

The Honorable Marsha J. Pechman

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT C. WARDEN,  
Plaintiff,  
v.  
GREGORY J. NICKELS and CITY OF SEATTLE,  
Defendants.

Case No. C09-1686 MJP

DECLARATION OF DAVID S. KEENAN  
IN SUPPORT OF REPLY IN SUPPORT  
OF DEFENDANTS' MOTION TO  
DISMISS PURSUANT TO FED. R. CIV. P.  
12(b)(6)

1 I, David S. Keenan, declare as follows:

2 1. I am an attorney licensed in the State of Washington. I am associated with the  
3 law firm of Orrick, Herrington & Sutcliffe LLP, counsel of record for Defendants Gregory J.  
4 Nickels and City of Seattle (collectively, "Defendants") in the above-captioned matter. I  
5 submit this declaration in support of Defendants' Reply in Support of Motion to Dismiss  
6 Amended Complaint. I have personal knowledge of the matters set forth herein and, if called  
7 upon, I could and would competently testify thereto.

8 2. On December 22, 2009, I was present for and participated in the deposition of  
9 Plaintiff Robert C. Warden. A true and correct copy of excerpts of the transcript of  
10 Mr. Warden's deposition is attached hereto as Exhibit A.

11 3. On or about January 8, 2010, I spoke with Plaintiff and expressed Defendants'  
12 view that his deposition testimony indicated that he could not establish either a likelihood of  
13 prevailing on the merits or that he had suffered injury. I asked him to consider striking his  
14 Motion for Preliminary Injunction for lack of merit. Plaintiff declined.

15 I declare under penalty of perjury under the laws of the United States of America that  
16 the foregoing is true and correct.

17 Executed this 22nd day of January, 2010, in Seattle, Washington.

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s/David S. Keenan

David S. Keenan

**CERTIFICATE OF SERVICE**

I hereby certify that on January 22, 2010, I electronically filed the following document with the Clerk of the Court using the CM/ECF system which will send notification of the filing to all counsel of record:

DECLARATION OF DAVID S. KEENAN IN SUPPORT OF REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(6).

DATED this 22nd day of January, 2010.

**ORRICK, HERRINGTON & SUTCLIFFE LLP**

By s/ Daniel J. Dunne  
Daniel J. Dunne (WSBA #16999)

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Seattle, WA 98104  
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# EXHIBIT A

1 does not provide much guidance, the open, public spaces the  
2 county's ordinance covers fit comfortably within the same  
3 category as schools and government buildings, end quote,  
4 correct?

5 A Yes.

6 Q So do you understand that in this opinion the Ninth Circuit,  
7 relying on the precedent of the Supreme Court in Heller held  
8 that a county ordinance forbidding possession of firearms in  
9 open, public spaces is not unconstitutional under the Second  
10 Amendment?

11 A Yes.

12 Q And are you aware of any higher federal authority to the  
13 contrary?

14 A I am not aware of that, no.

15 Q And they also summarized Heller to say that the core of the  
16 right that Heller analyzed was the right of an individual to  
17 defend themselves in their homes, correct?

18 A Yes.

19 Q And are you aware of any federal authority that recognizes  
20 under the Second Amendment a right to bear arms for self-  
21 defense outside of the home?

22 A I'm not aware of any right now, no.

23 Q And then the Ninth Circuit goes on to say that prohibiting  
24 firearm possession on municipal property fits within the  
25 exception from the Second Amendment for sensitive places that

1 quoted as saying on November 13th with respect to the City:  
2 They know full well it's illegal, but they went ahead and did  
3 it anyway.

4 Is that something that you said on November 13th?

5 A I believe that's -- yes, I believe that's an accurate quote.

6 Q And with respect to the knowledge that the policy was  
7 allegedly illegal, are you relaying on anything other than  
8 the language of the Second Amendment, the decision of the  
9 Supreme Court in Heller and the Attorney General's opinion  
10 and the state statute?

11 A No. Those -- yeah, I basically was talking about the  
12 Attorney General's opinion when I made that statement.

13 Q Okay.

14 A Yes, nothing other than what you just said.

15 Q And your lawsuit doesn't actually include a claim based on  
16 the state preemption statute, correct?

17 A Right.

18 Q You originally included one, but you amended your complaint  
19 to intentionally remove any claim based on Washington State  
20 statute, right?

21 A Right. It contains the Washington constitutional, but no  
22 statutory, yes.

23 Q All right. And so at this time, as we sit here today, you  
24 don't have a claim based on Title 9 of the RCW or any  
25 Washington statute; is that right?