows the Government to disarm individuals who present a credible threat to the physical safety of others."). That Illinois employs a double licensing scheme (requiring a FOID card as a prerequisite to acquiring a CCL) does not render its requirements unconstitutional: the State need only identify a historical analogue, not a historical dead ringer, for its regulation to pass constitutional muster.

Defendant's arguments about the constitutionality of open carry are ultimately beside the point. This case does not present the issue of whether Illinois's separate ban on open carry violates the Second Amendment because defendant was not charged under that provision, and his conduct involved concealed rather than open carry. Regardless, even if this Court were to consider the issue, Illinois's requirement that licensees conceal rather than openly carry their firearms is constitutional because the term "bear arms" in the Second Amendment does not presumptively protect a specific way an individual is entitled to exercise his or her right of public carriage, and Illinois's regulation of the type of carriage is consistent with the Nation's tradition of regulating the manner of public carriage of firearms.

I. Only Illinois's Ban on Unlicensed Carriage, and Not Its Ban on Open Carriage, Is at Issue in This Case.

As an initial matter, this case presents only a question of the constitutionality of Illinois's CCL requirement; it presents no issue regarding Illinois's ban on open carriage. This is so because the only issue properly before the Court is the constitutionality of the provision under which defendant was charged. *See, e.g.*, *People v. Chairez*, 2018 IL 121417, ¶ 13 (vacating portions of circuit court opinion invalidating statutes under which defendant was not charged); *People v. Mosley*, 2015 IL 115872, ¶¶ 11-12 (same). Although the People, in the appellate court, proceeded on defendant's assumption that AUUW bans open carry, this is wrong. This Court's first step in analyzing the constitutionality of a statute is construing what the statute means, *see People v. Hammond*, 2011 IL 110044, ¶ 56, and the proper construction of a statute is not subject to forfeiture, *see JP Morgan Chase Bank, N.A. v. Earth Foods, Inc.*, 238 Ill. 2d 455, 462 (2010).

The AUUW provisions under which defendant was charged do not implicate Illinois's ban on open carriage. Indeed, defendant's conduct — possessing a gun in a vehicle's glove box without a valid CCL — constitutes concealed carriage. The AUUW statute required the People to prove that (1) defendant carried a firearm "on or about his or her person or in any vehicle or concealed on or about his or her person," 720 ILCS 5/24-1.6(a)(1); (2) the firearm "was uncased, loaded, and immediately accessible at the time of the offense," 720 ILCS 5/24-1.6(a)(3)(A-5); and (3) defendant "has not been issued

a currently valid license under the Firearm Concealed Carry Act," *id.* The concealed versus open nature of defendant's carriage was not an element of the offense, because *either* concealed *or* open carriage satisfies the language of subsection (a)(1).

To be sure, open carriage is illegal in Illinois: the unlawful use of a weapon (UUW) statute, for example, requires that a firearm be "carried or possessed in accordance with the Firearm Concealed Carry Act by a person who has been issued a currently valid license under the Firearm Concealed Carry Act." 720 ILCS 5/24-1(a)(10). In turn, to carry a firearm in accordance with the Firearm Concealed Carry Act (FCCA) requires that a firearm be completely or mostly concealed. 430 ILCS 66/5 ("'Concealed firearm' means a loaded or unloaded handgun carried on or about a person completely or mostly concealed from view of the public or on or about a person within a vehicle."); 430 ILCS 66/10(c) (CCL authorizes holder to carry concealed firearm). A defendant with a valid CCL who openly carried a firearm would commit UUW, 720 ILCS 5/24-1(a)(10), but not AUUW, 720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5).

Thus, the only statutory provision properly before this Court is the AUUW section under which defendant was convicted, and not the FCCA's prohibition on open carriage or UUW's provisions enforcing the same, and this Court should not address defendant's arguments concerning Illinois's ban on open carriage. *See Mosley*, 2015 IL 115872, ¶¶ 11-12 (holding courts

do not rule on constitutionality of statute where its provisions do not affect parties and limiting discussion to subsections of AUUW statute under which defendant was convicted); *see also Davis v. Yenchko*, 2024 IL 129751, ¶¶ 21, 27 (vacating circuit court's judgment holding portion of FOID Card Act unconstitutional because holding would have no impact on plaintiffs).[2]

II. Illinois's Ban on Unlicensed Carriage, Coupled with Its "Shall-Issue" Licensing Regime, Comports with the Second Amendment.

A. The Supreme Court has expressly recognized the constitutionality of Illinois's shall-issue licensing regime for firearms.

Bruen forecloses any Second Amendment challenge to section 24-1.6(a)(1), (a)(3)(A-5), as it expressly affirmed the constitutionality of shall-issue licensing regimes like Illinois's. In *Bruen*, the Supreme Court held that the Second Amendment protects the right to carry firearms in public for self-defense, "subject to certain reasonable, well-defined restrictions," including "the manner by which one carrie[s] arms." 597 U.S. at 70. In striking down New York's "may issue" concealed-carry licensing regime, *id.* at 9-11, which required an applicant to show "some additional special need" for self-defense beyond that of the general community to obtain a license, *id.* at 11-14, the Court expressly affirmed the constitutionality of Illinois's regime, *id.* at 38 n.9.

[2] For the reasons explained Section III, *infra*, that ban would survive constitutional challenge, in any event.

Bruen held that New York's regime was unconstitutional because in effect it "broadly prohibited" the public carriage of firearms, *id.* at 11, 70-71, but Illinois's FCCA, as a shall-issue regime, does not prohibit the public carriage of firearms when one has a valid CCL, and an applicant may be denied a CCL only if he or she possesses one of the disqualifying conditions, such as a felony conviction or qualifying mental condition, *see* 430 ILCS 66/10(a); 430 ILCS 65/25. *Bruen* emphasized that New York's "restrictive" "may issue" regime was an outlier: New York was one of only seven States that required a showing of special need to obtain a license to publicly carry firearms. 597 U.S. at 11, 13-15, 50. The "vast majority of States" — 43 of them, including Illinois — are "'shall-issue' jurisdictions," in which "authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements." *Id.* at 13 & n.1 (expressly identifying Illinois as one such State). The Court hastened to make "clear" that "nothing in [its] analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes, under which a general desire for self-defense is sufficient to obtain a permit." *Id.* at 38 n.9 (cleaned up).

Indeed, three justices wrote separately in *Bruen* to emphasize that New York's regime was distinguishable from shall-issue regimes like Illinois's. Justice Alito "reiterate[d]" that the Court's decision was limited to holding New York's regime (which, he explained, made it "virtually impossible" for "law-abiding people to carry a gun outside the home for self-

defense") unconstitutional. *Id.* at 76 (Alito, J., concurring). Justice Kavanaugh, joined by Chief Justice Roberts, wrote to "underscore" that New York's "may-issue" licensing regime was an "outlier" and "unusually discretionary," and he emphasized that "the Court's decision does not affect the existing licensing regimes — known as 'shall-issue' regimes — that are employed in 43 States" and are "constitutionally permissible." *Id.* at 79-80 (Kavanaugh, J., concurring); *see also id.* at 80 (Kavanaugh, J., concurring) ("Going forward, the 43 States that apply objective shall-issue licensing regimes for carrying handguns for self-defense may continue to do so."). Thus, *Bruen* expressly endorsed licensing requirements in shall-issue jurisdictions like Illinois because those requirements "do not necessarily prevent 'law-abiding, responsible citizens' from exercising their Second Amendment right to public carry," but instead "are designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens." *Id.* at 38 n.9 (cleaned up).

B. Even if the Supreme Court had not expressly approved shall-issue licensing regimes, Illinois's ban on unlicensed public carriage is constitutional under *Bruen*'s two-step analysis.

