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IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY

JANE DOE (a fictitious name for a real
Jackson County resident),

Plaintiff,

vs.

MEDFORD SCHOOL DISTRICT 549C,

Defendant.

Case No. 07-3765-E2

DEFENDANT’S MOTIONS TO
STRIKE AND DISMISS
PURSUANT TO ORCP 21

(Oral Argument Requested)

UTCRC 5.050(1) NOTICE

Pursuant to UTCRC 5.050(1), Defendant hereby requests oral argument of this motion.

- (a) The time required for oral argument is approximately 1 hour.
- (b) Official court reporting services are not requested for the hearing.

UTCRC 5.010(2) CERTIFICATE OF COMPLIANCE

The undersigned certifies that he called opposing counsel on September 27 to discuss the motion to strike filed herein, but counsel were unable to resolve the matter.

INTRODUCTION

Plaintiff’s Complaint asks this Court to issue a declaratory judgment that a school board policy adopted by defendant Medford School District 549C (hereinafter “the District”), which policy prohibits District employees from possessing dangerous or deadly weapons, including firearms, on District property, is void and in contravention of ORS 166.170. That statute, which is contained as a part of Oregon’s general criminal statutes, provides:

“(1) Except as expressly authorized by state statute, the authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use of

1 firearms or any element relating to firearms and components
2 thereof, including ammunition, is vested solely in the Legislative
3 Assembly.

4 (2) Except as expressly authorized by state statute, no county,
5 city or other municipal corporation or district may enact civil or
6 criminal ordinances, including but not limited to zoning
7 ordinances, to regulate, restrict or prohibit the sale, acquisition,
8 transfer, ownership, possession, storage, transportation or use of
9 firearms or any element relating to firearms and components
10 thereof, including ammunition. Ordinances that are contrary to
11 this subsection are void.”

12 In addition, plaintiff alleges that she is the holder of a concealed handgun permit under ORS
13 166.291 and 166.292. As such, plaintiff seeks a permanent injunction prohibiting the District
14 from interfering with her ability to possess a handgun on District property, including under
15 the terms of the District’s policy prohibiting its employees from possessing dangerous or
16 deadly weapons on District property.

17 Plaintiff’s Complaint should be dismissed in its entirety. Plaintiff is mistaken in her
18 belief that she has the right to be in possession of a handgun, whether pursuant to a concealed
19 handgun permit or not, on District property and that the District’s policy somehow violates
20 ORS 166.170. Accordingly, plaintiff’s Complaint should be dismissed on the merits for
21 failure to state a claim under ORCP 21(A)(8). However, this Court is not even required to
22 reach the merits in this case, since plaintiff’s entire Complaint should be stricken under
23 ORCP 21(E) for failing to comply with the requirements of ORCP 16(A). Further, in the
24 event that the entire Complaint is not stricken, plaintiff’s Complaint has not alleged the
25 existence of an actual or justiciable controversy and is therefore subject to dismissal under
26 ORCP 21(A)(1) for lack of jurisdiction.

MOTION TO STRIKE UNDER ORCP 21(E)

FAILURE TO COMPLY WITH REQUIREMENTS OF ORCP 16(A)

Pursuant to ORCP 21(E), the District hereby moves the Court for an order striking
plaintiff’s Complaint in its entirety for failing to comply with the requirements of ORCP
16(A).

1 Points and Authorities

2 Nothing in the Oregon Rules of Civil Procedure explicitly permits suits under
3 fictitious names. In fact, ORCP 16(A) requires that in every complaint, “the title of the
4 action shall include the names of all the parties”. Plaintiff has filed this Complaint under a
5 fictitious name, “Jane Doe”. Plaintiff has not alleged any reason why she cannot prosecute
6 this action under her true and actual name, nor has she sought the leave of this Court to
7 proceed under a fictitious name. Accordingly, because the Complaint, on its face, fails to
8 comply with ORCP 16(A), it should be stricken in its entirety.

