No. 25-153

IN THE

Supreme Court of the United States

GATOR'S CUSTOM GUNS, INC. and WALTER WENTZ,
Petitioners,

v.

STATE OF WASHINGTON,
Respondent.

On Petition for a Writ of Certiorari to the Washington Supreme Court

BRIEF OF *AMICUS CURIAE* THE NATIONAL SHOOTING SPORTS FOUNDATION, INC. IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The National Shooting Sports Foundation, Inc. (NSSF) is the firearm industry trade association. Formed in 1961, NSSF is a Connecticut 501(c)(6) tax exempt non-profit corporation. NSSF's mission is to promote, protect, and preserve America's hunting and shooting-sports traditions. NSSF has a membership of approximately 10,000—which includes federally licensed firearms manufacturers, distributors, and sellers of firearms, ammunition, and related products. NSSF members engage in the lawful production, import, distribution, and sale of constitutionally protected arms. At present, over 200 NSSF members reside in the State of Washington.

The Second Amendment protects NSSF, its members, and all Americans from laws seeking to ban, restrict, or limit the constitutional right to keep and bear arms. Such laws are of particular interest to NSSF, as its members engage in the lawful commerce involving firearms across the United States—including in Washington—that enables the "people" to exercise their Second Amendment rights. Accordingly, Washington's ban on commonly owned magazines is of tremendous significance to NSSF and its members.

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[1] No counsel for any party authored this brief in any part, and no person or entity other than *amici* or *amici*'s counsel made a monetary contribution to fund its preparation or submission. All parties received notice of *amici*'s intent to file this brief at least ten days before its due date. *See* S. Ct. R. 37.2.

INTRODUCTION & SUMMARY OF ARGUMENT

This case presents a simple but vitally important question for millions of law-abiding American firearm owners: Does the Second Amendment permit a state to ban any firearm magazine that holds more than ten rounds of ammunition? The answer is equally straightforward: No. As the Second Amendment's text instructs, and as our Nation's history of firearm regulation confirms, the government cannot prohibit arms commonly possessed for lawful purposes. And if magazines do not meet that description, nothing does.

The Washington Supreme Court evaded that result by gerrymandering the definition of "Arms"—first by classifying these magazines as trivial add-ons, then by discounting their self-defense utility. But what the state dubs "large-capacity magazines" are in fact *ordinary* magazines that come standard with most of the country's most popular firearms—and are critical to the proper and intended function of those firearms. As such, they are the magazine of choice for millions of law-abiding citizens in this country, with nearly a billion in lawful circulation. And similar magazines have been a staple of American firearm ownership since the Civil War.

Washington's ban on industry-standard magazines for pistols and rifles thus amounts to a prohibition of the most common magazines chosen by Americans today for self-defense and other lawful uses. For that reason alone, it is unconstitutional: The Second Amendment prohibits such bans on arms in common use for lawful purposes.

In *Heller*, *Bruen*, and *Rahimi*, this Court adopted (then reiterated) a "historical approach" to the Second Amendment, rejecting the "means-end scrutiny" that served as a one-way ratchet against the fundamental right to keep and bear arms. *See New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24 (2022). These decisions made clear that arms in common use by the American people for lawful purposes comprise the core of that right and are protected from categorical bans by longstanding and unbroken tradition. *Id.* at 47; *D.C. v. Heller*, 554 U.S. 570, 629 (2008).

Unfortunately, the states and the lower courts have not given up on the notion of the Second Amendment as a second-class right. To be sure, *Bruen*'s rejection of policy-laden interest-balancing in favor of historical analysis has prompted a strategic pivot: Rather than urging courts to weigh policy tradeoffs (as they could before), or marshaling the historical evidence required by *Bruen*, states defending firearm restrictions search for an easier way out. Redefining the targeted product as something other than an "arm" offers one potential workaround; misapplying *Heller*'s references to "dangerous and unusual" arms provides another.

The court below employed both evasive maneuvers. Neither can be squared with this Court's precedents. But a growing list of lower courts apparently require an even clearer set of instructions. Unless this Court provides additional guidance on *what* constitutes an "Arm," and on *which* "Arms" might be unprotected, legislatures and lower courts will continue to contort both the text and history of the Second Amendment. This Court should not stand by as opportunistic regulators and sympathetic judges eviscerate *Heller* and its progeny.

