No. 129965

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- TYSHON THOMPSON, Petitioner-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-22-0429. There on appeal from the Circuit Court of Cook County, Illinois, No. 20 CR 5154. Honorable Vincent M. Gaughan, Judge Presiding.

REPLY BRIEF FOR PETITIONER-APPELLANT

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REPLY BRIEF FOR DEFENDANT-APPELLANT

Under the new historical analysis laid out in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, the aggravated unlawful use of a weapon statute, 720 ILCS 5/24.1 (a)(1), (3)(A-5), is facially unconstitutional as it categorically bans a law-abiding citizen's Second Amendment right to public open carry a handgun under its subsection (a)(1), and it enforces an ahistorical double licensing process under subsection (3)(A-5).

This case involves a young Black man, Tyshon Thompson, who was an otherwise law-abiding citizen with no prior criminal history and who possessed a valid Firearm Owner's Identification Card (FOID). (R. 599-600). Thompson is now a convicted felon after being found guilty of aggravated unlawful use of a weapon (AUUW), 720 ILCS 5/24.1 (a)(1), (3)(A-5). (C. 264) Despite its misleading name, section (a)(1), (3)(A-5) criminalizes the constitutionally protected conduct of public open carry of a handgun by ordinary law-abiding citizens like Thompson. This case does not involve the carrying of dangerous weapons by dangerous or mentally-ill individuals nor does it involve a statute that regulates such conduct, which is the theme taken by the State in its brief.

The U.S. Supreme Court has set out a two-step framework for analyzing Second Amendment challenges to gun regulations such as the AUUW:

> When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1, 17 (2022). Under the first step of the analysis, Thompson was engaged in conduct protected under the Second Amendment. *See Bruen*, 597 U.S. at 33 ("[t]he Second Amendment's plain text thus *presumptively guarantees*...a right to 'bear' arms in public for self-defense.") The State then fails to meet its burden under the second step of establishing a history and tradition in the AUUW statute's categorical ban on public open carry and its enforcement of a double licensing regime.

A. Under the first step of the *Bruen* analysis, Thompson's conduct of carrying a ready-to-use handgun for self-defense outside the home is *presumptively* protected under the Second Amendment.

In *Bruen*, 597 U.S. at 33, the U.S. Supreme Court held, "[t]he Second Amendment's plain text thus *presumptively guarantees*...a right to 'bear' arms in public for self-defense." Under the first step of the *Bruen* historical analysis, Tyshon Thompson's conduct of carrying a handgun in public for self-defense falls under the protection of the Second Amendment. (Op. Br. 11-12) The State improperly attempts to redefine or create a new category of unprotected conduct when it proposes that the "conduct of possessing firearms without a license" is not protected under the Second Amendment. (St. Br. 14-15) However, the U.S. Supreme Court has expressly held that legislation is no substitute for historical analysis when interpreting the U.S. Constitution.

The court in *Bruen*, specifically relied on *United States v. Stevens*, 559 U.S. 460, 468–471 (2010), to set forth that, "the government must generally point to *historical* evidence about the reach of the First Amendment's protections." *Bruen*, 597 U.S. at 24-25 (emphasis in original) It quoted *Stevens*, to highlight that, under a First Amendment challenge, the government has the burden "to show that a type of speech belongs to a 'historic and traditional categor[y]' of constitutionally unprotected speech 'long familiar to the bar.'"*Bruen*, 597 U.S. at 25 (quoting *Stevens*, 559 U.S. at 468–471). Indeed, *Stevens* expressly held that the government did not have "a freewheeling authority to declare new categories of speech outside the scope of the First Amendment" through the congressional enactment of a statute. *Stevens*, 559 U.S. at 468–472. It held that it was history and tradition that informs the scope of the First Amendment and not "legislative judgment." *Id*. at 469-70; *see also Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 791 (2011) ("In *Stevens*, we held that new categories of unprotected speech may not be added to the list by a legislature that concludes certain speech is too harmful to be tolerated.").

The court expressly adopted this as the proper analysis under a Second Amendment challenge. *Bruen*, 597 U.S. at 24 ("This Second Amendment standard accords with how we protect other constitutional rights.")

Here too, this Court should reject the State's attempt to create new categories of unprotected conduct under the Second Amendment by relying on licensing requirements enacted by Illinois' legislature. The State contends that because Illinois' Concealed Carry Act (CCL Act) bans unlicensed carry, "defendants who carry firearms without making an attempt to obtain a [concealed carry license (CCL)]" are "non-law-abiding citizens" and therefore are not engaged in conduct protected by the Second Amendment. (St. Br. 16) The amicus curiae also proposes that "Thompson's proposed conduct *must be defined as what the statute criminalizes.*" (Am. Br. 7) (emphasis added) However, the State fails to point to any history and tradition where carrying a firearm without a license was deemed a category of conduct falling outside the scope of Second Amendment protection. Notably, Thompson was a law-abiding citizen who did possess a license, a FOID card, and was allowed to possess a firearm. (R. 599-600) The circumstances here demonstrate that failure to possess a CCL is not synonymous with being a "non-law-abiding" citizen, as the State and amicus curiae propose. This is precisely why history and tradition should inform the scope of the Second Amendment's protection and not the "legislature's judgment," as explained by the U.S. Supreme Court in *Stevens*.

In fact, the U.S. Supreme Court has already engaged in a historical analysis to determine that a law-abiding citizen bearing "arms in public for self-defense," the conduct engaged in by Thompson, is protected under the Second Amendment. *Bruen*, 597 U.S. at 33; *see also United States v. Rahimi*, 602 U.S. __,144 S. Ct. 1896-1902 (2024) (immediately moving to step 2 of the *Bruen* test when evaluating a federal law regulating the conduct of "possessing a firearm" while subject to a domestic violence restraining order).

The State and its amicus also propose that the AUUW statute and CCL Act do not implicate the Second Amendment because they do not "infringe" on the right, as they do not amount to complete bans on public carry. (St. Br. 16-17) (Am. Br. 7-18) However, the Third Circuit in *Frein v. Pennsylvania State Police*, 47 F.4th 247, 254 (3d Cir. 2022), analyzed the meaning of "infringe" and found that the Second Amendment "also forbids lesser 'violations' that 'hinder' a person's ability to hold on to his guns." The Third Circuit explained that with other constitutional rights, courts not only consider complete bans but also lesser restrictions and burdens on those rights and, therefore, the same approach makes sense with the Second Amendment right. *Id.* at 254. The court found that *Bruen* had instructed courts to scrutinize "all gun restrictions for historically grounded justification." *Id.*

Indeed, the New York regulation at issue in *Bruen*, much like the CCL Act and AUUW, required individuals to obtain a license prior to carrying a handgun in public. *See Bruen*, 597 U.S. at 8-16. The regulation did not amount to a complete ban. In fact, the regulation did not prohibit individuals from carrying their handguns "'concealed for purposes of off road back country, outdoor activities similar to hunting,' such as 'fishing, hiking & camping etc.'" *Id.* at 16. Some individuals were still allowed to carry handguns to and from work. *Id.* Although this law did not amount to a complete ban on the carrying of handguns in public, the Court held, and the parties did not dispute, that the regulation burdened the Second Amendment right of ordinary, law-abiding citizens to carry handguns publicly for their self-defense. *Id.* at 9-10. This Court should reject the State's and the Amicus Curiae's suggestion that the AUUW statute and the CCL Act do not implicate the Second Amendment.

B. Under the second step of the *Bruen* analysis, the State fails to meet its burden of showing any historically analogous regulations to the AUUW statute's 1) categorical ban on the public open carrying of handguns under subsection (a)(1) of the statute, and 2) its enforcement of a double licensing regime under subsection (3)(A-5).

The State offers no historical analogues for the AUUW statute's complete ban on open carry and its imposition of criminal punishment. In fact, the State concedes that "[s]tates historically prohibited concealed carry to reduce violence in public spaces..." (St. Br. 44) It goes on to concede that Illinois' "General Assembly made a different policy choice (prohibiting open carriage) than that reflected in historical regulations." (St. Br. 45) The State's argument is largely grounded in means-ends scrutiny analysis, when it asks this Court to adopt the Illinois' legislature's balancing of interest over the Founder's. (St. Br. 45-46) But means-end scrutiny analysis is no longer applied to Second Amendment challenges, as it was put to rest by the court in *Bruen*, 597 U.S. at 25-26.The U.S. Supreme Court in *D.C. v. Heller*, 554 U.S. 570, 634–35 (2008), stated that constitutional"rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." The Court again in *Bruen* reaffirmed and solidified its rejection of a means-end scrutiny analysis and its adoption of the historical analysis approach, "[a] constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all." *Bruen*, 597 U.S. at 23 (quoting *Heller*, 554 U.S. at 634). The State also fails to offer any historical analogues for the AUUW statute's and CCL Act's imposition of a double licensing regime.

1. There is no history and tradition in the AUUW statute's categorical ban of public open carry.

The State relies on *Sinnissippi*, 2024 IL App (3d) 210073, to argue that the Second Amendment does not protect the open carry of firearms, at least not when concealed carry is available. (St. Br. 38-39) Thompson set forth in his brief how the *Sinnissippi* court incorrectly interpreted the cases it relied on. (Op. Br. 23-24) Thompson again points to the dissenting opinion in *Sinnissippi* , which provided a more extensive and thorough analysis on the history and tradition surrounding the regulation of concealed carry versus open carry. (Op. Br. 24)

See Sinnissippi 2024 IL App (3d) 210073, ¶¶ 48-121 (Holdridge, J., dissenting). In his dissent, Justice Holdridge found that "the categorical ban imposed by Illinois is not a 'reasonable regulation' permitted under the second amendment because it is not consistent with our nation's historical regulation of firearms." *Id*. at ¶ 64. This Court should follow the more thorough approach and analysis conducted by Justice Holdridge and hold that the AUUW's complete ban on public open carry violates the Second Amendment.

Every historical case relied on by the State supports Thompson's position that there was a history and tradition in regulating concealed carry but not open carry. (St. Br. 43-45)(relying on *State v. Jumel*, 13 La. Ann. 399, 399–400 (1858) (only banning concealed carry); *State v. Chandler*, 5 La. Ann. 489, 489–90 (1850) (same); *State v. Buzzard*, 4 Ark. 18, 18 (1842) (same); *State v. Mitchell*, 3 Blackf. 229, 229 (1833) (same); *In re Cheney*, 90 Cal. 617, 619, 27 P. 436, 437 (1891)(same); *Carroll v. State*, 28 Ark. 99, 101 (1872) (same); *State v. Roten*, 86 N.C. 701, 704 (1882) ("the legislature in our opinion never intended to make it an indictable offence to carry such arms are described in the 1st section of the act--openly and in view.").

The State also cites to several statutes to propose that open carry was "often restricted" by the states. (St. Br. 41-42) However, looking at the language of these statutes shows that the common thread between them was that they regulated only those who went "armed offensively, to the fear or terror" of the public with "dangerous" weapons.[1] The majority of these statutes did not ban open carry as suggested by the State, and certainly did not prohibit law-abiding citizens from public carry. (St. Br. 41-42)

Also, many of the statutes relied on by the State were expressly rejected by the *Bruen* court as not regulating public carry or rejected outright as not being incorporated into our Nation's

[1] *See* Appendix at (A-1) where the language of many of the relevant historical statutes relied on by the State are provided.

history of firearm regulation altogether. (St. Br. 41-42); *see Bruen*, 597 U.S. 1, 54, 64, 66-67, 69-70 (addressing: 1821 Tenn. Acts ch. 13, p. 15 (noting this law was replaced with a "substantively identical successor," 1870 Tenn. Acts ch. 13, § 1, p. 28., that permitted the public carry of larger firearms because a "categorical prohibition on their carry would violate the constitutional right to keep arms."); 1870 S. C. Acts p. 403, no. 288, § 4 (finding regulation only applied against those who go armed offensively to the terror of the people); 1875 Ark. Acts p. 156, § 1 (rejected as "short lived"); Wyo. Rev. Stat., ch. 3, § 5051 (1899) (1890 law succeeding 1876 Wyo. Comp. Laws 352, ch. 52, § 1 "enacted upon statehood prohibiting public carry only when combined with "intent, or avowed purpose, of injuring [one's] fellow-man"); 1881 Kan. Sess. Laws §§ 1, 23, pp. 79, 92.31 (finding it did not demonstrate meaningful restriction much less a broad tradition on regulating public carry); 1889 Ariz. Terr. Sess. Laws no. 13, § 1-2, p. 16-17 (finding local outlier did not reflect a broad tradition in restricting public carry and noting that it permitted the carrying of "rifles and other long guns everywhere" and exempted those who had "reasonable ground for fearing an unlawful attack upon his person" from liability.); 1890 Okla. Terr. Stats., Art. 47. §§ 1–2, 5, p. 495 (finding this local law during transitional American territorial era did not reflect Nation's tradition and noting that law allowed the carrying of shotguns and rifles for certain purposes)). Thus, the majority of the statutes relied on by the State do not support their position that states "often" prohibited the public open carry of handguns.

The State then relies on a Ninth Circuit case that was overturned by *Bruen*, *Young v. Hawaii*, 992 F.3d 765 (9th Cir. 2021), to propose that the Statute of Northhampton, the predecessor to going armed laws, was adopted by our Nation and led to the continued regulation of public carry through going armed laws. (St. Br. 39-41) The State acknowledges that *Young* was overturned by the *Bruen* decision, but it maintains that it only relies on *Young* for its "detailed

historical review of regulations governing public carriage." (St. Br. 39, n. 5) But the State is also barred from relying on the Ninth Circuit's flawed historical recitation of the Statute of Northampton and going armed laws. It was precisely its incorrect historical interpretation of these laws that the *Bruen* decision disagreed with. Specifically, the State relies on *Young* to propose that colonies adopted the Statute of Northampton "almost verbatim" and that this English custom is useful for interpreting the Second Amendment. (St. Br. 40-41) (quoting *Young*, 992 F.3d at 794) It goes on to state that "[t]hese laws demonstrate that American colonists shared the English concern that the mere presence of firearms in the public square presented a danger in the community." (St. Br. 41) However, both these points made by the State have been expressly refuted by the U.S. Supreme Court.

First, the U.S. Supreme Court expressly refuted the notion that the Statute of Northampton has any bearing on the interpretation of the Second Amendment. *Bruen*, 597 U.S. at 41, 45 (explaining that the Statute of Northampton "has little bearing on the Second Amendment adopted in 1791," and stating that "the Statute of Northampton ... was no obstacle to public carry for self-defense in the decades leading to the founding"). Second, the court refuted the idea that the mere presence of firearms in public was viewed as a danger to the English and American colonist. The court found "the opposite seems to have been true" stating that the public carry of firearms "had gained a fairly secure footing in English culture." *Id.* at 45.

The court also expressly rejected any reliance on the three colonial and one late-eighteenth century regulations relied on by the State. (St. Br. 41) (relying on 1686 N.J. Laws 289, 289-90, Ch 9; 1692 Mass. Laws, Ch. 18 § 6; 1699 N.H. Laws 1; 1786 Va. Laws 33, ch 21.); *Bruen*, 597 U.S. at 46-49. The court explained that these statutes "provide no justification for laws restricting the public carry of weapons that are unquestionably in common use today." *Id*. at 47. The court charged the government with misunderstanding these laws and stated these statutes were "far from banning the carrying of any class of firearms, they merely codified the existing

common-law offense of bearing arms to terrorize the people, as had the Statute of Northampton itself." *Id*. The State's reliance on these laws has, in large part, already been rejected by the U.S. Supreme Court.

State attempts to avoid its burden.

Thompson addresses two arguments raised by the State in its campaign to avoid its burden. First, the State relies on *United States v. Salerno,* 481 U.S. 739, 745 (1987), where the court stated that a facial challenge to a statute must "establish that no set of circumstances exist under which the Act would be valid" to contend that the AUUW statute is not facially unconstitutional because it can be applied against felons. (St. Br 13-14) The State made this identical argument relying on the same language from *Salerno* in *People v. Burns*, 2015 IL 117387, ¶ 26, and it was rejected by this Court. This Court explained that "when assessing whether a statute meets this standard, the Court has considered only applications of the statute in which it *actually authorizes or prohibits conduct*." *Id*. at ¶ 27 (emphasis added) (quoting *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409, 418 (2015)). This Court stated that, under the unlawful use of a weapon by a felon statute, 720 ILCS 5/24–1.1 (West 2008), Illinois already prohibits felons from carrying any weapons at all . *Burns*, 2015 IL 117387, ¶ 29. It reasoned that the AUUW statute does not include a prior felony conviction as an element of the offense, and an "unconstitutional statute does not 'become constitutional' simply because it is applied to a particular category of persons who could have been regulated, had the legislature seen fit to do so." *Id.* This Court held that it was "precisely because the [AUUW statute] *is not limited to a particular subset of persons, such as felons*, that the statute, as written, is unconstitutional on its face." *Id*. at ¶ 25 (emphasis added).

