No. 125513

In the Supreme Court of Illinois

ALFRED EVANS, JR.,

Petitioner-Appellant,

v.

ILLINOIS STATE POLICE and
COOK COUNTY STATE'S ATTORNEY,

Respondents-Appellees.

Appeal from the Appellate Court of Illinois, First District
No. 1-18-2488
There heard on appeal from the Circuit Court of Cook County, Illinois
No. 18 CH 2670
The Honorable **Michael T. Mullen**, Judge Presiding

BRIEF AND APPENDIX OF PETITIONER-APPELLANT ALFRED EVANS, JR.

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NATURE OF THE CASE

Petitioner, Alfred Evans, Jr., filed a petition in the Circuit Court of Cook County, Illinois, pursuant to 430 ILCS 65/10, requesting the court order the Illinois State Police ("ISP") to restore Plaintiff's rights under the Firearm Owner's Identification Act, 430 ILCS 65/1, *et seq.* ("FOID Card Act"). The circuit court, after considering written submissions from Petitioner, denied the Petition pursuant to Sections 65/10(c)(3) (holding that it was against the public interest to grant Petitioner a FOID card) and (c)(4) (holding that granting Petitioner a FOID card would be contrary to federal law) of the FOID Card Act.

Petitioner appealed *pro se*, and the Appellate Court, reviewing the Petitioner's written submissions *de novo*, held that it would not be contrary to the public interest to grant Petitioner a FOID card, given his demonstrated rehabilitation (*Evans v. Cook County State's Attorney*, 2019 IL App (1st) 182488, ¶36), but that Petitioner was nonetheless barred from receiving relief under 430 ILCS 65/10 due to the Court's statutory interpretations of both Section 65/10(c)(4) of the FOID Act and Section 5/24-1.1 of the Unauthorized Use of a Weapon by a Felon ("UUWF") statute (720 ILCS 5/24-1.1(a)). The Appellate Court found the interplay between the two statutes resulted in a permanent ban on persons convicted of a felony from ever being able to seek restoration of his/her FOID rights. *Id.* at ¶¶36, 42.

The Appellate Court noted this was probably not what the General

Assembly intended (*Id.* at ¶38), and it raised troubling constitutional concerns about the lack of procedural due process afforded to Petitioner. *Id.* at ¶40.

Petitioner filed a Petition for Leave to Appeal to this Court pursuant to Illinois Supreme Court Rule 315, and this Court granted the Petition.

ISSUES PRESENTED

I. Whether Section 10 of the FOID Card Act, which establishes a process for relief from firearms disabilities, automatically and permanently makes this relief inaccessible to those convicted of felonies by its interaction with 720 ILCS 5/24-1.1(a) and the federal firearm prohibitions of 18 U.S.C. § 922(g), which would create an absurd and unjust result, and also undermine the intention of the General Assembly by ignoring the plain meaning and intent of the FOID Card Act.

II. Whether the Appellate Court correctly held that *de novo* review was appropriate when it determined that granting Plaintiff a FOID card was not against the public interest.

JURISDICTION

The Plaintiff filed a timely Petition for Leave to Appeal following the October 28, 2019 decision by the First District Appellate Court, which this Court granted on March 25, 2020. Accordingly, this Court has jurisdiction

pursuant to Illinois Supreme Court Rule 315.

STATUTORY PROVISIONS INVOLVED

430 ILCS 65/10 provides in relevant part:

Sec. 10. Appeal to director; hearing; relief from firearm prohibitions.

(a) Whenever an application for a Firearm Owner's Identification Card is denied, whenever the Department fails to act on an application within 30 days of its receipt, or whenever such a Card is revoked or seized as provided for in Section 8 of this Act, the aggrieved party may appeal to the Director of State Police for a hearing upon such denial, revocation or seizure, unless the denial, revocation, or seizure was based upon a forcible felony, stalking, aggravated stalking, domestic battery, any violation of the Illinois Controlled Substances Act, the Methamphetamine Control and Community Protection Act, or the Cannabis Control Act that is classified as a Class 2 or greater felony, any felony violation of Article 24 of the Criminal Code of 1961 or the Criminal Code of 2012, or any adjudication as a delinquent minor for the commission of an offense that if committed by an adult would be a felony, in which case the aggrieved party may petition the circuit court in writing in the county of his or her residence for a hearing upon such denial, revocation, or seizure.

(b) At least 30 days before any hearing in the circuit court, the petitioner shall serve the relevant State's Attorney with a copy of the petition. The State's Attorney may object to the petition and present evidence. At the hearing the court shall determine whether substantial justice has been done. Should the court determine that substantial justice has not been done, the court shall issue an order directing the Department of State Police to issue a Card. However, the court shall not issue the order if the petitioner is otherwise prohibited from obtaining, possessing, or

using a firearm under federal law.

(c) Any person prohibited from possessing a firearm under Sections 24-1.1 or 24-3.1 of the Criminal Code of 2012 or acquiring a Firearm Owner's Identification Card under Section 8 of this Act may apply to the Director of State Police or petition the circuit court in the county where the petitioner resides, whichever is applicable in accordance with subsection (a) of this Section, requesting relief from such prohibition and the Director or court may grant such relief if it is established by the applicant to the court's or Director's satisfaction that:

(0.05) when in the circuit court, the State's Attorney has been served with a written copy of the petition at least 30 days before any such hearing in the circuit court and at the hearing the State's Attorney was afforded an opportunity to present evidence and object to the petition;

(1) the applicant has not been convicted of a forcible felony under the laws of this State or any other jurisdiction within 20 years of the applicant's application for a Firearm Owner's Identification Card, or at least 20 years have passed since the end of any period of imprisonment imposed in relation to that conviction;

(2) the circumstances regarding a criminal conviction, where applicable, the applicant's criminal history and his reputation are such that the applicant will not be likely to act in a manner dangerous to public safety;

(3) granting relief would not be contrary to the public interest; and

(4) granting relief would not be contrary to federal law.

720 ILCS 5/24-1.1 provides in relevant part:

(a) It is unlawful for a person to knowingly possess on or

> about his person or on his land or in his own abode or fixed place of business any weapon prohibited under Section 24-1 of this Act or any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction. This Section shall not apply if the person has been granted relief by the Director of the Department of State Police under Section 10 of the Firearm Owners Identification Card Act.

18 U.S.C. § 922 provides in relevant part:

> (g) It shall be unlawful for any person—
>
> > (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
>
> . . .
>
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 921 provides in relevant part (emphasis added):

> (20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—
>
> . . .
>
> What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. *Any conviction* which has been expunged, or set aside or *for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter*, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport,

possess, or receive firearms.

STANDARD OF REVIEW

"The standard of review on questions of law is *de novo*." *Krywin v. Chi. Transit Auth.*, 238 Ill. 2d 215, 226 (2010).

"Moreover, where the credibility of the witnesses is not at issue, no relevant facts are in dispute, and the court's ruling is not related in any way to a balancing of probity versus prejudice—in other words, when the considerations on which we typically defer to the trial court are not present—and the only issue for the reviewing court is the correctness of the trial court's legal interpretation, *de novo* review is appropriate." *People v. Risper*, 2015 IL App (1st) 130993, ¶ 33.

STATEMENT OF FACTS

On March 3, 1994, Petitioner Alfred Evans Jr. was convicted of Class 2 felony manufacture and delivery of a controlled substance and Class X felony manufacture and delivery of a 15+ grams of cocaine, and sentenced to the Illinois Department of Corrections. C300-302. In January, 2018, Petitioner applied to the Illinois State Police ("ISP") for a FOID card and was denied due to his felony convictions. C288-89, C292. The following month, Petitioner petitioned the circuit court *pro se* to reinstate his firearm rights which are prohibited under Section 65/88 of the FOID Act and Section 5/24-1.1(a) of the Criminal Code of 2012 due to his felony convictions, and to direct the State Police to issue him a FOID card. C181-183.

Section 65/10 of the FOID Act provides four criteria by which the circuit court may grant relief from his firearms disabilities. 430 ILCS 65/10(c). First, he cannot have been convicted or confined for a forcible felony within the past 20 years. 430 ILCS 65/10(c)(1). Second, he must show "the circumstances regarding a criminal conviction, where applicable, the applicant's criminal history and his [or her] reputation are such that the applicant will not be likely to act in a manner dangerous to public safety." 430 ILCS 65/10(c)(2). Third, he must show that "granting relief would not be contrary to the public interest." 430 ILCS 65/10(c)(3). Finally, he must show that "granting relief would not be contrary to federal law." 430 ILCS 65/10(c)(4).

