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**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER**

SCOTT HERNDON, JEFF AVERY,)
IDAHO SECOND AMENDMENT)
ALLIANCE, INC., and SECOND)
AMENDMENT FOUNDATION, INC.,)
Plaintiffs,)
vs.)
CITY OF SANDPOINT, FESTIVAL AT)
SANDPOINT, INC., DOES 1 TO 100,)
Defendants.)

Case No.: CV09-20-0692
**COMPLAINT: DECLARATORY
AND INJUNCTIVE RELIEF
(Jury Demand as to Disputed Facts)**
**Claim of Unconstitutionality by
Municipal Actor. Service on Idaho
Attorney General Required.
I.C. Title 10, § 1201 et seq.**
**Notice of Related Case:
Bonner Cnty v. City of Sandpoint,
CV09-19-1388**

1 **INTRODUCTION**

2 This suit challenges a faulty delegation of police power from the City of
3 Sandpoint to a non-profit corporation which results in violations of the IDAHO AND
4 UNITED STATES CONSTITUTION.
5

6 The right to keep and bear arms is a bundle of rights protected by the SECOND
7 AMENDMENT to the UNITED STATES CONSTITUTION. The State of Idaho recognizes
8 these rights in even more vigorous and explicit terms than the U.S. CONSTITUTION.
9 See IDAHO CONSTITUTION, Art. I, Sec. 11. Among those rights, Idaho recognizes a
10 right to be armed in public for self-defense and defense of others.
11
12

13 The City of Sandpoint leases a public park to the Festival at Sandpoint, Inc.,
14 every August. Recently the Festival at Sandpoint, Inc., has implemented a policy
15 of banning the possession and carrying, whether concealed or openly, of firearms
16 at the festival.
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18

19 The delegation of power is faulty and arises in at least three ways: (A) the City
20 of Sandpoint lacks the power to ban the possession of firearms on public property;
21 (B) the City of Sandpoint cannot, therefore, transfer or otherwise delegate that
22 power to a third party through any contract or franchise with a third party; and (C)
23 to the extent that the City of Sandpoint can delegate police powers to a third party -
24 - that third party becomes a “state actor” for purposes of analyzing the IDAHO
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1 CONSTITUTION and Idaho statutory laws, and are thus also preempted from
2 regulating the right to bear arms in public in derogation of state law.
3

4 Furthermore, such third party would then also become liable (either directly or
5 through estoppel) for any wrongful conduct sounding in tort (e.g., failure to
6 protect) or constitutional infringements under 42 U.S.C. § 1983, 1985, 1988.
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8

9 **PARTIES**

10 1. Plaintiff SCOTT HERNDON is a law-abiding resident of Idaho, a United
11 States citizen and is authorized to carry, openly or concealed, a firearm in public
12 places in accordance with Idaho law.
13
14

15 2. Plaintiff JEFF AVERY is a law-abiding resident of Idaho, a United States
16 citizen and is authorized to carry, openly or concealed, a firearm in public places in
17 accordance with Idaho law.
18

19 3. Plaintiff IDAHO SECOND AMENDMENT ALLIANCE, INC., (ISAA) is a
20 non-profit advocacy organization registered (and in good standing) with the Idaho
21 Secretary of State. ISAA is a membership organization that is organized around the
22 principle that law-abiding citizens have an inalienable right to keep and bear arms
23 for the defense of themselves, their family, their community, their state, and their
24 nation. ISAA also advocates for the right to keep and bear arms for sporting
25 purposes such as hunting and target practice. ISAA lobbies for changes in Idaho's
26
27
28

1 gun laws to enhance those rights, clarify those rights, and ensure that the political
2 foundation for those rights remain intact. To that end, ISAA is committed to
3
4 educating the public through various media on how, when, and where they may
5 exercise their right to keep and bear arms. ISAA also accomplishes its mission
6
7 through litigation, if necessary, to guarantee that governments at all levels (local,
8 state and federal) remain servants of the people and adhere to the constitutions that
9 the people have ratified for their safety and protection. ISAA brings this action on
10
11 behalf of itself and its members. ISAA is not a publicly traded corporation.

