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STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT
Case Type: Civil/Other

Minnesota Gun Owners Caucus;
Plaintiff,

v.

City of Saint Paul, Minnesota

Defendant.

Court File No. 62-CV-25-9927

PLAINTIFF'S REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

The City's opposition does not engage the dispositive legal defect in Ordinance 25-65: Saint Paul enacted a penal firearms ordinance in a field where the Legislature has expressly withdrawn municipal authority and declared inconsistent local regulation void. Instead, the City attempts to avoid judicial review by reframing this pre-enforcement ordinance-validity challenge as a failed effort to "enforce" state statutes, by characterizing the Ordinance as harmlessly "contingent," and by invoking policy-balancing arguments that Minnesota law and controlling constitutional doctrine do not permit. Minnesota's Uniform Declaratory Judgments Act squarely authorizes affected persons to challenge the validity of a municipal ordinance without waiting for enforcement, and the Ordinance's enactment—coupled with conflicting effective-date provisions and an undefined trigger tied to perceived future state action—creates present

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legal uncertainty sufficient for justiciability and irreparable harm.

ARGUMENT

1. UDJA supplies the vehicle for ordinance-validity challenges; the City's "no private cause of action" argument is a category error.

The City asks this Court to treat Plaintiff's UDJA suit as a private statutory enforcement action premised on alleged violations of Minn. Stat. §§ 471.633 and 624.714—and then dismiss it on the ground that neither statute creates a standalone private cause of action. That framing is the wrong doctrinal box. Plaintiff brings a classic ordinance-validity challenge under Minnesota's Uniform Declaratory Judgments Act, which serves to resolve uncertainty and legal insecurity when a statute or ordinance places conduct under an immediate cloud of doubt. The points below address (A) why § 555.02 supplies the vehicle, (B) why Halva does not control this context, and (C) why the City's reliance on Christopher is nonbinding and inapposite under Minnesota UDJA precedent.

A. UDJA § 555.02 supplies the cause of action to test ordinance validity

Minnesota's Uniform Declaratory Judgments Act expressly authorizes judicial resolution of disputes over municipal authority. Section 555.02 provides that any person "whose rights, status, or other legal relations are affected by a … municipal ordinance" may obtain a declaration regarding "any question of construction or validity arising under the … ordinance." Minn. Stat. § 555.02. By design, the UDJA supplies a procedural mechanism for resolving concrete disputes over legal validity; it does not require

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plaintiffs to plead a damages action, compel statutory performance, or wait for enforcement. *See Leighton v. City of Minneapolis*, 222 Minn. 516, 518, 25 N.W.2d 263, 264 (1946) (Where the court concluded the UDJA is not an extraordinary remedy, but an alternative remedy where there is a justiciable issue, the decision upon which will terminate a controversy.) The relief Plaintiff seeks here—a declaration that Ordinance 25-65 is *ultra vires* and void—is precisely the relief the statute contemplates.

Minnesota Supreme Court precedent confirms this understanding. Declaratory judgment is a proper and independent vehicle to test the validity of a municipal ordinance "regardless of whether another remedy exists." *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 337–38 (Minn. 2011) (quoting *Barron v. City of Minneapolis*, 212 Minn. 566, 569–70 (1942)). A plaintiff need not possess a fully matured, non-declaratory cause of action; it is enough that the plaintiff has a bona fide legal interest affected by the "ripe or ripening seeds of an actual controversy." *McCaughtry*, 808 N.W.2d at 338–39; *Minneapolis Fed'n of Men Teachers, Local 238 v. Bd. of Educ.*, 238 Minn. 154, 157–58 (1952). Where a municipality has enacted an ordinance that purports to regulate conduct and carry criminal consequences, the resulting legal uncertainty itself supplies justiciability. As in *Harstad v. City of Woodbury, 902 N.W.2d 64, 71 (Minn. Ct. App. 2017), aff'd, 916 N.W.2d 540 (Minn. 2018)*, Plaintiffs need not wait for enforcement to establish justiciability. Where an enacted municipal measure creates present uncertainty about legal obligations, that uncertainty itself supplies a ripe controversy for declaratory

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relief.

The City's reliance on *Weavewood, Inc. v. S. & P. Home Investment, LLC*, 821 N.W.2d 576 (Minn. 2012), does not alter this analysis. *Weavewood* holds only that the UDJA cannot be used to obtain an advisory declaration where no substantive legal theory would support relief outside the declaratory context. *Id.* at 579. It does not hold that a plaintiff must identify an express statutory damages remedy before seeking declaratory relief, nor does it bar declaratory actions challenging governmental action as *ultra vires* or void.

