EXHIBIT 1

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

IMMANUEL CAMPBELL, RUBIN CARTER, MARKEES SHARKEY, DEONTE BECKWITH, CHANTE LINWOOD, RACHEL JACKSON, on behalf) of themselves and a class of similarly situated persons, as well as BLACK LIVES MATTER CHICAGO, BLOCKS TOGETHER, BRIGHTON PARK NEIGHBORHOOD COUNCIL, CHICAGO URBAN LEAGUE, JUSTICE FOR FAMILIES - BLACK LIVES MATTER CHICAGO, NAACP, NETWORK 49, WOMEN'S ALL POINTS BULLETIN, and 411 MOVEMENT FOR PIERRE LOURY,

Plaintiffs,

v.

CITY OF CHICAGO, and CHICAGO POLICE OFFICERS MIGUEL VILLANUEVA (#17423), JOSUE A. ORTIZ (#15448), DOROTHY CADE (#7814), RICHARD BOLIN (#14590), PETER JONAS (#5069), BRETT POLSON (#5612), ANGEL PENA (#7135), WAUKEESHA MORRIS (#8255), JESUS ROMAN (#6676), JAEHO JUNG (#13387), JOHN CORIELL (#14274), CHAD BOYLAN (#8200), THOMAS MCGUIRE (#1337), ANTHONY OSTROWSKI (#15324), TODD STANLEY (#16662), LAWRENCE GADE JR. (#1841), and JOHN LAVORATA (#8464), in their individual capacities,

Defendants.

Case No. 17cv4467
(Class Action)
Hon. John Z. Lee

DEFENDANT CITY OF CHICAGO MOTION TO DISMISS THE FIRST AMENDED CLASS ACTION COMPLAINT PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(1) AND (B)(6)

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Plaintiffs allege that Chicago Police Department ("CPD") officers regularly violate the Fourth Amendment rights of people in Chicago by using excessive force, and that this practice disproportionately affects Black and Latinx individuals in violation of the Fourteenth Amendment's equal protection clause and state law. Without any evidence establishing that they will be subject to constitutional violations going forward as a result of CPD's practices, plaintiffs seek a wide-ranging injunctive relief not only to end this purported practice, but also to obtain additional and wholly unrelated relief. The Court should reject plaintiffs' claim for injunctive relief because plaintiffs failed to allege facts demonstrating that they will be subjected to excessive force at the hands of a CPD officer in the future, and therefore lack standing to pursue injunctive relief. Moreover, plaintiffs' injunctive relief claims are moot because the policies and practices that they seek to enjoin are no longer in place in light of CPD's extensive, ongoing reform efforts. The complaint should thus be dismissed for these and additional reasons detailed below.[1]

BACKGROUND

This action is brought by six individuals (collectively, the "individual plaintiffs") and nine organizations (collectively, the "organizational plaintiffs") against the City of Chicago (the "City") and seventeen CPD officers (collectively, the "officer defendants"). Plaintiffs allege that the City "has employed a pattern and practice of excessive force that adversely affects all people in Chicago, but that disproportionately and intentionally targets Black and Latinx individuals." First Amended Class Action Complaint [Dkt. 71] (the "complaint" or "Compl.") at ¶ 2.

[1] The City seeks dismissal of the following claims: (i) all claims for equitable and injunctive relief, (ii) all claims asserted by the organizational plaintiffs, (iii) the Illinois Civil Rights Act claim, (iv) all claims to the extent they rely on allegations that the City failed to screen or train CPD officers, and (v) the conspiracy claims.

Plaintiffs seek "a city-wide injunction prohibiting the abusive policies and practices undergirding the alleged constitutional and state law violations" alleged in their complaint, which they claim "together result[] in an overarching pattern of excessive force." *Id.* at ¶ 14. Although their claims are based on five fact-specific, historical encounters during which CPD officers allegedly used force against them, plaintiffs seek expansive relief "designed to fundamentally transform the CPD operations related to use of force policies and practices, accountability supervision, discriminatory policing, training, data collection, and transparency." *Id.* at Prayer for Relief, § (c)(iv). These reforms, in plaintiffs' view, should be managed by an independent monitoring team and this Court. *Id.* at Prayer for Relief, § (c)(iii). In addition to injunctive relief, the individual plaintiffs seek monetary damages from the City and the officer defendants. *See id.* at ¶ 15.

I. The individual plaintiffs

The individual plaintiffs' claims stem from five discrete incidents, each with its own unique set of factual allegations, during which they were arrested and allegedly subjected to excessive force by the defendant officers:

- Immanuel Campbell ("Campbell") alleges that on July 9, 2016, near the intersection of Roosevelt Road and Michigan Avenue, he was arrested and subjected to excessive force by defendant officers Coriell, Ostrowski, McGuire, and Boylan while engaged in a peaceful demonstration. *See id.* at ¶¶ 220-223. Campbell further alleges that his cellphone was seized and unlawfully searched by defendant officer Stanley at the behest of defendant officer Roman. *See id.* at ¶ 224. Charges against Campbell for obstruction of traffic and resisting arrest were dismissed about six months after his arrest. *See id.* at ¶¶ 225, 227.

- Rubin Carter ("Carter") alleges that on April 8, 2017, at the corner of Rockwell Street and Chicago Avenue, he was repeatedly shot with a Taser and arrested by defendant officers Villanueva and Ortiz. *See id.* at ¶¶ 234-36. Charges against Carter for aggravated assault on a peace officer remain pending. *See id.* at ¶¶ 236, 238.

- Markees Sharkey ("Sharkey") alleges that on October 6, 2015, defendant officers Cade and Morris arrived at his girlfriend's house in the West Pullman neighborhood and escorted him out. *See id.* at ¶¶ 243-44. Defendant officer Bolin arrived

subsequently and allegedly threatened and called Sharkey a racial slur before arresting him. *See id.* at ¶ 245-46. Sharkey further alleges that Bolin struck him with his baton while making racial slurs after pulling his police car over while en route to the Fifth District police station, and that Cade and Morris told Bolin to stop abusing Sharkey. *See id.* at ¶ 247-48. Charges against Sharkey for aggravated assault to a police officer remain pending. *See id.* at ¶¶ 249, 251.

- Deonte Beckwith ("Beckwith") alleges that on July 16, 2016 in the South Shore neighborhood, defendant officers Jonas, Polson, Jung, and Pena stopped him as he pulled his car into his garage and proceeded to handcuff and beat him. *See id.* at ¶¶ 257-61. Beckwith was charged with aggravated battery of a police officer and resisting arrest; the complaint is silent as to the status of these charges. *See id.* at ¶ 263.

- Chante Linwood ("Linwood") and Rachel Jackson ("Jackson") allege that on April 3, 2016 in the Gold Coast neighborhood, they were arrested and subjected to excessive force by defendant officers Gade and Lavorata. *See id.* at ¶¶ 268, 272, 281, 286. Linwood and Jackson were charged with resisting arrest and disorderly conduct. *See id.* at ¶¶ 274, 287. Charges against Jackson were eventually dismissed, *see id.* at ¶ 290; the complaint is silent as to the status of charges against Linwood.

The individual plaintiffs further allege in a conclusory and unsupported manner that they are "likely to be subjected to future unconstitutional and illegal uses of force by the CPD, under the policies and practices described herein." *Id.* at ¶¶ 19-24.

