

# THE SUPREME COURT OF WASHINGTON

STATE OF WASHINGTON,	)	No. 102940-3
	)	
Appellant,	)	<b>ORDER</b>
	)	
v.	)	
	)	
GATOR’S CUSTOM GUNS, INC. et al.,	)	
	)	
Respondents.	)	
	)	
	)	
	)	

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This case came before the Court (Justice Owens did not sit) on its July 10, 2024, En Banc Conference to consider Respondent’s motion to modify the Commissioner’s April 25, 2024, Ruling Granting Emergency Motion to Stay (Ruling). This Ruling stayed the trial court’s summary judgment order finding Engrossed Substitute Senate Bill (ESSB) 5078 (2022) unconstitutional and enjoining enforcement. A majority of the Court voted in favor of the following analysis and result.

The Court acknowledges the Respondents’ concerns regarding the Commissioner’s Ruling and we recognize that Second Amendment jurisprudence is rapidly evolving as demonstrated by the recent opinions in *United States v. Rahimi*, No. 22-915, 2024 WL 3074728 (U.S. June 21, 2024) and *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022).

Whether a stay pending resolution of appellate review is appropriate is governed by RAP 8.1(b)(3). Under that rule, the Court (i) considers whether there are debatable issues present on

appeal and (ii) compares the injury that would be suffered by the moving party with the injury that would be suffered by the nonmoving party if the stay were imposed.

Based on the Court's independent review of the law and the record, the Court concludes that there are debatable issues. The trial court's conclusion that ESSB 5078 violates the Second Amendment to the United States Constitution and article I, section 24 of the State Constitution rested in large part on *Bruen*. Many courts have upheld the constitutionality of high capacity ammunition magazine bans under *Bruen*. See *Duncan v. Bonta*, 83 F.4th 803, 805, 806 (9th Cir. 2023) (collecting cases). The trial court also did not have the benefit of the United States Supreme Court's decision in *Rahimi* which further clarified *Bruen*.

The legislature concluded that ESSB 5078 would likely save lives and reduce serious injuries. Giving all appropriate deference to the legislative findings that accompanied ESSB 5078, the Court concludes the Petitioner will suffer an injury should the stay not be imposed. The Respondent contends that imposing the stay imposes irreparable injury on the constitutional rights of Washington residents by preventing them from purchasing constitutionally protected large capacity ammunition magazines. As the constitutionality of ESSB 5078 has not yet been determined, this injury is speculative.

Now, therefore, it is hereby

ORDERED:

That the Respondents' motion to modify the Commissioner's Ruling granting the stay is denied.

DATED at Olympia, Washington this 15<sup>th</sup> day of July, 2024.

For the Court

  
CHIEF JUSTICE

I respectfully dissent.

  
Gordon McCloud, J.