

1 THE HONORABLE GREGORY P. CANOVA
2 Noted: Friday, February 12, 2010, 9:00 a.m.
3 (With Oral Argument)
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8 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

9 WINNIE CHAN, et al.,

10 Plaintiffs,

11 v.

12 CITY OF SEATTLE, et al.,

13 Defendants.
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No. 09-2-39574-8 SEA

**PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT**

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1 Attorney General Rob McKenna reinforced this message in 2008 in response to a
2 letter from state legislators that asked “Does a city in Washington have the authority to enact
3 a local law that prohibits possession of firearms on city property or in city-owned facilities?”
4 Fogg Decl., Ex. E at 1. Attorney General McKenna responded to this question as follows:

5 **The answer to your question is no.** RCW 9.41.290 “fully occupies and preempts the
6 entire field of firearms regulation” and preempts a city’s authority to adopt firearms
7 law or regulations of application to the general public, unless specifically authorized
8 by state law. Accordingly, RCW 9.41.290 preempts a city’s authority to enact local
9 laws that prohibit possession of firearms on city property or in city-owned facilities.

10 *Id.* (emphasis added). McKenna went on to state that a city cannot regulate firearm
11 possession under the guise of property ownership because “[l]arge parts of city property are
12 generally open to the public.” *Id.* at 4.

13 Notwithstanding these clear and unmistakable warnings, the City has enacted and is
14 enforcing an illegal gun ban that every day violates the rights of ordinary Washington citizens
15 like plaintiffs Winnie Chan, Robert Kennar, Raymond Carter, Gray Peterson, and Gary
16 Goedecke (collectively, “individual plaintiffs”). Accordingly, the individual plaintiffs –
17 joined by the Second Amendment Foundation (“SAF”), National Rifle Association of
18 America (“NRA”), Citizens Committee for the Right to Keep and Bear Arms (“Citizens
19 Committee”), and Washington Arms Collectors (collectively, “organizational plaintiffs”) –
20 come before this court seeking declaratory and injunctive relief on summary judgment. This
21 case presents a pure of issue of law. It can and should be decided now in plaintiffs’ favor.

22 **II. STATEMENT OF FACTS**

23 **A. The City enacts a Firearms Rule that conflicts with and is far more** 24 **restrictive than state law.**

25 In Washington, adults have the constitutional and statutory right to carry a concealed
firearm in most public locations – including city parks – if they have a valid Concealed Pistol

1 License. RCW 9.41.010-9.41.810, 70.108.150. Washington law also permits adults to openly
2 carry a holstered firearm in any place where it is otherwise legal to possess a firearm if such
3 carrying is done peacefully. RCW 9.41.270.

4 Ignoring these clear statutory directives, Seattle's Parks and Recreation Department
5 issued a rule on October 14, 2009 that completely contradicts the state regulatory scheme.
6 The City's firearms rule prohibits citizens from possessing a lawful firearm on city-owned
7 property where "children and youth are likely to be present":

8 The Department, in its proprietary capacity as owner or manager of
9 Department facilities, does not permit the carrying of concealed firearms or
10 the display of firearms, except by law enforcement officers and on-duty
11 security officers, at Parks Department facilities at which: 1) children and
youth are likely to be present and, 2) appropriate signage has been posted
to communicate to the public that firearms are not permitted at the facility.

12 Fogg Decl., Ex. A at ¶ 4.0. This rule, known as the "Firearms Rule," goes on to designate an
13 extensive list of Parks Department facilities as facilities at which children and youth are likely
14 to be present. Those facilities are:

- 15 5.1.1 Playgrounds and Children's play areas;
- 16 5.1.2 Sports Fields, Sports Courts and other sports facilities;
- 17 5.1.3 Swimming and Wading Pools;
- 18 5.1.4 Spray Parks (Water Play Areas);
- 19 5.1.5 Teen Centers;
- 20 5.1.6 Community Centers;
- 21 5.1.7 Environmental Learning Centers;
- 22 5.1.8 Small craft centers;
- 23 5.1.9 Performing Arts Centers;
- 24 5.1.10 Tennis Centers;
- 25 5.1.11 Skateboard Parks;
- 5.1.12 Golf Courses; and,
- 5.1.13 Swim beaches.

