**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| RYAN THOMAS, *et al.*, | ) | |
| | ) | |
| Plaintiffs, | ) | |
| | ) | No. 20 CV 734 |
| v. | ) | Honorable Judge Mary M. Rowland |
| | ) | |
| ILLINOIS STATE POLICE, *et al.* | ) | |
| | ) | |
| Defendants. | ) | |

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT**

Defendants, Illinois State Police, Brendan Kelly, and Jessica Trame, by their attorney Kwame Raoul, Illinois Attorney General, state as follows in support of their motion to dismiss Plaintiffs' Amended Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1):

## INTRODUCTION

Plaintiffs allege that Defendants, through their administration of the Illinois Firearm Owners Identification Card Act ("FOID Card Act"), 430 ILCS 65/1 *et seq.* (2016), violated the Second and Fourteenth Amendment rights of Plaintiffs Ryan Thomas, Goran Lazic, and Dovoni Singleton (the "Individual Plaintiffs"), by failing to issue them FOID cards and/or concealed carry licenses ("CCLs") for which they had applied. Organizational Plaintiffs, the Illinois State Rifle Association ("ISRA") and the Second Amendment Foundation, Inc. ("SAF"), seek to act as plaintiffs under the associational standing doctrine, citing the membership of Thomas, Lazic, and Singleton, as well as various unnamed members who have allegedly been wrongfully deprived of their FOID cards and CCLs by Defendants. Because Plaintiffs lack standing or raise claims that are not ripe, this court should dismiss the complaint in its entirety.

Plaintiffs allege that prior to November 2015, Plaintiff Thomas held a valid FOID card and a CCL. Dkt. 17 at ¶ 4. Following his decision to move to Texas, Thomas' FOID card and CCL were revoked by the Illinois State Police ("ISP"), pursuant to 430 ILCS 65/8. Dkt. 17 at ¶ 4. Thomas returned to Illinois in November 2017, and alleges that at that time, he submitted applications to have his FOID card and CCL re-issued. *Id.* at ¶ 5. Similarly, Plaintiff Lazic also held a valid FOID card and CCL prior to June 2017, when he was arrested for domestic battery. *Id.* at ¶ 8. Pursuant to 430 ILCS 65/8, his FOID card and CCL were revoked by ISP as a result of that arrest. *Id.* The charge was later dismissed and the arrest expunged from his record, at which time Lazic alleges that he applied to have his FOID card and CCL reinstated. *Id.* at ¶¶ 8-9.

These allegations are identical to those asserted by Thomas and Lazic in the initial Complaint, which was filed on January 31, 2020. Dkt. at 1. In the Amended Complaint, which was filed on June 10, 2020 [Dkt. at 17], Thomas and Lazic acknowledge that they have now received their FOID cards, *id.* at ¶¶ 6, 11, which is the relief they sought through this suit. As such, any decision rendered by this court would no longer have any effect on the rights of either Thomas or Lazic; rather, it would simply be "an opinion advising what the law would be upon a hypothetical state of facts.'" *H.P. by and Through W.P. v. Naperville Comm. Unit Sch. Dist. #203*, 910 F.3d 957, 960 (7th Cir. 2018). Those Individual Plaintiffs' claims regarding their FOID cards are thus moot. Regarding Lazic's claim related to his CCL, Lazic's CCL was activated and sent to him in April 2020, and so this claim is also moot. In contrast, Thomas only applied for a CCL in June 2020, and so his claim is not ripe for review. Thus, neither Lazic nor Thomas have a live claim that is ripe for review before this Court, and their claims should be dismissed accordingly.

Also via the Amended Complaint, Plaintiff Singleton was added as an additional individual plaintiff who claims to have been wrongfully denied a FOID card on the basis of a criminal

conviction which, he alleges, is now expungable. Dkt. 17 at ¶ 14. While he alleges that the offense preventing him from obtaining a FOID card is "expungable," he does *not* allege that he has actually attempted to have it expunged – an action which, if successful, would remove the bar to obtaining a FOID card complained of here. Singleton's claims are thus not ripe for review before this Court, nor do they meet the requirements for standing, and should also be dismissed.

Finally, neither ISRA nor SAF has standing to sue on its own behalf. And because none of the three Individual Plaintiffs have standing, the organizations cannot properly assert associational standing. There are consequently no claims set forth in the Amended Complaint on which relief can be granted by this Court, and the Amended Complaint should be dismissed in its entirety.

## LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(1) authorizes the Court to dismiss any claim over which the Court lacks subject matter jurisdiction. If a defendant challenges jurisdiction, the plaintiff bears the burden of establishing that the jurisdictional requirements have been met. *Center for Dermatology and Skin Cancer, Ltd. v. Burwell*, 770 F.3d 586, 588 (7th Cir. 2014); *Craig v. Ontario Corp.*, 543 F.3d 872, 876 (7th Cir. 2008). A motion to dismiss for lack of subject matter jurisdiction presents a threshold question concerning the court's power over a claim, and a federal court must assure itself that it possesses subject matter jurisdiction of a case before it proceeds on the merits. *See Cook v. Winfrey*, 141 F.3d 322, 325 (7th Cir. 1998). In ruling on a motion brought under Fed. R. Civ. P. 12(b)(1), the court need not accept the truth of the allegations in the complaint and may look beyond the complaint and pleadings to evidence that calls the court's jurisdiction into doubt. *See Bastien v. AT&T Wireless Serv., Inc.*, 205 F.3d 983, 990 (7th Cir. 2000). Here, Defendants assert that this Court lacks subject matter jurisdiction as to the claims brought by both

the Individual Plaintiffs and the Organizational Plaintiffs. Plaintiffs' Amended Complaint should consequently be dismissed.

## ARGUMENT

### I. The claims asserted by Plaintiffs Thomas and Lazic are moot.

With regard to the claims brought by Plaintiffs Thomas and Lazic, the mootness doctrine counsels in favor of dismissing the complaint. *See Milwaukee Police Ass'n v. Bd. of Fire & Police Com'rs of the City of Milwaukee*, 708 F.3d 921, 928 (7th Cir. 2013) ("Mootness is the doctrine of standing set in a time frame."). While standing "is evaluated at the time suit is filed," mootness requires "reevaluating the standing requirements throughout litigation." *Id.* at 928-29. As such, "when a party with standing at the inception of the litigation loses it due to intervening events, the inquiry is really one of mootness." *Id.* at 928; *see also Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 191 (5th Cir. 2012). A case becomes moot when "a court's decision can no longer affect the rights of litigants in the case before them and simply would be 'an opinion advising what the law would be upon a hypothetical state of facts.'" *H.P. by and Through W.P. v. Naperville Comm. Unit Sch. Dist. #203*, 910 F.3d 957, 960 (7th Cir. 2018); *see also Berron v. Ill. Concealed Carry Licensing Rev. Bd.*, 825 F.3d 843, 846 (7th Cir. 2016) (remanding Plaintiff Ghantous's claim to the district court, with instructions to dismiss as moot, where he had already been issued the concealed carry license he sought through his lawsuit).

Here, Thomas and Lazic base their claims on their alleged inability to obtain a FOID card or a CCL, asserting that this inability violated their Second and Fourteenth Amendment rights. *See generally* Dkt. 17. However, both Thomas and Lazic acknowledge in the Amended Complaint that they have received the FOID cards they sought through this lawsuit. Dkt. at ¶¶ 6, 11. As such, like

Mr. Ghantous in the *Berron* case, Plaintiffs have obtained the relief they sought through this lawsuit and have no remaining redressable claims to be considered by this Court with regard to their FOID cards.

In addition, both Lazic and Thomas allege that they are unable to obtain a CCL. However, according to ISP records, Lazic's CCL went active on April 21, 2020, and a copy was mailed to him on April 23, 2020. *See* Declaration of Greg Hacker, attached hereto as Exhibit A, at ¶ 4. Any claim Lazic may have had on that basis is therefore also moot. ISP records also indicate that Thomas applied for a CCL on June 3, 2020. *Id.* at ¶ 5. Pursuant to 430 ILCS 66/10(e), applications for CCLs must be reviewed and either approved or denied within 90 days of submission. That 90-day review period has not yet expired with regard to Thomas's CCL application; as such, any claims Thomas may have based on his alleged inability to obtain a CCL are not currently ripe for review before this Court. *See, e.g., Moustakas v. Margolis*, 154 F. Supp. 3d 719, 728 (N.D. Ill. 2016) ("Cases are not ripe where the allegations are hypothetical, speculative, or illusory disputes as opposed to actual, concrete conflicts.").

Moreover, none of the exceptions to the mootness doctrine apply here. Most notably, this is not a situation where there is a "dispute[] over an ongoing policy" that may continue, "even after the specific offense precipitating the suit has become moot." *Milwaukee Police Ass'n*, 708 F.3d at 930 (noting also that in order for a case to fall into that exception, the ongoing policy "must be a continuing and brooding presence that casts a substantial and adverse effect on the interests of the petitioning parties") (citation and internal quotations omitted). Here, Thomas, Lazic, and Singleton are the only individuals specifically alleged to have been wrongfully deprived of their FOID cards and/or CCLs due to ISP's administration of the FOID card system; Lazic and Thomas have already received their FOID cards, Lazic has received his CCL, while Thomas's claim with regard to his

CCL is not yet ripe for review. And as discussed in more detail *infra*, Singleton's claim is also not yet ripe for review. Consequently, there are no ongoing "adverse effects" at issue here, such that continuation of Thomas' or Lazic's claims would be warranted or appropriate, and those claims should be dismissed as moot.

