

TESTIMONY HB 3299
‘PRE-EMPTIVE’ TESTIMONY

Please accept this as my formal comments and **Pre-emptive Testimony** on **House Bill #3299**. I will address my personal resume, background and experience at the end of this testimony.

Dear House Judiciary Committee Members,

HB3299 is an Omnibus “Gut and Stuff” Bill that currently reads, “A BILL FOR AN ACT Relating to firearms. Be It Enacted by the People of the State of Oregon:

SECTION 1. The Department of State Police shall conduct a study on the reporting of attempted unlawful firearm transfers under ORS 166.412 (7) and 166.436 (5) and present the results of the study, along with any recommendations for legislation, in a report to the interim committees of the Legislative Assembly related to the judiciary in the manner provided under ORS 192.245 on or before September 15, 2020.

SECTION 2. Section 1 of this 2019 Act is repealed on January 2, 2021.”

This Bill is scheduled for a hearing and work session on 4-2-19. As of 4-1-19 at 11:00am, no “gut and stuff” amendments have been introduced or posted to the OLIS website. IF amendments are being considered to this bill that will be discussed in tomorrow’s hearing and have not been shared with the public (so that we may properly prepare testimony), this is a very underhanded means by which laws are made in this State. It is 26 hours before this bill will be heard tomorrow. How are citizens supposed to prepare for testimony ?!

Since this is the case at this time, I am sending the following testimony to OLIS as “pre-emptive testimony” not knowing what will be discussed within this bill. I am presuming that HB3299 will be similar to SB978, another gut and stuff bill being heard tomorrow in the Senate Judiciary. Therefor, consider the following as pre-emptive testimony for HB3299 ! Any reference to “SB978” or it’s “sections” of course would not correspond to your bill, however; the testimony comments remain pertinent.

Copied SB978 Testimony:

SB978 began as an innocuous Bill assigning the State Police to conduct a study on reporting of attempted unlawful firearms transfers. This bill with a late addition of 44 pages of amendments has become an omnibus bill involving various firearm related issues that are of grave concern to many honest and law obeying Oregon gun owners. The means by which these other amendments and proposed restrictions of our rights are being presented here, in itself is unprofessional and underhanded. That said, I will address my concerns with various parts of the amendments.

Section 26. “Local Authority to Regulate Firearms in Public Buildings”

*(1). a city, a county, a metropolitan service district organized under ORS chapter 268, or airport operating a commercial service airport with at least 2 million passenger boardings per calendar year **may adopt an ordinance regulating or prohibiting the possession of firearms in public buildings as defined in ORS 166.360 by persons licensed to carry a concealed handgun under ORS 166.291 and 166.292.** “(2) A school district, college or university may adopt a policy regulating or prohibiting the possession of firearms in public buildings as defined in ORS 166.360 by persons licensed to carry a concealed handgun under ORS 166.291 and 166.292.*

Section 27. ORS 166.360 is amended to read

(9) ‘Public building’ means: (a)(A) A hospital; (B)A capitol building; (C) A public or private school, as defined in ORS 339.315; (D)A college or university; (E)A city hall or the residence of any state official elected by the state at large, and the grounds adjacent to each such building. (F) The term also includes; That portion of any other building owned, Occupied or controlled by an agency of the state or a municipal corporation, as defined in ORS 297.405, other than a court facility (b) The grounds adjacent to a building described in paragraph (a) of this subsection; “(c) Real property owned by a college or university; or (d) The passenger terminal and parking area, and grounds adjacent to the passenger terminal and parking area, of a commercial service airport that has at least 1 million passenger boardings per calendar year.

The proposed amendments to Section 26 and 27 in addition to other language will severely restrict a Concealed Handgun License holder’s (CHL) ability to legally carry a concealed handgun. Allowing individual municipal and other government entities and hospitals and universities to develop ordinances and policies to regulate where and when a CHL holder can carry will cause complete confusion among CHL holders. A hodgepodge of hundreds if not thousands of new policies and ordinances would in effect render a CHL to be ineffective for the very purposes that the holder obtained the CHL for. It would also be impossible for any CHL holder to know all the various ordinances and policies as he or she passed through various jurisdictions and/or entered various facilities or properties.

Those that have a CHL obtained the license for various personal reasons. These could be; personal defense, crime victim, victim of a stalker, carry large amounts of monies or valuable properties, business related, general security, they live in a rural area where police response times are poor, former law enforcement officer, former military officer or; because they believe it is their responsibility to protect themselves, their family and community. Threats and risks to

honest CHL holders do not end just because there is a sign at the door, a policy written or an ordinance that disallows a licensed CHL holder from carrying into a specific building or upon (as an example) city owned properties. These amendments to existing ORS would place these CHL holders in greater harm by not allowing them to carry their handgun.

These amendments, if passed would cause extreme confusion and place a CHL holder in jeopardy of being arrested for violation of a ORS and/or ordinance. Imagine a CHL holder leaving their home from Eugene, traveling through Salem to pick up a child at school and then proceeding to Portland for business, dinner or to pick up a spouse at the airport. That holder could be subjected to at least 6 different governmental jurisdictions, a school district and PDX airport all of which could have their own ordinances regulating when and where a CHL holder could legally carry their handgun or not. It would be impossible to know all of these laws-ordinances and their nuances. You could literally on your drive be legal, illegal, legal, illegal, illegal. I would compare this to allowing every city, county, and other governmental and non-governmental agency to enact their own portions of the motor vehicle code. Codes that would conflict and be opposite of each other. An impossibility to comply that will only get honest CHL holders arrested. A parent with a CHL, going to school to pick up their child would literally have to disarm themselves at home and remain disarmed for their entire trip until they returned home (with a school disallowing CHL carry). This could place a crime victim CHL holder at risk of attack and injury. Other examples: If I drove from Albany to pick up a passenger at PDX-Portland, I could not even drive onto airport grounds with a handgun and my CHL. If I got off of work carrying my CHL and got into an accident, transported to a hospital, I could be subject to arrest for entering that hospital with a legally carried handgun using my CHL (hospital would be prohibited). Picking up a child at school would be illegal to carry a handgun-CHL on my person or in my vehicle (assuming the School passed an ordinance) EVEN if I was on an adjacent property to the school property. The ADJACENT PROPERTY clause in the amendments is further, ludicrous. My home property line borders that of the City Park where I reside. The park is literally behind my home. If my City passed an ordinance (under these proposed amendments) prohibiting CHL holders to carry a gun on any City owned properties; using the adjacent land amendment, I could not legally carry my concealed handgun on my own property or in my own home. I literally could NOT leave my home carrying a concealed handgun.

Allowing such entities to further restrict CHL holders from concealed or open carry of handguns would be a confusing mess that will only get honest citizens arrested. It will do nothing to ensure safety of any kind.

Safety Concerns: The safest place to retain a handgun when it is being carried is in it's holster ! If not being utilized for a defensive use, the gun should remain holstered. If these ordinances and carry restrictions were instituted, a CHL holder would be required to disarm themselves at various locations, buildings, lands and locations. This would require removal of the handgun from the person of the CHL holder and possible placement into a vehicle mounted safe (as example). Every time a gun is unholstered and re-holstered there is the possibility of an accidental discharge. The act of unholstering and re-holstering could be viewed by people in the vicinity and this could cause alarm and/or panic. This resulting panic could cause an unnecessary police response or a police response that could lead to an honest citizen CHL holder being mistaken as a threat and shot and killed or injured by responding police. As a CHL holder

leaving my home running various errands; one could find it necessary, to remain “legal”, to unholster and re-holster 4 or 5 times in one trip. Starbucks’s “no Guns”, unholster and re-holster. Kid’s school, unholster and re-holster. Post Office, unholster and re-holster. Bank, unholster and re-holster. Get the picture. Each time risking an accidental discharge or causing public alarm by handling a gun in view of the public. This is unsafe and ridiculous.

Oregon citizens that have taken the time to obtain a CHL have; taken the appropriate classes, are often experienced with firearm usage, trained in safety and legality of gun usage, background checked by State Police and the FBI (and other jurisdictions), fingerprinted and are regulated by existing laws. CHL holders ARE honest law abiding citizens ! Studies have shown that CHL holders are in fact more honest and more law obeying then even law enforcement officers. CHL holders have NOT been a problem or a safety risk to society or in the various locations that are proposed to allow restricted carry. In fact, there have been times where the CHL holder even prevented injuries, deaths and stopped the carnage of the criminal element causing harm. The Clackamas Town Center shooting incident was stopped by a CHL holder. There has NOT been a problem with CHL holders under current Oregon Law and current restrictions of carry. There is NO need to proceed with this bill and the amendments to allow jurisdictions to further restrict a CHL holder’s ability to legally carry a handgun.

It is a god given right for one to be able to protect themselves. The courts have agreed with this, we have a right to self defense. A CHL holder has that ability licensed to them for whatever personal reason and need they see fit. To further restrict where a honest CHL holder can carry removes safety and makes that very environment less safe. Criminals do not follow laws. Criminals do not and cannot obtain a CHL. Criminals will not obey “gun free zones”, therefore by allowing these amendments you are handing the criminal a platter of disarmed citizens to feast and prey upon. If I as a CHL holder disarmed myself to enter a municipal building/property/or adjacent property and I was attacked and injured by a criminal with assaultive intent; I would file a lawsuit against that municipality for failure to provide myself (and others) with adequate security and protection. This bill does NOTHING to further protect Oregonians and there is no need, has been no need to protect society from legally armed CHL holders, NONE !

As far as raising a fee for a CHL license to cover FBI costs or any other costs incurred by the Sheriff; there should be a maximum amount for all the fees charged. Currently there is no fee amount or maximum fee amount limitation for the FBI background check.

Section 5-10. Firearms Storage:

“SECTION 5. As used in sections 5 to 10 of this 2019 Act: “(1) ‘Authorized person’ means a person authorized by the owner or possessor of a firearm to carry or control the firearm. “(2)(a) ‘Container’ means a box, case, chest, locker, safe or other similar receptacle. “(b) ‘Container’ does not include a building, room or vehicle or a space within a vehicle. “(3) ‘Control’ means, in relation to a firearm, that a person is insufficiently close proximity to the firearm to prevent another person from obtaining the firearm. “(5) ‘Gun room’ means an area within a building enclosed by walls, a floor and a ceiling, including a closet, that has all entrances secured by a tamper-resistant lock, that is kept locked at all times when unoccupied and that is used for:

“SECTION 6. (1)(a) A person who owns or possesses a firearm shall, at all times that the firearm is not carried by or under the control of the person or an authorized person, secure the firearm: “(A) With an engaged trigger lock or cable lock that meets or exceeds the minimum specifications established by the Oregon Health Authority under section 10 of this 2019 Act; “(B) In a locked container, equipped with a tamper-resistant lock, that meets or exceeds the minimum specifications established by the Oregon Health Authority under section 10 of this 2019 Act; or “(C) In a gun room. (3) If a person obtains an unsecured firearm as a result of the owner Or possessor of a firearm violating subsection (1) of this section and the firearm is used to injure a person or property within two years of the violation, the owner or possessor of the firearm who violated subsection (1) of this section is strictly liable for the injury.

“SECTION 7. (1) A person transferring a firearm shall transfer the firearm:

“(a) With an engaged trigger lock or cable lock that meets or exceeds the minimum specifications established by the Oregon Health Authority under section 10 of this 2019 Act; or “(b) In a locked container, equipped with a tamper-resistant lock.

SECTION 8: “(3) If a lost or stolen firearm is used to injure a person or property and the person who owned, possessed or controlled the firearm at the time of the loss or theft did not report the loss or theft within the time period required by subsection (1) of this section, the person who owned, possessed or controlled the firearm at the time of the loss or theft is strictly liable for the injury for two years from the expiration of the time limit for reporting or until the loss or theft report is made, whichever occurs sooner. “(4) The liability imposed by subsection (3).”

Lock up requirements for guns should be a responsible thing to do but should be voluntary based upon the individuals own personal choice and circumstances. Besides, mandatory lock up requirements for firearms has been ruled UNCONSTITUTIONAL by the Supreme Court of the United States: “On June 26, 2008, the Supreme Court affirmed by a vote of 5 to 4 the [Court of Appeals for the D.C. Circuit](#) in ***Heller v. District of Columbia***.^{[4][5]} The Supreme Court [struck down](#) provisions of the [Firearms Control Regulations Act of 1975](#) as unconstitutional, determined that handguns are "arms" for the purposes of the Second Amendment, found that the Regulations Act **was an unconstitutional ban, and struck down the portion of the Regulations Act that requires all firearms including rifles and shotguns be kept "unloaded and disassembled or bound by a trigger lock"**.” This is settled law ! Any attempt by the Oregon Legislature to enact firearms lockup restrictions would be unconstitutional and you as Legislators are violating your oath of office even attempting to pass such legislation.

Other specific issues I have with the proposed “lock-up” restrictions (amendments):

- It violates my ability to control my own property within my own home or possession.
- A gun left on a night stand in a bedroom while the owner was in the kitchen could be seen as a violation of this law. (no children or visitors in the home) The gun would be viewed as NOT under the owner’s control and the owner subject to arrest.
- A gun in the home is often maintained for self defense purposes. Requiring a cable lock, box lock or other device defeats this purpose. In a home invasion or burglary, time is of

the essence to protect one's self and family from injury or death. A locking device defeats the very reason to have firearm for defensive purposes.

- The Amendment states that a building does not qualify for a locking device. My locked, deadbolted, cameras and alarm system Home does not qualify to properly retain my firearms ? But a plastic box with a cheap lock or a light weight cable lock that can be defeated with a \$5.00 tool is ? The State has no business what or how I store any of my property within my home. If a criminal makes the decision to break into my fortified and secured home and steal property of any kind, that is on the criminal not the homeowner.
- Cable lock/lock requirements upon sale or transfer even at a gun store. This is totally ridiculous. Many new firearms are now sold with locking devices. Some new firearms are sold with locking devices and by their design were custom made (as a cable would not work). I recently purchased a lever action hunting rifle that came with a custom lock. By design, not all guns can be locked by a device. Firearms from years past, many years, did not come with locking devices and there may not be the ability to do so. Cable locks currently accompanying firearms when sold can be easily opened using a screw driver or a simple wire cutter.
- Holding a gun owner legally liable for the acts of a criminal that illegally obtained their gun is ludicrous. 2 years at that. How could I prove months or years later that the gun that was stolen from me was properly locked up ? Where is the burden of proof ? The honest gun owner should not be held responsible for the acts of another... a criminal.
- Securing a gun in a vehicle is not permitted and is in fact a crime under this Bill. A CHL holder under other parts of this Bill would be required to disarm while in or upon certain jurisdictions. Proposed amendments would not allow locking a handgun in the trunk of their car. One could argue that the trunk (made of steel and a lock) is more secure than a cable lock, plastic box or cheap gun safe. Under this bill a CHL holder would be required to; disarm, unload the gun, insert a cable lock and then secure the weapon....where...? The vehicle is not permitted. All of this in view of the public, possibly in a parking lot. Unsafe and unnecessary.
- In reading these amendments I also see no exemption in storing of firearms in vehicles for; hunters, shooting sports, transporting guns for any reason or even guns stored within police vehicles. Does this State really want to criminalize a hunter for having a rifle locked in the cab of their truck, the trunk of their car or; the police officer that may have a spare gun, shotgun or tactical rifle in a police vehicle ?
- These amendments hold gun owners responsible for two years for guns they "transferred" unless they could prove the transferred gun had a trigger or cable lock.
- This bill significantly impacts personal choice and responsibility by requiring all firearms owners and possessors to secure the firearm with a trigger lock or other storage device, without regard to whether the premises itself is secured or where it is.

“SECTION 10. No later than January 1, 2020, the Oregon Health Authority shall adopt rules establishing the minimum specifications for trigger locks, cable locks and containers equipped with tamper-resistant locks required by sections 6 and 7 of this 2019 Act.

In regards to Section 10; It is my opinion that the Oregon Health Authority has no jurisdiction or expertise to comment or make rules in the proper locking or security of firearms. There are thousands of styles and designs of firearms which may require unique means of securing. If even possible. Regarding “tamper resistant locks”; every lock can be tampered with, every lock defeated. What will be the minimum standards ? At what cost ?

Most gun owners are already responsible for properly securing their firearms. Firearms is nothing more than, property. The State should not be involved in how gun owners store their property. This has already been settled by the Supreme Court in the Heller decision. Further action by the State is Unconstitutional ! Besides; cars, knives, hammers, drugs harm and kill more people than guns do....when will we require hammers be locked up ?

***Section 20:** “(j) Has been convicted of unlawful storage of a firearm under section 12 of this 2019 Act within the five years immediately preceding the date of the attempted sale, delivery or transfer.”*

Prohibits gun sale or transfer for violation of unlawful storage/lockup law. Removal of a Constitutionally protected right (gun ownership) should not be withheld under this Bill.

Section1: MINIMUM AGE FOR FIREARM SALES

A seller, dealer, etc. should not be able to limit firearms or ammunition sales beyond any restriction set forth in ORS or in Federal Laws. This is in effect a form of age discrimination. It is also a solution looking for a problem where none exists. We can send a 18 year old off to war, serving in the military but they can't buy shotgun shells or purchase a hunting rifle ? A teen can drive a 4,000 pound car at 16, buy one if they can, purchase all kinds of power tools, gasoline, other potentially dangerous items but cannot buy a gun, ammo or accessory if legal to do so by State Law ? Age discrimination is what it is. Leave the statutes as they are.

***“SECTION 32.** This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an **emergency is declared** to exist, and this 2019 Act takes effect on its passage.”*

The use of the Emergency Clause for SB978 and 978-1 Amendments is an improper and inappropriate use of the emergency clause, one for which it was NOT intended. I strongly object to the use of the emergency clause. NO emergency exists when it comes to any subject matter discussed within this Bill. There is NO emergency or need to alter places where law abiding CHL holders may carry their handguns ! There is NO emergency for securing and locking up of firearms ! There is NO emergency to change age restrictions for gun/ammo transfers and purchases ! There is NO emergency for other sections within SB978 & 978-1 Amendments.

Specific addition, HB3299:

In the event that HB3299 amendments has a **Magazine Capacity/High Capacity Magazine Ban-Restrictions:**

I am completely against ANY restriction of magazine capacity for the following reasons:

- First, A US Federal Court ruling on March 30, 2019 rules that the attempts to ban gun magazine's holding greater than 10 rounds in unconstitutional ! Materials: *"Individual liberty and freedom are not outmoded concepts," San Diego-based U.S. District Judge Roger Benitez wrote as he declared unconstitutional the law that would have banned possessing any magazines holding more than 10 bullets.* "It criminalizes the otherwise lawful acquisition and possession of common magazines holding more than 10 rounds – magazines that law abiding responsible citizens would choose for self-defense at home." "When the simple test of Heller is applied, a test that persons of common intelligence can understand, the statute fails and is an unconstitutional abridgment. It criminalizes the otherwise lawful acquisition and possession of common magazines holding more than 10 rounds – magazines that law abiding responsible citizens would choose for self-defense at home." All of Judge Benitez's ruling can be seen at the following link, includes legal citations.
- **Judge Benitez's 86 page decision:** I want this decision placed **in the RECORD** as part of my testimony
[!https://d3uwh8jpw49g.cloudfront.net/sharedmedia/1510684/2064261_2019-03-29-order-granting-plaintiffs_-msj.pdf](https://d3uwh8jpw49g.cloudfront.net/sharedmedia/1510684/2064261_2019-03-29-order-granting-plaintiffs_-msj.pdf)
- The Heller Decision: (from Judge Benitez) *"The Supreme Court's Simple Heller Test In Heller, the U.S. Supreme Court provided a simple Second Amendment test in crystal clear language. It is a test that anyone can understand. The right to keep and bear arms is a right enjoyed by law-abiding citizens to have arms that are not unusual "in common use" "for lawful purposes like self-defense." District of Columbia v. Heller, 554 U.S. 570, 624 (2008); Heller v. District of Columbia ("Heller II"), 670 F.3d 1244, 1271 (2011) (Kavanaugh, J., dissenting) ("In my view, Heller and McDonald leave little doubt that courts are to assess gun bans and regulations based on text, history, and tradition, not by a balancing test such as strict or intermediate scrutiny.").* It is a hardware test. Is the firearm hardware commonly owned? Is the hardware commonly owned by law-abiding citizens? Is the hardware owned by those citizens for lawful purposes? If the answers are "yes," the test is over. The hardware is protected. Millions of ammunition magazines able to hold more than 10 rounds are in common use by law-abiding responsible citizens for lawful uses like self-defense. This is enough to decide that a magazine able to hold more than 10 rounds passes the Heller test and is protected by the Second Amendment. The simple test applies because a magazine is an essential mechanical part of a firearm. The size limit directly impairs one's ability to defend one's self." " In Heller, the Supreme Court held that the Second Amendment protects an individual right to possess a "lawful firearm in the home operable for the purpose of immediate self-defense." The court also rules that the right of a citizen to "arms" included magazines, with no size restriction.

- Over 100 million magazines of all sizes are currently in the possession of American Citizens, they are commonly owned and in fact are often sold as standard issue when purchasing various firearms.
- Numerous cases exist where a homeowner or citizen has fired numerous rounds far above any limitation of 5 or 10, in self defense situations. To limit magazine capacity would place honest citizens in jeopardy of being injured or killed by an assailant.
- Multiple armed assailants against a citizen that would be limited to a 5 or 10 round magazine limit would result in certain injury or death for the innocent citizen. Larger capacity magazines is the only means by which a citizen would even have a fighting chance in fending off multiple attackers.
- Ability to hit the target (assailant) with a round. In an actual shooting situation; humans move, they are not a stationary target such as on a range, stress effects accuracy, it may take multiple rounds to stop an assailant, it may take multiple rounds to stop multiple assailants, environmental factors and environmental concealment can cause “misses”(assailant-criminal not hit), lighting and time of day, studies have shown that Police Officers have a very low hit rate in studies of shooting incidents. One might argue that a Police Officer has more training in firearms than an average gun owner. I would suspect that citizen gun owner hit rates would be similar. In the following article (see link) NYPD hit rate study should a hit rate of between 17.4% and 28.3% ! Los Angeles PD a 40% hit rate of all rounds fired. Link: <https://www.nytimes.com/2007/12/09/weekinreview/09baker.html> “Miss” rates are further proof that police officers as well as citizens need multiple rounds and high capacity magazines as a means for self defense in a shooting situation.
- Just compensation. To ban magazines holding greater than 5 or 10 rounds then requiring their destruction or relinquishment, without just and full compensation is unjust. To do so would cost Oregon taxpayers millions of dollars.
- Criminals will NOT obey any such magazine ban. The criminals are the problem, NOT law obeying citizens. Criminals retaining larger capacity magazines while restricting honest citizen’s magazines will place the citizen at unfair advantage and would be unsafe.
- Law abiding citizen use of larger capacity magazines (greater than 5 or 10) has NOT been a problem. This magazine size ban is a solution with no problem. Honest citizen’s use of larger capacity magazines has harmed NO ONE !
- Many firearms and magazines are not designed in such a way that a 5 or 10 round magazine limit is even physically possible. Especially the proposed 5 round limit. This would render some firearms illegal just by their mere design.
- Banning magazines with a capacity of greater than 5 or 10 rounds will turn honest Oregonians into criminals and potentially felons overnight. These magazines are so widely owned and used that it is of my opinion that the vast majority of Oregonians will NOT COMPLY with such a law. Then what ?!

In it's entirety, **HB3299** should be tabled and no further action be taken. The entire bill is restrictive of constitutionally protected rights at both the State and Federal Levels.

As a former Law Enforcement Officer, if you really want to make our communities safer; instead of attacking honest gun owners with unconstitutional laws and more restrictions of their rights, your efforts would be better spent: Enhancing penalties for crimes involving the use of firearms, enhanced sentencing for assaults/injures/deaths involving firearms, gang reduction (high illegal gun usage), drug use and trafficking (high illegal gun usage) and going after criminal black market gun sales. **HONEST GUN OWNERS ARE NOT THE PROBLEM ! CRIMINALS ARE !**

Respectfully submitted,

Craig Ziegenhagel, Oregon Native and Voter

* Resume: Former Deputy Sheriff, Corrections Deputy, Special Deputy, Police Officer, EMT, Security Manager-CEO, Associate Criminal Justice Degree-Honors, Member Salem Criminal Justice Advisory Board, Certified Course Instructor DPSST, Police K-9 Trainer, Business Owner, Pro Second Amendment Advocate.