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SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

PHILIP WATSON, an individual; RAY CARTER, an individual; FARWEST SPORTS, INC., dba OUTDOOR EMPORIUM, a Washington corporation; PRECISE SHOOTER, LLC, a Washington limited liability company; THE SECOND AMENDMENT FOUNDATION, INC., a Washington nonprofit corporation; NATIONAL RIFLE ASSOCIATION OF AMERICA, INC.; a New York non-profit association; AND NATIONAL SHOOTING SPORTS FOUNDATION, a Connecticut non-profit association,

Plaintiffs,

v.

CITY OF SEATTLE, a municipality; ED MURRAY, Mayor of the City of Seattle, in his official capacity; SEATTLE DEPARTMENT OF FINANCE AND ADMINISTRATIVE SERVICES, a department of the City of Seattle; and GLEN LEE, Director of Finance and Administrative Services, in his official capacity,

Defendants.

No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 Plaintiffs, by and through their attorneys, allege the following Complaint for declaratory
2 and injunctive relief against Defendants City of Seattle, Mayor Ed Murray, and City of Seattle
3 Finance Director Glen Lee:

4 **I. NATURE OF THE CASE**

5 The City of Seattle has passed an ordinance regulating the sale of firearms and ammunition
6 which imposes a tax on every firearm and ammunition sale in the city, with the purpose of making
7 it more difficult to access firearms and ammunition. However, the ordinance serves only as a
8 piece of propaganda, because the ordinance's mandates are legally unenforceable. The state of
9 Washington has the exclusive right to regulate the sale of firearms in Washington, and cities may
10 not enact local laws or regulations related to the sale of firearms. RCW 9.41.290. The City of
11 Seattle has simply ignored this clear rule of preemption—a rule which it has been found to have
12 violated in the past, *see Chan v. City of Seattle*, 164 Wn. App. 549, 265 P.3d 169 (2011)—by
13 purporting to regulate the sale of firearms and ammunition through a tax that is punishable as a
14 gross misdemeanor. The rule of preemption could not be clearer: the City of Seattle (like any
15 municipality in the state of Washington) is not permitted to pass laws that target the sale of
16 firearms and ammunition through any means, be it through the suppressive effect of a \$25 tax, the
17 operative prohibition of sales through a \$1000 tax, or an outright ban. By ignoring this clear
18 principle, the City of Seattle has wasted public resources in a futile effort to skirt the State's
19 exclusive powers to regulate firearms and ammunition. Accordingly, Plaintiffs bring this action
20 for injunctive and declaratory relief, and ask this Court for an order that would require the
21 Defendants to follow the law.

22 **II. PARTIES**

23 1. Plaintiff Philip Watson is an individual residing in Lakewood, Washington. Philip
24 Watson has purchased ammunition in Seattle at least once a year for the past six years, including
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1 from Plaintiff Farwest Sports, Inc., dba Outdoor Emporium. Philip Watson intends to continue
2 purchasing ammunition in Seattle, but will not be able to do so if the firearm and ammunition tax
3 is imposed and the cost is passed on to the consumer.

4 2. Plaintiff Ray Carter is an individual residing in West Seattle. Ray Carter has
5 purchased firearms and ammunition in Seattle at least once a year for the past six years, including
6 from Plaintiffs Farwest Sports, Inc., dba Outdoor Emporium and Precise Shooter, LLC. Ray
7 Carter intends to continue purchasing ammunition in Seattle, but will not be able to do so if the
8 firearm and ammunition tax is imposed and the cost is passed on to the consumer.

9 3. Farwest Sports, Inc., dba Outdoor Emporium (“Outdoor Emporium”), is
10 incorporated in Washington, with its principal place of business in Seattle, Washington. Outdoor
11 Emporium is the largest firearm and ammunition retailer in Seattle. Outdoor Emporium retails
12 firearms and ammunition to consumers, approximately 70% of whom are non-Seattle residents.
13 Outdoor Emporium also wholesales ammunition to other retailers in the Seattle area.

