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No. 90608-4

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

CITY OF SEATTLE,

Respondent,

v.

WAYNE EVANS,

Petitioner.

Filed  
Washington State Supreme Court

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Clerk

BRIEF OF AMICUS CURIAE  
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

On Appeal from King County Superior Court,  
The Honorable Patrick Oishi, Judge

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**A. IDENTITY AND INTEREST OF AMICUS CURIAE**

The Washington Association of Criminal Defense Lawyers (“WACDL”) is a nonprofit association of over 1100 attorneys practicing criminal defense law in Washington State. WACDL frequently submits amicus curiae briefs in this Court regarding significant constitutional questions, including the right to bear arms. *See, e.g., State v. Sieyes*, 168 Wn.2d 276, 225 P.3d 995 (2010).

**B. ISSUES OF CONCERN TO AMICUS CURIAE**

1. Whether Seattle’s fixed-blade knife ordinance, SMC 12A.14.080(B), is unconstitutionally vague?
2. Whether strict scrutiny should be applied under article I, section 24?

**C. STATEMENT OF THE CASE**

Amicus accepts the statement of facts set out in the *Amended Brief of the Appellant* and the *Brief of the Respondent* filed in the Court of Appeals.

**D. ARGUMENT**

**1. *Seattle's Fixed Blade Knife Ordinance is Unconstitutionally Vague Because it Bans the Possession of Common Items that Most People Frequently Possess***

**a. Introduction**

Seattle's ban on fixed blade knives, SMC 12A.14.080(B), is an extremely far-reaching ordinance that bans the possession of common household items in public places. The ordinance is so broad in its scope that it criminalizes someone carrying even a plastic picnic knife from a take-out restaurant to a park for lunch. The inclusion of such common and non-inherently harmful items in the category of "dangerous" knives renders SMC 12A.14.080(B) unconstitutionally vague, in violation of the Due Process Clauses of the Fourteenth Amendment of the United States Constitution and article I, section 3, of the Washington Constitution. The ordinance not only is clearly susceptible to arbitrary enforcement, but ordinary people can never be sure what is banned and what is not.

Almost twenty years ago, in a different era, a plurality of this Court rejected a due process challenge to SMC 12A.14.080(B). *City of Seattle v. Montana*, 129 Wn.2d 583, 596-99, 919 P.2d 1218 (1996) (Talmadge, J., joined by Dolliver and Smith, JJ., and Pekelis, J. Pro Tem). With all due

respect, the plurality's opinion actually compounded the problem and made enforcement of SMC 12A.14.080(B) even more arbitrary. This Court should take the opportunity in this case to overrule any precedential value of the plurality opinion in *Montana*.

**b. The Ordinance**

SMC 12A.14.080 states in part:

It is unlawful for a person knowingly to:

....

B. *Carry concealed or unconcealed* on his or her person *any dangerous knife* . . .

Emphasis added.

"Dangerous knife" is defined as:

*any fixed blade knife* and any other knife having a blade more than three and one half inches (3 1/2") in length.

SMC 12A.14.010(C) (emphasis added).

"Fixed blade knife" in turn is defined as:

*any knife, regardless of blade length, with a blade which is permanently open and does not fold, retract or slide into the handle of the knife*, and includes any dagger, sword, bayonet, bolo knife, hatchet, axe, straight edged razor, or razor blade not in a package, dispenser or shaving appliance.

SMC 12A.14.010(D) (emphasis added).

The statute does contain a limited number of exemptions:

The proscriptions of Section 12A.14.080(B) relating to dangerous knives shall not apply to:

A. A licensed hunter or licensed fisherman actively engaged in hunting and fishing activity including education and travel related thereto; or

B. Any person immediately engaged in an activity related to a lawful occupation which commonly requires the use of such knife, provided such knife is carried unconcealed; provided further that a dangerous knife carried openly in a sheath suspended from the waist of the person is not concealed within the meaning of this subsection;

C. Any person carrying such knife in a secure wrapper or in a tool box while traveling from the place of purchase, from or to a place of repair, or from or to such person's home or place of business, or in moving from one (1) place of abode or business to another, or while in such person's place of abode or fixed place of business.

