Hearing date: December 23, 2022
Hearing time: 9:00am
Judge/Calendar: Hon. Matthew Williams

IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON, Plaintiff, v. FEDERAL WAY DISCOUNT GUNS, LLC, Defendant.	**CASE NO. 22-2-20064-2** **DEFENDANTS' OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION**

INTRODUCTION

Defendant Mohammed Baghai is a retired US Army Ranger Captain and current "valuable asset" of the Bureau of Alcohol Tobacco and Firearms. Declarations of Mohammad Baghai ("Bahai Dec.") ¶ 2 & Benjamin Silva ("Silva Dec.") ¶ 16. Federal Way Discount Guns ("FWDG") has been instrumental fighting gun violence, despite it being uncommon for gun stores to cooperate with the ATF. Silva Dec. ¶ 11-16. Baghai also works extensively with the Federal Way Police Department. Declarations of Greg Stankatis ("Stankatis Dec."), Kyle Sumpter ("Sumpter Dec."), George Green ("Green Dec."), *passim*.

The Motion for Preliminary Injunction should be denied, and these new statutes declared void; the State cannot "meet their burden to identify an American tradition justifying" RCW 9.41.370 and .375 and *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111,

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2138 (2022). "American governments simply have not broadly prohibited" an arbitrary amount of ammunition loaded into "commonly used firearms for personal defense." *Id*. at 2156. Indeed, at the passage of the Second Amendment, citizens were *required* to carry a significant capacity of ammunition and accessories to load and operate their firearms.

There is no evidence that Defendants violated RCW 9.41.375, which prohibits "online" sales of Large Capacity Magazine ("LCMs"). The State cannot succeed on its First Cause of Action where Defendants sell nothing online. Baghai Dec. ¶ 15. The State is, likewise, not likely to prevail on its Second Cause of action where it attempts to use the Consumer Protection Act to circumvent the Second Amendment, denigrating both, and, independently, fails to show any "unfair" or "deceptive" act. The State independently fails to articulate any irreparable harm.[1]

FACTS

Mr. Baghai is an Iranian immigrant, honorably discharged US Army Ranger Captain. Baghai Dec. ¶ 2 & 4. He was assaulted during the Iran hostage crisis; his home has been vandalized due to his ethnicity. *Id.* ¶ 6. Given his personal history, the language of the United States Constitution is not "a simple semantic exercise." *Legal Services Corp. v. Velazquez*, 121 S. Ct. 1043, 1052, (2001).

Tellingly, the AGO has quickly resolved similar allegations against white gun shop owners with no fanfare. *Id*. ¶ 8. The name Mohammad makes Baghai a target for law enforcement and, apparently, the AGO. Silva Dec. ¶ 10. Baghai previously experienced racial discrimination by the Federal Way Police Department, but now is their Community Partner; the Federal Way Police trains at his gun range, even since this lawsuit, and they refuse to take issue with any of his activities.

[1] The State also seeks penalties exceeding its RCW 19.86 authority: destruction of Defendants' inventory despite clear exceptions allowing sales. RCW 9.41.370(2)(b) and (c).

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Baghai Dec. ¶ 7 & 11. Likewise, Baghai was, like most gun shops, extensively investigated by the ATF and the result was he became their partner. Silva Dec. ¶ 8 & 11-16.

The Federal Way Police are not alone: Algona PD, Port of Seattle PD, Port of Tacoma PD, Department of Homeland Security, and the military train at Defendants' range. FWDG regularly sells LCMs to these departments. *Id.* ¶¶ 12 & 18. Baghai has personally put himself in harm's way to combat the scourge of gun violence. *Id*. ¶ 14; Silva Dec. ¶¶ 11-16.

RCW 9.41.370-.375 violates the US Constitution's Second Amendment and WA Const. Art. I, § 24. Plaintiff, State of Washington, attempts to end-run those rights through the CPA, but provides no facts to allow this court to carry out the command of the United States Supreme Court in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111 (2022).

