

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

**BRIEF OF *AMICI CURIAE* NATIONAL AFRICAN
AMERICAN GUN ASSOC., INC., ASIAN PACIFIC
AMERICAN GUN OWNERS ASSOC., DC PROJECT
FOUNDATION, INC., OPERATION BLAZING
SWORD, INC., GABRIELA FRANCO, AND LIBERAL
GUN CLUB IN SUPPORT OF PETITIONERS**

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OTHER AUTHORITIES:

Center for The Study of Hate and Extremism,
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FACT SHEET: ANTI-ASIAN PREJUDICE,
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Centers for Disease Control and Prevention, *Web-
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POST, March 31, 202111

Flores, Andrew; Langston, Lynn; Meyer, Ilan; and
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STATEMENT OF INTERESTS¹

National African American Gun Association, Inc. (“NAAGA”), Asian Pacific American Gun Owners Association (“APAGOA”), DC Project Foundation, Inc. (“DCPF”), Operation Blazing Sword, Inc. (operating as Operation Blazing Sword - Pink Pistols) (“OBSPP”), and The Liberal Gun Club (“LGC”) are associations with thousands of members residing throughout the United States, including Rhode Island. Gabriela Franco, an individual, is in the planning stages of founding another member association focused on responsible firearms ownership and self-defense. The interests of these organizations in this case are clear. R.I. Gen. Laws § 11-47.1-3(b) – the sweeping statute enacted by Rhode Island at the heart of this case – bans some of the most commonly owned arms in the United States. The decision below presents a clear threat to the interests of the marginalized groups of Americans represented by the *Amici*, who are disproportionately the targets of violence and discrimination relating to the exercise of their Second Amendment rights and rely upon these arms to defend themselves, as is their constitutional right. Additionally, the decisions below, in the context of R.I. Gen. Laws § 11-47.1-3(b), are emblematic of the on-going threat to Second Amendment protections that has followed as state statutes impinging upon Second Amendments rights

¹ No counsel for any party authored this brief in whole or in part. No party or its counsel contributed financial support intended to fund the preparation or submission of this brief. The National Shooting Sports Foundation, Inc. contributed financial support to fund the preparation and submission of this brief.

are upheld in the lower courts, predicated upon an alleged lack of guidance provided by this Court in recent decisions, such as *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). Firm guidance from this Court is needed to establish whether this type of retrospective and confiscatory ban on the possession of ammunition feeding devices that are in common use violates the Second Amendment, and whether a law dispossessing citizens of their lawfully purchased property without compensation violates the Takings Clause.

NAAGA – a 501(c)(4) non-profit organization – was founded in 2015, to defend the Second Amendment rights of members of the African American community. NAAGA has more than 130 chapters in thirty-eight states, and more than 50,000 members living in every state of the United States and the District of Columbia. NAAGA’s mission is to establish a fellowship by providing education about the rich legacy of firearm ownership by African Americans, training that supports safe firearms use for self-defense and sportsmanship, and advocacy for the inalienable right to self-defense for African Americans. Its goal is to have every African American introduced to firearm use for home protection, competitive shooting, and outdoor recreational activities. NAAGA welcomes people of all religious, social, and racial perspectives, including African American members of law enforcement and active/retired military. NAAGA’s particular interest in this case stems in part from the fact that there has been a long history of discrimination against African Americans with respect to the exercise of their Second

Amendment right to bear arms. More specifically, African Americans were denied their Second Amendment right to bear arms under the antebellum Slave Codes, the post-Civil War Black Codes, and the Jim Crow laws that persisted into the twentieth century. R.I. Gen. Laws § 11-47.1-3(b) is just another prohibition on the African American community's ability to exercise their Second Amendment right to bear arms for self-defense.

APAGOA – a 501(c)(3) non-profit organization – was founded in 2021 to create a community of firearms owners with an Asian Pacific American heritage. APAGOA advocates for strong firearms safety, education, and community building initiatives. A core focus of APAGOA is to promote safe and responsible firearm ownership within the Asian Pacific American community by providing educational materials and other supportive resources to its members and other interested parties. APAGOA has a continued significant interest in this case as an organization that represents racial groups who are being disproportionately targeted for racial violence in recent years, and who have increasingly purchased firearms to defend themselves.

