

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

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KIM RHEIN and DAVID RHEIN,	)	
	)	
Plaintiffs,	)	No. 13 C 843
	)	
v.	)	JUDGE FEINERMAN
	)	
AGENT PRYOR, Star Number 4816, an	)	MAGISTRATE JUDGE KIM
Illinois State Police Officer, in his	)	
individual capacity; AGENT SUMMERS,	)	
Star Number 5706, an Illinois State Police	)	
Officer, in his individual capacity;	)	
LIEUTENANT JOHN COFFMAN, an	)	
Illinois State Police Officer, in his	)	
individual capacity; HIRAM GRAU,	)	
Illinois State Police Director, in his official	)	
capacity; and LISA MADIGAN, Illinois	)	
Attorney General, in her official capacity,	)	
	)	
Defendants.	)	

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**DEFENDANTS’ REPLY IN SUPPORT OF THEIR MOTION TO DISMISS**

Defendants Illinois State Police Director Hiram Grau, Agents Steven Pryor and Freddie Summers, and Lt. John Coffman, by their attorney Lisa Madigan, the Illinois Attorney General, state the following in support of their Reply in Support of their Motion to Dismiss Plaintiffs’ Complaint:

**INTRODUCTION**

Plaintiffs’ motion for leave to file an Amended Complaint in lieu of responding to Defendants’ motion to dismiss fails to remedy any of the deficiencies with Plaintiffs’ Original Complaint (attached hereto as Exhibit A). To begin, Plaintiffs’ purported causes of action under the Procedural Due Process Clause, the Equal Protection Clause, and the Second and Fourth

Amendments still fail to state a claim; indeed, Plaintiffs have made no material changes with respect to the allegations pertaining to these claims. Thus, for the reasons stated in Defendants' opening brief (Doc. 18), these claims should be dismissed.

Nor should this Court grant Plaintiffs leave to file their Proposed Amended Complaint (attached hereto as Exhibit B). First, Plaintiffs attempt to raise an individual capacity claim for money damages against Director Grau. But the limitations period within which to bring this claim has expired; moreover, the Proposed Amended Complaint does not allege that Director Grau was personally involved in any alleged violation of Plaintiffs' constitutional rights. Thus, a Section 1983 claim against Director Grau cannot stand.

Second, Plaintiffs raise a First Amendment retaliation claim in their Proposed Amended Complaint. But they have pleaded themselves out of court by alleging that the motivating factor for revoking Mr. Rhein's FOID card was Defendants' perception that Mr. Rhein possessed a mental condition that presented a clear and present danger to him or others. Plaintiffs have not alleged that Defendants *intended* to suppress Plaintiffs' First Amendment rights by revoking Mr. Rhein's FOID Card.

Third, and finally, Plaintiffs have not corrected the deficiency in their pleading with respect to their injunctive relief claim (seeking to enjoin enforcement of Section 8(f) of the FOID Card Act). Plaintiffs' conclusory allegation that the Illinois State Police continues to unconstitutionally revoke individuals' FOID cards is insufficient to state an injunctive relief claim. Plaintiffs have not, and cannot, allege facts sufficient to prove that there is a "real and immediate danger" that the State Police will revoke Mr. Rhein's FOID card in the future.

## ARGUMENT

### **I. Plaintiffs' Section 1983 Claim Against Director Grau In His Individual Capacity Is Time-Barred And Lacks Allegations Sufficient To State A Cause Of Action.**

#### **A. Any Individual Capacity Claim Against Director Grau Is Time-Barred.**

A two-year statute of limitations applies to Section 1983 claims litigated in federal court in Illinois, such as the new claim brought against Director Grau. Jenkins v. Vill. of Maywood, 506 F.3d 622, 623 (7<sup>th</sup> Cir. 2007). It is undisputed that Plaintiffs' Section 1983 claims arose in February 2011 (Pls. Proposed Am. Comp., Doc. 22, Ex. 1). Accordingly, the two-year limitations period has expired, and an individual capacity claim against Director Grau under Section 1983 is time-barred.