22 *Id.* at ¶ 5.1. At these facilities, the Parks Department Superintendent may post "appropriate
23 signage indicating to the public that firearms are not permitted at that facility." *Id.* at ¶ 5.2.
24 The Rule becomes applicable to a particular Parks Department facility once signage has been
25 posted at that facility. *Id.* at ¶ 4.0.

1 As a result of the Firearms Rule, a police officer or other authorized City employee
2 may order a person to leave a Parks Department facility *even if that person has a valid*
3 *Concealed Pistol License and is permitted by state law to carry a concealed pistol.* *Id.* at ¶
4 6.0. Refusal to leave may subject a violator to citation or arrest for criminal trespass.² *Id.* at ¶
5 6.1.

6 In conjunction with the enactment of its new Firearms Rule, the City also issued a
7 Press Release announcing that, by noon on October 16, 2009, signage announcing the
8 firearms ban would be posted at the South Park Community Center, the Garfield Community
9 Center, and the Bitter Lake Community Center. Fogg Decl., Ex. C. The Press Release further
10 stated that signs will be posted at approximately 530 designated facilities by December 1,
11 2009. *Id.*

12 **B. The City is enforcing the Firearms Rule against Washington citizens even**
13 **though the Rule violates state law.**

14 The individual plaintiffs all possess lawful and valid Concealed Pistol Licenses.³
15 Because the individual plaintiffs are properly licensed, state law entitles them to carry
16 concealed weapons to City parks and other designated facilities. Nevertheless, and as will be
17 discussed below, the City is aggressively enforcing the Firearms Rule in a manner that denies
18 the individual plaintiffs their right to carry concealed weapons in places like City parks and
19 recreation facilities.

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22 ² The Firearms Rule was likely a direct result of Executive Order 07-08 (“Gun Safety at City
23 Facilities”), which was issued by then-Mayor Nickels in June 2008. This Executive Order directed all
24 City departments to conduct an inventory of present policies, rules, and leases to determine the extent
25 to which they can prohibit firearms on City property and to implement plans to make such changes.
Fogg Decl., Ex. B.

³ See Chan Decl., Ex. A; Kennar Decl., Ex. A; Carter Decl., Ex. A; Peterson Decl., Ex. A;
Goedecke Decl., Ex. A (copies of individual plaintiffs’ Concealed Pistol Licenses).

1 Plaintiff Winnie Chan. Ms. Chan is a 36 year-old parole and probation officer for the
2 Washington Department of Corrections. Declaration of Winnie P. Chan (“Chan Decl.”) at ¶¶
3 2-3. She lives, works, and recreates in Seattle. *Id.* at ¶ 2. Ms. Chan’s job requires her to
4 supervise offenders released from incarceration. Because this job has the potential to be very
5 dangerous, she is required to be armed and has received substantial training in all aspects of
6 firearm use. *Id.* at ¶ 3-4.

7 Ms. Chan sometimes carries a personal firearm when she is off-duty in part because of
8 the likelihood that she will encounter people that she has apprehended in her line of work who
9 may wish to cause her harm. *Id.* at ¶ 6. Ms. Chan’s professional experience has taught her
10 that crime can be committed anywhere and by anyone; for that reason, she occasionally
11 carries her lawful firearm in public in order to protect herself. *Id.*

12 Ms. Chan enjoys walking in Lincoln Park, Discovery Park, and the Alki Beach area.
13 She also occasionally walks and plays tennis at the Hiawatha Community Center. *Id.* at ¶ 7.
14 All of these places are currently (or will soon become) subject to the Firearms Rule. For that
15 reason, Ms. Chan no longer feels that she can protect herself when she visits those locations.
16 *Id.* In fact, City officials recently asked Ms. Chan and plaintiff Robert Kennar to leave the
17 Hiawatha Community Center because they possessed otherwise lawful firearms. *Id.* at ¶ 8.
18 The City did so even though no firearm-banning signage had yet been posted at that center – a
19 blatant violation of the Firearms Rule, which only applies where “appropriate signage has
20 been posted.” *Id.*; Fogg Decl., Ex. A at ¶ 4.0.

