

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 CODDING, Superintendent of the Oregon State Police, in his official
capacity,

Defendants-Appellants,
Respondents on Review.

Harney County Circuit Court Case No.
22CV41008

Oregon Court of Appeals
A183242

Oregon Supreme Court
S071885

BRIEF OF *AMICUS CURIAE*
PORTLAND METRO CHAMBER

September 2025

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TABLE OF CONTENTS

INTRODUCTION	1
FACTUAL AND HISTORICAL BACKGROUND	1
ARGUMENT	11
A. <i>LCMs are not “arms.”</i>	13
B. <i>Because Measure 114 can be applied constitutionally, this Court should affirm the Court of Appeals’ decision</i>	21
CONCLUSION.....	33

TABLE OF AUTHORITIES

Cases

<i>Arnold v. Kotek</i> , 338 Or App 556 (2025).....	11, 12, 17
<i>Arnold v. Kotek</i> , Case No. 22CV41008 (ltr op)	11
<i>Bigelow v. Virginia</i> , 421 US 809 (1975).....	26
<i>City of Corvallis v. State</i> , 304 Or App 171 (2020).....	13, 26
<i>City of Portland v. Sottile</i> , 336 Or 74 (2024)	27
<i>Couey v. Atkins</i> , 357 Or 460 (2015).....	26
<i>Fyock v. Sunnyvale</i> , 779 F3d 991 (9th Cir 2015).....	17
<i>Liberty Nw. Ins. Corp. v. Oregon Ins. Guarantee Ass'n</i> , 206 Or App 102 (2006)	15
<i>Northup v. Hoyt</i> , 31 Or 524 (1897)).....	26
<i>OSSA v. Multnomah Cnty.</i> , 122 Or App 540 (1993), <i>rev den</i> , 319 Or 273 (1994)	.19
<i>Priest v. Pearce</i> , 314 Or 411 (1992)	15
<i>State v. Carr</i> , 215 Or App 306 (2007), <i>rev den</i> , 344 Or 109 (2008).....	13
<i>State v. Cartwright</i> , 246 Or 120 (1966)	23, 30
<i>State v. Christian</i> , 354 Or 22 (2013)	11, 12, 18, 21, 22, 24, 25, 26, 27
<i>State v. Delgado</i> , 298 Or 395 (1984)	15, 17, 22
<i>State v. Gray</i> , 370 Or 116 (2022).....	15
<i>State v. Hirsch</i> , 338 Or 622 (2005)	15, 23, 24, 25, 29, 30

<i>State v. Johnson</i> , 329 Or App 588 (2023)	18
<i>State v. Kessler</i> , 289 Or 359 (1980)	18, 19, 22
<i>State v. Owenby</i> , 111 Or App 270 (1992)	30
<i>State v. Reasoner</i> , 313 Or App 139 (2021), <i>rev den</i> , 369 Or 209 (2022).....	28
<i>State v. Robinson</i> , 217 Or 612 (1959)	22, 30, 31
<i>United States v. Rahimi</i> , 602 US 680 (2024)	27

Constitutional Provisions

Article I, section 27	11, 15, 18
Measure 114	13, 14, 28, 32, 33

Statutes

ORS 166.270	22, 23
ORS 166.527(6).....	31

Other Authorities

ATF, <i>Rep. & Recommendation on the Importability of Certain Semiautomatic Rifles</i> (Jul 1989)	20
ATF, <i>Total NICS Denials Received as Delayed Denials by State Calendar Years 2005-2020</i> (Dec 2020)	32
Cal. Dep’t of Justice: Att’y Gen., <i>Assault Weapons L. (Cal. & Fed. L.)</i>	7

Christopher S. Koper, <i>Assessing the Potential to Reduce Deaths & Injuries from Mass Shootings through Restrictions on Assault Weapons and Other High-Capacity Semiautomatic Firearms</i> , 19 CRIMINOLOGY & PUB. POL’Y 1, 147–170 (2020)	10
Christopher S. Koper, <i>Reducing Gun Violence in America</i> , Ch. 12, 167 (Ed. Daniel W. Webster and Jon S. Vernick. 2013).....	20
Ctrs. for Disease Control & Prevention, <i>All Intent Deaths Due to Firearm</i>	6
Erik Robinson, <i>New Statewide Report Reveals Significant Impacts from Firearm Injury Across Oregon</i> (Oct. 20, 2022).....	6
Everytown For Gun Safety, <i>Background Checks on All Gun Sales</i>	9
FBI, <i>Crime Data Explorer: Homicide Offense Characteristics</i> (Jul. 2025),	3
Giffords L. Cntr., <i>Licensing in Cal.</i> (Jul. 31, 2024)	7
Janey Wong, <i>Portland Restaurant Closings</i> , Eater (May 2024).....	4
Jason Pine, <i>Handgun Trigger Discipline: The Cornerstone of Responsible Gun Handling</i> , Four Bros. Blog (Jan. 5, 2025).....	9
Jess Marks, <i>Gun Tragedies in Oregon</i> , Alliance for a Safe Oregon (2025)	8
John Hopkins Ctr For Gun Violence Sols., <i>Closing the “Gun Show Loophole”: A Step In the Right Direction With More Work to Be Done</i> (May 28, 2024)	10

John Hopkins Ctr. for Gun Violence Sols., <i>Study Finds That Dropping Training Requirement to Obtain Concealed Carry Permit Leads to Significant Increase in Gun Assaults</i>	9
Jonathan Levinson, <i>Portland Mayor Ted Wheeler Claims Gun Violence State of Emergency</i> , OPB (Jul 2022)	5
Joseph J. Vince Jr., et al., <i>Firearms Training & Self-Defense</i> , Nat’l Gun Victims Action Council 4, 32, 44 (2015)	9
Kathleen Carlson, <i>Firearm Injury in Oregon</i> , OHSU Gun Violence Prevention Rsch. Ctr. (Mar. 13, 2025)	7
KATU 2, <i>Next Level Burger Near Providence Park Closing Due to Concerns Over Safety</i> (May 26, 2025)	4
KGW8, <i>Here Are the Major Retailers That Have Closed Portland Stores in the Last Year</i> (Sep 2023)	3
KGW8, <i>Three of Five HotLips Pizza Locations in Portland Are Shutting Down</i> (Mar 2023)	4
Louis Klarevas, <i>The Effect of Large-Capacity Magazine Bans on High-Fatality Mass Shootings</i> , 109 Am J Pub H 12, 1754 (2019)	20, 28
M. Res., <i>In the Matter of the Local Emergency within the City of Portland</i> , (Jul. 21, 2022).....	5