The Harney County Oregon District Court recently found that Oregon's similar "statutory scheme is very burdensome on lawful firearm owners who possess large capacity magazines legally now" and LCMs "come standard with many popular firearms and firearm platforms on the market today and are possessed by law-abiding citizens for lawful purposes." *Opinion Letter RE: Preliminary Injunction on Ballot Measure 114's Magazine Capacity Component:* Arnold v. Brown, Harney County Circuit Court #22CV41008, at 22. December 15, 2022. Declaration of Nathan J. Arnold ("Arnold Dec."), Exh. A. As there, Defendants' experts (Plaintiffs have none) show magazines are integral, historical components of firearms. Declaration of Mark Hanish ("Hanish Dec.") ¶¶ 20-25, Hlebinsky Dec. ¶¶ 11, 19-21, 28-30, 35-36, 45-46. Magazines require replacement. Silva Dec. ¶ 3, Sumpter Dec. ¶ 3. Like most infringements upon fundamental rights, the new law will harm law-abiding citizens, not criminals. Silva Dec. ¶ 5-6.

A. American Tradition

The legislative history of RCW 91.41.370 & .375 reveals a "means-ends" test forbidden by

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Bruen. "The legislature finds and declares that gun violence is a threat to the public health and safety of Washingtonians." ESSB 5078, 1:11. Nothing in the legislative history, or the record before this Court, meets the *Bruen* test.

Far from being outlawed, sufficient ammunition, and the technology of the day to deploy it, were *mandated* when the Second Amendment was adopted. Hlebinsky Dec. ¶ 46. This included:

> "general obligation of all adult male inhabitants to possess arms, and, with certain exceptions, to cooperate in the work of defence." … "The possession of arms also implied the possession of ammunition, and the authorities paid quite as much attention to the latter as to the former."

U.S. v. Miller, 59 S.Ct. 816, 818–19, 307 U.S. 174, 179–80 (U.S. 1939), *quoting*, 'The American Colonies In The 17th Century', Osgood, Vol. 1, ch. XIII. *See also:* Hlebinsky Dec. ¶¶ 24-26. Moreover, this "intended to insure the possession of arms and ammunition by all who were subject to military service appear in all the important enactments concerning military affairs," including the requirement to carry 20 bullets. *Id*. at 819 (emphasis added). Subject to these requirements were "all able bodied men, from sixteen to forty years of age." *Id*. *quoting* The General Court of Massachusetts, January Session 1784 (Laws and Resolves 1784, c. 55, pp. 140, 142). Similarly, New York required every able-bodied male age sixteen to forty-five "provide himself … not less than Twenty-Four Cartridges…'" *Miller* at 819, *quoting* an Act passed April 4, 1786 (Laws 1786, c. 25). In Virginia, all free male persons aged eighteen to fifty were obliged to possess "a cartridge box properly made, to contain and secure twenty cartridges fitted to his musket …" *Miller* at 192 *quoting* The General Assembly of Virginia, October, 1785 (12 Hening's Statutes c. 1, p. 9 et seq.).

Numerous other states had statutes requiring such armaments and ammunition quantities. *See, e.g.*, Maine, Adjutant General, An Act to Organize, Govern, and Discipline the Militia of the State of Maine, passed March 21, 1821 ("…not less than twenty-four cartridges."); North Carolina,

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Sess. Laws 407, ch. 1, § 5, 1786;; New Hampshire, Laws 409-10 § 7, 1786 ("…at least twenty-four rounds"); South Carolina, Acts 16, 1791 (at least twelve rounds of cartridges or other sufficient gun…).[2]

Just as the State fails to provide any historical context to the Court, it misleads by omission. The State being candid with this Court would prove fatal to their case. Magazines holding more than ten rounds predate the Second Amendment, including "repeaters" that preceded the Revolutionary War. Hlebinsky Dec. ¶¶ 14, 19. Meriwether Lewis, the first white American in the Pacific Northwest, bore a firearm with a twenty-two-round magazine. *Id*.

The State Offers No Evidence of CPA Violations.

Accompanying its abject failure to address *Bruen*, the State provides no evidence of "online" transactions. None exist. Baghai Dec. ¶ 15. The State also ignore the readily available fact that FWDG, far from being a danger to the community, is a longtime partner to law enforcement. Silva Dec. ¶ 11-16, Sumpter Dec. 5-7.

