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Illinois law banning guns near parks unconstitutional

by James G. Wargo

The Illinois Supreme Court unanimously held that the State's law prohibiting a firearm within 1,000 feet of a public park was unconstitutional in the recent case of *People v. Chairez,* 2018 IL 121417. The court concluded that the firearms prohibition constituted a "severe burden" on the right of self-defense recognized under the Second Amendment. In declaring the statute unconstitutional, the court concluded that the State failed to establish a strong public-interest justification and a close fit to that end.

On April 24, 2013, defendant Julio Chairez pled guilty to possessing a firearm within 1,000 feet of a public park in Aurora, which is a direct violation of Section 24-1(c)(1.5) of the unlawful use of a weapon ("UUW") statute under the Illinois Criminal Code. (720 ILCS 5/24-1 (c) (1.5)). On November 5, 2015, Chairez filed a petition to vacate his conviction on the grounds that the UUW statute was unconstitutional under the Second Amendment. Chairez argued that the prohibition against carrying a firearm within 1,000 feet of so many locations – including a school, public housing, a public park, a courthouse, and a public transportation facility — effectively barred a person from carrying a firearm in public.

The circuit court judge declared Section 24-1(c)(1.5) of the UUW statute unconstitutional. The judge reasoned that the "thousand-foot language" in the statute amounted to a "near comprehensive ban" that would have the practical effect of prohibiting a person from leaving his house with a "licensed firearm because he would constantly be in jeopardy of accidently and unknowingly entering within a thousand feet of a school, public park, public transportation facility" or public housing. The State filed an appeal from the court's ruling directly to the Illinois Supreme Court.

On appeal, the Illinois Supreme Court agreed that the prohibition against possessing a firearm within 1,000 feet of a public park was facially unconstitutional. However, the court only affirmed the *public park* prohibition, noting that Chairez lacked standing to challenge the constitutionality of the offenses for which he was not charged. In other words, he could not challenge the other restrictions in the UUW statute that prohibited the possession of a firearm on a public way.

The court was guided in its analysis by the United States Supreme Court's decision in *District of Columbia v. Heller,* 554 U.S. 570 (2008). Specifically, the Court in *Heller* held that the Second Amendment guarantees the "individual right to possess and carry weapons in case of confrontation." However, the Supreme Court cautioned that even though the Second Amendment

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Home rule authority extends to removal of municipal library board member

by John E. Motylinski

Home rule powers are especially broad. Indeed, home rule units have all powers of a sovereign unless the General Assembly has expressly limited those powers. In the recent decision of *Jaros v. Village of Downers Grove*, 2017 IL App (2d) 170758, the Illinois Appellate Court illustrated just how wide-reaching home rule authority can be in upholding a local government's power to remove a municipal library board trustee.

The Village of Downers Grove is a home rule municipality and is intimately related to the Downers Grove Public Library, which was established pursuant to the Local Library Act (75 ILCS 5). For example, under the Library Act, the Village has statutory authority to appoint library trustees. Significantly, the Village also enacted an ordinance, using its home rule powers, permitting its Village Council to remove any member of a Village board or commission where the member was appointed by the Village Council in the first place.

In August 2015, Arthur Jaros was appointed to the Library Board for a six-year term by the Village Council. At the Library's August 23, 2017, meeting, a League of Women Voters monitor reported that Jaros questioned why library

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staff members needed training on inclusion and diversity. Jaros also reportedly said that the library staff should protect children from exposure to homosexuals and homosexual lifestyle. Jaros fervently denied that the monitor's claims were accurate. Nevertheless, the Village Council - relying on its ordinance - unanimously voted to remove Jaros as a Library Trustee.

Jaros took the matter to the circuit court, arguing that the Village had no authority to remove him. The circuit court disagreed and dismissed his lawsuit. Jaros then appealed to the Illinois Appellate Court, Second District.

On appeal, Jaros advanced three arguments. First, he contended that the Village and the Library were two separate and distinct public bodies. Therefore, the Village could not exercise its home rule powers and remove him. Second, Jaros asserted that the Village could not remove him because home rule units need to run an authorizing referendum to "alter or repeal a form of government provided by law" under the Illinois Constitution. Since no referendum was passed, Jaros contended he could not have been removed. Third, Jaros argued that Section 4-4 of the Library Act governed removal of Library trustees, even though it only referred to vacancies on its face.

