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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT C. WARDEN,) No: 2:09-cv-01686-MJP
Plaintiff,)
) PLAINTIFF'S RESPONSE TO
vs.) DEFENDANTS' SUPPLEMENTAL
) BRIEF CONCERNING CHAN v. CITY
) OF SEATTLE AND STATE v. SIEYES
GREGORY J. NICKELS and)
CITY OF SEATTLE,)
Defendants.)
_____)

INTRODUCTION

Plaintiff hereby responds to Defendants' February 26,
2010 Supplemental Brief Concerning Chan v. City of Seattle and
State v. Sieyes (Dkt. No. 24). Plaintiff hereby reiterates and
incorporates into this Response all arguments made in all
previously filed pleading.

On February 12, 2010, King County Superior Court Judge
Catherine Shaffer ruled in Chan v. Seattle that the same Seattle
Parks Department gun ban rule at issue in the above-captioned

1 action violated Washington State statutory law, and declared the
2 rule null and void (See Dkt. No. 25-3, pages 43-65).

3 In granting complete summary judgment to the individual
4 Chan plaintiffs, Judge Shaffer also granted full injunctive
5 relief, found that the individual Chan plaintiffs who were
6 turned away from Parks property only because they carried
7 firearms had suffered substantial injury, and found that the
8 individual plaintiffs had "a clear legal or equitable right to
9 carry firearms under federal and state constitutions." (See
10 Dkt. No. 25-3, pages 63-65)

11 On February 18, 2010, in State v. Sieyes, the Washington
12 Supreme Court ruled that both the Washington and federal
13 constitutions protected the individual right of Washington state
14 citizens to carry arms. Six of the nine justices signed the
15 majority opinion (See attached Exhibit A). A seventh justice
16 authored a separate opinion concurring in the outcome, but
17 arguing that strict scrutiny should be the standard applied when
18 reviewing a curtailment of the right to bear arms (See attached
19 Exhibit B).

20 DISCUSSION

21 CHAN

22 The Chan ruling effectively destroyed the foundation of

1 Defendants' theories in the above-captioned action. Defendants
2 have repeatedly insisted that the gun ban rule was reasonable
3 and legal. That position was clearly and completely rejected in
4 Chan. Defendants have repeatedly claimed that Plaintiff lacks
5 standing and has not suffered harm in this case. That position
6 was clearly and completely rejected in Chan, whose individual
7 plaintiffs suffered the exact same harm as Plaintiff in this
8 case.

9 Chan struck down Defendants' gun ban rule as being
10 clearly illegal in light of Washington's state preemption
11 statute. It can no longer be coherently argued that the rule
12 was reasonable.

13 The Chan judge went out of her way to articulate and
14 support her opinion that the illegal rule also violated both
15 state and federal constitutions, as argued by Plaintiff in this
16 action.

17 SIEYES

18 In Sieyes, the Washington Supreme Court made a specific
19 finding, backed by exhaustive explanation, that the second
20 amendment applies to the states. In discussing the state
21 constitutional right to bear arms, the Sieyes court made it
22 clear that the individual right protected by the state

1 constitutional provision is at least as comprehensive as the
2 right protected by the second amendment, but declined to rule on
3 the distinct possibility that the state protection was greater
4 than the federal. Significantly, in footnote 20 (mislabeled as
5 "2") at the bottom of page 22 of the Siefes majority (Exhibit
6 A), the court made it crystal clear that their historic
7 reference to "reasonable regulation" of firearms does not in any
8 way imply a specific level of scrutiny.

9 IMPACT ON THE CASE AT BAR

10 Plaintiff's second amendment rights have been violated.
11 Though not binding precedent on this Court, both Chan and Siefes
12 read and applied the Heller ruling in the exact same way as
13 Plaintiff argues in this case. That is, given the language in
14 Heller, it is virtually inconceivable that the second amendment
15 will be found to apply only against federal authorities. The
16 writing is on the wall despite Defendants' stubborn continued
17 efforts to avert their collective gaze; this term in McDonald,
18 the U.S. Supreme Court will apply the second amendment against
19 the states. Defendant has never articulated any plausible basis
20 upon which the SCOTUS could or would rely to deny a specifically
21 and separately enumerated fundamental right to to the American
22 people. In any event, we will all know the outcome of McDonald

1 within a matter of weeks, as it is scheduled for oral argument
2 on March 2.

3 Defendants' illegal and already-vacated rule violated
4 Plaintiff's state constitutional right to bear arms. The Chan
5 judge stated this directly. She must have felt pretty strongly
6 about it because she stated it gratuitously; no constitutional
7 issue was technically before her. The Sieyes court made it
8 clear that the individual right secured by the state
9 constitution was at least as broad as that secured by the second
10 amendment. Defendants' oft-repeated argument that "reasonable
11 regulation" of firearms is allowed under the state constitution
12 was rendered meaningless by footnote 20 of the six-justice
13 Sieyes majority opinion. A seventh justice wrote and filed a
14 separate opinion in order to argue that the standard of review
15 of firearms regulation should be strict scrutiny.

16 As noted in Defendants' brief, a federal court's role is
17 to give state law the construction it believes the highest state
18 court would give it. In light of the high court's ruling in
19 Sieyes, it should be clear that the Washington Supreme Court
20 would find Defendants' unreasonable, irrational, and already-
21 determined-to-be illegal gun ban rule to violate the state
22 constitution.

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CONCLUSION

Defendants' gun ban rule cannot survive any level of scrutiny. The rule was an illegal and irrational solution to an incoherently articulated imaginary problem. Sieyes and Chan, separately and in conjunction, strengthen Plaintiff's claims on both the federal and state constitutional fronts.

Plaintiff has noted a motion for summary judgment in this action for March 12. As that motion is the flip side of the coin to the current motion to dismiss, the Court may find it useful to deal with all motions in one ruling. In addition, for the sake of judicial efficiency, Plaintiff respectfully asks the court to await this term's impending definitive U.S. Supreme Court ruling in McDonald, and then apply that ruling to this action.

DATED this 28th day of February, 2010.

Respectfully submitted,

s/ Robert C. Warden
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