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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' ANSWER TO BRIEF OF AMICI CURIAE CITY
OF SEATTLE, CITY OF WALLA WALLA, CITY OF OLYMPIA &
CITY OF KIRKLAND IN SUPPORT OF THE PETITION FOR
REVIEW**

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I. INTRODUCTION

This case concerns the conflict between a city ordinance and state laws regulating firearms. The question as to whether field preemption of firearms regulations under RCW 9.41.290 preempts the Ordinance passed by the City of Edmonds, or whether state law enacted by Initiative Measure No. 1639 (“I-1639”), codified at RCW 9.41.360, preempts the Ordinance, has been exhaustively briefed at the trial court and on appeal. The cities of Seattle (“Seattle”), Walla Walla (“Walla Walla”), Olympia (“Olympia”), and Kirkland (“Kirkland”) (collectively “amici curiae”), have submitted an amicus brief and allege that amici curiae “have an interest in furthering Washington cities’ ability to respond to pressing local health challenges through innovative and targeted local legislation” and to argue that ECC § 5.26.020 (the “Storage Provision”) does not conflict with state law and is within the scope of the police powers granted to municipalities in Washington (hereinafter “Amicus Brief”). The Amicus Brief does not raise an actual issue of substantial public interest which could make this dispute ripe for review, but rather seeks an inappropriate advisory opinion in an area of well-settled law.

While appellants have raised three issues on appeal, amici curiae seek only to address one purported issue—the conflict of a City of Edmonds Ordinance (the “Ordinance”) regulating the storage and access of firearms with the statewide field preemption of firearms regulation, RCW 9.41.290. Amici curiae argue that this Court should accept review of this matter

because RCW 9.41.290 is ambiguous, and that review is necessary to address whether Washington’s “strong home rule provision,” and “the broad police powers” granted to municipalities, should be read to avoid conflict between the Ordinance and the state statute.

Amici curiae are wrong.

II. ARGUMENT

RAP 13.4 provides four exclusive reasons why this Court may accept a petition for review:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). Amici curiae make no argument that review is appropriate under any of the first three prongs. Amici curiae argue solely “this case concerns ‘an issue of substantial public interest’ warranting review by this Court.” Amicus Brief at 2.

Amici curiae present two issues they claim satisfy the “substantial public interest” standard, and which they argue would be addressed by this Court’s review. First, the alleged importance of recognizing Washington’s “home rule” provision, which amici curiae argue grants municipalities broad police powers with regard to local matters. *Id.* at 3–5. Second, the necessity of clarifying how municipalities can exercise those powers in the face of preemption statutes which may be ambiguous. *Id.* at 5–10. Both of

these arguments fail.

1. *Amici curiae Seek an Improperly Broad Scope of Review*

As an initial matter, neither of these issues is properly before this Court. The issues on review are narrow and well defined—the justiciability of this dispute pursuant to Washington’s Uniform Declaratory Judgment Act, and the preemptive effect of RCW 9.41.290 on the Ordinance. Amici curiae seek not just a ruling as to whether the Ordinance conflicts with RCW 9.41.290, however, but also an advisory ruling on the “scope of preemption” “across multiple areas of local concern.” Amicus Brief at 9.

This Court issues advisory opinions only in the rare occasions “where the interest of the public in the resolution of an issue is overwhelming and where the issue has been adequately briefed and argued.” *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 416, 27 P.3d 1149, 1155–56 (2001) (internal quotation marks and citation omitted); *see also Walker v. Munro*, 124 Wn.2d 402, 418, 879 P.2d 920, 929 (1994) (discussing the rare instances where the Court may issue an advisory opinion, and explaining “this court is not authorized under the declaratory judgments act to render advisory opinions or pronouncements upon abstract or speculative questions.”). Amici curiae have not come close to establishing these requirements. Review should be denied.

2. *Amici curiae Fail to Demonstrate Review is Appropriate Under RAP 13.4(b)(4)*

As is the case with Appellant’s contentions, this case is inappropriate for review under “the issue of substantial public interest”

provision of RAP 13.4(b)(4) because amici curiae fail to provide any reason why the Court of Appeals was incorrect when it rejected all of Petitioners' arguments with regard to the scope of preemption of RCW 9.41.290.