12 4. Plaintiff SECOND AMENDMENT FOUNDATION, INC., (SAF) is a non-
13
14 profit membership organization incorporated under the laws of Washington with
15 its principal place of business in Bellevue, Washington. SAF has over 650,000
16
17 members and supporters nationwide, including California. The purposes of SAF
18 include education, research, publishing and legal action focusing on the
19
20 constitutional right to possess and carry firearms, as well as the consequences of
21
22 gun control. SAF brings this action on behalf of itself and its members. SAF
23
24 brings lawsuits like this because the fees and costs of prosecuting such actions
25 often exceeds the personal resources of individual gun owners. SAF brings this
26
27 action on behalf of itself and its members. SAF is not a publicly traded
28
corporation.

1 5. Defendant CITY OF SANDPOINT (COS) is an Idaho municipal corporation
2 located entirely in Bonner County, Idaho. COS owns the public park named War
3 Memorial Field Park located in Sandpoint. COS has concurrent (albeit subordinate
4 for purposes of this lawsuit) jurisdiction over the War Memorial Field Park. COS
5 is a public entity under Idaho Code § 12-177.
6
7

8 6. Defendant FESTIVAL AT SANDPOINT, Inc., (FAS) is an Idaho non-profit
9 corporation registered (and in good standing) with the Idaho Secretary of State.
10

11 7. Defendants DOES 1 to 100, whose true names are unknown, are named and
12 designated herein as DOES Defendants. When their true names are discovered, this
13 pleading will be amended accordingly.
14

15 JURISDICTION AND VENUE

16

17 8. Plaintiffs bring this action under the Idaho Constitution and Statutory Law,
18 including but not limited to: Art. I, §§ 1, 2, 10, 11, 13, 17, 18, 21; Art. II, § 1; Art.
19 III, § 1, 19; Art. XI, § 2, 7, 8; Art. XII, § 2; I.R.C.P. 54, I.R.C.P.; 57, I.R.C.P. 65,
20 I.R.C.P. 74; Idaho's Uniform Declaratory Judgment Act, I.C. § 10-1201 *et seq.*,
21 Idaho's Penal Code, I.C. §§ 18-3302, 18-3302C, 18-3302J, Idaho's Corporations
22 Code, I.C. § 30-501, Idaho's Municipal Corporations Code I.C. 50-301, and as
23 otherwise provided by Idaho law.
24
25

26
27 9. This Court also has subject matter jurisdiction over the federal claims under
28 42 U.S.C. §§ 1983, 1985, and 1988.

1 **STATEMENT OF FACTS**

2 10. The City owns a public park, located in Sandpoint, within Bonner County,
3
4 known as War Memorial Field Park. (City Park)

5 11. The War Memorial Field Park is public property under Idaho law, and
6
7 Sandpoint City Code 5-2-6-1. It consists of the public park grounds and Barlow
8 Stadium. Improvements to the park and its maintenance have been funded through
9 sales tax revenue, community volunteer work, donations, general fund
10 contributions and user fees.
11

12 12. Sandpoint’s City Code defines public property as "any real property, or
13 structures thereon, which are owned or controlled by a governmental entity." War
14 Memorial Field is public property subject to control by the City.¹
15

16 13. Currently, and for several decades now, the COS has entered into a written
17 agreement (contract or lease) with the FAS to rent the War Memorial Park for a
18 series of music concerts and art/cultural events (the Festival) for approximately
19 two weeks during the month of August.
20
21

22 14. The Festival has successfully brought music and cultural events to Bonner
23 County for decades, without any significant incidents of violence or civil unrest.
24

25
26 ¹ Idaho Code § 18-3309(2)(b)(i); (C. Activities: Unless specifically authorized, the following activities
27 are prohibited in any city park: 1. Golf. 2. Snowmobiling. D. Disturbing the Peace: The following
28 behaviors are prohibited in city parks: 1. Allowing unauthorized amplified music to disturb the peace
of any park user. 2. Abusive language disturbing the peace of any park user. E. Penalty: Any person
found to be in violation of this section shall be deemed to be guilty of an infraction punishable by a
fine not to exceed one hundred dollars (\$100.00) for any one offense.”).