21 Plaintiff Robert Kennar. Like Ms. Chan, Mr. Kennar is an armed parole and probation
22 officer for the Washington Department of Corrections. Declaration of Robert Kennar
23 (“Kennar Decl.”) at ¶ 4. He works and recreates in Seattle. *Id.* at ¶ 2. Mr. Kennar is a 60
24 year-old man who has a distinguished record of military service. *Id.* at ¶¶ 2, 5. He served in
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1 the United States Army from 1971 until 1973 and the United States Air Force from 1979 until
2 2009, and he is currently a member of the Washington State Guard. *Id.* at ¶ 5. In conjunction
3 with his extensive military service, as well as his current and past employment, Mr. Kennar
4 has been trained in all aspects of firearms maintenance and use. *Id.* In fact, he is a certified
5 Department of Corrections instructor in safe firearms handling. *Id.* Mr. Kennar is a member
6 of the NRA and the Washington Arms Collectors. *Id.* at ¶ 3.

7 When Mr. Kennar is off-duty, he always carries his personal firearm when he is
8 lawfully permitted to do so. *Id.* at ¶ 7. Like Ms. Chan, Mr. Kennar is legitimately concerned
9 about being threatened by people that he has encountered through his line of work. *Id.* In
10 addition, as a Department of Corrections employee, Mr. Kennar is familiar with the criminal
11 activity in Seattle and he believes that some Seattle streets and parks are unsafe. *Id.* In fact,
12 he has himself been the victim of crime in Seattle. *Id.* Mr. Kennar frequently visits Seattle
13 parks on his days off, including parks subject to the Firearms Rule: namely, Lincoln Park, the
14 Alki Beach area, the Green Lake area, Volunteer Park, Discovery Park, and Gas Works Park.
15 Because of the Firearms Rule, Mr. Kennar has stopped going to his favorite parks. *Id.* at ¶ 8.
16 In fact, he was recently asked to leave the Hiawatha Community Center because he was
17 carrying an otherwise lawful firearm. The City employee on-site at the Community Center
18 cited the Firearms Rule as his reasoning, despite the fact that no signs had yet been posted.
19 *Id.* at ¶ 9.

20 Plaintiff Raymond Carter. Mr. Carter is a 44 year-old gay man who is a past co-chair
21 of the Seattle Pride Parade and the founding President of the Seattle Chapter of Pink
22 Pistols/Cease Fear. Declaration of Raymond Carter (“Carter Decl.”) at ¶¶ 2, 4. He lives,
23 works, and recreates in Seattle, and is a SAF and NRA member. *Id.* at ¶¶ 2-3. He routinely
24 carries a firearm when he is lawfully permitted to do so because he strongly believes that as
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1 an openly gay man, he is more susceptible to becoming a victim of a hate-related crime but,
2 because of health issues, he does not feel that he is physically capable of running away. *Id.* at
3 ¶ 7. Mr. Carter used to regularly go walking in Lincoln Park, the Alki Beach area, and
4 Volunteer Park, and he twice visited the High Point Community Center for public meetings.
5 *Id.* at ¶ 8. However, because those facilities are now subject to the Firearms Rule, he no
6 longer exercises his right to visit them because he does not feel safe there. *Id.*

7 Recently, Mr. Carter entered the Alki Community Center and informed the employee
8 working there that he was carrying a holstered firearm and that he possessed a valid license to
9 do so. *Id.* at ¶ 9. The City employee instructed him – in writing – that he was required to
10 leave, pursuant to the Firearms Rule. *Id.*

11 Gray Peterson. Mr. Peterson is a 28 year-old man who describes himself as a
12 “progressive gay liberal.” Declaration of Gray Peterson (“Peterson Decl.”) at ¶¶ 2, 5. He is
13 also a member of the NRA who, like Mr. Carter, always carries a firearm when he is lawfully
14 permitted to do so in order to protect himself from hate crimes. *Id.* at ¶ 8. Mr. Peterson is
15 often credited for leading the charge to educate Washington law enforcement agencies about
16 the legality of openly carrying a firearm. *Id.* at ¶ 4.

