

No. 124100

IN THE  
SUPREME COURT OF ILLINOIS

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	the Second Judicial Circuit,
	)	White County, Illinois
Plaintiff-Appellant,	)	
	)	
v.	)	No. 17 CM 60
	)	
VIVIAN BROWN,	)	The Honorable
	)	Mark R. Stanley,
Defendant-Appellee.	)	Judge Presiding

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**BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT  
PEOPLE OF THE STATE OF ILLINOIS**

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### NATURE OF THE CASE

Defendant Vivian Brown was charged with possession of a firearm without a firearm owner's ID card under 430 ILCS 65/2(a)(1) (the "FOID Card Act"). C8.<sup>1</sup>

Defendant moved to dismiss the charges, alleging that the FOID Card Act violates the Second Amendment of the United States Constitution as applied to individuals otherwise eligible to obtain a FOID Card who keep firearms in their homes because the Act requires such individuals "to pay a fee and obtain a license to enjoy a right that is protected by the constitution." C28. The Circuit Court of White County agreed and held that the FOID Card Act violates both the Second Amendment and Article I, section 22 of the Illinois Constitution. C23. The State appealed directly to this Court. C62.

### ISSUES PRESENTED

- I. Whether, as this Court has previously held, requiring a FOID card to possess a firearm is the type of "meaningful regulation" of one's Second Amendment right that the United States and Illinois Supreme Courts have both recognized as constitutional.

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<sup>1</sup> "C\_" denotes the common law record; "R\_" denotes the report of proceedings.

- II. Whether a court may declare a statute unconstitutional as applied to a defendant based on factual circumstances that are not present in the defendant's case.
- III. Whether it is impossible, or unduly burdensome, to comply with the FOID Card Act in one's home.

### **JURISDICTION**

The State filed a timely notice of appeal from the circuit court's judgment declaring an Illinois statute unconstitutional. Accordingly, this Court has jurisdiction pursuant to Supreme Court Rules 302, 603, and 612(b).

### **STATUTORY PROVISIONS INVOLVED**

430 ILCS 65/2(a)(1) provides:

- (a)(1) No person may acquire or possess any firearm, stun gun, or taser 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 65/4 provides, in relevant part:

- (a) Each applicant for a Firearm Owner's Identification Card must:
- (1) Make application on blank forms prepared and furnished at convenient locations throughout the State by the Department of State Police, or by electronic means, if and when made available by the Department of State Police; and

\* \* \*

(a-20) Each applicant for a Firearm Owner's Identification Card shall furnish to the Department of State Police his or her photograph.

430 ILCS 65/5 provides, in relevant part:

[E]very applicant found qualified under . . . this Act by the Department [of State Police] shall be entitled to a Firearm Owner's Identification Card upon the payment of a \$10 fee.

430 ILCS 65/14(b) provides, in relevant part:

(b) Except as provided in subsection (a) with respect to an expired card, a violation of paragraph (1) of subsection (a) of Section 2 is a Class A misdemeanor when the person does not possess a currently valid Firearm Owner's Identification Card, but is otherwise eligible under this Act.

### **STATEMENT OF FACTS**

In March 2017, White County Sheriff's Department personnel responded to a call from defendant's husband reporting that defendant had fired a gun in their home. C26. Upon arrival, police found a rifle beside defendant's bed but found no evidence that she had fired the gun in the home. *Id.* Because defendant did not have a FOID card, she was charged with possession of a firearm without a FOID card. *Id.* According to defendant, she was eligible for a FOID card at the time of her arrest. C25.

Defendant moved to dismiss the charges, arguing that "the entire [FOID Card application] process suppresses a fundamental right that that is recognized to be enjoyed in the most private of areas, . . . the home." C28.

Pursuant to defendant's motion, the White County Circuit Court declared 430

ILCS 65/2(a)(1) unconstitutional under the Second Amendment to the United States Constitution and Article I, section 22 of the Illinois Constitution, “as applied to this case only.” C22-24. The court held that requiring defendant “to fill out a form, provide a picture ID and pay a \$10 fee to obtain a FOID card” was an unconstitutional burden on her Second Amendment rights when she possessed the firearm in her own home for the purpose of self-defense.

