20-2842

IN THE

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

MICHAEL WHITE and ILLINOIS STATE RIFLE ASSOCIATION,

Plaintiffs-Appellants,

—v.—

ILLINOIS STATE POLICE, ET AL.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION
NO. 1:19-CV-02797
HONORABLE JOAN H. LEFKOW

BRIEF OF EVERYTOWN FOR GUN SAFETY AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-APPELLEES

JANET CARTER
WILLIAM J. TAYLOR, JR.
LISA M. EBERSOLE
EVERYTOWN LAW
450 Lexington Avenue #4184
New York, New York 10017
(646) 324-8215
wtaylor@everytown.org

Counsel for Amicus Curiae Everytown for Gun Safety

CORPORATE DISCLOSURE STATEMENT

Everytown for Gun Safety (formally, Everytown for Gun Safety Action Fund) has no parent corporations. It has no stock and hence no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Regulations

Historical Statutes

Other Authorities

STATEMENT OF INTEREST

Amicus curiae Everytown for Gun Safety ("Everytown") is the nation's largest gun violence prevention organization, with nearly six million supporters across the country, including over 300,000 in Illinois. Everytown was founded in 2014 as the combined effort of Mayors Against Illegal Guns, a national, bipartisan coalition of mayors combating illegal guns and gun trafficking, and Moms Demand Action for Gun Sense in America, an organization formed after a 20-year-old gunman murdered twenty children and six adults at an elementary school in Newtown, Connecticut. The mayors of 28 Illinois cities are members of Mayors Against Illegal Guns. Everytown also includes a large network of gun-violence survivors who are empowered to share their stories and advocate for responsible gun laws.

Everytown's mission includes defending common-sense gun safety laws by filing *amicus* briefs that provide historical context and doctrinal analysis that might otherwise be overlooked. Everytown has filed such briefs in numerous Second Amendment cases, including in cases, like this one, involving challenges to public carry restrictions. *See, e.g.*, *Culp v. Madigan*, No. 15-3738 (7th Cir.); *Young v. Hawaii*, No. 12-17808 (9th Cir.) (en banc); *Peruta v. County of San Diego*, No. 10-56971 (9th Cir.) (en banc); *Libertarian Party v. Cuomo*, No. 18-0386 (2d Cir.). Several courts have also cited and expressly relied on Everytown's amicus briefs in

deciding Second Amendment and other gun cases. *See, e.g.*, *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Att'y Gen. N.J.*, 910 F.3d 106, 112 n.8 (3d Cir. 2018); *Rupp v. Becerra*, 401 F. Supp. 3d 978, 991-92 & n.11 (C.D. Cal. 2019), *appeal docketed*, No. 19-56004 (9th Cir. Aug. 28, 2019); *see also Rehaif v. United States*, 139 S. Ct. 2191, 2210-11, nn.4 & 7 (2019) (Alito, J., dissenting).[1]

STATEMENT OF ADDENDUM

Pursuant to Fed. R. App. P. 28(f), an addendum containing pertinent historical laws is filed concurrently with this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case is about Illinois's ability to protect its populace from the harms of guns in public places. Illinois's permitting scheme works to prevent individuals who present a danger to themselves or others or a threat to public safety from carrying concealed, loaded firearms in public. Appellant Michael White claims that he is not such a person, but the Illinois Concealed Carry Licensing Review Board (the "Board") concluded that he is. In reaching that conclusion, the Board considered evidence submitted by law enforcement and by White himself, including (among other things) White's guilty plea to unlawful use of a firearm, his arrest for domestic battery, his charge for unlawful use of a weapon, and his arrest (and subsequent jury

[1] All parties consent to the filing of this brief. No party's counsel authored this brief in whole or part and, apart from Everytown, no person contributed money to fund its preparation or submission.

acquittal) for reckless discharge of a firearm. *See* SA5, 7-8; Appellants' Separate App'x 46-47.

