

Marcoullier

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
LAKE COUNTY, ILLINOIS  
CHANCERY DIVISION

DANIEL D. EASTERDAY, )  
ILLINOIS STATE RIFLE ASSOCIATION, and )  
SECOND AMENDMENT FOUNDATION, INC., )

Plaintiffs, )

v. )

VILLAGE OF DEERFIELD, ILLINOIS, )  
a municipal corporation, )

Defendants. )

Case No. 18CH427

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs, DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, and SECOND AMENDMENT FOUNDATION. INC., by and through LAW FIRM OF DAVID G. SIGALE, P.C., their attorney, and as and for their Complaint against the Defendant, VILLAGE OF DEERFIELD, ILLINOIS, seeking a declaratory Judgment, permanent injunction, and other relief, in support thereof state as follows:

**INTRODUCTION**

This legal action is a challenge to the Defendant’s Ordinance O-18-06, passed on April 2, 2018, which bans assault weapons (used specifically as that term is defined in O-18-06) within the Defendant’s municipal limits. The passage and enforcement of the Ordinance O-18-06 violates the Defendant’s statutory authority, as the issues with which the Ordinance is concerned are preempted by Illinois state law as stated in the Illinois Firearm Owners Identification Card Act and the Illinois

Firearm Concealed Carry Act. Therefore, the Ordinance O-18-06 is invalid and must be enjoined, as described more fully herein.

## STATEMENT OF FACTS

### Plaintiffs

1. Daniel D. Easterday is a natural person, and a citizen and resident of the Village of Deerfield, in Lake County, Illinois. Easterday owns several firearms which he legally purchased that are considered assault weapons under O-18-06, as well as large capacity magazines, also as defined in O-18-06.

2. In addition to the firearms that Easterday owns, he desires to legally purchase additional firearms, parts and accessories, including some parts and accessories for the firearms he now owns, but cannot because they would be banned by the subject Ordinance O-18-06.

3. Easterday is a law-abiding citizen who possesses the said firearms for self-protection and protection of himself and his family in their home, and for target shooting. He has a FOID card issued by the Illinois State Police pursuant to the Illinois FOID Act, 430 ILCS 65/1 *et seq.* He also has a concealed carry license issued by the Illinois State Police pursuant to the Illinois Firearm Concealed Carry Act, 430 ILCS 66/1, *et seq.*

4. SAF is a non-profit membership organization incorporated under the laws of Washington with its principal place of business in Bellevue, Washington. SAF's membership includes residents of the Village of Deerfield, Illinois. SAF has over 650,000 members and supporters nationwide. The purposes of SAF include

education, research, publishing and legal action focusing on the Constitutional right privately to own and possess firearms. SAF brings this action on behalf of itself and its members.

5. Members of SAF who reside in Deerfield, Illinois would possess assault weapons and large capacity magazines for self-defense, but refrain from doing so because of the penalties in Section 15-89 of Ordinance O-18-06, and the confiscation/destruction provisions in Section 15-91 of Ordinance O-18-06.

6. ISRA is a non-profit membership organization incorporated under the laws of Illinois with its principal place of business in Chatsworth, Illinois. ISRA has over 17,000 members and supporters in Illinois, and many members outside the State of Illinois. The purposes of ISRA include securing the Constitutional right to privately own and possess firearms within Illinois, through education, outreach, and litigation. ISRA brings this action on behalf of itself and its members.

7. Members of ISRA who reside in Deerfield, Illinois would possess assault weapons and large capacity magazines for self-defense, but refrain from doing so because of the penalties in Section 15-89 of Ordinance O-18-06, and the confiscation/destruction provisions in Section 15-91 of Ordinance O-18-06.

8. Easterday is a member of SAF and ISRA.

### **Defendant**

9. Defendant Village of Deerfield is a municipal entity organized under the Constitution and laws of the State of Illinois. It lies in Lake County, with a small portion lying within Cook County.

10. Deerfield is governed by a Mayor and Board of Trustees. The Deerfield Board of Trustees is composed of six Trustees who serve four-year staggered terms.

11. Harriet Rosenthal is the Mayor of the Village of Deerfield. She is the chief executive officer of the Village, the President of the Board of Trustees, and has supervisory authority over all employees of the Village. She has served as Mayor since 2009.

12. The Board of Trustees is the legislative department of the village government. At all relevant times, the Trustees were: Robert “Bob” Benton, Tom Jester, Bill Seiden, Dan Shapiro, Barbara Struthers, and Mary M. Oppenheim.

