No. 126153

IN THE SUPREME COURT
STATE OF ILLINOIS

	)	Petition for Leave to Appeal
	)	from the Appellate Court of
	)	Illinois,
THOMAS D. BROWN,	)	Third District, No. 03-18-0409
	)	
Petitioner- Appellant	)	There heard on Appeal from the
	)	Circuit Court of the Tenth
vs.	)	Judicial Circuit, Putnam County,
	)	Illinois
	)	Circuit No. 16-MR-13
DEPARTMENT OF ILLINOIS	)	Honorable Stephen A. Kouri,
STATE POLICE	)	Circuit Judge
Respondent-Appellee.	)	

APPELLANT'S OPENING BRIEF

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ORAL ARGUMENT REQUESTED

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NATURE OF CASE

Thomas D. Brown's FOID card was revoked by the Illinois State Police on July 11, 2016, due to him being convicted of misdemeanor domestic battery in Los Angeles County, California, on or about September 22, 2001, for an incident involving his then-wife Suzette "Suzie" Brown. The Circuit Court of Putnam County, Illinois, Tenth Judicial Circuit, awarded Mr. Brown a FOID card after finding he met the qualifications of the FOID statute. A divided Appellate Court reversed on the basis that his possession of the FOID card was contrary to federal law. No questions are raised regarding the pleadings.

ISSUES PRESENTED FOR REVIEW

I. WHETHER THOMAS BROWN HAD "CIVIL RIGHTS RESTORED" BY VIRTUE OF CALIFORNIA AUTOMATICALLY ALLOWING MISDEMEANANTS FIREARM POSSESSION TEN YEARS AFTER CONVICTION?

II. WHETHER THOMAS BROWN SHOULD BE GRANTED A FOID CARD BASED ON HIS AS-APPLIED SECOND AMENDMENT CHALLENGE WITHOUT HAVING TO WAIT INDEFINITELY ON A PARDON REQUEST?

STATEMENT OF JURISDICTION

On May 31, 2018, the Circuit Court of Putnam County ordered the Illinois State Police to issue Thomas D. Brown a FOID Card. The Illinois State Police, via the Illinois Attorney General Filed a Notice of Appeal. On April 30, 2020, the Appellate Court, with one Justice dissenting, reversed the Circuit Court's decision. A Petition For Rehearing was filed on May 19, 2020. A Modified Opinion Upon Denial of Rehearing was filed on June 8, 2020. On July 6, 2020, Thomas Brown filed a Petition For Leave to Appeal which was granted on September 30, 2020. Therefore, jurisdiction lies in this Court pursuant to Rule 315(a).

STATEMENT OF FACTS

A. Disqualifying Conviction

1. California Proceeding

Petitioner Thomas D. Brown held a valid FOID card for several years prior to July 2016. On or about September 22, 2001, Brown pled guilty to, and was convicted of, the misdemeanor offense of inflicting corporal injury on a spouse in California. (C-140), for an incident occurring on or about September 12, 2001. (C-155). The disqualifying conviction involved a charge titled "Infliction Corporal Injury of a Spouse," in violation of California Penal Code Section 273.5(A) in Los Angeles County, California cause No. INE02319-01. Mr. Brown testified at trial that he took a plea bargain to avoid continuing to sit in Los Angeles County jail after spending three (3) days there (R.14, 24). He recalled the fine in question was $500.00, compared to coming up with bail of $5,000.00 (bail was set at $50,000.00 (10% to apply)). People from his company encouraged him to take the offer so he could continue working. (R.14). He understood the matter involved court supervision after probation, which if he completed it would "never be seen of it again." (R8-9, 24-25). The offense was minor enough that he did not serve any further jail time. (R.10) Other conditions were three years probation

and completion of community service and anger management, all of which were completed successfully. (R.10) He was not told that his firearm rights would be affected by the conviction. (R. 27).

2. Underlying Incident

With respect to the disqualifying conviction, Thomas Brown testified that the incident in question resulted from an argument with his then wife Suzette "Suzie" Brown, that he did not intend to injure Suzie, and that she was not injured beyond some "minor road rash" when he dropped her in a parking lot and she did not seek medical attention. (R. 13-16). No gun was involved with this incident. (C-285.) Suzie Brown wrote a letter (C-53, C-285) detailing the incident, admitted by stipulation into evidence at trial (C286), that after he picked her up, she ended up crawling down his back. She was not injured, nor did she believe he intended to injure her. No weapon was involved in the incident. She rejected the judge's attempt to impose an order of protection. She also stated in the letter she did not believe he was a danger to himself or others, and that she believed he was not likely to act in a manner dangerous to public safety if his FOID card was restored.

B. Events Following the Conviction/Pre-Trial Proceedings

After the California Conviction, Brown continued to hold a valid FOID card for several years prior to July 2016. At some point prior to July 11, 2016, Brown tried to purchase a firearm from a federally licensed firearm dealer, which resulted in the Illinois State Police running a background check which discovered the California conviction. Brown was sent a letter dated July 11, 2016, revoking his FOID Card. (C-14-C-15). Brown filed a Petition For Administrative Review of Illinois State Police Revocation of Petitioner's Firearm Owner's Identification Card (FOID Card) on August 12, 2016. (C-7- C-15). Included with the Petition was a Notice of Claim of Unconstitutionality (C-16-18) which challenged the constitutionality of 18 U.S.C. § 922(g)(9) and 430 ILCS 65/10(c)(4)under the Second Amendment of the United States Constitution and the Illinois Constitution Article I, Section 22, respectively as applied to Mr. Brown. The Notice of Claim of Unconstitutionality was given to Putnam County State's Attorney Christina Judd Mennie, and the Illinois Attorney General, (C-19-C-20) and subsequently to the United States' Attorney's Office for the Central District of Illinois. (C-39). Both the Putnam County State's Attorney and the United States Attorney declined to participate in these proceedings.

The Illinois Attorney General filed a Motion to Dismiss (C-23-C-26) with a Memorandum of Law in Support of Respondent's Motion to Dismiss (C-27-C-36) on September 15, 2016. Thomas Brown filed a Response to Motion to Dismiss (C-39-C-53) on October 13, 2016, raising relief under the FOID Act (for purposes of preserving the issue) and an as-applied challenge per the Second Amendment to the United States Constitution and the Illinois Constitution.

The Circuit Court denied the Motion to Dismiss on March 3, 2017. (C-64-C-69). The Illinois Attorney General subsequently filed an Answer (C-71-C-82). As required by the ethical rules, Mr. Brown's counsel filed a Disclosure of Supplemental Authority (C-83-C-98) disclosing the recently-released decision in *People v. Heitmann*, 2017 IL App (3d) 160527, distinguishing *Heitmann* from the present case in that California law remove the prohibition against persons convicted of misdemeanor domestic battery ten (10) years after conviction. (C-83).

Trial was set for April 5, 2018, and the Attorney General filed Motion For Summary Judgment (C-105-C-107) along with a Memorandum of Law in Support of Respondent's Motion For Summary Judgment. (C-108-C-131). Although denying that requiring Brown was to seek a pardon from the governor of California was a perpetual ban, (C-125-C-126),

the Attorney General then stated on Page 19 of her Motion, "[i]t is Petitioner's responsibility to seek relief from California regardless of how much time and expense he may incur." (C-126). She further stated "The General Assembly and ISP also have no control over when and how the President of the United States or the California Governor issue pardons, and have no control over funding of relief options." (C-126). An appendix was attached to the Memorandum (C-132-C-188) Documents included within this appendix included: 1) Mr. Brown's Hazmat Endorsement, (C-143); 2) his Request for FOID Appeal (C-154) requesting to correct his record, with a handwritten statement (C-155) that Brown understood his sentence was court supervision after three years probation, and 3) what appears to be the Illinois State Police's policy manual on how California law treats loss of and restoration of firearms rights (C-161-C162). C-162 provides that rights are lost for misdemeanor crimes of domestic violence for a ten year period, which can be restored under California Penal Code sections 29805, 29855, and 29860.

Trial

The parties appeared at trial on April 5, 2018. (C-104). While the Attorney General characterized the hearing as a "substantial justice" hearing under 430 ILCS 65/10,

Mr. Brown's counsel made clear he believed the hearing was on Mr. Brown's Second Amendment as-applied challenge to the federal firearm ban. (R.4). Thomas Brown's Post-Hearing Position Paper noted he was preserving the issue for purposes of appeal for relief under the FOID statute (C-193).

Thomas Brown (Brown) testified at trial (R. 5). Brown was born on November 18, 1966. (R.5) Until the 2016 revocation of his FOID card, he possessed weapons beginning at 16 years of age (R. 18) when his father gave him his first gun. (R.22), including after he moved to Illinois 20-25 years before. (R.18). Mr. Brown testified that he had purchased the weapons contained within the State's March 12, 2018 letter, maintained them and was very familiar with them. (R. 22). Mr. Brown testified he wished to have his FOID card restored so he may target shoot, to hunt, and for protection. (R. 20-21).

Mr. Brown has been employed with his present employer, XPO Logistics, formally Conway Freight, since July 2004, and had driven truck for several years before this, and is certified to handle hazardous substances and drive a tanker. (R6-7).

Mr. Brown testified he has never been convicted of a felony, (R.7-8) nor has he ever used a firearm in a

dangerous manner to himself or others. (R.20). Besides the disqualifying conviction from California, Mr. Brown testified his significant legal history involves a misdemeanor assault conviction from Minnesota in 1988 (R. 26)(not 1997 as the Attorney General contended), a 2005 Bureau County DUI charge resulting in him successfully completing twelve months supervision (R26-27), and a 2005 citation from LaSalle County for battery involving a bar fight where charges were dropped, likely due to evidence Mr. Brown was defending himself (R.12). A letter from Sheriff Kevin Doyle dated August 10, 2016 noted that Mr. Brown had no criminal matters since moving to Putnam County seven (7) years before. (C-184, C-286)

Mr. Brown's current wife, Kari Brown, testified (R. 29) that although she had taken a firearms class for women, she learned much about guns and gun safety from Thomas Brown. (R. 30) Due to his current inability to possess firearms, this has negatively impacted her hunting/target shooting activities, ability to socialize with others, or support charities which may auction firearms. (R. 33)

Circuit Court Ruling

After briefing on the issue, the Circuit Court granted Mr. Brown a FOID card on May 31, 2018, noting that Mr.

Brown already had access to weapons in his home by virtue of his current wife, Kari Brown, possessing the same, and that the facts of the disqualifying conviction were disputed by the alleged victim, Suzette Brown. C-287.

Appellate Court Ruling

The State filed a Notice of Appeal. (C-299-C-300). A divided Appellate Court reversed, *Brown v. Illinois State Police*, 2020 IL App (3d) 180409. The majority opinion reversed the Circuit Court's decision on the basis that California, rather than Illinois, must restore Mr. Brown's civil rights. *Brown*, at ¶ 24. The majority further concluded that Mr. Brown could not pursue his Second Amendment as-applied challenge because he could still seek a pardon from the Governor of California. *Brown*, at ¶ 26.

In dissent, Justice Holdridge, found that Brown's civil rights had been restored by operation of law at the end of the ten (10) year period provided by California Penal Code § 12021(c)(1) (West 2001)(now codified as Cal. Penal Code § 29805(a) (West 2012)). As such, the dissent argued that the restoration by California statute was the "dispensation of forgiveness" contemplated by the decision in *Johnson v. Department of State Police*, 2020 IL 124213, and thus sufficiently trustworthy to possess a firearm. *Brown* at ¶ 33. The dissent concluded by noting that *People*

v. Heitmann, 2017 IL App (3d) 160527, heavily relied on by the majority, had been largely superceded by the *Johnson* decision. *Brown* at ¶35.

