STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2018AP0563

JAMES P. MORAN,

Petitioner-Appellant,

v.

WISCONSIN DEPARTMENT OF JUSTICE,

Respondent-Respondent.

APPEAL FROM A FINAL ORDER ENTERED BY
THE CIRCUIT COURT FOR CHIPPEWA COUNTY,
THE HONORABLE JAMES M. ISAACSON PRESIDING,
AFFIRMING AN ADMINISTRATIVE DECISION OF
THE WISCONSIN DEPARTMENT OF JUSTICE

BRIEF OF RESPONDENT-RESPONDENT

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INTRODUCTION

Moran does not qualify for the exception to Wisconsin's prohibition on felons possessing firearms because he has not received a pardon. While Moran had his right to possess a firearm restored under a Virginia statute, that statute is only used by those who have not been pardoned. This Court cannot rewrite Wisconsin's statutory exception to expand its scope so as to include those who have had their civil right to possess a firearm restored in another state.

The Wisconsin Constitution and federal law do not require a different result. First, regarding the constitutional right to bear arms, courts recognize that right does not limit the ability to bar felons from possessing firearms. Further, the federal Full Faith and Credit Clause does not require Wisconsin to allow Moran to possess a firearm because Virginia allowed him to do so. Lastly, the federal Firearm Owners' Protection Act merely defines the scope of the federal felon-in-possession law, it does not grant anyone the affirmative right to possess a firearm in contravention of state law.

STATEMENT OF THE ISSUES

1) Wisconsin prohibits those who committed a crime in another state that would be a felony in Wisconsin from possessing a firearm, Wis. Stat. § 941.29(1m)(b), but exempts from the prohibition those who have "received a pardon with respect to the" relevant crime, Wis. Stat. § 941.29(5)(a). Moran had his right to possess a firearm restored by Virginia but was not pardoned. Does Moran qualify for the exception in Wis. Stat. § 941.29(5)?

The circuit court answered no.

This Court should also answer no.

2) Binding precedent holds that the right to bear arms under article I, section 25 of the Wisconsin Constitution and the Second Amendment to the U.S. Constitution do not prevent states from barring felons from possessing firearms. Do these constitutional provisions override Wisconsin's ban on felons possessing firearms?

The circuit court answered no.

This Court should also answer no.

3) The Full Faith and Credit Clause requires states to honor the "public Acts, Records, and judicial Proceedings of every other State," U.S. Const. Art. IV, § 1, but does not require it to substitute other states' statutes for its own. Moran obtained an order from a Virginia court restoring his right to own a firearm pursuant to a Virginia statute. Does the Full Faith and Credit Clause require Wisconsin to treat the Virginia order as restoring his right to own a firearm under Wisconsin law?

The circuit court answered no.

This Court should answer no.

4) The federal crime for felons possessing a firearm excludes those who have had their civil right to possess a firearm restored. The statute, however, disclaims any intent to occupy the field so as to prohibit states from regulating in this area. Does federal law override Wisconsin's prohibition of felons possessing firearms?

The circuit court answered no.

This Court should answer no.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is unnecessary because the issues can be adequately addressed by briefs. Publication is unwarranted because this case meets none of the criteria for publication in Wis. Stat § (Rule) 809.23(1)(a).

STATEMENT OF THE CASE

This case involves an exception to Wisconsin's statutory prohibition on felons possessing firearms. Before discussing the facts of this case, this brief will discuss Wisconsin's statutory prohibition and the exception at issue.

I. Relevant statutes

Wisconsin Stat. § 941.29 makes it a felony for certain people to possess firearms. Relevant here is Wis. Stat. § 941.29(1m)(b), which bars firearm possession by a person who "has been convicted of a crime elsewhere that would be a felony if committed in this state."

