

IN THE SUPREME COURT OF THE STATE OF OREGON

JOSEPH ARNOLD and CLIFF ASMUSSEN,  
Plaintiffs-Respondents,  
Petitioners on Review,  
and  
GUN OWNERS OF AMERICA, INC. and GUN OWNERS FOUNDATION,

Plaintiffs,

v.

TINA KOTEK, Governor of the State of Oregon, in her official capacity;  
DAN RAYFIELD, Attorney General of the State of Oregon, in his official  
capacity; and CASEY CODDING, Superintendent of the Oregon State Police,  
in his official capacity,

Defendants-Appellants,  
Respondents on Review.

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Harney County Circuit Court  
No. 22CV41008  
Oregon Court of Appeals  
A183242  
Oregon Supreme Court  
S071885

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**BRIEF OF *AMICI CURIAE* BRADY CENTER TO PREVENT GUN  
VIOLENCE, GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE,  
ALLIANCE FOR A SAFE OREGON, ALLIANCE FOR GUN  
RESPONSIBILITY, AND GUN OWNERS FOR RESPONSIBLE  
OWNERSHIP IN SUPPORT OF DEFENDANTS-RESPONDENTS**

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Review of the decision of the Court of Appeals on appeal from a judgment of the  
Circuit Court for Harney County,

Honorable ROBERT S. RASCHIO, Judge.

Opinion Filed: March 12, 2025

Author of Opinion: ORTEGA, P.J.

Before: Ortega, P.J., Hellman, J., and Mooney, S.J.

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September 18, 2025

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## INTERESTS OF *AMICI CURIAE*

Brady Center to Prevent Gun Violence (“Brady”), Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”), Alliance for a Safe Oregon, Alliance for Gun Responsibility, and Gun Owners for Responsible Ownership submit this brief as *amici curiae* in support of Defendants-Respondents on Review and affirmance of the judgment of the Oregon Court of Appeals. *Amici curiae* are gun violence prevention organizations that have filed numerous *amicus* briefs involving firearm regulations and constitutional principles affecting gun policy.

Founded in 1974, Brady is the nation’s most longstanding nonpartisan, nonprofit organization dedicated to reducing gun violence through education, research, legal advocacy, and political action. Giffords Law Center is a nonprofit policy organization that seeks to reduce gun violence and improve the safety of communities and has, for more than thirty years, promoted and defended the laws and policies proven to reduce gun violence.

The Alliance for a Safe Oregon is a nonprofit led by survivors of gun-related tragedies; firearm owners; rural and urban residents; veterans; healthcare providers; researchers; community leaders; and local community members who advance evidence-based solutions to the crisis of gun violence. The Alliance for Gun Responsibility, based in the State of Washington, works to save lives and eliminate the harms caused by gun violence through advocacy, education, and

partnerships. Gun Owners for Responsible Ownership is a nonprofit comprised of gun owners, outdoor enthusiasts, and veterans who believe in common-sense efforts to reduce gun violence and promote gun safety, and seek reasonable and responsible solutions to gun violence.

*Amici* have extensive experience analyzing the constitutionality of firearm regulations and how such regulations affect public safety. *Amici* submit this brief to provide this Court the benefit of this experience and expertise, and to provide information not otherwise brought to this Court’s attention by the parties to this case.

## INTRODUCTION

This case involves a challenge to Oregon Ballot Measure 114, the Reduction of Gun Violence Act (“Measure 114”). The Oregon electorate passed Measure 114 in November 2022 to “enhance public health and safety in all communities,” motivated by a “sharp increase in gun sales, gun violence, and raised fear in Oregonians of armed intimidation.” 2023 Oregon Laws Ch. 1, pmbl. (B.M. 114).

Measure 114 introduces three principal amendments to Oregon’s firearm regulations: (1) a restriction on firearm magazine capacity to 10 or fewer rounds of ammunition (“large-capacity magazine” or “LCM” provisions); (2) a requirement to obtain a permit to purchase a firearm (“permit-to-purchase” provisions); and (3) a requirement to complete—not simply initiate—a background check (“background check” provisions), thereby closing the loophole under federal law allowing a

firearm transfer to occur within three business days even if the background check has not been completed during this time. *See id.*; *see also* 18 U.S.C. § 922(t)(1)(B)(ii).

The Court of Appeals correctly held that Measure 114 satisfies the standard set forth by this Court in *State v. Christian*, 354 Or 22, 307 P3d 429 (2013), for evaluating a challenge under Article I, section 27, concluding Measure 114 is a “reasonable regulation . . . to promote public safety” and does not “unduly frustrate the right to armed self-defense guaranteed by Article I, section 27.” *Arnold v. Kotek*, 338 Or App 556, 567, 579, 566 P3d 1208, 1219, 1223–24 (2025), *rev allowed*, 373 Or 738, 571 P3d 1096 (2025) (citing *Christian*, 354 Or at 33). This Court should affirm the Court of Appeals’ decision upholding Measure 114.

*First*, Plaintiffs-Petitioners make no showing that Measure 114’s LCM provisions impose any burden on the “people’s individual right to bear arms for purposes limited to self-defense,” as recognized in *Christian*, 354 Or at 30 (citing *State v. Kessler*, 289 Or 359, 614 P2d 94 (Or 1980)). LCMs are not used for lawful self-defense, nor were they “commonly used for self-defense at the time [Article I, section 27] was drafted.” *Id.* (citing *Kessler*, 289 Or at 368). *Second*, Measure 114’s provisions requiring a permit to purchase a firearm, conditioned on the completion of a criminal background check and safety training course, are relevantly similar to historic firearms regulations. *Finally*, both provisions “promote public safety”

without “unduly frustrat[ing] the individual right to bear arms for the purpose of self-defense.” *Christian*, 354 Or at 33–34.

The judgment of the Court of Appeals should accordingly be affirmed.

## ARGUMENT

### **I. MEASURE 114’S LCM PROVISIONS ARE CONSTITUTIONAL UNDER *CHRISTIAN* BECAUSE THEY IMPOSE NO UNDUE BURDEN ON THE RIGHT TO SELF-DEFENSE.**

Measure 114’s LCM restriction provides that “a person commits [a] crime . . . if the person manufactures, imports, possesses, uses, purchases, sells or otherwise transfers any large-capacity magazine in Oregon on or after December 8, 2022,” subject to certain exceptions. ORS § 166.355(2). Measure 114 defines “large-capacity magazine” as a device with “an overall capacity of, or that can be readily restored, changed, or converted to accept, more than 10 rounds of ammunition and allows a shooter to keep firing without having to pause to reload.” *Id.* § 166.355(1)(d).

For the reasons set forth below, the Court of Appeals correctly held that Measure 114’s LCM provisions “do[] not unduly frustrate the right to armed self-defense guaranteed by Article I, section 27.” *Kotek*, 338 Or App at 579.

