

IN THE SUPREME COURT OF THE STATE OF OREGON

Joseph Arnold and Cliff Asmussen,
Plaintiffs-Respondents,
Petitioners on Review,

and

Gun Owners of America, Inc. and Gun Owners Foundation,
Plaintiffs,

v.

Tina Kotek, Governor of the State of Oregon, in her official capacity; Dan
Rayfield, Attorney General of the State of Oregon, in his official capacity; and
Casey Coddling, Superintendent of the Oregon State Police, in his official capacity,
Defendants-Appellants,
Respondent on Review

Harney County Circuit Court No.
22CV41008

Oregon Court of Appeals
A183242

Oregon Supreme Court
S071885

**AMICUS CURIAE BRIEF ON THE MERITS OF EASTERN OREGON
COUNTIES ASSOCIATION**

Review of the decision of the Court of Appeals on Appeal from the
Judgment of the Circuit Court of HARNEY County,
Honorable ROBERT S. RASCHIO, Judge.

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Author of Opinion: ORTEGA, P.J.
Before Judges: Ortega, P.J., Hellman, J., and Mooney, Senior Judge
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Continued...

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STATEMENT OF AMICI CURIAE

Amicus curiae Eastern Oregon Counties Association (“EOCA”) represents sixteen eastern and central-Oregon counties, comprised of Baker, Crook, Deschutes, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, and Wheeler counties. EOCA’s members face unique challenges relating to policing, funding, staffing, and implementing the requirements of Ballot Measure 114 (“BM114”). Fundamentally, EOCA’s members are concerned that county funding and staffing is insufficient to implement the “permit-to-purchase” and “firearms training course” included within BM114, at least not without substantially compromising and weakening community safety. Moreover, EOCA’s members are concerned that BM114’s amendment of ORS 166.412(3)(c), singularly and in combination with the permit-to-purchase, will unreasonably delay or functionally preclude citizens from exercising their constitutional right to purchase firearms as a result of these funding and staffing shortages, the massive backlog of background checks which currently exists, and the sole discretion which BM114 would place at the hands of the Oregon Department of State Police to delay a firearm purchase. Therefore, EOCA offers this brief as amicus curiae to inform the Court of the unique challenges Eastern Oregon counties face in the implementation of BM114 and how, as result of those challenges, BM114 would unlawfully infringe

on constitutional rights of Eastern Oregon citizens and undermine public safety in Eastern Oregon counties.

EOCA respectfully submits that the Honorable Judge Raschio's got it right in the trial court, both on the facts and on the law, and that the Court of Appeals seriously erred by sidestepping Judge Raschio's factual findings and reversing the trial court's judgment. This Court should reverse the Court of Appeals' opinion and affirm the trial court's findings and judgment. Doing so is essential to protect public safety in Eastern Oregon communities and to protect Eastern Oregon citizens' constitutional right to bear arms under the Oregon Constitution.

SUMMARY OF THE ARGUMENT

The testimony of county sheriffs Bowen and Jenkins succinctly describes why firearm ownership, and BM114-noncompliant magazines, are necessary for public safety in eastern Oregon. Moreover, BM114 is unconstitutional on its face, creating inexcusable burdens on firearm ownership that inhibit public safety, and erode Oregonians' ability to protect themselves and their property. Amici accordingly request that the Court reverse the Court of Appeals and affirm the opinion and order of the trial court.

LEGAL STANDARDS.

Article 1, Section 27 of the Oregon Constitution provides that “[t]he people shall have the right to bear arms for the defence (sic) of themselves, and the State, but the Military shall be kept in strict subordination to the civil power[.]” “It is generally recognized that the right to bear arms had its origin in the fear of the American colonists of a standing army and its use to oppress the people, and in their attachment to a militia composed of all able-bodied men.” *State v. Kessler*, 289 Or. 359, 366, 614 P.2d 94, 97 (1980) (quoting *People v. Brown*, 253 Mich. 537, 235 N.W. 245, 246 (1931) (emphasis added)). “The founders indisputably viewed the right to bear arms as fundamental to a free society, because it provided a mechanism whereby the people could act to prevent oppression and tyranny and also to protect their principal rights of personal security, personal liberty, and private property.” *State v. Hirsch*, 338 Or. 622, 676, 114 P.3d 1104, 1134 (2005), *overruled by State v. Christian*, 354 Or. 22, 307 P.3d 429 (2013).

