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6 **SUPERIOR COURT FOR THE STATE OF WASHINGTON**
7 **IN AND FOR THE COUNTY OF THURSTON**

8 GUARDIAN ARMS LLC, et al.,

9 Plaintiffs,

10 v.

11 STATE OF WASHINGTON, et al.,

12 Defendants,

13 and

14 ALLIANCE FOR GUN RESPONSIBILITY,

15 Intervenor-Defendant.
16

Case No.: 23-2-01761-34

PLAINTIFFS' RESPONSE AND CROSS-
MOTION TO STATE'S MOTION FOR
SUMMARY JUDGMENT

17 **I. Introduction**

18 The State's opening gambit is that "assault weapons are disproportionately used—and
19 disproportionately deadly—in mass shootings," so a categorical ban is "common-sense" and
20 constitutional. But the Legislature has already told a different story; in 2022 it found that
21 large-capacity magazines ("LCMs") "increase casualties by allowing a shooter to keep firing for
22 longer periods ... [and] have been used in all 10 of the deadliest mass shootings since 2009,"
23 concluding that restricting LCMs "is likely to reduce gun deaths and injuries" and "does not
24 interfere with ... lawful self-defense." Laws of 2022, ch. 104, § 1. A year later, the Legislature
25 pivoted and declared that "assault weapons" themselves are to blame because they are "like
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1 M-16 rifles,” “not suitable for self-defense,” and this separate ban “is *likely* to have an impact on
2 the number of mass shootings.” Laws of 2023, ch. 162, § 1 (emphasis added).

3 The State cannot have it both ways: if LCMs are the causal driver (as ESSB 5078 says), that
4 undercuts the premise of SHB 1240’s “assault-weapon” ban; if “assault weapons” are the driver
5 (as SHB 1240 says), that undercuts the State’s magazine-centric theory. Either way, the
6 Legislature’s dueling findings are policy assertions, not constitutional answers, and “the
7 construction of the meaning and scope of a constitutional provision is exclusively a judicial
8 function.” *State Highway Comm’n v. Pac. Nw. Bell Tel. Co.*, 59 Wn.2d 216, 222, 367 P.2d 605
9 (1961). Legislative “findings” are not infallible, and its improper legal conclusions are not
10 binding on courts. *See* Laws of 2020, ch. 138 § 1 (legislature prohibited “the use of single-use
11 plastic carryout bags” to “reduce waste, litter, and marine pollution, conserve resources, and
12 protect fish and wildlife” but total plastic use by weight has increased by 17 percent, and the
13 Department of Commerce “recommend[s] removal of the plastic bag thickness requirement,
14 allowing retailers to distribute single-use plastic bags.”);¹ *see also Etienne v. Ferguson*, No.
15 3:25-cv-05461 (W.D. Wash.) (legislature removed mandatory reporting exemption for Catholic
16 clergy while leaving secular exemptions intact; district court entered preliminary injunction,
17 parties filed stipulated motion to enter permanent injunction and final judgment).

18 And the State has also already argued that “LCMs are disproportionately used in mass
19 shootings and make such shootings more lethal.” Appellant State of Washington’s Statement of
20 Grounds for Direct Review, *State v. Gator’s Custom Guns, Inc.*, Wash. S. Ct. No. 102940-3,
21 p.19. It provided district court analysis that “State laws banning LCMs reduce the inciden[ce] of
22 mass shootings between 48 to 72 percent and decrease the number of fatalities that occur in these
23 mass shootings by 37 to 75 percent.” *Id.* (citing *Oregon Firearms Fed’n v. Kotek Oregon All.*

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26 ¹ Washington State Dep’t of Commerce, *Evaluating Washington State’s Retail Carryout Bag Policy, Report*
required by RCW 70A.530.060 [2020 c 138 s 7].

1 *For Gun Safety*, 682 F. Supp. 3d 874, 898 (D. Or. 2023). And lastly, the State cites a study, as
2 does one of their experts in this case, which finds that:

3 Assault rifles are commonly used in mass shootings with the most
4 casualties, and certain design features of these weapons plausibly
5 facilitate the ability of an assailant to rapidly shoot many rounds
6 (e.g., barrel shrouds and pistol grips). But the capacity of the
7 ammunition-feeding device and the ability to quickly reload may be
8 the most relevant feature of firearms that influence the incidence and
9 outcomes of mass shootings. Furthermore, most mass shootings do
10 not involve assault rifles, but many involve the use of LCMs. This
may explain why we found that LCM bans were associated with
significant reductions in the incidence of fatal mass shootings but
that bans on assault weapons had no clear effects on either the
incidence of mass shootings or on the incidence of victim fatalities
from mass shootings.

11 Daniel Webster et al., *Evidence Concerning the Regulation of Firearms Design, Sale, and*
12 *Carrying on Fatal Mass Shootings in the United States* 19 Criminology and Pub. Pol’y 171, 188
13 (2020). The State concedes that “assault weapons” have proliferated, but the share of murders
14 committed by people with rifles has remained constant. Expert Report of John R. Lott, Jr., Ph.D.,
15 p.10 (Hatcher Decl. Ex. 6).

16 Moreover, the State’s motion rests on several faulty premises: (1) that the most commonly
17 owned type of rifle is not an “arm” covered by the Washington Constitution; (2) that the
18 fundamental right to bear arms is subject to interest balancing, and that the proper level of
19 scrutiny is mere rational basis; and (3) that the legislature may effectively amend the Washington
20 Constitution by mere simple majority, conceding that SHB 1240 is a policy judgment in
21 contravention of the mandatory language of the Washington Constitution.

22 The State is not entitled to summary judgment. SHB 1240 violates Article 1, § 24 of the
23 Washington Constitution. Although the State asks this Court for relief, it suggests (1) that the
24 judiciary has no role in the matter; (2) that the Court should exercise extreme restraint regarding
25 the bill; and (3) the Court should overlook the obvious constitutional flaws. If the separation of
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1 powers mean anything, especially when a fundamental right is in jeopardy, judicial review is
2 appropriate and required, including as to those facts claimed protected as legislative facts.

3 This Court should protect the fundamental right of Washingtonians to bear arms in defense of
4 themselves and the state. Because so-called “assault weapons” are nothing more than arms
5 overwhelmingly and historically chosen by law-abiding citizens for defense, they are protected.
6 The Court should exercise its inherent authority to control the proceedings before it and grant
7 summary judgment to Plaintiffs as it is ineluctable that SHB 1240 impairs the right to bear arms
8 under the Washington Constitution.

9 II. Background

10 A. SHB 1240 prohibits the sale and manufacture of the most commonly owned rifles.

11 Article I, § 24 of the Washington Constitution straightforwardly states that the fundamental
12 “right of the individual citizen to bear arms in defense of himself, or the state, shall not be
13 impaired, but nothing in this section shall be construed as authorizing individuals or corporations
14 to organize, maintain or employ an armed body of men.” This plain language is clear on its face.
15 Yet despite this plain language, the State now posits that the only weapons that are protected are
16 “antique firearms, any firearm that has been made permanently inoperable, or any firearm that is
17 manually operated by bolt, pump, lever, or slide action.” Laws of 2023, ch. 162 § 2(2)(c).

