

March 30, 2019

Oregon Senate Committee on Judiciary  
Senators Prozanski, Thatcher, Bentz, Fagan, Gelser, Linthicum and Manning

To the Committee,

I submit this letter in strong opposition to SB 978 "Relating to Firearms."

Firearms are the most civilized self-defense weapons known to man. Stop decivilizing our society by making us turn to barbaric and less effective ways to protect ourselves.

Once again, it is our right to bear arms without infringement and it would be swell if you would stop trying to punish us for wanting to exercise said right. We'd surely like you a lot better if you'd back off our personal rights to life, liberty and property. I, for one, place utmost value on those three things and greatly resent the constant attacks coming from those who are supposedly elected to represent me. Bills say "Be it enacted by the People of the State of Oregon," but that isn't really the truth, is it?

I oppose SB978 and urge your "No" vote.

Sign by  
David Duane Everist

# Second Amendment to the United States Constitution

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The Bill of Rights in the [National Archives](#).

Close up image of the Second Amendment

The **Second Amendment (Amendment II)** to the [United States Constitution](#) protects the right of the people to [keep and bear arms](#) and was adopted on December 15, 1791 as part of the [Bill of Rights](#).<sup>[1][2][3][4]</sup>

In the 2008 [Heller decision](#), the [Supreme Court](#) affirmed for the first time that the right belongs to individuals, exclusively for [self-defense](#) in the home,<sup>[5][6][7][8]</sup> while also including, as *dicta*, that the right is not unlimited and does not preclude the existence of certain long-standing prohibitions such as those forbidding "the possession of [firearms](#) by felons and the mentally ill" or restrictions on "the carrying of dangerous and unusual weapons."<sup>[9][10]</sup> [State](#) and [local](#) governments are [limited to the same extent](#) as the [federal government](#) from infringing this right.<sup>[11]</sup>

The Second Amendment was based partially on the right to keep and bear arms in English [common law](#) and was influenced by the [English Bill of Rights of 1689](#). [Sir William Blackstone](#) described this right as an auxiliary right, supporting the natural rights of self-defense and resistance to oppression, and the civic duty to act in concert in defense of the state.<sup>[12]</sup>

While both [James Monroe](#) and [John Adams](#) supported the Constitution being ratified, its most influential framer was [James Madison](#). In [Federalist No. 46](#), Madison wrote how a federal army could be kept in check by state militias, "a standing army ... would be opposed [by] a militia." He argued that state militias "would be able to repel the danger" of a federal army, "It may well be doubted, whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops." He contrasted the federal government of the United States to the European kingdoms, which he described as "afraid to trust the people with arms," and assured that "the existence of subordinate governments ... forms a barrier against the enterprises of ambition".<sup>[13][14]</sup>

By January 1788, Delaware, Pennsylvania, New Jersey, Georgia and Connecticut ratified the Constitution without insisting upon amendments. Several amendments were proposed, but were not adopted at the time the Constitution was ratified. For example, the Pennsylvania convention debated fifteen amendments, one of which concerned the right of the people to be armed, another

with the militia. The Massachusetts convention also ratified the Constitution with an attached list of proposed amendments. In the end, the [ratification convention](#) was so evenly divided between those for and against the Constitution that the [federalists](#) agreed to the Bill of Rights to assure ratification. In *United States v. Cruikshank* (1876), the Supreme Court ruled that, "The right to bear arms is not granted by the Constitution; neither is it in any manner dependent upon that instrument for its existence. The Second Amendment [\[sic\]](#) means no more than that it shall not be infringed by Congress, and has no other effect than to restrict the powers of the National Government."<sup>[15]</sup> In *United States v. Miller* (1939), the Supreme Court ruled that the Second Amendment did not protect weapon types not having a "reasonable relationship to the preservation or efficiency of a well regulated militia."<sup>[16][17]</sup> In the twenty-first century, the amendment has been subjected to renewed [academic inquiry](#) and [judicial interest](#).<sup>[17]</sup> In *District of Columbia v. Heller* (2008), the Supreme Court handed down a [landmark decision](#) that held the amendment protects an individual's right to keep a gun for self-defense.<sup>[18][19]</sup> This was the first time the Court had ruled that the Second Amendment guarantees an individual's right to own a gun.<sup>[20][21][19]</sup> In *McDonald v. Chicago* (2010), the Court clarified that the Due Process Clause of the Fourteenth Amendment incorporated the Second Amendment against state and local governments.<sup>[22]</sup> In *Caetano v. Massachusetts*(2016), the Supreme Court reiterated its earlier rulings that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding" and that its protection is not limited to "only those weapons useful in warfare." The [debate](#) between various organizations regarding [gun control](#) and [gun rights](#) continues.<sup>[23]</sup>

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Close up image of the Second Amendment  
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In the 2008 Heller decision, the Supreme Court affirmed for the first time that the right belongs to individuals, exclusively for self-defense in the home,[5][6][7][8] while also including, as dicta, that the right is not unlimited and does not preclude the existence of certain long-standing prohibitions such as those forbidding "the possession of firearms by felons and the mentally ill" or restrictions on "the carrying of dangerous and unusual weapons." [9][10] State and local governments are limited to the same extent as the federal government from infringing this right.[11]

The Second Amendment was based partially on the right to keep and bear arms in English common law and was influenced by the English Bill of Rights of 1689. Sir William Blackstone described this right as an auxiliary right, supporting the natural rights of self-defense and resistance to oppression, and the civic duty to act in concert in defense of the state.[12]

While both James Monroe and John Adams supported the Constitution being ratified, its most influential framer was James Madison. In Federalist No. 46, Madison wrote how a federal army could be kept in check by state militias, "a standing army ... would be opposed [by] a militia." He argued that state militias "would be able to repel the danger" of a federal army, "It may well be doubted, whether a militia thus circumstanced could ever be conquered by such a proportion of regular troops." He contrasted the federal government of the United States to the European kingdoms, which he described as "afraid to trust the people with arms," and assured that "the existence of subordinate governments ... forms a barrier against the enterprises of ambition".[13][14]

By January 1788, Delaware, Pennsylvania, New Jersey, Georgia and Connecticut ratified the Constitution without insisting upon amendments. Several amendments were proposed, but were not adopted at the time the Constitution was ratified. For example, the Pennsylvania convention debated fifteen amendments, one of which concerned the right of the people to be armed, another with the militia. The Massachusetts convention also ratified the Constitution with an attached list of proposed amendments. In the end, the ratification convention was so evenly divided between those for and against the Constitution that the federalists agreed to the Bill of Rights to assure ratification.

In *United States v. Cruikshank* (1876), the Supreme Court ruled that, "The right to bear arms is not granted by the Constitution; neither is it in any manner dependent upon that instrument for its existence. The Second Amendment [sic] means no more than that it shall not be infringed by Congress, and has no other effect than to restrict the powers of the National Government."<sup>[15]</sup> In *United States v. Miller* (1939), the Supreme Court ruled that the Second Amendment did not protect weapon types not having a "reasonable relationship to the preservation or efficiency of a well regulated militia."<sup>[16][17]</sup>

In the twenty-first century, the amendment has been subjected to renewed academic inquiry and judicial interest.<sup>[17]</sup> In *District of Columbia v. Heller* (2008), the Supreme Court handed down a landmark decision that held the amendment protects an individual's right to keep a gun for self-defense.<sup>[18][19]</sup> This was the first time the Court had ruled that the Second Amendment guarantees an individual's right to own a gun.<sup>[20][21][19]</sup> In *McDonald v. Chicago* (2010), the Court clarified that the Due Process Clause of the Fourteenth Amendment incorporated the Second Amendment against state and local governments.<sup>[22]</sup> In *Caetano v. Massachusetts*(2016), the Supreme Court reiterated its earlier rulings that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding" and that its protection is not limited to "only those weapons useful in warfare."

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On Sat, Mar 30, 2019, 10:02 David Everist <[twincedarminingdistrict@gmail.com](mailto:twincedarminingdistrict@gmail.com)> wrote:

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I am in California Court Ruling on Bullet For Firearms restriction our unconstitutional

## NATIONAL

Judge blocks California's high-capacity ammunition ban

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By DON THOMPSON , ASSOCIATED PRESS

March 30, 2019 - 12:10 AM

SACRAMENTO, Calif. — High-capacity gun magazines will remain legal in California under a ruling Friday by a federal judge who cited home invasions where a woman used the extra bullets in her weapon to kill an attacker while in two other cases women without additional ammunition ran out of bullets.

"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.

California law has prohibited buying or selling such magazines since 2000, but those who had them before then were allowed to keep them.

In 2016, the Legislature and voters approved a law removing that provision. The California arm of the National Rifle Association sued and Benitez sided with the group's argument that banning the magazines infringes on the Second Amendment right to bear arms.

Benitez had temporarily blocked the law from taking effect with a 2017 ruling.

Chuck Michel, an attorney for the NRA and the California Rifle & Pistol Association, said the judge's latest ruling may go much farther by striking down the entire ban, allowing individuals to legally acquire high-capacity magazines for the first time in nearly two decades.

"We're still digesting the opinion but it appears to us that he struck down both the latest ban on possessing by those who are grandfathered in, but also said that everyone has a right to acquire one," Michel said.

Attorney General Xavier Becerra said in a statement that his office is "committed to defending California's common sense gun laws" and is reviewing the decision and evaluating its next steps.

The goal of the California law is to deter mass-shootings, with Becerra previously listing as an example the terrorist assault that killed 14 and injured 22 in San Bernardino.

Benitez, an appointee of Republican President George W. Bush, called such shootings "exceedingly rare" while emphasizing the everyday robberies, rapes and murders he said might be countered with firearms.

The Giffords Law Center to Prevent Gun Violence, named after a former congresswoman who survived a mass shooting, is also still evaluating whether the decision applies more broadly, said staff attorney Ari Freilich.

But Freilich predicted the "extreme outlier decision" will be overturned on appeal and criticized a judge "so deeply out of touch that he believes mass shootings are a 'very small' problem in this country."

Becerra previously said similar Second Amendment challenges have been repeatedly rejected by other courts, with at least seven other states and 11 local governments already restricting the possession or sale of large-capacity magazines. The conflicting decisions may ultimately be sorted out by the U.S. Supreme Court.

Benitez ruled that magazines holding more than 10 rounds are "arms" under the U.S. Constitution, and that the California law "burdens the core of the Second Amendment by criminalizing the acquisition and possession of these magazines that are commonly held by law-abiding citizens for defense of self, home, and state."

Benitez described three home invasions, two of which ended with the female victims running out of bullets.

In the third case, the pajama-clad woman with a high-capacity magazine took on three armed intruders, firing at them while simultaneously calling for help on her phone.

"She had no place to carry an extra magazine and no way to reload because her left hand held the phone with which she was still trying to call 911," the judge wrote, saying she killed one attacker while two escaped.

The magazine ban was included in 2016 legislation that voters strengthened with their approval of Proposition 63, which was championed by then-Lt. Gov. Gavin Newsom.

In a statement, Newsom criticized the judge's ruling.

"This District Court Judge's failure to uphold a ban on high-capacity magazines is indefensible, dangerous for our communities and contradicts well-established case law," the governor said. "I strongly disagree with the court's assessment that 'the problem of mass shootings is very small.' Our commitment to public safety and defending common sense gun safety laws remains steadfast."

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