Under the State's logic, no firearm regulation could ever be subjected to a Second Amendment challenge because they would all be constitutional as-applied to felons. *See Patel*, 576 U.S. at 418 ("its logic would preclude facial relief in every Fourth Amendment challenge

to a statute authorizing warrantless searches. For this reason alone, the [government's] argument must fail."). This Court and the U.S. Supreme Court have already rejected this argument raised by the State and it should be rejected again here.

Second, the State forfeited the argument it raises for the first time before this Court that the AUUW statute does not regulate the public open-carry of firearms. (St. Br. 7-9) The State admits that it has already conceded that the AUUW bans open-carry: "[a]lthough the People, in the appellate court, proceeded on [Thompson's] assumption that the AUUW bans open carry, this is wrong." (St. Br. 7) The State cannot now raise this new argument for the first time on appeal. *See People v. Artis*, 232 Ill. 2d 156, 177–78 (2009) (refusing to address the State's one-act, one-crime argument where it conceded the issue before the appellate court and did not challenge it when it had the opportunity to do so).

Even if this Court were to consider the State's new argument, the State quickly contradicts its entire position when it concedes the AUUW statute regulates open carry. It sets forth that, "[t]he concealed versus open nature of [Thompson's] carriage was not an element of the offense,[*sic*] because either concealed *or open carriage satisfies the language of subsection (a)(1)*" of the AUUW statute. (St. Br. 8) (emphasis added)

The State's interpretation also runs contrary to Illinois cases that have interpreted the statute as prohibiting open carry, including this Court. Beginning with the appellate court in this case, the court interpreted the AUUW statute as prohibiting open carry. *People v. Thompson*, 2023 IL App (1st) 220429-U, ¶¶ 51-53, 58. In *Sinnissippi Rod & Gun Club, Inc. v. Raoul,* 2024 IL App (3d) 210073, ¶¶ 5, 38-39, the court expressly found that the AUUW statute, "section 24-1.6(a)" "proscribe[s] the open carriage of firearms in public." This Court as well, in *Burns*, has interpreted the relevant language at issue here as banning both open and concealed carry. *People v. Burns*, 2015 IL 117387, ¶ 21 (quoting *Aguilar*, 2013 IL 112116, ¶ 19) (finding AUUW statute amounts to "flat ban on carrying ready-to-use guns outside the home.") The State's

proposed reading of the statute should be rejected.

The State then mentions that the alleged conduct that Thompson was engaged in was concealed carry. (St. Br. 7) In any event, Thompson was injured by the enforcement of subsection (a)(1), (3)(A-5) of the AUUW statute. He was convicted under the unconstitutional statute that categorically bans open carry and that enforces an ahistorical double licensing scheme against ordinary, law-abiding citizens. Therefore, he can raise a facial challenge against this section of the AUUW statute. *See Aguilar*, 2013 IL 112116, ¶¶ 11-12.

In *Aguilar*, this Court rejected the State's argument that the defendant could not challenge the AUUW statute because he was not engaged in any constitutionally protected conduct where he possessed a loaded, defaced, and illegally modified handgun on another person's property without consent. *Id*. at ¶ 11. This Court explained that, even if defendant could not establish that he was engaged in constitutionally protected conduct, he had been directly injured by the statute when he received two felony convictions for AUUW and was sentenced to 24 months' probation. *Id*. at ¶¶ 11-12. Thus, he could raise a facial challenge against the statute. *Id*. at ¶ 12. This Court expressly stated, "[o]r to put it another way, if defendant does not have standing to challenge the validity of these sections, then no one does. The State's standing objection is rejected." *Id*.

2. The State fails to meet its burden of showing a history and tradition in subsection (3)(A-5) of the AUUW statute's requirement that citizens undergo a double licensing regime.

The State does not point to any historical analogues to the AUUW statute's and CCL Act's requirement that individuals undergo two separate licensing processes before being able to public carry a handgun or face criminal punishment. It then takes a troubling paternalistic view on the disproportionate application of the AUUW statute against Black Illinoisians. This Court should flat out reject the State's troubling paternalistic views on Black Illinoisians.

a. There are no historical analogues for the AUUW statute's and CCL Act's dual licensing regime.

As an initial matter, in *Atkinson v. Garland*, 70 F.4th 1018, 1022 (7th Cir. 2023), the Seventh Circuit explained that courts cannot rely on *Bruen*'s footnote 9 to "sidestep" the required historical analysis applied to Second Amendment challenges. (Op. Br. 44-47); *see also People v. Miller*, 94 Cal. App. 5th 935, 945 (2023) (same). Without addressing *Atkinson* or *Miller*, the State over-relies on *Bruen*'s footnotes 1 and 9 to propose that the U.S. Supreme Court has "expressly recognized the constitutionality of Illinois' shall-issue licensing regime for firearms." (St. Br. 9-11) The State balloons *Bruen*'s citation to the Illinois CCL Act beyond the U.S. Supreme Court's utilization of it. The court was simply safeguarding against issuing advisory opinions about specific "shall issue" statutes. In his concurring opinion in *Rahimi*, Justice Gorsuch reiterated that the court does not engage in advisory opinions:

> Nor do we purport to approve in advance other laws denying firearms on a categorical basis ...Article III of the Constitution vests in this Court the power to decide only the " 'actual cas[e]' " before us," 'not abstractions.' "[citation]...*Nor should future litigants and courts read any more into our decision than that.* As this Court has long recognized, what we say in our opinions must "be taken in connection with the case in which those expressions are used,"[citation], and may not be "stretch[ed] ... beyond their context,"[citation].

Rahimi, 144 S. Ct. at 1910 (Gorsuch, J., concurring)(emphasis added). The U.S. Supreme Court has cautioned against taking "stray comments and stretch[ing] them beyond their context—all to justify an outcome inconsistent with this Court's reasoning and judgment," *Brown v. Davenport*, 596 U.S. 118, 141 (2022), and against "read[ing] a footnote" as "establish[ing] the general rule" for a case. *United States ex rel. Schutte v. SuperValu, Inc*., 598 U.S. 739, 755 n.6 (2023).

A close look into the CCL Act, beyond a citation on a footnote, reveals that there is some undefined discretion left to officials allowing them to deny applicants a license. (Op. Br. 30-31) Aside from whether the CCL Act is truly a "shall issue" licensing regime, only

through historical analysis can this Court determine whether there is a history and tradition to Illinois' double licensing scheme enforced through the AUUW statute and CCL Act. *See Atkinson*, 70 F.4th at 1022. The footnotes and concurrences from *Bruen*, relied on by the State, provide no historical analysis into Illinois' licensing regime. This Court should reject the State's position that the U.S. Supreme Court has specifically sanctioned Illinois' licensing laws.

The State then points to colonial and late eighteenth century laws: "going armed" laws; "disarmament" laws; and "surety statutes" as analogues. (St. Br. 18-29) However, the "why" behind these historical laws relied on by the State is not "relevantly similar" to the "why" behind the AUUW statute or the CCL Act. The U.S. Supreme Court explained that because "everything is similar in infinite ways to everything else," analogies must conform to some metric that enables the analogizer to distinguish between the similarities that matter and the ones that don't. *Bruen*, 597 U.S. at 29. Two metrics were provided by the court, "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id*."Why and how the regulation burdens the right are central to this inquiry." *Rahimi*, 144 S. Ct. at 1898. If modern laws do not address the same particular problems that were addressed by the founding era laws being compared, then that is a strong indicator that the historical laws are not proper analogues for the contemporary laws. *Id*. The laws relied on by the State were designed to restrict dangerous individuals from going armed offensively against the terror of the people and to disarm the Founders' political opponents during the Revolution. These laws do not share a relevantly similar "why" with the AUUW statute's imposition of criminal punishment against normal, law-abiding citizens for the simple carrying of a handgun.

