

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION**

ELLEN MISHAGA,)	
)	
Plaintiff,	)	No. 10-cv-03187-MPM-CHE
)	
v.)	
)	
HIRAM GRAU, Director of the Illinois	)	PLAINTIFF’S MOTION FOR SUMMARY
Department of State Police; MICHAEL	)	JUDGMENT
W. VORREYER, Master Sergeant,)	
Illinois Department of State Police,)	
)	
Defendants.)	
)	

COMES NOW Plaintiff, Ellen Mishaga, by and through undersigned counsel, and moves pursuant to Fed. R. Civ. P. 56, for summary judgment because Plaintiff is entitled to judgment as a matter of law with respect to each of her claims. Support for this Motion is provided below in a Memorandum in Support of Plaintiff’s Motion for Summary Judgment.

WHEREFORE, Plaintiff respectfully requests that summary judgment be entered in her favor with respect to each of her claims.

DATED this 3rd day of October 2011.

Respectfully Submitted:

/s/ James M. Manley
James M. Manley, Esq.
Mountain States Legal Foundation
2596 South Lewis Way
Lakewood, Colorado 80227
(303) 292-2021
(303) 292-1980 (facsimile)
jmanley@mountainstateslegal.com

Attorney for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION**

ELLEN MISHAGA,)	
)	
Plaintiff,	)	No. 10-cv-03187-MPM-CHE
)	
v.)	
)	
HIRAM GRAU, Director of the Illinois Department of State Police; MICHAEL W. VORREYER, Master Sergeant, Illinois Department of State Police,	)	MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT
)	
Defendants.)	
)	

TABLE OF CONTENTS

INTRODUCTION	2
UNDISPUTED MATERIAL FACTS	4
ARGUMENT	6
I. STANDARD OF REVIEW	6
II. ILLINOIS LAW PROHIBITS POSSESSION OF FUNCTIONAL FIREARMS FOR SELF-DEFENSE WITHOUT A FOID OR AN OUT-OF-STATE LICENSE.....	7
III. MS. MISHAGA DOES NOT POSSESS AN OUT-OF-STATE LICENSE AND SHE IS INELIGIBLE FOR A FOID BECAUSE SHE IS NOT A RESIDENT OF ILLINOIS	9
IV. MS. MISHAGA IS ENTITLED TO SUMMARY JUDGMENT ON HER FIRST CLAIM FOR RELIEF BECAUSE THE FOID ACT DENIES THE RIGHT TO BEAR FUNCTIONAL FIREARMS IN THE HOME, IN VIOLATION OF THE SECOND AMENDMENT TO THE UNITED STATES CONSTITUTION.....	10
A. The FOID Act Denies Ms. Mishaga The Constitutional Right To Possess A Functional Firearm For Self-Defense In Her Friends’ Illinois Home	10

B.	No FOID Act Exceptions Apply To Ms. Mishaga’s Claims	12
V.	MS. MISHAGA IS ENTITLED TO SUMMARY JUDGMENT ON HER SECOND CLAIM FOR RELIEF BECAUSE THE FOID ACT IMPAIRS INTERSTATE TRAVEL IN VIOLATION OF ARTICLE IV AND THE FOURTEENTH AMENDMENT	14
A.	The FOID Act Acknowledges The Right Of Illinois Residents To Possess Functional Firearms, But Denies That Right To Nonresidents	16
B.	There Is No Substantial Reason For The FOID Act To Discriminate Against Nonresidents	17
	CONCLUSION	18

INTRODUCTION

Summary judgment is appropriate under Federal Rule of Civil Procedure 56(c) if the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any, show there is no genuine issue as to any material facts and that the moving party is entitled to judgment as a matter of law. There are no genuine issues of material fact regarding whether Illinois law prohibits Ms. Mishaga from possessing a functional firearm for self-defense when she is an overnight guest in her friends’ Illinois home because she is not a resident of Illinois. For the reasons demonstrated herein, Ms. Mishaga is therefore entitled to entry of summary judgment.

Illinois law generally prohibits possession of firearms and ammunition in Illinois, unless a person is also in possession of a Firearms Owner Identification card (“FOID”). Ms. Mishaga meets all of the qualifications for a FOID, except that she does not possess an Illinois driver’s license or Illinois Identification Card. Ms. Mishaga has been denied a FOID on two occasions because she does not possess an Illinois driver’s license or Illinois Identification Card. Moreover, Ms. Mishaga is not exempt from the FOID Act, because she is not licensed or

registered to possess a firearm in the home in her resident state (nor is such a license available in her resident state). Therefore, Illinois law prohibits her from lawfully possessing a functional firearm for self-defense when she is a guest in her friends' Illinois home.

This prohibition is unconstitutional. It deprives her of the right to keep and bear arms for self-defense guaranteed by the Second and Fourteenth Amendments to the United States Constitution, and the right to travel guaranteed by Article IV and the Fourteenth Amendment.

Ms. Mishaga is entitled to summary judgment on her First Claim for Relief because the FOID Act denies the right to bear functional firearms in the home, in violation of the Second Amendment, which guarantees individuals a fundamental right to possess functional firearms for purposes of self-defense. As an overnight guest in her friends' Illinois home, Ms. Mishaga has a legitimate expectation of personal security and she has the same Second Amendment right to possess and use firearms that she has in her own home. Ms. Mishaga's Illinois host wants Ms. Mishaga to be able to exercise her Second Amendment rights when she is a guest in his home, and to that end he has given her permission to access his firearms for purposes of self-defense. The FOID Act, however, prevents Ms. Mishaga from lawfully possessing a functional firearm for self-defense in her friends' Illinois home.

Additionally, Ms. Mishaga is entitled to summary judgment on her Second Claim for Relief because the FOID act impairs interstate travel in violation of Article IV and the Fourteenth Amendment. Both Article IV and the Fourteenth Amendment prohibit discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. The FOID Act plainly discriminates on the basis of residency because nonresidents are ineligible for a FOID. Moreover, there is not a

substantial reason for the State to limit FOIDs to Illinois residents, because nonresidents do not constitute a peculiar source of the evil at which the Act is aimed.

Therefore, this Court should grant summary judgment in favor of Ms. Mishaga as to both of her claims for relief and permanently enjoin Defendants from enforcing the FOID Act's prohibition against nonresidents possessing functional firearms for self-defense in Illinois homes.

UNDISPUTED MATERIAL FACTS

For purposes of Plaintiff's Motion for Summary Judgment only, Ms. Mishaga submits that the following material facts are undisputed.

1. Ms. Mishaga is a citizen of the United States and a resident of Ohio. First Amended Complaint [docket no. 13] (hereinafter "Compl.") ¶ 4.

2. Several times each year, Ms. Mishaga and her husband travel to Illinois to visit their friends, James and Nancy Telzrow. Telzrow Declaration ¶ 6.¹ When they make these trips, they stay in the Telzrows' home overnight. *Id.* Ms. Mishaga has concrete plans to make overnight trips to Illinois to visit her friends in the future and she has a credible fear of arrest, prosecution, incarceration, and/or fine if she were to possess a functional firearm for self-defense while an overnight guest in her friends' Illinois home. Compl. ¶ 5; Deposition of Ellen Mishaga ("Mishaga Dep.") at 19–20.²

3. Defendant, Hiram Grau, is the Director of the Illinois Department of State Police. Defendant Grau is responsible for issuing FOIDs. Compl. ¶ 6; Defendant Grau's Answer to the Amended Complaint and Affirmative Defenses [docket no. 17] (hereinafter "Grau Answer") ¶ 6.

4. Defendant, Michael W. Vorreyer, is Master Sergeant, Illinois Department of State Police. Defendant Vorreyer has responsibility for the FOID Card Unit of the Illinois Department

¹ The Telzrow Declaration is attached hereto as Exhibit 1.

² Relevant portions of Ms. Mishaga's deposition are attached hereto as Exhibit 2.

of State Police, subject to the supervision of Director Grau. Compl. ¶ 7; Defendant Vorreyer's Answer to the Amended Complaint and Affirmative Defenses [docket no. 16] (hereinafter "Vorreyer Answer") ¶ 7.

5. An applicant for a FOID must possess either an Illinois driver's license number or an Illinois Identification Card number. Compl. ¶ 19; Deposition of Master Sergeant Michael Vorreyer ("Vorreyer Dep.") at 33, 36.³

6. On March 27, 2010, Ms. Mishaga submitted an application for a FOID. Compl. ¶ 26; Grau Answer ¶ 26; Vorreyer Answer ¶ 26; Initial Disclosures of Plaintiff Ellen Mishaga (hereinafter "Plaintiff's Initial Disclosures"), Bates No. 1.⁴

7. On or about April 30, 2010, Defendants denied Ms. Mishaga's FOID application because, "No Illinois driver's license number or state identification number provided." Compl. ¶ 27; Grau Answer ¶ 27; Vorreyer Answer ¶ 27; Plaintiff's Initial Disclosures, Bates No. 3; Vorreyer Dep. at 33, 36.

