No. 132015

IN THE

SUPREME COURT OF ILLINOIS

MALIK CEDRICK BRIGHT, Plaintiff-Appellee, v. JEFFREY YENCHKO, in his official capacity as Chief of the Firearm Services Bureau, Defendant-Appellant, And VICTOR JURADO, HANNAH GOLDSTEIN, and GABRIEL RUVALCAHA, Defendants.	Direct Appeal from the Circuit Court of the Twenty-Fourth Judicial Circuit, Randolph County, Illinois Case No. 23-LA-12 The Honorable JEREMY R. WALKER, Judge Presiding

BRIEF OF PLAINTIFF-APPELLEE

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ARGUMENT

This Court has already been presented with the same core issue now before it, which is whether it is constitutional for the State to revoke the FOID card of a person who has been accused, but not convicted, of committing a felony. See *Davis v. Yenchko*, 2024 IL 129751. Absent a definitive and substantive ruling, it is unlikely that these challenges will cease.

Plaintiff Malik Bricgt is a peaceable and generally law-abiding citizen, and prior to the events at issue here held a valid Firearms Owners Identification Card. (C9, C10). Even law-abiding citizens make mistakes, and at times, the criminal justice system makes its own. Here, Plaintiff's only 'mistake' was travelling to visit his family in Cook County. The mistake of the criminal justice system was arresting and initiating a felony prosecution against an entirely innocent person.

While travelling, Plaintiff had an unloaded firearm, properly enclosed in a case, and secured in the trunk of the vehicle in which he was a passenger. (C10, para 4). Consistent with Illinois law, Plaintiff also possessed a valid Firearm Owner's Identification (FOID) card, which he carried with him. (C10, para. 4, 6). This rendered his possession of his firearm fully compliant with statutory requirements. 430 ILCS 65/ *et. seq.*.

The vehicle was stopped for a minor traffic violation: a cracked windshield, which is a violation committed by the driver of the car, not a passenger, like Plaintiff. 625 ILCS 5/12-503(e). Following what appears to be standard police procedure, the officers who stopped the driver asked Plaintiff whether firearms were present inside the vehicle. (C10, para. 6). Plaintiff truthfully answered, advising that there was an unloaded, cased pistol in the trunk, and produced his FOID card. (C10, Para. 6). Despite Plaintiff's compliance with the various FOID statutes, Plaintiff was immediately arrested and charged with carrying a loaded firearm without a valid FOID card. (C11, Para. 10). This felony accusation was facially untrue, as the arresting officers knew the pistol was unloaded, secured in a case in the trunk, and that Plaintiff possessed and presented a valid FOID card. Nevertheless, Plaintiff's FOID card was subsequently invalidated, and from that instant, Plaintiff was prohibited from possessing a firearm anywhere in the State of Illinois. (C11, para. 12). Federal law, however did not require him to relinquish possession of firearms, but Illinois rendered his possession illegal.

I. STANDARD OF REVIEW

Plaintiff agrees with Defendant that as this is a matter of law, the standard of review is *de novo*. *Johnson v. Dep't of State Police*, 2020 IL 124213 ¶ 13.

II. THE PUBLIC INTEREST EXCEPTION ALLOWS CASE

It is undisputed that at the time this case was filed, Plaintiff's FOID card remained invalidated. Thus, as this Court recognized in *Davis v. Yenchko*, 2024 IL 129751, Plaintiff has standing to bring this case. In this case, Defendant raises a question not decided by *Davis v. Yenchko*: whether the reinstatement of Plaintiff's FOID card renders the issue moot.

On its face, the case may appear moot. Defendant has repeatedly reinstated FOID cards in a similar fashion in similar litigation and then sought dismissal on mootness grounds. But the mootness doctrine is not absolute, and the exceptions to the same prevent dismissal here. The most obvious exception is the public interest exception.

The public interest exception allows judicial review of otherwise moot questions when the immediacy or significance of the issue warrants judicial intervention. See *In re Shelby R.*, 2014 IL 114994 ¶ 16. This exception applies when "(1) the question presented is of a public nature; (2) an authoritative determination of the question is desirable for the future guidance of public officers; and (3) the question is likely to recur." *Id.* The public interest exception is narrowly construed and requires a clear showing of each element.

A. A Public Nature

Defendant argues that because Plaintiff characterized his claim as an *as-applied* challenge, it "by definition, does not present an issue of a public nature." (Def. Brief, p. 16). Under that logic, no *as-applied* challenge could ever satisfy the public-interest exception. Defendant relies on *In re Christopher K.*, 217 Ill. 2d 348, 362 (IL. 2005), but that case does not reach that question, and nor should this Court. *Christopher K* held only that an *as-applied* vagueness challenge does not implicate an issue of a public nature. Id. This case is not a vagueness challenge; the statutes at issue are clear and their operation and execution by Defendant is undisputed.

Here, the only facts relevant to Plaintiff is the triggering event, which was the filing of a felony charge, not conviction of a felony, and the invalidation of this FOID card. The Legislature could have drafted a provision providing the Illinois State Police "must revoke a FOID card upon the FOID cardholder being charged with any felony." If the Legislature had done so, Plaintiff's challenge would plainly be facial.