“It is a fundamental canon of construction that a Constitution should receive a liberal interpretation in favor of a citizen, especially with respect to those provisions which were designed to safeguard the liberty and security of the citizen in regard to both person and property.” *State ex rel. Gladden v. Lonergan*, 201 Or. 163, 177, 269 P.2d 491, 498 (1954) (citation omitted); *see also City of Portland v. Thornton*, 174 Or. 508, 512, 149 P.2d 972, 974 (1944) (“where the question

presented is as to the construction or violation of a provision of the state constitution which is similar to a provision of the federal constitution, and the same question has been decided by the federal supreme court with respect to the federal constitution, the federal decision is strongly persuasive as authority, and is generally acquiesced in by the state courts, although it is not absolutely binding.” (citation omitted)).

The *burden of proving* that a law is consistent with section 27 falls on the state, which must demonstrate that “[a]ny restriction must satisfy the purpose of that authority in the face of Article I, section 27: the protection of public safety, [that is,] protecting the security of the community against the potential harm that results from the possession of arms.” *State v. Christian*, 249 Or. App. 1, 10, 274 P.3d 262, 267 (2012), *aff’d*, 354 Or. 22 (quoting *Hirsch*, 338 Or. at 677–78). The legislature has authority to enact reasonable regulations to promote public safety but such regulation cannot frustrate the purpose of section 27. *Id.* Scholars have opined that this standard is akin to intermediate scrutiny. See Nino C. Monea, *State Constitutional Rights to Bear Arms Ten Years After Heller/mcdonald*, 82 U. Pitt. L. Rev. 381, 426 (2020) (explaining that the “reasonably necessary to promote public safety” standard is akin to intermediate scrutiny). Similarly, when a statute or ballot measure implicates a fundamental right, a more exacting form of scrutiny—either intermediate or strict—must be satisfied to uphold the measure. See *MacPherson v. Dep’t of Admin. Servs.*, 340 Or. 117, 140–41, 130 P.3d 308, 322 (2006).

The right to bear arms has been declared a fundamental right by federal courts, and state courts have alluded to the same. *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 778, 130 S. Ct. 3020, 3042, 177 L. Ed. 2d 894 (2010); *Hirsch*, 338 Or. at 668. An indefinite delay in firearms purchases, similar to that which resulted in some jurisdictions at the beginning of the COVID pandemic, is the type of law which “cannot survive any type of heightened scrutiny where the government bears some burden.” *McDougall v. Cnty. Of Ventura*, 23 F.4th 1095, 1116 (9th Cir.), *reh’g en banc granted, opinion vacated*, 26 F.4th 1016 (9th Cir. 2022), *and on reh’g en banc*, 38 F.4th 1162 (9th Cir. 2022) (vacated for further proceedings consistent with *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 213 L. Ed. 2d 387, 142 S. Ct. 2111 (2022); *Connecticut Citizens Def. League, Inc. v. Lamont*, 465 F. Supp. 3d 56, 61 (D. Conn. 2020), *vacated*, 6 F.4th 439 (2d Cir. 2021) (vacated on mootness grounds). Likewise, prohibitions on firearm magazines with over a ten-round capacity fail “[e]ven under the more forgiving test of intermediate scrutiny.” *Duncan v. Becerra*, 265 F. Supp. 3d 1106, 1139 (S.D. Cal. 2017), *aff’d*, 742 F. App’x 218 (9th Cir. 2018).

ARGUMENT

EOCA join the arguments of Petitioners on review and further assert that BM114 will hinder public safety while creating unconstitutional burdens on firearm ownership. BM114 will have a disproportionately-negative impact on EOCA’s members and their constituents and will cause indefinite delays in firearm purchases

at the sole discretion of the Oregon Department of State Police (OSP) and Federal Bureau of Investigations (FBI). Therefore, for the reasons provided herein, the Court should reverse the Court of Appeals and affirm the trial court.

I. The Challenges of Policing in Eastern Oregon Increase the Importance of Firearm Ownership and Magazine Capacity.

The vastness of eastern Oregon cannot be appreciated without travelling along the open roads connecting the few small communities dotting the immense landscape. In places like Fields, Oregon, the nearest town with more than 100 residents is over 100 miles away. In these remote areas simple tasks, like commuting back and forth to school, can be arduous, and residents adapt by limiting their trips to larger cities, sending their children to boarding schools, and stockpiling necessities. Defending one's family and property also takes on a different meaning in much of eastern Oregon. The combination of underfunded and understaffed county sheriff's departments, and the area's remoteness, means police response times are better measured in hours, rather than minutes. Across eastern Oregon, private firearm ownership plays a crucial role in maintaining public safety. BM114's restrictions, which will delay firearm purchases (possibly indefinitely) and reduce magazine capacity, will negatively affect the public safety of eastern Oregon.

This Court in *Christian* established that restrictions on firearms may be constitutional *only* if they do not frustrate the purpose of Article 1, section 27, and

promote public safety. 249 Or. App. at 10. During the trial before Judge Raschio, the testimony of Harney County Sheriff Dan Jenkins, and Union County Sheriff Cody Bowen, succinctly described why BM114 will reduce, rather than improve, public safety in eastern Oregon.

Sheriff Bowen testified that the Union County Sheriff's Department has jurisdiction over 2,000 square miles. Tr. 980. Union County has 15 patrol deputies to oversee that large area. *Id.* There also are no deputies on patrol in Union County from 3:00 a.m. to 7:00 a.m. Tr. 981. For the Union County Sheriff's Department, response times could be as long as 45 minutes, even with deputies "running code" at 80-to-120 miles per hour. *Id.*

Harney County is even larger than Union County. Harney County Sheriff Jenkins explained that the county is over 10,000 square miles. Tr. 998. The Harney County Sheriff's Department employs four full-time patrol deputies, with Sheriff Jenkins counting as a fifth. Tr. 997. From 12:00 a.m. to 7:00 a.m. in Harney County there are no deputies on patrol, and only one deputy on call for all 10,000 square miles. Tr. 999. Response times for the sheriff's department can be over an hour and a half, or longer depending on weather. Tr. 998.

The challenges faced by county sheriff's departments are similarly reflected in Oregon's state police. OSP has one of the lowest policing ratios in the United States and cannot provide 24/7 patrol in much of Oregon. *See Oregon District*

Attorneys Support SB 1545 (Feb. 4, 2020)

[https://olis.oregonlegislature.gov/liz/2020R1/Downloads/CommitteeMeetingDocu](https://olis.oregonlegislature.gov/liz/2020R1/Downloads/CommitteeMeetingDocument/210514)

[ment/210514](https://olis.oregonlegislature.gov/liz/2020R1/Downloads/CommitteeMeetingDocument/210514); *Presentation of Travis Hampton, OSP Superintendent, Senate*

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[troopers-on-oregons-highways/](https://www.salemreporter.com/2020/02/11/why-one-bill-seeks-to-put-more-state-troopers-on-oregons-highways/).¹

Sheriffs Bowen and Jenkins both testified why firearm ownership is a necessity for public safety and personal protection in their respective counties. The lengthy police response times make it crucial that persons within the counties be able to defend themselves, rather than depend solely on law enforcement. Tr. 981; Tr. 1002-03. Beyond that, Sheriff Bowen recalled a time that private citizens in Union County were called upon to provide armed backup to sheriff’s deputies. Sheriff Bowen testified about a robbery of a gun store in Union County, and a police pursuit that went into a rural area north of La Grande. Tr. 983-84. Once there, the sheriff’s

¹ SB 1545 (2020), which sought to increase state police presence across Oregon, was never passed by the state legislature.

deputies relied on two citizens armed with rifles and at least one 20-round magazine to watch the deputies' backs and keep an eye out for the perpetrator. Tr. 984, 991.

Sheriffs Bowen and Jenkins also testified that it is crucial that their patrol deputies be able to take their service weapons—including high capacity magazines—home with them. Tr. 984—986 (Sheriff Bowen testifying about the capacity of deputies' service weapons, that they take home with them); Tr. 1003-05 (Sheriff Jenkins testifying about the capacity of deputies' service weapons, which they take home). Neither Union County nor Harney County have the staff and resource capacity to have multiple deputies on patrol 24/7. Tr. 981; Tr. 999. At times, the need arises for the sheriff's departments to deploy off-duty officers. Tr. 987-89 (Sheriff Bowen testifying that there is a precedence that off-duty officers are expected to respond to emergencies if called upon); Tr. 1005-06 (Sheriff Jenkins testifying that even off-duty deputies are called in when necessary, and that he himself is subject to callout 24/7).

The testimony of sheriffs Bowen and Jenkins explains why it is crucial that private citizens, and sheriff's deputies in their personal capacity, be able to own weapons with capacities greater-than 10 rounds to promote public safety. The sheriff's departments in eastern Oregon rely on citizens to provide police backup using firearms with over 10-round capacity. And, sheriffs in these rural counties are always expected to be able to immediately respond to emergency situations with

their service weapons, even when they are off-duty. BM114 would eliminate these crucial necessities of firearm ownership. *See also* Memorandum of the National Police Association as Amicus Curiae at 16 (describing citizens’ greater need for standard capacity magazines because, while police often work as a unit, citizens often act alone when defending themselves). Not only does BM114 create serious burdens to firearm purchases (*see infra* section III), but it prohibits private citizens (including off-duty police officers) from using their high-capacity magazines or even transporting them to any location not included in the few specified exceptions in Sec. 11 (5) of BM114. Thus, off-duty police officers and private citizens would no longer be able to use or carry BM114-noncompliant firearms to protect the public, no matter how dire the situation may be.²

Moreover, the lengthy police response times in rural eastern Oregon makes private citizens the first line of defense against those threatening harm to person or

² To further illustrate how this would negatively impact public safety, Sheriff Jenkins testified that he is one-of-five *total* “patrol” deputies in Harney County, and that he can be called-out 24/7. Nevertheless, Sheriff Jenkins, like the rest of his deputies, has times where he is off-duty. BM114 would restrict Sheriff Jenkins from carrying his standard-issue service weapon while off-duty. *See* ER-38 (making it unlawful to “possess” a “large-capacity magazine.”). The exceptions to BM-114’s restrictions would not apply while Sheriff Jenkins is off-duty. ER-39 (law enforcement exception applies only where possession of “large-capacity magazine” is “related directly to activities within the scope of that person’s official duties.”). Thus, if Sheriff Jenkins were away from home and off-duty, but was called to respond to an urgent situation, Sheriff Jenkins would either have to travel home or to the Sheriff’s Department to retrieve his service weapon, or respond to the situation inadequately armed. This presents a serious public safety issue.

property. Sheriffs Bowens and Jenkins both explained why they feel it is necessary that their deputies carry firearms with greater-than 10 round capacity. Tr. 984—986; Tr. 1003-05. Because citizens cannot rely on timely police response in rural eastern Oregon, their firearm capacity needs are the same—if not greater—than those of the sheriff’s deputies. Tr. 988 (Sheriff Bowen testifying that he has never found himself in a situation where he wished he had fewer bullets). This also rings true for persons needing to defend themselves and their property against wildlife. Tr. 973-80 (Sheriff Bowen describing the public’s need to defend themselves against wildlife); Tr. 1008-12 (Sheriff Jenkins describing the kinds of predators that can pose a threat in Harney County, and stating that, when dealing with coyote predation, he would want to carry a rifle with “as many rounds as possible”). Sheriff Bowen himself has even used his handgun, and all 30 rounds in its magazine, to scare off a pack of wolves that surrounded him while he was bow hunting, some coming as close as three feet before running off. Tr. 992-94. Sheriff Jenkins, meanwhile, has personally witnessed packs of coyotes eating calves as they are being born. Tr. 1010.

