No. 17-2998

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

KEVIN W. CULP, MARLOW DAVIS, FREDDIE REED-DAVIS, DOUGLAS W. ZYLSTRA, JOHN S. KOLLER, STEVE STEVENSON, PAUL HESLIN, MARLIN MANGELS, JEANELLE WESTROM, SECOND AMENDMENT FOUNDATION, INC., ILLINOIS CARRY, and ILLINOIS STATE RIFLE ASSOCIATION,	)	Appeal from the United States District Court for the Central District of Illinois
Plaintiffs-Appellants,	)	No. 3:14-cv-03320-SEM-TSH
v.	)	
LISA MADIGAN, JESSICA TRAME, and LEO P. SCHMITZ,	)	The Honorable SUE E. MYERSCOUGH,
Defendants-Appellees.	)	Judge Presiding.

BRIEF OF DEFENDANTS-APPELLEES

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JURISDICTIONAL STATEMENT

The jurisdictional statement of Plaintiffs-Appellants Kevin W. Culp, Marlow Davis, Freddie Reed-Davis, Douglas W. Zylstra, John S. Koller, Steve Stevenson, Paul Heslin, Marlin Mangels, Jeanelle Westrom, Second Amendment Foundation, Inc., Illinois Carry, and Illinois State Rifle Association is not complete and correct. Defendants-Appellees Lisa Madigan, Jessica Trame, and Leo P. Schmitz provide this jurisdictional statement as required by Circuit Rule 28(b).

Plaintiffs brought this action in the district court under 42 U.S.C. § 1983 against Defendants in their official capacities,[1] alleging violations of their rights under the Second and Fourteenth Amendments to, as well as the Privileges and Immunities Clause of, the United States Constitution. R. 15-32.[2] The district court had subject matter jurisdiction over the federal claims pursuant to 28 U.S.C. § 1331. The district court referred the action to a magistrate judge for further pretrial proceedings. *See, e.g.*, Dist. Ct. Doc. No. 46; 28 U.S.C. § 363(b).

On December 4, 2015, the district court denied Plaintiffs' motion for a preliminary injunction. R. 406-07. Plaintiffs filed a notice of appeal from that

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[1] The complaint identified Hiram Grau, the former Director of the Illinois State Police, as a defendant in his official capacity. R. 15. Defendant-Appellee Schmitz, the current director, was automatically substituted in as a defendant by the district court under Federal Rule of Civil Procedure 25(d).

[2] The electronic record on appeal is consecutively paginated (at the bottom of each page), *see* 7th Cir. Doc. No. 15-2, and thus is cited, *e.g.*, "R. 1." References to the district court's docket are identified by the docket number and the page number if applicable, *e.g.*, Dist. Ct. Doc. No. 2, at 1. The Brief of Plaintiffs-Appellants is cited as "Appellants' Br. at ___," and the Appendix attached to that brief is cited as "SA__."

decision on December 8, 2015, which was docketed as No. 15-3738 in this Court. R. 470; *see* Dist. Ct. Doc. No. 32. This Court affirmed the district court's decision on October 20, 2016, *see* 7th Cir. Dkt. No. 15-3738, Doc. No. 39, and issued its mandate on November 16, 2016, *see* R. 471.

On September 15, 2017, the district court granted Defendants' motion under Federal Rule of Civil Procedure ("Rule") 56 for summary judgment and denied Plaintiffs' motion for summary judgment. R. 1284-85 (SA2-3). On September 19, 2017, the district court entered a separate judgment on the docket pursuant to Rule 58. R. 1344 (SA1). No motion to alter or amend the judgment was filed.

On September 27, 2017, Plaintiffs filed timely a notice of appeal within 30 days of the Rule 58 judgment. R. 1345; *see* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A). This Court has jurisdiction over the appeal from a final judgment pursuant to 28 U.S.C. § 1291.

ISSUES PRESENTED FOR REVIEW

1. Whether the district court properly determined that Defendants were entitled to summary judgment on Plaintiffs' Second Amendment claim.

2. Whether the district court properly determined that Defendants were entitled to summary judgment on Plaintiffs' remaining constitutional claims.

STATEMENT OF THE CASE

This case involves a challenge to section 40(b) of the Illinois Firearm Concealed Carry Act ("Concealed Carry Act"), 430 ILCS 66/40(b), a law that allows nonresidents to apply for an Illinois concealed carry license only if their home state's firearm laws are substantially similar to the ownership, possession, and carriage laws in Illinois. In 2016, this Court upheld the denial of Plaintiffs' request for preliminary injunctive relief, but noted that additional factual development might alter the analysis. *See Culp v. Madigan*, 840 F.3d 400, 403 (7th Cir. 2016) ("*Culp I*"). On remand, Plaintiffs proceeded to summary judgment without further factual development on the critical issues, rendering the record virtually identical to the one before the *Culp I* court. Applying the legal standard and other binding observations articulated in *Culp I*, the district court granted Defendants' motion for summary judgment. A full description of this procedural history, as well as the statutory scheme, follows.

A. The Statutory Scheme

After this Court's decision in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), the Illinois General Assembly enacted the Concealed Carry Act to regulate the public carriage of firearms in the State. *See* 430 ILCS 66/1 *et seq*. The Concealed Carry Act relied on, and incorporated certain provisions of, the Illinois Firearm Owner's Identification Card Act ("FOID Act"), which governs the possession and acquisition of firearms in Illinois. *See* 430 ILCS 65/0.01 *et seq*.

Concealed carry licenses are issued by the Illinois State Police to residents and nonresidents who are able to satisfy the statutory requirements for their respective licenses. 430 ILCS 66/10, 66/40. Licensees are permitted to "carry a loaded or unloaded concealed firearm, fully concealed or partially concealed, on or about his person" and to "keep or carry a loaded or unloaded concealed firearm on or about his or her person within a vehicle," so long as they are not in a prohibited area such as a school or a hospital. *Id.* 66/10(c), 66/65. Licenses are valid for five years, but may be revoked if, among other reasons, the licensee is found to be ineligible under the Concealed Carry Act or FOID Act. *Id.* 66/10(c), 66/70(a).

At issue here is section 40(b) of the Concealed Carry Act,[3] which imposes a threshold requirement on nonresident applicants that their home state have a substantially similar regulatory scheme governing ownership, possession, and carriage to that established in Illinois. *Id.* 66/40(b). This provision ensures that residents and nonresidents are held to the same eligibility requirements before being issued a concealed carry license. *Id.* Therefore, the following discussion addresses resident licensure, nonresident licensure, and the requirements in the FOID Act that are incorporated into both systems.

[3] In their opening brief on appeal, Plaintiffs frame their claim as a challenge to section 40 of the Concealed Carry Act. That section contains all of the requirements for nonresident licensure. The specific requirement that Plaintiffs seek to enjoin—that the nonresident's home state be "substantially similar"—is found in section 40(b). Therefore, this brief refers to the challenged provision as section 40(b).

Resident Concealed Carry License. Under section 10 of the Concealed Carry Act, the Illinois State Police issues concealed carry licenses to Illinois residents who satisfy the following statutory requirements. *Id.* 66/10. *First*, an applicant must meet the qualifications in section 25 of the Concealed Carry Act. *Id.* These include, most notably, having a currently valid FOID card *and* satisfying the eligibility requirements to legally possess a firearm under section 4 of the FOID Act at the time of the application. 430 ILCS 66/25(2). In other words, residents seeking to carry a firearm in public must first be eligible to legally possess that firearm.

Only Illinois residents who satisfy the age restrictions and submit the requisite documents showing their eligibility may obtain a FOID card. *Id.* 66.25(1)(2). Among other reasons, an applicant is ineligible for a FOID card if he has been convicted of a felony; domestic battery or aggravated domestic battery; or, within the past five years, battery assault, aggravated assault, violation of an order of protection, or a substantially similar offense in another jurisdiction, in which a firearm was used or possessed. *Id.* 65/4(a)(2)(ii), (viii), (ix). Additionally, an applicant is ineligible if he has been a patient in a mental health facility within the past five years, has an intellectual or developmental disability, has been involuntarily admitted into a mental health facility, or has been adjudicated a person with a mental disability. *Id.* 65/4(a)(2)(iv),(v), (xv), (xvi), (xvii).

The FOID Act also establishes a comprehensive monitoring system whereby state circuit court clerks, the Illinois Department of Human Services, medical professionals, law enforcement officials, and school administrators are required to

notify the Illinois State Police when, as relevant to their respective purviews, individuals pose a clear and present danger or are rendered ineligible for a FOID card by virtue of being a patient in a mental health facility, or of being adjudicated or determined to have a mental or developmental disability. *Id.* 65/8.1.

In addition to the FOID eligibility provisions, section 25 of the Concealed Carry Act requires that the applicant be at least 21 years old and have completed the section 75 training and education components. *Id.* 66/25(1), (6). The applicant must also not be the subject of a pending arrest warrant, prosecution, or proceedings for an offense or action that could lead to disqualification to own or possess a firearm, nor have been in "residential or court-ordered treatment for alcoholism, alcohol detoxification, or drug treatment within 5 years preceding the application." *Id.*

Second, the applicant must provide the designated application materials found in section 30 of the Concealed Carry Act. *Id.* 66/10. These include identifying information—such as current and former names, current and past residences, date and place of birth, a full set of fingerprints, and a color photograph—as well as a valid driver's license or state identification card number. *Id.* 66/30(b). An applicant must also submit, among other things, an affirmation that he has not been convicted or found guilty of a felony, a misdemeanor involving the use or threat of physical force or violence to any person within the five years preceding the date of application, or two or more violations related to driving while under the influence within five years immediately preceding the date of the license application. *Id.*

Moreover, he must waive "privacy and confidentiality rights and privileges under all federal and state laws" so that the Illinois State Police may obtain any medical or court records necessary to "determine[ ] whether the applicant qualifies for a license to carry a concealed firearm under this Act, or whether the applicant remains in compliance with the [FOID Act]." *Id.* 66/30(b)(3). By submitting this waiver, resident applicants subject themselves to continued monitoring for any mental health or criminal prohibitors.