Even if this Court were to accept defendant's invitation to conduct its own analysis of his challenge to section 24-1.6(a)(1), (a)(3)(A-5), Def. Br. 43-47, that challenge would fail. As an initial matter, because he has brought facial challenge, defendant "must establish that the statute is unconstitutional under any possible set of facts." *People v. Harris*, 2018 IL

121932, ¶ 38; *see also Rahimi*, 144 S. Ct. at 1898 (emphasizing that a facial challenge is the "'most difficult challenge to mount successfully' because it requires a defendant to 'establish that no set of circumstances exists under which the Act would be valid'" (citation omitted)). Thus, to succeed on his facial challenge, defendant would have to show that section 24-1.6(a)(1), (a)(3)(A-5) violates the Second Amendment rights of every defendant who is charged with carrying a loaded firearm without a valid CCL, which he cannot do.

But even putting this obstacle to one side, defendant cannot show that section 24-1.6(a)(1), (a)(3)(A-5) violates the Second Amendment under the text-and-tradition framework. The Supreme Court in *Bruen* clarified the legal standard governing Second Amendment claims: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." 597 U.S. at 24. In other words, the *Bruen* framework requires a threshold textual inquiry, which is then followed by a historical inquiry, if necessary. First, the court asks whether "the Second Amendment's plain text covers an individual's conduct." *Id.* Then, if necessary, the court determines whether the government has shown that its regulation is "consistent with this Nation's historical tradition of firearm regulation." *Id.*

At the threshold, textual step, defendant bears the burden to show that the Second Amendment's plain text covers his conduct, and thus presumptively protects that conduct. *See id.* Only if the Amendment's "plain text covers an individual's conduct . . . must [the government] *then* justify its regulation." *Id.* (emphasis added). The government may show that a challenged regulation aligns with historical tradition by identifying analogous historical regulations — that is, "whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Rahimi*, 144 S. Ct. at 1898. "Why and how the regulation burdens the right are central to this inquiry." *Id.*; *see also Bruen*, 597 U.S. at 28-29 (comparing "how and why the regulations burden a law-abiding citizen's right to armed self-defense"); *Caulkins v. Pritzker*, 2023 IL 129453, ¶ 34 (applying this standard).

1. Defendant's facial challenge fails because the relevant section of the AUUW statute is constitutional as applied to at least some defendants.

As a threshold matter, to succeed on his facial challenge, defendant must "'establish that no set of circumstances exists under which the Act would be valid.'" *Rahimi*, 144 S. Ct. at 1898 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)). The section of the AUUW statute with which defendant was charged, 720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5), criminalizes the possession of a loaded firearm by anyone without a valid CCL, regardless of why the person lacks a valid CCL. So, to prevail on his

facial challenge, defendant must show that the AUUW statute's criminalization of unlicensed carriage of a firearm would violate the Second Amendment as applied to every possible defendant. *See Rahimi*, 144 S. Ct. at 1898; *see also People v. Villareal*, 2023 IL 127318, ¶ 49. He cannot do so.

As just one example, a person may not have a valid CCL because he is ineligible due to a felony conviction. *See* 430 ILCS 66/25 (applicant for CCL must have a valid FOID card and meet requirements of FOID Act); 430 ILCS 65/8(c) (felony conviction is grounds for denying or revoking FOID card). Applying the AUUW statute's prohibition against public carriage of a firearm by someone without a valid CCL due to a felony conviction would not violate that defendant's Second Amendment rights. *See District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008) ("nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill"); *see also Rahimi*, 144 S. Ct. at 1902 (reiterating that such prohibitions "are 'presumptively lawful.'" (quoting *Heller*, 554 U.S. at 626, 627 n.26)). Accordingly, defendant's facial challenge based on the Second Amendment must fail. *See Rahimi*, 144 S. Ct. at 1898; *Villareal*, 2023 IL 127318, ¶ 49.

2. Defendant cannot establish that the plain text of the Second Amendment protects the right to unlawfully carry firearms in defiance of a law that permits carriage for those who comply with its requirements.

In any event, defendant's challenge fails at the first step of the *Bruen* analysis because he has not met his burden to show that the Second

Amendment's plain text covers his conduct of possessing firearms without a license. *See Bruen*, 597 U.S. at 24; *see also Rahimi*, 144 S. Ct. at 1912 n.2 (Kavanaugh, J., concurring) ("The historical approach applies when the text is vague. But the text of the Constitution always controls."). The Second Amendment's text does not protect a right to unlicensed carriage when licensed carriage is both required and available to those who meet the eligibility requirements. *See Maryland Shall Issue, Inc. v. Moore*, Nos. 21-2017, 21-7053, 2024 WL 3908548, *13 (4th Cir. Aug. 23, 2024) (en banc) (rejecting Second Amendment challenge to Maryland's shall-issue licensing regime for handgun purchases at first step of *Bruen* framework).

The Second Amendment provides that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend II; *see also Bruen*, 597 U.S. at 20 (citing *Heller*, 554 U.S. at 570). Two of the Amendment's terms are relevant here. First is "the people," and the issue presented is whether defendants who carry firearms without a CCL are included among "the people" whom the Second Amendment protects. They are not. *Bruen* confirmed that "the people" includes only "law-abiding, responsible citizens," 597 U.S. at 26, as Illinois courts have recognized, *see*, *e.g.*, *People v. Hatcher*, 2024 IL App (1st) 220455, ¶¶ 56, 59 ("*Bruen* expressly and repeatedly limits the second amendment's scope to law-abiding citizens"); *see also People v. Burns*, 2015 IL 117387, ¶ 41 ("the U.S. Supreme Court made clear that the right secured by the second amendment is held by 'law-abiding, responsible

citizens'") (citing *Heller*, 554 U.S at 635). Accordingly, Illinois's ban on unlicensed carriage, which restricts carriage only by *non*-law-abiding citizens — that is, defendants who carry firearms without making an attempt to obtain a CCL, or who are ineligible for one because they present a danger to public safety — does not regulate conduct protected by the Second Amendment. *See People v. Baker*, 2023 IL App (1st) 220328, ¶ 37 ("The *Bruen* Court could not have been more clear that its newly announced test applie[s] only to laws that attempt[ ] to regulate the gun possession of 'law-abiding citizens").

The second critical term is "infringed," and here the question is whether a shall-issue licensing regime like Illinois's CCL requirement "infringes" on the right to keep and bear arms. Again, the answer is no. *Bruen* held that shall-issue licensing regimes are constitutional because they "do not require applicants to show an atypical need for armed self-defense, [and thus] they do not necessarily prevent 'law-abiding, responsible citizens' from exercising their Second Amendment right to public carry." 597 U.S. at 38 n.9 (quoting *Heller*, 554 U.S. at 635). "Rather, it appears that these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.'" *Id.* (quoting *Heller*, 554 U.S. at 635). Thus, shall-issue licensing

regimes, like Illinois's, do not "infringe" any Second Amendment right. *See Maryland Shall Issue*, 2024 WL 3908548, *7 (en banc).

Accordingly, defendant's challenge to section 24-1.6(a)(1), (a)(3)(A-5) fails at the first step of the *Bruen* test because his conduct is not protected under the plain text of the Second Amendment.

3. The CCL requirement is consistent with the Nation's history of firearm regulations.

Even if the unlawful carriage of a firearm without a license were covered by the plain text of the Second Amendment, the AUUW section at issue here is constitutional because it is consistent with a longstanding tradition of similar regulation.

