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IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY

JANE DOE (a fictitious name for a real
Jackson County resident),

Plaintiff,

vs.

MEDFORD SCHOOL DISTRICT 549C,

Defendant.

Case No. 07-3765-E2

DEFENDANT’S MOTIONS TO
STRIKE AND DISMISS
PURSUANT TO ORCP 21

(Oral Argument Requested)

UTCRC 5.050(1) NOTICE

Pursuant to UTCRC 5.050(1), Defendant hereby requests oral argument of this motion.

- (a) The time required for oral argument is approximately 1 hour.
- (b) Official court reporting services are not requested for the hearing.

UTCRC 5.010(2) CERTIFICATE OF COMPLIANCE

The undersigned certifies that he called opposing counsel on September 27 to discuss the motion to strike filed herein, but counsel were unable to resolve the matter.

INTRODUCTION

Plaintiff’s Complaint asks this Court to issue a declaratory judgment that a school board policy adopted by defendant Medford School District 549C (hereinafter “the District”), which policy prohibits District employees from possessing dangerous or deadly weapons, including firearms, on District property, is void and in contravention of ORS 166.170. That statute, which is contained as a part of Oregon’s general criminal statutes, provides:

“(1) Except as expressly authorized by state statute, the authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use of

1 firearms or any element relating to firearms and components
2 thereof, including ammunition, is vested solely in the Legislative
Assembly.

3 (2) Except as expressly authorized by state statute, no county,
4 city or other municipal corporation or district may enact civil or
5 criminal ordinances, including but not limited to zoning
6 ordinances, to regulate, restrict or prohibit the sale, acquisition,
transfer, ownership, possession, storage, transportation or use of
firearms or any element relating to firearms and components
thereof, including ammunition. Ordinances that are contrary to
this subsection are void.”

7 In addition, plaintiff alleges that she is the holder of a concealed handgun permit under ORS
8 166.291 and 166.292. As such, plaintiff seeks a permanent injunction prohibiting the District
9 from interfering with her ability to possess a handgun on District property, including under
10 the terms of the District’s policy prohibiting its employees from possessing dangerous or
11 deadly weapons on District property.

12 Plaintiff’s Complaint should be dismissed in its entirety. Plaintiff is mistaken in her
13 belief that she has the right to be in possession of a handgun, whether pursuant to a concealed
14 handgun permit or not, on District property and that the District’s policy somehow violates
15 ORS 166.170. Accordingly, plaintiff’s Complaint should be dismissed on the merits for
16 failure to state a claim under ORCP 21(A)(8). However, this Court is not even required to
17 reach the merits in this case, since plaintiff’s entire Complaint should be stricken under
18 ORCP 21(E) for failing to comply with the requirements of ORCP 16(A). Further, in the
19 event that the entire Complaint is not stricken, plaintiff’s Complaint has not alleged the
20 existence of an actual or justiciable controversy and is therefore subject to dismissal under
21 ORCP 21(A)(1) for lack of jurisdiction.

22 **MOTION TO STRIKE UNDER ORCP 21(E)**

23 **FAILURE TO COMPLY WITH REQUIREMENTS OF ORCP 16(A)**

24 Pursuant to ORCP 21(E), the District hereby moves the Court for an order striking
25 plaintiff’s Complaint in its entirety for failing to comply with the requirements of ORCP
26 16(A).

1 Points and Authorities

2 Nothing in the Oregon Rules of Civil Procedure explicitly permits suits under
3 fictitious names. In fact, ORCP 16(A) requires that in every complaint, “the title of the
4 action shall include the names of all the parties”. Plaintiff has filed this Complaint under a
5 fictitious name, “Jane Doe”. Plaintiff has not alleged any reason why she cannot prosecute
6 this action under her true and actual name, nor has she sought the leave of this Court to
7 proceed under a fictitious name. Accordingly, because the Complaint, on its face, fails to
8 comply with ORCP 16(A), it should be stricken in its entirety.

9 ORCP 16(A) is substantially similar to Federal Rule of Civil Procedure 10(a), which
10 also requires a complaint to include the names of all the parties. Although there are no
11 reported decisions in Oregon concerning the use of a fictitious name by a plaintiff under
12 ORCP 16(A), there are numerous federal cases addressing that issue under FRCP 10(a).
13 Those cases note the general rule that “the identity of the parties in an action, civil or
14 criminal, should not be concealed except in an unusual case, where there is a need for the
15 cloak of anonymity.” *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1980). The rule
16 is based on the public’s legitimate interest in open court proceedings and serves to apprise
17 defendants of the accuser’s identity. It is only in unusual cases, where special circumstances
18 justify secrecy, that a plaintiff may be allowed to proceed anonymously. *Does I thru XXIII*
19 *v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000). The court must balance the
20 need for anonymity against the general presumption that parties’ identities are public
21 information and the risk of unfairness to the opposing party. *Id.* at 1068.

22 Courts have allowed plaintiffs to use fictitious names in three general situations
23 where, after conducting the balancing test described above, the need for anonymity tips in
24 favor of the plaintiff: (1) when identification creates a risk of retaliatory or physical harm;
25 (2) when anonymity is necessary to preserve privacy where the matter is of a sensitive and
26 highly personal nature; and (3) when the anonymous party is compelled to admit his or her

1 intention to engage in illegal conduct, thereby risking criminal prosecution. *Id.* (citations
2 omitted). Plaintiff has not alleged any such circumstances, and indeed none are present here.

3 Plaintiff may attempt to argue that she needs to maintain anonymity due to a fear of
4 physical harm from her ex-husband. Plaintiff's alleged fear of her husband has been cited
5 by plaintiff as the rationale for obtaining a concealed handgun license, as well as for her
6 desire to carry a concealed handgun on District property. That fear, however, preexisted her
7 filing of this Complaint. Plaintiff cannot reasonably argue that she needs to prosecute this
8 action under a fictitious name because she fears that her ex-husband may retaliate against her
9 for filing this Complaint.

10 Because there are no special circumstances present in this case which would override
11 the public's legitimate interest in open court proceedings and justify allowing plaintiff to
12 proceed under a fictitious name, this Court must strike plaintiff's Complaint in its entirety
13 for failure to comply with ORCP 16(A).

14 **MOTION TO DISMISS NO. 1**

15 **LACK OF JURISDICTION UNDER ORCP 21(A)(1)**

16 Pursuant to ORCP 21(A)(1), the District hereby moves the Court for an order
17 dismissing plaintiff's Complaint because it does not allege any actual or justiciable
18 controversy.

19 **Points and Authorities**

20 Plaintiff's Complaint, on its face, contains five allegations: (1) that plaintiff is
21 employed by the District; (2) that plaintiff is properly licensed to carry a concealed handgun;
22 (3) that plaintiff desires to carry her handgun concealed on her person while performing her
23 work duties for the District; (4) that the District has adopted a school board policy prohibiting
24 District employees from possessing dangerous or deadly weapons, including firearms, on
25 District property; and (5) that the District's policy is allegedly void under ORS 166.170(2).
26 On its face, the Complaint fails to allege any actual or justiciable controversy and must

1 therefore be dismissed for lack of jurisdiction.

2 The doctrine of justiciability encompasses a variety of related issues, including
3 standing, ripeness and mootness. *Yancy v Schatzer*, 337 Or. 345, 349 (2004). ORS 28.020,
4 the declaratory judgment statute which plaintiff attempts to avail herself of in this case,
5 provides that a person “whose rights, status or other legal relations are affected by a
6 constitution, statute, municipal charter, ordinance, contract or franchise” may seek
7 declaratory judgment relief. Oregon courts have held that ORS 28.020 contains a
8 jurisdictional requirement of justiciability. *Beck v City of Portland*, 202 Or.App. 360, 365
9 (2005).

10 Under the doctrine of justiciability, the court cannot issue declaratory judgments in
11 a vacuum and must instead resolve only an “actual or justiciable controversy”, which has
12 been described as “a dispute based on present facts rather than on contingent or hypothetical
13 events.” *TVKO v Howland*, 335 Or 527, 534 (2003). The difference between present facts
14 and hypothetical future events has been described as that between a decision that will have
15 “practical effects” on a party’s rights and one in which a party has only an “abstract interest
16 in the correct application of the law.” *Orr v East Valley Water District*, 203 Or.App. 430,
17 437 (2005); *see also Budget Rent-A-Car v Multnomah Co.*, 287 Or 93, 95 (1979).
18 Accordingly, “declaratory relief is available only when it can affect *in the present* some rights
19 between the parties.” *TVKO, supra*, 335 Or at 535 (emphasis in original). The plaintiff
20 “must show some injury or other impact upon a legally recognized interest in the correct
21 application or the validity of a law”, and in addition, “the plaintiff’s showing of that injury
22 or impact must not be ‘too speculative.’” *League of Oregon Cities v. State of Oregon*, 334
23 Or 645, 658 (2002) (citations omitted).

24 Here, plaintiff has not alleged that she has been disciplined or even threatened with
25 discipline by the District or that she has otherwise been harmed as a result of the District’s
26 policy. Her Complaint, on its face, therefore fails to allege any legally cognizable injury and

1 at best outlines a dispute based on contingent or hypothetical events. Such allegations are
2 too speculative and legally insufficient to present a justiciable controversy capable of being
3 remedied through the issuance of a declaratory judgment.¹ Accordingly, plaintiff's
4 Complaint must be dismissed with prejudice, since amendment of the Complaint would be
5 futile in that plaintiff cannot, on these facts, allege a justiciable controversy.

6 **MOTION TO DISMISS NO. 2**

7 **FAILURE TO STATE A CLAIM UNDER ORCP 21(A)(8)**

8 Pursuant to ORCP 21(A)(8), the District hereby moves the Court for an order
9 dismissing plaintiff's Complaint for failure to state a claim upon which relief may be granted.

