

No.

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN CASSIDY,
Petitioner

v.

COMMONWEALTH OF MASSACHUSETTS,
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE
SUPREME JUDICIAL COURT OF
MASSACHUSETTS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Private, in home possession of firearms and the 'core' of The Second Amendment's meaning post *Heller* and *McDonald* has been largely left open to the varying federal and state judicial appellate divisions and, in some cases, varying state legislation. Both sides of firearm arguments have centered on 'presumptively lawful restrictions,' 'laws that impermissibly burdens The Second Amendment,' or 'places a substantial burden on exercise of a Second Amendment right.' Petitioner Cassidy was convicted in Massachusetts of seven felonies for possessing two firearms, four large-capacity magazines and ammunition he lawfully purchased in Texas and kept in his off-campus residence, in a bedroom he alone occupied. Cassidy could not obtain a license prior to moving to the state and five of the items he possessed are banned in Massachusetts.

The questions presented:

1. What level of scrutiny should be used in reviewing statutes that punish possession of lawfully acquired arms kept in the home?
2. What are the limits a state may impose for possessing ammunition in the home?
3. May a state ban an entire class of firearms that are commonly possessed by law abiding citizens because the firearms look like a machine gun?
4. May a state ban large-capacity magazines made within the past 20 years?
5. Must a state recognize another state's implementation of Second Amendment rights?

6. Must a state have a firearm's licensing process in place to allow citizens to obtain a license prior to the citizen moving to the state so that they may bring their lawfully purchased firearms with them?
7. Does the Second Amendment protect lawfully acquired firearms purchased in one state by a citizen of that state when the citizen brings those firearms with them to another state that prohibits the very same items?

LIST OF ALL PARTIES

All parties appear in the caption of the case on the cover page.

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The opinion of The Supreme Judicial Court of Massachusetts affirming the petitioner's conviction appears at Appendix A and does not appear to be reported.

JURISDICTION

The date and opinion and judgment of the Supreme Judicial Court of Massachusetts sought to be reviewed is May 14, 2018. This petition is filed August 13, 2018, which is within the 90-day filing period and in compliance with Rule 30. The Supreme Judicial Court of Massachusetts is the highest court of Massachusetts. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Second Amendment to The United States Constitution provides:

A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Section One of The Fourteenth Amendment to The

United States Constitution provides:

...No State shall....deprive any person of life, liberty, or property, without due process of law...

Mass. Gen. Laws c. 140, §131M provides:

No person shall . . . possess an assault weapon or a large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994. Whoever not being licensed under the provisions of section 122 violates the provisions of this section shall be punished, for a first offense, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years.

Mass. Gen. Laws c. 269, § 10(m) provides:

Notwithstanding the provisions of paragraph (a) or (h), any person not exempted by statute who knowingly has in his possession . . . a large capacity weapon or large capacity feeding device therefor who does not possess a valid Class A or

Class B license to carry firearms issued under section 131 or 131F of chapter 140, except as permitted or otherwise provided under this section or chapter 140, shall be punished by imprisonment in a state prison for not less than two and one-half years nor more than ten years. The possession of a valid firearm identification card issued under section 129B shall not be a defense for a violation of this subsection; provided, however, that any such person charged with violating this paragraph and holding a valid firearm identification card shall not be subject to any mandatory minimum sentence imposed by this paragraph.

Mass. Gen. Laws c. 269, § 10(h)(1) provides:

Whoever owns, possesses or transfers a firearm, rifle, shotgun or ammunition without complying with the

provisions of section 129C
of chapter 140 shall be
punished by imprisonment
in a jail or house of
correction for not more
than 2 years or by a fine of
not more than \$500.

STATEMENT OF THE CASE

John Cassidy (“Cassidy”) was born and raised in Houston, Texas, where he exercised his Second Amendment rights and legally purchased a nine-millimeter pistol (as opposed to a revolver), a pistol that shoots a 7.62 x 39MM cartridge, several magazines capable of holding more than ten (10) rounds and the equivalent of about three boxes of loose ammunition. In 2010, the Commonwealth of Massachusetts invited Cassidy to attend its only state-operated law school to which Cassidy agreed. Cassidy brought his firearms, magazines and ammunition with him to Massachusetts and kept the items in his off-campus apartment for personal protection. Unknown to Cassidy, Massachusetts severely restricts the exercise of the Second Amendment and metes harsh punishment for violations of criminal statutes.

In March of 2011, Cassidy had a minor dispute with his roommate and the roommate reported Cassidy’s pistols, magazines and ammunition to the police. The police executed a search warrant at Cassidy’s home and found the pistols, magazines and ammunition in his bedroom that he alone occupied. The pistols, magazines and ammunition Cassidy

possessed are commonly possessed in almost every state in the union and used for self-defense in the home.

Cassidy cooperated with the police and admitted to owning the pistols, magazines and ammunition. The state prosecuted Cassidy for violations of: (a) Mass. Gen. Laws c. 269 § 10(m) which elevates commonly possessed firearms to large-capacity weapons; (b) Mass. Gen. Laws c. 140, § 131M which outlaws possession of certain firearms termed “assault weapons” not in the state prior to 1994; (c) Mass. Gen. Laws c. 269, § 10(m) which prohibits magazines capable of holding more than 10 rounds of ammunition (four counts); and (d) Mass. Gen. Laws c. 269, § 10(h), unlawful possession of ammunition.¹ Cassidy was represented at trial by a court-appointed attorney. A Superior Court jury convicted Cassidy of violating each of these statutes and Cassidy is now a felon. Throughout his trial and appeals, Cassidy maintained that the pistols, magazines and ammunition he legally purchased are authorized and protected under the Second Amendment. A jury, the trial court judge, Massachusetts’s Appeals Court and the state’s Supreme Judicial Court disagreed. Mr. Cassidy spent two and one-half years in prison, including time spent at the state’s maximum-security facility, as opposed to jail, for mere possession of commonly possessed and lawfully acquired firearms, feeding devices and ammunition. After trial, Cassidy proceeded through the appeals process pro se.

¹ There is no typographical error. Mass. Gen. Laws c. 269, § 10(m) prohibits possession of large capacity weapons and large capacity magazines.

