

<p>Supreme Court, State of Colorado Court Address: 2 East 14th Ave. Denver, CO 80203</p> <p>Appeal from: Denver District Court Judge Larry Manzanares, 03CV8609</p>	
<p>Plaintiff-Appellant: John A. Sternberg</p> <p>v.</p> <p>Defendants-Appellees: City and County of Denver, a home rule municipal corporation State of Colorado; and John Hickenloper, as Mayor of the City ounty of Denver</p>	<p>COURT USE ONLY</p>
<p>Attorney for Appellant: Stephen P. Halbrook Suite 404 10560 Main St. Fairfax, VA 22030 (703) 352-7276</p> <p>Anne Whalen Gill Anne Whalen Gill, P.C. 510 Wilcox Street, Suite C Castle Rock, CO 80104 Phone:303 713-9050 Fax: 303 713-0785 fax E-mail: annewhalengillpc@qwest.net Atty. Reg. #: 14610</p>	<p>Case Number: 05SA22</p>
<p>Opening Brief</p>	

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Issues Presented

- 6. Did the district court err in ruling that the area of firearms regulation is not a matter of statewide concern, as expressly stated in SB 3-24 and SB 03-25?**
- 7. Did the district court err in ruling that Denver ordinances addressing carrying of firearms, in conflict with state law, were not preempted by the provisions of SB 03-24 and SB 03-25?**
- 8. Did the district court err in ruling that Denver ordinances prohibiting certain types of firearms, contrary to the express language of SB 03-25, were not preempted?**
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- 10. Did the district court err in ruling that Denver may regulate the storage of firearms notwithstanding that the state validly regulates the possession of firearms?**

Statement of the Case and Facts

The Territory of Colorado began regulating firearms at least as far back as 1868. It continued that tradition as it became a state in 1876, including the right to self defense as inalienable and to bear arms in self defense in the state constitution. Art. II, §§ 3 and 13. Colorado brought that tradition of regulating firearms forward by continuously enacting legislation, reflecting societal issues throughout the years. At this time, there are literally dozens of state laws addressing firearms.

In 2003, after over ten years of debating various bills addressing licensing

concealed carry, the General Assembly enacted two bills, SB 03-24 and SB 03-25. Both declared the area of firearms regulation to be of statewide interest, and specifically addressed the need for statewide legislation due to the inconsistent patchwork of local laws and abuses in enforcing those law. The inconsistency of local laws and the difficulty of obtaining them placed ordinary citizens at risk of criminal violations.

Under SB 24, Aa permittee . . . may carry a concealed handgun as allowed by state law.@ C.R.S. ' 18-12-204(2)(a). A person with a permit may carry a concealed handgun in Aall areas of the state, except as specifically limited in this section A local government does not have authority to adopt or enforce an ordinance or resolution that would conflict with any provision of this part 2.@ C.R.S. ' 18-12-214(1)(a).¹

DRMC ' 38-117(a) provides in pertinent part:

It shall be unlawful for any person . . . to wear under their clothes, or concealed about their person any dangerous or deadly weapon, including, but not by way of limitation, any pistol, revolver, rifle, shotgun, . . . or other dangerous or deadly weapon.

Section 38-117(f) contains critically important exceptions to the above, but a person searching for that provision will likely be aware only of the obsolete

¹ A permittee is not authorized to carry a concealed weapon where prohibited by federal law, on public school property, or in a public building with security personnel and electronic weapons screening devices permanently in place and operational. *Id.* subsection (2), (3) and (4).

version and not the correct version. The obsolete version is represented as current by the Denver City Clerk,² is on Denver=s website³ and in WestLaw⁴ and is in the hard copy of Denver=s ordinances currently found in the Colorado Supreme Court Library. The obsolete version of ' 38-117(f) provides:

It shall not be an offense under 38-117(a) or 38-117(b) if the person is carrying the weapon concealed within a private automobile or other private means of conveyance, for lawful protection of such person's or another person's person or property, while traveling into or through the city to or from another jurisdiction, regardless of the number of times the person stops in the city or the other jurisdiction, and the weapon is not an explosive device, incendiary device, or a bomb.

Totally hidden from publication is the 2004 amendment, Ordinance No. 469, Series 2004, ' 1, which is not in the Record but is attached as Appendix 1. Undersigned counsel were able to obtain this amendment from the Denver Clerk only because they had this citation. An ordinary citizen would rely on the inaccurate public sources listed above. As amended, ' 38-117(f) provides (new language in italics):

It shall not be an offense under 38-117(a) or 38-117(b) if:

² Visit by counsel with Denver City Clerk, May 25, 2005.

³ <http://www.denvergov.org/Treasury/template110259.asp> (visited May 25, 2005), which links the visitor to http://library6.municode.com/gateway.dll/CO/colorado/340?f=templates&fn=default.htm&npuuse_rname=10257&nppassword=MCC&npac_credent (visited May 25, 2005).

⁴ WestLaw=s version claims to be Acurrent through Ordinance Number 889-04, adopted November 29, 2004.@ Visited May 25, 2005.

(1) *The person, at the time of carrying the concealed weapon, holds a valid written permit to carry a concealed weapon issued pursuant to section 18-12-105.1, C.R.S., prior to its repeal, or, if the weapon involved was a handgun, holds a valid permit or a temporary emergency permit to carry a concealed handgun issued pursuant to state law and is otherwise carrying handgun in conformance with any applicable state or local law; or*

(2) The person is carrying the weapon concealed within a private automobile or other private means of conveyance, for *hunting or for* lawful protection of such person=s or another person=s person or property, while traveling into or through the city to or from another jurisdiction, regardless of the number of times the person stops in the city or the other jurisdiction, and the weapon is not an explosive device, incendiary device, or a bomb.

In addition to the above, ' 2 of Ordinance No. 469 amended ' 38-117.5 to repeal Denver=s requirements that a concealed weapon must be obtained from the police chief based on a showing of need, and to provide: AThe manager of safety or the manager=s designee is authorized to issue permits for the carrying of concealed handguns in accordance with standards and procedures set forth in state law.@ However, all of the above cited public references still contain the repealed language. An ordinary citizen who has a permit issued according to current state law would nonetheless fear arrest by the police should he or she carry in Denver.

Similarly, ' 3 of Ordinance No. 469 amended ' 38-118 to repeal ' 38-118(a)(3), which made it an affirmative defense to a charge under ' 38-117(a) or (b) that a person had a permit by a police chief or sheriff to carry a weapon.

Again, because this amendment is not reflected in the publicly-available sources,

an ordinary citizen would think that this affirmative defense was still the law.

To say the least, it is extremely difficult to obtain information about Denver's gun restrictions. The result is that firearm owners will either be in unknowing violation of these restrictions or will forego exercise of a constitutional and statutory right for fear of violation of an ordinance. This is why uniform State statutes should govern this area of the criminal law.

