FILED
Court of Appeals
Division II
State of Washington
7/22/2019 11:33 AM

NO. 53245-0

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

FORT DISCOVERY CORP., a Washington corporation;
STEPHEN ANDERSON; STEVEN GILSTROM; and JAY TOWNE,

Appellants,

v.

JEFFERSON COUNTY, a Washington municipality,

Respondent.

AMICUS BRIEF OF THE STATE OF WASHINGTON

ROBERT W. FERGUSON
Attorney General

JEFFREY T. EVEN, WSBA 20367
Deputy Solicitor General

Office ID 91087
PO Box 40100
Olympia, WA 98504-0100
360-753-6200

TABLE OF CONTENTS

I. INTRODUCTION 1

II. IDENTITY AND INTEREST OF AMICUS 3

III. ISSUE ADDRESSED BY AMICUS 3

IV. ANALYSIS 3

A. Standard of Review 3

B. Jefferson County's Ordinance Reasonably Restricts Shooting After Dark, Consistent with Article I, Section 24 5

1. Recent federal cases do not change the meaning of article I, section 24 of the Washington Constitution 5

2. Jefferson County's Restriction on Shooting After Dark is a constitutionally reasonable regulation 7

C. The Second Amendment Does Not Protect a Right to Shoot After Dark at a Commercial Shooting Facility 10

1. Federal courts apply a two-step analysis to claims that legislation violates the Second Amendment 10

2. Jefferson County's ordinance burdens no conduct protected by the Second Amendment 12

3. Even if Jefferson County's ordinance burdened conduct protected by the Second Amendment, the Court should uphold it because it satisfies intermediate scrutiny 14

V. CONCLUSION 17

TABLE OF AUTHORITIES

Cases

Backlund v. Bd. of Comm'rs
106 Wn.2d 632, 724 P.2d 981 (1986) 8

Bauer v. Becerra
858 F.3d 1216 (9th Cir. 2017) 16-17

City of Seattle v. Evans
184 Wn.2d 856, 366 P.3d 906 (2015) 4-6

City of Seattle v. Montana
129 Wn.2d 583, 919 P.2d 1218 (1996) 5

Comm. to Defend Reprod. Rights. v. Myers
29 Cal. 3d 252, 625 P.2d 779 (1981) 7

Coppernoll v. Reed
155 Wn.2d 290, 119 P.3d 318 (2005) 3

Dist. of Columbia v. Heller
554 U.S. 570, 128 S. Ct. 2783,
171 L. Ed. 2d 637 (2008) 1, 6-7, 11-12, 15-16

Drummond v. Robinson Twp.
361 F. Supp. 3d 466 (W.D. Pa. 2019) 13

Ezell v. City of Chicago
651 F.3d 684 (7th Cir. 2011) 13

Jackson v. City & Cty. of San Francisco
746 F.3d 953 (9th Cir. 2014) 11-12, 14-17

Kitsap Cty. v. Kitsap Rifle & Revolver Club
1 Wn. App. 2d 393, 405 P.3d 1026 (2017) 1, 2, 12, 16

Mahoney v. Sessions
871 F.3d 873 (9th Cir. 2017) 15

McDonald v. City of Chicago
561 U.S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) 11

Morris v. Blaker
118 Wn.2d 133, 821 P.2d 482 (1992) 6-7

New York State Rifle & Pistol Ass'n, Inc. v. City of New York
883 F.3d 45 (2d Cir. 2018)..... 14, 16

People v. Scott
79 N.Y.2d 474, 593 N.E.2d 1328, 583 N.Y.S.2d 920 (1992) 7

Second Amendment Found. v. City of Renton
35 Wn. App. 583, 668 P.2d 596 (1983) 5-6

