

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff,

v.

CITY OF DALLAS,
KIMBERLY BIZOR TOLBERT, in her
official capacity as the Interim City
Manager for the City of Dallas
and the
STATE FAIR OF TEXAS,
Defendants.

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IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL VERIFIED PETITION FOR CIVIL PENALTIES,
TEMPORARY INJUNCTION AND PERMANENT INJUNCTIVE RELIEF**

TO THE HONORABLE COURT:

COMES NOW the State of Texas by and through Ken Paxton, Attorney General of Texas, and files this Original Verified Petition seeking civil penalties, a temporary injunction and permanent injunctive relief for the wrongful exclusion of handguns. The exclusion of handguns from the State Fair is an illegal *ultra vires* act because it exceeds the legal authority of the officials of the City of Dallas. In support thereof, the State of Texas would respectfully show the Court as follows:

I. DISCOVERY CONTROL PLAN

1.1 In accordance with Tex. R. Civ. P. 190.1, discovery in this case is intended to be conducted under Level 2 of the discovery control plan provided by Tex. R. Civ. P. 190.3.

II. JURISDICTION AND VENUE

2.1 Plaintiff seeks monetary relief of \$250,000 or less and non-monetary relief. *See*, Tex. R. Civ. P. 47(c). The relief sought is within the jurisdiction of this court. Tex. Const. art. V, § 8, Tex. Gov't Code Ann. §§ 24.007, 24.008 and 24.011, and Tex. Civ. Prac. & Rem. Code Ann. § 65.021(a).

2.2 Venue is proper in Dallas County, Texas as the events and omissions that give rise to plaintiff's claims and request for relief occurred in Dallas County. Tex. Civ. Prac. & Rem. Code Ann. § 15.002(a)(1). Venue is also proper in Dallas County as this is the county where the defendants have their principal offices in our state. Tex. Gov't Code Ann. § 411.209(f), Tex. Civ. Prac. & Rem. Code Ann. § 15.002(a)(3). *See also gen.*, Tex. Civ. Prac. & Rem. Code Ann. § 65.023.

III. PARTIES

3.1 Plaintiff the State of Texas by and through Ken Paxton, the Attorney General of Texas, is authorized to enforce Tex. Gov't Code Ann. § 411.209. Tex. Gov't Code Ann. § 411.209(g). The Attorney General is also authorized to prosecute all actions in which the state is interested before the courts of appeals and the supreme court. Tex. Gov't Code Ann. § 402.021.

3.2 Defendant City of Dallas is a political subdivision of the state of Texas. Defendant may be served with process by serving its interim city manager, Kimberly Bizer Tolbert, c/o Dallas City Hall, 1500 Marilla Street, Room 4EN, Dallas, Texas 75201.

3.3 Defendant Kimberly Bizer Tolbert, is the Interim City Manager for the

City of Dallas and she may be served with process at Dallas City Hall, 1500 Marilla Street, Room 4EN, Dallas, Texas 75201.

3.4 Defendant State Fair of Texas is a Texas nonprofit corporation. Defendant may be served with process by serving its registered agent, Robert B. Smith, 3838 Oak Lawn Ave., Suite 1000, Dallas, Texas 75219.

IV. FACTUAL BACKGROUND

4.1 The 277 acres known as Fair Park, at 1200 2nd Ave. / 3809 Grand Avenue, Dallas, Texas is owned by the City of Dallas and managed by Fair Park First, a domestic nonprofit corporation. However, the nonprofit corporation the State Fair of Texas operates the annual State Fair of Texas at Fair Park, in Dallas under the terms of the Fair Park Contract or lease agreement. This year's State Fair is scheduled to occur from September 27, 2024 to October 20, 2024.

4.2 Under the terms of subject lease agreement the State Fair of Texas has agreed to indemnify the City of Dallas and its officers, agents and employees harmless against any and all claims, lawsuits, judgment, costs, and expenses for harm for which recovery of damages might be sought that might arise out of or be occasioned by acts or omissions of the State Fair, its officers, agents, employees or contractors, unless the liability resulted from the sole negligence or fault of the City of Dallas. The subject lease agreement also expressly states that the agreement is governed by and construed in accordance with the laws and court decisions of the State of Texas.

