

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 Writ of Certiorari to the
Washington Supreme Court**

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF

The decision below deepens acknowledged circuit splits over whether magazines capable of holding more than ten rounds are “Arms” covered by plain text of the Second Amendment and whether and how courts should conduct the common-use inquiry. Those issues demand resolution, as do the related questions of whether these common devices may be banned notwithstanding historical tradition. And this case is a good vehicle for resolving those questions, as the decision below is neither preliminary nor tentative. This Court should grant certiorari and reverse.

I. This Court Should Resolve Whether States May Ban Commonly Owned Arms.

This Court has made clear that “the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms,” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 28 (2022) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008)), and that the “arms” the Second Amendment’s plain text covers include “any thing that a man ... takes into his hands, or useth in wrath to cast at or strike another,” *Heller*, 554 U.S. at 581. Yet the circuits are divided on whether the ubiquitous ammunition feeding devices Washington outlaws fit within the Second Amendment’s plain text.

The Washington Supreme Court held here that magazines capable of accepting more than ten rounds of ammunition are not “Arms” under the plain text of the Second Amendment, and thus that state laws banning them do not even implicate the fundamental right to keep and bear arms. Pet.App.1-19. Post-*Bruen*, the Seventh and Ninth Circuits have held the

same. *See Duncan v. Bonta*, 133 F.4th 852, 865-67 (9th Cir. 2025) (en banc) (holding that “large-capacity magazines are neither ‘arms’ nor protected accessories”); *Bevis v. City of Naperville*, 85 F.4th 1175, 1195-97 (7th Cir. 2023) (similar).

On the flip side, the D.C. and Third Circuits have held that magazines fit squarely within the Second Amendment’s plain text, no matter whether they hold two rounds or 20. *See Hanson v. District of Columbia*, 120 F.4th 223, 232-33 (D.C. Cir. 2024); *Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.*, 910 F.3d 106, 116-17 (3d Cir. 2018), *abrogated on other grounds by N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). And the First Circuit has assumed the same (albeit without deciding the question head-on). *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 43 (1st Cir. 2024).

Relying on a one-judge opinion in an unrelated case, the state claims that Third Circuit law is more limited than the Third Circuit has let on. *See* BIO.30 n.5. But, to use the state’s phrase, that “is not quite right.” *Id.* Whatever Judge Roth may believe Third Circuit law *ought* to be, there is no denying what Third Circuit law currently *is*. When directly confronted with “the question [of] whether a magazine is an arm under the Second Amendment,” the Third Circuit gave a direct response: “The answer is yes.” 910 F.3d at 116. The state notably glosses over that crystal clear holding, which squarely places the Third Circuit with the D.C. Circuit on the “Arms” question. To be sure, the Third Circuit “assume[d] without deciding” in that pre-*Bruen* case that ten-plus-round magazines are in common use for lawful purposes. *Id.* at 117. But as

petitioners have explained, *see* Pet.26-28, and as this Court’s caselaw makes clear, whether something is an “Arm” is a different question from whether it is in common use.¹

Ultimately, the state does not deny the division of authority over whether magazines capable of holding more than ten rounds of ammunition are “Arms” covered by the plain text of the Second Amendment. *See* BIO.30-31. Instead, the state tries to downplay it. But this is not a situation in which the Court would benefit from awaiting further percolation. As far as petitioners are aware, the circuits with pending district-court cases have either already weighed into the debate, *see Hanson*, 120 F.4th at 232-33, or made clear how they will resolve it, *see Ocean State*, 95 F.4th at 43. Even the United States has weighed in, recently moving to vacate a D.C. defendant’s conviction for possessing a “large-capacity ammunition feeding device” on the ground that bans like this one are unconstitutional. Mot. to Vacate, *Peterson v. United States*, No. 24-CF-430 (D.C. Sept. 12, 2025); *see also* Br. for U.S. as Amicus Curiae at 22-26, *Barnett v. Raoul*, No. 24-3060 (7th Cir. June 13, 2025) (arguing that Illinois’ equivalent ban on ten-plus-round magazines is unconstitutional).

