

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

C.A. No. 20-1280

ALFRED MORIN

Plaintiff /Appellant

v.

WILLIAM LYVER, in his official capacity as Northborough Chief of Police and
THE COMMONWEALTH OF MASSACHUSETTS

Defendants/Appellees

ON APPEAL FROM A DECISION BY THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

**BRIEF OF DEFENDANT – APPELLEE
CHIEF OF POLICE WILLIAM LYVER**

/s/ Janelle M. Austin
Janelle M. Austin, C.A. No. 1141809
KP Law, P.C.
Town Counsel
101 Arch Street, 12th Floor
Boston, Massachusetts 02110
(617) 556-0007
jaustin@k-plaw.com

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STATEMENT OF JURISDICTION

The United States District Court for the District of Massachusetts had jurisdiction over plaintiff-appellant Alfred Morin’s Complaint pursuant to 42 U.S.C. § 1983.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

1. Whether the District Court correctly granted summary judgment for defendants-appellants upon concluding that Morin’s challenge to G.L. c. 140, §§ 131(d)(ii)(D) and 131A due to his disqualifying prior criminal firearms convictions, as alleged in this case, fail under the Second Amendment to the United States Constitution?

STATEMENT OF THE CASE

Alfred Morin (“Morin”) filed the instant action against William Lyver, in his official capacity as Chief of Police for the Town of Northborough (“Chief Lyver”), alleging that certain provisions of the Massachusetts firearms licensing scheme, G.L. c. 140, §§ 131(d)(ii)(D) and 131A, which render him ineligible for a permit to purchase by reason of disqualifying criminal convictions for firearms offenses, violates his rights pursuant to the Second Amendment to the United States Constitution. [App. 6-13].¹ Following intervention by the Commonwealth of

¹ The Record Appendix filed by the Appellant is cited herein as “App. [page].” The Addendum to the Appellant’s brief is cited herein as “Add. [page].”

Massachusetts with respect to the constitutionality of the longstanding statutory scheme, a judge of the District Court (Hillman, J.) determined that the statute was constitutional and denied Morin's Motion for Summary Judgment and granted Chief Lyver's and the Commonwealth of Massachusetts' cross-motions for Summary Judgment. [App. 5]. This appeal followed. [App. 7].

STATEMENT OF FACTS²

Morin first received a Class A License to Carry firearms in 1985.³ [App. 9]. Such license allowed him to carry a concealed firearm in public in Massachusetts. Id. In 2004, Morin drove from Massachusetts to Washington, D.C., where he attempted to visit the Smithsonian National Museum of Natural History. Id. Ostensibly unaware that it was unlawful to carry a firearm across state lines, Morin brought his firearm on the trip from Massachusetts to Washington, D.C., and carried it on him in Washington D.C. while attempting to visit the Smithsonian museum. Id.

² To the extent that the facts cited herein are taken from the averments of the Complaint, they are accepted as true for the purposes of this brief only. Clark v. Boscher, 514 F.3d 107, 112 (1st Cir. 2008).

³ The Class A License is the least restrictive license in Massachusetts and entitles the holder to such rights as the ability to purchase, possess, and carry firearms, including large capacity firearms. Morin v. Leahy, 862 F.3d 123, 125, n.1 (1st Cir. 2017). The Class A License also permits the holder to carry a concealed firearm in public. G.L. c. 140, § 131(a).

Upon seeing a sign outside the museum expressly stating that firearms could not be brought inside the federal building, Morin approached a security guard and asked to “check” his weapon. [App. 9-10]. The security guard then contacted the police, who promptly arrested Morin. Id.

Following the incident with his firearm, Morin pled guilty to attempted carrying of a firearm without a license, in violation of D.C. Code § 22-3201(a)(1) (2004), and possession of an unregistered firearm, in violation of D.C. Code § 6-2376 (2004). [Docket No. 21-3; App. 10].⁴ Morin was sentenced to 60 days in prison on each conviction, to run concurrently, followed by three months of supervised probation and 24 hours of community service. [App. 10].

In 2008, Morin’s Class A firearms license expired. [Add. 2]. Morin initiated a renewal application for the license to carry, which had a standard form inquiring whether he had ever been convicted of a “violation of any law regulating the use, possession, ownership, sale, transfer, rental, receipt or transportation of weapons for which a term of imprisonment may be imposed.” [Docket No. 27, at 2; Add. 2]. Despite the two convictions for firearms offenses in Washington D.C., Morin answered “no,” and submitted the renewal application to the Chief of the Northborough Police Department. [Docket No. 27, at 2-3; Add. 2].