Defendant Cook County filed a written objection arguing that Petitioner did not satisfy the third and fourth criteria. C260-267. Petitioner retained counsel and filed a brief in response to Cook County's objection, arguing why relief should be granted. C270-276. In addition to arguing that granting relief would not be contrary to federal law, Petitioner included documentary evidence of his rehabilitation to prove that granting relief would not be contrary to the public interest. C278-281. He attached a letter to his Petition which "acknowledged his criminal convictions and explained that he was 'hanging with the wrong crowd which led [him] to actively participate in illegal activities.' His letter explained that he has been the owner of a 'towing and transportation business since 2005.'" C226. He also submitted letters

from his wife and three other character witnesses attesting to his changed character, hard-working nature, and his efforts to be a good role model to his family and the community. C278-281.

Petitioner also detailed his specific need for reinstating his firearm rights. C274-275. He owns and operates a towing business which frequently subjects him to physical threats and violence, so he seeks a restoration of his firearm rights for personal protection in his career. *Id.*

The circuit court set the matter for oral arguments and allowed for further documentary evidence to be filed prior to the hearing date. C283. There is nothing in the record to indicate that testimony or any other evidence was provided at the hearing.

The circuit court denied Petitioner's petition because it found that the third and fourth criteria were not satisfied. C332. Petitioner appealed *pro se*, and the Appellate Court determined that whether Petitioner was entitled to relief under Section 10 presented an issue of statutory construction, and therefore reviewed the circuit court's conclusions *de novo*. *Evans*, 2019 IL App (1st) 182488, ¶26, 40. In its *de novo* review, the Appellate Court found that the first three criteria were satisfied,

Id. at ¶22-30. Specifically, the Appellate Court found that it "would be inclined to reverse in light of the uncontradicted evidence that Evans has turned his life around. He has had no contact—conviction, arrest, or otherwise—with the criminal justice system since 2008. He is married and

active in raising his three children. He owns a business towing repossessed cars. He seeks a gun only for protection, and there is no evidence in the record that he would use a gun for any other purpose." *Id.* at ¶3.

However, the Appellate Court affirmed the circuit court's ruling that granting relief would be contrary to federal law. *Id.* at ¶30-37. The Appellate Court found a circular "statutory loop" between Section 10(c)(4) of the FOID Card Act, which prohibits the court from granting a FOID card if it would violate federal law, and 720 ILCS 5/24-1.1(a), which prohibits convicted felons from possessing firearms unless the State Police Director grants relief from the prohibition pursuant to Section 10 of the FOID Card Act, which he/she is prohibited from doing if it would violate federal law, which it would be for a felon to possess a firearm. *Id.* at ¶5-7 (*See also* 18 U.S.C. § 922(g)(1)).

ARGUMENT

I. Illinois's Regulatory Scheme Creates a Mechanism to Restore Firearm Rights that Satisfies the Federal Gun Control Act.

Section 922(g) of the Gun Control Act of 1968 prohibits certain individuals from possessing firearms. Section 922(g)(1) imposes such a disqualification on anyone "who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year" 18 U.S.C. § 922(g)(1). It may appear that Petitioner's felony convictions would subject him to this prohibition. However, 18 U.S.C. § 921(a)(20) provides four exceptions to the prohibition: "[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned *or has had civil rights*

restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." 18 U.S.C. § 921(a)(20) (emphasis added).

Thus, if Petitioner falls under one of these exceptions then he would not be otherwise prohibited from obtaining, possessing, or using a firearm under federal law, and granting him relief would not be contrary to federal law. Only the question of whether Petitioner's civil rights were restored is relevant to this appeal.

Whether the "civil rights restored" subsection of § 921(a)(20) is satisfied is determined by a two-part test: (1) whether the individual's civil rights have been restored; and then (2) whether the convicting jurisdiction continue to prohibit the individual from possessing firearms. *United States v. Wilson*, 437 F.3d 616, 620 (7th Cir. 2006) (holding a court must ask whether the convicting jurisdiction restored civil rights, and if answer is "yes," then ask whether the restoration of rights "expressly provides that the person may not . . . possess . . . firearms"); *United States v. Meeks*, 987 F.2d 575, 578 (9th Cir. 1993) ("[w]e first ascertain whether a felon's civil rights are substantially restored under state law; if they are, only then do we determine whether state law expressly restricts his right to possess firearms"); *Caron v. United States*, 524 U.S. 308, 312 (1998) (finding that because Massachusetts law

"restored petitioner's civil rights," the question presented was whether Massachusetts forbade him from possessing a firearm).

Illinois does not automatically restore firearm rights to those convicted of a felony. The Criminal Code of 2012 states that "[i]t is unlawful for a person to knowingly possess . . . any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction." 720 ILCS 5/24-1.1(a). However, that section goes on to say that it "shall not apply" if a felon "has been granted relief by the Director of the Department of State Police under Section 10." *Id.* The Appellate Court barred that relief, but this Court has since weighed in on the issue.

In a case with much similarity to this matter, this Court recently held in *Johnson v. The Department of the State Police*, 2020 IL 124213, that Section 10 relief was available to the petitioner because the ability to keep and bear arms is a civil right. *Id.* at ¶ 30. Specifically, this Court departed from the three-rights interpretation of "civil rights restored" stated in *Logan v. United States*, 552 U.S. 23, 26, 32 (2007) (limiting the civil rights inquiry to the rights to vote, hold public office, and sit on a jury), and instead concluded:

> (1) the right to keep and bear arms is a 'civil right,' (2) Illinois has a regulatory mechanism to restore those rights through an individualized determination, and (3) relief granted under section 10 of the FOID Card Act constitutes a sufficient restoration of civil rights as intended by section 921(a)(33)(B)(ii).

Johnson, 2020 IL 124213, ¶ 30.

Applying the two-part 18 U.S.C. § 921(a)(20) test discussed by the Seventh Circuit in *Wilson*, and pursuant to this Court's ruling in *Johnson*, relief from firearm disabilities under 430 ILCS 65/10 means that both steps can and should be resolved in Petitioner's favor at the same time.

It is clear that the Appellate Court's opinion, which predated *Johnson*, would render the holding in *Johnson* a nullity, as it interpreted the statutes to prohibit one from seeking relief under Section 65/10. Besides the absurd "merry-go-round" result this interpretation requires (*See Evans v. Cook County State's Attorney*, 2019 IL App (1st) 182488, ¶ 30), the Appellate Court's opinion now directly contradicts the holdings of this Court.

Further, that the petitioner in *Johnson* had been barred under 18 U.S.C. § 922(g)(9), while Petitioner seeks relief from 18 U.S.C. § 922(g)(1), is of no import. *Johnson* applies equally to this situation, and the legal analysis of the statutory interplay is exactly the same.

Under *Johnson*, therefore, Illinois' regulatory scheme means (as with the petitioner in that case) that if Petitioner is granted relief under Section 10 of the FOID Act, restoring his civil right to keep and bear arms, that constitutes a sufficient restoration of civil rights to satisfy §§ 921(a)(20) and 922 (g)(1), as intended by the Gun Control Act.

Given this Court's specific invocation of § 65/10 as a means by which one can restore fundamental firearm civil rights, and given the nullification of this remedy by the Appellate Court, this Court should reverse the

erroneous statutory interpretation of the Appellate Court and confirm the holdings in *Johnson*.

The Appellate Court fully acknowledges that its reading of the FOID Act is contrary to legislative intent and creates the absurd result of establishing a process for Petitioner to regain firearms rights but automatically cuts off access to relief from that process. *Evans* at ¶42 ("…the current statutory scheme operates as a de facto permanent ban on the possession of firearms by persons convicted of felonies because they will never have their federal possessory disability removed. As we have set out, given the current statutory structure, we do not perceive that result to be the legislative intent.).

That is not the way this Court has instructed courts to read statutes, "[T]his court presumes that the legislature did not intend to create absurd, inconvenient, or unjust results." *Coram v. State of Illinois*, 2013 IL 113867, ¶57. To avoid those absurd, inconvenient, and unjust results, this Court must instead uphold the reading of the FOID Card Act which allows for the restoration of firearm rights, per its holding in *Johnson.*

Further, the Respondent agrees with Petitioner's position, as it stated "[t]he appellate court's interpretation, as even it recognized, creates an absurd and, in its view, potentially unconstitutional result that likely is contrary to the General Assembly's intent . . . ." PLA Answer at p.1. Given the *Johnson* decision, it appears that everyone is in agreement that the

Appellate Court erred in its conclusions regarding the meaning and workings of the relevant statutes.