**A. *Christian* Establishes that Article I, Section 27 Protects the Right to Bear Arms Only for Purposes of Self-Defense.**

Article I, section 27 of the Oregon Constitution protects the right to bear arms only for the purpose of self-defense. In *Christian*—recognized by Plaintiffs-Petitioners and both courts below as the controlling precedent—this Court reaffirmed the relevant standard. See *Kotek*, 338 Or App at 559; *Arnold v. Kotek*, No 22CV41008, 2023 WL 12078798, at \*2 (Or Cir Nov 24, 2023), *rev’d and remanded*, 338 Or App 556, 566 P3d 1208 (2025); Pls.-Resp’t’s Answering Br., *Arnold v. Kotek*, No A183242, 2024 WL 4564757, at \*10–11 (Or Ct App July 26, 2024) (citing *Christian*, 354 Or 22).<sup>1</sup> *Christian* recognized that “the right to bear arms is not an absolute right,” and that “the legislature has wide latitude to enact specific regulations restricting the possession and use of weapons to promote public safety” provided the regulation “does not unduly frustrate the individual right to bear arms *for the purpose of self-defense*.” 354 Or at 33–34.<sup>2</sup>

*Christian* marked an extension of an unbroken line of precedent by this Court establishing the Oregon Constitution’s protection of the right to bear arms *only* for self-defense. In *State v. Hirsch*, the Court clarified that the word “defence” in Article

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<sup>1</sup> In *Christian*, this Court rejected a facial challenge to a Portland ordinance prohibiting the public possession or carry of a firearm that the holder had recklessly failed to unload, on the basis that it did not constitute a “total ban on possessing or carrying a firearm for self-defense.” *Christian*, 354 Or at 40.

<sup>2</sup> All emphases are supplied unless otherwise noted.

I, section 27, “serves to limit the scope of the constitutionally protected conduct,” and held that Article I, section 27 “precludes the legislature from infringing on the people’s right to bear arms for purposes of defense, but ***not for purposes other than defense.***” 338 Or 622, 632, 114 P3d 1104, 1110 (Or 2005), *overruled in part by Christian*, 354 Or 22. In *State v. Kessler*, this Court emphasized that Article I, section 27’s guarantee of the people’s “right to bear arms” did “not mean that all individuals have an unrestricted right to carry or use personal weapons in all circumstances,” but that “defense of themselves” guaranteed an individual’s “right to bear arms to protect his person and home.” 289 Or at 367–69 (citation omitted). Likewise, in *State v. Blocker*, the Court recognized the state constitutional “right to bear arms ***for defense of self.***” 291 Or 255, 259, 630 P2d 824, 825 (1981) (citation omitted), *overruled on other grounds by Christian*, 354 Or 22. Finally, in *State v. Delgado*, the Court reaffirmed that Article I, section 27 protected the right to “possess certain arms for the defense of person and property.” 298 Or 395, 398–99, 692 P2d 610, 611 (Or 1984) (en banc) (citation omitted).

In short, this Court has repeatedly and unambiguously held that the constitutional right guaranteed by Article I, section 27 is a right to bear arms for self-defense, not for other purposes.

**B. Measure 114’s LCM Provisions Do Not Burden the Right to Self-Defense.**

**1. The Ability to Fire More than 10 Rounds Does Not Aid in Self-Defense.**

As numerous courts have found and as empirical research establishes, LCM restrictions do not burden the right to self-defense because the ability to fire more than 10 rounds of ammunition without reloading is “unsuitable for and disproportionate to the objective of individual self-defense.” *Nat’l Ass’n for Gun Rts. v. Lamont*, \_\_\_ F4th \_\_\_, 2025 WL 2423599, at \*1 (2d Cir Aug 22, 2025); *see also Bianchi v. Brown*, 111 F4th 438, 461 (4th Cir 2024), *cert den sub nom Snope v. Brown*, 145 S Ct 1534 (2025) (finding “the AR-15 is a combat rifle that is both ill-suited and disproportionate to self-defense”).<sup>3</sup>

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<sup>3</sup> See, e.g., *Duncan v. Bonta*, 133 F4th 852, 880 n.11 (9th Cir 2025) (en banc); *Ocean State Tactical, LLC v. Rhode Island*, 95 F4th 38, 45 (1st Cir 2024), *cert den*, No 24-131, 2025 WL 1549866 (US June 2, 2025); *Hanson v. District of Columbia*, 120 F4th 223, 244–45 (DC Cir 2024), *cert den*, No 24-936, 2025 WL 1603612 (US June 6, 2025); *Or. Firearms Fed’n, Inc. v. Kotek*, 682 F Supp 3d 874, 896 (D Or 2023); *Worman v. Healey*, 922 F3d 26, 37 (1st Cir 2019), *abrogated on other grounds by N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 US 1 (2022); *Ass’n of N.J. Rifle & Pistol Clubs, Inc. (ANJRPC) v. Att’y Gen.*, 910 F3d 106, 121 n.25 (3d Cir 2018), *abrogated on other grounds by Bruen*, 597 US 1; *Kolbe v. Hogan*, 849 F3d 114, 127 (4th Cir 2017) (en banc), *abrogated on other grounds by Bruen*, 597 US 1; *Capen v. Campbell*, 708 F Supp 3d 65, 91 (D Mass 2023), *aff’d*, 134 F4th 660 (1st Cir 2025).

The database of “armed citizen” accounts maintained by the National Rifle Association (“NRA”) shows that the use of more than 10 rounds of ammunition for self-defense is “extremely rare.”<sup>4</sup> Studies analyzing this database establish that the average number of shots fired by civilians in self-defense during the study period was about *two*.<sup>5</sup> Of the 736 self-defense incidents reflected in the NRA database from January 2011 to May 2017, the defender was reported to have fired more than 10 bullets in only “*two* incidents (0.3% of all incidents).” Allen Decl. ¶ 10. Further, roughly 18 percent of the self-defense instances involved the firing of no shots at all. *Id.*

In this case, statistician Jorge Baez testified to several of the foregoing facts in the Circuit Court, reaffirming that an average of “2.2 rounds are fired in acts of self-defense,” and that in only “.3% of all incidents” reported in the NRA database were “over ten rounds fired in acts of self-defense.” *Kotek*, 2023 WL 12078798, at \*22.

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<sup>4</sup> Decl. of Lucy P. Allen ¶ 20, *Or. Firearms Fed’n, Inc. v. Brown*, No 22-cv-01815 (D Or Feb 6, 2023), Dkt. No. 116 [hereinafter Allen Decl.]; *see also Armed Citizen Stories*, NRA-ILA, <https://www.nraila.org/gun-laws/armed-citizen> (last visited Sept. 18, 2025).

<sup>5</sup> *See* Claude Werner, *The Armed Citizen – A Five Year Analysis*, Guns Save Lives (Mar. 12, 2012), <https://perma.cc/QTL7-U8EM> (average of 2.2 defensive shots fired per incident from 1997–2001); Allen Decl. ¶ 10 (same, from January 2011 to May 2017).

In *Oregon Firearms Federation v. Kotek*, the federal court decision upholding Measure 114 against a Second Amendment challenge, an expert on “the statistical use of LCMs in defensive gun use situations” (“DGUs”) confirmed these statistics. 682 F Supp 3d 874, 896–97 (D Or 2023), *appeal docketed*, No 23-35478 (9th Cir Aug 15, 2023). The expert studied a random sample of “200 incidents from the roughly 4,800 news stories describing DGUs” from January 2011 to May 2017—the same 6.5-year period covered by the NRA database. *Id.* (citations omitted). From this analysis, the expert confirmed that “in ***no incidents*** were more than ten shots fired,” and in only 2.7 percent of incidents, between 6 and 10 shots were fired. *Id.* (citations omitted).

Experts in other cases challenging LCM restrictions have likewise found that the ability to fire more than 10 rounds without reloading is fundamentally not necessary for self-defense. *See, e.g.*, Decl. of Edward Troiano ¶¶ 9–10, *Ocean State Tactical, LLC v. Rhode Island*, No 22-cv-246 (DRI Oct. 14, 2022), Dkt. No. 19-3 (in challenge to constitutionality of Rhode Island LCM law, expert declaring he was “unaware of ***any incident*** in which a civilian has ***ever*** fired as many as 10 rounds in self-defense.”); Decl. of James W. Johnson ¶¶ 30–31, *Kolbe v. O’Malley*, No 13-cv-02841 (D Md Feb 14, 2014), Dkt. No. 44-3 (in challenge to Maryland LCM and assault weapons law, then-Baltimore County Police Chief testifying that he was

“*unaware of any self-defense incident*” in Baltimore County or “anywhere else in Maryland” for which “it was necessary to fire as many as 10 rounds in self-defense”).