DCPF – a 501(c)(4) non-profit organization – was established in 2016 by retired police officer and professional shooting competitor Dianna Muller. A woman from each state originally met in Washington DC to organize nationally and advocate in each state for the right of women in America to own firearms and for the training and the safe use of firearms by women. DCPF members work together in a bipartisan

fashion to educate legislators on firearm safety and culture. Currently there are over 3,000 members. DCPF has an interest in this case based upon the negative impact R.I. Gen. Laws § 11-47.1-3(b) will have on women's right to self-defense and the right to bear arms secured by the Second Amendment.

OBSPP – a 501(c)(3) non-profit organization – was established to advocate on behalf of lesbian, gay, bisexual, transgender, and queer (“LGBTQ”) firearm owners, with specific emphasis on self-defense issues. Operation Blazing Sword, founded in 2016 the day after the Orlando Pulse Nightclub Massacre, has over 1,500 volunteer firearm instructors in nearly a thousand locations across all fifty states who will teach anyone the basics of firearm safety, operation and ownership for no cost and without judgment for race, gender, sexual orientation, biology, or manner of dress. Pink Pistols, founded in 2000 and incorporated into Operation Blazing Sword in 2018, is a shooting society that honors gender and sexual diversity and advocates the responsible use of firearms for self-defense. Pink Pistols, consisting of forty-five chapters across the country, does not maintain a list of members out of respect for those who wish to stay “inside the gun closet.” Membership of both aspects of this organization is open to anyone, regardless of sexual orientation or gender identity, who supports the rights of LGBTQ firearm owners. As an organization that represents portions of the American population that are consistently and disproportionately the targets of hate crimes and armed criminal violence, the issues presented in this

case as they relate to self-defense are of particular importance to OBSPP.

Gabriela “Gabby” Franco is a competitive shooter, firearms instructor, and industry advocate committed to introducing safe and responsible firearms ownership to women and the Latino community. Gabby was born and raised in Venezuela where she had a lengthy professional pistol shooting career. She won numerous gold medals at international competitions as a member of the Venezuelan National Team, and then participated at the 2000 Olympic Games in Sydney on behalf of Venezuela. After arriving in the United States and obtaining her citizenship, she embraced the rights protected by the Second Amendment, which had been stripped away by the authoritarian government of her home country. While pursuing her new passion as a firearms instructor, Gabby was a participant on “Top Shot” on the History Channel where she was the first woman contestant to reach the individual stage of competition and joined the show in later seasons as an All-Star contestant. In addition to competitive shooting, Gabby relies on firearms for protection and self-defense and helps train other women and members of the Latino community to safely use firearms for sport and protection. Unreasonable limits on magazine capacity deprive Gabby and other women of the ability to adequately defend themselves against individuals with physical strength and size advantages.

LGC – a 501(c)(4) non-profit organization – was founded to provide a forum and resources for left-of-center firearms owners who are pro-Second Amendment, but do not subscribe to the right-wing ideology and rhetoric that is often associated with other Second Amendment groups. Given this alternative perspective that resonates with a large contingent of politically moderate and left-of-center firearms owners, LGC membership has grown significantly over the past seven years with new chapters opening across the country. Many members of LGC fall within the protected classes represented by *Amici Curiae* in this brief. LGC encourages expression of differing viewpoints and active debate among its members and focuses on root cause mitigation to address violence, such as strengthening mental health treatment and finding solutions for poverty, homelessness and unemployment, rather than imposing prohibitions on firearms and firearms owners. LGC advocates for targeted enforcement of existing laws, as well as concealed carry minimum standards and reciprocity among the states. So-called assault weapons bans and limits on magazine capacity, such as the ban set forth in R.I. Gen. Laws § 11-47.1-3(b), disproportionately effect members of the already marginalized communities that make up a significant proportion of LGC’s membership.

INTRODUCTION

African Americans, Asian Pacific Americans, Latinos, women, and LGBTQ people have the right to defend themselves against violent crimes. The Second Amendment to the United States Constitution

guarantees them that right. However, R.I. Gen. Laws § 11-47.1-3(b) will severely infringe upon that right by denying them the ability to be adequately armed for self-defense.