II. The organizational plaintiffs

The complaint includes a brief description of each organizational plaintiff's purpose and mission. *See id.* at ¶¶ 25-33. Their claims are not based on specific incidents involving alleged excessive uses of force by CPD officers, but instead upon general, conclusory allegations that the organizations' members "have been or are likely to be subjected to future unconstitutional uses of force by the CPD, under the policies and practices described herein," and that "[p]olice violence forces [the organizations] to spend additional time and money addressing police abuses encountered by [their] members, diverting resources away from [each organization's] mission." *Id.* at ¶¶ 25-33. Accordingly, the organizational plaintiffs seek relief on their own behalf and on

behalf of their members. *See id.* at ¶¶ 33, fn. 3.[2] The organizational plaintiffs are participating in this action "only for the purposes of securing declaratory and injunctive relief." *Id.*

III. Plaintiffs' legal theories

Plaintiffs group their counts as "class and organizational legal claims," which are asserted against the City by both the individual plaintiffs on behalf of the putative class and the organizational plaintiffs, and "individual named plaintiffs' legal claims," which are asserted by the individual plaintiffs only in their personal capacity against the City and/or the defendant officers. Plaintiffs assert three counts on behalf of the class and organizations and ten counts by the individual plaintiffs. The City discusses below only the counts applicable to this motion.

1. Class and organizational counts

Count I asserts a claim pursuant to 42 U.S.C. § 1983 for excessive force in violation of the Fourth Amendment, alleging that the City "has implemented, enforced, encouraged, and sanctioned a policy, practice, and/or custom of using unreasonable force." *Id.* at ¶ 306. Count II asserts a claim pursuant to 42 U.S.C. § 1983 for violation of the equal protection clause of the Fourteenth Amendment, alleging that the City "has implemented, enforced, encouraged, and sanctioned a policy, practice, and/or custom of using unreasonable force against the named Plaintiffs and members of the Plaintiff class based solely on their race and national origin" and that the "use of unreasonable force has been and is being conducted predominantly on Black and Latinx individuals on the basis of racial profiling." *Id.* at ¶ 312. Count III asserts a claim for violation of the Illinois Civil Rights Act ("ICRA") on the grounds that CPD's allegedly "discriminatory law enforcement practices constitute criteria and methods of administering force that create a disparate impact on Black and Latinx people, in violation of [ICRA]." *Id.* at ¶ 323.

[2] Organizational plaintiff Women's All Points Bulletin is the exception and brings claims only on behalf of its members. *See id.*

2. The individual counts[3]

Count II asserts a claim pursuant to 42 U.S.C. § 1983 against the City and the officer defendants for conspiracy to deprive plaintiffs of their constitutional rights. The individual plaintiffs allege that "[e]ach of the Defendants, acting in concert with other known and unknown co-conspirators, conspired by concerted action to accomplish an unlawful purpose by unlawful means." *Id.* at ¶¶ 330. According to the individual plaintiffs, the defendants "took concrete steps to enter into an agreement to unlawfully use force on, detain, and arrest the Plaintiffs, knowing they lacked probable cause to do so, and for the purpose of violating Plaintiffs' Fourth and Fourteenth Amendment rights." *Id.* at ¶ 331. As a result, the individual plaintiffs assert that "[e]ach [officer defendant] is therefore liable for the violation of Plaintiffs' rights by any other [officer defendant]." *Id.* at ¶ 333.

IV. The policies and practices at issue in the complaint

A. Plaintiffs raise allegations and seek relief that is not relevant to their claims.

Plaintiffs' central allegation is that the City "has employed a pattern and practice of excessive force that adversely affects all people in Chicago, but that disproportionately and intentionally targets Black and Latinx individuals." *Id.* at ¶ 2. *See also id.* at ¶ 37 ("The City's policies, practices, and customs concerning the use of force are the direct and proximate cause of the constitutional violations outlined in this Complaint."). Despite this focus, plaintiffs devote

[3] In addition to the counts discussed below, the individual plaintiffs assert claims for violation of the Fourth Amendment (Count I) against the City and the officer defendants, failure to intervene (Count III) against the officer defendants, First Amendment retaliation and unlawful search and seizure against certain officer defendants (Counts IV and V), civil conspiracy (Count VI) against the officer defendants, intentional infliction of emotional distress (Count VII) against the officer defendants, malicious prosecution (Count VIII) against certain officer defendants, and respondeat superior (Count IX) and indemnification (Count X) against the City. These claims are not subject to this motion. The City is, however, contemporaneously filing a motion for an extension of time for the officer defendants to file a motion to dismiss, and the officer defendants may move to dismiss certain of these counts.

much of the complaint to discussing matters that are not relevant to the use of force policies and practices currently in effect at CPD. In an effort to show what plaintiffs contend is the "[h]istory of [r]acialized [p]olice [v]iolence in Chicago," three pages are spent rehashing events including the 1968 Democratic National Convention and the 1972 Metcalfe hearings. *Id.* at ¶¶ 43-50. Another page and a half discusses what plaintiffs allege is the CPD's purported "history of illegally stopping and seizing Black and Latinx individuals," *see id.* at ¶¶ 51-56, while more than twelve pages are used to cover the City's "history of lawsuits filed by victims and survivors of officer violence," *see id.* at ¶¶ 57-62 (setting forth allegations regarding nine pending excessive force cases (¶ 62) and nine excessive force cases that resulted in settlements (¶ 61)). Moreover, plaintiffs seek injunctive relief that goes well beyond preventing future acts of allegedly excessive force and that would require the Court to enmesh itself in matters relating to policing strategy, police response times, data collection and transparency, and the City's provision of supportive services for victims of police misconduct. *See id.* at Prayer for Relief, § (c)(iv).[4]

Plaintiffs identify several policies or practices that, in plaintiffs' view, cause CPD officers to engage in alleged acts of excessive force, although these policies and practices have no apparent relationship to plaintiffs' claims. For instance, although there is no allegation that any individual plaintiff (or any member of one of the organizational plaintiffs) was shot by CPD officers, plaintiffs claim that CPD has a practice of "shooting at fleeing suspects who pose no immediate threat to officers or the public" that was "caused in part by the CPD's failure to institute a foot pursuit policy or take corrective action concerning such violence." *Id.* at ¶¶ 89-90. *See also id.* at ¶ 91 (alleging a practice of "firing at vehicles without justification" despite no allegations that plaintiffs were subjected to such a practice), ¶ 93 (alleging that CPD officers rely

[4] The City is contemporaneously filing a motion to strike certain allegations of the complaint regarding subject matters which the City believes are of little or no relation to the central allegations of the complaint.

on a "jump out" technique even though no plaintiff alleges that he or she was subjected to such a technique), ¶ 100 (although no plaintiff is a minor, alleging that "CPD officers, as a matter of policy and practice, use excessive, less-than-lethal force on Black and Latinx children and teenagers").

B. Plaintiffs' allegations regarding the use of less-than-lethal excessive force are based on the PATF and DOJ Reports.

That leaves plaintiffs' allegations that CPD has a "pattern or practice" of "unnecessary, unjustified use of excessive, less-than-lethal force, including with Tasers, batons, emergency takedowns, body slamming, and hand-to-hand combat," *id.* at ¶ 95, and that CPD, "as a matter of pattern and practice, relies upon overly aggressive tactics that unnecessarily escalate encounters with individuals, increase tensions, and lead to excessive force," *id.* at ¶ 103. Plaintiffs assert that these alleged policies and practices are allowed to flourish because CPD "maintains and promotes a 'code of silence' by which police officers are trained and required to lie or remain silent about police misconduct, including the use of excessive force and discriminatory policing." *Id.* at ¶ 114. Plaintiffs allege that CPD "maintains a policy, practice, and custom of failing to discipline, supervise, monitor, and control its officers, thereby allowing its officers "to believe they can abuse and violate the rights of individuals without consequence." *Id.* at ¶ 124. Plaintiffs further allege that CPD, "as a matter of policy, practice and customs, fails to adequately train its officers," and that "[t]his deliberate lack of training on the use of force has resulted in the wholly foreseeable and widespread violation of people's rights, including the rights of the Plaintiff class." *Id.* at ¶ 167.

