

**APPEAL TO THE ILLINOIS APPELLATE COURT, FOURTH DISTRICT
FROM THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT,
SANGAMON COUNTY, ILLINOIS**

GUNS SAVE LIFE, INC.,	) Appellate Case No.: 4-23-0662
)
Plaintiff-Appellant,	) Appeal from the Circuit Court
	) of Sangamon County
v.)
BRENDAN KELLY, solely in his	) Trial Court Case No. 2019-CH-180
official capacity as Acting Director of)
the Illinois State Police,	) Trial Judge: Hon. Jennifer M. Ascher
	) Date of Notice of Appeal: July 28, 2023
Defendant-Appellee.	) Date of Judgment: July 18, 2023

**PLAINTIFF-APPELLANT’S OPPOSITION TO
DEFENDANT-APPELLEE’S MOTION TO STAY APPEAL**

Plaintiff-Appellant opposes Defendant-Appellee’s belated motion to stay the appeal. This appeal is fully briefed and ready for argument. Plaintiff-Appellant filed its brief over ten months ago. Defendant-Appellee obtained three separate 35-day extensions before filing his brief nearly six months ago. The Court set the appeal for argument but then ordered supplemental briefing in light of the U.S. Supreme Court’s decision in *United States v. Rahimi*, 144 S. Ct. 1889 (2024). The parties have completed their supplemental briefing. Nevertheless, Defendant now asks this Court to stay the appeal pending the Illinois Supreme Court’s decision in *People v. Thompson*, No. 129965, arguing that the Illinois Supreme Court’s consideration of *Thompson* “is a changed circumstance that occurred only recently.” Mot. to Stay Pending Appeal at 1 (“Mot.”). But the State has known that the Illinois Supreme Court would consider the appeal in *Thompson* since the Illinois Supreme Court granted the criminal defendant’s petition for review on November 29, 2023. *People v. Thompson*, 223 N.E.3d 643 (Ill. Nov. 29, 2023) (Table). That is not “a changed circumstance that occurred only recently.” Mot. at 1. Moreover, *Thompson* will not consider or

decide the issue in this appeal: whether the FOID Act violates the Second Amendment by requiring a license to possess firearms. The criminal defendant in *Thompson* instead challenged his conviction for aggravated unlawful use of a weapon (“AUUW”) after he publicly carried a handgun without a concealed carry license. *See People v. Thompson*, 2023 IL App. (1st) 220429-U, ¶ 21 (June 21, 2023) (noting that, at the time of the offense, the defendant possessed a FOID card but not a concealed carry license). The Illinois Supreme Court, therefore, has no reason in *Thompson* to apply *Bruen* to the FOID Act and determine whether the FOID Act requiring a license simply to possess firearms “is consistent with the Nation’s historical tradition of firearm regulation.” *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 24 (2022). This Court should deny Defendant’s belated attempt to further delay resolution of this appeal.

1. Plaintiff-Appellant Guns Save Life filed its notice of appeal on July 28, 2023, and contends that (1) the FOID Act violates the Second Amendment by requiring a license to own a firearm; and (2) in the alternative, the FOID Act violates the Second Amendment by imposing an unconstitutional tax on the right to keep and bear arms. Appellant’s Br. at 1, 6. Plaintiff filed its brief on November 3, 2023.

2. On November 21, 2023, Defendant-Appellee filed his first motion for extension of time, asking for a 35-day extension of time to file his response brief in this appeal. First Mot. for Extension of Time at 1. Counsel for Defendant certified that this request was made “not to unnecessarily delay this appeal.” Verification by Certification for First Mot. for Extension of Time at 3. The Court granted the extension.

3. On January 5, 2024, Defendant-Appellee filed his second motion for extension of time, asking for a second 35-day extension of time to file his response brief in this appeal. Second Mot. for Extension of Time at 1. Counsel for Defendant again certified that this request was made

“not to unnecessarily delay this appeal.” Verification by Certification for Second Mot. for Extension of Time at 2. The Court granted the extension.

