No. 21-1194

In the Supreme Court of the United States

VIRGINIA DUNCAN, ET AL.,
Petitioners,
v.
ROB BONTA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,
Respondents.

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

BRIEF OF ARIZONA, LOUISIANA, OKLAHOMA, WEST VIRGINIA, ALABAMA, ALASKA, ARKANSAS, GEORGIA, IDAHO, INDIANA, KANSAS, KENTUCKY, MISSISSIPPI, MISSOURI, MONTANA, NEBRASKA, OHIO, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH AND WYOMING AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

JEFF LANDRY
Attorney General of Louisiana
ELIZABETH B. MURRILL
Solicitor General
JOSIAH KOLLMEYER
Assistant Attorney General

JOHN M. O'CONNOR
Attorney General of Oklahoma
BRYAN CLEVELAND
Deputy Solicitor General

PATRICK MORRISEY
Attorney General of West Virginia
LINDSEY S. SEE
Solicitor General

MARK BRNOVICH
Attorney General of Arizona
BRUNN W. ROYSDEN III
Solicitor General
MICHAEL S. CATLETT
Deputy Solicitor General
Counsel of Record
KATE B. SAWYER
Assistant Solicitor General
OFFICE OF THE ARIZONA ATTORNEY GENERAL
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-5025
Michael.Catlett@azag.gov

Counsel for Amici Curiae
(Additional Counsel listed on Inside Cover)

STEVE MARSHALL
Attorney General
of Alabama

TREG R. TAYLOR
Attorney General
of Alaska

LESLIE RUTLEDGE
Attorney General
of Arkansas

CHRISTOPHER M. CARR
Attorney General
of Georgia

LAWRENCE G. WASDEN
Attorney General
of Idaho

THEODORE E. ROKITA
Attorney General
of Indiana

DEREK SCHMIDT
Attorney General
of Kansas

DANIEL CAMERON
Attorney General
of Kentucky

LYNN FITCH
Attorney General
of Mississippi

ERIC S. SCHMITT
Attorney General
of Missouri

AUSTIN KNUDSEN
Attorney General
of Montana

DOUGLAS J. PETERSON
Attorney General
of Nebraska

DAVE YOST
Attorney General
of Ohio

ALAN WILSON
Attorney General
of South Carolina

JASON R. RAVNSBORG
Attorney General
of South Dakota

HERBERT H. SLATERY III
Attorney General and
Reporter of Tennessee

KEN PAXTON
Attorney General
of Texas

SEAN D. REYES
Attorney General
of Utah

BRIDGET HILL
Attorney General
of Wyoming

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INTEREST OF AMICI CURIAE

Amici Curiae—the States of Arizona, Louisiana, Oklahoma, West Virginia, Alabama, Alaska, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Mississippi, Missouri, Montana, Nebraska, Ohio, South Carolina, South Dakota, Tennessee, Texas, Utah, and Wyoming (the "Amici States")—file this brief in support of Petitioners.[1] The undersigned are their respective states' chief law enforcement or chief legal officers and have authority to file briefs on behalf of the states they represent.

The Attorneys General have experience protecting public safety and citizen interests in states where magazines capable of holding more than ten rounds are lawfully possessed and used. The Amici States the Attorneys General serve are among the many (at least forty-one) states that permit the standard, eleven-plus capacity magazines that California has banned (the "Standard Magazines") and have advanced their compelling interests in promoting public safety, preventing crime, and reducing criminal firearm violence without a magazine ban such as the one here.

The experience in other states shows that Standard Magazines are common to the point of ubiquity among law-abiding gun owners and their use promotes public safety. Calling Standard Magazines "large-capacity" is a misnomer—they often hold only in the range of eleven to fifteen rounds (in no way a large absolute number) and come standard with many of the most popular firearms. *See* App.100 n.1 (Bumatay, J., dissenting) ("We … note that magazines with the capacity to accept more than ten rounds of

[1] Counsel of record for all parties received timely notice of Amici States' intent to file this brief. *See* Sup. Ct. R. 37.2(a).

ammunition are standard issue for many firearms. Thus, we would be more correct to refer to California's ban on 'standard-capacity magazines.'"). There is nothing sinister about citizens bearing Standard Magazines. Law-abiding citizens bearing Standard Magazines with lawful firearms benefit public safety, counter-balance the threat of illegal gun violence, and help make our streets safer.