There is an exception in Wis. Stat. § 941.29(5) for some individuals that would otherwise be prohibited from possessing a firearm. In order to qualify, a person must either: (a) have "received a pardon with respect to the crime or felony specified in sub. (1m) . . . and has been expressly authorized to possess a firearm under 18 USC app. 1203" or (b) have "obtained relief from disabilities under 18 USC 925 (c)." While Wis. Stat. § 941.29(5)(a) references 18 U.S.C. § 1203, that section of the federal code was repealed in 1986. *See* Firearms Owners' Protection Act, Pub. L. No. 99-308, § 104(b), 100 Stat. 449, 459 (1986). Further, Congress has not funded the program in 18 U.S.C. § 925(c) under which people can obtain relief from disabilities, referenced in Wis. Stat. § 941.29(5)(b). *United States v. Bean*, 537 U.S. 71, 75 & n.3 (2002).

Moran also relies on some federal laws. Federal law prohibits anyone from owning a firearm "who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding a year." 18 U.S.C. § 922(g)(1). The law, however, provides that "[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter," unless there was an express provision that the person could not ship, transport, possess, or receive firearms. 18 U.S.C. § 921(a)(20)(B). Congress added the exception for those who had their convictions expunged, received pardons, or had their civil rights restored in the Firearm Owners' Protection Act, passed in 1986. *See* Firearms Owners' Protection Act, Pub. L. No. 99-308, § 104(b), 100 Stat. 449 (1986).

II. Facts

On January 20, 1995, Moran was convicted in Virginia for embezzlement in excess of $200 under Va. Code Ann. § 18.2-111, a felony under Virginia law. (R. 24:25.) Moran was ordered to pay restitution of $30,700. (R. 24:31.)

In 2006, Moran had many of his rights restored under Virginia law. The document restoring his rights noted that "James P. Moran, by reason of conviction(s), suffers political disabilities," specifically "denial of the right to vote, to hold public office, to serve on a jury, to be a notary public and to ship, transport, possess or receive firearms." (R. 24:10, App. 006.) The Governor restored most of his civil rights "except the right to transport, possess, or receive firearms." (R. 24:10, App. 006.) In 2013, pursuant to Va. Code Ann. § 18.2-308.2.C, the Circuit Court of Loudon County, Virginia, restored Moran's right to possess firearms and granted Moran a permit to carry a firearm. (R. 24:11–12, App. 007–08.)

On October 5, 2016, Moran attempted to purchase a firearm in Wisconsin. (R. 1:4.) His purchase was denied by the Wisconsin Department of Justice (DOJ) (R. 1:4), which reviews potential handgun purchases in the State. *See* Wis. Stat. § 175.35(2).

III. Procedural history

A. Administrative proceedings

Moran contested the denial of his firearm purchase with DOJ using the administrative procedure outlined in Wis. Admin. Code Ch. Jus 10. (R. 24:5.) On October 26, 2016, the Firearms Unit of DOJ's Crime Information Bureau sustained the denial under Wis. Stat. § 941.29(1m)(b). (R. 21:22, App. 001.)

Moran appealed administratively to the Administrator of DOJ's Division of Law Enforcement Services, arguing that he should be allowed to purchase a firearm because his right to possess a firearm had been restored by Virginia. (R. 21:23–27.) On November 22, 2016, Administrator Brian O'Keefe sustained the denial because Moran was prohibited from owning a firearm under Wis. Stat. § 941.29(1m)(b) based on his 1995 conviction from Virginia. (R. 21:10, App. 002.) The Administrator ruled that "[t]he Department of Justice does not have authority to grant an exemption to these disqualifiers." (R. 21:10, App. 002.)

B. Circuit court proceedings

Moran then filed a petition for review in circuit court. (R. 1.) After briefing by the parties, the circuit court issued a written decision affirming DOJ's decision. (R. 36, App. 003–05.) The court identified the primary issue as whether "the restoration of rights under Virginia law . . . equate[s] with a pardon which is required under Wisconsin Statute § 941.29(5)(a)." (R. 36:1, App. 003.) The court noted

that Virginia has three types of pardons, none of which Moran received. (R. 36:1–2, App. 003–04.) After reviewing the requirements for a pardon under Wisconsin law, the court held that "the right to possess a firearm . . . as restored in the State of Virginia does NOT equal the governor[']s pardon in Wisconsin." (R. 36:3, App. 005.) The court rejected Moran's argument based on the Full Faith and Credit Clause because Wisconsin law required a pardon and Moran had not shown he had received a pardon. (R. 36:2, App. 005.)