*Id.*

The State filed a motion to reconsider, C30-38, which the court denied on October 16, 2018. C59-61. On denial of the motion to reconsider, the circuit court added a new justification — one that defendant never raised — for its holding that the Act was unconstitutional as applied to defendant: compliance with the FOID Card Act is impossible when in one’s own home. C60. The court observed that any adult with knowledge of the firearm and exclusive control over the area where it was located would be in constructive possession of the firearm. C59-60. Therefore, the court reasoned, compliance with the Act would be impossible because “[n]o person could have their FOID card on their person 24 hours each and every day when firearms or ammunition are in the house.” C60. The court further observed, “every person in the home (family member, friend, spouse, etc.) who has knowledge of the firearms or ammunition and has immediate and exclusive control of



the area where the firearms or ammunition is located who does not have a FOID card, would be in violation of the statute.” *Id.* Therefore, the court held, “430 ILCS 65/2(a)(1) is unconstitutional, as applied to this defendant, because it is impossible to comply in the person’s own home.” *Id.*

### **ARGUMENT**

The circuit court’s judgment should be reversed. The court’s initial order reasoned that the FOID card application process was an unconstitutional burden on someone otherwise eligible to receive the card who kept a firearm in her home for self-defense. But both this Court and the United States Supreme Court have held that the kinds of regulations found in the FOID Card Act — e.g., preventing felons or people from mental illnesses from possessing firearms — are the sorts of meaningful regulations permitted under the Second Amendment. If the State may constitutionally prohibit certain people from possessing firearms, then it must be allowed to establish a process to determine whether people fall into those prohibited categories. The FOID Card application process is the method by which the State determines whether someone is eligible to possess a firearm and there is no way to know before someone applies whether that person is eligible. In short, defendant’s position is that it is unconstitutional to convict someone of

violating the FOID Card Act if that person could have received a FOID card had she bothered to apply. This argument is meritless.

Upon denial of rehearing, the court further held that the Act was unconstitutional as applied to defendant because it was impossible to comply with the Act in her own home. But this holding relied on facts contrary to those of defendant's case and therefore provides no basis for the court to declare the statute unconstitutional as applied to her. Defendant did not allege that she had a FOID card but did not have it on her person. Indeed, defendant conceded below that she did *not* have a FOID card. Nor is there any indication that some other adult inhabitant of her home had a FOID card and that defendant was merely a "family member, friend, spouse" of the gun owner. Moreover, the plain language of the statute requires only that one "possess" a valid FOID card when she "possesses" a firearm. In other words, rather than being impossible to comply with the FOID Card Act, it is as simple to possess one's FOID card as it is to possess one's firearm. Finally, it is consistent with the meaningful regulation allowed under the Second Amendment to require every adult inhabitant who can exercise dominion over a firearm to possess a FOID card.

## I. Second Amendment Principles and Standard of Review

A two-step framework governs this Court's analysis of a Second Amendment challenge. *In re Jordan G.*, 2015 IL 116834, ¶ 22. First, the Court must determine whether the regulated activity is protected by the Second Amendment. *Id.* To do so, the Court must conduct a textual and historical analysis to determine whether the conduct was protected by the Second Amendment at the time of its ratification. *Id.* If the regulated activity falls outside the scope of the Second Amendment as it was understood at the time of ratification, then it is categorically unprotected, and no further review is necessary. *Id.* If the regulated activity is not categorically unprotected, then, under the second step, the Court applies the appropriate level of scrutiny to the State's justification for the regulation. *Id.*

Review of issues involving the constitutionality of a statute is de novo. *People v. Sharpe*, 216 Ill. 2d 481, 486-87 (2005). "A court must construe a statute so as to affirm its constitutionality, if reasonably possible." *In re Lakisha M.*, 227 Ill. 2d 259, 263 (2008); *see also People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 290-91 (2003); *People v. Greco*, 204 Ill. 2d 400, 406 (2003); *People v. Malchow*, 193 Ill. 2d 413, 418 (2000). If a statute's "construction is doubtful, the doubt will be resolved in favor of the validity of

the law attacked.” *People v. Fisher*, 184 Ill. 2d 441, 448 (1998) (internal quotations omitted).