4. On February 6, 2024, Defendant-Appellee filed his third motion for extension of time, asking for a third 35-day extension of time to file his response brief in this appeal. Third Mot. for Extension of Time at 1. Counsel for Defendant again certified that this request was made “not to unnecessarily delay this appeal.” Verification by Certification for Third Mot. for Extension of Time at 2. Defendant filed the third motion for extension after giving Plaintiff less than a day’s notice and without waiting for Plaintiff to provide its position. On February 7, 2024, Plaintiff asked the Court to at a minimum make clear that no additional extensions would be granted to Defendant. Opp’n to Third Mot. for Extension of Time at 1. The Court granted the third extension but ordered that was the “final extension of time” for Defendant to file his brief. Feb. 14, 2024 Order at 1.

5. Defendant filed his brief on March 25, 2024, and Plaintiff filed its reply on April 8, 2024. On June 6, 2024, the Court set the cause for oral argument on July 30, 2024.

6. On June 21, 2024, the U.S. Supreme Court decided *United States v. Rahimi*, 144 S. Ct. 1889 (2024). Accordingly, on July 1, 2024, this Court vacated the oral argument and directed the parties to provide further briefing. July 1, 2024 Order at 1. Plaintiff filed its supplemental brief on August 2, 2024, and Defendant filed his supplemental brief on September 9, 2024.

7. After the completion of briefing and supplemental briefing, Defendant informed Plaintiff for the first time on the afternoon of September 16, 2024, that Defendant would be moving by the end of the day to stay the appeal. Plaintiff expressed its opposition, and Defendant filed his motion to stay the appeal pending the Illinois Supreme Court’s decision in *People v. Thompson*.

8. The Illinois Supreme Court’s consideration of *People v. Thompson* is not “a changed circumstance that occurred only recently.” Mot. at 1. As Defendant neglects to mention,

the Illinois Supreme Court granted Thompson leave to appeal on November 29, 2023. That occurred well over ten months ago, before Defendant filed his second and third motions for extension of time, before Plaintiff filed its reply, before this Court initially set the case for argument, before the Court ordered supplemental briefing, before Plaintiff filed its supplemental brief, and before Defendant filed his supplemental brief. Defendant inexplicably waited over ten months to request a stay yet seeks to prejudice Plaintiff by delaying argument now that “this appeal is fully briefed.” Mot. at 4.

9. Defendant’s asserted concerns about “promot[ing] efficiency and conserv[ing] judicial resources” ring hollow. Mot. at 4. Over the past year, Plaintiff has expended resources preparing its brief, responding to Defendant’s extension requests, preparing its reply, and preparing its supplemental brief. The Court has also expended resources considering the briefing and motions and in requesting supplemental briefing on two topics related to *Rahimi*.

10. Unable to argue that the Illinois Supreme Court granting review in *Thompson* is a novel occurrence, Defendant focuses on how “the State of Illinois will file [its] appellee brief in *Thompson* on September 23, 2024,” and on how “*Thompson* is likely to be set for oral argument during the Illinois Supreme Court’s November sitting.” Mot. at 1. Neither the filing of the appellee brief in *Thompson* nor the potential scheduling of oral argument in *Thompson* “is a changed circumstance” that merits a stay in this case. *Id.* The State’s appellee brief in *Thompson* is merely a brief, and the State has known since November 2023 that it would eventually need to file such a brief and argue the case.

11. When the Illinois Supreme Court ultimately decides *Thompson*—likely sometime in 2025—the Illinois Supreme Court will not apply *Bruen* to the FOID Act because the criminal defendant in *Thompson* is not challenging the constitutionality of the FOID Act requiring a license

to possess a firearm in Illinois. The two issues in Thompson’s petition for leave to appeal were (1) whether the AUUW violates the Second Amendment by “aggravat[ing] the open carry of a firearm when an individual open carries it and the gun is loaded, uncased, and immediately accessible and that individual has not been issued a concealed carry license under the CCL Act,” and (2) “whether an accused such as Thompson . . . has standing to challenge the CCL Act” when he had not applied for a concealed carry license. Pet. for Leave to Appeal at 11, 16, *People v. Thompson*, No. 129965 (Aug. 25, 2023). The Illinois Supreme Court has no reason in *Thompson* to determine whether the FOID Act requiring a license simply to possess firearms “is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 U.S. at 24.

