

No. 127201

**In the
Supreme Court of Illinois**

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff-Appellant,

v.

VIVIAN CLAUDINE BROWN,

Defendant-Appellee.

On Petition for Leave to Appeal from the Circuit Court of Illinois,
Second Judicial District, No. 2017-CM-60.
The Honorable **Thomas J. Tedeschi**, Judge Presiding.

**BRIEF OF GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE
AS *AMICUS CURIAE* IN SUPPORT OF THE PEOPLE OF THE STATE OF ILLINOIS**

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INTEREST OF *AMICUS CURIAE*¹

Amicus curiae Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others who seek to reduce gun violence and improve the safety of their communities.² The organization was founded more than a quarter century ago and renamed Giffords Law Center in October 2017 after joining forces with the gun-safety organization led by former Congresswoman Gabrielle Giffords. Today, through partnerships with gun violence researchers, public health experts, and community organizations, Giffords Law Center researches, drafts, and defends laws, policies, and programs proven to effectively reduce gun violence. Together with Giffords, its partner organization, Giffords Law Center also advocates for the interests of gun owners and law enforcement officials who understand that Second Amendment rights have always been consistent with gun safety legislation and community violence prevention strategies.

Giffords Law Center has contributed technical expertise and informed analysis as an *amicus* in numerous cases involving firearm regulations and constitutional principles affecting gun policy. *See, e.g., District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and *People v. Brown*, 164 N.E.3d 1187 (Ill. 2020). Several courts have cited research and information from Giffords Law Center’s *amicus* briefs in Second Amendment rulings. *See, e.g., Ass’n of N.J. Rifle & Pistol Clubs*

¹ All parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part. No person other than *amicus curiae*, its members, or its counsel contributed money to fund this brief’s preparation or submission.

² Giffords Law Center’s website, www.giffords.org/lawcenter, is the premier clearinghouse for comprehensive information about federal, state, and local firearms laws and Second Amendment litigation nationwide.

v. Att’y Gen. N.J., 910 F.3d 106, 121-22 (3d Cir. 2018); *Hirschfeld v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 417 F. Supp. 3d 747, 754, 759 (W.D. Va. 2019); *Md. Shall Issue v. Hogan*, 353 F. Supp. 3d 400, 403-05 (D. Md. 2018); *Stimmel v. Sessions*, 879 F.3d 198, 204, 208, 210 (6th Cir. 2018); *Peruta v. County of San Diego*, 824 F.3d 919, 943 (9th Cir. 2016) (en banc) (Graber, J., concurring).

INTRODUCTION AND SUMMARY OF ARGUMENT

Firearms have caused many thousands of deaths and injuries in Illinois, and the ripple effect of each gunshot leaves many more people traumatized, grieving, and afraid to go about their daily lives. In recent years, Illinois experienced an annual average of 829 gun homicides, 538 gun suicides, and hundreds more non-fatal shootings.³ These all-too-frequent incidents harm communities, leave survivors traumatized, and exact an enormous economic toll, costing the state of Illinois an estimated \$7.2 billion per year.⁴

This lawsuit challenges Illinois’ authority to address the devastating violence within its borders by enforcing modest but meaningful licensing standards for the possession of firearms. Defendant has argued, and the Circuit Court improperly found in its April 26, 2021 Order, that the Illinois Firearm Owners Identification Card Act (“FOID Card Act”) violates the Second Amendment by requiring individuals to obtain a Firearm Owner’s Identification (“FOID”) card to possess a firearm. The Circuit Court’s Order flies in the face of repeated decisions from this Court and Illinois appellate courts, along with

³ Fatal firearm injury data is from the Centers for Disease Control and Prevention’s WISQARS Fatal Injury Reports (<https://www.cdc.gov/injury/wisqars/fatal.html>). Nonfatal firearm injury data is from the Agency for Healthcare Research and Quality’s HCUPnet Query System (<https://hcupnet.ahrq.gov/#setup>).

⁴ See *Giffords Law Center, The State of Gun Violence in Illinois*, <https://giffords.org/wp-content/uploads/2020/01/Giffords-Law-Center-State-of-Gun-Violence-in-Illinois-2020.pdf> (last visited Oct. 12, 2021).

the U.S. Court of Appeals for the Seventh Circuit, that have repeatedly held the requirement for Illinois gun owners to possess a FOID Card to be constitutional. The Circuit Court's Order relied on faulty reasoning, applied the wrong level of scrutiny, and provided no credible rationale for deviating from those prior rulings.