"Going armed" laws

The State submits that "going armed" laws are analogous to the AUUW statute and CCL Act as they demonstrate a history and tradition in "preventing individuals who threaten physical harm to others from misusing firearms." (St. Br. 18) (quoting *Rahimi*, 144 S. Ct. at

1896). It admits that going armed laws prohibited "riding or going armed, with dangerous or unusual weapons, to terrify the good people of the land." (St. Br. 19) (citing *Rahimi* 144 S. Ct. at 1901) These are not good analogues to the AUUW and CCL Act, which regulate the public carry of common-use handguns by ordinary, law-abiding citizens.

The court in *Bruen* explained that these colonial-era going armed laws provide little support for "restrictions on the public carry of handguns today." *Bruen*, 597 U.S. at 47. These laws only show a history of colonial legislatures sometimes prohibiting "dangerous and unusual weapons." *Id*. The court reiterated that handguns are "indisputably in 'common use' for self-defense today. They are, in fact, 'the quintessential self-defense weapon.'" *Id*. (quoting *Heller*, 554 U.S. at 629). It found that going armed laws provide no justification for current regulations that prohibit the public carry of common-use handguns. *Id*. The court further expounded that the purpose of going armed laws was to prohibit the bearing of arms in a way that spread "fear" or "terror" among the people. *Id*. at 50. It found no evidence that going armed laws regulated "the right of the general population to peaceable public carry." *Id*. at 51.

Even more recently, in *Rahimi*, the court again explained that "going armed" laws were a regime of laws designed to punish "those who had menaced others with firearms." *Rahimi*, 144 S. Ct. at 1900. It found that going armed laws were "relevantly similar," to the statute at issue in that case, 18 U.S.C.A. § 922 (g)(8), which– as the court described– prohibits the possession of firearms only by those found by a court to present a clear and credible threat of physical violence to another. *Rahimi*, 144 S. Ct. at 1901. The court distinguished section 922 from the New York law it struck down in *Bruen,* which broadly restricted the carrying of firearms by the general public. *Id.* The State's reliance on these going armed laws as analogues to broad public carriage regulations of handguns by ordinary law-abiding citizens, such as the AUUW statute and CCL Act, has been rejected by the U.S. Supreme Court.

Disarmament laws

The State then relies on "disarmament laws," as historical analogues to the CCL Act's licensing requirement and the AUUW's enforcement of that requirement. (St. Br. 20-23) The State describes that these laws were meant to disarm "individuals who remained loyal to the British government or refused to swear allegiance to the Republic." (St. Br. 20) It admits that these laws "disarmed individuals based on specific religions, political views, ethnicities, or other categories perceived by the state governments at the time as dangerous." (St. Br. 22)

The court in *Rahimi* addressed these disarmament laws designed to disarm political opponents and disfavored religious groups and explained that these laws did not survive their era. *Rahimi*, 144 S. Ct. at 1899. The court in *Rahimi* rejected these laws and stated that "[b]y the time of the founding, state constitutions and the Second Amendment had largely eliminated governmental authority to disarm political opponents on this side of the Atlantic." *Id.* In his concurrence in *Rahimi*, Justice Gorsuch went on to explain that, "in using pre-ratification history, courts must exercise care to rely only on the history that the Constitution actually incorporated and not on the history that the Constitution left behind." *Rahimi*, 144 S. Ct. at 1915 (Kavanaugh, J. concurring). These disarmament laws were, indeed, left behind. The court in *McDonald v. City of Chicago*, Ill., 561 U.S. 742, 768-69 (2010), explained that the Bill of Rights were ratified, in large part, due to the fear of citizens "that the federal government would disarm the people in order to impose rule through a standing army or select militia." The U.S. Supreme Court has already rejected any reliance on these politically motivated disarmament laws as proper historical references for interpreting the Second Amendment. *See Rahimi*, 144 S. Ct. at 1899.

Surety Statutes

The State then proposes that "surety statutes" are analogous to the CCL Act's requirement that individuals be issued a license before they may carry a concealed weapon in public. (St.

Br. 25-26) However, the State is wrong. These statutes "presumed that individuals had a right to public carry," and provided that the right could only be burdened if an accuser could make out a specific showing of "reasonable cause to fear an injury, or breach of the peace" to a neutral magistrate, "target[ing] only those threatening to do harm." *Bruen*, 597 U.S. at 55-57; *Rahimi*, 144 S. Ct. at 1891. Even after such a showing, an accused arms-bearer could continue carrying their arms in public so long as they did not breach the peace or injure others. *Bruen*, 597 U.S. at 56-57. The court expressly found that surety laws were not designed to regulate public carry and any effect had on the public carry of firearms was incidental. *Bruen*, 597 U.S. at 55, 57.

Accordingly, the court in *Rahimi* found surety statutes as "relevantly similar" to Section 922(g)(8)(C)(i), as to the "why and how it burden[ed] the Second Amendment right." *Rahimi*, 144 S. Ct. at 1901-02. The court explained that both laws only applied to individuals who had been found by a court "to threaten the physical safety of another." *Id.*

The CCL Act and AUUW statute are more similar to New York's broad prohibitory regime on carrying firearms that *Bruen* found unconstitutional. *Bruen*, 597 U.S. at 55-57. They are readily distinguishable from the narrow regulation at issue in *Rahimi* that only allowed the burdening of the right to bear arms after a determination by a neutral magistrate that an individual posed a credible threat to the physical safety of others. The *Rahimi* court set out this distinction in its decision:

> our Nation's tradition of firearm regulation distinguishes citizens who have been found to pose a credible threat to the physical safety of others from those who have not. The conclusion that focused regulations like the surety laws are not a historical analogue for a broad prohibitory regime like New York's does not mean that they cannot be an appropriate analogue for a narrow one.

Rahimi, 144 S. Ct. at 1902. Here, the AUUW statute and CCL Act are broad prohibitions on the carrying of firearms by the general public and are more like the New York statute struck down in *Bruen*. They are not like the surety laws or the statute at issue in *Rahimi.* The AUUW and CCL Act's prohibition on the carrying of firearms is not limited to those individuals who

have been found by a neutral magistrate to pose a credible threat of physical violence to another. They apply broadly to all individuals, including law-abiding citizens like Thompson. *See Moore v. Madigan*, 702 F.3d 933, 940 (7th Cir. 2012) (finding the AUUW statute is a broad firearms prohibition that applies to "the entire law-abiding adult population of Illinois").

It is true, as the State points out, that the AUUW statute and CCL Act do not condition an individual's right to carry a firearm on a showing of a heightened sense of need for self-defense, as the New York law at issue in *Bruen* did.(St. Br. 26) (citing *Bruen*, 597 U.S. at 56). However, contrary to the State's position, the AUUW statute and CCL Act do not operate on a *presumption* that everyone is entitled to carry a handgun and are far more distinguishable from the surety statutes in that sense. (St. Br. 27) Illinois citizens may not carry any weapon in public unless they first obtain permission from Illinois' government to do so through Illinois' double-licensing regime or face criminal punishment. *See* 430 ILCS 66/10 (c)(2) and 720 ILCS 5/24-1.6 (a)(1), (3)(A-5). Again, surety laws could only be applied against those who already carried firearms in public, and were not double-licensing regimes that required citizens to twice obtain permission from the government to carry a firearm in public. *See Bruen*, 597 U.S. at 57 (distinguishing New York licensing statute by explaining that with surety laws, "everyone started out with robust carrying rights" and they did not impact the carrying of firearms by law-abiding citizens.)

Further, unlike surety statutes and section 922(g)(8)(C)(i), the process of obtaining a CCL does not involve a neutral magistrate. It is the Illinois State Police that determines who is fit to carry arms in public. *See* 430 ILCS 66/25 (2) ("the Illinois State Police shall issue a license..."); *Rahimi*, 144 S. Ct. at 1902 (explaining that section 922(g) "matches the surety and going armed laws, *which involved judicial determinations* of whether a particular defendant likely would threaten or had threatened another with a weapon") (emphasis added).

Finally, in distinguishing surety statutes from the New York regulation, the *Bruen* court explained that unlike surety statutes, which were "intended merely for prevention," New York's

licensing law sought significant criminal penalties of up to four years in prison and a $5,000 fine. *Bruen*, 597 U.S. at 57. The same distinction applies to the AUUW statute. Unlike surety statutes, someone who is convicted under the AUUW statute is subject to significant criminal punishment. AUUW convictions are Class 4 felonies punishable by a sentence of one to three years in prison. 720 ILCS 5/24-1.6 (d)(1); 730 ILCS 5/5-4.5–45 (a). A second conviction is a Class 2 felony subject to a sentence of three to seven years in prison. 720 ILCS 5/24-1.6 (d)(1); 730 ILCS 5/5-4.5-35 (a). Thus, where surety statutes and section 922(g)(8)(C)(i) land at one end of the Second Amendment spectrum and New York's "proper cause" licensing regime at the other, the AUUW statute and CCL Act land much closer to the New York regulation and should likewise be found unconstitutional.

