Supreme Court No. 99596-6
Court of Appeals No. 80755-2-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

---

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,

Petitioners,

v.

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.

Respondents.

---

# RESPONDENTS' SUPPLEMENTAL BRIEF

---

CORR CRONIN LLP
Steven W. Fogg, WSBA No. 23528
Eric A. Lindberg, WSBA No. 43596
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900
Attorneys for Respondents/Counter-Appellants

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### *Cases*

***Statutes***



***Other Authorities***

## I. INTRODUCTION

This case concerns the legality of a City of Edmonds ordinance regulating the conduct of firearm owners when the legislature preempted "the entire field of firearms regulation." RCW 9.41.290. The Court of Appeals held that the challenge to the ordinance regulating firearms storage is justiciable, and that the ordinance is entirely preempted. *City of Edmonds v. Bass*, 16 Wn. App. 2d 488, 481 P.3d 596 (2021).

This case presents issues of jurisdiction, justiciability, and preemption. These issues are important to principles of separation of powers, legislative authority, and the role of the judiciary to adjudicate claims under the Uniform Declaratory Judgment Act, RCW 7.24.010 *et seq.* ("UDJA").

First, the Court should affirm that superior courts have general jurisdiction over UDJA claims. While courts should take care regarding interests at stake, finality, and factual development in order to avoid advisory opinions, courts have full jurisdiction to consider remedial UDJA actions.

Second, the Court should confirm that UDJA cases are justiciable when the issues are ripe, a party's rights are adversely affected by legislative action, and the judicial decision would be final. Rather than importing federal justiciability constraints and limiting claims to cases where a party intends to violate the law being challenged, the Court should recognize the remedial nature of UDJA claims and the availability of jurisdiction to render

judgment in ripe, factually defined cases of great public import. Adopting Petitioners' framing of UDJA claims could incentivize legislative bodies to craft regulations or enforcement mechanisms designed to avoid judicial review.

Third, the Court should clarify and reaffirm the authority of the legislature to preempt a field of regulation based on the legislative assessment of policy and the need for state uniformity. Due to separation of powers and deference, the legislature has the authority to preempt a field without being required to list every aspect of affected regulatory behavior, as it has done in the field of firearms regulation.

The Court of Appeals correctly identified these issues and reached the result compelled by this Court's precedent. This Court should affirm the well-reasoned decision and reinforce these important judicial principles.

## II. ISSUES PRESENTED FOR REVIEW

1. Does a lack of justiciability of a claim under the UDJA divest the Court of subject matter jurisdiction?

2. Did the Court of Appeals correctly apply the judicially crafted "major public importance" exception to UDJA justiciability as an alternative basis for concluding that Respondents had standing to challenge the Access Provision?

3. Did the Court of Appeals correctly conclude that RCW 9.41.290 "fully occupies" "the entire field" of firearms regulation, thereby preempting the Ordinance at issue in this case?

## III. STATEMENT OF THE CASE

### A. Washington State Law Fully Occupies and Preempts the Entire Field of Firearms Regulation

In 1935, the Washington Legislature adopted laws regulating firearms based on the Uniform Firearms Act.[1] Subsequently, the Legislature repeatedly amended state law in order to ensure uniformity and preempt local regulation. In 1983, the Legislature enacted Chapter 9.41 RCW to prevent municipalities from adopting inconsistent laws and ordinances regulating firearms.[2] In 1985, the Legislature amended former RCW 9.41.290 to "fully occup[y] and preempt[] the entire field of firearms regulation within the boundaries of the state, . . . ."[3] And in 1994, the Legislature amended former RCW 9.41.290 to preempt municipalities from regulating firearms unless "specifically authorized by state law, as in RCW 9.41.300" and to harmonize the penalties for violations of municipal ordinances and state law.[4]

---

[1] *Chan v. City of Seattle*, 164 Wn. App. 549, 551–52, 265 P.3d 169, 171 (2011) (citing Laws of 1935, ch. 172 & *Cherry v. Mun. of Metro. Seattle*, 116 Wn.2d 794, 800, 808 P.2d 746 (1991)).

[2] *Id.* at 552 (citing Laws of 1983, ch. 232, § 12; *Cherry*, 116 Wn.2d at 801).

[3] *Id.* (quoting Laws of 1985, ch. 428, § 1).

[4] *Id.* at 553, 553 n.2 (citing Laws of 1994, 1st Spec. Sess., ch. 7, §§ 428–29).