Third, the applicant must "not pose a danger to himself, herself, or others, or a threat to public safety as determined by the Concealed Carry Licensing Review Board in accordance with Section 20," which allows law enforcement agencies to submit an objection to an applicant. *Id.* 66/10(a)(4), 66/15(a). Although such objections are generally a discretionary matter, the Illinois State Police must file an objection if "an applicant has 5 or more arrests for any reason . . . within the 7 years preceding the date of application for a license, or has 3 or more arrests . . . for any combination of gang-related offenses" within the same period. *Id.* 66/15(b). *Fourth*, the applicant must pay the $150 fee. *Id.* 66/60.

Upon receiving a completed application, the Illinois State Police is required to "conduct a background check of the applicant to ensure compliance with the requirements of [the Concealed Carry Act] and all federal, State, and local laws." *Id.* 66/35. This check includes a search of the National Instant Criminal Background Check System; "all available state and local criminal history record information files, including records of juvenile adjudications"; all available federal, state, and local

records regarding wanted persons and domestic violence restraining and protective orders; the files of the Illinois Department of Human Services relating to mental health and developmental disabilities; and all other available records of a public entity in any jurisdiction "likely to contain information relevant to whether the applicant is prohibited from purchasing, possessing, or carrying a firearm under federal, state, or local law." *Id.*

Nonresident Concealed Carry License. The requirements for nonresident licensure are outlined in section 40 of the Concealed Carry Act. A nonresident is "a person who has not resided within this State for more than 30 days and resides in another state or territory." *Id.* 66/40(a). The nonresident licensure requirements are similar to those for residents, as nonresident applicants must meet all of the section 25 qualifications, except for the residency requirement; provide the section 30 application and documentation; submit a $300 fee; provide documentation showing compliance with the section 75 training and requirements; and undergo a background check under section 35. 430 ILCS 66/35, 40(b), (c)(3).

As with residents, then, nonresident applicants must satisfy the requirements for a FOID card. *Id.* 66/25. To that end, each applicant "shall submit documentation and information required by the [Illinois State Police] to obtain a [FOID card], including an affidavit that the non-resident meets the mental health standards to obtain a firearm under Illinois law." *Id.* 66/40(d). Upon receipt, the Illinois State Police is responsible for "ensur[ing] that the applicant would meet the eligibility criteria to obtain a [FOID card] if he or she was a resident of this State." *Id.*

In addition to these requirements, nonresident applicants must submit a notarized document stating, among other things, that the applicant "is eligible under federal law and the laws of his or her state or territory of residence to own or possess a firearm" and "if applicable, has a license or permit to carry a firearm or concealed firearm issued by his or her state or territory of residence." *Id.* 66/40(c)(2).

Finally, to ensure that these verification and monitoring standards are applied consistently to residents and nonresidents, the Concealed Carry Act requires a nonresident applicant to reside in a "state or territory of the United States with laws related to firearm ownership, possession, and carrying, that are substantially similar to the requirements to obtain a license under [the Concealed Carry Act]." *Id.* 66/40(b). A state is substantially similar when it: (1) "regulates who may carry firearms, concealed or otherwise, in public"; (2) "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"; (3) "reports denied persons to [the National Instant Criminal Background Check System]"; and (4) "participates in reporting persons authorized to carry firearms, concealed or otherwise, in public through [the National Law Enforcement Telecommunications System]." 20 Ill. Admin. Code § 1231.10. Currently, four states—Arkansas, Mississippi, Texas, and Virginia—have substantially similar laws under this standard. *See* Illinois State Police Firearms Services Bureau, CCL Frequently Asked Questions, *available at* https://www.ispfsb.com/public/Faq.aspx.

But there are exceptions to the licensure requirement for nonresidents. For example, a nonresident may transport a concealed firearm in his vehicle in Illinois without an Illinois concealed carry license, so long as he is not prohibited from owning or possessing a firearm under federal law and is eligible to carry a firearm in public under the laws of his state of residence. 430 ILCS 66/40(e). Likewise, a nonresident does not need a concealed carry license "while on a firing or shooting range recognized by the [Illinois State Police]," or while in an area where hunting is permitted and with a nonresident hunting license. *Id.* 65/2(b)(5), (7).

B. Preliminary Injunction Proceedings

In 2014, Plaintiffs brought this constitutional challenge against Defendants in their official capacities. R. 15-32. Plaintiffs alleged that the "substantially similar" residency requirement for concealed carry licenses contained in section 40(b) of the Concealed Carry Act violated their "individual right to possess and carry a handgun for self-defense as secured by the Second Amendment," as well as their rights under the Equal Protection Clause and the Due Process Clause of the Fourteenth Amendment and the Privileges and Immunities Clause of Article IV. R. 28-30.

After fact discovery closed, Plaintiffs sought a preliminary injunction enjoining Defendants from enforcing what they called "the non-residency application ban of 430 ILCS 66/40." R. 58-59. Defendants objected, arguing that Plaintiffs had not demonstrated a likelihood of success on the merits or irreparable harm, and that the balance of equities favored denying the motion. R. 168-93. Defendants relied on the affidavit of Trame, the Chief of the Firearms Services Bureau of the Illinois State

Police ("Bureau"). R. 195-200. Trame's affidavit explained how the Illinois State Police processed resident and nonresident applications, as well as the challenges that the Bureau faced in verifying nonresident qualifications. *Id.* Following a hearing, the district court denied the request for preliminary injunctive relief, concluding that "Plaintiffs' likelihood of success on the merits is not strong and the balance of harms favors Defendants and the public." R. 406-07, 469. Plaintiffs appealed. R. 470.

This Court affirmed the district court's denial of a preliminary injunction. *See Culp I*, 840 F.3d at 403. It recognized that in this circuit, "the constitutional right to keep and bear arms means that states must permit law-abiding and mentally healthy persons to carry loaded weapons in public," but noted that "'qualified,' 'law-abiding,' and 'mentally healthy' are significant limitations on the right of concealed carry." *Id.* at 401 (internal quotation marks omitted). The Concealed Carry Act entitles an individual to carry a firearm in public, but only if he "meets the qualifications set forth in the Act," which are "mainly about whether the applicant . . . has a criminal history or a history of mental illness." *Id.* at 401-02.

And "while the Illinois state police have ready access to information about Illinois residents" to assess their eligibility to carry a firearm, "they lack reliable access to the information they need about the qualifications of nonresident applicants other than [those residing in the] 'substantially similar' states." *Id.* at 402. The Illinois State Police is also unable to monitor the nonresident licensees effectively, as it cannot "obtain updates from states that don't track or report the information." *Id.* at 403. Therefore, "[t]he critical problem presented by the plaintiffs' demand—for

which they offer no solution—is verification" of a nonresident's application and the ability to receive "reliable updates" about their qualifications. *Id.* The court noted, though, that a "trial in this case may cast the facts in a different light," especially given that the record at that point consisted primarily of Trame's "uncontradicted affidavit." *Id.*

Once this Court issued the mandate, the district court lifted the stay that it had imposed while the appeal was pending. *See* Text Order (Nov. 16, 2016). Plaintiffs moved to reopen discovery, which had closed well before the district court issued the stay. *See* Dist. Ct. Doc. Nos. 16, 38. Defendants objected on diligence grounds, explaining that they had served Plaintiffs with interrogatories, requests to produce, and disclosures before discovery closed, but received no response. R. 496-98. For their part, Plaintiffs had not served any written discovery requests and never requested to depose defense witnesses. *Id.* The magistrate judge sustained the objection, finding that Plaintiffs "made no showing of any diligence in conducting discovery and no good cause for the relief they seek." R. 529. Because Plaintiffs did not object to this ruling by the magistrate judge, the district court declined to reach it *sua sponte*, but noted that in any event, it was "neither clearly erroneous nor contrary to law." R. 1319-20 (SA37-38).

C. Defendants' Summary Judgment Motion

Shortly thereafter, Defendants moved for summary judgment, asserting that a permanent injunction was unwarranted because no reasonable jury could find in

Plaintiffs' favor. In particular, Defendants argued that Plaintiffs could not succeed on the Second Amendment claim because section 40(b) was constitutional. R. 532-33.

Defendants first contended that the challenge was subject to intermediate scrutiny based on *Culp I* and because the regulated conduct fell "outside the core protection of the Second Amendment." R. 552. They then argued that section 40(b) satisfied intermediate scrutiny because "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 keeping guns out of the hands of presumptively risky people." R. 555 (internal quotation marks omitted). And even if a higher level of scrutiny were applied, "restricting public carriage to residents and nonresidents whose qualifications can be confirmed *is* the least restrictive means," as 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." R. 557.

