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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court Of Common Pleas

The Honorable Jocelyn Newman, Circuit Court Judge  
Trial Court Case No. 2020CP4001996

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Appellate Case No. 2021-001012

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State of South Carolina ex rel Alan Wilson, Attorney General ..... Respondent,

v.

City of Columbia ..... Appellant,

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**INITIAL BRIEF OF RESPONDENT STATE EX REL WILSON**

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## STATEMENT OF ISSUES

1. Whether S.C. Code Ann. §§ 23-31-510 and 23-31-520 occupy the field of firearms regulation in this State.
2. Whether the ordinances at issue are preempted by the above statutes.
3. Whether the City properly raised and preserved the issue of the applicability of the Federal Gun Free School Zones Act.
4. Whether the Gun Free School Zones Act applies to the ordinances at issue.
5. Whether the circuit court addressed the issue of whether the ordinances violate the Second Amendment of the U.S. Constitution.

## STATEMENT OF THE CASE

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. R. p. \*.<sup>1</sup> The State moved for judgment on the pleadings. R. pp. \* (Motion and Memorandum). Following a hearing regarding the Motion, the circuit court granted the Motion by Order dated May 4, 2021. R. p. \*. The City moved to alter or amend the Order (R. p. \*), and the Court denied the Motion by Order dated August 18, 2021. See note 1.

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<sup>1</sup> The City has not designated for the Record its response to the Complaint. The City's Designation of Matter fails to include key parts of the record below, including: the Complaint, the City's response to the Complaint, the State's Motion for Judgment on the Pleadings, the City's Motion to Alter or Amend (except as an attachment to the City's Notice of Appeal), and the Order of the circuit denying the City's Motion to Alter. The City did not designate for the record either the Motion to Alter or Amend or the Order denying it. The City did designate the Notice of Appeal to which the Motion is attached but not the Order. The Order is on C-Track, and as of the date of the filing of this Initial Brief, the City has moved to amend its notice to attach the Order.

## STANDARD OF REVIEW

In its review of the dismissal of a case pursuant to a motion for judgment on the pleadings, the Court of Appeals “applies the same standard of review implemented by the circuit court. *Williams v. Condon*, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct.App.2001).” *Hambrick v. GMAC Mortg. Corp.*, 370 S.C. 118, 122, 634 S.E.2d 5, 7 (Ct. App. 2006). As stated by the circuit court:

“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)).(emphasis added).

R. p. \*. The circuit court followed this standard and properly found that the City ordinances at issue violate state law.

## STATEMENT OF FACTS

Pursuant to S.C. Code Ann. §§23-31-510 and 23-31-520, and as found by the circuit court (R. p. \*), 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. S.C. Code Ann. §23-31-510 provides in pertinent part as follows:

[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;

Section 23-31-520 further stated at the time the ordinances were adopted and the Order issued in this case (See, note 2, *infra*):

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.<sup>2</sup>

As discussed below, the City adopted three firearms ordinances that are preempted by State law.

## **ARGUMENT**

### **I**

#### **THE ORDINANCES VIOLATE STATE LAW**

The circuit court ruled that “[p]ursuant to S.C. Code Ann. §§23-31-510 (2008) and -520

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<sup>2</sup> Section 23-31-520 was amended effective August 15, 2021, but the amendments do not change any of the conclusions reached by the circuit court about the applicability of the statute. See *infra*, Argument I A. The statute now reads as follows:

(A) Notwithstanding another provision of law, a governing body of a county, municipality, or political subdivision may temporarily restrict the otherwise lawful open carrying of a firearm on public property when a governing body issues a permit to allow a public protest, rally, fair, parade, festival, or oth a county, municipality, or political subdivision may not exercise the provisions of this subsection. A person or entity hosting a public protest, rally, fair, parade, festival, or other organized event must post signs at the event when open carrying is allowed or not allowed at the event.

(B) A governing body exercising the authority granted to it pursuant to this section must be specific in the area, duration, and manner in which the restriction is imposed and must provide prior notice of the restriction when feasible. In no event may the restriction extend beyond the beginning and conclusion of the event or beyond the location of the event. The duration of an event may not be scheduled for such a length of time as to frustrate the intent of this section.

(C) A county, municipality, or political subdivision may not confiscate a firearm or ammunition for a violation of this section unless incident to an otherwise lawful arrest.

(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.” R. p. \* (Order at p. 2). The City claims that the ruling is “without evidentiary support” and that the General Assembly instead drafted the statute “with an enumerated list of seven specific areas preempted.” The ruling is, of course, not an evidentiary ruling, but is based instead upon a correct reading of the statute, a matter of law. Section 53-31-510 states that it applies to a broad aspects of firearms regulation. It preempts the entire field of regulation regarding the “transfer, ownership, possession, carrying, or transportation of firearms, ammunition, components of firearms or any combination of these things.” Because the City’s ordinances fall within these categories, they are all preempted.

## A

### **The Extreme Risk Protection Ordinance**

Ordinance 2019-056 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. Complaint Exs. p. 15. This ordinance allows law enforcement, family, or household members to seek an order requiring the relinquishment of firearms by individuals who are found to be at risk by the court under the terms of the Ordinance.