Instead, 430 ILCS 64/8(n), as written, requires revocation when a person is prohibited by any federal or state law from possession or acquiring a firearm. The State further relies on 18 U.S.C. § 922(n), which prohibits the *receipt* of firearms, not possession to persons charged with certain felonies.

The State then construes § 922(n) into a reading that triggers 430 ILCS 43/8(n).

Plaintiff does not challenge 18 U.S.C. § 922(n); it is beyond the scope of this case. The problem arises from the interaction of § 922(n) with 430 ILCS 64/8(n). One hundred percent of the time when § 922(n) is triggered, so is § 8(n), resulting in an invalidated FOID card. Thus, Plaintiff's challenge does not rest on any fact unique to him or the specific felony involved. *Any* felony accusation suffices to give rise to this problem and it applies to any person, whether old, young, black, white, rich, poor, or otherwise. Any person accused of any felony, whether state or federal, violent or non-violent, is treated the exact same, whether there is a credible threat, or not.

With more than 2,473,655 active FOID card holders in Illinois, and over 66,000 new felony cases filed annually in Illinois state courts alone, it is simply a matter of time before this statutory interaction repeatedly impacts

FOID card holders[1], [2]. The breadth underscores the public importance of resolving this issue definitively.

In fact, Defendant's own counsel acknowledged in argument that this challenge is, in practical effect, a facial challenge. At the July 2, 2025, hearing, Defendant's counsel argued that:

> "a situation where I think we're on the same page but because it's important, I want to clarify .. for the record. … I think both the U.S. Supreme Court and the Illinois Supreme Court have acknowledged that, that language, that terminology, can get confusing in applications sometimes. And so it sometimes is helpful to think about instead of the labels about whats being argued and the issue here, the reason why it's so complicated is because as we all know … Section 8(n) is a catch all; and so

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[1] This Court can take judicial notice of this public record posted online by the Illinois States Police at https://isp.illinois.gov/Foid/Statistics

[2] See page 91 of the Illinois Courts Annual Report, 2023, available online at https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/2e8fe39f-d040-47ee-a2b5-d53880fccb19/2023%20Annual%20Report%20Statistical%20Summary.pdf

> there are many ways that Section 8(n) can apply in the particular way in which it's being challenged here is through 922(n) of Title 18 of the U.S. Code. So I think [Plaintiff] is correct when he says this is a challenge to 8(n) as applied through 922(n). I don't think that makes it an as-appied challege for purposes of the facial vs. as-appied distinction. That's just a situation where the same term has different meanings and different context."

(SUP R 57, line 6).

This Court has already been confronted with this issue. See *Davis v. Yenchko*, 2024 IL 129751. Absent a definitive ruling on the merits, it is unlikely that this case will be the last.

Justice Overstreet's reasoning in *Koshinski v. Trame*, 2017 IL App (5th) 150398, addressing FOID card revocations and Orders of Protection, applies equally here:

> "…[t]he question presented is of a public nature. The issue of whether the legislature enacted legislation violating our constitution is a matter of public importance. See *Johnson v. Edgar,* 176 Ill. 2d 499, 513 (1997) (issue of whether legislature enacted broad-sweeping legislation in a manner that violates

> our constitution is a matter of public importance). Though arguably less represented in Illinois case law, the right to bear arms found in the second amendment to the Constitution is no less fundamental. See *People v. Aguilar*, 2013 IL 112116, ¶ 20 (Second Amendment protects right to keep and bear arms). Further, as noted by the Plaintiff, the Defendant is a public official sued in her official capacity acting under her interpretation of the law. The issue is not case-specific but will broadly determine the rights of firearm licensees who are subject to *ex parte* orders of protection and the firearm suspension statutes. See *In re Rita P.*, 2014 IL 115798, ¶ 36. This issue is of sufficient breadth and has a significant effect on the public as a whole so as to satisfy the public nature criterion. See *In re Alfred H.H.*, 233 Ill. 2d 345, 357 (2009). Accordingly, the first criterion for review under the public interest exception is satisfied."

Koshinski v. Trame, 2017 IL App (5th) 150398

Koshinski was correct then, and its reasoning is correct now. Accordingly, the first criterion for review under the public interest exception is satisfied.

III. AN AUTHORITATIVE DECISION IS DESIREABLE

The second element of the public-interest exception requires a showing that an authoritative decision is desirable. In the FOID-card and Second Amendment context, *Koshinski v. Trame*, 2017 IL App (5th) 150398, remains the leading Illinois case addressing this issue.

As *Koshinski* explained, this Court in *In re Shelby R.*, 2013 IL 114994, ¶ 18, recognized that since formally adopting the public-interest exception, it has reviewed a wide variety of otherwise moot questions under this doctrine. These include matters affecting medical autonomy (*In re E.G.*, 133 Ill. 2d 98 (1989)), election law (*Bonaguro v. County Officers Electoral Bd.*, 158 Ill. 2d 391 (1994)), sentencing credit issues (*People v. Roberson*, 212 Ill. 2d 430 (2004)), juvenile procedure (*In re Christopher K.*, 217 Ill. 2d 348 (2005)), and separation-of-powers challenges (*Wirtz v. Quinn*, 2011 IL 111903). *Koshinski*, ¶ 25.