The *Amici* submit this brief to discuss the negative and unconstitutional effects that bans on ammunition feeding devices, such as the one imposed by R.I. Gen. Laws § 11-47.1-3(b), will have on the ability of their respective members in Rhode Island to defend themselves and conduct lawful activity. They offer this Court a perspective that no other party offers in this action – the perspective of citizens in Rhode Island who are at greater risk of being victims of violence based entirely upon their personal characteristics and identity. The *Amici* seek the protection of the Court because, as history shows, the Constitution is the place of refuge when the majority – in the name of safety – seek to disarm them, disenfranchise them, and devalue them.

BACKGROUND

Because of the unique perspective of each of the *Amici* and their troubled history as targets of hate and violence in our society, both nationally and in Rhode Island, *Amici* offer the following historical background and insight into the effects resulting from infringements of their constitutional rights. Most significantly, the groups that comprise the *Amici* have suffered violence and oppression at a disproportionately higher rate than members of the majority.

African Americans / NAAGA²

The Fourteenth Amendment guaranteed the right to bear arms to all Rhode Islanders. African Americans needed that protection. When “debating the Civil Rights Act of 1871, Congress routinely referred to the right to keep and bear arms and decried the continued disarmament of blacks in the South.” *McDonald v. City of Chicago*, 561 U.S. 742, 776 (2010) (citing Stephen Halbrook, *Freedmen, the Fourteenth Amendment, and the Right to Bear Arms*, 120-131 (1998)). African Americans have the right to adequately and legally defend themselves and their families in a world that is too often inhospitable, to say the least.

Nevertheless, there is a long history of racist firearm laws designed to deprive African Americans of this right. Even though R.I. Gen. Laws § 11-47.1-3(b) is not racially motivated, these types of magazine capacity limitation laws have a disproportionate impact on people of color. *See* Adam Winkler, “Racist Gun Laws and the Second Amendment,” *Harvard Law Review* 135, no. 8 (2022) 544-545, available at <https://harvardlawreview.org/forum/vol-135/racist-gun-laws-and-the-second-amendment/>. There is evidence demonstrating that citizens of all identities have declined to discard now-illegal magazines in states with bans in place. *See id.* Since the government’s ability to enforce such laws is constitutionally and

² The membership of LGC, including leadership at a national and state level, is comprised of members of all *Amici* groups. To avoid repetition, LGC is therefore not listed in its own separate background section.

practically limited, criminal charges for banned magazines are usually incidental to stops or arrests by police for other offenses. *See id.* “Due to condemnable but nonetheless highly predictable practices of overpolicing in minority communities, a disproportionate percentage of those convicted of violating the ban on high-capacity magazines are likely to be people of color.” *Id.* These social consequences must also be considered in addition to the unconstitutionality of magazine capacity restriction laws.

African American communities have at different times in U.S. history been subjected to unspeakable crimes, including lynchings, racist attacks, and gang violence. Law-abiding African Americans, including civil rights icons, have a long tradition of using firearms to protect themselves and their communities.³ Ida B. Wells wrote that a “Winchester rifle should have a place of honor in every black home, and it should be used for that protection which the law refuses to give.”⁴

African Americans are subject to more violence than white Americans. *See* Centers for Disease Control and Prevention, *Web-based Injury Statistics Query and Reporting System (WISQARS) Fatal Injury Reports, National, Regional and State*, available at <https://wisqars.cdc.gov/fatal-reports> (last accessed

³ *See* Nicholas Johnson, *Negroes and the Gun: The Black Tradition of Arms* (2014); Charles E. Cobb, Jr., *This Nonviolent Stuff'll Get You Killed* (2014).

⁴ Ida B. Wells, *Southern Horrors: Lynch Law in All its Phases*, 16 (1892).

Aug 19, 2024). Between 2001 and 2022, African Americans experienced a homicide rate 5.76 times greater than white Americans; between 2001 and 2020, homicide was the number one leading cause of death for African Americans ages fifteen to thirty-four, and number seven for all ages. By contrast, homicide was highest ranked as the number three leading cause of death for white Americans ages fifteen to twenty-four, number five for white Americans ages twenty-five to thirty-four, and number nineteen overall for all ages. *Id.*

Facing increased violence combined with the fact that crimes occur in a matter of seconds, and the time that it takes for law enforcement to respond to such incidents, African Americans need the right to possess firearms fitted with a magazine that can hold enough ammunition to fully defend themselves. R.I. Gen. Laws § 11-47.1-3(b) prevents them from doing so.