## **II. The FOID Card Act Is Not an Impermissible Burden on the Right to Possess Firearms in One’s Home.**

This Court’s analysis begins and ends with the first step of this familiar Second Amendment analysis. The conduct prohibited here — possessing a firearm without a valid FOID card — is not protected by the Second Amendment. *See People v. Mosley*, 2015 IL 115872, ¶ 36 (section 24-1.6(a)(3)(C)’s prohibition against a person publicly possessing a firearm without a valid FOID card passes Second Amendment scrutiny under the first step of the framework); *see also People v. Taylor*, 2013 IL App (1st) 110166, ¶¶ 31-32 (preventing people who fail to obtain FOID card from possessing weapons in public falls outside scope of Second Amendment right as understood at time of amendment’s adoption). In *Mosley*, this Court held that “the FOID card requirement of [the AUUW statute] is consistent with [the United States Supreme Court’s] recognition that the second amendment right to possess firearms is still ‘subject to meaningful regulation.’” 2015 IL 115872, ¶ 36.

Indeed, the valid restrictions recognized by the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), such as prohibitions on the possession of weapons by felons and the mentally ill, align perfectly with

the restrictions imposed by the FOID Card Act. 554 U.S. at 626 (cautioning “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill”). For this reason, numerous state and federal courts have upheld licensure or registration requirements imposed as prerequisites to possessing a firearm inside or outside the home. *See, e.g., Kwong v. Bloomberg*, 723 F.3d 160, 168-69 (2d Cir. 2013) (New York City’s licensure fee for handgun possession, even within home, did not violate Second Amendment); *Drake v. Filko*, 724 F.3d 426, 435 (3d Cir. 2013) (New Jersey licensure requirement that applicant show “justifiable need” to carry firearm in public was constitutional); *Heller v. District of Columbia (Heller II)*, 670 F.3d 1244, 1254–55 (D.C. Cir. 2011) (requirement to register firearm did not violate Second Amendment); *Williams v. Puerto Rico*, 910 F.Supp.2d 386, 395 (D.P.R. 2012) (Puerto Rico law requiring license to carry firearm did not violate Second Amendment); *Hertz v. Bennett*, 751 S.E.2d 90, 94 (Ga. 2013) (Georgia law requiring licensure to carry weapon was constitutional); *Delgado v. Kelly*, 127 A.D.3d 644 (N.Y. App. Div. 2015) (New York licensing requirement to possess handgun in home did not violate Second Amendment); *People v. Perkins*, 62 A.D.3d 1160 (N.Y. App. Div. 2009) (New York’s firearm licensing regulations did not violate Second Amendment); *Commonwealth v. McGowan*, 982 N.E.2d

495, 501 (Mass. 2013) (“We have consistently held . . . that the decisions in *Heller* and *McDonald* did not invalidate laws that require a person to have a firearm identification card to possess a firearm in one’s home or place of business, and to have a license to carry in order to possess a firearm elsewhere.”).

To determine whether an individual is prohibited from possessing a firearm, applicants for a FOID card must fill out a form, provide a photo ID, and pay a ten-dollar processing fee. These requirements — necessary to the administration of the State’s legitimate prohibition against possession of firearms by felons and the mentally ill — do not unduly burden the exercise of one’s constitutional rights. The FOID Card Act does *not* ban possession of a gun in an individual’s own home for self-defense. It merely requires that individual to obtain a license before doing so. The distinction is dispositive. The licensing fee is no more than a marginal restraint on Second Amendment rights. *See, e.g., Kwong*, 723 F. 3d at 167 (New York’s \$100 licensing fee to possess firearm did not substantially burden right to keep firearm in home for self-defense). A law does not substantially burden a constitutional right simply because it makes the right more expensive or more difficult to exercise. *See, e.g., Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 874 (1992) (“The fact that a law which serves a valid purpose, one not designed to

strike at the right itself, has the incidental effect of making it more difficult or more expensive to [exercise the right] cannot be enough to invalidate it.”).

