

regulations. Earlier this year, Nebraska passed constitutional carry legislation that repealed the State's concealed carry permitting scheme, proclaimed all local weapons regulations null and void, revoked all local authority to regulate weapons, and declared the regulation of weapons a subject matter on which only the State may legislate. Since its effective date, Lincoln Mayor Leirion Gaylord Baird issued an executive order prohibiting the carrying of weapons on all City property, and the City of Lincoln has failed to repeal its preexisting weapons regulations. State law preempts the executive order and the weapons ordinances, and the executive order also violates the separation of powers. Defendants will continue to enforce these unconstitutional, preempted laws unless and until a court orders them to stop.

2. In passing the constitutional carry legislation, Nebraska was following the national trend of states removing barriers to the right to bear arms. Since 2012 more than half of the states have passed legislation eliminating the need for government permission before a law-abiding citizen may exercise the right to bear arms. Nebraska was the 27th state to pass constitutional carry legislation through Legislative Bill ("LB") 77. LB 77 was a comprehensive bill that

amended 20 statutes in 8 different chapters. It amended chapters concerning the powers of political subdivisions, criminal laws, and personal property. The primary purposes for this legislation were to (1) create uniformity of concealed carry laws across the state by eliminating political subdivisions' powers to regulate firearms and (2) remove the permit requirement for a concealed weapon. The bill began by proclaiming that the regulation of weapons is for the State to decide, that local governments are prohibited from regulating weapons, and that all local laws regulating weapons are null and void.

3. The day LB 77 took effect, the Mayor issued an executive order prohibiting the carrying of weapons on all City property. The executive order prohibits individuals, except law enforcement, from possessing weapons in all buildings, facilities, parks, sidewalks, and parking lots that are under the City's control. The City's police department is responsible for enforcing the order. Violators will be considered trespassing and are subject to both criminal and civil penalties.

4. Since the passage of LB 77, the City has failed to repeal its local ordinances regulating firearms and other weapons. Lincoln's weapons ordinances prohibit many aspects of firearm use, possession, ownership, sale, storage, and transportation. They also regulates

myriad other weapons and include reporting requirements. These laws are still in effect and being enforced.

5. State law preempts both the existing ordinances and the executive order. State law provides that the authority to regulate firearms lies solely with the State of Nebraska; the City is prohibited from regulating firearms; and any City's firearm laws are null and void. Also, the Mayor's executive order prohibiting weapons from City property is unconstitutional because the Nebraska Constitution's Separation of Powers clause and the City's Charter grants the executive branch only enforcement authority, not legislative authority. The Mayor does not have the power to create law.

6. The City will continue to enforce the state-law preempted ordinances and executive order, and the unconstitutional executive order. This Court therefore should declare that the weapons ordinances and executive order are preempted by state law, declare the executive order is unconstitutional, and enjoin Defendants from enforcing the order and ordinances.

JURISDICTION AND VENUE

7. Plaintiffs are seeking a declaratory judgment (Neb. Rev. Stat. § 25-21,149) that Lincoln's: (a) weapons ordinances and executive order

violate Article XI, Section 2 (home rule charter) of the Nebraska Constitution because they are preempted and conflict with state law; and (b) executive order violates Article II, Section 1 (separation of powers) of the Nebraska Constitution because it encroaches into legislative powers.

8. Plaintiffs also seek both permanent (Neb. Rev. Stat. § 25-1062) and temporary (Neb. Rev. Stat. § 25-1063) injunctive relief against Defendants' enforcement of these laws because they infringe on Article II, Section 1 (right to bear arms) of the Nebraska Constitution.

9. This Court has jurisdiction over Plaintiff's claims and may grant the declaratory and injunctive relief requested under Article V, Section 9 of the Nebraska Constitution and Neb. Rev. Stat. §§ 24-302, 25-101, and 25-21,149.

10. Venue lies in this Court under Neb. Rev. Stat. § 25-403.01 because this county is where the City of Lincoln is incorporated and located, and where the laws were issued and are enforceable.

PARTIES

11. Plaintiff Nebraska Firearms Owners Association ("NFOA") is a Nebraska non-profit corporation, recognized by the Internal Revenue Service as a 501(c)(4) organization. NFOA members include over

10,000 firearm owners in Nebraska. It is leading the efforts to preserve Nebraskans natural rights as guaranteed in Article 1 of the State Constitution and the Second Amendment of the U.S. Constitution. NFOA's purpose is to ensure and expand firearms freedom. It does this through educational campaigns, lobbying, and special events to advocate for legislation that protects the law-abiding citizen's right to keep and bear arms and limits governmental oversight. NFOA provides its members and the public with firearm resources, information, training, and education. NFOA, and its members, were actively involved in the drafting, public debate, and passage of LB 77. Many of its members live in or around Lincoln, regularly carry their concealed weapons, utilize City properties, and have possessed gun parts, gun kits, and accessory accelerators.