V. FIRST CAUSE OF ACTION

5.1 By August 8, 2024, Texas residents licensed to carry a handgun under Chapter 411 of the Texas Government Code filed complaints and evidence with the Attorney General regarding the City of Dallas and State Fair of Texas being in violation of the law.

5.2 The Attorney General in evaluating and investigating these complaints noted that the State Fair of Texas within the frequently asked questions (FAQs) page on its website in response to “Can Someone with a License to Carry (LTC) bring their firearm to the Fair?” has responded “No.” See, <https://bigtex.com/about-us/faq/>.

5.3 Through public comments as well as the published statement from the State Fair of Texas website, the City of Dallas as a political subdivision of the state has communicated, by implication, that a license holder carrying a handgun under the authority of Subchapter H, Chapter 411, Texas Government Code, is prohibited from entering or remaining on the premises or other place or property owned or leased by the City of Dallas, *i.e.*, the entirety of the 277-acre Fair Park.

5.4 Tex. Gov’t Code Ann. § 411.209(a) prohibits state agencies or political subdivisions of the state (such as the City of Dallas) from taking any action, including an action consisting of the provision of notice by a communication described by Tex. Penal Code Ann. §§ 30.06 or 30.07, that states or implies that a license holder who is carrying a handgun under the authority of such subchapter is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are prohibited from carrying a handgun

on the premises or other place by Tex. Penal Code Ann. § 46.03 or other law.

5.5 While there are some premises or buildings within Fair Park where a license holder is prohibited under Tex. Penal Code Ann. § 46.03(a)(8) from carrying a weapon, such as certain premises or buildings within Fair Park when they are used for a high school, collegiate, professional sporting or interscholastic events, the vast majority of the 277-acre Fair Park in Dallas is not a place where weapons or firearms are prohibited.

5.6 On August 13, 2024, the Attorney General gave written notice to the chief administrative officer of the City of Dallas as required under Tex. Gov't Code Ann. § 411.209(f), which included a description of the violation of Tex. Gov't Code Ann. § 411.209, stated the amount of the proposed penalty for the first violation, and gave the city 15 days from receipt of the notice to cure the violation and thereby avoid the penalty. A copy of this notice was also provided to the State Fair of Texas.

5.7 On August 28, 2024, the City of Dallas provided its written response, wherein the City of Dallas asserted it had not violated Tex. Gov't Code Ann. § 411.209. To date the City of Dallas and the State Fair of Texas have not cured the violation to avoid civil penalties.

5.8 All conditions precedent have been performed or have occurred prior to the plaintiff filing suit under Tex. Gov't Code Ann. § 411.209.

5.9 Tex. Gov't Code Ann. § 411.209(b) states that a political subdivision of the state that violates Tex. Gov't Code Ann. § 411.209(a) is liable for a civil penalty of not less than \$1,000 and not more than \$1,500 for the first violation, and not less

than \$10,000 and not more than \$10,500 for the second or a subsequent violation. Tex. Gov't Code Ann. § 411.209(c) states that each day of a continuing violation of Tex. Gov't Code Ann. § 411.209(a) constitutes a separate violation.

5.10 The plaintiff has pled a valid cause of action and, as permitted by Tex. Gov't Code Ann. § 411.209(g), is requesting temporary and permanent injunctive relief. The plaintiff has a probable right to such relief because the allegations herein show the Defendants have violated the Texas Government Code. As a statute is being violated, the doctrine of balancing the equities has no application, and it is within province of the district court to restrain it. *State v. Texas Pet Foods, Inc.*, 591 S.W.2d 800, 805 (Tex. 1979). Injunctive relief is proper under Tex. Civ. Prac. & Rem. Code Ann. § 65.011.

5.11 Pursuant to Tex. Gov't Code Ann. § 411.209(g), the Attorney General is also entitled, and hereby requests, to recover reasonable expenses, including court costs, reasonable attorney fees, investigative costs, witness fees and deposition costs.

VI. SECOND CAUSE OF ACTION

6.1 The City of Dallas assigns Dallas Police Department officers to work the State Fair, to enforce applicable laws including criminal trespass.

6.2 Tex. Penal Code Ann. § 30.06 identifies what constitutes criminal trespass by a license holder with a concealed handgun.