As Appellees Illinois State Police et al. (the "State") explain, this Court should affirm the district court's judgment because res judicata bars White's claims and Appellant Illinois State Rifle Association lacked Article III standing.[2] Even if this Court reaches the merits of Appellants' claims, it should conclude that they fail as a matter of law.[3]

Under the framework developed in the wake of *District of Columbia v. Heller*, 554 U.S. 570 (2008), this Court must first determine whether White's claim implicates the Second Amendment right at all—or whether it involves conduct that falls outside the scope of the Second Amendment as historically understood. *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), which addressed a complete prohibition on guns outside the home, does not resolve that issue. Instead, the question here is whether there is a historical basis for firearm permitting schemes that authorize government officials to evaluate applicants on standards provided by the legislature. Everytown submits this brief to demonstrate that, for almost 150 years, states and localities have done just that: they have authorized government officials to judge whether an applicant for a license is fit to carry a concealed, loaded firearm in public,

[2] *See* Appellees' Br. 14-30.
[3] Hereafter, we refer to Appellants jointly as "White."

under standards such as "proper" person, "suitable" person, or "good moral character." As the State explains (Appellees' Br. 32-35), these long-accepted laws establish that allowing officials to consider evidence and make a judgment about an individual's ability to responsibly carry a firearm in public does not infringe upon any Second Amendment right. Accordingly, Illinois's permitting scheme—with its standards of "danger" and "threat to public safety," and its carefully-defined rules governing the Board's decision-making—likewise does not infringe upon any Second Amendment right. White's claim should be dismissed at the first step of the constitutional analysis.

ARGUMENT

I. FIREARMS RESTRICTIONS THAT ARE PART OF A LONGSTANDING REGULATORY TRADITION ARE CONSTITUTIONAL

In the wake of *Heller*, this Court—along with every other court of appeals that has considered the question[4]—applies a two-step framework to assess whether a law violates the Second Amendment. "The threshold question is whether the regulated activity falls within the scope of the Second Amendment … as originally understood." *Kanter v. Barr*, 919 F.3d 437, 441 (7th Cir. 2019) (citations omitted); *see Heller*, 554 U.S. at 626-27 & n.26 (identifying a "[non]exhaustive" list of

[4] *See Kolbe v. Hogan*, 849 F.3d 114, 132-33 (4th Cir. 2017) (en banc) (collecting decisions of Second, Third, Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh, and D.C. Circuits); *Gould v. Morgan*, 907 F.3d 659, 669 (1st Cir. 2018).

"presumptively lawful regulatory measures" that are "longstanding" and thus fall outside the scope of the Second Amendment). A regulation that has "long been accepted by the public" is "not likely to burden a constitutional right." *Heller v. District of Columbia*, 670 F.3d 1244, 1253 (D.C. Cir. 2011) ("*Heller II*").

A regulatory tradition does not have to precisely match the modern, challenged law to fall outside the Second Amendment's protection. This Court has confirmed that "exclusions" from the scope of the right "need not mirror limits that were on the books in 1791." *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) (en banc); *see also United States v. Yancey*, 621 F.3d 681, 683 (7th Cir. 2010) (observing that the Seventh Circuit had already "rejected the notion that only exclusions in existence at the time of the Second Amendment's ratification are permitted" and noting that the federal mental illness prohibitor dates only to 1968). The U.S. Solicitor General recently explained that the Supreme Court "has never held … that modern firearms regulations can be constitutional only if they mirror colonial regulations. … It is enough if the modern law is 'fairly supported' by tradition." Br. in Opp. to Pet. for a Writ of Cert. 9-10, *McGinnis v. United States*, No. 20-6046 (Jan. 15, 2021) (citations omitted), *cert. denied* (Feb. 22, 2021).[5]

[5] The Solicitor General's reference to "colonial" laws should be understood in light of the fact that *McGinnis* involved a challenge to a federal law. In a case challenging a state law, such as this one, regulations from the period beginning around 1868—when the Fourteenth Amendment's ratification made the Second