SB 03-24 addressed concealed carry, statewide permitting standards, and where firearms may be carried. SB 03-25 addressed preemption of more restrictive local laws addressing sale, purchase, possession, and carry of firearms.

Denver, cited in the General Assembly as the local government that caused many of the problems leading to the declarations that statewide regulation was appropriate, challenged these laws in a declaratory judgment action. Concerned that their interests were not represented in that action between Denver and the State, John A. Sternberg and the Aurora Gun Club sought to intervene. After the motion for intervention was denied, they filed a separate action against Denver which is the subject of this appeal.

In the Sternberg case, the plaintiffs pursued discovery and developed a factual record addressing the history of unequal issuance of permits to carry firearms under the previous statute; the lack of factual basis for Denver's ban on

“inferior” firearms which actually banned (only the transfer of) certain modern firearms which used advanced technical materials; that because these “inferior” firearms were on the approved list for Denver police to carry, Denver actually facilitated violation of its own ordinance when its police officers sought to obtain these firearms; that Denver’s seizures of firearms under its ordinances were poorly documented and that extremely few firearms were seized, contrary to the assertion that these were the weapons of choice of criminals, etc. Sternberg argued that SB 03-24 and SB 03-25, consistent with their legislative declarations, did address matters of statewide interest and preempted all inconsistent local ordinances. In contrast to Sternberg’s developed record, the State conceded that firearms regulation was either a matter of statewide interest or of mixed interest and did not develop a factual record comparable to Sternberg’s.

The State litigation was decided on cross-motions for summary judgment, holding that the state laws were unconstitutional restrictions on Denver’s right to regulate in certain areas but uphold the state law as to concealed carry and some other areas.

Even though the Sternberg case had no concessions on the statewide interest of firearms regulation, and different and voluminous facts in the record, the court adopted the decision in the State case. After the ruling was reduced to writing

pursuant to C.R.C.P. 58(a), Sternberg timely filed this appeal. Denver failed to appeal in this case.

Summary of Argument

A home rule city=s ordinances that conflict with state law are preempted unless those ordinances address a matter of purely local concern. The state laws at issue here, SB 03-24 and 25, address matters of state-wide concern and preempt conflicting Denver municipal ordinances. The district court erred in finding that open carry, possession of certain types of firearms, and possession of firearms in parks were matters of local concern so that parts of SB 24 and 25 were preempted by Denver and the statutes were unconstitutional restrictions on Denver=s ordinances. It also erred in upholding Denver=s storage ordinance.

ARGUMENT

I. SB 24 AND 25 ARE VALID ENACTMENTS INVOLVING MATTERS OF STATEWIDE OR MIXED STATEWIDE-LOCAL CONCERN

This case arises from the enactment in 2003 of Senate Bill 24, creating statewide uniformity over the carrying of concealed handguns, and Senate Bill 25, creating statewide uniformity over the sale, purchase and possession of firearms, carry within a private vehicle, and the posting of areas where open carrying of firearms is illegal. Inconsistent local ordinances, including certain of Denver=s

ordinances involved in this case such as bans on certain otherwise legal firearms and no requirement of posting areas where carrying of firearms is prohibited, are preempted as a matter of statewide concern or mixed statewide-local concern. Left unaffected are local ordinances regulating the discharge of firearms or the misuse of firearms.

In invalidating portions of SB 24 and SB 25, the lower court=s decision is unprecedented. Counsel is unaware of any case in American legal history in which a state firearms preemption law was invalidated on the grounds of home rule or any other reason.⁵

A. Legislative Declarations

In enacting SB 24, the General Assembly found a widespread inconsistency among jurisdictions in the state regarding the issuance of permits to carry concealed handguns and where it is lawful to carry concealed handguns. This created public uncertainty and resulted in arbitrary and capricious denials of permits based on residence rather than qualifications. Permit issuance historically has been regulated by the state, is based on the constitutional right to self protection, and is necessary to be occupied by the state to insure consistency.

C.R.S. ' 18-12-201(1). Accordingly, the Assembly concluded:

⁵ See Amicus Brief of the Colorado State Shooting Association addressing the number of states which have upheld state preemption of local firearms regulations.

- (a) The permitting and carrying of concealed handguns is a matter of statewide concern; and
- (b) It is necessary to provide statewide uniform standards for issuing permits to carry concealed handguns for self-defense.

C.R.S. ' 18-12-201(2).

Similarly, in enacting SB 25, the General Assembly recognized a duty to protect the fundamental rights to defend life and to keep and bear arms as reflected in Colo. Const., Art. II, ' ' 3 and 13. Widespread inconsistency in local laws on firearms regulations based on place of residence had an adverse extraterritorial impact on the public, was irrational, and placed citizens in unknowing violation of local criminal laws. C.R.S. ' 29-11.7-101(1). Thus, the Assembly concluded:

- (a) The regulation of firearms is a matter of statewide concern;
- (b) It is necessary to provide statewide laws concerning the possession and ownership of a firearm to ensure that law-abiding persons are not unfairly placed in the position of unknowingly committing crimes involving firearms.

C.R.S. ' 29-11.7-101(2). See also C.R.S. ' 18-12-105.6(2)(a).

These declarations demonstrate a clear intent to preempt the specific fields of regulation of firearms possession set forth in SB 24 and SB 25.⁶ As noted in

⁶ Some states go much further and preempt the entire field of firearms regulation. *E.g., see Penelas v. Arms Technology, Inc.*, 778 So.2d 1042, 1045 (Fla. 3d DCA 2001).

National Adver. Co. v. Department of Highways, 751 P.2d 632, 635 (Colo. 1988):

In light of the recognized legislative authority to declare the public policy of the state in matters of statewide concern, we have accorded great weight to the General Assembly's declaration that a particular matter is of statewide interest or concern.

B. Rules for Valid Preemption Consistent with Home Rule

SB 24 and SB25 are consistent with the home rule provisions of Colo.

Const., Art. XX, ' 6. The power of home-rule cities to enact local ordinances must yield when the Legislature preempts a field of regulation of statewide or mixed statewide-local concern. *City of Commerce City v. State*, 40 P.3d 1273, 1279 (Colo. 2002). A locality must prove that an ordinance regulates matters of purely local concern to avoid preemption by a conflicting state statute. *City of Northglenn v. Ibarra*, 62 P.3d 151, 155 (Colo. 2003).