18 Further, the legislative findings are rebutted by facts and evidence. The legislature included
19 a finding that “assault weapons” have been used in the deadliest mass shootings in the last
20 decade and that assailants with an “assault weapon” can hurt and kill twice the number of people
21 than an assailant with a handgun or nonassault rifle. Notwithstanding the nonsensical term of a
22 “nonassault rifle” being used to commit an assault, the mass shootings in Washington state do
23 not support this finding. Only one mass shooting (which as defined in SHB 1240 is an event
24 “that result[s] in four or more deaths”) has been carried out by a single shooter with an “assault
25 weapon.”

Event	Casualties	Weapons Used	“Assault Weapon”	Notes
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1	Wah Mee Massacre (1983)	13	Three .22 handguns	No	Deadliest in WA history; no “AW.”
2	Fairchild AFB (1994)	4 (incl. unborn child)	MAK-90 rifle	Yes	Unborn child possibly not “person” under WA law.
3	Frontier Middle School (1996)	3 (plus injured)	.30-30 lever rifle, .22 revolver	No	Not “mass shooting” under SHB 1240.
4	Trang Dai Café (1998)	5	1 AK-47, 2 pistols	Mixed	Only one shooter used “AW;” gang-related violence
5	Capitol Hill (2006)	6	Pump shotgun, Ruger P94 pistol	No	Neither used weapon is “AW.”
6	Seattle Jewish Federation (2006)	1 killed, 5 wounded	Two handguns (.45 & .40)	No	Not “AW.”
7	Carnation (2007)	6	Revolver (.357), 9mm pistol	No	Domestic dispute; not public shooting.
8	Lakewood Police Ambush (2009)	4	Glock 17 pistol	No	Not “AW.”
9	Seattle Café Shootings (2012)	5	Two .45 pistols	No	Not “AW.”
10	Cascade Mall (2016)	5	Ruger 10/22 rifle (wood stock)	No	Not “AW.”
11	Mukilteo (2016)	3 killed, 1 wounded	Ruger AR-15 rifle	Yes	“AW” used.
12	Freeman High School (2017)	1 killed, 3 wounded	AR-15 (unfired), Colt 1903 pistol	No	Only pistol fired.
13	Tacoma Mall (2005)	0 killed, 7 wounded	MAK-90 rifle	Yes	“AW” used, but no fatalities.
14	Marysville (2014)	4	Beretta PX4 pistol (.40)	No	Not “AW.”

Moreover, the “legislative findings” are nothing more than the Attorney General’s Office testimony.² This has resulted in a circularity of the Attorney General defending a bill he requested seven times and doing so by arguing that legislative findings are beyond reproach. This short-circuiting of the amendment process has impaired a fundamental right. Moreover, the very fact that the Attorney General had to request this bill for nearly a decade undermines the

² *Public hearing in the House Civil Rights & Judiciary Committee*, 68th Leg., 2023 Reg. Sess., Jan. 17, 2023 (statement of First Assistant Attorney General Kristin Beneski), video available at: <https://tvw.org/video/house-civil-rights-judiciary-2023011277/?eventID=2023011277> (beginning at 50:22)

1 claim that the legislative findings should be owed deference—or that the legislature was
2 addressing an epidemic.

3 **B. “Assault weapons” are not uniquely deadly, and the term “military-style” is**
4 **nonsensical.**

5 First, the State errs by asserting that “assault weapons” are civilian variants of weapons
6 created by the military. But the line between what is military and what is civilian has never been
7 distinct throughout history, and is not today. For instance, the military uses weapons that are
8 “manually operated by bolt, pump, lever, or slide action” and exempt from SHB 1240. Laws of
9 2023, ch. 162 § 2(2)(c). The genesis of our country is one borne of open revolt against
10 tyrannical government; it “follows that the Founders wanted citizens to possess the same
11 weapons that standing armies possessed so that they would be able to fight those armies on equal
12 terms.” Rebuttal Report of Michael Allen, Ph.D., p.10 (Hatcher Decl. Ex. 1); *see also* Expert
13 Report of Clayton Cramer, p.9-10 (Hatcher Decl. Ex. 2).

14 Second, the State errs by using a debunked “field test” for the incredible contention that the
15 AR-15 is some superweapon capable of unmatched carnage. But a study commissioned by
16 Secretary of Defense Robert S. McNamara in late 1962 was unable to duplicate the results of the
17 Advanced Research Projects Agency. Major Dallas Durham, *Speed versus Quality: A*
18 *Cautionary Tale of the M-16 in Vietnam*, Military Review, March-April 2022; *see also*, E.
19 Gregory Wallace, ‘Assault Weapon’ Lethality, 88 Tenn. L. R. 1 (2020) (“the Army’s Wound
20 Ballistic Laboratory at Edgewood Arsenal tested the lethality of the AR-15 in gelatin, animals,
21 and cadavers but could not duplicate the “theatrically grotesque wounds” reported by Project
22 AGILE.”) (citing C.J. Chivers, *The Gun* 283-88 (2010)); *see also* Andrew Rebuttal report by
23 Clayton Cramer, p.2 (Hatcher Decl. Ex. 4). That is because the AR-15 fires a small bullet: .223
24 caliber, or 5.56mm. President Theodore Roosevelt, during his famous foray into military service
25 with the Rough Riders, observed firsthand how the Model 1893 Mauser, used by Spanish troops
26 in the Spanish-American War, inflicted “wounds from the minute steel-coated bullet, with its

1 very high velocity, [which] were certainly nothing like as serious as those made by the old large-
2 caliber, low-power rifle.” Mark Lee Gardner, *Rough Riders* 140 (2016).

3 The state of Washington does not even allow hunting of big game with such a small round.
4 WAC 220-414-020 prohibits hunting big game with “less than 22 caliber for cougar” and “less
5 than 24 caliber for any other big game.” Adult male cougars “average approximately 140
6 pounds” while female cougars “rarely exceed 110 pounds.”³ Cougars are smaller than the
7 average adults according to CDC data, which provide that the average adult male in the US
8 weighs 199 pounds, while the average adult female weighs 171.8 pounds. The legislature
9 concedes that 22 caliber ammunition is not sufficient to kill big game and further exempts 22
10 caliber ammunition from so-called “large capacity magazines” if it is in a tubular ammunition
11 feeding device. *See* RCW 9.41.010(25)(b). This is an obvious concession that the 22 caliber is a
12 small projectile most suitable for varmint hunting.

13 The reason that such a small caliber round is not suitable for hunting big game is because it
14 does not have the kinetic energy of larger caliber bullets. Rounds fired from an AR-15 have
15 significantly lower kinetic energy than hunting rifles. ‘*Assault Weapon*’ *Lethality*, 88 Tenn. L. R.
16 at 43-51. Despite the logistical hurdles of enterprise-level shifting of supply chain operations in
17 place for 65 years, the U.S. Army is introducing a new service rifle and squad automatic weapon
18 which are chambered in 6.8mm, rather than the older and smaller 5.56mm (again, roughly
19 equivalent to .223 caliber).

