

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

JAMES D. ROBINSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
BRENDAN KELLY, et al.,	)	
	)	No. 20-cv-4270
Defendants,	)	
	)	Hon. Mary M. Rowland
<hr style="border: 0.5px solid black;"/>		
BRUCE DAVIDSON, et al.	)	
	)	
Plaintiff-Intervenors,	)	
	)	
v.	)	
	)	
BRENDAN KELLY, et al.,	)	
	)	
Defendants in Intervention.	)	

**DEFENDANTS' MEMORANDUM IN OPPOSITION  
TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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## **INTRODUCTION**

To effectively regulate who may legally possess a firearm in Illinois and protect the public safety, the legislature enacted the Firearm Owners Identification Card Act (FOID Card Act). 430 ILCS 65/1 *et seq.* An integral part of the FOID Card Act requires that all applicants for a FOID card go through a background check to ensure they are not dangerous to themselves or others or prohibited by law from obtaining a firearm. *Id.* at 65/4, 65/8.1. Plaintiffs have filed this motion for a preliminary injunction in an attempt to undermine the integrity of the FOID Card Act by insisting that Defendants issue FOID cards to Plaintiffs without completing the current application processing procedure, including background checks. *See* ECF No. 48 at 21.

Plaintiffs are not entitled to the extraordinary relief of such a sweeping preliminary injunction, especially given that if their motion is granted, Plaintiffs will obtain substantially all the relief sought through the underlying lawsuit. To obtain a preliminary injunction, Plaintiffs must make a clearing showing that they are likely to succeed on the merits, will suffer irreparable harm without the injunction, and the public interest favors the injunction. *Winter v. Nat. Res. Def. Coun.*, 555 U.S. 7, 20 (2008). Plaintiffs cannot satisfy any of these requirements.

First, Plaintiffs are unlikely to succeed on the merits of their underlying claims. Plaintiff Marszalek's FOID Card application has been processed and, as such, his underlying claim is moot. As for the "Organizational Plaintiffs" (the Second Amendment Foundation (SAF) and the Illinois State Rifle Association (ISRA)), they seek relief that violates principles of federalism and the Eleventh Amendment. Further, neither Organizational Plaintiff has standing to sue on its own behalf or on behalf of its members.

Even if any Plaintiff, including the Organizational Plaintiffs, had standing, they are unlikely to succeed on the merits of their claims. Plaintiffs allege that Defendants violated their

Second Amendment rights because it has taken Defendants more than 30 days to process FOID Card applications. However, under *District of Columbia v. Heller*, 554 U.S. 570 (2008), the regulation of firearms possession falls outside of the scope of the Second Amendment, meaning that the FOID Card Act's requirements cannot result in a Second Amendment violation. And even if the FOID Card Act were within the scope of the Second Amendment, any delays in processing applications do not violate the Second Amendment because the application process is substantially related to an important governmental objective, namely public safety.

Plaintiffs are also unlikely to succeed on their Fourteenth Amendment claim because the FOID Card Act provides an appeal process for unprocessed FOID Card applications. As such, Plaintiffs are afforded adequate procedural due process protections under *Mathews v. Eldridge*, 424 U.S. 319, 332-33 (1976). Additionally, Defendants are entitled to deference as to how they have operated since March 2020, including changes to hiring and processing procedures, due to the ongoing COVID-19 pandemic.

Second, Plaintiffs cannot establish that they will suffer irreparable harm if their motion is denied. Plaintiffs rely on the blanket allegation that any alleged deprivation of their constitutional rights amounts to irreparable harm. This is insufficient because Plaintiffs' actual allegations about the supposed danger of not having a firearm in their homes are all speculative and cannot be used to establish irreparable harm. *Winter*, 555 U.S. at 2. Finally, Plaintiffs cannot show that the public interest weighs in favor of injunctive relief. Plaintiffs are requesting that a FOID card be issued to affected members of SAF and ISRA immediately. ECF No. 48 at 21. The public interest in Defendants continuing to conduct background checks before issuing FOID cards significantly outweighs the alleged deprivation that any SAF and ISRA members will suffer if forced to wait for their applications to be processed.

Because Plaintiffs cannot satisfy any of the criteria for a preliminary injunction motion, their motion for preliminary injunction should be denied.

## **BACKGROUND**

### **Relevant Procedural History**

This lawsuit was filed on July 20, 2020, by four Individual Plaintiffs and the Organizational Plaintiffs against Defendants Kelly and Ingebrigtsen in their official capacities. ECF No. 1. Defendants moved to dismiss, but before briefing had concluded on that motion, the originally named Individual Plaintiffs had all received their FOID Cards. *See* ECF No. 14. On November 9, 2020, Plaintiffs filed an Amended Complaint naming four new Individual Plaintiffs—James D. Robinson, Natalia E. LaVallie, Matthew D. Sorenson, and John Marszalek (the only Individual Plaintiff to this motion)—and the same Organizational Plaintiffs and Defendants. ECF No. 40. On December 15, 2020, Plaintiff Marszalek and the Organizational Plaintiffs filed a motion for preliminary injunction and supporting memorandum. ECF Nos. 47-48. This motion for preliminary injunction was only filed on behalf of Plaintiff Marszalek and the Organizational Plaintiffs because the Individual Plaintiffs Robinson, LaVallie, and Sorenson received their FOID Cards between the filing of the Amended Complaint and the motion for preliminary injunction and, therefore, their claims are moot.

Plaintiff Marszalek applied for his FOID Card on May 4, 2020, and alleges that he had not received his FOID Card at the time that he filed this motion for preliminary injunction. ECF No. 48 at 4. As noted below, his FOID Card has now been processed). The Organizational Plaintiffs allege to have members and supporters who have not received FOID Cards within 30 days of applying, but only refer to two unnamed individuals—a 55-year-old man from Cook County and a 76-year-old man from DuPage County. *Id.* at 5 and ECF No. 48-2 at ¶¶ 7-8. In this motion for preliminary injunction, however, Plaintiffs only seek an order requiring Defendants to



immediately issue an FOID card to Plaintiff John M. Marszalek and the affected members of ISRA and SAF. ECF No. 48 at 21.

***The FOID Card System and Application Processing***

Illinois residents must have a FOID Card to legally possess a firearm or ammunition.<sup>1</sup> 430 ILCS 65/2(a). The possession and purchase of firearms in Illinois is governed by the FOID Card Act. 430 ILCS 65/1 *et seq.* It was enacted in 1967 “to promote and protect the health, safety and welfare of the public” by providing a licensure system that identifies “persons who are not qualified to acquire or possess firearms and firearm ammunition.” 430 ILCS 65/1. This system affords law enforcement the opportunity to identify those persons who are prohibited under federal and state law from acquiring or possessing firearms and ammunition. *Id.*

Illinois residents who have submitted the required documents showing their eligibility may obtain a FOID Card. 430 ILCS 65/4. Under Illinois law, certain factors render an applicant ineligible for a FOID Card. *Id.* For instance, an applicant is ineligible for a FOID Card if he has been convicted of a felony; domestic battery or aggravated battery; or any of the following offenses within the past five years: battery, assault, aggravated assault, or a substantially similar offense in another jurisdiction in which a firearm was used or possessed. *Id.* at 65/4(a)(2)(ii), (viii). Similarly, an applicant is ineligible for a FOID Card if he is subject to an existing order of protection. *Id.* at 65/4(a)(2)(vii). Further, an applicant is ineligible if he has been a patient in a mental health facility within the past five years, has an intellectual or developmental disability, has ever been involuntarily admitted into a mental health facility, or has ever been adjudicated a person with a mental disability. *Id.* at 65/4 (a)(2)(iv), (v), (xv), (xvi), (xvii).

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<sup>1</sup> 435 ILCS 65/2 lists certain exceptions to the FOID Card requirement that are not at issue in this case.

The FOID Card Act also establishes a comprehensive monitoring system whereby state circuit court clerks, the Illinois Department of Human Services, medical professionals, law enforcement officials, and school administrators are required to notify the Illinois State Police when, as relevant to their respective purviews, individuals pose a clear and present danger or are rendered ineligible for a FOID Card by virtue of being a patient in a mental health facility, or of being adjudicated or determined to have a mental or developmental disability. 430 ILCS 65/8.1.

Once the ISP Firearms Services Bureau (FSB) receives a FOID Card application, the applicant's information is cross-referenced with mental health admissions from the Illinois Department of Human Services. Declaration of Lt. Gregory Hacker ¶ 4, Exhibit A. If an applicant's information shows admission at a mental health facility, the application is denied. *Id.* Next, the application goes to an initial "quality check" review by a FSB employee. *Id.* ¶ 5. At this stage, the FSB employee reviews the application to confirm that it is complete and contains has an attached picture. *Id.*

After the quality check is completed, the application goes for the initial layer of background review. *Id.* ¶ 6. At this stage, the applicant's name is run through the Illinois Law Enforcement Agency Data System (LEADS the National Instant Criminal Background System, which contains national records; National Criminal Information Center (NCIC); and the ISP Bureau of Identification Criminal History Record Index (CHRI) system. *Id.* ¶ 7. If there is no "hit" in the relevant databases, meaning that the applicant's name is not listed in any of these systems, the FOID Card application does not require review by an analyst and is approved. *Id.* ¶ 8.

