

# **Exhibit A**

**ORDINANCE NO. 22 – 099**

**AN ORDINANCE  
ADDING CHAPTER 19  
(REGULATION OF THE COMMERCIAL SALE OF ASSAULT RIFLES) OF TITLE 3  
(BUSINESS AND LICENSE REGULATIONS) OF  
THE NAPERVILLE MUNICIPAL CODE**

**RECITALS**

1. **WHEREAS**, on July 4, 2022, 7 people were murdered, and 46 others were injured during a mass shooting that took place during an Independence Day parade in Highland Park, Illinois. The shooter used an AR-15-style semi-automatic rifle with three 30-round magazines to fire 83 shots into the parade crowd from the rooftop of a local store. A 22-year-old suspect has been arrested and charged.
2. **WHEREAS**, on May 24, 2022, 21 people were murdered (19 children and 2 staff members), and 18 others were injured during a mass shooting that took place at Robb Elementary School in Uvalde, Texas. The 18-year-old shooter used an AR-15-style semi-automatic rifle.
3. **WHEREAS**, on May 14, 2022, 10 people were murdered, and 3 others were injured during a mass shooting that took place in a grocery store in Buffalo, New York. The shooter used an AR-15-style semi-automatic rifle. An 18-year-old suspect has been arrested and charged.
4. **WHEREAS**, on August 3, 2019, 23 people were murdered, and 23 others were injured during a mass shooting at a Walmart store in El Paso, Texas. The shooter used an AK-47-style semi-automatic rifle. A 21-year-old suspect has been arrested and charged.
5. **WHEREAS**, on October 27, 2018, 11 people were murdered, and 6 others were injured during a mass shooting that took place at the Tree of Life synagogue in Pittsburgh, Pennsylvania. The shooter used an AR-15-style semi-automatic rifle. A 46-year-old suspect has been arrested and charged.
6. **WHEREAS**, on February 14, 2018, 17 people were murdered (14 students and 3 staff members), and 17 others were injured during a mass shooting that took place at Stoneman Douglas High School in Parkland, Florida. The 19-year-old shooter used an AR-15-style semi-automatic rifle.
7. **WHEREAS**, on November 5, 2017, 26 people were murdered, and 22 others were injured during a mass shooting that took place at the Sutherland Springs church in Sutherland Springs, Texas. The 26-year-old shooter used an AR-15-style semi-automatic rifle.

8. **WHEREAS**, on October 1, 2017, 60 people were murdered, and approximately 867 were injured during a mass shooting that took place at a music festival in Las Vegas, Nevada. The 64-year-old shooter used 24 firearms, including AR-15-style and AR-10-style semi-automatic rifles to fire more than 1,000 bullets.
9. **WHEREAS**, on June 12, 2016, 49 people were murdered, and 58 others were injured during a mass shooting that took place at the Pulse Nightclub in Orlando, Florida. The 29-year-old shooter used an MCX-style semi-automatic rifle.
10. **WHEREAS**, on December 2, 2015, 14 people were murdered, and 24 others were injured during a mass shooting that took place at the Inland Regional Center in San Bernardino, California. The 28-year-old and 29-year-old shooters used AR-15-style semi-automatic rifles.
11. **WHEREAS**, on December 14, 2012, 27 people were murdered (20 children and 6 staff members), and 2 others were injured during a mass shooting that took place at the Sandy Hook Elementary School in Newtown, Connecticut. The 20-year-old shooter used an AR-15-style semi-automatic rifle.
12. **WHEREAS**, there have been many other mass shootings during the last decade, and it has become an unacceptable fact of life that no municipality is exempt from the reality that its citizens are at risk.
13. **WHEREAS**, commonplace in mass shootings are the use of lawfully purchased assault rifles. The U.S. Department of Justice describes assault weapons as "semiautomatic firearms with a large magazine of ammunition that were designed and configured for rapid fire and combat use." Assault rifles are exceptionally deadly firearms and have immense killing power.
14. **WHEREAS**, like many of the municipalities that have encountered mass shootings involving assault rifles, Naperville has a vibrant commercial area, public parks, restaurants, movie theaters, music venues, parades, elementary, middle and high schools both public and private, colleges and universities, houses of worship of many denominations, and other places where members of the public gather with an expectation of safety.
15. **WHEREAS**, the Second Amendment to the United States Constitution provides that: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed". However, no fundamental right is set forth in the United States Constitution for persons or entities to engage in the commercial sale of assault rifles.
16. **WHEREAS**, in 1994, the U.S. Congress passed the Federal Assault Weapons Ban ("AWB"), a United States federal law which prohibited the possession and sale of assault weapons and large-capacity magazines (limiting magazines to ten rounds). Several constitutional challenges were filed against provisions of the ban, but all

were rejected by the courts. The AWB expired in 2004, in accordance with its sunset provision, and attempts to renew or replace the AWB have been unsuccessful.

17. **WHEREAS**, currently, seven states and Washington, D.C. prohibit assault weapons. Federal appellate courts have decided four cases concerning the Second Amendment and assault weapons, each time reaching the same conclusion that assault weapon bans are constitutional (the D.C. Circuit upheld the District of Columbia's ban in 2011, the Second Circuit upheld New York and Connecticut laws in 2015, the Seventh Circuit upheld Highland Park's local ordinance in 2015, and the Fourth Circuit upheld Maryland's ban in 2017).

18. **WHEREAS**, assault rifles did not exist when the United States Congress ratified the Second Amendment in 1791. Civilian-owned assault rifles were rare prior to 2004. The proliferation of civilian-owned assault rifles began within only the last 18 of the 231 years since the ratification of the Second Amendment. That recency of assault rifles combined with the recent proliferation of mass shootings and the common use of assault rifles in said mass shootings indicates that assault rifles are uncommon and unacceptably dangerous.

19. **WHEREAS**, the Illinois legislature has limited the ability of public bodies to enact laws to protect the public from assault weapons that are used in mass shootings that have devastated many communities and countless individuals.

