

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
Case Type: Civil/Other

Minnesota Gun Owners Caucus;

Court File No. 62-CV-25-9927

Plaintiff,

v.

City of Saint Paul, Minnesota

Defendant.

**PLAINTIFF’S MEMORANDUM OF
LAW IN SUPPORT OF MOTION
FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION**

INTRODUCTION

Plaintiff Minnesota Gun Owners Caucus (“MNGOC”) respectfully requests that the Court issue a Temporary Restraining Order (“TRO”) and Preliminary Injunction to enjoin the City of Saint Paul (“the City”) from publishing, codifying, or otherwise giving effect to Ordinance 25-65 (“the Ordinance”). The City enacted this Ordinance despite having no legal authority to do so. The Minnesota Legislature has expressly and completely preempted the field of firearms regulation, declaring any inconsistent local ordinance “void” from its inception. (Minn. Stat. § 471.633) The Minnesota Legislature has additionally expressly and completely preempted the field of regulating the carry of firearms. (Minn. Stat. § 624.714, subd. 23)

The City’s action is a quintessential *ultra vires* act—an assertion of legislative power that the State has expressly withheld. When a political subdivision exceeds its

statutory authority, it does not merely err; it disrupts the constitutional structure in which the Legislature alone defines the bounds of municipal power. *See Lilly v. City of Minneapolis*, 527 N.W.2d 107, 113 (Minn. App. 1995) (municipal action *ultra vires* and “without legal force or effect” when beyond delegated power); *Jennissen v. City of Bloomington*, 913 N.W.2d 456, 459–62 (Minn. 2018). The harm is not deferred until enforcement begins. It arises the moment a local government enacts a void ordinance in defiance of state preemption, because the ordinance distorts the legal landscape and signals to citizens that lawful conduct may soon be punished. *See Jennissen*, 913 N.W.2d at 459 (reaffirming that municipalities “have no power to regulate in a manner that conflicts with state law or invades subjects that have been preempted by state law.”).

The City’s enactment therefore causes immediate and irreparable harm by flaunting the authority of the Legislature and sowing confusion about what the law demands. As Minnesota courts have long recognized, laws must be sufficiently clear so that “persons of common intelligence must not be left to guess at the meaning” of legal prohibitions. *State v. Newstrom*, 371 N.W.2d 525, 528 (Minn. 1985); see also *State v. Hensel*, 901 N.W.2d 166, 172–73 (Minn. 2017) (discussing overbreadth and the need for narrow, definite standards in laws affecting expressive conduct). Here, the chilling effect is not speculative—it flows directly from the City’s unlawful attempt to legislate in a field the State has preempted. Pre-enforcement suits are justiciable where the

impact is direct and immediate and plaintiffs have a well-founded fear of enforcement. *Gray v. City of Valley Park*, 567 F.3d 976, 984 (8th Cir. 2009). And a constitutional challenger need only show a law “is, or is about to be, applied to [their] disadvantage.” *Lee v. Delmont*, 36 N.W.2d 530, 537 (1949). The Declaratory Judgments Act is designed to resolve the uncertainty over a party's legal rights pertaining to an actual controversy before those rights have been violated. *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 338 (Minn. 2011).

Members of MNGOC have already altered their ordinary conduct in response to the Ordinance. Some have stopped carrying firearms or accessories they previously carried in Saint Paul because they are unsure whether doing so now exposes them to criminal penalties. Others have begun evaluating how and when they would need to dispose of or relocate lawfully owned firearms, magazines, and components that the Ordinance declares unlawful upon a future triggering event. Some members have reported considering whether they need to relocate their homes or workplaces outside the city to avoid the risk of being subjected to enforcement under an ordinance with unclear effective dates and undefined contingencies. MNGOC itself has also diverted significant organizational time and resources to responding to a high volume of inquiries from members and the public, and the organization has encountered difficulty providing guidance because the Ordinance contains undefined contingencies and uncertain effective dates that make it unclear how and when its criminal prohibitions

may apply.

Because MNGOC is highly likely to succeed on the merits and because the balance of harms weighs overwhelmingly in favor of preserving the State's supremacy over firearms regulation, and protecting the due process rights of its residents, injunctive relief is not only appropriate but essential to vindicate the rule of law and maintain public confidence that legislative authority in Minnesota resides where the Constitution places it.