Similarly, in *United States v. Class*, 930 F.3d 460 (D.C. Cir. 2019), the D.C. Circuit made clear that "[t]he relevant inquiry is whether a particular *type* of regulation has been a 'longstanding' exception to the right to bear arms," and rejected the plaintiff's argument that the precise prohibition challenged, which was enacted in the 1980s, lacked a historical basis. *Id.* at 465 (emphasis in original). More generally, "lower courts have used analogy to extend *Heller*'s exclusions beyond those specifically identified in the case." Joseph Blocher & Darrell A.H. Miller, *The Positive Second Amendment* 136 (2018); *see, e.g., Kachalsky v. County of Westchester*, 701 F.3d 81, 91 (2d Cir. 2012) (upholding law regulating public carry of firearms, which has "a number of close and longstanding cousins"); *cf. Long v. SEPTA*, 903 F.3d 312, 321, 324 (3d Cir. 2018) (in Article III standing context, where Supreme Court test requires that an intangible harm have "'a close relationship' to one that historically has provided a basis for a lawsuit," emphasizing that "[a] perfect common-law analog is not required" (citation omitted)).[6]

Amendment applicable to the states—are particularly relevant. *See, e.g*, *Ezell v. City of Chicago*, 651 F.3d 684, 702-03 (7th Cir. 2011) ("*McDonald* confirms that if the [Second Amendment] claim concerns a state or local law, the 'scope' question asks how the right was publicly understood when the Fourteenth Amendment was proposed and ratified.").

[6] Even the small number of dissenting jurists who would prefer to interpret the Second Amendment to bar any firearm regulation not grounded in "text, history, and tradition"—a view contrary to the two-part Second Amendment framework that is the law of this Court and every other Circuit that has weighed in—acknowledge that "the proper interpretive approach" to the historical inquiry

If a challenged law falls outside the scope of the Second Amendment right as it was historically understood, then the analysis ends—"the regulated activity is categorically unprotected, and the law is not subject to further Second Amendment review." *Kanter*, 919 F.3d at 441 (citation omitted); *see also Horsley v. Trame*, 808 F.3d 1126, 1130 (7th Cir. 2015). Only if a law lacks such historical underpinnings will the court proceed to "a second inquiry into the strength of the government's justification" for the law, *Kanter*, 919 F.3d at 441, which this Court has described as "akin to intermediate scrutiny," *id.* at 442 (internal quotation marks and citation omitted). Numerous courts have rejected Second Amendment challenges at step one. *See, e.g.*, *Young v. Hawaii*, No. 12-17808, 2021 U.S. App. LEXIS 8571, at *144-45 (9th Cir. Mar. 24, 2021) (en banc) (upholding, based on history alone, Hawaii scheme that restricted public carry (with some exceptions) to those with "reason to fear injury to … person or property" or "urgency or … need" (internal quotation marks and citations omitted)).[7] As shown below, permitting systems under which

---

involves "reason[ing] *by analogy* from history and tradition." *See, e.g.*, *Heller II*, 670 F.3d at 1275 (Kavanaugh, J., dissenting) (emphasis added).

[7] *See also, e.g.*, *Peruta v. County of San Diego*, 824 F.3d 919, 942 (9th Cir. 2016) (en banc) (holding, based on historical analysis alone, that law prohibiting persons from carrying loaded or unloaded concealed weapons, subject to a license-based exception, did not violate the Second Amendment); *United States v. Rene E.*, 583 F.3d 8, 12, 16 (1st Cir. 2009) (holding, based on historical analysis alone, that law regulating possession of handguns by juveniles did not violate the Second Amendment); *People v. Aguilar*, 2 N.E.3d 321, 329 (Ill. 2013) (historical evidence set forth in other decisions supports "the obvious and undeniable conclusion that

government officials judge whether individual applicants are suitable to carry a loaded firearm in public are a "longstanding" form of firearms regulation that fall outside the scope of the Second Amendment. Accordingly, White's challenge fails at step one.

