No. 127201

IN THE
SUPREME COURT OF ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellant,

v.

VIVIAN CLAUDINE BROWN,

Defendant-Appellee.

On Petition for Leave to Appeal from the Circuit Court of Illinois,
Second Judicial District, No. 2017-CM-60
The Honorable T. Scott Webb, Judge Presiding

BRIEF OF AMICUS CURIAE CITY OF CHICAGO AND COOK COUNTY IN SUPPORT OF THE PEOPLE OF THE STATE OF ILLINOIS

CELIA MEZA
Corporation Counsel
of the City of Chicago
MYRIAM ZRECZNY KASPER
Deputy Corporation Counsel
SUZANNE M. LOOSE
Senior Counsel
2 N. LaSalle St., Suite 580
Chicago, Illinois 60602
(312) 744-8519
suzanne.loose@cityofchicago.org
appeals@cityofchicago.org

Attorneys for Amicus Curiae City of Chicago

KIMBERLY M. FOXX
Cook County State's Attorney
CATHY MCNEIL STEIN
Assistant State's Attorney
Chief, Civil Actions Bureau
JESSICA SCHELLER
MEGAN HONINGFORD
Assistant State's Attorneys
500 Richard J. Daley Center
Chicago, Illinois 60602
(312) 603-2350
Jessica.scheller@cookcountyil.gov

Attorneys for Amicus Curiae Cook County

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Carolyn Taft Grosboll
SUPREME COURT CLERK

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The City of Chicago

The City of Chicago is the third largest city in the United States, with a population of about 2.7 million people. Chicago faces a serious problem of firearms violence. In 2020 alone, for example, there were more than 3,000 shooting incidents in Chicago. These shootings occurred both in public and within private residences. Chicago Police Department ("CPD") reports show that from 2016 to 2020, there were 1,353 criminal residential shooting incidents, 299 of which were fatal. There were also 206 non-criminal residential shooting incidents, 26 of which were fatal.

Individuals in Illinois who wish to possess a firearm must obtain a firearms owner identification ("FOID") card. 430 ILCS 65/2(a)(1). Doing so is a simple matter of paying a $10 processing fee and checking off boxes on a form to aver that the individual is 21 or over, not a convicted felon, not subject to an order of protection, and similar requirements showing that the individual is not disqualified from possessing a firearm. Id. 65/4. Thus, the FOID card requirement is intended to keep firearms out of the hands of those who might use them to kill or injure others. Chicago police officers therefore actively enforce that requirement. From 2016 to 2020, there were more than 1,500 arrests for violations of section 65/2(a)(1). Almost one-third of those arrests involved incidents inside a residence. In the same time frame, more than 2,000 firearms were recovered based on incidents related to violations of

the same provision.

Cook County, Illinois

Cook County is home to Chicago and more than 130 other municipalities. It is the second largest county in the nation by population, with more than five million residents, or roughly 40 percent of the State's population. With more than 700 attorneys and over 1,100 employees, the Cook County State's Attorney's Office ("SAO") operates as the second largest state's attorney's office in the United States. The SAO works closely with municipal law enforcement agencies, including CPD, to address firearm-related crimes and prosecute violations of the FOID Card Act, 430 ILCS 65. Between just 2016 and July 14, 2021, the SAO filed more than 13,000 cases involving FOID Card Act provisions, including more than 2,000 violations of the provision at issue here, 430 ILCS 65/2(a)(1), with an average conviction rate of 80 percent. These cases comprise an increasing portion of the SAO's time and resources in recent years; in 2016, for example, the SAO filed 1,688 FOID-related felony cases, representing approximately five percent of the total felony cases filed by the SAO that year. By 2020, this figure had climbed to 2,997 cases, or 13 percent of the total felony cases filed by the Office that year. As of July 14, 2021, the SAO already has filed 1,827 FOID-related cases. If this pace continues, the SAO will file an unprecedented total of more than 3,000 FOID-related cases this calendar year.

