COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT FOR THE COMMONWEALTH

APPEALS COURT NO. 2025-P-0888

RANDY WESTBROOK AND, AS NOMINAL DEFENDANTS, THE HOLYOKE DIVISION OF THE DISTRICT COURT, ACTING BY AND THROUGH THE HONORABLE JUSTICE WILLIAM P. HADLEY, Defendant-Appellant

v.

DAVID PRATT,

Chief, Holyoke Police Department, as Licensing Authority, Plaintiff-Appellee

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ON APPEAL FROM A JUDGMENT IN THE SUPERIOR COURT FOR HAMPDEN COUNTY

APPLICATION FOR DIRECT APPELLATE REVIEW OF THE DEFENDANT, RANDY WESTBROOK

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FRANKLIN CONZA

REV. AUGUST 2025

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

SUPREME JUDICIAL COURT

No. _____

APPEALS COURT NO. 2025-P-0888

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v.

DAVID PRATT,

Chief, Holyoke Police Department, as Licensing Authority, Plaintiff-Appellee

APPELLANT, RANDY WESTBROOK'S, APPLICATION FOR DIRECT APPELLATE REVIEW

This case appears to be the first one in which, in a thorough and comprehensive manner, Constitutional challenges to the Massachusetts firearms licensing regime (including both facially, and as-applied) have been lodged at the appellate level in the wake of Bruen. This case entails: (1) questions of first impression and novel questions of law which should be submitted for final determination to the Supreme Judicial Court; (2) questions of law concerning the Constitution of the

Commonwealth or questions concerning the Constitution of the United States which have been raised in a court of the Commonwealth; *and* (3) questions of such public interest that justice requires a final determination by the full Supreme Judicial Court. As a threshold matter, this case differs from this Court's recent decision in the criminal case, Commonwealth v. Marquis, SJC-13562 (March 11, 2025)[1] insofar as:

(1) Marquis pertained to non-resident licensing (and in the context of a criminal prosecution); in this case Mr. Westbrook is a resident of the Commonwealth.
(2) The Marquis Court found that the criminal defendant there had no standing to raise an as-applied 2nd and 14th Amendment challenge, as he had not applied for a non-resident license. In contrast, the Appellant in the case at bar has standing to raise, has raised, and continues to raise, an as-applied challenge (in additional to a facial one).
(3) As the Appellant has argued since the District Court appeal, and as Marquis nowhere addresses, the Massachusetts *standards of review of judicial review* of adverse firearms licensing actions violate the 2nd and 14th Amendment and Bruen's prohibition on such deferential review of license denials, suspensions, and revocations.
(4) G.L. c. 140, s131 is devoid of any objective criteria that the licensing authority is to apply in making a determination of "unsuitability," in direct contravention of Bruen. Marquis touched upon this concept, but only in a more indirect and broad manner than in the case at bar.
(5) As the appellant, Westbrook, has argued throughout, the definition of "unsuitability" in G.L. c. 140, s131 is so broad as to encompass the *entire adult population* because any and all such people "may pose a public safety risk" at some future time. This consideration was nowhere addressed in Marquis.
(6) Appellant has argued throughout that the definition of G.L. c. 140, s131 is devoid of any type of *standard of*

[1] The United States Supreme Court will, of course, have the final say on the 2nd and 14th Amendment issues.

proof whatsoever, such as preponderance of the evidence, clear and convincing evidence, beyond a reasonable doubt, etc. The District Court agreed. Marquis does not address this issue.

(7) Appellant has argued throughout that the statute's placing the burden upon the license holder or would-be licensee to prove themselves "suitable" (for which there is no definition) violates the 2nd and 14th Amendment and Bruen's prohibition on such a burden. Marquis does not address this issue.

(8) Appellant has argued throughout that the statute's failure to place the burdens of proof and production upon the licensing authority as to the issue of "unsuitability," and to instead place the burden upon the license to meet the extremely deferential standards of review in judicial appeals of licensing decisions violates the 2nd and 14th Amendment and Bruen's prohibition on such. Marquis does not address this issue.

I. REQUEST FOR DIRECT APPELLATE REVIEW

Defendant, Randy Westbrook, hereby submits this Application for Direct Appellate Review, asking this Court pursuant to Mass.R.A.P. 11 to take this case directly. This case was recently entered in the Massachusetts Appeals Court as Docket Number 2025-P-0888 on July 21, 2025. As such, this Application is timely filed. Mass.R.A.P. 11(a).

II. STATEMENT OF PRIOR PROCEEDINGS

On August 29, 2023, Appellee David Pratt, in his capacity as the firearms licensing authority for the City of Holyoke, issued a written notice to Westbrook stating that his application for a LTC was denied. Pratt based this on the

stated grounds that Westbrook was subjectively deemed by Pratt to be a so-called "unsuitable person" to carry firearms, within the meaning of M.G.L. c. 140, §131(d). Pratt based this on a Holyoke Police Department arrest in which Westbrook was charged with domestic assault and battery and aggravated assault and battery (the latter of which Westbrook accepted a CWOF), as well as charges of Conspiracy to Violate the Controlled Substances Act and Possession with the Intent to Distribute a Class B Substance in the Northern Berkshire District Court (of which Westbrook accepted a CWOF. The A&B allegations had taken place on March 14, 2010- over thirteen years before Pratt's denial. The allegations in controlled substance case took place on April 4, 2014- nearly a decade before that licensing decision.

About a year and a half after the U.S. Supreme Court's landmark decision in New York Rifle & Pistol v. Bruen, 597 U.S. 1 (2022), the Appellant, Mr. Westbrook, in November 2023 timely appealed the denial of his application for a license to carry a firearm (LTC) by the Appellee, David Pratt- the chief of the Holyoke Police Department. In a lengthy and detailed Petition, Westbrook argued in exacting detail that the relevant "unsuitability" statute- G.L. c. 140, s131 et seq- is unconstitutional, both on its face and as applied to Westbrook.

Both parties represented by counsel, after a full evidentiary hearing, the District Court held (Hon. William Hadley, J, presiding) as follows (decision attached):

> "Laws that regulate Second Amendment rights must be consistent with historical precedent and may not give licensing authorities more than the minimal amount of discretion necessary to determine whether applicants would present a danger to themselves or others if armed. Judges may no longer decide Second Amendment challenges based on traditional balancing tests, and the government has the burden of demonstrating a historical tradition that supports its restriction on the right to carry a handgun. In this case, I find that, as a matter of law, there is an historical tradition in this country of denying firearms to individuals who have-demonstrated they would likely-be dangerous if armed. The Chief, however, has not demonstrated an historical tradition that would support a law like G.L. c. 140, §131 that is based not on probability or even reasonable inference, but on a suggestion, a hint, or an insinuation that there may be danger. The law is inconsistent with what the United States Supreme Court stated in Bruen concerning the rights protected by the Second and Fourteenth Amendments." (Exhibit A attached)

On July 19, 2024, the Plaintiff-Appellee, Pratt, filed a complaint for certiorari review, in accordance with M.G.L. c. 249, §4, requesting that the Hampden County Superior Court vacate the District Court's decision that had been made on May 20, 2024 to reverse the Plaintiffs' denial of Defendant Westbrook's application for a License to Carry ["LTC"]. After a hearting in March, 2025, the Superior Court judge (Hon. Deepika Shukla, presiding) more broadly held (decision attached):

"If there were any doubt, *Commonwealth* v. *Marquis,* 495 Mass. 434 (2025), which the Supreme Judicial Court decided after the District Court issued its opinion in this case, held the Commonwealth's nonresident firearms licensing scheme is facially constitutional. Because the nonresident licensing statute, G.L. c. 140, § 131F, imports the suitability requirement of § 131(d), the Court's analysis expressly focused on the constitutionality of "the definition of 'determined unsuitable"' in§ 131(d). *Marquis,* 495 Mass. at 452. The Supreme Judicial Court concluded that§ 131(d) is consistent with this nation's history of disarming "individuals who pose a credible threat to the physical safety of others." *Id.* at 453, quoting *Rahimi,* 602 U.S. at 698." (Exhibit B attached).

Mr. Westbrook then timely appealed the Superior Court's decision to the Massachusetts Appeals Court, which has assigned the case the above-captioned docket number. The docket entries from the Superior Court case are also attached. (Exhibit C attached).

III. BRIEF STATEMENT OF FACTS RELEVANT TO THE APPEAL

Seeking merely to exercise his Constitutional right to keep and bear arms under the 2nd and 14th Amendments, Randy Westbrook applied for a firearms license (LTC) in Holyoke. His LTC application was denied by the Defendant-Appellee, the Chief of the Holyoke Police, David Pratt. On August 29, 2023, the Pratt denied Westbrook's application for an LTC on the grounds that he deemed Westbrook to be an "unsuitable person" within the meaning of M.G.L. c. 140, §131(d). This was ostensibly based upon a Holyoke Police

Department Arrest Report #10-0600-AR stating that Defendant Westbrook was charged with A&B Domestic, which was adjudicated via CWOF). It was also based on charges of Conspiracy to Violate the Controlled Substances Act and Possession with the Intent to Distribute a Class B Substance, a case in which Mr. Westbrook accepted a CWOF. The A&B charges were based on an incident that allegedly transpired in March, 2010. In the controlled substance case, the offense had allegedly taken place in April, 2014.

IV. STATEMENT OF THE ISSUES OF LAW RAISED BY THE APPEAL

A. *Preservation*: Here, the issues were raised and properly and meticulously preserved in the both of the lower courts

Unlike the Marquis case, the precise Constitutional arguments raised in Mr. Westbrook's case- preserved since the case's inception in the District Court, arise out of a firearms licensing appeal, not a criminal case. These (largely procedural, including not just the 2nd Amendment, but also Due Process) arguments have, in fact, been *meticulously preserved* in Mr. Westbrook's case.[2] Moreover,

[2] In his District Court petition, Westbrook raised a myriad of detailed constitutional arguments, most of which are not addressed in the Marquis decision. His Petition there was 35 pages long. In responding to Pratt's certiorari petition, for example, Westbrook filed a 65 page Opposition to Pratt's Motion

for all the reasons set forth below, this case is readily distinguishable from this Court's decision in Marquis insofar as Westbrook has lodged a myriad of more focused Constitutional arguments, and, in any event, Mr. Westbrook's case consists of not just a facial challenge, but a detailed as-applied one as well (see below). As such, the extremely compelling Constitutional issues raised in this appeal have all been properly preserved.

V. ARGUMENTS

A. The two SJC decisions in 2025- *Commonwealth v. Donnell and Commonwealth v. Marquis*- do not directly address the far more precise arguments raised in this case: the grant of unbridled discretion to the licensing authority that Bruen expressly forbids as to not only the "proper cause" determination, but also the "suitability" decision.

(1) The Donnell decision calls into grave doubt the constitutionality of the legal procedures utilized in the "unsuitability" licensing process at issue in this case under G.L. c. 140, s 131.

On March 11, 2025 the SJC decided two relevant cases: Commonwealth v. Donnell, SJC-13561 (March 11, 2025) and Commonwealth v. Marquis, SJC-13562 (March 11, 2025). The

for Judgment on the pleadings, a 14 page Opposition to the Massachusetts Attorney General's pleading then a Supplemental Memorandum in the wake of this Court's decisions in Marquis and Donnell, which came down while the Superior Court had Pratt's Motion for Judgment on the Pleadings under advisement.

