

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

JENNIFER J. MILLER, DARIN E. MILLER)
SECOND AMENDMENT FOUNDATION, INC.)
ILLINOIS STATE RIFLE ASSOCIATION, and)
ILLINOIS CARRY,)

Plaintiffs,)

Case No. 18 cv 3085

Hon. Sue E. Myerscough

MARC D. SMITH, in his official capacity as)
Acting Director of the Illinois Department of Children and)
Family Services, and KWAME RAOUL, in his)
official capacity as Attorney General of the State of)
Illinois,)

Defendants.)

**DEFENDANTS’ RESPONSE TO PLAINTIFFS’
RULE 15(a)(2) MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

Defendants, Marc D. Smith, Acting Director of the Illinois Department of Children and Family Services (“Department”), and Kwame Raoul¹, in his official capacity as Illinois Attorney General, submit the following response in opposition to Plaintiffs’ motion for leave to file an amended complaint pursuant to Federal Rule of Civil Procedure 15(a)(2).

INTRODUCTION

Defendants acknowledge that amendments to complaints are freely given when justice so requires. To that end, Defendants are not opposed to Plaintiffs amending their complaint, provided the proposed amended complaint complies with the rules governing pleadings. Defendants object to the proposed amended complaint (Dkt. 16-1) because it does not comply with Federal Rule of Civil Procedure 10(b). In particular, Plaintiffs’ proposed amended complaint alleges a single count for relief that contains multiple claims under separate regulatory

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Marc D. Smith and Kwame Raoul are substituted as parties in this matter.

schemes by multiple plaintiffs, some of whom have been previously adjudged to lack standing in certain circumstances to bring such claims. Defendants therefore request that Plaintiffs' motion be denied without prejudice, allowing Plaintiffs to submit a new proposed amended complaint consistent with Federal Rule of Civil Procedure 10(b).

FACTUAL BACKGROUND

Plaintiffs are two individuals (the "Miller Plaintiffs") and three separate organizations (the "Organizational Plaintiffs") asserting various theories concerning alleged violations of their Second Amendment rights. Initially, on April 16, 2018, Plaintiffs filed a two-count Complaint alleging that certain Department's policies and state laws violate their rights under the Second Amendment and the Equal Protection Clause of the Fourteenth Amendment. Dkt. 1, at p. 10. Both counts were based upon the Miller Plaintiffs' status as day care home operators who possess and carry firearms. *Id.* On May 19, 2019, Plaintiffs sought leave to amend. Dkt. 16. Plaintiffs' proposed Amended Complaint, now with only one count asserting claims under both the Second Amendment and the Fourteenth Amendment, seeks to add new allegations grounded in the Miller Plaintiffs' status as foster parents.

Two of the Organizational Plaintiffs were also plaintiffs in a separate case, filed in 2016 by the same counsel who represents Plaintiffs here. *See Shults v. Walker, et al.*, 16 cv 2214 (Bruce, J.) (Cent. Dist. Ill.) (hereafter "*Shults*"). *Shults* focused on the regulations governing firearms in foster homes. Originally, the plaintiffs in *Shults* included licensed foster parents Kenneth and Colleen Shults. *See* 4/1/19 Order, at p. 2, attached as Exhibit A. In October 2018, the parties learned that the Shultses voluntarily relinquished their foster parent licenses. Exhibit A, at p. 3. The court granted the plaintiffs' motion to voluntarily dismiss the Shultses as

plaintiffs, and a second amended complaint was filed with only the two Organizational Plaintiffs.
Id.

The defendants in *Shults*, the individuals holding the same state offices at issue here, moved to dismiss the second amended complaint. In their response to the defendants' motion, the two Organizational Plaintiffs identified the Miller Plaintiffs in the case at bar, Jennifer and Darin Miller, as licensed foster parents with a foster child in their care, but did not seek leave to add the Millers as individual plaintiffs in *Shults*. *Shults* Dkt. 37, attached as Exhibit B. The court ruled that the two Organizational Plaintiffs did not have standing to sue, either in their own right, or based on an associational standing theory, and dismissed the *Shults* case with prejudice. Exhibit A, at p. 18. The plaintiffs in *Shults* did not appeal. The Second Amendment Foundation and the Illinois State Rifle Association, formerly plaintiffs in *Shults*, have once again brought suit here. Plaintiffs now seek to challenge multiple regulatory schemes, including the foster home regulations in *Shults*, as well as the day care home regulations pled in the original Complaint here, asserting violations of both the Second and Fourteenth Amendments, in a single-count amended complaint.

ARGUMENT

While Defendants concede that the court may freely give leave to amend the pleadings when justice so requires (Fed. R. Civ. P. 15(a)(2)), amendments must comply with the rules of civil procedure. This includes Rule 10(b), which provides that “[i]f doing so would promote clarity, each claim founded on a separate transaction or occurrence...must be stated in a separate count.” Fed. R. Civ. P. 10(b). The purpose of Rule 10(b) is to give defendants notice of the claims against them and the grounds supporting the claims, and to frame the issues and provide the basis for informed pretrial proceedings. *Stanard v. Nygren*, 658 F.3d 792, 797 (7th Cir.