II. WHITE'S CLAIMS FAIL BECAUSE ILLINOIS'S PERMITTING LAWS ARE PART OF A LONGSTANDING REGULATORY TRADITION

As the State explains, dangerous people do not have a Second Amendment right to carry firearms in public. *See* Appellees' Br. 32-35. Indeed, dangerous people may be prohibited from possessing firearms *entirely*. *See, e.g.*, *Kanter*, 919 F.3d at 447 (indicating that, at a minimum, those who are "dangerous[]" would not be protected under the Second Amendment); *id.* at 451, 454 (Barrett, J., dissenting) ("History is consistent with common sense: it demonstrates that legislatures have the power to prohibit dangerous people from possessing guns"; noting that this "includes dangerous people who have not been convicted of felonies"); *Tyler v. Hillsdale Cnty. Sheriff's Dep't*, 837 F.3d 678, 691 (6th Cir. 2016) (noting "Congress's power to categorically prohibit certain presumptively dangerous people from gun ownership"). It follows *a fortiori* that dangerous individuals may be prohibited from

---

the possession of handguns by minors is conduct that falls outside the scope of the second amendment's protection"); *cf. Nat'l Rifle Ass'n v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 700 F.3d 185, 204 (5th Cir. 2012) ("Although we are inclined to uphold the challenged federal laws at step one of our analytical framework, in an abundance of caution, we proceed to step two.").

carrying guns *in public*. *See, e.g.*, *Moore*, 702 F.3d at 940 ("[E]mpirical evidence of a public safety concern can be dispensed with altogether when the ban is limited to obviously dangerous persons *such as* felons and the mentally ill." (emphasis added)); *Wrenn v. District of Columbia*, 864 F.3d 650, 664 (D.C. Cir. 2017) ("[T]he right to carry is a right held by responsible, law-abiding citizens for self-defense … [and] 'responsible' must include those who are no more dangerous with a gun than law-abiding citizens generally are.").

White does not dispute that prohibiting certain dangerous people—those categorically barred as "convicted felons" or the other "proscribed persons set forth in 18 U.S.C. § 922,"—from carrying loaded, concealed firearms in public is permissible. *See* Appellants' Br. 15-17, 28-31. Instead, White argues that granting licensing officials the authority to determine on a case-by-case basis whether a particular individual would present a danger if permitted to carry publicly somehow offends the Second Amendment. *See* Appellants' Br. 15 (calling the standard "subjective"); *id.* at 17 (claiming Second Amendment violation in FCCA's lack of "defin[ition]" or "guidance" as to "what constitutes a 'danger' or a 'threat,'" the supposedly "unbridled discretion" of the Board, and the preponderance-of-evidence standard). White also argues that permitting officials to consider past behavior, and not just "current behavior," in making that determination somehow violates the Second Amendment. *See id.* at 16-17.

Neither of these arguments has merit. They are implausible from the outset: if, as the case law demonstrates, *see supra* at 8-9, it is permissible to prohibit dangerous individuals from carrying in public, it must also be permissible to determine whether or not a particular individual falls into that category, and that determination inevitably involves consideration of a range of evidence and some exercise of judgment. As the District Court observed, "granting discretion to licensing authorities to assess dangerousness in individual cases is both necessary and desirable because 'it is impossible for the legislature to conceive in advance each and every circumstance in which a person could pose an unacceptable danger to the public if entrusted with a firearm.'" SA17 (quoting *Kuck v. Danaher*, 822 F. Supp. 2d 109, 129 (D. Conn. 2011)); *see also Hightower v. City of Boston*, 693 F.3d 61, 76, 78 (1st Cir. 2012) (rejecting Second Amendment challenge to the level of "discretion conferred [to licensing authority] by the 'suitability' requirement" in Massachusetts's firearm licensing scheme); *Chief of Police of City of Worcester v. Holden*, 26 N.E.3d 715, 727-28 (Mass. 2015) (same).[8]

History bears this out. As the following sections will show, Illinois's permitting scheme—under which officials weigh evidence and determine whether

