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SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF EDMONDS, a municipality; DAVID 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,

vs.

BRETT BASS, an individual; SWAN SEABERG, an individual; THE SECOND AMENDMENT FOUNDATION, INC., a Washington nonprofit corporation; and NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., a New York nonprofit association,

Respondents.

CITY OF SEATTLE, CITY OF WALLA WALLA, CITY OF OLYMPIA, AND CITY OF KIRKLAND'S MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*

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I. INTRODUCTION AND RELIEF REQUESTED

The City of Seattle, City of Walla Walla, City of Olympia, and City of Kirkland (“*amici*”) respectfully move for leave to file an amicus brief pursuant to RAP 13.4 and 10.6 in support of the City of Edmonds’ Petition for Review from Division I of the Court of Appeals. *Amici*’s proposed brief is filed with this Motion. If the motion is granted, *amici* request that the brief lodged with this motion be deemed filed as of the date this motion was filed and accompanying brief lodged.

II. IDENTITY AND INTEREST OF AMICUS CURIAE

Amici support the Petition for Review filed by the City of Edmonds. Amicus curiae the City of Seattle is Washington’s most populous city. Seattle is a leader in tailoring local legislative responses to local problems, including by enacting its own safe-storage ordinance prohibiting the unsecured storage of firearms within its borders. Seattle therefore has a strong interest in the outcome of this case and in promoting cities’ rights to legislate generally for the health and welfare of their citizens.

The other *amici*—the City of Walla Walla, City of Olympia, and City of Kirkland—all seek greater clarity in how localities can legislate to protect their citizens in areas implicating state preemption statutes, including the statute at issue here. Like the City of Seattle, the Cities of

Walla Walla, Olympia, and Kirkland have a shared interest in understanding how much flexibility local lawmakers have to adopt local ordinances in response to public health challenges like gun violence—where local engagement is critical.

III. FAMILIARITY WITH THE ISSUES AND SCOPE OF ARGUMENT ON REVIEW

Amici and their counsel are familiar with the issues raised in this petition for review and the arguments presented by the parties' briefs. The City of Seattle is particularly familiar with these issues given its involvement in another case before the Washington Court of Appeals addressing a similar firearm storage ordinance. *Alim v. City of Seattle*, 14 Wash. App. 2d 838 (2020). *Amici* will not unduly repeat arguments raised by the parties.

IV. ISSUES ADDRESSED BY AMICI CURIAE BRIEF AND WHY BRIEFING WILL ASSIST THE COURT

This petition asks whether a gun-safety ordinance passed by the City of Edmonds is preempted by state law. *Amici* submit that that question is a matter of substantial public interest warranting review by this Court, as it has significant legal and practical implications for cities across the state. Based on their firsthand experience with similar local legislation, *amici's* proposed amicus brief will explain how the Court of Appeals'

decision confuses the legal boundaries between local and state authority, and disrupts local innovation that promotes democratic values. By casting light on these broader implications, *amici*'s proposed brief will assist the Court in deciding whether to grant review.

Research has shown that when towns legislate on matters of local importance, they not only effectively respond to pressing local concerns, they also spur a sense of “citizen effectiveness” that can encourage political participation. The ordinance here exemplifies many of those values. In holding the ordinance preempted, the Court of Appeals stifled the opportunity for Edmonds—and other cities like *amici*—to exercise their non-criminal legislative authority in this salutary way.

Second, *amici* will explain how the decision below undermines the long-standing presumption that exercises of municipal police power are valid unless *unambiguously* preempted by state law. Edmonds' ordinance is a paradigmatic example of carefully tailored legislation that is not clearly preempted. But the Court of Appeals nevertheless invalidated it—with significant implications for cities around Washington.

While *amici* serve different communities facing diverse public-health challenges, they all rely on the aforementioned presumption and care deeply about cities' ability to promote their citizens' welfare to the

fullest extent possible. *Amici* thus have a unique understanding of how local lawmakers will be affected by this decision. Their perspective will aid the Court in deciding whether to grant review.

V. CONCLUSION

For the foregoing reasons, *amici* respectfully request leave to file the attached amicus curiae brief in support of the City of Edmonds' Petition for Review. If the motion is granted, *amici* request that the brief lodged with this motion be deemed filed as of the date this motion was filed and accompanying brief lodged.

Dated: May 24, 2021

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Motion for Leave to File Amicus Brief of the City of Seattle, City of Walla Walla, City of Olympia, and City of Kirkland to be served on counsel for all other parties in this matter via this Court's e-filing platform.

Dated May 24, 2021.

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Respondents.

**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. IDENTITY AND INTEREST OF *AMICI CURIAE*

Amici—the City of Seattle, the City of Walla Walla, the City of Olympia, and the City of Kirkland—have an interest in furthering Washington cities’ ability to respond to pressing local health challenges through innovative and targeted local legislation.

II. INTRODUCTION

This case concerns a local government’s ability to protect its own citizens from entirely local violence. Multiple residents of the City of Edmonds have lost loved ones due to improperly stored firearms: guns that were left unsecured and then accessed by children or adults in the throes of despair. Responding to these tragedies, Edmonds took the reasonable step of passing a non-criminal ordinance that regulates *not* firearm use or possession, but simply the *storage* of guns within its borders. The Court of Appeals’ decision in this case, however, put a stop to Edmonds’ efforts—and those of other cities facing similar public health challenges—when it deemed the City’s ordinance preempted by a Washington state statute.

Amici—a diverse range of cities in Washington—respectfully submit that this result is incorrect as a matter of law and of common sense. Edmonds’ ordinance falls well within its police powers to provide for the health and safety of its residents. What is more, the Court

of Appeals' decision casts into doubt important background rules against which cities legislate. This Court should grant the petition for review.

III. STATEMENT OF THE CASE

Amici concur with and adopt the statement of the case set forth in the petition for review.

IV. ARGUMENT

This case concerns “an issue of substantial public interest” warranting review by this Court. RAP 13.4(b)(4). First, local government is often most innovative, most responsive to citizen needs, and most likely to further participatory democracy. The decision below, limiting a city’s ability to respond to health and public safety matters of pressing local concern, will have far-reaching practical consequences.

Second, the Court of Appeals’ decision undermines the bedrock presumption that exercises of municipal police power are valid unless unambiguously preempted. See *infra*. Cities rely on this presumption when governing in many areas where the line between local and state authority is unclear. Without it, cities may hesitate to legislate in these areas at all—impeding local responses to local challenges, impairing innovation, and imposing unforeseen and unknowable costs on communities. That is why Washington courts have long avoided state preemption unless the relevant

statute *unambiguously* conflicts with local law or occupies the entire field.

A. “Home Rule” Encourages Innovation and Ensures That Laws Are Tailored to Local Needs

Washington’s Constitution contains a “strong home rule provision.” Hugh Spitzer, “*Home Rule*” vs. “*Dillon’s Rule*” for *Washington Cities*, 38 Seattle Univ. L. Rev. 809, 825 (2015). The provision stipulates that “[a]ny county, city, town or township may make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws.” Const. art. XI, § 11. In short, the Constitution provides “a direct delegation of the police power as ample within its limits as that possessed by the Legislature itself.” *Detamore v. Hindley*, 83 Wash. 322, 326, 145 P. 462 (1915). “It requires no legislative sanction for its exercise so long as the subject-matter is local, the regulation reasonable and consistent with the general laws.” *Id.* at 326-27.

The “home rule” principle embedded in the Washington Constitution reflects a time-honored value: Sometimes the best government is local. City governments “are closely connected to their constituents and thus may be better able to experiment with solutions to a variety of issues affecting local communities.” Lauren E. Phillips, *Impending Innovation: State Preemption of Progressive Local Regulations*, 117 Colum. L. Rev. 2225, 2238 (2017). (To take one example, it makes sense to require greater

safety measures for stored firearms in densely populated areas than in more rural areas, where it may be easier to store weapons far away from minors and other unauthorized users.) And beyond being responsive to immediate needs, local governments can serve as “laboratories” for legislative solutions that can then be replicated on a statewide or even nationwide basis. Paul Diller, *Intrastate Preemption*, 87 B. U. L. Rev. 1113, 1128 (2007).