Multnomah Cnty., <i>Multnomah Cnty. Election Results, Update 15</i> (Dec 2022).....	8
Noah Webster, <i>An American Dictionary of the English Language</i> 60 (1848). 15, 16	
NRA, <i>It's Time for a Vocabulary Lesson</i> (Aug 2016)	14
Portland Downtown Clean & Safe, <i>2024 Downtown Portland Business Survey</i> (Feb. 28, 2025)	1
Portland Metro Chamber, <i>2023 State of the Economy</i> (2024)	5
Portland Metro Chamber, <i>2025 State of Downtown & The Central City</i> (Feb. 2025)	1, 3
Portland Metro Chamber, <i>2025 State of the Economy</i> (Feb. 2025)	3
Portland Police Bureau, <i>Police Shooting Incident Statistics</i> (Aug. 13, 2025)	2, 3
Public Safety Service Area, <i>Response Memo to FY2025 Budget Note: Budget and Reporting Structure Analysis for Office of Violence Prevention and Ceasefire</i> (Feb. 2025)	6
Rand, <i>The Effects of Background Checks</i> (Jul. 16, 2024)	9
Sierra Ellis & Franz Schoening, <i>Portland Ceasefire</i> (Apr. 28, 2025).....	6
Taxpayers Ass'n of Oregon Found., <i>Oregon Bus. Rep.: State's Largest Privately Owned Employer Jumps County Line</i> (May 5, 2025)	4
<i>The Oregon Firearm Injury Data Dashboard</i> , OHSU (2025)	7

The Oregonian, <i>Portland's 21 Most Painful Restaurant and Bar Closures of 2024</i> (Dec. 21, 2024).....	4
The Oregonian, <i>Portland's Downtown Office Building Fire Sales Will Hasten Millions in Lost Property Taxes</i> (Aug 7, 2025)	5
Wash. State: Off. of the Att'y Gen., <i>Firearms</i>	7
Wash. State: Off. of the Att'y Gen., <i>Initiative 1639</i>	7

INTRODUCTION

Portland Metro Chamber (“the Chamber”) files this brief as *amicus curiae* in support of Defendants. For the reasons set forth herein, this Court should hold that Measure 114 does not violate the right to bear arms as set forth in Article IV, section 27, of the Oregon Constitution.

FACTUAL AND HISTORICAL BACKGROUND

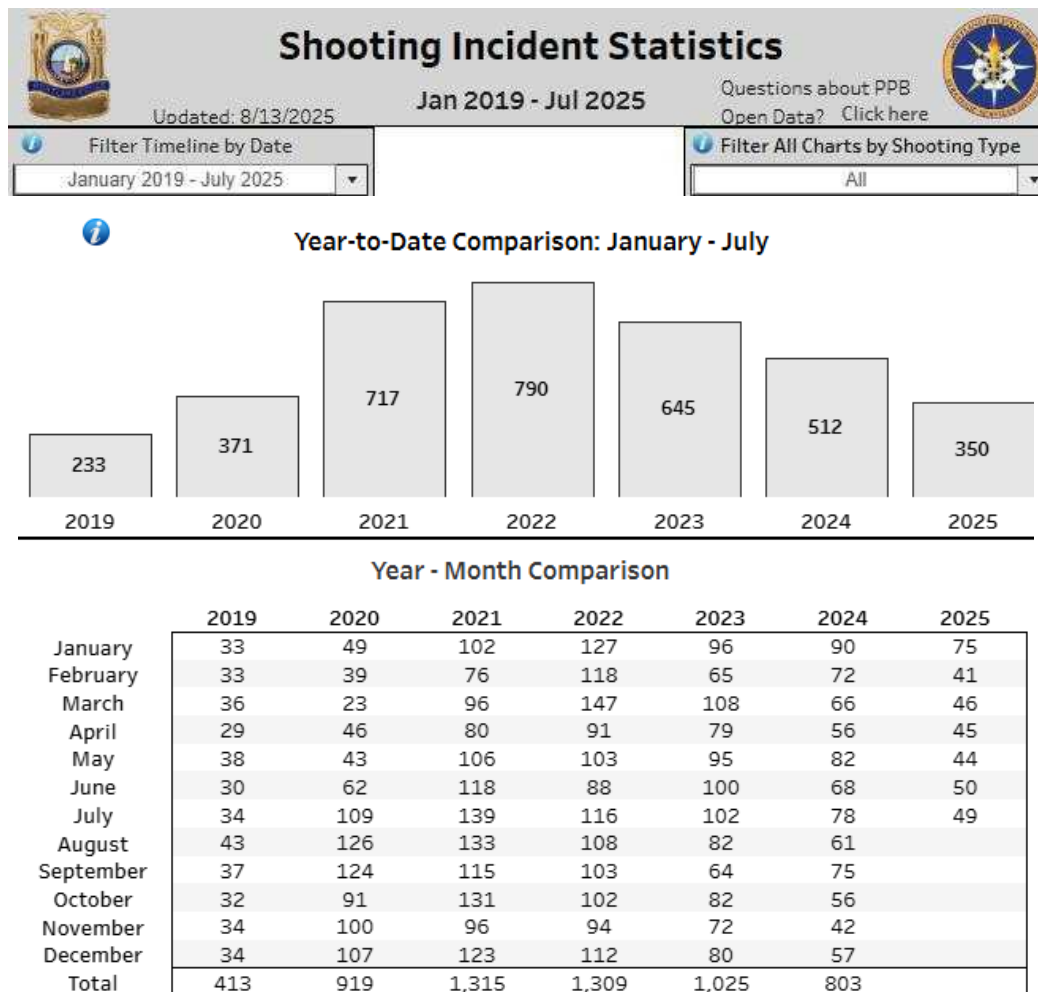
It is no secret that Portland has been struggling. Like many cities, it was hit hard by the pandemic; over the last six years, it has also endured protests, a surge in the homeless population, and a drug crisis. Today, the city looks to the future, but recovery is slow. In 2024, foot traffic downtown was 41% below what it was before the pandemic.¹ That is due in no small part to the public’s perception that Portland has become unsafe. 47% of downtown Portland businesses rate the downtown area as “not very safe or not at all safe,” while 29% report having employees quit due to safety concerns.²

Unfortunately, Portland’s bad reputation is borne out, at least in part, by the numbers: between 2019 and 2022, the city experienced a 217% increase in

¹ Portland Metro Chamber, *2025 State of Downtown & The Central City* (Feb. 2025), *available at* <https://portlandmetrochamber.com/resources/2025-state-of-downtown-central-city/>.

² Portland Downtown Clean & Safe, *2024 Downtown Portland Bus. Surv.* (Feb. 28, 2025), *available at* <https://downtownportland.org/2024-downtown-biz-survey/>.

shooting incidents.³ While that number has declined since its peak, Portland still experienced about twice as many shootings in 2024 as in 2019.



Portland Police Bureau, *Police Shooting Incident Statistics*. Over the last six years,

³ Portland Police Bureau, *Police Shooting Incident Statistics* (Aug. 13, 2025), available at <https://public.tableau.com/app/profile/portlandpolicebureau/viz/PortlandShootingIncidentStatistics/ShootingIncidentStatistics>.

a person was more likely to be shot in Portland than in any other part of Oregon.⁴ Additionally, the number of firearm homicides in Portland more than doubled in that same time period.⁵ Firearms and handguns are used in almost 80% of homicides committed in Portland.⁶

The increase of gun violence in Portland has negatively impacted the economic health and vitality of the region. Between 2021 and 2023, Multnomah County suffered a population loss of nearly 32,000.⁷ As visitors and office workers fail to return to the city, so does the revenue that they bring. At present, record numbers of retail and office spaces sit empty.⁸

Anchor businesses, which act as major economic drivers and sources of employment, such as REI, Target, and Buffalo Wild Wings, have closed their Portland locations, citing unsafe conditions and increased crime.⁹ Many local

⁴ OHSU et al., *The Oregon Firearm Injury Data Dashboard* (2025), available at <https://visual-data.dhsoha.state.or.us/t/OHA/views/FirearmInjury/ExtendedDashboard?%3Aembed=y&%3Aiid=1&%3AisGuestRedirectFromVizportal=y>.

