HONORABLE BARBARA LINDE
Hearing Date: October 19, 2018
Hearing Time: 11:00 a.m.

SUPERIOR COURT OF WASHINGTON
IN AND FOR KING COUNTY

OMAR ABDUL ALIM, an individual; MICHAEL THYNG, an individual; THE SECOND AMENDMENT FOUNDATION, INC., a Washington non-profit corporation; and NATIONAL RIFLE ASSOCIATION OF AMERICA, INC.; a New York non-profit association; Plaintiffs, v. CITY OF SEATTLE, a municipality; JENNY DURKAN, Mayor of the City of Seattle, in her official capacity; SEATTLE POLICE DEPARTMENT, a department of the City of Seattle; and CARMEN BEST, Chief of Police, in her official capacity, Defendants.	No. 18-2-18114-3 SEA **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS, OR IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT**

I. INTRODUCTION

After the City of Seattle passed Ordinance 12560 (the "Ordinance"), plaintiffs Omar Abdul Alim, Michael Thyng, The Second Amendment Foundation, and the National Rifle Association of America, Inc. (collectively, "Plaintiffs") filed this lawsuit. The Ordinance regulates possession of firearms by mandating how firearms must be stored. The state of Washington, however, has

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

the exclusive right to regulate the possession of firearms, and cities may not enact local laws or regulations related to the possession of firearms. RCW 9.41.290. The City of Seattle has ignored this clear rule of preemption in the past, *see Chan v. City of Seattle*, 164 Wn. App. 549, 265 P.3d 169 (2011).

Plaintiffs' claims for declaratory judgment and injunctive relief are justiciable, and Plaintiffs have standing. Defendants' Motion to Dismiss ("Motion") is littered with case law from federal courts regarding Article III jurisdictional standing and ripeness principles. But Defendants' Rule 12(b)(1) motion to dismiss based on subject matter jurisdiction has a fatal flaw: standing and ripeness are not jurisdictional limits on Superior Court jurisdiction under the Washington Constitution. Rather than identifying the governing Washington authority regarding declaratory judgment justiciability—which Plaintiffs satisfy—Defendants cite stringent federal authority that has not been adopted by Washington courts. Defendants' inapt authority does not apply to prevent a justiciable challenge to the Ordinance and its legally-unenforceable mandates. Plaintiffs request that the Court deny Defendants' Motion, and permit this case to go forward to prompt summary judgment on the merits.

II. BACKGROUND

Washington law provides that the authority to regulate firearms rests exclusively with the State. Washington law expressly states:

> The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law, as in RCW 9.41.300, and are consistent with this chapter.

RCW 9.41.290. The statute cites RCW 9.41.300, which permits cities and other municipalities to

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

enact only laws and ordinances restricting the discharge of firearms in certain locations and restricting the possession of firearms in a municipality-owned stadium or convention center. RCW 9.41.300(2).

On July 9, 2018, the Seattle City Council passed Council Bill 119266, titled "An Ordinance relating to the safe storage of and access to firearms." Compl. ¶ 12; *see* Motion Ex. A (Seattle Ordinance 12560). On July 18, 2018, Mayor Durkan approved and signed the Ordinance, making the Ordinance effective and in force on August 17, 2018. The Ordinance states that the substantive provisions will be imposed in February 2019, as administrated by the Seattle Police Department.

The Ordinance added Chapter 10.79 to the Seattle Municipal Code, which states, in pertinent part:

> **10.79.020 Safe storage of firearms**
>
> It shall be a civil infraction for any person to store or keep any firearm in any premises unless such weapon is secured in a locked container, properly engaged so as to render such weapon inaccessible or unusable to any person other than the owner or other lawfully authorized user. Notwithstanding the foregoing, for purposes of this Section 10.79.020, such weapon shall be deemed lawfully stored or lawfully kept if carried by or under the control of the owner or other lawfully authorized user.
>
> **10.79.030 Unauthorized access prevention**
>
> It shall be a civil infraction if any person knows or reasonably should know that a minor, an at risk person, or a prohibited person is likely to gain access to a firearm belonging to or under the control of that person, and a minor, an at-risk person, or a prohibited person obtains the firearm.

Motion, Ex. A, Ordinance at 4–5. The Ordinance makes a violation of SMC 10.79.020 a civil infraction subject to a penalty of $500, up to $1,000 if a minor or at-risk person obtains the firearm, and up to $10,000 if the firearm is used in connection with a crime. Despite this, the Ordinance

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

proclaims that it "does not impose criminal penalties" (*id.* at 3) despite RCW 9.41.290 applying to both civil and criminal regulation and the imposition of a $10,000 civil infraction serving as a de facto criminal fine.