## **2. The Oregon Federal District Court Found That Measure 114 Does Not Burden Self-Defense.**

The U.S. District Court for the District of Oregon has also considered whether Measure 114 unduly burdens the right to self-defense, and like the Court of Appeals, concluded that it does not. *See Kotek*, 682 F Supp 3d at 935, 947 (finding Measure 114’s LCM provisions “imposed a minimal burden on the right to self-defense,” and “enter[ing] judgment in favor of Defendants and Intervenor-Defendant on Plaintiffs’ Second Amendment challenge to [Measure] 114’s LCM restrictions”); *Oregon Firearms Fed’n, Inc. v. Brown*, 644 F Supp 3d 782, 806, 813 (D Or 2022) (finding Measure 114’s LCM restrictions “do[] not impose a greater burden on the right to self-defense than did analogous historical regulations,” and denying plaintiffs’ motion for temporary restraining order with respect to Measure 114’s LCM provisions).

While those federal decisions analyzed Measure 114 under the U.S. Constitution, the factual question—regarding the extent of any burden on self-defense—is similar, if not identical, under both the Oregon constitutional standard enunciated in *Christian* and the federal standard set forth in *New York State Rifle &*

*Pistol Ass’n, Inc. v. Bruen*, 597 US 1 (2022).<sup>6</sup> Compare *Christian*, 354 Or at 33–34 (recognizing a firearm regulation may be enacted consistent with Article I, section 27 provided it “does not unduly frustrate the individual right to bear arms for the purpose of self-defense”), with *Bruen*, 597 US at 17 (recognizing “the Second and Fourteenth Amendments protect an individual right to keep and bear arms for self-defense”); see also *Or. Firearms Fed’n v. Kotek*, 682 F Supp 3d at 928 (affirming “[t]he Second Amendment protects the right of law-abiding citizens with ordinary self-defense needs to keep and bear arms commonly used for lawful purposes, centrally self-defense” (citing *Bruen*, 597 US at 70)).

Citing the expert analysis of the NRA database discussed above, the federal district court in *Oregon Firearms Federation v. Kotek* found that “[a]ccording to [the] objective evidence, an individual discharges more than ten rounds in just 0.3 percent of self-defense incidents,” which “means that in 99.7 percent of all self-defense incidents, [Measure] 114’s restrictions on LCMs would place no burden on the right to self-defense.” 682 F Supp 3d at 928.

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<sup>6</sup> In *Bruen*, the Supreme Court announced a new framework for federal Second Amendment analysis, directing courts to first consider whether the Second Amendment’s plain text covers an individual’s conduct; if so, the Second Amendment “presumptively protects that conduct,” and the burden shifts to the government to justify the challenged regulation by showing that it is “consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 597 US at 24.

Additionally, while the court in *Kotek* acknowledged that millions of Americans *possessed* LCMs, it found that plaintiffs had “not shown that LCMs are commonly *employed* for self-defense.” *Id.* at 921–22. Conversely, the court found that defendants had “produced credible evidence showing that they are not.” *Id.* The court further concluded that while “many Americans purchase LCMs with the intent to use them for self-defense . . . it is exceedingly rare (far less than 1 percent) for an individual to fire more than ten shots in self-defense.” *Id.* at 897.

In short, under both the Oregon constitutional standard articulated by the Oregon Supreme Court in *Christian*, and the federal constitutional standard set forth by the U.S. Supreme Court in *Bruen*, the operative question is not simply how many individuals possess or wish to possess LCMs, but rather whether a restriction on LCMs burdens an individual’s right to self-defense.

Empirical research and carefully reasoned decisions of the Oregon federal district court and the Oregon Court of Appeals make clear that Measure 114 does not burden individual self-defense. Under *Christian*, this fact precludes Plaintiffs-Petitioners’ state constitutional challenge to Measure 114.

### **3. Numerous Other Courts Have Held That LCM Restrictions Do Not Burden Self-Defense.**

Jurisdictions across the country have enacted LCM restrictions like Measure 114’s LCM provisions, with nearly all of these laws restricting magazine capacity

to ten rounds.<sup>7</sup> Challenges to these LCM restrictions invariably raise the same issue presented in this case regarding whether the restrictions “unduly frustrate” the right to armed self-defense. *Christian*, 354 Or at 33–34. Courts have repeatedly upheld the LCM measures against such Second Amendment challenges, concluding that the challenged LCM restrictions do not unduly burden self-defense.

**(a) Courts Across the Country Have Held that LCM Bans Similar to Measure 114 Do Not Unduly Burden Self Defense.**

Numerous courts have upheld the constitutionality of 10-round LCM restrictions upon finding no evidence that firing more than 10 rounds of ammunition without reloading is necessary for self-defense. *See supra* n.4; *see also Duncan v. Bonta*, 133 F4th 852, 880 n.11 (9th Cir 2025) (en banc) (finding that “[f]iring more than ten rounds occurs only rarely, if ever, in armed self-defense” (collecting authorities)); *Ocean State Tactical, LLC v. Rhode Island*, 95 F4th 38, 45 (1st Cir 2024) (concluding that “[g]iven the lack of evidence that LCMs are used in self-defense, it reasonably follows that banning them imposes no meaningful burden on the ability of Rhode Island’s residents to defend themselves”); *Hanson v. District of*

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<sup>7</sup> *See* Giffords Law Ctr., *Large-Capacity Magazines*, <https://perma.cc/5ABP-R8AZ> (last visited Sept. 14, 2025) (identifying LCM restrictions enacted by 13 states and the District of Columbia); *see also Bonta*, 133 F4th at 861 (noting that “[m]any jurisdictions, including California, define ‘large-capacity magazine’ to include any magazine or similar automatic feeding device that can hold more than ten rounds of ammunition” (citing Cal. Penal Code § 16740; Conn. Gen. Stat. § 53-202w(a)(1); Haw. Rev. Stat. § 134-8(c))).

*Columbia*, 120 F4th 223, 245 (DC Cir 2024) (noting the challenger’s own evidence showed that “the average amount of rounds fired in self-defense is usually less than 10 and generally only two or three” (quotation marks and citation omitted)), *cert den*, No 24-936, 2025 WL 1603612 (US June 6, 2025); *Nat’l Ass’n for Gun Rights v. Lamont*, 685 F Supp 3d 63, 98 (D Conn 2023) (finding an “absence of persuasive evidence that the assault weapons or LCMs listed in the statutes are commonly used or are particularly suitable for self-defense”), *aff’d*, 2025 WL 2423599; *Capen*, 708 F Supp 3d at 91 (finding plaintiffs failed to “provid[e] any evidence . . . that a magazine that can hold more than ten rounds is necessary, useful, or even desirable for self-defense purposes” and concluding the “limit on magazine capacity impose[d] virtually no burden on self-defense” and was “comparably justified to historical regulations”).<sup>8</sup>

**(b) Washington Federal and State Courts Have Held That the State’s Similar LCM Restriction Does Not Unduly Burden Self Defense.**

Both federal and state courts in the State of Washington have rejected post-*Bruen* challenges seeking to enjoin Washington’s 10-round LCM restriction under the Second Amendment and Article I, section 24 of the Washington State

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<sup>8</sup> See also *Worman*, 922 F3d at 37 (“[N]ot one of the plaintiffs or their six experts could identify even a single example of . . . a self-defense episode in which ten or more shots were fired.”).