Many of these allegations originate with the Chicago Police Accountability Task Force's April 2016 report on CPD (the "PATF Report") and the Department of Justice's January 13, 2017 report on CPD (the "DOJ Report"). *See, e.g.*, *id.* at ¶¶ 96-98 (citing the DOJ Report's

conclusion on Taser use), ¶ 99 (citing DOJ Report's conclusion on less-than-lethal force), ¶ 106 (citing DOJ Report's conclusions on escalation), ¶ 108 (citing PATF Report's conclusion on escalation), ¶ 120 (citing PATF Report's conclusions on code of silence), ¶¶ 122-23 (citing DOJ Report's conclusion on code of silence), ¶ 127 (citing DOJ Report's conclusions on accountability), ¶ 130 (citing DOJ Report's conclusions on discipline), ¶ 131 (citing PATF Report's conclusions on discipline), ¶ 169 (citing DOJ Report's conclusions on training). However, plaintiffs fail to acknowledge that many of the policies and practices identified in the PATF and DOJ Reports have changed significantly since the reports were issued and since the five incidents alleged in the complaint occurred.

C. The City's policies and practices regarding the use of force have changed.

1. The City has revised its policies regarding the use of force.

In particular, in 2016 and 2017, CPD conducted a comprehensive review of a series of use of force policies, including its general orders detailing the Department's Use of Force Policy (G03-02), Force Options (G03-02-01), Taser Use (G03-02-04), OC Spray and Chemical Agent Use (G03-02-05), and Canine Use (G03-02-06). *See* Declaration of Karen Conway ("Conway Decl.") (attached as Exhibit A) at ¶ 3. Working with national experts, CPD analyzed and updated this group of policies, considering issues identified by the PATF and the DOJ Reports, to provide clearer direction for officers on the appropriate use of force, revise certain procedures, and make the sanctity of life the touchstone of the policies. *See* Kelly Bauer, "Chicago Police's New Use of Force Policy Focuses On 'Sanctity of Life,'" DNAInfo (May 17, 2017) (available at https://www.dnainfo.com/chicago/20170517/bronzeville/chicago-police-use-of-force-policy-cpd) (last accessed Aug. 18, 2017); Dan Hinkel, "Chicago police finalize tighter rules on when to shoot, other uses of force," Chicago Tribune (May 17, 2017) (available

http://www.chicagotribune.com/news/local/breaking/ct-chicago-police-use-of-force-met-20170517-story.html) (last accessed Aug. 18, 2017).[5]

In addition, for the first time, CPD incorporated a public comment process into the process of revising its policies, providing the public with an opportunity to review and comment on two separate drafts of the revised use of force policies. *See* Associated Press, "Chicago Police Department drafts new use-of-force policy," Daily Herald (Oct. 7, 2016) (available http://www.dailyherald.com/article/20161007/news/ 310079913) (last accessed Aug. 18, 2017). After each comment period, CPD, in consultation with legal and technical experts, reviewed the more than 1,000 comments received and made revisions to the draft policies based on those comments before publishing the final version of the policies. *See* Conway Decl. at ¶ 7. Among the comments submitted and considered were comments from plaintiffs' counsel Sheila Bedi and Craig Futterman, as well as from Arewa Karen Winters (who represents organizational plaintiff 411 Movement for Pierre Loury) and Crista Noel (who represents organizational plaintiff Women's All Points Bulletin). *See* Sheila A. Bedi and Craig Futterman, "Comments on the Chicago Police Department's Proposed Use of Force Guidelines," Northwestern Law (Oct. 2016) (available at http://www.law.northwestern.edu/legalclinic/macarthur/projects/police/documents/Bedi%20and%20Futterman%20Comments%20on%20CPD%20Use%20of%20 Force%20Policy%20final.pdf) (last accessed Aug. 18, 2017); City of Chicago Police Board, "Public Meeting Minutes" (Feb. 18, 2016) (available at

[5] The Court can take judicial notice of media reports regarding the City's reform efforts. *See Menominee Indian Tribe of Wisc.*, 161 F.3d 449, 456 (7th Cir. 1998) ("Judicial notice of historical documents, documents contained in the public record, and reports of administrative bodies is proper" and does not convert a motion to dismiss into one for summary judgment); *Schmude v. Sheahan*, 312 F. Supp. 2d 1047, 1064 (N.D. Ill. 2004) (it is "routine" for courts to take judicial notice of newspaper articles).

https://www.cityofchicago.org/content/dam/city/depts/cpb/PubMtgMinutes/PubMtg Transcript02182016.pdf) (last accessed Aug. 18, 2017).

CPD's revisions to its use of force policies include an increased emphasis on the sanctity of life, ethical behavior, objective and proportional uses of force, and de-escalation and force mitigation, as well as the imposition of appropriate limitations on the use of less-than-lethal and lethal force. *See* Kelly Bauer, "Chicago Police's New Use of Force Policy Focuses On 'Sanctity of Life,'" DNAInvo (May 17, 2017) (available at https://www.dnainfo.com/chicago/20170517/bronzeville/chicago-police-use-of-force-policy-cpd) (last accessed Aug. 18, 2017); Sam Charles, "CPD Reform Road Map: Training, transparency and accountability," Chicago Sun Times (March 14, 2017) (available at http://chicago.suntimes.com/news/officials-to-offer-road-map-of-police-reform-efforts/) (last accessed Aug. 18, 2017). The revised directives emphasize the investigation of lower level uses of force, and create within CPD a Force Review Panel and Force Review Unit, which are responsible for reviewing certain uses of force and identifying trends and opportunities for improvement in training, tactics, and equipment. *See* Revised Policies (Ex. 3 to Conway Decl.).[6]

In addition, the revised policies emphasize that the use of excessive force, discriminatory force, punitive or retaliatory force, and force in response to the exercise of First Amendment rights is prohibited. *See id.* The revised policies also emphasize that all uses of force must be reported, and further emphasize that verbal intervention and reporting is required when officers witness improper uses of force. *See id.*

[6] The revised policies are also available at https://home.chicagopolice.org/use-of-force-policy/ (last accessed Aug. 21, 2017).

2. The City has developed and implemented training regarding its new use of force policies.

In addition, and in connection with the promulgation in 2016 and 2017 of CPD's revised use of force policies, CPD has begun providing training on those policies. *See* Declaration of Commander Daniel Godsel ("Godsel Decl.") (attached as Exhibit B) at ¶ 5. Training is being provided in two phases. First, working with outside experts, CPD developed a four-hour course to ensure that officers are familiar with the revised use of force policies before they take effect, which is anticipated to be in September 2017. *See id.* at ¶¶ 5-6. CPD began providing the four-hour training in June 2017, and will provide that training to all CPD members by September 2017. *See id.* at ¶ 6. CPD supervisors also received training on their duties under the revised policies to investigate and review uses of force. *See id*. Second, CPD is developing an eight-hour training course on the revised policies; that course will include scenario-based training and will be provided to all CPD members in 2018. *See* Godsel Decl. at ¶¶ 5-6; Mayor's Press Office, "CPD Announces Use of Force Training Underway," City of Chicago (July 5, 2017) (available at https://www.cityofchicago.org/city/en/depts/mayor/press_room/__press_releases/2017/july/UseofForce.html) (last accessed Aug. 18, 2017); Heather Cherone, "Police Training On When Police Can Use Force Begins," DNAInfo (July 5, 2017) (available at https://www.dnainfo.com/chicago/20170705/jefferson-park/police-training-on-when-cops-can-use-force-starts-today) (last accessed Aug. 18, 2017).