LEGAL STANDARD

A. Temporary Injunctive Relief (Rule 65 & *Dahlberg*).

A court may grant a temporary injunction “it appears that sufficient grounds exist” based on affidavits or a verified complaint. Minn. R. Civ. P. 65.02. Ex parte relief under Rule 65.01 is available when specific, sworn facts show that immediate and irreparable harm will occur before the opposing party can be heard, and when counsel explains the efforts made to give notice or why notice should not be required. In deciding whether to issue temporary injunctive relief, courts weigh the five familiar *Dahlberg* factors:

1. **The nature and background of the parties' relationship;**
2. **The balance of harms** to be suffered by the parties if the injunction is granted or denied (including irreparable harm);
3. **The likelihood of success on the merits;**

4. **Public policy considerations;** and
5. **The administrative burdens** on the court in supervising and enforcing the injunction.

Dahlberg Bros., Inc. v. Ford Motor Co., 137 N.W.2d 314, 321–22 (1965).

The moving party bears the burden, but no single factor is dispositive. *Eakman v. Brutger*, 285 N.W.2d 95, 98–99 (Minn. 1979). The injunction’s core function is to preserve the status quo until the merits can be adjudicated. *Dahlberg*, 137 N.W.2d at 323.

B. Declaratory Judgments, Justiciability, and Pre-Enforcement Relief.

Minnesota’s Declaratory Judgments Act authorizes courts to “declare rights, status, and other legal relations whether or not further relief is or could be claimed,” and is remedial and to be liberally construed to relieve uncertainty. Minn. Stat. §§ 555.01, .12; *Holiday Acres No. 3 v. Midwest Fed. Savs. & Loan Ass’n*, 271 N.W.2d 445, 447 n.2 (Minn. 1978). “Any person...whose rights, status, or other legal relations are affected by a statute [or] municipal ordinance” may seek a declaration concerning its construction or validity. Minn. Stat. § 555.02. Consistent with that design, a declaratory judgment action is a proper vehicle to test the validity of a municipal ordinance, regardless of whether another remedy exists. *McCaughtry*, 808 N.W.2d at 337–39 (citing *Barron v. City of Minneapolis*, 4 N.W.2d 622, 624 (1942)); see also *Koppinger v. City of Fairmont*, 248

N.W.2d 708, 716 (1976).

A controversy is justiciable when it (1) presents definite and concrete assertions of right from a legal source, (2) involves adverse parties with a genuine conflict in tangible interests, and (3) is capable of specific resolution by judgment rather than posing hypothetical facts for an advisory opinion. *Onvoy, Inc. v. Allete, Inc.*, 736 N.W.2d 611, 617–18 (Minn. 2007). Minnesota law distinguishes standing (“who” may sue) from ripeness (“when”), with ripeness governed by the Declaratory Judgments Act’s aim to resolve legal uncertainty before rights are violated. *McKee v. Likins*, 261 N.W.2d 566, 569–70 n.1 (Minn. 1977); *see also McCaughtry*, 808 N.W.2d at 338–39 (the Act is designed to settle uncertainty “before those rights have been violated,” quoting *Culligan Soft Water Serv. of Inglewood, Inc. v. Culligan Int’l Co.*, 288 N.W.2d 213, 215–16 (Minn. 1979)).

Pre-enforcement relief is appropriate when a challenged law is, or is about to be, applied to the plaintiff’s disadvantage, *Lee*, 36 N.W.2d at 537, and Minnesota courts have long recognized jurisdiction to declare rights when there exist the “ripe or ripening seeds of an actual controversy,” even if the status quo has not yet been destroyed and no further relief is sought beyond a declaration. *Minneapolis Fed’n of Men Teachers, Local 238, AFL v. Bd. of Educ. of Minneapolis*, 56 N.W.2d 203, 205–06 (1952). It is “no defense” that judicial action prevents those seeds from further ripening. *Id.* at 205. Federal

authority is in accord: pre-enforcement facial challenges may proceed where the impact is direct and immediate and plaintiffs allege a well-founded fear the law will be enforced. *Gray*, 567 F.3d at 984.

Where a case presents a purely legal question that does not require development of a factual record, Minnesota courts see no reason to delay resolution of the constitutional issues. *McCaughtry*, 808 N.W.2d at 340 (“no reason to delay resolution of the constitutional questions”).

ARGUMENT

I. The *Dahlberg* Factors Overwhelmingly Support Granting an Injunction.

A. Factor 1: The Relationship Between the Parties Favors an Injunction.

The relationship here is that of a municipality and the citizens it governs. This relationship is predicated on the City acting within the bounds of its legal authority. Because the Legislature may preempt even home-rule charter authority on matters of statewide concern, a municipal foray into a preempted field is a structural injury, not a mere enforcement issue. *Fletcher Properties, Inc. v. City of Minneapolis*, 947 N.W.2d 1 (Minn. 2020). By passing an ordinance in a field expressly preempted by the state legislature, the City has acted *ultra vires* and fundamentally breached this relationship. MNGOC, representing its members who are citizens of Saint Paul, seeks to restore the proper legal relationship by enjoining this unlawful government act. This factor

strongly favors granting the injunction.

B. Factor 2: The Balance of Harms Decisively Favors MNGOC.

The harm is twofold: the chilling effect on the exercise of a fundamental constitutional right through a vague ordinance and the constitutional injury inflicted when a local government acts beyond the authority granted to it by the State.

First, the Ordinance's mere existence forces law-abiding citizens to question whether they can lawfully purchase or possess firearms that, while legal today under state law, are targeted by a dormant but "officially" enacted city regulation. This creates a coercive dilemma: forgo the exercise of a constitutional right or risk future prosecution, confusion, vague, or selective enforcement. Such uncertainty inevitably chills protected conduct and imposes a daily constitutional tax on those seeking to exercise Second Amendment rights. This is a paradigmatic case of irreparable injury. *See Hensel*, 901 N.W.2d at 172–73 (recognizing that vague or overbroad government restrictions burden constitutionally protected activity even before enforcement).

Second, the harm runs deeper still. Under Article XII, Section 3 of the Minnesota Constitution, the legislature may provide by law for the creation and governance of local government units, including the scope of municipal powers. Cities possess no inherent lawmaking power. *Jennissen*, 913 N.W.2d at 462 (reaffirming that municipalities may act only within powers expressly or impliedly conferred by statute). When a municipality enacts a law in defiance of express legislative preemption, it

violates not just statute but the constitutional allocation of legislative authority. That act itself—independent of enforcement—constitutes a structural injury. It invites legal uncertainty, erodes confidence in the coherence of state law, and puts citizens in the position of having to navigate conflicting commands from co-equal governments. The law does not require people to live under such fractured sovereignty.

No Harm to Defendant: The City suffers no cognizable harm from being enjoined from enforcing a regulation it had no authority to enact. A governmental entity has no legally protectable interest in enforcing an ordinance that is preempted, void, vague, and unconstitutional. To the contrary, enforcement would deepen the constitutional harm and compound public confusion.

Balance of Harms: Because MNGOC’s members face ongoing irreparable injury to constitutional rights and legal certainty—and because the City’s interest lies in preserving, not breaching, the bounds of its authority—the balance of harms weighs decisively in favor of injunctive relief.

C. Factor 3: MNGOC Has a High Likelihood of Success on the Merits.

This is arguably the most important Dahlberg factor (*see Dahlberg*, 272 Minn. at 274-75), and here, MNGOC’s likelihood of success is exceptionally high.

Ultra vires action. The case presents a pure question of law. Minn. Stat. § 471.633 states: “The legislature preempts **all authority** of a...city...to regulate firearms...**Local regulation inconsistent** with this section is **void**.” (emphasis added). Separate from

general firearms preemption, Minnesota's permit-to-carry statute sets the complete and exclusive framework for permits and their scope and forbids any governmental unit from "limit[ing] the exercise of a permit to carry". (Minn. Stat. § 624.714, subd. 23)

The City's Ordinance is a comprehensive regulation of firearms. It is plainly inconsistent with the statute and is therefore void. The City's attempt to delay the Ordinance's effective date is a legal nullity. An act that is *void ab initio* **cannot** be revived by a future contingency. Minnesota courts have held that a municipality may not do indirectly what it is prohibited from doing directly. For example, in *State ex rel. N. Pump Co. v. Village of Fridley*, 47 N.W.2d 204 (1951), the Minnesota Supreme Court held that a municipal incorporation that included territory contrary to a state statute was "void ab initio, as contrary to the statute." *Id.* at 208. This principle of preventing prohibited outcomes also extends to indirect methods; as the Minnesota Court of Appeals has held, "The city cannot indirectly accomplish through a 'policy' what it is precluded from accomplishing through an ordinance." *Builders Ass'n of Minn. v. City of St. Paul*, 819 N.W.2d 172, 182 (Minn. Ct. App. 2012). The City's legal strategy is a transparent attempt to circumvent a clear statutory prohibition, and it is certain to fail on the merits. See *Mangold Midwest Co. v. Village of Richfield*, 143 N.W.2d 813, 820-21 (1966) (noting that express preemption applies where a state law "requiring" uniformity and statewide application clearly showed the legislative intent to preempt this field except for the limited local regulation the statute expressly

permitted.”)

Separate and apart from general firearms preemption, Plaintiff is likely to succeed on its claim under Minn. Stat. § 624.714, subd. 23. That subdivision declares that § 624.714 “sets forth the complete and exclusive criteria and procedures for the issuance of permits to carry and establishes their nature and scope” and forbids any governmental unit from “limit[ing] the exercise of a permit to carry.” Read together with § 624.7181’s exemption for permit-holders carrying rifles and shotguns in public places, the statute gives permit-holders a statewide entitlement to carry that local governments may not carve up by ordinance. By criminalizing the possession of firearms in “Sensitive places” such as parks, libraries, recreation centers, and city buildings, as well as banning the possession and carry of entire categories of arms and magazines by permit-holders, Chapter 225A does exactly what § 624.714, subd. 23 forbids: it “limit[s] the exercise of a permit to carry.”

Due process violation. Due process demands penal enactments give ordinary people fair notice of what is prohibited and provide “minimal guidelines” to prevent arbitrary enforcement. A law is void for vagueness when persons of common intelligence must necessarily guess at its meaning, or if it authorizes or encourages ad-hoc enforcement. *Newstrom*, 371 N.W.2d at 528; *Kolender v. Lawson*, 461 U.S. 352, 357–58 (1983); *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972). This scrutiny is more stringent when criminal penalties attach or when protected activity is chilled. *Village of*

Hoffman Estates v. Flipside, 455 U.S. 489, 498–99 (1982); *Hensel*, 901 N.W.2d at 172–73.

The Ordinance is unconstitutionally vague in at least four independent ways—each sufficient on its own.

1. **When (self-contradictory effective dates).** Section 3 states the ordinance “shall take effect” 30 days after publication; § 225A.02 simultaneously declares it “shall not take effect, nor be enforced” until uncertain future events occur. Citizens cannot tell whether criminal liability attaches on day 30 or some later, unspecified date. That is classic *Newstrom* vagueness.
2. **What (undefined trigger).** § 225A.02(b) purports to “turn on” the ordinance automatically if the Legislature later passes a law “substantially the same as any part of this ordinance.” The phrase “substantially the same” is undefined. With no criteria, ordinary people (and officers) are left to guess whether elements, scope, or penalties are “close enough.” Vague standards that invite disagreement about core coverage are invalid. *See Chicago v. Morales*, 527 U.S. 41, 60–64 (1999) (striking ordinance for undefined, standardless terms).
3. **Who (no decisionmaker or standards).** The ordinance names no official and no process to decide whether the “substantial sameness” trigger has occurred. That omission confers standardless discretion on whoever chooses to act first—police,

prosecutors, or staff—precisely what vagueness doctrine forbids. *Kolender*, 461 U.S. at 357–58; *Hensel*, 901 N.W.2d at 172–73.

4. **How (no public notice mechanism).** Ordinary penal ordinances become effective on a date certain after publication. Here, the City claims the law will “spring to life” upon an external legislative event with no requirement of republication or official notice. Penal rules that “turn on” without a clear public-notice mechanism deny fair notice and foster arbitrary, uneven enforcement. *Grayned*, 408 U.S. at 108–09; *Press v. City of Minneapolis*, 553 N.W.2d 80, 84–85 (Minn. App. 1996).

These defects are structural, not semantic. The ordinance criminalizes possession and carry yet fails to tell the public **when** its prohibitions apply, **what** precise event makes them apply, **who** will determine that event, or **how** anyone will be notified. That is a due-process failure under both Minnesota and federal law. *Newstrom*, 371 N.W.2d at 528; *Kolender*, 461 U.S. at 357–58.

The City’s suggestion that it will not “enforce” the ordinance until later does not cure the problem. Due process polices the enactment of indeterminate criminal rules, not merely their execution. *Grayned*, 408 U.S. at 108–09. Nor does severability rescue the scheme: § 225A.02 is the very mechanism that purports to give the ordinance any effect at all. Striking it either (i) makes the ordinance “effective” on day 30—squarely preempted—or (ii) leaves a nullity. Either way, Plaintiff is likely to prevail on this count.

D. Factor 4: Public Policy Strongly Supports an Injunction.

Granting an injunction serves several critical public policies. It upholds the supremacy of state law, enforces the legislature's clear intent to create uniform firearm laws across the state, and prevents municipalities from exceeding their delegated authority. *See Mangold*, 143 N.W.2d at 816; *Bicking v. City of Minneapolis*, 891 N.W.2d 304, 312–13 (Minn. 2017); *Jennissen*, 913 N.W.2d at 459–62; *State v. Eide*, 898 N.W.2d 290, 294–97 (Minn. Ct. App. 2017). Granting an injunction at this stage also accords with precedent recognizing that courts need not wait for enforcement where a law's existence alone inflicts present harm and chills lawful conduct. *See Virginia v. American Booksellers Ass'n*, 484 U.S. 383, 393 (1988) ("We are not troubled by the pre-enforcement nature of this suit. The State has not suggested that the newly enacted law will not be enforced, and we see no reason to assume otherwise. We conclude that plaintiffs have alleged an actual and well-founded fear that the law will be enforced against them.") The public has a profound interest in legal certainty and in ensuring that government bodies act within the rule of law. Allowing a city to keep a void ordinance on its books undermines all of these principles.

