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KIMBERLY A. ALLEN
GRANT COUNTY CLERK

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

GUARDIAN ARMS LLC, a Washington
limited liability company; MILLARD
SALES, LLC, a Washington limited liability
company; MICHAEL MCKEE, EDGAR
SALAZAR, PAUL HILL, THEODORE
HILE, BRINA YEAROUT, NATHAN
POPLAWSKI, and JAXON HOLMAN,
individuals and residents of Grant 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
JOSEPH KRIETE, in his official capacity as
Sheriff of Grant County;

Respondents.

No:

23-2-00377-13

PETITIONERS' MOTION FOR
TEMPORARY RESTRAINING ORDER

I. RELIEF REQUESTED

Petitioners move the Court under CR 65 for a temporary restraining order against
Respondents prohibiting the enforcement of Substitute House Bill 1240 ("SHB 1240").

II. STATEMENT OF FACTS

PETITIONERS' MOTION FOR TEMPORARY
RESTRAINING ORDER- PAGE 1

Silent Majority Foundation
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1 On April 25, 2023, Governor Jay Inslee signed SHB 1240. SHB 1240 bans "assault
2 weapons" under Chapter 9.41 RCW, Firearms and Dangerous Weapons ("Washington
3 Uniform Firearms Act"). SHB 1240 unconstitutionally and categorically bans the
4 manufacture, importation, distribution, sale, or offer for sale of any "assault weapon." Any
5 violation of the provisions of SHB 1240 is categorized as a gross misdemeanor, punishable by
6 imprisonment in the county jail for up to 364 days, or a fine of not more than \$5,000, or by
7 both imprisonment and fine.

8 Respondents have made no showing that any of the numerous law-abiding citizens
9 directly targeted by SHB 1240 have ever misused, much less committed any crime of violence
10 with any "assault weapon." Moreover, Respondents cannot offer evidence for a
11 constitutionally permissible definition of "assault weapon," a vague and overbroad term
12 created and adopted by the legislature to regulate certain firearms it deems scary or that contain
13 "features that allow shooters to fire large numbers of rounds quickly" unlike the non-banned
14 semi-automatic firearms that possess the same characteristics yet fall outside of the definition
15 of "assault weapon." Accordingly, Petitioners ask the Court to issue an order restraining
16 Respondents from enforcing these unconstitutional laws which *immediately* fundamentally and
17 irreparably impair the rights of Washington citizens to bear arms during the pendency of this
18 action.

19 While the House and Senate Substitute Bill Reports note that "Nine other states and the
20 District of Columbia have enacted laws imposing various restrictions on assault weapons"¹
21 simple math dictates that the other 41 states have no such regulations. That the State of
22 Washington disparagingly and arbitrarily calls the entire class of the regulated firearms "assault
23 weapons," and imposes severe penalties for their possession, transfer, and use for otherwise
24 lawful purposes and looks past the common characteristics of these firearms is no surprise. In
25 spite of the moniker, the fact remains that law-abiding citizens throughout the country own tens
26 of millions of such firearms and use them for lawful purposes, including self-defense,
27 proficiency training, sport, and hunting, leaving these firearms as neither dangerous nor unusual,
28

¹ SHB 1240 is attached as Exhibit A to the Petition.
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1 and evidence suggests that they are rarely used in crime, and especially not used in “mass
2 shootings” in Washington as evidenced in the Complaint.

3 **III. ISSUES PRESENTED**

4 Are Petitioners entitled to a temporary restraining order prohibiting Respondents from
5 enforcing the provisions of SHB 1240, all of which violate Wash. Const. art. I, § 24 by
6 substantially impairing Washington citizens’ right to bear arms? YES.

7 **IV. EVIDENCE RELIED UPON**

8 In support of this Motion, Petitioners rely on the Petition for Declaratory Judgment and
9 Injunctive Relief and the Declaration of Counsel in support thereof. Petitioners also rely on the
10 legislation, *i.e.*, SHB 1240, itself, and the legislative Analyses and Reports for the Bill
(including the several iterations prior to its passage).

11 **V. ARGUMENT**

12 **A. A Temporary Restraining Order is Justified in This Case**

13 A trial court has broad discretion to fashion injunctive relief to fit the circumstances of
14 the case. *Rupert v. Gunter*, 31 Wn. App. 27, 30, 640 P.2d 36 (1982). A court’s decision to
15 grant or deny an injunction will not be overturned unless the decision is based on untenable
16 grounds, is manifestly unreasonable, or is arbitrary. *Fed. Way Family Physicians, Inc. v.*
Tacoma Stands Up for Life, 106 Wn.2d 261, 264, 721 P.2d 946 (1986).

17 To obtain a temporary restraining order, a party “must show (1) that he has a clear legal
18 or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and
19 (3) that the acts complained of are either resulting in *or will result* in actual and substantial
20 injury to him.” *Spokane v. AFSCE*, 76 Wn. App. 765, 771, 888 P.2d 735 (Div. 3 1995) (citing
21 *Port of Seattle v. International Longshoremen’s & Warehousemen’s Union*, 52 Wn.2d 317,
22 319, 324 P.2d 1099 (1958) (emphasis in original).

23 **1. Petitioners have a clear legal right to bear arms of their choosing.**

24 The Washington Constitution provides that “[t]he right of the individual citizen to bear
25 arms in defense of himself, or the state, shall not be impaired[.]” Wash. Const. art. I, § 24.
26 “Article I, section 24 plainly guarantees an individual right to bear arms.” *State v. Sieyes*, 168
27 Wn.2d 276, 292, 225 P.3d 995 (2010). “This ‘right to bear arms’ is an individual right that
exists in the context of that individual’s defense of himself or the state.” *City of Seattle v.*

1 *Evans*, 184 Wn.2d 856, 862, 366 P.3d 906 (2015) (citing *Sieyes*, 168 Wn.2d at 292-93).
2 Additionally, the Supreme Court stated that “we regard the history, lineage, and pedigree of the
3 Second Amendment right to bear arms necessary to an Anglo-American regime of ordered
4 liberty and fundamental to the American scheme of justice. It is deeply rooted in this Nation’s
5 history and tradition.” *Sieyes*, 168 Wn.2d at 287. Finally, “the right to bear arms protects
6 instruments that are designed as weapons traditionally or commonly used by law-abiding
7 citizens for the lawful purpose of self-defense.” *Id.* at 869. The “common-use” test espoused in
8 *Evans* is viewed in light of the “historical origins and use of that weapon, noting that a weapon
9 does not need to be designed for military use to be traditionally or commonly used for self-
10 defense.” *Id.* Lastly, the Court *will* “consider the weapon’s purpose and intended function.” *Id.*
11 Here, *all* portions of the common use test are met, and Petitioners are likely to ultimately
12 prevail on the merits.

13
14 **2. Through its emergency clause SHB 1240 renders the Bill operative upon the**
15 **Governor’s signature, delivering immediate actual and substantial injury.**

16 The challenged statutes impair the individual right to bear arms, conduct protected by
17 Wash. Const. art. I, § 24. Semiautomatic firearms are commonly possessed by law-abiding
18 citizens for lawful purposes and are therefore protected and have been a part of American
19 history for well more than a century. The Respondents cannot make a showing that bans of
20 semiautomatic weapons are longstanding, or that any analogous historical restrictions existed,
21 and SHB 1240 is therefore unconstitutional.

22 Here, Petitioners have a clear legal, constitutionally protected, right to bear arms, as
23 “[t]he violation of a fundamental constitutional right, even if temporary, constitutes irreparable
24 harm.” *Stevens Cty. v. Stevens Cty. Sheriff’s Dep’t*, 20 Wn. App. 2d 34, 94, 499 P.3d 917 (Div. 3
25 2021) (Fearing, J., dissenting) (citing *Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673 (1976)).
26 The Legislature’s immediate prohibition of *all* Washingtonian’s constitutionally protected rights
27 constitutes immediate irreparable harm that cannot be remedied barring a prohibition on the
28 enforcement of SHB 1240 until it is deemed unlawful. The inability to cease the violation clearly
demonstrates the necessity of a temporary restraining, which is proper, “when there is a clear
showing, based on specific facts, that the applicant will suffer irreparable injury, loss, or damage

1 before an adversary hearing can be convened in open court. CR 65(b)(1).” *Fisher v. Parkview*
2 *Props.*, 71 Wn. App. 468, 475, 859 P.2d 77, 81 (1993).

3 **i. Semiautomatic firearms are constitutionally protected.**

4 There is no genuine question that the firearms banned by SHB are common, not
5 prohibited in the vast majority of States, and have been used for more than a century by
6 millions of responsible, law-abiding people for various lawful purposes such as self-defense,
7 hunting, recreation, competition, and collecting. *See, e.g.*, Expert Declaration of Ashley
8 Hlebinsky, Declaration of Eric Hargrave, and Declaration of Bruce Davis, filed herewith. The
9 only rarity regarding such firearms is the very few States that seek to restrict them by
10 recharacterizing them as “assault weapons.” The dual purpose of Wash. Const. art. I, § 24 is
11 the protection of the right to bear arms for self-defense and in defense of the state. This is to
12 ensure that liberty is protected by the mere fact that the populace is armed and can withstand
tyrannical action of the government:

13 The right of the citizens to keep and bear arms has justly been
14 considered, as the palladium of the liberties of a republic; since it
15 offers a strong moral check against the usurpation and arbitrary
power of rulers; and will generally, even if these are successful in
the first instance, enable the people to resist and triumph over them.