Separate and apart from revising its written use of force policies, since the release of the PATF and DOJ Reports, CPD developed a new 16-hour, in-service training course focused on force mitigation principles, skills, and tactics. *See* Godsel Decl. at ¶ 3. CPD developed the course in conjunction with nationally recognized experts, including members of the Los Angeles Police Department, the Washington DC Metropolitan Police Department, and the National

Alliance on Mental Illness Chicago. *See id.*; *see also* Fran Spielman, "City bolsters mental health training after scathing DOJ report," Chicago Sun Times (Jan. 16, 2017) (available at http://chicago.suntimes.com/chicago-politics/city-bolsters-mental-health-training-after-scathing-doj-report/) (last accessed Aug. 18, 2017). Following national best practices, the course focuses on training officers to de-escalate conflicts safely, recognize the signs of mental illness, trauma and crisis situations, and respond quickly when deadly force is necessary. *See* Godsel Decl. at ¶ 4; Patrick M. O'Connell, "All Chicago police dispatchers now trained in mental health awareness," Chicago Tribune (Feb. 25, 2017) (available at http://www.chicagotribune.com/news/local/breaking/ct-911-operators-mental-health-training-met-20170225-story.html) (last accessed Aug. 18, 2017). The course emphasizes live, scenario-based training and provides the tools necessary for the wide range of situations officers face daily. *See* Godsel Decl. at ¶ 4. CPD launched the training in September 2016. *See id.*

Above and beyond revising its use of force policies, and providing training focused on proper use of force and the revised policies, the City has made the following changes to its policies and practices since the issuance of the PATF and DOJ Reports, to address the issues identified in those reports:

- The passage of an ordinance establishing, beginning on September 15, 2017, the Civilian Office of Police Accountability ("COPA"), the successor to the Independent Police Review Authority ("IPRA"). *See* Chi. Mun. Ord. § 2-78-200 *et seq.* COPA has provided its investigative and legal staff with six weeks of training through the "COPA Academy." *See* "COPA Celebrates the First Training Class of Academy Graduates," COPA (July 11, 2017) (available at http://www.chicagocopa.org/copa-celebrates-the-first-training-class-of-academy-graduates/) (last accessed Aug. 21, 2017). The ordinance requires a minimum funding level for COPA to ensure that COPA has the necessary resources to meet its mandate of providing thorough and accurate investigations into complaints of police misconduct. *See* Chi. Mun. Ord. § 2-78-105. Additionally, COPA's jurisdiction will be more expansive than IPRA's, as COPA will be directly responsible for investigating all allegations of improper search and seizure and will have the authority to investigate patterns and practices of misconduct in any form. *See* Chi. Mun. Ord. § 2-78-120.

- Even before the transition to COPA, in June 2016, IPRA implemented rules and regulations governing the investigation of police misconduct complaints. *See* IPRA Rules (effective June 28, 2016) (available at http://www.iprachicago.org/wp-content/uploads/2016/08/Final-IPRA-Rules-Regulations.pdf) (last accessed Aug. 18, 2017). Additionally, IPRA began the process of reviewing certain closed excessive force complaints to determine whether discipline is warranted. *See, e.g.*, Dan Hinkel, William Lee, and Todd Lighty, "IPRA reopens investigation into fatal 2014 shooting by Chicago Police," Chicago Tribune (Aug. 3, 2017) (last accessed Aug. 18, 2017).

- The creation and staffing of a new position of Deputy Inspector General for Public Safety to audit and review the policies, procedures, and practices of CPD, the Police Board, and COPA. *See* Chi. Mun. Ord. §§ 2-56-205, 2-56-210, 2-56-230.

- The adoption, in June 2016, of a video release policy, pursuant to which the City promptly releases video, audio, and documents relating to police-involved shootings and incidents involving death or serious bodily injury due to Taser use or while in police custody. *See* Video Release Policy for the City of Chicago (available at https://www.cityofchicago.org/content/dam/city/depts/cpd/Policies/VideoReleasePolicyfortheCityofChicago.pdf) (last accessed Aug. 18, 2017).

- The creation of a Community Policing Advisory Panel, which has engaged the community to make recommendations regarding community policing and reform efforts to rebuild trust with the City's residents. The Panel issued a report on August 10, 2017 that identified seven critical goals of community policing and provides recommendations on how CPD may achieve these goals. *See* Lauren Petty, "CPD's Community Policing Advisory Panel Releases Recommendations for Reforms," NBC Chicago (Aug. 10, 2017) (available http://www.nbcchicago.com/blogs/ward-room/chicago-police-community-policing-advisory-board-439650593.html) (last accessed Aug. 18, 2017).

- The development of an Early Intervention System ("EIS") that will use available CPD data to identify officers who may need additional training or support to avoid involvement in an excessive force or shooting incident, and to provide non-disciplinary interventions for those officers. *See* City of Chicago, "Progress Report: City of Chicago Police Reforms," at 5 (available at https://www.cityofchicago.org/content/dam/city/depts/mayor/Public%20Safety%20Reforms/ProgressReport-PoliceReforms.pdf).

- Further CPD reform efforts for 2017 are detailed in its written plan entitled Next Steps for Reform. *See* CPD, "Next Steps for Reform" (Mar. 14, 2017) (available at https://www.courthousenews.com/wp-content/uploads/2017/03/CPDReforms.pdf).

Through these reforms and others, the City has made substantial and meaningful changes to CPD's policies and practices regarding the use of in the past two years.

LEGAL STANDARDS

The "*Twombly-Iqbal* facial plausibility requirement for pleading a claim is incorporated into the standard for pleading subject matter jurisdiction." *Silha v. ACT, Inc.*, 807 F.3d 169, 174 (7th Cir. 2015). Thus, "to survive a challenge to standing under Rule 12(b)(1), a plaintiff must plead factual allegations, taken as true, that 'plausibly suggest'" the elements of standing. *Berger v. Nat'l Coll. Athletic Ass'n*, 843 F.3d 285, 289 (7th Cir. 2016) (quoting *Silha*, 807 F.3d at 174). Accordingly, to survive a 12(b)(1) motion, the complaint must allege facts plausibly suggesting that (1) the plaintiff "has suffered an injury in fact that is (a) concrete and particularized and (b) actual and imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Env. Servs. (TOC) Inc.*, 528 U.S. 167, 180-81 (2000).

"A case becomes moot, and the federal courts lose subject matter jurisdiction, when a justiciable controversy ceases to exist between the parties." *Aslin v. Fin. Indus. Reg. Auth., Inc.*, 704 F.3d 475, 477 (7th Cir. 2013). "This is often so where a plaintiff seeks only injunctive or declaratory relief and the defendant discontinues the conduct in dispute." *Id.* at 477-78. Put differently, mootness is "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existences (mootness)." *Friends of the Earth*, 528 U.S. at 185. Because mootness focuses on subject matter jurisdiction, it is a Rule 12(b)(1) argument, and the Court "may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact subject matter jurisdiction exists."

Evers v. Astrue, 536 F.3d 651, 656-57 (7th Cir. 2008) (quoting *Long v. Shorebank Dev. Corp.*, 182 F.3d 548, 554 (7th Cir. 1999)).

"A motion under Rule 12(b)(6) challenges the sufficiency of the complaint to state a claim upon which relief may be granted." *Hallinan v. Fraternal Order of Police of Chicago Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). A "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 570 (2007)). "[L]egal conclusions[, or t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements" should be disregarded. *Brooks v. Ross*, 578 F.3d 574, 581 (7th Cir. 2009). Instead, the Court must determine whether the Amended Complaint's "factual content . . . allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

ARGUMENT

The six individual plaintiffs allege that they were subjected to excessive force by CPD officers on a single prior occasion, while the nine organizational plaintiffs claim that unidentified members have been subjected to excessive force by CPD officers in the past. These allegations of past injury are insufficient to establish standing to pursue equitable relief; plaintiffs' threadbare allegations that they (or their members) are likely to be subjected to excessive force by CPD officers in the future are insufficient to save their equitable relief claims. Plaintiffs also invite the Court to develop and enforce an order overhauling a broad, yet undefined, set of CPD's policies and practices regarding not only the use of force, but also issues ranging from accountability and supervision, to policing tactics, data collection, and transparency that are unconnected to their alleged injuries. The Court should decline plaintiffs' invitation.