Donnell Court held that prosecutions of non-Massachusetts-residents for unlicensed firearms possession that took place before the "proper cause" provision was repealed by the Massachusetts legislature in the wake of Bruen violate the 2nd and 14th Amendments. In finding the discretion afforded the colonel of the State Police violative of the Bruen decision, the SJC specifically held as follows:

> "Under the pre-amendment version of the Commonwealth's nonresident firearm licensing scheme, a person's right to carry was treated as a privilege capable of being conferred or revoked regardless of whether the applicant fell into one of the "prohibited person" categories. At every step in the licensing process, the Commonwealth had the authority to deny a nonresident applicant his constitutional right based on "such terms and conditions as [the] colonel may deem proper." G. L. c. 140, § 131F. That authority, which the Supreme Court rejected in Bruen, 597 U.S. at 13-15, 38 n.9, was an essential factor of the prior nonresident firearm licensing scheme. Without ruminating as to what permissible language in a "may issue" licensing statute would look like, we hold that § 131F is not capable of separation because the discretionary language was so entwined in the licensing procedure that its removal would not result in a constitutionally enforceable law."

This illustrates precisely the nature of the constitutionally-fatal problem with respect to G.L. c. 140, s131- one that remains unresolved directly by either Donnell or Marquis.

There is no principled, substantive distinction that can be made between the wholesale discretion afforded to colonel of the

State Police vis-à-vis non-resident that the Donnell Court found violative of Bruen, and that afforded to residents under the "suitability" paradigm. The applicant must, as in the case at bar, face the specter of the licensing authority concluding that the applicant/licensee's past behavior "suggests," in the subjective eyes of the licensing authority, that the individual "may" be dangerous if armed, giving the licensing authority a patently-impermissible amount of discretion. That applicant must then, in order to try to regain his 2nd Amendment right, petition the court (at considerable financial cost), and therein demonstrate that the licensing authority "abused its discretion" or acted arbitrarily and capriciously.

The Appellees' suggestions to the contrary does little more than draw a distinction without a difference.

> *(2) In Marquis this Court was not, in a narrow manner, confronted with the issue of the unbridled discretion given to the licensing authority via the "may pose a public safety risk" language. There was no argument made in Marquis that the lack of objective licensing criteria renders "unsuitability" unconstitutional; and, as such, this Court did not address the argument raised to that effect in the case at bar. Therefore, direct appellate review is amply warranted.*

In Commonwealth v. Marquis, SJC-13562 (March 11, 2025), the Supreme Judicial Court addressed the general issue of the constitutionality of the Massachusetts firearms licensing regime

as applied to non-residents. However, nowhere in Marquis did the defendant argue what the Plaintiff argues in the instant case: That under G.L. c. 140, s131, the licensing authority conclusion that the applicant/licensee's past behavior "suggests," in the subjective eyes of the that licensing authority, the individual "may" be dangerous if armed, gives the licensing authority an impermissible amount of discretion under the Bruen decision. As the District Court judge found in the case at bar:

> "Like the LTC statute, Massachusetts laws concerning civil commitments, discussed above, and the various statutes identified by the Supreme Court in Bruen. are centered on how determinations concerning danger to self or others will be made. Other statutes, however, require a determination whether such danger is reasonably foreseeable or likely. By way of example, in Massachusetts, an order to disarm an individual on an emergency basis must be based on a finding that "the plaintiff demonstrates a substantial likelihood of immediate danger ... ". G.L. c. 209A, §3B. These laws, and indeed most statutes that regulate conduct and limit individual liberty, require the appraisal of facts and the consideration of probabilities and likelihood. G.L. c. 140, § 131 differs in its scope and in the amount of discretion it allows. The definition of suitability in the current statute allows a government official to deny an individual the right to bear arms in public for self-defense not based on a probability or reasonably foreseeable circumstances, but on behavior that merely "suggests" to the chief of police that an applicant "may" create a risk to public safety. This language is both broad and vague, and I have found no historical tradition for a statute that delimits the right to bear arms (or any other constitutional right for that matter) in such soft, indeed spongy terms. (see attached, footnote omitted)."

And, as has been argued throughout this case, Bruen by its express terms forbids this type of subjective discretion devoid

of any objective criteria as to not only a state's "proper cause" determination, but also its "suitability" decision. The Bruen Court expressly included "suitability" decisions within the ambit of the impermissible discretion of "may issue" states that, like Massachusetts, afford such decisions to be made subjectively, without reference to any objective criteria. See Bruen, supra, at 4 ("*[O]nly six States and the District of Columbia have 'may issue' licensing laws*, under which authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria, usually because the applicant has not demonstrated cause ***or suitability*** for the relevant license. Aside from New York, then, only California, the District of Columbia, Hawaii, Maryland, **Massachusetts**, and New Jersey have analogues to the 'proper cause' standard." (emphasis added). *See also* Id. at 30.[3]

Therefore, Marquis does not at all address the precise arguments raised in the case at bar. In this regard, Commonwealth v. Mancevice, 23-P-909 (1/21/25- unpublished decision), is concomitantly instructive. In Mancevice, though

[3] And [shall-issue state licensing procedures] likewise appear to contain only "narrow, objective, and definite standards" guiding licensing officials, **rather than requiring the "appraisal of facts, the exercise of judgment, and the formation of an opinion," —features that typify proper-cause standards like New York's**" Bruen at 30, fn9 (emphasis added).

dismissing as unpreserved the criminal defendant's broad 2nd Amendment claim, the Appeals Court reasoned:

> "The thrust of [Mancevice's] argument is that Bruen declared that all such "may issue" statutory schemes are unconstitutional, because they provide too much discretion to licensing authorities to deny persons the ability to carry a firearm.11 As indicated, the argument the defendant advances in this court is not the same Second Amendment argument that he pressed below -- at most, the argument he now presses was referenced so vaguely that it cannot fairly be said to have been raised."

Accordingly, the Court merely reviewed the criminal conviction under the "substantial risk of a miscarriage of justice" standard.

However, beyond all this, of the greatest salience in Mancevice is the Appeals Court's footnote 12. The Appeals Court specifically distinguished Mancevice's challenge from one like that contained in the case at bar, noting as follows:

> "In particular, the defendant never argued below, and did not argue to this court, that his actions did not meet the definition of "unsuitability" in § 131 (d). *Nor did he or does he argue constitutional infirmity in the statute's definition of unsuitability; in particular, the defendant does not specifically argue that the statute is or was unconstitutional because the actions the statute defines as unsuitable are overbroad*. " Id. at fn 12 (emphasis added).

In this regard, at a minimum, both Mancevice and Marquis are wholly distinguishable from the arguments raised in this case.

Moreover, the Marquis decision nowhere addresses the following arguments/issues, all of which are raised in the case at bar:

1. The Marquis Court found that the criminal defendant there had no standing to raise an as-applied 2nd and 14th Amendment challenge, as he had not applied for a non-resident license. In contrast, the plaintiff in the case at bar has standing to raise, has raised, and continues to raise, an as-applied challenge (in additional to a facial one);
2. The Massachusetts standards of review of judicial review of adverse firearms licensing actions violate the 2nd and 14th Amendment and Bruen's prohibition on such deferential review of license denials, suspensions, and revocations;
3. G.L. c. 140, s131 is devoid of any objective criteria that the licensing authority is to apply in making a determination of "unsuitability," in direct contravention of Bruen.
4. The definition of "unsuitability" in G.L. c. 140, s131 is so broad as to encompass the entire adult population because any and all such people "may pose a public safety risk" at some future time;
5. The definition of G.L. c. 140, s131 is devoid of any type of standard of proof whatsoever, such as preponderance of the evidence, clear and convincing evidence, beyond a reasonable doubt, etc.;
6. The statute's placing the burden upon the license holder or would-be licensee to prove themselves "suitable" (for which there is no definition) violates the 2nd and 14th Amendment and Bruen's prohibition on such a burden; and
7. The statute's failure to place the burdens of proof and production upon the licensing authority as to the issue of "unsuitability," and to instead place the burden upon the license to meet the extremely deferential standards of review in judicial appeals of licensing decisions violates the 2nd and 14th Amendment and Bruen's prohibition on such.

B. The so called "suitability" standard is devoid of any objective criteria that would remotely afford an applicant or license holder a fair determination or hearing.

The Massachusetts "suitability" law is, in every manner, a "sweeping prophylaxis" against ownership of firearms by a large group of people, Lewis v. United States, 445 U.S. 55, 63 (1980). While it "is not uncommon in constitutional law to create rules that prophylactically over-protect constitutional rights," it is "unprecedented" to apply a "rule that prophylactically under-protects individual constitutional rights." Tyler v. Hillsdale County Sheriff's Department, 837 F.3d 678, 713 (6th Cir. 2016). (Sutton, J., concurring in most of the judgment).

In New York States Rifle & Pistol Assoc., Inc. v. Bruen, 142 S. Ct. 2111 (2022), the United States Supreme Court struck down a New York law which required residents to demonstrate cause to obtain a license to carry a handgun outside the home. The Court for the first time provided an analytical framework for determining whether a particular firearm regulation violates the Second Amendment: Courts must first determine whether the "Second Amendment's plain text covers an individual's conduct." Id. at 2129–30. If so, the Constitution presumptively protects that conduct, and the government must "affirmatively prove that its firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." Id. at 2126. If the government cannot meet this burden, then the individual's firearm-related conduct falls within the Second

Amendment's "unqualified command" and is protected. Bruen, 142 S. Ct. at 2126. The Massachusetts courts seem largely to be ignoring this mandate, as well as the concomitant burden it places upon the licensing authority and the Commonwealth of proving that the relevant statutes and its actions are constitutional. No court in Massachusetts or any other state possesses such a luxury, however. The United States Constitution "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." US Constitution, Article VI. Accordingly, the Appellant's highly-substantial Constitutional arguments raised herein should be addressed by this Court.

C. In addition to being facially unconstitutional, G.L. c. 140, s131 is unconstitutional *as applied* to the facts of this case.

In this case, the unconstitutional procedures established by the Massachusetts "unsuitability" firearms licensing regime are illustrated lucidly. As to the *application* of the grossly-subjective procedure set forth in G.L. c. 140, §131 to the facts surrounding Westbrook's matter, Chief Pratt was questioned by Mr. Westbrook's counsel as follows at the District Court hearing:

Q If someone has a charge, correct, in their past, do you always deny them an LTC?

A No.

Q Okay. And you'd agree that the older the charge, the less probative it is as to whether the person poses a public safety risk; is that fair to say?

A It's a factor, yes.

Q Okay. And so what is the cutoff date that you would use in terms of the number of years that an incident such as this is just plain too old for you to deny an LTC based on your assessment and your decision?

A In this case?

Q No. In any case.

A Well, it would depend on the case.

Q It would depend on the case?

A Absolutely.

Q And so what do you use to -- as a reference, what guidelines do you use as a reference in making that determination?

A I look at all the -- I look at the facts of the cases that are presented to me in each individual case, and I make a decision based on that.

Q Okay. And what criteria do you use to make that determination?

A I guess 31 years of police experience.

Q Okay. So it's based on your experience as a police officer, correct?

A Correct.

Q And you became a chief roughly, you said two years ago, two and a half years ago?

A Two and a half years ago, yes.

Q Okay. But based on your experience as a police officer, correct?

A Yes.

