

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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KELLEY HOWE,

Plaintiff,

v.

CITY OF MADISON, WISCONSIN  
and NOBLE WRAY,

Defendants.  
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ORDER

11-cv-179-slc<sup>1</sup>

In this civil action for injunctive and monetary relief, plaintiff Kelley Howe contends that his rights under the Second Amendment were violated when Madison police arrested him and confiscated his rifle. He is proceeding under the in forma pauperis statute, 28 U.S.C. § 1915, and has made an initial partial payment.

Because plaintiff is proceeding in forma pauperis, I must screen his complaint and dismiss it if it is legally frivolous, malicious, fails to state a claim upon which relief may be granted or asks for money damages from a defendant who by law cannot be sued for money damages. 28 U.S.C. § 1915(e)(2)(B). After reviewing the complaint, I conclude that

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<sup>1</sup> For the purpose of issuing this order, I am assuming jurisdiction over the case.

plaintiff has failed to state a claim upon which leave may be granted. Therefore, I will dismiss his complaint.

### ALLEGATIONS OF FACT

During President Obama's visit to Madison on September 28, 2010, officers from the Madison Police Department arrested plaintiff in an embarrassing way and confiscated his rifle. They returned the gun after the president left town. On another occasion, the Madison police department stopped plaintiff, took his rifle and refused to return it without court action.

### DISCUSSION

Plaintiff contends that the actions of the Madison Police Department, under the direction of defendants City of Madison and Noble Wray, violated his rights under the Second Amendment of the United States Constitution, which states that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. However, the Second Amendment does not prohibit police officers from confiscating guns in the context of a lawful stop or arrest, because the Constitution allows officers to take actions to insure their personal safety and the safety of those around them. United States v. Bullock, 632 F.3d 1004, 1016 (7th Cir. 2011). Plaintiff does not contend that his stop or arrest were

unlawful or allege facts that would imply that it was, stating only that the arrest was “embarrassing.” Because plaintiff has not stated a claim for violation of his constitutional rights, I will dismiss his complaint.

ORDER

IT IS ORDERED that plaintiff Kelley Howe’s complaint is DISMISSED for failure to state a claim upon which relief may be granted. The clerk of court is directed to close this case.

Entered this 5th day of April, 2011.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge