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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF HARNEY

6 JOSEPH ARNOLD, CLIFF ASMUSSEN,
7 GUN OWNERS OF AMERICA, INC., and
8 GUN OWNERS FOUNDATION,

9 Plaintiffs,

10 v.

11 TINA KOTEK, Governor of the State of
12 Oregon, in her official capacity; and ELLEN
13 ROSENBLUM, Attorney General of the
14 State of Oregon, in her official capacity,
15 CASEY CODDING, Superintendent of the
16 Oregon State Police, in his official capacity,

17 Defendants.

Case No. 22CV41008

**PLAINTIFFS' TRIAL MEMORANDUM
AND MOTION FOR SUMMARY
JUDGMENT**

Oral Argument Requested

Trial Date and Time:

Monday, September 18, 2023 at 9:00 a.m. to
Monday, September 25, 2023.

18 **PLAINTIFFS' TRIAL MEMORANDUM**

19 This is a declaratory judgment action pursuant to ORS 28.020. Plaintiffs allege that Ballot
20 Measure 114 violates Article I, Section 27 of the Oregon State Constitution both facially and as
21 applied to Plaintiffs.

22 In order for a law regulating arms to be constitutional under Article I, Section 27, the
23 threshold question is whether the arms regulated are "protected arms" within the meaning of
Article I, Section 27. *State v. Delgado*, 298 Or 395, 400–01 (1984) (Article I, Section 27 is not
limited to firearms but protects all arms which "as modified by [their] modern design and function,
[are] of the sort commonly used by individuals for personal defense during either the revolutionary

1 and post-revolutionary era, or in 1859 when Oregon’s constitution was adopted.”) (brackets
2 supplied). **Plaintiffs will refer to this as the “protected arms” prong.** This prong determines
3 which arms are protected. If the arms are not protected, no further analysis applies, and the
4 regulation is lawful. Where, as here, the regulation applies to all firearms, the Court is not required
5 to perform a firearm-by-firearm analysis to determine which individual years, makes, and models
6 are protected and instead moves directly to the next steps in the analysis. *See State v. Christian,*
7 *354 Or 22 (2013)* (proceeding directly to the second phase of the analysis); *see also State v.*
8 *Christian, 249 Or App 1, 8–10 (2012)* (same). If the Court determines that the regulated arms are
9 protected, the following test applies and failing any of the below prongs defeats the law:

- 10 • **Manner of Use or Manner of Possession Prong:** The law must regulate the manner
11 of possession or manner of use of arms or place restrictions on the possession of arms
12 only upon certain identifiable and dangerous persons (namely felons), *Christian, 354*
13 *Or at 38* (“As we earlier established, the legislature may specifically regulate the
14 manner of possession and use of protected weapons to promote public safety as long
15 as the exercise of that authority does not unduly frustrate the right to bear arms
16 guaranteed by Article I, section 27.”); *State v. Hirsch, 338 Or 622, 677 (2005)* (relating
17 to certain identifiable and dangerous groups); *Delgado, 298 Or at 403–04* (“The
18 problem here is that ORS 166.510(1) absolutely proscribes the mere possession or
19 carrying of such arms. This the constitution does not permit.”);
- 20 • **Public Safety Prong:** The law must be necessary to benefit public safety and actually
21 and substantially benefit public safety, *Christian, 354 Or at 31* (the law must be
22 “necessary to protect public safety[.]”); *Hirsch, 338 Or at 677–78* (“That is not to say,
23 however, that the legislature’s authority to restrict the bearing of arms is so broad as to

1 be unlimited. Rather, any restriction **must satisfy the purpose of that authority** in the
2 face of Article I, section 27: the protection of public safety.”) (emphasis added); and

- 3 • **Infringement Prong:** The law must not infringe on the right to bear arms, *Christian*,
4 354 Or at 30 (citing *State v. Kessler*, 289 Or 359 (1980)) (“Article I, section 27, prevents
5 the legislature from infringing on the people’s individual right to bear arms for purposes
6 limited to self-defense.”); *Id.* at 33 (Article I, Section 27 protections prevent the
7 legislature from unduly frustrating the individual right to bear arms for self-defense).

8 As addressed in greater detail below, Ballot Measure 114 applies broadly to all firearms.
9 Sections 1–10 require a permit to purchase and a completed background check before *any* firearm
10 may be transferred while section 11 prohibits the purchase, possession, use, manufacture, import,
11 or transfer of any firearm or firearm magazine that is capable—now or in the future through
12 restoration, change, or conversion—of holding more than 10 rounds of ammunition *except for* .22
13 caliber or lever-action firearms utilizing a tubular magazine. Except for the narrow exceptions, no
14 firearm is permitted to carry 11 or more rounds of ammunition regardless of magazine type.

15 Because Ballot Measure 114 broadly applies to all firearms, this Court is not required to
16 engage in a firearm-by-firearm analysis of whether each and every make and model of modern
17 firearm meets the protected arms prong of the analysis and should move directly to analyzing
18 Ballot Measure 114 under the manner of use or manner of possession prong. Because no section
19 of Ballot Measure 114 regulates the manner of use or manner of possession of any firearm and
20 instead regulates the mere acquisition and mere possession of firearms while acting as an absolute
21 proscription on others, Ballot Measure 114 is unconstitutional on its face.

22 **Plaintiffs request that the Court allow oral argument on this issue on September 18,**
23 **2023 before the parties begin trial.**

1 I.

2 **FACTS; CONSTRUCTION OF BALLOT MEASURE 114**

3 In November of 2022, Ballot Measure 114 (“BM114” or “the Measure”) was narrowly
4 passed by Oregon’s voters. The Measure does two things. First, sections 1–10 create a permit to
5 purchase firearms requiring the completion of a firearms education program, an in-person firearm
6 demonstration, and a completed background check, as well as the requirements to demonstrate that
7 one has a permit to purchase a firearm and complete a subsequent background check prior to
8 transfer of the firearm for all licensed dealer sales, gun show sales, and private transfers. Second,
9 section 11 bans the manufacture, importation, possession, use, purchase, sale, or other transfer of
10 what it defines as “large-capacity magazines.”

11 **A. The Permit to Purchase.**

12 **(1) The Purchase or Transfer Process.**

13 Oregonians wishing to purchase or receive a transfer of any firearm from a gun dealer must
14 “present to the gun dealer current identification meeting the requirements of subsection (4) of this
15 section and a valid permit issued under section 4 of [BM114].” BM114, §6(2)(a). The gun dealer
16 must then, “by telephone or computer, verify that the purchaser has a valid permit-to-purchase a
17 firearm issued under section 4 of [BM114] and request that the [Department of State Police]
18 conduct a criminal history record check on the purchaser[.]” *Id.* at (2)(d). After receipt of the
19 request from the gun dealer, the Department of State Police must immediately process the
20 background check and either notify the gun dealer that the purchaser is disqualified or “provide
21 the gun dealer with a unique approval number indicating that the purchaser is qualified to complete
22 the transfer.” *Id.* at (3)(a). However, “[i]f the department is unable to determine if the purchaser is
23 qualified or disqualified from completing the transfer within 30 minutes, the department shall

1 notify the gun dealer and provide the gun dealer with an estimate of the time when the department
2 will provide the requested information.” *Id.* at (3)(b). Only after the Department of State Police
3 has actually made the decision to deny or delay a transaction for further research is an Oregonian
4 afforded the opportunity to seek review of the information maintained by the Oregon State Police
5 Criminal Offender Information System or Firearm Instant Check System and request a change,
6 correction or update. OAR 257-010-0035(1), (3). There is no timeline within which the Oregon
7 State Police must respond to such a request, again creating another indefinite timeline. *Id.* at (3).
8 Only after the Oregon State Police, or the agency originally contributing the information causing
9 the denial or delay, refuses to remove, modify, or correct the challenged record is an Oregonian
10 entitled to seek relief under the “provisions of Rules 30.00 to 30.80 of the Attorney General’s
11 Model Rules of Practice and Procedures under the Administrative Procedure Act, relating to
12 contested cases and judicial review.” *Id.* at (4). **These facts appear to be uncontested and give
13 rise to another reason BM 114 is unconstitutional.**

14 Under the Measure, “[t]he dealer may not transfer the firearm unless the dealer receives a
15 unique approval number from the department and, within 48 hours of completing the transfer, the
16 dealer shall notify the state that the transfer to the permit holder was completed.” BM114, §4(3)(c).
17 This replaced the former ORS 166.412(3)(c) which provided that a gun dealer “may deliver the
18 firearm to the purchaser” if the Department of State Police failed to provide a unique approval
19 number or notify the gun dealer of the purchaser’s disqualification “by the close of the gun dealer’s
20 next business day following the request by the gun dealer for a criminal history record check[.]”
21 ORS 166.412(3)(c) (2021) (amended 2022). In practice, this rule was inapplicable as it was
22 extended by federal law providing that a gun dealer may only transfer a firearm to a transferee if
23 a background check could not be completed within three days. 18 USC § 922(t).

1 Under pre-BM114 law, Oregonians wishing to receive a firearm via a private transfer were
2 required to do so through a licensed gun dealer, and the transfer process was similar to that of a
3 gun dealer sale. ORS 166.435(3) (2021) (amended 2022). However, BM114 added the requirement
4 that a transferee in a private sale present a valid permit to purchase a firearm to the gun dealer.
5 BM114, §7(3)(a). Additionally, it added the requirement that, “[i]f, upon completion of a criminal
6 background check, the gun dealer . . . (B) Receives notification . . . that the [Department of State
7 Police] is unable to determine if the transferee is qualified or disqualified from completing the
8 transfer, the gun dealer shall notify the transferor and neither the transferor nor the gun dealer shall
9 transfer the firearm to the transferee.” *Id.* at (3)(d). Although not express in ORS 166.435, gun
10 dealers were allowed, but not required, pursuant to ORS 166.412(3)(c) to complete the transfer
11 without a completed background check and subject to 18 USC § 922(t).

12 Under pre-BM114, a transferor at a gun show who was not gun dealer was required to
13 request a background check from the Department of State Police and was not authorized to transfer
14 the firearm until they received a unique approval number. ORS 166.438(1) (2021) (amended
15 2022). The Measure added to the requirements for gun show transfers that transferors who are not
16 gun dealers must confirm by telephone that the transferee has a valid permit to purchase, BM114,
17 § 8(2), and verify that confirmation with the Department of State Police, *Id.* at § 9(1)(a). **Plaintiffs**
18 **challenge this requirement as amended and assert that a ruling on the amendment would**
19 **apply to the pre-existing law as well.** *See* Complaint, 27:9 (Prayer at ¶4).

20 (2) **Obtaining a Permit to Purchase.**

21 The permit to purchase designates county sheriffs or police chiefs “with jurisdiction over
22 the residence of the person making an application for a permit to purchase, or their designees” as
23 Permit Agents. BM114, §3(5). A person seeking a permit to purchase applies through their permit

1 agent; for persons whose residence is under the jurisdiction of both a county sheriff and a policy
2 chief, they may apply through either permit agent. *Id.* at §4(1)(a). Among other qualifications, *Id.*
3 at (1)(b)(A)–(C), a person is qualified to be issued a permit to purchase after providing proof of
4 completion of a firearm safety course and payment of a fee to the permit agent not to exceed \$65.
5 *Id.* at (1)(b)(D), (E). This fee is intended to cover the costs of “fingerprinting, photographing and
6 obtaining a criminal background check” from the Department of State Police, and permit agents
7 are required to pay the Department of State Police part of that fee to complete the background
8 check. *Id.* at §(3)(b). A permit to purchase is valid for five years, unless revoked, *Id.* at (7)(a), and
9 a person renewing an unexpired permit does not have to complete another firearm training course
10 but does have to pay a fee not to exceed \$50 for the renewal, including another background check.
11 *Id.* at (7)(b).

12 As part of obtaining a permit to purchase a firearm, permit agents must determine whether
13 a person is qualified to be issued a permit to purchase through a completed criminal background
14 check. *Id.* at (1)(b)(A), (e). This background check is in addition to the background check that
15 must be completed at the point of sale or transfer. *Id.* at §§6, 7, 8, and 9. The background check
16 consists of the following:

17 The applicant must submit to fingerprinting and photographing by the permit agent.
18 The permit agent shall fingerprint and photograph the applicant and shall conduct
19 any investigation necessary to determine whether the applicant meets the
20 qualifications described in paragraph (b) of this section. **The permit agent shall**
21 **request the department to conduct a criminal background check, including**
22 **but not limited to a fingerprint identification, through the Federal Bureau of**
23 **Investigation.** The Federal Bureau of Investigation shall return the fingerprint
cards used to conduct the criminal background check and may not keep any record
of the fingerprints. **Upon completion of the criminal background check and**
determination of whether the permit applicant is qualified or disqualified from
purchasing or otherwise acquiring a firearm **the department shall report the**
results, including the outcome of the fingerprint-based criminal background
check, to the permit agent.

1 *Id.* at §4(1)(e). Actual completion of the FBI background check and a report of the results is
2 necessary for a permit agent to issue a permit to purchase. *Id.* at (1)(b) (“A person is qualified to
3 be issued a permit-to-purchase under this section if the person: (A) Is not prohibited from
4 purchasing or acquiring a firearm under state or federal law, including but not limited to
5 successfully **completing a criminal background check as described under paragraph (e)** of
6 this subsection”) (emphasis added); *see also* (3)(a) (“Within 30 days of receiving an application
7 for a permit under this section, if the permit agent has verified the applicant’s identity and
8 **determined that the applicant has met each of the qualifications described in paragraph**
9 **(1)(b) of this section**, the permit agent shall issue the permit-to-purchase.”) (emphasis added).
10 Defendants dispute that an Oregonian must successfully complete all phases of the criminal
11 background check, setting one standard for the fingerprint identification and another standard for
12 the remaining portions of the criminal background check.

13 Defendants advance this bizarre reading because all Defendants have admitted that “the
14 FBI has informed Defendant that the FBI has determined that Ballot Measure 114 does not meet
15 the requirements of Pub. L. 92-544.” *See* Defendant Tina Kotek’s Response to Plaintiff Gun
16 Owners Foundation’s First Request for Admissions, Nos. 1 and 2 (attached hereto as Exhibit 1)
17 (hereinafter “Defendant Kotek’s First RRFA”); Defendant Ellen Rosenblum’s Response to
18 Plaintiff Gun Owners Foundation’s First Request for Admissions, Nos. 1 and 2 (attached hereto
19 as Exhibit 2) (hereinafter “Defendant Rosenblum’s First RRFA”); Defendant Casey Coddling’s
20 Response to Plaintiff Gun Owners Foundation’s First Request for Admissions, Nos. 1 and 2
21 (attached hereto as Exhibit 3) (hereinafter “Defendant Coddling’s RRFA”). As such, no Oregonian
22 may be lawfully issued a permit to purchase by any permit agent in the state and will be required
23 to proceed to the due process appeal provided by section 5 of the Measure at the 30-day mark. *See*

1 BM114, §5. This causes a severe undue burden and infringement on Oregonians’ right to self-
2 defense.

3 It is a question of law for this Court whether an applicant seeking a permit to purchase
4 without a completed FBI background check “meets the criteria that are used for issuance” of the
5 permit. *Id.* at §5(6); *see also Held v. Hanlin*, 239 Or App 486, 493–94 (2010) (Holding in part
6 that there is “no statutory basis” upon which to compel a Sheriff to issue a concealed handgun
7 license until after the Sheriff had complied with the procedures required by the statute.) (Plaintiffs
8 note that Defendant Rosenblum authored the decision in this case).

9 Also, as part of obtaining a permit to purchase a firearm, applicants must demonstrate
10 completion of a firearm safety course complying with section 4(8). *See* BM114, §4(8). The firearm
11 safety course consists broadly of two components: an educational component covering listed topics
12 (the “Educational Course”), *Id.* at (8)(c)(A)–(C), and an “[i]n-person demonstration of **the**
13 **applicant’s ability** to lock, load, unload, fire and store a firearm before an instructor certified by
14 a law enforcement agency” (the “In-Person Demonstration”), *Id.* at (8)(c)(D) (emphasis added).
15 For applicants whose applications are denied or not approved within 30 days, the Measure provides
16 an appeal process. *Id.* at §5. The 30-day timeline commences upon the permit agent’s receipt of a
17 completed application and prior to the permit agent requesting a background check.

18 **B. The Magazine Ban.**

19 **(1) The Crime and Affirmative Defenses.**

20 The second part of the Measure (section 11) criminalizes the manufacture, importation,
21 possession, use, purchase, sale” or other transfer of “large-capacity magazines[,]”, *Id.* at §11(2),
22 subject to limited exceptions described in the Measure, none of which apply to ordinary
23 Oregonians, *Id.* at (3)(a) (applying to gun dealers in the first 180 days following the effective date),

1 (b) (applying to licensed gun dealers selling/transferring to law enforcement or the Armed Forces
2 of the United States), and (c) (government officers, agents, or employees acting within the scope
3 of their official duties). The “crime of unlawful manufacture, importation, possession, use,
4 purchase, sale or otherwise transferring of large-capacity magazines” is a class A misdemeanor,
5 *Id.* at (6), and subject to—not an *exception*—but certain affirmative defenses described in
6 subsection (5) of the Measure. *Id.* at (5). It is a Class A Misdemeanor. *Id.* at (6).

7 The first affirmative defense in subsection (5)(a) is for those who owned the magazine prior
8 to the effective date of the Measure; in order to avail oneself of this affirmative defense, the owner
9 has the burden of proving that they are in legal possession of the magazine by proving the
10 following:

- 11 (c) In addition to either (a) or (b) of this subsection the owner has not
12 maintained the large-capacity magazine in a manner other than:
- 13 (A) On property owned or immediately controlled by the registered
owner;
 - 14 (B) On the premises of a gun dealer or gunsmith licensed under 18
U.S.C. 923 for the purpose of lawful service or repair;
 - 15 (C) While engaging in the legal use of the large-capacity magazine, at a
public or private shooting range or shooting gallery or for
16 recreational activities such as hunting, to the extent permitted under
state law; or
 - 17 (D) While participating in firearms competition or exhibition, display or
educational project about firearms sponsored, conducted by,
approved or under the auspices of a law enforcement agency or a
national or state-recognized entity that fosters proficiency in
18 firearms use or promotes firearms education; and
 - 19 (E) While transporting any large-capacity magazines in a vehicle to one
of the locations authorized in paragraphs (c)(A) to (D) of this
20 subsection, the large-capacity magazine is not inserted into the
firearm and is locked in a separate container.

21 *Id.* at (5)(c).

22 The second affirmative defense is for those who, on or after the effective date of the
23 Measure, “acquired possession of the large-capacity magazine by operation of law **upon the death**

1 **of a former owner who was in legal possession of the large-capacity magazine[.]”** *Id.* at (5)(b).
2 Here, the acquiring heir has the duty of not only proving that they are in legal possession of the
3 magazine under subsection (5)(c), but that the former owner was in legal possession of it as well.
4 *Id.* at (5)(c). The last affirmative defense is for persons who have “permanently and voluntarily
5 relinquished the large-capacity magazine to law enforcement or to a buyback or turn-in program
6 approved by law enforcement, prior to commencement of prosecution by arrest, citation or a formal
7 charge.” *Id.* at (5)(d).

8 (2) **Defining “Large-Capacity Magazine”.**

9 As defined in the Measure, a “large-capacity magazine,” subject to the exceptions of
10 subsection (1)(d)(A)–(C), means:

11 [A] **fixed or detachable magazine**, belt, drum, feed strip, helical feeding device,
12 or similar device, **including any such device joined or coupled with another in**
13 **any manner**, or a kit with such parts, that has an **overall capacity** of, or **that can**
14 **be readily restored, changed, or converted to accept, more than 10 rounds of**
15 **ammunition** and allows a shooter to **keep firing without having to pause to**
16 **reload[.]**

17 *Id.* at (1)(d) (emphasis added). This definition differs greatly from that used in Washington and
18 California. *See* RCW 9.41.370; Cal Penal Code § 32310 PC. The first exception to this definition
19 is for fixed or detachable magazines that have been “permanently altered” so that they are “not
20 capable, now or in the future, of accepting more than 10 rounds of ammunition[.]” *Id.* at (1)(d)(A).
21 The second and third exceptions are tubular magazines “designed to accept, and capable of
22 operating only with 0.22 caliber rimfire ammunition[.]” *Id.* at (1)(d)(B), and tubular magazines for
23 lever-action firearms, *Id.* at (1)(d)(C).

24 This definition limits maximum capacity of fixed or detachable magazines to nine rounds
25 of ammunition because all firearms are capable of holding one round in firing chamber of the

1 firearm. As such, a fixed or detachable magazine (a device) capable of holding ten rounds of
2 ammunition, when joined with a firearm (another device), would have “an overall capacity of . . .
3 more than 10 rounds of ammunition” and allow the operator to “keep firing without having to
4 pause to reload.” *Id.*

5 This definition also criminalizes many shotguns that, ostensibly, have an overall capacity
6 (including the round in the firing chamber of the firearm) of less than ten rounds of standard-length
7 shotgun ammunition—three to three- and one-half-inch shotgun shells. This is because of the
8 invention of shotgun “mini-shells,” which are one- and three-quarters to two- and one-half inches.
9 The invention of mini-shells allows many shotguns to accept more than ten rounds of ammunition.

10 Further, this definition criminalizes the vast majority of detachable magazines which nearly
11 universally come standard with a removable baseplate at the base of the detachable magazine. This
12 is because magazines with a removable baseplate—whether in the “single stack” or “double stack”
13 variety—are almost universally able to accept magazine extensions, whether they are from the
14 original equipment manufacturer (“OEMs”) or created by aftermarket manufacturers or 3D
15 printers (“aftermarket”). As such, these magazines can be readily restored, changed, or converted
16 to accept more than ten rounds of ammunition. *Id.* Likewise, this definition criminalizes magazines
17 that have—whether by the manufacturer, firearm owner, government entity, or aftermarket
18 gunsmith—had installed rivets, magazine capacity limiting dimples, or a basepad magazine
19 capacity limiter to limit the overall capacity of the magazine itself to fewer than ten rounds. This
20 is because the rivets, magazine capacity limiting dimples, and basepad magazine capacity limiter
21 can be readily removed in seconds by ordinary persons with no gunsmith training and using only
22 regular household tools (*i.e.* cordless drill, flathead screwdriver, etc.). In short, there are no modern
23 firearms that escape the Measure’s ban, which relegates Oregonians to antiques for self-defense.

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II.