In short, the FOID card requirement plays an integral role in the police work and prosecutions undertaken every day by Chicago and Cook County. Chicago and Cook County's extensive role in enforcing FOID requirements places them in a unique position to address the importance of these requirements in Illinois.

ARGUMENT

Brown was charged with a misdemeanor for possessing a rifle in her home without having a FOID card. Brown's compliance with the FOID card requirement would have entailed filling out a simple form, submitting a photograph, and paying a $10 fee. The circuit court ruled that, as applied to Brown, the FOID card requirement for possession of a long gun in her home is unconstitutional under the Second Amendment. We urge this court to reverse that decision and uphold the FOID card requirement based on its insubstantial – indeed, nominal – burden on Second Amendment rights, without requiring the sort of stringent level of scrutiny that has been applied to bans and other severe restrictions on Second Amendment rights. That higher level of scrutiny should not be required when a regulation's impact on the exercise of Second Amendment rights is so minimal and when the governmental interest in protecting those within its borders is a matter of life and death. In these circumstances, legislators should be allowed to err on the side of public safety with requirements that can save lives, since doing so does not stand in the way of law-abiding individuals who seek to exercise

Second Amendment rights.

As we explain in our statement of interest, the FOID Card Act is a critical tool in the fight against firearms violence in Chicago and Cook County because it serves to keep firearms out of the hands of those whom the General Assembly found are most likely to misuse them. Chicago and Cook County have actively enforced Illinois' statutory firearms requirements with thousands of arrests, prosecutions, and firearms recoveries in the last five years. Indeed, far from eliminating the FOID card requirement, as the circuit court did, there is a need for enhanced enforcement of it. For example, in 2018, a gunman engaged in a mass shooting with an assault weapon in Aurora, Illinois that left five people dead and others injured; he had a 1995 felony aggravated battery conviction and his FOID card was revoked five years before the shooting, but there was no simple way for law enforcement to discover the revocation and recover his gun. See Jerry Nowicki, FOID Bill Strengthening Enforcement For Revoked Cards Will Head To Pritzker, Capital News Illinois (June 16, 2021) (available at https:// https://capitolnewsillinois.com/NEWS/foid-bill-strengthening-enforcement-for-revoked-cards-will-head-to-pritzker) (statement of Rep. Keith Wheeler) (last visited October 13, 2021). The General Assembly recognized the need for improved enforcement and passed legislation that, among other things, requires Illinois State Police monitoring of state and federal databases in order to initiate revocation proceedings when appropriate, creation of an

online portal so that police officers can easily access FOID card revocation and suspension information, and increased enforcement operations. See Ill. Pub. Act 102-0237 (effective Jan. 1, 2022). With these enhancements, the FOID card requirement is bound to become an even more effective public safety measure, with officials better equipped to monitor and recover firearms from those who are disqualified from firearms possession in Illinois.

I. THE FOID CARD REQUIREMENT IS CONSTITUTIONAL.

Since District of Columbia v. Heller, 554 U.S. 570, 626 (2008), this court has declared unconstitutional only regulations that it believed severely restricted the general population's ability to keep or carry firearms for purposes of self-defense. The FOID card requirement is a basic staple of firearms regulation in Illinois, and only minimally burdens law-abiding citizens qualified to possess arms for self-defense. The circuit court nonetheless invalidated the requirement as applied to Brown, on the basis that it was an unlawful categorical firearms ban directed at a "group of people," namely, all "non-licensed, law abiding residents who are in the privacy of their homes." Order at 6. But, unlike categorical bans on possessing or carrying firearms altogether, when a regulation so minimally affects an individual's ability to possess a firearm for purposes of self-defense, it should be upheld for that reason alone.