Silvester v. Harris
843 F.3d 816 (9th Cir. 2016).....15-16

State v. Gohl
46 Wash. 408, 90 P. 259 (1907).....6-7

State v. Gunwall
106 Wn.2d 54, 720 P.2d 808 (1986) 7

State v. Jorgenson
179 Wn.2d 145, 312 P.3d 960 (2013) 2, 4-6, 8-9

State v. Krantz
24 Wn.2d 350, 164 P.2d 453 (1945) 6-7

Teixeira v. Cty. of Alameda
873 F.3d 670 (9th Cir. 2017)..... 13

United States v. Chovan
735 F.3d 1127 (9th Cir. 2013)..... 2, 12, 15

Constitutional Provisions

Const. art. I, § 24.....1-3, 5, 7-10, 17

U.S. Const. amend. II..... 1, 10

Statutes

RCW 9.41.290 1

Ordinances

Jefferson County Code 8.50.210..... 8

Jefferson County Code 8.50.240(3)(n) 8-9, 13-14

I. INTRODUCTION

While the state and federal constitutions protect a right to keep and bear arms for self-defense, that right has limits. Const. art. I, § 24; U.S. Const. amend. II; *see Dist. of Columbia v. Heller*, 554 U.S. 570, 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008) (offering examples of limits on the Second Amendment right to keep and bear arms); *Kitsap Cty. v. Kitsap Rifle & Revolver Club*, 1 Wn. App. 2d 393, 418, 405 P.3d 1026 (2017) (the state constitutional right to bear arms is subject to a test of reasonableness). This appeal illustrates some of those limits.

Appellant Fort Discovery Corp. (Fort Discovery) brought this case to challenge a single provision in Respondent Jefferson County's ordinance regulating shooting facilities. That provision prohibits shooting after dark at a shooting range, with some exceptions. Prohibiting shooting after dark serves a clear public interest. Fort Discovery accordingly fails to muster arguments sufficient to invalidate the ordinance.[1]

The State of Washington offers this amicus brief to emphasize two points. First, the evolving nature of federal Second Amendment jurisprudence in recent years does not alter the independent interpretation

[1] Fort Discovery also challenges the entire Jefferson County ordinance as preempted by RCW 9.41.290. This Court has previously rejected that argument in a case concerning a Kitsap County ordinance on which Jefferson County's ordinance is based. *Kitsap Rifle*, 1 Wn. App. 2d at 404-12. The State agrees with this Court's previous analysis of the preemption issue in *Kitsap Rifle*.

of Washington's article I, section 24. Washington courts have, for more than a century, given meaning to our state constitutional right to bear arms by applying a standard of judicial reasonableness. *State v. Jorgenson*, 179 Wn.2d 145, 154, 312 P.3d 960 (2013).Washington courts construe our state provision independently from the Second Amendment, and so new federal cases do not change that analysis. *Id.* at 152.

Second, federal courts have consistently applied a two-step analysis for Second Amendment challenges. Under that approach, courts first ask whether the law being challenged falls within the ambit of the self-defense right protected by the Second Amendment. If it does not, the analysis ends and the measure is upheld. If it does implicate a Second Amendment right, the second step entails deciding the level of scrutiny to apply based on how close the law comes to the core Second Amendment right of self-defense and the severity of its burden on that right. *United States v. Chovan*, 735 F.3d 1127, 1136-38 (9th Cir. 2013). This Court has adopted that approach as well. *Kitsap Rifle*, 1 Wn. App. 2d at 414. Most Second Amendment challenges are resolved based on intermediate scrutiny, strict scrutiny rarely being applicable. *See Chovan*, 735 F.3d at 1138 (applying intermediate scrutiny even where a law seriously burdened a Second Amendment right).

Applying these principles, this Court should adhere to the standards already developed for construing both article I, section 24 and the Second Amendment, and affirm the superior court.

II. IDENTITY AND INTEREST OF AMICUS

Amicus State of Washington has an interest in the issue presented for review because a number of state laws, including several recent initiative measures, regulate firearms. This Court's analysis of Fort Discovery's challenge to Jefferson County's ordinance may affect decisions in future cases concerning statewide legislation, as well as other local measures.

III. ISSUE ADDRESSED BY AMICUS

Do either article I, section 24 of the Washington Constitution or the Second Amendment to the United States Constitution protect a right to shoot after dark at a commercial shooting facility?

