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Linn County sheriff: I won't enforce part of Measure 114

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Linn County Sheriff Michelle Duncan said the sheriff's office will not enforce magazine capacity limits narrowly approved by Oregon voters Nov. 8, despite Measure 114 requiring it.

"This is a terrible law for gunowners, crime victims and public safety," she said in an agency Facebook post.

In an interview by phone on Thursday, Duncan said she chose to make the post because community members were calling the agency concerned deputies were going to come take away their firearms that had magazines capable of holding more than 10 rounds.

As of Thursday, Nov. 10, **Measure 114 was passing** with 51.1% of the votes in the state, unofficial results showed. Despite the narrow margin, proponents declared victory the day before.

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According to Oregon's voter pamphlet, if the measure passes, it would require background checks, safety training and a fee for a local law enforcement-issued permit to acquire firearms. State police would maintain a new permit/firearm database.

The measure would also ban gun magazines capable of holding more than 10 rounds. It's that last part Duncan is taking issue with.

"I want to send a clear message to Linn County residents that the Linn County Sheriff's Office is NOT going to be enforcing magazine capacity limits," she wrote on Facebook.

In Linn County, voters overwhelmingly said no to the measure. Unofficial Secretary of State results showed 69.8% of Linn County voters shooting down the measure and with 30.2% voting yes.

"I want to ensure anything we do or don't do will not hinder gunowners' rights to purchase firearms, intentionally or unintentionally," Duncan said in the post.

The sheriff added that she's hopeful the measure will "result in an immediate lawsuit against it."

Duncan's announcement came on the heels of her **unofficial win in the Linn County sheriff election**. As of Thursday morning, she was leading the race with 56.4% of the votes. Opponent Jon Raymond received 43.3%.

Determining the law

Reached by phone, Duncan acknowledged that it is not her job to determine what is constitutional — that's the job of the courts. She said not enforcing the Measure 114 magazine capacity limits is not her deciding what's constitutional, but her enforcing a Supreme Court decision.

In June, the Supreme Court ordered the U.S. Court of Appeals for the 9th Circuit to revisit a 2021 7-4 ruling that upheld California's law banning magazines capable of holding more than 10 rounds.

The request —which did not overrule the circuit court ruling — followed a decision in an unrelated New York case. A decision at the 9th is still pending.

Duncan does not intend on enforcing the magazine capacity unless the court says she has to.

"Unless the Supreme Court comes up with a ruling contradicting what they've already decided, we're going to stand firm," she said.

Duncan said she's been clear from the beginning about her opinions on Measure 114 and her views on the job of a sheriff.

"I understand a lot of people's concerns," she said. "This isn't me saying I'm not going to follow the laws. That's not what I'm about."

She added that the agency has some discretion with how it uses its resources. For example, if a deputy is responding to a call but sees someone going 10 miles per hour over the speed limit or sees someone jaywalking, that deputy may opt not to pull over and cite the offender.

Permits and processes

In her Facebook post, Duncan said the agency's approach to the permitting process is up in the air.

"This measure is poorly written, and there is still a lot that needs to be sorted out regarding the permitting process, who has to do the training and what exactly does the training have to cover," Duncan said in the post.

"In the coming days, I will work with other law enforcement partners, elected officials and community members on the best course of action to take on permitting."

One of Duncan's biggest concerns with the looming permits is having to take deputies off the streets to process those permits. She said the new system could get bogged down for months and become "intrusive on gun owners' rights."

She acknowledged that eventually, she'll be forced to enforce the permitting process, she said, because there haven't been any Supreme Court rulings on the unconstitutionality of that part of Measure 114.

A Second Amendment sanctuary?

This is not Linn County's first foray into Second Amendment waters. Voters approved in 2018 a so-called "Second Amendment Preservation Ordinance."

The ordinance says it is the Linn County sheriff's job to determine "whether any federal, state or local regulation affecting firearms, firearms accessories and ammunition, that is enforceable within his/her jurisdiction, violates the Second, Ninth or Tenth Amendments."

The ordinance passed with 51.3% of voters supporting it.

According to **previous Mid-Valley Media reporting**, Linn joined seven other counties in the state in approving similar language. The others included Baker, Columbia, Douglas, Klamath, Lake, Umatilla and Union counties. Others followed.

The local ordinance allows violators to be sued and maximum civil penalties of \$2,000 for an individual, \$4,000 for a corporation.

Duncan said there's certain parts of the ordinance — including the fines — that she would be very careful about using as a defense for not enforcing gun laws.

"Some of the points are contrary to what we're trying to do in terms of public safety," she said. Duncan doesn't want to regulate other local law enforcement agencies, which she said should be viewed as partners.

And these types of preservation ordinances have faced pushback in court.

In October 2021, the Oregon Department of Justice filed lawsuits against Yamhill and Harney counties, challenging their preservation ordinances. A main contention: Local authorities don't get to overrule state laws.

“Gun safety laws exist to help keep guns out of dangerous hands and keep people safe. A county commission simply doesn't get to override state law in this way,” Attorney General Ellen Rosenblum said in an October 2021 news release. “The laws of Oregon remain fully in force — and fully enforceable — notwithstanding these invalid ordinances.”

Court documents show the Harney County case was dismissed in January after the county rescinded its ordinance.

Yamhill County didn't back down.

In July, Yamhill County Circuit Court Judge Ladd Wiles ruled that the county's ordinance was invalid because it conflicts with “paramount state law.”

In August, the county filed an appeal.

