

No. 93723-1

No. 74534-4-I

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

PHILIP WATSON, an Individual, et al.,

Appellants,

v.

CITY OF SEATTLE, a Municipality, et al.,

Respondents.

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

**RESPONDENTS' RESPONSE TO AMICI CURIAE BRIEF OF
CERTAIN WASHINGTON LEGISLATORS**

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INTRODUCTION

Defendants and respondents City of Seattle, Ed Murray, Seattle Department of Finance and Administrative Services, and Glen Lee (“Seattle” or the “City”) respectfully submit this response to the amici curiae brief of Certain Washington Legislators. Seattle maintains its objection to Certain Washington Legislators’ motion to file an amicus brief on the grounds that the brief is untimely and without basis under the Rules of Appellate Procedure. In addition, the brief presents no reason to disturb the trial court’s ruling that Seattle Ordinance 124833 (the “Ordinance”) is constitutional and a lawful exercise of the City’s taxing authority.

ARGUMENT

I. THE PERSONAL OPINIONS OF CERTAIN WASHINGTON LEGISLATORS HAVE NO BEARING ON THIS CASE

Certain Washington Legislators claim that as state legislators they are “uniquely situated to address state preemption and other matters at issue in this case,” and they offer their personal opinions regarding the meaning of RCW 9.41.290 – the Washington State Firearms Preemption Statute. (Certain Washington Legislators Motion to File Amicus Br. at 2.) The personal opinions of individual legislators as to the meaning of a statute, however, are irrelevant. It is well settled that the “interpretation of a statute by an individual legislator does not show legislative intent.” *State*

ex rel. Citizens against Tolls (CAT) v. Murphy, 151 Wn.2d 226, 238, 88 P.3d 375, 381 (2004). As the supreme court declared in *Woodson v. State*, 95 Wn.2d 257, 264, 623 P.2d 683, 687 (1980), “we are not concerned with the intent of some independent or isolated legislators” when interpreting a statute.¹

The lack of relevance of Certain Washington Legislators’ personal opinions is underscored by the fact that none of the twenty house members named as amici was in office in 1983 when the Legislature enacted RCW 9.41.290, or in 1985 or 1994 when the Legislature amended the statute.² And only one of the twenty state senators named as amici was in office in 1983 or 1985, and only four were in office when the Legislature last amended RCW 9.41.290 in 1994.³

¹ See also *Int’l Franchise Ass’n, Inc. v. City of Seattle*, 803 F.3d 389, 407 n.10 (9th Cir. 2015) (rejecting argument that Seattle’s minimum wage increase was motivated by animus, where statements of members of a committee established by the mayor were “of little value in determining the motivations of the City Council and Mayor”).

² See *Members of the Washington State Legislature 1889-2014* (2014) available at: <http://leg.wa.gov/LIC/Documents/Historical/MembersOfLeg.pdf> and legislators’ bios accessible through the State Legislature’s home page at <http://leg.wa.gov/>.

³ *Id.* The personal opinions of individual legislators contrast with the opinion of the Attorney General, who in his or her status as attorney for the State of Washington, is specifically authorized to “[a]pppear for and represent the state before the supreme court or the court of appeals in all

The personal opinions of Certain Washington Legislators concerning the meaning of RCW 9.41.290 should not be considered in determining the constitutionality of the Ordinance.

II. RCW 9.41.290 PREEMPTS REGULATION OF GUNS AND AMMUNITION, NOT TAXATION

Not only are the personal interpretations Certain Washington Legislators offer as to the meaning of RCW 9.41.290 irrelevant, they are contrary to the plain language of the unambiguous statute and principles of statutory interpretation. RCW 9.41.290 preempts *regulation* of guns and ammunition. It does not preempt taxation.

Where, as here, the “statutory language is plain and unambiguous,” an ordinance’s meaning “must be derived from the wording of the statute itself.” *Bowie v. Washington Dep’t of Revenue*, 171 Wn.2d 1, 10, 248 P.3d 504, 508 (2011). The court’s inquiry begins and ends with the plain language “because plain language does not require construction.” *Id.* at 11. *See also Arborwood Idaho, L.L.C. v. City of Kennewick*, 151 Wn.2d 359, 367, 89 P.3d 217, 221 (2004).

cases in which the state is interested.” RCW 43.10.030(1). *See also Young Ams. for Freedom v. Gorton*, 91 Wn.2d 204, 207, 588 P.2d 195, 197 (1978) (recognizing broad authority of Attorney General to appear as *amicus curiae*).