⁵ Portland Police Bureau, *Police Shooting Incident Statistics*.

⁶ FBI, *Crime Data Explorer: Homicide Offense Characteristics* (Jul. 2025), available at <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend>.

⁷ Portland Metro Chamber, *2025 State of the Economy* (Feb. 2025), available at <https://portlandmetrochamber.com/resources/2025-state-of-the-economy/>.

⁸ Portland Metro Chamber, *2025 State of Downtown & The Central City*.

⁹ KGW8, *Here Are the Major Retailers That Have Closed Portland Stores in the Last Year* (Sep 2023), available at <https://www.kgw.com/article/money>

businesses have also suffered: for example, Hot Lips Pizza and McCormick and Schmick's have closed central city locations, while former Portland mainstays like Hanna Andersson, Kornblatts, Food Front, the Laurelwood Brewery, Kenny & Zukes, the Pied Cow, Clyde Common, Paley's Place, the Bijou Café, and the Green Zebra have shuttered for good.¹⁰ The downward trend continues today; Hoffman Construction, the state's largest privately owned company, moved its headquarters out of Portland this year¹¹ and Next Level Burger closed its Providence Park location because "safety concerns have gotten worse and worse."¹² Additionally, fire sales of buildings like the U.S. Bancorp Tower (the

/business/portland-stores-retail-businesses-closed-shut-down/283-7dd2f41d-2b36-4435-aed8-7360395a1bf6.

¹⁰ KGW8, *Three of Five HotLips Pizza Locations in Portland Are Shutting Down* (Mar 2023), available at <https://www.kgw.com/article/news/local/hot-lips-pizza-closing-three-locations/283-f5b41cec-78d0-4631-8500-19690ceeafa0>; see also Janey Wong, *Portland Restaurant Closings*, Eater (May 2024), available at <https://pdx.eater.com/22240842/portland-restaurant-bar-cafe-closings>; The Oregonian, *Portland's 21 Most Painful Restaurant & Bar Closures of 2024* (Dec. 21, 2024), available at <https://www.oregonlive.com/dining/2024/12/portlands-21-most-painful-restaurant-and-bar-closures-of-2024.html> (listing even more closures, including Barrio, Boxer Ramen, Burger Stevens, Caffé Mingo and Bar(ba) Mingo, Cascade Brewing, Crush Bar, and Shari's Café & Pies).

¹¹ Taxpayers Ass'n of Oregon Found., *Oregon Bus. Rep.: State's Largest Privately Owned Employer Jumps County Line* (May 5, 2025), available at <https://oregonbusinessreport.com/2025/05/portland-firm-leaves>.

¹² KATU 2, *Next Level Burger Near Providence Park Closing Due to Concerns Over Safety* (May 26, 2025), available at <https://katu.com/news/local/next-level-burger-providence-park-closing-downtown-portland-oregon-police-crime-concerns-safety-security-violence-budget-ppb>.

owner of which previously ranked among Portland’s top ten property taxpayers) are negatively impacting property values in Portland.¹³ As businesses leave Portland Metro, so does tax revenue, leaving the city with a shrinking operating budget to deal with a growing problem.¹⁴ The City of Portland now faces its greatest economic crisis since the 1980s.¹⁵

In July of 2022, Mayor Ted Wheeler declared a state of emergency, recognizing the risk to the “lives and livelihoods of Portlanders” posed by gun violence.¹⁶ Mayor Wheeler’s Emergency Declaration to Address Gun Violence states that gun violence reached historic records in 2022 and that “the impact of gun violence is also felt deeply by the broader Portland community as the number of shootings and inherent danger increases across the City[.]”¹⁷

¹³ The Oregonian, *Portland’s Downtown Office Building Fire Sales Will Hasten Millions in Lost Property Taxes* (Aug 7, 2025), available at <https://www.oregonlive.com/business/2025/08/portlands-downtown-real-estate-fire-sales-will-hasten-millions-in-property-tax-losses.html>.

¹⁴ Portland Metro Chamber, *2023 State of the Economy* (2024), available at <https://portlandmetrochamber.com/wp-content/uploads/2023/05/2023-VOJ-State-of-Economy-WEB.pdf>.

¹⁵ *Id.*

¹⁶ Jonathan Levinson, *Portland Mayor Ted Wheeler Claims Gun Violence State of Emergency*, OPB (Jul 2022), available at <https://www.opb.org/article/2022/07/22/portland-mayor-ted-wheeler-declares-gun-violence-emergency/>.

¹⁷ M. Res., *In the Matter of the Local Emergency within the City of Portland*, (Jul. 21, 2022), available at <https://www.portland.gov/wheeler/documents/emergency-declaration-gun-violence-interventions-0/download>.

Gun violence in Portland disproportionately impacts people of color. 40% of the victims of fatal and non-fatal gun violence in Portland are Black, although that group makes up only 6.5% of the city's population.¹⁸ Today, Black Portlanders are 12.6 times more likely to be killed by gun violence compared to white Portlanders.¹⁹

And gun violence is not just a Portland problem. A study conducted by Oregon Health & Science University (OHSU) reveals that thousands of gun injuries occur in urban and rural counties across Oregon every year.²⁰ Between 2019 and 2023, 3,125 people in Oregon *died* due to firearm injury.²¹ The most recent data available shows that in 2023, rates of firearm-related deaths in Oregon were 22% higher than those in Washington and 74% higher than those in

¹⁸ Public Safety Serv. Area, *Response Memo to FY2025 Budget Note: Budget & Reporting Structure Analysis for Off. of Violence Prevention & Ceasefire* (Feb. 2025), available at <https://www.portland.gov/budget/2025-2026-budget/documents/budget-note-update-office-violence-prevention-ceasefire/download>.

¹⁹ Sierra Ellis & Franz Schoening, *Portland Ceasefire* (Apr. 28, 2025), available at https://multco.us/file/portland_presentation.pdf/download.

²⁰ Erik Robinson, *New Statewide Report Reveals Significant Impacts from Firearm Injury Across Oregon* (Oct. 20, 2022), available at <https://news.ohsu.edu/2022/10/20/new-statewide-report-reveals-significant-impacts-from-firearm-injury-across-oregon>.

²¹ Ctrs. for Disease Control & Prevention, *All Intents Deaths Due to Firearm*, available at <https://wisqars.cdc.gov/infographics/> (accessed Sept. 4, 2025).