Asian Pacific Americans / APAGOA

In modern times, Asian Pacific Americans (“APA”) have been targets of violence in Rhode Island and elsewhere in America. During the Covid-19 pandemic, those in the APA community were disproportionately targeted for racially motivated violence. Although hate crimes in general dropped by 6% nationally in 2020, hate crimes against APA spiked by 145%.⁵

⁵ Center for The Study of Hate and Extremism, California State University San Bernardino, *FACT SHEET: ANTI-ASIAN PREJUDICE*, March 2021, 1 (2021). *See also* Jonghyun Lee,

Violence against Asian Pacific Americans can happen in a crowd or in broad daylight. In 2021, Noel Quintana, a Filipino-American, was slashed from ear to ear with a box cutter on a crowded subway in New York City. Yet, “nobody helped, . . . [n]obody moved.”⁶ That same year, an unidentified Asian-American woman was brutally beaten in New York in broad daylight in front of multiple witnesses, yet nobody intervened, and one witness even closed a door to the victim after the attacker left.⁷ The rise in violence against those in the APA community has led many to arm themselves for self-defense because their confidence in the police is low, believing that the police “are not always there to protect . . . [t]hey’re only there to take the report.”⁸ As the D.C. Court of Appeals explained in *Warren v. District of Columbia*,

Return of the Yellow Peril? Racism, Xenophobia and Bigotry Against Asian Americans, Bridgewater Review (Dec. 2022) (“It is estimated that over two million Asian American individuals have experienced hate incidents since the Covid-19 pandemic started.”).

⁶ Wendy Grossman Kantor, *Filipino American Man Recounts Brutal Attack With Box Cutter on N.Y.C. Subway: ‘Nobody Helped’*, PEOPLE, February 18, 2021, <https://people.com/crime/filipino-american-man-recounts-brutal-attack-with-box-cutter-on-n-y-c-subway-nobody-helped/>.

⁷ Tim Elfrink, *New York man charged with hate crime in Asian American attack that bystanders watched without helping*, WASHINGTON POST, March 31, 2021, <https://www.washingtonpost.com/nation/2021/03/30/asian-american-attack-newyork-condo/>.

⁸ Marian Liu & Rachel Hatzipanagos, *“Nobody came, nobody helped”: Fears of anti-Asian violence rattle the community*, WASHINGTON POST, Feb. 25, 2021, <https://www.washingtonpost.com/nation/2021/02/25/asian-hate-crime-attack-patrol/>.

police usually have no general duty to protect an individual citizen, because their duty is owed to the public at large. 444 A.2d 1, 3 (D.C. 1981). APA “have been historically underrepresented among gun owners,”⁹ but that has changed since the Covid-19 pandemic. APA are buying firearms for self-defense in record numbers in response to the increase in anti-APA hate crimes.¹⁰ Statutes such as R.I. Gen. Laws §11-47.1-3(b) that seek to ban these ammunition feeding devices that are in common and prevalent use will unconstitutionally impair the ability of those in the APA community to arm and defend themselves, as is their right under the Second Amendment.

Women / DCPF

While the laws in Rhode Island have been neutral with regards to sex for a long time, society at large does not put women on an equal plane. Nationally, there were 2,059 females murdered by males in single victim/single offender incidents in 2020 based upon reports submitted to the FBI for its Supplementary Homicide Report.¹¹ By comparison, only 228 females were murdered by other females in single victim/single offender incidents in 2020. FBI

⁹ Aaron Smith, *More Asian-Americans are Buying Guns for Protection from Hate Crimes*, FORBES, Mar. 18, 2021, <https://www.forbes.com/asian-americans-buy-guns-for-protection-from-hate-crimes/>.

¹⁰ *Id.*

¹¹ See *When Men Murder Women – An Analysis of 2020 Homicide Data*, p. 3, Violence Policy Center (2022), available at <https://vpc.org/when-men-murder-women/>.

