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**SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF STEVENS**

JOHN DOES 1, 3, and 5, individuals and residents of Stevens County, Washington; and SILENT MAJORITY FOUNDATION, a nonprofit organization organized under the laws of Washington;

Petitioners,

v.

JAY INSLEE, in his official capacity as Governor of Washington; ROBERT FERGUSON, in his official capacity as Attorney General of Washington; and BRAD MANKE, in his official capacity as Sheriff of Stevens County;

Respondents.

No: 23-2-00092-33

PETITIONERS' RESPONSE TO RESPONDENTS' MOTION TO TRANSFER VENUE

I. INTRODUCTION

Contrary to Respondents' motion, Petitioners have sued *three* state officials, and have a motion to amend currently pending, which is noted to be heard concurrently with the instant motion. Petitioners, through the separate motion, seek removal Respondents Inslee and Ferguson by replacing them with Respondent State of Washington. Petitioners move to amend as the state is the proper and correct party in interest as Petitioners are asserting a facial

Silent Majority Foundation
5238 Outlet Dr.
Pasco, WA 99301

1 challenge to the constitutionality of recently enacted legislation, and Inslee and Ferguson have
2 no authority or duty related to the challenged laws.

3 As no official act done by either Governor Inslee or Attorney General Ferguson done
4 within his office is challenged herein. Under these circumstances, transfer of venue to
5 Thurston County is improper and would vitiate the controlling venue statute, Revised Code of
6 Washington (“RCW”), section 4.92.010.
7

8 **II. BACKGROUND**

9 In March 2022, with the passage of ESHB 1705, the Washington State legislature
10 banned the manufacture, assembly, sale, offer to sell, transfer, or purchase of untraceable
11 firearms (“ghost guns”) after June 30, 2022; the knowing or reckless possession, transportation,
12 or receipt of a ghost gun after March 10, 2023; the sale, offer to sell, transfer, or purchase of an
13 unfinished frame or receiver (non-firearm object, or “NFO”) after June 30, 2022; and the
14 knowing or reckless possession, transportation, or receipt of an NFO after March 10, 2023.
15

16 A violation of these restrictions in the first instance is a civil infraction punishable by a
17 monetary penalty of \$500. A second violation is punishable as a misdemeanor. A third or
18 subsequent violation is punishable as a gross misdemeanor. Any violation of these restrictions
19 with three or more untraceable firearms at a time is punishable as a gross misdemeanor. *See*,
20 RCW 9.41.326. Manufacturing an untraceable firearm with an intent to sell, or causing an
21 untraceable firearm to be manufactured, assembling, or causing to be assembled with an intent
22 to sell is punishable as a class C felony. *See*, RCW 9.41.325. Such punishments include a fine
23 up to \$10,000 and confinement in a state correctional institution for five years. RCW
24 9A.20.021.
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1 On March 8, 2023, Petitioners filed a petition for a temporary restraining order and
2 injunctive and declaratory relief with this Court. On Date, Petitioners’ Motion for a Preliminary
3 Injunction was heard, and denied. Simultaneously, Petitioners requested that the Court grant
4 pseudonymity to individual Petitioners, which the Court granted to three of the five individual
5 Petitioners, John Doe 1, 3, and 5 as each of the Petitioners are subject to penalties ranging from
6 misdemeanor to gross misdemeanor for the mere possession of the prohibited firearms—
7 possession which existed prior to the passage of the challenged laws. Respondents now seek
8 removal to Thurston County, and since Petitioners do not challenge acts taken by Respondent
9 Inslee or Ferguson in either Respondents’ official capacity, the removal sought, and its
10 accompanying statute, RCW 4.12.010 are inapplicable.
11

12 III. ISSUES PRESENTED

14 Whether venue is proper where the injury in fact has occurred, any prosecution of those
15 violations would occur, and where the state official charged with enforcement of the
16 challenged statutes carries out official action.
17

18 IV. ARGUMENT

19 A. Legal Standard

20 The Uniform Declaratory Judgment Act, Chapter 7.24 RCW, provides jurisdiction to
21 the courts of record where an interested person resides. Additionally, RCW 4.12.030(3), which
22 authorizes venue in a location where the “convenience of witnesses or the ends of justice
23 would be forwarded” weighs in favor of venue lying where Petitioners reside. If Petitioners’
24 Motion to Amend is granted, there will be only one remaining state official, Respondent
25 Manke, who carries out his official duties in Stevens County. Even if Petitioners’ Motion to
26
27

1 Amend is denied, the only state official whose actions are challenged, namely enforcement of
2 the laws challenged as unconstitutional, carries out his duties in Stevens County.