Defendants' preempted regulation of firearms will cause, and is already causing, injury to citizens who are hindered in their ability to exercise their basic constitutional right of possessing a firearm in the City of Seattle, and to possess and store a firearm in the home, ready to use, for "the core lawful purpose of self-defense" under the Second Amendment. *See D.C. v. Heller*, 554 U.S. 570, 630, 128 S. Ct. 2783, 2818, 171 L. Ed. 2d 637 (2008). Plaintiffs Alim and Thyng are individuals residing in Seattle. Both Alim and Thyng currently own firearms that they keep unlocked in their homes for self-defense and defense of their families. In fact, Alim has used his firearm to scare off an intruder during a home invasion. Compl. ¶ 1.

Both Alim and Thyng have extensive firearm experience and training, and both have a strong desire to continue having their firearm in an unlocked and usable state because a person cannot be reasonably expected to access a locked firearm under the time and pressure imposed by a home invasion. Both Alim and Thyng fear enforcement of the Ordinance if they to continue to keep an unlocked firearm in their home for self-defense. *Id.* ¶¶ 1–2. In addition, Alim will be forced to purchase a gun safe and/or gun locks in order to comply with the law. *Id.* ¶ 1.

The Second Amendment Foundation, Inc. ("SAF") and National Rifle Association of America, Inc. ("NRA") are non-profit organizations with members located in the City of Seattle. For example, Thyng is a member of the NRA and SAF. Declaration of Michael Thyng ("Thyng Decl.") ¶ 4. Other Seattle members of SAF and NRA also possess firearms and plan to do so in the future. If the Ordinance becomes effective, these Plaintiffs will be forced to alter the manner in which they possess and store firearms to their detriment and encroaching on the right to self-

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

defense in their homes. These interests are at the core of the SAF and NRA's respective organizational purpose.

III. ISSUES

1. Whether Defendants' Motion should be denied because it fails to raise an actual issue regarding lack of this Court's subject-matter jurisdiction?

2. Whether Defendants' Motion should be denied because Plaintiffs' claims satisfy Washington law as justiciable and Plaintiffs have standing to bring a declaratory judgment claim?

3. Whether Plaintiffs have stated a cognizable claim, and are not required to plead additional legal theories in order to state a claim?

4. Alternatively, whether the Court should grant Plaintiffs leave to amend?

IV. EVIDENCE RELIED UPON

Plaintiffs rely upon the Complaint, Defendants' Motion and the exhibits attached thereto, and the Declaration of Michael Thyng.

V. ARGUMENT

A. Defendants Fail to Raise Any Defect in This Court's Subject Matter Jurisdiction

1. Standing & ripeness are not cognizable under Civil Rule 12(b)(1)

Defendants argue that Plaintiffs' Complaint should be dismissed under CR 12(b)(1). Motion 4. Defendants argue that "[s]tanding and ripeness are appropriately decided under CR 12(b)(1)." *Id.* at n.4. But the doctrine of standing does not implicate this Court's subject matter jurisdiction. *Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co.*, 176 Wn. App. 185, 199, 312 P.3d 976, 984 (2013), *review denied*, 179 Wn.2d 1010, 316 P.3d 494 (2014); *Ullery v. Fulleton*, 162 Wn. App. 596, 604–05, 256 P.3d 406, *review denied*, 173 Wn.2d 1003, 271 P.3d 248 (2011). "Whether a court has authority to act is determined independent of any inquiry into a petitioner's standing to initiate judicial review." *Durland v. San Juan Cty.*, 175 Wn. App. 316,

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

325 n.5, 305 P.3d 246, 251 (2013), *aff'd*, 182 Wn.2d 55, 340 P.3d 191 (2014). This is in stark contrast to federal courts, where a plaintiff's lack of standing is cognizable under Rule 12(b)(1) and deprives the court of subject matter jurisdiction. *Trinity Universal*, 176 Wn. App. at 198–99. "By contrast, the Washington Constitution places few constraints on superior court jurisdiction." *Id.* at 198; *see* Wash. Const., art. IV, § 6. Washington courts are not strictly limited to deciding cases and controversies, *West v. Seattle Port Commission*, 194 Wn. App. 821, 829, 380 P.3d 82, 86 (2016), and therefore the federal authorities relating to standing are not relevant to this Court's jurisdiction.

To support the erroneous argument that this Court may consider standing and ripeness in a CR 12(b)(1) motion, Defendants cite *Inland Foundry Co. v. Spokane County Air Pollution Authority*, 98 Wn. App. 121, 122 (1999). Motion 4 n.4. *Inland Foundry* does not discuss standing, ripeness, or the appropriateness of deciding a CR 12(b)(1) motion based on standing or ripeness. Instead, the court in *Inland Foundry* decided that the Pollution Control Hearing Board's enabling statute did not grant the Board subject matter jurisdiction to review the validity of the Spokane County Air Pollution Control Authority's pollution source classification rule. 98 Wn. App. at 123–26. That case has nothing to do with standing or ripeness.