STANDARD OF REVIEW

In an appeal of "a circuit court order reviewing an agency decision," this Court reviews "the decision of the agency, not the circuit court." *Lake Beulah Mgmt. Dist. v. DNR,* 2011 WI 54, ¶ 25, 335 Wis. 2d 47, 799 N.W.2d 73. While this Court does not "defer to the opinion of the circuit court, that court's reasoning may assist" the Court. *Sterlingworth Condo. Ass'n, Inc. v. DNR,* 205 Wis. 2d 710, 720, 556 N.W.2d 791 (Ct. App. 1996).

The Wisconsin Supreme Court recently held that the statutory interpretations of administrative agencies are subject to de novo review without deference to the agency's decision. *Tetra Tech EC, Inc. v. DOR*, 2018 WI 75, ¶ 84, ¶ 141 (Ziegler, J., concurring), ¶ 159 (Gableman, J., concurring). A court, however, can "benefit from the administrative agency's analysis." *Id.* ¶ 84.

ARGUMENT

Moran does not dispute that he "has been convicted of a crime elsewhere that would be a felony if committed in this state," Wis. Stat. § 941.29(1m)(b), and that, as a result, he is barred from owning a firearm unless he satisfies Wis. Stat. § 941.29(5). There are two possible avenues under that subsection, and Moran satisfies neither. Moran does not satisfy section 941.29(5)(a) because he has not been

pardoned and does not satisfy section 941.29(5)(b) because he has not been relieved from disabilities under 18 U.S.C. § 925(c).

Moran fails in his attempt to avoid the plain language of the state statute by relying on constitutional provisions and federal law. The state and federal constitutional rights to bear arms do not override Wis. Stat. § 941.29 because precedent holds that states can bar felons from possessing firearms consistent with the right to bear arms. Regarding the Full Faith and Credit Clause, Virginia's restoration of Moran's right to possess a firearm under Virginia law does not require Wisconsin to recognize Moran's right to possess a firearm under Wisconsin law. Lastly, the Firearm Owners' Protection Act defines the scope of the federal ban on possessing firearms; it does not require any state to recognize the restoration of civil rights in another state.

I. Moran does not meet the requirements of Wis. Stat. § 941.29(5).

Because Moran does not dispute that he "has been convicted of a crime elsewhere that would be a felony if committed in this state," Wis. Stat. § 941.29(1m)(b), he is barred from owning a firearm unless he meets the terms of Wis. Stat. § 941.29(5). While Moran claims he meets the requirements of Wis. Stat. § 941.29(5), he does not satisfy the plain language of either section 941.29(5)(a) or (b).

A. Moran does not satisfy Wis. Stat. § 941.29(5)(a) because he has not "received a pardon" for his crime.

Moran does not satisfy the first exception because he has not "received a pardon with respect to" his disqualifying felony conviction. Wis. Stat. § 941.29(5)(a). Virginia law distinguishes between pardons, which Moran did not receive, and restorations of civil rights, which he did receive.

Virginia's prohibition on felons possessing firearms is codified at Va. Code Ann. § 18.2-308.2.A. Subsection B of that same statute provides that the "[t]he prohibitions of Subsection A shall not apply to . . . any person who has been pardoned." Va. Code Ann. § 18.2-308.2.B. Moran did not benefit from subsection B because the Virginia courts restored his right to possess a firearm under subsection C, (R. 13:13–14), which allows "[a]ny person prohibited from possessing . . . a firearm . . . under subsection A" to petition a Virginia circuit court "for a permit to possess or carry a firearm." Va. Code Ann. § 18.2-308.2.C. Clearly, Moran did not receive a pardon from the State of Virginia.

Recognizing that he was not pardoned, Moran incorrectly asserts that he can satisfy the exception because he received the "functional equivalent" of a pardon. (Moran Br. 16–18.) This contention asks the Court to abandon its role in a statutory interpretation case.

