IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
WHITE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
Plaintiff,	)	
	)	
	)	
Vs.	)	
	)	
	)	CASE NUMBER: 17-CM-60
	)	
VIVIAN CLAUDINE BROWN	)	
	)	
	)	
Defendants.	)	
	)	

ORDER ON DEFENDANT'S MOTION TO FIND STATUTE UNCONSTITUTIONAL

Now comes the Court, being fully advised in the premises, and enters this Order on Defendant's Motion to Find Statute Unconstitutional.

FACTS

1. On March 18, 2017, the Defendant, a person over the age of 21, resided at a residence located at 1290 County Road 1700 East, White County, Illinois, and occupied such residence as her home.

2. On March 18, 2017, the Defendant did not have a Firearm Owner's Identification Card (hereinafter referred to as a "FOID card") issued pursuant to the provisions of 430 ILCS 65/0.01 *et seq.*, nor had she ever had a FOID card revoked.

3. On March 18, 2017, the Defendant did not have any criminal record and was otherwise eligible to have and possess a firearm and be issued a FOID card pursuant to the provisions of 430 ILCS 65/0.01 *et seq.*

4. On March 18, 2017, at approximately 1:47 o'clock p.m., the White County Illinois Sheriff's Department (hereinafter referred to as the "Sheriff's Department") received a call

from the Defendant's husband, Scott Brown, in reference to the Defendant shooting a gun inside the residence at 1290 County Road 1700 East, White County, Illinois.

5. When the Sheriff's Department personnel arrived at the Defendant's home, they found a rifle beside the Defendant's bed that the Defendant had for protection but, after conducting an investigation, they did not find any evidence that the rifle (or any gun) had been fired in the residence. Further, the Defendant denied firing a gun and other occupants of the residence denied hearing a gun shot.

6. The Sheriff's Department made a report of the incident and forwarded it to the State's Attorney of White County, Illinois, who filed a criminal Information in the above-entitled cause charging the Defendant with Possession of Firearm without Requisite Firearm Owner's I.D. Card, a class A misdemeanor, in violation of 430 ILCS 65/2(a)(1). The specific charge reads as follows:

> That on March 18th, 2017, in White County, Vivian Claudine Brown, committed the offense of Possession of Firearm without Requisite Firearm Owner's I.D. Card in that said defendant, knowingly possessed a firearm, within the State of Illinois, without having in her possession a Firearm Owner's identification card previously issued in her name by the Department of State Police under the provisions of the Firearm Owners Identification Card Act in violation of 430 ILCS 65/2(a)(1).

7. The criminal Information in the above-entitled cause is now pending and undetermined.

8. 430 ILCS 65/2(a)(1) provides as follows:

> 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.

There are certain exceptions to the requirement of possessing a Firearm Owner's Identification card, as set forth in 430 ILCS 65/2(a)(2)(b), none of which are applicable to a person who has a firearm in his or her own home for protection.

9. 430 ILCS 65/5 requires the payment of a $10.00 fee for the issuance of the Firearm Owner's Identification Card.

PROCEDURAL HISTORY

This case has quite an extensive procedural history. In fact, this is the third iteration of this case, which has been before the Illinois Supreme Court on two separate occasions and the appellate court once. Instead of reciting the procedural history in this Order, this Court merely adopts the procedural history as set forth in the Defendant's Motion to Declare Statute Unconstitutional and Dismiss ("Defendant's Motion") as described on pages 3-6.

ANALYSIS

Contrary to the State's position, this Court views the fact that the alleged incident took place inside the Defendant's home as being paramount to its analysis. The Defendant asserts that because she was exercising her right to self-defense within the confines of her home, where there is an inherent right to privacy at issue as well. As set forth in *Griswold v. Connecticut*, 381 U.S. 479, 495 (1965), "the home derives its pre-eminence as the seat of family life." As such, this case is not just directed towards Second Amendment but also encompasses the right to privacy within one's home.

