No. 20-2842

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MICHAEL WHITE and ILLINOIS STATE RIFLE ASSOCIATION, Plaintiffs-Appellants, v. ILLINOIS STATE POLICE; ILLINOIS CONCEALED CARRY LICENSING REVIEW BOARD; BRENDAN KELLY, in his official capacity as Director of the Illinois State Police; JESSICA TRAME, in her official capacity as Bureau Chief of the Illinois State Police Firearms Services Bureau; JEREMY MARGOLIS, as Chair of the Illinois Concealed Carry Licensing Review Board; EDWARD BOBRICK; STEPHEN DINWIDDIE; JOSEPH DUFFY; JON JOHNSON; JOSEPH VAUGHN; and FRANK WRIGHT, Defendants-Appellees.	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division No. 1:19-cv-02797 The Honorable JOAN H. LEFKOW, Judge Presiding.

BRIEF OF DEFENDANTS-APPELLEES

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JURISDICTIONAL STATEMENT

The jurisdictional statement of Plaintiffs-Appellants Michael White and the Illinois State Rifle Association is not complete and correct. Defendants-Appellees Illinois State Police ("ISP"), Illinois Concealed Carry Licensing Review Board ("Board"), ISP Director Brendan Kelly, ISP Firearms Services Bureau Chief Gregory Hacker,[1] Board Chairman Donald Wilkerson,[2] and Board Members Peter Buckley, Inger Burnett-Zeigler, Lionel Craft, Nancy DePodesta, Joseph Duffy, and Jon Johnson,[3] provide this jurisdictional statement under Circuit Rule 28(b).

Plaintiffs brought this action in the district court under 42 U.S.C. § 1983 against defendants in their official capacities, alleging violations of the Second and Fourteenth Amendments to the United States Constitution. A3.[4] As discussed, *infra* Section II, the district court lacked subject-matter jurisdiction over the Illinois State Rifle Association because it failed to allege Article III standing. To the extent the Eleventh Amendment affects subject-matter jurisdiction, the district court lacked federal question jurisdiction over plaintiffs' claims against ISP and the Board. *See infra* p. 31 n.10; *Wis. Dep't of Corrs. v. Schacht*, 524 U.S. 381, 391 (1998)

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[1] Hacker replaced Jessica Trame and should be substituted as a defendant under Federal Rule of Appellate Procedure 43.

[2] Wilkerson replaced Jeremy Margolis and should be substituted as a defendant under FRAP 43.

[3] Buckley, Burnett-Zeigler, Craft, and DePodesta replaced Edward Bobrick, Stephen Dinwiddie, Joseph Vaughn, and Frank Wright and should be substituted as defendants under FRAP 43.

[4] The district court's docket is cited as "Doc.__ at __," the Appellants' Brief as "AT Br. at ___," the Short Appendix as "SA__," and the Appendix as "A__."

(Supreme Court has "not decided" whether immunity under Eleventh Amendment "is a matter of subject-matter jurisdiction"); *compare Mercado v. Dart*, 604 F.3d 360, 361 (7th Cir. 2010), *with Ind. Prot. & Advocacy Servs. v. Ind. Family & Soc. Servs. Admin.*, 603 F.3d 365, 370 (7th Cir. 2010). Otherwise, the district court had subject matter jurisdiction over the federal claims pursuant to 28 U.S.C. § 1331.

On August 28, 2020, the district court granted defendants' motion to dismiss the action, SA3, and a separate judgment was entered on the docket pursuant to Federal Rule of Civil Procedure 58, SA1. No motion to alter or amend the judgment was filed.

On September 23, 2020, plaintiffs filed a timely notice of appeal within 30 days of the Rule 58 judgment. Doc. 48; *see* 28 U.S.C. § 2107(a); Fed. R. App. P. 4(a)(1)(A). This court has jurisdiction over the appeal from a final judgment pursuant to 28 U.S.C. § 1291.

ISSUES PRESENTED FOR REVIEW

1. Whether White's claims were barred by *res judicata*, where he unsuccessfully litigated the same causes of action and, alternatively, the same underlying issues, to judgment in state court.

2. Whether the Illinois State Rifle Association lacked Article III standing, where it failed to raise any claims on behalf of itself or its members, and, alternatively, where it did not sufficiently allege associational or organizational standing.

3. Whether White failed to state a Second Amendment claim, where there is no Second Amendment right for dangerous persons to publicly carry firearms and, alternatively, where the challenged actions are reasonably related to the compelling state interest in preventing dangerous persons from carrying a firearm in public.

4. Whether White failed to state a Fourteenth Amendment claim, where there is no liberty interest in the right to public carriage and, in any event, where he was afforded sufficient process.

STATEMENT OF THE CASE

In 2015, ISP denied White's application for a concealed carry license based on the Board's determination that he was statutorily ineligible. A11 (¶ 31). This decision was made pursuant to section 20(g) of the Illinois Firearm Concealed Carry Act ("Concealed Carry Act"), which requires the Board to determine by a preponderance of the evidence whether applicants pose a danger to themselves or others, or are a threat to public safety. 430 ILCS 66/20(g). White sought review of the Board's decision in state court, arguing, among other things, that the Concealed Carry Act violated the Second and Fourteenth Amendments. A59-65. The state courts affirmed the Board's decision. *Id.* In 2017, White again applied for a concealed carry license, which was denied. A15 (¶ 47). Rather than pursue administrative review in state court, White (with the Illinois State Rifle Association) filed this lawsuit, alleging that section 20(g) violated the Second and Fourteenth Amendments. A3.[5] The district court dismissed the action on Eleventh Amendment, *res judicata*, and standing grounds, as well as for failure to state a claim. SA3-27.

A. The Concealed Carry Act

The Concealed Carry Act, which regulates the public carriage of firearms in Illinois, requires ISP to issue concealed carry licenses to applicants who satisfy the

[5] Although plaintiffs do not specify which provisions of the Concealed Carry Act they challenge, *e.g.*, A16, 19, the three theories presented in the complaint involve the Board's section 20(g) determination that White was dangerous or posed a threat, *e.g.*, *id.* (¶¶ 54, 65).

statutory requirements. 430 ILCS 66/10. Among other requirements, an applicant must have a valid license to possess firearms (in Illinois, known as a "FOID card"), complete the requisite training, and demonstrate that he or she has no disqualifying criminal conviction or mental health prohibitor. *Id.* 66/25. To verify the latter, ISP conducts a comprehensive background check using numerous state and federal databases. *Id.* 66/35.

Relevant here, an applicant must also "not pose a danger to himself, herself, or others, or a threat to public safety," a determination made by the Board through a process facilitated by ISP. *Id.* 66/10(a)(4). Upon receipt of an application, ISP enters information about the applicant into a database that is accessible to Illinois law enforcement agencies. *Id.* 66/10(i), (j). Those agencies have 30 days to submit an objection "based upon a reasonable suspicion that the applicant is a danger to himself or herself or others, or a threat to public safety." *Id.* 66/15(a).

If ISP receives an objection to an application that has not already been disqualified under the other statutory requirements, it refers the objection and other available information to the Board. *Id.*; 20 Ill. Admin. Code § 1231.70(d); *id.* § 1231.80(b). Although making an objection is usually a discretionary matter, ISP itself must object if "an applicant has 5 or more arrests for any reason . . . within the 7 years preceding the date of application for a license, or has 3 or more arrests . . . for any combination of gang-related offenses" within the same period. *Id.* 66/15(b). If no objection is received, then ISP continues to process the application. *Id.* 66/15(d).

The Board reviews "the materials received with the objection" and may request additional information from the applicant, ISP, or a law enforcement agency. *Id.* 66/20(e). If the objection appears sustainable, the Board sends "the applicant notice of the objection, including the basis of the objection and the agency submitting the objection." 20 Ill. Admin. Code § 2900.140(e). The applicant may then submit "any additional material in response to the objection" that he or she would like the Board to consider. *Id.* § 2900.140(e)(1). The Board may also convene a hearing for testimony on subjects that cannot be resolved to its satisfaction through written communications. *Id.* § 2900.140(c); *id.* § 2900.150.

After reviewing the evidence—which is limited to the "information submitted by [ISP], a law enforcement agency, or the applicant," 430 ILCS 66/20(e)—and holding a hearing if necessary, the Board decides whether the applicant, by a preponderance of the evidence, "poses a danger to himself or herself or others, or is a threat to public safety," *id.* 66/20(g). If a majority of the members answer in the affirmative, the Board "shall affirm the objection" and notify ISP "that the applicant is ineligible for a license." *Id.* Applicants deemed ineligible by the Board may seek judicial review by filing a complaint in the state circuit court under the Illinois Administrative Review Law. *Id.* 66/87.

