

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Argued January 5, 2023
Decided January 20, 2023

Before

JOEL M. FLAUM, *Circuit Judge*

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 22-1482

JENNIFER J. MILLER, et al.,
Plaintiffs-Appellants,

v.

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-Appellees.

Appeal from the United States District
Court for the Central District of Illinois.

No. 3:18-cv-03085-SEM-TSH

Sue E. Myerscough,
Judge.

ORDER

Appellants Darin and Jennifer Miller are both licensed foster home caretakers, and Jennifer Miller is licensed to operate a home day care. Illinois statutes and regulations restrict how the Millers may possess and store firearms and ammunition in their home. The Millers challenge the constitutionality of those statutes and regulations. The district court granted summary judgment for the State of Illinois, and the Millers appealed.

After the Millers filed their opening brief, the Supreme Court decided *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022), in which the Court ruled that means-end scrutiny does not apply in the Second Amendment context. *Id.* at 2126–30. The Court made more explicit the constitutional standard endorsed in *District of Columbia v. Heller*, 554 U.S. 570 (2008), requiring courts to assess whether modern firearms regulations are consistent with the Second Amendment’s text and historical understanding. *Id.* at 2131–34. After *Bruen* was published, briefing continued in this case, and we heard oral argument.

We now remand for additional proceedings to receive the full benefit of the district court’s decision applying the “text, history, and tradition” test of *Bruen*. On remand, the district court should allow the parties to engage in further discovery, including seeking additional expert reports. The district court should then evaluate any subsequent motions under *Bruen*’s text, history, and tradition framework. In doing so, the court should permit briefing on and consider the interaction of *Bruen* and the unconstitutional conditions doctrine, including but not limited to the employment context. *See, e.g., NASA v. Nelson*, 562 U.S. 134 (2011); *Engquist v. Oregon Dept. of Agri.*, 553 U.S. 591 (2008). The court should also allow discovery and briefing on the sensitive places doctrine, and on any other matter that the court and the parties find relevant in light of *Bruen*.

For these reasons, we VACATE the district court’s grant of summary judgment for the State of Illinois and REMAND for further proceedings consistent with this order.