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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

WINNIE CHAN, an individual; ROBERT KENNAR, an individual; RAYMOND CARTER, an individual; GRAY PETERSON, an individual; GARY G.GOEDECKE, an individual; THE SECOND AMENDMENT FOUNDATION, INC., a Washington non-profit corporation; CITIZENS COMMITTEE FOR THE RIGHT TO KEEP AND BEAR ARMS, a Washington non-profit corporation; WASHINGTON ARMS COLLECTORS, INC., a Washington non-profit corporation; AND NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., a New York non-profit association,

Plaintiffs,

v.

CITY OF SEATTLE, a municipality; GREGORY J. NICKELS, Mayor of the City of Seattle, in his official capacity; SEATTLE DEPARTMENT OF PARKS AND RECREATION, a department of the City of Seattle; and TIMOTHY A. GALLAGHER, Superintendent, in his official capacity,

Defendants.

No. 09-2-39574-8 SEA

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1 Plaintiffs, by and through their attorneys, allege the following complaint for
2 declaratory and injunctive relief against Defendants City of Seattle, Mayor Greg Nickels,
3 Seattle Department of Parks and Recreation, and Superintendent Timothy Gallagher:

4 **NATURE OF THE CASE**

5 It is an incontestable fact that the State of Washington has the exclusive right to
6 regulate the possession of firearms in Washington. RCW 9.41.290. It is equally incontestable
7 that cities in the State of Washington may not enact local laws or regulations that prohibit the
8 possession of firearms on city property. *Id.* The Defendants have ignored these clear legal
9 principles by issuing a city regulation that bans the possession of firearms on certain city
10 properties. Defendants have no right to simply ignore aspects of the law with which they
11 disagree. Accordingly, Plaintiffs bring this action for injunctive and declaratory relief, and
12 ask this Court for an order that would require the Defendants to follow the law.

13 **PARTIES**

14 1. Plaintiff Winnie Chan is a resident of Seattle, Washington. She has a valid and
15 current Washington Concealed Pistol License and visits Seattle parks and recreation facilities.

16 2. Plaintiff Robert Kennar is a resident of Federal Way, Washington. He has a
17 valid and current Washington Concealed Pistol License, and visits Seattle parks and
18 recreation facilities.

19 3. Plaintiff Raymond Carter is a resident of Seattle, Washington. He has a valid
20 and current Washington Concealed Pistol License, and visits Seattle parks and recreation
21 facilities.

22 4. Plaintiff Gray Peterson is a resident of Lynnwood, Washington. He has a valid
23 and current Washington Concealed Pistol License, and visits Seattle parks and recreation
24 facilities.

1 5. Plaintiff Gary Goedecke is a resident of Bothell, Washington who owns a
2 business located in Seattle, Washington. He has a valid and current Washington Concealed
3 Pistol License, and visits Seattle parks and recreation facilities.

4 6. Plaintiff Second Amendment Foundation, Inc. (“SAF”) is a non-profit
5 membership organization incorporated under the laws of Washington with its principal place
6 of business in Bellevue, Washington. SAF has over 600,000 members and supporters
7 nationwide, including thousands in the State of Washington. The purposes of SAF include
8 education, research, publishing, and legal action focusing on the constitutional right to own
9 and possess firearms. SAF brings this action on behalf of itself and its members.

10 7. Plaintiff Citizens Committee for the Right to Keep and Bear Arms (“Citizens
11 Committee”) is a Washington nonprofit corporation with its principal place of business in
12 Bellevue, Washington. Citizens Committee has over 650,000 members and contributors
13 nationwide, with approximately 22,000 members in the State of Washington. Citizens
14 Committee seeks to preserve Second Amendment and state constitutional rights through
15 education and advocacy and strives to ensure that firearms rights are not misinterpreted in
16 derogation of the people’s right to keep and bear arms for self-defense and other
17 constitutional purposes. Citizens Committee brings this action on behalf of itself and its
18 members.

19 8. Plaintiff Washington Arms Collectors (“WAC”) is a Washington non-profit
20 corporation and membership organization with its principal place of business in Renton,
21 Washington. WAC has approximately 15,000 members, many of whom reside in, or work in,
22 the City of Seattle. WAC provides a forum for collectors of arms and their accouterments to
23 exchange objects and information in a setting of fellowship and camaraderie, in order to foster
24 research, education, and publication concerning arms and their relationship to history.
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1 **FACTS**

2 16. The ownership of a firearm is a clearly protected right under the United States
3 and Washington Constitutions. In addition, Washington statutory law grants adults who meet
4 certain criteria the absolute right to obtain a Concealed Pistol License. Under state law, a
5 Concealed Pistol License entitles the licensee to carry a firearm in public locations, with
6 limited exceptions such as jails, courtrooms, public mental health facilities, bars, airports,
7 schools, and outdoor music festivals. *See* RCW 9.41.