Likewise, *Shelby R.* emphasized that although this Court often finds the exception unwarranted when no actual conflict exists, the absence of conflicting precedents do not bar review either. "Even issues of first impression may be appropriate for review under this exception," *Id*, citing *People ex rel. Wallace v. Labrenz*, 411 Ill. 618, 623 (IL. 1952) (public interest exception applicable where issue involved whether a trial court's

order requiring infant to undergo a blood transfusion violated the constitutional rights of the infant's parents who had objected to the transfusions on religious grounds); *Wisnasky-Bettorf v. Pierce*, 2012 IL 111253 (public interest exception applicable where issue involved the filling of vacancies in nomination of a public office); *Sandholm v. Kuecker*, 2012 IL 111443 (public interest exception applicable where issue involved recovery of attorney fees); *Goodman v. Ward*, 241 Ill. 2d 398 (2011) (public interest exception applicable where issue involved residency requirements of election law); *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200 (2008) (public interest exception applicable where appeal raised question of election law). Ultimately, in *Shelby R.*, this Court concluded that the issue of first impression before it, whether a juvenile may be committed to the Department of Juvenile Justice for underage drinking, was in need of an authoritative determination because it involved the liberty interests of minors. *In re Shelby R.*, 2012 IL 114994, ¶ 22.

The Second Amendment similarly implicates fundamental constitutional rights. The Second Amendment is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *New York State Rifle & Pistol Assn, Inc. v. Bruen*, 142 S.Ct. 2111, 2121 (U.S. 2022). This same issue has already arisen before this

Court in the last two years. *Davis v. Yenchko*, 2024 IL 129751. Between this case, and *Davis,* not one, but *two* trial courts, in recent years have declared this unconstitutional, on the same or similar grounds.

Furthermore, the State illustrates this point in its arguments. See *Def. Br. at page 18*. While asserting that no conflict in the laws exist requiring review, the State simultaneously cites what it characterizes as extensive authority contrary to the Plaintiff's position. If anything, the State's own argument underscores the lack of uniformity and necessity of resolution by this Court.

This need is heightened by developing federal case law. Federal Courts have at times, found the federal prohibition on firearm possession by certain persons to be unconstitutional, even as applied to people actually convicted of felonies. See *Range v. Att'y Gen. U.S.*, 69 F.4th 96 (3d Cir. 2023) (en banc).

Given the recurring nature of this legal challenge as to whether possession by a FOID card holder accused of, but not convicted of a felony; the constitutional rights implicated, the conflicting interpretations advanced, and the substantial costs of prolonged uncertainty for the over two million FOID card holders in the State of Illinois regarding § 8(n)'s validity as applied, an authoritative determination by this Court is unquestionably

desirable. Accordingly, the second prong of the public-interest exception is satisfied.

IV. The Issue Here Commonly Reoccurs

The third element of the public-interest exception requires a showing that the challenged issue is likely to recur, but there is no requirement it must recur with the same plaintiff. *In re Alfred H.H.*, 233 Ill. 2d 345, 358 (2009). This is not the first time this issue has been before this Court. *Davis v. Yenchko*, 2024 IL 129751. A lack of standing in *Davis v. Yenchko* prevented review, which is not present here.

Contrary to Defendant's position, this issue is not case-specific. A substantive ruling would determine the lawfulness of FOID card revocations not only as to this Plaintiff, but as to every FOID card holder in this state who is, or may be in the future, accused of a felony. Under Illinois law, all such individuals are presumed innocent unless and until proven guilty. A definitive ruling would provide clarity to the thousands of Illinois residents charged with felonies each year, some of whom have valid FOID cards. Over a generation, the number of individuals affected by the recurrent issue would likely reach into the tens, if not hundreds, of thousands. Even if the FOID card system was abolished or modified, the underlying constitutional

question remains: whether a person merely *charged* with any felony may be wholly disarmed without any individualized assessment.

Moreover, although the mootness exception does not require the same plaintiff to face the same issue again, the record shows that while this case was pending in the trial court, Plaintiff was charged with another felony, a traffic offense later reduced to a misdemeanor, with court supervision. Had Defendant learned of the same, the record supports the conclusion that Plaintiff's FOID card would have again been revoked.

As Justice Overstreet explained in *Koshinski v. Trame*, the "[r]ole of the defendant, as Chief of the Firearms Services Bureau, in executing the provision of the firearm suspension statutes is a recurring question." 2017 IL. App. (5th) 150398, ¶ 28. That observation applies squarely here.

Because all three elements of the public-interest exception are fully satisfied, this Court should reach the merits of the matter and render a substantive decision.

