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Julia Monroe, District Court Deputy
Alec J Anderson, District Court Deputy

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September 18, 2020

Sheriff Anthony Hawley
Okanogan County Sheriff's Office
123 Fifth Ave
Okanogan, WA 98840

Chief Jeff Koplin
Omak City Police Department
8 North Ash St.
Omak, WA 98841

Sgt. Lex Lindquist
Washington State Patrol
108 State Patrol Rd.
Okanogan, WA 98840

Chief Steve Brown
Colville Tribal Police Department
21 Colville St.
Nespelem, WA 99155

Oroville Police Department
PO Box 2200
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Twisp Police Department
Chief P. Budrow
PO Box 278
Twisp, WA 98856

Winthrop Marshals Office
Doug Johnson
PO Box 459
Winthrop, WA 98862

Brewster Police Department
Chief M. Ruiz
105 S. 3rd St.
Brewster, WA 98812

Coulee Dam Police Dpartment
300 Lincoln Ave
Coulee Dam, WA 99116

Re: Recent Protests in Okanogan County and Armed Citizen Responses-Follow Up Letter

Dear All,

Sheriff Hawley called me stating that many of your agencies contacted him in regards to my recent letter providing his office legal advice. He stated that some or all of your agencies took my letter as a directive and were confused. My office has not power to issue directives.

I write to provide clarity regarding the intent of the letter. My goal is to protect the public's safety. My other goal was to advise the Sheriff as to what this office understands the law in Washington to be regarding the legality of armed groups and the use of firearms in crimes in the context of intimidation. To be clear, my letter was intended as legal advice to the Sheriff's Office. The Prosecuting Attorney is not the lawyer for all law enforcement agencies in Okanogan County and was only advising the Sheriff. As your agencies work closely with the Sheriff's Office I attempted to include you as a courtesy.

The letter was intended solely to provide clear tools that may be used to protect the entire community of Okanogan County in the event that more protests occur in the future and there is civil unrest. The main tools this office referred to were RCW 38.40.120 and RCW 9.41.270. It is this office's position that they are both Constitutional laws pursuant to the Washington State Constitution and the United States Constitution. Sheriff Hawley's commented that he is not sure whether RCW 38.40.120 is enforceable due to the Second Amendment affording persons the right to form a militia. This office disagrees that militias, mass groups, gangs, clubs, or any other groups are protected by the Second Amendment.

The controlling case regarding the right to bear arms is *District of Columbia, et al. v. Heller*, 554 US 570, 128 S.Ct. 2783 (2008). Like myself, I trust you are all firm believers in the Second Amendment as it applies to the States through the Fourteenth Amendment, and therefore, I trust you have read this case more than once.

Without going into detail, *Heller* held for the first time in US history that the "Second Amendment does protect individual rights to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home." However, at the same time, *Heller* also ruled that "like most rights, the Second Amendment right is not unlimited. It is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." The easiest example of this is clearly that a person cannot bear arms to commit rob a bank or commit a crime with the firearm.

Heller also held that "Although the phrase implies that the carrying a weapon is for offensive or defensive action, it in no way connotes participation in a structured military organization." In studying founding-era sources the Supreme Court found that "in numerous instances, "bear arms" was unambiguously used to refer to the carrying of weapons outside of an organized militia." Finally, the Supreme Court found that the term "militia" as used in the Second Amendment was a specific term not giving the people the right to form any militia at any time because "the militia comprised all males physically capable of acting in concert for the common defense;" specifically, to respond and "deny Congress power to abridge the ancient right of individuals to keep and bear arms, so that the ideal of a citizens' militia would be preserved."

This is why, in 1989, Washington State was able to draft, enact, and ratify RCW 38.40.120, and *Heller* does not overrule the law. On a side note I-1639 is probably unconstitutional because it overregulates the Second Amendment in an individual's home. Furthermore, RCW 9.41.270 was enacted in 1969, and in *State v. Maciolek*, 101 Wn.2d 259, 676 P.2d 996 (1984), it was ruled constitutional and enforceable.

Just like RCW 9.41.230, these laws exist for peace keeping and public safety purposes. As with all cases, the facts revealed based upon law enforcements investigations reveal whether they were violated. This office relies on law enforcement to investigate crimes and we trust your judgment in investigation them.

If you choose to use the tools and provide solid evidence in your cases, this office was communicating that it stands behind your decisions, will take the cases seriously, and prosecute them to the fullest extent of the law. But once again, like the Sheriff none of your offices are required to agree or follow legal advice; it is just that, advice.

In the future, if you are concerned with any advice this office provides, I encourage you to contact me directly so we may discuss it? After all, this office provided the advice to the Sheriff. Because the advice are my words, does it not make the most sense that you address your questions, concerns, confusion, or grievances with me of my office since we provided the advice? I am not sure whether your respective agencies are concerned or confused as I did not hear directly from your offices? Should you choose to discuss these matters further, I will be happy to delve deeper into the case law and fact patterns governing these laws.

Thank you for your time and consideration.

Sincerely,

Arian Noma
Prosecuting Attorney for Okanogan County