The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DANIEL MITCHELL, et al., Plaintiffs, v. CHARLES ATKINS, in his official capacity as the Sheriff of Clark County, et al., Defendants.	NO. 3:19-cv-5106 DECLARATION OF TERESA BERNTSEN IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

I, Teresa Berntsen, declare as follows:

1. I am over the age of 18, competent to testify as to the matters herein, and make this declaration based on my personal knowledge.

2. I am the director of the Washington State Department of Licensing (Department), appointed by the governor effective July 1, 2018. Prior to this role I served as the Director of the Office of Minority and Women Business Enterprises, developing and implementing programs to eliminate barriers and provide meaningful opportunity for small minority- and women-owned businesses in public contracting and procurement. Before that I served as the Department of Licensing's Deputy Director for four and a half years, ending in

2016. I am not an attorney. The information included in this declaration is based on my personal knowledge and inquiries I have made with Department staff.

3. On October 9, 2019, I was served with a superseding "Notice of Deposition of Fed. R. Civ. P. 30(b)(6) Representative of Teresa Berntsen." I have reviewed the notice and the eight proposed topics of testimony.

4. The Department is organized into several divisions. One such division is the Business and Professions Division. The Department's Public Protection Services section is located with the Business and Professions Division. The Department's Firearms Program is located within the Public Protection Services section. The Administrator for the Public Protection Services section is Jennifer (JR) Richards.

5. The Firearms Program supports firearms record data entry, collection, and retention for concealed pistol licenses, alien firearm licenses, and firearm dealer licenses. The program also maintains records on pistol and semiautomatic assault rifle and sales from licensed firearm dealers in Washington. The program also provides the following: electronic database information to law enforcement agencies who issue licenses and complete background checks; application and licensing forms to local law enforcement and licensed firearm dealers; electronic submission of licensing documents into the Firearms database and database checks of concealed pistol licenses for individuals ineligible to possess a firearm; firearms database training to local law enforcement agency personnel.

6. I am familiar with the type of firearms related information the Department receives and maintains and have reviewed that information with the Firearms Program staff.

7. I am aware that Washington voters approved Initiative 1639 in 2018, which affected state laws concerning the use, sale, and/or possession of semiautomatic assault rifles. I have confirmed with my staff that the Department did not have a role in drafting or advocating for the initiative. Therefore, the Department is not in a position to comment on behalf of the State or any other party as to the state interests served by the initiative, as codified. In particular,

the Department and its representatives do not have an official position regarding each state interest served by either the ban on interstate sales of semiautomatic assault rifles codified at RCW 9.41.124 or the ban on certain purchases of semiautomatic assault rifles codified at RCW 9.41.240.

8. The Department has only received purchase and transfer information for semiautomatic assault rifles since July 1, 2019. The only information the Department has regarding semiautomatic assault rifles is what is contained on the purchase and transfer form. The Department does not collect or maintain data or other information regarding the purpose of assault rifles, nor on the rates of crimes committed therewith.

9. The Department does not have information regarding other types of firearms other than pistols and semiautomatic assault rifles.

10. The Department does not directly defend provisions of state laws such as RCW 9.41.124 or RCW 9.41.240 in the courts or to the public. To the extent, the agency is required to defend laws it enforces from legal challenge, it relies on representation from the Washington Office of the Attorney General. The Department and its staff do not have expertise in Second Amendment jurisprudence, or in the interpretation of Supreme Court decisions and subsequent case law.

11. The Department and its staff acting in their official capacity do not have subject matter expertise regarding the history, use, or characteristics of firearms including semiautomatic assault rifles. This is because such expertise is not necessary in order for any Department employee to implement the Department's statutory duties related to firearms.

12. After conducting the inquiry described above, I have concluded that, at this point, the Department and its staff acting in their official capacity do not know and cannot offer an opinion on the extent to which semiautomatic assault rifles are in common use in Washington, as the term "common use" is defined in *District of Columbia v. Heller*, 554 U.S. 570 (2008).

13. After conducting the inquiry described above, I have concluded that, at this point, the Department and its staff acting in their official capacity do not know and cannot offer an opinion on the extent to which semiautomatic assault rifles are typically possessed by law-abiding citizens in Washington, as the term "typically possessed by law-abiding citizens" is defined in *Heller*.

14. After conducting the inquiry described above, I have concluded that, at this point, the Department and its staff acting in their official capacity do not know and cannot offer an opinion on the extent to which semiautomatic assault rifles are used for lawful purposes in Washington, as the phrase "lawful purpose" is defined in *Heller*.

15. After conducting the inquiry described above, I have concluded that, at this point, the Department and its staff acting in their official capacity do not know and cannot offer an opinion on whether semiautomatic assault rifles are dangerous and unusual, as the term "dangerous and unusual" has been defined in *Heller*.

16. After conducting the inquiry described above, I have concluded that, at this point, the Department and its staff acting in their official capacity do not know and cannot offer an opinion on the effect of the ban on interstate sales of semiautomatic assault rifles contained in RCW 9.41.124.

17. After conducting the inquiry described above, I have concluded that, at this point, the Department and its staff acting in their official capacity do not know and cannot offer an opinion on the state interests served by the ban on interstate sales of semiautomatic assault rifles codified at RCW 9.41.124, beyond the basic assumption that the law seems to be intended to protect public safety.

18. After conducting the inquiry described above, I have concluded that, at this point, the Department and its staff acting in their official capacity do not know and cannot offer an opinion on the state interests served by the ban on certain purchases of semiautomatic

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assault rifles codified at RCW 9.41.240, beyond the basic assumption that the law seems to be intended to protect public safety.

19. I believe that to the extent the Department will be required in the defense of this litigation to offer an opinion or supporting facts on any of the eight topics proposed for testimony, the substance of such opinion and supporting facts will be developed by the Department's counsel, the Office of the Attorney General, based on information from outside the Department.

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

DATED this 24 day of October 2019.

Teresa Berntsen

TERESA BERNTSEN
Director
Washington Department of Licensing