

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT

WHITE COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF )  
ILLINOIS )  
 )  
-vs- ) No. 2017-CM-60  
 )  
VIVIAN CLAUDINE BROWN, )  
 )  
Defendant. )

MOTION TO FIND STATUTE UNCONSTITUTIONAL

Vivian Claudine Brown, the defendant in the above-entitled cause, by her attorney, Alan C. Downen, requests this court to find The Firearm Owners Identification Card Act (430 ILCS 65/0.01 *et seq.*) unconstitutional as applied to the defendant, and states as follows:

FACTS

1. On March 18, 2017, the defendant, a person over the age of 21, resided at a residence located at 1290 County Road 1700 East, White County, Illinois, and occupied such residence as her home.
2. On March 18, 2017, the defendant did not have a Firearm Owner's Identification Card (hereinafter after referred to as a "FOID card") issued pursuant to the provisions of 430 ILCS 65/0.01 *et seq.*, nor had she ever had a FOID card revoked.
3. On March 18, 2017, the defendant did not have any criminal record and was otherwise eligible to have and possess a firearm and be issued a FOID card pursuant to the provisions of 430 ILCS 65/0.01 *et seq.*

4. On March 18, 2017, at approximately 1:47 o'clock p.m., the White County Illinois Sheriff's Department (hereinafter referred to as the "Sheriff's Department") received a call from the defendant's husband, Scott Brown, in reference to the defendant shooting a gun inside the residence at 1290 County Road 1700 East, White County, Illinois.

5. When the Sheriff's Department personnel arrived at the defendant's home they found a rifle beside the defendant's bed that the defendant had for protection but, after conducting an investigation, they did not find any evidence that the rifle (or any gun) had been fired in the residence. Further, the defendant denied firing a gun and other occupants of the residence denied hearing a gun shot.

6. The Sheriff's Department made a report of the incident and forwarded it to the State's Attorney of White County, Illinois, who filed a criminal Information in the above-entitled cause charging the defendant with Possession of Firearm without Requisite Firearm Owner's I.D. Card, a class A misdemeanor, in violation of 430 ILCS 65/2(a)(1). The specific charge reads as follows:

That on March 18th, 2017, in White County, Vivian Claudine Brown, committed the offense of Possession of Firearm without Requisite Firearm Owner's I.D. Card in that said defendant, knowingly possessed a firearm, within the State of Illinois, without having in her possession a Firearm Owner's identification card previously issued in her name by the Department of State Police under the provisions of the Firearm Owners Identification Card Act in violation of 430 ILCS 65/2(a)(1).

7. The criminal Information in the above-entitled cause is now pending and undetermined.

8. 430 ILCS 65/2(a)(1) provides as follows:

No person may acquire or possess any firearm, stun gun, or taser 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.

There are certain exceptions to the requirement of possessing a Firearm Owner's Identification card, as set forth in 430 ILCS 65/2(a)(2)(b), none of which are applicable to a person who has a firearm in his or her own home for protection.

9. 430 ILCS 65/5 requires the payment of a \$10.00 fee for the issuance of the Firearm Owner's Identification Card.

## ARGUMENT

The Second Amendment to the United States Constitution provides as follows:

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

The Second Amendment protects the right to keep and bear arms for the purpose of self-defense and is fully applicable against the States. *McDonald v. Chicago*, 561 U.S. 712, 749 (2010).

*McDonald*, quoting *District of Columbia v. Heller*, 554 U.S. 570 (2008), stated as follows:

Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is 'the central component' of the Second Amendment right... (stating that the 'inherent right of self-defense of self, family, and property is most acute' in the home...). *McDonald v. Chicago*, 561 U.S. at 767.

A person cannot be compelled to purchase, through a license fee or a license tax, a privilege freely granted by the constitution. *Murdock v. Pennsylvania*, 319 U.S. 105, 114 (1943); *City of Blue Island v. Kozul*, 379 Ill. 511, 41 N.E.2d 515, 519 (1942). Thus, a person exercising

their right to keep and bear arms in their own home for self-defense should not be made to purchase a card or obtain a license to exercise a right guaranteed by the Constitution.

A government entity may enact regulations in the interest of public safety, health, welfare or convenience, within the limits permitted by law, but in every case this power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the freedom protected by the Constitution. *City of Blue Island* at 520.