B. White's First Application For A Concealed Carry License

In 2014, White applied for a concealed carry license. A11 (¶ 30).[6] The Chicago Police Department and Cook County Sheriff submitted objections to his application, which the Board ultimately sustained. *Id.* (¶ 31). The objections were based on White's membership in the Latin Souls street gang, as well as an arrest for battery with a knife on April 7, 1995; possession of a firearm in a vehicle on January 9, 1996; and an arrest for unlawful use of a weapon and reckless discharge on January 1, 2012. A60. White responded that, among other things, both the dangerousness requirement and Board's process were unconstitutional. A60-61. He also acknowledged a 1994 arrest for possession of cannabis, the 1995 arrest for battery with a knife, a 1998 arrest and subsequent guilty plea related to possession of a loaded firearm in his vehicle, a 2000 allegation of disorderly conduct, a 2001 traffic offense, and the 2012 arrest on which he was later acquitted. *Id.*

After his application was denied, White filed a petition for review in state circuit court, arguing that the Concealed Carry Act was unconstitutionally vague, violated due process by allowing the Board to consider "arrests that occurred 19 and 20 years before the date of his [application]," and violated the Second Amendment by employing a preponderance of the evidence standard. A61. The circuit court

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[6] This background is drawn from the complaint in this case, as well as documents attached to or referenced therein. The unpublished Illinois Appellate Court decision, *White v. Illinois Department of State Police*, 2017 IL App (1st) 161282-U (A59-65), is not cited for precedential value, but rather for the permissible purpose of supporting defendants' *res judicata* and collateral estoppel arguments. Ill. Sup. Ct. R. 23(e).

affirmed the Board's decision. *Id.* White appealed to the Illinois Appellate Court, where he reiterated his arguments from the circuit court, and also contended that consideration of gang membership violated due process and that the section 20(g) dangerousness determination violated the Second Amendment. *Id.* The appellate court rejected these arguments in an unpublished decision, A61-65, and the Illinois Supreme Court denied him leave to appeal in September 2017, A11 (¶ 32).

C. White's Second Application For A Concealed Carry License

In August 2017, White again applied for a concealed carry license. A11 (¶ 33). Shortly thereafter, ISP notified White that it had received an objection based on his membership in the Latin Soul street gang and his 2012 arrest for reckless discharge of a firearm. A13-14 (¶ 44). Additionally, the Board requested information about arrests on August 3, 1993, October 3, 1993, March 1, 1994, March 6, 1994, April 7, 1995, January 9, 1996, and August 10, 1998. *Id.*

White submitted a written response to this notification, arguing primarily that the dangerousness requirement and the discretion granted to the Board violated his Second and Fourteenth Amendment rights. A28-41. Additionally, White attached an affidavit in which he admitted that he pled guilty to unlawful use of a firearm in August 1998, after he was arrested for having a loaded firearm in his vehicle, and that he was charged with unlawful use of a weapon in January 1996. A46-47. White also confirmed his 1994 conviction for possession of cannabis, his 1994 arrest for domestic battery, and his 2001 citation for driving on a suspended license. A46-47.

White denied, however, that he had ever been a gang member. A47-48. He also explained that he was arrested in 2012 for reckless discharge of a firearm when someone at a party that he attended "brought a firearm to the party [and] shot it several times into the air." A46. White was acquitted of that charge. *Id.* Finally, White could not recall anything about the arrests in August 1993, October 1993, or April 1995, and could not provide details about the 2000 disorderly conduct allegation, other than he received no punishment for it. A46-47.

In November 2017, ISP denied White's application upon determining that he was a danger to himself or to others, or posed a threat to public safety. A15 (¶ 47). White did not file a complaint for administrative review with the state circuit court from this decision.

D. White's Federal Lawsuit

In April 2019, White brought a § 1983 action against defendants in their official capacities, alleging Second and Fourteenth Amendment violations. A3. According to White, defendants violated his Second Amendment rights by denying his application for a concealed carry license upon finding that he posed a danger or threat to himself or others. A16 (¶¶ 54-55). Specifically, White alleged that the Concealed Carry Act was unconstitutional, both facially and as applied, because it vests "unbridled discretion" in the Board without objective standards; requires the Board to evaluate dangerousness under a preponderance of the evidence standard; and imposed a "lifetime ban" on the right to bear arms by allowing the Board to

consider all relevant information, including older arrests and purported gang membership. A16-18 (¶¶ 54-61).

White also claimed that defendants violated his procedural due process rights. A19-22. White again referenced the "unbridled discretion" of the Board, the preponderance of the evidence standard, and the alleged lifetime ban on public carriage. A19-20 (¶¶ 66-69). Furthermore, White alleged that due process required that concealed carry license applicants receive additional procedural safeguards, such as a hearing. A21-22 (¶¶ 74-75). White sought injunctive relief and attorney fees and costs. A22-23.

The Illinois State Rifle Association was also identified as a plaintiff and purported to sue on behalf of itself and its members. A6 (¶12). The Association alleged that its purpose was to secure "the Constitutional right to privately own and possess firearms within Illinois, through education, outreach, and litigation." *Id.* It further alleged that it had "members who have applied for, and been denied, Illinois concealed carry licenses after their applications were routed to the [Board]." *Id.* ¶ 13. It did not raise any claims or include any request for relief as to itself or its members. A16-23.

Defendants moved to dismiss on several grounds. Doc. 15. First, they argued that ISP and the Board were not proper defendants under the Eleventh Amendment. *Id.* at 5-6. Second, they asserted that White's claims were barred by *res judicata*. *Id.* at 6-7. Third, they explained that plaintiffs failed to state a Second or Fourteenth Amendment claim. *Id.* at 7-19. Plaintiffs did not oppose dismissal of

ISP or the Board on Eleventh Amendment grounds, Doc. 28 at 2 n.1, but contended that *res judicata* did not bar the action and that they had sufficiently stated Second and Fourteenth Amendment claims, *id.* at 2, 23.

The district court granted defendants' motion to dismiss. SA3. To begin, it dismissed ISP and the Board under the Eleventh Amendment. SA12. The court next concluded that White's facial challenges were barred by *res judicata* because he had raised, and the state court had ruled on, the same causes of action in his 2014 action challenging the denial of his first application. SA12, SA13 n.10. It also held *sua sponte* that the Illinois State Rifle Association lacked standing to bring as-applied challenges. SA14.

The district court then turned to the merits. SA15. It concluded that plaintiffs failed to state a Second Amendment or due process claim because those claims were foreclosed by binding precedent, SA15, SA27, and because "prohibiting truly dangerous people from carrying firearms in public is proper under the Second Amendment," SA16. Plaintiffs appealed. Doc. 48.

SUMMARY OF ARGUMENT

Plaintiffs filed this action challenging the Board's section 20(g) authority to review objections and determine by a preponderance of the evidence whether "the applicant poses a danger to himself or herself or others, or is a threat to public safety." 430 ILCS 66/20(g). In the complaint, White alleged that section 20(g) violates the Second Amendment because it improperly imposes a preponderance of the evidence standard, vests the Board with "unbridled discretion," and allows the Board to consider the entirety of an applicant's criminal history, including older arrests and records of gang membership. He asserted the same theories under procedural due process and also alleged that he was entitled to additional procedural safeguards, such as a hearing before the Board.

The state courts, however, have already resolved these challenges against White in a nearly identical action he brought in 2014. In those proceedings, White raised the same causes of action based on the same underlying facts against the same parties (ISP and the Board), which he litigated to final judgment. His claims are thus barred by claim preclusion and, alternatively, issue preclusion.

The Illinois State Rifle Association fares no better. Although not a party to the state proceedings, it cannot satisfy Article III standing because it has not pled a cause of action, articulated an injury, or presented a request for relief on behalf of itself or its members. Nor has it sufficiently alleged the requirements for organizational or associational standing. The district court's dismissal order should be upheld on these threshold grounds alone.

But even if White's claims were properly before this court, dismissal was appropriate because he failed to state a claim under Rule 12(b)(6). The Second Amendment claim challenging certain aspects of section 20(g) should be dismissed for two independent reasons. First, section 20(g)—which prevents dangerous persons from carrying firearms in public—is constitutional because it does not burden the Second Amendment right held by law-abiding, responsible persons to publicly carry a firearm. Second, section 20(g) satisfies intermediate scrutiny because it is reasonably related to the compelling state interest in preventing dangerous persons from carrying firearms in public. White's arguments to the contrary are either foreclosed by binding precedent or unsupported by the record.

The due process claim, which is almost entirely derivative of the Second Amendment challenge, fails for many of the same reasons. In particular, White does not possess a legitimate claim of entitlement that is subject to procedural due process protection and, in any event, has been afforded all of the process that he is due. All told, the district court's dismissal order was proper and should be upheld.

ARGUMENT

I. The Standards Of Review Are *De Novo* And Abuse Of Discretion.

This court reviews *de novo* a district court's order granting a motion to dismiss under Rule 12(b)(6) for failure to state a claim, *Kubiak v. City of Chicago*, 810 F.3d 476, 480 (7th Cir. 2016), as well as a dismissal for lack of Article III standing, *Winkler v. Gates*, 481 F.3d 977, 982 (7th Cir. 2007). By contrast, this court reviews the district court's decision to dismiss an action without leave to amend for an abuse of discretion. *O'Brien v. Vill. of Lincolnshire*, 955 F.3d 616, 629 (7th Cir. 2020).

On *de novo* review, this court applies the same legal and procedural standards that the district court would in deciding whether a claim should have been dismissed, *Santiago v. Walls*, 599 F.3d 749, 756 (7th Cir. 2010), and may affirm the action's dismissal on any ground supported by the record and law, *Hernandez v. Cook Cnty. Sheriff's Off.*, 634 F.3d 906, 912 (7th Cir. 2011).

