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Submitter: Tony Aiello, Jr.
On Behalf Of: Myself
Committee: House Committee on Judiciary
Measure, Appointment or Topic: HB 3075-1, HB 3075

My name is Tony Aiello, Jr. and I am a Senior Associate Attorney at Tyler Smith & Associates, P.C. As you may know, I have been lead counsel on *Arnold v. Kotek* which challenges Ballot Measure 114 and contains various similar provisions. I write on my own behalf in opposition to this House Bill as a Husband tasked with protecting my home, firearm owner who cherishes his rights, and Oregonian who is sick and tired of what is being done to this state by those in Salem.

I encourage the committee to approach hearing testimony with humility. Many of those testifying in opposition to this bill have forgotten more about firearms than you will ever know; the fact that you control the fate of their rights is a cruel irony most of us cannot stomach. I myself have learned more from these good, God-fearing, gun-loving Oregonians than I knew before.

So-Called Large-Capacity Magazines.

Beginning with the so-called “Large Capacity Magazine” restriction, this bill seeks to ban magazines that come standard with common firearms used for self-defense. Common handgun capacities include 15+1, 17+1, etc. If you do not know what “+1” means, I submit you are too uneducated on the subject to vote on it. If you cannot articulate the difference between an automatic firearm, semi-automatic firearm, lever action firearm, or pump action firearm without using hand gestures or making “pew pew” sounds with your mouth, I again submit that you are too uneducated on this subject to vote. Last, if you cannot articulate the difference between a tubular magazine, cylinder, and a detachable magazine, please kindly abstain from speaking about firearms, including voting on our rights.

This bill’s vague definition of “Large Capacity Magazine” is uninformed by people with actual firearm knowledge. As an attorney who has litigated this issue, neither



the bill's drafter nor those in support of the bill have demonstrated even a rudimentary understanding of firearms or firearm magazines. How can you legislate that about which you have no knowledge? Passing this bill will lead to selective prosecutions depending on one's county of residence and a multitude of other factors which should not matter but, based on the language Representative Kropf and the drafters of Measure 114 chose, will matter greatly.

Particularly, creative prosecutors will argue that any magazine (especially detachable magazines) meets the definition of a "large capacity magazine" in HB 3075-1. This means that anti-firearm prosecutors such as those in "blue" counties will take one view of the law while those in rural Oregon will take another view. While this may (someday) be fixed in court, innocent Oregonians will be prosecuted in the meantime. Most Oregon firearm owners will be presumed criminals depending on their zip code based on this language. Additionally, allowing *prosecution* to essentially start at arrest in Section 11(5) gives law enforcement too much authority to choose to accept or deny the surrender of a magazine which can be targeted toward over-policed communities including communities of color.

Next, rather than exempting those who acquired their magazines prior to enactment of this bill (or Measure 114, for that matter) this bill creates an affirmative defense which places the onus on the lawful owner to demonstrate their innocence, rather than placing the onus on the State to prove their guilt. As a practical matter, it is virtually impossible to prove when one acquired a magazine, which will again lead to selective prosecution which may be targeted toward over-policed communities including communities of color.

This bill will do nothing to further public safety. Indeed, the litigants in *Arnold v. Kotek* failed to demonstrate that it would have any effect. Their supposed "expert" witness could not even lay a foundation for his own expertise. It is junk science and correlative evidence clouded by the presence of other firearm laws at best. More important than trial evidence, however, is common sense. There is already a strong black market for firearms and magazines as well as other states who do not have magazine restrictions. Those who wish to break the law by killing innocent people are unbothered by breaking additional laws in acquiring illegal magazines. Moreover, at trial, we demonstrated that it takes mere seconds (on average 2.5 seconds) to switch magazines. Meanwhile, one does not plan to defend oneself the



same way one plans to commit mass murder. While a mass shooter will certainly plan ahead to bring additional magazines, most law abiding Oregonians who carry a firearm for self-defense do not plan ahead for defense in the same way (*i.e.*, we do not walk around with many extra magazines). While the mass shooter wakes up with the plan, the defending Oregonian is caught off guard when forced to defend themselves; with adrenaline racing, changing magazines can but the defending Oregonian in vulnerable situations. Stories are abundant on this point and likely repeated by those in opposition to this bill.