Approximately 40-55% of FOID Card applications are approved at this stage. *Id.* ¶ 9. If there is a hit in any system, the application must go to an FSB analyst for review. *Id.* ¶ 10. Analyst review includes manual cross-referencing of all available databases and looking for any relevant

information that would impact the applicant's eligibility for a FOID Card. *Id.* ¶ 11-12. A routine application that goes to the analyst stage can be processed in under an hour. *Id.* ¶ 15. For instance, a hit in a database could occur if a FOID Card applicant has the same name as an individual convicted of a felony in Illinois, and the analyst could determine that the applicant does not have a felony conviction by cross-referencing dates of birth or using the photograph provided with the FOID Card application. *Id.* ¶ 12. However, if there are any delays in processing an application, such as waiting for information from out-of-state law enforcement agencies, the process can be delayed by weeks, or even months, while FSB waits for the out-of-state records required to finish processing an application. *Id.* ¶ 15. Additionally, an applicant who would otherwise be ineligible for a FOID Card but has successfully appealed the revocation and been granted a letter of relief from the Director of ISP or via court order requires review by an analyst. *Id.* ¶ 13. In 2020, FSB processed an average of 15,891 FOID Card applications each month and in the last quarter of 2020 FSB processed an average of 24,452 new FOID Card applications. *Id.* ¶ 16-17.

### ***The FOID Card Application Backlog and COVID-19***

The FSB is responsible for processing all FOID Card applications and renewal applications, as well as Concealed Carry Licenses ("CCLs") and Firearm Transfer Inquiry Program ("FTIP") requests (background checks for firearms purchases). *Id.* ¶ 18. For years, ISP has received thousands of FOID Card applications each month. *Id.* ¶ 19. Moreover, in 2020, ISP received a record-breaking number of applications. *Id.* ¶ 21. At the start of the COVID-19 pandemic in March, ISP received 36,762 new FOID Card applications. *Id.* ¶ 22. Then, in June 2020, ISP received 62,815 new FOID Card applications. *Id.*

Accordingly, ISP is currently facing a backlog of FOID Card application that need to be processed. FSB, however, has been actively working to reduce the backlog of FOID Card applications. FSB employees have been working internally and with third-party contractors to develop more efficient procedures to address the FOID Card backlog. *Id.* ¶ 23. Additionally, in 2020, FSB employees worked 18,000 hours of overtime to address the backlog. *Id.* ¶ 24.

FSB analysts are responsible for processing hundreds of thousands of applications each year. *See id.* There are currently 22 full-time FSB analysts that have completed all required training and are able to process FOID Card applications independently. *Id.* ¶ 25. In early 2020, FSB was preparing to hire approximately 30 new analysts in March and April 2020 to help address the FOID Card applications backlog and three new analysts were hired in early March of 2020. *Id.* ¶ 26. However, in mid-March 2020, due to the COVID-19 pandemic, FSB employees were instructed to work remotely. *Id.* ¶ 28. While ISP's information technologies department worked to create remote work systems, FSB was unable to process FOID Card applications for approximately two weeks. *Id.* ¶ 29. FSB was also forced to delay the hiring of new analysts because Central Management Services (the state agency that handles hiring and benefits for most state employees) was unable to process new hires. *Id.* ¶ 30. ISP and FSB adapted to the realities of operating an already overworked system remotely and were able to resume hiring. *Id.* ¶ 31. However, FSB was forced to hire employees in smaller groups to effectively train those analysts remotely. *Id.* It takes approximately six months to fully train an analyst to accurately process applications. *Id.* ¶ 27. This extensive training protects the integrity of the FOID Card system and is essential to making sure that FOID Cards are not wrongfully issued to ineligible, and dangerous, individuals or wrongfully withheld from eligible individuals who were identified in one of the background check databases but are, in fact, eligible for a FOID Card. *Id.* ¶ 12, 14.

Since March 1, 2020, 19 new analysts have started with FSB and four additional analysts are starting on January 19, 2021. *Id.* ¶ 32. As such, despite the significant increases in applications received and the delays to processing caused by COVID-19, FSB was able to substantially increase the number of applications processed through the second half of 2020. *Id.* ¶ 33. Starting in July 2020, FSB processed over 16,000 new FOID Card applications each month. *Id.* ¶ 34. In December 2020, FSB received 15,531 new applications but processed 26,942 new applications. *Id.* ¶ 35.

### **LEGAL STANDARD**

“Injunctive relief is “an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original); *see also Boucher v. Sch. Bd. of Sch. Dist. of Greenfield*, 134 F.3d 821, 823 (7th Cir. 1998). A preliminary injunction is “never awarded as of right” and “never to be indulged in except in a case clearly demanding it.” *Orr v. Shicker*, 953 F.3d 490, 501 (7th Cir. 2020).

A plaintiff “seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Illinois Republican Party v. Pritzker*, 973 F.3d 760, 762 (7th Cir. 2020) (quoting *Winter*, 555 U.S. at 20). If the plaintiff satisfies all these requirements, then the court must weigh the harm that the plaintiff will incur without an injunction against the harm to the defendant if one is entered, and “consider whether an injunction is in the public interest.” *GEFT Outdoors, LLC v. City of Westfield*, 922 F.3d 357, 364 (7th Cir. 2019) (internal quotations omitted). This analysis is done on a “sliding scale”—if the plaintiffs are less likely to win on the merits, the balance of harms must weigh more heavily in their favor, and vice versa. *Id.* The court should pay “particular regard for the public

consequences in employing the extraordinary remedy of injunction.” *Winter*, 555 U.S. at 24.

Plaintiffs’ burden in this case is even greater than usual because, rather than seeking to preserve the *status quo*, they seek *mandatory* interim relief ordering Defendants to immediately issue a FOID Card to Plaintiff Marszalek and to the affected members of the Organizational Plaintiffs. ECF No. 48 at 21. Mandatory injunctions are “rarely issued,” interlocutory mandatory injunctions are “even more rarely issued,” and neither should be issued “except upon the clearest equitable grounds.” *W.A. Mack, Inc. v. Gen. Motors Corp.*, 260 F.2d 886, 890 (7th Cir. 1958); *see also Graham v. Med. Mut. of Ohio*, 130 F.2d 293, 295 (7th Cir. 1997) (“mandatory preliminary writs are ordinarily cautiously viewed and sparingly issued.”); *Chicago United Indus. v. City of Chicago*, 445 F.3d 940, 945–46 (7th Cir. 2006).

Besides seeking mandatory relief, Plaintiffs also seek to obtain a preliminary injunction that would give them substantially all the relief they seek through this lawsuit. *See* ECF No. 40 at 17-28; ECF No. 48 at 21. That makes Plaintiffs’ burden even higher. *See, e.g., Boucher*, 134 F.3d 827 (“A preliminary injunction that would give the movant substantially all the relief he seeks is disfavored, and courts have imposed a higher burden on a movant in such cases.”).

## **ARGUMENT**

### **I. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS.**

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits.” *Winter*, 555 U.S. at 20. As the Seventh Circuit explained recently, “a possibility of success is not enough,” and the Supreme Court has expressly disapproved the “better than negligible” standard. *Illinois Republican Party*, 973 F.3d at 762-63 (7th Cir. 2020). A plaintiff seeking preliminary relief “bears a significant burden” and must make a “strong showing” that it is likely to succeed on the merits. *Id.* at 763. While this showing does not require proof by a

preponderance of the evidence, it “normally includes a demonstration of how the applicant proposes to prove the key elements of its case.” *Id.*

Even if a plaintiff makes the required showing, the court must determine how likely it is that the plaintiff actually will succeed: “The more likely the plaintiff is to win, the less heavily need the balance of harms weigh in his favor; the less likely he is to win, the more need it weigh in his favor.” *Roland Mach. Co. v. Dresser Indus., Inc.*, 749 F.2d 380, 387 (7th Cir. 1984). Moreover, when there are “two equally credible versions of the facts the court should be highly cautious in granting an injunction without the benefit of a full trial.” *Lawson Prods., Inc. v. Avnet, Inc.*, 782 F.2d 1429, 1440 (7th Cir. 1986) (internal citation omitted).

Here, Plaintiffs have no likelihood of success on the merits. First, Plaintiff Marszalek’s claim is moot because he has already received his FOID Card. Additionally, the Organizational Plaintiffs lack standing to sue. Even if any Plaintiff had standing, their claims would fail because the registration requirements imposed by the FOID Card Act fall outside of the scope of the Second Amendment and, even if they did not, the FOID Card Act’s requirements pass intermediate scrutiny as they are substantially related to an important governmental interest. Moreover, Plaintiffs are unlikely to succeed on the Fourteenth Amendment due process claim because all alleged Plaintiffs are afforded adequate procedural protections under *Mathews*. Finally, any COVID-19 related decisions that decreased FSB’s FOID Card application processing are entitled to deference.

