No. 125513

IN THE
SUPREME COURT OF ILLINOIS

ALFRED EVANS JR.,	) On Appeal from the Appellate Court
	) of Illinois, First Judicial District,
Petitioner-Appellant,	) No. 1-18-2488,
	)
v.	) There Heard on Appeal from the
	) Circuit Court of Cook County, County
ILLINOIS STATE POLICE and COOK	) Department, Chancery Division,
COUNTY STATE'S ATTORNEY,	) No. 18 CH 2670,
	)
Respondents-Appellees.	) The Honorable
	) MICHAEL MULLEN,
	) Judge Presiding.

BRIEF OF RESPONDENT-APPELLEE ILLINOIS STATE POLICE

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ORAL ARGUMENT REQUESTED

E-FILED
12/30/2020 10:40 AM
Carolyn Taft Grosboll
SUPREME COURT CLERK

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NATURE OF THE ACTION

Under the Illinois' Firearm Owners Identification ("FOID") Act ("Act"), 430 ILCS 65/1 *et seq*., the Illinois State Police ("ISP") cannot grant a FOID card to an individual if doing so would be "contrary to federal law." 430 ILCS 65/8(n). Under federal law, a person who has been convicted of a felony cannot possess a firearm. 18 U.S.C. § 921(a)(20). This federal firearm prohibition, however, includes a "safety valve": a conviction does not count if the convicted felon has had his civil rights restored under the law of the relevant State (here, Illinois), "unless such . . . restoration of civil rights expressly provides that the person may not . . . possess . . . firearms." *Id.* Under section 1.1(a) of Illinois's Unlawful Use of a Weapon by a Felon ("UUWF") statute, a person convicted of a felony may not possess a firearm. 720 ILCS 5/24-1.1(a). However, that section does not apply if the person has been granted relief under section 10 the FOID Act. *Id.*; *see also* 430 ILCS 65/10. Thus, when the Illinois General Assembly enacted section 1.1(a), it provided an avenue for convicted felons to seek relief from the federal firearm prohibition and thus potentially qualify for a FOID card.

On January 29, 2018, the Illinois State Police ("ISP") denied Petitioner Alfred Evans's petition for a FOID card under section 8 of the Act because he had two prior felony convictions under the Illinois Controlled Substance Act, and thus he was prohibited under federal law from possessing firearms. In February 2018, Evans petitioned the circuit court for relief from ISP's denial

of his application for a FOID card under section 10 of the Act. *See* 430 ILCS 65/10(a). After considering the evidence before it, and assessing the four factors set forth in section 10 of the Act, the circuit court concluded that Evans could not satisfy the third factor, because granting him a FOID card would be contrary to the public interest, and the fourth factor, because Evans was "barred by Federal statute from obtaining a FOID card." Applying *de novo* review, the appellate court disagreed as to the third factor. *Evans v. Cook Cnty. State's Atty.*, 2019 IL App (1st) 182488, ¶ 26. Nevertheless, it affirmed the circuit court's denial of a FOID card because it believed that Evans did not satisfy section 10's fourth factor, which required a showing that granting Evans a FOID card would not be contrary to federal law. *Id.* ¶¶ 36-37. In doing so, the appellate court noted that its holding, which it believed was compelled by the plain language of the Act and the UUWF statute, meant that Evans faced a perpetual ban on possessing a firearm, which was likely not consistent with the General Assembly's intent and could violate procedural due process. *Id.* ¶¶ 38-39.

Evans petitioned this Court to leave to appeal under Ill. Sup. Ct. R. 315(a). ISP answered the petition, agreeing that this Court's review was warranted. As ISP explained, the appellate court's interpretation of section 10 of the Act and section 1.1(a) of the UUWF statute to permanently ban all persons convicted of felonies from seeking to establish that they qualify for a FOID card would create an absurd result that was inconsistent with the

General Assembly's intent. However, the appellate court's judgment affirming the circuit court's holding that ISP properly denied his application for a FOID card was correct because granting Evans relief would be contrary to the public interest. This Court granted Evans's petition.

ISSUES PRESENTED FOR REVIEW

1. Whether section 10 of the Act and section 1.1(a) of the UUWF statute are properly interpreted to permanently ban all persons convicted of felonies from seeking to establish that they qualify for a FOID card.

2. Whether a circuit court's findings following a hearing under section 10 of the Act should be examined under the manifest weight of the evidence or the *de novo* standard of review.

3. Whether, on this record, Evans's criminal history, which includes convictions for felony drug offenses and arrests both before and after those convictions, is such that granting him a FOID card would be contrary to the public interest, precluding him from obtaining relief under section 10 of the Act.

STATEMENT OF FACTS

Statutory Background

Under the Act, an Illinois resident must have a FOID card to possess a firearm in Illinois. 430 ILCS 65/2(a)(1), 4.[1] The Act further requires that ISP deny a FOID card application, or revoke a FOID card, if the applicant has been "convicted of a felony" or "prohibited from possessing firearms or firearm ammunition by any Illinois State statute or by federal law." 430 ILCS 64/8(c), (n).

Relevant here, when ISP denies a FOID card application or revokes a FOID card because the applicant is prohibited from possessing a firearm under federal law due to the applicant's conviction for a Class 2 or greater felony under the Illinois Controlled Substances Act, the applicant may, under section 10 of the Act, "petition the circuit court in writing . . . for a hearing upon such denial." 430 ILCS 65/10(a); *Sykes v. Schmitz*, 2019 IL App (1st) 180458, ¶ 27.[2] When considering such a petition, the circuit court must evaluate the four criteria set forth in section 10(c) to determine whether to grant relief by ordering ISP to issue a FOID card. 430 ILCS 65/10(c).