[8] As *Hightower* noted, "suitable person" requirements exist in many modern permitting schemes. *See Hightower*, 693 F.3d at 79 n.16 (citing statutes from Alabama, Connecticut, Hawaii, New Hampshire, and Rhode Island).

applicants, like White, pose too great a danger to themselves or others to be permitted to carry guns in public—is part of a longstanding regulatory tradition and thus does not infringe the Second Amendment.[9]

A. *Moore v. Madigan* Does Not Resolve the Historical Analysis

In discussing the merits of White's Second Amendment claim, the District Court took the view that his claim survives the first step of the two-step analysis because "the Seventh Circuit has held that the Second Amendment protects a right to carry firearms in public for self-defense." SA16 (citing *Moore*, 702 F.3d at 942). *Moore*, however, addressed a "*flat ban* on carrying ready-to-use guns outside the home," and concluded that it was unconstitutional. 702 F.3d at 940, 942.[10] *Moore*'s holding can go no further than the issue presented—no further, that is, than concluding that a state cannot completely prohibit public carry, or, conversely, that public carry is protected *to some extent*.

Accordingly, the District Court was wrong to conclude that *Moore* controlled the step-one inquiry in this case. The issue here is not whether *some* public carry

[9] Historical laws cited in this section are reproduced in the concurrently-filed Addendum ("ADD__").

[10] In a sequel case, the same panel described *Moore* as holding that "so strict a ban—unique among the states—on carrying a gun violates the Second Amendment." *Shepard v. Madigan*, 734 F.3d 748, 749 (7th Cir. 2013). Recently, this Court explained *Moore* as the invalidation of "an Illinois law that effected a near total ban on handgun possession for self-defense outside the home." *Calderone v. City of Chicago*, 979 F.3d 1156, 1162 (7th Cir. 2020).

falls within the Second Amendment's scope, but whether the specific conduct that must be protected for White's claim to succeed—*concealed* carry by an individual whom *a permitting authority has determined to be dangerous*—falls within its scope.[11] As the next section explains, the answer is that it does not.

B. Permitting Schemes Like Illinois's Have Existed for Almost 150 Years

Firearm permitting schemes in which officials make judgments regarding individuals' suitability before issuing them a license to carry a firearm in public (or even, in some cases, to purchase or possess a firearm) have existed for almost 150 years. Beginning at least as early as 1881, at least 20 states and municipalities enacted firearms permitting schemes that depended on the judgment of a government official. These laws fall into three categories. First, there were provisions (like Illinois's) under which a government official had to determine whether an applicant for a permit to carry a firearm in public satisfied a statutorily-specified standard, such as good moral character. Second, there were laws that required an official to determine that an applicant satisfied a specified standard before providing a permit

[11] Equally, if White were, for example, under 21 years old and claimed a constitutional right to receive a concealed-carry permit, the step-one inquiry would be whether concealed carry by a person under 21 falls within the Second Amendment's scope—not (as in *Moore*) whether *some* concealed carry falls within its scope. *See, e.g.*, *People v. Mosley*, 33 N.E.3d 137, 155 (Ill. 2015) (upholding at step one an Illinois law prohibiting 18-to-20-year-olds from carrying handguns outside the home).

to *purchase or possess* a gun. And third, there were laws that imposed permitting requirements without expressly specifying in the statute any standards for officials to apply.

1. Examples of historical laws akin to Illinois's existed all across the country, tasking sheriffs, judges and other government officials with assessing whether an applicant for a concealed-carry permit met a specified standard of character or behavior, such as "good moral character," "suitability," or being a "proper" person.[12] In 1881 New York City, for example, "the officer in command at the station-house" had to be "satisfied that the applicant [for a concealed-carry permit] [was] a proper and law-abiding person." Elliott F. Shepard et ano., *Ordinances of the Mayor, Aldermen and Commonalty of the City of New York* 214-15 (1881), ADD2-3. In 1908, Virginia required a judge to find "satisfactory proof of the good character" of an applicant before granting a concealed-carry permit. 1908