**A. PLAINTIFF MARZALEK’S CLAIM IS MOOT.**

Plaintiff Marszalek’s FOID Card application was approved on December 3, 2020. Ex. A ¶ 3. This renders Marszalek’s claims in the Amended Complaint and motion for preliminary injunction moot. *See* Fed. R. Civ. P. 12(b)(1); *Pakovich v. Verizon LTD Plan*, 653 F.3d 488, 492 (7th Cir. 2011) (holding that courts lack subject matter jurisdiction when a case becomes moot);

*Milwaukee Police Ass'n v. Bd. of Fire & Police Com'rs of City of Milwaukee*, 708 F.3d 921, 929 (7th Cir. 2013). 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’s claim for a concealed carry license to the district court, with instructions to dismiss as moot, where plaintiff had already been issued the concealed carry license he sought through his lawsuit).

In both the amended complaint and the preliminary injunction motion, Plaintiff Marszalek is asking the Court to direct Defendants to issue his FOID Card. ECF No. 40 at 17 and No. 48 at 21. Because that has already occurred, Marszalek’s request for injunctive relief is moot, and his claim should be dismissed as moot. *See Brown v. Bartholomew Consol.*, 442 F.3d 588, 596 (7th Cir. 2006) (“In an action seeking only injunctive relief . . . once the threat of the act sought to be enjoined dissipates, the suit must be dismissed as moot.”). Further, his request for a declaratory judgment in the underlying complaint does not change this conclusion because such a ruling would have no “impact on the parties.” *Cornucopia Inst. v. U.S. Dep't of Agric.*, 560 F.3d 673, 676 (7th Cir. 2009). As his FOID Card application has already been approved, Ex. A ¶ 3, Plaintiff Marszalek has already obtained the relief he sought and so there is nothing more that this court give him. Because Plaintiff Marszalek’s claim is moot, his request for preliminary injunctive relief should also be denied.

**B. THE ORGANIZATIONAL PLAINTIFFS CANNOT OBTAIN THE RELIEF SOUGHT THROUGH A PRELIMINARY INJUNCTION.**

Plaintiffs’ motion for preliminary injunction requests that this Court enter an order directing Defendants to immediately issue FOID Cards to “the affected members of Plaintiffs



ISRA and SAF.” ECF No. 48 at 21. This Court should abstain from providing this relief under *Rizzo v. Goode*, 423 U.S. 362 (1976). Under *Rizzo*, the Supreme Court instructed that to obtain injunctive relief on a matter traditionally reserved to the discretion of a state or local government agency, a plaintiff must overcome the steep hurdle set by “the well-established rule that the Government has traditionally been granted the widest latitude in the ‘dispatch of its own internal affairs.’” *Id.* at 378–79 (quotations omitted). The Seventh Circuit recently affirmed the continuing relevance of *Rizzo* observing that “federal courts must be constantly mindful of the ‘special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law.’” *Courthouse News Serv. v. Brown*, 908 F.3d 1063, 1073 (7th Cir. 2018) (quoting *Rizzo*, 423 U.S. at 378). In such cases, federal courts are to issue injunctions “sparingly, and only in a clear and plain case.” *Rizzo*, 423 U.S. at 378. This strong preference against intrusive injunctive relief is primarily founded on “delicate issues of federal-state relationships” (*Id.* at 380 (quotation omitted)), which are premised on “the principles of equity, comity, and federalism.” *Id.* at 379 (quotation omitted). Here, Plaintiffs are attempting to micromanage the innerworkings of a state agency by seeking an order that would require Defendants to violate the FOID Card Act and issue FOID Cards to at least some individuals who may be ineligible and even dangerous. Additionally, Plaintiffs’ assertion that their FOID Cards must be processed within the thirty days allowed by 430 ILCS 65/5 amounts to an attempt to enforce that state statute in federal court. But any such attempt is barred by the Eleventh Amendment. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 107 (1984) (“[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law.”). *Id.*

Moreover, it is virtually impossible for this Court to grant such wide-sweeping relief. As discussed, *supra* Section I(A), all claims of the sole remaining Individual Plaintiff (Marszalek) are moot. The Organizational Plaintiffs have only referenced two anonymous members who are allegedly impacted by Defendants' allegedly failure to issue FOID Cards within thirty days of their application. ECF No. 48 at 5, 48-2 at ¶¶ 7-8. It is impossible to know whether these anonymous individuals' claims have become moot since this motion was filed. Instead, Plaintiffs request an order requiring Defendants to issue FOID Cards to an unknown number of individuals without completing the background checks required by the FOID Card Act. In effect, Plaintiffs seek to obtain relief suited to a class action without obtaining, or seeking, class certification. This attempt fails because each class member would need to be individually assessed to determine whether they were eligible for a FOID Card, precluding any finding of commonality. *See Money v. Pritzker*, 453 F. Supp. 3d 1103, 1128 (N.D. Ill. Apr. 10, 2020) (noting that in instances where each putative class member comes with a unique situation the "imperative of individualized determinations . . . makes [such a] case inappropriate for class treatment"). Further, if this Court granted Plaintiffs' requested relief, which requires the immediate issuance of FOID Cards to unnamed individuals, it is possible that individuals with felony convictions or other prohibiting factors would be granted FOID Cards in direct violation of the eligibility requirements of the FOID Card Act or possibly federal law.

### **C. THE ORGANIZATIONAL PLAINTIFFS LACK STANDING.**

The Organizational Plaintiffs are also unlikely to succeed on the merits of their claim because they lack standing to bring this action. "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 under certain circumstances, organizations, like these Organizational Plaintiffs, can assert standing “either on behalf of [themselves] or on behalf of [their] members.” *Milwaukee Police Ass’n*, 708 F.3d at 926. If an organization asserts standing on behalf of its members, which is also known as associational standing, then the 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, neither Organizational Plaintiff has standing in its own right or to sue on behalf of its members.

***1. Each Organizational Plaintiff lacks standing to sue on its own behalf.***

Plaintiffs allege that SAF is a non-profit organization whose purpose is to promote the private right to own and possess firearms through education, research, publishing, and legal action. ECF No. 40 at ¶ 19. Similarly, the ISRA is a non-profit organization with more than 26,000 members that serves the purpose of protecting the right to privately own firearms through education, outreach, and litigation. *Id.* at ¶ 15. Because these interests are primarily ideological, they cannot be used to establish standing. *See Planned Parenthood of Wisconsin v. Doyle*, 162 F.3d 463, 465 (7th Cir. 1998) (“A purely ideological interest is not an adequate basis for standing to sue in a federal court”); 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*, 863 F.3d at 639 (“[A]n interest in the underlying law does not equal an injury.”).

ISRA further alleges that it operates a firing range in Bonfield, Illinois. ECF No. 40 at ¶ 16. But this perfunctory allegation is also insufficient to confer standing. Without stating as much, ISRA includes this perfunctory allegation in an attempt to equate its circumstances with those in *Ezell*, 651 F.3d 684, where a firing-range facility supplier sought to open a firing range in Chicago. *See* ECF No. 48 at ¶ 16. This broad allegation is not enough to establish that ISRA has standing to sue on its own behalf. In *Ezell*, because the challenged ordinance would close all firing ranges in Chicago city limits, 651 F.3d at 690, the court determined that the firing range facility supplier had standing to sue on its own behalf because the ordinance at issue would cause direct harm to the firing-range facility supplier: it would not be able to open firing ranges in Chicago. *Id.* at 696.

Here, by contrast, ISRA does not allege that it has been prevented from operating its firing range or that any of its members have not utilized the firing range due to FOID Card processing delays. ISRA lacks standing because it has not adequately alleged that it has suffered an actual or impending injury. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992). The only allegation is that ISRA operates a firing range. ECF No. 40 at ¶ 16. Neither the Amended Complaint nor motion for preliminary injunction allege that there is anybody that has not used the ISRA firing range because they did not obtain a FOID Card within thirty days. *See* ECF Nos. 40, 48. The Amended Complaint and supporting declarations to the motion for preliminary injunction refer to two anonymous members: a 55-year-old Cook County resident and a 76-year-old DuPage County resident who, allegedly, did not receive their FOID Cards in thirty days. *See*

ECF No. 40 at ¶ 39 and ECF No. 48-2 at ¶¶ 7-8. There is no allegation that these two unnamed individuals or any Individual Plaintiff used the ISRA firing range. Given that Bonfield has a population of approximately 400 people, is not near any major population centers, and is at least 50 miles from DuPage County and Cook County,<sup>2</sup> it is unreasonable to assume that one of the allegedly aggrieved ISRA members would have used that firing range. In short, Plaintiffs have failed to allege with any specificity that there is an actual person who would have used the ISRA firing range but did not because of a delayed FOID Card approval. Because ISRA has failed to allege that it has, or will, suffer any harm as a result of ISP's actions, it cannot establish standing to sue on behalf of itself.

