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

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

Plaintiff,

vs.

MEDFORD SCHOOL DISTRICT 549C,

Defendant.

Case No. 073765E2

PLAINTIFF’S RESPONSE TO
DEFENDANT’S MOTION TO
STRIKE AND DISMISS PURSUANT
TO ORCP 21

Plaintiff, by and through counsel responds to Defendant’s Motions to Strike and Dismiss Pursuant to ORCP 21 as follows.

Anonymous Plaintiff

The use of the name “Doe” in reported Oregon cases, while rare, is not without precedent. See *Doe v. Linebaugh*, 175 Or App 291 (2001); *Roe v. Doe*, 161 Ore. App. 477 (1999); *Doe v. Denny’s, Inc.*, 327 Or 354 (1998); *Doe v. American Red Cross*, 322 Or 502 (1996); and *Doe v. Portland Health Centers*, 99 Or App 423 (1989). Plaintiff has chosen to reveal her identity in light of defendant having objected to her remaining anonymous. Plaintiff submits that her having attempted to retain her anonymity is now a moot point.

Justiciable Controversy

Plaintiff has moved to amend her complaint. She has added paragraphs to her amended complaint which should eliminate any question that a justiciable controversy now exists. Defendant has threatened to punish plaintiff should she and when she carries a concealed handgun

1 with her when she goes to work for defendant. Defendant threatened plaintiff directly.
2 Defendant's threat is credible. Although plaintiff prefers to wait until this Court rules that
3 defendant cannot lawfully prohibit her from carrying a concealed handgun while at work, she is
4 committed to lawfully carrying a concealed handgun to work on or before October 30, 2007.

5 **Text and Context of ORS 166.170 Make Defendant's Policy Void**

6 The text and context of ORS 166.170 establish that defendant's policy is void.

7 ORS 166.170 reads:

8 "(1) Except as expressly authorized by state statute, the authority to regulate in any
9 matter whatsoever the sale, acquisition, transfer, ownership, possession, storage,
10 transportation or use of firearms or any element relating to firearms and components
11 thereof, including ammunition, is vested solely in the Legislative Assembly.

12 "(2) Except as expressly authorized by state statute, no county, city or other municipal
13 corporation or district may enact civil or criminal ordinances, including but not limited to
14 zoning ordinances, to regulate, restrict or prohibit the sale, acquisition, transfer,
15 ownership, possession, storage, transportation or use of firearms or any element relating
16 to firearms and components thereof, including ammunition. Ordinances that are contrary
17 to this subsection are void."

18 First, ORS 166.170(1) establishes that firearms regulations are promulgated by the State of
19 Oregon, not by Oregon's local governments. Any and all — civil as well as criminal — local
20 regulation of firearms must be consistent with and cannot exceed state regulation.

21 Defendant asserts it is not affected by ORS 166.170(2). Defendant's assertion is without
22 merit. Defendant is a district, as defendant's name proves.

23 Defendant asserts its policy GBJ is merely a policy, not an ordinance. Defendant is wrong. A
24 policy is an ordinance. The legislature has not defined the term "ordinance," as it is used in ORS
25 166.170. In the absence of a statutory definition, we are to use a dictionary definition. The Oregon
26 Supreme Court's and the Court of Appeals' favorite dictionary is Webster's Third New
International Dictionary of the English Language Unabridged (2002). That dictionary, at page
1588, defines ordinance as follows:

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“**1a**: an authoritative decree or direction : ORDER <our swift ~s on their way over the whole earth —Walt Whitman> **b** : a public enactment, rule, or law promulgated by governmental authority: as (1) : one of a number of laws or regulations issued at various periods of English history without the assent of one of the three powers (Crown, House of Lords, and House of Commons) necessary to an act of Parliament (2) : a regulation or decree promulgated in Great Britain by an authority less than the sovereign enacting power (3) a; any of several acts of the U.S. Congress under the Articles of Confederation (4) : local law or regulation enacted by a city council or other similar body under powers delegated to it by the state **2a** : the act or an instance of ordering or arranging : DIRECTION, DISPENSATION, CONTROL <insistence upon a higher and rational ~ throughout the world —G.G. Coulton> **b** : something ordained or decreed by fate or a diety : a decree or disposition of divine or providential origin <an ~ of the Christian God —G.F. Hudson> **c obs** : ordained or appointed place or condition **3 a** : established rule, policy or practice <a positive ~ ... that there should be no sketching until lessons were done —Arnold Bennett> **b** : an established and fully authoritative religious ceremony, rite or usage that is not considered a sacrament **syn** see LAW”

Webster’s establishes that a policy is an ordinance. Defendant’s policy GBJ is an ordinance.