II. White's Claims Were Barred By *Res Judicata*.

At the threshold, this court should uphold the dismissal of White's claims because they were barred by *res judicata*—that is, subject to both claim preclusion and issue preclusion.[7] Although the district court ultimately dismissed all of White's claims, it limited its preclusion holding to the facial challenges based on an

[7] Although parts of the record below used "*res judicata*" to refer to claim preclusion and "collateral estoppel" to refer to issue preclusion, this section will use the terms claim preclusion and issue preclusion for clarity. *E.g.*, *United States v. Metro. Water Reclamation Dist.*, 792 F.3d 821, 824 (7th Cir. 2015).

incorrect distinction between White's facial and as-applied challenges. SA13-14. As part of this holding, the court determined that his facial claims were barred by claim preclusion and, alternatively, issue preclusion. SA13 & n.10. Because plaintiffs do not dispute the district court's holding on appeal, they have forfeited any challenge to it. *E.g.*, *M.G. Skinner & Assocs. Ins. Agency, Inc. v. Norman-Spencer Agency, Inc.*, 845 F.3d 313, 321 (7th Cir. 2017). In any event, the district court's conclusion was correct and should be extended to include White's as-applied challenges, which differed in no meaningful way from his facial claims. *See, e.g.*, SA15 ("White's brief does little to differentiate his as-applied challenges from his facial challenges, generally casting all of his arguments as both."); A18 (¶ 61), A22 (¶77) (grouping facial and as-applied claims together); AT Br. 14-17, 27, 48-49 (same).

It is well-established that "full faith and credit, 28 U.S.C. § 1738, applies to state-court judgments entered in proceedings to review a state administrative agency." *Garcia v. Vill. of Mount Prospect*, 360 F.3d 630, 634 (7th Cir. 2004). Accordingly, "[a] judgment of a state court sitting in an administrative review capacity will have preclusive effect on claims and issues brought in subsequent lawsuits according to the law of the state where the judgment was rendered." *Id.*

In Illinois, claim preclusion applies when there is "(1) a final judgment on the merits rendered by a court of competent jurisdiction, (2) the same cause of action, and (3) the same parties or their 'privies.'" *Chi. Title Land Tr. Co. v. Potash Corp. of Saskatchewan Sales*, 664 F.3d 1075, 1079 (7th Cir. 2011). If those requirements

are satisfied, the doctrine "will bar not only every matter that was actually determined in the first suit, but also every matter that might have been raised and determined in that suit." *Id.*

Here, as the district court explained—and plaintiffs do not dispute—each of these elements was met with respect to White's facial claims. SA13. The same is true for White's as-applied challenges, notwithstanding the district court's contrary conclusion. SA13-14. On the first and third elements, White's initial action was litigated to final judgment in state court against the same parties, or ones in privity, to those he has sued here. Not only did White seek administrative review of the Board's decision on his 2014 application by the Illinois circuit and appellate courts, he also sought leave to appeal to the Illinois Supreme Court. A11 (¶ 32). In those proceedings, White brought suit against the ISP Director in his official capacity, the ISP Firearms Services Bureau, and the Board. A59. In the present action, White sued ISP, the ISP Director in his official capacity, the ISP Firearms Services Bureau Chief in his official capacity, the Board, and the Board members in their official capacities. A6-8 (¶¶ 15-20). The defendants in these cases thus were the same or in privity, as they "adequately represent the same legal interests." *Parungao v. Cmty. Health Sys.*, 858 F.3d 452, 457 (7th Cir. 2017) (internal quotations omitted).

The second element was also satisfied because White now seeks relief on the same causes of action that the state courts have already resolved against him. To satisfy this requirement, courts assess whether claims "arise from the same

transaction or series of connected transactions." *Westmeyer v. Flynn*, 889 N.E.2d 671, 675 (Ill. App. Ct. 2008). In other words, claim preclusion applies if "a single group of operative facts give rise to the assertion of relief." *Garcia*, 360 F.3d at 637. This test disregards "the number of substantive theories, the variant forms of relief flowing from those theories, and the variations in evidence needed to support the theories." *Id.*

In both the state and federal proceedings, White asserted that section 20(g)'s procedures violated his Second Amendment and due process rights, A18, A22, A61, pressing arguments in each forum that were remarkably similar. White argued in both actions that his rights were violated because the Board: (1) considered arrests that occurred approximately 20 years before his application, A16 (¶ 55), A19 (¶ 66), A61, A63; (2) considered his alleged gang membership, A18 (¶ 60), A21 (¶ 71), A62; (3) lacked objective standards as to what constitutes a danger or threat, A17 (¶¶ 56, 59), A20 (¶¶ 67, 70); A61, A64; (4) purportedly subjected him to a "lifetime ban," A17 (¶ 58), A20 (¶ 69), A64; (5) used a preponderance of the evidence standard, A17 (¶ 57), A20 (¶ 68), A61; (6) does not holding hearings as a matter of course, A22 (¶ 75), A65; and (7) does not make specific findings of fact in its decisions, A15 (¶ 47), A64; AT Br. 54-55.

These arguments, moreover, were based on the same underlying facts, as even White acknowledges on appeal. For instance, White's challenges to the scope of the Board's review in both his state-court action and the present action were based on his arrests beginning in the 1990s and his inclusion in CPD's gang

database. *See, e.g.*, AT Br. 17 ("White's application for a CCL was denied in 2014 and 2017 based on the same CPD objections."). Likewise, the standards that White challenges—such as the preponderance of the evidence standard, the discretionary nature of hearings, and the definition of dangerousness—did not change between the time that the state court upheld their validity and when White filed his federal case. *See, e.g.*, *id.* at 35 (stating in "unbridled discretion" argument that "White proposed precisely this type of saving statutory construction in his appeal of the denial of his first application"); *id.* (arguing in both courts that timeframe for considering "arrests" should be read in light of entire statute); *id.* at 36 (state court "likewise rejected the claim that the [Concealed Carry Act] is fatally flawed because it does not provide a denied applicant the right to a hearing"). All told, White raised the same causes of action in this case that the state courts have already rejected. The second element of claim preclusion was thus satisfied, as the district court correctly recognized as to White's facial challenge.

The district court also acknowledged that White's as-applied claims may be foreclosed by claim preclusion given the similarity between them and the facial challenges, SA15, but ultimately declined to apply the doctrine due to its misunderstanding that White's arguments opposing dismissal on this basis rested on a distinction between as-applied and facial challenges, and that defendants had accepted that distinction in reply, SA13-14. But when responding to defendants' preclusion argument, White did not differentiate between his facial and as-applied claims. Doc. 28 at 23-24. Instead, he argued that his 2017 application was "a

second transaction presenting separate issues." *Id.* at 24. In reply, defendants reiterated that White's claims were precluded because he was raising a challenge to "the constitutionality of the [Concealed Carry Act] itself." Doc. 37 at 2.

The district court also was wrong that as-applied challenges are incompatible with claim preclusion because "such challenges target a law in operation, limited to the specific facts of an individual case." SA14 (internal quotations omitted). As explained, the Illinois doctrine requires determining whether the claims arise out of the same underlying facts, transaction, or series of transactions. In some cases, the as-applied and facial challenges will be sufficiently distinct to counsel against applying the doctrine. In others, however, the challenges stem from the same underlying facts and are both precluded. *See, e.g.*, *Agolf, LLC v. Vill. of Arlington Heights*, 946 N.E.2d 1123, 1136-37 (Ill. App. Ct. 2011) (rejecting argument that as-applied challenges should not be subject to *res judicata* where the "material facts involved remained the same" in both lawsuits). Indeed, the concessions by White on appeal—including that the Illinois state court rejected the same theories that he now raises—demonstrate that as-applied challenges are not necessarily based on unique underlying facts or transactions.

For the same reason, to the extent the district court suggested that claim preclusion was not warranted because White's "second application constitutes new grounds for a cause of action," SA13, that, too, was wrong. To be sure, a new application based on different facts or involving a different party might be precluded. But a litigant cannot automatically avoid the preclusive effect of a state

court decision by submitting a new application. If that were true, a litigant could easily sidestep a negative judgment by submitting a series of identical applications and challenging them in different fora until he received a favorable decision.

Here, there were no changed factual circumstances that would make preclusion inapplicable. The only possible difference between White's first and second applications was the amount of time that had passed since the arrests. In Illinois, however, that difference for preclusion purposes is calculated from the time of the state court judgment. *Arlin-Golf, LLC v. Vill. of Arlington Heights*, 631 F.3d 818, 822 (7th Cir. 2011) ("Illinois courts consider the facts as they exist at the time of judgment to determine whether *res judicata* bars a subsequent action.") (cleaned up). And here, White filed his second application two months after the Illinois Appellate Court issued its decision and one month before the Illinois Supreme Court denied him leave to appeal. *See supra* p. 8. There was thus no meaningful distinction based on the passage of time for preclusion purposes.

But even if claim preclusion did not apply, White's claims would nonetheless be barred by issue preclusion.[8] In Illinois, issue preclusion "refers to the effect of a judgment in foreclosing litigation in a subsequent action of an issue of law or fact that has been actually litigated and decided." *McDonald v. Adamson*, 840 F.3d 343,

[8] This argument was preserved for two reasons. First, the *res judicata*—which defendants raised below—encompasses both claim and issue preclusion. *Council v. Vill. of Dolton*, 764 F.3d 747, 748 (7th Cir. 2014). Second, the district court addressed issue preclusion, SA13 n.10, thus inviting this court's review, *Bailey v. Int'l Bhd. of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, Local 374*, 175 F.3d 526, 529-30 (7th Cir. 1999).

346 (7th Cir. 2016) (internal quotations omitted). As explained, *see supra* pp. 17, the questions resolved by the state court overlap with those presented in this action. In other words, even if the denial of White's second application gave rise to a new cause of action (which it did not), there are no legal or factual issues presented by this action that were not already litigated to judgment in the state action. Accordingly, as the district court recognized, White should be estopped from relitigating issues that the state court has already decided. SA13 n.10.