**2. *Each Organizational Plaintiff lacks standing to sue on behalf of its members.***

Additionally, neither the SAF nor ISRA have associational standing to bring suit on behalf of their members. The first element of associational standing “require[s] an organization suing as representative to include at least one member with standing to present, in his or her own right, the

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<sup>2</sup> See Kankakee County Clerk website, available at <https://www.kankakeecountyclerk.com/county-information/population-county-officials/>;

Google Maps;

<https://www.google.com/maps/dir/DuPage+County,+IL/Illinois+State+Rifle+Association,+1589+N+700+Rd+W,+Bonfield,+IL+60913/@41.4850517,-88.3587912,10z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x880fa8de1e18ff6b:0x490f88f65e78ec6a!2m2!1d-88.0900762!2d41.8243831!1m5!1m1!1s0x880dda804812052d:0xd0385a157024af04!2m2!1d-88.0097198!2d41.1406402!3e0>; Google Maps,

<https://www.google.com/maps/dir/Cook+County,+Illinois/Illinois+State+Rifle+Association,+1589+N+700+Rd+W,+Bonfield,+IL+60913/@41.4388092,-88.1082133,10z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x880fb1aa66431375:0x8ad9d709230ee03c!2m2!1d-87.697554!2d41.7376587!1m5!1m1!1s0x880dda804812052d:0xd0385a157024af04!2m2!1d-88.0097198!2d41.1406402!3e0>. This

Court may take judicial notice of this information and other external sources cited in this brief, as they are public records “not subject to reasonable dispute.” *Ennenga v. Starns*, 677 F.3d 766, 774 (7th Cir. 2012);

see also Fed. R. Evid. 201(b)(2) (permitting judicial notice of facts “whose accuracy cannot reasonably be questioned”); Fed. R. Evid. 902(6) (official documents and newspapers are self-authenticating); Fed. R. Evid. 101(b)(6) (rules on printed information apply to electronic sources of information).

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claim (or type of claim) pleaded by the association.” *Disability Rights Wisc. Inc. v. Walworth Cty. Bd. of Supervisors*, 522 F.3d 796, 801-02 (7th Cir. 2008).

As it relates to any of the Individual Plaintiffs, there cannot be associational standing because each of the Individual Plaintiff’s claims are moot. To establish associational standing, the Organizational Plaintiffs must name or describe a member who is adversely affected by the Defendants’ administration of the FOID Card Act and who would be able to sue on his or her own behalf. *See Disability Rights Wisconsin, Inc.*, 522 F.3d at 804 (noting that “Because [an association’s] First Amended Complaint does not identify any . . . student with standing to bring suit based on the Board of Supervisors’ conduct, [the association] does not satisfy the first element” of associational standing); *Kachalsky v. Cacace*, 817 F. Supp. 2d 235, 251 (S.D.N.Y. 2011) (finding SAF failed to satisfy first requirement of associational standing because it “has neither identified particular members who have standing, nor specified how they would have standing to sue in their own right”).

Here, the motion for preliminary injunction refers to an unnamed 55-year-old man from Cook County and an unnamed 76-year-old man from DuPage County who purportedly did not receive their FOID Cards within thirty days. ECF No. 48-2 at ¶¶ 7-8. Although an organization need not name specific members to establish standing, *Disability Rights Wisc. Inc.*, 522 F.3d at 80-02, if its members remain anonymous, the organization must make “specific allegations establishing that at least one identified member had suffered or would suffer harm” due to 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). The Supreme Court has rejected the blind acceptance of “the organizations’ self-descriptions of their membership,” even in situations where descriptions were

not in dispute, 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 Sierra Club, for example, has thousands of members who use and enjoy Sequoia National Forest?”) (internal quotations omitted). To establish associational standing, the Organizational Plaintiffs must “identify members who have suffered the requisite harm.” *Id.* Any assertions as to what these Organizational Plaintiffs’ members would do with a FOID Card is insufficient to establish that the Organizational Plaintiffs have an actual member who was harmed by the Defendants’ conduct. *See id.*

Here, the Organizational Plaintiffs’ blanket and conclusory assertions of harm to two unnamed members are insufficient to establish associational standing. Further, given the history of the Individual Plaintiffs, it is entirely plausible that the two unnamed members have likewise already received their FOID Cards, rendering their claims moot. It is also possible that the two unnamed members are ineligible for a FOID Card under either state or federal law. For all of these reasons, the conclusory statements in Plaintiffs’ motion do not establish standing.

Further, even if the Organizational Plaintiffs had identified members who would have standing to sue in their own right (they have not), the Organizational Plaintiffs still have not satisfied the second element of associational standing because they have failed to explain how the interests they seek to protect are germane to the organizations’ purposes. *See Milwaukee Police Ass’n*, 708 F.3d at 928. The Organizational Plaintiffs also have not demonstrated that the regulation of firearm possession and ownership 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, especially here, where each Individual Plaintiff named in the Complaint and Amended Complaint has received a

FOID Card. *See* ECF No. 14; ECF No. 48 at 4 n.3; *supra* Section I(A). Further, Defendants are actively working to reduce the backlog of applications and all eligible members of the Organizational Plaintiffs will receive their respective cards in time. Ex. A at ¶ 20. As such, the regulatory procedures in place actually coincide with the Organizational Plaintiffs' stated purpose.

Finally, the Organizational Plaintiffs have not satisfied the third element of associational standing, as they have not adequately alleged that the participation of individual members is unnecessary for the effective litigation of this issue. *See Milwaukee Police Ass'n*, 708 F.3d at 928. The Organizational Plaintiffs do not address this issue and do not allege that participation of any individual members is unnecessary to effectively litigate this issue. Without any information as to why this case should move forward without the participation of any individual member, the Organizational Plaintiffs do not 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); *see also Marin-Garcia v. Holder*, 647 F.3d 666, 670 (7th Cir. 2011). As discussed, the Organizational Plaintiffs attempt to improperly gain associational standing through vague and conclusory allegations. *See Uptown Tent City Organizers*, 2018 WL 2709431. The Organizational Plaintiffs have not satisfied any element required to assert associational standing and their claims should be dismissed accordingly.

**D. EVEN IF PLAINTIFFS' CLAIMS ARE JUSTICIABLE, PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THEIR SECOND AMENDMENT CLAIM.**

Even if any Plaintiff had standing, Plaintiffs are unlikely to succeed on a Second Amendment claim. In *Heller*, the Supreme Court held that the Second Amendment protects the individual right to possess a handgun in the home for self-defense. *Heller*, 554 U.S. at 636. However, *Heller* also clarified that "the right secured by the Second Amendment is not unlimited"; *Heller* did not overrule the right to implement "presumptively lawful regulatory



measures” such as the “longstanding prohibitions on the possession of firearms by felons and the mentally ill . . . or laws imposing conditions and qualifications on the commercial sale of arms.”

*Id.* at 626-27 n.26.

Post-*Heller*, most lower federal courts, including the Seventh Circuit, apply a two-step approach to Second Amendment cases. *Ezell*, 651 F.3d at 701-03. The first inquiry asks whether “the restricted activity is protected by the Second Amendment in the first place.” *Id.* at 701. If the relevant law does not regulate activity historically protected by the Second Amendment, the analysis ends and further Second Amendment review is unnecessary. *Id.* at 703. If, however, the challenged law falls under the purview of the Second Amendment, “there must be a second inquiry into the strength of the government’s justification for restricting or regulating the exercise of Second Amendment rights.” *Id.*

When determining if a law restricts activity that falls within the scope of the Second Amendment, the regulation “need not mirror limits that were on the books in 1791.” *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010). As such, a regulation can be considered longstanding and outside of the scope of the Second Amendment even if it extends beyond the restrictions in place when the Second Amendment was ratified. *Skoien*, 614 F.3d 638 at 641.

***1. Restrictions on who can purchase firearms, such as those imposed by the FOID Card Act, fall outside of the scope of the Second Amendment.***

Restrictions on who can purchase firearms fall outside the scope of the Second Amendment. But first, it is important to note that Plaintiffs do not allege that the FOID Card Act in general is unconstitutional. *See* ECF Nos. 40 and 48. Instead, Plaintiffs take issue with any delay beyond thirty days in processing applications. *Id.* Because the application process is the regulatory mechanism that Illinois has chosen to ensure that dangerous persons—such as felons

and the mentally ill—do not possess firearms, Plaintiffs’ challenge to this process and any potential delays, fall outside of the scope of the Second Amendment.