This brief presents additional reasons why Defendant's Second Amendment claims fail as a matter of law. It demonstrates that the FOID Card Act imposes, at most, a minimal burden on responsible, law-abiding citizens—making intermediate scrutiny the appropriate standard of review here, should the Court apply any heightened scrutiny at all. Furthermore, the FOID Card Act easily survives intermediate scrutiny. This is so, *first*, because social science evidence shows that laws requiring a license to purchase or possess firearms bolster public safety and can dramatically reduce gun deaths and deter criminal gun trafficking. The effects of these laws are powerful: experts comparing the impact of various gun regulations have concluded that comprehensive licensing laws are the single most effective way to keep guns out of the hands of criminal traffickers.⁵ *Second*, significant new empirical evidence proves the State's permitting standards survive intermediate scrutiny. This Court need not apply intermediate scrutiny afresh because it has already decided the FOID Act's constitutionality. But were it to do so, the Court should

⁵ Daniel W. Webster, *et al.*, *Preventing the Diversion of Guns to Criminals Through Effective Firearm Sales Laws*, REDUCING GUN VIOLENCE IN AMERICA at 109, 117 (Daniel W. Webster & Jon S. Vernick eds., 2013) (firearm permit to purchase laws are the single “most dramatic deterrent to interstate gun trafficking[.]”); *see also* Press Release, Johns Hopkins Bloomberg School of Public Health, Handgun Purchaser Licensing Laws Linked to Fewer Firearm Homicides in Large, Urban Areas (May 31, 2018), <https://www.jhsph.edu/news/news-releases/2018/handgun-purchaser-licensing-laws-linked-to-fewer-firearm-homicides-in-large-urban-areas.html> (summarizing study finding that licensing laws reduce gun homicides more effectively than laws merely requiring a point of sale background check).

find Illinois' FOID Card Act constitutional because social science evidence confirms the dangers of the unrestricted possession of firearms and that the FOID Card Act is an appropriately tailored public safety measure addressing these dangers. The Court should reverse the Circuit Court's Order finding the FOID Card Act unconstitutional.

ARGUMENT

I. THE FOID CARD ACT HAS ALREADY BEEN FOUND CONSTITUTIONAL, AND EASILY PASSES CONSTITUTIONAL MUSTER.

Since 1968, the FOID Card Act has required that residents obtain a FOID Card before they can legally possess or purchase a firearm. It provides in relevant part:

No person may acquire or possess any firearm . . . within this State without having in his or her possession a Firearm Owner's Identification Card previously issued in his or her name by the Department of State Police under the provisions of this Act.

430 ILCS 65/2(a)(1). To obtain a FOID Card, an applicant must submit evidence that he or she meets certain requirements, including (but not limited to) evidence that he or she is at least 21 years of age (or has a parent or guardian's permission to possess firearms); has never been convicted of a felony; is not addicted to narcotics; is not a person with an intellectual disability; has not been convicted within the past 5 years of battery, assault, aggravated assault, or violation of an order of protection in which a firearm was used or possessed; and has not been a patient in a mental health facility within the past five years (or that a mental health professional has certified that he or she is not a danger to themselves or others). 430 ILCS 65/4. Additionally, an applicant must provide a photograph to the

State Police. *Id.* After the Department of State Police approves an application, applicants receive their FOID Card after payment of a \$10.00 fee.⁶

A. The FOID Card Requirement Has Repeatedly Been Found Constitutional by This Court, the Seventh Circuit, and Illinois Appellate Courts.