SMC 12A.14.100.

The scope of this ordinance is startling. “[A]ny knife, regardless of blade length, with a blade which is permanently open and does not fold, retract or slide into the handle of the knife” includes common items that most people would never imagine would be considered to be “dangerous” -- butter knives, paring knives, bread knives, carving knives, fluting knives, steak knives, and chopping knives are all included. Even a plastic picnic knife is included as it fits within the category of “any knife” of whatever length, with a blade which is permanently open.

SMC 12A.14.080 bans the “carrying” of such an item anywhere in the City of Seattle, with limited exceptions. “Carrying” is not defined, but it is apparent that to “use” such an item, one must also “carry” it. Without addressing the subject of how someone can bring a plastic knife to a park to use it for lunch without carrying it, if one “uses” a knife to cut fruit, one must in some fashion be “carrying” it.

c. **The Ordinance Violates Due Process**

An individual’s right to due process of law under the Fourteenth Amendment and article I, section 3, includes the fundamental notions of fair notice and equal application of the laws. Born out of these considerations, the “void for vagueness” doctrine requires that a penal statute define the criminal offense: (1) with sufficient definiteness that ordinary people can understand what conduct is prohibited; and (2) in a manner that does not encourage arbitrary or discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357-58, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983); *Papachristou v. Jacksonville*, 405 U.S. 156, 162, 92 S. Ct. 839, 31 L.Ed.2d 110 (1972).

In *Kolender v. Lawson*, *supra*, the Supreme Court noted that the more important aspect of the void for vagueness doctrine was the requirement that

the legislature establish minimum guidelines to govern law enforcement personnel:

Where the legislature fails to provide such minimal guidelines, a criminal statute may permit a standardless sweep [that] allows policemen, prosecutors and jurors to peruse their own personal predilections.

*Kolender*, 461 U.S. at 358 (internal quotations omitted).

In *Montana*, four members of the Court rejected a vagueness challenge to SMC 12A.14.080. 129 Wn.2d at 595-97.<sup>1</sup> While this plurality opinion is not binding, *In re Isadore*, 151 Wn.2d 294, 302, 88 P.3d 390 (2004), this Court should take the opportunity to hold that the plurality opinion on this subject no longer has precedential value.

To begin with, the *Montana* plurality's vagueness analysis was based on the premise that "[u]nless First Amendment rights are implicated, the court considers only whether the statute is sufficiently definite as applied to the defendant's particular conduct." *Montana*, 129 Wn.2d at 597. However, subsequent to *Montana*, both this Court and the United States Supreme Court have found various ordinances to be facially vague outside of the First Amendment arena. See *City of Spokane v. Neff*, 152 Wn.2d 85, 89-91, 93 P.3d 158 (2004) (prostitution loitering); *City of Sumner v. Walsh*, 148 Wn.2d

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<sup>1</sup> The two other opinions in *Montana* did not address vagueness.

490, 499-02, 61 P.3d 1111 (2003) (plurality) (juvenile curfew); *City of Chicago v. Morales*, 527 U.S. 41, 55-64, 119 S.Ct. 1849, 144 L.Ed.2d 67 (1999) (plurality) (gang loitering).

In *Walsh*, Justice Alexander set out a series of situations where a person could hypothetically be convicted of “remaining” in public in violation of the curfew:

For example, one can reasonably ask whether the ordinance is violated by a juvenile who travels on foot during curfew hours, from any activity, and slows his or her pace, or stops, for perfectly legitimate reasons (tying one's shoelaces for example). One might ask the same question about a juvenile who stops to purchase gasoline while traveling to his or her home by automobile from an exempted activity such as a school football game or concert. Does such conduct constitute lingering or staying in violation of the ordinance? Sumner's ordinance simply does not provide sufficient guidance to answer these questions and many more and thereby does not prevent unconstitutionally arbitrary discretion by law enforcement.