II. Petitioner's Civil Rights Were Otherwise Restored by Operation of Illinois Law.

Even prior to *Johnson*, Petitioner also met the *Logan* test, as his civil rights were already restored by operation of law. Petitioner lost the civil right to hold office upon his conviction, but that right was restored by operation of law at the termination of his probation. Furthermore, Petitioner lost the right to vote when he was sentenced to the Illinois Department of Corrections, but that right was restored by his release from imprisonment.

Petitioner thus clearly satisfied the first step of having his core *Logan* civil rights restored by operation of Illinois law. The second step is not satisfied as Petitioner is currently barred from possessing firearms, but he can overcome that bar, and therefore satisfy the federal second step, if he obtains Section 10 relief, which should happen when this Court reverses the Appellate Court's erroneous statutory interpretation, especially given the Appellate Court's ruling that under any standard of review, granting Petitioner a FOID card would "not be contrary to the public interest" pursuant to Section 65/10(c)(3) of the FOID Card Act. *Evans*, 2019 IL App (1st) 182488, ¶28.

III. The Third and Fourth Appellate Districts' Reading of the FOID Card Act Correctly Conforms with *Johnson*.

The proper reading of the FOID Act was also understood by the Third District Appellate Court in *Pournaras v. People*, 2018 IL App (3d) 170051. As with Petitioner, the plaintiff in *Pournaras* was convicted of a felony and had his civil rights restored by operation of Illinois law. *Id.* at ¶3. The court concluded that for cases like those, Section 10 is an available remedy. *Id.* at ¶16 ("By virtue of completing his sentence, petitioner had his civil rights restored within the meaning of the Gun Control Act. *Id.* Therefore, petitioner utilized an exception to remove himself from disqualification under federal law. Under a proper reading of the Gun Control Act, we hold petitioner should be allowed to obtain a FOID card because we find he has met all of the statutory requirements.").

The Fourth District Appellate Court further clarified the interplay between the FOID Act and federal law in *Willis v. Macon County State's Attorney*, 2016 IL App (4th) 150480. In *Willis*, the Bureau Chief of the State Police Firearm Services Bureau, Jessica Trame, testified for what she was instructed was the position of the U.S. Government. *Id.* "Trame testified the FBI and the [ATF]…told her bureau that neither the Director nor an Illinois court could remove the misdemeanor crime of domestic violence prohibitor. Trame explained such crimes are different from other felonies or other misdemeanors. The federal authorities have recognized the Director providing relief for other felonies or mental health cases but not

misdemeanor crimes of domestic violence." *Id.* at ¶ 8. Based on Trame's testimony, the U.S. Government's position is that granting Section 10 relief to petitioners with felony convictions is not contrary to federal law.

The Appellate Court in this case deviated from this rational reading of the statute by apparently misunderstanding the timeline for applying the federal two-part test. *Evans*, 2019 IL App (1st) 182488, ¶36 ("…possession of a firearm must be legal under federal law to give relief under section 10 of the FOID Card Act.). The First District seems to be applying the two-part test to Petitioner in his present condition, ultimately determining that one must already have federal firearms rights before Section 10 relief may be granted. This is an irrational and unworkable interpretation of the FOID Act which undermines the plain meaning of the statute, and leads the absurd merry-go-round between Illinois and federal law which the Court describes. *Id.* at ¶37.

As this Court has instructed, "The most reliable indicator of the legislative intent is the language of the statute itself, which must be given its plain and ordinary meaning." *Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶16.

There are two instances in which Section 10 incorporates federal law. The first is under Section 10(b): "…the court shall not issue the order if the petitioner is *otherwise* prohibited from obtaining, possessing, or using a firearm under federal law." [Emphasis added]. 430 ILCS 65/10(b). The word

"otherwise" is key here because it establishes the basis of analysis as the Petitioner's condition *after* Section 10 relief is granted. The Appellate Court's reading of the statute only makes sense if one entirely ignores the word "otherwise," which violates the directives of this court. ("Each word, clause and sentence of a statute must be given reasonable meaning, if possible, and should not be rendered superfluous.") *Standard Mut. Ins. Co. v. Lay*, 2013 IL 114617, 989 N.E.2d 591, 371 Ill. Dec. 1 (Ill., 2013). Not only would ignoring the word "otherwise" render the word superfluous, doing so completely changes the meaning of the statute to something unreasonable, which the Appellate Court recognized even as it applied that incorrect reading.

The second instance in which Section 10 incorporates federal law is in Section 10(c)(4) when it states that the court may grant relief if it is established by the applicant to the court's satisfaction that "granting relief would not be contrary to federal law." 430 ILCS 65/10(c)(4). This does not say, as the Appellate Court seems to interpret, that Petitioner possessing firearms must currently not be contrary to federal law. The plain and ordinary meaning of the word "would" creates a hypothetical condition after "granting relief." Put another way, the statute directs the court to imagine that Section 10 relief is granted, then at that point analyze whether Petitioner is in violation of federal law. If the federal two step test is applied *after* Section 10 relief is granted, then we find that the first step is satisfied by operation of Illinois law, and the second step is satisfied by Section 10 relief, consistent

with this Court's holding in *Johnson*, which also affirms the reasoning of the Third District Appellate Court in *Pournaras.* Therefore, after granting relief, Petitioner would not be in violation of federal law.

IV. The Appellate Court's Interpretation of the FOID Card Act Unconstitutionally Violates Petitioner's Right to Procedural Due Process.

The three factors to consider in analyzing a Fourteenth Amendment procedural due process claim are (i) private interest affected by official action, (ii) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and (iii) the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *In re Robert S.*, 213 Ill. 2d 30, 49 (2004); *see also Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). The Appellate Court's holding, which permanently bars Petitioner from seeking Section 65/10 relief due to an alleged "Catch-22," violates Petitioner's right to procedural due process, as all three factors fall in Petitioner's favor.

For Petitioner, the private interest affected is the fundamental right to bear arms for self-defense and defense of others, specifically enumerated by the Second Amendment of the United States Constitution, *see*, *e.g.*, *People v. Aguilar*, 2013 IL 112116, ¶¶16-17, as well as Article I, § 22 of the Illinois State Constitution.

Regarding the second factor, the Appellate Court identified that through their reading of the Act, "[t]he risk of erroneous depravation using the current procedures appears not merely high, but guaranteed." *Evans*, 2019 IL App (1st) 182488, ¶40. Likewise, the probable value of additional or substitute procedural safeguards is extremely high, as the statute should/is supposed to permit the courts to perform an individual analysis of a petitioner's fitness for a FOID card, rather than be forced into a categorical denial due to the technicalities in the interplay of state and federal law.

Finally, the Government's interest in maintaining the categorical denial of reinstating Petitioner's fundamental right is low. The Section 10 process already requires individualized examination for determining the appropriateness of issuing FOID cards to petitioners. 430 ILCS 65/10(c)(2-3). Under the Appellate Court's interpretation, that individualized determination must be tossed aside for a categorical denial. But because the process is performed the same either way, there is no substantial financial or administrative burden to the substitute process of permitting the individualized analyses to be determinative of granting or denying a FOID card. Indeed, instead of the Government wasting resources to process applications and appeals only to deny them due to technicalities or inartful drafting, those same resources would be used to evaluate the appropriateness of reinstating Second Amendment rights to those like Petitioner on an individual, more equitable basis.

V. The Appellate Court Was Correct to Apply *De Novo* Review.

Since this Court should hold, consistent with its ruling in *Johnson*, that Section 10(c) is a viable mechanism for removing firearm disabilities and restoring firearm rights to those as to whom granting a FOID card would not be against the public interest, the crucial next step is determining the correct standard of review of a circuit court's factual determinations, where the circuit court did not actually gauge the credibility of any witnesses.

Here, in reviewing the circuit court's finding that granting Plaintiff a FOID card would be against the public interest – based solely on the written information supplied by Plaintiff and the Defendant's arguments – the Appellate Court correctly performed a *de novo* review. The Defendant asked for a manifest weight of the evidence standard, but the Appellate Court noted that "[w]hether [a] plaintiff is entitled to relief under section 10 of the FOID [Card] Act presents an issue of statutory construction" reviewed *de novo*." *Evans,* 2019 IL App (1st) 182488, ¶ 26 (quoting *Baumgartner v. Greene County State's Attorney's Office*, 2016 IL App (4th) 150035, ¶25). The Appellate Court found "*de novo* review particularly appropriate for three reasons: (i) only documentary evidence was introduced, so credibility does not play a role; (ii) the State did not challenge the legitimacy of the documentary evidence or present contrary evidence, which it could have done; and (iii) nothing in the record suggests, contrary to the State's assertion (unsupported by any record citation), that the circuit court conducted an evidentiary

hearing." *Evans*, 2019 IL App (1st) 182488, ¶26.