The challenges of policing in eastern Oregon increase the importance of firearm ownership and large-capacity magazines for the public’s protection of personal security, personal liberty, and private property. BM114’s restrictions on firearms ownership and magazine capacity are not reasonably related to providing for public safety in eastern Oregon, and in fact will have negative impacts on public

safety as indicated by Sheriffs’ Bowen’s and Jenkins’ testimony. *Christian*, 249 Or. App. at 10. Here, the Court of Appeals erred by ignoring the factual record—and rejecting the trial court’s findings from it—essentially eliminating the State’s burden to *prove* the public safety *assertions* made by BM114. This Court should affirm the trial court’s findings and conclusions because they are supported by the record and not clearly erroneous.

II. Restricting Firearm Capacity Infringes on the Defense of Property.

It is well documented that “[t]he founders indisputably viewed the right to bear arms as fundamental to a free society, because it provided a mechanism whereby the people could act to prevent oppression and tyranny and also to protect their principal rights of personal security, personal liberty, *and private property*.” *Hirsch*, 338 Or. at 676 (emphasis added). This purpose is to be liberally construed in favor of the citizenry—here, firearm owners and prospective purchasers. *State ex rel. Gladden*, 201 Or. at 177 (“It is a fundamental canon of construction that a Constitution should receive a liberal interpretation in favor of a citizen, especially with respect to those provisions which were designed to safeguard the liberty and security of the citizen in regard to both person and property.”) (citation omitted).

While it is a certainty that BM114’s prohibition of standard-capacity magazines will inhibit the public’s ability to protect themselves and their property—foundational purposes of Section 27—the State did nothing at the trial court to prove

that outlawing such magazines are necessary to the security of the community. The State feel into the fallacious assumption that gun violence, or violence in general, will not happen without standard capacity magazines. But, of course, BM114 will still allow persons to use and purchase firearms capable of operating with ten rounds and will not eliminate the public's ability to (unlawfully) obtain such firearms and magazines from Oregon's nearby border states. Moreover, the State did nothing to prove that past recorded incidents of gun violence would have actually been eliminated or abated if a magazine restriction were in place. It is highly speculative to argue that BM114's magazine limitation will have any impact on community welfare. It is not speculative at all to understand that BM114's magazine limitation will have real and severe consequences for those who use firearms with standard capacity magazines for the defense of themselves and their property. Thus, once again, the State failed to meet its intermediate scrutiny burden of proving that BM114's magazine limitation is necessary for "protecting the security of the community against the potential harm that results from the possession of arms[.]" *Christian*, 249 Or. App. at 10. As explained above, the Court of Appeal circumvented these conclusions by, effectively, ruling that the trial court's factual findings were irrelevant. This improperly relieved the State of its intermediate scrutiny burden.

III. Implementing BM114 is an Impossible Proposition for Many Eastern Oregon Counties, Creating Either an Absolute Bar on Firearm Purchases or Decreased Policing.

BM114 fails any level of scrutiny because it would undermine, not promote, public safety in Oregon. BM114 can only possibly be lawful if it promotes public safety. *Christian*, 249 Or. App. at 10. But as explained herein, BM114 will do just the opposite, forcing eastern Oregon counties to reallocate staff and funding dedicated towards public safety and focus it on implementing BM114's firearm training and permit-to-purchase requirements.

BM114 requires that prospective firearm purchasers first complete a mandatory permit-to-purchase, including a firearms training course, prior to purchasing any firearm. ER-29—31. This permit-to-purchase program *must be* implemented by county sheriffs' departments or community police departments with jurisdiction over the prospective purchaser. ER-29 ("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") (emphasis added). Without a permit-to-purchase, a person is barred from acquiring firearms. *See* ER-32; ER-35—37.