*Sumner v. Walsh*, 148 Wn.2d at 499-500.<sup>2</sup> Subjecting SMC 12A.14.080 to the same type of scrutiny leads to the conclusion that the ordinance is simply vague and subject to arbitrary enforcement.

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<sup>2</sup> Although Justice Alexander's opinion garnered three votes, Justice Chambers and Justice Sanders agreed with its analysis: “I concur with the majority that the word ‘errand’ is vague and this ordinance is facially unconstitutional.” 148 Wn.2d at 503 (Chambers, J., concurring).

The four-member plurality in *Montana* concluded that the exceptions to the ordinance made it constitutional:

SMC 12A.14.080 is not a complete ban on the possession and carrying of knives in Seattle. First, the ordinance does not forbid *possession* of knives. Under the terms of the ordinance, possession of fixed blade knives at home or a place of business is permitted. Even use of a knife in a restaurant or park to peel an apple would not be proscribed. [Footnote omitted] *Carrying* a fixed blade knife is banned by the ordinance, unless a person is doing so for hunting or fishing purposes, for work, or to and from home or work. Moreover, the ordinance does not regulate common pocket or traditional Scout knives whose blades fold.

*Montana*, 129 Wn.2d at 595 (emphasis in original).<sup>3</sup> In a footnote, the plurality explained:

If a person were carrying a knife in a picnic basket from home, or a lunch box from work to a park where the apple was peeled, and the knife was placed in the basket or lunch box after its use for the return home or to work, SMC 12A.14.100C applies.

*Id.* at 595 n. 4.

With all due respect, this language makes a vague ordinance even more vague. SMC 12A.14.100(C) speaks of carrying a knife “in a secure wrapper or in a tool box.” Nothing in the ordinance speaks of “lunch boxes”

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<sup>3</sup> Although these statements appear in the section of the opinion addressing the “reasonableness” of the ordinance, the plurality explicitly referenced these exemptions when concluding the ordinance was not vague: “Given the explicit direction of the ordinance and its exemptions, any ordinary person would easily understand the type of knife, the manner of carrying, and the exceptions.” *Montana*, 129 Wn.2d at 597.

or “picnic baskets.” By making up an exception to the ordinance that is not contained in its plain language, the plurality adds to its confusion and allows for arbitrary enforcement. The police officer on the beat could hardly be expected to know what type of container qualifies - whether a purse, backpack or a paper bag from a take-out restaurant should be given the same protected status as a “lunch box” or “picnic basket.”

The term “secure wrapper” is also not clear. Notably, in both Mr. Evans’s case and in *Montana*, the small knives at issue were secured in sheaths. *See Montana*, 129 Wn.2d at 587 (“In a sheath, worn under his shirt, McCullough carried a six to nine inch long fish fillet knife”); *Petition for Review* at 2 (“The officer recovered a fixed blade ‘kitchen’ knife in a plastic sheath.”). There is no evidence that the sheaths involved were not “secure wrappers,” and thus one would think that, under the plain language of the ordinance, neither Mr. Evans nor Mr. McCullough should have been convicted. Yet, if they could be convicted, despite having knives in “secure wrappers,” no one could know if he or she was complying with the ordinance.

The four-member plurality stated: “Even use of a knife in a restaurant or park to peel an apple would not be proscribed.” *Montana*, 129 Wn.2d at 595. But the Court did not explain how one could “use” a knife without

“carrying” it even briefly. If “use” is somehow different than “carrying” this would simply encourage people to walk down the street “using” their knives, a result that makes no sense.

