

**Testimony of Stephen D. Poss before the Oregon House
Judiciary Committee Concerning House Bill 4005, Presented
February 6, 2020**

RE: Testimony on Proposed House Bill 4005

Dear Members of the Judiciary Committee of the Oregon House
of Representatives:

I am writing to submit testimony on proposed House Bill 4005
("HB4005").

I am a full-time Oregon resident and a registered Oregon
voter. I am also a lawyer with more than 35 years of practice,
including experience in civil rights and constitutional law,
including but not limited to Second Amendment law.

For reasons including, but not limited to, those listed below,
HB4005 is so fatally flawed in its current form that it should be
rejected by the Committee.

HB4005 is Unconstitutional.

Under the landmark decision in *District Columbia v. Heller*, 554
U.S. 570 (2008), the United States Supreme Court held that the
Second Amendment Right to Keep and Bear Arms is an
individual right, that such right is a fundamental civil right
which protects, among other things (but not limited to), the right
to possess and use a firearm for self-defense in the home, and
that Washington D.C.'s requirement that firearms in the home

“be bound by a trigger lock or similar device” was unconstitutional because it burdened this fundamental right. Two years later the U.S. Supreme Court held that such limitations also apply to the States in *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

HB4005 squarely violates the Constitutional protections as elucidated in *Heller* and *McDonald*, and as such would be unconstitutional if enacted. Moreover, as described in more detail, below, there is no question that HB4005 would so burden the right to self defense that it cannot withstand any level of judicial scrutiny. In fact, HB4005 would effectively render firearms unusable for self-defense in the home, as well as in a tent at a campsite or in a recreational vehicle.

Proceeding with the current language of HB4005 would be unlawful, violate the civil rights of Oregonians, and lead to massive litigation brought against the State of Oregon as well as personally against all state and local officials who attempt to enforce it, with the result of the State and all such officials paying millions of dollars in attorneys’ fees to those who challenge this unconstitutional Bill.

HB4005 is Anti-Women.

For many women in Oregon, the use of firearms for self-defense is the only “equalizer” available to them should one or more criminals invade their home, RV, or tent with intent to rob, rape or murder. HB4005 would effectively disable the ability of such women to use their firearms for self-defense in the real world, as

opposed to the fairy-tale world of HB4005, which assumes that home invaders, murders, estranged spouses, rapists, etc., will give advance notice and then count to 300 before attacking their victims in order to enable the victim to unlock, load, and prepare their firearms for firing. This Bill would render their firearms effectively unavailable and unusable.

Under the actual text of HB4005, a 65-year old widow living alone in a single-story farmhouse in Eastern Oregon, where the sheriff would at best respond to a 911 call in 1-2 hours, must lock up her bedside firearm if she gets out of bed in the middle of the night to go to the bathroom, or else take the firearm into the bathroom with her, as otherwise it would not, under the punitive and unworkable language of the Petition, be “under the control” of the woman. And use of a “trigger lock” or “cable lock” as required by HB4005 would, of course, require each time that the firearm first be unloaded, all ammunition and magazine be removed, the slide racked and returned to battery, before engaging such locking mechanisms. Then, of course, should someone break down the door or come through her window in the middle of the night, she would have to operate the combination or key in the night in order to remove the lock, necessitating use of a light to give away her location to the intruder, then reload, cock, and ready the gun in order to be able to use it. By then she will be dead or under the power of the criminal, who will, of course, follow no such procedures with regard to his knife or gun.

--Have the members of the Judiciary Committee obtained, studied and analyzed the data showing the many, many actual, real-world situations in which women across the United States

have used their lawfully owned firearms to defend themselves and their loved ones under exigent circumstance where a few seconds made the difference between safety and tragedy?

--Have the members of the Judiciary Committee asked themselves as to how they would have survived in such a situation had their firearms been locked up, with the police or sheriff more than an hour away?

--Have the members of the Committee consulted with experts as to how such women would have fared had they had to comply with the requirements of HB4005, which would effectively disarm Oregon women in their own homes?