To support these conclusions, Defendants attached the affidavit of Trame, which was materially similar to the one filed during the preliminary injunction proceedings. R. 568; *see* R. 195. As Bureau Chief since 2012, Trame was responsible for administering the FOID and Concealed Carry Licensing Programs. R. 568. Under the Concealed Carry Act, she explained, "the Bureau is responsible for ensuring that a non-resident applicant would meet the eligibility criteria to obtain a FOID card if he or she was an Illinois resident." *Id.* Therefore, it must "ensure that residents and non-residents are subject to the same substantive requirements to

qualify for a [concealed carry license]." *Id.* To achieve that goal, the Bureau adheres to the following process when reviewing concealed carry license applications.

Identification. The first phase involves verifying an applicant's identity. R. 568. An Illinois resident's identity is verified through the Illinois Secretary of State's driver's license or state identification systems. R. 569. For nonresidents, because the Illinois State Police "does not have direct access to other states' driver's license, state ID or similar databases," it must rely on the National Law Enforcement Telecommunications System database "to check the validity of an out of state driver's license, including personal identifiers of the individual and address." *Id.* The database itself, however, is limited because it does not currently share "identifying photographs or signatures" with the Illinois State Police and because not all states participate fully in this system. *Id.*

Background Check. Once the applicant's identity is verified, the Bureau performs an extensive background check through numerous state and national systems. R. 568. For instance, it must verify that an "applicant's criminal history does not render the applicant ineligible." R. 569. For Illinois residents, this includes a review of the applicant's criminal history through federal systems, as well as two systems maintained by the Illinois State Police: the Criminal History Record Inquiry system and the Computerized Hot Files system. R. 568-69.

For nonresidents, the Bureau does not have "direct access to other states' local or state criminal history databases, so [it] relies on federal databases to obtain out-of-state criminal history information." R. 569-70. These include (1) the National

Instant Criminal Background Check System, which identifies denied-persons files, among others; (2) the Interstate Identification Index, a national criminal history record system; (3) the National Law Enforcement Telecommunications System, which contains information on the continued validity of state-issued concealed carry licenses; and (4) the National Crime Information Center, which consists of 21 distinct files, such as the National Sex Offender Registry, Foreign Fugitives, Immigration Violations, Orders of Protection, and Wanted Persons. R. 569-70.

Trame stated that these federal databases are insufficient for purposes of verifying eligibility for a concealed carry license because states do not provide them with complete or uniform information. R. 569-70. For instance, "[m]any states provide the federal databases with only a summary of an arrest" but not the disposition of the charge. *Id.* When the federal databases do not contain complete information, the Bureau would need to request a record from the local jurisdiction itself. *Id.* Local jurisdictions often charge for these records, and the Illinois State Police has limited resources. R. 570.

As another component of the background check, a resident "applicant's information is made available to Illinois law enforcement agencies, which may submit an objection to a [concealed carry license] applicant based upon a reasonable suspicion that the applicant is a danger to himself, herself, or others, or is a threat to public safety." R. 569. Upon receipt of an objection, the application is referred to the Concealed Carry Licensing Review Board. *Id.* An applicant becomes ineligible for a

license if that board determines by a preponderance of the evidence that he poses such a danger or is a threat to public safety. *Id.*

Mental Health Prohibitors. The Bureau must also verify that the applicant does not have any mental health prohibitors, an analysis that overlaps in part with the background check. R. 571. For Illinois residents, the Bureau consults the Illinois Department of Human Services FOID Mental Health System, which contains "information on Illinois mental health facility admissions," "to determine whether an individual has been involuntarily admitted into a mental health facility in Illinois or has been a patient in a mental health facility in Illinois within the past five years or more." *Id.* This database does not contain records "of out-of-state mental health facility admissions," and the Bureau does not have "access to other states' mental health facility admissions databases, if any exist." *Id.*

As for federal databases, only the National Instant Criminal Background Check Index contains information related to mental health prohibitors, but that information is largely limited to individuals prohibited from firearm possession under 18 U.S.C. § 922(g)(4). *Id.* It contains no information on voluntary mental health admissions, and its information on formal mental health adjudications is sparse. *Id.*

Continued Monitoring. Even after an applicant obtains a concealed carry license, the Illinois State Police continues to monitor the individual in various ways. *Id.* To begin, the Bureau checks on a daily basis all resident license holders against the Illinois Criminal History Record Inquiry system and the Illinois Department of Human Services FOID Mental Health System for any new prohibitors that would

render them ineligible to hold a FOID Card or a concealed carry license. *Id.* Additionally, the Bureau checks all resident and nonresident license holders "against the federal databases on a quarterly basis." *Id.*

There is also an extensive system of in-state reporting to alert the Bureau of new prohibitors that might not show up in those databases. R. 571-72. For example, Illinois physicians, qualified examiners, law enforcement officials, and school administrators are "required by law to report persons that may be a clear and present danger to themselves or others." R. 571. Likewise, state circuit court clerks are required to report "persons who have been adjudicated as mentally disabled or persons who have had a finding for an involuntary admittance to a mental health facility." R. 572. Finally, the Illinois Department of Human Services reports "information collected pertaining to mental health treatment admissions, either voluntary or involuntary, as well as reports of patients with intellectual and developmental disabilities, or who have been deemed to be a clear and present danger." *Id.* None of these systems, however, reaches out-of-state residents. R. 571-72. Therefore, Trame explained, as with the initial background check, the Bureau is dependent upon other states to have a substantially similar system to monitor the licensees. *Id.* Otherwise, it would be "virtually impossible to effectively conduct this same level of screening and monitoring for nonresident [licensees]." R. 572.

In light of the foregoing and her experience as Bureau Chief overseeing these programs, Trame concluded that if the Illinois State Police were required "to accept nonresident applications from states that lack reporting and eligibility requirements

similar to Illinois, the background check process would be jeopardized because [the Illinois State Police would be] unable to verify those nonresidents' credentials to the same standards as Illinois residents are held." R. 573.

Substantially Similar Surveys. Trame also explained the procedure employed by the Illinois State Police to determine which states have implemented substantially similar license requirements. R. 572-73. In 2013, when the Concealed Carry Act went into effect, the Illinois State Police "sent surveys to each of the 49 other states and to the District of Columbia requesting information regarding their regulation of firearms use and reporting and tracking mechanisms relative to criminal activity and mental health issues." R. 572. The survey questions tracked the four-part definition of substantial similarity, asking whether these jurisdictions:

(1) issue Concealed Carry Licenses;

(2) participate "in reporting Concealed Carry Licenses via the [National Law Enforcement Telecommunications System]";

(3) report "all involuntary (or adjudicated) mental health admissions to the National Instant Criminal Background Check System";

(4) prohibit "the use or possession of firearms based on a voluntary mental health admission within the last five years";

(5) have "a mechanism to track or report voluntary mental health admissions for the purpose of revoking or approving a concealed carry license"; and

(6) had "pending legislation that addresses the concern of mental health admissions with regards to possession of firearms."

R. 580. In 2014, the Illinois State Police "sent a second survey to those states that did not respond to the first survey." R. 572. The survey reflected that "only Hawaii, New Mexico, South Carolina, and Virginia" had substantially similar laws. *Id.*

In 2015, the Illinois State Police sent out another survey. R. 573. It was similar to the 2013 survey, but provided additional detail in several questions. R. 655-56. Although the results of the 2015 survey were not completed when Trame filed her initial affidavit, she submitted a supplemental affidavit in conjunction with Defendants' response to Plaintiffs' summary judgment motion. R. 1196. In that affidavit, Trame attested that Arkansas, Mississippi, Texas, and Virginia were deemed substantially similar following the 2015 survey, but Hawaii, New Mexico, and South Carolina were not. *Id.*

D. Plaintiffs' Summary Judgment Motion

Plaintiffs cross-moved for summary judgment, contending that they were entitled to a permanent injunction enjoining Defendants from enforcing section 40(b). R. 821, 835, 874. According to Plaintiffs, this relief was warranted because they had already shown in *Culp I* "a likelihood of success on the merits, irreparable harm, and no adequate remedy at law." R. 836. Plaintiffs made two specific arguments on the Second Amendment claim. *First*, they contended that "strict or near-strict scrutiny" was appropriate because "the enumerated right to possess a firearm for lawful purposes, most notably for self-defense, is fundamentally core to the Second Amendment." R. 839-42. *Second*, they attempted to discredit Trame's affidavit by asserting that "the reasons she cites in support of [section 40] actually go

far beyond the language of the [Concealed Carry Act]." R. 843. For example, they argued that the applicant, not the Illinois State Police, was responsible for ensuring eligibility for a concealed carry license under the Concealed Carry Act. R. 844.

Plaintiffs presented no evidence controverting the substance of Trame's affidavit. Instead, they attached a deposition of Trame from another action pending in the Southern District of Illinois, R. 920; declarations of the named plaintiffs attesting that they want to obtain concealed carry licenses but are unable to do so under section 40(b), *see* R. 893-908; and the 2015 survey responses, *see* R. 1008-1173. They also attached three new exhibits to their response to Defendants' summary judgment motion. R. 1198-1203. Finally, Plaintiffs relied on academic articles stating, among other things, that concealed carry licensees are law-abiding individuals. R. 870-72. Defendants objected on hearsay grounds and noted that the conclusory assertions made in the articles were "not even set forth as undisputed material facts" by Plaintiffs, let alone presented in an affidavit or through expert testimony. R. 1190.