The vagueness and arbitrariness of SMC 12A.14.080(B) can be illustrated by the recent and tragic killing of a Native American carver, John Williams, in Seattle in 2010 who was merely walking down the street holding a small folding knife (possibly “using” it) and a piece of wood.<sup>4</sup> Such a tragedy may be unusual, but is a result of an ordinance that is vague and seemingly inclusive of conduct that most people would never think could be a crime.

People eating lunch in a downtown plaza or attending a “Zoo Tunes” concert at a city park will likely never be shot and killed because they “carried” a butter knife with them. Yet, it is unfortunately predictable that the people charged with violating SMC 12A.14.080(B) appear to be members of marginalized groups. Mr. Montana, for instance, was also charged with “drug loitering,” although he was acquitted of that charge. *Montana*, 129 Wn.2d at

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<sup>4</sup> See “Seattle police officer Ian Birk fatally shoots Native American woodcarver John T. Williams on a downtown Seattle sidewalk, on August 30, 2010,” [http://www.historylink.org/index.cfm?DisplayPage=output.cfm&file\\_id=10296](http://www.historylink.org/index.cfm?DisplayPage=output.cfm&file_id=10296) (captured 3/17/15); “Family: Man shot by police was deaf in left ear,” *Seattle Post-Intelligencer*, 8/31/10 (noting that the knife was less than 3 inches long, but was arguably a violation of the Seattle Municipal Code).

587. Mr. Evans was not detained at Woodlawn Park during a concert, but rather was stopped in Seattle’s Central District at 23rd and E. Union. *Petition for Review* at 1-2. See also *City of Seattle v. Hall*, 60 Wn. App. 645, 646-47, 806 P.2d 1246 (1991) (prosecution for fixed blade knife violation originating from Rainier Vista housing project).

SMC 12A.14.080(B) is unconstitutionally vague. Whether or not it violates the Second Amendment and article I, section 24, the ordinance violates due process protected by the Fourteenth Amendment and article I, section 3.

**2. *Strict Scrutiny Should Be Applied Under Article I, section 24***

This Court should take the opportunity to disavow *Montana* not only as to the vagueness issue, but also as to its application of a “reasonable regulation” standard for evaluating laws implicating the right to bear arms under article I, section 24 of the Washington Constitution. The right to bear arms for self-defense is a fundamental right explicitly guaranteed by our state constitution. Thus, strict scrutiny, not rational basis review, should apply. See *Supplemental Brief of Petitioner* at 10-15.

In *State v. Jorgenson*, 179 Wn.2d 145, 158-63, 312 P.3d 960 (2013), a bare majority of the Court held that it would apply “intermediate scrutiny”

to Second Amendment challenges. With regard to challenges brought under article I, section 24, applying a *Gunwall*<sup>5</sup> analysis, the Court followed prior cases holding “the firearm rights guaranteed by the Washington Constitution are subject to reasonable regulation pursuant to the State’s police power.” *Jorgenson*, 179 Wn.2d at 155. By allowing for a “balancing” of public benefits against individual rights, the *Jorgenson* Court suggested that article I, section 24 is less protective of individual rights than the Second Amendment. But “Supreme Court application of the United States Constitution establishes a floor below which state courts cannot go to protect individual rights.” *State v. Sieyes*, 168 Wn.2d 276, 292, 225 P.3d 995 (2010).

To be sure, in the past, this Court has adopted the “reasonable regulation” test under article I, section 24, but this Court has referred to this language simply as “rhetoric.” *Sieyes*, 168 Wn.2 at 295 n.20. This “rhetoric” does not have a long pedigree, and is traceable only back to 1945. *See State v. Schelin*, 147 Wn.2d 562, 590-92, 55 P.3d 632 (2002) (Sanders, J., dissenting).