With no *per se* violation, the State's CPA claim is also toothless without evidence of any "unfair" or "deceptive" act leading to irreparable injury that justifies an injunction. Indeed, the State's argument is self-defeating: *Bruen* forbids means-ends justification of Second Amendment infringements, the CPA, a statute to remediate unfair and deceptive practices can never be used to justify such an infringement absent showing an "American tradition justifying" the regulation. *Bruen* at 2138.

EVIDENCE RELIED UPON

This Opposition relies upon the Declarations of Mohammad Baghai, George Green,

[2] Duke Law School Center for Firearms Law, Repository of Historical Gun Laws, available at: https://firearmslaw.duke.edu/repository/search-results/?_sft_subjects=militia-regulations, last accessed December 13, 2022. State statutes that did not specifically address more than ten rounds omitted.

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Benjamin Silva, Greg Stankatis, Kyle Sumpter, Benjamin Silva, experts Ashley Hlebinsky and Mark Hanish, and attorney Nathan J. Arnold.

ARGUMENT AND AUTHORITY

A. *Standard for Injunctive and/or Declaratory Relief.*

The essential elements which must be shown to obtain an injunction are necessity and irreparable injury. *Agronic Corp. of America v. deBough*, 585 P.2d 821, 824, 21 Wash.App. 459, 464 (Wash.App.,1978). The State has not articulated either nor has it shown a likelihood of prevailing on the merits.

In an injunction analysis "it is always in the public interest to prevent the violation of a party's constitutional rights." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (2012) (internal citations omitted). Constitutional considerations aside, damage to FWDG harms both State and Federal law enforcement's ability to combat gun violence. Silva Dec. ¶ 16, Stankatis Dec. ¶ 9, Sumpter Dec. ¶¶ 5-7, Green Dec. ¶¶ 3-4 & 8.

Without Means for Exercise, Constitutional Rights Are Meaningless.

"[I]t has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a pre-existing right. The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it 'shall not be infringed.'" *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). Acquisition of firearms and ammunition falls within the Amendment's historical scope. *Id*. at 582. The State cannot circumvent a pre-existing right by throttling the source. "[V]endors and those in like positions have been uniformly permitted to resist efforts at restricting their operations by acting as advocates of the rights of third parties who seek access to their market or function." *Craig v. Boren*, 429 U.S. 190, 195 (1976).

The Second Amendment protects ancillary rights necessary to the core right to possess a

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firearm. The Ninth Circuit held in *Jackson v. City and County of San Francisco*, that a prohibition on the sale of certain ammunition burdened core Second Amendment rights. 746 F.3d 953, 968 (9th Cir. 2014), cert. denied, —— U.S. ——, 135 S. Ct. 2799 (2015) ("The right to possess firearms for protection implies a corresponding right to obtain the bullets necessary to use them.") *Id*. (*quoting Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011) ("The right to keep arms, necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair."); *Andrews v. State*, 50 Tenn. 165, 178 (1871); *Ill. Ass'n of Firearms Retailers v. City of Chicago*, 961 F.Supp.2d 928, 930 (N.D. Ill. 2014) ("[T]he right to keep and bear arms for self-defense under the Second Amendment ... must also include the right to acquire a firearm.")

Pre-*Bruen*, courts held magazines are Second Amendment protected. *Jones v. Bonta*, 34 F.4th 704, 725-26 (9th Cir. May 11, 2022, *vacated on other grounds* by *Bruen*); *Jackson v. City of San Francisco*, 746 F.3d 966, 967 (9th Cir. 2014); *Fyock v. City of Sunnyvale*, 25 F. Supp. 3d 1267, 1275-77 (N.D. Cal. 2014) (Citywide ban of LCMs "implicates the Second Amendment's protections"); *and, see*, *Heller v. District of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011).

The State provides no arguments, nor can it, that the Supreme Court's ruling in *Bruen* does not apply to sales of firearms, including magazines. "Our citizens have always been free to make, vend, and export arms. It is the constant occupation and livelihood of some of them." Thomas Jefferson, 3 Writings 558 (H.A. Washington ed., 1853). Following 1774 British embargo, it is understandable that the Framers would want to protect the right to sell and acquire, in addition to bearing, arms. *See* David B. Kopel, *How the British Gun Control Program Precipitated the American Revolution*, 6 Charleston L. Rev. 286 (2012).

