

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECEIVED
MAR 20 2023
Stevens County
Prosecuting Attorney

COPY
ORIGINAL FILED
MAR 20 2023
SUPERIOR COURT
STEVENS COUNTY, WA

**SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF STEVENS**

JOHN DOES 1-5, individuals and residents of
Stevens County, Washington; and SILENT
MAJORITY FOUNDATION, a nonprofit
organization organized under the laws of
Washington;

Petitioners,

v.

JAY INSLEE, in his official capacity as
Governor of Washington; ROBERT
FERGUSON, in his official capacity as
Attorney General of Washington; and BRAD
MANKE, in his official capacity as Sheriff of
Stevens County;

Respondents.

No: 23-2-00092-33

PETITIONERS' MOTION FOR
PRELIMINARY INJUNCTION

I. INTRODUCTION AND RELIEF REQUESTED

Petitioners move the Court under CR 65(a) for a preliminary injunction against
Respondents enjoining the enforcement of RCW 9.41.190, .325, .326, and .327.

///
///
///

PETITIONERS' MOTION FOR PRELIMINARY
INJUNCTION - PAGE 1 OF 21

Silent Majority Foundation
5238 Outlet Dr.
Pasco, WA 99301

COPY

II. FACTUAL BACKGROUND

On March 23, 2022 Governor Jay Inslee signed Engrossed Substitute House Bill 1705 (“ESHB 1705” or “Untraceable Firearms Act”). ESHB 1705 radically alters and expands Washington’s statutes pertaining to unserialized or untraceable firearms (“ghost guns”); unfinished frames and receivers (“non-firearm objects” or “NFOs”); unserialized self-manufactured firearms (“SMFs”); as well as the very definition of “frame or receiver” under Chapter 9.41 RCW, Firearms and Dangerous Weapons (“Uniform Firearms Act”). ESHB 1705 unconstitutionally and categorically bans, under severe monetary and confinement penalties, the manufacture and assembly of untraceable firearms, and the sale, transfer, purchase, possession, transport, and receipt of untraceable firearms and unfinished frames and receivers. Simultaneously, ESHB 1705 drastically changes the definition of “frame or receiver” in a manner that results in an unconstitutionally vague definition of what may be “readily” completed or “partially complete” and thus treated as a firearm for purposes of the Uniform Firearms Act and the Untraceable Firearms Act.

While the State argues that untraceable “ghost guns” are especially attractive to those who want to use guns to commit crimes and those who cannot legally obtain guns from a licensed dealer, their argument is not based in reality. The challenged statutes are a paradigmatic shift; “the people of the State of Washington, grateful to the Supreme Ruler of the universe for our liberties,” set forth the Declaration of Rights explicitly declaring that “[a]ll political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.” Wash. Const. art. I, § 1. With the imposition of the requirement that all firearms now bear a serial number, Washington citizens may only bear arms with the permission and approval of

1 the state. This is a marked departure from the fundamental and pre-existing right of the
2 individual to bear arms in defense of himself, and one that has no longstanding historical
3 precedent. Petitioners accordingly ask the Court to preliminarily enjoin and restrain
4 Respondents from enforcing these unconstitutional laws which fundamentally and irreparably
5 impair the rights of Washington citizens to bear arms during the pendency of this action.
6

7 **A. Untraceable Ghost Guns Do Not Pose a Significant Threat to Public Safety**

8 While Respondents argue that ghost guns are particularly attractive to criminals, this is
9 simply conjecture. The Respondents attempt to portray ghost guns as a scourge upon society
10 and as constituting an “epidemic.” Opposition to TRO, Dkt. #19, p. 2. However, the fact that
11 nearly 40% of cases involving a ghost gun included perpetrators who could not legally
12 purchase or possess a firearm is directly in line with firearms offenses generally. See Katherine
13 A. Vittes, Jon S. Vernick, Daniel W. Webster, *Legal Status and Source of Offenders' Firearms*
14 *in States With the Least Stringent Criteria for Gun Ownership*, Injury Prevention, Johns
15 Hopkins Bloomberg School of Public Health, 19:26, 29 (2013)
16 <https://injuryprevention.bmj.com/content/19/1/26.abstract> (last visited March 13, 2023) (“40%
17 of offenders incarcerated for committing crimes with a gun in the 13 U.S. states with the least
18 strict standards for legal firearm purchase and possession were in possession of the gun
19 illegally. If these states had adopted more restrictive [age-based] standards like those in place
20 in a number of other states, an additional 29% of the persons incarcerated for committing a
21 crime with a firearm would have been legally prohibited from possessing a firearm at the time
22 of their current offense.”)
23
24
25

26 As Washington is one of the more heavily regulated states in terms of restrictions on
27 acquiring and possessing firearms based on age, as high as 69% of the individuals in the

1 nationwide survey would have been in illegal possession of a firearm at the time of offense,
2 outstripping the 40% share of ghost gun illegal possessors.