20 It is doing so because the 5.56mm is underpowered.⁴

21 Notwithstanding the nonsensical use of the State’s term “weapon of war” for a rifle that is
22 not issued to service members, the AR-15 quite literally is no longer the equivalent of the U.S.
23 Army service rifle. Many other weapons which are not banned under SHB 1240 are used by the
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25 ³ Wash. Dep’t of Fish & Wildlife, “Species in Washington / Cougar” last accessed September 29, 2025, available at:
<https://wdfw.wa.gov/species-habitats/species/puma-concolor#desc-range>

26 ⁴ U.S. Dep’t of War, Army Officials Brief the Media on the Next Generation Squad Weapon, Apr. 20, 2022, tr.
available at: <https://www.war.gov/News/Transcripts/Transcript/Article/3006668/army-officials-brief-the-media-on-the-next-generation-squad-weapon/>

1 military, such as the Benelli M4 semiautomatic shotgun, the Mossberg M500 pump action
2 shotgun, and the Sig Sauer M18 semiautomatic pistol, which is the standard issue sidearm for
3 Marine Corps officers and Military Police—which displaced the Beretta M9 semiautomatic
4 pistol, which in turn displaced the M45A1, both of which are available to civilians. Further, bolt
5 action rifles are used in the military, namely the M40A6, which is the standard issue sniper rifle
6 to Marine Corps scout snipers. Ultimately, weapons are not susceptible of classifying into
7 “military” or “civilian” as bifurcating into one or the other is not accurate or logical, and the
8 differences are in materials—not purpose. *See* Report of Wesley A. Turner, CWO5, USMC
9 (Ret.) (Hatcher Decl. Ex. 8). A weapon can be used—and useful—in both an offensive and
10 defensive setting, and in a military or civilian context. *See* Spitzer Rebuttal Report by Clayton
11 Cramer, p.17-19 (Hatcher Decl. Ex. 5).

12 The features which the legislature contends are not “well-suited for self-defense, hunting, or
13 sporting purposes” are designed to increase accuracy, make the weapon easier and more effective
14 to wield, and increase safety and a better fit for the person using it. This quite literally makes
15 any weapon better suited for self-defense, hunting, or sporting purposes. The only reasonable
16 conclusion from the legislative findings is that the State argues a more inaccurate weapon is
17 better for self-defense than an accurate one.

18 **C. The State defines “use” too narrowly and ignores other lawful purposes and the plain**
19 **text of the fundamental right to bear arms.**

20 The State continues its specious argument that the weapons prohibited by SHB 1240 are not
21 “necessary” in self-defense settings by utilizing a non-peer-reviewed anecdotal study. As an
22 initial matter, the state does not get to decide what is “necessary” for self-defense. That is
23 exclusively the domain of the individual in exercising the fundamental right to bear arms.

24 More importantly, the State relies on the “expert” opinion of Lucy Allen, who, to her credit,
25 admits that “there is no source that systematically tracks or maintains data on the number of
26 rounds fired by individuals in self-defense.” Hughes Decl., Ex. C, ¶8. But she in turn simply
relies on databases that are not intended to be comprehensive, and looks to a random smattering

1 of news broadcasts or publications; the result is that “her opinion lacks classic indicia of
2 reliability.” *Miller v. Bonta*, 19-cv-01537 (S.D. Cal.) (currently pending but held in abeyance
3 pending *Duncan v. Bonta*); *see also*, *State v. Gator’s Custom Guns, Inc.*, Cowlitz Cty. Super. Ct.
4 No. 23-2-00897-08 (“This court is no more convinced of the reliability of M[s] Allen’s report
5 than other Courts that have rejected it. Adding the Portland Police data is somewhat helpful, but
6 doesn’t address the questionable other data.”).

7 Moreover, the State uses a red herring argument for what constitutes “use” by limiting the
8 word to instances where a weapon prohibited by SHB 1240 is fired; that is not only irrelevant to
9 the constitutional inquiry, but it is wrong as to what conduct is protected. As stated, the State’s
10 expert Ms. Allen notes that the database she examined “is not comprehensive.” Hughes Decl.,
11 Ex. C, ¶33. Yet more than half of all defensive gun uses involved a rifle. Moreover, the State
12 omits, ignored, or mischaracterizes that SHB 1240 covers more than rifles; it includes
13 semiautomatic rifles, pistols, or shotguns which bear certain features. Laws of 2023, ch. 162 §
14 2(2). Certainly some of the 49% of defensive gun uses which did not involve rifles highlighted
15 in the Heritage Foundation report involved semiautomatic pistols or shotguns covered by SHB
16 1240. Even using the State’s crabbed definition of “use,” the weapons prohibited by SHB 1240
17 are used frequently in defensive gun uses.

18 **D. All weapons are dangerous, that is the point.**

19 The State concedes that SHB 1240 prohibits the firearms used by perpetrators of mass
20 shootings in one-fifth of all mass shootings in the last 20 years. Why hasn’t the State banned the
21 type of firearm used in the other four-fifths of mass shootings? And if so-called “assault
22 weapons” are so dangerous, why allow them to be possessed in the hundreds of thousands in this
23 state? By any metric, semiautomatic firearms are commonly owned, and are therefore
24 constitutionally protected. In the state of Washington, 35.3% of gun owners indicated that they
25 have owned an AR-15 rifle, and nationally, “30.2 percent of gun owners, about 24.6 million
26 people, have owned an AR-15 or similarly styled rifle, and up to 44 million such rifles have been

owned.” William English, *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned*, Georgetown McDonough School of Business Research Paper no. 4109494 (last revised Sept. 28, 2022).⁵ Even using a critique of the foregoing survey that the State has relied upon in other cases, “AR-15 style rifles” (which is a narrower subset than those weapons prohibited by SHB 1240) number between 23-24.4 million. Deborah Azrael et al., *A Critique of Findings on Gun Ownership, Use, and Imagined Use from the 2021 National Firearms Survey: Response to William English*, SMU L. Rev. (forthcoming 2025).⁶ In order to provide a full sight picture, William English authored a response, in which he acknowledges that “Azrael et al. have done a considerable service by articulating the best scholarly objections they can develop of this survey. As I have argued above, these criticisms are relatively mild and unpersuasive.” William English, *A Response to Critics of the 2021 National Firearms Survey*, Univ. of Wyoming Firearms Rsch. Ctr., Working Paper No. 2024-5, p.24.⁷ The State’s expert Louis Klarevas also served as an expert for the state of Illinois, and his faulty criticism is addressed by William English. *Id.*, p.20-23.

If the State’s theory were correct and allowed to stand, then any “arm” could be banned because it is dangerous. But that is the very purpose of “arms;” to be a dangerous implement that a law-abiding citizen can use in defense of self or the state. But this theory of course, is not correct, because of that pesky constitutional protection of the fundamental right to bear arms.

The State also unwittingly proves why so-called “assault weapons” are needed by law-abiding citizens; just as police carry them to defend themselves and others, so too should law-abiding citizens be able to possess so-called “assault weapons” to defend themselves in a world in which “just under 45 percent of all gang members own an assault rifle” and who are “seven times more likely to use the weapons in the commission of a crime.” State’s Mot., p.11 (citing *Bevis v. City of Naperville, Illinois*, 657 F. Supp. 3d 1052, 1074 (N.D. Ill. 2023), *aff’d*, 85 F.4th

⁵ Available at: <https://ssrn.com/abstract=4109494>, last accessed October 12, 2025.

⁶ Available at: <https://ssrn.com/abstract=4894282>, last accessed October 12, 2025.

⁷ Available at: https://firearmsresearchcenter.org/wp-content/uploads/2024/11/2024-05_William_English.pdf, last accessed October 12, 2025.

