No. 25-198

IN THE

# Supreme Court of the United States

VIRGINIA DUNCAN, ET AL.,
*Petitioners*,

v.

ROB BONTA, ATTORNEY GENERAL OF CALIFORNIA,
*Respondent.*

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

## BRIEF OF *AMICUS CURIAE* THE NATIONAL SHOOTING SPORTS FOUNDATION, INC. IN SUPPORT OF PETITIONERS


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## INTEREST OF *AMICUS CURIAE*[1]

The National Shooting Sports Foundation, Inc. (NSSF) is the firearm industry trade association. Formed in 1961, NSSF is a Connecticut 501(c)(6) tax exempt non-profit corporation. NSSF's mission is to promote, protect, and preserve America's hunting and shooting-sports traditions. NSSF has a membership of approximately 10,000—which includes federally licensed firearms manufacturers, distributors, and sellers of firearms, ammunition, and related products. NSSF members engage in the lawful production, import, distribution, and sale of constitutionally protected arms. At present, over 700 NSSF members reside in California.

The Second Amendment protects NSSF, its members, and all Americans from laws seeking to ban, restrict, or limit the constitutional right to keep and bear arms. Such laws are of particular interest to NSSF, as its members engage in the lawful commerce involving firearms across the United States—including in California—that enables the "people" to exercise their Second Amendment rights. Accordingly, California's ban on commonly owned magazines is of tremendous significance to NSSF and its members.

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[1] No counsel for any party authored this brief in any part, and no person or entity other than *amici* or *amici*'s counsel made a monetary contribution to fund its preparation or submission. All parties received notice of *amici*'s intent to file this brief at least ten days before its due date. *See* Sup. Ct. R. 37.2.

## INTRODUCTION & SUMMARY OF ARGUMENT

This case presents a simple but vitally important question for millions of law-abiding Americans: Can a state (or the federal government) impose a categorical ban on a functional component of the Nation's most popular firearms? The answer is straightforward: No. As the Second Amendment's text instructs, and as our Nation's history of firearm regulation confirms, no government may ban the possession of arms commonly possessed for lawful purposes. And if the standard-capacity magazines banned by California do not fit that description, nothing does.

Nevertheless, the Ninth Circuit upheld that state's ban on the possession of these magazines. It first held that standard-capacity magazines are not protected by the Second Amendment at all, because they are not "arms" (or even protected components of "arms") but trivial add-ons. Next, it tried to shoehorn California's categorical ban into a regulatory tradition pertinent to "dangerous and usual weapons." Neither maneuver withstands scrutiny; together, they give governments *carte blanche* to ban the most popular firearms and firearm components in the country.

Nor is the Ninth Circuit alone. *Bruen*'s rejection of interest-balancing in favor of historical analysis has not retired the view that the Second Amendment is a second-class right—it has simply spawned strategic innovation. Rather than expressly urging courts to weigh policy tradeoffs, governments defending bans on common arms now routinely ask judges to narrow the definition of "arms" or, alternatively, to balloon *Heller*'s category of "dangerous and unusual weapons" to include anything a criminal might find useful.

Unfortunately, this strategy has proven successful. In case after case, lower courts have gerrymandered the set of constitutionally protected "arms"—excising any firearm or firearm component that might make a weapon too effective or efficient, and thus "dangerous," in the hands of a violent criminal. *See*, *e.g.*, *Nat'l Ass'n for Gun Rts. v. Lamont*, No. 23-1162, 2025 WL 2423599 (2d Cir. Aug. 22, 2025); *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 47 (1st Cir. 2024), *cert denied*, No. 24-131, 2025 WL 1549866 (U.S. June 2, 2025); *Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024), *cert. denied sub nom. Snope v. Brown*, 145 S.Ct. 1534 (2025); *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023), *cert. denied sub nom. Harrel v. Raoul*, 144 S.Ct. 2491 (2024).

In vigorous dissents, this Court's lower-court colleagues have "sound[ed] the alarm over" this "affront to the Second Amendment." App.77 (Bumatay, J., dissenting). This Court should answer the bell by resolving two crucial issues.