The Amici States believe that in upholding California Penal Code 32310 ("the Act"), the Ninth Circuit utilized an erroneous construction of the U.S. Constitution, thereby allowing the Second Amendment rights of millions of citizens to be compromised. The Attorneys General submit this brief on behalf of the Amici States they serve to provide their unique perspective on these constitutional questions and protect the critical rights at issue, including the rights and interests of their own citizens.

The Amici States join together on this brief not merely because they disagree with California's policy choice, but because the challenged law represents a policy choice that is foreclosed by the Second Amendment. States may enact reasonable firearm regulations that do not categorically ban common arms core to the Second Amendment, but the challenged law fails as it is prohibitive rather than regulatory. California should not be allowed to invade its own citizens' constitutional rights, and the Ninth Circuit should not imperil the rights of citizens in other states with its analysis.

SUMMARY OF ARGUMENT

The Amici States urge the Court to grant certiorari and reverse the Ninth Circuit's en banc decision that California's ban on Standard Magazines does not violate the Second Amendment—a decision that conflicts with this Court's opinions in *Heller*, *McDonald*, and *Caetano*.

In *Heller*, this Court rejected a balancing approach to determine the constitutionality of an outright ban of firearms protected under the Second Amendment. Instead, the Court held that a ban on firearms protected under the Second Amendment was unconstitutional without utilizing any balancing framework. Under *Heller*'s guidance, courts should therefore ask only whether government has *banned arms commonly used by law abiding citizens for lawful purposes*. If so (as in *Heller*, *McDonald*, and *Caetano*), the government has violated the Second Amendment.

The Ninth Circuit was wrong to apply a "severity of burden and interest balancing test," especially given that the government here imposed a categorical ban on Standard Magazines. Using a balancing approach—like strict scrutiny or intermediate scrutiny—on a ban on arms commonly used by law abiding citizens for lawful purposes is inconsistent with this Court's precedent. Moreover, application of a balancing approach to a ban on protected firearms has understandably been the subject of immense criticism from at least four Justices and numerous Court of Appeals judges. Application of a balancing test to a categorical ban on protected firearms also reduces clarity in the law and promotes subjectivity.

The enumerated right to bear arms reflected in the Second Amendment is fundamental and predates the Bill of Rights. The right is important to millions of Americans, including many citizens living in disadvantaged communities. The arms at issue in these proceedings are commonly used by millions of law-abiding citizens for a myriad of lawful purposes. California's law criminalizes mere possession of commonly-used arms even in the home for self-defense, and therefore the law strikes at the core of the Second Amendment. California's outright ban on Standard Magazines is inconsistent with the Second Amendment, and the Ninth Circuit erred by concluding otherwise.

ARGUMENT

I. The Ninth Circuit's Interest-Balancing Test Contravenes This Court's Precedent.

The Ninth Circuit erroneously applied an interest-balancing test—an approach this Court already rejected—when considering whether California's ban on Standard Magazines violates the Second Amendment. This approach is not only inconsistent with *Heller* and its progeny, but such an approach also reduces clarity in the law and allows for subjectivity.

A. *Heller* Requires Courts To Consider Whether Arms Are Commonly Used By Law-Abiding Citizens For Lawful Purposes.

The Second Amendment states that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. This Court made clear over a decade ago that the Second Amendment protects an individual right that "belongs to all Americans," except those subject to certain "longstanding

prohibitions" on the exercise of that right, such as "felons and the mentally ill." *District of Columbia v. Heller*, 554 U.S. 570, 581, 622, 626-27 (2008); *see McDonald v. City of Chicago*, 561 U.S. 742 (2010) (incorporating the Second Amendment against the states). The Second Amendment right, therefore, belongs to all "law-abiding, responsible citizens[.]" *Heller*, 554 U.S. at 635. In *Heller*, the Court created a simple test for those "Arms" that enjoy the Constitution's protections: the Second Amendment protects a right to possess "Arms" that are "typically possessed by law-abiding citizens for lawful purposes[.]" *Id.* at 624-25. With this formulation, the Court provided an easily understood and applied test.

Thus, when a law bans possession of an item, under *Heller*, courts should first ask whether the banned item qualifies as "Arms" under the Second Amendment. If so, courts should ask only whether the banned "Arms" are (1) commonly used, (2) by law-abiding citizens, (3) for lawful purposes, including for self-defense or defense of "hearth and home." *See Heller*, 554 U.S. at 624, 635. If so, then the banned item is categorically protected under the Second Amendment and no further analysis is needed. *Id.* at 634-35. This test closely tracks the text of the Second Amendment, and is consistent with the history of gun ownership for self-defense as a key component of the American understanding of ordered liberty. *See id.* at 628-29.

B. The Ninth Circuit's Interest-Balancing Approach Is Inconsistent With *Heller* And Its Progeny.

In the aftermath of *Heller*, lower courts, including the Ninth Circuit, strayed from the test the Court set

forth in *Heller*. Instead of asking whether the item banned is commonly used by law-abiding citizens for lawful purposes, the Ninth Circuit created an indeterminate and value-laden, sliding scale balancing test. *See Silvester v. Harris*, 843 F.3d 816, 821 (9th Cir. 2016). Under that test, courts first make a value judgment about whether the laws or regulations at issue, even categorical bans, place a severe burden on the Second Amendment right. *See id.* Even those that do still may survive under strict scrutiny. *See id.* Those that the court determines do not place a severe burden on the Second Amendment right are subject to intermediate scrutiny, which requires a "significant, substantial or important" government interest and a "'reasonable fit' between the challenged regulation and the asserted objective." *See id.* at 821-22.

Any interest-balancing test that finds in favor of a ban on firearms commonly used by law-abiding citizens for lawful purposes is inconsistent with *Heller* and its progeny. *Heller* instructs that such bans should survive scrutiny, regardless of whether intermediate or strict scrutiny is applied, because core protections of constitutional rights are not subject to balancing. 554 U.S. at 628-29, 634. One of the dissents in *Heller* argued that the Court should adopt an "interest-balancing inquiry" that "asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests." *Id.* at 689-90 (Breyer, J., dissenting). The majority rejected such an inquiry, explaining that the Second Amendment "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." *Id.* at 634. The Second Amendment "elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635. The disagreement between the *Heller* majority and the dissent is about whether the core protection is subject to balancing under any standard or scrutiny, not whether the dissent's form of balancing is best. Applying a different form of balancing than the *Heller* dissent used still inappropriately adopts the dissent's view on scrutiny. *See, e.g.*, App.13-14.

Just two years later, in *McDonald*, the dissenting opinion again questioned the propriety of incorporating the Second Amendment against the states when doing so would require judges to make difficult empirical judgments. 561 U.S. at 922-25. Justice Alito's controlling opinion for the Court rejected the suggestion that a balancing test would apply: "As we have noted, while the [dissenting opinion] in *Heller* recommended an interest-balancing test, the Court specifically rejected that suggestion." *Id.* at 791; *see id.* at 811 (Thomas, J., concurring) (discussing the phrase "deeply rooted in this Nation's history and tradition" as a key component of the correct test).

Similarly, in *Caetano v. Massachusetts*, the Court, without employing a balancing test, rejected a decision from the Supreme Judicial Court of Massachusetts upholding a ban on the possession of stun guns.[2] 577 U.S. 411, 411-12 (2016); *see id.* at 418

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[2] On remand, the Supreme Judicial Court overturned the ban, reasoning that "we now conclude that stun guns are 'arms' within the protection of the Second Amendment. Therefore, under the

(Alito, J., concurring) ("[T]he relative dangerousness of a weapon is irrelevant when the weapon belongs to a class of arms commonly used for lawful purposes.").

Several members of the Court have expressed concern that the lower courts are misapplying *Heller* in a manner inconsistent with the Second Amendment. *See N.Y. State Rifle & Pistol Ass'n, Inc. v. City of New York*, 140 S. Ct. 1525, 1527 (2020) (Kavanaugh, J., concurring) ("I share Justice ALITO's concern that some federal and state courts may not be properly applying *Heller* and *McDonald*."); *id.* at 1544 (Alito, J. dissenting joined by Thomas and Gorsuch, JJ.) ("We are told that the mode of review in this case is representative of the way *Heller* has been treated in the lower courts. If that is true, there is cause for concern."); *Rogers v. Grewal*, 140 S. Ct. 1865, 1866 (2020) (Thomas, J., joined by Kavanaugh, J., dissenting from the denial of certiorari) ("But, as I have noted before, many courts have resisted our decisions in *Heller* and *McDonald*."); *Peruta v. California*, 137 S. Ct. 1995, 1999 (2017) (Thomas, J., joined by Gorsuch, J., dissenting from the denial of certiorari) ("The Court's decision to deny certiorari in this case reflects a distressing trend: the treatment of the Second Amendment as a disfavored right."); *Jackson v. City & County of San Francisco*, 135 S. Ct. 2799, 2802 (2015) (Thomas, J., joined by Scalia, J., dissenting from the denial of certiorari) ("The Court should have granted a writ of certiorari ... to reiterate that courts may not engage in this sort of judicial

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Second Amendment, the possession of stun guns may be regulated, but not absolutely banned." *Ramirez v. Massachusetts*, 94 N.E.3d 809, 815 (Mass. 2018).

assessment as to the severity of a burden imposed on core Second Amendment rights.").

Numerous circuit judges have expressed concern about the conflict between an intermediate scrutiny or interest-balancing test and the test announced in *Heller*. *See, e.g.*, *Heller v. District of Columbia* (*Heller II*), 670 F.3d 1244, 1271 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) ("In my view, *Heller* and *McDonald* leave little doubt that courts are to assess gun bans and regulations based on text, history, and tradition, not by a balancing test such as strict or intermediate scrutiny."); *Ass'n of N.J. Rifle & Pistol Clubs Inc. v. Att'y Gen. of N.J.*, 974 F.3d 237, 262 (3d Cir. 2020) (Matey, J., dissenting) (expressing "serious doubts" that the court's test "can be squared with *Heller*"); *Ass'n of N.J. Rifle & Pistol Clubs Inc. v. Att'y Gen. of N.J.*, 910 F.3d 106, 128-29 (3d. Cir. 2018) (Bibas, J., dissenting) (criticizing the majority's "balancing approach" because "the *Heller* majority rejected it"); *Binderup v. Att'y Gen. of the U.S.*, 836 F.3d 336, 378 (3d Cir. 2016) (en banc) (Hardiman, J., concurring in part) ("Applying some form of means-end scrutiny in an as-applied challenge against an absolute ban … eviscerates that right [to keep and bear arms] via judicial interest balancing in direct contravention of *Heller*."); *Mance v. Sessions*, 896 F.3d 390, 394 (5th Cir. 2018) (Elrod, J., dissenting from denial of en banc rehearing) ("Simply put, unless the Supreme Court instructs us otherwise, we should apply a test rooted in the Second Amendment's text and history—as required under *Heller* and *McDonald*—rather than a balancing test like strict or intermediate scrutiny."); *Tyler v. Hillsdale Cty. Sheriff's Dep't*, 837 F.3d 678, 702-03 (6th Cir. 2016) (Batchelder, J., concurring) ("The Supreme Court has at every turn rejected the

use of interest balancing in adjudicating Second Amendment cases."); *see also* App.115 (Bumatay, J., dissenting) ("We cannot 'square the type of means-ends weighing of a government regulation inherent in the tiers-of-scrutiny analysis with *Heller*'s directive that a core constitutional protection should not be subjected to a freestanding interest-balancing approach.").

These numerous judges are correct. The Ninth Circuit is not the only circuit to have strayed and employed a balancing test to govern cases such as this one. *See, e.g.*, *Worman v. Healey*, 922 F.3d 26, 37-38 (1st Cir. 2019), *cert. denied*, 141 S. Ct. 109 (2020); *Friedman v. City of Highland Park*, 784 F.3d 406, 414-15 (7th Cir. 2015); *Kolbe v. Hogan*, 849 F.3d 114, 138 (4th Cir. 2017); *Kachalsky v. County of Westchester*, 701 F.3d 81, 89 n.9 (2d Cir. 2012); *United States v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010). Those circuits also erred, misreading the Court's precedent. Again, the Second Amendment "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. The *Heller* test provides the appropriate framework for analyzing the fundamental rights protected in the Second Amendment. The Court should grant certiorari to make clear to lower courts, yet again, that the analytical framework in *Heller*, and not a balancing test, must be applied to determine the constitutionality of restrictions on the right to keep and bear arms.

C. An Interest Balancing Approach Reduces Clarity In The Law And Promotes Subjectivity.

American citizens and state legislatures deserve a clear standard they can utilize to readily determine the line that government cannot cross when regulating "arms," as well as the materials required for "arms" to function, such as Standard Magazines. The district court below was correct when it described the balancing approach as "an overly complex analysis that people of ordinary intelligence cannot be expected to understand"—a test that "obfuscates" more than aids understanding. App. 402. The *Heller* test, by contrast, is rooted in objective historical and current evidence of the prevalence of "arms" and their use by law-abiding citizens in America, as well as the plain text of the Second Amendment, making for "a test that anyone can figure out." *Id*.