Indeed, at its core, the FOID Card Act was designed to protect the public by requiring that the State conduct a thorough background check before an individual can legally possess a firearm. *See* 430 ILCS 65/1; *See Ex. A*. These regulations imposed by the FOID Card Act comport with the types of longstanding regulatory traditions that fall outside of the scope of the Second Amendment as they are designed to prohibit “the possession of firearms by felons and the mentally ill” and regulate “the commercial sale of arms.” *Heller*, 554 U.S. at 626; *see also Pena v. Lindley*, 898 F.3d 969, 1009 n.19 (9th Cir 2018) (Bybee J., concurring in part and dissenting in part) (finding that background checks and waiting periods regulate who may lawfully possess or purchase a firearm and qualify as restrictions on possession of firearms by felons and the mentally ill).

The history of gun control was discussed at length in *National Rifle Ass’n of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185 (5th Cir. 2012). There, the Fifth Circuit examined whether a federal law that prevented individuals from the ages of 18-21 from purchasing handguns from a federal firearms licensee implicated the Second Amendment. *Nat. Rifle A’ssn*, 700 F.3d at 187. In its analysis, the Fifth Circuit observed that “[s]ince even before the Revolution, gun use and gun control have been inextricably intertwined,” and that “gun safety regulation was commonplace in the colonies,” including “laws disarming certain groups and restricting sales to certain groups.” *Id.* (internal citations omitted). While that case dealt with age restrictions, the Fifth Circuit concluded that the challenged law was “consistent with a longstanding tradition of targeting select groups’ ability to access and to use arms for the sake of public safety.” *Id.* at 203.

Further, laws that require individuals to undergo a background check and obtain a permit before purchasing a firearm have been in place for over a century. *See, e.g.*, 1911 N.Y. Laws 195, at 442 § 1984 (requiring permit for purchase of firearm); 1918 Mont. Laws 2, at 6 § 3 (imposing requirement that applicant for a firearm permit has good moral character); 1921 Mo. Laws at 691 § 2 (requiring a showing of good moral character and that issuing a firearm permit will not endanger the public safety). Moreover, 22 states and the District of Columbia require a background check prior to purchasing a firearm.<sup>3</sup> As shown by the longstanding history of requiring background checks and permits to purchase firearms, the regulatory requirements of the FOID Card Act itself are “presumptively lawful.” *See Heller*, 554 U.S. at 626-27 & n.26. Therefore, the FOID Card Act does not regulate conduct within the scope of the Second Amendment, instead it promotes public safety through its requirements and application process.

**2. *Even if the FOID Card Act were within the scope of the Second Amendment, Plaintiffs have failed to show that delays beyond 30 days to process an application constitute a Second Amendment violation.***

**a) *Some form of intermediate scrutiny is the appropriate standard of review for any challenge to the application timeline for FOID Cards.***

If this Court determines that the FOID Card approval process implicates a Second Amendment right, or that the historical evidence of gun regulations, including background checks, is inconclusive, Plaintiffs still cannot show that they are likely to succeed on their

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<sup>3</sup> *See* Cal. Penal Code §§ 28100–28490; Colo. Rev. Stat. § 18-12-112; Conn. Gen. Stat. §§ 29-33(c), 29-36l(f), 29-37a(e)-(j); Del. Code tit. 11, § 1448B, tit. 24, § 904A; D.C. Code Ann. §§ 7-2502.01–7-2502.04; Haw. Rev. Stat. Ann. §§ 134-2, 134-13; 430 Ill. Comp. Stat. 65/1–65/15a, 720 Ill. Comp. Stat. 5/24-3(k); Iowa Code § 724.17; Md. Code Ann., Pub. Safety § 5-117.1(f); Mass. Gen. Laws ch. 140, §§ 121, 129B, 129C, 131, 131A, 131E; Mich. Comp. Laws §§ 28.422, 28.422a; Neb. Rev. Stat. Ann. §§ 69-2404, 69-2407, 69-2409; Nev. Rev. Stat. §§ 202.2547–202.2548; N.J. Stat. Ann. § 2C:58-3; N.M. Stat. Ann. § 30-7-7.1; N.Y. Gen. Bus. Law § 898; Or. Rev. Stat. §§ 166.435, 166.436; N.C. Gen. Stat. §§ 14-402–14-404; 18 Pa. Cons. Stat. § 611; R.I. Gen. Laws §§ 11-47-35–11-47-35.2; Rev. Code Wash. § 9.41.113; Va. Code Ann. § 18.2-308.2:2 (effective July 1, 2021); Vt. Stat. Ann. tit. 13, § 4019.

Second Amendment claim under the second prong of the *Heller* analysis. If this Court reaches the second stage of the analysis under *Heller*, it must inquire as to the strength of the government's justification for restricting or regulating the exercise of Second amendment rights. *Kanter v. Barr*, F. 3d 437, 441 (7th Cir. 2019). The appropriate standard of review depends on "how close the law comes to the core of the Second Amendment right and the severity of the laws burden on that right." *Id.* at 441, quoting *Ezell*, 651 F.3d at 703. If the law imposes a severe burden on the Second Amendment right, there must be a stronger public interest justification than when the burdens are closer to the margins of the Second Amendment right. *Id.* at 441-42.

Here, the only issue is the time frame in which FOID Card applications are processed. *See* ECF Nos. 40 and 48. This posture differs from the facts of *Heller* or *Ezell*, both of which completely prohibited conduct protected by the Second Amendment. *See Heller*, 554 U.S. 570 (banning possession of handguns in the home); *Ezell*, 651 F.3d 684 (banning firing range in the City of Chicago). Here, there is a temporary delay for eligible individuals to obtain a firearm, not a complete and total ban on firearm possession. The short-term nature of the delay is supported by this case's history. The original individual Plaintiffs all received their FOID Cards during the early stages of the case. *See* ECF No. 14 (Defendants' motion to dismiss the original Individual Plaintiffs based on mootness). Further, the claims of the Individual Plaintiffs named in the Amended Complaint filed on November 9, 2020, have already become moot. ECF No. 48 at 4 n. 3; *supra* Section I(A).

Plaintiffs believe that Defendants altered their processing method to approve the FOID Cards for individuals who file lawsuits to render those claims moot. ECF no. 48 at 4, n. 3. But this is not the case. The FSB processes applications, including the backlog, as quickly as they can. *See* Ex. A. The FSB does not prioritize an individual's application because the applicant is

party to a lawsuit challenging the 30 day processing timeline. *Id.* ¶ 20. Therefore, the issue at hand is one of timing and lies on the margins of the Second Amendment. As such, the appropriate standard of review is one akin to intermediate scrutiny. *Kanter*, 919 F.3d at 442. Therefore, the current process will survive so long as it is substantially related to an important governmental objective. *Id.* at 448.

*b) Defendants have a significant interest in regulating who may possess a weapon in Illinois and, as such, the FOID Card application process survives intermediate scrutiny.*

As some form of intermediate scrutiny is the appropriate standard of review, Plaintiffs are unlikely to succeed on their Second Amendment claim, because the FOID Card application and approval process is substantially related to the State’s significant interest in regulating who can legally possess a firearm. The FOID Card system was developed to “promote and protect the health, safety and welfare of the public” and promote the public interest through “a system of identifying persons who are not qualified to acquire or possess firearms” in the State of Illinois. 430 ILCS 65/1. Protecting public safety is an important government interest. *See Kanter*, 919 F.3d at 448 (evaluating comparable federal law stating that preventing gun violence by keeping firearms from those who may misuse them is an important interest); *U.S. v. Meza-Rodriguez*, 798 F.3d 664, 673 (7th Cir. 2015) (“[T]he government has a[ ] strong interest in preventing people who already have disrespected the law (including ... felons ...) from possessing guns.”).

Plaintiffs adopt the extreme position that Defendants have no interest in properly processing FOID Cards. ECF No. 48 at 18, 20. Plaintiffs present this argument by asserting that Defendants have no legitimate interest in failing to process the FOID Card applications within thirty days. ECF No. 48 at 20. However, Plaintiffs are essentially arguing that Defendants should abandon background checks if doing so would allow Defendants to process applications within the timeline set by a state statute (not the U.S. Constitution), regardless of whether such a

timeframe might result in felons or other dangerous persons being issued FOID Cards. The only way to effectively administer the FOID Card program is to maintain the integrity of the application process. *See Ex. A*. If the FSB abandons or relaxes its application process, it will not be able to confirm that FOID Cards are not mistakenly issued to ineligible individuals.

Moreover, it is significant to note that Plaintiffs' requested relief seeks an order granting a "preliminary injunction directing Defendants to immediately issue a FOID Card to Plaintiff John M. Marszalek,<sup>4</sup> and to the affected members of Plaintiffs ISRA and SAF." ECF No. 48 at 27. As discussed above, were Plaintiffs' request granted, Defendants would not have any opportunity to process the relevant applications. Instead, Defendants would be required to issue an undisclosed number of FOID Cards without confirming that the individuals meet the eligibility requirements. In other words, Defendants would be forced to completely disregard public safety and welfare, in total defiance of the FOID Card Act's purpose, to satisfy Plaintiffs' demands.

As Defendants have a clear interest in protecting the public by ensuring that potentially dangerous individuals are not allowed to possess firearms and Plaintiffs request relief that would completely frustrate this goal, Plaintiffs cannot show that they are likely to succeed on the merits of their Second Amendment claim.