20. **WHEREAS**, in 2013, the Illinois General Assembly enacted legislation amending the Firearm Owners Identification Card Act ("FOID Act"). As part of the 2013 amendment of the FOID Act, the state legislature granted municipalities only ten (10) calendar days to enact local ordinances regulating the possession or ownership of assault weapons.

21. **WHEREAS**, if a municipality could not, or did not, pass a local ordinance within the ten-day window, the legislature provided that a municipality could not thereafter pass an ordinance pertaining to the possession or ownership of assault weapons:

Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly. [430 ILCS 65/13.1(c)]

23. **WHEREAS**, the City of Naperville did not pass an assault weapon ordinance regulating the possession or ownership of assault weapons within the ten days allotted by the state legislature.

**24. WHEREAS**, the City of Naperville is a home rule unit of local government under the laws and Constitution of the State of Illinois.

**25. WHEREAS**, under the Constitution of the State of Illinois, home rule units of government have broad authority to pass ordinances and promulgate rules and regulations that protect the public health, safety, and welfare of their residents unless the state legislature specifically states that state legislation preempts home rule authority.

**26. WHEREAS**, the 2013 FOID Act preempts home rule municipalities relative to ***regulation of the possession or ownership*** of assault weapons in a manner that is inconsistent with that Act. However, the FOID Act does not preempt home rule municipalities from regulating the Commercial Sale of Assault Rifles within their jurisdiction. Therefore, the City retains its broad home rule authority to legislate with respect to commercial sales.

**27. WHEREAS**, in an effort to protect the public health, safety, and welfare, the City of Naperville has a clear and compelling interest in exercising its home rule authority as set forth herein.

**NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NAPERVILLE, DUPAGE AND WILL COUNTIES, ILLINOIS, in exercise of its home rule authority that:**

**SECTION 1: Recitals incorporated.** The foregoing Recitals are hereby incorporated in this Section 1 as though fully set forth herein.

**SECTION 2: Amendment adding Title 3, Chapter 19 to the Naperville Municipal Code.** Title 3 (Business and License Regulations) of the Naperville Municipal Code is hereby amended by adding the Chapter and language as follows:

**TITLE 3 -BUSINESS AND LICENSE REGULATIONS**

**CHAPTER 19 – REGULATION OF THE COMMERCIAL SALE OF ASSAULT RIFLES**

**SECTION:**

**3-19-1: - DEFINITIONS**

The following words and phrases shall, for the purposes of this Chapter, have the meaning ascribed to them by this Section, as follows:

<p>ASSAULT RIFLE:</p>	<p>Means any of the following, regardless of country of manufacture or caliber of ammunition accepted:</p> <p>(1) A semiautomatic rifle that has a magazine that is not a fixed magazine and has any of the following:</p> <ul style="list-style-type: none"> <li>(A) A pistol grip.</li> <li>(B) A forward grip.</li> <li>(C) A folding, telescoping, or detachable stock, or is otherwise foldable or adjustable in a manner that operates to reduce the length, size, or any other dimension, or otherwise enhances the concealability, of the weapon.</li> <li>(D) A grenade launcher.</li> <li>(E) A barrel shroud.</li> <li>(F) A threaded barrel.</li> </ul> <p>(2) A semiautomatic rifle that has a fixed magazine with the capacity to accept more than 10 rounds, except for an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.</p> <p>(3) Any part, combination of parts, component, device, attachment, or accessory that is designed or functions to accelerate the rate of fire of a semiautomatic rifle but not convert the semiautomatic rifle into a machinegun.</p> <p>(4) All of the following rifles, copies, duplicates, variants, or altered facsimiles with the capability of any such weapon thereof:</p> <ul style="list-style-type: none"> <li>(A) All AK types, including, but not limited to, the following: <ul style="list-style-type: none"> <li>(i) AK, AK47, AK47S, AK-74, AKM, AKS, ARM, MAK90, MISR, NHM90, NHM91, Rock River Arms LAR-47, SA85, SA93, Vector Arms AK-47, VEPR, WASR-10, and WUM.</li> <li>(ii) IZHMASH Saiga AK.</li> <li>(iii) MAADI AK47 and ARM.</li> <li>(iv) Norinco 56S, 56S2, 84S, and 86S.</li> <li>(v) Poly Technologies AK47 and AKS.</li> <li>(vi) SKS with a detachable magazine.</li> </ul> </li> <li>(B) All AR types, including, but not limited to, the following: <ul style="list-style-type: none"> <li>(i) AR-10.</li> <li>(ii) AR-15.</li> <li>(iii) Alexander Arms Overmatch Plus 16.</li> <li>(iv) Armalite M15 22LR Carbine.</li> <li>(v) Armalite M15-T.</li> <li>(vi) Barrett REC7.</li> <li>(vii) Beretta AR-70.</li> <li>(viii) Black Rain Ordnance Recon Scout.</li> <li>(ix) Bushmaster ACR.</li> </ul> </li> </ul>
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	<ul style="list-style-type: none"> <li>(x) Bushmaster Carbon 15.</li> <li>(xi) Bushmaster MOE series.</li> <li>(xii) Bushmaster XM15.</li> <li>(xiii) Chiappa Firearms MFour rifles.</li> <li>(xiv) Colt Match Target rifles.</li> <li>(xv) CORE Rifle Systems CORE15 rifles.</li> <li>(xvi) Daniel Defense M4A1 rifles.</li> <li>(xvii) Devil Dog Arms 15 Series rifles.</li> <li>(xviii) Diamondback DB15 rifles.</li> <li>(xix) DoubleStar AR rifles.</li> <li>(xx) DPMS Tactical rifles.</li> <li>(xxi) DSA Inc. ZM-4 Carbine.</li> <li>(xxii) Heckler &amp; Koch MR556.</li> <li>(xxiii) High Standard HSA-15 rifles.</li> <li>(xxiv) Jesse James Nomad AR-15 rifle.</li> <li>(xxv) Knight's Armament SR-15.</li> <li>(xxvi) Lancer L15 rifles.</li> <li>(xxvii) MGI Hydra Series rifles.</li> <li>(xxviii) Mossberg MMR Tactical rifles.</li> <li>(xxix) Noreen Firearms BN 36 rifle.</li> <li>(xxx) Olympic Arms.</li> <li>(xxxi) POF USA P415.</li> <li>(xxxii) Precision Firearms AR rifles.</li> <li>(xxxiii) Remington R-15 rifles.</li> <li>(xxxiv) Rhino Arms AR rifles.</li> <li>(xxxv) Rock River Arms LAR-15.</li> <li>(xxxvi) Sig Sauer SIG516 rifles and MCX rifles.</li> <li>(xxxvii) Smith &amp; Wesson M&amp;P15 rifles.</li> <li>(xxxviii) Stag Arms AR rifles.</li> <li>(xxxix) Sturm, Ruger &amp; Co. SR556 and AR-556 rifles.</li> <li>(xl) Uselton Arms Air-Lite M-4 rifles.</li> <li>(xli) Windham Weaponry AR rifles.</li> <li>(xlii) WMD Guns Big Beast.</li> <li>(xliii) Yankee Hill Machine Company, Inc. YHM-15 rifles.</li> <li>(C) Barrett M107A1.</li> <li>(D) Barrett M82A1.</li> <li>(E) Beretta CX4 Storm.</li> <li>(F) Calico Liberty Series.</li> <li>(G) CETME Sporter.</li> <li>(H) Daewoo K-1, K-2, Max 1, Max 2, AR 100, and AR 110C.</li> <li>(I) Fabrique Nationale/FN Herstal FAL, LAR, 22 FNC, 308 Match, L1A1 Sporter, PS90, SCAR, and FS2000.</li> <li>(J) Feather Industries AT-9.</li> <li>(K) Galil Model AR and Model ARM.</li> <li>(L) Hi-Point Carbine.</li> <li>(M) HK-91, HK-93, HK-94, HK-PSG-1, and HK USC.</li> </ul>
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	<p>(N) IWI TAVOR, Galil ACE rifle.  (O) Kel-Tec Sub-2000, SU-16, and RFB.  (P) SIG AMT, SIG PE-57, Sig Sauer SG 550, Sig Sauer SG 551, and SIG MCX.  (Q) Springfield Armory SAR-48.  (R) Steyr AUG.  (S) Sturm, Ruger &amp; Co. Mini-14 Tactical Rifle M-14/20CF.  (T) All Thompson rifles, including, but not limited to, the following:  (i) Thompson M1SB.  (ii) Thompson T1100D.  (iii) Thompson T150D.  (iv) Thompson T1B.  (v) Thompson T1B100D.  (vi) Thompson T1B50D.  (vii) Thompson T1BSB.  (viii) Thompson T1-C.  (ix) Thompson T1D.  (x) Thompson T1SB.  (xi) Thompson T5.  (xii) Thompson T5100D.  (xiii) Thompson TM1.  (xiv) Thompson TM1C.  (U) UMAREX UZI rifle.  (V) UZI Mini Carbine, UZI Model A Carbine, and UZI Model B Carbine.  (W) Valmet M62S, M71S, and M78.  (X) Vector Arms UZI Type.  (Y) Weaver Arms Nighthawk.  (Z) Wilkinson Arms Linda Carbine.</p> <p>(8) All belt-fed semiautomatic firearms, including TNW M2HB and FN M2495.</p> <p>(9) Any combination of parts from which a firearm described in subparagraphs (1) through (8) can be assembled.</p> <p>(10) The frame or receiver of a rifle described in subparagraphs (1) through (9).</p> <p>Assault Rifles as defined herein do not include firearms that: (i) are manually operated by a bolt, pump, lever or slide action; or (ii) have been rendered permanently inoperable.</p>
<p>BARREL SHROUD:</p>	<p>A shroud that is attached to, or partially or completely encircles, the barrel of a firearm so that the shroud protects the user of the firearm from heat generated by the barrel but excluding a slide that encloses the barrel.</p>



COMMERCIAL SALE OF ASSAULT RIFLES:	The sale or offer for sale of an Assault Rifle when the sale requires the seller to have a valid certificate of license issued pursuant to the Illinois Firearm Dealer License Certification Act (430 ILCS 68/5-1 et seq.).
DETACHABLE MAGAZINE:	An ammunition feeding device that can be removed from a firearm without disassembly of the firearm.
FIXED MAGAZINE:	An ammunition feeding device that is contained in and not removable from or permanently fixed to the firearm.
FOLDING, TELESCOPING, OR DETACHABLE STOCK:	A stock that folds, telescopes, detaches or otherwise operates to reduce the length, size, or any other dimension, or otherwise enhances the concealability, of a firearm.
FORWARD GRIP:	A grip located forward of the trigger that functions as a pistol grip.
LAW ENFORCEMENT OFFICER:	A person who can provide verification that they are currently employed by a local government agency, state government agency, or federal government agency as a sworn police officer or as a sworn federal law enforcement officer or agent.
PISTOL GRIP:	A grip, a thumbhole stock or Thordsen-type grip or stock, or any other characteristic that can function as a grip.
THREADED BARREL:	A feature or characteristic that is designed in such a manner to allow for the attachment of a device such as a firearm silencer or a flash suppressor.

**3-19-2: - PROHIBITION OF THE COMMERCIAL SALE OF ASSAULT RIFLES**

1. The Commercial Sale of Assault Rifles within the City is unlawful and is hereby prohibited.
2. The provisions of this Chapter shall not apply to the Commercial Sale of Assault Rifles to:
  - 2.1. Any federal, state, local law enforcement agency;

- 2.2. The United States Armed Forces or department or agency of the United States;
- 2.3. Illinois National Guard, or a department, agency, or political subdivision of a state; or
- 2.4. A Law Enforcement Officer.