⁴ Of note, these provisions were recodified subsequent to the convictions, at D.C. Code § 22-4504(a)(1) and D.C. Code § 7-2502.01, 7-2507.6, respectively. [Add. 2].

Upon receipt of the application, the Northborough Police Department ran a required background check of Morin's discovering Morin's out-of-state firearms convictions. [Docket No. 27, at 2-3]. Accordingly, the Police Chief issued a denial of the license in accordance with G.L. c. 140, § 131(d)(ii)(D). Id.

In 2015, Morin filed a new application for a Class A license, this time, however, disclosing his past criminal convictions for firearms offenses. [Docket Nos. 25-8; 27, at 3]. Again, the application was denied pursuant to G.L. c. 140, § 131(d)(ii)(D). Id. Morin appealed from the 2015 denial of the firearms renewal by the former Chief of Police of the Town of Northborough by instituting an action in District Court, similarly arguing that the statutory subsection requiring the denial of his applications violated the Second Amendment to the United States Constitution. That case was decided in favor of the former Police Chief and the Commonwealth, and was affirmed by this Court. See Morin v. Leahy and Commonwealth of Massachusetts, 862 F.3d 123 (2017).

In 2018, Morin applied for a firearm identification ("FID") card and a permit to purchase a firearm, pursuant to G.L. c. 140, §§ 129B and 131A, respectively. [Docket No. 30-1; App. 11]. Chief Lyver issued the FID card to Morin, which allows Morin to lawfully possess a firearm within his home. [App. 11]. Chief Lyver denied the application for a permit to purchase a firearm, however, due to

the disqualifying criminal firearms convictions, in accordance with G.L. c. 140, §§ 131A and 131(d)(ii)(D). Id.

Morin again instituted an action in the United States District Court for the District of Massachusetts, alleging that the denial of his application for a permit to purchase was unconstitutional under the Second Amendment to the United States Constitution. [App. 14-15]. The Commonwealth of Massachusetts intervened in the action, and the parties cross-moved for summary judgment. [Docket Nos. 12, 19, 25, 30].

The District Court (Hillman, J.) denied Morin's motion for summary judgment and granted the cross-motions for summary judgment of Chief Lyver and the Commonwealth. [Add. 1-12]. This appeal followed. [Docket No. 35; App. 7].

SUMMARY OF THE ARGUMENT

As discussed *infra*, given the intervention of the Commonwealth, Chief Lyver expressly incorporates herein the Commonwealth's arguments with respect to the constitutionality of G.L. c. 140, §§ 131(d)(ii)(D) and 131A. Accordingly, the grant of Chief Lyver's and the Commonwealth's cross-motions for summary judgment must be affirmed.⁵ [pp. 11].

⁵ Additionally, neither Chief Lyver nor the Town of Northborough may be held responsible for any award of attorneys' fees or costs, because the Attorney General's office moved to intervene in this case and, as a result, as a party to this

Even assuming *arguendo* that this Court were to find a constitutional violation as alleged, Chief Lyver submits that the entry of judgment in his favor also must be affirmed because, as a matter of law, Morin failed to show that Chief Lyver or the Town caused Morin’s constitutional rights to be violated by virtue of any municipal custom or policy so as to justify relief pursuant to 42 U.S.C. § 1983. See Monell v. Department of Social Services, 436 U.S. 658, 691 (1978). Rather, where, as here, a municipal entity merely executes the non-discretionary statutory mandate with respect to disqualifying criminal convictions for firearms licenses pursuant to state law, there can be no liability on the part of the Chief Lyver or the Town of Northborough. See, e.g., Bd. of Cty. Comm’rs of Bryan County v. Brown, 520 U.S. 397, 404 (1997) (“[I]t is not enough for a § 1983 plaintiff merely to identify conduct properly attributable to the municipality. The plaintiff must also demonstrate that, through its deliberate conduct, the municipality was the ‘moving force’ behind the injury alleged.”). [pp. 12-20].

