IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS
SANGAMON COUNTY, ILLINOIS

GUNS SAVE LIFE, INC.,	)	
	)	
Plaintiff,	)	
	)	Case No. 2019 CH 180
v.	)	
	)	
BRENDAN KELLY, solely in his official capacity as Acting Director of the Illinois State Police,	)	
	)	
Defendant.	)	
	)	

ORDER

Before the court are the Motion for Summary Judgment of Plaintiff, Guns Save Life, Inc. ("GSL"), and the Cross-Motion for Summary Judgment of Defendant Illinois State Police ("ISP") Director Brendan Kelly ("Director Kelly"), who is sued solely in his official capacity. GSL challenges the Firearm Owners Identification Card Act ("FOID Act") under the Second Amendment to the United States Constitution. After considering all pleadings filed in support of and in opposition to the motions, as well as the arguments presented at the hearing held June 20, 2023, and for the reasons stated below, the Court **grants** the motion of Defendant Director Kelly, **denies** the motion of Plaintiff GSL, and enters final judgment in favor of Director Kelly.

The Firearm Owners Identification Card Act ("FOID ACT or the "Act")

Enacted in 1967 and effective in 1968, the FOID Act was created "in order to promote and protect the health, safety and welfare of the public." 430 ILCS 65/1. To accomplish this goal, the Act "provid[es] a system of identifying persons who are not qualified to acquire or possess firearms

. . . within the State of Illinois by the establishment of a system of [FOID] Cards, thereby establishing a practical and workable system by which law enforcement authorities will be afforded an opportunity to identify those persons who are prohibited by . . . the Criminal Code . . . from acquiring or possessing firearms . . . ." *Id.*

The FOID Act requires Illinois residents to obtain FOID Cards in order to keep or bear a firearm anywhere, including in the home. Under the Act, "[n]o person may acquire or possess any firearm....within this State without having in his or her possession a [FOID] Card previously issued in his or her name by the Illinois State Police under the provisions of this Act." *Id.* at 65/2(a)(1). The FOID Act enumerates certain exceptions to the requirement of obtaining a FOID Card. *Id.* at 65/2(b)-(c). ISP administers the FOID Act and Defendant Kelly is the Director of ISP.

To obtain a FOID card, an Illinois resident must complete an application made available by ISP. *Id.* at 65/4(a)(1). The applicant also must pay a $10 application fee, *see id.* at 65/5(a).

The application requires an Illinois resident to submit evidence including, in part, that he or she (i) has not been convicted of a felony in Illinois or any other jurisdiction; (ii) is not addicted to narcotics; (iii) has not been a patient of a mental health facility within the past five years; (iv) is not an individual with an intellectual disability; (v) he or she is not a non-citizen who is unlawfully present in the United States; (vi) he or she is not subject to an existing order of protection prohibiting him or her from possessing a firearm; (vii) has not been convicted, within the past five (5) years, of battery, assault, aggravated assault, violation of order of protection or substantially similarly offense in another jurisdiction, in which a firearm was used or possessed; (viii) is a resident of the State of Illinois; (ix) he or she has not been adjudicated as a person with a mental

disability; (x), he or she has not been involuntarily admitted into a mental health facility; and (xi) he or she is not an individual with a developmental disability. *Id.* at 65/4(a)(2)(ii-xvii)

ISP is required to either approve or deny all application within 30 days from the date which they are received and every applicant found qualified under Section 8 of the FOID Act is entitled to his or her FOID Card upon payment of a $10.00 fee and applicable processing fees. *Id.* at 65/5(a). FOID Cards are valid for a minimum of ten (10) years. *Id* at 65/7.

Possessing a firearm without a FOID Card subjects an Illinois resident to criminal penalties varying in severity from a petty offense to a felony, depending on the circumstances of the offense. *Id.* at 65/14.