The categories of regulatory concern are (1) local, (2) statewide, and (3) mixed. *Id.* Both home-rule cities and the state may regulate matters of local concern, but if there is a conflict, the home-rule provision prevails. *Id.* The state regulates matters both of statewide concern and of mixed statewide and local concern, and prevails if there is a conflict. *Id.*

The need for statewide uniformity is acute here, because firearm possession is constitutionally protected and is not a malum in se crime. Patchworks of conflicting local rules of what constitutes a crime are unfair. *See City of Canon*

City v. Merris, 137 Colo. 169, 181-82, 323 P.2d 614 (1958) (driving under the influence of alcohol is a matter of state-wide concern); *Cherry v. Municipality of Metro. Seattle*, 116 Wash.2d 794, 801, 808 P.2d 746, 748 (1991) (The Legislature . . . sought to eliminate a multiplicity of local laws relating to firearms and to advance uniformity in criminal firearms regulation.®).

Bennion v. City and County of Denver, 180 Colo. 213, 504 P.2d 350 (1972), noted: ABut where the subject matter of the ordinance is of state wide concern and the terms of the ordinance authorize what the legislature has forbidden, or forbid what the legislature has expressly authorized, the ordinance must fail.® *Id.* at 215.⁷ *Bennion* held that state law permitting resistance to an unlawful arrest preempted an ordinance making it a crime, explaining:

Here, although this case involved local police officers enforcing municipal ordinances, the right to resist arrest established by the statute in question applies to all citizens of the state and all law enforcement officials of the state. . . . The citizenry of the state justifiably expects some uniformity in the application of criminal laws defining their rights and responsibilities vis a vis law enforcement officials.

Id. at 216.

A home-rule city=s authority to legislate under its police powers is only

⁷ See *City of Portland v. Lodi*, 94 Or.App. 735, 738, 767 P.2d 108 (1989) (under home rule, AA city ordinance . . . cannot prohibit an act that the statute permits®; ordinance on carrying arms void); *Dwyer v. Farrell*, 193 Conn 7, 14, 475 A.2d 257 (1984) (The [firearms] ordinance effectively prohibits what the state statutes clearly permit® and was thus void).

available in matters of local concern. *City & County of Denver v. Qwest Corp.*, 18 P.3d 748, 755 (Colo. 2001). In matters of mixed state and local concern, a conflict exists if the ordinance forbids what the state legislation authorizes. *Commerce City*, 40 P.3d at 1284.

Factors to be considered in deciding the category as local, statewide, or mixed include (1) a need for statewide uniformity; (2) the extraterritorial impact of the legislation; (3) historical and traditional considerations; (4) Constitutional grants of authority; (5) legislative declarations; and (6) the degree of cooperation needed between state and local governments to effectuate the statutory scheme.

Northglenn, 62 P.3d at 156. These factors are considered below.

1. The Need for Statewide Uniformity

Besides the formal findings of SB 24 and SB 25, the legislative history is replete with references to the need for statewide uniformity over firearms regulation.⁸ Senator Ken Chlouber (R- Leadville), the sponsor of SB 24, noted the great inconsistency across the state regarding handgun permits, which were liberally issued in some jurisdictions and denied in Denver. Hearings on S.B. 24 Before Veterans & Military Affairs Judiciary Committee, 64th Gen. Assembly, 1st

⁸See *Town of Telluride v. Lot Thirty-Four Venture*, 3 P.3d 30, 38 (Colo. 2000) (quoting sponsor of bill to show that the General Assembly recognized the potential extraterritorial impact of rent control when it passed section 38-12-301). See also Amicus Brief of County of El Paso.

Reg. Sess. (audiotape, Jan. 22, 2003, 4:02-6:08 p.m.). Indeed, only 7 permits were issued in Denver. *Id.* (testimony of D. Ewing & A. Rathburn). Senator Ken Gordon (D-Denver) concurred, noting that under current law, any sheriff or police chief could issue permits to carry weapons concealed which were valid statewide. Hearings on S.B. 24 Before the Senate on Second Reading, 64th Gen. Assembly, 1st Reg. Sess. (audiotape, Feb. 24, 2003).

The legislative history of SB 25 demonstrates the need for statewide uniformity in the area of the possession of firearms. Senator Jim Dyer (R-Centennial), the bill's sponsor, stated:

The practical effect of this bill, Mr. Chairman, would be to establish a statewide uniform rule of firearms regulation wherein those who choose to have firearms will not be subject to contradictory, vague, and different rules and regulations and laws. It will not subject them to arrest and penalty or confiscation simply because they went from one jurisdiction of the state to another.

Hearings on S.B. 25 Before the Senate Judiciary Committee, 64th Gen. Assembly, 1st Reg. Sess (audiotape, Jan. 13, 2003, at 1:55-3:59 p.m.).⁹

Similarly, the patchwork of local ordinances also pointed to the need for statewide uniformity. Senator Evans explained:

⁹ Noting a sufficient body of state law already on the books that provides severe penalties for people that break those laws, Senator Dyer recognized the widespread nature of gun ownership and use in the state, indicating the need for fair, equitable laws that everybody understands and applies the same to each individual, as opposed to that individual being subject to a different law because he comes from a different place. *Id.*

The problem that we've got here in this state is a whole series of laws that are very different. . . . Englewood, you can't carry if you're charged with a violation which would ultimately lead to forfeiting your weapon. . . . In Thornton, proprietor of a small business in Lakewood, you can't have dinner with a spouse. That's right, you can't have dinner with a spouse in a restaurant. I mean, that's basically what it is. And a proprietor of a small business in Thornton can only carry when there is an immediate threat. And, of course, the most famous example is the Denver one where if you've got a concealed weapon, you're traveling through Denver, and if it's not a Denver permit, you get your weapon confiscated . . . I think adding certainty in the uniformity with any law would aid law enforcement actually more than it would hurt law enforcement officers because of the uniformity from jurisdiction to jurisdiction.

Id.

The General Assembly considered the importance of protecting constitutional rights:

The problem is we don't generally take things that are founded in constitutional right and . . . have them interpreted by cities. Your fifth amendment right for self-incrimination; your fourth amendment right for unreasonable search and seizure; within some fairly broad boundaries, your freedom of speech, most of those within reason are not redefined by cities. Zoning is okay, speed limits are okay. There is a whole group of things that cities could and should do, but creating a thousand, perhaps, inconsistent bodies of regulations and laws regarding the possession, use, transport of firearms has just created a patchwork that nobody clearly understands and subjects law-abiding citizens to prosecutions who have done nothing more than perhaps been in the wrong place at the wrong time.

Hearings on S.B. 25 Before the Senate Second Reading, 64th Gen. Assembly, 1st Reg.Sess.(audiotape, Feb. 19, 2003, at 12:16-1:10 p.m.).

On the matter of local concern, the perceived need of Denver for a stricter

law was also addressed:

I know Denver has a problem, but I don't think . . . [that] misdemeanor city ordinances are going to address the issue of drive-by shootings and gang warfare because my sense is that those are far more serious crimes than that.