“The Massachusetts Constitution is, if anything, more protective of individual liberty and equality than the Federal Constitution; it may demand broader protection for fundamental rights; and it is less tolerant of government intrusion into the protected spheres of private life.” *Hillary Goodridge & Others v. Department of Public Health & Another*, 440 Mass. 309, 313, 798 NE 2d 941, 944 (2003). Yet that concept of “more protection” does not apply to Second Amendment rights because some states, like Texas, only require a driver’s license to possess pistols, magazines and ammunition, while Massachusetts requires a very extensive and arbitrary licensing process to possess firearms.

REASONS FOR GRANTING THE PETITION

I

MASSACHUSETTS HAS A CONFUSING STATUTORY SCHEME THAT SEVERELY PUNISHES CITIZENS THAT MOVE TO MASSACHUSETTS AND BRING WITH THEM LEGALLY PURCHASED AND COMMONLY POSSESSED FIREARMS TO BE KEPT IN THE HOME. *HELLER* INTERPRETS THE SECOND AMENDMENT AS “ELEVATING ABOVE ALL OTHER INTERESTS THE RIGHT OF LAW-ABIDING, RESPONSIBLE CITIZENS TO USE ARMS IN DEFENSE OF HEARTH AND HOME, WHERE THE NEED FOR DEFENSE OF SELF AND PROPERTY IS MOST ACUTE.”

Cassidy legally purchased firearms in Texas and brought these items with him from Texas when he attended law school in Massachusetts. Cassidy kept the items in his bedroom at an off-campus residence. Massachusetts appears to allow citizens to possess firearms in their homes without a license. Mass. Gen. Laws c. 269, § 10(a) provides:

Whoever, except as provided or exempted by statute, knowingly **has** in his possession . . . **a firearm**, loaded or unloaded, as defined in section one hundred and twenty-one of chapter one hundred and forty **without either: (1) being present in or on his residence . . . or (2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; . . . shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years.**² (**emphasis supplied**)

² Massachusetts's statutory scheme is so complicated that it appears designed to prevent citizens from exercising their Second Amendment rights. The petition will attempt to paraphrase for reading ease, but the opaqueness of the statutory schema cannot be ignored.

“A firearm is pistol . . . from which a . . . bullet can be discharged and of which the length of the barrel or barrels is less than 16 inches.” Mass. Gen. Laws c. 140, § 121. Because Cassidy possessed a pistol in his home, § 10(a) allows him to do so without a license, and § 10(a) appears congruent with both the Second Amendment. *Heller* allows a person to possess a firearm for traditionally lawful purposes, such as self-defense within the home. *District of Columbia v. Heller*, 554 U.S. 570, 628, 128 S.Ct. 2783, 2817 (2008). *Heller* applies to the states through the Court’s holding in *McDonald v. City of Chicago*, 561 U.S. 742, 785, 130 S.Ct. 3020, 3046 (2010). Yet Cassidy spent two and one-half years in prison for possessing pistols in his home because § 10(a) is a trap for the unwary. Cassidy possessed a firearm that rises to the level of a large-capacity weapon.

Large Capacity Weapons

Mass. Gen. Laws c. 269, § 10(m), the statute Cassidy was convicted of violating, provides, in pertinent part:

[n]otwithstanding the provisions of paragraph (a) or (h), any person not exempted by statute who knowingly has in his possession, . . . a large capacity weapon or large capacity feeding device therefor who does not possess a valid license to

carry firearms issued under section 131 or 131F of chapter 140, except as permitted or otherwise provided under this section or chapter 140, shall be punished by imprisonment in a state prison for not less than two and one-half years nor more than ten years.

Mass. Gen. Laws c. 269, §10, does not define the term “large capacity firearm” or “large capacity feeding device” and provides no guidance as to where a person reading the statute can seek the definition. Only two other sections of Mass. Gen. Laws c. 269, contain the term “large capacity.” Mass. Gen. Laws c. 269, § 12D(a) penalizes carrying a loaded large capacity shotgun or rifle on a public way, and Mass. Gen. Laws c. 269, §10F(a) penalizes selling large capacity weapons and feeding devices. Both sections specifically reference the definition of large capacity found in Mass. Gen. Laws c. 140, §121. “When a statute does not define its words . . . we derive the words' usual and accepted meaning from sources presumably known to the statute's enactors, such as their use in other legal contexts and dictionary definitions.” *Commonwealth v. Zone Book, Inc.*, 361 N.E.2d 1239, 1242, 372 Mass. 366, 369 (1977).

Mass. Gen. Laws c. 140, §121 defines a large capacity weapon as:

any firearm, rifle or
shotgun: (i) that is
semiautomatic with a fixed
large capacity feeding
device; (ii) that is
semiautomatic and capable
of accepting, or readily
modifiable to accept, any
detachable large capacity
feeding device; . . . or (iv)
that is an assault weapon.
The term "large capacity
weapon" shall be a
secondary designation and
shall apply to a weapon in
addition to its primary
designation as a firearm,
rifle or shotgun

Mass. Gen. Laws c. 140, § 121
defines a large capacity feeding device
as: "(i) a fixed or detachable magazine . .
. capable of accepting, . . . more than ten
rounds of ammunition." Mass. Gen.
Laws c. 140, § 131M provides requires
the feeding device to be possessed on
September 13, 1994 or earlier.

To summarize, for the purposes of this matter,
a large capacity weapon is a semiautomatic pistol
that uses or is capable of using a large capacity
feeding device of more than ten rounds and the large-
capacity feeding device must have been
manufactured prior to September 13, 1994.
Practically all pistols (as opposed to revolvers) fall
within the definition of large-capacity weapons. To

understand why practically all pistols qualify as large capacity weapons requires further explanation.

Fixed Large Capacity Feeding Device³

A firearm that uses a “fixed” feeding device uses a “clip” which holds the cartridges and goes into the firearm as part of the feeding mechanism. When the last round is fired, the clip automatically ejects from the firearm. The clip cannot be modified or adjusted to hold more or less bullets than the clip designed for use with the firearm. The firearm can only accept a fixed number of cartridges determined by the size of the clip because the clip becomes a part of the firearm. Therefore, there is no question as to the number of bullets the firearm can discharge because the size is absolutely fixed by the clip’s size. Firearms that use clips differ significantly from firearms that use magazines.