The State's reliance on statutes that imposed taxes are far–off the mark. (St. Br. 27-28) The AUUW statute and CCL Act are simply not tax regulations.

The State then points to current licensing statutes from several states to argue that the fees required under the CCL Act are not "exorbitant." (St. Br. 31) (citing Conn. Gen. Stat. § 29-30; K.S.A. § 75-7c05(b)(2); La. R. S. § 40:1379.3.1(A)(1); ALM GL ch. 140, § 131(I); 10 MCLS § 28.425b(5); R.S.S. Neb. § 69-2436(1); N.J. Stat. Ann. § 2C:58-4; N.M. Stat Ann. § 29-19-5; and ORS § 166.291)[2]. However, the State fails to account for the fact that the majority of these states with the exception of three, Connecticut, Michigan, and New Jersey, allow for a form of permitless carry that does not require their citizens to go through any licensing requirements whatsoever.[3] Critically, none of these licensing schemes require individuals to

[2] Thompson points out that he was unable to find ALM GL ch. 140, § 131(i) and that the fees under Kansas licensing law, K.S.A. § 75-7c05(b)(2), are $32.50 not $132.50 as indicated on the State's brief. (St. Br. 31)

[3] Kan. Stat. Ann. § 75-7c03 ("[t]he availability of licenses to carry concealed handguns under this act shall not be construed to impose a general prohibition on the carrying of handguns without such license, whether carried openly or concealed, or loaded or unloaded."); La. Stat. Ann. § 40:1379.3.4 "Louisiana permitless carry" ("[t]he Department

first obtain a separate license as does the CCL Act. *See* 430 ILCS 66/25 (2) (requiring a valid FOID card prior to obtaining CCL).

While the State relies on *Maryland Shall Issue, Inc. v. Moore* to propose that Illinois' double licensing does not offend the Second Amendment (St. Br. 18, 30), that court refused to conduct any historical analysis. *Maryland Shall Issue, Inc. v. Moore*, 116 F.4th 211, 222-23, 229 (4th Cir. 2024). Instead, the court manufactured a new test that directly contradicted the two-step analysis announced in *Bruen*. *Id.* In *Moore*, plaintiffs challenged Maryland's licensing regime under its handgun qualification statute (HQL), claiming its "temporary deprivation" of the ability to purchase a gun violated the Second Amendment. *Id.* at 216. The *Moore* court expressly deviated from the two-step framework announced in *Bruen,* and instead, it applied its own test that completely flipped the *Bruen* framework on its head. *Id.* at 222-23. The court deemed Maryland's HQL law a "shall issue" licensing regime that was presumed constitutional and relied on *Bruen*'s footnote 9 to place the burden on the plaintiffs to overcome that presumption. *Id.* 222-25. This analysis is directly contrary to the two-step framework announced in *Bruen*, 597 U.S. at 17, that ultimately places the burden on the government to prove the statute constitutional. The *Bruen* framework was reinforced by the court in *Rahimi*: "when the Government regulates arms-bearing conduct, as when the Government regulates other constitutional rights, it bears the burden to justify its regulation." *Rahimi*, 144 S. Ct. at 1897.

Given the Fourth Circuit's directly conflicting analysis with *Bruen*, it is no surprise that six justices rejected the court's new test. *See Moore*, 116 F.4th at 230-31 (Rushing, J.,

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of Public Safety and Corrections, office of state police, shall provide a two-hour online concealed handgun education course *at no cost to Louisiana residents*."); Neb. Rev. Stat. Ann. § 28-1202.01 (Except as otherwise provided in this section, a person, other than a minor or a prohibited person, may carry a concealed handgun anywhere in Nebraska, *with or without a permit* under the Concealed Handgun Permit Act."); N.M. Stat. Ann. § 30-7-2; N.M. Stat. Ann. § 29-19-3 (together only criminalizing concealed carry and only requiring license to conceal carry); Or. Rev. Stat. Ann. § 166.250; Or. Rev. Stat. Ann. § 166.291 (together only requiring license to conceal carry and only criminalizing concealed carry).

joined by Gregory, J., and Quattlebaum, J. concurring) (disagreeing with majority that HQL regulation does not implicate second amendment–"[t]hat is wrong," and disagreeing with majority's test that does not follow the *Bruen* framework and relieves government of its burden); *Id.* at 238-39 (Niemeyer, J. concurring in part and dissenting in part) ("for a reason I have difficulty fathoming, the majority opinion launches into illogical *dicta* to alter *Bruen*'s clear test for applying the Second Amendment by requiring a plaintiff, as part of step one, to demonstrate that the regulation 'infringes' the Second Amendment right...[and] sets the *Bruen* test on its head."); *Id.* at 238-39 (Richardson, J., joined by Agee, J., dissenting) (disagreeing with the majority's "workaround" of *Bruen*'s two-step framework and finding that the HQL statute violates the Second Amendment as the government provided no historical basis for its law.)

Lastly, the Fourth Circuit's decision in *Moore* also directly conflicts with the Seventh Circuit's decision in *Atkinson*, 70 F.4th at 1022, holding that courts cannot rely on *Bruen*'s footnote 9 to "sidestep" the required historical analysis applied to Second Amendment challenges. The State fails to address *Atkinson*. (Op. Br. 44-47) This Court should reject the new test announced in *Moore* and the State's reliance on it.

The State also concerns itself with a tradition in preventing dangerous and mentally-ill individuals from possessing firearms. (St. Br. 19-20) Thompson highlights that Illinois has robust laws in place that are specifically designed to ensure that only those law-abiding, responsible citizens are allowed to carry handguns. *See Madigan*, 702 F.3d at 940 ("And empirical evidence of a public safety concern can be dispensed with altogether when the ban is limited to obviously dangerous persons such as felons and the mentally ill. [citing *Heller*] Illinois has lots of options for protecting its people from being shot without having to eliminate all possibility of armed self-defense in public.").

For example, the FOID Act, apart from serving as the State's official channel of providing licensing to purchase a gun, also enforces Illinois' mandatory background check for the purchase

and transfers of all guns. *See* 430 ILCS 65/3.1. Federally licensed firearm dealers, gun show promoters, and gun show vendors must contact the Illinois State Police (ISP) to conduct a background check on those who wish to purchase a firearm before the firearm can be transferred. 430 ILCS 65/3.1 (e)(1); 430 ILCS 65/3.1 (a), (b). ISP utilizes its own criminal history files, those of the Federal Bureau of Investigation, including the Instant Criminal Background Check System (NCIS), and files from the Department of Human Services relating to mental health and developmental disabilities. 430 ILCS 65/3.1(b). This ensures that purchasers are not prohibited from possessing a firearm. 430 ILCS 65/3.1; 720 ILCS 5/24-3. The FOID Act also requires unlicensed arms dealers to ensure that an individual who wishes to obtain a firearm possess a valid FOID card or CCL or request a background check from ISP. 430 ILCS 65/3[4]. An individual must undergo this same background check before they can receive a FOID card and a CCL. 430 ILCS 65/4(a)(25); 430 ILCS 66/35.