10 **Points and Authorities**

11 On February 15, 2005, the District enacted School Board Policy Code GBJ
12 (hereinafter referred to as "the Policy"), a copy of which is attached as Exhibit "A" to
13 plaintiff's Complaint and which provides, in relevant part:

14 "Employees, district contractors, and/or their employees and
15 district volunteers shall not possess a dangerous or deadly
16 weapon or firearm on district property or at school-sponsored
17 events. This prohibition includes those who may otherwise be

18 ¹ The Court is also directed to the case of *Stubbs v Goldschmidt*, 2004 WL
19 1490323 (D.Or. 2004). In that case the plaintiff, who held a concealed handgun license,
20 alleged that a policy enacted by the State Board of Higher Education which prohibited the
21 possession of firearms by all persons on any college campus was void under ORS
22 166.170. The defendants filed a motion to dismiss on the grounds that the plaintiff lacked
23 standing, since the policy had not actually been enforced against the plaintiff and the
24 plaintiff had thus not suffered any injury. The Court agreed that the plaintiff did not have
25 standing and had not been injured by the mere existence of the defendants' policy, stating
26 "the alleged injury, prohibition of plaintiff's weapon, is merely what [the policy] itself
requires and has not actually been enforced by defendants. No threat to plaintiff's rights
appear beyond that implied by the existence of the regulation itself." *Id.* at *4.
Accordingly, the plaintiff's voluntary compliance with [the policy] causes his own alleged
injury" and "plaintiff's argument of actual enforcement amounts to a complaint about the
mere existence of the challenged regulation." *Id.* at *5.

1 permitted by law to carry such weapons.”²

2 The Policy is merely one example among many reasonable employee-related policies
3 adopted by the District in connection with its right to monitor and control its own employees
4 while on District property and while performing their duties on behalf of the District.
5 Clearly, the District has the right to enact reasonable rules and policies concerning the
6 conduct of its employees during the performance of their duties in order to foster a safe
7 working and learning environment for its staff and students. In that regard the Policy is
8 really no different than a policy prohibiting District employees from being under the
9 influence of alcohol while on District property. Although such an employee may not be
10 subject to criminal prosecution for such conduct, since possession and consumption of
11 alcohol by a person over 21 years of age is not a crime, the employee may still be subject to
12 discipline in the employment context.

13 Plaintiff’s attempt to frame the Policy as an attempt by the District to infringe on the
14 state legislature’s authority to regulate firearms under ORS 166.170 misses the mark by a
15 wide margin. Because the District has not infringed on any such authority in adopting the
16 Policy, and because the fact that plaintiff holds a concealed weapons permit is frankly
17 irrelevant to plaintiff’s claims, the Complaint must be dismissed in its entirety for failure to
18 state a claim.

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20 _____
21 ²The Policy is identical to the model policy drafted by the Oregon School Boards
22 Association (“OSBA”), and this same policy has been enacted by at least 13 other school
23 districts in Oregon. Similar workplace rules prohibiting the possession of guns by
24 employees in the workplace are pervasive among public employers in Oregon. *See, e.g.*,
25 Oregon Department of Human Services Policy No. DHS-080-008 (prohibiting possession
26 of firearms by DHS employees and volunteers in DHS facilities, including firearms
possessed by employees and volunteers with concealed handgun licenses); Department of
Administrative Services policy No. 125-6-321 (based on OAR 125-075-0015); Rules and
Regulations for Portland International Airport, § 7.1.

1 1. The Fact That Plaintiff May Hold a Concealed Handgun License Is Irrelevant.

2 To the extent that plaintiff's claims for relief rely on her possession of a concealed
3 handgun permit, that fact is not relevant to the ultimate question of whether the Policy is void
4 under ORS 166.170 as plaintiff alleges. There is no basis for distinguishing between the
5 holders of concealed handgun licenses and other possessors of firearms under ORS 166.170,
6 since if that statute preempts rules adopted by public entities regarding firearms on public
7 property, that preemption would apply regardless of whether plaintiff holds a concealed
8 handgun license or not.

9 Oregon's concealed handgun statutes, found at ORS 166.291 and 166.292, do not
10 affirmatively authorize the possession of a concealed handgun by any person, anywhere and
11 under any circumstances; it simply outlines the procedures for obtaining and issuing a
12 concealed handgun license. Although there are statutes which provide that the holder of a
13 concealed handgun license is exempt from the criminal liability that would otherwise attach
14 as a result of the possession of a concealed handgun in certain situations,³ there are no
15 Oregon statutes or administrative rules which affirmatively authorize the possession of a
16 concealed handgun or other weapon. If such an affirmative right were granted by statute or
17 otherwise, it would confer upon the holder of a concealed handgun license the right to
18 possess a handgun on private property, whether residential or commercial, even against the
19 property owner's wishes. That was not the intent of the Oregon legislature in enacting the
20 concealed handgun statutes, and Oregon courts should not interpret those statutes in such a
21 manner as to convey an absolute and unqualified right to be in possession of a firearm at any
22 time or place, including in a public school building.

23 _____
24 ³ For example, ORS 166.250(1)(a) makes it a crime to be in possession of a
25 concealed firearm, but ORS 166.260(1)(h) provides that the crime of unlawful possession
26 of a firearm does not apply to the holder of a concealed handgun license. *See also* ORS
166.370, which makes it a crime to possess a firearm in a public building, but exempts
from that provision any holder of concealed handgun license.

1 Since the concealed handgun statutes do not confer any affirmative rights, other than
2 the right to be free from criminal prosecution for carrying a concealed firearm, the fact that
3 plaintiff may hold a concealed handgun license is irrelevant to the issue before this Court and
4 should be disregarded.⁴ The issue is thus properly framed as whether the District, as an
5 employer, has the ability to create and enforce workplace rules for its employees, even if
6 those rules are related to the possession of firearms. As discussed below, the answer to that
7 question is that the District can enact such workplace rules without contravening the
8 provisions of ORS 166.170.

9 2. ORS 166.170 Does Not Prohibit the District From Creating and Enforcing
10 Workplace Rules and Policies Related To Firearm Possession.

11 ORS 166.170, enacted in 1995 and included as part of Oregon’s penal code, provides:

12 “(1) Except as expressly authorized by state statute, the authority
13 to regulate in any matter whatsoever the sale, acquisition,
14 transfer, ownership, possession, storage, transportation or use of
15 firearms or any element relating to firearms and components
16 thereof, including ammunition, is vested solely in the Legislative
17 Assembly.

18 (2) Except as expressly authorized by state statute, no county,
19 city or other municipal corporation or district may enact civil or
20 criminal ordinances, including but not limited to zoning
21 ordinances, to regulate, restrict or prohibit the sale, acquisition,
22 transfer, ownership, possession, storage, transportation or use of
23 firearms or any element relating to firearms and components
24 thereof, including ammunition. Ordinances that are contrary to
25 this subsection are void.” [emphasis added].

26 Nothing in ORS 166.170 refers to administrative policies adopted by a public body regarding

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22 ⁴ If plaintiff had alleged a right to carry a concealed handgun in a public building,
23 under ORS 166.370, which makes it a crime to possess a firearm in a public building but
24 provides an exception for the holder of a concealed handgun license, the fact that plaintiff
25 holds such a license may have more relevancy. Even in such a case, however, plaintiff’s
26 Complaint still would not be sufficient to survive a motion to dismiss for failure to state a
claim since, as discussed *infra*, neither ORS 166.370 nor ORS 166.170 prohibit a public
employer from implementing workplace rules concerning the possession of handguns by
its employees.

1 gun possession by its employees in the workplace.

2 By statute, each district school board in Oregon is charged with establishing rules for
3 the government of its schools and pupils consistent with the State Board of Education. ORS
4 332.107. The Policy was enacted by the District under that authority. Plaintiff's Complaint
5 alleges that the Policy is void under ORS 166.170(2), set forth above, which generally
6 prohibits counties, cities and other municipal corporations from enacting "civil or criminal
7 ordinances" purporting to regulate, restrict or prohibit the possession of firearms. However,
8 the Policy is not a civil or criminal ordinance, since it does not impose any civil or criminal
9 penalties for a violation. Further, the Policy does not attempt to regulate the general public,
10 but only District employees. The Policy therefore does not fall within the parameters of ORS
11 166.170.

12 There are no reported Oregon appellate decisions which have addressed either the
13 rights of government entities to prohibit the possession of handguns on government property,
14 nor the rights of the holder of a concealed handgun license to carry weapons on such
15 property. The Oregon Employment Relations Board ("ERB"), however, has issued an
16 opinion which addressed both issues. In *Federation of Oregon Parole and Probation*
17 *Officers v. Washington County*, 19 PECBR 411 (Aug. 21, 2001), Washington County had
18 enacted a rule which prohibited its employees from carrying firearms on duty or on county
19 property at any time. Some Washington County employees claimed that the rules were void
20 under ORS 166.170. In its decision upholding the validity of the rules, ERB determined that
21 the intent of the legislature in enacting ORS 166.170 was to prevent a patchwork of
22 inconsistent and contradictory local firearms ordinances, not to prevent a government
23 employer from instituting work rules for its employees. ERB found that Washington County,
24 as an employer, and notwithstanding ORS 166.170,

25 "Retains the right to address its unique concerns with its
26 employees' possession of firearms. The legislature did not
intend to interfere with the County's authority, in its

1 administrative capacity, to adopt policies governing its
2 employees' conduct. The policy's regulation of firearms
3 possession in this limited context is an exercise of the County's
4 authority over a matter of County concern and does not violate
5 State law" *Id.* at 420.