12. Plaintiff Terry Fitzgerald is a resident of Lincoln, Nebraska. He has a valid current concealed carry permit. He carries his concealed firearm for self-defense 100% of the time. He is an National Rifle Association Life Member, NRA Certified Instructor, NRA Chief Range Safety Officer, NRA Appointed Training Counselor, and Concealed Handgun Instructor Nebraska-Kansas-Minnesota. He has been an instructor for over 20 years. He trains and practices firearm

proficiency every chance he gets. Before the executive order, he would regularly go for walks through his neighborhood, and hike through City parks, around lakes, and on trails, always carrying his concealed weapon. Since the executive order, he has stopped using the City parks and trails because firearms are prohibited.

13. Plaintiff Dave Kendle is a resident of Seward County, Nebraska. He carries his concealed firearm 100% of the time. He has had a current, valid Nebraska concealed carry permit for about 10 years. He has been an NRA Life Member for 10 years. He trains and practices firearm proficiency at least once a week. He also has a Minnesota concealed carry permit. He carries his firearm for self-protection and defense of his family. Until the Mayor's executive order, he would take his wife and grandchildren to the City of Lincoln parks and playgrounds, always carrying his concealed firearm. Since the executive order, he has been unable to take his wife and their grandchildren to the City parks and playgrounds because firearms are prohibited.

14. Plaintiff Raymond Bretthauer is a resident of Lincoln, Nebraska. He carries his concealed firearm more than 50% of the time. He has had a current, valid Nebraska concealed carry permit for about

five years. He carries his firearm for self-protection and defense of his family. He maintains regular firearm training and proficiency. Before the executive order, he would usually carry his concealed firearm as he and his wife would regularly use the City parks for the walking paths, hiking trails, biking trails, and dog parks. Since the executive order he has been unable to use to walking paths, hiking trails, biking trails, and dog parks because firearms are prohibited.

15. Plaintiff D.J. Davis is a resident of Lincoln, Nebraska. He carries his concealed firearm 100% of the time. He carries his firearm for self-protection and defense of his family. He has had a current, valid Nebraska concealed carry permit for about five years. He is an NRA member and an NRA Certified Instructor. Before the executive order he would visit the City parks and lakes, together with his wife and two children, about once a week, always carrying his concealed firearm. Since the executive order, he and his family have been unable to visit the parks and lakes because firearms are prohibited.

16. Defendant City of Lincoln is the municipal entity under which the weapons ordinances and executive order were issued and are enforced, and it has an interest in whether those laws are valid. The City of Lincoln parks system includes more than 137 parks consisting

of over 6,000 acres of parkland, 172 miles of trails, 93 playgrounds, 9 public pools, 6 recreational facilities, five golf courses, five dog runs, nature center, and public gardens.¹

17. Defendant Leirion Gaylord Baird, sued in her official capacity as the Mayor of the City of Lincoln, issued the executive order. The Mayor, as the chief executive for the City, is responsible for the administration and enforcement of City laws. The Mayor enforces the weapons ordinances and the executive order by way of her authority over the Lincoln Police Department.

FACTS

The Passage of State law LB 77

18. On April 25, 2023, the Governor of Nebraska signed into law Legislative Bill (“LB”) 77.

19. The primary purposes of LB 77 are to: (1) “Prohibit regulation of weapons by cities, villages, and counties,” and (2) “To provide for the carrying of a concealed handgun without a permit.”

20. LB 77: (1) repealed all the permit requirements for the concealed carry of firearms; (2) declares that the regulation of firearms is a

¹ <https://www.lincoln.ne.gov/City/Departments/Parks-and-Recreation>, *last visited* December 2, 2023.

matter of statewide concern; (3) prohibits any local government regulation of firearms; and (4) declares that all local government regulations are null and void.

21. LB 77 automatically became effective three calendar months after the legislature adjourned on June 1, 2023, which was September 1, 2023.

The Mayor’s Executive Order Prohibiting All Weapons

22. On September 1, 2023, the Mayor issued an executive order, number 97962, entitled “Weapons Policy” (“Weapons Ban”). The purpose of the Weapons Ban was to prohibit “the possession of weapons in all vehicles, buildings, and facilities owned, leased, controlled, or maintained by the City of Lincoln.”

23. The Weapons Ban defined weapon as “any firearm, stun gun, knife with a blade length longer than 3.5 inches, explosive, any device which releases any propelled object by spring mechanism, compressed air, or compressed gas, or any other instrument the use of which is intended or likely to cause death or serious bodily injury.”