Certain Washington Legislators assert that the current version of RCW 9.41.290 “contains the broadest preemption language possible – ‘fully occupies’ and ‘entire field.’” (Certain Washington Legislators Br. at 1.) They conveniently ignore, however, that RCW 9.41.290 expressly defines and limits the “entire field” that the state of Washington “fully occupies” to the “entire field of *firearms regulation*.” RCW 9.41.290 (emphasis added). RCW 9.41.290 does not provide that the state “fully occupies and preempts the entire field of *firearms regulation and taxation*.” Taxation is expressly excluded from the statute’s field preemption clause and from its list of preempted actions.⁴

The Legislature’s omission of taxes from RCW 9.41.290 was not accidental. It is consistent with the state’s fundamental distinction between a tax – a means to raise revenue that does not limit or mandate conduct – and a regulation – a rule that limits or mandates conduct. Under the Washington Constitution, a city’s authority to enact regulations pursuant to its police power is separate and distinct from its authority to levy and

⁴ The first sentence of RCW 9.41.290 states in full:

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.

collect taxes. *Cf.* Const. art. XI, § 11 *with* Const. art. VII, § 9 and art. XI, § 12; *see also* *Arborwood*, 151 Wn.2d at 365–66 (explaining distinction between cities’ power to regulate and power to tax).⁵

Regulation and taxation are also distinct concepts for purposes of preemption. When other states have preempted taxation of guns, they have done so explicitly, expressly including taxes in their list of preempted areas.⁶ For this reason, the one court to consider an identical tax

⁵ The Seattle City Council enacted the Ordinance under its constitutional and legislative authority to tax, not under its separate authority to regulate. (Clerk’s Papers (CP) 68.)

⁶ *See e.g.*, Ariz. Rev. Stat. § 13–3108 (“a political subdivision of this state shall not enact any ordinance, rule or tax relating to the transportation, possession, carrying, sale, transfer, purchase, acquisition, gift, devise, storage, licensing, registration, discharge or use of firearms or ammunition or any firearm or ammunition components or related accessories in this state”); Me. Rev. Stat. tit. 25, § 2011(2) (a municipality may not “adopt any order, ordinance, rule or regulation concerning the sale, purchase, purchase delay, transfer, ownership, use, possession, bearing, transportation, licensing, permitting, registration, taxation or any other matter pertaining to firearms, components, ammunition or supplies”); Mich. Compiled Laws 123.1102 (a municipality “shall not impose special taxation on, enact or enforce any ordinance or regulation pertaining to, or regulate in any other manner the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, other firearms, or pneumatic guns, ammunition for pistols or other firearms, or components of pistols or other firearms”); Mont. Code 45–8–351(1) (a municipality “may not prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun”); Okla. Stat. tit. 21, § 1289.24(B) (a municipality shall not “adopt any order,

challenged on identical grounds concluded the applicable preemption statute did not apply because there, as here, “[t]axes are conspicuously absent from the list of measures that are preempted.” *ERP, Inc. v. Ali*, No.13 CH 07263 (Ill. Cir. Ct. Cook Cnty. Jan. 22, 2014) (slip op.) (CP 127.)

Certain Washington Legislators place tremendous emphasis on the amendments to RCW 9.41.290, arguing that the Legislature has steadily expanded the preemptive scope RCW 9.41.290. (*See* Certain Washington Legislators Br. at 2-6.) But the Legislature has never added taxation to the list of preempted activities, despite every opportunity to do so and even though numerous state preemption statutes expressly include taxes in their list of preempted fields. As the Attorney General has pointed out, the Legislature knows how to preempt taxation when it wants to, and when it

ordinance, or regulation concerning in any way the sale, purchase, purchase delay, transfer, ownership, use, keeping, possession, carrying, bearing, transportation, licensing, permit, registration, taxation other than sales and compensating use taxes, or other controls on firearms, knives, components, ammunition, and supplies”); R.I. Gen. Stat. § 11-47-58 (“The control of firearms, ammunition, or their component parts regarding their ownership, possession, transportation, carrying, transfer, sale, purchase, purchase delay, licensing, registration, and taxation shall rest solely with the state.”); Wyo. Stat. Ann. § 6-8-401(c) (“The sale, transfer, purchase, delivery, taxation, manufacture, ownership, transportation, storage, use and possession of firearms, weapons and ammunition shall be authorized, regulated and prohibited by the state, and regulation thereof is preempted by the state.”)

preempts local taxing authority, it does so explicitly. (*See* Amicus Br. of the State of Washington at 10.) The Legislature has not done so here.

Certain Washington Legislators also ignore that the supreme court has considered the legislative history upon which they place such great weight and has conclusively determined that RCW 9.41.290 is penal in nature and intended to eliminate conflicting municipal criminal codes and to advance uniformity in *criminal firearms regulation*. *See Pac. Nw. Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 356, 144 P.3d 276, 283 (2006); *Cherry v. Mun. of Metro. Seattle*, 116 Wn.2d 794, 801, 808 P.2d 746, 749 (1991). The Legislature could have amended RCW 9.41.290 following the *Cherry* and *Sequim* decisions to extend the preemptive scope of RCW 9.41.290 to all legislation, including taxation. But it did not do so.