Nor does an individual capacity claim against Director Grau relate back to the Original Complaint. Plaintiffs' reliance on Hill v. Shelander, 924 F.2d 1370 (7<sup>th</sup> Cir. 1991), is misplaced, (Pls. Mtn. for Leave to File Am. Comp., ¶ 2). In Hill, the plaintiff filed an excessive force claim pursuant to Section 1983 against a Tazewell County jail guard. 924 F.2d at 1371. The plaintiff mistakenly named the jail guard in his official capacity, although the allegations in the complaint made clear that the plaintiff intended to sue the jail guard in his individual capacity; the allegations alleged unconstitutional conduct regarding the jail guard's individual actions, as opposed to a policy/practice of the County. Id. at 1374. After the expiration of the limitations period, the plaintiff moved to amend his complaint to reflect the fact that he intended to sue the jail guard in his individual capacity. Id. at 1371.

The Seventh Circuit in Hill held that the plaintiff's claims against the jail guard related back for purposes of FRCP 15 and, thus, his claim was timely. Id. at 1374-78. The court relied on two critical facts in determining that the individual capacity claim "related back": (1) changing the capacity under which the jail guard was sued could not have prejudiced the jail

guard because all of the allegations in the pre-amended complaint made clear that plaintiff intended to bring an individual capacity suit, id. at 1375, 1378, and (2) the plaintiff at no time framed his allegations as an official capacity suit, id. at 1377-78.

On the other hand, here, Plaintiffs made abundantly clear in the Original Complaint that they had brought only an official capacity suit against Director Grau. (Pls. Original Comp., Doc. 1, ¶ 6). In addition to identifying the suit against Director Grau in his official capacity, Plaintiffs also stated that Director Grau is not being sued for damages, but instead only for declaratory and injunctive relief because he is the state official with authority to enforce Section 8(f) of the FOID Card Act (such claims are official capacity claims). (Id.). And unlike in Hill, where the plaintiff's allegations against the jail guard were directed solely at the jail guard's individual actions, there is not a single allegation in Plaintiffs' Original Complaint (or Proposed Amended Complaint as will be discussed below) to put Director Grau on notice that Plaintiffs have raised an individual capacity claim—seeking money damages—against him. At all times, Plaintiffs had framed their complaint as including only an official capacity suit against Director Grau. Accordingly, Hill is inapplicable.

Here, Director Grau had not been put on notice that an individual capacity claim seeking money damages would be raised against him. Accordingly, this Court should deny Plaintiffs' request to add an individual capacity claim against Director Grau.

**B. Plaintiffs' Proposed Amended Complaint Fails To State An Individual Capacity Claim Against Director Grau.**

Even if this Court finds that Plaintiffs' purported individual capacity claim against Director Grau is not time-barred, it nonetheless should deny Plaintiff leave to file this new claim on the ground that the Proposed Amended Complaint fails to state a cause of action. "For a defendant to be liable under § 1983, he or she must have participated directly in the

constitutional violation.” Hildebrandt v. Ill. Dep’t of Natural Res., 347 F.3d 1014, 1039 (7<sup>th</sup> Cir. 2003); Palmer v. Marion County, 327 F.3d 588, 594 (7<sup>th</sup> Cir. 2003) (stating that “§ 1983 lawsuits against individuals require personal involvement in the alleged constitutional deprivation to support a viable claim”).

Here, Plaintiffs’ Proposed Amended Complaint fails to state a single allegation regarding Director Grau’s personal involvement with any alleged constitutional violations. Thus, Plaintiffs have not stated a Section 1983 individual capacity claim against Director Grau. Accordingly, this Court should deny Plaintiffs’ request to amend their complaint to add an individual capacity claim against Director Grau.

## **II. Plaintiffs Have Pleaded Themselves Out of Court On Their New First Amendment Claim.**

In Plaintiffs’ Proposed First Amended Complaint, they raise a new claim—an as-applied First Amendment retaliation claim. (Pls. Proposed Am. Comp., Doc. 22, Ex. 1, ¶ 34-36).<sup>1</sup> To support a First Amendment retaliation claim, Plaintiffs must allege facts sufficient to prove that Mr. Rhein’s political speech was a “motivating factor” in revoking his FOID card. See George v. Walker, 535 F.3d 535, 538 (7<sup>th</sup> Cir. 2008); Kozel v. Vill. of Dolton, 804 F. Supp. 2d 740, 744 (N.D. Ill. 2011). But a plaintiff pleads himself out of court where he alleges facts showing that he has no claim. See Smart v. Local 702 Int’l Bhd. Of Elec. Workers, 562 F.3d 798, 810 (7<sup>th</sup> Cir. 2009).

Here, Plaintiffs have pleaded themselves out of court on their First Amendment retaliation claim. Plaintiffs admit that the revocation of Mr. Rhein’s FOID card was pursuant to

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<sup>1</sup> Plaintiffs claim that Defendants revoked Mr. Rhein’s FOID card in retaliation for political commentary made by Mr. Rhein. (Pls. Proposed Am. Comp., Doc. 22, Ex. 1, ¶¶ 34, 36). Ms. Rhein does not have standing to bring a First Amendment retaliation claim on behalf of her husband, Mr. Rhein.

section 8(f) of the FOID Card Act (Pls. Proposed Am. Comp., Doc. 22, Ex. 1, ¶¶ 14, 21), which allows the Director of the State Police to revoke an individual's FOID card whenever that individual possess a mental condition that presents a clear and present danger, 430 ILCS 65/8(f) (2010). Plaintiffs further admit in their Proposed First Amended Complaint that Defendants revoked Mr. Rhein's FOID card because they believed that Mr. Rhein possessed a mental condition presenting a clear and present danger. (Pls. Proposed Am. Comp., Doc. 22, Ex. 1, ¶ 31). Although Plaintiffs allege that Mr. Rhein did not actually possess such a mental condition, they nonetheless have alleged that it was Mr. Rhein's perceived mental condition that motivated Defendants to revoke Mr. Rhein's FOID card. Because Plaintiffs have alleged that Defendants' perception of Mr. Rhein's mental condition (even if mistaken) was the motivating factor behind revoking his FOID card, the First Amendment retaliation claim fails. See George v. Walker, 535 F.3d 535, 538 (7<sup>th</sup> Cir. 2008) (stating that retaliation claim under First Amendment requires that engagement in protected activity be motivating factor for alleged retaliatory conduct).

Accordingly, this Court should deny Plaintiffs leave to file a First Amendment retaliation claim.

### **III. Plaintiffs' Proposed Amended Complaint Does Not Cure The Pleading Deficiency Regarding The Claim For Injunctive Relief.**

In their opening brief, Defendants demonstrated that Plaintiffs' injunctive relief claims fail for lack of any allegation that there is a "real and immediate danger" that Defendants will revoke Plaintiffs' FOID cards pursuant to section 8(f) in the future. (Defs. Memo in Support of Mtn. to Dismiss, Doc. 18, Ex. 1, pp. 12-13). Plaintiffs attempt to cure this defect by stating in paragraph 39 of their Proposed Amended Complaint that,

upon information and belief, the statute in question is being used by Illinois State Police officials in a similar and persistent manner against other individuals in Illinois who are having their firearms and/or FOID cards revoked pursuant to this statute for engaging in speech that Illinois State Police officials are falsely construing as indicative of a mental condition exhibiting dangerousness.

(Pls. Proposed Am. Comp., Doc. 22, Ex. 1, ¶ 39). But this allegation is the very type of bald, conclusory statement that Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 570 (2007), and Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009), instruct are insufficient to defeat a motion to dismiss. See also Bissessur v. Ind. Univ. Bd. of Trs., 581 F.3d 599, 602 (7<sup>th</sup> Cir. 2009) (explaining that, after Iqbal, claim can survive motion to dismiss only if plaintiff alleges factual content sufficient to allow court to draw reasonable inference that defendant is liable for alleged misconduct).

Plaintiffs have not identified a single instance where Illinois State Police officials have utilized Section 8(f) of the FOID Card Act to suppress protected speech. Nor have they identified a “real and immediate danger” that Section 8(f) will be used in the future to retaliate against protected speech. Furthermore, there is no allegation that the Department of State Police has even considered revoking Mr. Rhein’s FOID card again; and there is no allegation that Ms. Rhein has ever had her FOID card revoked. Plaintiffs’ bare speculation of future revocation is insufficient to state a claim for injunctive relief. City of Los Angeles v. Lyons, 461 U.S. 95, 101-02 (1983); see also McCauley v. City of Chicago, 671 F.3d 611, 616 (7<sup>th</sup> Cir. 2011). Plaintiffs’ Proposed Amended Complaint thus does not cure the deficiencies in the Original Complaint with respect to the injunctive relief claims.

