

FILED
SUPREME COURT
STATE OF WASHINGTON
12/21/2021 2:48 PM
BY ERIN L. LENNON
CLERK

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
BRADY AND WASHINGTON ALLIANCE FOR GUN
RESPONSIBILITY**

CORR CRONIN LLP
Steven W. Fogg, WSBA No. 23528
Eric A. Lindberg, WSBA No. 43596
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900
Attorneys for Respondents/Counter-
Appellants

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ARGUMENT 2

 A. Amici Do Not Address the Issues Before the Court. 2

 B. The Court Should Affirm the Decision of the Court of
 Appeals. 4

III. CONCLUSION..... 8

TABLE OF AUTHORITIES

CASES

Alim v. City of Seattle, 14 Wn. App. 2d 838, 474 P.3d 589 (2020)..... 5
City of Edmonds v. Bass, 16 Wn. App. 2d 488, 481 P.3d 596 (2021).... 1, 3
Diversified Indus. Dev. Corp. v. Ripley, 82 Wn.2d 811, 514 P.2d 137
(1973)..... 6, 7
Kightlinger v. Public Utility District No. 1 of Clark County, 119 Wn. App.
501, 81 P.3d 876 (2003)..... 7
Okeson v. City of Seattle, 159 Wn.2d 436, 150 P.3d 556 (2007) 7
Rocha v. King County, 195 Wn.2d 412, 460 P.3d 624 (2020) 6
Snohomish County v. Anderson, 124 Wn.2d 834, 881 P.2d 240 (1994)..... 6
*Washington State Coal. For the Homeless v. Dep’t of Soc. & Health
Srvs.*, 133 Wn.2d 894, 949 P.2d 1291 (1997) 6

STATUTES

ECC 5.26.020..... 1
ECC 5.26.030..... 1
RCW 9.41.290 1, 3, 4, 8

OTHER AUTHORITIES

Joseph O’Sullivan, *Washington Democratic lawmakers to again propose
ban on high-capacity magazines, other gun restrictions*, SEATTLE
TIMES, (Dec. 15, 2021) 7

I. INTRODUCTION

This case concerns a conflict between a City of Edmonds ordinance (the “Ordinance”) and RCW 9.41.290, which preempts local regulation of firearms. The Ordinance established two Edmonds City Code provisions: first, the “Storage Provision,” requiring firearms to be secured by a properly-engaged locking device when not in the possession or control of the owner or authorized user; and second, the “Access Provision,” penalizing storage that leads to unauthorized access. ECC 5.26.020, .030. The Court of Appeals, Division One, held that Respondents have standing to challenge both provisions in the Ordinance and that the Ordinance is entirely preempted. *City of Edmonds v. Bass*, 16 Wn. App. 2d 488, 481 P.3d 596 (2021).

The questions presented to this Court by Petitioners are narrow issues of law: (1) whether the question of justiciability of a claim under the Uniform Declaratory Judgment Act (UDJA) implicates subject matter jurisdiction; (2) whether the Court of Appeals correctly applied the judicially crafted “major public importance” exception to UDJA justiciability as an alternative basis for concluding that the Respondents had standing to challenge the Access Provision, and; (3) whether the Court of Appeals correctly concluded that RCW 9.41.290 “fully occupies” “the

entire field” of firearms regulation, thereby preempting the Ordinance. Petition for Review from Division One of the Court of Appeals (Pet. for Review) at 2; Order on Petition for Review.

Amici curiae Brady and Washington Alliance for Gun Responsibility (collectively, “Amici”) submitted an amicus brief (“Amicus Brief”) that sidesteps these narrow issues in favor of a broad focus on policy matters related to Amici’s desire for firearm regulation. Ultimately, the relative merits or perceived desirability of the regulation enacted by the City of Edmonds has no bearing on the legal issues before the court. To the extent that the Amicus Brief has any application here, it is because the Amicus Brief implicitly demonstrates that Respondents have standing to challenge both provisions of the Ordinance: it shows that Respondents could be subject to enforcement of the Access Provision after theft of a firearm, and that these matters are issues of broad public importance. Respondents respectfully submit that the Amicus Brief is relevant only to the extent that it helps the Court analyze these narrow issues.

II. ARGUMENT

A. Amici Do Not Address the Issues Before the Court.

Amici submit assertions that are conclusory, incorrect, and ultimately unhelpful to the Court.

First, Amici argue that the Ordinance “falls clearly within the broad

police powers afforded to municipalities.” Amicus Brief at 3. But Amici offer no further discussion of municipalities’ police powers. The scope of a municipality’s police powers is not before the Court. In any event, the unquestioned existence of the City of Edmonds’s police powers does not invalidate the conclusion that RCW 9.41.290 preempts the ordinance, “regardless of the nature of the code, charter, or home rule status of [a] city, town, county, or municipality.”

Second, Amici ask the Court to not invalidate the Ordinance based on what they baldly assert to be an “ambiguous preemption statute that does not reference ‘storage’ or ‘access.’” Amicus Brief at 3. But this assertion is not helpful because it begs the question, *i.e.*, it assumes the truth of its argument, but never actually analyzes how or whether RCW 9.41.290 might be ambiguous. And indeed, as both the trial court and Court of Appeals determined, the statute unambiguously preempts the entire field of firearm regulation, which includes municipal regulation of firearm storage. *Bass*, 16 Wn. App. 2d at 497.