The Supreme Court in *District of Columbia* v. *Heller,* found that the right to bear arms and the right to self-defense are both embodied as individual rights within the Second Amendment. 554 U.S. 579 (2008). Accordingly, if there exists a place in this life where a person should feel safe and protected, it is within the confines of one's home. Self-defense within one's home should be honored and revered as nowhere else on Earth. Alternatively, when a person presents oneself in public, said person is voluntarily exposing themselves to would-be assailants. Unfortunately, that is just the nature of being in a public setting. Conversely, at home, one should not be made to feel the same sense of vulnerability. The right of self-

defense is paramount when one is tucked away in the privacy, comfort, and protection of one's home. The need to defend oneself, family, and property is most acute within the home. *Heller* at 626. The framers of our Constitution recognized that our homes are sacred escapes from unwanted intrusions. Absent exigent circumstances, *even the government* must obtain a warrant based on probable cause before they can enter the sacred sanctuary of one's home to investigate unlawful activity.

STANDARD OF REVIEW

When examining the constitutionality of a statute, "[s]tatutes are presumed to be constitutional, and courts must construe legislative enactments so as to affirm their constitutionality if reasonably possible." *People v. Howard*, 2017 IL 120443, ¶24. "The party challenging the statute's constitutionality has the burden of demonstrating its invalidity. *In re Deshawn G*, 396 Ill. Dec. 877, 885 (First. Dist., 2015).

GUNN ANALYSIS

As an initial matter, the State argues that this Court should not even analyze the issues before it because they have been addressed by the First District Appellate Court in the case of *People v. Gunn*, 2023 IL App. (1st) (221032, 2023). Specifically, it argues that this Court is bound to follow *Gunn* as controlling precedent. (State's Response, p. 5). In so doing, the State maintains that the *Gunn* Court has already declared the FOID Card Act constitutional. Alternatively, the Defendant argues that *Gunn's* discussion of the constitutionality of the FOID Act is dicta. (Def.'s Reply, p. 2). To get a clearer picture, it is important to note that the issue before this Court is whether a law-abiding citizen has the right to possess a firearm without a FOID Card *within the confines of one's home*. When presented in such a light, it becomes rather

clear that the *Gunn* holding is dicta because that issue was never analyzed. Moreover, most of the *Gunn* opinion focused on Illinois' Concealed Carry Licensing Act ("CCL") and not the FOID Card Act. In fact, the *Gunn* Court declined to engage in historical analysis of the FOID Act. *Id.* at Para. 20. Thus, this Court agrees with the Defendant in that the language regarding the constitutionality of the FOID Act as set forth in *Gunn* is dicta.

Furthermore, this Court finds the *Gunn* Court's limited analysis of the FOID Act fundamentally flawed. Firstly, the *Gunn* Court erroneously asserted that "[o]ur supreme court has held only that the FOID Card Act does not apply within a person's home." *Gunn,* at Para. 19. As a matter of fact, the *Gunn* Court cited the case at bar (albeit a prior iteration) as precedent for its specious proclamation. To be clear, the Illinois Supreme Court has *never* made such a finding. If it had, this case would already be resolved. Moreover, with its incorrect assessment, *Gunn* seemingly acknowledges that the FOID Card Act doesn't apply inside the home and if this Court was to follow it, then it would be forced to follow what this Court knows is an incorrect interpretation of the law. That simply cannot be the case.

In its perfunctory analysis of the FOID Act, the *Gunn* Court also reasoned that because "*Bruen* explicitly acknowledged that background checks, which are the cornerstone of the FOID Card Act, are permissible", then the FOID Card Act must be constitutional. *Id.* at Para. 20. After making that finding, the *Gunn* Court determined that there was "no need for us to engage in an historical analysis of firearm regulation when the Supreme Court has already done so and explicitly sanctioned the use of background checks." *Id.* Thus, it is this Court's view that *Gunn*'s legal analysis goes something like this: since the Supreme Court has held that background checks are constitutional and because background checks are the "cornerstone" of the FOID

Card Act, then the FOID Card Act must be constitutional, end of analysis. In what universe is that a thorough and proper constitutional analysis? Nevertheless, the State suggests that this Court is bound to follow *Gunn*'s flawed reasoning. Quite frankly, following the *Gunn* decision would be tantamount to judicial incompetence on the part of this Court. Instead, this Court has elected to follow the analysis as set forth in *N.Y. State Rifle & Pistol Ass'n v. Bruen* (142 S. Ct. 2111, 2022).

