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VIA E-MAIL & U.S. MAIL

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Demand for Immediate Rescission and Termination of Weapons Prohibition

Dear Town of Leland:

Just yesterday, the Town of Leland issued a “State of Emergency and Evacuation Notice in Preparation for Hurricane Florence,” which contains the following provision (*italics added*):

“Effective at 9:00 p.m. on Wednesday, September 12, 2018, *the transportation or possession, or the sale or purchase of any dangerous weapon or substance, while off one’s own premises, is prohibited.* This restriction does not apply to any individual or group of people who has the responsibility for the preservation of the public’s health, safety, or welfare. This restriction does not apply to any law enforcement officers, military personnel assigned for hurricane disaster duties, emergency medical personnel, or any other individual or groups of individuals whose job/employment will assist with the public’s health, safety, or welfare (i.e. fuel delivery personnel, utility repair personnel, etc.)”

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This “State of Emergency Notice” cites “N.C.G.S. Section 166” as the authority for the prohibitory declaration. However, “Section” 166 does not exist and never did. *Chapter* 166 did at exist one time, but that was repealed in 1977. The only existing authority on which this proclamation could be based is Chapter *166A*.

Specifically, the nature and extent of any power the Town has to lawfully issue enforceable declarations restricting citizens’ rights in such situations must be derived from N.C.G.S. § 166A-19.31, which permits local municipalities to “enact ordinances designed to permit the imposition of prohibitions and restrictions within the emergency area during a state of emergency.” § 166A-19.31(a).

But this power is expressly circumscribed for any prohibitions against firearms or ammunition, by subdivision (b) of 166A-19.31, which provides “[t]he ordinances authorized by this section may permit prohibitions and restrictions [¶] ... [¶] [u]pon the possession, transportation, sale, purchase, storage, and use of gasoline, and dangerous weapons and substances, *except that this subdivision does not authorize prohibitions or restrictions on lawfully possessed firearms or ammunition.* § 166A-19.31(b)(4) (italics added).

The statute goes on to explain that “[a]s used in this subdivision, the term ‘dangerous weapons and substances’ has the same meaning as it does under G.S. 14-288.1.” § 166A-19.31(b)(4). N.C.G.S. § 14-288.1 in turn defines a “dangerous weapon or substance” as “[a]ny deadly weapon, ammunition, explosive, incendiary device, radioactive material or device, as defined in G.S. 14-288.8(c)(5) [dealing with weapons “of mass death and destruction”], or any instrument or substance designed for a use that carries a threat of serious bodily injury or destruction of property; or any instrument or substance that is capable of being used to inflict serious bodily injury, when the circumstances indicate a probability that such instrument or substance will be so used; or any part or ingredient in any instrument or substance included above, when the circumstances indicate a probability that such part or ingredient will be so used.”

Despite the clear parameters established by the state law conferring authority for municipalities to act in times of emergency, the prohibition in the Leland State of Emergency Notice does *not* contain any reference to the express limitation upon prohibitions regulating firearms and ammunitions during such times. This limitation is crucial to ensuring such extraordinary declarations do not infringe the fundamental constitutional right to keep and bear arms under the Second Amendment.

Nor does the prohibitory declaration anywhere define “dangerous weapon or substance” as that phrase is used in the Notice so as to make clear that this phrase is to be understood and applied in the same manner as defined in the governing statutory law. This renders the prohibition void for vagueness insofar as the affected citizens cannot be reasonably certain of just what constitutes a “dangerous weapon or substance” *for purposes of Leland’s prohibition*, and it sets the stage for arbitrary or discriminatory enforcement since those enforcing the prohibition could apply various and conflicting interpretations.

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For the same reasons, such a vague and overbroad prohibition allowing for numerous conceivably absurd applications cannot legitimately advance the express stated purposes behind the law conferring such authority upon municipalities: “The purposes of this Article are to set forth the authority and responsibility of the Governor, State agencies, and local governments in prevention of, preparation for, response to, and recovery from natural or man-made emergencies or hostile military or paramilitary action and to do the following [¶] ... ¶] Reduce vulnerability of people and property of this State to damage, injury, and loss of life and property.” § 166A-19.1(1).

The Town’s prohibition could well *increase* vulnerability to damage, injury, or loss of life or property, by chilling the otherwise lawful use and possession of firearms and ammunition in the protection of oneself or one’s property during these times – rights expressly *preserved* under the state law in the event of such states of emergency – and by inviting arbitrary and discriminatory enforcement against those who exercise the right to use or possess firearms, ammunition, or any device that could swept up into the undefined category of “dangerous” weapons or substances.

And it follows that the Town’s prohibition runs afoul of the supreme law of the land. The Supreme Court’s “central holding” in the seminal case of *District of Columbia v. Heller*, 554 U.S. 570 (2008) – which solidified once and for all the individual nature of this right – was “that the Second Amendment protects a personal right to keep and bear arms for lawful purposes...” *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010); *see also Bateman v. Perdue*, 881 F.Supp.2d 709 (2012).

* * *

Disasters and potential disasters are *prima facie* reasons to protect the fundamental, individual right to keep and bear arms for all lawful purposes, including self-defense and hunting; they are not political opportunities to restrict these crucial constitutional rights.

Leland’s State of Emergency Notice should immediately be amended to strike the offending language creating this unlawful and unconstitutional weapons prohibition. Should the Town fail to do so, and/or attempt to enforce the same against any resident, it stands exposed to civil actions for declaratory and injunctive relief as well as monetary damages.

Please contact this office with any questions you may have. Thank you.

Sincerely,

/s/

Ray DiGuseppe

The DiGuseppe Law Firm, P.C.

Legal Counsel for

Firearms Policy Coalition

Firearms Policy Foundation