3
4 The history of this Nation and Washington State illustrates why law-abiding citizens
5 would desire guns that are not serialized and therefore not capable of being compiled in a
6 database to be used for potential confiscation efforts. The Founding Fathers would
7 undoubtedly understand why law-abiding citizens would want untraceable firearms. Before
8 the events of Lexington and Concord, Governor General Thomas Gage ordered that all
9 Bostonians register and store their arms in Faneuil Hall with the promise that such would be
10 returned at a later time; most Bostonians secreted their arms about the countryside rather than
11 comply, prescient action considering that the weapons were summarily destroyed by the
12 redcoats. See Christopher D. Fox and Joel R. Bohy, "For the Necessary Defense of this Town:
13 The Arms of Boston, Massachusetts, 1630-1822, Part 2," 14 *Man At Arms* 14, 15 (2021).

14
15 Washington Territory experienced two periods of martial law prior to statehood and
16 ratification of the Washington Constitution. The first period incredibly saw the Chief Justice
17 send an armed posse to arrest the Governor for the Governor's executive overreach of
18 suspending the right of habeas corpus for a handful of Native American sympathizers, although
19 there was no ongoing struggle with the local tribes. In response, the Governor, after having
20 loyal soldiers and clerks repel the Chief Justice's posse, sent his own armed contingent to
21 arrest the Chief Justice, and imprisoned him at a local fort for roughly two weeks. The second
22 period occurred in 1886, a mere three years before the Constitutional Convention, and saw two
23 weeks of military control of the government, curfews, military patrols, courts martial, and
24 military edicts which resulted in citizens being ejected from their homes. Justice Robert F.
25
26
27

1 Utter, *Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the*
2 *Washington Declaration of Rights*, 7 Seattle U. L. Rev. 491, 516-17.

3 The lack of a serial number does not make a weapon more dangerous, does not make
4 the weapon more likely to fall into the hands of children, or alter the functionality of the
5 weapon.
6

7 **B. Washington Seeks to Burden Constitutionally Protected Individual Conduct**
8 **Through Legislation**

9 The challenged statutes define "frame or receiver" in a manner that results in an
10 unconstitutionally vague definition of what may be "readily" completed or "partially
11 complete." Similar statutes and rules have been successfully challenged in numerous
12 jurisdictions on vagueness grounds, exceeding statutory authority, or for the lack of historical
13 precedent for serialization requirements. *See e.g., VanDerStok, et al. v. Garland, et al.*, 4:22-
14 cv-00691-O (N.D. Tex.); *United States v. Price*, 2:22-CR-00097 (S.D.W. Va.) (on
15 interlocutory appeal); *Rigby, et al., v. Carney, et al.*, 1:21-cv-01523 (D. Del.). A couple
16 additional challenges are currently pending. *See e.g., Polymer80, Inc. v. Garland, et al.*, 4:23-
17 cv-00029 (N.D. Tex.); *Morehouse Enterprises, LLC v. Bureau of ATF*, 22-2812, (interlocutory
18 appeal filed by Attorneys General of Alaska, Arizona, Arkansas, Idaho, Indiana, Kansas,
19 Kentucky, Louisiana, Missouri, Montana, Nebraska, Oklahoma, South Carolina, Texas, Utah,
20 West Virginia, and Wyoming) (8th Cir.).

21 Respondents cannot make a showing that any items or materials covered by the
22 Untraceable Firearm Act present a unique and significant danger to public safety so as to
23 justify this assault on constitutional rights. As the challenged statutes impair the right of
24 Washington citizens to self-manufacture firearms in contravention of the long and rich history
25
26
27

