

SSB 5038: Prohibiting the open carry of certain weapons at public demonstrations and the state capitol.

The Washington Association of Criminal Defense Lawyers (WACDL) and the Washington Defender Association (WDA) have concerns with SB 5038. We believe Section 2 should be narrowed to cover the building interiors of buildings on the Capitol campus, as it fits with the existing statute prohibiting guns in courthouses or jails. The areas outside the buildings have traditionally served as places for public forum and First Amendment gatherings.

We have deeper concerns with Section 1 and oppose it in its entirety. It prohibits the possession of a firearm (or other weapons which would include knives) during and at traditional First Amendment-protected activities. The second subsection widens the prohibition to 250 feet of a demonstration. In addition to being a potential restriction on the right to assemble under the First Amendment and Art. I §4 and §5, this would be a restriction of the right to bear arms under the Second Amendment and Art. I §24.

A statute exists preventing the display of a weapon under circumstances where the possessor intends to menace other people, RCW 9.41.270. The part of RCW 9.41.270 that makes the display criminal under this statute is if the display “is in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.”

In other words, if the carrying of weapons or firearms at a demonstration was done with the intent to intimidate others, the existing statute covers and prohibits that action, nullifying the need for a new statute with significant constitutional problems.

Conversely, if the display of weapons at a demonstration was not done with the intent to intimidate, then the public policy basis for such a law evaporates and it more clearly becomes an unconstitutional infringement on the right to peaceably assemble.

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