6 In reaching that conclusion, ERB found the holding by the Washington Supreme
7 Court in *Cherry v. Municipality of Metropolitan Seattle*, 116 Wash2d 794, 808 P.2d 746
8 (1991) to be persuasive. In that case, the city had adopted a policy prohibiting its employees
9 from possessing concealed weapons while on duty or on employer property. The plaintiff
10 held a concealed weapon permit. While on duty, the plaintiff was found in possession of
11 several weapons, including a cattle prod, a sharpened metal rod and a handgun. The plaintiff
12 was terminated for being in possession of a concealed weapon while on duty in violation of
13 the city's rule. Like plaintiff here, the plaintiff in *Cherry* alleged that the rule was preempted
14 by state statute. The State of Washington had enacted a statute which was substantially
15 similar to ORS 166.170 and purported to occupy the field of firearms regulation. R.C.W.
16 9.41.290 provided as follows:

17 "The state of Washington hereby fully occupies and preempts
18 the entire field of firearms regulation within the boundaries of
19 the state, including * * * possession * * * . Cities, towns and
20 counties or other municipalities may enact only those laws and
21 ordinances relating to firearms that are specifically authorized
22 by state law and consistent with this chapter. * * * Local laws
23 and ordinances that are inconsistent with, more restrictive than,
24 or exceed the requirements of state law shall not be enacted and
25 are preempted and repealed, regardless of the nature of the code,
26 charter, or home rule status of such city, town, county, or
municipality."

27 The Washington Supreme Court cited numerous reasons for its holding that R.C.W.
28 9.41.290 preempted only local laws and ordinances, not all rules adopted by any state
29 subdivision. First, the Court noted that the statute, like ORS 166.170, was included as part
30 of Washington's penal code. In addition, the Court found that the statute was not intended
31 to prohibit internal workplace rules. In that regard, the Court stated that the statute:

32 "Was enacted to reform that situation in which counties, cities,

1 and towns could enact conflicting local criminal codes
2 regulating the general public's possession of firearms. Nowhere
3 does the legislative history * * * deal with the authority of
4 public employers to prohibit their employees from carrying
5 firearms or other weapons while on duty or at the workplace."
6 808 P.2d at 749.⁵

7 Finally, the Court also utilized the general maxim of statutory construction that statutes
8 should not be interpreted to produce unlikely, strained or absurd results. *Id.* If the plaintiff's
9 concealed handgun license entitled him to carry a handgun in violation of the city's rule, it
10 would mean that private employers would be allowed to prohibit handguns in the workplace
11 but public employers could not. Even more, if the plaintiff's interpretation of R.C.W.
12 9.41.290 were correct, it would mean that the plaintiff could be fired under the city's rule for
13 his possession of non-firearm weapons, such as the cattle prod and sharpened metal rod, but
14 not for possession of the handgun, which was even more lethal and dangerous. *Id.* at 750.

15 As recognized by ERB in *Federation of Oregon Parole and Probation Officers v.*
16 *Washington County, supra*, the same reasoning and statutory construction applied by the
17 Supreme Court of Washington in *Cherry* are applicable in the present case. If plaintiff's
18 interpretation were correct, the District would be prevented from prohibiting the possession
19 of firearms on its property by its employees but private employers would not be under any
20 such restriction. Further, under the plaintiff's interpretation the District could continue to
21 prohibit the possession of dangerous and deadly weapons other than firearms, even though
22 firearms are more dangerous, since ORS 166.170 only preempts firearm regulation.

23 Adopting plaintiff's interpretation of ORS 166.170 would not only lead to absurd
24 results, it would also expose the District to the potential for significant liability. If the District
25 were not permitted to enact reasonable restrictions on its employees regarding the possession
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⁵ The legislative history of ORS 166.170 is in accord. *See* Affidavit of Thaddeus
G. Pauck, attached hereto as Exhibit "1", which includes the legislative history of that
statute.

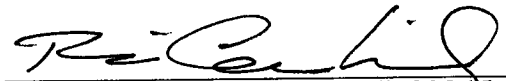
1 of handguns on District property, there would be nothing to prevent the District's schools
2 from turning into armed camps, including the storing of weapons in schools by the District's
3 employees, since ORS 166.170 provides that the storage of firearms cannot be regulated. If
4 the District were forced to allow its employees who hold concealed handgun licenses to
5 possess handguns in school, there would be no way that the District could guarantee the safe
6 handling of any such handgun, by the employee or any other person, including students, that
7 may obtain access to the gun. If the gun were accidentally discharged, such an accident
8 would be legally foreseeable and if the District had not taken reasonable precautions to
9 prevent such an accident, such as by enacting the Policy which is currently in place, the
10 District would be liable for any damages caused. *See Fazzolari v Portland School District*
11 *No. 1J, 303 Or. 1 (1987)*. Further, if a chaotic crisis were to occur on District property,
12 innocent people could be seriously injured or killed if officers entered a school and
13 encountered a person with a firearm, since the officers would not be aware of which persons,
14 if any, were authorized to be in possession of a firearm.

15 3. Conclusion.

16 In conclusion, ORS 166.170 prohibits the District (as well as any other governmental
17 body described in that statute) from exercising its police power to regulate firearms, but it
18 does not prohibit the District from acting as any other employer in establishing reasonable
19 work rules for its employees with respect to possession of firearms in the workplace.
20 Although ORS 166.170 preempts regulation of firearms through the use of police power, it
21 does not go so far as to preempt every rule that relates to firearms. The statute must be
22 interpreted, as recognized by ERB in *Federation of Oregon Parole Officers, supra*, to
23 distinguish between governmental acts, which seek to regulate the general public, and
24 proprietary acts intended to exercise control over a public body's property and employees.
25 The Policy does not violate ORS 166.170 since it is only a reasonable exercise of the
26 District's authority, as an employer, to monitor and control its own employees while on

1 District property and while performing their duties on behalf of the District. The Policy
2 furthers the District's legal obligation to provide a safe environment and workplace for
3 students and employees. Accordingly, for the reasons set forth above, this Court must find
4 that the Policy is not void under ORS 166.170 and dismiss plaintiff's Complaint with
5 prejudice for failure to state a claim.

6 DATED: September 27, 2007.

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9 Timothy C. Gerking, OSB #792345
10 Thaddeus G. Pauck, OSB#98318
11 BROPHY, MILLS, SCHMOR
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IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY

JANE DOE (a fictitious name for a real
Jackson County resident),

Plaintiff,

vs.

MEDFORD SCHOOL DISTRICT 549C,

Defendant.

Case No. 07-3765-E2

AFFIDAVIT OF THADDEUS
G. PAUCK

STATE OF OREGON)
County of Jackson) ss:

I, Thaddeus G. Pauck, being first duly sworn, depose and certify that:

1. I am one of the attorneys for Medford School District 549C, the defendant in this case, and make this affidavit based on my own personal knowledge.

2. Attached hereto as Exhibit "A" is a true and correct copy of the legislative history of ORS 166.170, identified as House Bill 2784 in the 1995 legislative session and special session.

3. The legislative history indicates that the intent of the statute is to avoid a patchwork of local laws in favor of statewide rules, so that persons would be able to travel throughout the state with their weapons without violating the laws of different jurisdictions. See, e.g., Ex. A, p. 18 (minutes of March 23, 2005 public hearing on HB 2784); Ex. A, p. 25 (minutes of April 3, 1995 House work session); Ex. A, p. 38 (minutes of May 17 public hearing on HB 2784); Ex. A, p. 40 (NRA position statement on HB 2784).