Bruen and *Rahimi* direct courts adjudicating Second Amendment challenges to firearm regulations to "ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit, 'apply[ing] faithfully the balance struck by the founding generation to modern circumstances.'" *Rahimi*, 144 S. Ct. at 1898 (quoting *Bruen*, 597 U.S. at 29 & n.7) (modification in *Rahimi*). In other words, "[t]he law must comport with the principles underlying the Second Amendment, but it need not be a dead ringer or a historical twin." *Id.* (cleaned up). "Why and how the regulation burdens the right are central to this inquiry." *Id.* And "if the laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar

restrictions for similar reasons fall within a permissible category of regulations." *Id.*

The historical analogues to section 24-1.6(a)(1), (a)(3)(A-5) share its important goal of ensuring that dangerous persons do not carry firearms. In the eighteenth century, governments restricted firearm carriage by means of "going armed" laws and disarming classes of people deemed dangerous at the time. In the nineteenth century, this tradition continued in the form of surety statutes and licensing and taxation regimes that enabled governments to track firearms and restrict their carriage by unsafe individuals. These regulations demonstrate a history and tradition of protecting public safety by preventing those considered dangerous from carrying firearms in public, and Illinois's CCL requirement and the AUUW section that incorporate it are consistent with this principle. *See Maryland Shall Issue*, Nos. 21-2017, 21-7053, 2024 WL 3908548, *18 (Rushing, J., joined by Gregory, J., and Quattlebaum, J., concurring) (Maryland's shall-issue licensing regime for handgun purchases is "consistent with the historical tradition of disarming those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten public safety").

(a) ***Prohibitions on "Going Armed"***

"Since the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms." *Rahimi*, 144 S. Ct. at 1896. In particular, Founding-Era

laws "provided a mechanism for punishing those who had menaced others with firearms. These were 'going armed' laws, a particular subset of the ancient common-law prohibition on affrays." *Id.* at 1900-01. Such "laws prohibited 'riding or going armed, with dangerous or unusual weapons, [to] terrify[ ] the good people of the land,'" *id.* at 1901 (quoting 4 William Blackstone, *Commentaries on the Laws of Eng.* (1769), *149) (emphasis deleted), because "such conduct disrupted 'the public order' and 'le[d] almost necessarily to actual violence,'" *id.* (quoting *State v. Huntly*, 25 N.C. 418, 421-422 (1843) (per curiam)). Conduct violating going-armed and affray laws was punished "with 'forfeiture of the arms . . . and imprisonment.'" *Id.* (quoting 4 Blackstone *149). Thus, going-armed and affray laws "confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed." *Id.*

Section 24-1.6(a)(1), (a)(3)(A-5) disarms individuals considered to be dangerous for the same purpose — to protect public safety and keep the peace. Put differently, the AUUW section shares a how and a why with going-armed and affray laws. Illinois's FCCA directs that the state police "shall issue a license" to any applicant who satisfies the licensure conditions. 430 ILCS 66/10. Accordingly, the state police may deny licensure only to applicants with disqualifying characteristics, such as criminal convictions or mental-health prohibitors. 430 ILCS 66/25. Defendant does not challenge the validity of these substantive restrictions, nor could he. In *Heller*, for

example, the Supreme Court emphasized that felons and the mentally ill do not have a Second Amendment right to possess firearms. *See* 554 U.S. at 626-27 ("nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill"). And recently, in *Rahimi*, the Court reiterated that such prohibitions "are 'presumptively lawful.'" 144 S. Ct. at 1902 (quoting *Heller*, 554 U.S. at 626, 627 n.26). If the government may set substantive requirements for firearm possession, "which *Heller* says it may, then it may use a licensing regime to enforce them." *Berron v. Ill. Concealed Carry Licensing Review Bd.*, 825 F.3d 843, 847 (7th Cir. 2016). The CCL requirement and AUUW section that incorporates it are therefore "relevantly similar" to the going-armed and affray laws that disarmed and punished those who have disrupted public order. *Bruen*, 597 U.S. at 30.

(b) *Disarmament Laws*

The widespread disarmament of individuals who either remained loyal to the British government or refused to swear allegiance to the Republic provides another historical analogue to the CCL requirement and the AUUW section incorporating it. "With the possible exception of Rhode Island, every state in the early Republic followed the Continental Congress's lead and disarmed loyalists and non-associators (i.e., colonists who refused to take an oath of allegiance or support volunteer military associations)." Br. for Amici Curiae Professors of History and Law in Support of Petitioner, *United States*

v. Rahimi, No. 22-915, 2023 WL 5489062, at *8.[3] State legislatures enacted such laws to protect society from potentially dangerous individuals whom the legislatures believed could not be trusted with weapons. *See id.* at *9 (citing George Washington's 1776 address to the Pennsylvania Council of Safety). Accordingly, the CCL requirement and related AUUW section also are analogous to Founding-Era laws disarming British loyalists and those who refused to take a loyalty oath to the Republic because, like those laws, the challenged provisions protect society by categorically disarming groups that the legislature has determined cannot be trusted with weapons.

As an additional example, *Heller* identified as a "highly influential" "precursor" to the Second Amendment the Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania to Their Constituents. 554 U.S. at 604. That report recognized the permissibility of imposing a firearms disability on convicted felons because citizens have a personal right to bear arms "unless for crimes committed, or real danger of public injury." 2 Bernard Schwartz, *The Bill of Rights: A Documentary History* 662, 665 (1971)). Likewise, Thomas M. Cooley's 1868 treatise, which *Heller* described as "massively popular," 554 U.S. at 616, explained that some classes of people were "almost universally excluded" from exercising certain civic rights, including "the idiot, the lunatic, and the felon, on obvious

[3] *See also* 1776 Pa. Laws 11, § 1; 1777 Pa. Laws 61, ch. 21, §§ 2, 4; 1777 Va. Laws, ch. 3, in 9 Hening's Statutes at Large 281, 281-82 (1821); 1777 N.C. Sess. Laws 231, ch. 6, § 9; 1777 N.J. Laws 90, ch. 40, § 20.

grounds." Thomas M. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 29 (1st ed. 1868). In other words, the Second Amendment incorporates a common-law tradition that permits restrictions directed those who are not law-abiding citizens and "does not preclude laws disarming the unvirtuous (i.e. criminals)." Don B. Kates, Jr., *The Second Amendment: A Dialogue*, Law & Contemp. Probs., Winter 1986, at 146.

Finally, many States historically disarmed individuals based on specific religions, political views, ethnicities, or other categories perceived by the state governments at the time as dangerous. Some of these laws prohibited selling arms to American Indians and those from outside the jurisdiction. *See, e.g.,* 1631 Va. Acts 173, Act 46; Act of Dec. 1, 1642, Public Records of the Colony of Connecticut 79 (1850); 1757-1768 Md. Acts 53, ch. 4, § 3; 1763 Pa. Laws 319; 1639 N.J. Laws 18; *Charters and General Laws of the Colony and Province of Massachusetts Bay* 133, § 2 (1814); Duke of York's Laws, 1665-75, 1 *Colonial Laws of New York from the Year 1664 to the Revolution* 40-41 (1896); *Charter to William Penn, and Laws of the Province of Pennsylvania, Passed Between the Years 1682 and 1700*, at 32 (1879). Other laws targeted Catholics. *See, e.g.,* 52 *Archives of Maryland* 454 (Pleasants ed., 1935); 1756 Va. Laws, ch. 2, in 7 *Hening's Statutes at Large* 26, 35 (1820); 5 *The Statutes at Large of Pennsylvania from 1682 to 1801*, at 627 (statute from 1759). Still others targeted slaves and freed Black people.