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<sup>5</sup> Under *State v. Gunwall*, 106 Wn.2d 54, 61-62, 720 P.2d 808 (1986), this Court reviews the following non-exclusive criteria to determine whether a state constitutional provision supplies broader protections than its federal counterpart: (1) the text of the state constitutional provision, (2) the differences in the texts of the parallel state and federal provisions, (3) state constitutional history, (4) pre-existing state law, (5) structural differences between the state and federal constitutions, and (6) matters of particular state interest and local concern.

WACDL asks this Court to reconsider and reject the “rhetoric” of “reasonable regulation,” and instead adopt “strict scrutiny” as the standard of review under article I, section 24. *See State v. Jorgenson*, 179 Wn.2d at 164-67 (Johnson, J.M. J. dissenting); *State v. Sieyes*, 168 Wn.2d at 303-04 & n. 32 (Johnson, J.M.J., dissenting). A *Gunwall* analysis demonstrates that article I, section 24 is more protective than the Second Amendment, and that strict scrutiny should apply to laws that burden the state constitutional provision.

a. **Textual Language and Differences**

Interpreting a state constitutional provision as more protective than its federal counterpart “is particularly appropriate when the language of the state provision differs from the federal, and the legislative history of the state constitution reveals that this difference was intended by the framers.” *State v. Simpson*, 95 Wn.2d 170, 177, 622 P.2d 1199 (1980). This is the case with article I, section 24.

Article I, section 24 provides:

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.

The Second 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.

The differences in text demonstrate that “Section 24 clearly provides broader protection for individuals than the Second Amendment.” Robert F. Utter & Hugh D. Spitzer, *The Washington State Constitution* 52 (2d ed. 2013). Indeed, this Court recognized as much in *State v. Rupe*, 101 Wn.2d 664, 706, 683 P.2d 571 (1984) (article I, section 24 “is facially broader than the Second Amendment, which restricts its reference to ‘a well regulated militia.’”).

Article I, section 24 also uses the term “impaired” as opposed to the Second Amendment’s use of the word “infringed.” “Impair” means to “to make or cause to become worse; diminish in ability, value, excellence, etc.; weaken or damage”, while “infringe” means an “to commit a breach or infraction of; violate or transgress,” which contemplates a more active violation. “Infringe” comes from the Latin *infringere*, which means to break or weaken, while “impair” comes from the Middle English *empairen*, which means “to make worse.” *The Random House Dictionary of the English Language, Second Edition* (Unabridged), 1987. The use of the word “impair”

rather than “infringe” suggests that the right to bear arms under article I, section 24, is stronger than the Second Amendment, with the writers of the Washington provision desiring that there not be even impairments on that right.

Finally, it is important to note, as this Court did in *Sieyes*, that article I, section 24 contains within it only two textual exceptions:

First, the right exists only in the context of an individual's “defense of himself, or the state.” CONST. art. I, § 24. Second, the right does not authorize “individuals or corporations to organize, maintain or employ an armed body of men.” *Id.* . . . We are not at liberty to disregard this text: “The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.” CONST. art. I, § 29. Moreover, the mandatory provision in article I, section 24 is strengthened by its two textual exceptions to the otherwise textually absolute right to keep and bear arms.

*Sieyes*, 168 Wn.2d at 293.

Thus, a textual comparison of the state and federal provisions regarding arms supports a conclusion that article I, section 24 is more protective of individual rights and accordingly requires a higher standard of review than the Second Amendment.

**b. Constitutional History**

Because the language of article I, section 24 was modeled on Oregon's parallel provision, this Court has looked to the Oregon Constitution for

guidance as to how to understand Washington's right to bear arms. *Rupe*, 101 Wn.2d at 706-07. The Oregon Constitutional provision protecting the right to bear arms states:

The people have the right to bear arms for defence of themselves, and the State, but the Military shall be kept in strict subordination to the civil power.

