No. 25-198

In the
Supreme Court of the United States

VIRGINIA DUNCAN; RICHARD LEWIS; PATRICK LOVETTE; DAVID MARGUGLIO; CHRISTOPHER WADDELL; AND CALIFORNIA RIFLE & PISTOL ASSOCIATION, INC.,
Petitioners,

v.

ROB BONTA, in his official capacity as Attorney General of the State of California,
Respondent.

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

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

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STATEMENT OF INTERESTS[1]

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 California. Chris Cheng is a California resident and world-renowned competitive shooter who sits on the boards of both APAGOA and OBSPP. Gabriela Franco, an individual, is working to found another member association focused on responsible firearms ownership and self-defense. The interests of *Amici* in this case are clear. Cal. Penal Code §§ 16740 and 32310 (collectively, the "CA Statutes") – the sweeping statutes enacted by California at the heart of this case – combine to ban 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. The decisions below, in the context of the CA Statutes, are emblematic of the on-going threat to Second Amendment protections

[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.

that has followed as state statutes impinging upon these rights continue to be 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). Clear and 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 eighty chapters in thirty-three 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 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 rights. More specifically, African Americans were denied their right to keep and bear arms under the antebellum Slave Codes, the post-Civil War Black Codes, and the Jim Crow laws that persisted into the twentieth century. The CA Statutes constitute just another in a long line of prohibitions on the African American community's ability to exercise their Second Amendment right 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, including *Amicus* Chris Cheng, who is a champion sport shooter, author, and proponent of Second Amendment rights[2], 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 and supportive resources to its members and other interested parties. APAGOA has a 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

[2] Mr. Cheng sits on the boards of both the APAGOA, as well as OBSPP, another *Amicus* joining this brief. Mr. Cheng has also been featured on multiple seasons of the History Channel show "Top Shot," including as the Champion of Season 4.

professional shooting competitor Dianna Muller. A woman from each state originally met in Washington DC to organize nationally and advocate 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 DCPF has more than 3,000 members. DCPF has an interest in this case based upon the negative impact the CA Statutes 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 the day after the Orlando Pulse Nightclub Massacre in 2016, has over 1,500 volunteer firearm instructors in nearly a thousand locations across every state who will teach anyone the basics of firearm safety, operation and ownership for no cost and without judgment based on 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, as these individuals are entitled to the same rights as all citizens.

Gabriela "Gabby" Franco is a competitive shooter, firearms instructor, and 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 participated at the 2000 Olympic Games in Sydney. 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 also a participant on "Top Shot" on the History Channel, where she was the first woman to reach the individual stage of competition and appeared 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 greater 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* 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 minimum standards for concealed carry reciprocity among the states. So-called assault weapons bans and limits on magazine capacity, such as the ban set forth in the CA Statutes, 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 crime. The Second Amendment guarantees them that right. Indeed, the Second Amendment provides the means of self-protection to all law-abiding Americans comprising of "the people" regardless of their gender, sexual orientation, race, creed, or political beliefs. If upheld, the CA Statutes will severely infringe upon these rights, 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 the CA Statutes, will have on the ability of their respective members in California 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 California 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[3]

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 California, *Amici* offer the following historical background and insight into the effects resulting from infringements of their constitutional rights. Most significantly, these groups suffer violence and oppression at a disproportionately higher rate than members of the majority. And research shows that *Amici* are among the fast-growing populations of firearm owners. In a 2024 report of first-time gun buyers, women comprised of nearly three quarters (70.5%) of respondents, and a significant proportion identified as African American (24.2%) or Latino/Hispanic (9.9%).[4]

African Americans / NAAGA

The Fourteenth Amendment guaranteed the right to bear arms to all Californians. 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*,

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[3] LGC's members, including leadership, is comprised of members of all *Amici* groups. To avoid repetition, LGC is therefore not listed in its own separate background section.

[4] *First-Time Gun Buyers*, p. 4, Nat'l Shooting Sports Foundation (2024), available at https://nssf.sync4share.com/portal/s/112119240392751229.pdf.

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 them.

There is a long history of racist firearm laws designed to deprive African Americans of their right to self-defense. Although the CA Statutes are not racially motivated, in practice, 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 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 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 over-policing 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 impactful social consequences must 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.[5] In 1892, 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."[6]

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,* available at https://wisqars.cdc.gov/fatal-reports (last accessed Aug 29, 2025). Between 2003 and 2022 (the most recent data available), African Americans experienced a homicide rate 7.44 times greater than white Americans; between 2018 and 2023, homicide was the number one cause of death for African Americans ages fifteen to twenty-four, and number two for ages twenty-five to thirty-four. *Id.* By contrast, during the same period homicide was highest ranked as the number three cause of death for white Americans ages fifteen to twenty-four, number five for white Americans ages twenty-five to thirty-four, and nineteen 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

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[5] *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).

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

possess firearms fitted with a magazine that can hold enough ammunition to fully defend themselves. The CA Statutes prevent them from doing so.