Plaintiffs' equitable relief claims suffer from another fatal deficiency. Plaintiffs assert that the root causes of the allegedly excessive uses of force against them are shortcomings in CPD's policies and practices. Yet CPD has made—and will continue to make—substantial reforms to its policies and practices regarding use of force. Importantly, many of these reforms post-date the underlying incidents upon which plaintiffs base their claims. Thus, the injunctive relief claims are moot to the extent they seek to change policies and practices which are no longer in effect.

Certain aspects of the complaint are also subject to dismissal for more discrete reasons. *First*, the organizational plaintiffs have not alleged facts sufficient to establish their standing to participate in this action. *Second*, the Illinois Civil Rights Act claim should be dismissed because the disparate impact theory advanced by plaintiffs does not apply to challenges to policing strategies and, even if it did, plaintiffs reliance on statistical disparities, without allegations of a causal connection between the City's policies and the alleged disparities, is insufficient to make out a prima facie case of disparate impact under controlling United States Supreme Court precedent. *Third*, and similarly, plaintiffs' claims that the City failed to properly screen and train its officers should be dismissed because plaintiffs have not alleged a causal nexus between these alleged failures and their injuries. *Fourth*, plaintiffs' conspiracy claims should be dismissed because they have not alleged facts suggesting an agreement or any other details regarding the purported conspiracy.

I. Plaintiffs lack standing to pursue equitable relief because they have not alleged facts establishing that they will be subjected to excessive force by CPD officers in the future.

A plaintiff has standing to seek equitable relief only if he or she is "under threat of suffering 'injury in fact' that is concrete and particularized." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). To meet this requirement, the threat "must be actual and imminent, not

conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury." *Id.* Plaintiffs do not—and cannot—meet this "irreducible constitutional minimum" with respect to their equitable relief claims. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Accordingly, their requests for (i) class certification,[7] (ii) declaratory judgment, and (iii) an order of injunctive relief should be dismissed with prejudice. *See Friends of the Earth*, 528 U.S. at 185 (plaintiffs must have standing for each form of relief sought).

A. The Supreme Court's decision in *Lyons* requires dismissal of the equitable relief claims.

Each individual plaintiff alleges that he or she was subjected to excessive force once, while the organizational plaintiffs make the conclusory allegation—without further factual embellishment—that their members "have been" subjected to excessive force. Compl. at ¶¶ 19-33. "[W]hile presumably affording [plaintiffs] standing to claim damages against the individual officers and perhaps the City," these allegations "do[] nothing to establish a real and immediate threat that" plaintiffs (or their members) will again be subjected to excessive force by a CPD officer. *City of Los Angeles v. Lyons*, 461 U.S. 95, 105 (1983). The distinction is critical because plaintiffs' "standing to seek the injunction requested depend[s] on whether [they are] likely to suffer future injury from the use of" excessive force by CPD officers. *Id.*[8]

Lyons, which is notable for its similarities to this action, governs and mandates dismissal of plaintiffs' claims for equitable relief. The *Lyons* plaintiff sought an injunction prohibiting Los

[7] Plaintiffs seek certification pursuant to Rules 23(a) and 23(b)(2) solely for the purposes of obtaining "declaratory and injunctive relief." Compl. at ¶ 294. Because plaintiffs lack standing to seek such relief, the request for class certification should be dismissed. In the event this motion is denied, the City reserves its right to oppose plaintiffs' request for class certification at the appropriate time.

[8] "[T]he same standard and reasoning applies to plaintiff[s]' claim for declaratory relief" because "[t]he declaratory relief statute is not an independent basis for jurisdiction and requires an 'actual controversy.'" *Robinson v. City of Chicago*, 868 F.2d 959, 966 n.5 (7th Cir. 1989)

Angeles Police Department ("LAPD") officers from using chokeholds. *See id.* at 98. Like the plaintiffs here, the *Lyons* plaintiff alleged that "pursuant to the authorization, instruction and encouragement" of the city of Los Angeles, LAPD officers "regularly and routinely apply . . . choke holds in innumerable situations where they are not threatened by the use of any deadly force whatsoever." *Id.*; *compare* Compl. at ¶ 37 ("The City's policies, practices, and customs concerning the use of force are the direct and proximate cause of the constitutional violations outlined in this Complaint."). The *Lyons* plaintiff also alleged, like plaintiffs here, that he "justifiably fears that any contact he has with [LAPD] officers may result in his being choked and strangled to death without provocation, justification, or other legal excuse." *Lyons*, 461 U.S. at 98; *compare* Compl. at ¶¶ 19-24 (alleging that the individual plaintiffs are "likely to be subjected to future unconstitutional and illegal uses of force by the CPD"), ¶¶ 25-33 (same for members of the organizational plaintiffs).

The allegations in *Lyons* were insufficient to establish standing to pursue equitable relief, as are the allegations at hand. The Supreme Court was clear about the standing requirements in an action like this one:

> [T]o establish an actual controversy in this case, Lyons would have had not only to allege that he would have another encounter with the police but also to make the incredible assertion either, (1) that *all* police officers in Los Angeles *always* choke any citizen with whom they happen to have an encounter, whether for purpose of arrest, issuing a citation or for questioning or, (2) that the City ordered or authorized police officers to act in such manner.

Lyons, 461 U.S. at 105-06 (emphasis original). The plaintiffs do not—and cannot—allege that every CPD officer always employs excessive force on any citizen (or all Black or Latinx citizens) whom they encounter or that the City affirmatively orders or directs officers to do so. In fact, plaintiffs concede that the opposite is the case by alleging that a small percentage of CPD

officers are responsible for a disproportionate share of excessive force incidents. *See* Compl. at ¶ 62. Accordingly, plaintiffs' claims for equitable relief must fail.

Indeed, in *Lyons*, and despite the allegation that LAPD officers used chokeholds "pursuant to the authorization, instruction, and encouragement" of the city, the Court held that "it is no more than conjecture to suggest that in every . . . encounter between the police and a citizen, the police will act unconstitutionally and inflict injury without provocation or legal excuse." *Lyons*, 461 U.S. at 108. *See also id.* at 105 (explaining that the "additional allegation . . . that the police . . . routinely apply chokeholds . . . falls far short of the allegations that would be necessary to establish a case or controversy between these parties"). As such, "it is surely no more than speculation to assert that Lyons himself will . . . be involved in one of those unfortunate instances." *Id.* at 108. "Absent a sufficient likelihood that he will again be wronged in a similar way, Lyons"—like plaintiffs here—"is no more entitled to an injunction than any other citizen of Los Angeles; and a federal court may not entertain a claim by any or all citizens who no more than assert that certain practices of law enforcement officers are unconstitutional." *Id.* at 111.