Oregon Const. art. I, §27. The Oregon Supreme Court thoroughly analyzed this provision, and traced its historic lineage in *State v. Kessler*, 289 Or. 359, 614 P.2d 94, 95-100 (1980). The Oregon court noted that art. I, § 27, shared a common historical background with other state constitutional arms provisions drafted in the Revolutionary and post-Revolutionary War era, and had the following justifications: (a) a preference for a citizen militia over a standing army, (b) a deterrence of governmental oppression, and (c) the right to personal defense. 614 P.2d at 97.

It is significant that our founders followed Oregon's lead, rather than modeling article I, section 24 after other states' provisions which explicitly conferred authority upon the legislature to impose reasonable regulations.<sup>6</sup>

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<sup>6</sup> See, e.g., Ill. Const. art. I, § 22 ("Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed."); Ga. Const. art. I, § 1, para. VIII ("The right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have the power to prescribe the manner in which arms may be borne."); Tex. Const. art. I, § 23 ("Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by  
(continued...)

Not only did our delegates to the Constitutional Convention reject the above options, they also declined to adopt a proposed proviso against carrying concealed weapons. Utter & Spitzer, *supra*, at 52. This decision is consistent with the long history of people in this country using knives for protection, going back to Colonial times. *See Amended Brief of Appellant* at 5-10. This factor therefore also supports a higher form of scrutiny under article I, section 24.

**c. Pre-Existing State Law**

In *Jorgenson*, the majority's survey of preexisting state law went back only to 1939. 179 Wn.2d at 154 (citing *State v. Tully*, 198 Wash. 605, 606-07, 89 P.2d 517 (1939) (upholding concealed weapons license requirement and law prohibiting those convicted of a violent crime from possessing a pistol). The Court never analyzed the common law as it existed at the time of the adoption of the Constitution. Yet, an analysis of the common law is essential to a state constitutional analysis. *See State v. Ringer*, 100 Wn.2d 686, 690-700, 674 P.2d 1240 (1983).

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<sup>6</sup> (...continued)  
law, to regulate the wearing of arms, with a view to prevent crime."); Utah Const. art. I, § 6 ("The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the legislature from defining the lawful use of arms.").

In *Ringer*, this Court acknowledged that its case law of the previous 50 years had interpreted article I, section 7 as a relatively weak protector of privacy, subject to a broad exception for warrantless searches incident to arrest. *Id.* at 698-99. The Court took the opportunity to make a course correction, stating, “We choose now to return to the protections of our own constitution and to interpret them consistent with their common law beginnings.” *Id.* at 699; *accord State v. Snapp*, 174 Wn. 2d 177, 194, 275 P.3d 289 (2012) (reaffirming *Ringer* and approving its “return[] to the common law origins” of article I, section 7).

Just as article I, section 7 jurisprudence went astray by following cases interpreting the less-protective Fourth Amendment, article I, section 24 cases inappropriately followed case law construing the Second Amendment. *See State v. Krantz*, 24 Wn.2d 350, 353, 164 P.2d 453 (1945) (following *United States v. Miller*, 307 U.S. 174, 59 S.Ct. 816, 83 L.Ed. 1206 (1939)). Thus, as with article I, section 7, a return to the common law origins of article I, section 24 is in order.

At common law, self-defense was “recognized as a privilege in both civil and criminal law.” *Kessler*, 614 P.2d at 98. In the American West in particular, the state constitutional right to bear arms in self-defense “reflects

the exigencies of the rural American experience.” *Id.* Furthermore, at the time the relevant state constitutional provisions were adopted, the term “arms” referred to both guns and knives, as well as other commonly owned items. *Id.* It was against this backdrop that the delegates to the Constitutional Convention drafted article I, section 24 to guarantee an individual right to bear arms in self-defense. This Court should honor the origins of article I, section 24 by applying strict scrutiny to laws impairing the right to bear arms in self-defense.

d. **Structural Differences and Matters of State Concern**

The fifth *Gunwall* factor, differences in structure between the state and federal constitutions, always supports an independent constitutional analysis because the federal constitution is a grant of power from the states, while the state constitution represents a limitation of the State's power. *State v. Young*, 123 Wn.2d 173, 180, 867 P.2d 593 (1994).

As to the sixth factor, “federalism and comity place the state courts in the role of the ‘primary protectors of the rights of criminal defendants.’” *Jorgenson*, 179 Wn.2d at 155 (quoting *Cabana v. Bullock*, 474 U.S. 376, 391, 106 S.Ct. 689, 88 L.Ed.2d 704 (1986)).

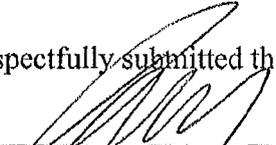
e. Conclusion

In sum, an analysis of the *Gunwall* factors demonstrates that article I, section 24 is more protective of the individual right to bear arms in self-defense than the Second Amendment. This Court should hold that a law impairing this fundamental state constitutional right is subject to strict scrutiny.

E. CONCLUSION

As explained above and in Petitioner's briefs, the ordinance at issue here is unconstitutional in several respects. This Court should hold that SMC 12A.14.080(B) is unconstitutional and reverse the judgment of the Court of Appeals.

Respectfully submitted this 19th day of March 2015.

  
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NEIL M. FOX, WSBA No. 15277

*electronic approval*  
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LILA J. SILVERSTEIN, WSBA No. 38394  
Attorneys for Amicus Curiae WACDL

**STATUTORY APPENDIX**

## STATUTORY APPENDIX

Ga. Const. art. I, § 1, para. VIII provides:

The right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have power to prescribe the manner in which arms may be borne.

Ill. Const. art. I, § 22 provides:

Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.

Or. Const. art. I, § 27 provides:

The people shall have the right to bear arms for the defence of themselves, and the State, but the Military shall be kept in strict subordination to the civil power[.]

Seattle Municipal Code 12A.14.010 provides:

The following definitions apply in this chapter:

A. "Air gun" means any air pistol or air rifle designed to propel a BB, pellet or other projectile by the discharge of compressed air, carbon dioxide or other gas.

B. "Chako stick" means a device designed primarily as a weapon, consisting of two or more lengths of wood, metal, plastic or similar substance connected by wire, rope, chain or other means so as to allow free movement of a portion of the device while held in the hand and capable of being rotated in such a manner as to inflict injury upon a person by striking.

C. "Dangerous knife" means any fixed-blade knife and any other knife having a blade more than three and one-half inches (3½") in length.

D. "Fixed-blade knife" means any knife, regardless of blade length, with a blade which is permanently open and does not fold, retract or slide into the handle of the knife, and includes any dagger, sword, bayonet, bolo knife, hatchet, axe, straight-edged razor, or razor blade not in a package, dispenser or shaving appliance.

E. "Firearm" means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

F. "Metal knuckles" means any device or instrument made wholly or partially of metal that is worn for purposes of offense or defense in or on the hand and that either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the person receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it or consist of projections or studs which would contact the person receiving a blow.

G. "Personal protection spray device" means a commercially available dispensing device designed and intended for use in self-defense and containing a nonlethal sternutator or lacrimator agent, including but not limited to:

1. Tear gas, the active ingredient of which is either chloracetophenone (CN) or O-chlorobenzylidene malonitrile (CS); or 2. Other agent commonly known as mace, pepper mace, or pepper gas.

H. "Switchblade knife" means any knife having a blade that opens automatically by hand pressure applied to a button, spring mechanism, or other device, or a blade that

opens, falls or is ejected into position by force of gravity or by an outward, downward, or centrifugal thrust or movement.

