

No. 80755-2-I

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

BRETT BASS, an individual; SWAN SEABERG, an individual;
CURTIS McCULLOUGH, 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/Cross-Appellants,

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/Appellants.

**WASHINGTON ALLIANCE FOR GUN RESPONSIBILITY AND
GRANDMOTHERS AGAINST GUN VIOLENCE'S AMICI CURIAE
BRIEF IN SUPPORT OF DEFENDANTS/APPELLANTS**

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I. INTEREST OF AMICI

Amicus curiae Washington Alliance for Gun Responsibility (“Alliance”) is a nonprofit organization dedicated to ending gun violence and promoting a culture of gun ownership that balances rights with responsibilities. In collaboration with local and national experts, civic leaders, and citizens, the Alliance identifies and advocates for evidenced-based solutions to the crisis of gun violence and promotes those solutions at the local, regional, and state levels.

The Alliance has successfully led statewide coalitions to pass three life-saving ballot measures, including Initiative Measure No. 1639 (“I-1639”), which was adopted by the people of Washington with over 59% of the vote. The Alliance initiated the drafting of I-1639, formed the political committee that spearheaded the effort to pass I-1639, successfully defended the Initiative against both ballot title language and pre-election challenges, and currently is defending the constitutionality of I-1639 as an intervenor-defendant in federal district court.

Amicus curiae Grandmothers Against Gun Violence (“GAGV”) is a Washington-based nonprofit organization formed in 2013 after the tragic shooting at Sandy Hook Elementary School. GAGV seeks to reduce gun violence through advocacy, research, and public education. GAGV regularly advocates for and testifies on behalf of legislation and policies

that promote safe and responsible gun ownership and use at the local, state, and federal levels. GAGV publicly supported and was a primary advocate for the passage of I-1639.

II. INTRODUCTION

One week before Halloween in 2014, a 15-year-old boy in Marysville, Washington brought to school a .40-caliber Beretta firearm that belonged to his father. In the school cafeteria during lunch, he gathered several of his friends around a table before shooting and killing four of them and then committing suicide. The shooting at Marysville-Pilchuck High School—less than 30 miles from the City of Edmonds—was the deadliest school shooting in the United States in 2014.

Following this and other tragic but preventable gun violence, including the 2018 shooting at Margery Stoneman Douglas High School in Parkland, Florida, the Edmonds City Council (“City Council”) enacted a common sense ordinance that, among other provisions, requires firearm owners to keep guns secured by a locking device when not in their control (the “Ordinance”). Cross-Appellants National Rifle Association et al. (the “NRA”) challenge the Ordinance, arguing that it conflicts with I-1639 and is preempted by RCW 9.41.290. As Appellants City of Edmonds et al. (the “City”) correctly explain, under both the language and purpose of RCW 9.41.290 and I-1639, local storage requirements are lawful.

Amici file this brief in support of the City to provide additional background and argument on three issues.

First, unsafely stored firearms are a serious risk to public safety. From 2012 to 2017, approximately 1.8 million firearms were stolen from individual gun owners in the United States, including an estimated 48,000 in Washington State alone. In addition to theft, child access to unsafely stored firearms also poses significant dangers. In the majority of school shootings, the shooter is young and obtained the firearm from their home or a relative's home. As the Marysville-Pilchuck High School shooting tragically shows, these risks are not theoretical for Washingtonians. Safe storage requirements are demonstrably effective at reducing unauthorized access to firearms and the injury and death that can result.

Second, the Ordinance does not conflict with I-1639. In an effort to reduce unauthorized access to firearms, the people of Washington established a framework under which firearm owners face liability for unsafely stored firearms that are accessed and misused by unauthorized users. But nothing in the Initiative preempts local jurisdictions from requiring specific safe storage methods. To the contrary, local prescriptions may help fulfill the Initiative's goal of "reduc[ing] gun violence" by "ensur[ing] that children and other prohibited persons do not inappropriately gain access to firearms."