It is beyond dispute that the State has a legitimate and substantial interest in keeping guns out of the hands of dangerous people. *See, e.g., United States v. Yancey*, 621 F.3d 681, 683 (7th Cir. 2010) (“Congress enacted the exclusions in § 922(g) to keep guns out of the hands of presumptively risky people.”). In *Yancey*, the Seventh Circuit observed that “most felons are nonviolent, but someone with a felony conviction on his record is more likely than a non-felon to engage in illegal and violent gun use.” 621 F.3d at 685. Indeed, one study found that “even handgun purchasers with only 1 prior *misdemeanor* conviction and no convictions for offenses involving firearms or violence were nearly 5 times as likely as those with no prior criminal history to be charged with new offenses involving firearms or violence.” Garen J. Wintemute, *et al., Prior Misdemeanor Convictions as a Risk Factor for Later Violent and Firearm-Related Criminal Activity Among Authorized Purchasers of Handguns*, 280 J. Am. Med. Ass’n 2083, 2083 (1998) (emphasis added).

Defendant could have applied for a FOID card, which would have provided the State with the opportunity to determine whether one of its legitimate prohibitions applies to her. If, as she claims, she is eligible for a

FOID card, she then could have legally kept a firearm in her home for self-defense. But she did not even apply for a FOID card. Without submitting an application and photo ID, the State could not determine whether defendant was a felon or mentally ill. She did not remit \$10 to defray the cost to the State of ensuring the safety of its citizens by keeping guns out of the hands of such people. Simply put, as this Court correctly held in *Mosley*, it is constitutional to require an individual to comply with a licensure process before permitting that person to possess a firearm.

**III. The Court May Not Declare a Statute Unconstitutional as Applied to Defendant Based on Facts Other Than Those in Defendant's Case.**

Upon denying the State's motion to reconsider, the circuit court also held that the FOID Card Act was unconstitutional as applied to defendant because it could not be complied with in her home. It based this conclusion on two hypothetical scenarios: (1) a defendant who was in constructive possession of a firearm kept in her home for self-defense who violated the Act because she did not possess her FOID card on her person 24 hours "each and every day;" and (2) a defendant who had joint constructive possession of a firearm with another adult inhabitant of her house who did possess a valid FOID card. C60. But neither of those scenarios describes defendant's circumstances, and an "as-applied challenge requires a showing that the



statute violates the constitution as it applies to the facts and circumstances of the challenging party.” *People v. Thompson*, 2015 IL 118151, ¶ 36; *see also United States v. Skoien*, 614 F. 3d 638, 645 (7th Cir. 2010) (“A person to whom a statute properly applies can’t obtain relief based on arguments that a differently situated person might present.” (citing *United States v. Salerno*, 481 U.S. 739, 745 (1987))). Without any evidentiary predicate for the argument that compliance with the Act in defendant’s home was impossible, this Court cannot conclude that defendant has met her substantial burden of demonstrating that the FOID Card Act is unconstitutional on this basis. *See People ex rel. Hartrich v. 2010 Harley-Davidson*, 2018 IL 121636, ¶ 32.

In any event, compliance with the FOID Card Act is not impossible in one’s own home. The FOID Card Act provides that no one may “possess” a firearm unless she has a FOID card in her “possession.” 430 ILCS 65/2(a)(1). Whatever standards this Court has established in the past or will establish in future jurisprudence for finding constructive possession of a firearm in one’s home, the clear legislative intent of the Act is that “possession” has the same meaning whether applied to a firearm or a FOID card.