*First*, magazines are undoubtedly "Arms" under the Second Amendment. This Court has defined "Arm" as "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another," *D.C. v. Heller*, 554 U.S. 570, 581 (2008) (citation omitted), and "instruments that facilitate armed self-defense," *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 24 (2022). Rightly so. Any definition that excluded firearm components integral to the design and proper operation of the arm, like magazines, "would allow the government to sidestep the Second Amendment with a regulation prohibiting possession at the component level." *Hanson v. D.C.*,

120 F.4th 223, 232 (D.C. Cir. 2024), *cert. denied*, No. 24-936, 2025 WL 1603612 (U.S. June 6, 2025).

*Second*, no government may ban standard-capacity magazines, nearly a billion of which are estimated to be in "common use" by millions of law-abiding Americans. *See, e.g.*, Nat'l Shooting Sports Found., *Detachable Magazine Report*, https://perma.cc/EYC4-KKNA (*NSSF Magazine Report*). Any "prohibition" of these magazines is thus "off the table" under *Heller*, 554 U.S. at 636. The *only* arms even *arguably* subject to such harsh treatment are "dangerous and unusual" arms, *id.* at 627—*i.e.*, arms both "particularly useful for illegal activity and not commonly possessed by law-abiding citizens." *United States v. Bridges*, No. 24-5874, 2025 WL 2250109, at *22 (6th Cir. Aug. 7, 2025) (Nalbandian, J., concurring). Standard-capacity magazines do not qualify.

The court below refused to acknowledge the basic principle—apparent from *Heller* and dictated by "the Nation's historical tradition of firearm regulation," *Bruen*, 597 U.S. at 24—that arms in common lawful use cannot be categorically banned consistent with the Second Amendment. *See* App.51-54. Instead, like other lower courts, the Ninth Circuit purported to divine an overarching tradition that blesses *any* restriction—including retroactive possession bans—on weapons a regulator deems "especially dangerous" in criminal hands. App.36-44. That analysis is badly flawed. Arms in common use for lawful purposes are, by definition, outside the "dangerous and unusual" category. And no relevant historical tradition begins to justify a ban on industry-standard magazines.

In short, California's ban on standard-capacity magazines is unconstitutional. If such magazines are not protected at all, as the court below held, the Second Amendment is "little more than a parchment promise," *Allen v. Milligan*, 599 U.S. 1, 10 (2023); governments can chip away at the right to bear arms by prohibiting an ever-growing list of widely-owned firearm components. And if standard-capacity magazines are not in common lawful use, then nothing is; indeed, they are integral to the design of semiautomatic firearms, as well as an ordinary and defining feature of everyday firearm ownership.

## ARGUMENT

### I. Magazines and other firearm components are "Arms" under the Second Amendment.

"Magazines—whether they hold ten rounds, more than ten rounds, or fewer than ten rounds—are unquestionably 'Arms' under the Second Amendment." App.83 (Bumatay, J., dissenting). This Court has defined "Arms" as "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another." *Heller*, 554 U.S. at 581 (citing 1 *A New and Complete Law Dictionary*). If an implement can be "carr[ied] … for the purpose of offensive or defensive action," it is an arm. *Id.* at 584; *accord id.* at 581 (arms are "[w]eapons of offence, or armour of defence" (citing 1 *Dictionary of the English Language* 106 (4th ed.) (reprinted 1978)). The Second Amendment thus protects all bearable "instruments that *facilitate armed self-defense*." *Bruen*, 597 U.S. at 28 (emphasis added); *see also United States v. Rahimi*, 602 U.S. 680, 691 (2024) (all "arms-bearing conduct" is presumptively protected).

Firearm magazines clearly fit those descriptions. Like the string of a bow, the shaft of a lance, or the casing of a cartridge, magazines are bearable devices carried for offensive and defensive purposes—even if they never make physical contact with an opponent. Like arms of old, every modern firearm is composed of various component mechanisms designed to facilitate and improve its function. Today, these constituent parts are complex, modular, and numerous—typically including a sighting mechanism to assist in aiming; an action to load and eject cartridges; a trigger to control firing; a frame or receiver to contain and protect internal components; a stock, grip, or handguard for support; and a magazine to store and feed ammunition.

All these components "facilitate armed self-defense," *Bruen*, 597 U.S. at 28, and the standard-capacity magazines banned by California are no different. Unlike the passive cartridge box of yore, modern magazines are integral to the design of semiautomatic firearms and the mechanism that makes them work, actively feeding ammunition into the firing chamber. Law-abiding citizens thus have a right to keep and bear firearms equipped with standard-capacity magazines for the same reason they have a right to keep and bear firearms loaded with ammunition: "[W]ithout bullets, the right to bear arms would be meaningless." *Jackson v. City & Cnty. of San Francisco,* 746 F.3d 953, 967 (9th Cir. 2014).

