



Written by [Bob Adelman](#) on November 24, 2023

Two More Second Amendment Wins, in Oregon and Maryland

After blocking Oregon's Measure 114 from taking effect immediately after it passed last year, Oregon's Circuit Court Judge Robert Raschio [issued his final and permanent injunction against it](#) on Tuesday. That was the same day that Maryland's Circuit Court Judge Julius Richardson [issued his ruling](#) declaring that his state's Handgun Qualification License requirements were unconstitutional.

Oregonians passed Measure 114 last year by the slimmest of margins with just 50.65% of the voters approving it and just six of the state's 36 counties supporting it. Judge Raschio found that it violated Oregon's state constitution, the salient part of which reads, "The people shall have the right to bear arms for the defence [sic] of themselves, and the State...."

Both parts of the measure — the permitting system and the ban on large capacity magazines — were ruled unconstitutional. The permitting system went far beyond any other state's, requiring an individual seeking a permit to purchase a handgun to complete an "in-person demonstration of the applicant's ability to lock, load, unload, fire, and store a firearm before an instructor certified by a law enforcement agency."

And on its face the ban on large capacity (i.e., more than 10 rounds) was ruled unconstitutional. Judge Raschio didn't need any help from the Supreme Court's ruling in *Bruen* from last summer. All he needed was common sense:

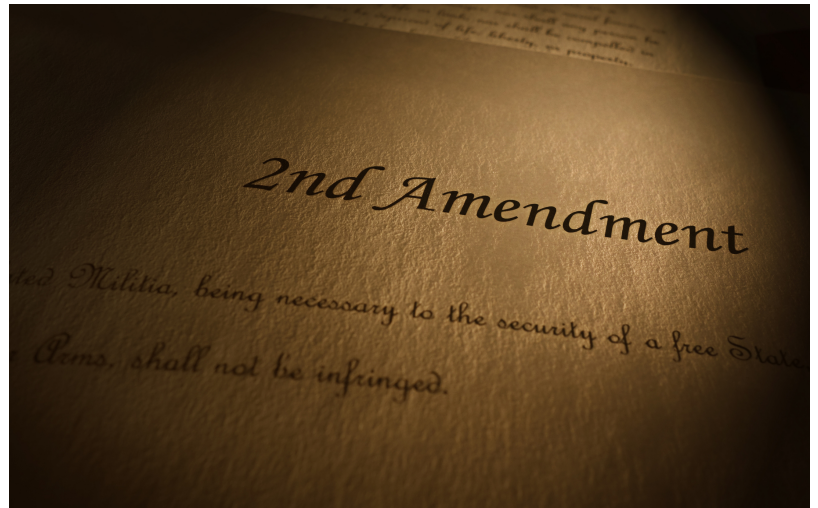
The court finds the defendants did not present evidence demonstrating a positive public safety result for the large capacity ban beyond a speculative, de minimis impact on mass shooting fatalities which occur very rarely.

The court further finds that the conduct of owning a large capacity magazine does not create an unreasonable and unjustified risk or harm to members of the public...

The court's legal and factual conclusion is that Ballot Measure 114 does not increase public safety but diminishes it, while creating nearly a million presumed misdemeanants ... [this is] a result that is not reasonable under Article 1, Second 27....

Raschio wasn't done:

This court [by its/his ruling] is preventing the undue burden of Ballot Measure 114 from



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being imposed on current and prospective gun owners who have a right to lawfully possess firearms for the purposes of defending themselves and the state against imminent threats of harm.

In Maryland, common sense, along with a little help from *Bruen*, gained the same result. As Fourth Circuit judge Julius Richardson wrote:

If you live in Maryland and you want a handgun, you must follow a long and winding path to get one.

Like with any firearms transfer — whether a purchase from a licensed dealer, gun show, or private person, or even a gift from a family member or friend — you must comply with Maryland’s 77R registration process, which requires you to fill out an application with certain identifying information and then wait seven days while the state performs a background check.

And if you want to carry your handgun, you need to get a separate carry permit too.

But — for handguns specifically — before you do any of that, there is an additional, preliminary step: You must also obtain a “handgun qualification license.”

Getting that license requires, among other things, submitting fingerprints to undergo a background “investigation” and taking a four-hour-long “firearms safety training course” in which you must fire at least one live round.

Then, after submitting your application for this extra license, you must wait up to thirty days for approval before you can start the rest of the process.

He reached for *Bruen* to make his case and inform his decision:

Maryland’s law fails the new *Bruen* test.

As we will explain, Plaintiffs have shown that Maryland’s handgun-licensure law regulates a course of conduct protected by the Second Amendment, and Maryland has not established that the law is consistent with our Nation’s historical tradition...

The challenged law restricts the ability of law-abiding adult citizens to possess handguns, and the state has not presented a historical analogue that justifies its restriction; indeed, it has seemingly admitted that it couldn’t find one.

Under the Supreme Court’s new burden-shifting test for these claims, Maryland’s law thus fails, and we must enjoin its enforcement.

So we reverse the district court’s contrary decision.

The problem defendants had in Maryland is one now imposed nearly everywhere that existing gun laws are being challenged: finding that “historical analogue” that’s now required, thanks to *Bruen*. That ground-shifting decision declares that “when the Second Amendment’s plain text covers an individual’s conduct [the right to keep and bear arms], the Constitution presumptively protects that conduct. The government [i.e., Maryland] must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the



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individual's conduct falls outside the Second Amendment's 'unqualified command.'"

Judge Richardson noted that Maryland couldn't find any such "historical tradition":

Indeed, Maryland admitted at oral argument that it had not presented a proper historical analogue for the challenged law, noting that it had identified no Founding-era laws that "required advance permission" before a citizen could purchase a firearm.

Both of these decisions may be appealed, but their final resting place, the Supreme Court (if they get that far), will merely reiterate its previous ruling in *Bruen*. Unless the government can find a historical reference to the proposed infringement of the Second Amendment, their efforts to restrict otherwise law-abiding citizens from purchasing a firearm will permanently fail.



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