2. Defendants fail to argue justiciability

Defendants purport to argue that Plaintiffs' claims are not justiciable, citing *Diversified Industries Development Corp. v. Ripley* and *To-Ro Trade Shows v. Collins*. These cases are part of a long line of Washington cases discussing the specific requirements to state a claim under the Declaratory Judgment Act. The issue of whether a Declaratory Judgment Act claim is justiciable or not was discussed first in *Acme Finance Co. v. Huse*, which upheld the constitutionality of the Act and provided guidelines to establish justiciability. 192 Wash. 96, 107, 73 P.2d 341, 345 (1937). The Washington Supreme Court has further defined those guidelines in a specific four-

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

part justiciability test. *See, e.g., Diversified Indus.*, 82 Wn.2d 811, 815, 514 P.2d 137, 139 (1973) (requiring (1) a dispute, (2) between opposing parties, (3) involving substantial interests, where (4) a judicial determination will be final). The Washington Supreme Court has applied this test time and time again to determine justiciability. *E.g.*, *League of Educ. Voters v. State*, 176 Wn.2d 808, 816, 295 P.3d 743, 747 (2013) (applying the four part justiciability test); *Nollette v. Christianson*, 115 Wn.2d 594, 598, 800 P.2d 359, 362 (1990) (same); *City of Spokane v. Taxpayers of City of Spokane*, 111 Wn.2d 91, 96, 758 P.2d 480, 482 (1988) (same); *Seattle Sch. Dist. No. 1 of King Cty. v. State*, 90 Wn.2d 476, 490, 585 P.2d 71, 80 (1978) (same); *see also City of Union Gap v. Printing Press Properties, L.L.C.*, 2 Wn. App. 2d 201, 232, 409 P.3d 239, 255 (2018) (same); *Benton Cnty. v. Zink*, 191 Wn. App. 269, 273, 361 P.3d 801, 802–03 (2015) (same).

The purpose of the Washington Supreme Court authority on declaratory judgment justiciability is to incorporate the doctrines of standing, mootness, and ripeness, and to "ensure that we render a final judgment on an actual dispute between opposing parties that have a genuine stake in the resolution." *Lakewood Racquet Club, Inc. v. Jensen*, 156 Wn. App. 215, 223, 232 P.3d 1147, 1151 (2010); *see also Walker v. Munro*, 124 Wn.2d 402, 418, 879 P.2d 920, 929 (1994) (explaining that these rules protect Washington courts from "rendering advisory opinions"). These justiciability requirements are not strictly jurisdictional; courts may disregard these justiciability requirements and rule on "issues of broad and overriding public import." *Diversified Indus.*, 82 Wn.2d at 814.

While Defendants argue that Plaintiffs' claims are not justiciable, **Defendants failed to identify for the Court the governing legal authority on this issue**, or argue that Plaintiffs fail to meet these requirements. Further, Defendants cite no cases and make no argument that justiciability under the Declaratory Judgment Act is a jurisdictional issue subject to Rule 12(b)(1). Defendants waived these arguments by failing to cite the legal authorities and argue the governing

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

legal test on the issue of justiciability. *Smith v. King*, 106 Wn.2d 443, 451–52, 722 P.2d 796, 801 (1986) (litigant waived issue by failing to cite governing legal authority and arguing the issue).

3. The Court should reject Defendants' arguments regarding standing

Because the standing doctrine does not implicate the trial court's subject matter jurisdiction, this Court should deny Defendants' CR 12(b)(1) motion based on standing. *Donlin v. Murphy*, 174 Wn. App. 288, 293 n.7, 300 P.3d 424, 427 (2013) (summarily reversing trial court's CR 12(b)(1) dismissal based on standing). Beyond that basic deficiency, Defendants make additional misguided arguments regarding standing. Even under Defendants' federal authorities, Plaintiffs have standing in this case.

First, Defendants mistakenly argue that Plaintiffs must plead that they intend to violate the Ordinance, or that they have a concrete intent to violate the law, in order to challenge the Ordinance. Defendants rely upon two Ninth Circuit cases, *Thomas v. Anchorage Equal Rights Commission*, 220 F.3d 1134 (9th Cir. 2000), and *Lopez v. Candaele*, 630 F.3d 775 (9th Cir. 2010). As discussed above, both of these cases explicitly analyze Article III standing and ripeness issues, and do not discuss Washington law or justiciability under the Washington Declaratory Judgment Act. Washington courts have never cited *Thomas*, and the elevated requirements described in that case do not apply here. And *Lopez* has only been cited once by a Washington court, and that was to **reject** applying the *Lopez* federal requirements to Washington. *In re Adoption of M.S.M.-P.*, 181 Wn. App. 301, 306 n.5, 325 P.3d 392 (2014), *aff'd*, 184 Wn.2d 496, 358 P.3d 1163 (2015) ("*Lopez* referred to the standing requirements needed to invoke the jurisdiction of *federal* courts.").[1]

[1] *Thomas* and *Lopez* are also clearly distinguishable to the facts alleged in this case. The plaintiffs in *Thomas* and *Lopez* did not allege that they had the desire to engage in banned conduct in the future, or that their intended conduct was actually proscribed by the challenged law. *Thomas*, 220 F.3d at 1139 (rejecting landlords' unsupported claim that they had violated the statute in the past and pointing out that it was entirely speculative that they would ever have an opportunity to violate

