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OREGON STATE LEGISLATURE
900 COURT ST NE SALEM, OREGON 97301

December 11, 2022

Case # 22CV41008
ORC79 Motion for Temporary Restraining Order and
Order to Show Cause Why Preliminary Injunction Should Not Enter

Honorable Harney County Judge Raschio,

On behalf of the overwhelming majority of my constituents and those of thirty of Oregon's thirty six counties, I am grateful for your order to grant a temporary restraining order and order to show cause why preliminary injunction should not enter regarding implementation of Ballot Measure 114 (BM 114) filed by plaintiffs Joseph Arnold, Cliff Asmussen, Gun Owners of America and Gun Owners Foundation. Ballot Measure 114's "permit to purchase" by a law-abiding person before purchasing a firearm and the prohibition of possessing a standard capacity firearm magazine, banning the "manufacture, importation, possession, use, purchase or other transfer" of a magazine with a capacity greater than 10 rounds of ammunition, violate Article 1, Section 27 of the Oregon Constitution as well as the 2nd Amendment of the Constitution of the United States.

The Oregon Supreme Court has previously held that Article 1, Section 27 of the Oregon Constitution prevents the infringement of an Oregonian's individual right to purchase and bear arms for the purpose of self-defense. Earlier this year, the U.S. Supreme Court ruled in *N.Y. State Rifle & Pistol Ass'n v. Bruen*; noting "any permitting scheme can be put toward abusive ends" and opened the door to challenges to "shall-issue regimes where, for example, lengthy wait times for processing license applications or exorbitant fees deny ordinary citizens their right to public carry". BM 114 violates the 2nd Amendment of the Constitution of the United States and Article 1, Section 27 of the Oregon Constitution by clearly going farther than contemplated in *Bruen* with the right of a citizen to public carry, and abusing this fundamental right and infringing upon a law abiding Oregonian's right to merely purchase a firearm.

The Oregon Supreme Court and U.S. Supreme Court have denied the infringement of an Oregonian's individual right to purchase and bear arms for the purpose of self-defense, which includes a firearm accessory that comes standard with the firearm. BM 114's prohibition of possessing a standard capacity firearm magazine, banning the "manufacture, importation, possession, use, purchase or other transfer" of a magazine with a capacity greater than 10 rounds of ammunition, equally violates Article 1, Section 27 of the Oregon Constitution as well as the 2nd Amendment of the Constitution of the United States. As the plaintiffs argue, firearm capacity to shoot more than ten rounds has existed since the 16th century. Merriwether Lewis carried such a firearm that had the capability of a 20 or 22 round magazine. Notwithstanding the extensive additional arguments included, it is clear that the founding fathers and the drafters of Article 1, Section 27 of the Oregon Constitution were very aware of the emerging technology of increased magazine capacity when drafting and ratifying. Therefore BM 114 violates the Oregon Constitution and the 2nd Amendment of the Constitution of the United States.

As argued by the plaintiffs, BM 114's abusive infringement of a law abiding Oregonians' right to purchase and possess a firearm and its standard equipment is a violation of the Oregon and U.S. Constitution. I support the plaintiff's arguments and as this issue moves forward, encourage the court to grant the requested preliminary injunction against this abusive and unconstitutional gun control measure and ultimately the end of any implementation of its provisions that in doing so, would irreparably harm the rights of every Oregonian.

Respectfully,

A handwritten signature in cursive script, appearing to read "David Brock Smith".

David Brock Smith

Oregon House of Representatives

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