I. "Throwing star" means a multi-pointed metal object designed to embed upon impact from any aspect.

Seattle Municipal Code 12A.14.080 provides:

It is unlawful for a person knowingly to:

A. Sell, manufacture, purchase, possess or carry any blackjack, sand-club, metal knuckles, switchblade knife, chako stick, or throwing star; or

B. Carry concealed or unconcealed on his or her person any dangerous knife, or carry concealed on his or her person any deadly weapon other than a firearm; or

C. Possess a firearm in any stadium or convention center operated by a city, county or other municipality, except that such restriction shall not apply to:

1. Any pistol in the possession of a person licensed under RCW 9.41.070 or exempt from the licensing requirement by RCW 9.41.060, or

2. Any showing, demonstration or lecture involving the exhibition of firearms.

D. Sell or give away to any person under eighteen (18) years of age any dangerous knife or deadly weapon other than a firearm, or for any person under eighteen (18) years of age to purchase any dangerous knife or deadly weapon other than a firearm, or for any person under eighteen (18) years of age to possess any dangerous knife or deadly weapon other than a firearm except when under the direct supervision of an adult.

E. Use any contrivance or device for suppressing the noise of any firearm unless the suppressor is legally registered and possessed in accordance with federal law.

Seattle Municipal Code 12A.14.100 provides:

The proscriptions of Section 12A.14.080(B) relating to dangerous knives shall not apply to:

A. A licensed hunter or licensed fisherman actively engaged in hunting and fishing activity including education and travel related thereto; or

B. Any person immediately engaged in an activity related to a lawful occupation which commonly requires the use of such knife, provided such knife is carried unconcealed; provided further that a dangerous knife carried openly in a sheath suspended from the waist of the person is not concealed within the meaning of this subsection;

C. Any person carrying such knife in a secure wrapper or in a tool box while traveling from the place of purchase, from or to a place of repair, or from or to such person's home or place of business, or in moving from one (1) place of abode or business to another, or while in such person's place of abode or fixed place of business.

Tex. Const. art. I, § 23 provides:

Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

U.S. Const. amend. II 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. 14, § 1 provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Utah Const. art. I, § 6 provides:

The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the state, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the Legislature from defining the lawful use of arms.

Wash. Const. art. I, § 24 provides:

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.

Wash. Const. art. I, § 29 provides:

The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SEATTLE, Respondent, v. WAYNE EVANS, Petitioner.	}	No. 90608-4  DECLARATION OF SERVICE
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I, Alex Fast, certify and declare that on March 19, 2015, I served the attached BRIEF OF AMICUS CURIAE on the attorneys for the Petitioner, Casey Grannis, and the Respondent, Peter Holmes and Richard Greene, by depositing copies into the United States mail, with proper first class postage attached, in envelopes addressed to:

Casey Grannis  
 Nielsen, Broman & Koch, PLLC  
 1908 E. Madison  
 Seattle, WA, 98122

Peter Holmes  
 Seattle City Attorney  
 Attn: Richard Greene  
 Seattle Law Department, Criminal Division  
 P.O. Box 94667  
 Seattle, WA, 98124-4667

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

3-19-2015-SEATTLE, WA  
DATE AND PLACE

Alex Fast  
ALEX FAST

## OFFICE RECEPTIONIST, CLERK

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**To:** Alexandra Fast; grannisc@nwattorney.net; Lila Silverstein; Richard.greene@seattle.gov; Neil Fox  
**Subject:** RE: Evans, Wayne - 90608-4

Received 3-18-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Alexandra Fast [mailto:ahfast2@gmail.com]  
**Sent:** Thursday, March 19, 2015 11:04 AM  
**To:** OFFICE RECEPTIONIST, CLERK; grannisc@nwattorney.net; Lila Silverstein; Richard.greene@seattle.gov; Neil Fox  
**Subject:** Evans, Wayne - 90608-4

Please accept for filing the attached "Motion to File Brief of Amicus Curiae" and " Brief of Curiae Washington Association of Criminal Defense Lawyers" in regards to Mr. Wayne Evans case No. 90608-4. A certificate of service is attached to the both pleadings.

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