24. The Weapons Ban mandated that “No individual shall possess or cause to be present a weapon in or on any City property or City vehicle. This prohibition applies regardless of whether an individual

possesses a valid concealed carry permit or license issued by any jurisdiction.” City property includes any premise “under the care and control of the City of Lincoln,” including, but not limited to, all buildings, facilities, parks, public spaces, sidewalks, driveways, and parking lots. Enforcement of the Weapons Ban is given to the Lincoln Police Department.

25. The Weapons Ban only exempted weapons in a locked vehicle and weapons possessed by law enforcement, security personnel, and individuals who have received approval from the Mayor.

26. The effective date of the Weapons Ban was September 1, 2023.

27. The Weapons Ban subjected violators to prosecution for criminal trespassing and to civil liability.

The Mayor’s Amended Weapons Ban

28. On September 12, 2023, the Mayor issued executive order, number 97985 (“Amended Weapons Ban”), to “rescind[] and supersede[] the Weapons Policy adopted by Executive Order 97962 dated September 1, 2023.”

29. The Amended Weapons Ban added an asserted authority under Neb. Rev. Stat. § 28-1202.01: “The City of Lincoln . . . has inherent property rights to regulate the property owned and/or controlled by it.

Neb. Rev. Stat. § 28-1202.01 recognizes the City’s property rights to control weapons, and specifically allows the prohibition of carrying concealed handguns with a permit and/or license into or onto properties under its control.”

30. The Amended Weapons Ban added an exception to the prohibition of weapons on City property for “Any person possessing a weapon in or on a shooting range or archery operated, supervised, or maintained by the City.”

31. The Amended Weapons Ban also stated that the public sidewalks to which it applies include only approach sidewalks, not any public street or public sidewalk that runs parallel to a public street.

32. The effective date of the Amended Weapons Ban was September 12, 2023.

33. The Amended Weapons Ban subjects violators to prosecution for criminal trespassing.

The City Failed to Repeal its Weapons Ordinances

34. Since the passage of LB 77, the City has not repealed any of its weapons ordinances under Lincoln Municipal Code (“Lincoln Code”) chapter 9.36 (“Weapons Ordinances”).

35. Chapter 9.36: prohibits possession of various weapons and firearm accessories; regulates the sale of various weapons and firearms; imposes reporting requirements; prohibits possession of firearms by individuals with certain convictions; regulates firearm storage; regulates transportation of weapons; and prohibits weapons from City properties.

36. Under the Weapons Ordinances, it is unlawful “for any person to sell, give away, or furnish to another person any device meeting the definition of multiburst trigger activator and it shall be unlawful for any person to have in his or her possession, custody, or control any device defined as a multiburst trigger activator within the corporate city limits of the City of Lincoln.” Lincoln Code § 9.36.035.

37. Under the Weapons Ordinances, it is unlawful “for any person to knowingly possess or cause to be present a firearm or other dangerous weapon in a city and/or county facility.” Lincoln Code § 9.36.130(a).

38. The Weapons Ordinances are still in effect.

Injury to Plaintiffs

39. To avoid prosecution for violating the Weapons Ban and Amended Weapons Ban, Plaintiffs have had to refrain from various activities in which they would otherwise engage to avoid prosecution:

hiking on a city trail, watching their children on a city playground, using a recreational facility, walking their dog at the park, walking on a sidewalk leading to a city building, or using any other city property.

40. The individual Plaintiffs, and many members of Plaintiff NFOA, carry their concealed weapon for self-defense, defense of their families and others. Because the purpose is self-defense, many carry their concealed weapon routinely. The inability to carry their firearm has impeded their ability to freely move about the city. and the individual Plaintiffs and Plaintiff NFOA's members must now determine whether or not their daily activities will include city properties, city parking lots, and abutting sidewalks. If so, they must consciously determine to leave the weapon at home because they cannot simply store it in their vehicles.

41. The Amended Weapons Ban thus forces Plaintiffs to make an untenable choice: *Either comply with the Ban and forfeit their right to bear arms or violate the law to protect themselves and others.*

42. Plaintiffs are law-abiding citizens who would like to enjoy the freedoms that constitutional carry provides and again freely carry a concealed weapon for their self-defense, defense of their loved ones, and protection of others.

43. But for the Amended Weapons Ban, Plaintiffs would immediately enjoy the City parks, hiking trails, and recreational facilities.

44. With Chapter 9.36 still in effect, NFOA members, Plaintiffs, and all others continue to be subject to the City's regulations of the possession, sale, transportation, use, storage, and ownership of firearms and other weapons.

CLAIMS

Count I – State Law Preemption

45. Plaintiffs incorporate paragraphs 1-44 as if fully set forth below.

46. Article XI, Section 2, the home rule charter provision, of the Nebraska Constitution provides that “Any city having a population of more than five thousand (5000) inhabitants may frame a charter for its own government, consistent with and subject to the constitution and laws of this state[]”

47. Cities incorporated under Article XI, Section 2 may not pass ordinances that conflict with state law; such ordinances, if passed, are preempted and void.

