



## **BACKGROUND *BRADLEY v. KELLY***

---

### **Executive Summary**

Illinois has long required residents to obtain a Firearm Owners Identification (FOID) card before they may purchase or even possess a firearm—of *any* kind—in the state. Under state law, when a resident applies for a FOID card, the Illinois State Police must issue the card within 30 days unless it determines that the person is legally disqualified. But Illinois has long failed to process FOID card applications within 30 days—and the situation has only become worse as applications have surged during the COVID-19 pandemic and other events of 2020.

People shouldn't have to ask for the government's permission—let alone wait indefinitely—just to be allowed to defend their own lives, families, and homes. If the state of Illinois thinks public safety requires checking people's backgrounds before allowing them to possess even the most basic firearm, then it must at least respect its own law and issue cards to qualifying applicants within 30 days.

The Goldwater Institute, together with the Illinois State Rifle Association and the Second Amendment Foundation, has sued the Illinois State Police on behalf of four Illinois residents who have applied for FOID cards but have been waiting longer—sometimes much longer—than 30 days to receive them. The lawsuit asks the courts to declare that forcing applicants to wait longer than 30 days to receive their cards violates the Second Amendment rights, and it asks the courts to order the state of Illinois to issue the plaintiffs their cards immediately.

### **The Problem**

Since 1968, the state of Illinois has required residents to obtain a Firearm Owners Identification (FOID) card before they may purchase or even possess a firearm—of *any* kind—in the state.<sup>1</sup> This, in itself, is an extraordinary restriction on Second Amendment rights. Only one other state, Massachusetts, requires a state license just to possess a rifle or shotgun in one's own home.<sup>2</sup>

To limit the FOID requirement's infringement on Second Amendment rights, state law requires the Illinois State Police to issue a FOID card to a qualified individual within 30 days of receiving his or her application.<sup>3</sup> But the

---

<sup>1</sup> 430 ILCS 65/2(a)(1).

<sup>2</sup> Mass. Gen. Laws ch. 140, § 129C.

<sup>3</sup> 430 ILCS 65/5(a). Disqualifying factors include, among other things, felony conviction, drug addiction, having been a patient in a mental health facility in the past five years, and having an intellectual disability. 430 ILCS 65/8.

state has long failed to comply with that requirement, and many qualified people have waited for months to receive their FOID cards<sup>4</sup>—and in the meantime have been completely deprived of their right to defend their lives, homes, and families. That situation has only become worse as applications for FOID cards have surged during the pandemic, violence, and looting of 2020.<sup>5</sup>

The Goldwater Institute represents four Illinois residents who have applied for a FOID card in 2020 but, more than 30 days later, still have not received one. For example, D’Andre Bradley of Chicago Heights, Illinois, recently completed years of service in the U.S. Marines—but can’t even have a firearm to defend his own home because the state hasn’t issued his FOID card.

### **The Law**

Under the Second Amendment individuals have a fundamental constitutional right to own a firearm for self-defense.<sup>6</sup> In 2010, the U.S. Supreme Court ruled that this right applies against state and local governments via the Fourteenth Amendment and therefore struck down the city of Chicago’s near-total ban on handgun possession.<sup>7</sup> Since then, federal courts have invalidated other severe restrictions on Second Amendment rights in Chicago and Illinois.<sup>8</sup>

Illinois’s FOID card requirement completely prohibits individuals from exercising their Second Amendment rights unless and until the state grants them permission. But regardless of whether the FOID rule is itself constitutional Illinois’s failure to grant FOID cards to qualifying individuals within 30 days, as state law requires, is an unreasonable, intolerable violation of Illinoisans’ fundamental constitutional rights.

The federal courts should declare that Illinois’s delays in processing FOID card applications violates the Second Amendment, and they should order the state to immediately grant FOID cards to individuals who applied more than 30 days.

