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

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

**PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, AND REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES Plaintiff Ella M. Samuel, and states as follows:

**INTRODUCTION**

Among the numerous exhibits at the FDR Library is one that shows First Lady Eleanor Roosevelt knew the benefits of gun ownership. Her New York permit to carry a pistol, issued August 5, 1957, is on display. (Ex. A).

The book, "Casting Her Own Shadow: Eleanor Roosevelt and the Shaping of Postwar Liberalism," quotes the Washington Herald's Earl Miller as saying:

> When ER became first lady, she refused Secret Service protection, insisting that she be able to travel as freely as possible. The agents complied with her wishes only after they discovered she knew how to shoot, and convincing her to carry a pistol when she drove alone. Intrigued by yet another example of ER's independence, the press treated ER's "packing" as front page news—especially after she nonchalantly remarked: "I carry a pistol, and I'm a fairly good shot."

"After leaving the White House, Mrs. Roosevelt found herself freer than ever to promote equal rights for African Americans. During her final years she continued fighting as hard and fearlessly as ever. On at least one occasion, the Secret Service warned her not to keep a speaking engagement on civil disobedience. The Ku Klux Klan had put a price on her head and the Secret Service said they could not guarantee her safety. Undeterred, she traveled with another lady and her revolver." http://www.blackhistoryreview.com/biography/ERoosevelt.php (viewed 1-28-2016).

Of course, if Mrs. Roosevelt were alive today, she could not legally carry that revolver in Illinois. Certainly, she might be able to keep it, unloaded, in her hotel room, in a condition next to useless. Mrs. Roosevelt might even be able to drive *through* Illinois, never getting out of her car with said revolver (assuming she had kept current her New York permit). But generally speaking, Mrs. Roosevelt would have the choice of either breaking the law (which, admittedly, it appears she probably did by carrying a revolver in the South while working for civil rights), or going defenseless, as Illinois would neither honor her New York permit, nor allow Mrs. Roosevelt to even apply for an Illinois permit.

When you get right down to it, if a historical icon and civil rights champion such as former First Lady Eleanor Roosevelt could not under any circumstances get a license to carry a firearm in Illinois in order to defend herself, then there is a problem with Illinois law under the Second Amendment. This Court should declare that problem unconstitutional.

**ARGUMENT**

Defendant argues that public carriage of firearms in Illinois is conditioned, with some exceptions, on possession of an Illinois concealed carry license. Basically, this is correct. Plaintiff would like such a license, hence this lawsuit. Unfortunately, Illinois law, at least as

presently being applied by Defendant, totally prohibits Plaintiff from obtaining such a license. Thus, Plaintiff is in the exact position that plaintiff was in in the case of *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012). That is, in essence, no legal method to carry a firearm outside of her own abode.

For its role, however, Defendant *claims* that

> "an examination of the Illinois firearm statutes reveals that Illinois allows qualified individuals to possess firearms and carry them in public for the purpose of self-defense. Because that is all the Second Amendment requires, Plaintiff's Second Amendment challenge fails."

(Doc. 23, p. 4).

Though not a "lie", per se, Defendant's statement is certainly grossly misleading, as just as former President Clinton made comment on something depending on what the definition of "is" is, the truth or falsity of Defendant's statement depends on what the definition of "qualified" is.

If the definition of "qualified" is defined as those more than 21 years of age, eligible for a FOID card, having the prescribed training required by Illinois law to obtain a Concealed Firearm License, having no felony or misdemeanor convictions of any kind, never being adjudicated as having some mental illness or defect, never having received mental health treatment of any kind, not being addicted to any controlled substances, having no DUI arrests at all, and under no legal disabilities per 18 U.S.C. 922(g), Defendant's statement is a blatant falsehood, because, if that were the case, Plaintiff could have applied for and actually received a Concealed Firearms License without filing this lawsuit.

If, on the other hand, the definition of "qualified" is more limited, Defendant's statement might be true.

**RESIDENCE**

Where Defendant and Plaintiff split is on Defendant's restrictions on what Defendant calls, "non-residents." Resident and non-resident do not appear to be defined in the actual text of the Illinois concealed firearms statute, nor in the Illinois Statute on Statutes. However, for present purposes, Defendant has defined whether someone is a "resident" or a "non-resident" in a way that has very little, if anything, to do with where that person is actually presently living.

