

News Analysis — RI New Gun Laws: Constitutional problems certain to lead to lawsuits

Through a series of weird parliamentary maneuvers, RI hurled itself into a legal nightmare on gun control. Three proposed bills would ban carrying long guns (rifles and shotguns) in public except for hunting (H.7358/S.2825), acquisition of firearms and ammunition by anyone under 21 (for whom handguns were already prohibited) (H.7457/S.2637), and possession of magazines capable of holding more than 10 rounds (H.6614/S.2653). All three were passed by both chambers of the General Assembly, sending them to the governor who said he would sign them into law.

Although the first two proposals passed both the House and Senate easily, the magazine capacity ban faced stiff opposition in the Judiciary committees of both chambers. The House Judiciary Committee on June 9 only passed it 10-8 because the speaker and majority leader used their rarely-exercised power to vote *ex-officio* (by virtue of their office) as members of every committee to forward the bill to the floor, and the Senate Judiciary Committee yesterday deadlocked on a tie vote even with the Senate president and majority leader voting *ex-officio* in favor. Because a tie vote in committee kills the bill, Senate leadership later in the day used a parliamentary maneuver to take up instead the House-passed bill for immediate consideration and pass it in concurrence, an extremely unusual move that requires a two-thirds super-majority vote and is almost never employed for anything controversial; the Senate voted 24-11 to override an objection to immediate consideration, the thinnest of margins. The Senate session ran almost six hours.

The RI magazine capacity bill is especially controversial because it provides for no grandfather clause that would allow owners of newly-banned magazines to keep them. While courts have generally held bans on manufacture and sales of magazines to be legal, no court decision currently in effect has allowed such a ban without a grandfather clause. California banned large magazines in 2000 but repealed its grandfather clause in 2016, leading to a flurry of litigation (*Duncan v. Bonta*) now pending before the US Supreme Court; an internal conference May 26 was held to decide whether to hear the case (*certiorari*), but legal observers expect that a major gun rights case on interpretation of the Second Amendment (*New York State Rifle & Pistol Association Inc. v. Bruen*) due to be decided by the end of this month will lead to the magazine case being remanded back to the lower courts.

By jumping into this fray, the RI ban on large magazines is certain to drag the state into litigation. The RI bill requires owners of existing magazines to either permanently modify them to reduce their capacity, surrender them to the police, or transfer them to a federally licensed firearms dealer for transfer out of state; violations constitute a felony punishable by up to five years imprisonment, a \$5,000 fine, and forfeiture of the magazine. The bill exempts active and retired law enforcement officers as well as active members of the military and National Guard.

Magazines are low-technology devices consisting of little more than a box and a spring, unchanged in fundamental design for more than a century. They are designed to fit a particular firearm, either a long gun or a handgun, so they generally are not modifiable without making them incompatible with that firearm. Highly popular current models probably would be served by manufacturers making new

reduced-capacity magazines compliant with the ban, but the vast majority of magazines are old, often decades old, and their sudden unavailability would render their companion firearm itself useless. The generally accepted estimate is that about half of all magazines in private hands hold more than 10 rounds. Because magazines can be swapped in seconds, it is far from clear that capacity limits are effective even if the goal is to reduce rate of fire.



STATE OF RHODE ISLAND
OFFICE OF THE ATTORNEY GENERAL

150 South Main Street • Providence, RI 02903
(401) 274-4400 • www.riag.ri.gov

Peter F. Neronha
Attorney General

June 10, 2022

The Honorable Robert E. Craven, Sr., Chair
House Committee on Judiciary
RI Statehouse, House Lounge
Providence, RI 02903

Dear Chair Craven:

I write concerning HB 6614 Substitute A, as I have been informed of concerns regarding the lack of a "grandfather clause," or exemption for current owners. Let me be clear—we need to reduce the supply of high-capacity magazines in Rhode Island. The addition of a grandfather clause would render this legislation unenforceable and functionally meaningless and is unnecessary to protect law-abiding gun owners in Rhode Island. This legislation has my full support as written, and I urge its passage.

