

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

NEW MEXICO PATRIOTS
ADVOCACY COALITION,
LISA BRENNER,

Plaintiffs,

Case No. D-202-CV-2019-07344

v.

TIM KELLER, Mayor,
City of Albuquerque,

Defendant.

**PLAINTIFFS' REPLY TO RESPONSE IN OPPOSITION TO EMERGENCY VERIFIED
PETITION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

COMES NOW, Plaintiffs New Mexico Patriots Advocacy Coalition and Lisa Brenner, by and through undersigned counsel Western Agriculture, Resource and Business Advocates, LLP (A. Blair Dunn, Esq.) with Plaintiffs' Reply to the Response in Opposition to Plaintiffs' Petition for Temporary Restraining Order and Preliminary Injunction.

INTRODUCTION

The feigned disingenuous confusion of Mayor Keller should have no sway over this Court. Plaintiffs clearly seek declaratory judgment that Mayor Keller in his official capacity, acting under his executive authority, has directed that a pair of state statutes be reinterpreted to apply in a way they have never applied before, a way that contradicts the plain language of the statutes themselves. This is in violation of prohibition in the New Mexico Constitution preventing the Mayor from regulating in any way the incident of New Mexico's citizens to keep and bear arms, thus infringing upon that fundamental liberty.

ARGUMENT

I. Plaintiff's are likely to succeed on the merits

Plaintiffs are likely to prevail on the merits because the Mayor's attempt to back door regulate the bearing of firearms contradicts the plain language of the statute. Statutes are interpreted to give meaning to the plain language unless there is ambiguity:

Our primary goal in interpreting statutory language is to "give effect to the intent of the Legislature." *State v. Smith*, 2004-NMSC-032, ¶ 8, 136 N.M. 372, 98 P.3d 1022 (internal quotation marks and citation omitted). "We look first to the plain meaning of the statute's words, and we construe the provisions of the Act together to produce a harmonious whole." *Dewitt v. Rent-A-Center, Inc.*, 2009-NMSC-032, ¶ 14, 146 N.M. 453, 212 P.3d 341 (internal quotation marks and citation omitted). When we interpret the plain language of a statute, we read all sections of the statute together so that all parts are given effect. *Diamond v. Diamond*, 2012-NMSC-022, ¶ 25, 283 P.3d 260. "[I]f the language is doubtful, ambiguous, or an adherence to the literal use of the words would lead to injustice, absurdity or contradiction, we will reject the plain meaning in favor of an interpretation driven by the statute's obvious spirit or reason." *State v. Trujillo*, 2009-NMSC-012, ¶ 21, 146 N.M. 14, 206 P.3d 125 (internal quotation marks and citations omitted).

Cordova v. Cline, 2017-NMSC-020, ¶ 13, 396 P.3d 159, 164. When no contrary intent or ambiguity exist, "no other means of interpretation should be resorted to and there is no room for construction." *State v. Lujan*, 1985-NMCA-111, ¶ 12, 103 N.M. 667, 712 P.2d 13.

Here, the New Mexico legislature unambiguously stated that school premises means, "any other public buildings or grounds, including playing fields and parking areas that are not public-school property, in or on which public school-related and sanctioned activities are being performed." NMSA 1978 § 30-7-2.1 (*emphasis added*). The legislature clearly did not state "where school activities have or may be performed," they said, "are being performed", *id.* thus, city centers are only school premises when school related and sanctioned activity is currently occurring; not all the time as the Mayor would like to be the case in his executive order. Likewise, a health center is only a university premise if a university sanctioned activity is

performed there. There is no demonstration by the Mayor that his executive order meets the plain language requirements of the law and he is prohibited by the New Mexico Constitution from enacting new regulation.

II. The Loss of Constitutional Freedom is Irreparable Harm.

Unfortunately, the Mayor is just flat wrong, New Mexico citizens have the constitutional right to carry their firearms at Albuquerque city centers and Albuquerque Health Centers, because the Legislature has not taken action to curtail those constitutional freedoms in the manner that the Mayor seeks to deprive them of in his executive order.

In a case involving constitutional rights, “the likelihood of success on the merits will often be the determinative factor.” *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114, 1145 (10th Cir. 2013), *aff'd sub nom. Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 189 L. Ed. 2d 675 (2014); *ACLU of Illinois v. Alvarez*, 679 F.3d 583, 589 (7th Cir.2012), *cert. denied*, — U.S. —, 133 S.Ct. 651, 184 L.Ed.2d 459 (2012). Such is the case because:

- “the loss of [constitutional] freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury, *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1190 (10th Cir.2003) (internal quotation marks omitted);
- “when [a] law ... is likely unconstitutional, the[] interests [of those the government represents, such as voters] do not outweigh [a plaintiff's interest] in having [its] constitutional rights protected,” *Awad v. Ziriak*, 670 F.3d 1111, 1131–32 (10th Cir.2012); and
- “it is always in the public interest to prevent the violation of a party's constitutional rights,” *Id.* at 1132.

CONCLUSION

This Court should do its duty to protect fundamental liberties of American's. In this instance it may very well be Mayor Keller believes he is doing the right thing, but its not his place

to make that decision, and “[T]here is in all of us a strong disposition to believe that anything lawful is also legitimate. This belief is so widespread that many persons have erroneously held that things are ‘just’ because law makes them so.” Frédéric Bastiat, *The Law*, The Foundation for Economic Education, Inc., Irvington-on-Hudson, New York 10533. The Court should enjoin the loss of constitutional freedoms.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 4, 2019, I filed the foregoing via the New Mexico E-filing System causing all parties of record to be served via electronic means.

/s/ A. Blair Dunn
A. Blair Dunn, Esq.