V. The Capable-of-Repetition-Yet-Evading Review Exception

Another mootness exception raised in the trial court was the "capable of repetition yet evading review" exception. C 224-26. This Court has long recognized that the mootness doctrine "should not be imposed where it

would preclude issues capable of repetition from ever being reviewed on appeal." *Yiadom v Kiley*, 204 Ill.App.3d 418, 425 (IL. 1990).

Defendant argues that Plaintiff failed show a reasonable expectation that he would be "subject to the same action again." Def. Br. at page 20. Specifically, Defendant argues that Plaintiff "offered no evidence" that his FOID card "had been, or was likely to be, suspended based on future felony charges." *Id.* But Defendant does not contend nor suggest that it would refrain from invalidating Plaintiff's FOID card if Plaintiff were charged with a felony now or in the future and Defendant became aware of it. Nor has Defendant claimed that it has ceased enforcing the statute, that the statute has been repealed, or that repeal is imminent. To the contrary, Defendant's briefing assumes ongoing enforcement.

The record further reflects that, after this case was filed and after the initial felony charge was dismissed, Plaintiff was charged with a different felony traffic offense, which was later reduced a misdemeanor with court supervision. Consistent the Defendant's position, it is reasonable to conclude that Defendant would have again revoked Plaintiff's FOID card had it been aware of the charges.

This exception has two elements. First, the challenged action must be of a duration too short to be fully litigated prior to its cessation. Second,

there must be a reasonable expectation that the "the same complaining party would be subjected to the same action again." *In re Alfred H.H.*, 233 Ill.2d 345, 355-62, (IL. 2009); *In re J.T.*, 221 Ill.2d 338, 350, (IL. 2006); *In re Barbara H.*, 183 Ill. 2d 482, 491 (IL. 1998).

A. The Challenged Action is Inherently of Short Duration

A FOID card invalidation based solely on a felony charge is necessarily temporary; it terminates as soon as the charge is dismissed or resolved. Further, the Illinois Speedy Trial Act, 725 ILCS 5/103-5(b), generally requires that non-custodial defendants be brought to trial within 160 days of demanding trial. This is substantially shorter than the duration of litigation in similar constitutional challenges. The classic example of this exception, pregnancy-related litigation, pregnancy lasts approximately 270 days, longer than the maximum period available here before Defendant asserted mootness. The inherently short lifespan of a felony charge ensures that this issue will routinely evade full review absent application of this exception. On the other hand, as noted in the trial court here, when this kind of litigation is filed, it is not at all uncommon for the Defendant to request 120 days worth of extensions to respond to the complaint. (Supp R. 62, p. 18). Or in the case of appeals like this one, over 130 days to file an opening brief.

B. There is a Reasonable Expectation of Repetition

Defendant's own litigation posture establishes that it will continue to invalidate FOID cards automatically upon notice of a FOID card holder's felony charge. Of this there is no dispute in the record. Defendant does not argue that it will cease this practice, nor does it identify any statutory or policy change that would mitigate repetition. The question, by its own nature, recurs whenever any of the 2.7 million FOID card holders is charged with a felony and Defendant is notified. Defendant's function could literally be performed by a computer, and may well actually be so.

As to Plaintiff specifically, the record reflects that he has twice been charged with felonies, neither resulting in a felony conviction. Regardless of the correctness of these charges, they demonstrate a concrete likelihood that Plaintiff may again face the same revocation if the Defendant becomes aware of any additional charges. As Justice Overstreet observed in *Koshinski*, "the role of the defendant, as Chief of the Firearms Services Bureau, in executing the provisions of the firearm suspension statutes is a recurring question." 2017 IL App (5th) 150398, ¶ 28. That observation applies with equal force here.

Because the FOID card invalidation at issue is both too short in duration to be fully litigated before the resolution of a felony charge and

reasonably likely to recur, the "capable of repetition yet evading review" exception applies. This issue is not dismissible as moot.

VI. DEFENDANT MISCONSTRUES THE CHALLENGE

Defendant correctly asserts that constitutional challenges are generally categorized as either facial or as-applied. But the mere existence of those labels does not mean that every statute or challenge fits neatly into one category or the other. A statute like § 8(n) may contain multiple operative conditions, some of which are constitutionally permissible and others that are not. In such a situation, a litigant may appropriately challenge only the unconstitutional application of the statute, without disturbing the valid one(s).

To illustrate the principle: if a statute provided that it was a felony for "a noncitizen **or** a person of Vietnamese descent" to vote, the statute would be valid as applied to the first category and unconstitutional as applied to the second. A litigant of Vietnamese descent would correctly bring an as-applied challenge, even though the statute is unconstitutional every time it is applied to that category of persons. The statute's mixed constitutionality does not preclude an as-applied challenge; it invites it.

The same structure is present here. Under Defendant's interpretation of the interaction between the FOID Act, 430 ILCS 65/8(n) and 18 U.S.C.

§922(n), every FOID card holder charged with any felony, whether violent, non-violent, white-collar or otherwise, must have their FOID card revoked. If the Illinois Statute itself simply stated that "FOID cards must be revoked upon any felony charge" there would be no dispute that such a law would be subject to a facial challenge, Defendant's interpretation of §922(n) does not change the substance: the effect is identical.