IV. ANALYSIS

A. Standard of Review

An appellate court reviewing a grant of summary judgment engages in the same inquiry as the trial court. Both sides having moved for summary judgment below, this appeal entails no dispute of material fact and questions of law are resolved de novo. *Coppernoll v. Reed*, 155 Wn.2d 290, 296, 119 P.3d 318 (2005).

Washington courts "resolve constitutional questions first under our own state constitution before turning to federal law." *Jorgenson*, 179 Wn.2d at 152; *see also City of Seattle v. Evans*, 184 Wn.2d 856, 862, 366 P.3d 906 (2015). Fort Discovery asks this Court to depart from this usual practice to analyze the federal constitution first. Their request is based on their belief that a state constitution must be construed to be at least as protective as the federal constitution. Appellants' Opening Br. at 27. But there is no reason why a state, in crafting its own constitution, is in any way obligated to even *address* a principle merely because the federal constitution also does so. Nothing prevented the framers of the Washington Constitution from including within our state charter a provision that restricts democratic lawmaking authority to a lesser extent than does the comparable federal provision. Certainly our constitutional convention in 1889 had no means, or need, to predict the analysis employed in much later federal cases in order to decide what they wanted our constitution to say. Thus there is no reason to analyze the federal constitution first.

B. Jefferson County's Ordinance Reasonably Restricts Shooting After Dark, Consistent with Article I, Section 24

1. Recent federal cases do not change the meaning of article I, section 24 of the Washington Constitution

Fort Discovery premises its first challenge to Jefferson County's ordinance on the state constitutional right to bear arms. The state provision reads:

> The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.

Const. art. I, § 24. This provision protects "an individual right that exists in the context of that individual's defense of himself or the state." *Evans*, 184 Wn.2d at 862.

Washington courts have "consistently held that the right to keep and bear arms in art. I, § 24 is not absolute but is instead subject to reasonable regulation by the State under its police power." *City of Seattle v. Montana*, 129 Wn.2d 583, 593, 919 P.2d 1218 (1996) (internal quotation marks omitted). "Under this court's precedent, a constitutionally reasonable regulation is one that is 'reasonably necessary to protect public safety or welfare, and substantially related to legitimate ends sought.'" *Jorgenson*, 179 Wn.2d at 156 (quoting *Montana*, 129 Wn.2d at 594)); *see also Second Amendment Found. v. City of Renton*, 35 Wn. App. 583, 586, 668 P.2d 596

(1983). Washington courts have not equated "constitutional reasonableness" with rational basis. Rather, they simply articulate the test and apply it as such. *Jorgenson*, 179 Wn.2d at 156.

Washington Courts have long applied this standard of constitutional reasonableness. *See, e.g.*, *Morris v. Blaker*, 118 Wn.2d 133, 144-45, 821 P.2d 482 (1992) (applying the standard of constitutional reasonableness and observing that the "Legislature has reasonably limited the right to own or possess pistols and other short firearms to persons who do not present an obvious threat to themselves or others"); *see also State v. Krantz*, 24 Wn.2d 350, 353, 164 P.2d 453 (1945) (upholding the uniform short firearms act); *State v. Gohl*, 46 Wash. 408, 410, 90 P. 259 (1907) (the constitutional guarantee of a right to bear arms "does not place such rights entirely beyond the police power of the state").

Developments in federal law suggest no reason why Washington courts should change their well-established approach to Washington's independently construed constitutional provision. Writing after *Heller*, the *Jorgenson* court made clear that *Heller* does not change the interpretation of the state constitution. *Id.* at 156 (*Heller*'s rejection of a rational basis standard for reviewing firearms cases did not alter the State's independent construction of the state constitution); *see also Evans*, 184 Wn.2d at 866 (discussions by federal courts of the meaning of the term "arms" under the