8 17. Washington law states in no uncertain terms that the authority to regulate
9 firearms rests exclusively with the State. Washington law expressly states:

10 The state of Washington hereby fully occupies and preempts the entire
11 field of firearms regulation within the boundaries of the state, including the
12 . . . possession . . . of firearms, or any other element relating to firearms or
13 parts thereof[.] Cities, towns, and counties or other municipalities may
14 enact only those laws and ordinances relating to firearms that are
15 specifically authorized by state law, as in RCW 9.41.300, and are
16 consistent with this chapter. [. . .]

17 RCW 9.41.290 (“Preemption Clause”).¹

18 18. On June 6, 2008, Mayor Nickels issued Executive Order 07-08 entitled “Gun
19 Safety at City Facilities.” This Executive Order directed all City departments to conduct an
20 inventory of present policies, rules, and leases to determine the extent to which they can
21 prohibit firearms on City property and to implement plans to make such changes. A true copy

22 ¹ RCW 9.41.300, which is referenced in the Preemption Clause, permits cities, towns,
23 counties, and other municipalities to enact laws and ordinances restricting the discharge of firearms in
24 certain locations and restricting the possession of firearms in a municipality-owned stadium or
25 convention center. RCW 9.41.300(2). This statutory provision is inapplicable to the present case,
which concerns city restrictions that have nothing to do with the discharge of firearms or the
possession of firearms in stadiums or convention centers.

Moreover, while the Washington Supreme Court has held that a municipal property owner
may impose conditions regarding firearms on its property, it may do so *only* as those conditions relate
to the *private use* of municipality-owned property. *Pacific Northwest Shooting Park Ass’n v. City of
Sequim*, 158 Wn.2d 342, 357, 144 P.3d 276 (2006) (emphasis added). The city restrictions at issue
here illegally impose conditions on the *public* use of city-owned property.

1 of this Executive Order is attached to this Complaint as Exhibit A and is incorporated by this
2 reference.

3 19. In October 2008, *after* Mayor Nickels issued Executive Order 07-08,
4 Washington Attorney General Rob McKenna issued an Opinion which put the City of Seattle
5 and Mayor Nickels on further notice that Washington cities may not enact local laws
6 prohibiting possession of firearms on city property or in city-owned facilities. See AGO 2008
7 No. 8. A true copy of this Opinion is attached to this Complaint as Exhibit B and is
8 incorporated by this reference.

9 20. Attorney General McKenna's Opinion was written in language that made it
10 absolutely clear that cities in Washington do not have the authority to enact local laws that
11 prohibit the possession of firearms on city property. Indeed, the Opinion opened with the
12 following colloquy:

13 Does a city in Washington have the authority to enact a local law that prohibits
14 possession of firearms on city property or in city-owned facilities?

15 The answer to your question is no. RCW 9.41.290 "fully occupies and preempts the
16 entire field of firearms regulation" and preempts a city's authority to adopt firearms
17 law or regulations of application to the general public, unless specifically authorized
18 by state law. Accordingly, RCW 9.41.290 preempts a city's authority to enact local
19 laws that prohibit possession of firearms on city property or in city-owned facilities.

20 21. Ignoring the incontestable Washington authorities discussed above, Defendants
21 have now illegally imposed restrictions on a citizen's right to possess a firearm on city-owned
22 property. Specifically, on October 14, 2009, Seattle's Parks and Recreation Department
23 Superintendent Timothy Gallagher issued Rule/Policy Number P 060-8.14 ("Firearms Rule"
24 or "Rule"). That Rule states, in relevant part:

25 The Department, in its proprietary capacity as owner or manager of
Department facilities, does not permit the carrying of concealed firearms or
the display of firearms, except by law enforcement officers and on-duty
security officers, at Parks Department facilities at which: 1) children and

1 youth are likely to be present and, 2) appropriate signage has been posted
2 to communicate to the public that firearms are not permitted at the facility.

3 Firearms Rule at ¶ 4.0.

4 22. The Rule goes on to designate certain Parks Department facilities at which
5 children and youth are likely to be present. Those facilities are:

- 6 5.1.1 Playgrounds and Children's play areas;
- 7 5.1.2 Sports Fields, Sports Courts and other sports facilities;
- 8 5.1.3 Swimming and Wading Pools;
- 9 5.1.4 Spray Parks (Water Play Areas);
- 10 5.1.5 Teen Centers;
- 11 5.1.6 Community Centers;
- 12 5.1.7 Environmental Learning Centers;
- 13 5.1.8 Small craft centers;
- 14 5.1.9 Performing Arts Centers;
- 15 5.1.10 Tennis Centers;
- 16 5.1.11 Skateboard Parks;
- 17 5.1.12 Golf Courses; and,
- 18 5.1.13 Swim beaches.

