IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ELLA M. SAMUEL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 15-780-NJR-SCW
	)	
JESSICA TRAME,	)	
	)	
Defendant.	)	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

NOW COMES Defendant, JESSICA TRAME, in her Official Capacity as Bureau Chief of the Illinois State Police Firearms Services Bureau, by and through her attorney, Lisa Madigan, Attorney General of Illinois, and hereby submits her memorandum of law in support of Defendant's motion for summary judgment, stating as follows:

BACKGROUND

Plaintiff seeks a permanent injunction barring enforcement of the residency requirement of the Firearm Concealed Carry Act, 430 ILCS 66/40(a), thereby permitting the plaintiff to apply for an Illinois concealed carry license. Section 40 of the Carry Act permits nonresidents to apply, pursuant to rules of the Illinois State Police ("ISP"), for a concealed carry license if the nonresident is a resident of a state or U.S. territory with laws related to firearm ownership, possession, and carrying that are substantially similar to Illinois' requirements. The purpose of this requirement is to ensure public safety and prevent violent crime. Currently, Hawaii, New Mexico, South Carolina, and Virginia are "substantially similar," based on information provided

by the jurisdictions in response to ISP's request for information.[1] (Ex. 1, Affidavit of Trame, at ¶¶ 26–29.)

Plaintiff states she is a resident of Montana; would apply for a concealed carry permit if able; and would carry concealed firearms in Illinois but fears criminal prosecution. Plaintiff is a member of the United States Air Force; is permanently stationed in Illinois; but chooses to maintain residency in Montana.

Pursuant to 20 Ill. Admin. Code § 1231.110(c), ISP sent surveys to other jurisdictions requesting information about their firearm laws to determine whether those jurisdictions had "substantially similar" firearm laws. (Ex. 1 at ¶¶ 26–29.) ISP asked whether the jurisdiction regulated who may carry firearms in public, reported via national databases persons authorized to carry and persons denied, and prohibited persons voluntarily (in the last five years) or involuntarily admitted to mental health facilities from possessing or using firearms. Colorado, Maine, Maryland, Massachusetts, Nevada, Pennsylvania, and Rhode Island did not respond to Illinois' requests. Hawaii, New Mexico, South Carolina, and Virginia stated they met all of the criteria. The remaining jurisdictions stated they did not have laws or procedures concerning one or more of the criteria. For example, and relevant to the plaintiff's state of residence, Montana stated it did not prohibit use or possession of firearms based on voluntary admissions to mental health facilities in the last five years and did not have a mechanism of tracking that information for their residents. (Ex. 1 at ¶ 29.)

Because Illinois' regulations concerning the carrying of firearms by nonresidents are constitutional, Defendant requests this Court enter judgment in favor of Defendant and against Plaintiff.

[1]ISP has proposed amended rules that may expand the number of states deemed to be "substantially similar" under the Carry Act. 39 Ill. Reg. 10717, 10740–41.

ISSUES AND ARGUMENT

Plaintiff argues that the residency requirement violates the Second Amendment right to keep and bear arms, and an unspecified application of the Fourteenth Amendment[2]. Plaintiff's various constitutional claims ultimately reduce to a Second Amendment challenge: whether the State may prohibit nonresidents from states without substantially similar firearm laws from obtaining an Illinois concealed carry license consistent with the right to bear arms. Based on the record before the Court, and the relevant case law, Defendant, and not Plaintiff, is entitled to summary judgment.

Public carriage of firearms in Illinois is conditioned, with some exceptions, on possession of an Illinois concealed carry license. The restriction applicable to nonresidents from states without substantially similar firearm laws does not violate the right to bear arms in public because it is reasonably related to Illinois' substantial interest in not allowing individuals to carry firearms if, due to criminal history, mental illness, or other factors, they are not qualified. Illinois has limited access to out-of-state information concerning nonresidents' qualifications to carry firearms in public in Illinois; unless a state gathers that information for the purpose of enforcing its own, substantially similar firearm laws, Illinois has no way to confirm that a nonresident from that state is qualified to carry a loaded firearm in public in Illinois, and would have no way to monitor that nonresident's ongoing qualifications were it to issue a license. Because the residency requirement does not violate the right to bear arms, Plaintiff's constitutional challenges premised on that right also fail.