4. Nowhere in the legislative history is there any reference to regulation of firearms in the employment context.

- Grisham, Johnston, Lewis, Meek, Naito, Prozanski, Qutub, Strobeck.
- 6-12 Speaker signed.
6-14(S) President signed.
7-21(H) Governor vetoed.
7-28 Governor's message read in the House.
Motion to repass bill notwithstanding the Governor's veto not having received the required two-thirds majority failed. Veto sustained.
Ayes, 37 --Nays, 22, Baum, Beyer, Brown, Carter, Courtney, Eighmey, Fahey, Federici, Gordly, Josi, Lehman, Naito, Piercy, Prozanski, Rasmussen, Ross, Shibley, Shields, Thompson, Uherbelau, Wooten, Wylie, Excused, 1--Montgomery.
Baum changed vote from 'aye' to 'nay' and served notice of possible reconsideration.
- 7-31 Veto sustained in accordance with Article V, Section 15b, Oregon Constitution.
- Declares state preemption in field of pesticide sale and use.
- HB 2754 By Representative TARNO -- Relating to in-stream water rights.**
- 2-15(H) First reading. Referred to Speaker's desk.
2-16 Referred to Water Policy.
3-14 Public Hearing held.
4-27 Work Session held.
5-4 Recommendation: Do pass with amendments and be printed A-Engrossed.
5-8 Second reading.
5-9 Rules suspended. Taken from today's Calendar and placed in proper order on Wednesday, May 10 Calendar.
5-10 Rules suspended. Taken from today's Calendar and placed in proper order on Thursday, May 11 Calendar.
5-11 Third reading. Carried by Tarno. Passed.
Ayes, 38 --Nays, 19, Beyer, Brown, Corcoran, Courtney, Eighmey, Federici, Gordly, Josi, Lehman, Naito, Piercy, Prozanski, Rasmussen, Ross, Shibley, Shields, Thompson, Uherbelau, Wylie, Excused, 2--Carter, Fahey, Excused for business of the House, 1--Brian.
Potential conflict(s) of interest declared by Fisher.
- 5-12(S) First reading. Referred to President's desk.
Referred to Water and Land Use.
5-18 Public Hearing and Work Session held.
5-25 Possible Reconsideration and Work Session held.
6-2 Recommendation: Do pass with amendments to the A-Eng. bill. (Printed B-Eng.)
(Amendments distributed.)
Second reading.
Third reading. Carried by Johnson. Passed.
Ayes, 18 --Nays, 10, Brecke, Cease, Dukes, Dwyer, Gold, Lim, McCoy, Sorenson, Springer, Trow, Excused, 1--Hartung, Attending Legislative Business, 1--Bryant.
- 6-5(H) House refused to concur in Senate amendments.
Ayes, 24 --Nays, 22, Baum, Beyer, Brown, Carter, Corcoran, Courtney, Eighmey, Fahey, Federici, Gordly, Josi, Lehman, Naito, Prozanski, Rasmussen, Roberts, Ross, Shibley, Shields, Uherbelau, Wooten, Wylie, Absent, 2--Johnston, Minnis, Excused, 2--Brian, Tiernan, Excused for business of the House, 10--Adams, Mannix, Meek, Montgomery, Parks, Piercy, Sowa, Starr, Tarno, Thompson.
Baum changed vote from 'aye' to 'nay' and served notice of possible reconsideration.
- 6-6 Vote reconsideration carried.
Ayes, 34 --Nays, 25, Beyer, Brown, Carpenter, Carter, Corcoran, Courtney, Eighmey, Fahey, Federici, Gordly, Johnston, Josi, Lehman, Naito, Piercy, Prozanski, Rasmussen, Ross, Shibley, Shields, Sowa, Thompson, Uherbelau, Wooten, Wylie, Excused, 1--Hayden.
House concurred in Senate amendments and repassed measure.
Ayes, 34 --Nays, 24, Beyer, Brown, Carpenter, Carter, Corcoran, Courtney, Eighmey, Fahey, Federici, Gordly, Johnston, Josi, Lehman, Naito, Piercy, Prozanski, Rasmussen, Ross, Shibley, Shields, Thompson, Uherbelau, Wooten, Wylie, Absent, 1--Adams, Excused, 1--Hayden.
- 6-15 Speaker signed.
6-15(S) President signed.
7-21(H) Governor vetoed.
7-28 Governor's message read in the House.
8-4 Veto sustained in accordance with Article V, Section 15b, Oregon Constitution.
- Defines 'in-stream flow' for in-stream water right purposes.
- HB 2779 By Representative CARTER; Representative GORDLY, Senator MCCOY -- Relating to enterprise zones.**
- 2-16(H) First reading. Referred to Speaker's desk.
2-17 Referred to Commerce.
3-13 Assigned to Subcommittee on Trade and Economic Development.
3-16 Public Hearing held.
3-21 Public Hearing held.
3-30 Work Session held.
4-13 Work Session held.
Returned to Full Committee.
4-18 Work Session held.
4-21 Recommendation: Do pass with amendments and be printed A-Engrossed.
4-25 Second reading.
4-26 Rules suspended. Taken from today's Calendar and placed in proper order on Thursday, April 27 Calendar.
4-27 Third reading. Carried by Carter. Passed.
Ayes, 58 --Excused, 1--Jones, Excused for business of the House, 1--Schoon.
- 4-28(S) First reading. Referred to President's desk.
5-4 Referred to Labor and Government Operations.
5-10 Public Hearing and Work Session held.
5-15 Recommendation: Do pass the A-Eng. bill.
Second reading.
5-16 Third reading. Carried by McCoy. Passed.
Ayes, 27 --Excused, 2--Leonard, Phillips, Attending Legislative Business, 1--Hannon.
- 6-15(H) Speaker signed.
6-15(S) President signed.
7-21(H) Governor vetoed.
7-28 Governor's message read in the House.
8-4 Veto sustained in accordance with Article V, Section 15b, Oregon Constitution.
- Allows city with population exceeding 400,000 inhabitants that is enterprise zone sponsor to impose additional conditions on business firm seeking precertification and eligibility for property tax exemption.

Special Session Calendar

HB 2784 By Representative MARKHAM; Representative CARPENTER, FISHER, GRISHAM, HAYDEN JONES, JOSI, LEWIS, MILNE, MINNIS, NORRIS OAKLEY, PARKS, ROBERTS, SNODGRASS SOWA, STARR, TARNO, TIERNAN, WELLS WELSH, Senators ADAMS, DWYER, JOHNSON KINTIGH, PHILLIPS, SHANNON, TIMMS WALDEN -- Relating to firearms.

- 2-20(H) First reading. Referred to Speaker's desk.
2-21 Referred to Judiciary.
2-23 Assigned to Subcommittee on Civil Law and Judicial Administration.
3-2 Public Hearing held.
3-23 Public Hearing and Work Session held.
Returned to Full Committee.
4-3 Work Session held.
4-7 Recommendation: Do pass with amendments and be printed A-Engrossed.
4-11 Second reading.
4-12 Third reading. Carried by Tarno. Passed.

Ayes, 45 --Nays, 12, Carter, Corcoran, Eighmey, Gordly, Naito, Piercy, Prozanski, Rasmussen, Ross, Shields, Strobeck, Uherbelau, Excused, 2--Brian, Wooten, Excused for business of the House, 1---Johnson.

4-14(S) First reading. Referred to President's desk.
 4-18 Referred to Rules and Elections.
 5-17 Public Hearing and Work Session held.
 5-25 Recommendation: Do pass with amendments to the A-Eng. bill. (Printed B-Eng.)

5-26 Second reading.
 5-29 Carried over to 05-30 by unanimous consent.
 5-30 Third reading. Carried by Phillips. Passed.
 Ayes, 24 --Nays, 5, Cease, Hamby, McCoy, Springer, Trow, Excused, 1--Gold.

6-1(H) House concurred in Senate amendments and repassed measure.
 Ayes, 48 --Nays, 7, Carter, Eighmey, Gordly, Naito, Piercy, Shields, Uherbelau, Absent, 1--Rasmussen, Excused for business of the House, 4---Baum, Beyer, Johnson, Watt.
 Vote explanation(s) filed by Uherbelau entered in Journal.

6-15 Speaker signed.
 6-15(S) President signed.
 7-21(H) Governor vetoed.
 7-28 Governor's message read in the House.
 Motion to repass bill notwithstanding the Governor's veto having received the required two-thirds majority carried. Bill repassed.
 Ayes, 46 --Nays, 13, Brown, Carter, Eighmey, Gordly, Naito, Piercy, Prozanski, Rasmussen, Ross, Shibley, Shields, Wooten, Wylie, Excused, 1--Montgomery.

7-28(S) Governor's veto message entered into Journal.
 Motion to repass bill notwithstanding Governor's veto carried in accordance with Art. V, sec. 15b, Oregon Constitution. Bill repassed.
 Ayes, 23 --Nays, 6, Cease, Gold, Hamby, McCoy, Springer, Trow, Excused, 1--Shannon.

7-28 Chapter 1 (Oregon Laws 1995, Special Session) Effective date: November 3, 1995

Vests exclusive authority to regulate sale, acquisition, transfer, ownership, possession, storage, transportation and use of firearms in Legislative Assembly.

HB 2861 By Representatives SCHOON, LOKAN; Representatives ADAMS, BAUM, BEYER, BRIAN, CARPENTER, CLARNO, CORCORAN, COURTNEY, EIGHMEY, FEDERICI, FISHER, GRISHAM, JONES, LEWIS, MARKHAM, MEEK, MILNE, NAITO, OAKLEY, QUTUB, SHIELDS, SNOODGRASS, STARR, STROBECK, TARNLO, WATT, WELLS, WELSH, Senator LEONARD -- Relating to audits.

2-22(H) First reading. Referred to Speaker's desk.
 2-23 Referred to General Government and Regulatory Reform.

3-16 Assigned to Subcommittee on Regulatory Reform.
 3-27 Public Hearing held.
 4-3 Work Session held.
 Returned to Full Committee.
 4-19 Work Session held.
 4-25 Recommendation: Do pass with amendments and be printed A-Engrossed.
 4-27 Second reading.
 4-28 Rules suspended. Taken from today's Calendar and placed in proper order on Tuesday, May 2 Calendar.
 5-2 Third reading. Carried by Wylie. Passed.
 Ayes, 58 --Nays, 1, Minnis, Excused, 1--Wooten.

5-3(S) First reading. Referred to President's desk.
 5-4 Referred to Rules and Elections.
 5-11 Public Hearing held.
 5-31 Public Hearing and Possible Work Session cancelled.
 6-1 Public Hearing held.
 Public Hearing and Work Session held.
 6-6 Recommendation: Do pass with amendments to the A-Eng. bill. (Printed B-Eng.) (Amendments distributed.)

Second reading.
 Rules suspended. Third reading. Carried by Miller.
 Passed.
 Ayes, 25 --Attending Legislative Business, 5---Cease, Hamby, Johnson, Timms, Walden.
 Leonard added as sponsor by unanimous consent.

6-8(H) House concurred in Senate amendments and repassed measure.
 Ayes, 40 --Nays, 18, Beyer, Fahey, Federici, Gordly, Johnston, Lehman, Naito, Piercy, Prozanski, Rasmussen, Ross, Shibley, Shields, Sowa, Thompson, Uherbelau, Wooten, Wylie, Absent, 1--Carter, Excused for business of the House, 1---Brian.

6-15 Speaker signed.
 6-15(S) President signed.
 7-21(H) Governor vetoed.
 7-28 Governor's message read in the House.
 Motion to repass bill notwithstanding the Governor's veto not having received the required two-thirds majority failed. Veto sustained.
 Ayes, 32 --Nays, 27, Baum, Beyer, Brown, Carter, Corcoran, Courtney, Eighmey, Fahey, Federici, Gordly, Johnston, Josi, Lehman, Mannix, Naito, Piercy, Prozanski, Rasmussen, Roberts, Ross, Shibley, Shields, Sowa, Thompson, Uherbelau, Wooten, Wylie, Excused, 1--Montgomery.
 Baum changed vote from 'aye' to 'nay' and served notice of possible reconsideration.