The primary objective of statutory interpretation is to ascertain and give effect to the General Assembly’s intent. *People v. Perry*, 224 Ill. 2d 312, 323 (2007). The surest and most reliable indicator of the legislature’s intent

is the statutory language itself, given its plain and ordinary meaning. *Id.* Where the language of the statute is clear and unambiguous, this Court applies it as written, without resort to extrinsic aids of statutory construction. *Id.* This Court will not depart from the plain language of a statute by reading into it exceptions, limitations, or conditions. *Id.*

Here, the plain language of the statute uses the same word — “possess” — to describe both firearm and FOID card. “Possess” must therefore have the same meaning when determining whether an individual “possesses” a firearm or a FOID card. Nothing in the plain language suggests, for example, that while one can be in constructive possession of a firearm kept in one’s bedroom for self-defense, one would not similarly be in constructive possession of a FOID card kept in one’s nightstand. Had the General Assembly intended to require actual, physical possession of one’s FOID card at all times, it knew how to do so, and thus would have said so explicitly as it did in subsection (c-5) of § 65/2. There, the General Assembly created an exemption to subsection (a)(1) “to the holder of a valid concealed carry license issued under the Firearm Concealed Carry Act who is in *physical* possession of the concealed carry license.” 430 ILCS 65/2(c-5) (emphasis added). Even if the plain language of the statute were ambiguous, it is at the very least reasonable to read the words “possess” and “possession”

as establishing identical standards of constructive possession. This common sense interpretation makes the FOID Card Act constitutional by eliminating the overly burdensome hypothetical requirement posited by the circuit court that one have her FOID card on her person at all times. *See People v. Johnson*, 225 Ill. 2d 573, 584 (2007) (Court will affirm statute's constitutionality if reasonably possible to give statute such an interpretation).

Nor does it render impossible compliance with the FOID Card Act, or unduly burden one's Second Amendment rights, to require that all adult inhabitants of a house who constructively possess a firearm also possess a FOID card. "Constructive possession exists where there is no actual, personal, present dominion over contraband, but defendant had knowledge of the presence of the contraband, and had control over the area where the contraband was found." *People v. Hunter*, 2013 IL 114100, ¶ 19. The State has an equally compelling interest in ensuring that anyone who can exercise dominion over a firearm is not a felon or mentally ill. *See* 430 ILCS 65/1 ("[I]n order to promote and protect the health, safety and welfare of the public, it is necessary and in the public interest to provide a system of identifying persons who are not qualified to acquire or possess firearms"). And, while it is true that more than one party can have joint constructive

possession, *see People v. Schmalz*, 194 Ill. 2d 75, 82 (2000), it is also true that one can deny constructive possession to another inhabitant of the home by denying her control or the ability to exercise control over the gun. *See People v. McIntyre*, 2011 IL App (2d) 100889, ¶ 17. Mere knowledge of a gun's location, proximity to the gun, or ownership of the location where the gun is located is not sufficient to establish constructive possession. *Id.* So, for example, a spouse would not need a FOID card if her husband kept a gun in a safe to which she did not know the combination.

In sum, defendant cannot succeed on an as-applied constitutional challenge based on circumstances that are inapplicable to her. That dispositive shortcoming aside, it is neither impossible to comply with the FOID Card Act in one's home, nor does compliance place a substantial burden on the exercise of Second Amendment rights. Accordingly, this Court should reverse the circuit court's judgment.

**CONCLUSION**

This Court should reverse the judgment of the circuit court.

April 26, 2019

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 containing the Rule 341(d) cover, the Rule 341(h)(1) 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 seventeen pages.

