

## Testimony on HB 4145 - Constitutional Concerns

### Oregon State Legislature

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#### Executive Summary

HB 4145 creates multiple constitutionally problematic provisions that violate principles of equal protection, due process, and access to courts under both the Oregon and U.S. Constitutions. The bill: (1) exempts certain retired law enforcement personnel from permit requirements and large-capacity magazine prohibitions while criminalizing identical conduct by active officers of the court and ordinary citizens; and (2) restricts all constitutional challenges to Marion County Circuit Court, creating discriminatory barriers to judicial review that disproportionately burden rural Oregonians.

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#### Key Constitutional Issues

##### 1. Arbitrary Classification in Violation of Equal Protection

**The Problem:** Section 11 (ORS 166.355(3)(d)) and Sections 12-15 create a two-tiered system:

- **Exempt Class:** Retired peace officers, parole officers, and probation officers who qualify under 18 U.S.C. 926C may possess large-capacity magazines and are exempt from permit-to-purchase requirements
- **Criminal Class:** Active attorneys (officers of the court), prosecutors, judges, and ordinary citizens face Class A misdemeanor charges for identical conduct

##### **Why This Fails Constitutional Scrutiny:**

The classification bears no rational relationship to the stated public safety purpose. If anything, the inverse is true:

- Active officers of the court often face threats related to their ongoing professional duties
- Retired officers no longer perform law enforcement functions that would justify differential treatment
- The bill provides no evidence that retired officers pose less risk than active legal professionals

**Oregon Constitutional Standards:** Article I, Section 20 of the Oregon Constitution requires that privileges and immunities belong equally to all citizens. Laws creating special classes must serve a legitimate governmental interest through means substantially related to that interest.

**Federal Constitutional Standards:** The Equal Protection Clause requires that classifications bear a rational relationship to a legitimate state interest. Here, the classification appears arbitrary and potentially discriminatory.

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##### 2. Inconsistent Application of Public Safety Rationale

**The Stated Purpose:** The bill claims to enhance public safety through universal background checks and capacity restrictions.

**The Reality:** The exemptions undermine this purpose:

- If large-capacity magazines pose an inherent public safety risk, that risk exists regardless of who possesses them
- If permit-to-purchase requirements are necessary for public safety, they should apply uniformly
- Creating exemptions based on former employment status (rather than current need or training) contradicts the safety rationale

**Questions the Legislature Should Consider:**

1. What public safety benefit justifies allowing a retired parole officer to possess items deemed too dangerous for an active prosecutor?
2. If these items are dangerous enough to criminalize, why are they safe in the hands of individuals no longer performing law enforcement duties?
3. How does this classification serve the bill's stated goal of reducing gun violence?

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### **3. Mandatory Venue Restriction - Discriminatory Impact on Rural Oregonians**

#### **Section 18 - Venue Provision:**

"Any action brought in state court challenging the legality, including the constitutionality, of this 2026 Act must be commenced in the Circuit Court for Marion County."

**The Problem:** This provision forces all Oregonians, regardless of where they live, to litigate constitutional challenges exclusively in Salem (Marion County). This creates severe hardships for rural Oregonians and those living far from the Willamette Valley.

#### **Why This Is Constitutionally Suspect:**

**Access to Courts:** The Oregon Constitution guarantees access to courts for redress of wrongs. Forcing residents of Pendleton, Burns, Brookings, or other distant communities to litigate in Marion County creates:

- Substantial financial barriers (travel costs, lodging, lost work time)
- Geographic discrimination favoring residents near Salem
- Disparate impact on rural and economically disadvantaged Oregonians
- Practical denial of meaningful access to judicial review

**Example:** A rancher in Harney County (330+ miles from Salem) or a fisher in Curry County (250+ miles) faces dramatically higher litigation costs than a Portland Metro resident (45 miles), creating a geography-based barrier to constitutional rights.

**No Legitimate State Interest:** Oregon has 36 counties with fully functional circuit courts capable of determining constitutional questions. There is no articulable reason why:

- A Josephine County resident cannot seek relief in Josephine County Circuit Court
- A Union County resident cannot file in Union County Circuit Court

- Constitutional challenges must be centralized in a single county  
**Contrary to Oregon Legal Tradition:** Oregon has historically allowed venue based on plaintiff's residence or where the controversy arose. This provision is an anomalous attempt to disadvantage rural litigants.  
**Suspect Legislative Intent:** This provision appears designed to:
    - Discourage constitutional challenges by increasing their cost
    - Favor government defendants by forcing challengers to litigate far from home
    - Create a "home court" advantage for state agencies in Salem
    - Disproportionately burden rural, conservative-leaning counties**Precedent Concerns:** If sustained, this provision creates dangerous precedent allowing the legislature to dictate venue for any disfavored litigation, undermining judicial independence and access to courts.
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#### **4. Vagueness and Due Process Concerns**

##### **Section 11(4)(b)(A) - Affirmative Defense Structure:**

The bill creates an affirmative defense for pre-December 2022 ownership but:

- Places burden of proof on defendants to establish ownership date
- Provides no clear mechanism for documentation or registration
- Creates prosecution risks for lawful owners who lack contemporaneous proof of purchase

**Practical Impact:** Law-abiding citizens who legally owned magazines before the cutoff date may face criminal prosecution if they cannot prove acquisition date—a nearly impossible burden for many owners.