STANDARD OF REVIEW

This Court reviews “the district court’s grant of summary judgment on cross-motions for summary judgment *de novo*.” Sch. Union No. 37 v. United Nat’l Ins. Co., 617 F.3d 554, 558 (1st Cir. 2010). Because this is an appeal from a grant

case, is ultimately responsible for defending the constitutionality of the state statutory provisions that mandated Chief Lyver’s actions.

of summary judgment in favor of the defendants, the facts are presented in a light most favorable to Morin. Walsh v. TelTech Sys., Inc., 821 F.3d 155, 157-58 (1st Cir. 2016).

ARGUMENT

I. The District Court Correctly Entered Judgment In Favor of Chief Lyver Because G.L. c. 140, §§ 131(d)(ii)(D) and 131A Are Constitutional.

The provisions of the Massachusetts firearms licensing statutes at issue, G.L. c. 140, §§ 131(d)(ii)(D) and 131A, as adopted by the Legislature, are constitutionally valid with respect to Morin’s request for a permit to purchase because of his out-of-state criminal convictions for weapons-related offenses. Indeed, as the District Court properly held “[i]n sum, because individuals convicted of weapons-related offenses punishable by a term of imprisonment are not, as a class, law-abiding and responsible citizens, Sections 131 and 131A do not implicate the core of the right protected by the Second Amendment.” Morin v. Lyver, 442 F. Supp. 3d 408, 415 (D. Mass. 2020). Where the Commonwealth has intervened in the case to defend the constitutionality of the relevant statutory provisions, Chief Lyver expressly incorporates herein the Commonwealth’s arguments, as set forth in its Brief, in support of his request that the entry of summary judgment in his favor be affirmed.

II. The District Court Correctly Entered Judgment In Favor of Chief Lyver Because the Denial of His Permit to Purchase Is Required Under Massachusetts Law And Not Under A Municipal Policy or Custom, Where, As Here, the Applicant Has Disqualifying Criminal Convictions for Firearms Offenses.

Even assuming *arguendo* that this Court were to conclude that Morin was able to show a constitutional violation stemming from the denial of his permit to purchase a firearm under G.L. c. 140, §§ 131(d)(ii)(D) and 131A, Morin’s Section 1983 claim against Chief Lyver or the Town fails as a matter of law because he did not demonstrate a municipal custom or policy which was the moving force behind his injury alleged.

A. Statutory Framework.

Before turning to the claim for relief against Chief Lyver pursuant to Section 1983, it is useful to provide a brief overview of the state framework under which Morin’s permit to purchase was denied by Chief Lyver under Section 131A and 131(d)(ii)(A).

Massachusetts has a longstanding statutory scheme with respect to its comprehensive regulation of the possession of firearms within the Commonwealth. An individual wishing to apply (or renew an application) for a license to carry a firearm in Massachusetts may apply to the “licensing authority” for such a license. G.L. c. 140, § 131. An individual wishing to obtain a permit to purchase a firearm also may apply to the licensing authority for such a license. G.L. c. 140, § 131A.

The chief of police or the colonel of state police, as the licensing authority, may issue a license to carry a firearm in Massachusetts if “the applicant is not a prohibited person ... to be issued a license and has good reason to fear injury to the applicant or the applicant’s property or for any other reason.” G.L. c. 140, § 131(d). As pertinent here, a “prohibited person shall be a person who ... has in any other state or federal jurisdiction, been convicted ... of ... a violation of any law regulating the use, possession, ownership, transfer, purchase, sale, lease, rental, receipt or transportation of weapons or ammunition for which a term of imprisonment may be imposed.” G.L. c. 140, § 131(d)(ii)(D). Likewise, the chief of police may issue a permit to purchase, rent, or lease a firearm pursuant to G.L. c. 140, § 131A, so long as the applicant is “a person qualified to be granted a license [under § 131] by such authority”; that is, not a “prohibited person” as defined above, G.L. c. 140, § 131.

Where, as here, Morin had been convicted of weapons related offenses in Washington D.C., Chief Lyver as the local firearms licensing authority was required pursuant to the Legislature’s adoption of G.L. c. 140, § 131A and G.L. c. 140, § 131(d)(ii)(D), to deny his application for a permit to purchase pursuant to G.L. c. 140, § 131A. There was no discretion on behalf of the Chief. Indeed, said

firearms licenses are ultimately issued by the state, through the Firearms Records Bureau.⁶

Indeed, to the extent that Morin contends that it is unfair to deny him a permit to purchase based on his prior criminal convictions, his avenue of appeal is to the Legislature, not the courts, since the state Firearms Records Bureau in Boston (a state agency) will not issue a permit to purchase if there is a statutory disqualification. See *Murphy v. Police Comm’r of Boston*, 369 Mass. 469, 471 (1976) (statute authorizing appeal of chief’s management decisions “is specific and clear. If it is unwise, it is not for us to say so; the remedy lies with the Legislature”); see also *Youngworth v. Commonwealth*, 436 Mass. 608, 612-13 (2002). Consequently, even if the Chief wanted to issue Morin a permit to purchase, he is unable to do so under Sections 131A and 131(d)(ii)(D).