PLAINTIFFS' CLAIMS

Plaintiffs present their first claim for relief under the Declaratory Judgment Act as ORS 28.020. Under ORS 28.020, “[t]o determine whether plaintiff satisfied the statutory requirements in ORS 28.020 to bring the claim, and whether the claims are ripe for adjudication, we examine the underlying facts to determine if and how the challenged ordinance restrictions affect plaintiff’s legal interests.” *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or App 457, 466 (2010). ORS 28.020 gives Plaintiff a statutory right, and statutory basis to present this claim. ORS 28.020 states, “[a]ny person interested under a deed, will, written contract or other writing constituting a contract, or whose rights, status or other legal relations are affected by a constitution, statute, municipal charter, ordinance, contract or franchise may have determined any question of construction or validity arising under any such instrument, constitution, statute, municipal charter, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder[.]” ORS 28.020. In order to present a challenge under ORS 28.020, a party need not wait until a challenged law actually applies so long as the eventual application to the party is not a matter of speculation. *Savage v. Munn*, 317 Or 283, 292 (1993).

III.

LAW TO BE APPLIED; ARTICLE I, SECTION 27

Article I, Section 27 of the Oregon State Constitution provides that, “[t]he 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.” Or. Const. Art. I, § 27. **Plaintiffs ask that the Court take judicial notice of the fact that Article I, section 27 was adopted without any**

1 **amendments or noted debate from the delegates pursuant to OEC 201 and 202.**¹ In order for
2 a law regulating arms to be constitutional under Article I, Section 27, the threshold question is
3 whether the arms regulated meet the protected arms prong. If so, the next steps of the analysis are
4 the manner of use or manner of possession prong, then the public safety prong, and finally the
5 infringement prong. If the regulation fails any one of these three prongs, the law is unconstitutional.
6 No Oregon court has ever been instructed to engage in an interest-balancing test or to in any way
7 balance one prong of the analysis against another. This means that, for example, no level of benefit
8 to public safety can overcome a regulation that infringes on the right to bear arms in self-defense
9 or is not a manner of use or manner of possession regulation.

10 **A. The Protected Arms Prong; Arms Protected by Article I, Section 27.**

11 **(1) Treatment of Modern Arms Under *Delgado*.**

12 As the Oregon Supreme Court has held, Article I, Section 27 is not limited to firearms but
13 protects all arms which “as modified by [their] modern design and function, [are] of the sort
14 commonly used by individuals for personal defense during either the revolutionary and post-
15 revolutionary era, or in 1859 when Oregon’s constitution was adopted.” *Delgado*, 298 Or at 400–
16 01 (brackets supplied). In *Delgado*, the Supreme Court noted that the constitutional drafters “must
17 have been aware that technological changes were occurring in weaponry as in tools generally. The
18 format and efficiency of weaponry was proceeding apace. This was the period of development of
19 the Gatling gun, breach loading rifles, metallic cartridges and repeating rifles.” *Id.* at 403.
20 Moreover, the *Delgado* Court specifically contemplated the issue of multi-shot firearms and
21 advancements in technology and roundly rejected the exclusion of such arms from Article I,

22 _____
23 ¹ Claudia Burton & Andrew Grade, Legislative History of the Oregon Constitution of 1857 – Part
1 (Articles I & II), 37 WILLAMETTE L. REV. 489, 545–46 (2001).

1 Section 27:

2 At one time the single-action, single-shot handgun was carried by many men for
3 defense. Did the development of the double-action feature of the handgun or the
4 addition of the revolving cylinder which enabled one to fire the gun several times
5 without pausing to reload, as a matter of law, transform the handgun from a
6 defensive weapon to an offensive weapon? Obviously, the gun, both before and
7 after such changes, could be used for either defense or offense.

8 *Id.* at 400 n. 4. In line with the Supreme Court’s other holdings when interpreting constitutional
9 provisions, the Supreme Court has stated that its “purpose is not to freeze the meaning of the state
10 constitution to the time of its adoption, but is instead to identify, in light of the meaning understood
11 by the framers, relevant underlying principles that may inform [the Court’s] application of the
12 constitutional text to modern circumstances.” *Couey v. Atkins*, 357 Or 460, 490 (2015) (internal
13 citations omitted).

14 Defendants have suggested that only firearm makes, models, and capabilities that existed
15 in 1859 are protected arms, which directly contradicts how controlling case law has applied Article
16 I, Section 27. Therefore, instead of freezing an Oregonian’s right to bear arms to antiques as
17 Defendant’s argument seems to insist, when analyzing whether a class of weapons qualifies as
18 *arms* under Oregon’s Constitution, Oregon courts must consider whether the arms are “of the sort
19 commonly used by individuals for personal defense” including modern modifications to their
20 design and function. *Delgado*, 298 Or at 400–01.

21 **(2) Test to be Applied When All Firearms Affected.**

22 Additionally, in the most recent Supreme Court case interpreting Article I, Section 27, the
23 Supreme Court dispensed with this historical antique firearm analysis where the law at issue
broadly applied to all firearms. Instead of engaging in a firearm-by-firearm analysis of all modern
firearms to which the law at issue applied to determine whether each and every modern firearm

1 qualified as a “protected arm,” the Supreme Court (and the Court of Appeals) proceeded directly
2 to the next part of the analysis examining whether the law at issue regulates the *manner of use* or
3 *manner of possession* of the arm. *See Christian*, 354 Or 22 (proceeding directly to the second phase
4 of the analysis); *see also Christian*, 249 Or App at 8–10 (same).

5 In *Christian*, the Supreme Court considered a contested City of Portland ordinance
6 proscribing the knowing possession or carrying of a firearm “including while in a vehicle in a
7 public place, recklessly having failed to remove all the ammunition from the firearm” subject to
8 fourteen exceptions, “including an exception for persons who are licensed by the State of Oregon
9 to carry a concealed weapon.” *Christian*, 354 Or at 26. The Court did not engage in a make and
10 model, firearm-by-firearm analysis of all modern firearms to determine whether the ordinance was
11 constitutionally applicable to some firearms but not others, thus classifying some firearms as
12 protected and others as unprotected. This is distinguishable treatment from cases such as *Oregon*
13 *State Shooting Association* where Multnomah County listed and classified “certain firearms as
14 ‘assault weapons,’” and prohibited their possession in public. *Oregon State Shooting Association*
15 *v. Multnomah County*, 122 Or App 540, 543 (1993). The ordinance at issue in that case,
16 Multnomah County Ordinance 646 (1990), listed fifteen semi-automatic rifles, nine semi-
17 automatic pistols, and two shotguns as “assault weapons” which made a firearm-by-firearm
18 analysis of only 26 firearms possible. *Id.*; *see* 1990 Mult. County. Ord. 646, §§II(A), IV.²
19 Importantly, both *Christian* and *Oregon State Shooting Association* were facial challenges.
20 Therefore, where a law broadly applies to all firearms or even the vast majority of firearms (*e.g.*,
21 all firearms *except* a specified list, thus still making a firearm-by-firearm analysis of all firearms

22 _____
23 ² Available at: https://multco.access.preservica.com/uncategorized/IO_cd296500-5823-49c5-b67b-187d92ef8525/.

1 unnecessary), the *Chrisian* analysis does not require Oregon courts to engage in a firearm-by-
2 firearm examination of all modern firearms and instead requires that they proceed directly to the
3 next step of the analysis.

4 (3) **Magazines are Arms.**

5 Defendants have also suggested that firearm magazines are not themselves arms. While
6 neither the Oregon Court of Appeals nor Supreme Court have addressed this issue, neither have
7 given any indication that any part of the firearm that allows it to function for self-defense (trigger,
8 barrel, magazine, etc.) is somehow unprotected under Oregon’s constitution. To the contrary, the
9 Supreme Court in *Delgado* held that a switchblade utilizing a spring was a protected arm despite
10 the fact that a switchblade *could* operate as a knife without utilizing the spring. *Delgado*, 298 at
11 403. However, unlike the spring, a firearm cannot operate for defensive purposes without an
12 ammunition feeding device.

13 Under the Measure, all ammunition feeding devices for all firearms are affected. This is
14 because all firearms have either a fixed or detachable magazine as defined under the statute. *See*
15 BM114, §11(1)(b), (c), and (d). A fixed magazine is “an ammunition feeding device contained in
16 or permanently attached to a firearm in such a manner that the device cannot be removed without
17 disassembly of the firearm action[.]” *Id.* at (1)(c). Fixed magazines are plainly part of the firearm.
18 Defendants have attempted to argue that detachable magazines do not constitute “arms” because
19 they can be detached from the firearm and replaced. However, detachable magazines perform the
20 same function as fixed magazines as part of the firearm operation and are not any less a part of the
21 firearm merely because they are detachable. The three primary justifications for which Article I,
22 Section 27 was enacted, as identified in *Kessler*, all require that firearms be capable of firing
23 bullets, and magazines (whether fixed or detached) are a part of that action.

1 Persuasive federal authority also informs the legal conclusion that magazines, whether
2 fixed or detached, are arms. The United States Supreme Court has interpreted the “the Second
3 Amendment’s definition of ‘arms’” to cover all “modern instruments that facilitate armed self-
4 defense,” and including ““even those that were not in existence at the time of the founding,”” and
5 regardless of whether they are strictly “necessary” for self-defense. *NYSRPA v. Bruen*, 142 S Ct
6 2111, 2132, 213 L Ed 2d 387 (2022) (quoting *District of Columbia v. Heller*, 554 US 570, 582
7 (2008). In short, “[t]he 18th-century meaning is no different from the meaning today.... ‘[A]rms’
8 [means] ‘any thing that a man wears for his defence, or takes into his hands, or useth in wrath to
9 cast at or strike another.’” *Heller*, 554 US at 581. Magazines fit comfortably within that settled
10 definition under the Second Amendment. After all, it is not the gun, but bullets *fed by the magazine*,
11 that are used to “strike another.” *See Id.* at 581. Citizens carry firearms equipped with magazines
12 and other ammunition feeding devices for the same reason they carry firearms loaded with
13 ammunition: “[W]ithout bullets, the right to bear arms would be meaningless.” *Jackson v. City &*
14 *Cnty. of S.F.*, 746 F3d 953, 967 (9th Cir 2014). It is undeniable that magazines and other
15 ammunition feeding devices facilitate armed self-defense. The Ninth Circuit has recognized a
16 “corollary, albeit not unfettered, right to possess the magazines necessary to render . . . firearms
17 operable.” *See Fyock v. Sunnyvale*, 779 F3d 991, 998 (9th Cir 2015). The Ninth Circuit has also
18 found that “[w]ithout a magazine, many weapons would be useless, including ‘quintessential’ self-
19 defense weapons like the handgun.” *Duncan v. Becerra*, 970 F3d 1133, 1146 (9th Cir 2020)
20 (citation omitted), *rev’d en banc on other grounds*, *Duncan v. Bonta*, 19 F4th 1087 (9th Cir 2021),
21 *vacated on other grounds*, *Duncan v. Bonta*, 142 S Ct 2895 (2022).

22 There is simply no Oregon authority indicating that firearm magazines are not included
23 within the Oregon Constitution’s definition of “arms.” To the contrary, reasonable inferences from

1 Oregon’s caselaw and persuasive authority from federal appellate courts interpreting the Second
2 Amendment demonstrate as a matter of law that firearm magazines are a part of the firearm itself,
3 necessary for its operation, and constitute arms.

4 **B. The Manner of Use or Manner of Possession Prong; Limitations on Police**
5 **Power by Article I, Section 27.**

6 In consistent decisions by the Oregon State Supreme Court, the Court has identified three
7 permissible types of arms regulations which can potentially not infringe on Oregonians’ Article I,
8 Section 27 rights if the regulations also actually and substantially benefit public safety. Two such
9 regulations apply to all citizens, and one applies only to certain identifiable and dangerous groups
10 of persons.

11 **(1) Manner of Use and Manner of Possession Laws.**

12 The first two regulations applicable to all citizens are *manner* of use and *manner* of
13 possession laws. Use of the word *manner* presupposes that the possession or use (or *mere*
14 possession or *mere* use) of the arm is permissible, but places restrictions on *how* or *the manner in*
15 *which* the arm is possessed or used. The most consistent and contextual dictionary definition of
16 “manner” is a “mode of procedure or way of acting.”³ See *Lovelace v. Bd. Of Parole & Post-*
17 *Prison Supervision*, 183 Or App 283 (2002) (defining “manner” as “a mode of procedure or way
18 of acting”) (citing *Webster's Third New Int'l Dictionary*, 1376 (unabridged ed 1993)); see also
19 *State v. Taylor*, 271 Or App 292, 298 (2015) (holding that when a statutory term is not defined,
20 the court will look at the dictionary definition to discern the plain, natural and ordinary meaning)
21 (citing *State v. Gaines*, 346 Or 160, 175 (2009)).

22 _____

23 ³ Merriam Webster.com, Manner, (Aug. 17, 2023, 4:29 PM), [https://www.merriam-webster.com/dictionary/manner#:~:text=a\(1\),or%20way%20of%20acting%20%3A%20fashion.](https://www.merriam-webster.com/dictionary/manner#:~:text=a(1),or%20way%20of%20acting%20%3A%20fashion.)

1 This reading is supported by Oregon’s Supreme Court case law. One example the Supreme
2 Court has provided of a regulation of the *manner of possession* was “[t]he English Statute of
3 Northampton in 1327 [which] forbade persons to ride at night carrying a firearm for the purpose
4 of terrifying the people.” *Kessler*, 289 Or 369–70 (brackets supplied);⁴ *see State v. Smoot*, 97 Or
5 App 255, 257–58 (1989) (“Contrary to defendant’s argument, ORS 166.240(1) does not impinge
6 on the constitutional right to possess a switchblade knife. A person may possess and carry a
7 switchblade so long as it is not concealed. Rather, ORS 166.240(1) regulates only the manner of
8 possession.”). This directly interprets the right of possession as different from the manner of
9 possession. Similarly, an example the Supreme Court has provided of a regulation of the *manner*
10 *of use* was “[a] 1678 Massachusetts law [that] forbade shooting near any house, barn, garden, or
11 highway in any town where a person may be ‘killed, wounded, or otherwise damaged.’” *Id.*
12 (brackets supplied). Again, this law presupposed that a person may use their firearm but set
13 restrictions on where one could not shoot.

14 Turning to a modern example in *Christian*, the Supreme Court upheld a Portland ordinance
15 which provided that “[i]t is unlawful for any person to knowingly possess or carry a firearm, in or
16 upon a public place, including while in a vehicle in a public place, recklessly having failed to
17 remove all the ammunition from the firearm.” *Christian*, 354 Or at 26. In upholding the ordinance,
18 the Supreme Court underscored its earlier rulings against total proscriptions on the mere possession
19 of arms in *Kessler*, *Blocker*, and *Delgado*, finding that the ordinance was constitutional only

20

21 ⁴ *See also Bruen*, 142 S Ct at 2139–40 (noting this statute likely dealt only with “the wearing of
22 armor” or perhaps “lances” that were “worn or carried only when one intended to engage in lawful
23 combat ... to breach the peace,” and “the Statute’s prohibition on going or riding ‘armed’
obviously did not contemplate handguns”); at 2143–45 (explaining that later laws modeled on the
Statute applied only to certain behaviors of “affray” and “riots” and “going armed ‘to the terror of
the people’”).

1 because its recklessness standard showed that it was regulating the manner of possession (reckless
2 possession) rather than the mere possession, and because the ordinance provided exceptions for
3 those licensed to carry concealed firearms. *Id.* at 29; *see State v. Blocker*, 291 Or 255, 260 (1981)
4 (“On the other hand, ORS 166.510 . . . is not, nor is it apparently intended to be, a restriction on
5 the manner of possession or use of certain weapons. The statute is written as a total proscription
6 of the mere possession of certain weapons, and that mere possession, insofar as a billy is
7 concerned, is constitutionally protected.”).

8 (2) **Regulations on Possession by Certain Identifiable and Dangerous**
9 **Persons.**

10 The third type of regulation that the Supreme Court has held to be constitutionally
11 permissible are those prohibiting the possession of firearms by certain criminals (namely felons,
12 but also immigrants, historically). *State v. Cartwright*, 246 Or 120 (1966); *Kessler* 289 Or at 370.
13 As articulated in *Hirsch*, the Supreme Court has held that “Article I, section 27, does not deprive
14 the legislature of the authority (1) to designate *certain groups of persons* as posing *identifiable*
15 *threats* to the safety of the community *by virtue of earlier commission of serious criminal conduct*
16 and, in accordance with such a designation, (2) to restrict the exercise of the constitutional
17 guarantee *by members of those groups.*” *Hirsch*, 338 Or 677 (emphasis added). The Supreme Court
18 has never held that the legislature may treat all Oregonians as identifiable threats. *Id.* (“[A]lthough
19 it has broad authority under that provision to assess the threat to public safety that a particular
20 group poses, the legislature is not free to designate any group without limitation as one whose
21 membership may not bear arms.”). Only felons and “unnaturalized foreign-born persons” have
22 been found by the Supreme Court to be constitutionally prohibited from possessing firearms. *Id.*
23 at 636–37 (citing *State v. Robinson*, 217 Or 612 (1959)).

1 **(3) Total Proscriptions Presumably Unconstitutional.**

2 Importantly, the Oregon Supreme Court has never upheld the proscription of an entire class
3 of arms to Oregonians and for over 40-years has consistently found that absolute proscriptions on
4 arms violate Article I, Section 27 on every occasion in which it examined such laws. *Kessler*, 289
5 Or at 372 (“The statute in this case . . . prohibits the mere possession of a club.”); *Blocker*, 291 Or
6 at 260; *Delgado*, 298 Or at 403–04 (“The problem here is that ORS 166.510(1) absolutely
7 proscribes the mere possession or carrying of such arms. This the constitution does not permit.”);
8 *Christian*, 354 Or at 40–41 (“We begin by observing that the ordinance expressly allows a person
9 to knowingly possess or carry a loaded firearm in a public place if the ‘person [is] licensed to carry
10 a concealed handgun.’ Thus, the ordinance is not a total ban on possessing or carrying a firearm
11 for self-defense in public like those bans that this court held violated Article I, section 27, in
12 previous cases.”) (internal citations omitted).

13 **C. Public Safety Prong; Regulations Must be Necessary to Protect Public Safety**
14 **and must Actually and Substantially Benefit Public Safety.**

15 Even where the Court finds that a law regulates the manner of possession or manner of use
16 of an arm, or where the regulation proscribes possession of an arm by a certain dangerous group
17 of persons, the regulation must still meet two other requirements. The first of these requirements
18 is that the law must be **necessary** to promote public safety and must **actually satisfy** the purpose
19 of public safety. Further, though the Supreme Court has not specifically addressed the degree to
20 which public safety must be promoted, Plaintiffs contend that the benefit to public safety must be
21 substantial because of the effect such a law has on a constitutionally guaranteed right.

22 First, for a law regulating the manner of possession or manner of use of arms to be
23 constitutional, it must be “necessary to protect public safety[.]” *Christian*, 354 Or at 31; *see also*

1 *Hirsch*, 338 Or at 677. As examples, the *Christian* Court cited to prohibitions on the carrying of
2 concealed weapons and restrictions on the possession of arms by felons. *Id.* Use of the word
3 “necessary” presupposes a least-restrictive-means-type test similarly utilized determining the
4 constitutionality of laws impinging upon other constitutional rights held by Oregonians. *See Aslin*
5 *v. Coos County Assessor*, 2009 Or Tax LEXIS 15 (2009) (citing *Meltebeke v. BOLI*, 120 Or App
6 273, 279 (1993) (Or Const. Art. I, §§2 and 3). Further, the requirement that the law must be
7 necessary to further public safety requires not only that the government demonstrate that there
8 exists an issue of public safety that must be solved through a permissible law, but that the law will
9 substantially benefit public safety by addressing that problem.

10 Second, as implied by the requirement that the law be “necessary” and expressly stated in
11 *Hirsch*, a law regulating the manner of possession or manner of use of arms must actually satisfy
12 the goal of public safety. *Hirsch*, 338 Or at 677–78 (“That is not to say, however, that the
13 legislature’s authority to restrict the bearing of arms is so broad as to be unlimited. Rather, any
14 restriction **must satisfy the purpose of that authority** in the face of Article I, section 27: the
15 protection of public safety.”) (emphasis added). Plaintiffs contend that a *de minimis* or merely
16 speculative benefit to public safety is insufficient to demonstrate that a restriction *actually* satisfies
17 the goal of furthering public safety. Instead, Plaintiffs contend that the benefit must be substantial
18 in order to justify any interference with a constitutional right, however slight Defendants assert
19 that interference may be. As articulated in *McDonald*, “[t]he right to keep and bear arms, however,
20 is not the only constitutional right that has controversial public safety implications. All of the
21 constitutional provisions that impose restrictions on law enforcement and on the prosecution of
22 crimes fall into the same category.” *McDonald v. City of Chicago*, 561 US 742, 783 (2010) (citing
23 *Hudson v. Michigan*, 547 US 586, 591, (2006) (“The exclusionary rule generates ‘substantial social

1 costs,' . . . which sometimes include setting the guilty free and the dangerous at large”); *Barker v.*
2 *Wingo*, 407 US 514, 522 (1972) (reflecting on the serious consequences of dismissal for a speedy
3 trial violation, which means “a defendant who may be guilty of a serious crime will go free”);
4 *Miranda v. Arizona*, 384 US 436, 517 (1966) (Harlan, J., dissenting); *id.*, at 542, (White, J.,
5 dissenting) (objecting that the Court's rule “[i]n some unknown number of cases . . . will return a
6 killer, a rapist or other criminal to the streets . . . to repeat his crime”)).

7 **D. Infringement Prong; Regulations Must Not Infringe on the Right to Bear**
8 **Arms.**

9 If a court finds that a law regulates the manner of possession or manner of use of an arm,
10 or that the regulation proscribes possession of an arm by certain dangerous group of persons, and
11 also finds that the law is necessary to, and actually does, further public safety, the law may still be
12 unconstitutional if it infringes on the right to bear arms as guaranteed by Article I, Section 27.

13 Article I, Section 27 guarantees not only the right to bear arms for self-defense, including
14 the defense of person and property, but further guarantees the right to bear arms in defense of the
15 state or in self-defense from the state.⁵ Indeed, as noted in *Kessler*, the three primary justifications

16

17 ⁵ Although Oregon courts have not had occasion to determine whether the right to defend oneself
18 under Article I, Section 27 includes the right to defend one’s livestock or other property, ample
19 persuasive authority, along with Oregon’s historic livestock traditions, indicates that the right to
20 do so is included in Article I, Section 27 protections. *See Heller*, 554 US at 628. The exigencies
21 of the rural American experience undoubtedly include protecting livestock and other property from
22 predators. *Kessler*, 289 Or at 367; *see* ORS 498.012; *State v. Webber*, 85 Or App 347, 351–52
23 (1987) (“The choice of evils defense is not limited to actions taken to protect life, but may also be
invoked by a defendant who has acted unlawfully in order to protect property . . . Defendant was
entitled to a choice of evils instruction if there was some evidence from which the jury could find
that (1) his conduct was necessary to avoid a threatened injury, (2) the threatened injury was
imminent and (3) it was reasonable for defendant to believe that the need to avoid the injury to his
property was greater than the need to avoid the injury that the law prohibiting killing the deer
without a permit seeks to prevent.” (citations omitted)).

1 for a state constitutional right to bear arms are: “(a) The preference for a militia over a standing
2 army; (b) the deterrence of governmental oppression; and (c) the right of personal defense.”
3 *Kessler*, 289 Or 366.

4 The affirmative defense of self-defense with a firearm resulting in a lawful homicide has,
5 since no later than a mere four years after adoption of Oregon’s constitution, been described as
6 follows:

7 And I think the court should have instructed the jury that if they believed from the
8 evidence in the case that there was reasonable ground for [the defendant] to believe
9 his life in danger, or that he was in danger of great bodily harm from the deceased,
10 and that such danger was imminent, and he did so believe, and acting on such belief
11 killed the deceased, he was excusable; and that it was not necessary that he should
12 wait until an assault was actually committed.

13 The whole doctrine of self-defense was most ably examined and illustrated in the
14 case of Thomas O. Selfridge, tried in the Supreme Court of Massachusetts; and the
15 doctrines of that case were adopted, in the state of New York, in the case of *Shorter*
16 *v. State*, where it is declared by Bronson, J., in speaking of the same case, “that
17 when, from the nature of the attack, there is reasonable ground to believe that there
18 is a design to destroy his life, or commit any felony upon his person, the killing the
19 assailant will be excusable homicide, although it should afterwards appear that no
20 felony was intended.” “To this doctrine,” says the learned judge, “I fully subscribe;
21 a different rule would lay too heavy a burden on poor humanity.”

22 *Goodall v. State*, 1 Or 333, 337–38 (1861); *see also State v. Burns*, 15 Or App 552, 558–59 (1973)
23 (stating that the basic principles in *Goodall* “have been restated in numerous subsequent self-
defense cases, including the leading Oregon cases of” *State v. Rader*, 94 Or 431 (1919) and *State*
v. Gray, 43 Or 446 (1904)). Here, it has long been held that Oregonians have the right to defend
themselves when they reasonably believe that they are facing imminent harm. This standard has
since been codified, ORS 161.219, and has been interpreted to not include any requirement to
attempt to retreat before using deadly force. *State v. Sandoval*, 342 Or 506, 511–12 (2007) (also
explaining that the use of the word “necessary” in ORS 161.209 “pertains to the *degree* of force

1 which a person threatened with unlawful force reasonably believes to be required for the purpose
2 of self-defense or defense of another.”).

3 The Supreme Court has also interpreted “[d]efense of themselves” to achieve the purpose
4 of deterring the “government from oppressing unarmed segments of the population” and to include
5 an individual’s right to bear arms in defense of one’s person and home. *Id.* at 366–67. The Supreme
6 Court cites as an example of deterring government oppression King James II’s attempt “to disarm
7 the Protestants while allowing Catholics to bear arms, thus prompting the guarantee in the 1689
8 Bill of Rights that Protestants could have ‘arms for their defense.’” *Id.* at 367. For personal defense,
9 the Supreme Court noted that “the justification for a right to bear arms in defense of person and
10 home probably reflects the exigencies of the rural American experience.” *Id.* For defense of the
11 state, the Supreme Court has interpreted that portion of Article I, Section 27 to “refer to the
12 historical preference for a citizen militia rather than a standing army[.]” *Id.* at 366. As noted by the
13 Supreme Court, any controversy “over the wisdom of a right to bear arms” or whether “the original
14 motivations for such a provision” would be “compelling if debated as a new issue” are irrelevant
15 to a determination of the meaning of Article I, Section 27; rather the task for Oregon courts “in
16 construing a constitutional provision is to respect the principles given the status of constitutional
17 guarantees and limitations by the drafters; it is not to abandon these principles when this fits the
18 needs of the moment.” *Kessler*, 289 Or at 362.

19 The Oregon Supreme Court has repeatedly held that “Article I, section 27, prevents the
20 legislature from infringing on the people’s individual right to bear arms for purposes limited to
21 self-defense.” *Christian*, 354 Or at 30 (citing *Kessler*, 289 Or 359). The Supreme Court has also
22 characterized Article I, Section 27 protections as preventing the legislature from unduly frustrating
23 the individual right to bear arms for the purpose of self-defense. *Id.* at 33. Therefore, where a

1 manner of use or manner of possession law outright prevents, or even unduly frustrates, an
2 individual from exercising their right to bear protected arms in defense of themselves (or the state),
3 that law cannot be constitutional notwithstanding any level of benefit to public safety related to
4 the enactment of that law.

5 **III.**

6 **ARGUMENT**

7 **A. Permit to Purchase (BM114, §§ 1–10) Unconstitutional Under Article I,**
8 **Section 27.**

9 As briefly addressed above, Plaintiffs contend that this Court can rule on the first two
10 portions of the above-described analysis as a matter of law and, based on Defendants’ own prior
11 admissions thus far, Defendants do not contend otherwise. Because sections 1–10 of the Measure
12 regulate all arms and cannot be characterized as a “manner of use” or “manner of possession” law,
13 or a law regulating the possession of firearms by certain identifiable and dangerous persons, this
14 Court should find that the permit to purchase provisions are unconstitutional as a matter of law.
15 Further, even assuming that Defendants could prevail on all other portions of the test, Defendants
16 admit that the FBI has refused to perform the background check required for a permit to purchase
17 to issue; whether that background check is required for issuance is a question of law. As such, this
18 Court should rule in favor of Plaintiffs as a matter of law.

19 The plain text of sections 1–10 of the Measure indicates that the permit to purchase
20 provisions of the Measure apply universally to all firearms. Moreover, if necessary, Plaintiffs’
21 evidence at trial will demonstrate likewise. As such, these sections regulate protected arms under
22 Article I, Section 27, and the Court should move to the next step of the analysis. *Christian*, 354 Or
23 22. The Court is not required to perform a firearm-by-firearm analysis of all firearms that exist

1 now or have ever existed before making this determination. *Id.* Nevertheless, if the Court performs
2 this analysis, the evidence at trial will demonstrate that the arms regulated—multi-shot handguns,
3 rifles, and shotguns—are of the sort, as modified by their modern design and function, commonly
4 used by individuals for personal defense during either the revolutionary and post-revolutionary
5 era, or in 1859 when Oregon’s constitution was adopted.” *Delgado*, 298 Or at 400–01.

6 Next, plain text of sections 1–10 do not regulate any specific manner of use or manner of
7 possession of firearms and apply equally to all Oregonians regardless of their past criminal history
8 or lack thereof; alternatively, if necessary, the evidence presented at trial will demonstrate this fact.
9 Further, Defendants contend that the determination of whether sections 4–9 are manner of use or
10 manner of possession laws is a purely legal conclusion that can be decided by this Court without
11 receiving evidence on the question. *See* Defendant Ellen Rosenblum’s Response to Plaintiff Gun
12 Owners of America’s First Request for Admissions Nos. 1, 2, 5–8, 11, 12, 15, 16, 19, and 20
13 (attached hereto as Exhibit 4) (hereinafter “Defendant Rosenblum’s Second RRFA”). Likewise,
14 Defendants contend that the determination of whether sections 4 and 6–9 apply to all Oregonians
15 regardless of criminal history or lack thereof is a purely legal conclusion that can be decided by
16 this Court without receiving evidence on the question. *Id.* at Nos. 3, 4, 9, 10, 13, 14, 17, 18, and
17 21. Last, Defendants admit that Oregon has no longstanding history of requiring adults to obtain
18 permits to purchase firearms, *Id.* at No. 28, requiring adults to pass an educational firearms training
19 course prior to purchasing firearms, *Id.* at No. 29, or requiring adults to perform an in-person
20 demonstration of their ability to operate a firearm prior to purchasing firearms, *Id.* at No. 30. As
21 such, Defendants cannot argue some other additional type of body of regulations which are
22 permissible under Article I, Section 27. Therefore, this Court should decide as a matter of law that
23 sections 1–10 of the Measure are unconstitutional.

1 If this Court determines that sections 1–10 of the Measure are a manner of use or manner
2 of possession law, or that they regulate the possession of firearms by certain identifiable and
3 dangerous persons, Plaintiffs will demonstrate at trial that sections 1–10 will not actually further
4 public safety. The required background check for the permit to purchase is in addition to an
5 identical background check performed at the point of transfer under existing law and, therefore,
6 acts as a mere prophylaxis upon prophylaxis. *See FEC v. Ted Cruz for Senate*, 2022 US LEXIS
7 2403, *28, 142 S Ct 1638, 1652–53 (2022) (citing *McCutcheon v. FEC*, 572 US 185, 221 (2014)
8 (“This “prophylaxis-upon-prophylaxis approach” requires that we be particularly diligent in
9 scrutinizing the law’s fit.”)); *FEC v. Wisconsin Right to Life, Inc.*, 551 US 449, 479 (2007) (“But
10 such a prophylaxis-upon-prophylaxis approach to regulating expression is not consistent with strict
11 scrutiny.”). Indeed, here, the process is designed to infringe upon and delay an Oregonians’ right
12 to exercise their constitutional right.

13 Last, should this Court determine that sections 1–10 of the Measure meet the public safety
14 requirements for constitutional laws under Article I, Section 27, Plaintiffs will demonstrate that
15 they do not do so without infringing on the rights to bear arms guaranteed by the Constitution. At
16 the outset, all Defendants have admitted that “the FBI has informed Defendant that the FBI has
17 determined that Ballot Measure 114 does not meet the requirements of Pub. L. 92-544.” *See*
18 Defendant Kotek’s First RRFA, Nos. 1 and 2 (Exhibit 1); Defendant Rosenblum’s First RRFA,
19 Nos. 1 and 2 (Exhibit 2), and Defendant Coddling’s RRFA, Nos. 1 and 2 (Exhibit 3). The FBI
20 background check is a necessary portion of the permit to purchase program and is required; that
21 determination is squarely a question of law. As such, should the Measure go into effect, no
22 Oregonian will be able to be issued a permit to purchase by any permit agent in the state and will
23 be forced to seek relief under section 5 of the Measure at the 30-day mark. *See* BM114, §5.

1 Plaintiffs contend that whether or not such relief could even be available is squarely before this
2 Court in facially interpreting what it means for an applicant to meet “the criteria that are used for
3 issuance of a permit-to-purchase[.]” *Id.* at 5(6). Defendants will dispute this and assert that this
4 Court should adopt their reading under the saving canon. However, Defendants’ interpretation is
5 plainly contrary to the intent of the voters and the plain text of the statute. *See State v. McNally*,
6 361 Or 314 (quoting *DeBartolo Corp v. Florida Gulf Coast Trades Council*, 485 US 568, 575
7 (1988) (“[W]here an otherwise acceptable construction of a statute would raise serious
8 constitutional problems, the Court will construe the statute to avoid such problems unless such
9 construction is plainly contrary to the intent of Congress” (brackets original))).

10 Moreover, as this Court has now held that it will only consider a facial challenge, the only
11 timeline which this Court can consider is the 30-day mark at which time applicants have a right to
12 appeal a non-decision. *See* BM114, §5(1). Defendants cannot argue that any decision will be made
13 sooner than that time in any specific circumstance, and Plaintiffs cannot argue that the Department
14 of State Police will take longer than that time. Because Oregonians have the right to defend
15 themselves when they reasonably believe that they are facing imminent harm, forcing an
16 Oregonian who has learned of an imminent threat to their life (for instance, from a stalker, former
17 partner, the sound of wolves howling near their home, or the announcement of an impending need
18 to defend the state) to wait 30 days before exercising their right to bear arms to engage in self-
19 defense, defense of others, or defense of the state infringes, and unduly burdens, that right.

20 Plaintiffs further assert that requiring Oregonians to pass a test or otherwise demonstrate
21 their *worthiness* to exercise a constitutionally recognized right infringes on their ability to possess
22 and bear arms for defense of themselves and the state as recognized by the Oregon Supreme Court.
23 As a constitutional right, just as with all other constitutional rights, the right to bear arms belongs

1 to each individual Oregonian and is recognized by Oregon’s constitution; it is not “a second-class
2 right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *Bruen*,
3 142 S Ct at 2156 (quoting *McDonald v. City of Chicago*, 561 US 742, 780 (2010)).

4 While Plaintiffs contend that this Court need only look to the first two requirements of this
5 analysis to determine that Ballot Measure 114, sections 1–10 are plainly unconstitutional, if
6 necessary, Plaintiffs will demonstrate through fact evidence that those portions similarly fail each
7 of the subsequent portions of the analysis as well. As such, Plaintiffs contend that this Court can
8 rule on sections 1–10 of the Measure as a matter of law.

9 **B. Magazine Restriction (BM114, § 11) Unconstitutional Under Article I,**
10 **Section 27.**

11 Plaintiffs contend that this Court can rule on the first two portions of the above-described
12 analysis as a matter of law and, based on Defendants’ own admissions thus far, Defendants do not
13 contend otherwise. Because section 11 of the Measure regulates the capacity of all firearms
14 whether they have a fixed or detachable magazine and cannot be characterized as a “manner of
15 use” or “manner of possession” law, or a law regulating the possession of firearms by certain
16 identifiable and dangerous persons, this Court should find that the magazine ban provision of the
17 Measure is unconstitutional as a matter of law. However, if the Court disagrees, Plaintiffs will
18 demonstrate that the arms banned by section 11 are protected arms under Oregon’s constitution,
19 that a prohibition on the mere possession and use of such arms is an unconstitutional exercise of
20 the state’s police power under Article I, Section 27 (*i.e.* not a manner of use or manner of
21 possession law), that the ban is not necessary to further public safety and will detract from public
22 safety, and that section 11 infringes on the right to bear arms guaranteed to Oregonians.

23 The plain text of sections 11 of the Measure indicates that the magazine ban from the

1 Measure applies universally to all firearms. The definition of “large-capacity magazine” includes
2 both fixed and detachable magazines. BM114, §11(1)(d); *see Id.* at (1)(b) (defining “detachable
3 magazine”) and (1)(c) (defining “fixed magazine”). Necessarily, all firearms’ ammunition feeding
4 devices, under the definitions of both provided, must be either “fixed” or “detached.” Therefore,
5 section 11 of the Measure applies to all firearms as all firearms, save the two *limited* exceptions,
6 are prohibited from having a fixed or detached magazine meeting the definition of a “large-
7 capacity magazine.” To Plaintiffs’ knowledge, Defendants do not dispute this. As such, the Court
8 should move to the next step of the analysis. *Christian*, 354 Or 22 (proceeding directly to the
9 second phase of the analysis); *see also Christian*, 249 Or App at 8–10 (same). The Court is not
10 required to perform a firearm-by-firearm analysis of all firearms that exist now or have ever existed
11 before making this determination. *Id.* However, if this Court disagrees, Plaintiffs’ evidence at trial
12 will demonstrate that the arms affected—all multi-shot handguns, rifles, and shotguns—are, as
13 modified by their modern design and function, of the same sort as their historical predecessors.
14 *Delgado*, 298 Or at 400–01. Indeed, the *Delgado* Court has already stated that multi-shot firearms
15 are protected under Article I, Section 27, dismissing any argument to the contrary and stating that
16 such a conclusion is obvious. *Id.* at 400, n. 4.

17 Next, the plain text of sections 11 does not regulate any specific manner of use or manner
18 of possession of firearms and applies equally to all Oregonians regardless of their past criminal
19 history or lack thereof. Further, Defendants contend that the determination of whether section 11
20 is a manner of use or manner of possession law is a purely legal conclusion that can be decided by
21 this Court without receiving evidence on the question. *See* Defendant Rosenblum’s Second RRFA,
22 Nos. 22, 23, and 24. Likewise, Defendants contend that the determination of whether section 11
23 applies to all Oregonians regardless of criminal history or lack thereof is a purely legal conclusion

1 that can be decided by this Court without receiving evidence on the question. *Id.* at No. 25. Last,
2 Defendants admit that Oregon has no longstanding history of prohibiting the mere possession of
3 firearms capable of holding more than ten rounds of ammunition. *Id.* at No. 26. However,
4 Defendants assert that OAR 635-065-0700 (regulating the use of magazine capacity for certain
5 forms of hunting) may qualify as such a restriction. Defendants are incorrect as a matter of law
6 because a regulation of magazine capacity *while engaging in specified forms of hunting* would
7 qualify as a *manner* of possession (possession while hunting) or *manner* of use (use while hunting)
8 law. Moreover, hunting is not among the traditional list of purposes for which the constitutional
9 right to bear arms is guaranteed. *Kessler*, 289 Or at 366–67. As such, Defendants cannot argue
10 some other additional body of regulations are historically permissible under Article I, Section 27.
11 Therefore, this Court should decide as a matter of law that section 11 of the Measure is
12 unconstitutional.

13 If this Court determines that section 11 of the Measure is a manner of use or manner of
14 possession law, or that it regulates the possession of firearms by certain identifiable and dangerous
15 persons, Plaintiffs will demonstrate at trial that section 11 will not actually further public safety.
16 Moreover, Plaintiffs will demonstrate that section 11 of the Measure will detract from public safety
17 and infringe and unduly burden the right to bear arms by, among other things, requiring that
18 Oregonians possess less capable firearms than will be possessed by those criminals from whom
19 Oregonians must exercise their right to self-defense. Plaintiffs will further demonstrate that the
20 issue Defendants seek to solve with section 11—mass shootings and mass public shootings—are
21 so extraordinarily rare, generally and especially in Oregon—that they cannot be regarded as an
22 issue of public safety capable of being substantially solved by section 11’s ban. Additionally,
23 Plaintiffs will demonstrate that section 11’s ban is not necessary to address and will not address

1 the issue of public safety proffered by Defendants.

2 Last, should this Court determine that section 11 of the Measure meets the public safety
3 requirements for constitutional laws under Article I, Section 27, Plaintiffs will demonstrate that it
4 does not do so without infringing on the right to bear arms guaranteed by the Oregon Constitution.
5 Plaintiffs will demonstrate that section 11 prohibits the vast majority of modern firearms
6 commonly used for the lawful purposes identified by the Supreme Court including not only self-
7 defense, but the deterrence of governmental oppression and the defense of the State. *Kessler* 289
8 Or at 366–67. Plaintiffs will demonstrate that Oregonians have historically been called upon to
9 defend their State and their Country with their own privately owned firearms, and that the right
10 guaranteed by Article I, Section 27 of the Oregon Constitution entitles them to arm themselves
11 with the arms necessary to do so in the future.

12 Additionally, as addressed above, Oregonians have the right to meet the imminent threat
13 of force with the level of force necessary to repel it. *Sandoval*, 342 Or at 511 (“it is clear that the
14 reference to “necessary” in [ORS 161.209] pertains to the degree of force which a person
15 threatened with unlawful force reasonably believes to be required for the purpose of self-defense
16 or defense of another.”) (brackets supplied). **As such, any restriction on the level of force an
17 Oregonian is capable of employing infringes on the right of that Oregonian to use force
18 exceeding the prescribed level where appropriate, such as meeting multiple attackers.** Oregon
19 has never employed a “common necessity test” because Oregonians have the right to possess arms
20 capable of repelling any degree of force that could be brought against them whether or not the
21 degree of force is common. This includes, but is not limited to, the ability to repel a foreign or
22 domestic tyrannical government. Indeed, Plaintiffs assert that the Supreme Court *rejected* a
23 common necessity test in *Delgado*, opting instead in favor of an analysis limited to whether the

1 arm in question can be employed defensively regardless of whether it is employed more often in
2 offensive situations. *See Delgado*, 298 Or at 399. In *Delgado*, the state argued that the switchblade
3 was not a weapon “‘commonly used for personal defense,’ and is therefore not an ‘arm’ within the
4 meaning of the Oregon Constitution. [The State] insists that the switch-blade is an offensive
5 weapon used primarily by criminals. *Id.* However, this was soundly disregarded by the Supreme
6 Court in *Delgado* and is not the test employed to determine whether or not an arm was protected.
7 *Id.* at 400–04. Nevertheless, Plaintiffs will demonstrate that arms capable of firing more than ten
8 rounds without reloading are routinely used in self-defense and necessary for the defense of oneself
9 and their property (*i.e.* livestock).

10 While Plaintiffs contend that this Court need only look to the first two requirements of
11 this analysis in order to determine that Ballot Measure 114, section 11 is plainly unconstitutional,
12 Plaintiffs will demonstrate through fact evidence that it similarly fails each of the subsequent
13 portions of the analysis as well.

14 **C. Completed Background Check Requirement (§§ 6(3)(c), 6(13)(b), (6)(14),**
15 **7(3)(d)(B), and 8(3)(c) Should Not be Severed.**

16 Since first hearing the issue of severing subsections 6(3)(c), 6(13)(b), (6)(14), 7(3)(d)(B),
17 and 8(3)(c) (the “Completed Background Check Provisions”) (referred to pejoratively by
18 Defendants as the “Charleston Loophole”) on December 23, 2022, nothing has changed that should
19 alter this Court’s preliminary conclusion that:

20 The language the defendants urge the court to use to sever is inexorably linked with
21 the permit-to-purchase program. To find otherwise requires the court to ignore the
22 operative language linking each provision on background checks to the permit-to-
23 purchase program. The court would be separating sentences at commas and
considering the phrase “permit holder” surplusage. It is not surplusage. The court
declines the defendants' invitation to do so at this preliminary stage.

1 See Second Opinion Letter, 2 (Jan. 3, 2023).

2 Even if the Court finds that the voters did intend the Completed Background Check
3 Provisions to be severable, the provision nevertheless cannot be severed “without doing violence
4 to the intent of the legislature.” *Pavlicek v. State Industrial Accident Commission*, 235 Or 490, 494
5 (1963). This is because the permit to purchase scheme encompasses not only the identification of
6 Oregonians who purchase firearms via the permit to purchase program and the requirement that
7 Oregonians pass a second background check and be issued a unique approval number associated
8 with their permit, but also that the Oregon State Police retain this information, along with essential
9 information about the firearm being transferred, to create a firearm registry. As the Court
10 previously and preliminarily found, the Court would be required conclude that use of the words
11 “permit holder” in sections 6, 7, and 8 are mere surplusage. However, these provisions are not
12 mere surplusage and are inexorably linked to the provisions squarely addressing the permit to
13 purchase program itself. These portions of the measure are each an integral part of the same
14 unconstitutional scheme and cannot be severed.

