

**IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT OF ILLINOIS  
SANGAMON COUNTY, ILLINOIS  
CHANCERY DIVISION**

GUNS SAVE LIFE, INC.,	)	
	)	
Plaintiff,	)	
	)	Case No. <u>2019CH000180</u>
v.	)	
	)	
KWAME RAOUL, solely in his official	)	
capacity as Attorney General of the State of	)	
Illinois, BRENDAN KELLY, solely in his	)	
official capacity as Acting Director of the	)	
Illinois State Police,	)	
	)	
Defendants.	)	

**COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

NOW COMES Plaintiff, Guns Save Life, Inc., by and through its attorneys, and for its Complaint against Defendants, Kwame Raoul, solely in his official capacity as Attorney General of the State of Illinois, and Brendan Kelly, solely in his official capacity as Acting Director of the Illinois State Police, and states as follows.

1. This is an action to vindicate the fundamental right of law-abiding residents of the State of Illinois, guaranteed by the Second and Fourteenth Amendments to the U.S. Constitution and by Article I, Section 22 of the Illinois Constitution, to keep and bear arms for self-defense and other lawful purposes, as well as the fundamental right to equal protection of the laws guaranteed by the Fourteenth Amendment to the U.S. Constitution and Article I, Section 2 of the Illinois Constitution.

2. The State of Illinois unconstitutionally conditions the right of its citizens to possess arms in defense of hearth and home to the requirement that they pay the State for the privilege

of obtaining a Firearm Owner's Identification ("FOID") card. This requirement has no basis in the history and tradition of firearm regulation in this Nation, and it is unconstitutional to subject a person to a tax on the exercise of constitutional rights.

3. This unconstitutional regime has recently resulted in the disarmament of at least two members of Gun Save Life. But the FOID Act restricts the rights of all Guns Save Life members who reside in Illinois and are subjected to the FOID Act's recurring fees and must at all times abide by its requirements. Guns Save Life therefore brings this action to enjoin the State of Illinois from imposing this unconstitutional burden on the right to keep and bear arms.

#### PARTIES

4. Plaintiff Guns Save Life, Inc., is an independent not-for-profit organization dedicated to defending the Second Amendment rights of Illinois residents. Its principal place of business is in Savoy, Illinois. Guns Save Life has many members who reside in and possess firearms throughout the State of Illinois. These members are generally required by Illinois law to obtain a FOID card for a \$10 fee—and to renew that card every 10 years for another \$10 fee—to exercise their constitutional right to possess a firearm, even in the home. Guns Save Life members will continue to possess firearms in Illinois and, if permitted, would do so without maintaining and renewing a FOID card and paying the FOID fees.

5. Defendant Kwame Raoul is being sued solely in his official capacity as Attorney General of the State of Illinois, who is the chief legal officer of the State and who is charged with enforcing the statutes of the State of Illinois. *See* 15 ILL. COMP. STAT. 205/4.

6. Defendant Brendan F. Kelly is being sued solely in his official capacity as Acting Director of the Illinois State Police, which is charged with processing FOID applications, issuing FOID cards, and collecting the FOID fees. *See* 430 ILL. COMP. STAT. 65/5.

## JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction under ILL. CONST. art. 6, § 9.

8. Venue is proper in Sangamon County under 735 ILL. COMP. STAT. 5/2-101 because it is the County of residence of a defendant joined in good faith and because some part of the transactions out of which this action arise occurred in Sangamon County.

## FACTUAL ALLEGATIONS

### The FOID Act

9. The Firearm Owners Identification Card Act, codified at 430 ILL. COMP. STAT. 65/1 through 65/16-3 (“FOID Act”), requires law-abiding Illinois residents to obtain a FOID card to keep or bear a firearm anywhere, including within their own homes. Under the Act, “[n]o person may acquire or possess any firearm, stun gun, or taser within this State without having in his or her possession a [FOID] Card previously issued in his or her name by the Department of State Police.” *Id.* at 65/2(a)(1). Nor may any person possess firearm ammunition without a FOID card. *Id.* at 65/2(a)(2).

10. By “no person,” the Act primarily means “no Illinois resident,” since it provides many exemptions from the FOID card requirement to nonresidents—including, for example, nonresidents at firing ranges, nonresidents at firearms showings, “[n]onresidents whose firearms are unloaded and enclosed in a case,” and “[n]onresidents who are currently licensed or registered to possess a firearm in their resident state.” *Id.* at 65/2(b)(7)–(10).

11. Thus, to possess a firearm and ammunition in the home—“where the need for defense of self, family, and property is most acute,” *District of Columbia v. Heller*, 554 U.S. 570, 628 (2008)—a law-abiding Illinois resident must also have a FOID card “in his or her

possession.” 430 ILL. COMP. STAT. 65/2(a)(1). Illinois residents likewise must have a FOID card to obtain an Illinois Concealed Carry License. *See id.* at 66/25(2).

