



# OLR RESEARCH REPORT

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## QUESTIONS ON LARGE CAPACITY MAGAZINES

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You asked several questions regarding large capacity magazines. A large capacity magazine, as defined in [SB 1094](#), generally means any detachable ammunition feeding device with the capacity to accept more than ten rounds of ammunition. Your questions and the respective answers follow.

The Office of Legislative Research is not authorized to give legal opinions and this report should not be considered one.

### ***How many large capacity magazines are made in Connecticut?***

We were unable to find the number of large capacity magazines made in Connecticut. The National Shooting Sports Foundation (NSSF), the trade association for the firearms industry, estimates that there are over 1.5 million large capacity magazines manufactured in Connecticut each year based on an informal analysis of industry data.

Four major firearms manufacturers (Colt's Manufacturing, Stag Arms, Ruger, and Mossberg) make large capacity magazines or distribute them with their firearms. Four major manufacturing companies (OKAY Industries, C-Products, Mec-Gar, and Metal Form) manufacture and sell magazines, including large capacity magazines. In addition, NSSF asserts that there are a number of smaller manufacturers whose production is not focused on firearms and magazines, but use that segment to supplement their own manufacturing.

### ***How many large capacity magazines are there in Connecticut?***

We were unable to find this number, but the NSSF estimates that it could be in the tens of millions. NSSF used the following methodology to arrive at this figure.

Based on Connecticut's percentage of National Instant Criminal Background Check System checks in the United States, NSSF estimated that the number of firearms owned by Connecticut residents is about three million. About one million of these firearms are handguns, of which 21%, or 231,000 use large capacity magazines. About 1.2 million are rifles, of which 30%, or 372,000 use large capacity magazines. Assuming four magazines owned for every firearm (assuming every firearm comes standard with at least two magazines), NSSF asserts there are over 2.4 million large capacity magazines in Connecticut that originated at the retail level. The NSSF final figure is larger than this because it counts firearms already in the state and those not purchased at the retail level.

### ***How many crimes committed in Connecticut involve the use of large capacity magazines?***

We were unable to find the number of crimes committed involving the use of large capacity magazines. Seventy (52 handguns, 2 shotguns, 16 unspecified firearms) of the 107 murders committed in Connecticut in 2009 involved a firearm, but there is no information on the capacity of the magazines involved (Connecticut Department of Public Safety, *Connecticut Summary Statistics 2009*). For more information on Connecticut crime statistics, see the following link: [www.dpsdata.ct.gov/dps/ucr/ucr.aspx](http://www.dpsdata.ct.gov/dps/ucr/ucr.aspx).

### ***What are the constitutional ramifications of a ban on large capacity magazines?***

The constitutional ramifications of a ban on large capacity magazines is a matter for the courts to decide. A ban would likely lead to challenges based on potential violations of the Second Amendment's right to bear arms and the Fifth Amendment's Takings Clause.

**Second Amendment.** If the state were to pass a ban, as proposed under SB 1094, a Connecticut resident could challenge the law as infringing on his or her right to bear arms as protected by the Second Amendment. The U.S. Supreme Court most recently addressed the Second Amendment's scope and application to firearm regulation in *District of Columbia v. Heller*, 128 S. Ct. 2783 (2008) and *McDonald v. Chicago*, 130 S. Ct. 3020 (2010).

In *Heller*, the Court struck down a District of Columbia law that effectively banned handguns on the grounds that the law violated an individual's Second Amendment right to possess firearms for lawful use, such as self-defense in one's home. The decision was considered a federal measure that applied only in federal jurisdictions. While the Court ruled that an outright handgun ban is unconstitutional, it said that some firearm regulation is constitutionally permissible, asserting that the Second Amendment does not confer a right to possess any firearm, anywhere, and for any purpose. The Court provided a list of "presumptively lawful" regulations, and noted that the list was not exhaustive. However, it did not set criteria for determining what laws would meet this standard.

In *McDonald*, the Court was asked to address the constitutionality of a gun ban in the city of Chicago. Here, the Court did not rule on the constitutionality of the ban, but made clear that the individual's right to keep and bear arms also applies to state and local gun control laws. For more information on these cases, see OLR Report [2010-R-0455](#).

A large capacity magazine ban, unlike the legislation challenged in *Heller* and *McDonald*, does not ban handgun possession outright. Rather, it regulates the type of firearm that can be possessed. While we cannot say how courts would rule on this issue, a Connecticut court decision prior to *Heller* and rulings in other jurisdictions post-*Heller* may provide some guidance.