Here, the "ripe or ripening seeds of an actual controversy" are concrete, not hypothetical. Ashley Scharffbillig, Mitchell Berg, and Brandon Flesher have already curtailed their previously lawful carrying of semiautomatic firearms and standard-capacity magazines in Saint Paul, and are reconsidering where they live, travel,

and enter city property, specifically because of the Ordinance’s conflicting effective-date language and undefined “substantially the same” trigger. *See* Scharffbillig Aff. ¶¶ 13–18; Flesher Aff. ¶¶ 16–21. Bryan Strawser has likewise stopped carrying a privately manufactured firearm in Saint Paul and describes members changing their day-to-day conduct in response to the Ordinance. *See* Strawser TRO Aff. ¶¶ 18–27. These sworn changes in behavior fit comfortably within *Minneapolis Fed’n of Men Teachers* and make this a paradigmatic pre-enforcement declaratory-judgment case, not a request for an advisory opinion.

E. Factor 5: The Administrative Burden on the Court is Minimal.

The injunction sought is a simple negative prohibition: the City shall not publish, codify, or implement the Ordinance. This requires no ongoing supervision or complex enforcement mechanism from the Court (*Dahlberg*, 272 Minn. at 274-75). The burden is negligible and presents no obstacle to granting relief.

II. The Court Should Waive the Bond Requirement or Set It at a Nominal Amount

Minnesota Rule of Civil Procedure 65.03(a) provides that no temporary restraining order or injunction “shall be granted except upon the giving of security by the applicant, in such sum as the court deems proper,” unless the court orders otherwise. *See Bio-Line, Inc. v. Wilfley*, 366 N.W.2d 662, 665 (Minn. Ct. App. 1985) (holding “the amount of security required on a temporary injunction is within the trial court’s discretion and may be

waived entirely if appropriate”). The rule and precedent thus grants the Court discretion to waive the bond requirement where equity supports it. In this case, the Court should exercise that discretion and either waive the requirement entirely or impose a nominal bond of no more than one dollar.

MNGOC is a nonprofit public-interest organization seeking to vindicate statutory and constitutional rights on behalf of its members. The relief it seeks—a prohibition on the publication or enforcement of a void ordinance—will not impose any financial cost on the City. Enjoining the City from enforcing an *ultra vires* law causes no harm, much less one requiring monetary compensation. The City cannot claim a legally protectable interest in the implementation of a preempted ordinance it had no authority to enact. *See State v. Century Camera, Inc.*, 309 N.W.2d 735, 738 (Minn. 1981) (noting the court's discretion to waive security where the injunction serves the public interest and imposes no risk of loss).

Moreover, requiring a substantial bond in this context would chill the ability of ordinary citizens and public-interest organizations to seek judicial review of illegal government action. Minnesota courts have recognized that procedural or financial barriers should not impede access to constitutional or public-rights litigation. In *McCaughy*, 808 N.W.2d at 338–39, the Court held that landlords bringing a pre-enforcement constitutional challenge to a housing inspection ordinance were not required to “continue expending resources to oppose serial warrant applications” in order

to maintain standing, emphasizing the importance of judicial access where legal uncertainty chills protected interests. This reflects a broader principle in Minnesota law: when individuals seek to vindicate constitutional rights or clarify government authority, the judicial system should be accessible and not conditioned on financial capacity.

The balance of equities weighs entirely in favor of the plaintiff, and no legitimate governmental interest is advanced by imposing a financial barrier to protect a legally void ordinance.

Accordingly, the Court should waive the bond requirement under Rule 65.03(a) or, in the alternative, set the bond in a nominal amount not to exceed \$1.00.

CONCLUSION

For the foregoing reasons, Plaintiff Minnesota Gun Owners Caucus has demonstrated that it is entitled to immediate injunctive relief. All five *Dahlberg* factors weigh strongly in its favor. Plaintiff respectfully requests that the Court issue a Temporary Restraining Order and an Order to Show Cause why a Preliminary Injunction should not be granted.

Dated: November 21, 2025

Respectfully submitted,

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