

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GUNS SAVE LIFE, INC., *et al.*,
Plaintiff,

v.

ZAHRA ALLI, in her capacity as
Director of the Department of
Revenue of Cook County, *et al.*,
Defendants.

No. 2015-CH-18217

Calendar 16

Judge David B. Atkins

JUDGE DAVID B. ATKINS

AUG 17 2018

Circuit Court-1879

MEMORANDUM OPINION AND ORDER

THIS CASE COMING TO BE HEARD on Plaintiffs' Motion for Summary Judgment and Defendants' Cross Motion for Summary Judgment, the court having considered the briefs submitted and being fully advised in the premises,

THE COURT HEREBY ORDERS that the Plaintiffs' Motion is DENIED and Defendants' Motion is GRANTED.

Background

This is a facial challenge to two Cook County ordinances: the Firearm Tax Ordinance, §§74-665 *et seq.*, and a later amendment to the same, Ordinance 15-6469 (together, the "Firearm and Ammunition Tax" or "Taxes"). The Firearm and Ammunition Tax imposes a \$25.00 tax on the purchase of any firearm in Cook County, and a \$0.01 or \$0.05 per cartridge tax (depending on the type) of firearm ammunition. Plaintiffs (who have either paid the Taxes or been affected by it as a retailer) filed this action in 2015, alleging that the Taxes violate their right to keep and bear arms under the Second and Fourteenth Amendments to the United States Constitution, as well as under Article 1, Section 22 of the Illinois Constitution. The court partially granted Defendants' Motion to Dismiss, and the parties now move for summary judgment.

Legal Standard

Summary judgment is appropriate when the pleadings, depositions, admissions, and affidavits illustrate no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005; *Miller v. William Chevrolet*, 326 Ill. App. 3d 642, 648 (2001). Because summary judgment is a drastic means of disposition of litigation it should be allowed only when the resolution of the case depends on a question of law, and the moving party's right to judgment is free and clear from doubt. *Country Mutual Insurance Co. v. Hagan*, 298 Ill. App. 3d 495, 500 (1998). If the party moving

for summary judgment supplies facts which, if not contradicted, would entitle the party to judgment as a matter of law, the opposing party cannot rely on his pleading alone to create a genuine issue of material fact. *Fields v. Schaumburg Firefighters' Pension Bd.*, 383 Ill. App. 3d 209, 224 (2008). Where, as here, the parties have filed cross-motions for judgment, they agree that no genuine issue of material fact exists, only a question of law is involved, and they invite the court to decide the issue based on the record. *Cordeck Sales, Inc. v. Construction Systems, Inc.*, 382 Ill. App. 3d 334, 343 (2008).

Discussion

Initially, as noted above, the parties all move for summary judgment in this matter and it is clearly appropriate for the same. No questions of fact remain and the only issue is whether the Firearms and Ammunition Tax is valid under the Illinois and US Constitutions. Turning to the merits thereof, the parties at length dispute the basis of the court's review, with Plaintiffs asserting heightened scrutiny must apply and Defendants arguing that they need only have a rational basis for the Taxes because they do not even implicate Plaintiffs' right to bear arms.

It is clear that the Illinois and US Constitutions create a fundamental, individual right to keep and bear arms. *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 750 (2010). The Illinois Supreme Court has reiterated these points and instructed that some level of heightened scrutiny (though it remains unclear exactly what level) applies whenever "the challenged law imposes a burden on conduct falling within the scope of the second amendment guarantee." *Wilson v. County of Cook*, 2012 IL 112026 ¶41-42 (2012). Plaintiffs have chosen to mount a facial challenge to the City's Firearm and Ammunition Tax. To be successful, the Plaintiffs must establish that there is no set of circumstances that exists under which it would be valid. *Gatz v. Brown*, 2017 IL App (1st) 160579, ¶15 (citing *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305-306 (2008)). Indeed, the Supreme Court in *United States v. Salerno* made clear that a facial challenge to a statute will fail if it has any constitutional application. 481 US 739, 745 (1987).

The Court in *District of Columbia v. Heller* made clear that "nothing in our opinion should be taken to cast doubt on long-standing laws imposing conditions and qualifications on the commercial sale of arms." 554 US 570, 626-27 (2008). In this case, Plaintiffs have failed to show that the Tax is more than an inconsequential burden so as to overcome this presumption of validity. See *Heller II*, 670 F. 3d 1253.