In sum, Plaintiffs’ motion for leave to file their Proposed Amended Complaint should be denied. Plaintiffs’ new, individual capacity claim against Director Grau is time-barred and fails to state a cause of action upon which relief may be granted. They have pleaded themselves out of court on their new First Amendment retaliation by alleging that Defendants’ perception of Mr. Rhein’s mental condition was the motivating factor for revoking his FOID card. And their injunctive relief claims continue to lack allegations sufficient to state a cause of action; Plaintiffs

simply have not adequately alleged that there is a real and immediate danger of future revocation sufficient to warrant injunctive relief.

Finally, neither Plaintiffs' motion for leave to amend, nor their Proposed Amended Complaint, addresses Defendants' motion to dismiss the claims under the Procedural Due Process and Equal Protection Clauses, as well as those under the Second and Fourth Amendments. Accordingly, all claims in the Original Complaint should be dismissed.

### CONCLUSION

For the foregoing reasons, as well as the reasons in their opening brief, Defendants request that this Court deny Plaintiffs' motion for leave to file an Amended Complaint, and furthermore dismiss all claims in the Original Complaint with prejudice.

**LISA MADIGAN**  
Attorney General of Illinois

Respectfully submitted,

\_\_\_\_\_/s/ *Sunil Bhave*\_\_\_\_\_  
Sunil Bhave  
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### CERTIFICATE OF SERVICE

I, Sunil Bhave, hereby certify that I have caused true and correct copies of the above and foregoing Reply in Support of Motion to Dismiss to be sent via e-filing to all counsel of record on July 3, 2013, in accordance with the rules on electronic filing of documents.

\_\_\_\_\_/s/ *Sunil Bhave*\_\_\_\_\_  
SUNIL BHAVE  
Assistant Attorney General

## **EXHIBIT LIST**

### **Exhibit A**

Plaintiffs' Original Complaint (Doc. 1)

### **Exhibit B**

Plaintiffs' Proposed First Amended Complaint (Doc. 22, Ex. 1).

# **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

KIM RHEIN, )  
DAVID RHEIN, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
AGENT PRYOR, Star Number 4816, )  
an Illinois State Police Officer, in his )  
individual capacity; )  
AGENT SUMMERS, Star Number 5706, )  
An Illinois State Police Officer, in his )  
individual capacity; )  
LIEUTANANT JOHN COFFMAN, )  
an Illinois State Police Officer, in his )  
individual capacity; )  
HIRAM GRAU, Illinois State Police Director; )  
in his official capacity; )  
LISA MADIGAN, Illinois Attorney General, )  
in her official capacity, )  
 )  
 )  
Defendants. )

COMPLAINT AT LAW

Jurisdiction/Venue

1. The search and seizure in this case occurred on or about February 5, 2011 in Sauk Village, Cook County, Illinois, located in the Northern District of Illinois.
2. The jurisdiction of this Court is invoked pursuant to the Civil Rights Act, 42 U.S.C. § 1983, § 1988, the judicial code 28 U.S.C. § 1331 and § 1343(a); the Constitution of the United States, and pendent jurisdiction, as provided under U.S.C. § 1367(a).

Parties

3. At all relevant times pertaining to this occurrence, Plaintiff Kim Rhein was residing

in the Northern District of Illinois, with her husband, David Rhein, at their home in Sauk Village, Cook County, Illinois.

4. At all relevant times pertinent to this occurrence, Defendants (Illinois State Police Agent Pryor, Star Number 4816, Illinois State Police Agent Summers, Star Number 5706, and Illinois State Police Lieutenant John Coffman) ("Defendant Officers") were acting within the course and scope of their employment with the Illinois State Police, and they were acting under color of law. These Defendant Officers are being sued for damages, described below.
5. Defendant Lisa Madigan is the Attorney General of the State of Illinois, the highest law enforcement officer in Illinois, and Hiram Grau is the Director of the Illinois State Police, which is the state agency ostensibly in charge of enforcement of 430 ILCS 65/8(f).
6. Madigan and Grau are not being sued for damages, but are instead being sued as Defendants in a declaratory and injunctive relief action.

#### Facts

7. On February 5, 2011, the Plaintiffs were in their home.
8. On this date, the Plaintiffs were not committing any violation of any law, statute or ordinance.
9. Inside their home, the Plaintiffs lawfully possessed firearms.
10. Kim was the owner of one or more of these firearms, and David was the owner of the rest.
11. As of this date, Plaintiff Kim Rhein owned a valid FOID card, and there was never any attempt to take away this FOID card, and she still possesses it to this date.

12. On February 3, 2011, Coffman wrote a letter purporting to attempt to revoke David Rhein's valid FOID card.
13. On February 4, 2011, Coffman or someone at the Illinois State Police mailed that letter.
14. The attempt to revoke Plaintiff David Rhein's FOID card was allegedly pursuant to 430 ILCS 65/8(f).
15. David Rhein did not receive Coffman's letter in the mail until February 7, 2011.
16. On February 5, 2011, Defendants Pryor and Summers, without a warrant, the Plaintiffs' valid and voluntary consent, or any other legal justification, entered the Plaintiffs' home, and illegally searched the Plaintiffs' home, and, once inside, Pryor and Summers illegally seized the Plaintiffs' firearms, some and/or all of which the Plaintiffs used for personal protection, hunting, investment and/or enjoyment.
17. Pryor and Summers took their actions with the approval of their supervisor, Lieutenant Coffman, who knew the search and seizure was unlawful, in violation of the Fourth and Second Amendments, yet Coffman approved it and/or condoned the illegal search and seizure/Second Amendment violation anyway.
18. The Plaintiffs were required to pay and hire an attorney to obtain their firearms and for David Rhein to get his FOID card back, and eventually, as the result of a court action, in the summer of 2012, the Plaintiffs were able to have the firearms returned to them.
19. As a result of the actions of the Defendant Officers, the Plaintiffs suffered damages.
20. The acts of the Defendants violated the Plaintiffs' Second, Fourth, Fifth, and Fourteenth Amendment rights.

21. The Defendant Officers took their actions ostensibly pursuant to 430 ILCS 65/8(f).
22. The actions of the Defendant Officers in conducting the illegal search and seizure and illegally seizing the Plaintiffs' firearms in no way was justified under this statute.
23. Not only was there no reasonable basis to conclude David Rhein had a mental condition that presented a clear and present danger to himself or anyone else, Section 65/8 does not even apply to persons who already own FOID cards; it applies only to applicants for FOID cards.
24. Additionally and/or alternatively, this statute violates the Due Process and Equal Protection Clauses of the United States Constitution, and the statute also violates the Second Amendment to the United States Constitution.
25. Section 65/8 provides no definition or method for determining whether someone has a "mental condition" that is "of such a nature that it poses a clear and present danger to the applicant, any other person or persons or the community."
26. The statute does not state who is to make this determination, nor does it give any standards for making this determination.
27. The statute is vague.
28. Section 65/8 provides no pre-seizure due process remedy.
29. Section 65/8 provides no post-seizure due process remedy.
30. At no time did any law enforcement official allege that Kim Rhein had a mental condition or was a danger in any way.
31. While Coffman alleged in his letter that David Rhein had such a mental condition, this is totally without merit, Coffman had no reasonable basis for making this conclusion, and Plaintiff David Rhein had no way of challenging such a conclusion.

32. The actions of the Defendant Officers violated the Second Amendment, the Fourth Amendment, as well as the Due Process and Equal Protection Clauses of the United States Constitution.
33. Additionally, the Plaintiffs seek declaratory and injunctive relief, pursuant to 42 U.S.C. § 1983, and 28 U.S.C. § 2201, *et. seq.*, against Madigan and Grau from enforcement of 430 ILCS 65/8(f), as this statute violates the Second Amendment, as well as the Due Process and Equal Protection Clauses of the United States Constitution.
34. The Plaintiffs, who both own valid FOID cards allowing them to possess the firearms in their home, are now again in lawful possession of their firearms, but they have a reasonable fear that Section 65/8(f) will be used again against one or both of them, to either revoke one or more of the Plaintiffs' valid FOID cards and/or seize their lawfully possessed firearms.
35. The actions taken against David Rhein, upon information and belief, were done because of his political comments to a locally elected official some time before the illegal search and seizure that concerned David Rhein's views about Americans' Second Amendment rights that either the representative, someone in that representative's office, and/or one of the Defendant Officers somehow construed as evidence that David Rhein had a mental condition that made him dangerous.
36. Both David and Kim Rhein plan on continuing to engage in political commentary supporting the Second Amendment.
37. The Plaintiffs fear their political commentary will put them at risk of being labeled as mentally unstable and dangerous, even though this is, in fact, not the case, and thus

they have legitimate concern that Section 65/8(f) will be used against them in a manner that would deprive them of their Constitutional rights, as described more fully above.