Second Amendment did not enlighten the court's consideration under state law). States are separate sovereigns, each with its own constitution and laws crafted without dependence on corresponding federal provisions. Each state has the sovereign authority to adopt its own state constitution and to craft its provisions independently from those of the federal constitution. *See State v. Gunwall*, 106 Wn.2d 54, 59, 720 P.2d 808 (1986); *see also People v. Scott*, 79 N.Y.2d 474, 593 N.E.2d 1328, 1342, 583 N.Y.S.2d 920 (1992) (change in federal constitutional jurisprudence did not require state court to follow with regard to comparable provision of the state constitution); *Comm. to Defend Reprod. Rights. v. Myers*, 29 Cal. 3d 252, 625 P.2d 779, 805 (1981) (Bird, J., concurring) (state constitutional right of privacy not dependent on federal constitutional law). Nor did this state's construction of article I, section 24, depend in any way on a prior federal analysis of the Second Amendment predating *Heller*. *See Morris*, 118 Wn.2d at 144-45; *Krantz*, 24 Wn.2d at 353; *Gohl*, 46 Wash. at 410. The Washington Supreme Court has, for these reasons, continued to adhere to established Washington law even while noting developments in federal law. *See, e.g., id.* at 156.

2. Jefferson County's Restriction on Shooting After Dark is a constitutionally reasonable regulation

The Washington Constitution permits "constitutionally reasonable" regulation of the right to bear arms. Legislation is constitutionally

reasonable if it is reasonably necessary to protect public safety or welfare, and substantially related to legitimate ends sought. *Jorgenson*, 179 Wn.2d at 156. Analysis begins with the familiar presumption that legislative enactments are constitutional, with the challenger bearing the burden of showing the contrary. *Id.* at 150.

Courts look "first to public benefit, then to whether the regulation frustrates the purpose of article I, section 24." *Id.* at 157. Jefferson County's ordinance describes its purpose as protecting shooting facility participants, spectators, neighboring properties, and the public. Jefferson County Code (JCC) 8.50.210 (appended to Respondent's brief). The county crafted it "to make the discharge of firearms safe." *Id.* It is designed to protect the environment and ensure compatibility with neighboring land uses. *Id.*

The sole provision of Jefferson County's ordinance that Fort Discovery challenges as infringing the right to bear arms is JCC 8.50.240(3)(n), which prohibits (with exceptions) shooting after dark at gun ranges. Jefferson County cites to a public safety interest protected by this provision. Public safety is a compelling state interest. Safety concerns "often override individual objections to regulations[.]" *Backlund v. Bd. of Comm'rs*, 106 Wn.2d 632, 642, 724 P.2d 981 (1986).

The second analytic step is to consider whether the legislation at issue "unduly frustrates the purposes of article I, section 24." *Jorgenson*,

179 Wn.2d at 157. The purpose of the constitutional provision is to protect a right to bear arms "in defense of himself, or the state." Const. art. I, § 24. Fort Discovery argues that article I, section 24 protects a right to "range training," Appellants' Opening Br. at 39-41, but this is beside the point. By its own terms, the constitution protects the "right to bear arms." Const. art. I, § 24. Any impairment of that right by a provision that merely precludes shooting at a gun range in the dark is minimal at most. The Jefferson County ordinance leaves shooters with the ready alternative of shooting during the daytime, including on weekends. JCC 8.50.240(3)(n). Moreover, since the safety measure of prohibiting shooting after dark is not defined in terms of certain hours of the evening (e.g., no shooting after 8:00 p.m.), it does not have the same effect throughout the year. Fort Discovery refers to it by the short hand term of a ban on "evening shooting," but during much of the year darkness falls well into the "evening."

The final step in the analysis is for the court to "balanc[e] the public benefit from the regulation against the degree to which it frustrates the purpose the constitutional provision." *Jorgenson*, 179 Wn.2d at 156 (alteration in original). As noted, the county enacted the ordinance to protect public interests that generally fall under the rubric of public safety. The parties debate the facts regarding that safety interest, and amicus can add nothing to that debate. But on the other side of the balance, Fort Discovery

offers only a minimal burden on the right to bear arms. The ordinance does not directly regulate the use of firearms in self-defense or defense of the state. It merely channels training or practice at a shooting range into daylight hours. During much of the year that restriction is slight indeed, with hours of daylight extending late into the evening. Fort Discovery has thus failed to overcome the ordinance's presumed validity given the balance of the public interest in safety relating to shooting guns in the dark against a minimal burden on any cognizable defensive interest.