California.²² Washington²³ and California²⁴ both have laws in effect that are similar to Oregon's Measure 114, including prohibitions on magazines holding more than 10 rounds of ammunition, background checks, and required firearm safety training in order to purchase firearms.

Gun-related injuries are not always intentional. In Oregon, unintentional injuries comprise about 20% of firearm-related injuries that require a visit to the emergency room.²⁵ Rates of unintentional firearm injuries are highest for youth in rural areas.²⁶

²² Kathleen Carlson, *Firearm Injury in Oregon*, OHSU Gun Violence Prevention Rsch. Ctr. (Mar. 13, 2025), *available at* <https://olis.oregonlegislature.gov/liz/2025R1/Downloads/CommitteeMeetingDocument/294685>.

²³ Wash. State: Off. of the Att'y Gen., *Firearms*, *available at* <https://www.atg.wa.gov/firearms> (accessed Sept. 3, 2025) (Washington prohibits the sale, attempted sale, manufacture and distribution of high-capacity magazines that hold more than 10 rounds); Wash. State: Off. of the Att'y Gen., *Initiative 1639*, *available at* <https://www.atg.wa.gov/initiative-1639#demonstrate> (accessed Sept. 3, 2025).

²⁴ Cal. Dep't of Justice: Att'y Gen., *Assault Weapons L. (Cal. & Fed. L.)*, *available at* <https://oag.ca.gov/ogvp/fed-assault-weapons-ban> (accessed Sept. 4, 2024) (California bans assault weapons with the capacity to accept more than 10 rounds); Giffords L. Cntr., *Licensing in Cal.* (Jul. 31, 2024), *available at* <https://giffords.org/lawcenter/state-laws/licensing-in-california/>.

²⁵ *The Oregon Firearm Injury Data Dashboard*, OHSU (2025), *available at* <https://visual-data.dhsoha.state.or.us/t/OHA/views/FirearmInjury/ExtendedDashboard?%3Aembed=y&%3Aiid=1&%3AisGuestRedirectFromVizportal=y>.

²⁶ Jess Marks, *Gun Tragedies in Oregon*, All. for a Safe Oregon (2025), *available at*

It was against the above-described epidemic of gun violence that Oregon voters passed Measure 114. 75% of the voters in Multnomah County, most of whom reside in the City of Portland, voted in favor of Measure 114.²⁷ Ballot Measure 114 reflects the will of Oregon voters, and the will of a supermajority of the citizens of Portland: to regulate firearms in the interest of public safety.

Measure 114 is designed to address the scourge of gun violence. It requires firearm purchasers to complete a firearm safety training and obtain a permit from local law enforcement before making a purchase. Measure 114, §4. It also limits the sale and use of large-capacity ammunition magazines that can fire more than 10 rounds without needing to reload. *Id.* §11.

Gun safety training clearly improves public safety. For example, a study conducted by National Gun Victims Action Council found that 60% of individuals with no firearm training would place a finger on the trigger of a gun before they were ready to shoot, thereby increasing the risk of accidental firing, compared to 33% of individuals with some training and 0% of individuals with advanced

<https://olis.oregonlegislature.gov/liz/2025R1/Downloads/CommitteeMeetingDocument/294680>.

²⁷ Ballot Measure 114 prevailed by a nearly three-to-one ratio in Multnomah County, which includes most of the City. *See Multnomah Cnty., Multnomah Cnty. Election Results, Update 15* (Dec 2022), available at https://multco-web7-psh-files-usw2.s3-us-west-2.amazonaws.com/s3fs-public/2022-11_report_15.pdf.

training.²⁸ Moreover, a study conducted by John Hopkins Center for Gun Violence Solutions found that states experienced a 32% average increase in violent gun assaults after removing firearm training requirements for concealed carry licensing.²⁹

Background checks help keep guns out of the wrong hands.³⁰ For example, after Connecticut adopted a permit-to-purchase gun program (including a background check plus waiting period), the state's policy was associated with a

²⁸ Joseph J. Vince Jr., et al., *Firearms Training & Self-Defense*, Nat'l Gun Victims Action Council 4, 32, 44 (2015), *available at* <https://www.multivu.com/players/English/65360-ngvac-national-gun-victims-tell-and-compel-we-re-done-asking/flexSwf/impAsset/document/c6b7ad45-3bc2-4483-9de1-4dc5dc9d449f.pdf>; Jason Pine, *Handgun Trigger Discipline: The Cornerstone of Responsible Gun Handling*, Four Bros. Blog (Jan. 5, 2025) <https://fourbrothersinc.com/blogs/firearm-safety-maintenance/handgun-trigger-discipline-the-cornerstone-of-responsible-gun-handling>.

²⁹ John Hopkins Ctr. for Gun Violence Sols., *Study Finds That Dropping Training Requirement to Obtain Concealed Carry Permit Leads to Significant Increase in Gun Assaults*, *available at* <https://publichealth.jhu.edu/center-for-gun-violence-solutions/2023/study-finds-that-dropping-training-requirement-to-obtain-concealed-carry-permit-leads-to-significant-increase-in-gun-assaults> (accessed Sept. 3, 2025).

³⁰ See Rand, *The Effects of Background Checks* (Jul. 16, 2024), *available at* <https://www.rand.org/research/gun-policy/analysis/background-checks.html> (background checks prevent felons, minors, fugitives, and those with certain histories of mental illness from accessing guns); Everytown For Gun Safety, *Background Checks on All Gun Sales*, *available at* <https://www.everytown.org/solutions/background-checks/> (accessed Sept. 3, 2025) (background checks plus a waiting period reduces the risk that an individual in crisis will act in an impulsive manner, thereby reducing both firearm suicide and homicide deaths).

28% decrease in its firearm homicide rate and a 33% decrease in its firearm suicide rate.³¹ Conversely, after Missouri repealed its firearm licensing law, its policy change was associated with a 47% increase in firearm homicides and a 23% increase in firearm suicide rate.³²

Firearms equipped with large-capacity ammunition magazines are used in a disproportionate share of public mass shootings.³³ Moreover, mass shootings that involve a large-capacity magazine have 60% to 67% higher fatality counts and 100% to 200% higher wounding counts than mass shootings that do not involve large-capacity magazines.³⁴

The instant case arises out of Plaintiffs’ claim that three provisions of Measure 114 are facially unconstitutional under Article I, section 27: (1) the ban on magazines with a capacity of more than 10 rounds, (2) the permit-to-purchase program, and (3) the requirement that a purchaser successfully pass a background

³¹ John Hopkins Ctr For Gun Violence Sols., *Closing the “Gun Show Loophole”: A Step In the Right Direction With More Work to Be Done* (May 28, 2024), available at <https://publichealth.jhu.edu/center-for-gun-violence-solutions/2024/what-does-closing-the-gun-show-loophole-do>.

³² *Id.*

³³ Christopher S. Koper, *Assessing the Potential to Reduce Deaths & Injuries from Mass Shootings through Restrictions on Assault Weapons & Other High-Capacity Semiautomatic Firearms*, 19 CRIMINOLOGY & PUB. POL’Y 1, 147–170 (2020), available at <https://doi.org/10.1111/1745-9133.12485>.