I. The Carry Act and Related Regulations Do Not Violate the Second Amendment.

[2] Plaintiff makes conclusory reference to the Fourteenth Amendment, but does not expound upon a theory of liability beyond the allegation that the challenged regulations violate the Second Amendment. It is, therefore, assumed that Plaintiff's challenge is limited to that claim.

Plaintiff argues that the residency requirement of the Carry Act constitutes a ban in violation of the Second Amendment as applied to her because, as a resident from a state lacking substantially similar firearm laws, she is prohibited from carrying a firearm in Illinois. However, an examination of the Illinois firearm statutes reveals that Illinois allows qualified individuals to possess firearms and carry them in public for the purpose of self-defense. Because that is all the Second Amendment requires, Plaintiff's Second Amendment challenge fails.

A. The Illinois Firearm Regulations

The Second Amendment confers two related individual rights: the right to keep arms and the right to bear arms. *See Dist. of Columbia v. Heller*, 554 U.S 570, 582-85 (2008); *McDonald v. Chicago*, 561 U.S. 742, 791 (2010) (applying Second Amendment to states). The right to keep arms is merely the right to possess them; the right to bear arms is the right to carry them in public for self-defense. *Heller*, 554 U.S at 582-84. Illinois has instituted separate statutes for each right. The right to keep arms is governed by the FOID Card Act, which allows qualified individuals to possess firearms. *See* 430 ILCS 65/1, *et seq*. However, a valid FOID card does not permit its holder to carry firearms in public in a condition suitable for self-defense (*i.e.*, loaded and immediately accessible). *See* 720 ILCS 5/24-1(a)(4), (a)(10); 720 ILCS 5/24-1.6(a)(1), (a)(2), (a)(3)(A-5). Rather, that right—the right to bear arms—is governed by the Firearm Concealed Carry Act, 430 ILCS 66/1, *et seq.*, which allows qualified individuals to *carry* arms.

1. The FOID Card Act ensures only qualified individuals may possess firearms.

Because nonresident applicants for a concealed carry license must meet all of the qualifications for a FOID Card except residency, 430 ILCS 66/25, 40(c), the FOID Card Act is examined first. The purpose of the FOID Card Act is "to promote and protect the health, safety, and welfare of the public" by "provid[ing] a system of identifying persons who are not qualified

to acquire or possess firearms." 430 ILCS 65/1. To effect this purpose without infringing on the Second Amendment right of "law-abiding, responsible citizens" to keep arms, *Heller*, 554 U.S. at 635, the Act relies upon "longstanding prohibitions on the possession of firearms by felons and the mentally ill," *id.*at 626, which are "presumptively lawful regulatory measures," *id.*at 627 n.26. *See* 430 ILCS 65/4(a)(2)(ii) (felony conviction bar); § 4(a)(2)(xiii) (juvenile adjudicated delinquent if would have been felony had applicant been adult); § 4(a)(2)(iv) (patients in mental health facility within past five years); § 4(a)(2)(xvi) (involuntarily mental health commitment). The Act also prohibits licensure of persons who cannot be entrusted with firearms. *See* 430 ILCS 65/4(a)(2)(vii) (orders of protection); § 4(a)(2)(viii) (conviction involving firearm use or possession within past five years); § 4(a)(2)(ix) (conviction of domestic violence offense that constitutes federal prohibitor); § 4(a)(2)(iii) (narcotics addiction); *see also United States v. Yancy*, 621 F.3d 681, 687 (7th Cir. 2010) ("prohibiting illegal drug users from firearm possession" constitutional under Second Amendment because "it is substantially related to the important governmental interest in preventing violent crime"). FOID Card applicants must submit evidence to ISP that none of these disqualifying conditions apply. 430 ILCS 65/4(a)(2).

Illinois' interest in assessing a person's qualifications to possess a firearm does not cease upon the issuance of a FOID Card. After all, an armed, card bearing person who once was qualified but no longer remains so may well present an even greater threat to the public than an armed person who was never qualified; the former's now-undeserved FOID Card might deceive law enforcement as to the threat posed by its holder. *Cf. Coram v. State*, 2013 IL 113867, ¶ 122 (Freeman, J., specially concurring) (issuing FOID card to person federally barred from possession renders system meaningless and threatens the public interest). Accordingly, any

disqualifying condition constituting grounds to deny an applicant is also grounds to revoke a FOID Card if the condition is discovered or arises after issuance. *See* 430 ILCS 65/8.

To ensure prompt identification of later-arising disqualifying conditions, the General Assembly created a comprehensive system of reporting obligations to monitor ongoing qualifications. The Illinois Circuit Court Clerks must notify ISP of every final disposition of a criminal charge, delinquency petition, and involuntary commitment proceeding. 430 ILCS 65/8.1; 20 ILCS 2630/2.1(c); 20 ILCS 2630/2.2. The Illinois Department of Human Services ("DHS") must report information relating to mental illness to ISP. 430 ILCS 65/8.1(c); 740 ILCS 110/12(b). Every physician, clinical psychologist, and qualified examiner who determines that a person poses a clear and present danger to himself, herself, or others must report that determination within twenty-four hours to DHS, which in turn "shall immediately update its records and information relating to mental health and developmental disabilities, and if appropriate, shall notify the [ISP]." 430 ILCS 65/8.1(d)(1), (2); 405 ILCS 5/6-1.3.3; *see* 20 Ill. Admin. Code § 1230.120. Finally, every law enforcement official and school administrator must report dangerous individuals directly to ISP within twenty-four hours. 430 ILCS 65/8.1(d)(2); 405 ILCS 5/6-1.3.3; 20 Ill. Admin. Code § 1230.120.

Nonresidents employed as law enforcement officers, armed security guards in Illinois, or members of the military permanently assigned in Illinois may apply for a FOID Card. 430 ILCS 65/4(a-10); 20 Ill. Admin Code § 1230.20(e). All nonresidents may possess firearms in Illinois without a FOID Card if their "firearms are unloaded and enclosed in a case," 430 ILCS 65/2(b)(9), or if they "are currently licensed or registered to possess a firearm in their resident state," 430 ILCS 65/2(b)(10). In addition, nonresidents may possess firearms in Illinois without a FOID Card if they are "hunters during hunting season, with valid nonresident hunting licenses

and while in an area where hunting is permitted" (430 ILCS 65/2(b)(5)); "on a firing or shooting range recognized by [ISP]" (430 ILCS 65/2(b)(7)); or "at a firearm showing or display recognized by [ISP]" (430 ILCS 65/2(b)(8)).

2. The Carry Act ensures only qualified individuals may publicly carry loaded and immediately accessible firearms.

The purpose of the Firearm Concealed Carry Act is "to allow for a limited right to carry an operable handgun in public," *People v. Henderson*, 2013 IL App (1st) 113294, ¶ 34. In conjunction with the enforcement mechanisms under the Criminal Code, *see, e.g.* the aggravated unlawful use of a weapon ("AUUW") statute (720 ILCS 5/24–1.6), the Act "protect[s] the public and police officers from the inherent dangers and threats to safety posed by *any person* carrying in public a loaded and immediately accessible firearm on his person or in his vehicle." *People v. Fields*, 2014 IL App (1st) 130209, ¶ 61 (emphasis added).

Because "keep[ing] guns out of the hands of those individuals who by their prior conduct ha[ve] demonstrated that they may not possess a firearm without being a threat to society" and "preventing armed mayhem" are important governmental objectives, *U.S. v. Williams*, 616 F.3d 685, 693 (7th Cir. 2010), Illinois' interest in limiting public carriage to qualified individuals is even greater than its interest in limiting mere possession of inaccessible and unloaded firearms under the FOID Card Act, and the qualifications required are correspondingly more comprehensive. *See also People v. Marin*, 342 Ill. App. 3d 716, 727–28, 795 N.E.2d 953, 962 (Ill. App. 1st Dist. 2003) ("Access to a loaded weapon on a public street creates a volatile situation vulnerable to spontaneous lethal aggression in the event of road rage or any other disagreement or dispute.") In addition to possessing and meeting the requirements for a currently valid FOID Card, an Illinois applicant for a concealed carry license cannot have been convicted within the past five years of a misdemeanor involving the use or threat of physical force or of