## B. The City of Edmonds Regulates Firearms Storage & Access

On July 24, 2018, the Edmonds City Council City enacted Ordinance Number 4120 (the "Ordinance"), which regulates firearms by imposing penalties for non-compliant storage of firearms within the City of Edmonds. Clerk's Paper's (CP) at 89–103. The Ordinance established Chapter 5.26 in the Edmonds City Code. The Ordinance contains two firearms storage regulations. The "Storage Provision" requires firearms to be secured by a properly-engaged locking device when not in the possession or control of the owner or authorized user. ECC 5.26.020. The "Access Provision" penalizes storage that leads to unauthorized access. ECC 5.26.030. The City of Edmonds imposes fines as penalties for violations of the Ordinance. ECC 5.26.040.

## C. Washington State Regulates Firearms Storage & Access

Months after the City enacted the Ordinance, Washington State voters approved Initiative No. 1639 ("I-1639"), which made a number of changes to Washington's firearms laws. One of the additions to state law concerned provisions related to "secure gun storage," and establishes standards related to the use of trigger locks or similar devices designed to prevent unauthorized use or discharge.

## D. Procedural History

Respondents filed suit and sought declaratory judgment that the Ordinance was preempted and invalid. Appellants filed a motion to dismiss

under Rule 12(b)(1), arguing that the entire case was not justiciable. CP at 649–745. The trial court permitted Respondents to submit a verified amended complaint to allege additional facts and to add an additional individual plaintiff. *Id.* at 280–292. After Petitioners filed a renewed motion to dismiss, the trial court ruled that all of the individual and organizational plaintiffs had standing to challenge the Storage Provision, but none of the individual and organizational plaintiffs had standing to challenge the Access Provision. *Id.* at 405–406.

Respondents submitted a motion for summary judgment challenging the entire Ordinance. *Id.* at 251–268. As part of the summary judgment motion, Respondent submitted testimony that each of the individual plaintiffs continue to store firearms without a locking device and outside of their possession and control even though the Ordinance is now in effect. Each individual was concerned, based on their firearms storage practices, that the City of Edmonds could enforce both provisions in the Ordinance against them. *Id.* at 74–85.

The trial court granted-in-part and denied-in-part Respondents' motion for summary judgment. Report of Proceedings at 25–40. First, the trial court incorporated the ruling denying Appellants' motion to dismiss, and rejected Plaintiffs' request to invalidate the Access Provision. *Id.* Turning to the Storage Provision, the trial court ruled that RCW 9.41.290

"unambiguously preempts the field of firearm regulation including firearms storage," and ruled the Storage Provision preempted and invalid. *Id.* at 28–37. The trial court explained "the basic 101 tenets of the rules of statutory preemption" prohibited a local jurisdiction from passing a law in a field occupied by the state. *Id.* at 29.

The parties cross-appealed. The Court of Appeals reversed the justiciability decision regarding the Access Provision holding that "the test under the UDJA is not whether a party intends to violate the law being challenged but merely whether their rights are adversely affected by it." *Bass*, 481 P.3d at 600 (quoting *Alim v. City of Seattle*, 14 Wn. App. 2d 838, 852, 474 P.3d 589 (2020)). The individual plaintiffs satisfied that test by testifying that they have an interest in keeping their firearms unsecured in the presence of unauthorized users, and they will have to deviate from their storage practices to avoid violating both provisions of the ordinance. *Id.* In the alternative, the Court of Appeals concluded that the appeal qualified under the exception to *Diversified's* standing test because Respondents had raised an issue of "broad overriding public import."

On the merits, the Court of Appeals examined the broad text of RCW 9.41.290 and concluded that state law preempted both provisions of the Ordinance.

## IV. ARGUMENT

### A. Justiciability Under the Uniform Declaratory Judgment Act is Not Jurisdictional

Petitioners invoke "drive-by jurisdictional"[5] language from the judicially created *Diversified Industries* test to argue that a lack of standing or justiciability under that test divests the superior court of subject matter jurisdiction over a UDJA claim. Accordingly, Petitioners argue, superior courts should apply the standards under Rule 12(b)(1) to motions to dismiss UDJA claims. But as this Court has recently clarified, and as the Court of Appeals explained in *Alim v. City of Seattle*, 14 Wn. App. 2d 838, 474 P.3d 589 (2020), this is not the law in Washington.[6]

"The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide." WASH. CONST. art. IV, § 1. "The superior court shall also have original jurisdiction in all cases and of all proceedings in

---

[5] *Boudreaux v. Weyerhaeuser Co.*, 10 Wn. App. 2d 289, 294, 448 P.3d 121, 127 (2019) (quoting *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 161, 130 S. Ct. 1237, 176 L. Ed. 2d 18 (2010)).