Supplementary Homicide Reports 1980-2020. In Rhode Island specifically, 71% of the homicide victims in intimate partner incidents between 2016 and 2020 were female.¹² Since 2014, the rate of women murdered by men has continued to increase from 1.06 per 100,000 women in that year, to 1.34 per 100,000 women in 2020. *See When Men Murder Women* at 3. Throughout the United States, women are the primary victims of domestic violence. Specifically, in cases where the relationship between the victim and offender is known, 89% of female victims were murdered by a male they knew, and 60% of those victims were the wives or intimate acquaintances of their killers. *Id.* at 4. Notably, women are significantly more likely to be killed by spouses or intimate acquaintances than men. *Id.* at 5. The numbers are even worse for racial/ethnic minority women, who face disproportionately higher homicide rates than white women. *Id.* at 7 (citing *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence—United States, 2003–2014* at 741-46, *Morbidity and Mortality Weekly Report*, 2017, vol. 66, available at <https://www.cdc.gov/mmwr/volumes/>). In particular, black females were murdered by males at a rate (2.96 per 100,000), nearly three times as high as white females (1.07 per 100,000). *See When Men Murder Women* at 5.

¹² *See Domestic Violence Homicides in Rhode Island 2016-2020* at 2, Rhode Island Coalition Against Domestic Violence (2022), available at https://www.wpri.com/HOMICIDE-RPT_FINAL.pdf.

These statistics demonstrate that women are disproportionately victimized by male attackers, who often have physical advantages. When confronted with one or more men and threatened with violence, a woman needs to have the option to use a firearm as an equalizer. The choice of what firearm and the amount of ammunition needed for an individual woman to protect herself and her family is a decision for her to make, not politically-motivated government bodies.

Gabby Franco / Latinos

Amid increased political tension over the influx of immigrants and asylum seekers crossing the U.S. southern border, hate crimes perpetrated against members of the Latino community have been on the rise.¹³ In 2019, anti-Hispanic¹⁴ hate crimes, which include robberies, assaults and other crimes, rose 8.7% from the prior year, even though hate crimes in general had been declining year over year.¹⁵ In one of the most horrific hate-based attacks in recent history,

¹³ See *Experiences of Victimization Among Latinos: Studies Confirm Significant Victim Mental Health Impact and Mistrust of Authorities*, National Institute of Justice (2022), available at <https://nij.ojp.gov/topics/articles/experiences-victimization-among-latinos-studies-confirm-significant-victim-mental>.

¹⁴ The term “Hispanic” is often used instead of “Latino” by federal agencies throughout statistical compilations and annual reports.

¹⁵ Suzanne Gamboa and the AP, *Rise in reports of hate crimes against Latinos pushes overall number to 11-year high*, NBC NEWS, November 16, 2020, <https://www.nbcnews.com/news/latino/rise-hate-crimes-against-latinos>.

a radicalized white supremacist murdered and seriously wounded more than thirty Latinos after releasing numerous racist statements and a manifesto targeted at the Latino community. He specifically indicated that his attack was in response to the “invasion” of Mexican.¹⁶ The continued spread of hateful viewpoints such as this will undoubtedly lead to further targeting and victimization of members of the Latino population.

Many Latinos, including *Amicus Curiae* Gabby Franco, have taken proactive steps to avoid being the next victim by exercising their constitutional right to self-defense. As with other firearm owners in protected classes represented by *Amici Curiae*, responsible and law-abiding Latino firearm owners should have a reasonable choice in how they defend their home and family. The arbitrary limit on magazine capacity set by R.I. Gen. Laws § 11-47.1-3(b) inhibits that choice and undercuts the efforts of Latinos to defend themselves against hate-based violence and other crimes.

LGBTQ+ / OBSPP

Rhode Island, like most of this country, has a history of legal discrimination against the LGBTQ+ community that has only been recently addressed. Despite growing acceptance, the LGBTQ+ community still suffers a higher rate of violence in America than the majority. LGBTQ+ people are nearly four times more likely than non-LGBTQ+ people to experience