The FOID Act is therefore a "shall issue" firearm regulatory regime. Under a "shall issue" licensing regime, a license must be issued whenever the applicant meets certain threshold requirements, without granting discretion to licensing officials by, for example, requiring that good cause for the issuance of a license exists. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2123 (2022). The FOID Act establishes a "shall issue" licensing regime as ISP may only deny an application for a FOID Card, or revoke a previously issued FOID Card, by applying specifically defined objective criteria such as felony conviction or serious mental illness. *Id.* at 65/8.

Procedural History

GSL filed this case on May 15, 2019, naming as Defendants Illinois Attorney General Kwame Raoul and Illinois State Police Director Brendan Kelly. That same day, GSL filed a motion for a preliminary injunction, which was denied by Judge Maurer on May 24, 2019. GSL filed an interlocutory appeal, and, on December 3, 2019, the Appellate Court affirmed the denial of GSL's preliminary injunction motion, noting that "an attack on the constitutionality of a statute should

not be resolved upon application of a temporary or preliminary injunction." *Guns Save Life v. Raoul*, 2019 IL App (4th) 190334 at ¶ 64. On March 25, 2020, the Illinois Supreme Court rejected GSL's petition for leave to appeal from the Appellate Court's decision. *Guns Save Life, Inc. v. Raoul*, 437 Ill. Dec. 590 (2020).

Following the appeals process, the matter returned to the trial court. GSL amended its complaint, and the parties litigated motions to dismiss, and conducted fact and expert discovery. At the end of these proceedings, only one defendant remained in the case: ISP Director Kelly. GSL and Director Kelly filed and briefed cross-motions for summary judgment. On June 20, 2023, without objection from any party, this matter was reassigned to the undersigned "for all further proceedings." The same day as the reassignment, the parties presented argument on their motions for summary judgment to this court, again without any objection.

The Appellate Court held that GSL had associational standing to challenge the FOID Act on behalf of its members—including the specific members identified in the original complaint—who are required under the FOID Act to obtain and continuously renew FOID cards in order to possess firearms, and who would not maintain FOID cards if not for the FOID Act. *See Guns Save Life, Inc. v. Raoul*, 2019 IL App (4th) 190334, 146 N.E.3d 254, 272. Consequently, associational standing is no longer challenged before this court.

Further, the Appellate Court held that "Plaintiff's claim . . . has all the elements of a "valid rule challenge," i.e., the constitutional defect is inherent within the statute and it can never pass constitutional muster since it contravenes basic rights otherwise provided by the second amendment." *Id.* ¶ 43. This Order addresses GSL's Second Amendment challenge, that the FOID

Act is unconstitutional on its face and that the fees attendant to the FOID Card requirement are likewise unconstitutional.

Guns Save Life's Claims

The parties seek summary judgment on both of GSL's claims through their cross-motions. First, the parties both seek summary judgment on Plaintiff's claim that the Act as a whole is facially unconstitutional, violating the Second Amendment of the U.S. Constitution and Article I, Section 22 of the Illinois Constitution. Second, the parties both seek summary judgment on GSL's claim that the $10 fee associated with the Act, independently facially violates the Second Amendment because it is "exorbitant." Again, the parties do not dispute that GSL has standing to bring a facial challenge to the FOID Act and the $10 fee associated with an application for a FOID Card.

Legal Standard

Summary judgment is proper when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Cohen v. Chi. Park Dist.*, 2017 IL 121800, ¶ 41; 735 ILCS 5/2-1005(c). "Summary judgment is a drastic measure and should only be granted if the movant's right to judgment is clear and free from doubt." *Seymour v. Collins*, 2015 IL 118432, ¶ 42. Summary judgment should be denied if a reasonable person could draw divergent inferences from undisputed facts. *See Pielet v. Pielet*, 2012 IL 112064, ¶ 53. On a motion for summary judgment, the record must be construed strictly against the movant and liberally in favor of the nonmoving party. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008). "Summary judgment, therefore, is inappropriate when (1) there is a dispute as to a material fact, (2) persons

could draw divergent inferences from undisputed facts, or (3) reasonable persons could differ on the weight to be given the relevant factors of a legal standard." *Cohen*, 2017 IL 121800 at ¶ 41.