[6] Preliminarily, the Court does not need to reach this issue. The question of whether Rule 12(b)(1) or Rule 12(b)(6) applies to a UDJA claim was central to the appeal in *Alim*, where the Court of Appeals held—on a review of an order granting the City's motion to dismiss—that justiciability under the UDJA was not jurisdictional; that decision was not appealed. In this case, the Court of Appeals held—on a review of a summary judgment record and order—that Respondents presented evidence demonstrating a justiciable case and, in the alternative, that the "major public importance" exception would apply. Only if the Court reverses both holdings could this issue be dispositive on remand.

which jurisdiction shall not have been by law vested exclusively in some other court[.]" WASH. CONST. art. IV, § 6. Stated otherwise, superior courts are courts of "general jurisdiction" and can therefore hear all legal and equitable matters unless those "'powers have been expressly denied.'" *Newlon v. Alexander*, 167 Wn. App. 195, 201, 272 P.3d 903, 906 (2012) (quoting *In re Marriage of Major*, 71 Wn. App. 531, 533, 859 P.2d 1262 (1993)).[7]

"'Subject matter jurisdiction' refers to a court's ability to entertain a type of case . . . ." *Banowsky v. Guy Backstrom, DC*, 193 Wn.2d 724, 731, 445 P.3d 543, 547 (2019) (quoting *In re Marriage of Buecking*, 179 Wn.2d 438, 448, 316 P.3d 999 (2013)). "'A lack of subject matter jurisdiction implies that [the tribunal] has no authority to decide the claim at all, let alone order a particular kind of relief.'" *Id.* (quoting *Marley v. Dep't of Labor & Indus*., 125 Wn.2d 533, 539, 886 P.2d 189 (1994)).

In Washington, subject matter jurisdiction is determined by the legislature and the Washington Constitution. No state court in Washington,

[7] No "case or controversy" requirement appears in the text of the constitutional grant of jurisdiction, and the Washington Supreme Court has consistently held that Washington courts have "'broad and comprehensive original jurisdiction over all claims which are not within the exclusive jurisdiction of another court. Because of this specific constitutional grant of jurisdiction, exceptions to this broad jurisdiction will be read narrowly.'" Philip A. Talmadge, *Understanding the Limits of Power: Judicial Restraint in General Jurisdiction Court Systems*, 22 SEATTLE U.L. REV. 695, 708–10 (1999) (quoting *Orwick v. City of Seattle*, 103 Wn.2d 249, 251, 692 P.2d 793, 795 (1984)).

including the Supreme Court, can give itself (or divest itself of) subject matter jurisdiction.

The legislature passed the Uniform Declaratory Judgment Act in 1935. LAWS OF 1935 ch. 113, § 12. The UDJA states that "[c]ourts of record within their respective jurisdiction shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed." RCW 7.24.010. Because the legislature has vested jurisdiction for UDJA claims in superior courts, the courts cannot divest jurisdiction through its own action (such as creation of the *Diversified Industries* test).

Petitioners' argument that the justiciability test is jurisdictional simply has no basis or support. Only the legislature may divest a court of subject matter jurisdiction, and Petitioners cannot point to any such legislative action to support its "federalization" of UDJA claims. This is the exact question the Court of Appeals correctly analyzed and decided in *Alim*, and what this Court explained in *Buecking*. *Buecking v. Buecking*, 179 Wn.2d 438, 447–48, 316 P.3d 999, 1003 (2013); *Alim*, 14 Wn. App. 2d at 847–49. Under *Buecking*, the errant reference to jurisdiction in the *Diversified Industries* test does not limit subject matter jurisdiction (and thus does not invoke Rule 12(b)(1)). Instead, establishing justiciability in a UDJA case "goes to something other than subject matter jurisdiction." *ZDI*

*Gaming Inc. v. State ex rel. Washington State Gambling Comm'n*, 173 Wn.2d 608, 618, 268 P.3d 929, 933 (2012).

The common definition of justiciability does not necessarily invoke jurisdictional principles; rather, it means the "quality, state, or condition of being appropriate or suitable for adjudication by a court." *Justiciability*, Black's Law Dictionary (11th ed. 2019). As Justice Talmadge observed, in Washington state courts the term justiciability refers to "traditional restraint doctrines" such as separation of powers, judicial economy, and other prudential policies. Talmadge, 22 SEATTLE U. L. REV. at 710–11.

Petitioners' objection to the judicial test for a Rule 12(b)(6) motion—whether "hypothetical facts" could support a legally sufficient claim—is nothing more than a red herring. First, neither the judicial *Diversified Industries* test nor the judicial standard for Rule 12(b)(6) are capable of divesting a court of subject matter jurisdiction. Second, applying the Rule 12(b)(6) standard to UDJA claims will not produce a result that the legislature did not intend. While a superior court considering a UDJA claim at the motion to dismiss stage must interrogate whether any set of facts consistent with the complaint would justify recovery,[8] the complainant must still sufficiently describe an actual dispute between opposing parties who

[8] *San Juan Cty. v. No New Gas Tax*, 160 Wn.2d 141, 164, 157 P.3d 831, 842 (2007).

have a direct interest and must pray for relief that will be final and conclusive.[9] After all, "CR 12(b)(6) motions are granted only sparingly and with care." *Worthington v. Westnet*, 182 Wn.2d 500, 506, 341 P.3d 995, 998 (2015). Courts are manifestly able to manage the application of these tests, and there is no reason to create a new UDJA-specific Rule 12 standard out of whole cloth. As this Court observed long ago, "[a] reading of the entire declaratory judgment act, RCW 7.24.010 *et seq.*, convinces us that a proceeding commenced under the provisions of the act is subject to the same rules of pleading as any other civil action." *Frach v. Schoettler*, 46 Wn.2d 281, 291, 280 P.2d 1038, 1044 (1955).

## B. Respondents' Challenge to the Access Provision is Justiciable

### 1. Respondents' Challenge is Justiciable Under the *Diversified Industries* Test

This Court reviews justiciability and summary judgment de novo. *Trimble v. Washington State Univ.*, 140 Wn.2d 88, 92, 993 P.2d 259, 261 (2000); *Nollette v. Christianson*, 115 Wn.2d 594, 599–600, 800 P.2d 359, 362 (1990).[10] As this Court recently explained:

---

[9] *See Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137, 139 (1973).

[10] Prompted by footnote 2 of the opinion, Petitioners appear to argue that the Court of Appeals applied Rule 12(b)(6) standard when holding that the challenge to the Access Provision is justiciable. But a careful reading of the opinion demonstrates that the Court of Appeals made its decision based on the Rule 56 summary judgment standard because it explicitly cites "testimony" by

> The UDJA is a remedial statute and is to be "liberally construed and administered." RCW 7.24.120. Standing is not intended to be a "high bar" to overcome. This court has acknowledged that the UDJA's procedures are peculiarly well suited to the judicial determination of controversies concerning constitutional rights and . . . the *constitutionality of legislative action*.

*Washington Bankers Ass'n v. State*, ___ Wn.2d ___, 495 P.3d 808, 827 (2021) (citations omitted) (emphasis in original). In *Diversified Industries* this Court described a justiciable case as a dispute:

> (1) which is 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. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 815, 514 P.2d 137, 139 (1973).

Preliminarily, Petitioners waived any argument that Respondents do not meet three of the four prongs of the *Diversified Industries* test. Petitioners argued only that Respondents did not allege or prove any "direct and substantial" issues, and did not present the Court of Appeals with any

---

Respondents as "evidence" of justiciability and reaches the merits on the Access Provision. *Bass*, 16 Wn. App. 2d at 496, 504.

argument regarding the first (ripeness), second (adversity), or fourth (final and conclusive judicial determination) prongs of the test. Pet'r Br. 14–20; Resp't Reply Br. 6. In effect, Petitioner's arguments regarding "advisory opinions" are an appeal to federal "case or controversy" standards, rather than an argument under the fourth prong of the *Diversified Industries* test that court resolution will not be possible or final. *See DiNino v. State ex rel. Gorton*, 102 Wn.2d 327, 332, 684 P.2d 1297 (1984) (declining to render declaratory judgment because the record was not sufficiently developed and any judicial decision would have been advisory); *Pasado's Safe Haven v. State*, 162 Wn. App. 746, 761–62, 259 P.3d 280 (2011) (declining to render declaratory judgment because judicial determination would not conclusively resolve the dispute).

