No. 24-131

IN THE

Supreme Court of the United States

OCEAN STATE TACTICAL, LLC, DBA BIG BEAR HUNTING AND FISHING SUPPLY, *et al.*,

Petitioners,

v.

RHODE ISLAND, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether it was appropriate to decline to preliminarily enjoin Rhode Island's law restricting civilian possession of large-capacity ammunition feeding devices when under the law individuals may possess any number of allowed ammunition feeding devices, any amount of ammunition, and when individuals could transfer, sell, or modify their ammunition feeding devices before they became contraband.

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BRIEF IN OPPOSITION

Rhode Island, faced with an ongoing and specific threat to its populace, including its children, from the "weekly—and sometimes daily—" (Pet.App.12) (citation omitted) specter of mass shootings, chose to enact a restriction on a limited set of firearms accessories while still allowing law-abiding citizens full access to arms commonly used for self-defense. Restricting possession of large-capacity magazines takes a means of "mass slaughter" (Pet.App.13) out of the hands of civilians, like long-standing, widespread possessory restrictions against machine guns, sawed-off shotguns, bump stocks, and other particularly dangerous and unusual weapons and their accessories. A person may still, in compliance with other licensing and safe carry laws, conceal carry a semi-automatic firearm with unlimited ability to fire, albeit with the added step of changing magazines for every ten bullets fired. In contrast, reports from mass shootings make clear that any pause in fire, such as the pause to switch magazines, allows for precious seconds in which to escape or take defensive action. This limited possessory restriction is fully congruent with the text and history of the Second Amendment as articulated in *Heller*, *Bruen*, and *Rahimi*.

Courts, including the First Circuit here, are newly engaged in applying this Court's clarifications articulated in *Bruen* and *Rahimi* about the text-and-history test. But the First, Third, Seventh and District of Columbia Circuits have each upheld denials of preliminary injunctions of regulations restricting (among other things) possession of large-capacity magazines (although, at this early stage, the Third Circuit did not reach the merits of

the Second Amendment claims). As the petition in this case demonstrates, Pet. 5-6, 16, there are many unsettled questions of fact that each side will ask these courts to marshal when doing the analogical work this Court has identified. Basic questions, like how many people own large-capacity magazines and how readily standard magazines are available, are not settled on the preliminary record in this case. But cases around the country are proceeding to trial and creating more complete records.

Rhode Island's restriction on large-capacity magazines "comport[s] with the principles underlying the Second Amendment." *United States v. Rahimi*, 144 S. Ct. 1889, 1898 (2024). As an initial matter, it does not burden the Second Amendment rights of anyone because it restricts only magazines—which are an accessory for contemporary firearms, not "Arms" themselves. But even if an examination of the historical tradition of this nation's firearms regulations is necessary to resolve the Second Amendment inquiry, Rhode Island's restriction is right in line, as the First Circuit determined in this case.

Large-capacity magazines include devices that can load fifty rounds or more in rapid succession, allowing semi-automatic rifles to function in ways similar to automatic-fire machine guns. These high-capacity accessories create crime scenes with injuries that are more severe and result in more fatalities. Pet.App.13. Evidence from around the nation also demonstrates that it is almost never the case that more than ten rounds are fired in self-defense, illustrating that large-capacity magazines are not in common use for self-defense today.

Particularly dangerous weapons used overwhelmingly for crime and mass violence, such as sawed-off shotguns,

machine guns, and Bowie knives, have been harshly restricted through regulation. Even in the Founding Era, where there were no such weapons that allowed individuals to inflict mass violence, there were restrictions on gunpowder, which effectively limited self-defense capacity, for public safety purposes (albeit in that case fire). The First Circuit correctly recognized that this historical tradition of regulations that promote safety while protecting instruments used for self-defense is relevantly similar to Rhode Island's regulation, which imposes a relatively mild restriction on a particularly dangerous weapons accessory. It is therefore permissible under the Second Amendment.

Petitioners' Takings Clause claim is unmoored from any of this Court's precedents. Rhode Island's law allows those who possess large-capacity magazines the free choice to transfer, surrender, or modify their magazines to come into compliance. There is no compensable taking here, as every individual may maintain possession of all of their magazines, if modified. Requiring modification for public safety purposes is a bread-and-butter exercise of the state's valid police powers. Exercise of these police powers has long been recognized as not constituting a taking unless absolutely all economic value is taken, a theory the Petitioners have never advanced here.

The First Circuit correctly decided all of the issues presented here. This case presents a poor vehicle for reviewing these issues because it proceeds on a preliminary posture at a time where courts around this country are applying *Bruen* to the cases before them. And, as yet, no disagreement among the federal courts of appeals or a state's highest court has emerged. Certiorari is not warranted.

STATEMENT

I. Rhode Island's Large-Capacity Magazine Restriction

1. In Rhode Island, the Firearms Act has regulated the types of firearms and their accessories that may be lawfully possessed since 1927. It has restricted civilian possession of some weapons that are unusually dangerous, like sawed-off shotguns and machine guns. R.I. Gen. Laws § 11-47-8(a), (b), (e); § 11-47-21 (restrictions on possession of sawed-off shotguns, sawed-off rifles, machine guns, ghost guns, undetectable firearms, any firearm produced by a 3D printing process, bombs, and bombshells).

Throughout this history of possessory restriction, Rhode Island has restricted possession of weapons with specific, large ammunition capacity at various times over the last 100 years. The Firearms Act first defined (and restricted possession of) machine guns as those firearms capable of firing more than twelve shots without reloading, without mentioning the firing mechanism or whether one or more pulls of the trigger were required to fire. 1927 R.I. Pub. Laws 256. Rhode Island continued this restriction-by-capacity, as opposed to categorizing by firing mechanism, until 1975. 1959 R.I. Pub. Laws 260; 1975 R.I. Pub. Laws 738-39.

Rhode Island has, during the same period, also restricted possession of a variety of firearms accessories. These restrictions have included a restriction on possession of silencers, which are broadly defined as a "device for deadening or muffling the sound of a firearm when discharged." R.I. Gen. Laws § 11-47-20. Similarly,

possession of armor-piercing bullets, § 11-47-20.1, and bump stocks, § 11-47-8(d), is restricted.

