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.	)	

MOTION FOR SUMMARY JUDGMENT AND PERMANENT INJUNCTION

Comes now Plaintiff Ella Samuel, by and through her attorneys, the Maag Law Firm, LLC, and Thomas G. Maag, and pursuant to Federal Rule of Civil Procedure 56, moves this Honorable Court for an Order of Summary Judgment, and for a permanent injunction. In support thereof, Plaintiff states as follows:

INTRODUCTION

Though Defendant is certain to put up a massive fight, this likely will be one of the easiest cases that this Court will ever have the opportunity to hear, for it has essentially already been decided by the U.S. Court of Appeals for the Seventh Circuit, as well as the Illinois Supreme Court. See *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), *People v. Aguilar*, 2013 IL 112116. In fact, Defendant herself, in her formal answer has admitted 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." (Doc. 7, Para. 10). In fact, Defendant's own answer sows the seeds of this cases' ultimate outcome, as Defendant, by operation of law, by failing to deny most, if not all of the material allegations, admits them. See FRCP 8(b)(6)("An allegation – other than one relating to amount of damages – is admitted if a responsive pleading is required and the allegation is not denied"

As a proximate cause of the Seventh Circuit's ruling in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), in July, 2013, the Illinois General Assembly enacted, over Governor Quinn's veto, the Firearms Concealed Carry Act, 430 ILCS 66/1, et seq., ("CCA") making Illinois the last State in the Union to allow the carrying of firearms within its borders outside of the home.

However, despite the rulings of the Seventh Circuit and the Illinois Supreme Court, and the enactment of the CCA, non-residents of Illinois (like Plaintiff) are ineligible to even *apply* for a Concealed Carry License, unless they live in a state pre-approved by the Illinois State Police. See 430 ILCS 66/40. The online application form will literally not allow an applicant to insert a state of residence for any state except Illinois, and four other states, none of which are Montana. In other words, Plaintiff cannot even undergo the useless action of submitting an application for purposes of having it denied, knowing full well it will be denied (which defeats Defendant's first affirmative defense)!

This result appears to come from the results of a questionnaire[1], which was sent to the other states, to determine whether the firearms laws of other states were "similar" to Illinois. If the FSB determined that the other state's concealed carry laws were not sufficiently similar to Illinois', then all the residents of that state are barred from applying for an Illinois concealed carry license, no matter what their qualification or need. As of the filing of this motion, apparently only four states had questionnaire answers that satisfied the FSB: Hawaii, New Mexico, South Carolina, and Virginia, and specifically *not* including Montana, or any of the rest of the states.

[1] Interestingly, the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives publishes a book listing most of the firearms laws for the 50 states. Why Defendant bothered to send "questionnaires" when it could have simply obtained a free copy of this book, *and read it*, is certainly a mystery. See Ex. A, available online at https://www.atf.gov/file/58536/download

Plaintiff is a resident of Montana, holds a Montana driver's licenses and owns a home in Montana. (Doc. 7, paras 1, 5). However, her duty assignment with the U.S. Air Force is at Scott Air Force Base, Saint Clair County, Illinois. (Doc. 7, Para. 7).

While Plaintiff is perfectly capable of defending herself while *on duty*, the simple fact of the matter is, while *off duty*, it is a criminal offense for Plaintiff to carry a firearm in Illinois, unless she has an Illinois Concealed Carry License. (Ex C, p. 4). As this Court can take judicial notice, recently, military members have been the target of terrorist attacks in the Continental United States, such as the recent attacks on recruiters in Tennessee (who coincidentally, appear to have violated military regulations by carrying their own private arms, while *on duty*, this, enabling them to fire back against the attacker). Military members are also not exempt from ordinary criminal attacks that the public at large is otherwise at risk from.

Plaintiff is not asking to be treated special. Plaintiff is perfectly willing to meet all requirements and pay all fees Illinois might impose before being granted a license, despite the frankly unreasonable costs and most stringent in the nation "training" requirements. But the fact that Plaintiff cannot even fill out the form, much less being legally unable to even apply results in a *de facto* total ban on the carrying of firearms in Illinois by most of the populace of the United States, no matter how well trained or deserving of a need to defend oneself.