16 Joseph Story, Commentaries on the Constitution of the United States 3 § 1890 (1833).
17 The Washington Supreme Court set forth the proper analysis to determine whether a weapon is
18 constitutionally protected: “the right to bear arms protects instruments that are designed as
19 weapons traditionally or commonly used by law-abiding citizens for the lawful purpose of self-
20 defense.” *City of Seattle v. Evans*, 184 Wn.2d 856, 869, 366 P.3d 906 (2015). As Justice
21 Kavanaugh, then D.C. Circuit judge, stated in his dissent in *Heller v. District of Columbia*,
22 670 F.3d 1244, 1271 (2011) (“*Heller II*”), courts should “assess gun bans and regulations based
23 on text, history, and tradition, not by a balancing test such as strict or intermediate scrutiny.”
24 *Id.* (Kavanaugh, J., dissenting). *See also: New York State Rifle & Pistol Ass’n, Inc. v. Bruen*,
25 597 U.S. ___, 142 S. Ct. 2111, 2126 (2022) doing away with “means-end scrutiny” and
26 replacing it with the following test: “when the Second Amendment’s plain text covers an
27 individual’s conduct, the Constitution *presumptively protects* that conduct...” (emphasis
added). To defend its decision, “the government must demonstrate that the regulation is

1 consistent with this Nation's historical tradition of firearm regulation." *Id.* Here, the State
2 cannot defend SHB 1240 as there is no historical tradition of such firearm regulation.

3 As noted above, the Washington Supreme Court held that "a weapon does not *need* to
4 be designed for military use to be traditionally or commonly used for self-defense. We will
5 also consider the weapon's purpose and intended function." *Evans*, at 869. (emphasis added).
6 This is a direct repudiation of the findings of the legislature purported to justify an impairment
7 of the right to bear arms. While a weapon does not *need* to be designed for military use to be
8 traditionally or commonly used for self-defense, it can be. Protections have been afforded to
9 dirk knives, the United States Marine Corps Ka-Bar fighting knife, jackknives and
10 switchblades, bowie knives, and swords. *Id.* at 867-68, 870 (citing *State v. Kessler*, 289 Or.
11 359, 361-70, 614 P.2d 94 (1980) and *State v. Delgado*, 298 Or. 395, 400-03, 692 P.2d 610
(1984)).

12 The approach taken by Oregon courts accords with how Washington courts should
13 examine the limitations of the right to bear arms. "It is well known that the delegates to the
14 Washington Convention borrowed heavily from the constitutions of other states." Justice
15 Robert F. Utter, *Freedom and Diversity in a Federal System: Perspectives on State*
16 *Constitutions and the Washington Declaration of Rights*, 7 Seattle U. L. Rev. 491, 513-14
17 (1984). Washington's right to bear arms was based on Oregon's art. I, § 27 in addition to U.S.
18 Const. amend. II. The Journal of the Washington State Constitutional Convention 1889, 512
19 n.40, (Beverly Rosenow, ed., 1962, reprint 1999).

20 Semiautomatic firearms are as American as baseball and apple pie, except for the fact
21 that the right to bear arms in self-defense and defense of the state is enshrined in the
22 Washington Constitution. *See, e.g.*, Expert Decl. of Hlebinsky, Decl. of Hargrave, and Decl. of
23 Davis demonstrating the common nature of the prohibited firearms, including related sales in
24 Grant County. The purpose and intended function of semiautomatic firearms is self-defense.
25 No military in the world issues semiautomatic rifles as the standard issue rifle, and certainly
26 the United States military does not do so. *See e.g.*, Declaration of Austin F. Hatcher filed
27 herewith. The purported legislative finding in support of SHB 1240 that "assault weapons" are
28 most useful in military service is categorically false.

ii. "Assault weapons" are not overwhelmingly used in mass shootings

1 The Washington legislature included a finding that "assault weapons" have been used
2 in the deadliest mass shootings in the last decade and that assailants with an "assault weapon"
3 can hurt and kill twice the number of people than an assailant with a handgun or nonassault
4 rifle. Notwithstanding the nonsensical term of a "nonassault rifle" being used to commit an
5 assault, the mass shootings in Washington state do not support this finding. Only one mass
6 shooting (which as defined in SHB 1240 is an event "that result[s] in four or more deaths") has
7 been carried out by a single shooter with an "assault weapon." Even that shooting, the
8 Fairchild A.F.B. shooting in 1994, is potentially not within the definition of "mass shooting" as
9 one of the fatalities was an unborn child, which is not considered a human worth protecting
10 until the point of viability under Washington law. One other event, perpetrated by three
11 shooters, resulted in five fatalities and five people wounded. However, only one of the
12 shooters wielded an "assault weapon." Further, that shooting, the Trang Dai massacre, was
13 deemed to be the result of gang violence, and is therefore not a mass public shooting as defined
14 by the Federal Bureau of Investigation.