### **State Law**

13. Effective July 9, 2013, the Illinois Legislature amended the Firearm Owners Identification Card Act (430 ILCS 65/1, *et seq.*). Specifically, Section 65/13.1 of the amended FOID Card Act stated at all relevant times:

(b) . . . the regulation, licensing, possession, and registration of handguns and ammunition for a handgun, and the transportation of any firearm and ammunition by a holder of a valid Firearm Owner’s Identification Card issued by the Department of State Police under this Act are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, enacted on or before the effective date of this amendatory Act of the 98th General Assembly [P.A. 98-63] that purports to impose regulations or restrictions on a holder of a valid Firearm Owner’s Identification Card issued by the Department of State Police under this Act in a manner that is inconsistent with this Act, on the effective date of this amendatory Act of the 98th General Assembly, shall be invalid in its application to a holder of a valid Firearm Owner’s Identification Card issued by the Department of State Police under this Act.

(c) Notwithstanding subsection (a) of this Section, the regulation of the possession or ownership of assault weapons are exclusive powers and functions of this State. Any ordinance or regulation, or portion of that ordinance or regulation, that purports to regulate the possession or ownership of assault weapons in a manner that is inconsistent with this Act, shall be invalid unless the ordinance or regulation is enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly. Any ordinance or regulation described in this subsection (c) enacted more than 10 days after the effective date of this amendatory Act of the 98th General Assembly is invalid. An ordinance enacted on, before, or within 10 days after the effective date of this amendatory Act of the 98th General Assembly may be amended. The enactment or amendment of ordinances under this subsection (c) are subject to the submission requirements of Section 13.3 [430 ILCS 65/13.3]. For the purposes of this subsection, “assault weapons” means firearms designated by either make or model or by a test or list of cosmetic features that cumulatively would place the firearm into a definition of “assault weapon” under the ordinance.

(d) For the purposes of this Section, “handgun” has the meaning ascribed to it in Section 5 of the Firearm Concealed Carry Act [430 ILCS 66/5].

(e) This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution [Ill. Const. Art. VII, § 6].

14. 430 ILCS 66/5 states that:

“Handgun” means any device which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas, or escape of gas that is designed to be held and fired by the use of a single hand. “Handgun” does not include:

(1) a stun gun or taser;

(2) a machine gun as defined in item (i) of paragraph (7) of subsection (a) of Section 24-1 of the Criminal Code of 2012 [720 ILCS 5/24-1];

(3) a short-barreled rifle or shotgun as defined in item (ii) of paragraph (7) of subsection (a) of Section 24-1 of the Criminal Code of 2012; or

(4) any pneumatic gun, spring gun, paint ball gun, or B-B gun which expels a single globular projectile not exceeding .18 inch in diameter, or which has a maximum muzzle velocity of less than 700 feet per second, or which expels breakable paint balls containing washable marking colors.

15. Additionally, at all relevant times, Section 66/90 of the Firearm Concealed Carry Act (430 ILCS 66/90) stated as follows:

The regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns by licensees are exclusive powers and functions of the State. Any ordinance or regulation, or portion thereof, enacted on or before the effective date of this Act that purports to impose regulations or restrictions on licensees or handguns and ammunition for handguns in a manner inconsistent with this Act shall be invalid in its application to licensees under this Act on the effective date of this Act. This Section is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of Article VII of the Illinois Constitution [Ill. Const., Art. VII, § 6].

16. While the 2013 amended FOID Card Act at 430 ILCS 65/13.1(c) allowed home rule municipalities until July 19, 2013 to regulate the possession or ownership of assault weapons, the 2013 amended FOID Card Act at 430 ILCS 65/13.1(b) specifically did *not* allow home rule municipalities, such as the Village, that same window as applied to handguns.

**2013 Village Ordinance (O-13-24)**

17. On July 1, 2013, the Village of Deerfield enacted Ordinance O-13-24 – *An Ordinance Regulating the Ownership and Possession of Assault Weapons in the*

*Village of Deerfield*. The Ordinance, which was valid because it was passed in the proper timeframe as stated in 430 ILCS 65/13.1, defined assault weapons (Sec. 15-86), required safe storage as a condition for possessing assault weapons possessed in the Village (Sec. 15-87(a)), provided for a lawful self-defense exception for violation of the safe storage requirement (Sec. 15-87(b)), and listed requirements for the possession, carrying, and transportation of assault weapons (Sec. 15-88).

**2018 Village Ordinance (O-18-06)**

18. On April 2, 2018, the Board of Trustees of the Village of Deerfield, Illinois, enacted O-18-06 - *An Ordinance Amending Chapter 15 (Morals and Conduct), Article 11 (Assault Weapons), Section 15-87 (Safe Storage of Assault Weapons) and Section 15-88 (Transportation of Assault Weapons) of the Municipal Code of the Village of Deerfield to Regulate the Possession, Manufacture, and Sale of Assault Weapons in the Village of Deerfield*. O-18-06 was labeled as an “amendment” to Ordinance O-13-24.

