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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF HARNEY

JOSEPH ARNOLD, CLIFF ASMUSSEN,  
GUN OWNERS OF AMERICA, INC., and  
GUN OWNERS FOUNDATION,

Plaintiffs,

v.

KATE BROWN, Governor of the State of  
Oregon, in her official capacity; and ELLEN  
ROSENBLUM, Attorney General of the  
State of Oregon, in her official capacity,  
TERRI DAVIE, Superintendent of the  
Oregon State Police, in her official capacity,

Defendants,

Case No. 22CV41008

**ORCP 79 MOTION FOR TEMPORARY  
RESTRAINING ORDER AND ORDER  
TO SHOW CAUSE WHY  
PRELIMINARY INJUNCTION  
SHOULD NOT ENTER**

Authority for Relief: ORCP 79

EX PARTE

**I.**

**MOTION**

Pursuant to ORCP 79, Plaintiffs move this Court for a Temporary Restraining Order and an Order to Show Cause Why Preliminary Injunction Should Not Enter, as stated below, enjoining Defendants from enforcing Ballot Measure 114 (“BM114”). This Motion is supported by the sworn verifications in Plaintiffs’ Complaint.

Without this Court’s immediate intervention, BM114 will go into full effect—including the requirement that Oregonians take a non-existent safety course to obtain a non-existent permit to purchase a firearm, and the prohibition on the manufacture, import, possession, use, purchase, sale, or other transfer of magazines capable of holding more than 10 rounds—on December 8,

1 2022. Plaintiffs, the members and supporters of the organizational plaintiffs, and numerous other  
2 similarly situated individuals will be unable to exercise their rights under the Or. Const. Art. 1,  
3 Sec. 27 to acquire firearms, and will similarly be prohibited from possessing, using, purchasing,  
4 selling, or otherwise transferring magazines capable of holding more than 10 rounds on that date.  
5 As of December 8, licensed dealers who sell or deliver a firearm to a purchaser or transferee who  
6 does not have a permit to purchase have committed a Class A misdemeanor. *See* BM114, § 8(14)  
7 (attached hereto as Exhibit 1). The same is true for private transferors, *Id.* at § 7(5)(a), and at gun  
8 shows, *Id.* at § 9(5)(a). As of December 8, the unlawful manufacture, importation, possession, use,  
9 purchase, sale or other transfer of a magazine capable of holding more than 10 rounds will be a  
10 class A misdemeanor. *Id.* at § 11(6).

11           Complying with BM114, even during the pendency of this case, will irreparably deprive  
12 countless Oregonians of their right to keep and bear arms, including turning hundreds of thousands  
13 of otherwise law-abiding Oregonians into criminals for continuing to possess and use magazines  
14 capable of holding more than 10 rounds, and completely barring any new sales of firearms, due to  
15 the non-existence of the requisite training course and permit to purchase scheme. Plaintiffs and  
16 hundreds of thousands of Oregonians have no other adequate remedy at law. Therefore, Plaintiffs  
17 move this Court for a temporary restraining order, and an order requiring Defendants to appear  
18 and show cause why a preliminary injunction should not enter, enjoining Defendants from  
19 enforcing BM114 while this case is pending.

20           Plaintiffs request that the Court hear oral argument on Plaintiffs' motion and estimate that  
21 oral argument will require 45-minutes. Official court reporting services are requested. This motion  
22 is authorized under ORCP 79. **Plaintiffs make this request on an emergency basis, and seek**  
23 **this Court's expedited consideration of their motion.**

1 II.

2 STATEMENT OF FACTS

3 Plaintiffs incorporate by reference the allegations contained in Plaintiffs' Verified  
4 Complaint, attached hereto as Exhibit 2.

5 Of particular importance to this motion, all the individual Plaintiffs own, or desire to own,  
6 magazines capable of holding more than 10 rounds of ammunition which, on or after December 8,  
7 2022, due to the prohibition provided for in BM114, will become a crime. *See* Verified Complaint  
8 ¶¶ 4, 5, 48, 50. All individual Plaintiffs desire to possess or continue possessing magazines capable  
9 of holding more than 10 rounds of ammunition outside of their homes on or after December 8,  
10 2022, and would do so but for the prohibition provided for in BM114. *Id.* All individual Plaintiffs  
11 intend to purchase a firearm on or after December 8, 2022 but will be unable to due to the  
12 unavailability of the requisite firearm safety course, and the non-existence of the requisite permit  
13 to purchase scheme in place due to BM114 and, but for BM114, the individual Plaintiffs would  
14 purchase a firearm on or after December 8, 2022. *Id.*

15 Additionally, Plaintiffs GOA and GOF represent the interests of their members and  
16 supporters, many of whom reside within Oregon, within this county, and who own, or desire to  
17 own, magazines capable of holding more than 10 rounds of ammunition on or after December 8,  
18 2022. *Id.* at ¶ 6–9, 49, 51. Many of these members and supporters intend to possess or continue  
19 possessing magazines capable of holding more than 10 rounds of ammunition outside of their  
20 homes on or after December 8, 2022 and, but for BM114, the members and supporters of GOA  
21 and GOF would continue to possess magazines holding more than 10 rounds of ammunition  
22 outside of their homes. *Id.* Many of these members intend to purchase a firearm on or after  
23 December 8, 2022, but will be unable to do so due to the unavailability of the requisite firearm

1 safety course and the non-existence of the requisite permit to purchase scheme in place due to  
2 BM114 and but for BM114, the members and supporters of GOA and GOF would purchase and  
3 continue to purchase firearms on or after December 8, 2022. *Id.*

4 **III.**

5 **POINTS AND AUTHORITIES**

6 Plaintiffs assert that they are entitled to a temporary restraining order and preliminary  
7 injunction in this matter pursuant to either ORCP 79 A(1)(a) or A(1)(b). Therefore, Plaintiffs  
8 address each in turn.

9 **(a) PLAINTIFFS ARE ENTITLED TO A TEMPORARY RESTRAINING ORDER**

10 Plaintiffs request that this Court grant a temporary restraining order, restraining Defendants  
11 from enforcing BM114. Plaintiffs file this Motion shortly after filing the Complaint in this action.  
12 Because Plaintiffs have just filed this action, Plaintiffs do not know precisely which attorney will  
13 be representing Defendants in this action. *See* Declaration of Tony Aiello, Jr., ¶ 3, 4. However,  
14 Plaintiffs have contacted Brian Simmonds Marshall, Senior Assistant Attorney General, by e-mail  
15 to provide him with the pleadings and to inform him that this motion is forthcoming, and attempted  
16 to contact him by telephone as well. *Id.*

17 Due to the extremely short period between the filing of this action and the impending  
18 enforcement date of December 8, 2022 for BM114, and Plaintiffs not knowing precisely which  
19 attorney at the Department of Justice will be representing Defendants, Plaintiffs were unable to  
20 give formal written notice to Defendants of this motion. *See* ORCP 79 B(1). However, as shown  
21 throughout this motion and the verified complaint, immediate and irreparable injury will result to  
22 Plaintiffs before Defendants can be heard in opposition if the temporary restraining order is not  
23 granted, *see* ORCP 79 B(1)(a), because Plaintiffs will have been denied their Constitutional right

1 to bear arms pursuant to Article 1, Section 27 of the Oregon State Constitution, and be turned into  
2 criminals by their continued possession and use of items that currently are entirely lawful. *See*  
3 *Elrod v. Burns*, 427 US 347, 373 (1976) (“The loss of First Amendment freedoms, for even  
4 minimal periods of time, unquestionably constitutes irreparable injury.”); *Melendres v. Arpaio*,  
5 695 F3d 990, 1002 (9<sup>th</sup> Cir 2012) (“It is well established that the deprivation of constitutional rights  
6 ‘unquestionably constitutes irreparable injury.’”) (“It is always in the public interest to prevent the  
7 violation of a party’s constitutional rights”); *see also Elkhorn Baptist Church v. Brown*, 366 Or  
8 506, 546 (2020) (“The inability of plaintiffs to worship in the manner that they prefer and the  
9 inability of intervenors to carry on their businesses in the manner that is usual (or at all) is  
10 irreparable harm for these purposes, even if temporary.) (Garrett, J., concurring).

11 As demonstrated in the Declaration of Tony Aiello, Jr., co-counsel for Plaintiffs, Plaintiffs  
12 have set forth the efforts which have been made to notify Defendant’s attorney of this application  
13 by telephone and e-mail. *See* Declaration of Tony Aiello, Jr., ¶ 3, 4. If Plaintiffs are not granted  
14 the temporary restraining order, Plaintiffs will suffer the irreparable deprivation of their  
15 Constitutional rights pursuant to Or. Const. Art. 1, Sec. 27 while Plaintiffs await a hearing on the  
16 preliminary injunction. This deprivation of rights, even for a day, is irreparable and cannot be  
17 tolerated in a free society, especially in light of the patently unconstitutional nature of BM114.

18 (b) **PLAINTIFFS ARE ENTITLED TO A PRELIMINARY INJUNCTION; ORCP 79**  
19 **A(1)(a).**

20 Pursuant to ORCP 79 A(1)(a), a temporary restraining order or preliminary injunction may  
21 be obtained when sought if:

22 A.(1)(a) When it appears that a party is entitled to relief demanded in a pleading,  
23 and such relief, or any part thereof, consists of restraining the commission or  
continuance of some act, the commission or continuance of which during the

1 litigation would produce injury to the party seeking the relief[.]  
2 ORCP 79 A(1)(a). Plaintiffs are likely to succeed on the merits and have prayed for a permanent  
3 injunction enjoining Defendants from enforcing BM114. Whether or not the BM114 is actively  
4 enforced, Plaintiffs and numerous other Oregonians will be irreparably injured during the  
5 pendency of this case, because licensed firearm dealers will be unable to process purchases due to  
6 the non-existence of the safety course and permit to purchase and the State is, even now, unable to  
7 process background checks timely.

8 **1. Plaintiffs are Likely to Succeed on the Merits.**

9 Plaintiffs have asserted that BM114 violates Article 1, Section 27 of the Oregon State  
10 Constitution, which is Plaintiffs' sole claim for relief in this case.

11 Generally, BM114 contains two parts. The first requires a law-abiding person to obtain a  
12 "permit to purchase" before acquiring any firearm, and constructs a convoluted, multi-step  
13 permitting process requiring involvement by both state and local law enforcement (fingerprinting,  
14 photographs, investigation, background check), along with completion of a firearm safety course,  
15 and payment of a fee, up to \$65 for the original permit and up to \$50 for each renewal. *See* BM114,  
16 § 4. As part of the process to obtain the permit to purchase, BM114 requires training in order to  
17 exercise the right to acquire a firearm, in the form of providing "proof of completion of a firearm  
18 safety course," which is required to be taught by certain types of entities, BM114, § 4(8)(a),  
19 "certified by a law enforcement agency," and required to cover certain topics, BM114, § 4(8)(c).  
20 However, such training does not yet exist and is not yet offered, either by law enforcement or  
21 certified private trainers, and no certification system by law enforcement has yet been developed,  
22 let alone implemented by local law enforcement. Until that occurs, BM114 operates to effectively  
23 eliminate the right to keep and bear arms within Oregon, as no permit can be acquired, no firearm

1 can be acquired.

2 Even after a permit to purchase has been acquired, a firearms dealer *still* cannot transfer a  
3 firearm to the permit holder until the state police has been contacted and again approves the  
4 transfer. BM114, § 6(2)(d). After transfer, the dealer must notify the state police that a firearm has  
5 been transferred. BM114, § 6(3)(c). Finally, the state police are authorized to “retain a record of  
6 the information ... sufficient to reflect each firearm purchased by a permit holder,” thus creating  
7 a gun registry of all firearm sales, maintained by the state. *See* BM114, § 6(7)(a). These provisions  
8 apply not only to transfers of firearms by licensed dealers, but to all transfers of firearms, including  
9 private sales, gifts, and the loaning of a firearm.

10 The second part of BM114 is a prohibition on possession of standard capacity firearm  
11 magazines, banning the “manufacture, importation, possession, use, purchase, sale, or other[]  
12 transfer[]” of a magazine with a capacity greater than 10 rounds of ammunition. BM114, § 11(2).  
13 Aside from exempting government agents such as military and law enforcement, BM114 provides  
14 no general exception even for continuing to possess magazines already owned prior to the effective  
15 date. Rather, BM114 provides a mere “affirmative defense”—contained in a non-existent statute  
16 (ORS 166.055)—from prosecution for magazines owned prior the effective date, but only if the  
17 magazine has been maintained at a person’s private property, subject to certain limited exceptions  
18 for transport to and from certain places and events. *See* BM114, § 11(5). Concealed carry is not  
19 one of those exceptions, as BM114 requires large capacity magazines being transported to be “not  
20 inserted into the firearm” and “locked in a separate container.” BM114, § 11(5)(c)(D). Violation  
21 of BM114’s magazine ban is a Class A misdemeanor. BM114, § 11(6). Additionally, BM114, §  
22 11(5)(c) does not appear to include a self-defense exception for usage of large capacity magazines,  
23 even while one is in their own home.

1                   **A.     Article 1, Section 27 Protects the Individuals Right to Bear Arms.**

2                   Article 1, Section 27 of the Oregon State Constitution provides that “[t]he people shall have  
3                   the right to bear arms for the defence of themselves, and the State, but the Military shall be kept in  
4                   strict subordination to the civil power[.]” Or. Const. Art. 1, § 27. Article 1, Section 27 of the  
5                   Oregon State Constitution recognizes, at a minimum, a right belonging to Oregonians that is co-  
6                   extensive with the protections afforded by the Second Amendment to the United States  
7                   Constitution, making authorities interpreting the Second Amendment relevant and persuasive to  
8                   the interpretation of Article 1, Section 27. Indeed, Oregon’s Constitution cannot afford its citizens  
9                   fewer protections with regard to the right to keep and bear arms than the United States’  
10                  Constitution. *McDonald v. Chicago*, 561 US 742 (2010). *See also Stickley v. City of Winchester*,  
11                  2022 Va. Cir. LEXIS 201, \*35 (Winchester County Circuit Court, Sep. 27, 2022) (“the Fourteenth  
12                  Amendment incorporates the Second Amendment to the States. Therefore, Article I, Section 13,  
13                  of the Constitution of Virginia is, at the very least, co-extensive with the Second Amendment as  
14                  to the enumerated rights guaranteed by the Second Amendment. As a result, it is appropriate for  
15                  this Court to examine Second Amendment jurisprudence to determine whether the provisions of  
16                  §§ 16-34(a)(2), (3), and (4) violate Article I, Section 13.”)

17                  For the sake of clarity, Plaintiffs are not challenging BM114 on Second Amendment  
18                  grounds, nor making any claim to relief under federal law, and offer caselaw interpreting the  
19                  Second Amendment merely as persuasive authority for how the coextensive and substantially  
20                  similar provision of *Oregon’s* Constitution was understood by the drafters of Oregon’s  
21                  Constitution.

22                  The Bill of Rights from Oregon’s 1859 Constitution “was taken verbatim from sections 32  
23                  and 33 of the Indiana Constitution of 1851” and those sections remained unchanged from Indiana’s



1 1816 Constitution. *State v. Kessler*, 289 Or 359, 363 (1980). When drafting Indiana’s Constitution  
2 in 1816, “[t]he drafters of Indiana’s bill of rights of 1816 borrowed freely from the wording of  
3 other state constitutions, most notably the constitutions of Kentucky, Ohio, Tennessee, and  
4 Pennsylvania” which were drafted between 1776 and 1802. *Id.* This makes Oregon’s “right to bear  
5 arms provision” traceable “to state provisions drafted in the revolutionary and post-revolutionary  
6 war era.” *Id.* The bill of rights, including the Second Amendment, were ratified on December 15,  
7 1791. The Second Amendment to the United States Constitution provides: “A well regulated  
8 Militia being necessary to the security of a free State, the right of the people to keep and bear Arms  
9 shall not be infringed.” U.S. Const. Am. II. This language, particularly the words “right to bear  
10 arms” are identical to those contained in the Second Amendment.

