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**SUPREME COURT OF THE STATE OF WASHINGTON**

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STATE OF WASHINGTON,

Appellant,

v.

GATOR'S CUSTOM GUNS, INC., a Washington for-profit  
corporation; and WALTER WENTZ, an individual,

Respondents.

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**AMICUS BRIEF OF  
NAACP ALASKA/OREGON/WASHINGTON  
STATE AREA CONFERENCE**

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## **I. INTRODUCTION**

The Opening, Response, and Reply briefs in this appeal focus on broad statistical generalities, historical archaeology, and nuanced case law dissections. In short, the kind of topics that legal elites and ivory tower academics love to ponder and debate.

But the Washington citizens most disproportionately impacted by mass shootings are not legal elites living in ivory towers. They are ordinary people living in our State's marginalized communities.

The NAACP Amici file this Amicus Brief to focus the issue in this appeal on a significant factor that the above briefs overlook: the disproportionate, literally life-or-death impact that this Court's ruling will on individuals living in our marginalized communities.

## **II. ERROR/ISSUE ADDRESSED**

The NAACP Amici do not repeat the arguments already made in the above briefs. Instead, they address from their

unique, marginalized community perspective the first issue presented in this appeal. Put bluntly, that issue is:

Does ESSB 5078's restriction on the sale of multi-bullet magazines in our State violate Article I, §24 of our State Constitution?

See Appellant's Brief at 4, issue #1.

The Respondents' Response Brief asserts a variety of rationalizations for why this Court's answer should be "yes". But as the following pages explain, those rationalizations callously ignore the deadly gun violence reality that people in our marginalized communities face. The correct answer is "no".

### **III. IDENTITY & INTEREST OF THE NAACP**

The NAACP Amici's corresponding Amicus Motion explains its identity and interest. But in summary:

The NAACP is our country's largest, oldest, and most successful civil rights organization, and the organization filing this Amicus Brief is the NAACP's Alaska/Oregon/Washington State Area Conference. <https://naacpaowsac.org/>.

The NAACP works “to ensure a society in which all individuals have equal rights.” NAACP Constitution at Vision Statement (available at <https://naacp.org/resources/naacp-constitution>). The NAACP accordingly fights for justice for all people – “without regard to race, gender, creed, or religion.” <https://naacp.org/resources/naacp-constitution>.

Gun violence, however, disproportionately kills and devastates people living in communities that are marginalized on account of race, gender, creed, or religion. The national NAACP has accordingly resolved to work for a national ban on high capacity bullet magazines. NAACP Resolution Addressing the Need for Gun Control (“THEREFORE, BE IT RESOLVED, that the NAACP work for the adoption by Congress a new ban on the purchase, ownership, and possession of ... high capacity magazine exceeding 11 rounds....”) (available at <https://naacp.org/resources/addressing-need-gun-control> ).

As the NAACP conference covering our State of Washington, the NAACP Amici filing this Amicus Brief have

the corresponding interest in upholding the Washington State legislature's adoption of the challenged statute in this case as part of our longstanding efforts to stem the killing of the individuals we and our members love.

**IV. STATEMENT OF THE CASE FROM THE NAACP  
AMICI'S PERSPECTIVE**

To avoid repetition of other briefs filed before today, the NAACP Amici will as a general matter adopt the Statement of the Case in the Appellant's Opening Brief.

But neither the Appellant's nor Respondents' case statement address the life-or-death realities in our marginalized communities that confirm the illogic of the Response Brief's attempts to rationalize the lower court's ruling. The ensuing Part V of this Amicus Brief therefore focuses on the real life reality faced by individuals in our marginalized communities that renders Respondents' rationalizations irrational.



## **V. LEGAL ARGUMENT FROM THE NAACP AMICI'S PERSPECTIVE**

### **A. Basic Foundation**

To put this Amicus Brief's legal argument in context, the NAACP Amici succinctly note the following foundation:

#### **1. Respondents' Burden of Proof**

Respondents "must, by argument and research, convince the court that there is no reasonable doubt that the statute violates the constitution." *Island County v. State*, 135 Wn.2d 141, 147, 955 P.2d 377 (1998). In short: to uphold the lower court's decision, Respondents must prove their case beyond a reasonable doubt. *Amalgamated Transit v. State*, 142 Wn.2d 183, 206, 11 P.3d 762 (2000).

#### **2. State Legislature's Legislative Findings**

The Appellant emphasizes this Court's pronouncements regarding the deference that this Court gives to the Legislature's fact finding process and resulting legislative finding. E.g., Opening Brief at 38-39; Reply Brief at 19.

And the Respondents disparage the Legislature's findings.  
Response Brief at 12-13, 17, 19, 22, 33-34, 50.

But neither Appellant nor Respondents detail what the factual findings enacted by the Legislature in this case are.

As another part of the underlying foundation for its legal argument in this case and the reasonableness of the challenged statute's protections for persons such as the NAACP Amici's members, this statute as enacted by the Legislature is attached in full at Appendix One. And in this 2022 enactment, the Legislature expressly made the following findings:

- The legislature finds and declares that gun violence is a threat to the public health and safety of Washingtonians.
- Firearms equipped with large capacity magazines increase casualties by allowing a shooter to keep firing for longer periods of time without reloading.
- Large capacity magazines have been used in all 10 of the deadliest mass shootings since 2009, and 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.
- Documentary evidence following gun rampages, including the 2014 shooting at Seattle Pacific University, reveals many instances where victims were able to escape or disarm

the shooter during a pause to reload, and such opportunities are necessarily reduced when large capacity magazines are used.