1 1175 (7th Cir. 2023), *cert. denied sub nom. Harrel v. Raoul*, 144 S. Ct. 2491, 219 L. Ed. 2d 1333
2 (2024). Those who are intent on breaking the law will continue to do so. And more likely than
3 not, they will continue to do so with weapons that are prohibited under SHB 1240. The only
4 people that SHB 1240 disarms are law-abiding citizens.

5 Next, the State turns to an appeal to emotion for the proposition that so-called “assault
6 weapons” pose unique dangers or that they result in police officers being “outgunned.” But they
7 rely on hearsay from an officer who chose to retire rather than be placed on leave following the
8 Uvalde shooting and the investigations that followed.⁸ Moreover, those investigations, including
9 by the U.S. Department of Justice, found that the “most significant failure was that responding
10 officers should have immediately recognized the incident as an active shooter situation, using the
11 resources and equipment that were sufficient to push forward immediately and continuously
12 toward the threat until entry was made into classrooms 111/112 and the threat was eliminated.”
13 Critical Incident Review: Active Shooter at Robb Elementary School, p. xvi.⁹ While it is
14 dangerous to respond to an active shooter incident, that is the very nature of the law enforcement
15 profession. Given that patrol officers are frequently the first responding officers, and immediate
16 action is required, it is likely that shields will not be available. “However, an officer should
17 *never* wait for the arrival of a shield before moving toward the threat to stop the shooter.” *Id.*
18 p.104 (emphasis in original). Further providing support that the failings were on the law
19 enforcement response, specifically the poor leadership of Uvalde Police Chief Arredondo who
20 “did not provide appropriate leadership, command, and control, including not establishing an
21 incident command structure nor directing entry into classrooms 111 and 112.” *Id.* p.174. Two of
22 the responding officers, namely former Police Chief Arredondo and former Officer Adrian
23 Gonzales are facing criminal charges for abandoning or endangering the children whom they
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25 ⁸ Uvalde Leader-News, *UPD officer’s exit tied to withheld footage*, September 18, 2024, last accessed October 2,
26 2205, available at: <https://www.uvaldeleadernews.com/articles/uvalde-police-sgt-donald-page-resigns/>

⁹ U.S. Department of Justice, *Critical Incident Review: Active Shooter at Robb Elementary School*, Office of
Community Oriented Policing Services, last accessed October 2, 2025, available at:
<https://portal.cops.usdoj.gov/resourcecenter/Home.aspx?item=cops-r1141>

1 failed to protect that day and are currently awaiting trial later this year.^{10,11} The deficient
2 response to the Uvalde shooter was due to failures of leadership—not because the shooter
3 wielded a firearm which many of the nearly 400 responding officers also wielded. The State’s
4 invocation of this incident is improper and frankly disappointing.

5 **III. Argument**

6 **A. Legal Standard.**

7 Summary judgment is proper where no genuine issue of material fact exists, and the moving
8 party is entitled to judgment as a matter of law. *W. Telepage, Inc. v. City of Tacoma Dep’t of*
9 *Fin.*, 140 Wn.2d 599, 607, 998 P.2d 884 (2000); CR 56(c). “A material fact is one upon which
10 the outcome of the litigation depends, in whole or in part.” *Hisle v. Todd Pac. Shipyards*, 151
11 Wn.2d 853, 861, 93 P.3d 108 (2004) (quoting *Barrie v. Hosts of Am., Inc.*, 94 Wn.2d 640, 642,
12 618 P.2d 96 (1980)). Facts are construed in a light most favorable to the nonmoving party. *W.*
13 *Telepage*, 140 Wn.2d at 607 (citing *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333
14 (1998)).

15 To defeat a motion for summary judgment, the non-moving party “must set forth specific
16 facts which sufficiently rebut the moving party’s contentions and disclose the existence of a
17 genuine issue as to a material fact.” *Michael v. Mosquera-Lacy*, 165 Wn.2d 595, 601, 200 P.3d
18 695 (2009); *see also Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). The
19 non-moving party may not rely on mere allegations, conclusions, opinions, speculation, or
20 “argumentative assertions that factual issues remain.” *Mosquera-Lacy*, 165 Wn.2d at 602. The
21 weapons prohibited by SHB 1240 are ‘arms,’ and have historically and traditionally been used
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23 ¹⁰ Earl Stoudemire, Kristin Dean, *Uvalde Police, DA won’t oppose venue change for former officer facing charges*
24 *in 2022 school shooting*, last accessed October 3, 2025, available at: [https://www.msn.com/en-us/news/other/uvalde-](https://www.msn.com/en-us/news/other/uvalde-police-da-won-t-oppose-venue-change-for-former-officer-facing-charges-in-2022-school-shooting/ar-AA1MTLFF?ocid=BingNewsSerp)
[police-da-won-t-oppose-venue-change-for-former-officer-facing-charges-in-2022-school-shooting/ar-](https://www.msn.com/en-us/news/other/uvalde-police-da-won-t-oppose-venue-change-for-former-officer-facing-charges-in-2022-school-shooting/ar-AA1MTLFF?ocid=BingNewsSerp)
[AA1MTLFF?ocid=BingNewsSerp](https://www.msn.com/en-us/news/other/uvalde-police-da-won-t-oppose-venue-change-for-former-officer-facing-charges-in-2022-school-shooting/ar-AA1MTLFF?ocid=BingNewsSerp)

25 ¹¹ Ryan Cerna, Erica Hernandez, Daniela Ibarra, *Former Uvalde CISD officer Adrian Gonzales files request for trial*
26 *outside of Uvalde County*, last accessed October 3, 2025, available at:
[https://www.ksat.com/news/local/2025/08/12/former-uvalde-cisd-officer-adrian-gonzales-files-request-for-trial-](https://www.ksat.com/news/local/2025/08/12/former-uvalde-cisd-officer-adrian-gonzales-files-request-for-trial-outside-of-uvalde-county/)
[outside-of-uvalde-county/](https://www.ksat.com/news/local/2025/08/12/former-uvalde-cisd-officer-adrian-gonzales-files-request-for-trial-outside-of-uvalde-county/)

1 by law-abiding citizens for lawful purposes like self-defense and defense of the state.

2 Accordingly, Plaintiffs' cross-motion for summary judgment should be granted.

3 **B. Standard for declaring statutes unconstitutional.**

4 The State misstates the legal standard of a facial challenge to a constitutional provision, and
5 also omits any mention of actually interpreting the language of the Constitution itself—an
6 oversight that is both fatal to its analysis and SHB 1240, and telling in the approach taken by the
7 legislature. The “no set of circumstances” test urged by Appellant in declaring a statute
8 unconstitutional is not correct. That test, which stems from *United States v. Salerno*, 481 U.S.
9 739, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987), is dictum and is not “applied to a state court
10 challenge, particularly a challenge under the state constitution.” *Robinson v. City of Seattle*, 102
11 Wn. App. 795, 807-08, 10 P.3d 452 (2000) (citing *City of Chicago v. Morales*, 527 U.S. 41, 119
12 S. Ct. 1849 (1999) (the no set of circumstances test “has never been the decisive factor in any
13 decision of this Court, including *Salerno* itself.”). At most, it provides an “excellent framework”
14 for analysis. *In re Detention of Turay*, 139 Wn.2d 379, 417 n.27, 986 P.2d 790 (1999).