The Department of Justice hasn't intervened in Linn County or other areas with Second Amendment ordinances. With Measure 114 unofficially passing, the DOJ may have to address these counties.

“We will be involved in various ways in implementing the new law, as we always are,” Kristina Edmunson, communications director for the Oregon Attorney General, said in an email. “And although this is unusual, there are nearly always ways we can address enforcement concerns constructively. We hope that will be the case here.”

A similar refrain from the past

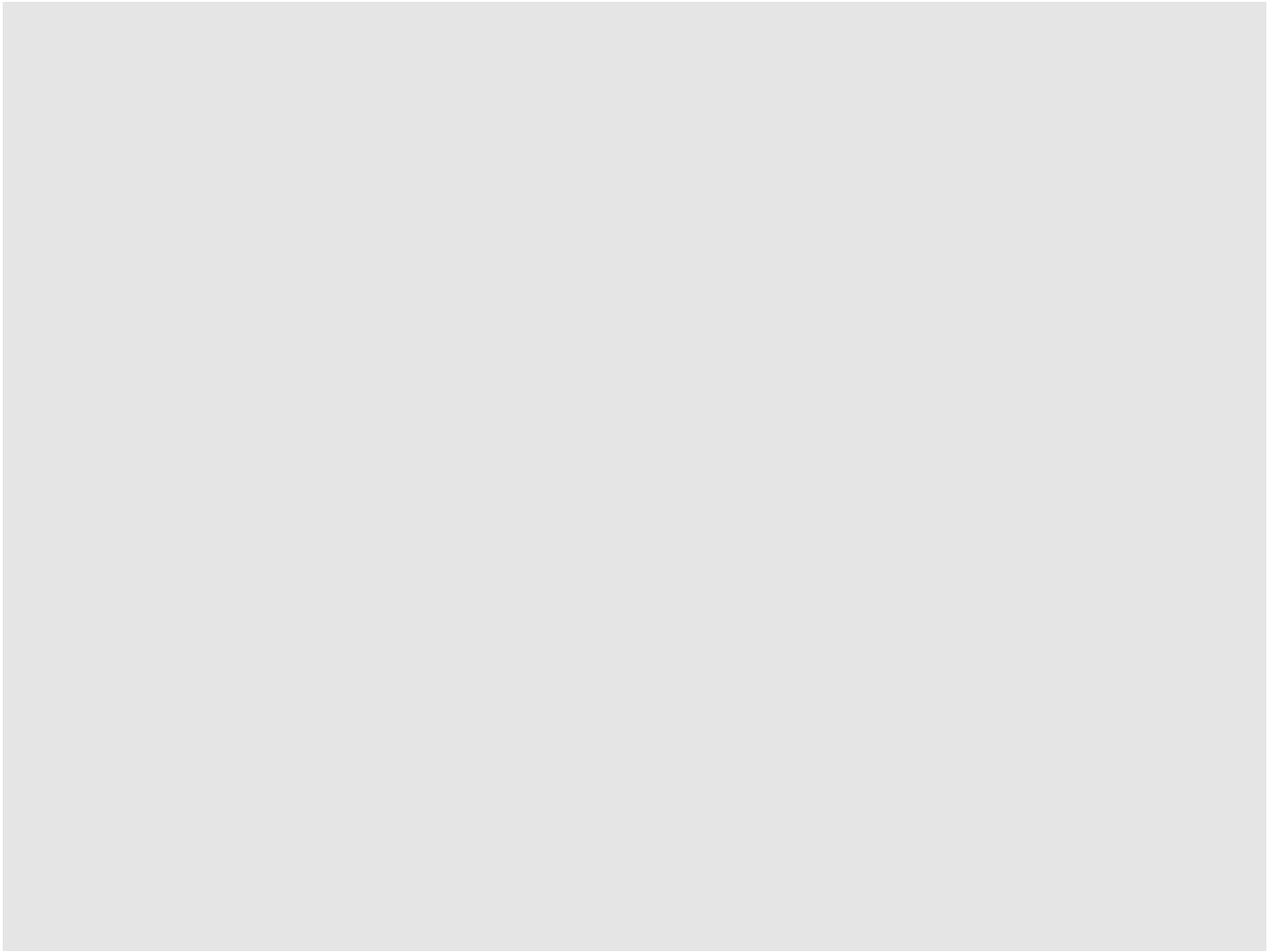
Besides the sanctuary ordinance, former Linn County Sheriff Tim Mueller made headlines in 2014 when **he sent a letter to then-Vice President Joe Biden saying that neither he nor his deputies will help federal agents take firearms** away from law-abiding citizens.

In the wake of the mass shooting at Sandy Hook Elementary School in Connecticut, Biden had presented former President Barack Obama with a list of recommendations for executive orders focusing on gun control.

Biden was not proposing confiscating weapons, according to news reports at the time. Rather, it entertained giving the Centers for Disease Control and Prevention authority to conduct national research on guns, more aggressive enforcement of existing gun laws and pushing for wider sharing of existing gun databases among federal and state agencies, Politico reported.

Regardless, Mueller sent Biden a letter that said, "It is the position of this sheriff that I refuse to participate, or stand idly by, while my citizens are turned into criminals due to the unconstitutional actions of misguided politicians," Mueller noted.

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As Linn County Sheriff Michelle Duncan headed toward electoral victory following the Nov. 8 General Election, she announced she would not enforce some provisions in statewide Measure 114, a gun safety measure which also was leading in unofficial results.

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