

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type Civil/Other

Minnesota Gun Owners Caucus

Court File No. 62-CV-25-9927

Plaintiff,

Judge Leonardo Castro

v.

City of Saint Paul, Minnesota,

**DEFENDANT'S REPLY
MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION TO
DISMISS**

Defendant.

ARGUMENT

- I. The Court lacks subject matter jurisdiction because Plaintiff fails to allege a justiciable controversy.**

The present question before the Court is whether a city ordinance that carries no enforceability and holds no active or future threat of enforcement absent further state action can generate an active justiciable controversy. The answer to the question is no, it cannot. While Plaintiff attempts to paint a picture based on its own speculative fears and alleged uncertainties, the simple fact remains that the Subject Ordinance, by its very own language, carries no enforceable power at this time. In all of Plaintiff's arguments, at no point does it offer any colorable threat of prosecution or any reasonable action by the state legislature to raise even a hint of potential enforceability of the Subject Ordinance at any point in the relevant future. (*See* Pltf.'s Mem. at 6–11.)

Plaintiff's reliance on *McCaughtry* is misplaced. In *McCaughtry*, the ordinance at issue was already in full effect, not only being enforceable, but it had already been actively enforced against the plaintiffs multiple times prior to the subject challenge in that matter. *McCaughtry v. City of Red Wing*, 808 N.W.2d 331, 340 (Minn. 2011). The defendant had also expressly stated its

intent to continue enforcing the ordinance against the plaintiffs. *Id.* The present ordinance carries no such enforceable authority and Plaintiff points to none. Nor does Plaintiff allege any concrete threat of future enforcement directed against Plaintiff, as was the case in *McCaughtry*. Unlike *McCaughtry*, there is no credible threat of enforcement under the Subject Ordinance. Thus, while Plaintiff cites that case for the general supposition that declaratory judgment may be sought “preventatively” and prior to enforcement, that case too still illustrates the point that any such preventative claim still requires a credible threat of prosecution and enforcement.

Plaintiff’s citation to *Bicking v. City of Minneapolis* is similarly misplaced and even more inapposite. First, *Bicking* does not address a pre-enforcement ordinance challenge. *See Bicking*, 891 N.W.2d at 308–312 (assessing justiciability of whether City properly direct City Clerk not to place proposed question on citizen-initiated charter amendment on election ballot). Second, no party in that case disputed the Court’s jurisdiction or authority to address the question before it. *Id.* at 308. (“[N]one of the parties before us have questioned our authority to act in this case.”). Second, *Bicking* only emphasizes the distinction in the present case where no such active conflict exists because the ordinance carries no enforceable authority by its own terms. In *Bicking*, the Court’s justiciability determination was specifically rooted in the specific precedent governing pre-enactment review of proposed ballot provisions. *See id.* at 310–12. Further, an actual controversy arose under those circumstances because the government would otherwise be required to undertake “what would amount to a futile election and a total waste of taxpayers money.” *Id.* at 311. Far from supporting Plaintiff’s claims, *Bickings* undermines them entirely by showing the distinction where an actual controversy and actual cost arise from a concrete action. In that case, it was an actual proposed ballot provision that would proceed on the ballot but for the Court’s

determination and the associated costs for the government to organize an election on a ballot provision that could not pass constitutional muster even if it were enacted by the voters.

In sharp contrast to *Bickings*, the present ordinance challenge by Plaintiff carries no such justiciable controversy and the clear precedent relating to such challenges directly undercuts Plaintiff's claims. Because the Subject Ordinance is not enforceable, carries no enforceability, and is otherwise non-self-executing, it offers no credible threat of prosecution and therefore Plaintiff's claims against the same cannot offer an actionable controversy to survive dismissal at this stage.

II. The Court lacks subject matter jurisdiction because Plaintiff fails to allege any concrete injury and therefore lacks standing to bring the present claims.

Plaintiff attempts to reframe their speculative fears as actual compliance with the alleged statute. (Pltf.'s Mem. at 8.) However, the mere fact that Plaintiffs choose to respond to their own speculative fears through various actions still does not transform their speculative assertions into concrete injuries for purposes of Standing. There is no compliance burden imposed by the Subject Ordinance because there is no well-founded, concrete threat of enforcement posed by the ordinance. Plaintiff attempts to handwave the precedent set forth in *Lujan v. Defendants of Wildlife*, 504 U.S. 55 (1992), but offers no substantial explanation as to why such case law, frequently cited and relied upon by Minnesota courts, should be ignored in this matter. *See, e.g., In re Custody of D.T.R.*, 796 N.W.2d 509, 512–13 (Minn. 2011) (citing *Lujan* for elements of standing).