B. *Lyons* is binding precedent.

Courts within the Seventh Circuit and elsewhere have relied on *Lyons* to dismiss claims for equitable relief similar to those asserted by plaintiffs. In *Polk v. Dent*, for example, the plaintiffs claimed that CPD officers used excessive force against them and illegally searched their vehicle. *See* No. 13 CV 9321, 2015 WL 2384601, at *1 (N.D. Ill. May 19, 2015)[9]. Like plaintiffs here, the *Polk* plaintiffs sought an injunction barring the City from continuing to employ the alleged policies and practices described in the complaint, as well as a declaratory judgment that those policies and practices were unconstitutional. *See id.* But the incidents of

[9] All unpublished cases cited herein are included for the Court's reference in Exhibit C.

past misconduct alleged in *Polk* did not "establish a real and immediate threat warranting injunctive or declaratory relief for future conduct." *Id.* at *3. Rather, to make out a claim for injunctive relief, the plaintiffs "would have to allege, at a minimum, that they face a real and immediate threat of being stopped by the police *again* and subjected to excessive force and/or an unlawful search. Not only do Plaintiffs fail to allege the likelihood of these future events, but even if they did, such allegations would be purely speculative and too attenuated to confer standing." *Id.* (emphasis in original). The same is true with respect to plaintiffs' threadbare allegations that they or their members will be subjected to excessive force in the future. *See* Compl. at ¶¶ 19-33. "Since Plaintiffs have not alleged a real and imminent threat of future injury to themselves, they do not have standing to seek equitable relief as to the City's future conduct." *Polk*, 2015 WL 2384601, at *3.

Other decisions are in accord and foreclose plaintiffs' claims for equitable relief. *See Simic v. City of Chi.*, 851 F.3d 734, 738 (7th Cir. 2017) (affirming dismissal of injunction because plaintiff's "claimed threat of future injury is conjectural. The threat is contingent upon her once again driving while using her cell phone and receiving a citation under the Chicago ordinance."); *Robinson v. City of Chi.*, 868 F.2d 959, 966 (7th Cir. 1989) (plaintiff lacked standing to seek injunction forbidding detention of arrestees pending search of fingerprint database because "even if the police were to detain others for investigation[,] . . . the possibility that [plaintiff] would suffer any injury as a result of that practice is too speculative"); *MacIssac v. Town of Poughkeepsie*, 770 F. Supp. 3d 587, 601 (S.D.N.Y. 2011) ("The alleged failures to train, supervise, and discipline fall short of what *Lyons* requires for equitable standing in this case: that is, an official policy that Taser stun guns were to be used in every stop and arrest, without regard to whether the suspect resisted arrest or otherwise provoked the use of force. Moreover, even such a policy might not suffice here, given how speculative it is that MacIssac

will be stopped, arrested, and subjected to the use of a Taser stun gun yet again."); *Portis v. City of Chicago*, 347 F. Supp. 2d 573, 576 (N.D. Ill. 2004) (plaintiffs lacked standing to seek equitable relief challenging alleged City practice of prolonged detentions because "[t]he argument that they would again fall victim to wrongful incarceration . . . for some misdemeanor in the future amounted to speculation"); *De Gonzalez v. City of Richmond*, No. C-13-00386, 2014 WL 2194816, at *3 (N.D. Cal. May 23, 2014) ("although Plaintiffs allege a pattern or practice of conduct . . . they have not alleged that they have been personally injured by the alleged pattern, other than during [the underlying incident]. . . . Further, even if Plaintiffs have another encounter with Richmond police officers, Plaintiffs have alleged no facts indicating that excessive force would likely be used."); *Otero v. Dart*, No. 12 C 3148, 2012 WL 5077727, at *5 (N.D. Ill. Oct. 18, 2012) ("Even if Otero had alleged that he may personally be subjected to the Unlawful Detention Policy in the future[,] . . . such allegations would be highly speculative and too attenuated to establish standing. . . . Speculation about a possible chain of future events does not establish standing."); *Simack v. City of Chi.*, No. 02 C 3139, 2003 WL 924335, at *4 (N.D. Ill. Mar. 6, 2003) (plaintiffs lacked standing to challenge CPD bonding procedures because "[t]hese possibilities are . . . speculative rather than real or immediate"); *Boston v. City of Chi.*, No. 86-C-5534, 1988 WL 31532, at *8 (N.D. Ill. Mar. 28, 1988 ("the fact that [Plaintiffs have] alleged the existence of an official municipal policy—which would imply that the violation is systemic, not isolated, in nature—is of no consequence: the existence of a municipal policy, in and of itself, is no indication that the named plaintiff[s] will be harmed by it").

Plaintiffs may argue that allegations in their complaint that they were acting lawfully at the time they allegedly were subjected to excessive force require a different result, *see* Compl. at ¶¶ 222, 235, 249, 263, 274, 287, but this is a distinction without difference. *Lyons* does not depend on the lawfulness or unlawfulness of the plaintiff's conduct; to the contrary, the Supreme

Court was careful to explain that "it is no more than conjecture to suggest that in every instance of a traffic stop, arrest, *or other encounter* between the police and a citizen, the police will act unconstitutionally and inflict injury without provocation or legal excuse." 461 U.S. at 108 (emphasis added).

* * *

In sum, plaintiffs lack standing to pursue equitable relief because they have not—and cannot—alleged facts plausibly suggesting that they will again be subjected to excessive force by CPD officers. Their claims for class certification, injunctive relief, and declaratory judgment should therefore be dismissed with prejudice.

II. Plaintiffs' equitable relief claims are moot in light of significant reforms to CPD that have been and are being implemented.

The Seventh Circuit "has upheld the general rule that repeal, expiration, or significant amendment to challenged legislation ends the ongoing controversy and renders moot a plaintiff's request for injunctive relief." *Fed. of Advertising Indus. Reps., Inc. v. City of Chi.*, 326 F.3d 924, 930 (7th Cir. 2003).

Here, CPD has undertaken extensive reforms since the incidents alleged in the complaint, and many of the policies and practices about which plaintiffs complain no longer exist. *See supra* at 8-13. This is especially true of the alleged policy or practice that is central to each of plaintiffs' requests for equitable relief—that is, the allegation that CPD "relies upon overly aggressive tactics that unnecessarily escalate encounters with individuals, increase tensions, and lead to excessive force." Compl. at ¶ 103; *see also id.* at ¶¶ 104-11 (setting forth additional allegations regarding a policy or practice of escalation); ¶¶ 220-92 (alleging that the officer defendants unnecessarily used excessive force on the plaintiffs). The de-escalation and use of force training that CPD provided after the incidents alleged in plaintiffs' complaint, in

combination with the revised use of force policies, amount to "an express disavowal of" any policy or practice that authorizes escalatory tactics and excessive uses of force and is therefore "sufficient to moot" plaintiffs' equitable relief claims to the extent they are based on the existence of a policy or practice of escalating encounters with citizens or using excessive force. *Doe v. Elmbrook School Dist.*, 658 F.3d 710, 720 (7th Cir. 2011) (overruled on other ground *en banc*, 687 F.3d 840, 842-43 (7th Cir. 2012)).[10]

A similar analysis applies to plaintiffs' assertion that CPD has "a policy, practice, and custom of failing to discipline, supervise, monitor, and control its officers." Compl. at ¶ 124. Plaintiffs allege that the reporting and review requirements for uses of force are generally insufficient, *see id.* at ¶¶ 134-39, and that "the boilerplate reports and omissions in required paperwork and utter lack of supervisor investigation pertaining to officer uses of force result from the City's failure to provide adequate discipline, supervision, and oversight within the CPD," *id.* at ¶ 140. While the City disputes that this was ever the case, it is critical for present purposes that plaintiffs' allegations do not describe CPD's current policies and practices. To the contrary, CPD has issued revised directives that increase the investigatory obligations for lower level uses of force (like those alleged in the complaint) and has created not one but two entities (the Force Review Panel and the Force Review Unit) charged with reviewing certain uses of force, identifying trends, and spotting opportunities to improve training, tactics, and equipment. *See* Revised Policies (Ex. 3 to Conway Decl (Ex. A)).