Plaintiff does not challenge 18 U.S.C. §922(n); as the federal statute is limited to the acquisition of new firearms or ammunition while under a felony indictment. Whether or not §922(n) is constitutional or not is beyond the scope of this litigation. What is challenged is the Illinois statute, §8(n), which converts §922(n)'s acquisition restriction into a total ban on possession, thereby fully disarming persons who are merely accused and are presumptively innocent. This transformation is accomplished through solely the application of Illinois law, not federal law.

In this case, the precise nature of Plaintiff's felony charge is irrelevant. Any felony charge, regardless of the seriousness, context or merit, triggers the same result under Defendant's interpretation. The only operative facts are: (1) the existence of a FOID card; and (2), the filing of a felony charge. This case, while technically an as-applied challenge, bears the

hallmarks of a facial challenge because the statute produces an unconstitutional result in every application involving §922(n).

Defendant argues that Plaintiff's complaint solely sought an injunction as to Plaintiff, and therefore broader relief is improper. But 735 ILCS 5/2-604(c) directly forecloses this argument:

> "Except in the case of default, the remedies requested from the court do not limit the remedies available. Except in the case of default, if a party seeks remedies other than those listed in the complaint or counterclaim, the court may, by proper order, and upon terms that may be just, protect the adverse party against prejudice by reason of surprise."

There is no suggestion that Defendant was held in default here. The trial court was therefore permitted to fashion appropriate relief. Defendant never claimed surprise. (Sup. R. pp. 18-19). This was not an amendment to the claims; it was the exercise of the trial court's authority to craft an appropriate remedy as a court of general jurisdiction as imbued by the Illinois Constitution. This is not an amendment of *claims*, it is a fashioning of remedies.

Moreover, counsel for the Defendant conceded to the trial court that it has the power to enter an injunction, such as it actually did. (Supp. R. 92)..

While counsel expressed policy disagreement with the scope of the injunction, Defendant never argued that the pleadings prevented such relief, and thus waived the point.

Regardless, if this Court affirms the practice of revoking FOID cards based solely on felony charges being filed is indeed unconstitutional, that holding alone will likely end the practice in this state. Once such conduct is deemed unconstitutional, qualified immunity would no longer protect individuals continuing the practice, and money damages liability would potentially follow in future cases that violated this holding. While monetary relief is inherently inadequate for the loss of constitutional rights, it remains a powerful deterrent to those who would destroy them. The injunction is less significant than the constitutional holding itself.

Contrary to Defendant's argument, Plaintiff does not concede that there are circumstances in which a person may be constitutionally disarmed merely because a felony charge has been filed, and nothing more, as is the current standard. Def. Br. at page 23. The same logic that prevented the City of Chicago from banning handguns outright prevents the State from disarming the presumed innocent simply because a charge has been filed. See *McDonald v. City of Chicago, Ill.*, 561 US 742 (U.S. 2010).

Policy preferences, even those that are well-intentioned, cannot override constitutional guarantees. The First Amendment does not permit suppression of unpopular speech (*Cohen v. California*, 403 U.S. 15 (1971); likewise, the Second Amendment does not permit total disarmament based solely on an accusation. If it did, then the outrages noted in *McDonald* might have been tolerable.

What is Constitutionally permissible, however, is what the United States Supreme Court recognized in *United States v. Rahimi,* 602 U.S. 680 (2024). The *Rahimi* Court explained,

> "When an individual has been found by a court to pose a credible threat to the physical safety of another, that individual may be temporarily disarmed consistent with the Second Amendment."

Id.

Illinois law already provides the mechanism for such individualized, constitutionally sound determinations. When the State believes that a particular person is a credible threat to the physical safety of another, such that temporary disarmament is appropriate, it need only file a motion requesting that as a bond condition. 720 ILCS 5/32-10(a-5). As long as the bond condition is imposed after a hearing that satisfies *Rahimi*, and allowing for notice and opportunity to be heard, a temporary disarmament is fully

constitutional. What is not Constitutional is merely pushing a button in a state database, thereby revoking a person's FOID card with no hearing and no opportunity to be heard, extending the application of §922(n) well beyond what 430 ILCS 65/8(n) ever intended. Such a continuous application renders 720 ILCS 5/32-10(a-5) superfluous. Illinois has every tool it needs to act within constitutional limits. The problem is not the State's lack of authority to disarm a person accused of a felony. The problem is the State's choice to bypass individualized judicial findings entirely and instead, impose a categorical, accusation-based disarmament, which could be and might well be run by an artificial intelligence, in a manner that involves little or no human intervention or thought and allows for repeat violations of the Second Amendment.