B. Chief Lyver Did Not Violate Morin’s Constitutional Rights By Virtue of Any Municipal Custom or Policy.

In this case, Morin contends that Chief Lyver violated his rights under the Second Amendment by denying his permit to purchase based on an explicit statutory disqualifier set forth in state law, G.L. c. 140, §§ 131A and 131(d)(ii)(D), resulting from his prior weapons offenses in Washington, D.C. In accordance with Morin’s view as to the constitutionality of the statute as applied to him, he had

⁶ See <https://www.mass.gov/how-to/check-the-status-of-your-firearms-license-application>.

requested declaratory and injunctive relief, as well as attorneys' fees, against Chief Lyver in his official capacity pursuant to 42 U.S.C. § 1983. Because Morin has named Chief Lyver in his official capacity only, setting forth no claims against the Chief in his individual capacity, the Section 1983 claims against Chief Lyver in his official capacity must be treated as a claim against the Town. See, e.g., Kentucky v. Graham, 473 U.S. 159, 166 (1985).⁷ Such claims plainly fail as a matter of law where, as here, Morin does not cite to any facts or cases which might establish a claim that his injury was caused by a municipal policy or custom of the Town of Northborough.

Local governing bodies, such as the Town of Northborough, “can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where ... the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers.” Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 690 (1978).⁸ It is well-established that to impose § 1983 liability on the

⁷ Suits for injunctive and declaratory relief against an officer in his or her official capacity “is treated as a suit against the municipality by which such officer is employed.” See, e.g., Celona v. Erickson, 270 F. Supp. 3d 473, 483 (D. Mass. 2017), citing Monell, supra at 658.

⁸ “Infringements of [the Second Amendment] cannot be compensated by damages.” Ezell v. City of Chicago, 651 F.3d 684, 699 (7th Cir. 2011). Therefore, the only claim against Chief Lyver for a purported constitutional violation is for injunctive and declaratory relief.

part of Chief Lyver, Morin must satisfy two basic elements: first, that he was harmed by a constitutional violation;⁹ and second, that the Town was responsible for that violation through something more than mere *respondeat superior*. Young v. City of Providence, 404 F.3d 4, 25-36 (1st Cir. 2005), citing Monell, 436 U.S. at 694. To establish municipal liability under the second prong of Monell, the plaintiff must show that the alleged municipal custom or policy was the “moving force” behind the “particular deprivation” of which he is complaining. Monell, 436 U.S. at 691 (1978) (“a local government may not be sued under § 1983 for an injury inflicted solely by its employees”); Bd. of County Comm’rs of Bryan County v. Brown, 520 U.S. 397, 403 (1997) (governmental entity “may not be held liable under § 1983 solely because it employs a tortfeasor”).

Indeed, “[i]t is not enough for a § 1983 plaintiff merely to identify conduct properly attributable to the municipality.” Brown, 520 U.S. at 404. Rather, “[t]he plaintiff must also demonstrate that, through its deliberate conduct, the

⁹ As noted, *supra*, the Attorney General’s office has actively intervened in this matter to defend the constitutionality of the statutes, G.L. c. 140, §§ 131(d)(ii)(D) or 131A. Chief Lyver incorporates the Commonwealth’s arguments with respect to the constitutionality of said statutory provisions filed contemporaneously herewith. Accordingly, if this Court concludes that the statute is not unconstitutional as applied to Morin, it need not reach the question whether Chief Lyver is liable under § 1983. See, e.g., Morin v. Leahy, 862 F.3d 123, 127 n.10 (1st Cir. 2017) (We do not need to reach this argument “because Morin has failed to show a constitutional violation”).

municipality was the moving force behind the injury alleged.” Id. That is, “a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demonstrate a direct causal link between the municipal action and the deprivation of federal rights.” Brown, 520 U.S. at 404; see also Foley v. City of Lowell, 948 F.2d 10, 14 (1st Cir. 1991) (same).