1 of such a practice, they are unconstitutional. The Respondents' citation to Everytown for Gun
2 Safety (TRO Opposition, Dkt. #19, p. 3) demonstrate that ghost guns are overwhelmingly
3 owned by law-abiding citizens. See Untraceable: The Rising Specter of Ghost Guns,
4 Everytown For Gun Safety (May 14, 2020), [https://everytownresearch.org/report/the-rising-
5 specter-of-ghost-guns/](https://everytownresearch.org/report/the-rising-specter-of-ghost-guns/) ("An extensive search of the internet uncovered a sample of 80 sellers
6 offering unfinished frames and/or receivers for ghost guns. Most offered shipment directly to
7 the customer; major credit cards were accepted at nearly all of these sites... An analysis of
8 business registrations shows that these online retailers are based in states all across the country,
9 with at least one seller operating in 26 states."). Further, the same article found that "[o]nline
10 sellers are finding their inventories stretched thin as demand increases[.]" *Id.* One seller in
11 Washington avers that 200 unfinished lowers were sold per month out of just his store alone
12 prior to the effective date of the challenged statutes. Declaration of Eric Hargraves, filed
13 herewith, p. 1-2, para. 3 & 4. That amounts to 2,400 unfinished frames or receivers from just
14 one retailer, which necessitates the conclusion that ghost guns are overwhelmingly owned by
15 law-abiding citizens when juxtaposed with the roughly 135 ghost guns seized in Washington
16 between 2019 and 2022. TRO Opposition, Dkt. #19, p. 4-5.

17
18
19
20 Throughout American history, firearms have been made by private citizens. See *State of*
21 *Washington v. Federal Way Discount Guns, LLC, et al.*, No. 22-2-20064-2 (King Cty. Sup. Ct.)
22 (Dkt. #19, Decl. of Ashley Hlebinsky, Curator Emerita & Senior Firearms Scholar, Cody
23 Firearms Museum); see also Letter from Sec'y of State Thomas Jefferson to George
24 Hammond, British Ambassador to the U.S., (May 15, 1793), in 7 *The Writings of Thomas*
25 *Jefferson* 325, 326 (Paul Ford ed., 1904) ("Our citizens have always been free to make, vend,
26 and export arms. It is the constant occupation and livelihood of some of them."); see also

1 Joseph G.S. Greenlee, *The American Tradition of Self-Made Arms*, 54 St. Mary's L. J. 35, 45-
2 71 (2023).

3 Americans have always been free to self-manufacture their own firearms and should
4 remain free to do so without governmental interference.
5

6 III. ISSUES PRESENTED

7 Whether Respondents should be preliminarily enjoined from enforcing RCW
8 9.41.190(1)(d), .325, .326, and .327 as the definitions contained in RCW 9.41.010(39) and (41)
9 are unconstitutionally vague, violate the ex post facto proscription contained in Wash. Const.
10 art. I, § 23, and taken together, violate Wash. Const. art. I, § 24 by substantially impairing
11 Washington citizens' right to bear arms as it directly impairs individual conduct.
12

13 IV. EVIDENCE RELIED UPON

14 In support of this Motion, Petitioners rely on the Petition for Declaratory and Injunctive
15 Relief, Motion to Proceed under Pseudonym and Declaration of Counsel in support thereof,
16 declarations in support of this motion, including Declaration of Counsel in support of, and
17 Declaration of Eric Hargraves.
18

19 V. ARGUMENT

20 A. A Preliminary Injunction is Justified in This Case

21 A trial court has broad discretion to fashion injunctive relief to fit the particular
22 circumstances of the case. *Rupert v. Gunter*, 31 Wn. App. 27, 30, 640 P.2d 36 (1982). A
23 court's decision to grant or deny an injunction will not be overturned unless the decision is
24 based on untenable grounds, is manifestly unreasonable, or is arbitrary. *Fed. Way Family*
25 *Physicians, Inc. v. Tacoma Stands Up for Life*, 106 Wn.2d 261, 264, 721 P.2d 946 (1986).
26
27

1 In order to obtain an injunction, a party “must show (1) that he has a clear legal or
2 equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3)
3 that the acts complained of are either resulting in *or will result* in actual and substantial injury
4 to him.” *Spokane v. AFSCME*, 76 Wn. App. 765, 771, 888 P.2d 735 (Div. 3 1995) (citing *Port of*
5 *Seattle v. International Longshoremen’s & Warehousemen’s Union*, 52 Wn.2d 317, 319, 324
6 P.2d 1099 (1958) (emphasis in original).