/s/ Garson S. Fischer  
GARSON S. FISCHER  
Assistant Attorney General

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APPEAL TO THE SUPREME COURT OF ILLINOIS  
 FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
 WHITE COUNTY, ILLINOIS

PEOPLE	)	
	)	Reviewing Court No: 124100
Plaintiff/Petitioner	)	Circuit Court No: 2017CM60
	)	Trial Judge: Mark R Stanley
v	)	
	)	
	)	
BROWN, VIVIAN CLAUDINE	)	
Defendant/Respondent	)	

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APPEAL TO THE SUPREME COURT OF ILLINOIS  
FROM THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
WHITE COUNTY, ILLINOIS

PEOPLE	)	
	)	Reviewing Court No: 124100
Plaintiff/Petitioner	)	Circuit Court No: 2017CM60
	)	Trial Judge: Mark R Stanley
v	)	
	)	
	)	
BROWN, VIVIAN CLAUDINE	)	
Defendant/Respondent	)	

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DIRECT APPEAL TO THE SUPREME COURT OF ILLINOIS  
FROM THE CIRCUIT COURT  
OF THE SECOND JUDICIAL CIRCUIT  
WHITE COUNTY, ILLINOIS

**FILED**  
OCT 05 2018

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 VIVIAN BROWN, )  
 )  
 Defendant. )

*Kelly L. Fulkerson*  
CIRCUIT COURT  
WHITE COUNTY

No. 17 CM 60

The Honorable  
Mark R. Stanley  
Judge Presiding.

**NOTICE OF APPEAL**

An appeal is taken from the order or judgment described below.

- (1) Court to which appeal is taken: Illinois Supreme Court
- (2) Name and address of appellant's attorney on appeal.  
 Name: The People of the State of Illinois  
 Address: Garson Fischer  
Assistant Attorney General  
100 West Randolph Street, 12th Floor  
Chicago, Illinois 60601  
 Email: gfischer@atg.state.il.us
- (3) Date of judgments or orders: February 2, 2018 (order declaring statute unconstitutional)  
October 2, 2018 (denying motion to reconsider)
- (4) If appeal is not from a conviction, nature of order appealed from: Opinion declaring 430 ILCS 65/2(a)(1) unconstitutional.

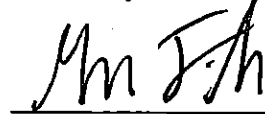
- (5) A copy of the court's opinion is appended to the notice of appeal.

October 2, 2018

Respectfully submitted,

Lisa Madigan  
Attorney General of Illinois

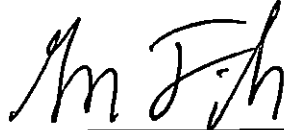
By:



Garson S. Fischer  
Assistant Attorney General  
100 West Randolph Street, 12th Floor  
Chicago, Illinois 60601  
(312) 814-2566  
gfischer@atg.state.il.us

**VERIFICATION BY CERTIFICATION**

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, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.



---

Garson S. Fischer  
Assistant Attorney General

DIRECT APPEAL TO THE SUPREME COURT OF ILLINOIS  
FROM THE CIRCUIT COURT  
OF THE SECOND JUDICIAL CIRCUIT  
WHITE COUNTY, ILLINOIS

**FILED**  
NOV 05 2018

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Plaintiff, )  
)  
v. )  
)  
VIVIAN BROWN, )  
)  
Defendant. )

*Keith L. Fisher*  
CIRCUIT COURT  
WHITE COUNTY

No. 17 CM 60

The Honorable  
Mark R. Stanley  
Judge Presiding.

**NOTICE OF APPEAL**

An appeal is taken from the order or judgment described below.

- (1) Court to which appeal is taken: Illinois Supreme Court
- (2) Name and address of appellant's attorney on appeal.  
Name: The People of the State of Illinois  
Address: Garson Fischer  
Assistant Attorney General  
100 West Randolph Street, 12th Floor  
Chicago, Illinois 60601  
Email: gfischer@atg.state.il.us
- (3) Date of judgments or orders: February 2, 2018 (order declaring statute unconstitutional)  
October 16, 2018 (denying motion to reconsider)
- (4) If appeal is not from a conviction, nature of order appealed from: Opinion declaring 430 ILCS 65/2(a)(1) unconstitutional.

- (5) A copy of the court's opinion is appended to the notice of appeal.