15 Moreover, while “a court will not controvert legislative findings of fact, the legislature is
16 precluded ... from making *judicial* determinations or legal conclusion[s].” *Port of Seattle v.*
17 *Pollution Control*, 151 Wn.2d 568, 625, 90 P.3d 659 (2004) (emphasis and alteration in original).
18 So the legislature’s contention that SHB 1240 does not “interfere with lawful self-defense” as
19 contended by the State is immaterial. “Where the validity of a statute is assailed, there is a
20 presumption of the constitutionality of the legislative enactment, unless its repugnancy to the
21 constitution clearly appears or is made to appear beyond a reasonable doubt.” *Clark v. Dwyer*, 56
22 Wn.2d 425, 431, 353 P.2d 941 (1960) (citing *Port of Tacoma v. Parosa*, 52 Wn.2d 181, 324 P.2d
23 438 (1958)). A party challenging the constitutionality of a statute bears the burden of proving its
24 case beyond a reasonable doubt. *Amalgamated Transit v. State*, 142 Wn.2d 183, 206, 11 P.3d
25 762 (2000). However, this is not a burden of proof as in the context of a criminal proceeding but
26 is simply one of deference to a co-equal branch of government. Here,

1 [T]he ‘beyond a reasonable doubt’ standard used when a statute is
2 challenged as unconstitutional refers to the fact that one challenging
3 a statute must, by argument and research, convince the court that
4 there is no reasonable doubt that the statute violates the constitution.
5 The reason for this high standard is based on our respect for the
6 legislative branch of government as a co-equal branch of
7 government, which, like the court, is sworn to uphold the
8 constitution.

9 *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998). The standard does not
10 prevent this Court from exercising its constitutional role to “make the decision, as a matter of
11 law, whether a given statute is within the legislature’s power to enact or whether it violates a
12 constitutional mandate.” *Id.*

13 Put simply, the Court needs to start with the text of the Washington Constitution. In *State v.*
14 *Sieyes*, this Court recognized that it was “not at liberty to disregard th[e] text” of article I, § 24,
15 because “[t]he provisions of this Constitution are mandatory, unless by express words they are
16 declared to be otherwise,” as provided in article I, § 29 (referred to here as the Mandatory
17 Clause). 168 Wn.2d 276, 293, 225 P.3d 995 (2010). The Mandatory Clause makes clear that the
18 constitution is to be obeyed as written, not whittled away through construction. *See Johns v.*
19 *Wadsworth*, 80 Wash. 352, 354-57, 141 P. 892 (1914).

20 The very purpose of the enshrinement of natural rights in a constitution is that constitutions
21 do not change with the varying tides of public opinion and desire. The Declaration of Rights was
22 meant to be a primary protector of the fundamental rights of Washingtonians. Justice Robert F.
23 Utter, *Freedom and Diversity in a Federal System: Perspectives on State Constitutions and the*
24 *Washington Declaration of Rights*, 7 Seattle U. L. Rev. 491, 491 (1984).¹² The Preamble to the
25 Washington Constitution gives thanks to the supreme creator for the pre-existing liberties of
26 Washingtonians; “[a]t the heart of the Washington Constitution is the emphasis on protecting
individual rights. Washington, like other states, begins its constitution with a Declaration of
Rights... [it] proclaim[s] the paramount purpose of government; “governments ... are

¹² Justice Utter wrote the referenced article while a Washington Supreme Court Justice.

1 established to protect and maintain individual rights.” Brian Snure, *A Frequent Recurrence to*
2 *Fundamental Principles: Individual Rights, Free Government, and the Washington State*
3 *Constitution*, 67 Wash. L. Rev. 669, 675 (1992) (quoting Wash. Const. art. I, § 1). The
4 conclusion of the Declaration of Rights provides that “frequent recurrence to fundamental
5 principles is essential to the security of individual right and the perpetuity of free government.”
6 Wash. Const. art. I, § 32.

7 Washington’s Constitution is to be interpreted with its common and ordinary meaning. *State*
8 *ex rel. Albright v. City of Spokane*, 64 Wn.2d 767, 770, 394 P.2d 231 (1964). Courts are “bound
9 by the mandatory language ... of the constitution as adopted by the people in 1889 until such
10 time as the people see fit to exercise their sovereign right to change it.” *State ex rel. Lemon v.*
11 *Langlie*, 273 P.2d 464, 479 (1954). The role of courts is to look at the text of the constitution—
12 and to the ratifying public’s original understanding—and pronounce, without fear of criticism,
13 what it means. Article I, § 24 is “clear and explicit,” and therefore “leave[s] no room for
14 construction.” *State ex rel. Wash. Nav. Co. v. Pierce County.*, 184 Wash. 414, 423, 51 P.2d 407
15 (1935). Even when something “serve[s] a good purpose and would undoubtedly be of great
16 public benefit,” the plain text of the Constitution takes precedent and must be given effect
17 without construction. *Johns*, 80 Wash. at 355. Just as in the case of a statute, a constitutional
18 provision which is plain, clear, and unambiguous is not open to construction. *State ex rel.*
19 *Carroll v. Munro*, 52 Wn.2d 522, 327 P.2d 729 (1958); *State ex rel. Evans v. Brotherhood Etc.*,
20 41 Wn.2d 133, 145, 247 P.2d 787 (1952); *State ex rel. Anderson v. Chapman*, 86 Wn.2d 189,
21 191, 543 P.2d 229 (1975). And the legislature’s “findings” which are naked policy preferences,
22 should be declared unconstitutional, as “courts cannot engraft exceptions on the constitution, “no
23 matter how desirable or expedient such . . . exception might seem.” *Anderson*, 86 Wn.2d at 196
24 (citing *State ex rel. O’Connell v. Port of Seattle*, 65 Wn.2d 801, 806, 399 P.2d 623 (1965)).

25 Article I, § 24 is clear: the right to bear arms “shall not be impaired.” The Washington
26 Supreme Court has provided:

1 Constitutions being the result of the popular will, the words used
2 therein are to be understood ordinarily in the sense that such words
3 convey to the popular mind. The meaning to be given to the
4 language used in such instruments is that meaning which a man of
5 ordinary prudence and average intelligence and information would
6 give. Generally speaking, the meaning given to words by the
7 learned and technical is not to be given to words appearing in a
8 constitution.

9 *State ex rel. State Capitol Comm. v. Lister*, 91 Wash. 9, 14, 156 Pac. 858 (1916). And the
10 Supreme Court has already done the work of what the ordinary definition was shortly after the
11 Washington Constitution was ratified: “Webster’s definition of ‘impair’ is, ‘To make worse; to
12 diminish in quantity, value, excellence or strength; to deteriorate.’” *Swinburne v. Mills*, 17 Wash.
13 611, 615, 50 P. 489 (1897). It is ineluctable that SHB 1240—which only leaves “antique
14 firearms, any firearm that has been made permanently inoperable, or any firearm that is manually
15 operated by bolt, pump, lever, or slide action” as available firearms—‘impairs’ the fundamental
16 right to bear arms. Laws of 2023, ch. 162 § 2(2)(c).