**II. This Court cannot grant Singleton the relief he seeks through this lawsuit.**

Plaintiff Singleton's claims mirror those of Plaintiffs Thomas and Lazic, in that he alleges a violation of his rights under the Second and Fourteenth Amendments due to ISP's denial of his FOID card application. Dkt. 17 at ¶¶ 13-15, 40-56. Unlike Thomas and Lazic, though, Singleton alleges that he still has not received a FOID card, and asserts that "he has had a FOID appeal pending since June 2018, since being denied for a decades old offense which should no longer be a FOID disqualifier." Dkt. 17 at p. 4. Specifically, Singleton asserts that in May 2018, he applied for and was denied a FOID card "due to a marijuana offense which is more than 20 years old, for which Singleton completed the required one year of probation, and which is now expungable." Dkt. 17 at ¶ 14. However, Singleton does not allege that he has actually had this conviction expunged – an action which, if successful, would remove the bar to obtaining a FOID card complained of here. *See* 18 U.S.C. § 921(a)(20); *see also Kanter*, 919 F.3d at 439 (noting that under § 922(g)(1), "any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored is not a conviction for purposes of the statute").

As an initial matter, Singleton has not established that he meets the elements for standing necessary to bring his claims. "[T]he irreducible constitutional minimum of standing contains three elements." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). First, the plaintiff must have suffered an injury in fact. Second, there must be a causal connection between the injury and the conduct complained of – "the injury has to be fairly traceable to the challenged action of the

defendant, and not. . . the result of the independent action of some third party not before the court." *Id.* And third, it must be likely that the injury will be redressed by a favorable decision. *Id.* at 561. Here, even assuming that Singleton has suffered an injury in fact, his claims fail to satisfy the second element of standing. Singleton acknowledges in the Amended Complaint that an avenue of relief is available to him– specifically, the ability to have his criminal record expunged. *See* Dkt. 17 at ¶ 14. However, he does not allege that he has attempted to make use of this option. As such, he cannot fairly claim that the injury he claims through the Amended Complaint is fairly traceable to the Defendants, as he himself has the ability to remedy said injury.

Moreover, the fact that Singleton has not yet attempted to have his record expunged makes his claims speculative and not ripe for review. The ripeness requirement "prevent[s] the courts, through the avoidance of premature adjudication, from entangling themselves in abstract disagreements." *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148 (1967). This requirement also prevents courts from interfering with laws before it is necessary to do so and enhances judicial decision-making by ensuring that cases present courts with an adequate record for effective review. *Id*. Here, an avenue of relief is available to Singleton which would circumvent the need for litigation in federal court. Through the Amended Complaint, Singleton acknowledges this avenue, but does not allege that he has attempted to make use of it. As such, his claims are not ripe for resolution before this Court, and should be dismissed.

**III. The Organizational Plaintiffs lack 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*, 641 F.3d 684, 694-95 (7th Cir. 2011). Accordingly, standing exists

(1) "when the plaintiff suffers an actual or impending injury;" (2) "the injury is caused by the defendant's acts;" and (3) "a judicial decision in the plaintiff's favor would redress the injury." *Id.* (internal quotations omitted). But 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). "[W]hen the plaintiff is not himself the object of the government action or inaction he challenges, standing is not precluded, but it is ordinarily substantially more difficult to establish." *Id.* (internal quotations omitted).

Applying those principles, an organization asserting standing "can do so either on behalf of itself or on behalf of its members." *Milwaukee Police Ass'n v. Bd. of Fire and Police Comm'rs of City of Milwaukee*, 708 F.3d 921, 926 (7th Cir. 2013). To bring an action in its own right, an organization must itself meet the three requirements of standing outlined above. *Id.* To bring an action on behalf of its members, which is also known as 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." *Id.* at 928 (internal quotations and alterations omitted). Here, each organizational defendant seeks to sue both on its own behalf and on behalf of its members. Dkt. 17 at ¶¶ 16, 19. Their allegations, however, are insufficient on both fronts.