In sum, per Defendant, a "resident" is a person who is eligible for an Illinois driver's license or an Illinois identification card. (Ex. B, p. 10, lines 7-13). On the other hand, a "non-resident" would be a person who is not eligible for an Illinois driver's license or Illinois identification card. (Ex. B, p. 10, lines 14-18). Living in a given location, even for several years, may not make you a resident thereof. See generally *Maksym v. BD. OF ELECTION COM'RS*, 950 NE 2d 1051 (Ill, 2011). Basically, it appears that one is eligible for an Illinois driver's license or state identification card, if they have an Illinois address and give up any similar card issued by some other state. 15 ILCS 335/1. Nothing else seems to matter. In fact, it is long settled that there is a constitutional right to travel and change states of residence at will. See *Dred Scott v. Sandford*, 60 U.S. 393, 417 (1857)("citizens of any one State of the Union, the right to enter any other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night … , and to keep and carry arms wherever they went.").

It is actually undisputed that Plaintiff actually maintains an abode in the State of Illinois, County of Saint Clair. She simply has a Montana driver's license and a permanent home in

Montana that she intends to ultimately return to. It is also undisputed that if Plaintiff simply gave up her Montana driver's license and instead obtained an Illinois driver's license of State ID card, Plaintiff could apply for and receive the very license that is at issue in this case. However, Plaintiff does not wish to do this, as Constitutionally speaking, it is not necessary.

**PURPORTED REASONS TO DISCRIMINATE AGAINST MONTANA RESIDENTS**

Defendant claims that

> "the restriction applicable to nonresidents from states without substantially similar firearm laws does not violate the right to bear arms in public because it is reasonably related to Illinois' substantial interest in not allowing individuals to carry firearms if, due to criminal history, mental illness, or other factors, they are not qualified."

The purported reason for this is,

> "Illinois has limited access to out-of-state information concerning nonresidents' qualifications to carry firearms in public in Illinois; unless a state gathers that information for the purpose of enforcing its own, substantially similar firearm laws, Illinois has no way to confirm that a nonresident from that state is qualified to carry a loaded firearm in public in Illinois, and would have no way to monitor that nonresident's ongoing qualifications were it to issue a license."

(Doc. 23, page 1).

The truth is somewhat different. As relates specifically to Plaintiff, and the State of Montana (as Plaintiff is a legal resident of Montana stationed in Illinois); Defendant states that the only reason that she will not issue a Concealed Firearm License to a Montana "resident", such as Plaintiff, is because Illinois has varying degrees of disqualification for firearms

possession by persons who have either been adjudicated as having certain mental problems, as well as persons who have voluntarily been a resident of a mental health facility. (Ex. B, p. 37, lines 6-25). There is nothing else that Illinois has determined is not "sufficiently similar" with Montana that provides a reason not to issue Montana residents Illinois licenses. (Id.). But for this, Plaintiff would be eligible for an Illinois Concealed Firearms License, and this case never would have needed to be filed by Plaintiff. Accordingly the whole issue of verifying identification[1], confirming lack of felony or other criminal convictions, and the like, as related to Plaintiff and the State of Montana are red herrings, as, per Defendant's own testimony, they don't apply.

As to the voluntary mental health treatment issue, this is based on an Illinois rule, which probably violates HIPAA, which purports to require medical facilities in Illinois to report to the Illinois Department of Human Services, who in turn report to the State Police, and ultimately Defendant, both voluntary and involuntary mental health commitments in Illinois. (Ex. B, p. 39, lines 4-11). As conceded by Defendant, no doctor or hospital in any of the 49 other states have any obligation to report to any Illinois agency any voluntary or involuntary mental health treatment or commitment. (Ex. B, p. 39, lines 19-25). Thus, literally, an Illinois resident could cross the Mississippi River and check into a mental health facility in downtown Saint Louis, literally within eyesight of this very Courthouse, and Defendant would probably never find out about it. (Ex. B, Page 40, lines 1-12). A good legal and public policy argument could be made that Defendant should not find out about it, as it is none of the government's business what a doctor and a patient talk about.

[1] Interestingly enough, even if verification of identity was an issue for Plaintiff (again, per Defendant, its not), Illinois Driver's licenses do not comply with the federal Real ID Act, a law that Defendant has apparently never even heard of. Ex. B, Page 15.