See, e.g., Aaron Leaming & Jacob Spicer, *The Grants, Concessions, and Original Constitutions of the Province of New Jersey* 341 (2d ed. 1881); 1715 Md. Laws 117, ch. 26, § 32; 1740 S.C. Acts 168, § 23. Indeed, even pacifist groups such as the Quakers were disarmed due to their refusal to pay taxes, and the perception that they therefore threatened the social order. *See* Philip A. Hamburger, *Religious Freedom in Philadelphia*, 54 Emory L.J. 1603, 1610-1615, 1621 (2005).

To be sure, as defendant notes, Def. Br. 36-39, most of these regulations would be repugnant today for the prejudices they embody. But the underlying principle that the government may disarm persons perceived to be dangerous has not changed. *Bruen* and *Rahimi* instruct that modern gun regulations must be measured against the actual American tradition of gun regulation, which included ample flexibility for governments to disarm people thought be dangerous. *See Rahimi*, 144 S. Ct. at 1898; *Bruen*, 597 U.S. at 29 & n.7. The CCL requirement and AUUW section that incorporates it are consistent with this tradition.

(c) *Nineteenth Century Laws*

The Founding-Era tradition of regulating dangerous individuals' rights with respect to firearms continued into the nineteenth century.[4] Indeed,

[4] Defendant correctly recognizes that nineteenth-century history is relevant at *Bruen*'s second step. *See* Def. Br. 10. *Bruen* recognized that a variety of historical sources and periods may inform the historical inquiry. Specifically,

Illinois's CCL requirement and the AUUW section that incorporates it find ready historical analogues from around the time the Fourteenth Amendment was ratified.

For example, many States and localities prohibited firearms sales to, or possession by, intoxicated people, drug addicts, and minors, none of whom was considered fit to purchase or possess guns. *See, e.g.*, 1878 Miss. Laws 175, ch. 46, § 2; Edwin R. Holmes, The Charter and Code of the Ordinances of Yazoo City, Mississippi § 297, at 174 (1908); 1911 Del. Laws 28-29, ch. 15, § 3; H.A. Lindsley, The Municipal Code of the City and County of Denver § 1447, at 674 (1917); 1856 Ala. Acts 17, No. 26, § 1; 1856 Tenn. Acts 92, ch. 81, § 2; Edward I. Bullock, The General Statutes of the Commonwealth of Kentucky, art. 29, § 1, at 359 (1873); 1875 Ind. Laws 59, ch. 40, § 1; 1876 Ga. Laws 112, No. 128 (O. No. 63.), § 1; 1878 Miss. Laws 175, ch. 66, §§ 1-2; John A. Hockaday & Thomas H. Parrish, Revised Statutes of the State of Missouri 224, § 1274 (1879); 1881 Del. Laws 987, ch. 548, § 1; 1881 Ill. Laws 73, § 2; 1882 Md. Laws 656, ch. 424, § 2; 1882 W. Va. Acts 421-422, ch. 135, § 1; 1883 Kan. Sess. Laws 159, ch. 105, §§ 1-2; 1883 Wis. Sess. Laws 290, ch. 329, §§ 1-

---

the Supreme Court assessed both the public understanding of the right to keep and bear arms in 1791, when the Second Amendment was ratified, and in 1868, when the Fourteenth Amendment was ratified, as well as the interpretation of the right in the years following both ratifications. 597 U.S. at 34-38; *see also Rahimi*, 144 S. Ct. at 1915-16 (Kavanaugh, J., concurring) ("post-ratification history — sometimes referred to as tradition — can also be important for interpreting vague constitutional text and determining exceptions to individual constitutional rights").

2; 1884 Iowa Acts and Resolutions 86, ch. 78, § 1; 1890 La. Acts 39, No. 46, § 1; 1890 Wyo. Sess. Laws 140, § 97; Act of July 13, 1892, ch. 159, § 2, 27 Stat. 116, 116-117 (federal legislation applying to D.C.); 1893 N.C. Public Laws & Resolutions 468, ch. 514, § 1. Some governmental authorities, similarly, prohibited firearm sales to, or possession by, those considered to have mental illness, *see* James McClellan, *A Digest of the Laws of the State of Florida,* ch. 80 § 13, at 429 (1881); and those considered "disorderly," or "tramps" or "vagrants," *see*, *e.g.*, Cong. Globe, 39th Cong., 1st Sess. 908-909 (1866); 1879 Conn. Pub. Acts 394, ch. 59, § 4; 1880 N.Y. Laws, vol. 2, ch. 176, § 4, at 297; Josiah A.P. Campbell, *Revised Code of Statutes and Laws of Mississippi*, ch. 77, § 2964, at 772 (1880).

Another common type of law from the mid-nineteenth century that is analogous to Illinois's CCL requirement is surety statutes, which required certain individuals to post bond before carrying weapons in public. *See Rahimi*, 144 S. Ct. at 1899-1900 (finding surety laws, which required those who posed a credible threat to public safety to post bond before possessing firearms, "relevantly similar" to modern law disarming individuals subject to a domestic-violence protective orders). Like Illinois's CCL requirement, these laws were not bans on public carriage, and typically targeted only those threatening to do harm. For example, in 1836, Massachusetts enacted a law providing:

> If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable

> cause to fear an assault or other injury, or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

Mass. Rev. Stat., ch. 134, § 16. In short, Massachusetts required any person who was reasonably likely to "breach the peace" to post a bond before publicly carrying a firearm. Between 1838 and 1871, nine other jurisdictions adopted variants of the Massachusetts law. *See* 1838 Terr. of Wis. Stat. § 16, p. 381; Me. Rev. Stat., ch. 169, § 16 (1840); Mich. Rev. Stat., ch. 162, § 16 (1846); 1847 Va. Acts ch. 14, § 16; Terr. Of Minn. Rev. Stat., ch. 112, § 18 (1851); 854 Ore. Stat. ch. 16, § 17, p. 220; D.C. Rev. Code ch. 141, § 16 (1857); 1860 Pa. Laws p. 432, § 6; W. Va. Code, ch. 153, § 8 (1868).

And although *Bruen* dismissed surety laws as an appropriate analogue to New York's "may issue" licensing regime, the Supreme Court's reasoning demonstrates why surety laws are a good analogue to Illinois's shall-issue regime. The Court explained that "[w]hile New York presumes that individuals have *no* public carry right without a showing of heightened need, the surety statutes *presumed* that individuals had a right to public carry that could be burdened only if another could make out a specific showing of 'reasonable cause to fear an injury, or breach of the peace.'" *Bruen*, 597 U.S. at 56 (citing Mass. Rev. Stat., ch. 134, § 16 (1836)). Like the surety statutes discussed in *Bruen* and *Rahimi*, Illinois's CCL requirement presumes that individuals shall be issued a license, excepting only those who fall into

specific categories likely to breach the peace. *See Maryland Shall Issue,* 2024 WL 3908548, *15 (Rushing, J., joined by Gregory, J., and Quattlebaum, J., concurring) (Maryland's shall-issue licensing regime for handgun purchases is consistent with historical tradition because it is analogous to "historic surety statutes").

In the nineteenth century, governments also used taxes and licensing regimes to address potential threats to public safety caused by firearms. For example, in 1821, Maine passed a law requiring that all firearms be marked and numbered, with a certificate to issue to the individual for each firearm. *See United States v. Barnes*, No. 23-12, 2024 WL 3328593, *14 (D. Del. July 8, 2024) (citing Laws of the State of Maine 546 (1830)). If an individual sold a firearm that was not marked and certified, he was fined ten dollars. *Id*. Similarly, in 1867, Mississippi passed a law imposing a tax "of not less than five dollars or more than fifteen dollars" on every "gun and pistol" possessed by any individual in Washington County. 1867 Miss. Laws 327-28, An Act To Tax Guns and Pistols in The County of Washington, ch. 249, § 1. And in 1893, Florida passed a law prohibiting the possession of a repeating rifle without a license. 1893 Fla. Laws 71-72, An Act to Regulate the Carrying of Firearms, ch. 4147, §§ 1-4.

