

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 DANIEL MITCHELL, *et al.*,

CASE NO. C19-5106-JCC

10 Plaintiffs,

ORDER

11 v.

12 CHUCK ATKINS, *et al.*,

13 Defendants,

14 and

15
16 SAFE SCHOOLS SAFE COMMUNITIES,

17 Intervenor-Defendant.
18

19 This matter comes before the Court on the parties' cross-motions for summary judgment
20 (Dkt. Nos. 150, 151). Having thoroughly considered the briefing and the relevant record, the
21 Court GRANTS Defendants' and Intervenor-Defendant's motion and DENIES Plaintiffs' motion
22 for the reasons explained herein.

23 **I. BACKGROUND**

24 Plaintiffs are licensed firearm dealers residing in Washington. (Dkt. No. 1.) In 2019, they
25 brought this suit challenging the constitutionality of section 12 of Washington State Initiative
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1 Measure 1639 (“I-1639”), which was approved by voters in 2018.¹ Section 12 amended
2 RCW 9.41.124, which legalized the in-person sale of rifles and shotguns to nonresidents. 1970
3 Wash. Sess. Laws, ch. 74, § 2 (originally codified at RCW 19.70.020, codified as amended at
4 RCW 9.41.124). Specifically, it narrowed the scope of that permission by removing semi-
5 automatic rifles (“SARs”) from the category of “rifles and shotguns” that legally may be
6 purchased in person by nonresidents. *See* RCW 9.41.124. Federal law already prohibits in-person
7 handgun sales to nonresidents of a state. 18 U.S.C. § 922(a)(5)(A), (b)(3). Section 12 in effect
8 mirrors that requirement for SARs. Plaintiffs are licensed firearm dealers in the state of
9 Washington and allege that I-1639 is unconstitutional under the Dormant Commerce Clause.

10 **II. DISCUSSION**

11 **A. Legal Standard**

12 “The court shall grant summary judgment if the movant shows that there is no genuine
13 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
14 Civ. P. 56(a). In making such a determination, the Court must view the facts in the light most
15 favorable to the nonmoving party and draw justifiable inferences in that party’s favor. *Anderson*
16 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986). Ultimately, summary judgment is appropriate
17 against a party who “fails to make a showing sufficient to establish the existence of an element
18 essential to that party’s case, and on which that party will bear the burden of proof at trial.”
19 *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

20 **B. Standing**

21 As a threshold matter, the Court first addresses Defendants’ justiciability argument. (*See*
22 *generally* Dkt. No. 151.) Defendants argue that Plaintiffs lack standing to challenge I-1639
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25 ¹ I-1639 expanded background checks for gun purchases in Washington, prohibited those under
26 age 21 from purchasing a semi-automatic rifle, and prohibited in-person sales of such rifles to
out-of-state purchasers. The constitutional challenge here is to the third provision prohibiting in-
person sales of SARs to non-Washington residents (the “Nonresident Sales Provision”).

1 because they have not indicated an intent to violate the statute, nor do they face the specter of
2 prosecution or administrative revocation. (*Id.*)

3 A plaintiff only has standing to sue if they present a legitimate “case of controversy,”
4 meaning the issues are “definite and concrete, not hypothetical or abstract.” *Thomas v.*
5 *Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000). Ripeness and standing
6 overlap by both focusing on whether an injury is “real and concrete.” *Id.* (quoting Gene R.
7 Nichol, Jr., Ripeness and the Constitution, 54 U. CHI. L. REV. 153, 172 (1987)). When plaintiffs
8 challenge a statute, the standing and ripeness requirements are met if “the plaintiffs face a
9 realistic danger of sustaining a direct injury as a result of the statute’s operation or *enforcement*,”
10 rather than an “imaginary or speculative” threat. *Id.* (emphasis added). In other words, there must
11 be a “genuine threat of imminent prosecution.” *Id.* (quoting *San Diego County Gun Rights*
12 *Comm. v. Reno*, 98 F.3d 1121, 1126–27 (9th Cir. 1996)). “In evaluating the genuineness of a
13 claimed threat of prosecution, [courts] look to whether the plaintiffs have articulated a ‘concrete
14 plan’ to violate the law in question, whether the prosecuting authorities have communicated a
15 specific warning or threat to initiate proceedings, and the history of past prosecution or
16 enforcement under the challenged statute.” *Id.* (quoting *Reno*, 98 F.3d at 1126–27). Moreover,
17 “[w]hen the plaintiff has alleged an intention to engage in a course of conduct arguably affected
18 with a constitutional interest, but proscribed by a statute, and there exists a credible threat of
19 prosecution thereunder, he should not be required to await and undergo a criminal prosecution as
20 the sole means of seeking relief.” *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289,
21 298 (1979).