8. On or about May 17, 2010, Ms. Mishaga submitted a second application for a FOID. Compl. ¶ 28; Grau Answer ¶ 28; Vorreyer Answer ¶ 28; Plaintiff's Initial Disclosures, Bates Nos. 5-7.

9. On or about June 14, 2010, Defendants denied Ms. Mishaga's second FOID application because, "Due to Illinois state law, you must have a valid IL driver's license or IL state ID in order to be eligible for an IL FOID card." Compl. ¶ 29; Grau Answer ¶ 29; Vorreyer Answer ¶ 29; Plaintiff's Initial Disclosures, Bates No. 8; Vorreyer Dep. at 33, 36.

³ Relevant portions of Master Sergeant Vorreyer's deposition are attached hereto as Exhibit 3.

⁴ Plaintiff's Initial Disclosures are attached hereto as Exhibit 4.

10. Ms. Mishaga meets all of the qualifications for a FOID card, except that she does not possess an Illinois driver's license or Illinois Identification Card. 430 ILCS 65/4; Mishaga Dep. at 12–13.

11. Illinois law prohibits Ms. Mishaga from possessing a functional firearm for self-defense when she is an overnight guest in her friends' Illinois home. Compl. ¶ 17; 430 ILCS 65/2; 65/4; 65/14.

12. Ms. Mishaga does not possess a concealed carry permit, nor is she licensed or registered to possess a firearm in any other way in her resident State of Ohio. Mishaga Dep. at 14–17.

13. Ms. Mishaga and her husband lawfully own firearms in their resident State of Ohio. Compl. ¶ 24; Mishaga Dep. at 13–14.

14. Mr. Telzrow wants Ms. Mishaga to be able to lawfully possess a firearm for self-defense when she is a guest in his home. Telzrow Declaration ¶ 7.

15. Mr. Telzrow possesses a valid FOID. Telzrow Declaration ¶ 3.

16. Mr. Telzrow lawfully possesses firearms in his Illinois home for hunting and self-defense purposes, to which Ms. Mishaga has access when she is a guest. Compl. ¶ 25; Telzrow Declaration ¶¶ 4, 7.

ARGUMENT

I. STANDARD OF REVIEW.

Summary judgment is appropriate under Federal Rule of Civil Procedure 56(c) if the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, if any, show there is no genuine issue as to any material facts and that the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). When

reviewing a motion for summary judgment, courts review the pleadings and the documentary evidence in the light most favorable to the nonmoving party and draw all legitimate inferences and resolve all doubts in favor of that party. *Keri v. Board of Trustees of Purdue University*, 458 F.3d 620, 628 (7th Cir. 2006). There are no genuine issues of material fact regarding whether Illinois law prohibits Ms. Mishaga from possessing a functional firearm for self-defense when she is an overnight guest in her friends' Illinois home because she is not a resident of Illinois. For the reasons demonstrated below, Ms. Mishaga is therefore entitled to entry of summary judgment as a matter of law pursuant to Federal Rule of Civil Procedure 56 with respect to each of her claims.

II. ILLINOIS LAW PROHIBITS POSSESSION OF FUNCTIONAL FIREARMS FOR SELF-DEFENSE WITHOUT A FOID OR AN OUT-OF-STATE LICENSE.

The FOID Act generally prohibits possession of firearms and ammunition in Illinois, unless a person is also in possession of a FOID issued to that person by the Illinois Department of State Police. 430 ILCS 65/2(a) (“No person may acquire or possess any firearm . . . within this State without having in his or her possession a Firearm Owner's Identification Card”); *Mishaga v. Monken*, 753 F. Supp. 2d 750, 753 (C.D. Ill. 2010) (denying motion to dismiss for failure to state a claim). In order to obtain a FOID a person must submit an application attesting that the person:

- (1) is more than 21 years old (or has the permission of a parent or guardian if younger);
- (2) has not been convicted of a felony;
- (3) is not addicted to narcotics;
- (4) has not been a patient in a mental institution within the past 5 years;
- (5) has not been adjudicated as a mental defective;
- (6) is not mentally retarded;
- (7) is not an alien who is unlawfully present in the United States;

- (8) is not subject to an existing order of protection prohibiting him or her from possessing a firearm;
- (9) has not been convicted within the past 5 years of battery, assault, aggravated assault, or violation of an order of protection, in which a firearm was used or possessed;
- (10) has not been convicted within the past 5 years of domestic battery;
- (11) is not an alien who has been admitted to the United States under a non-immigrant visa;
- (12) is not an adult who had been adjudicated a delinquent minor for the commission of an offense that if committed by an adult would be a felony.

430 ILCS 65/4. Ms. Mishaga meets all of these qualifications. Undisputed Material Facts (“UMF”) ¶ 10. If over eighteen years old, the applicant must also provide an Illinois driver’s license number or Illinois Identification Card number. 430 ILCS 65/4; UMF ¶ 5.

Nonresidents are exempt from many of the FOID Act restrictions when hunting, target shooting, or if they are “licensed or registered to possess a firearm in their resident state”; however, a nonresident without a FOID cannot otherwise possess a functional firearm. 430 ILCS 65/2(b)(5), (7)–(9); *People v. Holmes*, 948 N.E.2d 617, 624 (Ill. 2011) (“[A] valid permit or license from another state can substitute for the FOID card requirement . . .”). Unless a nonresident possesses an out-of-state license or permit, 430 ILCS 65/2(b)(10), none of the FOID Act exceptions allows that individual to possess functional firearms for self-defense in the home of an Illinois resident. *Mishaga*, 753 F. Supp. 2d at 753.

Possessing firearms or ammunition without a FOID or with an expired FOID is a misdemeanor, although a second or subsequent violation is a felony. 430 ILCS 65/14. It is also a felony to possess firearms or ammunition if a person is ineligible for a FOID, even if a person possessed a FOID issued before he became ineligible. *Id.* The FOID Act contains no self-defense exceptions. *See* 430 ILCS 65/2(b).

III. MS. MISHAGA DOES NOT POSSESS AN OUT-OF-STATE LICENSE AND SHE IS INELIGIBLE FOR A FOID BECAUSE SHE IS NOT A RESIDENT OF ILLINOIS.

Ms. Mishaga has twice been denied a FOID because, as an Ohio resident, she does not possess an Illinois driver's license number or Illinois Identification Card number. UMF ¶¶ 7, 9. In response to her first FOID application, Defendants informed Ms. Mishaga that her application was denied because, "No Illinois driver's license number or state identification number provided." UMF ¶ 7. Ms. Mishaga resubmitted her application and included a letter to the Illinois State Police, explaining that she did not possess an Illinois driver's license or Illinois Identification Card. UMF ¶ 8. Defendants nevertheless denied Ms. Mishaga's second application, stating, "Due to Illinois state law, you must have a valid IL driver's license or IL state ID in order to be eligible for an IL FOID card." UMF ¶ 9.

Ms. Mishaga and her husband lawfully own firearms in their resident State of Ohio. UMF ¶ 13. However, Ms. Mishaga is neither "licensed" nor "registered" to possess a firearm, because in Ohio no scheme exists to license or register possession of firearms in the home. UMF ¶ 12. In fact, Ohio law forbids such licensing or registration. *See* Ohio Rev. Code § 9.68(A) ("[A] person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm, part of a firearm, its components, and its ammunition."); *Cleveland v. State*, 942 N.E.2d 370, 374 (Ohio 2010); *Ohioans for Concealed Carry, Inc. v. Clyde*, 896 N.E.2d 967, 974 (Ohio 2008).

Ms. Mishaga does not possess a concealed carry permit. UMF ¶ 12. Ohio issues licenses to carry concealed firearms outside the home, Ohio Rev. Code § 2923.12(C)(2), however there is no such license available for possession of firearms within the home. *See* Ohio Rev. Code § 2923.12(C)(1)(d). Accordingly, none of the exceptions to the FOID Act allows Ms. Mishaga to

possess a functional firearm for self-defense within an Illinois home. Thus, because Defendants refuse to issue Ms. Mishaga a FOID, she is unable to lawfully possess a functional firearm for self-defense when she is a guest in her friends' Illinois home.

IV. MS. MISHAGA IS ENTITLED TO SUMMARY JUDGMENT ON HER FIRST CLAIM FOR RELIEF BECAUSE THE FOID ACT DENIES THE RIGHT TO BEAR FUNCTIONAL FIREARMS IN THE HOME, IN VIOLATION OF THE SECOND AMENDMENT TO THE UNITED STATES CONSTITUTION.