9 ORCP 16(A) is substantially similar to Federal Rule of Civil Procedure 10(a), which
10 also requires a complaint to include the names of all the parties. Although there are no
11 reported decisions in Oregon concerning the use of a fictitious name by a plaintiff under
12 ORCP 16(A), there are numerous federal cases addressing that issue under FRCP 10(a).
13 Those cases note the general rule that “the identity of the parties in an action, civil or
14 criminal, should not be concealed except in an unusual case, where there is a need for the
15 cloak of anonymity.” *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1980). The rule
16 is based on the public’s legitimate interest in open court proceedings and serves to apprise
17 defendants of the accuser’s identity. It is only in unusual cases, where special circumstances
18 justify secrecy, that a plaintiff may be allowed to proceed anonymously. *Does I thru XXIII*
19 *v. Advanced Textile Corp.*, 214 F.3d 1058, 1067 (9th Cir. 2000). The court must balance the
20 need for anonymity against the general presumption that parties’ identities are public
21 information and the risk of unfairness to the opposing party. *Id.* at 1068.

22 Courts have allowed plaintiffs to use fictitious names in three general situations
23 where, after conducting the balancing test described above, the need for anonymity tips in
24 favor of the plaintiff: (1) when identification creates a risk of retaliatory or physical harm;
25 (2) when anonymity is necessary to preserve privacy where the matter is of a sensitive and
26 highly personal nature; and (3) when the anonymous party is compelled to admit his or her

1 intention to engage in illegal conduct, thereby risking criminal prosecution. *Id.* (citations
2 omitted). Plaintiff has not alleged any such circumstances, and indeed none are present here.

3 Plaintiff may attempt to argue that she needs to maintain anonymity due to a fear of
4 physical harm from her ex-husband. Plaintiff's alleged fear of her husband has been cited
5 by plaintiff as the rationale for obtaining a concealed handgun license, as well as for her
6 desire to carry a concealed handgun on District property. That fear, however, preexisted her
7 filing of this Complaint. Plaintiff cannot reasonably argue that she needs to prosecute this
8 action under a fictitious name because she fears that her ex-husband may retaliate against her
9 for filing this Complaint.

10 Because there are no special circumstances present in this case which would override
11 the public's legitimate interest in open court proceedings and justify allowing plaintiff to
12 proceed under a fictitious name, this Court must strike plaintiff's Complaint in its entirety
13 for failure to comply with ORCP 16(A).

14 **MOTION TO DISMISS NO. 1**

15 **LACK OF JURISDICTION UNDER ORCP 21(A)(1)**

16 Pursuant to ORCP 21(A)(1), the District hereby moves the Court for an order
17 dismissing plaintiff's Complaint because it does not allege any actual or justiciable
18 controversy.

19 **Points and Authorities**

20 Plaintiff's Complaint, on its face, contains five allegations: (1) that plaintiff is
21 employed by the District; (2) that plaintiff is properly licensed to carry a concealed handgun;
22 (3) that plaintiff desires to carry her handgun concealed on her person while performing her
23 work duties for the District; (4) that the District has adopted a school board policy prohibiting
24 District employees from possessing dangerous or deadly weapons, including firearms, on
25 District property; and (5) that the District's policy is allegedly void under ORS 166.170(2).
26 On its face, the Complaint fails to allege any actual or justiciable controversy and must

1 therefore be dismissed for lack of jurisdiction.

2 The doctrine of justiciability encompasses a variety of related issues, including
3 standing, ripeness and mootness. *Yancy v Schatzer*, 337 Or. 345, 349 (2004). ORS 28.020,
4 the declaratory judgment statute which plaintiff attempts to avail herself of in this case,
5 provides that a person “whose rights, status or other legal relations are affected by a
6 constitution, statute, municipal charter, ordinance, contract or franchise” may seek
7 declaratory judgment relief. Oregon courts have held that ORS 28.020 contains a
8 jurisdictional requirement of justiciability. *Beck v City of Portland*, 202 Or.App. 360, 365
9 (2005).

10 Under the doctrine of justiciability, the court cannot issue declaratory judgments in
11 a vacuum and must instead resolve only an “actual or justiciable controversy”, which has
12 been described as “a dispute based on present facts rather than on contingent or hypothetical
13 events.” *TVKO v Howland*, 335 Or 527, 534 (2003). The difference between present facts
14 and hypothetical future events has been described as that between a decision that will have
15 “practical effects” on a party’s rights and one in which a party has only an “abstract interest
16 in the correct application of the law.” *Orr v East Valley Water District*, 203 Or.App. 430,
17 437 (2005); *see also Budget Rent-A-Car v Multnomah Co.*, 287 Or 93, 95 (1979).
18 Accordingly, “declaratory relief is available only when it can affect *in the present* some rights
19 between the parties.” *TVKO, supra*, 335 Or at 535 (emphasis in original). The plaintiff
20 “must show some injury or other impact upon a legally recognized interest in the correct
21 application or the validity of a law”, and in addition, “the plaintiff’s showing of that injury
22 or impact must not be ‘too speculative.’” *League of Oregon Cities v. State of Oregon*, 334
23 Or 645, 658 (2002) (citations omitted).