When given the ability to respond to local needs with tailored legislation, local governments promote a sense of “citizen effectiveness” that “may spur further political participation.” Phillips, 117 Colum. L. Rev. at 2238–39. At a time of increasing political polarization and frustration, functioning local governments—those that effectively address local needs identified by their constituents—are more important than ever.

Edmonds’ ordinance exemplifies the power of local legislation to respond to immediate local concerns. Indeed, the hearings that preceded the ordinance’s passage demonstrate how close to home this issue strikes for the city’s residents: the Edmonds City Council heard from a local resident whose church lost a young member after he was unintentionally shot because of an improperly stored gun, and from a Council member whose brother died by suicide with his father’s unlocked gun. Edmonds is all too familiar with the heartache and trauma suffered by

its neighbors to the north after 15-year-old freshman student Jaylen Fryberg obtained his father's illegal firearm and used it to kill four classmates at Marysville Pilchuck High School before killing himself in 2014. Pet. 3–4.

Whether one agrees or disagrees with the substance of the ordinance, it is clear that its goal and its means—reducing gun violence within Edmonds by regulating gun storage within its borders—are both acutely local. While a citizen carrying a firearm through various cities and counties in the space of a day could be subject to multiple, conflicting local laws, there is no risk that an Edmonds homeowner would be subject to conflicting local regulations over the safe storage of firearms in their Edmonds home. Finally, just as the law's reach is local, the consequences it seeks to avoid—another classmate or beloved community member lost—hit close to home too. For these communities, regulating firearms isn't abstract; it is necessary.

B. The Court of Appeals' Decision Undermines a Long-Standing Presumption on Which Cities Regularly Rely: Exercises of Municipal Police Power Are Valid Unless Unambiguously Preempted.

In view of the broad police powers the Washington Constitution affords cities and the need for responsive local governance, this Court has long deferred to cities when they regulate on the margins of statewide preemption. As illustrated by this case—and the complicated

body of jurisprudence addressing RCW 9.41.290—even broadly written preemption statutes give rise to ambiguities. Cities need to know how to properly exercise their authority in these circumstances.

One way that courts have provided this clarity is by applying a presumption in favor of municipal enactments when drawing lines between local and state authority. Courts “liberally construe[]” grants of municipal power on the one hand, *Heinsma v. City of Vancouver*, 144 Wn.2d 556, 561, 29 P.3d 709 (2001), and “narrowly but fairly” construe preemption clauses on the other, *Kitsap Cnty. v. Kitsap Rifle & Revolver Club*, 1 Wn. App. 2d 393, 404, 405 P.3d 1026 (2017). Moreover, because the State Constitution limits a municipality’s exercise of police powers only where it “conflict[s] with general laws,” Const. art. XI, § 11, a municipal ordinance is “presumed to be valid” unless it “irreconcilably conflict[s]” with a state statute, *Watson v. City of Seattle*, 189 Wn.2d 149, 158, 171, 401 P.3d 1 (2017), or the state Legislature “has clearly and explicitly stated its intent to preempt the power of local government to legislate in an area,” *Second Amendment Found. v. City of Renton*, 35 Wn. App. 583, 587, 668 P.2d 596 (1983). Absent such unambiguous preemption, municipal measures enjoy a strong presumption of validity.

This presumption is foundational to local government: It allows cities to exercise their police powers deliberately and vigorously,

without being hobbled by uncertainty about the validity of their actions. Because cities govern so many aspects of everyday life—from providing fair housing and public accommodations, to protecting citizens from crime and false advertising¹—they need to know how best to allocate their often-limited resources. See Nat’l League of Cities, *City Rights in an Era of Preemption: A State-by-State Analysis* 1, 3 (2018), <https://tinyurl.com/hcbbhmft>. So, when an ambiguous preemption statute can reasonably be read in harmony with their efforts, cities rely on this presumption to guide their work.