Finally, to the extent that White challenges the 2014 denial of his application, that would be barred by *Rooker-Feldman*. *See, e.g.*, A4 ("White has been battling this system since 2013"); A16 (¶ 54), A19 (¶ 65) ("White has twice been denied his constitutionally guaranteed right to bear arms for self-defense."); A16 (¶ 55), A19 (¶ 66) ("Board twice reached" the conclusion that he is dangerous based on arrests). Under the *Rooker-Feldman* doctrine, complaints that "essentially invite[ ] federal courts of first instance to review and reverse unfavorable state-court judgments" are "properly dismissed for want of subject-matter jurisdiction." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283-84 (2005). Although this doctrine does not apply to litigants who have lost in state administrative proceedings, *Hemmer v. Ind. State Bd. of Animal Health*, 532 F.3d 610, 614 (7th Cir. 2008), many circuits have concluded that it "may be applied if a state court has reviewed an administrative order" and ruled against the federal litigant, Wright & Miller § 4469.3; *see also, e.g.*, *Prince v. Arkansas Bd. of Exam'rs*, 380 F.3d 337, 340 (8th Cir. 2004). Thus, any challenge to the denial of White's first

application would be barred by *Rooker-Feldman* because state courts reviewed that administrative decision and ruled against White.

III. The Illinois State Rifle Association Lacked Article III Standing.

This court should also uphold the dismissal of the Illinois State Rifle Association because it failed to allege facts sufficient to confer Article III standing. It is well established that "Article III restricts the judicial power to actual 'Cases' and 'Controversies,' a limitation understood to confine the federal judiciary to the traditional role of Anglo-American courts, which is to redress or prevent actual or imminently threatened injury." *Ezell v. City of Chicago*, 651 F.3d 684, 694-95 (7th Cir. 2011) ("*Ezell I*"). Where an organization asserts standing, it "can do so either on behalf of itself or on behalf of its members." *Milwaukee Police Ass'n v. Bd. of Fire & Police Comm'rs of Milwaukee*, 708 F.3d 921, 926 (7th Cir. 2013). The Association sought to bring this action under both frameworks, A6 (¶ 12), but did not meet the requirements of either.

A. The Illinois State Rifle Association lacked organizational standing.

To bring an action in its own right, an organization must itself meet the three traditional requirements of Article III standing: (1) the plaintiff has suffered an actual or impending injury that is "concrete and particularized," (2) the injury is caused by the defendant's acts, and (3) a judicial decision in the plaintiff's favor would redress the injury. *Milwaukee Police Ass'n*, 708 F.3d at 926. The Illinois State Rifle Association did not satisfy this standard.

To start, the complaint contained no allegations as to *any* of these requirements. Instead, it described White's application process and the alleged constitutional violations flowing therefrom; the Association appeared only in the "parties" section of the complaint, where there were three paragraphs about its membership and purpose. A6 (¶¶ 12-14). The complaint included *no* causes of action brought by the Association, nor did it request any relief on its behalf. A16-22. With no articulation of an injury, let alone one caused by defendants, any claim by the Association was properly dismissed for lack of standing. *See, e.g.*, *Disability Rights Wis., Inc. v. Walworth Cnty. Bd. of Supervisors*, 522 F.3d 796, 801 (7th Cir. 2008) (standing lacking where no cognizable injury or request for relief in complaint).

But even if the complaint had included claims by the Illinois State Rifle Association, it did not satisfy organizational standing because it failed to allege "that it suffered a concrete and particularized injury." *Access Living of Metro. Chi. v. Uber Techs.*, 958 F.3d 604, 608 (7th Cir. 2020). Plaintiffs' complaint alleged only that the Illinois State Rifle Association is a nonprofit membership organization with purposes that "include securing the Constitutional right to privately own and possess firearms within Illinois, through education, outreach, and litigation." A6 (¶ 12). This was insufficient. *See Sierra Club v. Morton*, 405 U.S. 727, 738 (1972) ("mere 'interest in a problem'" not enough to establish Article III standing); *Keep Chi. Livable v. City of Chicago*, 913 F.3d 618, 625 (7th Cir. 2019) (no organizational

standing where "[n]ary a word in either complaint tethers any particular requirement of the Ordinance to a specific harm to the organization").

On appeal, plaintiffs argue otherwise, maintaining that when "a group is forced to spend resources, devoting its time and energy to dealing with certain conduct, it has standing to challenge that conduct." AT Br. 44. There were no allegations in the complaint, however, describing how the Illinois State Rifle Association was "forced" to dedicate resources to deal with any conduct by defendants or how an order could remedy that injury, A6 (¶¶ 12-14), and the opening brief provides little additional detail, AT Br. 44. According to the brief, the group answers questions about "the government's firearms policies" and "educates, publishes, engages in litigation, and is active in the political process regarding the preservation and expansion of Second Amendment rights, safe gun use, and gun control and its consequences." *Id.*

These statements do not appear in the complaint, and so should be disregarded. *Disability Rts. Wis., Inc.*, 522 F.3d at 801. But even if considered, they are too generalized to support standing, especially when compared with recent decisions where this court found this standard satisfied. *E.g.*, *Access Living*, 958 F.3d at 608 (organizational standing where group alleged in "clear and precise terms" its "increased costs" and diverted resources); *Common Cause Ind. v. Lawson*, 937 F.3d 944, 951-52 (7th Cir. 2019) (voting rights organizations detailed how challenged law forced them to devote additional time and resources to minimizing its effects).

Plaintiffs also note that the "reporters are replete with civil rights precedents litigated by organizations asserting the rights of their members, or their own injuries resulting from the deprivation of constitutional rights," including cases where the Illinois State Rifle Association was a party. AT Br. 43. But whether organizations have established standing in other cases does not necessarily mean that the Association demonstrated standing here. Furthermore, plaintiffs' primary case for this point (*Ezell I*) did not even address the Association's organizational standing. 651 F.3d at 696. Because the Association has failed to allege any injury and, in turn, how any court order could redress such an injury, it has failed to meet the requirements of organizational standing.

B. The Illinois State Rifle Association lacked associational standing.

The Illinois State Rifle Association also lacked standing to sue on behalf of its members. To satisfy associational standing, an organization must allege that "(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Milwaukee Police Ass'n*, 708 F.3d at 928 (cleaned up). These requirements derive from the longstanding principle that when "a plaintiff's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else,* much more is needed." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 562 (1992) (emphasis in original).

For the reasons discussed, *supra* Section II.A., the Association did not meet this standard because it raised no claim or request for relief on behalf of its members. That failure aside, the Illinois State Rifle Association met none of the three requirements for associational standing. The first requires an organization "to include at least one member with standing to present, in his or her own right, the claim (or the type of claim) pleaded by the association." *Disability Rights Wis., Inc.*, 522 F.3d at 802. Organizations need not name members, but must at least describe a member who would have standing in his or her own right. *Id.*

Despite arguing that the district court's associational standing ruling was erroneous, plaintiffs did not meaningfully address this requirement in their brief, and thus have forfeited any argument related to it. *M.G. Skinner & Assocs. Ins. Agency*, 845 F.3d at 321. Instead, they reiterated the legal standard, stating that the membership element was "met, as all [that] is required is one member who would have standing in his or her own right." AT Br. 45.

These same deficiencies were present in the complaint, which does not identify any Association member by name or allege that White was a member. A6 (¶¶ 13-14). Instead, it based associational standing on unidentified "members who have applied for, and been denied, Illinois concealed carry licenses after their applications were routed to the [Board]." *Id.* (¶ 13). These members, the complaint alleges, "would possess and carry loaded and functional concealed handguns in public for self-defense, but refrain from doing so because they fear prosecution." *Id.* (¶ 14).

These allegations were insufficient. For starters, they do not make clear how the members would have standing to litigate the claims raised in the complaint, which were discrete challenges to aspects of the Board's process under section 20(g). White challenged the preponderance of the evidence standard, the purported lack of objective standards under section 20(g), and the Board's ability to consider older arrests and gang membership. A16-22. But the only information about the members described in the complaint was that their applications were denied by the Board. A6 (¶ 13). These denials could have happened for any number of reasons unrelated to the actions challenged in the complaint. The complaint's allegations were also too generic to demonstrate "an ongoing, concrete, and particularized injury" caused by defendants and "capable of being redressed by a favorable ruling." *Keep Chi. Livable*, 913 F.3d at 623. In short, the Illinois State Rifle Association did not identify a single member who had been injured by the processes at issue, which is an essential element of standing. *Texas Indep. Producers & Royalty Owners Ass'n v. EPA*, 410 F.3d 964, 972 (7th Cir. 2005).

The Association also did not satisfy the second element—that the interests it seeks to protect are germane to its purpose. The complaint described the group's purpose as "securing the Constitutional right to privately own and possess firearms within Illinois." A6 (¶ 12). This purpose does not relate to the issues here, which revolve around procedural protections for concealed carry applicants.

Finally, the Association failed to meet the third element, which assesses whether participation of individual members is necessary. The complaint contained

no allegations on this prong, but the group argues on appeal it satisfied this element because "this case involves no individualized determinations whatsoever, addressing only straightforward legal questions that apply to all concealed carry license applicants that find their applications pending before the [Board]." AT Br. 46-47. This is false. Many of White's challenges were not universal to all applicants, such as his claim that it was improper for the Board to consider his older arrests or the record of his gang membership.

Moreover, plaintiffs have never asserted that its members faced the same combination of purported violations as White, nor is it likely that this would be the case. Accordingly, to determine whether the Association would prevail on its claims (had any claims been pled), a court would have to review evidence of applicants' individual circumstances and the practices undertaken by defendants. *Retired Chi. Police Ass'n v. City of Chicago*, 7 F.3d 584, 601-02 (7th Cir. 1993). The complaint's allegations were thus insufficient to confer associational standing.