12. To support his belated request for a stay, Defendant again attempts to conflate the FOID Act and the CCL Act and claims that *Bruen* has already ruled the FOID Act constitutional as a “shall-issue licensing regime[.]” Mot. at 2. As the circuit court in this case correctly noted, footnote 9 in *Bruen* referenced only shall-issue *concealed carry* licensing laws, not *possession* licensing laws like the FOID Act. See Reply at 5 (citing R. V.2 C2028).

13. Even when rejecting the Second Amendment argument in *Thompson*, the First District of the Illinois Court of Appeals agreed that *Bruen* identified Illinois as “fall[ing] in line with the majority of states as a ‘shall issue’ jurisdiction, ‘where authorities must issue *concealed-carry* licenses whenever applicants satisfy certain threshold requirements.’” *Thompson*, 2023 IL App. (1st) 220429-U, ¶ 54 (emphasis added) (quoting *Bruen*, 597 U.S. at 13 & n.1). Illinois stands alone with Massachusetts, however, in requiring a license to *possess* any sort of firearm, not even to carry it in public. See Reply at 5, 14. *Thompson* is a public carry case, so the Illinois Supreme Court’s resolution of *Thompson* will not resolve the dispute here.

14. Defendant also inaccurately portrays the Illinois Supreme Court’s decision last year in *Caulkins v. Pritzker*, 228 N.E. 3d 181 (Ill. 2023), as “interpret[ing] and apply[ing] *Bruen*’s text-and-tradition standard,” Mot. at 3 (citing *id.* ¶ 34). Plaintiffs in *Caulkins* “omitted a second amendment claim from the complaint and expressly disclaimed it in their pleadings,” and the Illinois Supreme Court analyzed the equal protection claim under a “different standard[.]” 228 N.E. 3d at 190. Defendant is far afield in claiming that *Caulkins* or *Thompson* will determine whether the FOID Act violates the Second Amendment.

15. *Thompson* also will not impact the standard for a facial constitutional challenge. While disagreeing about whether the FOID Act is facially constitutional, Plaintiff and Defendant both agree that the standard for a facial challenge is the “one Illinois and federal courts have long applied: ‘[F]or facial challenges, a plaintiff must establish that a law is unconstitutional in all of its applications.’” Appellant’s Supplemental Br. at 3 (quoting *People v. Burns*, 79 N.E. 3d 159, 165 (Ill. 2015) (cleaned up) (quoting *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015))); *see also* Appellee’s Supplemental Br. at 7 (“Illinois courts apply the same standard for facial challenges as federal courts.”).

16. The standard for a facial constitutional challenge played little role in *Thompson*. The First District of the Court of Appeals cited it in a single paragraph of its opinion. *See Thompson*, 2023 IL App. (1st) 220429-U, ¶ 53. Similarly, the State’s brief in this case cited the standard for a facial challenge in a single paragraph of its standing section, *see* Appellee’s Br. at 18-19, and Defendant still has not identified a *specific* set of circumstances when the FOID Act would be constitutional, *see* Appellee’s Supplemental Br. *Thompson* is thus highly unlikely to change the standard for a facial challenge or to explain its application in any way relevant to this appeal.

17. The Court did not stay this appeal pending the U.S. Supreme Court's decision in *Rahimi*. The long-pending appeal in *Thompson* does not merit special treatment that would significantly delay resolution of this appeal. If Defendant truly thought otherwise, then he should have moved for a stay ten months ago. Instead, *Thompson* went completely unmentioned in the dozens of pages of briefing in this appeal.

18. Accordingly, the Court should deny Defendant-Appellant's motion to stay this appeal pending the disposition in *People v. Thompson*.