When parties file cross-motions for summary judgment, they agree that only a question of law is involved and invite the court to decide the issues based on the record. *Pielet*, 2012 IL 112064, ¶ 28 (citing *Allen v. Meyer*, 14 Ill. 2d 284 (1958)). But the mere filing of cross-motions for summary judgment does not establish that there is no issue of material fact, nor does it obligate a court to render summary judgment. *Haberer v. Vill. Of Sauget*, 158 Ill. App. 3d 313, 317 (5th Dist. 1987).

"When a plaintiff challenges the constitutionality of a statute, the plaintiff "has the burden of establishing a clear constitutional violation." *One 1998 GMC*, 2011 IL 110236, ¶ 20, 355 Ill.Dec. 900, 960 N.E.2d 1071 (majority opinion). Because plaintiff brings a facial challenge, a successful claim "requires a showing that the statute is unconstitutional under any set of facts, *i.e.*, the specific facts related to the challenging party are irrelevant." *Thompson*, 2015 IL 118151, ¶ 36, 398 Ill.Dec. 74, 43 N.E.3d 984. "[A]ny doubt on the construction of a statute [will be resolved] in favor of its validity." *People v. Boeckmann*, 238 Ill. 2d 1, 6-7, 342 Ill.Dec. 537, 932 N.E.2d 998, 1001 (2010)." *Guns Save Life, Inc. v. Raoul,* 2019 IL App (4th) 190334, ¶ 55, 146 N.E.3d 254, 278.

Therefore, the presumption is that the statute is constitutional. *See*, *e.g.*, *U.S. v. Morrison*, 529 U.S. 598, 607 (2000). Under Illinois law, 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).

The Bruen Framework

Three years after this cause was filed, the United States Supreme Court addressed the standard for analyzing Second Amendment claims in the case of *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022). *Bruen* held that while the Second Amendment confers the right to "ordinary, law-abiding, adult citizens" to possess firearms "for self-defense," *Bruen*, 142 S. Ct. at 2134, this right "'is not unlimited.'" *Id.* at 2128 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008)). In particular, the standard for analyzing the scope of the Second Amendment "requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding" through a two-step process. *Id.* at 2131. At the first step, a plaintiff bears the burden of showing that the "Second Amendment's plain text covers" the regulated conduct. *Id.* 2129–30 (if "plain text covers an individual's conduct . . . the government must then justify its regulation"); *see also id.* at 2141 n.11. If a plaintiff satisfies this burden, the government must justify its regulation by demonstrating that it is "consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2130.

To show that a challenged regulation aligns with historical tradition, the government may either identify historical regulations that are "distinctly similar" to the challenged regulation or use "analogical reasoning" to demonstrate that the challenged regulation is analogous to historical regulation. *Id.* at 2131. Moreover, a modern-day regulation does not need to be a "dead-ringer" for historical precursors or a "historical twin" to "pass constitutional muster." Rather, a modern regulation is consistent with the Second Amendment if it "impose[s] a comparable burden on the

right of armed self-defense and [ ] that burden is comparably justified" as its historical predecessors. *Id.* at 2133. The *Bruen* decision also made clear that the Second Amendment is not supposed to be a "regulatory straightjacket," but emphasized that regulatory variation and evolution are permissible, since "[t]he regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868." *Id.* at 2132–33. *Bruen* also recognized that a variety of historical sources and periods may inform these inquiries, including (1) English practices that prevailed up to the period immediately before and after the framing of the Constitution; (2) public understanding of the right to keep and bear arms in 1791, when the Second Amendment was ratified, and in 1868, when the Fourteenth Amendment was ratified; and (3) the interpretation of the right in the years following both Amendments' ratifications. *Id.* at 2136–38. Finally, *Bruen* confirmed that fees for otherwise constitutional licenses are themselves constitutional so long they are not "exorbitant." *Bruen*, 142 S. Ct. at 2138 n.9.