- In addition, firearms equipped with large capacity magazines account for an estimated 22 to 36 percent of crime guns and up to 40 percent of crime guns used in serious violent crimes.
- Based on this evidence, and on studies showing that mass shooting fatalities declined during the 10-year period when the federal assault weapon and large capacity magazine ban was in effect, the legislature finds that restricting the sale, manufacture, and distribution of large capacity magazines is likely to reduce gun deaths and injuries.
- The legislature further finds that this is a well-calibrated policy based on evidence that magazine capacity limits do not interfere with responsible, lawful self-defense.
- The legislature further finds that the threats to public safety posed by large capacity magazines are heightened given current conditions.
- The years 2020 and 2021 have seen a sharp increase in gun sales and gun violence, as well as fears over gun violence and incidents of armed intimidation.
- In this volatile atmosphere, the legislature declares that it is time to enhance public health and safety by limiting the sale of large capacity magazines.
- The legislature intends to limit the prospective sale of large capacity magazines, while allowing existing legal owners to retain the large capacity magazines they currently own.

ENGROSSED SUBSTITUTE SENATE BILL 5078, Section 1.

### **3. Appellant's & Respondents' Ignoring of Marginalized Communities**

One thing that the Appellant's and Respondents' briefs share in common is their failure to address what the arguments they make say to individuals living in our State's marginalized communities. Instead, of addressing the impacts of their arguments on these individuals, they cite generalized numbers from generalized statistics relating to the general population as a whole. E.g., Opening Brief at 7-12, 30-31; Response Brief at 16-17, 56-57, Reply Brief at 8-9, 20.

This shortcoming is especially significant to the various rationalizations that the Respondents ask this Court to employ to affirm the lower court's ruling – for this Court's adopting those rationalizations would send a particularly damning message to individuals living in the marginalized communities disproportionately killed and devastated by the mass shootings that multi-bullet magazines perpetuate.

To fit within this Court's word-count limitation, this Brief limits itself to the following six illustrations of this point.

**B. What Respondents’ Rationalizations Require this Court to Tell Individuals in our State’s Marginalized Communities**

**1. Respondents’ “second class” premise**

Respondents premise their Response Brief on their assertion that their right to bear arms “is not a second class right.” Response at 9.

But their premise’s catchy slogan ignores the all too common reality that mass shootings target persons living in marginalized communities.

Put yourself in the shoes of an African-American teenager who is buying food for your family at the neighborhood grocery store in your town with a large African-American population. A person whose personal writings embrace the white supremacist “replacement theory” ideology that whites are being replaced by people of color walks in and starts shooting at you and your fellow shoppers. Because he had bought a 30-round multi-bullet magazine, he rapidly shoots 13 people – killing the person standing right next to you and 9 others.

But this is not a law school hypothetical. It's a reality in our marginalized communities: the **Tops Grocery Store mass shooting**.<sup>1</sup>

Civil rights groups, including NAACP branches across our country, highlight this mass shooting of marginalized Americans as yet another gun violence tragedy requiring legislators to take meaningful action.<sup>2</sup> And in 2022, the people's elected

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<sup>1</sup> <https://www.nytimes.com/2022/05/15/briefing/mass-shooting-buffalo-new-york.html>; <https://ag.ny.gov/press-release/2023/attorney-general-james-sues-gun-accessory-manufacturer-aiding-buffalo-shooter> ; <https://www.nytimes.com/2022/05/14/nyregion/east-side-buffalo-shooting.html?smid=url-share> ; <https://www.nytimes.com/live/2022/05/15/nyregion/shooting-buffalo-ny> ; <https://www.cbsnews.com/news/buffalo-shooting-tops-supermarket-payton-gendron-death-penalty/>

<sup>2</sup> <https://m.komonews.com/news/local/families-impacted-by-gun-violence-hold-remembrance-in-seattle-honor-the-buffalo-10>; <https://seattlemedium.com/seattle-naacp-to-hold-event-remembering-the-victims-of-gun-violence/>; <https://naacplosangeles.org/f/naacpla-uvalde-texas-elementary-school-shooting?blogcategory=Official+Statements+of+NAACPLA>; <https://nysnaacp.org/press/statement-on-buffalo-shooting>; <https://www.naacpldf.org/press-release/ldf-issues-statement-in-response-to-racially-motivated-buffalo-mass-shooting/>

representatives in our State did exactly that: they enacted ESSB 5078 (attached as Appendix One).

With respect to Respondents’ “second class” premise, the second class message that the lower court’s ruling effectively tells individuals who identify with the families of those killed in the Tops Grocery Store mass shooting is that our State courts considers them second class citizens – which is especially ironic here since the Respondents themselves admit that “Even in the context of defense of others, the right to preservation of life is obviously of paramount importance.” Response at 49 (citing *Gardner v. Loomis Armored Inc.*, 128 Wn.2d 931, 913 P.2d 377 (1996)).

## **2. Respondents’ popularity contest approach**

Respondents argue that this Court should strike down Washington’s statute because “only a drastic minority of states have enacted similar laws”, because such laws have been stricken down by “other courts which have examined similar laws”, and

because this Court “should follow the analysis under the Oregon Constitution.” Response at 9 & 29.

But Respondents’ popularity contest approach ignores the fact that our State is not other States. And a core reason for each State’s separation is, as Justices Brandeis and Stone explained, to allow an individual State such as ours to serve as a laboratory of democracy as we collectively struggle to deal with evolving problems such as the increase in mass shootings we face today. *See, New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (“It is one of the happy incidents of the federal system that a single courageous state may ... serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”) (J.J. Brandeis & Stone, dissenting).<sup>3</sup>

Respondents’ popularity contest focus also turns a blind eye on the non-popular targets of mass shootings.

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<sup>3</sup> *See also, Henry Ford’s observation that “If you always do what you’ve always done, you’ll always get what you’ve always got.”* <https://www.goodreads.com/quotes/904186-if-you-always-do-what-you-ve-always-done-you-ll-always>



Put yourself in the shoes of a homosexual-American partying with your friends at what's commonly thought of as the gay nightclub in your town. A person walks in and starts shooting at you and your friends. Because that shooter had bought several 30-round multi-bullet magazines, it takes him less than five minutes to shoot 102 people standing around you – and kill your two best friends along with 47 others.