1 15. Until August 2018, Idaho residents and visitors, in accordance with Idaho
2 law, have carried weapons for self-defense while attending the Festival.
3

4 16. Beginning in August 2018, the FAS implemented a ban on carrying weapons
5 into the Festival.² In August of 2019, Idaho residents and Plaintiffs SCOTT
6 HERNDON and JEFF AVERY were denied entrance to the Festival at War
7 Memorial Field because they were carrying firearms. The plaintiffs were lawfully
8 carrying their firearms in accordance with Idaho Law.³
9
10

11 17. During the August 2019 incident, the City Attorney of Sandpoint and City of
12 Sandpoint police officers assisted the Festival's security detail in denying the
13 Plaintiffs entry to War Memorial Field, even though both plaintiffs had purchased
14 and were in possession of tickets for the events. The Festival security personnel,
15 the COS police and city attorney cited the FAS ban on weapons.
16
17

18 18. When asked what lawful authority the Defendants had for banning weapons
19 on public property in violation of Idaho law, the Plaintiffs were threatened with a
20 criminal charge of trespass.
21
22
23
24

25 ² As of April 28, 2020, the FAQ page [<http://www.festivalatsandpoint.com/faq>] for FAS states that
26 weapons are not allowed at the Festival and asserts that FAS has the authority to conduct a scan by
27 security personnel to detect weapons.

28 ³ A video of the incident was recorded and posted online and can be viewed at:
<https://redoubtnews.com/2019/08/gun-ban-at-festival-in-sandpoint-video/> and
<https://www.youtube.com/watch?v=vUtlpU8saSs>. Both videos were last accessed on April 28, 2020.

1 19. The sole reason given by the Defendants for denying the Plaintiffs access to
2 the venue and festival was their possession of firearms.
3

4 20. Both Plaintiffs intend to purchase tickets for and attend the Festival at
5 Sandpoint during the 2020 and 2021 seasons and desire to exercise their right to
6 bear arms in public for self-defense purposes while attending the Festival at the
7 War Memorial Field park in Sandpoint, Idaho.
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10 CLAIMS FOR RELIEF

11 First Claim for Relief

12 Preemption: Declaratory Relief – State Law

13
14 21. Paragraphs 1 through 20 are incorporated by reference as if fully set forth
15 herein.
16

17 22. There are several constitutional violations on these facts. This Court can
18 avoid reaching those complicated issues, arising under both the Idaho and United
19 States Constitution, by interpreting just two Idaho Statutes.
20

21 23. The Idaho State Legislature has expressly preempted the entire field of
22 firearm regulation in this state. Idaho Crimes & Punishment Code (I.C.P.C.) § 18-
23 3302J reads:
24

25 PREEMPTION OF FIREARMS REGULATION.

26
27 (1) The legislature finds that uniform laws regulating firearms are
28 necessary to protect the individual citizen's right to bear arms

1 guaranteed by amendment 2 of the United States Constitution and
2 section 11, article I of the constitution of the state of Idaho. It is the
3 legislature's intent to wholly occupy the field of firearms regulation
4 within this state.

5 (2) Except as expressly authorized by state statute, no county, city,
6 agency, board or any other political subdivision of this state may adopt
7 or enforce any law, rule, regulation, or ordinance which regulates in any
8 manner the sale, acquisition, transfer, ownership, possession,
9 transportation, carrying or storage of firearms or any element relating
10 to firearms and components thereof, including ammunition.

11 (3) A county may adopt ordinances to regulate, restrict or prohibit the
12 discharge of firearms within its boundaries. Ordinances adopted under
13 this subsection may not apply to or affect:

14 (a) A person discharging a firearm in the lawful defense of person or
15 persons or property;

16 (b) A person discharging a firearm in the course of lawful hunting;

17 (c) A landowner and guests of the landowner discharging a firearm,
18 when the discharge will not endanger persons or property;

19 (d) A person lawfully discharging a firearm on a sport shooting range
20 as defined in section 55-2604, Idaho Code; or

21 (e) A person discharging a firearm in the course of target shooting on
22 public land if the discharge will not endanger persons or property.

23 (4) A city may adopt ordinances to regulate, restrict or prohibit the
24 discharge of firearms within its boundaries. Ordinances adopted under
25 this subsection may not apply to or affect:

26 (a) A person discharging a firearm in the lawful defense of person or
27 persons or property; or

28 (b) A person lawfully discharging a firearm on a sport shooting range
as defined in section 55-2604, Idaho Code.