¹⁶ *Id.*

violent victimization, including rape, sexual assault, and aggravated or simple assault. *See* Andrew Flores, Lynn Langston, Ilan Meyer, and Adam Romero, *Victimization rates and traits of sexual and gender minorities in the United States: Results from the National Crime Victimization Survey*, 2017, Science Advances, October 2, 2020, available at: <https://www.science.org/>. *See also* Ericka Dixon, Audacia Ray, Beverly Tillery, Michelle Leigh, *Pride and Pain: A Snapshot of Anti-LGBTQ Hate and Violence during Pride Season 2019*, National Coalition of Anti-violence Programs (“NCAVP”) (2020), available at <https://avp.org/reports/>.¹⁷

In 2017, the NCAVP recorded reports of fifty-two hate violence related homicides of LGBTQ people, the highest number it ever recorded. *See A Crisis of Hate: A Report on Lesbian, Gay, Bisexual, Transgender and Queer Hate Violence Homicides in 2017*, National Coalition of Anti-violence Programs (2017), available at <https://avp.org/reports/>. This number represents an 86% increase in single incident reports from 2016. *Id.* In 2017, there was the equivalent of one homicide of an LGBTQ person in the U.S. each week. *Id.*

¹⁷ The NCAVP recorded the homicides of fourteen LGBTQ people from May 15 – July 15, 2019, an average of nearly two (1.75) homicides each week and more than three times the hate violence homicides recorded between January 1 and May 14, 2019. Eleven of the homicides were hate violence related. Ten of these victims (91%) were black and seven (64%) were black trans women. Of the three intimate partner violence homicides, one victim was a white, gay man, one was a black woman, and one was a white woman, who identifies as asexual.

Of the total number of homicides in 2017, 71% of the victims were people of color, 31 (60%) of the victims were Black, 4 (8%) were Latino, 2 (4%) were Asian, and 1 (2%) was Native. Additionally, 12 (23%) of the victims were white and 2 victims' racial and ethnic identity is unknown to NCAVP at this time.

Id.

This trend continues. According to the FBI's annual crime report for 2022, hate crimes against LGBTQ+ people rose sharply from the previous year. The report showed a 13.8% increase in hate crime reports based upon sexual orientation, and a 32.9% rise in hate crimes based upon gender identity.¹⁸ It is no wonder that LGBTQ people who have chosen to responsibly own and use firearms for protection are worried about being able to adequately defend themselves with the passage of R.I. Gen. Laws § 11-47.1-3(b).

SUMMARY OF ARGUMENT

With reference to history and the original regulations on the right to bear arms, there is no evidence that demonstrates an “enduring American

¹⁸ See Delphine Luneau, *FBI's Annual Crime Report – Amid State of Emergency, Anti-LGBTQ+ Hate Crimes Hit Staggering Record Highs*, Human Rights Campaign, October 16, 2023, available at <https://www.hrc.org/press-releases/fbis-annual-crime-report-amid-state-of-emergency-anti-lgbtq-hate-crimes-hit-staggering-record-highs>.

tradition,” of government restrictions based on magazine size or ammunition quantity. *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 69-70 (2022). Even though multi-shot firearms long pre-dated the founding of this country, there were no laws restricting ammunition capacity when the Second Amendment was adopted. The magazine capacity restriction set by Rhode Island in R.I. Gen. Laws § 11-47.1-3(b), and other states with similar laws, are recent developments that lack a historical foundation and are therefore unconstitutional. Further, the retroactive nature of the law in question operates to deprive law-abiding citizens of Rhode Island of their until-now-lawfully-owned property, which many have long possessed without incident, without any compensation in violation of the Takings Clause of the U.S. Constitution.

The Petition ably explains why the decision below is untenable and this Court must intervene: The First Circuit’s upholding of Rhode Island’s retrospective and confiscatory law distorts this Court’s precedents and illustrates a disturbing trend among the lower courts, which continue to uphold laws that erode the Second Amendment rights of American citizens. This Court must intervene and establish clear and unequivocal guidelines for lower courts to follow in such cases to prevent the continued attempts to eviscerate the Second Amendment.

ARGUMENT

I. Banning Commonly Owned Arms is Unconstitutional and Impedes Upon Every Rhode Island Citizen’s Right to Self Defense

In *Bruen*, this Court clarified the basic lens through which all courts must view the Second Amendment when it held that this is no “second-class right” subject to a uniquely pro-government set of rules, and that the right is not limited to only those with a “special need” to exercise it. *Bruen*, 597 U.S. at 70. The individual right to keep and bear arms is afforded the same protection as all other constitutional rights held by individuals. The proper analysis courts must undertake reads:

[W]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation’s historic tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.”