In a series of vigorous dissents, this Court's lower-court colleagues have "sound[ed] the alarm over" this ongoing "affront to the Second Amendment." *Duncan v. Bonta*, 133 F.4th 852, 893 (9th Cir. 2025) (Bumatay, J., dissenting).

This Court should answer the bell by resolving two crucial issues. *First*, magazines are undoubtedly "Arms" under the Second Amendment. This Court has defined an "Arm" as "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another," *Heller*, 554 U.S. at 581 (citing 1 *A New and Complete Law Dictionary*), and "instruments that facilitate armed self-defense," *Bruen*, 597 U.S. at 28. Rightly so. Any definition of "arm" that excluded firearm components that are integral to the design and proper operation of the arm, such as magazines, "would allow the government to sidestep the Second Amendment with a regulation prohibiting possession at the component level." *Hanson v. D.C.*, 120 F.4th 223, 232 (D.C. Cir. 2024), *cert. denied*, No. 24-936, 2025 WL 1603612 (U.S. June 6, 2025).

The court below blessed precisely that tactic. After analogizing standard-capacity magazines to "cartridge boxes," the Washington Supreme Court concluded that such magazines "are not designed for use as . . . weapon[s] themselves." App.6a, 11a; *see also* App.10a-11a ("[T]he fact that a semiautomatic weapon will not function without [a magazine] does not conclusively establish that they are [arms]."). But no firearm component is a complete "weapon." The court's logic thus permits bans on, *e.g.*, triggers, barrels, frames, receivers, sights, and stocks. But the Second Amendment protects *all* devices that

"facilitate armed self-defense." *Bruen*, 597 U.S. at 28. The standard-issue magazines here surely qualify, because they are critical to the proper and intended function of modern semiautomatic firearms for lawful purposes, such as self-defense.

Second, no government may impose a ban on these "arms," nearly a billion of which are in "common use" by tens of millions of law-abiding Americans. *See* Nat'l Shooting Sports Found., *Detachable Magazine Report*, https://perma.cc/EYC4-KKNA (*NSSF Magazine Report*). Any state "prohibition" of standard-capacity magazines is thus "off the table" under *Heller*. 554 U.S. at 636. The *only* arms even *arguably* subject to such harsh treatment are "dangerous and unusual" weapons, *id.* at 627—*i.e.*, arms both "particularly useful for illegal activity and not commonly possessed by law-abiding citizens." *United States v. Bridges*, No. 24-5874, 2025 WL 2250109, at *22 (6th Cir. Aug. 7, 2025) (Nalbandian, J., concurring). Standard-capacity magazines do not qualify.

Here again, the Washington Supreme Court flouted basic Second Amendment principles—this time by demanding proof that standard-capacity magazines have proven *necessary* in some unknown threshold number (or percentage) of self-defense *incidents*. *See* App.12a. Of course, that is plainly irrelevant to defining an "Arm." And it is no more appropriate at *Bruen*'s second step, where a court must determine whether a challenged law falls within a historical tradition of arms regulation. The relevant question is whether the arm is a special favorite of criminals *and* an oddity among the law-abiding. Accordingly, an arm "typically possessed by law-abiding citizens for lawful purposes," *Heller*, 554 U.S. at 625, does not forfeit its

Second Amendment status when violent-crime rates fall, or because other arms are *more often* used in self-defense. The law-abiding American public's *choice* of arms controls—not a judge's ad hoc assessment of the weapon's self-defense *utility*.

In short, Washington's ban on standard-capacity magazines is unconstitutional. If such magazines are not protected at all, as the court below held, the Second Amendment is "little more than a parchment promise," *Allen v. Milligan*, 599 U.S. 1, 10 (2023); governments could chip away at the right to bear arms by prohibiting an ever-growing list of widely-owned firearm components. And if standard-capacity magazines are not in common lawful use, then nothing is; indeed, they are integral to the design of semiautomatic firearms, as well as an ordinary and defining feature of everyday firearm ownership in America.

This Court should grant review and reverse.