The FOID card Act requires individuals to pay a fee and obtain a license to enjoy a right that is protected by the Constitution, even in the individual's own home. Even if the fee is nominal (i.e., \$10.00) the entire process suppresses a fundamental right that is recognized to be enjoyed in the most private of areas, such as the home. No other fundamental right as guaranteed by the Bill of Rights requires a fee and/or a license to exercise.

Moreover, it is important to keep in mind that in the instant case the Illinois law in question is not about registering guns but, instead, about registering people. Likewise, the instant case is about a long gun kept in the home for self-defense – not a handgun.

It is axiomatic that in American and English jurisprudence the home is a special place – a place where one can retreat from the world (one's castle) and a place that is accorded special consideration in our laws. For instance, Illinois has a statute regarding using force in defense of a dwelling (720 ILCS 5/7-2) and stating that the force used can be deadly if:

- (1) The entry is made or attempted in a violent, riotous, or tumultuous manner and that the person reasonably believes that such force is necessary to prevent an assault upon, or offer of personal violence to, him or another then in the dwelling, or
- (2) He reasonably believes that such force is necessary to prevent the commission of a felony in the dwelling.

No other Illinois statute gives a person such rights when another structure is concerned. Further, other Illinois statutes give special protection to the home. For example, Home Invasion

is a class X felony (720 ILCS 5/19-6) and Criminal Trespass to a Residence is a class 4 felony when the person entering knows or has reason to know that someone is inside the residence (720 ILCS 5/19-4(b)(2)).

Having the right to defend your home, even by using deadly force, is virtually a useless right if you can't have a gun in the home (e.g., if someone breaks into your house armed with a gun and all you have is a knife or ball bat, what chance do you have to successfully defend yourself or your family?).

*Griswold v. Connecticut*, 381 U.S. 479 (1965), invalidated a law banning contraception, finding a right to marital privacy – a right to protection from government intrusion and establishing the right of privacy with respect to intimate practices. *Griswold* also discussed zones of privacy created by several fundamental constitutional guarantees, specifically the first, third, fourth, fifth and ninth Amendments (*Griswold* at p. 485), stating that “specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance” (*Griswold* at p. 484). Although *Griswold* did not mention the Second Amendment, there is no reason why that Amendment should not be included, for if there is any place that a zone of privacy should apply it would be to the home.

*Griswold* found the government's intrusion into the marital relationship as repulsive to the notions of privacy surrounding the marriage relationship, stating (*Griswold* at p. 485):

Such a law cannot stand in light of the familiar principle, so often applied by this Court, that a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.

Illinois has a Bill of Rights in its Constitution (Article 1), and among those rights is a right of privacy – a right to be protected from invasions of privacy (Section 6). This right is

included in the same paragraph that states “The people have the right to be secure in their... houses... against unreasonable searches and seizures.”

There cannot be any more basic right than the right to prevent violence in your own home – to be safe in your own home and defend its sanctity. The government should not be able to control a citizen’s right to defend himself in his own home and should not require a citizen to pay a fee and obtain a card to exercise that right, especially as in the instant case, where the person is not otherwise disqualified from possessing a gun.

Despite all the rhetoric to the contrary about regulating guns, the Second Amendment to the United States Constitution is crystal clear and protects the right to keep and bear arms for the purpose of self-defense. Further, it is fully applicable against the States. *McDonald* at p. 749.

## CONCLUSION

Vivian Claudine Brown, the defendant in the above-entitled cause, by her attorney, Alan C. Downen, requests this court, for the foregoing reasons, to find The Firearm Owners Identification Card Act (430 ILCS 65/0.01 *et seq.*) unconstitutional as applied to the defendant for the reasons set forth above.

VIVIAN CLAUDINE BROWN, defendant

By: s/ Alan C. Downen  
Alan C. Downen, her attorney

CERTIFICATE OF ELECTRONIC MAILING

The undersigned certifies that a copy of the foregoing Motion to Find Statute Unconstitutional was served upon the person shown below by transmission of the document via the designated e-mail address of record for such person on this 19th day of June, 2020:

Denton Aud  
White County State's Attorney  
[statesattorney1@whitecounty-il.gov](mailto:statesattorney1@whitecounty-il.gov)

s/ Alan C. Downen

Alan C. Downen  
Attorney for defendant  
Attorney #00668826  
204 North Washington Street  
McLeansboro, Illinois 62859  
(618) 643-2389  
acdownen@gmail.com