### **3-19-3: - ENFORCEMENT**

Any person or entity who violates any of the provisions set forth or referenced in this Chapter shall be subject to the following:

1. A fine of one thousand dollars (\$1,000.00) for a first offense within a 12-month period, and a fine of two thousand five hundred dollars (\$2,500.00) for a second or subsequent offense within a 12-month period.
  - 1.1. Each day that a violation of this Chapter continues shall be considered a separate and distinct offense and a fine shall be assessed for each day a provision of this Chapter is found to have been violated. Notwithstanding the forgoing, the escalation of fines as set forth above shall not occur until a prior adjudication of a violation against the same person or entity has been entered.
2. Any violation of the provisions of this Chapter may be deemed a public nuisance and abated pursuant to all available remedies, including but not limited to injunctive relief. In addition to the penalties provided for in Section 3-19-3:1 above, the City shall be entitled to reimbursement for the cost of the City's reasonable attorney's fees and all costs and expenses incurred by the City to abate any entity operating as a public nuisance. Said attorney's fees and said costs and expenses shall be paid to the City within sixty (60) days of issuance of a bill therefor unless an alternate timeframe is agreed to in writing by the City Manager.

**SECTION 3: Savings clause.** If any provisions of this Ordinance or their application to any person or circumstance are held invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability thereof shall not affect any of the remaining provisions or application of this Ordinance which can be given effect without the invalid or unenforceable provisions or application. To achieve this purpose, the provisions of the Ordinance are declared to be severable.

**SECTION 4: Effective date and Pre-existing purchasers.** This Ordinance shall take effect on January 1, 2023, (the “Effective Date”), except as follows:

Any person that can demonstrate to the satisfaction of the City Attorney that the Commercial Sale of an Assault Rifle was completed prior to the Effective Date of January 1, 2023, which means that prior to January 1, 2023, the purchaser completed an application, passed a background check, and has a receipt or purchase order for said purchase, without regard to whether the purchaser has actual physical possession of the Assault Rifle, shall be considered a pre-existing purchaser. For said pre-existing purchaser, the delivery of physical possession of the Assault Rifle may be completed, even if such activity would otherwise be in violation of the new provisions of Chapter 19 (Regulation of the Commercial Sale of Assault Rifles) of Title 3 (Business and License Regulations). Notwithstanding the foregoing, if physical possession of the Assault Rifle will not occur until more than sixty (60) days following the Effective Date of this Ordinance, that person is not a pre-existing purchaser and said purchase shall constitute a violation of the provisions of this Chapter.

PASSED this 16<sup>th</sup> day of August 2022.

AYES: CHIRICO, GUSTIN, HOLZHAUER, KELLY, LEONG, SULLIVAN,  
TAYLOR, WHITE

NAYS: HINTERLONG

APPROVAL this 17<sup>th</sup> day of August 2022.

\_\_\_\_\_  
Steve Chirico

Mayor

ATTEST:

\_\_\_\_\_  
Grace Michalak  
Records Clerk

# **Exhibit B**

**Nonstock Corporation - Annual Report**

Entity Information			
Entity Name:	National Association for Gun Rights, Inc.	Entity Type:	Nonstock Corporation
Entity ID:	05376561	Formation Date:	03/29/2000
Jurisdiction:	VA		
Status:	Active		
Registered Agent Information			
RA Type:	Individual	RA Qualification:	Officer of the Corporation
Name:	DAVE A WARRINGTON	Registered Office Address:	101 WASHINGTON STREET, FALMOUTH, VA, 22405 - 0000, USA
Locality:	STAFFORD COUNTY		
Principal Office Address			
Address: David Warrington, P O BOX 7002, FREDERICKSBURG, VA, 22404 - 0000, USA			
Principal Information			
<input type="checkbox"/> <b>No Officers:</b> If the corporation does not have officers because an organizational meeting has not been held.			
<input type="checkbox"/> <b>No Directors:</b> If the corporation does not have directors because (i) initial directors were not named in the articles of incorporation and an organizational meeting of the corporation has not been held or (ii) the board of directors has been eliminated by a written agreement signed by all of the shareholders, or by the adoption of provision in the articles of incorporation or bylaws that was approved by all of the shareholders.			
Title	Director	Name	Address
President	Yes	DUDLEY BROWN	2300 W Eisenhower Blvd, Loveland, CO, 80537 - 0000, USA
Secretary	Yes	CHRISTINA JEFFREY	801 PALMETTO STREET, SPARTANBURG, SC, 29302 - 0000, USA
	Yes	MICHAEL I ROTHFIELD	101 WASHINGTON STREET, FALMOUTH, VA, 22405 - 0000, USA
Treasurer	Yes	DAVID A WARRINGTON	PO BOX 230606, CENTREVILLE, VA, 20120 - 0000, USA
Signature Information			
Date Signed: 02/08/2022			
Printed Name	Signature	Title	
David A Warrington	David A Warrington	Treasurer	

# **Exhibit C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MICHAEL WHITE, and )  
ILLINOIS STATE RIFLE ASSOCIATION, )  
 )  
Plaintiff, )

v. )

ILLINOIS STATE POLICE, BRENDAN F. )  
KELLY, in his official capacity as Acting Director )  
of the Illinois State Police, JESSICA TRAME, )  
in her official capacity as Bureau Chief of the )  
Illinois State Police Firearms Services Bureau, )  
ILLINOIS CONCEALED CARRY LICENSING )  
REVIEW BOARD, JEREMY MARGOLIS, as Chair )  
of the Illinois Concealed Carry Licensing Review )  
Board, EDWARD BOBRICK, STEPHEN )  
DINWIDDIE, JOSEPH DUFFY, JON JOHNSON, )  
JOSEPH VAUGHN and FRANK WRIGHT, )  
 )  
Defendants. )

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

COME NOW the Plaintiffs, MICHAEL WHITE, and ILLINOIS STATE RIFLE ASSOCIATION, by and through KNABE, KRONING & BEDELL, and LAW FIRM OF DAVID G. SIGALE, P.C., their attorneys, and for their Complaint for declaratory and injunctive relief against the Defendants, ILLINOIS STATE POLICE, BRENDAN F. KELLY, in his official capacity as Acting Director of the Illinois State Police, JESSICA TRAME, in her official capacity as Bureau Chief of the Illinois State Police Firearms Services Bureau, ILLINOIS CONCEALED CARRY LICENSING REVIEW BOARD, JEREMY MARGOLIS, as Chair of the Illinois Concealed Carry Licensing Review Board, EDWARD BOBRICK, STEPHEN

DINWIDDIE, JOSEPH DUFFY, JON JOHNSON, JOSEPH VAUGHN and FRANK WRIGHT, as prayed for below, state as follows:

### INTRODUCTION

The right to the public carry of firearms is fundamental, as much so as the possession of firearms inside one's home. In response to the Seventh Circuit's decision in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), Illinois became the last State in America to allow the public concealed carry of firearms for self-defense purposes. However, the laws governing the licensing of concealed carry in Illinois have resulted in a system that, for some, result in a permanent denial of that right. This is due to a revolving door application process that forever penalizes past transgressions, takes as gospel unproven allegations, and denies the applicant a fair opportunity to investigate and refute the State's claims.