17 The guiding principle is to give effect to the intent of the framers of our constitution and the
18 people who adopted it. *Boeing Aircraft Co. v. R.F.C.*, 25 Wn.2d 625, 659, 171 P.2d 838 (1946).
19 As briefed more fully below, the State (and Territory) of Washington historically supported
20 robust armament of its citizens. To uphold SHB 1240 (especially alongside the other laws
21 recently enacted by the legislature) “would defeat the intention of our constitution’s framers [by]
22 interpret[ing] an essential right so that it slowly withers away.” *Sofie v. Fibreboard Corp.*, 112
23 Wn.2d 636, 649, 771 P.2d 711 (1989).

24 This Court should put a stop to the continual winnowing of a fundamental right by piecemeal
25 prohibitions. Despite the inclusion of the right to bear arms in the Declaration of Rights in the
26 Washington Constitution, which unequivocally sets forth that the “right of the individual citizen
27 to bear arms in defense of himself, or the state, shall not be impaired,” the state government now
28 limits Washington citizens to “antique firearms, any firearm that has been made permanently
29 inoperable, or any firearm that is manually operated by bolt, pump, lever, or slide action.” Laws

1 of 2023, ch. 162 § 2(2)(c). Any semiautomatic firearm is limited to 10 rounds or less in its
2 magazine. Laws of 2022, ch. 104. Put simply, how is the right not “impaired?”

3 **C. The plain language of the Washington Constitution is mandatory and must be given**
4 **effect.**

5 Washington is one of six states that have a “mandatory clause.” Timothy Sandefur, The
6 “Mandatory” Clauses of State Constitutions, 60 Gonz. L. Rev. 159, 161 (2024-25). As just
7 briefed, it simply means that the plain text of the constitution must be given effect and cannot be
8 ignored in the interests of the police power of the state. The constitution says what it says for a
9 reason.

10 Four of those six states are “constitutional carry” states that do not require a license to carry a
11 weapon. Two of those states, including this state and California, have gone the opposite
12 direction and have among the strictest gun laws in the country. But the California Constitution
13 does not have a provision protecting the right to bear arms. *See Kasler v. Lockyer*, 23 Cal. 4th
14 472, 481, 2 P.3d 581 (Cal. 2000). The four states allowing constitutional carry do not have
15 magazine capacity restriction laws or “assault weapon” bans. So Washington is the sole and
16 extreme outlier of the states which have a right to bear arms provision and a mandatory clause.

17 While California relies on the incorporated Second Amendment of the United States
18 Constitution to protect the right to bear arms, Washington “retains ‘the sovereign right to adopt
19 in its own Constitution individual liberties *more expansive* than those conferred by the Federal
20 Constitution.’” *State v. Gunwall*, 106 Wn.2d 54, 59, 720 P.2d 808 (1986) (*quoting PruneYard*
21 *Shopping Ctr. v. Robins*, 447 U.S. 74, 81, 100 S. Ct. 2035 (1980)) (emphasis added). And
22 “Supreme Court application of the United States Constitution establishes a floor below which the
23 state courts cannot go to protect individual rights. But states of course can raise the ceiling to
24 afford greater protections under their own constitutions.” *Sieyes*, 168 Wn.2d at 292. A district
25 court in California declared a similar “assault weapon” ban unconstitutional under the Second
26 Amendment. *Miller v. Bonta*, 19-cv-01537 (S.D. Cal. 2023), *held in abeyance*, (9th Cir. 2023).

And it appears the U.S. Supreme Court will “address the AR-15 issue soon, in the next Term or

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Silent Majority Foundation
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two.” *Snope v. Brown*, 605 U.S. ____ (2025) (statement of Kavanaugh, J.). While the issue is percolating up to the U.S. Supreme Court, the Washington Constitution provides greater protections while incorporating Second Amendment analysis. Arms in common use are protected by both constitutions, but more robustly by the Washington Constitution.

SHB 1240 is nothing but a continued erosion of Article I, § 24 by the legislature. But a “constitutional provision should receive a consistent and uniform interpretation. Even though the circumstances may have changed to make a different rule seem more desirable, the constitution should not be taken to mean one thing at one time and another at another time.” *State v. Catlett*, 133 Wn.2d 355, 382, 945 P.2d 700 (1997) (citing *State ex rel. Lemon v. Langlie*, 45 Wn.2d 82, 273 P.2d 464 (1954)). And throughout the history of Washington, weapons fit for use for self defense or defense of the state—“military style” if you will, including semiautomatic weapons—have been legal and approved for law-abiding citizens.

The Washington Constitution was drafted and adopted for the benefit and protection of Washingtonians. These liberties are not granted or conferred by the government, but are preexisting, “and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.” Wash. Const. art. I, § 1. The Washington Supreme Court has stated that “we regard the history, lineage, and pedigree of the Second Amendment right to bear arms necessary to an Anglo-American regime of ordered liberty and fundamental to the American scheme of justice. It is deeply rooted in this Nation’s history and tradition.” *State v. Sieyes*, 168 Wn.2d 276, 287, 225 P.3d 995 (2010).

Self-defense is a fundamental right. It has been described as “the first law of nature.” *State ex rel. Bd. of County Comm’rs v. Clausen*, 95 Wash. 214, 239, 163 P. 744 (1917) (Chadwick, J. concurring); see also, 1 St. George Tucker, Blackstone’s Commentaries app. at 300 (1803). The Washington Constitution is an acknowledgement that “the philosophy of natural rights or natural law also resonated with constitutional framers, including the delegates to the Washington State Constitutional Convention.” Justice Debra Stephens, *The Once and Future Promise of Access to*

Justice in Washington’s Article I, Section 10, 91 Wash. L. Rev. Online 41, 44-45 (2016). Washington case law supports the proposition that game laws banning the killing of wild animals are nullified in defense of property, let alone defense of self. Eugene Volokh, State Constitutional Rights of Self-Defense and Defense of Property, 11 Tex. Rev. L. & Pol. 399, 408 n.34 (2007) (citing *Cook v. State*, 192 Wash. 602, 611, 74 P.2d 199 (1937) (“one has the constitutional right to defend and protect his property, against imminent and threatened injury by a protected animal, even to the extent of killing the animal[.]”), and *State v. Burk*, 114 Wash. 370, 195 P. 16 (1921) (“The right of defense of person and property is a constitutional right . . . and is recognized in the construction of all statutes.”) (quoting *State v. Ward*, 170 Iowa 185, 152 N.W. 501 (1917))). Even in the context of defense of others, the right to preservation of life is obviously of paramount importance. *Id.* at 411 n.47 (citing *Gardner v. Loomis Armored Inc.*, 128 Wn.2d 931, 913 P.2d 377 (1996) (armored car driver exited vehicle in violation of company policy to intervene on behalf of bank customers being held at knifepoint))).

SHB 1240 unequivocally impairs the fundamental right to bear arms by freezing technological advances that civilians may use in exercising that right. But that is not permissible under the Washington Constitution.

D. The history of Washington state demonstrates the pervasive use of “military style” weapons in the hands of civilians.

Civilians in Washington have always had access to arms on par with those wielded by law enforcement and the military. As elucidated in *City of Seattle v. Evans*:

The right to bear arms protects instruments that are designed as weapons traditionally or commonly used by law-abiding citizens for the lawful purpose of self-defense. In considering whether a weapon is an arm, we look to the historical origins and use of that weapon, noting that a weapon does not need to be designed for military use to be traditionally or commonly used for self-defense. We will also consider the weapon’s purpose and intended function.