Indeed, by the late-nineteenth century governments were using licensing regimes to limit the right to keep and bear arms to those who could demonstrate good moral character and other indicia of lawfulness and

peacefulness, denying the right to those deemed dangerous, which sometimes took the form of reserving licenses only for "law-abiding" individuals, *see*, *e.g.*, Ordinances of the Mayor, Aldermen and Commonalty of the City of New York, in force January 1, 1881, ch. 8, art. 27, § 265 (1881) (permit to carry pistol can be issued if "applicant is a proper and law-abiding person"); for people found "proper" to carry weapons, *see*, *e.g.,* Laws of Nebraska Relating to the City of Lincoln, Revised Ordinances 210 (1895) (allowing mayor to issue permits to carry concealed weapons to those he deems "proper"); or for "peaceable" individuals, *see*, *e.g.,* San Francisco Municipal Reports for the Fiscal Year 1874-5, Ending June 30, 1875, Order No. 1,226 Prohibiting the Carrying of Concealed Deadly Weapons (1875) (allowing police to issue license to carry a concealed weapon to a "peaceable person, whose profession or occupation may require him to be out at late hours of the night, to carry concealed deadly weapons for his protection"). Like Illinois's licensing regime, these laws required individuals to obtain proper authorization before possessing or bearing firearms and to pay taxes on those firearms. And like Illinois's regime, the purpose of these regulations was to advance public safety.

* * *

While disarmament laws, surety statutes, and other similar historical laws do not regulate firearm possession by dangerous individuals in precisely the same manner as a licensing regime, *Rahimi* made clear that when assessing the relevant similarity of historical analogues, courts must focus on

whether the challenged statute "comport[s] with the principles underlying the Second Amendment"; the government need not identify "a 'dead ringer' or a 'historical twin'" for the modern statute. 144 S. Ct. at 1998. Indeed, as Justice Barrett explained in her concurrence, "a test that demands overly specific analogues has serious problems." *Id.* (Barrett, J., concurring). For one, "it assumes that founding-era legislatures maximally exercised their power to regulate, thereby adopting a 'use it or lose it' view of legislative authority." *Id.* (Barrett, J., concurring). Additionally, requiring overly specific analogues "giv[es] us a law trapped in amber." *Id.* (Barrett, J., concurring) (cleaned up). This, the Supreme Court explained in *Rahimi,* is precisely what its Second Amendment cases were not meant to suggest. *Id.* at 1897. "Holding otherwise would be as mistaken as applying the protections of the right only to muskets and sabers." *Id.* at 1898.

In sum, shall-issue licensing schemes like Illinois's CCL requirement have been recognized as constitutional by the Supreme Court and otherwise pass constitutional muster under the text-and-tradition standard that the Court outlined in *Rahimi* and *Bruen*. Defendant's challenge to section 24-1.6(a)(1), (a)(3)(A-5), which criminalize violations of Illinois's CCL requirement, thus fails.

C. No Provision of Illinois's Licensing Regime is Put to Abusive Ends Such that It Denies Ordinary Law-Abiding Citizens the Right to Carry.

None of the fees, waiting periods, nor safety requirements necessary to obtain a CCL are abusive such that they effectively deny law-abiding citizens the right to carry. As defendant notes, Def. Br. 26, *Bruen* did not "rule out" constitutional challenges to substantively constitutional "shall issue" regimes where they are "put to abusive ends," such as, "where, for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry." 597 U.S. at 38 n.9. But defendant's argument that Illinois's "dual licensing regime" meets this standard, Def. Br. 25-35, misses the mark. *See Maryland Shall Issue*, 2024 WL 3908548, *12 (rejecting argument that Maryland's handgun license requirement is redundant of Maryland's separate firearms permit requirement and thus "abusive" under *Bruen*'s framework); *id.* at *18 (Rushing, J., joined by Gregory, J., and Quattlebaum, J., concurring) (same).

First, defendant's challenge fails because he cannot demonstrate that $160 (the combined cost for both a FOID card — which is a prerequisite to obtaining a CCL — and a CCL) is exorbitant, such that requiring payment of that fee denies otherwise law-abiding, responsible citizens their right to keep arms. To qualify as "exorbitant," the fee or waiting period must significantly exceed what is normal. *See State ex rel. Okla. Bar Ass'n v. Moss*, 577 P.2d 1317, 1320-21 (Okla. 1978) ("exorbitant" means excessive, grossly exceeding

normal); *Morris v. Savoy*, 576 N.E.2d 765, 772 (Ohio 1991) ("exorbitant" means "[o]ut of all bounds" or "extravagant"). Courts have defined "exorbitant" as synonymous with "unconscionable" and "shockingly unfair, harsh, or unjust." *Woody v. DOJ*, 494 F.3d 939, 948 (10th Cir. 2007); *United States HHS v. Smitley*, 347 F.3d 109, 116 (4th Cir. 2003).

Under these definitions, defendant cannot show that the fee for a new CCL license is exorbitant because it does not grossly exceed the fees charged for similar licenses in other States. *See, e.g.*, Conn. Gen. Stat. § 29-30 (charging fee of $140 for concealed carry permit); K.S.A. § 75-7c05(b)(2) (charging fee of $132.50); La. R. S. § 40:1379.3.1(A)(1) (charging fee of $150 for applicants who have not resided in Louisiana for 15 consecutive years prior to the submitting an application); ALM GL ch. 140, § 131(i) (charging fee of $100); 10 MCLS § 28.425b(5) (charging fee of $100); R.S.S. Neb. § 69-2436(1) (charging fee of $100); N.J. Stat. Ann. § 2C:58-4 (charging fee of $200); N.M. Stat. Ann. § 29-19-5 (charging fee of $100); ORS § 166.291 (charging fee of $115).

Nor is the CCL fee exorbitant relative to the cost of processing a CCL application. In the First Amendment context, which courts looked to pre-*Bruen*, *see Guns Save Life v. Raoul*, 2019 IL App (4th) 190334, ¶ 70 ("'the Supreme Court's First Amendment fee jurisprudence provides the appropriate foundation for addressing . . . fee claims under the Second Amendment'") (quoting *Kwong v. Bloomberg*, 723 F.3d 160, 165 (2d Cir.

2013)), licensing fees are constitutional "when they are designed 'to meet the expense incident to the administration of the [licensing statute] and to the maintenance of public order in the matter licensed,'" *id*. (quoting, with alterations, *Cox v. New Hampshire*, 312 U.S. 569, 577 (1941)).

That standard is met here. The $150 CCL application fee is distributed among three funds. The largest portion, $120, goes to the State Police Firearm Services Fund. 430 ILCS 66/60(b). These funds "are expressly designated 'to finance any of [the state police's] lawful purposes, mandates, functions, and duties under the Firearm Owners Identification Card Act and the Firearm Concealed Carry Act, including the cost of . . . prompt and efficient processing of applications.'" *Guns Save Life*, 2019 IL App (4th) 190334, ¶ 77 (quoting 20 ILCS 2605/2605-595(b)). Accordingly, as to the portion of the fee "deposited into the State Police Firearm Services Fund, the fee is clearly imposed to defray the cost of the licensing program." *Id*.