Constitution, a “bear arms” provision modeled on Oregon’s Article I, section 27. *See City of Seattle v. Evans*, 184 Wash 2d 856, 867–68, 366 P3d 906, 912 (2015) (en banc) (noting “Washington’s article I, section 24 was drawn from Oregon’s article I, section 27 and the constitution proposed by W. Lair Hill”).

The Washington LCM provision, like Measure 114, restricts persons in the state from manufacturing, importing, distributing, selling, or offering to sell any LCMs, subject to certain exceptions. *See* Wash. Rev. Code § 9.41.370(1) (“No person in this state may manufacture, import, distribute, sell, or offer for sale any large capacity magazine, except as authorized in this section.”); *see also* ORS § 166.355(2) (“[A] person commits [a] crime . . . if the person manufactures, imports, possesses, uses, purchases, sells or otherwise transfers any large-capacity magazine in Oregon[.]”).

In *Brumback v. Ferguson*, the U.S. District Court for the Eastern District of Washington declined to grant a preliminary injunction seeking to enjoin enforcement of Washington’s LCM provision, rejecting plaintiffs’ challenge under both the Second Amendment and Article I, section 24 of the Washington Constitution. *See* No 22-cv-03093, 2023 WL 6221425, at \*12 (ED Wash Sept 25, 2023). The court found, as to the Second Amendment challenge, that plaintiffs had failed to establish that “[LCMs] fall within the Second Amendment right.” *Id.* at \*10. As to the plaintiffs’ challenge under Article I, section 24 of the Washington Constitution, the

court found that the plaintiffs had failed to demonstrate (i) that the regulation was not “reasonably necessary to protect public safety or welfare” or “substantially related to legitimate ends sought,” or (ii) that “the degree to which [the regulation] frustrates the purpose of the constitutional provision” outweighed the “public benefit from the regulation.” *Id.* at \*11–12 (internal quotations omitted).

Likewise, the Washington Supreme Court upheld the constitutionality of the state’s LCM restriction under both the federal and state constitutions, reasoning in part that LCMs were not weapons protected by Article I, section 24 because they were “not traditionally or commonly used for self-defense” and “the right to purchase LCMs [was] not among the ancillary rights necessary to the realization of the core right to bear arms in self-defense.” *State v. Gator’s Custom Guns, Inc.*, 4 Wash 3d 732, 742, 568 P3d 278, 283 (2025), *as amended* (May 14, 2025) (en banc), *pet for cert docketed*, No 25-153 (US Aug 8, 2025). Relying on its en banc decision in *City of Seattle v. Evans*, 184 Wash 2d 856—which in turn relied on Oregon courts’ jurisprudence regarding Article I, section 27—the Washington Supreme Court observed that Article I, section 24 protected “instruments that are designed as weapons traditionally or commonly used by law abiding citizens for the ***lawful purpose of self-defense***.” *Gator’s*, 4 Wash 3d at 741 (emphasis in original omitted) (quoting *Evans*, 184 Wash 2d at 869).

*Ferguson* and *Gator*'s are noteworthy because of the strong parallels between the "bear arms" provisions of the Washington and Oregon constitutions. Washington's Article I, section 24, like Oregon's Article I, section 27, protects "[t]he right of the individual citizen to bear arms in defense of himself, or the state." Wash Const, Art I, § 24 (adopted 1889); *compare id.*, with Or Const, Art I, § 27 (adopted 1859) ("The people shall have the right to bear arms for the defence (*sic*) of themselves, and the State, but the Military shall be kept in strict subordination to the civil power[.]").

Further, like Oregon courts, Washington courts have evaluated whether a weapon is a constitutionally protected "arm" by considering whether it was "traditionally or commonly used by law abiding citizens for the lawful purpose of self-defense," based on "the *historical origins and use of that weapon*" and "consider[ing] the weapon's purpose and intended function." *Evans*, 184 Wash 2d at 869 (explaining "this approach" is rooted in part in "the Oregon Supreme Court's interpretation of its state constitution's article I, section 27"); *compare Delgado*, 298 Or at 39–40 (in assessing whether weapon is a protected "arm," court considers "whether a kind of weapon . . . is of the sort commonly used by individuals for personal defense *during either the revolutionary and post-revolutionary era, or in 1859* when Oregon's constitution was adopted").

Recognizing these similarities, Washington courts have frequently looked to Oregon interpretations of Article I, section 27 when interpreting Washington’s parallel constitutional provision. *See Evans*, 184 Wash 2d at 868, 366 P3d at 912 (recognizing that the Washington Supreme Court had previously “cited with approval to the Oregon Supreme Court’s interpretation of its analogous provision” (collecting cases))<sup>9</sup>; *see also, e.g., State v. Rupe*, 101 Wash 2d 664, 707, 683 P2d 571, 596 (1984) (en banc) (plurality) (“Our conclusion” regarding the parameters of Article I, section 24 “coincides with the interpretation placed on a similar provision contained in the Oregon constitution.” (citing Or Const Art I, § 27)); *City of Seattle v. Montana*, 129 Wash 2d 583, 590 n.1, 919 P2d 1218, 1221 n.1 (1996) (en banc) (citing Oregon case law evaluating the meaning of “arms”), *abrogated on other grounds by Yim v. City of Seattle*, 194 Wash 2d 682, 451 P3d 694 (2019).

The self-defense emphasis in Oregon and Washington case law is consistent with historical cases establishing the constitutionality of restrictions on weapons deemed excessively dangerous, with courts reasoning that such arms are not necessary for self-defense. *See, e.g., O’Neill v. State*, 16 Ala 65, 67 (1849); *Andrews v. State*, 50 Tenn 165, 171, 186 (1871); *English v. State*, 35 Tex 473, 474, 477 (1872),

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<sup>9</sup> *See also* Quentin Shipley Smith, *Analytical Index*, in *The Journal of the Washington State Constitutional Convention, 1889*, at 512 n.40 (Beverly Paulik Rosenow ed., 1999), <https://digitalcommons.law.uw.edu/selbks/4/> (setting forth text of Article I, section 24 of the Washington Constitution, and citing, as authorities, Article I, section 27 of Oregon Constitution and the Second Amendment).

*abrogated on other grounds by Bruen*, 597 US 1. This case law is also consistent with state court decisions regulating the concealed carry of weapons—regulations that courts have held impose no burden on self-defense. *See, e.g., State v. Mitchell*, 3 Blackf 229, 229 (Ind 1833); *Ex parte Thomas*, 97 P 260, 265 (Okla 1908); *State v. Reid*, 1 Ala 612, 614, 621 (1840); *State v. Buzzard*, 4 Ark 18, 18 (1842); *State v. Chandler*, 5 La Ann 489, 489–90 (1850); *State v. Jumel*, 13 La Ann 399, 399–400 (1858).

In sum, courts have repeatedly concluded that analogous laws restricting LCMs or dangerous weapons do not burden the right to self-defense. Plaintiffs-Petitioners do not and cannot demonstrate that LCMs are well-suited or used for self-defense, and have accordingly failed to show that Measure 114 infringes on their rights under Article I, section 27.

### **C. LCMs Were Not Commonly Used for Self-Defense at the Time the Oregon Constitution Was Drafted.**

In *Christian*, this Court reaffirmed that the right to bear arms under Article I, section 27 may extend to “some firearms and certain hand-carried weapons commonly used for self-defense at the time [Article I, section 27] was drafted.” *Christian*, 354 Or at 30 (citing *Kessler*, 289 Or at 368). Measure 114 does not implicate this principle because it does not restrict arms that were commonly used for self-defense at the time that Article I, section 27 was drafted.