Fort Discovery's challenge based on article I, section 24 accordingly fails.

C. The Second Amendment Does Not Protect a Right to Shoot After Dark at a Commercial Shooting Facility

1. Federal courts apply a two-step analysis to claims that legislation violates the Second Amendment

Fort Discovery's second constitutional claim is that Jefferson County's restriction on shooting at a gun range after dark violates the Second Amendment. That amendment provides:

> A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Const., amend. II.

The United States Supreme Court recently concluded that the Second Amendment "guarantee[s] the individual right to possess and carry

weapons in case of confrontation." *Heller*, 554 U.S. at 592. It later concluded that "the Second Amendment right is fully applicable to the States." *McDonald v. City of Chicago*, 561 U.S. 742, 749, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010).

"Like most rights, the right secured by the Second Amendment is not unlimited." *Heller*, 554 U.S. at 626. As the Court explained: "From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* Examples of clearly permissible regulations offered by the Court included prohibitions against carrying concealed weapons, prohibitions on the possession of firearms by felons and persons with mental illness, laws restricting firearms in sensitive places such as schools and government buildings, and regulation of the commercial sale of arms. *Id.* at 626-27. The Court particularly emphasized that Second Amendment rights must be construed in light of the Amendment's focus on self-defense, particularly in "the home, where the need for defense of self, family, and property is most acute." *Id.* at 628.

The Ninth Circuit has, "[l]ike the majority of our sister circuits . . . discerned from *Heller*'s approach a two-step Second Amendment inquiry." *Jackson v. City & Cty. of San Francisco*, 746 F.3d 953, 960

(9th Cir. 2014). This approach "(1) asks whether the challenged law burdens conduct protected by the Second Amendment and (2) if so, directs courts to apply an appropriate level of scrutiny." *Id.* (quoting *Chovan*, 735 F.3d at 1136-37). This Court properly follows this approach. *Kitsap Rifle*, 1 Wn. App. 2d at 414.

2. Jefferson County's ordinance burdens no conduct protected by the Second Amendment

The core right protected by the Second Amendment is the right to keep and bear arms for self-defense purposes. *Heller*, 554 U.S. at 628. The analytic first step considers the scope of Second Amendment coverage in light of the historical understanding of the scope of the right. *Jackson*, 746 F.3d at 960. Only if the law at issue prohibits an activity within the historical scope of the Second Amendment does the analysis proceed to the second step of considering the level of scrutiny to apply. *Id.*

Much of the debate between the parties concerns whether the Second Amendment protects a right to train at a shooting range as a right ancillary to self-defense. *See* Appellants' Opening Br. at 28; Resp't's Br. at 38-43. The State agrees with Jefferson County's arguments. The County's prohibition against shooting in the dark, while leaving open other options for training in the proper and safe use of firearms, does not implicate a right protected by the Second Amendment.

The principal case on which Fort Discovery relies for the proposition that the Second Amendment protects a right to train at a shooting range is a case in which a local government banned shooting ranges in their entirety. *Ezell v. City of Chicago*, 651 F.3d 684, 691 (7th Cir. 2011). That case has no application here, where Jefferson County's ordinance permits shooting facilities, but merely restricts their hours of operation. JCC 8.50.240(3)(n).

Ezell thus fails to address the application of the Second Amendment, if any, to a mere restriction on the time, place, and manner of shooting at a shooting facility. The Ninth Circuit upheld a local zoning ordinance that precluded locating a gun store at a location convenient to the plaintiffs. The court concluded, "gun buyers have no right to have a gun store in a particular location, at least as long as their access is not meaningfully constrained." *Teixeira v. Cty. of Alameda*, 873 F.3d 670, 680 (9th Cir. 2017); *see also Drummond v. Robinson Twp.*, 361 F. Supp. 3d 466, 484 (W.D. Pa. 2019) (only those laws that substantially burden the ability to keep and bear arms for self-defense fall within the Second Amendment).

