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IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MARK FITZ; GRAYGUNS, INC.; G4  
ARCHERY, LLC; SECOND  
AMENDMENT FOUNDATION;  
FIREARMS POLICY COALITION,  
INC.,

Plaintiffs - Appellants,

v.

ELLEN ROSENBLUM, In her official  
capacity as Attorney General of the  
State of Oregon; TERRI DAVIE, In her  
official capacity as Superintendent of  
the Oregon State Police,

Defendants - Appellees.

U.S.C.A. No. 23-35478

DANIEL AZZOPARDI;  
SPORTSMAN'S WAREHOUSE INC.,

Plaintiffs - Appellants,

v.

ELLEN ROSENBLUM, In her official  
capacity as Attorney General of the  
State of Oregon; TERRI DAVIE, In her  
official capacity as Superintendent of  
the Oregon State Police,

Defendants - Appellees.

U.S.C.A. No. 23-35479

Page 1 - DEFENDANTS-APPELLEES' UNOPPOSED MOTION TO  
CONSOLIDATE APPEALS

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KATERINA B. EYRE; TIM  
FREEMAN; MAZAMA SPORTING  
GOODS; NATIONAL SHOOTING  
SPORTS FOUNDATION, INC.;  
OREGON STATE SHOOTING  
ASSOCIATION,

Plaintiffs - Appellants,

v.

ELLEN ROSENBLUM, In her official  
capacity as Attorney General of the  
State of Oregon; TERRI DAVIE, In  
her official capacity as Superintendent  
of the Oregon State Police,

Defendants - Appellees,

and

OREGON ALLIANCE FOR GUN  
SAFETY,

Intervenor-Defendant -  
Appellee.

U.S.C.A. No. 23-35539

OREGON FIREARMS  
FEDERATION, INC., an Oregon  
public benefit corporation; BRAD  
LOHREY, Sherman County Sheriff;  
ADAM JOHNSON, an individual;  
CODY BOWEN, Union County  
Sheriff; BRIAN WOLFE, Malheur  
County Sheriff; HAROLD RICHARD  
HADEN, Jr., an individual; KEVIN  
STARRETT; TERRY ROWAN;  
BRIAN PIXLEY; DAMIAN  
BUNTING,

Plaintiffs - Appellants,

v.

KATE BROWN, Governor of the  
State of Oregon; ELLEN  
ROSENBLUM, Attorney General of

U.S.C.A. No. 23-35540

the State of Oregon, in both their  
official and personal capacities;  
TERRI DAVIE, In her official  
capacity as Superintendent of the  
Oregon State Police,

Defendants - Appellees,

and

OREGON ALLIANCE FOR GUN  
SAFETY,

Intervenor-Defendant -  
Appellee.

**DEFENDANTS-APPELLEES' UNOPPOSED MOTION TO  
CONSOLIDATE APPEALS**

The Oregon state Defendants-Appellees move to consolidate the four appeals before this Court challenging the federal constitutionality of Oregon Ballot Measure 114, Nos. 23-35478, 23-35479, 23-35539, and 23-35540 (9th Cir.). The district court consolidated the four matters below, and the appeals thus arise out of the same proceedings. All parties were contacted—Plaintiffs-Appellants and Intervenor-Defendant-Appellee—and no party opposes consolidation, provided that each party retain its right under Federal Rule of Appellate Procedure 28(i) to file its own briefing, should it so choose.

**A. Background**

Oregon voters enacted Ballot Measure 114 in the November 2022 general election. Broadly, Measure 114: (1) prohibits the purchase and restricts the use of

large-capacity magazines, and (2) requires a permit to purchase firearms. Four sets of plaintiff groups sued a variety of state officials challenging the federal constitutionality of the measure:

- *Oregon Firearms Federation, Inc., et al. v. Tina Kotek, et al.*,<sup>1</sup> No. 2:22-cv-1815-IM (D. Or.)
- *Mark Fitz, et al. v. Ellen F. Rosenblum, et al.*, No. 3:22-cv-1859-IM (D. Or.)
- *Katerina B. Eyre, et al. v. Ellen F. Rosenblum, et al.*, No. 3:22-cv-1862-IM (D. Or.)
- *Daniel Azzopardi, et al. v. Ellen F. Rosenblum, et al.*, No. 3:22-cv-1869-IM (D. Or.)

The Oregon Alliance for Gun Safety then intervened as a defendant in the *Oregon Firearms Federation*, No. 2:22-cv-1815-IM, and *Eyre*, No. 3:22-cv-1862-IM, suits.

At the request of the parties, the district court consolidated all four actions for trial. No. 2:22-cv-1815-IM, ECF 62 (D. Or.);<sup>2</sup> No. 3:22-cv-1859-IM, ECF 34 (D. Or.); No. 3:22-cv-1862-IM, ECF 46 (D. Or.); No. 3:22-cv-1869-IM, ECF 25 (D. Or.). After a weeklong bench trial, the district court upheld the facial constitutionality of Measure 114. In doing so, the court issued a single Findings of

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<sup>1</sup> The notice of appeal in that case identified Kate Brown as a current party. However, plaintiffs sued Kate Brown in her official capacity as the Governor of Oregon. When she left office, the district court substituted her successor, Tina Kotek, as a named defendant under Federal Rule of Civil Procedure 25(d).

<sup>2</sup> “ECF” refers to the district court docket in that particular case.

Fact and Conclusions of Law. No. 2:22-cv-1815-IM, ECF 252 (D. Or.); No. 3-22-cv-1859-IM, ECF 210 (D. Or.); No. 3:22-cv-1862-IM, ECF 224 (D. Or.); No. 3:22-cv-1869-IM, ECF 203 (D. Or.).

Each of the above four plaintiff groups then filed separate notices of appeal:

- *Fitz*, No. 23-35478 (9th Cir.)
- *Azzopardi*, No. 23-35479 (9th Cir.)
- *Eyre*, No. 23-35539 (9th Cir.)
- *Oregon Firearms Federation*, No. 23-35540 (9th Cir.)

This Court has docketed the appeals as companion cases only.

## **B. Argument**

The Court should consolidate the four appeals under Federal Rule of Appellate Procedure 3(b)(2). That rule was adopted “to encourage consolidation of appeals whenever feasible.” Fed. R. App. 3(b) advisory committee’s note to 1967 amendment. To that end, the Court has noted that consolidation “may be ordered \* \* \* in the interests of justice.” *United States v. Washington*, 573 F.2d 1121, 1123 (9th Cir. 1978). And the Court has consolidated appeals that “raise the same legal issues.” *California v. Mesa*, 813 F.2d 960, 961 n.1 (9th Cir. 1987), *aff’d*, 489 U.S. 121 (1989).

Here, consolidation of the four appeals would serve the interests of justice and would promote judicial economy. As noted, all four appeals arise out of the

same district court proceedings, which that court consolidated at the request of the parties. The district court thereby held a single trial and issued a single Findings of Fact and Conclusions of Law. In other words, the cases have the same record and will raise largely the same issues on appeal, namely, whether the district court correctly ruled that Measure 114 comports with the Second, Fifth, and Fourteenth Amendments of the U.S. Constitution. Moreover, each appeal was filed recently with this Court. As a result, consolidation would cause little or no delay.

### CONCLUSION

The Court should consolidate the four appeals challenging the federal constitutionality of Oregon Ballot Measure 114, Nos. 23-35478, 23-35479, 23-35539, and 23-35540 (9th Cir.).

Respectfully submitted,

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/s/ Robert A. Koch

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Attorneys for the Oregon state  
Defendants-Appellees

## CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2023, I directed the Defendants-Appellees' Unopposed Motion to Consolidate Appeals to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Robert A. Koch

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