Whether or not a plaintiff has stated a Section 1983 claim against a municipal entity typically hinges on the extent to which that municipal entity was independently responsible for the allegedly unconstitutional act. See Snyder v. King, 745 F.3d 242, 247 (7th Cir. 2014). In answering that question, courts have focused on whether “there is a direct causal link between a municipal policy or custom and the alleged constitutional deprivation.” City of Canton v. Harris, 489 U.S. 378, 385 (1989); Lyver v. Bd. of Trs., 912 F.2d 917, 922 (7th Cir. 1990) (“[p]roximate causation between the municipality’s policy or custom and the plaintiff’s injury must be present,” quoting Strauss v. City of Chicago, 760 F.2d 765, 767 (7th Cir.1985)); Foley, supra.

In this matter, there has been no allegation of a “municipal policy or custom” and the alleged constitutional deprivation related to Morin’s denial of a permit to purchase. Cf. Monell, supra. Rather, the Chief of Police merely applied state law, as established by the Legislature, to Morin’s application for a permit to purchase, for which he was statutorily disqualified due to more than one firearms

conviction for which a term of imprisonment may be imposed. G.L. c. 140, §§ 131(d)(ii)(D) and 131A. Though Morin essays an attack on the Chief’s non-discretionary action by contending that his crimes were not “serious” or “violent” and therefore should not bar him from the ability to purchase a handgun, Appellant’s Brief, at 7, 9-14, he fails to point to any discretionary policy or custom of the Town at play. Rather, the statutes direct that persons convicted of out-of-state firearms offenses for which imprisonment may be imposed, G.L. c. 140, § 131(d)(ii)(D), are prohibited persons for the purpose of obtaining a permit to purchase a firearm, G.L. c. 140, § 131A. The Chief merely carried out the statutory mandates under state law and not any municipal policy as applied to Morin. Id.

As the Seventh Circuit Court of Appeals has held:

When state law unequivocally instructs a municipal entity to produce binary outcome X if condition Y occurs, we cannot say that the municipal entity’s ‘decision’ to follow that directive involves the exercise of any meaningful independent discretion, let alone final policymaking authority. It is the statutory directive, not the follow-through, which causes the harm of which the plaintiff complains.

Snyder, 745 F.3d at 249 (plaintiff cannot obtain injunctive or declaratory relief against county defendants for same reasons he cannot obtain monetary damages).

“To say that any such direct causal link exists when the only local government ‘policy’ at issue is general compliance with the dictates of state law is a bridge too

far; under those circumstances, the state law is the proximate cause of the plaintiff's injury." Id. at 247.

Here too, then, there can be no claim that Chief Lyver, charged as the local licensing authority with no discretion as to how to carry out the statutory directives of which Morin complains, implemented a municipal policy which was the moving force behind the purported constitutional violation. See, e.g., Surplus Store and Exchange, Inc. v. City of Delphi, 928 F.2d 788, 791-92 (7th Cir. 1991) (“[i]t is difficult to imagine a municipal policy more innocuous and constitutionally permissible, and whose causal connection to the alleged violation is more attenuated, than the ‘policy’ of enforcing state law. If the language and standards from Monell are not to become a dead letter, such a ‘policy’ simply cannot be sufficient to ground liability against a municipality”);¹⁰ Whitesel v. Sengenberger, 222 F.3d 861, 872 (10th Cir. 2000) (county cannot be liable for “merely implementing” state policy); Familias Unidas v. Briscoe, 619 F.2d 391, 404 (5th Cir. 1980) (municipal entity cannot be held liable for simply enforcing state law because municipal policy, in that instance, “may more fairly be characterized as

¹⁰ The First Circuit has addressed the Surplus Store decision briefly in a concurrence that positively cited the case. See Yeo v. Town of Lexington, 131 F.3d 241, 257 (1st Cir. 1997) (Stahl, J., concurring).

the effectuation of the policy of the State ... embodied in that statute, for which the citizens of a particular county should not bear singular responsibility”).