WHEREFORE, the Plaintiffs respectfully request compensatory and punitive damages against the Defendant Officers, and declaratory and injunctive relief against Defendants Madigan and Grau in that Plaintiffs seeks a declaration that 430 ILCS 65/8(f) is unconstitutional, and that Defendants should be temporarily, then permanently, enjoined from enforcing this statute.

**PLAINTIFFS DEMAND TRIAL BY JURY.**

Respectfully submitted,

By: s/ Richard Dvorak

Attorney for the Plaintiffs.

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# **EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

KIM RHEIN,	)	
DAVID RHEIN,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	13 C 843
AGENT PRYOR, Star Number 4816,	)	
an Illinois State Police Officer, in his	)	JUDGE FEINERMAN
individual capacity;	)	
AGENT SUMMERS, Star Number 5706,	)	MAGISTRATE JUDGE KIM
An Illinois State Police Officer, in his	)	
individual capacity;	)	
LIEUTANANT JOHN COFFMAN,	)	
an Illinois State Police Officer, in his	)	
individual capacity;	)	
HIRAM GRAU, Illinois State Police Director;	)	
in his individual and official capacities;	)	
	)	
	)	
	)	
Defendants.	)	

FIRST AMENDED COMPLAINT

Jurisdiction/Venue

1. The search and seizure in this case occurred on or about February 5, 2011 in Sauk Village, Cook County, Illinois, located in the Northern District of Illinois.
2. The jurisdiction of this Court is invoked pursuant to the Civil Rights Act, 42 U.S.C. § 1983, § 1988, the judicial code 28 U.S.C. § 1331 and § 1343(a); the Constitution of the United States, and pendent jurisdiction, as provided under U.S.C. § 1367(a).

Parties

3. At all relevant times pertaining to this occurrence, Plaintiff Kim Rhein was residing

in the Northern District of Illinois, with her husband, David Rhein, at their home in Sauk Village, Cook County, Illinois.

4. At all relevant times pertinent to this occurrence, Defendants (Illinois State Police Agent Pryor, Star Number 4816, Illinois State Police Agent Summers, Star Number 5706, Illinois State Police Lieutenant John Coffman and Illinois State Police Director Hiram Grau) ("Defendant Officers") were acting within the course and scope of their employment with the Illinois State Police, and they were acting under color of law. These Defendant Officers are being sued for damages, described below.
5. Defendant Hiram Grau is the Director of the Illinois State Police, which is the state agency ostensibly in charge of enforcement of 430 ILCS 65/8(f).
6. Grau is being sued for damages, and as the sole Defendant in a declaratory and injunctive relief action.

#### Facts

7. On February 5, 2011, the Plaintiffs were in their home.
8. On this date, the Plaintiffs were not committing any violation of any law, statute or ordinance.
9. Inside their home, the Plaintiffs lawfully possessed firearms.
10. Kim was the owner of one or more of these firearms, and David was the owner of the rest.
11. As of this date, Plaintiff Kim Rhein owned a valid FOID card, and there was never any attempt to take away this FOID card, and she still possesses it to this date.
12. On February 3, 2011, Coffman wrote a letter purporting to attempt to revoke David Rhein's valid FOID card.

13. On February 4, 2011, Coffman or someone at the Illinois State Police mailed that letter.
14. The attempt to revoke Plaintiff David Rhein's FOID card was allegedly pursuant to 430 ILCS 65/8(f).
15. David Rhein did not receive Coffman's letter in the mail until February 7, 2011.
16. On February 5, 2011, Defendants Pryor and Summers, without a warrant, the Plaintiffs' valid and voluntary consent, or any other legal justification, entered the Plaintiffs' home, and illegally searched the Plaintiffs' home, and, once inside, Pryor and Summers illegally seized the Plaintiffs' firearms, some and/or all of which the Plaintiffs used for personal protection, hunting, investment and/or enjoyment.
17. Pryor and Summers took their actions with the approval of their supervisor, Lieutenant Coffman, who knew the search and seizure was unlawful, in violation of the Fourth and Second Amendments, yet Coffman approved it and/or condoned the illegal search and seizure/Second Amendment violation anyway.
18. The Plaintiffs were required to pay and hire an attorney to obtain their firearms and for David Rhein to get his FOID card back, and eventually, as the result of a court action, in the summer of 2012, the Plaintiffs were able to have the firearms returned to them.
19. As a result of the actions of the Defendant Officers, the Plaintiffs suffered damages.
20. The acts of the Defendant Officers violated the Plaintiffs' Second, Fourth, Fifth, and Fourteenth Amendment rights.
21. The Defendant Officers took their actions ostensibly pursuant to 430 ILCS 65/8(f).
22. The actions of the Defendant Officers in violating Plaintiffs' due process rights,

conducting the illegal search and seizure (and/or approving of it), and illegally seizing the Plaintiffs' firearms in no way was justified under this statute.