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[1] The record on appeal contains one common law volume cited as "C_." The brief of Petitioner-Appellant is cited as "AT Br. at ___."

[2] Petitioners who, like Evans, are seeking relief from ISP's initial denial or revocation of a FOID card based on an offense enumerated in section 10(a) of the Act must seek relief from the circuit court. 430 ILCS 65/10(a); *Sykes*, 2019 IL App (1st) 180458, ¶¶ 10, 13, 27; *Fuller v. Dep't of State Police*, 2019 IL App (1st) 173148, ¶¶ 17-18. Other section 10 petitioners must seek relief from ISP's Director. 430 ILCS 65/10(a).

First, the court must determine whether the applicant was convicted of a "forcible felony under the laws of this State or any other jurisdiction" within the past twenty years. 430 ILCS 65/10(c)(1). Second, the court considers whether "the circumstances regarding a criminal conviction, where applicable, the applicant's criminal history and his reputation are such that the applicant will not be likely to act in a manner dangerous to public safety." 430 ILCS 65/10(c)(2). Third, the court assesses whether "granting relief would not be contrary to the public interest." 430 ILCS 65/10(c)(3). And, fourth and finally, the court must ascertain whether "granting relief would not be contrary to federal law." 430 ILCS 65/10(c)(4).

Under federal law, it is unlawful for a person "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year" to possess a firearm. 18 U.S.C. § 922(g)(1). However, federal law also contains a "safety valve": a person's former felony conviction will not qualify for purposes of section 922(g)(1)'s federal firearm prohibition if the person has: (1) received a pardon for the felony conviction; (2) had the felony conviction expunged; or (3) had his civil rights restored, "unless such pardon, expungement, or restoration of rights expressly provides that the person may not . . . possess . . . firearms." 18 U.S.C. § 921(a)(20).

In Illinois, section 1.1(a) of the UUWF statute allows the People to criminally prosecute felons found in possession of a firearm. 720 ILCS 5/24-1.1(a) (making it "unlawful for a person to knowingly possess . . . any firearm

or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction"). Thus, applying section 921(a)(20), because Illinois law bars those with Illinois felony convictions from possessing firearms, section 922(g)(1)'s federal firearm prohibition endures. *See Caron v. United States*, 524 U.S. 308, 312 (1998).

But Illinois has its own "safety valve" for felons, in section 1.1(a) of the UUWF statute. Under section 1.1(a), Illinois's prohibition on firearm possession by felons will not apply if the person has been "granted relief by the Director of the Department of State Police under Section 10 of the Act." 720 ILCS 5/24-1.1(a) (2018). So, if an individual with a former felony conviction is granted relief by ISP's Director — or by the circuit court for those offenses enumerated in section 10(a), *see Sykes*, 2019 IL App (1st) 180458, ¶¶ 10, 64; *see also supra* n. 2 — then Illinois law no longer prohibits firearm possession, and so the person would no longer be federally prohibited under section 922(g)(1), through operation of section 921(a)(20).

Evans' Application for a FOID Card

On March 3, 1994, Evans was convicted of and sentenced to prison for two Illinois felonies: a Class X felony for the manufacture and delivery of more than 15 grams of cocaine, C300, and a Class 2 felony for the manufacture and delivery of controlled substances, C226, 302.

In January 2018, 13 years after being released from prison, Evans applied to ISP for a FOID card. C288-89, 297. On January 29, 2018, ISP

denied his application under section 8(c) of the Act because of his 1994 Illinois felony drug convictions. C292. Those convictions were for crimes "punishable by imprisonment for a term exceeding one year," which meant that Evans was unable to possess a firearm under federal law, by virtue of section 922(g)(1). *Id.*

Evans, proceeding *pro se*, filed a petition in circuit court under section 10 of the Act, seeking review of ISP's denial of his application for a FOID card. C181-83. In the petition, Evans named only ISP as a respondent, and argued that he was entitled to relief based on section 10 because it had been more than twenty years since his drug convictions. C181.

ISP thereafter appeared in the circuit court, C199-200, and moved for the Cook County State's Attorney ("Cook County") to be added as a necessary party based on section 10(c)(.05) of the Act, C197. The circuit court granted the motion and directed Evans to add Cook County as a respondent. C203. Evans filed a second petition, this time naming the Attorney General of Illinois as a respondent, C208-09, and then subsequently filed a third petition naming Cook County as a respondent but not the Attorney General, C225. Cook County appeared, C252, and the circuit court dismissed the Attorney General from the case, C259, leaving ISP and Cook County as respondents.[3]

[3] On September 21, 2020, Cook County informed this Court that because the "public interests represented by the Cook County State's Attorney's Office are also represented by the Illinois Attorney General's Office," it sought leave to withdraw from participation in the appeal before this Court. This Court granted Cook County leave to withdraw on October 1, 2020.

Evans attached several documents to his operative section 10 petition, including two notarized letters from himself. C226, 230. In one letter, Evans acknowledged the "validity of his past infractions," but said that he should be granted a FOID card because he had never been convicted of a forcible felony. C230. In the other letter, Evans stated that he served four and a half years in prison and three years on parole for a "major mistake" that he made in participating in a crime in 1994. C226. He added that he was "always in compliance of parole requirements": he did not test positive during drug screenings, he obtained a job, and he has owned his own business since 2005. *Id.* He described himself as a "family man" with a non-violent criminal background who was "not a danger to society." *Id.*

Evans also attached to his petition a notarized letter from his wife, Rolanda Evans. C227. She described Evans as a "family oriented person" and an "extreme workaholic" who sought to "pay it forward to the community where he grew up." *Id.* She said that he was a "chang[ed] man" since his 1994 convictions. *Id.* Notarized letters from three of Evans's friends — Kristi Brown, Althea Jones, and Charlotte Hogan — noted that Evans had made poor choices in the past but had not engaged in criminal activity for more than a decade. C228 (Brown), C229 (Jones), C231 (Hogan).

