

WA Supreme Court Commissioner hears arguments for, against stay on high-capacity magazine ban

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Washington state's ban on the sale of "high-capacity" magazines will remain for now while state Supreme Court Commissioner Michael E. Johnston decides whether to keep the ban in place as a ruling on its constitutionality makes its way through the court system. Steve Bloom sbloom@theolympian.com

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Johnston must decide whether to deny or grant an emergency motion for stay of a Cowlitz County Superior Court ruling invalidating enforcement of the state's ban.

The stay was filed April 8 by the Attorney General's Office after Cowlitz County Superior Court Judge Gary Bashor [ruled the state's ban on high-capacity magazines unconstitutional](#) in a lawsuit between Washington State and Gators Customs Guns, a firearms dealer in Kelso.

Johnston approved the Attorney General's request to stay the lower court's ruling later that afternoon.

On Wednesday, both parties to the lawsuit presented their arguments to Johnston, who said that his ruling to extend or not extend the stay as the lawsuit works its way through appellate courts will come at a later date, perhaps by next week.

The Attorney General's Office initially [filed the lawsuit in September](#) against Gators Custom Guns after the retailer continued to sell magazines that were [banned by the state Legislature in 2022](#).

The law prohibits the manufacture, importation, distribution, selling, and offering for sale of "ammunition feeding devices" with the capacity to hold more than 10 rounds of ammunition.

Immediately after Judge Bashor's ruling in early April, firearms retailers around the state [resumed the sale of high-capacity magazines](#). Sales were then cut off again after Johnston approved the stay.

Johnston had some opening remarks before the hearing began Wednesday, citing the need for the public to understand the intricacies of the "high-profile" case.

The commissioner said it was made clear to him that there was some confusion about the procedures involved. He also said he received several emails and phone calls from people upset by his approval of the state's motion for a stay.

"We're not ruling on the ultimate merits of the case, we're ruling on whether it is procedurally teed up — whether it belongs in this court, and various procedural things," Johnston said. "It's important to note that any decision I make by way of ruling can be reversed by the justices of this court."

After his remarks, both parties were given time to argue their case and provide a rebuttal.

Attorney William McGinty represented the state during proceedings, arguing to keep the stay in place.

McGinty said that other states have upheld the constitutionality of similar bans on high-capacity magazines even [after the 2022 Bruen decision](#).

"Moreover, the balance of harms weighs sharply in favor of maintaining this stay because (the ban) is a critical public safety law that will save lives," McGinty contended.

McGinty pointed to how firearms dealers immediately allowed sales again after Bashor granted the injunction, even encouraging gun owners to go purchase them while they could. He said the stay is also necessary to "preserve the fruits of the appeal."

The defendant's attorney, Austin Hatcher, argued against the stay, saying that the state hasn't "carried their burden to show whether debatable issues are present."

Hatcher said he believes the Superior Court was thorough in its analysis. He noted that a court in Oregon found a ban on high-capacity magazines unconstitutional and that a court of appeals declined to stay the circuit court's determination there.

Johnston responded that the Oregon courts apply a much different standard when it comes to stays, and that Oregon's statute is different from Washington's.

Hatcher then continued his argument and said that the authority the state provides is also non-binding. Oregon was cited because Washington's Constitution is based on Oregon's, he said.

The state "truly fails to meet the conjunctive test" in the "preservation of the fruits of the appeal," he said. That point is undercut by the fact that the state Legislature allowed three months after passage of the ban on magazines for the law to go into effect.

Johnston said he found that argument "odd" since the owner of Gators Custom Guns stocked up on high-capacity magazines prior to the ban taking effect.

Hatcher said that the state has only "speculative harms" and that high-capacity magazines "facilitate effective self-defense." He argued that if some of the "crazies" who have been calling the Commissioner then broke into the Commissioner's house, that Johnson would probably prefer to have a 30-round magazine over a 7-round magazine.

Johnston told Hatcher that his argument was not persuasive, arguing that he would prefer to have something more like a 12-gauge shotgun in that scenario. The two also argued about the role of high-capacity magazines in mass shootings.

Johnston concluded by saying if the stay is granted, it will be a continuation of the stay currently in place.

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