two or more violations relating to driving while under the influence of alcohol or drugs. 430 ILCS 66/25(3). Similarly, the applicant cannot be subject to a pending arrest warrant, prosecution, or proceeding for an offense or action that could lead to disqualification to own or possess a firearm (430 ILCS 66/25(4)) or have been in residential or court-ordered treatment for alcoholism or drug use within the past five years (430 ILCS 66/25(5)). To confirm an applicant's qualifications, ISP conducts extensive background checks using national, state, and local records, as well as DHS files. 430 ILCS 66/35. In addition, the Carry Act allows state and local law enforcement agencies to submit objections to a license applicant. 430 ILCS 66/15; 20 Ill. Admin. Code § 1231.70.

As under the FOID Card Act, any disqualifying condition that would constitute grounds to deny a concealed carry license is also grounds to revoke a license if discovered or arising after its issuance. 430 ILCS 66/70(a). Because applicants for concealed carry licenses must meet the requirements for a FOID Card, 430 ILCS 66/25(2); 430 ILCS 66/40(c), all of the reporting obligations under the FOID Card Act also serve to monitor concealed carry licensees' ongoing qualifications under the Carry Act. In addition, disqualifying arrests are identified through daily reports to ISP from "[a]ll agencies making arrests for offenses which are required by statute to be collected, maintained or disseminated by the [ISP]." 20 ILCS 2630/2.1(a). All State's Attorneys must notify ISP of all charges and delinquency petitions filed to identify disqualifying prosecutions. 20 ILCS 2630/2.1(b).

Nonresident applicants for concealed carry licenses must meet the same requirements as resident applicants, except that rather than possessing a FOID Card, they must meet all qualifications to do so except for the Illinois residency requirement. 430 ILCS 66/40(c). As with resident license holders, Illinois has a substantial interest in monitoring the ongoing

qualifications of nonresident license holders. Illinois cannot effectively monitor nonresidents' qualifications itself, however; out-of-state mental health providers and law enforcement agencies do not share the reporting obligations of their Illinois counterparts, and out-of-state criminal and mental health databases are not necessarily accessible to ISP or sufficiently comprehensive for Illinois licensing purposes. (*See generally* Ex. 1.) Rather than flatly banning nonresidents from obtaining Illinois concealed carry licenses, however, Illinois allows nonresidents from states "with laws related to firearm ownership, possession, and carrying, that are substantially similar" to Illinois' own to apply for an Illinois concealed carry license. 430 ILCS 66/40(b). A state has a firearm law substantially similar to Illinois' if it:

> regulates who may carry firearms, concealed or otherwise, in public; prohibits all who have involuntary mental health admissions, and those with voluntary admissions within the past 5 years, from carrying firearms, concealed or otherwise, in public; reports denied persons to NICS;[3] and participates in reporting persons authorized to carry firearms, concealed or otherwise, in public through NLETs.[4]

20 Ill. Admin. Code § 1231.10. Because states with substantially similar firearm laws monitor the criminal and mental health qualifications information relevant under Illinois law to assure compliance with their own laws and make that information available through national databases, Illinois can confirm that nonresidents from those states are qualified to hold an Illinois concealed carry license.

Although nonresidents from states without similar laws (and therefore similar collection and reporting of data) may not hold Illinois concealed carry licenses, they may transport a concealed firearm in their vehicle without a license if they are not prohibited by federal law from

[3] The National Instant Criminal Background Check System maintained by the Federal Bureau of Investigation. 20 Ill. Admin.Code § 1231.10.

[4]The National Law Enforcement Telecommunications System.20 Ill. Admin.Code § 1231.10.

possessing a firearm or by their own state's laws from carrying a firearm in public, as evidenced by their possession of a concealed carry license or permit by their own state, as applicable. 430 ILCS 66/40(e).