The requirement for Illinois gun owners to possess a FOID Card has repeatedly been found constitutional, including by this Court, the Seventh Circuit, and Illinois appellate courts, applying various standards of review. *See, e.g., People v. Mosley*, 33 N.E.3d 137, 155 (Ill. 2015) (FOID card requirement of aggravated unlawful use of a weapon (AUUW) statute constitutional and “consistent with this court’s recognition that the second amendment right to possess firearms is still ‘subject to meaningful regulation’”); *People v. Taylor*, 3 N.E.3d 288, 297 (Ill. App. 1 Dist. 2013) (“[R]estriction . . . is limited to those lacking a FOID card and is not a flat ban. [. . .] [U]nder either strict scrutiny analysis or the more recently used ‘text, history, and tradition’ approach, [the FOID Card requirement] does not violate the right to bear arms guaranteed under the second amendment.”). As discussed at length by this Court in *Coram v. State*:

Both the Illinois Constitution and the United States Constitution safeguard the respective state and federal rights to keep and bear arms. Article I, section 22, of the Illinois Constitution provides: ‘Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.’ Ill. Const. 1970, art. I, § 22. The second amendment of the United States Constitution provides: ‘A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.’ U.S. Const., amend. II. The language of the Illinois Constitution suggests that the right, or ‘rights,’ of Illinois citizens to keep and bear arms are not generic or categorical, that Illinois secures to its citizens, via the Illinois

⁶ *See* 430 ILCS 65/5. Certain applicants, including members of the Armed Forces, are exempt from the application fee.

Constitution and implementing laws, individualized consideration of a person's right to keep and bear arms. That policy is reflected in the provisions of Illinois' FOID Card Act (see 430 ILCS 65/5, 8, 10 (West 2010)), which mandates individual assessment of a person's application and circumstances by the Department of State Police in the first instance, and individualized judicial consideration of the basis for denial of a FOID card—without which firearm possession is illegal under state law—and judicial relief from that denial in appropriate circumstances.

996 N.E.2d 1057, 1060 (Ill. 2013). *See also People v. Henderson*, 12 N.E.3d 519, 528–29 (Ill. App. 1 Dist. 2013) (discussing *Coram* and noting that “Both the special concurrence by Justices Burke and Freeman and the dissent by Justices Theis and Garman discussed how the FOID Card Act applied to the facts of the case. All of them held that the FOID Card Act applied and none questioned its constitutionality.”) (emphases deleted).

In 2015, the Seventh Circuit evaluated whether the FOID Card Act's requirement that a FOID card applicant younger than 21 years old have the written consent of a parent or legal guardian violated the Second Amendment. The Seventh Circuit noted that “[t]he absence of a blanket ban makes the Illinois FOID Card Act much different from the blanket ban on firearm possession present in *Heller*”:

In addition to reviewing Illinois's chosen regulatory means, we also consider the public-benefits end it seeks to achieve. It is clear that Illinois has an important and compelling interest in its citizens' safety. Illinois's interest in protecting the public from firearms violence underlies the challenged statute. [. . .] The Illinois statute is substantially related to the achievement of the state's interests. [. . .] We conclude that Illinois has shown a sufficient means-end relationship between the challenged statute and an important government interest.

Horsley v. Trame, 808 F.3d 1126 (7th Cir. 2015) (internal citations omitted); *see also Berron v. Ill. Concealed Carry Licensing Review Bd.*, 825 F.3d 843, 847 (7th Cir. 2016) (“If the state may set substantive requirements for ownership, which *Heller* says it may,

then it may use a licensing system to enforce them.”); *Culp v. Raoul*, 921 F.3d 646, 655 (7th Cir. 2019) (in the concealed carry licensing context, “[t]he State’s enforcement authority necessarily must bring with it a practical way of monitoring the ongoing fitness of individuals licensed to carry a firearm on a public street”).

As discussed below, the Circuit Court’s Order fails to offer a reason or rationale to deviate from this and other courts upholding the FOID Card Act. This Court need not revisit the issue anew, but even if it does, at most, intermediate scrutiny would apply. The FOID Card Act more than satisfies this standard.

B. In Deviating from the Judicial Consensus, the Circuit Court Erred by Relying on Faulty Reasoning.

The Circuit Court’s Order finding the FOID Card Act unconstitutional relies on flawed reasoning and fails to justify its departure from the significant body of case law from this and other courts upholding the FOID Card Act. Emblematic of the Circuit Court’s unabashed departure from Second Amendment jurisprudence was the assertion that “there should be no burden on the citizenry to enjoy [the] rights [to bear arms and self-defense].” *People v. Brown*, No. 17-CM-60, slip op. at 9 (Ill. Cir. Ct. Apr. 26, 2021). Of course, all constitutional rights can be burdened to some degree, and “[l]ike most rights, the right secured by the Second Amendment is not unlimited[.]” *Heller*, 554 U.S. at 626 (recognizing the “longstanding prohibitions on the possession of firearms by felons and the mentally ill, [] laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, [and] laws imposing conditions and qualifications on the commercial sale of arms.”).