This court has long distinguished between broad bans and minimal regulations. In two seminal cases, this court struck down broad bans on

carrying handguns in public. See People v. Chairez, 2018 IL 121417, ¶48 (invalidating a law that prohibited carrying firearms within 1,000 feet of "a vast number of public areas" and, as such, was "not minimal"); People v. Aguilar, 2013 IL 112116, ¶ 21-22 (invalidating statutory provision that broadly prohibited carrying guns outside the home). By contrast, in Wilson v. County of Cook, 2012 IL 112026, this court did not automatically invalidate Cook County's assault weapons ban on and instead remanded for the parties to develop a record on whether and how the ban actually impacted Second Amendment rights. Id. ¶ 51-52.

None of this court's decisions supports the circuit court's notion that a regulation that does not categorically prohibit firearm activity, but merely places a minimal burden on firearms possession, like the one at issue here, violates the Second Amendment. In fact, in People v. Mosley, 2015 IL 115872, this court cited approvingly an Illinois Appellate Court decision that held that prohibiting the possession of firearms for "those lacking a FOID card" is "not a flat ban" and does not violate the Second Amendment. Id. ¶ 36 (citing People v. Taylor, 2013 IL App (1st) 110166, ¶¶ 28-32).

The constitutionality of applying the FOID card requirement to the possession of long guns in the home is now squarely before this court, and Brown's Second Amendment challenge to it should be rejected because that requirement does not substantially burden Second Amendment rights. This approach is well-grounded in United States Supreme Court precedent and

has been followed in other jurisdictions. Indeed, the circuit court in this case stands alone in its view of this basic, unobtrusive registration requirement, and its novel approach should be rejected.

A. Reasonable Regulations That Nominally Burden Fundamental Rights Are Constitutional.

Firearms regulations are generally subjected to intermediate scrutiny. Intermediate scrutiny, however, is not just one test. It is an umbrella term that covers a sliding scale of tests that are more complex than rational basis review, yet not as exacting as strict scrutiny. See generally Ashutosh Bhagwat, The Test That Ate Everything: Intermediate Scrutiny in First Amendment Jurisprudence, 2007 U. Ill. L. Rev. 783 (2007) (describing development of various and distinct intermediate scrutiny tests under the First Amendment).

The exact formulation of an intermediate scrutiny test depends upon the nature of both the underlying right and the underlying regulation. See, e.g., Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989) (describing intermediate scrutiny test for time, place, and manner regulations on free speech); Central Hudson Gas v. Public Service Commission of New York, 447 U.S. 557, 564-66 (1980) (describing multi-factor test for commercial speech); United States v. O'Brien, 391 U.S. 367, 367-72 (1968) (describing separate multi-factor test for symbolic conduct); Pickering v. Board of Education, 391 U.S. 563, 568 (1968) (creating distinct balancing test for public employees' speech). Even where a law may burden the exercise of a right to some

degree, burdens that are insubstantial fall on the lower end of the scale, and thus often trigger a "lower-level scrutiny (or none at all)." Adam Winkler, Scrutinizing the Second Amendment, 105 Mich. L. Rev. 683, 698 (2007).

This court should apply a constitutional standard for Second Amendment challenges that incorporates a threshold inquiry into whether a firearm regulation substantially burdens protected activity. This standard fits comfortably under the rubric of intermediate scrutiny. As Eugene Volokh, a prominent scholar frequently cited by the Supreme Court, has explained:

> A restriction may also be justified on the grounds that it imposes a less than substantial burden on the exercise of a right, and therefore doesn't unconstitutionally "infringe[ ]" the right even though it regulates the right's exercise. The mildness of the burden, the argument would go, means that it's unnecessary for the government to prove that the law would indeed likely materially reduce some harm. Rather, the mildly burdensome law would be treated as categorically constitutional, at least so long as it is not outright irrational.

Eugene Volokh, Implementing the Right to Keep and Bear Arms for Self-Defense: An Analytical Framework and a Research Agenda, 56 UCLA L. Rev. 1443, 1454 (2009) (alterations in original) (citations omitted).