Currently, Rhode Island does not restrict any class of semiautomatic weapons. Instead, in June 2022, prior to this court's decision in *Bruen*, the Rhode Island General Assembly added large-capacity feeding devices to the list of accessories that are prohibited. *Id.* § 11-47.1-3. It "was not alone in doing so" "[i]n the wake of recent mass shootings, many of which have occurred in schools. . . ." Pet.App.36.

A large-capacity feeding device, also referred to as a large-capacity magazine, is "a magazine, box, drum, tube, belt, feed strip, or other ammunition feeding device which is capable of holding, or can readily be extended to hold, more than ten (10) rounds of ammunition to be fed continuously and directly therefrom into a semi-automatic firearm," but does not include a firearm's "attached tubular device which is capable of holding only .22 caliber rimfire ammunition." R.I. Gen. Laws § 11-47.1-2(2). Like some of the other prohibitions of weapons and accessories in force in Rhode Island, the possessory restriction of large-capacity magazines has exceptions. Not only does it exempt certain tubular magazines, but it also contains exceptions for active-duty police and military otherwise authorized to possess such accessories, along with qualified retired police officers. *Id.* § 11-47.1-2(2); § 11-47.1-3(b)(2)–(3). And, as is evident from the above definition, ammunition feeding devices for weapons like bolt-action rifles and shotguns, which are not semiautomatic because they require manual intervention before they are ready to fire again, are not subject to the restriction. *See id.* § 11-47.1-2(2).

Rhode Islanders who possessed a large-capacity feeding device prior to passage had the option to transfer, sell, or permanently modify the device such that it could hold no more than ten rounds of ammunition and remain in compliance with the law. *Id.* § 11-47.1-3(b). Nothing in the June 2022 law sets limits on the amount of ammunition or number of compliant magazines a person can possess (although Rhode Island does have laws regulating storage, carry, and sale to minors related to ammunition). That is, both before and after the law, a person with the appropriate permit may conceal-carry a semiautomatic handgun with the ability to fire many dozens of rounds of ammunition from an unlimited number of 10-round magazines. The only practical difference is that to use more than ten rounds of ammunition, a shooter will need to switch magazines or reload.

2. The day after this Court's decision in *Bruen*, Petitioners filed the underlying complaint seeking to immediately enjoin the law, challenging the large-capacity magazine restriction under the Second Amendment and the Takings Clause. The District Court denied the request for injunction, noting that "the merits need not be conclusively determined" because at the preliminary injunction stage "decisions are to be understood as statements of probable outcomes only." Pet.App.40 (citation omitted).

Applying *Bruen* and *Heller* to the evidence proffered by the plaintiffs at the preliminary injunction hearing, the District Court found that large-capacity magazines do not meet the textual meaning of "Arms" as that term is used in the Second Amendment. Analyzing the plain text of the Second Amendment as required by *Bruen*, the

court concluded that large-capacity magazines are not themselves weapons because they are not used "in wrath to *cast at or strike* another" Pet.App.62 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008) (emphasis by District Court), but are instead accessories to weapons, like silencers, and "generally have no use independent of their attachment to a gun." Pet.App.62 (citation omitted). Moreover, and again based on evidentiary presentations by both sides, the District Court found that large-capacity magazines are not "in 'common use' *for self defense today*" Pet.App.69 (quoting *Bruen*, 142 S. Ct. at 2143) (emphasis by district court) because both during Reconstruction (when high-capacity weapons were first available in any numbers in the United States) and today, high-capacity weapons have been regarded as weapons appropriate for lawful law-enforcement or military use or criminal conduct, not self-defense.

The District Court also applied black-letter Takings Clause jurisprudence to conclude that Rhode Island's law, offering options for sale, disposal, relocation or modification of newly-defined contraband, did not constitute a taking requiring just compensation. Pet.App.86-88 (collecting cases finding similar new designations of contraband not takings).

Last, the District Court found that Petitioners had not established the other preliminary injunction factors because the harms proffered by plaintiffs were economic or did not impede their ability to keep and bear arms for self-defense. Pet.App.91-93. The District Court also noted that any temporary harm to plaintiffs in awaiting an adjudication on the merits "pales in comparison to the unspeakable devastation caused by mass shooters wildly

spraying bullets without end into a crowd of bystanders." Pet.App.93. And to safeguard any loss of property in the event Petitioners ultimately prevail, the District Court ordered a mechanism for safekeeping of any large-capacity magazines the public chose to surrender to the police. Pet. App.95 n. 45. As such, the District Court declined to grant the extraordinary relief of preliminary injunction.

3. The First Circuit affirmed. Pet.App.2. The First Circuit began its considered opinion by noting that it would "proceed in the manner directed by the Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), *McDonald v. City of Chicago*, 561 U.S. 742 (2010), and most recently in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022)." Pet.App.6. The Court then accurately noted its analysis would require first a consideration of whether "'the Second Amendment's plain text covers' the possession of LCMs," and then a consideration of whether "Rhode Island's ban is 'consistent with this Nation's historical tradition of firearm regulation' and thus permissible under the Second Amendment." Pet. App.6 (quoting *Bruen*, 597 U.S. at 17*)*.

In this instance, the First Circuit found it "unnecessary" to decide whether large-capacity magazines were not "Arms" under that term's plain meaning as used in the Second Amendment because it "assume[d]" that they were covered, and instead went on "to consider whether [Rhode Island's restriction] is consistent with our history and tradition." Pet.App.6-7.

At the start, the First Circuit categorically rejected Petitioners' argument that, because "some multi-shot firearms existed" in the distant past but were unregulated, they cannot be regulated today. Pet.App.7. The Court

pointed out that Petitioners' had conceded (*contra* Pet. 16) that "today's semiautomatic weapons fitted with LCMs" are "more accurate," "capable of quickly firing more rounds," and "substantially more lethal" than "their historical predecessors." Pet.App.7. As such, the Court found "no direct precedent for the contemporary and growing societal concern" about "such weapons" becoming "the preferred tool for murderous individuals intent on killing as many people as possible, as quickly as possible." *Id.* The First Circuit noted that the relative recency of this concern is unsurprising given the historical fact that the United States had not seen a "mass shooting resulting in ten or more deaths" until 1949 and noting that as of 2019, 33 percent of the mass shootings in the last fifty years had occurred since 2010. *Id.* (citation omitted).