At the founding, private citizens sold firearms to one another. Hlebinsky Dec. ¶ 15. While

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the Uniform Firearms Act distinguishes military and law enforcement personnel from civilians, such distinction has no historical precedent. *Id*. at ¶ 17. The civilian market drives innovation and ammunition capacity. *Id*. at ¶ 13. Military familiarity informs the civilian market. *Id*. at ¶ 17, Hanish Dec. ¶ 15. History makes no such distinction. Hlebinsky Dec. ¶ 17; Hanish Dec. ¶ 17. Here RCW 9.41.370 goes past sales only to law enforcement, permitting sales to civilian non-residents of Washington State. RCW 9.41.370(2)(c). This raises additional concerns under the Privileges and Immunities Clause, Equal Protection, as well as the Commerce Clause: "classification created by the residence requirement, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional." *Memorial Hospital v. Maricopa Cnty*., 94 S.Ct. 1076, 1084, 415 U.S. 250, 261 (1974).

RCW 9.41.370 and .375 are Unconstitutional.

> To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'

Bruen, 142 S. Ct. at 2126, *citing Konigsberg v. State Bar of Cal*., 366 U. S. 36, 50, n. 10 (1961).

The Supreme Court was explicit: Intermediate scrutiny is the wrong test:

> While judicial deference to legislative interest balancing is understandable – and, elsewhere, appropriate – it is not deference that the Constitution demands here. The Second Amendment is the very product of an interest balancing by the people, and it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms for self-defense.

Id., at 2131, *citing District of Columbia v. Heller*, 554 U.S. 570, 635, 128 S. Ct. 2783 (2008) (internal quotations omitted, emphasis in original). No means-end analysis is permissible.

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With no historical facts or expert analysis in this record, Plaintiff cannot "meet their burden to identify an American tradition justifying" RCW 9.41.370 and .375. *Bruen*, 142 S. Ct. at 2138. The first laws restricting magazines passed in 1920-33, long after the Second and Fourteenth Amendments.[3] Only nine states have capacity restrictions, all post-1994.

Under State law, this Court should follow the Oregon District Court's analysis of their LCM ban: "[t]here are no circumstances where [this] section could be constitutional."[4] The operative language of Oregon and Washington's State Constitutions is functionally identical. OR Const. Art. I, § 27, WA Const. Art. I, § 24. Washington, too, lacks a historical tradition of regulating ammunition capacity, and the Washington Constitution provides greater protection than the Second amendment: "right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired..." WA Const., Art. 1, Sec. 24 (Emphasis added.). LCMs were defined this year. Ch. 104, Laws of 2022 § 2. The term "large" is a misnomer and the selection of ten, rather than nine, eleven, or any other number is arbitrary. Silva Dec. ¶ 4, Sumpter ¶ 4, Stankatis Dec ¶ 5, Green Dec. ¶ 5 The first restriction on firearms in this state was 1935, and it only restricted concealment without licensure. Ch. 172, Sess. Laws 1935. Legislative efforts to such rights failed in 1913, 1917, and 1921.[5] Even so, "late-19th-century [and 20th century] evidence cannot provide much insight into the meaning of the Second Amendment when it contradicts earlier evidence." *Bruen*, 142 S. Ct. at 2154. The State has provided this Court with no facts upon which it can perform a *Bruen* analysis.

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[3] David B. Kopel, The History of Firearms Magazines and of Magazine Prohibition, 78 Albany L. Rev. 849, 864-868 (2015); and Hlebinsky Decl. ¶ 46.

[4] See: FN 3, at 23.

[5] Don Brazier, History of the Washington Legislature 1854 – 1963 (2000), available at: R:\ADMINIST\SECSEN\History of the Legislature\History of the Legislature. (wa.gov); pp. 79, 84, and 89, respectively.

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The State Provides No Evidence of Online Sales.

To prevail on a CPA claim, the State must prove: "(1) an unfair or deceptive act or practice (2) occurring in trade or commerce, and (3) public interest impact." *State v. Kaiser*, 161 Wn. App. 705, 719, 254 P.3d 850 (2011).