Id.

Accordingly, the need for statewide uniformity of criminal laws involving firearm possession was adequately supported in both the formal findings and in the legislative debate.

2. Extraterritorial Impact

We have defined extraterritorial impacts as >those involving the expectations of state residents.=@ *Commerce City*, 40 P.3d at 1282. Further, municipal laws that impact >persons living outside the municipal limits= are relevant to the analysis of whether a matter is one of statewide concern@ *Id.*

Denver's ordinances at issue subject both state residents and persons from out of state, who rely on statewide uniformity to discriminatory treatment. They include persons with permits to carry handguns issued under Colorado law and others with such permits issued by other states, as well as persons who do not have permits but who are seeking to follow the rules regarding open carry, transport, or other possession of firearms. All such persons have reasonable expectations based on their adherence to state law, when in fact they are in jeopardy of arrest for

unknowing violation of Denver's ordinances.

3. Historical and Traditional Considerations

Colorado has a long history of regulating the possession and carrying of firearms. Beginning in 1868, the Territory of Colorado enacted Chapter 22, ' 149:

If any person or persons shall, within any city, town or village in this territory, whether the same is incorporated or not, carry concealed upon his or her person, any pistol, bowie-knife, dagger or other deadly weapon, such person shall upon conviction before any justice of the peace of the property county, be fined in any sum not less than five nor more than thirty-five dollars. . . .

In 1876, after it joined the Union, the Colorado Constitution declared self defense to be an Ainalienable right,@ Art. II, ' 3, and declared that the right to bear arms for self defense Ashall [not] be called in question,@ excluding the practice of carrying concealed weapons. Art. II, ' 13. In 1912, Colorado enacted Chapter 11, ' 1984 as follows:

No person, unless authorized to do so by the chief of police of a city, mayor of a town, the sheriff of a county, shall use or carry concealed upon his person any firearms, as defined by law, nor any pistol, revolver, bowie knife, dagger, sling shot, brass knuckles, or other deadly weapon.

In 1971, Colorado enacted C.R.S. ' ' 40-12-101 *et. seq.*, which added a formal permitting system effective in all areas of the state. C.R.S. ' 40-12-105 (1971). In 1980, this Court held that the authority to issue concealed carry permits was not an intrinsic power of sheriffs and police chiefs. *Douglas v. Kelton*, 610 P.2d 1067,

1069 (Colo. 1980). As a result, Colorado delegated specific authority to chiefs of police and sheriffs to issue concealed carry permits. C.R.S. ' ' 30-10-523 and 31-4-112.1 (1981 Supp.). In 2000, Colorado changed the permitted carrying of a concealed weapon from an affirmative defense to no offense. C.R.S. ' 18-12-105 (2000 Supp.).¹⁰

In 1989, Colorado specifically addressed the issue of assault weapons,¹⁰ refusing to criminalize the mere possession of them. Hearings on S.B. 248 Before the Senate Judiciary Committee, 57th Gen. Assembly, 1st Reg. Sess. (audiotape, April 26, 1989, at 2:39-3:44). Instead, the Legislature enacted a bill punishing use of a dangerous weapon¹¹ or semiautomatic assault weapon¹² in a crime of violence with an additional five-years mandatory sentence. C.R.S. ' 16-11-309(8) (1993 Supp.; section repealed in 2002 and relocated to ' 18-1.3-406). In addition to the sentencing-enhancement statute, Colorado has enacted laws that cover the gamut of firearms use and abuse.¹¹

4. Constitutional Considerations

¹⁰ Misuse of weapons was also the subject of legislation. As early as 1861, the Territory of Colorado legislated against the use of deadly weapons.¹⁰ G.L. ' 40 (dueling); ' 48 (assault with a deadly weapon); and ' 104 (officers bound to arrest those fighting with deadly weapons). After statehood, Colorado carried forward those same crimes. R.S.C. ' ' 40, 48, and 119. As of 1935, Colorado had consolidated its firearms laws at C.S.A. ' 245 *et. seq.*

¹¹See Appendix 2.

The Colorado Constitution, Article II, includes the following provisions:

Section 3. Inalienable rights. All persons have certain natural, essential and inalienable rights, among which may be reckoned the right of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property, and of seeking and obtaining their safety and happiness. . . .

Section 13. Right to bear arms. The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons.

Although the Colorado Constitution, Art. XX, provides for home rule cities and towns, there is no express delegation of any authority to municipalities to regulate in the field of firearms and personal protection. Given the interest in ensuring the protection of constitutional rights statewide, the State of Colorado must be the primary guarantor.¹²

5. Cooperation Needed Between State and Local Government To Effectuate The Statutory Scheme

The statewide statutory scheme governing firearms enacted in SB 24 and SB 25 can be effectuated only with the cooperation of Denver and precludes Denver=s conflicting regulatory scheme. AWhere not only uniformity is necessary, but

¹² AA state may validly restrict or regulate the right to possess arms if the purpose of such possession is not a constitutionally protected one.@ *People v. Pflugbeil*, 834 P.2d 843, 847 (Colo. App. 1992) (state procedure to petition court to deprive an involuntarily committed patient of legal right to weapons). As this exemplifies, firearm possession is an area of state conce

cooperation among governmental units, as well, and where action of state and county officials within the limits of the city is imperative to effectuate adequate protection outside the city, the matter will in all likelihood be considered a state concern.@ *City & County of Denver v. State*, 788 P.2d 764, 768 (Colo. 1990).¹³

6. Denver=s Policy Arguments are Not for the Courts

Firearms carrying, transport, and possession are not areas in which Athe State=s interests are so insignificant that the matter is one of purely local interest.@ *Commerce City*, 40 P.3d at 1284. Unable to make any such showing, Denver has made policy arguments against SB 24 and SB 25. However, ACourts must avoid making decisions that are intrinsically legislative. It is not up to the courts to make policy or to weigh policy.@ *Town of Telluride v. Lot 30-4 Venture, LLC*, 3 P.3d 30, 38 (Colo. 2000).

II. SPECIFIC PROVISIONS OF DENVER=S ORDINANCES ARE INCONSISTENT WITH STATE LAW AND ARE PREEMPTED

Specific provisions of the Denver ordinances conflict with state law and are preempted. The preempted areas included carrying concealed, transporting in a vehicle, carrying openly, and carrying in a posted City building; possession of Aassault@ and Ainferior quality@ firearms; access to firearms by juveniles; and

¹³ The reference to Aprotection outside the city@ is particularly relevant here, as applied to non-residents who are accustomed to State rules outside the city and who venture into the city, and its parks outside the city limits, unaware that conflicting rules apply.

possession of firearms in parks.