Cook County objected to Evans' section 10 petition. C260-67. Primarily, it argued that granting Evans a FOID card would be "contrary to the public interest" and therefore that he could not satisfy the third of the

four section 10 criteria. C261, 266-67. Although Evans's two felony drug convictions were not forcible felonies, they still demonstrated his "decided contempt for the law." C266. In addition, Evans had not been without interactions with law enforcement since his incarceration for the drug felonies; he was subsequently arrested for other crimes, although those arrests did not lead to conviction. *Id.* Evans's criminal history thus "cast doubt" on his submission that he was now "responsible" and "mature" such that granting him relief under section 10 would be in the public interest. C267.

Evans, now proceeding through counsel, C267, replied in support of his petition, reiterating that his felonies were not "forcible felonies" and that he deserved relief because he had not "returned" to his prior criminal behavior, C275. Here, he noted that his last arrest was more than ten years earlier. *Id.* Evans added that as the owner of a car towing business, he needed to be able to protect himself because the drivers with whom he interacted could become frustrated, irate, and threatening. C275-76. In addition, he was working toward obtaining his own personal security license. *Id*. For these reasons, Evans submitted, granting him a FOID card would be in the public interest. *Id.*

The circuit court scheduled a hearing on Cook County's objection to Evans's petition for November 20, 2018. C283. The order directed that the "records pertaining to 1994 conviction[s]" be filed with the court

approximately one month before the hearing. *Id.* On October 18, 2018, Cook County submitted ISP's file, which was kept in the ordinary course of business, regarding Evans to the circuit court. C284. This file included Evans's application for a FOID card, C288-91; his FOID card denial letter, C292-93; the notarized letters from Evans, his wife, and three friends that he attached to his section 10 petition, C313-18; and Evans's criminal history report, C320-27. Evans's criminal history report revealed that in addition to his two felony drug convictions, C301-02, he had been arrested six other times for: robbery in 1987, C302, aggravated assault in 1992, C301, possession of controlled substance and possession of a firearm without a FOID card in 1992, *id.*, battery in 1993, C300, possession of a controlled substance in 1999, C297-98, and battery in 2008, C297.

On November 20, 2018, the circuit court held the hearing, at which Evans was represented by counsel. C332. After the hearing, a transcript of which was not made part of the record on appeal, the court found in a written order that Evans had "not sustained his burden" of showing that "issuing a FOID card would not be contrary to the public interest" and that he was "barred by federal statute from obtaining a FOID card," and therefore that Evans could not satisfy the third and fourth prerequisites for relief under section 10. *Id.*

Evans, again proceeding *pro se*, appealed, C333, and the appellate court affirmed in a published opinion. *Evans*, 2019 IL App (1st) 182488.

The appellate court first observed that there was "nothing in the record suggest[ing] . . . that the circuit court conducted an evidentiary hearing" on Evans's section 10 petition. *Id.* at ¶ 26; *see id.* at ¶ 18 ("the record does not reveal whether the trial court held a hearing"). The appellate court further observed that "only documentary evidence was introduced" before the circuit court — *i.e.,* the materials attached to Evans's section 10 petition — and the People "did not object" to that evidence. *Id.* at ¶ 26. Finally, the court found that determining credibility played no role in the circuit court's resolution of the petition, and thus ruled that it would review *de novo* the circuit court's holding that Evans had not carried his burden of showing that granting him a FOID card would in the public interest. *Id.* Then, applying *de novo* review, the court held that issuing a FOID card to Evans would not be contrary to the public interest. *Id.* at ¶¶ 26-28. The court found that Evans had made "great progress" since 2008, and his criminal history should not "overshadow" his now stable life, where he was a father to three children and had a "viable business." *Id.* at ¶ 27. Finally, the court noted that it would have reached the same conclusion under the "the manifest weight of the evidence" standard. *Id.* at ¶¶ 26-28.

Nevertheless, the appellate court affirmed the denial of Evans's FOID card because, in its view, Evans is prohibited under federal law from possessing a firearm and thus could not satisfy section 10's fourth factor. *Id.* at ¶ 41. The appellate court acknowledged that section 1.1(a) of the UUWF

statute provides individuals who were convicted of a felony with a mechanism to restore their right to possess firearms under federal law. *Id.* at ¶ 36. But the court interpreted that provision, together with section 10 of the Act, as creating a "statutory merry-go-round without a way off," *id.* at ¶ 37, that had the effect of "permanently depriv[ing] convicted felons of the right to possess firearms," *id.* at ¶ 39. The court acknowledged, however, that the result it had reached was likely not what the General Assembly intended and might even violate Evans's procedural due process rights, although that was not a claim that he had preserved. *Id.* at ¶¶ 39-40.

ARGUMENT

I. The General Assembly intended for individuals with an Illinois felony conviction to have an opportunity to qualify for a FOID card.

Individuals convicted of a felony in Illinois are barred from possessing firearms under federal law, *see* 18 U.S.C. § 922(g)(1), and thus are barred from possessing an Illinois FOID card, *see* 430 ILCS 65/10(b), (c)(4), unless they are granted relief through section 1.1(a) of the UUWF statute, 720 ILCS 5/24-1.1(a) (eff. Jan. 1, 2012); *see also* 18 U.S.C. § 921(a)(20). ISP agrees with Evans that when the General Assembly enacted section 1.1(a), it intended to provide individuals with an Illinois felony conviction a mechanism to restore their federal firearm rights, and thus have the opportunity to possess an Illinois FOID card. *See* AT Br. at 13, 16.