ARGUMENT

I. Magazines and other firearm components are "Arms" under the Second Amendment.

"Magazines—whether they hold ten rounds, more than ten rounds, or fewer than ten rounds—are unquestionably 'Arms' under the Second Amendment." *Duncan*, 133 F.4th at 896 (Bumatay, J., dissenting). This Court has defined "Arms" as "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another." *Heller*, 554 U.S. at 581 (citing 1 *A New and Complete Law Dictionary*). If an implement can be "carr[ied] . . . for the purpose of offensive or defensive action," it is an arm. *Id.* at 584; *see also id.* at 581 (arms are "[w]eapons

of offence, or armour of defence" (citing 1 *Dictionary of the English Language* 106 (4th ed.) (reprinted 1978)). The Second Amendment thus protects all bearable "instruments that *facilitate armed self-defense*." *Bruen*, 597 U.S. at 28 (emphasis added); *see also United States v. Rahimi*, 602 U.S. 680, 691 (2024) (all "arms-bearing conduct" is presumptively protected).

Firearm magazines clearly fit those descriptions. Like the string of a bow, the shaft of a lance, or the casing of a cartridge, magazines are bearable devices carried for offensive and defensive purposes—even if they never make physical contact with an opponent. Like arms of old, every modern firearm is composed of various component mechanisms designed to facilitate and improve its function. Today, these constituent parts are complex, modular, and numerous—typically including a sighting mechanism to assist in aiming; an action to load and eject cartridges; a trigger to control firing; a frame or receiver to contain and protect internal components; a stock, grip, or handguard for support; and a magazine to store and feed ammunition.

All these functional components "facilitate armed self-defense," *Bruen*, 597 U.S. at 28, and the standard-capacity magazines banned by Washington State are no different. Unlike the passive "cartridge box" of yore, App.6a, modern magazines are integral to the design of semiautomatic firearms and the mechanism that makes them work, actively feeding ammunition into the firing chamber. Law-abiding citizens thus have a right to keep and bear firearms equipped with standard-capacity magazines for the same reason they have a right to keep and bear firearms loaded with ammunition: "[W]ithout bullets, the right to bear arms

would be meaningless." *Jackson v. City & Cnty. of San Francisco,* 746 F.3d 953, 967 (9th Cir. 2014).

In sum, there is no way to distinguish the functional *parts* of a protected "Arm" from the "Arm" itself. The court below suggested that components that actually "'cast'" a projectile qualify, while those that merely "modify" a firearm's projectile-casting "capacity" do not. App.10. But the Second Amendment does not prioritize one piece of hardware over another. And the protection of arms *necessarily* reaches their functional components, because "[t]o hold otherwise would allow the government to sidestep the Second Amendment with a regulation prohibiting possession at the component level." *Hanson*, 120 F.4th at 232. Because "[t]he Constitution deals with substance, not shadows," *SFFA v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023), this Court must hew to its functional definition of "arm," rather than artificially limiting its reach to complete weapons, or to some imagined bare-minimum set of weapon components.

Nor does it work to assert, as the court below did, that these magazines in particular are not "arms" because no firearm requires a magazine that can hold more than ten rounds. *See* App.10a; *Duncan*, 133 F.4th at 868 (holding that such magazines are not "arms" but "optional accessories"). No definition of "arm" adopted by this Court contains that "necessity" requirement. To the contrary, *Heller*'s logic forecloses a do-you-really-need-it defense: The District of Columbia was not free to ban handguns because it "allowed" rifles and shotguns; it did not matter that no resident's self-defense *required* the former. 554 U.S. at 629. Indeed, handguns and long guns are distinguished by their various components, none of

which are strictly necessary to armed self-defense. *See* 27 C.F.R. § 479.11 (defining "pistol" and "rifle" based on "accessor[es], component[s]," and "attachment[s]").

Precedent aside, the Washington Supreme Court's reasoning inevitably triggers a race to the bottom: Under its logic, no magazine counts as an arm. After all, some semiautomatic weapons can still technically *fire* without *any* magazine if a user loads individual rounds of ammunition directly into the chamber[2]—and in theory, manufacturers could design all firearms to work that way. Perhaps recognizing that stripping Second Amendment protection from semiautomatic technology would be controversial, the court below eventually conceded that magazines as "a *class* . . . could not be banned as a whole." App.11a. But that only leads to another blind alley: If a magazine that holds *one round* is an "arm," at what point does it lose that status? At two rounds? At ten? This unprincipled theory of the Second Amendment's reach cannot be taken seriously. If a magazine of any size is an "arm," then a ten-round magazine is also an "arm."

Simply put, the size of a magazine (like the accuracy of a sighting device, the sensitivity of a trigger, or the durability of a receiver) is not relevant to the definition of "arm." It is relevant, if at all, at *Bruen*'s second step, where the state must prove that a particular magazine restriction is "consistent with the Nation's historical tradition of firearm regulation." 597 U.S. at 24.