That distinction is decisive here. Plaintiff alleges a classic *ultra vires* claim: that the City enacted an ordinance in a field from which the Legislature has expressly withdrawn municipal authority and declared inconsistent local regulation "void." Minn. Stat. § 471.633. Claims challenging the validity of municipal ordinances as beyond delegated power have long been cognizable in equity and are routinely resolved through declaratory and injunctive relief. See *Barron*, 212 Minn. at 569–70; *Minneapolis Fed'n of Men Teachers*, 238 Minn. at 157–58; *McCaughtry*, 808 N.W.2d at 337–39. In such cases, the UDJA does not create the underlying claim; it supplies the procedural mechanism by which courts determine whether a municipality acted within the bounds of its authority.

Nor does *Hoeft v. Hennepin County*, 754 N.W.2d 717 (Minn. Ct. App. 2008), support the City's position. *Hoeft* simply reiterates that the UDJA does not create new substantive rights or liabilities. *Id.* at 722. The court clarified that the UDJA cannot create

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a cause of action that does not otherwise exist, but it does provide a mechanism for declaring rights under existing legal frameworks. It does not conclude that declaratory relief is unavailable where a plaintiff seeks a determination that a municipal ordinance is *ultra vires* or void under existing law.

The City's justiciability argument collapses the UDJA's procedural role into an implied-remedy inquiry it was never meant to answer. Plaintiff asks the Court to resolve an existing, concrete controversy over municipal authority—whether the City acted within powers the Legislature has granted or instead enacted a void ordinance in defiance of express preemption. Minnesota law is clear that such disputes are not only justiciable under the UDJA; they are exactly what the UDJA was enacted to resolve.

B. The City's private-right-of-action framing is the wrong doctrinal box (the *Halva* category error)

The City's next move follows from its justiciability argument: it invokes *Halva v. Minnesota State Colleges & Universities* 953 N.W.2d 496 (Minn. 2021) to contend that because Minn. Stat. §§ 471.633 and 624.714 do not contain an express private right of action, Plaintiff has "no claim" at all. That argument misclassifies the nature of this case and misreads *Halva*.

Halva addresses a narrow and different question—whether the Official Records Act, Minn. Stat. § 15.17, which is "silent as to enforceability," nonetheless gives rise to a private civil cause of action. Applying Minnesota's rule that a statute does not create a

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civil cause of action unless it is explicit or established by "clear implication," the Supreme Court held that § 15.17 does not authorize an implied private cause of action and declined to recognize a new common-law remedy. The Court also emphasized that the Legislature had already supplied a judicial remedy through the Data Practices Act, leaving "no reason to imply a separate, additional" cause of action under the Official Records Act.

This case is categorically different. Plaintiff is not suing the City for damages, and Plaintiff is not asking the Court to compel City compliance with §§ 471.633 or 624.714 through a private enforcement suit. Plaintiff invokes those statutes as limits on municipal authority and seeks a declaration, under the UDJA, that the City acted *ultra vires* and that its ordinance is void. A statutory city has no inherent powers beyond those expressly/impliedly conferred by statute. *See Harstad*, 916 N.W.2d at 545; *Country Joe, Inc. v. City of Eagan*, 560 N.W.2d 681, 683 (Minn. 1997); B*olen v. Glass*, 755 N.W.2d 1, 4–5 (Minn. 2008); *City of Morris v. Sax Invs., Inc.*, 749 N.W.2d 1, 6 (Minn. 2008); *City of Baxter v. City of Brainerd*, 932 N.W.2d 477 (Minn. Ct. App. 2019). Minnesota courts have long treated that inquiry—whether a municipality possessed authority to legislate in the first place—as a classic subject of declaratory relief, independent of any implied-remedy analysis. *Barron*, 212 Minn.at 569–70; *Minneapolis Fed'n of Men Teachers*, 238 Minn. 154; *City of Glencoe v. Beneke*, 288 Minn. 190, 194–95 (1970); *Rice Street VFW Post No. 3877 v. City of St. Paul*, 452 N.W.2d 503, 506 (Minn. Ct. App.

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1990).

The City's syllogism—"no private right of action in the statute, therefore no declaratory judgment"—confuses the rule of decision with the procedural vehicle. The preemption statutes supply the rule of decision (why the ordinance is invalid); the UDJA supplies the procedural mechanism and remedy (how the Court determines the ordinance's validity and declares the parties' legal relations). *Halva* says nothing to the contrary because it did not involve an ordinance-validity challenge under Minn. Stat. § 555.02 and did not purport to narrow the availability of declaratory relief in that context.