[12] These terms were used more commonly in the late part of the nineteenth century and early twentieth, but share a common thread with, and are acknowledged by, modern courts. *See Heller*, 554 U.S. at 635 (finding that "law-abiding, responsible" citizens have a Second Amendment right to bear arms in self-defense); *Yancey*, 621 F.3d at 684-85 ("[T]he right to bear arms was tied to the concept of a virtuous citizenry … accordingly, the government could disarm 'unvirtuous citizens.'" (quoting *United States v. Vongxay*, 594 F.3d 1111, 1118 (9th Cir. 2010))); *United States v. Bryant*, 711 F.3d 364, 369 (2d Cir. 2013) (per curiam) (*Heller* imposes "an implicit limitation on the exercise of the Second Amendment right to bear arms for 'lawful purposes,' … and a limitation on ownership to that of 'law-abiding, responsible citizens'" (quoting *Heller*, 554 U.S. at 628, 630, 635)).

Va. Acts 381, § 3780, ADD17. In 1917, California and Oregon required "proof before [specified law enforcement officials] that the person applying [for a concealed-carry permit] is of good moral character." 1917 Or. Sess. Laws 804-08, §§ 1, 9, ADD44-48; 1917 Cal. Sess. Laws 221-25, §§ 3, 6, ADD38-42. Connecticut applied permitting laws to open carry as well as concealed carry, and required the chief of police to find that an applicant "is a suitable person to receive such permit." 1923 Conn. Pub. Acts 3707, ch. 252, § 3, ADD66. West Virginia's provision required applicants for public carry permits to first declare their intent to apply for a permit in the county newspaper, then to file an application showing (among other things) that "he is a person of good moral character, of temperate habits," which a court would then assess at a hearing. 1925 W. Va. Acts 25-30, ch. 3, § 7(a), ADD82-87. North Dakota and Michigan both required the chief of police or other specified officials to decide whether the applicant was a "suitable person." 1923 N.D. Sess. Laws 380-81, ch. 266, § 8, ADD72-73; 1925 Mich. Pub. Acts 474, § 6, ADD78. And Rhode Island law instructed that "licensing authorities" shall issue a concealed-carry license "if … [the applicant] is a suitable person to be so licensed." 1927 R.I. Sess. Laws 256, §§ 1, 4, 5, 6, ADD101-04.[13]

[13] Several of these statutes separately required an official to determine that the applicant had a "proper purpose" or "good cause" for seeking to carry a loaded gun in public, such as a specific reason to fear injury to themselves or their property. *See, e.g.*, 1917 Cal. Sess. Laws 222 §6, ADD39; 1923 N.D. Sess. Laws 380-81, ch. 266, § 8, ADD72-73; 1927 R.I. Sess. Laws 256, § 6, ADD103-04.

2. Several states and cities required a permit to *possess or purchase* a firearm and specified standards of character or conduct that applicants had to meet. For example, New York in 1913 made it a misdemeanor to possess (and a felony to carry concealed) a handgun without a permit, for the issuance of which a magistrate must be "satisfied of the good moral character of the applicant, and provided that no other good cause exists for the denial of such application." 1913 N.Y. Sess. Laws 1627-29, § 1897, ADD22-24. In Chicago in 1915, to receive a permit to purchase a "pistol, revolver … or other weapon of like character," the applicant had to "present such evidence of good character as the General Superintendent of Police in his discretion may require." Samuel A. Ettelson, Chicago Dep't of Law, *Opinions of the Corporation Counsel and Assistants from May 1, 1915, to June 30, 1916* 458-59 (Vol. 7, 1916), ADD35-36. In 1919, North Carolina provided that "before the clerk of the Superior Court shall issue any such license or permit [to purchase or receive a pistol], he shall fully satisfy himself by affidavits, oral evidence, or otherwise, as to the good moral character of the applicant therefor." 1919 N.C. Sess. Laws 398, ch. 197, § 3, ADD59. In 1921, Missouri required a permit to purchase a handgun, to be issued "if the sheriff be satisfied that the person applying for the same is of good moral character and of lawful age, and that the granting of the same will not endanger

the public safety." 1921 Mo. Sess. Laws 691-92, § 2, ADD62-63.[14] Similarly, New Jersey in 1927 required a permit to purchase a handgun, to be issued to those of "good character" and "good repute in the community in which he lives," and not subject to exclusions. 1927 N.J. Laws 742-46, § 9, ADD98-99.