The Second Amendment guarantees individuals a fundamental right to possess functional firearms—including handguns, rifles, and shotguns—for purposes of self-defense. *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008). This guarantee extends to, *inter alia*, the right to possess and use firearms in a home for personal security. *Id.* The Fourteenth Amendment makes the Second Amendment right to bear arms applicable to the states. *McDonald v. City of Chicago*, 561 U.S. ___, 130 S.Ct. 3020, 3026 (2010).

A. The FOID Act Denies Ms. Mishaga The Constitutional Right To Possess A Functional Firearm For Self-Defense In Her Friends' Illinois Home.

As an overnight guest in her friends' Illinois home, Ms. Mishaga has a legitimate expectation of personal security and she has the same Second Amendment right to possess and use firearms that she has in her own home. *Cf. Minnesota v. Olson*, 495 U.S. 91, 99 (1990) (recognizing expectation of privacy for overnight guest in private home); *United States v. Jeffers*, 342 U.S. 48, 51–52 (1951) (recognizing expectation of privacy for hotel guest). Here, Ms. Mishaga's interest in personal security is coextensive and indistinguishable from that of her host, Mr. Telzrow. UMF ¶ 14. Mr. Telzrow wants Ms. Mishaga to be able to exercise her Second Amendment rights when she is a guest in his home, and to that end he has given her permission to access his firearms for purposes of self-defense. *Id.*

It is well established that constitutional rights, like the right to keep and bear arms guaranteed by the Second Amendment, or the right to be free from unreasonable searches and seizures guaranteed by the Fourth Amendment, do not lose their force and effect outside a person's permanent residence. For example, in *Olson*, the Supreme Court ruled that an overnight guest's expectation of privacy and security allows the guest to claim the Fourth Amendment's protection against warrantless arrest in her host's home. 495 U.S. at 99–100. The Court's inquiry in *Olson* focused on the similarity between one's own home and the home of another:

From the overnight guest's perspective, he seeks shelter in another's home precisely because it provides him with privacy, a place where he and his possessions will not be disturbed by anyone but his host and those his host allows inside. We are at our most vulnerable when we are asleep because we cannot monitor our own safety or the security of our belongings. It is for this reason that, although we may spend all day in public places, when we cannot sleep in our own home we seek out another private place to sleep, whether it be a hotel room, or the home of a friend.

Id. at 99. Here, Mr. Telzrow has explicitly authorized Ms. Mishaga to keep and bear arms in his home, in order to exclude individuals from the home and otherwise maintain the security of the home. UMF ¶ 14. Thus, Ms. Mishaga's privacy and security interests are indistinguishable from those of Mr. Telzrow. *See Olson*, 495 U.S. at 99 (“[W]hen the host is away or asleep, the guest will have a measure of control over the premises.”). Because Mr. Telzrow has given Ms. Mishaga the right to exclude intruders from the home, it is clear that she has the same right as Mr. Telzrow to defend the home with a functional firearm. *Heller*, 554 U.S. at 630.

Nevertheless, Defendants refuse to issue Ms. Mishaga a FOID and she is not licensed or registered to possess firearms in her resident State. UMF ¶¶ 7, 9, 12. Therefore, Illinois law prohibits her from lawfully possessing a functional firearm for self-defense when she is a guest in her friends' Illinois home. This prohibition violates the central holding of *Heller*: “whatever else [the Second Amendment] leaves to future evaluation, it surely elevates above all other

interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *Heller*, 554 U.S. at 635. Accordingly, contrary to the Supreme Court’s decision in *Heller*, Defendants currently maintain and actively enforce a set of laws, customs, practices, and policies under color of state law that deprive Ms. Mishaga of the right to keep and bear arms, in violation of the Second and Fourteenth Amendments. Defendants are therefore liable to Ms. Mishaga under 42 U.S.C. § 1983.⁵

B. No FOID Act Exceptions Apply To Ms. Mishaga’s Claims.

None of the exceptions to the FOID Act can remedy its unconstitutionality. Subsection (9) is the only exception that comes close to addressing Ms. Mishaga’s claims for relief, because it makes the FOID Act inapplicable to “nonresidents whose firearms are unloaded and enclosed in a case.” 430 ILCS 65/2(b)(9). Yet, 430 ILCS 65/2(b)(9) does not render the FOID Act constitutional.⁶

Under 430 ILCS 65/2(b)(9), nonresidents’ firearms must be rendered and kept inoperable at all times; there is no exception for self-defense. Therefore, this subsection of the FOID Act suffers from the same constitutional infirmity as the law struck down by the Supreme Court in *Heller*:

We must also address the District’s requirement . . . that firearms in the home be rendered and kept inoperable at all times. This makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional. The District argues that we should interpret this element of the statute to contain

⁵ Given this case’s stark similarity to *Heller*, it is not necessary to define a standard of scrutiny. To the extent a standard of scrutiny is required, the standard is strict scrutiny. *Ezell v. City of Chicago*, 2011 WL 2623511, *17 (7th Cir. 2011).

⁶ As discussed above, *supra* Part III., Ms. Mishaga is neither “licensed” nor “registered” to possess a firearm, because in Ohio no scheme exists to license or register possession of firearms in the home. UMF ¶ 12. Accordingly, 430 ILCS 65/2(b)(10) does not allow her to possess functional firearms in Illinois. *See Mishaga*, 753 F. Supp. 2d at 753.

an exception for self-defense. . . . But we think that is precluded by the unequivocal text, and by the presence of certain other enumerated exceptions

554 U.S. at 630 (internal citations omitted). Thus, 430 ILCS 65/2(b)(9) is unconstitutional because it requires nonresidents’ “firearms in the home be rendered and kept inoperable at all times” *Id.*

Moreover, 430 ILCS 65/2(b)(9) does nothing to address Ms. Mishaga’s claims for relief: “By prohibiting Ms. Mishaga from possessing a *functional* firearm, Defendants . . . deprive Ms. Mishaga of the right to keep and bear arms . . . [and] the right to travel” Compl. ¶ 35 (emphasis added); *id.* ¶ 43. It is no response to these claims for relief to say, as 430 ILCS 65/2(b)(9) does, that Ms. Mishaga may possess a *nonfunctional* firearm. Subsection (9) specifically prohibits the constitutionally protected activity Ms. Mishaga intends to engage in by requiring nonresidents’ firearms to be “unloaded and enclosed in a case” at all times. 430 ILCS 65/2(b)(9). Thus, even if 430 ILCS 65/2(b)(9) were not unconstitutional, this exception would not save the FOID Act.

Therefore, the FOID Act is unconstitutional because it prohibits Ms. Mishaga from possessing a functional firearm for self-defense while she is an overnight guest in her friend’s Illinois home. Ms. Mishaga is consequently entitled to entry of summary judgment as a matter of law with respect to her First Claim for Relief, Compl. ¶¶ 32–36, and declaratory and permanent injunctive relief regarding the FOID Act’s prohibition against nonresidents possessing functional firearms for self-defense in Illinois homes.

V. MS. MISHAGA IS ENTITLED TO SUMMARY JUDGMENT ON HER SECOND CLAIM FOR RELIEF BECAUSE THE FOIA ACT IMPAIRS INTERSTATE TRAVEL IN VIOLATION OF ARTICLE IV AND THE FOURTEENTH AMENDMENT.

Illinois law recognizes the right of Illinois residents to keep and bear arms, but denies this right to citizens of other States. UMF ¶ 11; Ill. Const. art. I, sec. 22; 430 ILCS 65/1 *et seq.* This discrimination against nonresidents violates both the Privileges and Immunities Clause of Article IV and the Privileges or Immunities Clause of the Fourteenth Amendment.⁷ *Saenz v. Roe*, 526 U.S. 489, 500–01 (1999) (“by virtue of a person’s state citizenship, a citizen of one State who travels in other States, intending to return home at the end of his journey, is entitled to enjoy the ‘Privileges and Immunities of Citizens in the several States’ that he visits.”); *id.* at 512–13 (Rehnquist, C.J., dissenting) (“Nonresident visitors of other States should not be subject to discrimination solely because they live out of State.”). Both Article IV and the Fourteenth Amendment prohibit “discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States.” *Id.* at 502–04 (quoting *Toomer v. Witsell*, 334 U.S. 385, 396 (1948)).

