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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

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

v.

City of Columbia. Respondent.

COMPLAINT

State of South Carolina, ex rel Alan Wilson, Attorney General (State), brings this action seeking a declaration by this Court that three City of Columbia Firearms Ordinances are unconstitutional.

PARTIES

1. Attorney General Alan Wilson brings this action for the State of South Carolina as its chief legal officer in order to challenge three municipal ordinances that conflict with State law and the Second Amendment of the United States Constitution.

2. The City of Columbia is the municipality of the State of South Carolina that adopted the ordinances at issue.

JURISDICTION AND VENUE

3. The jurisdiction of this Court is founded upon Rule 245, SCACR, S.C. Code Ann §14-3-310 and S.C. Const. art. V, §5. Additionally, jurisdiction is founded on the South

GOVERNING STATUTES AND CONSTITUTION

4. 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;

5. 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.

6. The Second Amendment of the United States Constitutions provides that “the right of the people to keep and bear Arms, shall not be infringed.”

ORDINANCES AT ISSUE

7. City of Columbia Ordinance 2019-046 makes “ghost guns” public nuisances which it defines as “a homemade firearm which was created or assembled without a serial number.” Addendum to Petition p. 52.

8, Ordinance 2019-056 amended the City of Columbia Code Chapter 14, to add Article XII Extreme Risk Protection Orders. Add. 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.

9. Ordinance 2019-063 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.” Add. p. 33.

**ALLEGATIONS REGARDING ORDINANCES AND OPINIONS
OF THE OFFICE OF THE ATTORNEY GENERAL**

10. The City of Columbia was directly notified of the preemptive effect of State law in a 2015 Opinion of the Office of the Attorney General. *Op. S.C. Atty. Gen.*, 2015 WL 4596713 (July 20, 2015). Add. p. 1.

11. At issue in the 2015 Opinion was an “Emergency Ordinance for the Temporary Ban of Weapons Within a Two Hundred Fifty (250) foot Area Surrounding The South Carolina State House Grounds.” Columbia Ordinance No. 2015-066 (Add. p. 12). The Opinion stated that “we believe a court would conclude the Columbia Ordinance contravenes State law as well as the Second Amendment of the United States Constitution.” *Id.* at p. 11

12. Despite this Opinion, the City of Columbia has adopted three firearms ordinances in 2019 contrary to State law and the Second Amendment. Two City Ordinances were the subject of separate Opinions of the Office of the Attorney General issued last month; a third was addressed in a September, 2019 Opinion.

13. Ordinance 2019-056 amended the City of Columbia Code Chapter 14, to add Article XII Extreme Risk Protection Orders. Add. 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.

14. The Opinion as to that Ordinance 2019-056 was “that a court most likely would conclude that such an ordinance constitutes a prohibited regulation of possession, carrying, and

transfer of a firearm by a political subdivision” and is preempted by §§23-31-510 and 23-31-520. *Op. S.C. Atty. Gen.*, 2019 WL 6794778, at *7 (Dec. 2, 2019) (Add. pp. 23 & 30). The Opinion also found that the “ordinance not only undermines state law, but undercuts the Second Amendment.” *Id.* at p. 32.

15. Ordinance 2019-063 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.” Add. p. 33. A second Opinion issued on December 2, consistently with the other Opinion of that date, found that a court would most likely find that, “at least that portion of Ordinance 2019-063 prohibiting possession of a firearm in a school zone is preempted by S.C. Code Ann. § 23-31-510.” *Op. S.C. Atty. Gen.*, 2019 WL 6794777, at *6 (Dec. 2, 2019). Add. pp. 35 & 42. The Ordinance also “undercuts the Second Amendment.” *Id.*

16. Ordinance 2019-046 makes “ghost guns” public nuisances which it defines as “a homemade firearm which was created or assembled without a serial number.” Add. pp. 52 and 53. *Op. S.C. Atty. Gen.*, 2019 WL 4894126 (Sept. 19, 2019) referenced the Second Amendment and concluded that a Court would most likely find the Ordinance to be prohibited by §23-31-510. Add. p. 44.

17. In the course of preparing each of the 2019 Opinions, this Office sought and received responses from the City of Columbia including legal analysis. The letters from the City respectfully disagreed with the position that the Ordinances are contrary to State law. The Opinions concluded otherwise.

18. On December 3, 2019, the Attorney General wrote the Honorable Stephen K. Benjamin, Columbia Mayor, strongly urging that the ordinances be repealed because of their inconsistency with State law and the Second Amendment. Add. p. 54. The Office of the Attorney General did not receive a written response to the letter, but news media reported that the City respectfully disagreed. No action appears to have been taken to repeal the ordinances.

FOR A FIRST CAUSE OF ACTION

19. The above paragraphs are incorporated by reference as fully as if set forth herein.

20. The Office of the Attorney General has consistently construed Sections 23-31-510 and 23-31-520 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 regulations are expressly permitted by those same statutes. *See, e.g., Op. S.C. Atty. Gen.*, 2017 WL 6940255 (December 29, 2017).

21. Ordinances 2019-046, 2019-056 and 2019-063 conflict with and are preempted by §23-31-510, and Ordinance 2019-056 also conflicts with §23-31-520.

FOR A SECOND CAUSE OF ACTION

22. The above paragraphs are incorporated by reference as fully as if set forth herein.

23. Ordinances 2019-046, 2019-056 and 2019-063 also conflict with the Second Amendment of the United States Constitution.

WHEREFORE, Petitioner State ex rel Wilson respectfully requests that this Court declare Ordinances 2019-046, 2019-056 and 2019-063 invalid under State law and the Second Amendment and provide for such other relief as it deems just and proper.

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