As stated in Defendant's initial brief, the Complaint's allegations reinforce the hypothetical and speculative nature of the claimed harm. (*See* Def. Mem. at 9.) Even Plaintiff's own argument betrays the speculative nature of the harm, alleging that Plaintiff's members change their conduct

on the speculative possibility that “the Ordinance’s provisions are misunderstood or treated as operative.” (Plft.’s Mem. at 8.) Coupled with the non-enforceable nature of the Subject Ordinance on its face, these alleged injuries are simply far too speculative to raise standing in this matter.

Nor does Plaintiff’s citation to *Holiday Acres No. 3 v. Midwest Fed. Sav. & Loan Ass’n of Minneapolis*, 271 N.W.2d 445, 447–49 (Minn. 1978), change this analysis. Plaintiff cites that case for the notion that declaratory judgment is available when parties are allegedly forced to alter conduct now rather than face sanctions later. (Plft.’s Mem. at 9.) However, nothing in *Holiday Acres* addresses the question of statutory challenges for ordinances that carry no enforceable authority. Indeed, *Holiday Acres* involves a contractual dispute around real estate and specifically addresses the issue of a due-on-sale clause, for which the Court identified substantial precedent supporting the justiciability of such issues in that specific context. *Holiday Acres*, 271 N.W.2d at 448. However, outside that specific context, *Holiday Acres* offers no substantial guidance on the present matter and Plaintiff provides no substantive explanation for how it should be applied.

Similarly, Plaintiff’s reliance on *281 Care Comm. v. Arneson*, 638 F.3d 621 (8th Cir. 2011) is inapposite. *Arneson* involved a First Amendment challenge and was rooted in the specific chilling analysis arising from the First Amendment context. *See id.* at 627. Under the First Amendment, a plaintiff engaged in arguably protected speech, but chilled from doing so by the existence of the statute may be able to establish standing based on the self-censorship alone. *Id.* Through *Arneson*, Plaintiff attempts to import First Amendment chilling analysis into an entirely different context. However, courts have declined to “assume that the principles and doctrines developed in connection with the First Amendment apply equally to the Second, as to assume that rules developed in the Second Amendment context could be transferred without modification to the First.” *Kachalsky v. Cnty. of Westchester*, 701 F.3d 871, 92 (2d Cir. 2012). Plaintiff has not offered any relevant Second Amendment cases to inform this analysis, relying instead on *Arneson*.

Such reliance is misplaced and cannot salvage Plaintiff's claims because the analysis is specific to the First Amendment and offers no insight here.

Further, even under *Arenson*, "persons having no fears of state prosecution except those that are imaginary or speculative, are not to be accepted as appropriate plaintiffs." *Arneson*, 638 F.3d at 627. Indeed, *Arneson* maintains the same requirement of a "credible threat of prosecution" before standing will exist. *Id.* That case also additionally involved a statute that carried full enforceability and no contingent provision on its face that rendered it non-enforceable (as the present ordinance does). *See id.* at 625.

The cases offered in Defendant's initial brief make the issue plain that standing and justiciability both require a credible threat of prosecution under the statute. (*See* Def. Mem. at 5–9.) No such credible threat exists in the present case and the Complaint should accordingly be dismissed for lack of subject matter jurisdiction.

III. The Subject Ordinance is not unconstitutionally vague.

Plaintiff alleges three principal defects in the Subject Ordinance to support its constitutional vagueness claim. (Pltf.'s Mem. at 16–18.) However, none of those alleged defects resolve Plaintiff's claim in the fashion it alleges and cannot sustain a claim based on unconstitutional vagueness in light of the actual terms of the Subject Ordinance. (*See* Def. Mem. at 15–22.)

Plaintiff's first alleged defect holds no water. The ordinance clearly specifies when it takes effect and the terms under which its contingency provisions may be triggered. (*See* Def. Mem. at 18–19.) Plaintiff's two cited cases, *In re Welfare of B.A.H.* and *State v. Newstrom*, provide no relevant guidance on this issue. Neither matter addresses the timing of a contingent statutory provision and, more importantly, both cases only address the question of vagueness in terms of the specific conduct prohibited under the challenged statutes. In this case, the prohibited conduct under

the ordinance is clearly defined, and Plaintiff makes no dispute as to the language of the ordinance regarding what conduct is specifically prohibited. Rather, as Defendant pointed out its initial brief, Plaintiff's entire argument centers on the question of whether the use of "substantially similar" state law is acceptably clear for constitutional purposes.

Newstrom is similarly inapposite as to the other alleged defects as well. Specifically, the language at issue in *Newstrom* involved the actual conduct prohibited under the statute rather than the present issue wherein the alleged vagueness is not that the conduct prohibited is unclear, but that the statute has not sufficiently defined what a "substantially similar" state law may be. In *Newstrom*, the challenged statute stated that in order to satisfy compulsory attendance requirements, a school must have teachers whose qualifications are "essentially equivalent" to the minimum standards for public school teachers. *State v. Newstrom*, 371 N.W.2d 525, 526 (Minn. 1985). The court held that the use of "essentially equivalent" was unconstitutionally vague because it provided no clear standard for individuals to assess whether they were in violation the statute. *Id.* at 528–29. The analysis was centered on the actual conduct prohibited under the statute and the Court noted that multiple courts had reached conflicting interpretations. *Id.* at 528.

No such conflicting issues are present in this case and despite Plaintiff's self-serving constructions in the alternative, the actual conduct prohibited under the ordinance is not in dispute. The relevant language of "substantially similar" state law is confined to the contingency provision. To the extent the ordinance were to take effect, there is no ambiguity as to the conduct prohibited. Furthermore, while Plaintiff asserts that conforming the ordinance to the relevant state law would raise additional uncertainties under the ordinances, that is simply not the case. The conduct prohibited under the ordinance to the extent it may be triggered under a substantially similar law would be defined by the applicable state law. As such, any conduct at issue would also be in violation of the state law that triggered the ordinance. There is no vagueness in that regard.

Plaintiff also argues that the “all applications” standard under *Enyeart* should support its claims. (Pltf.’s Mem. at 23.) That is simply not the case. In order for Plaintiff’s claim to survive under that standard, the Subject Ordinance must be unconstitutionally vague under all circumstances. That is simply not the case here. First, 225A.02(a) provides an undisputed clear triggering application of the statute that defeats the claim. Second, even following Plaintiff’s argument that 225A.02(b) must be assessed in isolation, it still cannot be shown to be unconstitutionally vague in all applications. For example, if the state legislature simply copied the Subject Ordinance wholesale and adopted it as state law, there would be no vagueness or reasonable dispute as to the terms of the Ordinance and its triggering under the substantially similar state law (or identical as the case may be). That example alone defeats Plaintiff’s Count III as it demonstrates at least one instance in which no unconstitutional vagueness would arise in application of the Subject Ordinance.

For these reasons, Plaintiff’s vagueness claim should be dismissed with prejudice.

IV. Minn. Stat. §§ 624.714 and 624.717 do not preempt the Subject Ordinance.

Responding to Minn. Stat. § 624.714’s lack of preemptive effect, Plaintiff confusingly argues that it has not alleged a general right to carry firearms in public places under the statute. (See Pltf.’s Mem. at 25.) However, Plaintiff then goes on to argue that the statute does indeed provide preemptive authority for a general right for permit holders to carry firearms in public places that cannot be limited or displaced by local ordinance. (*Id.*) Plaintiff misunderstands Defendant’s argument entirely and mischaracterizes the same as some form of general constitutional claim. Rather, as Defendant stated in its opening brief, Plaintiff’s claim boils down to the essential argument that § 624.714 creates a right for permit holders to carry firearms in public places without penalty and that that statutory right supersedes any local ordinances restricting firearms from specified locations. (Def. Mem. at 22.)