The Illinois Supreme Court has instructed that a 2-pronged approach is necessary to determine whether or not a law challenged on 2nd Amendment grounds is invalid. The first question is "whether the challenged law imposes

a burden on conduct falling within the scope of the 2nd Amendment guarantee.” *Wilson*, 2012 IL 112026 ¶41. The \$25 Firearm Tax and \$.01 or \$.05 Ammunition Tax are proper exercises of Cook County’s Home Rule taxing powers and do not in any meaningful way impede plaintiffs’ ability to exercise their 2nd Amendment right to bear arms.

Although any tax on goods or services adds to the cost thereof, courts have consistently understood that such additional costs by themselves do not render a tax unconstitutional. See e.g. *Cloverdale v. Arkansas-Louisiana Pipe Line Co.*, 303 U.S. 604, 612 (1938) (holding that “increased cost alone is not sufficient to invalidate a tax as an interference with interstate commerce” in violation of the Commerce Clause); see also *Kwong v. Bloomberg*, 723 F.3d. 160, 167-68 (2nd Cir. 2013). Plaintiffs provide no evidence that the Tax will have the effect of preventing their ownership or possession of firearms or that it affects the ability of law-abiding citizens to retain sufficient means of self-defense.

Unlike those cases involving a weapons ban, the tax in this case neither takes away firearms nor restricts their ownership or possession and thus does not burden the right. *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015); see also *Wollschlaeger v. Governor*, 848 F.3d 1293 (11th Cir. 2017). No constitutionally relevant burden exists in this case as a result of the Tax. Similarly, just as the court finds the Tax does not significantly infringe on any rights under the 2nd Amendment, it also does not infringe on similar rights under Article I, Section 22 of the Illinois Constitution.

Assuming *arguendo* that one were to consider the minimal Tax to create a “burden”(which it does not), it is also substantially related to the important government interest of public safety. The use of guns creates significant expenditures of public safety resources. The Tax addresses some of those costs, and provides funds to implement specific policies and programs designed to combat violence. As the US Supreme Court has ruled, there is no constitutional requirement “that the amount of general revenue taxes collected from a particular activity must be reasonably related to the value of the services provided to the activity.” *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 622 (1981). A general revenue tax is not a fee for specific services, but is a means of distributing the burden of the cost of government, and there is no constitutional imperative that the specific benefits to a given taxpayer achieve a certain proportion to the burden on that taxpayer. *Id.* (citing *Carmichael v. Southern Coal and Coke Co.*, 301 U.S. 495, 521-23 (1937)). Defraying the societal costs of guns in Cook County is significant, substantial, and an important governmental objective.

Plaintiff also argues that the FOID Act and FCCA preempt the Tax. In determining whether an ordinance is preempted by statute, the court must

first look to the text of the statute or statutes and determine the scope of their preemptive effect. By their plain language, both the FCCA and the FOID act will preempt “the regulation, licensing, possession, registration, and transportation of handguns and ammunition for handguns” by the municipalities to the extent that they are “inconsistent.” See 430 ILCS 66/90; 65/13.1. Taxes are conspicuously absent from the measures preempted. Moreover, the legislative history of House Bill 183 (otherwise known as the FCCA) further suggests the statute was not intended to preempt taxation. Section 13.1 of the FOID Act and §90 of the FCCA do not preempt the Firearm and Ammunition Tax Ordinance. The tax is a valid exercise of Cook County’s home rule power to tax.

Additionally, the classifications in the tax are valid under the Illinois Uniformity Clause. Centerfire ammunition and rimfire ammunition are clearly defined and differentiated, supporting taxing them at different rates, arguably based on the amount of damage each is capable of inflicting. Plaintiffs have failed to carry their burden of demonstrating that the different rates of classification violate the Uniformity Clause.

This court finds that:

1. The Firearm and Ammunition Tax Ordinance violates neither the Second or the Fourteenth Amendments to the United States Constitution or Article 1, Section 22 of the Illinois State Constitution;
2. The Firearm and Ammunition Tax Ordinance does not violate the uniformity clause of the Illinois State Constitution; and
3. The FOID Act and the FCCA do not preempt the Firearm and Ammunition Tax Ordinance and the court, accordingly, declines to enjoin Defendants from enforcing the tax.

WHEREFORE, Plaintiffs’ Motion for Summary Judgment is DENIED and Defendants’ Cross Motion for Summary Judgment is GRANTED in that judgment is hereby entered in favor of Defendants and against Plaintiffs. This is a final and appealable order.

ENTERED:
JUDGE DAVID B. ATKINS

AUG 17 2018

Circuit Court-1879

Judge David B. Atkins

The court.