The First Circuit turned directly to *Bruen* for guidance in addressing a situation where there is no "directly on-point tradition" because of technological and societal evolution. Pet.App.8. The Court noted that *Bruen* addressed expressly those situations "'implicating unprecedented societal concerns'" and that these situations "may require a more nuanced approach." *Id.* (quoting *Bruen*, 597 U.S. at 27). The First Circuit again correctly identified that it must not "limit [its] consideration" to laws that are "a dead ringer" or "a historical twin" for Rhode Island's restriction. Pet.App.8 (quoting *Bruen*, 597 U.S. at 30.) Instead, the First Circuit recognized that it must employ "analogical reasoning" to determine whether there are "relevantly similar" restrictions in our nation's history with a focus on "*how* and *why* the regulations burden a law-abiding citizen's right to armed self-defense." Pet. App.8, 9 (quoting *Bruen*, 597 U.S. at 29) (emphasis by First Circuit).

In considering the "how" the law may be relevantly similar, the First Circuit analyzed Rhode Island's law by "comparing the 'burden on the right of armed self-defense' imposed by the new regulation to the burden imposed by historical regulations." Pet.App.9 (quoting *Bruen*, 597 U.S. at 29). The First Circuit examined the record in this case and the findings of other courts, concluding that "civilian self-defense rarely—if ever—calls for the rapid and uninterrupted discharge of many shots, much less more than ten." Pet.App.9. The First Circuit rejected the notion that there was a constitutionally relevant burden just because an individual "could imagine Hollywood-inspired scenarios in which a homeowner would need to fend off a platoon of well-armed assailants without having to swap out magazines." Pet.App.11. The Court noted its task is "to ascertain how a regulation actually burdens" the Second Amendment right to self-defense, and that it therefore need not consider "imagined burdens," or even if it did, to accord them much weight, because to do otherwise would be to find a "substantial burden" in every case. *Id.*

The First Circuit then went on to compare the burden imposed by Rhode Island's restriction with long-standing regulations like the ban on sawed-off shotguns, weapons this Court has "deemed unprotected by the Second Amendment"; machine guns; and widespread, effective bans on Bowie knives, which were enacted "in the nineteenth century once their popularity in the hands of murderers became apparent." (Pet.App.11.) It concluded that it is "reasonably clear that our historical tradition of regulating arms used for self-defense has tolerated burdens" that are "certainly no less than the (at most) negligible burden of having to use more than one magazine to fire more than ten shots." Pet.App.12.

The First Circuit continued its analysis by using analogical reasoning to consider whether the "justification" for Rhode Island's regulation was relevantly similar to "why" governments of the past enacted similar regulations. *Id.* The First Circuit identified Rhode Island's justification as a "response" to a "societal concern: that the combination of modern firearms and LCMs have produced a growing and real threat to the State's citizens, including its children." *Id.* The First Circuit considered this justification in the context of justifications of other constitutionally permissible restrictions. First, as for sawed-off shotguns, their regulation began "after they became popular with the 'mass shooters of their day'—notorious Prohibition-era gangsters like Bonnie Parker and Clyde Barrow." Pet.App.15 (citation omitted). Second, the Court examined the justification for restrictions on Bowie knives. It noted that the specific "features" of the Bowie knife made it especially well-suited to "violent crime in the nineteenth century," when Bowie knives "were considered more dangerous than firearms." Pet.App.16. "[S]tates reacted" to a "'nationwide surge of homicides' in the nineteenth century" by "'passing laws severely restricting access to certain dangerous weapons,' including Bowie knives." *Id.* Third, the First Circuit expressly turned to this Court's decision in *Heller* for guidance, drawing the inference that "weapons that are most useful in military service" are outside the ambit of the Second Amendment because "[t]hey are more dangerous, and no more useful for self-defense, than a normal handgun or rifle." Pet. App.17. Last, the First Circuit examined the Founding Era, and found that "Founding-era society faced no risk that one person with a gun could, in minutes, murder several dozen individuals" but was at risk "posed by the aggregation of large quantities of gunpowder, which could

kill many people at once if ignited." Pet.App.19. The First Circuit found that this overriding public safety concern, posed by an especially dangerous weapon, was the same justification for limits on the quantity and storage of gunpowder that were imposed by state regulation at the time. *Id.* The First Circuit next found that the burden imposed by a large-capacity magazine restriction was "*more* modest than founding-era limits on the size of gunpowder containers in that it imposes no limits on the total amount of ammunition that gun owners may possess." *Id.* (emphasis added).

As for the Takings Clause claim, the First Circuit found no likelihood of success. First, the First Circuit distinguished Rhode Island's law from the physical takings at issue in *Horne* and *Loretto* because both cases "involved the government necessarily occupying, taking title to, or physically possessing the relevant item." Pet. App.27. In contrast, Rhode Island's law gives large-capacity magazine owners "the option to sell, transfer, or modify their magazines" and Rhode Island "does not effect a physical taking just because [it] offered to assist . . . owners with the safe disposal of their soon-to-be-proscribed" magazines. *Id.* Next, the Court noted that Petitioners did not even argue that the restriction was a regulatory taking under this Court's precedent in *Lucas*, as they could not—the law, which requires modification of the magazine, is "the very type of use restriction that property owners must 'necessarily expect[ ] . . . from time to time' as states legitimately exercise their police powers." *Id.* (quoting *Lucas*, 505 U.S. at 1027).

REASONS FOR DENYING THE PETITION

The petition should be denied. There is no issue worthy of this Court's attention at this time. Courts around the country are grappling with the identical issue, many on substantially more developed records than this opinion affirming denial of a preliminary injunction on an abridged record. And, as of yet, there has been no conflict among the federal appellate courts on this issue as they in good faith apply this Court's new precedent in *Bruen*.

I. No Criteria for Discretionary Review is Satisfied.

A. There is No Division of Authority to Resolve.

The decision below is not in conflict with any decision of another federal court of appeals or state court of last resort, and therefore certiorari is not warranted. Sup. Ct. R. 10. As highlighted in the petition for certiorari, there is no conflict in the decisions among the federal courts of appeals to have considered challenges to laws restricting possession of large-capacity magazines. Pet. 12-13. In fact, there is no conflict among a broader set of challenges that include challenges to assault weapons, an entire class of semi-automatic weapons that often include the ability to accept large-capacity magazines. All such federal courts have concluded, at least at the preliminary injunction phase, that restrictions on weapons and their accessories that are dangerous and unusual in their potential destructive force are consistent with the text-and-history test as articulated in *Heller*, *Bruen*, and *Rahimi*.

To date, three other appellate courts have preliminarily considered the constitutionality of a possessory restriction on large-capacity magazines since *Bruen*: the Third, Seventh, and District of Columbia Circuits. Each of them declined to precipitously enjoin basic public safety statutes on the challengers' premise that it is somehow without the text and history of the Second Amendment to restrict civilian possession of dangerous and unusual weapons developed for war, while continuing to allow civilians ample access to weapons in common use for self-defense.

The Third Circuit did not reach the merits of the challenge because it concluded the challengers had not demonstrated entitlement to the extraordinary remedy of a preliminary injunction. *Delaware State Sportsmen's Ass'n, Inc. v. Delaware Dep't of Safety & Homeland Sec.*, 108 F.4th 194, 206 (3d Cir. 2024), *petition for cert. filed sub nom. Gray v. Jennings*, No. 92-212 (U.S. Sept. 18, 2024). The Third Circuit noted that the challengers had not even alleged "a time-sensitive need for such guns or magazines" restricted by Delaware's law. *Id.* at 205.

The District of Columbia Circuit closely mirrored the reasoning of the decision of the First Circuit in this case, concluding that the District's 10-round cap on magazine capacity was part of "a relevant historical tradition" that "is based upon the regulation of weapons that are particularly capable of unprecedented lethality." *Hanson v. D.C.*, No. 23-7061, 2024 WL 4596783, at *9 (D.C. Cir. Oct. 29, 2024). The Court perceived this tradition on the historic regulation of Bowie knives and sawed-off shotguns, just as the First Circuit did. *Id.* at 8-9. And, like the Third Circuit, the District of Columbia Circuit also found that the plaintiff in that case had not shown

entitlement to the "extraordinary remedy" of preliminary injunction that would "effectively grant him the same relief he would obtain at the end of trial before that trial even starts." *Id.* at *13.

The Seventh Circuit, like the District of Columbia, the Third, and the First, affirmed the District Court's denial of preliminary injunctive relief. It reasoned that "assault weapons and high-capacity magazines are much more like machineguns and military-grade weaponry than they are like the many different types of firearms that are used for individual self-defense" and are therefore not within the textual definition of "Arms" protected by the Second Amendment. *Bevis v. City of Naperville, Illinois*, 85 F.4th 1175, 1195 (7th Cir. 2023), *cert. denied sub nom. Harrel v. Raoul*, 144 S. Ct. 2491 (2024). The Seventh Circuit also went on to analyze the restrictions using *Bruen*'s historical tradition test, and, again similar to the First Circuit, concluded that the laws are consistent with "a long tradition, unchanged from the time when the Second Amendment was added to the Constitution, supporting a distinction between weapons and accessories designed for military or law-enforcement use, and weapons designed for personal use." *Id.* at 1202.

Additionally, the Fourth Circuit, sitting en banc, recently reconsidered a summary decision in a pre-*Bruen* challenge to Maryland's assault weapons possessory restriction. While the decision is not directly on point, because it considers only assault weapons, the challenged Maryland law does include the ability to accept large-capacity magazines as a feature of the prohibited weapons. The Fourth Circuit faithfully applied the standard first articulated in *Heller*, finding that at least some of

the weapons proscribed by the Maryland statute were "weapons 'most useful in military service' with firepower far exceeding the needs of the typical self-defense situation." *Bianchi v. Brown*, 111 F.4th 438, 453 (4th Cir. 2024), *petition for cert. filed sub nom. Snope v. Brown*, No. 24-203 (U.S. Aug. 23, 204) (quoting *Heller*, 554 U.S. at 627). Therefore, the Fourth Circuit concluded those weapons "do not fit within the Second Amendment's ambit and thus 'may be banned.'" *Id.* (same); *see also id.* at 454-59 (applying same analysis to AR-15s).

All of the federal courts of appeals to consider the issue of possessory restrictions on large-capacity magazines after *Bruen* have concluded that these restrictions withstand Second Amendment challenge. Petitioners here do not disagree; they identify no instance of any appellate court that has decided differently than the First Circuit. Pet. *generally*. Petitioners simply do not like the emerging consensus of the federal appellate courts.

In addition to these relevant, converging federal appeals court opinions, there are a number of very similar challenges proceeding in federal and state courts around the country. Some of these challenges are in a preliminary posture similar to this case and some are proceeding on full summary judgment or trial records. *Capen v. Campbell*, No. 24-1061 (1st Cir.) (argued Oct. 7, 2024); *Grant v. Lamont*, No. 23-1344 (2d Cir.) (argued Oct. 16, 2024); *Nat'l Ass'n of Gun Rights v. Lamont*, No. 23-1162 (2d Cir.) (argued Oct. 16, 2024); *Vt. Fed'n of Sportsmen's Clubs v. Birmingham*, No. 24-2026 (2d Cir.); *Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Attorney General New Jersey*, No. 24-2415 (3d Cir.); *Viramontes v. County of Cook*, No. 24-1437 (7th Cir.); *Fitz v. Rosenblum*, Nos. 23-35478, 23-35479, 23-35539, 23-35540 (9th Cir.); *Miller*

v. Bonta, No. 23-2979 (9th Cir.) (argued Jan. 24, 2024); *Duncan v. Bonta*, No. 23-55805 (9th Cir.) (argued Mar. 19, 2024); *Rupp v. Bonta*, No. 24-2583 (9th Cir.); *Washington v. Gator's Custom Guns, Inc., et al.*, No. 102940-3 (Wash.).

This "crucible of adversarial testing" "could yield insights (or reveal pitfalls)" that this Court may wish to factor into any future consideration of the application of *Bruen* to these issues. *Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring in part and concurring in the judgment); *see also*, *e.g.*, *United States v. Mendoza*, 464 U.S. 154, 160 (1984) (discussing the importance of "the benefit" of having several courts of appeals "explore a difficult question before" a grant of certiorari). As of this brief 's filing, there is agreement that state restrictions on civilian possession of large-capacity magazines are compatible with the text and history of the Second Amendment, and there is no need for this Court's intervention to resolve any dispute. Granting review now could deprive the Court of unknown advantages from the flurry of activity regarding these issues in the appellate courts.