(5) This section shall not be construed to affect:

(a) The authority of the department of fish and game to make rules or
regulations concerning the management of any wildlife of this state, as
set forth in section 36-104, Idaho Code; and

1 (b) The authority of counties and cities to regulate the location and
2 construction of sport shooting ranges, subject to the limitations
3 contained in chapter 26, title 55, Idaho Code.

4 (6) The provisions of this section are hereby declared to be severable.
5 And if any provision is declared invalid for any reason, such declaration
6 shall not affect the validity of the remaining portions of this section.

7 24. Idaho Corporations Code (I.C.C.) § 30-501 reads:

8 CORPORATIONS -- CONSTITUTION OF THE STATE OF IDAHO.
9 Every corporation organized for any lawful purpose or purposes,
10 whether a general business corporation or a designated class of
11 corporation, shall, by the act of filing incorporation documents with the
12 state of Idaho, acknowledge and accept the provisions of the
13 constitution of the state of Idaho as binding upon that corporation.

14 25. The City of Sandpoint clearly lacks the power to ban firearms at War
15 Memorial Park. Idaho Crimes & Punishment Code § 18-3302J. When that statute
16 is read in conjunction with the Idaho Corporations Code, then either (A) the City
17 lacks the power to delegate policy-making authority to ban firearms in War
18 Memorial Park (because it cannot delegate a power it does not have), and therefore
19 any contract purporting to convey such policy-making as part of a lease or contract
20 is null and void; and/or (B) even if the City could delegate such power, the Festival
21 at Sandpoint, Inc., by accepting that delegation and electing to do business under
22 the Idaho Corporation Code [I.C.C. § 30-501] is therefore also bound by the
23 pedigree of Idaho's Preemption Doctrine which is derived from both the Idaho
24 Constitution and The United States Constitution.
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1 26. The Idaho Supreme Court’s binding precedent in *Johnson v. Young*, 52
2 Idaho 271, 23 P.2d 723 (1932) supports this conclusion and is dispositive. Local
3 governments, when regulating or disposing of public property are bound to make
4 such conveyances in accordance with state law and any strictly construed statutory
5 power. Therefore, local governments may not delegate or alienate rights (and
6 powers) that they do not expressly or statutorily hold themselves through the
7 artifice of a lease or contract.
8

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10
11 27. Plaintiffs seek a declaratory judgment from this Court, under Idaho’s
12 Uniform Declaratory Judgment Act, I.C. § 10-1201 *et seq.*, that either (A) the City
13 of Sandpoint lacks the power to convey police powers, specifically the power to
14 ban firearms at War Memorial Park, to the non-profit corporation Festival at
15 Sandpoint, Inc.; or in the alternative (B) that the Festival at Sandpoint, Inc., is
16 bound by Idaho’s Preemption Doctrine as set forth in I.C.P.C. § 18-3302J. See
17 also: I.R.C.P. 57.
18
19
20

21 **Second Claim for Relief**
22 **Preemption: Injunctive Relief – State Law**

23 28. Paragraphs 1 through 27 are incorporated by reference as if full set forth
24 herein.
25

26 29. Plaintiffs seek injunctive relief in any form the Court deems just (prohibitory
27 or mandamus) that either: (A) compels the City of Sandpoint to insist on contract
28

1 terms with the non-profit corporation Festival at Sandpoint, Inc., that shall
2 guarantee compliance with Idaho's laws regulating the possession and carrying of
3 firearms in public; or (B) compels the non-profit corporation Festival at Sandpoint,
4 Inc., to comply with Idaho's laws regulating the possession and carrying of
5 firearms in public. See: I.R.C.P. 54, 65.
6
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9 **Third Claim for Relief**
10 **Conspiracy to Violate Constitutional Rights**
11 **Right to Keep and Bear Arms - 42 U.S.C. § 1985**

12 30. Paragraphs 1 through 29 are incorporated by reference as if fully set forth
13 herein.