Id. at 24 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)). Thus, the *Bruen* rule requires the government to prove the historical basis for its regulations. In applying this standard, the U.S. District Court for the District of New Jersey held:

[The State] must be able to rebut the presumption that the challenged conduct is constitutionally protected by “demonstrate[ing] that the regulation is consistent with this Nation’s historical tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2126. To reiterate, [the State] “*may not simply posit that the regulation promotes an important interest. Rather, the [State] must demonstrate that the regulation is consistent with this Nation’s historical tradition of firearm regulation.*” *Id.* (emphasis added).

Koons v. Reynolds, No. 22-7464 (RMB/EAP), 2023 WL 128882, at *9 (D. N.J. Jan. 9, 2023) (emphasis in original) (granting a motion for a temporary restraining order staying enforcement of New Jersey’s recently enacted gun control legislation). As relevant to magazine capacity limitations, this Court specifically restricted the kind of historical tradition on which the government may rely to “an enduring American tradition of state regulation,” and not just a handful of laws in “outlier jurisdictions.” *Bruen*, 597 U.S. at 70.

As a threshold matter, magazines fall squarely within the scope of the Second Amendment. As aptly noted in the Petition, even the First Circuit did not sanction the district court’s troubling conclusion that ammunition feeding devices fall outside the protection of the Second Amendment. Pet. at 15. However, the First Circuit also did not reject the finding outright, opting instead to merely assume for argument’s sake that such devices were presumptively protected. See Pet. at 6-7. As noted by Justice Thomas, “[c]onstitutional rights implicitly protect those closely related acts necessary to their exercise.” *Luis v. United States*, 578 U.S. 5, 26-27 (2016). The right to “keep and bear arms” implies the right to use those arms, and R.I. Gen. Laws § 11-47.1-3(b) significantly impedes the ability to use firearms as intended.

Even before *Bruen*, the various circuit courts concurred with the premise that “the right to possess firearms for protection implies a corresponding right to obtain the bullets necessary to use them.” *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014); see also *Worman v. Healey*, 922 F.3d 26, 36 (1st Cir. 2019) (implicitly holding that a magazine restriction implicates the Second Amendment); *Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Atty Gen. of N.J.*, 910 F.3d 106, 116 (3d Cir. 2018) (“The law challenged here regulates magazines, and so the question is whether a magazine is an arm under the Second Amendment. The answer is yes.”).

Moreover, the Second Amendment protects arms that are “typically possessed by law abiding citizens for lawful purposes.” *District of Columbia v. Heller*, 554 U.S. 570, 624-25 (2008). Magazines with a capacity of more than ten rounds of ammunition are commonly owned and utilized by law-abiding firearms owners across the country and previously in Rhode Island, including members of the groups represented by *Amici*. See, e.g., *N.Y. State Rifle & Pistol Ass’n*, 804 F.3d at 255-57 (noting “large-capacity magazines” are “in common use” based on even the most conservative estimates). In particular, such magazines are “typically possessed” for the core lawful purpose of self-defense. *Heller*, 554 U.S. at 624-25.

As discussed above, the minorities represented by *Amici* suffer higher rates of violence and, arguably, have a higher need for tools of self-defense. All Rhode Islanders have the right to defend themselves and their families. How one does that is up to the individual. R.I. Gen. Laws § 11-47.1-3(b), whether intended or not, has the effect of making minority Rhode Islanders even more vulnerable to violence than the majority by disarming them in the name of public safety. As members of these groups well know, the police do not always respond in time to help. Indeed, the government is not liable if the police fail to show up at all. See *DeShaney v. Winnebago Cty*, 489 U.S. 189 (1989) (due process does not give rise to an affirmative right to government assistance with protecting an individual’s life, liberty, or property; the government does not assume a permanent guarantee of an individual’s safety once it provides protection for

a temporary period); *see also Castle Rock v. Gonzales*, 545 U.S. 748 (2005).

