

**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, )

v. )

Case No. 3:18-CV-3085

BEVERLY J. WALKER, in her official capacity as )  
Director of the Illinois Department of Children and )  
Family Services, and LISA MADIGAN, in her )  
official capacity as Attorney General of the State )  
of Illinois, )

Defendants. )

**PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR  
MORE DEFINITE STATEMENT PURSUANT TO FED. R. CIV. P. 12(e)**

NOW COME the Plaintiffs, JENNIFER J. MILLER, DARIN E. MILLER,  
SECOND AMENDMENT FOUNDATION, INC., ILLINOIS STATE RIFLE  
ASSOCIATION, and ILLINOIS CARRY, by and through LAW FIRM OF DAVID G.  
SIGALE, P.C., their attorney, and for their Response to the Defendants' F.R.Civ.P.  
12(e) Motion for More Definite Statement, states as follows:

**ARGUMENT**

**Standard for Motion to Dismiss**

**F.R.Civ.P. 12(e) Standard**

F.R.Civ.P. 12)(e) "is designed to strike at unintelligibility rather than want of detail. If the pleading meets the requirements of Rule 8 FRCP and fairly notifies the opposing party of the nature of the claim, a motion for a more definite statement

should not be granted.” *Wishnick v. One Stop Food & Liquor Store, Inc.*, 60 F.R.D. 496, 498, 1973 U.S. Dist. LEXIS 12571, \*4, (N.D.Ill., 1973). “[A] motion for a more definite statement should not be granted to require evidentiary detail which is normally the subject of discovery under Rules 26 through 36 of the FRCP.” *Id.*

**I. PLAINTIFFS’ COMPLAINT FAIRLY NOTIFIES THE DEFENDANTS OF THE NATURE OF THEIR CLAIM.**

“Rule 12(e) motions are generally disfavored, and courts should grant such motions only if the complaint is so unintelligible that the defendant cannot draft a responsive pleading. *U.S. for Use of Argyle Cut Stone Co., Inc. v. Paschen Contractors, Inc.* 664 F. Supp. 298, 303 (N.D. Ill., E.D. Jan. 6, 1987). Moreover, Rule 12(e) motions are not to be used as substitutions for discovery.” *Moore v. Fidelity Fin. Servs.*, 869 F.Supp. 557, 559-560 (N.D.Ill., 1994).

Plaintiffs’ Complaint (Dkt. #1) is incorporated as if fully restated herein.

Plaintiffs’ Complaint alleges that “[t]he Millers are fearful of losing Jennifer’s day care home license if they complain or do not comply with 225 ILCS 10/7 and the JCAR sections listed in the paragraphs above.” Complaint at ¶32. The listed JCAR sections are 406.8(a)(17) and (18). Complaint at ¶29. Any references in the Complaint to IDCFS policy are to those JCAR sections, which have been adopted by IDCFS.

Any doubt as to what Plaintiffs are seeking should be removed by the relief sought:

A declaratory judgment that the IDCFS policy of prohibiting handgun possession and carrying to day care home licensees, and those who would be day care home licensees in Illinois, and

the Illinois statutory language which restricts firearms rights and privileges based on status as a day care home licensees, such as contained in 225 ILCS 10/7, are null and void because they (i) infringe on the right of the people to keep and bear arms in violation of the Second and Fourteenth Amendments to the United States Constitution; and (ii) violate the equal protection of the laws guaranteed by the Fourteenth Amendment to the United State Constitution.

Complaint at p.13.

As for the references in the Complaint to the Firearms Concealed Carry Act (Complaint at ¶29), the Millers both have concealed carry licenses. The FCCA states that:

Nothing in this paragraph shall prevent the operator of a child care facility in a family home from owning or possessing a firearm in the home or license under this Act, **if no child under child care at the home is present in the home or the firearm in the home is stored in a locked container when a child under child care at the home is present in the home.**

430 ILCS 66/65(a)(2) (boldface added).

The Complaint alleges that the Millers, as concealed carry licenseholders, are willing to comply with these FCCA requirements. Complaint at ¶31. Nowhere does the Complaint state that the Plaintiffs are only challenging the IDCFS requirements to the extent they conflict with the FCCA. Rather, Plaintiffs are pointing out that even if the IDCFS rules are struck down, the Millers must still comply with the safety requirements of the FCCA, which they would willingly do.

Of course, this aside has nothing to do with the unconstitutionality of the challenged statute and JCAR sections, and nothing in the Complaint implies

otherwise. In Defendants' words, they should not "disregard the broader allegations contained in the balance of the Complaint." Dkt. #9 at ¶6.

Further, the question of whether "the stated willingness to comply with the Illinois Concealed Carry Law applies to all Plaintiffs or only the Millers" (Dkt. #9 at ¶8), is a hypothetical question that is inappropriate for a pleading Motion. The challenged statute and JCAR sections are unconstitutional – that is an allegation the Defendants can understand and answer.

Finally, per the Complaint, there is no distinction between Jennifer, who is a day-care licensee, and Darin, who is her husband and resides on the premises. Both are subject to the firearm restrictions and requirements of living in a "day care home" as that term is defined in Section 406.2 of the Joint Committee of Administrative Rules ("JCAR")." Complaint at ¶28. JCAR Section 406.8(a)(17) makes clear the firearm restrictions apply to the premises. Complaint at ¶29. There is *no* exception for those residents in the day care home who do not have a license or do not actually care for the day care children. Therefore, Darin's claim is as strong as Jennifer's, as is any FOID cardholder with a resident relative with a day care license.

### CONCLUSION

Plaintiffs' Complaint states causes of action under F.R.Civ.P. 8, which can be understood and answered by the Defendants. Therefore, the Defendants' F.R.Civ.P. 12(e) Motion should be denied.



**CERTIFICATE OF ATTORNEY AND NOTICE OF ELECTRONIC FILING**

The undersigned certifies that:

1. On July 19, 2018, the foregoing document was electronically filed with the District Court Clerk *via* CM/ECF filing system;
2. Pursuant to F.R.Civ.P. 5, the undersigned certifies that, to his best information and belief, there are no non-CM/ECF participants in this matter.

/s/ David G. Sigale

Attorney for Plaintiffs

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