Q Okay. And you'd agree with me that there's -- nowhere in the Mass General Laws are there any criteria at all that are created

by statute for you to make that determination; is that fair to say?

A Are you asking is there like a set guideline, like in years?

Q Guidelines or criteria in any statute?

A I'm not aware of it, no.

Q I'm sorry?

A I'm not aware of that, no.

Q Okay. And what about in the code of Mass Regulations, is there any set criteria there?

A I don't believe so, no.

Q Okay. So it's based on your experience as a police officer, correct?

A Yes.

Q And you would agree with me, if you -- if someone else became chief tomorrow in your department, I hope it doesn't happen, they would have become chief --

A It might.

Q Maybe you hope. If they were to become chief tomorrow, their experience is different than yours, correct?

A Possibly, yes.

Q I mean, they may have far less experience than you, for example, correct?

A Possibly, yeah (Dist Ct Hrg Transc, 51-54)[4]

[4] The Plaintiff's testimony illustrates plainly and forcefully why the law, as applied to Mr. Westbrook's case, is also unconstitutional as applied. After all, the licensing authority testified that he does not always deny a license if the person had a prior charge. *Then, exactly which past charges do, or do not, make one "unsuitable"?* He testified that how long he would look back at charges temporally, "would depend on the case." The chief testified he "look[s] at all the -- I look at the facts of the cases that are presented to me in each individual case, and I make a decision based on that." *What exactly is the point in time, however, where a given set of*

VI. CONCLUSION

For all the reasons of law and fact set forth herein, this case raises (1) questions of first impression and novel questions of law which should be submitted for final determination to the Supreme Judicial Court; (2) questions of law concerning the Constitution of the Commonwealth or questions concerning the Constitution of the United States which have been raised in a court of the Commonwealth; *and* (3) questions of such public interest that justice requires a final determination by the full Supreme Judicial Court. Direct appellate review is therefore warranted.

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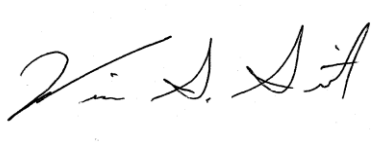
charges becomes too old to support the proposition that they "may pose a public safety risk…"? Chief Pratt testified that his decision here and in other cases is based on "I guess 31 years of police experience." *However, this is not criteria. This is not a guideline. Moreover, what about a different licensing authority in a different town with the exact same experience- qualitatively and quantitatively? Is not that other licensing authority free to decide entirely differently, reasoning that based on hir or her experience, Westbrook's charges and adjudications short of guilt, coupled with his lack of subsequent issues, are by that time too old to render him "unsuitable"?*

The testimony here, as well as a myriad of other immensely disconcerting questions not addressed by this Court in Marquis, demonstrate that G.L. c. 140, §131 is not only unconstitutional on its face, but as applied to the facts of this case. As the District Court correctly held, on its face and as-applied here, G.L. c. 140, §131 violates the 2nd and 14th Amendments, as well as articles 12 and 17 of the Massachusetts Declaration of Rights.

Respectfully submitted,
RANDY WESTBROOK,

Defendant-Appellant,

By his Attorney,



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Dated: August 8, 2025

CERTIFICATION OF SERVICE

I, William Smith, hereby certify that on August 8, 2025, I have caused a copy of the within pleading(s) to be served upon the Intervenor's attorney, Timothy Casey, Esq. by electronic mail and/or Efile service.

/s/ William S. Smith

I, William Smith, hereby certify that on August 8, 2025, I have caused a copy of the within pleading(s) to be served upon the Intervenor's attorney, Phoebe Fischer-Groban, Esq. to her by electronic mail and/or Efile service.

/s/ William S. Smith

I, William S. Smith, hereby certify that on August 8, 2025, I have caused a copy of the within pleading(s) to be served upon the nominal Defendant District Court's attorney, Brian T. Mulcahy, Esq. to him at his business address located at the Executive Office of the Trial Court, Two Center Street Plaza, Room 540, Boston, MA 02108 by first class mail, postage prepaid and by electronic mail and/or Efile service.

/s/ William S. Smith

I, William Smith, hereby certify that on August 8, 2025, I have caused a copy of the within pleading(s) to be served upon the Plaintiff’s attorney, Kathleen Degnan, Esq. by electronic mail and/or Efile service.

/s/ William S. Smith

CERTIFICATION PURSUANT TO RULE 11(b)

I, William S. Smith, hereby certify Pursuant to Mass.R.A.P. 11(b) that to the best of my knowledge this Application for Direct Appellate Review complies with the rules of court that pertain to the filing of such pleadings, including, but not limited to: Mass. R. A. P. 16(a)(6) (pertinent findings or memorandum of decision); Mass. R. A. P. 16(e) (references to the record); Mass. R. A. P. 16(f) (reproduction of statutes, rules, regulations); Mass. R. A. P. 16(h) (length of briefs); Mass. R. A. P. 18 (appendix to the briefs); and Mass. R. A. P. 20 (form of briefs, appendices, and other papers).

According to my word processing program, the Argument section of the Application is ten (10) pages long. The Application is in Courier New- a mponospaced font.

/s/ William S. Smith

_____

William S. Smith, Esq.

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(Rev.) August 8, 2025

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss

HOLYOKE DISTRICT COURT

DOCKET NUMBER: 2317CV0154

RANDY WESTBROOK,

Petitioner

v.

DAVID PRATT,

Chief, Holyoke Police Department, as

Licensing Authority,

Respondent

Decision on Petition for Judicial Review of Denial of License to Carry a Firearm

Summary of Decision

This is an appeal from the denial of a license to carry a firearm pursuant to G.L. c. 140, § 131. The law applicable to these matters has changed significantly in recent years as a result of a trilogy of decisions from the United States Supreme Court and statutory amendments enacted by the Massachusetts legislature. Constitutional balancing tests no longer control, and only reliable and credible information may be considered by a licensing authority and a reviewing court. Information concerning sealed criminal records is admissible. A licensing authority now must justify its regulation of the fundamental constitutional right to bear arms by demonstrating that it is consistent with the nation's historical tradition of firearm regulation. Any law that restrains this right must be narrow and objective and must provide definite standards that limit the discretion to be exercised by a licensing authority. G.L. c.140, § 131 is generally consistent with an historic tradition of denying firearms to dangerous persons, but its standard for determining whether an applicant is dangerous is not narrow and objective. It impairs an individual's right to bear arms for self-defense based on a determination that his or her past behavior "suggests" the individual "may" be dangerous if armed, giving the licensing authority an impermissible amount of discretion. For this reason, the decision to deny the plaintiff a license must be reversed.

Procedural History

The plaintiff, Randy Westbrook (Westbrook), applied for a license to carry a firearm (LTC) pursuant to G.L. c.140, § 131. The defendant, David Pratt, in his capacity as the Chief of the Holyoke Police Department (the Chief), reviewed the application and notified Westbrook in writing that his application had been denied. In his written notice of denial, the Chief stated that he had determined Westbrook was an "unsuitable person" for an LTC. He indicated this decision was:

> Based on Holyoke Police Department Arrest Report #10-600-AR in which you were charged with A&B Domestic and Aggravated A&B. The latter charge you accepted a CWOF on. Also, you accepted a CWOF on the charges of Conspiracy to Violate the Controlled Substances Act and Possession with the Intent to Distribute a Class B Substance in Northern Berkshire District Court.

Westbrook filed a complaint for judicial review pursuant to G.L. c.140, § 131(f). He asserts that, under the "traditional" Massachusetts standard of judicial review for LTC denials, the decision to deny him an LTC was unreasonable, arbitrary or capricious, an abuse of discretion and was not supported by substantial evidence. He maintains, however, that the traditional standard of judicial review of a licensing authority's denial of a firearm application is no longer applicable after the United State Supreme Court's decision in New York State Rifle & Pistol Association Assoc., Inc. v. Bruen, 597 U.S. 1 (2022). In addition, he contends that the "suitability" standard set out in G.L. c. 140, § 131 is impermissibly vague and overbroad and is therefore unconstitutional. (Westbrook gave the Attorney General notice of his constitutional challenge as required by Mass. R. Civ. P. 24(d). The Attorney General has not intervened.)

An evidentiary hearing was held on March 1, 2023. The Chief was the only witness. He testified that his decision was based on information contained in two police reports and in other police records he reviewed, and his 37 years of experience in law enforcement.

Westbrook objected to the introduction of the disposition of a criminal charge that was sealed pursuant to G.L. c. 276, § 100A. He objected to the introduction of and any reference to one of the police reports. He also objected to hearsay statements that gave rise to a criminal charge. Westbrook's objections were taken under advisement and the evidence was admitted de bene. For the following reasons, these objections are overruled.

Sealed Records

Pursuant to G.L. c. 276, § 100A individuals who have "a record of criminal court appearances and dispositions in the commonwealth on file with the office of the commissioner of probation" may "request that the commissioner seal the file." When these records are sealed by the

commissioner in his files, the clerks and probation officers of the courts in which the dispositions occurred are to "seal records of the same proceedings in their files." The statute, in pertinent part, also provides that "sealed records shall not operate to disqualify a person in any examination, appointment or application for public service ... nor shall such sealed records be admissible in evidence or used in any way in any court proceedings...." G.L. c. 276, §100A.

This section of the law, however, appears to conflict with G.L. c. 6, § 172. That statute provides that the Department of Criminal Justice Information Services (CJIS) is to maintain criminal offender record information in a database. G.L. c.6, § 172(a)(1) provides that "Criminal justice agencies may obtain all criminal offender record information, including sealed records, for the actual performance of their criminal justice duties. Licensing authorities, as defined in section 121 of chapter 140, may obtain all criminal offender record information, including sealed records, for the purpose of firearms licensing in accordance with sections 121 to 131P, inclusive, of chapter 140."

A sealed record provides a mechanism whereby a disposition is, in most instances, shielded from public view. Section 100A, however, does not have the same reach or effect as statutes governing expungement or a pardon. In the case of a pardon, for example, "all records relating to the offense for which the person received the pardon" are sealed and they, by statute, no longer disqualify a person from obtaining a license. G.L. c. 127, § 152. See DeLuca v. Chief of Police of Newton, 415 Mass. 155 (1993); Rzeznik v. Chief of Police of Southampton, 374 Mass. 475 (1978); Chief of Police of Shelburne v. Moyer, 16 Mass. App. Ct. 543 (1983). However, even when a person is pardoned after a conviction, the historical facts that underly the conviction may be considered if relevant to a government agency's decision on character and suitability. Commissioner of Metropolitan District Commission v. Director of Civil Service, 348 Mass. 184 (1964).

"A fundamental tenet of statutory interpretation is that statutory language should be given effect consistent with its plain meaning and in light of the aim of the legislature unless to do so would achieve an illogical result." Sullivan v. Brookline, 435 Mass. 353, 360 (2001). Hypothetically, if an individual has been convicted of a felony, he or she would be statutorily disqualified from obtaining an LTC and the police chief would have to deny his or her application. To interpret Section 100A as prohibiting a police chief from introducing any evidence of the mandatory disqualifying event when his or her denial is challenged in court defies common sense and cannot be what the Legislature intended. Interpreting the relevant statutes in the manner suggested by Westbrook would achieve an illogical result.