Accepting the City's *Halva*-based framing would also invert the UDJA's remedial purpose. Minnesota courts have emphasized that declaratory relief exists to resolve concrete legal uncertainty **before** rights are violated and without requiring parties to await enforcement or incur criminal exposure. "The policy behind the declaratory judgment act is to allow parties to determine certain rights and liabilities pertaining to an actual controversy **before** it leads to repudiation of obligations, invasion of rights, and the commission of wrongs." *Metro. Sports Facilities Comm'n v. Minn. Twins P'ship*, 638 N.W.2d 214, 227 (Minn. App. 2002) (emphasis added), review denied (Minn. Feb. 4, 2002) *See also McCaughtry*, 808 N.W.2d at 338–39; *Minneapolis Fed'n of Men Teachers*, 238 Minn. at 157–58. Under the City's theory, a municipality could enact any *ultra vires* ordinance carrying criminal penalties and insulate it from review unless and until the Legislature created an express "citizen suit" provision—a result Minnesota

courts have never endorsed.

Halva governs whether a statute implies a private enforcement remedy. This case asks a different, antecedent question: whether the City possessed authority to enact Ordinance 25-65 at all. Minnesota law resolves that question through ordinance-validity principles and declaratory relief—not through implied-remedy doctrine.

C. *Christopher v. Ramsey County* is nonbinding, structurally distinct, and does not control this UDJA ordinance-validity challenge

The City's reliance on *Christopher v. Ramsey County,* 621 F. Supp. 3d 972 (D. Minn. 62-CV-25-9927) is misplaced. *Christopher* is a federal district court decision, not binding on this Court, and it arose in a materially different statutory and institutional context. It does not displace controlling Minnesota precedent governing declaratory challenges to municipal ordinances.

First, *Christopher* applied an implied-private-remedy analysis that Minnesota courts do not require for UDJA ordinance-validity actions. The decision dismissed the declaratory claim because the preemption statutes did not "expressly or impliedly create a private right of action," collapsing a UDJA validity challenge into a statutory enforcement inquiry. Minnesota Supreme Court precedent rejects that move. Declaratory judgment is a proper vehicle to test the validity of a municipal ordinance, even where no private enforcement remedy exists, and even before enforcement occurs. *McCaughtry*, 808 N.W.2d at 337–39; *Barron*, 212 Minn. at 569–70.

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Second, *Christopher* is structurally distinct. The defendant there was the Minnesota State Agricultural Society, a public corporation expressly authorized by statute to promulgate limited rules "for the protection, health, safety, and comfort of the public on the fairgrounds," with violations made misdemeanors by statute. Minn. Stat. §§ 37.01, 37.16. Whatever the correctness of *Christopher*'s ultimate outcome, the Society could, and did[1], point to an affirmative legislative delegation of regulatory authority.

This case presents the opposite posture. Minn. Stat. § 471.633 expressly withdraws firearm-regulatory authority from "a home rule charter or statutory city" and declares inconsistent local regulation "void." The City of Saint Paul is a home rule charter city squarely within that prohibition. Unlike the Society in *Christopher*, the City cannot identify any statute that affirmatively authorizes it to regulate firearms for public safety; the Legislature has made a contrary judgment and unambiguously removed that power altogether.

II. Plaintiffs' Claims Are Ripe and Plaintiffs Have Standing (the Ordinance creates present legal uncertainty and concrete conduct changes)

A. Ripeness under Minnesota UDJA turns on present uncertainty and "ripe or ripening seeds," not only explicit enforcement threats

The City's ripeness theory is that Plaintiff cannot establish a justiciable controversy because there is no "direct and imminent injury," no "credible threat of enforcement," and the Ordinance is "contingent" and "not enforceable absent further state

[1] Defendant State Agricultural Society's Memorandum in Support of Motion to Dismiss Amended Complaint at 3, *Christopher v. Ramsey County*, No. 0:21-cv-02292-JRT-ECW (D. Minn. Oct. 22, 2021), ECF No. 7.

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action." That framing improperly substitutes a narrow "credible threat" model for Minnesota's UDJA ripeness doctrine.