ISP further agrees that, to accomplish this goal, courts should consider section 10(c)(1)-(3) of the Act — and not section 10(c)(4) — when deciding whether an individual convicted of a felony in Illinois is entitled to relief under section 10 of the Act and section 1.1(a) of the UUWF statute. *See id.* at 12-13, 17. By doing so, courts will provide the individualized determinations that the General Assembly intended, as demonstrated through the plain language of the statutes, and the drafting history underlying section 1.1(a). *E.g.,* 83rd General Assembly, Senate Regular Session, 41, Oct. 19, 1983, http://ilga.gov/Senate/transcripts/Strans83/ST101983.pdf (statement of Sen.

Jeremiah Joyce) (last accessed Dec. 29, 2020); 83rd General Assembly, Debate, 23, Nov. 2, 1983 http://ilga.gov/House/transcripts/Htrans83 /HT110283.pdf (Statements of Rep. Aaron Jaffee) (last accessed Dec. 29, 2020); *see also Johnson v. Dep't of State Police*, 2020 IL 124213, ¶ 27 (describing section 10 as providing a "path to . . . restore firearm rights" by providing "a process for determining, after an individualized hearing, that the individual is not likely to act in a manner dangerous to the public safety and that it would not be against the public interest for the individual to possess firearms").

Indeed, were this Court interpret the reference to "section 10" of the Act within section 1.1(a) of the UUWF statute as the appellate court did, it would, as the appellate court recognized, create a *de facto* permanent ban on firearm possession by individuals with an Illinois felony conviction. *See Evans*, 2019 IL App (1st) 182488, ¶ 42. This would be contrary to the General Assembly's intent and raise constitutional concerns. *Id.* at ¶¶ 38, 40.

A. This Court reviews issues of statutory construction *de novo*.

Whether section 10 of the Act and section 1.1(a) of the UUWF statute allow persons convicted of a felony in Illinois to seek to establish that they qualify for a FOID card raises a question of statutory construction. This Court reviews such questions *de novo*. *Johnson*, 2020 IL 123213, ¶ 13.

"The fundamental rule of statutory construction is to ascertain and give effect to the legislature's intent." *Krohe v. City of Bloomington*, 204 Ill.

2d 392, 394 (2003). To accomplish this goal, the Court first looks to the plain language of the statute, "considering the statute in its entirety and keeping in mind . . . the apparent intent of the legislature in enacting it." *People v. Clark*, 2018 IL 122495, ¶ 8. The Court interprets all words "in light of other relevant provisions" and does not read them "in isolation." *Brucker v. Mercola*, 227 Ill. 2d 502, 514 (2007). When a statute's language is "ambiguous or unclear," *Nowak v. City of Country Club Hills*, 2011 IL 111838, ¶ 11, however, this Court may look to other sources, such as legislative history, to determine the General Assembly's intent, *People v. Bradford*, 2016 IL 118674, ¶ 15. In so doing, this Court considers "the reasons for the law, the purposes to be achieved, and the consequences of construing a statute one way or another." *Id.* And the Court in all instances construes statutory language "'in a manner that avoids absurd or unjust results.'" *People v. Hanna*, 207 Ill. 2d 486, 498 (2003).

In addition, statutes are "presumed constitutional." *People v. Madrigal*, 241 Ill. 2d 463, 466 (2011). Accordingly, the Court "presumes that the General Assembly did not intend an inconvenience or injustice in enacting legislation," *People v. Clark*, 2019 IL 122891, ¶ 19, and construes statutory language so as to "affirm [its] constitutionality" so long as it is "reasonably capable of such a construction," *Burger v. Lutheran Gen. Hosp.*, 198 Ill. 2d 21, 32 (2001).

B. Although the Act initially bars individual convicted of a felony in Illinois from possessing a FOID card, section 10 of the Act, section 1.1(a) of the UUWF statute, and federal law together provide an opportunity to restore federal firearm rights and possess a FOID card.

But by interpreting the Act and the UUWF statute as it did here, the appellate court created a "*de facto* permanent ban on the possession of firearms by persons convicted of felonies," though that likely was not the General Assembly's intent. *Evans*, 2019 IL App (1st) 182488, ¶ 42. This was error, as now explained.

Before the 2013 amendments to the Act, circuit courts, or the Director of ISP, as applicable, could grant a petitioner who had previously been convicted of a felony relief from ISP's initial denial or revocation of a FOID card if the court or Director found that the three requirements then set forth in section 10(c) of the Act were met: (1) the applicant had not been convicted of a forcible felony within 20 years of the application or 20 years had passed since a term of imprisonment for such a felony; (2) "the circumstances regarding a criminal conviction, where applicable, the applicant's criminal history and his reputation are such that the applicant will not be likely to act in a manner dangerous to public safety"; and (3) "granting relief would not be contrary to the public interest." 430 ILCS 65/10(c)(1)-(3) (eff. July 28, 2010); *see Coram v. State*, 2013 IL 113867, ¶ 9. By the 2013 amendments, the General Assembly added section 10(c)(4) to the Act, adding the additional

requirement that granting relief must "not be contrary to federal law." 430 ILCS 65/10(c)(4) (eff. Jan. 1, 2013).