On the contrary, this bill decreases public safety by depriving those law-abiding Oregonians of the best tools available for self-defense. This is especially true in rural Oregon where Oregonians face different self-defense needs. Rural Oregonians face natural predators such as wolves, bears, coyotes, and mountain lions and cannot rely on law enforcement quickly responding across larger, sparsely populated counties with fewer resources and more ground to cover. Law abiding Oregonians have the constitutional right to access the best tools for self-defense available. This bill artificially forces the law-abiding Oregonian to use less useful tools while doing nothing to prevent mass murderers from accessing these tools from neighboring states or the black market.

Pre-Purchase Licensing Requirements.

As for the permit to purchase, I have a permit to purchase a firearm. It is spelled out for you all in plain English in the Second Amendment of the United States' Constitution and Article I, section 27 of the Oregon State Constitution. I do not need any further grant of permission from Government to exercise that right.

It would be humorous if not for the gravity of the matter, but the same Democrat party that laments the concept of showing an ID to vote as racist is perfectly fine with requiring ID to exercise the constitutional right to bear arms. At least when Republicans encourage Voter ID, they posit that the Government should provide free or low-cost IDs to those for whom payment would be a barrier... but not Oregon's Democrat Party. Indeed, the same Democrat party that laments ID for voting as a poll tax are proposing increasing the fee to exercise one's right to purchase a firearm from \$65 in Ballot Measure 114 (which is already exorbitant) to \$150. For context, I have purchased firearms for less than \$150. That amount is a serious barrier for



many of Oregon’s lowest income earners including persons of color and rural Oregonians.

Additionally, requiring *training* to exercise a constitutional right is unheard of. Might the State next require pastors and parishioners to receive Government-approved *training* prior to preaching or praying? Might parents be forced to undergo state training before being allowed to take their baby home from the hospital? Might one have to get your permission before protesting or seeking redress of grievances from elected officials? Our legislative representatives, including those on this Committee, must learn and come to understand that our rights are not up for a vote! The training imposed by this bill is intended to delay, not educate. To the extent our legislators want to educate Oregonians on firearm use, let’s look at making it part of high school curricula again. You will find ample support and volunteers among Oregonians for that prospect.

Completed Background Check Requirement.

Last, the Completed Background Check requirement (which you call closing the “Charleston Loophole”). I encourage the Committee to inquire into the number of acts of violence that have been perpetrated by someone who acquired their firearm illegally by this method. The answer is that there has been precisely one incident of such violence in the nearly 32 years since the Brady Bill was enacted in 1993 (the year I was born). In that same time, there have been more than 291,686,000 firearm transfers nationwide (1992-2020).¹ We often say “one-in-a-million” in regular conversation. However, one in now over 300 million transfers presents statistically astronomical odds!

Proponents claim that in 2020 there were 2,989 disqualified individuals who obtained a firearm *nationwide*. None committed acts of violence according to available information, and many of them were mistakes which were later rectified (*e.g.*, erroneous denials, mistaken identity, delays in paperwork such as

1. Brooks, Connor, *Background Checks for Firearm Transfers*, 2019–2020, U.S. DEPARTMENT OF JUSTICE, Bureau of Justice Statistics (November 7, 2023) <https://bjs.ojp.gov/library/publications/background-checks-firearm-transfers-2019-2020>.