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

Second, Defendants cite no Washington authority requiring an intent or concrete plan to violate the law in order to have standing to challenge the Ordinance; that simply isn't the legal test in Washington. Moreover, that is not the legal test in the federal courts, either. Defendants argue that Plaintiffs lack standing because they allege that they would continue to store firearms unlocked but for the ban, the do not allege that they intend to violate the ban. Federal case law on standing does not impose such an absurd pleading requirement. The United States Supreme Court has consistently held that all that is required is for Plaintiffs to allege that their conduct is within the scope of enforcement, and that but-for the challenged law they would continue to act in a manner that would subject them to enforcement under the new law. *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 15-16 (2010) (plaintiffs had standing where they had engaged in newly-prohibited activity in the past and "would [do so] again if the statute's allegedly unconstitutional bar were lifted"). Plaintiffs' allegations—that but-for the Ordinance they would continue to store firearms unlocked, and that because of the Ordinance they will incur costs in order to comply—satisfies the test for federal standing. *See, e.g.*, *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2343–44, 189 L. Ed. 2d 246 (2014) (holding that petitioners' allegation of prior conduct that would be prohibited under the challenged law and an intent to engage in that same conduct in the future had standing); *Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 393, 108 S. Ct. 636, 643, 98 L. Ed. 2d 782 (1988) (permitting pre-enforcement challenge by plaintiffs who alleged a fear of enforcement—"Further, the alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution."); *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 302, 99 S. Ct. 2301,

---

the statute); *Lopez*, 630 F.3d at 790 (demonstrating that no official or student had invoked or mentioned the challenged rule or suggest that Lopez's actions were sanctionable under the rules). But here Plaintiffs have alleged that but-for the Ordinance they would continue to store firearms unlocked.

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

2310–11, 60 L. Ed. 2d 895 (1979) (declining to restrict standing to challenge a law to those who are prosecuted under it because "the positions of the parties [were] sufficiently adverse").

Third, Defendants argue Washington courts are disinclined to consider pre-enforcement challenges, particularly when the statute is not in effect. Motion 8. Defendants rely upon *Walker v. Munro*, but that case is distinguishable from the dispute here. Several of the Plaintiffs in *Walker* were state legislators, and the court remarked that "[w]hen a statute is not in effect, and when it may be amended by the very persons the Petitioners claim are being harmed, state legislators, we cannot do otherwise than find that this is only a speculative dispute." 124 Wn.2d 402, 412, 879 P.2d 920, 926 (1994). This part of the court's holding is related to the fact that the court wanted to avoid "involve[ing] itself in what is an essentially political dispute." *Id.* at 413. And Washington courts have often permitted declaratory judgment actions before enforcement; after all, the very first case in *Acme Finance* was a pre-enforcement, pre-effective date challenge. *Acme Finance*, 192 Wash. at 108.

4. The Court should reject Defendants' arguments regarding ripeness

Defendants argue that the dispute is not ripe. But the Washington State Supreme Court's justiciability test already includes ripeness considerations, *Lakewood Racquet Club*, 156 Wn. App. at 223, and the justiciability test largely supplants an inquiry into ripeness.[2]

Likewise, CR 12(b)(1) cases involving "ripeness" are not based on the factors cited by Defendants, but rather concern administrative law, finality, and exhaustion. *See, e.g., Evergreen Washington Healthcare Frontier LLC v. Dep't of Soc. & Health Servs.*, 171 Wn. App. 431, 453,

[2] Courts will sometimes apply both the justiciability test and the ripeness test. *See, e.g., First United Methodist Church of Seattle v. Hearing Exam'r for Seattle Landmarks Pres. Bd.*, 129 Wn.2d 238, 245, 916 P.2d 374, 377–78 (1996). But those cases tend to involve land use disputes subject to administrative exhaustion and finality issues. *See First Covenant Church of Seattle, Wash. v. City of Seattle*, 114 Wn.2d 392, 399–400, 787 P.2d 1352, 1356 (1990), *cert. granted, judgment vacated*, 499 U.S. 901, 111 S. Ct. 1097, 113 L. Ed. 2d 208 (1991).

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

287 P.3d 40, 50 (2012) ("Because Evergreen failed to exhaust its administrative remedies, the superior court did not have jurisdiction over Evergreen's current claims, and it properly granted the Department's CR 12(b)(1) motion to dismiss."). Because Defendants raise no issues regarding exhaustion or finality, this Court should deny Defendants' CR 12(b)(1) motion based on ripeness.

In any event, this dispute is ripe. A case is fit for judicial determination if the issues raised are primarily legal, do not require factual development, and the challenged action is final. *State v. Sanchez Valencia*, 169 Wn.2d 782, 786, 239 P.3d 1059 (2010). The facts and circumstances of any enforcement action will not impact whether or not the Ordinance is a preempted regulation of firearms. The Ordinance is already enacted, and nothing will change about the preemption issue between now and enforcement of the substantive provisions. *See id.* at 788–90. And the risk of hardship is significant: Plaintiffs will be required to incur costs now, and upon effectiveness the Ordinance will compromise their Second Amendment right to self-defense in their home. *Id.*; *Heller*, 554 U.S. at 630, 128 S. Ct. at 2818. And the threat of a $500 fine is a legitimate and prohibitory amount of money for most people. The City cannot insulate its Ordinance from pre-enforcement review simply by including a "modest" fine.