The opinion in *City & County of Denver v. State of Colorado*, No. 03 CV 3809, Denver Dist. Ct., Nov. 5, 2004 (Hon. Joseph E. Meyer III), see Record at 343-57, now on appeal in 04SA396, was adopted in this case. Record at 358. That decision is referred to below simply as *Opinion* with a citation to the appropriate page in the Record.

A. Carrying and Transporting Firearms

1. Carrying Concealed by Permittee or Non-Permittee

Denver's concealed carry ordinance, DRMC § 38-117(a), is preempted as a matter of statewide concern by SB 24 and SB 25, as it applies to permittees and non-permittees alike. For the reasons set forth in the findings to those bills, the carrying of concealed firearms is an area of statewide concern. C.R.S. §§ 18-12-201, 29-11.7-101.

As noted in the “Statement of the Case and Facts,” the amended version of § 38-117(f)(1) provides that it is not an offense to carry a concealed weapon if a person holds a valid permit and is carrying a handgun in conformance with any applicable state or local law. The reference to *local law* is preempted and void.

The lower court upheld the reference to *local law*, stating: *The potential*

that the City might, sometime in the future, pass a local law in conflict with state statutes is not a reason to invalidate the ordinance now.@ Opinion 8, Record at 350. That reference to Alocal law@ should be declared void to preclude any interpretation of the current ordinance that would restrict a permit holder. A permit holder would believe that other local restrictions indeed apply, e.g., ' ' 38-118.5 (carrying into posted public building) or 39-9 (possession in park), and would forego exercise of an enumerated constitutional right.

In a home rule state, a statute providing for permits to carry concealed weapons leaves no room for local control, particularly where different standards apply to different people. *Schwanda v. Bonney*, 418 A.2d 163 (Maine 1980). AObviously, the need for uniform application of the concealed weapons law precludes local regulation resulting in such inconsistencies.@ *Id.* at 166.¹⁴

DRMC ' 38-117(a), which makes it unlawful to wear a concealed firearm, is preempted as applied to non-permittees because it prohibits what state law allows. Section 38-118(a) makes it an affirmative defense if the weapon was carried:

(1) In a private automobile or other private means of conveyance for lawful protection of their or another's person or property, when there

¹⁴ See also *Baca v. New Mexico Dept. of Public Safety*, 132 N.M. 285, 285; 47 P.3d 441, 444 (N.M. 2002) (invalidating state statute that delegated to localities the power to prohibit the carrying of concealed weapons by permittees).

is a direct and immediate threat thereto, while traveling away from the area of their residence or business; [or]

(2) In their own dwelling, or place of business, or on property owned or under their control at the time of the act of carrying such weapon . .

..

While C.R.S. ' 18-12-105(1)(a) also makes it unlawful to carry a concealed firearm, instead of providing affirmative defenses, ' 18-12-105(2) provides:

It shall not be an offense if the defendant was:

(a) A person in his or her own dwelling or place of business or on property owned or under his or her control at the time of the act of carrying; or

(b) A person in a private automobile or other private means of conveyance who carries a weapon for lawful protection of such person's or another's person or property while traveling

In short, state law says that it is not a crime to carry a concealed firearm in one=s own dwelling or car, while Denver makes it a crime, and only provides an affirmative defense. Surely the state has an overriding interest in protecting the sanctity of one=s home.¹⁵ Denver also repudiates state law in requiring a direct threat for one to carry a firearm in an automobile for protection. (See further discussion below.)

Accordingly, DRMC ' 38-117(a) is preempted in its entirety as applied to both permittees and to non-permittees.

¹⁵ See *State v. Hamdan*, 665 N.W.2d 785 (Wis. 2003) (ban on carrying concealed firearm on one=s premises held violative of right to bear arms for defense).

2. *Carrying Firearm in Vehicle*

DRMC ' 38-117(a) makes it unlawful to wear a firearm concealed about the person. In addition, ' 38-117(b) makes it unlawful to carry, use or wear a firearm or other weapon.

Ordinance No. 469 B the mystery amendment which is not publically available B amended ' 38-117(f)(2) to exempt a person carrying a concealed weapon in an automobile Afor hunting or for lawful protection of such person=s or another person=s person or property, while traveling into or through the city to or from another jurisdiction, regardless of the number of times the person stops in the city or the other jurisdiction@ *Id.*

The Denver ordinance conflicts with state statute and is preempted. Section 18-12-105.6(b) provides:

Notwithstanding any other provision of law, no municipality, county, or city and county shall have the authority to enact or enforce any ordinance or resolution that would restrict a person's ability to travel with a weapon in a private automobile or other private means of conveyance for hunting or for lawful protection of a person's or another's person or property while traveling into, or through, *or within*, a municipal, county, or city and county jurisdiction, regardless of the number of times the person stops in a jurisdiction. (Emphasis added.)¹⁶

¹⁶ See *Trinen v. City and County of Denver*, 53 P.3d 754, 758-59 (Colo. App. 2002), *cert. denied* (Sept. 9, 2002) (Denver stipulated that reference to Ainto or through@ in prior ' 18-12-105.6(2) was an issue of mixed, not local, concern).

In addition, SB 24 authorizes carrying of a handgun in a vehicle without a permit. Section 18-12-204(3)(a) provides: A person who may lawfully possess a handgun may carry a handgun under the following circumstances without obtaining a permit and the handgun shall not be considered concealed: (I) The handgun is in the possession of a person who is in a private automobile or in some other private means of conveyance and who carries the handgun for a legal use, including self defense; or (II) The handgun is in the possession of a person who is legally engaged in hunting activities within the state. The General Assembly found in support that persons carrying weapons in autos within as well as through localities faced inconsistent ordinances, amounting to confusing patchworks of laws which unfairly subjected unknowing citizens to criminal penalties. C.R.S. ' 18-12-105.6(1).¹⁷ Thus, such transport is a matter of statewide concern and is not an offense. ' 18-12-105.6(2)(a).

The lower court found C.R.S. ' 18-12-105.6 validly to preempt both DRMC ' ' 38-117(a) and 38-117(f)(2), because that prohibits carrying a weapon in an

¹⁷ Some of these persons would be from out of State, including permittees who fly into Denver International Airport, and stay overnight in a hotel in Denver. The state gives reciprocity to permittees of other states. C.R.S. ' 18-12-213. Colorado has granted reciprocity to permittees of 21 other states. *See*, Colorado Bureau of Investigation website, www.cbi.state.co.us/ccw/reciprocity.asp. Denver's ordinance would subject law abiding citizens from out-of-state to prosecution, even though they are led to believe by state law that they are lawfully carrying under their permits.

automobile while traveling entirely within Denver, and ' 38-118(a)(1), because it requires a direct and immediate threat. Opinion 8, Record at 350.