Rather than address the discrete legal issues before the Court, Amici concede that their primary focus is to “emphasize, as a larger public health and safety matter, the importance of safe firearm storage practices required by the ordinance and the consequences of not following those practices” and to “provide additional background on the necessity and effectiveness of

reasonable safe storage laws.” Amicus Brief at 3–4. In doing so, Amici analyze public policy questions through their preferred political lens. But public policy concerns are not at issue. *See generally* Pet. for Review. The alleged importance or effectiveness of firearm storage laws is not the issue before the Court and has no bearing on the resolution of the actual legal issues at hand. Simply put, policy justifications have no bearing on the City of Edmonds’s ability—or, as is the case here, inability—to enact the Ordinance in light of RCW 9.41.290.

Amici do not otherwise add to the arguments about the issues before the Court raised by Respondents’ or Appellants’ Supplemental Briefs. The Court can and should decide the issues related to the UDJA, standing, and preemption without resort to the extraneous background materials included in the Amicus Brief.

B. The Court Should Affirm the Decision of the Court of Appeals.

Amici raise no new legal issues applicable to the questions before the Court. As such, to avoid merely reiterating the points raised in Respondents’ prior briefing, Respondents address the legal issues only to the short extent they are addressed by Amici, and incorporate by reference their other arguments. Respondents respectfully submit that, for the following reasons, the Court should affirm the decision of the Court of Appeals.

First, Amici make no attempt to address whether questions of UDJA justiciability implicate a court’s subject matter jurisdiction, or whether the standards for motions to dismiss under CR 12(b)(1) should apply to Respondents’ UDJA claims.

Second, Amici implicitly support the Court of Appeals’ conclusion that Respondents have standing to challenge both provisions of the Ordinance. Amici provide myriad statistics in support of the assertion that unsecured firearms are a target for theft. Amicus Brief 25–30. According to Amici, nearly 48,000 firearms were stolen in Washington between 2012 and 2017. *Id.* at 27. To the extent that—as Amici suggest—unsecured firearms are more susceptible to theft, the risk of theft places Respondents at direct risk of enforcement of the Access Provision. *Id.* at 28–29. For these reasons and those raised in Respondents’ Supplemental Brief, this Court should affirm the Court of Appeals’ conclusion that Respondents have standing to bring their claim. *See Alim v. City of Seattle*, 14 Wn. App. 2d 838, 854, 474 P.3d 589 (2020) (“The test under the UDJA is not whether a party intends to violate the law being challenged but merely whether their rights are adversely affected by it.”).

Third, Amici fortify alternative grounds on which this Court could affirm the Court of Appeals’ decision that the “broad overriding public import” exception to the *Diversified Industries* test applies. *See Diversified*

Indus. Dev. Corp. v. Ripley, 82 Wn.2d 811, 814–15, 514 P.2d 137, 139 (1973). Amici’s direct focus on the public policy questions underlying the City of Edmonds’ decision to enact the Access Provision should be proof enough that the issues at hand are of major public importance. Media and interest groups—including Amici—have closely followed the case. As Respondents have explained in substantive briefing before this Court, when “faced with an issue of significant public interest, standing is analyzed in terms of the public interests presented,” and a court will “engage in a more liberal and less rigid analysis.” *Rocha v. King County*, 195 Wn.2d 412, 420, 460 P.3d 624 (2020); *see also Washington State Coal. For the Homeless v. Dep’t of Soc. & Health Servs.*, 133 Wn.2d 894, 917, 949 P.2d 1291 (1997) (traditional justiciability analysis does not apply in the presence of issues of “major public importance”). “[I]n deciding whether to review such an issue, courts examine not only the public interest which is represented by the subject matter of the challenged statute, but the extent to which public interest would be enhanced by reviewing the case.” *Snohomish County v. Anderson*, 124 Wn.2d 834, 841, 881 P.2d 240 (1994) (emphasis omitted).

If any question of public policy is properly before the court, it should be confined to whether the Ordinance’s Access Provision presents a matter of “major public importance” sufficient to confer the Respondents standing. Such a conclusion is soundly supported by precedent. In *Kightlinger v.*

Public Utility District No. 1 of Clark County, Division One considered whether taxpayers had standing to assert a declaratory judgment action against a public utility district for its decision to continue to operate a consumer appliance repair business. 119 Wn. App. 501, 504, 81 P.3d 876 (2003), *overruled on other grounds by Okeson v. City of Seattle*, 159 Wn.2d 436, 451 n.5, 150 P.3d 556 (2007). The PUD had continued to operate the business despite an Attorney General opinion concluding that the PUD did not have legal authority to do so. *Id.* The court concluded that this constituted an issue of widespread public interest because the local newspaper had published a number of articles and letters to the editor on the issue, and because of the possibility that the issue might arise in other PUDs. *Id.* at 504–05. As Amici demonstrate, even if this Court were to conclude Respondents lacked standing pursuant to the *Diversified Industries* test, it could properly conclude the major public interest exception applies.¹

¹ Further, the State Legislature continues to debate legislation in the area of firearm regulation. While this legislative activity may address some of the public policy issues raised by Amici, it also highlights Respondents’ concerns about potential conflicts between municipal and state firearms regulation, and reinforces the continued salience of these issues. *E.g.*, Joseph O’Sullivan, *Washington Democratic lawmakers to again propose ban on high-capacity magazines, other gun restrictions*, SEATTLE TIMES, (Dec. 15, 2021), <https://www.seattletimes.com/seattle-news/politics/washington-democratic-lawmakers-to-again-propose-ban-on-high-capacity-magazines-other-gun-restrictions/>.

