

Next salvo fired in WA Supreme Court in high-cap mag ban case



Ammunition for sale at Gator's Guns in Washington.
Carleen Johnson/The Center Square

By [By Carleen Johnson/The Center Square](#)

| May 10, 2024 12:20 AM

(The Center Square) — The public could learn within a few months or sooner if the Washington Supreme Court will take up the Gator's Custom Guns case related to the state's ban on the buying or selling of high-capacity magazines.

That's the assessment of Pete Serrano with The Silent Majority Foundation, representing the Kelso gun retailer. Serrano is also running for state Attorney General.

The ban on the buying and selling of magazines holding more than 10 rounds was ruled unconstitutional last month by Cowlitz County Superior Court Judge Gary Bashor, who said the ban violates the Second Amendment of the U.S. Constitution, as well as the state constitution's granting individuals the right to bear arms for self-defense.

Within 90 minutes of that ruling, Washington Attorney General Bob Ferguson secured a stay of the order with state Supreme Court Commissioner Michael Johnston. Ferguson's office has asked the state's high court for discretionary review of the merits of the case.

In his stay extension order, Johnson said 10 rounds or less should be sufficient for self-protection.

Serrano takes issue with that.

"It's not his job to define what the limitations are," he said. "Obviously, the Legislature did that and the lower court determined that those limitations were unconstitutional."

Serrano his team filed a response on Tuesday to the Attorney General's request for a direct appeal of the case.

"That's just us saying we agree this should be a Supreme Court issue," he said. "However, we don't necessarily agree with how the state wants to get it there. We believe obviously it's a personal fundamental rights case."

The Center Square reached out to the Attorney General's Office for comment on Serrano's filing.

"Every other court in Washington and across the country to consider challenges to a ban on the sale of high-capacity magazines under the U.S. or Washington Constitution has either rejected that challenge or been overruled," a representative with the Attorney General's Office emailed The Center Square. "We are confident the court will agree this law is constitutional."

Serrano says he expects the state Supreme Court to take the case, "unless they really want to dodge it and force the appellate court to build some additional record. I mean I really don't think it's appropriate at the appellate level, but it's the Supreme Court of Washington, so I don't know."

Serrano says it could happen soon.

"We could see briefing done on this in early August," he said.

William Kirk, president of Washington Gun Law, has followed the case closely.

After Johnston extended the stay order, Kirk posted a scathing video on YouTube.

"I've had an opportunity to digest it, to vomit over it a few times. This is one of the most animosity-ridden opinions I have ever read in my entire career," he said. "Commissioner Johnston seemingly has a big fat bone to pick with every single lawful gun-owning Washington resident. It is obvious when you read this opinion that it is written out of personal animosity."

Kirk thinks the case may not hinge on Second Amendment rights at all, but rather Article 1 Section 24 of the Washington State Constitution, which states, "The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men."

Kirk read from Johnston's ruling: "The issue of whether an LCM [large-capacity magazines] is an arm at all, is a very large anchor pulling on the Superior Court's debatable Heller analysis."

In *District of Columbia v. Heller*, the U.S. Supreme Court ruled the Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home

Asked about the long legal battle being worth it or not, Gator's Custom Guns owner Wally Wentz told *The Center Square* he's inspired by the ongoing support from customers and donors to his legal fight.

"Daily, sometimes hourly, they donate, telling me go get 'em, Wally," he said. "That's what the state may have discounted, because I'm not driven by money; I'm only motivated by doing what I know is right."