22 Here, Plaintiffs’ allegations identify a sufficiently definite injury for purposes of standing
23 and ripeness. While the State may not have fashioned specific plans to enforce the challenged
24 law against Plaintiffs, the entire business of selling guns is a “course of conduct” that makes
25 prosecution under Washington’s gun laws a realistic threat. *Babbitt v. United Farm Workers Nat.*
26 *Union*, 442 U.S. 289, 298 (1979). This threat can be structurally inferred from RCW 9.41.090

1 which *requires* a gun-dealer to notify law enforcement each time they want to sell a pistol or
2 semiautomatic assault rifle.² It is difficult to see how Plaintiffs could sustain a more concrete
3 form of injury without violating the law. The standing and ripeness requirements have therefore
4 been satisfied, and the Court DENIES Defendants summary judgment on this issue.

5 **C. Constitutionality of RCW 9.41.124 under the Dormant Commerce Clause**

6 The Commerce Clause provides that Congress shall have the power “[t]o regulate
7 Commerce with foreign Nations, and among several states, and with the Indian Tribes.” U.S.
8 Const. Art. 1, § 8, cl. 3. In addition to this express grant of power to Congress, the Commerce
9 Clause has an implicit negative aspect—known as the Dormant Commerce Clause—that
10 “prohibits state laws that unduly restrict interstate commerce.” *Tenn. Wine & Spirit Retailers*
11 *Ass’n v. Thomas*, 139 S. Ct. 2449, 2459 (2019). The Dormant Commerce Clause serves as a
12 bulwark against state programs of “economic protectionism—that is, regulatory measures
13 designed to benefit in-state economic interests by burdening out-of-state competitors.” *Int’l*
14 *Franchise Ass’n, Inc. v. City of Seattle*, 803 F.3d 389, 399 (9th Cir. 2015) (internal citations and
15 quotations omitted).

16 To determine whether a law violates the Dormant Commerce Clause, courts “first ask
17 whether it discriminates on its face against interstate commerce.” *United Haulers Ass’n v.*
18 *Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 338–39 (2007). If so, the law is
19 invalid unless the state “has no other means to advance a legitimate local purpose.” *Id.* (citing
20 *Maine v. Taylor*, 477 U.S. 131, 138 (1986)). If the law is non-discriminatory, however, it violates
21 the Dormant Commerce Clause only if the burden on interstate commerce is “clearly excessive
22 in relation to the putative local benefits.” *Sullivan v. Oracle Corp.*, 662 F.3d 1265, 1271 (9th Cir.

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24 ² I-1639’s amendments to RCW 9.41.090 provide that a dealer may not deliver a pistol or
25 semiautomatic assault rifle until they have obtained an application from the purchaser, delivered
26 it to the local chief of police or sheriff, and waited the requisite time period without receiving a
response. RCW 9.41.090(6)(a)-(c). If the chief of police or sheriff find that the purchaser is
ineligible to buy a firearm, they must deny the application. RCW 9.41.090(6)(c).

1 2011) (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)). This *Pike* balancing test
2 requires “sensitive consideration of the weight and nature of the state regulatory concern in light
3 of the extent of the burden imposed on the course of interstate commerce.” *Raymond Motor*
4 *Transp., Inc. v. Rice*, 434 U.S. 429, 441 (1978). And to prove a Dormant Commerce Clause
5 violation, that burden must be “substantial.” *Nat’l Ass’n of Optometrists & Opticians v. Harris*,
6 682 F.3d 1144, 1148 (9th Cir. 2012) (citing *S.-Cent. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82,
7 87 (1984)).

8 1. Facial Discrimination Against Interstate Commerce

9 The threshold question under the Dormant Commerce Clause is whether the law is
10 discriminatory on its face. The term “discrimination” has a specific meaning in the Dormant
11 Commerce Clause context: it “simply means differential treatment of in-state and out-of-state
12 economic interests that *benefits* the former and *burdens* the latter.” *Rocky Mtn. Farmers Union*
13 *v. Corey*, 730 F.3d 1070, 1087 (9th Cir. 2013) (quoting *Or. Waste Sys., Inc. v. Dep’t of Env’tl.*
14 *Quality*, 511 U.S. 93, 99 (1994)). Mere differential treatment of in-state and out-of-state interests
15 is insufficient to establish discrimination. Rather, there must be some *economic* benefit to in-
16 state interests or some economic burden on out-of-state interests. *City of Phila. v. New Jersey*,
17 437 U.S. 617, 624 (1978) (“The crucial inquiry . . . [is] whether [the law] is basically a
18 protectionist measure, or whether it can fairly be viewed as a law directed to legitimate local
19 concerns, with effects upon interstate commerce that are only incidental.”). Indeed, “[t]he central
20 rationale for the rule against discrimination is to prohibit state or municipal laws whose object is
21 local economic protectionism, laws that would excite those jealousies and retaliatory measures
22 the Constitution was designed to prevent.” *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S.
23 383, 390 (1994).