ARGUMENT

I. THOMAS BROWN HAD "CIVIL RIGHTS RESTORED" BY VIRTUE OF CALIFORNIA ALLOWING MISDEMEANANTS FIREARM POSSESSION TEN YEARS AFTER CONVICTION

Thomas Brown is entitled to relief under the Illinois FOID statute, 430 ILCS 65/10(c), et. seq. (West 2016). The Circuit Court, in granting Mr. Brown his FOID card, at least implicitly found that he had not been convicted of a forcible felony within the last 20 years, that Mr. Brown is not likely to act in a manner dangerous to public safety, and granting him relief was not contrary to public interest. The only ground in dispute is whether granting him a FOID card is "…contrary to federal law."

A. STANDARD OF REVIEW

Interpretation of a statute is a question of law this Court reviews *de novo*. *People v. Harris*, 203 Ill.2d 111, 116 (2003).

B. APPLICABLE STATE AND FEDERAL STATUTORY LAW PROVISIONS

1. Illinois law

430 ILCS 65/10 (c) provides in relevant part:

> (c) Any person prohibited from possessing a firearm under Sections 24-1.1 or 24-3.1 of the Criminal Code of 2012 or acquiring a Firearm Owner's Identification Card under Section 8 of this Act may apply to the Director of State Police or petition the circuit court in the

> county where the petitioner resides, whichever is applicable in accordance with subsection (a) of this Section, requesting relief from such prohibition and the Director or court may grant such relief if it is established by the applicant to the court's or Director's satisfaction that:
>
> (0.05) when in the circuit court, the State's Attorney has been served with a written copy of the petition at least 30 days before any such hearing in the circuit court and at the hearing the State's Attorney was afforded an opportunity to present evidence and object to the petition;
>
> (1) the applicant has not been convicted of a forcible felony under the laws of this State or any other jurisdiction within 20 years of the applicant's application for a Firearm Owner's Identification Card, or at least 20 years have passed since the end of any period of imprisonment imposed in relation to that conviction;
>
> (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;
>
> (3) granting relief would not be contrary to the public interest; and
>
> (4) granting relief would not be contrary to federal law.

Based on the testimony of Thomas Brown, Kari Brown, and letters from Putnam County Sheriff Kevin Doyle, and Suzie Brown, the evidence was essentially undisputed that Thomas Brown meets the first three (3) elements under the FOID Act, plus as the prevailing party, any doubts in the record in this regard must be resolved in his favor. The

question then becomes whether granting him a FOID card is "contrary to federal law."

2. Applicable Federal Law

Congress passed the Federal Gun Control Act ("FGCA") in 1968 to prevent firearms from falling within the hands of certain individuals deemed dangerous to the public or otherwise untrustworthy. An Amendment to the FGCA, Section 922(g)(9), was passed in 1996 to keep firearms from persons convicted of a misdemeanor crime of domestic violence. That Section provides in relevant part:

> The Gun Control Act makes it unlawful for any person "who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." 18 U.S.C. § 922(g)(9) (2015).
>
> The Gun Control Act defines " 'misdemeanor crime of domestic violence' " as:
>
> "(i) is a misdemeanor under Federal, State, or Tribal law; and (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim." 18 U.S.C. § 921(a)(33) (2015).

Section 921(a)(33)(B)(ii) of the FGCA, 18 U.S.C. § 921(a)(33)(B)(ii), states:

> A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(Emphasis Added).

3. California Law

California Penal Code §29805 (West 2012) provides that the right to possession of a firearm for those convicted of misdemeanor domestic battery in California Penal Code § 273.5 (West 2001) is restored after 10 years from the date of a conviction. California Penal Code §29855 (West 2012)provides that persons employed as peace officers or whose employment or livelihood requires them to be able to legally possess a firearm may petition the court for relief if they prove by a preponderance of evidence they are likely to use firearms in a safe and lawful manner.

C. THE ILLINOIS SUPREME COURT'S 2020 *JOHNSON* DECISION

In *Johnson v. Department of State Police*, 2020 IL 124213, this Court unanimously concluded that restoration

of firearms rights under the Illinois FOID statute, constitutes "civil rights restored" for purposes of federal law, and thus granting relief under the FOID statute is consistent with federal law. In so concluding, *Johnson* addressed an open question left by *Coram v. State of Illinois*, 2013 IL 113867, and effectively overruled several appellate court decisions, including the Third District's decision in *People v. Heitmann*, 2017 IL App (3d) 160527 that had held restoration of firearm rights was not "civil rights restored" for purposes of federal law.

D. THE THIRD DISTRICT IN *POURNARAS* PREVIOUSLY FOUND "RESTORATION OF RIGHTS" BY OPERATION OF LAW

The issue of whether firearms rights being "civil rights" for purposes of federal law having been resolved by the *Johnson* Court, the question then becomes what constitutes a "restoration" of those rights. In concluding that Thomas Brown did not have his firearm rights "restored," the appellate majority opinion failed to mention, much less reconcile, their decision in this cause with their prior opinion in *Pournaras v. People of the State of Illinois*, 2018 IL App. 3d 170051.

In *Pournaras*, the Petitioner, Kostantino "Gus" Pournaras, had felony convictions for burglary and theft, resulting in a sentence of probation and time served. ¶ 4

In reversing the trial court, the *Pournaras* Court, *citing United States v. Gillum*, 372 F. 3d 848, 861 (7th Cir. 2004) observed that upon completion of his sentence, Mr. Pournaras became eligible per the Ill. Const. 1970, art. XIII, § 1. and 730 ILCS 5/5-5-5(b) (West 2016), to hold public office and such right "…would be automatically restored upon completion of the defendant's sentence.". *Pounaras*, at ¶14. (Emphasis Added). The same conclusion was reached with respect to Mr. Pournaras being eligible to serve on a jury upon completion of felony probation. *Pounaras* at ¶15. Thus, the Court concluded that Mr. Pournaras had "civil rights restored" and ordered that Circuit Court direct the Illinois State Police to issue him a FOID card absent any intervening disqualifying event. *Pounaras* at ¶18.

Justices Carter and Lytton specially concurred in *Pournaras*, arguing that the decision was distinguishable from the Court's prior decision in *People v. Heitmann*, 2017 IL App (3d) 160527, on the basis that restoration of gun rights was not "civil rights restored" and thus the *Heitmann* petitioner had lost no civil rights and thus had no rights to restore. This portion of *Heitmann*, however, is no longer valid in light of *Johnson, at* ¶37, concluding that restoration of firearm rights does indeed constitute

"civil rights restored" as is the *Heitmann* conclusion that Illinois law does not provide a framework to restore gun rights. Heitmann,2017 IL App (3d) 160527 at ¶23.

Similar to Mr. Pournaras' civil rights of being able to hold public office and sit on a jury being automatically restored upon completion of his sentence, Mr. Brown's civil right to possess a firearm in California was automatically restored by said statute upon passage of time. Although the "civil rights restored" between *Pournaras* (right to hold office, serve on a jury), differ from the present case (restoration of the right to possess firearms), after the *Johnson* opinion, that difference is no longer relevant. As discussed by the appellate dissent, California Penal Code §29805 is the "dispensation of forgiveness" contemplated by the *Johnson* Court.

E. CALIFORNIA AUTOMATICALLY RESTORED BROWN'S FOID RIGHTS BY OPERATION OF LAW

1. California Law Provides a Dispensation of Forgiveness

The appellate majority opinion in this case concluded that Mr. Brown cannot have "civil rights restored" by the Circuit Court because such rights must be restored by the convicting jurisdiction, namely California. *Brown*, at ¶24. While the majority opinion cited *Johnson* at ¶26 for the proposition that the convicting jurisdiction must restore

"civil rights," it omitted other portions of that same paragraph describing what constituted "restoration" of "civil rights." *Johnson* described "civil rights as "a measure by which the government relieves an offender of some or all of the consequences of his conviction," and "…whether an offender's legal status has been altered by a state's dispensation of forgiveness." (further citations omitted). The majority opinion omitted any discussion of California Penal Code §29805 (formerly California Penal Code 12021(c)(1)), discussed above, providing that the right to possession of a firearm for those convicted of misdemeanor domestic battery in California is automatically restored after 10 years from the date of a conviction. See also (C-257)(even noting a reduction from a felony to a misdemeanor may provide relief under that statute); *Brown v. The Illinois State* Police, 2020 IL App (3d)1804999, dissenting opinion of Justice Holdridge at ¶ 33.

2. *Johnson* Foreclosed the Argument That California Did Not Restore Brown's Civil Rights

Although the appellate majority failed to reconcile their decision in the instant cause with the *Pournaras* decision, they briefly answered Justice Holdridge by stating in ¶ 24, footnote 2, by arguing that Brown had not

shown that firearm rights were "civil rights" for purposes of federal law or that California believes restoration of firearm rights constitute "civil rights restored" for purposes of federal law. The appellate majority's assertion that California law does not believe restoration of firearm rights is undercut by the Attorney General's assertion that Mr. Brown could possess firearms in California under California law but not federal law (C-120) *citing U.S. v. Chovan*, 735 F.3d 1127, 1130 (9th Circ. 2013) and that Mr. Brown would still need to petition the federal government to remove the federal disability (C-121), an argument no longer viable post-*Johnson*. Even were this correct, at a minimum California has removed its own prohibition, with Illinois removing any remaining federal prohibition by virtue of the FOID statute.

Although *Enos v. Holder*, 855 F. Supp. 2d 1088 (E.D. Cal. 2012) *aff'd*, 585 Fed. App'x 447 (9th Cir. 2014) concluded that the automatic restoration provisions of California did not constitute "civil rights restored," the *Johnson* Court unanimously rejected the same believing that *Enos* was poorly reasoned, *Johnson* at ¶ 48, and that *Dupont v. Nashua Police Dep't*, 113 A.3d 239 (N.H., 2015) had declined to follow it. *Johnson* at ¶ 49. Although *Johnson* distinguished *Enos* from that case based on the automatic

restoration provisions, unlike the *Enos* petitioner, Mr. Brown went through the Illinois restoration provision after the California prohibition was removed.

3. California law Provides the Avenue(s) for Relief But Federal Law Controls its Effect

Putting aside the appellate majority's and the Attorney General's argument that California Penal Code §29805 has no legal effect, the Illinois Supreme Court is not bound by the Ninth Circuit's interpretation of federal law *State Bank of Cherry v. CGB Enterprises*, 2013 IL 113836 ¶ 53 (Illinois Supreme Court not bound by federal circuit interpretation of federal law) and has concluded to the contrary regarding the meaning of "civil rights" in *Johnson*. Thus, while California law can provide the methods for misdemeanants (or felons) to resume possession of firearms, whether firearm rights are "civil rights" and whether they have been "restored" are neither questions of California law, nor Illinois law, but federal law. *Johnson* has already determined that firearm rights are "civil rights" for purposes of federal law and that the FOID statute reinstating them is "restoration" for purposes of federal law. Following *Johnson*, California's "dispensation of forgiveness" in California Penal Code §29805, providing such rights automatically back for misdemeanants after a

ten year period, is "restoration" for purposes of federal law. By analogy, the United States Supreme Court in *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985) recognized that while property rights are generally created by state law, the process by which an individual may be deprived of such is governed by the Due Process Clause of the United States Constitution, and cannot be defined by state procedures for deprivation.

F. A CONCLUSION THAT BROWN'S "CIVIL RIGHTS" WERE NOT "RESTORED" LEADS TO ARBITRARY RESULTS.

The majority appellate opinion, in neither finding that Mr. Brown's civil rights were restored under California law, nor allowing an as-applied challenge to proceed under the Second Amendment, (as discussed below), is inconsistent with the *Pournaras* Court's conclusion that the FOID statute should be construed to "..avoid an absurd application of the law" to avoid punishing minor offenders disproportionately to more serious offenders, *Pournaras* at ¶ 17, *citing Coram*, 2013 IL 113867 ¶ 5, or which raise doubts as to their validity *Pournaras* at ¶ 9.

In the *Heitmann* decision, that petitioner argued that the failure to find restoration of firearms rights constituted "civil rights restored," or allowance of a Second Amendment as-applied challenge, lead to the absurd

results in that less serious offenders were disproportionately punished. The *Heitmann* Court responded by stating that more severe offenders would have a tougher time passing the other hurdles of the FOID statute. *Heitmann*, at ¶¶ 27-28. Thirteen months after the *Heitmann* decision was issued, a more severe offender, Mr. Pournaras, did in fact receive his FOID card back.

