

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

JOSHUA D. MEYERS,
Plaintiff,

v.

LEO P. SCHMITZ , Director of the
Illinois State Police,

Defendant .

No.:

COMPLAINT

Now comes Joshua D. Meyers, plaintiff, by Carl R. Draper of FeldmanWasser, and for his Complaint against defendant Leo P. Schmitz, he states the following:

1. Plaintiff, Joshua D. Meyers (Meyers) was previously an Illinois resident in possession of an Illinois Firearm Owners Identification Card and Illinois Concealed Carry License.
2. Defendant Leo P. Schmitz is the Director of the Illinois State Police (Director) having, among other things, responsibilities pursuant to Illinois law for administration and enforcement of the Illinois Firearm Concealed Carry Act, including compliance with the requirements to conduct hearings set forth in the Act.
3. Since January, 2013, Meyers has possessed a Firearm Owners Identification Card (FOID Card) issued by the Illinois State Police. His most recent card was scheduled to expire on January 1, 2023. A true and correct copy of his most current card is attached hereto as Exhibit A.

4. On February 28, 2014, Meyers was issued a Concealed Carry License by the Illinois State Police with an original expiration of February 28, 2019. A true and correct copy of that license is attached hereto as Exhibit B.
5. Meyers had been issued a Concealed Weapon or Firearm License by the state of Florida on February 25, 2014 with a regular expiration date of February 25, 2021. A true and correct copy of that license is attached hereto as Exhibit C.
6. In December, 2014, Meyers began employment in the state of Florida. He applied for and was issued a Florida drivers license on January 12, 2015.
7. On or around June 1, 2015, the Illinois Department of State Police became aware of the drivers license issued by the state of Florida and, on information and belief, in reliance on that information, defendant Director issued a document stating that Meyers' Concealed Carry License was "cancelled". The e-mail containing that information was sent on June 8, 2015. A true and correct copy of that e-mail is attached hereto as Exhibit D.
8. The reason stated for the "cancellation" of the Concealed Carry License was that Meyers now lived in Florida who's law is not considered to be substantially similar to the law in the state of Illinois based upon a survey that had been sent by the Illinois State Police to each state.
9. On October 30, 2013, a predecessor Director of Illinois State Police mailed a letter to the Florida Department of Agriculture and Consumer Services with survey questions concerning a review of Florida state law in relation to concealed carry permits. A true and correct copy of that letter together with the

survey response returned by the Florida employee are attached hereto as Exhibit E. In the survey response, the Florida employee answered that effective July 1, 2013 amendments were made to the Florida statutes identify the circumstances under which a voluntary mental health admission would be considered by the State of Florida to disqualify an individual from eligibility for a concealed carry permit.

10. Meyers attempted to communicate with officials at the Illinois State Police through an e-mail portal established by the Illinois State Police for communications concerning the Concealed Carry Act. True and correct copies of his communications are attached hereto as Exhibit F. As part of those, Meyers requested an explanation for the “cancellation” of his Concealed Carry License.
11. On June 11, 2015, Meyers submitted a letter addressed to Director Schmitz requesting an administrative hearing in order to establish that he is eligible for a nonresident Concealed Carry License. As part of that, he provided information concerning the issue relating to the question of whether Florida statutes are substantially similar to Illinois. A true and correct copy of that request for a hearing is attached hereto as Exhibit G.
12. In response to the request for an administrative hearing, the Illinois State Police responded that he was not considered eligible for even an administrative review hearing by the Director of State Police. The response from the Illinois State Police further stated: “You were not denied, revoked or suspended. Your

license was cancelled as you are no longer eligible for a resident Concealed Carry License.” A true and correct copy of that response is attached hereto as Exhibit H.

13. Pursuant to its current rules and policies the Illinois State Police requires an applicant for a non-resident Concealed Carry License to submit an application only through a web portal for online applications. The application process stops an applicant from completing the application if the applicant states that he or she is a resident of the state of Florida or any other state that defendant Director has pre-determined to be a state who’s laws are not substantially similar to the laws of the state of Illinois.
14. Based on the notification from the Illinois State Police that the concealed carry permit of Meyers was “cancelled” Meyers attempted to appeal the revocation or suspension of his Concealed Carry License. A true and correct copy of his request to appeal the revocation is attached hereto as Exhibit I.
15. Officials at the Illinois State Police, acting pursuant to the authority of defendant Director, refused to grant any hearing on the request to appeal the revocation of the Concealed Carry License in an e-mail on June 11, 2015. A true and correct copy of the e-mail is attached hereto as Exhibit J. As part of that denial of an administrative hearing, the Illinois State Police advised that, as an out of state resident, Meyers would have to apply pursuant to the non-resident standards, but such an application would not be accepted as long as he was a resident of the State of Florida. The state police further confirmed that he was

not allowed to file an application as a non-resident and that Meyers' attempt to apply was cancelled as stated in that e-mail.