A New Jersey appellate court considered somewhat similar circumstances when that state's expungement remedy appeared to conflict with a statute relating to firearm licensing. In that case, the plaintiff had the record of a psychiatric commitment expunged and later applied for a gun permit. The court ruled that the New Jersey expungement privilege was not absolute. It found that in the context of gun ownership, the legislature had crafted a strict regulatory scheme intended to protect society and individuals. The firearm permit application was deemed

to be a constructive waiver of the expungement privilege that allowed the trial court to inquire into and consider expunged evidence. In re Appeal of the Denial of M.U.'s Application for a Handgun Purchase Permit, 475 N.J. Super. 148 (App. Div. 2023).

The New Jersey approach to the reconciliation of the two conflicting statutes may be appropriate here but is not required. As noted above, Section 100A only relates to the admissibility and use of sealed records of criminal appearances and criminal dispositions in the files of the commissioner of probation, court clerks and probation officers. In this case, neither party sought to introduce an actual probation record or a court record. Unlike the statutes governing pardons, Section 100A does not seal or proscribe the admission and consideration of any other documents, records or testimony from other sources.

Here, the Chief, in this capacity as the firearms licensing authority for the City of Holyoke, lawfully obtained sealed records and utilized them in the performance of his duty. For all the above reasons, Westbrook's objection is overruled, and the proffered evidence is admitted.

Hearsay

Westbrook also objects to what he asserts is unreliable hearsay contained in two police reports the Chief sought to introduce. One report, dated March 14, 2010, indicates that officers were dispatched to an apartment in Holyoke for a report of a domestic disturbance. They met the apartment resident and learned that the alleged victim was hiding in a bathroom. The police observed that the alleged victim's "right eye was swollen, partially closed and her eyelid was bulging out." She reported that Westbrook was her ex-boyfriend and that after an argument he had started shaking her "and then punched her several times in the face and the back of her head." She reported that she ran to her friend's apartment, and that Westbrook followed her there. The friend told the officers that she was able to lock Westbrook out of her apartment. The alleged victim also told the police she was nine months pregnant. Officers went to Westbrook's home and left word that they wished to speak with him. Later that evening Westbrook reported to police headquarters. He was subsequently charged with both domestic assault battery and assault and battery on a pregnant woman.

In his LTC application, which was introduced without objection, Westbrook stated (apparently incorrectly) that he had "pled Guilty" and had been convicted of "domestic violence." He also disclosed that he had been the subject of a 209A order "because of the domestic violence." According to an internal record that was considered by the Chief, on May 4, 2010, the first charge was nolle prosed and the second was continued without a finding. The Chief testified that the second charge was later dismissed after a period of probation. Westbrook objected only to the admissibility of this information. Its accuracy was not challenged.

The second report offered by the Chief was created by a Massachusetts State Police trooper. He reported that on April 4, 2014, he saw a van operating at high rate of speed above the posted limit and he followed it. He conducted a traffic stop. Westbrook was the front seat passenger in the van. The operator indicated he did not have a driver's license in his possession. The trooper

returned to his vehicle and performed a computer inquiry that revealed that the operator's license had been suspended. The trooper requested assistance and other members of the State Police arrived on the scene. The trooper directed the operator and Westbrook to exit the vehicle so that an inventory could be conducted before the vehicle was towed.

A trooper found two suboxone sublingual film strips in the floor center console of the van. He found a ripped corner of a plastic sandwich bag in the center console. It appeared to have white residual powder residue in it. Under the van's gas cap, a trooper found several plastic baggies holding a total of 17 smaller baggies containing a white substance the trooper believed was consistent with cocaine. The driver stated that the cocaine found in the gas cap belonged to him and that he did not want to get Westbrook in trouble. He claimed that all the cocaine was intended for his personal use that evening while he "partied with girls." Both Westbrook and the van driver were arrested and charged with possession with intent to distribute cocaine.

At the hearing in this case, the Chief testified that according to police records this charge was continued without a finding and later dismissed following probation. Once again, the accuracy of this assertion was not challenged.

In Chief of Police of the City of Worcester v. Holden, 470 Mass. 845 (2015), the Supreme Judicial Court dealt with similar circumstances. It found that "The hearsay evidence on which the chief relied was reliable and relevant, and it was the kind and quality of evidence on which judges often rely in probation revocation hearings." *Id.* at 863. Despite citing Commonwealth v. Durling, 407 Mass. 108 (1990), however, the Holden Court quoted Chief of Police of Shelburne v. Moyer, 16 Mass. App. Ct. 543 at 547 (1983), stating "'The full panoply of procedures usually available at a trial is not required in the review by a District Court in a case of this nature. The hearsay rule should not be applied to evidence proffered by a chief of police in support of the reasonableness of his denial. The test should be one of relevance.'" Holden at 863.

In Moyer, however, the Appeals Court had indicated that the Declaration of Rights of the Massachusetts Constitution does not protect the right to keep and bear arms and procedures for obtaining an LTC did not involve a property right. Moreover, in Moyer the Appeals Court relied on Lotto v. Commonwealth, 369 Mass. 775 (1976), a decision that involved the termination of a license to rent out boats in a state park, not a constitutional right.

Constitutionally speaking, the landscape has changed substantially since Lotto, Moyer and even Holden were decided. In District of Columbia v. Heller, 554 U.S. 570 (2008), the United States Supreme Court recognized that the Second Amendment protects an individual's right to keep and bear arms for self-defense. In McDonald v. City of Chicago, Ill.,561 U.S.742 (2010), the Supreme Court held that the Fourteenth Amendment makes this fundamental right fully applicable to the states. After Holden was decided, in Bruen the Supreme Court held that the Second Amendment to the United States Constitution protects the right of "ordinary, law-abiding citizens" to possess handguns in their homes and to carry them publicly for self-defense, without having to demonstrate any special need. Bruen at 1. Both Moyer and Holden were

decided when it was not clear that the right to possess a handgun outside of the home is constitutionally protected as a fundamental right applicable to the states.

Generally, as noted in In the Matter of G.P., 473 Mass. 112 (2015), (dealing with commitments under G.L. c. 123, § 35) the "flexible nature of due process" does not always require "strict adherence to the rules of evidence, so long as there is fairness in the proceeding." Id. at 122. "Allowing hearsay if it is credible preserves the 'due process touchstone of an accurate and reliable determination,' Durling, supra at 117-118, while accounting for practical considerations of § 35 hearings. But precisely because hearsay evidence may well play an extremely significant role in these hearings, the judge's obligation to ensure that any hearsay on which he or she relies is 'substantially reliable,' as required by rule 7(a), is critical, particularly in light of the clear and convincing evidence standard of proof required by rule 6(a)." Id.

Like a probation violation hearing or a civil commitment hearing, a hearing after the denial of an application for an LTC can present practical difficulties regarding the production of live testimony. This is particularly true with regard to allegations of prior criminal or violent behavior. The interests of the parties, however, call for a reliable, accurate evaluation. As noted in Durling, "when the government seeks to rely on evidence that is not subject to cross examination, the due process touchstone of an accurate and reliable determination still remains. The proper focus of inquiry in such situations is the reliability of the evidence presented." Id. at 117. Moreover, as Durling states, when hearsay is offered as the only evidence, the indicia of reliability should be substantial.

Indeed, the licensing statute now explicitly requires that a "determination of unsuitability shall be based on **reliable, articulable and credible information** that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others." G.L. c. 140, §131 (d) (emphasis added).

Given the importance of the right that is at stake here, and given the plain language of the statute, a judge reviewing a police chief's denial of an LTC application based on unsuitability must determine whether the denial was based on reliable and credible information. Consistent with Darling and In the Matter of G.P., considering hearsay only if it is credible and reliable, preserves the due process touchstone of an accurate determination while accounting for practical considerations. When hearsay is the only evidence introduced to establish unsuitability, the reliability of the hearsay must be substantial. A lesser standard would be inconsistent with the basic principles of due process that are required to protect fundamental constitutional rights, including the right protected by the Second Amendment.

Applying these principles to the police reports in this case, the information set out above that is contained in the 2014 report is substantially reliable, credible hearsay and it is admissible. It is factually detailed and states primary facts, not mere conclusions or opinions. It sets out personal observations by officers that were recorded close in time to the reported events. For

the same reasons, the personal, first-hand observations recorded by the troopers in the 2010 report constitute substantially reliable, credible hearsay. They are also admissible.

As to the hearsay statements of the complaining witness that are contained in the 2010 report, they are also substantially reliable and credible when considered together with the documented observation of a recent injury to the victim and the fact that Westbrook subsequently admitted there were sufficient facts to warrant a finding of guilty.

No guilty finding entered, but a finding did enter, and a disposition was made. For this to occur, a court had to find that the facts stated by the prosecutor satisfied the essential elements of the alleged crime; were voluntarily admitted by the plaintiff; and were sufficient to warrant a finding of guilt. This allows an admission to sufficient facts to be treated as a guilty plea in many respects. Commonwealth v. Rossetti, 95 Mass. App. Ct. 552 (2019). In the words of the Supreme Judicial Court:

> Commentators and the established practice in the District Court indicate that a judge would not and should not accept an admission to sufficient facts unless that admission had a factual basis to support a finding of guilt of the crime charged. See E.B. Cypher, Criminal Practice and Procedure § 24:76 (4th ed. 2014). Indeed, it is illogical to conclude that a defendant could receive the disposition of a CWOF without first admitting to sufficient facts that satisfied the judge that he or she was guilty. See Mass. R. Crim. P. 28(b), 378 Mass. 898 (1979). See also Commonwealth v. Norrell, 423 Mass. 725, 727 n. 5, 673 N.E.2d 19 (1996). The reason an admission to sufficient facts triggers the same safeguards as a guilty plea is that a violation of the conditions of a CWOF may result in the immediate adjudication of guilt and imposition of sentence without requiring the Commonwealth to offer any further evidence of the underlying offense. See Commonwealth v. Tim T., 437 Mass. 592, 596–597, 773 N.E.2d 968 (2002). See also Commonwealth v. Mahadeo, 397 Mass. 314, 316, 491 N.E.2d 601 (1986). If a judge can enter a finding of guilty and impose sentence without taking any further evidence of the underlying offense after a violation of the conditions of a CWOF, it follows that an implicit determination has been made that the defendant "has violated or failed to comply with the law." Tirado v Board of Appeal on Motor Vehicle Liability Policies and Bonds, 472 Mass. 333, 339 (2015).

For all these reasons, I find the information relied upon by the Chief was substantially reliable and credible. The hearsay objections are overruled.

Judicial Review Before and After Bruen

Holden, cited above, appears to be the last time the Massachusetts Supreme Judicial Court broadly addressed the "suitable person" standard in G.L. c 140, § 131. In that decision, the Court found that the core of the Second Amendment is the right to possess firearms for use in defense of the home and that prohibitions on carrying concealed weapons outside of the home are presumptively lawful. It noted that the purpose of the LTC statute was to limit access to

deadly weapons by irresponsible persons and to keep firearms out of the hands of people who posed a palpable risk that they would not use a firearm responsibly. Using a balancing test, the Court found the law promoted important government interests and bore a substantial relationship to public health and safety. Consequently, it determined the statute passed constitutional muster under a rational basis analysis.

In view of the evidence, particularly the evidence supporting the charge of aggravated domestic assault battery, if Holden and earlier decisions dealing with LTC appeals still controlled, the decision to deny Westbrook an LTC would be upheld. Protecting the public from danger related to the misuse of firearms is an important government interest, and given the discretion formerly afforded to a police chief in Massachusetts, the Chief's decision was neither arbitrary nor capricious, and it was not an abuse of discretion. Several sections of the statute that were applicable to Holden, however, have been amended, and the United States Supreme Court has set out a completely different standard for evaluating firearms licensing. As noted above, the constitutional landscape has greatly changed. Historical analysis is now required.

Currently, when an individual applies for an LTC in Massachusetts, the licensing authority must determine whether the applicant is a "prohibited person," for example, a convicted felon or a person who falls into one of the other categorical exclusions that are specifically listed in G.L. c. 140, § 131(d)(i)-(x). If the applicant falls into one of these categories, he or she shall not be issued an LTC. Previously, a licensing authority could deny an application for an LTC "if, in a reasonable exercise of discretion," the authority determined the applicant was unsuitable to be issued an LTC. The quoted language regarding discretion has been deleted.

Even if the applicant is not a statutorily prohibited person, the licensing authority shall deny the applicant an LTC if the applicant is "unsuitable." Previously, the statute provided no definition of the term unsuitable. Now unsuitability means that there is "reliable, articulable and credible information that the applicant ... has exhibited or engaged in behavior that suggests that, if issued a license, the applicant ... may create a risk to public safety or a risk of danger to self or others." G.L. c. 140, § 131(d).

In Bruen, the Supreme Court stated that, "[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." Bruen at 24. This is because constitutional rights have the scope they were understood to have when they were adopted. The Court explicitly rejected the balancing test employed in Holden, and previous Massachusetts appellate decisions, in favor of an historical analysis that places the burden to justify regulation on the licensing authority.

Consequently, since Bruen, a judge considering an LTC appeal initially must decide two things. First, the judge must determine whether the text of the Second Amendment applies to the applicant and to his proposed conduct. If it does, then the judge must determine whether the licensing authority has proven that the suitability standard contained within the LTC statute "is

part of the historical tradition that delimits the outer bounds of the right to keep and bear arms." Bruen at 18.

Historic Tradition and Dangerousness

As to the first issue, the United States Supreme Court explained in Heller that the Second Amendment's reference to the right of "the people" to bear arms refers to members of the entire political community. The right presumptively belongs to all Americans. In this case, Westbrook is not an automatically prohibited person and has Second Amendment rights. He seeks an LTC so that he may possess a firearm for self-defense outside of his home. The Second Amendment applies to his proposed conduct.

As to the more difficult second issue, the Chief has not identified anything that might support a determination that G.L. c. 140, § 131 falls within an historical tradition of regulating the right to keep and bear arms. Westbrook argues that there is no tradition of laws that would disarm an individual who has been charged but not convicted of a disqualifying offense. He also asserts that a generalized historic tradition of disarming individuals deemed dangerous does not satisfy the requirements of Bruen, and that the Massachusetts unsuitability provision is too subjective and is the equivalent of the law that was struck down in Bruen. He relies on a handful of decisions, including United States v. Quiroz, 629 F. Supp. 3rd 511 (W.D. Texas 2023) and United States v. Rahimi, 61 F.4th 443 (5th Cir. 2023) in support of his position.

These decisions, however, do not give sufficient weight to the Supreme Court's admonition in Bruen that judges are not to place a "regulatory straitjacket" on government by requiring a "historical twin" for every present-day statute in order for the statute to be constitutional. Bruen at 30. It has been suggested that the historical analysis called for in Bruen is not even centered on a determination whether an individual has been convicted of a felony or has engaged in what any particular jurisdiction deems felonious conduct.

As stated in United States v. Harrison, 654 F. Supp. 3d 1191 (W.D. Oklahoma 2023):

> While our Nation's history and tradition does not support disarming a person merely because they have engaged in felonious conduct, it does support a different proposition: 'that the legislature may disarm those who have demonstrated a proclivity for violence' through past violent, forceful, or threatening conduct (or past attempts at such conduct). Or, to put it another way, 'the historical record' demonstrates 'that the public understanding of the scope of the Second Amendment was tethered to the principle that the Constitution permitted the dispossession of persons who demonstrated that they would present a danger to the public if armed'. Id. at 1210 (internal citations omitted).

This analysis is supported by detailed historical research. See Greenlee, Joseph G.S., The Historical Justification for Prohibiting Dangerous Persons from Possessing Arms, Wyoming Law

Review. Vol. 20: No. 2, Article 7. In short, notwithstanding the decisions relied upon by Westbrook, when the Second Amendment was adopted, "the right to keep and bear arms was understood to exclude those who presented a danger to the public." Greenlee at 267.

The Determination of Suitability and Limitations on Discretion

In Holden, the Supreme Judicial Court stated that the Massachusetts suitability standard properly gave a police chief "'considerable latitude' or broad discretion in making a licensing decision.'" Holden at 854 (internal citations omitted). This is no longer permissible.

In Bruen, the New York firearm licensing statute in question included a provision that required an applicant to establish a "proper cause" for an LTC. (This term is used broadly here, as different jurisdictions use different terminology.) A proper cause was interpreted as a special need for self-defense that was distinguishable from that of the general community. After a lengthy historical analysis, the Supreme Court determined there was no historic tradition requiring a showing of special need before an individual could exercise the right to carry a firearm. The Court held that the Second Amendment did not allow government regulation that relies on a discretionary assessment of an individual's need or justification.

The Court, however, also stated that firearm licensing statutes may lawfully require applicants to undergo background checks or pass firearms safety courses, as requirements of this sort are objective and designed to ensure only that the people carrying firearms are in fact law-abiding and responsible citizens. Bruen, in fact, identifies 43 states where the Court determined LTCs are issued based on objective criteria. The Court stated that "nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States' "shall-issue' licensing regimes, under which 'a general desire for self-defense is sufficient to obtain a (permit).'" Bruen at 30, n.9 (internal citations omitted). The Court also noted that these 43 jurisdictions "appear to contain only 'narrow, objective, and definite standards' guiding licensing officials, *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151, 89 S.Ct. 935, 22 L.Ed.2d 162 (1969), rather than requiring the 'appraisal of facts, the exercise of judgment, and the formation of an opinion,' *Cantwell v. Connecticut*, 310 U.S. 296, 305, 60 S.Ct. 900, 84 L.Ed. 1213 (1940)—features that typify proper-cause standards like New York's." Bruen at 30, n.9.[1]

Massachusetts was not one of the 43 so-called "shall-issue" states identified by the Supreme Court, but the Court indicated that three states- Connecticut, Delaware, and Rhode Island- that have suitability requirements in their licensing statutes appear to operate as "shall-issue" jurisdictions. As stated above, the Massachusetts legislature has amended the LTC statute since Bruen was decided. Consequently, Bruen does not explicitly state whether the current Massachusetts standard for suitability makes Massachusetts a "shall-issue" jurisdiction like

[1] Much of Note 9 in Bruen is dicta, but carefully considered United States Supreme Court dicta is accorded great weight and is treated as authoritative.

Connecticut, Delaware and Rhode Island. Antonyuk v Chiumento, 89 F. 4th 271 (2023) is informative on this issue.

In Antonyuk, the Second Circuit Court of Appeals addressed a constitutional attack on New York's requirement of "good character," a suitability standard of sorts. The Court took note of Bruen's apparent endorsement of multiple state suitability provisions and its simultaneous criticism of laws that give officials discretion to deny licenses based on a perceived lack of need or suitability. It examined the licensing regimes in Connecticut, Delaware, and Rhode Island and a dozen other states that were referred to in Bruen as "shall-issue" jurisdictions. The Antonyuk Court found that these licensing regimes all have some type of a suitability determination that requires "the appraisal of facts, the exercise of judgment, and the formation of an opinion," Antonyuk at 324, citing Bruen at 30 n.9. More particularly, the Court stated that the New York "good character" provision and the licensing laws in Connecticut, Delaware and Rhode Island, and the dozen other statutes identified (and arguably approved) by the Supreme Court in Bruen, all give licensing authorities a "modicum of discretion" that is "embedded in the licensing schemes...." Id. at 326.

The Second Circuit Court of Appeals ultimately found that Bruen suggests that states cannot deny LTC applications based on a suitable need or purpose but may do so based on an applicant's previous conduct, or lack of the character, temperament, or reputation in the community necessary to be entrusted with a weapon. Therefore, statutes that authorize a licensing authority to make a determination of unsuitability because an individual is likely to use a firearm unlawfully; will likely present a danger to himself if armed; or suffers from a condition or infirmity that prevents the safe handling of a gun, would be supported by a historic tradition focused on danger to an applicant or others. In addition, if a licensing regime does not prevent ordinary, law-abiding citizens from carrying handguns; is focused only on disarming those who would present a danger if armed; and only gives the licensing authority the "modicum" of discretion needed to make this determination on danger, it would meet the requirements set out in Bruen.

Narrow, Objective Standards

Having discerned the broad parameters of permissible government regulation of Second Amendment rights, the final, critical issue to be decided here is whether G.L. c. 140, § 131 meets the requirements set out in Bruen or is, as Westbrook contends, too subjective and overly broad, affording a police chief too much discretion.

In considering this question, it is significant that the Supreme Court cited two important First Amendment decisions in Bruen, Shuttlesworth v. Birmingham, 394 U.S. 147 (1969) and Cantwell v. Connecticut, 310 U.S. 296 (1940). In Shuttlesworth, a city ordinance that gave a local commission the power to prohibit demonstrations on city streets was found unconstitutional. The Supreme Court found that the local government was improperly "guided by their own ideas of 'public welfare, peace, safety, health, decency, good order, morals or convenience.'"

Shuttlesworth at 151 (internal citations omitted). The Court pointed out that many of its decisions hold that "a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." Id. at 150-151.

Cantwell v. Connecticut dealt with the First Amendment right to exercise one's freedom of religion in public areas. In that case, the state suggested that if a licensing officer acts arbitrarily, capriciously or even corruptly, the harm is not irreparable, as individuals have a judicial remedy available. The Supreme Court responded to this argument by noting that "A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the constitution as one providing for like restraint by administrative action." Cantwell at 306.

The inclusion of these two decisions in Bruen underscores the Supreme Courts' admonition that "The constitutional right to bear arms in public for self-defense is not "a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." Bruen at 70, quoting McDonald, 561 U.S. at 780. It also underscores an argument that has been made by Westbrook, that a firearm licensing regime is not intended to be a two-step process involving both administrative action and judicial review.

In short, even if most reasonable people would agree that protecting individuals from a danger that is inherent in the possession of a firearm is a legitimate and important government interest, the government's regulation of Second Amendment rights, like the regulation of First Amendment rights, must incorporate constitutional protections and must do so from the start, that is, at the administrative hearing, not just upon further judicial review.

Like the LTC statute, Massachusetts laws concerning civil commitments, discussed above, and the various statutes identified by the Supreme Court in Bruen, are centered on how determinations concerning danger to self or others will be made. Other statutes, however, require a determination whether such danger is reasonably foreseeable or likely. By way of example, in Massachusetts, an order to disarm an individual on an emergency basis must be based on a finding that "the plaintiff demonstrates a substantial likelihood of immediate danger...". G.L. c. 209A, §3B. These laws, and indeed most statutes that regulate conduct and limit individual liberty, require the appraisal of facts and the consideration of probabilities and likelihood.