**A. Neither Organizational Plaintiff has standing to sue on its own behalf.**

With respect to the claims brought on their own behalves, the Organizational Plaintiffs do not allege an adequate injury. The Illinois State Rifle Association notes only that its purposes "include securing the Constitutional right to privately own and possess firearms within Illinois, through education, outreach, and litigation," and asserts that it has "more than 26,000 members

and supporters in Illinois, and many members outside the State of Illinois." Dkt. 17 at ¶ 16. Similarly, the Second Amendment Foundation notes that its purposes "include education, research, publishing and legal action focusing on the Constitutional right privately to own and possess firearms," and that it has "over 650,000 members and supporters nationwide." Dkt. 17 at ¶ 19. These interests, which are primarily ideological, do not suffice to establish standing. *See* 33 Fed. Prac. & Proc. Judicial Review § 8345 (injury alleged "cannot be merely 'ideological' – i.e. damage to the 'special interest' of an organization does not qualify as an injury for constitutional standing."). As the Seventh Circuit has explained, "[a]n abstract interest in a matter never has been considered a sufficient basis for the maintenance of – or the continuation of – litigation in the federal courts." *Muro v. Target Corp.*, 580 F.3d 485, 491 (7th Cir. 2009); *see also Milwaukee Police Ass'n v. Flynn*, 863 F.3d 636, 639 (7th Cir. 2017) ("[A]n interest in the underlying law does not equal an injury.").

A comparison of these allegations with those in *Ezell* further reveals their shortcomings. There, organizations that supplied firing-range facilities sought to challenge a firing-range ban in the City of Chicago. *Ezell*, 651 F.3d at 696. Because suppliers of firing-range facilities would be directly harmed by a ban on firing-range facilities, the Seventh Circuit held that they had satisfied the standing inquiry. *Id.* Here, by contrast, Plaintiffs have identified no direct harm to their organizations as a result of ISP's administration of the system for considering applications for, granting, denying, and/or revoking individual licenses to possess firearms under the FOID Card Act. For these reasons, another court has already held these very allegations to be "plainly insufficient to give rise to" organizational standing. *See Kachalsky v. Cacace*, 817 F. Supp. 2d 235, 251 (S.D.N.Y. 2011), *aff'd sub nom. Kachalsky v. Cty. of Westchester*, 701 F.3d 81 (2d Cir. 2012). In *Kachalsky*, the court addressed the Second Amendment Foundation's allegations "that it

'promot[es] the exercise of the right to keep and bear arms' and engages in 'education research, publishing and legal action focusing on the [c]onstitutional right to privately own and possess firearms,'" but held that "such activities, standing alone, are plainly insufficient to give rise to standing." *Id.*; *see also Plotkin v. Ryan*, 239 F.3d 882, 886 (7th Cir. 2001) (denying organizational standing because "ordinary expenditures as part of an organization's purpose do not constitute the necessary injury-in-fact required for standing"). The same reasoning applies here.

**B. Neither Organizational Plaintiff has standing to sue on behalf of its members.**

Moreover, the Organizational Plaintiffs do not have associational standing. As an initial matter, they cannot meet the first element, which "require[s] an organization suing as representative to include at least one member with standing to present, in his or her own right, the claims (or type of claim) pleaded by the association." *Disability Rights Wisconsin, Inc. v. Walworth Cty. Bd. of Supervisors*, 522 F.3d 796, 801-02 (7th Cir. 2008). The member may "remain unnamed by the organization," *id.*, but there must at least be "specific allegations establishing that at least one identified member had suffered or would suffer harm" from the defendants' actions. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009); *see also Quad Cities Waterkeeper v. Ballegeer*, 84 F.Supp.3d 848, 860-61 (C.D. Ill. 2015) (organization identified a member in complaint).

Here, Ryan Thomas, Goran Lazic, and Dovoni Singleton are the only members identified in this litigation as being adversely affected by ISP's administration of the FOID Card Act. Were those individuals able to present claims in their own right similar to those asserted by the Organizational Plaintiffs, the fact that they are the only members identified would not pose a problem. However, as previously discussed in detail, neither Thomas nor Lazic have standing to bring the claims asserted in this lawsuit, and Singleton's claims are not ripe. As such, in order to

effectively assert associational standing, the Organizational Plaintiffs are required to name or describe a member who is adversely affected by ISP's administration of the FOID Card Act and would have the ability to sue on his or her own behalf. *See Disability Rights Wisconsin, Inc.*, 522 F.3d at 804 ("Because DRW's First Amended Complaint does not identify any Walworth County disabled student with standing to bring suit based on the Board of Supervisors' conduct, DRW does not satisfy the first requirement."); *Kachalsky*, 817 F.Supp.2d at 251 (Second Amendment Foundation fails to satisfy the first requirement because it "has neither identified particular members who have standing, nor specified how they would have standing to sue in their own right"). Despite allegedly having numerous members who have "been wrongfully deprived of their FOID cards and CCLs," the Organizational Plaintiffs have failed to identify any specific members beyond Thomas, Lazic, and Singleton. As such, because none of the three Individual Plaintiffs named in this suit are properly able to obtain relief from this Court on their claims, the Organizational Plaintiffs are effectively seeking an advisory opinion from this court "on abstract disputes about the law," which is impermissible. *Milwaukee Police Ass'n*, 708 F.3d at 928.