15 Further, these provisions cannot be severed without the Court rewriting the measure
16 substantially and cannot, as is contemplated with severability, be solved by merely striking
17 portions of the measure. Rather, to make these provisions capable of severability, the Court would
18 be required supply language—*i.e.*, substituting other words for “permit holder”—to the measure
19 to correct clear and unambiguous language that defeats Defendants’ position on severability. *State*
20 *v. Wolfe*, 368 Or 38, 50 (2021) (“This court cannot correct clear and unambiguous language for
21 the legislature so as to better serve what the court feels was, or should have been, the legislature’s
22 intent.”) (quoting *Monaco v. U. S. Fidelity & Guar.*, 275 Or 183, 188 (1976)). Any hypothetical
23 rewriting of the Measure by the Court would not be the Measure that voters passed.

1 (1) Severability of Section 6.

2 Defendants assert that the provisions concerning completed background checks in sections
3 6(3)(c), 6(13)(b), and 6(14) are severable. Plaintiffs disagree. Section 6(3)(c) requires that a
4 firearm dealer receive a unique approval number prior to transferring a firearm to a permit holder,
5 and that the firearm dealer “notify the state that the transfer to the permit holder was completed”
6 within 48-hours. *See* BM114, §6(3)(c). Here, the permit to purchase, unique approval number
7 generated from the completed background check, provision of the information required by BM114,
8 subsection 6(2)(d)(A)–(H), and notification to the state of the completed transfer act to create a
9 firearm registry as was intended by the voters. These provisions are so intertwined that it would
10 require rewriting substantial portions of the measure to give effect to any one provision. *See e.g.*,
11 §6(7)(a). Moreover, for the Court to sever a single provision from the rest, as Defendants ask, the
12 Court would have to supply language to the measure—substituting the word purchaser for permit
13 holder—to avoid the unconstitutionality of the permit to purchase requirements. By asking the
14 Court to sever an intertwined portion of the statute, and then to rewrite the severed portion so that
15 it makes sense out of context, Defendants are asking this Court to engage in legislative, rather than
16 judicial, functions. *Wolfe*, 368 Or at 50. The Court should decline to do so.

17 Next, Defendants assert that Section 6(13)(b) is severable. The pre-BM114 version of this
18 section provides immunity from liability for firearm dealers who request the requisite background
19 check; the post-BM114 version only removes liability if the firearm dealer verifies that the
20 transferee has a permit to purchase and receives the unique approval number showing that the
21 background check was completed. 2021 ORS 166.412(13)(b) (amended 2022). If this Court agrees
22 that it cannot supply language to subsection 6(3)(c) to substitute the word *purchaser* for *permit*
23 *holder* to make that section severable, it follows that it was not the intention of the voters to require

1 the elimination of the relief valve contained in the former ORS 166.412. Likewise, regarding this
2 subsection, if it was not the intent of the voters to close that relief valve on its own, then it was
3 also not the intent of the voters to allow for the transfer of the firearm without receipt of the unique
4 approval number but also expose the firearm dealer who effects such a transfer to liability. The
5 voter pamphlet is silent on issues regarding firearm dealer civil liability and there is insufficient
6 evidence that this provision can stand alone.

7 Last, Defendants assert that subsection 6(14) is severable. Again, this provision cannot be
8 severed to the extent the Court agrees that it cannot supply language to subsection 6(3)(c), as there
9 is no evidence in the voter pamphlet indicating that the voters intended to allow a firearm dealer
10 to release a firearm without a completed background check (the status quo of ORS
11 166.412(6)(3)(c) (2021) (amended 2022) if the Court agrees not to supply language to it) and
12 impose criminal liability for doing so (the effect of BM114, §14). The imposition of criminal
13 liability for an otherwise lawful transfer was not contemplated by the voters at the ballot box and
14 was not even contemplated in the voters' pamphlet.

15 Thus, whether the provisions of section 6 are severable depends on whether it is permissible
16 and for the Court to supply language to subsection 6(3)(c) to make it severable. Otherwise,
17 subsections 6(13)(b) and (14) cannot be severed because there is nothing in the legislative history
18 of BM114 indicating that the voters intended to impose civil and criminal liability for transferring
19 a firearm without a completed background check if the provision forbidding such a transfer
20 (subsection 6(3)(c)) was stricken. As such, these provisions are inexorably linked and should not
21 be severed.

22 (2) **Severability of Section 7.**

23 Defendants assert that the provisions concerning completed background checks can be

1 severed from BM114, Sections 7, specifically Section 7(3)(d)(B). Again, their arguments fail.

2 BM114’s changes to subsection 7(3)(d)(B) add to the requirement that a firearm dealer
3 may not transfer a firearm if the dealer receives notification that “the department is unable to
4 determine if the transferee is qualified or disqualified from completing the transfer . . .” *See*
5 BM114, §7(3)(d)(B). It is clear from the additional changes to Section 7(3)(a) that the voters
6 intended an Oregonian to be considered qualified only if the transferor and transferee “appear in
7 person before a gun dealer, with the firearm and a valid permit-to-purchase issued to the transferee
8 . . .” *Id.* at §(3)(d)(B). Simply, nothing in section 7 requires a background check to be completed
9 before a firearm is transferred; rather, section 7 requires that an individual be qualified, which
10 necessarily includes the requirement that a purchaser show that they have a permit to purchase a
11 firearm under the requirements of the Measure.

12 Again, the requirement that a purchaser present proof of a valid permit to purchase is so
13 intertwined with the requirements for an individual to be qualified under subsection 7(3)(d)(B)
14 that these provisions cannot be severed.

15 **(3) Severability of Section 8.**

16 Defendants assert that the Completed Background Check Provisions can be severed from
17 subsection 8(3)(c). The language of subsection 8(3)(c) is identical to that of subsection 6(3)(c);
18 likewise, the analysis remains the same. In order to sever subsection 8(3)(c) from the permit to
19 purchase provisions of BM114, this Court would be required to substitute the word “purchaser”
20 for “permit holder” in that subsection, which is something Plaintiffs submit is not the judicial
21 function. *See Wolfe*, 368 Or at 50. This subsection only contemplates transfers to permit holders
22 and does not contain the word purchaser, meaning that the Court cannot sever these provisions by
23 merely striking the new language.

1 Additionally, it is worth noting that transfers at gun shows (as contemplated by sections 8
2 and 9 of the Measure) could not be performed without a completed background check prior to
3 Ballot Measure 114. *See* ORS 166.438(1)(a)(B) (2021) (amended 2022) (under the Measure, this
4 subsection is section 9(1)(a)(C)).

5 **D. Completed Background Check Requirement (§§ 6(3)(c), 6(13)(b), (6)(14),**
6 **7(3)(d)(B), and 8(3)(c)) Unconstitutional Under Article I, Section 27 if**
7 **Severed.**

8 Plaintiffs provide the below separate analysis to address the independent constitutionality
9 of the Completed Background Check Requirements if this Court considers them separately.
10 **Additionally, even if this Court does not, Plaintiffs have asserted a challenge to the**
11 **Completed Background Check Requirement broadly and ask that this Court consider these**
12 **arguments with respect to the pre-Ballot Measure 114 Completed Background Check**
13 **Requirements under the prior 2015 amendment because any constitutional argument against**
14 **the amended law would apply equally to the former law. *See* 2021 ORS 166.438(1); Complaint,**
15 **27:9 (Prayer at ¶4). As with the permit to purchase, the “Completed Background Check Provisions**
16 **apply to the purchase of all firearms and, therefore, this Court need not engage in a firearm-by-**
17 **firearm analysis and may move to the second phase of the analysis.**

18 Moving to the second phase, the Completed Background Check Provisions are plainly not
19 manner of use or manner of possession law. Instead, the Completed Background Check Provisions
20 regulate the mere acquisition and purchase of firearms. Defendants will argue that they operate as
21 a prohibition on the possession of firearms by certain criminals (namely felons). *See Kessler* 289
22 Or at 379; *Cartwright*, 246 Or 120. However, as was more fully articulated in *Hirsch*, “Article I,
23 section 27, does not deprive the legislature of the authority (1) to designate *certain groups of*

1 *persons as posing identifiable threats to the safety of the community by virtue of earlier*
2 *commission of serious criminal conduct* and, in accordance with such a designation, (2) to restrict
3 the exercise of the constitutional guarantee *by members of those groups.*” *Hirsch*, 228 Or at 677
4 (emphasis added). The Supreme Court has never held that the legislature may treat all Oregonians
5 as identifiable threats, and only felons and “unnaturalized foreign-born persons” have been found
6 by the Supreme Court to be constitutionally prohibited from possessing firearms. *Id.* at 636–37
7 (citing *Robinson*, 217 Or 612). To the contrary, the Supreme Court has expressly stated that “the
8 legislature is **not free to designate any group** without limitation as one whose membership may
9 not bear arms.” *Id.* at 677 (emphasis added). Contrary to Defendants’ assertions, those who may
10 be suffering from some degree of mental health issues have never been included within this group
11 of persons who may be deprived their right to bear arms by any appellate court in Oregon;
12 therefore, any purported “mental health review” in the Measure does not meet constitutional
13 muster.

14 If the Court disagrees and moves to the next phase of the analysis, Plaintiffs will
15 demonstrate that the Completed Background Check Provisions are not necessary to promote public
16 safety. Indeed, Defendants can only cite one instance of a firearm being transferred without a
17 completed background check that ended in violence, and that instance occurred in Charleston,
18 South Carolina nearly a decade ago. For context, the Brady Bill was adopted in 1993, and the “next
19 business day” rule for Oregon has existed in ORS 166.412 since at least 1995. *See* ORS
20 166.412(3)(c) (1995) (amended 2022).

21 Last, Plaintiffs will demonstrate that the Completed Background Check Provisions infringe
22 on Oregonians’ right to bear arms by indefinitely delaying their ability to bear arms for the
23 purposes identified by the Supreme Court. *Kessler*, 289 Or at 366–67. While Defendants may

1 argue that there is some period of delay that is justifiable, that issue is not before the Court; what
2 is before the Court is whether the state is justified in designating all Oregonians as an identifiable
3 threat and restricting their exercise of their right to bear arms for an indefinite period until the state
4 has determined otherwise. As addressed regarding the permit to purchase, under this facial
5 challenge, Defendants cannot argue the best-case-scenario or average amount of time it takes an
6 Oregonian to receive a completed background check. Nor can Plaintiffs cite the numerous
7 incidences where a completed background check takes months or even years. Instead, this Court
8 must look at the lengths of time allowed to the Department of State Police to conduct the
9 background check which Plaintiffs assert is indefinite.

10 Pursuant to 2021 ORS 166.412(3)(b) (unamended by BM 114, §6), “If the department is
11 unable to determine if the purchaser is qualified or disqualified from completing the transfer within
12 30 minutes, the department shall notify the gun dealer and provide the gun dealer with an estimate
13 of the time when the [Department of State Police] will provide the requested information.”
14 *Compare* 2021 ORS 166.412(3)(b) *with* BM114, §6(3)(b). However, this determination does not
15 constitute a “delay” and there is no statutory or administrative recourse for Oregonians when the
16 Department of State Police is unable to determine whether to deny or delay a transaction, making
17 the timeline indefinite. Only after the Department of State Police has actually made the decision
18 to approve, deny, or delay a transaction for further research is an Oregonian afforded the
19 opportunity to seek review of the information maintained by the Oregon State Police Criminal
20 Offender Information System or Firearm Instant Check System and request a change, correction
21 or update. OAR 257-010-0035(1), (3). There is no timeline within which the Oregon State Police
22 must respond to such a request, again creating another indefinite timeline. *Id.* at (3). Only after the
23 Oregon State Police, or the agency originally contributing the information causing the denial or

1 delay, refuses to remove, modify, or correct the challenged record is an Oregonian entitled to seek
2 relief under the “provisions of Rules 30.00 to 30.80 of the Attorney General’s Model Rules of
3 Practice and Procedures under the Administrative Procedure Act, relating to contested cases and
4 judicial review.” *Id.* at (4). Requiring Oregonians to wait an indefinite period at *two levels* before
5 they are afforded the ability to administratively challenge the Oregon State Police’s delay or denial
6 of their firearm purchase undoubtedly infringes on their right to self-defense from imminent harm.
7 *Sandoval*, 342 Or at 511.

8 As such, Plaintiffs contend that the Court should hold that the Completed Background
9 Check Provisions are unconstitutional as a matter of law upon an examination of the first two parts
10 of the test articulated above. Unquestionably, an *indefinite period* is too long for the Oregon
11 Constitution to allow. **A right delayed is a right denied.** *See generally State v. Dameron*, 316 Or
12 448, 467–68 (quoting *State v. Quinn*, 290 Or 383, 416–17 (Tongue, J. dissenting)).

13 **E. Measure 114 Unconstitutionally Instructs the Federal Bureau of**
14 **Investigations.**

15 Ballot Measure 114 purports to command the FBI to act, stating that “[t]he Federal Bureau
16 of Investigation shall return the fingerprint cards used to conduct the criminal background check
17 and may not keep any record of the fingerprints.” BM114, §4(1)(e). However, since the dawn of
18 the United States it has been held “that the constitution and the laws made in pursuance thereof
19 are supreme; that they control the constitution and laws of the respective States and cannot be
20 controlled by them.” *McCulloch v. Maryland*, 17 US 316, 426 (1819). In short, the federal
21 government, US Constitution, and federal law are supreme over any exercise by the states, and
22 states lack the authority to command that the federal government, or any branch thereof, *do*
23 *anything*. It is from this principle that the corollary rule “that ‘the activities of the Federal

1 Government are free from regulation by any state.” *In re NSA Telecoms. Records Litig.*, 533 F
2 Supp 2d 892, 903 (ND Cal 2007) (quoting *Hancock v. Train*, 426 US 167, 178 (1976)).

3 Because the people of Oregon are powerless to compel the FBI to do anything, at a
4 minimum, the requirement that an applicant for a permit to purchase submit to fingerprinting must
5 be stricken. The Measure requires that “the [Department of State Police] [] conduct a criminal
6 background check, including but not limited to a fingerprint identification, through the Federal
7 Bureau of Investigation.” BM114, §4(1)(e). Because the fingerprint identification necessarily
8 includes the FBI fingerprint background check—at a minimum—any fingerprinting requirement
9 should be stricken.

10 **F. Measure 114 is Unconstitutional Under Article I, sections 9, 11, and 12 of the**
11 **Oregon Constitution.**

12 **(1) Article I, sections 9 and 12.**

13 Article I, section 9 provides that “No law shall violate the right of the people to be secure
14 in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no
15 warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly
16 describing the place to be searched, and the person or thing to be seized.” Or. Const. Art. I, §9.

17 The evidence at trial will show that the length of magazines with standard capacities for
18 the firearm for which they were made and magazines which have had their capacities reduced are
19 identical until removed. As such, there is no way for an officer to determine whether the magazine
20 contained in a firearm is legal under the Measure without engaging in an unconstitutional search
21 and seizure.

22 Ballot Measure 114’s permit to purchase provisions are also unconstitutional because it
23 forces citizens to choose between their right to be free from unreasonable searches and seizures,

1 Or. Const. Art. I, §9, or the right to not give testimony against oneself, Or. Const. Art. I, §12, and
2 their right to bear arms pursuant to Art. I, §27. The permit to purchase program itself requires that
3 Oregonians submit to answer questions about themselves, submit to a mental health examination,
4 submit to law enforcement taking their fingerprints to be maintained permanently by the State, and
5 submit to demonstrating their operation of a firearm before law enforcement in order to exercise
6 their right to bear arms. An Oregonian who, for example, objects to the search of his fingerprints
7 and seizure of his person while providing those fingerprints to be included in the State’s firearm
8 registry is then denied their right to bear arms; the Oregonian is forced to choose between these
9 rights. *See generally Davis v. Mississippi*, 394 US 721, 724–25 (1969) (holding that taking
10 fingerprints was an unreasonable seizure under the Fourth Amendment where the underlying
11 detention was not lawful). Likewise, the Oregonian who does not want to provide their fingerprints
12 to law enforcement, and thus potentially give evidence against himself, is likewise required to
13 choose between rights. *See generally United States v. Clawson*, 832 F2d 909, 912 (1987)
14 (“*Simmons* held that when a defendant testifies in support of a motion to suppress evidence on
15 fourth amendment grounds, his testimony may not be admitted against him at trial to prove that he
16 possessed the evidence. *Simmons* rested upon the undesirability of forcing the defendant to choose
17 between his fifth amendment right against self-incrimination and his fourth amendment right to
18 object to government seizure.”) (summarizing *Simmons v. United States*, 390 US 377 (1968)).

19 As such, the Measure’s permit to purchase program is unconstitutional under Article I,
20 sections 9 and 12.

21 (2) **Article I, sections 11 and 21.**

22 Ballot Measure 114 does not require that the State demonstrate the unlawful ownership of
23 a firearm or firearm magazine and instead puts the onus on the criminal defendant Oregonian to

1 prove their *innocence* through an affirmative defense. It also criminalizes the purchase of firearms
2 and firearm magazines that do not meet the Measure’s restrictions even if the purchase was lawful
3 at the time it was completed, thus acting as an *ex post facto* law. As such, the Measure is
4 unconstitutional pursuant to Article I, sections 11 and 21.

5 Article I, section 11 of the Oregon constitution “guarantees a criminal defendant’s right to
6 a fair trial by an impartial jury” including the guarantee “that a defendant shall be tried by a jury
7 that will decide guilt based on evidence—not emotion or prejudice.” *State v. Soprych*, 318 Or App
8 306, 309–310 (citing *State v. Langley*, 363 OR 482, 504 (2018); *State v. Evans*, 344 Or 358, 362
9 (2008)). Included within the right to trial by an impartial jury is the presumption of innocence. *Id.*
10 at 310 (“The presumption of innocence is not a mere form, but a substantial part of the law, that
11 remains with the defendant from the beginning of the trial until a verdict is found.”) (quoting *State*
12 *v. Rosasco*, 103 Or 343, 357 (1922)).

13 Ballot Measure 114 allows an Oregonian to be charged with a Class A Misdemeanor if that
14 Oregonian “manufactures, imports, possesses, uses, purchases, sells or otherwise transfers any
15 large-capacity magazine in Oregon on or after the effective date” of Ballot Measure 114. *See*
16 BM114, §11(2). This is subject to limited exceptions for gun dealers and firearms manufacturers
17 for 180 days. *Id.* at §11(3). This is also subject to an impossible-to-prove affirmative defense for
18 average Oregonians who already have purchased and own firearms and firearm magazines capable
19 of holding more than 10 rounds of ammunition. *Id.* at §11(5).

20 Here, the Measure gives the State no obligation to prove beyond a reasonable doubt that
21 the firearm or magazine was purchased prior to the effective date of the Measure and instead places
22 the onus on the criminal defendant to demonstrate their innocence in violation of Article I, section
23 11. Further, at least for the charge of the unlawful purchase of a “large-capacity magazine” under

1 section 11(2), the law acts as an *ex post facto* law subject to the criminal defendant’s ability to
2 *prove their innocence* pursuant to the affirmative defense in violation of Article I, section 21 of
3 the Oregon State Constitution. *See State v. Wolfe*, 368 Or 38, 53 (2021) (“the guarantee against *ex*
4 *post facto* laws [prohibits] . . . laws that punish acts that were legal before the enactment of those
5 laws[.]”) (quoting *State v. Cookman*, 324 Or 19, 31 (1996)); Or. Const. Art. I, §21.

6 Additionally, the evidence at trial will show that the affirmative defense offered is
7 impossible to prove. The vast majority of firearm magazines do not have serial numbers or any
8 way to confirm that the magazine purchased (as evidenced by a receipt, if kept, video surveillance,
9 if accessible, or any other means) is the same magazine for which the criminal defendant was
10 charged. Worse, there is no firearm registry, and therefore no way to demonstrate who is the
11 “registered owner” of a firearm magazine. BM114, §11(5)(c)(A). While Ballot Measure 114 does
12 create a purchase registry, it does not track all transfers of firearms such as those effected between
13 certain family members. *See* 2021 ORS 166.435(4)(c); BM114, §7(4)(c). This includes inheritance
14 where, as addressed above, the criminal defendant is tasked with proving not only that they have
15 properly maintained the firearm or firearm magazine in conformity with the law, but that the person
16 from whom they are inheriting did as well. BM114, §11(5)(b). Indeed, to inherit under section
17 11(5)(b), the devisee must show that they inherited from “a former owner who was in legal
18 possession of” the firearm or firearm magazine, *Id.*; to show legal possession for a current or
19 former owner, the criminal defendant must demonstrate the requirements of subsections (5)(a) and
20 (c). *Id.* at (5)(a), (c).

21 Last, the Measure provides officers with too great of discretion to allow some, but not all,
22 who possess a non-compliant firearm or firearm magazine to “permanently and voluntarily
23 relinquish[] the large-capacity magazine to law enforcement . . . prior to commencement of

1 prosecution by arrest, citation or a formal charge.” *Id.* at (5)(d). This violates Article I, section 11’s
2 requirement that the law be impartial. Or. Const. Art. I, §11.

3 Because Ballot Measure 114 does not require that the State demonstrate the unlawful
4 ownership of a firearm or firearm magazine and instead puts the onus on the criminal defendant
5 Oregonian to prove their *innocence* rather than on the State to prove their guilt, Ballot Measure
6 114 is unconstitutional under Article I, section 11 of the Oregon Constitution. Similarly, because
7 the Measure creates an affirmative defense rather than an exception for conduct that was lawful at
8 the time it was done (purchasing firearms and firearm magazines that do not comply with the
9 Measure’s restrictions on the same), the law is an unconstitutional *ex post facto* law pursuant to
10 Article I, section 21.

11 **G. Plaintiffs’ Proposed Treatment of Errors in Ballot Measure 114.**

12 **(1) The Court’s Methodology.**

13 ORS 174.010 provides:

14 “In the construction of a statute, the office of the judge is simply to ascertain and
15 declare what is, in terms or in substance, contained therein, not to insert what has
16 been omitted, or to omit what has been inserted; and where there are several
provisions or particulars such construction is, if possible, to be adopted as will give
effect to all.”