2011). Plaintiffs' proposed Amended Complaint fails to do so. Defendants request that Plaintiffs motion be denied without prejudice to allow Plaintiffs the opportunity to cure these defects.

In this case, substantial factual and legal differences foster homes and day care homes highlight the need for separate counts. The statutory definitions of foster homes and day care homes are separate and distinct. *See* 225 ILCS 10/2.17 (defining foster family homes); 225 ILCS 10/2.18 (defining day care homes). Likewise, the rules and regulations governing foster homes and day care homes are also separate and distinct. *See* Ill. Admin. Code tit. 89, Ch. III, Subch. e, Pt. 402, Licensing Standards for Foster Family Homes; Ill. Admin. Code tit. 89, Ch. III, Subch. e, Pt. 406, Licensing Standards for Day Care Homes. In addition, the licenses to become a foster parent and to run a day care home are separate and distinct, as are the processes for obtaining those licenses. *Compare* Ill. Admin. Code tit. 89, Ch. III, Subch. e, Pt. 402, Sec. 402.4 (application for licensure for foster family home) *with* Ill. Admin. Code tit. 89, Ch. III, Subch. e, Pt. 406, Sec. 406.4 (application for licensure for day care home). Indeed, becoming a licensed foster parent requires an entirely separate transaction from becoming a licensed day care home operator. Under the plain language of Rule 10(b), the allegations concerning day care homes and foster homes involve separate legal and regulatory issues that require them to be separated into distinct counts. *See Alioto v. Town of Lisbon*, 651 F.3d 715, 721 (7th Cir. 2011) (holding that the court may require allegations be grouped into logical counts for claims founded on separate transactions or occurrences).

While Plaintiffs' proposed amendment would broadly expand this case, the amendment would add unnecessary confusion by combining claims founded on different transactions into a single count. Plaintiffs' original two-count complaint was based simply on the Miller Plaintiffs'

objections to the rules, regulations, and statutes governing their status as licensed *day care home operators*. Plaintiffs now seek to add to that complaint the separate *foster home* issue previously identified in *Shults*. Adding more confusion, Plaintiffs' one proposed single count alleges that two separate regulatory schemes violate two separate constitutional provisions: the Second Amendment and the Fourteenth Amendment.² Undifferentiated, generalized pleadings such as this, which combine numerous alleged violations of constitutional and statutory provisions into one count, violate Rule 10(b). *See Goerlich v. Davis*, 1991 WL 195772 at *2 (N.D. Ill. Sept. 25, 1991) (noting that a plaintiff's complaint was properly dismissed under Rule 10(b) for combining multiple constitutional or statutory claims into one count); *see also Kole v. Village of Norridge*, 941 F. Supp. 2d 933, 942 (N.D.Ill. Apr. 19, 2013) (quoting *Second Amendment Arms v. City of Chicago*, 2012 WL 4464900, at *9 (N.D.Ill. Sept. 25, 2012) ("Requiring separate counts serves two purposes: (1) it gives fair notice to the defendants of the claims against them; and (2) it enables the court to grant relief on an entire count, not just part of a count.")).

Furthermore, it is unclear from Plaintiffs' proposed amended complaint which Plaintiffs are asserting which claims against which Defendant in relation to which statute or regulation. As noted above, another court in this district has already held that certain of these Plaintiffs lack standing to bring certain of these claims against these Defendants in certain circumstances. Exhibit A, at p. 18. Depending on which Plaintiffs are asserting which claims against which Defendants, the Defendants may have grounds for a motion to dismiss certain claims. But the proposed amended complaint does not provide Defendants with fair clarity consistent with Rule

² Adding even further confusion, Plaintiffs cite the Equal Protection Clause of the Fourteenth Amendment in the "Constitutional Provisions" section of the amended complaint (Dkt. 16-1, at p. 8), but cite generally to the Fourteenth Amendment in the heading to Count 1 (Dkt. 16-1, at p. 14) and in their prayer for relief. (Dkt. 16-1, at p. 17). Yet the paragraphs within Count 1 make no specific reference to the Fourteenth Amendment, making Plaintiffs theory of recovery unclear. (Dkt. 16-1, at pp. 14-16.)

10(b), and deprives them of the ability to assert and the Court of the ability to resolve certain affirmative defenses at the pleading stage. *See Kole*, 941 F. Supp. 2d at 941 (quoting *Second Amendment Arms*, 2012 WL 4464900, at *9).

Defendants do not object to Plaintiffs' efforts to amend their pleading in general. Defendants request, however, that Plaintiffs' proposed amendment comply with Rule 10(b) to afford Defendants the clarity necessary to allow them to adequately defend this case.

CONCLUSION

WHEREFORE, for these reasons, Defendants respectfully request that this Court deny without prejudice Plaintiffs' Motion for Leave to File Amended Complaint, and direct Plaintiffs to submit a new proposed amended complaint that complies with Rule 10(b).

Dated: May 24, 2019

Respectfully submitted,

KWAME RAOUL
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CERTIFICATE OF SERVICE

The undersigned, as attorney, certifies pursuant to 28 U.S.C. §1746 that a copy of this notice and referenced pleading were filed using the Clerk of Court's Electronic Case Filing system on May 24, 2019, which provides notification of same to all counsel of record.

s/ Michaelina G. Camp