In this instant matter, the Fourth District Appellate Court held:

> Plaintiff's claim, whether labeled as such or not, has all the elements of a "valid rule challenge," *i.e.*, the constitutional defect is inherent within the statute and it can never pass constitutional muster since it contravenes basic rights otherwise provided by the second amendment. Plaintiff referenced two members, Mr. Meyers and the unnamed veteran, as examples of how the application of the statute violates their second amendment rights. Defendants, on the other hand, contend how easy it would be for each to secure their FOID cards by utilizing the procedures contained within the FOID Act. Such an argument, either wittingly or unwittingly, mixed an as-applied challenge with a facial one.

Guns Save Life, Inc. v. Raoul, 2019 IL App (4th) 190334, ¶ 43, 146 N.E.3d 254, 274

Director Kelly argues that Illinois' FOID Act is a constitutional shall-issue regime under *Bruen* and that this court need not engage in any historical analysis. This court disagrees.

The New York statute at issue in *Bruen* required licenses for the concealed carrying of firearms in public. The United States Supreme Court held that such licensing requirements must be "shall-issue" regimes as opposed to "may-issue" regimes, where "authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria." 142 S. Ct. at 2124. The United States Supreme Court added that "nothing in [its] analysis should be interpreted to suggest the unconstitutionality of the 43 States' 'shall-issue' licensing regimes" which were not at issue. *Id.* at 2138 n.9. The *Bruen* court stated, "Nothing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms…" *Id.* at 2119. The Second Amendment permits law-abiding citizens to keep and bear arms both at home and in public. However, this court finds that there is an appreciable difference between applying for a license or identification card to possess (or carry) a firearm in public verses merely possessing a firearm in any manner including in one's home or place of abode.

This court cannot accept Director Kelly's position that *Bruen* applies to every "shall-issue" licensing regime in which a state must issue a permit, license or identification card to any applicant that meets certain objective criteria wherein the state, as is the case in Illinois, requires an identification card for possessing a firearm. In footnote 1, *Bruen* outlines the forty-three (43) "shall-issue jurisdictions, where authorities must issue *concealed-carry licenses* whenever applicants satisfy certain threshold requirements;" which is then addressed in footnote 9, "nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' "shall-issue" licensing regimes". *Id.* at 2123 n.1 and n. 9 (emphasis added).

Given that the court disagrees, Director Kelly must justify the FOID Act under the text-and-history standard that *Bruen* sets out in order to defend his claim that the FOID Act is not facially unconstitutional. *Id.* at

The *Bruen* Text-and-History Standard

The Second Amendment provides: "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed." U.S. CONST. amend. II. As reiterated in *Bruen*, the United States Supreme Court has "expressly rejected the application of any judge-empowering interest-balancing inquiry" for Second Amendment claims "that asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests." 142 S. Ct. at 2129 (internal quotation marks omitted). Instead, "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 2129–30.

Once this prima facie textual determination is made, "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2130. "Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Id.* (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)). This text-and-history standard is the single "standard for applying the Second Amendment." *Id.* at 2127, 2129; *accord id.* at 2161 (Kavanaugh, J., concurring).

The *Bruen* opinion provides thorough instructions for applying the text-and-history standard. As detailed below, those instructions—along with the Supreme Court's other landmark Second Amendment decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742 (2010)—establish two rules relevant to this case. When a challenged regulation burdens conduct covered by the Second Amendment's plain text, the State must justify that regulation by producing historical laws that are well-established, representative,

and relevantly similar. The challenged regulation must show consistency with the understanding of the Second Amendment but *Bruen* outlines that it must be a "well-established and representative historical *analogue*, not a historical *twin*." *Id.* at 2133.

<u>Director Kelly's Burden to Show the FOID Act is Consistent with a Historical Tradition of Firearm Regulation</u>

Director Kelly's historical case is built on a report offered by Professor Saul Cornell, which argues that the FOID Act satisfies *Bruen*'s historical requirements. *See* Def.'s Cross-Mot. for Summ. J., Ex. F (Dec. 2, 2022) ("Cornell Report").

Professor Cornell is a professor of History at Fordham University, and a scholar with expertise on the history of the Founding Era, as well as the history of firearm regulation in the United States. Professor Cornell's work was cited by both the majority and a dissent in *Bruen*, *see* 142 S. Ct. at 2149; *see also id.* at 2178, 2187–88 (Breyer, J., dissenting).

GSL suggests that this court give the Cornell Report little weight arguing that it cannot be considered as a reliable application of historical rigor. GSL has not, however, attempted to support its argument through a deposition of Professor Cornell, nor has GSL filed a motion to exclude the Cornell Report. Moreover, the Illinois Supreme Court requires only that an expert's "experience and qualifications afford him knowledge which is not common to lay persons," and that their testimony "will aid the trier of fact in reaching its conclusion." *Lerma*, 2016 IL 118496 at ¶ 23. Professor Cornell and the Cornell Report meet this standard. The Cornell Report is therefore admissible for the purposes of these cross-motions, and will be considered by the Court.

Bruen instructs courts to reason by analogy, and suggests that courts consider "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Bruen*, 142 S. Ct. at 2133.

There is ample historical evidence supporting the constitutionality of the FOID Act, and GSL's facial challenge fails as the historical record demonstrates that laws "relevantly similar" to the FOID Act have been part of American legal history from the Founding Era to the present day.

Director Kelly has demonstrated that at the time of the Founding and throughout the Early Republic era, states enacted laws regulating the possession of firearms—analogous to the FOID Act's scheme—in order to ensure that only qualified individuals possessed firearms, to identify who possessed guns and what types, and to require gun owners to subsidize the costs of public safety. Cornell Report at 8–19. These laws established an unbroken tradition of regulation stretching from the disarmament and militia statutes of the Founding Era to the implementing of the police power in the Nineteenth Century and Reconstruction Era. And they provide historical analogues to the FOID Act, because they imposed comparable burdens on individuals who wished to possess guns for comparable reasons. *See Bruen* at 2133.

Disarmament Laws

First, Director Kelly presents sufficient evidence justifying the FOID Act based on the "disarmament statutes" in effect during the Founding Era. Disarmament statutes preventing dangerous or "unvirtuous" people from being armed were commonplace at the time of the Founding. *See United States v. Yancey*, 621 F.3d 681, 684–85 (7th Cir. 2010) ("[M]ost scholars of the Second Amendment agree that the right to bear arms was tied to the concept of a virtuous citizenry and that, accordingly, the government could disarm 'unvirtuous citizens.'"); Cornell Report at 14. Indeed, "historical evidence support[s] the notion that government could disarm individuals who are not law-abiding members of the political community," such as convicted

felons. *See United States v. Carpio-Leon*, 701 F.3d 974, 980 (4th Cir. 2012); *Medina v. Whitaker*, 913 F.3d 152, 159 (D.C. Cir. 2019).

Disarmament laws also included those that prohibited firearm possession by individuals who refused to take an oath of loyalty to the government, those who engaged in political violence and certain forms of protest—even certain peaceful protests—and those who refused to pay taxes toward public defense or otherwise contribute to public defense and safety costs. Cornell Report at 13–14. The use of loyalty oaths was common at the time of the ratification of the Second Amendment. *Id.* at 14. Even individuals who had not committed any illegal or violent act—but who had simply participated in certain peaceful protests or espoused certain political views—could be barred from being armed by the State. Cornell Report at 14.

For example, the State of Pennsylvania passed a statute in 1777—the Test Act—that required citizens, including Quakers (a Protestant Christian religious group known formally as the Society of Friends), to be disarmed unless they swore an oath to the government and paid a fee (or provided service to the state). Cornell Report at 16; *see also* Act of June 13, 1777, § 1 (1777), 9 The Statutes at Large of Pennsylvania from 1652–1801 110, 111 (William Stanley Ray ed., 1903). For religious reasons, Quakers did not comply with the Test Act and thus had their firearms confiscated *en masse*. *Id.* As Professor Cornell describes:

> [T]he disarmament of the Quakers plainly shows … that at the Founding it was widely accepted that States had broad authority to regulate firearms, and to require those who wished to possess firearms to comply with what is, in modern terms, a form of licensing scheme . . . . In short, owning a gun in Pennsylvania required one to both register with the government and forswear any intention to oppose the actions of the government by force, and pay appropriate fees.

Id. Similar regulations and/or rules on the possession of arms were found in "most states" during the Founding. *See* Cornell Report at 14.

The widespread use of disarmament statutes in early American history, and particularly the disarmament of the Quakers under the Test Act, provides a "well-established and representative historical" analogue to the Act. *Bruen*, 142 S. Ct. at 2133.

Disarmament statutes imposed conditions on the possession of firearms comparable to those in the FOID Act, for comparable reasons: public safety and respect for the rule of law. These conditions included requiring individuals to provide information to the government, demanding they swear allegiance to the government and its laws, assessing their fitness to possess firearms—based on a review of their background and potential to harm public safety—and paying fees or making contributions toward the costs of public defense.

Just like its predecessors at the Founding, the FOID Act was enacted "to promote and protect the health, safety and welfare of the public" through "a practical and workable system" to identify persons who are unqualified to possess firearms. *See* 430 ILCS 65/1. The FOID Act accomplishes this purpose by having each FOID Card applicant attest that they are 21 years or older (or have written consent of a parent if under 21 years old), they are not addicted to narcotics, they have not been a patient of a mental health facility within the past five years, they do not have a mental condition that poses a clear and present danger, they do not have an intellectual disability, they have not been convicted of a felony and they are not "prohibited from acquiring or possessing firearms or firearm ammunition by any Illinois State statute or by federal law." *See*, *e.g.*, 430 ILCS 65/4; 430 ILCS 65/8(n). Furthermore, the FOID Act also requires background checks when purchasing a firearm from a federally licensed dealer or at a gun show. 430 ILCS 65/3, 3.1. Thus, the FOID Act is relevantly similar to "historical precursors" like disarmament statutes, and passes "constitutional muster." *See Bruen*, 142 S. Ct. at 2118.

GSL seeks to distinguish the FOID Act from the disarmament statutes, claiming that while "the FOID Act applies to all citizens," the disarmament statutes identified by Director Kelly only "applied to individuals traditionally understood not to be entitled to [Second Amendment protection]." Pl.'s Resp. at 13. GSL provides no historical support for this assertion, which is also defeated by the unrefuted record before the court.

Contrary to GSL's contention, the evidence before this court evidences that in the Founding era States removed firearms from everyone who refused to swear loyalty to the government, including law-abiding Quakers and Catholics. *See* Def.'s MSJ at 19–22. Likewise, Director Kelly's Cross-Motion also described Virginia's 1777 statute disarming "all free born male inhabitants … above the age of sixteen years" who refused to take a loyalty oath. *Id.* at 21. There is nothing in the historical record—GSL certainly points to nothing—that suggests that Quakers and Catholics, and "free born males . . . above the age of sixteen" were "traditionally understood not to be" protected by the Second Amendment. Consequently, GSL's assertion that Founding-era disarmament statutes are not analogous falls short.

Likewise, GSL dismisses the GSL's evidence about "disarmament" statutes by insisting that "one must be armed to be disarmed," P.'s Resp. at 15. But there is no historical evidence in the record justifying this assertion, which is contradicted by the testimony of Professor Cornell. *See* Cornell Report at 16 ("In short, owning a gun in Pennsylvania required one to both register with the government . . . and pay appropriate fees."). More fundamentally, GSL fails to explain what difference it makes—constitutionally—whether the government confiscated guns already possessed or preemptively prohibited individuals from obtaining them. The analogy between Founding-era disarmament statutes and the FOID Act is valid either way. In both cases, the

government conditioned the possession of firearms on a system for determining the qualifications of an individual to do so—just like the FOID Act.