And, under federal law, it is unlawful for a person "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year" to possess a firearm. 18 U.S.C. § 922(g)(1). But a felony conviction that carries a potential sentence of over a year in prison will not count for purposes of this federal firearm prohibition if the felon has received a pardon, had the conviction expunged, or has had his civil rights restored, "unless such pardon, expungement, or restoration of rights expressly provides that the person may not . . . possess . . . firearms." 18 U.S.C. § 921(a)(20). Here, there is no dispute that Evans, who had been convicted of a crime punishable by more than one year in prison, had his core civil rights revoked and then restored to him. *See Logan v. United States*, 552 U.S. 23, 31 (2007). His right to vote was restored to him after his term of imprisonment ended, Ill. Const. 1970, art III, § 2; 730 ILCS 5/5-5-5(c), and his right to hold public office was restored to him after he completed his sentence, *see* Ill. Const. 1970, art XIII, § 1; 730 ILCS 5/5-5-5(b). Thus, under the "unless" clause of 18 U.S.C. § 921(a)(20), if Illinois law did not bar Evans from possessing firearms, he could possess firearms under federal law, *see Caron*, 524 U.S. at 312, satisfying section 10(c)(4) of the Act.[4]

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[4] In *Johnson v. Department of State Police*, 2020 IL 124213, this Court held "that 'civil rights' includes firearm rights as that term is applied under section 921(a)(33)(B)(ii)." *Id.* at ¶ 37 (discussing 18 U.S.C. §

Relevant to that question, both before and after the 2013 amendments to the Act, felons found in possession of a firearm could be criminally prosecuted under section 1.1(a) of Illinois' UUWF statute. *Compare* 720 ILCS 5/24-1.1(a) (2012) (making it "unlawful for a person to knowingly possess . . . any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction"), *with* 720 ILCS 5/24-1.1(a) (2018) (same). But both before and after the 2013 Amendments to the Act, a felon could not be prosecuted under section 1.1(a) if the felon had been "granted relief by the Director of the Department of State Police under Section 10 of the [FOID] Act." 720 ILCS 5/24-1.1(a) (2012); 720 ILCS 5/24-1.1(a) (2018). Prior to the 2013 amendments to the Act, when determining whether to grant such relief, the Director would evaluate the three factors then-enumerated in section 10(c) — *i.e.,* sections 10(c)(1)-(3). The General Assembly did not amend section 1.1(a) of the UUWF statute, however, when it amended the Act to add section 10(c)(4).

In short, although Evans's core civil rights had been restored to him for purposes of 18 U.S.C. § 921(a)(20), section 1.1(a) of the UUWF statute, in conjunction with the "unless" clause of 18 U.S.C. § 921(a)(20), still precluded

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921(a)(33)(B)(ii)). Section 921(a)(33)(B)(ii) describes the federal "safety valve" available to persons convicted of a misdemeanor crime of domestic violence. Here, however, section 921(a)(33)(B)(ii) is not at issue, and there is no dispute that Evans's civil rights were restored; thus, the Court need not decide whether its holding in *Johnson* that "civil rights" include firearm rights applies to this case.

him from possessing a firearm. But this section of the UUWF statute states that it "shall not apply if the person has been granted relief by the Director of the Department of State Police under Section 10 of the [FOID] Act." 720 ILCS 5/24-1.1(a).[5] In other words, the General Assembly clearly intended that felons such as Evans would be afforded an opportunity to establish that they were qualified to obtain a FOID card and possess firearms. Nevertheless, the appellate court construed section 10 of the Act and section 1.1(a) of the UUWF statute in a way that would deprive felons of this opportunity and permanently bar all felons from possessing firearms. This, the appellate court admitted, was an absurd and, in the appellate court's opinion, potentially unconstitutional result that likely was contrary to the General Assembly's intent. *See Evans*, 2019 IL App (1st) 182488, ¶ 36 (describing "petitioners, like Evans, [as] stuck on a statutory merry-go-round without a way off," under court's interpretation); *id.* ¶ 39 (stating that, under its interpretation, "[p]otentially serious constitutional concerns arise with the way the statutory scheme operates"); *id.* ¶ 42 (opining that the "current statutory scheme operates as a *de facto* permanent ban on the possession of firearms by persons convicted of felonies," despite the fact that this likely was not what the General Assembly intended). But the appellate court need not, and should not, have interpreted the statutes to produce this result.

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[5] Because Evans was convicted of one of the offenses enumerated in section 10(a) of the Act, that section directed him to the circuit court, rather than ISP's Director, for relief. *See supra* n.2.

To begin, all statutes are "presumed constitutional." *Madrigal*, 241 Ill. 2d at 466. And this Court has commanded courts to construe statutes "'in a manner that avoids absurd or unjust results,'" *Hanna*, 207 Ill. 2d at 498, and to "construe a statute so as to affirm its constitutionality if the statute is reasonably capable of such a construction," *Burger*, 198 Ill. 2d at 32. Here, the appellate court ignored those mandates. Instead, it interpreted the relevant statues in a way that it admitted creates absurd results, calls into question their constitutionality, likely conflicts with what the General Assembly intended, and is contrary to the interpretation followed by ISP — the agency charged with enforcing the Act and relevant UUWF provision. 430 ILCS 65/1, 2; *see People ex rel. Birkett v. City of Chi.*, 202 Ill. 2d 36, 46 (2002) ("a court will give substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with administering and enforcing that statute").