This approach is evident in Supreme Court jurisprudence addressing other fundamental rights.[1] For example, the Court has applied a similar

[1] State court decisions upholding regulations under state constitutional analogues to the Second Amendment provide further support for a test upholding regulations that nominally burden Second Amendment rights. Long before District of Columbia v. Heller, 554 U.S. 570 (2008) and McDonald v. City of Chicago, 561 U.S. 742 (2010), state courts had developed

standard in cases involving voting rights. See, e.g., Crawford v. Marion County Election Board, 553 U.S. 181, 198-200 (2008) (upholding photo identification requirement for in-person voting where the inconvenience of getting a state identification card "does not qualify as a substantial burden"); Burdick v. Takushi, 504 U.S. 428, 438-39 (1992) (upholding state's ban on write-in voting as a reasonable measure that "imposes only a limited burden on voters' rights to make free choices and to associate politically through the vote."); Bullock v. Carter, 405 U.S. 134, 143-44 (1972) ("not every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review," but statutes with "a real and appreciable impact on exercise of the franchise" are subject to close scrutiny) (citations omitted).

The same sort of threshold substantial-burden inquiry also appears in cases involving the free exercise of religion. For example, in Wisconsin v. Yoder, 406 U.S. 205 (1972), the Court first determined that a law requiring compulsory education until age 16 "would gravely endanger if not destroy the free exercise of respondents' religious beliefs," id. at 219, before proceeding to consider the State's justifications and ultimately holding the law

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a "reasonable regulation test" to determine the validity of regulations under those state constitutions. Adam Winkler, Scrutinizing the Second Amendment, 105 Mich. L. Rev. 683, 689-90 (Feb. 2007). Under that test, a firearms regulation that "so excessively burdens the right as to destroy it will be invalidated." Id. at 717. In practice, "the burden on the individual is usually considered to be minimal so long as there are alternative means of exercising the right," and the courts have upheld "all but the most arbitrary and excessive laws." Id. at 718.

unconstitutional, id. at 219-35; see also Sherbert v. Verner, 374 U.S. 398, 403-04 (1963) (inquiring first whether facially neutral law imposes undue pressure on religious adherence, before requiring justification).[2]

The Court has taken a similar approach in due process cases involving the fundamental right to marry, Zablocki v. Redhail, 434 U.S. 374 (1978), applying strict scrutiny only after first determining that the law there "clearly does interfere directly and substantially with [a fundamental] right" to marry, id. at 387, while also making clear that "reasonable regulations that do not significantly interfere with decisions to enter into the marital relationship may legitimately be imposed," id. at 386. Consistent with this, the Court stated that laws imposing less severe burdens on marriage may be constitutional for that reason alone. See id. at 387 n.12 (distinguishing Califano v. Jobst, 434 U.S. 47 (1977)).

The Court has also rejected the idea that nominal burdens violate the constitution under the "undue burden" test applied in abortion cases. In Planned Parenthood v. Casey, 505 U.S. 833 (1992), the Court explained that "not every law which makes a right more difficult to exercise is, ipso facto, an infringement of that right," id. at 873. Instead, an undue burden exists only where the "purpose or effect" of a law is to place "a substantial obstacle in the

[2] Under Employment Division v. Smith, 494 U.S. 872 (1990), the Court ruled that this threshold inquiry is not necessary for neutral laws of general applicability, see id. at 883, but did not question its application in other contexts.

path" of a woman exercising the constitutional right to an abortion. Id. at 877. In Casey, the Court found no such "substantial obstacle" in most of a statute's record-keeping requirements because "[a]t most they might increase the cost of some abortions by a slight amount." Id. at 901. And in Gonzalez v. Carhart, 550 U.S. 124 (2007), the court held that the prohibition of one abortion procedure did not "impose a substantial" obstacle to abortions where the statute allowed, "among other means, a commonly used and generally accepted method." Id. at 165.