Defendants cite only federal case law to argue that Plaintiffs will not suffer hardship if the Court does not proceed with the lawsuit now. Those cases require Plaintiffs to suffer prosecution under the Ordinance before bringing suit. None of these authorities have been cited or relied upon by Washington courts, and Washington authorities do not require Plaintiffs to wait for actual enforcement in order for a declaratory judgment to be justiciable. *See, e.g., Clallam Cty. Deputy Sheriff's Guild v. Bd. of Clallam Cty. Comm'rs*, 92 Wn.2d 844, 848–49, 601 P.2d 943, 945 (1979); *Acme Finance*, 192 Wash. at 108; *Arnold v. Dep't of Retirement Sys.*, 74 Wn. App. 654, 660, 875 P.2d 665 (1994), *rev'd on other grounds*, 128 Wn.2d 765, 912 P.2d 463 (1996). For that matter, federal authorities also do not require Plaintiffs to expose themselves to enforcement to be entitled

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

to challenge a statute, especially when the statute deters the exercise of constitutional rights. *Steffel v. Thompson*, 415 U.S. 452, 459 (1974); *see Humanitarian Law Project*, 561 U.S. at 16.

For all of the above reasons, the Court should deny Defendants' erroneous and misleading motion to dismiss.

B. Plaintiffs' Allegations State a Justiciable Claim For Declaratory Relief

If the Court reaches the issue of whether or not Plaintiffs' Complaint states a justiciable claim, the Court should consider the four requirements set out in Washington Supreme Court precedent, and disregard Defendants' inapposite federal authority.

The Washington Supreme Court has defined those requirements as follows:

> (1) " . . . an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement,
>
> (2) between parties having genuine and opposing interests,
>
> (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and
>
> (4) a judicial determination of which will be final and conclusive."

Diversified Indus., 82 Wn.2d at 815. The Declaratory Judgments Act is remedial in nature and subject to liberal construction and administration. *Arnold*, 74 Wn. App. at 660–61 (citing RCW 7.24.120 & RCW 7.24.050).

In *Arnold*, the plaintiff filed suit to determine the legality of a statute that purported to bar her from receiving retirement benefits from her ex-husband's retirement program. While the statute had been passed and was in force, Arnold acknowledged that she would not even be eligible to receive such benefits unless her ex-husband predeceased her, an event which had not occurred. Still, the court held the controversy justiciable. First, **even though Arnold had not yet been denied the benefits, and was not yet eligible to receive benefits**, Arnold had alleged an existing

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

dispute between parties. *Id.* Second, the court held that the parties had genuine and opposing interests. *Id.* Third, the court held that Arnold had an interest in determining what assets she might potentially have available for her retirement planning. She also had an interest in receiving the funds immediately upon her ex-husband's death, rather than waiting three to five years litigating the issue. *Id.* Fourth, declaratory judgment would finally and conclusively resolve the legality of the statute. *Id.*

In *Clallum County*, the Board of county commissioners had an employment and salary dispute with the county deputy sheriffs and their guild. *Clallam Cty.*, 92 Wn.2d at 846. The Board had enacted ordinances to supervise county employees and set salary levels. *Id.* at 846–47. The Board offered the deputy sheriffs jobs and salaries set at levels defined in the ordinances. The guild filed a declaratory judgment lawsuit, arguing that the ordinances conflicted with the civil service for sheriffs' office act, RCW 41.14. *Id.* at 847. The Board argued that the dispute was speculative and potential, and not justiciable, because the ordinance provisions had not been enforced against any deputy sheriffs. *Id.* at 848–49 ("[The Board] claims that, as long as those provisions are not enforced, no real dispute about the overlap exists and thus no justiciable controversy exists under the Uniform Declaratory Judgments Act."). The Washington State Supreme Court rejected the Boards not-justiciable-until-enforcement argument. The court held that "[a] real dispute is readily germinating from" the conflict between the ordinances and the state statute, and that the plaintiffs "have a direct and substantial interest in securing relief from the uncertainty of their legal rights and obligations." *Id.* at 849. The court also noted that a declaratory judgment was proper because the issue of conflict preemption raised an "important constitutional question about the supremacy of state law." *Id.*

Like the plaintiffs in *Arnold* and *Clallum County*, Plaintiffs here easily satisfy the four-part test.