### **Case Logistics**

The plaintiffs in this case are four Illinois residents who applied to the Illinois State Police for a FOID card but did not receive a card within 30 days as state law requires.

The case was filed in the United States District Court for the Northern District of Illinois on July 21, 2020.

The lawsuit seeks a court order that: (1) declares that the state of Illinois violates residents’ Second Amendment rights when it fails to act on their FOID card applications within 30 days; and (2) orders the state to immediately issue FOID cards to the plaintiffs.

### **The Legal Team**

---

<sup>4</sup> See, e.g., *Illinois Gun Buyers Now Waiting More than 60 Days for FOID Card*, CBS Chicago, Mar. 27, 2013, <https://chicago.cbslocal.com/2013/03/27/illinois-gun-buyers-now-waiting-more-than-60-days-for-foid-card/>.

<sup>5</sup> Megan Hickey, *Surge in FOID Card Applications After Recent Violence Leads to Backlog*, CBS Chicago, June 10, 2020, <https://chicago.cbslocal.com/2020/06/10/foid-card-application-backlog-illinois-violence-looting/>.

<sup>6</sup> *District of Columbia v. Heller*, 554 U.S. 570 (2008).

<sup>7</sup> *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

<sup>8</sup> See, e.g., *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012) (striking down Illinois’s ban on public carrying of firearms); *Ill. Ass’n of Firearms Retailers v. City of Chicago*, 961 F.Supp.2d 928 (N.D. Ill. 2014) (striking down Chicago’s ban on virtually all sales and transfers of firearms).

**Jacob Huebert** is a Senior Attorney at the Goldwater Institute. Before joining Goldwater, he served as Director of Litigation for the Liberty Justice Center in Chicago. There, he successfully litigated cases to protect economic liberty, free speech, and other constitutional rights, including the landmark *Janus v. AFSCME* case, in which the U.S. Supreme Court upheld government workers' First Amendment right to choose for themselves whether to pay money to a union. Huebert is a former clerk to a judge of the U.S. Court of Appeals for the Sixth Circuit and a graduate of Grove City College and the University of Chicago Law School.

**Martha Astor** is a Staff Attorney at the Goldwater Institute. She earned her J.D. at the Notre Dame School of Law, and she has a B.S. in public relations and an M.A. in counseling from Northern Arizona University, where she graduated with highest honors. Before law school, Martha was invited to speak at numerous international conferences, including at Oxford and the Sorbonne. She has written and published frequently on education reform, including authoring the book *Regrowing from Our Roots*.

**The Goldwater Institute** opened in 1988, with the blessing of its namesake. Its early years focused on defending liberty in Barry Goldwater's home state of Arizona. Today, the Goldwater Institute is a national leader for constitutionally limited government, with hundreds of legislative and court victories to its name.

**David G. Sigale** is an attorney at the Law Firm of David G. Sigale, P.C., in Wheaton, Illinois, and is General Counsel of the Illinois State Rifle Association. He litigates constitutional claims and other civil and criminal matters. He was co-counsel for the plaintiffs in *McDonald v. City of Chicago*, in which the U.S. Supreme Court held that the Fourteenth Amendment protects individuals' right to keep and bear arms against infringement by state and local governments and struck down Chicago's handgun ban. He has also successfully protected the Second Amendment rights of resident aliens, foster parents, and residents of public housing and U.S. territories. He also obtained the first Illinois federal court opinion declaring the tattoo business to be protected by the First Amendment. He is a graduate of the Georgetown University Law Center and Indiana University.

**Gregory A. Bedell** is an attorney at Knabe & Bedell in Chicago, with over 30 years of practice experience. Admitted to practice in Illinois in 1985, Greg started his career with the United States Securities and Exchange Commission as a Staff Attorney in its Chicago Regional Office. In 1987, he entered private practice, and since then he has devoted himself primarily to solving legal problems for small businesses and entrepreneurs. He represents clients in numerous matters involving local, state, and federal regulatory regimes and in general commercial litigation.