E. The District Court's Summary Judgment Decision

Following a hearing, the district court granted Defendants' motion for summary judgment. R. 1285 (SA2); *see* Dist. Ct. Doc. No. 66 (hearing transcript). Because this Court had already determined in *Culp I* "that the regulated conduct falls within the scope of the Second Amendment," R. 1323 (SA41), and that intermediate scrutiny applied, R. 1326-27 (SA44-45), the district court focused its analysis on whether section 40(b) of the Concealed Carry Act was constitutional

under that standard, R. 1327 (SA45); *see also* R. 1285 (SA3). And the district court noted that *Culp I* "found, based on the evidence presented at that point, including the uncontroverted affidavit of Trame, that the law was not unreasonable or so imperfect as to justify issuance of a preliminary injunction." *Id.* Nevertheless, this Court left open the possibility that "a trial in the case may cast the facts in a different light." *Id.*

To that end, the district court explained, Plaintiffs attempted to "cast the facts in a different light" by arguing that "the issues raised by Trame in her [a]ffidavit [were] outside the scope of the Concealed Carry Act." R. 1328 (SA46). Plaintiffs first tried to argue that "under the statutes, Illinois does not play any role in verifying compliance or qualifications but is limited to checking the available database and records." *Id.* The court rejected this argument because it was belied by the Concealed Carry Act and this Court's determination in *Culp I* that "a nonresident's application for an Illinois concealed-carry license cannot be taken at face value. The assertions in it must be verified." R. 1329 (SA47). The court also rejected Plaintiffs' contention that "Illinois' laws governing nonresidents are arbitrary" because of purported discrepancies in the survey results, R. 1330 (SA48), finding that the discrepancies did not exist when the record was viewed as a whole, and, even if they did, they at most showed that the law is not perfect, R. 1335 (SA53).

On the merits of the Second Amendment claim, the district court found "that Illinois has an important and compelling interest in its citizens' safety," *id.*, and that "[l]ongstanding prohibitions on the possession of firearms by felons and the mentally

ill are permissible," R. 1336 (SA54). Therefore, the court reasoned, "a state must have a way of determining whether an applicant is a felon or mentally ill." *Id.* The Concealed Carry Act was designed not only to ensure "that felons and the mentally ill do not obtain concealed carry licenses," but also "to monitor those who have concealed carry licenses to ensure that the license holders remain qualified." *Id.* And if "another state does not have substantially similar firearm laws as Illinois' laws, Illinois cannot confirm that nonresidents from that state are qualified to hold and maintain an Illinois concealed carry license." R. 1337 (SA55).

Accordingly, the district court held that "Illinois has a substantial interest in restricting concealed carry licenses to those persons whose qualifications can be verified and monitored," and that the "restriction barring nonresidents from states without substantially similar laws from applying for an Illinois concealed carry license is substantially related to the strong public interest." R. 1338 (SA56). It also determined that Plaintiffs' other constitutional claims failed, given that they would be examined under the same or a lower level of scrutiny. R. 1338-39 (SA56-57). Plaintiffs again appealed. R. 1345.

SUMMARY OF ARGUMENT

This Court should affirm the district court's grant of summary judgment to Defendants because section 40(b) of the Concealed Carry Act is constitutional. In Illinois, the State regulates concealed carry by requiring that all applicants for a license be qualified at the time of the application and for the life of the license. For Illinois residents, the State is able to verify an applicant's eligibility through its own databases, which contain comprehensive criminal history and mental health information. The State does not, however, have access to that information for nonresidents, who are subject to the same licensure requirements as residents. Therefore, it must rely on other states to regulate their residents' licensure in the same way as Illinois. Section 40(b) reflects this need for verification by allowing nonresidents to apply for a concealed carry license only if their home state's possession and carriage laws are substantially similar to those in Illinois.

Accordingly, as this Court already determined in *Culp I*, section 40(b) satisfies intermediate scrutiny because it is reasonably related to the State's compelling interest in confirming that all who seek to carry a firearm in public are qualified to do so. On remand from that decision, Plaintiffs developed no new evidence that might have cast their claims in a different light or controverted Defendants' evidence on monitoring and verification. Instead, they proceeded to summary judgment on virtually the same record while seeking a different result. Because there was no factual or legal basis to depart from *Culp I*, the district court properly rejected Plaintiffs' arguments. This Court should affirm.

ARGUMENT

I. The Standard Of Review Is *De Novo*.

This Court "review[s] a district court's decision on cross-motions for summary judgment de novo." *Hess v. Reg-Ellen Mach. Tool Corp.*, 423 F.3d 653, 658 (7th Cir. 2005). On *de novo* review, this Court applies the same procedural and legal standards as the district court would, *see Wisconsin v. EPA*, 266 F.3d 741, 745 (7th Cir. 2001), and the district court's judgment may be affirmed on any basis supported by the record and law, *see Jajeh v. Cty. of Cook*, 678 F.3d 560, 568 (7th Cir. 2012).

"Summary judgment is proper if the record demonstrates that there is no genuine issue as to any material fact and that a moving party is entitled to judgment as a matter of law." *O'Regan v. Arbitration Forums, Inc.*, 246 F.3d 975, 983 (7th Cir. 2001) (internal quotation marks and alterations omitted). The initial burden rests with the movant to show that there is no material dispute of fact "with respect to an essential element" of the nonmovant's substantive claim. *MMG Fin. Corp. v. Midwest Amusements Park, LLC*, 630 F.3d 651, 657 (7th Cir. 2011). If that is met, the nonmovant must offer sufficient evidence from which a reasonable jury could find in his favor. *Id.* at 656. If that burden is not met, the movant "need not produce evidence of its own" but instead is entitled to judgment. *Arnett v. Webster*, 658 F.3d 742, 760 (7th Cir. 2011).

"With cross-motions, [this Court's] review of the record requires that [it] construe all inferences in favor of the party against whom the motion under consideration is made." *Hendricks-Robinson v. Excel Corp.*, 154 F.3d 685, 692 (7th

Cir. 1998) (internal quotation marks omitted). Because the district court granted summary judgment to Defendants, this Court should "examine the record in the light most favorable to [Plaintiffs], granting [them] the benefit of all reasonable inferences that may be drawn from the evidence." *Id.* And here, where "a permanent injunction has been requested at summary judgment," this Court must determine whether Plaintiffs have shown: (1) success on the merits; (2) irreparable harm; (3) that the benefits of granting the injunction outweigh the injury to Defendants; and (4) that the public interest will not be harmed by the requested relief. *Collins v. Hamilton*, 349 F.3d 371, 374 (7th Cir. 2003).

II. The District Court Properly Granted Summary Judgment To Defendants On Plaintiffs' Second Amendment Claim.

A. The *Culp I* Legal Framework Governs This Appeal.

When reviewing a Second Amendment claim, this Court undertakes a two-step analysis, beginning "with the threshold question of whether the restricted activity is protected by the Second Amendment." *Horsley v. Trame*, 808 F.3d 1126, 1129 (7th Cir. 2015) (internal quotation marks and alterations omitted). "If the challenged law regulates activity that falls outside the scope of the Second Amendment at the historically relevant time, then the regulated activity is not protected, and the analysis stops there." *Id.*

But if a court deems the law to be within the scope of the Second Amendment, it performs a means-ends analysis. *Id.* at 1131. As this Court has explained, the level of scrutiny for laws protected by the Second Amendment is determined on a case-by-case basis, but will always be higher than rational basis review. *See Friedman v. City*

of Highland Park, 784 F.3d 406, 410 (7th Cir. 2015). The degree of heightened scrutiny applied "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." *Horsley*, 808 F.3d at 1131 (internal quotation marks omitted). At this step, courts "evaluate the regulatory means the government has chosen and the public-benefits end it seeks to achieve." *Id.* (internal quotation marks omitted). "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.* (internal quotation marks omitted). Additionally, as the Supreme Court has stated, longstanding regulations on possession and carriage such as "prohibitions on the possession of firearms by felons and the mentally ill" are "presumptively lawful." *District of Columbia v. Heller*, 554 U.S. 570, 626-27 & n.26 (2008).

In *Culp I*, this Court addressed the first step by reiterating its holding in *Moore* "that the Second Amendment entitles qualified persons to carry guns outside the home," as well as its conclusion in *Berron v. Illinois Concealed Carry Licensing Review Board*, 825 F.3d 843 (7th Cir. 2016), that "the constitutional right to keep and bear arms means that states must permit law-abiding and mentally healthy persons to carry loaded weapons in public." *Culp I*, 840 F.3d at 401 (internal quotation marks omitted). It noted, though, that "'qualified,' 'law-abiding,' and 'mentally healthy' are significant limitations on the right of concealed carry." *Id.*

On the means-ends question, this Court applied intermediate scrutiny, stating that section 40(b), like many laws, was "imperfect," but not "unreasonable." *Culp I*,

840 F.3d at 403 (citing *Moore*, 702 F.3d at 940). This determination, which became established law once decided by the *Culp I* court, controls here. *See Ezell v. City of Chi.*, 846 F.3d 888, 893 (7th Cir. 2017) ("*Ezell II*"). Plaintiffs resist this conclusion, however, suggesting on appeal that the district court did not properly interpret *Culp I* and, alternatively, that the means-ends analysis performed in *Culp I* should be revisited. Appellants' Br. at 25-27. Neither argument is persuasive.

Plaintiffs first note that this Court did not use the phrase "intermediate scrutiny" in its decision. *Id.* at 26-27. Though true, that observation is not determinative. The terms used in *Culp I*—"imperfect" and "unreasonable," 840 F.3d at 403—connote intermediate scrutiny as used by this Court and others in the Second Amendment context. In *Ezell I*, for instance, this Court explained that "intermediate scrutiny requires a fit between the legislature's ends and the means chosen to accomplish those ends, a fit that is not necessarily perfect, but reasonable." *Ezell v. City of Chi.*, 651 F.3d 684, 708 (7th Cir. 2011) ("*Ezell I*") (internal quotation marks and alterations omitted); *see N.Y. State Rifle & Pistol Ass'n, Inc. v. City of New York*, 883 F.3d 45 (2d Cir. 2018) ("To survive intermediate scrutiny, the fit between the challenged regulation and the government interest need only be substantial, not perfect.") (internal alterations omitted); *Woollard v. Gallagher*, 712 F.3d 865, 878 (4th Cir. 2013) (defining intermediate scrutiny as "decid[ing] if the State has demonstrated that there is a 'reasonable fit' between the good-and-substantial-reason requirement and the governmental objectives of protecting public safety and preventing crime"); *Drake v. Filko*, 724 F.3d 426, 436 (3d Cir. 2013) ("The fit

between the asserted interest and the challenged law need not be perfect, but it must be reasonable.") (internal quotation marks and alterations omitted).

Another indication that *Culp I* applied intermediate scrutiny was its citation to *Moore* in finding that section 40(b) was not "unreasonable." 840 F.3d at 403. The cited passage in *Moore* stated that "the government had to make a 'strong showing' that [the regulation] was vital to public safety." 702 F.3d at 940; *see* Appellants' Br. at 24 (agreeing that *Moore* "held that the State must make a 'strong showing'"). As with "unreasonable," the phrase "strong showing" is synonymous with intermediate scrutiny. *See Ezell I*, 651 F.3d at 708 ("a 'form of strong showing'—a/k/a 'intermediate scrutiny'"); *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010) ("The United States concedes that some form of strong showing ('intermediate scrutiny,' many opinions say) is essential."). And, as a practical matter, it is unlikely that this Court would have applied a more heightened form of scrutiny to the regulation of concealed carry licenses in *Culp I* than to the wholesale ban on concealed carry in *Moore*, particularly without saying so.

To the extent Plaintiffs contend that this Court should reexamine its holding in *Culp I*, that argument fares no better. As in the *Ezell* litigation, this Court's conclusions about whether the right is protected by the Second Amendment and, if necessary, the applicable level of scrutiny for that right, became "established law" once decided in the first instance. *See Ezell II*, 846 F.3d at 893. A party cannot relitigate "these settled propositions" or "modify the analytical framework

established" by this Court in an earlier case, especially without providing a compelling reason for doing so. *Id.*

As a final matter, Plaintiffs suggest that the merits of the Second Amendment claim are not at issue in this appeal because both the district court and this Court determined at the preliminary injunction stage that they "showed a likelihood of success on the merits." Appellants' Br. at 19. This is wrong. The district court specifically stated that "Plaintiffs' likelihood of success on the merits is not strong," R. 469, and this Court affirmed that decision, while emphasizing the "critical problem" with Plaintiffs' Second Amendment claim, *Culp I*, 840 F.3d at 403.

In sum, this Court should not disturb its prior determination that the right to public carriage falls within the scope of the Second Amendment or that intermediate scrutiny applies to challenges involving that right. As the district court properly noted, the remaining issues that it was to resolve on this Court's remand, based on any further factual development, were whether Defendants satisfied their burden under intermediate scrutiny and, if necessary, whether a permanent injunction was warranted. *See* R. 1326-27 (SA44-45). The district court's decision on those matters are the proper focus of this appeal.

B. The District Court Properly Applied Intermediate Scrutiny To Its Review Of Section 40(b).

Culp I aside, application of intermediate scrutiny to section 40(b) was correct because that provision does not impinge upon a core Second Amendment right. The Supreme Court has held that the Second Amendment is at its apex when a healthy, law-abiding individual seeks to possess a firearm in his home for self-defense

purposes. *See Heller*, 554 U.S. at 635 (Second Amendment "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home"). Based on that foundation, this Court has recognized that the "core component" of the Second Amendment is the right to possess operable firearms for self-defense in the home. *Ezell I*, 651 F.3d at 689. This is so because "the 'need for defense of self, family, and property is most acute' in the home." *Horsley*, 808 F.3d at 1131 (quoting *Heller,* 554 U.S. at 628).

Section 40(b) does not regulate the possession of firearms or their availability to those seeking to defend their home, and thus does not implicate a core Second Amendment right. Instead, it regulates the carriage of firearms outside the home, an activity with different parameters and consequences to its exercise. *See* 430 ILCS 66/40(b). This Court acknowledged this in *Berron*, explaining there are many "differences between possessing guns at home and carrying guns in public," such as the degree of danger posed. 825 F.3d at 847. And in *Shepard v. Madigan*, 734 F.3d 748, 750 (7th Cir. 2013), this Court rejected plaintiffs' post-*Moore* request for relief that would have required "any Illinoisan who has a FOID card [to] be allowed to carry a gun outside the home, without regard to additional restrictions in the new [concealed carry] law." This Court specifically noted that its mandate in *Moore* "did not forbid the state to impose greater restrictions on carrying a gun outside the home than existing Illinois law . . . imposes on possessing a gun in the home." *Id.* at 751; *see Kachalsky v. City of Westchester*, 701 F.3d 81, 94 (2d Cir. 2012) (there is "a critical difference" between possession and carriage because the "state's ability to regulate

firearms and, for that matter, conduct, is qualitatively different in public than in the home"). Here, the conduct at issue extends not only beyond the home, but wholly outside of the individual's home state. Whatever the outer limits of the core right defined in *Heller*, they do not encompass unmonitored public carriage of a firearm while visiting another state. *See* 554 U.S. at 635.

On appeal, Plaintiffs do not meaningfully address the parameters of the core Second Amendment right, focusing instead on *Moore*'s holding that the Second Amendment "right extends outside of the home." Appellants' Br. at 23. But no one disputes that *Moore* recognized such a right. The issue now is whether it is a *core* right that triggers strict scrutiny. And *Moore* did not identify it as such. *See* 702 F.3d at 940. In fact, even Plaintiffs' description of the right recognizes the elevation of self-defense in the home above other Second Amendment rights. *See* Appellants' Br. at 24 ("Both *Heller* and *McDonald* do say that the need for defense of self, family, and property is most acute in the home.") (internal quotation marks omitted); *id.* at 25 (referencing "infringements on the core Second Amendment right of *possession* for self-defense.") (emphasis added).

Moreover, section 40(b) does not impose a flat ban or blanket restriction. *See Horsley*, 808 F.3d at 1129. To the contrary, it extends the right to public carriage by allowing qualified nonresidents to apply for a concealed carry license if their home state has established a "substantially similar" regulatory system. *See* 430 ILCS 66/40(b). The difficulty, which Plaintiffs do not credit, is that Illinois does not have access by itself to the necessary information to assess whether nonresidents are

qualified, and remain qualified, for public carriage. Therefore, it must rely on other states to police their residents' licensure in the same way that Illinois does for theirs. Describing section 40(b) as a ban mischaracterizes the statutory scheme.

Furthermore, the focus of the substantial similarity inquiry—a verification of initial credentials and the continued monitoring of criminal convictions and mental health prohibitors, among others, *see* 20 Ill. Admin. Code § 1231.10—is closely tied to the regulations that this Court and the Supreme Court have upheld. This tradition of regulation was discussed in *Heller*, where the Supreme Court made clear that the right conferred under the Second Amendment is "not unlimited." 554 U.S. at 595. Even in Blackstone's time, the right had never been understood "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626. Indeed, "the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues." *Id.* As such, the Court indicated that nothing in its decision "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill," which are "presumptively lawful." *Id*. at 626-27 n.26.

Both the FOID Act and Concealed Carry Act continue that tradition through a complex and interdependent set of regulations that work to prevent felons and the mentally ill from possessing and carrying firearms. Section 40(b) plays a critical role in this system by prohibiting nonresident felons and the mentally ill from carrying firearms in public while visiting Illinois. It does this by ensuring that the

qualifications of nonresidents seeking to carry a firearm are being initially verified and then monitored for the same criminal and mental health prohibitors that would render an Illinois resident ineligible under the Concealed Carry Act. Nonresidents are thus placed on equal regulatory footing with residents, and the public can be assured that all applicants are evaluated and monitored in the same manner. *See Friedman*, 784 F.3d at 412 (crediting interest in "the public's sense of safety"). Without this provision, nonresidents could possess a concealed carry license while being statutorily ineligible to do so, creating a loophole in the regulatory scheme.

Plaintiffs rejoin that section 40(b) is a restriction rather than a regulation because "the prohibition in this case violates the rights of even more law-abiding people than in *Moore*." Appellants' Br. at 24. This is inaccurate. A law allowing qualified residents and nonresidents to carry firearms in public cannot be broader than a law banning all residents and nonresidents from doing so. Besides, Plaintiffs do not support their statement with any evidence; instead, they concede that "[i]t is unknown how many non-resident applicants there would be if the law changed" or "how many non-residents with [concealed carry licenses] in their home state are in Illinois at any one time." *Id.* at 26. Additionally, the fact that an unknown, but possibly large, number of people might be affected by section 40(b) does not transform the regulation into a ban, let alone one that is qualitatively similar to those struck down in *Moore* and *Ezell I*. *Id.* at 23-25 (citing *Moore* and *Ezell I*). The concealed carry regulatory system, which enables qualified individuals to become licensed, is unlike the concealed carry ban in *Moore* or the firing-range ban in *Ezell I*,

both of which were wholesale restrictions prohibiting the exercise of a Second Amendment right. *See Moore* 702 F.3d at 934; *Ezell I*, 651 F.3d at 690.