**E. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THEIR FOURTEENTH AMENDMENT CLAIM.**

Plaintiffs allege that Defendants' failure to process FOID Cards within the 30 day time period contained in the FOID Card Act amounts to a violation of their procedural due process rights under the Fourteenth Amendment. ECF No. 48 at 12-15. Plaintiffs, however, are unlikely to succeed on this claim for two reasons. First, any alleged violation by Defendants of the

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<sup>4</sup> As discussed above, Plaintiff Marszalek's claim is moot.

procedures set forth in the FOID Card Act does not create a federal procedural due process right. Second, the FOID Card Act provides an appeal process for individuals whose application are not processed in thirty days.

At its core, procedural due process requires notice and the opportunity to be heard. *See Mathews*, 424 U.S. at 332-33. It is well established that the contours of what constitutes adequate due process are “flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). To determine the amount of process required, the courts consider: (1) “the private interest that will be affected by the official action,” (2) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail,” and (3) “the risk that the plaintiff will suffer an erroneous deprivation through the procedure used and the probable value if any of additional procedural safeguards.” *Mathews*, 424 U.S. at 335. Here, the appeal process established by the FOID Card Act satisfies these requirements.

The FOID Card Act provides appropriate procedural due process to applicants, including Plaintiffs had they used the appropriate procedures. While the right at issue is fundamental, the amount of process required to protect that right must weigh the State’s cost in providing additional procedural due process. *Mathews*, 424 U.S. at 33. Here, Plaintiffs have not provided any suggestion as to what process is appropriate outside of their demand that all cards be processed within thirty days and that all affected SAF and ISRA members be immediately issued FOID Cards. *See* ECF No. 48. However, the already strained FSB would face an untenable burden if it were forced to provide an additional layer of procedural due process. *See generally Ex. A*. Moreover, there is virtually no risk of an erroneous deprivation in this case. Plaintiffs do not allege that eligible applicants were wrongly denied FOID Cards, just that allegedly eligible

applicants did not receive approval within 30 days. As such, there is no allegation that any individual has been erroneously deprived of a FOID Card indefinitely. The application process is tailored to ensure that the FSB accurately and thoroughly reviews each FOID Card application to reduce the risk of any erroneous deprivation. *Id.* at ¶ 12. The alleged burden on Plaintiffs is significantly outweighed by the burden that Defendants would suffer if they are forced to provide additional procedural safeguards, including administrative cost and the possibility of future FOID Cards being erroneously issued or denied if FSB if forced to adhere to a strict thirty-day timeline.

Plaintiffs rely on two cases that are over fifty years old to support their position that they are entitled to additional procedural due process. ECF No. 48 at 20. Neither case addresses Second Amendment restrictions, let alone modern Second Amendment jurisprudence. Instead, Plaintiffs rely on First Amendment cases addressing film censorship, *see Freedman v. Maryland*, 380 U.S. 51 (1965), and solicitation laws, *see Staub v. City of Baxley*, 355 U.S. 313 (1958). As such, these cases do not control in the context of what procedural due process rights these Plaintiffs are entitled to.

Instead, this Court should consider the Northern District of Illinois' holding in *Eldridge v. Challenging Law Enforcement Official*, No. 17-cv-4241, 2018 WL 1561729 (N.D. Ill. Mar. 30, 2018). There, plaintiff brought suit alleging that a twenty-month delay in determining whether plaintiff was eligible for a concealed carry license in Illinois constituted a due process violation. There, the court, citing *Rhein v. Coffman*, 825 F.3d 823 (7th Cir. 2017), determined that "there does not appear to be a clearly established constitutional right regarding the timing of decisions that impact gun-possession rights." *Eldridge*, 2018 WL 1561729, at \*6.



Further, Plaintiffs should not be allowed to pursue their due process challenge because they did not take advantage of state procedural processes when a FOID Card application is not acted upon within 30 days. The FOID Card Act provides an appeal process for unprocessed applications. 430 ILCS 65/10. Specifically, the FOID Card Act states that “whenever the Department fails to act on an application within 30 days of its receipt . . . the aggrieved party may appeal to the Director of State Police for a hearing upon such denial . . .” *Id.* Plaintiffs do not allege that any of the named Individual Plaintiffs or any anonymous members of the Organizational Plaintiffs appealed their non-processed application to the Director. *See* ECF Nos. 40 and 48. Instead, Plaintiffs proceeded directly to federal court to challenge the Defendants’ delay in processing applications. *Id.* It is true that Plaintiffs do not generally need to exhaust their administrative remedies before pursuing an action under Section 1983. *See Porter v. Nussle*, 534 U.S. 516, 524 (2002) (noting only prisoners must exhaust administrative remedies before filing suit under section 1983). But the validity of Plaintiffs’ procedural due process claim is significantly curtailed by the existence of the appeal process provided by the FOID Card Act.

Moreover, Plaintiffs repeatedly reference the thirty-day processing time frame set forth in the FOID Card Act. However, even if Defendants failed to follow the time frame set forth in the FOID Card Act, violations of state procedural laws and policies do not amount to a federal due process claim. *Charleston v. Bd. of Trustees of Univ. of Illinois at Chicago*, 741 F.3d 769, 773 (7th Cir. 2013) (“[W]e will be clear once more: a plaintiff does not have a federal constitutional right to state-mandated process.”); *Miyler v. Vill. of E. Galesburg*, 512 F.3d 896, 898 (7th Cir. 2008). Thus, Plaintiffs have not shown that they are likely to succeed on their claim that Defendants’ failure to process FOID Card applications within thirty days violated their procedural due process rights under the Fourteenth Amendment.

**F. OPERATIONAL DECISIONS THAT DEFENDANTS MADE TO PREVENT THE SPREAD OF COVID-19 ARE ENTITLED TO DEFERENCE UNDER *JACOBSON*, EVEN IF THOSE DECISIONS INCREASED THE FOID CARD APPLICATION BACKLOG.**

It is undeniable that Illinois, along with the rest of the world, has been forced to adapt to a novel public health crisis. In an extraordinary public health crisis such as this, the State has broad emergency powers that it may exercise to protect public health, and courts are to afford deference to temporary actions taken to curb the spread of a dangerous disease and mitigate its effects. In this case, some of the operational decisions FSB made to prevent the spread of COVID-19 had the incidental effect of increasing the backlog of FOID Card applications, but Defendants are entitled to deference regarding those decisions.

It is well established that “the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.” *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 29 (1905). The COVID-19 pandemic qualifies as the kind of public health crisis contemplated in *Jacobson*. *Cassell v. Snyders*, No. 20 C 50153, 2020 WL 2112374, at \*7 (N.D. Ill. May 3, 2020). As Justice Kavanaugh recently stated in his concurrence in *Roman Catholic Diocese of Brooklyn v. Cuomo*, “[t]he Constitution principally entrusts the safety and health of the people to the politically accountable officials of the States. Federal courts therefore *must afford substantial deference* to state and local authorities about how best to balance competing policy considerations during the pandemic.” 141 S. Ct. 63, 73-74, 2020 WL 6948354, at \*8 (Nov. 25, 2020) (Kavanaugh, concurring) (emphasis added). As such, in this instance, the actions taken by FSB to prevent the transmission of COVID-19 should be upheld so long as there is a “real and substantial relation” to public health and safety, and the

action does not constitute “beyond all question, a plain, palpable invasion of rights secured by the fundamental law.” *Jacobson*, 197 U.S. at 31.

Here, some of the delays in processing FOID Card applications were caused because FSB had to alter its operations to comply with shelter-in-place orders and then social distancing guidelines to protect the public health. When the initial Executive Orders related to COVID-19 went into effect in March 2020, all FSB analysts were instructed to work at home. Ex. A at ¶ 28. Thus, FSB analysts were unable to process FOID Card applications while ISP’s information technologies department arranged for the analysts to work from home. *Id.* at ¶ 29.

Additionally, FSB planned to hire approximately thirty new employees in March and April of 2020. *Id.* at ¶ 26. However, the hiring of new employees was delayed because of COVID-19 administrative delays. *Id.* at ¶ 30. Moreover, once hiring could resume, FSB had to hire new analysts in smaller groups than initially planned to ensure that all new employees could be adequately trained remotely. *Id.* at ¶ 31. All of these decisions had a “real and substantial relation” to public health and safety, as they were intended to comply with safety guidelines designed to promote public safety and prevent the spread of COVID-19. However, these temporary procedures also had the incidental effect of increasing delays in processing FOID Card applications. To the extent that COVID-19 has affected the FSB’s operations, Defendants are entitled to deference under *Jacobson* and its progeny. Thus, Plaintiffs are unlikely to succeed on their Second and Fourteenth Amendment claims for this reason as well.