The Court also held that it "would also find that the trial court's conclusion on this factor was against the manifest weight of the evidence, were we to apply that standard." *Id.* Under either standard of review, then, this Court should affirm the Appellate Court's finding that it would be against the public interest for Petitioner to receive a FOID card.

Despite this, Respondent continues to ask for a manifest weight standard. "*De novo* review is appropriate, however, when there are no factual or credibility disputes, and the appeal therefore involves a pure question of law." *People v. Chapman*, 194 Ill. 2d 186, 217 (2000); *See also People v. Buss*, 187 Ill. 2d 144, 204-205 (1999).

> "Moreover, where the credibility of the witnesses is not at issue, no relevant facts are in dispute, and the court's ruling is not related in any way to a balancing of probity versus prejudice—in other words, when the considerations on which we typically defer to the trial court are not present—and the only issue for the reviewing court is the correctness of the trial court's legal interpretation, *de novo* review is appropriate. *People v. Aguilar*, 265 Ill. App. 3d 105, 109, 637 N.E.2d 1221, 202 Ill. Dec. 485 (1994). In *Aguilar*, which our supreme court cited as an example of a proper *de novo* review of an evidentiary ruling (*see Caffey*, 205 Ill. 2d at 89), the court considered whether the trial court had properly interpreted the admissions exception to the hearsay rule. Because the case 'involve[d] a legal issue and did not require the trial court to use its discretion regarding factfinding or assessing the credibility of witnesses,' the court found *de novo* review appropriate. *Aguilar*, 265 Ill. App. 3d at 109; *see also People v. Mitchell*, 165 Ill. 2d 211, 230, 650 N.E.2d 1014, 209 Ill. Dec. 41 (1995) (though review of decision on motion to suppress was typically subject to manifestly-erroneous standard, "[*d*]*e novo*

> review by this court is appropriate *** when, as here, neither the facts nor the credibility of witnesses is questioned")."

People v. Risper, 2015 IL App (1st) 130993, ¶33; *See also People v. Anderson*, 364 Ill. App. 3d 528, 533 (2d Dist. 2006) ("According to the supreme court, where there is no dispute in the underlying facts, a criminal conviction may be reviewed *de novo*").

On the other hand, "[a]n abuse of discretion standard applies when this court reviews a trial court's evidentiary rulings." *Jones v. DHR Cambridge Homes, Inc.*, 381 Ill. App. 3d 18, 34 (1st Dist. 2008) (quoting *Chapman v. Hubbard Woods Motors, Inc.*, 351 Ill. App. 3d 99, 105 (1st Dist. 2004).

The instant situation should be compared to that of *People v. Ceja*, 204 Ill. 2d 332 (2003), where a defendant claimed he did not impliedly consent to monitoring of a telephone conversation that turned out to be incriminating. The trial court found that consent existed, and the defendant asserted that *de novo* appellate review of that finding was appropriate. This Court disagreed, noting that "[t]his is a factual question, which turns on the credibility of witnesses. We must defer to the trial court, which was able to observe witnesses and draw inferences and conclusions of what defendant knew and, thus, whether he impliedly consented." *Id.* at 347.

In contrast, in this case there was no witness testimony in the circuit court, no determining of credibility, and no weighing of conflicting evidence.

The Defendants did not object to the documentary evidence Plaintiff submitted in the circuit court, and the Appellate Court was being asked to consider the same uncontroverted evidence. In all relevant ways, this situation is just like one where a circuit court granted summary judgment, which is also subject to *de novo* review. *See*, *e.g.*, *State Bank of Cherry v. CGB Enters.*, 2013 Ill. 113586, ¶65 (circuit court's ruling on summary judgment is subject to *de novo* review).

A review of the cases Defendant cited does not support its position, either. Defendant refers to a "substantial justice hearing" (PLA Answer at 9), but the cases to which it cites mention no such thing, and the cases are not analogous in any event. In *Coram v. Illinois State Police*, 2013 IL 113867, the petitioner also sought restoration of his FOID rights under Section 65/10 of the FOID Act. There is no indication live testimony was submitted; rather, the petitioner submitted a psychological report in support of his petition, and the County State's Attorney submitted nothing and did not object to the petition. *Id.* at ¶¶11-12. The trial court referenced "substantial justice" in granting petitioner a FOID card, presumably per 430 ILCS 65/10(b) (*Id.* at ¶13), but there was no ruling or finding that "substantial justice" had anything to do with how the hearing was held procedurally or how evidence was considered.

When the ISP intervened, the issues became whether the federal statute 18 U.S.C. § 922(g)(9) prohibited the court from considering and

granting the petitioner's request for a FOID card and, if so, whether such prohibition was an unconstitutional violation of petitioner's rights to equal protection and due process as applied to petitioner. *Id.* at ¶17. Ultimately, the trial court answered both questions in the affirmative (*Id.*), and upheld the order to issue petitioner a FOID card. *Id.* at ¶20.

The matter was appealed directly to this Court, which found (the then-existing) version of 430 ILCS 65/10 compatible with 18 U.S.C. § 922(g)(9) in that the trial court, in granting relief under Section 65/10(c), removed the federal firearm disability of 18 U.S.C. § 922(g)(9), and therefore petitioner was "entitled to a FOID card." *Id.* at ¶74. The Court vacated the portion of the trial court's opinion declaring 18 U.S.C. § 922(g)(9) unconstitutional, and the case was concluded. *Id.* at ¶¶76-78.

Notably, *nowhere* did this Court conduct any review of the trial court's factual findings during its Section 65/10(b) analysis. The main reason for that, perhaps, was that the ISP did not appeal said factual findings (*See Id.* at ¶2 ("Before this court, the [ISP], appellant herein, contends that the firearm ban of section 922(g)(9) is 'constitutional under the Second Amendment,' both facially and as applied to [Petitioner] Coram.")). There was no challenge to the circuit court's ruling under Section 65/10(b), there was therefore no discussion of the standard of review of a circuit court's factual findings. In *Johnson*, this Court noted that the circuit court's charge is to determine "whether 'substantial justice has not been done.'" 2020 IL

124213, ¶17 (quoting 430 ILCS 65/10(b)). However, that did not answer the question, or even address the issue, of the appellate standard of review, especially since the facts were not disputed. *Johnson*, 2020 IL 124213, ¶19.

The Defendant next cites to *Baumgartner v. Greene Cnty. State's Attorney's Office*, 2016 IL App (4th) 150035 (2016), but that case does not aid Defendant, either. In *Baumgartner*, the FOID card plaintiff lied on his FOID card application about his felony cannabis conviction and his misdemeanor domestic battery conviction. *Id.* at ¶¶4-5. Nonetheless, his application was denied due to the domestic battery conviction. *Id.* at ¶5. He filed a complaint in circuit court, where he, his wife, and a former employer testified on his behalf. He also submitted a letter from his current employer. *Id.* at ¶¶7-14. The State's Attorney did not make an objection to the FOID request. *Id.* at ¶15. The trial court ordered the ISP to issue the plaintiff a FOID card, ruling he met the requirements of Section 65/10(c). *Id.*

The ISP intervened and asked the circuit court to reconsider, as 18 U.S.C. § 922(g)(9) prohibited the plaintiff from possessing a firearm, and therefore plaintiff could not obtain relief under Section 10 of the FOID Act (as revised in 2013). *Id.* at ¶16. The plaintiff argued (1.) that the *Coram* decision meant plaintiff was able to obtain relief from 18 U.S.C. § 922(g)(9) *via* a Section 65/10(b) hearing (*Id.* at ¶17), and (2.) he was not subject to the prohibitions of 18 U.S.C. § 922(g)(9), because he had lost his civil rights upon his conviction and later had them restored. *Id.* at ¶¶18-19. The latter

argument was not specifically addressed by the circuit court, and that court ultimately agreed with the ISP that 18 U.S.C. § 922(g)(9) prohibited the relief plaintiff sought. *Id.* at ¶19.

On appeal, the Appellate Court found the current (2013 amendments) version of Section 65/10 of the FOID Act applicable to plaintiff, and that since granting him a FOID card would be contrary to federal law, relief to the plaintiff was barred. *Id.* at ¶¶29-30. The Court held that *Coram*, which involved the pre-2013 amendment version of Section 65/10, was inapplicable to the case. *Id.* at ¶¶32-33.