The same approach favored by Professor Volokh for "mildly burdensome" laws, Volokh, supra, at 1454, and which the Supreme Court has taken in other First Amendment and due process cases, should be followed here. Firearms, by their very nature, always involve the potential danger of death or injury. Thus, as Professor Volokh has explained, a "substantial burden threshold" is appropriate because:

> judges are rightly worried about gun crime and gun injury, and are likely to want to leave legislatures with some latitude in trying to fight crime in ways that interfere little with lawful self-defense. A substantial burden threshold would give legislatures the power to experiment without requiring a court to estimate the effectiveness of the law in preventing future crime and injury--estimation that . . . is likely to be especially hard.

Volokh, supra, at 1461.

This concern certainly resonates in Chicago and Cook County, where police officers, prosecutors, and other officials fight daily against gang violence, domestic violence, and other crimes involving firearms. With more

than 8,000 crimes a year committed with firearms, see, e.g. Chicago Police Department, 2019 Annual Report at 29, 54 (available at https://home.chicagopolice.org/wp-content/uploads/2020/09/19AR.pdf), it is not surprising that police have spent so much time recovering thousands of firearms, or that the SAO has prosecuted thousands of cases involving FOID Card Act violations in recent years, in a tireless effort to stem the tide of firearms violence. This work is increasingly important as firearms violence increases. For example, in July 2021, there were 461 shooting incidents with 614 victims in Chicago, compared to 402 and 561 last July.[3] Given the danger inherent in firearms activity, the government should have maximum flexibility to experiment with sensible regulations when doing so poses no serious obstacles to qualified, law-abiding citizens' exercise of Second Amendment rights.

B. Other Courts Have Upheld Regulations That Impose Only Nominal Burdens On Second Amendment Rights.

Courts in several other jurisdictions have applied a version of intermediate scrutiny to uphold regulations that impose nominal burdens on Second Amendment rights, without requiring the government to prove the degree to which safety benefits will be realized. In Nordyke v. King, 644 F.3d

[3] See Dana Rebik, Chicago Shootings Up, Murders Slightly Down This July Compared to Last Year, https://wgntv.com/news/chicagocrime/shootings-up-murders-slightly-down-this-july-compared-to-last-year/ (last visited Oct. 13, 2021).

776, 780 (9th Cir. 2010), for example, the Ninth Circuit upheld an ordinance that restricted gun shows on county property. The court rejected the Second Amendment challenges there based solely on its conclusion that the gun show restrictions did not "substantially burden the right to keep and bear arms." Id. at 786. The panel decision was later vacated, and a majority of the en banc court similarly upheld the ordinance because it regulated gun shows "only minimally and only on county property." Nordyke v. King, 681 F.3d 1041, 1044 (9th Cir. 2012) (en banc). The court rejected the Second Amendment claim on that basis alone, id., without requiring empirical support justifying the regulation.

The D.C. Circuit took the same approach in District of Columbia v. Heller, 670 F.3d 1244 (D.C. Cir. 2011) ("Heller II") and Heller v. District of Columbia, 801 F.3d 264 (D.C. Cir. 2015) ("Heller III"). In Heller II, the court upheld the district's "basic registration requirement" for handguns, which was "self-evidently de minimis" and could not "reasonably be considered onerous," 670 F.3d at 1255. Then, in Heller III, 801 F.3d 264, the court upheld the same "basic registration requirement" for long guns "[b]ecause the burden of the basic registration requirement as applied to long guns is de minimus," so it "does not implicate the second amendment right," id. at 274. And in both of those Heller decisions, the court upheld the fees associated with registration ($13 per firearm and $35 for fingerprinting) because "'administrative . . . provisions incidental to the underlying regime' – which

include reasonable fees associated with registration – are lawful insofar as the underlying regime is lawful." Id. at 274 (quoting Heller II, 670 F.3d at 1249).

