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SUPERIOR COURT OF WASHINGTON FOR COWLITZ COUNTY

**STATE OF WASHINGTON,
Plaintiff,**

V.

**GATOR'S CUSTOM GUNS, INC., and
WALTER L. WENTZ, an individual,
Defendants.**

No. 23-2-00897-08

**ORDER ON MOTION FOR CR 12(e)
RELIEF AND MOTION FOR CR 56(f)
CONTINUANCE**

Clerk's Action page 5

This matter comes before the Court on the State's motion for continuance based on CR 12(e) for Defendants to make more definite as well as a discovery motion under CR 56(f).

CR 12 (e) Motion for more definite statement:

This case was originally separate from 23-2-00826-08 (which included defendants original request for declaratory relief. On October 16, 2023, the Court heard arguments on the State's request for dismissal of 23-2-00826-08.

Though less than artfully drafted, the complaint in 23-2-00826-08 referenced recent federal case law and obliquely a Second Amendment argument as the basis for

1 its state constitutional claim. Defendant's answer in the instant case (23-2-00897-08 -
2 filed on 10/3/2023) more clearly requests relief under both the State of Washington
3 Constitution, as well as under the US Constitution Amendment 2.

4 The Court considered the overlapping claims related to the Constitutionality of
5 ESSB 5078 alleged in 23-2-00826-08, as well as the claims raised by defendants
6 answer in the instant case.
7

8 At the suggestion of the Plaintiff State of Washington, and noting the judicial
9 economy presented by addressing both cases' constitutional questions at once, the
10 Court ordered the matters consolidated into the present case. There is no need for the
11 defendants to amend their complaint. When the Court consolidated the cases, to
12 address the constitutionality of the same state law and onduct, it necessarily put all
13 issues raised by the parties in both cases properly before the Court.
14

15 An order of consolidation effectively discontinues the separate actions and
16 creates a single new and distinct action; the fact that separate judgments are
17 entered does not overcome the effect of the consolidation. *First Nat'l Bank v.*
18 *Fowler*, 51 Wash. 638, 99 P. 1034 (1909).

19 Jeffery v. Weintraub, 32 Wash. App. 536, 547, 648 P.2d 914, 921 (1982)

20
21 It is obvious to this Court that to analyze the constitutionality of ESSB 5078 the
22 Court must include this effect of the Second Amendment

23 The State's motion to make more definite is therefore denied.
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1 **CR 56(f) Request for continuance:**

2 Plaintiff asserts *Bruen* is a new constitutional test for second amendment cases.
3 *Bruen* is not a new test. *Bruen* adopted the text then history methodology established
4 in *Heller* and applied it to a regulation of use case instead of an arms ban case¹.
5 *Bruen* did not abrogate or reverse *Heller*. *Bruen* did reiterate the mandate (as it did in
6 *Heller, McDonald* and *Caetano*) it was improper for this Court to engage in interest
7 balancing when evaluating a second amendment challenge.
8

9 The Court agrees the parties certainly have a right to file whatever declarations or
10 documents they choose to address the pending summary judgment motion. It is the
11 court's duty, after review of same, to determine the relevance and admissibility of any
12 proffered evidence.
13

14 Defendants have not filed any expert declarations in support of their motion for
15 summary judgement. Therefore, there appear to be no defense experts the State
16 would need to depose to better understand the defense experts' opinions or respond
17 to. The state is free to have its expert(s) comment on the studies filed by the defense.
18

19 *Keck v Collins*, 181 Wash.App. 67 (2014) cited by the State was based on the
20 concerns there was no time available to depose the other side's experts and develop
21 rebuttal expert testimony.
22

23 The underlying facts of this case do not appear to be in dispute at this juncture.
24 There may be expert opinions which are relevant to the issues before the court. One
25 of the requirements for a continuance under CR 56(f) is for the moving party to
26

27 _____
28 ¹ Heller gave the inferior courts the in common use constitutional test after using the text then history methodology. The so called Bruen test is simply the Heller test.

1 establish what evidence it might reasonably establish through additional discovery,
2 and whether such evidence may raise a genuine issue of fact.

3 Where a party knows of the existence of a material witness and shows good
4 reason why the witness' affidavit cannot be obtained in time for the summary
5 judgment proceeding, the court has a duty to give the party a reasonable
6 opportunity to complete the record before ruling on the case. **However, the**
7 **trial court may deny a motion for a continuance when 1) the moving party**
8 **does not offer a good reason for the delay in obtaining the evidence; 2) the**
9 **moving party does not state what evidence would be established through**
10 **the additional discovery; or 3) the evidence sought will not raise a genuine**
11 **issue of fact.** *Turner v. Kohler*, supra 54 Wash.App. at 693, 775 P.2d 474.
12 (emphasis added)

13 Coggle v. Snow, 56 Wash. App. 499, 507, 784 P.2d 554, 559 (1990)²

14 It is notable in this case, counsel on both sides are handling related cases in
15 different courts with presumably the same experts. When asked in October if the
16 parties had identified their experts, the State agreed it had, and provided the Court
17 with significant affidavits from each. The States reply seeks time to conduct extensive
18 discovery related to the authors and sources of two attachments to Defendant's
19 attorney's declaration.

20 The defense attachments are not expert declarations or opinions. The Court will
21 need to assess whether the defense documents are admissible or relevant, and the
22 State can certainly comment on that topic through its already identified experts. It's
23 not clear what facts in dispute such further discovery would provide.
24

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28 ² This case was largely related to a late-retained attorney needing time to prepare.

1 The Court has some misgivings about a continuance based on the showing made,
2 however, the State has made a convincing argument for limited additional discovery.

3 Given the tight briefing schedule the Court previously adopted and considering the
4 delays associated with the recent holidays, the court is inclined to push out the filing
5 deadlines and the current MSJ hearing.
6

7 **The Court notes this continuance is over Defendants' objection.**

8 The Court **strikes the hearing scheduled for 22 January 2024** and reschedules
9 same for **11 March 2024 at 9:00 AM** in person at the Cowlitz County Hall of Justice.

10 Briefing schedules per CR 56 are adjusted to conform to the new hearing date,
11 and the Defendants are free to file any amended Motion for Summary Judgement
12 within those timelines.
13

14 If the Parties cannot agree on the new briefing schedule, a short remote hearing to
15 establish dates can be scheduled with Court administration.
16

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18 Dated this 9 day of January 2024.

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21 _____
22 Judge Gary Bashor
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