November 2, 2018

Respectfully submitted,

Lisa Madigan  
Attorney General of Illinois

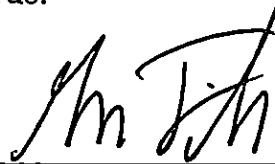
By:



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---

Garson S. Fischer  
Assistant Attorney General



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT

WHITE COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF )  
 ILLINOIS )  
 )  
 -vs- )  
 )  
 VIVIAN CLAUDINE BROWN, )  
 )  
 Defendant. )

No. 2017-CM-60

**FILED**  
 FEB 14 2018  
*Kelly L. Sullivan*  
 CIRCUIT COURT  
 WHITE COUNTY

ORDER FINDING STATUTE UNCONSTITUTIONAL

On this 14 day of February, 2018, this Court, after examining the defendant's Motion to Find Statute Unconstitutional, and being fully advised in the premises, finds as follows:

1. This Court has jurisdiction of the parties hereto and the subject matter hereof.
2. The facts of this case are undisputed and are fully set forth in the defendant's Motion to Find Statute Unconstitutional filed herein on September 26, 2017.
3. The statute in question is 430 ILCS 65/2(a)(1) which provides for the following:

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.

4. 430 ILCS 65/4(a)(1) and (a-20) respectively provide, in part, as follows:

Each applicant for a Firearm Owner's Identification Card must: (1) make application of blank forms prepared and furnished... by the Department of State Police;

Each applicant for a Firearm Owner's Identification Card shall furnish to the Department of State Police his or her photograph.

5. 430 ILCS 65/5 provides, in part, that in order to obtain a Firearm Owner's Identification Card a person must submit to the Department of State Police "payment of a \$10 fee."

6. Article I, Section 22, of the Constitution of the State of Illinois states:

Subject only to the police power, the right of the individual citizen to keep and bear Arms shall not be infringed.

7. The Second Amendment to the United States Constitution provides, in part, as follows:

... the right of the people to keep and bear Arms, shall not be infringed.

8. The Fourteenth Amendment to the United States Constitution provides, in part, as follows:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

9. The Fourteenth Amendment to the United States Constitution incorporates the Second Amendment right to keep and bear arms for the purpose of self-defense and is applied to the States. *McDonald v. City of Chicago*, 561 U.S. 742, 749 (2010). Thus, the Second Amendment protects the right to keep and bear arms for the purpose of self-defense. *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008) found that "the inherent right of self-defense" has been central to the Second Amendment and the home is "where the need for defense of self, family, and property is most acute".

10. In this case the facts show the defendant possessed a gun, in her house, for the purpose of self-defense without a FOID card. To require the defendant to fill out a form, provide a picture ID and pay a \$10 fee to obtain a FOID card before she can exercise her constitutional right to self-defense with a firearm is a violation of the Second Amendment to the United States Constitution as applied to the States and a violation of

C 23

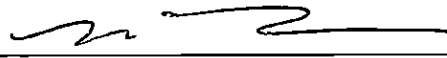
Article I, Section 22, of the Constitution of the State of Illinois, as applied to this case only.

11. Based upon the forgoing, the Court finds 430 ILCS 65/2(a)(1) unconstitutional as applied to this case.

12. The Court further finds 430 ILCS 65/2(a)(1) cannot, in this case, reasonably be construed in a manner that would preserve its validity and this finding of unconstitutionality is necessary to the decision in this case and this decision cannot rest upon an alternate ground.

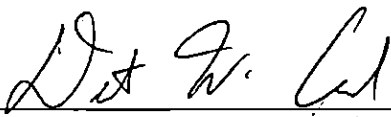
13. The Court finds Supreme Court Rule 18 has been complied with.


IT IS THEREFORE ORDERED that 430 ILCS 65/2(a)(1) is unconstitutional as applied to the defendant herein.