While amici curiae attempt to circumvent the plain language in RCW 9.41.290 that “[t]he state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state,” their arguments fail. Amici curiae rely on easily distinguishable cases discussing separate issues like: taxation, *Watson v. City of Seattle*, 189 Wn.2d 149, 401 P.3d 1 (2017); business permitting, *Kitsap County v. Kitsap Rifle & Revolver Club*, 1 Wn. App. 2d 393, 405 P.3d 1026 (2017); internal employment rules, *Cherry v. Mun. of Metro. Seattle*, 116 Wn.2d 794, 808 P.2d 746 (1991); and convention center permitting, *Pac. Nw. Shooting Park Ass’n v. City of Sequim*, 158 Wn.2d 342, 357, 144 P.3d 276, 283 (2006). None of these cases address the issue here—whether a municipality can enact an ordinance that regulates firearms. Amici curiae do not dispute that the Ordinance is a regulation, or that the regulation regulates firearms—they merely seek to circumvent or narrow the reach of preemption over “the entire field.”

This analysis does not change by virtue of Washington’s “home rule” provision. Home rule cities are still subject to preemption and legislative enactments. *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 own charter.”). “When the state's interest

is paramount or joint with the city's interest, the city may not enact ordinances affecting the interest unless it has delegated authority.” *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 560, 29 P.3d 709, 711 (2001) (citing *Massie v. Brown*, 84 Wash.2d 490, 492, 527 P.2d 476 (1974)). RCW 9.41.290 is the exact type of legislative enactment that precludes the City of Edmonds, and amici curiae, from enacting these types of ordinances regulating firearms, and the existence of the home rule provision has no impact on this steadfast rule.

Amici curiae’s argument that without additional guidance, municipalities will be unsure of the scope of their powers, is similarly unsupported. The preemption language in RCW 9.41.290 speaks for itself—municipalities may not legislate within the field of firearms regulation. While amici curiae, as did Petitioners, attempt to argue the subsequent categories provided in the statute narrow the scope of preemption, and thus a municipality could be unsure about how it may regulate, this ignores the plain language of the statute. Moreover, it ignores the fact that the City of Edmonds passed the Ordinance while knowing full well it likely violated RCW 9.41.290. CP 120–122.

RCW 9.41.290 is not ambiguous. On its face, it occupies the entire field of firearms regulation. Amici curiae’s efforts to manufacture an issue of public importance by invoking the importance of municipalities’ exercise of police power should be seen for what it is—a thinly veiled attempt to create an issue where none exists. Review should be denied.

3. *Amicus City of Seattle Seeks Review of a Matter it has Already Declined to Appeal*

Amici curiae are not strangers to these arguments. While not appearing as counsel for the amici curiae here, the same national interest group providing legal counsel to City of Edmonds, Everytown for Gun Safety (“Everytown”), served as counsel for the City of Seattle in a similar suit regarding “an identical ordinance passed in Seattle.” Petition for Review at 8. There, a recent decision by the Court of Appeals reversed a decision dismissing the suit, addressing a number of the same issues raised by Petitioners here. *Alim v. City of Seattle*, 14 Wn. App. 2d 838, 474 P.3d 589 (2020); *see also* Petition for Review at 6–10 (discussing the *Alim* decision in detail and asking this Court to consider whether the *Alim* decision conflicts with this Court’s decision in *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn.2d 811, 514 P.2d 137 (1973)). Everytown served as Seattle’s counsel both in the trial and appellate court. Rather than appeal that decision, Seattle—with local counsel undersigned but now without Everytown’s attorneys—seems to be seeking a second bite at the apple, filing this Amicus Brief. Seattle’s attempt at an end around should be denied.

DATED this 14th day of June, 2021.

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CERTIFICATE OF SERVICE

The undersigned certifies as follows:

1. I am employed at Corr Cronin LLP, attorneys for Respondents herein.
2. On June 14, 2021, I caused a true and correct copy of the foregoing document to be served on the following parties in the manner indicated below:

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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: June 14, 2021, at Seattle, Washington.

s/ Monica Dawson
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CORR CRONIN LLP

June 14, 2021 - 4:15 PM

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