B. The Interlocutory Posture of this Case Makes it a Poor Vehicle for Review.

Even where "there is no barrier" to the Court's review of a case, when the issues on review are in "an interlocutory posture," they are "better suited for certiorari review" after judgment is final. *Abbott v. Veasey*, 137 S. Ct. 612, 613 (2017) (Roberts, C.J., statement denying cert.); *see also Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024) (Thomas, J., statement denying cert.) (Court is "rightly wary of taking cases in an interlocutory posture.").

Here, the District Court and the First Circuit focused on the interlocutory posture of the case, which arrived on appeal from the denial of a preliminary injunction. The First Circuit appropriately noted that its review was cabined due to the preliminary nature of the proceedings in the District Court, and that therefore it would apply the "deferential standard" of "abuse of discretion" review. Pet.App.4. The District Court had found that the public interest weighed in favor of the State because "the LCM ban promotes public safety" and because plaintiffs had failed to identify "'the kind of irreparable harm required for a preliminary injunction to issue.'" Pet.App.5 (citation omitted).

Moreover, the interlocutory nature of this appeal means it proceeds on a less-than-developed factual record. For example, the petition contains a number of references to "hundreds of millions" of magazines currently in civilian hands, none of which cite to the record in this case. *Compare* Pet. i, 5-6, 16, 35; App. Br. at 37 (Apr. 10, 2023) (citing various, non-peer reviewed publications) *with* Docs. 8, 22, 22-1, 23, 32 (no such evidence). These statistics about large-capacity magazine ownership in contemporary society have been hotly contested in other district courts given the opportunity to consider the matter. *E.g. Oregon Firearms Fed'n v. Kotek*, 682 F. Supp. 3d 874, 895 (D. Or. 2023) (giving precursor National Shooting Sports Foundation (NSSF) survey "little weight"); Nat'l Assoc. for Gun Rights (@NatlGunRights), X.com (Aug. 12, 2024 12:52PM), https://x.com/NatlGunRights/status/1823039844677042220 (statement by plaintiff in Colorado case that NSSF refused to make its researcher available for deposition, resulting in voluntary dismissal of the case). Additionally, below, Petitioners did not make

any evidentiary showing regarding specific magazines and their function, despite leaning on assertions that certain firearms require certain magazines as a lynchpin of their argument. *Compare* Pet. 14-15 *with* Docs. 8, 22, 22-1, 23, 32; *see also* Pet.App.67 n. 29 (granting defendants' motion to exclude affidavit of William Worthy, Doc. 23). Even when a court is considering legislative, as opposed to adjudicative facts, adversarial fact-finding can be of use to aid appellate review, especially when the facts at hand are complicated or require expert review, such as statistical modeling. *See, e.g., Borden's Farm Prod. Co. v. Baldwin*, 293 U.S. 194 (1934) (remanded to the trial court to take evidence on economic conditions and trade practices underlying law).

These deficits in the factual record may be cured by allowing this case to proceed in the District Court, or by waiting for this issue to be presented on a fully-developed record in another case. For example, after this Court's recent denial of certiorari in the consolidated cases in *Bevis*, proceedings re-commenced in *Barnett v. Raoul*, 23-209 (S.D. Ill.), culminating in a four-day bench trial with extensive development of the factual record, including evidentiary disputes about the same survey evidence discussed above. *See id.* at Doc. 223. As these proceedings play out before the trial and appellate courts, including proceedings regarding expert testimony, *Daubert* challenges, and other matters, there will be additional development in the application of the standards articulated in *Heller*, *Bruen*, and *Rahimi* that this Court may find helpful in any ultimate consideration of the issue of large-capacity magazine restrictions.

C. This Case Presents Alternate Grounds for Affirmance.

The preliminary posture of this case also means there are multiple, alternate grounds for affirmance. The First Circuit specifically found that plaintiffs did not challenge the District Court ruling regarding the other factors relevant to its denial of a preliminary injunction, and instead "rest[ed] their appeal on the argument that they are likely to prevail on the merits. . . ." Pet.App.6. While the First Circuit then "focus[ed its] review accordingly," *id.*, these issues are still present and provide alternate grounds for affirmance.

As such, an immediate additional issue is whether Petitioners meet the requirements for preliminary injunction. Because a preliminary injunction is "'an extraordinary remedy never awarded as of right,'" it "does not follow as a matter of course from a plaintiff's showing of a likelihood of success on the merits." *Benisek v. Lamone*, 585 U.S. 155, 158 (2018) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). Were certiorari to be granted in this case, Respondents would renew their arguments on the remaining preliminary injunction factors. These arguments are alternate grounds for affirmance. For example, Petitioners expressly argued before the First Circuit that irreparable harm consisted solely of the alleged deprivation of their Second Amendment right *and* that the public interest factor also merged with the underlying merits of their claim. App. Br. at 61 (Apr. 10, 2023). But this Court has not ever recognized such a principle of complete merger of the preliminary injunction factors even when important constitutional rights are at stake. By contrast, it has applied the other preliminary injunction factors as determinative even in

certain instances where plaintiffs press, for example, First Amendment theories. *Benisek*, 585 U.S. at 157-58 (affirming district court's denial of preliminary injunction on equitable factors in case where plaintiffs advanced a claim of First Amendment retaliation); *cf. Elrod v. Burns*, 427 U.S. 347, 373 (1976) (irreparable harm existed where deprivation of First Amendment rights had occurred and was presently ongoing and affecting plaintiffs' current conduct). Adopting Petitioners' theory would collapse *Winter*'s four-factor test for all claims where constitutional rights are at stake, allowing injunctions to issue at a preliminary stage in large numbers of cases as a matter of course, just by showing some likelihood of success on the merits.

In addition, the First Circuit did not address the District Court's determination that large-capacity magazines are not "Arms." Respondents have argued, and would continue to argue, that large-capacity magazines are nothing more than firearms accessories, which do not fall within the plain meaning of "Arms" as that term is used in the Second Amendment. Below, Respondents marshalled significant historic textual evidence to demonstrate that weapons accessories, including ammunition and ammunition feeding devices, were not included in the term "Arms." The evidence of usage is drawn from dictionaries, newspapers, legal documents, and other primary sources. Doc. 19-7 (discussing the many sources treating separately "arms" and "accoutrements"). As the District Court noted, "magazines themselves are neither firearms nor ammunition. They are *holders* of ammunition, as a quiver holds arrows, or a tank holds water for a water pistol, or a pouch probably held the stones for David's sling." Pet.App.63.