In fact, the same thing is true whether the person is an Illinois resident, or not, or has an Illinois driver's license or ID card, or not. (Ex. B, P. 40, lines 13-16). If a person born and/or raised in Illinois went off for college in another state, and voluntarily sought mental health treatment in that other state, ultimately, that fact would not be reportable to Illinois or Defendant. (Ex. B, P. 40, lines 17-23).

As far as involuntary mental health adjudications are concerned, many, if not most are actually reported to various federal databases. (Ex B, P. 41, lines 5-8). On the other hand, in 2012, only three of the 102 counties in Illinois reported involuntary mental health adjudications to the state. (Ex. B, P. 41, lines 9-13). In other words, less than three percent of the counties in Illinois reported mental health adjudications in 2012. Allegedly, now, 72 of the 102 Illinois counties report. (Ex. B, P. 41, lines 14-18). The other thirty, allegedly, claim to have no mental health adjudications in their counties. (Ex. B, P. 41, lines 18-21). While a study on whether these other thirty Illinois counties truly have no mental health adjudications might be interesting, the simple fact is Illinois reports for mental health adjudication are not exactly perfect.

In fact, Defendant admits that as far as running a mental health check for applicants, whether they are Illinois residents, or not, the same gaps exist in what you're able to access for residents as well as non-residents. (Ex, B, Page 48, lines 9-14). Then you have the fact that even if a person had been adjudicated as mentally defective or voluntarily committed themselves after a divorce or something like that, it is still possible for that person to qualify for a Concealed Firearms License. (Ex, B. P. 47, lines 3-9). Except Plaintiff's Montana residence prevents her from applying, no matter what Plaintiff's background or qualfications.

Interestingly, it is undisputed that Defendant will issue a non-resident permit to a resident of Virginia or New Mexico, as, allegedly, Virginia and New Mexico each have "substantially similar[2]" firearms laws as Illinois. Notably, in a footnote, Defendant admits that:

> "… New Mexico and Virginia each indicated in response to ISP's request that they did not have a mechanism to track voluntary mental health admissions for the purpose of revoking or approving concealed carry licenses, …"

(Doc. 22, page 3, Footnote 1).

This is no different than Montana.

When it is pointed out to Defendant that it is equally difficult to perform background checks on residents and non-residents, Defendant invokes the so called "Nuremburg defense".

> A. I follow what is put forth in front of me.
>
> Q. You're just following orders
>
> A. Well, if you want to simplify it, yes.

(Ex. B, p. 27).

In any event, the application for a Concealed Firearm License asks about criminal history and mental health records. (Ex. B, P. 46, lines 1-4). These questions are required to be answered

[2] A real and candid analysis of Illinois versus New Mexico and Virginia firearms laws reveals that they are essentially, in no way actually similar. For instance, neither New Mexico nor Virginia have anything close to a FOID card. Both states, unlike Illinois, generally allow open carry of pistols without a permit of any kind. Both states generally allow machineguns; silencers and other firearms regulated the National Firearms Act, which are generally outlawed in Illinois. In fact, there is very little difference between New Mexico and Virginia's firearms laws, and Montana's. To claim that Virginia or New Mexico is substantially similar to Illinois' firearms laws is to ignore reality.

under oath. (Id., lines 5-7). It is actually a criminal offense to provide false information on such an application. (Id., lines 8-10). Accordingly, assuming that someone correctly fills out an application correctly, Defendant has sworn evidence that the particular person is eligible for a license, or not. (Ex, B, Page 46, lines 11-20). And if nothing comes up to contradict the information that is provided on the application, during the course of the background checks, aside from what the legislature may have written, Defendant would have no reason to disapprove any of those applications. (Ex, B, Page 46, line 21 through Page 47, line 2).

In fact, even if a person had been adjudicated mentally defective or voluntarily committed themselves after a divorce or something like that, it is still possible for that person to qualify for a license issued by Defendant, as they can go through a procedure to have their rights restored. (Ex. B, Page 47, lines 3-9).

Defendant claims that because nonresident applicants for a concealed carry license must meet all of the qualifications for a FOID Card except residency, 430 ILCS 66/25, 40(c), the FOID Card Act is examined first. (Doc. 23, p. 5). While not challenged in this case, and the undersigned being of the opinion that the entire FOID Card Act unconstitutional anyway, the purported "purpose of the FOID Card Act is "to promote and protect the health, safety, and welfare of the public" by "provid[ing] a system of identifying persons who are not qualified to acquire or possess firearms." 430 ILCS 65/1." (Doc. 23, p. 5).