C. The district court did not abuse its discretion in dismissing the Illinois State Rifle Association's claims without leave to amend.

Alternatively, plaintiffs argue that the district court erred by *sua sponte* dismissing the Illinois State Rifle Association's claims with prejudice. AT Br. 41-42. First, plaintiffs are wrong that the *sua sponte* nature of the dismissal was improper, as federal courts must evaluate subject-matter jurisdiction regardless of whether it was argued by either party. *Wernsing v. Thompson*, 423 F.3d 732, 743 (7th Cir. 2005).

Additionally, although a plaintiff ordinarily should receive leave to amend, denial is proper "if an amendment would be futile or the plaintiff cannot explain how any revisions might address the deficiencies." *Robertson v. Allied Sols., LLC*, 902 F.3d 690, 698-99 (7th Cir. 2018). Plaintiffs never explain how any amendment would have cured the deficiencies discussed. AT Br. 42-47. Thus, they failed to meet this standard and have forfeited any such argument. *Trustees of Chi. Painters & Decorators Pension, Health & Welfare, & Deferred Sav. Plan Tr. Funds v. Royal Int'l Drywall & Decorating, Inc.*, 493 F.3d 782, 790 (7th Cir. 2007).

It is likewise relevant that plaintiffs filed no postjudgment motion seeking leave to amend. Had they done so, the district court would have been required to give leave unless there was an "apparent or declared reason—such as undue delay, bad faith or dilatory motive," undue prejudice, or futility of amendment—that would make leave to file unwarranted. *O'Brien*, 955 F.3d at 629 (Rule 15(a) standard applies to postjudgment motions "when a district court enters judgment at the same time it first dismisses a case"). But they did not, and so the district court did not abuse its discretion. *Id.*; *see also Chaidez v. Ford Motor Co.*, 937 F.3d 998, 1007 (7th Cir. 2019) (no abuse of discretion where plaintiffs "never filed a proper motion seeking leave to amend, either before or after the district court entered judgment").

Finally, to the extent the district court dismissed the Illinois State Rifle Association's claims with prejudice, the use of that language does not require reversal. *Compare* SA14 ("ISRA's as-applied claim is dismissed for lack of standing"); SA2 (referencing decision "on a motion to dismiss"), *with* SA27

("Defendants' motion to dismiss is granted with prejudice."). In *MAO-MSO Recovery II, LLC v. State Farm Mut. Auto. Ins. Co.*, 935 F.3d 573 (7th Cir. 2019), for example, this court recognized that although it was error to dismiss a "case with prejudice, when the problem was a fundamental lack of Article III standing," it determined that the district court acted within its discretion in denying the plaintiffs an opportunity to cure the defects. *Id.* at 577. The court thus affirmed the judgment and corrected the record "to reflect that the dismissal is without prejudice." *Id.*; *see Chaidez*, 937 F.3d at 1008 ("it is within our power to modify the judgment to be without prejudice for the claims that were properly dismissed, and we do so"). A similar approach would be appropriate here.

IV. White Failed To State A Second Amendment Claim.

Even if this court were to conclude that *res judicata* did not preclude White's action, it should nonetheless affirm the dismissal of White's Second Amendment claim under Rule 12(b)(6).[9] In his complaint, White framed this claim as having three overarching theories: (1) the preponderance of the evidence standard violates the Second Amendment, (2) section 20(g) lacks objective standards and thus improperly vests the Board with "unbridled discretion," and (3) the Board erred by

[9] Because plaintiffs raised no Second Amendment claim on behalf of the Illinois State Rifle Association, this section focuses on White's allegations. But if this court were to read the complaint to include such a claim on behalf of the Association, dismissal would be warranted on the same grounds as those discussed with respect to White.

considering his past arrests and gang membership. A16-18 (¶¶ 54-61). The district court correctly determined that none of these theories had merit. SA11, SA16-18.[10]

For a Second Amendment claim, the court undertakes a two-step analysis, starting "with the threshold question of whether the restricted activity is protected by the Second Amendment." *Horsley v. Trame*, 808 F.3d 1126, 1130 (7th Cir. 2015) (cleaned up). "If the challenged law regulates activity that falls outside the scope of the Second Amendment at the historically relevant time, then the regulated activity is not protected, and the analysis stops there." *Id.*

But if a court deems the restricted activity to be within the Second Amendment's scope, it performs a means-ends analysis. *Id.* at 1131. At this step, courts "evaluate the regulatory means the government has chosen and the public-benefits end it seeks to achieve." *Id.* (internal quotations omitted). The degree of scrutiny applied "will depend on how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right," *id.*, but will always be more rigorous than rational basis review, *Friedman v. City of Highland Park*, 784 F.3d 406, 410 (7th Cir. 2015). "Laws restricting activity lying closer to the margins of the Second Amendment right, laws that merely regulate rather than restrict, and modest burdens on the right may be more easily justified." *Horsley*, 808 F.3d at 1131 (cleaned up).

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[10] The district court also ruled that his claims against ISP and the Board were barred by the Eleventh Amendment, a decision that plaintiffs did not contest below and do not dispute on appeal. Doc. 28 at 2 n.1; SA12. The dismissal of those claims should thus be upheld.

White's claims did not satisfy this standard for two independent reasons. First, section 20(g) is valid because it does not burden a Second Amendment right. Second, section 20(g) is subject to intermediate scrutiny, and it satisfies that standard because it is reasonably related to the compelling state interest in preventing dangerous persons from carrying firearms in public.

A. Dangerous persons do not have a Second Amendment right to public carriage.

This court should uphold the dismissal at the first step of the analysis because section 20(g)—which prevents dangerous persons from publicly carrying firearms—burdens no Second Amendment right. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court made clear that the right conferred under the Second Amendment is "not unlimited." *Id.* at 595. On the contrary, it is held by "law-abiding, responsible citizens" and is most acute "in defense of hearth and home." *Id.* at 634. After *Heller*, this court recognized a Second Amendment right to public carriage, but held that it only "entitles *qualified* persons to carry guns outside the home." *Culp v. Madigan*, 840 F.3d 400, 401 (7th Cir. 2016) (*Culp I*) (emphasis added); *see also, e.g.*, *Culp v. Raoul*, 921 F.3d 646, 654 (7th Cir. 2019) ("*Culp II*") (no "broad, unfettered right to carry a gun in public"); *Berron v. Illinois Concealed Carry Licensing Review Board*, 825 F.3d 843, 845 (7th Cir. 2016) ("states must permit law-abiding and mentally healthy persons to carry loaded weapons in public"). The aspects of section 20(g) that White challenged do not burden the rights of law-abiding, responsible citizens. Instead, they prevent dangerous persons from publicly carrying firearms by requiring the Board to evaluate whether

applicants pose a danger to themselves or others. Accordingly, section 20(g) does not burden any Second Amendment right.

Furthermore, section 20(g) is consistent with the longstanding practice of prohibiting dangerous persons from carrying concealed weapons through licensure and similar regulatory measures. Accordingly, it is presumptively lawful. *Heller*, 554 U.S. at 626-27 & n.26 (longstanding regulations on possession and carriage such as "prohibitions on the possession of firearms by felons and the mentally ill" are "presumptively lawful"). As a general matter, even in Blackstone's time, the Second Amendment right had never been understood "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* at 626. On the contrary, "an expectation of sensible gun safety regulation was woven into the tapestry of the guarantee." *NRA v. ATF*, 700 F.3d 185, 200 (5th Cir. 2012). One form of regulation imposed by States was to restrict certain groups' firearm access for "public safety reasons." *Id.* Notably, these restrictions regularly extended beyond "criminals" to include individuals who "posed a potential danger." *Id.* For example, "several jurisdictions passed laws that confiscated weapons owned by persons who refused to swear an oath of allegiance to the state or to the nation." *Id.*

And in the early 20th century, many jurisdictions prohibited public carriage for unlicensed persons. Although the qualifications for licensure varied, a common approach was for law enforcement or the judicial branch to conduct individualized determinations on whether the applicant posed a danger to the public, was of good

moral character, and/or demonstrated a need to carry a firearm. *See, e.g.*, 1925 Mich. Pub. Acts 473-74 (No. 313) (approved May 26, 1925) (licensure for concealed carriage issued "if it appears that the applicant is a suitable person to be granted a license and there is reasonable cause therefor"); 1923 N.D. Laws 379-81 (S.B. 256) (approved Mar. 7, 1923) (licensure for concealed carriage issued if applicant "is a suitable person to be so licensed"); 1921 Mo. Laws 691-93 (H.B. 168) (approved Apr. 7, 1921) (permit for concealed carry issued where sheriff satisfied of "good moral character" and that granting permit "will not endanger the public safety"); 1917 Cal. Stat. 221-22 (licensure for concealed carry upon proof "that the person applying therefor is of good moral character, and that good cause exists"); 1917 Or. Laws 804-08 (H.B. 402) (approved Feb. 21, 1917) (license for concealed carry may issue upon "proof" that applicant "is of good moral character").

Section 20(g) is consistent with this tradition in at least two ways. First, as explained, prohibiting dangerous persons from carrying firearms in public is a policy determination that has been made by States and understood to be constitutional since the founding era. Second, the mechanism by which Illinois has implemented this policy is in line with regulatory models developed more than a century ago. Like the early 20th century laws discussed, the Board conducts an individualized review of an application, with a focus on the applicant's criminal history and dangerousness.