This Court should say so. Absent correction, judges will continue to gerrymander the definition of "Arms"

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[2] Semiautomatic firearms with a magazine disconnect feature will not fire when the magazine is removed.

to exclude components they deem unnecessary to the functioning of a Platonic "regular firearm[]." *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 47 (1st Cir. 2024), *cert. denied*, No. 24-131, 2025 WL 1549866 (U.S. June 2, 2025) (contrasting "regular firearms" and "semiautomatic rifles"); *Duncan*, 133 F.4th at 867-68 (attempting to distinguish necessary components from "accessories"); App.10-11. No such ideal form exists. "[T]he ordinary operation of a protected weapon," *Duncan*, 133 F.4th at 867, cannot be divorced from the design or components of a specific weapons platform. And while the operation of this so-called "basic firearm" remains a mystery, lower courts' reasoning suggests something like: able to go *bang* once. *See id.* at 918 (VanDyke, J., dissenting).

It is not hard to see where this reasoning will lead: An automatic action can always be replaced by a double-action revolving cylinder, which in turn might be replaced by a single-action cylinder, bolt, or lever action. An electronic red-dot sight might be replaced by fixed iron sights or a steel rib or removed entirely. A trigger might be replaced by a crank or button. A stock, grip, or handguard might be exchanged, modified, or excluded altogether.

In short, the reasoning of the decision below would allow governments around the country to categorically ban any number of industry-standard firearm components—without so much as glancing at history or tradition. As that absurd outcome suggests, this illogic "misunderstands the Second Amendment inquiry." *Id.* at 899 (Bumatay, J., dissenting). Whether any weapon or weapon component is *necessary* for self-defense is beside the point: The Second Amendment protects *any* bearable device that "the people"

commonly "choose to 'facilitate armed self-defense.'" *Id.* (quoting *Bruen*, 597 U.S. at 28). No court may second-guess that choice. And here, the American people have spoken emphatically: What Washington calls "large-capacity magazines" are in fact ordinary everyday magazines that come standard with virtually every semi-automatic pistol and have long been an integral part of lawful firearm ownership in this country. *See* Part III, *infra*.

It is worth asking whether courts would so eagerly narrow other constitutional rights in this way. Would a court bless a ban on the automatic printing press because newspapers can still "function" (albeit at reduced "capacity") with a manual version? App.15a. Of course not. *C.f. Minneapolis Star & Trib. Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585 (1983). Could a government ban public prayer because the free exercise of religion can still "function" (albeit at reduced "capacity") when confined to private homes? Surely not. *C.f. Tandon v. Newsom*, 593 U.S. 61 (2021). The strict-necessity test employed below thus depends on the now-discredited theory that the Second Amendment is a "second-class right." *Bruen*, 597 U.S. at 70.

II. The Second Amendment precludes bans on arms in common use.

Once it is clear that magazines are "arms," the next question is whether a particular state restriction on magazines "infringe[s]" on "the right of the people to keep and bear" them. U.S. Const. amend. II. That turns on whether the challenged law is consistent with "the historical tradition that delimits the outer bounds of the right." *Bruen*, 597 U.S. at 19. And it is

the *state's* burden to demonstrate that its modern statute falls within a "relevantly similar" tradition of firearm regulation. *Id.* at 29. Often, this analogical inquiry focuses on "[w]hy and how" the state's new "regulation burdens the right." *Rahimi*, 602 U.S. at 692. And applying this test is "straightforward" when a government lacks *any evidence* of a "distinctly similar historical regulation." *Bruen*, 597 U.S. at 26.

1. A State will always fail this test when it seeks to ban an arm in common use by law-abiding citizens: No such prohibition appears in the historical record. *See id.* at 22, 47. Indeed, the "record before 1800 offers no support for a ban on any class of arms." *Bridges*, 2025 WL 2250109 at *15 (Nalbandian, J., concurring). "From the Founding to the Civil War, only one state enacted a law banning the possession or sale of any kind of firearm"—and it was promptly challenged and pared back by the state's high court. *Id.* at 16 (citing *Nunn v. State*, 1 Ga. 243, 251 (1846)). In short, our history contains "no robust . . . tradition of disarming *law-abiding* citizens of *commonly owned* arms." *Duncan*, 133 F.4th at 907 (Bumatay, J., dissenting) (emphasis added).