A court's role in statutory interpretation "begins with the language of the statute," and if the language is plain, then the inquiry stops. *State ex rel. Kalal v. Circuit Ct. for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110 (quoting *Seider v. O'Connell*, 2000 WI 76, ¶ 41, 236 Wis. 2d 211, 612 N.W.2d 659)). A court "may not substitute [its] judgment for that of the legislature," and thus "may not rewrite" a statute to say what a litigant wants it to say. *City of Menasha v. WERC*, 2011 WI App 108, ¶ 18, 335 Wis. 2d 250, 802 N.W.2d 531.

The statute requires a pardon; Moran did not receive one, even though Virginia does offer pardons. Va. Const. art. V, § 12 (granting governor power "to grant reprieves and pardons after conviction"). Here, the statute requires a pardon, so the inquiry stops once it is conceded that Moran has not obtained one.

If the Wisconsin Legislature had intended to include those who have had their rights restored in addition to those who have been pardoned, it easily could have said so in Wis. Stat. § 941.29(5)(a). The federal Firearm Owners' Protection Act did just that in excluding certain convictions from the federal law, specifically those that have "been expunged, or set aside or for which a person has been pardoned or has had civil rights restored." 18 U.S.C. § 921(a)(20)(B). The federal law would not make a distinction between a person who "has been pardoned" and one, like Moran, who "has had civil rights restored," *id.*, if these two terms were the same thing and could be used interchangeably. *Kalal*, 271 Wis. 2d 633, ¶ 46 ("Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage."). Because a court "may not substitute [its] judgment for that of the legislature," this Court "may not rewrite" Wis. Stat. § 941.29(5)(a) to include both pardons and their functional equivalents. *Menasha*, 335 Wis. 2d 250, ¶ 18. Moran simply does not fit within the terms of Wis. Stat. § 941.29(5)(a).

Nor is Moran helped by the fact that Wis. Stat. § 941.29(5)(a) references 18 U.S.C. § 1203, a repealed federal statute. The exclusion in Wis. Stat. § 941.29(5)(a) has two elements: (1) a pardon and (2) an "express[ ] authoriz[ation] to possess a firearm" under 18 U.S.C. § 1203. Given that he does not meet the first element, a pardon, he does not meet the requirements of the exemption irrespective of how one would address the effect of 18 U.S.C. § 1203's repeal.

B. Moran does not satisfy the requirements of Wis. Stat. § 941.29(5)(b).

Moran also does not meet the requirements of Wis. Stat. § 941.29(5)(b) because he has not "obtained relief from disabilities under 18 USC 925(c)." Wis. Stat. § 941.29(5)(b). As noted above, the federal government has

not funded program under which relief from disabilities under 18 U.S.C. § 925(c) was granted for many years.

That Congress has not funded this program does not affect the analysis. With the exception in Wis. Stat. § 941.29(5)(b), the Legislature decided to allow felons who benefitted from a particular federal program to possess firearms. The federal government then stopped the program. Section 941.29(5)(b), in turn, ceased to have a practical effect. The Legislature, however, is under no obligation to create exemptions allowing felons to possess firearms, so the fact that the federal government stopped the program does not somehow entitle Moran to possess a firearm.

Moran suggests that the defunct federal program is, in some sense, similar to the relief he obtained in Virginia. (Moran Br. 14–16.) Putting aside the accuracy of that observation, it is irrelevant. The Legislature has not created an exception based on the Virginia process. Again, the courts have no power to rewrite the statute to grant an exemption to those who have obtained relief from a state procedure a litigant claims is similar to the federal procedure in 18 U.S.C. § 925(c).

C. The 1989 Attorney General Opinion does not grant Moran the right to possess a firearm.

The Attorney General opinion relied upon by Moran, 78 Op. Att'y Gen. 22 (1989), does not apply in this case because Moran has not been pardoned. The opinion was issued in response to a request by the Governor for advice on how the repeal of 18 U.S.C. § 1203 affected Wis. Stat. § 941.29(5)(a) and pardons granted by his office.