15 Insofar as the legislature has applied the term "mass shootings" and "assault weapons"
16 to perpetrate SHB 1240 and to justify its emergency clause (making SHB 1240 immediately
17 applicable to the People), these terms do not justify the regulation of firearms; in fact, such
18 creative terminology fails to recognize *any* part of the *Bruen* test, as these terms have no place
19 in the "Nation's historical tradition of firearm regulation." *Bruen* at 2126. Notwithstanding the
20 Legislature's abject failure to meet *Bruen*'s dictate to conform its laws with the historical
21 tradition of such regulation, Petitioners will address each of Washington's "mass shootings"
22 recorded since the 1980's to demonstrate that almost every such shooting was perpetrated with
23 firearms **not** regulated by SHB 1240 and the Legislature's claim of protecting the People of
24 Washington, if rooted in historical tradition (it's not), would be null and void because the
25 regulation does not meet the facts.

26 The Capitol Hill massacre in which six people were killed and two injured, was carried
27 out by a gunman wielding a Winchester Defender 12 pump-action shotgun and a Ruger
28 P94 .40 caliber pistol; the shooter had an AR-15 in his pickup truck but did not use it. James
Alan Fox, et al., Capitol Hill Mass Murder Case, 7 Brief Treatment and Crisis Intervention
127, 130 (2007), Oxford Univ. Press (adapted with permission from report prepared for Seattle

Police Chief R. Gil Kerlikowske). **Neither weapon would be classified as an “assault weapon” under SHB 1240.**

The mass murder in Carnation, Washington, in which six individuals comprising three generations of a family were slain, was committed with a Smith & Wesson Model 19 .357 revolver and a 9mm semiautomatic pistol. Scott Gutierrez, *Carnation Suspects Tell Officers of Victims’ Frantic, Final Moments*, Seattle Post-Intelligencer, December 28, 2007, available at: <https://www.seattlepi.com/local/article/Carnation-suspects-tell-officers-of-victims-1260062.php>, last accessed April 12, 2023. **Neither weapon would be classified as an “assault weapon” under SHB 1240.** This event would also not be classified as a mass shooting by the FBI, as it was primarily a domestic dispute.

The Cascade Mall shooting in which five people were killed was carried out by a gunman wielding a Ruger 10/22 hunting rifle with a wooden stock. Steph Solis, *Washington Mall Shooting Suspect to Face 5 Murder Charges*, USA Today, September 25, 2016, available at: <https://www.usatoday.com/story/news/nation-now/2016/09/25/washington-mall-shooting-suspect-arcan-cetin/91071336/>, last accessed April 12, 2023. **The weapon would not be classified as an “assault weapon” under SHB 1240.**

The shooting at Freeman High School in which one person was killed and three others injured was carried out by a gunman wielding an AR-15 and a Colt 1903 pistol; however, the AR-15 jammed before the shooter fired any rounds from it. *One Student Dead, Three in Hospital After Classmate Opens Fire at Freeman High School*, The Spokesman-Review, September 14, 2017, available at: <https://www.spokesman.com/stories/2017/sep/13/shooting-reported-at-freeman-high-school/#/0>, last accessed April 12, 2023. **Again, the weapon used by the shooter would not have been considered an “assault weapon.”**

The shooting at Frontier Middle School in which three people were killed was carried out by a shooter wielding a .30-30 caliber lever-action hunting rifle and a .22 caliber revolver. Bonnie Harris, *School Killings All Too Familiar Moses Lake Horror Parallels Plot of Novel Found in Suspect’s Room*, The Spokesman-Review, April 10, 1996, available at: <https://www.spokesman.com/stories/1996/apr/10/school-killings-all-too-familiar-moses-lake/>, last accessed April 12, 2023. **Neither weapon would be classified as an “assault weapon” under SHB 1240.**

1 The Lakewood mass shooting in which four police officers were ambushed and slain
2 was carried out by a shooter with a Glock 17 semiautomatic pistol. Steve Miletich, *Routine*
3 *Stolen-Car Check Led to Lakewood Police-slaying Suspect*, The Seattle Times, December 1,
4 2009, available at:

5 [https://web.archive.org/web/20091204011100/http://seattletimes.nwsources.com/html/localnew](https://web.archive.org/web/20091204011100/http://seattletimes.nwsources.com/html/localnews/2010400199_shootingmainbar02m.html)
6 [s/2010400199_shootingmainbar02m.html](https://web.archive.org/web/20091204011100/http://seattletimes.nwsources.com/html/localnews/2010400199_shootingmainbar02m.html), last accessed April 12, 2023. **The weapon would**
7 **not be classified as an “assault weapon” under SHB 1240.**