By neither finding that the California statute restored Mr. Brown's gun rights (nor allowing Mr. Brown's as-applied Second Amendment challenge to go forward), the disparate results in this case are as follows: 1) Mr. Brown could possess firearms in the convicting jurisdiction, California, but not in Illinois (or, California could promise him his firearms rights back after ten (10) years, possibly knowing the federal government would be depriving him of the same); 2) Mr. Brown would have had "civil rights restored" had he been charged with a felony rather than misdemeanor domestic battery in this case (Justice Holdridge noting the charge here was a "wobbler" offense, *Brown*, at ¶32.) and 3) closely related to the second reason, as noted by this Court in *Coram*, had Mr. Brown committed a more severe offense or served a day in jail post-conviction, he would have been eligible to

receive his FOID card back, leading to knowledgeable offenders to purposely serve one day post-conviction.

II. A PERPETUAL BAN ON FIREARM POSSESSION BY MISDEMEANTS WHO POSE NO RISK TO THE GENERAL PUBLIC VIOLATES THE SECOND AMENDMENT

A. STANDARD OF REVIEW

The standard of review for interpretation of constitutional questions, is *de novo*. *People v. Hale*, 2013 IL 113140, ¶ 15 (further citations omitted.).

B. POSSIBLE ALTERNATE REMEDIES UNDER CALIFORNIA LAW

It does not appear that California has any similar provisions, for restoration of firearms for residents or non-residents convicted of certain offenses, including misdemeanor domestic battery, except for police officers or those required to legally possess firearms for purposes of employment. California Penal Code §29855. This is not surprising, particularly where restoration of gun rights is automatic after 10 years under California Penal Code § 29805. Expungement is not a viable option under California Penal Code § 1203.4 as the Attorney General (C-127) noted it does not qualify for restoration of FOID rights under 921(a)(33)(B)ii). Even assuming dismissal or vacation of a plea would be an option almost 20 years later, Section 1203.4(c)(2), provides that dismissal of the accusation or

information does not restore the right to possess a firearm. As such, in the event California Penal Code § 29805 has not already restored Mr. Brown's firearm rights for purposes of federal law, then the only possible remedy for Mr. Brown under California law would appear to be a gubernatorial pardon.

C. CORAM'S "OPEN QUESTION" REGARDING WHETHER NON-VIOLENT MISDEMEANTS MUST ATTEMPT TO SEEK A PARDON

In *Coram*, this Court, and specifically, the opinion of the concurring justices, left open the question of whether the state could require misdemeanants to seek a pardon prior to pursuing a Second Amendment claim. The concurrence framed the issue in ¶ 104, footnote 6 as follows:

> whether the state may burden the second amendment rights of a misdemeanant who poses no safety risk by requiring him to obtain a pardon before he may lawfully possess a firearm, and whether the state may permanently bar such a person from possessing firearms.

Although Justice Burke stated she was expressing no opinion on the issue, the wording of the issue ("no safety risk" and "permanently bar") strongly suggests the answer to this question by a majority of this Court is "no," yet the *Heitmann* and the *Brown* Courts concluded otherwise. U.S Supreme Court precedent as discussed in Section E, also

suggests the answer is "no." *Patsy v. Florida Board of Regents,* 457 U.S. 496 (1982) (exhaustion of administrative remedies is generally not required where constitutional rights are involved.)

D. INTERMEDIATE SCRUTINY APPLIES

Courts have applied an intermediate scrutiny standard in cases such as *Heller v. District of Columbia*, 670 F.3d 1244 (D.C.Cir.2011) ("Heller II ") in evaluating Second Amendment challenges by misdemeanants who have lost their gun privileges as a result of a conviction. Restrictions on gun ownership applying intermediate scrutiny "must be substantially related to an important governmental objective." *Heller II*, supra. The burden of proof is on the government. *Id.* The Illinois Supreme Court in *Coram v. State of Illinois*, 2013 IL 113867 (2013) ¶ 51, likewise concluded that a mere rational basis was not enough to sustain the government's burden. While keeping firearms out of the hands of dangerous domestic batterers is an important government objective, as *Coram* noted, Congress itself did not believe a perpetual ban was necessary to further this objective *Coram*, at ¶ 56. Mr. Brown respectfully submits that in the event he is not found to have "civil rights" restored within the meaning of federal

law, the intermediate scrutiny standard applies to the question of whether the government can force him to indefinitely wait while seeking a pardon prior to pursuing his federal and state as-applied constitutional challenge claims.

E. EXHAUSTION OF REMEDIES HAS GENERALLY NOT BEEN REQUIRED IN THE CONTEXT OF OTHER CONSTITUTIONAL CLAIMS

Although there does not appear much law on the whether a litigant must exhaust state remedies, or pursue a pardon, prior to litigating a Second Amendment claim, exhaustion of administrative remedies has generally not been required when bringing suit on other constitutional claims. The United States Supreme Court held in *Patsy v. Florida Board of Regents*, 457 U.S. 496 (1982) that a claimant claiming race and gender discrimination need not exhaust administrative remedies prior to pursuing a claim under 42 U.S.C. 1983 in federal court. A later precedent, *Felder v. Casey*, 487 U.S. 131 (1988), held that a litigant claiming he was beaten and arrested by police due to his race, was not required to comply with a state notice-of-claim provision, prior to bringing suit in state court. Illinois courts that have required exhaustion of state remedies involve cases claiming improper real estate assessments such as *Boughton Trucking and Materials, Inc.*

v. County of Will, 229 Ill. App.3d 576, 580 (3rd Dist. 1992). These cases, however, involve administrative procedures with certain legal standards and time limits, as opposed to purely discretionary decisions with no time limits. Cf. *Bowens v. Quinn*, 561 F.3d 671 (7th Cir. 2009)(no time limit on governor's decision to grant or deny pardon).

F. SEVERAL COURTS HAVE SUGGESTED IN DICTUM THAT A PERPETUAL BAN, VIA INDEFINITELY WAITING ON A PARDON, VIOLATES THE SECOND AMENDMENT

In *Coram v. State of Illinois*, 2013 IL 113867 (2013), the Petitioner, Jerry Coram filed an application for a FOID Card in 2009 which was denied by the Illinois State Police ("ISP") because he had been convicted of domestic battery in 1992 for slapping his live-in girlfriend in the face. In *Coram*, the petitioner had a substantial period of time as a law-abiding citizen from the 1992 incident until 2009. The total denial of a firearm was found unconstitutional under the Second Amendment of the United States Constitution as-applied to him by the Circuit Court, which finding was later vacated based on the Illinois Supreme Court decision avoiding the constitutional issue, based on the conclusion that relief for Coram was available under the FOID statute then in effect pre-2013. *Coram* at ¶ 53-54 cited with approval *Schrader v. Holder*, 704 F.3d 980

(D.C.Cir.2013), involving a 64-year-old veteran who was disqualified from ever possessing a firearm due to a "common law misdemeanor assault and battery" conviction roughly 40 years old, for the proposition that a perpetual ban raises serious constitutional issues, although *Schrader* did not preserve an as-applied challenge. Thus, the clear implication of *Coram* is that had the FOID Act not provided Jerry Coram relief, then the circuit courts must reach a petitioner's as-applied challenge.

Several federal courts, including *United States v. Skoien,* 614 F.3d 638, 642-44 (7th Cir. 2010) and *Schrader* (discussed above) and *United States v. Miller*, 588 F.3d 418 (7th Cir.2009) have all recognized that an as-applied Second Amendment challenge to the blanket federal ban on persons convicted of misdemeanor domestic violence is appropriate in particular cases. Like *Coram*, these cases have observed that Congress itself, by enacting Section 925 relief (which has not been funded since 1992) and NCIS grants, did not believe a perpetual ban on misdemeanor domestic batterers was necessary. *Miller* was cited by the *Coram* Court for the proposition that Congress' failure to fund Section 925 relief raises serious constitutional issues. *Coram*, at ¶ 50.

These courts have suggested that not only does such a perpetual, blanket ban flunk intermediate constitutional scrutiny, they further concluded that Congress itself has not suggested a ban would pass intermediate scrutiny (by allowing relief under Section 925 and the NCIS grants). *Skoien* itself noted a lifetime prohibition would raise constitutional questions. *Skoien*, 614 F.3d at 645. *Skoien* believed the risk of recidivism was the paramount consideration, citing three studies which showed the risk of re-offending over a three year period. *Skoien*, 614 F.3d at 644. As *Skoien* noted, where a domestic abuser has been law-abiding for several years and no longer poses a risk to family members, the initial ban is not justified. *Skoien*, 614 F.3d at 644. Mr. Brown possessed firearms with a FOID for card for approximately fifteen (15) years after the California conviction, or roughly five (5) times the length of the three year studies cited in *Skoien*.

The question of whether pardons could even apply to rights under either the First or Second Amendments did surface in the concurring opinion of Judge Alex Kozinski in *Fisher v. Kealoha*, 855 F.3d 1067 (9th Cir. 2017), Although he personally disagreed with the *Heller* decision finding an individual right to bear arms, Judge Kozinski noted the inconsistent treatment between the Second Amendment and

other constitutional rights, such, as for example, lifetime restriction on sex offenders' internet access under the First Amendment. Judge Kozinski observed that a right existing at the mercy of the state effectively does not exist:

> Hawaii's procedure for restoring Second Amendment rights is notably slender: The governor can pardon someone. But gubernatorial clemency is without constraint; as Blackstone put it, an executive's mercy springs from "a court of equity in his own breast." 4 William Blackstone, Commentaries *390. This unbounded discretion sits in uneasy tension with how rights function. A right is a check on state power, a check that loses its force when it exists at the mercy of the state. Government whim is the last refuge of a precarious right. And while Fisher's case gives us no occasion to seek better refuge, others will.
>
> In other contexts, we don't let constitutional rights hinge on unbounded discretion; the Supreme Court has told us, for example, that "[t]he First Amendment prohibits the vesting of such unbridled discretion in a government official." Forsyth County v. Nationalist Movement , 505 U.S. 123, 133, 112 S.Ct. 2395, 120 L.Ed.2d 101 (1992). Despite what some may continue to hope, the Supreme Court seems unlikely to reconsider Heller. The time has come to treat the Second Amendment as a real constitutional right. It's here to stay.

As such, Judge Kozinski suggested that requiring application for a pardon, particularly when there is no time limit to act, is itself unconstitutional under the Second Amendment.

G. REQUIRING A PARDON LEADS TO ARBITRARY RESULTS

The *Heitmann* rule requires less severe offenders, whose crimes were not severe enough to lose civil rights, to seek a purely discretionary, and unrestricted by time, gubernatorial pardon prior to pursuing a Second Amendment as-applied challenge. In *Johnson*, this Court sought to ameliorate the arbitrariness visited on minor offenders by recognizing that restoration of firearm rights indeed constitutes "civil rights restored" within the meaning of federal law (implicitly overruling *Heitmann's* conclusion to the contrary). Nevertheless, assuming Mr. Brown's firearm rights were not restored in California automatically ten years after his date of conviction (See Section I), and expungement not being an option (C-49, C-127, C-203), then requiring him to seek a pardon (which pardon must specifically authorize restoration of firearm rights (C-256)) he is being punished disproportionately compared to more serious offenders.

The *Heitmann* and *Brown* Courts did not answer for how long a litigant must (futilely) pursue a pardon. The Illinois Attorney General did offer an opinion on Page 19 of the Motion for Summary Judgment (C-126)stating "[i]t is Petitioner's responsibility to seek relief from California regardless of how much time and expense he may incur." Although the Illinois Attorney General did not come out

directly and say that there is no time limit for a governor to grant or deny a pardon, the Illinois Attorney General attempts to wash its hands of the situation by claiming "The General Assembly and ISP also have no control over when and how the President of the United States or the California Governor issue pardons, and have no control over funding of relief options." (C-126). Article V, Section 8 of the California Constitution places no time limit on the Governor of California to make any decision with respect to a pardon or other forms of clemency. For a pardon applicant, the worst possible result is actually not a denial but the pardon sitting indefinitely on a governor's desk with no action being taken whatsoever. The belief that a pardon can sit indefinitely on a governor's desk is totally at odds with *Coram's* citation to *United States v. Miller,* 588 F.3d 418 (7th Cir.2009) for the proposition that the failure to fund Section 925 relief raised serious constitutional issues. *Coram* at ¶ 50.