³⁴ *Id.*

check. *Arnold v. Koteck*, Case No. 22CV41008 (ltr op). The trial court held that those provisions violate Article I, section 27. *Id.* The Court of Appeals reversed. *Arnold v. Koteck*, 338 Or App 556, 580 (2025).

STANDARD OF REVIEW

A statute that regulates firearms is constitutional so long as there exist some circumstances under which it can be applied constitutionally. *State v. Christian*, 354 Or 22, 39 (2013). Put otherwise, a statute that infringes upon the right to bear arms in some but not all circumstances must be upheld. *Id.*

ARGUMENT

Portland Metro Chamber submits this brief in support of the State’s argument that Measure 114 does not run afoul of Article I, section 27 of the Oregon Constitution. Article I, section 27 provides: “The people shall have the right to bear arms for the defense of themselves, and the State, but the Military shall be kept in strict subordination to the civil power[.]”

The trial court held that three provisions of Measure 114 are facially unconstitutional under Article I, section 27: (1) the ban on magazines with a capacity of more than 10 rounds, (2) the permit-to-purchase program, and (3) the requirement that a purchaser successfully pass a background check. *Arnold v. Koteck*, Case No. 22CV41008 (ltr op).

The Court of Appeals reversed, holding Measure 114 facially valid under Article I, section 27, because the law is capable of constitutional application. *Arnold*, 338 Or App at 580. In reaching its conclusion, the Court of Appeals properly followed the framework set forth in *State v. Christian*, 354 Or 22 (2013).³⁵ *Arnold*, 338 Or App at 566–67. First, the court determined that Article I, section 27 applies to Measure 114. *Id.* at 576. Second, the court determined that Measure 114 was constitutional because it governs the possession and use of constitutionally protected arms in order to promote public safety without unduly frustrating the right to armed self-defense guaranteed by Article I, section 27. *Id.* at 571-74, 576-580.

The court also properly declined to engage in fact finding or speculation about how the measure might be executed in the future and the effect it might have on any one individual's Article I, section 27, right. *Id.* at 567, 574. Those questions can only be explored through as-applied challenges. *See State v. Carr*,

³⁵ First, *Christian* instructs the court to determine whether the regulation in question falls within the scope of Article I, section 27. *Christian*, 354 Or at 30. Second, *Christian* instructs the court to determine whether there is “no reasonably likely circumstance in which application of [the regulation] would pass constitutional muster,” keeping in mind that the legislature has “authority to enact reasonable regulations to promote public safety as long as the enactment does not unduly frustrate the individual right to bear arms for the purpose of self-defense.” *Id.* at 33, 41.

215 Or App 306, 310 n 5 (2007), *rev den*, 344 Or 109 (2008) (an as-applied challenge asserts that executive officials violated the constitution when they enforced the statute); *City of Corvallis v. State*, 304 Or App 171, 182 (2020) (emphasis in original) (“[a] prerequisite to challenging the constitutionality of the law *as applied* is that the law has been applied.”). Petitioners appealed to the Oregon Supreme Court.

On appeal, the Chamber’s position is that Measure 114 does not violate the right to bear arms set forth in Article IV, section 27, because (1) LCMs are not “arms,” and (2) Measure 114 can be applied without offending Article I, section 27. For the reasons set forth herein, this court should affirm the Court of Appeals decision.

A. LCMs are not “arms.”

Measure 114 bans magazines with a capacity of more than 10 rounds, which it defines as “Large Capacity Magazines.” Measure 114, §11(c). For ease of reference, the Chamber adopts that definition and refers hereinafter to magazines with a capacity of more than 10 rounds as “LCMs.” The trial court found that Measure 114’s ban on LCMs was an unconstitutional restriction of the right to bear arms set forth in Article I, section 27. Measure 114, section 11 criminalizes the

possession of a large-capacity magazine, which it defines, subject to limited exceptions, as

“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[.]”

As noted above, an LCM is a magazine that holds more than 10 rounds.

As used in Measure 114, a magazine is “an ammunition feeding device.”³⁶

Measure 114, § 11(b) and (c). LCMs include both detachable magazines and magazines that are “permanently attached” to the firearm, also known as “fixed” magazines. *Id.* at § 11(d). Section 11 bans both detachable large capacity magazines, which exist independently from the firearm, and fixed large capacity magazines, which are an integral part of a firearm.

As a threshold matter, this court must determine whether Measure 114’s ban on LCMs is a restriction on “arms” such that Article I, section 27 is implicated.

³⁶ The NRA’s definition of a magazine is “a spring-loaded container for cartridges that may be an integral part of the gun’s mechanism or may be detachable.” NRA, *It’s Time for a Vocabulary Lesson* (Aug 2016), available at <https://www.nrablog.com/articles/2016/8/misused-firearms-terms/>.

See State v. Delgado, 298 Or 395, 399 (1984). Put simply, would the framers of Article I, section 27 have understood LCMs to be “arms?”

In construing a constitutional provision, Oregon courts examine the text and context of the provision, the case law surrounding it, and the historical circumstances from which the provision arose. *Priest v. Pearce*, 314 Or 411, 417 (1992); *see also State v. Gray*, 370 Or 116, 129 (2022). By its plain language, Article I, section 27 protects the right to bear “arms”; therefore, if LCMs are not “arms” within the meaning of that provision, then the restriction upon them has no constitutional implications. *Delgado*, 298 Or at 399. The plain text of Article I, section 27 bears another important limitation: it protects only arms borne for the purpose of self-defense. *See State v. Hirsch*, 338 Or 622, 632 (2005).

Contemporaneous dictionaries can shed light on the commonly understood meaning of words at the time a constitutional provision was enacted. *Liberty Nw. Ins. Corp. v. Oregon Ins. Guarantee Ass'n*, 206 Or App 102, 113 (2006) (“Noah Webster’s *An American Dictionary of the English Language* was especially popular.”). *An American Dictionary of the English Language*, published in 1848, defines “arms” as “weapons[.]” Noah Webster, *An American Dictionary of the English Language* 60 (1848). That definition also explains that “Fire - arms are such as may be charged with powder , as cannon , muskets , mortars , & c .” *Id.*

(spacing from original). Those definitions and examples suggest that the framers understood “arms” to refer to the weapons themselves and not to a device for holding ammunition.

Detachable LCMs are not “arms” under the plain meaning of that word as the framers would have understood it in 1859. That is because a detachable magazine is not a weapon, but a means of loading one. A ban on detachable LCMs does not therefore restrict a citizen’s ownership of a firearm; rather, it restricts the types of devices that can be used in conjunction with that firearm, which in turn regulates the amount of ammunition that can be loaded into said firearm at any one time. Notably, *Webster’s* defines “fire – arms” as things that can be *loaded*, such as “cannon, muskets, [and] mortars,” and *not* as the “powder,” or, in this case, series of bullets, with which they are loaded. *Id.* Put otherwise, “arms” are weapons, and not ammunition holding accessories.