17 As stated by the Oregon Supreme Court, the “cardinal rule” of all statutory construction is
18 to “pursue the intention of the legislature if possible.” *Gaines*, 346 Or at 165 (quoting ORS
19 174.020). To do that, Oregon courts apply three separate levels of analysis. *PGE v. Bureau of*
20 *Labor and Industries*, 317 Or 606, 610–12 (1993), *abrogated in part by statute, as stated in Gaines*.
21 First, the court must examine the “text and context of the statute.” *Gaines*, 346 Or at 169–170. To
22 discern the meaning of a particular statutory provision, the court “considers rules of construction
23 of the statutory text that bear directly on how to read the text.” *PGE*, 317 Or at 611. These include

1 statutory rules of construction, such as ORS 174.010, and the common-law rule that “words of
2 common usage typically should be given their plain, natural, and ordinary meaning.” *Id.* at 611
3 (citing cases). For context, the court considers “other provisions of the same statute and other
4 related statutes” and applicable rules of construction. *See, e.g.*, ORS 174.010; ORS 174.020.

5 The second step of the analysis requires the court to give appropriate consideration to any
6 legislative history proffered by the parties. *Gaines*, 346 Or at 171–72. In 2001, ORS 174.020 was
7 amended, partially abrogating the methodology outlined in *PGE v. Bureau of Labor and Industries*.
8 As amended, ORS 174.020 requires courts to consider legislative history even if the court does not
9 find any ambiguity in the statutory text. “Beyond that, the legislature left it to judicial discretion
10 to decide what value to place on legislative history proffered by a party.” *Gaines*, 346 Or at 169.
11 Notwithstanding the 2001 amendments to ORS 174.020, the “text of the statutory provision itself
12 . . . is the best evidence of the legislature’s intent.” *PGE*, 317 Or at 610; *Gaines*, 346 Or at 171
13 (“text and context remain primary, and must be given primary weight in the analysis”).

14 “If, after consideration of text, context, and legislative history, the intent of the legislature
15 remains unclear, then the court may resort to general maxims of statutory construction to aid in
16 resolving the remaining uncertainty.” *PGE*, 317 Or at 612 (citing, e.g., ORS 174.030 regarding an
17 interpretation “in favor of natural right” and “the maxim that, where no legislative history exists,
18 the court will attempt to determine how the legislature would have intended the statute to be
19 applied had it considered the issue”).

20 (2) **Errors Identified by Plaintiffs; Plaintiffs’ Proposed Treatment of**
21 **Identified Error.**

22 Ballot Measure 114 is poorly written and contains numerous errors, some of which are
23 more substantial than others. The following are the errors Plaintiffs have identified for the Court

1 and Plaintiffs’ proposed treatment of those errors:

2 (i) In sections 3(2) and 6(1)(f) the Measure defines “Gun dealer” as “a
3 person engaged in the business, as defined in 18 U.S.C. 921, of selling,
4 leasing or otherwise transferring a firearm, whether the person is a
5 retail dealer, pawnbroker or otherwise.” BM114, §§ 3(2) and 6(1)(f)
(emphasis added). The phrase “engaged in the business” is not defined
anywhere in 18 USC § 921. The term “person” is defined at 18 USC
§921(a)(1).

6 This error exists in both the pre- and post-Ballot Measure 114 version of ORS 166.412(1)(f)
7 (BM114, §6(1)(f)). Because the citation to 18 USC § 921 follows the term “person” and “engaged
8 in the business” is undefined in that chapter of federal law, Plaintiffs believe it is reasonable for
9 this Court or any other court interpreting this law to find that the citation is meant to only define
10 “person” and “engaged in the business” is given its plain, natural, and ordinary meaning. *PGE*,
11 317 Or at 61.

12 (ii) In section 11(1)(a) the Measure uses a non-existent statute, ORS
13 343.282 to define “Armed Forces of the United States.”

14 This Court should strike section 11(1)(a) and “Armed Forces of the United States” should
15 be given its plain, natural, and ordinary meaning where used. *Id.*

16 (iii) In section 11(1)(e), the Measure cites to ORS 166.360 to define
17 “loaded.” That statute does not define “loaded” but does define “loaded
18 firearm.” *See* ORS 166.360(6). Plaintiffs note that the only use of the
word “loaded” in section 11 is accompanied by the undefined term
“unloaded” in defining a detachable magazine. *See* BM114, § 11(1)(b).

19 The reference to the definition of “loaded firearm” does not even inform the sole use of the
20 term in the Measure. Plaintiffs suggest that the Court strike section 11(1)(e) and allow the
21 previously defined term “loaded” and the undefined but related term “unloaded” to be given their
22 plain, natural, and ordinary meanings. *Id.*

23 (iv) In section 11(5), the Measure cites ORS 166.055 as the source of an

1 **affirmative defense to the crime created by section 11(2). ORS 166.055**
2 **is another non-existent statute.**

3 Plaintiffs note that this error was identified by the Explanatory Statement Committee for
4 Ballot Measure 114 when it was Initiative Petition 17, and legislative counsel present at the
5 committee meeting stated that the legislative counsel could not enact such a substantive change as
6 deleting or correcting the statute cited.⁶ However, the citation to ORS 166.055 could be regarded
7 as mere surplusage if the Court agrees that, as noted by legislative counsel before the committee,
8 many affirmative defenses do not contain a citation to a specific statute. This reading would not
9 be inconsistent with the explanatory statement provided in the voters’ pamphlet. *Gaines*, 346 Or
10 at 171–72 (regarding legislative history).

11 However, if this Court strikes the affirmative defense, Plaintiffs assert that section 11 is
12 only even more clearly unconstitutional under the infringement prong of the analysis if every
13 Oregonian who now owns firearms capable of holding more than 10 rounds is now already guilty
14 of a crime for which they do not even have an affirmative defense of permanently and voluntarily
15 relinquishing the firearm/firearm magazine. *See* BM114, §5(d). Moreover, every Oregonian who
16 now owns a non-compliant firearm/firearm magazine would be forced to go buy a new complaint
17 firearm/firearm magazine in order to exercise their right to bear arms for self-defense.

18 **(v) In section 11(3)(a)(C), the Measure does not conclude a sentence,**
19 **ending it with the phrase “or permanently alter the magazine so it is no**
20 **longer a[.]”**

21 Plaintiffs assert that this Court can regard incomplete sentence occurring in section

22 ⁶ Oregon State Legislature, *IP 17 Explanatory Statement Committee*, 1:57:50–02:01:32
23 [https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2022081005](https://olis.oregonlegislature.gov/liz/mediaplayer?clientID=4879615486&eventID=2022081005&startStreamAt=7070&stopStreamAt=7292)
 &startStreamAt=7070&stopStreamAt=7292 (accessed Sept. 9, 2023).

1 11(3)(a)(C) beginning with “or permanently alter the magazine so it is no longer a” as mere
2 surplusage because the words preceding it, “Permanently alters any large-capacity magazine in the
3 gun dealer’s inventory or custody so that it is not capable, upon alteration or in the future, of
4 accepting more than 10 rounds of ammunition,” constitute a complete thought that makes sense in
5 the context of the statute.

6 (vi) In section 11(5)(c)(A), the measure does not define “registered owner.”

7 The phrase “registered owner” is a misnomer because there is no firearm magazine registry,
8 nor is there any way to create one as the evidence will show that the vast majority of firearm
9 magazines, if not *all firearm magazines*, are not serialized. There is no way for the Court to give
10 effect to this term, so it should be stricken. Moreover, the Court should strike the remainder of
11 subsection (c) because, without subsection (c)(A) the remainder of the subsection does not make
12 sense since it would be impossible to only maintain the firearm magazine in the ways described in
13 subsections (c)(B)–(E) without also being allowed to keep the firearm magazine at one’s home.

14 **IV.**

15 **CONCLUSION**

16 Plaintiffs contend that this Court can decide in favor of Plaintiffs and hold all provisions
17 of Ballot Measure 114, including the Completed Background Check Provisions, if severed,
18 unconstitutional under Article I, Section 27 of the Oregon Constitution. If this Court disagrees,
19 Plaintiffs will demonstrate their entitlement to this relief through evidence presented at trial.

20 ///

21 ///

22 ///

23 ///

1 Plaintiffs also assert that certain provisions of the Ballot Measure and the entire Ballot
2 Measure are unconstitutional under Article I, sections 9, 11, and 12 of the Oregon Constitution, as
3 well as the federal supremacy clause.

4

5 Respectfully submitted,

6 DATED: September 13, 2023

7

Tyler Smith and Associates, PC

8

By /s/ Tony L. Aiello, Jr.
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on **SEPTEMBER 13, 2023** I caused a true copy of **PLAINTIFFS'**
3 **TRIAL MEMORANDUM AND MOTION FOR SUMMARY JUDGMENT** to be served upon
4 the following named parties or their attorney as indicated below and addressed to the following:

5 Harry Wilson, OSB #077214
6 Markowitz Herbold PC
7 1455 SW Broadway, Suite 1900
8 Portland, Oregon 97201
9 Harrywilson@markowitzherbold.com
10 *Of Attorneys for Defendants*

11 Mailing was done by X first class mail, and by ___ certified or ___ registered mail, return
12 receipt requested with restricted delivery, or ___ express mail, ___ facsimile, and e-mail X .

13 DATED: September 13, 2023

14 **Tyler Smith and Associates, PC**

15 By /s/ Tony L. Aiello, Jr.
16 Tony L. Aiello, Jr., OSB #203404
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF HARNEY

JOSEPH ARNOLD, CLIFF ASMUSSEN,
GUN OWNERS OF AMERICA, INC., and
GUN OWNERS FOUNDATION,

Plaintiffs,

vs.

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

Defendants.

No. 22CV41008

**DEFENDANT TINA KOTEK'S
RESPONSE TO PLAINTIFF GUN
OWNERS FOUNDATION'S FIRST
REQUEST FOR ADMISSIONS**

Defendant Tina Kotek responds to plaintiff Gun Owners Foundation's First Request
for Admissions as follows:

GENERAL OBJECTIONS TO REQUESTS

1. Privilege. Defendant objects to the requests to the extent that plaintiff seeks
information protected from disclosure by the attorney-client privilege, the work-product
doctrine, mediation privilege, deliberative process privilege, informer privilege, or any other
applicable privilege, immunity, rule of privacy or confidentiality, protection, or restriction
that protects information from involuntary disclosure. Defendant intends to and does assert
the privileges above with respect to all such information, and this information will not be
disclosed. Any inadvertent disclosure of this information is not intended to constitute, and
shall not constitute, a waiver, in whole or in part, of any privilege, doctrine, or objection.

1 2. Compliance with Rules. Defendant objects to the requests, instructions, and
2 definitions to the extent they purport to impose on defendants any obligations different from,
3 inconsistent with, or in addition to, those imposed by the Oregon Rules of Civil Procedure or the
4 Supplemental Local Rules of this Court. Defendant will not respond in any manner beyond what
5 is required pursuant to the Oregon Rules of Civil Procedure or the Supplemental Local Rules of
6 this Court.

7 3. Scope of Discovery. Defendant objects to the requests to the extent they seek
8 information that is not relevant to any claim or defense of any party. Defendant objects to
9 the requests to the extent that they are not proportional to the needs of the case considering
10 the importance of the issues at stake in the action, the amount in controversy, the parties'
11 relative access to relevant information, the parties' resources, the importance of the discovery
12 in resolving the issues, and whether the burden or expense of the proposed discovery
13 outweighs its likely benefit. Defendant objects to the requests to the extent the discovery
14 sought is unreasonably cumulative or duplicative or is obtainable from some other source
15 that is more convenient, less burdensome, or less expensive. Defendant objects to the
16 requests to the extent they require defendant to search for and produce information from
17 sources that are not reasonably accessible because of undue burden or expense. Defendant
18 will not produce information from sources that are not reasonably accessible because of
19 undue burden or cost. Defendant further objects to the extent that plaintiff seeks documents
20 or information already in their possession and/or equally available to all parties.
21 Additionally, defendant objects to the requests to the extent they seek information that
22 defendant is legally or contractually prohibited from disclosing. Defendant reserves the right
23 to object to further discovery into any subject matter covered by the requests.

24 4. Discovery Ongoing. Defendant's responses are made to the best of her
25 present knowledge, information, and belief. The responses are at all times subject to
26 additional or different information that discovery or further investigation may disclose and,

1 while based on the present state of her recollection, are subject to refreshing of recollection
2 and additional knowledge of facts, as may result from further discovery or investigation.

3 Accordingly, defendant reserves her right to supplement the responses to these requests if
4 additional documents or information become known to her. In addition, defendant has made
5 reasonable efforts to respond to the requests based on their interpretation of each request, but if
6 plaintiff subsequently asserts an interpretation of any request that is different from defendant's
7 interpretation, defendant reserves the right to supplement her objections or responses.

8 5. Possession, Custody, or Control. Defendant objects to the requests to the
9 extent that they purport to require the disclosure of information from sources not in
10 defendant's possession, custody, or control. In responding to the requests, defendant will
11 only disclose information reasonably known to her or within her possession, custody, or
12 control.

13 6. Objection to Form. Defendant objects to the requests to the extent that they
14 are not complete in and of themselves or are vague, overbroad, compound, conjunctive,
15 harassing, ambiguous, burdensome, and/or oppressive.

16 7. No Waiver/Reservation of Objections. No response to any portion of any
17 request shall be deemed a waiver of any objection which could have been made to such
18 request, including objections as to the relevance of the responsive information or documents,
19 or the admissibility of such information or documents at trial. Defendant reserves her right to
20 challenge the competency, relevancy, materiality, and admissibility of, or to object on any
21 ground to the use of, information set forth herein, or produced in connection herewith, at
22 subsequent proceedings or the trial of this or any action.

23 8. No Incidental and/or Implied Admissions. To the extent defendant responds or
24 provides information requested in any individual request, defendant does not concede that the
25 information requested is relevant, material, competent, or admissible. Except for expressed facts
26 stated herein, no incidental or implied admissions are intended by, or in, any of the responses.

1 The fact that defendant has responded to any request is not an admission that defendant
2 accepts or admits the existence of any facts set forth or assumed by plaintiff. Defendant
3 reserves the right to object to further discovery into any subject matter covered by the requests.

4 9. Reasonable Interpretation. Defendant has made reasonable efforts to respond
5 to these requests based on her common-sense interpretation of each request, but if plaintiff
6 subsequently asserts an interpretation of any request which is different from defendant's
7 interpretation, defendant reserves the right to supplement her objections or responses.

8 10. General Objections Incorporated into Responses. These general objections
9 are incorporated by reference into defendant's responses to each individual request. A
10 specific objection may repeat a general objection for emphasis or for some other reason. The
11 failure to include any general objection within any specific response shall not be interpreted
12 as a waiver of any general objection to that request.

13 **REQUESTS FOR ADMISSION**

14 **REQUEST FOR ADMISSION NO. 1:** Admit that the FBI has informed Defendant
15 that it will not perform fingerprint-based criminal background checks for permit to purchase
16 applicants.

17 **RESPONSE:** Defendant incorporates her general objections as set out above.

18 Subject to and without waiving these objections, defendant responds as follows:

19 Admitted that the Federal Bureau of Investigation has said it will not process the fingerprint-
20 based background checks required by Measure 114; otherwise denied.

21 **REQUEST FOR ADMISSION NO. 2:** Admit that the FBI has informed Defendant
22 that the FBI has determined that Ballot Measure 114 does not meet the requirements of Pub.
23 L. 92-544.

24 **RESPONSE:** Defendant incorporates her general objections as set out above.

25 Subject to and without waiving these objections, defendant responds as follows:

26 Admitted that the Federal Bureau of Investigation has said it will not process fingerprint-

1 based background checks based on its determination that Ballot Measure 114 does not meet
2 the requirements of Pub. L. 92-544.

3 **REQUEST FOR ADMISSION NO. 3:** Admit that the FBI has informed Defendant
4 that the FBI determined that Ballot Measure 114 does not meet the requirements of 28 CFR
5 25.6.

6 **RESPONSE:** Defendant incorporates her general objections as set out above.
7 Subject to and without waiving these objections, defendant responds as follows: Denied.

8 **REQUEST FOR ADMISSION NO. 4:** Admit that OSP must obtain the results of
9 its criminal background check before providing a Gun Dealer with a unique approval number
10 for the purchaser pursuant to BM 114 § 6(3)(b).¹

11 **RESPONSE:** Defendant incorporates her general objections as set out above.
12 Defendant further objects that this request improperly seeks a pure legal conclusion.
13 Requests for admission may only seek admissions about facts, opinions of fact, or application
14 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
15 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
16 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
17 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008)² (“Requests to admit may not be used to
18 establish legal conclusions.”).

19 Based on the above objections, defendant does not respond to this request.
20

21 ¹ Sec. 6(3)(b) states: “If the department is unable to determine if the purchaser is
22 qualified or disqualified from completing the transfer within 30 minutes, the department shall
23 notify the gun dealer and provide the gun dealer with an estimate of the time when the
24 department will provide the requested information.”

25 ² Where the Federal Rules of Civil Procedure are nearly identical to Oregon rules,
26 case law interpreting the FRCPs is persuasive in a state court. *See, e.g., Meyer v. State ex rel*
Ore. Lottery, 292 Or. App. 647, 672-73 (2018) (“Because FRCP 26(b)(3) and ORCP 36 B(3)
are nearly identical, we find the above-quoted authority interpreting that rule persuasive
when interpreting ORCP 36 B(3).”); *Goldsborough v. Eagle Crist Partners, Ltd.*, 105 Or.
App. 499, 503 (1992) (“Because FRCP 34 is nearly identical to ORCP 43, cases interpreting
the federal rule are persuasive.”).

1 **REQUEST FOR ADMISSION NO. 5:** Admit that pursuant to BM 114 § 6(13)(b),
2 a Gun Dealer’s receipt of a unique approval number from OSP indicates that a purchaser has
3 successfully completed the background check required by BM 114, § 6(2)(a)(A).

4 **RESPONSE:** Defendant incorporates her general objections as set out above.
5 Defendant further objects that this request improperly seeks a pure legal conclusion.
6 Requests for admission may only seek admissions about facts, opinions of fact, or application
7 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
8 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
9 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
10 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
11 establish legal conclusions.”). Defendant further objects that Measure 114 does not contain a
12 section numbered 6(2)(a)(A).

13 Based on the above objections, defendant does not respond to this request.

14 **REQUEST FOR ADMISSION NO. 6:** Admit that pursuant to BM 114 § 6(3)(c), a
15 Gun Dealer may not transfer a firearm to a purchaser unless the Gun Dealer receives a unique
16 approval number.

17 **RESPONSE:** Defendant incorporates her general objections as set out above.
18 Defendant further objects that this request improperly seeks a pure legal conclusion.
19 Requests for admission may only seek admissions about facts, opinions of fact, or application
20 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
21 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
22 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
23 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
24 establish legal conclusions.”).

25 Based on the above objections, defendant does not respond to this request.
26

1 **REQUEST FOR ADMISSION NO. 7:** Admit that pursuant to BM 114
2 § 7(3)(d)(A)–(B), a Gun Dealer may not transfer a firearm to a purchaser unless the Gun
3 Dealer receives a unique approval number.

4 **RESPONSE:** Defendant incorporates her general objections as set out above.
5 Defendant further objects that this request improperly seeks a pure legal conclusion.
6 Requests for admission may only seek admissions about facts, opinions of fact, or application
7 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
8 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
9 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
10 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
11 establish legal conclusions.”).

12 Based on the above objections, defendant does not respond to this request.

13 **REQUEST FOR ADMISSION NO. 8:** Admit that pursuant to BM 114 § 8(3)(c), a
14 transferor who is not a Gun Dealer may not transfer a firearm at a gun show to a transferee
15 unless the transferor receives a unique approval number.

16 **RESPONSE:** Defendant incorporates her general objections as set out above.
17 Defendant further objects that this request improperly seeks a pure legal conclusion.
18 Requests for admission may only seek admissions about facts, opinions of fact, or application
19 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
20 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
21 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
22 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
23 establish legal conclusions.”).

24 Based on the above objections, defendant does not respond to this request.

1 **REQUEST FOR ADMISSION NO. 9:** Admit that the in-person portion of the
2 firearm training course required by BM 114 § 4(8)(c)(D) is not currently available in all of
3 Oregon’s 36 counties.

4 **RESPONSE:** Defendant incorporates her general objections as set out above.
5 Defendant further objects to the request as requiring information outside of defendant’s
6 possession, custody, or control, as the request cannot be answered without information from
7 local permit agents in all 36 Oregon counties. Local law enforcement officials have stated
8 that they intend to certify instructors and firearm safety courses. In a federal court filing, the
9 Executive Director of the Oregon State Sheriffs Association (“OSSA”) stated that “OSSA
10 and representatives of the Oregon Chiefs of Police have met to work on creating a process for
11 the in- person demonstration of the applicant’s ability to lock, load, unload, fire and store a
12 firearm.” (Second Decl. of Jason Myers, *Oregon Firearms Federation, et al. v. Kotek, et al.*,
13 Case No. 22-cv-01815-IM (Dkt. 37) ¶ 10.) Accordingly, defendant’s response is limited
14 solely to their own knowledge and does not encompass knowledge held by the local law
15 enforcement that intends to certify live-fire training instructors.

16 Subject to and without waiving these objections, defendant responds as follows:
17 Admitted that to defendant’s knowledge the in-person portion of the firearm training course
18 required by BM 114 § 4(8)(c)(D) is not currently available in all of Oregon’s 36 counties.

19 **REQUEST FOR ADMISSION NO. 10:** Admit that the in-person portion of the
20 firearm training course required by BM 114 § 4(8)(c)(D) will not be available in all of
21 Oregon’s 36 counties by June 16, 2023.

22 **RESPONSE:** Defendant incorporates her general objections as set out above.
23 Defendant further objects to the request as requiring information outside of defendant’s
24 possession, custody, or control, as the request cannot be answered without information from
25 local permit agents in all 36 Oregon counties. Local law enforcement officials have stated
26 that they intend to certify instructors and firearm safety courses. In a federal court filing, the

1 Executive Director of the OSSA stated that “OSSA and representatives of the Oregon Chiefs
2 of Police have met to work on creating a process for the in- person demonstration of the
3 applicant’s ability to lock, load, unload, fire and store a firearm.” (Second Decl. of Jason
4 Myers, *Oregon Firearms Federation, et al. v. Kotek, et al.*, Case No. 22-cv-01815-IM (Dkt.
5 37) ¶ 10.) Accordingly, defendant’s response is limited solely to their own knowledge and
6 does not encompass knowledge held by the local law enforcement that intends to certify live-
7 fire training instructors.