As Respondents argued and the Court of Appeals held, the record on summary judgment supports a finding that the challenge to the Access Provision is justiciable. Respondents submitted declarations in support of their motion for summary judgment stating, among other things, that they have an interest in keeping their firearms unsecured in their homes. *Bass*, 16 Wn. App. 2d at 496; CP at 74–85. Respondents each testified that unauthorized users could gain access to their unsecured firearms: Respondent McCullough testified that he keeps unsecured firearms in a home where his minor children live; Respondent Seaberg lives in a

neighborhood that has experienced an uptick in home invasions. CP at 29–31, 44. In accord, Everett Police Chief Dan Templeman has explained that firearm theft is a major concern. CP at 528. And Amicus Alliance for Gun Responsibility submitted a brief to the Court of Appeals establishing that the risk of firearm theft is "not theoretical" because of "a staggering number of firearms [that] are stolen from individual gun owners every year." Br. of Amicus WAGR and GAGV at 3, 5.

As stated in *Alim*, "the test under the UDJA is not whether a party intends to violate the law being challenged but merely whether their rights are adversely affected by it." 14 Wn. App. 2d at 854 (referencing RCW 7.24.020). Here, the purpose of the Ordinance is to force firearm owners to modify storage behavior through regulation. Respondents must substantially change their firearm storage practices or risk violating the Access Provision based on non-permissive actions by third parties. Providing relief for parties in such dilemmas "is the very purpose of the Declaratory Judgment Act." *Acme Fin. Co. v. Huse*, 192 Wash. 96, 108, 73 P.2d 341, 346 (1937).

Petitioner's argument that intent to engage in conduct violating a law is required for UDJA standing should be rejected by the Court. This proposed rule would erroneously narrow the availability of UDJA claims. The UDJA is a remedial statute and must be construed liberally. RCW

7.24.120; *Washington Bankers Ass'n*, 495 P.3d at 827; *Huse*, 192 Wash. at 108. In fact, adopting such a rule would give legislative bodies a perverse incentive to craft procedural mechanisms in order to insulate facially invalid laws from pre-enforcement review.[11] And the case relied upon by Respondents to support the "intent to violate" rule—*Forbes v. Pierce County*, 5 Wn. App. 2d 423, 427 P.3d 675 (2018)—makes the same mistake as Respondents by importing federal rules and standards that are informed by Article III and limited jurisdiction principles. These federal justiciability principles unduly limit the availability of UDJA claims without regard for whether "intent to violate" provides safeguards that are justified or necessary under Washington's general jurisdiction system.[12]

### 2. Alternatively, the "Major Public Importance" Exception Applies

This Court reviews justiciability, including the application of the "major public importance" exception, de novo. *Nollette*, 115 Wn.2d at 599–600.[13]

---

[11] *Cf. Whole Woman's Health v. Jackson*, 141 S. Ct. 2494, 2495 (2021) (declining on justiciability and prudential grounds to intervene in lawsuit challenging a Texas law empowering private individuals to enforce state law regulating abortion).

[12] *E.g.*, *West v. Seattle Port Comm'n*, 194 Wn. App. 821, 828, 380 P.3d 82, 86 (2016) (rejecting the Ports' reliance on federal jurisprudence to argue that plaintiff did not demonstrate enough of an injury to demonstrate standing).

[13] Before the Court of Appeals the parties disputed the standard of review over a trial court's decision not to apply the exception to the *Diversified*

Petitioners argue that the Court of Appeals erred by holding, in the alternative, that the exception applies. Petitioners contend that the exception cannot apply unless plaintiffs allege "concrete harm." Pet. for Review at 2, 5. Petitioners also contend that "major public importance" requires more than just broad impact, such as the invalidation of a statewide law. Petitioners are wrong on both counts.

This Court has long held that the *Diversified Industries* test does not need to be satisfied in cases of "major public importance." *Washington State Coal. for the Homeless v. Dep't of Soc. & Health Servs.*, 133 Wn.2d 894, 917, 949 P.2d 1291, 1303 (1997). This Court has phrased the "major public importance" exception in at least two ways. First, when "faced with an issue of significant public interest, standing is analyzed in terms of the public interests presented, and [this Court] engage[s] in a more liberal and less rigid analysis." *Rocha v. King Cty.*, 195 Wn.2d 412, 420, 460 P.3d 624, 629 (2020). Alternatively, this Court has required three elements in order to apply the "less rigid and more liberal" approach: (1) substantial public importance, (2) immediate effect on a significant segment of the population, and (3) direct bearing on commerce, finance, labor, industry, or agriculture. *Grant Cnty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791,

---

*Industries* test. *See* Resp't Reply Br. 3–6. The Court of Appeals concluded that de novo review is the correct standard. *Bass*, 16 Wn. App. 2d at 496 n.3.