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

First, the dispute between Plaintiffs and Defendants regarding the legality of the Ordinance is unquestionably the mature seeds of an actual dispute. Plaintiffs have alleged that they fear enforcement of the Ordinance, and that it will force them to change their firearm-storage and self-defense practices. Compl. ¶¶ 1, 2, 17. Plaintiffs further allege that they must incur expenses now, if the Ordinance is not declared unlawful, in order to prepare for enforcement. *Id.* ¶ 1. Defendants have enacted the Ordinance and have not disclaimed intent to enforce it. The Ordinance is self-executing and will be enforced by the police department without the need for any further legislative action. Compl. ¶ 12; Motion Ex. A, Ordinance 10. Even though Section 1 of the Ordinance is not yet being enforced, the dispute here is more mature and actual than the dispute in *Arnold*, where the plaintiff had not yet been denied benefits (and was not even eligible yet). *Arnold*, 74 Wn. App. at 660; *see Clallam Cty.*, 92 Wn.2d at 848–49 (pre-enforcement dispute regarding legality of an ordinance in light of overlapping state statute).

Second, the dispute is genuine and the parties have opposing interests. The recitations in the Ordinance (Motion Exhibit A, Ordinance 1–3) and Defendants' Motion (pages 1–2), lay out Defendants' interests. Plaintiffs, both individuals and organizations, have interests in the constitutional right to self-defense. *See Heller*, 554 U.S. at 630–35. Individual Plaintiffs and members of the organizations own and store firearms in Seattle, and fear enforcement of the Ordinance. Compl. ¶¶ 1–4, 17. Defendants may not seriously argue that the organizational Plaintiffs are in favor of the ordinance and that this litigation is a sham. Instead, the parties' interests fundamentally conflict.

Third, Plaintiffs have a direct interest in the enforceability of the Ordinance, as well as an interest under the Second Amendment to self-defense in their homes. In *Heller*, the Supreme Court held that storage requirements that affect an individual's ability to use firearms for "the core lawful purpose of self-defense" implicates the Second Amendment—and that these requirements

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

may be unconstitutional. 554 U.S. at 630, 128 S. Ct. at 2818. Plaintiffs also have an interest in a timely legal determination of the Ordinance's legality, rather than being compelled to spend money on gun safes, trigger locks, and other items in anticipation of enforcement. As in *Clallum County*, where the deputy sheriffs had "a direct and substantial interest in securing relief from the uncertainty of their legal rights and obligations" before enforcement of the employment ordinance against them, Plaintiffs here have an interest in a legal determination now rather than waiting for the Ordinance to be enforced (and fines issued). *Clallam Cty.*, 92 Wn.2d at 849 (finding pre-enforcement preemption challenge to be a real, not theoretical, dispute). The Washington State Supreme Court rejected the Boards not-justiciable-until-enforcement argument. The court held that "[a] real dispute is readily germinating from" the conflict between the ordinances and the state statute, and that the plaintiffs "have a direct and substantial interest in securing relief from the uncertainty of their legal rights and obligations." *Id.* at 849.

And Fourth, declaratory judgment would finally and conclusively resolve the legality of the Ordinance. Like in *Clallum County*, once the Court reaches the merits, summary judgment regarding preemption will determine whether the Ordinance is null and void due to preemption and whether Defendants are permitted to enforce the Ordinance.

This case is analogous to the first declaratory judgment case, where Acme Finance challenged the Small Loans Act before it went into effect. There, plaintiffs filed the case and the court entered judgment before the effective date of the act, but the court remarked that the difference between a law being in effect and a law being enacted but not yet in effect was "not material." *Acme Finance*, 192 Wash. at 108. The plaintiff had alleged that the defendant would enforce the law, which the defendant did not deny. This put plaintiff into a bind, where they would have to choose between suffering penalties for violating the law or complying with an invalid law "to their damage." *Id.* As the court summarized, "[h]ere was an interested plaintiff

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

and an interested defendant, and they were in sharp controversy." *Id.*; *see also McDermott v. State*, 197 Wash. 79, 83, 84 P.2d 372, 374 (1938) (finding a justiciable controversy where a licensed barber challenged a statute requiring conspicuous licensee photographs before enforcement of the statute against him).

Like *Acme Finance*, Plaintiffs here have asked the court to determine the legality of an enacted law before the effective date in order to avoid the Hobson's choice between violating the Ordinance or being compelled to take actions to their detriment. The individual and organizational plaintiffs are interested parties, Defendants are interested parties, and the parties are "in sharp controversy." *Acme Finance*, 192 Wash. at 108; *see also* 15 Wash. Prac. Civil Procedure § 42:4 (2d ed.) ("In view of the nature of the device, a declaratory judgment should be proper if it is reasonably certain that coercive litigation will ultimately take place between the parties unless a declaration is given.").