Plaintiff has no objection to having to qualify for a FOID card to get an Illinois Concealed Carry License. In fact, Plaintiff is perfectly willing to submit a copy of her Illinois FOID card along with an Illinois Concealed Carry Application. This is because nonresident members of the military permanently assigned in Illinois may apply for a FOID Card. 430 ILCS 65/4(a-10); 20 Ill. Admin Code § 1230.20(e). This is true even if the applicant is from Montana.

Defendant claims that Second Amendment challenges are governed by a two-pronged approach, and cites to *Ezell v. Chicago*, 651 F.3d 684, 701–04 (7th Cir. 2011). Per the argument, first, courts consider the threshold question of "whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee," id.at 704 (7th Cir. 2011). Further per the argument, where, as here, the regulated conduct falls within the scope of the Second Amendment, "there must be a second inquiry into the strength of the government's justification for restricting or regulating the exercise of Second Amendment rights." Ezell, 651 F.3d at 703.

For this second inquiry, "the rigor of . . . judicial review will depend on how close the law comes to the core of the Second Amendment right and the severity of the law's burden on the right." *Ezell*, 651 F.3d at 703.

Addressing this argumet, as noted by the Seventh Circuit,

> "A woman who is being stalked or has obtained a protective order against a violent ex-husband is more vulnerable to being attacked while walking to or from her home than when inside. She has a stronger self-defense claim to be allowed to carry a gun in public than the resident of a fancy apartment building (complete with doorman) has a claim to sleep with a loaded gun under her mattress."

*Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012), (bold added for emphasis).

Plaintiff is enlisted in the U.S. Air Force. Military personnel in the continental United States have been repeatedly and recently targeted by terrorists trying to, and sometimes succeeding in, killing them. This Court can take judicial notice of such attacks at Fort Hood Texas and Nashville, Tennessee. More recently, ISIS has publically threatened to attach U.S.

Military members, and their families, at home in the U.S. http://www.msnbc.com/andrea-mitchell-reports/watch/new-isis-threat-to-us-military-personnel-367219779582

Thus, even under Defendant's argument, Plaintiff has a stronger self-defense claim than that set forth in *McDonald v. City of Chicago,* 561 U.S. 742 (2010). This should be the end of the analysis.

However, it is not at all clear that the *Ezell* analysis is the correct one. As noted in *McDonald,*

> "… [it]is incorrect that incorporation will require judges to assess the costs and benefits of firearms restrictions and thus to make difficult empirical judgments in an area in which they lack expertise. As we have noted, while his opinion in Heller recommended an interest-balancing test, the Court specifically rejected that suggestion. (citation omitted) "The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon."

*McDonald v. City of Chicago*, 561 U.S. 742 (2010).

Thus, this Court need not asses costs and benefits, it simply need find, as the Seventh Circuit did in *Moore,* that Plaintiff has a constitutional right to carry arms outside of her abode, and enforce the constitution.

As to Defendant's arguments that it has the right to prohibit"firearm carriage outside the vehicle by nonresidents whose qualifications cannot be confirmed" is, as shown above, simply a red herring, as this issue was settled by the adoption of the Second Amendment. Even if this Court engages in "balancing" contrary to the instructions of the Supreme Court, as shown above,

the only issue with Plaintiff and Montana residents is mental health records, and Defendant has the identical problem running mental health record checks on both Illinois residents and non-residents. To claim otherwise in their motion is a blatant falsehood. A driver's license from Illinois, which is the only thing standing between Plaintiff and a Concealed Firearms License, does not a better background check make. There is no mental health requirement in Illinois for driver's licenses or state ID cards. Yet that is all it would take for Defendant to issue Plaintiff a Concealed Firearms License.

As noted above, contrary to the claim of Defense counsel, "reporting obligations placed upon Illinois mental health professionals do not ensure that disqualifying conditions which arise in Illinois can be identified and acted upon, instead, they encourage people to either not seek mental health treatment at all, or to seek it out of state.

**CONCLUSION**

For the foregoing reasons, Plaintiff Ella Samuel, humbly requests that this Honorable Court GRANTS her motion for summary judgment, DENIES Defendant's Motion for Summary Judgment, declares 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: January 29, 2016

Respectfully Submitted,
Ella M. Samuel

By: s/Thomas G. Maag

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing document was filed, on this date, using the CM/ECF system, which will sent notification to the following:

Bilal Aziz

Dated: January 29, 2016

s/Thomas G. Maag