BM114 requires that counties allocate staff and funding to implement the permit-to-purchase program.³ Eastern Oregon counties already struggle to fund existing law enforcement programs and services. These counties cannot afford to fund the implementation of BM114 without shifting financial resources and staff, including deputies, away from traditional law enforcement programs and services to implementing BLM114's permit-to-purchase program. In other words, BM114 puts eastern Oregon counties in the untenable situation of either: (1) choosing to not fund or implement BM114, which would infringe on their citizens' constitutional right to bear arms; or (2) reallocating resources from traditional law enforcement programs and services to implementing BM114, which will significantly undermine public safety. Declaration of Susan Roberts in Support of Motion to Appear as Amici Curiae [before the Court of Appeals] ("Roberts Decl.") at ¶¶ 6—9; Tr. 980-81 (Sheriff Bowen describing the few deputies available in Union County, and the "breaks" in patrol); Tr. 997-99 (Sheriff Jenkins describing the same in Harney County). Whichever decision eastern Oregon counties make, it is certain that implementation of BM114 in eastern Oregon will violate Section 27 by either harming public safety or overtly eliminating the right to obtain firearms. *See Christian*, 249 Or. App. at 10.

³ Counties have not received state funding for implementing BM114. Moreover, Article XI, Section 15 of the Oregon constitution, which exempts counties from enforcing unfunded mandates, does not apply to initiatives like BM114.

EOCA's members face unique challenges that are likely to significantly delay, or outright preclude, the full implementation of BM114. Seven of EOCA's members have populations of under 9,000 people, and three of those members have county-wide populations of less than 3,000 people. *County Populations*, Oregon Secretary of State (2022) <https://sos.oregon.gov/blue-book/Pages/local/county-population.aspx#InplviewHash04115801-432c-47bf-aef3-abafd774261d=SortField%3DRank-SortDir%3DAsc>; Roberts Decl. ¶ 3. However, EOCA's members rank at the top of the state in per-capita firearm dealers, concealed-carry permit holders, and hunters. *Oregon Gun Ownership—Concealed-Carry Permits Per 10,000 Residents*, The Oregonian (Aug. 14, 2022) <https://www.oregonlive.com/data/2022/08/who-is-most-likely-to-legally-carry-a-concealed-handgun-oregon.html>; Roberts Decl. ¶ 5. Therefore, while many county populations may be low in eastern Oregon, the number of firearm purchases occurring per-person will be disproportionately high.

These facts in and of themselves make funding and implementing BM114 a challenge. However, when coupled with the funding and staffing issues many counties face, implementation becomes nearly impossible without significantly sacrificing (i.e., reducing) traditional law enforcement programs and services. EOCA's members are already budget constrained, often having to have made budget and staffing cuts in recent years just to maintain existing programs, let alone when

faced with the prospect of hiring or reallocating staff towards the implementation of BM114. Roberts Decl. ¶¶ 3—4.⁴

Meanwhile, BM114 requires firearm purchasers to apply for a permit-to-purchase through county sheriffs' department. The permit-to-purchase will require county sheriffs' departments to, *inter alia*: (1) process and verify the completion of permit applications; (2) verify the applicants' identify; (3) complete fingerprinting and photographing of the applicant; (4) request a background check; (5) evaluate the background check; (6) report the permit to the Oregon Department of State Police, and; (7) ensure that the applicant has completed a firearm safety course, which the county sheriff's departments must create and implement. ER-29—31. Because eastern Oregon contains a disproportionately-high number of firearm dealers, owners, and purchasers, EOCA's member counties will be required to re-assign or hire full-time deputies and staff dedicated to implementation of BM114, while

⁴ To a significant degree, the budget shortfalls which routinely exist among EOCA's members are a product of the land ownership dynamics of eastern Oregon. Roberts Decl. ¶ 3. The federal government, through the Bureau of Land Management, U.S. Forest Service, and U.S. Park Service owns a significant portion of the eastern Oregon land base. Eleven of EOCA's 16 member counties are comprised of over 50 percent federal ownership. David Cansler, *Fight for public land: Which Oregon counties have the most?*, The Oregonian (June 17, 2018) <https://www.oregonlive.com/news/erry-2018/07/8738566d8d2532/fight-for-public-land-which-or.html>; Roberts Decl. ¶ 3. EOCA's members cannot generate property tax income from the federal government but nevertheless must still patrol and offer county services on these lands, contributing to everlasting budget shortfalls. Roberts Decl. ¶ 3.

reducing budgets for traditional law enforcement priorities and services in order to balance county budgets. Roberts Decl. ¶¶ 6—9. For even eastern Oregon’s smallest counties by population, BM114 will require an additional \$100,000+ in county funding to hire staff dedicated to implementing the measure. Roberts Decl. ¶ 7.