Militia Laws

Second, at the time of the Founding, nearly all States enacted militia laws and gun census regulations that identified which individuals possessed firearms (and what types of firearms), mandated periodic inspection of individuals' firearms, required individuals to purchase specific military quality firearms and ammunition, and required individuals to comply with various requirements related to militia service. Cornell Report at 17–19. Such militia statutes "were among the most detailed and lengthy pieces of legislation drafted during the period." Cornell Report at 17. These laws "defined who was in the militia, what sort of weapons members of the militia had to purchase . . . , provided elaborate mechanisms for assuring compliance . . . , and detailed muster roles tracking who was in the militia and their attendance at required militia training." *Id.*; Ex. F4 & F-5. Thus, the Founding generation understood the scope of the Second Amendment at the time of its ratification as giving broad power to state governments to regulate the possession of firearms, even to the extent of tracking who possessed firearms, mandating that individuals obtain and maintain military quality firearms, and periodically forcing individuals to submit to government inspections of those arms. *See id.* In particular, as Professor Cornell explains, these historical militia statutes served as a "form of taxation" in that they functionally transferred the cost of public defense from the government to individual households who were required to purchase firearms for use in the militia. Again, these historical statutes, which were common and widely accepted at the time of the Founding, serve as clear historical analogues to the Act. The burdens of the FOID Act and these early militia statutes on the right to keep and bear arms are nearly identical, and the goals of maintaining public safety are sufficiently comparable, if not the same. *Bruen*, 142 S. Ct. at 2133.

("[W]hether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparably justified are central considerations . . . .") (quotation marks omitted). Like the FOID Act, the early militia laws required individuals to provide information to the government and required those who possess firearms to pay certain costs toward public safety and to show that they were qualified to possess firearms. Consequently, early militia laws further demonstrate that the FOID Act is consistent with the Second Amendment.

Continuing Traditions Of Regulation In The Nineteenth Century

In unbroken continuation of the tradition of regulation exemplified in the disarmament and militia laws described above, states continued to exercise their authority under the police power to regulate firearm possession in the same manner as the Act throughout the nineteenth century. *See* Cornell Report at 20–24. The scope of state authority to regulate firearm possession is revealed through an unbroken chain of statutes and municipal ordinances from the Founding Era through the end of the nineteenth century, which relied on the police power to regulate the possession, storage, and taxation of firearms, ammunition, and gunpowder. *Id.*; Ex. F-6. For example, Maine passed a law in 1821 requiring that all firearms be marked and numbered and a certificate given to each person possessing said firearms; failure to comply with these requirements could subject a person to a ten dollar penalty. Cornell Report, Ex. F-6. North Carolina passed laws in the 1850s imposing annual taxes on every pistol. *Id.* Mississippi passed a law in 1867 imposing an annual tax on every gun and pistol possessed by any person in Washington County. *Id.* at 27. In 1893, Florida enacted a statute prohibiting the possession of a repeating rifle without a license. *Id.* Such laws demonstrate a consistent tradition of States using their police powers to regulate the possession of firearms through licensing schemes and the imposition of taxes on the possession of certain firearms, stretching from the Founding Era through Reconstruction. The burden imposed

by these State laws is comparable, if not more onerous—than that of the FOID Act's requirement of a $10 fee and application process approximately every ten years. The justification for such laws is also comparable: ensuring those individuals who possess guns are responsible, law-abiding persons and applying fees in connection with those regimes.

Likewise, in reviewing the historical record of State laws about the public carry of firearms, *Bruen* identified the widespread adoption of surety statutes in the mid-nineteenth century that required individuals to "post bond before carrying weapons in public." *Bruen*, 142 S. Ct. at 2148. Like the FOID Act, such surety statutes "did not directly restrict" the right to bear arms, but rather imposed financial obligations as a condition of firearm possession to ensure that individuals were "responsible" in their use of firearms. *Id.* at 2150. For example, in 1836, Massachusetts enacted a law providing:

> If any person shall go armed with a dirk, dagger, sword, pistol, or other offensive and dangerous weapon, without reasonable cause to fear an assault or other injury, or violence to his person, or to his family or property, he may, on complaint of any person having reasonable cause to fear an injury, or breach of the peace, be required to find sureties for keeping the peace, for a term not exceeding six months, with the right of appealing as before provided.

