

Hearing Date: June 23, 2023  
Hearing Time: N/A  
Judge/Calendar: Allyson Zipp

**STATE OF WASHINGTON  
THURSTON COUNTY SUPERIOR COURT**

GUARDIAN ARMS, LLC, et al.,  
Plaintiffs,  
v.  
STATE OF WASHINGTON, et al.,  
Defendants.

NO. 23-2-1761-34

[PROPOSED] ORDER DENYING  
PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING  
ORDER

**[PROPOSED] ORDER**

This matter came before the Court on Plaintiffs' Motion for Temporary Restraining Order. Below is the Court's ruling denying entry of a temporary restraining order, reproduced from the official transcript of the Court's oral ruling delivered on June 23, 2023. The ruling below differs from the oral ruling of the Court only insofar as citations to case law have been added as appropriate, and certain non-substantive stylistic and typographical changes to the text of the official transcript have been made.

Plaintiffs in this lawsuit are Guardian Arms LLC, Millard Sales LLC, Michael McKee, Edgar Salazar, Paul Hill, Theodore Hile, Brina Yearout, Nathan Poplawski, Jaxon Holman and Silent Majority Foundation. Defendants are Joseph Kriete in his official capacity as Sheriff of Grant County, the State of Washington, Jay Inslee in his official capacity as Governor of Washington, and Robert Ferguson in his official capacity as Attorney General of Washington.

1 Plaintiffs have brought a lawsuit against defendants alleging that recently-enacted Substitute  
2 House Bill [(SHB)] 1240 is unconstitutional under two provisions of the Washington State  
3 Constitution. First, plaintiffs allege SHB 1240 unconstitutionally impairs their right to bear arms  
4 under Article I Section 24. Second, plaintiffs allege SHB 1240 is unconstitutionally void for  
5 vagueness under Article I Section 3. In their lawsuit, plaintiffs request the relief of a judgment  
6 declaring SHB 1240 invalid and unconstitutional and an injunction prohibiting the  
7 implementation of SHB 1240 and all of its provisions.

8 The issue before this Court is not whether Plaintiffs will ultimately prevail on their claim  
9 that SHB 1240 is unconstitutional. The issue before the Court is plaintiffs' motion for a  
10 temporary restraining order. This is an initial step in the litigation of this case.

11 In their motion for a temporary restraining order, plaintiffs asked this Court to  
12 temporarily enjoin the enforcement of SHB 1240 while this case is being litigated. A TRO is an  
13 "extraordinary remedy" that is only available when the requester establishes that they have met  
14 an exacting three-part test. *Swiss Baco Skyline Logging Co. v. Haliewicz*, 14 Wn. App. 343, 345,  
15 541 P.2d 1014 (1975). Courts can grant a temporary restraining order only when the requester  
16 establishes that all three required elements of that exacting test have been met. *See Ameriquist*  
17 *Mortg. Co. v. State Att'y Gen.*, 148 Wn. App. 145, 157, 199 P.3d 468 (2009). If the requester  
18 fails to establish any of the three required elements, the court must deny the request for a TRO.  
19 *Huff v. Wyman*, 184 Wn.2d 643, 651, 361 P.3d 727 (2015). "A doubtful case [does] not warrant"  
20 a temporary restraining order. *Id.* at 652.

21 To obtain a TRO, a requester must establish that they have "a clear legal or equitable  
22 right," that they have "a well-grounded fear of immediate invasion of that right," and "that the  
23 act[s] complained of" are either resulting in or "will result in actual and substantial injury" to  
24 them. *Id.* at 651. These elements are "examined in light of equity, including balancing the relative  
25 interests of the parties and the public, if appropriate." *Id.* (cleaned up).

1 The Court finds that plaintiffs have failed to establish elements one and three. The Court  
2 will address each element in turn.

3 The first element of the TRO test is a clear legal or equitable right. In their lawsuit,  
4 plaintiffs argue that their right to bear arms as established by the Washington Constitution Article  
5 I Section 24 prohibits the regulatory measures enacted in SHB 1240. Plaintiffs bring a facial  
6 challenge to SHB 1240, which means that to ultimately prevail in their case, they must prove  
7 that SHB 1240 “is unconstitutional beyond a reasonable doubt and there are no factual  
8 circumstances under which the [SHB 1240] could be constitutional.” *City of Pasco v. Shaw*, 161  
9 Wn.2d 450, 458, 166 P.3d 1157 (2007).