6.3 Tex. Penal Code Ann. § 30.06(e) however states that it is an exception to § 30.06, if a license holder carries a handgun on property that is owned or leased

by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Tex. Penal Code Ann. § 46.03.

6.4 Tex. Penal Code Ann. § 30.07 identifies what constitutes criminal trespass by a license holder with an openly carried handgun.

6.5 Tex. Penal Code Ann. § 30.07(e) however states that it is an exception to § 30.07, if a license holder openly carries a handgun on property that is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Tex. Penal Code Ann. § 46.03.

6.6 While there are some premises or buildings located within Fair Park where a license holder is prohibited under Tex. Penal Code Ann. § 46.03(a)(8) from carrying a weapon such as certain premises or buildings when they are used for a high school, collegiate, professional sporting or interscholastic events, the vast majority of the 277-acre Fair Park in Dallas is not a place where weapons or firearms are prohibited, and those licensed to carry should not be subject arrest upon entering the Fair grounds or for entering most of the premises within Fair Park.

6.7 The City of Dallas and/or Kimberly Bizer Tolbert as City Manager, through the officers of the Dallas Police Department should therefore be enjoined from enforcing any criminal trespass law against licensed carry holders – except in those situations where a licensed carry holder enters premises or a building within the State Fair where such premises are specially identified in Tex. Penal Code Ann. § 46.03(a)(8).

6.8 The City of Dallas and/or Kimberly Bizer Tolbert, through law enforcement officers of the Dallas Police Department are about to perform law enforcement tasks at the State Fair, which is the subject of this litigation including the arrest of licensed carry holders, in violation of the rights of such licensed carry holders and in violation of our state law, which would render any judgment in this case ineffectual. In addition, or in the alternative the plaintiff is entitled to an injunction under the principles of equity and the penal statutes of this state. In addition, or in the alternative should these arrests occur, it will cause irreparable injury to the personal reputations of our licensed carry holders, irrespective of any remedy at law. Injunctive relief is therefore proper under Tex. Civ. Prac. & Rem. Code Ann. § 65.011.

VII. THIRD CAUSE OF ACTION

7.1 The Texas Legislature recognized the Second Amendment of the U.S. Constitution and also recognized that Section 23, Article I, of the Texas Constitution secures for Texas citizens the right to keep and bear arms and that the Legislature has the power, by law, to regulate the wearing of arms, with a view to prevent crime. The Texas Legislature passed the Firearm Carry Act of 2021, (H.B. 1927) which was signed by Governor Abbott and became effective September 1, 2021, amending various statutory provisions allowing most people 21 and older to carry a handgun in Texas without a license to carry.

7.2 Our state government and the political subdivisions of our state, including the City of Dallas and City officials, must respect the actions of our Texas

Legislature and allow the unlicensed carry of a firearm on government property unless it is specifically prohibited by law, such as those premises or places identified in Tex. Penal Code Ann. § 46.03.

7.3 While there are some premises or buildings located within Fair Park where weapons are prohibited under Tex. Penal Code Ann. § 46.03(a)(8) such as certain premises or buildings when they are used for a high school, collegiate, professional sporting or interscholastic events, the vast majority of the 277-acre Fair Park in Dallas is not a place where weapons or firearms are prohibited, and those individuals without a license to carry should be permitted to enter upon Fair grounds and should also be permitted to enter into most of the premises or buildings located within Fair Park's 277 acres.

7.4 The State Fair of Texas within the frequently asked questions (FAQs) page on its website in response to "Can I Bring Any Weapons Into the Fair?" has responded "The State Fair of Texas prohibits fairgoers from carrying all firearms, . . . This includes concealed carry and open carry of firearms anywhere on the fairgrounds . . ." See, <https://bigtex.com/about-us/faq/>

7.5 To the extent that the Kimberly Bizer Tolbert as the City Manager for the City of Dallas (and the City Attorney and/or Board President of the Park and Recreation Board of the City of Dallas), have permitted or allowed lessee the State Fair of Texas, to prevent private citizen rights of the unlicensed carry of firearms on most of Fair Park, during the State Fair of Texas, the City Manager has acted without legal or statutory authority to do so.

7.6 City Manager Tolbert, the City of Dallas and the State Fair of Texas should be enjoined under the principles of equity and the statutes of this state.