24 Here, plaintiff has not alleged that she has been disciplined or even threatened with
25 discipline by the District or that she has otherwise been harmed as a result of the District’s
26 policy. Her Complaint, on its face, therefore fails to allege any legally cognizable injury and

1 at best outlines a dispute based on contingent or hypothetical events. Such allegations are
2 too speculative and legally insufficient to present a justiciable controversy capable of being
3 remedied through the issuance of a declaratory judgment.¹ Accordingly, plaintiff's
4 Complaint must be dismissed with prejudice, since amendment of the Complaint would be
5 futile in that plaintiff cannot, on these facts, allege a justiciable controversy.

6 **MOTION TO DISMISS NO. 2**

7 **FAILURE TO STATE A CLAIM UNDER ORCP 21(A)(8)**

8 Pursuant to ORCP 21(A)(8), the District hereby moves the Court for an order
9 dismissing plaintiff's Complaint for failure to state a claim upon which relief may be granted.

10 **Points and Authorities**

11 On February 15, 2005, the District enacted School Board Policy Code GBJ
12 (hereinafter referred to as "the Policy"), a copy of which is attached as Exhibit "A" to
13 plaintiff's Complaint and which provides, in relevant part:

14 "Employees, district contractors, and/or their employees and
15 district volunteers shall not possess a dangerous or deadly
16 weapon or firearm on district property or at school-sponsored
17 events. This prohibition includes those who may otherwise be

18 ¹ The Court is also directed to the case of *Stubbs v Goldschmidt*, 2004 WL
19 1490323 (D.Or. 2004). In that case the plaintiff, who held a concealed handgun license,
20 alleged that a policy enacted by the State Board of Higher Education which prohibited the
21 possession of firearms by all persons on any college campus was void under ORS
22 166.170. The defendants filed a motion to dismiss on the grounds that the plaintiff lacked
23 standing, since the policy had not actually been enforced against the plaintiff and the
24 plaintiff had thus not suffered any injury. The Court agreed that the plaintiff did not have
25 standing and had not been injured by the mere existence of the defendants' policy, stating
26 "the alleged injury, prohibition of plaintiff's weapon, is merely what [the policy] itself
requires and has not actually been enforced by defendants. No threat to plaintiff's rights
appear beyond that implied by the existence of the regulation itself." *Id.* at *4.
Accordingly, the plaintiff's voluntary compliance with [the policy] causes his own alleged
injury" and "plaintiff's argument of actual enforcement amounts to a complaint about the
mere existence of the challenged regulation." *Id.* at *5.

1 permitted by law to carry such weapons.”²

2 The Policy is merely one example among many reasonable employee-related policies
3 adopted by the District in connection with its right to monitor and control its own employees
4 while on District property and while performing their duties on behalf of the District.
5 Clearly, the District has the right to enact reasonable rules and policies concerning the
6 conduct of its employees during the performance of their duties in order to foster a safe
7 working and learning environment for its staff and students. In that regard the Policy is
8 really no different than a policy prohibiting District employees from being under the
9 influence of alcohol while on District property. Although such an employee may not be
10 subject to criminal prosecution for such conduct, since possession and consumption of
11 alcohol by a person over 21 years of age is not a crime, the employee may still be subject to
12 discipline in the employment context.

13 Plaintiff’s attempt to frame the Policy as an attempt by the District to infringe on the
14 state legislature’s authority to regulate firearms under ORS 166.170 misses the mark by a
15 wide margin. Because the District has not infringed on any such authority in adopting the
16 Policy, and because the fact that plaintiff holds a concealed weapons permit is frankly
17 irrelevant to plaintiff’s claims, the Complaint must be dismissed in its entirety for failure to
18 state a claim.