Nor is this a situation, for example, where Illinois has invented additional, obscure qualifications and imposed them on nonresidents alone to prevent them from carrying concealed weapons in the State. Instead, it merely holds nonresidents to the same substantive standards as residents, to prohibit felons and the mentally ill from carrying firearms. *See Heller*, 554 U.S at 626-27. Plaintiffs do not assert that these criteria for issuing a concealed carry license to Illinois residents are improper, or that these same criteria should not apply to nonresidents. *See* Appellants' Br. at 39, 50. Logically, the section 40(b) requirement should be viewed as a natural extension of these presumptively constitutional regulations, not a severe burden or ban on Second Amendment rights. In sum, Illinois has the authority to implement these standardized regulatory measures and by doing so has not created a ban or restriction subject to strict scrutiny.

Finally, application of intermediate scrutiny is consistent with decisions of this Court and those of other circuits. As discussed, this Court has repeatedly applied intermediate scrutiny to review regulations that do not infringe core Second Amendment rights. *See, e.g.*, *Culp I*, 840 F.3d at 403; *Horsley*, 808 F.3d at 1131; *Skoien*, 614 F.3d at 641-42; *Moore*, 702 F.3d at 940. Even in *Ezell I*, which struck down a ban imposing a "severe burden" on the core right to possess handguns in defense of one's home, this Court did not apply strict scrutiny. 651 F.3d at 708. Instead, it employed "a strong form of intermediate scrutiny" requiring "the City to

demonstrate 'a close fit between the range ban and the actual public interests it serves.'" *Ezell II*, 846 F.3d at 893 (quoting *Ezell I*, 651 F.3d at 708-09).

Additionally, the Second Circuit applied intermediate scrutiny to a challenge to New York's "proper cause" requirement after assuming, without deciding, that the Second Amendment applied to the right to concealed carry. *See Kachalsky*, 701 F.3d at 93. It reached this conclusion based on the "historical prevalence of the regulation of firearms in public," and because "state regulation of the use of firearms in public was 'enshrined within the scope' of the Second Amendment when it was adopted." *Id.* at 96 (quoting *Heller*, 554 U.S. at 634). Likewise, the Fourth Circuit applied intermediate scrutiny "to laws that burden any right to keep and bear arms outside of the home," recognizing "a longstanding out-of-the-home/in-the-home distinction bearing directly on the level of scrutiny applicable." *Woollard*, 712 F.3d at 876, 878 (internal quotation marks and alterations omitted); *see Drake*, 724 F.3d at 429-30 (applying intermediate scrutiny in an alternative holding).

And three other circuits—the Third, Ninth, and Tenth—have concluded that concealed carry is not a right in the context of the Second Amendment, upholding the challenged laws at the first step of the analysis. *See Peruta v. Cty. of San Diego*, 824 F.3d 919, 924 (9th Cir. 2016), *cert. denied sub nom. Peruta v. California*, 137 S. Ct. 1995 (2017); *Peterson v. Martinez*, 707 F.3d 1197, 1201 (10th Cir. 2013); *Drake*, 724

F.3d at 429-30.[4] For these reasons, the district court was correct to apply intermediate scrutiny here.

C. Section 40(b) Is Reasonably Related To The State's Substantial Interest In Ensuring The Public Safety.

The district court also properly determined that section 40(b) satisfied intermediate scrutiny because it is reasonably related to the State's interest in verifying and monitoring the qualifications of licensees. *See* R. 1338 (SA56). To begin, this Court has recognized that there is a substantial state interest in protecting the public by ensuring that individuals who pose a threat or danger are not permitted to carry firearms in public. As explained in *Horsley*, for instance, "it is clear that Illinois has an important and compelling interest in its citizens' safety" and in "protecting the public from firearms violence." 808 F.3d at 1132; *see Skoien*, 614 F.3d at 642 ("[N]o one doubts that the goal of § 922(g)(9), preventing armed mayhem, is an important governmental objective."). This same state interest animated this Court's assertion in *Moore* that the training requirements imposed by some states are sensible because a "person who carries a gun in public but is not well trained in the use of firearms is a menace to himself and others." 702 F.3d at 940-41.

An important corollary to the interest in public safety is the State's "practical need" for information "about the qualifications of nonresident applicants" to determine if they should be permitted to carry firearms in public. *Culp I*, 840 F.3d at

[4] The only decision reaching a different conclusion is *Wrenn v. District of Columbia*, 864 F.3d 650 (D.C. Cir. 2017), which is in conflict with *Moore* and which Plaintiffs failed to cite in their opening brief on appeal.

402-03. The State must also be able "to receive reliable updates in order to confirm that license-holders remain qualified during the five-year term of the license." *Id.* at 403. Both are important because "circumstances may change between the time someone receives a keep-at-home license . . . and the time he seeks a concealed-carry license." *Berron*, 825 F.3d at 847. As such, "Illinois is entitled to check an applicant's record of convictions, and any concerns about his mental health, close to the date the applicant proposes to go armed on the streets." *Id.*

Plaintiffs respond by contending that the State has "no interest" in denying nonresidents "the fundamental Second and Fourteenth Amendment rights of handgun possession in the same manner available to residents, based solely on [the] state of residence." Appellants' Br. at 28. But this attempt to shift the court's focus is not effective. At issue here is a specific regulation on public carriage, not the possession of firearms generally. Additionally, Plaintiffs' argument places too much emphasis on the role of the state of residence. As Defendants have explained, an applicant's state of residence serves in this context as a proxy for the ability to confirm the individual's substantive qualifications to carry a firearm, not for its own sake or for a discriminatory purpose. And any differences in the application procedure between residents and nonresidents are designed to achieve parity among all applicants as to these critical qualifications.

Furthermore, the district court correctly determined that section 40(b) is reasonably related to these state interests. *See* R. 1338 (SA56). Because the record remains largely the same on summary judgment as it was during the preliminary

injunction proceedings,[5] *Culp I* informs much of the analysis here. In *Culp I*, the uncontroverted evidence included an outline of "information sources that the Bureau relies on in determining whether an applicant for a concealed-carry license is eligible," as well as an explanation that the Bureau "is unable to obtain updates from states that don't track or report the information" to those sources. 840 F.3d at 403. The practical need for this information, and the inability of the Bureau to receive it as a matter of course, "explains all four of the requirements for 'substantially similar' gun laws listed above." *Id.* In other words, these "requirements are not imposed in order to punish nonresidents because of where they live or because Illinois disapproves of other states' gun regimes. The sole purpose is to protect Illinois residents." *Id.* at 402.

Moreover, *Culp I* pinpointed the crux of Plaintiffs' problem—the State's need for verification—and suggested that further factual development might strengthen their position. *Id.* at 403. According to this Court, their "claim to be allowed to carry concealed firearms when they are visiting Illinois would be compelling if the Illinois authorities could reliably determine whether in fact a nonresident applicant for an Illinois concealed-carry license had all the qualifications that Illinois . . . require[s] be met." *Id.* at 402. But because Plaintiffs offered no evidence controverting Trame's affidavit, they did not make "a case for a preliminary injunction." *Id.* at 403. All of

[5] On appeal, Plaintiffs do not challenge the district court's discovery rulings or argue that they did not have an opportunity to further develop the record. Therefore, they have forfeited any such argument. *See Gross v. Town of Cicero, Ill.*, 619 F.3d 697, 704-05 (7th Cir. 2010).

these key facts identified in *Culp I* remained uncontroverted at summary judgment. R. 1346 (SA27) (noting that Trame summary judgment affidavit was "substantially similar" but "includes additional information regarding the 2015 Survey"). In particular, Plaintiffs did not dispute Trame's attestations about the Illinois State Police's inability to verify information through federal and state databases. Therefore, the district court was correct to ultimately conclude that section 40(b) is reasonably related to the State's interest in verifying the qualifications of its concealed carry licensees. *See* R. 1317 (SA35), 1328 (SA46).

As Trame explained in her summary judgment affidavit, the Illinois State Police verifies and monitors resident applicants' qualifications through the many state systems that it has established for these and other purposes. R. 568-70. For example, it consults the Illinois Department of Human Services FOID Mental Health System to "determine whether an individual has been involuntarily admitted into a mental health facility in Illinois or has been a patient in a mental health facility in Illinois within the past five years or more." R. 571. It also reviews the Illinois Secretary of State database for identification purposes, and the Criminal History Record Inquiry and Computerized Hot Files systems for criminal history information. R. 568-69. Finally, it makes a resident applicant's data available to Illinois law enforcement agencies, and they can object to the application "based on a reasonable suspicion that the applicant is a danger to himself, herself, or others, or is a threat to public safety." 430 ILCS 66/15(a). None of these databases, however, contains records of nonresident criminal convictions or stays in a mental health facility, and

the Illinois State Police cannot access other states' databases, to the extent they exist. R. 571. And though it checks the federal databases for this information, those do not contain uniform information sufficient to fill the data gap. R. 569-70.

In fact, only the National Instant Criminal Background Check Index contains information related to mental health prohibitors, but that information is largely limited to individuals prohibited from federal firearm possession. R. 571. It does not maintain information on voluntary mental health admissions, and its information on formal mental health adjudications is sparse. *Id.* For identification purposes, the Illinois State Police can check the validity of a nonresident driver's license and concealed carry license through the National Law Enforcement Telecommunications System database, but only if the home state participates fully in the system. R. 569-70. And regarding criminal convictions, the relevant federal databases—the National Instant Criminal Background Check System, Interstate Identification Index, National Law Enforcement Telecommunications System, and National Crime Information Center—are insufficient because states do not provide them with complete or uniform information. *Id.* For their part, Plaintiffs do not dispute any of these sworn assertions, which are consistent with recently compiled statistics showing the gap between state records and those listed in federal databases. *See* Appellants' Br. at 45-46 ("No single source exists that provides complete and up-to-date information about a person's criminal history.") (internal quotation marks omitted); Amicus Br. of Everytown for Gun Safety, Section III (describing statistics).