White disputes this yet provide no contrary historical evidence. Instead, he suggests that *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), limited the universe

of dangerous persons who may be disqualified from public carriage to felons and the mentally ill. AT Br. 28-29. That is belied by the plain text of *Moore*, where this court explained that "empirical evidence of a public safety concern can be dispensed with altogether when the ban is limited to obviously dangerous persons *such as* felons and the mentally ill." 702 F.3d at 940 (emphasis added).

This broader understanding of the groups that may be disqualified from public carriage, moreover, is consistent with other circuits' decisions upholding laws prohibiting certain groups from possessing firearms for public safety reasons under the first step of the analysis. The Eighth Circuit, for example, concluded that the federal prohibition on "possession of firearms by those who are found to represent a credible threat to the physical safety of an intimate partner or child" does not burden any Second Amendment right because it is "focused on a threat presented by a specific category of presumptively dangerous individuals." *United States v. Bena*, 664 F.3d 1180, 1184 (8th Cir. 2011) (cleaned up). Similarly, the First Circuit held that "the federal ban on juvenile possession of handguns is part of a longstanding practice of prohibiting certain classes of individuals from possessing firearms—those whose possession poses a particular danger to the public." *United States v. Rene E.*, 583 F.3d 8, 15 (1st Cir. 2009).

In sum, section 20(g) impinges upon no Second Amendment right because it does not burden the rights of law-abiding, responsible citizens and because it is consistent with longstanding regulations prohibiting dangerous persons from carrying firearms in public.

B. Alternatively, intermediate scrutiny governs the analysis.

Even if section 20(g) fell within the Second Amendment's scope, intermediate scrutiny would apply because it does not burden a core Second Amendment right. The Supreme Court has held that the Second Amendment is at its apex when a healthy, law-abiding individual seeks to possess a firearm in his or her home for self-defense purposes. *Heller*, 554 U.S. at 635. Based on that foundation, this court has recognized that the "core component" of the Second Amendment is the right to possess firearms for self-defense in the home. *Ezell I*, 651 F.3d at 689.

Section 20(g) does not regulate the possession of firearms or their availability to those seeking to defend their home, and thus does not implicate a core Second Amendment right. Instead, it regulates the carriage of firearms outside the home, an activity with different parameters and consequences to its exercise. This court acknowledged this in *Berron*, describing the many "differences between possessing guns at home and carrying guns in public," including the degree of danger posed. 825 F.3d at 847. And it has since applied intermediate scrutiny to Second Amendment challenges to public carriage. *E.g.*, *Culp II*, 921 F.3d at 654 (rejecting application of strict scrutiny based on historical and practical differences between possession and public carriage).

Another reason why this case does not involve a core right is because section 20(g) does not impose a blanket prohibition on law-abiding individuals. *See Horsley*, 808 F.3d at 1131-32. Instead, it sets forth a standard by which the Board is called to evaluate whether a person is a danger to himself or others. If that person is

deemed to be dangerous, then he cannot obtain a concealed carry license. This case is thus distinct from those where blanket prohibitions on possession or carriage preclude everyone, including law-abiding persons, from exercising a Second Amendment right. *E.g.*, *Moore*, 702 F.3d at 940; *Ezell I*, 651 F.3d at 708.

On appeal, White does not meaningfully explain why section 20(g) implicates the core Second Amendment right or expand on its assertion that strict scrutiny should apply, asserting only that "[t]he right to self defense, both inside *and outside* the home, [is] at the 'core' of the Second Amendment." AT Br. 14 (emphasis in original). He cites *Moore* and *Ezell I*, but neither supports his theory. *Moore* did not identify the right to public carriage as a core one. *Culp II*, 921 F.3d at 654 (rejecting argument that *Moore* identified a core right to public carriage). And *Ezell I* did not address any issues relating to public carriage and, in addition, did not apply strict scrutiny despite concluding that the ban imposed a severe burden on the core right to possess handguns in defense of one's home. 651 F.3d at 708. Instead, it employed "a strong form of intermediate scrutiny" requiring "the City to demonstrate 'a close fit'" between the law and the asserted public interests. *Ezell v. City of Chicago*, 846 F.3d 888, 893 (7th Cir. 2017) ("*Ezell II*") (quoting *Ezell I*, 651 F.3d at 708-09).

White also contends that there are no distinctions between possession in the home and public carriage. AT Br. 30. According to him, a person who is "truly dangerous"—and thus unable to publicly carry firearms—should logically also be stripped of "his right to possess a firearm." *Id.* But this court rejected that

argument in *Berron*, explaining that "the different degrees of danger posed by possessing a weapon at home (the basic license) and carrying a loaded weapon in public (the concealed-carry license) justify different systems." 825 F.3d at 847. Similarly, in *Shepard v. Madigan*, 734 F.3d 748 (7th Cir. 2013), the court rejected a request for relief that would have required "any Illinoisan who has a FOID card [to] be allowed to carry a gun outside the home." *Id.* at 750. The court specifically noted that its mandate in *Moore* "did not forbid the state to impose greater restrictions on carrying a gun outside the home than existing Illinois law . . . imposes on possessing a gun in the home." *Id.* at 751.

C. The challenged aspects of section 20(g) satisfy intermediate scrutiny.

Section 20(g) satisfies intermediate scrutiny because it is reasonably related to the State's interest in preventing dangerous persons from publicly carrying firearms. At the threshold, the state interest in protecting the public by ensuring that dangerous individuals are not permitted to carry firearms in public is well-established, *e.g.*, *Culp II*, 921 F.3d at 655, and White makes no contrary argument on appeal. Instead, he focuses on the fit between that interest and the means selected by the State, arguing that section 20(g) is not sufficiently tailored to prevent dangerous persons from carrying firearms. Accordingly, this section will focus on how the three challenged aspects of section 20(g) are all reasonably related to the indisputably compelling state interest.[11]

[11] For the same reasons discussed in this section, section 20(g) would satisfy any level of heightened scrutiny, including strict scrutiny.

1. *Berron* forecloses White's challenge to section 20(g)'s preponderance of the evidence standard.

The district court rightly rejected White's claim that the preponderance of the evidence standard in section 20(g) violates the Second Amendment. SA16. As White concedes, AT Br. 57, his preponderance argument is foreclosed by *Berron*, which held that "the preponderance standard" under section 20(g) of the Concealed Carry Act is constitutional, 825 F.3d at 848. Accordingly, the district court's dismissal should be upheld.

White's request for the court to "revisit its holding" in *Berron* should be declined. AT Br. 57. For one thing, a panel of this court cannot overrule another panel decision. *Brooks v. Walls*, 279 F.3d 518, 522 (7th Cir. 2002). For another, White offers no reason why revisiting *Berron* is warranted. Nor could he. The panel fully resolved the question, the Supreme Court issued no relevant intervening decision, and no decision of this court has called *Berron* into doubt. *See, e.g.*, *Horwitz v. Alloy Auto. Co.*, 992 F.2d 100, 103 (7th Cir. 1993) (rejecting request to overrule panel decision where initial "panel fully considered the issues, and no subsequent developments draw the reasoning into question"). The district court's decision on this point should be upheld.

2. Section 20(g) does not vest the Board with unbridled discretion.

White next argues that section 20(g) violates the Second Amendment because it grants "unbridled discretion" to the Board when "determining who is a 'danger' or a 'threat.'" AT Br. 17; Doc. 1 ¶¶ 56, 59, 61. Stated differently, White contends that

a lack of "objective standards" for dangerousness violates the Second Amendment. A18 (¶61). This argument is flawed for several reasons.

First, to the extent that White is attempting to import the First Amendment prior restraint doctrine into the Second Amendment analysis by alleging that the Board has "unbridled discretion," this court rejected that approach in *Berron*. *See* 825 F.3d at 847 ("The problem with this argument is that everyone is entitled to speak and write, but not everyone is entitled to carry a concealed firearm in public."); *see also, e.g.*, *Drake v. Filko*, 724 F.3d 426, 435 (3d Cir. 2013) (rejecting prior restraint doctrine in Second Amendment analysis); *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 91-92 (2d Cir. 2012) (same); *Hightower v. City of Boston*, 693 F.3d 61, 80-81 (1st Cir. 2012) (same).

Regardless, White is incorrect that the Board operates with unbridled discretion. The Board's authority is cabined in several ways. First, in rendering a decision under section 20(g), the Board may consider only information sent to it by ISP, an objecting law enforcement agency, or the applicant. 430 ILCS 66/20(e). Law enforcement objections must be based on the applicant's dangerousness or potential threat (as opposed to any other reason), and must be submitted alongside any information relevant to the objection. *Id.* 66/15(a). The information relayed by ISP to the Board is similarly focused, including only the results of its background check and the application materials. *Id.* 66/35. Should a Board member receive information from an outside source, he or she must report its receipt and is barred

from considering it during review of the application. 20 Ill. Admin. Code § 2900.110(e).