The right of a nonresident to be treated as a “welcome visitor rather than an unfriendly alien” is “expressly protected by the text of the Constitution.” *Id.* at 501. The Supreme Court “long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.” *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969), *overruled on other*

⁷ The right to keep and bear arms is likewise protected by the Privileges or Immunities Clause of the Fourteenth Amendment. *McDonald v. City of Chicago*, 561 U.S. ___, 130 S.Ct. 3020, 3059 (2010) (Thomas, J., concurring) (“[T]he right to keep and bear arms is a privilege of American citizenship . . .”).

grounds by *Edelman v. Jordan*, 415 U.S. 651, 670–71 (1974). The Supreme Court has described nonresidents’ constitutional right to travel as follows:

The first sentence of Article IV, § 2, provides: “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.” Thus, by virtue of a person’s state citizenship, a citizen of one State who travels in other States, intending to return home at the end of his journey, is entitled to enjoy the “Privileges and Immunities of Citizens in the several States” that he visits. This provision removes “from the citizens of each State the disabilities of alienage in the other States.”

Saenz, 526 U.S. at 501. (citation omitted) (quoting *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1868)). The Fourteenth Amendment likewise protects the ““privileges or immunities of citizens of the United States,”” including the right to travel. *Id.* at 503–04 (quoting Amend. XIV).⁸

The protections embodied in the right to travel have been applied to strike down State laws prohibiting nonresidents from obtaining employment, *Hicklin v. Orbeck*, 437 U.S. 518 (1978), procuring abortions and other medical services, *Doe v. Bolton*, 410 U.S. 179 (1973), or engaging in commercial fishing, *Toomer v. Witsell*, 334 U.S. 385 (1948).⁹ As demonstrated below, the FOID Act is unconstitutional because it: (1) “discriminat[es] against citizens of other States”; and (2) “there is no substantial reason for the discrimination” *Saenz*, 526 U.S. at 502.

⁸ The overlapping protection of the right to travel guaranteed by Article IV and the Fourteenth Amendment is in part influenced by an abandoned interpretation of Article IV. The Supreme Court has concluded that the Fourteenth Amendment’s guarantee of equal rights to “citizens of the United States” was a reaction to the Court’s decision excluding blacks from the protection of Article IV in *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856). *Saenz*, 526 U.S. at 502 n.15.

⁹ The Court has been less protective of nonresidents’ rights to obtain “portable” state benefits conditioned on durational residency requirements, such as divorce decrees and college education. *See, e.g., Sosna v. Iowa*, 419 U.S. 393 (1975) (divorce); *Vlandis v. Kline*, 412 U.S. 441 (1973) (in-state tuition).

A. The FOID Act Acknowledges The Right Of Illinois Residents To Possess Functional Firearms, But Denies That Right To Nonresidents.

The FOID Act plainly discriminates on the basis of residency because nonresidents are ineligible for a FOID. UMF ¶¶ 7, 9, 11; *see Hicklin*, 437 U.S. at 520 (invalidating statute requiring the employment of qualified residents in preference to nonresidents); *Toomer*, 334 U.S. at 396 (invalidating statute that required nonresidents to pay a fee 100 times greater than that paid by residents for a license to shrimp commercially); *Ward v. Maryland*, 79 U.S. (12 Wall.) 418, 430 (1871) (invalidating statute requiring nonresident merchants to obtain licenses, charging nonresidents a higher license fee, and prohibiting employment of nonresident salesmen). There should be little argument that a prohibition on possession of a functional firearm offends the right to travel at least as much as denying the right to receive an abortion or engage in commercial fishing. *Cf. Bolton*, 410 U.S. at 200; *Toomer*, 334 U.S. at 399–401. The Supreme Court has made clear that the right to “possess and carry weapons in case of confrontation” is the core of the right guaranteed by the Second Amendment. *Heller*, 554 U.S. at 592. In *McDonald*, the Court confirmed that the right protected is “fundamental to *our* scheme of ordered liberty.” 130 S.Ct. at 3050 (emphasis in original). *McDonald* also emphasized that the Second Amendment does not embody “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *Id.* at 3045. On its face, the FOID Act acknowledges the right of Illinois residents to possess functional firearms, but denies that right to nonresidents. 430 ILCS 65/2(a), (b)(5), (7)–(9). The FOID Act therefore impairs the right to interstate travel in violation of Article IV and the Fourteenth Amendment by denying nonresidents, and only nonresidents, the fundamental right to possess functional firearms in the home for self-defense.

B. There Is No Substantial Reason For The FOID Act To Discriminate Against Nonresidents.

There is not a substantial reason for the State to limit FOIDs to Illinois residents, because nonresidents do not “constitute a peculiar source of the evil at which the statute is aimed.” *Hicklin*, 437 U.S. at 526 (quoting *Toomer*, 334 U.S. at 398). Indeed, the FOID Act’s restrictions do not apply to “[n]onresidents who are currently licensed or registered to possess a firearm in their resident state.” 430 ILCS 65/2(b)(10). Moreover, the need to check out-of-state records could hardly be raised as a defense against issuing FOIDs to nonresidents, because the FOID Act specifically contemplates an interstate check of medical records as part of the FOID application process, and the National Instant Criminal Background Check System compiles criminal records from every State in a central database. 430 ILCS 65/4(a)(3); Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, § 103, 107 Stat. 1536, 1541–43 (1993). Also, the benefits of the FOID are not “portable” in the way a divorce decree or a college education are portable. *Cf. Sosna*, 419 U.S. at 393 (divorce); *Vlandis*, 412 U.S. at 441 (in-state tuition). The FOID only gives the holder the ability to legally possess and purchase firearms and ammunition in the State of Illinois. 430 ILCS 65/2(a); UMF ¶¶ 7, 9, 11. It gives the holder no “portable” rights or privileges outside of Illinois. The FOID Act therefore impairs the right to interstate travel in violation of Article IV and the Fourteenth Amendment by denying nonresidents, and only nonresidents, the fundamental right to possess functional firearms in the home for self-defense.

Accordingly, Defendants currently maintain and actively enforce a set of laws, customs, practices, and policies under color of state law that deprive Ms. Mishaga of the right to travel, in violation of Article IV and the Fourteenth Amendment. Ms. Mishaga is therefore entitled to entry of summary judgment as a matter of law with respect to her Second Claim for Relief, Compl. ¶¶ 37–44, and declaratory and permanent injunctive relief regarding the FOID Act’s

prohibition against nonresidents possessing functional firearms for self-defense in Illinois homes. Defendants are therefore liable to Ms. Mishaga under 42 U.S.C. § 1983.

CONCLUSION

For the foregoing reasons, the FOID Act, 430 ILCS 65/1 *et seq*, is unconstitutional as applied to Ms. Mishaga. It deprives her of the right to keep and bear arms for self-defense guaranteed by the Second and Fourteenth Amendments, and the right to travel guaranteed by Article IV and the Fourteenth Amendment. Therefore, this Court should grant summary judgment in favor of Ms. Mishaga as to both of her claims for relief and permanently enjoin Defendants from enforcing the FOID Act's prohibition against nonresidents possessing functional firearms for self-defense in Illinois homes.

DATED this 3rd day of October 2011.

Respectfully Submitted:

/s/ James M. Manley
James M. Manley, Esq.
Mountain States Legal Foundation
2596 South Lewis Way
Lakewood, Colorado 80227
(303) 292-2021
(303) 292-1980 (facsimile)
jmanley@mountainstateslegal.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October 2011, I filed the foregoing document using the CM/ECF system and caused counsel of record to be served electronically through the CM/ECF system:

Bianca R Chapman
Assistant Attorney General
Office of Illinois Attorney General Lisa Madigan
500 S. Second Street
Springfield, Illinois 62706
bchapman@atg.state.il.us

/s/ James M. Manley
James M. Manley

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

ELLEN MISHAGA,)
)
Plaintiff,) No. 10-cv-03187-MPM-CHE
)

v.)

HIRAM GRAU, Director of the Illinois) **DECLARATION OF JAMES L. TELZROW**
Department of State Police; MICHAEL)
W. VORREYER, Master Sergeant,)
Illinois Department of State Police,)
)
Defendants.)
)

I, James L. Telzrow, declare as follows:

1. I am over eighteen years of age and I am competent to testify from my first-hand knowledge as to the matters set forth in this Declaration.
2. I am a citizen of the United States and have resided in the City of White Hall, Greene County, Illinois, for thirty-seven years.
3. I have possessed a valid Illinois Firearms Owner Identification Card ("FOID") for more than twenty years. My current FOID expires on March 1, 2019.
4. I lawfully possess firearms in my Illinois home for hunting and self-defense purposes.
5. I have know Plaintiff, Ellen Mishaga, for twelve years.
6. Several times each year, Ms. Mishaga and her husband travel to Illinois to visit my wife and me. When they make these trips, they stay in my home overnight.

7. I want Ms. Mishaga to be able to lawfully possess a firearm for self-defense when she is a guest in my home. Accordingly, I have given Ms. Mishaga permission to access my firearms for self-defense purposes when she is a guest in my home.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 28 day of September 2011.