3. Finally, some states and localities granted authority to government officials to grant or deny carry permits without expressly circumscribing that authority in the law. In Fresno, California, anyone aside from "peace officers and travelers" needed "written permission (revokable at any time) from the president of the board of trustees" to "carry concealed upon his person any pistol or firearm." C.C. Merriam, *Charter and Ordinances of the City of Fresno* 62 (1891), ADD7. Under an 1897 ordinance in Oregon City, "permission [could] be granted by the mayor … to carry a pistol or revolver when upon proper representation it appear[ed] to him necessary or prudent to grant such permission." *The Charter of Oregon City, Oregon, Together with the Ordinances and Rules of Order* 152 (1904), ADD10. A 1905 New Jersey law carved out from its concealed-carry prohibition an exception for "any person having a written permit to carry such … firearm … from the mayor of any city [or equivalent governing body], … [which] when issued shall be in force

[14] *See also* 1918 Mont. Sess. Laws 6-7, ch. 2, § 3, ADD50-51 ("No permit [to purchase firearm from out-of-state seller] shall be given by the sheriff until he is satisfied that the person applying for such permit is of good moral character and does not desire such fire arm or weapon for any unlawful purpose."); 1913 Or. Sess. Laws 497 § 2, ADD27.

… for a period of one year from date of issue, unless sooner revoked by the officer or body granting the same." 1905 N.J. Sess. Laws 324-25, ch. 172, § 1, ADD14-15. Colorado in 1911 prohibited anyone from using or carrying concealed firearms "unless authorized so to do by the chief of police of a city, mayor of a town or the sheriff of a county." 1911 Colo. Sess. Laws 251, ADD19. Georgia's 1914 law made it "unlawful for any person to have or carry about his person … any pistol or revolver without first taking out a license from the ordinary of the respective counties in which the party resides …. The ordinary … *may* grant such license[.]" Orville A. Park, VI *Park's Annotated Code of the State of Georgia 1914* 234-36, § 348(a)-(b) (1915) (emphasis added), ADD31-33. In 1919, Hawaii prohibited the sale of handguns "unless the person desiring to purchase the same shall first have obtained from the sheriff ... a written permit for such purchase." 1919 Haw. Sess. Laws 166-67, ADD55-56.[15]

Illinois's permitting law sits firmly within this long history of regulation. It requires the Board to determine that an individual "does not pose a danger to himself, herself, or others, or a threat to public safety," in a carefully-structured process. *See* 430 ILCS 66/10(a)(4), 66/20. That standard is at least as favorable, and likely far more favorable, to an applicant than the historical standards: its focus on "danger"

[15] Hawaii subsequently enacted a statute that incorporated a suitability requirement for those seeking permits to carry handguns in public. *See* 1927 Haw. Sess. Laws 209-11, ADD89-91.

and "public safety" is, if anything, more concrete than historical laws that required officials to judge whether an individual was "suitable" (Connecticut, Rhode Island, North Dakota, and Michigan) or "proper" (New York City), or had "good moral character" (California, Missouri, Montana, New Jersey (1927), New York, North Carolina, Oregon, Virginia, West Virginia, and Chicago, Ill.). Illinois's permitting scheme also provides procedural protections not mentioned in any of the historical laws, including the opportunity formally to rebut objections submitted by law enforcement to the Board, 20 Ill. Admin. Code § 2900.140(e), and the availability of judicial review of the Board's determination under the Illinois Administrative Review Law, 430 ILCS 66/87.