However, further conflicts exist. State law allows guns carried lawfully in automobiles to be loaded or unloaded. C.R.S. ' ' 18-12-204 & 214. However, Denver requires that guns be unloaded except when carried for self-defense, which is an affirmative defense. DMRC ' 38-118(a)(1), (b) (3), (4). Again, the ordinance provisions are preempted. *See Montgomery County v. Maryland*, 302 Md. 540, 548-49, 489 A.2d 1114, 1118 (1985) (statute preempted local laws regulating the carrying or transport of loaded handguns).

Moreover, ' 38-118(a) and (b) provide affirmative defenses to ' 38-117(a) and (b) offenses. All of these provisions are preempted both because they criminalize what state law allows and because they only provide affirmative defenses, allowing prosecution for conduct that state law declares not to be an offense.

Finally, Denver bans firearms in vehicles as authorized by State law by exempting only handguns carried by persons with a permit. DRMC ' 38-117(f)(1). Any person who carries a rifle or shotgun in a vehicle, regardless of whether the person has a concealed handgun permit, is subject to arrest.

As in *Commerce City*, 40 P.3d at 1281, Aa driver could pass through

multiple jurisdictions in a simple daily commute to work. Without uniform state legislation, Colorado drivers may be subject to a significant variety of conflicting local legislation, further increasing the potential for confusion and substantially affecting their expectations.¹⁸

Accordingly, DRMC ' ' 38-117(a) and (b), as applied to transportation in a vehicle, are preempted and void.

3. Carrying Openly

DRMC ' ' 38-117(b) makes it unlawful to carry, use or wear a firearm, subject to limited affirmative defenses, including that the weapon was carried in defense of home, person or property, when in such home when there is a direct and immediate threat thereto¹⁹ DRMC ' 38-118(b)(1).¹⁹ These provisions are void.

This violates the right to carry firearms openly under Colo. Const., Art. II, ' 13, which guarantees the right to keep and bear arms in defense of one's home, person, and property. Moreover, C.R.S. ' 29-11.7-103 preempts any prohibition

¹⁸ See *City of Chicago v. Haworth*, 303 Ill.App.3d 451, 708 N.E.2d 425, 429, 236 Ill.Dec. 839 (1999) (The City's [handgun] registration requirement places an unreasonable burden on private detectives who live outside Chicago; home rule held not to preclude preemption of local law).

¹⁹ Other affirmative defenses to open carry include carrying in one's dwelling, business, or property, for use on a hunting trip or target shooting, transportation as a collector or licensed dealer, and moving personal property from an old residence to a new residence. ' 38-118(a), (b).

on Apossession of a firearm that a person may lawfully sell, purchase, or possess under state or federal law.@ A locality may prohibit Athe open carrying of a firearm in a building or specific area within the local government=s jurisdiction,@ if it posts appropriate signs. C.R.S. ' 29-11.7-104.

The lower court upheld DRMC ' ' 38-117(b) and 38-118 to the extent they prohibit the open carrying of firearms, which it found to be a matter of purely local concern based on the following:

Denver is by far the most densely populated area of Colorado. . . . Denver also suffers rates of violent crime far in excess of statewide averages. . . . These unique factors predominate over any need for statewide uniformity or any concern about extraterritorial impact. . . . As plaintiffs stated in their opening brief: ASimply put, a bullet fired in DenverCwhether maliciously by a criminal or negligently by a law-abiding citizenCis more likely to hit something or somebody than a bullet fired in rural Colorado.@

Opinion 10, Record at 352.

By the same reasoning, Denver could pass its own DWI laws on the basis that a drunk driver is more likely to hit someone because of its dense population. However, DWI laws are a matter of state-wide concern. AWe hold that the operation of a vehicle by one who is under the influence of intoxicating liquor is a matter of state-wide concern.@ *Merris*, 137 Colo. at 181-82.²⁰

²⁰ Justice Moore, specially concurring, noted:

The lower court further decided that SB 25 had no comprehensive regulatory scheme for open carry, and that it should be relatively simple for a gun owner to know that Denver bans open carry. Opinion 10, Record at 352. How this would be known is not stated.

Yet open carry is protected by Colo. Const., Art. II, § 13. The State may prohibit open carry in narrowly defined instances. *People v. Garcia*, 197 Colo. 550, 595 P.2d 228 (1979) (prohibition on immediate possession of firearm while intoxicated). However, a locality has no authority to enact a general ban on bearing arms openly. *City of Lakewood v. Pillow*, 180 Colo. 20, 501 P.2d 744 (1972).²¹ In contrast, SB 25 specifically delegated authority to local government to prohibit open carry in specific areas *if they were posted*. Section 29-11.7-104, C.R.S. Accordingly, DRMC §§ 38-117(b) and 38-118 are void.

4. Carrying in Posted City Buildings

Denver's prohibition on carrying a firearm in posted City buildings is more

The prohibition against driving an automobile under the influence of intoxicating liquor is not a 'local or municipal matter.' . . . It is of statewide importance and is covered by statutes of statewide application. (*Id.* at 187).

²¹ See *City of Portland v. Lodi*, 94 Or. App. 735, 738, 767 P.2d 108 (1989) (The statutory policy has been to preserve broadly the right to bear arms, while narrowly limiting the right to carry knives. Thus the Portland ordinance prohibits an act that the statute permits); *Doe v. Portland Housing Authority*, 656 A.2d 1200, 1203 (Me. 1995) (preemption law was enacted to reinforce the [right-to-bear arms] amendment and to ensure uniformity in the regulation of guns).

stringent than State law and is preempted. DRMC ' 38-118.5(a) provides:

It shall be unlawful for any person . . . to carry any firearm within any building owned or leased by the city or any department or agency thereof whenever signs are posted at the public entrances of such a building informing persons that the carrying of firearms is prohibited in the building.

However, State law authorizes a locality only to prohibit the *open* carrying of a firearm in a government building if signs are posted at the entrances. C.R.S.

' 29-11.7-104 provides:

A local government may enact an ordinance, regulation, or other law that prohibits the open carrying of a firearm in a building or specific area within the local government's jurisdiction. If a local government enacts an ordinance, regulation, or other law that prohibits the open carrying of a firearm in a building or specific area, the local government shall post signs at the public entrances to the building or specific area informing persons that the open carrying of firearms is prohibited in the building or specific area.

DRMC 38-118.5 also conflicts with SB 24, which provides that Aa permittee . . . may carry a concealed handgun as allowed by state law.@ C.R.S. ' 18-12-204(2)(a). The handgun may be carried in Aall areas of the state, except as specifically limited in this section@ C.R.S. ' 18-12-214(1)(a).²² One such prohibited area is a public building where security personnel screen for weapons with electronic devices permanently installed. C.R.S. ' 18-12-214(4).