Jefferson County's ordinance is not inconsistent with the policy view articulated by Fort Discovery that there is an interest in training in firearm use. Far from prohibiting shooting facilities, the ordinance authorizes them but subject to restrictions in the public interest. A

legislative body might reasonably agree with Fort Discovery that, given the Second Amendment right to keep and bear arms for self-defense, there is a concomitant interest in allowing gun owners to acquire the proficiency necessary to safely use a firearm. *See New York State Rifle & Pistol Ass'n, Inc. v. City of New York*, 883 F.3d 45, 58 (2d Cir. 2018) ("Possession of firearms without adequate training and skill does nothing to protect, and much to endanger, the gun owner, his or her family, and the general public."). The ordinance permits such training, except after dark. JCC 8.50.240(3)(n).

Because Jefferson County's ordinance does not burden a Second Amendment right, the analysis in this case may stop at the first step, and the Court should uphold the ordinance. *Jackson*, 746 F.3d at 960.

3. Even if Jefferson County's ordinance burdened conduct protected by the Second Amendment, the Court should uphold it because it satisfies intermediate scrutiny

This Court need not proceed to the second step of Second Amendment analysis because a local ordinance does not fall within Second Amendment protection when it does nothing more than restrict shooting ranges to operation during daylight hours. But even if the court proceeded to the second step, Jefferson County's ordinance need only survive intermediate scrutiny. The ordinance would readily pass that scrutiny.

At the second step, the court considers "(1) 'how close the law comes to the core of the Second Amendment right' and (2) 'the severity of the law's burden on that right.'" *Jackson*, 746 F.3d at 960-61 (quoting *Chovan*, 735 F.3d at 1138); *see also Mahoney v. Sessions*, 871 F.3d 873, 879 (9th Cir. 2017). "In analyzing the first prong of the second step, the extent to which the law burdens the core of the Second Amendment right, we rely on *Heller*'s holding that the Second Amendment has 'the core lawful purpose of self-defense'" particularly the right to defense of "hearth and home." *Jackson*, 746 F.3d at 961 (quoting *Heller*, 554 U.S. at 630). Under the second prong of the second step, the extent of any burden on the Second Amendment right, "laws which regulate only the '*manner* in which persons may exercise their Second Amendment rights' are less burdensome than those which bar firearm possession completely." *Jackson*, 746 F.3d at 961 (quoting *Chovan*, 735 F.3d at 1138). "Similarly, firearm regulations which leave open alternative channels for self-defense are less likely to place a severe burden on the Second Amendment right than those which do not." *Jackson*, 746 F.3d at 961.

The second step allows the court to determine the level of scrutiny to apply to the challenged law. "The result is a sliding scale." *Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016). "A law that imposes such a severe restriction on the core right of self-defense that it 'amounts to a

destruction of the [Second Amendment] right,' is unconstitutional under any level of scrutiny." *Jackson*, 746 F.3d at 961 (alteration in *Jackson*) (quoting *Heller*, 554 U.S. at 626). "Further down the scale, a 'law that implicates the core of the Second Amendment right and severely burdens that right warrants strict scrutiny.' " *Bauer v. Becerra*, 858 F.3d 1216, 1222 (9th Cir. 2017) (quoting *Silvester*, 843 F.3d at 821). But, "if a challenged law does not implicate a core Second Amendment right, or does not place a substantial burden on the Second Amendment right, we may apply intermediate scrutiny." *Jackson*, 746 F.3d at 961. Federal courts applying this sliding scale "have overwhelmingly applied intermediate scrutiny[.]" *Bauer*, 858 F.3d at 1222.