But this is not a law school hypothetical. It's a reality in our marginalized communities: the **Pulse Nightclub mass shooting**.<sup>4</sup>

Civil rights groups such as the NAACP react to this mass shooting of marginalized Americans as another reason for

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<sup>4</sup> <https://www.usatoday.com/story/news/2016/06/14/guns-used-kill-49-orlando-high-capacity-common-weapons/85887260/> ; <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-w0857-pub.pdf> ; <https://www.nytimes.com/2019/02/13/us/pulse-nightclub-orlando-officer-gunfire.html>

lawmakers to take meaningful action.<sup>5</sup> And in 2022, the people’s elected representatives in our State did just that: ESSB 5078 (attached as Appendix One).

The message that the lower court’s ruling effectively told individuals who identify with those killed in the Pulse Nightclub mass shooting is that individuals like them simply are not popular enough for Washington courts to protect them.

### **3. Respondents’ “ineffectiveness” tautology**

Respondents object that considering this statute a reasonable or common sense law “is belied by the ineffectiveness of its provisions” – arguing “only law-abiding citizens will abide by the law; that tautology is simple, yet it lays bare the ineffectiveness of ESSB 5078.” Response at 9 & 22.

But Respondents’ only-law-abiding-citizens-obey-the-law argument does not prove the unreasonableness of this statute

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<sup>5</sup> <https://portal.cops.usdoj.gov/resourcecenter/content.ashx/cops-w0857-pub.pdf> (citing NAACP statement about this shooting).

any more than that tautology proves the unreasonableness of every single other law in our State (including, laws outlawing drunk driving, murder, and rape) – for only law abiding citizens obey those laws.

As with their other rationalizations, Respondents' tautology argument indifferently glosses over the all too common reality that mass shootings target persons living in marginalized communities.

Put yourself in the shoes of a Native-American parent, and you just sent your daughter to your tribal high school. A person walks in to her classroom and starts shooting at your daughter and her classmates. Because that shooter had a 15-round multi-bullet magazine, it takes him just three minutes to shoot 7 people – killing your daughter, 4 of her classmates, her teacher, and the security guard.

But this is not a law school hypothetical. It's a reality in our marginalized communities: the **Red Lake High School mass shooting**.<sup>6</sup>

Or put yourself in the shoes of a Latino-American parent, and you just sent your son to his elementary school in your town with a large Latino-American population. A person walks in to your son's classroom and starts shooting at him and his classmates. Because that shooter had bought 30-round multi-bullet magazines, it takes that shooter just two and a half minutes to shoot 38 people – killing your son, 18 of his classmates, and 2 teachers.

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<sup>6</sup> [https://schoolshooters.info/sites/default/files/FBI-Red-Lake\\_1.pdf](https://schoolshooters.info/sites/default/files/FBI-Red-Lake_1.pdf); <https://www.cbsnews.com/news/red-lake-massacre-took-3-minutes/>;

But this too is not a law school hypothetical. It's a reality in our marginalized communities: the **Robb Elementary School mass shooting**.<sup>7</sup>

Civil rights groups, including the NAACP, react to these mass shootings of marginalized Americans as another call to take meaningful action.<sup>8</sup> And in 2022, the people's elected

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<sup>7</sup> <https://datausa.io/profile/geo/uvalde-tx>;  
[https://static.texastribune.org/media/files/d005cf551ad52eea13d8753ede93320c/Uvalde%20Robb%20Shooting%20Report%20-%20Texas%20House%20Committee.pdf?\\_ga=2.47553639.1596182532.1676993926-336316347.1676993926](https://static.texastribune.org/media/files/d005cf551ad52eea13d8753ede93320c/Uvalde%20Robb%20Shooting%20Report%20-%20Texas%20House%20Committee.pdf?_ga=2.47553639.1596182532.1676993926-336316347.1676993926);  
<https://everytownresearch.org/report/assault-weapons-and-high-capacity-magazines/>;  
<https://www.texastribune.org/2023/05/24/uvalde-school-shooting-what-to-know/>,

<sup>8</sup> <https://naacplosangeles.org/f/naacpla-uvalde-texas-elementary-school-shooting?blogcategory=Official+Statements+of+NAACPLA>;  
<https://www.naacpldf.org/press-release/ldf-responds-to-doj-report-on-failures-of-uvalde-police-department/> ;  
<https://naacplosangeles.org/f/naacpla-uvalde-texas-elementary-school-shooting?blogcategory=Official+Statements+of+NAACPLA>

representatives in our State did: ESSB 5078 (attached as Appendix One).

Adopting Respondents' tautological, all-laws-are-ineffective reasoning would tell individuals who identify with the families of children killed in the Red Lake High School and Robb Elementary School mass shootings that Washington courts deem it ineffective to pass any law restricting the number of bullets that a mass murderer can rapidly fire to kill as many of their children as they can.

#### **4. Respondents' anything-common-is-constitutional claim**

Similar to the U.S. Postal Service's "if it fits, it ships" slogan for the cost of flat-rate package delivery,<sup>9</sup> Respondents repeatedly promote an "if it's common, it's constitutional" test for the constitutionality of selling multi-bullet magazines: "They are common and therefore protected." Response at 52; accord,

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<sup>9</sup> [https://about.usps.com/postal-bulletin/2009/pb22265/html/info1\\_004.htm](https://about.usps.com/postal-bulletin/2009/pb22265/html/info1_004.htm)

Respondents expanded common use arguments at 16-17, 23, 52, 56-57, & 69.

“If it’s common, it’s constitutional” is not, however, the test. For if it were, racially segregated public schools being widespread and common in the 1950’s would have made them constitutional in the 1950’s.

But they were not. *Brown v. Board of Education of Topeka*, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955).

And as with Respondents’ other rationalizations, adopting their “if it’s common, it’s constitutional” test would once again require this Court to turn a blind eye to the all too common reality that mass shootings target persons living in marginalized communities.

Put yourself in the shoes of a new American who lawfully immigrated from Mexico, and you’re shopping at one of those so-called superstores in your city with a large Mexican immigrant population. A person whose personal writings explicitly echo President-elect-Trump’s anti-immigrant animus

walks in and starts shooting at you and your friends. Because that shooter had bought an extended capacity multi-bullet magazine, it takes him only six minutes to shoot 45 of the people around you – killing the elderly man beside you pushing a shopping cart and 22 others.