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20 _____
21 ²The Policy is identical to the model policy drafted by the Oregon School Boards
22 Association (“OSBA”), and this same policy has been enacted by at least 13 other school
23 districts in Oregon. Similar workplace rules prohibiting the possession of guns by
24 employees in the workplace are pervasive among public employers in Oregon. *See, e.g.*,
25 Oregon Department of Human Services Policy No. DHS-080-008 (prohibiting possession
26 of firearms by DHS employees and volunteers in DHS facilities, including firearms
possessed by employees and volunteers with concealed handgun licenses); Department of
Administrative Services policy No. 125-6-321 (based on OAR 125-075-0015); Rules and
Regulations for Portland International Airport, § 7.1.

1 1. The Fact That Plaintiff May Hold a Concealed Handgun License Is Irrelevant.

2 To the extent that plaintiff's claims for relief rely on her possession of a concealed
3 handgun permit, that fact is not relevant to the ultimate question of whether the Policy is void
4 under ORS 166.170 as plaintiff alleges. There is no basis for distinguishing between the
5 holders of concealed handgun licenses and other possessors of firearms under ORS 166.170,
6 since if that statute preempts rules adopted by public entities regarding firearms on public
7 property, that preemption would apply regardless of whether plaintiff holds a concealed
8 handgun license or not.

9 Oregon's concealed handgun statutes, found at ORS 166.291 and 166.292, do not
10 affirmatively authorize the possession of a concealed handgun by any person, anywhere and
11 under any circumstances; it simply outlines the procedures for obtaining and issuing a
12 concealed handgun license. Although there are statutes which provide that the holder of a
13 concealed handgun license is exempt from the criminal liability that would otherwise attach
14 as a result of the possession of a concealed handgun in certain situations,³ there are no
15 Oregon statutes or administrative rules which affirmatively authorize the possession of a
16 concealed handgun or other weapon. If such an affirmative right were granted by statute or
17 otherwise, it would confer upon the holder of a concealed handgun license the right to
18 possess a handgun on private property, whether residential or commercial, even against the
19 property owner's wishes. That was not the intent of the Oregon legislature in enacting the
20 concealed handgun statutes, and Oregon courts should not interpret those statutes in such a
21 manner as to convey an absolute and unqualified right to be in possession of a firearm at any
22 time or place, including in a public school building.

23 _____
24 ³ For example, ORS 166.250(1)(a) makes it a crime to be in possession of a
25 concealed firearm, but ORS 166.260(1)(h) provides that the crime of unlawful possession
26 of a firearm does not apply to the holder of a concealed handgun license. *See also* ORS
166.370, which makes it a crime to possess a firearm in a public building, but exempts
from that provision any holder of concealed handgun license.

1 Since the concealed handgun statutes do not confer any affirmative rights, other than
2 the right to be free from criminal prosecution for carrying a concealed firearm, the fact that
3 plaintiff may hold a concealed handgun license is irrelevant to the issue before this Court and
4 should be disregarded.⁴ The issue is thus properly framed as whether the District, as an
5 employer, has the ability to create and enforce workplace rules for its employees, even if
6 those rules are related to the possession of firearms. As discussed below, the answer to that
7 question is that the District can enact such workplace rules without contravening the
8 provisions of ORS 166.170.

9 2. ORS 166.170 Does Not Prohibit the District From Creating and Enforcing
10 Workplace Rules and Policies Related To Firearm Possession.

11 ORS 166.170, enacted in 1995 and included as part of Oregon’s penal code, provides:

12 “(1) Except as expressly authorized by state statute, the authority
13 to regulate in any matter whatsoever the sale, acquisition,
14 transfer, ownership, possession, storage, transportation or use of
15 firearms or any element relating to firearms and components
16 thereof, including ammunition, is vested solely in the Legislative
17 Assembly.

18 (2) Except as expressly authorized by state statute, no county,
19 city or other municipal corporation or district may enact civil or
20 criminal ordinances, including but not limited to zoning
21 ordinances, to regulate, restrict or prohibit the sale, acquisition,
22 transfer, ownership, possession, storage, transportation or use of
23 firearms or any element relating to firearms and components
24 thereof, including ammunition. Ordinances that are contrary to
25 this subsection are void.” [emphasis added].