Contrary to the trial court’s determination, therefore, the prohibition of detachable magazines with a capacity of more than 10 rounds is not an outright ban on arms. Measure 114’s prohibition on LCMs does not run afoul of Article I, section 27 because it does not ban “arms” at all. As the trial court acknowledged, “[t]he vast majority, if not all, standard shotguns sold on the market today have bolts that are removeable and replaceable with tubular magazine extensions,”

meaning that the magazine extensions are not fixed. ER-787. Nor does Measure 114 ban the use of all magazines, which could render firearms inoperable and therefore be a *de facto* ban on weapons and therefore invoke the protections of Article I, section 27. *See, e.g., Fyock v. Sunnyvale*, 779 F3d 991, 998 (9th Cir 2015); *cf. Delgado*, 298 Or at 403-404 (1984) (holding an ordinance unconstitutional because it banned switchblades altogether).

Although the Court of Appeals declined to address whether magazines are “arms” within the scope of Article I, section 27, it stated that it would be inappropriate to “parcel[] out” firearm components in deciding the constitutionality of Measure 114. *Arnold*, 338 Or App at 576. Measure 114 does not parcel out firearm components to ban magazines because magazines with ammunition capacities of 10 rounds or fewer remain operable.

With respect to fixed magazines, however, this Court is faced with a closer question. Because a fixed magazine is not readily detached from a firearm, it is an integral part of that firearm, and as such, the ban on fixed magazines does ban a particular class of weapons – those that are permanently attached to a magazine capable of holding more than 10 rounds.³⁷ Because Measure 114 includes fixed

³⁷ Notably, the trial court construed Measure 114 as unconstitutional because of its reasoning that every gun can hold an extra bullet in the chamber, rendering guns that can take magazines of 10 rounds noncompliant because they could potentially

magazines in its definition, Measure 114 does appear by its text to regulate at least that more narrow class of LCMs directly.

Article I, section 27 does not guarantee citizens the right to carry weapons of any kind, however. By its terms, that provision guarantees the right to bear arms for the purposes of self-defense. This Court has held that Article I, section 27 does not guarantee the right to carry weapons that are not commonly used by individuals for the purpose of self-defense. *State v. Kessler*, 289 Or 359, 369 (1980). “Arms,” as that term appears in Article I, section 27 therefore excludes many of the weapons of modern warfare. *Id.* “Arms” includes only the “modern day equivalents” of those weapons commonly in use in the colonial era. *Id.*; *see also Christian*, 354 Or at 30 (“[T]he term ‘arms’ includes some firearms and certain hand-carried weapons commonly used for self-defense at the time the provision was drafted.”). Accordingly, not all firearms are “arms” that are constitutionally protected. *Kessler*, 289 Or at 369 .

Are weapons with fixed magazines with a capacity for more than 10 rounds “arms” as the framers understood that term to mean? The question turns upon whether such weapons are the “modern day equivalent” of those used for self-

hold 11. ER-788. That strained reasoning runs contrary to the rule set forth in *Johnson*, which directs courts to construe provisions in a manner that does not offend the constitution. *State v. Johnson*, 329 Or App 588, 636 (2023).

defense in the colonial era. *Id.* at 369. As the Court of Appeals explained in *Oregon State Shooting Association*, “while technological advancement does not necessarily mean that a weapon is not ‘arms’ within Article I, section 27, there is a point at which that advancement renders the constitutional protection inapplicable.” *OSSA v. Multnomah Cnty.*, 122 Or App 540, 546 (1993), *rev den*, 319 Or 273 (1994).

Because the guarantee set forth in Article I, section 8, is limited to the purpose of defense, the Court of Appeals has distinguished between weapons of defense and weapons of offense. *Id.* at 547. As distinguished from “personal weapons for defense of self,” non-protected weapons, or “weapons of warfare,”³⁸ are designed to kill as many people as possible, as quickly as possible. That result is not what the framers intended to protect when they enacted Article I, section 27. On that basis, the court held that semi-automatic weapons are not “arms” under the Oregon Constitution. *Id.* at 547 and at 547 n 7 (“While we are aware that the name of a weapon does not determine the constitutional protection, the listed weapons

³⁸ The trial court reasoned that military and personal weapons were indistinguishable during the colonial era. Notably, Article I, section 27 also provides that “the Military shall be kept in strict subordination to the civil power.” Arguably, that provision refers to the state’s “civil power” to regulate matters “Military” in nature, such as firearms. Curiously, this phrase, and its explicit limitation, have yet to be examined by this court or the Oregon Supreme Court.

are called assault weapons for a reason.”). A similar logic applies here. As the Bureau of Alcohol, Tobacco, Firearms and Explosives has explained, “large capacity magazines are indicative of military firearms” and are “particularly suitable for combat” because they enable the user to fire many rounds without pausing to reload. See ATF, *Rep. & Recommendation on the Importability of Certain Semiautomatic Rifles* (Jul 1989), available at https://www.generalstaff.org/Firearms/ATF_Sporting/ATF_1989_Report-on-importability-of-semi-automatic-rifles.htm (64% of high-fatality mass shootings involve the use of LCM); Louis Klarevas, *The Effect of Large-Capacity Magazine Bans on High-Fatality Mass Shootings*, 109 Am J Pub H 12, 1754 (2019).

LCMs are an efficient means of killing many people very quickly. Klarevas, 109 Am J Pub H at 1754 . Indeed, mass shootings that involve LCMs involve more than twice as many fatalities as those that do not. Christopher S. Koper, *Reducing Gun Violence in America*, Ch. 12, 167 (Ed. Daniel W. Webster and Jon S. Vernick. 2013). The goal of shooting as many people as one can as quickly as possible is not compatible with the objective of self-defense. The average number of rounds fired in self-defense is 2.2. ER-792. Acts of self-defense almost never involve, let alone require, firing more than 10 rounds. Based on data gathered from the NRA, only 0.3% of all acts of self-defense use over 10 rounds. ER-793.

LCMs are not necessary for self-defense; rather, they are the type of military-grade technological development that render a weapon outside of what the framers of Article I, section 27 meant by “arms.”

Today, most magazines are detachable; weapons with fixed magazines are relatively rare. In 1859, neither technology was readily available. There were no 10-round magazines in circulation, let alone magazines that held more than 10 rounds. ER-763. As the trial court below acknowledged, the foundation was laid for LCMs in the decades *following* the adoption of Article I, section 27. ER-763. It strains credulity to imagine that the drafters of Article I, section 27 would consider the right to bear arms to encompass a right to fire more than 10 rounds without pausing to reload.

B. Because Measure 114 can be applied constitutionally, this Court should affirm the Court of Appeals’ decision.

Even when a regulation implicates the right to bear arms, it will be upheld unless it cannot be applied under any circumstances without offending Article I, section 27. *Christian*, 354 at 40 (holding that “overbreadth challenges are not cognizable in Article I, section 27, challenges). Because Measure 114 is constitutional in at least some applications, the trial court must be reversed.

In *Christian*, this Court explained that

“[T]he drafters of Article I, section 27, did not intend to deprive the legislature of the authority to specifically regulate the manner of possession or use of arms when it determines that such regulation is necessary to protect public safety[.]”