14 4. Plaintiff Precise Shooter, LLC (“Precise Shooter”) is organized under the laws of
15 Washington, with its principal place of business in Seattle, Washington. Precise Shooter is a
16 retailer of firearms and ammunition that specializes in serving sportsmen and women seeking
17 products for highly accurate target shooting, as used in shooting sports, competitive events,
18 ranges, and hunting.

19 5. Plaintiff Second Amendment Foundation, Inc. (“SAF”) is a non-profit membership
20 organization incorporated under the laws of Washington with its principal place of business in
21 Bellevue, Washington. SAF has over 600,000 members and supporters nationwide, including
22 thousands in the state of Washington. The purposes of SAF include education, research,
23 publishing, and legal action focusing on the constitutional right to own and possess firearms. SAF
24 brings this action on behalf of itself and its members.
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1 6. Plaintiff National Rifle Association of America, Inc. ("NRA") is a non-profit
2 association incorporated under the laws of New York, with its principal place of business in
3 Fairfax, Virginia. NRA has almost four million members, including thousands of members in the
4 state of Washington. NRA's purposes include protection of the right of citizens to have firearms
5 for lawful defense, hunting, and sporting use, and to promote public safety. NRA brings this
6 action on behalf of itself and its members.

7 7. Plaintiff National Shooting Sports Foundation ("NSSF") is a non-profit trade
8 association for America's firearms, hunting, and recreational shooting sports industry,
9 incorporated and with its principal place of business in Connecticut. NSSF has a membership of
10 more than 9,000 federally-licensed firearms and ammunition manufacturers, distributors, retailers;
11 companies manufacturing, distributing, and selling shooting and hunting-related goods and
12 services; public and private shooting ranges; and sportsmen's organizations, including members
13 in the state of Washington. NSSF's members supply the firearms and ammunition used by the
14 U.S. Military and Federal, State, and Local law enforcement to protect America's national security
15 and keep our communities safe, and also supply sportsmen and gun owners throughout the State
16 with the firearms and ammunition they use for lawful purposes. NSSF's purpose is to promote,
17 protect, and preserve hunting and the shooting sports. NSSF brings this action on behalf of itself
18 and its members.

19 8. Defendant City of Seattle ("Seattle" or "the City") is a municipal corporation and
20 first-class city organized under the laws of the state of Washington.

21 9. Defendant Ed Murray ("Mayor Murray") is the Mayor of the City of Seattle. Mayor
22 Murray is the head of the Executive Department, and in that capacity directs and controls all City
23 offices and departments except where that authority is granted to another office by the Seattle City
24 Charter.
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1 firearms and ammunition.” On August 21, 2015, Mayor Murray approved and signed the
2 Ordinance, making the Ordinance effective and in force on September 20, 2015. The Ordinance
3 states that the tax itself will be imposed beginning on January 1, 2016 on every person engaging
4 within the City in the business of making sales of firearms or ammunition, as administrated by the
5 Finance Department and Director Lee.

6 16. The Ordinance added Chapter 5.50 to the Seattle Municipal Code, which states, in
7 part:

8 **5.50.030 Tax imposed; rates**

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10 A. There is imposed a tax on every person engaging within the City in the business
11 of making retail sales of firearms or ammunition. The amount of the tax due shall
12 be equal to the quantity of firearms sold at retail and the quantity of ammunition
13 sold at retail multiplied by the applicable tax rates that are stated in Section
14 5.50.030.B.

15 B. The tax rate shall be \$25 per firearm sold at retail, \$.02 per round of ammunition
16 that contains a single projectile that measures .22 caliber or less sold at retail, and
17 \$.05 per round of ammunition for all other ammunition sold at retail.

18 17. The Ordinance also amended 5.55.220 of the Seattle Municipal Code to make
19 failure to pay the firearm and ammunition tax a gross misdemeanor, punishable by a fine of up to
20 \$5,000, imprisonment for a term not to exceed 364 days, or both.