803, 83 P.3d 419, 424 (2004); *Washington Nat. Gas Co. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 77 Wn.2d 94, 96, 459 P.2d 633, 635 (1969). Under either formulation, "concrete harm" is not required. This makes perfect sense: the rationale for the exception is to allow courts to reach important public issues when standing is **less certain** and **less concrete**.[14] The Court should reject Petitioners' misguided suggestion to impose an inherently inconsistent "concrete harm" requirement on the "less rigid and more flexible" approach.

Petitioners rely primarily upon *Walker v. Munro* to argue that "concrete harm" is required. 124 Wn.2d 402, 879 P.2d 920 (1994). Respondents have previously explained why *Walker* is factually and legally distinguishable from this case. Resp't Op. Br. 41–43; Resp't Reply Br. 13. In their petition for review, Petitioners cherry pick *Walker*'s reference to concrete harm but ignore the actual analysis that the Court applied, which primarily concerned ripeness and finality. *See Walker*, 124 Wn.2d at 412 (discussing ripeness concerns because the challenged initiative was not yet

[14] Versions of the exception exist in most other states that have adopted the model declaratory judgment act, which forms the basis of Washington's UDJA. *See, e.g., Aged Hawaiians v. Hawaiian Homes Comm'n*, 78 Hawai'i 192, 204, 891 P.2d 279, 291 (1995) (holding that federal justiciability standards are relaxed for "matters of great public importance"); *Brimmer v. Thomson*, 521 P.2d 574, 578 (Wyo. 1974); *California Water & Tel. Co. v. Los Angeles Cnty.*, 253 Cal. App. 2d 16, 26, 61 Cal. Rptr. 618, 625 (Cal. Ct. App. 1967) (resolving any doubt over justiciability in favor of adjudication due to public interest in the dispute).

in effect and could still be amended by the petitioners); *id.* at 412–13 (discussing lack of justiciability in light of "confusion regarding the implementation of the initiative," uncertainty regarding interpretation and impact on the budget that may never come to pass, and the lack of an existing fact-specific dispute); *id.* at 414–16 (differentiating prior applications of the exception based on lack of ripeness and the fact that the challenged measure was not yet in effect). There is a crucial distinction between an ordinance that is preempted on its face "and an initiative that is potentially unconstitutional in its application, like the statutory supermajority requirements in *Walker* and *League of Education Voters*." *Lee v. State*, 185 Wn.2d 608, 617–18, 374 P.3d 157, 163 (2016).

Next, this case involves issues of major public importance. Respondents set out this argument in the briefing below, including arguing that the case meets the *Grant County* formulation and a "direct bearing on commerce, finance, labor, industry, or agriculture." Resp't Op. Br. 39–41; Resp't Reply Br. 10–12. Also, the amicus briefs submitted in this case support Respondents' contention that the question of the Access Provision is an issue of major public importance, including the brief submitted by the sponsors of I-1639. Br. of Amicus WAGR and GAGV at 5–7 (providing the court with information regarding the rationale behind their multi-million dollar political campaign). Application of the exception here is squarely in

line with precedent. *See Kightlinger v. Pub. Util. Dist. No. 1 of Clark Cnty.*, 119 Wn. App. 501, 505, 81 P.3d 876, 879–80 (2003), *overruled on other grounds*, *Okeson v. City of Seattle*, 159 Wn.2d 436, 451 n.5, 150 P.3d 556, 565 (2007) (applying the exception because, among other reasons, the media and interest groups followed the case closely, the issue had already reached statewide government, and other municipalities were interested in similar regulation).

This Court has also explained that the decision whether to apply the exception depends upon "the extent to which public interest would be enhanced by reviewing the case." *Snohomish Cty. v. Anderson*, 124 Wn.2d 834, 841, 881 P.2d 240, 244–45 (1994). In other words, where it appears that an opinion by the court will provide beneficial guidance to the public or other branches of government, the court should weigh in favor of applying the exception. *Id.* (citing *Seattle School Dist. 1 v. State*, 90 Wn.2d 476, 490, 585 P.2d 71 (1978) & *Sorenson v. Bellingham*, 80 Wn.2d 547, 496 P.2d 512 (1972)). Conversely, if it appears that an opinion will not conclusively resolve the matter or provide useful guidance, courts should weigh against applying the exception.

Review here will enhance the public interest by providing final, definitive guidance to multiple municipalities (including Seattle, which has an identical ordinance) regarding regulation of access to firearms. No

further factual development is needed and no party disputes that judgment will be final and conclusive. Moreover, the Court will reach the merits of the preemption issue via the Storage Provision, and Petitioners do not argue that the preemption analysis differs between the Storage and Access Provisions—it does not; the analysis is identical.