CONCLUSION

Petitioner Thomas Brown respectfully requests this Court hold that he had "civil rights restored" by virtue of California law automatically restoring his firearm rights ten years from the date of conviction, and thus, the

Circuit Court's granting his FOID card was "not contrary to federal law." In the alternative, he requests this Court hold that the blanket, effectively lifetime ban, on him possessing firearms under the Illinois FOID Act and the FGCA violates the Second Amendment of the United States Constitution, as well as Article I, Section 22 of the Illinois Constitution as applied in his particular case and to direct the ISP to issue him a FOID card.

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CERTIFICATE OF COMPLIANCE

I certify, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents containing the 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 35 pages.

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No. 126153

IN THE SUPREME COURT
STATE OF ILLINOIS

	) Petition for Leave to Appeal
	) from the Appellate Court of
	) Illinois,
THOMAS D. BROWN,	) Third District, No. 03-18-0409
	)
Petitioner- Appellant	) There heard on Appeal from the
	) Circuit Court of the Tenth
vs.	) Judicial Circuit, Putnam County,
	) Illinois
	) Circuit No. 16-MR-13
DEPARTMENT OF ILLINOIS	) Honorable Stephen A. Kouri,
STATE POLICE	) Circuit Judge
Respondent-Appellee.	)

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REPORT OF PROCEEDINGS

APRIL 5, 2018 HEARING

EXHIBITS

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2020 IL App (3d) 180409

Opinion filed April 30, 2020
Modified Opinion Upon Denial of Rehearing filed June 8, 2020

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2020

THOMAS BROWN,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Putnam County, Illinois.
Petitioner-Appellee,	)	
	)	
	)	
	)	Appeal No. 3-18-0409
v.	)	Circuit No. 16-MR-13
	)	
	)	
THE ILLINOIS STATE POLICE,	)	
	)	
Respondent-Appellant.	)	The Honorable
	)	Stephen A. Kouri,
	)	Judge, presiding.

JUSTICE CARTER delivered the judgment of the court, with opinion.
Presiding Justice Lytton concurred in the judgment and opinion.
Justice Holdridge dissented, with opinion.

OPINION

¶ 1 Petitioner, Thomas Brown, filed a petition in the trial court seeking relief from a decision of the Illinois State Police (ISP) revoking his Firearm Owners Identification (FOID) Card. After an evidentiary hearing, the trial court granted the petition and directed the ISP to issue Brown a FOID card. The ISP appeals. We reverse the trial court's judgment.

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¶ 2 I. BACKGROUND

¶ 3 In September 2001, Brown pled guilty to, and was convicted of, the misdemeanor offense of inflicting corporal injury on a spouse in California. He was sentenced to three years of probation and was required to pay a fine and to attend anger management counseling. The conviction stemmed from an incident where Brown had gotten into an argument with his then-wife, Suzie Brown; picked her up; and dropped her or let her fall over his back, causing her to get a "road rash." Brown and Suzie were later divorced in 2007 but remained on friendly terms.

¶ 4 For several years after the 2001 California conviction, Brown held a FOID card and owned and possessed firearms in Illinois, apparently without incident. In January 2013, Brown filed an application to renew his FOID card. When Brown was asked on the renewal application whether he had ever been convicted of domestic battery or a substantially similar offense (misdemeanor or felony), he checked "no." Brown's FOID card was later renewed.

¶ 5 At some point prior to or during July 2016, Brown tried to purchase a gun from a federally licensed firearms dealer. The ISP ran a background check on Brown for the purchase and learned of Brown's 2001 California conviction, which the ISP classified as being an "aggravated domestic battery[ ] or a substantially similar offense in another jurisdiction." The ISP revoked Brown's FOID card based upon that conviction and, in July 2016, sent Brown a letter notifying him of the revocation and directing him to turn over any guns in his possession to the police. See 430 ILCS 65/8(l) (West 2016) (authorizing the ISP to revoke a person's FOID card if the person has previously been convicted of a domestic battery, aggravated domestic battery, or a substantially similar offense in another jurisdiction). Brown complied. All of the guns that Brown turned over were manufactured outside the state of Illinois.

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¶ 6 In August 2016, the month after Brown had received the revocation notice, he filed a petition in the trial court under section 10 of the Firearm Owners Identification Card Act (FOID Act) (430 ILCS 65/10 (West 2016)) seeking relief from the ISP's decision revoking his FOID card. Among other things, Brown alleged in the petition that he was qualified under Illinois law to hold a FOID card, that issuing him a FOID card would not be contrary to federal law, and that certain portions of the FOID Act and of the federal Gun Control Act of 1968 (FGCA) (18 U.S.C. § 922(g)(9) (2012)) were unconstitutional as applied to him. The ISP opposed Brown's petition.

¶ 7 In April 2018, an evidentiary hearing was held on the petition. During the hearing, the parties presented the testimony of three witnesses and numerous pieces of documentary evidence, most of which were admitted into evidence by stipulation. In addition to establishing many of the facts set forth above, the evidence presented at the hearing can be summarized as follows.

¶ 8 Brown testified that he was 51 years old, worked as a truck driver, and lived in Putnam County. He had been working for the same employer for the past 14 years and was licensed to manage and transport hazardous materials. Brown had never been convicted of a felony but had been convicted of the domestic offense in California, which he referred to in his testimony as a domestic battery.

¶ 9 At the time of the September 2001 offense, Brown and his then-wife, Suzie, were driving a truck together as a team. A load that Brown and Suzie were supposed to pick up got canceled, and Brown and Suzie had to get a motel room in California. They had a few drinks at the bar and got into a little bit of an argument. Brown picked up Suzie and was carrying her in what he described as a "playful moment," and Suzie fell off of or down Brown's back and onto the ground causing Suzie to get a little bit of a "road rash" on her arm. The police were apparently

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called by someone, and they arrested Brown for battery. Brown sat in jail for three days waiting for his case to go before the court. Brown pled guilty to the offense because otherwise it would have cost him $5000 to bail out of jail so that he could fight the case and he was advised by the company that he worked for at the time to take the plea bargain. Brown's understanding of the plea agreement was that he was to be given court supervision and three years of probation. Brown later learned that he did not receive court supervision and that he was given a conviction instead. As a result of the plea, Brown also paid a fine of approximately $500 and performed community service work and anger management counseling but was not required to serve any postjudgment jail time. Brown did not remember being advised at the time of the plea that a guilty plea would affect his gun rights in any way. According to Brown, he did not intend to hurt Suzie when the incident happened and, to the best of his knowledge, Suzie was not hurt as a result of the incident, other than her road rash. Suzie did not seek medical treatment and did not call the police. There were no other incidents of domestic violence between Brown and Suzie during their relationship. A letter from Suzie was admitted into evidence during the hearing, which gave a similar account of what had occurred during the 2001 California incident and stated Suzie's opinion that Brown was not likely to act in a manner dangerous to public safety if his FOID card was reinstated and that reinstating Brown's FOID card would not be contrary to the public interest.

¶ 10 As for his other criminal encounters, Brown stated that he was placed on court supervision in 2005 for a driving under the influence charge in Bureau County and that he successfully completed the period of supervision. Brown was also charged in 2005 with battery for a bar fight he had gotten into in LaSalle County. Brown stated on the witness stand, however, that he was merely defending himself during that incident and that the charge was later dropped.

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Brown also had a conviction in 1988 in Minnesota when he was a minor for assault in the fifth degree. A letter from the Bureau County sheriff was admitted into evidence during the hearing, which indicated that Brown had lived in Bureau County for the past seven years without incident.

¶ 11 With regard to his fitness to possess a firearm, Brown testified that he had held a FOID card for about 20 or 25 years and that he had owned firearms since he was about 16 years old. Brown had used firearms in the past for hunting and for target practice and had never used a firearm in a dangerous manner to himself or to others. Brown stated on his FOID card renewal application that he had never been convicted of domestic battery because he thought that he had received court supervision on the California offense, not because he was trying to deny that something had happened. Brown wanted to be able to possess firearms for protection so that he could teach his current wife, who was a FOID card holder, how to use weapons and for hunting purposes. Brown learned that there was a problem with his FOID card when he went to purchase another gun and his purchase was denied. When Brown's FOID card was revoked, he turned all of his and his wife's firearms over to the sheriff's department. Brown's wife later took possession of the firearms with court permission and now kept those firearms in her and Brown's home.

¶ 12 Brown had never tried to have his California domestic violence conviction vacated or expunged and had never applied for a governor's pardon for the California offense. Other than filing this lawsuit, Brown had done nothing else to try to get his California conviction removed from his record.

¶ 13 Brown's current wife, Kari Brown, testified at the hearing in support of Brown's petition. Kari stated that she and Brown had been married since 2010. Before Brown's FOID card was

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revoked, he participated in target practice with Kari and taught her how to clean a firearm. Kari had always known Brown to be careful with firearms and had no reason to believe that Brown would act contrary to the public interest if he was granted a FOID card or that he would be a danger to public safety.

¶ 14 Lieutenant Jennifer Radosevic testified at the petition hearing on behalf of the ISP and stated that she was the assistant bureau chief in the ISP's Firearms Services Bureau. Radosevic described the FOID card process in general and the role of the Firearms Services Bureau in the FOID card process and in the firearm purchase process. According to Radosevic, the ISP revoked Brown's FOID card because of a federal and state firearm prohibitor—Brown's September 2001 California conviction of inflicting corporal injury on a spouse. When Radosevic was asked about Brown's reply on his FOID card renewal application that he had never been convicted of a domestic battery or similar offense, Radosevic stated that Brown's answer to that question was clearly incorrect. Radosevic noted that a person could have his FOID card application denied or his FOID card revoked for providing false information on a FOID card application and could also be charged with perjury. During Radosevic's testimony, a copy of Brown's FOID card renewal application and certain other ISP records were admitted into evidence as business records of the ISP.

¶ 15 After all of the evidence had been presented, the trial court took the case under advisement and gave the parties time to file written closing arguments. The following month, in May 2018, after the written closing arguments had been submitted, the trial court issued a one-page written ruling granting Brown's petition. In the ruling, the trial court stated that it was granting the petition based upon the "unique circumstances presented herein, including the fact that guns [were] lawfully in the home of [Brown], with the approval of the State." The trial court

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noted in its ruling that the " 'conviction' entered years ago in the [California] domestic battery case [had] been disputed by the alleged victim." As part of its ruling, the trial court directed the ISP to issue Brown a FOID card. The ISP appealed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, the ISP argues that the trial court erred in granting Brown's section 10 petition and in directing the ISP to issue Brown a FOID card. In support of that argument, the ISP asserts first that the trial court did not have the authority to grant Brown section 10 relief because doing so was contrary to federal law since Brown was prohibited from possessing a firearm under federal law and did not qualify for an exception to the federal firearm prohibition. Second, and in the alternative, the ISP asserts that trial court should not have granted Brown section 10 relief because the manifest weight of the evidence presented at the hearing showed that Brown was likely to act in a manner dangerous to public safety and that granting Brown relief would be contrary to the public interest. Third, and also in the alternative, the ISP contends that Brown's as-applied constitutional challenge in this case should not be considered by this court because it is premature since Brown has never pursued any of the other available avenues of relief, such as a pardon or expungement. For all of the reasons stated, the ISP asks that we reverse the trial court's judgment.

