

Status of the Magazine Ban and 72-Hour Waiting Period Challenge As of 8/25/2026

As you are likely aware: The Vermont Federation of Sportsmen's Clubs filed a challenge to Vermont's Large-Capacity Magazine (LCM) ban as well as Vermont's 72-Hour Waiting Period on December 18, 2023. The VTFSC immediately followed that by filing a motion for a Preliminary Injunction (PI) that would, if granted, have stayed the enforcement of both laws until the full challenge was heard and decided.

On July 18, 2024, the Federal District Court in Vermont denied our request for a PI on both challenges. The court decided that the VTFSC was unlikely to succeed on the merits of our LCM challenge because:

- The court did not accept that LCMs were in common use for self-defense by making a distinction between "ownership" of LCMs and the use of LCMs for self-defense; and
- Even if they were protected by the 2nd Amendment's text, the court found that the State had demonstrated sufficient historical analogues for the constitutional restriction.

Regarding the 72-hour Waiting Period challenge, the court concluded:

- The 2nd Amendment's text allows us to keep and bear arms, but it did not protect the right to immediately acquire a firearm; and
- Even if acquisition implicated the 2nd Amendment, the waiting period constituted a permissible commercial restriction intended to ensure that firearms were acquired for lawful purposes. This conclusion was reached EVEN THOUGH the court acknowledged that the State did not establish a Founding-era tradition of firearm waiting periods.

In the face of these egregious decisions and on the advice of counsel, the VTFSC appealed the Federal District Court's denial of the PI to the 2nd Circuit Court of Appeals on July 31st, 2024.

Prior to our appeal being heard by the 2nd Circuit, that court heard the case of *NAGR v Lamont*, with that case dealing with a LCM ban out of Connecticut, which was also an appeal on a denial of a PI. In their convoluted decision which concluded that a ban on LCMs WAS constitutional, the 2nd Circuit created the phrase "unusually dangerous" to support CT's ban on LCMs. That stands in sharp contrast to the phrase the Supreme Court of the United States (SCOTUS) used, which was "dangerous and unusual."

The 2nd Circuit's decision in *NAGR v Lamont* rendered our challenge to Vermont's LCM ban moot until such time as SCOTUS renders a decision on LCMs. LCMs will likely be dealt with by SCOTUS in some fashion by July of 2027 (after they have heard and decided two Semi-Automatic bans, *Grant v Higgins* and *Viramontes v Cook County*).

So, while the challenge to Vermont's LCM ban is on hold for now, our challenge to Vermont's 72-hour Waiting Period is alive and well; with oral arguments heard by the 2nd Circuit on April 28th, 2026.

As a side note: There is now a "Circuit Split" between the 1st Circuit Court of Appeals (which ruled in *Beckwith v Frey* that Maine's 72-hour waiting period ban WAS constitutional, overruling a Maine District Court's opinion that it WASN'T) and the 10th Circuit Court of Appeals (which ruled in *Ortega v Grisham* that New Mexico's 1-week waiting period WASN'T constitutional, overruling a New Mexico District Court's opinion that it WAS).

Just so you know, the three judges assigned to our case in the 2nd Circuit are:

- Barrington Parker – appointed by George W Bush;
- Richard Sullivan – appointed by Donald Trump; and
- Steven Menashi – appointed by Donald Trump

Given this panel, at present we expect a 2-1 ruling, possibly even a 3-0 ruling in our favor (ChatGPT estimates a 60-65% chance that the panel will reverse or vacate the District Court of Vermont's denial of our PI).

While there is no 2nd Circuit rule concerning how long they can take to render a decision, we are hopeful to receive their decision before the end of 2026, since they have been considering this for approximately 3 ½ months (the court's median time from an oral argument to disposition is 5 months.)

The fundamental weakness with the Vermont District Court's decision is the threshold conclusion that the right to keep and bear arms does NOT encompass the right to acquire them immediately, as well as the proposition that laws regarding intoxication constitute an adequate historical analogue for imposing a mandatory cooling-off period on every lawful firearm purchaser.

We remain hopeful that Vermont's 72-hour Waiting Period will be stayed by 2027; we remain confident of eventual victory on both the 72-Hour Waiting Period and LCM challenges; we fully

expect that SCOTUS will decide the constitutionality of semi-automatic firearms by late spring 2027 along the way; and we are especially pleased with what we currently see happening to the National Firearms Act (NFA) of 1968 having to do with suppressors, short-barreled rifles and short-barreled shotguns.