10 At the TRO stage, plaintiffs must show that they have a clear right that what they claim  
11 is so: that SHB 1240 is on its face unconstitutional. Plaintiffs have not established that they have  
12 that clear right.

13 Two Washington State Supreme Court decisions, *State v. Jorgenson* and *City of Seattle*  
14 *v. Evans*, are central to this court’s analysis of Article I Section 24. In *State v. Jorgenson*, 179  
15 Wn.2d 145, 312 P.3d 960 (2013), the Supreme Court states: “We have long held that the firearm  
16 rights guaranteed by the Washington Constitution are subject to reasonable regulation pursuant  
17 to the State’s police power.” *Id.* at 155. *Jorgenson* also explains that “a constitutionally  
18 reasonable regulation is one that is reasonably necessary to protect public safety or welfare, and  
19 substantially related to legitimate ends sought.” *Id.* (cleaned up).

20 Defendants argue that SHB 1240 is a constitutionally reasonable regulation under that  
21 test. Defendants point out that SHB 1240 does not completely ban assault weapons.<sup>1</sup> Instead, it  
22 restricts the manufacture, importation, distribution and sale of assault weapons in a manner that  
23 is substantially related to legitimate ends sought by the Legislature in enacting it. Defendants  
24

25 \_\_\_\_\_  
26 <sup>1</sup> The Court uses the term “assault weapon” because that is the term defined by SHB 1240. Usage of the  
term in this Order is not intended to be pejorative.

1 point to legislative findings in SHB 1240 that support the Legislature’s determination that  
2 SHB 1240 is reasonably necessary to protect public safety and welfare.

3 Plaintiffs dispute the accuracy and factual basis of the legislative finding in SHB 1240.  
4 Plaintiffs rely on *City of Seattle v. Evans*, 184 Wn.2d 856, 366 P.3d 906 (2015). In *Evans*, which  
5 was decided two years after *Jorgenson*, the State Supreme Court clarified the test for what  
6 constitutes an “arm” under Article I Section 24. *Evans* holds that Article I Section 24’s right to  
7 bear arms “protects instruments that are designed as weapons traditionally or commonly used by  
8 law abiding citizens for the lawful purpose of self-defense.” *Id.* at 869. In considering whether a  
9 weapon is an arm, *Evans* said courts “look to the historical origins and use of that weapon, noting  
10 that a weapon does not need to be designed for military use to be traditionally or commonly used  
11 for self-defense.” *Id.* In addition, courts “will also consider the weapon’s purpose and intended  
12 function.” *Id.*

13 In *City of Seattle v. Evans*, the Supreme Court did not hold that weapons that are arms  
14 cannot be regulated, and *Evans* did not revisit the holding of *Jorgenson*, that Article I  
15 Section 24’s right to bear arms is subject to reasonable regulation pursuant to the State’s police  
16 power.

17 Plaintiffs, in their Motion for TRO, argue that what SHB 1240 defines as an assault  
18 weapon constitutes an arm under the *Evans* test. Defendants dispute this assertion.

19 Considering the first element of the TRO test, the Court finds that plaintiffs have failed  
20 to establish a clear right for at least two reasons: First, there are substantive disputes involving  
21 questions of law and fact regarding whether assault weapons as defined in SHB 1240 are arms  
22 for purposes of Article I Section 24; and second, if assault weapons are arms, there are  
23 substantive disputes involving questions of law and fact regarding whether assault weapons can  
24 be constitutionally regulated in the manner provided in SHB 1240.  
25  
26

1 In the face of these substantive disputes of fact and law, plaintiffs cannot be said to have  
2 established a clear right for purposes of a temporary restraining order. Because plaintiffs have  
3 failed to meet the first element of the TRO test, their motion must be denied.

4 The second element of the TRO test is well-grounded fear of immediate invasion of the  
5 right. This element would be met if plaintiffs had established a clear right.