Detachable Large Capacity Feeding Devices

A “detachable” feeding device includes “magazines”; a spring-loaded container for cartridges. When the last round is fired, the user must manually release the magazine, which differs from clips which automatically eject when the last cartridge is fired. Theoretically, however, the number of rounds a magazine can hold is only limited by the firearm’s ability to lock the magazine in place for firing and a user’s physical strength to hold the firearm; ammunition is heavy. Almost all

³ See Mark Keefe, *Clips Vs. Magazines*, American Rifleman (2014), <https://www.americanrifleman.org/articles/2014/3/6/clips-vs-magazines/> (last visited Dec. 12, 2017).

pistols may accept magazines that hold ten or less bullets and more than ten bullets. Therefore, almost all pistols qualify as large capacity weapons.

For example, the following pistols are commonly sold in Massachusetts, appear on the state-approved firearms list and do not appear on Massachusetts's list of large-capacity firearms:

- (1) In June 2014, German firearms manufacturer Heckler and Koch introduced a nine-millimeter pistol, model number VP 9;⁴ and
- (2) In 2005, Massachusetts based firearms manufacturer Smith & Wesson introduced a nine-millimeter pistol, model no. M&P.⁵

These are examples of pistols **capable of accepting** a large capacity magazine thus becoming large capacity weapons and illegal to possess in the home without a license. Because the firearms are manufactured after 1994, however, the magazines rendering the pistols as large-capacity weapons can never be possessed in Massachusetts.

The Heckler and Koch VP9 as well as the Smith & Wesson M&P 9MM pistol can receive magazines that have 10 or 15 round capacities. Therefore, the pistols described above are offered for sale in the Commonwealth with magazines only having a 10-round capacity, but are "capable of

⁴ Wikipedia,
[https://en.wikipedia.org/wiki/Heckler %26 Koch VP9](https://en.wikipedia.org/wiki/Heckler_%26_Koch_VP9) (last visited Oct. 8, 2017).

⁵ Wikipedia,
[https://en.wikipedia.org/wiki/Smith %26 Wesson M%26P](https://en.wikipedia.org/wiki/Smith_%26_Wesson_M%26P) (last visited Oct. 8, 2017).

accepting a detachable large capacity feeding device of more than ten rounds,” which bring the firearms within § 10(m)’s grasp because they qualify as large capacity weapons. Yet, the items do not appear on Massachusetts’s large-capacity weapons list.⁶

Many pistols have this issue; the pistols meet the definition of large-capacity weapons, but the feeding devices rendering the pistols as large capacity weapons can never be possessed in Massachusetts. Which leads to the question, does § 10(m) violate the Second Amendment because it outlaws lawfully purchased pistols commonly owned by American citizens and kept in the home?

Standard of Review

Petitioner must choose a lens through which to view the question, the standard of review, to challenge statutes governing possession of firearms, specifically pistols, as Cassidy had, in the home.⁷

⁶ See Commonwealth of Massachusetts, Executive Office of Public Safety and Security, Large Capacity Weapons Roster 02-2015 located at <https://www.mass.gov/files/documents/2016/09/tv/large-capacity-roster-06-2011.pdf>. (last visited on August 9, 2018).

⁷ Petitioner is mindful that the dissents in *Heller* read the Second Amendment to protect “militia-related interests.” *Heller* at 681. Cassidy alerts the Court to 10 U.S.C. § 246 which defines the militia of the United States as “all able-bodied males at least 17 years of age and . . . under 45 years of age . . . and of female citizens of the United States who are members of the National Guard.” The statute bifurcates the militia into: organized and unorganized. The organized militia is the National Guard and Naval Militia and the unorganized

Courts employ differing standards of review for statutes involving firearms possessed in the home. *Heller* appears to reject any kind of “rational basis,” *Heller* at 723, N.27 or an “interest-balancing” tests *Id.* at 634, 2821. The level of scrutiny applicable under the Second Amendment “depends on the nature of the conduct being regulated and the degree to which the challenged law burdens the right.” *U.S. v. Chester*, 628 F.3d 673, (4th Cir. 2010). Strict scrutiny is reserved for “any law that would burden the fundamental core right of self-defense in the home by a law-abiding citizen. *U.S. v. Masciandaro*, 638 F3d 458, 470 (4th Cir. 2011). What we know from [*Heller* and *McDonald*] is that Second Amendment guarantees are at their zenith within the home. *Kachalsky v. County of Westchester*, 701 F.3d 81, 89 (2d Cir. 2012) *citing Heller* at 628-29. *See Pineiro v. Gemme*, 937 F.Supp.2d 161, 172 (D. Mass. 2013). On the other hand, “[a]s between strict and intermediate scrutiny . . . the latter is the more appropriate standard for review of gun registration laws.” *Heller v. Dist. of Columbia*, 670 F.3d 1244, 1258 (D.C. Cir., 2011).

The Court held that the Second Amendment to the U.S. Constitution guarantees an individual right to possess handguns in the home. *Heller* at 628. In

militia consists of members of the militia not part of the National Guard and Naval Militia.” While the majority in *Heller* did not believe the prefatory clause of the Second Amendment relating to the militia had much to do with the individual right to possess arms, the dissenters may find the codified definition of the militia as grounds for reviewing statutes infringing upon the right to bear arms using a strict-scrutiny standard when regulations infringe upon the unorganized militia’s ability to possess arms. At the time of the offense, Cassidy was in his mid-twenties.

cases involving individual rights not enumerated in the Constitution, the Court has inferred a “substantive due process” component to the Fifth and Fourteenth Amendments which “forbids the government to infringe certain fundamental liberty interest at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest.” *Reno v. Flores*, 507 U.S. 292, 302, 113 S.Ct. 1439 (1993). “The Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substances.” *Griswold v. State of Connecticut*, 381 U.S. 479, 484, 85 S.Ct. 1678, (1965). “The Court has recognized that a right to personal privacy or a guarantee of certain areas or zones of privacy exist under the Constitution [and] include personal rights so fundamental or implicit in the concept or orderly liberty . . . and ha[ve] some extension to marriage, procreation, contraception, family relationships, child rearing and education [and abortion].” *Roe v. Wade* 410 U.S. 113, 152-53, 93 S.Ct. 705 (1973). Marriage, procreation, family, children and abortion. Each of these rights have something very fundamental in common. A person has a right to self-preservation—a right to ensure their progeny carry on their legacy. The Second Amendment cements that right because the central component of the Second Amendment is the right to self-defense of the person and the family in the home.