Mass. Rev. Stat., ch. 134, §16. In short, Massachusetts required any person who was reasonably likely to "breach the peace" to post a bond before publicly carrying a firearm. Between 1838 and 1871, nine other jurisdictions adopted similar laws. See 1838 Terr. of Wis. Stat. §16, p. 381; Me. Rev. Stat., ch. 169, §16 (1840); Mich. Rev. Stat., ch. 162, §16 (1846); 1847 Va. Acts ch. 14, §16; Terr. of Minn. Rev. Stat., ch. 112, §18 (1851); 1854 Ore. Stat. ch. 16, §17, p. 220; D. C. Rev. Code ch. 141, §16 (1857); 1860 Pa. Laws p. 432, §6; W. Va. Code, ch. 153, §8 (1868).

The *Bruen* Court dismissed surety laws as an analogue to New York's "proper cause" licensing scheme, but in distinguishing New York's scheme, the Court demonstrated why surety

laws are a good analogue to Illinois's "shall issue" scheme. The Court noted that "[w]hile New York presumes that individuals have no public carry right without a showing of heightened need, the surety statutes presumed that individuals had a right to public carry that could be burdened only if another could make out a specific showing of 'reasonable cause to fear an injury, or breach of the peace.'" *Bruen*, 142 S. Ct. at 2148 (citing Mass. Rev. Stat., ch. 134, §16 (1836)).

The FOID Act, like the surety statutes, presumes that individuals shall be issued a license, and that right is only burdened if they fall into a specific category that demonstrates a likelihood to breach the peace. In other words, Illinois's "shall issue" licensing scheme is consistent with the nation's historical tradition of regulation of firearms, including surety laws.

Thus, well into the nineteenth century, states routinely exercised their police powers to regulate firearms. *See* Cornell Report, Ex. F-3. Moreover, it was widely recognized throughout the nineteenth century that states could exercise the police power to pass a wide array of regulations of firearms to address changing circumstances and problems, including passing laws to regulate firearm possession that are direct analogues to the Act. *Id.* at 25–27. In sum, the historical record—from Founding-era disarmament laws and militia statutes to nineteenth century licensing laws, surety laws, and gun taxes—is clear that the regulation of firearm possession was well within the state police power at the time of the ratification of the Second Amendment in 1791 and beyond. *Id.* at 20–27.

<u>The FOID Card Application Fee Is Constitutional</u>

GSL separately challenges the facial constitutionality of the $10 fee the State of Illinois charges no more than once every ten years to apply for or renew a FOID Card. Under the applicable *Bruen* standard, fees for otherwise constitutional licenses are themselves constitutional

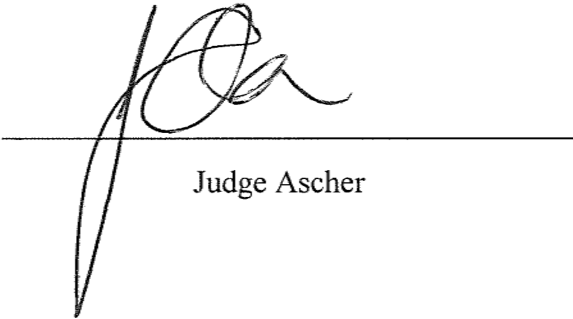
so long they are not "exorbitant." *Bruen*, 142 S. Ct. at 2138 n.9. The unrebutted record shows it costs $10 to apply for a FOID Card, which is valid for at least 10 years. Moreover, the amount of the fee is lower than the cost of processing a FOID Card application. An application fee that amounts to at most $1 a year, and is insufficient to cover even the State's processing costs, is not exorbitant under any definition of the word. GSL's challenge to the FOID Act's fee cannot survive the Supreme Court's reasoning and ruling in *Bruen*.

GSL's motion for summary judgment as to their separate challenge to the $10 FOID Card fee is denied, and Director Kelly's cross-motion for summary judgment is granted.

Conclusion

For these reasons, the Court **GRANTS** the motion of Director Kelly, and **DENIES** the motion of GSL. Final judgment is entered in favor of Director Kelly. This is a final and appealable order. Case closed, cause stricken.

DATED: 7/18/23



Judge Ascher