Dated: September 24, 2024

Respectfully submitted,

/s/ Christian D. Ambler
Christian D. Ambler
ARDC No.: 6228749
STONE & JOHNSON, CHTD.
111 West Washington Street
Suite 1800
Chicago, Illinois 60602
(312) 332-5656
cambler@stonejohnsonlaw.com

David H. Thompson – ARDC # 6316017*
Peter A. Patterson – ARDC # 6316019*
Clark L. Hildabrand – ARDC # 6345284*
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com
childabrand@cooperkirk.com
*Appearance pursuant to Ill. S. Ct. Rule
707

Attorneys for Plaintiff-Appellant

No. 4-23-0662
IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

GUNS SAVE LIFE, INC., et al.	)	Appeal from the Circuit Court
	)	for the Seventh Judicial
Plaintiffs-Appellant,	)	Circuit, Sangamon County, Illinois
)	
v.	)	No. 2019-CH-180
)	
BRENDAN KELLY, in his official capacity	)	The Honorable Jennifer M. Ascher,
as Director of the Illinois State Police,	)	Judge Presiding.
)	
Defendant-Appellee,)	

NOTICE OF FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on September 24, 2024, I caused to be electronically filed with the Appellate Court of Illinois Fourth Judicial District, **PLAINTIFF-APPELLANT'S OPPOSITION TO DEFENDANT-APPELLEE'S MOTION TO STAY APPEAL**, a copy of which is attached hereto and served upon you.

Christian D. Ambler (ARDC No. 6228749)
STONE & JOHNSON, CHTD.
111 West Washington Street
Suite 1800a
Chicago, Illinois 60602
(312) 332-5656
cambler@stonejohnsonlaw.com

David H. Thompson (ARDC No. 6316017)*
Peter A. Patterson (ARDC No. 6316019)*
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com

* Appearance entered pursuant to Ill. S. Ct.
Rule 707

CERTIFICATE OF SERVICE

I, Christian D. Ambler, an attorney certify that this Notice of Filing and the attached PLAINTIFF-APPELLANT'S OPPOSITION TO DEFENDANT-APPELLEE'S MOTION TO STAY APPEAL was served via the Clerk's Office E-filing system with consent of the recipient(s) where permissible under Ill. Sup Ct. R. 11, at the e-mail addresses as indicated before 5:00 p.m. on September 24, 2024. Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

/s/ Christian D. Ambler

107-13147

Guns Save Life, Inc. v. Kelly, et al.

Service List

Attorneys for Plaintiff:

Christian D. Ambler, Esq.
STONE & JOHNSON, CHARTERED
111 West Washington Street
Suite 1800
Chicago, Illinois 60602
(312) 332-5656
cambler@stonejohnsonlaw.com

David H. Thompson (ARDC No. 6316017)*
Peter A. Patterson (ARDC No. 6316019)*
Clark L. Hildebrand (ARDC No. 6345284)*
COOPER & KIRK, PLLC
1523 New Hampshire Ave., N.W.
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com
ppatterson@cooperkirk.com
jmasterman@cooperkirk.com

Counsel for Defendants:

Laura K. Bautista, Esq.
Assistant Attorney General
500 South Second St.
Springfield, Illinois 60701
Fax No. (217) 782-5819
(217) 524-5091
lbautista@atg.state.il.us
gls@atg.state.il.us

Samantha M. Vazquez
Assistant State's Attorney
McLean County State's Attorney Office
104 W. Front Street Room 604
Bloomington, Illinois 61701

Samantha.Vazquez@mcleancountyil.gov

Isaac Freilich Jones
Assistant Attorney General
100 West Randolph St., 11th Fl.
Chicago, Illinois 60601
(312) 814-3000
Isaac.FreilichJones@ilag.gov

Kaitlyn N. Chenevert
Assistant Attorney General
115 South LaSalle Street
Chicago, IL 60603
(312) 814-2127
CivilAppeals@ilag.gov
Kaitlyn.Chenevert@ilag.gov