The seminal cases cited above, however, only forbid governmental interference with respect to rights found deeply embedded in the right to privacy through the Fifth and Fourteenth amendments. In *Heller*, the Court found a right to self-defense embedded in the Second Amendment and Second

Amendment rights are at their zenith in the home. It seems appropriate to extend strict-scrutiny analysis to the embedded fundamental right found in the Second Amendment of possessing firearms in the home for self-defense.

Applying strict scrutiny requires reviewing each gun law with care to determine whether it is narrowly tailored to achieve a compelling governmental interest. *Abrams v. Johnson*, 521 U.S. 74, 82, 117 S.Ct. 1925, 138 L.Ed.2d 285 (1997). The requirement of narrow tailoring is satisfied so long as the regulation promotes a substantial governmental interest that would be achieved less effectively absent the regulation, and the means chosen are not substantially broader than necessary to achieve that interest. *Ward v. Rock Against Racism*, 491 U.S. 781, 782-83, 109 S.Ct. 2746 (1989).

With respect to Massachusetts's interest in regulating firearms, it has previously argued that the state has a compelling and an important interest in restricting and regulating firearms: “[to] limit[] the proliferation of firearms because of their inherent danger and to prevent dangerous persons from obtaining firearms, *Fletcher v. Haas*, 851 F.Supp.2d 287, 303 (D. Mass. 2012) (relating to whether the Second Amendment applies to lawful resident aliens) also see *United States v. Carter*, 752 F.3d 8, 13 (1st Cir. 2014) (relating to disqualifying . . . domestic violence misdemeanants from gun ownership and preventing gun violence in the home.) Dangerous persons should not obtain firearms and that the state has an interest in protecting its citizens, but the state should not prevent citizens from possessing lawfully-acquired firearms for self-defense in the

home, a right protected under the Second Amendment.

So, the question becomes, is § 10(m), which absolutely forbids possession of a large capacity weapon without a Massachusetts Class A License to Carry, substantially broader than necessary to prevent: the proliferation of firearms and to prevent dangerous people from acquiring firearms? The answer is no. Cassidy legally purchased pistols, magazines and ammunition which § 10(m) does not take into consideration. Cassidy's only "crime" was possessing legally purchased pistols, magazines and ammunition and nothing more. As discussed below, Massachusetts has no procedure for people to obtain a Class A License to Carry prior to simply moving to the state.

In short, §10(m) outlaws firearms commonly possessed in most states across the country and is not narrowly tailored to prevent proliferation. In addition, this Court said that "guns generally can be owned in perfect innocence." *Staples v. United States*, 511 U.S. 600, 611-12 (1994). Roughly 50% of American homes contain at least one firearm. *Id.* at 613. Further, Massachusetts locks up dangerous people and federal law prohibits felons from possessing firearms. A blanket prohibition or restrictive licensing requirement is not narrowly tailored to prevent the proliferation of illegal firearms.

Petitioner is mindful that *Heller* declined to establish a blanket standard of review for statutes regulating firearms using one of the traditional levels of scrutiny and rejected a "judge-empowering 'interest-balancing inquiry'." *Heller* at 634. Petitioner contends that the Court should apply a

strict scrutiny standard to review statutes that put a person in prison for two and one-half years for possessing legally acquired and commonly possessed pistols, magazines and ammunition in the home. Even if the Court does not apply one of the traditional standards of review for § 10(m), the statute violates *Heller* because the statute severely punishes possession of firearms in common use by law-abiding citizens in their homes.

Massachusetts does not require a firearms license to possess firearms in the home. Cassidy possessed in his home a pistol that fired a nine-millimeter cartridge and could hold more than 10 rounds at a given time which makes the item a large capacity weapon. Large capacity weapons require a Class A License to Carry to possess at any time, even in the home. Massachusetts does not have any grace period for citizens moving to the state bringing items which the state deems large capacity weapons.

Absent a traditional standard of review, the main question governing G.L. c. 269, §10(m): what kind of regulations the government may impose on the possession of lawfully acquired and commonly possessed large-capacity pistols. The Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes such as short-barreled shotguns or automatic M-16 rifles and the like. *Heller* at 625 and 627. If the firearms are commonly possessed, then governments can impose prohibitions on the: (a) possession of firearms by felons, the mentally ill and individuals convicted of domestic violence; and (b) the carrying of firearms in sensitive places, *Heller* at 626 627. With respect to the Constitutionality of regulating the actual firearm, *Heller* appears to

apply a two-step analysis: (1) are the firearms commonly possessed by law-abiding citizens for lawful purposes; and (2) the extent to which Massachusetts may regulate those firearms.

Pistols Are Commonly Possessed by Law-Abiding Citizens

According to the United States Department of Justice’s Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), between 1986 and 2016, manufacturers in the U.S. produced, and put into commerce, 155,140,222 firearms consisting⁸:

Firearms Manufactured (1986-2016)		
<i>Source: ATF</i>		
Firearm Type	Units Manufactured	%
Rifles	55,577,340	36%
Pistols	52,915,204	34%
Shotguns	26,998,635	18%
Revolvers	16,099,281	10%
Misc.	3,549,762	2%
Total Firearms	155,140,222	100%

⁸ Data compiled by Petitioner using ATF statistics found at (a) <https://www.atf.gov/resource-center/data-statistics> for 2016, Annual Firearms Manufacturers and Export Report; and (b) Exhibit 1 of the ATF’s Annual Firearms Manufacturing and Export Report, between 2007 and 2015 found at <https://www.atf.gov/resource-center/docs/undefined/firearms-commerce-united-states-annual-statistical-update-2017/download>. (both locations last visited on August 4, 2018).

Fully one-third of all firearms manufactured between 1986 and 2016, a 30-year period, consisted of pistols. It is evident that because pistols are commonly possessed. The next question becomes whether the pistol Cassidy went to prison for having in his home is commonly possessed by law-abiding citizens.

Cassidy possessed one 9-millimeter pistol. According to the ATF's Annual Firearms Manufacturing and Export Report, between 2007 and 2016, the only data readily available from the ATF, the caliber of pistols manufactured and distributed into commerce delineated as:⁹

⁹ Data compiled by Petitioner using ATF statistics found at <https://www.atf.gov/resource-center/data-statistics> for 2007 through 2016, Annual Firearms Manufacturers and Export Report. (location last visited on August 4, 2018.)