Instead, the appellate court should have construed section 10 of the Act and section 1.1(a) of the UUWF statute together "in a manner that avoids an inconsistency and gives effect to both[.]" *McNamee v. Federated Equip. & Supply Co., Inc.*, 181 Ill. 2d 415, 427 (1998); *see also Brucker*, 227 Ill. 2d at 514 (statutory provisions "must be given reasonable meaning and not rendered superfluous"). Indeed, there is a simple way to harmonize these statutes that is supported by their language and gives effect to the General Assembly's intent that felons be afforded an opportunity to establish that

they qualify for a FOID card. Section 1.1(a) of the UUWF statute clearly contemplates that a felon might be able to obtain a determination that he be allowed to possess firearms under state law for purposes of the "unless" clause in the federal firearm prohibition by authorizing the Director, or the circuit court, to grant relief under "Section 10" of the Act. 720 ILCS 5/24-1.1(a). Therefore, ISP agrees with petitioner that "Section 10" as referenced in section 1.1(a) of the UUWF statute should be interpreted to encompass only sections 10(c)(1)-(3) of the Act. *See* AT Br. at 17-18 ("If the federal two step test is applied after Section 10 relief is granted, then we find that the first step is satisfied by operation of Illinois law, and the second step is satisfied by Section 10 relief."). And if ISP's Director, or the circuit court, as applicable, evaluates and finds that the felon satisfies the factors in sections 10(c)(1)-(3), then the felon would no longer be subject to prosecution under section 1.1(a) of the UUWF statute and, in turn, no longer face the federal firearm prohibition caused by 18 U.S.C. § 921(a)(20), for he would no longer be prohibited from possessing firearms by state law.

By the plain terms of section 10 and section 1.1(a), then, the General Assembly intended that convicted felons like Evans should be afforded an opportunity to establish that they are qualified to obtain a FOID card. And while a statute's "plain language" may render an examination of "legislative history unnecessary," *Clark*, 2019 IL 122891, ¶ 28, the history here shows that the General Assembly intended that individuals convicted of a felony in

Illinois would have an opportunity to pursue the section 10 process and, potentially, obtain a FOID card.

When amending the UUWF statute to add section 1.1(a) in 1983, the General Assembly was aware of the federal firearm prohibitor and sought to provide an opportunity for Illinois felons to remove it through the operation of state law, so that they could again possess firearms. The bill's sponsor in the Senate explained that the proposed legislation would ensure that "a felon could obtain a firearm . . . after review." 83rd General Assembly, Senate Regular Session, 41, Oct. 19, 1983, http://ilga.gov/Senate/transcripts/Strans83/ST101983.pdf (statement of Sen. Jeremiah Joyce) (last accessed Dec. 29, 2020). The House sponsor similarly stated that the proposal would ensure that "convicted felons [who] are . . . excluded from having firearms" could request a "reinstate[ment of] that right." 83rd General Assembly, Debate, 23, Nov. 2, 1983 http://ilga.gov/House/transcripts/Htrans83/HT110283.pdf (statements of Rep. Aaron Jaffee) (last accessed Dec. 29, 2020). He added that, under the proposed legislation, ISP would be permitted, "on an individual basis," "to determine the nature and the severity of the applicant's criminal act," and, though this process, the "State" would decide whether an individual would receive relief from the federal firearm prohibitor "instead of the federal government." *Id.* at 22-23 (reiterating that ISP would "make that determination instead of the federal government").

Thus, to the extent that this Court concludes that the reference to "Section 10" in section 1.1(a) of the UUWF statute is ambiguous, the legislative history demonstrates that the General Assembly intended to afford individuals like Evans, who had been convicted of a felony in Illinois, an opportunity to remove the federal prohibitor and obtain a FOID card, so long the relevant decisionmaker concluded that relief was warranted after an individualized evaluation.

Not only is the appellate court's interpretation inconsistent with the plain language of sections 10 of the Act and section 1.1(a) of the UUWF, as well as the drafting history of section 1.1(a), that interpretation, the appellate court noted, raises "potentially serious constitutional concerns" because it could result in a deprivation of Evans's procedural due process rights. *Evans*, 2019 IL App (1st) 182488, ¶¶ 39-40. Federal courts have allowed litigants to advance procedural due process claims when faced with challenges to a State's process for granting or revoking a state firearms license. *See Hightower v. City of Boston*, 693 F.3d 61, 65, 84, 87 (1st Cir. 2012) ("assum[ing] the requirements of due process apply" but finding no procedural issues in Massachusetts revocation of former law enforcement officer's license to carry concealed firearm); *Spinelli v. City of New York*, 579 F.3d 160, 169 (2d Cir. 2009) (allowing due process challenge to revocation of gun dealer license). Here, the General Assembly provided a statutory process for convicted felons to seek to establish that they qualify for a FOID card. But by holding that

convicted felons like Evans cannot, in fact, avail themselves of the process, and instead are in all cases permanently banned from possessing firearms, the appellate court construed the relevant statutory provisions in a way that calls their constitutionality into question, violating settled principles of statutory construction. *See*, *e.g.*, *Burger*, 198 Ill. 2d at 32 (requiring courts to "construe a statute so as to affirm its constitutionality if the statute is reasonably capable of such a construction").

Finally, interpreting section 10 of the Act and section 1.1(a) of the UUWF statute to provide convicted felons like Evans with an opportunity to demonstrate that they qualify for a FOID card would be consistent with this Court's decision in *Johnson*, 2020 IL 124213. In *Johnson*, the Court explained that section 10 provides individuals prohibited from possessing firearms under section 8 "with an avenue to appeal and seek an individualized hearing before the Director of State Police or the circuit court, depending on the nature of the prohibition, to restore eligibility for a FOID card." *Id.* at ¶ 18; *see also id.* at ¶ 27 (describing section 10 as providing a "path to . . . restore firearm rights" by providing "a process for determining, after an individualized hearing, that the individual is not likely to act in a manner dangerous to the public safety and that it would not be against the public interest for the individual to possess firearms"). To be sure, this Court in *Johnson* did not consider the relationship between section 10 of the Act and section 1.1(a) of the UUWF statute because the petitioner there had been

convicted of a misdemeanor crime of domestic violence rather than a felony and therefore was not subject to section 1.1(a)'s prohibition on firearm possession.[6] But the Court in *Johnson* did not suggest that the General Assembly intended to limit the section 10 process to individuals who had been convicted of misdemeanor crimes of domestic violence, and not make it available to convicted felons like Evans and, for the reasons explained, every indication is that the legislature intended that section 10 would apply to convicted felons such as Evans.