8 As shown *infra*, Petitioners are likely to ultimately prevail on the merits. The
9 challenged statutes impair individual conduct which is protected by Wash. Const. art. I, § 24.
10 Self-manufactured firearms are commonly possessed by law-abiding citizens for lawful
11 purposes and are therefore protected and have been a part of American history since the
12 inception of this great Nation. The Respondents cannot make a showing that serialization
13 requirements are a longstanding regulation, or that any analogous restriction exists, and the
14 requirements and proscriptions of the challenged statutes are therefore unconstitutional.
15

17 I. Violation of a Clear Legal or Equitable Right

18 The Washington Constitution provides that “[t]he right of the individual citizen to bear
19 arms in defense of himself, or the state, shall not be impaired[.]” Wash. Const. art. I, § 24.
20 “Article I, section 24 plainly guarantees an individual right to bear arms.” *State v. Sieyes*, 168
21 Wn.2d 276, 292, 225 P.3d 995 (2010). “This ‘right to bear arms’ is an individual right that
22 exists in the context of that individual’s defense of himself or the state.” *City of Seattle v.*
23 *Evans*, 184 Wn.2d 856, 862, 366 P.3d 906 (2015) (citing *Sieyes*, 168 Wn.2d at 292-93).
24 Additionally, the Supreme Court stated that “we regard the history, lineage, and pedigree of the
25 Second Amendment right to bear arms necessary to an Anglo-American regime of ordered
26
27

1 liberty and fundamental to the American scheme of justice. It is deeply rooted in this Nation's
2 history and tradition." *Sieyes*, 168 Wn.2d at 287.

3 As set forth in great detail in the Petition for Declaratory and Injunctive Relief,
4 Petitioners have demonstrated how the challenged statutes unconstitutionally impair the right
5 to bear arms as set forth in the Washington Constitution, and how the previous standard used
6 by the Washington Supreme Court in *State v. Jorgensen*, 179 Wn.2d 145, 312 P.3d 960 (2013)
7 is outmoded and needs to be reexamined following *New York State Rifle & Pistol Ass'n, Inc. v.*
8 *Bruen*, ___ U.S. ___, 142 S. Ct. 2111 (2022). (Dkt. #2, p. 7-17). Such a standard does away
9 with the intermediate scrutiny and "reasonable regulation" utilized in *Jorgenson*. "Not only
10 did *Heller* decline to engage in means-end scrutiny generally, but it also specifically ruled out
11 the intermediate-scrutiny test that respondents and the United States now urge us to adopt."
12 *Bruen*, 142 S. Ct. at 2129.

13
14
15 There is no disagreement that the Washington Constitution should be interpreted
16 separately and independently from its federal counterpart, as stated by the Washington Supreme
17 Court in *Jorgenson*. However, the decision issued by the Washington Supreme Court in
18 *Jorgenson* needs to be squared with the recent *Bruen* decision. Although *Jorgenson* used the
19 two-part test popular with the circuit courts of appeal, that test has been abrogated in no uncertain
20 terms by *Bruen*.

21
22
23 *Jorgenson* incorrectly used intermediate scrutiny in contravention of *Heller*; it is even
24 more wrong today following *Bruen*, which rejects the second prong of the two-step approach,
25 where courts analyze whether "the Government can show that the regulation is substantially
26 related to the achievement of an important governmental interest." *Id.* at 2126. The U.S.

27 Supreme Court explicitly and categorically rejects the 'important governmental interest' which

1 serves as the entire basis of Respondents' arguments; "[d]espite the popularity of this two-step
2 approach, it is one step too many." *Id.* at 2127. While the first step of determining whether the
3 conduct is rooted in the Second Amendment's text is still in accordance with Second
4 Amendment standards, "*Heller* and *McDonald* do not support applying means-end scrutiny in
5 the Second Amendment context. Instead, the government must affirmatively prove that its
6 firearms regulation is part of the historical tradition that delimits the outbounds of the right to
7 keep and bear arms." *Id.*

8
9 Now, the federal standard is that:

10
11 When the Second Amendment's plain text covers an individual's
12 conduct, the Constitution presumptively protects that conduct. The
13 government must then justify its regulation by demonstrating that it
14 is consistent with the Nation's historical tradition of firearm
15 regulation. Only then may a court conclude that the individual's
16 conduct falls outside the Second Amendment's unqualified
17 command.

18 *Id.* at 2129-30 (internal quotations omitted). The Washington Constitution provides even more
19 robust protections than does the U.S. Constitution: "Supreme Court application of the United
20 States Constitution establishes a floor below which state courts cannot go to protect individual
21 rights. But states of course can raise the ceiling to afford greater protections under their own
22 constitutions." *State v. Sieyes*, 168 Wn.2d 276, 292, 225 P.3d 995 (2010).