In an attempt to support its claims, the Illinois State Rifle Association asserts that it "has members who have been denied Illinois FOID cards and concealed carry licenses, and who have unsuccessfully attempted to navigate, communicate with, and avail themselves of the FOID and CCL appeals processes, not because their claims were not meritorious, but simply because the Defendants have engineered and/or allowed the aforementioned processes to provide no relief to applicants." Dkt. 17 at ¶ 17. However, these conclusory statements do not suffice to establish associational standing. Indeed, the Supreme Court has specifically rejected the blind acceptance of "the organizations' self-descriptions of their membership," even in instances where those assurances are not disputed, because "it is well established that the court has an independent

obligation to assure that standing exists." *Summers*, 555 U.S. at 499 ("Without individual affidavits, how is the court to assure itself that the Sierra Club, for example, has thousands of members who use and enjoy the Sequoia National Forest?") (internal quotations omitted). Instead, as discussed, "the Court has required plaintiffs claiming an organizational standing to identify members who have suffered the requisite harm." *Id.* That the Organizational Plaintiffs include a description of what their alleged members "would" do if they were not subject to ISP regulations does not cure the failure to identify these members. Pl.'s Compl. at ¶¶ 12, 13, 15. The Supreme Court requires identification of members harmed by the defendants' conduct, and parties cannot sidestep this requirement with a description of how hypothetical individuals would conduct themselves if not for the regulatory scheme at issue. *See Summers*, 555 U.S. at 499.

Additionally, neither Organizational Plaintiff has satisfied the second and third elements of associational standing. *See Milwaukee Police Ass'n*, 708 F.3d at 928. As to the second element, the Organizational Plaintiffs have failed to explain how the interests that they seek to protect are germane to the organizations' purposes. Rather, they make the conclusory assertion that the interest at issue here – the ability to "obtain and possess a firearm for self-defense and defense of family" – is germane to their proclaimed purposes of "securing the Constitutional right to privately own and possess firearms within Illinois through education, outreach, and litigation." As demonstrated by the fact that, as discussed below, two of the three Individual Plaintiffs to this suit have already received their FOID cards, while the third has not due to federal and state bars to his ability to possess firearms, ISP's administration of the FOID Card Act does not serve to hinder the ability of law-abiding Illinois residents from privately owning and possessing firearms. That the issuance of Plaintiffs' FOID cards and/or CCLs took longer than Thomas and Lazic might have liked does not equate to a constitutional violation. It is not self-evident, nor have the Organizational

Plaintiffs explained, how the regulation of firearm possession and ownership in Illinois for purposes of maintaining public safety is germane to – or, for that matter, contradictory to – the organizations' self-proclaimed purposes of securing the constitutional right to firearm ownership and possession for Illinois residents.

Finally, the Organizational Plaintiffs have not adequately alleged that the participation of individual members is unnecessary for the effective litigation of this issue, as the third element dictates. *See Milwaukee Police Ass'n*, 708 F.3d at 928. The Organizational Plaintiffs do not address this element of standing, and make no allegations tending to establish that the participation of its individual members, who have allegedly been "wrongfully deprived of their FOID cards and CCLs," is unnecessary for effective litigation of this issue. Such a complete lack of information regarding why this case should be permitted to move forward without the participation of any of the allegedly wronged individual members is not sufficient to overcome "the presumption against third-party standing." *Uptown Tent City Organizers v. City of Chicago Dep't of Admin. Hearings*, No. 17 C 4518, 2018 WL 2709431, at *7 (N.D. Ill. June 5, 2018).

## CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court dismiss Plaintiffs' Amended Complaint with prejudice.

Dated: August 24, 2020

Respectfully Submitted,

KWAME RAOUL
Attorney General of Illinois

*/s/ Amanda L. Kozar*

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on August 24, 2020, she electronically filed the foregoing document with the Clerk of the Court for the Northern District of Illinois by using the CM/ECF system. All participants in the case are registered CM/ECF users who will be served by the CM/ECF system.

Respectfully Submitted,

*/s/ Amanda L. Kozar*
AMANDA L. KOZAR