The Appellate Court then dealt with plaintiff's alternative argument: that his civil rights had been restored and thus he was not subject to 18 U.S.C. § 922(g)(9). *Id.* at ¶39. The Court found that because plaintiff was effectively sentenced to "time served," he did not lose any civil rights upon conviction and thus could not have them restored. *Id.* at ¶51.

The plaintiff attempted to raise an as-applied constitutional challenge in the Appellate Court, but the argument was deemed waived for failure to raise it in the circuit court. *Id.* at ¶58. Further, the Court noted that:

> [a] court is not capable of making an 'as applied' determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact.' *In re Parentage of John M.*, 212 Ill. 2d 253, 268, 817 N.E.2d 500, 508, 288 Ill. Dec. 142 (2004); *see also Lebron*, 237 Ill. 2d at 228, 930 N.E.2d at 902 (holding that 'when there has been no evidentiary hearing and no findings of fact, the constitutional challenge must be facial'). 'By definition, an as-applied constitutional challenge is dependent on the particular circumstances and facts of

> the individual defendant or petitioner' and, '[t]herefore, it is paramount that the record be sufficiently developed in terms of those facts and circumstances for purposes of appellate review.' *People v. Thompson*, 2015 IL 118151, ¶37, 398 Ill. Dec. 74, 43 N.E.3d 984."

Baumgartner, 2016 IL App (4th) 150035 at ¶56.

The Court held the circuit court proceedings did not count as an evidentiary hearing because the ISP was not a party, and only intervened post-hearing when it learned the State's Attorney did not represent its interests. *Id.* at ¶58. The Court also held the proposed constitutional argument to be premature, as the plaintiff had the ability to seek a gubernatorial pardon and had not sought that remedy. *Id.* at ¶¶60-61.

In discussing the two arguments it considered, the *Baumgartner* Court reviewed both *de novo*, as "[w]hether plaintiff is entitled to relief under section 10 of the FOID Act presents an issue of statutory construction." *Id.* at ¶25. "The construction of a statute presents a question of law and is subject to *de novo* review." *Id. See also Id.* at ¶35. While there was live testimony at the circuit court (which fully distinguishes it from the instant case), the Appellate Court refused to review the factual findings. Instead, like this matter, the circuit court only looked to the documentary evidence, to wit, the criminal case file, and the ISP's printout of plaintiff's criminal record. *Id.* at ¶45. This further supports Plaintiff's position that *de novo* review by the Appellate Court was appropriate, but also undercuts Defendant's argument to the contrary.

Finally, Defendant cites to *Walton v. Ill. State Police*, 2015 IL App (4th) 141055, but that case is likewise no help to Defendant. In *Walton*, the petitioner (like in *Coram* and *Baumgartner*) had a previous domestic battery conviction which served as a bar to obtaining a FOID card under 18 U.S.C. § 922(g)(9). *Id.* at ¶18. He filed a petition for relief under Section 65/10(c) of the FOID Act. He did not file a constitutional challenge. He testified, as did his son and daughter. He presented numerous letters from acquaintances, and from his doctor, that he was a non-violent and non-dangerous person, while the ISP and the State's Attorney submitted petitioner's criminal record. *Id.* at ¶7. The circuit court found, "based on the totality of the circumstances, petitioner would not be likely to act in a manner dangerous to public safety and granting him relief would not be contrary to public safety." *Id.* at ¶8. *The ISP did not challenge this finding on appeal. Id.*

There were two issues on appeal. The first was whether petitioner's conviction was for a misdemeanor crime of domestic violence under 18 U.S.C. § 921, thus barring petitioner from firearm possession per 18 U.S.C. § 922(g)(9), which the Court answered in the affirmative. *Id.* at ¶¶13, 18. The second issue was whether this Court's majority opinion in *Coram* allowed for the circuit court to remove the federal firearm disability through a Section 65/10 hearing. *Id.* at ¶20. Because *Coram* dealt with the pre-2013 amendment version of Section 65/10(b), the *Walton* Court held that *Coram* did not apply, and the circuit court was barred from granting petitioner relief.

Id. at ¶¶24-25.

The *Walton* Court did not consider the factual findings of the circuit court (in part because they were not appealed), and so *Walton* did not discuss what standard of review to apply to such findings. Additionally, there was much live testimony at the circuit court for which credibility needed to be gauged, which was not the situation in the circuit court in this case. So whatever constituted a "substantial justice" hearing in *Walton*, since that phrase was only used when the opinion quoted the statute (*Id.* at ¶22), this was not it. However, the *Walton* Court *did* refer to the proceedings in the circuit court, with live testimony, as an "evidentiary hearing." *Id.* at ¶7. That did not happen in the instant case, so for that additional reason, as Plaintiff did not have an evidentiary hearing, *Walton* is inapplicable.

Respondent's other citations in its PLA Answer are equally off-point. In *Best v. Best*, 223 Ill. 2d 342 (2006), which involved a domestic violence order-of-protection hearing, the petitioner and a police officer testified, and credibility was a major issue in the trial court's determinations. *Id.* at 346-47. Further, the holding was only that "A finding of abuse made under the Domestic Violence Act of 1986 will be reversed only if it is against the manifest weight of the evidence." *Id.* at 350. A similar analysis was conducted in *Tamraz v. Tamraz*, 2016 IL App (1st) 151854, but the Domestic Violence Act of 1986 is not at issue in this case.

In *Condon & Cook, L.L.C. v. Mavrakis*, 2016 IL App (1st) 151923, a

dispute about the terms of a settlement agreement, the manifest weight standard applied because the "the trial court held an evidentiary hearing." *Id.* at ¶56. Three witnesses testified at the evidentiary hearing. *Id.* at ¶24. This buttressed that Appellate Court's previous rulings that "repeatedly held that '[w]hen presented with a challenge to a trial court's determination that parties reached an oral settlement agreement, a reviewing court will not overturn that finding unless it is against the manifest weight of the evidence.'" *Id.* at ¶57 (internal citations omitted). That situation is not present here.

"Because the trial court held an evidentiary hearing tantamount to a trial to decide the factual issues in this case, we review the issues under the deferential manifest weight of the evidence standard." *Kulchawik v. Durabla Mfg. Co.*, 371 Ill. App. 3d 964, 969 (1st Dist. 2007). At least two witnesses testified in *Kulchawik* (*Id.* at 968), which again distinguishes it from the present case.

In short, Respondent cites no authority that invalidates the Appellate Court's finding that *de novo* review was appropriate, and, in any event, the Appellate Court also held that it would have reached the same conclusion favoring Petitioner's Petition under the manifest weight of the evidence standard. Therefore, this Court should affirm the Appellate Court's holding that granting Petitioner a FOID card would not be contrary to the public interest pursuant to 430 ILCS 65/10(3).

CONCLUSION

This Court should reverse the judgment of the Appellate Court, First District, that found Plaintiff statutorily prohibited from seeking relief under 430 ILCS 65/10(c)(4), and affirm the judgment of the Appellate Court that the circuit court's findings should be reviewed *de novo* and that granting Petitioner a FOID card would not be contrary to the public interest per 430 ILCS 65/10(c)(3).

Given that Sections 65/10(3) and (4) were the only impediments to Petitioner gaining relief, and since the analyses of those sections should be resolved in Petitioner's favor, Petitioner requests this Court enter an Order directing the ISP to issue Petitioner a FOID card.

June 3, 2020

Respectfully submitted,

/s/ Bryant Chavez
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/s/ David G. Sigale
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Attorneys for Petitioner-Appellant

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is thirty-one pages.

/s/ David G. Sigale
One of the Attorneys for Petitioner-Appellant Alfred Evans, Jr.

ILLINOIS SUPREME COURT RULE 342 APPENDIX TO BRIEF OF PETITIONER-APPELLANT

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No. 125513

In the
Supreme Court of Illinois

ALFRED EVANS, JR.,

Petitioner-Appellant,

v.

ILLINOIS STATE POLICE and
COOK COUNTY STATE'S ATTORNEY,

Respondents-Appellees.

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Alfred Evans, Jr.
v.
Cook County State's Attorney
Illinois State Police

No. 18 CH 2670

Judge Michael T. Mullen
NOV 20 2018
Circuit Court-2084

2016
409

ORDER

This matter coming to be heard on fully briefed State's Attorney objection to Plaintiff's complaint to Restore Firearm Rights; Counsel for ~~both~~ all parties appearing; This court being advised, IT IS HEREBY ORDERED:

The Court sustains the State's Attorney's objections as to Plaintiff's being barred by Federal Statute from obtaining a FOID card and further sustains that Plaintiff has not sustained his burden that issuing a FOID card would not be contrary to the public interest. Accordingly, Plaintiff's petition is denied.