23 The initial test is not whether a restriction or regulation burdens or impairs the right to
24 bear arms, the initial inquiry is whether the conduct sought to be regulated is within the ambit
25 of individual conduct; if the answer is in the affirmative, then the *government* must show that
26 the restriction or regulation is consistent with the Nation's historical tradition of firearm
27 regulation. *Bruen*, 142 S. Ct. at at 2129-30. *Bruen* again marks a return to the presumption that

1 the declared rights of individuals to bear arms is the baseline; any restriction on that right must
2 comport with the tradition of firearm regulation.

3 Acquiring a firearm is within the unqualified command of the Second Amendment, and
4 in turn, art. I, § 24 and is presumptively protected; in order to justify its regulation, the
5 government must show that it is consistent with the Nation's historical tradition of firearm
6 regulation. This is the new floor below which the state cannot go. *Sieyes*, 168 Wn.2d at 292.
7 "The Constitution of the United States is the supreme law of the land." Wash. Const. art. I, § 2.
8 The protections of the federal constitution are incorporated against the states by virtue of the
9 Fourteenth Amendment. Respondents cannot simply wish away the new standard and test
10 promulgated by *Bruen*.

11 As self-manufacturing firearms is categorically individual conduct, the presumption is
12 that any attempt by the government to proscribe that conduct must be in accordance with
13 longstanding regulations. Respondents attempt to foist the burden upon Petitioners, but the
14 onus is on Respondents to show that such a regulation has longstanding historical precedent
15 stretching back to the Founding era or the era of Reconstruction, when the federal charter was
16 incorporated against the States.

17 Respondents cannot make that showing here. The requirement that all firearms bear a
18 serial number is of recent vintage; such a requirement was promulgated under the Gun Control
19 Act of 1968. In turn, that requirement was an extension of the National Firearms Act of 1934,
20 which required that regulated firearms, e.g., machine guns, short-barreled shotguns, etc., were
21 required to bear a serial number.

22 Examining ghost guns under the *Heller* standard, and as mirrored by the Washington
23 Supreme Court in *City of Seattle v. Evans*, 184 Wn.2d 856, 366 P.3d 906 (2015), "the right to

1 bear arms protects instruments that are designed as weapons traditionally or commonly used by
2 law-abiding citizens for the lawful purpose of self-defense.” *Evans*, 184 Wn.2d at 869. While
3 new technology has made it easier for individuals to self-manufacture firearms, such a practice
4 has a long and rich history in this Nation and this state, including its territorial period. Further,
5 the Washington Supreme Court stated that if a weapon has been traditionally used for self-
6 defense, it is protected. *Id.* 184 Wn.2d at 870 (“historically, certain knives, for example, bowie
7 knives and swords, have been commonly used for self-defense and, therefore, may be
8 considered arms”) (citing *City of Seattle v. Montana*, 129 Wn.2d 583, 919 P.2d 1218 (1996)
9 (internal quotation marks omitted).
10
11

12 As the challenged statutes impair the right of Washington citizens to self-manufacture
13 firearms in contravention of the long and rich history of such a practice, they are
14 unconstitutional. The weapon’s purpose and intended function is to be considered. *Id.* 184
15 Wn.2d at 869. Even if the Court were to consider ghost guns as their own class by virtue of a
16 nonfunctional designation, they are commonly possessed by law-abiding citizens for lawful
17 purposes.
18

19 2. Well-Founded Fear of Immediate Invasion of Rights

20 The challenged statutes went into effect March 11, 2023. Currently, law-abiding
21 citizens are now subject to civil and criminal penalties, including fines and confinement for
22 violations. As shown above, the subject firearms are protected under Wash. Const. art. I, § 24,
23 and the challenged statutes are in conflict with the right of law-abiding citizens to bear arms.
24

25 ///

26 ///

1 **3. The Challenged Statutes Are Either Resulting in or Will Result in**
2 **Actual and Substantial Injury**

3 “The violation of a fundamental constitutional right, even if temporary, constitutes
4 irreparable harm.” *Stevens Cty. v. Stevens Cty. Sheriff's Dep't*, 20 Wn. App. 2d 34, 94, 499
5 P.3d 917 (Div. 3 2021) (Fearing, J., dissenting) (citing *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.
6 Ct. 2673 (1976)). Respondents attempt to limit violations of constitutional rights sufficient to
7 warrant injunctive relief to specifically regarding those concerning the First Amendment. This
8 is not in accordance with common sense, the language used by Justice Fearing in his dissent, or
9 *Heller* and *Bruen*. In fact, the approach of *Bruen* was to bring Second Amendment review into

11 accord[] with how we protect other constitutional rights. Take, for
12 instance, the freedom of speech in the First Amendment, to which
13 *Heller* repeatedly compared the right to keep and bear arms. In that
14 context, when the Government restricts speech, the Government
15 bears the burden of proving the constitutionality of its actions.

