SUPERIOR COURT OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

BRETT BASS, an individual; SWAN SEABERG, 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 EDMONDS, a municipality; DAVE EARLING, Mayor of the City of Edmonds, in his official capacity; EDMONDS POLICE DEPARTMENT, a department of the City of Edmonds; and AL COMPAAN, Chief of Police, in his official capacity,

Defendants.

No. 18-2-07049-31

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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I. INTRODUCTION

After the City of Edmonds enacted Ordinance 4120 (the "Ordinance"), plaintiffs Brett Bass, Swan Seaberg, The Second Amendment Foundation, Inc., 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 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. This is not the first time that a city has ignored this clear rule of preemption and attempted to regulate firearms on its own. *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' 12(b)(1) Motion to Dismiss ("Motion") is littered with case law from federal courts regarding Article III jurisdictional standing and ripeness principles. But standing and ripeness are not jurisdictional limits on Superior Court jurisdiction under the Washington Constitution. And rather than identifying the governing Washington authority regarding justiciability of a Uniform Declaratory Judgments Act, chapter 7.24 RCW ("UDJA") claim—which Plaintiffs satisfy—Defendants rely upon federal authorities that have not been adopted by Washington courts. Plaintiffs and Defendants have an actual, present dispute about the legality of the Ordinance, which requires citizens to purchase gun safes and trigger locks in order to comply. The Ordinance also unlawfully restricts Plaintiffs' freedom to store firearms in their homes—even when not carried and not within immediate reach —in a way that permits ready use for self-defense. This dispute, and the need to determine legal rights before these adverse effects take place, is the reason that declaratory relief exists under Washington law.

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

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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 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 24, 2018, the Edmonds City Council passed Ordinance 4120, titled "An Ordinance relating to the safe storage of and access to firearms." Compl. ¶ 13; *see* Motion Ex. A (Edmonds Ordinance 4120). On July 29, 2018, Mayor Earling approved and signed the Ordinance, making the Ordinance effective and in force on August 23, 2018. The Ordinance states that enforcement shall begin 180 days from the date of final passage.

The Ordinance added Chapter 5.26 to the Edmonds City Code ("ECC"), which states, in pertinent part:

> **5.26.020 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

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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.

5.26.030 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 3–4. The Ordinance makes a violation of ECC 5.26.020 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. *Id.* at 4 (§ .040).

Defendants' preempted regulation of firearms will cause, and is already causing, injury. First, the Ordinance requires residents of Edmonds to acquire "locked container[s]" or trigger locks in order to comply with the Ordinance. Many firearms owners do not own these devices, which are not otherwise mandated under state or federal law. Individuals will need to purchase these devices—starting now—to be in compliance. For example, Mr. Seaberg will be forced to purchase a gun safe or gun locks in order to comply with the law. Declaration of Swan Seaberg ("Seaberg Decl.") ¶¶ 6–7.

Further, Plaintiffs are hindered in their ability to exercise their basic constitutional right to possess and store a firearm in the City of Edmonds, 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 (2008). Mr. Bass and Mr. Seaberg are individuals residing in Edmonds. Both Mr. Bass and Mr. Seaberg currently own firearms that they keep unlocked in their homes for self-defense and defense of their families. Compl. ¶¶ 1–2. Both Mr. Bass and Mr. Seaberg have extensive firearm experience and training, and both have a strong desire to continue having their firearm in an unlocked and

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usable state because a person cannot be reasonably expected to access a locked firearm under the time and pressure imposed by a home invasion. When stored in this fashion, these firearms are not carried by or under the control of an authorized user. Both Mr. Bass and Mr. Seaberg have a credible fear enforcement of the Ordinance if they to continue to keep an unlocked firearm in their home for self-defense. *Id.*

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 Edmonds. For example, Mr. Bass is a member of the NRA and SAF. Other Edmonds members of SAF and NRA also possess firearms and plan to do so in the future. If the Ordinance becomes effective, these individuals will incur economic injury (purchasing equipment mandated under the Ordinance) and will be compelled to alter their possession and storage of firearms, encroaching on the right to self-defense in their homes. Both the NRA and SAF also promote safe practices with firearms, including safe storage practices, but the NRA and SAF have weighed those interests and determined that the Ordinance unnecessarily and unlawfully restricts the right to self-defense. This core Second Amendment interest is 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?

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

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IV. EVIDENCE RELIED UPON

Plaintiffs rely upon the Complaint, Defendants' Motion and the exhibits attached thereto, and the Declaration and Swan Seaberg.

V. ARGUMENT

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

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, 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.

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, 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.

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Ultimately, the Court may construe Defendants' motion as a 12(b)(6) motion directed at Plaintiffs' UDJA claim, which Plaintiffs address below. But Defendants' jurisdictional arguments are incorrect, and the Court may deny the motion to dismiss on that basis alone. *See 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).