Third, until I-1639, the state statutory scheme was entirely silent on storage of firearms. This prolonged silence, coupled with the intentional decision in I-1639 to legislate only as to personal liability, underscores that RCW 9.41.290 does not preempt local storage laws. Moreover, preemption ensures uniformity in regulations so gun owners are not subject to varying restrictions simply because they travel to different jurisdictions. Safe storage requirements do not trigger this concern because they apply only in specific physical locations: where a gun owner stores or keeps their firearms.

This Court should reverse the trial court's decision.

III. STATEMENT OF THE CASE

Amici concur with and adopt the statement of the case set forth in the City's Opening and Reply Briefs.

IV. ARGUMENT

A. Safe Storage Laws Are Effective Tools to Address the Serious Risks to Public Safety Arising From Unauthorized Access to Firearms.

There are more than 400 million civilian-owned firearms in circulation in the United States.¹ And more than half of all gun owners

¹ Christopher Ingraham, *There Are More Guns Than People in the United States, According To A New Study of Global Firearm Ownership*, Washington Post, June 19, 2018, available at <https://www.washingtonpost.com/news/wonk/wp/2018/06/19/there-are-more-guns-than-people-in-the-united-states-according-to-a-new-study-of-global-firearm-ownership/>; Keith Collins and David Yaffe-Bellany, *About 2 Million Guns Were Sold in the U.S. as Virus Fears Spread*, NY Times, April 2, 2020, available at

store at least one firearm without locks or other safe storage methods.² It is therefore of little surprise that a staggering number of firearms are stolen from individual gun owners every year. The FBI estimates that from 2012 to 2017, more than 1.8 million firearms were reported stolen from individuals nationwide, at an estimated value of \$829 million.³

The figures applicable to Washington specifically are equally troubling. Like our national counterparts, historically the majority of firearm-owning households in Washington do not store firearms locked and unloaded. CP 90. During the same six-year period of data collected by the FBI (2012 to 2017), approximately 48,000 firearms were reported stolen in Washington, at an estimated value of \$21.6 million. *Id.* In the year before Edmonds adopted the Ordinance, the nearby City of Everett had more than 100 firearms stolen within the city. CP 528.

<https://www.nytimes.com/interactive/2020/04/01/business/coronavirus-gun-sales.html>. The articles, government data, scholarly literature, and related material cited in this brief constitute “legislative facts” supporting the City Council’s decision to enact the Ordinance. *Wyman v. Wallace*, 94 Wn.2d 99, 102, 615 P.2d 452 (1980) (“Under th[e] legislative facts] doctrine, a court can take notice of scholarly works, scientific studies, and social facts.”); *State v. Balzer*, 91 Wn. App. 44, 59, 954 P.2d 931 (1998) (“[I]t is essential that courts have unrestricted ability to employ judicially noticed ‘legislative facts’ in formulating legal principles.”).

² Cassandra K. Crifasi, et al., *Storage Practices of US Gun Owners in 2016*, 108 American Journal of Public Health, 532, 532-33 (2018), available at <https://ajph.aphapublications.org/doi/10.2105/AJPH.2017.304262>.

³ Center for American Progress, *Gun Theft in the United States: A State-by-State Analysis*, March 4, 2020, available at <https://www.americanprogress.org/issues/guns-crime/news/2020/03/04/481029/gun-theft-united-states-state-state-analysis/> (“CAP, *Gun Theft*”).

Although these figures are enough to cause concern, they likely do not reflect the true number of stolen firearms in the nation or Washington because not all firearm thefts are reported to law enforcement.

Compounding this problem, in most states, including Washington,⁴ firearms owners are not required by law to report firearm thefts.⁵

Stolen firearms pose substantial risks to public safety. Chief among them is that stolen firearms are frequently used to perpetrate crimes. An analysis of more than 23,000 stolen firearms recovered by law enforcement from 2010 to 2016 found that the overwhelming majority connected to crimes.⁶ Similarly, data from the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) reveal that from 2012 to 2018, nearly 15,000 firearms that were recovered by law enforcement in connection with a criminal investigation and traced by ATF had been reported stolen or lost from gun shops.⁷ Stolen firearms also thwart the ability of law enforcement to solve crimes involving such guns because

⁴ Giffords Law Center, *Reporting Lost & Stolen Guns*, available at <https://lawcenter.giffords.org/gun-laws/policy-areas/gun-owner-responsibilities/reporting-lost-stolen-guns/> (last accessed July 20, 2020). Under I-1639, a firearm owner can avoid liability by reporting a stolen firearm to local law enforcement, but no independent reporting obligation exists.

