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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

WINNIE CHAN, an individual; ROBERT KENNAR, an individual; RAY 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, an department of the City of Seattle; and TIMOTHY A. GALLAGHER, Superintendent, in his official capacity,

Defendant.

No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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

1 **NATURE OF THE CASE**

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

10 **PARTIES**

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

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

16 3. Plaintiff Ray Carter is a resident of Seattle, Washington. He has a valid and
17 current Washington Concealed Pistol License, and visits Seattle parks and recreation
18 facilities.

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

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

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

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

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

22 9. Plaintiff National Rifle Association of America, Inc. (“NRA”) is a non-profit
23 association incorporated under the laws of New York, with its principal place of business in
24 Fairfax, Virginia. NRA has almost four million members, including thousands of members in
25

1 the State of Washington. NRA’s purposes include protection of the right of citizens to have
2 firearms for lawful defense, hunting, and sporting use, and to promote public safety. NRA
3 brings this action on behalf of itself and its members.

4 10. Defendant City of Seattle (“Seattle” or “the City”) is a municipal corporation
5 and first-class city organized under the laws of the State of Washington.

6 11. Defendant Gregory J. Nickels (“Mayor Nickels”) is the Mayor of the City of
7 Seattle. Mayor Nickels is the head of the Executive Department, and in that capacity directs
8 and controls all City offices and departments except where that authority is granted to another
9 office by the Seattle City Charter.

10 12. Defendant Department of Parks and Recreation (“Parks Department”) is an
11 agency of the City of Seattle which was created by the Seattle City Charter and which
12 oversees the management of approximately 400 parks and open areas in its approximately
13 6,200-acre park system in Seattle, Washington.

14 13. Defendant Timothy A. Gallagher is the Superintendent of Seattle’s Department
15 of Parks and Recreation. Superintendent Gallagher is responsible for the management and
16 control of the park and recreation system of the City of Seattle.

17 **JURISDICTION & VENUE**

18 14. This Court has jurisdiction under RCW 2.08.010, RCW 7.24.010, and RCW
19 7.40.010.

20 15. Venue is properly in this Court under RCW 4.12.020(2) and RCW 4.12.025(1).

21 **FACTS**

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

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

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

10 RCW 9.41.290 (“Preemption Clause”).¹

11 18. On June 6, 2008, Mayor Nickels issued Executive Order 07-08 entitled “Gun
12 Safety at City Facilities.” This Executive Order directed all City departments to conduct an
13 inventory of present policies, rules, and leases to determine the extent to which they can
14 prohibit firearms on City property and to implement plans to make such changes. A true copy
15 of this Executive Order is attached to this Complaint as Exhibit A and is incorporated by this
16 reference.

17 19. In October 2008, *after* Mayor Nickels issued Executive Order 07-08,
18 Washington Attorney General Rob McKenna issued an Opinion which put the City of Seattle

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20 ¹ RCW 9.41.300, which is referenced in the Preemption Clause, permits cities, towns,
21 counties, and other municipalities to enact laws and ordinances restricting the discharge of firearms in
22 certain locations and restricting the possession of firearms in a municipality-owned stadium or
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.

23 Moreover, while the Washington Supreme Court has held that a municipal property owner
24 may impose conditions regarding firearms on its property, it may do so *only* as those conditions relate
25 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). The city restrictions at issue here illegally impose restrictions on the *public* use of city-owned property.

1 and Mayor Nickels on further notice that Washington cities may not enact local laws
2 prohibiting possession of firearms on city property or in city-owned facilities. See AGO 2008
3 No. 8. A true copy of this Opinion is attached to this Complaint as Exhibit B and is
4 incorporated by this reference.

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

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

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

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

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

Firearms Rule at ¶ 4.0.

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

- 1 5.1.1 Playgrounds and Children’s play areas;
- 2 5.1.2 Sports Fields, Sports Courts and other sports facilities;
- 3 5.1.3 Swimming and Wading Pools;
- 4 5.1.4 Spray Parks (Water Play Areas);
- 5 5.1.5 Teen Centers;
- 6 5.1.6 Community Centers;
- 7 5.1.7 Environmental Learning Centers;
- 8 5.1.8 Small craft centers;
- 9 5.1.9 Performing Arts Centers;
- 10 5.1.10 Tennis Centers;
- 11 5.1.11 Skateboard Parks;
- 12 5.1.12 Golf Courses; and,
- 13 5.1.13 Swim beaches.

14 Firearms Rule at ¶ 5.1. At these facilities, the Parks Department Superintendent may post
15 “appropriate signage indicating to the public that firearms are not permitted at that facility.”

16 *Id.* at ¶ 5.2. The Rule becomes applicable to a particular Parks Department facility once
17 signage has been posted at that facility. *Id.* at ¶ 4.0. A person who carries a concealed
18 firearm or displays a firearm at a designated facility where appropriate signage is displayed
19 may be ordered to leave by a police officer or other authorized City employee/agent. *Id.* at ¶
20 6.0. Refusal to leave may subject a violator to citation or arrest for criminal trespass. *Id.* at ¶
21 6.1. A true copy of the Firearms Rule is attached to this Complaint as Exhibit C and is
22 incorporated by this reference.

23 23. Also on October 14, 2009, the City issued a Press Release announcing the
24 Firearms Rule and announcing that, by noon on Friday, October 16, 2009, signs would be
25 posted at South Park Community Center at 8319 8th Avenue South, Garfield Community
Center at 2323 East Cherry Street, and Bitter Lake Community Center at 13035 Linden
Avenue North. The Press Release further stated that signs will be posted at all designated
facilities by December 1, 2009. A true copy of this Press Release is attached to this
Complaint as Exhibit D and is incorporated by this reference.

