

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, Omaha Mayor Jean L. Stothert issued an executive order prohibiting the carrying of firearms on all City property, and the City of Omaha passed two ordinances to regulate gun parts. The two ordinances and executive order are all preempted by state law, 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.

3. 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.

4. Shortly before LB 77 took effect, Mayor Jean Stothert issued an executive order prohibiting the carrying of concealed firearms on all City property. The executive order prohibits individuals, except law enforcement, from possessing firearms in all buildings, facilities, parks, public spaces, sidewalks, driveways, and parking lots that are under the City's control. The City's police department is responsible for enforcing the order. If someone violates the order, the City's Police Department will issue a citation and the violator will be subject to up to a \$500 fine and/or 6 months in jail.

5. After the Mayor issued that order, the Omaha City Council passed an ordinance prohibiting unfinished firearm parts and "ghost gun" kits. The ordinance prohibits the possession of an unfinished

receiver or frame that does not have a serial number. Shortly thereafter, the Omaha City Council passed another ordinance banning firearm accelerator parts that can be added onto firearms. The ordinance prohibits the sale, manufacture, transfer, or possession of firearm accessories that accelerate the rate of fire. Both ordinances are punishable by a fine of up to \$500.00, six months in prison, or both.

6. State law preempts both the executive order and the new ordinances. 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 firearms from City property is unconstitutional because the Nebraska Constitution's Separation of Powers clause and the City's Charter grant the executive branch only enforcement authority, not legislative authority. The Mayor does not have the power to create law.

7. 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 executive order and ordinances are preempted by state law, declare the executive order

unconstitutional, and enjoin Defendants from enforcing the order and ordinances.

JURISDICTION AND VENUE

8. Plaintiffs seek a declaratory judgment (Neb. Rev. Stat. § 25-21,149) that Omaha's: (a) two 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.

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

10. This Court has jurisdiction over Plaintiffs' 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.

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

PARTIES

12. 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 Omaha, regularly carry their concealed weapons, utilize City properties, and have possessed gun parts, gun kits, and accessory accelerators.

13. Plaintiff Lonny Sund is a resident of Omaha, where he lives with his wife. He has a current, valid concealed carry permit. He carries his concealed firearm more than 75% of the time. He carries his firearm for self-protection and defense of his family. Before the executive order, he frequently would walk with his wife around the City lake a few blocks from their house, always carrying his firearm. But since the Mayor issued her executive order, they rarely go for walks because firearms are prohibited. Also, before the City Council enacted ordinance prohibiting unfinished gun parts and the assembly of ghost gun kits, he enjoyed building firearms as a hobby. Since the ordinance he has been unable to purchase unfinished gun parts or build any firearms because the ordinance prohibits this.

14. Plaintiff Justin Armsbury is a lifelong resident of Omaha, where he lives with his wife. He carries his concealed firearm 100% of the time. He has had a current, valid concealed carry permit for more than 10 years. He trains regularly and takes 1 to 3 training classes a year. He carries his firearm to protect himself and his wife. Before the Mayor's executive order, he would use a City hiking trail several times a week, walk in his neighborhood, including several City-owned green spaces, and coach little league at the City parks. But, since the Mayor

issued her executive order, he has been unable to use the hiking trails and go for walks in his neighborhood, and he will not be able to coach little league in the spring, because the order prohibits him from carrying firearms in these places. Also, before the City Council enacted the ordinances banning unfinished gun parts and assembly of ghost gun kits, he enjoyed building firearms. Since the City Council enacted the ordinance, he has been unable to purchase unfinished gun parts or build any firearms because the ordinance prohibits this.

15. Plaintiff Michael O'Donnell is a resident of Omaha, where he lives with his fiancée and their four children. He carries his concealed firearm more 75% of the time. He has a current, valid Nebraska concealed carry permit that he has held for about 10 years. He was a member of the National Rifle Association and is a current NRA Certified Pistol Instructor. He has been an instructor for 20 years and frequently teaches the Nebraska concealed carry classes. He carries his firearm for self-protection and defense of his family. He collects firearms, and before the new ordinances he would regularly purchase various unfinished gun parts to upgrade and customize his weapons. But since the new ordinances he has been unable to purchase unfinished gun parts because it is prohibited. Also, prior to the

executive order, he would always carry his concealed firearm when he and his family would visit the City parks, lakes, and trails a few times a week. But since the order they have been unable to visit the City parks because firearms are prohibited.

