

Representative Kropf:

The right to keep and bear arms, enshrined in the Second Amendment, is under increasing attack through legislation that seeks to disarm law-abiding citizens under the guise of "safety." Recent attempts by the Oregon legislature to further restrict firearm ownership—by enacting severe magazine capacity limits and imposing unconstitutional burdens on gun owners—stand in direct violation of both historical precedent and Supreme Court rulings, including *Bruen*. These laws not only strip citizens of their fundamental right to self-defense but also disregard clear evidence demonstrating that defensive gun use is a critical factor in protecting innocent lives.

The United States Supreme Court, in *New York State Rifle & Pistol Association v. Bruen*, established that any law affecting the Second Amendment cannot be justified through an "interest balancing" or "public safety" approach. House Bill 3075, through its emergency enactment clause, is clearly intended as an interest-balancing and public safety measure, which *Bruen* explicitly rejected. Furthermore, expanding or modifying provisions of a law still under judicial review for constitutionality is an apparent attempt to circumvent the judicial process.

Article I, Section 27 of the Oregon Constitution states, "The people 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." Likewise, the Second Amendment of the United States Constitution affirms that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." Requiring citizens to obtain government permission to exercise their Second Amendment rights constitutes a violation of that right. This principle was reaffirmed in *Nguyen v. Bonta*, where the state of California failed to justify restricting individuals from purchasing more than one firearm per month. Similarly, the legislature has no authority to impose a permit process for purchasing firearms.

House Bill 3075 also seeks to establish an illegal firearm registration system, directly violating the Firearm Owners Protection Act (FOPA) of 1986. FOPA explicitly states, "No such rule or regulation prescribed [by the Attorney General] after the date of the enactment of the Firearms Owners Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or disposition be established..." Yet, under House Bill 3075, Section (6)(B)(7)(a), the Department of State Police is permitted to retain records of criminal history checks for up to five years, including firearm make, model, and serial number. This provision constitutes an unlawful firearm registry in direct violation of federal law.

Another critical issue in House Bill 3075, as well as the contested Measure 114, is the restriction on semi-automatic firearm magazines. Certain legislators and advocacy groups argue that magazines are mere accessories and are not protected under the Second Amendment. Some even claim that semi-automatic firearms function without magazines, rendering them unnecessary. This argument is fundamentally flawed. Some firearms, such as the Phoenix Arms HP22 and HP25, were required under California law to be rendered inoperable if the magazine was removed. Additionally, most modern semi-automatic handguns and rifles are designed to use magazines, and without them, they become either single-shot firearms or entirely inoperable. While a magazine

may not legally qualify as a firearm, it is an essential component, making it an ancillary right justified by the core protections of the Second Amendment. Therefore, banning or restricting magazines is a direct violation of both the Oregon and United States Constitutions.

House Bill 3075 and Measure 114 also violate constitutional protections by improperly shifting the burden of proof onto citizens to demonstrate that they legally owned their magazines before the law's enactment. The Fifth Amendment guarantees due process, a protection extended to state law under the Fourteenth Amendment. Shifting the burden of proof to the accused violates procedural due process. In *Coffin v. United States* (1895), the Supreme Court affirmed the principle that individuals are presumed innocent until proven guilty. Requiring individuals to prove lawful ownership rather than requiring the state to prove unlawful possession reverses this foundational principle of justice.

Furthermore, the magazine capacity restrictions imposed by House Bill 3075 and Measure 114 are unconstitutionally vague. The language fails to set a clear capacity limit, instead prohibiting any magazine that *could* be modified to hold more than a certain number of rounds (in this case, 10). This broad and imprecise wording effectively bans all magazines, as any magazine could theoretically be altered to hold additional rounds. A law so vague that it criminalizes nearly all firearm magazines is unconstitutional on its face.

The justification for magazine capacity limits is also based on faulty data. The widely cited claim that an average of 2.2 rounds are fired in self-defense situations is a fabrication. Economist Lucy Allen derived this number using incomplete, cherry-picked data while failing to provide transparency for independent verification. This statistic, despite lacking academic rigor, is the primary source legislators use to justify restricting magazine capacity.

Additionally, a 2013 study commissioned by the Centers for Disease Control (CDC) under President Barack Obama found that defensive gun uses (DGU) occur between 500,000 and 3 million times per year, with most incidents resulting in no injury or death to either the perpetrator or the defender. In contrast, annual firearm-related deaths, including homicides and suicides, average around 50,000. Under *Bruen*, this data cannot be used to justify firearm regulations, yet it strongly suggests that arming citizens enhances public safety rather than endangering it.

Moreover, House Bill 3075 has a clause added to it that makes it illegal to challenge this law outside of Marion County courts. The use of ORS 255.044 for this purpose constitutes a violation of the Oregon Constitution. This statute pertains specifically to state measures, which are defined as laws proposed by initiative petition, referendum, or referred to voters by the legislature. It does not apply to House or Senate bills that have been enacted into law. Therefore, ORS 250.044 cannot be used by the legislature to restrict the public from contesting enacted House or Senate bills in courts outside of Marion County. Regarding venue for legal actions, ORS 14.080 outlines general provisions, stating that actions should be commenced in the county where the defendants reside or where the cause of action arose. This implies that challenges to enacted legislation could potentially be filed in various counties, depending on the specifics of the case and the parties involved. While ORS 250.044 centralizes challenges to the constitutionality of state measures in Marion County, it does not grant the legislature authority to limit where the public can contest enacted House or Senate bills. The appropriate venue for such challenges would depend on other statutory provisions and the particulars of each case.

In summary, House Bill 3075 and Measure 114 not only violate the *Bruen* decision by imposing an interest-balancing approach, infringe upon both state and federal constitutional protections, establish an illegal firearm registration system, shift the burden of proof in violation of due process, rely on flawed data to justify unconstitutional restrictions and circumvent the judicial process in multiple ways. Accordingly, this bill should be struck down as unlawful infringements on the fundamental rights of Oregonians.

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CC – Representatives, Democratic Leader Ben Bowmen & Republican Leader Christine Drazan