17 Mr. Peterson visits Seattle parks with his domestic partner. *Id.* at ¶ 9. These parks
18 include Volunteer Park, Cal Anderson Park, and the Green Lake area, all of which are
19 currently (or will eventually be) subject to the Firearms Rule. Mr. Peterson has not been
20 willing to visit these parks since the Firearms Rule went into effect because he does not feel
21 safe there. *Id.*

22 Gary Goedecke. Mr. Goedecke is a 63 year-old Bothell resident. Declaration of Gary
23 Goedecke (“Goedecke Decl.”) at ¶ 2. He owns a 35 year-old business at Pike Place Market in
24 downtown Seattle. He has served the City of Seattle’s chartered public corporation known as
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1 the Pike Place Market Preservation and Development Authority, and its related entities, in a
2 variety of leadership capacities since 1974. *Id.* at ¶ 4. He is a veteran who is trained in the
3 use of Nike Hercules missiles and air defense artillery automatic weapons, and he earned a
4 Viet Nam Commendation medal, a Viet Nam Service medal, and a Bronze Star medal for
5 meritorious service during the Viet Nam war. *Id.* at ¶ 6.

6 Mr. Goedecke always carries a firearm when he is lawfully permitted to do so in order
7 to protect himself, his wife, and his employees. He is particularly likely to carry his firearm
8 when he is at his place of business due to the level of dangerous criminal activity in
9 downtown Seattle. *Id.* at ¶ 7. In addition, Pike Place Market is directly adjacent to Victor
10 Steinbrueck Park, which Mr. Goedecke passes through regularly and believes to be an area of
11 significant criminal activity. *Id.* at ¶¶ 7-8. He also regularly visits the Alki Beach area and
12 the Green Lake area. *Id.* at ¶ 8. A Seattle Police officer recently told Mr. Goedecke that due
13 to the new Firearms Rule, Mr. Goedecke could not cross the street into Victor Steinbrueck
14 Park because he was carrying an otherwise lawful firearm. *Id.* at ¶ 9.

15 **III. STATEMENT OF ISSUES**

16 Are the plaintiffs, current holders of lawful Washington Concealed Pistol Licenses and
17 organizations whose members are so licensed, entitled to a judgment declaring the Firearms
18 Rule null and void, enjoining the enforcement of that rule, and requiring the City to remove
19 all gun ban signage posted under the rule where the City enacted the rule despite clear legal
20 authority that such regulation is unlawful under state law?

21 **IV. EVIDENCE RELIED UPON**

22 This motion for summary judgment is based upon the evidence and authorities cited
23 herein, and the Declarations of Steven Fogg, Winnie Chan, Robert Kennar, Raymond Carter,
24 Gray Peterson, Gary Goedecke, David Workman, Leland Bull, and Christopher Cox.

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V. ARGUMENT AND AUTHORITY

Summary judgment in the moving party's favor is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). Where a trial court is faced with questions of a purely legal nature, it is proper to decide the case on summary judgment. *Kinnear v. The Hertz Corp.*, 86 Wn.2d 407, 418 (1976). The issues presented by this case pertain to statutory authority and constitutional limitations, and are therefore issues of law to be determined by this Court. *Okeson v. Seattle*, 150 Wn.2d 540, 549 (2003).

A. The Firearms Rule violates clearly established state law.

The possession of a firearm is a clearly protected right under the United States and Washington Constitutions. U.S. CONST. amend. II; *District of Columbia v. Heller*, 128 S.Ct. 2783, 2797 (2008); WASH. CONST. art. I, § 24. Indeed, our state Constitution explicitly states that “[t]he right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired[.]” WASH. CONST. art. I, § 24.

In furtherance of this clear policy, the Washington legislature has created a comprehensive statutory scheme which aims to protect the citizen's right to bear arms while simultaneously protecting the public's safety from firearm-related dangers. *See* RCW 9.41.010-9.41.810, 70.108.150. Under this statutory scheme, an adult who meets certain criteria may obtain a Concealed Pistol License which entitles him/her to carry a concealed firearm in public locations with limited exceptions such as jails, courtrooms, public mental health facilities, bars, airports, schools, and outdoor music festivals. *Id.* In addition, persons may openly carry lawful firearms in places where firearm possession is otherwise legal if they do so in a manner that does not manifest an intent to intimidate or warrant alarm. RCW 9.41.270.