Minnesota's UDJA justiciability standard is not limited to cases where enforcement has begun or where the government has issued an explicit threat. Minnesota courts recognize UDJA jurisdiction where a complainant is "faced with a present uncertainty and insecurity" and where rights are placed in jeopardy by the "ripe or ripening seeds of an actual controversy," even though the status quo has not yet been destroyed. *Minneapolis Fed'n of Men Teachers,* 238 Minn. at 157–58. The Court expressly rejected the argument—mirroring the City's argument here—that a UDJA plaintiff must plead a conventional cause of action or wait for a concrete enforcement event before the controversy becomes justiciable. "Clearly, in order to constitute a justiciable controversy, there need not be such an actual right of action in one party against the other as would justify a granting of consequential relief but only a right on the part of the complainant to be relieved of an uncertainty and insecurity arising out of an actual controversy with respect to his rights, status, and other legal relations with an adversary party." *Id.* at 157

That doctrine fits the posture here. Ordinance 25-65 is enacted, codified as law, and contains criminal prohibitions that are purported to activate automatically, without notice, upon an unclarified triggering event. The present injury is the uncertainty created by the Ordinance's legal status and operation—uncertainty that has already directly

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altered members' conduct now (as shown by the sworn record summarized in Plaintiff's memorandum and affidavits). Minnesota UDJA ripeness does not require Plaintiffs to wait for prosecution where the Ordinance itself places regulated conduct under an immediate cloud of legal insecurity.

Nor does the City's focus on enforcement history make sense here. This is not a decades-old, unused statute; it is a newly enacted ordinance. And the injury arises from the City placing a criminal ordinance on the books with an undefined trigger and no public notice mechanism for when criminal liability attaches. That is exactly the kind of present uncertainty UDJA exists to resolve.

B. The City's "no ambiguity" characterization of the effective date is wrong—and in any event proves why UDJA relief is appropriate

The City attempts to avoid ripeness and vagueness by arguing (in a footnote) that there is no ambiguity: Section 3 purportedly sets a "minimum of thirty days," after which the contingency clause "takes effect" and limits enforceability. But Plaintiff's claim is not a subjective assertion of confusion; it is an objective due process problem: a penal ordinance whose operative prohibitions hinge on undefined, standardless triggering events and unclear notice mechanics creates unconstitutional uncertainty and invites arbitrary enforcement. "A statute is void due to vagueness if… the law is so indefinite that people must guess at its meaning." *Hard Times Cafe, Inc. v. City of Minneapolis*, 625 N.W.2d 165, 171 (Minn. App. 2001) (quotation omitted)

Even on the City's own explanation, citizens and officers must speculate about

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when the Ordinance is "in force," when it is "not in effect," and what state action counts as "substantially the same" such that the ordinance springs to life. That is not a ripeness shield—it is the case for UDJA adjudication. Under Minnesota's UDJA jurisprudence, when a law's enactment creates "present uncertainty and insecurity" that will continue until the legal consequences are judicially declared, the controversy is justiciable. *Minneapolis Fed'n of Men Teachers*, 238 Minn. at 157–58, 56 N.W.2d at 205–06 .

C. Standing: this is not a generalized grievance; it is member-specific, conduct-regulating injury

The City argues Plaintiffs lack standing because they allege only speculative future harm, rely on "some day" intentions, and are essentially asserting an abstract injury "because the government is acting illegally." That mischaracterizes the record and misstates the nature of the claim.

Plaintiff is not asserting "citizen standing." Plaintiff brings a pre-enforcement challenge to an enacted ordinance that purports to impose criminal prohibitions and that creates immediate legal uncertainty for identifiable members whose conduct is regulated. The harm alleged is not an abstract desire for lawful government; it is the concrete consequence of placing a penal ordinance on the books with contradictory effective-date language and an undefined trigger that could criminalize previously lawful possession/carry without clear notice. This is not "some day" speculation—it is present, conduct-regulating uncertainty.

Plaintiff's memorandum documents that members have already altered ordinary

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conduct in response to the Ordinance, including refraining from carrying firearms or accessories and changing purchasing/possession decisions due to uncertainty about exposure and enforcement. Those present conduct changes, coupled with the Ordinance's enacted status and penal structure, satisfy injury-in-fact and confirm that Plaintiffs are not litigating a generalized grievance.

D. *Simon* (credible-threat factors) cuts in Plaintiffs' favor, not the City's

The City analogizes this case to *Democratic-Farmer-Labor Party v. Simon* and argues there is no "credible threat of prosecution," emphasizing factors such as enforcement history and governmental disavowal. But the comparison fails on its own terms.

As the City itself explains, *Simon* turned on a "constellation of factors" including whether enforcement was threatened, the history of enforcement, government statements about enforceability, and the posture of the statute. *Simon* found no credible threat because the law had not been enforced in decades and the state actor "firmly announced" it could not and would not enforce it. Those circumstances are absent here. Ordinance 25-65 is newly enacted and actively defended by the City. And the City does not disavow enforcement; it asserts enforcement will occur once some unidentified person or entity concludes a triggering condition is met—while the trigger itself is undefined and the mechanism for determining it is unclear.