3 Petitioners do not merely place “State of Washington” in the case caption for simplicity
4 or to plead around RCW 4.12.020(2); the state of Washington is the proper party to the action
5 as its laws are being challenged as neither the Governor nor the Attorney General has
6 enforcement authority or any other prospective action. The lone “required” action by either
7 Respondent was Governor Inslee’s signature on HB 1705 once signed by the Senate President
8 and Speaker of the House, and Petitioners do not challenge the validity, authenticity, or
9 accuracy of Governor Inslee’s signature.
10

11 While the Attorney General is entitled to be heard, “[t]he state as a whole is interested
12 in the validity of [our state statutes], and it is evident that the legislature desired to protect that
13 interest when it provided for service of the proceedings upon the attorney general.” *Camp Fin.*
14 *LLC*, 133 Wn. App. at 161 (citing *Parr v. City of Seattle*, 197 Wash. 53, 56, 84 P.2d 375
15 (1938)). Here, the Attorney General has received notice and service of the action and is
16 represented and has had an opportunity to be heard. The Attorney General will continue to
17 have the opportunity to be heard while representing the Respondent State of Washington, and
18 if his personal interests are implicated, he can seek intervention in his personal capacity.
19

20
21 **B. Venue is Mandatory in Stevens County Under the Public Officer Statute**

22 As briefed by Respondents, “[w]hen [the public officer] statute applies, venue in the
23 specific county is mandatory.” Motion to Transfer Venue, p. 3 (citing *Johnson v. Inslee*, 198
24 Wn.2d 492, 496, 496 P.3d 1191 (2021)). The public officer statute provides that in suits
25 against a public officer for an “act done by him or her in virtue of his or her office,” the action
26 “shall be tried in the county where the cause, or some part thereof, arose.” RCW 4.12.020(2).
27

1 Respondents incorrectly characterize the nature of the instant action; it is not an
2 Administrative Procedure Act claim, or a separation of powers challenge. It is a facial
3 challenge to the constitutionality of recently passed statutes, seeking a declaration that such
4 laws are unconstitutional and unenforceable. Beyond his general duty to “see that the laws are
5 faithfully executed[,]” Governor Inslee has no enforcement powers regarding the challenged
6 statutes. Wash. Const. art. III, § 5.

8 Similarly, the Attorney General has no enforcement powers under the challenged
9 statutes, as there is no Consumer Protection Act provision, as included in other recently
10 enacted gun control legislation. *See, e.g.*, ESSB 5078, SHB 1240. That leaves Governor Inslee
11 and Attorney General Ferguson as strictly supervisory officials.

13 Respondents’ reliance on *Johnson and Gonzales v. Inslee*, 21 Wn. App. 2d 110, 504
14 P.3d 890 (2022) is misplaced; both of those cases are inapposite as they were challenges to
15 gubernatorial emergency proclamations issued pursuant to RCW 43.06.220. Here, the
16 constitutionality of laws passed by the legislature are being challenged, and the public official
17 charged with enforcing them carries out those enforcement duties in Stevens County.
18 Accordingly, “it is the official act itself—the act for which redress is sought—that ‘gives rise’ to
19 the cause of action, and thus venue is proper in the bounty where the act is made.” *Johnson*,
20 198 Wn.2d at 496-97. The action challenged is not the validity of the Governor’s signature or
21 the procedural propriety of the bill, or whether the Governor or Attorney General violated the
22 separation of powers doctrine by requesting such legislation for six years prior to passage. It is
23 squarely a determination as to the validity of the laws passed by the legislature that impair the
24 Petitioners’ right to bear arms, as protected by Wash. Const. art. I, § 24.

1 The only public official who has enforcement powers in the instant case is Respondent
2 Manke. *See, e.g., Whatcom County v. State*, 99 Wn. App. 237, 243, 993 P.2d 273 (2000)
3 (finding that a county prosecutor is a state official when prosecuting state law offenses; citing
4 to *McMillian v. Monroe County*, 520 U.S. 781, 117 S. Ct. 1734 (1997), where “the U.S.
5 Supreme Court held that Alabama sheriffs represent the state, not their counties, when acting in
6 a law enforcement capacity”).

7
8 Actual enforcement of ESHB 1705 falls to the county sheriff and the prosecuting
9 attorney. Violations of ESHB 1705 are punishable as misdemeanors or gross misdemeanors
10 under Chapter 9A.20 RCW, and the Uniform Firearms Act, Chapter 9.41 RCW, makes it the
11 duty of peace officers to seize unlawful firearms and parts as contraband. *See*, RCW 9.41.220
12 (“it shall be the duty of all peace officers ... to seize [unlawful firearms], or parts thereof,
13 wherever and whenever found”).

