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SC Court of Appeals

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

State of South Carolina *ex rel* Alan Wilson,
Attorney General,

Plaintiff,

v.

City of Columbia,

Defendants.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2020CP4001996

**ORDER GRANTING PLAINTIFF'S MOTION
FOR JUDGMENT ON THE PLEADINGS**

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This matter came before the Court for consideration of “Motion for Judgment on the Pleadings,” filed by Plaintiff State of South Carolina *ex rel* Alan Wilson, Attorney General (“the State”) on August 11, 2020. A hearing was conducted regarding this motion via Cisco WebEx on January 19, 2021. The State was represented by J. Emory Smith, Jr., Esquire; David Jones, Esquire; and W. Jeffrey Young, Esquire. Defendant City of Columbia (“the City”) was represented by Patrick L. Wright, Esquire.

For the reasons set forth below, the State’s motion is GRANTED.

FACTUAL AND PROCEDURAL HISTORY

The State, through its Attorney General, filed this declaratory judgment action on April 16, 2020, to challenge the validity of several ordinances enacted by the City, a local municipality. Specifically, in 2009, the City enacted or revised three specific ordinances, each of which concerns firearms and ammunition in some manner. The State argues that the ordinances – Ordinance Nos. 2019-046, 2019-056, and 2019-063 – are contravened by State law and are, therefore, invalid. The State also contends that these ordinances unconstitutionally violate the Second Amendment.

The City filed its Answer to the Complaint on May 18, 2020. In summary, the parties agree as to the existence and enactment of the ordinances. In the City's Answer, it denies only the legal conclusions posited by the State, arguing that the State has failed to state facts sufficient to constitute a cause of action. Therefore, on August 11, 2020, the State filed its Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure. The State seeks a declaration from this Court that the ordinances in question are invalid and unenforceable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

“After the pleadings are closed ... any party may move for judgment on the pleadings.” Rule 12(c), SCRPC. “[A] judgment on the pleadings is considered to be a drastic procedure by our courts.” *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 338 (1991) (citing *U.S. Cas. Co. v. Hiers*, 233 S.C. 333, 104 S.E.2d 561 (1958)). However, “[a] motion for Judgment on the Pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue.” *Rosenthal v. Unarco Indus., Inc.*, 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982) (citing *Wooten v. Standard Life and Cas. Ins. Co.*, 239 S.C. 243, 122 S.E.2d 637 (1961)).

The State's motion for judgment on the pleadings is based on certain South Carolina statutes. Pursuant to S.C. CODE ANN. §§23-31-510 (2008) and -520 (2006), State law expressly occupies the entire field of South Carolina firearms regulation and preempts any local ordinance on the same subject, except where local regulations are specifically permitted by those same statutes. Specifically, S.C. CODE ANN. §23-31-510 provides, in pertinent part:

[n]o governing body of any county, municipality, or other political subdivision in the State may enact or promulgate any regulation or ordinance that regulates or attempts to regulate:

(1) The transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms or any

combination of these things...

S.C. CODE ANN. §23-31-510 (2008). Section 23-31-520 further states:

This article does not affect the authority of any county, municipality, or political subdivision to regulate the careless or negligent discharge or public brandishment of firearms during the times of or a demonstrated potential for insurrection, invasions, riots, or natural disasters. This article denies any comity to any county, municipality, or political subdivision the power to confiscate a firearm or ammunition unless incident to an arrest.

S.C. CODE ANN. §23-31-520 (2006).

The three ordinances adopted by the City in 2019 violate those statutes.

I. The Extreme Risk Protection Ordinance (2019-056)

In 2019, Ordinance 2019-056 amended the City amended the 1998 Code of Ordinances of the City of Columbia, South Carolina, Chapter 14, Offenses and Miscellaneous Provisions, to add “Article XII, Extreme Risk Protection Orders.” This ordinance allows law enforcement, family or household members to seek a court order requiring the relinquishment of firearms by individuals who are found to be at risk by the court under the terms of the Ordinance.

As stated by the South Carolina Attorney General,

...the entire legislative scheme of the Ordinance focuses squarely on the transfer and possession of firearms, as expressly prohibited by S.C. Code Ann. §23-31-510 (Supp. 2019). We believe that a court most likely would conclude that the Ordinance is impermissible for this reason alone. *See Op. S.C. Att’y Gen.*, 2017 WL 6940255 (December 29, 2017). Additionally, the Ordinance expressly authorizes the involuntary removal of firearms merely on a finding of extreme risk. City of Columbia Code of Ordinances §14-353. The Ordinance list [sic] certain criminal behavior as factors to consider, but does not require that any crime be committed or any arrest be made prior to ordering relinquishment. *See City of Columbia Code of Ordinances §14-355*. Therefore, a court may also conclude that the Ordinance is prohibited by S.C. Code Ann. §23-31-520 (2007), which “denies any ... municipality ... the power to confiscate a firearm or ammunition unless incident to an arrest.”

....

Additionally, the Ordinance authorizes the involuntary removal of firearms merely on a finding of extreme risk, and does not require that any crime be committed or any arrest be made prior to ordering relinquishment. *See* City of Columbia Code of Ordinances §14-355. Therefore, a court may also conclude that the Ordinance is an unlawful firearm confiscation prohibited by S.C. Code Ann. §23-31-520 (2007).

....

In order to be unmistakably clear, our Office consistently has construed Sections 23-31-510 and -520 to mean that the General Assembly intended that State law expressly occupy the entire field of South Carolina firearm regulation and preempt any local ordinance on the same subject, except where local regulation are expressly permitted by those same statutes. *See, e.g., Op. S.C. Att’y Gen.*, 2017 WL 6940255 (December 29, 2017); *see also* S.C. Code Ann. §§ 23 31-510 (Supp. 2019) & -520 (2007).