26 Nothing in ORS 166.170 refers to administrative policies adopted by a public body regarding

22 ⁴ If plaintiff had alleged a right to carry a concealed handgun in a public building,
23 under ORS 166.370, which makes it a crime to possess a firearm in a public building but
24 provides an exception for the holder of a concealed handgun license, the fact that plaintiff
25 holds such a license may have more relevancy. Even in such a case, however, plaintiff’s
26 Complaint still would not be sufficient to survive a motion to dismiss for failure to state a
claim since, as discussed *infra*, neither ORS 166.370 nor ORS 166.170 prohibit a public
employer from implementing workplace rules concerning the possession of handguns by
its employees.

1 gun possession by its employees in the workplace.

2 By statute, each district school board in Oregon is charged with establishing rules for
3 the government of its schools and pupils consistent with the State Board of Education. ORS
4 332.107. The Policy was enacted by the District under that authority. Plaintiff's Complaint
5 alleges that the Policy is void under ORS 166.170(2), set forth above, which generally
6 prohibits counties, cities and other municipal corporations from enacting "civil or criminal
7 ordinances" purporting to regulate, restrict or prohibit the possession of firearms. However,
8 the Policy is not a civil or criminal ordinance, since it does not impose any civil or criminal
9 penalties for a violation. Further, the Policy does not attempt to regulate the general public,
10 but only District employees. The Policy therefore does not fall within the parameters of ORS
11 166.170.

12 There are no reported Oregon appellate decisions which have addressed either the
13 rights of government entities to prohibit the possession of handguns on government property,
14 nor the rights of the holder of a concealed handgun license to carry weapons on such
15 property. The Oregon Employment Relations Board ("ERB"), however, has issued an
16 opinion which addressed both issues. In *Federation of Oregon Parole and Probation*
17 *Officers v. Washington County*, 19 PECBR 411 (Aug. 21, 2001), Washington County had
18 enacted a rule which prohibited its employees from carrying firearms on duty or on county
19 property at any time. Some Washington County employees claimed that the rules were void
20 under ORS 166.170. In its decision upholding the validity of the rules, ERB determined that
21 the intent of the legislature in enacting ORS 166.170 was to prevent a patchwork of
22 inconsistent and contradictory local firearms ordinances, not to prevent a government
23 employer from instituting work rules for its employees. ERB found that Washington County,
24 as an employer, and notwithstanding ORS 166.170,

25 "Retains the right to address its unique concerns with its
26 employees' possession of firearms. The legislature did not
intend to interfere with the County's authority, in its

1 administrative capacity, to adopt policies governing its
2 employees' conduct. The policy's regulation of firearms
3 possession in this limited context is an exercise of the County's
4 authority over a matter of County concern and does not violate
5 State law" *Id.* at 420.

6 In reaching that conclusion, ERB found the holding by the Washington Supreme
7 Court in *Cherry v. Municipality of Metropolitan Seattle*, 116 Wash2d 794, 808 P.2d 746
8 (1991) to be persuasive. In that case, the city had adopted a policy prohibiting its employees
9 from possessing concealed weapons while on duty or on employer property. The plaintiff
10 held a concealed weapon permit. While on duty, the plaintiff was found in possession of
11 several weapons, including a cattle prod, a sharpened metal rod and a handgun. The plaintiff
12 was terminated for being in possession of a concealed weapon while on duty in violation of
13 the city's rule. Like plaintiff here, the plaintiff in *Cherry* alleged that the rule was preempted
14 by state statute. The State of Washington had enacted a statute which was substantially
15 similar to ORS 166.170 and purported to occupy the field of firearms regulation. R.C.W.
16 9.41.290 provided as follows:

17 "The state of Washington hereby fully occupies and preempts
18 the entire field of firearms regulation within the boundaries of
19 the state, including * * * possession * * * . Cities, towns and
20 counties or other municipalities may enact only those laws and
21 ordinances relating to firearms that are specifically authorized
22 by state law and consistent with this chapter. * * * Local laws
23 and ordinances that are inconsistent with, more restrictive than,
24 or exceed the requirements of state law shall not be enacted and
25 are preempted and repealed, regardless of the nature of the code,
26 charter, or home rule status of such city, town, county, or
municipality."