The historical record shows that governments have more latitude with respect to "dangerous and unusual" arms. *See, e.g.*, *Heller*, 554 U.S. at 627 (referring to "tradition of prohibiting the carrying of 'dangerous and unusual weapons'"); W. Baude & R. Leider, *The General-Law Right to Bear Arms*, 99 NOTRE DAME L. REV. 1467, 1485 (2024). But even assuming governments may prohibit "dangerous and unusual" weapons, history offers no support for banning arms "typically possessed by law-abiding citizens for lawful

purposes," including "self-defense." *Heller*, 554 U.S. at 624-25.

The crucial question thus becomes whether an arm is in "common use." Thankfully, the distinction between dangerous and unusual weapons and common ones "has deep roots." *Bianchi v. Brown*, 111 F.4th 438, 515 (4th Cir. 2024), *cert. denied sub nom. Snope v. Brown*, 145 S.Ct. 1534 (2025) (Richardson, J., dissenting). An arm is "dangerous and unusual" (in the traditional sense relevant here) only if it is both "particularly useful for illegal activity and not commonly possessed by law-abiding citizens." *Bridges*, 2025 WL 2250109 at *22 (Nalbandian, J., concurring). Three Justices of this Court have recognized as much. *See Caetano v. Massachusetts,* 577 U.S. 411, 417 (2016) (Alito, J., concurring in judgment) ("A weapon may not be banned unless it is *both* dangerous *and* unusual."); *Snope*, 145 S.Ct. 1534, 1536 (2025) (Thomas, J., dissenting) (same); *Heller v. District of Columbia*, 670 F.3d 1244, 1272 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) (same).

To put a finer point on it, if an arm "was in common use for lawful purposes but also sometimes used for criminal purposes, its common-use status trumped its criminal-use status." *Bridges*, 2025 WL 2250109 at *20 (Nalbandian, J., concurring). Indeed, that should have been clear from *Heller*, under which all arms in "common use" are *definitionally excluded* from the category of "dangerous and unusual weapons." 554 U.S. at 627; *see also, e.g.*, *Bruen* 597 U.S. at 21. The upshot is that once the law-abiding American public widely adopts a particular arm (and its component parts) for lawful purposes, it *necessarily* falls outside the category of "dangerous and unusual weapons."

And that, in turn, precludes a ban: In *Heller*, for example, the fact that "handguns are the most popular weapon chosen by Americans for self-defense" was "enough" to invalidate the District's full "prohibition" of those arms. 554 U.S. at 629. Thanks to that "cho[ice]" by the law-abiding public, a ban was "off the table." *Id.* at 629, 636 (emphasis added). It made no difference if they also happened to be the most popular firearm of choice for criminals.

While this may seem straightforward enough, lower courts have not gotten the message. Some have even classified the AR-15—"the most popular rifle in the country," *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025)—as "dangerous and unusual," and thus susceptible to a complete ban. *See Bianchi*, 111 F.4th at 459; *Bevis v. City of Naperville*, 85 F.4th 1175, 1197 (7th Cir. 2023), *cert. denied sub nom. Harrel v. Raoul*, 144 S.Ct. 2491 (2024); *Nat'l Ass'n for Gun Rts. v. Lamont*, No. 23-1162, 2025 WL 2423599 (2d Cir. Aug. 22, 2025); *but see Snope*, 145 S.Ct. 1534 (Statement of Kavanaugh, J.) ("Americans today possess an estimated 20 to 30 million AR-15s," which "are legal in 41 … States"); Nat'l Shooting Sports Found., *Modern Sporting Rifle Comprehensive Consumer Report* 12 (July 14, 2022), perma.cc/SSU7-PR95 (*NSSF MSR Report*) (documenting popularity of the AR platform).

In short, these courts have applied the Second Amendment "backwards"—upholding bans on common firearms "*because*" they would *also* be "useful for militia service." Baude & Leider, *supra*, at 1501. Absent intervention, such topsy-turvy rulings will proliferate.

2. The Washington Supreme Court's decision below continues the trend by refusing to grant "common use" status to a concededly "common" firearm component. The court reasoned that the *only* lawful use relevant to the Second Amendment is "self-defense." App.12a. Compounding that threshold mistake, the court then demanded empirical "evidence" that standard-capacity magazines have been *used* in some unknown number of documented self-defense incidents. *Id.* This method of identifying arms in "common use" is badly misguided.