11           Simply, there is no textual or historical reason to conclude that the drafters of Oregon’s  
12 Constitution understood Article 1, Section 27 to depart from the protections afforded via the  
13 Second Amendment, let alone offer fewer protections. Indeed, it would make absolutely no sense  
14 for Oregonians to knowingly ratify a state provision that protected less than the Second  
15 Amendment and, therefore, would immediately become inoperative and ineffective. Thus, Second  
16 Amendment case law is persuasive authority for interpreting the scope of Article 1, Section 27.

17           **B.       The Permit to Purchase Scheme of BM114 is Unconstitutional**

18           The BM114 permit to purchase scheme is unconstitutional both in its current and  
19 unavailable or nonexistent form, as well as in the form in which it may, someday, exist once  
20 implemented. First, the permit to purchase scheme, including but not limited to the *application*  
21 *itself*, as well as the requirement that Oregonians seeking a permit to purchase provide “proof of  
22 completion of a firearm safety course,” BM114, § 4(8)(a), is unavailable to Oregonians at this time  
23 either from law enforcement or certified private trainers, and no certification system by law

1 enforcement has yet been developed, let alone implemented by local law enforcement. Until that  
2 occurs, BM114 operates to effectively eliminate the right to keep and bear arms within Oregon:  
3 because no training can be had, no permit can be acquired; and because no permit can be acquired,  
4 no firearm can be acquired.

5 Second, once the firearm safety course and permit to purchase scheme are in place, these  
6 schemes will result in lengthy wait times in processing license applications, as well as for each  
7 purchase once the license is granted, effectively denying ordinary Oregonians their right to bear  
8 arms. BM114 infringes and violates the rights of Oregonians to bear arms by placing the onus on  
9 each Oregonian wishing to exercise their right under the Oregon Constitution to affirmatively  
10 prove their worthiness to exercise their right, rather than on the State to prove that they do not have  
11 that right. This makes the right to bear arms the exception, not the rule.

12 The Oregon State Supreme Court has held that “Article I, Section 27, prevents the  
13 legislature from infringing on the people’s individual right to bear arms for purposes of self-  
14 defense.” *State v. Christian*, 354 Or 22, 30 (2013). As understood in the context of the Second  
15 Amendment and articulated in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022),  
16 when examining whether a regulation infringes on the right to bear arms, courts examine “how  
17 and why the regulations burden a law-abiding citizen’s right to armed self defense.” *Bruen*, 142 S  
18 Ct at 2132–33. This same consideration is echoed in Oregon’s case law. In *Christian*, the Oregon  
19 Supreme Court stated that “the legislature may specifically regulate the manner of possession and  
20 use of protected weapons to promote public safety as long as the exercise of that authority does  
21 not unduly frustrate the right to bear arms guaranteed by Article I, section 27.” *Christian*, 354 Or  
22 at 38. No Oregon case has permitted the State to so-regulate an Oregonian’s right to merely  
23 purchase a firearm.

1           Rather, in *Bruen*—which dealt with New York’s public-carry licenses, and not a permit to  
2 purchase a firearm—the United States’ Supreme Court noted that “any permitting scheme can be  
3 put toward abusive ends” and opened the door to challenges to “shall-issue regimes where, for  
4 example, lengthy wait times in processing license applications or exorbitant fees deny ordinary  
5 citizens their right to public carry.” *Bruen* 142 S Ct at 2138 n. 9. That is the case here. While the  
6 permit to purchase and requisite firearm safety course are unavailable, and as of December 8, 2022,  
7 no Oregonian will be able to exercise their right to bear arms by purchasing a firearm, even after  
8 going through the federal background check which is identical to the background check portion of  
9 BM114 required for a permit to purchase.

10           What is more, even once the permit to purchase program is someday developed, delays  
11 with background checks processed at the state level and the lack of access to the requisite training  
12 courses will make the firearm purchasing process last for months or longer. Oregonians will be  
13 forced to wait for a firearm safety course meeting the requirements of BM114, § 4(8)(c) to be  
14 available. BM114 alludes to an unspecified course that may be offered online, but the existence,  
15 availability, and cost of that course is unknown. Regardless of whether the first portion of the  
16 course is readily available, BM114 also requires an in-person portion of the course before the  
17 permit to purchase can be granted. This requires an “[i]n-person demonstration of the applicant’s  
18 ability to lock, load, unload, fire and store a firearm before an instructor certified by a law  
19 enforcement agency.” BM114, § 4(8)(c)(D). Of course, since this proof of competency *with a*  
20 *firearm* is required before a person can *acquire a firearm*, a trainee is left to the good graces of  
21 others to loan the person a firearm (in their presence, of course).

22           Finally, once an Oregonian has waited for their opportunity to demonstrate their worthiness  
23 to exercise their Constitutional right—which has now been reduced to a privilege to be earned –

1 and paid for – from Government, rather than a right recognized by Government—that Oregonian  
2 is required to wait *again* for *another* federal background check, which federal and state law  
3 demand for every dealer firearm sale. Then, a person is required to wait *even further* for the firearm  
4 dealer to contact the Oregon State Police to provide a unique (and trackable) approval number.

5 This is precisely the type of abusive and lengthy process that will, in effect, deny the  
6 ordinary citizen their right to public carry as contemplated by both state and federal supreme courts  
7 in *Christian* and *Bruen*. However, Oregon has chosen to go even further in their abuse than  
8 contemplated in *Bruen* by placing these abusive and lengthy procedures on ordinary citizens  
9 merely wishing to even *purchase* any firearm, not just to carry that firearm in public. Simply,  
10 Oregon’s permit to purchase scheme violates and infringes the right to bear arms guaranteed by  
11 Article 1, Section 27 of the Oregon Constitution and is, therefore, unconstitutional. *Christian*, 354  
12 Or at 28.

### 13 C. The Magazine Ban of BM114 is Unconstitutional

14 In addition to effectively banning the sale of firearms in the State, BM114 goes further to  
15 ban the manufacture, import, possession, use, purchase, sale, or other transfer of magazines  
16 capable of holding more than 10 rounds of ammunition. Oregon’s limited case law interpreting  
17 Article 1, Section 27 does not support an outright ban on any firearm, let alone a firearm accessory  
18 (critical to the operation of the firearm) that comes standard with many of the most popular  
19 firearms and firearm platforms. Therefore, BM114’s ban on magazines capable of holding more  
20 than 10 rounds of ammunition is unconstitutional on its face. *See Christian* 354 Or at 30  
21 (prohibiting restrictions denying the “individual right to bear arms for purposes limited to self-  
22 defense.”); *cf.* Complaint at ¶ 4 (Plaintiff Arnold will be unable to carry his firearm for self-  
23 defense, because there is no commercially available magazine available that holds ten or fewer

1 rounds).

2           The Oregon Supreme Court has limited the State’s ability to regulate protected arms to  
3 allow only the regulation of the *manner of possession and use* of protected arms, *Christian*, 354  
4 Or at 38, and adds that banning “the mere possession” of arms is not permitted under the Oregon  
5 Constitution. *Id.* at 40–41 (citing *State v. Bocker*, 291 Or 255, 259 (1981); *State v. Delgado*, 298  
6 Or 395, 403–04 (1984)). The term *arms*, under both the Oregon and Federal Constitutions,  
7 necessarily includes not only firearms but the magazines and ammunition necessary to use a  
8 firearm. *Fyock v. City of Sunnyvale*, 779 F3d 991, 998 (9<sup>th</sup> Cir 2015) (“our case law supports the  
9 conclusion that there must also be some corollary, albeit not unfettered, right to possess the  
10 magazines necessary to render those firearms operable.”) (citing *Jackson v. City & Cty of S.F.*, 746  
11 F3d 953, 967 (9<sup>th</sup> Cir 2014) (right to possess firearms implies corresponding right to possess  
12 ammunition necessary to use them)). In *Heller*, the United States’ Supreme Court *specifically*  
13 upheld the right to keep a handgun in an operable state “for the purpose of immediate self-defense.  
14 *Heller*, 554 US at 635. In *Christian*, the Oregon State Supreme Court similarly held that the right  
15 to bear arms under Article 1, Section 27 includes for purposes of self-defense, which requires a  
16 firearm to be operable, *Christian*, 354 Or at 30, and for a firearm to be operable, it must have  
17 ammunition and means of supplying the firearm with that ammunition – *i.e.*, a magazine. There is  
18 simply no Oregon case law supporting any contention that the term *arms* excludes magazines or  
19 ammunition. In *Caetano v. Massachusetts*, 577 U.S. 411 (2016), the Supreme Court reaffirmed its  
20 conclusion in *Heller* that “the Second Amendment extends, *prima facie*, to **all instruments that**  
21 **constitute bearable arms**, even those that were not in existence at the time of the founding ...”  
22 and that this “Second Amendment right is fully applicable to the States.” *Id.* at 411, 416 (emphasis  
23 added).

1           The Oregon Court of Appeals has regarded the right of Oregonians to bear “arms” to  
2 include “arms” which are, “as modified by its modern design and function,” *of the sort* in existence  
3 in the mid-nineteenth century, were in common use, and were used for personal defense. *See*  
4 *Oregon State Shooting Ass’n v. Multnomah County*, 122 Or App 540, 544 (1993) (quoting *State v.*  
5 *Delgado*, 298 Or 395, 400 (1984)). This case was decided over a decade prior to *Heller* (which  
6 applied the right to bear arms to the individual American) and *McDonald* (which applied the  
7 Second Amendment to the states). *See Heller*, 554 US 570; *McDonald*, 561 US 742. In *Heller*, the  
8 Court characterized the argument that the Second Amendment only applies to “those arms in  
9 existence in the 18<sup>th</sup> century” as “bordering on the frivolous.” *Heller*, 554 US at 582. The Court  
10 added that “[j]ust as the First Amendment protects modern forms of communications . . . and the  
11 Fourth Amendment applies to modern forms of search . . . the Second Amendment extends, prima  
12 facie, to all instruments that constitute bearable arms, even those that were not in existence at the  
13 time of the founding.” *Id.* (internal citations omitted).

14           Even before *Heller*, the Oregon Supreme Court held in a similar vein that—when  
15 examining whether an *arm* is *of the sort* in existence at or prior to Oregon’s founding—the Court  
16 is to examine whether the modern equivalent is “substantially different from its historical  
17 antecedent” and bear in mind that the drafters of Oregon’s Constitution “must have been aware  
18 that technological changes were occurring in weaponry as in tools generally.” *Delgado*, 298 Or at  
19 403 (“The format and efficiency of weaponry was proceeding apace. This was the period of  
20 development of the Gatling gun, breach loading rifles, metallic cartridges and repeating rifles. The  
21 addition of a spring to open the blade of a jackknife is hardly a more astonishing innovation than  
22 those just mentioned.”). These considerations are analogous, if not identical, to those in *Heller*.  
23 Indeed, when interpreting Oregon’s Constitution, the Oregon Supreme Court has held that “[a]s a

1 general matter, we examine the text of the constitution in its historical context, along with relevant  
2 cases interpreting it . . . In conducting that examination, **our purpose is not to freeze the meaning**  
3 **of the state constitution to the time of its adoption**, but is instead to identify, in light of the  
4 meaning understood by the framers, relevant underlying principles that may inform our application  
5 of the constitutional text to modern circumstances.” *Couey v. Atkins*, 257 Or 460, 490 (2015)  
6 (internal citations omitted) (emphasis added).

7 Firearms capable of holding multiple rounds, including firearms capable of firing more  
8 than 10 rounds without reloading, have been in existence since the 16<sup>th</sup> century; the first of its kind  
9 was a firearm capable of firing 16-rounds.<sup>1</sup> As firearm technology continued to develop, the British  
10 army first issued a multishot firearm to its army in 1658.<sup>2</sup> Still prior to the adoption of the Second  
11 Amendment and the founding of the United States, a successful early-version of the revolver,  
12 called the Puckle Gun, was patented in 1718 and held eleven charges that fired separately with  
13 each trigger-pull.<sup>3</sup> At the time the Second Amendment was being ratified, the emerging leader in  
14 multishot firearms was the Girandoni air rifle which offered a 20- or 22-shot magazine.<sup>4</sup> This  
15 firearm is so germane to Oregon’s history the Meriwether Lewis himself carried a Girandoni on  
16 the Lewis and Clark expedition of the Oregon territory.<sup>5</sup> The .46 and .49 caliber Girandoni rifles  
17 were invented around 1779,<sup>6</sup> and could shoot through a one-inch thick wood plank or take down

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19 <sup>1</sup> David B. Kopel, *The History of Firearm Magazines and Magazine Prohibition*, 78 ALB. L. REV. 849 (2014) (citing LEWIS WINANT, *FIREARMS CURIOSA* 168–70 (2009)).

20 <sup>2</sup> Clayton E. Cramer & Joseph Olson, *Pistols, Crime, and Public Safety in Early America*, 44 WILLAMETTE L. REV. 699, 716-18 (2008).

21 <sup>3</sup> Kopel, *supra* n. 1 at 716–17.

22 <sup>4</sup> Cramer & Olson, *supra* n. 2 at 853 (citing JIM SUPICA ET AL, *TREASURES OF THE NRA NATIONAL FIREARMS MUSEUM* 31 (2013)).

23 <sup>5</sup> *Ibid.* (citing JIM GARRY, *WEAPONS OF THE LEWIS & CLARK EXPEDITION* 94 (2012))

<sup>6</sup> *Ibid.* (citing JIM SUPICA ET AL, *TREASURES OF THE NRA NATIONAL FIREARMS MUSEUM* 31 (2013)).

1 an elk.<sup>7</sup> Firearm technology continued to progress into the 1800s, and has continued to progress  
2 since. In 1821, the Jennings multi-shot flintlock rifle could fire 12-shots before reloading.<sup>8</sup> Pistol  
3 technology also advanced during this time, with so-called “Pepperbox” pistols being produced in  
4 the 1830s that could fire more than 10 rounds without reloading.<sup>9</sup> Moving into the mid-1800s, and  
5 prior to Oregon’s founding, multi-shot technology continued developing rapidly:

6 The 1830s through the 1850s saw a number of different firearm designs intended  
7 to increase ammunition capacity. In 1838, the Bennett and Haviland Rifle was  
8 invented; it was a rifle version of the pepperbox, with twelve individual chambers  
9 that were manually rotated after each shot. This would bring a new chamber,  
10 preloaded with powder and shot, into the breach, ready to be fired. Alexander Hall  
11 and Colonel Parry W. Porter each created rifles with capacities greater than ten in  
12 the 1850s. Hall's design had a fifteen-shot rotating cylinder (similar to a revolver),  
13 while Porter's design used a thirty-eight-shot canister magazine. The great  
14 breakthrough, however, began with a collaboration of Daniel Wesson (of Smith and  
15 Wesson) and Oliver Winchester. They produced the first metallic cartridge-  
containing the gunpowder, primer, and ammunition in a metallic case similar to  
modern ammunition. Furthermore, they invented a firearms mechanism that was  
well suited to the new metallic cartridge: the lever action. Their company, the  
Volcanic Repeating Arms Company, introduced the lever action rifle in 1855. This  
rifle had up to a thirty-round tubular magazine under the barrel that was operated  
by manipulating a lever on the bottom of the stock. The lever-action allowed a  
shooter to quickly expel spent cartridges and ready the firearm for additional shots.  
An 1859 advertisement bragged that the guns could be loaded and fire thirty shots  
in less than a minute.<sup>10</sup>

16 Regardless of the prevalence of these firearms in Oregon at the time of its founding, it  
17 cannot be argued that the drafters of Article 1, Section 27 were ignorant to emerging firearm  
18 technology, or the idea that firearms could hold more than 10 rounds and be rapidly fired. Oregon  
19 is not an island, and there is no reason why the drafters would have assumed that technology

20

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21 <sup>7</sup> *Ibid.*

22 <sup>8</sup> *Ibid.* (citing NORM FLAYDERMAN, FLAYDERMAN’S GUIDE TO ANTIQUE AMERICAN FIREARMS AND  
THEIR VALUES 683 (9th ed. 2007)).

