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

I. Even Under Plaintiff’s First Amended Complaint, Plaintiff Still Has Not Alleged a Justiciable Controversy.

As discussed in the District’s Motion, courts cannot issue declaratory judgments in a vacuum and must only resolve “actual” or “justiciable” controversies which are based on present facts rather than on contingent or hypothetical events. *TVKO v Howland*, 335 Or 527, 534 (2003). Declaratory relief is therefore only available where a plaintiff can demonstrate that the alleged injury is not too speculative. *League of Oregon Cities v. State of Oregon*, 334 Or 645, 658 (2002) (citations omitted).

The allegations set forth in plaintiff’s proffered Amended Complaint still fail to rise to the level of a justiciable controversy as recognized by Oregon courts. Her proffered Amended Complaint now alleges that she will carry her handgun concealed upon her person while engaged in her work for defendant no later than October 30, 2007. Amended Complaint, ¶ 4. She also alleges that she received a memo from the District, reminding her of her obligation to comply with the District’s policy concerning the possession of firearms on District property and advising that a failure to so comply would result in disciplinary action. *Id.*, ¶ 5. Importantly, she has not alleged that she has in fact brought a handgun onto

1 the District's property or that she has been disciplined in any manner for doing so. Such
2 allegations are too speculative and legally insufficient to present a justiciable controversy
3 capable of being remedied through the issuance of a declaratory judgment.

4 Plaintiff's current standing is identical to the plaintiff in *Stubbs v Goldschmidt*, 2004
5 WL 1490323 (D.Or. 2004), cited in the District's Motion. In that case the University's policy
6 concerning gun possession on its property had not actually been enforced against the plaintiff
7 and the plaintiff had thus not suffered any injury. The Court found that the plaintiff had not
8 been injured by the mere existence of the defendants' policy, stating "the alleged injury,
9 prohibition of plaintiff's weapon, is merely what [the policy] itself requires and has not
10 actually been enforced by defendants. No threat to plaintiff's rights appear beyond that
11 implied by the existence of the regulation itself." *Id.* at *4. Accordingly, "the plaintiff's
12 voluntary compliance with [the policy] causes his own alleged injury" and "plaintiff's
13 argument of actual enforcement amounts to a complaint about the mere existence of the
14 challenged regulation." *Id.* at *5.

15 In sum, plaintiff's allegations as to what she may or may not do in the future are
16 simply too speculative to rise to the level of a current, justiciable controversy.

17 **II. The District's Policy Does Not Violate ORS 166.170 Or Any Other Statute.**

18 *A. A School District Is Not a "District" Within the Meaning of ORS 166.170.*

19 Plaintiff's Response states as fact, without any supporting authority, that the District
20 is a "district" as that term is used in ORS 166.170(2). Such an assumption is conclusory and
21 simply wrong. As pointed out by the District in its Motion, the legislative history of that
22 statute indicates that the term "district" was meant to apply only to "special districts". *See*
23 Pauck Aff., ¶ 5, and Ex. "A" to District's Motion, p. 46 (Oregon Senate Staff Measure
24 Summary, stating that the need for HB 2784 arises because "cities, counties, some special
25 districts and municipal groups are all writing their own firearm regulations, including civil
26 fine and forfeiture provisions, to which the public must comply.") (emphasis added).

