

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

NEW MEXICO PATRIOTS
ADVOCACY COALITION,
LISA BRENNER, PRO-GUN WOMEN,

Plaintiffs,

D-202-CV-2020-01048

v.

TIM KELLER, Mayor,
City of Albuquerque, SARITA NAIR,
Chief Administrative Officer,
City of Albuquerque,

Defendant.

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS AMENDED COMPLAINT**

COMES NOW, Plaintiffs New Mexico Patriots Advocacy Coalition, Lisa Brenner, and Pro-Gun Women, by and through undersigned counsel Western Agriculture, Resource and Business Advocates, LLP (A. Blair Dunn, Esq.) and Barnett Law Firm, P.A. (Colin L. Hunter, Esq.) with Plaintiffs' Response in Opposition to Defendant's Motion to Dismiss Amended Complaint for Declaratory Judgment and Verified Petition for Injunctive Relief, and state as follows:

RESPONSE TO PRELIMINARY STATEMENT OF DEFENDANTS

First, an argument that a new order which by its very language explains that it is interpreting state law to enforce a law that had never previously been enforced in such a fashion does not pass the smell test. Defendants ask this Court to grant them a power specifically reserved to the legislature and explicitly prohibited from them. It is stunning to acknowledge, in one breath, that the New Mexico Supreme Court has clearly articulated what the intent of the Legislature was

regarding school premises stating, “the presence of dangerous weapons **on school property** is an intolerable threat to the safety of students and teachers.” *State v. Rowell*, 2008-NMSC-041, ¶ 33 (*emphasis added*). And then, in the next breath, state that interpreting the statute to include non-school property contrary to the plain language of the statute is also the intent of the Legislature, with a straight face. Neither are the community centers school property, nor are the health centers university property. Plain and simple, Defendants are attempting to regulate through interpreting the statutes to fit their whim, ignoring the plain language of the New Mexico Constitution and the statutes themselves. Under the logic presented by the Defendants, regulation of firearms could be enforced on private property where a class of school children takes a field trip, merely under the premise that the property has been sanctioned for school use. The improper use of the law not only has implications that do not fit into the law as the legislature intended but allow the Defendant to continue to chip away at a fundamental liberty.

ARGUMENT

I. Defendants’ Actions Violate the New Mexico and the United States Constitutions

Defendants ask this Court to accept that their legal conclusion that all they are doing by the AI’s is giving notice, is a fact, while the Plaintiffs’ statement that what the Defendants are doing is regulating by reinterpreting statutes to suit their liking is merely an incorrect legal conclusion. Truly, this is the crux of the issue before the Court. This Court must decide as matter of law whether the AI’s are regulating thru a new and novel interpretation which is prohibited from the Defendants; or whether they are just giving notice of the application of the law as it is plainly written and intended by the Legislature. Plaintiffs respectfully offer that despite the legal wrangling of the Defendants in their Motion this Court should easily arrive at the conclusion that the New Mexico Constitution and the Legislature is clear that they are not allowed to bend the

words to suit their liking in order to subvert the democratic process of having the Legislature change the laws. This Court might award them points for creativity, but the Constitution and the laws do not.

The First Amendment to the United States Constitution states that “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press.” U.S. Const. amend. I. That is the functional equivalent of the New Mexico Constitution’s prohibition of local governments regulating in any way the carrying of firearms by stating “[n]o municipality or county shall regulate, in any way, an incident of the right to keep and bear arms.” N.M. Const. art. II, § 6. If Congress can make no law abridging the freedoms protected by the First Amendment, how can this Court find it permissible for a municipality acting through the authority of its mayor to regulate by re-interpreting state law the bearing of firearms protected by the Second Amendment and Section 6 of the New Mexico Bill of Rights without causing an violation of the clear language of the New Mexico Constitution.

II. The Statutes Passed by the Legislature are Clear

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.

Both the United States Constitution and the New Mexico Constitution protect the pre-existing fundamental liberty of the individual to keep and bear arms, directing that the government shall not infringe upon that right. It is understood that the right to keep and bear arms is “not unlimited,” *D.C. v. Heller*, 554 U.S. 570, 595, 128 S. Ct. 2783, 2799, 171 L. Ed. 2d 637 (2008), but may only be limited by regulation that is narrowly tailored to serve a compelling government interest and that such infringement is subject to strict scrutiny by judicial review. *See Abrams v. Johnson*, 521 U.S. 74, 82, 117 S.Ct. 1925, 138 L.Ed.2d 285 (1997). Further, in New Mexico Law such regulation is limited by Article II Section 6 of the New Mexico Bill of Rights in the New

Mexico Constitution to prohibit counties and municipalities from regulating **in any way** an incident of the right to keep and bear arms. Thus, even an action to reinterpret state law would be **the way** in which the City of Albuquerque seeks to regulate the incident of carrying of firearms on certain city property, which would be expressly prohibited by the New Mexico Constitution, putting aside that the reinterpretation is legally incorrect.

Likewise, the argument that the trespassing statute coupled with an AG's opinion concerning regulation of firearms by neither a municipality nor a county should gain no more purchase with this Court than the argument that the Defendants are merely giving notice of what the law says and how they plan to enforce it. Nothing permits the City from regulating, **in any way** (which includes regulation by reinterpreting laws in a way never intended by the Legislature in passing them), a right incident to the keeping and bearing of arms. To argue that a trespassing statute can be read to override the New Mexico Constitution's clear prohibition for the city to regulate firearms on their property is argument that lacks such merit that it barely deserves a response.

III. Openly Carrying Firearms is Expressive Conduct that is Protected by the First Amendment and Art. 2, § 17 of the New Mexico Constitution

It is disappointing that the City relies upon the argument that simply because the violation of civil liberties is not clearly established (which grants them qualified immunity under Section 1983) that no violation of rights is occurring. The law is far from clear or settled that displaying firearms and chanting about support for firearm ownership in a traditional forum like civic plaza would not be expressive protected conduct.¹

¹ Here, in contrast, Plaintiff's open carrying of a gun was unaccompanied by any other means of conveying a message in support of Michigan's open carry law. Thus, the decision in *Smith* does not overcome the Defendant officers' appeal to qualified immunity, and Plaintiff does not point to any other ruling that would have alerted a reasonable officer in Defendants' position that Plaintiff was engaged in expressive activity protected by the First Amendment. *Chesney v. City of Jackson*, 171 F. Supp. 3d 605, 617 (E.D. Mich. 2016)

CONCLUSION

James Madison once said “[j]ustice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit.” It would be grave injustice for this Court to entertain favorably this Motion to Dismiss.

The Court should deny the Motion.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2021 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
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