For these reasons, this Court should reverse the appellate court's opinion, insofar as that court held that individuals convicted of a felony in Illinois cannot avail themselves of the section 10 process to show that they qualify for a FOID card and thus are permanently banned from possessing firearms.

II. Although section 10 of the Act and section 1.1(a) of the UUWF statute provide an opportunity for relief, on this record, Evans is not entitled to it because he failed to show that granting him a FOID card would not be "contrary to the public interest."

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[6] Because the Court in *Johnson* was not asked to consider the availability of the section 10 process to convicted felons, the decision below does not "directly contradict[]" *Johnson*, contrary to Evans's suggestion. *See* AT Br. at 12. Like *Johnson*, *Willis v. Macon County State's Attorney*, 2016 IL App (4th) 150480 (discussed at AT Br. at 15-16), addressed issues arising out of the attempt by an individual who had been convicted of a misdemeanor crime of domestic violence to avail herself of the section 10 process, *see id.* at ¶¶ 3, 18, and thus is not on all fours with this case. And *Pournanas v. People*, 2018 IL App (3d) 170051 (discussed at AT Br. at 15, 18), discussed the section 10 process as invoked by a convicted felon but did not consider the relationship between section 10 of the Act and section 1.1(a) of the UUWF statute.

This case also presents this Court with the opportunity to settle the standard of review applicable to factual determinations reached by the circuit court during section 10 proceedings. In other circumstances, this Court has held that while the manifest weight of the evidence standard applies when the circuit court hears live witness testimony, *de novo* review of factual findings is proper when the court conducts a paper hearing based on its review of documentary evidence only. *See Addison Ins. Co. v. Fay*, 232 Ill. 2d 446, 453 (2009). While the same standards should be applied to section 10 proceedings, here, Evans did not meet his burden as appellant to provide a complete record of the lower court proceedings, as he failed to supply either a transcript or bystander's report of the circuit court's November 20, 2018 hearing on his section 10 petition. As a result, it cannot be determined from the record whether the circuit court heard live testimony, or limited its review to documentary evidence. The incomplete nature of the record should be construed against Evans, *see Foutch v. O'Bryant*, 99 Ill. 2d 398, 391 (1984), and the manifest weight of the evidence standard applied.

Even if this Court were to review the circuit court's findings *de novo*, however, it should affirm the circuit court's judgment because Evans failed to show that granting him a FOID card would not be "contrary to the public interest." 430 ILCS 65/10(c)(3); *see also City of Champaign v. Torres*, 214 Ill. 2d 234, 241 (2005) (noting that Court is not "constrained by appellate court's reasoning" and may "affirm" the judgment on "any basis supported by the

record"). On the contrary, granting Evans relief would be contrary to the public interest given his past convictions for serious drug offenses and his repeated interactions with law enforcement both before and after leaving prison for these convictions.

A. The standard for reviewing a circuit court's factual findings depends on the type of evidence presented.

In civil cases, "'the manifestly erroneous standard represents the typical appellate standard of review for findings of fact made by a trial judge.'" *Corral v. Mervis Indus., Inc.*, 217 Ill. 2d 144, 151 (2005) (quoting *People v. Coleman*, 183 Ill. 2d 366, 385-86 (1988)). A factual finding is against the manifest weight of the evidence only if "the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based in evidence." *Best v. Best*, 223 Ill. 2d 342, 350-51 (2006). A reviewing court will not "substitute its judgment for that of the trial court regarding the credibility of witnesses, the weight to be given to the evidence, or the inferences to be drawn." *Id.* And under this standard, the reviewing court will defer to the lower court's findings, because, as the finder of fact, the lower court is in the "best position to observe the conduct and demeanor of the parties and witnesses." *Id.*

Typically, this Court has directed a reviewing court to review factual findings made by a lower court *de novo* only when the lower court limited its consideration to documentary evidence, and did not hear live witness testimony, when making its factual findings. *See Addison Ins.*, 232 Ill. 2d at

453. This is because "without having heard live testimony, the [lower] court [is] in no superior position than any reviewing court to make findings, and so a more deferential standard of review is not warranted." *Id.*; *see also Townsend v. Sears, Roebuck, & Co.*, 227 Ill. 2d 147, 154 (2007) (when "record consists solely of documents," and decision is based "on documentary evidence" and not live testimony, "rationale underlying a deferential standard of review is inapplicable and review is *de novo*").

Depending on the circumstances, then, a circuit court's factual findings following a section 10 hearing may be reviewed under the manifest weight of the evidence standard, if they were reached after an evidentiary hearing that includes live witness testimony, *see*, *e.g.*, *Johnson*, 2020 IL 123213, ¶ 8, or *de novo*, if they were reached based on documentary evidence only, *see*, *e.g.*, *In re Bailey*, 2016 IL App (5th) 140586, ¶ 4.

B. Here, the manifest weight of the evidence standard applies because Evans, as appellant, failed to ensure the completeness of the record on appeal; regardless, under either standard, Evans failed to show that granting him a FOID card would not be "contrary to the public interest."