**1. Firearms Capable of Firing Repeatedly Without Reloading Were Not Broadly Available Until After Adoption of Oregon’s Constitution in 1859.**

Article I, section 27 can be traced to state provisions drafted between the Revolutionary War and the Civil War. *See Kotek*, 2023 WL 12078798, at \*5. Oregon’s Constitutional Convention took place in 1857, and Article I, section 27 was drawn “verbatim from sections 32 and 33 of the Indiana Constitution of 1851.” *Kessler*, 289 Or at 363, 614 P2d at 96. The drafters of Indiana’s 1816 bill of rights, in turn, “borrowed freely from the wording of other state constitutions” drafted between 1776 and 1802, including those of Kentucky, Ohio, Tennessee, and Pennsylvania. *Id.*

Weapons capable of firing more than 10 rounds without reloading were not broadly available in the United States until the late nineteenth century, and were not commercially available to civilians until even later. *See* Decl. of Brian DeLay ¶¶ 8, 21, *Arnold v. Kotek*, No 22CV41008 (Or Cir Ct Dec. 12, 2022) (stating “no large-capacity firearm design functioned well enough to become militarily and commercially viable before 1860” and “the first handheld firearm that both (a) had a detachable magazine holding more than ten rounds and (b) was commercially available to civilians in the United States was the Thompson submachine gun, introduced to the market in the 1920s”). While examples of 10-round firearms magazines *existed* prior to 1857, the technological shortcomings of these magazines

were not solved until later—well after statehood and Oregon’s enactment of Article I, section 27. *See* Decl. of Brian DeLay ¶¶ 4, 46, *Or. Firearms Fed’n, Inc. v. Brown*, No 22-cv-01815 (D Or Feb 6, 2023), Dkt. No. 118 [hereinafter DeLay Decl.]; *see also Kotek*, 2023 WL 12078798, at \*4.

The Henry rifle—“the world’s first reliable firearm with a greater than ten-shot capacity”—was developed in 1860, and its more refined successor, the Winchester Model, in 1866. DeLay Decl. ¶ 58; *see also Kotek*, 2023 WL 12078798. These two models were effectively “the only large-capacity firearms in circulation in the years surrounding the ratification of the Fourteenth Amendment” in 1868—*i.e.*, nearly a decade after the adoption of Oregon’s Constitution in 1859. DeLay Decl. ¶ 58. Yet each suffered from technological limitations. The Henry rifle’s cartridge was “underpowered for a military firearm”; the “open magazine bottom under the barrel could easily become fouled”; the rifle’s design could make it difficult to operate and aim; and the rifle was prone to becoming jammed and inoperable. *1st DC Cavalry Martial Henry Rifle*, College Hill Arsenal, <https://perma.cc/LFP3-AVDY>. The 1866 Winchester rifle had similar flaws and, unlike modern semi-automatic firearms, required the shooter to “manipulate a lever in a forward-and-back motion before each shot” and manually reload the gun “one round at a time” when it was emptied. Decl. of Robert J. Spitzer ¶ 48, *Or. Firearms Fed’n, Inc. v. Brown*, No 22-cv-01815 (D Or Feb. 6, 2023), Dkt. No. 123.

Further, the substantial majority of Henrys and Winchesters produced between 1861 and 1871 “were made to order for foreign armies and exported abroad.” DeLay Decl. ¶ 59; *see also id.* (explaining data indicated “(a) that high-capacity firearms went almost exclusively to military buyers through the early 1870s, and (b) that very few were in the hands of private persons that might have used them in ways that attracted regulatory attention”).

This Court, in *Delgado*, noted that the period of Oregon’s constitutional drafting was one of the “development of the Gatling gun.” 298 Or at 403. Yet the Gatling only entered general use in 1866—nearly a decade after Oregon’s Constitutional Convention in 1857. *See* Gatling Gun, *Encyclopedia of North Carolina* (William S. Powell ed., 2006), <https://northcarolinahistory.org/encyclopedia/gatling-gun/>. The Union Army attempted to use the Gatling gun in 1863, but after buying just 13 of them, deemed them “ineffective,” and did not use the gun “for the rest of the Civil War.” *Id.* It was not until the late 1860s that the Gatling gun “became successful,” when its “original paper cartridges were exchanged with more reliable brass cartridges.” *Id.*

## **2. Modern Firearms Capable of Firing Repeatedly Without Reloading Are Fundamentally Different from Historical Antecedents.**

Modern firearms capable of firing more than 10 rounds without reloading embody dramatic technological changes from the weaponry of both the

revolutionary and post-revolutionary eras, and from when Oregon's Constitution was adopted in 1859. At the time of the Founding, the typical Revolutionary-era musket (i) could hold just one round at a time, (ii) could fire no more than three or four rounds per minute, (iii) had a maximum accurate range of 55 yards, and (iv) had a muzzle velocity of approximately 1,000 feet per second.<sup>10</sup> Further, these muskets had to be loaded before they could even be used; they could not be stored for long periods in a loaded state because the powder would corrode the gun.<sup>11</sup> By contrast, a typical modern AR-15 (i) can hold 30 rounds, (ii) can fire approximately 45 rounds per minute, (iii) can shoot accurately from approximately 600 yards, (iv) attains a muzzle velocity of over 3,000 feet per second, and (v) can be stored loaded and immediately fired.<sup>12</sup> Even the most advanced firearms of the Civil War era were a far cry from the modern AR-15. For example, the 1866 Winchester rifle, discussed above, had a maximum effective range of approximately 100 yards (about one-sixth

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<sup>10</sup> Christopher Ingraham, *What 'Arms' Looked Like When the 2nd Amendment Was Written*, Wash. Post (June 13, 2016), <https://perma.cc/H6X5-C2NL>.

<sup>11</sup> See, e.g., *Firearms History and the Technology of Gun Violence*, U.C. Davis Libr., <https://perma.cc/N5HW-EJF7> (last visited Sept. 9, 2025) (describing the “complicated process” of loading muskets used by soldiers during the Civil War).

<sup>12</sup> See Christopher Ingraham, *What 'Arms' Looked Like When the 2nd Amendment Was Written*, Wash. Post (June 13, 2016).

of an AR-15) and a muzzle velocity of 1,100 feet per second (roughly one-third of an AR-15).<sup>13</sup>

In short, repeating firearms, especially the lethally accurate firearm technologies of today, were not commonly available or used during the revolutionary and post-revolutionary periods, or when the Oregon Constitution was drafted and adopted.

**II. MEASURE 114’S PERMIT-TO-PURCHASE PROVISIONS ARE CONSISTENT WITH A HISTORICAL TRADITION OF FIREARM REGULATION AND ACCORDINGLY IMPOSE NO UNDUE BURDEN ON THE RIGHT TO SELF-DEFENSE.**

In addition to its LCM provisions, Measure 114 contains a separate set of provisions that require a permit to be obtained from the local police chief or county sheriff prior to the purchase of a firearm. *See* 2023 Oregon Laws Ch. 1, §§ 4(1)(a), 6(2), 7(3), 8(2), 9(1). To qualify for a permit, an individual must have passed a criminal background check and completed a qualifying firearm safety course, among other requirements. *Id.* § 4(1)(b).