G.L. c. 140, § 131 differs in its scope and in the amount of discretion it allows. The definition of suitability in the current statute allows a government official to deny an individual the right to bear arms in public for self-defense not based on a probability or reasonably foreseeable circumstances, but on behavior that merely "suggests" to the chief of police that an applicant "may" create a risk to public safety. This language is both broad and vague, and I have found no

historical tradition for a statute that delimits the right to bear arms (or any other constitutional right for that matter) in such soft, indeed spongy terms.[2]

Statutory words and phrases must be construed "according to the common and approved usage of the language." G.L. c. 4, §6. Black's Law Dictionary has provided a definition of the word "suggestion." It states that "It is in the nature of a hint or insinuation and lacks the element of probability. Facts which merely suggest do not raise an inference of the existence of the fact suggested, and therefore a suggestion is much less than an inference or presumption." *Black's Law Dictionary*, 1285 (1979 5th Edition). Similarly, dictionaries list the words imply, hint, intimate and insinuate as synonyms for the word suggest. *The American Heritage Dictionary of The English Language, 1731 (*2000 4th Edition).

A law that gives a local official broad discretion to deny a First Amendment right to publicly protest government action or to express a religious belief in public based on a hint or an insinuation of danger to the public would not be tolerated. Likewise, a standard of unsuitability based on a hint, an intimation or an insinuation is not permissible because it allows the government to exercise more than a modicum of discretion, and more than that which is allowed in the licensing regimes identified favorably in Bruen. The amount of discretion the terms of G.L. c. 140, §131 impart in their common usage is simply inconsistent with historical tradition and the narrow, objective, definite standard that is required to survive scrutiny post-Bruen.

Conclusion

The United States Supreme Court has decided that there is a fundamental right to carry a handgun in public for self-defense. Laws that regulate Second Amendment rights must be consistent with historical precedent and may not give licensing authorities more than the minimal amount of discretion necessary to determine whether applicants would present a danger to themselves or others if armed. Judges may no longer decide Second Amendment challenges based on traditional balancing tests, and the government has the burden of demonstrating a historical tradition that supports its restriction on the right to carry a handgun. In this case, I find that, as a matter of law, there is an historical tradition in this country of denying firearms to individuals who have demonstrated they would likely be dangerous if armed. The Chief, however, has not demonstrated an historical tradition that would support a law like G.L. c. 140, §131 that is based not on probability or even reasonable inference, but on a

[2] 1 Some courts have concluded that there is a very broad historical tradition of prohibiting individuals who are members of groups that are simply perceived to pose a danger to public safety if armed from having guns. As proof they cite bans on gun ownership by African Americans, Native Americans, and Catholics. Although such prohibitions unfortunately did exist, it is now clear they were based on racism and bigotry. The suggestion that racist and bigoted laws, that we now recognize as wholly unconstitutional, should be considered in determining what the Second Amendment means is not instructive and is somewhat disconcerting.

suggestion, a hint, or an insinuation that there may be danger. The law is inconsistent with what the United States Supreme Court stated in Bruen concerning the rights protected by the Second and Fourteenth Amendments.

Order

For all the above reasons, the decision denying Westbrook an LTC must be reversed and the LTC is to issue. Westbrook's petition for fees and costs and any further relief is denied.

William P. Hadley, First Justice

Holyoke District Court

May 20, 2024

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2479CV00392

DAVID PRATT, CHIEF OF THE HOLYOKE POLICE DEPARTMENT,
AS LICENSING AUTHORITY,
Plaintiff

and

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff-Intervenor

vs.

RANDY WESTBROOK & another,[1]
Defendants

MEMORANDUM OF DECISION AND ORDER ON
PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

The petitioner, David Pratt, Chief of the Holyoke Police Department ("HPD"), as the firearms licensing authority for the City of Holyoke, brought this action pursuant to G.L. c. 249, § 4, seeking certiorari review of the Holyoke District Court's May 20, 2024, order reversing HPD's denial of Defendant Randy Westbrook's application for a license to carry a firearm ("LTC"). HPD denied Westbrook's application for an LTC on August 29, 2023, on the grounds that Westbrook was an "unsuitable person" to carry firearms

[1] As nominal defendant, the Holyoke Division of the District Court, acting by and through the Honorable Justice William P. Hadley.

within the meaning of G.L. c. 140, § 131(d).[2] Westbrook appealed pursuant to G.L. c. 140, § 131(f), and the District Court reversed the denial based on its conclusion that the suitability provision of the Massachusetts gun licensing scheme is unconstitutional in the wake of *New York State Rifle & Pistol Ass'n* v. *Bruen*, 597 U.S. 1 (2022). HPD now seeks certiorari review of the District Court's decision. After a hearing and careful consideration of the parties' submissions, HPD's motion for judgment on the pleadings is **ALLOWED**.

BACKGROUND

Westbrook applied to HPD for an LTC in April 2023. On August 29, 2023, Pratt, in his capacity as the licensing authority for the City of Holyoke, issued a written notice denying Westbrook's application for an LTC because Westbrook was an "unsuitable person" to carry a firearm. The notice indicated the denial was based on: HPD Arrest Report #10-600-AR (the "HPD report"), in which Westbrook was charged with domestic assault and battery and aggravated assault and battery on a pregnant woman; and Northern Berkshire District Court charges for conspiracy to violate the Controlled Substances Act and possession with intent to distribute a Class B substance.

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[2] A statutory amendment effective October 2, 2024, moved the suitability component of the firearms licensing scheme to a new section, G.L. c. 140, § 121F(k). The suitability standard itself remains unchanged. For consistency with the briefing, and because Westbrook's application was denied when the prior 2022 version of the statute was in effect, the court refers to § 131(d).

The HPD report indicated that on March 14, 2010, police responded to an apartment in Holyoke for a report of a domestic disturbance. Officers met with the alleged victim and observed that her "right eye was swollen, partially closed and her eyelid was bulging out." The alleged victim stated that Westbrook, her ex-boyfriend, shook her "and then punched her several times in the face and the back of her head." She then ran to the apartment of her friend, who managed to lock Westbrook out. The alleged victim also told police she was nine months pregnant. Officers went to Westbrook's apartment and left word that they wished to speak to him. Later that evening, Westbrook reported to police headquarters.

Westbrook was subsequently charged with two counts – domestic assault and battery, and assault and battery on a pregnant woman. On May 4, 2010, the first charge was *nolle prossed,* and Westbrook accepted a continuation without a finding ("CWOF") on the second charge, which was ultimately dismissed after a period of probation. In his LTC application, Westbrook stated he had "pled guilty" to "domestic violence" and had been subject to a 209A order "because of the domestic violence."

With respect to the drug charges, a Massachusetts State Police report[3] indicated that on April 4, 2014, Westbrook was a passenger in a vehicle containing 17 individually

[3] Westbrook objected to the admissibility of both police reports, but did not challenge the accuracy of the information contained within them. The District Court overruled Westbrook's objections to the admissibility of the reports and concluded HPD could properly consider them when reviewing Westbrook's LTC application.

packaged baggies of a substance consistent with cocaine. The vehicle also contained two suboxone sublingual film strips and a ripped corner of a plastic sandwich bag with white residue inside. The Trooper noted that he found no instruments suggesting personal use and that, in his training and experience, the amount and cocaine packaging was indicative of intended sale. Westbrook was arrested and charged with possession with intent to distribute cocaine. Westbrook accepted a CWOF and the charge was later dismissed after a period of probation.

Pratt denied Westbrook's LTC application based on these facts. Westbrook sought judicial review, and the District Court reversed the denial through a written decision dated May 20, 2024. The District Court held that the suitability provision of G.L. c. 140, § 131(d), is unconstitutional in the wake of *Bruen* because the standards set forth for determining whether an applicant is unsuitable are not sufficiently "narrow and objective," and thus confer an impermissible amount of discretion upon the licensing authority. In particular, the District Court concluded that while "there is an historical tradition in this country of denying firearms to individuals who have demonstrated they would likely be dangerous if armed," the language of G.L. c. 140, § 131(d), permitting reliance on behavior that "suggests" an individual "may create a risk" to public safety, did not fit within that historical tradition. The HPD now seeks judicial review under G.L. c. 249, § 4.

DISCUSSION

In an action for certiorari review under G.L. c. 249, § 4, the Court "examines the record of the District Court . . . to correct substantial errors of law apparent on the record adversely affecting material rights." *Chief of Police of Wakefield* v. *DeSisto*, 99 Mass. App. Ct. 782, 784-785 (2021) (citation and quotations omitted). HPD, and the Commonwealth as Intervenor, argue the District Court's decision was based upon an error of law. After careful review, the Court agrees.

In the proceedings below, the District Court ruled that the suitability requirement of § 131(d) is unconstitutional under *Bruen* because it vests too much discretion in the licensing authority and thus violates the Second Amendment. Westbrook advanced both facial and as-applied challenges to the constitutionality of the statute.

I. Facial Challenge

The Second Amendment protects an individual's "right to possess and carry weapons in case of confrontation." *District of Columbia* v. *Heller*, 554 U.S. 570, 592 (2008). See also *McDonald* v. *Chicago*, 561 U.S. 742, 750 (2010) (applying Second Amendment to the States). However, "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Heller*, 554 U.S. at 626. It is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* The Supreme Court clarified, for example, in a non-exhaustive list, that "nothing in [its] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by

felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-627.

In *Bruen*, the Supreme Court held that the Second Amendment protected the right to carry a firearm without the need to demonstrate an individual, special need for self-defense. *Bruen*, 597 U.S. at 71. In so doing, the Supreme Court articulated a new framework for evaluating Second Amendment challenges: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24.

Applying that two-step framework, the Supreme Court struck down a New York license to carry statute requiring an applicant to show "proper cause" to obtain a firearm license. *Id.* at 71. The Supreme Court explained that there was no historical tradition of conditioning issuance of a license on a discretionary assessment of need or justification. *Id.* Because the New York law required applicants "to show an atypical need for armed self-defense," *id.* at 38 n.9, it created an impermissible "may issue" licensing regime, under which "authorities have discretion to deny . . . licenses even when the applicant satisfies the statutory criteria." *Id.* at 14.

In contrast, the Court expressly stated that "nothing in [its] analysis should be interpreted to suggest the unconstitutionality" of "shall issue" licensing schemes, which

provide that authorities must issue licenses whenever applicants satisfy certain threshold criteria and do not require the applicant to show a special need for armed self-defense. *Id.* at 38 n.9. "[S]hall-issue regimes, which often require applicants to undergo a background check or pass a firearms safety course, are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.'" *Id.*, quoting *Heller*, 554 U.S. at 635. Further, those regimes do so by applying "'narrow, objective, and definite standards' guiding licensing officials." *Id.*, quoting *Shuttlesworth* v. *Birmingham*, 394 U.S. 147, 151 (1969).

Westbrook contends that *Bruen* supports his argument that suitability requirements, like "proper cause" or need requirements, are unconstitutional. Specifically, he notes the *Bruen* Court, in distinguishing "shall issue" from "may issue" jurisdictions, stated:

> "[T]he vast majority of States—43 by our count—are 'shall issue' jurisdictions, where authorities must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need *or suitability*. Meanwhile, only six States and the District of Columbia have 'may issue' licensing laws, under which authorities have discretion to deny concealed-carry licenses even when the applicant satisfies the statutory criteria, usually because the applicant has not demonstrated cause *or suitability* for the relevant license."