7-31 Veto sustained in accordance with Article V, Section 15b, Oregon Constitution.

Directs Secretary of State to schedule performance and program audits of state agencies as directed by Joint Legislative Audit Committee.

HB 2902 By Representative MANNIX; Representative MILNE -- Relating to Department of Human Resources; prescribing an effective date.

2-23(H) First reading. Referred to Speaker's desk.
 2-24 Referred to Human Resources and Education.
 3-29 Work Session held.
 4-4 Without recommendation as to passage and be referred to General Government and Regulatory Reform.
 Referred to General Government and Regulatory Reform by order of Speaker.

4-12 Public Hearing held.
 4-26 Work Session held.
 5-15 Recommendation: Do pass with amendments, be printed A-Engrossed and be referred to Ways and Means.
 Referred to Ways and Means by order of Speaker.
 Assigned to Subcommittee on Human Resources.

6-5(S) Public Hearing and Work Session held.
 6-6(H) Returned to Full Committee.
 6-6(S) Work Session held.
 6-7(H) Recommendation: Do pass with amendments and be printed B-Engrossed.

6-8 Rules suspended. Second reading.
 6-9 Third reading. Carried by Mannix. Passed.
 Ayes, 34 --Nays, 24, Adams, Brown, Carpenter, Corcoran, Eighmey, Fahey, Federici, Johnston, Josi, Lehman, Lokan, Lundquist, Montgomery, Naito, Piercy, Prozanski, Rasmussen, Ross, Shibley, Shields, Thompson, Uherbelau, Watt, Wooten, Absent, 1--Parks, Excused, 1--Minnis.

6-9(S) First reading. Referred to President's desk.
 Referred to Ways and Means.
 Recommendation: Do pass the B-Eng. bill.
 Rules suspended. Second reading.
 Rules suspended. Third reading. Carried by Cease.
 Passed.
 Ayes, 24 --Attending Legislative Business, 6---Bryant, Dukes, Hannon, Miller, Phillips, Springer.

6-15(H) Speaker signed.
 6-15(S) President signed.
 7-21(H) Governor vetoed.
 7-28 Governor's message read in the House.
 8-4 Veto sustained in accordance with Article V, Section 15b, Oregon Constitution.

~~SENATE~~/HOUSE BILL BACK

LC 2459

Bill 2784

FEB 09 1995

Title: Relating to firearms.

Sponsored by Committee on:

At the request of

All agencies, organizations and persons that have formally requested the measure are named herein in accordance with ORS 171.127

~~REPRESENTATIVE BILL MARKHAM~~

Bill Markham

CHIEF SPONSOR SIGNATURE

~~BILL MARKHAM~~

(Name Printed or Typed)

SENATE		HOUSE
<i>B</i> Adams	___ Adams	<i>J</i> Minnis
___ Baker	___ Baum	___ Montgomery
___ Bradbury	___ Beyer	___ Naito
___ Bryant	___ Brian	<i>Jo</i> Norris
___ Bunn	___ Brown	<i>JP</i> Oakley
___ Cease	<i>CH</i> Carpenter	___ Parks
___ Derfler	___ Carter	___ Piercy
___ Dukes	<i>CL</i> Clarno	___ Prozanski
<i>BD</i> Dwyer	___ Corcoran	___ Qutub
___ Gold	___ Courtney	___ Rasmussen
___ Hamby	___ Eighmey	___ Repine
___ Hannon	___ Fahey	<i>RR</i> Roberts
___ Hartung	___ Federici	___ Ross
<i>J</i> Johnson	<i>DF</i> Fisher	___ Schoon
___ Kennemer	<i>GD</i> Gordly	___ Shibley
<i>RK</i> Kintigh	<i>GR</i> Grisham	___ Shields
___ Leonard	<i>HA</i> Hayden	___ Snodgrass
___ Lim	___ Johnson	<i>LS</i> Sowa
___ McCoy	___ Johnston	<i>CS</i> Starr
___ Miller	<i>JO</i> Jones	___ Strobeck
<i>VP</i> Phillips	<i>JA</i> Josi	<i>TP</i> Tarno
<i>MS</i> Shannon	___ Lehman	___ Thompson
___ Smith	<i>LL</i> Lewis	<i>TI</i> Tiernan
___ Sorenson	___ Lokan	___ Uherbelau
___ Springer	___ Luke	___ VanLocuwen
<i>ST</i> Stall	___ Lundquist	___ Watt
___ Timms	___ Mannix	<i>WJ</i> Wells
___ Trow	<i>MA</i> Markham	<i>WJ</i> Welsh
<i>W</i> Walden	___ Meek	___ Wooten
___ Yih	<i>MI</i> Milne	___ Wylie

FOR INFORMATION ONLY

JEAN MARKHAM 986-1446 RUTH TREADWELL 6-1312

CONTACT PERSON (please print or type)

TELEPHONE NUMBER

Exhibit Page

A.
3

D R A F T

SUMMARY

Vests exclusive authority to regulate sale, acquisition, transfer, ownership, possession, transportation and use of firearms in Legislative Assembly. Permits cities and counties to regulate or prohibit discharge of firearms within their borders with specified exceptions. Permits cities and counties to regulate or prohibit possession of loaded firearm in public place. Prohibits cities and counties from regulating or prohibiting possession of firearm in public place rented, leased or occupied by person.

A BILL FOR AN ACT

1
2 Relating to firearms; creating new provisions; and repealing ORS 166.245.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** (1) Except as expressly authorized by state statute, the
5 authority to regulate in any matter whatsoever the sale, acquisition,
6 transfer, ownership, possession, transportation or use of firearms or
7 any element relating to firearms and components thereof, including
8 ammunition, is vested solely in the Legislative Assembly.

9 (2) Except as expressly authorized by state statute, no county, city
10 or other municipal corporation may enact civil or criminal ordinances
11 to regulate, restrict or prohibit the sale, acquisition, transfer, owner-
12 ship, possession, transportation or use of firearms or any element re-
13 lating to firearms and components thereof, including ammunition.

14 **SECTION 2.** (1) Cities and counties may enact ordinances to regu-
15 late, restrict or prohibit the discharge of firearms within their
16 boundaries.

17 (2) Ordinances adopted under subsection (1) of this section may not
18 apply to or affect:

19 (a) Persons discharging firearms in the lawful defense of person or
20 property.

NOTE: Matter in boldfaced type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in boldfaced type.

1 (b) Persons discharging firearms in the course of lawful hunting.

2 (c) Landowners and their guests when the discharge will not en-
3 danger adjacent persons or property.

4 (d) Persons discharging firearms upon public or private shooting
5 ranges, shooting galleries or other specific areas designed and built for
6 the purpose of target shooting.

7 SECTION 3. (1) Cities and counties may enact ordinances to regu-
8 late, restrict or prohibit the possession of loaded firearms in public
9 places as defined in ORS 161.015.

10 (2) Ordinances adopted under subsection (1) of this section do not
11 apply to or affect:

12 (a) Law enforcement officers in the performance of their official
13 duties.

14 (b) Military personnel in the performance of their official duties.

15 (c) Persons licensed to carry a concealed handgun.

16 SECTION 4. Notwithstanding any other provision of law, cities and
17 counties may not enact ordinances to regulate, restrict or prohibit the
18 possession of firearms in a public place rented or leased to or other-
19 wise occupied by a person.

20 SECTION 5. ORS 166.245 is repealed.
21 _____

LYNN SNODGRASS
STATE REPRESENTATIVE
DISTRICT 10
CLACKAMAS AND MULTNOMAH
COUNTIES



HOUSE OF REPRESENTATIVES
SALEM, OREGON
97310

COMMITTEES:
CHILDREN AND FAMILIES
COMMERCE
 Subcommittee on Business
HUMAN RESOURCES & EDUCATION
 Subcommittee on Education
LABOR

February 28, 1995

TO: Ramona Kennedy, Chief Clerk of the House of Representatives
FROM: Representative Lynn Snodgrass
RE: Co-sponsoring bills

Please sign my name on as a co-sponsor of HB 2784. Thank you.

HOUSE COMMITTEE ON JUDICIARY
Subcommittee On Civil Law And Judicial Administration
March 2, 1995 - Page 3

- 167 COMSTOCK: Yes. That would return it to the pre 1987 status, when we did have the power to order them into the alternative county courtrooms.
- 174 REP. JOHNSTON: Do you have to file a lien now in both circuit and district court?
- 179 COMSTOCK: Yes, we can enforce it in either court. If it is originally a district court judgment, then either a lien record abstract must be recorded in the original county to become a lien against real property, or it can be recorded in any other county to become a lien against real properties in other counties. The effect of a district court judgment is not a lien on real property originally. The district court judgment could serve as the basis of a judgment / debtor examination in the original county, but not in any other county in the state.
- 194 REP. JOHNSTON: Unless we change this?
- 195 COMSTOCK: Yes.
- 198 REP. JOHNSTON: Do you know of any opposition to SB 69?
- 199 COMSTOCK: No.

Recesses at 8:55 am while waiting for other members.
Reopens hearing at 9:00 am.

PUBLIC HEARING ON HB 2784

- 212 MILT JONES, COMMITTEE COUNSEL: HB 2784 vests exclusive authority to regulate sale, acquisition, transfer, ownership, possession, transportation and use of firearms in Legislative Assembly.

