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Pacifica Attorneys Achieve Significant Constitutional Victory in Defending Oregon Gun Safety Ballot Measure

Pacifica Represented Oregon Alliance for Gun Safety in Trial that Affirmed Constitutionality of Ballot Measure 114

SEATTLE, WA—Pacifica Law Group attorneys Zach Pekelis and Scott Ferron helped secure an important constitutional victory for our client, the Oregon Alliance for Gun Safety, and for the people of Oregon when, on Friday, July 14, a federal court in Portland ruled that Ballot Measure 114 is constitutional. Measure 114, which Oregon voters approved in November 2022, restricts the sale and manufacture of large-capacity gun magazines (LCMs) and establishes a permit system for all firearm purchases.

In her ruling, U.S. District Judge Karin J. Immergut held that the Second Amendment does not protect LCMs, defined as magazines that hold more than 10 rounds of ammunition, and that Measure 114's permitting provisions are also constitutional.

Judge Immergut's 122-page decision is the culmination of a six-day bench trial in four cases consolidated under the name *Oregon Firearms Federation, Inc. v. Kotek*, which were filed shortly after voters adopted Measure 114. The plaintiffs included firearms dealers and gun industry organizations, including the Second Amendment Foundation, the Firearms Policy Coalition, and the Oregon State Shooting Association (the NRA's Oregon affiliate). Pacifica's client, the Oregon Alliance for Gun Safety (the "Oregon Alliance"), is a Portland-based nonprofit gun safety advocacy organization and a leading advocate for Measure 114. In December, the Oregon Alliance intervened in the cases to defend the law. Pacifica attorneys Zach Pekelis and Scott Ferron tried the case alongside attorneys for the State of Oregon defendants.

During the weeklong trial, Pacifica attorneys:

- Delivered an opening statement, in which associate Scott Ferron stated: "It's the Alliance's firm conviction that Measure 114 is precisely the sort of policy that promotes gun safety while respecting the Second Amendment rights of Oregonians. The Alliance is confident that the testimony in this week's trial will confirm that conclusion."

- Offered testimony from expert and fact witnesses, including University of Illinois linguistics professor Dennis Baron, who testified that the original public meaning of the word “arms” in the Second Amendment did not include “accoutrements” like ammunition or ammunition containers; Oregon Health & Science University trauma surgeon Dr. Mackenzie Cook, who testified regarding the severity of gunshot wounds from LCM-equipped firearms and the burdens imposed on hospital capacity by mass shooting events; and Jenna Longenecker, whose mother was killed by a mass shooter armed with an LCM at the Clackamas Town Center, and whose father died by firearm suicide.
- Cross-examined plaintiffs’ witnesses, successfully exposing their close ties to the gun lobby and economic interests in the outcome of the case. The court found their witnesses’ bias “troubling” and gave “little weight” to their testimony. In contrast, the court found the defense experts—historians, social scientists, and other scholars—“significantly more credible—and entitled to more weight—than [plaintiffs’ experts].”
- Delivered a closing argument, in which partner Zach Pekelis stated: “In 2013, after Sandy Hook, fed-up Oregonians formed the Oregon Alliance for Gun Safety. We are proud to represent the Alliance which intervened in this case to help defend Measure 114. A commonsense gun safety law that the Alliance vigorously campaigned to enact, and the voters did so, spurred by another school massacre ten years after Sandy Hook at Robb Elementary in Uvalde. The people’s will should be honored and respected and upheld.”

Judge Immergut did so, ruling that Measure 114 is constitutional. The court’s decision is the first final judgment in any federal case challenging state laws restricting LCMs since the U.S. Supreme Court’s decision last year in *New York State Rifle and Pistol Association v. Bruen*, which significantly altered the standard governing Second Amendment claims. Applying that standard, which focuses on the Second Amendment’s text and the nation’s historical tradition of firearms regulation, Judge Immergut ruled that LCMs are not “bearable arms” protected by the Second Amendment because they are accessories that “are not necessary for firearms to function,” are not in common use for self-defense, and have “uniquely dangerous propensities” and are “closely related to weapons used in warfare.” The court also concluded that, even if LCMs were protected by the Second Amendment’s text, prohibiting their sale and manufacture is consistent with the nation’s long history of regulating especially dangerous arms and accessories. Judge Immergut found that “mass shootings using LCMs are an unprecedented societal concern,” and that Measure 114’s “restrictions on LCMs impose a minimal burden on the right to self-defense” and are consistent with the Nation’s history and tradition of firearms regulation. Judge Immergut also found that BM 114’s permitting provisions constitute a shall-issue licensing regime.

As to the permit-to-purchase system, Judge Immergut held that it was an example of a “shall-issue” licensing regime, which the Supreme Court in *Bruen* indicated is constitutional under the Second Amendment. Under *Bruen*, a shall-issue regime requires issuance of a permit based on “narrow, objective, and definite standards” and do not afford excessive discretion to licensing officials. The *OFF* Court ruled that Measure 114’s permitting regime is just such a shall-issue regime, and therefore constitutional under *Bruen*.

Rejecting the plaintiffs’ other constitutional claims under the Takings Clause and the Due Process Clause, the Court entered final judgment for the Oregon Alliance and the State Defendants.

Pacifica partner Zach Pekelis, who first-chaired the trial for the Oregon Alliance, hailed the decision. “The Court’s detailed, well-reasoned decision is a significant victory for gun violence prevention and for the people of Oregon,” Pekelis said. “In adopting Measure 114, Oregonians voted for common-sense strategies to reduce mass shootings, which overwhelmingly involve LCMs, and to ensure people meet basic requirements before they may purchase a deadly weapon—which has been shown to reduce homicides and other interpersonal violence. The ruling confirms that Measure 114 is not only good policy, but it is perfectly consistent with the Second Amendment. As the concurring Justices told us in *Bruen*, ‘Properly interpreted, the Second Amendment allows a variety of gun regulations.’ We hope other courts adjudicating Second Amendment cases around the country follow the Court’s thorough and measured decision, which we are confident will be affirmed on appeal.”

Ballot Measure 114 is also the subject of a case in Oregon state court. In that case, the Harney County Circuit Court entered a temporary restraining order blocking the measure’s enforcement pending trial, which is scheduled for September 2023.

In addition to representing the Oregon Alliance for Gun Safety, Pacifica has long represented the Seattle-based Alliance for Gun Responsibility. Pacifica secured significant victories for the Alliance for Gun Responsibility in state and federal cases challenging Washington firearm laws, including I-594 (requiring background checks for all gun sales), I-1639 (enacting age and residency restrictions on purchase of semiautomatic rifles), Senate Bill 5078 (restricting large-capacity magazines), and House Bill 1240 (restricting assault weapons).

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