Further, while plaintiffs criticize IPRA, even they acknowledge that Chicago's Municipal Code was amended to replace IPRA with COPA, a new agency with expanded authority and resources. *See id.* at ¶ 153; *see also* Chi. Mun. Ord. § 2-78-105. Equitable claims based on

[10] This is not to suggest that plaintiffs have alleged a causal nexus between any purported failure to provide training and their injuries. *See* Section V, *infra.*

perceived shortcomings at IPRA should therefore be dismissed, as "[a] case challenging a statute's validity normally becomes moot if the statute is repealed or invalidated." *Shepard v. Madigan*, 734 F.3d 748, 750 (7th Cir. 2013). Plaintiffs then proceed to offer numerous complaints about COPA, *see id.* at ¶¶ 153-56, but plaintiffs' complaints fail to account both for the changes that IPRA has already made (*e.g.*, its review of certain closed files to determine whether discipline is warranted) and the changes that will soon go into effect with the transition to COPA (*e.g.*, COPA's significantly increased and independent funding and expanded authority to investigate patterns and practices of misconduct in any form). *See* Chi. Mun. Ord. §§ 2-78-105, 2-78-110, 2-78-120.

III. The organizations have not alleged sufficient facts to establish their standing to seek equitable relief.

An organization has standing to sue on behalf of its members (associational standing) if "(1) its members would otherwise have standing to sue in their own right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Milw. Police Ass'n v. Bd. of Fire and Police Comm'rs of Milw.*, 708 F.3d 921, 928 (7th Cir. 2013). Additionally, an organization can sue on its own behalf (organizational standing) if it meets Article III's requirements of "injury in fact, a causal connection between the injury and the defendant's conduct, and likely redressability through a favorable decision." *Disability Rights Wisc., Inc. v. Walworth County Bd. of Supervisors*, 522 F.3d 796, 800 (7th Cir. 2008). Here, the allegations establish neither associational nor organizational standing.

The organizational plaintiffs seek only declaratory and injunctive relief. *See* Compl. at ¶¶ 25-33. For the reasons explained in Section I, "it is surely no more than speculation to assert" that a member of an organization is "likely to be subjected to future unconstitutional and illegal

uses of force by" CPD. *Lyons*, 461 U.S. at 108; Compl. at ¶¶ 25-33. Consequently, the organizations lack associational standing.

With respect to organizational standing, allegations that an organization "will incur expenses in processing claims of police misconduct unless the federal equity court intervenes, assuming this amounts to injury in fact, is not within the zone of interests protected by the Fourteenth Amendment or 42 U.S.C. § 1983." *Calvin v. Conlisk*, 534 F.2d 1251, 1253 (7th Cir. 1976).[11] Here, the organizations allege that "[p]olice violence forces [them] to spend additional time and money addressing police abuses encountered by [their] members, diverting resources away from [their] focus." Compl. at ¶¶ 25-31, 33. *Calvin* held that finding standing based on such allegations would improperly "give any organization with a particularized interest the right to bring suit in order to spare itself the expense of continued efforts to further that interest." 534 F.2d at 1253. "The effect would be to undermine the prudential rules of standing." *Id.* *See also Barnes v. Shalala*, 865 F. Supp. 550, 561 (W.D. Wisc. 1994) (finding standing based on allegations that organization's "resources are being sapped by this litigation and by the activities the foundation has engaged in to oppose approval of [veterinary drug] . . . would eviscerate the constitutional requirement of the standing doctrine: any plaintiff with a disagreement with the government could manufacture an injury to establish standing simply by filing a lawsuit"). The organizational plaintiffs accordingly have not alleged facts sufficient to establish organizational standing.

[11] The *Calvin* court also noted, in the alternative, that the organizations' "voluntary decision to assume the burden of processing these claims arguably breaks the causal chain between the defendants' conduct and the expenses incurred by the organizations in processing the claims." 534 F.2d at 1253 n.3.

IV. The Illinois Civil Rights Act claim should be dismissed.

Plaintiffs allege that the City's "discriminatory law enforcement practices constitute criteria and methods of administering force that create a disparate impact on Black and Latinx people, in violation of the Illinois Civil Rights Act [("ICRA")]." Compl. at ¶ 323. ICRA prohibits local governments from utilizing "criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or gender." 740 ILCS 23/5(a)(2). A claim "under . . . ICRA requires only a disparate impact regardless of intent." *McFadden v. Bd. of Educ. for Ill. School Dist. U-46*, 984 F. Supp. 2d 882, 890 (N.D. Ill. 2013).

A. Disparate impact liability does not apply to policing strategies.

ICRA "was expressly intended to provide a state law remedy that was *identical* to the federal disparate impact canon." *Jackson v. Cerpa*, 696 F. Supp. 2d 962, 964 (N.D. Ill. 2010) (emphasis in original) (citing *Ill. Native Am. Bar Ass'n v. Univ. of Ill.*, 368 Ill. App. 3d 321, 327 (1st Dist. 2006)). Thus, ICRA "was not intended to create new rights but merely created a new venue—state court—for discrimination claims under federal law." *Dunnet Bay Cosntr. Co. v. Borggren*, 700 F.3d 676, 697 (7th Cir. 2015). Accordingly, Illinois courts "look to cases concerning alleged violations of federal civil rights statutes to guide our interpretation of" ICRA. *Cent. Austin Neighborhood Ass'n v. City of Chi.*, 2013 IL App (1st) 123041, ¶ 10 ("*CANA*").

Disparate impact liability has traditionally been associated with employment and housing discrimination. *See Tex. Dept. of Housing and Comm. Affairs v. Inclusive Comm. Proj., Inc.*, 135 S. Ct. 2507, 2525 (2015) (recognizing disparate-impact claims under federal Fair Housing Act); *Smith v. City of Jackson*, 544 U.S. 228, 240 (2005) (same under federal Age Discrimination in Employment Act); *Griggs v. Duke Power Co.*, 401 U.S. 424, 430 (1971) (same under Title VII of the Civil Rights Act of 1964). In order to asset a prima facie case, a plaintiff "that relies on a

statistical disparity" must allege that offer "statistical evidence demonstrating a causal connection." *Inclusive Comm.*, 135 S. Ct. at 2523. Once that threshold is met, the burden shifts to the defendant to identify a public interest justifying the challenged policy or practice. *See id.* at 2518. Before rejecting such a justification, "a court must determine that a plaintiff has shown that there is 'an available alternative . . . practice that has less disparate impact and serves the [entity's] legitimate needs.'" *Id.* (quoting *Ricci v. DeStefano*, 557 U.S. 557, 578 (2009)).

The City has been unable to locate any decision in which a court sustained a challenge to a policing strategy using a disparate impact analysis, thereby contemplating judicial intrusion into core policing policy decisions absent evidence of intentional discrimination.[12] This distinction is critical. Intruding on core police policy decisions is justified when discrimination is intentional; moreover, intentional discrimination is easily cured, as the agency need merely stop using race as the basis for law enforcement actions and remains otherwise free to pursue its law enforcement goals as it sees fit.

By contrast, a disparate impact arises not from illicit intent but from the application of a neutral system that happens to produce the disparate impact as an unfortunate byproduct. Accordingly, applying disparate impact liability here would require the Court (assuming for the sake of argument that plaintiffs established a prima facie case for disparate impact) to assess whether CPD's use of force policies and practices serve CPD's undeniably legitimate interests in public safety and, if so, whether plaintiffs' can identify other reasonably available policing

[12] The plaintiffs in *CANA* alleged that persons in predominantly African-American and Hispanic neighborhoods waited longer for police to arrive in response to 911 calls than those in predominantly white neighborhoods. *See* 2013 IL App (1st) 123041, ¶ 1. The court held that the political question doctrine did not divest the trial court of jurisdiction and that the trial court should not have dismissed the complaint for failure to state a justiciable claim. *Id.* *See also id.* at ¶ 28 ("because the complaint does not present a nonjusticiable political question, we reverse the trial court's judgment and remand for further proceedings in accord with this order"). Accordingly, the *CANA* court did not hold that the plaintiffs had, in fact, stated a claim under ICRA.

strategies that would serve CPD's public safety goals with less disparate impact. Doing so would enmesh the Court in policing strategy questions outside the scope of its expertise. Thus, absent evidence of intentional discrimination, decisions regarding CPD's policing strategies properly lie with CPD.