- Witnesses:
- Rep. Bill Markham, District 46
 - Sen. Randy Miller, District 13
 - Sen. Bill Dwyer, District 21
 - Rep. Cedric Hayden, District 28
 - Rep. Bill Fisher, District 45
 - Rep. Lonnie Roberts, District 21
 - Sen. Rod Johnson, District 23
 - Jackie Bloom, City of Portland
 - Tami Jones, Portland Police Department
 - Mark Murauski, Portland Police Department
 - Don Faulkner, Portland Police Department
 - Bob Roberts, Portland Police Department
 - Mark Callier, City of Salem Police
 - Sarah Hackett, League of Oregon Cities
 - Kevin Starret, Gun Owners of America
 - John Nichols, Oregon Gun Owners
 - Rod Harder, Oregon Sportsmen Defense Fund, National Rifle Association
 - Larry Campbell, Oregon Association of Chiefs of Police

HOUSE COMMITTEE ON JUDICIARY
Subcommittee On Civil Law And Judicial Administration
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219 **REP. BILL MARKHAM, DISTRICT 46:** Testifies in support of HB 2784.

375 **SEN. RANDY MILLER, DISTRICT 13:** Testifies in support of HB 2784.

391 **SEN. BILL DWYER, DISTRICT 21:** Testifies in support of HB 2784.

TAPE 33, SIDE A

033 **REP. CEDRIC HAYDEN, DISTRICT 28:** Testifies in support of HB 2784.

040 **REP. BILL FISHER, DISTRICT 45:** Testifies in support of HB 2784.

054 **REP. LONNIE ROBERTS, DISTRICT 21:** Testifies in support of HB 2784.

062 **SEN. ROD JOHNSON, DISTRICT 23:** Testifies in support of HB 2784.

094 **REP. BROWN:** This relates to HB 3500 in terms of the civil rights issue?

097 **SEN. JOHNSON:** The intent of the people behind HB 3500 was state wide control vs. patch work control.

103 **REP. BROWN:** How do we address the citizens concerns in the city of Portland about the gun control issue?

110 **SEN. JOHNSON:** Does the control of guns effect the level of crime? If you assume that it does, that is one opinion. I believe that the level of crime isn't because of the availability of guns, it is a result of the propensity of people to use guns or violence to achieve what they want. It is not guns that kill people, but people that kill people.

126 **REP. BROWN:** Do you agree that by having fewer firearms available, at least in the city of Portland, that it would more likely decrease the amount of gun violence?

133 **SEN. JOHNSON:** No. If we can take out every gun from Multnomah county, and pass a law from ever returning a gun to Multnomah county, then yes there would be fewer people killed. That isn't possible, explains.

154 **REP. MARKHAM:** You could decrease the number of guns, but you wouldn't clean up the gun problem because the criminals probably don't have any legal weapons anyway.

161 **REP. JOHNSTON:** Are there any regulations that a city can place on weapons that would meet your test?

167 **REP. MARKHAM:** In publicly owned places, they are allowed to set regulation.

172 **REP. JOHNSTON:** I agree with desire not to place unfounded mandates on cities and counties. What if a city decides to impose a \$15 fee so that they could do those checks?

HOUSE COMMITTEE ON JUDICIARY
Subcommittee On Civil Law And Judicial Administration

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- 182 **REP. MARKHAM:** I would like to take that ability away from them in Portland because that was part of the agreement when we passed the gun bill in 1993.
- 189 **SEN. JOHNSON:** I support the government mandates prohibition. But the thing that makes this different is what Rep. Markham told you. There was an agreement that said there wouldn't be a charge for the permits because of the fear that it would and could be raised so that people may not be able to eventually afford permits.
- 202 **REP. MARKHAM:** In Oregon and across the country they have the power as to restrict the right to bear arms as it relates to discharge and loaded carry.
- 206 **REP. JOHNSTON:** Is there any fee they can charge?
- 208 **REP. MARKHAM:** There is a fee now.
- 209 **REP. JOHNSTON:** For a concealed weapons permit, we charge \$15. Does that seem offensive to the 1989 deal?
- 212 **REP. MARKHAM:** I thought that a fee was part of the cost to cover the cost of background checks.
- 215 **SEN. JOHNSON:** The key is to have some sort of limit to keep it from being an indirect way of prohibiting people from taking advantage.
- 216 **REP. MARKHAM:** It is kind of restrictive in a way, explains.
- 233 **JACKIE BLOOM, CITY OF PORTLAND:** Introduces people from the city of Portland police department.
- 264 **SERGEANT TAMI JONES, PORTLAND POLICE DEPARTMENT:** Testifies in opposition to HB 2784.
- 302 **OFFICER MARK MURAUSKI, PORTLAND POLICE DEPARTMENT:** Testifies in opposition to HB 2784.
- 347 **DETECTIVE DON FAULKNER, PORTLAND POLICE DEPARTMENT:** Testifies in opposition to HB 2784.
- 371 **OFFICER BOB ROBERTS, PORTLAND POLICE DEPARTMENT:** Testifies in opposition to HB 2784.
- 402 **CHAIR PARKS:** Does this ordinance just specify things that it effects?
- 405 **JONES:** There are things of high volume that are readily available and turned over.
- 413 **CHAIR PARKS:** Outboard motors have serial numbers, does this effect them?

HOUSE COMMITTEE ON JUDICIARY
Subcommittee On Civil Law And Judicial Administration
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- 417 JONES: No. Regulated property are part of that, gives examples. Within the city of Portland, there are only six pawn shops. Most of the people we are dealing with are second hand dealers that buy and sell second hand property. The volume of stolen property that was going through the shops is inordinate. This code was to allow us to be able to put a hold on that piece of property and try to figure out why a person is selling a piece of stolen property. We can then give that information to the detectives.
- 443 CHAIR PARKS: When someone sells a gun....
- 445 JONES: That is when it comes into effect. The city code is regulating a business.
- 449 CHAIR PARKS: But then the dealer will sell it to someone.
- 450 JONES: After the 15 day holding period.

TAPE 32, SIDE B

- 012 CHAIR PARKS: What if the gun gets into the wrong hands?
- 014 JONES: It is in the wrong hands if a stolen gun is sold.
- 015 CHAIR PARKS: If a person wants to buy from a dealer, they have to go through the procedure and be checked.
- 017 MURAUSKI: Only if they have a federal firearms license.
- 018 CHAIR PARKS: I'm talking about a second hand dealer who isn't buying the gun for his own collection, but to resell. If they then sell it, does that person that is going to buy it have to go through the procedure of checking out their background?
- 021 ROBERTS: Only if the person has a federal firearms license.
- 022 CHAIR PARKS: The second had stores buy the guns to resell.
- 025 MURAUSKI: Unless they have a federal firearms license, they do not have to do any paperwork. Who regulates how that ammunition is stored and kept? Discusses zoning issues that deal with firearms.
- 044 REP. BROWN: Would you be supportive of a measure like this if we were to regulate sales of guns from pawn shops and gun shows?
- 048 JONES: If what we had in city code, was regulated into state law and second hand dealers and pawn shops had to do what we asked them to do, then it would not impact us because there would be a regulation. That state wide regulation is what we are after.
- 054 MURAUSKI: I would be in favor of that. We deal with federal firearms dealers all the time. Most of the federal firearms license dealers would be in favor of that situation too.

HOUSE COMMITTEE ON JUDICIARY
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- 060 **REP. JOHNSTON:** Would it be of any interest or beneficial value if we changed HB 2784 to be able to continue regulating all sales except individual to individual?
- 069 **MURAWSKI:** I can buy 35 guns for \$100 and sell them at the gun show without a federal firearms license and get more money for them without doing any paperwork.
- 085 **MARK CAILLER, CITY OF SALEM POLICE:** Testifies in support of HB 2784, but concerned about parts of bill.
- 119 **REP. QUTUB:** Is it lawful to hunt in the city of Salem?
- 120 **CAILLER:** No, because of the discharge of a firearm inside of the city limits is unlawful.
- 126 **SARAH HACKETT, LEAGUE OF OREGON CITIES:** Testifies and submits written testimony in opposition to HB 2784. (EXHIBIT C)
- 163 **REP. BROWN:** Questions section 3-4 of bill. Currently the uniform trial court rules prohibit bringing firearms into the Multnomah county court house. Would this bill prohibit the uniform trial court rules from prohibiting loaded or unloaded firearms in a public building?
- 172 **MILT JONES, COMMITTEE COUNSEL:** That is already covered by state statute, explains.
- 178 **KEVIN STARRET, GUN OWNERS OF AMERICA:** Testifies in support of HB 2784.
- 254 **JOHN NICHOLS, OREGON GUN OWNERS INS.:** Testifies and submits proposed amendments in support of HB 2784. (EXHIBIT D)
- 290 **REP. JOHNSTON:** Can you explain your rationale on the pawn shop issue?
- 292 **NICHOLS:** There is a statute on the sale of used weapons, explains process.
- 304 **MILT JONES, COMMITTEE COUNSEL:** I understand that pawn shops are regulated by state law but I'm wondering about other second hand sales of firearms? Second hand shops are under city code and pawnshops are state? There is a legislation for pawnshops but not second hand stores?
- 315 **JONES:** There are about 150 second hand shops within the city of Portland. Both pawn shops and second hand dealers are subject to regulation under city code 1437. Pawn shops are also covered under city code 726, which is the pawn shop ordinance.
- 325 **NICHOLS:** The state statutes regulate that anyone that engages in business of selling used firearms has to do the reporting requirement. The Oregon law on firearm dealers, keys in with the federal statute on firearms dealers, which requires anyone who buy or sells under state and federal law, to get a firearms license.
- 336 **JONES:** City code 1437, gives us an opportunity to hold the property for 15 days.

HOUSE COMMITTEE ON JUDICIARY
Subcommittee On Civil Law And Judicial Administration

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- 345 **ROD HARDER, OREGON SPORTSMEN DEFENSE FUND, NATIONAL RIFLE ASSOCIATION:** Testifies and submits written testimony in support of HB 2784. **(EXHIBIT E)**

TAPE 33, SIDE B

- 011 **LARRY CAMPBELL, OREGON ASSOCIATION OF CHIEFS OF POLICE:** Testifies on HB 2784. We would like to see some state uniformity.