Asian Pacific Americans / APAGOA

In modern times, Asian Pacific Americans ("APA") have been targets of violence in California 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 increased by 145%.[7]

Violence against APA remains a serious issue in the years since the pandemic. "From March 2020 to the end of 2023, Stop AAPI Hate collected over 12,000 reports though they believe it's likely an undercount. Over 700 occurred in 2023."[8] "Also in 2023, an AAPI Data and Associated Press-NORC poll found a third of Asian Americans and Pacific Islanders say they have experienced an act of abuse based on their race or ethnicity in the last year." *Id.*

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[7] Center for The Study of Hate and Extremism, California State University San Bernardino, *FACT SHEET: ANTI-ASIAN PREJUDICE*, March 2021, 1 (2021).

[8] Terry Tang, *Asian Americans and Pacific Islanders are still targets of hatred 5 years after pandemic surge*, Associated Press, March 28, 2025, https://www.ap.org/news-highlights/spotlights/2025/asian-americans-and-pacific-islanders-are-still-targets-of-hatred-5-years-after-pandemic-surge/.

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."[9] As the D.C. Court of Appeals explained in *Warren v. District of Columbia,* 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,"[10] 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.[11] Laws such as the CA Statutes that seek to ban 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 California 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 2,410 females murdered by males in single

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[9] Marian Liu & Rachel Hatzipanagos, *"Nobody came, nobody helped"*, WASHINGTON POST, Feb. 25, 2021, https://www.washingtonpost.com/nation/2021/02/25/asian-hate-crime-attack-patrol/.

[10] 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/.

[11] *Id.*

victim/single offender incidents in 2022 – the most recent year for which data was available – based upon reports submitted to the FBI.[12] In California specifically, 42.7% of women were victims of some form of physical violence by intimate partners between 2016 and 2017 (the most recent data available).[13] Since 2019, the rate of women murdered by men has increased from 1.2 per 100,000 women, to 1.4 per 100,000 women in 2022. *See When Men Murder Women* at 2. 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, 87.5% of female victims were murdered by a male they knew, and 58.1% of those victims were the wives or intimate acquaintances of their killers. *Id.* at 4. Notably, women are significantly more likely than men to be killed by spouses or intimate acquaintances. *Id*. The numbers are even worse for most minority women, who face disproportionately higher homicide rates than white women. *Id.* at 3 (citing *FBI Supplementary Homicide Report. Downloaded on January 26, 2024*, available at: https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/home*;* and Violence Policy Center. *When Men Murder Women: A Review of 25 Years of Female Homicide Victimization in the United States*. October 2023,

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[12] *See When Men Murder Women: An Analysis of 2022 Homicide Data*, p. 2, Violence Policy Center (October, 2024), available at https://vpc.org/revealing-the-impacts-of-gun-violence/female-homicide-victimization-by-males/.

[13] *See The National Intimate Partner and Sexual Violence Survey* at 78, Centers for Disease Control and Prevention (2023), available at https://www.cdc.gov/nisvs/documentation/NISVS-2016-2017-State-Report-508.pdf.

available at: https://www.vpc.org/studies/wmmw2023.pdf). In particular, black females were murdered by males at a rate (3.2 per 100,000), nearly three times as high as white females (1.2 per 100,000). *See When Men Murder Women* at 6.

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.

Gabriela 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.[14] In 2019, anti-Hispanic[15] hate crimes rose 8.7% from the prior year, even though hate crimes in

[14] *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.

[15] The term "Hispanic" is often used instead of "Latino" by federal agencies.

general had been declining year after year.[16] And that upward trend continues. According to a report released in 2023, "anti-Latino hate crime edged 2.8% higher in 2022 after a 41% increase in the 2021 major city survey."[17]

In one of the most horrific hate-based attacks in recent history, 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 immigrants.[18] 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 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, responsible and law-abiding Latino firearm owners should have a reasonable choice in how they defend

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[16] Suzanne Gamboa, *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.

[17] Albinson Linares, *Rise in hate crimes includes a 'significant increase' against Latinos*, NBC NEWS, November 3, 2023, https://www.nbcnews.com/news/latino/hate-crimes-latinos-see-significant-increase-rcna123211.

[18] Marlene Lenthang, *El Paso Walmart shooter who targeted Hispanics agrees to pay families more than $5 million*, NBC NEWS, September 25, 2023, https://www.nbcnews.com/news/us-news/texas-shooter-targeted-hispanics-2019-walmart-rampage-agrees-pay-5-mil-rcna117235.

their homes and families. The arbitrary limit on magazine capacity set by the CA Statutes inhibits that choice and undercuts the efforts of Latinos to defend themselves against hate-based crime.