The permit-to-purchase provisions were intended to preclude firearm purchases by those whose possession would threaten public safety, such as because of a demonstrated proclivity for violence or insufficient training in how to safely

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<sup>13</sup> Dan Alex, *Winchester Model 1866: Lever-Action Repeating Rifle*, Military Factory (Mar. 12, 2019), <https://perma.cc/4ZJA-5V4M>.

operate or store a firearm. *See* 2023 Oregon Laws Ch. 1, pmbl. (explaining Measure 114 “will require that anyone purchasing a firearm must first complete a safety training course, successfully pass a full background check and, only then . . . be granted a permit-to-purchase a firearm, ***so that firearms are kept out of dangerous hands***”); *see also Or. Cable Telecomms. Ass’n v. Dep’t of Revenue*, 237 Or App 628, 641, 240 P3d 1122, 1129 (2010) (explaining that the “preamble to the bill further informs our understanding of the legislature’s intention in enacting” the statute at issue (citations omitted)).

As courts have recognized with respect to analogous “shall-issue” permitting regimes that “may require a license applicant to undergo . . . a background check . . . and training in firearms handling,” Measure 114’s permitting provisions fall within the historical tradition of firearms regulation. *See Bruen*, 597 US at 80 (Kavanaugh, J., concurring) (observing that such “shall-issue licensing regimes” are presumptively “constitutionally permissible”); *id.* at 39 n.9 (emphasizing that “nothing in [the majority’s] analysis should be interpreted to suggest the unconstitutionality of the 43 States’ ‘shall-issue’ licensing regimes, under which ‘a general desire for self-defense is sufficient to obtain a [permit],’ which ‘do not necessarily prevent ‘law-abiding, responsible citizens’ from exercising their Second Amendment right to public carry” (citing *District of Columbia v. Heller*, 554 US 570, 635 (2008))).

In particular, these permitting provisions are consistent with a broad and deep tradition of limiting arms to “law-abiding” citizens who do not pose a threat of employing arms to harm themselves or others. *Bruen*, 597 US at 8–9 (recognizing the Second Amendment protects the “right of **law-abiding**, responsible citizens to use arms for self-defense” (quoting *Heller*, 554 US at 635)); *see also United States v. Rahimi*, 602 US 680, 693 (2024) (finding that “[f]rom the earliest days of the common law, firearm regulations have included provisions barring people from **misusing weapons to harm or menace others**”); *Antonyuk v. James*, 120 F4th 941, 976 (2d Cir 2024), *cert den*, 145 S Ct 1900 (2025) (recognizing that “[a] reasoned denial of a carry license to a person who, if armed, would pose a danger to **themselves, others, or to the public** is consistent with the well-recognized historical tradition of preventing dangerous individuals from possessing weapons”).<sup>14</sup>

Indeed, from the Founding Era to today, states and municipalities have restricted the use or possession of weapons by persons deemed to pose a public safety risk. These historical measures include requirements that those threatening to cause harm post bond as a precondition to public carry and licensing schemes imposing prerequisites on the carry or ownership of weapons.

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<sup>14</sup> Cf. *United States v. Duarte*, 137 F4th 743, 751 (9th Cir 2025) (“*Bruen* limited the scope of its opinion to ‘law-abiding citizens,’ evidenced by its use of the term fourteen times throughout the opinion.” (citing *Bruen*, 597 US at 8–9, 26, 60)).

For example, from before the Founding, early manuals for American Justices of the Peace empowered authorities to confiscate arms from persons who carried them in a manner that spread fear or terror. *See, e.g.*, Act of Nov. 1, 1692, ch. 18, § 6, 1 *Acts and Resolves of the Province of Massachusetts Bay* 52–53 (1869); Act of June 14, 1701, ch. 7, 1 *Laws of New Hampshire* 679 (Albert Stillman Batchellor ed., 1904); Act of Nov. 27, 1786, ch. 21, *A Collection of all such Acts of the General Assembly of Virginia, of a Public and Permanent Nature, as are now in Force* 33 (1794); *see also United States v. Sutton*, No 24-CR-00168, 2024 WL 3932841, at \*6 (ND Okla Aug 23, 2024) (explaining that the rule regarding confiscation “was expressly recodified in some 17th- and 18th-century American statutes” (collecting authorities)).

Colonies and early states also enacted statutes requiring the forfeiture of arms in the event of unsafe storage of guns or gunpowder, *see* Robert J. Spitzer, *Historical Firearm Licensing and Permitting Laws*, 129 Dick. L. Rev. 1041, 1063–64 (2025), <https://perma.cc/M5L9-VM8W>; *Sutton*, 2024 WL 3932841, at \*6 (collecting statutes),<sup>15</sup> and adopted surety statutes that, as noted, typically obligated individuals

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<sup>15</sup> *See* Act of Mar. 1, 1783, ch. 13, 1783 Mass. Acts 218, 218–19 (prohibiting loaded firearms in “any Dwelling-House, Stable, Barn, Out-house, Ware-house, Store, Shop, or other Building, within the Town of Boston” and authorizing seizure of such arms and a fine); Act of Apr. 13, 1784, ch. 28, 1784 N.Y. Laws 627, 627–29 (prohibiting “any quantity of gun powder exceeding twenty-eight pounds weight, in any one place” in New York City “except in the public magazine” and requiring

who “threaten[ed] to do harm” “to post bond before carrying weapons in public,” *Bruen*, 597 US at 55; *see also Rahimi*, 602 US at 698 (“[S]urety and going armed laws confirm what common sense suggests: When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.”).

Colonies and early states also enacted licensing laws animated by public safety concerns. From the 1700s to 1860, at least 13 colonies or states “enacted laws to grant discharge licensing authority to local officials.” Spitzer, 129 Dick. L. Rev. at 1060–62; *see also id.* at 1071–74 (Appendix A cataloging weapons licensing laws by category and jurisdiction). For example, in 1750, the Colony of Pennsylvania subjected to “penalties and forfeitures” those who “fire[d] any gun or other fire-arm . . . within any of the said towns or boroughs, without the Governor’s special license for the same.” An Act for the More Effectual Preventing Accidents Which May

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gunpowder to be “seperated into four stone jugs or tin cannisters, which shall not contain more than seven pounds each, on pain of forfeiting all such gun powder” and paying a fine); Act of Feb. 28, 1786, § I, 1786 N.H. Laws 383, 383–84 (prohibiting “more than ten pounds of gun-powder” in “any dwelling-house, store or other building, on land, within the limits of said Portsmouth” and requiring gunpowder to “be kept in a tin cannister properly secured for that purpose” or else “forfeit the powder” illegally kept and pay a fine); Act of Mar. 28, 1787, ch. 328, § II, 1786 Pa. Laws 502, 502–03 (prohibiting “any house, store, shop, cellar or other place, within the city of Philadelphia” from storing “any greater quantity of gunpowder, at one time, than thirty pounds . . . under the penalty of forfeiture of the whole quantity so over and above stored or kept, together with the sum of twenty pounds for every such offence”); Act of June 19, 1801, ch. 20, § 1, 1801 Mass. Acts 507, 507–08 (prohibiting storage of gunpowder in any “house or shop for sale, by retail” exceeding “twenty-five pounds” and requiring gunpowder to be “kept in brass, copper or tin Tunnels” subject to “forfeiting all such Gun Powder”).

Happen By Fire, and for Suppressing Idleness, Drunkenness, and Other Debaucheries, ch. 388, 1750 Pa. Laws 208.

Later permitting laws enacted around the time of Oregon’s adoption of its Constitution further “confirm[]” the Founding-era tradition of restricting firearms to “law-abiding” and “responsible” citizens. *Bruen*, 597 US at 24, 26, 37.<sup>16</sup> Of the “[n]early 320 weapons licensing laws” enacted between the 1600s through the early 1900s, 34 states adopted 89 laws in total imposing licensing prerequisites on the carry or ownership of weapons between the latter half of the 19th century and first half of the 20th. *See* Spitzer, 29 Dick. L. Rev. at 1050.

