

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

ELLA M. SAMUEL,)	
)	
Plaintiff,)	
)	
vs.)	No. 15-780-NJR-SCW
)	
JESSICA TRAME,)	
)	
Defendant.)	

ANSWER AND AFFIRMATIVE DEFENSES

NOW COMES Defendant JESSICA TRAME, by and through her attorney, Lisa Madigan, Attorney General of the State of Illinois, and for her Answer and Affirmative Defenses to the Plaintiff’s Complaint states as follows:

1. At all times relevant, Plaintiff Ella M. Samuel is enlisted in the United States Air Force, and is stationed at Scott Air Force Base in Saint Clair County, Illinois.

RESPONSE: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1.

2. At all times relevant, Defendant Jessica Trame is the Director of the Firearms Services Bureau of the Illinois State Police, and is sued in her official capacity pursuant to 42 U.S.C. 1983.

RESPONSE: Defendant admits that she is the Chief of the Firearms Services Bureau of the Illinois State Police, and that Plaintiff has sued her in her official capacity. Defendant denies that she is the Director of the Firearms Services Bureau of the Illinois State Police. Defendant lacks knowledge or information sufficient to form a belief about what time frame Plaintiff refers to when using the term “[a]t all times relevant.”

3. That as part of her duties in the United States Air Force, Plaintiff is assigned to security, and is trained by the United States Air Force to utilize firearms, including but not limited to the Beretta M9 pistol, the M240 machinegun, the M16 rifle, as well as assorted heavy

weapons. Recent assignments have included providing security for the nation's military aircraft, facilities and nuclear weapons.

RESPONSE: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 3.

4. That Plaintiff is willing to undergo whatever additional firearm training, over and above what she has already received, in order to legally carry a firearm in Illinois, as is necessary to legally carry a firearm in Illinois.

RESPONSE: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 4.

5. That Plaintiff is a legal resident of Montana, owns a home in Montana, and holds a Montana Driver's license issued by the State of Montana. Under Montana law, Plaintiff is entitled to carry a firearm in Montana without the necessity of a permit.

RESPONSE: Defendant admits that Plaintiff holds a Montana driver's license issued by the State of Montana. Defendant lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in paragraph 5.

6. That Plaintiff does not hold an Illinois Driver's license, but has been issued a "temporary" Firearm Owners Identification Card.

RESPONSE: Defendant admits that Plaintiff does not hold an Illinois driver's license. Defendant denies that Plaintiff has been issued a "temporary" Firearm Owners Identification Card.

7. That Plaintiff, per her Air Force Duty Assignment, physically is domiciled in Illinois, specifically in Saint Clair County, and in order to carry a firearm, off duty, is required by Illinois law to have a concealed carry license issued by the State of Illinois.

RESPONSE: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 7.

8. That carrying a firearm by Plaintiff, while off duty, and without a concealed carry license issued by the State of Illinois, is a criminal offense.

RESPONSE: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 8.

9. That shortly after arriving in Illinois from Montana, Plaintiff contacted the Firearm Services Bureau of the Illinois State Police, and learned that:

- A. There was no mechanism under Illinois law for Plaintiff to obtain an Illinois license to carry a firearm, either as a “resident” or as a “non-resident”, and
- B. It is a criminal offense for Plaintiff to carry a loaded and functional firearm on or about her person, in the State of Illinois, without an Illinois concealed carry license.

RESPONSE: Defendant lacks knowledge or information sufficient to form a belief about whether Plaintiff contacted the Firearm Services Bureau and what she learned if she did. Defendant denies there is no mechanism under Illinois law for Plaintiff to obtain an Illinois license to carry a firearm, either as a “resident” or as a “non-resident.” Defendant lacks knowledge or information sufficient to form a belief as to whether Plaintiff’s carrying of a loaded and functional firearm on her person in Illinois without a concealed carry license would constitute a criminal offense.

10. That at all times relevant, under the Second and Fourteenth Amendment to the U.S. Constitution, pursuant to decisions of both the United States Court of Appeals for the Seventh Circuit, and the Illinois Supreme Court, a total ban on the carry of arms for self defense outside the home is unconstitutional.

RESPONSE: Defendant admits that under case law from the United States Court of Appeals for the Seventh Circuit and the Illinois Supreme Court, a total ban on the carrying of arms for self-defense outside the home is unconstitutional. Defendant denies the remaining allegations in paragraph 10.

11. That, as applied to Plaintiff, the Illinois statutes, as they pertain to the carrying of firearms, results in a total ban on the carry of firearms for self-defense by Plaintiff, despite the fact that she is (a) of age, (b) well trained in the use of arms, and (c) is a law abiding citizen.

RESPONSE: Defendant denies the allegations in paragraph 11.

12. That Plaintiff has never been charged or convicted of a felony or misdemeanor of any kind, has never been adjudicated as being mentally defective and is not subject to any form of an order of protection or any similar restrictions.

RESPONSE: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 12.

13. That Plaintiff desires to carry a firearm, while off duty, for her own personal protection, outside of her home, and would do so in Illinois but for the laws prohibiting it, and her inability to obtain a Illinois Concealed Carry Permit, no matter what her qualifications and training.

RESPONSE: Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13.

AFFIRMATIVE DEFENSES

1. Ripeness

Plaintiff's claims are premature and unripe due to Plaintiff's failure to apply for a FOID card or a concealed carry license and her failure to apply for an Illinois license or Illinois identification card, for which she may be qualified given her allegation that she is domiciled in Illinois.

2. Qualified Immunity

To the extent Plaintiff's complaint is construed to plead claims, including for fees or costs, against Defendant in her individual capacity, Defendant is protected from suit by the

doctrine of qualified immunity because she acted reasonably and in good faith in the performance of her duties and without violating Plaintiff's clearly established statutory or constitutional rights of which a reasonable person would have known.

3. Eleventh Amendment Immunity

To the extent that Plaintiff's complaint is construed to plead claims beyond the declaratory and injunctive relief and related costs and fees expressly requested under 42 U.S.C. § 1983 and 42 U.S.C. § 1988 for alleged violations of the Second and Fourteenth Amendments to the United States Constitution, Defendant was not fairly placed on notice of such claims. To the extent those additional claims would be barred by the Eleventh Amendment to the United States Constitution, including claims for damages, Defendant is immune from suit under the Eleventh Amendment.

Respectfully submitted,

JESSICA TRAME,

Defendant,

LISA MADIGAN, Attorney General
of the State of Illinois,

Attorney for Defendant,

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Of Counsel.

By: /s/ Joshua D. Ratz
Joshua D. Ratz
Assistant Attorney General

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2015 the foregoing document, Answer and Affirmative Defenses, was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing(s) to the following:

Thomas G. Maag
tmaag@maaglaw.com
maag@maaglawfirm.com

and I hereby certify that on August 3, 2015, a copy of the foregoing document was mailed by United States Postal Service, to the following non-registered participant:

None.

Respectfully submitted,

s/ Joshua D. Ratz

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