Thus, someone who wishes to carry a gun must undergo three separate background checks or face criminal punishment under the AUUW statute for failure to have a CCL. 720 ILCS 5/24.1 (a)(1), (3)(A-5). The AUUW statute runs contrary to a tradition of preventing dangerous and mentally-ill individuals from possessing firearms. It applies to ordinary law-abiding citizens and turns them into criminals when they fail to undergo two separate licensing processes. (Op. Br. 25-35); *see Madigan*, 702 F.3d at 940 (explaining AUUW statute applies to "the entire law-abiding adult population of Illinois"). The AUUW statute converts otherwise law-abiding citizens into criminals following a conviction under a simple possession regulation. Robert J. Cottrol & Raymond T. Diamond, *Helpless by Law: Enduring Lessons from A Century-Old Tragedy*, 54 Conn. L. Rev. Online 1, 34-35 (2022). Contrary to the State's position, Illinois'

[4] *See* Appendix at (A-8) for a workflow of the FOID Act's Firearm Transfer Inquiry Program (FTIP). The workflow was obtained from ISP's website at https://isp.illinois.gov/Foid/Statistics (last accessed on October 24, 2024).

dual licensing regime has been put to abusive ends. (St. Br. 30-37)

The State also focuses on the fees required under the CCL Act and the FOID Act (St. Br. 30), $160, without accounting for the unspecified fees required for the background checks under both processes. 430 ILCS 65/4 (a)(25); 430 ILCS 66/35. The State ultimately fails to address Thompson's challenge to the AUUW statute's and CCL Act's double licensing regime. It does not address why two separate schemes are required and it points to no historical tradition or other current state laws that require the same. The State is wrong that this licensing process is not exorbitant, extravagant, excessive, grossly exceeding normal, or unconscionable. (St. Br. 30-31) This atypical requirement to undergo two separate licensing processes has proven to be unconscionable to Illinois' citizens, especially its Black community. (Op. Br. 31-42)

b. The only historical analogous regulations that can be pointed to any licensing requirement are the racist colonial gun laws that sought to oppress and disenfranchise Black Americans from their Second Amendment rights, and this Nation has a history of abolishing such abhorrent laws.

The State does not dispute Thompson's argument that historically racist colonial gun laws are analogous to the disparate application of the AUUW statute against Black Illinoisians. (Op. Br. 36-43) Instead, the State proposes that the discriminatory enforcement of the AUUW statute against Black Illinoisians is "irrelevant" in this analysis. (St. Br. 47, n. 6) It then takes a troubling paternalistic view that "the principles of disarming dangerous people serve to benefit Black communities, which are disproportionately the victims of gun violence." (St. Br. 47) But these paternalistic views on stripping Black Illinoisians of their Second Amendment right to carry a gun strips them of their right to self-defense and does little to curb the violence. Cottrol, *Helpless by Law*, 54 Conn. L. Rev. Online at 35. Thus, "the failure to protect remains a constant, as does the push to deny the most elemental right, the right to self-defense." *Id.* at 36.

The State then turns around in contradictory fashion and asks this Court to actually

find racist-based colonial laws that sought to disarm Black Americans as relevant in determining the constitutionality of the AUUW statute and CCL Act. (St. Br. 22-23) It points to disarmament laws that prohibited selling arms to Native Americans, Quakers, and even those laws that sought to disarm enslaved Blacks and freed Black Americans. (St. Br. 22-23) Its reliance on these laws as analogues is troubling and should be outright rejected by this Court.

Several justices in *Rahimi* rejected relying on these types of laws for historical interpretation of the Second Amendment. Justices Sotomayor and Kagan stated that, "[h]istory has a role to play in Second Amendment analysis, but a rigid adherence to history, (particularly history predating the inclusion of women and people of color as full members of the polity), impoverishes constitutional interpretation and hamstrings our democracy." *Rahimi*, 144 S. Ct. at 1905 (Sotomayor, J. and Kagan, J., concurring). Justice Kavanaugh stated that the U.S. Constitution, "sought to reject the Nation's history of racial discrimination, *not to backdoor incorporate racially discriminatory and oppressive historical practices and laws into the Constitution*." *Rahimi*, 144 S. Ct. at 1915 (Kavanaugh, J., concurring) (emphasis added).

These racist laws were expressly left behind when this Nation eradicated them through the enactment of the Freedmen's Bureau Act, the Civil Rights Act of 1871, and ultimately the Fourteenth Amendment. (Op. Br. 38-39) Asking this Court to rely on these racist laws that mainly targeted Black Americans and Native Americans as a basis for upholding the AUUW statute and CCL Act would offend our Nation's morals and ignore our Nation's history in eradicating them. (Op. Br. 39) It is not enough for the State to acknowledge that these "regulations would be repugnant today for the prejudices they embody," when it turns around and asks this court to rely on these same repugnant laws ***today*** to find Illinois' current gun laws constitutional. (St. Br. 23)

At least one Illinois appellate court is in agreement with Thompson, and it recently admonished the State on relying on such repugnant laws. The court's reasoning echoed "the

sentiments of Judge Sharon Coleman of the Northern District of Illinois on this subject":

> The Court is dismayed by the government's continuous reliance on admittedly bigoted and racist laws in these cases. Indeed, the Court would be remiss in failing to point out that the government's characterization of [the defendant], a Black man, as an 'untrustworthy adherent to the law' would have been the same characterization the founders had about the enslaved Africans. The government essentially expands on *Bruen*'s test to argue that the denial of all constitutional rights at the founding can justify the denial of some constitutional rights today. The government should be careful in 'picking its friends out of history's crowd.
>
> The government demonstrates ignorance and insensitivity toward this nation's history of slavery and the peculiar institution's modern impact on Black Americans. This level of disregard becomes all the more concerning when the realities of how Section 922(g)(1) is enforced against primarily Black Americans is considered.
>
> Unsurprisingly, this Court rejects the government's reliance on slavery and discrimination toward Native Americans as historical analogues to Section 922(g)(1) given the regulations impermissible premise cannot impose a 'comparably justified' burden on the right of armed self-defense. Accordingly, the Court finds that Section 922(g)(1) is not analogous to discriminatory regulations regarding slavery and Native Americans.

People v. Mobley, 2023 IL App (1st) 221264, ¶ 33 (cleaned up) (quoting: *United States v. Washington*, No. 23-cr-00274, 2023 WL 8258654, at *5-6 (N.D. Ill. Nov. 29, 2023)). This Court should outright reject the State's troubling position here.

C. This Court should weigh in and provide guidance to Illinois courts on the newly historical analysis announced in *Bruen* and strike down section 24-1.6(a)(1), (3)(A-5) of the AUUW statute.

If this Court were to strike down section 24-1.6(a)(1), (3)(A-5) of the AUUW statute, the legislature would have little difficulty bringing these two statutes into compliance with the Second Amendment. Thompson provides a few options that would be available to the legislature. To address the unconstitutional categorical ban on open carry, section (3)(A-5) could be stricken from the AUUW statute, or the legislature could incorporate language in this section that would allow for a form of open carry, such as for self-defense. *See,* e.g., Conn. Gen. Stat. § 29-35 (a)(2) ("If a person displays a firearm temporarily while engaged in self-defense or other conduct that is otherwise lawful, such display shall not constitute a violation of this subdivision."); Fla. Stat. Ann. § 790.053(2) ("A person may openly carry, for purposes of lawful

self-defense."). The AUUW statute would no longer consist of a categorical ban on open carry.

To address Illinois' ahistorical double licensing regime, the legislature could strike section 430 ILCS 66/25 (2) from the CCL Act, which requires individuals to possess a FOID card in order to obtain a CCL. The legislature could also allow CCL holders to purchase guns, as it does with the FOID Act. This would not affect background checks, as ISP is already required to keep databases of both, FOID card holders and CCL holders. 430 ILCS 66/10 (i) ("[t]he Illinois State Police shall maintain a database"); 430 ILCS 66/85 (providing that CCL holders are not exempt from background checks). Thus, someone who wishes to purchase a handgun would be able to do so with a FOID card or CCL, and ISP could easily confirm whether the intended purchaser possessed either license and conduct the same background check in either situation. These changes would not require the legislature to break new ground on a new sweeping statute or delve into an unfamiliar area of gun laws. It would be an easy fix.

CONCLUSION

For the foregoing reasons, Tyshon Thompson, Defendant-Appellant, respectfully requests that this Court find section 720 ILCS 5/24-1.6(a)(1), (3)(A-5) facially unconstitutional and reverse his AUUW conviction outright.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b) and this Court's order from October 22, 2024, allowing Defendant-Appellant leave to file reply brief in excess of page limitation but not exceeding twenty-five (25) pages. The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 25 pages.