Being only accessories, large-capacity magazines are not "weapons of self-defense." Pet.App.69. The District Court did not even find "a link" between large-capacity magazines and "the use of firearms for self-defense," *id.*, in Petitioners' filings below, instead highlighting contemporary and historic evidence that high-capacity firearms have rarely if ever been used in self-defense and have instead been regarded as military or criminal weapons. Pet.App.65-69. These threshold issues present alternate grounds that would need to be decided.

Moreover, Petitioners failed to show that Rhode Island's restriction is unconstitutional in all its applications. In a Second Amendment challenge, "to prevail, the Government need only demonstrate that [the regulation] is constitutional in some of its applications." *Rahimi*, 144 S. Ct. at 1898. Here, Petitioners bring a facial challenge raising extremely fact-specific arguments regarding types of large-capacity magazines, types of weapons that accept certain types of magazines, and the prevalence of ownership of these magazines and weapons, but do not address 30-, 50-, or 100-plus-round magazines. Pet. 5-6. In contrast, Respondents demonstrated that the law applied to "drum" magazines, R.I. Gen. Laws § 11-47.1-2(2), which are commercially available in, for example, 50-round configurations (and beyond) that enable semi-automatic weapons to function in ways indistinguishable from constitutionally-banned machine guns. *See* Doc. 19 at 25 (citing Magpul, *Magpul—3 Drums*, YOUTUBE (Apr. 5, 2022), https://www.youtube.com/watch?v=vmcCBuIg0g8.). Even Petitioners cede there "'may well be some capacity above which magazines are not in common use.'" Pet. 6 (quoting *Heller v. District of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011)). Because

there are such magazines, and because Petitioners do not seem to argue (because they cannot, given this Court's approval of bans of machine guns and sawed-off shotguns) that items not in common use implicate the Second Amendment, Petitioners' facial challenge cannot succeed. Moreover, this Court would need to address this issue in the first instance, as neither the District Court nor the First Circuit addressed the facial nature of Petitioners' challenge.

These alternative arguments would also need to be resolved if certiorari were granted.

D. This Court should reject Petitioners' urgings to depart from its usual criteria.

Petitioners would have this Court depart from its usual practice and take this case now, at this early stage, based largely on a manufactured narrative that there is "open hostility" to this Court's *Bruen* decision. Pet. 32. Not so; both courts here faithfully applied this Court's tests articulated in *Heller* and *Bruen*. *See infra* Part II.

As for any purported departure by the Seventh Circuit, this Court declined to grant certiorari in that very case. Moreover, Petitioners' point hinges on the bizarre argument that the Seventh Circuit "rejected a challenge to a magazine ban without so much as mentioning text or historical tradition" (Pet. 33) when the very page cited by Petitioners contains the heading "Historical Tradition" and the Seventh Circuit's accurate recitation of the relevant test from *Bruen*, including a lengthy discussion of the role of analogical reasoning in its analysis of comparable regulations. *Bevis*, 85 F.4th

at 1197-1202. Petitioners' criticism of the Third Circuit's decision affirming denial of a preliminary injunction is perhaps even more puzzling because the Third Circuit did not address the merits at all, but merely applied this Court's long-settled precedents with respect to injunction factors. *Del. State Sportsmen's Ass'n*, 108 F.4th at 206.

As for criticism of the Fourth Circuit's and Ninth Circuit's recent decisions to take certain cases en banc, these actions are well within the application of Federal Rule of Appellate Procedure 35. That is, in granting *sua sponte* rehearing en banc in *Bianchi v. Brown* (*see* No. 21-1255, 2024 WL 163085 (4th Cir. Jan. 12, 2024)), the Fourth Circuit was able "to secure or maintain uniformity of the court's decisions" with the other Second Amendment case it had agreed to hear en banc, *Maryland Shall Issue, Inc. v. Moore*, No. 21-2017 (L), 2024 WL 124290 (4th Cir. Jan. 11, 2024). Fed. R. App. P. 35. And the Ninth Circuit is similarly empowered to use its en banc proceedings to eliminate any inter-circuit conflict in the law it perceives. *Id.* Neither action represents any departure from this Court's pronouncements in *Bruen*. If anything, Petitioners' criticism of each of these other decisions, none of which are the subject of this petition, only emphasizes the uniformity in the courts of appeals and the lack of any circuit split.

What is "remarkable" (Pet. 33) are Petitioners' efforts to contort the careful work of four federal Courts of Appeals to apply *Bruen*'s "text-and-history" test to urgent social problems of today as defiance, especially when two of the courts have rendered no decision on the merits and one was not even faced with the issue presented in this case. This Court should reject that reasoning and allow

the federal appellate courts to address these issues in the normal course and on full records.

II. The Decision Below is Consistent with *Bruen* and *Heller*.

This Court should deny certiorari for the additional reason that the decision below is consistent with and correct under *Bruen* and *Heller*. The First Circuit hewed to the text-and-tradition test for determining constitutionality of firearms restrictions under the Second Amendment set forth by this Court in *Bruen*, as well as the guidance this Court gave in *Heller* in how to evaluate the Second Amendment's application to regulation of weapons or other objects that are asserted to be "Arms" under the Second Amendment.

A. Large-Capacity Magazines are Not "Arms."

At the outset, the First Circuit correctly identified that *Bruen* presented a threshold inquiry "whether 'the Second Amendment's plain text covers' the possession of LCMs." Pet.App.6 (quoting *Bruen*, 597 U.S. at 17). The First Circuit found it "unnecessary to decide" this inquiry, which the District Court had answered in the negative, and instead assumed that large-capacity magazines *are* covered by the Second Amendment for the purposes of its opinion. Pet.App.6-7.

But large-capacity magazines are not "Arms," and are not in common use for self-defense today. "Like most rights, the right secured by the Second Amendment is not unlimited" and is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for

whatever purpose." *Bruen*, 597 U.S. at 81 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 626). "The Second Amendment's plain text thus presumptively guarantees . . . a right to 'bear' *arms* in public for *self-defense*." *Bruen*, 597 U.S. at 33 (emphasis added). Therefore, the Second Amendment does not protect a right to carry "'dangerous and unusual weapons'"; it only reaches those weapons "in 'common use' for self-defense today." *Id.* at 47 (quoting *Heller*, 554 U.S. at 627).