16. Plaintiff Robert Robinson has lived in Nebraska his whole life, and is currently a resident of Omaha, where he lives with his two older children. He carries his firearm to protect himself and his two children. He carries his concealed firearm more than 25% of the time. He has a current, valid Nebraska concealed carry permit. He has been an NRA Life member since 2013 and an NRA Patriot Life member since 2018. He regularly trains and practices shooting. Before the executive order, he would visit City properties a few times a week with his family, where he would sometimes carry his concealed firearm. But since the executive order, he and his family have been unable to use the City parks because firearms are prohibited. Also, before the ordinances, he purchased unfinished gun parts, accessory accelerators, and would build firearms. But since the ordinances, he has been unable to purchase unfinished gun parts, ghost gun kits, accessory accelerators, and has been unable to build firearms because it is prohibited.

17. Plaintiff Alan Koziol is a resident of Omaha. Since the passage of LB 77, he carries his concealed firearm more than 50% of the time. He is married with two children. He is a war veteran and carries his firearm for self-protection and defense of his family. Before the executive order, he would visit City properties about once a week. But because of the executive order he and his family are unable to enjoy the parks because firearms are prohibited.

18. Defendant City of Omaha is the municipal entity under which the two ordinances and executive order were issued and are enforced, and it has an interest in whether those laws are valid. The City of Omaha parks system includes more than 250 parks consisting of over 11,000 acres of parkland, 20 recreational facilities, and over 120 miles of paved trails.¹

19. Defendant Jean L. Stothert, sued in her official capacity as the Mayor of the City of Omaha, 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 two ordinances and the executive order by way of her authority over the Omaha Police Department.

¹ <https://parks.cityofomaha.org/parks>, *last visited* November 6, 2023.

FACTS

The Passage of Legislative Bill 77

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

21. 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.”

22. LB 77 (1) repealed all the permit requirements for the concealed carry of firearms; (2) declares that the regulation of firearms is a matter of statewide concern; (3) prohibits any local government regulation of firearms; and (4) declares that all local government regulations are null and void.

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

The City of Omaha’s Repeal of its Concealed Carry Laws

24. On August 29, 2023, the Omaha City Council unanimously passed ordinances 43508 and 43510, which repealed all of the City’s concealed carry requirements and weapons ordinances. The stated purpose of both ordinances was to repeal ordinances “regarding

firearms and weapons due to the passage of LB 77 passed by the Nebraska on April 25, 2023, which declares such ordinances null and void.”

25. The Omaha City Mayor signed ordinances 43508 and 43510 into law on August 30, 2023. They went into effect September 13, 2023.

The Mayor’s Executive Order Prohibiting Concealed Firearms

26. On August 30, 2023, the Mayor of the City of Omaha issued an executive order, number S-48-23, entitled “Prohibition of Firearms on City of Omaha Property” (“Firearms Order”). The purpose of the Firearms Order was “to make clear that firearms are prohibited on all owned or leased City of Omaha Property.”

27. The Firearms Order mandates that “No person shall have in his or her possession any firearm on any City property,” which includes all buildings, facilities, parks, public spaces, sidewalks, driveways, and parking lots that are “under the City’s control.” The Omaha Enforcement of the Firearms Order is given to the Omaha Police Department.

28. The Firearms Order only exempts law enforcement, security personnel, citizens using the Harry A. Koch Trap & Skeet facility, and individuals who have received approval from the chief of police.

29. The effective date of the Firearms Order was September 2, 2023.

30. The penalty for violation of the Firearms Order is a fine of up to \$500.00, up to six months in prison, or both, under Omaha Municipal Code (“Omaha Code”) § 1-10.

The City Council’s Ban on Gun Parts

31. On October 31, 2023, the Omaha City Council passed ordinance 43579 to prohibit possession of firearm parts and prohibit building firearms.

32. Ordinance 43579 prohibits possession of gun parts: “It shall be unlawful for a person who is not a licensed firearm importer or licensed manufacturer to knowingly possess an unfinished frame or receiver that does not contain a serial number placed by a licensed importer or licensed manufacturer.”

33. The punishment for violation of ordinance 43579 is a fine of up to \$500, six months in prison, or both, under Omaha Code § 1-10.

The City Council’s Bump Stock Ban

34. On November 14, 2023, the Omaha City Council passed ordinance 43580, which provides: “It shall be unlawful for any person to sell, manufacture, transfer, or possess a bump stock or trigger crank.”