12. To obtain a FOID card, one must complete an application and furnish the applicant’s personal information (e.g., age and address), driver’s license or Illinois state identification card number, and personal photo. *See id.* at 65/4. The applicant also must pay a \$10 application fee, *see id.* at 65/5(a), and a \$1 service fee, *see Frequently Asked Questions*, ILL. STATE POLICE: FIREARMS SERVS. BUREAU, <http://bit.ly/2KX5Jr3> (“Exhibit A”). Of the application fee, \$6 is deposited in the Wildlife and Fish Fund in the State Treasury, \$1 is deposited in the State Police Services Fund, and \$3 is deposited in the State Police Firearm Services Fund, the fund specifically designated for financing the FOID program. *See* 430 ILL. COMP. STAT. 65/5(a); 20 ILL. COMP. STAT. 2605/2605-595.

13. The applicant must then wait up to 30 days—and, on information and belief, often more—to receive a FOID card. *See* 430 ILL. COMP. STAT. 65/5(a); William G. Holland, *Management Audit of the Department of State Police’s Administration of the Firearm Owner’s Identification Act* at i, OFFICE OF THE ILL. AUDITOR GEN. (2012), <http://bit.ly/2VoQRWC> (“2012 FOID Audit”) (“Exhibit B”).

14. If a FOID card holder changes addresses or legal names, the holder must promptly notify the State police and obtain a new card. The statutory cost of that card is \$5. *See* 430 ILL. COMP. STAT. 65/13.2.

15. If a FOID card is lost, destroyed, or stolen, the statutory cost of a replacement card is \$5. *See id.* On information and belief, FOID cards wear quickly and must frequently be replaced. *See* 2012 FOID Audit at 10.

16. FOID cards are valid for 10 years. *See* 430 ILL. COMP. STAT. 65/7. To renew a FOID card, the holder must submit a renewal application and another \$10 statutory fee. *See id.* at 65/5(b).

17. It is unlawful to possess a firearm without a FOID card and doing so subjects a person to criminal penalties varying in severity from a petty offense to a felony, depending on the circumstances of the offense. *Id.* at 65/14.

### **The FOID Act Infringes on the Rights of Guns Save Life Members**

18. Members of Guns Save Life are subject to the FOID Act's restrictions and have acquired and maintained FOID cards for the sole purpose of complying with the law. Members' FOID cards expire, and therefore must be renewed, on a frequent, regular basis. But for the FOID Act and its requirements, Guns Save Life members would not be subject to these restrictions on their right to possess firearms.

19. The disarmament of two Guns Save Life members illustrates just how thoroughly the FOID Act infringes on that right. Harold Meyer, a 74-year-old Guns Save Life member and resident of Cook County, has never been charged with or convicted of any crime, subjected to any protective order, or diagnosed with or treated for any mental illness. He used to enjoy target shooting once a week and possessed firearms for that purpose, and he kept those firearms for self-defense in the home. In compliance with Illinois law, he also held a FOID card. Recently, when that card was set to expire, he dutifully applied to renew it. But in a January 29, 2019 letter, the State police denied his application, and revoked his FOID card, on the ground that Mr. Meyer had been convicted of battery in Cook County in 1983. *See* Letter from Ill. State Police, Firearm Servs. Bureau, to Harold Meyer (Jan. 29, 2019) ("Exhibit C"). Apparently the police did not notice this conviction when Mr. Meyer had first applied for a FOID card. The

reason is simple: Mr. Meyer has no such conviction. Nevertheless, the letter instructed him to surrender his FOID card, to dispossess himself of his firearms, and to complete a Firearm Disposition Record disclosing the make, model, and serial numbers of his firearms and what he had done with them—all within 48 hours. *See id.* Mr. Meyer complied, transferring his firearms to his wife (who has a FOID card) and travelling to the police station to document the transfer and to surrender his FOID card. He also requested the record of his supposed conviction from the Circuit Court of Cook County. But in a February 27, 2019 letter, the Clerk of the Court indicated that the record could not be found and likely had been destroyed. *See* Letter from Dorothy Brown, Clerk of the Circuit Court of Cook Cty., to Harold Meyer (Feb. 27, 2019) (“Exhibit D”). Thus, the FOID Act has allowed a police error to deprive Mr. Meyer entirely of a constitutional right.

20. Another Guns Save Life member—an 84-year-old, law-abiding Marine veteran—has also been deprived of his fundamental right to keep firearms in his own home as a result of the FOID Act. When, unbeknownst to him, his FOID card expired earlier this year, two armed police officers came to his house and confiscated his FOID card and firearms. His disarmament has left him without his principal means of self-defense.