The Circuit Court also makes much of the fact that the underlying case involves the possession of a firearm by a “law-abiding citizen.” *See, e.g., People v. Brown*, slip op. at

14 (“Again, this case is about an unlicensed, law-abiding citizen *possessing* a firearm within the confines of her home.”) (emphasis in original). But the law the Circuit Court invalidates is designed to ensure that individuals who possess firearms are, *in fact*, not convicted felons, mentally ill, or otherwise excluded from firearm ownership. That is, far from imposing a categorical restriction, law-abiding citizens are categorically *protected* under the FOID Act.

Finally, the Circuit Court asserts, without providing any legitimate justification, that the FOID Card Act “does little to protect the general public.” *Id.* This is empirically untrue. As demonstrated by the substantial evidence cited below in Section D, licensure laws have been proven to significantly reduce gun homicides and suicides and to help prevent firearms from falling into the hands of criminals and individuals intent on causing harm.

C. At Most, Intermediate Scrutiny Applies to the FOID Card Act.

Licensing laws for firearm possession fall outside the scope of the Second Amendment because they are longstanding regulatory measures that impose a minimal, purely administrative burden on those individuals exercising their rights to purchase and possess lethal weapons.⁷ But should the Court conclude otherwise, at most, the Court

⁷ See, e.g., *U.S. v. Skoien*, 614 F.3d 638, 640 (7th Cir. 2010) (recognizing that some “categorical limits” and “statutory prohibitions on the possession of weapons by some persons are proper” under the Second Amendment); *U.S. v. Bryant*, 711 F.3d 364, 369 (2nd Cir. 2013) (upholding, at step one of the generally applicable two-step process for evaluating Second Amendment claims, the federal statute criminalizing firearm possession in furtherance of a drug trafficking crime); *United States v. Bogle*, 717 F.3d 281, 281–82 (2d Cir. 2013) (upholding federal ban on felon firearm possession at step one); see also *Heller v. District of Columbia (Heller II)*, 670 F.3d 1244, 1253 (D.C. Cir. 2011) (“[A] regulation that is ‘longstanding,’ which necessarily means it has long been accepted by the public, is not likely to burden a constitutional right; concomitantly the activities covered by a longstanding regulation are presumptively not protected from regulation by the Second Amendment.”); *United States v. Marzzarella*, 614 F.3d 85, 91

should apply intermediate scrutiny because Illinois' FOID Card Act does not substantially burden the rights of law-abiding, responsible citizens under the Second Amendment or the Illinois Constitution. The Circuit Court improperly applied its own novel, modified form of intermediate scrutiny, requiring something "greater than what is commonly understood when evaluating whether a law is substantially related to an important government interest"—though, in the same breath, the Circuit Court declined to "fully articulate the most appropriate standard." *People v. Brown*, slip op. at 13. In doing so, the Circuit Court rejected well-established law regarding the application of means-end scrutiny, and altered its delicate role in evaluating legislative decision-making.

When analyzing the constitutionality of a restriction on the Second Amendment right to bear arms, this Court applies the two-part approach adopted in *Wilson v. County of Cook*, 968 N.E.2d 641 (Ill. 2012). *See, e.g., People v. Chairez*, 104 N.E.3d 1158, 1167 (Ill. 2018); *People v. Mosley*, 33 N.E.3d 137, 154 (Ill. 2015). The Court first conducts a textual and historical inquiry to determine whether the challenged law imposes a burden on conduct that was understood to be within the scope of the Second Amendment's protection at the time of ratification. *E.g., Chairez*, 104 N.E.3d at 1167. The regulated activity is categorically unprotected if the challenged law applies to conduct falling outside the scope of the Second Amendment right. *Id.* "However, if the historical evidence is inconclusive or suggests that the regulated activity is not categorically unprotected, then the court, applying the appropriate level of means-ends scrutiny, conducts a second inquiry into the

(3d Cir. 2010) ("[L]ongstanding limitations are exceptions to the right to bear arms" and "are presumptively lawful because they regulate conduct outside the scope of the Second Amendment."); *accord Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 196 (5th Cir. 2012); *United States v. Bena*, 664 F.3d 1180, 1183 (8th Cir. 2011).

