



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

December 8, 2021

Honorable Members of the Washington State Legislature:

Last week, the Ninth Circuit Court of Appeals upheld California's ban on the sale of high-capacity magazines. The very same day, a 15-year-old used a high-capacity magazine to fire indiscriminately into his Michigan high school, killing four teenagers, injuring four, and terrorizing an entire community.

Firearms equipped with high-capacity magazines have been the weapons of choice in many of our country's deadliest mass shootings, including in Dayton (2019), El Paso (2019), Pittsburgh (2018), Parkland (2018), Las Vegas (2017), Sutherland Springs (2017), Orlando (2016), Newtown (2012), and Aurora (2012).

We have had too many mass shootings here in our state, including an incident in Eastern Washington in August 2021 that killed three people and injured a fourth. You are all familiar with the alarming reports of shootings in Washington state in recent months.

It's time to take action.

The talking points used by the gun lobby to oppose the common sense reform of banning the sale of high-capacity magazines do not hold up to scrutiny.

Here are the facts.

Gun Lobby Talking Point #1: A ban on the sale of high-capacity magazines that hold more than ten rounds violates the constitution.

Fact: Seven federal courts of appeal have upheld laws prohibiting the sale of magazines that hold more than ten rounds. Every court of appeals to rule on this issue has upheld these high-capacity magazine restrictions:

- The First Circuit upheld Massachusetts' ban;
- The Second Circuit upheld New York's and Connecticut's bans;
- The Third Circuit upheld New Jersey's ban;
- The Fourth Circuit upheld Maryland's ban;
- The Seventh Circuit upheld Chicago's ban;
- The Ninth Circuit upheld California's ban; and
- The D.C. Circuit upheld Washington, D.C.'s ban.

ATTORNEY GENERAL OF WASHINGTON

Washington State Legislature
December 8, 2021
Page 2

To be blunt, there is currently no split in the federal courts of appeal on this issue. All of these federal appellate courts recognized that the government's interest in promoting the public safety of its residents is an important one, and that this public policy is appropriate to achieve that outcome.

The unregulated, unrestricted sale of high-capacity magazines is akin to shouting "fire" in a crowded theater – a form of speech that is not protected by the constitution.

Gun Lobby Talking Point #2: A ban on the sale of high-capacity magazines will not have an impact because "criminals don't care what the law says."

Fact: The Ninth Circuit Court of Appeals recognized that: "Approximately three-quarters of mass shooters possessed their weapons, as well as their large-capacity magazines, *lawfully*." (Emphasis original.)

This public safety measure is proven to work because it focuses on licensed firearms dealers – not criminals. Licensed firearms dealers must comply with state and federal laws, and are subject to federal, state, and local oversight.

Gun Lobby Talking Point #3: There is no evidence that bans on the sale of high-capacity magazines will save lives.

Fact: There is overwhelming evidence that this public policy will save lives and make our communities safer.

The Ninth Circuit recognized the following:

"Shooters who use large-capacity magazines cause significantly more deaths and injuries than those shooters who are equipped with magazines of smaller capacity. ... Because shooters who are equipped with large-capacity magazines may fire many bullets without pause, shooters are able to – and do – inflict far more damage using those magazines than they otherwise could." (Emphasis added.)

"In the past half-century, large-capacity magazines have been used in about three-quarters of gun massacres with 10 or more deaths and in 100 percent of gun massacres with 20 or more deaths, and more than twice as many people have been killed or injured in mass shootings that involved a large-capacity magazine as compared with mass shootings that involved a smaller-capacity magazine." (Emphasis added.)

In fact, whether a state allows high-capacity magazine sales is the **single best predictor of the mass shooting rates in that state**, according to an analysis by Michael Siegel, a community health science professor at Boston University.

ATTORNEY GENERAL OF WASHINGTON

Washington State Legislature
December 8, 2021
Page 3

Gun Lobby Talking Point #4: The Assault Weapons Ban of 1994 did not reduce mass shootings.

Fact: On March 24, 2021, Glenn Kessler, the Washington Post’s fact-checker, published [an article](#) confirming that the 1994 Ban did reduce mass shootings. The article specifically notes that, “new research increasingly supports the idea that restrictions on large-capacity magazines were effective in reducing the death toll when the law was in effect.”

Gun Lobby Talking Point #5: High-capacity magazines are critical for self-defense.

Fact: The Ninth Circuit recognized the following:

“Plaintiffs have **not pointed to a single instance – in California or elsewhere, recently or ever – in which someone was unable to defend himself or herself due to a lack of a large-capacity magazine**, whereas the record describes the many deaths and injuries caused by criminals’ use of large-capacity magazines during mass shootings.” (Emphasis added.)

“Experts in this case and other cases report that ‘most homeowners only use two to three rounds of ammunition in self-defense.’”

Gun Lobby Talking Point #6: Magazines that hold 15 rounds or more are “standard.”

Fact: 93 million Americans, or more than one in four U.S. residents, live in jurisdictions that block the sale of magazines capable of holding more than ten rounds.

The gun industry cannot reasonably avoid legal restrictions on the sale of dangerous high-capacity magazines by flooding the market with these magazines.

Gun Lobby Talking Point #7: A ban on the sale of high-capacity magazines makes criminals out of law-abiding citizens.

Fact: State legislation restricting access to high-capacity magazines always provided an exception for “grandfathered” magazines. This year’s legislation focuses on prohibiting new *sales* of high-capacity magazines – not possession. This is consistent with the law in Maryland.

Gun Lobby Talking Point #8: Mass shootings represent only a fraction of gun violence deaths. Consequently, this policy will have only a minimal impact.

Fact: This talking point is offensive, deeply insensitive to the families devastated by mass shootings, and ignorant of the true impact of these events. Mass shootings like the one that happened last week in Michigan, and the 2016 mass shooting in Mukilteo, traumatize entire communities.

In 2018, Pew Research found that a majority of U.S. teenagers fear a mass shooting in their school. Fear is not conducive to learning.

ATTORNEY GENERAL OF WASHINGTON

Washington State Legislature
December 8, 2021
Page 4

All Washingtonians deserve to feel safe in public spaces. You have the ability to save lives. Additionally, you have the ability to make Washington students feel safer in their classrooms. You can make parents and teachers feel safer, too.

Please do not squander another opportunity to protect our residents from the next individual who wants to use a high-capacity magazine to terrorize a public space.

Thank you to the leaders who are fighting for this reform.

Sincerely,

A handwritten signature in blue ink that reads "Bob Ferguson". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

BOB FERGUSON
Attorney General

RWF/jlg