Second, although there is no definition of "danger" or "threat" in section 20(g), there are numerous provisions in the Concealed Carry Act that guide the scope of the inquiry. For example, the Concealed Carry Act contemplates that ISP and the Board would review many aspects of the applicant's criminal history and contacts with law enforcement, including the number of arrests, when those arrests occurred, and whether the arrests were gang-related, 430 ILCS 66/15(b); misdemeanor convictions involving the use or threat of force or physical violence, *id.* 66/25(3)(A); violations related to driving while under the influence, *id.* 66/25(3)(B); pending arrest warrants, prosecutions, or proceedings that could lead to disqualification to possess firearms, *id.* 66/25(4); juvenile adjudications, *id.* 66/35(2); and domestic-violence restraining and protective orders, *id.* 66/35(4). Also relevant is a history of substance abuse, *id.* 66/25(5); mental health issues, *id.* 66/35(5); or developmental disabilities, *id.*

Third, each decision by the Board requires a majority of seven commissioners, and the commissioners are statutorily required to have varying backgrounds. *Id.* 66/20(a). Specifically, the Board consists of one member with at least five years of service as a federal judge, two with at least five years of experience as an attorney with the U.S. Department of Justice, one with at least five years of experience "as a licensed physician or clinical psychologist with expertise in the diagnosis and treatment of mental illness," and three with at least five years of experience as a

"federal agent or employee with investigative experience or duties related to criminal justice." *Id.* No more than four commissioners may be members of the same political party, and they must reside in different regions of the State. *Id.* These requirements ensure that no one viewpoint is controlling.

Fourth, the Board's decisions are subject to judicial review under the Illinois Administrative Review Law. *Id.* 66/87. Relevant here, an applicant may file a complaint in the circuit court, *id.*, to challenge the Board's section 20(g) decision and join any statutory or constitutional claims he or she may have, *e.g.*, *Perez v. Ill. Concealed Carry Licensing Rev. Bd.*, 63 N.E.3d 1046, 1050 (Ill. App. Ct. 2016). This operates not only as a constraint on the Board's discretion, but also provides another mechanism to further develop the meaning of "danger" and "threat." For instance, when a challenge was raised regarding the scope of law enforcement contacts that could be considered by the Board, the Illinois Appellate Court made clear that the "plain language of the Act, which allows the Board to consider plaintiff's entire criminal history as well as the objections based on a reasonable suspicion, shows the legislature's intent not to limit considerations for an application to convictions." *Id.* at 1052; *Jankovich v. Ill. State Police*, 78 N.E.3d 548, 559 (Ill. App. Ct. 2017) ("nonsensical to read statute as categorically barring" arrest records "because they happened earlier in time").

In short, the Board's discretion is hardly "unbridled." Vesting the Board with measured discretion, moreover, serves the important state interest in ensuring that dangerous persons do not publicly carry firearms. If Illinois were limited to

restricting public carriage to those who fit within clearly delineated categories, as White proposes, AT Br. 32-36, it would not be able to prevent all dangerous persons from carrying firearms in public. It is not difficult to imagine how individuals could fall outside of categories like felons or the mentally ill, yet still pose a danger to themselves or others.

For instance, in *Jankovich*, an applicant who was not disqualified under the Concealed Carry Act's categorical limitations, *e.g.*, 430 ILCS 66/25, was nonetheless alleged to have committed several disturbing acts that were brought to the Board's attention during the objection process. 63 N.E.3d at 562. Among other incidents, the applicant was alleged to have "threatened to put an individual in a wood chipper and six feet underground" over a monetary dispute, "threatened to bust a man's head open and break his legs" for damaging the applicant's campaign signs, and "kicked and punched an individual with brass knuckles." *Id.* And in *Bolton v. Bryant*, 71 F. Supp. 3d 802 (N.D. Ill. 2014), a law enforcement agency objected on the grounds that the applicant had "been arrested for impersonating a peace officer and unlawful use of a weapon." *Id.* at 807.

In other words, there are circumstances in which vesting the Board with discretion to make individualized determinations allows it to prevent dangerous persons from carrying firearms in public. This conclusion is fatal to White's facial challenge—to the extent he is still pursuing it, *see supra* Section II; AT Br. 27—which would require him to show that section 20(g) "is unconstitutional in all of its

applications" and "cannot be applied to *anyone*." *Ezell I*, 651 F.3d at 698 (internal quotations omitted) (emphasis in original).

White's as-applied challenge also fails because the Board did not exercise "unbridled discretion" when reviewing his application. Instead, it reviewed the materials specified in the statute—the background check, law enforcement objections, and information submitted by White—before rendering its decision. *See supra* pp. 8-9. There are no allegations, for example, that the Board considered information from an improper source, operated outside of the governing standards, or made its decision without allowing White to respond to the objections. In short, the Board operated well within statutory and constitutional bounds.

According to White, however, the Board's discretion is unbridled because it may "consider *all* arrests," even those that occurred "twenty or more years prior." AT Br. 38 (emphasis in original). Stated differently, "[h]olding that *everything* is relevant for the [Board] provide[s] no guidance at all." *Id.* This is not true. As discussed, Illinois courts have determined that the statute allows the Board to review the entirety of an applicant's criminal history, including older arrests. These decisions bear directly on White's circumstances and provide clear guidance. That White disagrees with the standard does not mean that it is boundless or lacks objective parameters.

White makes two additional arguments opposing the dismissal of this aspect of his Second Amendment claim. First, he contends that license eligibility should not be determined on a case-by-case basis and should instead be limited to those

who fit into categorical exceptions that are clearly enumerated by the legislature. AT Br. 32-33; *see also id.* at 29-30. He cites no authority for this novel proposition. Nor could he. Illinois' approach mirrors state regulations dating to the early 20th century, *supra* Section IV.A., and this court has recognized that case-by-case determinations of eligibility to possess or carry firearms are constitutional.

In *United States v. Skoien*, 614 F.3d 638 (7th Cir. 2010) (en banc), for example, this court assumed that the government would be allowed to make "case-by-case exclusions of persons who have been shown to be untrustworthy with weapons." 614 F.3d at 641. At issue there, however, was whether "categorical disqualifications are permissible" and, if so, which categories. *Id.* This issue arose in *Kanter v. Barr*, 919 F.3d 437 (7th Cir. 2019), as well. Although the majority opinion concluded that a categorical restriction on the possession of firearms by felons was consistent with the Second Amendment, the dissent reached the opposite conclusion. *Id.* at 454 (Barrett, J., dissenting). Rather than accept the categorical standard adopted by the majority, the dissent favored a more tailored approach that "disarm[s] those who have demonstrated a proclivity for violence or whose possession of guns would otherwise threaten the public safety." *Id.* This group "includes dangerous people who have not been convicted of felonies." *Id.* As these decisions illustrate, the tailored approach adopted by Illinois does not run afoul of the Second Amendment.

Second, White asserts, it is insufficient for the terms "danger" and "threat" to be fleshed out through judicial review of individual cases. AT Br. 36-37. This

contention, too, conflicts with this court's precedent. *Berron* explained that to the extent any statutory terms are ambiguous, a "court should not assume that the state will choose the unconstitutional path when a valid one is open to it." 825 F.3d at 846. Instead, it recognized that "[s]tate and federal agencies may flesh out a vague scheme in the course of administrative adjudication." *Id.* And as discussed, the Illinois courts have provided additional guidance on the meaning of these terms.

Because White failed to state a facial or as-applied constitutional claim as to the Board's alleged "unbridled discretion," the dismissal order should be upheld.

3. The Board's consideration of older arrests and gang membership did not impose an unconstitutional, lifetime ban on public carriage and is consistent with the Second Amendment.

White's third theory is that defendants violated his Second Amendment rights because they effectively imposed a lifetime ban on his ability to obtain a concealed carry license by considering arrests that occurred approximately 20 years ago and a report including him in the "Chicago Gang Database." AT Br. 2, 10; A17-18 (¶¶ 58-60). To the extent White is still pursuing his facial claim, *see supra* Section II; AT Br. 27, he articulated no basis for such a claim. Instead, the complaint focused on the particular evidence in White's case, which was not universal among concealed carry applicants. A17-18 (¶¶ 58-60). White has thus presented no reason why the challenged process "is wholly invalid and cannot be applied *to anyone*." *Ezell I*, 651 F.3d at 698 (emphasis in original).

Regarding his as-applied challenge, White's description of the process—that "the Board focused on arrests, not even convictions, that occurred over 20 years

ago," A16 (¶ 55) (emphasis omitted), and on the Chicago Gang Database report, A18 (¶ 60)—does not reflect the holistic review that occurred. To start, the evidence before the Board was not limited to 20-year-old arrests and a disputed record of gang membership. Instead, the Board reviewed a record showing two convictions, six arrests, and a disorderly charge allegation during a period spanning two decades, *supra* pp. 8-9. Three of these incidents involved the improper use of weapons and at least two were violent in nature. *Id.* The Board also reviewed White's response brief and affidavit, in which he denied gang membership, provided additional context for several incidents, and described his current personal and employment circumstances. *Id.*

It is, therefore, untrue that the Board relied only on the older arrests and gang database report. The Board was presented with a wide variety of incidents (some admitted, some disputed), weighed the evidence, and made a decision within the confines of a licensing system that this court has deemed constitutional. *See Berron*, 825 F.3d at 846-47. If White believed that the weight given to the various submissions or the ultimate decision on his second application was made in error, he was free to challenge that decision through the state administrative review process.

But even if White's version of events were accurate, he did not state a claim because the Board's approach was constitutionally permissible. Although the question was not squarely presented in *Berron*, this court contemplated that the Board would consider a wide variety of dangerousness indicators that extend

beyond convictions and are not temporally limited, including the applicant's "history of arrests, domestic disturbances, threats of violence, or other reasons why a law-enforcement agency may think that this person's being armed in public poses risks to others." *Id.* at 846.