Bruen, 597 U.S. at 13-15 (emphasis added). Among the 43 states whose licensing schemes were deemed acceptable by the Supreme Court were Connecticut, Delaware, and Rhode

Island—all of which have suitability requirements for licensing, like Massachusetts.[4] The Supreme Court explained: "Although Connecticut officials have discretion to deny a concealed-carry permit to anyone who is not a 'suitable person,' the 'suitable person' standard precludes permits only to those 'individuals whose conduct has shown them to be lacking the essential character o[r] temperament necessary to be entrusted with a weapon.'" *Id.* at 13 n.1 (citations omitted). Likewise, while "Rhode Island has a suitability requirement, . . . the Rhode Island Supreme Court has flatly denied that the '[d]emonstration of a proper showing of need' is a component of that requirement." *Id.* (citations omitted).

Contrary to Westbrook's position, then, *Bruen* does not invalidate all suitability requirements. Rather, "[t]he Supreme Court's simultaneous endorsement of Connecticut and Rhode Island's suitability regimes and criticism of state laws that give licensing officials 'discretion to deny licenses based on a perceived lack of need or suitability,' suggests that States cannot grant or deny licenses based on suitable need or purpose but may do so based on the applicant having a suitable character or temperament to handle

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[4] Massachusetts was included in *Bruen's* list of six states having an impermissible "may issue" licensing scheme. After *Bruen,* the Legislature amended the statute in 2022 to state the licensing authority "shall issue" a firearm license "if it appears that the applicant is neither a prohibited person nor determined to be unsuitable to be issued a license . . ." G.L. c. 140, § 131(d), first paragraph, as inserted by St. 2022, c. 175, § 7. The same language now appears in the 2024 version of the statute now in effect, albeit in § 121F(k). As noted in footnote 2, *supra,* Westbrook's application was denied when the 2022 version was in effect.

a weapon." *Antonyuk* v. *James*, 120 F.4th 941, 966 (2d Cir. 2024) (internal citation omitted). Nor does *Bruen* prohibit licensing authorities from exercising any amount of discretion at all. *Id.* at 994-996 (explaining that more than a dozen of the States cited in *Bruen* as having approved "shall issue" licensing regimes call for some measure of discretion in assessing suitability, good moral character, or danger to public safety); *id.* at 998 (the Supreme Court "did not establish a new rule forbidding all discretionary judgments in firearm licensing").

With this framework in mind, the Court concludes the suitability provision contained in the Massachusetts firearm licensing regime is not facially unconstitutional. Section 131(d) provides, in pertinent part, that:

> "The licensing authority shall deny the application or renewal of a license to carry, or suspend or revoke a license issued under this section if the applicant or licensee is unsuitable to be issued or to continue to hold a license to carry. A determination of unsuitability shall be based on reliable, articulable and credible information that the applicant or licensee has exhibited or engaged in behavior that suggests that, if issued a license, the applicant or licensee may create a risk to public safety or a risk of danger to self or others."

Assuming without deciding that § 131(d) regulates conduct protected by the "plain text" of the Second Amendment, *Bruen*, 597 U.S. at 24, the statute is "consistent with the Nation's historical tradition of firearm regulation." *Id.* Surety and "going-armed" laws identified by the Commonwealth[5] stand as sufficient historical analogues to the

[5] See 1836 Mass. Laws ch. 134, §§ 6, 16 (surety law authorizing magistrates to require individuals suspected of future misbehavior who are going armed to post a bond as

suitability provision as to both "how" and "why" they "burden a law-abiding citizen's right to armed self-defense." *Id.* at 29. See also, e.g., *United States* v. *Rahimi*, 602 U.S. 680, 700 (2024) (explaining long "tradition of firearm regulation [that] allows the Government to disarm individuals who present a credible threat to the physical safety of others"). Moreover, "[f]or as long as American jurisdictions have issued concealed-carry-licenses, they have permitted certain individualized, discretionary determinations by decisionmakers." *Antonyuk*, 120 F.4th at 987-991 (collecting historical laws granting officials discretion in making licensing decisions).

Like surety and going-armed laws, "[t]he purpose of G.L. c. 140, § 131, is to 'limit access to deadly weapons by irresponsible persons'" and prevent future violence by such persons who have engaged in behavior indicating they present a risk to public safety. *Chief of Police of City of Worcester* v. *Holden*, 470 Mass. 845, 853 (2015), quoting *Ruggiero* v. *Police Comm'r of Boston*, 18 Mass. App. Ct. 256, 258 (1984). Critically, section 131(d) disarms only individuals deemed dangerous based on their specific conduct; it "does not

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"recognizance to keep the peace" "for a term not exceeding six months"; failure to comply with surety requirement could result in imprisonment for "period for which he was required to give security"); 1795 Mass. Laws ch. 2 (surety and going-armed law prohibited "rid[ing] or go[ing] armed offensively" to terrify "the good citizens of this Commonwealth" and authorized magistrates to require persons who did so "to find sureties for his keeping the Peace . . . and in want thereof, to commit him to prison until he shall comply with such requisition"); 1692 Mass. Laws ch. 18, § 6 (going-armed law authorizing justices of the peace to arrest persons who "ride or go armed offensively . . . in fear or affray of their majesties liege people"; violation resulted in imprisonment and authorized seizure of "armour or weapons").

broadly restrict arms use by the public generally." *Rahimi*, 602 U.S. at 698. Like surety laws and the Federal statute upheld in *Rahimi*, a determination of unsuitability is not a permanent disarmament; an applicant may re-apply for a license in the future. The result of a determination of unsuitability—temporary disarmament—is thus also less severe than historically analogous firearm regulations, such as going-armed laws, which provided for imprisonment.

The fact that the initial determination of a public safety risk is made by a licensing official rather than a court, does not place section 131(d) outside the historical tradition of preventing risk to the public vis-à-vis surety laws, particularly where judicial review of that determination is available. See *Antonyuk*, 120 F.4th at 981, 985; *Rahimi*, 602 U.S. at 699-700 (disarmament regulation that applies only following a determination that the person represents a credible threat to the physical safety of another is consistent with the "how" of historical surety and going-armed laws).

If there were any doubt, *Commonwealth* v. *Marquis*, 495 Mass. 434 (2025), which the Supreme Judicial Court decided after the District Court issued its opinion in this case, held the Commonwealth's nonresident firearms licensing scheme is facially constitutional. Because the nonresident licensing statute, G.L. c. 140, § 131F, imports the suitability requirement of § 131(d), the Court's analysis expressly focused on the constitutionality of "the definition of 'determined unsuitable'" in § 131(d). *Marquis*, 495 Mass. at 452. The Supreme Judicial Court concluded that § 131(d) is consistent with this

nation's history of disarming "individuals who pose a credible threat to the physical safety of others." *Id.* at 453, quoting *Rahimi*, 602 U.S. at 698. The Supreme Judicial Court explicitly found the Commonwealth's basis for restrictions on the issuance of licenses to carry firearms within Massachusetts constitutional, stating:

> "To the extent that the Commonwealth restricts the ability of law-abiding citizens to carry firearms within its borders, the justification for so doing is credible, individualized evidence that the person in question would pose a danger if armed. Both case law and the historical record unequivocally indicate that this justification is consistent with 'the Nation's historical tradition of firearm regulation.'"

Marquis, 495 Mass. at 454, quoting *Bruen*, 597 U.S. at 24.

In particular, "because the only statutorily permissible ground on which to withhold or revoke a license from a nonprohibited person is a determination," based on "reliable, articulable and credible information," that the applicant's behavior demonstrates "a risk to public safety or a risk of danger to self or others," the Court found the regulation is "'designed to ensure only that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens.'" *Marquis*, 495 Mass. at 455-456, quoting *Bruen*, 597 U.S. at 38 n.9. "[O]nce a determination of unsuitability has been made pursuant to these criteria, the licensing authority 'shall notify the applicant in writing setting forth the specific reasons for the determination.'" *Id.*, quoting G.L. c. 140, § 131(d). In addition, if an applicant is unsatisfied with the reasons given for a determination of unsuitability, he or she may petition for judicial review. See G.L. c. 140, § 131(d), (f). Accordingly, the Supreme Judicial Court concluded that the statute "fits neatly within the tradition the

surety and going armed laws represent." *Id.* at 457, quoting *Rahimi*, 602 U.S. at 698. Westbrook's arguments to the contrary are therefore rejected.

Westbrook's argument that the statute is unconstitutionally vague and overbroad fares no better. *Marquis* expressly held that "the statutory criteria for 'unsuitability' appropriately 'guid[e]' the licensing authority by means of 'narrow, objective, and definite standards.'" *Marquis*, 495 Mass. at 456, quoting *Bruen*, 597 U.S. at 38 n.9. "Specifically, an applicant can be identified as posing 'a risk to public safety or a risk of danger to self or others' if armed only on the condition that the applicant 'has exhibited or engaged in behavior' indicating such a risk. Likewise, the determination that an applicant has engaged in the specified behavior indicating the specified safety risk must itself be supported by 'reliable, articulable and credible information.' Subjective, impressionistic judgments of 'unsuitability' are thereby proscribed." *Id.* (internal citations omitted).

The Appeals Court also recently rejected the argument that § 131(d)'s suitability provision sets forth a "highly discretionary standard that does not pass constitutional muster," concluding that the statutory definition "is narrow, specific, and dovetails with the Supreme Court's approval, in *Rahimi*, of 'firearm laws [that] . . . prevent[ ] individuals who threaten physical harm to others from misusing firearms.'" *Commonwealth* v. *Mancevice*, 105 Mass. App. Ct. 1111, 2025 WL 250177, at *6 (2025) (Rule 23 decision), quoting *Rahimi*, 602 U.S. at 690. See also *Holden*, 470 Mass. at 854-856, 859-

861 (rejecting arguments that prior version of § 131(d), containing a less specific unsuitability standard, was unconstitutionally vague, overbroad, and conferred excessive discretion on licensing authority, noting, "[o]ur decisions . . . [further] limit the scope of discretion of a licensing authority"). Likewise, the fact that the statute vests the authority to make licensing decisions in multiple officials throughout the Commonwealth (usually the local police chief or its designee) does not create an unconstitutional patchwork of discretion, as Westbrook argues. All licensing officials' discretion is bounded by the same set of "narrow, objective and definite standards" set forth in the statute and the guidance and limits articulated in Supreme Judicial Court decisions.

Accordingly, the Court concludes § 131(d) is facially constitutional, and the District Court's decision, which did not have the benefit of the *Marquis* decision, is reversed.

II. As-Applied Challenge

Finally, the suitability requirement is not unconstitutional as applied to Westbrook. HPD's denial was not based on a generalized, subjective determination of unsuitability. Rather, HPD relied on articulable, credible, and individually specific evidence that Westbrook had assaulted a pregnant woman and possessed cocaine with intent to distribute. With respect to the aggravated assault and battery, the police report recounted the statement of Westbrook's pregnant girlfriend that he had shaken her,

punched her in the face and back of her head, then chased her to her friend's apartment. Consistent with her report, officers observed that her "right eye was swollen, partially closed and her eyelid was bulging out." As to the drug charge, Westbrook was the passenger in a vehicle found by police to contain cocaine packaged for sale.