First, the court's premise was wrong: Self-defense is *not* the only legal purpose that matters under the Second Amendment. Instead, as *Heller* made clear, the question is whether the state seeks to ban an arm currently "in common use . . . for lawful *purposes*"—plural—"*like* self-defense." 554 U.S. at 624-25 (emphases added); *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 780 (2010) ("[T]he Second Amendment protects a personal right to keep and bear arms for lawful purposes, most notably for self-defense."). While *Heller* noted that self-defense is "the core lawful purpose" of firearm ownership, 554 U.S. at 630, it never suggested that states may ban arms widely adopted for *other* lawful uses. To the contrary, *Heller* identified both "hunting" and resistance to "tyranny" as motivations for the Second Amendment. *Id.* at 599-600. In sum, while "individual self-defense" is clearly "central" to the Second Amendment, self-defense is not "its *only* purpose." *Bianchi*, 111 F.4th at 498-99 (Richardson, J., dissenting); *Snope*, 145 S.Ct. at 1536 (Thomas, J., dissenting) ("[w]eapons in common use today for self-defense *and other lawful purposes*" are "fully protected.") (citation modified) (emphasis added).

Second, after zeroing in on self-defense, the court discounted the public's choice of standard-capacity magazines for that use and demanded proof that such magazines have fulfilled their self-defense role on enough occasions. App.12a. But to start, is not clear a plaintiff could ever muster such evidence. Is a litigant supposed to offer statistics on how often firearms *equipped* with standard-capacity magazines are used in self-defense, how often would-be victims rely on the *tenth round* in a standard-capacity magazine to protect themselves, or how often efforts at self-defense fail because ten shots were insufficient? And is the object of this empirical snipe hunt absolute (*i.e.*, a threshold number of defensive uses) or comparative (*i.e.*, some threshold percentage of defensive incidents in which standard-capacity magazines are used)?

Thankfully, this Court's precedents do not require litigants to scour police records: Once law-abiding citizens have widely *chosen* an arm to carry for self-defense, a court cannot "replace Americans' opinions of [the arm's] utility with [its] own." *Bianchi*, 111 F.4th at 524 (Richardson, J., dissenting). Fortunately, most firearm carriers will never have to wield one in self-defense *at all*. But because many Americans have "chosen" handguns *for* "self-defense," they cannot be banned. *Heller*, 554 U.S. at 629. Likewise, once the law-abiding public has "chosen" to carry standard-capacity magazines *for* "self-defense" (among other lawful purposes) they, too, cannot be banned—regardless of *how often* such magazines happen to prove necessary to defend innocent life.

III. "Large capacity magazines" are in common use for lawful purposes.

Tens of millions of Americans have made precisely that choice. What Washington's law calls "large-capacity magazines" are unquestionably "commonly possessed by law-abiding citizens for lawful purposes." *Caetano*, 577 U.S. at 420 (Alito, J., concurring). Indeed, if standard-capacity magazines do not fit that description, nothing does: Not only are they "common," they are the standard magazine for the Nation's most popular semiautomatic handguns and rifles—and have been part of the fabric of American firearm ownership for generations.

1. Begin with history. "It is certainly true that firearms technology has advanced since 1791—but not as much as some would like to think." C. Cramer & J. Olson, *Pistols, Crime, and Public Safety in Early America*, 44 WILLAMETTE L. REV. 699, 716 (2008). In particular, "[t]he desire . . . for repeating weapons is almost as old as the history of firearms." H. Peterson, *Arms and Armor in Colonial America 1526-1783*, at 215 (1956). The first known firearm able to fire more than ten rounds without reloading was invented during the reign of Elizabeth I. *See* D. Kopel, *The History of Firearm Magazines and Magazine Prohibitions*, 78 ALB. L. REV. 849, 852 (2015). Such firearms steadily grew in popularity. *Id.* at 852-53. In 1722, an American source described a firearm which, "though loaded but once[,] . . . was discharged eleven times following, with bullets, in the space of two minutes." Peterson, *supra*, at 215. At the Founding, the premier firearm was the Girandoni rifle, which boasted a 22-round magazine capacity. Kopel, *supra*, at 853.