78 Op. Att'y Gen at 22–23, App. 016–17.[1] The opinion is not helpful in this case because it deals with an entirely different factual situation: those who received pardons but could not obtain relief from disabilities due to the repeal of 18 U.S.C. § 1203. The opinion cannot possibly grant Moran the right to possess a firearm because it applied the statute to those who have received pardons and, as shown above, Moran has not been pardoned.

In addition, the reasoning of the opinion is not persuasive in this case. Attorney General opinions are only persuasive authority. *City of Madison v. DHS,* 2017 WI App 25, ¶ 33, 375 Wis. 2d 203, 895 N.W.2d 844. This reasoning is not persuasive here because the opinion was drafted shortly after the repeal of 18 U.S.C. 1203. The opinion therefore offered an "interim interpretation" of Wis. Stat. § 941.29(5)(a), 78 Op. Att'y Gen. at 25, App. 019, that would apply "[p]ending corrective action by the Wisconsin legislature" to account for the repeal of 18 U.S.C. § 1203. *Id.* at 26 (quoting 1 Hammer and Donohoo, *Substantive Criminal Law in Wisconsin* 460 (1988)), App. 020. Irrespective of whether the opinion's reasoning was persuasive in 1989, it is no longer persuasive today. An "interim interpretation" that would apply "[p]ending corrective action by the Wisconsin legislature," 78 Op. Att'y Gen. at 25–26, App. 019–20, is not tenable thirty years after the change was made in federal law. The role of the courts is "to faithfully give effect to the laws enacted by the legislature," and "to defer[ ] to the policy choices enacted into law by the legislature."

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[1] While not applicable to this case, the Attorney General concluded that pardons granted by the Governor after November 15, 1986, would give the recipient the right to possess firearms unless the pardon expressly provided otherwise. *Id.* at 25–26, App. 019–20.

Kalal, 271 Wis. 2d 633, ¶ 44. After thirty years of non-action, the only reasonable conclusion is that the Legislature sees no need to "fix" or "update" the statute. Courts have no authority to substitute an interim interpretation to "fix" the statute for the Legislature.

In addition, Moran misrepresents the opinion in two ways. First, the Attorney General did not opine a person who had his civil rights restored would qualify for the exemption under Wis. Stat. § 941.29(5)(a). (Moran Br. 12.) The opinion was merely quoting the revised language in 18 U.S.C. § 921(a)(20), which provides that a person with a conviction who "has had civil rights restored shall not be considered a conviction for purposes of this chapter." 78 Op. Att'y Gen. at 23 (quoting 18 U.S.C. § 921(a)(20)), App. 017. As explained in Section IV below, the federal statute merely removes certain convictions from the federal felon-in-possession ban; it does not grant Moran or anyone else the right to possess a firearm in contravention of state law.

In addition, the opinion does not, as Moran claims (Moran Br. 15), address how to interpret Wis. Stat. § 941.29(5)(b) following the federal government's decision to stop awarding relief from disabilities under 18 U.S.C. § 925(c). The opinion only interprets Wis. Stat. § 941.29(5)(a). 78 Op. Att'y Gen. at 22, App. 016. The opinion nowhere recognizes Section 925(c) as a "nullity," (Moran Br. 15), nor could it have when the opinion was issued in 1989, but Congress did not stop funding the Section 925(c) program until 1992. (Moran Br. 15.) In any event, the opinion's reasoning would be just as unpersuasive as to Wis. Stat. § 941.29(5)(b) as it is to Wis. Stat. § 941.29(5)(a) because the Legislature has not amended the statute even though it has had twenty-five years to do so following the federal government's decision to stop funding the program.

II. The state and federal constitutional rights to bear arms do not prevent laws prohibiting felons from possessing firearms.

Both federal and state courts agree that states can restrict felons from possessing firearms without violating the constitutional right to bear arms. This Court holds that felons can be barred from firearm possession consistent with article I, section 25 of the Wisconsin Constitution. *State v. Pocian*, 2012 WI App 58, 341 Wis. 2d 380, 814 N.W.2d 894; *State v. Thomas*, 2004 WI App 115, 274 Wis. 2d 513, 683 N.W.2d 497. In fact, "the legislative history of the amendment clearly demonstrates that the intent of the sponsors of the amendment was to preserve the legislature's authority to restrict the possession of firearms by felons." *Thomas*, 274 Wis. 2d 513, ¶ 12. Article I, section 25 therefore cannot be read to allow a felon to possess a firearm when barred from doing so under Wis. Stat. § 941.29.