27 The Washington Supreme Court cited numerous reasons for its holding that R.C.W.
28 9.41.290 preempted only local laws and ordinances, not all rules adopted by any state
29 subdivision. First, the Court noted that the statute, like ORS 166.170, was included as part
30 of Washington's penal code. In addition, the Court found that the statute was not intended
31 to prohibit internal workplace rules. In that regard, the Court stated that the statute:

32 "Was enacted to reform that situation in which counties, cities,

1 and towns could enact conflicting local criminal codes
2 regulating the general public's possession of firearms. Nowhere
3 does the legislative history * * * deal with the authority of
4 public employers to prohibit their employees from carrying
5 firearms or other weapons while on duty or at the workplace."
6 808 P.2d at 749.⁵

7 Finally, the Court also utilized the general maxim of statutory construction that statutes
8 should not be interpreted to produce unlikely, strained or absurd results. *Id.* If the plaintiff's
9 concealed handgun license entitled him to carry a handgun in violation of the city's rule, it
10 would mean that private employers would be allowed to prohibit handguns in the workplace
11 but public employers could not. Even more, if the plaintiff's interpretation of R.C.W.
12 9.41.290 were correct, it would mean that the plaintiff could be fired under the city's rule for
13 his possession of non-firearm weapons, such as the cattle prod and sharpened metal rod, but
14 not for possession of the handgun, which was even more lethal and dangerous. *Id.* at 750.

15 As recognized by ERB in *Federation of Oregon Parole and Probation Officers v.*
16 *Washington County, supra*, the same reasoning and statutory construction applied by the
17 Supreme Court of Washington in *Cherry* are applicable in the present case. If plaintiff's
18 interpretation were correct, the District would be prevented from prohibiting the possession
19 of firearms on its property by its employees but private employers would not be under any
20 such restriction. Further, under the plaintiff's interpretation the District could continue to
21 prohibit the possession of dangerous and deadly weapons other than firearms, even though
22 firearms are more dangerous, since ORS 166.170 only preempts firearm regulation.

23 Adopting plaintiff's interpretation of ORS 166.170 would not only lead to absurd
24 results, it would also expose the District to the potential for significant liability. If the District
25 were not permitted to enact reasonable restrictions on its employees regarding the possession
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⁵ The legislative history of ORS 166.170 is in accord. *See* Affidavit of Thaddeus
G. Pauck, attached hereto as Exhibit "1", which includes the legislative history of that
statute.

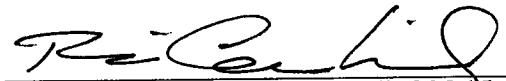
1 of handguns on District property, there would be nothing to prevent the District's schools
2 from turning into armed camps, including the storing of weapons in schools by the District's
3 employees, since ORS 166.170 provides that the storage of firearms cannot be regulated. If
4 the District were forced to allow its employees who hold concealed handgun licenses to
5 possess handguns in school, there would be no way that the District could guarantee the safe
6 handling of any such handgun, by the employee or any other person, including students, that
7 may obtain access to the gun. If the gun were accidentally discharged, such an accident
8 would be legally foreseeable and if the District had not taken reasonable precautions to
9 prevent such an accident, such as by enacting the Policy which is currently in place, the
10 District would be liable for any damages caused. *See Fazzolari v Portland School District*
11 *No. 1J, 303 Or. 1 (1987)*. Further, if a chaotic crisis were to occur on District property,
12 innocent people could be seriously injured or killed if officers entered a school and
13 encountered a person with a firearm, since the officers would not be aware of which persons,
14 if any, were authorized to be in possession of a firearm.

15 3. Conclusion.

16 In conclusion, ORS 166.170 prohibits the District (as well as any other governmental
17 body described in that statute) from exercising its police power to regulate firearms, but it
18 does not prohibit the District from acting as any other employer in establishing reasonable
19 work rules for its employees with respect to possession of firearms in the workplace.
20 Although ORS 166.170 preempts regulation of firearms through the use of police power, it
21 does not go so far as to preempt every rule that relates to firearms. The statute must be
22 interpreted, as recognized by ERB in *Federation of Oregon Parole Officers, supra*, to
23 distinguish between governmental acts, which seek to regulate the general public, and
24 proprietary acts intended to exercise control over a public body's property and employees.
25 The Policy does not violate ORS 166.170 since it is only a reasonable exercise of the
26 District's authority, as an employer, to monitor and control its own employees while on

1 District property and while performing their duties on behalf of the District. The Policy
2 furthers the District's legal obligation to provide a safe environment and workplace for
3 students and employees. Accordingly, for the reasons set forth above, this Court must find
4 that the Policy is not void under ORS 166.170 and dismiss plaintiff's Complaint with
5 prejudice for failure to state a claim.