But this is not a law school hypothetical. It's a reality in our marginalized communities: the **El Paso Walmart mass shooting**.<sup>10</sup>

Or put yourself in the shoes of a Haitian-American immigrant who's attending English as a Second Language (ESL) class conducted at your town's non-profit resettlement

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<sup>10</sup> <https://www.texastribune.org/2019/08/28/el-paso-shooting-gun-romania/>; <https://www.nbcbayarea.com/news/national-international/el-paso-police-report-shooter-at-mall/147513/>; <https://www.texastribune.org/2023/02/08/el-paso-walmart-shooting-pleads-guilty/>; <https://www.nytimes.com/2021/07/01/movies/915-hunting-hispanics-review.html>; <https://www.nytimes.com/2019/08/04/us/politics/trump-mass-shootings.html?smid=url-share>; <https://www.nytimes.com/2019/08/03/us/patrick-crusius-el-paso-shooter-manifesto.html>



organization. A person walks in and starts shooting at you and your fellow immigrants. Because that shooter had bought a 30-round multi-bullet magazine, it takes him merely minutes to shoot 18 of your classmates – killing the young woman sitting next to you and 12 others.

But this is not a law school hypothetical. It's a reality in our marginalized communities: the **Binghamton Civic Association mass shooting**.<sup>11</sup>

Civil rights groups, including El Centro de la Raza, react to these mass shootings of marginalized Americans as another

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<sup>11</sup> <https://www.pressconnects.com/in-depth/news/local/2019/03/27/binghamton-mass-shooting-american-civic-association-aca-changed-city/3157972002/>;  
<https://www.hSDL.org/c/timeline/binghamton-shootings/>;  
<https://www.nytimes.com/2009/04/04/nyregion/04hostage.html>;  
[https://www.syracuse.com/news/2011/04/mass\\_slaying\\_anniversary\\_marke.html](https://www.syracuse.com/news/2011/04/mass_slaying_anniversary_marke.html); <https://nypost.com/2011/04/04/survivor-from-2009-binghamton-mass-shooting-calls-for-magazine-ban/>;  
<https://abcnews.go.com/US/story?id=7249853&page=1>;  
<https://www.latimes.com/archives/la-xpm-2009-apr-04-na-binghamton-shooting-hostage4-story.html>;  
<https://www.elpasotimes.com/in-depth/news/2020/07/30/el-paso-walmart-shooting-community-reflect-racist-motive-behind-attack/5450331002/>

call to take meaningful action.<sup>12</sup> And in 2022, the people’s elected representatives in our State did just that. They enacted ESSB 5078 (attached as Appendix One).

Upholding the lower court’s ruling with Respondents’ “if it’s common, it’s constitutional” reasoning would tell individuals who identify with the families of those killed in the El Paso Walmart and Binghamton Civic Association mass shootings that Washington law gives shooters the constitutional right to buy multi-bullet magazines to rapidly kill them because such magazines are common.

## **5. Respondents’ free agency theory**

Respondents posit that this statute’s limiting the sale of multi-bullet magazines to those holding no more than ten bullets is unconstitutional because it “seeks to eradicate the agency of individual citizens to determine what is reasonable for their own self-defense”, and “it is unquestionable that limiting the rounds

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<sup>12</sup> <https://www.elcentrodelaraza.org/impact-of-the-el-paso-shooting-on-november-3> .

available to the wielder of a firearm makes that person's ability to defend themselves worse". Response at 58 & 15-16.

But the Washington Constitution does not grant every person unbounded free agency to buy whatever they think is reasonable to defend themselves. For example, an individual can credibly say that restricting their ability to wield flame throwers, machine guns, and armor piercing bullets makes their ability to defend themselves worse. But Respondents' unbounded free-agency theory does not give that individual a constitutional right to buy flame throwers, machine guns, and armor piercing bullets.

And like the other rationalizations that Respondents give for striking down this statute's limiting the sale of multi-bullet magazines to ten bullets or less, Respondents' let-me-do-whatever-I-want, free agency theory cavalierly ignores the all too common reality that mass shootings target individuals living in marginalized communities.

Put yourself in the shoes of an Asian-American attending a Lunar New Year celebration at a Chinese dance studio in your

town that has a large Asian-American population. A person walks in and starts shooting at you and your friends. Because that shooter had bought a 30-round multi-bullet magazine, it takes him less than three minutes to shoot 20 of your friends – killing the friend you are dancing with along with 10 others.

But this is not a law school hypothetical. It's a reality in our marginalized communities: the **Star Ballroom mass shooting**.<sup>13</sup>

Upholding the lower court's ruling based on Respondents' free-agency theory would send a clear message to individuals who identify with the families of those killed in the Star

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<sup>13</sup> <https://www.cbsnews.com/news/monterey-park-shooting-victims-identified/>;  
<https://www.nytimes.com/2023/01/22/us/shooting-monterey-park-california.html>; <https://www.cnn.com/2023/01/23/us/huu-can-tran-monterey-park-shooting-what-we-know>;  
<https://www.nytimes.com/live/2023/01/23/us/shooting-monterey-park-california/recovered-weapons-ammunition-clothing-heres-what-police-found-when-investigating-the-suspect?smid=url-share>;  
<https://www.cnn.com/2023/01/23/us/monterey-park-mass-shooting-timeline/index.html>,

Ballroom mass shooting – namely, the Washington law grants shooters who target their communities the right to buy whatever weapon of mass destruction those shooters think is reasonable for that shooter to have.

**6. Respondents’ “potentially dangerous persons” spin**

Respondents do not dispute that it is not unconstitutional for the State to prevent potentially dangerous persons from buying or owning firearms. To the contrary, they admit that this Court has established that our “State has an important interest in restricting potentially dangerous persons from using firearms”, and that the *Heller* Court “explicitly recognized ‘presumptively lawful’ firearm regulations, such as those banning felons and the mentally ill from possessing guns.” Response at 59 & 44 (quoting *State v. Jorgenson*, 179 Wn.2d. 145, 162 & 156, 312 P.3d 960 (2013)).

