No. 25-872

In the
Supreme Court of the United States

KIMBERLY LAFAVE, *et al.*,
Petitioners,

v.

THE COUNTY OF FAIRFAX, VIRGINIA, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

SUPPLEMENTAL BRIEF OF PETITIONERS

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Pursuant to Supreme Court Rule 15.8, Petitioners respectfully submit this Supplemental Brief to address the District of Columbia Court of Appeals' recent decision in *Benson v. United States*, No. 23-CF-0514 (D.C. Mar. 5, 2026) ("Slip Op.").

ARGUMENT

I. The District of Columbia Court of Appeals' Decision in *Benson v. United States* Deepens the Split of Authority Below.

In *Benson*, the District of Columbia Court of Appeals held the District's ban on ammunition magazines capable of holding more than 10 rounds was an unconstitutional ban on an "arm" that is in common use for lawful purposes. The defendant challenged the 10+ round restriction on its face. He had been arrested while possessing a semiautomatic firearm equipped with a 30-round magazine and the District argued, therefore, that the court's review of the challenge should be limited to asking "whether bans on 30-round magazines pass constitutional muster." Slip Op. 42. The court disagreed. It held that just because the ban "captures some conduct [possessing 30- or even 100-round magazines] that hypothetically could have been proscribed by a more narrow statute is beside the point. … [I]n no sense does that mean that *this law* could be constitutionally applied to prosecute those who possess those larger magazines." *Id.* at 43 (emphasis in original). The dispositive fact, as the court explained, was that "this law does not require the government to prove those higher capacities [so] it has not drawn the line in a constitutionally permissible place." *Id.*

In reaching this conclusion, *Benson* warned that "there are few areas of jurisprudence that are more difficult to decipher than when a litigant can successfully raise a facial challenge." *Id.* at 44, To guide it through this difficult area, *Benson* relied specifically on this Court's facial holding in *District of Columbia v. Heller*, 554 U.S. 570 (2008). It noted that if *Heller* itself had applied the District's notion of a "facial challenge," it would have upheld the handgun ban at issue "because, as *Heller* recognized, there are clearly some hypothetical handgun prohibitions—applying only to felons and/or the mentally ill, or only to fully automatic handguns—that would pass constitutional muster," Slip Op. at 49. Therefore, the court concluded, "it is not within the judicial function for us to draw [the] line in a new place, [so] the statute is unconstitutional in all of its applications and is facially invalid." *Id.* at 49–50.

Benson was correctly decided and directly supports Petitioners' argument on the merits. *See, e.g.*, Pet. 15–17 (arguing for the same understanding of *Heller*'s facial holding). It also demonstrates the need for this Court to grant certiorari by deepening the split below. The Fourth Circuit's decision is emblematic of the trouble caused by mistaken judicial understandings of this "difficult to decipher" area of the law. Slip Op. at 44. In ratifying a ban in all parks in Fairfax County because a tiny minority of them play host to school programs—even though a school's presence is legally irrelevant to securing a conviction under the statute—the Fourth Circuit's decision below was directly contrary to the D.C. Court of Appeals' thoughtful analysis and this Court's precedents. *See* Pet. 12–13.

CONCLUSION

The Court should grant petition for a writ of certiorari and vacate the decision below.

March 6, 2026

Respectfully submitted,

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