C. Plaintiffs Have Standing to Bring a Declaratory Judgment Claim

Defendants primarily rely upon federal case law to argue that Plaintiffs do not have standing. Under Washington law, questions of standing begin with the specific statute. *See, e.g.*, *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004) (looking first to the language of the Uniform Declaratory Judgments Act, chapter 7.24 RCW, to determine whether a party had standing). The Washington Supreme Court has established a two-part test to determine standing under the UDJA. The first part of the test asks whether the interest sought to be protected is "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." *Save a Valuable Env't v. City of Bothell*, 89 Wn.2d 862, 866, 576 P.2d 401 (1978) (internal quotation marks omitted). The

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

second part of the test considers whether the challenged action has caused "injury in fact," economic or otherwise, to the party seeking standing. *Id.* at 866.[3]

1. The individual plaintiffs have standing

Both Alim and Thyng, the individual plaintiffs, have standing to bring this declaratory judgment action. No one doubts that individual gun owners like Alim and Thyng are within the "zone of interests" regulated by the Ordinance's "safe storage" requirements. And both Alim and Thyng satisfy the injury-in-fact test. At times, Thyng keeps a firearm unlocked in his home, and through his training and experience he knows that his firearm needs to be unlocked and ready in order to be useful for self-defense. Compl. ¶ 2. Thyng fears enforcement of the Ordinance and he will be forced to forgo his constitutional right to self-defense in his home if the Ordinance is not declared unlawful. *Id.* Likewise, Alim will suffer the same injuries. *Id.* ¶ 1. Additionally, Alim will suffer financial injury as a target of the Ordinance, as he will be compelled to purchase a safe or gun lock in order to comply. *Id.*[4]

In *Spokane Entrepreneurial Center v. Spokane Moves to Amend Constitution*, the petitioners had standing to challenge an initiative for similar reasons. There, the initiative affected property rights and created barriers to zoning. 185 Wn.2d 97, 106–07, 369 P.3d 140, 145 (2016). Like Thyng and Alim will suffer harm by reducing their freedom to engage in home self-defense with their firearms by storing the firearms ready to use, the petitioners had standing because,

---

[3] Defendants argue that Washington courts interpret the injury-in-fact test consistently with federal cases. Motion 4 n.5. But the dicta cited by Defendants is based on *KS Tacoma Holdings, LLC v. Shorelines Hearings Bd.*, 166 Wn. App. 117, 126–27, 272 P.3d 876, 881 (2012), where the court applied statutory standing conditions from federal case law because the APA statute instructed the court consistent with federal law. *Id.* (citing RCW 34.05.001). While Washington case law sometimes analogizes to federal case law, the UDJA does not explicitly import federal case law to the question of UDJA standing.

[4] Additionally, the Ordinance declares that individuals that store firearms incorrectly are exposed to greater liability by defining unsafe storage as "negligence per se." Ordinance 5–6. This inflicts further injury-in-fact on plaintiffs.

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

among other reasons, they would suffer harm by having to go through additional zoning approval processes. *Id.* "Regardless of whether these harms might be justified or offset by other societal benefits, these petitioners will suffer harm." *Id.* Plaintiffs here meet the injury-in-fact case and may challenge the Ordinance. *See also Grant Cty*., 150 Wn.2d at 802–03 (finding that the property owners had alleged injury-in-fact because they would suffer different tax rates before and after the annexation).

Defendants also argue that neither individual defendant has standing to challenge SMC 10.79.030 because neither included allegations that a minor, at-risk person, or prohibited person was likely to gain access to their firearm. But that is not true; both individuals alleged that they keep a firearm in the home, unlocked, to protect their **family** (Alim has children who live in his household). Further, the Court should reach the merits on the entire ordinance for practical reasons. Members of Plaintiffs' households and members of their community may eventually gain access to Plaintiffs' stored firearms. Likewise, the Court should elect to reach the issue to decide the legality of the entire Ordinance based on judicial economy. Plaintiffs have standing, the parties are "in sharp controversy," *Acme Finance*, 192 Wash. at 108, and it is reasonably certain that coercive litigation will ultimately take place regarding the entire Ordinance. There is no reason not to reach all issues in this lawsuit.

2. The organizational plaintiffs have standing

Likewise, both the SAF and the NRA have standing to bring a declaratory judgment claim. "A non-profit corporation or association which shows that one or more of its members are specifically injured by a government action may represent those members in proceedings for judicial review." *Washington Educ. Ass'n v. Shelton Sch. Dist. No. 309*, 93 Wn.2d 783, 791, 613 P.2d 769, 774 (1980) (quoting *Save a Valuable Environment v. Bothell*, 89 Wn.2d 862, 867, 576 P.2d 401 (1978)). Thyng is a member of both SAF and the NRA. Thyng Decl. ¶ 4. Further, each

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

organization represents other similarly situated members in the City of Seattle who will be adversely impacted by the Ordinance.