19. Rather than being a mere amendment to O-13-24, however, O-18-06 is actually a new ordinance.

20. Whereas O-13-24 allowed the possession of assault weapons under certain conditions, and even contained a lawful self-defense exception for using them, O-18-06 bans them entirely (Sec. 15-87(a)). There is also no lawful self-defense exception.

21. Though these new restrictions have limited exceptions for law enforcement, retired law enforcement, and military personnel, they are not relevant to Plaintiffs in this action.

22. O-18-06 provides that assault weapons and large capacity magazines in Deerfield will be confiscated and destroyed (Secs. 15-89; 15-91). O-13-24, in contrast, contains no such provision.

23. Also, while Section 15-91 of O-18-06 calls for the confiscation and destruction of large capacity magazines, they are not actually banned by any other section in O-18-06.

24. Further, while Deerfield may intend that large capacity magazines should be confiscated and destroyed pursuant to O-18-06, the original ordinance O-13-24 does not restrict or regulate the possession or use of large capacity magazines at all, except as they may be used in conjunction with an assault weapon.

#### **IRREPARABLE HARM AND INADEQUATE REMEDY AT LAW**

25. Plaintiffs will suffer irreparable harm if the Ordinance is enforced. Unless relief is granted herein, Plaintiffs will incur irreparable harm in that despite their aforesaid legal possession of firearms and magazines, and without any intent on their part to engage in any illegal activity they will be subject to penalties and loss of property.

26. The Plaintiffs will have no adequate remedy at law, there being no forum to recover damages, the Village most likely being immune from liability for tortious conduct and resulting losses.



27. While care should be used in granting injunctions to avoid prospective injuries, there is no requirement that the Court must wait until the injury occurs before granting relief, and Plaintiffs have demonstrated both irreparable harm is imminent, and their remedy at law would be inadequate.

28. Pursuant to Section 15-90 of O-18-06, Plaintiffs and/or their members have until June 1, 2018 to remove assault weapons and large capacity magazines from the Village, or to modify them, or to surrender them to the Deerfield Chief of Police. If this is not done, Plaintiffs will be prosecuted, and damages resulting from enforcement of the subject ordinance as amended are likely and not merely possible.

#### **COUNT I – PREEMPTION UNDER STATE LAW**

1-28. Plaintiffs reassert and reallege paragraphs 1 through 28, above, as paragraphs 1 through 28 of this Count I.

29. The Village only has authority to exercise its home rule powers to the extent the Illinois Legislature has not preempted those powers.

30. 430 ILCS 65/13.1(e) states that the FOID preemption statute is a “denial and limitation of home rule powers and functions.”

31. Further, 430 ILCS 66/90 states that the concealed carry preemption statute is a “denial and limitation of home rule powers and functions.”

32. While 430 ILCS 65/13.1(c) allowed for a validly-passed municipal ordinance regarding assault weapons to be amended, the statute does not allow the municipality to broaden the ordinance to the point where it is no longer the same ordinance. That is what the Village has done with O-18-06.

33. Therefore, the provisions of O-18-06 that are an improper broadening of O-13-24 must be invalidated by the preemption doctrine as effected by 430 ILCS 65/13.1 and/or 430 ILCS 66/90. Those provisions include:

- a. The banning of the possession of assault weapons, even if following safe storage requirements, as described in Section 15-87 of O-18-06;
- b. The banning of handguns and ammunition that the Village was defined as assault weapons to concealed carry license-holders, as described in Section 15-87 of O-18-06;
- c. The elimination of a lawful self-defense exception to the violation of Section 15-87 of O-18-06;
- d. The banning of Deerfield residents from being able to “carry, keep, bear, transport, or possess an assault weapon in the Village” unless said firearm is merely being transported through the Village in either a broken-down non-functioning state, and is not immediately accessible to any person, or is unloaded and encased (Sec. 15-88 of O-18-06);
- e. The confiscation and destruction of assault weapons (Sec. 15-91 of O-18-06);
- f. The confiscation and destruction of large capacity magazines (Sec. 15-91 of O-18-06);

WHEREFORE, the Plaintiffs, DANIEL D. EASTERDAY, ILLINOIS STATE RIFLE ASSOCIATION, and SECOND AMENDMENT FOUNDATION. INC., request this honorable court to enter judgment in their favor and against the Defendant, and to grant Plaintiffs the following relief:

1. Enter a declaratory judgment that the subject Ordinance O-18-06 is preempted by state law and unenforceable, with regard to the following provisions:



David G. Sigale  
LAW FIRM OF DAVID G. SIGALE, P.C.  
799 Roosevelt Road, Suite 207  
Glen Ellyn, IL 60137  
630.452.4547  
Atty. ID# 6238103  
dsigale@sigalelaw.com