

# WRITTEN SUBMISSION FOR THE LEGISLATIVE RECORD

**Oregon House Judiciary Committee**

**Re: HB 4145**

**Submitted by:** Mark Neubauer, Oregon Resident

**Submitted for inclusion in the official legislative record**

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## STATEMENT OF PURPOSE

This written submission is offered for inclusion in the official legislative record to document federal statutory conflicts and constitutional defects presented by HB 4145. These concerns are raised to ensure the Legislature is placed on notice of the legal consequences and constitutional infirmities of the bill prior to enactment.

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## LEGAL AND CONSTITUTIONAL OBJECTIONS

### I. HB 4145 Creates a De Facto Firearm Registry in Conflict with Federal Law

HB 4145 conditions lawful firearm transfers and possession on state-maintained approvals and records. Although framed as an administrative or permitting mechanism, the functional result is the creation of government-controlled records identifying firearm acquisition and eligibility.

The **Firearm Owners Protection Act of 1986 (FOPA)** was enacted by Congress specifically to prevent the creation of firearm registries and to limit the accumulation of firearm ownership records by the government. Congress codified these protections in **18 U.S.C. § 926(a)**, which provides in relevant part:

“No such rule or regulation prescribed after the date of the enactment of the Firearms Owners’ Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearm owners, or firearm transactions or dispositions be established.”

This prohibition is not limited to formal registries labeled as such. It reflects Congress’s clear intent to prevent government entities—federal or state—from creating systems that functionally track firearm ownership, transfers, or eligibility through centralized or government-controlled records.

HB 4145 conflicts with both the **letter and purpose** of FOPA by conditioning lawful firearm acquisition and possession on state-controlled approval systems and records that necessarily identify, track, and retain information about firearm transactions and eligible individuals. Whether styled as permits, verification processes, or compliance records, such systems produce the very outcome Congress sought to prohibit.

Under the **Supremacy Clause**, state laws that recreate federally prohibited registries through indirect or administrative mechanisms are preempted. A firearm registry does not become lawful because it is incremental, decentralized, or justified as a public safety measure; courts evaluate substance over form.

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## II. Expansion of Subjective Denial Standards Violates Constitutional Limits on Discretion

HB 4145 expands discretionary authority to deny applications based on vague and subjective criteria untethered from objective standards.

The Supreme Court has long held that constitutional rights may not be conditioned on unbridled discretion. *Shuttlesworth v. City of Birmingham*, 394 U.S. 147 (1969).

The Ninth Circuit has likewise recognized that licensing schemes impacting constitutional rights must be governed by narrow, objective, and definite standards, particularly where discretionary enforcement invites arbitrary treatment. *Kaahumanu v. Hawaii*, 682 F.3d 789 (9th Cir. 2012).

In *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. \_\_\_\_ (2022), the Supreme Court expressly rejected discretionary “may-issue” licensing regimes. HB 4145 reintroduces the same constitutional defect under a different statutory structure.

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## III. Penalizing Applicants for Government Record Failures Violates Procedural Due Process

HB 4145 permits denial or delay based on incomplete, delayed, or erroneous government records, shifting the consequences of state failure onto the applicant.

Procedural due process forbids deprivation of rights based on government error. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982).

The Ninth Circuit has held that when the government controls the relevant records or procedures, it may not penalize individuals for administrative failures beyond their control. *Noel v. Hall*, 568 F.3d 743 (9th Cir. 2009).

A constitutional right cannot lawfully depend on flawless bureaucratic performance.

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#### IV. Extended Waiting Periods Operate as Constructive Denials of a Fundamental Right

HB 4145 significantly extends waiting periods for the exercise of the right to keep and bear arms.

Delays affecting fundamental rights constitute irreparable injury. *Elrod v. Burns*, 427 U.S. 347 (1976).

Post-*Bruen*, the state bears the burden of demonstrating a historical analogue for such delays. No well-established historical tradition supports prolonged government-imposed waiting periods on arms acquisition.

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#### V. Financial Barriers Unconstitutionally Condition the Exercise of a Right on Wealth

HB 4145 increases fees, training costs, and compliance expenses, disproportionately burdening lower-income citizens.

The Supreme Court has repeatedly held that wealth-based barriers to the exercise of fundamental rights are unconstitutional. *Murdock v. Pennsylvania*, 319 U.S. 105 (1943); *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966).

The Ninth Circuit has recognized that fees imposed on constitutional activity must be narrowly tailored and cannot function as deterrents. *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011 (9th Cir. 2009).

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#### VI. Preferential Treatment for Law Enforcement Raises Equal Protection Concerns

HB 4145 grants broader firearm privileges to law enforcement than to ordinary citizens.

The Second Amendment protects “the people,” not a government-approved class. Preferential treatment for state agents in the exercise of a fundamental right raises serious Equal Protection Clause concerns. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

The Ninth Circuit has recognized that unequal application of laws affecting fundamental rights is constitutionally suspect. *Squaw Valley Development Co. v. Goldberg*, 375 F.3d 936 (9th Cir. 2004).

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## VII. Attempts to Constrain Judicial Review Implicate Separation of Powers

HB 4145 attempts to dictate the forum or process through which challenges may be brought.

Legislatures lack authority to insulate statutes from constitutional review or to restrict access to courts. *Marbury v. Madison*, 5 U.S. 137 (1803).

The Ninth Circuit has reaffirmed that meaningful judicial review is a core constitutional safeguard. *Courthouse News Service v. Planet*, 947 F.3d 581 (9th Cir. 2020).

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## PRESERVATION OF RECORD

These objections are submitted to preserve the legislative record that the Oregon Legislature was placed on notice of the statutory conflicts and constitutional defects of HB 4145 prior to enactment.

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## CONCLUSION

HB 4145 reflects a pattern of layering delay, discretion, and cost onto a constitutionally protected right rather than addressing underlying constitutional constraints. The Constitution does not permit fundamental rights to be regulated out of existence through administrative friction.

For these reasons, HB 4145 should not advance.

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**Respectfully submitted,**

**Mark Neubauer**

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