VII. REVOKING BRIGHT'S FOID VIOLATED THE SECOND AMENDMENT

Defendant, in its Brief (Def. Brief, p. 24), boldly stated, "As every federal court of appeals addressing similar issues has held, the Second Amendment's plain text and history do not prohibit the Illinois General Assembly from temporarily disarming individuals charged with felonies." No citation is given for Defendant's bold statement. There is a reason, likely that no federal appellate court has ever ruled on any such enactment of the

Illinois General Assembly. Likewise, no federal statute actually served to disarm anyone by prohibiting mere possession of a firearm or other weapon merely for being *charged*, but not convicted of a felony. As shown supra, there is a federal statute prohibiting *acquiring* additional arms or ammunition while charged with a felony, just as there is a federal statute that generally prohibits importing elephant ivory, but that does not prevent possessors from keeping what they already have. Rather, the federal statute, which Illinois goes well beyond by prohibiting mere possession of arms, is a position that federal law only reserves to those actually convicted, and even then not all felonies. We live in a system where we are presumed innocent of allegations against us, and that presumption carries with us until an actual conviction takes place.

VIII. THE ACTUAL BRUEN TEST

While after *District of Columbia v. Heller*, 554 U.S. 570 (2008), much of the judiciary, including this Court, simply applied the wrong standard to Second Amendment cases, the U.S. Supreme Court in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. ___ (2022), the U.S. Supreme Court made it clear that such interest balancing tests were inappropriate. The Court held: "When the Second Amendment's plain text covers an individual's conduct [here the right to bear arms], 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. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'"

A. First Step – Plain Text

For its purposes, the Defendant conflates the first and second *Bruen* tests. In step one of *Bruen*, it is easy to conclude that what is being denied to Plaintiff, a "firearm," is an "arm" within the meaning of the Second Amendment's text and that Plaintiff's "proposed course of conduct— possessing one at some location, any location permitted will do, for self defense"— falls within the Second Amendment's plain language, two points the Defendant never disputes.

Bruen, 597 U.S. at 32.

The Defendant argues only that "the people" in the Second Amendment excludes persons who have been accused (not convicted) of a felony, like Plaintiff because they are not members of the "law abiding" citizenry. But Plaintiff has never been proven, by any burden of proof, to have committed an actual crime, much less a felony, much less a common law felony, much less a crime of violence. And neither has anyone else who

has their FOID card invalidated only as a consequence of having been charged with a crime. Until a conviction takes place, a charge is only an allegation. Even leading presidential candidates, former FBI directors, state attorney generals, state's attorneys and actual peaceful protesters, from time to time, and for whatever reason, get *charged* with felonies. Which is likely why *Bruen* and *Heller* foreclose that argument because both recognized the "strong presumption" that the text of the Second Amendment confers an individual right to keep and bear arms that belongs to "all Americans," not an "unspecified subset." *Bruen*, 597 U.S. at 70 (quoting *District of Columbia v. Heller,* 554 U.S. 570, 581 (2008)).

As then-Judge Barrett's dissenting opinion in *Kanter v. Barr*, in which she persuasively explained that "all people have the right to keep and bear arms," though the legislature may constitutionally "strip certain groups of that right." 919 F.3d 437, 452 (7th Cir. 2019). Plaintiff passes the first *Bruen* test, as he is one of "the people" protected by the Amendment, and his course of conduct, merely possessing a firearm for lawful purposes like self defense fits into the plain language of the amendment. This leads us to the second *Bruen* test.

B. Second *Bruen* Step

Defendant suggests that Plaintiff Bright is not "responsible", and therefore could be properly excluded from Second Amendment protections. We know that is not true, as the U.S. Supreme Court clearly told us so. See United States v. Rahimi, 144 S. Ct. 1889, 1894 (U.S. 2024) ("Finally, the Court rejects the Government's contention that Rahimi may be disarmed simply because he is not "responsible."). That, and as Plaintiff's case shows, being charged with a felony does not require one to actually act irresponsibly or even unlawfully. Again, Plaintiff is and was a factually innocent man merely accused of wrongdoing.

Despite this actual innocence, Defendant also suggests that Plaintiff is not a law-abiding citizen, as a judge found probable cause to conclude that Plaintiff committed a felony. That might be an better argument, if the statute required the invalidation of FOID cards upon a court finding probable cause that a felony was committed, but it doesn't, and Plaintiff's FOID card wasn't. The prohibition is triggered by the mere filing of charges, information or indictment, nothing more.

Furthermore, as noted by the trial court, and not disputed by Defense counsel in this case, the "preliminary hearing" in question was not a "preliminary hearing" per se, but rather appears to have been a so called Gerstein hearing, an informal hearing with no evidence taken, and at least in

much of this state, no defense lawyer present, held within 48 hours of a warrantless arrest. See Gerstein v. Pugh, 420 U.S. 103 (1975)

But even if a preliminary hearing is what triggered the disability, as this Court noted, several times,

> "Indeed, probable cause does not even demand a showing that the belief that the suspect has committed a crime be more likely true than false."

People v. Jackson, 232 Ill. 2d 246, 261 (IL 2009); *citing People v. Wear*, 229 Ill.2d at 564, 323 Ill.Dec. 359, 893 N.E.2d 631, citing *People v. Jones*, 215 Ill.2d 261, 277, 294 Ill.Dec. 129, 830 N.E.2d 541 (2005).