48. Lincoln's City Charter is a home rule charter adopted under Article XI, Section 2 of the Nebraska Constitution.

49. Article 1, Section 1 of the Nebraska Constitution guarantees that all persons have “the right to keep and bear arms for security or defense of self, family, home, and others, and for lawful common defense, hunting, recreational use, and all other lawful purposes”

50. LB 77 states that: (1) “the regulation of the ownership, possession, storage, transportation, sale, and transfer of firearms and other weapons is a matter of statewide concern”; (2) regardless of home rule charters, cities “shall not have the power to” “[r]egulate the ownership, possession, storage, transportation, sale, or transfer of firearms or other weapons”; and (3) “Any county, city, or village ordinance, permit, or regulation in violation of subsection (2) of this section is declared to be null and void.”

51. The Nebraska Constitution protects the right to bear arms and LB 77 reserved to the State all powers to regulate firearms and weapons.

52. LB 77 went into effect September 1, 2023.

53. The Weapons Ban went into effect September 1, 2023. The Amended Weapons Ban went into effect on September 12, 2023. And Chapter 9.36 of the Lincoln Municipal Code was in effect before passage of LB 77 and remains in effect today.

54. The Amended Weapons Ban prohibits the possession, storage, and transportation of firearms and other weapons on all City property and therefore is preempted by LB 77.

55. The Weapons Ordinances regulate the ownership, possession, storage, transportation, sale, and transfer of firearms and weapons, and therefore are preempted by LB 77.

56. Unless the Amended Weapons Ban and the Weapons Ordinances of chapter 9.36 are declared null and void and permanently enjoined, Plaintiff NFOA's members and the individual Plaintiffs will continue to suffer a deprivation of their right to bear arms protected by LB 77.

Count II – Violation of Separation of Powers

57. Plaintiffs incorporate paragraphs 1-56 as if fully set forth below.

58. The Nebraska Constitution, Article II, Section 1 provides: "The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted."

59. The Lincoln City Charter, Article IV, Section 12 grants the Mayor the authority to: (1) exercise supervision over executive activities; (2) enforce the Lincoln City Charter and ordinances; (3) exercise the power of appointment and removal; (4) submit an annual budget to the City Council; (5) exercise supervision over City purchasing; (6) prepare an annual report on City actions; (7) promote commercial and industrial growth; and (8) “[e]xercise such other powers and perform such other duties as may be prescribed by this charter, ordinances and resolutions and applicable laws.”

60. Nothing in the Nebraska Constitution or the Lincoln City Charter authorizes the Mayor to unilaterally enact legislation.

61. The Weapons Ban and the Amended Weapons Ban do not cite to any State or Charter authority by which the Mayor may create a law.

62. The Amended Weapons Ban has the force and effect of law. It is not an internal rule or procedure; it applies to all people on City property, and is enforced by the police department.

63. The Mayor’s enactment of the Amended Weapons Ban was therefore an exercise of legislative power that violates the Nebraska Constitution’s separation of powers.

64. Unless the Amended Weapons Ban is declared unconstitutional and permanently enjoined, Plaintiffs, and others like them, will continue to suffer a deprivation of their right to bear arms protected by LB 77.

REQUEST FOR RELIEF

Plaintiffs request the following relief:

- A. A judgment declaring that LB 77 preempts the Amended Weapons Ban and the Weapons Ordinances of Lincoln Code chapter 9.36, and that the order and ordinances are therefore void under Article XI, Section 2 of the Nebraska Constitution;
- B. A judgment declaring that the Amended Weapons Ban violates Article II, Section 1 of the Nebraska Constitution;
- C. A permanent injunction prohibiting Defendants from enforcing the Amended Weapons Ban and Weapons Ordinances Lincoln Code chapter 9.36;
- D. An award of Plaintiffs' reasonable attorneys' fees and costs under Neb. Rev. Stat. §§ 25-1801, 25-1708, and 25-21,158;
- E. Any further relief this Court deems just and proper.

Respectfully submitted this 18th day of December, 2023.

/s/ Seth Morris _____

Seth Morris

seth@libertylawnebraska.com

LIBERTY LAW GROUP

1201 "O" Street, Suite 304

Lincoln, Nebraska 68508

(402) 865-0501

Jacob Huebert* (TX Bar No. 4129465)

jhuebert@libertyjusticecenter.org

Loren A. Seehase* (HI Bar No. 10414)

lseehase@libertyjusticecenter.org

Noelle Daniel* (KS Bar No.29461)

ndaniel@libertyjusticecenter.org

LIBERTY JUSTICE CENTER

440 N. Wells Street, Suite 200

Chicago, Illinois 60654

(312) 637-2280

Counsel for Plaintiffs

** Pro Hac Vice application*

forthcoming