Between the ratification of the Bill of Rights and the Fourteenth Amendment, firearms with 10-plus-round capacities proliferated. *See id.* at 853-56 (noting advances such as "pepperbox" pistols, which could fire more than 24 rounds before reloading). Then as now, Americans prized these devices as tools of self-defense: The Winchester Model 1866—a wildly popular rifle with a 17-round magazine—was marketed as the best defense against "sudden attack[s]." R.L. Wilson, *Winchester: An American Legend* 32 (1991). By the Civil War, "magazines of more than ten rounds [were] very commonly possessed in the United States." Kopel, *supra*, at 871. That popularity persisted into the 20th Century. *See id.* at 857-59 & nn. 82, 88.

In short, while the *modern* popularity of standard-capacity magazines is enough to invalidate Washington's ban, *see infra*, 19-23, "the common use of [standard-capacity magazines] for self-defense is [also] apparent in our shared national history." *Duncan v. Becerra*, 970 F.3d 1133, 1147 (9th Cir. 2020). Far from a novel and threatening innovation, such magazines would have been familiar to the drafters of the Fourteenth Amendment; when they convened, "rifle magazines of more than ten rounds" had already "become popular." Kopel, *supra*, at 851. Nor did governments try to alter that: From colonial times until the Prohibition era, they imposed zero bans on magazines. *Id.* at 870.

2. Today, standard-capacity magazines are more popular than ever. NSSF research has shown that, of the more than 963 million magazines sold into the commercial market between 1990 and 2021, around 74 percent—some 717 million magazines—have a maximum capacity of 11 or more rounds. *See NSSF*

Magazine Report, *supra*, at 3. In fact, the *majority* of detachable pistol magazines hold more than 10 rounds. *Id.* And there are far more rifle magazines in circulation today with capacities of more than 30 rounds than magazines that hold fewer than 10. *Id.* There is nothing unusual about these products: They are the industry standard.

Courts, too, have recognized the massive popularity of such magazines. If the point were subject to dispute, states would surely contest it. Because they cannot, even sympathetic courts have admitted that standard-capacity magazines "are common in circulation." App.12a. As the Ninth Circuit conceded, about "half of privately owned magazines hold more than ten rounds." *Duncan*, 133 F.4th at 862; *Kolbe v. Hogan*, 849 F.3d 114, 129 (4th Cir. 2017) (*en banc*) ("Most pistols are manufactured with magazines holding ten to seventeen rounds, and many popular rifles are manufactured with magazines holding twenty or thirty rounds.").

Nor are these magazines owned by a small cadre of hobbyists. In a NSSF survey, "43.3 percent of firearm owners reported owning a detachable magazine with a capacity of 11 or more rounds"—suggesting that nearly *one out of every ten Americans* owns a magazine covered by Washington's statute. *NSSF Magazine Report*, *supra*, at 4. In another NSSF survey, more than half of semiautomatic modern sporting rifle owners reported that "the magazine capacity of their [rifle] is 30 rounds." *NSSF MSR Report*, *supra*, at 6. And a recent comprehensive report found that roughly *40 million* individuals have owned firearm magazines that hold more than 10 rounds—for context, that is about *half* of all American gunowners. *See* W. English,

2021 National Firearms Survey: Analysis of Magazine Ownership and Use, at 20 (May 4, 2023), https://perma.cc/DV55-QT88 (English 2023).

None of this should be surprising—after all, magazines capable of holding ten or more rounds come standard with America's most popular firearms, including semiautomatic handguns like the Glock pistol and rifles like the AR-15. *See Duncan v. Bonta*, 19 F.4th 1087, 1155 & n.25 (9th Cir. 2021) (Bumatay, J., dissenting); Kopel, *supra*, at 859 (noting that "[t]he most popular rifle in American history"—the AR-15—has "standard magazines of twenty or thirty rounds"). Indeed, "manufacturers often include large-capacity detachable magazines as part of the standard package when the firearm is purchased." *Duncan*, 133 F.4th at 862; *see also NSSF MSR Report*, *supra*, at 31. In short, what Washington calls "large-capacity magazines" are in fact among the most common components of the Nation's most common firearms.

3. And for good reason. More than 70 percent of standard-capacity magazine owners cite "defensive purposes"—within and outside of the home—as their reason for owning them. English 2023, *supra*, at 4. Self-defense is thus "the most common reason cited for ownership of" the magazines now banned by Washington. *Id.* And that preference makes perfect sense: Having enough ammunition—without having to reload—can be critical to thwarting would-be assailants or (preferably) deterring attacks before they begin. After all, "[w]hen a firearm being used for defense is out of ammunition, the defender no longer has a functional firearm." Kopel, *supra*, at 851. And reloading in the heat of a home invasion or assault leaves the potential victim "especially vulnerable." *Id.*

Americans have long selected standard-capacity magazines to guard against that vulnerability.