Plaintiff White has been battling this system since 2013. Though not a perfect individual, White has met all requirements for both an Illinois FOID card and a concealed carry license, except for being improperly labeled a "danger" by the State, a label which, given the language and implementation of the Illinois Firearms Concealed Carry Act, White will never be able to shake.

Plaintiff White is one such individual unlawfully aggrieved by the system, but there are many.



## JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201 and 2202, and 42 U.S.C. §1983, in that this action seeks to redress the deprivation, under color of the laws, statutes, ordinances, regulations, customs, and usages of the Defendants as they execute, administer and enforce the complained-of laws, of the rights, privileges or immunities secured by the United States Constitution and by Acts of Congress.

8. Venue lies in this Court pursuant to 28 U.S.C. §1391, because the events and omissions giving rise to this action are harming Plaintiff in this District.

## PARTIES

### Plaintiffs

9. Michael White (“White”) is an individual 43 years of age who resides in the City of Chicago, County of Cook, in the State of Illinois. White is married and has two children, now adults, who he has faithfully supported. White obtained a General Equivalency Degree in 2001 and, since then, he has been gainfully and essentially continuously employed.

10. White applied for, and has been denied, an Illinois concealed carry license after his application was routed to the Illinois Concealed Carry Licensing Review Board.

11. White would possess and carry a loaded and functional concealed handgun in public for self-defense, but refrains from doing so because he fears

prosecution due to the prohibition on carrying a concealed firearm in public for self-defense without a CCL.

12. ISRA is a non-profit membership organization incorporated under the laws of Illinois with its principal place of business in Chatsworth, Illinois. ISRA has over 17,000 members and supporters in Illinois, and many members outside the State of Illinois. The purposes of ISRA include securing the Constitutional right to privately own and possess firearms within Illinois, through education, outreach, and litigation. ISRA brings this action on behalf of itself and its members.

13. ISRA has members who have applied for, and been denied, Illinois concealed carry licenses after their applications were routed to the Illinois Concealed Carry Licensing Review Board.

14. Members of ISRA who are Illinois residents, and who possess FOID cards, and who have applied for an Illinois concealed carry license but were rejected by the Illinois Concealed Carry Licensing Review Board, would possess and carry loaded and functional concealed handguns in public for self-defense, but refrain from doing so because they fear prosecution due to the prohibition on carrying a concealed firearm in public for self-defense without a CCL.

### **Defendants**

15. The Department of Illinois State Police (“ISP”) is a department of the Executive Branch of the State of Illinois created by statute, 20 ILCS 2605/2605-1, *et seq.* Under the Illinois Firearm Concealed Carry Act, 430 ILCS 66/1, *et seq.* (“FCCA”), the ISP is charged with administering the system for considering and for

granting or denying individual applications for licenses to carry concealed handguns under the FCCA.

16. Brendan F. Kelly is the Acting Director of the ISP and is sued in his official capacity pursuant to the principles set forth in *Ex Parte Young*, 209 U.S. 123 (1908).

17. The Firearm Services Bureau (“FSB”) is a division of the ISP established to administer programs relating firearms delegated to the ISP, such as under the FCCA. Having the power to make decision in these programs, the FSB is an administrative agency of the State of Illinois as defined by 735 ILCS 5/3-101.

18. Jessica Trame is the Bureau Chief of the FSB. She is the ISP employee directly responsible for the administration of the FCCA, and is the ISP employee directly responsible for the denial of White’s CCL application and his rights. She is sued in her official capacity pursuant to the principles set forth in *Ex Parte Young*, 209 U.S. 123 (1908).

19. The Illinois Concealed Carry Licensing Review Board (the “Review Board”), is an administrative agency created under the FCCA, 430 ILCS 66/20, which is charged with hearing and determining objections filed by law enforcement agencies to the applications of individuals for licenses to carry a concealed handgun pursuant to § 66/30 of the FCCA. In relevant part, the CCLRB reviewed White’s application for a CCL and unjustly denied same.

20. Jeremy Margolis is the Chair of the Review Board, and Edward Bobrick, Stephen Dinwiddie, Joseph Duffy, Jon Johnson, Joseph Vaughn and Frank

Wright are members of the Review Board. All of the above-named Defendants participated in the decision to wrongfully deny White a CCL and violate his rights, and are sued in their official capacity only, pursuant to the principles set forth in *Ex Parte Young*, 209 U.S. 123 (1908).

### **FACTS COMMON TO ALL COUNTS**

#### **Concealed Carry in Illinois:**

21. It is the law in Illinois that a citizen may bears arms for protection outside the home. In response to the decision of the United States Court of Appeals for the Seventh Circuit in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), finding the Second Amendment to the United States Constitution secured the right to carry a concealed firearm for protection outside the home, the Illinois General Assembly enacted the FCCA.

22. White wishes to obtain a CCL in order to be able to obtain a firearm for self-defense, pursuant to *District of Columbia v. Heller*, 128 U.S. 2783 (2008), which is applicable to the State of Illinois pursuant to *McDonald v. City of Chicago*, 130 S.Ct. 3020 (2010), and *Moore*.

23. The FCCA established a statutory framework that sets forth the administrative, training, and individual eligibility requirements needed to obtain a license to carry a concealed firearm (hereinafter “License”). An applicant must pay a License application fee and hold a valid Firearm Owners Identification Card (“FOID”) issued (also for a fee) by the ISP. 430 ILCS 66/5. An applicant for a license must then take a 16 hour course from certified instructor covering firearm

safety, the provisions of the FCCA and a practical proficiency test that involves live fire exercises. Instructors charge for these courses, with costs ranging from \$175.00-\$350.00.

24. The FCCA requires the ISP to conduct a background check on each applicant. 430 ILCS 66/35. The ISP must search, *inter alia*, the National Instant Criminal Background Check (“NICS”); all available state and local criminal history record information files, including records of juvenile adjudications; records relating to domestic violence orders; mental health records; and “all other available records of a federal, state or local agency or other 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.”

25. With information the ISP compiled from the background check, § 66/25(3) of the FCCA provides (emphasis added):

The [ISP] **shall issue** a license to an applicant completing an application in accordance with Section 30 if this person:

- (3) has not been convicted or found guilty in this State, or any other state, of:
  - (A) a misdemeanor involving the use or threat of physical force or violence to any person within the 5 years preceding the date of the license application<sup>1</sup>; or
  - (B) 2 or more violations related to driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or any

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<sup>1</sup> For completeness, it is noted that conviction of a felony would disqualify a person not only from a CCL but also an FOID, thus prohibiting even the possession of a firearm. 430 ILCS 65/8(c).

combination thereof, within the 5 years preceding the date of the license application.

- (4) is not the subject of a pending arrest warrant, prosecution, or proceeding for an offense or action that could lead to disqualification to own or possess a firearm.

26. In apparent contradiction to the “shall issue” mandate of § 66/25(3) of the FCCA, § 66/15(b) of the FCCA directs the ISP to object to an application under the following conditions:

- (b) If an applicant has 5 or more arrests for any reason that have been entered into the Criminal History Records Information (CHRI) System, within 7 years preceding the date of application for a license, or has 3 or more arrests within the 7 years preceding that date of application for a license for any combination of gang-related offenses.

27. Any law enforcement agency may also object to the application under § 66/15 of the FCCA “based upon a reasonable suspicion that the applicant is a danger to himself or herself or other, or a threat to public safety.”

28. If either the ISP or a law enforcement agency objects to an application, the FCCA created the Concealed Carry Licensing Review Board (“Review Board”) “to consider any objection to an applicant’s eligibility to obtain a license under [the Act] submitted by a law enforcement agency or the Department under Section 15 of [the Act].” FCCA, § 66/20.

29. The FCCA does not define or provide any guidance to the Review Board (or law enforcement agencies) concerning what conduct or applicant characteristics make the applicant “a danger to himself or herself or other, or a threat to public safety.”

White's first application:

30. On or about May 1, 2014, White submitted an application for a license to carry a concealed firearm, pursuant to and in accordance with § 66/30 of the FCCA. At that time, White had paid his fees, possessed a valid FOID and successfully completed the required classes. In addition, White was not disqualified from obtaining a License under § 66/25(3) of the FCCA.

31. However, two law enforcement agencies, the Chicago Police Department (“CPD”) and the Cook County Sheriff, objected to his application based on prior arrests, some dating back nearly 20 years. The Review Board, by final order dated August 20, 2015, denied the application, stating:

After reviewing the evidence received, the CCLRB determined, by a preponderance of the evidence, that the above referenced Applicant is a danger to him/herself, is a danger to others, or poses a threat to public safety. Therefore, the objection is sustained and the Illinois State Police is directed to deny his/her application for a concealed carry license pursuant to 10(f) of the FCCA.

32. Disagreeing with this finding, he appealed this decision to the Circuit Court of Cook County, Illinois, which affirmed the Board’s decision. He then appealed to the Appellate Court of Illinois, First District, which also affirmed Board’s decision. The Illinois Supreme Court denied his Petition for Leave to Appeal on September 27, 2017.

White's second application:

33. On or about August 19, 2017, White reapplied for a License. During the three year time period between his initial application and this second application he was not arrested. Accordingly, he truthfully answered “No” to the

“Criminal History Questions” and made the affirmation required in § 66/30 of the FCCA.

34. At the time of this reapplication, he was still in lawful possession of a Firearm Owners Identification Card (“FOID”) issued by the ISP pursuant to 430 ILCS 65/5; he has had his FOID card for approximately 20 years. He is not otherwise prohibited, under either state or Federal law, from possessing or receiving a firearm.

35. At the time of his reapplication, he had not been convicted or found guilty in this state, or any other state, of:

- a. a misdemeanor involving the use or threat of physical force or violence to any person within the 5 years; or
- b. two or more violations related to driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or any combination thereof, within the 5 preceding years.

36. At the time of White’s reapplication, he was not the subject of a pending arrest warrant, prosecution, or proceeding for an offense or action that could lead to disqualification to own or possess a firearm.

37. At the time of White’s reapplication, he had not been in residential or court-ordered treatment for alcoholism, alcohol detoxification, or drug treatment within the immediately preceding 5 years.

38. At the time of White’s reapplication, he had successfully completed firearms training and all educational components required under § 66/75 of the FCCA.



39. With White's reapplication, he paid the fee required under the FCCA and the Rules promulgated thereunder.

40. At the time of White's reapplication, he had not violated any of the statutory preconditions of § 66/25 of the FCCA that would have disqualified him from obtaining a concealed carry license.

41. At the time of White's reapplication, he had not been arrested 5 or more times for any reasons in the 7 years prior to his application. *In fact, White had not been arrested at any time during the five years prior to his reapplication.*

42. At the time of White's reapplication, he had not been arrested 3 or more times for any combination of "gang-related offenses" (as defined in § 66/10 of the FCCA) in the 7 years prior to his application.

43. At the time of White's reapplication, he satisfied all requirements set forth in § 66/25 of the FCCA, which therefore mandated that the ISP "shall issue" him a license.

44. By letter dated September 21, 2017, the ISP notified White that it had received "an objection to [his] eligibility from a law enforcement agency." Then on October 25, 2017, White received a communication through the ISP website "portal" the ISP uses to communicate with License applicants. This communication advised White that the Chicago Police Department ("CPD") had objected stating:

CHICAGO POLICE DEPARTMENT: Officer Eric Gonzalez on behalf of Superintendent Eddie Johnson of the Chicago Police Department objects to the issuance of a concealed carry license to the applicant, Michael W. White, based on a reasonable suspicion that the applicant is a danger to himself or others or a threat to public safety. In support of the objection, be advised

that the Justice Police Department reports reflect the following: 12-00001 reckless discharge of a firearm, in that on 01 JAN 2012, the applicant discharged multiple rounds from a gun into the air; the offender was arrested. The applicant is identified in the Chicago Police gang database as a member of the Latin Soul street gang. The criminal activities of street gangs pose a substantial threat to the safety and quality of life of the residents of Chicago. [] [sic] The Board is also requesting the following information from you: Information regarding the factual circumstances of your arrest(s) by the Chicago Police Department on or about the indicated date(s): 8/10/1998; 1/9/1996; 4/7/1995; 3/6/1994; 3/1/1994; 10/3/1993; 8/3/1993.

A copy of this communication is attached hereto as 1 and by this reference is incorporated herein.

45. Notably missing from the CPD's objection was the fact that White demanded trial on the "reckless discharge of a firearm" and was found not guilty after trial. White brought this to the Review Board's attention along with providing the information requested for the arrests dating back to 1993, in his affidavit attached as part of his "Applicant's Submission in Response to Objections (the "Submission").<sup>2</sup> A copy of the Submission is attached hereto as Exhibit 2 and by this reference is incorporated herein.

46. In addition to addressing the "reckless discharge" and arrests, White flatly denied in his affidavit that he is or was ever a member of any gang. Moreover, in connection with White's first application, his counsel requested, through FOIA requests, all information from the CPD and Sheriff of Cook County that supported their accusations that White was a member of the Latin Souls gang.

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<sup>2</sup> White also advised the Review Board in his Submission that he was informed and believed that another individual had actually been convicted of that reckless discharge.

Neither the CPD nor the Sheriff provided any factual basis other than a database printout. White raised this fact, or indeed the lack of supporting facts, to the Board in his Submission. A copy of the CPD's and Sheriff's FOIA responses are attached as Exhibits 2 and 3 to his Submission.

47. By letter dated November 17, 2017, the ISP notified White that his application was denied. The communication did not provide any explanation or basis for the decision other than the Review Board "determined that your are a danger to yourself, are a danger to others, or pose a threat to public safety." The Review Board gave no reasoning or factual substantiation for this determination. A copy of this communication is attached hereto as Exhibit 3 and by this reference is incorporated herein.

48. White is a law-abiding FOID cardholder, and any determination that White is unfit to obtain a CCL is arbitrary and capricious, not based on any competent or sufficient evidence.

49. White is not a danger to himself or the community, and granting the relief requested herein would not be contrary to the public interest.

### **CONSTITUTIONAL PROVISIONS**

50. The Second Amendment provides:

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

U.S. Const. amend. II.

51. The Second Amendment “is fully applicable against the States.” *McDonald v. City of Chicago*, 561 U.S. 3025, 130 S. Ct. 3020, 3026 (2010).

52. The constitutional right to carry firearms in public for self-defense and defense of others is as fundamental as the right to possess firearms for those purposes inside one’s residence. *Moore v. Madigan*, 702 F.3d 933, 941 (7th Cir. 2012).

**COUNT I: THE FCCA VIOLATES WHITE’S RIGHT TO BEAR ARMS  
U.S. CONST. AMENDS. II AND XIV, 42 U.S.C. §1983**

53. Plaintiffs incorporate and reallege Paragraphs 1 through 52, inclusive, as if fully restated herein.

54. White has twice been denied his constitutionally guaranteed right to bear arms for self defense. The conclusory basis for this denial resides in the cryptic restatement of the FCCA’s language, that White *is* “a danger to him/herself, is a danger to others, or poses a threat to public safety.”

55. The Board twice reached this conclusion with no evidence that White *is* “a danger to him/herself, is a danger to others, or poses a threat to public safety.” Rather, the Board focused on *arrests*, not even convictions, *that occurred over 20 years ago*. White challenged the only “recent” event, a charge of unlawful discharge of a firearm, demanding trial on the allegation; he was found not guilty of the offense. Further, White is informed and believes that another man was convicted of unlawfully discharging a gun at the New Year’s Eve party at which White was arrested.

56. The FCCA allows the Board to reach this result because it provides no guidance as to either the meaning, or particular application, of the phrase “is a danger to him/herself, is a danger to others, or poses a threat to public safety.” In fact, the FCCA vests the Board with unbridled discretion in deciding what this phrase means and to whom it may be applied.

57. The FCCA also allows the Board to make this finding by using the most lax of evidentiary standards; § 66/20 of the FCCA provides that the fundamental right to armed self defense may be taken from an individual “if the Board determines *by a preponderance* of the evidence that the applicant poses a danger to himself or herself, or others, or is a threat to public safety.”

58. A finding that a person “poses a threat to himself, herself or others or is a threat to the public safety” works as a “blanket prohibition” to that person’s right to carry a firearm to protect himself in public. The claim that the Board may consider any *arrest* regardless of when it occurred, works not only blanket prohibition but also a perpetual prohibition, indeed a *lifetime ban*, to that person’s right to carry a firearm to protect himself in public.

59. White allowed several years to pass before he reapplied for his CCL. This period of time made no difference to the Board; and, given the utter lack of guidance and objective criteria governing how the Board is to consider when an applicant *is* “a danger to him/herself, is a danger to others, or poses a threat to public safety” White cannot know what he must do, or how long he must wait, to avail himself of his constitutionally secured right to bear arms for self defense.

60. It is also clear that White's inability to prove a negative – that he is *not* a gang member – affected his ability to exercise his right to bear arms for self defense. Despite requesting evidence from the CPD and Cook County Sheriff that substantiated, or even provided the basis of suspicion, that he was a gang member, the objecting law enforcement agencies gave him nothing more than a computer printout with his name on it.