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

1. Plaintiffs satisfy the Washington test for declaratory judgment justiciability

In the midst of arguing standing and ripeness under federal authorities, 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 recite a specific four-part justiciability test for Washington claims under the UDJA. This test incorporates the doctrines of standing, mootness, and ripeness, but the test is not jurisdictional; courts may disregard these justiciability requirements and rule on "issues of broad and overriding public import." *Diversified Indus.*, 82 Wn.2d 811, 814, 514 P.2d 137 (1973). The Washington Supreme Court has applied this test time and time again to determine justiciability.[1] But Defendants **fail to even cite this controlling test**, or to make any arguments in its Motion as to why Plaintiffs' claims do not satisfy the test.

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.

[1] *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).

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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 UDJA is remedial in nature and subject to liberal construction and administration. *Arnold v. Dep't of Retirement Sys.*, 74 Wn. App. 654, 660–61, 875 P.2d 665 (1994), *rev'd on other grounds*, 128 Wn.2d 765, 912 P.2d 463 (1996) (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 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.*

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In *Clallam County Deputy Sheriff's Guild v. Board of Clallam County Commissioners*, 92 Wn.2d 844, 601 P.2d 943 (1979), the Board had an employment and salary dispute with the 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 *Clallam County*, Plaintiffs here easily satisfy the test.

First, the dispute between Plaintiffs and Defendants regarding the legality of the Ordinance is a present dispute regarding the requirement to purchase equipment and the mature seeds of a dispute regarding the change in conduct imposed. 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, 17–19. Plaintiffs further allege that **they must incur expenses now**, if the Ordinance is not declared unlawful, in order to prepare for enforcement. *Id.* ¶ 2.

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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. ¶ 13; Motion Ex. A, Ordinance 7. 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).

Defendants argue—based on the "safe harbor" provision of the Ordinance—that Plaintiffs do not allege that their conduct will violate the Ordinance. The Ordinance provides that a firearm "shall be deemed lawfully stored or lawfully kept if carried by or under the control of the owner or other lawfully authorized user." The Ordinance does not define "control." The Complaint states that Plaintiffs "desire to continue having [their] firearm in an unlocked and usable state in [their] home." Compl. ¶¶ 1, 2. This includes both firearms are carried by Plaintiffs or under their control, and also firearms not being carried or under immediate control. As the Complaint sets forth, Plaintiffs' current storage method, while reasonable, would violate the requirements of the Ordinance. Compl. ¶¶ 1, 2, 17, 18. Moreover, Plaintiffs allege a credible fear that their current (and intended future) storage practices violate the Ordinance. This puts Plaintiffs in a classic dilemma: risk enforcement or unnecessarily curtail their right to self-defense. Plaintiffs have alleged sufficient facts to establish the mature seeds of an actual dispute between the Ordinance and their current (and intended future) conduct.

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

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members of the organizations own and store firearms in Edmonds, 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 or that this litigation is a sham. Instead, the parties' interests fundamentally conflict, which is all that this step requires.

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 such requirements may be unconstitutional. 554 U.S. at 630. 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.[2] As in *Clallam 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 purchasing equipment or 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). There, 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.

[2] These costs are not hypothetical or imaginary and are unlike the alleged injury in *To-Ro*, where the jury and the court rejected the argument that the plaintiff had suffered lost revenue and costs due to enforcement of the statute against a third-party. *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 412, 27 P.3d 1149, 1153 (2001).

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And Fourth, declaratory judgment would finally and conclusively resolve the legality of the Ordinance. Like in *Clallam 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. *See also Chan v. City of Seattle*, 164 Wn. App. 549, 265 P.3d 169 (2011).

Plaintiffs here have asked the court to determine the legality of an enacted law before the effective date in order to avoid the dilemma between violating the Ordinance or being compelled to take actions to their detriment.

2. The Court should reject Defendants' arguments regarding ripeness

Defendants misguidedly assert separate ripeness arguments, rather than justiciability under the UDJA. Even under Defendants authorities, however, this case easily passes the ripeness test.

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. The legal issue on the merits (preemption) requires no factual development and is fit for prompt judicial determination. And the risk of hardship is significant: Plaintiffs will be required to **incur costs now**, and upon enforcement the Ordinance will compromise their Second Amendment right to self-defense in their home. *Id.*; *Heller*, 554 U.S. at 630. 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 what the City's attorneys call a "relatively small fine."

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Defendants cite only federal case law to argue that Plaintiffs will not suffer hardship if the Court does not proceed with the lawsuit now. None of these authorities have been cited or relied upon by Washington courts. For that matter, federal authorities do not require Plaintiffs to expose themselves to enforcement to challenge a statute, especially when the statute deters the exercise of constitutional rights. *See Holder v. Humanitarian Law Project*, 561 U.S. 1, 16 (2010).