WORK SESSION ON SB 45

- 030 **CHAIR PARKS:** Why are we proposing to add another exception to the general rule?
- 038 **REP. JOHNSTON:** Employee appeals board functions, in effect, as a judicial capacity, explains. We are extending to them the same thing that we have already extended to worker's compensation. They thought that they should be and were exempt, I agree.
- 048 **CHAIR PARKS:** Does this apply to the evaluation of individual cases rather than policy matters?
- 051 **REP. JOHNSTON:** I don't know.
- 058 **RENEE BRYANT, EMPLOYMENT APPEALS BOARD:** We are trying to be able to deliberate about the context of cases that would include the facts, credibility, and evidence. It would include policy in terms of the application of policy. The policy is made by the Employment Department.
- 068 **CHAIR PARKS:** Is this a consideration of individual cases?
- 069 **BRYANT:** Yes, explains. We are three persons board therefore, two people constitute a quorum, explains process.
- 077 **MOTION:** **REP. JOHNSTON:** Moves **SB 45 TO THE FULL COMMITTEE** with a **DO PASS** recommendation.
- VOTE:** **6-0 MOTION PASSES**
AYE: Brown, Carpenter, Johnston, Naito, Qutub, Parks
NO: None
EXCUSED: Tiernan

WORK SESSION ON SB 69

- 089 **MOTION:** **REP. JOHNSTON:** Moves **SB 69 TO THE FULL COMMITTEE** with a **DO PASS** recommendation.

BILL NO.: HB 2784
HOUSE JUDIC. CIVIL
EXHIBIT: C
DATE: 3/2/95 PAGES: 2
SUBMITTED BY: Sarah Hackett



*Working together
for livable
Oregon
communities*

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March 2, 1995

Rep. Del Parks
H-280 State Capitol
Salem, OR 97310

RE: HB 2784

Dear Rep. Parks:

On behalf of the League of Oregon Cities I would like to respond to the proposals contained in HB 2784 -- Exclusive firearm regulation by the Legislature. Cities have serious concerns about this proposal to redesign the control of firearms and to remove some of their existing local authority.

As you consider this legislation, please consider the following:

- o Community policing is a primary focus and direction of nearly all law enforcement and crime control efforts at the local, state, and federal levels. One component of this philosophy is to take problems to their lowest denominator, to the local community and neighborhood. Preempting local authority to work at the local level to regulate firearms runs counter to these theories.
- o Trends in criminal activities may change quickly or may evolve gradually. However, because the Legislature only meets once every two years, it is only able to respond to such change of needs once every two years. Local governments efforts to address local problems would be hampered by this timeline.
- o Local governments currently administer a large portion of the state laws requiring registration and background checks for firearm purchases. The issue has been discussed and debated at length, and cities have been authorized to set and collect local fees for background checks performed for purchases made within their boundaries. This authority should not be hampered by HB 2894.
- o Many cities currently adopt most of state law as their local firearm regulation. This bill, however, will preempt those cities that are using ORS

166.245 to address special local concerns. It would also prevent cities from taking action locally to address changing local conditions and needs as they affect the use of firearms.

We also have particular concerns about Section 4 of the bill. This section appears to conflict with the regulation authority provided to local governments in Section 3.

We appreciate your consideration of these comments and would be willing to assist with any further discussion of this legislation.

Sincerely,

Sarah I. Hackett
Sarah I. Hackett
Senior Staff Associate

- c. House Judiciary Subcommittee
on Civil Law and Judicial Administration

BILL NO.: HB 2784
HOUSE JUDIC. CIVIL
EXHIBIT: D
DATE: 3/2/95 PAGES: 1
SUBMITTED BY: John Nichols

PROPOSED AMENDMENTS TO HOUSE BILL 2784 SECOND DRAFT
SUBMITTED BY JOHN NICHOLS
HEARING MARCH 2, 8:30 AM ROOM 357

SECTION 1 LINE 5: AFTER WORD "POSSESSION" ADD WORD "STORAGE."

SECTION (2) LINE 10: AFTER WORD "POSSESSION" ADD WORD "STORAGE."

~~A~~ SECTION 1 (2) LINE 11: AFTER WORD "AMMUNITION ADD "ANY SUCH EXISTING ORDINANCES ARE HEREBY DECLARED NULL AND VOID. ZONING ORDINANCES WHICH ARE DESIGNED FOR THE PURPOSE OF RESTRICTING OR PROHIBITING THE SALE, PURCHASE, TRANSFER OR MANUFACTURE OF FIREARMS OR AMMUNITION AS A METHOD OF REGULATING FIREARMS OR AMMUNITION ARE IN CONFLICT WITH IS SUBSECTION AND ARE PROHIBITED."

SECTION 2 (2) ADD NEW SUBSECTION: ^(e)~~(d)~~ PERSONS DISCHARGING FIREARMS ON PUBLIC LANDS OUTSIDE THE URBAN GROWTH BOUNDARIES FOR THE PURPOSE OF INFORMAL TARGET SHOOTING WHEN SUCH DISCHARGE DOES NOT ENDANGER ADJACENT PERSONS OR PROPERTY."



Oregon Sportsmens Defense Fund Inc.

A Multiple use Coalition

PO Box 100, Blachly, Oregon 97412 Ph 503-925-3022 Fax 503-925-4122

Testimony of Rod Harder, OSDF Executive Director on
HB2784

House Judiciary Sub Committee on Civil Law

March 2, 1995

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Rogue Valley Bowhunters
Blue Mountain Hound Club
Cascadian Bow Hunter
Black Rose Traditional Archers
South Umpqua Bow Hunters
Salem Oregon Bow Hunters
Oregon Taxidermists Assoc.
Four Corners Rod/Gun Club

Rod Harder
Executive Director

Good morning. My name is Rod Harder. I am the executive director for the Oregon Sportsmens Defense Fund Inc. , a coalition of over 40 Natural Resource and Firearms businesses and organizations. I also serve as the Oregon point of contact for the National Rifle Association.

OSDF fully supports the concept of HB2784 which vests the authority to control firearms ownership, possession and use in the Oregon Legislature while still giving ample authority to local government to act in the interest of public safety.

Some of the amendments which are being offered originated with the NRA. Because the LC Draft of the amendments was not received until shortly before the hearing, NRA Legal Counsel has not had an opportunity to review them, and while in support of the concept of HB2784 will defer taking a formal position until the review is completed.

Thank you for the opportunity to appear today.

Sincerely,

Rod Harder
Executive Director

BILL NO.: HB 2784
HOUSE JUDIC. CIVIL
EXHIBIT: E
DATE: 3/2/95 PAGES: 1
SUBMITTED BY: Rod Harder

HOUSE COMMITTEE ON JUDICIARY
Subcommittee On Civil Law And Judicial Administration
March 23, 1995 - Page 6

WORK SESSION ON HB 2784

- 307 MILT JONES, COMMITTEE COUNSEL: HB 2784 vests exclusive authority to regulate sale, acquisition, transfer, ownership, possession, transportation and use of firearms in Legislative Assembly. Explains differences between the -7 & -8 amendments. (EXHIBITS H, I, J, K)
- 333 REP. TIERNAN: Cites language in section 6. Is that language meant to include the gun shows?
- 347 CHAIR PARKS: That is true. There is an issue as to what a "second hand store" is. Cites EXHIBIT H.
- 353 REP. TIERNAN: Gives example of a resale gun and problems which needs to be addressed.
- 362 CHAIR PARKS: Has everyone had an opportunity to consider the amendments including EXHIBIT H?
- 368 MOTION: REP. TIERNAN: Moves to **ADOPT HB 2784 -8 AMENDMENTS.**
- VOTE: Hearing no objections the amendments are **ADOPTED.** All members are present.
- 385 MOTION: REP. TIERNAN: Moves to **ADOPT THE "SECOND HAND STORE" DEFINING LANGUAGE AS STATED IN EXHIBIT H.**
- VOTE: Hearing no objections the amendments are **ADOPTED.** All members are present.
- 390 MOTION: REP. TIERNAN: Moves **HB 2784 AS AMENDED TO THE FULL COMMITTEE** with a **DO PASS** recommendation.
- 401 REP. NAITO: What are some of the types of organizations that will now be prohibited? Will carrying loaded weapons in a car be allowed in the city of Portland?
- 409 CHAIR PARKS: The purpose of the bill is to allow the state to make those rules.
- 414 REP. TIERNAN: I believe the rule is that a person can not carry a loaded firearm in the car.
- 419 REP. NAITO: The statutes regulate concealed weapons and possession in public places, but I can not find any regulation of a person carrying a loaded gun openly. There is a city ordinance, but I don't find a state regulated ordinance, is that allowed?
- 436 MILT JONES, COMMITTEE COUNSEL: The carrying of a weapon, loaded or unloaded, is permitted in Oregon.

TAPE 43, SIDE B

HOUSE COMMITTEE ON JUDICIARY
Subcommittee On Civil Law And Judicial Administration
March 23, 1995 - Page 7

- 007 CHAIR PARKS: This bill does not say that the carrying of a loaded weapon cannot be prevented. It says that this is an issue of the rights of people and should be the same in every locality. The state should regulate this issue as a state wide issue, explains.
- 018 REP. NAITO: I don't believe that all areas have subject to a state wide concern. We have real needs in Portland because there is so much violence and death caused by guns. It is different in metropolitan areas than in rural areas.
- 025 REP. TIERNAN: There are unique problems when there are different laws all over the state, gives example. There is problems with having different laws concerning different kinds of guns, loaded or unloaded, when traveling around the state. We need to have one rule so that people can carry their weapon with the insurance that they won't violate different jurisdiction laws.
- 040 VOTE: 6-1 MOTION PASSES
 AYE: Brown, Carpenter, Johnston, Qutub, Tiernan, Parks
 NO: Naito

PUBLIC HEARING ON HB 2942

- 048 MILT JONES, COMMITTEE COUNSEL: HB 2942 expands authority of court to restrain person who abuses family or household member.

Witnesses: Rep. Kate Brown, District 13
 Rep. Chuck Carpenter, District 7

- 060 REP. KATE BROWN, DISTRICT 13: Testifies in support of HB 2942.
- 075 REP. CHUCK CARPENTER, DISTRICT 7: Testifies in support of HB 2942.
- 091 REP. NAITO: The order must be fairly specific with respect to the area surrounding it. Should it specify a number of feet around a home or should it be by the block?
- 097 REP. BROWN: A specific number of feet would be appropriate, but in some neighborhoods a block is used. Gives example of a situation where this would apply.
- 107 REP. TIERNAN: How does this bill differ from the stalking legislation?
- 109 REP. BROWN: This amends the Family Abuse Prevention Act. The stalking legislation is a different statutory authority.
- 111 REP. TIERNAN: It seems there are some similarities between the bills.
- 112 REP. BROWN: Yes they are. The stalking legislation that was passed last session was based on the Family Abuse Prevention Act, and that is what this bill would amend.
- 115 REP. TIERNAN: Does this do something that the stalking legislation doesn't do?

BILL NO.: HB 2784

HOUSE JUDIC. CIVIL

EXHIBIT: HDATE: 3/23/95 PAGES: 2SUBMITTED BY: STAFF

HB 2784-7

(LC 2459)

3/21/95 (VV/wb/hl)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2784**

1 On page 1 of the printed bill, line 5, after "possession," insert
2 "storage,".

3 In line 9, after "corporation" insert "or district" and after "ordinances"
4 insert ", including but not limited to zoning ordinances,".

5 In line 10, after "possession," insert "storage,".

6 In line 11, after the period insert "Ordinances that are contrary to this
7 subsection are void.".

8 In line 12, delete "Cities and" and delete "enact" and insert "adopt".

9 After line 20, insert:

10 "(e) Persons discharging firearms in the course of target shooting on
11 public land that is not inside an urban growth boundary or the boundary of
12 a city, if the discharge will not endanger persons or property.

13 **"SECTION 3. (1) Cities may adopt ordinances to regulate, restrict
14 or prohibit the discharge of firearms within their boundaries.**

15 **"(2) Ordinances adopted under subsection (1) of this section may
16 not apply to or affect:**

17 **"(a) Persons discharging firearms in the lawful defense of person
18 or property.**

19 **"(b) Persons discharging firearms upon public or private shooting
20 ranges, shooting galleries or other specific areas designed and built for
21 the purpose of target shooting."**

22 In line 21, delete "3" and insert "4" and delete "enact" and insert
23 "adopt".

24 After line 26, insert:

1 “(d) Persons authorized to possess a loaded firearm while in or on a
2 public building under ORS 166.370.”.

3 In line 27, delete “4” and insert “5” and delete “cities and counties” and
4 insert “a city, county or other municipal corporation or district”.

5 On page 2, line 1, delete “enact” and insert “adopt” and after
6 “possession” insert “or sale” and delete “place” and insert “building”.

7 In line 2, delete “or otherwise occupied by”.

8 After line 2, insert:

9 **“SECTION 6. Notwithstanding any other provision of law, a city
10 may regulate the sale of used firearms in pawnshops and retail stores
11 selling secondhand goods.”.**

12 In line 3, delete “5” and insert “7”.

13

BILL NO.: HB 2784
 HOUSE JUDIC. CIVIL
 EXHIBIT: I
 DATE: 3/23/95 PAGES: 2
 SUBMITTED BY: Staff

HB 2784-8
 (LC 2459)
 3/21/95 (VV/wb/hl)

PROPOSED AMENDMENTS TO
 HOUSE BILL 2784

1 On page 1 of the printed bill, line 5, after "possession," insert
 2 "storage,".

3 In line 9, after "corporation" insert "or district" and after "ordinances"
 4 insert ", including but not limited to zoning ordinances,".

5 In line 10, after "possession," insert "storage,".

6 In line 11, after the period insert "Ordinances that are contrary to this
 7 subsection are void.".

8 In line 12, delete "Cities and counties" and insert "A county" and delete
 9 "enact" and insert "adopt".

10 In line 15, delete "Persons" and insert "A person" and delete "firearms"
 11 and insert "a firearm".

12 In line 16, delete "Persons" and insert "A person" and delete "firearms"
 13 and insert "a firearm".

14 In line 17, delete "Landowners and their guests" and insert "A landowner
 15 and guests of the landowner discharging a firearm,".

16 Delete lines 19 and 20 and insert:

17 "(d) A person discharging a firearm on a public or private shooting range,
 18 shooting gallery or other area designed and built for the purpose of target
 19 shooting.

20 "(e) A person discharging a firearm in the course of target shooting on
 21 public land that is not inside an urban growth boundary or the boundary of
 22 a city, if the discharge will not endanger persons or property.

23 "SECTION 3. (1) A city may adopt ordinances to regulate, restrict
 24 or prohibit the discharge of firearms within the city's boundaries.

1 “(2) Ordinances adopted under subsection (1) of this section may
2 not apply to or affect:

3 “(a) A person discharging a firearm in the lawful defense of person
4 or property.

5 “(b) A person discharging a firearm on a public or private shooting
6 range, shooting gallery or other area designed and built for the pur-
7 pose of target shooting.”.

8 In line 21, delete “3” and insert “4” and delete “Cities and counties” and
9 insert “A city or county” and delete “enact” and insert “adopt”.

10 Delete lines 24 and 25 and insert:

11 “(a) A law enforcement officer in the performance of official duty.

12 “(b) A member of the military in the performance of official duty.”.

13 In line 26, delete “Persons” and insert “A person”.

14 After line 26, insert:

15 “(d) A person authorized to possess a loaded firearm while in or on a
16 public building under ORS 166.370.”.

17 In line 27, delete “SECTION 4.” and insert “(3)” and delete “cities and
18 counties” and insert “a city, county or other municipal corporation or dis-
19 trict”.

20 On page 2, line 1, delete “enact” and insert “adopt” and delete “to” and
21 insert “that” and after “possession” insert “or sale” and delete “place” and
22 insert “building”.

23 In line 2, delete “or otherwise occupied by”.

24 After line 2, insert:

25 “SECTION 5. Notwithstanding any other provision of law, a city
26 may regulate the sale of used firearms in pawnshops and retail stores
27 selling secondhand goods.”.

28 In line 3, delete “5” and insert “6”.

29

Oregon Issues Strategies

Rod Harder Consulting Services
3300 Market St. NE, Osborne Plaza, Suite 11
Salem, OR.
Phone 361-0070 Fax 362-5184

BILL NO.: HB 2784
HOUSE JUDIC. CIVIL
EXHIBIT: J
DATE: 3/23/95 PAGES: 1
SUBMITTED BY: Ron Harder

March 23, 1995

To: Rep Parks

From: Rod Harder

The HB-2784-7 Amendments still do not reflect the agreement we arrived at on the sale of firearms in second hand stores. As written, the dash-7 amendments widen the cities authority to regulate sales. That is going the opposite direction from where we want to go. The problem seems to be that LC can find no definition of "Second Hand Stores" I propose we do the following.

Section 6. Notwithstanding any other provision of law, a city may continue to regulate the sale of used firearms in pawn shops and second hand stores".

"Second Hand Stores" are defined as "Any store or business whose primary source of revenue is the sale of used merchandise".

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EXHIBIT: K
DATE: 3/22/95 PAGES: 1
SUBMITTED BY: John Nichols

Section 6. Notwithstanding any other provision of law a city or county may regulate the sale of used firearms by retail stores which are not subject to the provisions of ORS 166.427.

HOUSE JUDICIARY

Page 4

April 3, 1995-

WORK SESSION ON HB 2784

- 148 MILT JONES, COMMITTEE COUNSEL: HB 2784 vest exclusive authority to regulate sale, acquisition, transfer, ownership, possession, transportation and use of firearms in Legislative Assembly. (EXHIBIT B)
- 154 MOTION: REP. BROWN: Moves **HB 2784 AS AMENDED TO THE FLOOR** with a **DO PASS** recommendation.
- 159 REP. COURTNEY: Is this a gun control bill?
- 160 CHAIR PARKS: Yes it gives gun control regulation to the state of Oregon rather than local jurisdictions.
- 161 REP. PROZANSKI: It is my understanding that this bill would prohibit local regulation such as zoning for firearms?
- 166 MILT JONES, COMMITTEE COUNSEL: To a limited extent, that is correct.
- 167 REP. PROZANSKI: Can you explain when a city would be able to regulate or not regulate the citing, such as in a shooting gallery or a firing range?
- 169 MILT JONES, COMMITTEE COUNSEL: It does allow the city to regulate the discharge of firearms, but not the citing of ranges.
- 172 REP. PROZANSKI: A firing range could be opened up to someone's house in a residential area?
- 175 MILT JONES, COMMITTEE COUNSEL: Yes.
- 176 REP. PROZANSKI: There is no definition of what a shooting range is?
- 177 MILT JONES, COMMITTEE COUNSEL: Other than what is on the face of the bill, no.
- 178 REP. PROZANSKI: The intent of the bill is to preempt cities from having any say as to where a shooting range can be located?
- 183 CHAIR PARKS: The intent of the bill is to recognize the constitutional rights of lawful owners of firearms and to regulate them in a uniform manner throughout the state.
- 185 REP. PROZANSKI: Is the state going to have some sort of citing criteria for when a range can or can't be opened?
- 190 REP. JOHNSTON: Cites section 3 of page 9 language as to Rep. Prozanski's concern.