6 DATED: September 27, 2007.

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9 Timothy C. Gerking, OSB #792345
10 Thaddeus G. Pauck, OSB#98318
11 BROPHY, MILLS, SCHMOR
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IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY

JANE DOE (a fictitious name for a real
Jackson County resident),

Plaintiff,

vs.

MEDFORD SCHOOL DISTRICT 549C,

Defendant.

Case No. 07-3765-E2

AFFIDAVIT OF THADDEUS
G. PAUCK

STATE OF OREGON)
County of Jackson) ss:

I, Thaddeus G. Pauck, being first duly sworn, depose and certify that:

1. I am one of the attorneys for Medford School District 549C, the defendant in this case, and make this affidavit based on my own personal knowledge.

2. Attached hereto as Exhibit "A" is a true and correct copy of the legislative history of ORS 166.170, identified as House Bill 2784 in the 1995 legislative session and special session.

3. The legislative history indicates that the intent of the statute is to avoid a patchwork of local laws in favor of statewide rules, so that persons would be able to travel throughout the state with their weapons without violating the laws of different jurisdictions. See, e.g., Ex. A, p. 18 (minutes of March 23, 2005 public hearing on HB 2784); Ex. A, p. 25 (minutes of April 3, 1995 House work session); Ex. A, p. 38 (minutes of May 17 public hearing on HB 2784); Ex. A, p. 40 (NRA position statement on HB 2784).