8 Subject to and without waiving these objections, defendant responds as follows:
9 Defendant has made a reasonable inquiry, and the information she knows or can readily
10 obtain is insufficient to enable defendant to admit or deny this request.

11 **REQUEST FOR ADMISSION NO. 11:** Admit that Defendant has been informed
12 by the Sheriff of at least one of Oregon’s 36 counties that the firearm training course required
13 by BM 114 § 4(8)(c)(D) will not be available by a date prior to June 16, 2023.

14 **RESPONSE:** Defendant incorporates her general objections as set out above.

15 Subject to and without waiving these objections, defendant responds as follows:
16 Denied.

17 **REQUEST FOR ADMISSION NO. 12:** Admit that the in-person portion of the
18 firearm training course required by BM 114 § 4(8)(c)(D) will not be available in Harney
19 County by June 16, 2023.

20 **RESPONSE:** Defendant incorporates her general objections as set out above.

21 Defendant further objects to the request as requiring information outside of defendant’s
22 possession, custody, or control, as defendant does not know the status or plan for a firearm
23 training course in Harney County.

24 Subject to and without waiving these objections, defendant responds as follows:
25 Defendant has made a reasonable inquiry, and the information she knows or can readily
26 obtain is insufficient to enable defendant to admit or deny this request.

1 **REQUEST FOR ADMISSION NO. 13:** Admit that Defendant has been informed
2 by the Sheriff of Harney County that the firearm training course required by BM 114
3 § 4(8)(c)(D) will not be available by a date prior to June 16, 2023.

4 **RESPONSE:** Defendant incorporates her general objections as set out above.
5 Subject to and without waiving these objections, defendant responds as follows:
6 Denied.

7 **REQUEST FOR ADMISSION NO. 14:** Admit that the in-person portion of the
8 firearm training course required by BM 114 § 4(8)(c)(D) will not be available in all of
9 Oregon's 36 counties by September 18, 2023.

10 **RESPONSE:** Defendant incorporates her general objections as set out above.
11 Defendant further objects to the request as requiring information outside of defendant's
12 possession, custody, or control, as the request cannot be answered without information from
13 local permit agents in all 36 Oregon counties.

14 Subject to and without waiving these objections, defendant responds as follows:
15 Defendant has made a reasonable inquiry, and the information she knows or can readily
16 obtain is insufficient to enable defendant to admit or deny this request.

17 **REQUEST FOR ADMISSION NO. 15:** Admit that Defendant has been informed
18 by the Sheriff of at least one of Oregon's 36 counties that the firearm training course required
19 by BM 114 § 4(8)(c)(D) will not be available by a date prior to September 18, 2023.

20 **RESPONSE:** Defendant incorporates her general objections as set out above.
21 Subject to and without waiving these objections, defendant responds as follows:
22 Denied.

23 **REQUEST FOR ADMISSION NO. 16:** Admit that the in-person portion of the
24 firearm training course required by BM 114 § 4(8)(c)(D) will not be available in Harney
25 County by September 18, 2023.
26

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2023, I have made service of the foregoing **DEFENDANT TINA KOTEK'S RESPONSE TO PLAINTIFF GUN OWNERS FOUNDATION'S FIRST REQUEST FOR ADMISSIONS** on the parties listed below in the manner indicated:

Tyler D. Smith
Tony L. Aiello, Jr.
Tyler Smith & Associates, P.C.
181 N. Grant Street, Suite 212
Canby, OR 97013

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email: tyler@ruralbusinessattorneys.com;
Tony@RuralBusinessAttorneys.com
- Odyssey File & Serve™

DATED this 18th day of April, 2023.

s/ Hanna K. Hoffman

Hannah K. Hoffman, OSB #183641
*Special Assistant Attorney General for
Defendants*

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF HARNEY

JOSEPH ARNOLD, CLIFF ASMUSSEN,
GUN OWNERS OF AMERICA, INC., and
GUN OWNERS FOUNDATION,

Plaintiffs,

vs.

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

Defendants.

No. 22CV41008

**DEFENDANT ELLEN ROSENBLUM'S
RESPONSE TO PLAINTIFF GUN
OWNERS FOUNDATION'S FIRST
REQUEST FOR ADMISSIONS**

Defendant Ellen Rosenblum responds to plaintiff Gun Owners Foundation's First
Request for Admissions as follows:

GENERAL OBJECTIONS TO REQUESTS

1. Privilege. Defendant objects to the requests to the extent that plaintiff seeks
information protected from disclosure by the attorney-client privilege, the work-product
doctrine, mediation privilege, deliberative process privilege, informer privilege, or any other
applicable privilege, immunity, rule of privacy or confidentiality, protection, or restriction
that protects information from involuntary disclosure. Defendant intends to and does assert
the privileges above with respect to all such information, and this information will not be
disclosed. Any inadvertent disclosure of this information is not intended to constitute, and
shall not constitute, a waiver, in whole or in part, of any privilege, doctrine, or objection.

1 2. Compliance with Rules. Defendant objects to the requests, instructions, and
2 definitions to the extent they purport to impose on defendant any obligations different from,
3 inconsistent with, or in addition to, those imposed by the Oregon Rules of Civil Procedure or the
4 Supplemental Local Rules of this Court. Defendant will not respond in any manner beyond what
5 is required pursuant to the Oregon Rules of Civil Procedure or the Supplemental Local Rules of
6 this Court.

7 3. Scope of Discovery. Defendant objects to the requests to the extent they seek
8 information that is not relevant to any claim or defense of any party. Defendant objects to
9 the requests to the extent that they are not proportional to the needs of the case considering
10 the importance of the issues at stake in the action, the amount in controversy, the parties'
11 relative access to relevant information, the parties' resources, the importance of the discovery
12 in resolving the issues, and whether the burden or expense of the proposed discovery
13 outweighs its likely benefit. Defendant objects to the requests to the extent the discovery
14 sought is unreasonably cumulative or duplicative or is obtainable from some other source
15 that is more convenient, less burdensome, or less expensive. Defendant objects to the
16 requests to the extent they require defendant to search for and produce information from
17 sources that are not reasonably accessible because of undue burden or expense. Defendant
18 will not produce information from sources that are not reasonably accessible because of
19 undue burden or cost. Defendant further objects to the extent that plaintiff seeks documents
20 or information already in their possession and/or equally available to all parties.
21 Additionally, defendant objects to the requests to the extent they seek information that
22 defendant is legally or contractually prohibited from disclosing. Defendant reserves the right
23 to object to further discovery into any subject matter covered by the requests.

24 4. Discovery Ongoing. Defendant's responses are made to the best of her
25 present knowledge, information, and belief. The responses are at all times subject to
26 additional or different information that discovery or further investigation may disclose and,

1 while based on the present state of her recollection, are subject to refreshing of recollection
2 and additional knowledge of facts, as may result from further discovery or investigation.

3 Accordingly, defendant reserves her right to supplement the responses to these requests if
4 additional documents or information become known to her. In addition, defendant has made
5 reasonable efforts to respond to the requests based on their interpretation of each request, but if
6 plaintiff subsequently asserts an interpretation of any request that is different from defendant's
7 interpretation, defendant reserves the right to supplement her objections or responses.

8 5. Possession, Custody, or Control. Defendant objects to the requests to the
9 extent that they purport to require the disclosure of information from sources not in
10 defendant's possession, custody, or control. In responding to the requests, defendant will
11 only disclose information reasonably known to her or within her possession, custody, or
12 control.

13 6. Objection to Form. Defendant objects to the requests to the extent that they
14 are not complete in and of themselves or are vague, overbroad, compound, conjunctive,
15 harassing, ambiguous, burdensome, and/or oppressive.

16 7. No Waiver/Reservation of Objections. No response to any portion of any
17 request shall be deemed a waiver of any objection which could have been made to such
18 request, including objections as to the relevance of the responsive information or documents,
19 or the admissibility of such information or documents at trial. Defendant reserves her right to
20 challenge the competency, relevancy, materiality, and admissibility of, or to object on any
21 ground to the use of, information set forth herein, or produced in connection herewith, at
22 subsequent proceedings or the trial of this or any action.

23 8. No Incidental and/or Implied Admissions. To the extent defendant responds or
24 provides information requested in any individual request, defendant does not concede that the
25 information requested is relevant, material, competent, or admissible. Except for expressed facts
26 stated herein, no incidental or implied admissions are intended by, or in, any of the responses.

1 The fact that defendant has responded to any request is not an admission that defendant
2 accepts or admits the existence of any facts set forth or assumed by plaintiff. Defendant
3 reserves the right to object to further discovery into any subject matter covered by the requests.

4 9. Reasonable Interpretation. Defendant has made reasonable efforts to respond
5 to these requests based on her common-sense interpretation of each request, but if plaintiff
6 subsequently asserts an interpretation of any request which is different from defendant's
7 interpretation, defendant reserves the right to supplement her objections or responses.

8 10. General Objections Incorporated into Responses. These general objections
9 are incorporated by reference into defendant's responses to each individual request. A
10 specific objection may repeat a general objection for emphasis or for some other reason. The
11 failure to include any general objection within any specific response shall not be interpreted
12 as a waiver of any general objection to that request.

13 **REQUESTS FOR ADMISSION**

14 **REQUEST FOR ADMISSION NO. 1:** Admit that the FBI has informed Defendant
15 that it will not perform fingerprint-based criminal background checks for permit to purchase
16 applicants.

17 **RESPONSE:** Defendant incorporates her general objections as set out above.
18 Subject to and without waiving these objections, defendant responds as follows: Admitted
19 that the Federal Bureau of Investigation has said it will not process the fingerprint-based
20 background checks required by Measure 114; otherwise denied.

21 **REQUEST FOR ADMISSION NO. 2:** Admit that the FBI has informed Defendant
22 that the FBI has determined that Ballot Measure 114 does not meet the requirements of Pub.
23 L. 92-544.

24 **RESPONSE:** Defendant incorporates her general objections as set out above.
25 Subject to and without waiving these objections, defendant responds as follows: Admitted
26 that the Federal Bureau of Investigation has said it will not process fingerprint-based

1 background checks based on its determination that Ballot Measure 114 does not meet the
2 requirements of Pub. L. 92-544.

3 **REQUEST FOR ADMISSION NO. 3:** Admit that the FBI has informed Defendant
4 that the FBI determined that Ballot Measure 114 does not meet the requirements of 28 CFR
5 25.6.

6 **RESPONSE:** Defendant incorporates her general objections as set out above.
7 Subject to and without waiving these objections, defendant responds as follows: Denied.

8 **REQUEST FOR ADMISSION NO. 4:** Admit that OSP must obtain the results of
9 its criminal background check before providing a Gun Dealer with a unique approval number
10 for the purchaser pursuant to BM 114 § 6(3)(b).

11 **RESPONSE:** Defendant incorporates her general objections as set out above.
12 Defendant further objects that this request improperly seeks a pure legal conclusion.
13 Requests for admission may only seek admissions about facts, opinions of fact, or application
14 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
15 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
16 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
17 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008)¹ (“Requests to admit may not be used to
18 establish legal conclusions.”).

19 Based on the above objections, defendant does not respond to this request.
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23 ¹ Where the Federal Rules of Civil Procedure are nearly identical to Oregon rules,
24 case law interpreting the FRCPs is persuasive in a state court. *See, e.g., Meyer v. State ex rel*
25 *Ore. Lottery*, 292 Or. App. 647, 672-73 (2018) (“Because FRCP 26(b)(3) and ORCP 36 B(3)
26 are nearly identical, we find the above-quoted authority interpreting that rule persuasive
when interpreting ORCP 36 B(3).”); *Goldsborough v. Eagle Crist Partners, Ltd.*, 105 Or.
App. 499, 503 (1992) (“Because FRCP 34 is nearly identical to ORCP 43, cases interpreting
the federal rule are persuasive.”).

1 **REQUEST FOR ADMISSION NO. 5:** Admit that pursuant to BM 114 § 6(13)(b),
2 a Gun Dealer’s receipt of a unique approval number from OSP indicates that a purchaser has
3 successfully completed the background check required by BM 114 § 6(2)(a)(A).

4 **RESPONSE:** Defendant incorporates her general objections as set out above.
5 Defendant further objects that this request improperly seeks a pure legal conclusion.
6 Requests for admission may only seek admissions about facts, opinions of fact, or application
7 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
8 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
9 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
10 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
11 establish legal conclusions.”). Defendant further objects that Measure 114 does not contain a
12 section numbered 6(2)(a)(A).

13 Based on the above objections, defendant does not respond to this request.

14 **REQUEST FOR ADMISSION NO. 6:** Admit that pursuant to BM 114 § 6(3)(c), a
15 Gun Dealer may not transfer a firearm to a purchaser unless the Gun Dealer receives a unique
16 approval number.

17 **RESPONSE:** Defendant incorporates her general objections as set out above.
18 Defendant further objects that this request improperly seeks a pure legal conclusion.
19 Requests for admission may only seek admissions about facts, opinions of fact, or application
20 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
21 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
22 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
23 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
24 establish legal conclusions.”).

25 Based on the above objections, defendant does not respond to this request.
26

1 **REQUEST FOR ADMISSION NO. 7:** Admit that pursuant to BM 114
2 § 7(3)(d)(A)–(B), a Gun Dealer may not transfer a firearm to a purchaser unless the Gun
3 Dealer receives a unique approval number.

4 **RESPONSE:** Defendant incorporates her general objections as set out above.
5 Defendant further objects that this request improperly seeks a pure legal conclusion.
6 Requests for admission may only seek admissions about facts, opinions of fact, or application
7 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
8 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
9 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
10 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
11 establish legal conclusions.”).

12 Based on the above objections, defendant does not respond to this request.

13 **REQUEST FOR ADMISSION NO. 8:** Admit that pursuant to BM 114 § 8(3)(c), a
14 transferor who is not a Gun Dealer may not transfer a firearm at a gun show to a transferee
15 unless the transferor receives a unique approval number.

16 **RESPONSE:** Defendant incorporates her general objections as set out above.
17 Defendant further objects that this request improperly seeks a pure legal conclusion.
18 Requests for admission may only seek admissions about facts, opinions of fact, or application
19 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
20 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
21 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
22 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
23 establish legal conclusions.”).

24 Based on the above objections, defendant does not respond to this request.

1 **REQUEST FOR ADMISSION NO. 9:** Admit that the in-person portion of the
2 firearm training course required by BM 114 § 4(8)(c)(D) is not currently available in all of
3 Oregon’s 36 counties.

4 **RESPONSE:** Defendant incorporates her general objections as set out above.
5 Defendant further objects to the request as requiring information outside of defendant’s
6 possession, custody, or control, as the request cannot be answered without information from
7 local permit agents in all 36 Oregon counties. Local law enforcement officials have stated
8 that they intend to certify instructors and firearm safety courses. In a federal court filing, the
9 Executive Director of the Oregon State Sheriffs Association (“OSSA”) stated that “OSSA
10 and representatives of the Oregon Chiefs of Police have met to work on creating a process for
11 the in- person demonstration of the applicant’s ability to lock, load, unload, fire and store a
12 firearm.” (Second Decl. of Jason Myers, *Oregon Firearms Federation, et al. v. Kotek, et al.*,
13 Case No. 22-cv-01815-IM (Dkt. 37) ¶ 10.) Accordingly, defendant’s response is limited
14 solely to their own knowledge and does not encompass knowledge held by the local law
15 enforcement that intends to certify live-fire training instructors.

16 Subject to and without waiving these objections, defendant responds as follows:
17 Admitted that to defendant’s knowledge the in-person portion of the firearm training course
18 required by BM 114 § 4(8)(c)(D) is not currently available in all of Oregon’s 36 counties.

19 **REQUEST FOR ADMISSION NO. 10:** Admit that the in-person portion of the
20 firearm training course required by BM 114 § 4(8)(c)(D) will not be available in all of
21 Oregon’s 36 counties by June 16, 2023.

22 **RESPONSE:** Defendant incorporates her general objections as set out above.
23 Defendant further objects to the request as requiring information outside of defendant’s
24 possession, custody, or control, as the request cannot be answered without information from
25 local permit agents in all 36 Oregon counties. Local law enforcement officials have stated
26 that they intend to certify instructors and firearm safety courses. In a federal court filing, the

1 Executive Director of OSSA stated that “OSSA and representatives of the Oregon Chiefs of
2 Police have met to work on creating a process for the in- person demonstration of the
3 applicant’s ability to lock, load, unload, fire and store a firearm.” (Second Decl. of Jason
4 Myers, *Oregon Firearms Federation, et al. v. Kotek, et al.*, Case No. 22-cv-01815-IM (Dkt.
5 37) ¶ 10.) Accordingly, defendant’s response is limited solely to their own knowledge and
6 does not encompass knowledge held by the local law enforcement that intends to certify live-
7 fire training instructors.

8 Subject to and without waiving these objections, defendant responds as follows:
9 Defendant has made a reasonable inquiry, and the information she knows or can readily
10 obtain is insufficient to enable defendant to admit or deny this request.

11 **REQUEST FOR ADMISSION NO. 11:** Admit that Defendant has been informed
12 by the Sheriff of at least one of Oregon’s 36 counties that the firearm training course required
13 by BM 114 § 4(8)(c)(D) will not be available by a date prior to June 16, 2023.

14 **RESPONSE:** Defendant incorporates her general objections as set out above.

15 Subject to and without waiving these objections, defendant responds as follows:
16 Denied.

17 **REQUEST FOR ADMISSION NO. 12:** Admit that the in-person portion of the
18 firearm training course required by BM 114 § 4(8)(c)(D) will not be available in Harney
19 County by June 16, 2023.

20 **RESPONSE:** Defendant incorporates her general objections as set out above.

21 Defendant further objects to the request as requiring information outside of defendant’s
22 possession, custody, or control, as defendant does not know the status or plan for a firearm
23 training course in Harney County.

24 Subject to and without waiving these objections, defendant responds as follows:
25 Defendant has made a reasonable inquiry, and the information she knows or can readily
26 obtain is insufficient to enable defendant to admit or deny this request.

1 **REQUEST FOR ADMISSION NO. 13:** Admit that Defendant has been informed
2 by the Sheriff of Harney County that the firearm training course required by BM 114
3 § 4(8)(c)(D) will not be available by a date prior to June 16, 2023.

4 **RESPONSE:** Defendant incorporates her general objections as set out above.
5 Subject to and without waiving these objections, defendant responds as follows:
6 Denied.

7 **REQUEST FOR ADMISSION NO. 14:** Admit that the in-person portion of the
8 firearm training course required by BM 114 § 4(8)(c)(D) will not be available in all of
9 Oregon’s 36 counties by September 18, 2023.

10 **RESPONSE:** Defendant incorporates her general objections as set out above.
11 Defendant further objects to the request as requiring information outside of defendant’s
12 possession, custody, or control, as the request cannot be answered without information from
13 local permit agents in all 36 Oregon counties.

14 Subject to and without waiving these objections, defendant responds as follows:
15 Defendant has made a reasonable inquiry, and the information she knows or can readily
16 obtain is insufficient to enable defendant to admit or deny this request.

17 **REQUEST FOR ADMISSION NO. 15:** Admit that Defendant has been informed
18 by the Sheriff of at least one of Oregon’s 36 counties that the firearm training course required
19 by BM 114 § 4(8)(c)(D) will not be available by a date prior to September 18, 2023.

20 **RESPONSE:** Defendant incorporates her general objections as set out above.
21 Subject to and without waiving these objections, defendant responds as follows:
22 Denied.

23 **REQUEST FOR ADMISSION NO. 16:** Admit that the in-person portion of the
24 firearm training course required by BM 114 § 4(8)(c)(D) will not be available in Harney
25 County by September 18, 2023.
26

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2023, I have made service of the foregoing **DEFENDANT ELLEN ROSENBLUM'S RESPONSE TO PLAINTIFF GUN OWNERS FOUNDATION'S FIRST REQUEST FOR ADMISSIONS** on the parties listed below in the manner indicated:

Tyler D. Smith
Tony L. Aiello, Jr.
Tyler Smith & Associates, P.C.
181 N. Grant Street, Suite 212
Canby, OR 97013

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email: tyler@ruralbusinessattorneys.com;
Tony@RuralBusinessAttorneys.com
- Odyssey File & Serve™

DATED this 18th day of April, 2023.

s/ Hannah K. Hoffman

Hannah K. Hoffman, OSB #183641
*Special Assistant Attorney General for
Defendants*

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF HARNEY

JOSEPH ARNOLD, CLIFF ASMUSSEN,
GUN OWNERS OF AMERICA, INC., and
GUN OWNERS FOUNDATION,

Plaintiffs,

vs.

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

Defendants.

No. 22CV41008

**DEFENDANT CASEY CODDING'S
RESPONSE TO PLAINTIFF GUN
OWNERS FOUNDATION'S FIRST
REQUEST FOR ADMISSIONS**

Defendant Casey Coddling responds to plaintiff Gun Owners Foundation's First
Request for Admissions as follows:

GENERAL OBJECTIONS TO REQUESTS

1. Privilege. Defendant objects to the requests to the extent that plaintiff seeks
information protected from disclosure by the attorney-client privilege, the work-product
doctrine, mediation privilege, deliberative process privilege, informer privilege, or any other
applicable privilege, immunity, rule of privacy or confidentiality, protection, or restriction
that protects information from involuntary disclosure. Defendant intends to and does assert
the privileges above with respect to all such information, and this information will not be
disclosed. Any inadvertent disclosure of this information is not intended to constitute, and
shall not constitute, a waiver, in whole or in part, of any privilege, doctrine, or objection.

1 2. Compliance with Rules. Defendant objects to the requests, instructions, and
2 definitions to the extent they purport to impose on defendants any obligations different from,
3 inconsistent with, or in addition to, those imposed by the Oregon Rules of Civil Procedure or the
4 Supplemental Local Rules of this Court. Defendant will not respond in any manner beyond what
5 is required pursuant to the Oregon Rules of Civil Procedure or the Supplemental Local Rules of
6 this Court.