The portions of the CCL fee deposited in State Crime Laboratory Fund ($10) and the Mental Health Reporting Fund ($20) fulfill the purpose of protecting the health, safety, and welfare of the public, and providing a system for identifying those who are not qualified to carry a concealed firearm. The Mental Health Reporting Fund finances the "collecting and reporting [of] data on mental health records and ensuring that mental health firearm possession prohibitors are enforced." 30 ILCS 105/6z-99(b). And

deposits to the State Crime Laboratory Fund are used, among other things, "to educate and train forensic scientists who may test ballistics, conduct firearm functionality tests, test gunshot residue, collect DNA analyses, or collect other evidence useful in gun cases." *People v. Stevens*, 2018 IL App (4th) 150871, ¶ 21 (citing 730 ILCS 5/5-9-1.4(g)(3) (2014)).

Nor is the $10 FOID card application fee exorbitant relative to the cost of processing that application. The plain language of the FOID Act provides that the $10 payment is a "fee," 430 ILCS 65/5(a), which "seeks to recoup expenses incurred by the state — to 'compensat[e]' the state for some expenditure incurred," *People v. Jones*, 223 Ill. 2d 569, 582 (2006). Indeed, the Act is explicit about how the $10 fee is distributed to defray various costs. FOID card fees are equally divided between the State Police Firearm Services Fund and the State Police Revocation Enforcement Fund. 430 ILCS 65/5(a). The funds deposited in the State Police Firearm Services Fund are "clearly imposed to defray the cost of the licensing program." *Guns Save Life*, 2019 IL App (4th) 190334, ¶ 72. And the State Police Revocation Fund is expressly designated for "[l]aw enforcement agencies that participate in Firearm Owner's Identification Card revocation enforcement" to establish task forces, hire and train State Police officers, and prevent violent crime. 30 ILCS 105/6z-125. Its purpose "corresponds with the FOID Act's purpose 'to promote and protect the health, safety and welfare of the public' and 'provide

a system of identifying persons who are not qualified to acquire or possess firearms.'" *Guns Save Life*, 2019 IL App (4th) 190334, ¶ 73.

Collectively, the above funds either cover the administrative costs of the licensing regime, the enforcement of the regime, or relate to the overarching public interest in the management of lawful firearm ownership, which distribution complies with the Supreme Court's fee jurisprudence. *See Cox*, 312 U.S. at 577; *see also Nat'l Awareness Found. v. Abrams*, 50 F.3d 1159, 1166 (2d Cir. 1995). For his part, defendant has presented no evidence demonstrating that Illinois charges more than is necessary for the administration of the licensing regime and maintenance of public order in the matter licensed, *Cox*, 312 U.S. at 577, and it is his burden to overcome the presumption of the statute's constitutionality, *see Rizzo*, 2016 IL 118599, ¶ 48; *see also Davis v. Brown*, 221 Ill. 2d 435, 442 (2006) (party challenging constitutionality of a statute has burden of clearly establishing a constitutional violation).

The 30- and 90-day maximum processing times to obtain a FOID card, 430 ILCS 65/5(a), and CCL, 430 ILCS 66/10(e), respectively, similarly do not grossly exceed the wait time for similar licenses in other States. *See* Cal. Penal Code § 26205 (120 days to process concealed carry license application); C.R.S. 18-12-206 (90 days to process application); Nev. Rev. Stat. Ann. § 202.366 (120 days to process application); N.J. Stat. Ann. § 2C:58-4 (90 days to process application); NY CLS Penal § 400.00 (six months to process

application). Indeed, other States allow officials an undefined "reasonable" amount of time to process such applications. *See, e.g.*, HRS § 134-9; Md. Public Safety Code Ann. § 5-306.

Moreover, the sheer number of CCLs that have been issued in Illinois demonstrates that neither the $160 combined fee for a FOID card and CCL nor the processing time effectively denies the right to carry. More than 60,000 new CCL applications were approved by the state police between August 2023 and July 2024 (the most recent 12-month period for which statistics are available). *See* ISP FOID Processing Statistics, *available at* https://isp.illinois.gov/Foid/Statistics (last visited Sep. 17, 2024). That 62,000 people in Illinois were able to obtain CCLs so that they could lawfully exercise their Second Amendment rights to public carry in Illinois demonstrates that that Illinois's licensing regime does not essentially function as the denial of the right to bear arms. *See People v. Gunn*, 2023 IL App (1st) 221032, ¶ 29.

Finally, to the extent that defendant argues that additional requirements such as a background check and firearm safety training, *see* Def. Br. 28-31, render the CCL requirement unconstitutional, that argument fails because the Supreme Court has already held that such requirements are a permissible part of a licensing regime. *See Bruen*, 597 U.S. at 38 n.9 ("nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes . . , it

appears that these shall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens") (cleaned up). Specifically, defendant points out that an applicant will not be deemed to have completed the required firearms training course if he does not follow the orders of the certified firearms instructor. Def. Br. 30 (citing 430 ILCS 66/75). According to defendant, this provision grants the State too much discretion because it does not define exactly what "orders" the instructor may give. *Id.* However, requiring a firearms training course — a practice specifically approved by the *Bruen* Court, 597 U.S. at 38 n.9 — would obviously serve no purpose if applicants were free to disregard the instruction. *Gunn*, 2023 IL App (1st) 221032, ¶ 27.

In sum, no aspect of the CCL requirement — be it the associated fees, processing times, background check, or safety course — functions to prohibit ordinary, law-abiding citizens from publicly carrying a firearm. Defendant has been held criminally liable for carrying a firearm in public because he did not even attempt to comply with the requirement that he obtain a CCL, not because the State somehow prevented him from complying with this obligation.

III. Illinois's Ban on Open Carry Satisfies the Second Amendment.

Even if defendant could challenge Illinois's ban on open carriage, despite being convicted only of unlicensed *concealed* carriage, Illinois's

system of permitting only concealed carriage with a valid CCL passes constitutional muster. First, the text of the Second Amendment — which protects the right to "bear arms" — does not guarantee a right to carry *both* openly and in a concealed manner. Second, the historical record firmly establishes that States have long exercised discretion to regulate the manner of carrying firearms in public, including by prohibiting open carriage. Illinois's regulation of public carriage, which prohibits open carriage but allows concealed carriage, is consistent with this tradition and thus does not violate the Second Amendment. *See, e.g.*, *Baird v. Bonta*, No. 19-617, 2023 WL 9050959, *116-123 (E.D. Cal. Dec. 28, 2023) (upholding California's ban on open carriage in more than half the State because licensed concealed carriage is allowed); *Frey v. Nigrelli*, 661 F. Supp. 3d 176, 199 (S.D. N.Y. 2023) ("The fact that the manner in which New York allows public carry — concealed rather than open — is not to Plaintiffs' liking does not mean that enforcement against open carry is unconstitutional."); *Abed v. United States*, 278 A.3d 114, 129 n.27 (D.C. 2022) ("nothing in [*Bruen*] implies that a State must allow open carry").

A. Defendant's Challenge Fails Because the Definition of the Right to "Bear Arms" Does Not Presumptively Protect a Specific Manner of Public Carriage.

The operative term in the Second Amendment for purposes Illinois's ban on open carriage is "bear arms," which protects the right to some form of public carriage, but not open carriage specifically. The Supreme Court has

explained that "bear arms" denotes the right to "wear, bear, or carry. . . upon the person or in the clothing or in a pocket, for the purpose. . . of being armed and ready for offensive or defensive action in a case of conflict with another person." *Heller*, 554 U.S. at 584 (cleaned up). Following from this definition, *Bruen* held that the term "bear" encompasses public carriage, and thus that the Second Amendment's plain text presumptively covers the conduct of "'bear[ing]' arms in public for self-defense." 597 U.S. at 33. But it does not also follow that open carriage is protected by the Second Amendment's text. *See Sinnissippi Rod & Gun Club, Inc. v. Raoul*, 2024 IL App (3d) 210073, ¶ 45 (Albrecht, J., concurring); *see also Heller*, 554 U.S. at 626 (Second Amendment right is not a right to "carry any weapon whatsoever in any manner whatsoever and for whatever purpose.").

