

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

OCEAN STATE TACTICAL, LLC, d/b/a Big Bear Hunting and Fishing Supply;
JONATHAN HIRONS; JAMES ROBERT GRUNDY; JEFFREY GOYETTE; MARY BRIMER,

Applicants,

v.

STATE OF RHODE ISLAND; COLONEL DARNELL S. WEAVER, in his official capacity as
the Superintendent of the Rhode Island State Police; PETER F. NERONHA, in his
official capacity as the Attorney General for the State of Rhode Island,

Respondents.

**APPLICATION TO THE HON. KETANJI BROWN JACKSON
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT**

Pursuant to Supreme Court Rule 13(5), Ocean State Tactical, LLC, d/b/a Big Bear Hunting and Fishing Supply, Jonathan Hirons, James Robert Grundy, Jeffrey Goyette, and Mary Brimer (hereafter, collectively, “Applicants”) hereby move for an extension of time of 30 days, to and including July 5, 2024, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be June 5, 2024.

In support of this request, Applicants state as follows:

1. The United States Court of Appeals for the First Circuit rendered its decision on March 7, 2024 (Exhibit 1). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. At issue in this case is a sweeping, criminal prohibition on long-lawful arms owned by tens of millions of law-abiding Americans. Just days before this Court issued its decision in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), Rhode Island enacted House Bill 6614, the Large Capacity Feeding Device Ban Act of 2022 (codified at R.I. Gen. Laws §§11-47.1-2, -3). The Act does what its name suggests: It flatly bans all devices that feed ammunition “into a semi-automatic firearm” if they are “capable of holding ... more than ten (10) rounds of ammunition.” R.I. Gen. Laws §11-47.1-2(2), -3(a). The Act does not just make it illegal to “manufacture, sell, offer to sell, transfer, [or] purchase” these commonplace arms (not that any of that would be consistent with the Second Amendment). *Id.* §11-47.1-3(a). It also criminalizes their mere “possess[ion],” and empowers the state to throw citizens in prison for up to five years even if the arms the state now deems criminal contraband were lawfully acquired long ago. *Id.*

3. Fearing imprisonment for their once-lawful possession of commonly owned arms, four individuals (Jonathan Hirons, James Grundy, Jeffrey Goyette, and Mary Brimer) and one retailer (Ocean State Tactical, LLC), sued Rhode Island, its Attorney General, and its Police Superintendent. Applicants alleged that the Act violates their constitutional rights under the Second Amendment, and both the Takings Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment, as Rhode Island’s confiscatory ban forces citizens to dispossess themselves of lawfully acquired property without any compensation from the state.

4. Applicants sought a preliminary injunction, which the district court denied. *Ocean State Tactical, LLC v. Rhode Island*, 646 F.Supp.3d 368 (D.R.I. 2022).

5. The First Circuit affirmed. *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38 (1st Cir. 2024). Starting with Applicants' Second Amendment claim, the First Circuit "assume[d]" without deciding that ammunition feeding devices capable of holding more than 10 rounds "are 'arms' within the scope of the Second Amendment," and thus "proceed[ed] to consider whether HB 6614 is consistent with our history and tradition." *Id.* at 43. The court did not identify any historical tradition of flatly banning arms commonly owned by law-abiding citizens for lawful purposes (because there is none). Indeed, the First Circuit frankly acknowledged that Rhode Island proffered "no directly on-point tradition." *Id.* at 44. The court likewise recognized that "multi-shot firearms existed in the late 1700s, and others were more common by the mid-to-late 1800s." *Id.*

6. Yet rather than hold that the lack of a tradition of banning common arms that have been around for over a century means that the Act is unconstitutional, *see Bruen*, 597 U.S. at 28-30, the First Circuit moved the goal posts. Deeming "LCM-aided mass shootings" an unprecedented societal phenomenon, the court applied "'a more nuanced approach' to historical analysis," *Ocean State Tactical*, 95 F.4th at 44 (quoting *Bruen*, 597 U.S. at 27), under which the central consideration was the degree of the "burden" the challenged restriction imposes on "the right of armed self-defense," *id.* at 45. That backdoor means-ends scrutiny not surprisingly led the court to defer to the state. The court concluded that "banning" feeding devices capable of

holding more than 10 rounds of ammunition “imposes no meaningful burden on the ability of Rhode Island’s residents to defend themselves” because people rarely need to fire more than 10 rounds “in self-defense” situations. *Id.* Seen through that (distorted) lens, the court deemed Founding-era gunpowder-storage laws to be sufficiently analogous to the Act to justify it. *Id.* at 49. *But see District of Columbia v. Heller*, 554 U.S. 570, 632 (2008) (noting that “gunpowder-storage laws” were “fire-safety laws” that did “not remotely burden the right of self-defense as much as an absolute ban on [a class of arms]”).

7. Finally, the First Circuit affirmed the district court’s decision that Applicants are unlikely to succeed on their void-for-vagueness, retroactivity, and Takings Clause claims. *Ocean State Tactical*, 95 F.4th at 52-54.

8. Applicants anticipate filing a petition that demonstrates the profound error in the First Circuit’s decision, which contorted this Court’s clear precedent. The First Circuit expressly refused to engage with the principal question under that precedent—whether the “plain text covers [the] conduct” that the challenged law restricts—and completely ignored this Court’s common-use tests, which prohibits bans on arms “‘in common use’ today.” *Bruen*, 597 U.S. at 17, 32 (quoting *Heller*, 554 U.S. at 627). That is not hyperbole: The phrase “common use” does not appear even once in the First Circuit’s decision. Making matters worse, the First Circuit ignored this Court’s admonition in *Bruen* that it is *the government*, not the citizen, that bears the burden to “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 24. The court deemed the

Act sufficiently justified not by reference to a well-established historical tradition, but by reference to “anecdotal findings,” flawed “[s]tatistical evidence,” and twentieth-century laws prohibiting *dangerous and unusual* firearms “outside the ambit of the Second Amendment.” *Ocean State Tactical*, 95 F.4th at 46-49. The decision below defies, rather than applies, *Bruen*. And its Fifth and Fourteenth Amendment analyses were no less flawed.

9. Applicants’ counsel, Erin E. Murphy, requires additional time to prepare a petition that fully addresses the important issues raised by the decision below in a manner that will be most helpful to the Court. An extension will also ensure that counsel has adequate time to consider and address the implications of any decisions or orders this Court may issue in *United States v. Rahimi*, No. 22-915, and *Barnett v. Raoul*, Nos. 23-879, 23-1010, 23-877, 23-878, 23-880, & 23-944.

10. Ms. Murphy also has substantial briefing obligations between now and June 5, 2024, including an opening brief in *Sunflower Electric Power Corp., et al., v. FERC*, Nos. 23-1264, 23-1287, 24-1032, 24-1033 (D.C. Cir.), due May 24, 2024, and an amicus curiae brief in *Nguyen v. Bonta*, No. 24-2036 (9th Cir.), due June 4, 2024, as well as some long-scheduled international travel.

WHEREFORE, for the foregoing reasons, Applicants request that an extension of time to and including July 5, 2024, be granted within which Applicants may file a petition for a writ of certiorari.

Respectfully submitted,



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