/s/Eric E. Castañeda
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APPENDIX TO THE BRIEF

Tyshon Thompson No. 129965

Statutes Relied on by the State

The State relies on several historical statutes. Appellate counsel was able to find many of the laws through the Duke Center for Firearms Laws website. This website was last visited by appellate counsel on October 24, 2024. Duke University describes its initiative under its center for firearms laws as follows:

> The Duke Center for Firearms Law is dedicated to the development of firearms law as a scholarly field. It seeks to do so through the development and support of reliable, original, and insightful scholarship, research, and programming on firearms law that will be useful to lawyers, policy makers, and the interested layperson.

https://firearmslaw.duke.edu/

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Historical laws relied on by the State at (St. Br. 41):

- **1795 Mass. Laws 436, ch. 2, An Act for Repealing an Act, made and passed in the year of our Lord, one Thousand six Hundred and ninety-two, entitled, "An Act for punishing Criminal Offenders," and for reenacting certain provisions therein**:

And it is further enacted by the authority aforesaid, That every Justice of the Peace, within the county for which he may be commissioned, may cause to be staid and *arrested, all affrayers, rioters, disturbers, or breakers of the peace, and such as shall ride or go armed offensively, to the fear or terror of the good citizens* of this Commonwealth, or such others as may utter any menaces or threatening speeches, and upon view of such Justice, confession of the delinquent, or other legal conviction of any such offence, shall require of the offender to find sureties for his keeping the Peace, and being of the good behavior; and in want therof, to commit him to prison until he shall comply with such requisition: and may further punish the breach of the Peace in any person that shall assault or strike another, by fine to the Commonwealth, not exceeding twenty shillings, and require sureties as aforesaid, or bind the offender, to appear and answer for his offence, at the next Court of General Sessions of the Peace, as the nature or circumstances of the case may require.

available at:
https://firearmslaw.duke.edu/laws/1795-mass-laws-436-ch-2-an-act-for-repealing-an-act-made-and-passed-in-the-year-of-our-lord-on-ethousand-six-hundred-and-ninty-two-entitled-an-act-for-punishing-criminal-offenders-and-for-r

- **1801 Tenn. Pub. Acts 259, 260-61:**

Tennessee, which was at the forefront of gun control throughout the eighteen hundreds, did have an 1801 statute authorizing justices of the peace to require sureties of any person who (1) violated the common-law prohibition against *going armed to the terror of the people* or (2) privately carried any "dirk, large knife, pistol, or any other *dangerous weapon*" privately to the terror of the people. Act of Nov. 13, 1801, ch. 22, § 6, 1801 Tenn. Pub. Acts 259, 260-61.

available at:
Robert Leider, *Our Non-Originalist Right to Bear Arms*, 89 Ind. L.J. 1587, 1651, n. 59 (2014)

- **1821 Me. Laws 285, ch. 76, § 1:**

Be it enacted by the Senate, and House of Representatives, in Legislature assembled, That it shall be within the power, and be the duty of every Justice of the Peace within this county, to punish by fine not exceeding five dollars, all assaults and batteries that are not of a high and aggravated nature, and to examine into all homicides, murders, treasons, and felonies done and committed in this county, and commit to prison all persons guilty, or suspected to be guilty of manslaughter, murder, treason or other capital offence; and to cause to be staid and arrested, *all affrayers, rioters, disturbers or breakers of the peace, and such as shall ride or go armed offensively, to the fear or terror of the good citizens of this State*, or such others as may utter any menaces or threatening speeches; and upon view of such Justice, confession of the delinquent or other legal conviction of any such offence, shall require of the offender to fund sureties to appear and answer for his offence, at the Supreme Judicial Court, or Circuit Court of Common Pleas, next to be held within or for the same county at the discretion of the Justice, and as the nature or circumstances of the case may require;
1821 Me. Laws 285, ch. 76, § 1.

available at:
https://firearmslaw.duke.edu/laws/1821-me-laws-285-ch-76-c2a7-1

- **1821 Tenn. Pub. Acts 15-16, An Act to Prevent the Wearing of Dangerous and Unlawful Weapons, ch. 13:**

[E]ach and every person so degrading himself, by carrying a dirk, sword cane, French knife, Spanish stiletto, belt or pocket pistols . . . shall pay a fine of five dollars for every such offence[.]

available at:
https://firearmslaw.duke.edu/laws/1821-tenn-pub-acts-15-16-an-act-to-prevent-the-wearing-of-dangerous-and-unlawful-weapons-ch-13

- **N.C. Decl. of Rights section XVII (1776):**

Section XVII. That the People have a right to bear Arms for the Defence of the State; and as standing Armies in Time of Peace are dangerous to liberty, they ought not to be kept up; and that the military should be kept under strict subordination to, and governed by, the civil Power

available at:
https://docsouth.unc.edu/csr/index.php/document/csr23-0055

- **Tenn. Const. of 1796, art. XI**:

XXVI – That the freemen of this state have a right to keep and to bear arms for their common defence.

available at:
chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/http://www.dircost.unito.it/cs/pdf/17960206_UsaTennessee_eng.pdf

- **Const. of Me., art. I, § 16 (1820)**:

Every citizen has a right to keep and bear arms for the common defence; and this right shall never be questioned.

- **1870 S. C. Acts p. 403, no. 288, § 4:**

For instance, South Carolina in 1870 authorized the arrest of *"all who go armed offensively, to the terror of the people,"* **1870 S. C. Acts p. 403, no. 288, § 4**,

available at:
New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1, 64, (2022).

Historical laws relied on by the State at (St. Br. 42):

- **1888 Id. Sess. Laws 23, An Act Regulating the Use and Carrying of Deadly Weapons in Idaho Territory, § 1:**

That it is unlawful for any person, except United States officials, officials of Idaho Territory, County officials, Peace officers, Guards of any jail, and officers or employees of any Express company on duty, to carry, exhibit or flourish any dirk, dirk-knife, sword, sword-cane, pistol, gun or other *deadly weapons*, within the limits or confines of any city, town or village or in any public assembly of Idaho Territory. Every person so doing is guilty of a misdemeanor and is punishable by fine not less than fifty dollars nor more than one hundred dollars, or by imprisonment in the county jail for a period of not less than twenty days nor more than fifty days, or by both such fine and imprisonment.

available at:
https://firearmslaw.duke.edu/laws/1888-id-sess-laws-23-an-act-regulating-the-use-and-carrying-of-deadly-weapons-in-idaho-territory-c2a7-1

- **Act of Mar. 18, 1889, no. 13, §§ 1-9, Ariz. Sess. Laws 30, 30-31 (1889 The Courier):**

SECTION 1. If any person within any settlement, town, village or city within this Territory shall carry on or about his person, saddle, or in his saddlebags, any pistol, dirk, dagger, slung shot, sword cane, spear, brass knuckles, bowie knife, or any other kind of knife manufactured or sold for purposes of offense or defense, he shall be punished by a fine of not less than twenty-five nor more than one hundred dollars; and in addition thereto, shall forfeit to the County in which he is convicted, the weapon or weapons so carried.

SEC. 2. The preceding article shall not apply to a person in actual service as a militiaman, nor as a peace officer or policeman, or person summoned to his aid, nor to a revenue or other civil officer engaged in the discharge of official duty, nor to the carrying of arms on ones own premises or place of business, nor to persons traveling, nor to one who has reasonable ground for fearing an unlawful attack upon his person, and the danger is so imminent and threatening as not to admit of the arrest of the party about to make such attack upon legal process.

SEC. 3. If any person shall go into any church or religious assembly, any school room, or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into a ball room, social party or social gathering, or to any election precinct on the day or days of any election, where any portion of the people of this Territory are

collected to vote at any election, or to any other place where people may be assembled to muster or to perform any other public duty, or to any other public assembly, and shall have or carry about his person a pistol or other firearm, dirk, dagger, slung shot, sword cane, spear, brass knuckles, bowie knife, or any other kind of a knife manufactured and sold for the purposes of offense or defense, he shall be punished by a fine not less than fifty nor more than five hundred dollars, and shall forfeit to the County the weapon or weapons so found on his person.

SEC. 4. The preceding article shall not apply to peace officers, or other persons authorized or permitted by law to carry arms at the places therein designated.

SEC. 5. Any person violating any of the provisions of Articles 1 and 3, may be arrested without warrant by any peace officer and carried before the nearest Justice of the Peace for trial; and any peace officer who shall fail or refuse to arrest such person on his own knowledge, or upon information from some credible person, shall be punished by a fine not exceeding three hundred dollars.

SEC. 6. Persons traveling may be permitted to carry arms within settlements or towns of the Territory for one-half hour after arriving in such settlements or town, and while going out of such towns or settlements; and Sheriffs and Constables of the various Counties of this Territory and their lawfully appointed deputies may carry weapons in the legal discharge of the duties of their respective offices.