This is a final and appealable order.

Attorney No.: 46943
Name: Alexander Blum
Atty. for: Plaintiff
Address: 900 Chicago Ave, #104
City/State/Zip: Evanston, IL 60202
Telephone: 773-999-2556

ENTERED:

Dated: _____, _____

Judge Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

_____ **DEPARTMENT,** _____ **DIVISION/DISTRICT**

3323
APP
A.M.

ALFRED EVANS JR
Plaintiff/ Appellant Appellee

v.

ILLIONIS STATE Police
COOK COUNTY STATE ATTORNEY
Defendant/ Appellant Appellee

Reviewing Court No.: _____
Circuit Court No.: 18 CH 2670

FILED-1
CIRCUIT COURT OF COOK COUNTY, ILLINOIS
2018 NOV 21 PM 12:25
DOROTHY BROWN
CLERK
CIVIL APPEALS DIVISION

NOTICE OF APPEAL

(Check if applicable. See IL Sup. Ct. Rule 303(a))(3).

☐ Joining Prior Appeal ☐ Separate Appeal ☐ Cross Appeal

Appellant's Name: ALFRED EVANS JR	Appellee's Name:
☐ Atty. No.: _____ ☐ Pro Se 99500	☐ Atty. No.: _____ ☐ Pro Se 99500
Atty Name:	Atty Name:
Address: 4LANGFORD CT	Address:
City: BOLINGBROOK State: IL	City: State:
Zip: 60440	Zip:
Telephone: 773-619-9643	Telephone:
Primary Email:	Primary Email:
Secondary Email:	Secondary Email:
Tertiary Email:	Tertiary Email:

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

Date of the judgment/order being appealed: 11-21-18

Name of judge who entered the judgment/order being appealed: MICHAEL T MULLEN

Relief sought from Reviewing Court:

I DISAGREE WITH ORDER ON 11-20-18 CASE-18CH2670-2084 DUE TO FEDERAL STATUE 9-22-G. IT ALSO STATE IF YOUR BACKGROUND HAS BEEN EXPUNGED YOU HAVE THE RIGHT TO RESTORE YOUR RIGHTS FOR A FOID CARD. I WAS WAS MISREPRESENTATED BY MY ATTORNEY WHO NEVER DISCLOSE THAT

I understand that a *"Request for Preparation of Record on Appeal"* form (CCA 0025) must be completed and the initial payment of $110 made prior to the preparation of the Record on Appeal. The Clerk's Office will not begin preparation of the ROA until the Request form and payment are received. Failure to request preparation of the ROA in a timely manner, i.e., at least 30 days before the ROA is due to the Appellate Court, may require the Appellant to file a request for extension of time with the Appellate Court. A *"Request for Preparation of Supplemental Record on Appeal"* form (CCA 0023) must be completed prior to the preparation of the Supplemental ROA.

Alfred Evans JR

To be signed by Appellant or Appellant's Attorney

2019 IL App (1st) 182488
No. 1-18-2488
Opinion filed October 28, 2019

First Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ALFRED EVANS JR.,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County.
	)	
v.	)	No. 18 CH 2670
	)	
THE COOK COUNTY STATE'S ATTORNEY and THE ILLINOIS STATE POLICE,	)	Honorable
	)	Michael Mullen,
	)	Judge, presiding.
Respondents-Appellees.		

JUSTICE HYMAN delivered the judgment of the court, with opinion.
Presiding Justice Griffin concurred in the judgment and opinion.
Justice Pierce specially concurred, with opinion.

OPINION

¶ 1 Alfred Evans Jr., who has applied for a Firearm Owner's Identification (FOID) card, finds himself caught in a circuitous commingling of Illinois and federal laws that only the General Assembly can untangle.

¶ 2 In the circuit court, Evans contested the Illinois State Police's (ISP) decision to deny his FOID card application. The ISP had cited convictions for two felony drug offenses in 1994, and the related federal statute prohibiting possession of firearms by felons. The Cook County State's

Attorney objected on the grounds that issuing Evans a FOID card would violate federal law as well as public interest. The circuit court agreed with the State.

¶ 3 We would be inclined to reverse in light of the uncontradicted evidence that Evans has turned his life around. He has had no contact—conviction, arrest, or otherwise—with the criminal justice system since 2008. He is married and active in raising his three children. He owns a business towing repossessed cars. He seeks a gun only for protection, and there is no evidence in the record that he would use a gun for any other purpose.

¶ 4 But, as we already have said, Evans has been snagged by an interrelated statutory web. The Firearm Owners Identification Card Act (FOID Card Act) (430 ILCS 65/10(c) (West 2018)) requires the circuit court to consider four factors before granting relief, including whether Evans's possession of a gun would violate federal law, and under ordinary circumstances, it would. Federal law prohibits persons convicted of offenses that carry a possible sentence of more than one year in prison (in Illinois, this means felonies) from possessing firearms. There is, however, a safety valve in the federal law's definition of a "conviction." A conviction does not count for the purposes of federal law when the law in the relevant jurisdiction (Illinois) has restored Evans's civil rights to him. The State concedes that Illinois has done so.

¶ 5 But that federal safety valve comes with a caveat. It does not apply if State law places an affirmative impediment on accessing the FOID card. This returns us to Illinois law, and Illinois law, like the federal law, prohibits firearm possession by persons convicted of felonies. 720 ILCS 5/24-1.1(a) (West 2018). Again, there is a safety valve—a felon can petition the director of ISP for relief from the possessory disability imposed by his or her felony conviction. *Id.* So far so good, except the safety valve conceals a fatal design flaw, namely, the reliance on the same

four-factor test applied in the FOID Card Act, which, as we said, prohibits the issuance of a FOID card if doing so would violate federal law.

¶ 6 Sound circular? It is.

¶ 7 So we are back at the beginning of an unending statutory loop. We cannot rewrite Illinois law. Unless the General Assembly sees fit to intervene and fix this ill-crafted statutory scheme, the federal prohibition on Evans's possession of a firearm functions as a barricade rather than a bridge, and Evans and others in the same circumstance will never be entitled to relief under section 10(c) of the FOID Card Act. 430 ILCS 65/10(c) (West 2018). We are obligated to affirm.

¶ 8 Background

¶ 9 Throughout Evans's late teens and early 20s, he had multiple contacts with police. In 1987, when he was 17, he was arrested (but not convicted) for battery and theft. Five years later, Evans was arrested three times. One arrest, for aggravated assault, did not lead to a conviction. The other two arrests resulted in convictions for Class 2 felony possession of an unknown amount of an unknown controlled substance and Class X felony possession of more than 15 grams of a substance containing cocaine. The record shows that the court sentenced Evans to three years in the Department of Corrections for the Class 2 offense. The record does not show the sentence for the Class X offense. In 1993, while apparently on bond for the two drug cases, police arrested Evans for battery. Again, this charge did not lead to a conviction.

¶ 10 In a letter attached to his application for the FOID card, Evans says that he served four-and-one-half years of actual time in prison for two offenses—the State does not dispute that calculation, and nothing in the record indicates otherwise.

¶ 11 In 1999, Evans was arrested for various controlled substance offenses, none of those arrests ended in a conviction. Then in 2008, he was arrested for battery. That arrest, too, did not lead to a conviction. Evans has had no documented contact with police since then.

¶ 12 In January 2018, Evans applied to the ISP for a FOID card. His application admits his earlier felony convictions. The ISP denied his request by letter saying that his convictions prohibited his possessing firearms, which also triggered a prohibition against firearm possession under federal law. Evans petitioned the circuit court for review of the ISP's determination.

¶ 13 Evans attached several letters to his petition. His own letter, like his initial application, acknowledged his criminal convictions and explained that he was "hanging with the wrong crowd which led [him] to actively participate in illegal activities." His letter explained that he has been the owner of a "towing and transportation business since 2005."

¶ 14 Evans's wife, Rolonda, submitted a letter, confirming that Evans has been in the towing business since 2005. She described Evans as "family-oriented," pointing to his active role in raising their three children. She characterized Evans as a "workaholic" who, despite "some blemishes in his past *** tries his best to live right, pay it forward and give back to the community where he grew up."

¶ 15 Evans submitted letters from three more character witnesses. All acknowledged Evans's criminal history but described Evans as a changed man. Kristi Brown, from Catholic Charities, explained that Evans is "deeply involved in the community" and tries to "teach[ ] young men the benefits of staying free of the penal system, working a tax paying job and owning their own business." Dr. Althea Jones (Ed.D), a childhood friend, said that Evans had "changed his life tremendously" despite his "criminal past," though she did not provide specifics. Charlotte

Hogan, Evans's sister, emphasized that Evans tries his best to be a role model for his children and, like Rolanda, described his commitment to his business.

