No. 24-131

In the
Supreme Court of the United States

OCEAN STATE TACTICAL, LLC, et al.,
Petitioners,
v.
STATE OF RHODE ISLAND, et al.,
Respondents.

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

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF

Bruen should have served as a clarion call that it was time for states to reevaluate their restrictions on arms-bearing conduct. Yet rather than respect the judgments of this Court and the framers, Rhode Island thumbed its nose at both, newly banning ammunition feeding devices that millions of law-abiding citizens have long chosen for self-defense. The district court blessed that act of legislative defiance and then did the state one better, deriding this Court's Second Amendment jurisprudence as "wrong," "ill"-conceived, and "of little help." And the First Circuit dismissed this Court's cases as lacking "common sense."

Remarkably, respondents contend that the real problem is that the First Circuit did not go even further and hold that a ban on integral components of firearms owned by tens of millions of Americans does not implicate the Second Amendment at all. By that (il)logic, the government could ban operative firearms entirely—as respondents all but admitted by taking the extraordinary position below that a ban on triggers would not implicate the Second Amendment either. Respondents' felt-need to continue to resort to such extreme positions speaks volumes about their confidence in the reasoning the First Circuit *did* embrace—and about just how far Rhode Island's ban strays from our Nation's historical traditions.

Respondents are left asking this Court to wait patiently for a circuit split while a handful of states continue to chip away at Second Amendment rights. But delay is rarely a virtue when fundamental rights hang in the balance. And kicking the can down the road would be particularly perverse here, as it would

signal that states and lower courts are free to continue disregarding this Court's precedents when it comes to the Second Amendment. A decade's worth of now-discarded "two-step" cases ought to suffice to show how that will turn out. This Court's intervention at this juncture is not just warranted, but imperative.

I. This Court Should Resolve Whether States May Ban Commonly Owned Arms.

This Court has repeatedly held that the Second Amendment protects the right to keep and carry arms that are "in common use today" for lawful purposes, *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 47 (2022), and that the government may not flatly ban what the Second Amendment protects, *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008). That is the irreducible minimum of the Second Amendment: "Whatever the reason" a class of arms is widely "chosen by" law-abiding Americans, "a complete prohibition of" arms "in common use" for lawful purposes "is invalid," full stop. *Heller*, 554 U.S. at 627, 629; *Bruen*, 597 U.S. at 17, 27.

Discontented with that precedent, and with the Nation's historical tradition of *protecting* the right to keep and bear common arms, the First Circuit simply discarded them. In its view, "common sense" dictates that a state may flatly ban even extraordinarily common and long-lawful arms, so long as it decides (and can convince some judges) that the people's perception of their "usefulness for self-defense" is mistaken, and that those arms pose special dangers in the hands of criminals. Pet.App.22-25. But it is not open to the government (or the courts) to try to address crime by disarming the potential victims. The

framers struck a different balance in the Second Amendment, and that balance "demands our unqualified deference." *Bruen*, 597 U.S. at 26.

Respondents' efforts to defend the First Circuit's decision fall flat. They begin by insisting that the court did not go far enough in their favor, faulting it for "assum[ing]" (albeit without deciding) that magazines are "Arms" presumptively protected by the Second Amendment's plain text. Pet.App.6-7. In respondents' view, magazines are just "accessories," not "weapons in and of themselves," and so are outside the scope of the Second Amendment entirely. BIO.27. Nonsense. People do not want magazines for their own sake; they want them to use in their firearms, to enable them to fire multiple rounds semiautomatically. The Second Amendment's "definition of 'arms'" covers all bearable "instruments that facilitate armed self-defense," *Bruen*, 597 U.S. at 28, and a firearm equipped with a magazine that enables it to fire as intended plainly fits that bill.

Indeed, even respondents concede that magazines are "*integral* to [a firearm's] working" "if installed"; they just claim that the state may ban them because they are not "the machine itself." BIO.27. But "the machine itself" is the summation of its parts, so the protection to which it is entitled encompasses each of those parts. "To hold otherwise would allow the government to sidestep the Second Amendment with a regulation prohibiting possession at [a] component level." *Hanson v. District of Columbia*, 120 F.4th 223, 232 (D.C. Cir. 2024). Respondents admitted as much below, making the remarkable argument that even a ban on triggers would not implicate the Second

Amendment. That respondents must resort to such nonsensical extremes to defend Rhode Island's magazine ban is telling.

