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

SUPPLEMENTAL BRIEF FOR PETITIONERS

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March 11, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

SUPPLEMENTAL BRIEF FOR PETITIONERS

On March 5, 2026, the D.C. Court of Appeals held that the District's ban on magazines that can hold more than 10 rounds violates the Second Amendment. *Benson v. United States*, 2026 WL 628772 (D.C. Mar. 5, 2026). That is exactly the opposite of what the Washington Supreme Court held here with respect to that state's identical ban. Indeed, the Washington Supreme Court not only held that the same ban is constitutional, but held that it did not even implicate the Second Amendment. There is now squarely a split on the question presented, adding to the pre-existing disarray among state and federal courts over whether such magazines are "Arms" covered by the plain text of the Second Amendment and what the common-use inquiry entails. There is no longer any reason to delay. This Court should grant certiorari and reverse.

REASON TO GRANT THE PETITION

In a thorough and decisive opinion spanning over 50 pages, D.C.'s highest court held that the District's ban on feeding devices that hold more than 10 rounds of ammunition is unconstitutional. *Benson*, 2026 WL 628772, at *1. As the court put it, the "District's magazine capacity ban violates the Second Amendment" because "11+ magazines are unquestionably arms" presumptively covered by the Second Amendment, "they are in not only common but ubiquitous use for lawful purposes, and there is no history or tradition of blanket bans on arms in such common use." *Id.* at *2; *see also id.* at *14. That decision is directly and expressly at odds with the decision below. Indeed, the D.C. court diverged from

the Washington court here not only on the bottom line, but on every subsidiary issue relevant to the analysis.

At the threshold, the Washington Supreme Court held here that magazines capable of accepting more than 10 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. The D.C. Court of Appeals expressly disagreed, rejecting the conclusion that "11+ magazines are not arms at all." *Benson*, 2026 WL 628772, at *10 n.10. *Benson* instead held that "[m]agazines of all capacities are … arms covered by the plain text of the Second Amendment" because they plainly "facilitate[] armed self-defense." *Id.* at *7; *see N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 28 (2022). The split on that issue is now 3-3, with the Washington Supreme Court, Ninth Circuit, and Seventh Circuit on the wrong side and the D.C. Court of Appeals, D.C. Circuit, and Third Circuit on the right side, and with the First Circuit assuming that the latter is the correct position. *See* Pet.19-21; Reply.1-3; *cf. Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 43 (1st Cir. 2024) ("we assume that LCMs are 'arms' within the scope of the Second Amendment"). And the decision below is a particularly extreme example of the wrong side of the split, as it held that the Second Amendment does not protect magazines *at all*, on the theory that semiautomatic firearms may be fired "1 round at a time" therefore "leaving the weapon fully functional for its intended purpose." Pet.App.15.

Benson also confirms that "courts are divided on the import of the common use inquiry," and that

"'[t]here is no consensus on whether the common-use issue' is a threshold textual inquiry … or a historical inquiry." 2026 WL 628772, at *8 (quoting *Hanson v. District of Columbia*, 120 F.4th 223, 232 n.3 (D.C. Cir. 2024)). The Washington Supreme Court held here that petitioners bore the burden to establish common use. Pet.App.12. The D.C. Court of Appeals rejected that view in no uncertain terms. *Benson*, 2026 WL 628772, at *9. The D.C. court also parted company with the Washington court with respect to the import of the inquiry. The Washington court held that petitioners had to come forward with evidence showing that people typically fire more than 10 rounds in self-defense situations. Pet.App.12. The D.C. court rejected that view, holding instead that an instrument that "ranks among the most popular arms possessed by law-abiding citizens" is in "common use." 2026 WL 628772, at *9; *cf. Caetano v. Massachusetts*, 577 U.S. 411, 420 (2016) (per curiam). So "[j]ust as handguns cannot be banned because they are 'the most preferred [type of] firearm in the nation,' … the 11+ magazines that tend to accompany them are the most preferred type of magazine and likewise cannot be banned." 2026 WL 628772, at *11 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 628-29 (2008)).

In short, the already-evident disarray has now metastasized into a clear conflict. The need for this Court's intervention could hardly be more acute.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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