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 UDJA 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 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 Mr. Bass and Mr. Seaberg have standing to bring this UDJA claim. Individual gun owners like Mr. Bass and Mr. Seaberg are within the "zone of interests" regulated by the Ordinance's "safe storage" requirements. And both Mr. Bass and Mr. Seaberg satisfy the injury-in-fact test. At times, Mr. Bass 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

[3] 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.

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self-defense. Compl. ¶ 1. Mr. Bass 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, Mr. Seaberg will suffer the same injuries. *Id.* ¶ 2. Further, there is no dispute that Mr. Seaberg has standing based on his economic injury. Mr. Seaberg will suffer financial injury as a target of the Ordinance, as he will be compelled to purchase a safe or trigger locks for his long guns in order to comply. Seaberg Decl. ¶ 7. *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). Pecuniary harm, and the threat of economic loss, satisfy any test for standing, state or federal.

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 Mr. Bass and Mr. Seaberg 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, among other reasons, petitioners in that case could suffer harm in the future 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.

Defendants also argue that neither individual defendant has standing to challenge Section 5.26.030 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, unsecured, and not in anyone's control or possession, in order to protect their **family** (Mr. Seaberg has grandchildren that visit). Further, the Court should reach the merits on the entire ordinance for reasons based on judicial economy.

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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)). Mr. Bass is a member of both SAF and the NRA. Further, each organization represents other similarly situated members in the City of Edmonds 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). While the NRA and SAF support firearms safety, the broad-brush requirements in the Ordinance to keep firearms locked away impedes self-defense.[4] The NRA

[4] As their websites point out, safe storage is not satisfied by the requirements put forward by the Ordinance. Indeed, as the NRA website notes, "A person's particular situation will be a major part of the consideration [in safe storage] . . . mechanical locking devices, like the mechanical safeties built into guns, can fail and should not be used as a substitute for safe gun handling." *See* https://gunsafetyrules.nra.org/ (last visited Oct. 19, 2018). There are many safe and secure ways to store firearms that fall outside of the strict limitations required by the Ordinance.

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and SAF have an interest in ensuring their members will be free to choose the safe storage model that is best suited to each individual member, rather than abiding by an overly strict and potentially ineffective method prescribed by statute.

3. The Court should reject Defendants' federal authority regarding standing

Defendants argue that federal standing authorities apply. But even under Defendants' federal authorities, Plaintiffs have standing in this case.

The crux of Defendants' mistaken argument is 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 UDJA. Washington courts have never cited *Thomas*, and *Lopez* has only been cited once by a Washington court, and that was to reject applying its test. *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.").[5]

The United States Supreme Court case law on standing does not impose such an absurd pleading requirement, either. The 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

[5] *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 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.

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challenged law they would continue to act in a manner that would subject them to enforcement under the new law—intent to **violate** is simply not required. *See Humanitarian Law Project*, 561 U.S. at 15–16 (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 in *Holder* for standing. *See also Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334, 2343–44, 189 L. Ed. 2d 246 (2014) (holding that one petitioners had standing based on allegations of prior conduct that would be prohibited and an intent to engage in that same conduct); *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, 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").[6]

Defendants may point to the recently-decided case from Division Two, *Forbes v. Pierce Cty.*, 51548-2-II, 2018 WL 4441786 (Wash. Ct. App. Sept. 18, 2018),[7] to argue that Washington courts also require threatened enforcement to permit review. *Forbes* is entirely distinguishable from this case. First, *Forbes* is not a UDJA case; the challenge to Piece County Code 5.14.250 in

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[6] Likewise, in a factually-analogous federal case where plaintiffs challenged the constitutionality of a local safe storage law, a federal judge ruled that the plaintiffs had standing to challenge the law and that their claims were ripe. *Jackson v. City & Cty. of San Francisco*, 829 F. Supp. 2d 867, 872 (N.D. Cal. 2011).

[7] Because this case was decided so recently, Plaintiffs are unaware whether or not it has been appealed to the Washington State Supreme Court.

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that case arose out of an enforcement action under a separate ordinance, which plaintiffs did not challenge. Second, the court relied on the failure of plaintiffs to allege any adverse effect at all from § 230. In contrast, here Plaintiffs have alleged economic injury and alleged impairment of Second Amendment rights; even if *Forbes* applies, Plaintiffs would have standing. Third, the court relied upon plaintiffs' failure to allege an intent to engage in future conduct covered by § 230 (which makes sense, since that conduct would separately and independently violate a separate ordinance). In direct contrast, Plaintiffs here have alleged the intent to engage in their current storage practices in the future, but for the Ordinance. That allegation was sufficient to confer standing in *Humanitarian Law Project*, 561 U.S. at 15–16, a case that was not cited by the appellants or discussed by the court in *Forbes*.

D. 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.

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DATED: October 22, 2018.

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CERTIFICATE OF SERVICE

The undersigned certifies as follows:

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

2. On October 22, 2018, I caused a true and correct copy of the foregoing document to be served on the following parties in the manner indicated below:

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

DATED: October 22, 2018, at Seattle, Washington.

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