14
15 **C. Venue is Proper in Stevens County Under the General Venue Statute and UDJA**

16
17 RCW 4.92.010 provides in relevant part, that “[a]ny person or corporation having any
18 claim against the state of Washington shall have a right of action against the state in superior
19 court. The venue for such actions shall be as follows: (1) [t]he county of the residence or
20 principal place of business of one or more of the plaintiffs; (2) [t]he county where the cause of
21 action arose; ... or (5) Thurston county.” Therefore, venue is proper both under the public
22 officer statute, discussed *supra*, at IV.B., and under the general venue statute, as all John Doe
23 Petitioners reside in Stevens County and Petitioner Silent Majority Foundation has significant
24 contacts in Stevens County.
25

26 Additionally, this action is brought pursuant to Chapter 7.24 RCW, which provides that
27 “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status

1 and other legal relations whether or not further relief is or could be claimed.” RCW 7.24.010.

2 The Uniform Declaratory Judgment Act (“UDJA”) further provides that:

3 A person interested under a deed, will, written contract or other
4 writings constituting a contract, or whose rights, status or other legal
5 relations are affected by a statute, municipal ordinance, contract or
6 franchise, may have determined any question of construction or
7 validity arising under the instrument, statute, ordinance, contract or
8 franchise and obtain a declaration of rights, status or other legal
9 relations thereunder.

10 RCW 7.24.020. This statute clearly evinces an intention to provide jurisdiction and
11 venue where the petitioner resides as it offers petitioners an avenue to challenge the
12 construction or validity of a statute or ordinance. Respondents assert that Petitioners added a
13 “nominal” respondent in order to bring the instant action in Stevens County; however,
14 Petitioners simply brought suit where they reside. As the only public officer charged with
15 enforcing the challenged statutes resides in Stevens County, it should remain the venue for the
16 action. Determining to the contrary that any challenge to a statute must be brought in Thurston
17 County would swallow the general venue statute and the vitiate the authority of superior courts
18 to render declaratory judgments under the UDJA.

19 **D. There Should be No Award of Costs**

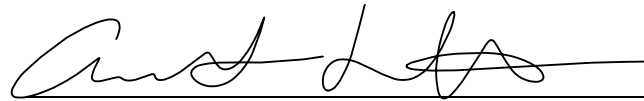
20 Costs are not warranted as transfer is not proper. Assuming, *arguendo*, that
21 Respondents’ Motion to Transfer Venue is granted, costs should not be awarded as
22 Respondents have given no indication of what costs would be. Additionally, as the public
23 officer statute is at play for all of the named Respondents, costs should not be awarded as
24 Petitioners filed suit in accordance with the general venue statute, the public officer statute, and
25 because the initial choice of venue belongs to the plaintiff. *Hatley v. Saberhagen Holdings*,
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1 *Inc.*, 118 Wn. App. 485, 488–89, 76 P.3d 255 (2003) (noting this concept is a “well-established
2 principle”).

3
4 **V. CONCLUSION**

5 For the foregoing reasons, the Court should deny Respondents’ Motion to Transfer
6 Venue.

7 Dated this 22nd of May, 2023.

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10 Austin F. Hatcher, WSBA #57449
11 Simon Peter Serrano, WSBA #54769
12 Attorneys for Petitioners
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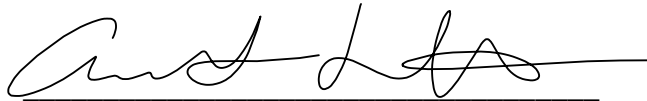
CERTIFICATE OF SERVICE

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

Office of the Attorney General:	
July Simpson, Assistant Attorney General:	july.simpson@atg.wa.gov
Andrew Hughes, Assistant Attorney General:	andrew.hughes@atg.wa.gov
Will McGinty, Assistant Attorney General:	william.mcginty@atg.wa.gov
Spencer Coates, Assistant Attorney General:	spencer.coates@atg.wa.gov
Amy Hand, Paralegal:	amy.hand@atg.wa.gov
Sara Cearley, Paralegal:	sara.cearley@atg.wa.gov
Christine Truong, Legal Assistant:	christine.truong@atg.wa.gov
Vyna Nguyen, Legal Assistant:	vyna.nguyen@atg.wa.gov
Electronic Mailing Inbox:	ComCEC@atg.wa.gov
Stevens County Sheriff's Office:	civil@stevenscountywa.gov
Andrew Patrick, Deputy Prosecutor:	apatrick@stevenscountywa.gov

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

DATED this 22nd day of May, 2023, at Spokane, WA.



Austin Hatcher, WSBA #57449
Attorney for Petitioners