Earlier this year, I submitted the Annual Gun Crimes Report for 2021. Relying on a preview of new and expanded data that we will be maintaining and reporting in future years, our 2021 report showed the extent to which Rhode Island's communities are inundated with firearms. During a pilot period of just four months in 2021, we prosecuted approximately 143 firearms-related cases, at least 38 of which involved high-capacity magazines. We know that these high-capacity magazines are capable of causing significant harm and destruction in a short amount of time, and we have to get them off our streets. And so, I applaud the House of Representatives' efforts to enact HB 6614 Substitute A, which would ban all firearm magazines with capacities exceeding ten (10) rounds.

Put simply, inclusion of a grandfather clause will render these laws unenforceable, and our public safety gains will be lost. Most high-capacity magazines do not have identifying marks, serial numbers, or registration numbers, which could be used to indicate when they were manufactured or sold. Because law enforcement would be unable to verify whether an individual possessed a magazine *prior* to the effective date of this legislation, such an exemption would serve as a readily available defense for every prospective criminal defendant. Rhode Island should learn from the experience of states such as California and New York, which have both repealed previously enacted grandfathering provisions for this very reason. We need to reduce the supply of high-capacity magazines in Rhode Island, and we need to ensure that we have meaningful tools to enforce the law—a grandfather clause would only undermine and frustrate both of these critical goals.

I also want to reassure you that this legislation, as currently written without any grandfather clause, will not turn law-abiding gun owners in Rhode Island into felons overnight.

Magazine capacity letter, Attorney General Peter Neronha to House Judiciary Committee Chair Robert Craven, June 10, 2022.

A grandfather clause on the magazine ban was vociferously opposed by Attorney General Peter Neronha in a letter to the House Judiciary Committee on June 10 (the day after its passage by the committee): "Put simply, inclusion of a grandfather clause will render these laws unenforceable, and our public safety gains will be lost. Most high-capacity magazines do not have identifying marks, serial numbers, or registration numbers, which could be used to indicate when they were manufactured or sold. Because law enforcement would be unable to verify whether an individual possessed a magazine prior to the effective date of this legislation, such an exemption would serve as a readily available defense for every prospective criminal defendant." Neronha in his letter compared the six months owners would have to comply with the magazine ban to the prior one month to comply with "ghost gun" (homemade guns without serial numbers) ban, but of course there are thousands and probably tens of thousands of about-to-be-banned magazines while there are almost no "ghost guns" extant.

“This is rather breathtaking. In just a few months, tens of thousands of Rhode Island gun owners could become felons,” the RI Republican Party said in a statement this morning. “Never have so many law-abiding citizens been put at risk for jail time since the days of Prohibition when possession of alcohol was a crime. A few weeks ago, the General Assembly decided to pass a law that expunged any criminal convictions related to marijuana possession even though, at the time, marijuana was illegal. Now that same General Assembly wants to make possession of certain capacity magazines a crime even though the magazine was bought at a time when it was legal in Rhode Island. This makes no sense.”

Entering a similar legal swamp, the RI ban on possession of any firearms by those under age 21 is even more expansive than a ban on possession of some firearms (semi-automatic centerfire rifles) that was ruled unconstitutional by the US Court of Appeals for the Ninth Circuit on May 11 (*Jones v. Bonta*). “Young adults have the same constitutional rights as the middle-aged or the elderly - even if some of them may not necessarily have the wisdom or judgment that age and experience can bring - for the same reason that we do not limit fundamental rights based on supposed intelligence, maturity, or other characteristics” the court wrote, later noting that “young adults have a Second Amendment right to keep and bear arms. Because that right includes the right to purchase arms, both California laws burden conduct within the scope of the Second Amendment.” (The court upheld a second California law that required some purchasers to first obtain a hunting license.) While RI in the First Circuit is not strictly bound by Ninth Circuit precedent, the recent court ruling bodes ill for the survival of the new RI ban.

The ban on carrying long guns in public may likewise face constitutional problems, if as expected the US Supreme Court rules within the next few weeks that there is some Second Amendment right to carry a firearm in public (*New York State Rifle & Pistol Association Inc. v. Bruen*), thereby making licenses or permits to carry in public a right subject to increased scrutiny if denied. While RI law does contain a provision that local police “shall issue” permits to carry handguns in public, in practice police departments have been reluctant to comply, even refusing to accept applications, without being sued.