8 The Marysville Pilchuck High School shooting in which four people were killed and
9 another wounded was carried out by a shooter with a .40 caliber Beretta PX4 Storm. *Father of*
10 *Marysville School Shooter Jaylen Fryberg Charged with Gun Buy*, NBC News, March 31,
11 2015, available at: [https://www.nbcnews.com/news/us-news/father-marysville-school-](https://www.nbcnews.com/news/us-news/father-marysville-school-shooting-suspect-charged-gun-buy-n333416)
12 [shooting-suspect-charged-gun-buy-n333416](https://www.nbcnews.com/news/us-news/father-marysville-school-shooting-suspect-charged-gun-buy-n333416), last accessed April 12, 2023. **The weapon**
13 **would not be classified as an “assault weapon” under SHB 1240.**

14 The Seattle café shootings in which five people were killed and another injured was
15 carried out by a shooter with a .45 caliber Remington 1911 R1 and a Colt New Agent .45 ACP
16 Series 90. *Police: Seattle Shootings Were Like an Execution*, Seattle Post-Intelligencer, June 2,
17 2012, available at: [http://www.seattlepi.com/local/article/Police-Seattle-shootings-were-like-](http://www.seattlepi.com/local/article/Police-Seattle-shootings-were-like-an-execution-3599900.php)
18 [an-execution-3599900.php](http://www.seattlepi.com/local/article/Police-Seattle-shootings-were-like-an-execution-3599900.php), last accessed April 12, 2023. **The weapons would not be**
19 **classified as “assault weapons” under SHB 1240.**

20 The Seattle Jewish Federation shooting in which one person was killed and another five
21 wounded was carried out by a shooter wielding a Smith & Wesson .45 caliber handgun and
22 a .40 caliber Ruger P94 handgun. *Suspect Ticketed on Way to Jewish Center Shooting*, CNN,
23 July 29, 2006, available at: <http://www.cnn.com/2006/US/07/29/seattle.shooting/index.html>,
24 last accessed April 12, 2023. **Neither weapon would be classified as an “assault weapon”**
25 **under SHB 1240.**

26 The Trang Dai massacre, in which five people were killed and five more wounded, was
27 carried out by three gunmen, one of which wielded an AK-47, while the other two wielded
28 pistols. Tan Vinh, *Family Grieves for Brothers Killed in Tacoma Shooting*, Seattle Times, July
7, 1998, available at: <https://archive.seattletimes.com/archive/?date=19980707&slug=2759875>,

1 last accessed April 12, 2023. **Only the rifle would be classified as an “assault weapon”**
2 **under SHB 1240.**

3 Finally, the deadliest mass shooting in the history of Washington state, the Wah Mee
4 massacre, in which 13 people were slain and another wounded, was perpetrated by three
5 shooters each wielding a .22 caliber handgun. Wallace Turner, *20-year-old is Convicted in*
6 *Deaths of 13 in Seattle*, New York Times, August 25, 1983, available at:

7 [https://www.nytimes.com/1983/08/25/us/20-year-old-is-convicted-in-deaths-of-13-in-](https://www.nytimes.com/1983/08/25/us/20-year-old-is-convicted-in-deaths-of-13-in-seattle.html)

8 [seattle.html](https://www.nytimes.com/1983/08/25/us/20-year-old-is-convicted-in-deaths-of-13-in-seattle.html), last accessed April 12, 2023. **None of the weapons would be considered**
9 **“assault weapons” under SHB 1240.**

10 Three mass shootings in Washington have been carried out by shooters with “assault
11 weapons,” although only one would technically qualify as a “mass shooting” as defined in
12 SHB 1240; the first is the Fairchild A.F.B. attack in 1994, in which four people lost their lives,
13 tragically including an unborn child of a woman who was shot but survived, which was carried
14 out by a shooter with a MAK-90. *An Airman's Revenge: 5 Minutes of Terror*, The New York
15 Times, June 22, 1994, available at: [https://www.nytimes.com/1994/06/22/us/an-airman-s-](https://www.nytimes.com/1994/06/22/us/an-airman-s-revenge-5-minutes-of-terror.html)

16 [revenge-5-minutes-of-terror.html](https://www.nytimes.com/1994/06/22/us/an-airman-s-revenge-5-minutes-of-terror.html), last accessed April 12, 2023 (behind paywall). The second
17 is the Mukilteo mass shooting in which three people were killed and another injured by a
18 shooter with a Ruger AR-15 semiautomatic rifle. Ted Land, *Mukilteo Shooting Suspect Bought*
19 *Gun Week Before Murders, Texted Warning*, KING-TV, October 23, 2016, available at:
20 [https://web.archive.org/web/20161023133215/http://www.king5.com/news/local/mukilteo-](https://web.archive.org/web/20161023133215/http://www.king5.com/news/local/mukilteo-shooting-suspect-bought-gun-a-week-before-murders-sent-warning-text-messages/285450163)