In this case, Chief Lyver, as a statutorily-authorized firearms “licensing authority” for the Town of Northborough, G.L. c. 140, §§ 131, 131A, cannot be held liable under § 1983 for damages or injunctive relief, as articulated by the Supreme Court in Monell, because there has been no allegation that the purported constitutional violation was the result of any Town of Northborough policy or custom. In denying Morin’s permit to purchase firearms application because he is a statutorily “prohibited person” by virtue of disqualifying firearms offenses under G.L. c. 140, §131(d)(ii)(D), neither the Town of Northborough nor Chief Lyver was following any custom or policy of the Town. Rather, the Chief’s non-discretionary action to deny Morin’s application for a permit to purchase was dictated by state law, G.L. c.140, §§131(d)(ii)(D) and 131A. [Docket Entry 27, Commonwealth’s Local Rule 56.1 Statement of Facts, ¶11)]. As such, the entry of summary judgment in his favor must be affirmed.

Indeed, upon receipt of an application, Chief Lyver is obligated to run a criminal background check on permit to purchase applicants and then he is

required to deny any license for which the applicant is statutorily disqualified.¹¹

See G.L. c. 140, §§ 131(d)(ii)(D), 131A. In this regard, the mandatory background check conducted on Morin revealed that he had been convicted of firearms offenses in Washington D.C., following his unlawful decision to transport a firearm across state lines and enter a federal building, the Smithsonian's American Museum of Natural History, with said firearm. Specifically, Morin pled guilty to carrying a pistol without a license and possession of an unregistered firearm; the court sentenced him to sixty days in prison on each count, to run concurrently, as well as three months of supervised probation and twenty hours of community service. His prison sentence was suspended. [Docket No. 27, at 2; App. 10].

Consequently, Morin is disqualified by state law to obtain the permit to purchase for which he applied. G.L. c. 140, §§ 131(d)(ii)(D), 131A. As discussed, under the statutory mandates set forth in G.L. c. 140, §§ 131(d)(ii)(D) and 131A, established by the Massachusetts Legislature to ensure that law abiding and

¹¹ Any person residing or having a place of business within the jurisdiction of the licensing authority or any law enforcement officer employed by the licensing authority or any person residing in an area of exclusive federal jurisdiction located within a city or town may submit to the licensing authority or the colonel of state police, an application for a Class A license to carry firearms, or renewal of the same, which the licensing authority or the colonel may issue if it appears that the applicant is not a prohibited person, as set forth in this section..."G.L. c. 140, § 131(d)[emphasis supplied].

responsible individuals possess certain firearms, Chief Lyver had (and continues to have) no discretion as to whether or not to grant or deny a license to carry or a permit to purchase where, as here, the applicant has a statutory disqualifier as a result of prior criminal convictions. See G.L. c. 140, § 131(d) (outlining when a license to carry must be denied by local licensing authority); G.L. c. 140, § 131A (incorporating prohibits in § 131 for when permit to purchase must be denied by local licensing authority). Morin’s supposed lack of “awareness” of the criminal conduct for which he was convicted does not serve to void those firearms convictions. Accordingly, Chief Lyver cannot be held liable in this instance.

Finally, to the extent that Morin attempts to circumvent the explicit mandates of Monell by asserting that Monell is inapplicable to a claim seeking only equitable or declaratory relief, such an assertion is futile. The Supreme Court held in Los Angeles Cnty., Cal. v. Humphries, 562 U.S. 29, 34 (2010) that a municipality may face liability only for its own policies or customs that result in constitutional injury and whether an act or omission can be attributed to a municipality does not depend on the form of relief sought. Specifically, the Supreme Court concluded: “Monell’s holding applies to § 1983 claims against municipalities for prospective relief [for declaratory and injunctive relief] as well as to claims for damages.” Id. (collecting cases). “For whether an action or omission is a municipality’s ‘own’ has to do with the nature of the action or

omission, not with the nature of the relief that is later sought in court. Id. at 37. This Circuit also has recognized this principle. See Watchtower Bible & Tract Soc’y of New York, Inc. v. Municipality of San Juan, 773 F.3d 1, 9 (1st Cir. 2014) (applying Monell to equitable claims for injunctive relief).