B. The Carry Act Does Not Violate the Second Amendment.

Second Amendment challenges are governed by a two-pronged approach. *Ezell v. Chicago*, 651 F.3d 684, 701–04 (7th Cir. 2011). First, courts consider the threshold question of "whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee," *id.*at 704 (7th Cir. 2011) (citing *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010)), because conduct beyond the scope of the Second Amendment is categorically unprotected. *Id.* at 703. Where, as here, the regulated conduct falls within the scope of the Second Amendment, *Moore v. Madigan*, 702 F.3d 933, 942 (7th Cir. 2012) (carriage of firearms outside the home for purpose of self-defense is within scope of Second Amendment right to bear arms), "there must be a second inquiry into the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights." *Ezell*, 651 F.3d at 703.

For this second inquiry, "the rigor of . . . judicial review will depend on how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right." *Ezell*, 651 F.3d at 703. Thus, while "a severe burden on the core Second Amendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government's means and its end, ... laws restricting activity lying closer to the margins of the Second Amendment right, laws that merely regulate rather than restrict, and modest burdens on the right may be more easily justified." *Id.* at 708. So called "means-end" or intermediate scrutiny is appropriate where, as here, the burden on Second Amendment rights lies

outside of the core of the right. *See Yancey*, 621 F.3d at 683, 685 (applying intermediate scrutiny to categorical prohibition on habitual drug users, even though ban "wildly overinclusive"); *Williams*, 616 F.3d at 692 (applying means-end scrutiny to categorical prohibition on felons); *U.S. v. Skoien*, 614 F.3d 638, 642 (7th Cir. 2010) (applying means-end scrutiny to categorical prohibition on domestic violence misdemeanants).

1. The residency requirement is subject to intermediate scrutiny because it regulates conduct outside the core of the Second Amendment.

Plaintiff incorrectly characterizes the residency requirement as flatly banning public carriage of firearms by nonresidents (Doc. 10 at 8–9) and argues the requirement impacts "*at least* 91% of the U.S. population." (Doc. 10 at 7). As such, Plaintiff insists that the Court should analyze the statutes at issue, here, as though they were within the core protection of the Second Amendment. However, review of the Illinois firearm statutes belies this characterization. Illinois allows nonresidents to carry firearms in public with an Illinois concealed carry license where it can confirm, with the assistance of their states of residence, that they are not disqualified from doing so by conduct or mental illness. *See supra*, Section I.A.2. Nonresidents may also carry concealed firearms in their vehicles regardless of their home state's regulatory schemes. 430 ILCS 66/40(e); *Holmes*, 241 Ill. 2d at 521. Thus, the regulated conduct is actually much narrower than claimed— the carriage of firearms outside of a vehicle in public by nonresidents whose qualifications to do so as law-abiding, mentally healthy individuals cannot be confirmed. *See Peterson v. Martinez*, 707 F.3d 1197, 1219 (Lucero, J. concurring separately) ("[a]lthough the residency requirement . . . governs the vast majority of individuals . . . , it burdens a relatively small proportion of individuals present in the state at any time.").

This conduct falls outside the core protection of the second amendment—the "right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Heller*, 554 U.S. at

635. "[O]utside the home, firearms rights have always been more limited, because public safety interests often outweigh individual interests in self-defense." *United States v. Masciandaro*, 638 F.3d 458, 470 (4th Cir. 2011). Accordingly, courts have applied intermediate scrutiny to regulation of public carriage. *See Drake v. Filko*, 724 F.3d 426, 430, 430 n.5 (3d Cir. 2013); *Kachalsky v. Westchester*, 701 F.3d 81, 96 (2d Cir. 2012); *Masciandaro*, 638 F.3d at 471.

The regulated conduct is also beyond the core of the Second Amendment because it implicates longstanding prohibitions that are presumptively lawful. *See Heller*, 554 U.S. at 626–27 & n.26; *Williams*, 616 F.3d at 692 (applying intermediate scrutiny to presumptively lawful prohibition against possession of firearms by felons). Here, the regulated conduct lies at the intersection of three presumptively lawful regulations: longstanding prohibitions against possession by the criminally dangerous and mentally ill; public carriage of firearms; and possession by nonresidents. Because the right belongs only to "law-abiding, responsible citizens," *Heller*, 554 U.S. at 626, 627 n.26, 635, the prohibition against nonresidents carrying firearms in public when their mental health and law-abiding qualifications to do so cannot be confirmed must also bear a presumption of lawfulness.