Finally, the state clings to the fact that, despite diverging on the threshold textual question, each

¹ The Third Circuit recently decided to hear the return appeal in that case en banc. *See Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.*, No. 24-2415 (3d Cir. filed Aug. 6, 2024). But far from undermining the need for this Court’s intervention, that just proves the importance of the question presented, and the need for this Court to resolve it once and for all.

circuit to weigh in so far has upheld bans on magazines capable of holding more than ten rounds of ammunition. BIO.30-31. The state misses the point. The same courts that have been denying Second Amendment rights at every opportunity ever since *Heller* are continuing to do so—yet they cannot get on the same page as to why. That dynamic underscores the need for this Court to resolve both the threshold and the ultimate question once and for all.

Tens of millions of law-abiding Americans own hundreds of millions of the magazines Washington and other states have banned as core components of the firearms they keep and bear for self-defense and other lawful purposes. They deserve to know whether they are exercising a constitutionally protected right or engaging in conduct that could render them criminals. Only this Court can provide a definitive answer to that critically important question.

II. The Decision Below Cannot Be Reconciled With This Court's Precedents.

It should be beyond debate that a semiautomatic firearm equipped with a magazine—the mechanism that feeds ammunition into the firing chamber—is an “Arm[],” i.e., a “thing that a man ... takes into his hands,” *Heller*, 554 U.S. at 581, that “facilitate[s] armed self-defense,” *Bruen*, 597 U.S. at 28. It should be equally clear that that conclusion remains the same no matter whether the magazine at issue holds two rounds or 20. Indeed, a contrary conclusion would not only flout this Court's precedents, but allow states to circumvent the Second Amendment via component-level regulation. *Hanson*, 120 F.4th at 232.

Perhaps that is why the state urges this Court to ignore the Washington Supreme Court's holding that the magazines the state has banned are not "arms" at all. According to Washington, while a law banning ten-plus-round magazines does not implicate the Second Amendment, "a complete ban on magazines might effectively ban the use of semiautomatic firearms and could therefore violate the Second Amendment." BIO.18. That is not so much an argument as an admission that the decision below went awry. After all, magazines either are unprotected "accoutrements," BIO.15-18, or they are not. And if banning them entirely *would* violate the Second Amendment, then that just goes to show that they are not mere "accoutrements," but rather core components of the arms that the right protects.

The state's embrace of the Washington Supreme Court's backup theory—that 10-plus-round magazines do not implicate the Second Amendment because they are not "necessary to actualize the core right of armed self-defense," BIO.2; *see* Pet.App.14-15, underscores the problems with the decision below and the state's eager defense of it. Nothing in the Second Amendment's plain text (let alone historical tradition) confines the people to the bare minimum of a functional arm. The state implicitly recognizes as much in acknowledging that a functional ban on semiautomatic firearms would be unconstitutional. The state also has no explanation for how, as a *textual* matter, a 10-round magazine is presumptively protected but an 11-round magazine is not. That is because there is none.

Things get no better for the state when it turns to historical tradition. Washington tries to tether the decision below to the tradition this Court has recognized of restricting “dangerous and unusual” weapons.” BIO.23. But the state cannot help but admit reality: The only (supposed) tradition the state and the decision below are willing to recognize is an invented one under which states may ban any and all arms that legislators deem “unusually dangerous” in the hands of criminals. BIO.24; *see also* BIO.7, 22-23. That criminals’-veto theory of the Second Amendment should sound familiar: It is the same one the dissenters in *Heller* advanced, *see Heller*, 554 U.S. at 713 (Breyer, J., dissenting), but the majority rejected as inconsistent with historical tradition and the very notion that the Second Amendment secures a fundamental right, *see id.* at 636 (maj. op.).

In any event, the state’s effort to collapse “dangerous and unusual” into “unusually dangerous” does not even help its cause, as it just begs the question: Unusually dangerous as compared to what? The obvious answer is as *compared to arms that are in common use*, i.e., as compared to arms that law-abiding citizens “typically possess[] ... for lawful purposes.” *Id.* at 625. That is precisely why both *Heller* and *Bruen* recognized that arms that are in common use for lawful purposes cannot be banned consistent with the “dangerous and unusual” tradition. *See id.* at 627; *Bruen*, 597 U.S. at 47.