16 *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, ___ U.S. ___, 142 S. Ct. 2111, 2130,
17 (2022) (internal citation and quotation omitted).

18 Common sense dictates that a violation of a constitutional right, regardless of the
19 Amendment from which it is granted constitutes irreparable harm. Justice Fearing’s dissent
20 recognizes this by utilizing the term “fundamental” rather than strictly cabining irreparable
21 harm to free speech rights. Respondents surely would not posit that a violation of the Third
22 Amendment would not be subject to a preliminary injunction.

23 Respondents contend that the only injuries possibly sustained by Petitioners are purely
24 economic and compensable by damages. TRO Opposition, Dkt. #19, p. 18. This is a gross
25 mischaracterization of the challenged statutes, which provide that only the first instance is
26 punishable strictly by a monetary penalty of \$500. While that may not be a lot of money to the
27

1 Attorney General's Office, that is a lot of money to Washington citizens, and the Respondents
2 should not so cavalierly dispense with prospective punishments, or discount having to resort to
3 filing suit to recover a penalty.
4

5 Respondents also disregard the remainder of the penalty provisions of the challenged
6 statutes, which provide that subsequent violations (or violations involving three or more
7 untraceable firearms) are punishable as misdemeanors or gross misdemeanors under RCW
8 9A.20, which in turn provides that misdemeanors are punishable for a maximum term of not
9 more than ninety days, and a fine not more than one thousand dollars, or by both such
10 imprisonment and fine, and gross misdemeanors are punishable by imprisonment up to three
11 hundred sixty-four days, or fine of not more than five thousand dollars, or by both such
12 imprisonment and fine. RCW 9A.20.021(2) and (3). Additionally, if any person manufactures
13 or assembles an untraceable firearm with an "intent to sell," whatever that is determined to be,
14 a violation is deemed a class C felony, punishable by confinement for five years, a ten
15 thousand dollar fine, or both. RCW 9A.20.021(1)(c). Therefore, the current issue is decidedly
16 not compensable purely by damages and is therefore ripe for injunctive relief.
17
18

19 **B. Equities and Public Interest Necessitate a Preliminary Injunction**

20 Respondents incorrectly conduct the analysis pertaining to whether injunctive relief is
21 warranted by skipping over the constitutional protections and interests of Petitioners by
22 proceeding directly to public interest. As stated in Respondents' brief in opposition to the
23 Motion for TRO, "the listed criteria must be examined in light of equity including balancing
24 the relative interest of the parties and, *if appropriate*, the interests of the public." *Tyler Pipe*
25 *Indus., Inc. v. State, Dep't of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982) (emphasis
26 added).
27

1 Respondents' attempt to avail themselves of public interest weighed against individual
2 rights is not appropriate in the context of the right to bear arms; "[t]he Second Amendment is the
3 very *product* of an interest balancing by the people and it surely elevates above all other interests
4 the right of law-abiding, responsible citizens to use arms for self-defense. It is this balance –
5 struck by the traditions of the American people – that demands our unqualified deference." *Bruen*,
6 142 S. Ct. at 2131 (internal quotations and citation omitted) (emphasis in original). Whether a
7 regulation is "reasonable" is not the analysis this Court is directed to conduct; the analysis is
8 whether the conduct in question is individual conduct protected by the edict that individuals may
9 bear arms in defense of themselves and the state, and if so, whether the government can then
10 show that such a regulation is in accordance with longstanding historical precedent for regulating
11 such conduct.
12

14 The State cannot make such a showing. *Bruen* marks a return to the presumption that
15 fundamental rights are just that; rights in which courts "regard the history, lineage, and
16 pedigree of the Second Amendment right to bear arms [as] necessary to an Anglo-American
17 regime of ordered liberty and fundamental to the American scheme of justice. It is deeply
18 rooted in this Nation's history and tradition." *Sieyes*, 168 Wn.2d at 287.
19

20 Regulations on self-manufactured firearms are not longstanding. "In fact, there were
21 no restrictions on the manufacture of arms for personal use in America during the seventeenth,
22 eighteenth, or nineteenth centuries. All such restrictions have been enacted within the last
23 decade." Greenlee, *The American Tradition of Self-Made Arms*, 54 St. Mary's L. J. at 78-83
24 (2023). The right to bear arms is the very *product* of interest balancing by the people who
25 drafted and ratified constitutional protections. The "reasonable regulations" that the right to
26
27

1 bear arms is subject to can only be considered only if the individual right has been subjected to
2 longstanding regulation.