21 18. Defendants have enacted and are required to enforce this tax despite the fact that
22 the authority to regulate firearms rests exclusively with the State of Washington. The City
23 Council’s materials attempt to avoid the Preemption Clause by stating, without support, that RCW
24 9.41.290 is not implicated because taxation and regulation are legally distinct functions. Beyond
25 having no legal basis, the fanciful notion that a tax can exist without implicating or requiring
regulation quickly collapses when one considers the context surrounding passage of the ordinance.
For example, the statements in support of the Ordinance by council members demonstrate a desire
to suppress the sale of firearms and ammunition: council member John Okamoto showed his

1 support by reading a citizen statement that “[p]rohibiting guns completely will not stop every
2 shooting, but I do believe that making it more difficult to access guns and ammunition will save
3 more lives”, council member Bruce Harrell issued his support for the ordinance by stating “[t]he
4 fact is, in simple terms, access to guns is too high”, and council member Sally Bagshaw’s
5 statement that “we cannot rely upon our federal government to do what’s right here.”² The
6 strawman of taxation is also undermined by the City’s wildly erroneous estimates of what funds
7 would be raised by this tax, which were based on inaccurate assumptions on the price of firearms
8 and ammunition, the number of sales taking place in Seattle, and the firearms businesses that
9 would be able to continue operating in Seattle after imposition of the tax. The anticipated funds
10 that would be earmarked for gun violence education and research will not be realized, but Seattle’s
11 tax will have exactly the regulatory effect the City Council intended by passing this tax: a dramatic
12 suppression in the number of firearm and ammunition sales that will take place within the Seattle
13 city limits.

14 19. Defendants’ refusal to recognize the State’s basic preemption principle will cause
15 irreparable harm to citizens who are hindered in their ability to exercise a basic constitutional right
16 of purchasing firearms and ammunition in the City of Seattle.

17 20. Plaintiffs Phillip Watson and Ray Carter purchase ammunition in Seattle and plan
18 to do so in the future. The organizational Plaintiffs’ Seattle members also purchase ammunition
19 in Seattle and plan to do so in the future. If the tax becomes effective, these Plaintiffs will be
20 forced to seek firearms and ammunition outside Seattle, either because it is economically
21 infeasible to purchase in Seattle or because those selling firearms and ammunition will be required
22 to relocate.

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² August 10, 2015 Seattle City Council Meeting at 1:24:39, 1:25:44 & 1:27:39 (available at
<http://www.seattlechannel.org/mayor-and-council/city-council/full-council?videoid=x57446&Mode2=Video>)

1 21. Irreparable harm is faced by those individual Plaintiffs who engage in the business
2 of selling firearms, by requiring them to impose a tax on each sale or face penalty or prosecution.

3 22. Precise Shooter faces irreparable harm from a tax that will force it to either pass
4 on the tax to their customers or move outside Seattle. Applying the tax to Precise Shooter's sales
5 to date in 2015, it would owe more for this increased tax than it has earned in profit. However,
6 passing the tax on to the customer would result in a catastrophic loss of business for Precise
7 Shooter. For example, one of the most popular rounds of ammunition at Precise Shooter, the .22
8 caliber, costs \$.05 to \$.10 a round. The next most popular ammunition at Precise Shooter, the
9 9mm, costs approximately \$.20 to \$.30 a round. A \$.02 and \$.05 respective tax increase per round
10 would result in a tax rate from 20% to 40% on ammunition, an increase that would send customers
11 to online retailers or to those just outside Seattle. Given that the tax will make the sales of firearm
12 and ammunition in Seattle unprofitable, Precise Shooter must relocate north outside the city limits
13 if the tax is not struck down. Although the tax will not go into effect until January 1, 2016, Precise
14 Shooter must make decisions now about moving outside the city limits in order to continue its
15 business after that date.