James L. Telzrow

EXHIBIT 2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

ELLEN MISHAGA,)	
)	
Plaintiffs,)	
)	
vs.	)	No. 10-3187
)	
HIRAM GRAU, Director of)	
the Illinois Department)	
of the State Police and)	
MICHAEL VORREYER,)	
)	
Defendants.)	

Deposition of ELLEN MISHAGA, taken before
Cathy J. Craggs, CSR, at the instance of the
Defendants, on July 26, 2011, at the hour of 9:00
a.m., at 3000 Montvale, Springfield, Illinois,
pursuant to attached stipulation.

ASSOCIATED COURT REPORTERS
1-800-252-9915
P.O. Box 684
Taylorville, Illinois 62568

S T I P U L A T I O N

1
2 It is stipulated between the parties
3 herein, through their attorneys, that the deposition
4 of ELLEN MISHAGA may hereby be taken upon oral
5 interrogatories, on July 26, 2011, at the hour of 9:00
6 a.m., at 3000 Montvale, Springfield, Illinois, before
7 the instance of the Defendants, and before Cathy J.
8 Craggs, CSR and RPR.

9 That the oral interrogatories and the
10 answers of the witness may be taken down in shorthand
11 by the Reporter and afterwards transcribed.

12 That the reading and signing of said
13 deposition is waived.

14 That the deposition or any portions
15 thereof may be used by any of the parties hereto,
16 without foundation proof, for any purpose for which
17 depositions are competent.

18 That copies of the deposition may be
19 furnished to any of the parties at his or her own
20 expense.

21
22
23
24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

APPEARANCES: (July 26, 2011)

MOUNTAIN STATES LEGAL FOUNDATION

By Mr. Jim Manley

Attorney at Law

2596 South Lewis Way

Lakewood, Colorado 820227

Appeared on behalf of the Plaintiff;

ATTORNEY GENERAL'S OFFICE

By Ms. Bianca R. Chapman

Attorney at Law

500 South Second Street

Springfield, Illinois 62706

Appeared on behalf of the Defendants.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ELLEN MISHAGA				
	5	28	32	

E X H I B I T S

EXHIBIT	PAGE
Exhibit 1	9
Exhibit 2	21

EXHIBITS ATTACHED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

ELLEN MISHAGA,

called as a witness herein, at the instance of the Defendants, having been duly sworn on her oath, testified as follows:

DIRECT EXAMINATION

CONDUCTED BY MS. CHAPMAN:

Q. Good morning, Mrs. Mishaga, we met earlier but if you could just please state and spell your full name for the record?

A. M. Ellen Mishaga, M-I-S-H-A-G-A.

Q. Okay. And is this your first deposition or have you had depositions before?

A. I have had one prior.

Q. Okay. So you're probably a little familiar with the instructions but I am going to go ahead and just quickly run through them anyway.

When I ask you a question, I'll need a verbatim response, so head nodding is not okay because it can't be recorded.

Also try to avoid saying uh-huh and/or huh-uh, so if you do that, I'll wait for you and, you know, and ask for a verbal response.

A. Okay.

Q. Great.

1 Q. Now there is also a number listed on this
2 Exhibit 1, did you call that number?

3 A. No.

4 Q. Okay. Now have you ever been convicted of a
5 felony or a misdemeanor?

6 A. No.

7 Q. And I'm going to go through a lot of these
8 and it's a little bit tedious but I'd just like to go
9 through them and I'm sure --

10 A. Okay.

11 Q. -- they won't take too long.

12 As a minor were you ever adjudicated or
13 delinquent for the commission of an offense that if
14 committed by an adult would be a felony?

15 A. No.

16 Q. And are you now or have you ever been
17 addicted to any narcotics?

18 A. No.

19 Q. And have you been a patient in a mental
20 institution within the past five years?

21 A. No.

22 Q. Have you been adjudicated as mentally
23 defective?

24 A. No.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Q. With mental retardation?

A. No.

Q. Are you alien to the United States or were you born in the United States?

A. No.

Q. You were born in the United States?

A. Yes.

Q. Okay. Thank you.

Are you subject to an existing order of protection?

A. No.

Q. And have you been convicted in the past five years of battery, assault, aggravated assault or violation of an order of protection?

A. No.

Q. And have you been convicted of domestic violence?

A. No.

Q. Okay. Now do you own guns currently?

A. Yes.

Q. Can you tell me what types of guns you own?

A. I have a 380 semi automatic pistol.

Q. Is that your only gun?

A. That's the only one that I have used.

1 **Are you licensed or permitted to carry**
2 **or possess guns in your permanent resident state?**

3 A. I'm permitted to carry guns, we don't need a
4 license.

5 **Q. Okay. And so when you say you're permitted**
6 **to carry guns, did you have a permit that allows you**
7 **to do that?**

8 A. No.

9 **Q. Do you have a license to do that?**

10 A. No.

11 **Q. Do you have to register to do that?**

12 A. No.

13 **Q. So tell me what's the process in Ohio that**
14 **allows you to, to carry guns?**

15 A. I don't know that I understand that. We are
16 allowed to have guns in our home. I don't have a
17 license to go out and carry a gun like in public, I
18 don't have that, but I'm allowed to own a gun.

19 **Q. Okay. So you don't have a, a license or**
20 **permit --**

21 A. No.

22 **Q. -- to carry a gun outside your home?**

23 A. No.

24 **Q. Okay. So then you don't have a concealed**

1 **carry license?**

2 A. No.

3 **Q. Have you applied for one?**

4 A. No.

5 **Q. And why haven't you applied for one?**

6 A. I didn't feel I needed one.

7 **Q. And why do you feel you don't need one?**

8 A. Because I'm allowed to use a gun in my home
9 for protection, so I don't need, that's the only place
10 I would want to, to have a gun for protection.

11 **Q. Okay. So the only place that you feel like**
12 **you need a gun for protection is inside of your home?**

13 A. Correct.

14 **Q. So when you leave out of your home you don't**
15 **feel like you need a gun?**

16 A. Well, my husband has his.

17 **Q. Okay. And when you leave the home, are you**
18 **always with your husband?**

19 A. No.

20 **Q. So you feel safe to leave your home and**
21 **travel about in Ohio without carrying a gun with you,**
22 **having a gun with you for protection?**

23 A. Yes.

24 **Q. Now did you have a license to carry or**

1 **possess a gun in any capacity in any other state?**

2 A. No.

3 **Q. Have you ever applied for a license to carry**
4 **guns in any other states?**

5 A. I don't think I understand that question
6 cause I don't know how that applies to the FOID card.

7 **Q. Okay. You can still answer the question.**

8 **Do you understand that, that what I'm**
9 **asking you is have you ever applied for a license to**
10 **carry or possess a gun in any other state?**

11 A. I have never applied for a license. I've
12 only applied for the FOID card.

13 **Q. So you have never applied for a similar type**
14 **of card in any other state?**

15 A. No.

16 **Q. Do you travel to other states outside Ohio?**

17 A. Yes.

18 **Q. Where do you travel?**

19 A. Pennsylvania, Maryland, Texas, Florida, and
20 all the states in between to get to those places.

21 **Q. Okay. But you don't have a license or a**
22 **card to carry guns in any of those states?**

23 A. No.

24 **Q. Do you carry guns with you to those states**

1 **Pennsylvania, Maryland and Florida and you stay in**
2 **people's homes, you don't bring your firearm with you?**

3 A. No, but they have firearms at their homes.

4 **Q. And can you tell me how many times have you**
5 **traveled to Illinois since January 2008?**

6 A. Oh, 2008.

7 **Q. Uh-huh.**

8 A. It's usually at least twice a year,
9 sometimes three within a year.

10 **Q. And so in 2008 about how many times do you**
11 **think?**

12 A. Twice.

13 **Q. About twice.**

14 **And 2009?**

15 A. Twice.

16 **Q. And 2010?**

17 A. Twice.

18 **Q. And this year 2011?**

19 A. Once so far.

20 **Q. Today?**

21 A. Correct.

22 **Q. So have you --**

23 A. A couple of days, we were here Sunday.

24 **Q. Okay. So in 2011 you only traveled here for**

1 **this specific trip?**

2 A. This time, yes.

3 **Q. And when you travel to Illinois, how do you**
4 **get here?**

5 A. Drive.

6 **Q. Do you drive each time?**

7 A. Uh-huh, yes.

8 **Q. And about how long do you stay?**

9 A. Anywhere from 4 to 7 days.

10 **Q. And on these trips where do you stay?**

11 A. At Jim and Nancy Telzrow's.

12 **Q. Jim and Nancy?**

13 A. Telzrow, T-E-L-Z-R-O-W.

14 **Q. Where do Jim and Nancy stay?**

15 A. Where do they live?

16 **Q. Where do they live?**

17 A. White Hall.

18 **Q. Can you give me their address?**

19 A. They have a post office box, they have no
20 street name.

21 **Q. Okay. Fair enough. They have no street**
22 **name?**

23 A. (Nod Negatively).

24 **Q. Can you, do you know their post office box?**

EXHIBIT 3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

ELLEN MISHAGA,)	
)	
Plaintiff,)	
)	
vs.	)	No. 10-3187
)	
HIRAM GRAU, Director of)	
the Illinois Department)	
of the State Police and)	
MICHAEL VORREYER,)	
)	
Defendants.)	