The State posits that the *Bruen* Court expressly "endorsed Illinois' licensing regime". (State's Brief p. 10). That is a misguided assertion because the *Bruen* Court was examining New York State's CCL scheme and the right to public carry instead of in-home possession statutes. The State, no doubt believes that the two are one and the same. However, that reasoning flies in the face of the Illinois legislature, which believes they are different because they have enacted two separate acts for the different activities. One act (FOID) governs the right to possess a firearm, and the other act (CCL) governs the right to possess or carry a loaded firearm in public. A cursory reading of Bruen's citation demonstrates that the Court cited the CCL (439 ILCS 66/10) and NOT the FOID Card Act (430 ILCS 65). As noted above, possessing a firearm inside one's home, in this case a .22 rifle bolt action long gun, is fundamentally different than carrying a concealed loaded handgun in public.

The CCL delineates more stringent requirements such as fingerprinting and completing safety and shooting classes. Not only are the two laws fundamentally different with respect to their licensing requirements but the regulated activities differ as well. Common sense dictates that carrying a loaded firearm in public presents greater dangers than possessing a long gun

within one's home. Since the Bruen Court alluded to Illinois' CCL Act and not the FOID Act, this Court finds that it did not express endorse Illinois' FOID Card Act.

***BRUEN* ANALYSIS**

The *Bruen* Case is a landmark case in that the Court declined to follow the two-step (means-end) analysis that had been followed by virtually all lower courts, including this Court in its prior opinion. Instead, the Supreme Court adopted an analysis that is centered around whether the Second Amendment covers or protects the individual's conduct. If the conduct is covered or protected by the Second Amendment, the government must justify the regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. *Bruen,* at 2129-2130. Specifically, it is important to examine the understanding of the scope of the Second Amendment from the time it was ratified, which was 1791. *Id.* at 2137.

Thus, the first inquiry is whether the individual's conduct is protected by the Second Amendment. The Supreme Court noted that the "people" who are protected by the Second Amendment are law-abiding, responsible citizens. *Id.* at 2131. The State argues that the Defendant is not protected by the Second Amendment because she is not a law-abiding responsible citizen. The State reasoned that because the Defendant failed to apply for and obtain a FOID card and possessed a firearm, she is not law-abiding and thus falls outside of the protections of the Second Amendment. That reasoning would exclude every person who fails or refuses to comply with even the most draconian gun legislation from challenging its constitutionality because they would no longer be considered law-abiding citizens. They would be considered to fall outside the scope of the group of people protected by the Second Amendment. This would open the flood gates for the government to pass the most restrictive

gun laws while severely limiting the number of people who could challenge them. Such reasoning is a fatally flawed attempt to make everyone criminals who refuses to bow their knee to the dictates of the government and kiss its signet ring. Such reasoning would have a chilling effect and ultimately strip them of their Second Amendment rights.

Conversely, since the inception of this case, both parties have agreed that the Defendant was and is eligible to receive a FOID Card and, as such, is a law-abiding, responsible citizen. Only now does the State seek to re-define the Defendant as a criminal and strip her of her Second Amendment rights. Despite the State's novel "law-abiding" argument, this Court has determined that the Defendant is a responsible, law-abiding citizen deserving of the protections guaranteed under the Second Amendment. Accordingly, the Defendant's possession of a .22 caliber rifle within the confines of her home, even without a valid FOID card falls squarely within the protections afforded her by the Second Amendment.

In keeping with the *Bruen* analytical framework, the burden now shifts to the government to demonstrate that the regulation is "consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2130.

The FOID Card Act is of relatively recent vintage and was enacted in 1967. Frankly, there is no historical analogue to the Act. However, the State points to several "disarming" laws that focused on groups of people who were considered dangerous at the time. Many of said laws would be viewed repugnant today as they were racist in nature. This Court regrets that those laws ever existed in the history of our nation. However, those laws were categorically different than the FOID Act. First, those laws sought to "disarm" groups of people who were considered dangerous. The very use of the term "disarm" connotes that those individuals once possessed

a right to bear arms, but the government took it away. In other words, the individual had a right to possess firearms, but they affirmatively did something to lose that right or were mentally disabled. That is not the case with respect to the FOID Act. No one has a right to possess firearms in the State of Illinois unless and until they obtain a license a first. Everyone in the State is prohibited from possessing a firearm irrespective of their criminal background. Secondly, the underlying theme of those laws was the notion that the disarmed people were dangerous in some manner. While that might be theory behind the FOID Act, that is not the reality. Instead, the FOID Act makes it illegal for everyone to possess a firearm unless they obtain a requisite license. Unfortunately, and to the utter dismay of this Court, the actual reality is that all citizens of the State of Illinois are presumed dangerous, and the burden is on the applicant to prove otherwise. Moreover, none of the laws cited by the State as being historically similar sought to disarm otherwise law-abiding citizens within the confines of their own homes. That is the essence of the FOID Act when the superficial layers of the Act are peeled away.