19 Firearms Rule at ¶ 5.1. At these facilities, the Parks Department Superintendent may post
20 "appropriate signage indicating to the public that firearms are not permitted at that facility."

21 *Id.* at ¶ 5.2. The Rule becomes applicable to a particular Parks Department facility once
22 signage has been posted at that facility. *Id.* at ¶ 4.0. A person who carries a concealed
23 firearm or displays a firearm at a designated facility where appropriate signage is displayed
24 may be ordered to leave by a police officer or other authorized City employee/agent. *Id.* at ¶
25 6.0. Refusal to leave may subject a violator to citation or arrest for criminal trespass. *Id.* at ¶
6.1. A true copy of the Firearms Rule is attached to this Complaint as Exhibit C and is
incorporated by this reference.

26 23. Also on October 14, 2009, the City issued a Press Release announcing the
27 Firearms Rule and announcing that, by noon on Friday, October 16, 2009, signs would be
28 posted at South Park Community Center at 8319 8th Avenue South, Garfield Community
29 Center at 2323 East Cherry Street, and Bitter Lake Community Center at 13035 Linden

1 Avenue North. The Press Release further stated that signs will be posted at all designated
2 facilities by December 1, 2009. A true copy of this Press Release is attached to this
3 Complaint as Exhibit D and is incorporated by this reference.

4 24. Defendants performed the above acts despite the fact that the authority to
5 regulate firearms rests exclusively with the State of Washington. Defendants' refusal to
6 recognize this basic preemption principle has caused and will continue to cause irreparable
7 harm to citizens who are now unable to exercise a basic constitutional right without fear of
8 penalty or prosecution.

9 25. The individual Plaintiffs in this lawsuit have suffered harm that is
10 representative of the harm suffered by a broad class of citizens. For instance, Plaintiff Winnie
11 Chan is a Department of Corrections employee who lives and works in Seattle. She has a
12 current and valid Washington Concealed Pistol License. Ms. Chan often carries her personal
13 concealed weapon when she is not on-duty, in part because she worries that people she
14 encounters in her line of work may retaliate against her when she is off-duty. Ms. Chan
15 enjoys visiting Seattle parks for recreation, however at least one of her favorite parks now
16 displays a sign prohibiting firearms. Because of the Firearms Rule, she is now unable to visit
17 that park if she wants to exercise her legal right to possess her lawful firearm.

18 26. Plaintiff Robert Kennar is a Department of Corrections employee who works
19 in Seattle. He has a current and valid Washington Concealed Pistol License. Mr. Kennar
20 always carries his personal concealed weapon when he is not on-duty and when he is lawfully
21 permitted to do so, in part because he worries that people he encounters in his line of work
22 may retaliate against him when he is off-duty. In addition, Mr. Kennar often witnesses
23 criminal activity in Seattle and himself has been a victim of crime in Seattle. Mr. Kennar
24 enjoys visiting Seattle parks for recreation, however at least one of his favorite parks now
25

1 displays a sign prohibiting firearms. Because of the Firearms Rule, he is now unable to visit
2 that park if he wants to exercise his legal right to possess his lawful firearm.

3 27. Plaintiff Raymond Carter lives and works in Seattle. He has a current and
4 valid Washington Concealed Pistol License. He is openly gay, and is a past co-chair of the
5 Seattle Pride Parade and a founder of the Seattle Chapter of Pink Pistols/Cease Fear. Mr.
6 Carter always carries a concealed weapon when he is lawfully permitted to do so because he
7 feels that, as an openly gay man, he is susceptible to becoming a victim of hate-related crimes.
8 Mr. Carter enjoys visiting Seattle parks for recreation, as well as Seattle community centers
9 for public meetings. Some of his favorite parks and community centers now display signage
10 prohibiting firearms. Because Mr. Carter is concerned for his safety, he now refrains from
11 visiting those facilities because he is not able to possess his lawful firearm there under the
12 Firearms Rule.

13 28. Plaintiff Gray Peterson lives in Lynnwood and works in Everett. He has a
14 current and valid Washington Concealed Pistol License. He is openly gay, and he always
15 carries a concealed weapon when he is lawfully permitted to do so because he feels that, as an
16 openly gay man, he is susceptible to becoming a victim of hate-related crimes. Mr. Peterson
17 and his domestic partner enjoy visiting Seattle parks for recreation, however some of his
18 favorite parks now display signage prohibiting firearms. Because Mr. Peterson is concerned
19 for his safety, he now refrains from visiting those facilities because he is not able to possess
20 his lawful firearm there under the Firearms Rule.

21 29. Plaintiff Gary G. Goedecke lives in Bothell and owns a thirty-five year-old
22 business at Pike Place Market in Seattle. He has a current and valid Washington Concealed
23 Pistol License. Mr. Goedecke carries a concealed weapon when he is lawfully permitted to do
24 so in part because of the level of dangerous criminal activity in downtown Seattle. Mr.
25