14 31. As evidenced by the written agreement between the City of Sandpoint and
15 the Festival at Sandpoint, Inc., and based on actions taken by agents for both
16 Defendants at the August 2019 Festival, there exists

- 17
18 (a) a conspiracy (or agreement) by the Defendants,
19
20 (b) to deprive Plaintiffs of the equal protection of the laws, and/or equal
21 privileges or immunities under the law, based on the exercise of a
22 fundamental right to bear arms for self-defense (as guaranteed by the
23 Idaho and U.S. Constitution),
24
25 (c) an overt act in furtherance of the conspiracy (see fn. 3, *supra*) by one or
26 more of the Defendants that caused,
27
28

1 (d) a deprivation of the rights and privileges of the Plaintiffs who are
2 citizens of the United States.
3

4
5 **Fourth Claim for Relief**
6 **Violation of Constitutional Rights**
7 **Second Amendment – 42 U.S.C. § 1983**

8 32. Paragraphs 1 through 31 are incorporated by reference as if fully set forth
9 herein.

10 33. By depriving Plaintiffs access to a public event, on public property, based on
11 Plaintiffs’ exercise of a fundamental right to bear arms in public for self-defense
12 purposes, as protected by the Idaho and United States Constitution, the Defendants
13 have violated the Second Amendment to the United States Constitution as that
14 right is protected from infringement by state actors under the Fourteenth
15 Amendment.
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19
20 **Fifth Claim for Relief**
21 **Violation of Constitutional Rights**
22 **Unreasonable Search/Seizure – 42 U.S.C. § 1983**

23 34. Paragraphs 1 through 33 are incorporated by reference as if fully set forth
24 herein.

25 35. By threatening to and engaging in warrantless searches for weapons in
26 conjunction with admission to the Festival (see fn. 2, *supra*), the Defendants have
27 (and are) violating the Fourth Amendment to the United States Constitution as that
28

1 right is protected from infringement by state actors under the Fourteenth
2 Amendment.

3
4 **Sixth Claim for Relief**
5 **Violation of Constitutional Rights**
6 **Violation of Equal Protection – 42 U.S.C. § 1983**

7 36. Paragraphs 1 through 35 are incorporated by reference as if fully set forth
8 herein.

9 37. By discriminating against Plaintiffs’ access to a public event, on public
10 property, based on Plaintiffs’ exercising a fundamental right protected by the Idaho
11 and United States Constitution, Defendants have violated (and threaten to violate)
12 the Fourteenth Amendment’s Equal Protection Clause.
13
14

15
16 **PRAYER FOR RELIEF**

17
18 WHEREFORE, Plaintiffs pray that this Court:

- 19 A. Resolve the Preemption Controversy by way of Declaratory Judgment,
20 and/or Injunctive Relief.
21
22 B. Find the existence of a Conspiracy to Violate the rights, privileges and
23 immunities of the Plaintiffs by the Defendants and take corrective action in
24 the form of declaratory and/or injunctive relief.
25
26 C. Issue Orders mandating and/or prohibiting the Defendants from violating the
27 Second Amendment to the United States Constitution.
28

- 1 D. Issue Orders mandating and/or prohibiting the Defendants from violating the
2 protections in the Idaho Constitution that secure the right to keep and bear
3 arms in public for all lawful purposes.
4
5 E. Issue Orders mandating and/or prohibiting the Defendants from violating the
6 Fourth Amendment to the United States Constitution.
7
8 F. Issue Orders mandating and/or prohibiting the Defendants from violating the
9 Fourteenth Amendment to the United States Constitution.
10
11 G. Award nominal damages to the Plaintiffs.
12
13 H. Award Attorney fees and costs under Idaho Code § 10-1210, 12-117, 12-
14 120, 12-121, 12-123.
15
16 I. Award Attorney fees and costs under 42 U.S.C. §§ 1983, 1985, 1988.
17
18 J. For such further and additional relief as the Court deems just and equitable.

18 Respectfully submitted on this date: May 29, 2020.

19 /s/Alexandria Kincaid

20 Alex Kincaid for Scott Herndon, Jeff Avery and the Idaho Second
21 Amendment Alliance, Inc.

22
23 /s/ Donald Kilmer, Attorney at Law (Licensed in CA Only)

24 Donald Kilmer for Second Amendment Foundation, Inc.
25 (Pro Hac Vice Application pending.)
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