Given this lack of information, the only way to ensure that a nonresident satisfies the concealed carry licensure requirements is for his home state to verify and monitor that information. Accordingly, Illinois will allow nonresidents to apply for a license once it has been confirmed that their home state's possession, ownership, and carriage laws are substantially similar to those in Illinois. *See* 430 ILCS 66/40(b). Each requirement for "substantial similarity" tracks a necessary component of Illinois' regulatory system, with a focus on preventing felons and the mentally ill from carrying firearms in public.

At the most basic level, the state must have a system regulating concealed carry. 20 Ill. Admin. Code § 1231.10. This system must include prohibiting those with involuntary mental health admissions, and those with voluntary admissions within the past five years, from carrying firearms. *Id.* And finally, the state must report the individuals who have been denied a concealed carry license to the National Instant Criminal Background Check System and the individuals who have been authorized (and remain authorized) to possess a concealed carry license to the National Law Enforcement Telecommunications System. *Id.*; R. 569-70.

These requirements work together to confirm that the concealed carry licensing system in an applicant's home state not only tracks residents' qualifications but also prohibits unqualified individuals from becoming licensed in the first place. They also ensure, through the reporting requirement, that the Illinois State Police will have access to an updated list of individuals who are either authorized to publicly carry a firearm under his home state's laws or denied from doing so. And if a

nonresident's license is taken away in his home state due to a new prohibitor, that information will be reflected in the National Instant Criminal Background Check System's denied persons list. None of these requirements is superfluous to Illinois' goal of verifying and monitoring the credentials of concealed carry licensees, and all work together to achieve the state goal of public safety through verification of information. The district court, therefore, properly concluded that section 40(b) was reasonably related to a substantial state interest.

Plaintiffs assert that this evidence, though unrefuted, is insufficient because Defendants have not shown that "allowing [concealed carry license] holders to file [concealed carry license] applications in Illinois would cause any harm." Appellants' Br. at 19, 28, 39-40. But as discussed, the harm in not being able to determine whether an applicant for a concealed carry license would pose a danger to himself or the public is obvious. And laws regulating firearm possession and carriage by felons and the mentally ill are presumptively constitutional under *Heller*. *See* 554 U.S. at 626; *see also Moore*, 702 F.3d at 940 (discussing "the usual prohibitions of gun ownership by children, felons, illegal aliens, lunatics, and in sensitive places"). Section 40(b), which arose in an effort to impose the same substantive requirements on residents and nonresidents, is a part of the State's presumptively constitutional framework for preventing felons and the mentally ill from carrying firearms. The State need not also show that unlicensed nonresidents have committed violence in Illinois to justify section 40(b).

This Court should reject Plaintiffs' arguments and uphold the district court's decision. Alternatively, because the State's interest in public safety and the need for verification remain undisputed, section 40(b) would survive any level of heightened scrutiny. While no statute is perfect, none of the purported problems identified by Plaintiffs renders this scheme unconstitutional.

D. Plaintiffs' Remaining Arguments Also Lack Merit.

Plaintiffs pursue several additional arguments on appeal, the bulk of which have already been rejected by this Court in *Culp I* or are irrelevant to the critical issues identified there. Primarily, they attempt to discredit Trame's affidavit by narrowing its relevance and scope, rather than controverting the statements contained in it. *First*, Plaintiffs insinuate that Trame did not have the requisite knowledge to support the statements in her affidavit because she "is a civilian employee with an education in administration and no demonstrated knowledge or experience in the causes of crime, or crime statistics, or mental health." Appellants' Br. at 29. But Trame, who has served as Chief of the Illinois State Police Firearms Services Bureau since 2012, did not purport to attest to those topics. Instead, she outlined the process by which the Illinois State Police reviews concealed carry license applications and performs background checks, so as to ensure that residents and nonresidents are subject to the same substantive qualifications for a concealed carry license. *See* R. 568-71. And as the Bureau Chief overseeing these programs for more than six years, she has demonstrated knowledge and experience in those matters. *Id.*

Second, Plaintiffs assert that Trame "wrongly state[d]" that "the Bureau is responsible for ensuring that a non-resident applicant would meet the eligibility criteria." Appellants' Br. at 30. According to Plaintiffs, "[t]he *Applicant* is responsible for ensuring eligibility." *Id.* But this Court in *Culp I* recognized that "[a] nonresident's application for an Illinois concealed-carry license cannot be taken at face value. The assertions in it must be verified." 840 F.3d at 403; *see Berron*, 825 F.3d at 847 ("Licensure is how states determine whether the requirements have been met."). The text of the Concealed Carry Act confirms this point. Subsection 40(d) of the nonresidents provision states that "the Department [of the Illinois State Police] shall ensure that the applicant would meet the eligibility criteria to obtain a [FOID] card if he or she was a resident of this State." 430 ILCS 66/40(d); *see id.* 66/35 ("The [Illinois State Police] shall conduct a background check of the applicant to ensure compliance with the requirements of this Act and all federal, State, and local laws.").

It makes sense that the State would want to verify what applicants say, instead of using an honor system. Otherwise, many unqualified applicants who nonetheless submit applications averring to their eligibility would be granted licenses, which would be a detriment to public safety. *See, e.g.*, *Jankovich v. Ill. State Police*, 78 N.E.3d 548, 562 (Ill. App. 2017) (denying concealed carry license where applicant "had been arrested 18 times," had "threatened to put an individual in a wood chipper and six feet underground" over a monetary dispute, and had "threatened to bust a man's head open and break his legs for damaging some of plaintiff's campaign signs") (internal quotation marks and alterations omitted); *Perez*

v. Ill. Concealed Carry Licensing Review Bd., 63 N.E.3d 1046, 1052 (Ill. App. 2016) (denying concealed carry license where applicant's "criminal background included the 2007 domestic battery, the 2011 aggravated assault, 2003 charges for criminal trespass to a vehicle and driving without a license, and a 2001 juvenile arrest for assault"); *Baumgartner v. Greene Cty. State's Attorney's Office*, 52 N.E.3d 654, 658 (Ill. App. 2016) (denying FOID card where applicant had domestic battery conviction for incident where he "raged" and grabbed his girlfriend "by the throat") (internal quotation marks and alterations omitted).

Third, Plaintiffs argue that the affidavit incorrectly asserts that the Illinois State Police must verify an applicant's criminal history as part of the background check, as the "actual statutory language does not require 'verification' but instead requires the check be made of the six listed categories." Appellants' Br. at 34-35. According to Plaintiffs, the background check is limited to a search of the "available records" in the six categories of databases enumerated in section 35 of the Concealed Carry Act. *Id.* at 35-36. But that misreads the statutory language, which states in full: "The Department shall conduct a background check of the applicant *to ensure compliance* with the requirements of this Act and all federal, State, and local laws. The background check *shall include a search* of the following [six categories]." 430 ILCS 66/35 (emphasis added). Searching the available records in those six categories is only one part of the process undertaken by the Illinois State Police to verify compliance with all eligibility requirements.

Fourth, Plaintiffs contend that "Trame's alleged difficulties verifying non-resident mental health information are outside the scope of the statute." Appellants' Br. at 36. On their view of the statute, the Illinois State Police cannot deny an application simply because it has "difficulties in obtaining a perfect investigation" or could not "satisfy its curiosity about non-resident applicants." *Id.* at 36, 38. For the same reasons discussed, that is a nonstarter. The Illinois State Police has a statutory obligation to verify the qualifications of all applicants, which include any mental health prohibitors. *See* 430 ILCS 66/40(d).

Relatedly, Plaintiffs insist that, by default, the State's system looks upon nonresidents with distrust, which is inappropriate given that Plaintiffs are law-abiding individuals licensed to carry concealed firearms in their home states. Appellants' Br. at 38, 61. That is untrue; the State has not implemented these monitoring requirements because it finds nonresidents to be more suspicious or dangerous than residents. Instead, it has created a system that holds all applicants to the same standards, and recognizes that no one can claim to be forever immune to mental health concerns or other prohibitors. And given that simple truth, the State must be able to monitor the eligibility of individuals who are carrying firearms in public in the event that they find themselves in a mental health crisis, or other disqualifying status, at any point during the life of the license. It would thus not be sufficient, as Plaintiffs suggest, *see* Appellants' Br. at 39, to allow nonresident applicants to submit verified records at the outset of the application process.

In addition to the Trame affidavit, Plaintiffs contend that the results of the 2015 survey support their position. Appellants' Br. at 40. Before the district court, Plaintiffs raised this argument in the context of the balance of harms, not with respect to the merits of the Second Amendment claim. *See* R. 867-70, 1252-56. But even if relevant to the Second Amendment analysis, the cursory points that Plaintiffs make on appeal are unpersuasive. For example, they note that New Mexico, Hawaii, and South Carolina were removed from the substantially similar list even though, to their knowledge, no residents from those states committed crimes in Illinois as a result of applying for, or receiving, a concealed carry license in Illinois. Appellants' Br. at 40-41. But Plaintiffs acknowledge that these states changed their responses to the mental health questions on the survey. *Id.* Because they no longer track and report mental health prohibitors, they cannot be substantially similar, for the reasons discussed above, *see supra* Section II.C.