Last, applying the exception here will not create a slippery slope leading to a floodgate of UDJA claims. Here, at least three of the four elements are met; in terms of factual development, there is no discernable benefit from the Court's waiting for an enforcement action; multiple jurisdictions have passed similar ordinances and the state has recently enacted a law in this area; and the Court will reach precisely the same merits issue via an indisputably justiciable claim. *See State ex rel. Distilled Spirits Inst., Inc. v. Kinnear*, 80 Wn.2d 175, 178, 492 P.2d 1012, 1014 (1972). This assortment of factors is unlikely to be common and does not set a problematic precedent. Petitioners have provided no evidence that the superior courts are (or will be) awash in nonjusticiable UDJA cases if the Court re-affirms its UDJA precedents.

### C. The Plain Language of RCW 9.41.290 Preempts Municipal Regulation of Firearms Storage

Petitioners argue that the scope of the firearm preemption statute, RCW 9.41.290, as construed by the Court of Appeals, is "limitless" and at

odds with this Court's precedent. Additionally, amicus curiae have argued that the scope of preemption over Home Rule cities and other municipalities is unclear in light of the decision below. But the decision by the Court of Appeals is well-reasoned, comports with precedent, and applies the clear statutory text in a manner that everyone—including Petitioners and amicus "Home Rule" cities—should understand.

The firearm preemption statute provides:

> 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. Such local ordinances shall have the same penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

RCW 9.41.290.

As this Court recently observed, "the Legislature included clear preemption language" in the statute. *Watson v. City of Seattle*, 189 Wn.2d 149, 171, 401 P.3d 1, 12 (2017). "A city is preempted from enacting ordinances if the legislature has expressly or by implication stated its

intention to preempt the field. When the legislature has expressly stated its intent to preempt the field, a city may not enact any ordinances affecting the given field." *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 561, 29 P.3d 709, 712 (2001) (citations omitted).

Neither the Court of Appeals below, nor other Washington courts construing the scope of regulation preemption under RCW 9.41.290, have applied "limitless" preemptive effect to the statute. In *Watson*, this Court held that RCW 9.41.290 preempted the field of firearms regulation (but not non-regulatory laws, like taxation). 189 Wn.2d at 173. In *Kitsap County v. Kitsap Rifle and Revolver Club*, the Court of Appeals held that the local ordinance regulated the shooting range's business activities, but did not regulate the manner in which gun owners possess, store, and/or allow others to access their firearms; therefore, the statute was not preempted. 1 Wn. App. 2d 393, 407–08, 405 P.3d 1026, 1033 (2017). Stated otherwise, Washington courts have consistently relied on the plain language of the statute to properly limit preemption to firearm ***regulation***; if the local ordinance goes to something other than firearm regulation, *e.g.*, shooting range business activities, it is not preempted by the statute. Here, there is no dispute here that the Access Provision directly regulates firearm owners related to their storage practices.

Petitioners argue that the illustrative list in the statute somehow bounds the scope of the field of firearms regulation. Respondents have exhaustively briefed this issue and explained why Petitioners are wrong. Resp't Op. Br. 21–24; Resp't Reply Br. 17–18. Simply put, Petitioners' argument is contrary to well-established principles of statutory interpretation and logic. The entire point of field preemption is to remove the authority of municipalities from any regulation at all in the category that is preempted. By "fully" preempting the "entire" field and removing concurrent authority, the legislature does not have to determine and enumerate all of the specific items within the field to specifically preempt, and avoids problems with municipalities trying to regulate in the field in an unanticipated or artful manner.

To circumvent this, Petitioners implore the Court to undermine decades of precedent regarding the non-exclusivity of statutory lists utilizing the "enlarging" term "includes." *See, e.g., Brown v. Scott Paper Worldwide Co.*, 143 Wn.2d 349, 359, 20 P.3d 921, 926 (2001) ("RCW 49.60.040(3) contains the word 'includes,' which is a term of enlargement."); *Douglass v. Shamrock Paving, Inc.*, 189 Wn.2d 733, 740, 406 P.3d 1155, 1159 (2017) ("The second clause begins with 'including,' which is generally construed as a term of enlargement, not limitation."). Changing the treatment of "includes" retroactively would not only undo

settled precedent, but would also violate principles of deference to the legislature and would substitute the Court's own policy judgment for the Legislature's.[15]

