

HONORABLE DAVID G. ESTUDILLO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GABRIELLA SULLIVAN; *et al.*,

Plaintiffs,

v.

BOB FERGUSON, in his official capacity
as Washington State Attorney General, *et*
al.,

Defendants,

and

ALLIANCE FOR GUN
RESPONSIBILITY,

Intervenor-
Defendant.

No. 3:22-cv-05403-DGE

INTERVENOR-DEFENDANT
ALLIANCE FOR GUN
RESPONSIBILITY'S RESPONSE
TO ORDER TO SHOW CAUSE

RESPONSE

Intervenor-Defendant Alliance for Gun Responsibility submits this brief response to the Court's Order to Show Cause (the "Order"), Dkt. #82. For the reasons explained in State Defendants' Response to the Order, Dkt. #86, a Court-appointed expert witness to evaluate historical sources is unwarranted. In particular, the Court does not need to engage in any historical analysis to resolve Plaintiffs' Second Amendment claim because Engrossed Substitute Senate Bill

INTERVENOR-DEFENDANT'S
RESPONSE TO ORDER TO SHOW CAUSE - 1
Case No. 3:22-cv-05403-DGE

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1 5078 (“ESSB 5078”) is constitutional under the threshold textual analysis established in *New York*
2 *State Rifle and Pistol Association, Inc. v. Bruen*, 142 S. Ct. 2111, 2129–30 (2022) (asking “whether
3 the Second Amendment’s plain text covers [the plaintiff’s] conduct” regulated by the challenged
4 law). Plaintiffs carry the burden of persuasion on this textual question. *See Ocean State Tactical,*
5 *LLC v. Rhode Island*, No. 22-CV-246 JJM-PAS, 2022 WL 17721175, at *12 (D.R.I. Dec. 14,
6 2022); *Oregon Firearms Fed’n, Inc. v. Brown*, No. 2:22-cv-01815-IM, 2022 WL 17454829, at *12
7 (D. Or. Dec. 6, 2022); *Nat’l Ass’n for Gun Rts., Inc. v. City of San Jose*, 2022 WL 3083715, at *8
8 (N.D. Cal. Aug. 3, 2022).

9 Even if the Court finds it necessary to proceed to the second phase of *Bruen* and engage in
10 a historical inquiry, a Court-appointed expert will still be unnecessary because the parties will
11 frame the historical issues through the adversarial process. *Bruen*, 142 S. Ct. at 2130 n.6 (“In our
12 adversarial system of adjudication, we follow the principle of party presentation,” under which
13 courts analyze “the historical record compiled by the parties.”) (emphases added) (cleaned up).
14 Here, State Defendants intend to offer testimony from various experts, including three highly
15 qualified historical experts. Dkt. #86. The Alliance may offer additional expert testimony,
16 including on the historical tradition of firearms regulation. Although Plaintiffs do not intend to
17 offer expert testimony, they do intend to introduce evidence they believe to be relevant to *Bruen*’s
18 second prong of analysis, Dkt. #66 at 2–3. This expert testimony and other evidence will be
19 sufficient for the Court to determine whether ESSB 5078 comports with our nation’s historical
20 tradition of regulating dangerous firearms, should that inquiry prove necessary to adjudicate
21 Plaintiffs’ Second Amendment claim.

22 For those reasons, the Court should not appoint a historical expert at this time.
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24

1 DATED this 6th day of February, 2023.

2
3 PACIFICA LAW GROUP LLP

4 s/ Kai A. Smith

5 Zachary J. Pekelis, WSBA #44557

6 Kai A. Smith, WSBA #54749

7 Attorneys for Intervenor-Defendant Alliance for
8 Gun Responsibility
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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of February, 2023, I electronically filed the foregoing document with the Clerk of the United States District Court using the CM/ECF system which will send notification of such filing to all parties who are registered with the CM/ECF system.

DATED this 6th day of February, 2023.



Sydney Henderson