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#### **Specific Problematic Provisions**

##### **Large-Capacity Magazine Exemptions (Section 11)**

**ORS 166.355(3)(d) states:**

"A peace officer, a parole and probation officer or a retired peace officer or parole and probation officer who is a qualified retired law enforcement officer, who acquires, possesses or uses a large-capacity magazine, regardless of whether the acquisition, possession or use is related to activities within the scope of the person's official duties or occurs while the person is off duty or after the person's retirement."

##### **Why This Is Problematic:**

- Creates lifetime privilege based on former employment
- No ongoing training, certification, or fitness requirements
- No nexus to current law enforcement duties
- Excludes equally trained and vetted professionals (attorneys, judges, court security)

##### **Permit Exemptions (Sections 12-15)**

Similar exemptions for permit-to-purchase requirements exclude active legal professionals while protecting retired law enforcement, creating the same constitutional problems.

### **Mandatory Marion County Venue (Section 18)**

#### **Section 18 states:**

"(1) Any action brought in state court challenging the legality, including the constitutionality, of this 2026 Act must be commenced in the Circuit Court for Marion County. (2) The plaintiff in an action described in this section must serve a copy of the complaint on the Attorney General."

#### **Why This Is Problematic:**

- Forces all Oregonians to travel to Salem for constitutional challenges
- Creates financial barriers proportional to distance from Marion County
- Disproportionately burdens rural counties (Harney, Malheur, Curry, Wallowa, Grant, etc.)
- No legitimate governmental interest justifies denying venue in plaintiff's home county
- Appears designed to discourage constitutional challenges through increased litigation costs
- Violates traditional Oregon venue rules allowing suit where plaintiff resides

#### **Real-World Impact Examples:**

- Eastern Oregon rancher: 6+ hour drive each way for hearings
- Southern Oregon resident: 5+ hour drive, potential overnight stays
- Portland Metro resident: 1 hour drive
- Salem resident: Local access, no travel burden

This geographic discrimination creates different classes of citizens based solely on where they live.

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### **Recommended Amendments**

To cure these constitutional defects, the Legislature should consider:

1. **Universal Application:** If the measures are necessary for public safety, apply them uniformly to all citizens, including retired law enforcement
2. **Need-Based Exemptions:** Rather than status-based exemptions, create exemptions based on:
  - Active duty requirements for current law enforcement
  - Documented threats for at-risk individuals (judges, prosecutors, domestic violence victims)
  - Enhanced training and certification standards
3. **Equal Treatment for Court Officers:** If exemptions are retained, extend them to:
  - Active and retired judges
  - Active and retired prosecutors and public defenders

- Court security personnel
- Other officers of the court facing similar risks
- 4. **Grandfathering with Registration:** Replace the affirmative defense structure with a clear registration mechanism for pre-existing magazines, reducing due process concerns
- 5. **Remove Venue Restriction:** Strike Section 18 entirely, or at minimum allow venue in:
  - The county where the plaintiff resides
  - The county where the alleged violation occurred
  - Marion County (as one option among others)

This preserves judicial efficiency while respecting geographic diversity and equal access to courts.

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### **Conclusion**

HB 4145, while attempting to address legitimate public safety concerns, creates multiple constitutionally suspect provisions that undermine equal protection, access to courts, and due process. The bill:

1. **Criminalizes conduct by active legal professionals while exempting retired law enforcement personnel**, inverting any logical public safety rationale
2. **Forces rural Oregonians to litigate constitutional challenges hundreds of miles from home**, creating geography-based discrimination in access to judicial review
3. **Creates arbitrary classifications** without rational relationship to stated governmental interests

These provisions are not mere technical defects—they represent fundamental fairness problems that disadvantage specific classes of Oregonians based on their profession and geographic location.

I respectfully urge this body to:

- Apply the bill's requirements universally, without arbitrary employment-based exemptions
- Remove the mandatory Marion County venue restriction or allow venue where plaintiffs reside
- Ensure equal access to both constitutional rights and constitutional remedies for all Oregonians, regardless of where they live or what profession they practice

The current approach invites immediate constitutional challenge and undermines the principles of equal justice that should guide this Legislature's work.

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**Respectfully submitted for consideration by the Oregon State Legislature**