UNDISPUTABLE FACTS

1. Ella Samuel is an enlisted airman in the United States Air Force, with her permanent place of residence in Montana. . (Doc. 7, paras 1, 5)
2. Defendant Jessica Trame is the Chief of Firearms Services for the Illinois State Police Firearms Services Bureau. She is the ISP employee directly responsible for the administration of the CCA, and is the FSB employee directly responsible for the denial of

concealed carry licensing to the Plaintiffs. She is sued in her official capacity. (Doc. 7, para. 2)See Ex. D

3. Both the U.S. Court of Appeals for the Seventh Circuit, as well as the Illinois Supreme Court have declared unconstitutional under the Second and Fourteenth Amendments total bans on carrying firearms outside of the home. *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), *People v. Aguilar*, 2013 IL 112116.
4. Pursuant to Section 40(b) of the CCA, non-resident CCL applications will only be accepted from persons licensed or permitted to carry firearms, concealed or otherwise, in public, in a substantially similar state. Ex. E
5. The Illinois State Police is required to post on its website a list of all states determined to be substantially similar. Ex. B.
6. Hawaii, New Mexico, South Carolina, and Virginia are the only states that have been determined by Defendant to be "substantially similar."
7. That Montana has not been determined to be "substantially similar."
8. That Plaintiff, being a permanent resident of Montana, is not eligible for an Illinois CCL, even though she works and stays in Illinois, at and near Scott Air Force Base.
9. That Plaintiff, being a permanent resident of Montana, cannot even fill out the online application for a CCL, as the computer will not accept a Montana address, or an address from any state other than Illinois, Hawaii, New Mexico, South Carolina, or Virginia.
10. That it is, generally speaking, a criminal offense to carry a firearm, in Illinois, without a CCL. Ex. D, p. 4.

APPLICABLE LAW AND STANDARDS

Summary judgment is governed by Federal Rule of Civil Procedure 56. In ruling on a summary judgment motion, a Court will not resolve factual disputes or weigh conflicting evidence, rather, it will only determine whether a genuine issue of material fact exists for trial, which is the case where "there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986). In reaching a conclusion as to the presence of a genuine issue of material fact, a court must view the evidence and draw all inferences in a way most favorable to the nonmoving party. *Tolentino v. Friedman*, 46 F.3d 645, 649 (7th Cir (1995). Pursuant to Federal Rule of Civil Procedure 8(b)(6) "[a]n allegation – other than one relating to amount of damages – is admitted if a responsive pleading is required and the allegation is not denied."

Where there is no genuine issue of material fact, the sole question is whether the moving party is entitled to judgment as a matter of law. If the nonmoving party fails to establish the existence of an element essential to his case, one on which he would bear the burden of proof at trial, summary judgment must be granted to the moving party. *Richards v. Combined Ins. Co. of America*, 55 F.3d 247, 251 (7th Cir.1995). It is not the Court's function to scour the record in search of evidence to defeat a motion for summary judgment. Id.

A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). As explained in *Ezell v. City of Chicago*, 651 F. 3d 684 (7th Cir 2011), Plaintiff has no adequate remedy at law for this kind of violation. See also See 11A

CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 2948.1 (2d ed. 1995) ("When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary."). Likewise, Plaintiff asserts not only "some likelihood of success of the merits", Plaintiff has moved for summary judgment, and believes she has shown complete and total success on the merits. Under any balancing test this Court could conceive of, Plaintiff is entitled to, at least, a preliminary injunction. Furthermore, as Plaintiff is moving for summary judgment on her claim, as, if granted, there is nothing left for trial, and no reason to not issue a permanent injunction, as opposed to limiting Plaintiff to a preliminary injunction as relief.

ARGUMENT

The simple fact of the matter is that Plaintiff, who defends this country for a living, is not allowed to defend herself outside her home in Illinois, despite not one, but two cases reinforcing that she has the right to. *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), *People v. Aguilar*, 2013 IL 112116. As such, Plaintiff is entitled to summary judgment against Defendant, and an injunction against enforcement of 430 ILCS 66/40, which violates Plaintiff's Second and Fourteenth Amendment right to "keep and bear arms" as explained in the *Moore* and *Aguilar* cases.

Injunctive Relief

The Seventh Circuit has previously observed that when constitutional rights are at stake, "the merits of a dispute often are intertwined with the other three factors to be considered in the decision to issue or deny a preliminary injunction." *Libertarian Party v. Packard*, 741 F.2d 981, 985 (7th Cir.1984). In fact, "the likelihood of success on the merits will often be the

determinative factor." *Joelner v. Wash. Park*, 378 F.3d 613, 620 (7th Cir. 2004). This is the case here. If the Plaintiff's constitutional rights are being violated by 430 ILCS 66/40, then Plaintiff is likely to succeed on the merits, money damages are inadequate, the ongoing deprivation irreparable, and interest balancing must cede to the explicit constitutional protection. See generally id. Thus, analysis should begin by assessing the merits of Plaintiffs' claim. See, e.g., *Grossbaum v. Indianapolis-Marion County Building Authority*, 63 F.3d 581, 586 (7th Cir. 1995). However, Plaintiff easily satisfies all threshold requirements for obtaining preliminary injunctive relief, and the balance of interests weigh heavily in her favor. Furthermore, as Plaintiff satisfies the requirements for summary judgment in total, she also is entitled to a permanent injunction, as there will be nothing left for actual trial, as Plaintiff will have won.