16. In compliance with the laws of the State of Illinois, Meyers surrendered the physical cards he had been issued for the firearm owners identification and for the Concealed Carry Licenses on June 25, 2015 by delivery to the Sheriff of Menard County Illinois.
17. At all times relevant to the matters set forth in this complaint, there was in force and effect the Firearm Concealed Carry Act effective beginning July 9, 2013. (430 ILCS 66/1 *et seq.*)(herein after, "the Act") Pursuant to the Act, a non-resident is allowed to make a license application under Section 40. (430 ILCS 66/40). Under Section 40 of the Act the Department was required to adopt rules to allow for non-resident license applications from any state with laws related to firearm ownership, possession, and carrying that are substantially similar to the requirements for a license under the Illinois Act. Further, Section 40 of the Act provides that any applicant must meet the qualifications established under Section 25 of the Act that apply to Illinois residents with the exception of the requirement to be an Illinois resident as defined in the Firearm Owners Identification Card Act.

18. The qualifications for a Concealed Carry License under the Act in Section 25 are as follows:

Sec. 25. Qualifications for a license.

The Department shall issue a license to an applicant completing an application in accordance with Section 30 of this Act if the person:

- (1) is at least 21 years of age;
- (2) has a currently valid Firearm Owner's Identification Card and at the time of application meets the requirements for the issuance of a Firearm Owner's Identification Card and is not prohibited under the Firearm Owners Identification Card Act or federal law from possessing or receiving a firearm;
- (3) has not been convicted or found guilty in this State or in any other state of:
 - (A) a misdemeanor involving the use or threat of physical force or violence to any person within the 5 years preceding the date of the license application; or
 - (B) 2 or more violations related to driving while under the influence of alcohol, other drug or drugs, intoxicating compound or compounds, or any combination thereof, within the 5 years preceding the date of the license application;
- (4) is not the subject of a pending arrest warrant, prosecution, or proceeding for an offense or action that could lead to disqualification to own or possess a firearm;
- (5) has not been in residential or court-ordered treatment for alcoholism, alcohol detoxification, or drug treatment within the 5 years immediately preceding the date of the license application; and
- (6) has completed firearms training and any education component required under Section 75 of this Act.

430 ILCS 66/25

19. Section 70 of the Act provides procedures for the defendant Director to revoke, suspend or deny a Concealed Carry License. No provision of Section 70 of the

Act allows the Director or anyone acting on behalf of the Illinois State Police to “cancel” a license. That section also requires a licensee whose license is revoked to surrender the license to a local law enforcement agency. (430 ILCS 66/70)

20. Pursuant to the Act whenever an application for a Concealed Carry License is denied or when the Department fails to act on an application within 90 days or at any time that a license is revoked or suspended, the aggrieved party may appeal to the director for a hearing. Such hearings would have to be conducted in accordance with the Administrative Procedure Act (5 ILCS 100/1 *et seq.*) and all final administrative decisions are subject to judicial review pursuant to the Administrative Review Law. (735 ILCS 5/3-101 *et seq.*)
21. Section 5 of the Act requires the Department to inform an applicant of his right to an appeal through the administrative and judicial review procedures for any application that is denied. (430 ILCS 66/5(f)) The Department failed to provide any notice to Meyers of his right to an administrative hearing upon the denial of his right to process an application for a license and refused to give him any such hearing.
22. The Department of State Police adopted rules for the administration of the Firearm Concealed Carry Act. Non-resident applications are governed by Section 1231.110 of those rules. Those rules provide that a non-resident application will only be accepted by persons similarly licensed, “...in a substantially similar state.” That rule also provides that the Department shall post on its website a list of states determined to be substantially similar and

that the Department shall make a determination of which states are substantially by surveying all other states. 20 Ill.Admin. Code § 1231.110.

