IN THE
SUPREME COURT OF THE UNITED STATES

No. 23A1058

OCEAN STATE TACTICAL, LLC, d/b/a Big Bear Hunting and Fishing Supply; JONATHAN HIRONS; JAMES ROBERT GRUNDY; JEFFREY GOYETTE; MARY BRIMER,

Applicants,

v.

STATE OF RHODE ISLAND; COLONEL DARNELL S. WEAVER, in his official capacity as the Superintendent of the Rhode Island State Police; PETER F. NERONHA, in his official capacity as the Attorney General for the State of Rhode Island,

Respondents.

APPLICATION TO THE HON. KETANJI BROWN JACKSON FOR A FURTHER EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Pursuant to Supreme Court Rule 13(5), Ocean State Tactical, LLC, d/b/a Big Bear Hunting and Fishing Supply, Jonathan Hirons, James Robert Grundy, Jeffrey Goyette, and Mary Brimer (hereafter, collectively, "Applicants") hereby move for a second extension of time of 30 days, to and including August 5, 2024, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be July 5, 2024.

In support of this request, Applicants state as follows:

1. The United States Court of Appeals for the First Circuit rendered its decision on March 7, 2024 (First Mot. for Extension, Ex. 1). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. On May 24, 2024, undersigned counsel for Applicants, Erin E. Murphy, applied for an extension of time of 30 days, to and including July 5, 2024, for the filing of a petition for a writ of certiorari.

3. On May 30, 2024, Justice Jackson granted that application.

4. In support of the first application for an extension, counsel explained that this case involves a sweeping, criminal prohibition on long-lawful arms owned by tens of millions of law-abiding Americans. Just days before this Court issued its decision in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022), Rhode Island enacted House Bill 6614, the Large Capacity Feeding Device Ban Act of 2022 (codified at R.I. Gen. Laws §§11-47.1-2, -3). The Act does what its name suggests: It flatly bans all devices that feed ammunition "into a semi-automatic firearm" if they are "capable of holding … more than ten (10) rounds of ammunition." R.I. Gen. Laws §11-47.1-2(2), -3(a). The Act does not just make it illegal to "manufacture, sell, offer to sell, transfer, [or] purchase" these commonplace arms (not that any of that would be consistent with the Second Amendment). *Id*. §11-47.1-3(a). It also criminalizes their mere "possess[ion]," and empowers the state to throw citizens in prison for up to five years even if the arms the state now deems criminal contraband were lawfully acquired long ago. *Id.*

5. Fearing imprisonment for their once-lawful possession of commonly owned arms, four individuals (Jonathan Hirons, James Grundy, Jeffrey Goyette, and Mary Brimer) and one retailer (Ocean State Tactical, LLC), sued Rhode Island, its Attorney General, and its Police Superintendent. Applicants alleged that the Act

violates their constitutional rights under the Second Amendment, and both the Takings Clause of the Fifth Amendment and the Due Process Clause of the Fourteenth Amendment, as Rhode Island's confiscatory ban forces citizens to dispossess themselves of lawfully acquired property without any compensation from the state.

6. Applicants sought a preliminary injunction, which the district court denied. *Ocean State Tactical, LLC v. Rhode Island*, 646 F.Supp.3d 368 (D.R.I. 2022).

7. The First Circuit affirmed. *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38 (1st Cir. 2024). Starting with Applicants' Second Amendment claim, the First Circuit "assume[d]" without deciding that ammunition feeding devices capable of holding more than 10 rounds "are 'arms' within the scope of the Second Amendment," and thus "proceed[ed] to consider whether HB 6614 is consistent with our history and tradition." *Id.* at 43. The court did not identify any historical tradition of flatly banning arms commonly owned by law-abiding citizens for lawful purposes (because there is none). Indeed, the First Circuit frankly acknowledged that Rhode Island proffered "no directly on-point tradition." *Id.* at 44. The court likewise recognized that "multi-shot firearms existed in the late 1700s, and others were more common by the mid-to-late 1800s." *Id.*