SEC. 7. It shall be the duty of the keeper of each and every hotel, boarding house and drinking saloon , to keep posted up in a conspicuous place in his bar room, or reception room if there be no bar in the house, a plain notice to travelers to divest themselves of their weapons in accordance with Section 9 of this Act, and the Sheriffs of the various Counties shall notify the keepers of hotels, boarding houses and drinking saloons in their respective Counties of their duties under this law, and if after such notification any keeper of a hotel, boarding house or drinking saloon, shall fail to keep notices posted as required by this Act, he shall, on conviction thereof before a Justice of the Peace, be fined in the sum of five dollars to go to the County Treasury.

SEC. 8. All Acts or parts of Acts in conflict with this Act are hereby repealed.

SEC. 9. This Act shall take effect upon the first day of April, 1889. Approved March 18, 1889.

available at:
https://firearmslaw.duke.edu/laws/act-of-mar-18-1889-1889-ariz-sess-laws-16-17

- **1890 Okla. Laws 495, art. 47**:

Sec. 1. It shall be unlawful for any person in the Territory of Oklahoma to *carry concealed on or about his person*, saddle, or saddle bags, any pistol, revolver, bowie knife, dirk, dagger, slung-shot, sword cane, spear, metal knuckles, or any other kind of knife or instrument manufactured or sold for the purpose of defense except as in this article provided.

Sec. 2. It shall be unlawful for any person in the Territory of Oklahoma, to carry upon or about his person any pistol, revolver, bowie knife, dirk knife, loaded cane, billy, metal knuckles, or any other offensive or defensive weapon, except as in this article provided.

Sec. 3. It shall be unlawful for any person within this Territory, to sell or give to any minor any of the arms or weapons designated in sections one and two of this article.

Sec. 4. Public officers while in the discharge of their duties or while going from their homes to their place of duty, or returning therefrom, shall be permitted to carry arms, but at no other time and under to other circumstances: Provided, however, That if any public officer be found carrying such arms while under the influence of intoxicating drinks, he shall be deemed guilty of a violation of this article as though he were a private person.

Sec. 5. Persons shall be permitted to carry shot-guns or rifles for the purpose of hunting, having them repaired, or for killing animals, or for the purpose of using the same in public muster or military drills, or while traveling or removing from one place to another, and not otherwise.

. . .

Sec. 7. It shall be unlawful for any person, except a peace officer, to carry into any church or religious assembly, any school room or other place where persons are assembled for public worship, for amusement, or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or into any ball room, or to any social party or social gathering, or to any election, or to any place where intoxicating liquors are sold, or to any political convention, or to any other public assembly, any of the weapons designated in sections one and two of this article.

Sec. 8. It shall be unlawful for any person in this Territory to carry or wear any deadly weapons or dangerous instrument whatsoever, openly or secretly, *with the intent or for the avowed purpose of injuring his fellow man.*

Sec. 9. It shall be unlawful for any person to point any pistol or any other deadly weapon whether loaded or not, at any other person or persons either in anger or otherwise.

available at:
https://firearmslaw.duke.edu/laws/1890-okla-laws-495-art-47#:~:text=It%20shall%20be%20unlawful%20for%20any%20person%20in%20this%20Territory,of%20injuring%20his%20fellow%20man.

- **1909 Ala. Laws 258, no. 215, §§ 1, 2, 4:**

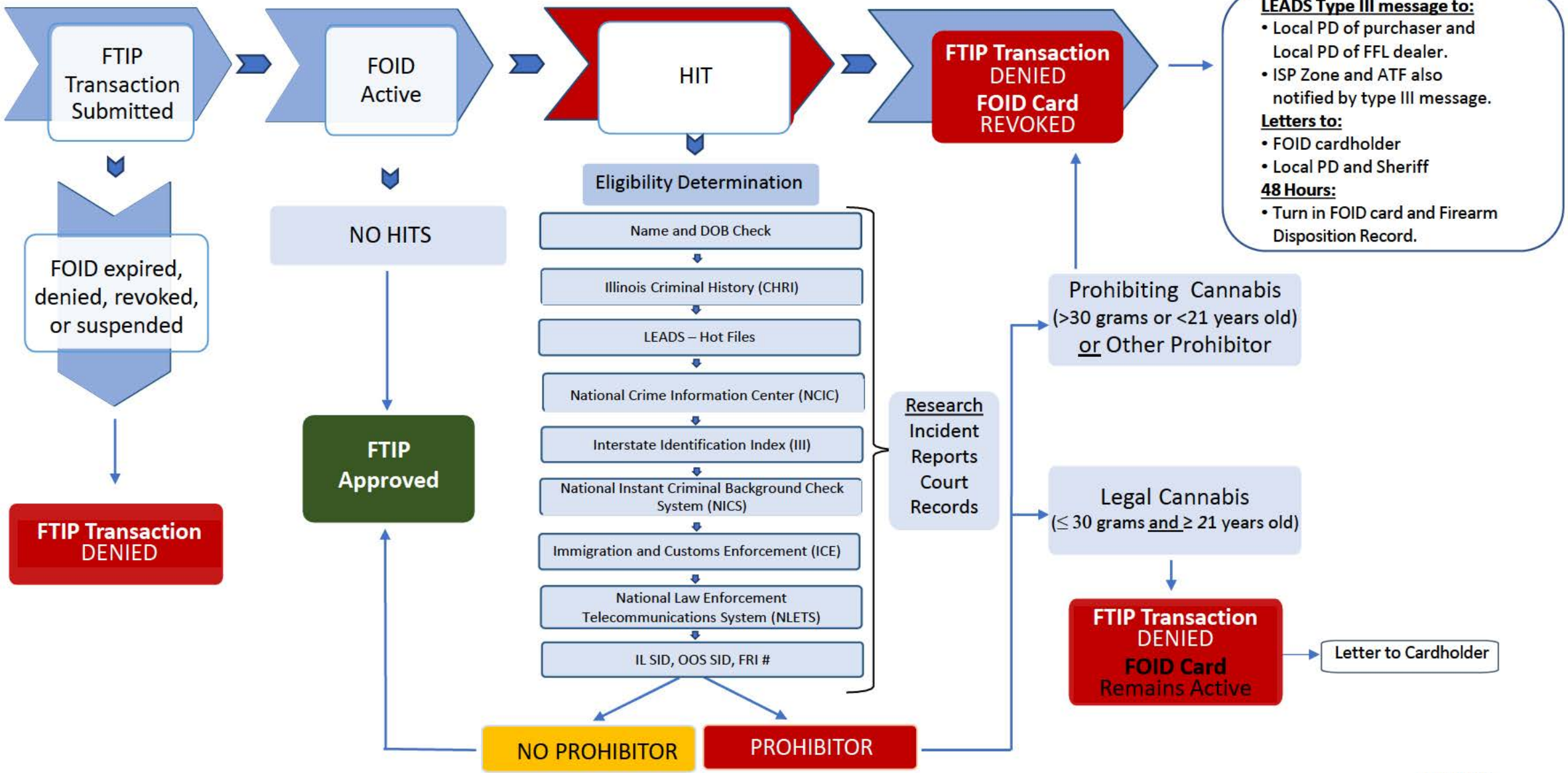
Sec. 1. Be it enacted by the Legislature of Alabama, *That it shall be unlawful for any person to carry a pistol concealed about his person.*

Sec. 2. It shall be unlawful for any person to carry a pistol about his person on premises not his own or under his control, provided this section shall not apply to any sheriff or his deputy or police officer of an incorporated town or city in the lawful discharge of the duties of his office or United States Marshal or their deputies, rural free delivery mail carries in the discharge of their duties as such or bonded constable in the discharge of their duties as such.
. . .

Sec. 4. The defendant may give evidence that at the time of carrying the pistol he had good reason to apprehend an attack which the jury may consider in mitigation of the fine or justification of the offense.

available at:
https://firearmslaw.duke.edu/laws/1909-ala-laws-258-no-215-c2a7c2a7-1-2-4

Lifecycle of an FTIP Transaction



No. 129965

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- TYSHON THOMPSON, Petitioner-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-22-0429. There on appeal from the Circuit Court of Cook County, Illinois , No. 20 CR 5154. Honorable Vincent M. Gaughan, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle St., Chicago, IL 60603, eserve.criminalappeals@ilag.gov;

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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. On November 4, 2024, the Reply Brief was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the petitioner-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Reply Brief to the Clerk of the above Court.

/s/Mia Roman
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