As Defendants noted, however, § 624.714 creates no such right, let alone a preemptive one preventing the Subject Ordinance’s regulation of “sensitive places.” (*Id.* at 22–23.) Rather, § 624.714 establishes a general prohibition for carrying or possessing a pistol in a public place. Minn. Stat. § 624.714, subd. 1a; *see also State v. Paige*, 256 N.W.2d 298, 303 (Minn. 1977) (describing Minn. Stat. § 624.714, subd. 1 as a “general prohibition” and a permit as an exception to that prohibition). The statute then carves out an exception for those who have “first obtained a permit to carry the pistol” and goes on to set forth the criteria and procedures for an individual to obtain said permit. Minn. Stat. § 624.714. The permit is an exception to the statute’s specific criminal liability, not a general grant of right for permit holders to carry a firearm in public. *See Paige*, 256 N.W.2d at 303 (describing “without a permit” language as exception to general prohibition established under § 624.714).

The exclusivity provision cited by Plaintiff applies to regulations regarding process and requirements for obtaining a permit under § 624.724. *See id.* § 624.714, subd. 23. The subdivision’s use of the phrase “or limit the exercise of a permit to carry” does not salvage Plaintiff’s preemption claim. That language must be read in the context of the rest of the statute, which solely describes the processes and criteria for obtaining a permit under the statute and carves out certain categories of individuals who may not exercise the protection of a permit under the statute. *See id.* § 624.714, subd. 24 (establishing a misdemeanor for predatory offenders under Minn. Stat. § 243.166 to carry a pistol regardless of whether the carrier possesses a permit under the statute). Furthermore, the statute applies the permit as an exception to the statutory prohibition. The permit does not create or establish an affirmative right to carry in public places generally; it merely establishes that the carrier may not be liable under § 624.714 specifically. Read in its context, the statute’s “limit the exercise” language specifically pertains to regulations or ordinances that otherwise limit who may use or obtain a permit. In other words, a government

entity cannot restrict or limit the issuance of a permit to an individual who otherwise satisfies the statutory criteria.¹

In this case, the Subject Ordinance makes no such regulations regarding the criteria or processes for obtaining a permit under § 624.714. Nor does it profess to establish any additional class of persons restricted from obtaining a permit or otherwise limiting the applicability of a statutory permit as an exception to the prohibition set forth under § 624.714. Accordingly, there is no preemptive effect from the statute that otherwise bars the Subject Ordinance from operation.

Plaintiff argues in the alternative that Minn. Stat. § 624.717 generally supersedes *any* regulation regarding or related to firearms under § 624.714 regardless of how the Court may read the statute.² This is patently incorrect and broadly ignores the full relevant language of § 624.717 and its broader place within the statutory framework of the MCPA generally. Specifically, § 624.717 states that “Sections 624.711 to 624.716 shall be construed to supersede municipal or county regulation of the carrying or possessing of pistols and the regulation of Saturday night special pistols.” The superseding language is specifically confined by the construction of “Sections 624.711 to 624.716” and directs those sections to be construed to supersede local regulation. Because 624.717 limits itself to “constru[ing]” specific sections, it is best understood as creating a superseding authority for those sections only to the extent they conflict with local regulations. This is consistent with how Minnesota Courts have treated § 624.717 in other contexts. *See*

¹ For example, a county cannot establish additional classes of prohibited individuals in the same manner as § 624.714, subd. 24, and thereby deny permits to those individuals.

² Plaintiff also alleges that Defendants conceded the issue on § 624.717, which is not true. (*See* Plft.’s Mem. at 28.) Plaintiff’s principal preemption claim is based on § 624.714, subd. 23, as evidenced in the Amended Complaint. (*See* Am. Compl. ¶¶ 69–75.) Thus, Defendant’s initial brief principally addressed the primary basis for preemption. Further, for the reasons stated above, § 624.717 merely frames the language of § 624.714 and does not operate as its own general preemption statute. Accordingly, the lack of preemptive effect under § 624.714 is dispositive on the present motion and Defendant focused its initial brief accordingly.

Application of Hoffman, 430 N.W.2d 210, 214 (Minn. Ct. App. 1988) (noting that § 624.717 was specifically passed to address subjective town-to-town and county-to-county private criteria for permit applications governed by § 624.714).

Thus, § 624.717 only creates a superseding authority for §624.714 to the extent a local regulation otherwise conflicts with the latter. As already stated, however, no such conflict exists in this case because the Subject Ordinance does not regulate or control any aspect of permits under § 624.714 or their application. Accordingly, neither section carries preemptive effect over the Subject Ordinance and Plaintiff's Count II claim must be dismissed.

CONCLUSION

For all the reasons stated, Defendant's motion to dismiss should be granted and the Complaint dismissed in its entirety.

Dated: April 7, 2026

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