Finally, Amici make no attempt to support its bald assertion that RCW 9.41.290 is ambiguous or does not fully preempt the field of firearms regulation. The Parties comprehensively address this dispute in the supplemental briefs and elsewhere in the record.

III. CONCLUSION

For the reasons discussed here and raised in Respondents' Supplemental Brief, Respondents respectfully request that this Court affirm the judgment of the Court of Appeals.

I certify that this Response contains 1,642 words, in compliance with RAP 18.17.

DATED this 21st day of December, 2021.

CORR CRONIN LLP

s/ Eric A. Lindberg

Steven W. Fogg, WSBA 23528

Eric A. Lindberg, WSBA No. 43596

1001 Fourth Avenue, Suite 3900

Seattle, Washington 98154-1051

Tel: (206) 625-8600

Fax: (206) 625-0900

Attorneys for Cross-Appellants

CERTIFICATE OF SERVICE

The undersigned certifies as follows:

1. I am employed at Corr Cronin LLP, attorneys for Respondents herein.
2. On December 21, 2021, I caused a true and correct copy of the foregoing document to be served on the following parties in the manner indicated below:

Attorneys for Defendants:

Edmonds City Attorney
c/o Jeffrey Taraday,
WSBA No. 28182
Lighthouse Law Group PLLC
600 Stewart St, Ste 400
Seattle, WA 98101-1217
(206) 273-7440 Phone
jeff@lighthouselawgroup.com

- Via ECF
- Via U.S. Mail
- Via Hand Delivery
- Via Overnight Mail
- Via electronic mail

Attorneys for Defendants:

Jessica L. Goldman
Summit Law Group PLLC
315 Fifth Avenue S, Suite 1000
Seattle, WA 98104-2682
(206) 676-7000 Phone
jessicag@summitlaw.com

- Via ECF
- Via U.S. Mail
- Via Hand Delivery
- Via Overnight Mail
- Via electronic mail

Attorneys for Defendants:

Molly Thomas-Jensen,
Admitted *Pro Hac Vice*
Everytown Law
450 Lexington Ave, Suite 4184
New York, NY 10017
(646) 324-8222 Phone
mthomasjensen@everytown.org

- Via ECF
- Via U.S. Mail
- Via Hand Delivery
- Via Overnight Mail
- Via electronic mail

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

DATED: December 21, 2021, at Seattle, Washington.

s/ Monica Dawson
Monica Dawson

CORR CRONIN LLP

December 21, 2021 - 2:48 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 99596-6
Appellate Court Case Title: Brett Bass, et al. v. City of Edmonds, et al.
Superior Court Case Number: 18-2-07049-8

The following documents have been uploaded:

- 995966_Briefs_20211221144544SC848601_2834.pdf
This File Contains:
Briefs - Answer to Amicus Curiae
The Original File Name was 2021-12-21 Response to Brady Amici Brief.pdf

A copy of the uploaded files will be sent to:

- Derrick.DeVera@seattle.gov
- Jennifer.Litfin@seattle.gov
- KKruger@perkinscoie.com
- Lsantangelo@kirklandwa.gov
- Marisa.Johnson@seattle.gov
- bbyers@corrchronin.com
- cnicols@bradyunited.org
- ddunne@orrick.com
- dpatterson@corrchronin.com
- erica.franklin@seattle.gov
- etirschwell@everytown.org
- greg.wong@pacificallawgroup.com
- jeff@lighthouselawgroup.com
- jeremiah.miller@seattle.gov
- jessicag@summitlaw.com
- jstarr@perkinscoie.com
- kai.smith@pacificallawgroup.com
- kraymond@kirklandwa.gov
- mbarber@ci.olympia.wa.us
- mrutherford@corrchronin.com
- mthomasjensen@everytown.org
- roberta.horton@arnoldporter.com
- sea_wa_appellatefilings@orrick.com
- sfogg@corrchronin.com
- sharonh@summitlaw.com
- sheala.anderson@seattle.gov
- sydney.henderson@pacificallawgroup.com
- tdonaldson@wallawallawa.gov
- thien.tran@pacificallawgroup.com
- ttobin@PerkinsCoie.com

Comments:

Sender Name: Eric Lindberg - Email: elindberg@corrchronin.com

Address:

1001 4TH AVE STE 3900

SEATTLE, WA, 98154-1051

Phone: 206-625-8600

Note: The Filing Id is 20211221144544SC848601