23. The adopted rules of the Illinois State Police further provide for administrative appeal hearings. An individual who's application is denied or who's license is suspended or revoked is entitled to petition the Department for relief. 20 Ill.Admin. Code § 1231.170. That rule also provides that formal administrative hearings upon request.
24. Administrative hearings concerning the denial of an application for a license or revocation of an existing license are considered a "contested case" pursuant to the Administrative Procedure Act. (5 ILCS 100/1-30) Pursuant to the Administrative Procedure Act, all rules of any agency governing the procedures for contested cases must comply with the provisions of Article 10 of that law. (5 ILCS 100/10-10)
25. The actions of defendant Director and the Illinois State Police violated the Administrative Procedure Act in that the rules and the actions as alleged above, failed to comply with the standard of proof requirement that the agency must prove the basis for revocation by a preponderance of the evidence (5 ILCS 100/10-15); and failed to comply with the provisions of Section 10-25 in that Meyers was not afforded an opportunity for a hearing, was not given written notice containing a statement of the legal authority and jurisdiction for the hearing or the denial of his right to a hearing and was denied the opportunity to appear and present evidence and argument in support of his objection to the

revocation of his license and the denial of his right to apply for a non-resident license. (5 ILCS 100/10-25)

26. The actions of defendant Director and the Illinois State Police violated the Administrative Procedure Act in that no record was properly maintained of the attempt by Meyers to obtain a hearing on the revocation of his license and the denial of his non-resident application as required by Section 10-35. (5 ILCS 100/10-35).
27. The actions of defendant Director and the Illinois State Police violated the Administrative Procedure Act requirement that decisions and orders of the agency be prepared in writing including findings of fact, conclusions of law together with a statement of whether such decision is a final administrative decision subject to the Administrative Review Law. (5 ILCS 100/10-50)
28. The Administrative Procedure Act further provides as follows: “a decision by any agency in the contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this act relating to contested cases....” (5 ILCS 100/10-50(c)).
29. The Administrative Procedure Act expressly prohibits *ex parte* communications which would include any communication, directly or indirectly in connection with any issue of fact with any person except on notice and an opportunity to participate. (5 ILCS 100/10-60). The survey conducted by the Illinois State Police of administrators in other states, including the state of Florida, meets the definition of an *ex parte* communication which formed the factual basis upon

which the Illinois State Police made a determination to deny Meyers the opportunity to submit his application. Meyers was denied his right to present evidence concerning the law of the State of Florida to establish that it is substantially similar to the law of the State of Illinois.

30. The Administrative Procedure Act further provides that no agency shall revoke, suspend, annul, withdraw a valid license without first giving written notice to the licensee of the facts for conduct upon which the agency will rely together with an opportunity for hearing pursuant to the contested case provisions of that law. At such a hearing the licensee has the right to show compliance with lawful requirements. (5 ILCS 100/10-65).
31. The foregoing actions of defendant Director and the Illinois State Police deprived Meyers of his right to notice and an opportunity for hearing concerning the revocation of his Concealed Carry License and, as provided in the Administrative Procedure Act the revocation is consequently void.
32. The rules of the Department of State Police violate the Administrative Procedure Act for the rules contained in Section 1231.110 in that the Illinois State Police predetermines, based merely on the hearsay evidence of a survey, which states are substantially similar to the laws of the State of Illinois. In his attempt to obtain an administrative hearing, Meyers provided evidence that the laws of the State of Florida were substantially similar and he was deprived of any opportunity to have his evidence considered in an administrative appeal hearing.

33. The rules of the Department define “substantially similar”, in relation to which states have laws that are substantially similar to the laws of the State of Illinois set forth in 20 Ill.Admin. Code § 1231.10. The definition of substantially similar is contrary to the provisions of the Act as exceeding the powers of the Department of State Police authorized pursuant to statute. As a consequence, this court should declare that rule void.
34. The Illinois Administrative Procedure Act further provides that in any case in which a party has an administrative rule declared invalid by a court for any reason, including an agency exceeding its statutory authority or the failure to follow provisions of the Administrative Procedure Act, the court shall award the party reasonable expenses of litigation including reasonable attorney’s fees. (5 ILCS 100/10-55)
35. This court should declare the actions of the defendant, Director of the Illinois State Police cancelling the Concealed Carry Permit of plaintiff, Joshua D. Meyers void and unlawful.

WHEREFORE, plaintiff Joshua D. Meyers respectfully prays that this court will enter a judgment declaring that the actions of the defendant and the employees, officials, and agents at the Illinois State Police in cancelling the Concealed Carry Permit of plaintiff was contrary to law and therefore void and of no effect. Plaintiff further prays that this court declare that the defendant’s policy of “cancelling” a concealed permit are policies that are not authorized by law and therefore constitute

unlawful rules under the Administrative Procedure Act. Plaintiff further prays that this court declare that the rules under which the defendant pre-determines the legal questions concerning whether or not an applicant lives in a state whose laws are “substantially similar” to the laws of the State of Illinois violate the Administrative Procedure Act and are void. Finally, for the violations of the Administrative Procedure Act plaintiff respectfully prays that this court will enter an order awarding to plaintiff and against the defendant his reasonable attorney’s fees and costs incurred herein and for such other relief as this court deems just.

JOSH MEYERS , Plaintiff

By: Carl R. Draper, His Attorney
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