Next, Plaintiffs list various state responses to the surveys and conclude, without explanation, that "it is clear the Defendants just do not want to issue [concealed carry license] permits, or are just picking states at random, rather than having any actual justification for the 45 state ban." Appellants' Br. at 42. As the district court detailed, though, the purported discrepancies among the responses to the state surveys have no merit and even if they did, it would show at most that the "law is not perfect." R. 1330-35 (SA48-53). Plaintiffs' argument on appeal does not provide any reason to disturb that analysis.

Plaintiffs add that academic studies show that "most guns are in the hands of people who are unlikely to misuse them." Appellants' Br. at 42. Therefore, "most Concealed Carry Applicants have no criminal history and hence have no gaps to research." *Id.* at 44. As with the surveys, Plaintiffs used these sources as part of their balance of harms argument in the district court. *See* R. 870-74, 1256-62. Even if relevant and true, however, this research does not come close to controverting Defendants' evidence. By its own terms, the research only addresses the criminal history records of *most* applicants as a general matter. *See* Appellants' Br. at 42-46. It does not include information related to any specific applicant's mental health prohibitors, identification concerns, or other eligibility factors. *Id.* Thus regardless of its merits, this research could not have any impact on the ultimate result.

In any event, this hodgepodge of research presented is "not the only side of the story." *Peruta*, 824 F.3d at 944; *see also* Amicus Br. of Giffords Law Center to Prevent Gun Violence, Section II. "Much respected evidence is to the contrary," including several studies "suggest[ing] that the clear majority of states that enact laws broadly allowing concealed carrying of firearms in public experience *increases* in violent crime, murder, and robbery when those laws are adopted." *Peruta*, 824 F.3d at 944 (internal quotation marks omitted); *see also id.* ("Similarly, some studies suggest that policies to *discourage* firearms in public may help prevent violence.") (internal quotation marks omitted). And as the Ninth Circuit concluded, in "the face of that disagreement, and in the face of inconclusive evidence, [it] must allow the

government to select among reasonable alternatives in its policy decisions." *Id.*; *see Kachalsky*, 701 F.3d at 99; *Drake*, 724 F.3d at 439.

Finally, Plaintiffs contend that they were entitled to a permanent injunction at summary judgment because they showed irreparable harm, that the benefits of granting the injunction outweigh the injury to Defendants, and that the public interest would not be harmed by the requested relief. Appellants' Br. at 64-71. This Court does not need to reach these factors, however, because Plaintiffs have not demonstrated success on the merits of their constitutional claims. *See Plummer v. Am. Inst. of Certified Pub. Accountants*, 97 F.3d 220, 230 (7th Cir. 1996).

Alternatively, Defendants disagree with Plaintiffs' characterization of the relevant harms here. As discussed, *see supra* Section II.C, the State has shown that it has an important interest in public safety, and that section 40(b) serves that interest in critical ways. Plaintiffs, by contrast, make several unsupported statements as part of their theory that the harms articulated by the State are hypothetical, whereas Plaintiffs are "real people being affected." Appellants' Br. at 70. For example, Plaintiffs claim that "[w]hile gun violence is a compelling issue, the granting of a non-resident [concealed carry license] is not going to affect it in the least," *id.* at 69, a statement that is both baseless and untrue, *see, e.g.*, Violence Policy Center, Concealed Carry Killers, *available at* http://concealedcarrykillers.org/ (last updated Mar. 8, 2018) (compiling data and showing that 1,129 people have been killed by concealed carry permit holders since May 2007).

Notably, Plaintiffs do not limit their unsupported statements to the part of their brief that addresses the balance of harms. *See, e.g.*, Appellants' Br. at 29 ("[I]t is well-known these [concealed carry license] holders are not the cause of any gun violence problem that may exist in Illinois."); *id.* at 47 ("[I]f someone wanted to bring a gun illegally into Illinois, he would just do so."); *id.* at 50 ("It is not seriously subject to dispute that a person intending to commit gun violence in Illinois is not going to undergo the training, fulfill the requirements, and pay the fees to first get an Illinois [concealed carry license]."); *id.* at 70 n.4 (while the number of crimes committed by concealed carry licensees is unknown, they "are undeniably far less frequent than acts of gun violence committed by those without licenses, such as gang members and other criminals"). Such bald assertions are not competent evidence at the summary judgment stage and should be disregarded. *See MMG Fin. Corp.*, 630 F.3d at 656. In sum, a permanent injunction was not warranted here, and this Court should uphold the district court's decision.

III. The District Court Properly Granted Summary Judgment To Defendants On The Remaining Constitutional Claims.

The district court also determined that Defendants were entitled to summary judgment on Plaintiffs' equal protection, privileges and immunities, and procedural due process claims. *See* R. 1338 (SA56). Given that section 40(b) "passes scrutiny under the Second Amendment," the district court reasoned, it "passes scrutiny under the other provisions because they do not require a stronger showing." R. 1338-39 (SA56-57). This decision was correct, and should be upheld by this Court. *See Peruta*, 824 F.3d at 942 (Second Amendment holding "also necessarily resolves,

adversely to Plaintiffs, their derivative claims of prior restraint, equal protection, privileges and immunities, and due process").

To begin, the district court properly concluded that Plaintiffs' equal protection challenge fails. *See* R. 1339-40 (SA57-58). Under the Equal Protection Clause, a court should uphold a challenged law if there is a rational basis supporting it. *Baskin v. Bogan*, 766 F.3d 648, 654 (7th Cir. 2014). Plaintiffs argue for strict scrutiny because they claim infringement of their fundamental right to carry firearms in public. Appellants' Br. at 51-52. But where a law is upheld under the appropriate Second Amendment analysis, the question for equal protection purposes is whether the law has a rational basis, so long as some other suspect class is not involved. *See, e.g.*, *Kwong v. Bloomberg*, 723 F.3d 160, 170 n.19 (2d Cir. 2013); *Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 700 F.3d 185, 211-12 (5th Cir. 2012); *Hightower v. City of Boston*, 693 F.3d 61, 83 (1st Cir. 2012).

A law survives this level of review when any reasonably conceivable set of facts could provide a rational basis for it. *Baskin*, 766 F.3d at 654. Here, as discussed, *see supra* Section II.C, the rational basis for section 40(b) is provided by the evidence that the Illinois State Police does not have access to information to enable it to verify that residents of non-similar states are qualified to carry concealed firearms under the Concealed Carry Act. Far from an arbitrary law, Appellants' Br. at 56, section 40(b) is a measured response to a serious problem.

Likewise, the district court did not err in determining that Plaintiffs' privileges and immunities claim fails. *See* R. 1340-41 (SA58-59). Assuming that the

Privileges and Immunities Clause applies here, *see, e.g.*, *Peterson*, 707 F.3d at 1216, it is well-established that its protections are not absolute, *Supreme Ct. of New Hampshire v. Piper*, 470 U.S. 274, 285 (1985). Instead, a state law that discriminates against the citizens of another state will be upheld if there is a substantial reason for the difference in treatment and the discrimination against nonresidents bears a substantial relationship to the state's objective. *Id*.

Section 40(b) satisfies this test. For starters, any difference in treatment arising out of section 40(b) stems from the fact that Illinois cannot verify and monitor the information necessary to establish that nonresidents are qualified for a concealed carry license under the same criteria as Illinois residents. Additionally, section 40(b) bears a substantial relationship to the State's important goal of ensuring that only qualified individuals carry firearms in public. For the reasons discussed, *see supra* Section II.C, if a state does have substantially similar eligibility and reporting requirements, the Illinois State Police can be reasonably certain that the individual applicant would be eligible, and maintain eligibility, under Illinois law.

Plaintiffs respond that section 40(b) fails this test because there "is no 'substantial state interest' in refusing to allow people to apply for a [concealed carry license], and whatever 'evil' the Defendants are attempting to prevent, the Plaintiffs (and other qualified non-residents) are not the problem." Appellants' Br. at 61. That misses the point. As explained, Illinois has a substantial and important interest in ensuring that all people who carry concealed firearms in the State are qualified to do so. Therefore, Illinois unquestionably has the authority to impose eligibility

requirements on nonresident concealed carry license applicants and to verify eligibility for such applicants in a manner comparable to what it uses for Illinois residents.

Finally, Plaintiffs are incorrect that section 40(b) violates their procedural due process rights. *See id.* at 62. To start, Plaintiffs are nonresidents whose qualifications for a concealed carry license cannot be confirmed, and thus they do not have a legitimate claim of entitlement that is subject to protection by procedural due process. Furthermore, there is no additional process that Illinois could offer. *See Mathews v. Eldridge*, 424 U.S. 319, 334 (1976). Even if the State could provide a hearing to determine whether a nonresident was qualified under Illinois law, it still would not be able to monitor his continued eligibility. That is why Illinois must rely on similar state regimes; no other method is practicable.

CONCLUSION

For these reasons, Defendants-Appellees Lisa Madigan, Jessica Trame, and Leo P. Schmitz request that this Court affirm the judgment of the district court.

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CERTIFICATE OF COMPLIANCE WITH WORD LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

I hereby certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and Circuit Rule 32 and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word 2013, in 12-point Century Schoolbook BT font, and complies with Federal Rule of Appellate Procedure 32(a)(7)(A) in that the brief is 13,968 words.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 9, 2018, I electronically filed the foregoing Brief of Defendants-Appellees with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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