RCW 9.41.375 proscribes only the "online" sales of LCMs:

> Distributing, selling, offering for sale, or facilitating the sale, distribution, or transfer of a large capacity magazine **online** is an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce for purposes of the consumer protection act, chapter 19.86 RCW.

RCW 9.41.375 (emphasis added).

The plain language of .375 requires the State to show that Defendants engaged in *online* conduct. "*[E]xpressio unius est exclusio alterius*, [is] a canon of statutory construction, [which means] to express one thing in a statute implies the exclusion of the other. Omissions are deemed exclusions." *Schnitzer W., LLC v. City of Puyallup*, 190 Wn.2d 568, 582, 416 P.3d 1172 (2018). The inclusion of the word 'online' means that in-person sales are not a *per se* violation of the CPA.

RCW 9.41.375, dealing specifically with online sales, has no carve out for law enforcement, the military, or non-Washington residents. To accept the State's reading, that .375 applies to anything other than online sales, only disharmonizes .350 and .375, and would make in-person sales to law enforcement a *per se* violation under .375 despite the exclusions at .350. *Bour v. Johnson*, 122 Wash.2d 829, 835, 864 P.2d 380 (1993) (statutes on the same subject matter must be read together to give each effect and to harmonize each with the other). And tt makes sense that .375 would not have such exceptions where impersonation is easier "online."

The State presents no evidence of FWDG selling LCMs online. Having no evidence, it is unlikely to succeed on its first cause of action. Indeed, FWDG does not operate an online store at

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all, and there is accordingly no *per se* violation of the CPA.

The Consumer Protection Act Cannot Be Used to End-Run the Constitution.

Whether a *per se* violation or not, the State cannot use the Consumer Protection Act to circumvent the Constitution. When analyzing deceptive trade practices under the CPA, courts have held that the First Amendment requires "exacting proof requirements… to provide sufficient breathing room for protected speech." *Illinois ex rel. Madigan v. Telemarketing Assocs.*, 538 U.S. 600, 620, 123 S. Ct. 1829 (2003); *see also State v. TVI, Inc.*, 18 Wn. App. 2d 805, 822, 493 P.3d 763 (2021). The legislature cannot pass laws, under the CPA or otherwise, which conflict with the Constitution; the Second Amendment is the very *product* of an interest balancing by the people and precludes ends-means balancing. *Bruen*, *passim*.

The State Provides No Evidence of an Unfair or Deceptive Act.

The State first relies upon *Boggs v. Whitaker* claiming continued sale of LCMs constitutes unfair "competition." 56 Wn. App. 583 (1990). This Division II case does not support the State's position; that Court found no unfair competition. There, as here, "there is nothing in the record to suggest that [Defendants'] deceptive advertising was intended to give the company an advantage over competitors, or that it actually harmed any competitors. *Id*. 588. The State has provided no evidence, only conclusory hypotheses. RCW 9.41.370 contains several carveouts, two of which apply here, RCW 9.41.370(2)(b)-(c). All licensed firearms dealers and manufacturers can legally sell LCMs within Washington. Perhaps the State can amend to survive a motion to dismiss, but it fails to bear its burden for a preliminary injunction.

Second, the State relies upon *Magney v Lincoln Mut. Sav. Bank*, 34 Wn. App 45 (1983) and claims that "the public policy of protecting public health underlying Washington's ban on selling LCM's" constitutes an unfair and deceptive practice. This is precisely the type of means-ends

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analysis that *Bruen* prohibits. In *Magney*, Division III found no violation of a "due-on-sales" clause where there was "no showing that they were induced to act based on the due-on-sale clause, nor that they had suffered any damage as a result of the clause. *Id.* at 58. The State has no evidence, and does not make even a conclusory argument, the public has taken any action based upon any act or practice of Defendants. *Magney* also noted that, "[d]ue-on-sale clauses have been upheld as valid in this state and by the U.S. Supreme Court." *Id*. at 57–58. Again, the means-ends argument that the State makes here is explicitly barred by *Bruen*. Independently, "[i]n passing the Consumer Protection Act, the Legislature specifically recognized that acts or practices which are reasonable business practices or which are not injurious to the public are not the kind of acts sought to be prohibited. RCW 19.86.920." *State v. Black*, 676 P.2d 963, 969, 100 Wash.2d 793, 802–03 (Wash.,1984). Conduct which not only comports with, but is protected by, the United States Constitution is not injurious to the public.