strength of the government’s justification for restricting or regulating the exercise of Second Amendment rights.” *People v. Chairez*, 104 N.E.3d at 1167 (citing *Ezell v. City of Chicago*, 651 F.3d 684, 701–04 (7th Cir. 2011) (*Ezell I*)). “[T]he Seventh Circuit, which this court has followed when analyzing second amendment challenges . . . teaches us that the argument is not strict versus intermediate scrutiny⁸ but rather how rigorously to apply intermediate scrutiny to second amendment cases.” *People v. Chairez*, 104 N.E.3d at 1170. In sum, *at most*, intermediate scrutiny governs Defendant’s constitutional challenge to the FOID Card Act. As discussed in *People v. Chairez*, on the sliding scale of intermediate scrutiny, laws restricting rights of “all law-abiding citizens,” such as laws that prohibit the carriage of weapons in public for self-defense, require more elevated intermediate scrutiny; however, “presumptively lawful” regulatory measures, such as those that keep firearms out of the hands of felons, need only be evaluated under plain intermediate scrutiny. *Id.* at 1171-75 (felon-in-possession statute in *U.S. v. Williams*, 616 F.3d 685 (7th Cir. 2010) required plain intermediate scrutiny). As licensing laws impose, at most, “modest burdens”

⁸ At least one Illinois appellate court found that the FOID Card Act would survive *even under a strict scrutiny analysis*. *People v. Taylor*, 3 N.E.3d 288, 296–97 (Ill. App. 1 Dist. 2013):

Under the strict scrutiny standard, the means employed by the legislature must be necessary to achieve a compelling state interest, and the statute must be narrowly tailored to accomplish this goal, meaning the legislature must employ the least restrictive means consistent with the attainment of the intended goal. [. . .] The portion of the AUUW statute at issue here seeks to protect the public from individuals carrying firearms who should not be permitted to do so [. . .] Requiring individuals to comply with the FOID card statute is the least restrictive way in which to meet this compelling state interest. Therefore, [the statute] survives under strict scrutiny analysis.

on gun owners and do not keep guns out of the possession of law-abiding citizens, plain intermediate scrutiny (rather than elevated intermediate scrutiny) applies.

D. Social Science Evidence Supports the Challenged Law Under Intermediate Scrutiny.

To satisfy intermediate scrutiny, Illinois must show that its FOID Card Act is “substantially related to [an] important government interest.” *People v. Chairez*, 104 N.E.3d at 1175. The weight of empirical evidence shows that licensing laws like Illinois’ are highly effective at reducing gun homicides and suicides and at decreasing gun purchases by criminals. These laws are therefore substantially related to Illinois’ interests in lowering violence and preventing gun access by irresponsible, dangerous people within the State. Thus, the FOID Card Act easily survives intermediate scrutiny.

1. Firearm Licensing Laws Are Linked to Substantial Reductions in Gun Homicides.

Empirical evidence suggests firearm licensing laws can reduce gun homicides by preventing gun access by high-risk purchasers. Illinois’ FOID Card Act requires prospective gun owners obtain a FOID card from the State Police, and to submit photographs or fingerprints, among other conditions. 430 ILCS 65/2(a)(1). Twelve other states and Washington, D.C., have similar laws that require a license to purchase or possess handguns or other firearms, often called permit-to-purchase or license-to-own laws.⁹ These licensing laws have important advantages over other regulations intended to verify eligibility for firearm possession. Unlike background check laws that only require gun sellers to perform criminal history checks at the point of sale, licensing laws “require

⁹ Illinois’ FOID Card Act is an example of a license-to-own law. *See Giffords Law Center, Licensing*, <http://lawcenter.giffords.org/licensing> (last visited Oct. 12, 2021).

prospective gun purchasers to have direct contact with law enforcement or judicial authorities that scrutinize purchase applications[]” before a proposed gun purchase.¹⁰ Laws that require contact with judges or police can deter straw purchasers and reduce the risk that negligent or fraudulent gun sellers will fail to comply with background check laws.¹¹ A 2020 study showed that licensing laws that require an in-person application or fingerprinting help prevent mass shootings: states with such laws have 56% fewer fatal mass shooting incidents.¹² Finally, licensing laws give permit-issuing authorities more time to conduct comprehensive background checks and enable law enforcement to quickly investigate illegal transfers.¹³ Because of these advantages, licensing laws have the “potential to significantly restrict gun acquisition by high risk individuals” and deter people intent on doing harm.¹⁴