²² *E.g.*, a concealed weapon may not be carried where prohibited by federal law or on public school property. *Id.* subsection (2).

Based on the compelling need for uniformity of the criminal law regarding the carrying of firearms, including in public buildings, DRMC 38-118.5(a) is preempted and void.²³

B. POSSESSION OF ASSAULT AND INFERIOR QUALITY FIREARMS

C.R.S. § 29-11.7-103 provides: "A local government may not enact an ordinance . . . that prohibits the sale, purchase, or possession of a firearm that a person may lawfully sell, purchase, or possess under state or federal law." State law prohibits possession of certain firearms, with exceptions,²⁴ and federal law prohibits transfer and possession of certain firearms, again with exceptions.²⁵ Denver prohibits the sale, purchase, or possession of two types of firearms that a person may lawfully sell, purchase, and possess under state and federal law.²⁶

First, DRMC § 38-130 makes it unlawful to carry, store, keep, manufacture,

²³ See *Michigan Coalition for Responsible Gun Owners v. City of Ferndale*, 256 Mich. App. 401, 414, 662 N.W.2d 864, 872 (Mich. App. 2003) (in a home rule state, the Legislature made a clear policy choice to remove from local units of government the authority to dictate where firearms may be taken, including in municipal buildings).

²⁴ C.R.S. § 18-12-102 (prohibition on possession of machine gun, short shotgun, and short rifle; exceptions include a person with a valid permit or license); § 18-12-103 (prohibition on possession of firearm with defaced serial number).

²⁵ E.g., 18 U.S.C. § 922(o) (prohibition on possession of machine gun; grandfather clause for lawfully possessed guns).

²⁶ See Amicus Brief of Rocky Mountain Gun Owners.

sell or possess an Assault weapon. Second, DRMC ' 38-122(c) makes it unlawful for dealers to sell, rent, exchange or deliver a handgun knowing or having reasonable cause to believe that the basic structural components are of a material having a melting point, tensile strength, or density less than certain specified levels.²⁷

The lower court upheld these provisions, stating: ADenver=s interest in limiting the impact of assault weapons and Saturday night specials in Denver far outweighs the State=s insubstantial interest in uniformity of gun control laws, especially since the State has never chosen to legislate in this arena before. Opinion 11-12, Record at 353-54.

To the contrary, the State=s focus has been to respect the constitutional right of law-abiding citizens to possess firearms generally, while severely punishing criminals who possess or misuse firearms. Moreover, the State has addressed assault weapons. C.R.S. ' 18-1.3-406 defines Asemiautomatic assault weapon and imposes an additional mandatory five years incarceration for the use of an assault weapon in a crime of violence.²⁸

²⁷ Many of such are of the highest quality (e.g., the Glock 17) and are in use by Denver=s own police and sheriff=s departments.

²⁸ *Robertson v. Denver*, 874 P.2d 325, 349 n.3 (Colo. 1994) (Erickson, J., dissenting), pointed out:

Similarly, instead of addressing a subset of handguns based on their materials, the State addresses the field comprehensively by regulating the concealed carrying of firearms, ' 18-12-201 *et seq.*, and by prohibiting possession of firearms by previous offenders, ' 18-12-108, possession of handguns by juveniles, ' 18-12-108.5, and the providing of handguns to juveniles, ' 18-12-108.7. The State legislated in the field and preempted Denver=s conflicting ordinances.²⁹

Significant portions of Denver=s assault weapon ban were declared void for vagueness in *Robertson v. Denver*, 874 P.2d 325 (Colo. 1994), *appeal after remand*, 978 P.2d 156 (Colo. App. 1999).³⁰ Yet Denver failed to repeal these unconstitutional provisions and they remain part of the Ordinance. Denver has thereby for over a decade nullified the decisions of this Court and the other courts ruling on the issue.

The General Assembly has specifically addressed the issue of "assault weapons." In the 1989 session, the General Assembly refused to enact legislation criminalizing the possession of assault weapons by law-abiding persons. [Citation omitted.] The General Assembly has addressed assault weapons by enacting [' 18-1.3-406]

²⁹ See *Doe v. City & County of San Francisco*, 136 Cal.App.3d 509, 512, 186 Cal.Rptr. 380, 385 (1982) (in home-rule state, in an area of statewide concern a local legislative body may act only if the state has not revealed an intention to occupy the field to the exclusion of all local regulation; state preempted local ordinance prohibiting handguns).

³⁰ See *Robertson*, 874 P.2d at 327 n.5 (' 38-130(h)(5) vague), & at 334-35 (' 38-130(b)(1)(c) vague); 978 P.2d at 158-59 (' 38-130(h)(1)(i), (1)(l), (1)(p), (2)(e), (3)(b), & (3)(c) vague).

Ensuring the integrity of the decisions of the Judicial Branch and protecting the right of citizens to due process of law are matters of state-wide concern. The Legislature was justified in passing preemptive legislation to enforce the decisions of the various courts in the *Robertson* litigation and to ensure that citizens are not subject to vague laws such as Denver keeps on its books.³¹

Preemption claims were not considered in *Robertson*. See 874 P.2d at 327 n.2, 3. However, Justice Erickson would have held the assault weapon ban to be preempted:

Although the General Assembly has the power to regulate assault weapons, every hamlet and home-rule city does not have the same power. Local governments should not have a separate and different legislative definition, penalty, and proscription against the manufacture, use, and possession of so-called assault weapons. In my view, local regulation of firearms is an undue infringement on the right to bear arms under the Colorado Constitution and is preempted by state law.

Id. at 349-50 (Erickson, J., dissenting).

Ortiz v. Commonwealth, 545 Pa. 279, 286, 681 A.2d 152, 156 (1996), held that, in a home-rule state, an assault weapon ban ordinance was preempted by state

³¹ The Legislature was also justified in finding the portions of the Denver ordinance not declared vague nonetheless to be irrational and violative of due process. Relying in part on *Robertson*, definitions in a similar assault weapon ban were declared vague in *Springfield Armory, Inc. v. City of Columbus*, 29 F.3d 250, 253 (6th Cir. 1994). The remainder of the ordinance, which like Denver=s ordinance banned firearms by model name, was also void because the catch-all phrase is the only element that brings any generality to the measure and the remaining listing of names was arbitrary. *Id.* at 254.

law as a matter of statewide concern. Like that of Colorado, Pennsylvania's Constitution provides that the right to bear arms for defense shall not be questioned, and this affects the preemption analysis as follows:

Because the ownership of firearms is constitutionally protected, its regulation is a matter of statewide concern. . . . Thus, regulation of firearms is a matter of concern in all of Pennsylvania, not merely in Philadelphia and Pittsburgh, and the General Assembly, not city councils, is the proper forum for the imposition of such regulation.