The federal courts likewise agree that the Second Amendment does not prevent restrictions on felons possessing firearms. The United States Supreme Court said that nothing in its opinion in *District of Columbia v. Heller*, 554 U.S. 570 (2008), which established an individual right to bear arms, "should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." *Id.* at 626. Thus, *Heller*, the sole authority that Moran cites in support of his Second Amendment argument, does not even support his argument. The *Heller* court could not have been clearer that felon-in-possession laws are consistent with the Second Amendment, even though it also recognized the arguments Moran makes about the amendment codifying a pre-existing right intertwined with the right of self-defense.

Given these precedents, the federal and state constitutions provide no justification for allowing Moran to possess a firearm.

III. The Full Faith and Credit Clause does not require Wisconsin to recognize Virginia's restoration of rights.

Wisconsin is not required to recognize the restoration of Moran's right to own a firearm in Virginia by the Full Faith and Credit Clause. The clause provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 1. The order Moran received from the Virginia court restored his right to possess to carry a firearm in Virginia. It did not purport to give him the right to possess a firearm in any other state. As a result, there simply is no Full Faith and Credit problem with Wisconsin enforcing its prohibition against Moran.

Even if Virginia had purported to restore Moran's rights as to other states, the Full Faith and Credit Clause would not require Wisconsin to recognize Virginia's order. The United States Supreme Court holds that "[t]he Full Faith and Credit Clause does not compel 'a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.'" *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 232 (1998) (quoting *Pacific Emp'rs Ins. Co. v. Indus. Accident Comm'n*, 306 U.S. 493, 501 (1939)). Moran received an order from a Virginia court allowing him to carry a firearm in Virginia, issued under a Virginia statute that allows "[a]ny person prohibited from possessing, transporting, or carrying a firearm" to petition a circuit court "for a permit to possess or carry a firearm." Va. Code Ann. § 18.2-308.2.C. He cites no authority for the proposition that the Full Faith and Credit Clause requires

every other state to recognize the Virginia permit; nor could he when his interpretation of the Full Faith and Credit Clause would force each state to substitute the Virginia statute for its own.

For this reason, Moran's Full Faith and Credit argument has been rejected by several courts on facts indistinguishable from this one. The California Court of Appeal rejected the argument of a defendant who had an Arizona felony conviction and had his right to possess a firearm restored in Arizona. *People v. Shear*, 83 Cal. Rptr. 2d 707, 710 (Cal. Ct. App. 1999). The court reasoned that the state's prohibition on felons possessing firearms "deals with 'a subject matter concerning which [California] is competent to legislate,'" *id.* at 713 (alteration in original) (quoting *Baker*, 522 U.S. at 232), and was "the expression of [California]'s domestic policy, in terms declared to be exclusive in its application to persons and events within the state." *Id.* (alteration in original) (quoting *Pacific Emp'rs*, 306 U.S. at 502–03). Likewise, "California's 'significant contact' with defendant, a California resident, creates a 'state interest[ ], such that choice of its law is neither arbitrary nor fundamentally unfair.'" *Id.* (alteration in original) (quoting *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 818 (1985)). Lastly, "California's enforcement of the right conferred by the Arizona statute would be 'obnoxious to the public policy' of the forum." *Id.* (quoting *Bradford Elec. Light Co. v. Clapper*, 286 U.S. 145, 160 (1932)). Simply put, "[t]he Full Faith and Credit Clause does not preclude California from carrying out its public policy of prohibiting convicted felons within its borders from possessing firearms merely because defendant could lawfully possess firearms in Arizona." *Id.* at 714.