The Second Amendment extends only to "instruments that constitute bearable arms." *Bruen*, 597 U.S. at 28. Because large-capacity magazines are not "Arms," they do not fall within "the Second Amendment's plain text." *Id.* at 24. As *Heller* noted, the "object" of an individual's Second Amendment right is "Arms." 554 U.S. at 581. But large-capacity magazines are not "Arms," as the term "Arms" was understood at the Founding or at the ratification of the Second or Fourteenth Amendments. *Id.* ("The 18th-century meaning is no different from the meaning today.").

Heller consulted 18th-century sources defining arms as "'[w]eapons of offence, or armour of defence'" and "'any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another.'" *Id.* (quoting Samuel Johnson, 1 *Dictionary of the English Language* 106 (4th ed. 1773) (reprinted 1978) and Timothy Cunningham, 1 *A New and Complete Law Dictionary* (1771), respectively). Samuel Johnson's dictionary further defines "weapon" as an "[i]nstrument of offence; something with which one is armed to hurt another." Samuel Johnson, 2 *Dictionary of the English Language* (4th ed. 1773).

In 1778, the difference between weapons and the accessories needed to use those weapons was clear to writers. In that year, the Continental Congress promised the colonies it would reimburse for " . . . [e]very horse and all arms and accoutrements, which shall be taken, by the enemy in action. . . ." Congress Undertakes to Raise a Cavalry Corps., *in* 2 *Public Papers of George Clinton, First Governor of New York* 827–28 (Wynkoop Hallenbeck Crawford Co. ed., 1900). Yet the Second Amendment refers only to "Arms," a term that does not naturally encompass accessories like magazines, ramrods, powder horns, bandoliers or cartridge boxes. As the District Court noted, large-capacity magazines "are *holders* of ammunition," not weapons in and of themselves. Pet.App.63.

Petitioners' insistence that large-capacity magazines are "integral" to the functioning of semi-automatic firearms (Pet. 14-15) is not only factually unsupported, but its logic does not hold up. At the District Court, Petitioners did not provide a single example of a firearm that could not be fired without a large-capacity feeding device. They cannot; if a round is chambered *by any means*, a firearm will fire. Moreover, any component part of a machine, if installed, is *integral* to the machine's working, but does not transform that part into the machine itself. Take, for example, the bicycle gear—a gear is not a bicycle in any use of the English language. Yet, when a bicycle is *geared*, the gear is integral to the workings of a bicycle. But there of course remain perfectly functional bicycles with no gears. This is how our language works, and at the Founding, ample textual evidence of usage at the time demonstrates that the term "Arms" did not encompass firearms accessories.

The Second Amendment extends only to an individual's right to keep and carry "arms," and does not protect a right to carry "dangerous and unusual weapons"; it only reaches those weapons "in 'common use' for self-defense today." *Bruen*, 597 U.S. at 47 (quoting *Heller*, 554 U.S. at 627). The focus is on *use* rather than mere *ownership* of arms—*Bruen* repeatedly says so. *See*, *e.g.*, *Bruen*, 597 U.S. at 38 (referring to "commonly *used* firearms for self-defense") (emphasis added); *id.* at 47 (noting handguns are "indisputably in 'common *use*' for self-defense today") (emphasis added); *id.* at 70 (describing the "right to bear commonly *used* arms in public subject to certain reasonable, well-defined restrictions") (emphasis added); *see also Heller*, 554 U.S. at 636 (striking down an "absolute prohibition of handguns held and *used* for self-defense") (emphasis added).

But what constitutes common use for self-defense today has never been established for large-capacity magazines. Local law enforcement "unearthed no incidents 'in which a civilian has ever fired as many as 10 rounds in self-defense.'" Pet.App.10. The First Circuit found generally a "lack of evidence" that large-capacity magazines are "used in self defense." *Id.* With no textual evidence that the Second Amendment was meant to extend to dangerous weapons accessories and no evidence that large-capacity magazines are used for self-defense, there is no merit to Petitioners' argument that mere numerosity of possession (assuming Petitioners could factually demonstrate it) grants Second Amendment entitlement to a particular weapons accessory.

B. Restrictions on Large-Capacity Magazines Are Consistent with The Nation's Historical Tradition of Firearm's Regulation.

Consistent with *Bruen*, the First Circuit went on to "consider whether Rhode Island's ban is 'consistent with this Nation's historical tradition of firearm regulation' and thus permissible under the Second Amendment." Pet. App.6 (quoting *Bruen*, 597 U.S. at 17). Even assuming, as the First Circuit did, that magazines are "Arms," because the historical record is replete with analogous regulations banning weapons and their accessories that are most often used outside the context of self-defense, the First Circuit found that Rhode Island's regulation was consistent with the tradition.

The First Circuit recognized that its inquiry was limited to regulations that are "relevantly similar," which it explained as an examination of "'*how* and *why* the regulations burden a law-abiding citizen's right to armed self-defense.'" Pet.App.9 (quoting *Bruen*, 597 U.S. at 29) (emphasis in First Circuit). As explained above, there is no burden on the right to armed self-defense because large-capacity magazines are not used for self-defense except in rare instances. *See also* Pet.App.9. The First Circuit thus concluded that the "how" of the regulatory burden in this case equates to "no meaningful burden on the ability of Rhode Island's residents to defend themselves." Pet.App.10-11. The First Circuit then identified similar restrictions that "effectively banned" machine guns, and were "severe" regarding the possession of Bowie knives. Pet.App.11.

As for the "why," the First Circuit found multiple historic examples, specifically sawed-off shotguns and Bowie knives, where "legislators responded to a growing societal concern about violent crime by severely restricting the weapons favored by its perpetrators, even though those same weapons could conceivably be used in self-defense." Pet.App.16-17. This is exactly the type of "analogical reasoning" *Bruen* contemplated—a comparison of historic regulation that burdened the Second Amendment right in a similar manner in response to similar concerns. The First Circuit extended this reasoning to the historic distinction that arises between weapons with features useful for the military and useful for civilian defense. Pet.App.17-18.