23. There no reasonable basis to conclude David Rhein had a mental condition that presented a clear and present danger to himself or anyone else.
24. Additionally and/or alternatively, this statute violates the Due Process and Equal Protection Clauses of the United States Constitution, and the statute also violates the Second Amendment to the United States Constitution.
25. Section 65/8 provides no definition or method for determining whether someone has a "mental condition" that is "of such a nature that it poses a clear and present danger to the applicant, any other person or persons or the community."
26. The statute does not state who is to make this determination, nor does it give any standards for making this determination.
27. The statute is vague.
28. Section 65/8 provides no pre-seizure due process remedy.
29. Section 65/8 provides no post-seizure due process remedy.
30. At no time did any law enforcement official allege that Kim Rhein had a mental condition or was a danger in any way.
31. While Coffman alleged in his letter that David Rhein had such a mental condition, this is totally without merit, Coffman had no reasonable basis for making this conclusion, and Plaintiff David Rhein had no way of challenging such a conclusion.
32. The actions of the Defendant Officers violated the Second Amendment, the Fourth Amendment, as well as the Due Process and Equal Protection Clauses of the United States Constitution.

33. Additionally, the Plaintiffs seek declaratory and injunctive relief, pursuant to 42 U.S.C. § 1983, and 28 U.S.C. § 2201, *et. seq.*, against Grau from enforcement of 430 ILCS 65/8(f), as this statute violates the Second Amendment, as well as the Due Process and Equal Protection Clauses of the United States Constitution.
34. Plaintiff David Rhein also bring an as-applied First Amendment challenge because the actions of the Defendant Officers were the result of Plaintiff David Rhein expressing unpopular political views, specifically about his support of Second Amendment rights.
35. The Plaintiffs, who both own valid FOID cards allowing them to possess the firearms in their home, are now again in lawful possession of their firearms, but they have a reasonable fear that Section 65/8(f) will be used again against one or both of them, to either revoke one or more of the Plaintiffs' valid FOID cards and/or seize their lawfully possessed firearms.
36. The actions taken against David Rhein, upon information and belief, were done because of his political comments to a locally elected official some time before the illegal search and seizure that concerned David Rhein's views about Americans' Second Amendment rights that either the representative, someone in that representative's office, and/or one of the Defendant Officers somehow construed (falsely) as evidence that David Rhein had a mental condition that made him dangerous.
37. Both David and Kim Rhein plan on continuing to engage in political commentary supporting the Second Amendment, and the continued existence of the overbroad and vague statute, which contains no adequate due process guarantees, is chilling the

Plaintiffs' speech and preventing them from engaging in further political commentary supporting the Second Amendment.

38. The Plaintiffs fear their political commentary will put them at risk of being labeled as mentally unstable and dangerous, even though this is, in fact, not the case, and thus they have legitimate concern that Section 65/8(f) will be used against them in a manner that would deprive them of their Constitutional rights, as described more fully above.

39. Finally, upon information and belief, the statute in question is being used by Illinois State Police officials in a similar and persistent manner against other individuals in Illinois who are having their firearms and/or FOID cards revoked pursuant to this statute for engaging in speech that Illinois State Police officials are falsely construing as an indicative of a mental condition exhibiting dangerousness.

WHEREFORE, the Plaintiffs respectfully request compensatory and punitive damages against the Defendant Officers, and declaratory and injunctive relief against Defendant Grau in that Plaintiffs seeks a declaration that 430 ILCS 65/8(f) is unconstitutional, and that Defendants should be temporarily, then permanently, enjoined from enforcing this statute.

**PLAINTIFFS DEMAND TRIAL BY JURY.**

Respectfully submitted,

By: s/ Richard Dvorak

Attorney for the Plaintiffs.

Richard Dvorak  
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