Third, the State relies upon the seminal case of *Panag* for the proposition that Defendants' conduct "had the capacity to deceive a substantial portion of the public." *Panag v. Farmers Ins. Co. of Wash*., 166 Wn.2d 27, 34, 204 P.3d 885, 887 (2009). The State thereafter claims that Defendants' sales of LCM would deceive the public into believing such sales are legal when they are not. The State cites no authority for this novel proposition. Indeed, even if Defendants' conduct was not protected by the Constitution, even the 'least sophisticated' consumer cannot reasonably believe that a merchant is dispensing legal advice.

FWDG is not, for example, selling magazines claimed to hold thirty rounds, but only capable of holding twenty-eight. Just as the in the time of Lewis & Clark, magazines with more than ten rounds are not "large" by any use of the term today. Silva Dec. ¶ 4, Sumpter ¶ 4, Stankatis Dec. ¶ 5, Green Dec. ¶ 5. Selling a standard sized product, constitutionally protected or not, is

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neither unfair nor deceptive. The State further has no basis, in American tradition, or otherwise, of a rational basis why eleven rounds in a magazine makes any difference relative to ten. The right to be free from such action is itself a fundamental right. *Pierce Cnty. Sheriff v. Civil Service Com'n of Pierce Cnty.*, 658 P.2d 648, 651, 98 Wash.2d 690, 693 (Wash.,1983). The statutes fail for this reason too, and there is certainly nothing deceptive being done by FWDG.

The Relief Sought is Overbroad.

The relief the State requests is, independently, overbroad. The State has cited no authority to require Defendants to preserve and more quickly produce asserted discoverable materials not already required by the Civil Rules. More egregiously, the State requests that the Defendants destroy valuable property which they are explicitly allowed to sell under exceptions to RCW 9.41.370.

CONCLUSION

The law upon which the State brings this civil action is unconstitutional under *Bruen* and should be declared as such by this Court. At minimum, the State has failed to provide this Court with any evidence to demonstrate it is likely to prevail on the merits, and the equitable relief requested should be denied. Wholly independent of *Bruen*, the State has failed to show any irreparable harm.

The State fails to articulate anything more than hypothetical harm caused by an exercise of Constitutional Rights. Even actual harm is insufficient to abridge these rights, that is the upshot of *Bruen*: no more end-means balancing. The only evidence in this record is that the ill-conceived attack on this "valuable asset" of the ATF will hurt law enforcement and the community at large. *See* Declarations of Green, Silva, Stankatis, Sumpter, and Wortman.

If any injunction were to be granted, it should be restraining the Attorney General's

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enforcement of the new law - "it is always in the public interest to prevent the violation of a party's constitutional rights." *Black Lives Matter Seattle-King Cnty. v. City of Seattle, Seattle Police Department*, 466 F.Supp.3d 1206, 1215 (W.D.Wash., 2020).

Where the State cannot pass a *Bruen* analysis this case should be dismissed in full[6]. If the Court is disinclined to dismiss on this procedural posture, Defendants additionally request that this case be stayed in its entirely pending a separate Motion to Dismiss *and* the outcome of *Brumback v. Washington*, United States District Court, Eastern District of Washington Cause No. 22-03093, in which the parties await an imminent ruling that may moot this case.

This Opposition contains 4,120 words, in compliance with the Local Civil Rules.

DATED this 19th day of December 2022.

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[6] This Court should retain jurisdiction for post-dismissal motions practice, including for fees as authorized by RCW 19.86.080, *see State v. Black*, 676 P.2d 963, 965, 100 Wn.2d 793, 794 (Wash.,1984).

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the above-entitled action.

On December 19, 2022, I served a copy of the foregoing upon all counsel of record via the Court's ECF system.

DATED this 19th day of December 2022 at Edmonds, WA

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