ENTER:   
Judge

DATED: 2-14-18

APPROVED AS TO FORM:

  
Denton Aud, State's Attorney

  
Alan C. Downen, attorney for defendant

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT

WHITE COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF )  
 ILLINOIS )  
 )  
 -vs- )  
 )  
 VIVIAN CLAUDINE BROWN, )  
 )  
 Defendant. )

No. 2017-CM-60

FILED  
OCT 16 2018

*Kelly K. Sullivan*  
CIRCUIT COURT  
WHITE COUNTY

ORDER DENYING MOTION TO RECONSIDER ORDER  
FINDING STATUTE UNCONSTITUTIONAL

On this 16 day of October, 2018, this Court, after examining the State's Motion to Reconsider, the defendant's Response, hearing arguments of counsel and being fully advised in the premises, finds as follows:

1. This Court has jurisdiction of the parties hereto and the subject matter hereof.
2. The Court denies the State's Motion to Reconsider filed herein on March 19, 2018.
3. The Court supplements its ruling of February 2, 2018, as follows:
  - a. To comply with 430 ILCS 65/2(a)(1) a person must have a FOID card on their person when in either actual or constructive possession of a firearm or ammunition. Owning a FOID card is insufficient to comply with the statute. See *People v. Eldens*, 63 Ill.App.3d 554 (Fifth Dist. 1978) and *People v. Cahill*, 37 Ill.App.3d 361 (Second Dist. Second Div. 1976).

A person is in constructive possession of a firearm or ammunition when: (1) The person has knowledge of the presence of a weapon or ammunition, and (2) That person is

in immediate and exclusive control over the area where the firearm or ammunition is located.

Due to the language of 430 ILCS 65/2(a)(1) and the Court's interpretation of the statute, it is clear that compliance is impossible when one is in their own home. No person could have their FOID card on their person 24 hours each and every day when firearms or ammunition are in the house.

In addition, every person in the home (family member, friend, spouse, etc.) who has knowledge of the firearms or ammunition and has immediate and exclusive control of the area where the firearms or ammunition is located, who does not have a FOID card, would be in violation of the statute.

Thus, 430 ILCS 65/2(a)(1) is unconstitutional, as applied to this defendant, because it is impossible to comply in the person's own home. As an alternative, if 430 ILCS 65/2(a)(1) is constitutional then it becomes obvious the legislature did not intend the statute to apply in one's own home due to impossibility of compliance.

4. The Court reiterates its findings and ruling in its previous Order Finding Statute Unconstitutional filed herein on February 14, 2018, that 430 ILCS 65/2(a)(1) is unconstitutional as applied to the defendant in her own home. The Court further finds and orders that 430 ILCS 65/2(a)(1) is unconstitutional as applied to the defendant in her own home, in violation of the Second Amendment to the United States Constitution, as applied to the States thru the Fourteenth Amendment, and Article I, Section 22 of the Constitution of the State of Illinois, because it is impossible to comply with and that such statute cannot reasonably be construed in a manner that preserve its validity. The Court further finds, in compliance with Supreme Court Rule 18, that the finding of unconstitutionality is necessary to the decision and that such decision cannot rest upon an al-

ternative ground; and that the notice required by Supreme Court Rule 19 has been served and that those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute.

IT IS THEREFORE ORDERED that for the foregoing reasons, and those enumerated in the Order Finding Statute Unconstitutional filed herein on February 14, 2018, that 430 ILCS 65/2(a)(1) is unconstitutional as applied to the defendant in this case, in violation of the Second Amendment to the United States Constitution, as applied to the States thru the Fourteenth Amendment, and Article I, Section 22 of the Constitution of the State of Illinois, and by reason thereof, this cause is dismissed with prejudice.

ENTER: \_\_\_\_\_  
JudgeDATED: 10-16-18

**PROOF OF FILING AND SERVICE**

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On April 26, 2019, the foregoing **Brief and Appendix of Plaintiff-Appellant**, was electronically filed with the Clerk, Illinois Supreme Court, and served upon the following by email:

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Law Firm of David G. Sigale, P.C.  
799 Roosevelt Road, Suite 207  
Glen Ellyn, IL 60137  
(630) 452-4547  
dsigale@sigalelaw.com  
*Defendant-Appellee*  
*Vivian Brown*

/s/ Garson S. Fischer  
*Counsel for Plaintiff-Appellant*  
*People of the State of Illinois*