In sum, there is no way to distinguish the functional parts of a protected "Arm" from the "Arm" itself. The court below suggested that ammunition and perhaps triggers are protected, while components that merely improve a firearm's performance are not. App.18-20. But the Second Amendment does not prioritize one

piece of hardware over another. And the protection of arms necessarily reaches their functional components, because "[t]o hold otherwise would allow the government to sidestep the Second Amendment with a regulation prohibiting possession at the component level." *Hanson*, 120 F.4th at 232. Because "[t]he Constitution deals with substance, not shadows," *SFFA v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 230 (2023), this Court must hew to its functional definition of "arm," rather than artificially limiting its reach to complete weapons, or to some imagined bare-minimum set of weapon components.

Nor does it work to assert, as the Ninth Circuit did, that these magazines in particular are not "arms" because no firearm requires a magazine that can hold more than ten rounds. *See* App.18-21 (holding that such magazines are not "arms" but "accoutrements" or "optional accessories"). No definition of "arm" adopted by this Court contains that "necessity" requirement. To the contrary, *Heller* forecloses a do-you-really-need-it defense: D.C. was not free to ban handguns because it "allowed" rifles and shotguns; it did not matter that no resident's self-defense *required* the former. 554 U.S. at 629. Indeed, handguns and long guns are distinguished by their components, none of which are strictly necessary to armed self-defense. *See* 27 C.F.R. § 479.11 (defining "pistol" and "rifle" based on "accessor[es], component[s]," and "attachment[s]").

Precedent aside, the Ninth Circuit's reasoning inevitably triggers a race to the bottom: Under its logic, no magazine counts as an arm. After all, some semiautomatic weapons can still technically *fire* without *any* magazine if a user loads individual

rounds of ammunition directly into the chamber[2]—and in theory, manufacturers could design all firearms to work that way. Perhaps recognizing that stripping Second Amendment protection from semiautomatic technology would be controversial, the Ninth Circuit eventually conceded that California could not ban *all* magazines. App.20. But that only leads to another blind alley: If a magazine that holds *one round* is an "arm," at what point does it *lose* that status? At two rounds? At ten? This unprincipled theory of the Second Amendment's reach cannot be taken seriously—and is redolent of the "interest-balancing" rejected in *Heller*, 554 U.S. at 634. If a magazine of any size is an "arm," then a ten- or eleven-round magazine is also an "arm."

Simply put, the size of a magazine (like the accuracy of a sighting device or the sensitivity of a trigger) is not relevant to the definition of "arm." It is relevant, if at all, at *Bruen*'s second step, where the state must prove that a particular magazine restriction is "consistent with the Nation's historical tradition of firearm regulation." 597 U.S. at 24.

This Court should say so. Absent correction, judges will continue to gerrymander the definition of "Arms" to exclude components they deem unnecessary to the functioning of a Platonic "regular firearm[]." *Ocean State Tactical*, 95 F.4th at 47 (contrasting "regular firearms" and "semiautomatic rifles"); *Washington v. Gator's Custom Guns, Inc.*, 568 P.3d 278, 284 (2025) (reasoning that the constitution protects magazines as "a *class*," but not this "subclass," because additional rounds are "not required"). No such ideal form exists.

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[2] Semiautomatic firearms with a magazine disconnect feature will not fire when the magazine is removed.

"[T]he ordinary operation of a protected weapon," App.19-20, 21, cannot be divorced from the design or components of a specific weapons platform. And while the operation of this so-called "basic firearm" remains a mystery, lower courts' reasoning suggests something like: able to go *bang* once. *See* App.132 (VanDyke, J., dissenting).

It is not hard to see where this reasoning will lead: An automatic action can always be replaced by a double-action revolving cylinder, which in turn might be replaced by a single-action cylinder, bolt, or lever action. A suppressor can be removed. An electronic red-dot sight might be replaced by fixed iron sights or a steel rib or removed entirely. A trigger might be replaced by a button. A stock, grip, or handguard might be exchanged, modified, or excluded.

In short, the Ninth Circuit's reasoning would allow governments to categorically ban any number of industry-standard firearm components—without so much as glancing at history or tradition. As that absurd outcome suggests, this illogic "misunderstands the Second Amendment inquiry." App.89 (Bumatay, J., dissenting). Whether any weapon or weapon component is *necessary* for self-defense is irrelevant: The Second Amendment protects *any* bearable device that "the people" commonly "choose to 'facilitate armed self-defense.'" *Id.* (quoting *Bruen*, 597 U.S. at 28). No court may second-guess that choice. Here, the American people have spoken emphatically: What California calls "large-capacity magazines" are ordinary magazines that come standard with virtually every semiautomatic pistol and have long been an integral part of lawful firearm ownership in this country. *See* Part III, *infra*.

It is worth asking whether courts would so eagerly narrow other constitutional rights in this way. Would a court bless a ban on the automatic printing press because newspapers can still "function" (albeit at reduced "capacity") with a manual version? App.20. Of course not. *C.f. Minneapolis Star & Trib. Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585 (1983). Could a government ban public prayer because the free exercise of religion can still "function" (albeit at reduced "capacity") when confined to private homes? Surely not. *C.f. Tandon v. Newsom*, 593 U.S. 61 (2021). The strict-necessity test employed below thus depends on the discredited theory that the Second Amendment is a "second-class right." *Bruen*, 597 U.S. at 70. But as this Court has held, "[t]he very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Heller*, 554 U.S. at 634.

## II. The Second Amendment precludes bans on arms in common use.

Once it is clear that magazines are "arms," the next question is whether a particular state restriction on magazines "infringe[s]" on "the right of the people to keep and bear" them. U.S. Const. amend. II. That turns on whether the challenged law is consistent with "the historical tradition that delimits the outer bounds of the right." *Bruen*, 597 U.S. at 19. It is the state's burden to demonstrate that its modern statute falls within a "relevantly similar" tradition of firearm regulation. *Id.* at 29. Often, this analogical inquiry focuses on "[w]hy and how" the state's new "regulation burdens the right." *Rahimi*, 602 U.S. at 692. And applying this test is "straightforward" when a

government lacks *any evidence* of a "distinctly similar historical regulation." *Bruen*, 597 U.S. at 26.

**1.** A State will always fail this test when it seeks to ban an arm in common use by law-abiding citizens: No such prohibition appears in the historical record. *See id.* at 22, 47. Indeed, the "record before 1800 offers no support for a ban on *any* class of arms." *Bridges*, 2025 WL 2250109 at *15 (Nalbandian, J., concurring) (emphasis added). And "[f]rom the Founding to the Civil War, only one state enacted a law banning the possession or sale of any kind of firearm"—and it was promptly challenged and pared back by the state's high court. *Id.* at 16 (citing *Nunn v. State*, 1 Ga. 243, 251 (1846)). In short, the historical record contains "no robust … tradition of disarming *law-abiding* citizens of *commonly owned* arms." App.106 (Bumatay, J., dissenting) (emphases added).

The historical record shows that governments have more latitude with respect to "dangerous and unusual" arms. *Heller*, 554 U.S. at 627 (referring to "tradition of prohibiting the carrying of 'dangerous and unusual weapons'"). But assuming governments may prohibit "dangerous and unusual" weapons, history offers no support for banning arms "typically possessed by law-abiding citizens for lawful purposes," including "self-defense." *Id.* at 624-25. "[U]nder the *Bruen* test, that is the end of the matter." M. Smith, *NYSPRA v. Bruen*, 24 HARV. J. L. & PUB. POL., PER CURIAM 8 (2022); D. Kopel & J. Greenlee, *The History of Bans on Types of Arms Before 1900*, 50 J. OF LEGISL. 1, 293-94 (2024) (for commonly-owned arms, states instead regulated the "mode of carry," set age limits, and adjusted punishments for criminal use).

The crucial question thus becomes whether an arm is in "common use." Fortunately, the distinction between "dangerous and unusual" arms and "common" ones "has deep roots." *Bianchi*, 111 F.4th at 515 (Richardson, J., dissenting). An arm is "dangerous and unusual" (in the traditional sense relevant here) only if it is both "particularly useful for illegal activity and not commonly possessed by law-abiding citizens." *Bridges*, 2025 WL 2250109 at *22 (Nalbandian, J., concurring). Three Justices of this Court have recognized as much. *See Caetano v. Massachusetts,* 577 U.S. 411, 417 (2016) (Alito, J., concurring in judgment) ("A weapon may not be banned unless it is *both* dangerous *and* unusual."); *Snope*, 145 S.Ct. at 1536 (Thomas, J., dissenting) (same); *Heller v. District of Columbia*, 670 F.3d 1244, 1272 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) (same).

In short, if an arm "was in common use for lawful purposes but also sometimes used for criminal purposes, its common-use status trumped its criminal-use status." *Bridges*, 2025 WL 2250109 at *20 (Nalbandian, J., concurring). Indeed, that should have been clear from *Heller*, under which all arms in "common use" are *definitionally excluded* from the category of "dangerous and unusual weapons." 554 U.S. at 627. The upshot is that once the law-abiding American public widely adopts a particular arm (and its components) for lawful purposes, it necessarily falls outside the category of "dangerous and unusual weapons." And that precludes a ban: In *Heller*, for example, the fact that "handguns are the most popular weapon chosen by Americans for self-defense" was "enough" to invalidate the "prohibition" of those arms. *Id.* at 629. Thanks to that "cho[ice]" by the law-

abiding public, a ban was "off the table." *Id.* at 629, 636. It made no difference if handguns also happened to be the most popular firearm of choice for criminals.

While this may seem straightforward enough, lower courts have not gotten the message. Some have even classified the AR-15—"the most popular rifle in the country," *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025)—as "dangerous and unusual," and thus susceptible to a complete ban. *See Bianchi*, 111 F.4th at 459; *Bevis*, 85 F.4th at 1197; *Lamont*, 2025 WL 2423599 at *11-12; *id.* at *25-27 (Nathan, J., concurring); *but see Snope*, 145 S.Ct. at 1534 (Statement of Kavanaugh, J.) ("Americans today possess an estimated 20 to 30 million AR-15s," which "are legal in 41 … States"); *see also* Nat'l Shooting Sports Found., *Modern Sporting Rifle Comprehensive Consumer Report* 12 (July 14, 2022), perma.cc/SSU7-PR95 (*NSSF MSR Report*) (documenting the AR platform's popularity). Absent intervention, such topsy-turvy rulings will proliferate.

**2.** The court below continued the trend, upholding a categorical ban on standard-capacity magazines despite recognizing that "many firearm owners own [these] magazines" for lawful purposes. App.51. California's ban could thus be upheld—even though standard-capacity magazines are not "unusual" among law-abiding citizens—because the state deems them "especially dangerous." App.14, 34, 36, 38-40, 44. So, the argument goes, a ban on possessing standard-capacity magazines is just the latest in a tradition of prohibiting "especially dangerous uses of weapons." App.44.

Note the sleight of hand here. Surely aware that the historical record lacks any tradition of banning common *arms*, the Ninth Circuit recharacterized California's magazine ban as prohibiting an "especially dangerous *use*[]" of arms. App.44 n.9. The implicit assumption that standard-capacity magazines are themselves unprotected by the Second Amendment is wrong. *See* Part I, *supra*. And so is the Ninth Circuit's description of the state's law: California did not target any particular *use* of such magazines. Instead, by retroactively banning their possession, California criminalized *all uses* of standard-capacity magazines and firearms equipped with them. Again, the court ignored *Heller*'s rule that a ban does not become permissible merely because Americans have other self-defense options.

In any event, the Ninth Circuit did not identify any historical tradition analogous to a ban on any arm commonly owned by the general public for lawful uses. *First*, from historical gunpowder-storage laws, it divined a "tradition of regulating a component necessary to the firing of a firearm in order to prevent or mitigate … harm." App.43. But as that description indicates, these laws merely regulated the storage of gunpowder; they did not ban its possession. App.34-35. And it is no answer to point to a storage law's effect on "the speed at which a person [can] fire a firearm," App.42, because any ban on modern arms or arm components has that effect.

*Second*, the Ninth Circuit pointed to bans on "trap guns." App.35-36. To start, it is not clear that "trap guns" are protected by the Second Amendment, seeing as the device's "whole design … was to allow a firearm to be discharged *without* a person needing to 'keep' or

'bear' it." App.108 (Bumatay, J., dissenting). Regardless, the Ninth Circuit did not point to a law that banned the possession of arms most readily converted into "trap guns." The statutes it did identify regulated a particular *use* of an arm: automatic firing without human supervision. Thus, "how" these laws burdened the Second Amendment right is entirely distinct from "how" California's flat ban on standard-capacity magazines does so. *Rahimi*, 602 U.S. at 692.

*Third*, the court below gestured at laws regulating the use and carry of unusual weapons such as Bowie knives and "slungshots." App.36-39. But *Bruen* already distinguished this history at length. 597 U.S. at 40-55. Rather than imposing categorical bans on owning or carrying weapons, these statutes regulated how they could be carried or used. And if, as *Bruen* held, these "targeted historical carry laws don't justify … restrictions on the carry of commonly owned weapons," it follows that "they don't support the outright ban of commonly owned weapons." App.102 (Bumatay, J., dissenting). And crucially, these laws regulated arms that were both (1) oddities among law-abiding citizens and (2) special favorites of dangerous criminals. *See Bridges*, 2025 WL 2250109 at *16-20 (Nalbandian, J., concurring) (collecting cases). By contrast, the Second Amendment was always understood to protect even "particularly dangerous" arms that were nonetheless "in common use for lawful purposes." *Id.* at *20.

**3.** In the end, the Ninth Circuit could point to no historical statute remotely analogous to California's magazine ban. And under *Bruen*, that is fatal. So the court brought back its pre-*Bruen* interest-balancing inquiry, this time "masquerading" as a "nuanced"

analysis of "the Second Amendment's historical scope." App.120 (Bumatay, J., dissenting).

It did so first by defining the regulatory tradition at a sky-high level of generality: all regulations, even short of bans, intended to "protect innocent persons from harm from especially dangerous uses of weapons." App.44. Unsurprisingly, the court found that California's magazine ban falls within that overbroad category. App.44-45. And that liberated the court to assess whether California's law imposes an impermissible burden on Second Amendment rights. It did not, the majority held, because "the only effect of California's ban … is that a person may fire a semi-automatic weapon no more than ten times without a short pause"—and that minor "effect" leaves plenty of other avenues for self-defense. App. 45-47.

As the dissenters below correctly observed, that is not the inquiry required by *Bruen*. App.112 (Bumatay, J., dissenting). Indeed, "the majority's lax historical balancing test" may prove "even easier for the government to satisfy than intermediate scrutiny," because every modern firearm or firearm component that enhances a law-abiding citizen's ability to act in self-defense also qualifies as "especially dangerous" in a criminal's hands—and thus, can be banned in the Ninth Circuit. App.139-40 (VanDyke, J., dissenting). This Court must intervene before lower courts swap their pre-*Bruen* one-way-ratchet against the Second Amendment for a new-and-improved model.

Not only did the court butcher its application of *Bruen*'s framework, it purported to find an escape hatch in *Bruen* itself. App.30-35. Whenever a state faces new "societal concerns" and new "technological

changes," a "more nuanced approach" kicks in. App.31. Under it, a court need only follow the historical mood music—if any old laws were aimed at mitigating the "harm" caused by criminal misuse of arms, then any modern statute aimed at the same "harm" will (in all likelihood) pass constitutional muster.

*Bruen* mandated one test, not two. Statutes implicating the Second Amendment right must be "consistent with this Nation's historical tradition of firearm regulation." 597 U.S. at 34. *Bruen*'s reference to a "more nuanced approach … was an unremarkable observation that making comparisons to proper historical analogies might be challenging at times." App.113 (Bumatay, J., dissenting). The presence of new social problems does not suddenly put all "policy choices"—including bans on commonly used arms—back on "the table," *Heller*, 554 U.S. at 636, or a grant a "regulatory blank check," *Bruen*, 597 U.S. at 30. Because this Court has already made clear that history offers no support for banning arms in common use for lawful purposes, no "new" social problem or technological change can justify such a law today.

## III. "Large capacity magazines" are in common use for lawful purposes.

What California calls "large-capacity magazines" are unquestionably "commonly possessed by law-abiding citizens for lawful purposes." *Caetano*, 577 U.S. at 420 (Alito, J., concurring). Indeed, if such magazines do not fit that description, nothing does: Not only are they "common," they are ubiquitous. They are the standard magazine for America's most popular semiautomatic handguns and rifles—and

have been part of the fabric of American firearm ownership for generations.

**1.** Begin with history. "It is certainly true that firearms technology has advanced since 1791—but not as much as some would like to think." C. Cramer & J. Olson, *Pistols, Crime, and Public Safety in Early America*, 44 WILLAMETTE L. REV. 699, 716 (2008). In particular, "[t]he desire … for repeating weapons is almost as old as the history of firearms." H. Peterson, *Arms and Armor in Colonial America 1526-1783*, at 215 (1956). The first known firearm able to fire more than ten rounds without reloading was invented in the Elizabethan era. *See* D. Kopel, *The History of Firearm Magazines and Magazine Prohibitions*, 78 ALB. L. REV. 849, 852 (2015). Such firearms steadily grew in popularity. *Id.* at 852-53. In 1722, an American source described a firearm which, "though loaded but once[,] … was discharged eleven times following, with bullets, in the space of two minutes." Peterson, *supra*, at 215. At the Founding, the premier firearm was the Girandoni rifle, which boasted a 22-round magazine capacity. Kopel, *supra*, at 853.

Between the ratification of the Bill of Rights and the Fourteenth Amendment, firearms with 10-plus-round capacities proliferated. *See id.* at 853-56 (noting advances such as "pepperbox" pistols, which could fire more than 24 rounds before reloading). Then as now, Americans prized these devices as tools of self-defense: The Winchester Model 1866—a wildly popular rifle with a 17-round magazine—was marketed as the best defense against "sudden attack[s]." R.L. Wilson, *Winchester: An American Legend* 32 (1991). By the Civil War, "magazines of more than ten rounds [were] very commonly possessed in the United States." Kopel,

*supra*, at 871. That popularity persisted into the 20th Century. *See id.* at 857-59 & nn. 82, 88.

In short, while the modern popularity of standard-capacity magazines is enough to invalidate California's ban, "the[ir] common use … for self-defense is [also] apparent in our shared national history." *Duncan v. Becerra*, 970 F.3d 1133, 1147 (9th Cir. 2020). Far from some threatening innovation, such magazines would have been familiar to the drafters of the Fourteenth Amendment; when they convened, "rifle magazines of more than ten rounds" had already "become popular." Kopel, *supra*, at 851. Nor did governments try to alter that: From colonial times until the Prohibition era, they imposed zero bans on magazines. *Id.* at 870.

**2.** Today, standard-capacity magazines are more popular than ever. NSSF research has shown that, of the estimated 963 million magazines sold into the commercial market between 1990 and 2021, around 74 percent—some 717 million magazines—have a maximum capacity of 11 or more rounds. *See NSSF Magazine Report*, *supra*, at 3. In fact, the majority of detachable pistol magazines hold more than 10 rounds. *Id.* And there are far more rifle magazines in circulation with capacities of more than 30 rounds than magazines that hold fewer than 10. *Id.* There is nothing unusual about these products: They are the industry standard, because they are what law-abiding gun owners desire to own for lawful purposes.

Courts, too, have recognized the massive popularity of such magazines. The Ninth Circuit noted that about "half of privately owned magazines hold more than ten rounds." App.7; *Kolbe v. Hogan*, 849 F.3d 114, 129 (4th

Cir. 2017) (*en banc*) ("Most pistols are manufactured with magazines holding ten to seventeen rounds, and many popular rifles are manufactured with magazines holding twenty or thirty rounds.").

Nor are these magazines owned by a small cadre of hobbyists. In a NSSF survey, "43.3 percent of firearm owners reported owning a detachable magazine with a capacity of 11 or more rounds"—suggesting that nearly *one out of every ten Americans* owns a magazine covered by California's statute. *NSSF Magazine Report*, *supra*, at 4. In another NSSF survey, more than half of semiautomatic modern sporting rifle owners reported that "the magazine capacity of their [rifle] is 30 rounds." *NSSF MSR Report*, *supra*, at 6. And a recent comprehensive report found that roughly 40 million individuals have owned firearm magazines that hold more than 10 rounds—for context, that is about half of all American gun owners. *See* W. English, *2021 National Firearms Survey: Analysis of Magazine Ownership and Use*, at 20 (May 4, 2023), https://perma.cc/DV55-QT88 (English 2023).

None of this should be surprising—after all, magazines capable of holding more than ten rounds come standard with America's most popular firearms, including semiautomatic handguns like the Glock pistol and rifles like the AR-15. *See Duncan v. Bonta*, 19 F.4th 1087, 1155 & n.25 (9th Cir. 2021) (Bumatay, J., dissenting); Kopel, *supra*, at 859 (noting that "[t]he most popular rifle in American history"—the AR-15—has "standard magazines of twenty or thirty rounds"). Indeed, "manufacturers often include large-capacity detachable magazines as part of the standard package when the firearm is purchased." App.7; *see also NSSF MSR Report*, *supra*, at 31. In short, what California

calls "large-capacity magazines" are among the most common components of the Nation's most common firearms.