¶ 16 The Cook County State's Attorney objected, primarily arguing that federal law barred the issuance of a FOID card due to Evans having been sentenced to over one year in prison. The state's attorney also argued that issuing the FOID card would be against the public interest because Evans's adult arrests "cast[ ] substantial doubt" that he has become a responsible person.

¶ 17 Evans, who had filed his initial petition *pro se*, retained counsel to file a response to the State's objection. Counsel, in one sentence, argued that issuing Evans a FOID card "is not contrary to federal law, and the FOID Card Act is unconstitutional as applied to him because it amounts to a perpetual firearm ban." Counsel cited no cases and made no argument to support that claim. Counsel also argued, citing a case from New Hampshire, that the circuit court could order the ISP to issue a FOID card to Evans despite the provision of federal law barring him from possessing a firearm. Relying on the information in the letters attached to Evans's petition, counsel urged that issuing Evans a FOID card would not be contrary to the public interest.

¶ 18 The record does not reveal whether the trial court held a hearing, but it did enter a written order "sustain[ing] the State's Attorney's objections as to [Evans]'s being barred by [f]ederal statute from obtaining a FOID card and further sustains that [Evans] has not sustained his burden that issuing a FOID card would not be contrary to the public interest. Accordingly, [Evans]'s petition is denied."

¶ 19 Analysis

¶ 20 The statutory scheme allowing individuals to apply for a FOID card starts off easy enough to follow. Any person in Illinois interested in getting a FOID card applies to the ISP. 430

ILCS 65/4 (West 2018). The ISP can deny an application under several criteria. *Id.* § 8. Relevant here, the ISP can deny an application if the applicant has been "convicted of a felony under the laws of this or any other jurisdiction" or if a person is "prohibited from acquiring or possessing firearms *** by any Illinois State statute or by federal law." *Id.* § 8(c), (n). If the ISP denies a FOID card application, the applicant can appeal to the director of the ISP. *Id.* § 10(a). This is true unless the applicant has been convicted of any number of criminal offenses—here, a violation of the Illinois Controlled Substances Act (720 ILCS 570/100 *et seq.* (West 2018))—in which case the applicant can petition the circuit court for relief. 430 ILCS 65/10(a) (West 2018).

¶ 21 The state's attorney for the relevant county may object, and the trial court considers the petition and the objection in determining "whether substantial justice has been done." *Id.* § 10(b). If the court determines that substantial justice has not been done, it must order the ISP to issue a FOID card unless the applicant is otherwise prohibited from possessing firearms under federal law. *Id.*

¶ 22 Because the Criminal Code of 2012 (see 720 ILCS 5/24-1.1 (West 2018) (felon in possession)) prohibits the applicant from possessing a firearm, the circuit court may only grant relief to an applicant if it is satisfied that:

> "(1) the applicant has not been convicted of a forcible felony under the laws of this State or any other jurisdiction within 20 years of the applicant's application for a [FOID] Card, or at least 20 years have passed since the end of any period of imprisonment imposed in relation to that conviction;

> (2) the circumstances regarding a criminal conviction, where applicable, the applicant's criminal history and his [or her] reputation are such that the applicant will not be likely to act in a manner dangerous to public safety;
>
> (3) granting relief would not be contrary to the public interest; and
>
> (4) granting relief would not be contrary to federal law." 430 ILCS 65/10(c)(1)-(4) (West 2018).

Evans challenges only the first factor, and the State responds that the trial court properly denied relief because both the third and fourth factors have not been satisfied. Nobody disputes that Evans satisfies the second factor.

¶ 23 *Passage of Time*

¶ 24 Our inquiry is fairly simple as to Evans's argument about the age of his convictions. His criminal history shows a conviction for a Class X delivery of 15 or more grams of a substance containing cocaine on March 3, 1994. On the same date, he was convicted of Class 2 delivery of an unspecified amount of a controlled substance. Evans's criminal history reflects that he received a three-year sentence for the Class 2 offense but does not indicate a sentence for the Class X offense. There is no indication that either of these convictions count as "forcible felonies." See 720 ILCS 5/2-8 (West 2018) (defining the term). But, even if they did, Evans's convictions, in 1994, occurred over 20 years ago. See 430 ILCS 65/10(c)(1) (West 2018). As Evans correctly argues, subsection (c)(1) does not pose an obstacle.

¶ 25 *Public Interest*

¶ 26 We disagree with both the State and the trial court that issuing Evans a FOID card would be contrary to the public interest. The State argues that we review this factor deferentially,

limiting our review to deciding whether the trial court's determination was against the manifest weight of the evidence. But, one of the cases the State cites for this proposition says that review of "[w]hether [a] plaintiff is entitled to relief under section 10 of the FOID [Card] Act presents an issue of statutory construction" reviewed *de novo*. *Baumgartner v. Greene County State's Attorney's Office*, 2016 IL App (4th) 150035, ¶ 25. *Baumgartner* did not distinguish between the subsections of section 10, and we see no need to either. We find *de novo* review particularly appropriate for three reasons: (i) only documentary evidence was introduced, so credibility does not play a role; (ii) the State did not challenge the legitimacy of the documentary evidence or present contrary evidence, which it could have done; and (iii) nothing in the record suggests, contrary to the State's assertion (unsupported by any record citation), that the circuit court conducted an evidentiary hearing. We would also find that the trial court's conclusion on this factor was against the manifest weight of the evidence, were we to apply that standard.

¶ 27 Reviewing the public interest factor *de novo*, we cannot agree that issuing Evans a FOID card should be regarded as contrary to the public interest. The only point the State makes in support of affirming the trial court focuses on Evans's past arrests and convictions. We acknowledge those, and while we agree with their seriousness, nothing suggests the involvement of violence. Of greater import, the State fails to account for the immense progress Evans has made since 2008, nor does it explain why his now 25-year-old criminal history and his life since should overshadow the person he has become. It's uncontradicted that Evans has a stable family life—his wife of many years wrote of her husband's active role in raising their three children. It's also uncontradicted that Evans has a viable business which he runs.

¶ 28 Additionally, Evans's letters to the circuit court do not attempt to reassign blame or hide his criminal history. He openly admitted his convictions on his FOID card application and the letter attached to his petition acknowledges his errant past and expresses a desire to be better going forward. Evans has taken responsibility for the poor choices he made years ago and asks only that proper account be taken of the good choices he makes now. We find that granting him a FOID card would not be contrary to the public interest.

¶ 29 *Federal Law*

¶ 30 We arrive at the final, and most daunting, aspect of our analysis: determining whether federal law prevents Evans from possessing a firearm. As we explained, the federal Gun Control Act of 1968 (Gun Control Act) makes it unlawful for any person "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year *** to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition." 18 U.S.C. § 922(g)(1) (2018). Evans was convicted of two drug offenses, one a Class 2 offense and the other a Class X offense. At the time, Class 2 offenses were punishable by a prison term of 3 to 7 years (730 ILCS 5/5-8-1(a)(5) (West 1994)) and Class X offenses were punishable by a prison term of 6 to 30 years (*id.* § 5-8-1(a)(3)). His convictions, therefore, bring him within the federal prohibition.

¶ 31 The Gun Control Act's definition section, however, places limits on what counts as a "conviction." Specifically, the Act provides that

> "a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights

> restored shall not be considered a conviction for purposes of this chapter." 18 U.S.C. § 921(a)(20) (2018).

Apparently, Evans's convictions have not been expunged or set aside, and he has not received a pardon. We must determine, then, whether Evans has had his "civil rights restored" for the purposes of section 921(a)(20). *Id.*

¶ 32 The leading case in Illinois on this question is *Coram v. State*, 2013 IL 113867 (plurality opinion). Coram had been convicted of domestic battery and applied for a FOID card 17 years later. *Id.* ¶¶ 5, 8. Federal law prevented (and prevents) persons convicted of misdemeanor offenses of domestic violence from possessing FOID cards. 18 U.S.C. § 922(g)(9) (2018). The circuit court found section 922(g)(9) unconstitutional. *Coram*, 2013 IL 113867, ¶ 18. A three-justice plurality of our supreme court rejected the circuit court's constitutional holding but found that "Coram ha[d] a remedy, and Illinois a procedure, which entitle[d] him to relief/exemption from the disabling effect of section 922(g)(9)." *Id.* ¶ 56. The plurality questioned, but accepted, the United States Supreme Court's decision in *Logan v. United States*, 552 U.S. 23, 28 (2007), which held that the relevant "civil rights" for the purposes section 921(a)(20) were "the rights to vote, hold office, and serve on a jury," and as long as those rights had been restored, federal law no longer acted as a prohibition on possession of firearms. See *Coram*, 2013 IL 113867, ¶ 73 ("we acknowledge the binding precedent of cases like *Logan*, and abide by the principle of automatic restoration of firearm rights upon the restoration of unrelated rights").