Op. S.C. Att’y Gen., 2019 WL 6794778, at *7 (Dec. 2, 2019). The Court agrees with – and adopts – this analysis¹ in finding that the Extreme Risk Protection Ordinance is preempted by S.C. CODE ANN. §§23-31-510 and 23-31-520.

II. Gun-Free School Zones (2019-063)

The City also enacted Ordinance 2019-063, which amends the 1998 Code of Ordinances, Chapter 14, Offenses and Miscellaneous Provisions, by adding “Article XIII, Gun-free School Zones.” This Ordinance criminalizes the possession of a firearm “at a place that the individual knows, or has reasonable cause to believe, is a school zone,” which is defined by the Ordinance as “on the grounds of, a public, parochial or private school or within a distance of 1,000 feet from the grounds of a public, parochial or private school.”

¹ Although the City contends that Opinions of the Attorney General do not carry “the weight of law,” they are considered to be “persuasive,” *State v. Ramsey*, 409 S.C. 206, 212, 762 S.E.2d 15, 18 (2014); *Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 560–61, 713 S.E.2d 604, 609 (2011). Moreover, the Ordinances clearly violate the broad prohibitions of the above statutes.

Again, the Court adopts the analysis conducted by the South Carolina Attorney General.

Specifically,

The substantive prohibitions of the Ordinance are found Section 14-404, which we quote here in relevant part: “(a) It shall be unlawful for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone [subject to the listed exceptions] . . .” The remainder of Section 14-404 addresses the discharge of a firearm, and we understand that this portion of the Ordinance is beyond the scope of the opinion request.

....

In summary, the Ordinance purports to establish that possession of a firearm in certain circumstance[s] constitutes a criminal offense. Conversely, Section 23-31-510 expressly prohibits local ordinances that attempt to regulate "transfer, ownership, [or] possession of firearms." S.C. Code Ann. § 23-31-510. We believe that a court most likely would conclude that the Ordinance is impermissible for this reason alone. *See also Op. S.C. Att’y Gen.*, 2017 WL 6940255 (December 29, 2017).

Op. S.C. Att’y Gen., 2019 WL 6794777, at *6 (Dec. 2, 2019). Therefore, the Court finds that at least that portion of Ordinance 2019-063 which prohibits possession of a firearm in a school zone is also preempted by S.C. CODE ANN. §23-31-510.

III. Ghost Gun Ordinance (2019-046, -099)

Ordinance 2019-046, also adopted by the City in 2019, amends the 1998 Code of Ordinances, Chapter 8, Article II, Nuisances, Section 8-31, subsections (a) and (b) by declaring to be a nuisance “[a]ny act, structure, device, or location which is used for the manufacture, assembly, storage, warehousing, transfer, distribution or sale of one or more ghost guns.” It also defines “ghost gun” as “a homemade firearm which was created or assembled without a serial number.” Subsequently, Ordinance 2019-099 amended paragraph (b)(9) to remove the word “transfer.”

These provisions are also prohibited by S.C. CODE ANN. §23-31-510. As articulated by the South Carolina Attorney General,

On its face, the Ordinance imposes a regulatory scheme, with potential civil and criminal consequences, targeting the “storage, warehousing, transfer, distribution or sale” of a class of firearms. Conversely, Section 23-31-510 expressly prohibits local ordinances that attempt to regulate “transfer, ownership, [or] possession of firearms.” S.C. Code Ann. §23-31-510. . . [P]ossession and ownership of a firearm necessarily involves “storage” of that firearm in some structure at some time. *Id.* Furthermore, the State statute expressly prohibits local ordinances that attempt to regulate “components of firearms,” which necessarily are an indispensable part of the “manufacture [and] assembly” described in the Ordinance. *Id.*

In summary, the Ordinance predicates its regulatory scheme on the transfer, ownership, and possession of a particular class of firearms, as expressly prohibited by S.C. Code Ann. §23-31-510. We do not undertake to explore the limits of the preemption in Section 23-31-510 with respect to, e.g., manufacturing because this Ordinance facially targets conduct which falls squarely within the unambiguous terms of the State law. *Id.* We believe that a court most likely would conclude that the Ordinance is impermissible for this reason alone. *See also Op. S.C. Att’y Gen.*, 2017 WL 6940255 (December 29, 2017).

Op. S.C. Att’y Gen., 2019 WL 4894126 (Sept. 19, 2019). Therefore, the Court agrees with the conclusion reached by the South Carolina Attorney General.

While the form of the ordinance purports to target any “act, structure, device, or location” which is characterized as a nuisance, the substance of the ordinance patently targets a particular class of firearms for regulation by the City. To say that this ordinance does not regulate a class of firearms, but instead the act of storing those firearms or the structure in which it is stored, is a distinction without a difference. Instead, we believe that a court probably would find that the purpose and effect of the ordinance is to regulate “the transfer, ownership, possession, carrying, or transportation of [certain] firearms” in a manner prohibited by State law.” *See* S.C. Code Ann. §23-31-510(1) (2007).

Id.

CONCLUSION

For the foregoing reasons, the Court finds that the following City Ordinances are invalid as violative of state law – 2019-56; the portion of 2019-63 which prohibits possession of a firearm in a school zone; 2019-46; and 2019-099 (which amends and continues 2019-046).

IT IS, THEREFORE, ORDERED that Plaintiff's Motion for Judgment on the Pleadings is GRANTED.

AND IT IS SO ORDERED.



Richland Common Pleas

Case Caption: State Of South Carolina Ex Rel Alan Wilson Attorney General vs
City Of Columbia
Case Number: 2020CP4001996
Type: Order/Other

So Ordered

Jocelyn Newman

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