23 <sup>9</sup> *Ibid.* at 854 (citing LEWIS WINANT, PEPPERBOX FIREARMS 7 (1952)).

<sup>10</sup> *Ibid.* at 854–55 (internal citations omitted).



1 developing in the Eastern United States would not make its way to the rural State of Oregon. As  
2 the Oregon Supreme Court has noted, the drafters of Oregon’s Constitution “must have been aware  
3 that technological changes were occurring in weaponry as in tools generally.” *Delgado*, 298 Or at  
4 403 (“The format and efficiency of weaponry was proceeding apace. This was the period of  
5 development of the Gatling gun, breach loading rifles, metallic cartridges and repeating rifles. The  
6 addition of a spring to open the blade of a jackknife is hardly a more astonishing innovation than  
7 those just mentioned.”).

8 Beyond the historical references, and as noted in Plaintiffs’ Complaint, magazines capable  
9 of holding more than 10 rounds of ammunition are extremely popular today and come standard  
10 with many of the most popular firearms and firearm platforms. *See* Complaint, ¶¶ 4–9, 48–51.  
11 Simply, magazines capable of holding more than 10 rounds of ammunition are of the sort “typically  
12 possessed by law-abiding citizens for lawful purposes....” *Heller*, 544 US at 625.

13 BM114’s ban on magazines capable of holding more than 10 rounds of ammunition is  
14 unconstitutional under Oregon’s constitution. This short-sighted ban, if it is allowed to be  
15 enforced, will immediately deprive hundreds of thousands of Oregonians of their right to bear arms  
16 pursuant to Article 1, Section 27 of the Oregon Constitution. Pursuant to ORCP 79, Plaintiffs have  
17 demonstrated a likelihood of success on the merits and Plaintiffs’ motion for a temporary  
18 restraining order and preliminary injunction should be granted.

19 **2. Plaintiffs Have Sought the Appropriate Relief Pursuant to ORCP 79**

20 In addition to Plaintiffs’ obligation to demonstrate their apparent entitlement to the relief  
21 prayed for, ORCP 79 also requires Plaintiffs to show that the relief demanded in their pleading  
22 consists or partially consists of restraining the commission or continuance of some act. Here,  
23 Plaintiffs have prayed for a declaratory judgment and injunctive relief pursuant to 208 USC § 2201

1 and ORS 28.020 declaring BM114 unconstitutional and unenforceable and permanently enjoining  
2 Defendants from enforcing it. *See* Complaint, 25:21–26:9. This ORCP 79 requirement is satisfied.

3 **3. Plaintiffs Will Be Irreparably Injured if BM114 Is Enforced; The Balance of**  
4 **Public and Private Interests Favors Plaintiffs.**

5 ORCP 79 requires Plaintiffs to show that the continued enforcement of BM114 during this  
6 litigation will produce injury to them, and that this injury will be irreparable. ORCP 79 A(1)(a);  
7 *see State of Oregon ex rel v. Dobson*, 195 Or 533, 580 (1952) (showing of irreparable harm  
8 required).

9 As articulated above, BM114 will, on December 8, 2022, immediately deprive all  
10 Oregonians of their right to bear arms as recognized by Article 1, Section 27 of the Oregon State  
11 Constitution by immediately depriving them of the ability to purchase any firearm whatsoever—  
12 due to the unavailability and nonexistence of both the permit to purchase scheme and the requisite  
13 firearm safety course—as well as their right to bear magazines capable of holding more than 10  
14 rounds. Moreover, even once the permit to purchase scheme is put in place, time delays will further  
15 deprive all Oregonians of the ability to purchase firearms due to BM114’s convoluted permitting  
16 process and the lengthy time periods exhausted in obtaining the permit to purchase. This  
17 constitutes a deprivation of the right to bear arms by infringing that right as recognized by Article  
18 1, Section 27 of the Oregon State Constitution. *Christian*, 354 Or at 38; *Bruen*, 142 S Ct at 2138  
19 n. 9 (“That said, because any permitting scheme can be put toward abusive ends, we do not rule  
20 out constitutional challenges to shall-issue regimes where, for example, lengthy wait times in  
21 processing license applications or exorbitant fees deny ordinary citizens their right to public  
22 carry.”) (applying to permits for public carry, not the even more foundational right to purchase).

23 Additionally, the harm to Plaintiffs and hundreds of thousands of Oregonians will be

1 irreparable. Allowing BM114 to be enforced will cause the individual Plaintiffs, and GOA and  
2 GOF’s members, irreparable injury. The deprivation of a fundamental constitutional right, even  
3 temporarily, constitutes irreparable injury. *See Melendres*, 695 F3d at 1002 (“It is well established  
4 that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”); *see*  
5 *also Elkhorn Baptist Church* 366 Or at 546 (“The inability of plaintiffs to worship in the manner  
6 that they prefer and the inability of intervenors to carry on their businesses in the manner that is  
7 usual (or at all) is irreparable harm for these purposes, even if temporary.) (Garrett, J., concurring).  
8 As BM114 deprives Oregonians of being able to acquire a firearm at all, being forced to wait many  
9 weeks or months, BM114 could stop someone from obtaining a much needed firearm for self-  
10 defense – potentially the difference between life or death.<sup>11</sup>

11 Plaintiffs ask this Court to maintain the pre-December 8, 2022 status quo, which has existed  
12 in the State of Oregon since 1859, and which continues to exist in the vast majority of States. This  
13 is not a radical request. Meanwhile, Defendants will ask that this Court deny this motion and allow  
14 the State to usher in one of the most extreme and radical anti-gun regimes in the country. Yet  
15 Defendants are not even ready to implement this ballot measure, and the Oregon State Sheriff’s  
16 Association have been quoted on record saying that “without a permit system in place” they believe  
17 “that all firearms sales by dealers, at gun shows, and most private transfers ... in Oregon will  
18 immediately stop.”<sup>12</sup>

19 No doubt, Defendants will argue that the State will suffer irreparable injury if this brand  
20

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21 <sup>11</sup> To be sure, BM114 permits a short-term emergency loan of a firearm, but that requires a person  
22 under threat to (a) know someone with a firearm and (b) be willing to convince that person to loan  
a firearm, at great personal risk including potential criminal prosecution.

23 <sup>12</sup> *See* <https://www.koin.com/news/oregon/without-permitting-system-in-place-ossa-expects-gun-sales-to-halt-after-measure-114/>.

1 new law is enjoined. But which is predominant, the State’s liberty or the people’s? The Oregon  
2 Constitution, like the Federal Constitution, is intended to *restrain* the State and to recognize and  
3 protect the rights of Oregonians. Our constitutional form of government thus heavily weighs in  
4 favor of granting this motion. As such, this Court should grant Plaintiffs’ motion and immediately  
5 enjoin enforcement of BM114.

6 (c) **PLAINTIFFS ARE ENTITLED TO PRELIMINARY INJUNCTION; ORCP 79**  
7 **A(1)(b).**

8 Pursuant to ORCP 79 A(1)(b), a temporary restraining order or preliminary injunction may  
9 be obtained when sought if:

10 A.(1)(b) When it appears that the party against whom a judgment is sought is doing  
11 or threatens, or is about to do, or is procuring or suffering to be done, some act in  
12 violation of the rights of a party seeking judgment concerning the subject matter of  
the action, and tending to render the judgment ineffectual.

13 ORCP 79 A(1)(b).

14 The effective date for BM114 is December 8, 2022. As of that date, Oregonians will be  
15 unable to exercise their rights to keep and bear arms by purchasing a firearm, because the required  
16 safety course and permit to purchase program is nonexistent. Oregonians will also be unable to  
17 exercise their rights to bear arms with regard to any magazine they currently own or would like to  
18 purchase, that is capable of holding more than 10 rounds of ammunition. Defendants, and the  
19 prosecutors and law enforcement officials they supervise and control, are about to begin enforcing  
20 BM114 which will violate the rights of Plaintiffs and innumerable other Oregonians, altering the  
21 status quo come December 8, 2022. The rights of Plaintiffs and all Oregonians are the subject  
22 matter of this action. Once these rights are denied to Plaintiffs and all other Oregonians, no later-  
23 entered Judgment can restore the right that was deprived to them, or compensate for the

1 deprivation. *See Elrod*, 427 US at 373; *Melendres*, 695 F3d at 1002; *Elkhorn Baptist Church*, 366  
2 Or at 546 (Garrett, J., concurring).

3 **IV.**

4 **BOND REQUIREMENT**

5 No bond is required by ORS 28.020. Further, a court is required to dispense with any  
6 security bond requirement in this instance under ORCP 82 A(1)(b)(ii) because no security bond is  
7 required where “[a] restraining order or preliminary injunction is sought to prevent unlawful  
8 conduct when the effect of the injunction is to restrict the enjoined party to available judicial  
9 remedies.” ORCP 82 A(1)(b)(ii). In this case, a Preliminary Injunction will only require  
10 Defendants to adhere to the status quo. Any position by Defendants that enforcement of BM114  
11 somehow constitutes an emergency is unsupportable.

12 Alternatively, should the Court find a bond is necessary to issue the restraining order or  
13 preliminary injunction, Plaintiffs contend that this bond should be for a nominal amount because  
14 the purpose of a bond under ORCP 82 is “for the payment of such costs, damages, and attorney  
15 fees as may be incurred or suffered” by Defendants if they are found to have been “wrongfully  
16 enjoined or restrained.” Here, the State of Oregon will defer paying filing fees. *See* ORS 20.140.  
17 Further, Defendants are not entitled to attorney fees in this action and will not incur damages as a  
18 result of being enjoined until the legality of BM114 is determined.

19 **V.**

20 **CONCLUSION**

21 In light of the foregoing, and pursuant to ORCP 79, Plaintiffs request that this Court enter  
22 a Preliminary Injunction enjoining Defendants from enforcing the unconstitutional and oppressive  
23 BM114 until a determination on the merits can be reached. Absent this Court’s intervention,

1 Plaintiffs and hundreds of thousands, if not millions, of Oregonians will be deprived of their  
2 Constitutional rights to bear arms pursuant to Article 1, Section 27 of the Oregon Constitution.  
3 This deprivation of rights, even if only during the pendency of this case, cannot be tolerated in a  
4 free society.

5 Respectfully Submitted,

6 DATED: **December 2, 2022**

7 **Tyler Smith and Associates, PC**

8 By /s/ Tyler D. Smith  
9 Tyler D. Smith, OSB #075287  
10 Tony L. Aiello, Jr., OSB #203404  
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15 Tyler@RuralBusinessAttorneys.com  
16 Tony@RuralBusinessAttorneys.com  
17  
18  
19  
20  
21  
22  
23

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on **December 2, 2022**, I caused a true copy of Plaintiffs **ORCP 79**  
3 **MOTION FOR ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION**  
4 **SHOULD NOT ENTER** and **DECLARATION OF TONY AIELLO, JR.** to be served upon the  
5 following named parties or their attorney as indicated below and addressed to the following:

6 Governor Kate Brown Attorney General Ellen F. Rosenblum  
Oregon State Capitol Oregon Department of Justice  
7 900 Court St. NE, Suite 254 1162 Court St. NE  
Salem, Oregon 97301 Salem, OR 97301  
8 Defendant Defendant

9 Superintendent of Oregon State Police Terri Davie  
Oregon State Police  
10 3565 Trelstad Ave. SE  
Salem, Oregon 97317  
11 Defendant

12 **Courtesy Copy to Presumptive Counsel for Defendants via E-mail**  
Brian Simmonds Marshall  
13 Brian.S.Marshall@doj.state.or.us

14 Mailing was done by:

- 15  Via First Class Mail  
16  Via Facsimile  
 Via Hand-Delivery  
 Via E-mail  
17  Via OJD File & Serve System

18 DATED: **December 2, 2022**

19 **Tyler Smith and Associates, PC**

20 By /s/ Tyler D. Smith  
Tyler D. Smith, OSB #075287  
21 Tony L. Aiello, Jr., OSB #203404  
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## PREAMBLE

Whereas the People of the State of Oregon have seen a sharp increase in gun sales, gun violence, and raised fear in Oregonians of armed intimidation, it is imperative to enhance public health and safety in all communities; and

Whereas the gun violence in Oregon and the United States, resulting in horrific deaths and devastating injuries due to mass shootings, homicides and suicides is unacceptable at any level, and the availability of firearms, including semiautomatic assault rifles and pistols with accompanying large-capacity ammunition magazines, pose a grave and immediate risk to the health, safety and well-being of the citizens of this State, particularly our youth; and

Whereas Oregon currently has no permit requirements for purchasing a semiautomatic assault firearm or any other type of weapon and studies have shown that permits-to-purchase reduce firearm-related injuries and death and studies further have shown that firearm ownership or access to firearms triples the risk of suicide and doubles the risk of homicide when compared to someone who does not have access, this measure will require that anyone purchasing a firearm must first complete a safety training course, successfully pass a full background check and, only then, will an individual be granted a permit-to-purchase a firearm, so that firearms are kept out of dangerous hands; and

Whereas large-capacity magazines are often associated with semiautomatic assault rifles, and can also be used with many semiautomatic firearms including shotguns and pistols, and estimates suggest that nearly 40% of crime guns used in serious violent crimes, including attacks on law enforcement officers, are equipped with large-capacity magazines; and

Whereas firearms equipped with large-capacity magazines increase casualties by allowing a shooter to continue firing for longer periods of time before reloading, thus explaining their use in all 10 of the deadliest mass shootings since 2009, and in mass shooting events from 2009 to 2018 where the use of large-capacity magazines caused twice as many deaths and 14 times as many injuries, including the 2015 shooting at Umpqua Community College in Roseburg, Oregon in which 10 people were killed and 7 more were injured; and

Whereas restrictions on high-capacity magazines during the 10-year federal ban from 1994-2004 and the ban in over nine (9) states and the District of Columbia have been found to reduce the number of fatalities and injuries in shooting incidents, this measure will enhance the safety of residents, particularly children, of this state by prohibiting the manufacture, sale, or transfer of large-capacity ammunition magazines and regulate the use of such magazines that are currently owned;

Now, therefore:

Be It Enacted by the People of the State of Oregon

**SECTION 1.** Sections 2 to 11 of this 2022 Act are added to and made a part of ORS 166.210 to 166.490.

**SECTION 2.** The People of the State of Oregon find and declare that regulation of sale, purchase and otherwise transferring of all firearms and restriction of the manufacture, import, sale, purchase, transfer, use and possession of ammunition magazines to those that hold no more than 10 rounds will promote the public health and safety of the residents of this state and this Act shall be known as the Reduction of Gun Violence Act.

## DEFINITIONS

**SECTION 3.** Definitions. As used in sections 3 to 10 of this 2022 Act:

- (1) "Criminal background check" has the same meaning given to this term in ORS 166.432(1)(a) to (e).
- (2) "Department" means the Department of State Police.
- (3) "Gun dealer" means a person engaged in the business, as defined in 18 U.S.C. 921, of selling, leasing or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker or otherwise.
- (4) "Permit" or "permit-to-purchase" mean an authorization issued to a person to purchase or acquire a firearm, provided all other requirements at the time of purchase or acquisition are met.
- (5) "Permit Agent" means a county sheriff or police chief with jurisdiction over the residence of the person making an application for a permit-to-purchase, or their designees.
- (6) "Transfer" has the meaning given that term in ORS 166.435(1)(a).
- (7) "Transferor" means a person who is not a gun dealer or licensed as a manufacturer or importer under 18 U.S.C. 923



and who intends to deliver a firearm to a transferee.