Several other courts have followed the same reasoning. The Appellate Division of the New Jersey Superior Court dealt with the issue in a case involving a New York felon who had his right to own a firearm restored, holding that "[t]he Full Faith and Credit Clause does not require New Jersey to ignore its law that treats such convictions as automatically disqualifying simply because the certificates remove that automatic disqualifier under New York's gun laws." *In re Winston*, 101 A.3d 1120, 1125 (N.J. Super. Ct. App. Div. 2014). Similarly, the Tennessee Court of Appeals held that Full Faith and Credit did not require it to recognize a Georgia pardon because it would be contrary to "Tennessee's public policy against the restoration of firearm rights for persons convicted of a felony involving force, violence, or a deadly weapon." *Blackwell v. Haslam*, No. M2012-01991-COA-R3-CV, 2013 WL 3379364, at *17 (Tenn. Ct. App. June 28, 2013) (unpublished), R-App. 101–18.

The reasoning in these cases applies here. Allowing Moran to possess a firearm would be contrary to Wisconsin's public policy, embodied in Wis. Stat. § 941.29(1m)(b), which bars him from owning a firearm. Wisconsin is competent to legislate over who is allowed to possess firearms in the State. Moran is now a Wisconsin resident, and thus Wisconsin has significant ties to him such that the state interest would not be arbitrary or unfair to him. In contrast, Moran cites no cases that follow his reasoning, which would impose the absurd result that one state can give a person the right to possess firearms in every other state. Given this persuasive authority, and the complete lack of authority cited by Moran, the Court should reject Moran's argument based on the Full Faith and Credit Clause.

IV. The Firearm Owners' Protection Act does not give Moran the right to possess a firearm.

The Firearm Owners' Protection Act defines the scope of the federal ban on felons possessing firearms; it does not grant the right to own firearms in contravention of state laws. Federal law prohibits anyone from owning a firearm "who has been convicted in any court, of a crime punishable by imprisonment for a term exceeding a year." 18 U.S.C. § 922(g)(1). Moran relies on the definition of "crime punishable by imprisonment for a term exceeding one year" in 18 U.S.C. § 921(a)(20), which excludes convictions that have "been expunged, or set aside or for which a person has been pardoned or has had civil rights restored." This definition sets the scope of a crime under federal law; it means that Moran cannot be prosecuted under federal law for possessing a firearm.

The federal law does not give anyone the right to possess a firearm or require that states use this same definition in their laws prohibiting felons from possessing firearms. The Attorney General opinion quoted by Moran does not hold otherwise; it merely quotes 18 U.S.C. § 921(a)(20) while describing the enactment of the Firearm Owners' Protection Act. 78 Op. Att'y Gen. at 23, App. 017.

Further, the Firearm Owners' Protection Act specifically disclaims any intent to occupy the field and preempt state laws:

> No provision of this chapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which such provision operates to the exclusion of the law of any State on the same subject matter, unless there is a direct and positive conflict between such provision and the law of the State so that the two cannot be reconciled or consistently stand together.

18 U.S.C. § 927. The law does not require Wisconsin to "recognize and defer to Moran's civil rights restoration in Virginia." (Moran Br. 10.) The only type of preemption recognized is "conflict preemption," under which state laws are preempted only "where 'compliance with both state and federal law is impossible,' or where 'the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1595 (2015) (quoting *California v. ARC America Corp.*, 490 U.S. 93, 100–01 (1989)).

Wisconsin's prohibition on felons possessing firearms does not present a "direct and positive conflict," 18 U.S.C. § 927, merely because it is broader than the federal prohibition. The federal law prevents certain people from owning firearms. State laws also prevent certain people from owning firearms. While Wisconsin bars some, like Moran, from owning firearms who are not barred under federal law, the federal law does not purport to limit states in restricting firearm rights or grant anyone the affirmative right to own a firearm. As a result, Wisconsin law is not an obstacle to the execution of the federal law. Any other result would yield the absurd result that states are prohibited from imposing more restrictive criminal laws when the federal government has a similar criminal law.

CONCLUSION

For the foregoing reasons, the Court should affirm the decisions of DOJ and the circuit court.

Dated this 11th day of July, 2018.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 5135 words.

Dated this 11th day of July, 2018.

BRIAN P. KEENAN
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CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 11th day of July, 2018.

BRIAN P. KEENAN
Assistant Attorney General