1 In addressing the interests of firearm possession and public safety, the Washington
2 legislature made it abundantly clear that the authority to regulate firearms rests exclusively
3 with the state:

4 The state of Washington hereby **fully occupies and preempts the entire**
5 **field of firearms regulation within the boundaries of the state,**
6 including the . . . possession . . . of firearms, or any other element relating
7 to firearms or parts thereof[.] **Cities, towns, and counties or other**
8 **municipalities may enact only those laws and ordinances relating to**
9 **firearms that are specifically authorized by state law, as in RCW**
10 **9.41.300, and are consistent with this chapter. [. . .] Local laws and**
11 **ordinances that are inconsistent with, more restrictive than, or exceed the**
12 **requirements of state law shall not be enacted and are preempted and**
13 **repealed [. . .].**

14 RCW 9.41.290 (“Preemption Clause”) (emphasis added).⁴ This Preemption Clause “was
15 enacted to reform that situation in which counties, cities, and towns could each enact
16 conflicting local criminal codes regulating the general public’s possession of firearms” and
17 aims to “creat[e] statewide uniformity of firearms regulation of the general public.” *Cherry v.*
18 *Mun. of Metro. Seattle*, 116 Wn.2d 794, 801-02 (1991); *see also Rabon v. Seattle*, 135 Wn.2d
19 278, 289 (1998) (“Preemption may be found where there is express legislative intent to
20 preempt the field or such intent appears by necessary implication”); *Shoreline v. Club for*
21 *Free Speech*, 109 Wn. App. 696, 703 (2001) (“when statutory language is clear and
22 unequivocal, courts must assume the legislature meant exactly what it said and apply the
23 statute as written”) (internal quotation omitted).

24 Because the state of Washington has preempted the field of firearms regulation, a
25 municipality may not regulate the lawful possession of firearms on its property when that
property is being used by the general public for a public purpose. *Pac. Northwest Shooting*

⁴ While the Preemption Clause provides that municipalities may regulate firearms to the extent specifically authorized by state law, no state law allows a municipality to ban the possession of otherwise lawfully possessed firearms from city parks property during public use of that property.

1 *Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 357 (2006).⁵ The City is well aware of the
2 Preemption Clause and the limits it imposes on local actions to regulate firearms. In May
3 2006, for instance, then-Mayor Nickels wrote a letter to Speaker of the House Frank Chopp in
4 which he urged Representative Chopp to work toward adopting reasonable gun regulations.
5 Fogg Decl., Ex. D. In that letter, Mayor Nickels discussed the problem of gun violence in
6 Seattle, then admitted:

7 We cannot accomplish anything without your personal leadership in Olympia.
8 **State law preempts any and all local regulations related to firearms. Our**
9 **hands are tied at the local level and we are unable to adopt any local laws**
10 **to protect our residents from gun crime.**

11 *Id.* at 2 (emphasis added).⁶

12 Indeed, Attorney General Rob McKenna unequivocally reinforced this conclusion in
13 an Opinion issued shortly after Mayor Nickels directed all Seattle departments to assess and
14 implement plans to prohibit firearms on City property in 2008. *See* Fogg Decl., Exs. B, E. In
15 responding to the question, “Does a city in Washington have the authority to enact a local law
16 that prohibits possession of firearms on city property or in city-owned facilities?”, McKenna
17 wrote:

18 The answer to your question is no. RCW 9.41.290 “fully occupies and preempts the
19 entire field of firearms regulation” and preempts a city’s authority to adopt firearms
20 law or regulations of application to the general public, unless specifically authorized

21 ⁵ The City may erroneously argue that *Pac. Northwest Shooting Park Ass'n v. City of Sequim*
22 validates the Firearms Rule because it holds that a city, acting in its proprietary capacity, may regulate
23 firearms in the same way that a private property owner may. 158 Wn.2d at 357. But this is only true
24 if the regulations pertain to the *private* use of city-owned property and are not “laws or regulations of
25 application to the general public.” *Id.* Indeed, Attorney General McKenna expressly stated that the
City of Sequim case does *not* support the proposition “that cities may prohibit the general public from
possessing firearms on city property.” Fogg Decl., Ex. E at 4.

⁶ There may, in fact, be other instances where city officials acknowledged the limits imposed
by the Preemption Clause. However, as of the date of this motion, the City had not yet responded to
plaintiffs’ discovery requests seeking such information. Plaintiffs therefore reserve the right to
supplement this motion at a later date, if necessary.

1 by state law. Accordingly, RCW 9.41.290 preempts a city's authority to enact local
2 laws that prohibit possession of firearms on city property or in city-owned facilities.