Considering the merits of the case, the appellate court started with the premise that the Village, as a home rule municipality, was able to pass ordinances that had the same force and effect as State law - so long as the General Assembly does not explicitly take that power away. The court found no evidence that the General Assembly had intended to deprive home rule municipalities of their ability to remove library trustees. Therefore, the Village's removal ordinance was presumptively valid.

The court then rejected each of Jaros's arguments in turn. First, even if the Library was technically a separate unit of local government, the Illinois Supreme Court had already held that home rule municipalities can exercise their authority over their libraries. Therefore, Jaros's first argument was moot.

If the General Assembly had intended to limit home rule authority to remove Library Board trustees, it would have said so in a statute.

Second, the court found that no referendum was required to remove Jaros. In the court's view, no "form of government" would be changed by removing him, as it did not implicate "the relationship between the legislative and executive branches" of the Village or Library Board. Stated differently, the removal did not modify the structure or organization of the Library Board; it merely regulated which individuals could serve as trustees in the established scheme.

Finally, Section 4-4 of the Library Act, which was cited by Jaros as fatal to the Village's attempt to remove him, was inapplicable. The court found that Section 4-4 only deals with the filling of vacancies on the Library Board. As such, the court refused to read into Section 4-4 "an implied limitation on when vacancies *must be* declared," and found that it "does not speak at all to discretionary removal or to the creation of vacancies in situations other than those listed." If the General Assembly had intended to limit home rule authority to remove Library Board trustees, it would have said so in a statute. Therefore, Section 4-4 was of no help to Jaros.

In conclusion, the appellate court ruled that the Village properly removed Jaros appropriately exercising its home rule powers.

The *Jaros* decision serves as a demonstration of the breadth of home rule powers. Indeed, home rule units will be presumed to wield the power of the State, so long as the General Assembly has not said otherwise, and this power may even extend to the composition of an independent public body. Accordingly, home rule governments should keep their tremendous powers in mind in confronting and resolving unique local issues. ■

Attorney Note . . .

Carolyn Welch Clifford will be presenting at the Illinois Government Finance Officers Association (IGFOA) conference in June. Intended for middle-level finance professionals, her session on "Pension 101: What every finance professional needs to know about firefighter and police pension funds" will provide a basic overview of the police and fire pension fund administration and the role of the municipal finance professional in administering the funds.

Additional population deviation in City's voting districts constitutional

by Meganne Trela

After the 2010 Census, the City of Chicago Heights drafted a new voting map to match the change in the City's population. The Seventh Circuit eventually addressed the constitutionality of those aldermanic districts in *McCoy v. Chicago Heights Election Commission*, 880 F.3d 411 (7th Cir. 2018). The City met its burden under the Equal Protection Clause of the Constitution to provide legitimate, non-discriminatory reasons for reapportioning its voting district map despite an overall population deviation of more than 10 percent.

Prior to the most recent lawsuit, the City was involved in a lawsuit regarding the aldermanic districts, which resulted in a Consent Decree. The original lawsuit, which dated back to 1987, alleged that the City and the Chicago Heights Park District diluted voting opportunity and challenged the manner in which representatives were elected to the City Council. Based on the finding that the City violated the Voting Rights Act of 1965, a 2010 Consent Decree was entered by the federal court in the Northern District of Illinois. The Decree established a seven-ward, single aldermanic form of government with a ward map that met applicable constitutional requirements. However, the Decree also contained a provision requiring the City to reapportion the wards as the population fluctuated.

The 2010 Census showed that the population in the City had changed and, therefore, required that the City re-apportion the voting districts accordingly. By motion, the City submitted a revised map to the federal district court with the seven voting districts each having less than a 10% population deviation. That means each district's population was within 10% of the ideal where all districts are of equal size. However, the overall population deviation was 12.65%, meaning the difference between the smallest and largest districts was too large. Because a population deviation of more than 10% requires the government to provide justifications for the variance under the Voting Rights Act of 1965, the district court denied the City's motion, but allowed the City to submit a justification for the variance in its proposed map.