21 [shooting-suspect-bought-gun-a-week-before-murders-sent-warning-text-messages/285450163,](https://web.archive.org/web/20161023133215/http://www.king5.com/news/local/mukilteo-shooting-suspect-bought-gun-a-week-before-murders-sent-warning-text-messages/285450163)
22 last accessed April 13, 2023. The third shooting carried out by a shooter with an “assault
23 weapon” was the Tacoma Mall shooting, in which a shooter, wielding a MAK-90, wounded
24 seven people. *Mall Shooting Suspect Surrenders*, CNN, November 21, 2005, available at:

25 <http://www.cnn.com/2005/US/11/20/mall.shooting/>, last accessed April 13, 2023. The shooter

26 potentially could have been stopped by a bystander with a weapon, but the bystander refrained
27 from firing on the shooter, because he would have had to shoot “a kid.” M. Alexander Otto,

28 *Mall Victim Held Fire at ‘Kid,’* The News Tribune, November 29, 2005, available at:

[https://web.archive.org/web/20071123201615/http://dwb.thenewstribune.com/news/local/story/](https://web.archive.org/web/20071123201615/http://dwb.thenewstribune.com/news/local/story/5363616p-4853200c.html)
5363616p-4853200c.html, last accessed April 13, 2023.

1 SHB 1240 is not rooted in fact or in the historical tradition of regulating firearms is
2 invalid, and must be enjoined on an emergency TRO and subsequently through an injunction.

3 **iii. The Federal “assault weapon” ban had little to no effect on crime**

4 In support of SHB 1240, the Washington legislature posits that a ban on “assault
5 weapons” will have an impact on mass shooting fatalities, as during the federal assault weapon
6 ban. However, this assertion is not supported by evidence: “AWs [assault weapons] were used
7 in only a small fraction of gun crimes prior to the ban: about 2% according to most studies and
8 no more than 8%. Most of the AWs used in crime are assault pistols rather than assault rifles.”
9 Christopher S. Koper, et al., An Updated Assessment of the Federal Assault Weapons Ban:
10 Impacts on Gun Markets and Gun Violence, 1994-2003, at 2 (Report to the National Institute
11 of Justice, U.S. Dep’t of Justice 2004). Further, the report summarized that “it is worth noting
12 that the ban has not completely eliminated the use of AWs, and, despite large relative
13 reductions, the share of gun crimes involving AWs is similar to that before the ban. Based on
14 year 2000 or more recent data, the most common AWs continue to be used in up to 1.7% of
gun crimes.” *Id.* at 52.

15 According to a comprehensive review of mass public shootings, it was found that the
16 U.S. comprises only 1.13% of mass public shooters, 1.77% of fatalities ensuing from those
17 events. John R. Lott, Jr., Comparing the Global Rate of Mass Public Shootings to the U.S.’s
18 Rate and Comparing their Changes Over Time, Crime Prevention Resource Center, at 34 (last
revised September 27, 2022), available at:

19 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3671740, last accessed April 13, 2023.

20 By share of murders, “assault weapons” are used only slightly more frequently than
21 blunt objects, and far less often than hands or feet. “In any given year, for every person
22 murdered with a rifle, there are 15 murdered with handguns, 1.7 with hands or fists, and 1.2
23 with blunt instruments.” *Are AR-15 Rifles a Public Safety Threat? Here’s What the Data Say*,
24 FEE, January 11, 2019, available at: [https://fee.org/articles/are-ar-15-rifles-a-public-safety-
threat-heres-what-the-data-say/](https://fee.org/articles/are-ar-15-rifles-a-public-safety-threat-heres-what-the-data-say/), last accessed April 13, 2023. In fact, “homicides with any sort
25 of rifle represent a mere 3.2 percent of all homicides on average over the past decade. Given
26 that the FBI statistics pertain to *all* rifles, the homicide frequency of “assault-style” rifles like
27 the AR-15 is necessarily lesser still[.]” *Id.* (emphasis in original). The New York Times

1 conducted analysis on mass shootings in the United States from 2007-2017, and found that 173
2 people were killed in those events. During that time frame, a total of 13,657 people were
3 killed, with the resultant finding that “about one-tenth of one percent of homicides were
4 produced by mass shootings.” *Id.*

5 Given that knives and sharp objects are involved in far more homicides than “assault
6 weapons,” those weapons should be the focus of efforts to combat loss of life. However, the
7 Washington Supreme Court has already held that knives with military origins, modified by
8 modern design and function, and commonly used by individuals for self-defense, are
9 constitutionally protected. *Evans*, 184 Wn.2d at 867-68. SHB 1240 is little more than an effort
to gain votes, at the expense of constitutional rights.