24 On its face, Section 12 does not trigger this protectionism concern because it neither
25 benefits in-state economic interests nor burdens out-of-state economic interests. Indeed, the
26 statute signifies a burden to Washington economic interests. Conversely, the likely economic

1 beneficiaries of a prohibition on Washington sales to out-of-state buyers are out-of-state gun
2 dealers who would see a corresponding increase in sales at the expense of Washington gun
3 dealers. In other words, the Washington law neither has the potential to excite jealousies or court
4 retaliatory measures. *See C & A Carbone*, 511 U.S. at 390. Unsurprisingly, Plaintiffs fail to offer
5 evidence creating a genuine dispute on this threshold issue. (*See generally*, Dkt. No. 150.)
6 Accordingly, the core concern of discriminatory state protectionism under the Dormant
7 Commerce Clause is not triggered and Section 12 is not *prima facie* discriminatory.

8 2. The Pike Balancing Test

9 Absent facial discrimination, a law need only satisfy the *Pike* balancing test, under which
10 courts “will uphold the law ‘unless the burden imposed on [interstate] commerce is *clearly*
11 *excessive* in relation to the *putative* local benefits.’” *Pike v. Bruce Church, Inc.*, 397 U.S. 137,
12 142 (1970) (emphasis added). Plaintiffs “bear the burden of proof in establishing the excessive
13 burden in relation to the local benefits.” *Nat’l Ass’n of Optometrists & Opticians LensCrafters,*
14 *Inc. v. Brown*, 567 F.3d 521, 528 (9th Cir. 2009).

15 As noted, Plaintiffs fail to put forth evidence showing how the law confers an economic
16 benefit to in-state interests or an economic burden on out-of-state interests. By contrast, I-1639’s
17 noneconomic *putative* benefits are self-evident.³ Indeed, there are few interests more paramount
18 to state governments than protecting public safety, and especially “the suppression of violent
19 crime and vindication of its victims.” *United States v. Morrison*, 529 U.S. 598, 618 (2000). To
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21 ³ At the Founding, single-fire muskets had certain democratic properties. A person had to get
22 close to kill you and, in getting close, he typically rendered himself vulnerable to counterattack.
23 It took time to reload, and so one person could not kill dozens in a few seconds. One person, one
24 gun, one shot was not as perfect a system of majority rule as one person, one vote, but the side
25 with the most men often won. Today, technological advancements have made the right to bear
26 arms substantially more dangerous. Washington’s regulation of firearms is just another
paradigmatic example of the police power which the Founders reposed in the States. *See United States v. Morrison*, 529 U.S. 598, 618 (2000) (“[W]e can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime.”)

1 advance this public-safety interest, the people of Washington, with over 59% of the vote,
2 extended an existing safeguard on handgun sales to SAR sales.⁴ This decision is more than
3 legitimate—it is *compelling*. See, e.g., *Mance v. Sessions*, 896 F.3d 699, 719 (5th Cir. 2018)
4 (federal prohibition on in-person sales of handguns to nonresidents, 18 U.S.C. § 922(a)(3), was
5 “justified by a *compelling* . . . interest and is narrowly tailored to serve that interest”).

6 The Supreme Court’s recent decision in *National Pork Producers Council v. Ross*, 598
7 U.S. 356 (2023), supports insulating I-1639 from judicial invalidation. As the Court noted,
8 “preventing state officials from enforcing a *democratically adopted* state law in the name of the
9 dormant Commerce Clause is a matter of “extreme delicacy,” something courts should do only
10 “where the infraction is clear.” *Id.* at 1165 (quoting *Conway v. Taylor’s Executor*, 1 Black 603,
11 634 (1862)). In a plurality opinion, Justice Gorsuch wrote that the fact that California’s new law
12 might shift market share from one set of producers to another did not constitute a sufficient
13 burden on interstate commerce to warrant further judicial scrutiny. *Id.* at 1166 (*See Sotomayor*,
14 J., concurring in part) (citing *id.* at 1164–65 (majority opinion)). Here, as there, any shift in the
15 economic balances-of-power among gun manufacturers in the SARs market is of no import
16 under *Pike*. And in any event, even assuming, *arguendo*, that I-1639 imposes a burden on
17 interstate commerce, this would still fail to offset the substantial benefit to public safety that *the*
18 *people* of Washington voted for.

19 Accordingly, the Nonresident Sales Provision is constitutional under *Pike*.

20 **III. CONCLUSION**

21 For the foregoing reasons, Plaintiffs’ motion for summary judgment (Dkt. No. 150) is
22 DENIED, and Defendants’ and Intervenor’s cross motion for summary judgment (Dkt. No. 151)
23 is GRANTED. Plaintiffs’ amended complaint (Dkt. No. 17) is DISMISSED with prejudice.

24 ⁴ As explained by Defendants’ law enforcement expert Mark Jones—a former special agent with
25 the Bureau of Alcohol, Tobacco, Firearms and Explosives— “mass shootings . . . are
26 demonstrably more lethal when the assailant uses a [SAR] than when other firearms are used.”
(Dkt. No. 89 at pp. 15–16.)

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DATED this 23rd day of February 2024.

A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE