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SC Court of Appeals

EXHIBIT B

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
)	
State of South Carolina, ex rel Alan Wilson,)	C/A No.: 2020-CP-40-01996
Attorney General,)	
)	
Plaintiff,)	
)	
vs.)	DEFENDANT’S NOTICE OF MOTION
)	AND MOTION PURSUANT TO RULE
City of Columbia,)	59(e), SCRCP
)	
Defendant.)	
)	
)	

TO: J. EMORY SMITH, JR., ESQUIRE, ATTORNEY FOR PLAINTIFFS ABOVE-NAMED:

PLEASE TAKE NOTICE that the City of Columbia ("the City" or "Defendant"), by and through its undersigned attorney, hereby moves the Court for an order which reconsiders, alters, and/or amends its decision issued in the above-referenced matter. This motion is brought pursuant to Rule 59(e), SCRCP, as well as the relevant statutory and case law.

The State brought this suit by a Complaint filed April 16, 2020, challenging three firearms ordinances of the City of Columbia as violating State law. The City filed an Answer on May 18, 2020 denying that the State was entitled to relief. Subsequently, the State filed a Motion for Judgment on the Pleadings, which this Court granted on May 4, 2021.

Based upon the facts in the record, the City respectfully moves that the Court reconsider its ruling on the following grounds:

1. Plaintiff claims in paragraph 1 of its motion and this court found that through S.C. Code Ann. §§23-31-510 and 23-31-520 "State law expressly occupies the entire field of South Carolina firearm regulation and preempts any local government on the same subject..." That is not what those statutes say. The State Legislature could have stated that the entire field of firearm regulation was preempted, but it purposely chose not to do so. Instead it chose to list in the statute,

the seven areas that were preempted. The City's answer clearly shows that there is a material issue that exists and that the matter should be allowed to go forward to be argued on its merits. The City's ordinances do not conflict with any of these seven areas and actually complements state law.

2. Plaintiff claims in paragraph 2 of its motion that the City of Columbia's ordinances violate the above referenced statutes as well as the Second Amendment of the United States Constitution. The ordinances in question violate neither. Plaintiff attempts to quote its office's opinions to justify its claim, but as we know, opinions of the State Attorney General's Office do not carry the weight of law, though it may carry persuasive weight. That being said, the Attorney General's Office has opined many times in agreement with the South Carolina Supreme Court and the South Carolina Constitution that:

When determining the validity of a local ordinance, we begin with the principle that '[a]n ordinance is a legislative enactment and is presumed to be constitutional.'... The burden of proving the invalidity of a local ordinance rests with the party attacking the ordinance.

Op. S.C. Att'y Gen., 2017 WL 4707545 (October 11, 2017); *Southern Bell Tel. & Tel. Co. v. City of Spartanburg*, 285 S.C. 495, 497, 331 S.E.2d 333, 334 (1985); S.C. Const., Art. VIII, §17.

As the Supreme Court has stated "Where no conflict exists, both laws stand." *Town of Hilton Head Island v. Fine Liquors, Ltd.*, 302 S.C. 553, 397 S.E.2d at 664 (quoting *McAbee v. Southern Rwy. Co.*, 166 S.C. 166, 169 170 164 S.E. 444-445 (1932)).

Also, specifically regarding Ordinance 2019-056, Extreme Risk Protection Orders, the plaintiff indicates that the ordinance gives the City the authority to confiscate firearms, but it does no such thing. As S.C. Code §23-31-520 states, local law enforcement has the authority to confiscate weapons if incident to an arrest. The City's ordinance does not expand this authority.

What it does is give any court of competent jurisdiction, after weighing the facts, the ability to order that someone, who the court has deemed an extreme risk to him or herself or to others, temporarily relinquish firearms to either a licensed gun shop or, if the individual chooses to do so, to a law enforcement agency, until the court rescinds the order, deems the individual to no longer be a threat, or the limited time for relinquishment expires. Nowhere is the ability for the City to confiscate firearms expanded.

As to Plaintiff's claim that the ordinances in question are unconstitutional as a violation of the Second Amendment of the United States Constitution; this claim is false. The ordinances are fully in line with the Second Amendment. The Plaintiff's argument that the Second Amendment was violated would also mean that both the Federal Statutes and State Law that regulate firearms would also be in violation of the Second Amendment because any regulation of firearms by any governmental entity would be a violation. Of course, this is not the case.

3. Specifically regarding Ordinance: 2019-063, the court failed to address the fact that 18 U.S.C., Section 922(q)(3), the Gun-Free School Zones Act of 1990, with amendments, allows local governments to establish gun-free school zones as provided in the subsection or the fact that the ordinance does not conflict with existing state laws. The City should have the opportunity to argue the merits of its ordinance before the court.

4. As to Ordinance: 2019-046, regarding Ghost Guns, state law gives the City the ability to declare a location that is used to violate state or federal law, a violation of land use regulation, and to deem that location a nuisance. This ordinance does not go against any preemption and the City should be allowed the opportunity to argue its position before this court.

4. The City reasserts that it should be able to present its arguments on their merits before the court as stated in its Answer to the Plaintiff's Complaint, including all Exhibits and attachments.

WHEREFORE, the grounds upon which Plaintiff's motion rests are not supported, and the City of Columbia respectfully urges the Court to reconsider its Order Granting Plaintiff's Motion for Judgment on the Pleadings.

s/Patrick L. Wright
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Columbia, South Carolina
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