## PERMIT-TO-PURCHASE PROCESS

### SECTION 4.

(1)(a) A person may apply for a permit-to-purchase a firearm or firearms under this section to the police chief or county sheriff with jurisdiction over the residence of the person making the application, or their designees, hereinafter referred to as "permit agent".

(b) A person is qualified to be issued a permit-to-purchase under this section if the person:

(A) Is not prohibited from purchasing or acquiring a firearm under state or federal law, including but not limited to successfully completing a criminal background check as described under paragraph (e) of this subsection;

(B) Is not the subject of an order described in ORS 166.525 to 166.543;

(C) Does not present reasonable grounds for a permit agent to conclude that the applicant has been or is reasonably likely to be a danger to self or others, or to the community at large, as a result of the applicant's mental or psychological state or as demonstrated by the applicant's past pattern of behavior involving unlawful violence or threats of unlawful violence;

(D) Provides proof of completion of a firearm safety course as defined in subsection (8) of this section; and

(E) Pays the fee described in paragraph (b) of subsection (3) of this section.

(c) An application for a permit under this section must state the applicant's legal name, current address and telephone number, date and place of birth, physical description, and any additional information determined necessary by department rules. The application must be signed by the applicant in front of the permit agent.

(d) The permit agent shall verify the applicant's identity with a government-issued form of identification bearing a photograph of the applicant.

(e) The applicant must submit to fingerprinting and photographing by the permit agent. The permit agent shall fingerprint and photograph the applicant and shall conduct any investigation necessary to determine whether the applicant meets the qualifications described in paragraph (b) of this section. The permit agent shall request the department to conduct a criminal background check, including but not limited to a fingerprint identification, through the Federal Bureau of Investigation. The Federal Bureau of Investigation shall return the fingerprint cards used to conduct the criminal background check and may not keep any record of the fingerprints. Upon completion of the criminal background check and determination of whether the permit applicant is qualified or disqualified from purchasing or otherwise acquiring a firearm the department shall report the results, including the outcome of the fingerprint-based criminal background check, to the permit agent.

(2)(a) If during the background check, the department determines that:

(A) A purchaser is prohibited from possessing a firearm under ORS 166.250 (1)(c), the department shall report the attempted application for a permit, the purchaser's name and any other personally identifiable information to all federal, state and local law enforcement agencies and district attorneys that have jurisdiction over the location or locations where the attempted application for a permit was made and where the permit applicant resides;

(B) Based on the judgment of conviction, the permit applicant is prohibited from possessing a firearm as a condition of probation or that the permit applicant is currently on post-prison supervision or parole, the department shall report the attempted application for a permit to the permit applicant's supervising officer and the district attorney of the county in which the conviction occurred.

(C) The permit applicant is prohibited from possessing a firearm due to a court order described in ORS 166.255 (1)(a), the department shall report the attempted application for a permit to the court that issued the order.

(D) The permit applicant is under the jurisdiction of the Psychiatric Security Review Board, the department shall report the attempted application for a permit to the board.

(b) Reports required by paragraphs (A) to (D) of subsection (2)(a) shall be made within 24 hours after the determination is made, unless a report would compromise an ongoing investigation, in which case the report may be delayed as long as necessary to avoid compromising the investigation.

(c) On or before January 31 of each year, beginning in 2024, the department shall annually publish a report indicating for each county the number of applications made to any permit agent, the number of permits-to-purchase issued and the number of permits-to-purchase denied and the reasons for denial. The department may, by rule, include any additional

information that it determines would be helpful to ensuring the permit-to-purchase process is being administered in a consistent and equitable manner.

(3)(a) Within 30 days of receiving an application for a permit under this section, if the permit agent has verified the applicant's identity and determined that the applicant has met each of the qualifications described in paragraph (1)(b) of this section, the permit agent shall issue the permit-to-purchase.

(b) The permit agent may charge a reasonable fee reflecting the actual cost of the process but shall not exceed \$65, including the cost of fingerprinting, photographing and obtaining a criminal background check.

(4)(a) The department shall develop:

(A) A standardized application form for a permit under this section; and

(B) A form in quadruplicate for use by permit agents in issuing permits under this section.

(b) The issuing permit agent shall maintain a copy of each permit issued under this section.

(c) The person named in a permit shall:

(A) Maintain a copy of the permit as long as the permit is valid.

(B) Present a copy of the permit to the gun dealer or transferor of a firearm when required under ORS 166.412, 166.435, 166.436 or 166.438.

(5)(a) The permit agent shall report the issuance of a permit under this section to the department, and shall provide to the department a copy of the permit and any information necessary for the department to maintain an electronic searchable database of all permits issued under this section. A permit agent revoking a permit shall report the revocation to the department at the time that notice of the revocation has been sent to the permit holder.

(b) The department shall maintain the electronic database described in paragraph (a) of this subsection by ensuring that new permits are added to the database, renewed permits are assigned a new expiration date, and expired or revoked permits are marked expired or revoked but retained in the database.

(6)(a) A permit-to-purchase issued under this section does not create any right of the permit holder to receive a firearm.

(b) A permit-to-purchase issued under this section is not a limit on the number of firearms the permit holder may purchase or acquire during the time period when the permit is valid.

(7)(a) A permit-to-purchase issued under this section is valid for five years from the date of issuance, unless revoked.

(b) A person may renew an unexpired permit issued under this section by repeating the procedures set forth in subsection (1) of this section, except:

(A) A full finger print set does not need to be taken again if the original set has been retained by the permit agent or is otherwise available; and

(B) The training course does not need to be completed, provided the course previously taken fully complies with each of the requirements set forth in subsection 8 of this section.

(c) The permit agent may charge a reasonable fee for renewal of the permit, reflecting the actual cost of the process but shall not exceed \$50, including the cost of obtaining a criminal background check and photographing.

(8) As used in this section, "proof of completion of a firearm safety course" means the following:

(a) Proof of completion of any firearms training course or class available to the general public that is offered by law enforcement, a community college, or a private or public institution or organization or firearms training school utilizing instructors certified by a law enforcement agency, and that includes the components set forth in paragraph (c) of this subsection; or

(b) Proof of completion of any law enforcement firearms training course or class that is offered for security guards, investigators, reserve law enforcement officers, or any other law enforcement officers, and that includes the components set forth in paragraph (c) of this subsection;

(c) A firearms training course or class required for issuance of a permit-to-purchase must include:

(A) Review of federal and state laws in place at the time of the class and other safe practices related to ownership, purchase, transfer, use and transportation of firearms;

(B) Review of federal and state safe storage laws in place at the time of the class and other safe practices related to safe storage, including reporting lost and stolen guns;

(C) Prevention of abuse or misuse of firearms, including the impact of homicide and suicide on families, communities and the country as a whole; and

(D) In-person demonstration of the applicant's ability to lock, load, unload, fire and store a firearm before an instructor certified by a law enforcement agency. This requirement may be met separately from the other course requirements in subparagraphs (A), (B) and (C) of paragraph (c), which may be completed in an on-line course, provided the on-line course has been conducted by a trainer certified by law enforcement.

(d) Proof of successful completion of a training course in order to meet the requirements for a concealed handgun license issued under ORS 166.291 and 166.292 may be submitted for a permit as a substitute for the requirements in paragraph (c) of this subsection, provided the completed course included each of the components set forth in paragraph (c) of this subsection.

(9) The department may adopt rules to carry out the provisions of this section.

#### PERMIT-TO-PURCHASE DUE PROCESS APPEAL

**SECTION 5.** (1) If the application for the permit-to-purchase is denied, the permit agent shall set forth in writing the reasons for the denial. The denial shall be placed in the mail to the applicant by certified mail, restricted delivery, within 30 days after the application was made. If no decision is issued within 30 days, the person may seek review under the procedures in subsection (5) of this section.

(2) Notwithstanding subsections (1) to (3) of section 4 of this 2022 Act, and subject to review as provided in subsection (5) of this section, a permit agent may deny a permit-to-purchase if the permit agent has reasonable grounds to believe that the applicant has been or is reasonably likely to be a danger to self or others, or to the community at large, as a result of the applicant's mental or psychological state or as demonstrated by the applicant's past pattern of behavior involving unlawful violence or threats of unlawful violence.

(3)(a) Any act or condition that would prevent the issuance of a permit-to-purchase is cause for revoking a permit-to-purchase.

(b) A permit agent may revoke a permit by serving upon the permittee a notice of revocation. The notice must contain the grounds for the revocation and must be served either personally or by certified mail, restricted delivery. The notice and return of service shall be included in the file of the permit holder. The revocation is effective upon the permit holder's receipt of the notice.

(4) Any peace officer or corrections officer may seize a permit-to-purchase and return it to the issuing permit agent if the permit is held by a person who has been arrested or cited for a crime that can or would otherwise disqualify the person from being issued a permit. The issuing permit agent shall hold the permit for 30 days. If the person is not charged with a crime within the 30 days, the permit agent shall return the permit unless the permit agent revokes the permit as provided in subsection (3) of this section.

(5) A person denied a permit-to-purchase or whose permit is revoked or not renewed may petition the circuit court in the petitioner's county of residence to review the denial, nonrenewal or revocation. The petition must be filed within 30 days after the receipt of the notice of denial or revocation.

(6) The judgment affirming or overturning the permit agent's decision shall be based on whether the petitioner meets the criteria that are used for issuance of a permit-to-purchase and, if the petitioner was denied a permit, whether the permit agent has reasonable grounds for denial under subsection (2) of this section. Whenever the petitioner has been previously sentenced for a crime under ORS 161.610 (Enhanced penalty for use of firearm during commission of felony) or for a crime of violence for which the person could have received a sentence of more than 10 years, the court shall grant relief only if the court finds that relief should be granted in the interest of justice.

(7) Notwithstanding the provisions of ORS 9.320 (Necessity for employment of attorney), a party that is not a natural person, the state or any city, county, district or other political subdivision or public corporation in this state, without appearance by attorney, may appear as a party to an action under this section.

(8) Petitions filed under this section shall be heard and disposed of within 15 judicial days of filing or as soon as practicable thereafter.

(9) Filing fees for actions shall be as for any civil action filed in the court. If the petitioner prevails, the amount of the filing fee shall be paid by the respondent to the petitioner and may be incorporated into the court order.

(10) Initial appeals of petitions shall be heard de novo.

(11) Any party to a judgment under this section may appeal to the Court of Appeals in the same manner as for any other civil action.

(12) If the governmental entity files an appeal under this section and does not prevail, it shall be ordered to pay the attorney fees for the prevailing party.

#### REQUIRES PERMITS FOR LICENSED DEALER SALES

**SECTION 6.** ORS 166.412 is amended to read:

(1) As used in this section:

(a) "Antique firearm" has the meaning given that term in 18 U.S.C. 921;

(b) "Department" means the Department of State Police;

(c) "Firearm" has the meaning given that term in ORS 166.210, except that it does not include an antique firearm;

(d) "Firearms transaction record" means the firearms transaction record required by 18 U.S.C. 921 to 929;

(e) "Firearms transaction thumbprint form" means a form provided by the department under subsection (11) of this section;

(f) "Gun dealer" means a person engaged in the business, as defined in 18 U.S.C. 921, of selling, leasing or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker or otherwise; and

(g) "Purchaser" means a person who buys, leases or otherwise receives a firearm from a gun dealer.

(2) Except as provided in subsection ~~s (3)(c) and~~ (12) of this section, a gun dealer shall comply with the following before a firearm is delivered to a purchaser:

(a) The purchaser shall present to the gun dealer current identification meeting the requirements of subsection (4) of this section **and a valid permit issued under section 4 of this 2022 Act.**

(b) The gun dealer shall complete the firearms transaction record and obtain the signature of the purchaser on the record.

(c) The gun dealer shall obtain the thumbprints of the purchaser on the firearms transaction thumbprint form and attach the form to the gun dealer's copy of the firearms transaction record to be filed with that copy.

(d) The gun dealer shall, ~~request~~ by telephone **or computer, verify that the purchaser has a valid permit-to-purchase a firearm issued under section 4 of this 2022 Act and request** that the department conduct a criminal history record check on the purchaser and shall provide the following information to the department:

(A) The federal firearms license number of the gun dealer;

(B) The business name of the gun dealer;

(C) The place of transfer;

(D) The name of the person making the transfer;

(E) The make, model, caliber and manufacturer's number of the firearm being transferred;

(F) The name and date of birth of the purchaser;

(G) The Social Security number of the purchaser if the purchaser voluntarily provides this number to the gun dealer; and

(H) The type, issuer and identification number of the identification presented by the purchaser.

(e) The gun dealer shall receive a unique approval number for the transfer from the department and record the approval number on the firearms transaction record and on the firearms transaction thumbprint form.

(f) The gun dealer may destroy the firearms transaction thumbprint form five years after the completion of the firearms transaction thumbprint form.

(3)(a) Upon receipt of a request of the gun dealer for a criminal history record check, the department shall immediately, during the gun dealer's telephone call or by return call:

(A) Determine, from criminal records and other information available to it, whether the purchaser is disqualified under ORS 166.470 from completing the purchase; and

(B) Notify the gun dealer when a purchaser is disqualified from completing the transfer or provide the gun dealer with a unique approval number indicating that the purchaser is qualified to complete the transfer.

(b) If the department is unable to determine if the purchaser is qualified or disqualified from completing the transfer within 30 minutes, the department shall notify the gun dealer and provide the gun dealer with an estimate of the time when the

department will provide the requested information.

**(c) The dealer may not transfer the firearm unless the dealer receives a unique approval number from the department and, within 48 hours of completing the transfer, the dealer shall notify the state that the transfer to the permit holder was completed.** ~~[If the department fails to provide a unique approval number to a gun dealer or to notify the gun dealer that the purchaser is disqualified under paragraph (a) of this subsection before the close of the gun dealer's next business day following the request by the gun dealer for a criminal history record check, the gun dealer may deliver the firearm to the purchaser.]~~

(4)(a) Identification required of the purchaser under subsection (2) of this section shall include one piece of current identification bearing a photograph and the date of birth of the purchaser that:

(A) Is issued under the authority of the United States Government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization or an international quasi-governmental organization; and

(B) Is intended to be used for identification of an individual or is commonly accepted for the purpose of identification of an individual.

(b) If the identification presented by the purchaser under paragraph (a) of this subsection does not include the current address of the purchaser, the purchaser shall present a second piece of current identification that contains the current address of the purchaser. The Superintendent of State Police may specify by rule the type of identification that may be presented under this paragraph.

(c) The department may require that the gun dealer verify the identification of the purchaser if that identity is in question by sending the thumbprints of the purchaser to the department.

(5) The department shall establish a telephone number that shall be operational seven days a week between the hours of 8 a.m. and 10 p.m. for the purpose of responding to inquiries from gun dealers for a criminal history record check under this section.

(6) No public employee, official or agency shall be held criminally or civilly liable for performing the investigations required by this section provided the employee, official or agency acts in good faith and without malice.

**(7)(a) The department may retain a record of the information obtained during a request for a criminal history record check for no more than five years, except for the information provided to the dealer under subsection (2)(d) of this section, sufficient to reflect each firearm purchased by a permit holder, which must be attached to the electronic record of the permit stored by the department. The department may develop a system for removal of the information in subsection (2)(d)(E) of this section, upon proof of sale or transfer of the firearm to another permit holder and for recording of the information to reflect the transfer of ownership to the permit of the new owner.**

(b) The record of the information obtained during a request for a criminal history record check by a gun dealer is exempt from disclosure under public records law.