Id. at 287.

Similarly, *City of Cincinnati v. Baskin*, 158 Ohio App.3d 539, 817 N.E.2d 433 (2004), held that a local assault weapon prohibition was preempted by state law and was not saved by that state's home rule guarantee. State law on the subject embodied a comprehensive legislative enactment, operate[d] uniformly throughout the state, and prescribe[d] a rule of conduct upon citizens generally. *Id.* at 542. Further, the ordinance prohibits what the state permits. Therefore, we conclude that the municipal ordinance must give way to the state statute. *Id.* at 544.

For the above reasons, DRMC ' ' 38-130 and ' 38-122(c) are preempted by valid State law and are void.

C. ACCESS TO FIREARMS BY JUVENILES

C.R.S. ' 29-11.7-103 prohibits any ordinance that prohibits the sale,

purchase, or possession of a firearm that a person may lawfully sell, purchase, or possess under state law or federal law.@ This preempts DRMC ' 38-124, which makes it unlawful, without exception, Afor any person to sell, loan or furnish any instrument or weapon designated in sections 38-117 or 38-122 . . . to any minor.@

It also preempts DRMC ' 38-131(b), which provides:

It shall be unlawful for any person to store, control or possess any firearm within or upon any premises of which that person has an ownership interest, custody or control, in such a manner that that person knows, or should know, that a minor is likely to gain possession of the firearm and in the event that the minor does, in fact, obtain possession of the firearm.

Colorado law allows minors to possess handguns for firearms or hunter safety courses, practice and target shooting, organized competition, hunting and trapping, traveling to and from these activities. C.R.S. ' ' 18-12-108.5 & 108.7. It also allows minors to possess a handgun on real property under the control of the minor=s parent, guardian or grandparent, and for self-defense under C.R.S. ' 18-1-704.5. *Id.*

Possession of a rifle or shotgun by a minor is lawful in Colorado. *See also* C.R.S. ' 18-12-108.7(3) (for firearms other than handguns, a person may not transfer such firearm or allow unsupervised possession thereof to a juvenile without parental consent). It is lawful for a minor to possess a rifle or shotgun under federal law. Federal law restricts transfer of a handgun to a juvenile, but

exempts hunting, target practice, and other purposes. 18 U.S.C. ' 922(x).

The lower court correctly held DRMC ' 38-124 to be preempted by valid state law. Opinion 12, Record at 354. However, the lower court upheld ' 38-131 because AState law is silent on the question of safe storage@ Opinion 12, Record at 354. Yet storage is simply one aspect of possession, the other aspect of possession being the carrying of the firearm.³² C.R.S. ' 29-11.7-103 prohibits an ordinance Athat prohibits the . . . possession of a firearm,@ and the Denver ordinance prohibits one form of possession.³³

The state statute is comprehensive and sets a uniform standard for determining when and where a minor may possess a firearm, and by inference who may provide a firearm to a minor. Moreover it dovetails with the state juvenile code.³⁴ See C.R.S. ' ' 19-2-508(3)(a)(III)(C), 19-2-513(3)(a); 19-2-

³² This is clear, *e.g.*, in C.R.S. ' 18-12-108(1), which prohibits Apossession of a weapon by a previous offender@ B it would be no defense to argue that the weapon was not Aposessed@ because it was Astored.@ See *People v. District Court, City & County of Denver*, 953 P.2d 184, 190 (Colo. 1998) (purpose to Alimit the possession of firearms@ by unfit persons); *People v. Stark*, 691 P.2d 334, 339 (Colo. 1984) (to be Aconvicted of *possession* of cocaine@: AThe drug need not be found on the person of the defendant, as long as it is found in a place under his dominion and control.@).

³³ Gun storage ordinances were held preempted in *NRA v. City of South Miami*, 774 So.2d 815, 816 (Fla. 3rd DCA 2000), *later proceeding*, 812 So.2d 504, 506 (Fla. 3d DCA 2002), and *HC Gun & Knife Shows, Inc. v. City of Houston*, 201 F.3d 544, 548 (5th Cir. 2000).

³⁴ AThe state's interest in fulfilling its statutory obligations to place and supervise adjudicated delinquent children in foster care homes pursuant to uniform, statewide criteria overrides any home-rule city's interest in controlling land uses within its territorial limits.@ *Northglenn*, 62

517(1)(a)(II)(B) and Colo.R.Juv.P. 3.8. The regulation of juveniles and firearms is a matter of state, not local, concern.

For the above reasons, DRMC ' ' 38-124 and 38-131 are preempted and void.

D. POSSESSION OF FIREARMS IN PARKS

It is unlawful to possess a firearm in any Denver park, parkway, mountain park or other recreational facility. DRMC ' 39-9(a). This is preempted by C.R.S. ' 29-11.7-103 (locality may not prohibit possession of firearm), ' 18-12-105.6 (locality may not prohibit transport of firearm), and the provisions (discussed above) governing concealed weapon permittees.

The lower court declared C.R.S. ' 29-11.7-103 preempted the Denver ordinance as applied to concealed handguns carried with a permit. However, as applied to everyone else, the court found ' 29-11.7-103 to be unconstitutional and upheld the Denver ordinance. Opinion 13, Record at 355. This disregarded the findings and policies of SB 24 and SB 25 that the law of firearms possession must be uniform statewide, and that inconsistent local ordinances created a patchwork of criminal minefields just waiting to be stepped upon by the unknowing citizen. The state interest preempts the conflicting ordinance.

Accordingly, DRMC ' 39-9(a) is void not only as applied to permittees, but also to law-abiding persons who are openly carrying, transporting or possessing firearms in accordance with state law.³⁵

CONCLUSION

This Court should affirm such portions of the trial court=s judgment that declared that SB 24 and SB 25 preempt Denver=s firearm ordinances, and reverse those portions which upheld the validity of said ordinances. The following provisions of DRMC should be declared to be preempted by State law and void:

- ' 38-117(a) and (b) (carrying concealed or carrying firearm)
- ' 38-118.5(a) (carrying in posted City building)
- ' 38-130 (assault weapons)
- ' 38-122(c) (handguns of certain materials)
- ' 38-124 (furnish firearm to minor)
- ' 38-131(b) (firearm storage)
- ' 39-9(a) (firearm in park)

³⁵ See *Doe v. Portland Housing Authority*, 656 A.2d 1200, 1204 (Me. 1995) (Aa purpose of the preemption statute was to protect the citizens of large communities from discriminatory firearms regulations@; ban on firearms in public housing Ais contrary to the Legislature's intent to ensure that all Maine citizens are treated equally with regard to firearms regulation@).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this ___ day of June, 2005, I served a copy of the following by depositing copies of the same in the United States mail, first-class postage prepaid, on the following:

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