Deposition of MICHAEL VORREYER, taken before Cathy J. Craggs, CSR, at the instance of the Plaintiff, on July 26, 2011, at the hour of 1:00 p.m., at 3000 Montvale, Springfield, Illinois, pursuant to attached stipulation.

ASSOCIATED COURT REPORTERS
1-800-252-9915
P.O. Box 684
Taylorville, Illinois 62568

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

S T I P U L A T I O N

It is stipulated between the parties herein, through their attorneys, that the discovery deposition of MICHAEL VORREYER may hereby be taken upon oral interrogatories, on July 26, 2011, at the hour of 1:00 p.m., at 3000 Montvale, Springfield, Illinois, before the instance of the Plaintiff, and before Cathy J. Craggs, CSR and RPR.

That the oral interrogatories and the answers of the witness may be taken down in shorthand by the Reporter and afterwards transcribed.

That the reading and signing of said deposition is NOT waived.

That the deposition or any portions thereof may be used by any of the parties hereto, without foundation proof, for any purpose for which depositions are competent.

That copies of the deposition may be furnished to any of the parties at his or her own expense.

1 APPEARANCES: (July 26, 2011)

2

3 MOUNTAIN STATES LEGAL FOUNDATION

4 By Mr. Jim Manley

5 Attorney at Law

6 2596 South Lewis Way

7 Lakewood, Colorado 820227

8 Appeared on behalf of the Plaintiff;

9

10 ATTORNEY GENERAL'S OFFICE

11 By Ms. Bianca R. Chapman

12 Attorney at Law

13 500 South Second Street

14 Springfield, Illinois 62706

15 Appeared on behalf of the Defendant.

16

17

18

19

20

21

22

23

24

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
MICHAEL VORREYER				
	5	51	55	61

E X H I B I T S

EXHIBIT	PAGE
Exhibit 1	15
Exhibit 2	29
Exhibit 3	32
Exhibit 4	34
Exhibit 5	39
Exhibit 6	47

EXHIBITS ATTACHED

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

MICHAEL VORREYER,

called as a witness herein, at the instance of the Plaintiff, having been duly sworn on his oath, testified as follows:

DIRECT EXAMINATION

CONDUCTED BY MR. MANLEY:

Q. So has the witness been sworn in?

COURT REPORTER: Yes.

Q. My name is Jim Manley and I represent the Plaintiff in the case Mishaga v Grau and I called you here to take your deposition.

Would you state your name and spell it for the record, please?

A. Mike Vorreyer, V, Victor, O-R-R-E-Y-E-R.

Q. And let's just go around the table so we know who's here. If you would just state your name and who you are?

MS. CHAPMAN: Sure. Bianca Chapman attorney for the Defendants.

MR. CARTER: Master Sergeant John Carter state police legal counsel.

Q. So have you had your deposition taken before?

A. Yes.

1 **like a normal FOID application, can you walk me**
2 **through your analysis of it?**

3 MS. CHAPMAN: Objection,
4 foundation and calls for speculation. I don't think
5 he's testified that he gets those applications.

6 **Q. Okay.**

7 A. If this came across my desk, it would be
8 sent back with an informational sheet for missing
9 drivers license number. I would have to look at other
10 checks on the sheet, if there was a check for out of
11 state resident.

12 **Q. Are there any other problems that you see**
13 **with the application?**

14 A. The out of the state residents and no
15 Illinois drivers license or Illinois State ID number.

16 **Q. Okay. Great, thank you.**

17 **Do you know was Ms. Mishaga issued a**
18 **FOID card?**

19 A. She was not.

20 **Q. And why not?**

21 A. It was sent back to her as incomplete.

22 **Q. And why was it incomplete?**

23 A. Do you have the checklist?
24

1 (Exhibit 4 marked for identification
2 by the Court Reporter.)

3 MS. CHAPMAN: Can we clarify
4 with regard to which application are you referring
5 because it looks like you've given him, there are two
6 separate checklists that were returned to her, which
7 is this regarding?

8 **Q. Sure.**

9 **Well, okay. We've just handed you a**
10 **document labeled Exhibit 4, can you identify the**
11 **document?**

12 **A. It looks like a checklist for a returned**
13 **FOID card, for returned FOID application.**

14 **Q. And do you recognize the checklist, do you**
15 **know?**

16 **A. Yes.**

17 **Q. Do you know what application it is in**
18 **response to?**

19 **A. No.**

20 **Q. Okay. That's the response to Ms. Mishaga's**
21 **second application, it's been previously disclosed.**

22 **So I believe the question that we were**
23 **on was what, what, why was Ms. Mishaga not issued a**
24 **FOID card?**

1 A. This was other reason due to Illinois State
2 law you must have a valid Illinois drivers license or
3 Illinois State ID in order to be eligible for an
4 Illinois FOID card.

5 **Q. Okay. Is that an accurate statement of the,**
6 **of the Illinois State Police policy?**

7 A. Yes.

8 **Q. Okay. Now you may have already answered**
9 **this question but just so we are on the same page.**

10 **Based on these applications is Ms.**
11 **Mishaga or this application is she eligible for a FOID**
12 **card?**

13 MS. CHAPMAN: Objection,
14 foundation.

15 A. Based on this application I can't determine
16 her eligibility.

17 **Q. What information would you need in order to**
18 **determine her eligibility?**

19 A. When I refer to eligibility, I mean her
20 eligibility to possess firearms, her criminal history
21 based on her being an out of state resident if she did
22 not provide any other information showing she's an
23 Illinois resident, it's just an incomplete
24 application.

1 **Q. What information would Ms. Mishaga need to**
2 **provide in order for her application to be processed?**

3 A. Illinois address and Illinois drivers
4 license or ID card.

5 **Q. So I want to direct your attention to, I**
6 **guess, the fifth paragraph on Exhibit 4, could you**
7 **just read that paragraph for us? It's the one that**
8 **begins no Illinois drivers license.**

9 A. No Illinois drivers license or state
10 identification number provided. If you're employed in
11 the protective security or public safety fields in
12 Illinois, and the employment requires you to have a
13 FOID card, or you're in the United States armed
14 services or permanent duty assigned in Illinois, you
15 may be eligible for relief for this requirement.
16 Please call the Firearms and Information Services
17 Resources Bureau at 217-782-7980 if you would like
18 information on the relief process.

19 **Q. Can you describe for us the relief process,**
20 **what does that mean?**

21 A. The relief process in reference to the FOID
22 card would be as read in there. If you are employed
23 in Illinois, and it requires you to be armed, we can
24 grant relief to issue a FOID card for that individual

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
SPRINGFIELD DIVISION

ELLEN MISHAGA,)	
)	
Plaintiff,	)	No. 10-cv-03187-MPM-CHE
)	
v.)	
)	
JONATHON E. MONKEN, Director of	)	INITIAL DISCLOSURES OF PLAINTIFF
the Illinois Department of State Police,	)	ELLEN MISHAGA
)	
Defendant.)	

Plaintiff, Ellen Mishaga, by and through her undersigned attorney, hereby submits her Federal Rule of Civil Procedure 26(a)(1) disclosures:

- A. THE NAME AND, IF KNOWN, THE ADDRESS AND TELEPHONE NUMBER OF EACH INDIVIDUAL LIKELY TO HAVE DISCOVERABLE INFORMATION — ALONG WITH THE SUBJECTS OF THAT INFORMATION — THAT THE DISCLOSING PARTY MAY USE TO SUPPORT ITS CLAIMS OR DEFENSES, UNLESS THE USE WOULD BE SOLELY FOR IMPEACHMENT;**

Ellen Mishaga
9104 Gregory Ct
Mentor, Ohio 44060
440-205-1958

Ms. Mishaga has knowledge of her travels to Illinois, her self-defense concerns when in Illinois, and her eligibility for an Illinois Firearms Owner Identification Card (“FOID”).

James Telzrow
P.O. Box 259
White Hall, Illinois 62092
217-374-2997

Mr. Telzrow lives in Illinois, is licensed pursuant to the FOID Act to possess firearms, and lawfully possess firearms in his home. He hosts Ms. Mishaga in his home when she visits Illinois and desires for her to be able to lawfully possess functional firearms in his home for self-defense.