There is good reason for the State to consider the types of evidence identified as permissible in *Berron* and presented to the Board here. Generally, when a local law enforcement agency has flagged an applicant as presenting a danger or threat, the State has an interest in reviewing the entirety of that applicant's criminal history, *supra* Section IV.C.2. But more specifically, incidents like those in White's record are probative of dangerousness, notwithstanding his contrary arguments. As one example, convictions for nonviolent conduct are relevant to potential future dangerousness. According to an American Medical Association study cited in *Kanter*, "'handgun purchasers with only 1 prior *misdemeanor* conviction and no convictions for offenses involving firearms or violence were nearly 5 times as likely as those with no prior criminal history to be charged with new offenses involving firearms or violence.'" 919 F.3d at 449 (emphasis in original).

Additionally, White's arrest for domestic battery (which did not yield a conviction) is consistent with the reality that it is often difficult for law enforcement to pursue domestic violence complaints, as "either forgiveness or fear induces many victims not to report the attack to begin with." *Skoien*, 614 F.3d at 643. As a result, "many aggressors end up with no conviction, or a misdemeanor conviction, when similar violence against a stranger would produce a felony conviction." *Id.*

Similarly, an acquittal on any charge "does not demonstrate a defendant's innocence"; rather, it "means only that the prosecution was unable to prove the defendant guilty beyond a reasonable doubt." *Perez*, 63 N.E.3d at 1051 (cleaned up). These law enforcement encounters, then, are relevant to the Board's section 20(g) evaluation of an applicant's dangerousness.

To be sure, the Board will likely give more weight to incidents that are more recent, show a propensity for violence, or involve the improper use of firearms. But that does not mean that the Board's review should be limited to those records. Illinois has an important interest in reviewing the entirety of an applicant's record on a case-by-case basis, and allowing the Board to weigh all aspects of that record is part of that interest.

White's primary opposition here is that the Board's review should be restricted to the "*current* behavior of an applicant" because the State purportedly is only allowed to check the applicant's record "'close to the date the applicant proposes to go armed on the streets.'" AT Br. 16 (emphasis in original) (quoting *Berron*, 825 F.3d at 847). But this argument rests on an incorrect interpretation of a single sentence in *Berron*. That sentence is in a paragraph explaining why Illinois may require separate licenses for possession and public carriage. 825 F.3d at 847. Among other reasons, the court noted that "circumstances may change between the time someone receives a keep-at-home license (which is valid for ten years, see 430 ILCS 65/7) and the time he seeks a concealed-carry license." *Id.* Accordingly, "Illinois is entitled to check an applicant's record of convictions, and any concerns

about his mental health, close to the date the applicant proposes to go armed on the streets." *Id.* The court was not signaling, as White suggests, that state review of dangerousness is limited to only recent incidents.

White's temporal argument is also in conflict with the numerous federal and state regulations that prohibit possession or carriage of firearms based on incidents occurring years or decades prior to the time the person seeks to purchase or carry a firearm. *E.g.*, *Kanter*, 919 F.3d at 442 (lifetime ban on felons possessing firearms facially constitutional); 430 ILCS 65/8, 65/10; 430 ILCS 66/25. White does not challenge any of these. AT Br. 15. On the contrary, he favorably cites the federal requirements that impose categorical, and often lifetime, prohibitions on the possession of firearms by dangerous persons, and does not dispute that the categorical prohibitions in the Concealed Carry Act based on convictions and arrests from years or decades prior to application, *see, e.g.*, 430 ILCS 66/25, are valid.

White further asserts that the Board should not have considered his inclusion in the Chicago Gang Database because it is "discredited" and unreliable, AT Br. 23, and because he denied any gang affiliation under oath, *id.* at 2. But as White recognizes, he had the opportunity to respond to this allegation (and did) by submitting contrary evidence and argument to the Board. A14-15 (¶¶ 45-46). White's disagreement with how the Board weighed this evidence does not amount to a constitutional violation; rather, it is an issue best addressed by state court in administrative review.

Finally, White is incorrect that the Board has imposed a lifetime ban on his ability to obtain a concealed carry license. AT Br. 21. The Board has not indicated as much. White points out that he has twice been denied a concealed carry license, but those applications were only three years apart and he did not seek administrative review of the second denial. For all these reasons, White's contention that the Board erred by considering all of his law enforcement contacts is unpersuasive and does not merit reversal.

V. White Failed To State A Due Process Claim.

Finally, this court should uphold the dismissal of White's procedural due process claim, which is largely duplicative of his Second Amendment claim. In particular, White alleged that defendants violated due process by: (1) implementing a preponderance of the evidence standard under section 20(g); (2) vesting the Board with "unbridled discretion" and a lack of objective standards; (3) imposing a "lifetime ban" on White by considering older arrests and documented gang membership; and (4) failing to provide White with additional procedural safeguards such as a hearing. A19-22 (¶¶ 66-72, 75). These allegations were insufficient for many reasons.

First, White's due process claim should be dismissed because he does not have a legitimate claim of entitlement that is subject to protection by procedural due process. This court rejected a similar theory in *Culp II* because the plaintiffs had failed to establish a Second Amendment violation or cite any authority that "the Due Process Clause independently confers a right to carry a concealed firearm

in Illinois." 921 F.3d at 658; *see also Peruta v. Cty. of San Diego*, 824 F.3d 919, 942 (9th Cir. 2016) (en banc) (Second Amendment holding "necessarily resolves . . . derivative claims of . . . due process"). The same is true here: White does not satisfy the qualifications for a concealed carry license, has pointed to no authority that due process confers a right to publicly carry a firearm, and has not stated a claim that defendants have violated his Second Amendment rights. Accordingly, he cannot show that he has "been deprived of a [protected] interest without due process." *Culp II*, 921 F.3d at 658 (citing *Swarthout v. Cooke*, 562 U.S. 216, 219 (2011)).

Furthermore, White did not sufficiently allege that the challenged procedures are constitutionally insufficient. *Swarthout*, 562 U.S. at 219. His first three points—both as alleged in the complaint and made on appeal—are the same as those made regarding the Second Amendment claim. *See, e.g.*, AT Br. 50 ("As argued above, the [Concealed Carry Act] provides no guidance or limitation . . . on what makes an applicant a 'danger' or a 'threat'"); *id.* at 51 (asserting that Board's consideration of "*anything* in applicant's criminal history," including older arrests and "purported gang membership" is unconstitutional); *id.* at 55-57 (asking this court to revisit its preponderance of evidence holding in *Berron*). And as discussed, *see supra* Section IV.C., White has identified no constitutional deficiencies on any of these fronts. This court should reject these theories for the same reasons as above.

White also argues that the Board erred by "ignor[ing] [his] request for a hearing, notwithstanding [his] specific request to address at the hearing the

unfounded and unsubstantiated allegation that he was a gang member." AT Br. 53. According to White, the Concealed Carry Act's "failure to provide the opportunity for a hearing before an applicant is denied a [concealed carry license is], on its face" a due process violation. *Id.* This is not true; due process generally requires only notice and an opportunity to be heard, whether in person or in writing. *Cleveland Bd. v. Loudermill*, 470 U.S. 532, 546 (1985). These requirements were satisfied here, as White received a detailed description of the law enforcement objections and was given an opportunity to respond, which he did via affidavit, *supra* p. 8.

Finally, White argues that the Board's "failure to provide any findings of fact or otherwise give a factual basis for its conclusion" that he did not satisfy section 20(g) constituted a due process violation. AT Br. 54 (italics omitted). Although White did not clearly include this theory as part of either claim in his complaint, he made a cursory argument in opposition to defendants' motion to dismiss that the Board's decision "presented no information for a reviewing court to gauge the justifiability of the Board's decision." Doc. 28 at 13.

The district court rightly concluded that White had forfeited this argument because he cited no cases "articulating a Second Amendment or Due Process right to a more detailed statement of reasons than what he was provided" and did not "address the fact that Illinois courts have repeatedly reviewed similar orders from the Board without remanding for a more detailed statement." SA26. The latter point, according to the district court, "suggests that [Illinois courts] did not find the

Board's orders to be lacking and demonstrates that the concept of dangerousness is being fleshed out through judicial review." *Id.*

On appeal, White does not address the district court's forfeiture finding, and thus has forfeited any argument against it. *M.G. Skinner & Assocs. Ins. Agency*, 845 F.3d at 321.[12] That aside, the court's conclusion was correct. White has never articulated a legal theory—whether in the complaint, in the filings below, or on appeal—about how the Board's order violated his due process rights. Nor could he, as the statement of reasons in an administrative decision "need not include detailed findings of fact but must inform the court and petitioner of the grounds of decision and the essential facts upon which the administrative decision was based." *Bagdonas v. Dep't of Treasury*, 93 F.3d 422, 426 (7th Cir. 1996). And here, the Board found that White was a danger to himself or others, A15 (¶ 47), which the state courts could review. In fact, when White's first application was denied, the Illinois Appellate Court reviewed the Board's decision and issued a 42-paragraph order. A64. Had White sought review of his second application, there is no reason to believe the state courts would have been unable to accomplish that task.

[12] Although the district court addressed this argument under both the Second Amendment and due process frameworks, SA26, White does not press a Second Amendment theory on appeal, *e.g.*, AT Br. 2-3. In any event, any such argument would fail for the same reasons articulated in this section.

CONCLUSION

For these reasons, Defendants-Appellees request that this Court affirm the judgment of the district court.

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

I hereby certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and Circuit Rule 32 and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word, in 12-point Century Schoolbook font, and complies with Federal Rule of Appellate Procedure 32(a)(7)(A) in that the brief is 13,985 words.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on April 23, 2021, I electronically filed the foregoing Brief of Defendants-Appellees with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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