When respondents finally get around to trying to defend the First Circuit's actual reasoning, they succeed only in highlighting its problems. Respondents parrot the First Circuit's claim that what the people choose to keep and bear makes no difference, and that no arm is in "common use" unless it is commonly fired in self-defense situations. BIO.28; *see* Pet.App.20-21. That defies not only *Bruen* and *Heller*, but the Second Amendment's text, which secures the right to "keep and bear Arms," not just a right to fire them in self-defense situations. Once again, respondents' contrary position produces nonsensical results, as people rarely fire *any* firearm in self-defense. They instead "use" their firearms for self-defense by keeping them and "being armed and ready for offensive or defensive action in a case of conflict with another person." *Bruen*, 597 U.S. at 32.

Respondents' cramped conception of "use" is also refuted by the very passage on which it relies. *Bruen* juxtaposed the phrase "weapons that are those 'in common use at the time'" with the phrase "those that 'are highly unusual in society at large.'" *Id.* at 47. That juxtaposition makes sense only if the "uses" that matter include keeping and bearing, as the latter phrase ("are highly unusual") is nonsensical vis-à-vis a frequency-of-firing inquiry. Indeed, *Bruen* held that citizens have a fundamental right to carry handguns outside the home for self-defense *without ever asking how frequently people fire them in actual self-defense situations*. It sufficed in *Bruen*, just as it did in *Heller*,

that "handguns are the most popular weapon chosen by Americans for self-defense." *Heller*, 554 U.S. at 629; *see also Bruen*, 597 U.S. at 47.

That should have sufficed here too. To be sure, ammunition feeding devices are not handguns. But the only meaningful difference is that so-called "LCMs" are *an order of magnitude* more common than even the most common handgun. *See* Pet.5-6, 15-16.

Turning to history, respondents contend that *United States v. Rahimi*, 144 S.Ct. 1889 (2024), somehow compels the conclusion that founding-era "gunpowder storage laws [are] relevantly similar" to a flat ban on common arms. BIO.30. That would have required the Court to overrule not just *Bruen*, but *Heller*, which concluded that those very same gunpowder-storage laws were "fire-safety" measures that did "not remotely burden the right of self-defense as much as an absolute ban" on common arms. 554 U.S. at 632. *Rahimi* offers not the slightest hint that it meant to so radically rework the Court's Second Amendment jurisprudence. Respondents' reliance on prohibitions on sawed-off shotguns and machine guns, BIO.29-30, fares no better, as prohibitions on *un*common arms are plainly not relevantly similar to a ban on arms chosen by millions of law-abiding Americans. And the notion that a complete "possessory" ban on an entire class of arms is "incredibly narrow," BIO.31, blinks reality.

Respondents' efforts to defend the First Circuit's (mis)application of *Bruen*'s "how" and "why" inquiries fall equally flat. Respondents echo the court's claim that a ban on common arms imposes "no meaningful burden" on the right to keep and bear arms because

citizens do not often fire more than ten rounds in self-defense situations. BIO.29 (quoting Pet.App.10-11). But anyone who has ever actually faced (or even contemplated) such a situation well knows that "every round matters in a self-defense scenario." *Barnett v. Raoul*, 2024 WL 4728375, at *42 (S.D. Ill. Nov. 8, 2024). More to the point, the "how" inquiry does not focus on how "meaningful" a court thinks the burden on Second Amendment rights is. It focuses on whether the burden a modern law imposes is comparable to the burden imposed by the government's proffered historical analogues. And respondents identified no historical analogue—let alone any longstanding tradition of—confining law-abiding citizens to firing their common firearms only ten times before being required to manually reload.

II. This Court Should Decide Whether States May Compel Law-Abiding Citizens To Dispossess Themselves Of Lawfully Acquired Property Without Compensation.

The confiscatory nature of HB6614 not only underscores its ahistoric character, but effects an uncompensated taking. Respondents do not dispute that HB6614's "transfer" and "surrender" options require physical dispossession. BIO.32. But they insist that the law does not effect a taking because citizens can "maintain possession" of their now-banned magazines if they have been permanently "modified" to hold no more than ten rounds. BIO.3, 32-33. That illusory alternative fails to solve the takings problem. Respondents cite no authority for the proposition that states can avoid the requirement to pay just compensation by letting people retain

lawfully acquired property only on the condition that they convert it into something *the state itself views as fundamentally different*. *See* Pet.29 n.3. That is because none exists.[1] Indeed, while respondents claim (at 32) to find support in *Horne v. Department of Agriculture*, 576 U.S. 350 (2015), and *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), both of those cases *rejected* far less transparent efforts to disguise a taking. *See* Pet.29-30.