7 3. Scope of Discovery. Defendant objects to the requests to the extent they seek
8 information that is not relevant to any claim or defense of any party. Defendant objects to
9 the requests to the extent that they are not proportional to the needs of the case considering
10 the importance of the issues at stake in the action, the amount in controversy, the parties'
11 relative access to relevant information, the parties' resources, the importance of the discovery
12 in resolving the issues, and whether the burden or expense of the proposed discovery
13 outweighs its likely benefit. Defendant objects to the requests to the extent the discovery
14 sought is unreasonably cumulative or duplicative or is obtainable from some other source
15 that is more convenient, less burdensome, or less expensive. Defendant objects to the
16 requests to the extent they require defendant to search for and produce information from
17 sources that are not reasonably accessible because of undue burden or expense. Defendant
18 will not produce information from sources that are not reasonably accessible because of
19 undue burden or cost. Defendant further objects to the extent that plaintiff seeks documents
20 or information already in their possession and/or equally available to all parties.
21 Additionally, defendant objects to the requests to the extent they seek information that
22 defendant is legally or contractually prohibited from disclosing. Defendant reserves the right
23 to object to further discovery into any subject matter covered by the requests.

24 4. Discovery Ongoing. Defendant's responses are made to the best of his
25 present knowledge, information, and belief. The responses are at all times subject to
26 additional or different information that discovery or further investigation may disclose and,

1 while based on the present state of his recollection, are subject to refreshing of recollection
2 and additional knowledge of facts, as may result from further discovery or investigation.
3 Accordingly, defendant reserves his right to supplement the responses to these requests if
4 additional documents or information become known to him. In addition, defendant has made
5 reasonable efforts to respond to the requests based on their interpretation of each request, but if
6 plaintiff subsequently asserts an interpretation of any request that is different from defendant's
7 interpretation, defendant reserves the right to supplement his objections or responses.

8 5. Possession, Custody, or Control. Defendant objects to the requests to the
9 extent that they purport to require the disclosure of information from sources not in
10 defendant's possession, custody, or control. In responding to the requests, defendant will
11 only disclose information reasonably known to him or within his possession, custody, or
12 control.

13 6. Objection to Form. Defendant objects to the requests to the extent that they
14 are not complete in and of themselves or are vague, overbroad, compound, conjunctive,
15 harassing, ambiguous, burdensome, and/or oppressive.

16 7. No Waiver/Reservation of Objections. No response to any portion of any
17 request shall be deemed a waiver of any objection which could have been made to such
18 request, including objections as to the relevance of the responsive information or documents,
19 or the admissibility of such information or documents at trial. Defendant reserves his right to
20 challenge the competency, relevancy, materiality, and admissibility of, or to object on any
21 ground to the use of, information set forth herein, or produced in connection herewith, at
22 subsequent proceedings or the trial of this or any action.

23 8. No Incidental and/or Implied Admissions. To the extent defendant responds or
24 provides information requested in any individual request, defendant does not concede that the
25 information requested is relevant, material, competent, or admissible. Except for expressed facts
26 stated herein, no incidental or implied admissions are intended by, or in, any of the responses.

1 The fact that defendant has responded to any request is not an admission that defendant
2 accepts or admits the existence of any facts set forth or assumed by plaintiff. Defendant
3 reserves the right to object to further discovery into any subject matter covered by the requests.

4 9. Reasonable Interpretation. Defendant has made reasonable efforts to respond
5 to these requests based on his common-sense interpretation of each request, but if plaintiff
6 subsequently asserts an interpretation of any request which is different from defendant's
7 interpretation, defendant reserves the right to supplement his objections or responses.

8 10. General Objections Incorporated into Responses. These general objections
9 are incorporated by reference into defendant's responses to each individual request. A
10 specific objection may repeat a general objection for emphasis or for some other reason. The
11 failure to include any general objection within any specific response shall not be interpreted
12 as a waiver of any general objection to that request.

13 **RESPONSES TO REQUESTS FOR ADMISSION**

14 **REQUEST FOR ADMISSION NO. 1:** Admit that the FBI has informed Defendant
15 that it will not perform fingerprint-based criminal background checks for permit to purchase
16 applicants.

17 **RESPONSE:** Defendant incorporates his general objections as set out above.

18 Subject to and without waiving these objections, defendant responds as follows:

19 Admitted that the Federal Bureau of Investigation has said it will not process the fingerprint-
20 based background checks required by Measure 114; otherwise denied.

21 **REQUEST FOR ADMISSION NO. 2:** Admit that the FBI has informed Defendant
22 that the FBI has determined that Ballot Measure 114 does not meet the requirements of Pub.
23 L. 92-544.

24 **RESPONSE:** Defendant incorporates his general objections as set out above.

25 Subject to and without waiving these objections, defendant responds as follows:

26 Admitted that the Federal Bureau of Investigation has said it will not process fingerprint-

1 based background checks based on its determination that Ballot Measure 114 does not meet
2 the requirements of Pub. L. 92-544.

3 **REQUEST FOR ADMISSION NO. 3:** Admit that the FBI has informed Defendant
4 that the FBI determined that Ballot Measure 114 does not meet the requirements of 28 CFR
5 25.6.

6 **RESPONSE:** Defendant incorporates his general objections as set out above.
7 Subject to and without waiving these objections, defendant responds as follows: Denied.

8 **REQUEST FOR ADMISSION NO. 4:** Admit that OSP must obtain the results of
9 its criminal background check before providing a Gun Dealer with a unique approval number
10 for the purchaser pursuant to BM 114 § 6(3)(b).¹

11 **RESPONSE:** Defendant incorporates his general objections as set out above.
12 Defendant further objects that this request improperly seeks a pure legal conclusion.
13 Requests for admission may only seek admissions about facts, opinions of fact, or application
14 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
15 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
16 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
17 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008)² (“Requests to admit may not be used to
18 establish legal conclusions.”).

19 Based on the above objections, defendant does not respond to this request.

21 ¹ Sec. 6(3)(b) states: “If the department is unable to determine if the purchaser is
22 qualified or disqualified from completing the transfer within 30 minutes, the department shall
23 notify the gun dealer and provide the gun dealer with an estimate of the time when the
24 department will provide the requested information.”

25 ² Where the Federal Rules of Civil Procedure are nearly identical to Oregon rules,
26 case law interpreting the FRCPs is persuasive in a state court. *See, e.g., Meyer v. State ex rel*
Ore. Lottery, 292 Or. App. 647, 672-73 (2018) (“Because FRCP 26(b)(3) and ORCP 36 B(3)
are nearly identical, we find the above-quoted authority interpreting that rule persuasive
when interpreting ORCP 36 B(3).”); *Goldsborough v. Eagle Crist Partners, Ltd.*, 105 Or.
App. 499, 503 (1992) (“Because FRCP 34 is nearly identical to ORCP 43, cases interpreting
the federal rule are persuasive.”).

1 **REQUEST FOR ADMISSION NO. 5:** Admit that pursuant to BM 114 § 6(13)(b),
2 a Gun Dealer’s receipt of a unique approval number from OSP indicates that a purchaser has
3 successfully completed the background check required by BM 114 § 6(2)(a)(A).

4 **RESPONSE:** Defendant incorporates his general objections as set out above.
5 Defendant further objects that this request improperly seeks a pure legal conclusion.
6 Requests for admission may only seek admissions about facts, opinions of fact, or application
7 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
8 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
9 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
10 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
11 establish legal conclusions.”). Defendant further objects that Measure 114 does not contain a
12 section numbered 6(2)(a)(A).

13 Based on the above objections, defendant does not respond to this request.

14 **REQUEST FOR ADMISSION NO. 6:** Admit that pursuant to BM 114 § 6(3)(c), a
15 Gun Dealer may not transfer a firearm to a purchaser unless the Gun Dealer receives a unique
16 approval number.

17 **RESPONSE:** Defendant incorporates his general objections as set out above.
18 Defendant further objects that this request improperly seeks a pure legal conclusion.
19 Requests for admission may only seek admissions about facts, opinions of fact, or application
20 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
21 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
22 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
23 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
24 establish legal conclusions.”).

25 Based on the above objections, defendant does not respond to this request.
26

1 **REQUEST FOR ADMISSION NO. 7:** Admit that pursuant to BM 114
2 § 7(3)(d)(A)–(B), a Gun Dealer may not transfer a firearm to a purchaser unless the Gun
3 Dealer receives a unique approval number.

4 **RESPONSE:** Defendant incorporates his general objections as set out above.
5 Defendant further objects that this request improperly seeks a pure legal conclusion.
6 Requests for admission may only seek admissions about facts, opinions of fact, or application
7 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
8 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
9 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
10 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
11 establish legal conclusions.”).

12 Based on the above objections, defendant does not respond to this request.

13 **REQUEST FOR ADMISSION NO. 8:** Admit that pursuant to BM 114 § 8(3)(c), a
14 transferor who is not a Gun Dealer may not transfer a firearm at a gun show to a transferee
15 unless the transferor receives a unique approval number.

16 **RESPONSE:** Defendant incorporates his general objections as set out above.
17 Defendant further objects that this request improperly seeks a pure legal conclusion.
18 Requests for admission may only seek admissions about facts, opinions of fact, or application
19 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
20 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
21 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
22 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
23 establish legal conclusions.”).

24 Based on the above objections, defendant does not respond to this request.

1 **REQUEST FOR ADMISSION NO. 9:** Admit that the in-person portion of the
2 firearm training course required by BM 114 § 4(8)(c)(D) is not currently available in all of
3 Oregon’s 36 counties.

4 **RESPONSE:** Defendant incorporates his general objections as set out above.
5 Defendant further objects to the request as requiring information outside of defendant’s
6 possession, custody, or control, as the request cannot be answered without information from
7 local permit agents in all 36 Oregon counties. Local law enforcement officials have stated
8 that they intend to certify instructors and firearm safety courses. In a federal court filing, the
9 Executive Director of the Oregon State Sheriffs Association (“OSSA”) stated that “OSSA
10 and representatives of the Oregon Chiefs of Police have met to work on creating a process for
11 the in- person demonstration of the applicant’s ability to lock, load, unload, fire and store a
12 firearm.” (Second Decl. of Jason Myers, *Oregon Firearms Federation, et al. v. Kotek, et al.*,
13 Case No. 22-cv-01815-IM (Dkt. 37) ¶ 10.) Accordingly, defendant’s response is limited
14 solely to their own knowledge and does not encompass knowledge held by the local law
15 enforcement that intends to certify live-fire training instructors.

16 Subject to and without waiving these objections, defendant responds as follows:
17 Admitted that to defendant’s knowledge the in-person portion of the firearm training course
18 required by BM 114 § 4(8)(c)(D) is not currently available in all of Oregon’s 36 counties.

19 **REQUEST FOR ADMISSION NO. 10:** Admit that the in-person portion of the
20 firearm training course required by BM 114, § 4(8)(c)(D) will not be available in all of
21 Oregon’s 36 counties by June 16, 2023.

22 **RESPONSE:** Defendant incorporates his general objections as set out above.
23 Defendant further objects to the request as requiring information outside of defendant’s
24 possession, custody, or control, as the request cannot be answered without information from
25 local permit agents in all 36 Oregon counties. Local law enforcement officials have stated
26 that they intend to certify instructors and firearm safety courses. In a federal court filing, the

1 Executive Director of the OSSA stated that “OSSA and representatives of the Oregon Chiefs
2 of Police have met to work on creating a process for the in-person demonstration of the
3 applicant’s ability to lock, load, unload, fire and store a firearm.” (Second Decl. of Jason
4 Myers, *Oregon Firearms Federation, et al. v. Kotek, et al.*, Case No. 22-cv-01815-IM (Dkt.
5 37) ¶ 10.) Accordingly, defendant’s response is limited solely to their own knowledge and
6 does not encompass knowledge held by the local law enforcement that intends to certify live-
7 fire training instructors.

8 Subject to and without waiving these objections, defendant responds as follows:
9 Defendant has made a reasonable inquiry, and the information he knows or can readily obtain
10 is insufficient to enable defendant to admit or deny this request.

11 **REQUEST FOR ADMISSION NO. 11:** Admit that Defendant has been informed
12 by the Sheriff of at least one of Oregon’s 36 counties that the firearm training course required
13 by BM 114, § 4(8)(c)(D) will not be available by a date prior to June 16, 2023.

14 **RESPONSE:** Defendant incorporates his general objections as set out above.

15 Subject to and without waiving these objections, defendant responds as follows:
16 Denied.

17 **REQUEST FOR ADMISSION NO. 12:** Admit that the in-person portion of the
18 firearm training course required by BM 114, § 4(8)(c)(D) will not be available in Harney
19 County by June 16, 2023.

20 **RESPONSE:** Defendant incorporates his general objections as set out above.
21 Defendant further objects to the request as requiring information outside of defendant’s
22 possession, custody, or control, as defendant does not know the status or plan for a firearm
23 training course in Harney County.

24 Subject to and without waiving these objections, defendant responds as follows:
25 Defendant has made a reasonable inquiry, and the information he knows or can readily obtain
26 is insufficient to enable defendant to admit or deny this request.

1 **REQUEST FOR ADMISSION NO. 13:** Admit that Defendant has been informed
2 by the Sheriff of Harney County that the firearm training course required by BM 114,
3 § 4(8)(c)(D) will not be available by a date prior to June 16, 2023.

4 **RESPONSE:** Defendant incorporates his general objections as set out above.
5 Subject to and without waiving these objections, defendant responds as follows:
6 Denied.

7 **REQUEST FOR ADMISSION NO. 14:** Admit that the in-person portion of the
8 firearm training course required by BM 114, § 4(8)(c)(D) will not be available in all of
9 Oregon's 36 counties by September 18, 2023.

10 **RESPONSE:** Defendant incorporates his general objections as set out above.
11 Defendant further objects to the request as requiring information outside of defendant's
12 possession, custody, or control, as the request cannot be answered without information from
13 local permit agents in all 36 Oregon counties.

14 Subject to and without waiving these objections, defendant responds as follows:
15 Defendant has made a reasonable inquiry, and the information he knows or can readily obtain
16 is insufficient to enable defendant to admit or deny this request.

17 **REQUEST FOR ADMISSION NO. 15:** Admit that Defendant has been informed
18 by the Sheriff of at least one of Oregon's 36 counties that the firearm training course required
19 by BM 114, § 4(8)(c)(D) will not be available by a date prior to September 18, 2023.

20 **RESPONSE:** Defendant incorporates his general objections as set out above.
21 Subject to and without waiving these objections, defendant responds as follows:
22 Denied.

23 **REQUEST FOR ADMISSION NO. 16:** Admit that the in-person portion of the
24 firearm training course required by BM 114, § 4(8)(c)(D) will not be available in Harney
25 County by September 18, 2023.

26

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2023, I have made service of the foregoing **DEFENDANT CASEY CODDING’S RESPONSE TO PLAINTIFF GUN OWNERS FOUNDATION’S FIRST REQUEST FOR ADMISSIONS** on the parties listed below in the manner indicated:

Tyler D. Smith
Tony L. Aiello, Jr.
Tyler Smith & Associates, P.C.
181 N. Grant Street, Suite 212
Canby, OR 97013

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email: tyler@ruralbusinessattorneys.com;
Tony@RuralBusinessAttorneys.com
- Odyssey File & Serve™

DATED this 18th day of April, 2023.

s/ Hannah K. Hoffman

Hannah K. Hoffman, OSB #183641
*Special Assistant Attorney General for
Defendants*

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF HARNEY

JOSEPH ARNOLD, CLIFF ASMUSSEN,
GUN OWNERS OF AMERICA, INC., and
GUN OWNERS FOUNDATION,

Plaintiffs,

vs.

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

Defendants.

No. 22CV41008

**DEFENDANT ELLEN ROSENBLUM'S
RESPONSE TO PLAINTIFF GUN
OWNERS OF AMERICA'S FIRST
REQUEST FOR ADMISSIONS**

Defendant Ellen Rosenblum responds to plaintiff Gun Owners of America's First
Request for Admissions as follows:

GENERAL OBJECTIONS TO REQUESTS

1. Privilege. Defendant objects to the requests to the extent that plaintiff seeks
information protected from disclosure by the attorney-client privilege, the work-product
doctrine, mediation privilege, deliberative process privilege, informer privilege, or any other
applicable privilege, immunity, rule of privacy or confidentiality, protection, or restriction
that protects information from involuntary disclosure. Defendant intends to and does assert
the privileges above with respect to all such information, and this information will not be
disclosed. Any inadvertent disclosure of this information is not intended to constitute, and
shall not constitute, a waiver, in whole or in part, of any privilege, doctrine, or objection.

1 2. Compliance with Rules. Defendant objects to the requests, instructions, and
2 definitions to the extent they purport to impose on defendant any obligations different from,
3 inconsistent with, or in addition to, those imposed by the Oregon Rules of Civil Procedure or the
4 Supplemental Local Rules of this Court. Defendant will not respond in any manner beyond what
5 is required pursuant to the Oregon Rules of Civil Procedure or the Supplemental Local Rules of
6 this Court.

7 3. Scope of Discovery. Defendant objects to the requests to the extent they seek
8 information that is not relevant to any claim or defense of any party. Defendant objects to
9 the requests to the extent that they are not proportional to the needs of the case (considering
10 the importance of the issues at stake in the action, the amount in controversy, the parties'
11 relative access to relevant information, the parties' resources, the importance of the discovery
12 in resolving the issues, and whether the burden or expense of the proposed discovery
13 outweighs its likely benefit. Defendant objects to the requests to the extent the discovery
14 sought is unreasonably cumulative or duplicative or is obtainable from some other source
15 that is more convenient, less burdensome, or less expensive. Defendant objects to the
16 requests to the extent they require defendant to search for and produce information from
17 sources that are not reasonably accessible because of undue burden or expense. Defendant
18 will not produce information from sources that are not reasonably accessible because of
19 undue burden or cost. Defendant further objects to the extent that plaintiff seeks documents
20 or information already in their possession and/or equally available to all parties.
21 Additionally, defendant objects to the requests to the extent they seek information that
22 defendant is legally or contractually prohibited from disclosing. Defendant reserves the right
23 to object to further discovery into any subject matter covered by the requests.

24 4. Discovery Ongoing. Defendant's responses are made to the best of her
25 present knowledge, information, and belief. The responses are at all times subject to
26 additional or different information that discovery or further investigation may disclose and,

1 while based on the present state of her recollection, are subject to refreshing of recollection
2 and additional knowledge of facts, as may result from further discovery or investigation.

3 Accordingly, defendant reserves her right to supplement the responses to these requests if
4 additional documents or information become known to her. In addition, defendant has made
5 reasonable efforts to respond to the requests based on their interpretation of each request, but if
6 plaintiff subsequently asserts an interpretation of any request that is different from defendant's
7 interpretation, defendant reserves the right to supplement her objections or responses.

8 5. Possession, Custody, or Control. Defendant objects to the requests to the
9 extent that they purport to require the disclosure of information from sources not in
10 defendant's possession, custody, or control. In responding to the requests, defendant will
11 only disclose information reasonably known to her or within her possession, custody, or
12 control.

13 6. Objection to Form. Defendant objects to the requests to the extent that they
14 are not complete in and of themselves or are vague, overbroad, compound, conjunctive,
15 harassing, ambiguous, burdensome, and/or oppressive.

16 7. No Waiver/Reservation of Objections. No response to any portion of any
17 request shall be deemed a waiver of any objection which could have been made to such
18 request, including objections as to the relevance of the responsive information or documents,
19 or the admissibility of such information or documents at trial. Defendant reserves her right to
20 challenge the competency, relevancy, materiality, and admissibility of, or to object on any
21 ground to the use of, information set forth herein, or produced in connection herewith, at
22 subsequent proceedings or the trial of this or any action.

23 8. No Incidental and/or Implied Admissions. To the extent defendant responds or
24 provides information requested in any individual request, defendant does not concede that the
25 information requested is relevant, material, competent, or admissible. Except for expressed facts
26 stated herein, no incidental or implied admissions are intended by, or in, any of the responses.

1 The fact that defendant has responded to any request is not an admission that defendant
2 accepts or admits the existence of any facts set forth or assumed by plaintiff. Defendant
3 reserves the right to object to further discovery into any subject matter covered by the requests.

4 9. Reasonable Interpretation. Defendant has made reasonable efforts to respond
5 to these requests based on her common-sense interpretation of each request, but if plaintiff
6 subsequently asserts an interpretation of any request which is different from defendant's
7 interpretation, defendant reserves the right to supplement her objections or responses.

8 10. General Objections Incorporated into Responses. These general objections
9 are incorporated by reference into defendant's responses to each individual request. A
10 specific objection may repeat a general objection for emphasis or for some other reason. The
11 failure to include any general objection within any specific response shall not be interpreted
12 as a waiver of any general objection to that request.

13 **REQUESTS FOR ADMISSION**

14 **REQUEST FOR ADMISSION NO. 1:** Admit that BM114, Section 4 does not
15 regulate the manner of use of firearms by Oregonians.

16 **RESPONSE:** Defendant incorporates her general objections as set out above.
17 Defendant further objects that this request improperly seeks a pure legal conclusion.
18 Requests for admission may only seek admissions about facts, opinions of fact, or application
19 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
20 (E.D. Pa. 1966) ("A long line of decisional authority has held improper any request for
21 admission of a matter of law[.]" (Quotation marks and citation omitted)); *Sommerfield v. City*
22 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) ("Requests to admit may not be used to
23 establish legal conclusions.");¹ Defendant further objects to the request as vague and

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25 ¹ Where the Federal Rules of Civil Procedure are nearly identical to Oregon rules,
26 case law interpreting the FRCPs is persuasive in a state court. *See, e.g., Meyer v. State ex rel*
Ore. Lottery, 292 Or. App. 647, 672-73 (2018) ("Because FRCP 26(b)(3) and ORCP 36 B(3)
are nearly identical, we find the above-quoted authority interpreting that rule persuasive
when interpreting ORCP 36 B(3)."); *Goldsborough v. Eagle Crist Partners, Ltd.*, 105 Or.

1 ambiguous, including with respect to “manner of use,” which plaintiff does not define, and
2 which could have one of many meanings, including: Who may use a firearm, for what
3 purpose a firearm may be used, or where a firearm may be used, among other meanings.

4 Based on the above objections, defendant does not respond to this request. If a
5 response is required, this request for admission is denied.

6 **REQUEST FOR ADMISSION NO. 2:** Admit that BM114, Section 4 does not
7 regulate the manner of possession of firearms by Oregonians.

8 **RESPONSE:** Defendant incorporates her general objections as set out above.
9 Defendant further objects that this request improperly seeks a pure legal conclusion.
10 Requests for admission may only seek admissions about facts, opinions of fact, or application
11 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
12 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
13 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
14 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
15 establish legal conclusions.”). Defendant further objects to the request as vague and
16 ambiguous, including with respect to “manner of possession,” which plaintiff does not
17 define, and which could have one of many meanings, including: Who may possess a firearm,
18 for what purpose a firearm may be possessed, or where a firearm may be possessed, among
19 other meanings.