¶ 33 We note that *Coram* has attracted considerable scrutiny in several appellate court decisions. See *Willis v. Macon County State's Attorney*, 2016 IL App (4th) 150480, ¶ 19 (collecting cases from all five appellate districts). Some courts have ruled that *Coram* does not

apply to a FOID card applicant who, like Evans, applied after the FOID Card Act's 2013 amendment. *Id.* (citing *People v. Frederick*, 2015 IL App (2d) 140540, ¶¶ 22-23). Other courts have ruled *Coram* to be nonbinding because its analysis only garnered the support of a plurality of justices. *Id.* (collecting cases).

¶ 34 Several courts have combined *Coram*'s concurrence and dissent to prohibit the circuit court from "removing" the federal firearm disability. See *Baumgartner*, 2016 IL App (4th) 150035, ¶¶ 31-33 (collecting cases). This is an odd conclusion, given that Congress expressly left to State law the task of defining a "conviction" for the purposes of the federal gun laws. See 18 U.S.C. § 921(a)(20) (2018) ("What constitutes a conviction of such a crime shall be determined in accordance with the law *of the jurisdiction in which the proceedings were held*." (Emphasis added.)) In other words, if Evans gets relief from the ISP and his prohibition on possession of firearms removed, he, indeed, would fall within the "civil rights restored" safety valve discussed by the lead opinion in *Coram*. We have no occasion to offer our own opinion on the precedential value of the *Coram* plurality because the State concedes that Evans has had his civil rights restored under section 921(a)(20).

¶ 35 The State argues, instead, that Evans comes within an exception to the federal safety valve. The final clause of section 921(a)(20) provides that a person convicted of a felony can possess a firearm if his or her civil rights have been restored "*unless* such pardon, expungement, or restoration of civil rights expressly provides that the person may not *** possess *** firearms." 18 U.S.C. § 921(a)(20) (2018). The State argues, correctly, that Illinois law places an affirmative bar on the possession of firearms by those convicted of felonies. 720 ILCS 5/24-1.1(a) (West 2018). This means that, although Evans had his civil rights restored as contemplated

by the federal Gun Control Act, an affirmative provision in Illinois law prevents him from possessing firearms.

¶ 36 It would appear that all is not lost, however. The same section that prohibits possession of firearms by felons provides a mechanism by which to restore the right. *Id.* ("This Section shall not apply if the person has been granted relief by the Director of the Department of State Police under Section 10 of the [FOID] Card Act."). But, this only brings us back to where we started—possession of a firearm must be legal under federal law to give relief under section 10 of the FOID Card Act. 430 ILCS 65/10 (West 2018).

¶ 37 And so petitioners, like Evans, are stuck on a statutory merry-go-round without a way off. Evans can apply for a FOID card. To successfully do so, he must meet the four conditions in section 10(c) of the FOID Card Act (*id.* § 10(c)), including a determination that his possession of a firearm would not violate federal law. Federal law prohibits possession of firearms by felons, and Evans is a felon. But, Evans's conviction will not count as a "conviction" under federal law if his civil rights have been restored. Under the plurality in *Coram*, and given the State's concession, Evans's civil rights are automatically restored on the completion of his sentences for his criminal convictions; he could be issued a firearm unless, again under federal law, an affirmative provision bars his possession of a firearm. In Illinois, it is illegal for felons to possess firearms—an affirmative provision preventing the restoration of Evans's right to do so. But, he can be given relief from that prohibition if he satisfies the four factors in section 10 of the FOID Card Act. One of those four factors is determining whether his possession of a firearm would violate federal law. And so we have arrived back where we started.

¶ 38 We cannot imagine this is the result the General Assembly intended. When we construe statutes we are supposed to give effect to legislative intent by giving the words in those statutes their ordinary meaning and considering the overall structure of the statutory scheme. *E.g.*, *People v. Conick*, 232 Ill. 2d 132, 138 (2008). The FOID Card Act contemplates the possibility that those convicted of criminal offenses—even some of Illinois's more serious offenses—should have a legitimate opportunity to seek the restoration of their right to possess a firearm. 430 ILCS 65/10(a) (West 2018). The Criminal Code of 2012, by its plain language, contemplates the real possibility of relief from the ban on possessing firearms for those convicted of felonies. 720 ILCS 5/24-1.1(a) (West 2018). Taking the General Assembly at its word(s), we cannot conclude that it intended to indefinitely deprive persons convicted of felonies from possessing firearms without an opportunity to assess individual circumstances.

¶ 39 Potentially serious constitutional concerns arise with the way the statutory scheme operates. This concern is not so much with the second amendment, as it seems likely that the General Assembly could permanently deprive convicted felons of the right to possess firearms without running afoul of existing Supreme Court precedent. See *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) ("nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons"); see also, *e.g.*, *People v. Burns*, 2015 IL 117387, ¶¶ 28-29.

¶ 40 We are far more troubled that Evans's predicament may violate his procedural due process rights. See *In re Robert S.*, 213 Ill. 2d 30, 49 (2004) (three factors to procedural due process claim are (i) private interest affected by official action, (ii) risk of erroneous deprivation of that interest through current procedures used, and (iii) value of any additional or substitute

safeguards). Here, the private interest involved is substantial—the General Assembly has provided a statutory right to seek the reinstatement of a constitutional right. The risk of erroneous depravation using the current procedures appears not merely high, but guaranteed. The value of substitute safeguards is also high—by allowing the ISP to take a more pragmatic approach to removing the felon disability, either the ISP or the circuit court can then take a similarly holistic approach to evaluating the wisdom of issuing a FOID card to a given individual. But, we cannot develop this theory further because Evans is *pro se* and has not presented these arguments to us. We must, therefore, affirm.

¶ 41 How, then, did we get here? The simplest explanation, it seems, is a lag in statutory amendments. Before 2013, section 10 of the FOID Card Act only had three requirements: (i) the applicant did not have a conviction for a forcible felony within the previous 20 years, (ii) the applicant would not be likely to act in a manner dangerous to public safety, and (iii) issuing a FOID card would not be contrary to the public interest. See Pub. Act 97-1131 (eff. Jan. 1, 2013) (amending 430 ILCS 65/10(c)). Thus, even though the ISP could still deny a FOID card for an applicant's felon status under federal law (see 430 ILCS 65/8(n) (West 2018)), before 2013, there was the possibility for meaningful relief. A person convicted of a felony could have his or her "civil rights restored" by completing his or her sentence and seeking relief under section 24-1.1(a) of the Criminal Code of 2012. 720 ILCS 5/24-1.1(a) (West 2012). The circuit court would then have been permitted to do a more individualized, holistic evaluation of the person's fitness to possess a FOID card under the three requirements in section 10 of the FOID Card Act.

¶ 42 Whether or not the General Assembly intends a felony conviction to create a permanent bar on gun possession, it should work to make its intent clearer. If it does intend a permanent bar,

it should expressly say so either in the FOID Card Act or the Criminal Code of 2012 (or both). If it does not intend a permanent bar, it should amend section 24-1.1(a) of the Criminal Code of 2012 to allow the director of the ISP to consider more individualized factors when granting or denying relief under that section. Unless and until the General Assembly takes action, the current statutory scheme operates as a *de facto* permanent ban on the possession of firearms by persons convicted of felonies because they will never have their federal possessory disability removed. As we have set out, given the current statutory structure, we do not perceive that result to be the legislative intent. Our role does not include divining unexpressed legislative intent; we must follow statutes as written. Doing so requires us to affirm.

¶ 43 Affirmed.

¶ 44 JUSTICE PIERCE, specially concurring:

¶ 45 I concur in the judgment only.

No. 1-18-2488

Cite as:	*Evans v. Cook County State's Attorney*, 2019 IL App (1st) 182488
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 18-CH-2670; the Hon. Michael Mullen, Judge, presiding.
Attorneys for Appellant:	Alfred Evans Jr., of Bolingbrook, appellant *pro se*.
Attorneys for Appellee:	Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and Katelin B. Buell, Assistant Attorney General, of counsel), for appellees.

PROOF OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 3, 2020, the foregoing **Brief and Appendix of Petitioner-Appellant**, was electronically filed with the Clerk, Illinois Supreme Court, and served upon the following by email:

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