Jefferson County's ordinance serves an important interest in public safety by restricting shooting in the dark. Fort Discovery admits, as it must, the importance of the interest in public safety. Appellants' Opening Br. at 32. Ensuring that shooting facilities do not endanger the public or neighboring property is an important interest. *Kitsap Rifle*, 1 Wn. App. 2d at 417. Where the ordinance leaves gun owners with reasonable alternatives, its restriction on shooting in the dark satisfies intermediate scrutiny. *See id.*

Where, as here, the law being challenged affects Second Amendment rights only slightly if at all, it will certainly pass intermediate scrutiny. *See New York State Rifle & Pistol Ass'n*, 883 F.3d at 57 (New York

City restriction against transporting a firearm to a shooting range outside the city imposed "at most trivial limitations on the ability of law-abiding citizens to possess and use firearms for self-defense"). And Jefferson County's approach need bear only a "reasonable fit" to that interest; it need not be the least restrictive means available. *Bauer*, 858 F.3d at 1223; *Jackson*, 746 F.3d at 969. "Where a law poses a minimal burden on core Second Amendment rights in furtherance of an important government interest, the federal courts have universally upheld it." *Bauer*, 858 F.3d at 1226-27.

Following this established analysis, Jefferson County's prohibition against shooting in the dark at gun ranges would satisfy Second Amendment review even if a restriction on the time, place, and manner for operating a shooting range fell within Second Amendment protection. This Court should affirm the superior court's grant of summary judgment in favor of Jefferson County.

V. CONCLUSION

This Court should continue to adhere to well-established Washington law construing article I, section 24 of the Washington Constitution. Under that standard, legislation addressing the right to bear arms survives scrutiny if it is constitutionally reasonable. This Court should also resolve Fort Discovery's Second Amendment challenge to Jefferson

County's ordinance under established federal precedent. Under that precedent, a prohibition against shooting in the dark does not fall within the ambit of the Second Amendment. Even if it did, a regulation that merely affects the hours for operation of a shooting facility satisfies the applicable level of scrutiny.

RESPECTFULLY SUBMITTED this 22nd day of July 2019.

ROBERT W. FERGUSON
Attorney General

s/ Jeffrey T. Even
JEFFREY T. EVEN, WSBA 20367
Deputy Solicitor General

Office ID 91087
PO Box 40100
Olympia, WA 98504-0100
360-753-6200

CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that I served, via electronic mail, a true and correct copy of the foregoing upon the following:

Greg Overstreet greg@ssnwhq.com
Security Services Northwest, Inc.

Philip C. Hunsucker phunsucker@co.jefferson.wa.us
Chief Civil Deputy Prosecuting Attorney
Jefferson County

DATED this 22nd day of July 2019, in Seattle, Washington.

s/ Wendy Scharber
Wendy Scharber
Legal Assistant

SOLICITOR GENERAL OFFICE

July 22, 2019 - 11:33 AM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	53245-0
Appellate Court Case Title:	Fort Discovery Corp. et al., Appellants v. Jefferson County, Respondents
Superior Court Case Number:	18-2-01023-6

The following documents have been uploaded:

- 532450_Briefs_20190722112938D2539617_6549.pdf
  This File Contains:
  Briefs - Amicus Curiae
  The Original File Name was StateAmicusBrief072219.pdf
- 532450_Motion_20190722112938D2539617_7753.pdf
  This File Contains:
  Motion 1 - Other
  The Original File Name was StateAmicusMotion072219.pdf

A copy of the uploaded files will be sent to:

- greg@ssnwhq.com
- gregoverstreet67@gmail.com
- jeff.even@atg.wa.gov
- phunsucker@co.jefferson.wa.us
- phunsucker@hgnlaw.com
- wendyo@atg.wa.gov

Comments:

Motion To File Amicus Brief Of The State Of Washington Amicus Brief Of The State Of Washington

---

Sender Name: Kristin Jensen - Email: kristinj@atg.wa.gov
Filing on Behalf of: Jeffrey Todd Even - Email: jeffe@atg.wa.gov (Alternate Email: Jeff.Even@atg.wa.gov)

Address:
PO Box 40100
1125 Washington St SE
Olympia, WA, 98504-0100
Phone: (360) 753-4111

Note: The Filing Id is 20190722112938D2539617