HOME VS. PUBLIC

It is tantamount to understand that this case examines one's right to possess a firearm in the home. It is not a public concealed carry case pursuant to the CCL or even a public possession case pursuant to the FOID Card Act. It is an in-home possession case.

The State argues that there should be no distinction between the right to possess a firearm within one's home and the right to carry a firearm in public. (State's Response, p.9, p.30). In so doing, the State relies upon the *Bruen* Court's reasoning. (*Id.* at 2134-2135). Clearly, a contextual reading of the cited passages demonstrates that the *Bruen* Court held that

the scope of the Second Amendment extends beyond the four walls of one's home. In *addition* to one's home, the right to armed self-defense extends to public areas as well. In fact, the *Bruen* Court cited *U.S. vs. Heller*, (554 U.S. at 628) which held that "the need for armed self-defense is perhaps 'most acute' in the home." The fact remains that the *Heller* Court was addressing the possession of handguns *within* the home and the *Bruen* Court dealt with possession *outside* the home or in public spaces. Cherry picking the *Bruen* decision to stand for the proposition that there is absolutely no distinction between public self-defense and home self-defense is short-sighted at best and misleading at worst.

Even so, this Court agrees that the right to armed self-defense is the same outside of the home as it is inside. However, that does not necessarily mean that there should be a one-size-fits-all regulation for both. As pointed out above under the *Gunn* analysis, there are different regulations for each. Clearly, the government cannot create a practical ban in either instance as pointed out in *Heller* and *Bruen*. However, the regulations can vary depending on the type of dangers involved.

There can be little question that *everyone* views the possession of a firearm in public different from the possession of a firearm within the privacy and protection of one's home. The difference is supported by the fact that Illinois has the FOID Card Act, which limits the possession of a firearm within the home and the CCL, which limits the carrying of a loaded firearm in public places. It is not mere happenstance that the CCL contains more stringent requirements and restrictions than the FOID Card Act. For instance, the FOID Card Act allows for the possession and carry of a loaded firearm within one's home. 720 ILCS 5/24-1 (a)(4). However, it does not allow for the same exercise of one's Second Amendment right in public

places. *Id.* Nor does it allow for the possession of a firearm within one's home without a valid FOID Card. Quite frankly, it is asinine to think that in this "land of the free and home of the brave", one must petition the government and pay a fee to be able to enjoy the fundamental Constitutional right to protect oneself inside one's home.

Our nation has a long history of viewing safety and protection within the home a central tenet of society. Even the Illinois legislature has recognized a higher need for self-defense inside a dwelling. 720 ILCS 5/7-2 confers the right to use force, which is likely to cause great bodily harm or death if: (1) The entry into the dwelling was made in a violent, riotous, or tumultuous manner, and he reasonably believes that such force is necessary to prevent an assault upon, or personal violence to, him or another then in the dwelling, or (2) He reasonably believes that such force is necessary to prevent the commission of a felony in the dwelling.

Alternatively, 720 ILCS 5/7-1, which sets for forth the standard for self-defense outside of a dwelling, uses a different standard altogether. Pursuant to the statute, a person is only allowed to use force which is intended or likely to cause death or great bodily harm if he reasonably believes such force is necessary to prevent *imminent death or great bodily* harm to himself or another, or the commission of a forcible felony.

These two standards are critically different. In the former, one can use deadly force if someone breaks into your home, and you reasonably believe that you or another in the home will be assaulted or victimized by personal violence. In comparison, to justify the use of deadly force outside the home, one must reasonably believe that the force is necessary to prevent imminent death or great bodily harm. Clearly, the standard of "assault or personal violence"

inside the dwelling is significantly less than the standard of "likely to cause imminent death or great body harm".

Additionally, deadly force is allowed if one reasonably believes that said force is necessary to prevent the commission of felony in the dwelling. However, one must reasonably believe that the use of deadly force is necessary to prevent the commission of a *forceable* felony outside of a dwelling.