35. This punishment for violation of ordinance 43580 is a fine of up to \$500, up to six months in prison, or both, under Omaha Code § 1-10. The ordinance went into effect 15 days after passage, on November 29, 2023.

Injury to Plaintiffs

36. Since the Firearms Order took effect, Plaintiffs have been unable to carry a concealed weapon while hiking on a city trail, watching their children on the city playground, using a recreational facility, walking their dog at the park, or using any other city property. Even simply walking down a sidewalk that abuts city property would put them in violation of the Firearms Order. Nor can they store their firearms in their vehicles parked in a city parking lot, or even have a firearm in their cars while driving on a city driveway.

37. The individual Plaintiffs, and many members of Plaintiff NFOA, carry their concealed weapon for self-defense and 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. The individual Plaintiffs and Plaintiff NFOA's members must now determine whether 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.

38. The Firearms Order thus forces Plaintiffs to choose: *Either comply with the Order and forfeit their right to bear arms or violate the law to protect themselves and others.*

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

40. But for the Firearms Order, all Plaintiffs would immediately enjoy the City parks, hiking trails, and recreational facilities.

41. Since the passage of ordinance 43579, Plaintiffs Sund, O'Donnell, Robinson, and Armsbury, many NFOA members, and others like them may no longer have unfinished gun parts or ghost gun kits in their possession. Before the passage of ordinance 43579 Plaintiffs Sund, O'Donnell, Robinson, and Armsbury, and NFOA members were able to purchase unfinished firearm frames and receivers for assembly into a completed firearm. But for the passage of ordinance 43579, Plaintiffs Sund, O'Donnell, Robinson, and Armsbury,

NFOA members, and other Nebraskans would like to continue their hobby of firearm assembly.

42. Since the passage of ordinance 43580, Plaintiff Robinson, and other NFOA members, may no longer sell, manufacture, transfer, or possess any firearm accessories or components that accelerate the rate of fire. But for the passage of ordinance 43580 Plaintiff Robinson and other NFOA members would seek to possess accessory accelerators.

CLAIMS

Count I – State Law Preemption

43. Plaintiffs incorporate paragraphs 1 through 42 as if fully set forth below.

44. 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[]”

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

46. Omaha’s City Charter is a home rule charter adopted under Article XI, Section 2 of the Nebraska Constitution.

47. 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[]”

48. 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.”

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

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

51. The Firearms Order went into effect September 2, 2023. Ordinance 43579 went into effect on November 15, 2023. Ordinance 43580 went into effect on November 29, 2023.

52. The Firearms Order prohibits the possession, storage, and transportation of firearms on all City property and therefore is prohibited and preempted by LB 77.

53. Ordinances 43579 and 43580 prohibits the ownership, possession, storage, transportation, sale, and transfer of firearm parts and therefore are preempted by LB 77.

54. Unless the Firearms Order and Ordinances 43579 and 43580 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

55. Plaintiffs incorporate paragraphs 1 through 54 as if fully set forth below.

56. 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.”

57. The Omaha City Charter, Section 3.04, grants the Mayor the authority to: (1) exercise supervision over executive activities; (2) enforce the Omaha City Charter and ordinances; (3) exercise the power of appointment and removal; (4) submit an annual budget to the City Council; and (5) “[e]xercise such other powers and performing such other duties as may be prescribed by the charter, by ordinance or resolution, or by applicable laws of the State of Nebraska.”

58. Nothing in the Nebraska Constitution or the Omaha City Charter authorizes the Mayor to unilaterally enact legislation.

59. The Firearms Order does not cite any State or Charter authority by which the Mayor may create a law.

60. The Firearms Order 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.

61. The Mayor’s enactment of Firearms Order was therefore an exercise of legislative power that violates the Nebraska Constitution’s separation of powers.

62. Unless the Firearms Order is declared unconstitutional and permanently enjoined, Plaintiff NFAO's members and the individual Plaintiffs 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 Firearms Order, Ordinance 43579, and Ordinance 43580, and that the order and ordinances are therefore void under Article XI, Section 2 of the Nebraska Constitution;
- B. A judgment declaring that the Firearms Order violates Article II, Section 1 of the Nebraska Constitution;
- C. A permanent injunction prohibiting Defendants from enforcing the Firearms Order, Ordinance 43579, and Ordinance 43580;
- 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 _____

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** Pro Hac Vice application*

forthcoming