So in order to rationalize their claim that it is unconstitutional for this statute to limit multi-bullet magazines to ten or fewer bullets, Respondents invoke a variant of the NRA’s

old “guns don’t kill people, people do” slogan – insisting that laws regulating guns (instead of dangerous people) are unconstitutional. Response at 45, 58-60.

But that distinction does not make sense – for it is the multi-bullet magazine that makes the person wielding it dangerous. To paraphrase the case law that Respondents themselves cite: Our State has an important interest in restricting potentially dangerous persons with firearms, and thus it is presumptively lawful for the State to ban the sale of multi-bullet magazines since multi-bullet magazines make a person wielding a firearm far more dangerous.

Respondents’ “guns don’t kill people, people do” deflection also disregards the reality that the mass shootings that multi-bullet magazines enable all too commonly target persons living in marginalized communities.

Put yourself in the shoes of a middle-aged Jewish American worshiping in your town’s synagogue on a nice Fall Saturday. A man whose personal writings assert that Jews are

the “enemy of white people” walks in and starts shooting at you and those praying around you. Because that shooter had bought a 30-round multi-bullet magazine, it takes him only minutes to shoot 17 people – killing the old lady next to you and 10 others.

But this is not a law school hypothetical. It’s a reality in our marginalized communities: the **Tree of Life Synagogue mass shooting**.<sup>14</sup>

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<sup>14</sup> <https://www.nytimes.com/2018/10/27/us/active-shooter-pittsburgh-synagogue-shooting.html>;  
<https://www.justice.gov/opa/pr/jury-recommends-sentence-death-pennsylvania-man-convicted-tree-life-synagogue-shooting>;  
<https://www.justice.gov/opa/pr/jury-recommends-sentence-death-pennsylvania-man-convicted-tree-life-synagogue-shooting>;  
[https://www.nytimes.com/2018/10/27/us/robert-bowers-pittsburgh-synagogue-shooter.html?unlocked\\_article\\_code=1.ZU4.s9jI.o26EdGLpoAI&smid=url-share](https://www.nytimes.com/2018/10/27/us/robert-bowers-pittsburgh-synagogue-shooter.html?unlocked_article_code=1.ZU4.s9jI.o26EdGLpoAI&smid=url-share),

Civil rights groups such as the NAACP react to this mass shooting of marginalized Americans as yet another call to take meaningful action.<sup>15</sup> And in 2022, the people’s elected representatives in our State did so, enacting ESSB 5078 (attached as Appendix One).

Upholding the lower court’s ruling on the theory that our Washington Constitution allows the State to try to restrict potentially dangerous people with firearms, but does not allow the State to limit the multi-bullet magazines that enable such shooters to rapidly kill as many people as possible, sends an empty message to individuals who identify with the families of those killed in the Tree of Life Synagogue mass shooting. A message that many of them will simply hear as: “thoughts and prayers... but at the end of the day, we don’t sufficiently care.”

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<sup>15</sup> <https://www.naacpldf.org/press-release/ldf-statement-tree-life-synagogue-shooting/>; <https://thenjsentinel.com/gloucester-county-naacp-stand-in-solidarity-with-victims-and-their-families-in-the-pittsburgh-massacre/>



## VI. CONCLUSION

Focusing on facts like the widespread toll of mass shooting deaths made easy by multi-bullet magazines is important. So are other facts like the widespread availability and use of mass killing enhancements like multi-bullet magazines. The main appellate briefing in this case has accordingly focused on the wealth of statistics regarding such widespread facts.

But a problem with mind numbing statistics is exactly that. They're mind numbing. Focusing solely on statistics regarding widespread facts seen from the 30,000 foot level numbs one to the individual life-and-death tragedies on the ground. As that line attributed to Joseph Stalin succinctly noted: "One death is a tragedy, a million deaths is just a statistic."<sup>16</sup>

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<sup>16</sup> See, e.g., <https://www.oxfordreference.com/display/10.1093/acref/9780191843730.001.0001/q-oro-ed5-00010383#:~:text=Nikolai%20Tolstoy%20Stalin's%20Secret%20War,20%20January%201947;%20see%20Tucholsky>

The NAACP Amici respectfully submit this brief to ensure that one does not overlook the on-the-ground, life-and-death significance that this Court's ruling will have in our State's marginalized communities.

Many – far too many – of our fellow citizens living in our State's marginalized communities have lost confidence in our judicial system's caring about and upholding justice, equality, and fairness for them. Upholding the lower court's ruling that our Constitution prohibits our elected representatives from taking even the small step at issue here to protect them from the carnage of mass shootings would only deepen that lack of confidence. And for the reasons outlined above, so deepening that lack of confidence is not what our Constitution requires.

RAP 18.17(b) & (c)(6) Word Limit Certification:

I certify that this Amicus Brief, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities & abbreviations, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (e.g., photographs, maps, diagrams, and exhibits), contains 3,839 words (not more than 5,000).

RESPECTFULLY SUBMITTED this 27th day of  
November, 2024.

Foster Garvey PC

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I declare under penalty of perjury under the laws of the  
State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, on November 27, 2024.

/s/ McKenna Filler  
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CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5078**

Chapter 104, Laws of 2022

67th Legislature  
2022 Regular Session

FIREARMS—LARGE CAPACITY MAGAZINES

EFFECTIVE DATE: July 1, 2022

Passed by the Senate February 9, 2022  
Yeas 28 Nays 20

DENNY HECK

**President of the Senate**

Passed by the House March 4, 2022  
Yeas 55 Nays 42

LURIE JINKINS

**Speaker of the House of  
Representatives**

Approved March 23, 2022 10:34 AM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5078** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

**Secretary**

FILED

March 23, 2022

**Secretary of State  
State of Washington**

---

**ENGROSSED SUBSTITUTE SENATE BILL 5078**

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Passed Legislature - 2022 Regular Session

**State of Washington                      67th Legislature                      2021 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Lias, Kuderer, Darneille, Hunt, Nguyen, Pedersen, and Wilson, C.; by request of Attorney General)

READ FIRST TIME 01/29/21.