184 Wn.2d 856, 869, 366 P.3d 906 (2015). The right to bear arms “encompasses at least two prongs: (1) protection against governmental or military tyranny and (2) self-protection. While

1 the latter arguably finds more relevance today, both underlie the Second Amendment and
2 support its application to the states.” *Sieyes*, 168 Wn.2d at 291 (2010) (internal citations
3 omitted). In fact, the design of a weapon for military use is part of what affords it
4 Constitutional protection. Bowie knives, dirk knives, the United States Marine Corps Ka-Bar
5 fighting knife, jackknives, switchblades, and swords have been protected due to their “military
6 origins,” “history,” and “purpose.” *Evans*, 184 Wn.2d at 867-68 (citing *State v. Kessler*, 289 Or.
7 359, 361-70, 614 P.2d 94 (1980) and *State v. Delgado*, 298 Or. 395, 400-03, 692 P.2d 610
8 (1984)). Assuming, *arguendo*, that the term “military-style” made sense, it would do nothing
9 more than confirm that those weapons are protected due to their “military origins,” “history,”
10 and “purpose” of defense of self and the state.

11 In fact, in 1860, the legislative assembly of the Territory of Washington directed the Quarter
12 Master General of the Territory “to forward one fourth of all the Territorial arms now in his
13 possession to some convenient point in the counties of Spokane and Walla Walla, or both of
14 them” to an Assistant Quarter Master “to issue the arms in his charge to the aforesaid counties
15 east of the Cascade Mountains in this Territory, in accordance with the law now in force for the
16 distribution of the public arms.” Hatcher Decl., Ex. 9. And again in 1878, citizens in Central
17 Washington were equipped by the territorial government with rifles and 50 cartridges in response
18 to “the great Indian scare in this region.” Interstate Publishing Company, *Illustrated History of*
19 *Klickitat, Yakima and Kittitas Counties*, 377 (1904).¹³ The weapons sent to the settlers were
20 “three hundred stand of Remington needle-guns.” *Id.*, p.164. The “needle-gun” or “Springfield
21 Model 1873 was the standard issue rifle during the Indian Wars of the 1870s and 1880s. The
22 rifle also saw service in the Spanish-American War and the Philippine Insurrection.” Nick
23 McGrath, *The Springfield Model 1873 Rifle*, The Army Historical Foundation (2013).¹⁴ While
24 the “perception of life in the West may have been exaggerated during the 1870s and 1880s, ... in

25
26 ¹³ Available online at: <https://archive.org/details/illustratedhistorkykc00inte/page/n7/mode/2up>, last accessed
October 12, 2025.

¹⁴ Available at: <https://armyhistory.org/the-springfield-model-1873-rifle/>, last accessed October 12, 2025.

1 Washington Territory the reality often came close to the stereotype. After a hiatus of almost
2 twenty years, Indian wars broke out in Washington in 1877 and ... continued well into the
3 1890s.” Kent D. Richards, *Insurrection, Agitation and Riots: The Police Power and Washington*
4 *Statehood*, Montana: The Magazine of Western History, Vol. 37, No. 4, Autumn, 1987, p.12. In
5 1891, acting Governor Charles E. Laughton sent 200 rifles and 6,000 ball cartridges to “be used
6 only in the case of actual necessity occasioned by attack from Indians.” Office of the Adjutant
7 General, *The Official History of the Washington National Guard, Volume IV* 141 (c. 1955-67).¹⁵

8 This rough period required arms sufficient to defend self and the state. No bifurcation
9 between civilian and “military-style” existed. During the Mexican American War and the Civil
10 War, soldiers who surrendered were sometimes paroled and allowed to keep their firearms. *See*
11 Ron Chernow, *Grant* 48 (2017) (General—and later, President—Zachary Taylor allowed
12 surrendered Mexican soldiers to retain their muskets and horses); 485 (President Lincoln, in
13 discussing eventual terms of surrender to be extended to confederate armies with General—and
14 later, President—Ulysses S. Grant, stated that confederate soldiers should “have their horses to
15 plow with, and, if you like, their guns to shoot crows with”); *cf.*, David Herbert Donald, *Lincoln*
16 431 (President Lincoln took personal interest in weapons technology and inventors who
17 developed arms). There has never been a split between what civilians may use for defense of
18 self and the state and what the military uses for defense of the state on an individual armament
19 level.

20 **E. Assuming that an interest-balancing analysis is erroneously used, strict scrutiny is**
21 **required.**

22 The State relies heavily on a case which is limited in scope and duration, and which is
23 “incorrect and harmful,” due to its erroneous application of intermediate scrutiny. *State v.*
24 *Gator’s Custom Guns, Inc.*, 4 Wn.3d 732, 771, 568 P.3d 278 (2025) (McCloud, J., dissenting). It
25 is incorrect and harmful because “State interference with a fundamental right is subject to strict

26 ¹⁵ Digital versions of original documents compiled by the Washington National Guard State Historical Society,
available at: <https://mil.wa.gov/official-history-of-washington-national-guard>, last accessed October 12, 2025.

1 scrutiny.” *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 220, 143 P.3d 571 (2006) (citing *In re*
2 *Parentage of C.A.M.A.*, 154 Wn.2d 52, 57, 109 P.3d 405 (2005)); *Gator’s*, 4 Wn.3d at 771
3 (collecting cases). The State’s attempted use of *State v. Jorgenson*, 179 Wn.2d 145, 312 P.3d
4 960 (2013) is unavailing here; there, the Supreme Court was careful to note that “[t]he State has
5 an important interest in restricting *potentially dangerous persons* from using firearms.” *Id.* at 162
6 (emphasis added). The statute at issue in *Jorgenson* was limited to “only persons charged with
7 specific serious offenses from possessing firearms, and only while released on bond or personal
8 recognizance.” *Id.* As applied to Jorgenson, who was “released on bond after a judge found
9 probable cause to believe Jorgenson had shot someone,” the grounds were clearly met. *Id.*

10 *Jorgenson* is limited to narrow situations; “as applied here, the temporary restriction on
11 Jorgenson’s right to bear arms after a trial court judge found probable cause to believe he had
12 shot someone does not violate the Second Amendment.” *Id.* at 164. The Supreme Court utilized
13 intermediate scrutiny, which the court reasoned may be available when “evaluating restrictions
14 on gun possession by *particular people* or *in particular places*.” *Id.* at 160 (emphasis added).
15 That may be correct when evaluating *limited* restrictions for *specific* classes of people, as it is
16 analogous to First Amendment challenges pertaining to time, place, and manner restrictions on
17 speech. *Id.* But SHB 1240 is not limited in any way, shape, or form, unlike the challenged
18 statute in *Jorgenson* which was “sufficiently limited in the scope of affected persons and its
19 duration to warrant review under intermediate scrutiny.” *Id.* at 162. Strict scrutiny—at
20 minimum—is required here.

