

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT

WHITE COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF )  
ILLINOIS )  
 )  
-vs- )  
 )  
VIVIAN CLAUDINE BROWN, )  
 )  
 )  
Defendant. )

No. 2017-CM-60

FILED  
FEB 14 2018

*Kelly L. Sullivan*  
CIRCUIT COURT  
WHITE COUNTY

ORDER FINDING STATUTE UNCONSTITUTIONAL

On this 14 day of February, 2018, this Court, after examining the defendant's Motion to Find Statute Unconstitutional, and being fully advised in the premises, finds as follows:

1. This Court has jurisdiction of the parties hereto and the subject matter hereof.
2. The facts of this case are undisputed and are fully set forth in the defendant's Motion to Find Statute Unconstitutional filed herein on September 26, 2017.
3. The statute in question is 430 ILCS 65/2(a)(1) which provides for the following:

No person may acquire or possess any firearm... within this State without having in his or her possession a Firearm Owner's Identification Card previously issued in his or her name by the Department of State Police under the provisions of this Act.

4. 430 ILCS 65/4(a)(1) and (a-20) respectively provide, in part, as follows:

Each applicant for a Firearm Owner's Identification Card must: (1) make application of blank forms prepared and furnished... by the Department of State Police;

Each applicant for a Firearm Owner's Identification Card shall furnish to the Department of State Police his or her photograph.

5. 430 ILCS 65/5 provides, in part, that in order to obtain a Firearm Owner's Identification Card a person must submit to the Department of State Police "payment of a \$10 fee."

6. Article I, Section 22, of the Constitution of the State of Illinois states:

Subject only to the police power, the right of the individual citizen to keep and bear Arms shall not be infringed.

7. The Second Amendment to the United States Constitution provides, in part, as follows:

... the right of the people to keep and bear Arms, shall not be infringed.

8. The Fourteenth Amendment to the United States Constitution provides, in part, as follows:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

9. The Fourteenth Amendment to the United States Constitution incorporates the Second Amendment right to keep and bear arms for the purpose of self-defense and is applied to the States. *McDonald v. City of Chicago*, 561 U.S. 742, 749 (2010). Thus, the Second Amendment protects the right to keep and bear arms for the purpose of self-defense. *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008) found that "the inherent right of self-defense" has been central to the Second Amendment and the home is "where the need for defense of self, family, and property is most acute".

10. In this case the facts show the defendant possessed a gun, in her house, for the purpose of self-defense without a FOID card. To require the defendant to fill out a form, provide a picture ID and pay a \$10 fee to obtain a FOID card before she can exercise her constitutional right to self-defense with a firearm is a violation of the Second Amendment to the United States Constitution as applied to the States and a violation of


Article I, Section 22, of the Constitution of the State of Illinois, as applied to this case only.

11. Based upon the forgoing, the Court finds 430 ILCS 65/2(a)(1) unconstitutional as applied to this case.

12. The Court further finds 430 ILCS 65/2(a)(1) cannot, in this case, reasonably be construed in a manner that would preserve its validity and this finding of unconstitutionality is necessary to the decision in this case and this decision cannot rest upon an alternate ground.

13. The Court finds Supreme Court Rule 18 has been complied with.


IT IS THEREFORE ORDERED that 430 ILCS 65/2(a)(1) is unconstitutional as applied to the defendant herein.

ENTER:   
Judge

DATED: 2-14-18

APPROVED AS TO FORM:

  
Denton Aud, State's Attorney

  
Alan C. Downen, attorney for defendant