Simply put, EOCA’s members generally lack the ability to hire the staff necessary to implement BM114, without sacrificing public safety. This leaves the counties with two options: (1) shift funding and staff resources away from other critical issues and towards the implementation of BM114⁵, or; (2) do not implement BM114, regardless of the constitutional issues this may create⁶. Roberts Decl. ¶¶ 6—9. If counties choose to shift staff and funding resources away from public safety and wellness programs to implement BM114, community safety and wellness will suffer as a direct result of the ballot measure.⁷ Ultimately, EOCA submits that

⁵ Re-assigning patrol deputies to focus on implementing BM114 will have a serious, negative impact on public safety across eastern Oregon, where many counties only employ a small number of deputies. *See* Tr. 980-81; Tr. 997-99.

⁶ Counties’ inability to fund the implementation of BM114 will result in “indefinite and fluid” delays in firearm acquisitions, which is unlawful under any level of heightened scrutiny. *McDougall*, 23 F.4th at 1106. Moreover, BM114 places all firearm purchases at the discretion of the FBI and state police, which is also unlawful. *See Connecticut Citizens Def. League, Inc. v. Lamont*, 465 F. Supp. 3d at 61.

⁷ There are additional, practical considerations that make BM114’s permit-to-purchase program exceptionally burdensome on rural residents. BM114 will require that persons needing to obtain a firearm go to their county’s sheriff’s department to apply for a permit, complete a safety course, pay a processing fee, and pass a background check just to obtain the permit enabling them to purchase a firearm. As for the purchase itself, the individual would need to complete a second background

BM114 is not a reasonable restriction on the right to bear arms, and will inhibit—rather than improve—public safety.

CONCLUSION

Judge Raschio correctly found that BM114 will not promote public safety, and the testimony of county sheriffs Bowen and Jenkins succinctly describes why firearm ownership, and BM114-noncompliant magazines, are necessary in eastern Oregon. Moreover, BM114 is unconstitutional on its face, creating inexcusable burdens on firearm ownership that inhibit public safety, and erode Oregonians' ability to protect themselves and their property. For the reasons provided herein Amici respectfully request that this Court reverse the opinion of the Court of Appeals and affirm the trial court's opinion and judgment.

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check. In rural eastern Oregon, the only options for both completing the permit-to-purchase and purchasing a firearm may be over 100 miles away, and the individual's ability to obtain a permit is contingent on the county's ability to actually implement the permit to purchase program. Thus, for an individual to obtain a firearm in these areas where police response times are better measured in hours, a person will need to take multiple lengthy trips to larger towns and be subject to months-long wait times while background checks are completed.

DATED this 31st day of July, 2025.

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**COMBINED CERTIFICATE OF COMPLIANCE WITH BRIEF LENGTH
AND TYPE SIZE REQUIREMENTS, AND CERTIFICATES OF FILING
AND SERVICE**

I hereby certify that this **AMICUS CURIAE BRIEF ON THE MERITS OF EASTERN OREGON COUNTIES ASSOCIATION** complies with the type-volume limitations of ORAP 5.05 because it contains 5,092 words prepared in a proportionately spaced typeface using Microsoft Word Times New Roman 14-point font.

I hereby certify that on July 31, 2025 , I filed the foregoing **AMICUS CURIAE BRIEF ON THE MERITS OF EASTERN OREGON COUNTIES ASSOCIATION** with the Appellate Court Administrator on July 31.

I further certify that I served a true and correct copy of the foregoing by the appellate courts' eFiling system at the participants' email addresses as recorded this date in the appellate eFiling system:

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