Put differently, nothing in White's objections to Illinois's permitting scheme distinguishes Illinois's scheme from the longstanding regulatory tradition just set out. To reiterate, White objects that the standard is "subjective," without "defin[ition]" or "guidance" as to "what constitutes a 'danger' or a 'threat'"; that decisionmakers have "unbridled discretion"; and that they may consider past behavior, and not just "current behavior," in making their decisions. Appellants' Br. 15-17 (emphasis omitted).[16] However, "danger" and "threat to public safety" are

[16] White also objects to the preponderance-of-the-evidence standard. Appellants' Br. 17. As the State explains, *Berron v. Illinois Concealed Carry Licensing Review Board*, 825 F.3d 843 (7th Cir. 2016), forecloses that argument

certainly no more subjective than the "proper," "suitable," and "moral" standards seen in laws from 1881 through 1927, none of which defined those terms.[17] And, far from having "unbridled discretion," the Board is constrained not only by the statutory standard and subject to judicial review, but in multiple other ways set out in the State's brief. *See* Appellees' Br. 40-41 (explaining, among other things, that the Board may only consider information sent to it by ISP, law enforcement, or the applicant).[18] These are significantly greater constraints than existed for officials acting alone under historical statutes to assess whether an individual is "proper," "suitable," or "moral," and greater still than existed in those jurisdictions where legislation empowered officials to grant or deny permits without expressly

---

(as White concedes, *see id.* at 57), and there is no reason to revisit its holding. *See* Appellees' Br. 39.

[17] The Second Circuit recently rejected a due-process vagueness challenge to the terms "good moral character," "proper cause," and "good cause" in New York's firearms licensing law, noting that "despite the presence of those challenged terms in New York's licensing regime for more than a century, Plaintiffs have identified no 'evidence of confusion.'" *Libertarian Pty. of Erie Cnty. v. Cuomo*, 970 F.3d 106, 126 (2d Cir. 2020) (citation omitted), *petition for cert. filed*, No. 20-1151 (U.S. Feb. 9, 2021).

[18] As the State notes, White's invocation of "unbridled discretion" appears to be an improper effort to import First Amendment prior-restraint jurisprudence into the Second Amendment. *See* Appellees' Br. 40. The Ninth Circuit *en banc* recently rejected a similar "unbridled discretion" argument, observing that "[s]o far as we can tell, every court to address the question has declined to apply the prior restraint doctrine to firearm licensing laws." *Young*, 2021 U.S. App. LEXIS 8571 at *145-48 (citing decisions of First, Second, Third, Fourth, and Eleventh Circuits). Thus, in addition to being factually baseless and contrary to the long history of firearms regulation, White's argument fails for this reason too.

specifying any standard to constrain their decision-making (Colorado, New Jersey (1905), Georgia, Hawaii, Fresno, Cal., and Oregon City, Ore.). Moreover, none of the historical statutes described above contained any restriction specifying that only an applicant's "current behavior" may be considered, or imposing a time limitation on the relevance of past behavior.

Accordingly, in light of the long history of firearm permitting schemes similar to or surpassing Illinois's in the features to which White objects, we respectfully submit that this Court should conclude that White's Second Amendment challenge fails at the first step of the two-step inquiry.

CONCLUSION

For the foregoing reasons, and those set forth by the State, the judgement of the district court should be affirmed.

Respectfully submitted,

Dated: April 30, 2021

By: /s/ William J. Taylor, Jr.

Janet Carter
William J. Taylor, Jr.
Lisa M. Ebersole
EVERYTOWN LAW
450 Lexington Avenue
P.O. Box 4184
New York, NY 10017
(646) 324-8215

Counsel for Amicus Curiae
Everytown for Gun Safety

CERTIFICATE OF COMPLIANCE WITH WORD LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

I hereby certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5), Circuit Rule 32 and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word, in 14-point Times New Roman font, and complies with Circuit Rule 29 in that this brief is 5,147 words, excluding the portion of the document exempted by Fed. R. App. P. 32(f).

/s/ William J. Taylor, Jr.

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 30, 2021, I electronically filed the foregoing amicus brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

/s/ William J. Taylor, Jr.