Indeed, around the time of adoption of Oregon’s Constitution, permitting schemes “emerged as the ascendent model in firearms regulation,” and in the decades that followed—as gun violence emerged as a novel societal problem—they

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<sup>16</sup> Further confirming this Founding-era tradition are laws enacted around the time of the drafting of Oregon’s Constitution that restricted the sale of firearms to or possession by certain categories of individuals deemed incapable of safely bearing arms. These laws restricted, for example, “(1) the sale of firearms to, or the possession of firearms by, individuals below specified ages; (2) the sale of firearms to those of unsound mind; (3) the possession of firearms by those who were intoxicated; and (4) the possession of weapons by certain vagrants.” *United States v. Duarte*, 137 F4th 743, 759–60 (9th Cir 2025) (collecting statutes). Courts upheld these laws on the basis that those subject to regulation were not likely to safely use arms. *See, e.g., State v. Shelby*, 90 Mo 302, 2 SW 468, 469 (1886) (finding restriction on carrying arms while intoxicated a “reasonable regulation” that would ward against the “mischief to be apprehended from an intoxicated person going abroad with fire-arms”); *State v. Hogan*, 63 Ohio St 202, 58 NE 572, 575 (1900) (upholding statute requiring disarming of “tramps,” since the constitutional “guaranty was never intended as a warrant for vicious persons to carry weapons with which to terrorize others”).

became “the dominant model of firearms regulation in America.” Saul Cornell, *The Right to Regulate Arms in the Era of the Fourteenth Amendment: The Emergence of Good Cause Permit Schemes in Post-Civil War America*, 55 U.C. Davis L. Rev. Online 65, 86, 89 (2021). These “ordinances were first enacted by municipalities” and soon thereafter “emulated by states.” Cornell, 55 U.C. Davis L. Rev. Online at 89; Spitzer, 29 Dick. L. Rev. at 1051, 1055.

Like Measure 114’s permit-to-purchase background check provision, several licensing laws required a threshold showing that the applicant was a “law-abiding” citizen. *Bruen*, 597 US at 26 (quoting *Heller*, 554 US at 635). For example, an 1873 Jersey City ordinance mandated that an applicant demonstrate he was “temperate, of adult age, and capable of exercising self-control,” and further required “written endorsement of the propriety of granting a permit from at least three reputable freeholders.” Jersey City, N.J., Ordinance to Re-organize the Local Government of Jersey City, § 3 (1874).

An 1881 New York City ordinance provided that an individual “may apply to the officer in command” for a permit to carry a pistol for “his protection,” with “such officer, if satisfied that the applicant [was] a proper and law-abiding person,” instructed to “give said person a recommendation to the superintendent of police, or the inspector in command . . . who shall issue a permit . . . allowing him to carry a pistol of any description.” New York, N.Y., Ordinances of the Mayor, Aldermen

and Commonalty in force January 1, 1881, ch. 8, art. 27, § 265 (1881). And an 1893 Florida law made it “unlawful to carry or own a Winchester or other repeating rifle without first taking out a license from the County Commissioner,” with such license “conditioned on the proper and legitimate use of the gun.” Act of June 2, 1893, ch. 4147, §§ 1–4, 1893 Fla. Laws 71, 71–72; *see also* Spitzer, 29 Dick. L. Rev. at 1052–60 (discussing additional licensing schemes for weapons carrying or possession).<sup>17</sup>

The historical tradition likewise supports the permit-to-purchase provisions’ training requirements. By the 19th century, states required militia members and other gun owners to train with their weapons. For example, Tennessee mandated that members of the infantry “meet at the place of holding their battalion musters . . . , armed with a rifle, musket, or shot gun . . . ***for the purpose of being trained*** . . . at regimental drills.” 1821 Tenn. Pub. Acts 63, ch. 55, §§ 2–3; *see also* 1837 Vt. Acts & Resolves 38, ch. 9, art. 20 (referencing mandatory “company training”); *see also, e.g., Maryland Shall Issue, Inc. v. Moore*, 116 F4th 211, 229, 229–30 (4th Cir 2024) (en banc) (Rushing, J. concurring in judgment) (agreeing with majority that Maryland firearm licensing regime requiring completion of firearms safety training course is constitutional under Second Amendment because “it is consistent with the

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<sup>17</sup> Florida further required the county commissioners to maintain “a record of the name of the person taking out such license, the name of the maker of the firearm so licensed to be carried and the caliber and number of the same.” 1893 Fla. Laws 71–72.

principles underlying our Nation’s historical tradition of firearm regulation”); *Antonyuk v. Hochul*, 639 F Supp 3d 232, 251, 314 (NDNY 2022), *aff’d in part, vacated in part on other grounds, remanded sub nom Antonyuk v. James*, 120 F4th 941 (2d Cir 2024) (upholding 18-hour training requirement for concealed-carry permit as comparable to historical analogues requiring militia members to engage in firearm training, which indicate an intent to “deny the possession of a firearm to all militia members who, due to their unfamiliarity with a firearm, pose a danger to themselves or others”).

Taken together, Measure 114’s permit-to-purchase provisions are consistent with a well-established tradition of restricting firearms use and possession by those who posed a threat of harm to themselves or others. The justification underpinning Measure 114’s permit-to-purchase provisions—to ensure “firearms are kept out of dangerous hands,” 2023 Oregon Laws Ch. 1, pmbl.—is also “relevantly similar” to these historical regulations, which aimed to restrict firearm use in the interest of public safety. *Cf. Rahimi*, 602 US 680, 698 (2024) (holding federal statute prohibiting firearm possession by those subject to a domestic violence restraining order is “relevantly similar” to Founding Era surety and going armed laws “in both why and how it burdens the Second Amendment right,” since the statute “restricts gun use to mitigate demonstrated threats of physical violence, just as the surety and going armed laws do” (quoting *Bruen*, 597 US at 29)).

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As this Court has recognized, “[t]he legislature has wide latitude to enact specific regulations restricting the possession and use of weapons to promote public safety” provided “the enactment does not unduly frustrate the individual right to bear arms for the purpose of self-defense.” *Christian*, 354 Or at 33–34. For the reasons set forth in Parts I and II, *supra*, and as the Court of Appeals correctly held, Measure 114 “does not unduly frustrate the right to armed self-defense guaranteed by Article I, section 27.” *Kotek*, 338 Or App at 573–74, 579.

### **III. MEASURE 114 IS A REASONABLE REGULATION THAT PROMOTES PUBLIC SAFETY, SATISFYING *CHRISTIAN*.**

As the Court of Appeals also correctly held, Measure 114’s LCM and permit-to-purchase provisions are also “reasonable regulations” intended to “promote public safety.” *Kotek*, 338 Or App at 573–74, 579.