## **II. PLAINTIFFS HAVE NOT SHOWN THAT THEY WILL BE SUBJECT TO IRREPARABLE HARM WITHOUT JUDICIAL INTERVENTION.**

Plaintiffs have also failed to establish that they will suffer irreparable harm if the Court denies their motion. *Winter*, 555 U.S. at 2 (“possibility” of irreparable harm is not enough; plaintiffs must “demonstrate that irreparable injury is *likely* in the absence of an injunction”)

(emphasis in original). Plaintiffs’ lack of irreparable harm is especially stark given that, as discussed above, every Individual Plaintiff in this case has received their FOID Cards.

The claim of the only Individual Plaintiff, Marszalek, is moot, and, as such he is not subject to any irreparable harm. *See Ex. A* ¶ 3. Further, Plaintiffs have not established that any anonymous members have suffered any irreparable harm or that the Organizational Plaintiffs have suffered any irreparable harm. *Supra* at Section (I)(C). Instead, Plaintiffs’ motion relies on baseless fears to support their irreparable harm claim. Plaintiffs reference the “months of civil unrest and the unfortunate lawlessness that has accompanied it” during these “troubling times.” ECF No. 48 at 2, 14. Plaintiffs even go as far as to state that “no legal remedies will suffice to compensate those killed or injured” because their FOID Card application was not processed within thirty days. *Id.* at 19. These claims are speculative and cannot be used to show that Plaintiffs will suffer irreparable harm. *See Tranchita v. Callahan*, No. 20-cv-5956, 2020 WL 50349, at \*20 (N.D. Ill. Jan. 5, 2021) (“the irreparable harm must be ‘likely’ in the absence of an injunction, not just possible.”). Additionally, the Organizational Plaintiffs have not suffered irreparable harm, and any alleged injury to the ISRA through lost revenue from its firing range is not irreparable harm that warrants immediate injunctive relief.

Plaintiffs allege that any infringement upon their Second Amendment rights automatically constitutes irreparable harm. ECF No. 48 at 15. This argument is unpersuasive given that Plaintiffs are unable to articulate an actual harm that has resulted from the delayed processing of FOID Card applications and the importance of Defendants’ interest in accurately processing applications. It is well established that the possibility of irreparable harm is not sufficient to warrant a preliminary injunction. *Orr*, 953 F.3d at 502.

### III. THE BALANCE OF HARMS WEIGHS HEAVILY IN FAVOR OF THE STATE.

Finally, Plaintiffs request for a preliminary injunction also fails under the “balance of harms” portion of the analysis. To succeed here, Plaintiffs must establish that “the harm they would suffer without the injunction is greater than the harm that preliminary relief would inflict on the defendants.” *Mich v. U.S. Army Corps of Eng’g*, 667 F.3d 765, 769 (7th Cir. 2011). Because Plaintiffs’ claims are unlikely to succeed on the merits, Plaintiffs “must compensate for the lesser likelihood of prevailing by showing the balance of harms tips *decidedly* in favor of the movant.” *Boucher*, 134 F.3d at 826 n. 5 (emphasis in original). The court should also consider whether a preliminary injunction would cause harm to the public interest. *Platinum Home Mort. Corp. v. Platinum Fin. Group, Inc.*, 149 F.3d 772, 726 (7th Cir. 1998). Here, because the Defendants are officials of a state agency, Defendants’ interest is the public’s interest. *Nken v. Holder*, 556 U.S. 418, 435 (2009) (stating that when weighing public interest the factors merge when the Government is the opposing party). Moreover, Plaintiffs’ requested relief is not in the public interest because it would drastically interfere with the State’s ability to enforce its own laws and “any time a State is enjoined from effectuating statutes enacted by representative of its people, it suffers a form of irreparable injury.” *Proft v. Madigan*, 340 F. Supp. 3d 683, 695 (N.D. Ill. 2018) *quoting Maryland v. King*, 567 U.S. 1301, 1301 (2012).

Here, Defendants have implemented a policy to ensure that each FOID Card application is reviewed by the FSB to reduce the possibility of an unstable or dangerous individual obtaining a FOID Card and, therefore, a firearm. *See Ex. A*. The case of *Bolton v. Bryant*, 71 F. Supp. 3d 802 (N.D. Ill. Oct. 21, 2014) is instructive here. In *Bolton*, the plaintiff sought a preliminary injunction related to the denial of his application for a concealed carry license. *See id* at 807. The court recognized that when “considering a motion for a preliminary injunction, a court must pay particular attention to the ‘public consequences in employing the extraordinary remedy of

injunction.”” *Id.* at 818 (internal quotations omitted). The court found that “the harm to the public that would result from allowing dangerous individuals to carry concealed weapons is self-evident” and that “the costs of a wrong decision are substantial.” *Id.* The same reasoning should be applied here, as both *Bolton* and this case address the need for the State to make informed decisions as to who may possess a firearm.

Despite Plaintiffs’ decision to ignore the legitimate government interest in regulating the possession of firearms in Illinois, ECF No. 48 at 20, the balance of harms weighs heavily in favor of denying Plaintiffs’ motion for a preliminary injunction because the risk of an erroneously issued FOID Card significantly outweighs any speculative injury that unnamed individuals might suffer while waiting to have their FOID Card applications processed.

### **CONCLUSION**

Plaintiffs are unlikely to succeed on the merits of their claims and have failed to establish that they will suffer irreparable harm if this motion is denied. Moreover, Defendants’ significant interest in maintaining the integrity of the FOID Card system outweighs any speculative harm that Plaintiffs may suffer while waiting for their applications to be processed.

For the foregoing reasons, Defendants respectfully request that this Court deny Plaintiffs’ motion for preliminary injunction.

January 15, 2021

Respectfully submitted,

KWAME RAOUL  
Attorney General of Illinois

/s/ Mary A. Johnston

Mary A. Johnston  
Office of the Illinois Attorney General  
100 West Randolph Street  
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(312) 814-3739

*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

I certify that on January 15, 2021 I caused a copy of the foregoing *Defendants' Memorandum In Opposition To Plaintiffs' Motion for Preliminary Injunction* be filed electronically on CM/ECF, which will cause a notice of filing to be sent to all counsel of record who have entered appearances.

/s/ Mary A. Johnston



# **EXHIBIT A**

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

JAMES D. ROBINSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
BRENDAN KELLY, et al.,	)	
	)	No. 20-cv-4270
Defendants.	)	
<hr style="width: 40%; margin-left: 0;"/>	)	Hon. Mary M. Rowland
	)	
BRUCE DAVIDSON, et al.	)	
	)	
Plaintiff-Intervenors,	)	
	)	
v.	)	
	)	
BRENDAN KELLY, et al.,	)	
	)	
Defendants in Intervention.	)	

**DECLARATION OF LIEUTENANT GREGORY HACKER**

I, Lieutenant Gregory Hacker, state that I have personal knowledge of the facts set forth herein, that I am competent to testify and if called to testify would state as follows:

1. I am the acting Commander of the Firearms Services Bureau (FSB) of the Illinois State Police (ISP).
2. Part of my responsibilities include assisting with the supervision of the FSB including, but not limited to, implementing strategies to increase productivity, overseeing employee training, and overseeing the processing of Firearm Owners Identification Cards (FOID Cards).

3. John Marszalek applied for his FOID Card on May 4, 2020. His application was processed and approved on December 3, 2020, and was printed and placed in the mail on January 2, 2021.

***The FOID Card System and Application Processing***

4. When a new FOID Card application is received, it must go through an initial mental health check, where the applicant's information is checked against mental health admissions from the Illinois Department of Human Services. Any application that meets the mental health prohibitor is denied.

5. Next, the application goes into the "quality check" process. This is an initial administrative review where the application is reviewed by a FSB employee to confirm that the application is complete and that a picture is attached.

6. After the quality check is complete, the application moves to the next stage for background review.

7. A background review of the applicant's name is then run through the Law Enforcement Agency Data System (LEADS), which contains Illinois records; the National Instant Criminal Background System, which contains national records; National Criminal Information Center (NCIC); and the ISP Bureau of Identification Criminal History Record Index (CHRI) system.

8. If the applicant's information is not contained in any of these systems, the FOID Card application is approved.

9. Approximately 40-55% of FOID Card applications are approved at this stage without the need for additional review.

10. If the applicant's information registers (or "hits") in any of the background databases, the application must be reviewed by a FSB analyst.

11. If a FOID Card application moves to the analyst stage, the analyst must manually look up the applicant's information to determine if they are eligible for a FOID Card. The manual look-up stage has, at a minimum, 42 separate steps that must be completed before an application can be approved or denied.

12. This review includes the analyst cross-referencing any hits with the applicant's information. This manual review protects the integrity of the application process and helps ensure that FOID Cards are not wrongly approved or denied. For example, an individual may not have a felony record, but a more thorough review of arrest records may show that there was a domestic violence arrest where the applicant threatened self-harm and, as such, is not eligible for a FOID Card. Further, without this review there is a risk that an eligible applicant will not receive a FOID Card. For instance, if an applicant had the same name as an individual with a felony conviction, the FSB processes have the extra safeguard, in the form of analyst review, to ensure that an application is not erroneously denied.