3 Fogg Decl., Ex. E at 1. McKenna went on to state that a city cannot regulate firearm
4 possession under the guise of property ownership because "[l]arge parts of city property are
5 generally open to the public." *Id.* at 4.

6 The City's Firearms Rule unquestionably violates state law. The ability to regulate the
7 possession of firearms in public parks and recreational facilities, during the public use of
8 those facilities, lies within the exclusive province of the State. Statutes and case law are clear,
9 as is the Attorney General's Opinion.⁷ The Firearms Rule is unlawful and unconstitutional in
10 its entirety. *See* WASH. CONST. art. XI, § 11 ("Any county, city, town or township may make
11 and enforce within its limits all such local police, sanitary and other regulations as are not in
12 conflict with general laws"); *Rabon*, 135 Wn.2d at 287 ("an ordinance is unconstitutional if a
13 state enactment preempts the field, leaving no room for concurrent jurisdiction, or if a conflict
14 exists between the ordinance and a statute which cannot be harmonized").

15 **B. Declaratory relief is appropriate here.**

16 A person may ask a court to determine the validity of an ordinance, and obtain a
17 declaration of rights under that ordinance, if his/her "rights, status or other legal relations are
18 affected by" that rule. RCW 7.24.020. Such declaratory relief is "peculiarly well suited to
19 the judicial determination of controversies concerning constitutional rights and [. . .] the
20 constitutionality of legislative action or inaction." *Seattle Sch. Dist. v. State*, 90 Wn.2d 476,
21 490 (1978). Courts typically will not issue declaratory judgments, however, in the absence of
22 a justiciable controversy. *To-Ro Trade Shows v. Grant Collins*, 144 Wn.2d 403, 411 (2001).

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24 ⁷ Attorney General Opinions are entitled to great weight by this Court. *Belas v. Kiga*, 135
25 Wn.2d 913, 928 (1998).

1 A justiciable controversy exists where there is: (1) an actual, present, and existing dispute, as
2 opposed to a dispute that is possible, hypothetical, moot, or speculative, (2) between parties
3 that have genuine and opposing interests, (3) which involves direct and substantial interests as
4 opposed to potential, theoretical, or abstract interests, and (4) a judicial determination of
5 which will conclusively terminate the controversy. *Id.*; RCW 7.24.060.

6 The present case involves a justiciable controversy. First, an actual dispute currently
7 exists: the City is prohibiting the general public from carrying otherwise lawful firearms onto
8 hundreds of designated parks and recreational facilities despite State preemption, and all but
9 one of the individual plaintiffs have been told to leave city parks and recreation property
10 because they were lawfully carrying a firearm. *See* Chan Decl. at ¶ 8; Kennar Decl. at ¶ 9;
11 Carter Decl. at ¶ 9; Goedecke Decl. at ¶ 9. There is nothing hypothetical, moot, or speculative
12 about this dispute. Second, the parties have genuine and opposing interests. The individual
13 plaintiffs, on one hand, possess Concealed Pistol Licenses and wish to exercise their
14 constitutional and statutory rights to carry their lawful firearms while recreating and engaging
15 in their constitutional right to peacefully assemble on public property.⁸ *See* Chan Decl. at ¶¶
16 5-7; Kennar Decl. at ¶¶ 6-8; Carter Decl. at ¶¶ 5, 7-8; Peterson Decl. at ¶¶ 6, 8-9; Goedecke
17 Decl. at ¶¶ 5, 7-8. The City, on the other hand, has justified banning lawful firearms in parks
18 and recreation facilities by citing to its responsibility to protect children. Fogg Decl., Ex. A at
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21 ⁸ The organizational plaintiffs have members in Washington with these same interests, and the
22 organizational plaintiffs' central purposes focus on their members' right to possess firearms.
23 Declaration of David P. Workman at ¶¶ 2-7 (representing plaintiffs SAF and Citizens Committee);
24 Declaration of Christopher W. Cox at ¶¶ 2-4 (representing plaintiff NRA); Declaration of Leland L.
25 Bull, Jr. at ¶¶ 2-4 (representing plaintiff WAC). *See Am. Legion Post No. 149 v. Dep't of Health*, 164
Wn.2d 570, 595 (2008) (an organization may have standing in a representative capacity where their
members would have standing to sue in their own right, where the interests they seek to protect are
germane to its purpose, and where the claims and requested relief does not require the participation of
individual members).