The Second Circuit used a similar rationale in United States v. Decastro, 682 F.3d 160 (2d Cir. 2012), to uphold a federal statute that prohibits the transportation of a firearm bought in one state into the purchaser's state of residence. The court explained that the statute "does not substantially burden the fundamental right to obtain a firearm for self-defense, and attempts only to assist states in enforcement of their own gun laws," so "it does not infringe the Second Amendment right to keep and bear arms." Id. at 168-69. The court emphasized the Supreme Court's presumption of constitutionality of certain restrictions in Heller, including restrictions on the possession of firearms by felons and the mentally ill, carrying firearms in sensitive places, and the commercial sale of firearms. Id. at 165 n.4 (citing District of Columbia v. Heller, 554 U.S. 570, 626, 627 n.26 (2008)). The Second Circuit found "the natural explanation" for the presumptive lawfulness of such regulations to be that "time, place, and manner restrictions may not significantly impair the right to possess a firearm for self-defense, and may impose no appreciable burden on Second Amendment rights." Id. at 165. The court further observed that the Supreme Court had distinguished the handgun ban at issue in Heller from founding-era laws that "did not much burden self-defense and had a minimal

deterrent effect on the exercise of Second Amendment rights." Id. at 166. And, borrowing a principle from First Amendment law that applies when there are "ample alternative channels for communication," id. at 167 (citing Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293 (1984)), the court held that: "By analogy, a law that regulates the availability of firearms is not a substantial burden on the right to keep and bear arms if adequate alternatives remain for law-abiding citizens," id. at 168. The court concluded that Heller did not "mandate that any marginal, incremental or even appreciable restraint on the right to keep and bear arms be subject to heightened scrutiny." Id. at 166.

Then, in Kwong v. Bloomberg, 723 F.3d 160 (2d Cir. 2013), the Second Circuit upheld New York City's imposition of a $340 fee for a residential handgun permit that lasts three years. Id. at 161. The court applied the Supreme Court's "First Amendment fee jurisprudence," id. at 165, which holds "that governmental entities may impose licensing fees relating to the exercise of constitutional rights when the fees 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 Cox v. New Hampshire, 312 U.S. 569, 577 (1941)) (alteration in original). And the court reaffirmed its holding in Decastro that only when restrictions "operate as a substantial burden on the ability of law-abiding citizens to possess and use a firearm for self-defense" will heightened scrutiny apply. Id. at 167. The

court thus rejected the Second Amendment claim where the plaintiffs had not even attempted to show that "the licensing fee, which amounts to just over $100 per year," made the exercise of Second Amendment rights "prohibitively expensive." Id.; see also United States v. Focia, 869 F.3d 1269, 1286 (11th Cir. 2017) (federal statute prohibiting transfer of a firearm by unlicensed person to another unlicensed person "only minimally affects the ability to acquire a firearm," and is "presumptively lawful"); United States v. Marzzarella, 614 F.3d 85, 94-95 (3d Cir. 2010) (suggesting that "de minimis" burden on Second Amendment rights would not warrant heightened scrutiny); Justice v. Town of Cicero, 577 F.3d 768, 773-75 (7th Cir. 2009) (upholding registration requirement for all firearms because it "leaves law-abiding citizens free to possess guns" and thus "appears to be consistent with the ruling in Heller").

In a recent decision, the Illinois Appellate Court followed suit. In Guns Save Life, Inc. v. Ali, 2020 IL App (1st) 181846, petition for leave to appeal allowed, 154 N.E.2d 778 (Table) (Sept. 30, 2020), the Illinois Appellate Court addressed a Cook County tax on firearms and ammunition, at the rates of $25 per firearm purchased within Cook County, and 1¢ or 5¢ per cartridge of certain ammunition. Id. ¶ 8. The court held that the taxes "do not restrict the ownership of firearms or ammunition," id. ¶ 57; nor are they set at an amount that has a "prohibitive or exclusionary" effect on the exercise of Second Amendment rights, id. ¶ 59. The court followed the approach in

Kwong, Decastro, and Casey, holding that "a law does not substantially burden a constitutional right simply because it makes the right more expensive or difficult to exercise." Id.

These cases also fit with the Supreme Court's approach to defining the scope of Second Amendment rights in light of historical practices and longstanding prohibition. Historically, a host of stringent restrictions on firearms activity have co-existed with the right to keep and bear arms, including bans on the carrying of firearms in public, see Patrick Charles, The Faces of the Second Amendment Outside the Home: History Versus Ahistorical Standards of Review, 60 Cleveland State L. Rev. 1, 14-28 (2012), and severely restricting the discharge of firearms, see, e.g., Ezell v. City of Chicago, 651 F.3d 684, 705 (7th Cir. 2011). The substantial burden test is a good match with this historical acceptance of an array of firearms regulations because it allows the government latitude to regulate in the interest of public safety while simultaneously ensuring that no serious obstacles prevent the exercise of Second Amendment rights. This court should apply this test to the FOID card requirement.

C. The FOID Card Requirement Does Not Substantially Burden Second Amendment Rights.

Against this backdrop, it is patently clear that the FOID card requirement is constitutional. Qualified applicants need only fill out a form, submit a photograph, and pay a $10 processing fee – and, again, Brown does not claim that any of the disqualifiers in the FOID Card Act apply to her.

The FOID Act's fee is but a fraction of the charge upheld in Kwong, and thus far less burdensome. Similarly, the financial burden of the tax in Guns Save Life is potentially much greater, since the tax applies to every firearm or ammunition cartridge purchased. See 2020 IL App (1st) 181846, ¶ 8. Moreover, the $10 charge under the FOID Card Act is a "fee" not a "tax." A tax has "no relation to the services rendered," and is instead "assessed to provide general revenue." Crocker v. Finley, 99 Ill. 2d 444, 452 (1984). The $10 charge here has a clear relationship to governmental services associated with the licensing and use of firearms. It supports the state police, including Illinois' police firearms services. 430 ILCS 65/5(a) & (b). See also Ill. Pub. Act 102-0237 § 20 (effective Jan. 1, 2022) ($5 will go into the State Police Firearms Services Fund and $5 will go into the State Police Revocation Enforcement Fund). Not surprisingly, Brown has never argued that the small fee at issue here is excessive compared to the regulatory and policing expenses involved in enforcing license requirements.

The circuit court's contrary view is unsupportable. The court compared the FOID card requirement to voting rights cases, but it erred in doing so. The court stated that "requiring a voter to pay an administrative fee for voting absentee in their own home would be unthinkable," and that "[t]here is no question that requiring a voter to pay a processing fee for absentee voting within their own home violates their right to vote." Order at 16. But modest burdens even on voting rights are permissible. For example,

in Rosario v. Rockefeller, 410 U.S. 752 (1973), the Court upheld a registration cut-off date for voting in primary elections, holding that the requirement was neither invidious nor arbitrary and the limitation was not "so severe as to itself to constitute an unconstitutionally onerous burden on the petitioners' exercise of the franchise." Id. at 757-62. Moreover, the Court has long held that fees are permissible when applied to cover the costs of administering regulations or maintaining public order related to constitutionally protected activity. See, e.g., Cox, 312 U.S. at 577 (holding government may impose fee for parade permit in order to "meet the expense incident to the administration of the act and to the maintenance of public order in the matter licensed"); Murdock v. Commonwealth of Pennsylvania, 319 U.S. 105, 113-14 (1943) (holding government may impose "a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question").

Moreover, the circuit court's Second Amendment analysis rests on an erroneous premise. Rather than begin its inquiry with a meaningful analysis about the actual burden of the FOID card requirement on the exercise of the Second Amendment rights, the circuit court treated the FOID card requirement as a regulation that prevents "groups of people . . . from possessing firearms." Order at 6. According to the circuit court, since all people who lack a FOID card, even those who have never applied, are precluded from possessing firearms, the requirement amounts to a ban on

firearms possession for a category of individuals and is thus comparable to categorical bans for other identifiable groups of people, such as felons, minors, addicts, and mentally ill persons. Id. at 6-7. In other words, the court treated a basic registration requirement the same as a firearms ban that leaves group members no path to firearms possession at all.