Last, the amicus "Home Rule" cities need look no farther than the statutory text in order to obtain the answer to the scope of their authority to regulate firearms. In addition to preempting the entire field—and thus effectively ending the inquiry—the statute goes on to specifically provide that inconsistent local laws "are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality." RCW 9.41.290.[16] Amicus municipalities do not receive any special treatment to avoid firearms regulation preemption. *See Chem. Bank v. Washington Pub. Power Supply Sys.*, 99 Wn.2d 772, 792, 666 P.2d 329, 340 (1983) (explaining "first class cities may exercise powers that do not violate a constitutional provision, legislative enactment, or the city's

[15] Respondents have also previously addressed Petitioners' *ejusdem generis* argument in prior briefing. Resp't Br. 28–29. While Petitioners argue in vain that "storage" is not precisely the same as "possession," the Court of Appeals correctly determined that storage is sufficiently like the other categories in the illustrative list, and unquestionably falls within the scope of firearms regulation.

[16] This provision was not originally part of the statutory text, but the Legislature revised that statute in light of local firearm regulation to add specific language ensuring that home rule cities did not have authority to circumvent the statute and regulate firearms. *See* 1994 sp.s. c 7 § 428; 1985 c 428 § 1.

own charter."). The Court should clarify for amicus "Home Rule" cities that their recourse, if any, lies with the Legislature and not with the judiciary.

## V. CONCLUSION

Respondents respectfully request that this Court affirm the judgment of the Court of Appeals.

I certify that this Supplemental Brief contains 4,959 words, in compliance with RAP 18.17.

DATED this 3rd day of November, 2021.

CORR CRONIN LLP

*s/ Eric A. Lindberg*

Steven W. Fogg, WSBA 23528
Eric A. Lindberg, WSBA No. 43596
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel: (206) 625-8600
Fax: (206) 625-0900
*Attorneys for Respondents*

## CERTIFICATE OF SERVICE

The undersigned certifies as follows:

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

2. On November 3, 2021, 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:**
Edmonds City Attorney
c/o Jeffrey Taraday,
WSBA No. 28182
Lighthouse Law Group PLLC
600 Stewart St, Ste 400
Seattle, WA 98101-1217
(206) 273-7440 Phone
jeff@lighthouselawgroup.com

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

**Attorneys for Defendants:**
Jessica L. Goldman
Summit Law Group PLLC
315 Fifth Avenue S, Suite 1000
Seattle, WA 98104-2682
(206) 676-7000 Phone
jessicag@summitlaw.com

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

**Attorneys for Defendants:**
Molly Thomas-Jensen,
Admitted *Pro Hac Vice*
Everytown Law
450 Lexington Ave, Suite 4184
New York, NY 10017
(646) 324-8222 Phone
mthomasjensen@everytown.org

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

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

DATED: November 3, 2021, at Seattle, Washington.

*s/ Monica Dawson*
Monica Dawson

**CORR CRONIN LLP**

**November 03, 2021 - 4:25 PM**

**Transmittal Information**

| | |
|---|---|
| **Filed with Court:** | Supreme Court |
| **Appellate Court Case Number:** | 99596-6 |
| **Appellate Court Case Title:** | Brett Bass, et al. v. City of Edmonds, et al. |
| **Superior Court Case Number:** | 18-2-07049-8 |

**The following documents have been uploaded:**

- 995966_Briefs_20211103162424SC811386_7623.pdf
  This File Contains:
  Briefs - Respondents Supplemental
  *The Original File Name was 2021-11-03 Supplemental Brief.pdf*

**A copy of the uploaded files will be sent to:**

- Derrick.DeVera@seattle.gov
- Jennifer.Litfin@seattle.gov
- Lsantangelo@kirklandwa.gov
- Marisa.Johnson@seattle.gov
- bbyers@corrcronin.com
- ddunne@orrick.com
- dpatterson@corrcronin.com
- erica.franklin@seattle.gov
- etirschwell@everytown.org
- jeff@lighthouselawgroup.com
- jeremiah.miller@seattle.gov
- jessicag@summitlaw.com
- kraymond@kirklandwa.gov
- lmaldonado@corrcronin.com
- mbarber@ci.olympia.wa.us
- mthomasjensen@everytown.org
- sea_wa_appellatefilings@orrick.com
- sfogg@corrcronin.com
- sharonh@summitlaw.com
- sheala.anderson@seattle.gov
- tdonaldson@wallawallawa.gov

**Comments:**

---

Sender Name: Eric Lindberg - Email: elindberg@corrcronin.com
Address:
1001 4TH AVE STE 3900
SEATTLE, WA, 98154-1051
Phone: 206-625-8600

**Note: The Filing Id is 20211103162424SC811386**