Jonathon E. Monken
Director
Illinois Department of State Police
Office of the Director
801 South Seventh Street
Suite 1100 – S
Springfield, Illinois 62794-9461

Mr. Monken is the Director of the Illinois Department of State Police. In that capacity he is responsible for issuing FOIDs. Mr. Monken may have knowledge regarding the content of a set of laws, customs, practices, and policies—which he is responsible for enforcing—regarding the possession of firearms in Illinois by non-residents, including those set forth in the Illinois FOID Act.

B. A COPY — OR A DESCRIPTION BY CATEGORY AND LOCATION — OF ALL DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND TANGIBLE THINGS THAT THE DISCLOSING PARTY HAS IN ITS POSSESSION, CUSTODY, OR CONTROL AND MAY USE TO SUPPORT ITS CLAIMS OR DEFENSES, UNLESS THE USE WOULD BE SOLELY FOR IMPEACHMENT;

1. A copy of the FOID application submitted by Ms. Mishaga to the Illinois Department of State Police. [Bates Number 1]
2. A copy of the March 26, 2010, check submitted with Ms. Mishaga's first FOID application. [Bates Number 2]
3. A copy of the correspondence form sent to Ms. Mishaga by the Illinois Department of State Police in response to her first FOID application. [Bates Number 3]
4. A copy of the May 17, 2010, letter sent by Ms. Mishaga to the Illinois Department of State Police with her second FOID application. [Bates Numbers 4]
5. A copy of the May 17, 2010, check submitted with Ms. Mishaga's second FOID application. [Bates Number 5]
6. A copy of the certified mail receipt for the second FOID application submitted by Ms. Mishaga. [Bates Numbers 6–7]
7. A copy of the correspondence form sent to Ms. Mishaga by the Illinois Department of State Police in response to her second FOID application. [Bates Number 8]

- C. **A COMPUTATION OF EACH CATEGORY OF DAMAGES CLAIMED BY THE DISCLOSING PARTY — WHO MUST ALSO MAKE AVAILABLE FOR INSPECTION AND COPYING AS UNDER RULE 34 THE DOCUMENTS OR OTHER EVIDENTIARY MATERIAL, UNLESS PRIVILEGED OR PROTECTED FROM DISCLOSURE, ON WHICH EACH COMPUTATION IS BASED, INCLUDING MATERIALS BEARING ON THE NATURE AND EXTENT OF INJURIES SUFFERED; AND**

Not applicable.

- D. **FOR INSPECTION AND COPYING AS UNDER RULE 34, ANY INSURANCE AGREEMENT UNDER WHICH AN INSURANCE BUSINESS MAY BE LIABLE TO SATISFY ALL OR PART OF A POSSIBLE JUDGMENT IN THE ACTION OR TO INDEMNIFY OR REIMBURSE FOR PAYMENTS MADE TO SATISFY THE JUDGMENT.**

Not applicable.

Plaintiff will timely supplement these disclosures as needed. *See* Fed. R. Civ. P. 26(e).

Done this 25th day of January 2011.

MOUNTAIN STATES LEGAL FOUNDATION

By: 

James M. Manley
Mountain States Legal Foundation
2596 South Lewis Way
Lakewood, Colorado 80227
(303) 292-2021
(303) 292-1980 (facsimile)
jmanley@mountainstateslegal.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify that on the 25th day of January 2011, a true and accurate copy of forgoing document was served on all other counsel of record via U.S. mail, first class, postage prepaid, addressed as follows:

Joanna Belle Gunderson
Assistant Attorney General
Office of the Attorney General
500 South Second Street
Springfield, IL 62706



Jane Larrew



APPLICATION FOR FIREARM OWNER'S IDENTIFICATION CARD

WARNING: Entering false information on an application for a Firearm Owner's Identification Card is punishable as a Class 2 felony in accordance with subsection (d-5) of Section 14 of the Firearm Owner's Identification Card Act.

Document #

Remit exactly \$10.00 in check or money order payable to FOID. THIS FEE IS NONREFUNDABLE

Last Name: M I S H A G A M E
 First Name: M E L L E N A M E M. Initial: A Suffix: I I I
 Street Address: 9 1 0 4 E G R E G O R Y S E T Apt: _____
 City/Town: M E N T O R O W N State: 0 7 Zip Code: 4 4 0 6 0
 County Code: 1 9 0 0 Date of Birth: 0 9 / 1 0 / 1 9 4 4 List Any Previous Names: L E I G H T Y



SEX: Male Female HEIGHT: 5 ft 02 in EYE COLOR: SELECT ONE: Brown Black Other Blue Grey Maroon Green Hazel HAIR COLOR: SELECT ONE: Brown Black White Blonde Grey Red Sandy Bald Other
 RACE: Black White Other WEIGHT: 175 lbs

1. Place of Birth State or Country: P E N N S Y L V A N I A M N O C
 1a. Are you a United States citizen or a naturalized citizen? Yes No
 If NO, you must provide your alien registration number or provide other proof of documentation.
 Alien #: 1 2 3 4 5 6 7 8 9 0 1
 (Alien # - Resident Alien Card/Permanent Resident Card) (Admission # Form I-94/I-94W)

Mandatory: If you are 18 years of age or older, you must provide your Illinois Driver's License # or your State Identification #.
 Illinois Driver's License Number: A 1 2 3 4 5 6 7 8 9 0 1
 OR
 Illinois State Identification Number: 1 2 3 4 5 6 7 8 9 0 1 A

FOR QUESTIONS 2-11 ANSWERED 'YES', PROVIDE DETAILED DOCUMENTATION. Mark The Appropriate Box With An X.

All definitions defined by the FOID Act	Yes	No
2. Have you ever been convicted of a felony?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. In the past 5 years, have you been a patient in any medical facility or part of any medical facility used primarily for the care or treatment of persons for mental illness?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Are you addicted to narcotics?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Are you mentally retarded?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Are you subject to an existing order of protection which prohibits you from possessing a firearm?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. Within the past 5 years, have you been convicted of battery, assault, aggravated assault, violation of an order of protection, or a substantially similar offense in which a firearm was used or possessed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Have you ever been convicted of domestic battery or a substantially similar offense (misdemeanor or felony)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Have you ever been adjudicated a delinquent minor for the commission of an offense that if committed by an adult would be a felony?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Are you an alien who is unlawfully present in the United States?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Have you ever been adjudicated as a mental defective?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Optional Numbers
 Social Security Number: 1 2 3 4 5 6 7 8 9
 Area Code: 4 4 0 Daytime Phone Number: 2 0 5 1 9 5 8
 My signature authorizes the Illinois State Police to verify answers given with the Department of Human Services and any medical facility used for the care or treatment of mental illness. I hereby solemnly affirm that the information contained herein is true to the best of my knowledge. I consent to the use of my digital Illinois Driver's License or Illinois State Identification photo and signature. I understand that I am still required to submit a photo and signature with this application.
 Signature: M. Ellen Mishaga
 SIGNATURE REQUIRED (Please sign inside the box)

IF YOU ARE UNDER 21: The minor applicant and their parent or legal guardian must complete this section. The signature of the applicant's parent or legal guardian is required.

Parent or Legal Guardian Information
 Relationship: Mark with an X
 Father Parent or legal guardian must be 21 years of age and eligible to acquire or possess firearms or firearm ammunition.
 Mother
 Legal Guardian Legal Guardian must submit a copy of legal guardianship court order.

Parent/Guardian Last Name: P A R E N T / G U A R D I A N First Name: _____ MI: _____
 Date of Birth: M M / D D / Y Y Y Y Male Female Illinois Driver's License or State ID #: A 1 2 3 4 5 6 7 8 9 0 1
 I hereby give my consent for this applicant to possess and acquire firearms and firearm ammunition. My signature authorizes the Illinois State Police to verify with the Department of Human Services and any medical facility used for the care or treatment of mental illness that I should not be prohibited from holding a Firearm Owner's Identification Card. I declare the above statements are true and accurate.
 Signature of Parent/Legal Guardian Required

081013/6-89

M. ELLEN MISHAGA
19104 GREGORY CT
MENTOR, OH 44060

NATIONAL CITY BANK
CLEVELAND, OHIO
6-12-10

DATE

3/26/2010

AMOUNT

10.00

FOID Application

FOID

Ten Only *****

PAY TO THE ORDER OF

FOID
Illinois State Police
Post Office Box 16733
Springfield, IL 62794-9233

FOID Application

FOID

M. Ellen Mishaga

2793

Security features included. Details on back.