(c) If the department determines that a purchaser is prohibited from possessing a firearm under ORS 166.250 (1)(c), the department shall report the attempted transfer, the purchaser's name and any other personally identifiable information to all federal, state and local law enforcement agencies and district attorneys that have jurisdiction over the location or locations where the attempted transfer was made and where the purchaser resides.

(d) If the department determines that, based on the judgment of conviction, the purchaser is prohibited from possessing a firearm as a condition of probation or that the purchaser is currently on post-prison supervision or parole, the department shall report the attempted transfer to the purchaser's supervising officer and the district attorney of the county in which the conviction occurred.

(e) If the department determines that the purchaser is prohibited from possessing a firearm due to a court order described in ORS 166.255 (1)(a), the department shall report the attempted transfer to the court that issued the order.

(f) If the department determines that the purchaser is under the jurisdiction of the Psychiatric Security Review Board, the department shall report the attempted transfer to the board.

(g) Reports required by paragraphs (c) to (f) of this subsection shall be made within 24 hours after the determination is made, unless a report would compromise an ongoing investigation, in which case the report may be delayed as long as necessary to avoid compromising the investigation.

(h) On or before January 31 of each year, a law enforcement agency or a prosecuting attorney's office that received a report pursuant to paragraph (c) of this subsection during the previous calendar year shall inform the department of any action that was taken concerning the report and the outcome of the action.

(i) The department shall annually publish a written report, based on any information received under paragraph (h) of this subsection, detailing the following information for the previous year:

(A) The number of purchasers whom the department determined were prohibited from possessing a firearm under ORS 166.250 (1)(c), arranged by category of prohibition;

(B) The number of reports made pursuant to paragraph (c) of this subsection;

(C) The number of investigations arising from the reports made pursuant to paragraph (c) of this subsection, the number of investigations concluded and the number of investigations referred for prosecution, all arranged by category of prohibition; and

(D) The number of criminal charges arising from the reports made pursuant to paragraph (c) of this subsection and the disposition of the charges, both arranged by category of prohibition.

(8) A law enforcement agency may inspect the records of a gun dealer relating to transfers of firearms with the consent of a gun dealer in the course of a reasonable inquiry during a criminal investigation or under the authority of a properly authorized subpoena or search warrant.

(9) When a firearm is delivered, it shall be unloaded.

(10) In accordance with applicable provisions of ORS chapter 183, the Superintendent of State Police may adopt rules necessary for:

(a) The design of the firearms transaction thumbprint form;

(b) The maintenance of a procedure to correct errors in the criminal records of the department;

(c) The provision of a security system to identify gun dealers that request a criminal history record check under subsection (2) of this section; and

(d) The creation and maintenance of a database of the business hours of gun dealers.

(11) The department shall publish the firearms transaction thumbprint form and shall furnish the form to gun dealers on application at cost.

(12) This section does not apply to transactions between persons licensed as dealers under 18 U.S.C 923.

(13)(a) If requested by a transferor who is not a gun dealer, a gun dealer may request a criminal background check pursuant to ORS 166.435 or 166.438 and may charge a reasonable fee for providing the service.

(b) A gun dealer that requests a criminal background check under this subsection is immune from civil liability for any use of the firearm by the recipient or transferee, provided that the gun dealer requests the criminal background check as described in this section **and also provided that the dealer verifies that the recipient has a valid permit-to-purchase the firearm and the dealer has received a unique approval number from the department indicating successful completion of the background check.**

**(14) Knowingly selling or delivering a firearm to a purchaser or transferee who does not have a valid permit-to-purchase a firearm in violation of subsection 2(d) of this section, or prior to receiving a unique approval number from the department based on the criminal background check in violation of subsection 3(c) of this section, is a Class A misdemeanor.**

#### **REQUIRES PERMITS FOR PRIVATE TRANSFERS**

**SECTION 7.** ORS 166.435 is amended to read:

(1) As used in this section:

(a) "Transfer" means the delivery of a firearm from a transferor to a transferee, including, but not limited to, the sale, gift, loan or lease of the firearm. "Transfer" does not include the temporary provision of a firearm to a transferee if the transferor has no reason to believe the transferee is

prohibited from possessing a firearm or intends to use the firearm in the commission of a crime, and the provision occurs:

(A) At a shooting range, shooting gallery or other area designed for the purpose of target shooting, for use during target practice, a firearms safety or training course or class or a similar lawful activity;

(B) For the purpose of hunting, trapping or target shooting, during the time in which the transferee is engaged in activities related to hunting, trapping or target shooting;

(C) Under circumstances in which the transferee and the firearm are in the presence of the transferor;

(D) To a transferee who is in the business of repairing firearms, for the time during which the firearm is being repaired;

(E) To a transferee who is in the business of making or repairing custom accessories for firearms, for the time during which the accessories are being made or repaired; or

(F) For the purpose of preventing imminent death or serious physical injury, and the provision lasts only as long as is necessary to prevent the death or serious physical injury.

(b) "Transferee" means a person who is not a gun dealer or licensed as a manufacturer or importer under 18 U.S.C. 923 and who intends to receive a firearm from a transferor.

(c) "Transferor" means a person who is not a gun dealer or licensed as a manufacturer or importer under 18 U.S.C. 923 and who intends to deliver a firearm to a transferee.

(2) Except as provided in ORS 166.436 and 166.438 and subsection (4) of this section, a transferor may not transfer a firearm to a transferee unless the transfer is completed through a gun dealer as described in subsection (3) of this section.

(3)(a) A transferor may transfer a firearm to a transferee only as provided in this section. Except as provided in paragraph (b) of this subsection, prior to the transfer both the transferor and the transferee must appear in person before a gun dealer, with the firearm **and a valid permit-to-purchase issued to the transferee under section 4 of this 2022 Act**, and request that the gun dealer perform a criminal background check on the transferee.

(b) If the transferor and the transferee reside over 40 miles from each other, the transferor may ship or deliver the firearm to a gun dealer located near the transferee or a gun dealer designated by the transferee, and the transferor need not appear before the gun dealer in person.

(c) A gun dealer who agrees to complete a transfer of a firearm under this section shall request a criminal history record check on the transferee as described in ORS 166.412 and shall comply with all requirements of federal law.

(d) If, upon completion of a criminal background check, the gun dealer:

(A) Receives a unique approval number from the Department of State Police indicating that the transferee is qualified to complete the transfer, the gun dealer shall notify the transferor, enter the firearm into the gun dealer's inventory and transfer the firearm to the transferee.

(B) Receives notification that the transferee is prohibited by state or federal law from possessing or receiving the firearm **or that the department is unable to determine if the transferee is qualified or disqualified from completing the transfer**, the gun dealer shall notify the transferor and neither the transferor nor the gun dealer shall transfer the firearm to the transferee. If the transferor shipped or delivered the firearm to the gun dealer pursuant to paragraph (b) of this subsection, the gun dealer shall comply with federal law when returning the firearm to the transferor.

(e) A gun dealer may charge a reasonable fee for facilitating a firearm transfer pursuant to this section.

(4) The requirements of subsections (2) and (3) of this section do not apply to:

(a) The transfer of a firearm by or to a law enforcement agency, or by or to a law enforcement officer, private security professional or member of the Armed Forces of the United States, while that person is acting within the scope of official duties.

(b) The transfer of a firearm as part of a firearm turn-in or buyback event, in which a law enforcement agency receives or purchases firearms from members of the public.

(c) The transfer of a firearm to:

(A) A transferor's spouse or domestic partner;

(B) A transferor's parent or stepparent;

(C) A transferor's child or stepchild;

(D) A transferor's sibling;

(E) A transferor's grandparent;

(F) A transferor's grandchild;

(G) A transferor's aunt or uncle;

(H) A transferor's first cousin;

(I) A transferor's niece or nephew; or

(J) The spouse or domestic partner of a person specified in subparagraphs (B) to (I) of this paragraph.

(d) The transfer of a firearm that occurs because of the death of the firearm owner, provided that:

(A) The transfer is conducted or facilitated by a personal representative, as defined in ORS 111.005, or a trustee of a trust created in a will; and

(B) The transferee is related to the deceased firearm owner in a manner specified in paragraph (c) of this subsection.

(5)(a) A transferor who fails to comply with the requirements of this section commits a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, a transferor who fails to comply with the requirements of this section commits a Class B felony if the transferor has a previous conviction under this section at the time of the offense.

### **REQUIRES PERMITS FOR ALL TRANSFERS AT GUN SHOWS**

**SECTION 8.** ORS 166.436 is amended to read:

(1) The Department of State Police shall make the telephone number established under ORS 166.412 (5) available for requests for criminal background checks under this section from persons who are not gun dealers and who are transferring firearms at gun shows.

(2) Prior to transferring a firearm at a gun show, a transferor who is not a gun dealer [~~may request~~] **shall** by telephone **verify that the transferee has a valid permit-to-purchase a firearm under section 4 of this 2022 Act and request** that the department conduct a criminal background check on the recipient upon providing the following information to the department:

(a) The name , address and telephone number of the transferor;

(b) The make , model, caliber and manufacturer's number of the firearm being transferred;

(c) The name, date of birth , race, sex and address of the recipient ;

(d) The Social Security number of the recipient if the recipient voluntarily provides that number ;

(e) The address of the place where the transfer is occurring; and

(f) The type, issuer and identification number of a current piece of

identification bearing a recent photograph of the recipient presented by the recipient. The identification presented by the recipient must meet the requirements of ORS 166.412 (4)( a).

(3)(a) Upon receipt of a request for a criminal background check under this section, the department shall immediately, during the telephone call or by return call:

(A) Determine from criminal records and other information available to it whether the recipient is disqualified under ORS 166.470 from completing the transfer or is otherwise prohibited by state or federal law from possessing a firearm; and

(B) Notify the transferor when a recipient is disqualified from completing the transfer or provide the transferor with a unique approval number indicating that the recipient is qualified to complete the transfer. The unique approval number is a permit valid for 24 hours for the requested transfer. If the firearm is not transferred from the transferor to the recipient within 24 hours after receipt of the unique approval number, a new request must be made by the transferor.

(b) If the department is unable to determine whether the recipient is qualified for or disqualified from completing the transfer within 30 minutes of receiving the request , the department shall notify the transferor and provide the transferor with an estimate of the time when the department will provide the requested information.

**(c) The transferor may not transfer the firearm unless the transferor receives a unique approval number from the department and, within 48 hours of the completed transfer, the transferor shall notify the state that the transfer to the permit holder was completed.**

(4) A public employee or public agency incurs no criminal or civil liability for performing the criminal background checks required by this section, provided the employee or agency acts in good faith and without malice.

(5)(a) The department may retain a record of the information obtained during a request for a criminal background check under this section for the period of time provided in ORS 166.412 (7), **as amended by this 2022 Act.**

(b) The record of the information obtained during a request for a criminal background check under this section is exempt from disclosure under public records law.

(c) If the department determines that a recipient is prohibited from possessing a firearm under ORS 166.250 (l)(c), the department shall report the attempted transfer, the recipient's name and any other personally identifiable information to all federal, state and local law enforcement agencies and district attorneys that have jurisdiction over the location or locations where the attempted transfer was made and where the recipient resides.



(d) If the department determines that, based on the judgment of conviction, the recipient is prohibited from possessing a firearm as a condition of probation or that the recipient is currently on post-prison supervision or parole, the department shall report the attempted transfer to the recipient's supervising officer and the district attorney of the county in which the conviction occurred.

(e) If the department determines that the recipient is prohibited from possessing a firearm due to a court order described in ORS 166.255 (1)(a), the department shall report the attempted transfer to the court that issued the order.

(f) If the department determines that the recipient is under the jurisdiction of the Psychiatric Security Review Board, the department shall report the attempted transfer to the board.

(g) Reports required by paragraphs (c) to (f) of this subsection shall be made within 24 hours after the determination is made, unless a report would compromise an ongoing investigation, in which case the report may be delayed as long as necessary to avoid compromising the investigation.

(h) On or before January 31 of each year, a law enforcement agency or a prosecuting attorney's office that received a report pursuant to paragraph (c) of this subsection during the previous calendar year shall inform the department of any action that was taken concerning the report and the outcome of the action.

(i) The department shall annually publish a written report, based on any information received under paragraph (h) of this subsection, detailing the following information for the previous year:

(A) The number of recipients whom the department determined were prohibited from possessing a firearm under ORS 166.250 (1)(c), arranged by category of prohibition;

(B) The number of reports made pursuant to paragraph (c) of this subsection;

(C) The number of investigations arising from the reports made pursuant to paragraph (c) of this subsection, the number of investigations concluded and the number of investigations referred for prosecution, all arranged by category of prohibition; and

(D) The number of criminal charges arising from the reports made pursuant to paragraph (c) of this subsection and the disposition of the charges, both arranged by category of prohibition.

(6) The recipient of the firearm must be present when the transferor requests a criminal back-ground check under this section.

(7)(a) Except as otherwise provided in paragraph (b) of this subsection, a transferor who receives notification under this section that the recipient is qualified to complete the transfer of a firearm, has the recipient fill out the form required by ORS 166.438 (1)(a) and retains the form as required by ORS 166.438 (2) is immune from civil liability for any use of the firearm from the time of the transfer unless the transferor knows, or reasonably should know, that the recipient is likely to commit an unlawful act involving the firearm.

(b) The immunity provided by paragraph (a) of this subsection does not apply:

(A) If the transferor knows, or reasonably should know, that the recipient of the firearm intends to deliver the firearm to a third person who the transferor knows, or reasonably should know, may not lawfully possess the firearm; or

(B) In any product liability civil action under ORS 30.900 to 30.920.

#### **REQUIRES PERMITS FOR ALL TRANSFERS AT GUN SHOWS (2015 Amendment)**

**SECTION 9.** ORS 166.438 is amended to read:

(1) A transferor who is not a gun dealer may not transfer a firearm at a gun show unless the transferor:

**(a)(A) Verifies with the department that the recipient has a valid permit-to-purchase issued under section 4 of this 2022 Act;**

~~(A)~~**(B)** Requests a criminal background check under ORS 166.436 prior to completing the transfer;

~~(B)~~**(C)** Receives a unique approval number from the department indicating that the recipient is qualified to complete the transfer; and

~~(C)~~**(D)** Has the recipient complete the form described in ORS 166.441; or

(b) Completes the transfer through a gun dealer.

(2) The transferor shall retain the completed form referred to in subsection (1) of this section for at least five years and shall make the completed form available to law enforcement agencies for the purpose of criminal investigations.

(3) A person who organizes a gun show shall post in a prominent place at the gun show a notice explaining the requirements of subsections (1) and (2) of this section. The person shall provide the form required by subsection (1) of this section to any person transferring a firearm at the gun show.

(4) Subsection (1) of this section does not apply if the transferee is licensed as a dealer under 18 U.S.C. 923.

(5)(a) Failure to comply with the requirements of subsection (1), (2) or (3) of this section is a Class A misdemeanor.

(b) Notwithstanding paragraph (a) of this subsection, failure to comply with the requirements of subsection (1), (2) or (3) of this section is a Class C felony if the person has two or more previous convictions under this section **at the time of the offense.**

(6) It is an affirmative defense to a charge of violating subsection (1) or (3) of this section that the person did not know, or reasonably could not know, that more than 25 firearms were at the site and available for transfer.

**SECTION 10. The amendments to ORS 166.412, 166.435, 166.436 and 166.438 by sections 3 to 9 of this 2022 Act apply to firearm transfers conducted on or after the effective date of this 2022 Act.**

### **PROHIBITIONS/EXCEPTIONS TO LARGE-CAPACITY MAGAZINES**

**SECTION 11. (1) As used in this section:**

(a) "Armed Forces of the United States" has the meaning given that term in ORS 348.282.

(b) "Detachable magazine" means an ammunition feeding device that can be loaded or unloaded while detached from a firearm and readily inserted in a firearm;

(c) "Fixed magazine" means an ammunition feeding device contained in or permanently attached to a firearm in such a manner that the device cannot be removed without disassembly of the firearm action;

(d) "Large-capacity magazine" means a fixed or detachable magazine, belt, drum, feed strip, helical feeding device, or similar device, including any such device joined or coupled with another in any manner, or a kit with such parts, that has an overall capacity of, or that can be readily restored, changed, or converted to accept, more than 10 rounds of ammunition and allows a shooter to keep firing without having to pause to reload, but does not include any of the following:

(A) An ammunition feeding device that has been permanently altered so that it is not capable, now or in the future, of accepting more than 10 rounds of ammunition;

(B) An attached tubular device designed to accept, and capable of operating only with 0.22 caliber rimfire ammunition; or

(C) A tubular ammunition feeding device that is contained in a lever-action firearm.

(e) "Loaded" has the meaning given that term in ORS 166.360;

(f) "Person" means any natural person, corporation, partnership, fire or association.

(2) Notwithstanding ORS 166.250 to 166.470, and except as expressly provided in subsections (3) to (5) of this section, a person commits the crime of unlawful manufacture, importation, possession, use, purchase, sale or otherwise transferring of large-capacity magazines if the person manufactures, imports, possesses, uses, purchases, sells or otherwise transfers any large-capacity magazine in Oregon on or after the effective date of this 2022 Act.

(3) Subsection (2) of the section does not apply during the first 180 days following the effective date of this 2022 Act, with respect to:

(a) A licensed gun dealer that within 180 days of the effective date of this 2022 Act:

(A) Transfers or sells the large-capacity magazines in the gun dealer's inventory to a non-resident gun dealer or other transferee outside of this state;

(B) Purchases or acquires temporary custody from an owner of any large-capacity magazine for permanent removal from this state within the 180 days of the effective date of this 2022 Act;

(C) Permanently alters any large-capacity magazine in the gun dealer's inventory or custody so that it is not capable, upon alteration or in the future, of accepting more than 10 rounds of ammunition or permanently alter the magazine so it is no longer a; or

(D) Permanently disposes of the large-capacity magazines in the gun dealer's custody or inventory.

(b) A firearms manufacturer, properly licensed under federal, state and local law, that is a party to a contract, in existence and binding on the effective date of this 2022 Act, with an entity outside of this state, for the manufacture of large-capacity magazines, provided that:

(A) All manufacturing is completed no later than 180 days after the effective date of this 2022 Act; and

(B) The entity outside of Oregon receiving the large-capacity magazines is made aware in writing on or before the delivery of the ammunition devices of the restrictions pertaining to large-capacity magazines in this state as set forth in this 2022 Act.

(4) Subsection (2) of the section does not apply at any time to:

(a) A firearms manufacturer properly licensed under federal, state and local law that manufactures large-capacity magazines, provided:

(A) The manufacturing is for exclusive sale or transfer to the Armed Forces of the United States or a law enforcement agency and solely for authorized use by that entity related to the official duties of the entity; and

(B) Any large-capacity magazine, permitted to be manufactured under paragraph (a)(A) of this subsection after the effective date of this 2022 Act, shall include a permanent stamp or marking indicating that the large-capacity magazine was manufactured or assembled after the effective date of this 2022 Act. The stamp or marking must be legibly and conspicuously engraved or cast upon the outer surface of the large-capacity magazine. The department may promulgate such rules as may be necessary for the implementation of this section, including but not limited to rules requiring such large-capacity magazine be stamped with information indicating the limitation for use only by military and law enforcement or such other identification to distinguish clearly large-capacity magazines manufactured after the effective date of this 2022 Act. Except as provided in paragraph (3)(b) of this section, no large-capacity magazines without such stamp may be manufactured in this state after the effective date of this Act.

(b) A licensed gun dealer that sells or otherwise transfers large-capacity magazines to the Armed Forces of the United States or a law enforcement agency solely for authorized use by that entity, provided the large-capacity magazines have been engraved as provided in paragraph (a)(B) of this subsection.

(c) Any government officer, agent or employee, member of the Armed Forces of the United States or peace officer, as that term is defined in ORS 133.005, that is authorized to acquire, possess or use a large-capacity magazine provided that any acquisition, possession or use is related directly to activities within the scope of that person's official duties.

(5) As of the effective date of this 2022 Act, it shall be an affirmative defense, as provided in ORS 166.055, to the unlawful possession, use and transfer of a large-capacity magazine in this state by any person, provided that:

(a) The large-capacity magazine was owned by the person before the effective date of this 2022 Act and maintained in the person's control or possession; or

(b) The possession of a large-capacity magazine was obtained by a person who, on or after the effective date of this section, acquired possession of the large-capacity magazine by operation of law upon the death of a former owner who was in legal possession of the large-capacity magazine; and

(c) In addition to either (a) or (b) of this subsection the owner has not maintained the large-capacity magazine in a manner other than:

(A) On property owned or immediately controlled by the registered owner;

(B) On the premises of a gun dealer or gunsmith licensed under 18 U.S.C. 923 for the purpose of lawful service or repair;

(C) While engaging in the legal use of the large-capacity magazine, at a public or private shooting range or shooting gallery or for recreational activities such as hunting, to the extent permitted under state law; or

(D) While participating in firearms competition or exhibition, display or educational project about firearms sponsored, conducted by, approved or under the auspices of a law enforcement agency or a national or state-recognized entity that fosters proficiency in firearms use or promotes firearms education; and

(E) While transporting any large-capacity magazines in a vehicle to one of the locations authorized in paragraphs (c)(A) to (D) of this subsection, the large-capacity magazine is not inserted into the firearm and is locked in a separate container.

(d) The person has permanently and voluntarily relinquished the large-capacity magazine to law enforcement or to a buyback or turn-in program approved by law enforcement, prior to commencement of prosecution by arrest, citation or a formal charge.

(6) Unlawful manufacture, importation, possession, use, purchase, sale or otherwise transferring of a large-capacity magazine is a class A misdemeanor.

**SECTION 12.** If any provision of this 2022 Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable. The people hereby declare that they would have adopted this Chapter, notwithstanding the unconstitutionality, invalidity and ineffectiveness of any one of its articles, sections, subsections, sentences or clauses.

**SECTION 13.** The provisions of this 2022 Act apply to all actions taken on or after the effective date of this 2022 Act, unless expressly stated otherwise herein. This 2022 Act may be known and cited as the Reduction of Gun Violence Act.

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF HARNEY

JOSEPH ARNOLD, CLIFF ASMUSSEN,  
GUN OWNERS OF AMERICA, INC., and  
GUN OWNERS FOUNDATION,

Plaintiffs,

v.

KATE BROWN, Governor of the State of  
Oregon, in her official capacity; and ELLEN  
ROSENBLUM, Attorney General of the  
State of Oregon, in her official capacity, and  
TERRI DAVIE, Superintendent of the  
Oregon State Police, in her official capacity,

Defendants,

Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Claims not subject to mandatory arbitration

Plaintiffs Joseph Arnold, Cliff Asmussen, Gun Owners of America, Inc., and Gun Owners Foundation (“Plaintiffs”) allege as follows for their Complaint against Defendants Kate Brown, the Governor of Oregon, in her official capacity, and Ellen Rosenblum, Attorney General of Oregon, in her official capacity (“Defendants”):

1.

Plaintiffs seek injunctive and declaratory relief pursuant to ORS 28.020 against Defendants as the chief law enforcement officers of Oregon, to permanently enjoin and declare unconstitutional the recently enacted 2022 Ballot Measure 114 (“BM 114”).

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## **JURISDICTION AND VENUE**

2.

This Court has jurisdiction pursuant to ORCP 4(A)(4) because all Defendants are engaged in substantial and not isolated activities within the State of Oregon.

3.

This is the proper venue pursuant to ORS 14.060 because Harney County is where the cause of this suit arose. Harney County is where, because of BM114, the individual Plaintiffs, as well as the members and supporters of Plaintiffs Gun Owners of America, Inc. and Gun Owners Foundation, reside and will be unable to exercise their Constitutional Rights under Or. Const. Art. 1, Sec. 27, including being unable to purchase a firearm and being unable to purchase or possess a magazine capable of holding more than 10 rounds of ammunition on or after December 8, 2022.

## **PARTIES**

4.

Plaintiff Joseph Arnold (“Arnold”) is a resident of Harney County, Oregon and a law-abiding person who can legally possess firearms, and has an Oregon Concealed Handgun License. Plaintiff Arnold is a member of GOA. Plaintiff Arnold possesses what BM114 designates as “large capacity magazines” and, in fact, has a handgun which he carries that utilizes an 11-round ammunition magazine, which would be considered a prohibited “large capacity magazine” pursuant to BM114. Upon information and belief, for Arnold’s specific handgun, a magazine that holds fewer than 11 rounds of ammunition is not available on the commercial market and, therefore, Plaintiff Arnold will no longer be able to carry his firearm. Plaintiff Arnold desires to continue to purchase firearms, including handguns, after December 8, 2022 (when BM114 becomes effective) without the need to apply for a permit to purchase, and without having his

information (including his firearm) registered and recorded in a government database. Plaintiff Arnold also does not want to pay a fee for the required permit to purchase or take the required safety class as he already has a Concealed Handgun License, a precondition of which was demonstrating competence with a firearm. Finally, Plaintiff Arnold is currently attempting to purchase a handgun, but Oregon has failed to timely complete his background check for over two weeks – and this is before BM114 has even been implemented.

5.

Plaintiff Cliff Asmussen (“Asmussen”) is a resident of Harney County, Oregon and a law-abiding person who can legally possess firearms, and has an Oregon Concealed Handgun License. Plaintiff Asmussen is a member of GOA. Plaintiff Asmussen has magazines that suddenly now are considered prohibited “large capacity magazines” under BM114. Additionally, Plaintiff Asmussen carries a pistol with a magazine capacity greater than 10 rounds when he is out in rural Harney County, but not engaged in hunting, and thus would not fall under the BM114 exception for hunting. Plaintiff Asmussen also wants to continue to purchase firearms after December 8, 2022, without being made to get a permit simply to purchase a firearm, to pay a fee to receive the permit, and to take a “safety” class when it is unnecessary for him to do so merely to exercise his constitutional rights.

6.

Plaintiff Gun Owners of America, Inc. (“GOA”) is a California non-stock corporation with its principal place of business in Springfield, Virginia. GOA is organized and operated as a non-profit membership organization that is exempt from federal income taxes under Section 501(c)(4) of the U.S. Internal Revenue Code. GOA was formed in 1976 to preserve and defend the Second Amendment rights of gun owners. GOA has more than 2 million members and supporters across

the country, including many who reside throughout the State of Oregon and in Harney County, Oregon.

7.

Plaintiff Gun Owners Foundation (“GOF”) is a Virginia not-for-profit, non-stock corporation, with its principal place of business in Springfield, Virginia. GOF is organized and operated as a non-profit legal defense and educational foundation that is exempt from federal income taxes under section 501(c)(3) of the United States Internal Revenue Code. GOF is supported by gun owners across the country, including within the state of Oregon.

8.

GOA and GOF bring this action in a representational capacity on behalf of, and asserting the interests of, their members and supporters in Oregon. GOA has many thousands of members and supporters across the state of Oregon, including over 100 members and supporters in Harney County, Oregon. Each of these persons would have standing to challenge BM114 in their own right. Protection of these members’ and supporters’ rights and interests is germane to GOA and GOF’s mission, which is to preserve and protect the rights of Americans to keep and bear arms, including against infringement by anti-gun politicians and unconstitutional state statutes. Litigation of the challenges raised in this case does not require participation of each of GOA and GOF’s members and supporters. GOA and GOF are capable of fully and faithfully representing the interests of their members and supporters without participation by each of these individuals. Indeed, GOA and GOF routinely litigates cases on behalf of their members and supporters.

9.

Many of the gun owners represented in this matter by GOA and GOF, like the individual Plaintiffs, wish to purchase a firearm but will be unable to do so after December 8, 2022 due to

BM114. Many of these gun owners, like the individual Plaintiffs, wish to possess (or continue to possess), use, or acquire magazines capable of holding more than 10 rounds but will not be able to after December 8, 2022 due to BM114.

10.

Defendant Kate Brown is the Governor of the State of Oregon. Defendant Ellen Rosenblum is the Attorney General of the State of Oregon. Defendants are the chief law enforcement officers of Oregon. Defendants are charged by the Oregon Constitution with the duty to uniformly and adequately enforce the laws of the State of Oregon. Defendant Rosenblum directly supervises every district attorney and sheriff in all matters pertaining to their respective official duties, including informing the public, local prosecutors, and law enforcement regarding the meaning of Oregon laws, including BM114. Defendants are responsible for formulating, executing, and administering BM114's restrictions on magazines capable of holding more than 10 rounds (the "magazine restrictions"). Defendants are also responsible for formulating, executing, and administering BM114's requirement that Oregonians obtain a "permit to purchase" firearms in the State of Oregon (the "permit to purchase restriction"). Defendants can enforce these restrictions against Plaintiffs and other Oregon citizens.

11.

Defendant Terri Davie is the Superintendent of the Oregon State Police. Her officers will be tasked with enforcing BM114's magazine restrictions, and BM114 imposes numerous duties on the Oregon State Police with regard to the permitting process including, but not limited to, developing the standardized application for a permit to purchase. *See e.g.*, BM114, §§ 4(1)(c), (e), (2)(a), (c), (4)(a), (5)(a), (b), (9).

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## GENERAL ALLEGATIONS

### Background of BM114

12.

Oregon voters recently enacted BM114 by a narrow majority on the November 8, 2022 general election ballot. BM114 goes into effect on December 8, 2022. A true copy of BM114 is attached and incorporated as **Exhibit 1**.

13.

Generally, BM114 contains two parts. The first requires a law-abiding person to obtain a “permit to purchase” before acquiring any firearm, and constructs a convoluted, multi-step permitting process requiring involvement by both state and local law enforcement (fingerprinting, photographs, investigation, background check), along with completion of a firearm safety course, and payment of a fee, up to \$65 for the original permit and up to \$50 for each renewal. *See* BM114, § 4. Even after a permit to purchase has been acquired, a firearms dealer *still* cannot transfer a firearm to the permit holder until the state police have been contacted and *again* approve the transfer. BM114, § 6(2)(d). After transfer, the dealer must notify the state police that a firearm has been transferred. BM114, § 6(3)(c). Finally, the state police are authorized to “retain a record of the information ... sufficient to reflect each firearm purchased by a permit holder,” thus creating a gun registry of all firearm sales, maintained by the state. *See* BM114, § 6(7)(a). These provisions apply not only to transfers of firearms by licensed dealers, but to all transfers of firearms, including private sales, gifts, and the loaning of a firearm.

14.

The second part of BM114 is a prohibition on possession of standard capacity firearm magazines, banning the “manufacture, importation, possession, use, purchase, sale, or other[]

transfer[ ]” of a magazine with a capacity greater than 10 rounds of ammunition. BM114, § 11(2). Aside from exempting government agents such as military and law enforcement, BM114 provides no general exception even for continuing to possess magazines already owned prior to the effective date. Rather, BM114 provides a mere “affirmative defense”—contained in a non-existent statute (ORS 166.055)—from prosecution for magazines owned prior the effective date, but only if the magazine has been maintained at a person’s private property, subject to certain limited exceptions for transport to and from certain places and events. *See* BM114, § 11(5). Concealed carry is not one of those exceptions, as BM114 requires large capacity magazines being transported to be “not inserted into the firearm” and “locked in a separate container.” BM114, § 11(5)(c)(D). Violation of BM114’s magazine ban is a Class A misdemeanor. BM114, § 11(6). Additionally, BM114, § 11(5)(c) does not appear to include a self-defense exception for usage of large capacity magazines, even while one is in their own home, or target shooting on their own property.

15.

BM114 requires training in order to exercise the right to acquire a firearm, in the form of providing “proof of completion of a firearm safety course,” which is required to be taught by certain types of entities, BM114, § 4(8)(a), “certified by a law enforcement agency,” and required to cover certain topics, BM114, § 4(8)(c).

16.

Upon information or belief, such training does not yet exist and is not yet offered, either by law enforcement or certified private trainers, and no certification system by law enforcement has yet been developed, let alone implemented by local law enforcement. Until that occurs, BM114 operates to effectively eliminate the right to keep and bear arms within Oregon, as no permit can be acquired without training, and no firearm can be acquired without a permit.

17.

This elimination of the right to keep and bear arms has been widely reported, with the Oregon State Sheriff's Association going on record to say that "without a permit system in place" they believe "that all firearms sales by dealers, at gun shows, and most private transfers ... in Oregon will immediately stop." *See* <https://www.koin.com/news/oregon/without-permitting-system-in-place-ossa-expects-gun-sales-to-halt-after-measure-114/>.

18.

Moreover, even once the permit to purchase program is developed, delays with background checks processed at the state level and the lack of access to the requisite training courses will make the firearm purchasing process take months or longer.

19.

BM114 §4(1)(e) requires that an applicant "submit to fingerprinting and photographing by the permit agent." Lacking from this requirement is any timeline for the "permit agent" to complete photographing, fingerprinting, and the required background check.

20.

Because there are no timelines, the permitting scheme that will be enacted via BM114 will be put to abusive ends and will lead to lengthy wait times in processing license applications. These significant delays are more egregious than those in other states and infringe on Plaintiffs' rights to keep and bear arms.

21.

Even when the Plaintiffs' background check is complete, the permit agent is clothed with unbridled discretion to deny a permit to purchase based on what are termed "reasonable grounds," a hopelessly vague and ambiguous term that BM114 does not define. BM114 §4(1)(b)(C).

22.

Even once the permit to purchase program is developed, currently existing delays with background checks processed at the state level, and the lack of ready access to the requisite training courses, will make the firearm purchasing process take months or longer – merely to be able to exercise an enumerated right. Moreover, the permitting scheme enacted via BM114 will be put to abusive ends and will establish lengthy wait times in processing license applications. These significant delays are more egregious than those in even the most anti-gun of states and violate Plaintiffs’ rights to keep and bear arms.

23.

The background check required by BM114 is unnecessary prophylaxis-upon-prophylaxis, as Oregon *already* requires background checks to buy firearms, even for transfers between private citizens.<sup>1</sup> Moreover, buying a firearm from a federally licensed firearm dealer *already* requires the purchaser to fill out an ATF Form 4473<sup>2</sup> and submit to a federal NICS background check. However, due to the extreme backlog currently for background checks to be performed, the Oregon “Firearm Instant Check System” (“FICS”) will continue to be “not instant,” and therefore applicants will wait weeks or months in order while the background check to purchase a firearm is processed. Moreover, if FICS cannot complete a background check within thirty days, then federal law requires a new Form 4473 to be completed and another background check to be started, resulting in an endless loop where a person would never be able to acquire a firearm. *See* 27 CFR 478.102(c).

<sup>1</sup> <https://www.oregon.gov/osp/programs/cjis/pages/firearms-instant-check-system.aspx>.

<sup>2</sup> <https://www.atf.gov/firearms/docs/4473-part-1-firearms-transaction-record-over-counter-atf-form-53009/download>.

24.

Hundreds of thousands of law-abiding Oregonians, including Plaintiffs and their members and supporters, own and possess firearms equipped with magazines capable of holding more than 10 rounds of ammunition. Firearm magazines, including magazines capable of holding more than 10 rounds, are not unusual or novel technology, but rather have become ubiquitous among modern firearms overwhelmingly chosen and in common use by law-abiding gun owners for lawful purposes including self-defense. Many (if not most) of the nation's best-selling handguns and rifles come standard with magazines that can hold more than 10 rounds, and such magazines are lawfully and possessed and responsibly utilized by millions of law-abiding citizens in the vast majority of States that allow them.<sup>3</sup> Nor are so-called "large capacity" firearms a new invention but predate even the founding of the republic.

25.

A recent article from Reason magazine reported on a survey which billed itself as the "Largest-Ever Survey of American Gun Owners," finding that "Americans own some 415 million firearms, including 171 million handguns, 146 million rifles, and 98 million shotguns."<sup>4</sup> That survey suggests that Americans own "up to 44 million AR-15-style rifles and up to 542 million

<sup>3</sup> "Millions of ammunition magazines able to hold more than 10 rounds are in common use by law-abiding responsible citizens for lawful uses like self-defense. This is enough to decide that a magazine able to hold more than 10 rounds passes the *Heller* test and is protected by the Second Amendment. The simple test applies because a magazine is an essential mechanical part of a firearm. The size limit directly impairs one's ability to defend one's self." *Duncan v. Becerra*, 366 F. Supp. 3d 1131, 1142 (S.D. Cal. 2019) (*rev'd by, remanded by Duncan v. Bonta*, 19 F.4th 1087, 2021 U.S. App. LEXIS 35256 (9th Cir. Cal., Nov. 30, 2021) (*en banc*), *cert. granted, judgment vacated*, 142 S.Ct. 2895 (2022)).

<sup>4</sup>

<https://webcache.googleusercontent.com/search?q=cache:1kYof3RwPOkJ:https://reason.com/2022/09/09/the-largest-ever-survey-of-american-gun-owners-finds-that-defensive-use-of-firearms-is-common/&cd=1&hl=en&ct=clnk&gl=us&client=firefox-b-1-d>.

magazines with capacities exceeding 10 rounds are already in circulation.” These numbers demonstrate that magazines with a capacity exceeding 10 rounds are commonly owned in the United States.

26.

Historically, magazines holding more than 10 rounds predated the ratification of the Second Amendment (and Oregon’s Second Amendment analogue). *See Symposium Article: The History of Firearm Magazines And Magazine Prohibitions*, 78 Alb. L. Rev. 849, 852 (“The first known firearm that was able to fire more than ten rounds without reloading was a sixteen-shooter created around 1580, using ‘superposed’ loads (each round stacked on top of the other).”).

27.

Although BM114 maligns so-called “large capacity magazines” as popularly used by many perpetrators (40%) of violent crime, such magazines are also overwhelmingly chosen by police forces (approaching 100%) across the country whose job it is to stop such bad actors, and overwhelmingly chosen by law-abiding gun owners who desire to protect themselves from such violent acts (such as by multiple attackers). Magazines capable of holding more than 10 rounds are standard with many of the most popular firearms and firearm platforms. Magazines between 15 and 30 rounds are standard magazine sizes sold with many of the most popular firearms and firearm platforms.<sup>5</sup>

<sup>5</sup> Additionally, there are countless stories of individuals needing more than ten rounds to defend themselves: *See* (Florida man fired 30 rounds while fighting off seven intruders); <https://crimeresearch.org/2020/10/ten-cases-over-the-last-few-years-where-people-have-had-fire-ten-or-more-shots-in-self-defense/> (detailing “ten cases where law-abiding citizens ... fired at least 10 shots in self-defense”); <https://concealednation.org/2019/04/man-uses-ak-47-against-5-home-invaders-killing-3-and-injuring-2/> (man used “AK-47 to defend his home and his life” against five armed attackers).

28.

The so-called “large capacity magazines” that BM114 prohibits are legal to own under federal law, and a supermajority of states do not ban or restrict their ownership or possession.

29.

Magazines are protected by the Oregon constitution because the right to keep and bear arms encompasses the right to own, possess, and carry magazines that hold more than ten rounds of ammunition. And likewise, there are no “well-established and representative historical” analogues which would support a ban on these types of magazines. *See N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2133 (2022).

30.

Off duty law enforcement officers are not exempted from BM114’s magazine restrictions. The law enforcement exemption is limited to on duty officers and must be “related directly to activities within the scope of that person’s official duties.” BM114, § 11(4)(c).

#### **Article 1, Section 27**

31.

Article 1, Section 27 of the Oregon State Constitution provides that “[t]he people shall have the right to bear arms for the defence of themselves, and the State, but the Military shall be kept in strict subordination to the civil power[.]”

32.

The Oregon Supreme Court has held that “As a general matter, we examine the text of the constitution in its **historical context**, along with relevant cases interpreting it . . . In conducting that examination, our purpose is not to freeze the meaning of the state constitution to the time of its adoption, but is instead to identify, in light of **the meaning understood by the framers**,

relevant underlying principles that may inform our application of the constitutional text to modern circumstances.” *Couey v. Atkins*, 257 Or 460, 490 (2015) (internal citations omitted) (emphasis added); see also *State v. Christian*, 354 Or 22, 30, (2013) (“we considered early American examples of restrictions....”), 32–33 (noting the Court’s having “discussed the text and history of Article I, section 27” and the “historical circumstances pertaining to Article I, section 27....”), 42 (discussing *Heller*’s “extensive analysis of the text and historical circumstances pertaining to the Second Amendment.”). In other words, the Oregon Supreme Court has used an analytical method that parallels that used by the Supreme Court in *Bruen*.

33.

The Second Amendment to the United States’ Constitution and Article 1, Section 27 of the Oregon State Constitution, protect coextensive rights possessed by Oregonians, making interpretations of the Second Amendment (and federal case law) persuasive to the interpretation of Article 1, Section 27. Due to the similarity of the federal and state provisions, and the similar historical approaches taken by state and federal courts to analyze the rights, this Complaint addresses authorities under the Second Amendment, although—for avoidance of confusion—**Plaintiffs do not bring a challenge under the Second Amendment, and seek relief solely for a violation of Article I, Section 27 of the Oregon State Constitution.**

34.

Indeed, Oregon’s Constitution cannot afford its citizens fewer protections with regard to the right to keep and bear arms than the United States’ Constitution. *McDonald v. Chicago*, 561 US 742 (2010); see *Stickley v. City of Winchester*, 2022 Va. Cir. LEXIS 201, \*35 (Winchester County Circuit Court, Sep. 27, 2022) (“the Fourteenth Amendment incorporates the Second Amendment to the States. Therefore, Article I, Section 13, of the Constitution of Virginia is, at the



very least, co-extensive with the Second Amendment as to the enumerated rights guaranteed by the Second Amendment. As a result, it is appropriate for this Court to examine Second Amendment jurisprudence to determine whether the provisions of §§ 16-34(a)(2), (3), and (4) violate Article I, Section 13.”).

35.

The Bill of Rights from Oregon’s 1859 Constitution “was taken verbatim from sections 32 and 33 of the Indiana Constitution of 1851” and those sections remained unchanged from Indiana’s 1816 Constitution. *State v. Kessler*, 289 Or 359, 363 (1980). When drafting Indiana’s Constitution in 1816, “[t]he drafters of Indiana’s bill of rights of 1816 borrowed freely from the wording of other state constitutions, most notably the constitutions of Kentucky, Ohio, Tennessee, and Pennsylvania” which were drafted between 1776 and 1802. *Id.* This makes Oregon’s “right to bear arms provision” traceable “to state provisions drafted in the revolutionary and post-revolutionary war era.” *Id.* The bill of rights, including the Second Amendment, were ratified on December 15, 1791.

36.

Since the Oregon Constitution was ratified after the ratification of the Second Amendment, it would make absolutely no sense for Oregonians to knowingly ratify a state provision that protected less than the Second Amendment and, therefore, would immediately become inoperative and ineffective. For that reason as well, Article 1, Section 27 must be read to provide at least protection as the Second Amendment, and thus making federal authorities persuasive and relevant to an Article 1, Section 27 analysis.

37.

The Second Amendment to the United States Constitution provides: “A well regulated

Militia being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.”

38.

In its landmark 2008 decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court rejected the nearly uniform opinions reached by the courts of appeals, which for years had claimed that the Second Amendment protects only a communal right of a state to maintain an organized militia. *Heller*, 554 U.S. at 581. Setting the record straight, the *Heller* Court explained that the Second Amendment recognizes, enumerates, and guarantees to individuals the preexisting right to keep and carry arms for self-defense and defense of others in the event of a violent confrontation. *Id.* at 592.

39.

Then, in *McDonald*, 561 U.S. 742, the Supreme Court explained that the Second Amendment is fully applicable to the states through operation of the Fourteenth Amendment. *Id.* at 791.

40.

In *Caetano v. Massachusetts*, 577 U.S. 411 (2016), the Supreme Court reaffirmed its conclusion in *Heller* that “the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding ...” and that this “Second Amendment right is fully applicable to the States.” *Id.* at 411, 416.

41.

Finally, as the Supreme Court has now explained in *Bruen*, the Second and Fourteenth Amendments together guarantee individual Americans not only the right to “keep” firearms in their homes, but also the right to “bear arms,” meaning “to carry a handgun for self-defense outside

the home,” free from infringement by either federal or state governments. *Bruen*, 142 S Ct at 2122.

42.

Importantly, in addition to clearly recognizing the right of “law-abiding, responsible citizens’ ... to public carry” (*Id.* at 2138, n.9), *Bruen* also rejected outright the methodology used within many circuits to judge Second Amendment challenges.

43.

Prior to *Bruen*, the U.S. Court of Appeals for the Fourth Circuit had adopted a two-part test for analyzing Second Amendment cases:

[W]e have concluded that a two-part approach to Second Amendment claims seems appropriate under *Heller*. Pursuant to that two-part approach, we first ask whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's guarantee. If the answer is no, then the challenged law is valid. If, however, the challenged law imposes a burden on conduct protected by the Second Amendment, we next apply[] an appropriate form of means-end scrutiny.... [W]e ... select between strict scrutiny and intermediate scrutiny.... [T]he level of scrutiny we apply depends on the nature of the conduct being regulated and the degree to which the challenged law burdens the right.

*Kolbe v. Hogan*, 849 F.3d 114, 132-133 (4<sup>th</sup> Cir. 2017); *see also Bruen*, 142 S Ct at 2127, n.4 (collecting cases using two-part test). Other circuits had adopted and used a substantially similar formula, which invariably utilized the very same “judge-empowering ‘interest-balancing inquiry’” that *Heller* had explicitly rejected. *See Heller* at 634; *see also Duncan v. Becerra*, 265 F. Supp. 3d 1106, 1117 (S.D. Cal. 2017), *aff’d* 742 Fed. Appx. 218 (9<sup>th</sup> Cir. 2018) (“the Ninth Circuit uses what might be called a tripartite binary test with a sliding scale and a reasonable fit.”).

44.

Rejecting this widespread atextual, “judge empowering” (*Bruen*, 142 S Ct at 2129) interest-balancing approach, *Bruen* directed (again) the courts back to first principles, to assess the text of the Second Amendment, informed by the historical tradition. *Bruen*, 142 S Ct at 2127. First, the

Supreme Court “decline[d] to adopt that two-part approach” used in this and other circuits, and reiterated that, “[i]n keeping with *Heller*, we hold that when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Bruen*, 142 S Ct at 2126. Second, the Court held that, “[t]o justify [a] regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *Id.* (citation omitted). Third, in reviewing the historical evidence, the Court in *Bruen* cabined review of relevant history to a narrow time period, because “not all history is created equal,” focusing on the period around the ratification of the Second Amendment, and *perhaps* the Fourteenth Amendment (but noted that “post-ratification” interpretations “cannot overcome or alter that text,” and “we have generally assumed that the scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791.”). *See Bruen*, 142 S Ct at 2135–56 (discussing the lack of relevant historical prohibitions on concealed carry in public).

45.