Prohibitions[5] against public carriage and carriage by nonresidents are similarly longstanding. The prohibition against public carriage is rooted in the English right codified by the Second Amendment. *See id.*at 599 (Second Amendment "codified a right inherited from our English ancestors") (internal quotation marks omitted); Patrick J. Charles, *The Faces of the Second Amendment Outside the Home: History Versus Ahistorical Standards of Review*, 60 Clev. St. L. Rev. 1, 7-8 (2012) ("[P]ublic regulation of arms is as old as the Norman Conquest or what eighteenth century commentators referred to as the beginning of the English Constitution.").

[5] Illinois merely regulates public carriage based on the ability to confirm qualifications.

Chief among such regulations was the 1328 Statute of Northampton, stating that "no person shall 'go nor ride armed by Night nor by Day in Fairs, Markets, nor in the Presence of the Justices or other Ministers nor in no Part elsewhere.'" Charles, 60 Clev. St. L. Rev. at 7–8 (quoting Statute of Northampton, 2 Edw. 3, c. 3 (Eng. 1328)). The statute was not only a prohibition on arms in the public concourse, but "[i]ts tenets also provided the basis of English legal reform for centuries to come," *id*. at 13, with three states—Massachusetts, North Carolina, and Virginia—"expressly incorporat[ing]" the Statue of Northampton "immediately after the adoption of the Constitution," *id.* at 31–32 (citing 2 The Perpetual Laws, of the Commonwealth of Massachusetts, from the Establishment of its Constitution to the Second Session of the General Court, in 1798 259 (Worcester, Isaiah Thomas 1799); Francois-Xavier Martin, A Collection of Statutes of the Parliament of England in Force in the State of North-Carolina 60-61 (Newbern 1792); A Collection of All Such Acts of the General Assembly of Virginia, of a Public and Permanent Nature, as are Now in Force 33 (Augustine Davis 1794)). The "legal tenets" underlying the Statute of Northampton persisted beyond the colonial period, and "[t]hroughout the nineteenth century numerous States enacted different versions." Charles, 60 Clev. St. L. Rev. at 40–41.

The prohibition against carriage of firearms by nonresidents dates back nearly a century. *See Heller v. Dist. of Columbia*, 670 F.3d 1244, 1253 (D.C. Cir. 2011) (noting that "*Heller*[, 554 U.S 570, 626, 627 n.26 (2008),] considered 'prohibitions on the possession of firearms by felons' to be 'longstanding' although courts did not start to enact them until the early 20th century") (*citing* C. Kevin Marshall, *Why Can't Martha Stewart Have a Gun?*, 32 Harv. J.L. & Pub. Pol'y 695, 708 (2009)). For example, in 1909, West Virginia conditioned carriage of a pistol, revolver, "or any other dangerous or deadly weapon of like kind and character" on:

> obtain[ing] a state license to carry any such weapon *within any county in this state* by publishing a notice in some newspaper published *in the county in which he resides*, setting forth his name, residence and occupation, and that on a certain day he will apply *to the circuit court of his county* for such state license . . . .

Act of Feb. 16, 1909, ch 51, 1909 W. Va. Acts 394, 395-96 (emphasis added). Similarly, a 1919 Montana statute allowed Montana judges to grant "permission to carry or bear concealed or otherwise a pistol or revolver," provided that "[n]o such permission shall be granted any person who is not a citizen of the United States, and who has not been an *actual bona fide resident of the State of Montana* for six (6) months immediately next preceding the date of such application." Act of Mar. 3, 1919, ch. 74, § 5, 1919 Mont. Acts 147, 148 (emphasis added). A 1921 Missouri statute prohibited a person from buying, borrowing, or receiving a "pistol, revolver or other firearm of a size which may be concealed upon the person, unless the buyer, borrower, or person receiving such weapon shall first obtain . . . a permit authorizing such person to acquire such weapon," where:

> [s]uch permit shall be issued by the circuit clerk *of the county in which the applicant for a permit resides in this state*, if the sheriff be satisfied that the person applying for the same is of good moral character and of lawful age and that the granting of the same will not endanger the public safety.

Act of Apr. 7, 1921, § 2, 1921 Mo. Laws 692 (emphasis added).

In sum, because public carriage of firearms by nonresidents in public outside of their vehicles when their mental health qualifications or criminal history cannot be confirmed is not at the core of the Second Amendment, the challenged statute is subject to intermediate scrutiny, in which "the government has the burden of demonstrating that its objective is an important one and that its objective is advanced by means substantially related to that objective." *Williams*, 616 F.3d at 692. The government has demonstrated that mental health status and criminal history status are critical to the safety of law enforcement and the public. The regulation at issue is substantially related to that objective. The challenged regulations are therefore constitutional.

2. The Carry Act is reasonably related to Illinois' substantial interest in preventing unqualified people from publicly carrying loaded firearms.

Plaintiff's challenge to the Carry Act fails. The prohibition of firearm carriage outside the vehicle by nonresidents whose qualifications cannot be confirmed is reasonably related to the important governmental interest in "suppressing armed violence" by "keep[ing] guns out of the hands of presumptively risky people[,] . . . . including criminals, . . . mental defectives, armed groups who would supplant duly constituted public authorities, and others whose possession of firearms is similarly contrary to the public interest." *Yancey*, 621 F.3d at 683; *see also Fields*, 2014 IL App (1st) 130209, ¶ 57 ("[p]romoting and ensuring the safety of both the general public and police officers by limiting the accessibility of firearms in public to a less responsible or less mature group of people constitutes a substantial or important interest."); *see also Osterweil v. Bartlett*, 819 F.Supp.2d 72, 88 n.14 (collecting residency requirements of various states) (N.D.N.Y. 2011) *vacated on other grounds,* 738 F.3d 520 (2nd Cir. 2013). Limiting the right to carry a firearm in public to people whose qualifications can be confirmed is certainly reasonably related to Illinois' interest in preventing unqualified people from carrying firearms in public. *See Yancey*, 621 F.3d at 684–85 (right to bear arms tied to concept of *virtuous citizenry* and unvirtuous may be disarmed).

Plaintiff argues that "it is not even clear what possible relevance anther [sic] state's laws are to Plaintiff's ability to apply for a license issued by Illinois." (Doc. 10 at 9). However, this statement demonstrates that Plaintiff's argument does not even address the interest involved, much less the validity of the legislative solution enacted. The interest at stake is not that an individual nonresident is presumed to be less safe than a resident, but rather that nonresidents from dissimilar states are not subject to the fundamental inquiries necessary to establish the requisite qualifications in the first place. (*See generally* Ex. 1.)

Illinois' "monitoring interest is, in essence, an interest in continually obtaining relevant behavioral information," and Illinois has "just as much of an interest, for example, in discovering signs of mental instability demonstrated [out of state] as in discovering that instability [in state]." *Bach v. Pataki*, 408 F.3d 75, 91 (2d Cir. 2005) *overruled on other grounds*, *McDonald*, 561 U.S. at 748. Reporting obligations placed upon Illinois mental health professionals and law enforcement officials ensure that disqualifying conditions which arise in Illinois can be identified and acted upon, but there are no similar mechanisms available outside of Illinois if a nonresident's own state does not monitor such conditions for its own purposes. Accordingly, in considering the constitutionality of New York's restrictions on firearm licenses to nonresidents, the Second Circuit in *Bach* found it "self-evident" that "other States . . . cannot adequately play the part of monitor for the State of New York or provide it with a stream of behavioral information approximating what New York would gather." *Id.*; *see also Peterson v. Martinez*, 707 F.3d 1197, 1220–24 (10th Cir. 2013) (Lucero, J., separately concurring) (concluding residency requirement for concealed carry license did not violate Second Amendment or privileges and immunities clause under intermediate scrutiny because requirement is substantially related to important government interest in assessing qualifications); *Peterson v. LaCabe*, 783 F. Supp. 2d 1167, 1175 (D. Colo. 2011) (residency requirement sufficiently related under Article IV analysis to "substantial interest in restricting permits to those persons whose [qualification] information is more readily available" because State showed that "it is much more difficult and expensive to obtain information pertinent to an applicant's eligibility for a concealed handgun permit from out-of-state sources"). Other states have little incentive to gather and make available to Illinois information that has no independent relevance to those states, *see*

Bach, 408 F.3d at 92–93; "Motivation is incentive driven—without these incentives, there is little reason to expect effective monitoring, if any." *Id.* at 93.

Nonetheless, even if there were more "narrow" ways to ensure a nonresident's qualifications, regulation of conduct beyond the core of the Second Amendment, as here, need be only substantially related to the government interest. *Williams*, 616 F.3d at 692. This "means-end" inquiry merely requires "a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served." *Ezell*, 651 F.3d at 708. Here, the fit is reasonable, allowing nonresidents whose qualifications can be confirmed with their states of residency to carry firearms in public with a valid Illinois concealed carry license and allowing nonresidents whose qualifications cannot be confirmed to carry firearms in their vehicles without one. 430 ILCS 66/40(e); *cf. Holmes*, 241 Ill. 2d at 521.

Further, restricting public carriage to residents and nonresidents whose qualifications can be confirmed *is* the least restrictive means necessary. There is no way for Illinois to ensure that nonresidents from states without similar firearm laws are qualified to publicly carry firearms without endangering Illinois' citizens. Information on disqualifying out-of-state mental health conditions, arrests, and prosecutions is not reliably available through national databases. (Ex. 1 at ¶¶ 9–25.) Out-of-state mental health providers and law enforcement officials are under no obligation to notify Illinois should they discover a nonresident's disqualifying condition (so that an undeserved license can be revoked) and do not have the knowledge of Illinois law necessary to identify such a condition. (Ex. 1 at ¶¶ 16–25.) Plaintiff insists that she is a law-abiding, responsible citizen, but because she is a nonresident from a state without similar firearm

regulations and reporting methods, Illinois is unable to confirm these assurances of responsibility.

Plaintiff's request for injunctive barring enforcement of the residency requirement essentially requires Illinois to simply give unknown numbers of nonresidents the benefit of the doubt, responding only *after* violence is committed. Plaintiff asks for nonresidents to be treated *more* favorably than residents, in that nonresidents from dissimilar states are not subject to many of the same regulations and monitoring mechanisms applicable to residents.[6] Plaintiff, while residing in Illinois, does not wish to fully subject herself to the laws of the state's jurisdiction. Plaintiff wishes to maintain her nonresident status, but asks the Court compel Illinois to yield its regulation of the public carriage of firearms to accommodate the lack of monitoring in Plaintiff's state of permanent residence. The Second Amendment does not require public safety to be sacrificed in favor of Plaintiff's approach, nor does the Second Amendment require nonresidents to be treated more favorably than residents. Illinois is entitled to insist on meaningful assurances that residents and nonresidents alike are qualified to publicly carry loaded firearms.

CONCLUSION

In *McDonald v. City of Chicago*, 561 U.S. 742, 785 (2010), the Court noted that although the Second Amendment applies to the states, "[s]tate and local experimentation with reasonable firearms regulations will continue under the Second Amendment." (alteration in original). Such experimentation can only work, however, if the states are permitted to insist that their regulations be satisfied by residents and nonresidents alike. Plaintiff's requested relief would foreclose such experimentation. Because Illinois' firearm regulations are constitutional, being reasonably related to important and substantial state interests, Plaintiff's claims fail.

[6] Plaintiff does not challenge the requirements of the FOID Card Act or the Carry Act unrelated to residency, and therefore concede that those requirements may be constitutionally applied.

WHEREFORE, Defendant requests this honorable Court enter judgment in her favor and against Plaintiff.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Bilal A. Aziz, Assistant Attorney General, herein certifies that he has served a copy of the foregoing *Defendant's Memorandum of Law in Support of Defendant's Motion for Summary Judgment and In Opposition to Plaintiff's Motion for Summary Judgment* upon:

Thomas G. Maag
Maag Law Firm, LLC
22 West Lorena Ave.
Wood River, IL 62095

by mailing a true copy thereof to the address referred to above in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois on November 30, 2015.

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