1 ¶ 1.0. The interest in bearing arms for self-protection and the interest in regulating firearms
2 possession are both genuine and potentially competing.

3 Third, plaintiffs' interests in exercising their constitutional and statutory rights while
4 recreating and assembling are direct and substantial. As it currently stands, the individual
5 plaintiffs (and the organizational plaintiffs' members) cannot visit their favorite city parks and
6 community meeting centers while simultaneously carrying their otherwise lawful firearms – a
7 right protected by the United States and Washington Constitutions and by Washington statute
8 – without violating a City rule and risking the humiliation of being asked to leave (or of being
9 arrested for trespass if they fail to comply). And finally, a judicial determination of plaintiffs'
10 rights will indeed terminate this controversy as it would conclusively establish that the City's
11 Firearms Rule was an unlawful attempt to bypass the State's exclusive authority to regulate
12 firearms possession.

13 In sum, the four elements of a justiciable controversy are present and are indisputable.
14 No genuine issue of fact is present and the statutory and case law plainly demonstrate that the
15 City's Firearms Rule violates state statutory and constitutional law. Plaintiffs are entitled to a
16 declaration that the City's Firearms Rule is unlawful and unenforceable in its entirety.

17 The declaratory relief plaintiffs seek from this court is not unusual or extraordinary. A
18 review of the relevant case law demonstrates that courts do not hesitate to grant declaratory
19 relief on summary judgment where municipal regulations conflict with state law. For
20 example, a city ordinance requiring a telephone franchisee to move underground lines at its
21 own expense was declared null and void where a state regulation essentially required the
22 relocation of lines to be paid for by the party requesting it. *See Gen. Tel. Co. of the N.W., Inc.*
23 *v. City of Redmond*, 105 Wn.2d 579, 587 (1986) (affirming trial court's decision to grant
24 declaratory relief on summary judgment). And where state law provided that property
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1 development rights vest at the time a developer files a legally sufficient permit or plat
2 application, a county ordinance stating otherwise was preempted and therefore declared
3 invalid. *Adams v. Thurston County*, 70 Wn. App. 471, 482 (1993) (affirming trial court's
4 decision to grant declaratory relief on summary judgment). Declaratory relief is appropriate
5 here.

6 **C. Injunctive relief is also appropriate here.**

7 A declaration from this Court that the Firearms Rule is unlawful will go a long way
8 toward restoring plaintiffs' clear legal rights. The plaintiffs will not receive complete relief,
9 however, until the City is required to remove all signage posted pursuant to the Firearms Rule
10 and is permanently enjoined from enforcing the Firearms Rule in any way. Such injunctive
11 relief is appropriate where: (1) the plaintiffs have a clear legal or equitable right, (2) the
12 plaintiffs have a well-grounded fear of the immediate invasion of that right, and (3) the acts
13 complained of are resulting, or will result, in actual and substantial injury to the plaintiffs.
14 *Wash. Fed'n of State Employees v. State*, 99 Wn.2d 878, 887-88 (1983).

15 Here, there is no question that the individual plaintiffs have a clear legal right to carry
16 their lawful firearms in areas where state law permits them to do so. *See* WASH. CONST. art. I,
17 § 24; RCW 9.41.010-9.41.810, 70.108.150. And because the City's Firearms Rule clearly
18 prohibits plaintiffs from exercising this right, there is no question that plaintiffs have a well-
19 grounded fear of the immediate invasion of that right. And finally, the plaintiffs have been
20 injured in that they have been prohibited from entering public property despite the fact that
21 they are acting in accordance with state law. *See* Chan Decl. at ¶ 8; Kennar Decl. at ¶ 9;
22 Carter Decl. at ¶ 9; Peterson Decl. at ¶ 9; Goedecke Decl. at ¶ 9.⁹

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24 ⁹ Nor will money damages do anything to make the plaintiffs whole. *See Kucera v. Dep't of*
25 *Transp.*, 140 Wn.2d 200, 209 (2000) (injunctive relief will not be granted where a plaintiff has an
adequate remedy at law). No monetary award would restore a taxpaying citizen's right to enter public
property for public use while exercising a constitutional and statutory right.