ILLINOIS STATE POLICE
Firearms Services Bureau

Your Firearm Owner's Identification (FOID) application(s) is being returned to you for completion or correction. The Illinois State Police is unable to process your application as submitted for the following reason(s):

- Application re-submission needed.** Fully complete the enclosed application and return it promptly in the enclosed envelope. The application has been marked to indicate your processing fee has been received and deposited.
- Out-of-date application.** Complete the enclosed FOID application exactly as the original application. (Please note, all items printed in red on application are now mandatory.)
- The highlighted portions of the application must be completed.**
- No Illinois driver's license number or state identification number provided.** (If you are employed in the protective, security, or public safety fields in Illinois AND that employment requires you to have a FOID card OR you are in the United States Armed Services on permanent duty assignment in Illinois, you may be eligible for relief from this requirement. Please call the Firearms & Information Resources Bureau at 217/782-7980, if you would like information on the relief process.)
- Written consent is not from a parent or legal guardian.** The relationship shown is not a parent or legal guardian; therefore it is not acceptable. If the individual listed on the enclosed application is your legal guardian, submit a copy of the legal guardian court order with the enclosed application. A spouse is not a legal guardian without guardianship papers.
- No guardianship papers provided.** The relationship shows Legal Guardian. Please submit a copy of the legal guardianship court order papers.
- No processing fee provided.** Submit a \$10.00 check or money order payable to FOID with your photograph and application. Do not submit cash or copies of the money order.
- Incorrect fee or incomplete check.** Please submit correct fee/check with the enclosed application.
 ___ incorrect fee ___ cash not accepted ___ check not signed ___ payee not completed
- Amount of check does not equal the number of applications submitted.**
 _____ check amount _____ number of applications received
- No photograph/unacceptable photograph.** Submit a recent, clear, head and shoulder photograph, approximately 1 inch by 1 1/2 inches in size.
- Application is incomplete, illegible or damaged in mail.** The condition of the application you submitted is not acceptable for processing.
- No Alien Number provided.** The question "Are you a United States citizen or a naturalized citizen?" was answered "No". Please provide your INS/Alien Number and your country of birth.
- Previous payment already received.** No additional payment is necessary.
- Other Reason/Additional Information:** _____

Please make the necessary corrections and return the FOID application, \$10.00 payment and photo to:

Illinois State Police - FOID
Post Office Box 19233
Springfield, Illinois 62794-9233

3

M. Ellen Mishaga
9104 Gregory Court
Mentor, Ohio 44040
440-205-1958 (Home)
gemishaga@sbcglobal.net

May 17, 2010

Illinois State Police - FOID
Post Office Box 19233
Springfield, IL 62794-9233

To Whom It May Concern:

On March 27, 2010, I submitted an application for a Firearm Owner's Identification Card (FOID). On April 30, 2010, my application was returned to me because I did not provide an Illinois Driver's License Number or an Illinois State Identification Number.

I do not have an Illinois Driver's License Number or an Illinois State Identification Number. Also, I do not meet either of the exceptions to this requirement described in your response to my initial application. However, I do meet all the other requirements for a FOID card. Therefore, I respectfully request that you process my application as originally submitted. I have included my original application with this letter, along with appropriate payment.

Sincerely,



M. Ellen Mishaga

Enclosures: FOID application
Check
FOID response

081013/6-99

M. ELLEN MISHAGA
3104 GREGORY CT
MENTOR OH 44060

NATIONAL CITY BANK
CLEVELAND, OHIO
6-12-410

2802

5/17/2010

DATE

AMOUNT

10.00

13 1/2

M. Ellen Mishaga

FOID Application

FOID
Ten Only *****
PAY TO THE ORDER OF
FOID
Illinois State Police / FOID
Post Office Box 19233
Springfield, IL 62794-9233

Security features included. Details on back.

MENTOR PO
 MENTOR, Ohio
 440609998
 3816630722 -0096

05/18/2010 (440)255-2798 09:59:18 AM

Sales Receipt		
Product Description	Sale Qty	Unit Price / Final Price
SPRINGFIELD IL 62794-9233 Zone-4 First-Class Letter 0.80 oz.		\$0.44
Expected Delivery: Fri 05/21/10		
Return Rcpt (Green Card)		\$2.30
Certified		\$2.80
Label #: 70093410000151557372		
Issue PVI:		\$5.54
Total:		\$5.54

Paid by:
 Cash \$20.00
 Change Due: -\$14.46

Order stamps at USPS.com/shop or call

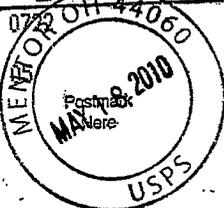
U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information, visit our website at www.usps.com

SPRINGFIELD IL 62794-9233

OFFICIAL USE

Postage	\$ 0.44
Certified Fee	\$ 2.80
Return Receipt Fee (Endorsement Required)	\$ 2.30
Restricted Delivery Fee (Endorsement Required)	\$ 0.00
Total Postage & Fees	\$ 5.54

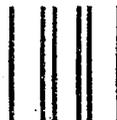


05/18/2010

Sent To: ILLINOIS STATE POLICE - FOID
 Street, Apt. No. or PO Box No.: P.O. Box 19233
 City, State, ZIP+4: SPRINGFIELD, ILL. 62794-9233

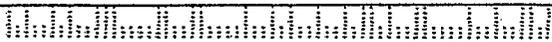
7009 3410 0001 5155 7372

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •
 M. ELLEN MISHAGA
 9104 GREGORY CT
 MENTOR, OH 44060-4429



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	A. Signature X LANTER DELIVERY <input type="checkbox"/> Agent <input type="checkbox"/> Addressee
1. Article Addressed to: ILLINOIS STATE POLICE-FOID POST OFFICE BOX 19233 SPRINGFIELD, ILL 62794-9233	B. Received by (<i>Printed Name</i>), SYSTEMS, INC. <input type="checkbox"/> Date of Delivery
2. Article Number (Transfer from service label)	D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No
PS Form 3811, February 2004	3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.
Domestic Return Receipt	4. Restricted Delivery? (<i>Extra Fee</i>) <input type="checkbox"/> Yes
7009 3410 0001 5155 7372	102595-02-M-1540

ILLINOIS STATE POLICE
Firearms Services Bureau

*I-mailed
copy to Jim
Monday 6-14-10*

Your Firearm Owner's Identification (FOID) application(s) is being returned to you for completion or correction. The Illinois State Police is unable to process your application as submitted for the following reason(s):

- Application re-submission needed.** Fully complete the enclosed application and return it promptly in the enclosed envelope. The application has been marked to indicate your processing fee has been received and deposited.
- Out-of-date application.** Complete the enclosed FOID application exactly as the original application. (Please note, all items printed in red on application are now mandatory.)
- The highlighted portions of the application must be completed.**
- No Illinois driver's license number or state identification number provided.** (If you are employed in the protective, security, or public safety fields in Illinois AND that employment requires you to have a FOID card OR you are in the United States Armed Services on permanent duty assignment in Illinois, you may be eligible for relief from this requirement. Please call the Firearms & Information Resources Bureau at 217/782-7980, if you would like information on the relief process.)
- Written consent is not from a parent or legal guardian.** The relationship shown is not a parent or legal guardian; therefore it is not acceptable. If the individual listed on the enclosed application is your legal guardian, submit a copy of the legal guardian court order with the enclosed application. A spouse is not a legal guardian without guardianship papers.
- No guardianship papers provided.** The relationship shows Legal Guardian. Please submit a copy of the legal guardianship court order papers.
- No processing fee provided.** Submit a \$10.00 check or money order payable to FOID with your photograph and application. Do not submit cash or copies of the money order.
- Incorrect fee or incomplete check.** Please submit correct fee/check with the enclosed application.
 incorrect fee cash not accepted check not signed payee not completed
- Amount of check does not equal the number of applications submitted.**
 _____ check amount _____ number of applications received
- No photograph/unacceptable photograph.** Submit a recent, clear, head and shoulder photograph, approximately 1 1/4 inch by 1 1/2 inches in size.
- Application is incomplete, illegible or damaged in mail.** The condition of the application you submitted is not acceptable for processing.
- No Alien Number provided.** The question "Are you a United States citizen or a naturalized citizen?" was answered "No". Please provide your INS/Alien Number and your country of birth.
- Previous payment already received.** No additional payment is necessary.

Other Reason/Additional Information: Due to IL state law, you must have a valid IL driver's license or IL state ID in order to be eligible for an IL FOID card.

Please make the necessary corrections and return the FOID application, \$10.00 payment and photo to:

Illinois State Police - FOID
Post Office Box 19233
Springfield, Illinois 62794-9233

Additional FOID applications can be found at <http://www.isp.state.il.us/foid/firearms.cfm>. Please contact us at 217/782-7980 if you have any further questions.