Indeed, an individual's right to "bear arms" can be exercised through the wearing, bearing, or carrying of a firearm either openly *or* concealed "in the clothing or in a pocket." *Heller*, 554 U.S. 584. And nothing in the text of the Second Amendment suggests that an individual is entitled to publicly carry *both* openly and concealed. Properly understood, the question here is not whether open carry is conduct that falls within the text of the Second Amendment, but whether open carry is protected conduct when concealed carry is readily available. Based on the Court's definition of the right to "bear arms," the answer is no. *See Sinnissippi*, 2024 IL App (3d) 210073,

¶ 47 (Albrecht, J., concurring). Accordingly, defendant's claim fails at the first step of the *Bruen* inquiry.

B. Restrictions on One Form of Carriage — Open *or* Concealed — Are Consistent With the Nation's Tradition of Firearm Regulations.

Even if open carriage were conduct covered by the Second Amendment's text, notwithstanding the availability of licensed concealed carriage, the historical record establishes that States have long regulated the manner of carrying firearms in public. Accordingly, Illinois's ban on open carriage is consistent with the Nation's tradition.

To begin, for centuries before the Second Amendment's ratification, England regulated the public carriage of firearms. In 1328, Parliament enacted the Statute of Northampton, which provided that no person shall "go nor ride armed by night nor by day in fairs, markets, nor in the presence of the justices or other ministers, nor in no part elsewhere." 2 Edw. 3, c. 3 (Eng. 1328) (including exceptions for certain officials of King). This statute "applied to anyone carrying arms, without specifying whether the arms were carried openly or secretly." *Young v. Hawaii*, 992 F.3d 765, 788 (9th Cir. 2021) (en banc), *vacated and remanded for further consideration by Young v. Hawaii*, 142 S. Ct. 2895 (2022).[5]

[5] The Ninth Circuit's en banc opinion in *Young* was vacated and remanded by the Supreme Court, and the People do not rely on *Young*'s holding. Nevertheless, *Young*'s detailed historical review of regulations governing public carriage remains a useful tool for this Court, and the People cite *Young* for this purpose only.

The Statute of Northampton's restriction on public carriage bore "'longterm importance for the maintenance of law and order' in the realm, by helping keep the king's peace," *id.* at 788 (quoting Anthony Verduyn, *The Politics of Law and Order During the Early Years of Edward III*, 108 Eng. Hist. Rev. 842, 850 (1993)), and the prohibition of open carriage served this end because, as several English jurists observed, an individual's display of firearms was likely to instill terror in others enjoying the public space. *See, e.g.*, Abraham Fraunce, *The Lavviers Loglike Exemplifying the Praecepts of Loglike by the Practise of the Common Lawe* 56 (London, William How 1588) (explaining that Statute of Northampton prohibited the "wearing of armour and weapon" in public because if an individual "shall shew himself furnished with armour or weapon, which is not usually worne and borne, it wil[l] strike a feare into others that be not armed"); 4 Blackstone *148-49 (stating that "offence of riding or going armed, with dangerous or unusual weapons, is a crime against the public peace, by terrifying the good people of the land").

To be sure, as *Bruen* noted, "the language of the Constitution cannot be interpreted safely except by reference to the common law and to British institutions *as they were when the instrument was framed and adopted*, not as they existed in the Middle Ages." 597 U.S. at 39 (cleaned up) (emphasis in *Bruen*). But American settlers continued the robust English tradition of regulating the public carriage of firearms, with some colonies adopting the Statute of Northampton "almost verbatim," *Young*, 992 F.3d at 794, making

the English history and custom useful for interpreting the language eventually adopted in the Second Amendment. New Jersey acted first, providing that "no planter shall ride or go armed with sword, pistol, or dagger." 1686 N.J. Laws 289, 289-90, Ch. 9. Other colonies also enacted Northampton-style statutes. *See, e.g.*, 1692 Mass. Laws, Ch. 18 § 6; 1699 N.H. Laws 1; 1786 Va. Laws 33, Ch. 21. These laws demonstrate that American colonists shared the English concern that the mere presence of firearms in the public square presented a danger in the community.

Indeed, most States continued to restrict the public carriage of firearms following the ratification of the Second Amendment in 1791. *See Young*, 992 F.3d at 796-98. Carriage (including open carriage) was often restricted even when States' own constitutions expressly guaranteed an individual right to keep and bear arms. *See, e.g.*, Francois Xavier Martin, *A Collection of Statutes of the Parliament of England in Force in the State of North Carolina* 60-61 (Newbern 1792); 1795 Mass. Acts 436, ch. 2; 1801 Tenn. 259, 260-61, ch. 22; 1821 Me. Laws 285, ch. 76 § 1; 1821 Tenn. Pub. Acts 15, ch. 13; 1859 N.M. Laws 94, § 2; *see also,* N.C. Decl. of Rights § XVII (1776); Mass. Const. of 1780, pt. 1, art. 17; Tenn. Const. of 1796, art. XI, § 26; Const. of Me., art. 1, § 16 (1820). These laws show that the States did not view restrictions on the public carriage of firearms, including bans on open carriage, as violative of the right to keep and bear arms.

Following the ratification of the Fourteenth Amendment in 1868, States, their localities, and territories continued to prohibit public carriage (including open carriage) of firearms. *See, e.g.*, 1870 S.C. Laws 403, No. 288, § 4; 1874-75 Ark. Acts 156, § 1; 1876 Wyo. Comp. Laws 352, ch. 52, § 1; Los Angeles, Cal. Ordinance, Nos. 35-36 (1878); 1881 Kan. Sess. Laws 92 Ch. 37, § 24; 1888 Id. Sess. Laws 23, § 1; 1889 Ariz. Sess. Laws 16, § 1; 1889 Id. Laws 23, § 1; 1890 Okla. Laws 495, art. 47, § 2; 1909 Ala. Laws 258, No. 215, § 2. All told, centuries of English and American history reveal that the government has the power to regulate arms in the public square, including by prohibiting the open carriage of firearms. Illinois's statutory prohibition of open carriage falls squarely within this tradition, and thus does not violate the Second Amendment.

C. Defendant Is Wrong That Open Carriage Is Uniquely Protected by the Second Amendment.

Defendant's reading of the Nation's tradition of firearm regulation as demonstrating that regulations on concealed carry are permissible whereas restrictions on open carriage are not, Def. Br. 14-24, would create precisely the "law trapped in amber," *Rahimi*, 144 S. Ct. at 1925 (Barrett, J., concurring), that the Supreme Court explained should be avoided, 144 S. Ct. at 1897. The lesson to be learned from the discussion of historical analogues in *Bruen* and *Rahimi* is not that legislatures are only free to prohibit concealed carriage, but rather that it is constitutional to prohibit one form of carriage if another is available.