8. Yet rather than hold that the lack of a tradition of banning common arms that have been around for over a century means that the Act is unconstitutional, *see Bruen*, 597 U.S. at 28-30, the First Circuit moved the goal posts. Deeming "LCM-aided mass shootings" an unprecedented societal phenomenon, the court applied "'a

more nuanced approach' to historical analysis," *Ocean State Tactical*, 95 F.4th at 44 (quoting *Bruen*, 597 U.S. at 27), under which the central consideration was the degree of the "burden" the challenged restriction imposes on "the right of armed self-defense," *id.* at 45. That backdoor means-ends scrutiny not surprisingly led the court to defer to the state. The court concluded that "banning" feeding devices capable of holding more than 10 rounds of ammunition "imposes no meaningful burden on the ability of Rhode Island's residents to defend themselves" because people rarely need to fire more than 10 rounds "in self-defense" situations. *Id.* Seen through that (distorted) lens, the court deemed Founding-era gunpowder-storage laws to be sufficiently analogous to the Act to justify it. *Id.* at 49. *But see District of Columbia v. Heller*, 554 U.S. 570, 632 (2008) (noting that "gunpowder-storage laws" were "fire-safety laws" that did "not remotely burden the right of self-defense as much as an absolute ban on [a class of arms]").

9. Finally, the First Circuit affirmed the district court's decision that Applicants are unlikely to succeed on their void-for-vagueness, retroactivity, and Takings Clause claims. *Ocean State Tactical*, 95 F.4th at 52-54.

10. Applicants anticipate filing a petition that demonstrates the profound error in the First Circuit's decision, which contorted this Court's clear precedent. The First Circuit expressly refused to engage with the principal question under that precedent—whether the "plain text covers [the] conduct" that the challenged law restricts—and completely ignored this Court's common-use tests, which prohibits bans on arms "'in common use' today." *Bruen*, 597 U.S. at 17, 32 (quoting *Heller*, 554

U.S. at 627). That is not hyperbole: The phrase "common use" does not appear even once in the First Circuit's decision. Making matters worse, the First Circuit ignored this Court's admonition in *Bruen* that it is *the government*, not the citizen, that bears the burden to "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24. The court deemed the Act sufficiently justified not by reference to a well-established historical tradition, but by reference to "anecdotal findings," flawed "[s]tatistical evidence," and twentieth-century laws prohibiting *dangerous and unusual* firearms "outside the ambit of the Second Amendment." *Ocean State Tactical*, 95 F.4th at 46-49. The decision below defies, rather than applies, *Bruen*. And its Fifth and Fourteenth Amendment analyses were no less flawed.

11. As noted in the previous extension application, this Court is likely to issue decisions or orders in the coming weeks that may shed considerable light on the Second Amendment issues this case presents. *See United States v. Rahimi*, No. 22-915; *Barnett v. Raoul*, Nos. 23-879, 23-1010, 23-877, 23-878, 23-880, & 23-944. Counsel requires additional time to prepare a petition that fully addresses the important and far-reaching issues raised by the decision below in a manner that will be most helpful to the Court.

12. While counsel has been working diligently in preparing this petition, Ms. Murphy also has substantial briefing and argument obligations between now and July 5, 2024, including a motion for summary judgment in *Netchoice v. Griffin*, No. 5:23-cv-05105 (W.D. Ark.), due June 21, 2024; a motion for summary judgment

in *LEJILEX v. SEC*, No. 24-cv-00168 (N.D. Tex.), due June 26, 2024; a reply brief in *NetChoice, LLC v. Carr*, No. 24-cv-02485 (N.D. Ga.), due June 26, 2024; and an argument for a preliminary injunction in *NetChoice, LLC v. Carr*, No. 24-cv-02485 (N.D. Ga.), on June 28, 2024. More time is required, commensurate with counsel's other responsibilities, to adequately research and brief the important issues posed by this matter.

WHEREFORE, for the foregoing reasons, Applicants request that an extension of time to and including August 5, 2024, be granted within which Applicants may file a petition for a writ of certiorari.

Respectfully submitted,

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