It is hard to imagine any constitutional right so completely eviscerated, even if only temporarily, based on such a low standard as a probable cause finding, and as noted, even that is not what is required to trigger the statute.

That being said, in the words of the Defendant's trial court counsel, "…it's not important" for these individual case specific facts do not matter in a case like this. (Supp R p. 24, line 10). All that ultimately matters is that Plaintiff was charged with a felony, and, at least for a time, lost his FOID card as a result, period.

The phrase "law-abiding" is as expansive as it is vague. Who are "law-abiding" citizens in this context? Does it exclude those who have committed summary offenses or petty misdemeanors, which typically result in a ticket and a small fine? Clearly not.

The Supreme Court's references to "law-abiding" do not mean that every American who gets a traffic ticket is no longer among "the people" protected by the Second Amendment.

Perhaps, then, the category refers only to those who commit "real crimes" like felonies or felony-equivalents? At English common law, felonies were so serious they were punishable by estate forfeiture and even death.

4 William Blackstone, Commentaries on the Laws of England 54 (1769).

But today, felonies include a wide swath of crimes, some of which can seem, and in some cases are actually minor. And some misdemeanors seem serious. As the Supreme Court noted recently: "a felon is not always more dangerous than a misdemeanant." *Lange v. California*, 141 S. Ct. 2011, 2020 (2021) (cleaned up).

To preclude Plaintiff from possessing firearms, the Defendant must show that banning persons charged, not convicted, of a modern felony, "is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Bruen.* at 2127.

Historical tradition can be established by analogical reasoning, which "requires only that the government identify a well-established and representative historical analogue, not a historical twin." Id. at 2133. To be compatible with the Second Amendment, regulations targeting longstanding problems must be "distinctly similar" to a historical analogue. Id. at 2131. But "modern regulations that were unimaginable at the founding" need only be "relevantly similar" to one. Id. at 2132. Bruen offers two metrics that make historical and modern firearms regulations similar enough: "how and why the regulations burden a law-abiding citizen's right to armed self-defense." Id. at 2133.

As to the actual historical analogues required by *Bruen*, Defendant cites to three. Plaintiff will address each. None of them support Defendant's position.

1. There Was Allegedly No Right to Bail

Defendant's first argument is really no legal argument at all; and boils down to, in antiquity, many, maybe even most, persons awaiting trial for

serious charges were completely denied bail or other pretrial release, and that such persons could not keep their weapons with then in jail. No argument was made that there was any requirement for those bound over to empty their home of arms, or to hand any such arms as they went to jail. Just the common sense point that those actually in jail cannot take certain things with them, including firearms.

As to their being no bail, the institution of bail long predates the founding. The Constitution's prohibition on excessive bails is copied from the 1689 English Bill of Rights. Compare U.S. Const. Amend. VIII, with English Bill of Rights, 1689, 1 W.&M., c. 2 (Eng.). The Judiciary Act of 1789, adopted by the first Congress, governed federal bail for 176 years. Judiciary Act of 1789, ch. 20, 1 Stat. 73, 91 (1789). That law required courts to detain in capital cases but to set bail in all others. Id. Bail amounts could not be excessive but were otherwise discretionary. Id. The Defendant submitted no evidence that bail conditions ever prohibited firearms possession.

Congress first permitted gun restrictions as a pretrial release condition in 1984, too late to shed light on the Second Amendment's meaning. See Pub. L. 98-473, § 203, 98 Stat. 1976, 1977 (codified as

amended at 18 U.S.C. § 3142(c)(1)(B)(viii)); *Bruen*, 142 S.Ct. at 2154 n.28. But to this day, federal law does not invariably prohibit releases from possessing guns. Rather, persons under indictment are prohibited only from acquiring firearms not already in possession. 18 U.S.C. § 922(n).

2. **Undesirable Groups**

The trial court was well aware of the historical practice of barring certain "undesirable groups" arms. (Sup R 10). It is fair to say that there is likely a historical precedent to denying arms to just about every racial, ethnic and religious group in the English common law and the early American experience. These include Catholics, Protestants, Indians, Blacks, Asians, Italians and others. *District of Columbia v. Heller*, 554 U.S. 570 (2008). Some of these statutes were overtly discriminatory. Others were facially neutral, but apparently, at least in the beginning, only being discretionarily applied against the undesirable groups. See e.g. *Watson V. Stone*, 148 Fla. 516 (Fla. 1941) (Buford, J., Concurring). Research indicates that much of Illinois 20th century firearms restrictions fall into similar categories. Of course *Heller* teaches us, logically, such racist and otherwise discriminatory practices are not to be tolerated.

Defendant cites to this racist and immoral conduct to justify what it is arguing for here. (Def. Brief, p. 31). Such argument is offensive.

If it is merely Defendant's point that persons found to be actually dangerous can be disarmed; granted. *Rahimi* categorized this as a "credible threat." And nothing stops a court, or a legislature from authorizing a court, to, following a hearing, with a prior notice, and a lawyer, the elements of due process, from ordering those a court finds to be a credible threat, to be disarmed, once a sufficient finding by a sufficient burden of proof made. However, under the present statute, those charged with terrorism and mass murder are treated the same as a person whose check used to buy groceries bounced from an accounting error, or a whole host of regulatory felonies.