61. In the following ways, both facially and as-applied, the construction, operation and implementation of the FCCA unjustifiably burdens White's right to bear arms secured by the Second Amendment to the United States Constitution:

- a. the FCCA fails to set objective standards under which an administrative agency may evaluate an applicant for a license to bears arms for self defense;
- b. the FCCA vests unbridled discretion in determining who may exercise the right to bear arms for self defense;
- c. the FCCA allows the administrative agency to use the preponderance of the evidence standard in evaluating whether a person may be deprived of the right to bear arms for self defense.
- d. the FCCA works a lifetime ban on a person's right to bear arms for self defense.

62. By so burdening White’s ability to obtain a license under the FCCA, the Defendants have not only unjustifiably denied him his right but have effectively imposed a lifetime ban on White’s right to bear arms for self defense.

63. The Defendants, under the color of law, both facially and as-applied, deprive White of his right to bear arms, in violation of the Second and Fourteenth Amendments to the United States Constitution. White is thus damaged in violation of 42 U.S.C. §1983. White is therefore entitled to declaratory and preliminary and permanent injunctive relief against the continued deprivation of his right.

**COUNT II: THE FCCA VIOLATES WHITE’S RIGHT TO DUE PROCESS**  
**U.S. CONST. AMEND. XIV, 42 U.S.C. §1983**

64. White repeats, realleges, and incorporates Paragraphs 1 through 63, inclusive, as if fully restated herein.

65. White has twice been denied his constitutionally guaranteed right to bear arms for self-defense. The conclusory basis for this denial resides in the cryptic restatement of the FCCA’s language, that White *is* “a danger to him/herself, is a danger to others, or poses a threat to public safety.”

66. The Board twice reached this conclusion with no evidence that White *is* “a danger to him/herself, is a danger to others, or poses a threat to public safety.” Rather, the Board focused on *arrests*, not even convictions, *that occurred over 20 years ago*. White challenged the only “recent” event, a charge of unlawful discharge of a firearm, demanding trial on the allegation; he was found not guilty of the offense. Further, White is informed and believes that another man was

convicted of unlawfully discharging a gun at the New Year's Eve party at which White was arrested.

67. The FCCA allows the Board to reach this result because it provides no guidance as to either the meaning, or particular application, of the phrase “is a danger to him/herself, is a danger to others, or poses a threat to public safety.” In fact, the FCCA vests the Board with unbridled discretion in deciding what this phrase means and to whom it may be applied.

68. The FCCA also allows the Board to make this finding by using the most lax of evidentiary standards; § 66/20 of the FCCA provides that the fundamental right to armed self defense may be taken from an individual “if the Board determines *by a preponderance* of the evidence that the applicant poses a danger to himself or herself, or others, or is a threat to public safety.”

69. A finding that a person “poses a threat to himself, herself or others or is a threat to the public safety” works as a “blanket prohibition” to that person’s right to carry a firearm to protect himself in public. The claim that the Board may consider any *arrest* regardless of when it occurred, works not only blanket prohibition but also a perpetual prohibition, indeed a *lifetime ban*, to that person’s right to carry a firearm to protect himself in public.

70. White allowed several years to pass before he reapplied for his CCL. This period of time made no difference to the Board; and, given the utter lack of guidance and objective criteria governing how the Board is to consider when an applicant *is* “a danger to him/herself, is a danger to others, or poses a threat to



public safety” White cannot know what he must do, or how long he must wait, to avail himself of his constitutionally secured right to bear arms for self defense.

71. It is also clear that White’s inability to prove a negative – that he is *not* a gang member – affected his ability to exercise his right to bear arms for self defense. Despite requesting evidence from the CPD and Cook County Sheriff that substantiated, or even provided the basis of suspicion, that he was a gang member, the objecting law enforcement agencies gave him nothing more than a computer printout with his name on it.

72. By so burdening White’s ability to obtain a license under the FCCA, the Defendants have not only unjustifiably denied him his right but have effectively imposed a lifetime ban on White’s right to bear arms for self defense.

73. White’s private interest that will be affected and deprived by the Defendants’ actions is his fundamental right to armed self-defense in public. He is not a person who was historically prohibited from possessing firearms, and has not done anything since to remove himself from those categories of persons able to exercise this fundamental right.

74. The risk of the Defendants’ erroneous deprivation of White’s interest through the CCLRB procedures is great, as White has been deprived of his fundamental rights with no opportunity to correct or undo the deprivation, and the consequences include White’s sustaining a severe or fatal injury should he suffer a violent attack and be unable to properly defend himself.

75. The value of additional or substitute procedural safe-guards, such as offering White a hearing, and disallowing the Defendants' reliance on long-ago incidents and long-ago unsubstantiated allegations of wrongdoing that are not probative to the issue of whether White *is* a danger to himself or anyone else, is high.

76. The Defendants and the State do not have an interest in depriving persons of fundamental rights, and of wrongfully preventing qualified persons from being able to defend themselves.

77. The Defendants, under the color of law, both facially and as-applied, deprive White of his right to bear arms, in violation of his procedural due process rights under the Fourteenth Amendment to the United States Constitution. White is thus damaged in violation of 42 U.S.C. §1983. White is therefore entitled to declaratory and preliminary and permanent injunctive relief against the continued deprivation of his right.

WHEREFORE, White prays this Honorable Court:

- a. find that the FCCA unjustifiably denies White his Second Amendment right to bear arms for self defense;
- b. find that the FCCA unjustifiably denies White his Fourteenth Amendment procedural due process rights;

c. enter an order granting White injunctive relief that enjoins the Defendants from further deprivation of White's right to bear arms and right to procedural due process;

c. enter a mandatory injunction requiring the Defendants to issue White a license to carry a concealed firearm under the FCCA;

d. award White his attorney's fees and costs, pursuant to 42 U.S.C. §1983; and,

e. award White such other and further relief as it deems just.

Dated: April 25, 2019

Respectfully submitted,

By: /s/Gregory A. Bedell  
One of the Attorneys for Plaintiff

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