1            AN ACT Relating to establishing firearms-related safety measures  
2 to increase public safety by prohibiting the manufacture,  
3 importation, distribution, selling, and offering for sale of large  
4 capacity magazines, and by providing limited exemptions applicable to  
5 licensed firearms manufacturers and dealers for purposes of sale to  
6 armed forces branches and law enforcement agencies for purposes of  
7 sale or transfer outside the state; amending RCW 9.41.010; adding new  
8 sections to chapter 9.41 RCW; creating a new section; prescribing  
9 penalties; and providing an effective date.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11            NEW SECTION.    **Sec. 1.**    The legislature finds and declares that  
12 gun violence is a threat to the public health and safety of  
13 Washingtonians. Firearms equipped with large capacity magazines  
14 increase casualties by allowing a shooter to keep firing for longer  
15 periods of time without reloading. Large capacity magazines have been  
16 used in all 10 of the deadliest mass shootings since 2009, and mass  
17 shooting events from 2009 to 2018 where the use of large capacity  
18 magazines caused twice as many deaths and 14 times as many injuries.  
19 Documentary evidence following gun rampages, including the 2014  
20 shooting at Seattle Pacific University, reveals many instances where  
21 victims were able to escape or disarm the shooter during a pause to

1 reload, and such opportunities are necessarily reduced when large  
2 capacity magazines are used. In addition, firearms equipped with  
3 large capacity magazines account for an estimated 22 to 36 percent of  
4 crime guns and up to 40 percent of crime guns used in serious violent  
5 crimes. Based on this evidence, and on studies showing that mass  
6 shooting fatalities declined during the 10-year period when the  
7 federal assault weapon and large capacity magazine ban was in effect,  
8 the legislature finds that restricting the sale, manufacture, and  
9 distribution of large capacity magazines is likely to reduce gun  
10 deaths and injuries. The legislature further finds that this is a  
11 well-calibrated policy based on evidence that magazine capacity  
12 limits do not interfere with responsible, lawful self-defense. The  
13 legislature further finds that the threats to public safety posed by  
14 large capacity magazines are heightened given current conditions. Our  
15 country is in the midst of a pandemic, economic recession, social  
16 tensions, and reckonings over racial justice. The years 2020 and 2021  
17 have seen a sharp increase in gun sales and gun violence, as well as  
18 fears over gun violence and incidents of armed intimidation. In this  
19 volatile atmosphere, the legislature declares that it is time to  
20 enhance public health and safety by limiting the sale of large  
21 capacity magazines. The legislature intends to limit the prospective  
22 sale of large capacity magazines, while allowing existing legal  
23 owners to retain the large capacity magazines they currently own.

24 **Sec. 2.** RCW 9.41.010 and 2021 c 215 s 93 are each amended to  
25 read as follows:

26 Unless the context clearly requires otherwise, the definitions in  
27 this section apply throughout this chapter.

28 (1) "Antique firearm" means a firearm or replica of a firearm not  
29 designed or redesigned for using rim fire or conventional center fire  
30 ignition with fixed ammunition and manufactured in or before 1898,  
31 including any matchlock, flintlock, percussion cap, or similar type  
32 of ignition system and also any firearm using fixed ammunition  
33 manufactured in or before 1898, for which ammunition is no longer  
34 manufactured in the United States and is not readily available in the  
35 ordinary channels of commercial trade.

36 (2) "Barrel length" means the distance from the bolt face of a  
37 closed action down the length of the axis of the bore to the crown of  
38 the muzzle, or in the case of a barrel with attachments to the end of  
39 any legal device permanently attached to the end of the muzzle.



1 (3) "Bump-fire stock" means a butt stock designed to be attached  
2 to a semiautomatic firearm with the effect of increasing the rate of  
3 fire achievable with the semiautomatic firearm to that of a fully  
4 automatic firearm by using the energy from the recoil of the firearm  
5 to generate reciprocating action that facilitates repeated activation  
6 of the trigger.

7 (4) "Crime of violence" means:

8 (a) Any of the following felonies, as now existing or hereafter  
9 amended: Any felony defined under any law as a class A felony or an  
10 attempt to commit a class A felony, criminal solicitation of or  
11 criminal conspiracy to commit a class A felony, manslaughter in the  
12 first degree, manslaughter in the second degree, indecent liberties  
13 if committed by forcible compulsion, kidnapping in the second degree,  
14 arson in the second degree, assault in the second degree, assault of  
15 a child in the second degree, extortion in the first degree, burglary  
16 in the second degree, residential burglary, and robbery in the second  
17 degree;

18 (b) Any conviction for a felony offense in effect at any time  
19 prior to June 6, 1996, which is comparable to a felony classified as  
20 a crime of violence in (a) of this subsection; and

21 (c) Any federal or out-of-state conviction for an offense  
22 comparable to a felony classified as a crime of violence under (a) or  
23 (b) of this subsection.

24 (5) "Curio or relic" has the same meaning as provided in 27  
25 C.F.R. Sec. 478.11.

26 (6) "Dealer" means a person engaged in the business of selling  
27 firearms at wholesale or retail who has, or is required to have, a  
28 federal firearms license under 18 U.S.C. Sec. 923(a). A person who  
29 does not have, and is not required to have, a federal firearms  
30 license under 18 U.S.C. Sec. 923(a), is not a dealer if that person  
31 makes only occasional sales, exchanges, or purchases of firearms for  
32 the enhancement of a personal collection or for a hobby, or sells all  
33 or part of his or her personal collection of firearms.

34 (7) "Family or household member" has the same meaning as in RCW  
35 7.105.010.

36 (8) "Felony" means any felony offense under the laws of this  
37 state or any federal or out-of-state offense comparable to a felony  
38 offense under the laws of this state.

39 (9) "Felony firearm offender" means a person who has previously  
40 been convicted or found not guilty by reason of insanity in this

1 state of any felony firearm offense. A person is not a felony firearm  
2 offender under this chapter if any and all qualifying offenses have  
3 been the subject of an expungement, pardon, annulment, certificate,  
4 or rehabilitation, or other equivalent procedure based on a finding  
5 of the rehabilitation of the person convicted or a pardon, annulment,  
6 or other equivalent procedure based on a finding of innocence.