Here, however, the Court of Appeals refused to apply this bedrock presumption. It made a blanket declaration that RCW 9.41.290 “is unambiguous and necessarily extends to regulations of the storage of firearms.” *City of Edmonds v. Bass*, ___ Wn. App. 2d ___, 481 P.3d 596, 601-02 (2021). But this Court has previously recognized ambiguity in this very statute. *Cherry v. Mun. of Metro. Seattle*, 116 Wn.2d 794, 799-800, 808 P.2d 746 (1991) (acknowledging ambiguity about the scope of the preempted field); *Pac. Nw. Shooting Park Ass’n v. City of Sequim* (“PNSPA”), 158 Wn.2d 342, 356, 144 P.3d 276 (2006) (reiterating that “the purpose of the statute [is] unclear”). It has then upheld local measures

¹ Seattle Mun. Code §§ 14.08.040 (fair housing), 14.06.030 (public accommodations), 12A.02.050 (city crime), 7.08.030 (false advertising).

related to firearms when they do not clearly conflict with state law. *Watson*, 189 Wn.2d at 174 (upholding municipal tax on firearm sales because RCW 9.41.290 does not explicitly preempt taxation); *PNSPA*, 158 Wn.2d at 355-57; *Cherry*, 116 Wn.2d at 801; *see also Kitsap*, 1 Wn. App. 2d at 407 (upholding local permitting requirements for shooting ranges because they are not “inconsistent with chapter 9.41 RCW, which ... does not address shooting facilities”).

The same ambiguity exists here and should have weighed in favor of upholding the city’s ordinance. Firearm storage is neither referenced in RCW 9.41.290 nor encompassed by any of the categories listed therein. Instead of acknowledging this ambiguity, the court likened firearm “storage” to firearm “possession,” the latter of which is expressly preempted. *Bass*, 481 P.3d at 602. But their likeness is far from clear. The Washington Legislature omitted storage from the list of preempted categories—even though analogous statutes in other states explicitly reference firearm storage.² And the City of Edmonds drafted its ordinance to carefully avoid any regulation of firearm possession. Edmonds Mun. Code § 5.26.020 (effectively exempting firearms that are “carried by or under the control of the owner or other lawfully authorized user”).

² *E.g.*, Ariz. Rev. Stat. Ann. § 13-3118(A); Idaho Code § 18-3302J(2); Ind. Code § 35-47-11.1-2; Ky. Rev. Stat. § 65.870; Nev. Rev. Stat. § 268.418(1)(b); Wyo. Stat. § 6-8-401(C).

Given this ambiguity, RCW 9.41.290 does not “irreconcilably conflict” with Edmonds’ ordinance. *Watson*, 189 Wn.2d at 171. Nor is it clear that the Legislature “inten[ded] to preempt the power of local government to legislate in” the area of firearm storage. *Second Amendment Found.*, 35 Wn. App. at 588. Indeed, there is reason to think that *non-criminal* ordinances like this one are not the primary target of the preemption statute at all. *See Cherry*, 116 Wn.2d at 801 (noting Legislature’s primary intent to achieve uniformity in local *criminal* codes); *accord PNSPA*, 158 Wn.2d at 356. Edmonds therefore relied on the presumption in favor of municipal authority and took action to address a highly local problem: improper firearm storage within the city’s boundaries.

The ripple effects of this decision will be felt beyond the realm of firearm safety. In Washington, cities must navigate issues of preemption across multiple areas of local concern. *See generally* Nat’l League of Cities, at 4, <https://tinyurl.com/hcbbhmft> (surveying state-by-state preemption laws). And the scope of preemption in these areas is rarely straightforward. *E.g.*, Wash. State Joint Transportation Comm., *Regulation of Transportation Network Companies: Policy Guide* 8-34 (Jan. 2019), <https://tinyurl.com/ndn6k4uw> (discussing overlapping state and municipal laws governing ride-sharing in Washington).

If cities cannot rely on the presumption upholding their legislative efforts in the face of ambiguity, they will expend significant resources crafting and implementing policies tailored to their communities' needs, all the while plagued by uncertainty about whether their work is worth the candle. Worse yet, they may stop trying to legislate at all on the margins of municipal authority—even if the needs are acutely local, as with firearm storage. Given the broad benefits of responsive local government—to citizen participation and democracy writ large—the repercussions of such a change will be felt just as broadly.

V. CONCLUSION

For the foregoing reasons, *amici* request that this Court grant the Petition for Review.

Dated: May 24, 2021

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