The City's "we won't enforce until the trigger" argument is not a disavowal; it is

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an admission that enforcement is intended upon a condition whose meaning and occurrence are contested and unclear. That posture strengthens, rather than defeats, ripeness. Because the Ordinance is written to "spring to life" upon an undefined event—without any identified decisionmaker or public notice mechanism—law-abiding gun owners who live in, work in, or travel through Saint Paul cannot reliably determine when ordinary, currently lawful possession or carry will become criminal. The practical result is immediate: rational citizens must treat the Ordinance as a looming penal rule and begin planning for compliance now—by altering carry practices, avoiding locations, changing purchasing and storage decisions, or preparing to dispose of or relocate property—because no one can identify when the City will claim the trigger has been met and the prohibitions are suddenly enforceable. That is exactly the kind of "present uncertainty and insecurity" the UDJA is designed to resolve. *Minneapolis Fed'n of Men Teachers*, 238 Minn. at 157–58; *See also Virginia v. Am. Booksellers Ass'n, Inc*., 484 U.S. 383, 393 (1988) (recognizing that plaintiffs need not await prosecution where a criminal statute creates a well-founded fear of enforcement; although addressing speech, the logic extends to all enumerated rights because the harm—self-censorship and altered lawful conduct—is inherent whenever a penal law chills protected activity).

III. Likelihood of Success on the Merits (*Dahlberg* Factor 3) Is Strong on Three Independent Grounds

Plaintiff's memorandum identified three independent merits paths: (1) the Ordinance is *ultra vires* and void under Minn. Stat. § 471.633; (2) the carry restrictions

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independently violate the MCPPA's exclusivity provision, Minn. Stat. § 624.714, subd. 23; and (3) the Ordinance is void for vagueness under due process because it fails to provide fair notice and invites arbitrary enforcement. The City's response does not meaningfully undermine any of them.

A. The Ordinance is void and *ultra vires* under Minn. Stat. § 471.633 (field preemption; "void" means void)

The City characterizes Minn. Stat. § 471.633 as a mere directive to local governments—one that does not "create rights" and therefore cannot support a private claim. That framing misunderstands both the statute and Plaintiff's theory.

Plaintiff is not asserting that § 471.633 is a rights-conferring damages statute. Plaintiff invokes § 471.633 for what it is: a withdrawal of municipal power coupled with an express declaration of legal effect. The statute provides that the Legislature "preempts all authority" of a home rule charter or statutory city to regulate firearms and ammunition and that any inconsistent local "order, ordinance, or regulation is void." Minn. Stat. § 471.633. Whether a municipality has acted beyond delegated authority, and whether its enactment is therefore void, presents a classic *ultra vires* question that Minnesota courts resolve through declaratory and injunctive relief. "The courts should declare an ordinance void only when its unreasonableness is so clear, manifest, and undoubted as to amount to a mere arbitrary exercise of legislative power." *State v. Clarke Plumbing & Heating, Inc*., 238 Minn. 192, 200, 56 N.W.2d 667, 672–73 (1952)

The operative statutory word matters. "Void" does not mean "unenforceable if and

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when prosecuted"; it means without legal force or effect. The legal status of a void ordinance is a live controversy immediately upon enactment and codification—particularly where, as here, the ordinance purports to impose criminal prohibitions and alter citizens' conduct. Determining whether the City possessed authority to enact Ordinance 25-65 is therefore a merits question squarely within the Court's competence and well-suited for declaratory judgment. See *Barron*, 212 Minn. at 569–70; *McCaughtry*, 808 N.W.2d at 337–38.

B. The Ordinance independently violates Minn. Stat. § 624.714, subd. 23 by "limit[ing] the exercise" of a permit to carry

Even if § 471.633 did not exist, the Ordinance would still be unlawful under Minn. Stat. § 624.714, subd. 23. The City argues this provision does not apply because the Ordinance does not alter permit issuance criteria, does not mention permits, and because a permit merely supplies a defense rather than an "affirmative right." That argument fails on the statute's text and structure.

Subdivision 23 is not limited to issuance criteria. It expressly provides that the permit statute is the "complete and exclusive" authority governing permits to carry and that no governmental unit may "change, modify, or supplement" the statutory criteria or procedures **or limit the exercise of a permit to carry**. Minn. Stat. § 624.714, subd. 23 (emphasis added). A citywide ban on carrying in parks, libraries, and other City-defined locations is a direct limitation on the exercise of a permit—regardless of whether the ordinance uses the word "permit."

