

**Rev. Joe McMahan, M.Div.**

520 Dogwood Dr.  
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March 31, 2019

Regarding SB 978

To Whom it may Concern:

I am writing to voice my opposition to SB 978, and any amendment to the aforementioned bill that violates the Second Amendment of the U.S. Constitution. My concerns are mine; and not reflective of any endorsing or certifying organization where I maintain professional relationships.

You Sir, or Madam, have a Fiduciary Obligation and Duty to the U.S. Constitution and the Oregon State Constitution. On February 14, 1859, Congress recognized the Oregon Admissions Act by bringing the State of Oregon into the Union stating,

*Whereas the people of Oregon have framed, ratified and adopted a constitution of state government which is republican in form, and in conformity with the Constitution of the United States and have applied for admission into the Union on an equal footing with the other states;*<sup>1</sup>

Given the significance of statehood, The Oregon Constitution (ORS 396.105) in support of the U.S. Constitution, specifically defines the militia as being both formal (e.g. the Oregon National Guard) and informal-any able-bodied individual 18 to 45 who may be summoned by the Governor in times of emergency or crisis. In my estimation, this inextricably binds the State of Oregon Constitution with that of the United States. If enacted, SB 978 contains excessive infringements as supported in a strong judicial precedent in our neighbor to the south, California (United States District Court-Southern District of California). In *Duncan-v-Becerra*<sup>2</sup> written by The Honorable Roger T. Benitz on March 29, 2019 his ruling makes clear that many of the items in SB 978 would be unconstitutional. It is my understanding that Hon. Roger Benitz is an immigrant from Cuba who understands the need to prevent the tyranny of government.

In making his case for the need for personal protection he notes, "A special report by the U. S. Department of Justice, Bureau of Justice Statistics established that in 2013, reported that between 2007 and 2011 'there were 235,700 victimizations where the victim used a firearm to threaten or attack an offender.'" (3)

He further notes, "According to another U.S. Department of Justice, Bureau of Justice Statistics, Special Report, for each year between 2003 and 2007, an estimated 266, 560 burglaries occurred during which a person at home became the victim of violent crime or a 'home invasion'. Households composed of single females with children had the highest rate of burglary while someone was at home. (3-4)"

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<sup>1</sup> <https://worldhistoryproject.org/1859/2/14/oregon-is-the-33rd-state-admitted-to-the-union> (accessed 03/31/2019)

<sup>2</sup> [Case 3:17-cv-01017-BEN-JLB Document 87 Filed 03/29/19 PageID.8055 Page 1 of 86](#). (Unless otherwise cited, page numbers (in parenthesis) through this document refer to *Duncan-v-Becerra*.)

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Judge Benitz cites the *Heller* case in support of personal defense. He states, "*Heller* makes clear that the Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home." (4)

As I understand the amendment to SB 978, law-abiding Oregonians will be guilty of a felony for owning a magazine (and in the case of a revolver with six shots) over five rounds. This seems arbitrary in my view. Justice Benitz notes, "In California, currently, citizens may be charged for the crime of possessing magazines with over 10 rounds." (5) However, numerous incidents are cited where persons needed more than 10 rounds to defend 'hearth and home'.

I am very concerned that the current temperament of the Oregon Legislature is one of *contempt* for the electorate. Justice Benitz, who understands the *gravitas* of mass shootings states, "Regardless of current popularity, neither a legislature nor voters may trench on constitutional rights." (6) When the Oregon Legislature is willing to consider a bill that will make law-abiding citizens responsible for crimes committed by criminals with stolen firearms this seems to 'trench on constitutional rights' and as such is an undue burden. Justice Benitz argued that the California law was burdensome on the citizenry. He states, "The solution for mass shootings exacts a high toll on the everyday freedom of ordinary law-abiding citizens." (7)

We do not hold car owners responsible when their car is stolen and is used to commit crimes by the criminal element. So why do you single out gun owners?

I believe that the founders intended to 'deputize' every able-bodied citizen to defend the idea of Liberty contained in the U. S. Constitution. While borders were significant, the real aim, in my mind is the defense of the idea of Freedom and Liberty contained in the U.S. Constitution, is from excessive government. Justice Benitz affirms this when he writes, "The founders were aware of the need to preserve citizen access to firearms in light of the risk that a strong government would use its power to disarm the people. . . the right declared in the Second Amendment of the U.S. Constitution was thus meant to be a strong moral check against the usurpation and arbitrary power of rulers, and as necessary and efficient means of regaining rights when temporarily overturned by usurpation." (14). It is clear to me that SB 978 is a usurpation of the rights of all Oregonians. My recent observation of legislation is that it is intended to be 'club' to coerce submission, not a frame in which passions of Liberty can be exercised.

I truly believe that the Oregon Legislature is grasping at straws in order to provide the illusion of security. I have lived outside of the United States, and it is my observation that Americans have a false sense of security, and no matter how well intentioned, SB 978 only provides an illusion of security. Regarding the illusion of security, Justice Benitz forcefully states, "Needing a solution to current law enforcement difficulty cannot be justification for ignoring the Bill of Rights as bad policy." (14) He further states, "Neither can the government response to a few mad men with guns and ammunition be a law that turns millions of responsible law-abiding people trying to protect themselves into criminals." (14)

For me this is an important issue. With the passage of SB 978, is it your intention to turn law-abiding citizens into felons? That is exactly what you will be doing!

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One of the aims of SB 978 is limit the size of magazines used in guns. This issue is addressed in *Duncan-v-Becerra*. Justice Benitz noted two important questions from *Heller*. He asks, “Is the hardware commonly owned? Is the hardware owned by those citizens for lawful purposes? If the answers are ‘yes’ the test is over. The hardware is protected.” (15)

He further states, “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 part of a firearm. The size limit directly impairs one’s ability to defend one’s self.” (15)

One may argue that crucial parts such as gun magazines are not mentioned in the Second Amendment. Justice Benitz notes, “Neither magazines, nor rounds of ammunition, nor triggers, nor barrels are specifically mentioned in the Second Amendment. ...But without a right to keep and bear triggers, or barrels, or ammunition and magazines that hold ammunition, the Second Amendment right would be meaningless. . . . To the extent that certain firearms capable of use with a magazine –e.g., certain semi-automatic handguns—are commonly possessed by law-abiding citizens for lawful purposes, our case law supports the conclusion that there must also be some corollary, albeit not unfettered, right to possess the magazines necessary to render the firearms operable.” (16)

I implore you to remember the sacred oath you took when you came into office. I further ask you stand with law-abiding Oregonians. We are not the enemy you will make us into by passing this legislation. We are hard-working, love our state and our country dearly. Please stand with us, and honor us by having the moral fortitude to vote this bill down. I wanted to quote more of *Duncan-v-Becerra*, but space does not permit. Suffice it to say, I believe SB 978 is unconstitutional and outside the limits of current legal precedent.

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April 03, 2019

**Notice and Demand to Cease and Desist SB 978**

I am writing to voice my opposition to SB 978, and any amendment to the aforementioned bill that violates the Second Amendment of the U.S. Constitution. My concerns are mine; and not reflective of any endorsing or certifying organization where I maintain professional relationships.

To the Oregon State Legislature

Preamble

This Notice and Demand to Cease and Desist limits in no way the extent to the scope of the subject matter covered. This Notice and Demand does not limit any summary and plenary remedies available to anyone but serves as the beginning of the lawful process necessary by the acts and omission to act of the various principles or those accessory, in an effort to arrest the irreparable and immeasurable harm to the actual Public or People of the State of Oregon in acts committed by The Oregon State Legislature and other third part interest.

By this Notice and Demand to Cease and Desist you are made aware and in knowledge of the wrongs and continuing wrongs of which you have a sworn Duty, Obligation, and Responsibility to protect the Public or "the people". For the Public record, as Preparatory to and Requisite of remedies, and for other purposes To the Oregon State legislature in the Consideration of SB 978 and Dash 1 Amendment

"Some of the worst things imaginable have begun with the best of intentions." The Fiduciary Obligation and Duty of The Oregon State Legislature is to assure the People of the perpetuity of a constitutionally mandated "Republican Form of Government". The proof of this is the constitutionally mandated "Oath of Office" that each Representative of both House and Senate is required to take. The following passage is from the Constitution of the State of Oregon, specifically referred to as "Section 31 Oath of Members. The members of the Legislative Assembly shall before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation; I do solemnly swear (or affirm as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Oregon, and that I will faithfully discharge the duties of Senator (or Representative as the case may be) according to the best of my Ability, And such oath may be administered by the Governor [sic], Secretary of State, or a judge of the Supreme Court.----" The pathway for purpose and need for this "Oath " is in the 1859 Admissions Act which in its preamble states "Whereas the people of Oregon have framed, ratified, and adopted a constitution of State government which is republican in form, and in conformity with the Constitution of the United States, and have applied for admission into the Union on an equal footing with the other States; Therefore---" As the Oregon Constitutionally mandated "Oath of Office" lists an order of priority of support for the Constitution of the United States, and the Constitution of the State of Oregon it is clear to "the people" that our elected Representatives cannot make war on the Constitution and Laws of the United States.

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You are further informed of this concept by examination of “U.S. Constitution, Article IV, sec4 The United States shall guarantee to every state in the Union a republican form of government....” and “Amendment IX U.S. Constitution” which states “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”. There are in this time in history many frivolous arguments against the 2nd Amendment of the Constitution of the United States. Here only the rulings of the Supreme Court of the United States are considered. In the study of these rulings there is no real argument that anyone can mount and only the proofs that the Oregon State legislature is making war on “the people” by trying to fast track and hide from public input, attempts at incremental infringements of granted 2nd Amendment Rights. The Supreme Court of the United States has reached the same conclusion in each instance of challenge and ruled consistently that the protections of the 2nd Amendment Rights are held. It is suggested that the actual findings of the Supreme Court of the United States be read by the legislative bodies for verification of this fact. The law mandates a Public Input Process that is well defined though willfully ignored by the Oregon Legislature.

Instead a falsified public input process has been substituted to create a false history of public acceptance. Involvement by NGO organizations that are financially supported by organizations outside our State is an unrealistic intrusion by a few overreaching into the lives of the entire population threatening granted rights that is in direct conflict of both Federal and State law. It can only be concluded that the entire process that has been used, constitutes a broad-based scheme of artifice that does not give the actual consent of or allow the ability of “the people” of the State of Oregon to give legitimate public input. Any Consensus based Public Input Process involvement by third party beneficiaries or “Stakeholders” and documented as “Consent” to proceed is hereby rejected. The falsified historical record of NGO organizations funded by national groups and wealthy individuals that provide undue influence upon the Public Input Process is also rejected as no true public consent has been given nor sought. This plan in its conception and further implementation constitute an unlawful infringement and harm besides having no lawful authority to proceed.

This letter provides notice to the State of Oregon. Your decisions cause great concern to “the people” as from all aspects and appearances the attempts at implementing laws that have clear violations of the laws of the United States and the State of Oregon. I will first refer you to “ORS 192.620 Policy. The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly. [1973 c 172 1}”. Official replies and responses that “concerns will be part of the public record” are deceptive and a clear violation of the protections granted all citizens by the Constitution of the United States as well as the Constitution of the State of Oregon. The lack of public notice and involvement, lead to a strong public perception of an appearance of impropriety.

This is pointed out after discovery of drafts of legislation that have been submitted, approved, circulated and efforts undertaken to fast track these attempts (gut and stuff), these actions combined with no protective response from any part of the legislative bodies is an unacceptable breach of your fiduciary duty to the people of the State of Oregon. The fact that a direction and attempts to infringe 2nd Amendment Granted Rights has already been made while “the people” were kept out of the Public Input

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Process and NGO organizations were allowed input. As the public becomes more aware of these intrusions and responds in horror is absolute evidence of gross malfeasance or illustrative of a constitutional due process violation. The following passage from the beginning of Oregon Revised Statute 183.502 explains the actual illegal usage of any "Consensus Process" to make war on "the people" by attacking constitutionally protected granted rights. "ORS 183.502 Authority of agencies to use alternative means of dispute resolution; model rules; amendment of agreements and forms; agency alternative dispute resolution programs. (1) Unless otherwise prohibited by law," The Oregon Administrative Procedures Act section 183.400 (4) (a) specifically addresses the invalidity of any rule by stating "(4) The court shall declare the rule invalid only if it finds that the rule: (a) Violates constitutional provisions;". Very simply if the "court shall" why must we pursue this matter further than noticing the Oregon State Legislature. The limitations of impositions and the possibility of potential harms are why laws exist. The Constitution of the State of Oregon states that every man has a remedy.

"The people" seek such remedy and thus inform you that if necessary accrued evidences shall be forwarded to appropriate Federal Agencies that exist to protect "the people" from such overt disregards and infringements of constitutionally protected granted rights. The following is from a recent Supreme Court of the United States decision it is found here: McDonald v. City of Chicago, Ill., 561 US 742 - Supreme Court 2010 \*3050 Third, Justice BREYER is correct that incorporation of the Second Amendment right will to some extent limit the legislative freedom of the States, but this is always true when a Bill of Rights provision is incorporated. Incorporation always restricts experimentation and local variations, but that has not stopped the Court from incorporating virtually every other provision of the Bill of Rights. "[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table." Heller, 554 U.S., at 636, 128 S.Ct., at 2822. This conclusion is no more remarkable with respect to the Second Amendment than it is with respect to all the other limitations on state power found in the Constitution. The above statement is not from a fringe source, it is from a Supreme Court Justice of the United States and may allow you to reflect upon the current direction of the Oregon State Legislature, "policy is not law" and a current legislative disparity in numbers does not allow for the destruction of our way of life and infringement of granted rights.

I. The Minimum Age for Firearm Sales

The Amendment in Section allows the business to set the minimum age for sales of firearms, components (etc.) and ammunition as either "18, 19, 20 or 21". Why would the State of Oregon permit a seller to determine arbitrarily the age of the customers they are willing to serve? This makes no sense to me.

First, the Oregon Constitution sets the minimum age of the informal militia as 18. Second, we allow our young men and women to join the military at age 18. And, finally since the colonial period of U.S. history the militia has been responsible to arm itself to be ready at a moment's notice to come to the aid of the state/nation. (*Duncan*; 28,29) <sup>1</sup> If is the expectation both from history and the Oregon Constitution that

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<sup>1</sup> *Duncan-v-Becerra*. March 29, 2019. Herein referred to as *Duncan*. Page numbers in parenthesis refer to page numbers in *Duncan*.

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18 year-old persons should be part of the 'informal militia', it is not a stretch to challenge this portion of the amendment as being unconstitutional.

II. Firearm Storage

In this portion of the Dash 1 amendment it makes clear that a person whose firearm is stolen is liable for any crime committed by a criminal element within two years places an undue burden on the citizens of Oregon. This is a nothing more than a blatant attempt to social engineer the population through coercion. At its issue is one of the Tripartite Binary Test with a Sliding Scale and Reasonable Fit, *Duncan* (36,37). One leg of that test is 'closeness to the core and severity of the burden'. In my understanding of this test, if passed, this would both close to the core of the Second Amendment Right and be a severe burden of that right.

III. Local Authority to Regulate Firearms in Public Buildings

This section is a prophylaxis that is being put in place in the attempt to stop mass events from happening. This would seem to be realistic if, in fact, the State can prove that mass events are common in Public Buildings, however, the State cannot prove that gun violence in Public Buildings through mass shootings is 'common'. A cursory reading of Oregon history regarding mass shooting events shows that from June of 1977 to October 2015 is a total of nine events.<sup>2</sup> On average this is one event every four years, which does not pass the test of 'common'.

When they occur, they are tragic. Innocent lives are lost, while others are scarred forever. Communities are transformed and the event dominates the news cycle for weeks, months or years. Because mass events draw more media attention, they are therefore a target for politicizing them, even though they are exceedingly rare. The burden of proof is on the legislature to prove that this will prevent mass events from happening in/on Public properties.

IV. Claims and Counterclaims

It is agreed that the State has four interests or objectives. The State interests are: (1) protecting citizens from gun violence; (2) protecting law enforcement from gun violence; (3) protecting the public safety (which is like protecting citizens from gun violence); and (4) preventing crime. While the State has interests, the electorate has interests of equal weight as well.

The first interest of the electorate is that the legislative branch of the State, even though occupied by a majority party will act in a manner that protects a republican form of government and will create laws that protect the liberty of electorate in congruence with both the Oregon State Constitution and the Constitution of the United States. To do anything less is reprehensible and violation of the public trust.

Second, that the legislative branch will not usurp the rights of the electorate. If this SB 978 is allowed to pass with the current Amendment it will be a usurpation of the rights of law-abiding citizens.

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<sup>2</sup> [www.oregonlive.com](http://www.oregonlive.com), Mass Shootings in Oregon: a list., posted Oct. 09, 2015. (Accessed 2019.04.03)

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Third, that any Government prophylaxis-to protect against the violations of the few, must **not** burden the rights of the many. If this is accomplished in any protected area, it turns the Bill of Rights on its head. "Our Founders crafted a Constitution to promote the liberty of the individual, not the convenience of the Government." *Duncan* (64)

Fourth, the electorate expects that the legislative branch will protect them from an incrementalism that will lead to political coercion. SB 978 is beyond incremental. If this is allowed to pass, it will be a step toward making Constitutional rights meaningless and eventually could obliterate them.

Fifth, the electorate expects that the legislative branch will be cognizant of the 'fit' of legislation with muscular rights as enumerated in the Bill of Rights.

Sixth, the electorate expects that the legislative branch in regard to legislation will perform ethically in regard to their Oath and the law. Many emotional arguments exist on both side of the argument. There are those who have lost loved ones from gun violence; and there are those who have deterred home invasions and prevented mass casualties by their well-timed interventions. The FBI statistics that included crimes that qualified to be included in its report concluded that concealed carry permit holders stopped 10% of them.<sup>3</sup> In spite of emotional anecdotes, this means that the legislative branch has an ethical responsibility to choose the '*harder right*'. In this case the harder right is to preserve the rights of law-abiding citizens who are protected by the Second Amendment.

In closing it is respectfully demanded that the bill SB 978 and all amendments (Dash 1, Dash 2, Dash 3 and further amendments) not be considered any further.

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<sup>3</sup><https://www.fbi.gov/file-repository/active-shooter-incidents-us-2016-2017.pdf/view> (accessed 2019.04.03)