This Ordinance is preempted by §§23-31-510 and 23-31-520 and conflicts with the Second Amendment. *See Op. S.C. Atty. Gen.*, 2019 WL 6794778, at \*7 (Dec. 2, 2019) (Complaint Exs. pp. 15 & 23). As stated in the Opinion of this Office (Attachments to Complaint at pp. 29-31):

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 lists 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).

The circuit court agreed with and adopted this analysis in finding that the Ordinance was preempted by §§23-31-510 and 23-31-520. R. p. \*.

The City argues that the provision of the Ordinance authorizing the removal of firearms upon a finding of extreme risk is not a prohibited confiscation of weapons, but it is. Although a Court order is required, the City sets up a process by which weapons may be confiscated in a judicial proceeding unauthorized by State law and inconsistent with the prohibition on weapons confiscation. The amendment to §23-31-520 does not affect these conclusions in that it still prohibits confiscation of weapons except incident to a lawful arrest.

The Court further noted that “[a]lthough 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.” R. p. \* (Order, p. 4, footnote 1). Although the City contends that the circuit court improperly relied on Opinions of the Attorney General, that court made clear that, while it was not bound by the Opinions, it independently found that the Ordinance did violate the above prohibitions.

## **B**

### **The Gun Free School Zones Ordinance**

Ordinance 2019-063 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.” R. p. \* (Complaint Exs. p. 33.)

The circuit court adopted the following analysis from *Op. S.C. Atty. Gen.*, 2019 WL 6794777, at \*6 (Dec. 2, 2019). R. p. \* (Complaint Exs. p. 35) and R. p. \* (Order at p. 5):

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. Atty Gen.*, 2017 WL 6940255 (December 29, 2017).

R. p. \* (Comp. Exs. pp. 40 & 41).

The City contends that the Federal Gun Free School Zones Act permits the ordinance. The City does not designate documents in the Record showing that it properly raised that issue below.<sup>3</sup> The circuit court did not address the issue in its Order regarding that Motion. When the City does not show that it raised that argument below and the circuit court did not address the issue, this question may not be raised now on appeal. *Nationwide Mut. Ins. Co. v. Hunt*, 327 S.C. 89, 98, 488 S.E.2d 339, 344 (1997) (“as these arguments were not presented to, or ruled upon by, the trial court . . . [b]ecause they are not properly before this Court, we need not address them.”). Although the City’s Motion to Alter or Amend only references the argument in a conclusory manner, its doing so is untimely because the City’s designations do not show that it raised the issue earlier. *Glassmeyer v. City of Columbia*, No. 2014-002221, 2016 WL 4446306, at \*1 (S.C. Ct. App. Aug. 24, 2016) quotes *Dixon v. Dixon*, 362 S.C. 388, 399, 608 S.E.2d 849, 854 (2005) as “stating an issue raised for first time in a motion to alter or amend is not preserved for review.”

Even if the argument were properly before the Court, it is completely lacking in merit. The part that the City references is 18 U.S.C.A. § 922(q)(4) which states that “[n]othing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.” This statute merely states that federal law does not prevent local gun free school zones. The provision clearly does not insulate local ordinances from State laws, such as §23-31-510, which preempt such

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<sup>3</sup> The State does not represent what Appellant’s undesignated documents show as to whether the City raised this issue below. The burden is on the City to support its position, and the City has not done so.

ordinances.

## C

### The Ghost Gun Ordinance

Ordinance 2019-046 amends the 1998 Code of Ordinances, Chapter 8, Article II, Nuisances, Sections 8-31-Definitions (a) and (b) by declaring to be a nuisance “any act, structure, device, or location which is used for the manufacture, assembly, storage, warehousing, transfer, distribution or sale of one or more ghost guns ((b)(9))” which it defines as “a homemade firearm which was created or assembled without a serial number (a)” R. p. \* (Complaint Exhibits, pp. 52 & 53.) Ordinance 2019-099 subsequently amended paragraph (b)(9) to remove the word “transfer.” R. p. \* (Answer Ex. 3).

As found by the Circuit Court (R. p. \* (Order at p. 6)), the provisions added to the City Code by Ordinance 2019-046 and continued, as amended, by Ordinance 2019-099 are prohibited by §23-31-510. *See, Op. S.C. Atty. Gen.*, 2019 WL 4894126 (Sept. 19, 2019) (R. p. \* (Complaint Exhibits 44)). The Court quoted the following from the above referenced 2019 Opinion of this Office:

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. . . possession 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).

R. p. \* (Complaint Exs. at p. 48).

The City contends that the statute gives municipalities 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. Appellant cites no authority for this position and the statute does not authorize such declaration. The above 2019 Opinion properly rejected this point as follows:

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).

R. p. \* (Complaint Exs. at p. 50.)

## II

### **THE COURT DID NOT REACH THE SECOND AMENDMENT ISSUE**

The City claims that the circuit court erred in concluding that the ordinances violate the Second Amendment. The Court made no such ruling. Although the State raised that issue in the Complaint and its Motion for Judgment on the pleadings, the circuit court did not address that argument. R. pp. \*\* (Complaint at p. 5; Motion at p. 3). Although the State considers that argument meritorious, it is not raising the issue on appeal because the court's ruling under the statutes is dispositive.

**CONCLUSION**

The State respectfully requests that this Court affirm the circuit court's rulings

Respectfully submitted,

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