LGBTQ+ / OBSPP

California, 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. A report analyzing results for the National Crime Victimization Survey for 2022-2023 found that LGBTQ+ people are nearly five times more likely than non-LGBTQ+ people to experience violent victimization, including rape, sexual assault, and aggravated or simple assault.[19]

This is not a new phenomenon. In 2017, the NCAVP recorded reports of fifty-two hate related homicides of LGBTQ people, the highest number it

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[19] *See* Ilian H. Meyer and Andrew R. Flores, *Anti-LGBT Victimization in the United States*, Williams Institute at UCLA School of Law, February, 2025, available at https://williamsinstitute.law.ucla.edu/wp-content/uploads/Anti-LGBT-Violence-Feb-2025.pdf; *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/.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 related homicides recorded between January 1 and May 14, 2019. Eleven of the homicides were hate violence related.

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 represented 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.*

This trend continues. According to the FBI's annual crime report for 2024, while reported hate crimes against LGBTQ+ fell from the previous year, LGBTQ Americans were still the third most targeted group.[20] Notably, however, as recently as 2022, the same 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.[21] 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 the CA Statutes.

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[20] *GLAAD Responds to 2024 FBI Hate Crime Statistics Documenting Over 2,400 Anti-LGBTQ Hate Crime Incidents*, GLAAD, August 13, 2025, available at https://glaad.org/releases/glaad-responds-to-2024-fbi-hate-crime-statistics/.

[21] 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.

SUMMARY OF THE ARGUMENT

With reference to history and the original regulations on the right to bear arms, there is no evidence that demonstrates an "enduring American 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 the CA Statutes, and in 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 California of their until-now-lawfully-owned property, which many have long possessed without incident, without any compensation in violation of the Takings Clause.

The Petition ably explains why the decision below is untenable and this Court must intervene: The Ninth Circuit's upholding of California's retrospective and confiscatory laws distorts this Court's precedents and illustrates a disturbing and persistent trend, where lower courts continue to sanction laws that erode the 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 California 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.

Id. at 24 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)). Thus, the *Bruen* rule – which clarified *Heller* – requires that once it is determined that a regulation implicates conduct covered by the

Second Amendment, it is presumptively unconstitutional and the burden shifts to the government to prove the historical basis for its regulations. 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." *Id*. at 70.

As a threshold matter, magazines fall squarely within the scope of the Second Amendment. As correctly noted in the Petition, while the Ninth Circuit did acknowledge that "the Second Amendment's text necessarily encompasses the corollary right to possess a magazine for firearms that require one," it went on to rule that because "large capacity magazines" are not "necessary to operate any firearm," these devices therefore are not "arms" and fall outside the protection of the Second Amendment. Pet. at 16. This is akin to saying you have a right to own a car but not tires because even though a car is designed to use tires, it can also run on its rims. 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 the CA Statutes significantly impede the ability to use firearms as intended.

Even before *Bruen*, the various circuit courts agreed with the basic 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) ("[T]he 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 California. *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). 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 self-defense tools. All Californians have the right to defend themselves and their families. How one does that is up to the individual. The CA Statutes, whether intended or not, have the effect of making minority Californians even more vulnerable to violence 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); *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.

The analysis applied by the Ninth Circuit in this case at best distorts, and at worst completely ignores, this Court's recent precedent. Instead of undertaking a clear textual analysis, the Ninth Circuit first took it upon itself to determine that magazines that hold more than ten rounds are not "arms," and therefore do not even implicate the Second Amendment. Pet. at 21. The myriad reasons that this determination and line of analysis are improper and incorrect are thoroughly and capably elucidated in the Petition, which the *Amici* echo, but will not burden this Court by repeating here.

Of particular concern, however, is that while giving lip-service to *Bruen*, the Ninth Circuit still reverted, at least in part, to its pre-*Bruen* framework. The Ninth Circuit undertook an analysis of how heavily California's statutes burden Second Amendment rights, considering that burden to be "minimal" because "[f]iring more than ten rounds occurs only rarely, if ever, in armed self-defense." Pet. at 26. These analytical schemes were plainly rejected by this Court. *See Bruen*, 597 U.S. at 19 & n.4.

That lower courts persist with such warped and strained interpretations of this Court's decision in *Bruen* makes plain why this Court must provide further clarity and guidance. Citizens of California and other states with similar statutes, particularly those represented by the *Amici* and other similarly situated individuals, must not have their Second

Amendment right to determine what ammunition capacity is appropriate to protect themselves be dependent upon how many rounds of ammunition the government thinks is *truly* necessary – that decision is for the citizens to make for themselves.

II. California's Statutes Operate to Dispossess Citizens of Property Without Compensation

Amici also fully support Petitioners' request that this Court decide whether states 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 Ninth Circuit's decision on this issue also disregards this Court's precedent regarding the Takings Clause, holding that no taking occurs because, in part, the California Statutes allow owners to "modify" their property "to accept a smaller number of bullets," to "mov[e] it out of state," or "sell it." *See* Pet. at 31.

In this case, the limitations on magazine capacity imposed by the California Statutes is a *de facto* 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). This Court has also held that forcing citizens to permanently alter their property or render it inoperable places an unconstitutional condition on possession, which equates to a taking for which they must be compensated. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 605 (2013).

Members of the represented minority groups living in California 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 fewer 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). The CA Statutes provide no such compensation and thus violate 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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