In the interest of transparency, Petitioner identified inconsistencies in the data sets the ATF reported. Exhibit 1 of the ATF's Firearms Commerce in the United States Annual Statistical Update 2017 for years 2017 through 2015 reports 24,674,148 as compared to 24,452,038 pistols manufactured for the same period as reported at Annual Firearms Manufacturers and Export Report between 2007 and 2015 reports, or a 222,110 (1%) difference.

**Annual Firearms
Manufacturing (2007-2016)
Pistols Only**

Source: ATF

Caliber to:	Units Manufactured	%
0.22	4,095,550	14%
0.25	154,140	1%
0.32	238,748	1%
0.380	6,269,003	21%
9MM	10,925,217	37%
0.50	7,489,455	26%
	29,172,113	100%

Based on the ATF's data, the caliber of pistol Cassidy possessed is the most popular category of pistol production. The only conclusion from this data is that Cassidy's pistol is commonly possessed.

While not directly pertinent to the analysis, it should not be lost on the Court that Massachusetts companies manufacture almost a third of all pistols placed into commerce. According to the ATF, companies in Massachusetts manufactured and put into commerce the following¹⁰:

¹⁰ Data compiled by Petitioner using ATF statistics found at <https://www.atf.gov/resource-center/data-statistics> for 2007-016, Annual Firearms Manufacturers and Export Reports. (last visited on August 3, 2018).

**Ratio of Pistols Manufactured
In Mass to Total Pistols (2007-2016)**

Source: ATF

Caliber to:	Total Units Manufactured	Units Made in Mass	%
0.22	4,095,550	135,098	3%
0.25	154,140	332	0%
0.32	238,748	2,322	1%
0.380	6,269,003	1,120,248	18%
9MM	10,925,217	3,187,221	29%
0.50	7,489,455	2,247,172	30%
	29,172,113	6,692,393	23%

Almost one-third of 9-millimeter pistols manufactured in the U.S. are made in Massachusetts. The primary manufacturer of these items: Smith and Wesson. Located in Springfield, MA, Smith & Wesson operates a 575,000 square foot facility in which it machines, assembles, inspects and tests the firearms it manufactures. American Outdoor Brands Corporation, Annual Report (Form 10-K) at 11 (June 29, 2017). The Springfield facility primarily manufactures handguns, modern sporting rifles, and hunting rifles. *Id.* at 35.

Massachusetts allows Smith and Wesson to produce its products within the state's sovereign borders for export to other states for law-abiding citizens to use. Yet, the Commonwealth severely restricts possession and access to these products for its citizens and punishes citizens moving into the state if they do not possess a Class A License to Carry Firearms. If the true goal of Massachusetts was to "restrict the proliferation of arms" the state would not allow Smith and Wesson, and other firearms manufacturers, the ability to produce these firearms in the state.

Massachusetts's Ability to Restrict Commonly Possessed Pistols

Mass. Gen. Laws c. 269, § 10(a) allows citizens to possess pistols in their home without any type of license. Certain pistols, such as the one Cassidy possessed, rise to the level of large-capacity weapons and § 10(m) imposes a two and one-half year prison sentence. *Heller* makes it clear that the right to possess arms is not unlimited. *Heller* at 595. Some statutes regulating who can possess arms, where they may possess those arms and the arms allowable to possess are Constitutional.

Heller acknowledges that states may prohibit felons and mentally ill persons from possessing firearms. *Heller* at 626. Juveniles cannot own handguns, and neither can persons convicted of domestic violence, even a misdemeanor conviction. *Heller* acknowledges the Constitutionality of statutes restricting firearms possession in sensitive places, such as schools and government buildings, *Heller* at 626. As for types of weapons, citizens have restricted access to: “machine guns, sawed-off shotguns and artillery pieces and hand grenades.” *Staples* at 611-12.

Texas allowed Cassidy to buy the pistol in Texas as a Texas citizen. The pistol did not appear to violate any federal rule. Cassidy possessed the legally purchased pistol in his home in Massachusetts. *Heller* cements a person's right to possess legally acquired firearms in their homes. So, the only question really becomes whether Massachusetts can prohibit the unlicensed

possession of pistols, that rise to the level of large capacity weapons, in the home.

“The American people have considered the handgun to be the quintessential self-defense weapon.” *Heller* at 629. As discussed above, pistols are the preferred handgun of choice, outnumbering revolvers by a 3:1 margin. The preferred caliber handguns is 9 millimeter. While the ATF does not delineate the bullet holding capacity of firearms sold, as discussed above, almost all pistols meet Massachusetts’s definition of large capacity weapons: “[pistols] typically hold at least nine rounds . . . and many [have] standard and optional magazine capacities holding up to 18 rounds.”¹¹ Pistols capable of accepting feeding devices holding more than 10 rounds are commonly possessed in the United States and Massachusetts’s punishment of possessing these items in the home is unconstitutional. Massachusetts will argue that it does not ban large-capacity weapons; it merely regulates them through requiring a person to obtain a Class A License to Carry.

Massachusetts’s Firearms Licensing Structure

Mass. Gen. Laws c. 140, § 131 outlines a two-tier licensing structure. Class A License to Carry allows for the possession of large capacity firearms, large capacity feeding devices (which must have been in the state prior to 1994) and ammunition. Class B allows for the possession of all firearms except large

¹¹ Larry Bell, [Some Important Consideration For First-Time Gun Buyer: Lessons From Personal Experience](https://www.forbes.com/sites/larrybell/2013/05/07/some-important-considerations-for-first-time-gun-buyers-lessons-from-personal-experience/#3ba81a8547cf), Forbes May 7, 2013 <https://www.forbes.com/sites/larrybell/2013/05/07/some-important-considerations-for-first-time-gun-buyers-lessons-from-personal-experience/#3ba81a8547cf> (last visited August 4, 2018).

capacity ones. Mass. Gen. Laws c. 140, § 129B allows a Firearm's Identification Card ("FID") holder to own or possess a firearm (not a large capacity weapon), within a residence, but not to carry in any other place.

Mass. Gen. Laws c. 140, § 131F allows the colonel of the Massachusetts state police to issue a Class A license "to a nonresident . . . for purposes of firearms competition or employment purposes." The statute does not allow the colonel to issue a license for simply moving to the Commonwealth. Massachusetts does not appear to have any other type of licensing program for a citizen moving to the Commonwealth to obtain a Class A License.

Mass. Gen. Laws c 140, § 129C(j) appears to provide a grace period for out-of-state citizens moving to Massachusetts that bring their firearms with them. The statute provides: ". . . any new resident moving into the Commonwealth, with respect to any firearm, rifle or shotgun and any ammunition therefor then in his possession for 60 days after . . . entry into the Commonwealth is exempted from having a license." That statute only covers firearms and not large-capacity weapons. In refusing to apply the exemption contained in G.L. c. 140, § 129C(j) to a Georgia citizen that possessed legally acquired firearms he brought with him to Massachusetts, the Appeals Court held that: "the new resident exemption contained in G.L. c. 140, § 129C(j) . . . does not provide a defense to a violation of G.L. c. 269, § 10(m). *Commonwealth v. Cornelius*, 938 N.E.2d 892, 896, 78 Mass.App.Ct. 413, 420 (2010). Thus, a person crossing into Massachusetts, without a Massachusetts Class A License to Carry, automatically commits a felony if they have a

commonly possessed pistol which is likely elevated to large capacity weapon. Possessing legally acquired pistols in one's home is practically an automatic felony for any citizen moving to Massachusetts with their firearms and violates *Heller*.

Massachusetts (and other states) Should Recognize the Second Amendment Licensing Requirements of Other States and the Lawful Application of those Requirements Instead of Making Citizens Felons.

Massachusetts failed to recognize Texas' licensing structure with respect to the Second Amendment. That failure is unconstitutional. If states are required to allow their citizens to exercise their Second Amendment rights, those rights are undermined when the citizen moves to another state to go to school and cannot bring with them items that were lawfully purchased and will only be kept in the home. The Supreme Court devoted significant discussion to states not recognizing Constitutional rights as implemented by other states when discussing marital rights. An Army Reserve officer married in New York, deployed to Afghanistan and then settled in Tennessee, but Tennessee did not recognize the lawful marriage performed in New York. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2595 (2015).

The Founding Fathers made no mention of marriage in the Constitution as a fundamental right. The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution. *Id.* at 2598. Regardless of Massachusetts's reasons for not recognizing Texas's application of Second Amendment rights,

Massachusetts has a genuine disdain for firearms. “[W]hen that sincere, personal opposition becomes enacted law and public policy, the necessary consequence is to put the imprimatur of the State itself on an exclusion that soon demeans or stigmatizes those whose own liberty is then denied.” *Id.* at 2602. Unlike same-sex marriage in which the harm involved people not able to enjoy the dignity of marriage, Cassidy lost all his dignity in the horrors of prison and lost his liberty of movement simply because he had a legally acquired pistol in his home, a right absolutely protected under the Second Amendment.

A State's most basic responsibility is to keep its people safe. *See Caetano v. Massachusetts*, 136 S.Ct. 1027, 1033 (2016) (J. Alito concurring joined by J. Thomas). While Massachusetts’s legislature desires to protect its citizens from crime, and restrictive gun control is one way that may protect its citizens, Texas also desires to protect its citizens from crime, but has much less restrictive firearms laws. According to the Federal Bureau of Investigation (“FBI”), the rate of violent crime between Texas and Massachusetts delineates as follows¹²:

¹² Petitioner-compiled data from the Federal Bureau of Investigation, Criminal Justice Information Services found at <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/table-6/table-6.xls/view> (last viewed on August 9, 2018). Violent crime includes murder, non-negligent homicide, rape, robbery and aggravated assault.

**Rate of Violent Crime
2016 Comparison**

Source: FBI

State	Reporting Population (000s)	Violent Crime Incidents (000s)	Rate
Texas	19,796	98	0.495%
Mass	6,559	24	0.366%
U.S.	207,570	963	0.464%

Overall, Massachusetts's violent crime rate of 0.4% is lower than Texas's crime rate of 0.5% and lower than the overall average crime rate in the U.S. of 0.5%, but not that much lower. Does the one-tenth of one percent difference justify infringement on a Constitutional right to possess pistols in the home? Is the slight difference in violent crime rates even attributable to Massachusetts's restrictive gun laws? The point is that in both states, and in the U.S., a person has less than a 1% chance of being the victim of a violent crime. Based on this analysis, it seems that Massachusetts can develop a less restrictive means in regulating arms to allow individuals to possess legally acquired firearms in their homes without a license.

Massachusetts law misleads citizens of other states into believing that they may possess legally acquired firearms in the home without a license. Mass. Gen. Laws c. 269, § 10(a). By elevating commonly owned pistols to large capacity weapons, failing to recognize a sister-state's implementation of the Second Amendment and punishing the possession of commonly owned firearms in the home, Mass. Gen. Laws c. 269, § 10(m) violates the Second Amendment, at least as applied to U.S. citizens that

move to Massachusetts with their legally acquired firearms and keep the same in their home.

The Court should grant the petition because this case serves as the perfect vehicle to address: (a) the limits as to what firearms a citizen moving between states may have in their home relative to lawfully purchased firearms; and (b) whether states must recognize another states implementation of Second Amendment rights, at least when it come to possession of firearms in the home.

Assault Weapons

The Commonwealth has yet another category for some pistols: assault weapons. Mass. Gen. Laws c. 140, § 121 defines an assault weapon as having:

the same meaning as a semiautomatic assault weapon as defined in the federal Public Safety and Recreational Firearms Use Protection Act, 18 U.S.C. section 921(a)(30) as appearing in such section on September 13, 1994, and shall include, but not be limited to, any of the weapons, or copies or duplicates of the weapons, of any caliber, known as: (i) Avtomat Kalashnikov (AK) (all models).

Cassidy possessed a pistol that met the definition of an AK-47-style pistol according to the police. One of the police officers testified at trial that when he first discovered the item, he thought it was an AK-47 style rifle. The officer's confusion is understandable. Massachusetts has 189 firearms statutes, a state code of regulations and many municipalities have local ordinances governing firearms. The regulatory and criminal statutes use language, internal-references and the interplay among them (firearm, large-capacity weapon, assault weapon), which makes the law difficult to understand for all but the most learned experts. The regulatory scheme is the very definition of confusing.

Massachusetts penalizes mere possession without a license of a legally purchased AK-47-like pistol with a fine of \$1,000 and at least one year in jail. This penalty does not apply to an individual retired from service with a law-enforcement agency.¹³ Mass. Gen. Laws c. 140, § 131M.

What is an AK-47-like pistol?

The "AK" in "AK-47" stands for "Avtomat Kalashnikova, Russian for 'automatic Kalashnikov,' for its designer, Mikhail Timofeyevich Kalashnikov, who designed the accepted version of the weapon in

¹³ While outside the scope of this petition, putting retired law-enforcement officers in a different category from other citizens may violate the Equal Protection Clause of the Fourteenth Amendment.

1947. Built around a 7.62-
mm round . . . it had a
cyclic firing rate of 600
rounds per minute and was
capable of both
semiautomatic and
automatic fire.”¹⁴

The ATF classifies the AK Assault Rifle as a machine gun.¹⁵ Cassidy’s pistol did not have the ability to fire automatically and automatic weapons require compliance with federal statutes. See *Staples* at 600.

Cassidy possessed a pistol that fired a 7.62 x 39mm round that is marketed as an AK-47. According to one retailer, “[t]he Draco is a semi-automatic pistol [made in Romania] designed for sporting use, has inspiration of the famous AK-47 rifle. It accepts all AK magazines.”¹⁶ Just like Coke is used to describe cola beverages, Q-Tips describes cotton swabs and Google describes Internet searches, the term “AK-47” is used to describe semiautomatic firearms that are similar in appearance to the

¹⁴ The Editors of Encyclopedia Britannica, AK-47 Soviet Firearm, <https://www.britannica.com/technology/AK-47> Last visited on August 7, 2018).

¹⁵ ATF, Firearms Guide – Identification of Firearms – Section 2, <https://www.atf.gov/firearms/firearms-guide-identification-firearms-section-2> (Last visited on August 7, 2018).

¹⁶ Classic Firearms selling a Century Arms pistol. Both companies are based in the United States. <https://www.classicfirearms.com/ak47-draco-pistol-7-62x39-w-30-rd-mag-3821>. (Last visited on August 7, 2018).

machine gun AK-47. So, the issue becomes whether AK-47-like rifles and pistols are commonly possessed by law-abiding citizens.

There are no reliable statistics as to the number of assault weapons in general, and AK-47 - like firearms in particular, in the United States.

[B]y one reckoning, at least 100 million Kakshnikov variants in circulation worldwide. The market is so big that Command Arms and Accessories in Israel will be mass producing AK-47s for export to “the bottomless U.S. civilian market which is estimated to hold anywhere from 300 million to 600 million guns and generates approximately \$16 billion in yearly revenue.¹⁷

According to the New York Times:

For American gun enthusiasts, an authentic Russian-made Kalashnikov is appealing . . . because of its reliability. About 70

¹⁷ Neri Zilber, Israelis Will Soon Be Mass Producing AK-47s for the U.S. Market. Daily Beast, Feb. 26, 2017, <https://www.thedailybeast.com/israelis-will-soon-be-mass-producing-ak-47s-for-the-us-market>. (Last visited on August 7, 2018).

percent of the factory's AK-47 output is now civilian rifles, up from 50 percent two years ago. Of the civilian arms, about 40 percent are exported to the United States. That means American consumers are now buying about the same number of Kalashnikov-style weapons from Izhmash as the Russian army and police.¹⁸

If Americans are buying as many AK-47s as the Russian army and police combined, at least since 2012, then the AK-47 is commonly possessed by law-abiding citizens.

Banning a class of semiautomatic arms commonly possessed by law abiding citizens for the lawful purpose of self-defense is not narrowly tailored to a compelling government interest. Further commonly-possessed firearms are protected under the Second Amendment through *Heller*. As a result, the Massachusetts assault weapon ban, at least as relates to the AK-47-like semiautomatic pistol, lawfully acquired and possessed in the home, is unconstitutional.

¹⁸ Andrew Kramer, *Importing Russia's Top Gun*, New York Time, Aug. 14, 2012. <https://www.nytimes.com/2012/08/15/business/a-kalashnikov-factory-in-russia-survives-on-sales-to-us-gun-owners.html> (last visited on Aug. 10, 2018).

As with large-capacity weapons, the Court should grant the petition because it serves as a vehicle to address whether “assault weapon” bans for possessing a semi-automatic firearm just because of its looks like a machine gun violate the Second Amendment.

II

THE PETITION SHOULD BE GRANTED BECAUSE MASSACHUSETTS’S BAN ON LARGE-CAPACITY FEEDING DEVICES PUNISHES CITIZENS FOR MERELY POSSESSING A POPULAR ITEM LAWFUL IN 43 OTHER STATES AND UNDER FEDERAL LAW WHICH ARE USED IN FURTHERANCE OF SELF-DEFENSE AND TARGET SHOOTING.

Massachusetts defines a large-capacity feeding device as: “a fixed or detachable magazine . . . or similar device capable of accepting, or that can be readily converted to accept, more than ten rounds of ammunition.” Mass. Gen. Laws c. 140, § 121. Massachusetts prohibits the sale, transfer or possession large capacity feeding devices not otherwise lawfully possessed on September 13, 1994. Mass. Gen. Laws c. 140, § 131M. Finally, Massachusetts punishes unlawful possession of large capacity feeding devices with a minimum imprisonment for not less than two and one-half years nor more that ten years. Mass. Gen. Laws c. 269, § 10(m). The exact same punishment for illegally possessing a large-capacity weapon. Cassidy was convicted of possessing four large capacity feeding devices.

The first issue is whether a firearm’s feeding devices fall under the Second Amendment’s “arms” umbrella. For all practical purposes, a magazine is necessary to operate a pistol. In addition, because the Massachusetts Legislature included the language “large capacity feeding devices” in the: (a) title of Mass. Gen. Laws c. 269, §10 (“Carrying dangerous weapons; possession of machine gun or sawed-off shotguns; possession of large capacity weapon or large capacity feeding device; punishment”); and (b) the language itself in Mass. Gen. Laws c. 269, § 10(m) punishing mere possession of a large capacity weapon or feeding device (“a large capacity weapon or large capacity feeding device”) links the weapon and magazine, it seems Massachusetts equates firearms with feeding devices. “Magazine holding more than 10 rounds are useful for self-defense by law-abiding citizens. And they are common.” *Duncan v. Becerra*, 265 F.Supp.3d 1106, 1112 (S.D. Cal. 2017). Thus, it seems that magazines fall within the Second Amendment’s scope.

Magazines holding more than ten rounds are popular. The devices “are lawful in at least 43 state and under federal law. And they are common.” *Id.* “Some estimate that as many as 100,000,000 of such magazines are currently owned by citizens of the United States.” *Id.* In most states, stores sell firearms magazines on display for purchase and most of the time a person does not have to even show a driver’s license to purchase the devices.

In reviewing Massachusetts’s ban on large-capacity feeding devices that have been manufactured less than 25 years ago, and are commonly possessed by law-abiding citizens, *see in general Duncan v. Becerra*, the question is what

standard of review to use. Since the standard of review should mirror the standard used for large capacity weapons, Massachusetts's complete ban on large capacity magazines should be reviewed under strict scrutiny.

The ban on large-capacity feeding devices punishes possession even if the magazines are not used with a firearm. The minute Cassidy crossed into Massachusetts with his large capacity magazines, he committed a felony because he did not have magazines older 24 years. With 100,000,000 large capacity magazines in circulation, it is likely that people bring these items into Massachusetts all the time without a firearm. Is it fair for them to go to prison for two and one-half years for mere possession? Petitioner contends that by any standard (strict scrutiny, intermediate scrutiny or rational basis) the total ban violates the Second Amendment. The ban does nothing to stop firearms crime because the devices are not firearms. By themselves, magazines are nothing but clumps of metal or plastic being no more of a threat than a baseball.

Using *Heller's* test of commonly possessed arms by law-abiding citizens for lawful purposes in the home, Massachusetts's ban on large capacity feeding devices violates the Second Amendment. Because large capacity feeding devices cannot be easily broken down to render them inoperable, unlike a firearm, a person could never innocently possess and transport a large-capacity feeding device not older than 25 years old in Massachusetts without breaking the law. Breaking the law for possessing something that only works with a firearm, even

without the presence of a firearms violates the Second Amendment.¹⁹

The Court should grant the petition because this case serves to address whether bans on large capacity feeding devices violate the Second Amendment.

III

THE PETITION SHOULD BE GRANTED BECAUSE MASSACHUSETTS'S BAN ON POSSESSING AMMUNITION WITHOUT A LICENSE VIOLATES THE SECOND AMENDMENT

Massachusetts defines “ammunition” as cartridges or cartridge cases, primers (igniter), bullets or propellant powder designed for use in any firearm, rifle or shotgun. Mass. Gen. Laws c. 140, § 121. Massachusetts, at a minimum, requires a Firearms Identification Card to possess ammunition. Mass. Gen. Laws c. 140, §129C. Failing to have, at a minimum, an FID card when possessing ammunition carries a jail sentence up to two years and a \$500 fine. Mass. Gen. Laws c. 269, § 10(h)(1).

It is axiomatic that a firearm needs ammunition to operate. As discussed above, Massachusetts allows a person to possess a firearm

¹⁹ As mentioned above, the dissents in *Heller* read the Second Amendment to protect “militia-related interests.” *Heller* at 681 (J. Breyer dissenting, joined by J. Stevens, J. Souter and J. Ginsburg.) Cassidy again alerts the Court to 10 U.S.C. § 246 definition of the militia. Cassidy falls within the scope of that statute’s definition of the unorganized militia. Cassidy asserts that large-capacity feeding devices are useful to the militia.

(as opposed to a firearm that is also a large-capacity weapon or an assault weapon) in their home without a license. Mass. Gen. Laws c. 269, §10(a). Ammunition, by itself, is no more dangerous than gasoline. Massachusetts does not require a license to possess gasoline.

Massachusetts Comprehensive Fire Safety Code requires “small arms ammunition to be stored in a locked cabinet, closet or box. 527 CMR 1.12.8.39.1.14 A person may keep up to 10,000 rounds of rim-fire ammunition and 10,000 rounds of centerfire ammunition without a permit. With a permit, a person may keep up to 30,000 rounds of rim fire ammunition and 50,000 rounds of centerfire ammunition. With a license, a person may keep more than 30,000 round of firm fire ammunition and more than 50,000 rounds of center fire ammunition. *See* 527 CMR Table 1.12.8.50. In comparison, Massachusetts only allowing seven gallons of gasoline to be stored in a home without a permit or license and only two pounds of black powder. *Id.* Clearly from an explosive or incendiary point of view, ammunition is no more dangerous that gasoline.

Like firearms’ magazines, ammunition falls within the Second Amendment’s wheelhouse. The restriction on ammunition possession punishes possession even if the ammunition is not used with a firearm. For something no more dangerous than gasoline, a person may spend up to two years in jail. In 46 states, anyone can walk into a store or click on a website and buy bullets, no questions asked.²⁰

²⁰ Beth Schwartzapfel, The Marshall Project, CNN Money, Gun control is one thing, but what about bullets? January 7, 2016.

The minute Cassidy crossed into Massachusetts with his ammunition he violated Massachusetts's law. With more than 100,000,000 million firearms in the country, it is a safe assumption that there are billions of bullets in in the U.S. It is likely that people inadvertently bring these items with them into Massachusetts all the time without a firearm. Is it fair for them to go to jail for up to two years for mere possession of a single bullet? Petitioner contends that by any standard (strict scrutiny, intermediate scrutiny or rational basis) Massachusetts statutes governing the possession of ammunition violates the Second Amendment.

Using *Heller's* test of commonly possessed arms by law-abiding citizens for lawful purposes in the home, Massachusetts's requiring a special license to purchase ammunition violates the Second Amendment. Breaking the law for possessing something that only works with a firearm, even without the presence of a firearm violates the Second Amendment.²¹

It should also be apparent that the inability to acquire ammunition makes the exception to possessing firearms without a license found in Mass. Gen. Laws c. 269, § 10(a) useless. What good is a firearm without bullets?

<https://money.cnn.com/2016/01/07/news/gun-control-bullets/index.html>. (last visited August 8, 2018).

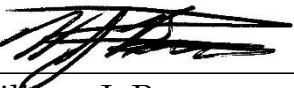
²¹ Again, the dissents in *Heller* read the Second Amendment to protect "militia-related interests." *Heller* at 681. Cassidy again alerts the Court to 10 U.S.C. § 246 definition of the militia. Cassidy falls within the scope of that statute's definition of the unorganized militia. Cassidy asserts that ammunition is not only useful to the militia, it is a requirement for use with firearms.

The Court should grant the petition because it will serve to define limits as to what a state may regulate when it comes to ammunition.

CONCLUSION

The petition for a writ of certiorari should be granted.

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