A brief description of Humphries is illustrative in this regard. There, the Supreme Court evaluated whether the municipal “policy or custom” requirement also applies when plaintiffs seek prospective relief, such as an injunction or declaratory judgment. Id. at 31. The plaintiffs had been accused of child abuse in California but were later exonerated. Id. at 31-32. Despite their exoneration, under state law, their names were required to be added to a Child Abuse Central Index, where they remained visible to various state agencies for a minimum of ten years. Id. at 32. The statute did not set forth any procedure to review whether a previously-filed report was unfounded or to allow individuals to challenge their inclusion in the Index. Id. Following their exoneration, the plaintiffs sought to have their names removed from the Index, but the Los Angeles Sheriff’s Department refused. Id. As a result, the exonerees filed suit against the Attorney General of California, the Los Angeles Sheriff’s Department, two detectives in the Sheriff’s Department and the County of Los Angeles¹² for damages and injunctive relief. Id. at 31-32. During the litigation, Los Angeles argued that it was a state

¹² The county of Los Angeles is a municipal entity.

policy, not a county or municipal policy, which brought about the plaintiffs' deprivation. Id. at 32.

In reversing the Ninth Circuit Court of Appeals decision, the Supreme Court held that the Monell standard applies to Section 1983 claims against municipalities for prospective injunctive relief, as well as to claims for damages. Id. at 32.¹³

The Supreme Court also rejected any relief-based bifurcation of claims, reasoning that Monell's "logic also argues against any relief-based bifurcation ... [t]he 'policy or custom' requirement rests upon that distinction and embodies it in law.

To find the requirement inapplicable where prospective relief is at issue would

undermine Monell's logic." Id. at 37. Indeed, the Supreme Court held that

"applying Monell's requirement to prospective relief claims will leave some set of ongoing constitutional violations beyond redress" and expressly held that Monell's

"policy or custom" requirement applies in § 1983 cases irrespective of whether a party seeks monetary damages or prospective equitable relief. Id. at 37-38.

Accordingly, Chief Lyver, acting as the Town's firearms licensing authority, merely complied with the Commonwealth's non-discretionary statutory mandates in G.L. c. 140, §§ 131(d)(ii)(D) and 131A. Therefore, because there are no facts to

¹³ The Supreme Court also reversed the Ninth Circuit's decision that Los Angeles was not responsible for attorneys' fees under 42 U.S.C. § 1983. See Humphries, 562 U.S. at 39. Here too, neither Chief Lyver nor the Town may be held liable for attorneys' fees or costs in this matter as the policy or custom at issue is not the municipality's "own"; rather, it is a state law.

support Morin's Section 1983 claim for equitable relief against Chief Lyver relative to the denial of his permit to purchase following his criminal conduct related to firearms offenses, he was entitled to summary judgment in its favor, and the District Court's decision should be affirmed.

CONCLUSION

For the reasons set forth herein, as well as for those set forth in the Commonwealth of Massachusetts' Brief, Chief of Police William Lyver respectfully requests that the entry of summary judgment in his favor be affirmed.

Respectfully submitted,

WILLIAM LYVER, CHIEF OF THE
NORTHBOROUGH POLICE
DEPARTMENT,

By his attorney,

/s/ Janelle M. Austin

Janelle M. Austin, No. 1141809
KP Law, P.C.

Town Counsel
101 Arch Street, 12th Floor
Boston, Massachusetts 02110
(617) 556-0007
jaustin@k-plaw.com

Dated: November 20, 2020

CERTIFICATE OF COMPLIANCE

I, Janelle M. Austin, hereby certify that the foregoing brief complies with the type-volume limit of Fed. R. App. P. 32(a)(7)(B) because, excluding the parts of the document exempted by Fed. R. App. 32(f), this brief contains 4,925 words.

I further certify that the foregoing brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally-spaced typeface using Microsoft Word in 14-point font size in the Times New Roman font style.

/s/ Janelle M. Austin

Janelle M. Austin, No. 1141809

KP Law, P.C.

Town Counsel

101 Arch Street, 12th Floor

Boston, Massachusetts 02110

(617) 556-0007

jaustin@k-plaw.com

November 20, 2020

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2020, the foregoing motion will be filed and served electronically through the CM/ECF system to the following counsel, who are registered as ECF filers:

J. Steven Foley, Esq.
Law Offices J. Steven Foley
100 Pleasant St., #100
Worcester, MA 01609
Counsel for Plaintiff-Appellant

Julia E. Kobick, Esq.
Assistant Attorney General
Government Bureau
Office of the Attorney General
One Ashburton Place
Boston, Massachusetts 02108
(617) 963-2559
Counsel for Defendant-Appellant

November 20, 2020

/s/ Janelle M. Austin
Janelle M. Austin, No. 1141809
KP Law, P.C.
Town Counsel
101 Arch Street, 12th Floor
Boston, Massachusetts 02110
(617) 556-0007
jaustin@k-plaw.com