According to the Second Amendment’s text, and as elucidated by the Court in *Bruen*, if a member of “the people” wishes to “keep” or “bear” a protected “arm,” then the ability to do so “shall not be infringed.” Period. There are no “ifs, ands or buts,” and it does not matter (even a little bit) how important, significant, compelling, or overriding the government’s justification for or interest in infringing the right. It does not matter whether a government restriction “minimally” versus “severely” burdens (infringes) the Second Amendment. There are no relevant statistical

studies to be consulted. There are no sociological arguments to be considered. The ubiquitous problems of crime or the density of population do not affect the equation. The only appropriate inquiry then, according to *Bruen*, is what the “public understanding of the right to keep and bear arms” was during the ratification of the Second Amendment in 1791, and perhaps during ratification of the Fourteenth Amendment in 1868. *Bruen*, 142 S Ct at 2138.

46.

The Supreme Court has also instructed as to the scope of the protected persons, arms, and activities covered by the Second Amendment. First, *Heller* explained that “in all six other provisions of the Constitution that mention ‘the people,’ the term unambiguously refers to all members of the political community, not an unspecified subset.” *Heller* at 580. *Heller* cited to *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990), which held that “[T]he people’ ... refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community.” *Id.* Second, *Heller* then turned to the “substance of the right: ‘to keep and bear Arms.’” *Id.* at 581. The Court explained that “[k]eep arms’ was simply a common way of referring to possessing arms, for militiamen *and everyone else.*” *Id.* at 583 (emphasis original). Next, the Court instructed that the “natural meaning” of “bear arms” was “wear, bear, or carry ... upon the person or in the clothing or in a pocket, for the purpose ... of being armed and ready for offensive or defensive action in a case of conflict with another person.” *Id.* at 584. And “[a]t the time of the founding, as now, to ‘bear’ meant to ‘carry.’” *Id.* *Bruen*, in fact, was more explicit, explaining that the “definition of ‘bear’ naturally encompasses public carry.” *Bruen*, 142 S Ct at 2134. Third, with respect to the term “arms,” the Court explained that “the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the

founding.” *Heller* at 582. Indeed, the “arms” protected by the Second Amendment include “weapons of offence, or armour of defence... Arms are any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another.” *Heller* at 581 (punctuation omitted).

47.

As relevant here, in addition to clearly establishing the framework by which lower courts are to analyze challenges implicating Second Amendment rights, *Bruen* also acknowledged the inherent risk in all permitting schemes, “because any permitting scheme can be put toward abusive ends, we do not rule out constitutional challenges to shall-issue regimes where, for example, *lengthy wait times in processing license applications* or exorbitant fees deny ordinary citizens their right to public carry.” *Bruen*, 142 S Ct at 2138, n.9 (emphasis added). BM114 creates and encourages precisely such “abusive ends,” requiring a permit not merely to carry but even to possess a firearm, and compounding the problems with a state background check system that already experiences *significant* delays in acquiring firearms.

### **INJURIES TO PLAINTIFFS & INJUNCTIVE RELIEF ALLEGATIONS**

48.

The individual Plaintiffs own, or intend to own on or after December 8, 2022, possess, and use magazines capable of holding more than 10 rounds of ammunition, but such possession and use will be impossible due to the prohibition provided for in BM114. All individual Plaintiffs intend to possess or continue possessing magazines capable of holding more than 10 rounds of ammunition outside of their homes on or after December 8, 2022, and but for BM114, the individual Plaintiffs would continue to possess magazines holding more than 10 rounds of

ammunition outside of their homes, and would continue to use such magazines for all lawful purposes now prohibited by BM114.

49.

Plaintiffs GOA and GOF represent their members and supporters, many of whom own, or desire to own on or after December 8, 2022, magazines capable of holding more than 10 rounds of ammunition. Many of their members and supporters intend to possess or continue possessing magazines capable of holding more than 10 rounds of ammunition outside of their homes on or after December 8, 2022 and but for BM114, the members and supporters of GOA and GOF would continue to possess magazines holding more than 10 rounds of ammunition outside of their homes.

50.

The individual Plaintiffs intend to purchase a firearm on or after December 8, 2022 but will be unable to do so without violation of their rights to keep and bear arms, due to the unavailability of the requisite firearm safety course, the non-existence of the requisite permit to purchase scheme in place after BM114's enactment, the permitting process itself, and the significant delays that will continue to grow in obtaining a firearm in Oregon, and but for BM114, the individual Plaintiffs would purchase a firearm on or after December 8, 2022.

51.

Plaintiffs GOA and GOF represent their members. Many of their members intend to purchase a firearm on or after December 8, 2022 but will be unable to due to the unavailability of the requisite firearm safety course and the non-existence of the requisite permit to purchase scheme in place due to BM114, and that but for BM114, the members and supporters of GOA and GOF would purchase a firearm on or after December 8, 2022.

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52.

BM114 violates, violates, and is inconsistent with Or. Const. Art. 1, Sec. 27.

53.

Because BM114 will operate as a complete and outright ban on the purchase of any firearm (either new or used) starting on December 8, 2022, BM114 violates and is inconsistent with Or. Const. Art. 1, Sec. 27.

54.

If not enjoined by this Court, Defendants and their agents, representatives, and employees will administer, implement, and enforce BM114, including against Plaintiffs. This will violate or be inconsistent with Or. Const. Art. 1, Sec. 27 and subject the individual Plaintiffs, and GOA and GOF's members, to criminal arrest and prosecution, potential imprisonment, and loss of property.

55.

This will cause the individual Plaintiffs, and GOA and GOF's members, irreparable injury. The deprivation of a fundamental constitutional right, even temporarily, constitutes irreparable injury. *See Elrod v. Burns*, 427 US 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”); *Melendres v. Arpaio*, 695 F3d 990, 1002 (9<sup>th</sup> Cir 2012) (“It is well established that the deprivation of constitutional rights ‘unquestionably constitutes irreparable injury.’”) (“It is always in the public interest to prevent the violation of a party’s constitutional rights.”; *see also Elkhorn Baptist Church v. Brown*, 366 Or 506, 546 (2020) (“The inability of plaintiffs to worship in the manner that they prefer and the inability of intervenors to carry on their businesses in the manner that is usual (or at all) is irreparable harm for these purposes, even if temporary.) (Garrett, J., concurring).

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**FIRST CLAIM FOR RELIEF**

**Declaratory Judgment; ORS 28.020**

**(BM114 Violates Or. Const. Art. 1, Sec. 27)**

56.

Plaintiffs reallege and incorporate by reference the allegations of the prior Paragraphs as though fully set forth herein.

57.

Article 1, Section 27 of the Oregon State Constitution bars prohibitions on and violation of the right to bear arms in public in order to engage in the reasonable defense of oneself against felonious attack.

58.

The Oregon Supreme Court has provided that “Article I, section 27, prevents the legislature from infringing on the people’s individual right to bear arms for purposes limited to self-defense.” *Christian*, 354 Or at 30.

59.

The Oregon Supreme Court has further concluded that, while “the legislature may specifically regulate the manner of possession and use of protected weapons to promote public safety as long as the exercise of that authority does not unduly frustrate the right to bear arms guaranteed by Article I, section 27.” *Christian*, 354 Or at 38. BM114, however, *completely eliminates* the right to possess and use certain arms, and *completely eliminates* the ability even to acquire arms.

60.

BM114 requires Oregonians wishing to purchase any firearm from a licensed dealer,

private party, or gun show to first obtain, and then present, a valid government issued permit to purchase the firearm issued under BM114, Section 4.

61.

Requiring a permit to purchase a firearm violates the right to bear arms guaranteed by the Oregon Constitution.

62.

Requiring a permit to purchase a firearm violates the rights of Oregonians to bear arms by placing the onus on each Oregonian wishing to exercise their right under the Oregon Constitution to affirmatively prove their worthiness to exercise their right rather than on the State to prove that they do not possess that right. This makes the right to bear arms the exception, not the rule.

63.

Requiring a permit to purchase a firearm is inconsistent not only with Oregon's historical tradition of firearm regulation, but the nation's historical tradition from the Founding to the present day.

64.

On information and belief, most, if not all, Oregon counties, as well as the Oregon State Police, do not have in place any procedure or process for accepting, reviewing, or granting applications for permits to purchase under BM114.

65

BM114 requires Oregonians wishing to obtain a permit to purchase under BM114, Section 4 to provide "proof of completion of a firearm safety course as defined in subsection (8) of [Section 4]." BM114, § 4(8) requires that the firearm safety course include "(D) In-person demonstration of the applicant's ability to lock, load, unload, fire and store a firearm before an instructor certified

by a law enforcement agency.”

66.

Requiring Oregonians to complete a firearm safety course in order to obtain a permit to purchase a firearm violates the rights of Oregonians to keep and bear arms by placing the onus on each Oregonian wishing to exercise their Second Amendment right to affirmatively prove their worthiness to exercise their right rather than on the State to prove that they do not possess that right. This makes the right to keep and bear arms the exception, not the rule.

67.

Requiring Oregonians to complete a firearm safety course in order to obtain a permit to purchase a firearm violates the right to bear arms guaranteed by the Oregon Constitution.

68.

Requiring Americans to complete a firearm safety course in order to obtain a permit to purchase a firearm is inconsistent not only with the Oregon’s historical tradition of firearm regulation, but the nation’s historical tradition from the Founding to the present day.

69.

On information and belief, most, if not all, Oregon counties do not have in place any firearm safety course meeting all requirements of BM114, § 4(8). Thus, an Oregonian could not obtain a permit to purchase even if so desired, because BM114 requires an impossibility.

70.

BM114 bans the manufacture, import, possession, use, purchase, sale, or other transfer of magazines capable of holding more than 10 rounds.

71.

Article 1, Section 27 protects the right of Oregonians to bear “arms” which are, “as

modified by its modern design and function,” of the sort in existence in the mid-nineteenth century, were in common use, and were used for personal defense. *See Oregon State Shooting Ass’n v. Multnomah County*, 122 Or App 540, 544 (1993) (quoting *State v. Delgado*, 298 Or 395, 400 (1984)).

72.

Banning magazines capable of holding more than 10 rounds of ammunition violates the right to bear arms guaranteed by the Oregon Constitution.

73.

Banning the mere possession of arms is not permitted under the Oregon Constitution. *See Christian*, 354 Or at 40–41 (citing *State v. Bocker*, 291 Or 255, 259 (1981); *Delgado*, 298 Or at 403–04).

74.

The magazines banned through BM114 are of the sort that were in existence in the mid-nineteenth century (when the Article 1, Section 27 was ratified), were in common use, and were used for personal defense.

#### **ATTORNEY FEES**

75.

Plaintiffs claim a right to recover reasonable attorney fees and costs pursuant to the Court’s inherent equitable authority under the constitutional and substantial benefit theories and any other applicable provision of law. *De Young v. Brown*, 368 Or 64 (2021).

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request judgment against Defendants as follows:

1. For entry of Judgment against Defendants;

2. On Plaintiffs' First Claim for Relief, for entry of a declaration under the Oregon Uniform Declaratory Judgment Act that BM114 is unconstitutional on its face pursuant to Article 1, Section 27 of the Oregon State Constitution, and entry of a permanent injunction permanently enjoining Defendants and their officers, agents, and employees from enforcing BM114 in its entirety, or in such portions and applications as the Court finds to be unconstitutional;
3. Plaintiffs' reasonable attorney fees and costs pursuant to this Court's inherent equitable authority under the constitutional and substantial benefit theories; and
4. Any other relief as this Court may deem just and proper.

DATED: **December 2, 2022**

**Tyler Smith and Associates, PC**

By /s/ Tyler D. Smith  
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**VERIFICATION**

WE, the undersigned, individually or on behalf of our respective corporations named as Plaintiffs to this action, declare under penalty of perjury that we have read the foregoing Complaint for Declaratory and Injunctive Relief, and the matters and things stated therein are true to the best of our knowledge and belief.

Dated: Dec 2, 2022

  
Joseph Arnold (Dec 2, 2022 54:14 PST)

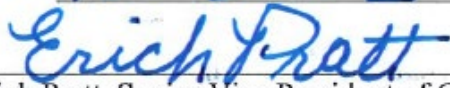
Joseph Arnold, Individually

Dated: Dec 2, 2022

  
Clifford Asmussen (Dec 2, 2022 14:41 PST)

Cliff Asmussen, Individually

Dated: 12-2-22



Erich Pratt, Senior Vice President of Gun Owners of America, Inc.

Dated: 12-2-22



Erich Pratt, Senior Vice President of Gun Owners Foundation

## PREAMBLE

Whereas the People of the State of Oregon have seen a sharp increase in gun sales, gun violence, and raised fear in Oregonians of armed intimidation, it is imperative to enhance public health and safety in all communities; and

Whereas the gun violence in Oregon and the United States, resulting in horrific deaths and devastating injuries due to mass shootings, homicides and suicides is unacceptable at any level, and the availability of firearms, including semiautomatic assault rifles and pistols with accompanying large-capacity ammunition magazines, pose a grave and immediate risk to the health, safety and well-being of the citizens of this State, particularly our youth; and

Whereas Oregon currently has no permit requirements for purchasing a semiautomatic assault firearm or any other type of weapon and studies have shown that permits-to-purchase reduce firearm-related injuries and death and studies further have shown that firearm ownership or access to firearms triples the risk of suicide and doubles the risk of homicide when compared to someone who does not have access, this measure will require that anyone purchasing a firearm must first complete a safety training course, successfully pass a full background check and, only then, will an individual be granted a permit-to-purchase a firearm, so that firearms are kept out of dangerous hands; and

Whereas large-capacity magazines are often associated with semiautomatic assault rifles, and can also be used with many semiautomatic firearms including shotguns and pistols, and estimates suggest that nearly 40% of crime guns used in serious violent crimes, including attacks on law enforcement officers, are equipped with large-capacity magazines; and

Whereas firearms equipped with large-capacity magazines increase casualties by allowing a shooter to continue firing for longer periods of time before reloading, thus explaining their use in all 10 of the deadliest mass shootings since 2009, and in mass shooting events from 2009 to 2018 where the use of large-capacity magazines caused twice as many deaths and 14 times as many injuries, including the 2015 shooting at Umpqua Community College in Roseburg, Oregon in which 10 people were killed and 7 more were injured; and

Whereas restrictions on high-capacity magazines during the 10-year federal ban from 1994-2004 and the ban in over nine (9) states and the District of Columbia have been found to reduce the number of fatalities and injuries in shooting incidents, this measure will enhance the safety of residents, particularly children, of this state by prohibiting the manufacture, sale, or transfer of large-capacity ammunition magazines and regulate the use of such magazines that are currently owned;

Now, therefore:

Be It Enacted by the People of the State of Oregon

**SECTION 1.** Sections 2 to 11 of this 2022 Act are added to and made a part of ORS 166.210 to 166.490.

**SECTION 2.** The People of the State of Oregon find and declare that regulation of sale, purchase and otherwise transferring of all firearms and restriction of the manufacture, import, sale, purchase, transfer, use and possession of ammunition magazines to those that hold no more than 10 rounds will promote the public health and safety of the residents of this state and this Act shall be known as the Reduction of Gun Violence Act.

## DEFINITIONS

**SECTION 3.** Definitions. As used in sections 3 to 10 of this 2022 Act:

- (1) "Criminal background check" has the same meaning given to this term in ORS 166.432(1)(a) to (e).
- (2) "Department" means the Department of State Police.
- (3) "Gun dealer" means a person engaged in the business, as defined in 18 U.S.C. 921, of selling, leasing or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker or otherwise.
- (4) "Permit" or "permit-to-purchase" mean an authorization issued to a person to purchase or acquire a firearm, provided all other requirements at the time of purchase or acquisition are met.
- (5) "Permit Agent" means a county sheriff or police chief with jurisdiction over the residence of the person making an application for a permit-to-purchase, or their designees.
- (6) "Transfer" has the meaning given that term in ORS 166.435(1)(a).
- (7) "Transferor" means a person who is not a gun dealer or licensed as a manufacturer or importer under 18 U.S.C. 923