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The City's "no affirmative right" framing also inverts the constitutional and statutory structure. The right to keep and bear arms does not originate in § 624.714; it preexists the statute. See *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). The Legislature did not need to "create" a right to carry; it enacted § 624.714 to define the exclusive scope of state-authorized regulation of an existing right and to establish uniform statewide guardrails. Subdivision 23 is the Legislature's enforcement mechanism for that uniformity: it forbids municipalities from adding their own location-based carry prohibitions on top of the state scheme. The Legislature further reasserted its authority in the regulation of carry in Minn. Stat § 624.717, which reaffirms that § 624.714 "shall be construed to supersede municipal or county regulation of the carrying or possessing of pistols…"

Accepting the City's theory would render the "limit the exercise" language meaningless. Under that view, a city could prohibit permit holders from carrying in broad swaths of public space so long as it did not formally alter permit issuance. The Legislature foreclosed that result by using expansive, functional language—"limit the exercise"—rather than narrow references to issuance criteria alone.

C. The Ordinance is void for vagueness because its triggers and operative dates fail to provide fair notice and invite arbitrary enforcement

Plaintiff's due-process challenge provides a third, independent basis for likelihood

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of success. The City attacks Plaintiff's reliance on *State v. Hensel* as irrelevant to TRO standards and characterizes it as a post-conviction or First Amendment overbreadth case. That misstates Plaintiff's use of the case.

Plaintiff cites *Hensel* for a narrow and uncontroversial proposition: penal laws must provide clear standards, and vagueness itself inflicts constitutional injury by forcing ordinary people to guess at lawful conduct and by inviting arbitrary enforcement. 901 N.W.2d 166, 172–73 (Minn. 2017). Plaintiff does not rely on *Hensel* as a procedural TRO standard or as a standalone irreparable-harm test. Independently, Minnesota UDJA doctrine permits pre-enforcement adjudication where legal uncertainty affects present conduct. *McCaughtry*, 808 N.W.2d at 338–39; *Minneapolis Fed'n of Men Teachers*, 238 Minn. at 157–58; *see also In re Minn. Dep't of Nat. Res. Special Permit No. 16868*, 867 N.W.2d 522, 532-33 (Minn. App. 2015) (stating that "a party may bring a void-for-vagueness challenge if the statute at issue encompasses constitutionally protected conduct or if there is a potential for arbitrary and discriminatory enforcement"), *rev. denie*d (Minn. Oct. 20, 2015)

The vagueness here is concrete and structural. The Ordinance contains: (i) contradictory effective-date language; (ii) an undefined "substantially the same" trigger tied to future state action; (iii) no identified decisionmaker authorized to determine when the trigger is met; and (iv) no notice mechanism by which the public can determine when criminal liability attaches. These defects are not academic. They deny law-abiding

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residents and visitors any objective, publicly ascertainable standard by which to determine when conduct that is lawful today becomes criminal, and they provide no mechanism by which regulated persons can ensure compliance before enforcement occurs. As a result, the only reliable means of avoiding criminal exposure is to alter lawful conduct now—by refraining from possession or carry that the Ordinance purports to prohibit—producing an immediate chilling effect. At the same time, the absence of defined standards necessarily delegates enforcement decisions to after-the-fact judgments by City officials, creating the precise risk of arbitrary and inconsistent enforcement the vagueness doctrine forbids.

Because the Ordinance imposes criminal prohibitions and because its operative scope turns on undefined and unknowable conditions, it fails to provide the fair notice due process requires. That constitutional defect further reinforces Plaintiffs' likelihood of success on the merits.

IV. Irreparable Harm and Balance of Harms (*Dahlberg* Factor 2) Favor Injunctive Relief

A. Plaintiffs' harms are not speculative: current chill plus present legal uncertainty from an enacted penal ordinance

The City argues there is no irreparable harm because there is no "credible threat of enforcement," any harm is conjectural, and "chilling alone isn't enough," citing cases such as *Morehouse*, *Lamont*, and *Worth*. That framing misdescribes both the nature of the harm and the posture of this case.

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This is not "chilling alone." It is chilling **plus** present legal uncertainty created by the vagueness of an enacted ordinance that purports to impose criminal prohibitions but makes their attachment depend on undefined future events. As explained above, Ordinance 25-65 is on the books, pending publication, carries penal consequences, and is designed to activate upon an indeterminate trigger with no clear standards or notice mechanism. "The fundamental principle that laws regulating persons or entities must give fair notice of what conduct is required or proscribed is essential to the protections provided by the Fifth Amendment's Due Process Clause" *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012) (quotations omitted)

That structure immediately affects regulated conduct: law-abiding residents and visitors cannot determine when lawful possession or carry becomes criminal, and the only reliable means of avoiding criminal exposure is to alter lawful conduct now. Minnesota courts recognize that pre-enforcement relief is appropriate where enactment itself creates present uncertainty affecting legal relations and conduct, even before enforcement begins. The contingency clause does not mitigate harm; it aggravates it by making criminality hinge on a vague future condition.

The cases the City relies on do not fit this posture. They involve either longstanding laws, clear enforcement regimes, or circumstances where plaintiffs could identify with certainty when and how a law applied. Here, by contrast, the Ordinance's structure forces immediate compliance planning and present behavioral change precisely

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because the enforcement line is not publicly ascertainable.

B. The City's "other firearms remain available" argument is legally irrelevant under *Heller* and mismatched to this case

The City argues that even if the Ordinance were enforceable, Plaintiffs have not shown irreparable harm because "myriad" other firearms remain available for self-defense, borrowing the "adequate alternatives" rationale advanced in cases like *Lamont*. That argument fails for two independent reasons.

First, as a constitutional matter, *District of Columbia v. Heller* rejected the notion that the government may burden protected conduct on the theory that other options remain available. The availability of alternatives is not a limiting principle for a protected right. A court does not ask whether a citizen has "enough" remaining means to exercise a right; it asks whether the government may impose the restriction at all.

Second—and more importantly for this case—the City's argument is beside the point. Plaintiffs' strongest merits claims rest on state preemption and *ultra vires* principles, and on Minn. Stat. § 624.714, subd. 23's prohibition against municipal limits on the exercise of a permit to carry. Whether some other firearms remain available is not a defense to a municipality's lack of authority to legislate in a preempted field, nor does it cure an ordinance that independently violates the Legislature's command of uniformity.

C. The City's public-safety "compelling interest" is not a legal answer to preemption or *Bruen*'s methodology

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The City repeatedly invokes a "compelling" interest in public safety and gun violence prevention, suggesting that this interest outweighs Plaintiffs' harms and favors denying injunctive relief. That contention does not carry the City's burden under *Dahlberg*.

Public safety does not create municipal power where the Legislature has withdrawn it. Preemption is a question of authority, not policy balancing. When the Legislature has declared that local firearm regulation is preempted and that inconsistent local ordinances are void, a municipality cannot justify acting beyond that authority by appealing to general police-power interests. *See State v. Kuhlman* 722 N.W.2d 1, 4 (Minn. Ct. App. 2006), aff'd, 729 N.W.2d 577 (Minn. 2007), (the Minnesota Supreme Court reiterated that state statutes may preempt local ordinances through express preemption) *See also Power v. Nordstrom*, 150 Minn. 228, 232, (1921) ("It is elementary that an ordinance must not be repugnant to, but in harmony with, the laws enacted by the Legislature for the government of the state. It cannot authorize what a statute forbids or forbid what a statute expressly permits but it may supplement a statute or cover an authorized field of local legislation unoccupied by general legislation.")

To the extent the City's argument is framed as Second Amendment interest balancing, it fares no better. *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1, 26 (2022) rejected means-end scrutiny and interest balancing as the constitutional test. Courts do not weigh public safety against protected conduct to decide whether a

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restriction may stand. The City's reliance on "compelling interest" rhetoric therefore does not defeat Plaintiffs' showing of irreparable harm or diminish the likelihood of success on the merits.

D. There is no cognizable harm to the City from enjoining publication or codification of a void ordinance; an injunction preserves the proper status quo

Plaintiffs seek limited injunctive relief to enjoin publication, codification, and giving effect to Ordinance 25-65 pending adjudication on the merits, precisely to prevent entrenching uncertainty and avoid a "zombie ordinance" lingering in the code. The City responds that codification itself is the status quo and that enjoining it would cause harm.

That argument misidentifies the relevant status quo. For TRO purposes, the status quo is the legal regime before an *ultra vires* penal ordinance with undefined triggers is embedded in the City Code and before citizens are forced to navigate uncertain criminal exposure. Preserving that status quo prevents additional harm; it does not impose it.

Moreover, the City's own position undercuts any claim of harm. The City asserts the Ordinance is not presently enforceable. If that is so, the City suffers no cognizable injury from pausing publication or codification while the Court determines validity. By contrast, allowing the Ordinance to be codified and publicized as law exacerbates the present uncertainty and chilling effect on regulated persons. Under *Dahlberg*, the balance of harms therefore favors injunctive relief.