Substantial evidence confirms that licensing laws effectively restrict gun access by wrongdoers by demonstrating that these laws are strongly associated with significant reductions in gun homicides. Numerous studies have persuasively substantiated this association. One such study, from leading researchers at Johns Hopkins, found that a dramatic increase in gun homicides followed Missouri’s repeal of a handgun licensing law

¹⁰ Daniel W. Webster, *et al.*, *Relationship Between Licensing, Registration, and Other Gun Sales Laws and the Source State of Crime Guns*, 7 INJ. PREV. 184, 184 (2001).

¹¹ *See, e.g.*, Johns Hopkins Bloomberg School of Public Health, *Permit to Purchase Licensing for Handguns* 1 (Mar. 2015), https://www.jhsph.edu/research/centers-and-institutes/johns-hopkins-center-for-gun-policy-and-research/publications/FactSheet_PermittoPurchaseLicensing.pdf.

¹² Daniel W. Webster, *et al.*, *Evidence Concerning the Regulation of Firearms Design, Sale, and Carrying on Fatal Mass Shootings in the United States*, 19 CRIM. & PUB. POL’Y, 171, 181 (2020).

¹³ Webster, *Source State of Crime Guns*, 7 INJ. PREV. at 184.

¹⁴ *Id.*

in 2007.¹⁵ The study found that from 2007 to 2016, Missouri's rate of gun homicides increased by 47%.¹⁶ The same study found, by contrast, that a dramatic *decrease* in gun homicides followed Connecticut's adoption of a handgun licensing law in 1995.¹⁷ From 1995 to 2017, Connecticut's firearm homicide rate decreased by 28%.¹⁸

A May 2018 study found that statewide permit-to-purchase and license-to-own laws were associated with an 11% reduction in gun homicides in populous urban counties, where homicides tend to be concentrated.¹⁹ This lifesaving effect was not observed in states that require gun sellers to perform background checks but do not require purchasers to submit fingerprints and obtain a permit or license from local licensing officers, and thus can be attributed to features of the licensing process—like contact with law enforcement—and not simply a background check performed by a gun dealer.²⁰ The strong link between licensing laws and decreased gun homicides in urban counties substantiates the State's position that Illinois' FOID Card Act significantly furthers public safety by reducing gun murders.

¹⁵ Alexander D. McCourt, *et al.*, *Purchaser Licensing, Point-of-Sale Background Check Laws, and Firearm Homicide and Suicide in 4 U.S. States, 1985-2017*, 110 AM. J. PUB. HEALTH 10, 1546, 1549 (2020).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Cassandra K. Crifasi, *et al.*, *Correction to: Association between Firearm Laws and Homicide in Urban Counties*, J. URBAN HEALTH (2018), <https://link.springer.com/article/10.1007%2Fs11524-018-0306-y>.

²⁰ Cassandra K. Crifasi, *et al.*, *Association between Firearm Laws and Homicide in Urban Counties*, 95 J. URBAN HEALTH 383, 384, 387 (2018).

2. Firearm Licensing Laws Are Linked to Substantial Reductions in Gun Suicides and Suicide Attempts.

Research also suggests that handgun licensing laws are an effective way to reduce firearm suicides. Because “suicidal ideation is often transient,” suicide attempts can be prevented if a suicidal person’s immediate access to a firearm is “restricted during periods of distress or impulsivity”—such as through a law requiring non-gun-owners to apply to police or judges for a gun license.²¹ Unsurprisingly, research suggests that licensing or registration laws are “associated with fewer suicide attempts overall, a tendency for those who attempt to use less lethal means, or both.”²²

The 2020 Johns Hopkins study discussed above also confirmed the safety-enhancing effect of licensing laws by comparing gun suicide rates in Connecticut and Missouri. As noted, Connecticut adopted a handgun permit-to-purchase law in 1995, and Missouri repealed its version of the same law in 2007.²³ The study found that after Connecticut adopted its licensing law, from 1995 through 2017, the state experienced a 33% decrease in firearm suicides.²⁴ Conversely, after Missouri repealed its licensing law, from 2007 through 2017, it experienced a 24% increase in its firearm suicide rate.²⁵ The measurable reduction in gun suicides after Connecticut’s adoption of a licensing law and the spike in gun suicides after Missouri repealed such a law further show that Illinois’

²¹ Cassandra K. Crifasi, *et al.*, *Effects of Changes in Permit-to-Purchase Handgun Laws in Connecticut and Missouri on Suicide Rates*, 79 PREV. MED. 43, 43 (2015).