7 (10) "Felony firearm offense" means:

8 (a) Any felony offense that is a violation of this chapter;

9 (b) A violation of RCW 9A.36.045;

10 (c) A violation of RCW 9A.56.300;

11 (d) A violation of RCW 9A.56.310;

12 (e) Any felony offense if the offender was armed with a firearm  
13 in the commission of the offense.

14 (11) "Firearm" means a weapon or device from which a projectile  
15 or projectiles may be fired by an explosive such as gunpowder.  
16 "Firearm" does not include a flare gun or other pyrotechnic visual  
17 distress signaling device, or a powder-actuated tool or other device  
18 designed solely to be used for construction purposes.

19 (12) "Gun" has the same meaning as firearm.

20 (13) "Intimate partner" has the same meaning as provided in RCW  
21 7.105.010.

22 (14) "Law enforcement officer" includes a general authority  
23 Washington peace officer as defined in RCW 10.93.020, or a specially  
24 commissioned Washington peace officer as defined in RCW 10.93.020.  
25 "Law enforcement officer" also includes a limited authority  
26 Washington peace officer as defined in RCW 10.93.020 if such officer  
27 is duly authorized by his or her employer to carry a concealed  
28 pistol.

29 (15) "Lawful permanent resident" has the same meaning afforded a  
30 person "lawfully admitted for permanent residence" in 8 U.S.C. Sec.  
31 1101(a)(20).

32 (16) "Licensed collector" means a person who is federally  
33 licensed under 18 U.S.C. Sec. 923(b).

34 (17) "Licensed dealer" means a person who is federally licensed  
35 under 18 U.S.C. Sec. 923(a).

36 (18) "Loaded" means:

37 (a) There is a cartridge in the chamber of the firearm;

38 (b) Cartridges are in a clip that is locked in place in the  
39 firearm;

1 (c) There is a cartridge in the cylinder of the firearm, if the  
2 firearm is a revolver;

3 (d) There is a cartridge in the tube or magazine that is inserted  
4 in the action; or

5 (e) There is a ball in the barrel and the firearm is capped or  
6 primed if the firearm is a muzzle loader.

7 (19) "Machine gun" means any firearm known as a machine gun,  
8 mechanical rifle, submachine gun, or any other mechanism or  
9 instrument not requiring that the trigger be pressed for each shot  
10 and having a reservoir clip, disc, drum, belt, or other separable  
11 mechanical device for storing, carrying, or supplying ammunition  
12 which can be loaded into the firearm, mechanism, or instrument, and  
13 fired therefrom at the rate of five or more shots per second.

14 (20) "Manufacture" means, with respect to a firearm or large  
15 capacity magazine, the fabrication or construction of a firearm or  
16 large capacity magazine.

17 (21) "Nonimmigrant alien" means a person defined as such in 8  
18 U.S.C. Sec. 1101(a)(15).

19 (22) "Person" means any individual, corporation, company,  
20 association, firm, partnership, club, organization, society, joint  
21 stock company, or other legal entity.

22 (23) "Pistol" means any firearm with a barrel less than  
23 (~~sixteen~~) 16 inches in length, or is designed to be held and fired  
24 by the use of a single hand.

25 (24) "Rifle" means a weapon designed or redesigned, made or  
26 remade, and intended to be fired from the shoulder and designed or  
27 redesigned, made or remade, and intended to use the energy of the  
28 explosive in a fixed metallic cartridge to fire only a single  
29 projectile through a rifled bore for each single pull of the trigger.

30 (25) "Sale" and "sell" mean the actual approval of the delivery  
31 of a firearm in consideration of payment or promise of payment.

32 (26) "Secure gun storage" means:

33 (a) A locked box, gun safe, or other secure locked storage space  
34 that is designed to prevent unauthorized use or discharge of a  
35 firearm; and

36 (b) The act of keeping an unloaded firearm stored by such means.

37 (27) "Semiautomatic assault rifle" means any rifle which utilizes  
38 a portion of the energy of a firing cartridge to extract the fired  
39 cartridge case and chamber the next round, and which requires a  
40 separate pull of the trigger to fire each cartridge.

1 "Semiautomatic assault rifle" does not include antique firearms,  
2 any firearm that has been made permanently inoperable, or any firearm  
3 that is manually operated by bolt, pump, lever, or slide action.

4 (28) "Serious offense" means any of the following felonies or a  
5 felony attempt to commit any of the following felonies, as now  
6 existing or hereafter amended:

7 (a) Any crime of violence;

8 (b) Any felony violation of the uniform controlled substances  
9 act, chapter 69.50 RCW, that is classified as a class B felony or  
10 that has a maximum term of imprisonment of at least (~~ten~~) 10 years;

11 (c) Child molestation in the second degree;

12 (d) Incest when committed against a child under age (~~fourteen~~)  
13 14;

14 (e) Indecent liberties;

15 (f) Leading organized crime;

16 (g) Promoting prostitution in the first degree;

17 (h) Rape in the third degree;

18 (i) Drive-by shooting;

19 (j) Sexual exploitation;

20 (k) Vehicular assault, when caused by the operation or driving of  
21 a vehicle by a person while under the influence of intoxicating  
22 liquor or any drug or by the operation or driving of a vehicle in a  
23 reckless manner;

24 (l) Vehicular homicide, when proximately caused by the driving of  
25 any vehicle by any person while under the influence of intoxicating  
26 liquor or any drug as defined by RCW 46.61.502, or by the operation  
27 of any vehicle in a reckless manner;

28 (m) Any other class B felony offense with a finding of sexual  
29 motivation, as "sexual motivation" is defined under RCW 9.94A.030;

30 (n) Any other felony with a deadly weapon verdict under RCW  
31 9.94A.825;

32 (o) Any felony offense in effect at any time prior to June 6,  
33 1996, that is comparable to a serious offense, or any federal or out-  
34 of-state conviction for an offense that under the laws of this state  
35 would be a felony classified as a serious offense; or

36 (p) Any felony conviction under RCW 9.41.115.