#### **A. The LCM Provisions**

Mass shootings in the United States have been on the rise, with the number of mass shooting incidents more than doubling between 2014 and 2020,<sup>18</sup> and the years

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<sup>18</sup> In connection with these statistics, “mass shooting” is defined as “at least 4 people injured in a single event,” excluding the shooter. Juan Duchesne et al., *State Gun Law Grades and Impact on Mass Shooting Event Incidence: An 8-Year Analysis*, 234 J. Am. Coll. Surg. 645, 645–46 (2022), <https://perma.cc/W3CX-D682>. The FBI has also found an increase in “active shooter incidents,” or incidents in which “one or more individuals [are] actively engaged in killing or attempting to kill

2020 and 2021 each proving deadlier than the year preceding it.<sup>19</sup> Research also reflects that the number of those shot in mass shooting incidents has increased since 2015.<sup>20</sup>

Mass shootings involving LCMs are deadlier than those that do not involve them. Since 2020, every single “high-fatality mass shooting”—a shooting in which at least six individuals died, not including the perpetrator—involved LCMs. *Or. Firearms Fed’n v. Kotek*, 682 F Supp 3d at 897 (citation omitted). Whereas the “average number of shots fired in a mass shooting where an LCM was *not* used” was 16, where an LCM *was* used, the average number of shots fired was 99. *Id.* at 897–98 (citations omitted). In the deadliest mass shooting event in U.S. history to date, which occurred in Las Vegas, Nevada in 2017, LCMs and semi-automatic rifles enabled the shooter to fire 100 rounds in 9 to 11 seconds, for a total of more than

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people in a populated area.” John Gramlich, *What the Data Says About Gun Deaths in the U.S.*, Pew Rsch. Ctr. (Mar. 5, 2025), <https://perma.cc/8LW6-FK85>. While the number of active shooter incidents has declined from a high in 2021, the number remains higher than the years prior to 2021.

<sup>19</sup> Nadine Yousif, *Why Number of US Mass Shootings Has Risen Sharply*, BBC News (Mar. 28, 2023), <https://perma.cc/U55P-QV9V>.

<sup>20</sup> *Mass Shootings in the United States*, Everytown Policy & Research (last updated Mar 2023), <https://perma.cc/YWU6-T4AD>.

1,000 rounds. *Id.* at 898. Sixty people were killed and more than 410 people shot, all in the span of about 11 minutes. *Id.*<sup>21</sup>

LCM restrictions have been proven to promote public safety. State laws restricting LCMs reduce mass shooting incidents by between 48 and 72 percent and “decrease the number of fatalities that occur in these mass shootings by 37 to 75 percent.” *Kotek*, 682 F Supp 3d at 898 (citation omitted); *see also Kotek*, 338 Or App at 579 (recognizing that “the use of large-capacity magazines presents a clear public safety threat to the welfare of the public because of the great increase in capacity to cause death and injury when a person may fire a firearm more than 10 times without having to reload”).

Beyond this aggregate data, first-hand accounts demonstrate why restricting LCMs can enormously reduce the number of deaths and injuries. The few seconds it takes to swap out a magazine or change firearms give victims the chance to run, hide, or perhaps disarm the shooter. *See Bonta*, 133 F4th at 859 (observing that “[v]ictims and law enforcement personnel take advantage of short pauses in firing to flee, take cover, and fight back”).

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<sup>21</sup> *See also Las Vegas Attack: What Took Police So Long?*, BBC News (Oct. 10, 2017), <https://perma.cc/PV8X-ANQG>; Katelyn Newberg, *Sisolak: We Will Never, Never Forget Those Killed in Oct 1 Shooting*, Las Vegas Review-Journal (Oct. 1, 2020), <https://perma.cc/RF7G-GLEU>

When former U.S. Representative Gabby Giffords was shot in 2011, bystanders were able to disarm and tackle the shooter as he was replacing a spent magazine.<sup>22</sup> During the mass shooting in 2012 at Sandy Hook Elementary School in Newtown, Connecticut, “nine children were able to flee and two were able to hide when the shooter paused to reload magazines.” *Kotek*, 682 F Supp 3d at 898 (citation omitted). And during the mass shooting in 2019 at the Poway Synagogue in California, congregants confronted and chased the shooter out “after he had fired all ten rounds from his firearm and paused to reload.” *Id.* (citation omitted). These pauses necessarily arise less frequently when a shooter uses an LCM, and without them, victims are deprived of crucial moments to prevent or escape further harm. *See Bonta*, 133 F4th at 859 (“[a] mass shooter’s use of large-capacity magazines limits those precious opportunities” to “flee, take cover, and fight back”).

## **B. The Permit-to-Purchase Provisions**

Measure 114’s permit to purchase provisions likewise “promote public safety” by reducing firearm-related deaths and injuries. *Christian*, 354 Or at 33–34; *see also Kotek*, 338 Or App at 573 (finding Measure 114’s permit-to-purchase provisions “directly seek to identify persons disqualified to own or possess a firearm under state or federal law, to identify dangerous persons who either are the subject

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<sup>22</sup> *Woman Wrestled Fresh Ammo Clip from Tucson Shooter as He Tried to Reload*, ABC News (Jan. 9, 2011), <https://perma.cc/CE4Y-4ZSY>.

of an extreme risk protection order or have ‘been or [are] reasonably likely to be a danger to self or others, or to the community at large’ based on their psychological state or past conduct, and to ensure that persons seeking to obtain firearms have completed a firearm safety course”).

For example, researchers have found that Connecticut’s handgun-purchaser licensing law, enacted in 1995, was associated with an estimated 28 percent decrease in the state’s firearm homicide rate, and a decrease of between roughly 23 and 40 percent in the state’s firearm suicide rate. ER-59; *see also* ER-94–98 (estimating Connecticut’s law was “associated with a 40% reduction” in the state’s “firearm homicide rates during the first 10 years that the law was in place”).

Conversely, researchers studying the repeal of Missouri’s permit-to-purchase requirement found that the repeal was associated with an estimated 47 percent *increase* in the state’s firearm homicide rate, and a more than 23 percent *increase* in the firearm suicide rate following repeal. *See* ER-62.

Similarly, researchers have found that a loss of training requirements was associated with an increase in firearm assaults. *See* Mitchell L. Doucette et al., *Deregulation of Public Civilian Gun Carrying and Violent Crimes: A Longitudinal Analysis 1981–2019*, J. Criminol. Pub. Pol’y 833, 833 (2024), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1745-9133.12638>. One study observed that those with training were less likely to misfire—that is, shoot an

innocent bystander or police officer—in a simulated self-defense scenario. Joseph J. Vince, Jr. et al., *Firearms Training & Self-Defense* 43–44, Mt. St. Mary’s U. & Nat’l Gun Victims Action Council (2015), <https://perma.cc/N95W-D6M9>.

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As these studies and data reflect, and as the Court of Appeals correctly held, *see Kotek*, 338 Or App at 573–74, 579, Measure 114’s LCM and permit-to-purchase provisions are “reasonable regulations” that “promote public safety” by helping to reduce mass shootings incidents and decrease fatalities, and by limiting firearm access to those capable of responsibly handling such dangerous weapons. *Christian*, 354 Or at 33–34.

### CONCLUSION

Measure 114 is fully consistent with Article I, section 27 of the Oregon Constitution. For the reasons stated, the judgment of the Court of Appeals should be affirmed.

DATED: September 18, 2025

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the word-count limitation in ORAP 5.05(1)(b)(ii)(B) because the word count on this brief (as described in ORAP 5.05(1)(d)(i)) is 9,305 words.

I certify that the size of the type in this brief is not smaller than 14 points for both the text of the brief and footnotes, as required under ORAP 5.05(3)(b)(ii).

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## CERTIFICATE OF FILING AND SERVICE

I hereby certify that on September 18, 2025, I directed the original *Brief of Amici Curiae Brady Center to Prevent Gun Violence, Giffords Law Center to Prevent Gun Violence, Alliance for a Safe Oregon, Alliance for Gun Responsibility, and Gun Owners for Responsible Gun Ownership in Support of Defendants-Respondents*, to be electronically filed with the Appellate Court Administrator and Appellate Records Section via the eFiling system and served on the following parties by electronic service via the eFiling system:

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