--Have they consulted experts –and such experts do exist—on how much time a homeowner has to take action when a knife-wielding intruder appears in her bedroom in the middle of the night? (Less than 3 seconds.)

--Have the Members of the Judiciary Committee examined in detail the reports of the CDC and other experts concerning the number of instances each year –even the anti-gun CDC estimates more than a million, others in the multiple hundreds of thousands—in which the quick and ready availability of lawfully owned firearms have enabled Americans to defend themselves and their families, often deterring would-be attackers without firing a shot?

--Have the Members of the Judiciary Committee compared the robbery, rape and murder rates of cities (such as Chicago) and states which have the most stringent laws limiting or outlawing

the ready use of firearms by lawful citizens with those cities and states where Americans are free to defend themselves? Are they aware that the safest cities and states have the least restrictive laws concerning the right to keep and bear arms?

It would be irresponsible for the Committee to pass on this defective HB4005 without detailed analysis of such data and reports.

HB4005 will Result in More Home Invasions, Burglaries, Rapes and Murders of Law-Abiding Oregonians.

There are studies and ample data available showing that criminals—who make risk-benefit decisions as do all humans-- are less likely to unlawfully enter an occupied home, as opposed to entering an unoccupied home, when they believe that the homeowner is armed and presents an immediate threat to the intruder. Areas in which homeowners have been prevented from having lawfully owned firearms at the ready show increased levels of home invasions, and the presence of victims in the home, as opposed to the burglary of an un-occupied home, often leads to the most tragic consequences.

--Have the Members of the Committee obtained and reviewed these studies and this data?

--Is each Member of the Judiciary Committee, and each Democrat in the Oregon Legislature, willing to post a sign outside each of their personal homes, weekend cabins, RVs, etc., saying in bold letters: “Attention all burglars, rapists, and murderers, the owners of this home do not have any firearms

readily available to defend themselves should you break in, and therefore you will not be at personal risk should you do so”? That is the practical impact in the real world of HB4005.

HB4005 is Fatally Biased Against Oregon’s Responsible and Law-Abiding Youth and Appears Motivated by a Desire to Cripple Youth Shooting in Oregon Rather Than Safety.

HB4005, if adopted, would profoundly alter Oregon law on use of firearms by minors, including outlawing many safe and common traditions and practices used without harm or trouble by law-abiding Oregonians since statehood and indeed before. As just one example, HB4005 would for all practical purposes outlaw shooting teams, competitions, instructional classes, firearms safety classes, etc., for minors. Common, safe practices and activities undertaken by minors and their families, schools, clubs, and community organizations such as the Boy Scouts, families, etc., would be outlawed by HB4005. Oregon youth would be prohibited from qualifying for and competing in the Olympics or interscholastic or intercollegiate competitions unless their parents quit their jobs and were with their children every second.

While HB4005 pays lip service to providing limited exceptions where the parent has expressly provided “permission,” that term is not defined and no instructor, coach, teacher, family friend, uncle or aunt, etc., will risk the draconian “strict liability” to work with these fine young people should HB4005 become law. HB4005 would outlaw for all practical purposes the safe and necessary target practice by minors with firearms.

HB4005 would prevent Oregon families, particularly rural families, from following safe and important traditions they have followed for generations. In most non-urban areas in Oregon, indeed in the entire Eastern half of the State, young people have typically received their first rifles as teenagers (or before) and have been counted on to put food on the table, protect the farm or ranch for predators, and been able to practice marksmanship and safe gun handling. HB4005 is written with in such a way as to outlaw that way of life, with no basis in fact or law.

If HB4005 is enacted, it will place minors in harm's way. If a rancher's 17-year old daughter, who has safely and expertly used the family rifle since she was 12, is minding the ranch while her parents are hours away in town purchasing supplies, and an intruder appears on the ranch, God help that young woman, as the Oregon Legislature will have abandoned her.

Perhaps the proponents for HB4005, who appear to identify only with Oregon's urban and suburban communities, simply cannot conceive of the level of responsibility and care that is routinely exercised by minors in rural Oregon, where young people are raising and caring for livestock on their own, operating farm machinery, hunting for the family table, and protecting their families' herds and flocks from predators, all before age 18, all without the "presence" of a parent at all times, and all without incident. Rather than impose unnecessary and harmful limitations on responsible minors throughout the state, the proponents of HB4005, and those who may vote to enact it into law, should revise the bill to limit the provisions concerning minors to take effect only in their own towns and cities, and leave the rest of the State alone.

The real goal of HB4505 appears to make youth target shooting, safety training, and hunting so onerous and difficult and expensive that families will simply give up. That is not a permissible or Constitutional purpose of legislation.

HB4005 is Biased Against Rural Oregonians.

As discussed above, safe use of firearms is and has been a way of life for rural Oregonians. The locks and limitations proposed in HB4005 are simply not compatible with the realities of life on the farm, on the ranch, or in or about the home in most of Oregon.

HB4005 would effectively prevent Oregonians from using lawfully owned family firearms on their own property or in the national forests or BLM land, areas which are by Federal statute open to such shooting and often the only safe and available place to practice target shooting when one lives on many acres of farmland or ranchland and the only “shooting range, shooting gallery or other area designed for the purpose of target shooting” is both hours away and too expensive for the family to enjoy.

HB4005 would unfairly and unnecessarily expose rural Oregon families, who may live in small, remote homes with no nearby police or sheriff to respond to a 911 call—should there even be cell service—to danger from criminals and predators alike.

HB4005 seems to be drafted only for the benefit of wealthy, anti-gun urban and suburban families who live in McMansions, have expensive home security systems that summon the police

at a moment's notice, and who do not trust their own families to understand or safely use firearms that have been kept and used safely in the homes of other Oregonians for generations without problems. The proponents of HB4005 have no basis or right to impose their own lifestyles, insecurities, and limitations on the rest of the state.

HB4005 Would Punish the Law-Abiding Rather Than the Criminal and Impose Crippling and Unpredictable Costs on Law-Abiding Oregon Families.

HB4005 includes purported requirements for firearms to be secured with locks or in locked containers. The penalties for noncompliance are huge and draconian, given that each firearm constitutes a separate violation, thereby subjecting an owner of multiple firearms (in other words, the typical Oregon hunter, farmer, rancher, or target shooter) to multiple penalties for the same incident. Moreover, an innocent firearm owner whose firearms are stolen without his or her actual knowledge of the theft would be subject to strict liability and indeed personal bankruptcy for unlimited damages if the firearm is used by a criminal, thus imposing far more significant penalties on innocent Oregon gun owners than Oregon imposes on criminals who steal firearms and use them to commit crimes.

HB4005 would impose "strict liability," for example, on Oregon citizens who do not know that their firearms have been stolen, based on the absurd legal standard that they "should have known." Any experienced lawyer will tell the Committee that

such a “should have known” standard is unfair, unpredictable, and arbitrary.

If the rationale of HB4005 were to be adopted, then shouldn't any Oregonian who is out running errands or jogging be subject to “strict liability” for any damages caused if they leave their car keys home and not locked in a safe, a burglar breaks in and steals the car keys, and they do not know that has happened until after the thief has caused a fatal accident with the stolen car? After all, the death and destruction caused by stolen cars vastly exceeds any firearms-related problems in Oregon. If the homeowner subsequently returns home and does not each and every time immediately check his or her entire house to make sure that the car keys are where they left them, who is to say whether the homeowner “should have known” about the theft before the car thief crashed the stolen vehicle?

And given that minors driving cars are the leading cause of death in that age group, is the Legislature prepared to ban all “transfers” of cars to minors, and punish with strict liability anyone who does not lock up the car keys to prevent minors from accessing them?

The zeal of the Democrats in the Oregon State Legislature to punish and restrict law-abiding gunowners rather than adopt and enhance increased penalties for actual criminals or address other more pressing problems evinces an unconstitutional animus against the exercise of Second Amendment Rights, rather than any credible concern for public safety.

The Judiciary Committee Cannot Responsibly or Constitutionally Consider HB4005 at this Time Given HB4005's Failure to Provide Information About the Costs, Effectiveness, and Burdens of the Bill.

HB4005 would create onerous, dangerous, expensive and unworkable locking and storage requirements for firearms, requiring locks and containers that must comply with certain “minimum specifications,” but does not include any information as to what those requirements or specifications would be, whether they are practically or reasonably available with existing available products or technology, and what they would cost or involve.

Rather, HB4005 attempts to hide the ball by providing that the Oregon Health Authority can make up any rules or requirements it wants, with no limits as to cost or practicality or effectiveness, and regardless of whether those requirements would NOT have been approved and been adopted by the Legislature if they had had a chance to consider those requirements in voting yes or no on HB4005.

This is no small matter, as safes for firearms can cost thousands of dollars, or be practically impossible to install for voters living in certain types of residences, particularly in apartment buildings or in rural Oregon. Moreover, the Oregon Health Authority, whose mission is limited by statute to providing “access to quality and affordable health care,” has neither any legal jurisdiction, nor any experience, nor any expertise with regard to the subject matter of HB4005.

The proponents of HB4005 have had years to research and consider the locking and storage requirements they wish to impose on Oregonians, including the types, models, efficacy, dangers, and costs of such devices which exist on the market today, and could have included them in the text of HB4505 but chose not to do so, apparently because do not want either their fellow Members or Oregon's citizens to know what they are voting on.

Moreover, many Oregonians have already invested thousands of dollars in gun safes, locked containers, gun rooms, etc., which have been considered safe and legal and acceptable for years and which often are permanently installed in the home and for all practical purposes cannot be removed or replaced. Surely all such devices currently in use should be grandfathered, at the very least.

Oregon's legislators should not be asked to vote on the proverbial "pig in a poke," but that is what HB4005 does.

HB4005 would unlawfully give the Oregon Health Authority the unrestricted ability to make unknown, unspecified, unreasonable, negligent, and scientifically unsound yet binding rules establishing specifications for trigger and cable locks and locked containers, no matter how unnecessary, how ineffective, how unreasonable, how contrary to law, and how much expense would be imposed on Oregonians. At the time members of the Oregon State Legislature would vote on HB4005 they would have no knowledge of what requirements they may be voting for. Imagine proposed legislation that provided, "it will be a

violation to perform or to receive an abortion in the State of Oregon except under future rules dictating what equipment and procedures must be used to perform abortions, such rules to be defined and promulgated later by an Oregon state agency with no expertise in medical procedures, and have the force of law.” Would the Judiciary Committee approve such a proposed bill?

HB4005 Cannot be Practically Complied With and Will Result in Accidental Deaths and Injuries.

The cable locks and trigger locks required by HB4005 are impracticable, unworkable, and accidents waiting to happen.

Safe and responsible gun owners frequently clean, maintain and inspect their firearms regularly. To do that they must disassemble the firearms for cleaning, which often involves letting the components soak in cleaning solutions for a period of time. Many Oregonians cannot afford a separate gun room. Rather, they do this with cleaning gear on the kitchen table, in the garage, in the dining room, wherever they have space. HB4505 would require them to maintain trigger or cable locks on their firearms throughout these processes, which is impossible. First, one cannot safely or effectively clean a firearm with a trigger lock or cable lock in place. Moreover, trigger and cable locks are not made of materials that can withstand many of the materials used in gun cleaning, lubrication and maintenance. So any gun owner who leaves his or her disassembled firearms to soak while tending to other household activities would be in violation of HB4005. This is

absurd. One must wonder how many firearms have been taken down, cleaned, lubricated, and reassembled by the House members proposing this bill.

Moreover, one cannot use trigger or cable locks with a loaded firearm, and indeed a cable lock cannot be used even with an empty the chamber if a magazine is present. Yet having a firearm loaded and ready for use is essential for many purposes, including self-defense in the home. So in order to comply with the unworkable and draconian provisions of HB4005, Oregonians would need to constantly be unloading their firearms, removing magazines, racking the slides to safety check the firearms, attaching cable or trigger locks, then removing the locks, then replacing the magazines and reloading the chambers and racking the slides, etc., many times each day as they go to the bathroom or vacuum the living room or make soup in the kitchen, unless they carry their firearms with them from room to room everywhere in the home and never have them more than an arm's length away.

This is a recipe for accidents and problems that would never otherwise take place, as shown by the extraordinarily low rate of firearms accidents, which have decreased dramatically in the US without such burdensome regulations at the same time lawful firearm ownership has risen geometrically. Only people with no practical experience with actual firearms would draft a bill such as HB4005.

Indeed, the proponents of HB4005 have inserted a “Trojan Horse” or “Catch 22” provision into the Bill, as even if a firearm owner utilizes an Oregon Health Authority-approved “trigger

lock” or “cable lock” or “locked container,” for example, to secure her firearm, the owner is not in compliance with the law if any “means of opening a lock or container is readily available to” an unauthorized person. Yet, as the Judiciary Committee must surely know, there is no trigger lock or cable lock, etc., reasonably available to consumers which cannot be opened by a criminal using common household tools. So there is really no way for any reasonable Oregonian to actually comply with the provisions of HB4005 as written.

HB4005 Violates the Ex-Post-Facto Clause of the Oregon Bill of Rights.

Article 1, Section 21, of the Oregon State Constitution prohibits the enactment of ex-post-facto laws. Thousands of Oregonians have purchased firearms and safe storage equipment, such as gun safes and lock boxes, under current law. As noted above, such equipment is often expensive, and often has been permanently installed in homes. The legislature cannot enact HB4005, which would suddenly declare those citizens to be violators based on past conduct which was lawful when taken, without violating Section 21. At the very least, all firearm storage devices, locks, safes, containers, gun rooms, etc., which were in place prior to the final enactment into law of HB4005 must be grandfathered.

HB4005 is Unconstitutionally Vague and Misleading.

HB4005 as drafted is vague, misleading, and appears designed to conceal its true impact on the citizens of Oregon. Oregon citizens would be falsely led to believe that the use of the word "transfer" in the proposed statute is consistent with the use of the term "transfer" as applied to firearms under governing Federal law, when in fact HB4005 would redefine "transfer" to include any time anyone hands a firearm to another person, or loans a firearm to a friend for lawful purposes, and thus make it unlawful to engage in almost all of the currently lawful and common uses of firearms under existing Federal and Oregon law. Other terms such as "control" and "in the presence of the owner" are similarly unconstitutionally vague and would result in arbitrary, inconsistent, and capricious interpretations and enforcement. Laws imposing penalties must be absolutely clear so that citizens can know with certainty whether their actions are or are not in compliance. HB4005 flunks that test.

Summary.

HB4005 falsely and misleadingly presents itself as a minor and practicable safety measure. That is simply not true.

HB4005 is a radical proposal that would punish and bankrupt law-abiding Oregonians. It would dramatically cripple the currently lawful use of firearms in common and customary use for self-defense, hunting, target shooting, safety training, and competition, and outlaw safe and traditional uses of firearms by minors.

HB4005 would turn lawful, safe and innocent gun owners into violators subject to fines, penalties, unlimited strict liability, and ultimately personal bankruptcy. It is unconstitutional under both the United States and the Oregon Constitutions. It is unnecessary, unworkable, and counterproductive. It would discriminate in favor of the wealthy and against rural and less wealthy Oregonians. It would cripple safe and traditional youth firearms use in Oregon. I respectfully urge that the Judiciary Committee reject this horrible Bill.

Respectfully Submitted,

/S/ Stephen D. Poss

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