Nor are their concerns merely theoretical. Studies estimate that Americans use firearms in more than 1.6 million "defensive incidents" annually. *See* W. English, *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned* at 1 (May 13, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4109494 (English 2022). Most involve handguns, and the most popular handguns come standard with magazines that hold more than ten rounds. English 2022, *supra*, at 10; *see supra*, 20. Given the sheer number of defensive uses and the popularity of such magazines, it is apparent that firearms equipped with such magazines are used in thousands of defensive stands annually. Confirming as much, hundreds of respondents in a recent survey reported facing scenarios "in which it would have been useful for defensive purposes to have a firearm with a magazine capacity in excess of 10 rounds[.]" English 2022, *supra*, at 26, 28. Most involved multiple attackers—justifying the intuition that has made these and similar magazines popular for two centuries. *See id.* at 28-33.

And while handguns are the most commonly used self-defense weapon, semiautomatic rifles like the AR-15—which, again, has "standard magazines of twenty or thirty rounds," Kopel, *supra*, at 859—are also used in defense of innocent life. *Cf.* English 2022, *supra*, at 15 (rifles are used in 13 percent of defensive incidents). Take one example: In 2019, two masked men broke into Jeremy King's home. *See* Dave Jordan, *Victim of Home Invasion Speaks; Credits Wife With Saving His Life With AR-15*, SpectrumNews Florida (Nov. 1, 2019,

4:37 PM), https://perma.cc/F4AL-L2K8. They grabbed his 11-year-old daughter, demanded money, and beat King within an inch of his life. But before they could kill him (and perhaps his daughter, too), King's pregnant wife burst into the room with an AR-15 and repelled the attackers. As King put it: They "came in with two normal pistols and my AR stopped it. [My wife] evened the playing field and kept them from killing me." Thanks to the rifle's ammunition capacity, Mrs. King could fire at one attacker while retaining enough ammunition to deter the second. But without the rifle's standard-capacity magazine, there is no telling what would have happened.

Of course, self-defense is not the only use for which law-abiding Americans employ their standard-capacity magazines. Most also possess these magazines for "recreational target shooting" (64.3%), and many use them for "hunting" (47%) and "competitive shooting sports" (27.2%). English 2023, *supra*, at 4. Nothing in the Second Amendment or this Court's precedents suggests that, once the public has put an arm into common use for these (equally lawful) purposes, the state can prohibit that device based on fears that criminals will misuse it. *See supra*, 15.

4. The court below brushed aside all the evidence of standard-capacity magazines' widespread adoption for lawful purposes. *See* App. 12a-14a. And it is not alone: Lower courts resist the commonsense nature of "common use," straining for a way to uphold bans on arms owned and used by millions of law-abiding Americans. *See Lamont*, 2025 WL 2423599 at *11-12 (holding that "popular weapons" may be banned as "dangerous and unusual"); *Duncan*, 133 F.4th at 882 (deriding "simplistic" focus on how many magazines

are in lawful circulation); *Bianchi*, 111 F.4th at 460 (calling "absurd" the argument that AR-15s are in "common use"); *Ocean State Tactical*, 95 F.4th at 50 (similar). What these courts refuse to see is that "[t]he Second Amendment protects a *customary* historical right, based in the practice of the people." *Bridges*, 2025 WL 2250109 at *24 n.30 (Nalbandian, J., concurring). What matters, then, is "that the American people" clearly "consider[]" standard-capacity magazines a "quintessential" tool of self-defense and other lawful purposes. *Heller*, 554 U.S. at 629.

* * *

The State of Washington has chosen to prohibit a class of arms protected by the Second Amendment. "[T]hat decision comes at a cost," *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024), because our "historical tradition of firearm regulation" contains no precedent for banning arms widely adopted by the law-abiding public, *Bruen*, 597 U.S. at 24. The State of Washington itself does not deny that standard-capacity magazines are "commonly possessed . . . for lawful purposes." *Caetano*, 577 U.S. at 420 (Alito, J., concurring). Nor could it, because such magazines are a standard, integral feature of the best-selling firearms, chosen by a vast swath of Americans for self-defense and other lawful uses.

CONCLUSION

The Court should grant the petition for certiorari and reverse the decision below.

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