4. Nowhere in the legislative history is there any reference to regulation of firearms in the employment context.

- Grisham, Johnston, Lewis, Meek, Naito, Prozanski, Qutub, Strobeck.
- 6-12 Speaker signed.
6-14(S) President signed.
7-21(H) Governor vetoed.
7-28 Governor's message read in the House.
Motion to repass bill notwithstanding the Governor's veto not having received the required two-thirds majority failed. Veto sustained.
Ayes, 37 --Nays, 22, Baum, Beyer, Brown, Carter, Courtney, Eighmey, Fahey, Federici, Gordly, Josi, Lehman, Naito, Piercy, Prozanski, Rasmussen, Ross, Shibley, Shields, Thompson, Uherbelau, Wooten, Wylie, Excused, 1--Montgomery.
Baum changed vote from 'aye' to 'nay' and served notice of possible reconsideration.
- 7-31 Veto sustained in accordance with Article V, Section 15b, Oregon Constitution.
- Declares state preemption in field of pesticide sale and use.
- HB 2754 By Representative TARNO -- Relating to in-stream water rights.**
- 2-15(H) First reading. Referred to Speaker's desk.
2-16 Referred to Water Policy.
3-14 Public Hearing held.
4-27 Work Session held.
5-4 Recommendation: Do pass with amendments and be printed A-Engrossed.
5-8 Second reading.
5-9 Rules suspended. Taken from today's Calendar and placed in proper order on Wednesday, May 10 Calendar.
5-10 Rules suspended. Taken from today's Calendar and placed in proper order on Thursday, May 11 Calendar.
5-11 Third reading. Carried by Tarno. Passed.
Ayes, 38 --Nays, 19, Beyer, Brown, Corcoran, Courtney, Eighmey, Federici, Gordly, Josi, Lehman, Naito, Piercy, Prozanski, Rasmussen, Ross, Shibley, Shields, Thompson, Uherbelau, Wylie, Excused, 2--Carter, Fahey, Excused for business of the House, 1--Brian.
Potential conflict(s) of interest declared by Fisher.
- 5-12(S) First reading. Referred to President's desk.
Referred to Water and Land Use.
5-18 Public Hearing and Work Session held.
5-25 Possible Reconsideration and Work Session held.
6-2 Recommendation: Do pass with amendments to the A-Eng. bill. (Printed B-Eng.)
(Amendments distributed.)
Second reading.
Third reading. Carried by Johnson. Passed.
Ayes, 18 --Nays, 10, Brecke, Cease, Dukes, Dwyer, Gold, Lim, McCoy, Sorenson, Springer, Trow, Excused, 1--Hartung, Attending Legislative Business, 1--Bryant.
- 6-5(H) House refused to concur in Senate amendments.
Ayes, 24 --Nays, 22, Baum, Beyer, Brown, Carter, Corcoran, Courtney, Eighmey, Fahey, Federici, Gordly, Josi, Lehman, Naito, Prozanski, Rasmussen, Roberts, Ross, Shibley, Shields, Uherbelau, Wooten, Wylie, Absent, 2--Johnston, Minnis, Excused, 2--Brian, Tiernan, Excused for business of the House, 10--Adams, Mannix, Meek, Montgomery, Parks, Piercy, Sowa, Starr, Tarno, Thompson.
Baum changed vote from 'aye' to 'nay' and served notice of possible reconsideration.
- 6-6 Vote reconsideration carried.
Ayes, 34 --Nays, 25, Beyer, Brown, Carpenter, Carter, Corcoran, Courtney, Eighmey, Fahey, Federici, Gordly, Johnston, Josi, Lehman, Naito, Piercy, Prozanski, Rasmussen, Ross, Shibley, Shields, Sowa, Thompson, Uherbelau, Wooten, Wylie, Excused, 1--Hayden.
House concurred in Senate amendments and repassed measure.
Ayes, 34 --Nays, 24, Beyer, Brown, Carpenter, Carter, Corcoran, Courtney, Eighmey, Fahey, Federici, Gordly, Johnston, Josi, Lehman, Naito, Piercy, Prozanski, Rasmussen, Ross, Shibley, Shields, Thompson, Uherbelau, Wooten, Wylie, Absent, 1--Adams, Excused, 1--Hayden.
- 6-15 Speaker signed.
6-15(S) President signed.
7-21(H) Governor vetoed.
7-28 Governor's message read in the House.
8-4 Veto sustained in accordance with Article V, Section 15b, Oregon Constitution.
- Defines 'in-stream flow' for in-stream water right purposes.
- HB 2779 By Representative CARTER; Representative GORDLY, Senator MCCOY -- Relating to enterprise zones.**
- 2-16(H) First reading. Referred to Speaker's desk.
2-17 Referred to Commerce.
3-13 Assigned to Subcommittee on Trade and Economic Development.
3-16 Public Hearing held.
3-21 Public Hearing held.
3-30 Work Session held.
4-13 Work Session held.
Returned to Full Committee.
4-18 Work Session held.
4-21 Recommendation: Do pass with amendments and be printed A-Engrossed.
4-25 Second reading.
4-26 Rules suspended. Taken from today's Calendar and placed in proper order on Thursday, April 27 Calendar.
4-27 Third reading. Carried by Carter. Passed.
Ayes, 58 --Excused, 1--Jones, Excused for business of the House, 1--Schoon.
- 4-28(S) First reading. Referred to President's desk.
5-4 Referred to Labor and Government Operations.
5-10 Public Hearing and Work Session held.
5-15 Recommendation: Do pass the A-Eng. bill.
Second reading.
5-16 Third reading. Carried by McCoy. Passed.
Ayes, 27 --Excused, 2--Leonard, Phillips, Attending Legislative Business, 1--Hannon.
- 6-15(H) Speaker signed.
6-15(S) President signed.
7-21(H) Governor vetoed.
7-28 Governor's message read in the House.
8-4 Veto sustained in accordance with Article V, Section 15b, Oregon Constitution.
- Allows city with population exceeding 400,000 inhabitants that is enterprise zone sponsor to impose additional conditions on business firm seeking precertification and eligibility for property tax exemption.

Special Session Calendar

HB 2784 By Representative MARKHAM; Representative CARPENTER, FISHER, GRISHAM, HAYDEN JONES, JOSI, LEWIS, MILNE, MINNIS, NORRIS OAKLEY, PARKS, ROBERTS, SNODGRASS SOWA, STARR, TARNO, TIERNAN, WELLS WELSH, Senators ADAMS, DWYER, JOHNSON KINTIGH, PHILLIPS, SHANNON, TIMMS WALDEN -- Relating to firearms.

- 2-20(H) First reading. Referred to Speaker's desk.
2-21 Referred to Judiciary.
2-23 Assigned to Subcommittee on Civil Law and Judicial Administration.
3-2 Public Hearing held.
3-23 Public Hearing and Work Session held.
Returned to Full Committee.
4-3 Work Session held.
4-7 Recommendation: Do pass with amendments and be printed A-Engrossed.
4-11 Second reading.
4-12 Third reading. Carried by Tarno. Passed.