Additionally, the First Circuit thought about the very specific limitation a large-capacity magazine restriction places on the number of rounds that can be fired without reloading and found an historic analogue in early gunpowder storage laws, that were meant to prevent mass casualty in cities at the Founding. Pet.App.19. As *Rahimi* recently confirmed, "if laws at the founding regulated firearm use to address particular problems, that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations." 144 S. Ct. at 1898. That *Bruen* disapproved of gunpowder storage laws as a relevantly similar analogue in that case does not preclude these laws from being instructive in evaluating regulations like this one that condition, but do not extinguish, access to unlimited firepower. *Rahimi* observed that just because "focused regulations . . . are not a historical analogue for a broad prohibitory regime like New York's does not mean that they cannot be an appropriate analogue

for a narrow one." *Id.* at 1902. Here, Rhode Island's restriction is incredibly narrow, applying only to a class of firearms accessory, not ammunition, and allows unlimited magazines and unlimited bullets, as long as each magazine is limited to ten bullets—requiring a shooter to reload for each ten shots fired. This slight pause has a negligible burden on anyone's Second Amendment rights, but may give "'two or three seconds [when] a child—or two children, or even three—may escape the fire of a mad person.'" Pet.App.14 (citation omitted).

III. The Decision Below Correctly Found No Takings Clause Violation.

There is also no certiorari-worthy question lurking in the First Circuit's mundane application of settled Takings Clause precedent to Rhode Island's law. By ignoring the myriad other ways in which regulations impose non-confiscatory restrictions on personal property items, Petitioners perceive a Takings Clause violation in the requirement to modify, transfer, or dispose of their personal property to come into compliance with Rhode Island law. To hear Petitioners tell it, the government owes compensation each time a new designer club drug is added to a state's controlled dangerous substance schedule, or a state adds a safety-necessary "must repair" item to the vehicle inspection checklist. But contrary to this flawed logic, states may engage in reasonable regulation, especially of personal property, when economic value is retained, even if that property must be modified.

A. Rhode Island's Law is Not a Taking Under the Takings Clause.

Contrary to Petitioners' assertions, Pet. 30-31, the valid police power doctrine does not merely set forth which kinds of takings are permissible. As the District Court noted, "[m]ore than a century ago," (Pet.App.72) this Court recognized an important distinction—that instances where the government exercises the police power to effect "destruction of property which is itself a public nuisance, or the prohibition of its use in a particular way" is "very different from taking property for public use." *Mugler v. Kansas*, 123 U.S. 623, 669 (1887). As such, valid exercises of the police power should not be "burdened with the condition that the state *must compensate* such individual owners for pecuniary losses they may sustain, by reason of their not being permitted, by a noxious use of their property, to inflict injury upon the community." *Id.* at 669 (emphasis added). *Mugler* was this Court's "early formulation of the police power justification necessary to sustain (without compensation) *any* regulatory diminution in value." *Lucas*, 505 U.S. at 1026.

It is under this principle that the First Circuit determined that Rhode Island's law did not mandatorily shift possession or title in property nor did it commit a physical invasion—under Rhode Island's law, individuals may transfer or surrender their magazines but they may also retain and modify their magazines. The law therefore does not fall under this Court's physical takings jurisprudence like *Horne v. Department of Agriculture*, 576 U.S. 350 (2015) (title of raisins) and *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982) (physical invasion). And Petitioners have not made

a case that they meet the requirements of *Lucas* (Pet. 31.), which requires total deprivation of economic value. 505 U.S. at 1026 (1992) (*total* regulatory takings must be compensated). Moreover, Petitioners are incorrect that they possessed large-capacity magazines free and clear of a need to conform with reasonable safety laws requiring modifications before the law. Here, Petitioners can keep possession of and title to all of their magazines by modifying their capacity.

Just as the state does not pay compensation when a particular chemical is added to the schedule of controlled substances, the state can require safety modifications for personal property without paying just compensation.

B. Petitioners' Compensation-Only Theory Presents Meritless and Thorny Issues Not Considered Below.

Because of the preliminary posture of this case, proceeding on a record where no dispositive motion has yet been filed, the District Court and First Circuit were not presented with full argument related to the State's affirmative defense of sovereign immunity regarding the Takings Clause claims. *See* Doc. 21 (Answer to Amended Compl.). But this affirmative defense poses yet another barrier to adjudication here. When recently presented with another original demand for just compensation from a state proceeding in the first instance in federal court, this Court deferred to available state court remedies. *DeVillier v. Texas*, 601 U.S. 285 (2024).

"[C]onstitutional concerns do not arise when property owners have other ways to seek just compensation." *Id.* at

292. As this Court recently reiterated, "[w]e should not 'assume the States will refuse to honor the Constitution,' including the Takings Clause, because 'States and their officers are [also] bound by obligations imposed by the Constitution.'" *Id.* at 293 (quoting *Alden v. Maine*, 527 U.S. 706, 755 (1999). This Court did not address whether the Takings Clause required just compensation in *DeVillier* because "Texas state law provides a cause of action by which property owners may seek just compensation against the State." *DeVillier*, 601 U.S. at 293.

This case has the same features as those presented in *DeVillier*. Despite their litany of complaints related to lack of compensation, Petitioners have never sought or attempted to seek just compensation for any purported loss in value to their personal property (which, again, may be retained and used as long as it is modified to comply with the law, a step achievable with commercially available kits, *e.g.*, Magblocks, *Glock Pistol Magblock Magazine Capacity Limiter*, https://www.magazineblocks.com/magento/products/magblock-kits/glock-pistol-limiter-kit-retail-3-pack.html (last visited November 4, 2025)). Rhode Island provides such a cause of action that may be brought in Rhode Island state court. *Marek v. Rhode Island*, 702 F.3d 650, 654 (1st Cir. 2012) (holding that Rhode Island courts recognize an inverse condemnation remedy that "constitutes an adequate procedural pathway to just compensation" for alleged takings).

Petitioners' Takings Clause contentions would require this Court to upend precedents regarding the treatment of personal property recently declared contraband, and run contrary to *DeVillier*, where this Court recently declined, in favor of state courts, to adjudicate the same

type of claim regarding availability of just compensation. Petitioners' continued press of their Takings Clause claims presents meritless arguments that would unnecessarily consume court resources, which is an additional reason this case is a poor candidate for certiorari.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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November 5, 2024