**3.** And for good reason. More than 70 percent of standard-capacity magazine owners cite "defensive purposes"—within and outside of the home—as their reason for owning them. English 2023, *supra*, at 4. Self-defense is thus "the most common reason cited for ownership of" the magazines banned by California. *Id.* That preference makes perfect sense: Having enough ammunition—without having to reload—can be critical to thwarting would-be assailants or (preferably) deterring attacks before they begin. After all, "[w]hen a firearm being used for defense is out of ammunition, the defender no longer has a functional firearm." Kopel, *supra*, at 851. And reloading in the heat of a home invasion or assault leaves the potential victim "especially vulnerable." *Id.* Americans have long selected standard-capacity magazines to guard against that vulnerability.

Nor are their concerns theoretical. Studies estimate that Americans use firearms in more than 1.6 million "defensive incidents" annually. *See* W. English, *2021 National Firearms Survey: Updated Analysis Including Types of Firearms Owned* at 1 (May 13, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4109494 (English 2022). Most involve handguns, and the most popular handguns come standard with magazines that hold more than ten rounds. *Id.* at 10. Given the number of defensive uses and the popularity of such magazines, it is apparent that firearms equipped with such magazines are used in thousands of defensive stands annually. Confirming as much, hundreds of respondents in a

recent survey reported facing scenarios "in which it would have been useful for defensive purposes to have a firearm with a magazine capacity in excess of 10 rounds[.]" *Id.* at 26, 28. Most involved multiple attackers—justifying the intuition that has made these and similar magazines popular for two centuries. *See id.* at 28-33.

And while handguns are the most commonly used self-defense weapon, semiautomatic rifles like the AR-15—which, again, has "standard magazines of twenty or thirty rounds," Kopel, *supra*, at 859—are also used in defense of innocent life. *Cf.* English 2022, *supra*, at 15 (rifles are used in 13 percent of defensive incidents). Take one example: In 2019, two masked men broke into Jeremy King's home. *See* Dave Jordan, *Victim of Home Invasion Speaks; Credits Wife With Saving His Life With AR-15*, SpectrumNews Florida (Nov. 1, 2019, 4:37 PM), https://perma.cc/F4AL-L2K8. They grabbed his 11-year-old daughter, demanded money, and beat King within an inch of his life. But before they could kill him (and perhaps his daughter), King's pregnant wife burst into the room with an AR-15 and repelled the attackers. As King put it: They "came in with two normal pistols and my AR stopped it. [My wife] evened the playing field and kept them from killing me." Thanks to the rifle's ammunition capacity, Mrs. King could fire at one attacker while retaining enough ammunition to deter the second.

**4.** The Ninth Circuit brushed aside all evidence of standard-capacity magazines' widespread adoption for lawful purposes. *See* App.51-54 (deriding a "simplistic" focus on how many magazines are in lawful circulation). Indeed, courts routinely resist the commonsense nature of "common use," straining for a

way to uphold bans on arms owned and used by millions of law-abiding Americans. *See Lamont*, 2025 WL 2423599 at *11-12 ("popular" arms may be banned as "dangerous and unusual"); *Bianchi*, 111 F.4th at 460 (calling "absurd" the argument that AR-15s are in "common use").

What these courts refuse to see is that "[t]he Second Amendment protects a *customary* historical right, based in the practice of the people." *Bridges*, 2025 WL 2250109 at *24 n.30 (Nalbandian, J., concurring). What matters, then, is "that the American people" clearly "consider[]" standard-capacity magazines a "quintessential" tool of self-defense and other lawful purposes. *Heller*, 554 U.S. at 629.

* * *

California has chosen to prohibit a class of arms protected by the Second Amendment. "[T]hat decision comes at a cost," *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024), because our "historical tradition of firearm regulation" contains no precedent for banning arms widely adopted by the law-abiding public, *Bruen*, 597 U.S. at 24. California does not deny that standard-capacity magazines are "commonly possessed … for lawful purposes." *Caetano*, 577 U.S. at 420 (Alito, J., concurring). Nor could it, because such magazines are a standard, integral feature of the best-selling firearms, chosen by a vast swath of Americans for self-defense and other lawful uses.

## CONCLUSION

The Court should grant the petition for certiorari and reverse the decision below.

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