A reviewing court "obviously cannot" review "an issue relating to a circuit court's factual findings or the basis for its legal conclusions" if there is no bystander's "report or report of proceedings." *In re Marriage of Gulla & Kanaval*, 234 Ill. 2d 414, 422 (2009) (citing *Corral*, 217 Ill. 2d at 156). It was Evans's burden as the appellant to "present a sufficiently complete record of the proceedings at trial to support a claim of error." *Foutch*, 99 Ill. 2d at 391.

And here, Evans knew that a court reporter would not be present at the hearing on his section 10 petition. *See* C283. Despite this, he apparently did not make arrangements to have a court reporter transcribe the proceedings, nor did he submit a bystander's report, *see* Ill. S. Ct. R. 323(c). The appellate court thus erred in construing the incompleteness of the record against "the State." *Evans*, 2019 IL App (1st) 182488, ¶ 26 (stating that "nothing in the record suggests, contrary to the State's assertion (unsupported by any record citation), that the circuit court conducted an evidentiary hearing").

Rather, the incompleteness of the record should be construed against Evans, *see Foutch*, 99 Ill. 2d at 392 ("any doubts arising from the inadequacy of the record will be resolved against the appellant"), and it thus should be presumed that the circuit court conducted an evidentiary hearing at which it heard live testimony. Accordingly, this Court should review the circuit court's finding that Evans had not shown that it would not be "contrary to the public interest" to issue him a FOID card under the manifest weight of the evidence standard, *Corral*, 217 Ill. 2d at 151, and affirm because that finding is not "arbitrary, unreasonable, or not based in evidence," *Best*, 223 Ill. 2d at 350-55, given Evans's significant criminal history. However, even if this Court were to review the circuit court's finding *de novo,* Evans still cannot prevail. This is because under either standard of review, this Court should conclude on this record, as the circuit court did, *see* C332, that Evans did not sustain his burden of showing that granting him relief, and thus

requiring ISP to issue him a FOID card, would not be "contrary to the public interest." 430 ILCS 65/10(c)(3); *see also Baumgartner v. Green Cnty. State's Atty's Office*, 2016 IL App (4th) 150035, ¶ 46 (under section 10, FOID card applicant bears burden of showing that he meets section 10's requirements).[7]

Here, granting Evans a FOID card would not be in the public interest given the serious nature of his two felony drug convictions, either alone or in combination with his subsequent arrest history. His 1994 conviction for manufacture and delivery of a controlled substance, *i.e.,* 15 or more grams of cocaine or an analog substance, Ill. Stat. Ch. 56.5 ¶ 1401-a-2-A (1992), was a Class X felony, 720 ILCS 570/401(a)(2)(A) (1994). *See* C300. And his 1994 conviction for manufacture and delivery of a controlled substance, *i.e.,* narcotics, LSD and analogs, 720 ILCS 570/401(d) (1994), was a Class 2 felony, 730 ILCS 5/5-8-1 (1994). C302. Given the "notorious[ ] link[ ]" between "serious drug offenses" and violence, *United States v. Torres-Rosario*, 658 F.3d 110, 113 (1st Cir. 2011), it would not be in the public interest to authorize an individual with Evans's criminal history to possess a firearm.

[7] Just as Evans's criminal history precluded him from showing that granting him a FOID card "would not be contrary to the public interest," as required by section 10's third requirement, 430 ILCS 65/10(c)(3), that history prevents him from showing that his "history and reputation are such that [he] will not be likely to act in a manner dangerous to public safety," as required by section 10's second requirement, 430 ILCS 65/10(c)(2). But because the analysis of the second and third criteria overlap on the facts of this case, ISP limits its argument to the third requirement.

In addition, Evans's prior felony convictions place him at risk of recidivism. Relying on a 2019 study by the United States Sentencing Commission, the Seventh Circuit has noted that approximately 64% of felons incarcerated for violent crimes, and 40% of felons incarcerated for non-violent crimes, are arrested for new crimes following their release. *Hatfield v. Barr*, 925 F.3d 950, 952 (7th Cir. 2019) (discussing *Recidivism Among Federal Violent Offenders* 3 https://www.ussc.gov/research/research-reports/recidivism-among-federal-violent-offenders (Jan. 2019)). Evans's subsequent criminal history confirms this risk: not only was he arrested five times before his convictions, *see* C297-302, after he left prison, he was arrested again for possessing a controlled substance in 1999 and for battery in 2008, C321. Although Evans maintained in the circuit court that the conduct giving rise to his 1994 convictions was a "mistake" for which he takes responsibility, and that he has since reformed, he provided no explanation for his arrests following his release, even though it was his burden to show that he was entitled to relief. *See Baumgartner*, 2016 IL App (4th) 140035, ¶ 46.

In short, although Evans was entitled to an opportunity pursuant to section 10 to show, after an individualized hearing, that he is qualified for a FOID card, *see* Section I, he did not make the requisite showing and thus was not entitled to section 10 relief, as the circuit court correctly concluded, C332. Accordingly, this Court should reverse the appellate court's determination

that granting Evans a FOID card would not be contrary to the public interest, and thereby affirm the circuit court's judgment.

CONCLUSION

For these reasons, Respondent-Appellee Illinois State Police asks that this Court affirm the appellate court's judgment, albeit on a different ground than the appellate court relied on.

Respectfully submitted,

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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 10 pages contained in 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 34 pages.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on December 30, 2020, I electronically filed the foregoing Brief Respondent-Appellee Illinois State Police with the Clerk of the Illinois Supreme Court, by using the Odyssey eFileIL system.

I further certify that that the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served by the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

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