13. In addition, applications of individuals who have successfully sought and been granted relief from firearms disabilities through the Director of ISP, designee, or the circuit court in their county of residence require manual review by an analyst to avoid erroneous denial of their FOID Card application.

14. If the FSB FOID Card application system removed the personal review by analysts, the integrity of the system would be undermined, resulting in ineligible, and potentially dangerous, individuals receiving FOID Cards, as well as eligible individuals being erroneously denied FOID Cards as discussed in Paragraphs 12-13 above.

15. If an analyst receives an application that requires the additional layer of review, the timeline of approval can vary significantly. In the most straightforward situations, such as an

applicant sharing their name with a convicted felon, the issue can be resolved in under an hour using the date of birth, photo identification, or address to determine whether or not the applicant is the same individual. However, if FSB must request records from another state, FSB cannot process the application until those records are received. Even with routine follow-up, it can take anywhere from days to months for FSB to receive the required out-of-state records.

***History of the FOID Card Backlog***

16. In 2020, FSB processed an average of 15,891 FOID Card applications each month.

17. In the last quarter of 2020, FSB processed an average of 24,452 new FOID Card applications. *See* FOID Processing Statistics, attached hereto as Exhibit 1<sup>1</sup>.

18. The FSB is also responsible for processing all FOID Card renewals, Concealed Carry License (“CCL”) applications, and Firearm Transfer Inquiry Program (“FTIP”) requests (background checks for firearms purchases).

19. For years, ISP has received thousands of FOID Card applications each month *See* Exhibit 1.

20. The FSB does not change when or how an application is processed due to pending litigation; none of the FOID Card applications for the individuals named in this lawsuit (including those named in the original complaint) were expedited by the FSB. As such, all applications will be processed as FSB is able and all eligible applicants will receive their FOID Cards in time.

21. In 2020, FSB received 328,012 new applications for FOID Cards. *See* Exhibit 1.

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<sup>1</sup> Available at <http://isp.illinois.gov/Foid/Statistics>. The “FOID Applications Received Historically” table shows all new and renewal FOID Card applications whereas the “FOID Processing Statistics” table only shows new FOID Card applications.

22. In March 2020, FSB received 36,762 new FOID Card applications, and in June 2020, FSB received a record-breaking 62,815 new FOID Card applications. *Id.*

23. FSB is actively working internally and with third-party contractors to review its internal procedures to increase efficiency and address the FOID Card application backlog.

24. In 2020, employees of the FSB worked over 18,000 hours of overtime to help address the FOID Card application backlog.

25. Currently, there are 22 analysts in the FSB who have completed all required training and can process FOID Card applications independently.

26. In early 2020, there was a plan to hire 30 new employees for the FSB in March and April 2020, and in early March 2020 three new analysts were hired.

27. It takes approximately six months to fully train an analyst and ensure that they are accurately processing applications.

### ***The Impact of COVID-19***

28. In March 2020, all FSB analysts were instructed to work from home due to the COVID-19 pandemic.

29. For approximately two weeks, the FSB was unable to process FOID Card applications while the ISP information technologies department worked to set up the required systems to allow the FSB employees to work remotely.

30. The planned hiring had to be delayed to allow for COVID-19 related administrative issues such as the temporary closure of Central Management Services, which processes hiring of State employees.

31. Further, once hiring could resume, FSB was unable to hire in large groups as planned because large groups of analysts cannot be effectively trained remotely. As such, FSB has been forced to hire in smaller groups to ensure that all new FSB analysts receive adequate training.

32. Since March 1, 2020, 19 new analysts have started work and there are four additional analysts starting on January 19, 2021.

33. Despite the significant increases in applications received and the delays to processing caused by COVID-19, FSB was able to significantly increase the number of applications processed through the second half of 2020. *Id.*

34. Starting in July 2020, FSB processed over 16,000 new FOID Card applications each month. *Id.*

35. In December 2020, FSB received 15,531 new applications but processed 26,942 new applications.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 15, 2021.

  
\_\_\_\_\_  
Lieutenant Gregory Hacker



# **EXHIBIT 1**

## FOID Applications Received Historically

	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
2015	15,110	14,119	15,808	12,817	10,273	9,100	10,540	10,525	11,141	11,855	16,560	25,324	163,172
2016	21,693	17,244	17,795	13,384	11,428	13,989	15,812	13,629	13,374	16,664	18,950	13,985	187,947
2017	18,342	15,978	16,849	13,754	11,896	11,636	10,596	13,231	12,043	13,451	15,351	13,522	166,649
2018	14,452	16,332	19,131	19,217	15,530	21,028	23,575	26,560	22,916	28,173	26,008	23,431	256,353
2019	28,391	23,923	27,313	23,323	21,795	25,359	24,565	28,136	30,169	26,367	25,858	23,977	309,176

## FOID Processing Statistics

Month/Year	Number of New FOID Applications Received	Number of New FOID Applications Approved	Number of New FOID Applications Denied	Number of FOID Cards Revoked	
Dec 2019	13,141	17,658	603	844	SUMMARY
Jan 2020	21,424	10,849	745	857	SUMMARY
Feb 2020	13,629	10,033	653	805	SUMMARY
Mar 2020	36,762	6,828	693	762	SUMMARY
April 2020	25,254	11,967	832	836	SUMMARY
May 2020	17,420	12,614	646	754	SUMMARY
June 2020	62,815	9,000	1,097	879	SUMMARY
July 2020	35,817	15,323	1,159	1,036	SUMMARY
Aug 2020	30,719	16,877	824	939	SUMMARY
Sept 2020	26,168	16,242	953	957	SUMMARY
Oct 2020	21,309	21,303	918	1,163	SUMMARY
Nov 2020	21,164	23,000	1,195	1,172	SUMMARY
Dec 2020	15,531	25,145	1,797	1,172	SUMMARY

## FTIP Transaction Statistics

Month/Year	Number of FTIP Transactions Received	Number of FTIP Transactions Denied	
Dec 2019	39,470	285	SUMMARY
Jan 2020	33,368	277	SUMMARY
Feb 2020	33,605	277	SUMMARY
Mar 2020	64,028	700	SUMMARY
April 2020	43,727	690	SUMMARY
May 2020	38,362	581	SUMMARY
June 2020	65,222	610	SUMMARY
July 2020	45,875	393	SUMMARY
Aug 2020	44,142	303	SUMMARY
Sept 2020	43,487	306	SUMMARY
Oct 2020	45,374	318	SUMMARY
Nov 2020	48,914	379	SUMMARY
Dec 2020	48,091	327	SUMMARY

## CCL Processing Statistics

Month/Year	Number of New Non-Fingerprint CCL Applications Received	Number of New Fingerprint CCL Applications Received	Number of New Non-Fingerprint CCL Applications Approved	Number of New Fingerprint CCL Applications Approved	Number of New Non-Fingerprint CCL Applications Denied	Number of New Fingerprint CCL Applications Denied	
Dec 2019	3,834	2,370	3,662	811	36	8	SUMMARY
Jan 2020	5,302	1,169	4,585	1,775	42	50	SUMMARY
Feb 2020	5,235	2,826	3,484	4,203	46	39	SUMMARY
Mar 2020	5,713	2,644	2,065	3,040	6	23	SUMMARY
April 2020	3,954	2,324	4,595	2,164	31	61	SUMMARY
May 2020	2,963	2,136	2,030	2,156	13	44	SUMMARY
June 2020	7,341	2,076	2,887	2,234	31	33	SUMMARY
July 2020	8,087	2,805	2,780	800	50	20	SUMMARY
Aug 2020	7,501	2,480	2,232	1,161	66	29	SUMMARY
Sept 2020	6,813	1,962	2,598	1,672	32	8	SUMMARY
Oct 2020	6,375	2,023	2,841	1,331	178	67	SUMMARY
Nov 2020	4,804	1,629	2,976	1,712	112	42	SUMMARY
Dec 2020	4,294	1,437	5,229	2,108	250	82	SUMMARY

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

JAMES D. ROBINSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
BRENDAN KELLY, et al.,	)	
	)	No. 20-cv-4270
Defendants.	)	
	)	Hon. Mary M. Rowland
<hr style="border: 0.5px solid black;"/>		
	)	
BRUCE DAVIDSON, et al.	)	
	)	
Plaintiff-Intervenors,	)	
	)	
v.	)	
	)	
BRENDAN KELLY, et al.,	)	
	)	
Defendants in Intervention .	)	

**NOTICE OF FILING**

**To: Attorneys of Record**

**PLEASE TAKE NOTICE** that on **January 15, 2021**, I caused to be filed with the Clerk of the United States District Court, Northern District of Illinois, Eastern Division, **DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**.

/s/ Mary A. Johnston  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing notice and referenced pleadings was served on all counsel of record via the Court's CM/ECF system on the **15th** day of **January, 2021**.

/s/ Mary A. Johnston  
MARY A. JOHNSTON