**COUNT I**  
**(U.S. Constitution Amendments II and XIV, 42 U.S.C. § 1983)**

21. Plaintiff restates and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

22. The Second Amendment to the U.S. Constitution provides that “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” U.S. CONST. amend. II. This Amendment codifies a preexisting

individual right to keep and bear arms for self-defense and other lawful purposes, which is applicable to the states through the Fourteenth Amendment.

23. The FOID Act places an unconstitutional tax on the exercise of this right. Law-abiding citizens generally may not “be required to pay a tax for the exercise of . . . a high constitutional privilege.” *Follett v. Town of McCormick, S.C.*, 321 U.S. 573, 578 (1944). But that is exactly what the FOID Act requires: law-abiding citizens must pay multiple fees simply to possess a firearm and ammunition for a firearm, even in the home. That requirement is not narrowly tailored to a compelling government interest, since whatever public-safety interest the FOID Act might serve can be served in a less costly and burdensome way. Nor are FOID fees used to defray the administration costs of the FOID program, since a majority of the initial FOID application fee goes to a wholly unrelated fund. The Act thus targets and discourages conduct at the heart of the Second Amendment, reducing the freedom and ability of law-abiding citizens to defend themselves. It is unconstitutional on its face.

24. The FOID Act is also unconstitutional on its face because it directly burdens the exercise of Second Amendment rights. Ownership licenses with attendant fees have no basis in the history and tradition of firearms regulation in this Nation, and, accordingly, there are no “historical justifications” that support their validity. *Heller*, 554 U.S. at 635. And this regulation perversely leaves law-abiding citizens less able to procure the means to defend against violent attackers. Moreover, it is impossible both to exercise Second Amendment rights and to comply with the FOID Act in the home, where Second Amendment rights are most vital, since the Act has been interpreted to require one to have a FOID card on his or her person whenever he or she is in *constructive* possession of a firearm. Under this reading a person who has a firearm in the

home must have a FOID card on his or her person at all times including, for example, when taking a shower.

25. For these reasons, the FOID Act is invalid and cannot constitutionally be applied to members of Guns Save Life or anyone else in the State of Illinois.

WHEREFORE, Plaintiff prays that this Honorable Court:

- A. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701, that the FOID Act violates the Second and Fourteenth Amendments to the United States Constitution;
- B. Enter a preliminary and permanent injunction enjoining the Defendants and their officers, agents, and employees from enforcing the FOID Act;
- C. Enter an Order awarding Plaintiff its costs of suit, including attorneys' fees and costs, pursuant to 42 U.S.C. §§ 1983 and 1988; and
- D. Enter an Order providing any other and further relief that the Court deems just and appropriate under the circumstances.

**COUNT II**  
**(Illinois Constitution, Article I, Section 22)**

26. Plaintiff restates and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

27. Article I, Section 22 of the Illinois Constitution provides that, “[s]ubject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.”

28. The FOID Act places an unconstitutional tax on the exercise of this right. Law-abiding citizens generally may not “be required to pay a tax for the exercise of . . . a high constitutional privilege.” *Follett*, 321 U.S. at 578; accord *Boynton v. Kusper*, 112 Ill. 2d 356,



369–70 (1986). But that is exactly what the FOID Act requires: law-abiding citizens must pay multiple fees simply to possess a firearm and ammunition for a firearm, even in the home. That requirement is not narrowly tailored to a compelling government interest, since whatever public-safety interest the FOID Act might serve can be served in a less costly and burdensome way. Nor are FOID fees used to defray the administration costs of the FOID program, since a majority of the initial FOID application fee goes to a wholly unrelated fund. The Act thus targets and discourages conduct at the heart of Article I, Section 22, reducing the freedom and ability of law-abiding citizens to defend themselves. It is unconstitutional on its face.

29. The FOID Act is also unconstitutional on its face because it directly burdens the right to possess a firearm. Ownership licenses with attendant fees have no basis in the history and tradition of firearms regulation in this Nation, and, accordingly, there are no historical justifications that support their validity. This regulation perversely leaves law-abiding citizens less able to procure the means to defend against violent attackers; it is impossible both to exercise the right to keep and bear arms and to comply with the FOID Act, since the Act has been interpreted to require one to have a FOID card on his or her person whenever he or she is in *constructive* possession of a firearm. Under this reading a person who has a firearm in the home must have a FOID card on his or her person, for example, when taking a shower.

30. For these reasons, the FOID Act is invalid and cannot constitutionally be applied to members of Guns Save Life or anyone else in the State of Illinois.

WHEREFORE, Plaintiff prays that this Honorable Court:

- A. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701, that the FOID Act violates Article I, Section 22 of the Illinois Constitution of 1970;

- B. Enter a preliminary and permanent injunction enjoining the Defendants and their officers, agents, and employees from enforcing the FOID Act;
- C. Enter an Order awarding Plaintiff its costs of suit, including attorneys' fees and costs, pursuant to 740 ILL. COMP. STAT. 23/5(c)(2); and
- D. Enter an Order providing any other and further relief that the Court deems just and appropriate under the circumstances.

**COUNT III**  
**(U.S. Constitution Amendment XIV, 42 U.S.C. § 1983)**

31. Plaintiff restates and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

32. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides that “[n]o State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. CONST. amend. XIV, § 1.

33. The bedrock principle of equal protection is that no statute may place people into “different classes on the basis of criteria wholly unrelated to the objective of that statute.” *Reed v. Reed*, 404 U.S. 71, 76 (1971). Where, as here, the classification implicates a fundamental right, the classification must be “given the most exacting scrutiny.” *Clark v. Jeter*, 486 U.S. 456, 461 (1988).

34. The object of the FOID Act is “to promote and protect the health, safety and welfare of the public.” 430 ILL. COMP. STAT. 65/1.

35. The FOID Act places people into different classes—namely, those who may and those who may not exercise their fundamental, Second Amendment right to possess a firearm and ammunition for a firearm—based on criteria wholly unrelated to public safety. Whether or

not one pays the FOID fees has no bearing on his ability to possess a gun safely. This arbitrary classification renders the Act unconstitutional on its face.

36. For these reasons, the FOID Act is invalid and cannot constitutionally be applied to members of Guns Save Life or anyone else in the State of Illinois.

WHEREFORE, Plaintiff prays that this Honorable Court:

- A. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701, that the FOID Act violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution;
- B. Enter a preliminary and permanent injunction enjoining the Defendants and their officers, agents, and employees from enforcing the FOID Act;
- C. Enter an Order awarding Plaintiff its costs of suit, including attorneys' fees and costs, pursuant to 42 U.S.C. §§ 1983 and 1988; and
- D. Enter an Order providing any other and further relief that the Court deems just and appropriate under the circumstances.

**COUNT IV**  
**(Illinois Constitution, Article I, Section 2)**

37. Plaintiff restates and re-alleges the allegations of the preceding paragraphs as if fully set forth herein.

38. Article I, Section 2 of the Illinois Constitution provides that “[n]o person shall . . . be denied the equal protection of the laws.” ILL. CONST. art. I, § 2.

39. Article I, Section 2 prohibits the State from drawing classifications “on the basis of criteria wholly unrelated to the legislation’s purpose.” *In re Destiny P.*, 2017 IL 120796, ¶ 14,

102 N.E.3d 149, 155. Classifications “affecting fundamental rights” are subject to strict scrutiny. *McLean v. Dep’t of Revenue of the State of Ill.*, 184 Ill. 2d 341, 354 (1998).

40. The object of the FOID Act is “to promote and protect the health, safety and welfare of the public.” 430 ILL. COMP. STAT. 65/1.

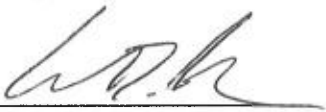
41. The FOID Act places people into different classes—namely, those who may and those who may not exercise their fundamental, Article I, Section 22 right to possess a firearm and ammunition for a firearm—based on criteria wholly unrelated to public safety. Whether or not one pays the FOID fees has no bearing on his ability to possess a gun safely. This arbitrary classification renders the Act unconstitutional on its face.

42. For these reasons, the FOID Act is invalid and cannot constitutionally be applied to members of Guns Save Life or anyone else in the State of Illinois.

WHEREFORE, Plaintiff prays that this Honorable Court:

- A. Enter a declaratory judgment, pursuant to 735 ILL. COMP. STAT. 5/2-701, that the FOID Act violates Article I, Section 2 of the Illinois Constitution of 1970;
- B. Enter a preliminary and permanent injunction enjoining the Defendants and their officers, agents, and employees from enforcing the FOID Act;
- C. Enter an Order awarding Plaintiff its costs of suit, including attorneys’ fees and costs, pursuant to 740 ILL. COMP. STAT. 23/5(c)(2); and
- D. Enter an Order providing any other and further relief that the Court deems just and appropriate under the circumstances.

Respectfully Submitted:

By:   
Christian D. Ambler  
One of the Plaintiff's Attorneys

Christian D. Ambler (ARDC No. 6228749)  
STONE & JOHNSON, CHTD.  
111 West Washington Street  
Suite 1800  
Chicago, Illinois 60602  
(312) 332-5656  
cambler@stonejohnsonlaw.com

David H. Thompson (ARDC No. 6316017)\*  
Peter A. Patterson (ARDC No. 6316019)\*  
COOPER & KIRK, PLLC  
1523 New Hampshire Ave., N.W.  
Washington, D.C. 20036  
(202) 220-9600  
dthompson@cooperkirk.com  
ppatterson@cooperkirk.com

\*Appearance entered pursuant to Ill. S. Ct. Rule 707