7.7 The Court should issue such an injunction because the City Manager lacks the authority to allow the State Fair of Texas to post signs to exclude those who carry handguns or to otherwise violate the rights of handgun owners by excluding them from City property, and her decision to do so is, therefore, *ultra vires*. That is particularly true here, where the City Manager signed the contract, lease agreement or amendments to the agreement with the State Fair of Texas.

7.8 The City Manager is failing to carry out the purely ministerial act of allowing handgun owners who are exercising their constitutional right to carry a handgun without a license to enter Fair Park. *See, City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009).

VIII. FOURTH CAUSE OF ACTION

8.1 As previously stated, the City of Dallas, and/or the City Manager assign Dallas Police Department officers to work the State Fair, to enforce applicable laws including criminal trespass.

8.2 While there are some premises or buildings located within Fair Park where carrying a weapon is prohibited under Tex. Penal Code Ann. § 46.03(a)(8) such as certain premises or buildings when they are used for a high school, collegiate, professional sporting or interscholastic events, the vast majority of the 277-acre Fair Park in Dallas is not a place where the unlicensed carrying of a weapon or firearm is prohibited and those unlicensed to carry should not be subject to arrest upon entering

the Fair grounds or for entering most of the premises within Fair Park. Such actions to enforce the exclusion of those who have the right to carry a handgun without a license into Fair Park are outside the legal authority of City officials and are *ultra vires* actions.

8.3 The City of Dallas and Kimberly Bizer Tolbert as City Manager, should therefore be enjoined from enforcing any criminal trespass law against unlicensed carry – except in those situations where the person engaged in the unlicensed carry enters premises or a building within the State Fair where such premises are specially identified in Tex. Penal Code Ann. § 46.03(a)(8).

8.4 Officers of the Dallas Police Department are about to perform law enforcement tasks at the State Fair, which is the subject of this litigation, including the arrest of those who carry a handgun unlicensed, in violation of the rights of such individuals and in violation of our state law, which would render any judgment in this case ineffectual.

8.5 Plaintiff asks the Court to enjoin the defendants from acting outside their legal authority by banning guns and by allowing the police to arrest people who violate the illegal ban. The Court should also order defendants to perform the purely ministerial act of allowing people to enter the Park while exercising their constitutional right to carry a handgun and should order the police not to arrest people who exercise their constitutional right to carry a handgun.

8.6 In addition, or in the alternative, the plaintiff is entitled to an injunction under the principles of equity and the penal statutes of this state. Should these

arrests occur, it will cause irreparable injury to the personal reputations of those citizens that carry a handgun unlicensed, irrespective of any remedy at law. Injunctive relief is therefore proper under Tex. Civ. Prac. & Rem. Code Ann. § 65.011.

IX. PRAYER

WHEREFORE, plaintiff requests that it be awarded penalties, reasonable attorney fees, investigative costs, witness fees, deposition costs, and be granted injunctive relief as state above, and that it not be required to post any bond in accordance with Tex. Civ. Prac. & Rem. Code Ann. § 6.001, that it be granted temporary injunctive relief and permanent injunctive relief, as stated above, and for such other and further relief, at law or in equity, to which the plaintiff may show itself justly entitled.

Respectfully, submitted,

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Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

RALPH MOLINA
Deputy First Assistant Attorney General

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ATTORNEYS FOR PLAINTIFF

CAUSE NO. _____

STATE OF TEXAS,
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CITY OF DALLAS,
KIMBERLY BIZOR TOLBERT, in her
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IN THE DISTRICT COURT OF

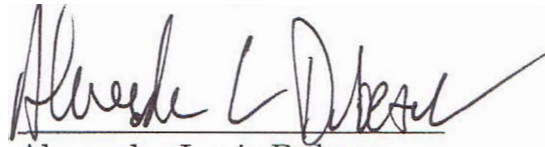
DALLAS COUNTY, TEXAS

____ JUDICIAL DISTRICT

Unsworn Declaration of Alexandre Louis Dubeau

My name is Alexandre Louis Dubeau, and I am an employee / investigator of the following governmental agency: Office of the Attorney General, Administrative Law Division, located at 300 W. 15th Street, Austin, Texas 78701. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing factual statements in the Plaintiff's Petition are true and correct.

Executed in Bastrop County, Texas on this the 28 day of August, 2024.


Alexandre Louis Dubeau