

No. 93723-1

FILED  
July 15, 2016Court of Appeals  
Division I  
State of Washington

No. 74534-4-I

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

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PHILIP WATSON, an Individual, et al.,

Appellants,

v.

CITY OF SEATTLE, a Municipality, et al.,

Respondents.

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Appeal from the Superior Court of Washington  
for King County  
No. 15-2-20613-3 SEA

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**APPELLANTS' RESPONSE TO  
THE STATE OF WASHINGTON'S  
AMICUS CURIAE BRIEF**

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The amicus brief filed by the Attorney General on behalf of the State of Washington is wholly duplicative of the brief filed by Seattle and adds nothing to this case.<sup>1</sup> Accordingly, Appellants rely on their prior briefing in response and will not burden the Court with a rehash of those arguments.

However, it is worth noting the irrationality of the Attorney General's stance on Seattle's taxing power. The Attorney General adopts

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<sup>1</sup> Indeed, the brief hues so closely to Seattle's briefing that it doubles down on the City's errors, particularly with regard to the preemption of taxes by RCW 9.41.290.

The amicus brief repeats the City's categorical stance that taxes could never be preempted by RCW 9.41.290 because the statute does not contain the word "taxes", but this conclusion is entirely backwards. RCW 9.41.290 expressly preempts the field except for those ordinances specifically authorized by RCW 9.41.300. Taxes are never mentioned in 9.41.300—the only source of statutory authority to enact laws relating to firearms and ammunition—and are therefore not authorized. *See* Laws of 1994, 1st Sp. Sess., ch. 7, §§ 428-29 (adding "as in RCW 9.41.300" in order to clarify the interplay of the statutes, strictly delimit the types of ordinances that were not preempted, and abrogate the interpretation in *City of Seattle v. Ballsmider*, 71 Wn. App. 159, 162-63, 856 P.2d 1113 (1993) that any State statute's general authorization to act could defeat field preemption). None of the statutes or cases cited by the amicus or the City maintain this preemption structure and are therefore irrelevant.

Moreover, the amicus brief ignores one of the issues that was expressly reserved below in the trial court: preemption of taxes that have the effect of making it economically impractical or impossible to continue operating as a firearm/ammunition retailer. Seattle cannot, through purportedly innocuous means, effectively prohibit or oppressively burden the sale of firearms and ammunition. *See, e.g., Teixeira v. County of Alameda*, --- F.3d ---, 2016 WL 2849245, at \*11-13 (9th Cir. May 16, 2016) (holding that a zoning regulation required heightened scrutiny if it effectively banned gun stores by restricting them to locations that did not exist). Appellants continue to urge the Court to find that the face of RCW 9.41.290 preempts any legislation specifically imposed on firearms and ammunition, be it regulation or taxes. But, at the very least, the Court must acknowledge that the issue of *de facto* regulation through oppressive taxes remains to be litigated should a remand be necessary.

Seattle's argument that RCW 35.21.710 limits a municipality's taxing authority only if it chooses to impose a tax on "gross receipts" rather than on one of any other number of infinite ways to measure a tax. The Attorney General, like Seattle, makes no effort to square this assumption with either prior case law—*Western Telepage, Inc. v. City of Tacoma*, 140 Wn.2d 599, 613, 998 P.2d 884 (2000) (holding that RCW 35.21.710 was "designed to severely restrict the tax rates local governments could assess")—or its practical ramifications. The position taken by Seattle, and now the Attorney General, renders the restrictions in RCW 35.21.710 utterly meaningless and leaves retailers of all tangible personal property subject to unlimited municipal taxation. Neither Seattle nor the Attorney General disagree with this conclusion; instead they appear to accept unlimited taxing power as a necessary consequence of the attempt to find a means (any means) to place a burden on the sale of firearms and ammunition.

It may be politically expedient to take a strong stance on gun laws in the current climate, no matter how irrational and destabilizing that stance may be. But if hard cases make bad law, the amicus brief's myopic arguments seek to prove that adage by undermining any semblance of the State's limitation on municipal taxes on retail sales. It is firearms and ammunition today, but the same expansive power will apply to any and every conceivable item or activity related to retail sales if the Court ignores RCW 35.21.710. Thus, Appellants ask the Court to reject the amicus brief's duplicative and overly-expansive arguments.

DATED this 15th day of July, 2016.

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**CERTIFICATE OF SERVICE**

The undersigned hereby declares as follows:

1. I am employed at Corr Cronin Michelson Baumgardner Fogg & Moore LLP, attorneys of record for Appellants herein.

2. On this date, I caused a true and correct copy of the foregoing document to be served via Email on the following parties:

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

DATED: July 15, 2016, at Seattle, Washington.

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