Westbrook accepted a CWOF as to both charges. Though not a conviction,[6] a CWOF entails an admission to sufficient facts to warrant a finding of guilt, and the law is settled that criminal conduct not resulting in a conviction may nevertheless be considered in evaluating an applicant's suitability to possess a firearm. See *Holden*, 470 Mass. at 856 ("conduct which is criminal and violent, regardless whether it has resulted in a criminal conviction, is grounds for denial, revocation, or suspension of a license to carry a firearm on the basis of unsuitability"). A person of ordinary intelligence would be able to ascertain that assault and battery on a pregnant woman and possession of cocaine with intent to distribute are indicative of a risk to public safety should such a person receive a license to carry a firearm. *Id.*, and cases cited. Westbrook's constitutional challenges to the suitability component of § 131(d) are thus without merit.

[6] Had Westbrook been convicted of either of these offenses, he would have been disqualified from firearm licensure as a matter of law. See G.L. c. 140, § 131(d)(i)(C), (E).

ORDER

For the foregoing reasons, the petitioner's Motion for Judgment on the Pleadings is **ALLOWED**. The District Court's May 20, 2024 decision is reversed.

Deepika B. Shukla
Justice of the Superior Court

DATE: May 5, 2025

2479CV00392 David Pratt, Chief of the Holyoke Police Department, as Licensing Authority vs. Westbrook, Randy et al

- Case Type:
- Administrative Civil Actions
- Case Status:
- Open
- File Date
- 07/19/2024
- DCM Track:
- X - Accelerated
- Initiating Action:
- Certiorari Action, G. L. c. 249 § 4
- Status Date:
- 07/19/2024
- Case Judge:
-
- Next Event:
-

All Information | Party | Event | Tickler | Docket | Disposition

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Events

Date	Session	Location	Type	Event Judge	Result
02/12/2025 02:00 PM	Civil A - Ct. Rm. 4		Hearing for Judgment on Pleading		Canceled
03/05/2025 02:00 PM	Civil A - Ct. Rm. 4	SPRF-3rd FL, CR 4 (SC)	Hearing for Judgment on Pleading	Shukla, Hon. Deepika B	Decision rendered

Ticklers

Tickler	Start Date	Due Date	Days Due	Completed Date
Service	07/19/2024	10/17/2024	90	
Judgment	07/19/2024	07/21/2025	367	05/06/2025

Docket Information

Docket Date	*Docket Text*	File Ref Nbr.	*Image Avail.*
07/19/2024	Attorney appearance On this date Kathleen Elizabeth Degnan, Esq. added for Plaintiff David Pratt, Chief of the Holyoke Police Department, as Licensing Authority		
07/19/2024	Case assigned to: DCM Track X - Accelerated was added on 07/19/2024		
07/19/2024	Original civil complaint filed for Certiorari review pursuant to Massachusetts General Law, Chapter 249, Section 4	1	Image
07/19/2024	Civil action cover sheet filed.	2	Image
07/19/2024	Financial Note: Global outage. One write receipt #159570.		
07/29/2024	Attorney appearance electronically filed. Applies To: Smith, Esq., William Scott (Attorney) on behalf of Westbrook, Randy (Defendant)	3	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
07/29/2024	Answer to original complaint Applies To: Westbrook, Randy (Defendant)	4	Image
10/17/2024	Defendant As Nominal Defendants, The The Holyoke Division of The District Court, Acting By and Through The Honorable Justice William P. Hadley's Motion to impound	5	Image
10/17/2024	General correspondence regarding Certified Copy of the Record of the Proceedings Volume I Randy Westbrook V. David Pratt, Chief, Holyoke Police Department as Licensing Authority Holyoke Division District Court Department No. 2317CV000154	6	Image
10/17/2024	General correspondence regarding Certified Copy of the Record of the Proceedings Volume II Randy Westbrook V. David Pratt, Chief, Holyoke Police Department as Licensing Authority Holyoke Division District Court Department No. 2317CV000154	7	Image
10/17/2024	General correspondence regarding Certified Copy of the Record of the Proceedings Volume III Randy Westbrook V. David Pratt, Chief, Holyoke Police Department as Licensing Authority Holyoke Division District Court Department No. 2317CV000154	8	
10/21/2024	Endorsement on Motion to impound (#5.0): ALLOWED (Court record Volume III)		Image
12/05/2024	Other Interested Party The Commonwealth of Massachusetts's Assented to Motion to Intervene to Defend the Constitutionality of a State Statue	9	Image
12/05/2024	Attorney appearance On this date Timothy James Casey, Esq. added for Other interested party The Commonwealth of Massachusetts		
12/05/2024	Attorney appearance On this date Phoebe Fischer-Groban, Esq. added for Other interested party The Commonwealth of Massachusetts		
12/05/2024	Endorsement on Motion to Intervene to Defend the Constitutionality of a State Statue (#9.0): ALLOWED (em.12/6/24)		Image
12/16/2024	Attorney appearance On this date Daniel C Hagan, Jr., Esq. added for Defendant Randy Westbrook Attorney appearance filed twice in Efile env #3336344.	10	Image
12/31/2024	Plaintiff David Pratt, Chief of the Holyoke Police Department, as Licensing Authority's Motion for judgment on the pleadings MRCP 12(c)	11	Image
12/31/2024	David Pratt, Chief of the Holyoke Police Department, as Licensing Authority's Memorandum in support of its Motion for Judgment on the Pleadings	11.1	Image
12/31/2024	Plaintiff David Pratt, Chief of the Holyoke Police Department, as Licensing Authority's Statement of reasons	11.2	Image
12/31/2024	General correspondence regarding Plaintiff's list of supporting authorities	11.3	Image
01/02/2025	General correspondence regarding Certified Copy of the Record of the Proceedings Volume I filed by Special District Attorney Daniel P. Sullivan	12	Image
01/02/2025	General correspondence regarding Certified Copy of the Record of the Proceedings Volume II filed by Special District Attorney Daniel P. Sullivan	13	Image
01/02/2025	General correspondence regarding Certified Copy of the Record of the Proceedings Volume III filed by Special District Attorney Daniel P. Sullivan	14	Image
01/14/2025	Event Result:: Hearing for Judgment on Pleading scheduled on: 02/12/2025 02:00 PM Has been: Canceled For the following reason: Other event activity needed Comments: Atty Degnan will remark for a date in March Hon. Deepika B Shukla, Presiding		
01/15/2025	Plaintiff David Pratt, Chief of the Holyoke Police Department, as Licensing Authority's Assented to Motion to reschedule Hearing on Plaintiff's Motion for Judgment on the Pleadings	15	Image
01/15/2025	Endorsement on Motion to reschedule Hearing on Plaintiff's Motion for Judgment on the Pleadings (#15.0): Other action taken		Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	The parties are to supply the Court with the other cases that they wish to consolidate (em.1/16/25)		
01/15/2025	Attorney appearance On this date Brian T Mulcahy, Esq. added for Other interested party The Commonwealth of Massachusetts		
01/30/2025	Opposition to the Plaintiff's Motion for judgment on the pleadings and statements of reasons filed by Randy Westbrook	16	Image
01/30/2025	Affidavit of compliance with Superior Court Rule 9C Applies To: Degnan, Esq., Kathleen Elizabeth (Attorney) on behalf of David Pratt, Chief of the Holyoke Police Department, as Licensing Authority (Plaintiff)	16.1	Image
01/30/2025	Defendant Randy Westbrook's Notice of filing Applies To: Degnan, Esq., Kathleen Elizabeth (Attorney) on behalf of David Pratt, Chief of the Holyoke Police Department, as Licensing Authority (Plaintiff)	16.2	Image
01/31/2025	Plaintiff David Pratt, Chief of the Holyoke Police Department, as Licensing Authority's Notice of hearing	17	Image
02/07/2025	Plaintiff David Pratt, Chief of the Holyoke Police Department, as Licensing Authority's Notice of hearing	18	Image
02/18/2025	Defendant Randy Westbrook's Motion to Reserve And Report This Case To The Massachusetts Appeals Court	19	Image
02/18/2025	Opposition to Defendant Randy Westbrook's Motion to Reserve And Report This Case To The Massachusetts Appeals Court filed by David Pratt, Chief of the Holyoke Police Department, as Licensing Authority, The Commonwealth of Massachusetts	19.1	Image
02/18/2025	Affidavit of compliance with Superior Court Rule 9C	19.2	Image
02/18/2025	Affidavit of compliance with Superior Court Rule 9C	19.3	Image
02/21/2025	The Commonwealth of Massachusetts's Memorandum in support of the Constitutionality of G.L. c. 140 sec 131	20	Image
02/24/2025	Randy Westbrook's Memorandum in opposition to Commonwealths Memorandum In Support Of The Constitutionality Of G.L. C. 140, 131	21	Image
02/24/2025	Attorney Daniel C Hagan, Jr., Esq.'s motion to withdraw as counsel of record for party (efiled 2/24/25) Applies To: Westbrook, Randy (Defendant)	22	Image
02/24/2025	Attorney appearance On this date Daniel C Hagan, Jr., Esq. dismissed/withdrawn for Defendant Randy Westbrook		
02/25/2025	Endorsement on Motion to withdraw as counsel of record for Defendant (#22.0): ALLOWED (em.2/25/25)		Image
03/05/2025	Matter taken under advisement: Hearing for Judgment on Pleading scheduled on: 03/05/2025 02:00 PM Has been: Held - Under advisement Comments: Held in CR 4 FTR 4 Hon. Deepika B Shukla, Presiding Staff: William T Walsh, Jr., Assistant Clerk Magistrate		
03/11/2025	Randy Westbrook's Memorandum of law (Supplemental)	23	Image
03/12/2025	Plaintiff David Pratt, Chief of the Holyoke Police Department, as Licensing Authority's Notice of Supplemental Authority and Response to Defendant's Supplemental Memorandum of Law	24	Image
03/24/2025	Docket Note: The "under advisement" date was changed because the parties were permitted to file supplemental briefs based on a new SJC case. Judge: Shukla, Hon. Deepika B		
05/05/2025	Endorsement on Motion for Judgement on the Pleadings (#11.0): ALLOWED See memorandum of decision and Order (em.5/6/25)		Image
05/06/2025	MEMORANDUM & ORDER: on Plaintiff's Motion for Judgment on the Pleadings	25	Image

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
	Judge: Shukla, Hon. Deepika B (d. 5/5/25 and em. 5/6/25)		
05/06/2025	JUDGMENT on the Pleadings entered: After hearing and consideration thereof; It is ORDERED and ADJUDGED: That Judgment shall enter for the Plaintiff and the May 20, 2024 decision of the District Court is hereby reversed.	26	Image
05/06/2025	Notice of appeal filed. Applies To: Westbrook, Randy (Defendant)	27	Image
05/14/2025	Certification/Copy of Letter of transcript ordered from Court Reporter 03/05/2025 02:00 PM Hearing for Judgment on Pleading	28	Image
07/03/2025	CD of Transcript of 03/05/2025 02:00 PM Hearing for Judgment on Pleading received from Nancy McCann.	29	
07/10/2025	Notice of assembly of record sent to Counsel	30	Image
07/10/2025	Notice to Clerk of the Appeals Court of Assembly of Record	31	Image
07/10/2025	Appeal: Statement of the Case on Appeal (Cover Sheet).	32	Image
07/22/2025	Notice of Entry of appeal received from the Appeals Court Entered on July 21, 2025 (2025-P-0888)	33	Image

Case Disposition

Disposition	Date	Case Judge
Disposed by Court Finding	05/06/2025	