Recognizing the weakness of their argument that RCW 9.41.290 covers all legislation, including taxation, Certain Washington Legislators claim the Ordinance is a regulation because it does in fact ““regulat[e] . . . sales”” by requiring persons subject to the tax to keep certain records and be open for inspection. (Certain Washington Legislators Br. at 6 (citing SMC 5.55.060).) The Ordinance’s tax is not transformed into a regulation simply because in enforcing the tax, Seattle may have the ability to audit retailers’ firearms sales. If that were the case, Seattle’s gross receipts tax

would be a regulation, when it is not. The Washington Department of Revenue also audits gun retailers for compliance with the state gross receipts tax and sales tax collection, *see* RCW 82.32.070, and that statute is not a regulation.

Certain Washington Legislators' final argument – that RCW 9.41.290 requires a tax on firearms to be specifically authorized and that authorization is absent – is similarly unavailing. The preemptive scope of RCW 9.41.290 is limited to firearms regulation. RCW 9.41.290 does not preempt the taxation of guns and ammunition. The second sentence of RCW 9.41.290 – “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” – does not expand the scope of RCW 9.41.290 to include taxation.

Because the Ordinance is a tax, not a regulation, the second sentence of RCW 9.41.290 – just as the statute's first sentence – does not apply. In any event, as discussed below, the tax imposed by the Ordinance is “specifically authorized by state law.”

III. SEATTLE HAS THE AUTHORITY TO IMPOSE AN EXCISE TAX ON THE SALE OF GUNS AND AMMUNITION

The trial court conclusively held that the Ordinance is a lawful exercise of Seattle's taxing authority under RCW 35.22.280(32), recognizing that the supreme court long ago held that the statute's broad grant of authority includes the power to raise revenues by imposing an excise tax on businesses. (CP 181 (citing *Pac. Tel. & Tel. Co. v. City of Seattle*, 172 Wn. 649, 21 P.2d 721 (1933).) The trial court further concluded that the tax "may include a tax on gross receipts, but is not limited [to] such a tax." (CP 181.) As the Legislature has directed, the power to tax under RCW 35.22.280(32) is to "be liberally construed." RCW 35.22.900. The state of Washington agrees that the Ordinance's tax on gun and ammunition sales is a proper exercise of Seattle's broad authority to levy licensing taxes under RCW 35.22.280(32). (See Amicus Br. of the State of Washington at 14-17.)

Certain Washington Legislators provide no reason to disturb the trial court's ruling. Instead, they urge the Court to turn principles of municipal taxation on their head.

Certain Washington Legislators contend that a city cannot enact a local tax on guns or ammunition unless there is a specific statute authorizing a local government to enact a tax on guns. (See Amicus Br. of

Certain Washington Legislators at 9-10.) But the supreme court has reaffirmed the broad and independent taxing authority of cities on multiple occasions: “[A] city or municipality may define its taxation categories as it sees fit unless it is restrained by a constitutional provision or legislative enactment.” *Commonwealth Title Ins. Co. v. City of Tacoma*, 81 Wn.2d 391, 394, 502 P.2d 1024, 1026 (1972). Following the supreme court’s instruction, courts have consistently held that a restraint on a city’s taxing authority will be found only if there is “specific, express statutory language.” *Enter. Leasing, Inc. v. City of Tacoma*, 93 Wn. App. 663, 669, 970 P.2d 339, 342, *aff’d*, 139 Wn.2d 546, 988 P.2d 961 (1999). The Legislature knows how to restrict the taxing power of a city if it wants to. *See, e.g.*, RCW 82.14.070 (restricting local sales and use tax); RCW 66.08.120 (restricting municipality’s power to tax liquor). It has not done so.

RCW 35.22.280(32) grants Seattle the right to raise revenue for the general benefit of its citizens through an excise tax on the business of selling guns and ammunition. The Ordinance is a lawful exercise of Seattle’s taxing authority.

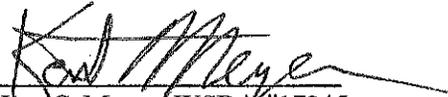
CONCLUSION

RCW 9.41.290 preempts only the regulation of guns and ammunition, not taxation. The personal opinions of individual legislators

as to the meaning of the statute are irrelevant and contrary to the statute's plain language. The Ordinance is a constitutional and valid tax. Defendants and respondents City of Seattle, Ed Murray, Seattle Department of Finance and Administrative Services, and Glen Lee respectfully request that the Court affirm the trial court's order holding that the Ordinance is a constitutional tax within the lawful exercise of Seattle's taxing authority, granting summary judgment to Seattle, and dismissing plaintiffs' case in its entirety.

DATED this 8th day of August, 2016.

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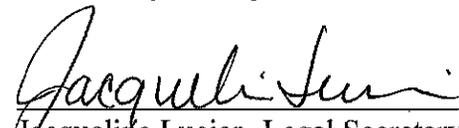
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Signed this 8th day of August, 2016 at Seattle, Washington



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