

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Raymond P. Moore**

Civil Action No. 22-cv-01685-RM

ROCKY MOUNTAIN GUN OWNERS,
NATIONAL ASSOCIATION FOR GUN RIGHTS, and
CHARLES BRADLEY WALKER,

Plaintiffs,

v.

THE TOWN OF SUPERIOR, a Colorado municipality, and
JOE PELLE, in his capacity as Sheriff of Boulder County, Colorado

Defendants.

TEMPORARY RESTRAINING ORDER

Before the Court is Plaintiffs' Motion for a Temporary Restraining Order and for Preliminary Injunction (ECF No. 11). While the Motion seeks a temporary restraining order ("TRO") and a preliminary injunction, at this time, the Court rules only on the request for a TRO. The request for a preliminary injunction will be deferred until the hearing set forth below. The Court grants in part, denies in part, and defers in part the Motion for the reasons below. The Court also sets this matter for a status hearing and a hearing on the Motion for a Preliminary Injunction.

I. BACKGROUND

The Town of Superior, Colorado, one of the defendants in this case¹, adopted an ordinance that went into effect on July 1, 2022, which amended the Superior Municipal Code, Article 9, Section 10, (the “Amended Code”) and which regulates the possession, use, transfer, and sale of certain weapons within the Town limits. Town of Superior Ordinance 0-9 Series 2022. Plaintiffs, two nonprofit organizations that represent gun owners, as well as one current resident of Superior, Colorado, filed a Complaint raising one claim for relief. (ECF No. 1.) Plaintiffs assert that the Amended Code violates their rights to keep and bear arms pursuant to the Second and Fourteenth Amendments to the United States Constitution. They seek declaratory judgment holding the provisions unconstitutional on their face or as applied to law-abiding adults. Plaintiffs also filed the Motion at issue, requesting that this Court enter a TRO immediately and that it set this matter for consideration of their motion for a preliminary injunction. (ECF No. 11.)

In its effort to rule on the Motion, the Court has faced two significant challenges. It is not entirely clear to the Court, based on Plaintiffs’ Motion, which precise provisions of the Amended Code they wish to challenge. The Court also notes, however, that the Amended Code is not, itself, a model of clarity. Nevertheless, based on the Motion, it appears to the Court that Plaintiffs primarily challenge three of the Amended Code’s provisions—section 10-9-40, section 10-9-240, and section 10-9-260.

¹ Defendant Joe Pelle is named in his official capacity as the Sheriff of Boulder County, Colorado. The Town of Superior contracts with the Boulder County Sheriff’s Office for public safety purposes and Plaintiffs assert that it is Defendant Pelle who will be responsible for implementing the provisions of the amended Municipal Code.

II. LEGAL STANDARDS AND ANALYSIS

The Court begins its analysis with a discussion of the standard for the granting of a TRO and then proceeds to briefly review the Supreme Court's recent pronouncements on the right to bear arms. The Court then turns to each of the challenged provisions and will discuss them in turn.

A. TRO Standard

To obtain a TRO or injunctive relief in any other form a plaintiff must establish: “(1) a substantial likelihood of prevailing on the merits; (2) irreparable harm unless the injunction is issued; (3) that the threatened injury outweighs the harm that the preliminary injunction may cause the opposing party; and (4) that the injunction, if issued, will not adversely affect the public interest.” *Diné Citizens Against Ruining Our Environment v. Jewell*, 839 F.3d 1276, 1281 (10th Cir. 2016) (quotation omitted). The final two requirements merge when the government is the opposing party. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). “It is the movant’s burden to establish that each of these factors tips in his or her favor.” *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1188-89 (10th Cir. 2003). In cases like this one, in which a TRO would provide the movant all of the relief that could be sought at trial on the merits, an injunction is considered disfavored. *Awad v. Ziriya*, 670 F.3d 1111, 1125 (10th Cir. 2012). The Court must, therefore, scrutinize such motions more closely and the movant must make a strong showing of both the likelihood of success on the merits and that the balance of harms favors the relief. *Id.* at 1125-26. If the movant, however, demonstrates that “the three ‘harm’ factors tip *decidedly* in its favor, the ‘probability of success requirement’ is somewhat relaxed.” *Heideman*, 348 F.3d at 1189 (emphasis original).

A TRO is an extraordinary remedy, and therefore the plaintiff must demonstrate a right to relief that is clear and unequivocal. *Schrier v. Univ. of Colo.*, 427 F.3d 1253, 1258 (10th Cir. 2005). A TRO may issue without notice to the opposing party, but its duration is limited to fourteen days unless the Court extends it for an additional fourteen days for good cause or the adverse parties agree to a longer extension. Fed. R. Civ. P. 65(b)(2).

B. The Right to Bear Arms

Beginning with its 2008 decision in the case of *District Columbia v. Heller*, 554 U.S. 570 (2008), through its recent decision in *New York State Rifle & Pistol Assn. v. Bruen*, 142 S.Ct. 2111 (2022), the Supreme Court has issued several opinions clarifying the scope of the right to bear arms as protected by the Second and Fourteenth Amendments to the Constitution. In *Heller*, the Court concluded that the Second Amendment secures the right to bear arms and that an absolute prohibition on the possession of handguns violated that right. 554 U.S. at 573, 636. The Court acknowledged that “[l]ike most rights, the right secured by the Second Amendment is not unlimited. . . . [T]he right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* at 626. The Court concluded that the type of weapons protected are “those ‘in common use at the time.’” *Id.* at 627 (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)). Governments can, the Court noted, restrict certain dangerous and unusual weapons, “those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns.” *Id.* at 625-627.

In *McDonald v. City of Chicago, Il.*, 561 U.S. 742, 749, 791 (2010), the Court concluded that the Second Amendment “is fully applicable to the States” as incorporated by the Fourteenth Amendment.