354 Or at 31. Plaintiffs argue that the “manner of possession or use” language renders *Christian* inapplicable to the instant case, because the LCM ban represents an outright ban on “mere possession” of a weapon, which is impermissible under *Kessler*, 289 Or 359, and *Delgado*, 298 Or 395. Pet Br 24–26. As a preliminary matter, the weapons at issue in those cases were not firearms, and therefore did not implicate the same public safety concerns at issue here. *See Christian*, 354 Or at 33 (constitutionality of a law is determined by considering, among other things, the magnitude of the harm the law seeks to address).

Moreover, this Court has held that regulations that impact entire categories of people or behavior are within the “manner of possession/manner of use” framework that renders them constitutionally permissible. For example, in *State v. Robinson*, this Court upheld a statute, former ORS 166.270, that prohibited felons from possessing concealable weapons. 217 Or 612, 619 (1959). The *Robinson* court reasoned that the regulation was a valid attempt “to prevent crimes of the kind in which concealed weapons play a part[.]” *Id.* at 616.

In *State v. Cartwright*, this Court again dismissed a constitutional challenge to former ORS 166.270, reasoning:

“[N]otwithstanding Article I, Section 27, the state, in the exercise of the police power, may provide that the ownership or possession of certain firearms by an ex-convict is a public offense; for the Legislature might reasonably conclude that, in the generality of cases, a person who had demonstrated his disregard for the laws of society by committing a felony against the person or property of another would be more likely than others to resort to force and violence and would be a greater threat to the public safety when in possession of a concealable firearm than when not.”

246 Or 120, 1359 (1966). In placing said restrictions on felons, the *Robinson* and *Cartwright* courts reasoned that the statute at issue was a permissible means of preventing weapons from being used for purposes other than self-defense; notably, however, former ORS 166.270 criminalized the ownership by a felon of a concealable weapon or a machine gun, but not of weapons of all kinds. *See Cartwright*, 246 Or at 136 (“[T]he statute does not prohibit the possession by an ex-convict of any and all firearms...[i]t would have been perfectly legal, so far as the statute is concerned, for the defendant to have provided himself with a rifle or shotgun for the purpose of protection[.]”).

In *State v. Hirsch*, however, this Court considered ORS 166.270 as amended, which prohibited felons from owning firearms of any kind. 338 Or 622. Like its predecessors, *Hirsch* makes clear that Article I, section 27, does not divest the legislature of its authority to place limitations on an individual’s right to own firearms in the interest of public safety. *Id.* at 678. *Hirsch* went farther than those

cases, however, because it upheld an outright ban on the ownership of firearms by an entire category of people. *Hirsch* affirms the long-standing rule that the right to bear arms is not absolute: the legislature may impose restrictions on the right for “the permissible legislative purpose of protecting the security of the community against the potential harm that results from the possession of arms.” *Id*; *see id.* at 677 (after undergoing a lengthy historical analysis, this Court determined that “when the drafters of the Oregon Constitution adopted and approved the wording of Article I, section 27, they did not intend to deprive the legislature of the authority to restrict arms possession (and manner of possession) to the extent that such regulation of arms is necessary to protect the public safety”). Although the specific issue in *Hirsch* involved gun restrictions placed on felons, *Hirsch* approved the legislature’s authority to regulate guns in the interest of public safety generally.

In *Christian*, this Court reaffirmed that “the right to bear arms is not an absolute right[:] the legislature has wide latitude to enact specific regulations restricting the possession and use of weapons to promote public safety.” 354 Or at 33. In considering the city ordinance, *Christian*, like *Hirsch*, considered the important legislative aim of protecting the City of Portland and its people from the threat of gun violence:

“[T]he ordinance at issue here reflects a contemporary legislative response to identifiable threats to public safety stemming from the carrying of loaded firearms in public within a city, when the conduct creates an unreasonable and unjustified risk of harm to members of the public. The ordinance reflects a legislative determination that the risk of death or serious injury to members of the public moving about in public places is increased by the threat posed by individuals who recklessly fail to unload their firearms.”

354 Or at 34. *Christian* and its predecessors represent an uninterrupted line of Oregon cases that recognize the legislature’s ability to promote public safety in a manner that might implicate, but does not extinguish, the right to bear arms for the purposes of self-defense. Further, because the permit-to-purchase and background check provisions of Measure 114 prevent firearms from falling into the wrong hands and being used for purposes other than self-defense,³⁹ those provisions also regulate the manner of possession or use of firearms. *See Hirsch*, 338 Or at 639 (the guarantee under Article I, section 27, is limited solely to self-defense). Therefore, *Christian* applies to those provisions as well, contrary to Plaintiffs’ assertion. Pet Br 27–28.

³⁹ The training requirement under the permit-to-purchase provision also regulates the “manner of possession or use” of firearms by educating trainees on how to properly use firearms, thereby preventing accidental discharges and injury.

Most importantly, *Christian* closed the door on overbreadth⁴⁰ challenges⁴¹ in Article I, section 27 cases. 359 Or at 39 (reasoning that the “strong medicine” of an overbreadth challenge should be reserved to treat the chilling effect of statutes restricting speech). As such, Respondents cannot prevail by showing that Measure 114 might unduly burden the right to bear arms under some circumstances. That is because “if a statute may constitutionally operate upon certain persons or cases, it is not unconstitutional simply because there may be persons or cases to whom it constitutionally cannot apply.” *City of Corvallis*, 304 Or App at 180–81 (citing *Northup v. Hoyt*, 31 Or 524, 529 (1897)).

Under *Christian*, Measure 114 must be upheld unless it is unconstitutional in every possible application. 352 Or at 35, 41 (rejecting the plaintiff’s facial challenge because “it cannot be argued that there can be no reasonably likely circumstances in which application of the ordinance would pass constitutional muster”) (internal quotations omitted). *Christian* is dispositive in the instant case.

⁴⁰ Oregon’s overbreadth doctrine is modeled after the approach set forth in *Bigelow v. Virginia*, 421 US 809 (1975). See *Couey v. Atkins*, 357 Or 460, 474 (2015). Under *Christian*, it is limited to free expression challenges.

⁴¹ Even in the context of overbreadth challenges, Oregon courts first attempt to construe the statute in a manner that does not offend the constitutional provision at issue, and then, if that is not possible, amputate the offensive passages while leaving the remainder intact. *Id.* at 39, see also *Johnson*, 329 Or App at 636 (this court will construe provisions so as to avoid constitutional issues).

354 Or at 40 (A statute is only unconstitutional if it is “[in]capable of constitutional application in any circumstance.”). The statute easily clears that low bar. *See City of Portland v. Sottile*, 336 Or 74, 744 (2024) (quoting *United States v. Rahimi*, 602 US 680, 693 (2024) (“[a] facial challenge is ‘the most difficult challenge to mount successfully,’ because it ‘requires a defendant to establish that no set of circumstances exists under which’ the law would be valid”).