10 In reviewing Firearms Trace Data for Washington from 2021, the most recent data
11 compiled and made available by the ATF, the top calibers for firearm traces with a Washington
12 recovery were 9mm and .22 caliber, which are most commonly used in pistols or small game
13 rifles. Of the top ten calibers listed, 5.56mm and 7.62mm (the calibers most associated with
14 AR-15s and AK-47s and -74s) were ranked nine and ten, respectively.² Pistols were recovered
more than three times as frequently as rifles.

15 Further, the legislature erroneously finds that modern sporting rifles (“MSRs”) are
16 marketed to and “overtly appeals troubled young men intent on becoming the next mass
17 shooter.” However, real-world data does not support such a hypothesis. Of MSR owners, 38
18 percent are active/retired members of law enforcement or the military, their average age is 55
19 years old, and 74 percent are married. National Shooting Sports Foundation, *Modern Sporting*
20 *Rifle: Comprehensive Consumer Report* 8 (2022). The most commonly listed rationale for
21 owning such weapons are: fun/enjoyment of shooting, exercising freedom and rights, ease of
22 use, and reliability. *Id.* at 51. Individuals who leave the military frequently seek to purchase
23 weapons that are analogous to their service rifles. See Bruce N. Canfield, *Bruce Canfield’s*
24 *Complete Guide to the M1 Garand and the M1 Carbine* 163 (1999). Congress created the
25 Civilian Marksmanship Program to foster marksmanship, training, and safety, and because
26 there was widespread demand from returning citizen soldiers; M1s were widely available at

27 ² ATF, *Firearms Trace Data: Washington – 2021*, available at: [https://www.atf.gov/resource-center/firearms-](https://www.atf.gov/resource-center/firearms-trace-data-washington-2021)
28 [trace-data-washington-2021](https://www.atf.gov/resource-center/firearms-trace-data-washington-2021) (last accessed April 19, 2023)

1 steeply discounted prices. *Id.* at n.85, *see also* Larry L. Ruth, 2 War Baby! Comes Home: the
2 U.S. Caliber .30 Carbine 575 (R. Blake Stevens ed., 1993). In a self-defense scenario,
3 familiarity could mean the difference between life and death, and semiautomatic firearms are
4 intimately familiar to military veterans. Decl. of Hatcher, and Decl. of Edgar Salazar filed
5 herewith.

6 **iv. The right to bear arms protects arms traditionally designed and commonly
7 possessed and used for self-defense**

8 As discussed *supra* in V.A.i., arms which have the purpose and function of self-defense
9 and have traditionally and commonly been owned for self-defense are constitutionally
10 protected. It is undisputed that semiautomatic rifles, and even more specifically, MSRs, are
11 commonly owned. On July 20, 2022, the National Shooting Sports Foundation (“NSSF”) released its updated industry estimate of MSRs in circulation in the United States, utilizing data
12 from NSSF research, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) Annual Firearms Manufacturing and Exportation Report (“AMFER”), and the U.S.
13 International Trade Commission (“U.S. ITC”). The NSSF estimates that 24,446,000 MSRs to
14 be in circulation today. That is an increase of 4.5 million rifles since 2020. “Commonly
15 Owned: NSSF Announces over 24 Million MSRs in Circulation,” The National Shooting
16 Sports Foundation, Inc., July 20, 2022, available at: [https://www.nssf.org/articles/commonly-
17 owned-nssf-announces-over-24-million-msrs-in-circulation/](https://www.nssf.org/articles/commonly-owned-nssf-announces-over-24-million-msrs-in-circulation/), last accessed April 13, 2023.

18 Semiautomatic firearms have been in production since the beginning of the Twentieth
19 Century. MSRs, and specifically the AR-15, have been in commercial production since the
20 early 1950s. Mark W. Smith, *First They Came for the Gun Owners* 1087 (2019). AR-15s are
21 more commonplace than the Ford F-150, the most popular vehicle in America. The ATF has
22 acknowledged that “the AR-15-type rifle, [is] one of the most popular firearms in the United
23 States.” Definition of “Frame or Receiver” and Identification of Firearms, 87 Fed. Reg. 24652
24 (April 26, 2022); *see also*, Expert Declaration of Mark Hanish, filed herewith. The most
25 comprehensive survey of firearms ownership found that “30.2 percent of gun owners, about
26 24.6 million people, have owned an AR-15 or similarly styled rifle, and up to 44 million such
27 rifles have been owned.” William English, 2021 National Firearms Survey: Updated Analysis
Including Types of Firearms Owned 20 (Georgetown Univ. McDonough School of Business

1 Research paper (expanded report May 2022) available at:

2 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4109494, last accessed April 13, 2023.