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

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

15 26. Plaintiff Robert Kennar is a Department of Corrections employee who works
16 in Seattle. He has a current and valid Washington Concealed Pistol License. Mr. Kennar
17 always carries his personal concealed weapon when he is not on-duty and when he is lawfully
18 permitted to do so, in part because he worries that people he encounters in his line of work
19 may retaliate against him when he is off-duty. In addition, Mr. Kennar often witnesses
20 criminal activity in Seattle and himself has been a victim of crime in Seattle. Mr. Kennar
21 enjoys visiting Seattle parks for recreation, however at least one of his favorite parks now
22 displays a sign prohibiting firearms. Because of the Firearms Rule, he is now unable to visit
23 that park if he wants to exercise his legal right to possess his lawful firearm.

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

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

19 29. Plaintiff Gary G. Goedecke lives in Bothell and owns a thirty-five year-old
20 business at Pike Place Market in Seattle. He has a current and valid Washington Concealed
21 Pistol License. Mr. Goedecke carries a concealed weapon when he is lawfully permitted to do
22 so in part because of the level of dangerous criminal activity in downtown Seattle. Mr.
23 Goedecke enjoys visiting Seattle parks and beaches for recreation. In addition, Mr.
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1 Goedecke's business is directly adjacent to a Seattle park that has a high incidence of criminal
2 activity and he fears for the safety of himself and his employees.

3 **FIRST CAUSE OF ACTION: DECLARATORY RELIEF**

4 **-- Against All Defendants --**

5 30. Plaintiffs reallege and incorporate by reference paragraphs 1 through 29 above.

6 31. A present controversy exists concerning whether Defendants have legal
7 authority to prohibit the carrying of concealed firearms at designated Parks Department
8 facilities during public use of those facilities. The individual Plaintiffs' constitutional and
9 statutory rights to carry a firearm in public parks and community centers are affected by this
10 controversy. In addition, the organizational Plaintiffs' Washington members' constitutional
11 and statutory rights to carry a firearm in public parks and community centers are affected by
12 this controversy, and the protection of these rights is germane to the organizational Plaintiffs'
13 purposes.

14 32. Plaintiffs are entitled, under RCW 7.24 and Civil Rule 57, to an accelerated
15 judicial declaration that:

16 a. The Firearms Rule violates Washington statutory and constitutional law and is
17 therefore null and void; and

18 b. Defendants lack legal authority to enact any ordinance, law, or rule that
19 prohibits the carrying of concealed firearms at Parks Department facilities during public use
20 of those facilities; and

21 c. Defendants may not post signage in Parks Department facilities
22 communicating that firearms are not permitted, withdraw a person's permission to enter or
23 remain in Parks Department facilities, or enforce the Firearms Rule by any other means; and
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1 d. Defendants must immediately remove all signage posted on City property
2 pursuant to the Firearms Rule.

3 33. Such declaration will conclusively terminate the controversy giving rise to this
4 proceeding.

5 **SECOND CAUSE OF ACTION: INJUNCTIVE RELIEF**

6 **-- Against All Defendants --**

7 34. Plaintiffs reallege and incorporate by reference paragraphs 1 through 33 above.

8 35. The individual Plaintiffs have a clear constitutional and statutory right to carry
9 a firearm in public parks and community centers and a well-grounded fear of immediate
10 invasion of that right, the invasion of that right has resulted in actual and substantial injuries,
11 and there is no adequate remedy at law to redress those injuries. In addition, the
12 organizational Plaintiffs' Washington members' constitutional and statutory rights to carry a
13 firearm in public parks and community centers are in jeopardy of immediate invasion, causing
14 actual and substantial injuries without any adequate remedy at law.

15 36. Plaintiffs are entitled, under RCW 7.40 and CR 65, to an injunction as follows:

16 a. Defendants should be enjoined from posting signage communicating that
17 firearms are not permitted on Parks Department facilities, withdrawing a person's permission
18 to enter or remain at a Parks Department facility pursuant to the Firearms Rule, and enforcing
19 the Firearms Rule by any other means.

20 b. Defendants should be ordered to immediately remove all signage posted on
21 City property pursuant to the Firearms Rule.

22 c. Defendants should also be enjoined from implementing any other ordinance,
23 law, or rule that prohibits the carrying of concealed firearms at Parks Department facilities
24 during public use of those facilities.
25

1 **REQUEST FOR RELIEF**

2 37. WHEREFORE, Plaintiffs request that judgment be entered against Defendants
3 as follows:

4 a. Declaring that Defendants’ actions in enacting and enforcing the
5 Firearms Rule were contrary to law and the Firearms Rule is null and void.

6 b. Permanently enjoining Defendants as follows: (1) enjoining Defendants
7 from enforcing the Firearms Rule in any way, (2) enjoining Defendants from implementing
8 any other ordinance, law, or rule that prohibits the carrying of concealed firearms at Parks
9 Department facilities during public use of those facilities, and (3) requiring Defendants to
10 immediately remove all signage posted pursuant to the Firearms Rule.

11 c. Awarding Plaintiffs fees, costs, and disbursements incurred in this
12 action as the court deems just and equitable.

13 d. Awarding Plaintiffs any additional or further relief which the court
14 finds appropriate, equitable, or just.

15 DATED this ____ day of October, 2009.

16 CORR CRONIN MICHELSON
17 BAUMGARDNER & PREECE LLP

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19 _____
20 Steven W. Fogg, WSBA No. 23528
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