¶ 18 Brown argues that the trial court's ruling was proper and should be upheld. In support of that argument, Brown asserts first that the trial court correctly granted his petition and correctly directed the ISP to issue him a FOID card because (1) section 10(c)(4) of the FOID Act and section 922(g)(9) of the FGCA are unconstitutional as applied to him; (2) he was not required under the law to pursue a pardon or other administrative remedy before bringing his as-applied constitutional challenge; and (3) the trial court's decision, which Brown characterizes as a grant

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of his as-applied constitutional challenge, was supported by ample evidence showing that Brown was not likely to act in a manner dangerous to public safety and that granting Brown's petition would not be contrary to the public interest. Second, and in the alternative, Brown asserts that the trial court correctly granted Brown's petition because Brown was entitled to relief under the FOID Act and because granting Brown relief was not contrary to federal law. In making that assertion, Brown contends that he qualified for an exception to the federal firearm prohibition because the trial court restored Brown's civil rights when it determined in the section 10 proceeding in this case that Brown should be allowed to possess a firearm. Brown recognizes that his contention in that regard has been rejected by the various districts of the Illinois Appellate Court that have ruled upon this issue, including this district (see, *e.g.*, *People v. Heitmann*, 2017 IL App (3d) 160527, ¶¶ 20-22 (rejecting the petitioner's argument on appeal that the trial court granting the petitioner his FOID card constituted civil rights restored for the purpose of the exception under federal law to the firearm prohibition)), but makes the argument, nonetheless, to preserve the issue for any possible subsequent appeals.[1] For all of the reasons set forth, Brown asks, albeit somewhat implicitly, that we affirm the trial court's ruling, granting Brown's petition and directing the ISP to issue Brown a FOID card.

¶ 19 The issue raised in this appeal potentially presents both questions of fact and questions of law. As to the questions of fact, we give deference to the trial court's factual findings, which were made after an evidentiary hearing, and will not reverse those findings unless they are against the manifest weight of the evidence. See *Eychaner v. Gross*, 202 Ill. 2d 228, 251 (2002).

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[1] After the appeal in this case was filed and oral arguments were heard, the supreme court issued its decision in *Johnson v. Department of State Police*, 2020 IL 124213. In *Johnson*, the supreme court held that for the purpose of the federal firearms prohibition exception (1) gun rights were civil rights and (2) gun rights restored through a section 10 proceeding constituted civil rights revoked and restored when the prior disqualifying conviction took place in Illinois. See *Johnson*, 2020 IL 124213, ¶ 30.

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As to the questions of law, however, we apply a *de novo* standard of review. See *O'Neill v. Director of Illinois Department of State Police*, 2015 IL App (3d) 140011, ¶ 21.

¶ 20 Under section 10 of the FOID Act, a person whose FOID card has been revoked because of a prior conviction of domestic battery, aggravated domestic battery, or a substantially similar offense in another jurisdiction may petition the trial court for a hearing on the revocation. 430 ILCS 65/10(a) (West 2016). At the hearing, the trial court must determine whether substantial justice has been done. *Id.* § 10(b). If the trial court finds that substantial justice has not been done, it will direct the ISP to issue a FOID card to the petitioner. *Id.* The trial court may not grant relief, however, unless the petitioner has proven the following four requirements to the trial court's satisfaction: (1) that the petitioner has not been convicted of a forcible felony within 20 years of the petitioner's FOID card application or at least 20 years has passed since the end of any period of imprisonment imposed in relation to such a conviction; (2) that the circumstances regarding a criminal conviction (where applicable), the petitioner's criminal history, and the petitioner's reputation are such that the petitioner is not likely to act in a manner that would be dangerous to public safety; (3) that granting relief would not be contrary to the public interest; and (4) that granting relief would not be contrary to federal law. *Id.* § 10(c). As the fourth requirement indicates and as the statute itself separately notes, the trial court may not grant relief to the petitioner if the petitioner is prohibited from obtaining, possessing, or using a firearm under federal law. *Id.* § 10(b), (c); *Johnson*, 2020 IL 124213, ¶¶ 18-19; *Heitmann*, 2017 IL App (3d) 160527, ¶ 12; *People v. Frederick*, 2015 IL App (2d) 140540, ¶¶ 28, 31-34; *Baumgartner v. Greene County State's Attorney's Office*, 2016 IL App (4th) 150035, ¶¶ 25-30; *Odle v. Department of State Police*, 2015 IL App (5th) 140274, ¶¶ 25-33; see also *Coram v. State of Illinois*, 2013 IL 113867, ¶ 101 (Burke, J., specially concurring, joined by Freeman, J.) (stating

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in the special concurring opinion that the 2013 amendments to the FOID Act make clear that the trial court no longer has the authority to grant relief under section 10 if the trial court concludes that the applicant would be in violation of federal law if he or she were to possess a firearm); *Coram*, 2013 IL 113867, ¶¶ 123-24 (Theis, J. dissenting, joined by Garman, J.) (making a similar statement in the dissenting opinion).

¶ 21 Under the applicable federal law in this case—the FGCA—a person who has been convicted in any court of a misdemeanor crime of domestic violence is prohibited from possessing a firearm. See 18 U.S.C. § 922(g)(9) (2012) (prohibiting possession "in or affecting commerce"). The FGCA defines a "misdemeanor crime of domestic violence" as an offense that is a misdemeanor under federal, state, or tribal law and that has as an element the use or attempted use of physical force or the threatened use of a deadly weapon committed by a current or former spouse, parent, or guardian of the victim (or other specified relationship to the victim). *Id.* § 921(a)(33)(A). For an offense to qualify as a misdemeanor crime of domestic violence under the FGCA, the existence of a domestic relationship between the offender and the victim does not have to be a required element of the offense. *Heitmann*, 2017 IL App (3d) 160527, ¶ 18. Thus, a conviction of simple battery will constitute a misdemeanor crime of domestic violence under the FGCA if the victim of the offense was the offender's spouse or child. *Id.*

¶ 22 The FGCA provides a limited exception to the federal prohibition on firearm possession for those persons who have been convicted of a misdemeanor crime of domestic violence. See 18 U.S.C. § 921(a)(33)(B)(ii) (2012); *Heitmann*, 2017 IL App (3d) 160527, ¶¶ 19, 25, 29. Pursuant to that exception, a person will not be considered to have been convicted of a misdemeanor crime of domestic violence (for the purpose of the federal firearm prohibition) if the misdemeanor conviction has been expunged or set aside or if the offender has been pardoned or

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has had his civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights for such an offense), unless such a pardon, expungement, or restoration of civil rights expressly provides that the offender may not ship, transport, possess, or receive firearms. 18 U.S.C. § 921(a)(33)(B)(ii) (2012); *Heitmann*, 2017 IL App (3d) 160527, ¶¶ 19, 25, 29.

¶ 23 In the present case, after having reviewed the record of the trial court proceedings, we find that the trial court erred when it granted Brown's section 10 petition. The crime of which Brown was convicted in California in 2001 clearly qualifies as a misdemeanor crime of domestic violence. See 18 U.S.C. § 921(a)(33)(A) (2012); *Heitmann*, 2017 IL App (3d) 160527, ¶ 18. It does not appear that Brown disputes that portion of the determination. Therefore, unless the limited exception under the FGCA applies, Brown is prohibited from possessing a firearm under federal law. See 18 U.S.C. § 922(g)(9) (2012); *Heitmann*, 2017 IL App (3d) 160527, ¶¶ 19, 25, 29.

¶ 24 The exception cannot apply in this case, however, because Brown's California conviction was never expunged or set aside, Brown was never pardoned for that conviction, and Brown never had his civil rights revoked and restored in California as a result of that conviction. See 18 U.S.C. § 921(a)(33)(B)(ii) (2012); *Johnson*, 2020 IL 124213, ¶ 26 (recognizing that the law of the convicting jurisdiction controls whether civil rights have been restored); *Heitmann*, 2017 IL App (3d) 160527, ¶¶ 19, 25, 29. Although Brown claims that the trial court granting him relief under the FOID Act constitutes civil rights revoked and restored under the federal statutory exception and our supreme court has recently held that the right to keep and bear arms is a civil right for purposes of that exception, the exception still does not apply to Brown here because

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Brown has not shown that he had his civil rights revoked and restored in California—the convicting jurisdiction. See *Johnson*, 2020 IL 124213, ¶ 26.[2]

¶ 25 It must be concluded, therefore, that Brown did not qualify for the limited exception under the FGCA (see 18 U.S.C. § 921(a)(33)(B)(ii) (2012); *Heitmann*, 2017 IL App (3d) 160527, ¶¶ 19, 25, 29) and that the trial court erred in granting Brown's section 10 petition. Having so determined, we need not rule upon the ISP's other assertions in support of its position.

¶ 26 In addition, although Brown asks this court to rule upon his as-applied constitutional challenge to section 10(c)(4) of the FOID Act and section 922(g)(9) of the FGCA, this court has already ruled in *Heitmann* that such a challenge is premature where, as here, the petitioner still has other remedies available to him to obtain relief, such as a pardon or expungement. See *Heitmann*, 2017 IL App (3d) 160527, ¶¶ 36, 40.

¶ 27 III. CONCLUSION

¶ 28 For the foregoing reasons, we reverse the judgment of the circuit court of Putnam County.

¶ 29 Reversed.

¶ 30 JUSTICE HOLDRIDGE, dissenting.

¶ 31 The majority concludes that, although our supreme court has recently held that the right to keep and bear arms is a civil right for purposes of the limited exception provided under the FGCA (*Johnson*, 2020 IL 124213, ¶ 37; 18 U.S.C. § 921(a)(33)(B)(ii) (2012)), Brown cannot meet this

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[2] As noted in the previous footnote, in *Johnson*, the supreme court held, among other things, that gun rights were civil rights for the purpose of the federal firearms prohibition in a case where the prior disqualifying conviction took place in Illinois. See *Johnson*, 2020 IL 124213, ¶ 30. Contrary to the assertion of the dissent in this case, respondent has not shown that California (the convicting jurisdiction) has held that gun rights were civil rights or that the removal and automatic restoration of gun rights alone, and no other rights, satisfied the civil rights restored provision for the purpose of the federal firearms prohibition.

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exception because he did not have his gun rights revoked and restored in California. I respectfully disagree with this finding for the following reasons.

¶ 32 On September 22, 2001, Brown was convicted of a misdemeanor in California for inflicting corporal injury to a spouse. See Cal. Penal Code § 273.5(a) (West 2001) (this statute is designated in California as a "wobbler," where a defendant can be charged and punished with either a misdemeanor or a felony). He was sentenced to a period of three years' probation, 78 hours of anger management counseling, and $443 in fines. Brown successfully completed his probation and his anger management counseling and paid his fines.

¶ 33 A conviction for inflicting corporal injury to a spouse subjected Brown to a firearm prohibition, which revoked his eligibility to possess a firearm for 10 years from the date of his conviction, specifically, until September 22, 2011. See Cal. Penal Code § 12021(c)(1) (West 2001) (now codified as Cal. Penal Code § 29805(a) (West 2012)). Thus, after the 10-year revocation period expired, Brown's right to possess a firearm was automatically restored by operation of California law. See *id.* This restoration of Brown's gun rights changed his legal status by means of the state's dispensation of forgiveness and demonstrated that, despite his conviction, he was sufficiently trustworthy to possess a firearm. See *Johnson*, 2020 IL 124213, ¶ 26. As such, it is evident that Brown's gun rights were, in fact, revoked and restored in California.

¶ 34 Therefore, I would find that the trial court's order granting Brown's section 10 petition was not against the manifest weight of the evidence as the record demonstrated (1) that he was not convicted of a forceable felony, (2) neither his criminal history nor his reputation indicated that he would act in a manner dangerous to public safety, (3) granting relief was not contrary to public policy, and (4) granting relief was not contrary to federal law because Brown met the FGCA

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exception as his gun rights were revoked and restored in California. See 430 ILCS 65/10(c) (West 2016); 18 U.S.C. § 921(a)(33)(B)(ii) (2012).

¶ 35 As a final matter, I note the majority's strenuous reliance on *Heitmann*, 2017 IL App (3d) 160527, ¶ 21 (holding that "gun rights" were not the type of "civil rights" contemplated under the FGCA). Much of that opinion on the issue of restoration of civil rights has been rendered obsolete given our supreme court's recent decision in *Johnson*.