Prior to *Heller*, the Connecticut Supreme Court upheld an assault weapons ban in *Benjamin v. Bailey*, 234 Conn. 455 (Conn. 1995). The court found that the ban did not violate the state constitutional right to bear arms, in that:

the constitution does not guarantee the right to possess any weapon of the individual's choosing for use in self defense. [And] as long as our citizens have available to them some types of weapons that are adequate reasonably to vindicate the right to bear arms in self-defense, the state may proscribe the possession of other weapons. . .

Since *Heller*, there have been a few Second Amendment challenges to large capacity magazine and assault weapon regulation in other jurisdictions. According to the Legal Community Against Violence (LCAV), a public interest law center dedicated to preventing gun violence, these Second Amendment challenges have not been successful. LCAV cites the following cases: *Wilson v. Cook County*, 943 N.E. 2d 768 (Ill. App. 1<sup>st</sup> Dist. 2011); *Heller v. District of Columbia (Heller II)*, 689 F. Supp. 2d 179 (D.D.C. 2010); *People v. James*, 174 Cal. App. 4<sup>th</sup> 662 (Cal. App. 3<sup>rd</sup> Dist. 2009); *U.S. v. Fincher*, 538 F.3d 868 (C.A. 8 2008).

**Fifth Amendment.** If the state were to pass a ban, the owner of a surrendered large capacity magazine could also challenge the law as an illegal taking of property, a right protected by the Fifth Amendment Takings Clause. Although most of the U.S. Supreme Court cases on physical takings involve deprivation of real property, in *Andrus v. Allard*, 444 U.S. 51 (1979), the Court upheld a regulation with regard to personal property.

While we cannot say how courts would rule on a restriction in Connecticut, rulings in other jurisdictions may provide some guidance. NSSF asserts that SB 1094 constitutes a physical taking of magazines because it (1) prohibits the physical possession of large capacity magazines, (2) does not contain a grandfather provision for those who own magazines when the bill passes, and (3) offers no compensation for owners who surrender their magazines.

The LCAV, on the other hand, asserts that no assault weapon ban has been found to violate the Fifth Amendment or analogous state constitutional provisions (*Silveira v. Lockyer*, 312 F.3d 1052 (9<sup>th</sup> Cir. 2002); *Citizens for a Safer Community v. City of Rochester*, 627 N.Y.S. 2d 193 (N.Y. Gen. Term 1994); *Gun South, Inc. v. Brady*, 877 F.2d 858 (11<sup>th</sup> Cir. 1989). We note that in each of the aforementioned cases, none of the legislation challenged on the basis of the Takings Clause is on point with SB 1094. State legislation in *Silveira* included a grandfather clause that permitted individuals who owned assault weapons before the legislation passed to use them as long as they registered them with the state. In *Citizens*, the city ordinance restricted ammunition feeding devices with more than 17 cartridges, but only the ban on selling, trading, or leasing firearms in the city was challenged on Fifth Amendment grounds. The *Gun South* case involved a temporary suspension on the importation, rather than possession, of assault weapons, and did not apply to weapons purchased under preexisting permits.

### ***What would be the financial impact on Connecticut of a ban?***

According to the NSSF, a ban on large capacity magazines could directly cost the state more than \$100 million. Owners surrendering large capacity magazines would need to purchase new magazines to have a functional firearm, thus reducing their spending on other sectors of the state's economy, such as groceries, clothing, or other goods and services. NSSF estimates that this would result in a loss of \$10.6 million to \$42.3 million in economic activity and between 80 and 320 jobs in Connecticut. In addition, the total cost to consumers based on the replacement of four large magazines per firearm would be close to \$58 million. We note that while replacement of large magazines may reduce spending in other sectors of the state's economy, it would likely increase spending in the firearms industry.

Retailers would also suffer a loss because they would have to adjust current inventory. For example, NSSF estimates that 65% of the semi-automatic firearms sold at Cabela's have high-capacity magazines.

In addition to these direct costs, NSSF claims that a ban would ultimately force the state's firearm and magazine manufacturers to leave the state. They base this assertion on the fact that the state's firearm manufacturers have stated that they will not be able to continue business in Connecticut without the commercial retail market. NSSF notes that tax revenue would be lost from relocating manufactures and jobs. The industry and its employees pay over \$81 million in taxes, including property-, income-, and sales-based levies.

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