In *McDonald v. City of Chicago*, this Court commented about governments that disarm and subject minorities to criminal attack:

Amici supporting incorporation of the right to keep and bear arms contend that the right is especially important for women and members of other groups that may be especially vulnerable to violent crime. If, as petitioners believe, their safety and the safety of other law-abiding members of the community would be enhanced by the possession of handguns in the home for self-defense, then the Second Amendment right protects the rights of minorities and other residents of high-crime areas whose needs are not being met by elected public officials.

561 U.S. at 790 & n.33 (citing, *inter alia*, Brief of Pink Pistols). Having to repeatedly reload low-capacity magazines, or simply not having enough rounds of ammunition to end an attack underway, leaves individuals exposed and vulnerable. Accordingly, any government regulation that limits magazine capacity substantially inhibits self-defense.

As comprehensively argued in the Petition, the analysis applied by the First Circuit in this case completely ignores this Court's recent precedent and

reverts to a pre-*Bruen* framework, analyzing Rhode Island’s statute based upon how heavily it burdens Second Amendment rights under *Worman v. Healy*, 922 F.3d 26, 26 (1st Cir. 2019), *abrogated by Bruen*, 597 U.S. 1, while also employing an interest-balancing test. These analytical schemes were plainly rejected by this Court in *Bruen*. *See Bruen*, 597 U.S. at 19 & n.4.

Of particular concern, among myriad other aspects of the decision below, is the First Circuit’s pointed focus on how often citizens use particular arms for the purposes of self-defense to determine whether Rhode Island’s statute presents a “meaningful” burden. *See Pet.* at 10-11. The problematic “logic” being that since the First Circuit determined that ten or more rounds are seldom discharged when a victim uses a firearm in self-defense, it concluded that banning magazines that carry more than ten rounds presents only a “negligible” burden on Second Amendment rights. *See id.* at 12.

The First Circuit’s claim that *Bruen* requires such an analysis “in no uncertain terms” is also particularly troubling. *See Pet.* at 20-21. Such a warped and strained interpretation of this Court’s decision in *Bruen* makes plain why this Court must provide further clarity and guidance on these issues. Citizens of Rhode Island and other states with similar statutes, particularly citizens such as those represented by the *Amici* and other similarly situated individuals, must not have their Second Amendment-protected right to determine what ammunition

capacity is appropriate to protect themselves be dependent upon what the government thinks is necessary – that decision is for the citizens to make for themselves.

II. Rhode Island’s Statute Operates to Dispossess Citizens of Property Without Compensation

Amici also fully support Petitioners’ request that this Court decide whether states, through the enactment of statutes such as R.I. Gen. Laws § 11-47.1-3(b), are permitted to compel law-abiding citizens to forfeit property that they have long owned legally and without incident, without just compensation. As fully argued in the Petition, and continuing a dangerous theme, the First Circuit’s decision on this issue also flies in the face of this Court’s precedent regarding the Takings Clause, holding that no taking occurs unless the state “occup[ies], tak[es] title to, or physically possess[es] the relevant item.” *See* Pet. at 27.

In the context of the case at bar, the limitations on magazine capacity imposed by R.I. Gen. Laws § 11-47.1-3(b) is a *de facto* seizure or taking by the government. The Takings Clause provides that “private property” shall not “be taken for public use, without just compensation.” U.S. Const. amend. V; *see Chicago, B&Q Ry. Co. v. Chicago*, 166 U.S. 226, 239 (1897) (applying the Takings Clause to the states). A physical taking occurs whenever the state “absolutely dispossess[es] the owner” of property. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419,

435 n.12 (1982). Whenever a physical taking occurs, the government is required to pay just compensation for the property taken. *Id.* at 421.

Members of the represented minority groups living in Rhode Island are required to relinquish magazines with a capacity of more than ten rounds. It is of no significance that their magazines can be sold to private dealers or modified to only hold ten or less rounds because it is the state that “has a categorical duty to compensate the former owner” for the loss of use of their property. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Planning Agency*, 535 U.S. 302, 322 (2002); *see also, Kelo v. City of New London*, 545 U.S. 469, 473-75 (2005). R.I. Gen. Laws § 11-47.1-3(b) provides no such compensation and thus violates the constitutional rights of its law-abiding citizens.

CONCLUSION

For the reasons stated above, this Court should grant the petition for a writ of certiorari or summarily reverse.

Respectfully submitted,
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