expungements and firearm rights restorations, etc.). Firearm purchases were up in 2020 by 50% because it was a year marred by lockdowns and nationwide riots which increased demand for firearm purchases. 2020 was also marred by COVID-19 lockdowns which decreased output from those performing background—including FICS—because of work from home issues and unavailable staff due to illness. We saw massive backlog in background checks. Nevertheless, there were 24,994,000 applications processed in 2020 (meaning 0.012% nationwide were improper). Only 398,000 (1.6%) were denied.²

Proponents rarely cite Oregon-specific statistics on this topic because it is such a non-issue in Oregon that Oregon does not even track the transfers to disqualified buyers.³ Perhaps this Committee might consider tracking those transfers to find out if there *is an issue* before prohibiting the practice. In my experience, Oregon’s FFLs rarely transfer firearms without a completed background check and reserve the practice to egregious situations where FICS delays people for long periods of time. Indeed, taking the depositions of FICS, I saw many transfers that had been delayed for years. At trial, we had testimony from one witness who had been delayed two years despite having a concealed handgun license. I myself have been delayed for more than a month despite having no criminal history, a “funny” last name, a concealed handgun license, and regularly purchasing firearms.

FICS has shown itself incapable of timely doing its job since 2020, and any desire to improve background checks should be focused on giving FICS the tools and leadership it needs to do that job. It currently has neither. If background checks are timely processed within three days, then this law is unnecessary. At a minimum, this bill should set a time limit for FICS to do its job.

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2. *Ibid.*

3. Stringer, Grant, *Federal, state agencies don’t track sales of guns to disqualified buyers in Oregon*, OREGON CAPITAL CHRONICLE (January 19, 2023) <https://oregoncapitalchronicle.com/2023/01/19/federal-state-agencies-donttrack-sales-of-guns-to-disqualified-buyers-in-oregon/>.



Marion County Venue Selection.

This bill thumbs its nose at 35 Oregon counties and especially Eastern Oregon counties by requiring Oregonians intending to challenge this bill to travel to the capitol city to do so. While a Hunger Games comparison may be trite, the phrase “if the boot fits” comes to mind.

Requiring Oregonians statewide to travel to Marion County to bring their lawsuit is manifestly un-American. As you should know, the earliest Americans chose to continue the English practice of judges riding circuits rather than forcing those with grievances to come to London to have their cases heard. This practice was intended to give people access to justice.

Forcing Eastern Oregonians—who are already ignored by those in Salem—to travel to Salem to have their case heard is ivory-tower elitism. In Oregon, we elect our judges; at least, we are supposed to despite the concerning practice of Gubernatorial appointments that have become the norm. This begs the question; why do the voters in Marion County have a greater say in electing the judge who will hear the dispute against HB 3075? Is the State not subject to the jurisdiction of Oregon’s other 35 circuit courts? Are those in the *capitol* or those elected in the *capitol* somehow above those who live in Oregon’s other 35 counties? I am unaware of any constitutional provision making Marion County a super-Circuit Court, and this bill’s attempt to do so is laughably partisan.

Conclusion.


At the end of the day, only Democrats will vote for this bill. Still, many may not vote for it because they know of its extreme unpopularity and the grave constitutional concerns it poses. To those Democrats who narrowly won their elections, elections have consequences and Oregon’s firearm owners intend to remove anyone who votes in favor of this bill or any other unconstitutional firearm bill from office at the ballot box. I encourage you to align yourself with your electorate and not your party in this vote.

Additionally, I have listened to Democrats bleat about the “rule of law” as targeted toward their political opponents for my entire adult life, but especially these last four



years. *Arnold v. Kotek* will be appealed to the Oregon Supreme Court, and this bill seeks to circumvent that appeal. Should you advance this bill notwithstanding this appeal to the Oregon Supreme Court and the appeal pending in the Ninth Circuit, please kindly abstain from pontificating about the rule of law or the constitution; your vote has demonstrated that you neither care for nor cherish the rule of law, the court process, your oath, or your vote, let alone the constitution.

Thank you for providing this matter your immediate attention,



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