²² Michael D. Anestis, *et al.*, *Association Between State Laws Regulating Handgun Ownership and Statewide Suicide Rates*, 105 AM. J. PUB. HEALTH 2059, 2059 (2015).

²³ McCourt, *Firearm Homicide and Suicide in 4 U.S. States*, 110 AM. J. PUB. HEALTH at 1547.

²⁴ *Id.* at 1548.

²⁵ *Id.* at 1549.

FOID Card Act substantially advances public safety—and thereby satisfies intermediate scrutiny.

3. Firearm Licensing Laws Help Prevent Gun Access by Criminals.

Licensing laws also lessen criminals’ ability to gain access to firearms. Guns trafficked from lawful commerce into the illegal market are the leading source of guns used to commit crimes.²⁶ Firearm licensing laws can reduce this flow of illegal guns since they help restrict gun access by people at risk of engaging in criminal trafficking.²⁷ Further, these laws ensure that traffickers can be prosecuted.²⁸

Two studies demonstrate that there is, in fact, an incredibly strong link between firearm licensing laws and the reduced availability of guns to criminal traffickers. In 2013, public health researchers assessed the effect of state gun-sale regulations on interstate gun trafficking in the 48 contiguous states. This study concluded that, among all of the policies examined, firearm licensing laws were the single “most dramatic deterrent to interstate gun trafficking.”²⁹ Licensing laws were associated with significantly reduced rates of firearms trafficked to other states even after controlling for the effect of other gun laws, rates of gun

²⁶ Daniel W. Webster, *et al.*, *Effects of State-Level Firearm Seller Accountability Policies on Firearm Trafficking*, 86 J. URBAN HEALTH 525, 526 (2009).

²⁷ Greg Sargent, *Why Expanding Background Checks Would, In Fact, Reduce Gun Crime*, WASH. POST., Apr. 3, 2013, <https://www.washingtonpost.com/blogs/plum-line/wp/2013/04/03/why-expanding-background-checks-would-in-fact-reduce-gun-crime/>.

²⁸ *See id.*

²⁹ Daniel W. Webster, *et al.*, *Preventing the Diversion of Guns to Criminals Through Effective Firearm Sales Laws*, REDUCING GUN VIOLENCE IN AMERICA 109, 117 (Daniel W. Webster & Jon S. Vernick eds., 2013).

ownership, and geography.³⁰ Moreover, the study observed a sharp increase in the number of guns diverted to criminals in Missouri after the 2007 repeal of its licensing law.³¹

A 2001 study used crime gun trace records from 25 cities to calculate the percentage of guns used to commit crimes that came from inside the state (as opposed to from a different state), which it concluded is “an important measure of how hard it is for criminals to get guns” in a state.³² The study found that cities in states with firearm licensing and registration laws “have a much smaller proportion of their crime guns coming from in-state[,]” meaning that such laws indeed may make it more difficult for criminals to access guns within the state.³³ The 2001 study also found that, as to the six cities with the lowest percentage of crime guns obtained in-state, *all* six cities were in states that had handgun licensing laws at the time of the study.³⁴ One of these was Chicago, which of the 25 cities examined, had the sixth-lowest percentage of crime guns coming from inside the state.³⁵

* * *

The research discussed in Section I.D above demonstrates that Illinois’ FOID Card Act directly and substantially furthers three critical public safety interests. Gun licensing laws like the FOID Card Act are associated with lower rates of gun homicide and suicide and reduced availability of guns to criminal traffickers—including in Illinois. This evidence is more than sufficient to show that the FOID Card Act is “substantially related

³⁰ *Id.* at 118

³¹ *Id.* at 112-14

³² Webster, *Relationship Between Licensing, Registration, and Other Gun Sales Laws*, 7 INJ. PREV., at 187.

³³ *Id.*

³⁴ *Id.* at 186.