1. *The LCM ban is facially constitutional.*

The prohibition of magazines accepting more than 10 rounds set forth in Measure 114, section 11 is facially constitutional. The provision “is not a total ban on possessing or carrying a firearm for self-defense,” nor is it even a prohibition on the amount of ammunition, or even the number of magazines, a gun owner may possess. *Christian*, 354 Or at 40. Like the regulation in *Christian*, the provision at issue permissibly regulates the manner in which firearms are used. *Id.* By requiring a shooter to pause and reload after firing 10 rounds, the provision achieves the legislative aim of protecting the public from the risk of harm⁴² posed

⁴² The trial court reasoned that “the defendants did not present evidence demonstrating a positive public safety result for the large capacity ban.” ER 799. None of the Oregon jurisprudence regarding Article I, section 27 requires the legislature to present evidence of a prospective law’s efficacy; rather, the State need only show that the regulation is reasonably related to the valid legislative aim of public safety.

by firearms made exponentially more dangerous by the use of LCMs. *See* Klarevas, 109 Am J Pub H at 1754 (concluding that a prohibition on LCMs is the most important regulatory action that can be taken toward greater gun safety). Most firearms are compatible with magazines of 10 rounds or less, making the provision capable of constitutional application. *See State v. Reasoner*, 313 Or App 139, 151 (2021), *rev den*, 369 Or 209 (2022) (a statute that is “capable of constitutional application” is facially constitutional).

Even if a gun is truly incompatible with magazines holding 10 rounds or less, its owner may still use that weapon on their own property, at a shooting range, in a shooting competition, or during hunting. Measure 114, § 11(5). In light of those permissible uses, Measure 114 does not amount to a deprivation of the right to bear arms under the Oregon Constitution.

2. The permit-to-purchase program is facially constitutional.

The permit-to-purchase requirement set forth in Measure 114, section 4 does not offend Article 1, section 27. Section 4 provides, in relevant part:

(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 [extreme risk protection] order [as] 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[;]
and

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

First, the prohibition of ownership by groups designated by the legislature as posing a potential threat to public safety is constitutionally permissible. The legislature “has broad authority under that provision to assess the threat to public safety that a particular group poses” and may prohibit that group from bearing arms for the “permissible legislative purpose of protecting the security of the community against the potential harm that results from the possession of arms.” *Hirsch*, 338 Or at 678 (statute prohibiting felons from owning firearms was constitutional).

Here, the legislature determined that certain individuals, as a result of their mental or psychological state, pose an elevated risk to public safety such that prohibiting those individuals from owning firearms is necessary to protect the

public. The Court of Appeals has previously upheld a restriction based on mental or psychological state in *State v. Owenby*, 111 Or App 270, 274 (1992) (“Given the nature of firearms, the danger the statute seeks to avert is a serious one.”). Such a regulation is permissible under *Hirsch*. 338 Or at 678; *see also Robinson*, 217 Or at 616 (“Obviously, it is difficult to spot the law breaker before he takes an unlawful course, and yet the legislature has the right to make efforts in that direction.”).

A prohibition on individuals with a record of violent or lawless behavior is also constitutionally valid. *See Robinson*, 217 Or at 616–17 (“The legislature evidently believed that ex-convicts who possess firearms ...are more likely to commit evil than if they are forced to remain unarmed. We cannot say that a classification based upon that proposition is capricious or that it is irrelevant to the legislative purpose.”); *see also Cartwright*, 246 Or at 1359. With respect to nonviolent felons, the *Robinson* court reasoned that a prohibition on gun ownership was nevertheless rationally related to the permissible legislative aim of preserving public safety:

“A person who embezzles money, fails to report his income or commits any other non-violent felony is evidently deficient in the deference to law which must be expected of all who live in a democracy. Such a person displays a lack of proper regard for the duties of citizenship and the normal restraints to which virtually all others yield instinctively. By his own felonious conduct he classifies himself and places himself in a category different from that composed of the law abiding. When the legislature concludes that a person of

that kind cannot be trusted with a concealable weapon we surely cannot say that its decision lacks reason.”

217 Or at 617. Similarly, it is reasonable for the legislature to determine that persons who have been adjudged to be an “imminent risk[] of suicide or of causing physical injury to another person” should not be issued a permit to purchase firearms. ORS 166.527(6).

No facts here suggest that Section 4 is unconstitutional as applied, either. Plaintiffs do not claim that they are felons or are otherwise members of a group that will not be issued a permit under Section 4. *Robinson*, 217 Or at 618 (“[W]e cannot understand how the defendant is in a position to raise the contention concerning aliens. He does not claim that he is an alien.”). Moreover, the permit-to-purchase provision’s prohibition on the issuance of a permit to individuals who are already prohibited by law or court order from obtaining a firearm merely observes existing restrictions.⁴³

With respect to the requirement that an applicant complete a safety course, it is clear that a person who has been trained to use and store a firearm safely is less likely to cause accidental death or injury to themselves or others than a person who

⁴³ If an underlying law prohibiting firearm ownership were unconstitutional, then that law, and not the permitting provision giving credence to it, would be the proper subject of a constitutional challenge.

has not been trained. For that reason, the requirement is a valid regulation in the interest of public safety. Because Section 4 is capable of constitutional application, it does not offend Article I, section 27.

3. The background check requirement is facially constitutional.

Finally, Measure 114, Section 4's requirement that a person pass a background check prior to purchasing a firearm is a permissible regulation of the manner of possessing a firearm. The background check requirement ensures that guns do not fall into the wrong hands as a result of administrative error. Under federal law, if a background check has not been completed by the FBI within three days, then the purchase may proceed. 27 CFR 478.102(a)(2)(ii).

This three-day guarantee results in the sale of guns to those who are prohibited by law from possessing them. In fact, the Bureau of Alcohol, Tobacco, Firearms and Explosives reported that in 2020, approximately 6,000 persons who would have failed a background check were legally sold a gun because of the three-day rule. ATF, *Total NICS Denials Received as Delayed Denials by State Calendar Years 2005-2020* (Dec 2020), available at https://everytownresearch.org/documents/2021/02/2021-0075-final-response-packet-_atf_everytown_redacted.pdf/.

The background check requirement exists to prevent that dangerous result. A person who has not been issued a permit within 30 days has a right to bring a civil cause of action and to receive a ruling within 10 days, which is a procedural safeguard for those whose permit has been delayed because of the background check requirement. Measure 114 §5. This regulation represents a permissible restriction on the manner of possession. In no way does it ban gun ownership.

CONCLUSION

The right to bear arms is not absolute. Measure 114 permissibly regulates the manner of possession and use of firearms in the interest of public safety. Because Measure 114 can be applied to most circumstances without offending the constitution, the Court of Appeals' decision should be affirmed.

DATED this 20th day of October, 2025.

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT,
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I certify that (1) this brief complies with the page-count limitation in
ORAP 5.05, and (2) the size of the type in this brief is not smaller than 14 point.

DATED this 20th day of October, 2025.

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CERTIFICATE OF FILING AND SERVICE

I certify that on October 20, 2025, I electronically filed an original copy of the foregoing with the Appellate Court Administrator, Appellate Records Section.

I 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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**Alliance for Gun Responsibility, and
Gun Owners for Responsible
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