B. If disparate impact liability applies, plaintiffs have not alleged a prima facie case.

If the Court elects to create new law by holding that a disparate impact challenge to CPD's policing strategies is at least theoretically cognizable—which it should not for the reasons explained above—the Court should dismiss plaintiffs' ICRA claim for the alternate reason that the plaintiffs' allegations do not establish a prima facie case of disparate impact because plaintiffs have not—and cannot—allege a causal connection between CPD's policies and practices and any racial disparities. In *Inclusive Communities*, the plaintiffs challenged a state agency's selection criteria for allocating the low-income housing tax credits it distributed to developers because those credits went disproportionately toward low-income housing in majority African-American urban areas as opposed to majority white suburban neighborhoods. *See* 135 S. Ct. at 2513-14. Relying on a disparate impact theory, the plaintiffs sought a court order requiring the agency to modify its criteria to encourage the construction of low-income housing in the suburbs. *See id.* at 2514.

Although the Supreme Court recognized the possibility of disparate impact liability under the FHA, it declined to hold that plaintiffs had established a prima facie case based solely on a statistical disparity in the allocation of the housing credits. *See id.* at 2522. Rather, to make out a prima facie case for disparate impact liability, the Court held that the plaintiffs must draw an explicit, causal connection between the challenged policy and the statistical disparity.

As the Court explained, "a disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity." *Id.* at 2523. Moreover, "[i]t may be difficult to establish causation because of the multiple factors that go into [policymaking decisions]." *Id.* at 2523-24. This "robust causality requirement ensures that 'racial imbalance . . . does not, without more, establish a prima facie case of disparate impact' and thus protects defendants from being held liable for racial disparities they did not create." *Id.* (quoting *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 653 (1989)). Thus, "[a] plaintiff who fails to allege facts at the pleading stage or produce statistical evidence demonstrating a causal connection cannot make out a prima facie case of disparate impact." *Id.*

Plaintiffs here cannot satisfy the "robust causality requirement" mandated by the Supreme Court. Although plaintiffs allege that Black and Latinx people are subjected to excessive force more frequently than white people, they do not allege or identify evidence of a causal connection between CPD's policies and these purported disparities. Indeed, plaintiffs make no attempt to address other plausible explanations for the alleged disparities, such as the demographics of areas where crime occurs most frequently or the demographics of arrestees. Because "racial imbalance . . . does not, without more, establish a prima facie case of disparate impact," plaintiffs' ICRA claim should be dismissed. *Id.*

V. Plaintiffs' failure to train and screen claims should be dismissed because they do not allege a causal nexus between the alleged failures and their claimed injuries.

To state a claim for failure to train, plaintiffs must allege "how the failure to provide specific training had a causal nexus to their injury." *Palmquist v. Selvik*, 111 F.3d 1332, 1345 (7th Cir. 1997). *See also City of Canton v. Harris*, 489 U.S. 378, 391 (1989) ("the identified deficiency in a city's training program must be closely related to the ultimate injury"). While plaintiffs offer broad criticisms of CPD's training efforts and assert that CPD "fails to adequately

train its officers," Compl. at ¶¶ 167-83, they do not identify (i) a failure to provide specific training that (ii) has a causal nexus to their alleged injuries. Plaintiffs' claims should thus be dismissed to the extent they rely on allegations of a failure to train.

Plaintiffs' failure to screen claims are also deficient. To begin with, the complaint does not allege any facts about CPD's screening and hiring processes. This is fatal on its own, as liability for failure to screen arises "[o]nly where adequate scrutiny of an applicant's background would lead a reasonable policymaker to conclude that the plainly obvious consequence of the decision to hire the applicant would be the deprivation of a third party's federally protected right." *Bd. of County Commrs. of Bryan County, Okla. v. Brown*, 520 U.S. 397, 411 (1997). Moreover, because they do not allege facts regarding screening or hiring, plaintiffs have not alleged a causal nexus between the alleged failure to screen and their claimed injuries. This deficiency also requires dismissal of plaintiffs' claims to the extent they rely on allegations of a failure to screen because municipal culpability "must depend on a finding that *this* officer was highly likely to inflict the *particular* injury suffered by the plaintiff." *Id.* at 412 (emphasis original).

VI. Plaintiffs' constitutional conspiracy claims should be dismissed because they have not alleged facts suggesting an agreement and because the purported conspiracies are not adequately defined.

Plaintiffs allege that "[e]ach of the defendants . . . conspired by concerted action to accomplish an unlawful purpose by unlawful means" and that "[e]ach of the defendants took concrete steps to enter into an agreement to unlawfully use force on, detain, and arrest the Plaintiffs, knowing they lacked probable cause to do so, and for the purpose of violating Plaintiffs' Fourth and Fourteenth Amendment rights." Compl. at ¶¶ 330-31. As a result, plaintiffs maintain that "[e]ach individual Defendant is therefore liable for the violation of Plaintiffs' rights by any other individual Defendant." *Id.* at ¶¶ 331.

Plaintiffs allege no facts about this purported conspiracy or the alleged agreement, much less facts suggesting that officer defendants who were involved in one of the five underlying incidents even had knowledge of the other four underlying incidents. Their conspiracy claims should therefore be dismissed. *See Copeland v. Northwestern Memorial Hosp.*, 964 F. Supp. 1225, 1235 (N.D. Ill. 1997) (dismissing conspiracy claims where plaintiff "failed to allege facts showing that the City had an agreement with any other person to deprive Copeland of his constitutional rights"); *Linda Constr. Inc. v. City of Chi.*, No. 15 C 8714, 2016 WL 1020747, at *6 (N.D. Ill. Mar. 15, 2016) (dismissing conspiracy claim where plaintiff "have not alleged any facts indicating that the City . . . entered into an agreement with any of the other Defendants with the goal of depriving Plaintiffs of their constitutional rights because of their race" and explaining that the "contention that a conspiracy existed is a legal conclusion that the Court need not accept as true"); *Hegwood v. City of Berwyn*, No. 09 C 7344, 2010 WL 5232281, at *2 (N.D. Ill. Dec. 16, 2010) (allegation that police officer and store manager "reached an agreement amongst themselves to unlawfully search and seize Plaintiff, and to thereby deprive Plaintiff of his Constitutional rights" insufficient to state conspiracy claim because plaintiff "fails to allege the reasons for this alleged agreement, when it was entered into, the specific role of each conspirator, or even the end goal of the agreement;" "[w]ithout these facts alleged, Hegwood fails to allege a conspiracy").

CONCLUSION

Plaintiffs' claims for equitable relief should be dismissed because both the individual and organizational plaintiffs lack standing to bring them and, in any event, plaintiffs seek to change policies and practices that are the subject of substantial and ongoing reforms. Plaintiffs' disparate-impact claim under ICRA should also be dismissed because disparate-impact liability does not and should not apply to policing strategies and, even if it does, plaintiffs' have failed to

allege a prima facie case. Further, plaintiffs' claims should be dismissed to the extent they rely on allegations that the City failed to adequately screen and train CPD officers because plaintiffs have not alleged an adequate causal nexus. Lastly, plaintiffs' conspiracy claims are inadequately pled and should therefore be dismissed as well.

Dated: August 21, 2017

Respectfully submitted,

CITY OF CHICAGO

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