¶ 36 For the foregoing reasons, I would affirm the trial court's judgment.

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No. 3-18-0409

Cite as:	*Brown v. Illinois State Police*, 2020 IL App (3d) 180409
Decision Under Review:	Appeal from the Circuit Court of Putnam County, No. 16-MR-13; the Hon. Stephen A. Kouri, Judge, presiding.
Attorneys for Appellant:	Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and Katelin B. Buell, Assistant Attorney General, of counsel), for appellant.
Attorneys for Appellee:	James R. Angel, of Princeton, for appellee.

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(430 ILCS 65/10) (from Ch. 38, par. 83-10)
Sec. 10. Appeal to director; hearing; relief from firearm prohibitions.
(a) Whenever an application for a Firearm Owner's Identification Card is denied, whenever the Department fails to act on an application within 30 days of its receipt, or whenever such a Card is revoked or seized as provided for in Section 8 of this Act, the aggrieved party may appeal to the Director of State Police for a hearing upon such denial, revocation or seizure, unless the denial, revocation, or seizure was based upon a forcible felony, stalking, aggravated stalking, domestic battery, any violation of the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, or the Cannabis Control Act that is classified as a Class 2 or greater felony, any felony violation of Article 24 of the Criminal Code of 1961 or the Criminal Code of 2012, or any adjudication as a delinquent minor for the commission of an offense that if committed by an adult would be a felony, in which case the aggrieved party may petition the circuit court in writing in the county of his or her residence for a hearing upon such denial, revocation, or seizure.
(b) At least 30 days before any hearing in the circuit court, the petitioner shall serve the relevant State's Attorney with a copy of the petition. The State's Attorney may object to the petition and present evidence. At the hearing the court shall determine whether substantial justice has been done. Should the court determine that substantial justice has not been done, the court shall issue an order directing the Department of State Police to issue a Card. However, the court shall not issue the order if the petitioner is otherwise prohibited from obtaining, possessing, or using a firearm under federal law.
(c) Any person prohibited from possessing a firearm under Sections 24-1.1 or 24-3.1 of the Criminal Code of 2012 or acquiring a Firearm Owner's Identification Card under Section 8 of this Act may apply to the Director of State Police or petition the circuit court in the county where the petitioner resides, whichever is applicable in accordance with subsection (a) of this Section, requesting relief from such prohibition and the Director or court may grant such relief if it is established by the applicant to the court's or Director's satisfaction that:
(0.05) when in the circuit court, the State's

Attorney has been served with a written copy of the petition at least 30 days before any such hearing in the circuit court and at the hearing the State's Attorney was afforded an opportunity to present evidence and object to the petition;

(1) the applicant has not been convicted of a

forcible felony under the laws of this State or any other jurisdiction within 20 years of the applicant's application for a Firearm Owner's Identification

Card, or at least 20 years have passed since the end of any period of imprisonment imposed in relation to that conviction;

(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;

(3) granting relief would not be contrary to the

public interest; and

(4) granting relief would not be contrary to federal

law.

(c-5) (1) An active law enforcement officer employed by a unit of government, who is denied, revoked, or has his or her Firearm Owner's Identification Card seized under subsection (e) of Section 8 of this Act may apply to the Director of State Police requesting relief if the officer did not act in a manner threatening to the officer, another person, or the public as determined by the treating clinical psychologist or physician, and as a result of his or her work is referred by the employer for or voluntarily seeks mental health evaluation or treatment by a licensed clinical psychologist, psychiatrist, or qualified examiner, and:
(A) the officer has not received treatment

involuntarily at a mental health facility, regardless of the length of admission; or has not been voluntarily admitted to a mental health facility for more than 30 days and not for more than one incident within the past 5 years; and

(B) the officer has not left the mental institution

against medical advice.

(2) The Director of State Police shall grant expedited relief to active law enforcement officers described in paragraph (1) of this subsection (c-5) upon a determination by the Director that the officer's possession of a firearm does not present a threat to themselves, others, or public safety. The Director shall act on the request for relief within 30 business days of receipt of:
(A) a notarized statement from the officer in the

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form prescribed by the Director detailing the circumstances that led to the hospitalization;

(B) all documentation regarding the admission,

evaluation, treatment and discharge from the treating licensed clinical psychologist or psychiatrist of the officer;

(C) a psychological fitness for duty evaluation of

the person completed after the time of discharge; and

(D) written confirmation in the form prescribed by

the Director from the treating licensed clinical psychologist or psychiatrist that the provisions set forth in paragraph (1) of this subsection (c-5) have been met, the person successfully completed treatment, and their professional opinion regarding the person's ability to possess firearms.

(3) Officers eligible for the expedited relief in paragraph (2) of this subsection (c-5) have the burden of proof on eligibility and must provide all information required. The Director may not consider granting expedited relief until the proof and information is received.
(4) "Clinical psychologist", "psychiatrist", and "qualified examiner" shall have the same meaning as provided in Chapter I of the Mental Health and Developmental Disabilities Code.
(c-10) (1) An applicant, who is denied, revoked, or has his or her Firearm Owner's Identification Card seized under subsection (e) of Section 8 of this Act based upon a determination of a developmental disability or an intellectual disability may apply to the Director of State Police requesting relief.
(2) The Director shall act on the request for relief within 60 business days of receipt of written certification, in the form prescribed by the Director, from a physician or clinical psychologist, or qualified examiner, that the aggrieved party's developmental disability or intellectual disability condition is determined by a physician, clinical psychologist, or qualified to be mild. If a fact-finding conference is scheduled to obtain additional information concerning the circumstances of the denial or revocation, the 60 business days the Director has to act shall be tolled until the completion of the fact-finding conference.
(3) The Director may grant relief if the aggrieved party's developmental disability or intellectual disability is mild as determined by a physician, clinical psychologist, or qualified examiner and it is established by the applicant to the Director's satisfaction that:
(A) granting relief would not be contrary to the

public interest; and

(B) granting relief would not be contrary to federal

law.

(4) The Director may not grant relief if the condition is determined by a physician, clinical psychologist, or qualified examiner to be moderate, severe, or profound.
(5) The changes made to this Section by this amendatory Act of the 99th General Assembly apply to requests for relief pending on or before the effective date of this amendatory Act, except that the 60-day period for the Director to act on requests pending before the effective date shall begin on the effective date of this amendatory Act.
(d) When a minor is adjudicated delinquent for an offense which if committed by an adult would be a felony, the court shall notify the Department of State Police.
(e) The court shall review the denial of an application or the revocation of a Firearm Owner's Identification Card of a person who has been adjudicated delinquent for an offense that if committed by an adult would be a felony if an application for relief has been filed at least 10 years after the adjudication of delinquency and the court determines that the applicant should be granted relief from disability to obtain a Firearm Owner's Identification Card. If the court grants relief, the court shall notify the Department of State Police that the disability has been removed and that the applicant is eligible to obtain a Firearm Owner's Identification Card.
(f) Any person who is subject to the disabilities of 18 U.S.C. 922(d)(4) and 922(g)(4) of the federal Gun Control Act of 1968 because of an adjudication or commitment that occurred under the laws of this State or who was determined to be subject to the provisions of subsections (e), (f), or (g) of Section 8 of this Act may apply to the Department of State Police requesting relief from that prohibition. The Director shall grant the relief if it is established by a preponderance of the evidence that the person will not be likely to act in a manner dangerous to public safety and that granting relief would not be contrary to the public interest. In making this determination, the Director shall receive evidence concerning (i) the circumstances regarding the firearms disabilities from which relief is sought; (ii) the petitioner's mental health and criminal history records, if any; (iii) the petitioner's reputation, developed at a minimum through character witness statements, testimony, or other character evidence; and (iv) changes in the petitioner's condition or circumstances since the disqualifying events relevant to the relief sought. If relief is granted under this subsection or by order of a court under this Section, the Director shall as soon as practicable but in no case later than 15 business days, update, correct, modify, or remove the person's record in any database that the Department of State

Police makes available to the National Instant Criminal Background Check System and notify the United States Attorney General that the basis for the record being made available no longer applies. The Department of State Police shall adopt rules for the administration of this Section.
(Source: P.A. 98-63, eff. 7-9-13; 99-29, eff. 7-10-15; 99-78, eff. 7-20-15.)

§921. Definitions

(a) As used in this chapter—

(1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means—

(A) any explosive, incendiary, or poison gas—

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless—

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either

(aa) the case was tried by a jury, or

(bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(34) The term "secure gun storage or safety device" means—

(A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device;

(B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or

(C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.

§922. Unlawful acts

(a) It shall be unlawful—

(1) for any person—

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that—

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person—

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who [2] has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person—

(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) who has been adjudicated as a mental defective or who has been committed to a mental institution;

(5) who, being an alien—

(A) is illegally or unlawfully in the United States; or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));

(6) who has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence,

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to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(h) It shall be unlawful for any individual, who to that individual's knowledge and while being employed for any person described in any paragraph of subsection (g) of this section, in the course of such employment—

(1) to receive, possess, or transport any firearm or ammunition in or affecting interstate or foreign commerce; or

(2) to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

(i) It shall be unlawful for any person to transport or ship in interstate or foreign commerce, any stolen firearm or stolen ammunition, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(j) It shall be unlawful for any person to receive, possess, conceal, store, barter, sell, or dispose of any stolen firearm or stolen ammunition, or pledge or accept as security for a loan any stolen firearm or stolen ammunition, which is moving as, which is a part of, which constitutes, or which has been shipped or transported in, interstate or foreign commerce, either before or after it was stolen, knowing or having reasonable cause to believe that the firearm or ammunition was stolen.

(k) It shall be unlawful for any person knowingly to transport, ship, or receive, in interstate or foreign commerce, any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered or to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered and has, at any time, been shipped or transported in interstate or foreign commerce.

(l) Except as provided in section 925(d) of this chapter, it shall be unlawful for any person knowingly to import or bring into the United States or any possession thereof any firearm or ammunition; and it shall be unlawful for any person knowingly to receive any firearm or ammunition which has been imported or brought into the United States or any possession thereof in violation of the provisions of this chapter.

§925. Exceptions: Relief from disabilities

(a)(1) The provisions of this chapter, except for sections 922(d)(9) and 922(g)(9) and provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

(2) The provisions of this chapter, except for provisions relating to firearms subject to the prohibitions of section 922(p), shall not apply with respect to (A) the shipment or receipt of firearms or ammunition when sold or issued by the Secretary of the Army pursuant to section 4308 of title 10 before the repeal of such section by section 1624(a) of the Corporation for the Promotion of Rifle Practice and Firearms Safety Act, and (B) the transportation of any such firearm or ammunition carried out to enable a person, who lawfully received such firearm or ammunition from the Secretary of the Army, to engage in military training or in competitions.

(3) Unless otherwise prohibited by this chapter, except for provisions relating to firearms subject to the prohibitions of section 922(p), or any other Federal law, a licensed importer, licensed manufacturer, or licensed dealer may ship to a member of the United States Armed Forces on active duty outside the United States or to clubs, recognized by the Department of Defense, whose entire membership is composed of such members, and such members or clubs may receive a firearm or ammunition determined by the Attorney General to be generally recognized as particularly suitable for sporting purposes and intended for the personal use of such member or club.

(4) When established to the satisfaction of the Attorney General to be consistent with the provisions of this chapter, except for provisions relating to firearms subject to the prohibitions of section 922(p), and other applicable Federal and State laws and published ordinances, the Attorney General may authorize the transportation, shipment, receipt, or importation into the United States to the place of residence of any member of the United States Armed Forces who is on active duty outside the United States (or who has been on active duty outside the United States within the sixty day period immediately preceding the transportation, shipment, receipt, or importation), of any firearm or ammunition which is (A) determined by the Attorney General to be generally recognized as particularly suitable for sporting purposes, or determined by the Department of Defense to be a type of firearm normally classified as a war souvenir, and (B) intended for the personal use of such member.