⁵ CAP, *Gun Theft*.

⁶ Brian Freskos, *Missing Pieces: Gun Theft From Legal Gun Owners Is On The Rise, Quietly Fueling Violent Crime Across America*, The Trace, November 20, 2017, available at <https://www.thetrace.org/features/stolen-guns-violent-crime-america/>.

⁷ CAP, *Gun Theft*. Unlike individual firearms owners, federal firearms licensees (“FFLS”) must report stolen or lost firearms to ATF. ATF, *Data & Statistics*, available at <https://www.atf.gov/resource-center/data-statistics> (last accessed July 20, 2020).

tracing will not provide a direct link to the perpetrator of the crime.⁸ As Everett Police Chief Dan Templeman explained, firearm theft is a major concern. CP 528.

Child access to unsafely stored firearms also poses significant public safety risks. As the *Wall Street Journal* concluded based on its review of all school shootings from 1990 to 2018, the majority of school shooters are young and use a firearm sourced at home or from relatives.⁹ Likewise, as the City Council recognized here, in the majority of school shootings that occurred from 1974 to 2000, the shooter obtained the firearm “from their home or that of a relative.” CP 90. These findings comport with other studies and data showing that approximately 70 to 90% of firearms used in youth suicides, unintentional shootings by youth, and school shootings perpetrated by individuals under 18 are obtained from their home or the home of someone they know.¹⁰

These dangers are not theoretical or limited to other regions of the country. As noted above, a couple of years before the City Council adopted the Ordinance, a 15-year-old high school student in nearby

⁸ See, e.g., ATF, *2012 Summary: Firearms Reported Lost and Stolen*, available at <https://www.atf.gov/file/4721/download> (last accessed July 20, 2020).

⁹ Tawnell D. Hobbs, *Most Guns Used in School Shootings Come From Home*, Wall Street Journal, April 5, 2018, available at <https://www.wsj.com/articles/in-school-shootings-most-guns-come-from-home-1522920600>.

¹⁰ Giffords Law Center, *Child Access Prevention*, available at <https://lawcenter.giffords.org/gun-laws/policy-areas/child-consumer-safety/child-access-prevention/> (last accessed July 20, 2020) (collecting studies) (“Giffords, *Child Access Prevention*”).

Marysville used a .40-caliber Beretta handgun belonging to his father to shoot and kill four of his classmates before turning the gun on himself. CP 109.¹¹

One of the most effective ways to reduce injuries and deaths resulting from unauthorized access to firearms is simple: require them to be stored safely. Firearms owners “who do not store guns safely are at higher risk to have their guns stolen.”¹² And while “[a]ccess to firearms is a key risk factor for suicide,”¹³ firearm owners “who store[] their firearms locked or unloaded, or both, [a]re less likely to commit suicide by firearms.”¹⁴ These data comport with numerous other data broadly showing that safe storage requirements can significantly reduce firearms injuries and deaths, including nearly a third of youth firearm suicides and unintentional firearm injuries.¹⁵

¹¹ Mike Carter, *Father of Marysville Shooter Sentenced To 2 Years For Illegal Gun Possession*, Seattle Times, January 12, 2016, available at https://www.seattletimes.com/seattle-news/crime/father-of-marysville-shooter-sentenced-to-two-years-for-gun-possession/?utm_source=email&utm_medium=email&utm_campaign=article_left_1.1.

¹² See, e.g., David Hemenway, et al., *Whose Guns Are Stolen? The Epidemiology of Gun Theft Victims*, 4 Injury Epidemiology, no. 11, 1 (2017), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5385318/>.

¹³ American Public Health Association, *Reducing Suicides by Firearms*, Nov. 13, 2018, available at <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2019/01/28/reducing-suicides-by-firearms>.