But the burden suffered by a group of people who have not even tried to obtain a FOID card is not remotely comparable to the burden on a group that is wholly disqualified from possessing firearms under federal, state, or local laws. A person's failure to apply for a FOID card is not a characteristic that places a person in a discrete group, such as being a minor or having been convicted of a felony. Here, Brown does not claim she would have been disqualified if she had applied for a FOID card or dispute that getting a card is as easy as checking some boxes and paying a modest processing fee. In short, she could have easily obtained a FOID card. There is no similar easily satisfied process that will restore the right to possess firearms to felons or any other disqualified group. When identifiable groups are barred without such recourse, courts have examined the fit between the governmental objective and the regulation with heightened scrutiny. E.g., Kanter v. Barr, 919 F.3d 437, 438-39 (7th Cir. 2019); United States v. Skoien, 614 F.3d 638, 642 (7th Cir. 2010). Nominal burdens on firearms possession should require less. Indeed, we are aware of no case anywhere that has treated such easily satisfied conditions in the same way as a regulation of a "group of people"

that "will never have the rights guaranteed to them by the Second Amendment." Order at 7.

* * * *

The FOID card requirement is a vital tool in the effort to prevent firearms violence. The circuit court downplayed that goal, stating it "only becomes realized once the owner steps outside of their residence with the firearm." Order at 11. But firearms violence outside of homes is a serious public safety threat, and, of course, firearms can, and do, wreak havoc in homes, too. As we explain in our statement of interest, between 2016 and 2020, there were at least 1,500 residential shootings in Chicago. And domestic violence remains a serious concern, especially for women. More than half of all intimate partner homicides are committed with guns.[4] The risk of a male abusive partner killing a female partner increases by 400 percent when the male partner has access to a gun.[5] Because the FOID card requirement helps identify those who are qualified to have guns and facilitates gun recoveries from those who are not, it remains a critical tool for protecting Chicago and Cook County residents from firearm-related crimes, not only in public, but also in the home.

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[4] See April M. Zeoli, Multiple Victim Homicides, Mass Murders & Homicide-Suicides as Domestic Violence Events, Battered Women's Justice Project Nov. 2018, at 4 (available at https://www.preventdvgunviolence.org/multiple-killings-zeoli-updated-112918.pdf (last visited Oct. 13, 2021)).

[5] Id.

For all of these reasons, we urge this court to apply a threshold test under which regulations that only nominally burden activity protected by the Second Amendment are upheld without the sort of stringent scrutiny that has been applied to bans and other serious barriers to constitutionally protected activity.

CONCLUSION

For these reasons, as well as those set out in the appellant's brief, the judgment of the circuit court should be reversed.

Respectfully submitted,

CELIA MEZA
Corporation Counsel
of the City of Chicago

By: /s/ Suzanne M. Loose
SUZANNE M. LOOSE
Senior Counsel
2 N. LaSalle St., Suite 580
Chicago, Illinois 60602
(312) 744-8519

KIMBERLY M. FOXX
Cook County State's
Attorney

By: /s/ Jessica Scheller
JESSICA SCHELLER
Chief; Advice, Business &
Complex Litigation Division
Civil Actions Bureau
500 Richard J. Daley Center
5th Floor
Chicago, IL 60602

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, and the certificate of service, is 22 pages.

/s/ Suzanne M. Loose
SUZANNE M. LOOSE, Attorney

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies under penalty of law as provided in 735 ILCS 5/1-109 that the statements set forth in this instrument are true and correct and that the foregoing brief was electronically filed with the Illinois Supreme Court using the court's electronic filing system, and was served on all counsel of record, listed below, via *File and Serve Illinois* on October 13, 2021.

/s/ Suzanne M. Loose
SUZANNE M. LOOSE, Attorney

Persons served:

David G. Sigale
dsigale@sigalelaw.com

Garson S. Fischer
Garson.fischer@ilag.gov
eserve.criminalappeals@ilag.gov

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Carolyn Taft Grosboll
SUPREME COURT CLERK