21 **F. The State— and its experts—find that so-called “large capacity magazines” are the**
22 **drivers of increased fatalities in mass shootings—not so-called “assault weapons.”**

23 As previously briefed, the State admits that so-called “LCMs have been used in two-thirds of
24 gun massacres since 1990, resulting in a 58% increase in average fatalities per incident compared
25 to mass shootings that did not involve LCMs.” Appellant State of Washington’s Brief, *State v.*
26 *Gator’s Custom Guns, Inc.*, No. 102940-3, p.33. The State’s expert witnesses corroborate the
conclusion that LCMs—not “assault weapons”—are the driver of increased casualties. First,

1 Louis Klarevas, Ph.D., touts his “perfect gun policy study” which concludes that “jurisdictions
2 with LCM bans experienced substantially lower gun massacre incidence and fatality rates when
3 compared to jurisdictions not subject to similar bans.” Hughes Decl., Ex. D, p.1. His study was
4 also used to support the conclusion that “LCM bans were associated with significant reductions
5 in the incidence of fatal mass shootings but that bans on assault weapons had no clear effects on
6 either the incidence of mass shootings or on the incidence of victim fatalities from mass
7 shootings.” Webster, 19 Criminology and Pub. Pol’y at 188. And Phil Andrew admits that
8 LCMs “increase the lethality” of “assault weapons” “because they are able to fire rapidly with
9 high-capacity magazines.” Hughes Decl., Ex. A, p.12-13.

10 To use the words of the State: “deadly LCMs ... make mass shootings and other horrific
11 crimes more frequent and more deadly[.]” Appellant State of Washington’s Answer to Motion to
12 Modify Comm’r’s Ruling, p.16. The State cites the Webster study favorably, evincing its
13 support for the proposition that LCMs—not “assault weapons”—are to blame.

14 **G. SHB 1240 is unconstitutionally vague.**

15 Finally, the State closes with snarky arguments and comments that Plaintiffs should read
16 SHB 1240. Notwithstanding the tone of the argument, it is also wrong on a substantive level
17 because the State misstates the law. SHB 1240 makes it illegal to “manufacture, import,
18 distribute, sell, or offer for sale any assault weapon[.]” Laws of 2023, ch. 162 § 3(1). The term
19 “assault weapon” includes any “conversion kit, part, or combination of parts, from which an
20 assault weapon can be assembled or from which a firearm can be converted into an assault
21 weapon if those parts are in the possession or under the control of the same person[.]” *Id.* §
22 2(2)(iii). The parts which can convert a semiautomatic firearm into an “assault weapon”
23 includes nine categories of attachments. For simplicity, we will use a forward pistol grip to
24
25
26

1 demonstrate how simply purchasing a \$9.99 item¹⁶ could convert an otherwise legal
2 semiautomatic shotgun into a prohibited “assault weapon.”

3 First and foremost, SHB 1240 is correct that a forward pistol grip is “designed for use by the
4 nonfiring hand to improve control;” exactly something that would be useful for a law-abiding
5 citizen in a self-defense setting. It can be easily attached and detached to the Picatinny rail
6 system, which is the mounting platform which is standardized for most modern sporting rifles
7 and designed to allow users to affix attachments—such as a forward pistol grip—to their rifle or
8 pistol to increase control and individual fit or preference. Under SHB 1240, simply possessing a
9 forward pistol grip, or having it under your control, is enough to qualify as an “assault weapon.”
10 SHB 1240 provides that if “an assault weapon can be assembled or from which a firearm can be
11 converted into an assault weapon” is enough, “if those parts are in the possession or under the
12 control of the same person[.]” *Id.* The State argues that only if parts “are assembled into an
13 assault weapon,” they are prohibited. State’s Mot. for Summ. J., p.23. It cites to RCW 70.74.022
14 for the proposition that “[i]t is not uncommon for lawful items to become unlawful when
15 assembled.” *Id.* n.4. But that statute requires that the possessor of lawful items which may be
16 combined into an explosive device *intend* to assemble them into an explosive device. RCW
17 70.74.022(1). SHB 1240 makes it a crime to simply possess a “part, or combination of parts,
18 from which an assault weapon can be assembled or from which a firearm can be converted into
19 an assault weapon[.]” Laws of 2023, ch. 162 § 2(2)(iii). There is no intent requirement, only that
20 the parts “are in the possession or under the control of the same person[.]” *Id.* This is no way to
21 encumber the exercise of a fundamental right.

22 **H. The Court should deny the State’s motion and grant summary judgment to Plaintiffs.**

23 The record is fully developed in this case. Both parties have submitted expert reports,
24 propounded and responded to written discovery, and the State has deposed some of Plaintiffs’

25 _____
26 ¹⁶ Cheaper Than Dirt!, *NcSTAR 1913 Mid Length Vertical Grip 3.75” AR-15 Picatinny Mount Polymer Black*, last
accessed October 3, 2025, available at: <https://www.cheaperthandirt.com/ncstar-1913-mid-length-vertical-grip-3.75-ar-15-picatinny-mount-polymer-black/fc-848754014528.html>

1 experts as well as some of the Plaintiffs and 30(b)(6) designees. Plaintiffs accordingly cross-
2 move for summary judgment as there are no material issues of genuine fact that require trial. It
3 would serve judicial economy and conserve public and private resources to grant summary
4 judgment in favor of Plaintiffs. Both parties have had ample opportunity explore the issues and
5 develop the record. Plaintiffs are entitled to cross-move in their responding brief. *See Northwest*
6 *Infrastructure, Inv. v. PCL Constr. Servs., Inc.*, 2010 Wash. Super. LEXIS 1568¹⁷ (“the Court
7 finds that the Washington Civil Rules do not prohibit a non-moving party from including a cross-
8 motion in its opposition to a summary judgment motion, where the cross-motion is based upon
9 the same identical issues.”).

10 It is also axiomatic that courts have the inherent authority to manage their own docket. *See*
11 *State v. Gassman*, 175 Wn.2d 208, 211, 283 P.3d 1113 (2012) (trial courts have the inherent
12 authority to control and manage their calendars, proceedings, and parties); *see also Cowles*
13 *Pub’g Co. v. Murphy*, 96 Wn.2d 584, 588, 637 P.2d 966 (1981). Even where there is an absence
14 of a cross-motion, a court may still grant summary judgment in favor of a non-moving party. *See*
15 *Celotex Corp. v. Catrett*, 477 U.S. 317, 326, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986) (as long as
16 losing party on notice that it had to present all evidence, *sua sponte* granting of summary
17 judgment proper); *Gospel Missions of Am. v. City of L.A.*, 328 F.3d 548, 553 (9th Cir. 2003)
18 (summary judgment proper for non-moving party if losing party had opportunity to develop
19 same issues); *Cool Fuel, Inc. v. Connett*, 685 F.2d 309, 312 (9th Cir. 1982) (same); *Northwest*
20 *Infrastructure, Inv.*, 2010 Wash. Super. LEXIS 1568 (same).

21 IV. Conclusion

22 As detailed above, the weapons prohibited by SHB 1240 are “arms” for purposes of the
23 fundamental right to bear arms as protected by the Washington Constitution. Because they are
24 protected, and because it is a complete prohibition of the most commonly possessed arms in the
25 state, SHB 1240 is an unconstitutional impairment. Plaintiffs are entitled to summary judgment.

26 ¹⁷ According to GR 14.1(a), this case may be cited as persuasive authority if identified as non-binding.

1 Dated this 13th of October, 2025.

2 /s/ Austin F. Hatcher

3 Austin F. Hatcher, WSBA #57449

4 Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I filed with the Court and electronically served a copy of this document on all parties on the date below as follows:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 13th day of October, 2025, at Spokane, WA.

/s/ Austin F. Hatcher

Austin Hatcher, WSBA #57449
Attorney for Plaintiffs