Summary Judgment

Our Supreme Court has held that the enumerated right to possess a firearm for lawful purposes, most notably for self-defense, is fundamental to the core to the Second Amendment. *Heller*, 128 S.Ct. at 2818. See also *McDonald*, 130 S.Ct. 3020, 3043 (2010). That right extends outside of the home. *Moore*, 702 F.3d at 937, *Aguilar*, 2013 IL 112116.

In *Moore*, the Seventh Circuit held the ban of the public carrying of firearms violated the Second Amendment and was unconstitutional, and noted the importance of the fundamental right to self-defense. The Court held that the State must make a "strong showing" where the challenged restriction curtails "the gun rights of the entire law-abiding adult population." Id. at 940. In this particular case, the challenged restriction affects, *at least* 91% of the U.S. population. https://en.wikipedia.org/wiki/List_of_U.S._states_and_territories_by_population. While perhaps not expressly a maxim of constitutional law, it is probably safe to say that if a given statute prohibits exercise of a fundamental constitutional right by 91% of the people in the

United States, it is probably not constitutional. In fact, if it only prohibited 9% of the people in the United States from exercising their rights, there would still be grave concerns.

The Seventh Circuit has also compared the analysis of infringements of Second Amendment rights to those of infringements of First Amendment rights. *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011). According to *Ezell*, infringements on the core Second Amendment right of possession for self-defense must satisfy a level of scrutiny approaching strict scrutiny. *Id*. at 708. This likewise means that Illinois's prohibition, ". . . a severe burden on the core Second Amendment right of armed self-defense will require an extremely strong public-interest justification and a close fit between the government's means and its end." Id.

When the standards required by *Moore* and *Ezell* are applied to this case, it is Obvious that Illinois cannot defend its arbitrary and capricious ban. Further, under any level of Scrutiny (which could not include rational basis, see *District of Columbia v. Heller*, 128 S. Ct. 2783, 2818, n 27 (U.S. 2008)), the challenged statute, 430 ILCS 66/40 fails.

It is not within the State's constitutional power to ban otherwise qualified non-residents, like Plaintiff, from possessing firearms outside of the home, including pistols and revolvers which have expressly been deemed constitutionally protected by our Supreme Court. See *Helle*r, 128 S.Ct. at 2817-18. Plaintiff does not particularly care whether she is required to carry the firearm openly or concealed, she is willing to do either. That Illinois has such a ban that prohibits her from doing either violates the Second and Fourteenth Amendments. The State has no interest, let alone an extremely strong or compelling one, in denying virtually all non-residents (again 91% of the U.S. population) their fundamental Second and Fourteenth Amendment rights of firearms possession in the same manner available to residents, based solely

on the state of residence, especially when doing so by the arbitrary method of simply refusing them the ability to even submit an application. In fact, it is not even clear what possible relevance anther state's laws are to Plaintiff's ability to apply for a license issued by Illinois. Plaintiff is not seeking reciprocity, whereby Illinois is being forced to honor another states license, rather, Plaintiff wishes to apply for, and ultimately receive, a license issued by the State of Illinois, for conduct within the borders of the State of Illinois. Whatever Montana's rules are, they are not applicable to Illinois.

In light of the above, Plaintiff is entitled to summary judgment, and an injunction against the enforcement of 430 ILCS 66/40 should be immediately entered, such that Plaintiff is allowed to apply for a CCL, the same as an Illinois, Hawaii, Virginia, South Carolina or New Mexico resident, and that Defendant is required to process and either approve, or deny said application, without regard to Plaintiff's Montana residence.

CONCLUSION

For the reasons set forth, and for those additional reasons, if any, set forth in any reply brief, or at oral argument, this Court should grant Plaintiff's Motion for Summary Judgment, declaring Illinois' denial of Plaintiff's constitutional rights under the Second and Fourteenth Amendments unconstitutional, entering an injunction against the enforcement of 430 ILCS 66/40 such that Plaintiff is allowed to apply for a CCL, the same as an Illinois, Hawaii, Virginia, South Carolina or New Mexico resident, and that Defendant is required to process and approve (if appropriate), said application, without regard to Plaintiff's Montana residence, plus taxable costs, and attorney fees under 42 U.S.C. 1988, and for such other, further and different relief as is allowed by law.

Dated: August 17, 2015

By:s/Thomas G. Maag
Thomas G. Maag #6272640
Maag Law Firm, LLC
22 West Lorena Avenue
Wood River, IL 62095

Phone: 618-216-5291

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, he filing the foregoing document, using the CM/ECF system, which will send notification of the filing to the following:

Joshua D. Ratz

Bilal Aziz

Assistant Attorney General
500 South Second Street
Springfield, IL 62706

Dated: August 17, 2015

S/Thomas G. Maag