Alternatively, an organization may have standing based on an injury to its collective interest and purpose. Both the NRA and SAF have deep interests in promoting self-defense through firearm ownership and possession, and both groups have clear incentives and interests in opposing regulatory encroachments onto the Second Amendment rights of its members. Standing for NRA and SAF here is similar to *Washington Association for Substance Abuse & Violence Prevention v. State*, 174 Wn.2d 642, 653–54, 278 P.3d 632, 639 (2012), where the organization suffered no economic loss, but the regulation adversely impacted the organization's goal of reducing liquor availability and consumption. *See also 1519-1525 Lakeview Blvd. Condo. Ass'n v. Apartment Sales Corp.*, 144 Wn.2d 570, 576 n.3, 29 P.3d 1249, 1253 (2001) (holding that the Association had a sufficient interest in the outcome and had standing, even though the Association had not suffered direct injury); *City of Seattle v. State*, 103 Wn.2d 663, 668-69, 694 P.2d 641 (1985) (holding that the city had standing to challenge RCW 35.13.165 on grounds of equal protection because the city had a direct interest in the constitutionality of its annexation process). While the NRA and SAF of course support firearms safety, the broad-brush requirements in the Ordinance to keep firearms locked away impedes self-defense. The organizational plaintiffs' strong support for the use of firearms for self-defense in the home puts their interests squarely at issue with regards to the Ordinance, and in this lawsuit

D. Plaintiffs Have Pled a Valid Cause of Action and Need Not Re-Plead Specifically

Defendants ask this Court to require Plaintiffs to provide a more definite statement specifying the statutory and constitutional provisions the Ordinance violates. But that is simply not required. A pleading setting forth a claim for relief must contain '"(1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

for the relief to which the pleader deems the pleader is entitled.'" Civil Rule 8. "The only function left to be performed by the pleadings alone is that of notice. Thus, pleadings under the rules simply may be a general summary of the party's position that is sufficient to advise the other party of the event being sued upon." *RTC Transp., Inc. v. Walton*, 72 Wn. App. 386, 395 n.3, 864 P.2d 969, 974 (1994) (quotation marks and citation omitted).

Plaintiffs' Complaint meets the requirements of Civil Rule 8, and a more definite statement is not required. The Complaint alleges that Defendants lack legal authority to enact any ordinance, law, or rule that regulates the manner in which firearms are stored; and lack enforcement powers. Compl. ¶ 21. The Complaint cites to the Preemption Clause, RCW 9.41.290, which expressly states ordinances such as the one enacted by the City of Seattle are preempted, and therefore null and void. *Id.* ¶ 11. No more definite statement is needed or required under Washington's notice pleading rules. *RTC Transp.*, 72 Wn. App. at 395 n.3.

E. Alternatively, the Court Should Grant Plaintiffs Leave to Amend

If the Court finds merits in Defendants' arguments, Plaintiffs respectfully request leave to amend the complaint. Under Civil Rule 15, "leave shall be freely given when justice so requires." CR 15(a). There will be no prejudice to Defendants if Plaintiffs are permitted to amend. There would be no unfair surprise and amendment will not unduly burden the scheduled proceedings. *See Karlberg v. Otten*, 167 Wn. App. 522, 529, 280 P.3d 1123 (2012).

VI. CONCLUSION

Plaintiffs have standing to bring a declaratory judgment claim, the parties are in sharp controversy over the validity of the Ordinance, and it is reasonably certain that coercive litigation is going to take place unless the Court reaches the merits in this case. Plaintiffs respectfully request that the Court deny Defendants' Rule 12(b)(1) motion, and reject Plaintiffs' inappropriate attempt to apply federal jurisdictional limits on standing and ripeness to this dispute.

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

DATED: October 8, 2018.

I certify that this memorandum contains 6481 words, in compliance with the Local Civil Rules.

CORR CRONIN LLP

s/ Eric Lindberg

Steven W. Fogg, WSBA No. 23528
Eric A. Lindberg, WSBA No. 43596
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154
(206) 625-8600 (Phone)
sfogg@corrcronin.com
elindberg@corrcronin.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies as follows:

1. I am employed at Corr Cronin LLP, attorneys for Plaintiffs herein.

2. On October 8, 2018, I caused a true and correct copy of the foregoing document to be served on the following parties in the manner indicated below:

Attorneys for Defendants:

Daniel J. Dunne, WSBA No. 16999
Orrick Herrington Sutcliffe
701 Fifth Avenue, Suite 5600
Seattle, WA 98104
Phone: (206) 839-4395
ddunne@orrick.com

- ☒ Via ECF
- ☐ Via U.S. Mail
- ☐ Via Messenger Delivery
- ☐ Via Overnight Courier
- ☐ Via electronic mail

Attorneys for Defendant City of Seattle:

Peter S. Holmes (Seattle City Attorney)
Kent C. Meyer, WSBA #17245
Carlton W.M. Seu, WSBA No. 26830
Seattle City Attorneys Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
kent.meyer@seattle.gov
carlton.seu@seattle.gov

- ☒ Via ECF
- ☐ Via U.S. Mail
- ☐ Via Messenger Delivery
- ☐ Via Overnight Courier
- ☐ Via electronic mail

Notice Only To:

Jeffrey T. Even, WSBA No. 20367
Deputy Solicitor General
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
Phone: (360) 586-0728
jeff.even@atg.wa.gov

- ☐ Via ECF
- ☐ Via U.S. Mail
- ☐ Via Messenger Delivery
- ☐ Via Overnight Courier
- ☒ Via electronic mail

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

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

DATED: October 8, 2018, at Seattle, Washington.

s/ Christy A. Nelson
Christy A. Nelson

CORR CRONIN LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900