3 The Respondents' argument that the proscription of self-manufacturing firearms or
4 having to serialize the same, while also prohibiting the acquisition of the same are not
5 impairments of the right to bear arms fails, for
6

7 Constitutional rights thus implicitly protect those closely related acts
8 necessary to their exercise... The right to keep and bear arms, for
9 example, "implies a corresponding right to obtain the bullets
10 necessary to use them," *Jackson v. City and County of San*
11 *Francisco*, 746 F.3d 953, 967 (C.A.9 2014), and "to acquire and
maintain proficiency in their use," *Ezell v. Chicago*, 651 F.3d 684,
704 (C.A.7 2011)... Without protection for these closely related
rights, the Second Amendment would be toothless.

12 *Luis v. United States*, 578 U.S. 5, 26-27, 136 S. Ct. 1083 (2016) (Thomas, J., concurring)
13 (emphasis added); see also *Ill. Ass'n of Firearms Retailers v. City of Chicago*, 961 F. Supp. 2d
14 928, 930 (N.D. Ill. 2014) ("[C]ertain fundamental rights are protected by the Constitution, put
15 outside government's reach, including the right to keep and bear arms for self-defense under
16 the Second Amendment. This right must also include the right to acquire a firearm...")
17 (emphasis in original); see also *Teixeira v. County of Alameda*, 873 F.3d 670, 677 (9th Cir.
18 2017) ("As with purchasing ammunition and maintaining proficiency in firearms use, the core
19 Second Amendment right to keep and bear arms for self-defense wouldn't mean much without
20 the ability to acquire arms.") (internal quotations omitted).

23 C. Ex Post Facto Nature of Statutes

24 The challenged statutes are facially ex post facto laws; as briefed by Respondents,
25 "[f]inding a violation turns upon whether the law changes legal consequences of acts
26 completed before its effective date." *State v. Edwards*, 104 Wn.2d 63, 71 (1985). The effective
27

1 date of the challenged statutes just passed, to wit March 11, 2023. However, the challenged
2 statutes now make the mere possession of an untraceable firearm or unfinished frame or
3 receiver, created or acquired after July 1, 2019, as punishable.

4 **D. Statutes are Void for Vagueness**

5
6 While facial vagueness challenges are most commonly within the domain of the First
7 Amendment,

8 The test to be applied by the court in determining whether a statute
9 is unconstitutional depends on the allegation made. When it is
10 alleged that a statute is wholly unconstitutional, the court looks not
11 to the conduct of the defendant, but to the face of the statute to
12 determine whether any conviction under the statute could be
13 constitutionally upheld.

14 *Bellevue v. Miller*, 85 Wn.2d 539, 541, 536 P.2d 603 (1975). If, upon such an examination, the
15 court finds that no conviction could be upheld, the statute is unconstitutional on its face.

16 This matter requires the Court's attention and determination, as "Washington courts
17 have never decided whether the state constitution provides superior rights to the accused in the
18 context of vague statutes, since no appellant has analyzed the question under the *Gunwall*
19 analysis." *State v. Harrington*, 181 Wn. App. 805, 823, 333 P.3d 410 (2014). If the Court
20 desires, the parties should be given opportunity to supplementally brief the matter under
21 *Gunwall*, as Petitioners have demonstrated they are likely to prevail on the matter under the
22 *Gunwall* analysis as it pertains to Wash. Const. art. I, § 24, and have not briefed the vagueness
23 challenge accordingly.

24 A statute is unconstitutionally vague if it fails *either* of two requirements. *Spokane v.*
25 *Douglass*, 115 Wn.2d 171, 178, 795 P.2d 693 (1990). A statute is void if either "(1) the statute
26 does not define the criminal offense with sufficient definiteness that ordinary people can
27

1 understand what conduct is proscribed or (2) the statute does not provide ascertainable
2 standards of guilt to protect against arbitrary enforcement.” *Harrington*, 181 Wn. App. at 823
3 (citing *State v. Watson*, 160 Wn.2d 1, 6, 154 P.3d 909 (2007)).
4

5 Here, the challenged statutes fail both.

6 First, the definition of “unfinished frame or receiver” contains multiple terms that are
7 susceptible of multiple interpretations, evidenced by the fact that two terms within the
8 definition are in turn defined as subparts. RCW 9.41.010(39)(a). Initially, subpart (b)(i)
9 defines “readily” by starting with an assertion that it applies to a “process that is fairly or
10 reasonably efficient, quick, and easy, but not necessarily the most efficient, speedy, or easy
11 process.” Washington citizens are only left to guess as to what that means. The process must
12 be fairly or reasonably efficient, quick, and easy, but doesn’t have to be the most effective,
13 fastest, or easiest means of accomplishing the end goal.
14

15 Even more troublesome and confusingly, no less than eight factors are provided for
16 Washington citizens to weigh when determining whether the process is efficient, quick, and
17 easy, but no single factor is controlling, so Washington citizens are left to ascribe the level of
18 importance to any or some of the eight factors as they deem important or dispositive. This
19 amounts to a guessing game on the part of Washington citizens as to what constitutes an
20 unfinished frame or receiver, which cannot serve as the basis for significant penalties and
21 incarceration.
22

23
24 Then, subpart (b)(ii) attempts to define “partially complete” as “a forging, casting,
25 printing, extrusion, machined body, or similar article that has reached a stage in manufacture
26 where it is clearly identifiable as an unfinished component part of a firearm.” Numerous
27 power tools, crossbows, and assorted other items utilize “pistol grips” that are designed to
28

1 untraceable firearm, or the knowing or reckless possession, transportation, or receipt
2 of an untraceable firearm; and

- 3
4 4. Respondents shall not enforce provisions of RCW 9.41.327 pertaining to the knowing
5 or reckless possession, transportation, or receipt of an unfinished frame or receiver, or
6 the sale, offer to sell, transfer, or purchase of an unfinished frame or receiver.
7
8 5. The Court should require only a nominal bond amount, as Petitioners have
9 demonstrated that they are likely to prevail on the merits, and the constitutional
10 protections of Washington citizens are asserted in the instant matter.

11
12 Dated this 20th of March, 2023.



13
14 Austin F. Hatcher, WSBA #57449
15 Attorney for Petitioners
16
17
18
19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that I filed with the Court and electronically served a copy of this document on all parties on the date below as follows:

Office of the Attorney General:	
Andrew Hughes, Assistant Attorney General:	andrew.hughes@atg.wa.gov
Will McGinty, Assistant Attorney General:	william.mcginty@atg.wa.gov
Spencer Coates, Assistant Attorney General:	spencer.coates@atg.wa.gov
Amy Hand, Paralegal:	amy.hand@atg.wa.gov
Sara Cearley, Paralegal:	sara.cearley@atg.wa.gov
Christine Truong, Legal Assistant:	christine.truong@atg.wa.gov
Vyna Nguyen, Legal Assistant:	vyna.nguyen@atg.wa.gov
Electronic Mailing Inbox:	ComCEC@atg.wa.gov
Office of the Governor:	serviceATG@atg.wa.gov
Stevens County Sheriff's Office:	physical service to Stevens County Prosecutor's Office
Andrew Patrick, Deputy Prosecutor:	apatrick@stevenscountywa.gov

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 20th day of March, 2023, at Spokane, WA.



Austin Hatcher, WSBA #57449
Attorney for Petitioners

1
2
3
4
5
6
7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **IN AND FOR THE COUNTY OF STEVENS**

9 JOHN DOES 1-5, et al.,

10
11 Petitioners,

12 v.

13 JAY INSLEE, et al.,

14 Respondents.
15

No. 23-2-00092-33

GR17 AFFIDAVIT RE:
FAXED MATERIALS

16
17 I, Robyn Webster, Office Administrator, with North Country Personal Injury, declare and
18 state the following:

19 The attached is a digital transmission of Petitioner's Motion for Preliminary Injunction
20 submitted by Austin Hatcher, attorney for Petitioners, in the above-entitled matter.

21 The attached document, prepared for filing this 20th day of March, 2023, and consisting
22 of 22 pages, including this affidavit page, has been examined and determined by me to be
23 complete and legible.
24

25 Dated: 3/20/2023


ROBYN WEBSTER

1 SUBSCRIBED AND SWORN before me this 20th day of March, 2023.

2
3 Seal:



4
5
6 [Signature]
7 Notary Public, State of Washington
8 Kelly L. King
9 Commission expires: 4-1-2023