³⁵ *Id.*

to [an] important government interest” is therefore constitutional under the U.S. and Illinois constitutions. *People v. Chairez*, 104 N.E.3d at 1175.

E. The State’s Gun Policy Choices Are Entitled to Deference.

Social science research overwhelmingly confirms that firearm licensing laws are among the best-informed policy choices that the State could make to shield Illinois citizens from increased gun violence. As this Court explained in *City of Chicago v. Beretta U.S.A. Corp.*, “there are strong public policy reasons to defer to the legislature in the matter of regulating the manufacture, distribution, and sale of firearms.” 821 N.E.2d 1099, 1121 (Ill. 2004). Deference to the legislature’s judgment is an established principle of constitutional jurisprudence. And deference to the legislature’s judgment is especially critical in Second Amendment cases because “[i]n the context of firearm regulation, the legislature is ‘far better equipped than the judiciary’ to make sensitive public policy judgments” about safety risks and benefits. *Kachalsky v. County of Westchester*, 701 F.3d 81, 97 (2nd Cir. 2012) (quoting *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 665 (1994)). The Supreme Court has repeatedly explained that heightened means-end scrutiny does not require legislatures to furnish exact empirical justifications for regulations that burden constitutional rights, but rather, demands that the legislature make informed judgments based on available evidence.³⁶

³⁶ The Supreme Court has “permitted litigants to justify speech restrictions by reference to studies and anecdotes pertaining to different locales altogether, or even, in a case applying strict scrutiny, to justify restrictions based solely on history, consensus, and ‘simple common sense.’” *Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 555 (2001) (quoting *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 628 (1995)); see also *Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 60 (1973) (“We do not demand of legislatures ‘scientifically certain criteria of legislation.’”) (internal citation and quotation omitted). In a First Amendment case involving a crime reduction measure that targeted secondary effects of protected speech, the Court credited city officials’ informed judgment even

By demonstrating a strong link between firearm licensing laws and reduced gun violence, social science research here provides ample empirical justification for the Illinois legislature’s decision over a half-century ago to require state residents to obtain a FOID Card to legally possess firearms within Illinois. Even with less close empirical substantiation, Illinois’ decision to adopt a licensing law would still be entitled to deference and would withstand intermediate scrutiny. *See, e.g., Moore v. Madigan*, 702 F.3d 933, 940 (7th Cir. 2012) (noting that “the state can prevail with less evidence when, as in *Skoien*, guns are forbidden to a class of persons who present a higher than average risk of misusing a gun”). But the Court need not depend on deference here, because the FOID Card Act has been found constitutional, and the evidence overwhelmingly demonstrates its constitutionality under heightened scrutiny.

CONCLUSION

The Circuit Court offered no basis for concluding that Illinois’ FOID Card Act violates the Second Amendment, nor any reason to depart from sound Illinois Supreme Court and Seventh Circuit precedent finding the FOID Card Act constitutional. There is a growing consensus that licensing and permitting laws like the FOID Card Act save lives. In accordance with this evidence and its own precedents, the Court should reverse the decision below.

where the city failed to furnish specific “empirical data, that its ordinance will successfully lower crime.” *City of L.A. v. Alameda Books*, 535 U.S. 425, 439 (2002).

Dated: October 14, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 19 pages.

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NOTICE OF FILING

PLEASE TAKE NOTICE that the Giffords Law Center to Prevent Gun Violence served and filed electronically via Odyssey the **Brief of Giffords Law Center to Prevent Gun Violence as *Amicus Curiae* in Support of the People of the State of Illinois** in the Supreme Court of Illinois, this 14th day of October, 2021.

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CERTIFICATE OF SERVICE

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. I, Jonathan K. Baum, an attorney, certify that I caused a copy of the **Brief of Giffords Law Center to Prevent Gun Violence as *Amicus Curiae* in Support of the People of the State of Illinois** to be filed with the Clerk of the Court for the Illinois Supreme Court by using the Odyssey eFileIL system on October 14, 2021.

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

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Additionally, within five (5) days of the electronic review notification upon acceptance by the court's electronic filing system, the undersigned will send via FedEx overnight thirteen (13) duplicate copies of the **Brief of Giffords Law Center To Prevent Gun Violence as *Amicus Curiae*** to the Clerk of the Supreme Court of Illinois' office in Springfield.

/s/ Jonathan K. Baum
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