¹⁴ Edmond D. Shenassa, et al., *Safer Storage of Firearms At Home and Risk of Suicide: A Study of Protective Factors In A Nationally Representative Sample*, 58 J. of Epidemiology & Cmty. Health, 841, 841 (2004), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1763337/>.

¹⁵ See, e.g., Giffords, *Child Access Prevention* (collecting studies). Likewise, the RAND Corporation recently concluded that “laws restricting firearm storage and use are

Given these empirical realities, it is no surprise that even the NRA has a “longstanding rule” on safe storage: “store your guns so that they are inaccessible to any unauthorized users, especially your children and the children that visit your home.” *See, e.g.*, CP 520-25, 536. Safe storage requirements, like the City Ordinance, seek to ensure that such commonsense “rules” are followed.

B. The City’s Ordinance Does Not Conflict With I-1639.

The same year that the City Council enacted the Ordinance, the people of Washington adopted I-1639, with over 59% of voters supporting the measure. CP 202 (I-1639, §1).¹⁶ Like the Ordinance, the overriding purpose of the Initiative was to “increase public safety and reduce gun violence.” CP 202 (I-1639, §1). Specifically, the people acknowledged the dangers associated with irresponsibly stored firearms:

firearms taken from the home by children or other persons prohibited from possessing firearms have been at the heart of several tragic gun violence incidents. One study shows that over eighty-five percent of school shooters obtained the firearm at their home or from a friend or relative. Another study found that more than seventy-five percent of firearms used in youth suicide attempts and unintentional

associated with a subsequent 11% decrease in the firearms-related death rate.” Terry L. Schell, et al., *Changes in Firearm Mortality Following the Implementation of State Laws Regulation Firearm Access and Use*, 117 Proceedings of the National Academy of Sciences, 14906, 14906 (2020), available at <https://www.pnas.org/content/117/26/14906>.

¹⁶ Washington Secretary of State, General Election Results of Initiative Measure No. 1639, https://results.vote.wa.gov/results/20181106/State-Measures-Initiative-Measure-No-1639-Initiative-Measure-No-1639-concerns-firearms_ByCounty.html (last accessed July 20, 2020).

injuries were stored in the residence of the victim, a relative, or a friend.

Id.

The people sought to address this danger by establishing a framework under which firearms owners can be held liable if their unsafely stored firearm is accessed and misused by someone who cannot legally possess it. CP 210-11 (I-1639, § 5).¹⁷ Specifically, a firearm owner faces liability if they store a firearm such that they “know[], or reasonably should know” that an unauthorized person may gain access to the firearm, and such a person does gain access and misuses the gun in one of the enumerated ways. CP 210-11 (I-1639, §5). In passing I-1639, the people determined that imposing liability “will increase public safety by helping ensure that children and other prohibited persons do not inappropriately gain access to firearms.” CP 203 (I-1639, § 1).

Ignoring the express language and clear intent of the people, the NRA contends that the safe storage provision of I-1639 conflicts with the Ordinance. NRA’s Answering Br. at 31. Under well-established preemption doctrine, the Ordinance does not conflict—much less irreconcilably conflict—with I-1639. *See Lawson v. City of Pasco*, 168

¹⁷ I-1639 contains several other common sense gun measures, including prohibiting individuals under 21 from purchasing semi-automatic assault rifles (“SARs”), requiring an enhanced background check for SAR purchases, requiring a waiting period on SAR purchases, and prohibiting in-person sales of SARs to non-Washington residents. CP 203-30 (I-1639, §§ 3-4, 10-13).

Wn.2d 675, 682, 230 P.3d 1038 (2010) (holding that state law preempts a local ordinance only when it “directly and irreconcilably conflicts.”); *City of Bellingham v. Schampera*, 57 Wn.2d 106, 111, 356 P.2d 292 (1960) (holding that local law conflicts with state law if it forbids “what the Legislature has expressly licensed, authorized, or required.”).