Indeed, a review of the cases considering the historical laws cited by defendant demonstrates that allowing *open* carry while prohibiting *concealed* carry was not the crucial factor in determining whether the restrictions passed constitutional muster. The common thread is that courts struck down statutes that categorically prohibited the public carriage of firearms, both open and concealed, and ruled that the Second Amendment permitted limited restrictions that did not amount to a complete ban on public carriage. Put differently, the government could lawfully eliminate one kind of public carriage to protect and ensure the safety of its citizens, so long as the people were permitted to carry weapons in another manner that allowed self-defense. Thus, the constitutional emphasis in those cases was categorical (unconstitutional) versus limited (constitutional), rather than open versus concealed. *See State v. Jumel*, 13 La. Ann. 399, 399-400 (1858) ("The statute in question does not infringe the right of people to keep or bear arms. It is a measure of police, prohibiting only a particular mode of bearing arms which is found dangerous to the peace of society.") (emphasis omitted); *see also State v. Chandler*, 5 La. Ann. 489, 490 (1850) (upholding statute restricting manner of public carry because statute did not categorically ban public carriage in that it allowed right to carry in another manner); *State v. Buzzard*, 4 Ark. 18, 22 (1842) (holding that restricted carry was constitutional); *State v. Mitchell*, 3 Blackf. 229 (Ind. 1833) (upholding law restricting, but allowing, public carriage).

Illinois's system is consistent with the principles underlying these historical laws. To be sure, States typically regulated the right to bear arms by outlawing concealed carriage while permitting open carriage. However, Illinois, too, has "lawfully eliminate[d] one kind of public carry" while leaving "open [another] option," and thus has not "altogether prohibit[ed] the public carry of arms" for self-defense. *Bruen*, 597 U.S. at 55 (internal quotations omitted). Although Illinois has made the inverse choice to allow concealed carriage while prohibiting open carriage, defendants need only identify "a well-established and representative historical *analogue*, not a historical *twin*." *Id.* at 30 (emphasis in original); *see also Rahimi*, 144 S. Ct. at 1898.

Moreover, Illinois's statutory regime is "comparably justified" with respect to historical regulations. *Bruen*, 597 U.S. at 29. States historically prohibited concealed carriage to reduce violence in public places and thereby protect unsuspecting members of the public: "it [was] a well-recognized fact that the unrestricted habit of carrying concealed weapons [was] the source of much crime, and frequently [led] to causeless homicides as well as breaches of the peace." *In re Cheney*, 27 P. 436, 471 (Cal. 1891); *see Chandler*, 5 La. An. at 489-90 (law prohibiting concealed carriage was "absolutely necessary to . . . prevent bloodshed and assassinations committed upon unsuspecting persons"); *State v. Roten*, 86 N.C. 701, 702 (N.C. 1882) ("evident intention of the legislature in passing" law prohibiting concealed carriage was to "prevent the dangerous use of deadly weapons in sudden personal conflicts"). State

courts upheld these regulations because they recognized that it was "not unreasonable for the legislature to enact that deadly weapons shall not be worn concealed" based on public safety concerns. *Carroll v. State*, 28 Ark. 99, 101 (1872).

Similarly, the Illinois legislature sought to reduce violence and promote safety in public places by regulating the public carriage of firearms. *See Chairez*, 2018 IL 121417, ¶ 62. But in view of shifting societal preferences and evolving social science, the General Assembly made a different policy choice (prohibiting open carriage) than that reflected in historical regulations. A review of contemporary research reveals that today's prohibitions on open carriage fit within the principles demonstrated by historical prohibitions on concealed carriage. *See Rahimi*, 144 S. Ct. at 1925 (Barrett, J., concurring) ("Historical regulations reveal a principle, not a mold." (citing *Bruen*, 597 U.S. at 28-29, 30-31)). Studies have shown that the mere display of firearms can cause individuals to act more aggressively and violently. *See* Arlin Benjamin Jr. & Brad Bushman, *Effects of Weapons on Aggressive Thoughts, Angry Feelings, Hostile Appraisals, and Aggressive Behavior: A Meta-Analytic Rev. of the Weapons Effect Lit.,* Personality and Social Psych. Rev. 347, 359 (2018); Arlin Benjamin Jr. & Brad Bushman, *The Weapons Priming Effect*, 12 Current Op. in Psychol. 45, 46-48 (2016). Thus, the open carriage of firearms makes it more likely that disagreements will escalate into violent conflicts. *See* Jennifer Klinesmith et al., 17 *Guns,*

Testosterone, and Aggression: An Experimental Test of a Mediational Hypothesis, Psychol. Sci. 568, 570 (2006).

Furthermore, "[s]cholars have found that allowing the carry of firearms in plain sight is likely to inspire public fear." *Southerland v. Escapa*, 176 F. Supp. 3d 786, 792 (C.D. Ill. 2016); *see also, e.g.,* Eugene Volokh, *Symposium: The Second Amendment and the Right to Bear Arms After* District of Columbia v. Heller*: Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and a Research Agenda*, 56 UCLA L. Rev. 1443, 1521 (2009) ("In many places, carrying openly is likely to frighten many people, and to lead to social ostracism as well as confrontations with the police."); James Bishop, *Hidden or on the Hip: The Right(s) to Carry After* Heller, 97 Cornell L. Rev. 907, 928 (2012) (explaining concealed carriage is "less disruptive to the public peace" than open carriage); Reid Golden, *Loaded Questions: A Suggested Constitutional Framework for the Right to Keep and Bear Arms*, 96 Minn. L. Rev. 2182, 2210 (2012) (open carriage "may cause alarm in public").

This fear is particularly prominent for minority groups because hate groups, such as white supremacists, have long openly carried firearms to threaten and intimidate others. Ariel Lowrey, Giffords Law Center, *How*

America's Gun Laws Fuel Armed Hate (Mar. 15, 2021).[6] In this way, Illinois's prohibition of open carriage is consistent with the principles underlying the earlier restrictions on concealed carry: protecting the public space and the fear attendant to open carriage. *See Rahimi*, 144 S. Ct. at 1898 ("the appropriate analysis involves considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition"). Illinois's system, therefore, is analogous to its historical precursors in both how and why it impacts the right to bear arms for self-defense. Accordingly, even if Illinois's ban on open carriage were before the Court, that ban passes constitutional muster.

---

[6] Defendant's assertion that the CCL requirement is effectively a form of discrimination against Black Illinoisans, Def. Br. 39-43, is both irrelevant to evaluating whether section 24-1.6(a)(1), (a)(3)(A-5) is unconstitutional on its face, *see Rahimi*, 144 S. Ct. at 1898 (facial challenge "requires a defendant to 'establish that no set of circumstances exists under which the Act would be valid'" (citation omitted)), and ignores that the principles behind disarming dangerous people serve to benefit Black communities, which are disproportionately the victims of gun violence, *see Bruen*, 597 U.S. at 86 (Breyer, J., dissenting) ("the consequences of gun violence are borne disproportionately by communities of color, and Black communities in particular" (citation omitted)).

CONCLUSION

This Court should affirm the appellate court's judgment.

September 23, 2024

Respectfully submitted,

KWAME RAOUL
Attorney General of Illinois

JANE ELINOR NOTZ
Solicitor General

KATHERINE M. DOERSCH
Criminal Appeals Division Chief

GARSON S. FISCHER
Assistant Attorney General
115 South LaSalle Street
Chicago, Illinois 60603
(773) 590-6911
eserve.criminalappeals@ilag.gov

Attorneys for Plaintiff-Appellee
People of the State of Illinois

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 48 pages.

/s/ Garson S. Fischer
GARSON S. FISCHER
Assistant Attorney General

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On September 23, 2024, the foregoing **Brief of Plaintiff-Appellee People of the State of Illinois** was electronically filed with the Clerk, Illinois Supreme Court, and served upon the following by way this Court's Odyssey e-filing system:

Douglas R. Hoff, Deputy Defender
Eric E. Castaneda, Assistant Deputy Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle, 24th Floor
Chicago, Illinois 60601
1stdistrict.eserve@osad.state.il.us

Counsel for Defendant-Appellant

/s/ Garson S. Fischer
Counsel for Plaintiff-Appellee
People of the State of Illinois