3 Recently, Judge Roger Benitez of the Southern District of California held that the AR-15 style
4 rifle is “one of the most popular civilian rifles in America.” *Duncan v. Becerra*, 366 F. Supp.3d
5 1131, 1145 (S.D. Cal. 2019). Judge Benitez went on to hold that the AR-15 style rifle is
6 “[m]anufactured with various characteristics by numerous companies, it is estimated that more
7 than five million have been bought since the 1980s. These rifles are typically sold with 30-
8 round magazines. These commonly owned guns with commonly-sized magazines are
9 protected by the Second Amendment and *Heller*’s simple test for responsible, law-abiding
citizens to use for target practice, hunting, and defense.” *Id.*

10 By any metric, semiautomatic firearms are commonly owned, and are therefore
11 constitutionally protected. In the state of Washington, 35.3% of gun owners indicated that they
12 have owned an AR-15 rifle. English, 2021 National Firearms Survey, at 36.

13 In support of SHB 1240, the legislature bizarrely tries to claim that “assault weapons”
14 are not suitable for self-defense. The foregoing data refutes this finding, but so too does the
15 amicus curiae brief filed by the Violence Policy Center, supporting the District of Columbia in
16 *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783 (2008), which stated that
17 “handguns are not well-suited for self-defense... a handgun is the least effective firearm for
18 self defense and in almost all situations, shotguns and rifles are much more effective in
19 stopping a criminal.” Brief of Amicus Curiae Violence Policy Center, p. 30 (quoting Chris
20 Bird, *The Concealed Handgun Manual: How to Choose, Carry, and Shoot a Gun in Self*
21 *Defense* 40 (1998). The brief also noted that “[a] handgun is the hardest firearm to shoot
22 accurately.” *Id.* (citing same source, alteration in original). This amicus brief is noteworthy as
R. Gil Kerlikowske, the Seattle Chief of Police at the time, was one of the amici.

23 **B. No Notice to Respondents Should Be Required Before Issuing the Temporary
24 Restraining Order**

25 A temporary restraining order may be issued without notice to the adverse party if (1) it
26 is shown by specific facts shown in an affidavit or by the verified complaint that immediate
27 and irreparable injury, loss, or damage will result to the moving party before the adverse party
or his or her attorney can be heard in opposition, and (2) the moving party’s attorney certifies

1 to the court in writing the efforts, if any, which have been made to give the notice and the
2 reasons supporting the applicant's claim that notice should not be required. CR 65(b).

3 Notwithstanding the foregoing, the undersigned attorney provided notice on April 20,
4 2023, to Respondents Inslee and Ferguson that a motion for a temporary restraining order
5 would be filed on the same date. *See* Declaration of Counsel in support of motion for
6 temporary restraining order, filed herewith, notice letter attached thereto as Ex. A.

7 VI. CONCLUSION

8 Because SHB 1240 immediately and directly infringes on Petitioners' rights to bear
9 arms protected under Article 1, § 24 of the Washington Constitution, Petitioners meet the
10 standard for issuance of a Temporary Restraining Order of a showing of a "clear legal or
11 equitable right," "well-grounded fear of immediate invasion of that right," and that Governor
12 Inslee's signature on SHB 1240 "will result in actual and substantial injury to" Petitioners.
13 *Spokane v. AFSCE*, 76 Wn. App. 765, 771, 888 P.2d 735 (Div. 3 1995) (citing *Port of Seattle*
14 *v. International Longshoremen's & Warehousemen's Union*, 52 Wn.2d 317, 319, 324 P.2d
15 1099 (1958) (emphasis in original). Under these conditions, Petitioners respectfully request
16 that the Court grant this Motion and enter a temporary restraining order against Respondents,
17 pending further order of the court, as follows:

- 18 1. Respondents shall not enforce provisions of SHB 1240 pertaining to the manufacture,
19 importation, distribution, sale, or offering for sale of "assault weapons;"
- 20 2. Respondents shall not enforce provisions of SHB 1240 pertaining to the Consumer
21 Protection Act, Chapter 19.86 RCW, and shall not issue Civil Investigative Demands
22 pursuant to SHB 1240.

23 Dated this 25th of April, 2023.



24 Austin F. Hatcher, WSBA #57449
25 S. Peter Serrano, WSBA # 54769
26 Attorneys for Petitioners

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: serviceATG@atg.wa.gov

Office of the Governor: serviceATG@atg.wa.gov

Grant County Sheriff's Office: physical service to Grant County Auditor, per RCW 4.28.080(1)

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

DATED this 25th day of April, 2023, at Spokane, WA.



Austin Hatcher, WSBA #57449
Attorney for Petitioners