As explained above, I-1639 imposes personal liability for unauthorized access resulting from irresponsible storage. Contrary to the NRA’s argument, this provision does not “entitle” firearms owners with an affirmative statewide right to store their firearms in any manner whatsoever. NRA’s Answering Br. at 31. Rather, the Initiative provides that “[n]othing in this section mandates how or where a firearm must be stored.” CP 211 (I-1639, § 5(6)). “This section” refers to Section 5 of I-1639, which is the portion of the Initiative that establishes the liability framework. Properly read, this provision clarifies that the imposition of liability does not require specific storage methods and in fact is limited to establishing liability. Nothing in this language creates an affirmative right to store firearms in any manner the owner chooses.

Nor does anything in I-1639 preclude safe storage requirements by separate law. I-1639 addresses what *personally happens* if an individual does not store their firearm securely and it is improperly attained and used. It says nothing about local governments separately requiring specific and

broadly applicable *ways* of securing firearms. Whether an urban jurisdiction, like the City of Edmonds, wants to require one form of safe storage and a rural jurisdiction, like Okanogan County, wants to stay silent on the issue is of no consequence under the Initiative. Neither choice impacts the personal liability that I-1639 establishes.

The NRA’s interpretation also contravenes the purpose of I-1639: to “increase public safety and reduce gun violence,” including by “helping ensure that children and other prohibited persons do not inappropriately gain access to firearms.” CP 202-03 (I-1639, § 1). Certainly the people did not intend or even contemplate that I-1639 would prohibit local jurisdictions from requiring storage methods that further “reduce gun violence” in their communities. The NRA’s claim that I-1639 “entitles” firearms owners to store their guns in any manner whatsoever—even unsafe manners—cannot be reconciled with the purpose of I-1639.

C. RCW 9.41.290 Does Not Preempt Local Firearm Storage Ordinances.

The NRA’s argument that the Ordinance is preempted by RCW 9.41.290 also misses the mark. As the City correctly explains, neither the plain language nor history of the preemption statute support the NRA’s argument. City’s Opening Br. 17-39.

The City’s reading is reinforced by the prolonged silence in the state statutory scheme on the issue of firearm storage. In fact, state law was entirely silent on the issue until 2018, when I-1639 addressed, for the first time in state law, the topic of safe storage. But as explained above, that change was to add personal liability for unauthorized access resulting from unsafe storage practices. This prolonged silence in state law on storage of firearms, coupled with Washington voters’ intentional choice to speak on the issue only as it relates to personal liability—rather than storage method—further demonstrates that RCW 9.41.290 does not preempt local storage requirements.

The purpose behind the preemption statute further underscores the propriety of local storage ordinances. As the City correctly explains, RCW 9.41.290 was enacted to “eliminate a multiplicity of local laws relating to firearms and to advance uniformity in criminal firearms regulation.” City’s Opening Br. at 43 (quoting *Cherry v. Municipality of Metro. Seattle*, 116 Wn.2d 794, 801, 808 P.2d 746 (1991); see also *Pac. Nw. Shooting Park Ass’n v. City of Sequim*, 158 Wn.2d 342, 356, 144 P.3d 276 (2006) (explaining that “the central purpose of RCW 9.41.290 was to eliminate *conflicting municipal criminal codes* and to ‘advance uniformity in *criminal* firearms regulation.’” (citing *Cherry*, 116 Wn.2d at 801)).

This central purpose of avoiding conflicting laws is not implicated by local jurisdictions' firearm storage ordinances, which apply only in specific physical locations: where a firearm owner stores or keeps a firearm, typically their home. As such, firearms owners would not normally be subject to conflicting jurisdictions' storage requirements. In this way, storage requirements are fundamentally different from other laws specifically enumerated in RCW 9.41.290, such as "possession, "sale," discharge," and "transportation." A firearm owner may be subject to a plethora of such laws in the course of owning and using their firearm because they possess, sell, discharge, and transport firearms in many different jurisdictions. In contrast, a local jurisdiction's prescription of storage practices does not bear on these underlying concerns because a firearm owner stores their guns in specific physical locations.

V. CONCLUSION

Safe storage requirements are a common sense and effective tool to reduce injuries and deaths caused by unauthorized access to firearms. The City's storage requirement comports with I-1639 and is not preempted by RCW 9.41.290. This Court should reverse the trial court's decision.

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RESPECTFULLY SUBMITTED this 20th day of July, 2020.

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