

# Gun ruling: WA high court upholds ban on high-capacity magazines

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*In this photo provided in 2023 by the attorney general's office, bins of high-capacity magazines are shown on display at Gator's Custom Guns in Kelso. (Courtesy of Washington attorney general's office)*

By [David Gutman](#)

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The Washington state Supreme Court upheld the state's ban on large capacity magazines Thursday, ruling the state can regulate magazines without violating the Constitution's right to bear arms.

The decision overturns a lower a lower court ruling that had declared the ban unconstitutional.

High-capacity magazines — those holding more than 10 bullets — have [remained illegal to buy or sell in Washington](#), as the lower court ruling has been on hold while the state Supreme Court considered the question.

The Legislature passed the ban in 2022. It allows for the continued possession of high-capacity magazines that people already own, but bans their sale or purchase in Washington.

The ban “does not violate either the Washington or United States constitutional protection of the right to bear arms because large capacity magazines (LCMs) are not ‘arms’ within the meaning of either constitutional provision,” Justice Charles Johnson [wrote for the majority in a 7-2 decision](#). “The ability to purchase LCMs is not necessary to the core right to possess a firearm in self-defense.”

High-capacity magazines are not weapons and are not traditionally or commonly used for self defense, therefore do not fall under the right to bear arms, Johnson wrote. In contrast, a ban on ammunition would almost certainly violate the right to bear arms, Johnson wrote, as it would “render the firearm a paperweight.”

“But there are no firearms that require an LCM to function,” he wrote. “Without the right to purchase LCMs, an individual may still own, possess, operate, repair, and maintain proficiency with firearms, as LCMs are not an ‘integral component’ of firearms.”

Thirteen other states currently ban high-capacity magazines.

Justices Sheryl Gordon McCloud and G. Helen Whitener dissented and would have invalidated the law.

In dissent, Gordon McCloud wrote that millions of law-abiding Americans have chosen to use semi-automatic weapons and high-capacity magazines for self-defense so “it necessarily follows that the Second Amendment protects the arms-bearing conduct at issue here.” The Second Amendment, she wrote, protects conduct — bearing arms — “not just inanimate objects like firearms or magazines.”

The dissent also accuses the majority of “the sort of interest-balancing that repressive governments have historically used to suppress opposition,” citing historical examples of the government banning enslaved people and Native Americans from owning guns and the Nazis confiscating guns from Jews.

The state, in defending the law, argued high-capacity magazines are “disproportionately used — and disproportionately deadly — in mass shootings and other horrific crimes, whereas they have little if any use in self-defense.”

“Today’s decision is right on the law and will save lives,” Attorney General Nick Brown said in a prepared statement. “Large capacity magazines are used in the overwhelming majority of mass shootings, and reducing the toll of these senseless killings is vitally important.”

The law was thrown into doubt last year when a Cowlitz County judge ruled it violated both the U.S. and Washington constitutions.

In [ruling the law unconstitutional](#), Superior Court Judge Gary Bashor pointed to the U.S. Supreme Court’s 2022 Bruen decision, in which the court ruled 6-3 that gun regulations must be “consistent with the Nation’s historical tradition of firearm regulation.”

The implications of the Bruen case have perplexed lower courts across the country, and [spurred a raft of legal challenges](#) to gun safety laws in Washington and elsewhere.

Bashor wrote that the founders had “no appetite to limit gun rights” and therefore there are “few, if any” ways “a state can justify a modern firearms regulation.”

“Though the specific technology available today may not have been envisioned, the Founders expected technological advancements,” Bashor wrote. “The result is few, if any, historical analogue laws by which a state can justify a modern firearms regulation.”

That was at the heart of the argument from Gator’s Custom Guns, a Kelso gun shop that challenged the law.

The state, lawyers for Gator’s wrote, “failed to show that the ban on [high-capacity magazines] fits within the historical tradition of firearms regulations.”

They argued the Legislature approved the ban “without concern” for how it would burden the rights of gun owners.

“The fundamental right to bear arms is not a privilege that can be continuously winnowed by the state,” lawyers Austin Hatcher and Peter Serrano wrote. Serrano is also the mayor of Pasco and director of the Silent Majority Foundation, a conservative legal group that’s filed lawsuits on guns and COVID regulations.

An employee at Gator’s Custom Guns said its owner, Walter Wentz, had no comment. The Silent Majority Foundation did not immediately respond to a request for comment.

Six national gun rights groups filed separate briefs urging the Supreme Court to strike down the ban.

Under the trial court’s opinion, then-Attorney General Bob Ferguson wrote last year, the state would be unable to regulate AR-15s, machine guns or even cluster bombs.

“This is not the law,” Ferguson wrote. “Commonsense regulation of military-style weapons and accessories does not infringe the individual right to armed self-defense.”