Defendant has provided the Court with the legislative history for ORS 166.170. Plaintiff submits HB 2784 is the context for ORS 166.170. Plaintiff directs the Court’s attention to Sections 4¹ and 5² of HB 2784 as it is reproduced at Exhibit A, pages 44-45, to Defendant’s Motions to Strike and Dismiss Pursuant to ORCP 21. Section 4 says a city or a county may adopt ordinances to regulate, restrict or prohibit the possession of loaded firearms in public places but that such ordinances do not apply to persons — such as plaintiff — who are licensed to carry concealed handguns. Assuming the legislature intended to include districts when it used the words, “a city or a county,” the legislature prohibited districts from promulgating ordinances that affect persons — such as plaintiff — who are licensed to carry concealed handguns³.

Defendant asserts that the legislature did not intend ORS 166.170 to interfere with its authority to establish conditions of employment. Defendant cites a Washington case that interpreted a statute markedly different from ORS 166.170. The Washington court determined

¹ Codified at ORS 166.173.
² Codified at ORS 166.174.
³ Alternatively, the legislature did not intend the words, “a city or a county,” to include districts. If that is the case, then districts do not have the authority to promulgate ordinances that regulate, restrict or prohibit the possession of loaded firearms in public places. *Expressio unis exclusio alterius*.

1 that the Washington statute it was interpreting limited local government’s authority to promulgate
2 criminal laws restricting firearms. ORS 166.170 cannot be read so narrowly. ORS 166.170(2)
3 specifically prohibits restrictive “civil or criminal ordinances.”

4 Although defendant asks this court to insert the word, “employment,” into ORS 166.170 so
5 as to make ORS 166.170 inapplicable to employment ordinances, this Court cannot add a word to
6 a statute that the legislature has omitted. ORS 42.230⁴.

7 **Schools Are Not Above the Law**

8 The University of Utah asserted it was not subject to a Utah law similar to ORS 166.170.
9 The Utah Supreme Court disagreed. *University of Utah v. Shurtleff*, 144 P.3d 1109 (Utah 2006).

10 **The Oregon Legislature’s Decision to Prohibit Local Regulations of Firearms Was**
11 **Reasonable, Rational, and Just**

12 HB 2784 was not the Oregon Legislature’s first attempt to reign in local governments’
13 efforts to regulate firearms. A prior effort occurred in 1989. The legislative history for HB 2784
14 demonstrates that HB 2784 was not the legislature’s first effort in an ongoing battle regarding
15 Oregonians’ civil right to keep and bear arms. It is indisputable that many in government,
16 especially-but-not-only-local-governments, are deeply antagonistic towards an individual’s right
17 to keep and bear arms.

18 The legislature has chosen to give persons who obtain concealed handgun licenses
19 permission to carry firearms at times and in places that persons who have not obtained concealed
20 handgun licenses are forbidden to carry firearms. Specifically, persons who have concealed
21 handgun licenses are permitted to carry firearms in public buildings.

22 The legislature trusts persons with concealed handgun licenses. There is no reason to think
23

24 ⁴ “Office of judge in construing instruments. In the construction of an instrument, the office of the
25 judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to
26 insert what has been omitted, or to omit what has been inserted; and where there are several
provisions or particulars, such construction is, if possible, to be adopted as will give effect to all.”

1 this trust is misplaced. Arrests of Oregon concealed handgun licensees are rare. The undersigned
2 is not aware of any Oregon concealed handgun licensee having been arrested for using a firearm
3 to commit a crime. On the other hand, Oregon peace officers are all too often accused of and
4 convicted of committing crimes⁵. No one argues that peace officers should not be permitted to
5 carry firearms. No reason exists to deprive concealed handgun licensees of their right to carry
6 firearms.

7 Defendant is in no position to second guess the legislative policy decision to allow
8 concealed handgun licensees to carry firearms in public buildings. To the contrary, defendant is
9 specifically forbidden from doing so by ORS 166.170 and ORS 166.173.

10 DATED: October 5, 2007.

JAMES E. LEUENBERGER PC

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James E. Leuenberger OSB 89154
Attorney for plaintiff

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Certificate of Delivery

15 I certify that I mailed a true copy of this document to Timothy C. Gerking and Thaddeus G.
16 Pauck, Brophy, Mills, Schmor, Gerking, Brophy & Paradis, LLP, PO Box 128, Medford, OR
17 97501. I also emailed a true copy of this documents to tgerking@brophymills.com and
tpauck@brophymills.com.

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James E. Leuenberger

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26 ⁵ Peace officers in Clackamas County and Lane County have recently been arrested and convicted
for serious, violent felonies.