V. Public Interest and Parties' Relationship (*Dahlberg* Factors 1 and 4) Favor Enforcement of State Supremacy and Clarity in Penal Law

A. The public interest is not "let the City govern"; it is "government within lawful

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bounds"

The City urges the Court to defer to municipal governance and to treat the asserted public-safety purpose of Ordinance 25-65 as a strong public-interest reason to deny injunctive relief. But *Dahlberg*'s public-interest factor does not ask whether the Court agrees with the City's policy goals or questions the sincerity of its elected officials. It asks whether injunctive relief would disserve Minnesota's public policy as expressed in controlling law. *See Stangel v. Whipple*, No. A22-1318, 2023 WL 5200586, at *6 (Minn. Ct. App. Aug. 14, 2023)

Minnesota's public policy includes legislative supremacy and statewide uniformity where the Legislature has occupied the field and withdrawn municipal authority. Here, the Legislature has expressly preempted municipal firearm regulation and declared inconsistent local regulation "void." Minn. Stat. § 471.633.

That statute reflects the Legislature's statewide policy judgment—made through the democratic process—about how firearm regulation is to be handled in Minnesota. The City's appeal to local democratic enactment cannot override that allocation of authority. The public interest is therefore served, not harmed, by enforcing the Legislature's limits and preventing municipalities from embedding void, preempted criminal ordinances in their codes.

The City quixotically invokes *Maryland v. King,* 567 U.S.1301 (2012) to portray itself as the defender of democratic self-government while categorically rejecting the

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very principle of sovereign authority that *King* protects. *King* cautions against courts enjoining statutes enacted by a sovereign legislature. Here, the sovereign has already acted. The Minnesota Legislature has withdrawn municipal authority in this field and declared inconsistent local enactments void. Enjoining the City from publishing or codifying a potentially void ordinance does not "silence the people"; it enforces the Legislature's determination of who may speak with the force of law in this field. "Minnesota's cities, even charter cities such as Saint Paul, are, materially, creatures of state law." *Olson v. Lesch*, No. 62-CV-18-975, 2018 WL 6682566, at *5 (Minn.Dist.Ct. Sep. 26, 2018) *citing Bicking v. City of Minneapolis*, 891 N.W.2d 304, 312 (Minn. 2017); J*ennissen v. City of Bloomingto*n, 913 N.W.2d 456, 459-60 (Minn. 2018). What the City characterizes as judicial interference with democracy is, in fact, the City's own refusal to accept the limits the Legislature has imposed on municipal power.

The public interest is also served by clarity in penal law. Ordinance 25-65 is not a symbolic or aspirational resolution; it purports to create criminal prohibitions whose enforceability turns on an undefined trigger with no publicly ascertainable mechanism for determining when criminal liability attaches. Such vague penal triggers undermine confidence in the law, invite inconsistent enforcement, and force law-abiding residents and visitors to alter lawful conduct now to avoid unknowable future exposure. Preventing that uncertainty pending judicial review advances, rather than frustrates, the public interest.

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B. The relationship of the parties favors enforcing legislative boundaries, not entrenching *ultra vires* action

The City further argues that the relationship between the parties favors denial because an injunction would "disrupt" municipal governance and the status quo. That argument again assumes the conclusion. The relevant relationship here is that between a municipality and the citizens it governs—a relationship that presupposes the City acts within the bounds of authority granted by the Legislature.

An *ultra vires* ordinance distorts that relationship immediately. Even under the City's claimed "contingency" posture, the enactment and codification of a penal ordinance signals that conduct lawful today may soon be punished and leaves residents and visitors without any objective way to determine when criminal liability will attach. The practical effect is to pressure compliance now and chill lawful behavior. Allowing that distortion to persist in the name of municipal autonomy would invert *Dahlberg*'s relationship factor by rewarding *ultra vires* action and penalizing citizens who rely on the supremacy of state law.

This factor therefore favors immediate judicial intervention—not to substitute the Court's policy judgment for the City's, but to enforce the Legislature's allocation of authority and preserve a coherent legal regime until the merits are resolved.

VI. Administrative Burdens (*Dahlberg* Factor 5)

The City suggests the administrative-burden factor is neutral. Plaintiff does not

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dispute. The requested injunction is straightforward: it is a simple negative prohibition preventing the City from publishing, codifying, or otherwise giving effect to Ordinance 25-65 pending adjudication. It does not require ongoing supervision or complex enforcement.

CONCLUSION

For all the reasons stated, Plaintiff's motion for temporary restraining order and preliminary injunction should be granted.

Respectfully submitted,

Dated: December 15, 2025

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