Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT C. WARDEN, Plaintiff, vs. GREGORY J. NICKELS and CITY OF SEATTLE, Defendants.	No: 2:09-cv-01686-MJP PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE RE MOTION FOR PRELIMINARY INJUNCTION NOTED ON MOTION CALENDAR: **Friday, January 22, 2010**

Plaintiff hereby replies to Defendants' January 19, 2010 Response (Dkt. No. 14).

In addition to the arguments already made in Plaintiff's Motion for Preliminary Injunction (Dkt. No. 8), and in Plaintiff’s January 19, 2010 Response to Defendants’ Motion to Dismiss, which are hereby incorporated by reference, Plaintiff asserts the following in direct reply to Defendants' January 19 Response:

Plaintiff’s motives and reasons for presenting himself armed with a concealed pistol at the Southwest Community Center on November 14, 2009 are utterly irrelevant. The uncontested fact is that Plaitiff was refused entry, and that such refusal was based solely on Plaintiff’s exercise of a fundamantal

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constitutional right.

It is irrelevant that Plaintiff does not regularly or frequently carry a concealed pistol on Seattle Park property. How often one chooses to exercise a right cannot coherently be relevant to the legality of a policy that denies the right when one does choose to exercise it. If an individual did not regularly exercise a free speech right would that make it okay to deny him that right when he did choose to exercise it?

Irreparable harm is experienced each and every time an individual is improperly denied the exercise of a right. The fact that other Seattle Parks properties may allow exercise of the right is also irrelevant. Would a rule banning free speech in some public parks be permissible so long as free speech were permitted in other parks?

Though Plaintiff regretably misstated the applicable legal standard for preliminary injunctive relief, Plaintiff has already demonstrated that the new Winter standards are easily met.

No evidence of irreparable harm or injury is necessary as the fact of such is not reasonably in dispute – Plaintiff was denied entry. On November 14, 2009 a right was denied that cannot be monetarily compensated.

Statements made by Plaintiff in his deposition testimony related to interpretation and/or applicability of law and caselaw

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are obviously irrelevant. Whether or not a given statute or precedent applies or not in a given situation is a determination that is independent of Plaintiff's response to any question in a deposition.

Defendants cite a 2009 survey of no demonstrated or even suggested statistical significance or validity that purports to suggest that only 4 percent of Seattle voters have concealed pistol licenses. Assuming only for the sake of argument that that is true, who cares? If only 4 percent of Seattle voters wanted to exercise their right to peaceably assemble, would that justify a policy forbidding peaceable assembly? I bet at least some children are afraid of large crowds. Everyone knows that large crowds of peaceably assembled persons can become unpeaceful. Shall we just prohibit large crowds?

Defendants continue to hide behind absolutely baseless, heart-string-pulling, smoke-and-mirrors rhetoric about children and families. Where is the beef? Where is any evidence of any kind that anyone is endangered in any way by lawful concealed pistol carrying in Parks properties? Defendants advance the trivially obvious fact that gun violence cannot happen without guns. It is also uncontroversially true that young single males commit the vast majority of all violent crimes. Would the city be justified in simply banning all young single males from so-called "sensitive" areas?

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Defendants continually question Plaintiff's motives and even personality traits. Defendants continually use empty emotional arguments that have no rational basis or substance behind them. Perhaps most offensively, Defendants continue to claim that the preferences and bigotry of a purported majority justifies significant abrogation of a fundamental individual right. Defendants like to speak of irony. The ultimate irony in this case is that this tyranny of the majority was invented and implemented by a single municipal bureaucrat (Parks Department head) at the direction of a single man who had already been unequivocally voted out of office by the very majority he claims to represent: Defendant Greg Nickels.

DATED this 22nd day of January, 2010.

Respectfully submitted,

s/ Robert C. Warden

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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:

PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE RE MOTION FOR PRELIMINARY INJUNCTION

DATED this 22nd day of January, 2010.

s/ Robert C. Warden
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