6 The third element of the TRO test is that the acts complained of are either resulting in or  
7 will result in actual and substantial injury. Plaintiffs have also failed to establish this element,  
8 which requires them to show that the acts complained of, implementation and enforcement of  
9 SHB 1240, are either resulting in or will result in actual and substantial injury to plaintiffs.

10 In their briefing, plaintiffs did not attempt to articulate any concrete injury that they have  
11 suffered because of SHB 1240. Instead, Plaintiffs argue that the violation of a fundamental  
12 constitutional right, even if temporary, in and of itself constitutes irreparable harm that amounts  
13 to actual and substantial injury. Plaintiffs have not established that this is the law for the  
14 constitutional violation they have alleged in this lawsuit.

15 Plaintiffs rely on a Court of Appeals dissent as authority, Pltf. Mot. at 4 (quoting *Stevens*  
16 *County v. Stevens Cnty. Sheriff's Dep't*, 20 Wn. App. 2d 34, 94, 499 P.3d 917 (2021) (Fearing, J.,  
17 dissenting), *review denied*, 199 Wn.2d 1008, 506 P.3d 639 (2022)), but a dissenting opinion is  
18 not the law. And the dissent cites as authority a U.S. Supreme Court case involving violation of  
19 the First Amendment, not the right to bear arms. *See Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct.  
20 2673, 49 L. Ed. 2d 547 (1976) (“*The loss of First Amendment freedoms, for even minimal periods*  
21 *of time, unquestionably constitutes irreparable injury.*”) (emphasis added). The U.S. Supreme  
22 Court case addressed injuries suffered by employees whose First Amendment right of  
23 association was violated when they were threatened with termination from employment if they  
24 did not support a particular political party. *Id.* at 350. That situation is very different than what  
25 is presented here. Outside of the First Amendment, courts require more than a claim of  
26 constitutional violation to find that irreparable harm amounting to actual and substantial injury

1 has occurred. *See Great N. Res, Inc.. v. Coba*, 3:20-CV-01866-IM, 2020 WL 6820793, at \*2 (D.  
2 Or. Nov. 20, 2020) (collecting cases).

3 Examining plaintiffs’ amended complaint, all but one of the individual plaintiffs assert  
4 that they already possess assault weapons and “desire[] to add more . . . to [their] arsenal[s].”  
5 Am. Compl. at ¶¶ 15–18, 20. SHB 1240 does not prohibit these plaintiffs from continuing to  
6 possess the assault weapons they already have. The one individual plaintiff who does not already  
7 own an assault weapon is not prevented by SHB 1240 from acquiring firearms during this  
8 litigation that are not assault weapons as defined by SHB 1240. This is also true for the other  
9 individual plaintiffs. These plaintiffs have not articulated how they will suffer actual and  
10 substantial injury if they must wait until the end of this litigation to acquire additional assault  
11 weapons if they prevail.

12 Plaintiff Silent Majority Foundation has organizational standing and does not have injury  
13 separate from its members. As for plaintiffs Guardian Arms and Millard Sales, these companies’  
14 alleged injuries are monetary and, thus, capable of remedy at law. *See, e.g., Kucera v. State,*  
15 *Dep’t of Transp.*, 140 Wn.2d 200, 209–10, 995 P.2d 63 (2000) (“injunctive relief will not be  
16 granted where there is a plain, complete, speedy and adequate remedy at law,” such as “monetary  
17 damages”).

18 Considering the third element of the TRO test, the Court finds that plaintiffs have failed  
19 to establish that implementation and enforcement of SHB 1240 is either resulting in or will result  
20 in actual and substantial injury to them. Because plaintiffs have failed to meet the third element  
21 of the TRO test, their motion must be denied on this basis as well.

22 Based on the foregoing reasons, the Court denies Plaintiffs’ Motion for Temporary  
23 Restraining Order.

1                   **IT IS SO ORDERED.**

2                   DATED this \_\_\_\_ day of July, 2023.

3  
4                   \_\_\_\_\_  
5                   THE HONORABLE ALLYSON ZIPP  
                  Thurston County Superior Court Judge

6   Presented by:

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