> *While exact precision is not required, government bodies are required to make an honest and good faith effort to make voting districts with populations that are as equal as possible.*

The City justified the variance by stating that it was attempting to maintain the historical and natural boundary lines where possible to avoid voter confusion. The City theorized that unusual boundary lines would create undue confusion among voters. After holding an evidentiary hearing, the district court approved the City's proposed map as constitutional.

On review, the Seventh Circuit reasoned that the principle of "one person, one vote" found in the Equal Protection Clause of the Constitution requires that government officials are elected from voting districts with substantially equal populations. While exact precision is not required, government bodies are required to make an honest and good faith effort to make voting districts with populations that are as equal as possible.

Corporation counsel for the City was primarily responsible for re-drawing the voting districts along with a cartographer. The City's corporate counsel testified at the hearing that his focus in creating the map was to make as little change as possible to the wards to avoid voter confusion. He also testified that he used major thoroughfares as the natural dividing lines between wards. Challengers to the City's map argued that they developed a map that was more equally apportioned.

In addressing the challenger's argument, the Seventh Circuit found that the Decree only contemplated the submission of the City's draft voting map and did not require the district court to review maps submitted by the challengers. Thus, the court was only required to review whether the map presented by the City was constitutionally adequate.

The Seventh Circuit in this case found that the justifications were legitimate and non-discriminatory. The court reasoned that maintaining historical boundaries and utilizing major thoroughfares as natural dividing lines was constitutionally acceptable. Further, the court found that challengers to the City's submission failed to present any evidence of discriminatory intent. Therefore, the deviation, although greater than the deviation typically allowed by courts, was constitutional and satisfied the principle of one person, one vote.

Communities must be careful to maintain voting districts that pass constitutional muster. Local governments must be able to provide legitimate, non-discriminatory reasons for voting districts that surpass a 10% population deviation. For questions regarding voting districts, contact an attorney at Ottosen Britz. ■

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guarantees the right to bear arms, that right is "not unlimited" and it does not confer a right "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." The Court cited several examples of lawful regulations, including "longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."

To decide the case, the Illinois Supreme Court applied the two-part approach adopted in *Wilson v. County of Cook,* 2012 IL 112026. Under the first step, the court determines whether the challenged statute imposes a burden on conduct that fell "within the scope of the Second Amendment's protection at the time of ratification." If not, then the "regulated activity" is unprotected and is not subject to further review. However, if the "historical evidence is inconclusive or suggests that the regulated activity is not categorically unprotected," the court proceeds to the second step of the inquiry: applying "heightened means-ends scrutiny." Under this standard, the court considers "the strength of the government's justification for restricting or regulating the exercise" of Second Amendment rights.

In regard to the first step, the State argued that the Second Amendment does not protect possession of a firearm within 1,000 feet of a public park. The prohibition is a presumptively valid restriction because public parks constitute a "sensitive place" similar to a school or governmental building. The court declined to decide whether the restriction fell outside the protection of the Second Amendment, focusing instead on the second step. Specifically, the court agreed with other courts that assume some level of scrutiny must be applied to even a "presumptively lawful" regulation under *Heller.*

Upon moving to step two, the court cited the United States Court of Appeals for the Seventh Circuit, which noted that any severe burden on the right of an "armed self-defense" will require "an extremely strong public-interest justification and a close fit between the government's means and its ends." *Ezell v. City of Chicago,* 651 F.3d 684 (7th Cir. 2011). According to the Illinois Supreme Court, the UUW statute creates a "severe burden," because the right of self-defense is close to the core of the Second Amendment's protections. Therefore, the State needed to establish a close connection between the prohibition around public parks and the actual public interest served by the law.

The court rejected the State's arguments that a compelling interest in public safety was "served by reducing firearm possession within 1,000 feet of a public park," thereby keeping children and others safe. The State provided no evidence to support its claims that banning guns near a public park would reduce that danger. Accordingly, the court held that the law prohibiting possession of a firearm within 1,000 feet of a public park was facially unconstitutional.

Finally, the court found the unconstitutional ban on firearms near parks severable from the remaining provisions of the UUW statute. Therefore, the remaining 1,000-foot firearm restriction zones involving schools, courthouses, public transportation facilities, and public housing remain enforceable. ■

As of the publication date, the decision in Chairez has not been released for publication in permanent law reports. Therefore, the opinion is subject to revision or withdrawal.

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