16 23. Outdoor Emporium faces similar irreparable harm. To ensure customer
17 satisfaction and maintain its position as the largest firearm retailer in Seattle, Outdoor Emporium
18 has historically matched any advertised price on firearms and ammunition. As a result, Outdoor
19 Emporium's margin on firearms and ammunition is significantly lower than required, even before
20 the imposition of a good-specific tax. A firearm and ammunition specific tax on Seattle retailers
21 will erase that thin margin if it is not passed on to customers or drive customers outside the city
22 limits if it is passed on to customers (especially considering approximately 70% of Outdoor
23 Emporium's firearms customers are non-Seattle residents). Outdoor Emporium's wholesale
24 business would also be affected, because it will no longer be able to provide the cheapest price on
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1 ammunition to local retailers. Should the tax go into effect on January 1, 2016, Outdoor
2 Emporium will be required to either relocate outside Seattle to maintain its firearm and
3 ammunition sales, cut its firearm and ammunition department entirely (requiring a number of
4 layoffs), or refrain from selling all but the most expensive and highly-specialized firearm and
5 ammunition. Any of these choices will damage Outdoor Emporium's brand as a location for a
6 wide array of sporting goods and irreparably damage its customer base. Outdoor Emporium must
7 make this choice now so that it may take the appropriate action prior to the end of the year.

8 24. Outdoor Emporium and Precise Shooter sell the vast majority of firearms and
9 ammunition in Seattle. However, neither Outdoor Emporium nor Precise Shooter will be able to
10 continue selling firearms or ammunition in Seattle after the imposition of the newly-passed tax,
11 with the possible exception of a select few high-end firearms and ammunition. The exit of these
12 retailers from the Seattle firearm market will make purchasing a generic firearm (such as a
13 handgun or range rifle) or common ammunition (such as .22 caliber or 9mm) in Seattle a practical,
14 if not total, impossibility.

15 V. CAUSES OF ACTION

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

17 **-Against All Defendants-**

18 25. Plaintiffs repeat and reallege paragraphs 1 through 24 as if fully set forth herein.

19 26. A present controversy exists concerning whether Defendants have legal authority
20 to regulate the sale of firearms and ammunition by imposing a tax, the non-payment of which is
21 punishable as a gross misdemeanor. The retailer Plaintiffs' statutory right to be free from local
22 interference with the sale of firearms is affected by this controversy. In addition, the individual
23 Plaintiffs' and the organizational Plaintiffs' Seattle members' constitutional rights to purchase
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1 firearms and ammunition in Seattle is affected by this controversy, and the protection of those
2 rights is germane to the organizational Plaintiffs' purposes.

3 27. Plaintiffs are entitled, under RCW 7.24 and CR 57, to an accelerated judicial
4 declaration that:

5 a. The Ordinance violates Washington statutory and constitutional law and is
6 therefore null and void;

7 b. Defendants lack legal authority to enact any ordinance, law, or rule that imposes a
8 tax on the sale of firearms or ammunition; and

9 c. Defendants may not collect the firearm or ammunition tax or enforce the Ordinance
10 by any other means.

11 28. Such declaration will conclusively terminate the controversy giving rise to this
12 proceeding.

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

14 **- Against All Defendants -**

15 29. Plaintiffs repeat and reallege paragraphs 1 through 28 as if fully set forth herein.

16 30. The retailer Plaintiffs' statutory rights to be free from local interference with the
17 sale of firearms is in jeopardy of immediate invasion, causing actual and substantial injuries
18 without any adequate remedy at law. In addition, the individual Plaintiffs' and the organizational
19 Plaintiffs' Seattle members' constitutional rights to purchase firearms and ammunition in Seattle
20 is in jeopardy of immediate invasion, causing actual and substantial injuries without any adequate
21 remedy at law.

22 31. Plaintiffs are entitled, under RCW 7.40 and CR 65, to an injunction as enjoining
23 Defendants from collecting the firearm or ammunition tax or enforcing the Ordinance by any other
24 means.
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VI. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that judgment be entered against Defendants as follows:

a. Declaring that Defendants' actions in enacting and enforcing the Ordinance were contrary to law and the Ordinance is null and void.

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

c. Awarding any additional or further relief which the court finds appropriate, equitable, or just.

DATED this 24th day of August, 2015.

CORR CRONIN MICHELSON
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