Finally, the state’s discussion of analogical reasoning confirms the need for course-correction. Under this Court’s caselaw, “the appropriate analysis involves considering whether the challenged

regulation is consistent with the principles that underpin our regulatory tradition”—and “central to this inquiry” are “[w]hy and how the regulation burdens the right.” *United States v. Rahimi*, 602 U.S. 680, 692 (2024). Rather than ask “how” the mechanics of Washington’s regulation compare to those of historical laws, as this Court’s cases require, *see id.* at 698-700, the state defends the decision below by arguing about how burdensome (it thinks) Washington’s ban is, BIO.18. Because the ban leaves smaller magazines untouched, the state thinks it imposes only a minimal (and thus acceptable) burden on the right. Once again, this Court has already rejected that miserly, interest-balancing approach to the Second Amendment. *See Heller*, 554 U.S. at 629 (“It is no answer to say ... that it is permissible to ban the possession of handguns so long as the possession of other firearms (*i.e.*, long guns) is allowed.”). And while Washington may not think its citizens really *need* more than ten rounds for self-defense, this Court has also made clear that the Second Amendment does not turn on what judicial or political officials think the people really need. *See Bruen*, 597 U.S. at 22-23. The state’s dogged insistence on recycling the same tired arguments this Court has squarely and repeatedly rejected confirms the need for course-correction.

III. The Question Presented Is Important, And This Is A Good Vehicle To Resolve It.

The state does not deny the importance of the question presented. Instead, the state argues that the Court should deny certiorari because it has denied magazine-related petitions in the past. BIO.31-32. But this Court was “wary of taking” those “cases”

because they arose “in an interlocutory posture.” *Harrel v. Raoul*, 144 S.Ct. 2491, 2492 (2024) (Thomas, J., respecting the denial of certiorari). And, even then, there were three votes for certiorari. *See Ocean State Tactical, LLC v. Rhode Island*, 145 S.Ct. 2771 (2025). Unlike those cases, however, this case has reached final judgment. There is no longer any reason to wait. Again, even the United States has weighed in on the question presented—and taken petitioners’ side. *See* p.3, *supra*. This is not an issue that needs further percolation. It is an issue that needs this Court’s resolution—now.

The state’s arguments about the record developed in the trial court miss the forest for the trees. In fact, the state’s derision of petitioners’ decision not “to build an evidentiary record” to prove that “LCMs satisfy the historic definition of ‘Arms,’” BIO.32, gives away the game. It is neither disputed nor disputable that, in the age of semiautomatic firearms, a magazine “is necessary to make meaningful an individual’s right to carry a handgun for self-defense.” *Hanson*, 120 F.4th at 232. “To hold otherwise would allow the government to sidestep the Second Amendment with a regulation prohibiting possession at the component level[.]” *Id.* Adopting Washington’s view that, even in the face of a ban on such arms, citizens must expend vast resources in litigation just to “show that their rights were implicated,” BIO.23, would effectively shield from review all manner of restrictions. It would also turn *Bruen*’s burden-shifting regime on its head. After all, if a plaintiff must expend time and money proving the obvious just to put the state to its historical-tradition burden, then the Second

Amendment would be “no constitutional guarantee at all.” *Heller*, 554 U.S. at 634.

The state claims that this case is a poor vehicle because (it says) “reversal would not change the ultimate outcome.” BIO.33. That is both wrong and irrelevant. This Court routinely grants certiorari to resolve important questions that controlled the lower court’s decision notwithstanding a respondent’s confident assertion that, on remand, it may prevail for a different reason. *See, e.g.*, BIO.35-38, *Limelight Networks, Inc. v. Akamai Techs., Inc.*, No. 12-786 (U.S. Apr. 3, 2013); BIO.11-22, *Fitzgerald v. Barnstable Sch. Comm.*, No. 07-1125 (U.S. May 5, 2008). In all events, the state’s facile historical narrative flies in the face of this Court’s caselaw. *See* pp.6-7, *supra*.

Finally, this Court’s recent grant of certiorari in *Wolford v. Lopez*, No. 24-1046, does not counsel against certiorari. That case, about the default rules for constitutional rights on private property, has little to do with this one. And even if *Wolford* (or *United States v. Hemani*, No. 24-1234) might have some bearing on this case, that would at most be a reason to hold this petition, not to deny it. But the far better course would be to grant certiorari and make clear once and for all that the Second Amendment protects the right to keep and bear arms—including their constituent components—that are commonly used by law-abiding citizens for lawful purposes.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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