37 (29) "Short-barreled rifle" means a rifle having one or more  
38 barrels less than (~~sixteen~~) 16 inches in length and any weapon made  
39 from a rifle by any means of modification if such modified weapon has  
40 an overall length of less than (~~twenty-six~~) 26 inches.

1 (30) "Short-barreled shotgun" means a shotgun having one or more  
2 barrels less than (~~eighteen~~) 18 inches in length and any weapon  
3 made from a shotgun by any means of modification if such modified  
4 weapon has an overall length of less than (~~twenty-six~~) 26 inches.

5 (31) "Shotgun" means a weapon with one or more barrels, designed  
6 or redesigned, made or remade, and intended to be fired from the  
7 shoulder and designed or redesigned, made or remade, and intended to  
8 use the energy of the explosive in a fixed shotgun shell to fire  
9 through a smooth bore either a number of ball shot or a single  
10 projectile for each single pull of the trigger.

11 (32) "Transfer" means the intended delivery of a firearm to  
12 another person without consideration of payment or promise of payment  
13 including, but not limited to, gifts and loans. "Transfer" does not  
14 include the delivery of a firearm owned or leased by an entity  
15 licensed or qualified to do business in the state of Washington to,  
16 or return of such a firearm by, any of that entity's employees or  
17 agents, defined to include volunteers participating in an honor  
18 guard, for lawful purposes in the ordinary course of business.

19 (33) "Undetectable firearm" means any firearm that is not as  
20 detectable as 3.7 ounces of 17-4 PH stainless steel by walk-through  
21 metal detectors or magnetometers commonly used at airports or any  
22 firearm where the barrel, the slide or cylinder, or the frame or  
23 receiver of the firearm would not generate an image that accurately  
24 depicts the shape of the part when examined by the types of X-ray  
25 machines commonly used at airports.

26 (34) "Unlicensed person" means any person who is not a licensed  
27 dealer under this chapter.

28 (35) "Untraceable firearm" means any firearm manufactured after  
29 July 1, 2019, that is not an antique firearm and that cannot be  
30 traced by law enforcement by means of a serial number affixed to the  
31 firearm by a federally licensed manufacturer or importer.

32 (36) "Large capacity magazine" means an ammunition feeding device  
33 with the capacity to accept more than 10 rounds of ammunition, or any  
34 conversion kit, part, or combination of parts, from which such a  
35 device can be assembled if those parts are in possession of or under  
36 the control of the same person, but shall not be construed to include  
37 any of the following:

38 (a) An ammunition feeding device that has been permanently  
39 altered so that it cannot accommodate more than 10 rounds of  
40 ammunition;

1 (b) A 22 caliber tube ammunition feeding device; or

2 (c) A tubular magazine that is contained in a lever-action  
3 firearm.

4 (37) "Distribute" means to give out, provide, make available, or  
5 deliver a firearm or large capacity magazine to any person in this  
6 state, with or without consideration, whether the distributor is in-  
7 state or out-of-state. "Distribute" includes, but is not limited to,  
8 filling orders placed in this state, online or otherwise.  
9 "Distribute" also includes causing a firearm or large capacity  
10 magazine to be delivered in this state.

11 (38) "Import" means to move, transport, or receive an item from a  
12 place outside the territorial limits of the state of Washington to a  
13 place inside the territorial limits of the state of Washington.  
14 "Import" does not mean situations where an individual possesses a  
15 large capacity magazine when departing from, and returning to,  
16 Washington state, so long as the individual is returning to  
17 Washington in possession of the same large capacity magazine the  
18 individual transported out of state.

19 NEW SECTION. Sec. 3. A new section is added to chapter 9.41 RCW  
20 to read as follows:

21 (1) No person in this state may manufacture, import, distribute,  
22 sell, or offer for sale any large capacity magazine, except as  
23 authorized in this section.

24 (2) Subsection (1) of this section does not apply to any of the  
25 following:

26 (a) The manufacture, importation, distribution, offer for sale,  
27 or sale of a large capacity magazine by a licensed firearms  
28 manufacturer for the purposes of sale to any branch of the armed  
29 forces of the United States or the state of Washington, or to a law  
30 enforcement agency in this state for use by that agency or its  
31 employees for law enforcement purposes;

32 (b) The importation, distribution, offer for sale, or sale of a  
33 large capacity magazine by a dealer that is properly licensed under  
34 federal and state law for the purpose of sale to any branch of the  
35 armed forces of the United States or the state of Washington, or to a  
36 law enforcement agency in this state for use by that agency or its  
37 employees for law enforcement purposes;

38 (c) The distribution, offer for sale, or sale of a large capacity  
39 magazine to or by a dealer that is properly licensed under federal

1 and state law where the dealer acquires the large capacity magazine  
2 from a person legally authorized to possess or transfer the large  
3 capacity magazine for the purpose of selling or transferring the  
4 large capacity magazine to a person who does not reside in this  
5 state.

6 (3) A person who violates this section is guilty of a gross  
7 misdemeanor punishable under chapter 9A.20 RCW.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 9.41 RCW  
9 to read as follows:

10 Distributing, selling, offering for sale, or facilitating the  
11 sale, distribution, or transfer of a large capacity magazine online  
12 is an unfair or deceptive act or practice or unfair method of  
13 competition in the conduct of trade or commerce for purposes of the  
14 consumer protection act, chapter 19.86 RCW.

15 NEW SECTION. **Sec. 5.** If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 remainder of the act or the application of the provision to other  
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 6.** This act takes effect July 1, 2022.

Passed by the Senate February 9, 2022.

Passed by the House March 4, 2022.

Approved by the Governor March 23, 2022.

Filed in Office of Secretary of State March 23, 2022.

--- END ---

# FOSTER GARVEY PC

November 27, 2024 - 4:36 PM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 102,940-3  
**Appellate Court Case Title:** State of Washington v. Gator's Custom Guns, Inc., et al.  
**Superior Court Case Number:** 23-2-00897-0

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### Comments:

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**Note: The Filing Id is 20241127163535SC331295**