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(5) For the purpose of paragraph (3) of this subsection, the term "United States" means each of the several States and the District of Columbia.

(b) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector who is indicted for a crime punishable by imprisonment for a term exceeding one year, may, notwithstanding any other provision of this chapter, continue operation pursuant to his existing license (if prior to the expiration of the term of the existing license timely application is made for a new license) during the term of such indictment and until any conviction pursuant to the indictment becomes final.

(c) A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Attorney General may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter, who makes application for relief from the disabilities incurred under this chapter, shall not be barred by such disability from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Attorney General grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.

(d) The Attorney General shall authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the firearm or ammunition—

(1) is being imported or brought in for scientific or research purposes, or is for use in connection with competition or training pursuant to chapter 401 of title 10;

(2) is an unserviceable firearm, other than a machinegun as defined in section 5845(b) of the Internal Revenue Code of 1986 (not readily restorable to firing condition), imported or brought in as a curio or museum piece;

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1986 and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms, except in any case where the Attorney General has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled; or

(4) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition.

The Attorney General shall permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection.

(e) Notwithstanding any other provision of this title, the Attorney General shall authorize the importation of, by any licensed importer, the following:

(1) All rifles and shotguns listed as curios or relics by the Attorney General pursuant to section 921(a)(13), and

(2) All handguns, listed as curios or relics by the Attorney General pursuant to section 921(a)(13), provided that such handguns are generally recognized as particularly suitable for or readily adaptable to sporting purposes.

(f) The Attorney General shall not authorize, under subsection (d), the importation of any firearm the importation of which is prohibited by section 922(p).

(Added Pub. L. 90–351, title IV, §902, June 19, 1968, 82 Stat. 233; amended Pub. L. 90–618, title I, §102, Oct. 22, 1968, 82 Stat. 1224; Pub. L. 98–573, title II, §233, Oct. 30, 1984, 98 Stat. 2991; Pub. L. 99–308, §105, May 19, 1986, 100 Stat. 459; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–649, §2(c), (f)(2)(C), (E), Nov. 10, 1988, 102 Stat. 3817, 3818; Pub. L. 101–647, title XXII, §2203(b), (c), Nov. 29, 1990, 104 Stat. 4857; Pub. L. 104–106, div. A, title XVI, §1624(b)(3), Feb. 10, 1996, 110 Stat. 522; Pub. L. 104–208, div. A, title I, §101(f) [title VI, §658(d)], Sept. 30, 1996, 110 Stat. 3009–314, 3009–372; Pub. L. 104–294, title VI, §607(c), Oct. 11, 1996, 110

Stat. 3511; Pub. L. 107–296, title XI, §1112(f)(6), Nov. 25, 2002, 116 Stat. 2276; Pub. L. 108–174, §1(3), Dec. 9, 2003, 117 Stat. 2481.)

Amendment of Section

Pub. L. 100–649, §2(f)(2)(C), (E), Nov. 10, 1988, 102 Stat. 3818, as amended by Pub. L. 105–277, div. A, §101(h) [title VI, §649], Oct. 21, 1998, 112 Stat. 2681–480, 2681–528; Pub. L. 108–174, §1(1), (3), Dec. 9, 2003, 117 Stat. 2481; Pub. L. 113–57, §1, Dec. 9, 2013, 127 Stat. 656, provided that, effective 35 years after the 30th day beginning after Nov. 10, 1988, subsection (a) of this section is amended by striking "and provisions relating to firearms subject to the prohibitions of section 922(p)" in par. (1), striking ", except for provisions relating to firearms subject to the prohibitions of section 922(p)," in par. (2), and striking "except for provisions relating to firearms subject to the prohibitions of section 922(p)," in pars. (3) and (4) and subsection (f) of this section is repealed.

References in Text

Section 4308 of title 10 before the repeal of such section by section 1624(a) of the Corporation for the Promotion of Rifle Practice and Firearms Safety Act, referred to in subsec. (a)(2)(A), means section 4308 of Title 10, Armed Forces, prior to repeal by section 1624(a)(1) of Pub. L. 104–106, div. A, title XVI, Feb. 10, 1996, 110 Stat. 522.

Section 5845(b) of the Internal Revenue Code of 1986, referred to in subsec. (d)(2), is classified to section 5845(b) of Title 26, Internal Revenue Code.

Section 5845(a) of the Internal Revenue Code of 1986, referred to in subsec. (d)(3), is classified to section 5845(a) of Title 26.

Amendments

2002—Subsecs. (a), (c) to (f). Pub. L. 107–296, which directed amendment of this section by substituting "Attorney General" for "Secretary" wherever appearing, was executed by making the substitution wherever appearing in subsecs. (a)(4) and (c) to (f), by not making the substitution for "Secretary of the Army" in subsec. (a)(2), and by substituting "Attorney General" for "Secretary of the Treasury" in subsec. (a)(3), to reflect the probable intent of Congress.

1996—Subsec. (a)(1). Pub. L. 104–208 inserted "sections 922(d)(9) and 922(g)(9) and" after "except for".

Subsec. (a)(2)(A). Pub. L. 104–106 inserted "before the repeal of such section by section 1624(a) of the Corporation for the Promotion of Rifle Practice and Firearms Safety Act" after "section 4308 of title 10".

Subsec. (a)(5). Pub. L. 104–294 substituted "For the purpose of paragraph (3)" for "For the purpose of paragraphs (3) and (4)".

1990—Subsec. (a)(1). Pub. L. 101–647, §2203(b), inserted "possession," before "or importation".

Subsec. (c). Pub. L. 101–647, §2203(c), substituted "regarding the disability" for "regarding the conviction" and "barred by such disability" for "barred by such conviction" and struck out "by reason of such a conviction" after "incurred under this chapter".

1988—Subsec. (a). Pub. L. 100–649, §2(c)(1), inserted ", except for provisions relating to firearms subject to the prohibitions of section 922(p)," after "chapter" in pars. (1) to (4).

Subsec. (f). Pub. L. 100–649, §2(c)(2), added subsec. (f).

1986—Subsec. (c). Pub. L. 99–308, §105(1), substituted "is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition" for "has been convicted of a crime punishable by imprisonment for a term exceeding one year (other than a crime involving the use of a firearm or other weapon or a violation of this chapter or of the National Firearms Act)" and "shipment, transportation, or possession of firearms, and" for "shipment, or possession of firearms and incurred by reason of such conviction, and" and inserted provision that any person whose application for relief has been denied may file for judicial relief of such denial and that the court may admit additional evidence to avoid a miscarriage of justice.

Subsec. (d). Pub. L. 99–308, §105(2)(A), (B), (D), in provision preceding par. (1) substituted "shall authorize" for "may authorize" and struck out "the person importing or bringing in the firearm or ammunition establishes to the satisfaction of the Secretary that" after "thereof if", and in provision following par. (4) substituted "shall permit" for "may permit".

Subsec. (d)(2). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Subsec. (d)(3). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

Pub. L. 99–308, §105(2)(C), inserted "except in any case where the Secretary has not authorized the importation of the firearm pursuant to this

paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled".

1984—Subsec. (e). Pub. L. 98–573 added subsec. (e).

1968—Subsec. (a). Pub. L. 90–618 redesignated existing provisions as par. (1), made minor changes in phraseology, and added pars. (2) to (5).

Subsec. (b). Pub. L. 90–618 added licensed collectors to the enumerated list of licensees.

Subsec. (c). Pub. L. 90–618 substituted "imposed by Federal laws with respect to the acquisition, receipt, transfer, shipment, or possession of firearms and" for "under this chapter", "to act in a manner dangerous to public safety" for "to conduct his operations in an unlawful manner," and "licensed importer, licensed manufacturer, licensed dealer, or licensed collector" for "licensee".

Subsec. (d). Pub. L. 90–618 made minor changes in phraseology, subjected ammunition to the authority of the Secretary in text preceding par. (1), substituted "section 5845(b)" for "section 5848(2)" in par. (2), substituted "section 5845(a)" for "section 5848(1)" and "excluding surplus military firearms" for "and in the case of surplus military firearms is a rifle or shotgun" in par. (3), inserted "or ammunition" after "the firearm" in par. (4), and authorized the Secretary to permit the importation of ammunition for examination and testing in text following par. (4).

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–296 effective 60 days after Nov. 25, 2002, see section 4 of Pub. L. 107–296, set out as an Effective Date note under section 101 of Title 6, Domestic Security.

Effective Date of 1996 Amendment

Amendment by Pub. L. 104–106 effective on the earlier of the date on which the Secretary of the Army submits a certification in accordance with section 5523 of [former] Title 36, Patriotic Societies and Observances, or Oct. 1, 1996, see section 1624(c) of Pub. L. 104–106, set out as a note under section 4316 of Title 10, Armed Forces.

Effective Date of 1988 Amendment; Sunset Provision

Amendment by section 2(c) of Pub. L. 100–649 effective 30th day beginning after Nov. 10, 1988, and amendment by section 2(f)(2)(C), (E) effective 35

years after such effective date, see section 2(f) of Pub. L. 100–649, as amended, set out as a note under section 922 of this title.

Effective Date of 1986 Amendment

Amendment by Pub. L. 99–308 applicable to any action, petition, or appellate proceeding pending on May 19, 1986, see section 110(b) of Pub. L. 99–308, set out as a note under section 921 of this title.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–573 effective 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98–573, set out as a note under section 1304 of Title 19, Customs Duties.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90–618 effective Dec. 16, 1968, except subsecs. (a)(1) and (d) effective Oct. 22, 1968, see section 105 of Pub. L. 90–618, set out as a note under section 921 of this title.

(a) Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant, or the mother or father of his or her child, corporal injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars ($6,000) or by both that fine and imprisonment.

(b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(c) As used in this section, "traumatic condition" means a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force. For purposes of this section, "strangulation" and "suffocation" include impeding the normal breathing or circulation of the blood of a person by applying pressure on the throat or neck.

(d) For the purpose of this section, a person shall be considered the father or mother of another person's child if the alleged male parent is presumed the natural father under Sections 7611 and 7612 of the Family Code.

(e) (1) Any person convicted of violating this section for acts occurring within seven years of a previous conviction under subdivision (a), or subdivision (d) of Section 243, or Section 243.4, 244, 244.5, or 245, shall be punished by imprisonment in a county jail for not more than one year, or by imprisonment in the state prison for two, four, or five years, or by both imprisonment and a fine of up to ten thousand dollars ($10,000).

(2) Any person convicted of a violation of this section for acts occurring within seven years of a previous conviction under subdivision (e) of Section 243 shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to ten thousand dollars ($10,000), or by both that imprisonment and fine.

(f) If probation is granted to any person convicted under subdivision (a), the court shall impose probation consistent with the provisions of Section 1203.097.

(g) If probation is granted, or the execution or imposition of a sentence is suspended, for any defendant convicted under subdivision (a) who has been convicted of any prior offense specified in subdivision (e), the court shall impose one of the following conditions of probation:

(1) If the defendant has suffered one prior conviction within the previous seven years for a violation of any offense specified in subdivision (e), it shall be a condition thereof, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 15 days.

(2) If the defendant has suffered two or more prior convictions within the previous seven years for a violation of any offense specified in subdivision (e), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 60 days.

(3) The court, upon a showing of good cause, may find that the mandatory imprisonment required by this subdivision shall not be imposed and shall state on the record its reasons for finding good cause.

(h) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, consistent with the terms of probation imposed pursuant to Section 1203.097, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(i) Upon conviction under subdivision (a), the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the

court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

(a) (1) In any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice, determines that a defendant should be granted the relief available under this section, the defendant shall, at any time after the termination of the period of probation, if he or she is not then serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense, be permitted by the court to withdraw his or her plea of guilty or plea of nolo contendere and enter a plea of not guilty; or, if he or she has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and, in either case, the court shall thereupon dismiss the accusations or information against the defendant and except as noted below, he or she shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted, except as provided in Section 13555 of the Vehicle Code. The probationer shall be informed, in his or her probation papers, of this right and privilege and his or her right, if any, to petition for a certificate of rehabilitation and pardon. The probationer may make the application and change of plea in person or by attorney, or by the probation officer authorized in writing. However, in any subsequent prosecution of the defendant for any other offense, the prior conviction may be pleaded and proved and shall have the same effect as if probation had not been granted or the accusation or information dismissed. The order shall state, and the probationer shall be informed, that the order does not relieve him or her of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or for contracting with the California State Lottery Commission.