3. Surety Laws

Whatever the precise history of so called surety laws, as the Supreme Court said in *Rahimi:*

> "Taken together, the surety and going armed laws confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed."

United States v. Rahimi, 602 U.S. ___ (2024).

There is nothing in the record to suggest that any surety laws did, for example, prohibit someone from actually possessing or carrying a firearm once they posted the required bond. To the extent that cash bail, as

historically done in Illinois acted as a sort of bond, it has been legislatively abolished. See Pub. Act 101-652, § 10-255 (eff. Jan. 1, 2023) (adding 725 ILCS 5/110-1.5). Here, there is an absolute prohibition on possession of all firearms for all reasons, in all places, once charged with a felony, any felony.

Like made clear in *Rahimi,* the Second Amendment right may only be burdened once a defendant has been found to pose a credible threat to the physical safety of others. See *ibid*. Merely being charged, absent more, is not such a credible finding, it is an accusation that the Court ultimately, one way of the other, has to determine the truth of. While the Supreme Court did not impose a special due-process limitation in *Rahimi* for all Second Amendment cases, it did find that the due process protections required by federal law were important in connecting federal law to the historical tradition identified by the Supreme Court.

Plainly, the prohibition challenged here applies to anyone who has been charged, but not convicted in any court of a felony, any felony. This applies to the many alleged felons whose alleged crime or alleged conduct suggest they may well pose a "clear threat of physical violence to another." *Rahimi,* 144 S. Ct. at 1901. But it equally applies to alleged felons who have no history of or expected propensity towards violence, like Martha Stewart. A total ban on handguns works the same way, depriving both the harmless

and the dangerous, at least legally, to handguns. But this is not an option on the table. When assessing the burden on the Second Amendment right imposed by the surety and affray laws, the U.S. Supreme Court in *Rahimi* found it key that the laws "involved judicial determinations of whether a particular defendant likely would threaten or had threatened another with a weapon." Id. at 1902. This tracks the view of scholars who have linked these historical laws to a principle of disarming those who pose a threat of physical violence to another.[3] Here there is no judicial determination of anything. A paper is filed by an employee of the executive branch, and the

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[3] See, e.g., Joseph G.S. Greenlee, The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms, 20 Wyo. L. Rev. 249, 285 (2020) (highlighting these historical laws' focus on "persons guilty of committing violent crimes," "persons with violent tendencies," and other groups thought prone to commit violence); Jamie G. McWilliam, Dangerousness Standard in Felon Disarmament, 108 Minn. L. Rev. Headnotes 315, 324 (2024) ("[T]he danger feared by those drafting the historical disarmament laws was always physical violence."); F. Lee Francis, Defining Dangerousness: When Disarmament is Appropriate, 56 Tex. Tech L. Rev. 593, 597 (2024) (concluding that "violent conduct" is necessary for disarmament).

FOID card is *ipso facto* invalidated, once another employee of the executive branch learns of same. The former FOID holder is just notified of same after the fact. It is not a difficult or even expansive hearing that is suggested to satisfy *Rahimi*, is the crime serious, is it violent, and is there a credible threat based on what is known at the time of future physical violence to another. These type of hearings are conducted routinely in the DUI context by persons alleged to have driven drunk, *before* their driver's licenses are suspended. See 625 ILCS 5/2-118.1. Importantly, findings in these summary suspension hearings do not prejudice substantive DUI criminal matters. *People v. Moore*, 138 Ill.2d 162 (IL1990).

If the answer to these three questions is in the affirmative, then a court can enter an order at least temporarily disarming a person pre-trial. If not, then disarmament, even temporarily, is not allowed. The challenged statute does not comply. Notably, however, and as recognized by the trial court, "The Pre-Trial Fairness Act allows a court to impose conditions (including the loss of a FOID card, the surrender of firearms while the case is pending, as well as a multitude of other conditions). … Obviously in certain cases, individuals should be disarmed while pending trial. However, this should only occur, as at the time of the founding, after a determination has been made that the accused is a threat to society." (C344, paras. DD, EE).

"The [Defendant] must … justify its regulation by demonstrating that it is consistent with the nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command[]'" is the command of *Bruen.* It is not a suggestion, it is fundamental Constitutional law. Here, no such justification is made by Defendant. As such, 430 ILCS 64/8(n), as enforced by Defendant to persons charged, but not convicted of a felony offense, is unconstitutional under the Second Amendment as incorporated by the Fourteenth Amendment.

CONCLUSION

That Plaintiff Humbly requests that this Honorable Court AFFIRM the trial Court.

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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 pages or words 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 36 pages.

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CERTIFICATE OF FILING AND SERVICE

I certify that on December 1, 2025, I electronically filed the foregoing Brief of Plaintiff-Appellee with the Clerk of the Court for the Illinois Supreme Court by using the Odyssey eFileIL system.

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