Thus, according the above-cited statutes, the State of Illinois provides everyone greater rights of self-defense inside their dwelling than outside. Yet, the State refuses to acknowledge the greater right to armed self-defense within the home. In so doing, it neuters the right to armed self-defense inside the home by requiring them to obtain a license to possess a firearm within the home. If an intruder had entered Ms. Brown's home and threatened violence towards her and, God forbid, she was forced to use that .22 rifle to defend herself, she would have committed a class A misdemeanor carrying with it a possible penalty of up to 364 days in the county jail. She could claim self-defense, but that does not change the fact that she possessed a firearm without a valid FOID Card. Such an outcome is asinine especially in this great nation that so cherishes the right to be secure and defend oneself within the home.

Does the Second Amendment provide that otherwise law-abiding citizens become criminals because they desire to feel safe and secure within the confines of their home? May it never be.

FOID ACT FEE

430 ILCS 65/5 (a) provides, "...every applicant found qualified under Section 8 of this Act [430 ILCS 65/8] by the Department shall be entitled to a Firearm Owner's Identification Card upon the payment of a $10 fee."

The Defendant argues that the fee required for the issuance of a FOID card is unconstitutional because it "suppresses a fundamental right that is recognized to be enjoyed in the most private areas, such as the home." (Defendant's Motion, p. 4.) The State counters by pointing out that the $10 is not a charge or a tax on the exercise of Second Amendment rights. Rather, it compensates the state for costs associated with processing the application. (State's Response, p. 13).

This Court agrees with the State. However, its agreement only extends to areas outside of one's home. Courts have routinely looked to First Amendment analysis when analyzing Second Amendment issues. *People v. Stevens*, 2018 IL App (4th) 150871. Yet, that analysis fails with respect to exercising a core Constitutional right *within one's home*. It simply cannot be the case that a citizen must pay a fee to exercise a core individual Second Amendment right within their own home. While it is true that fees have been found to be constitutional with respect to exercising First Amendment rights, the exercise of those rights were public in nature and not within one's home. This Court cannot contemplate another Constitutional right where one must pay a fee to exercise it within the safety and privacy of one's own home.

If we compare it to the right to vote,[1] requiring a voter to pay an administrative fee for voting absentee in their own home would be unthinkable. There is no question that voting

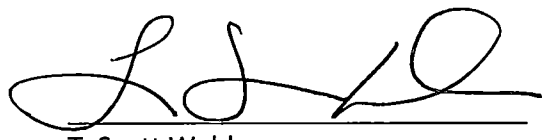
[1] Some would argue that voting isn't an individual right but a civic right along the same lines as the right to join the armed forces or serve as jurors. *See, Kanter v. Barr*, 919 F.3d 437, 465 (7th Circuit, 2019), Justice Barrett's Dissent.

from home requires more administrative work. Yet, to require the payment of additional fees would disenfranchise voters, regardless of the amount of the fee. Illinois even requires that the return ballot postage be prepaid. *See*, 10 ILCS 5/19-4. There is no question that requiring a voter to pay a processing fee for absentee voting within their own home violates their right to vote. Moreover, requiring a person to remit a fee, regardless of how nominal it may be, to exercise their *First Amendment* rights inside their home violates their Constitutional First Amendment Rights as well. People are treated differently inside of their homes because their homes are sanctuaries, and the dangers posed to the public at large are nominal. The dangers of yelling "fire" inside of one's home simply don't exist in the manner they exist in a crowded theatre.

After analyzing all the evidence in this matter, this Court finds that the Defendant's activity of possessing a firearm within the confines of her home is an act protected by the Second Amendment. Additionally, there are no historical analogues to the FOID Act as required in *Bruen*. Finally, the Court finds that *any* fee associated with exercising the core fundamental Constitutional right of armed self-defense within the confines of one's home violates the Second Amendment. Specifically, the Court finds 430 ILCS 65/2(a)(1) and 430 ILCS 65/5 unconstitutional on their face and as applied to law-abiding citizens within their home as well as to the Defendant in the case *sub judice* under the Second Amendment to the United States' Constitution. This Court cannot reasonably construe the FOID Card Act in a manner that would preserve its validity. In addition, the finding of unconstitutionality is necessary to this Court's decision, and it cannot rest its decision upon an alternative ground. Finally, this Court finds that the notice requirements of Rule 19 have been met by the Defendant serving her Motion on the

White County State's Attorney thereby giving the State's Attorney and the Illinois Attorney General opportunity to defend the constitutionality of the applicable provisions of the FOID Card Act.

SO ORDERED, this 10th day of February, 2025



T. Scott Webb,
White County Resident Circuit Judge