

EDITORIAL: Gun legislation at standstill waiting for high court

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An AR-15 is seen here with four high-capacity magazines. In 2022, the Legislature approved a ban on the manufacture, import, distribution and sale of high-capacity magazines.

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The details and the legalese surrounding Washington's ban on high-capacity ammunition magazines are complex. But state officials must continue to defend gun legislation passed by the representatives of the people.

In 2022, the Legislature approved a ban on the manufacture, import, distribution and sale of high-capacity magazines. Last year, lawmakers added a ban on the sale of assault-style weapons; they also passed legislation requiring a 10-day waiting period to purchase guns and mandatory firearm safety training.

The impetus for the laws is clear: The U.S. has the highest rate of gun deaths among developed countries. It also is the only nation in which mass shootings are routine; [GunViolenceArchive.org](https://www.gunviolencearchive.org) recorded 18 mass shootings (at least three people injured) in the first 14 days of this month.

But just because a law is beneficial to society does not inherently mean it is constitutional. And this month, that is what a Cowlitz County judge decided about the ban on high-capacity magazines. As part of his ruling, Judge Gary Bashor noted that there are "few, if any, historical analogue laws by which a state can justify a modern firearms regulation."

Pointing to U.S. Supreme Court precedent, Bashor wrote that the high-capacity magazine ban does not pass judicial muster because there are no "relevantly similar" laws from 1791, when the Second Amendment was adopted.

The assertion seems outlandish, considering that modern weaponry was not banned in the 18th century because it did not exist. Using that logic, all traffic laws would be void; there were, after all, no laws governing motor vehicles in 1791 because there were no motor vehicles. Such a standard would prevent legislation of technological advances.

Gun-rights advocates will point out that those advancements are not protected by the U.S. Constitution, and the Second Amendment states that, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

It is unlikely that James Madison conceived of rapid-fire weaponry or high-capacity magazines when writing the Bill of Rights, but that is where the argument has landed. And in 2022, the U.S. Supreme Court ruled in *New York State Rifle & Pistol Association*,

Inc. v. Bruen that courts had to determine whether a gun law is “consistent with this Nation’s historical tradition.”

That decision has led to confusion rather than clarity for lawmakers and judges at the state level. It also has obfuscated the “well regulated” phrase of the Constitution while calling gun legislation into question.

In court filings, Washington Attorney General Bob Ferguson called Bashor’s ruling an “extreme outlier” and wrote, “There is nothing unreasonable about restricting the sale of deadly (high-capacity magazines) when the unrebutted evidence shows they make mass shootings and other horrific crimes more frequent and more deadly, and when the evidence shows they are not used for self-defense.”

About 90 minutes after Bashor issued his ruling last week, the state Supreme Court halted it from taking effect. The owner of Gator’s Custom Guns, a Kelso shop at the heart of the litigation, said he sold hundreds of high-capacity magazines during that time.

Now the issue is at a standstill, waiting to be heard by the state’s highest court. At its core, an eventual decision will determine whether our society is mired in the 1700s or whether elected officials can pass laws that are grounded in reality.