

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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SUPPLEMENTAL BRIEF FOR PETITIONERS

In opposing certiorari here, Washington relied heavily on the absence of any appellate decision invalidating a state law outlawing magazines capable of holding more than ten rounds of ammunition. BIO.30-31. That premise no longer holds. On July 17, 2026, the en banc Third Circuit held that New Jersey’s ban on these ubiquitous arms violates the Second Amendment. *See Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.*, Nos. 24-2415, 24-2450 & 24-2506, --- F.4th ---, 2026 WL 2075513 (3d Cir. 2026) (en banc). That decision creates a square split with the Washington Supreme Court’s decision in this case, which held that Washington’s identical ban is constitutional. The Court may therefore wish to consider granting certiorari here (and/or in *Duncan v. Bonta*, No. 25-198 (U.S.)) so it may resolve this profoundly consequential question alongside the consolidated cases the Court has granted addressing whether states may ban AR-15-style rifles consistent with the Second Amendment. *See Viramontes v. Cook Cnty.*, No. 25-238 (U.S. cert. granted June 30, 2026), *consolidated with Grant v. Higgins*, No. 25-566 (U.S.).

REASON TO GRANT THE PETITION

In *Association of New Jersey Rifle & Pistol Clubs, Inc. v. Attorney General of New Jersey*, the en banc Third Circuit held by a 10-5 vote that New Jersey’s “law restricting possession of magazines that can hold more than 10 rounds of ammunition” violates the Second Amendment. 2026 WL 2075513, at *5 n.12; *see id.* at *21-25. That decision is directly at odds with the decision below. Indeed, the Third Circuit diverged from the Washington court here not only on the

bottom line, but on every subsidiary issue relevant to the analysis.

The Washington Supreme Court held here that magazines capable of accepting more than ten rounds are not “Arms” covered by the Second Amendment’s plain text—and thus that laws banning them do not even implicate the fundamental right to keep and bear arms—on the theory that a semiautomatic firearm fired “1 round at a time” is still “fully functional for its intended purpose,” Pet.App.15. See Pet.App.1-19. New Jersey “urge[d]” the Third Circuit “to adopt the [same] view” and hold “that LCMs are not arms.” 2026 WL 2075513, at *22. The Third Circuit rebuffed the invitation, rejecting that view as “at odds with the Supreme Court’s instruction in *Bruen*.” *Id.* at *23. *Bruen*, the court explained, made clear that “the Second Amendment’s definition of ‘arms’ ... covers modern instruments that *facilitate armed self-defense*.” *Id.* (quoting *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 28 (2022)). And “even where a particular arm does not require the use of a magazine” (or one of a particular capacity), “a magazine unquestionably facilitates the arm user’s ability ‘to cast at or strike another.’” *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008)). “Accordingly,” the Third Circuit held, “magazines are arms.” *Id.* The court reached that conclusion, moreover, for *all* magazines, regardless of their capacity. *Id.* at *22 (“The text of the Second Amendment covers *all* magazines, not just magazines that [a state] considers ‘standard capacity.’” (emphasis

added)). In doing so, the court once again parted company with the Washington Supreme Court.¹

“[T]urn[ing] to *Bruen*’s second step,” *id.* at *23, the Third Circuit once again departed from the decision below. In holding that laws banning the possession of ubiquitous magazines are consistent with historical tradition, the Washington Supreme Court inverted this Court’s common-use test and held that petitioners failed to establish that ten-plus-round magazines are even presumptively protected because they did not introduce sufficient evidence showing that people typically fire more than 10 rounds in self-defense situations. Pet.App.12. The Third Circuit rejected that position in no uncertain terms, holding that our Nation’s historical tradition protects arms that are in “common use” for lawful purposes, 2026 WL 2075513, at *9-11 & n.20, that ten-plus-round magazines “are in common use for lawful purposes” regardless of how frequently people fire ten rounds at an attacker in self-defense situations, and that no other “historical

¹ That conclusion is confirmed by this Court’s own description of how an AR-15-style semiautomatic rifle functions. After each shot, a semiautomatic weapon “ejects the spent cartridge from the chamber and loads a new one in its place.” *Garland v. Cargill*, 602 U.S. 406, 419 (2024). But without a magazine to supply the next cartridge, a semiautomatic firearm designed to accept a detachable magazine cannot complete that semiautomatic firing cycle. Reducing such a firearm to a manually loaded, single-shot weapon does *not* leave it “fully functional for its intended purpose.” *Contra* Pet.App.15. Indeed, as the dissent below observed, the Washington Supreme Court’s contrary conclusion reflects “a fundamental misunderstanding” of both “‘semiautomatic’ and ‘self-defense.’” Pet.App.42 n.22 (McCloud, J., dissenting).

tradition ... supports New Jersey's LCM Provisions," *id.* at *24.

The split is now clear. And unlike the last time an appellate court created a split on this issue, *see Benson v. United States*, 352 A.3d 719 (D.C. 2026) (three-judge panel striking down District's ban on ten-plus-round magazines), *reh'g en banc granted, opinion vacated*, 355 A.3d 190 (D.C. 2026), the Third Circuit's en banc decision is not subject to any further review beyond this Court. The Court accordingly may wish to grant certiorari here (and/or in *Duncan*) to resolve the question presented now, rather than continue to hold this petition pending resolution of *Viramontes* and *Grant*.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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