Respondents double down on the First Circuit's (mis)characterization of HB6614 as merely lessening the economic value of personal property. *See* BIO.32-33. But respondents themselves (correctly) describe HB6614 as a "possessory restriction," BIO.1; they cannot now turn around and claim that it is a mere regulation of economic "use." As for the contention that only a "total deprivation of economic value" constitutes a taking, BIO.33, that is just plain wrong: This Court in *Lucas* expressly rejected the argument that a property owner "whose deprivation is … short of complete is not entitled to compensation." *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1019 n.8 (1992).

Switching gears, respondents argue that the ban does not effect a taking because it is a "valid exercise[] of the police power." BIO.32. But this Court has rejected that argument for more than a century, *see Chi., Burlington & Quincy Ry. Co. v. Illinois ex rel. Grimwood*, 200 U.S. 561, 593 (1906)—and with good reason, as the Takings Clause would be all but

[1] Nor would it be a complete answer here, given the subset of banned magazines "that cannot be modified" to hold fewer rounds. Pet.28 (quoting Pet.App.72); *see also* Pet.App.26.

nugatory if the police power were a get-out-of-paying-just-compensation-free card. Pet.30-31.

With little else left to offer, respondents claim that sovereign immunity would frustrate the ability to secure just compensation in court. BIO.33. But petitioners do not seek damages for the state's constitutional violation; they request injunctive relief from which the state lacks immunity. *See* Dist.Dkt.12.at.29-30. Respondents' seeming view that they would not have to pay any compensation even if they *are* effecting takings just underscores the need for that relief. In any event, this Court has never applied sovereign immunity to dismiss a takings case against a state government. *Cf. First Eng. Evangelical Lutheran Church of Glendale v. Los Angeles Cnty.*, 482 U.S. 304, 316 n.9 (1987).

Respondents' argument that petitioners' claim is barred because Rhode Island law provides recovery through "inverse condemnation," BIO.34-35, defies *Knick v. Township of Scott*, 588 U.S. 180 (2019), which held that a plaintiff need *not* bring an inverse-condemnation action under state law to obtain relief in federal court for a taking. *Id.* at 189. Nor does *DeVillier v. Texas*, 601 U.S. 285 (2024), help respondents. All *DeVillier* held is that, in suits for damages against states (not relevant here), a plaintiff *may* pursue just compensation under the Takings Clause based on a "state-law inverse-condemnation cause of action." 601 U.S. at 293. *DeVillier* injects no "[t]horny issues," BIO.33-34, into the question here.

Last and least, respondents' passing comparison to state-mandated vehicle "safety modifications" or "controlled substances" laws, BIO.31-33, underscores

that HB6614 is in a league of its own. Respondents identify no motor-vehicle law that (like HB6614) requires citizens to either modify their property to degrade critical components or else forfeit possession. *Cf. What if I Fail?*, R.I. Emissions & Safety Testing, https://tinyurl.com/bp4s33fu (last visited Nov. 20, 2024) (providing compensation even for state-mandated safety modifications). And adding a drug "to the schedule of controlled substances," BIO.33, does not (like HB6614) require dispossession or modification of any personal property; it merely demands that possession be authorized by "a valid prescription." R.I. Gen. Laws §21-28-4.01(c)(1). If respondents mean to compare this late-breaking prohibition to longstanding prohibitions of Schedule I drugs like heroin or marijuana, that comparison is obviously inapt; there is, of course, no constitutional right to get high.[2]

III. The Questions Presented Are Exceptionally Important, And Now Is The Time To Resolve Them.

Respondents do not and cannot deny the importance of the question presented. Instead, they urge the Court to defer review because of the procedural posture. BIO.17-19. But while the Seventh Circuit's decision in *Bevis v. City of Naperville* at least said that its analysis was "preliminary," 85 F.4th 1175, 1197 (7th Cir. 2023), the First Circuit provided no such disclaimer. And the temporary loss

[2] The comparison is actually worse, as Rhode Island does not even ban certain Schedule I drugs outright; it lets citizens petition the state to retain certain amounts of certain drugs. *See* R.I. Gen. Laws §21-28.6-1 (marijuana).

of constitutional rights is a quintessential irreparable injury—which is precisely why respondents are forced to acknowledge that this Court has long vindicated constitutional rights in cases that arise in an interlocutory posture. BIO.21 (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). If anything, the nature of HB6614 and the decisions below make respondents' plea for patience more problematic. Left standing, the kind of defiance of this Court's decisions (and citizens' fundamental constitutional rights) displayed below will just beget more defiance.