20 Based on the above objections, defendant does not respond to this request. If a
21 response is required, this request for admission is denied.

22 **REQUEST FOR ADMISSION NO. 3:** Admit that BM114, Section 4 applies to all
23 Oregonians who wish to purchase a firearm.

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26 _____
App. 499, 503 (1992) (“Because FRCP 34 is nearly identical to ORCP 43, cases interpreting
the federal rule are persuasive.”).

1 **RESPONSE:** Defendant incorporates her general objections as set out above.
2 Defendant further objects that this request improperly seeks a pure legal conclusion.
3 Requests for admission may only seek admissions about facts, opinions of fact, or application
4 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
5 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
6 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
7 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
8 establish legal conclusions.”). Defendant further objects to the request as vague and
9 ambiguous, including with respect to “wish to purchase.” Defendant further objects to the
10 request as ambiguous, as it does not specify what type of purchase the request refers to or
11 from whom it would occur.

12 Based on the above objections, defendant does not respond to this request.

13 **REQUEST FOR ADMISSION NO. 4:** Admit that BM114, Section 4 applies to
14 Oregonians who have never been convicted of a Crime.

15 **RESPONSE:** Defendant incorporates her general objections as set out above.
16 Defendant further objects that this request improperly seeks a pure legal conclusion.
17 Requests for admission may only seek admissions about facts, opinions of fact, or application
18 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
19 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
20 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
21 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
22 establish legal conclusions.”).

23 Based on the above objections, defendant does not respond to this request.

24 **REQUEST FOR ADMISSION NO. 5:** Admit that BM114, Section 5 does not
25 regulate the manner of use of firearms by Oregonians.

26

1 **RESPONSE:** Defendant incorporates her general objections as set out above.
2 Defendant further objects that this request improperly seeks a pure legal conclusion.
3 Requests for admission may only seek admissions about facts, opinions of fact, or application
4 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
5 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
6 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
7 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
8 establish legal conclusions.”). Defendant further objects to the request as vague and
9 ambiguous, including with respect to “manner of use,” which plaintiff does not define, and
10 which could have one of many meanings, including: Who may use a firearm, for what
11 purpose a firearm may be used, or where a firearm may be used, among other meanings.

12 Based on the above objections, defendant does not respond to this request. If a
13 response is required, this request for admission is denied.

14 **REQUEST FOR ADMISSION NO. 6:** Admit that BM114, Section 5 does not
15 regulate the manner of possession of firearms by Oregonians.

16 **RESPONSE:** Defendant incorporates her general objections as set out above.
17 Defendant further objects that this request improperly seeks a pure legal conclusion.
18 Requests for admission may only seek admissions about facts, opinions of fact, or application
19 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
20 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
21 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
22 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
23 establish legal conclusions.”). Defendant further objects to the request as vague and
24 ambiguous, including with respect to “manner of possession,” which plaintiff does not
25 define, and which could have one of many meanings, including: Who may possess a firearm,
26

1 for what purpose a firearm may be possessed, or where a firearm may be possessed, among
2 other meanings. The phrase is overbroad so as to be almost impossible to interpret.

3 Based on the above objections, defendant does not respond to this request. If a
4 response is required, this request for admission is denied.

5 **REQUEST FOR ADMISSION NO. 7:** Admit that the amendments to ORS
6 166.412 made by BM114, Section 6, do not regulate the manner of use of firearms by
7 Oregonians.

8 **RESPONSE:** Defendant incorporates her general objections as set out above.
9 Defendant further objects that this request improperly seeks a pure legal conclusion.
10 Requests for admission may only seek admissions about facts, opinions of fact, or application
11 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
12 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
13 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
14 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
15 establish legal conclusions.”). Defendant further objects to the request as vague and
16 ambiguous, including with respect to “manner of use,” which plaintiff does not define, and
17 which could have one of many meanings, including: Who may use a firearm, for what
18 purpose a firearm may be used, or where a firearm may be used, among other meanings.

19 Based on the above objections, defendant does not respond to this request. If a
20 response is required, this request for admission is denied.

21 **REQUEST FOR ADMISSION NO. 8:** Admit that the amendments to ORS
22 166.412 made by BM114, Section 6, do not regulate the manner of possession of firearms by
23 Oregonians.

24 **RESPONSE:** Defendant incorporates her general objections as set out above.
25 Defendant further objects that this request improperly seeks a pure legal conclusion.
26 Requests for admission may only seek admissions about facts, opinions of fact, or application

1 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
2 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
3 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
4 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
5 establish legal conclusions.”). Defendant further objects to the request as vague and
6 ambiguous, including with respect to “manner of possession,” which plaintiff does not
7 define, and which could have one of many meanings, including: Who may possess a firearm,
8 for what purpose a firearm may be possessed, or where a firearm may be possessed, among
9 other meanings.

10 Based on the above objections, defendant does not respond to this request. If a
11 response is required, this request for admission is denied.

12 **REQUEST FOR ADMISSION NO. 9:** Admit that the amendments to
13 ORS 166.412 made by BM114, Section 6, apply to all Oregonians who wish to purchase a
14 firearm from a Gun Dealer.

15 **RESPONSE:** Defendant incorporates her general objections as set out above.
16 Defendant further objects that this request improperly seeks a pure legal conclusion.
17 Requests for admission may only seek admissions about facts, opinions of fact, or application
18 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
19 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
20 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
21 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
22 establish legal conclusions.”). Defendant further objects to the request as vague and
23 ambiguous, including with respect to “wish to purchase.”

24 Based on the above objections, defendant does not respond to this request.
25
26

1 **REQUEST FOR ADMISSION NO. 10:** Admit that the amendments to
2 ORS 166.412 made by BM114, Section 6, apply to Oregonians who have never been
3 convicted of a Crime who wish to purchase a firearm from a Gun Dealer.

4 **RESPONSE:** Defendant incorporates her general objections as set out above.
5 Defendant further objects that this request improperly seeks a pure legal conclusion.
6 Requests for admission may only seek admissions about facts, opinions of fact, or application
7 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
8 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
9 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
10 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
11 establish legal conclusions.”). Defendant further objects to the request as vague and
12 ambiguous, including with respect to “wish to purchase.” It is impossible to know what
13 plaintiff means by “wish.” Defendant further objects to the request as ambiguous, including
14 which section of ORS 166.412 it refers to.

15 Based on the above objections, defendant does not respond to this request.

16 **REQUEST FOR ADMISSION NO. 11:** Admit that the amendments to
17 ORS 166.435 made by BM114, Section 7, do not regulate the manner of use of firearms by
18 Oregonians.

19 **RESPONSE:** Defendant incorporates her general objections as set out above.
20 Defendant further objects that this request improperly seeks a pure legal conclusion.
21 Requests for admission may only seek admissions about facts, opinions of fact, or application
22 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
23 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
24 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
25 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
26 establish legal conclusions.”). Defendant further objects to the request as vague and

1 ambiguous, including with respect to “manner of use,” which plaintiff does not define, and
2 which could have one of many meanings, including: Who may use a firearm, for what
3 purpose a firearm may be used, or where a firearm may be used, among other meanings.

4 Based on the above objections, defendant does not respond to this request. If a
5 response is required, this request for admission is denied.

6 **REQUEST FOR ADMISSION NO. 12:** Admit that the amendments to
7 ORS 166.435 made by BM114, Section 7, do not regulate the manner of possession of
8 firearms by Oregonians.

9 **RESPONSE:** Defendant incorporates her general objections as set out above.
10 Defendant further objects that this request improperly seeks a pure legal conclusion.
11 Requests for admission may only seek admissions about facts, opinions of fact, or application
12 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
13 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
14 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
15 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
16 establish legal conclusions.”). Defendant further objects to the request as vague and
17 ambiguous, including with respect to “manner of possession,” which plaintiff does not
18 define, and which could have one of many meanings, including: Who may possess a firearm,
19 for what purpose a firearm may be possessed, or where a firearm may be possessed, among
20 other meanings.

21 Based on the above objections, defendant does not respond to this request. If a
22 response is required, this request for admission is denied.

23 **REQUEST FOR ADMISSION NO. 13:** Admit that the amendments to
24 ORS 166.435 made by BM114, Section 7, apply to all Oregonians who wish to privately
25 transfer a firearm to a transferee.
26

1 **RESPONSE:** Defendant incorporates her general objections as set out above.
2 Defendant further objects that this request improperly seeks a pure legal conclusion.
3 Requests for admission may only seek admissions about facts, opinions of fact, or application
4 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
5 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
6 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
7 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
8 establish legal conclusions.”). Defendant further objects to the request as vague and
9 ambiguous, including with respect to “wish.”

10 Based on the above objections, defendant does not respond to this request.

11 **REQUEST FOR ADMISSION NO. 14:** Admit that the amendments to
12 ORS 166.435 made by BM114, Section 7, apply to Oregonians who have never been
13 convicted of a Crime who wish to purchase a firearm from a Gun Dealer.

14 **RESPONSE:** Defendant incorporates her general objections as set out above.
15 Defendant further objects that this request improperly seeks a pure legal conclusion.
16 Requests for admission may only seek admissions about facts, opinions of fact, or application
17 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
18 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
19 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
20 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
21 establish legal conclusions.”). Defendant further objects to the request as vague and
22 ambiguous, including with respect to “wish to purchase.” Defendant further objects to the
23 request as inaccurate, as Section 7 of Measure 114 and ORS 166.435 do not apply to
24 transfers by gun dealers.

25 Based on the above objections, defendant does not respond to this request.
26

1 **REQUEST FOR ADMISSION NO. 15:** Admit that the amendments to
2 ORS 166.436 made by BM114, Section 8, do not regulate the manner of use of firearms by
3 Oregonians.

4 **RESPONSE:** Defendant incorporates her general objections as set out above.
5 Defendant further objects that this request improperly seeks a pure legal conclusion.
6 Requests for admission may only seek admissions about facts, opinions of fact, or application
7 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
8 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
9 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
10 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
11 establish legal conclusions.”). Defendant further objects to the request as vague and
12 ambiguous, including with respect to “manner of use,” which plaintiff does not define, and
13 which could have one of many meanings, including: Who may use a firearm, for what
14 purpose a firearm may be used, or where a firearm may be used, among other meanings.

15 Based on the above objections, defendant does not respond to this request. If a
16 response is required, this request for admission is denied.

17 **REQUEST FOR ADMISSION NO. 16:** Admit that the amendments to
18 ORS 166.436 made by BM114, Section 8, do not regulate the manner of possession of
19 firearms by Oregonians.

20 **RESPONSE:** Defendant incorporates her general objections as set out above.
21 Defendant further objects that this request improperly seeks a pure legal conclusion.
22 Requests for admission may only seek admissions about facts, opinions of fact, or application
23 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
24 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
25 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
26 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to

1 establish legal conclusions.”). Defendant further objects to the request as vague and
2 ambiguous, including with respect to “manner of possession,” which plaintiff does not
3 define, and which could have one of many meanings, including: Who may possess a firearm,
4 for what purpose a firearm may be possessed, or where a firearm may be possessed, among
5 other meanings.

6 Based on the above objections, defendant does not respond to this request. If a
7 response is required, this request for admission is denied.

8 **REQUEST FOR ADMISSION NO. 17:** Admit that the amendments to
9 ORS 166.436 made by BM114, Section 8, apply to all Oregonians who wish to transfer or
10 receive a firearm at a gun show.

11 **RESPONSE:** Defendant incorporates her general objections as set out above.
12 Defendant further objects that this request improperly seeks a pure legal conclusion.
13 Requests for admission may only seek admissions about facts, opinions of fact, or application
14 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
15 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
16 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
17 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
18 establish legal conclusions.”). Defendant further objects to the request as vague and
19 ambiguous, including with respect to “wish to purchase.” Defendant further objects to the
20 request as ambiguous, including which section of ORS 166.436 it refers to.

21 Based on the above objections, defendant does not respond to this request.

22 **REQUEST FOR ADMISSION NO. 18:** Admit that the amendments to
23 ORS 166.436 made by BM114, Section 8, apply to Oregonians who have never been
24 convicted of a Crime who wish to transfer or receive a firearm at a gun show.

25 **RESPONSE:** Defendant incorporates her general objections as set out above.
26 Defendant further objects that this request improperly seeks a pure legal conclusion.

1 Requests for admission may only seek admissions about facts, opinions of fact, or application
2 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
3 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
4 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
5 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
6 establish legal conclusions.”). Defendant further objects to the request as vague and
7 ambiguous, including with respect to “wish to purchase.” Defendant further objects to the
8 request as ambiguous, including which section of ORS 166.436 it refers to.

9 Based on the above objections, defendant does not respond to this request.

10 **REQUEST FOR ADMISSION NO. 19:** Admit that the amendments to
11 ORS 166.438 made by BM114, Section 9, do not regulate the manner of use of firearms by
12 Oregonians.

13 **RESPONSE:** Defendant incorporates her general objections as set out above.
14 Defendant further objects that this request improperly seeks a pure legal conclusion.
15 Requests for admission may only seek admissions about facts, opinions of fact, or application
16 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
17 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
18 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
19 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
20 establish legal conclusions.”). Defendant further objects to the request as vague and
21 ambiguous, including with respect to “manner of use,” which plaintiff does not define, and
22 which could have one of many meanings, including: Who may use a firearm, for what
23 purpose a firearm may be used, or where a firearm may be used, among other meanings.

24 Based on the above objections, defendant does not respond to this request. If a
25 response is required, this request for admission is denied.

26

1 **REQUEST FOR ADMISSION NO. 20:** Admit that the amendments to
2 ORS 166.438 made by BM114, Section 9, do not regulate the manner of possession of
3 firearms by Oregonians.

4 **RESPONSE:** Defendant incorporates her general objections as set out above.
5 Defendant further objects that this request improperly seeks a pure legal conclusion.
6 Requests for admission may only seek admissions about facts, opinions of fact, or application
7 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
8 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
9 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
10 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
11 establish legal conclusions.”). Defendant further objects to the request as vague and
12 ambiguous, including with respect to “manner of possession,” which plaintiff does not
13 define, and which could have one of many meanings, including: Who may possess a firearm,
14 for what purpose a firearm may be possessed, or where a firearm may be possessed, among
15 other meanings.

16 Based on the above objections, defendant does not respond to this request. If a
17 response is required, this request for admission is denied.

18 **REQUEST FOR ADMISSION NO. 21:** Admit that the amendments to
19 ORS 166.438 made by BM114, Section 9, apply to Oregonians who have never been
20 convicted of a Crime who wish to transfer or receive a firearm at a gun show.

21 **RESPONSE:** Defendant incorporates her general objections as set out above.
22 Defendant further objects that this request improperly seeks a pure legal conclusion.
23 Requests for admission may only seek admissions about facts, opinions of fact, or application
24 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
25 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
26 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*

1 of Chicago, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
2 establish legal conclusions.”). Defendant further objects to the request as vague and
3 ambiguous, including with respect to “wish to purchase.” Defendant further objects to the
4 request as ambiguous, including which section of ORS 166.438 it refers to.

5 Based on the above objections, defendant does not respond to this request.

6 **REQUEST FOR ADMISSION NO. 22:** Admit that BM114, Section 11 does not
7 regulate the manner of use of firearms by Oregonians.

8 **RESPONSE:** Defendant incorporates her general objections as set out above.
9 Defendant further objects that this request improperly seeks a pure legal conclusion.
10 Requests for admission may only seek admissions about facts, opinions of fact, or application
11 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
12 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
13 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
14 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
15 establish legal conclusions.”). Defendant further objects to the request as vague and
16 ambiguous, including with respect to “manner of use,” which plaintiff does not define, and
17 which could have one of many meanings, including: Who may use a firearm, for what
18 purpose a firearm may be used, or where a firearm may be used, among other meanings.

19 Based on the above objections, defendant does not respond to this request.

20 **REQUEST FOR ADMISSION NO. 23:** Admit that BM114, Section 11 does not
21 regulate the manner of possession of firearms by Oregonians.

22 **RESPONSE:** Defendant incorporates her general objections as set out above.
23 Defendant further objects that this request improperly seeks a pure legal conclusion.
24 Requests for admission may only seek admissions about facts, opinions of fact, or application
25 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
26 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for

1 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
2 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
3 establish legal conclusions.”). Defendant further objects to the request as vague and
4 ambiguous, including with respect to “manner of possession,” which plaintiff does not
5 define, and which could have one of many meanings, including: Who may possess a firearm,
6 for what purpose a firearm may be possessed, or where a firearm may be possessed, among
7 other meanings.

8 Based on the above objections, defendant does not respond to this request. If a
9 response is required, this request for admission is denied.

10 **REQUEST FOR ADMISSION NO. 24:** Admit that BM114, Section 11 prohibits
11 the mere possession of firearm magazines capable of holding more than 10 rounds of
12 ammunition.

13 **RESPONSE:** Defendant incorporates her general objections as set out above.
14 Defendant further objects that this request improperly seeks a pure legal conclusion.
15 Requests for admission may only seek admissions about facts, opinions of fact, or application
16 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
17 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
18 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
19 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
20 establish legal conclusions.”). Defendant further objects to the request as vague and
21 ambiguous, including with respect to “possession,” which plaintiff does not define, and
22 which could have one of many meanings.

23 Based on the above objections, defendant does not respond to this request. If a
24 response is required, this request for admission is denied.

25 **REQUEST FOR ADMISSION NO. 25:** Admit that BM114, Section 11 applies to
26 Oregonians who have never been convicted of a Crime.

1 **RESPONSE:** Defendant incorporates her general objections as set out above.
2 Defendant further objects that this request improperly seeks a pure legal conclusion.
3 Requests for admission may only seek admissions about facts, opinions of fact, or application
4 of fact to law. ORCP 45 A(1). *See also, Mahaney v. Doering*, 260 F. Supp. 1006, 1008
5 (E.D. Pa. 1966) (“A long line of decisional authority has held improper any request for
6 admission of a matter of law[.]” (Quotation marks and citation omitted)); *Sommerfield v. City*
7 *of Chicago*, 251 F.R.D. 353, 355 (N.D. Ill. 2008) (“Requests to admit may not be used to
8 establish legal conclusions.”).

9 Based on the above objections, defendant does not respond to this request.

10 **REQUEST FOR ADMISSION NO. 26:** Admit that the state of Oregon has not, at
11 any time in Oregon’s history prior to the passage of BM114, by statute or regulation,
12 prohibited the mere possession of firearms capable of holding more than 10 rounds of
13 ammunition.

14 **RESPONSE:** Defendant incorporates her general objections as set out above.
15 Defendant further objects to the request as ambiguous, as it is unclear what body of
16 “statute[s] and regulation[s]” the request refers to and what it means by “prohibited,” which
17 could refer to either legislative or enforcement acts. Defendant further objects to the request
18 in that it mischaracterizes Section 11 of Measure 114, which does not ban firearms, but
19 firearm magazines.

20 Subject to and without waiving these objections, defendant responds as follows:
21 Admitted, but see OAR 635-065-0700 (regulating use of magazine capacity for certain forms
22 of hunting).

23 **REQUEST FOR ADMISSION NO. 27:** Admit that the state of Oregon has not, at
24 any time in Oregon’s history prior to the passage of BM114, by statute or regulation,
25 prohibited the mere possession of firearm magazines capable of holding more than 10 rounds
26 of ammunition.

1 **RESPONSE:** Defendant incorporates her general objections as set out above.
2 Defendant further objects to the request as ambiguous, as it is unclear what body of
3 “statute[s] and regulation[s]” the request refers to and what it means by “prohibited,” which
4 could refer to either legislative or enforcement acts.

5 Subject to and without waiving these objections, defendant responds as follows:
6 Admitted, but see OAR 635-065-0700 (regulating use of magazine capacity for certain forms
7 of hunting).

8 **REQUEST FOR ADMISSION NO. 28:** Admit that the state of Oregon has not, at
9 any time in Oregon’s history prior to the passage of BM114, by statute or regulation,
10 required an adult resident of the state of Oregon to obtain a permit to purchase a firearm.

11 **RESPONSE:** Defendant incorporates her general objections as set out above.
12 Defendant further objects to the request as ambiguous, as it is unclear what body of
13 “statute[s] and regulation[s]” the request refers to.

14 Subject to and without waiving these objections, defendant responds as follows:
15 Admitted.

16 **REQUEST FOR ADMISSION NO. 29:** Admit that the state of Oregon has not, at
17 any time in Oregon’s history prior to the passage of BM114, by statute or regulation,
18 required an adult resident of the state of Oregon to take an educational firearms training
19 course prior to purchasing a firearm.

20 **RESPONSE:** Defendant incorporates her general objections as set out above.
21 Defendant further objects to the request as ambiguous, as it is unclear what body of
22 “statute[s] and regulation[s]” the request refers to.

23 Subject to and without waiving these objections, defendant responds as follows:
24 Admitted.

25 **REQUEST FOR ADMISSION NO. 30:** Admit that the state of Oregon has not, at
26 any time in Oregon’s history prior to the passage of BM114, by statute or regulation,

1 required an adult resident of the state of Oregon to perform any in-person demonstration of
2 their ability to operate a firearm prior to purchasing a firearm.

3 **RESPONSE:** Defendant incorporates her general objections as set out above.
4 Defendant further objects to the request as ambiguous, as it is unclear what body of
5 “statute[s] and regulation[s]” the request refers to.

6 Subject to and without waiving these objections, defendant responds as follows:
7 Admitted.

8 DATED this 18th day of April, 2023.

9
10 ELLEN ROSENBLUM
11 ATTORNEY GENERAL
12 FOR THE STATE OF OREGON

13 By: *s/ Hannah K. Hoffman*

14 _____
15 Harry B. Wilson, OSB #077214
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25 1428549
26

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2023, I have made service of the foregoing **DEFENDANT ELLEN ROSENBLUM'S RESPONSE TO PLAINTIFF GUN OWNERS OF AMERICA'S FIRST REQUEST FOR ADMISSIONS** on the parties listed below in the manner indicated:

Tyler D. Smith
Tony L. Aiello, Jr.
Tyler Smith & Associates, P.C.
181 N. Grant Street, Suite 212
Canby, OR 97013

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email: tyler@ruralbusinessattorneys.com;
Tony@RuralBusinessAttorneys.com
- Odyssey File & Serve™

DATED this 18th day of April, 2023.

s/ Hannah K. Hoffman

Hannah K. Hoffman, OSB #183641
*Special Assistant Attorney General for
Defendants*