(2) Dismissal of an accusation or information pursuant to this section does not permit a person to own, possess, or have in his or her custody or control any firearm or prevent his or her conviction under Chapter 2 (commencing with Section 29800) of Division 9 of Title 4 of Part 6.

(3) Dismissal of an accusation or information underlying a conviction pursuant to this section does not permit a person prohibited from holding public office as a result of that conviction to hold public office.

(4) This subdivision shall apply to all applications for relief under this section which are filed on or after November 23, 1970.

(b) Subdivision (a) of this section does not apply to any misdemeanor that is within the provisions of Section 42002.1 of the Vehicle Code, to any violation of subdivision (c) of Section 286, Section 288, subdivision (c) of

Section 288a, Section 288.5, or subdivision (j) of Section 289, any felony conviction pursuant to subdivision (d) of Section 261.5, or to any infraction.

(c) (1) Except as provided in paragraph (2), subdivision (a) does not apply to a person who receives a notice to appear or is otherwise charged with a violation of an offense described in subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle Code.

(2) If a defendant who was convicted of a violation listed in paragraph (1) petitions the court, the court in its discretion and in the interests of justice, may order the relief provided pursuant to subdivision (a) to that defendant.

(d) A person who petitions for a change of plea or setting aside of a verdict under this section may be required to reimburse the court for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the court not to exceed one hundred fifty dollars ($150), and to reimburse the county for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the county board of supervisors not to exceed one hundred fifty dollars ($150), and to reimburse any city for the actual costs of services rendered, whether or not the petition is granted and the records are sealed or expunged, at a rate to be determined by the city council not to exceed one hundred fifty dollars ($150). Ability to make this reimbursement shall be determined by the court using the standards set forth in paragraph (2) of subdivision (g) of Section 987.8 and shall not be a prerequisite to a person's eligibility under this section. The court may order reimbursement in any case in which the petitioner appears to have the ability to pay, without undue hardship, all or any portion of the costs for services established pursuant to this subdivision.

(e) (1) Relief shall not be granted under this section unless the prosecuting attorney has been given 15 days' notice of the petition for relief. The probation officer shall notify the prosecuting attorney when a petition is filed, pursuant to this section.

(2) It shall be presumed that the prosecuting attorney has received notice if proof of service is filed with the court.

(f) If, after receiving notice pursuant to subdivision (e), the prosecuting attorney fails to appear and object to a petition for dismissal, the prosecuting attorney may not move to set aside or otherwise appeal the grant of that petition.

(g) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of

subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, paragraph (1) of subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, or 830.95, subdivision (a) of former Section 12100, as that section read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, Section 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29855 or 29860.

(a) Any person employed as a peace officer described in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment or livelihood is dependent on the ability to legally possess a firearm, who is subject to the prohibition imposed by Section 29805 because of a conviction under Section 273.5, 273.6, or 646.9, may petition the court only once for relief from this prohibition.

(b) The petition shall be filed with the court in which the petitioner was sentenced. If possible, the matter shall be heard before the same judge who sentenced the petitioner.

(c) Upon filing the petition, the clerk of the court shall set the hearing date and shall notify the petitioner and the prosecuting attorney of the date of the hearing.

(d) Upon making each of the following findings, the court may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise grant relief from the prohibition as the court deems appropriate:

(1) Finds by a preponderance of the evidence that the petitioner is likely to use a firearm in a safe and lawful manner.

(2) Finds that the petitioner is not within a prohibited class as specified in Section 29815, 29820, 29825, or 29900, or subdivision (a) or (b) of Section 29800, and the court is not presented with any credible evidence that the petitioner is a person described in Section 8100 or 8103 of the Welfare and Institutions Code.

(3) Finds that the petitioner does not have a previous conviction under Section 29805, no matter when the prior conviction occurred.

(e) In making its decision, the court shall consider the petitioner's continued employment, the interest of justice, any relevant evidence, and the totality of the circumstances. The court shall require, as a condition of granting relief from the prohibition under Section 29805, that the petitioner agree to participate in counseling as deemed appropriate by the court. Relief from the prohibition shall not relieve any other person or entity from any liability that might otherwise be imposed. It is the intent of the Legislature that courts exercise broad discretion in fashioning appropriate relief under this section in cases in which relief is warranted. However, nothing in this section shall be construed to require courts to grant relief to any particular petitioner. It is the intent of the Legislature to permit persons who were convicted of an offense specified in Section 273.5, 273.6, or 646.9 to seek relief from the prohibition imposed by Section 29805.

(730 ILCS 5/5-5-5) (from Ch. 38, par. 1005-5-5)
Sec. 5-5-5. Loss and Restoration of Rights.
(a) Conviction and disposition shall not entail the loss by the defendant of any civil rights, except under this Section and Sections 29-6 and 29-10 of The Election Code, as now or hereafter amended.
(b) A person convicted of a felony shall be ineligible to hold an office created by the Constitution of this State until the completion of his sentence.
(c) A person sentenced to imprisonment shall lose his right to vote until released from imprisonment.
(d) On completion of sentence of imprisonment or upon discharge from probation, conditional discharge or periodic imprisonment, or at any time thereafter, all license rights and privileges granted under the authority of this State which have been revoked or suspended because of conviction of an offense shall be restored unless the authority having jurisdiction of such license rights finds after investigation and hearing that restoration is not in the public interest. This paragraph (d) shall not apply to the suspension or revocation of a license to operate a motor vehicle under the Illinois Vehicle Code.
(e) Upon a person's discharge from incarceration or parole, or upon a person's discharge from probation or at any time thereafter, the committing court may enter an order certifying that the sentence has been satisfactorily completed when the court believes it would assist in the rehabilitation of the person and be consistent with the public welfare. Such order may be entered upon the motion of the defendant or the State or upon the court's own motion.
(f) Upon entry of the order, the court shall issue to the person in whose favor the order has been entered a certificate stating that his behavior after conviction has warranted the issuance of the order.
(g) This Section shall not affect the right of a defendant to collaterally attack his conviction or to rely on it in bar of subsequent proceedings for the same offense.
(h) No application for any license specified in subsection (i) of this Section granted under the authority of this State shall be denied by reason of an eligible offender who has obtained a certificate of relief from disabilities, as defined in Article 5.5 of this Chapter, having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when the finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses, unless:
(1) there is a direct relationship between one or

more of the previous criminal offenses and the specific license sought; or

(2) the issuance of the license would involve an

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unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

In making such a determination, the licensing agency shall consider the following factors:
(1) the public policy of this State, as expressed in

Article 5.5 of this Chapter, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses;

(2) the specific duties and responsibilities

necessarily related to the license being sought;

(3) the bearing, if any, the criminal offenses or

offenses for which the person was previously convicted will have on his or her fitness or ability to perform one or more such duties and responsibilities;

(4) the time which has elapsed since the occurrence

of the criminal offense or offenses;

(5) the age of the person at the time of occurrence

of the criminal offense or offenses;

(6) the seriousness of the offense or offenses;
(7) any information produced by the person or

produced on his or her behalf in regard to his or her rehabilitation and good conduct, including a certificate of relief from disabilities issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified in the certificate; and

(8) the legitimate interest of the licensing agency

in protecting property, and the safety and welfare of specific individuals or the general public.

(i) A certificate of relief from disabilities shall be issued only for a license or certification issued under the following Acts:
(1) the Animal Welfare Act; except that a certificate

of relief from disabilities may not be granted to provide for the issuance or restoration of a license under the Animal Welfare Act for any person

convicted of violating Section 3, 3.01, 3.02, 3.03, 3.03-1, or 4.01 of the Humane Care for Animals Act or Section 26-5 or 48-1 of the Criminal Code of 1961 or the Criminal Code of 2012;

(2) the Illinois Athletic Trainers Practice Act;
(3) the Barber, Cosmetology, Esthetics, Hair

Braiding, and Nail Technology Act of 1985;

(4) the Boiler and Pressure Vessel Repairer

Regulation Act;

(5) the Boxing and Full-contact Martial Arts Act;
(6) the Illinois Certified Shorthand Reporters Act of

1984;

(7) the Illinois Farm Labor Contractor Certification

Act;

(8) the Interior Design Title Act;
(9) the Illinois Professional Land Surveyor Act of

1989;

(10) the Illinois Landscape Architecture Act of 1989;
(11) the Marriage and Family Therapy Licensing Act;
(12) the Private Employment Agency Act;
(13) the Professional Counselor and Clinical

Professional Counselor Licensing and Practice Act;

(14) the Real Estate License Act of 2000;
(15) the Illinois Roofing Industry Licensing Act;
(16) the Professional Engineering Practice Act of

1989;

(17) the Water Well and Pump Installation

Contractor's License Act;

(18) the Electrologist Licensing Act;
(19) the Auction License Act;
(20) the Illinois Architecture Practice Act of 1989;

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(21) the Dietitian Nutritionist Practice Act;
(22) the Environmental Health Practitioner Licensing

Act;

(23) the Funeral Directors and Embalmers Licensing

Code;

(24) the Land Sales Registration Act of 1999;
(25) the Professional Geologist Licensing Act;
(26) the Illinois Public Accounting Act; and
(27) the Structural Engineering Practice Act of 1989.
(Source: P.A. 97-119, eff. 7-14-11; 97-706, eff. 6-25-12; 97-1108, eff. 1-1-13; 97-1141, eff. 12-28-12; 97-1150, eff. 1-25-13; 98-756, eff. 7-16-14.)

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SEC. 8.

(a) Subject to application procedures provided by statute, the Governor, on conditions the Governor deems proper, may grant a reprieve, pardon, and commutation, after sentence, except in case of impeachment. The Governor shall report to the Legislature each reprieve, pardon, and commutation granted, stating the pertinent facts and the reasons for granting it. The Governor may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring.

(b) No decision of the parole authority of this State with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. The Governor shall report to the Legislature each parole decision affirmed, modified, or reversed, stating the pertinent facts and reasons for the action.

(Sec. 8 amended Nov. 8, 1988, by Prop. 89. Res.Ch. 63, 1988.)

No. 126153

IN THE SUPREME COURT
STATE OF ILLINOIS

	) Petition for Leave to Appeal
	) from the Appellate Court of
	) Illinois,
THOMAS D. BROWN,	) Third District, No. 03-18-0409
	)
Petitioner- Appellant	) There heard on Appeal from the
	) Circuit Court of the Tenth
vs.	) Judicial Circuit, Putnam County,
	) Illinois
	) Circuit No. 16-MR-13
DEPARTMENT OF ILLINOIS	) Honorable Stephen A. Kouri,
STATE POLICE	) Circuit Judge
Respondent-Appellee.	)

NOTICE OF ELECTRONIC FILING- APPELLANT'S OPENING BRIEF

I, James R. Angel, state that on November 5, 2020, I electronically filed the Appellant's Opening Brief (including Appendix) with the Clerk of the Illinois Supreme Court.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

James R. Angel

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No. 126153

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DEPARTMENT OF ILLINOIS	) Honorable Stephen A. Kouri,
STATE POLICE	) Circuit Judge
Respondent-Appellee.	)

CERTIFICATE OF SERVICE- APPELLANT'S OPENING BRIEF

The undersigned hereby certifies that a true and correct copy of the **Appellant's Opening Brief** (including Appendix) was served to:

KWAME RAOUL, ATTORNEY GENERAL STATE OF ILLINOIS

Katelin B. Buell, Assistant Attorney General
100 West Randolph Street, 12th Floor
Chicago, IL 60601

via efile and serve only to CivilAppeals@atg.state.il.us and to kbuell@atg.state.il.us on November 5, 2020.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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