Respondents' reliance on supposed "alternate grounds for affirmance," BIO.20, goes nowhere. As already explained, their theory that the Second Amendment is not implicated when a state bans critical components of common firearms, BIO.21-22, does not pass the straight-face test. As for respondents' paean to the difficulty of facial challenges, BIO.22-23, if they were right, then *Heller* should have come out the other way. And the notion that petitioners should not get relief even if HB6614 likely is unconstitutional, BIO.20-21, beggars belief.

Respondents also note that there is not presently a clear circuit split. BIO.13-17. But this is decidedly not a context in which all judges to confront an issue have sung in unison. District courts have reached diametrically opposed conclusions, and a number of circuit court decisions have garnered strong dissents. What is more, as amici (including 25 of Rhode Island's sister states) explain, the lack of a split "is a product of geography more than law," which no amount of percolation will change. NSSF.Amicus.21-22; Ohio.Amicus.11-14. Respondents' contrary

protestations, BIO.23-25, just highlight the problem: The same circuit courts that defied *Heller* for a decade have promptly resumed their pre-*Bruen* practice of blessing even the most specious firearm laws, paying lip service to *Bruen*'s mandated text and historical tradition analysis but nothing else. Pet.32-35. This Court did not let the lack of a post-*Bruen* circuit split stop it from taking up a petition arguing that Second Amendment rights had been interpreted too broadly in *Rahimi*. It should not let that stand in the way of ensuring that Second and Fifth Amendment rights are not interpreted too narrowly either.

That is especially true considering that courts have reached the same rights-defying end by conflicting means that demonstrate a pressing need for guidance. *See* Pet.33-34. The First Circuit, for example, chose to continue walking the well-trodden path of (now-abrogated) pre-*Bruen* cases by assuming that magazines are protected "Arms" and then contorting the common-use inquiry into a question of how many bullets the government deems necessary for self-defense. Pet.25-26. The Fourth and Seventh Circuits, on the other hand, held that weapons that are "most useful in military service" are "outside the ambit of the Second Amendment" entirely. *Bianchi v. Brown*, 111 F.4th 438, 448-49 (4th Cir. 2024); *Bevis*, 85 F.4th at 1197.[3] And while respondents try to portray the D.C. Circuit's recent decision as a "mirror[]" image of the others, they ignore its

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[3] The petition arising out of *Bianchi* involves a ban on "assault weapons"; it does not involve magazines. *See* Pet. for Cert., *Snope v. Brown*, No. 24-204 (U.S. filed Aug. 21, 2024). This Court would therefore benefit from granting both that petition and this one.

threshold conclusions that magazines *are* "Arms," that the Fourth and Seventh Circuit's military-use inquiry defies *Heller* and *Bruen*, and that this Court's common-use inquiry cannot be discounted. *Hanson*, 120 F.4th at 232-33. That all is conflict enough, without even a mention of the circuits' contradictory understanding of the relevant history. *Compare, e.g.*, Pet.App.19 (relying on founding-era "gunpowder" storage laws to bless HB6614), *with Hanson*, 120 F.4th at 235 (rejecting reliance on such laws as "silly" because they are "not 'relatively similar'" to magazine bans).

In the end, the divergence respondents try to hide pales in comparison to the circuit courts' repeated efforts to smuggle interest-balancing back into the Second Amendment analysis under the guise of *Bruen*'s "how" and "why" inquiries. And while it is usually taken for granted that states will respect this Court's pronouncements, the past few years have seen states rend the fabric of our federal system when it comes to the Second Amendment. Leaving unchecked acts of rights-diluting defiance like Rhode Island's confiscatory ban on standard-capacity magazines (and the lower courts' decisions rubber-stamping it) will only embolden others who steadfastly refuse to accept that the right to keep and bear arms is not second-class. Whether through plenary review, summary reversal, or vacatur, this Court should not let stand the First Circuit's return to the very "judge-empowering 'interest-balancing,'" that it has already "expressly rejected" as incompatible with the Second Amendment. *Bruen*, 597 U.S. at 22.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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