While some may write the Second Amendment off as a relic of a bygone era, in reality, the ability to defend one's self remains essential to millions of Americans. As the three-judge panel majority below correctly recognized, "[o]ur country's history has shown that communities of color have a particularly compelling interest in exercising their Second Amendment rights." App. 204. The same is true for women; guns can allow women to protect themselves more effectively against "abusers and assailants." App. 205; *see also* Daniel Peabody, *Target Discrimination: Protecting the Second Amendment Rights of Women and Minorities*, 48 Ariz. St. L.J. 883, 910-13 (2016). Similarly, those in high-crime communities where law enforcement is stretched thin often cannot rely on the government for prompt protection against criminals and so highly value the right to own weapons for self-

defense. App. 219; *see also McDonald*, 561 U.S. at 790 ("If [petitioners are correct,] 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.").

"A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all." *Heller*, 554 U.S. at 634. To fully protect fundamental constitutional rights, a total ban on their exercise, like that California has imposed here, must not be subjected to imprecise balancing tests based on "a variety of vague ethico-political First Principles whose combined conclusion can be found to point in any direction the judges favor." *McDonald*, 561 U.S. at 804 (Scalia, J., concurring). Allowing a ban on the exercise of a fundamental right to rise and fall based on the policy assessment of judges—even when those judges are wise and well-meaning—runs counter to the basic idea of the Bills of Rights and needlessly injects greater uncertainty. *See United States v. Virginia*, 518 U.S. 515, 567 (1996) (Scalia, J., dissenting) ("These [tiers of scrutiny] are no more scientific than their names suggest, and a further element of randomness is added by the fact that it is largely up to [the Supreme Court] which test will be applied in each case.").

Applying an "intermediate scrutiny" or even a "strict scrutiny" test is particularly inapt in the case of a *ban* on a class of "Arms" protected under the Second Amendment. Applying typical safety concerns to such a ban could easily result in a "balancing test" that leads to the conclusion that banning otherwise protected firearms is acceptable. But, as explained above, the Supreme Court flatly rejected such a conclusion in both *Heller* and *McDonald*. As Justice

Alito later explained, this is because "the relative dangerousness of a weapon is irrelevant when the weapon belongs to a class of arms commonly used for lawful purposes." *See Caetano*, 577 U.S. at 418 (Alito, J., concurring). In other words, the Founders already performed the balancing of interests and concluded that the need for self-defense, against both criminals and potential tyranny, outweighs the safety risk of firearms commonly possessed by law-abiding citizens. *Heller*, 554 U.S. at 635. The Court should grant certiorari and reject the Ninth Circuit's disregard of the Founders' conclusion enshrined in the Second Amendment.

II. California's Magazine Ban Is Unconstitutional Because It Is A Categorical Ban On "Arms" Commonly Used By Law-Abiding Citizens For Lawful Purposes.

State legislatures have broad discretion in crafting policy, but not in conflict with the text of the Constitution. California's outright ban on Standard Magazines strikes at the core of the Second Amendment. Standard Magazines are "Arms" commonly used by law-abiding citizens for lawful purposes, including in defense of hearth and home.

Thus, when California enacted such a statewide and retroactive ban on the mere possession of Standard Magazines, it destroyed the core of the Second Amendment right. And when such destruction occurs, interests should not be balanced.[3] *See Heller*, 554 U.S. at 634 ("We know of no other enumerated

[3] This, of course, does not mean that California cannot regulate the possession or use of Standard Magazines if such regulations are consistent with prior longstanding regulations on the right to keep and bear arms.

constitutional right whose core protection has been subjected to a freestanding 'interest-balancing' approach.")*;* *see also Young v. Hawaii*, 992 F.3d 765, 784 (9th Cir. 2021) (en banc) ("If a regulation 'amounts to a destruction of the Second Amendment right,' it is unconstitutional under any level of scrutiny[.]"); *see id.* at 855 (O'Scannlain, J., dissenting) ("Under our court's framework, if Hawaii's law 'amounts to a destruction' of the core right, it must be held 'unconstitutional under any level of scrutiny.'").

Possessing Standard Magazines is an integral aspect of the right to "keep and bear arms" and regulating their possession implicates the core of the Second Amendment. *See Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring) ("The right to keep and bear arms ... implies a corresponding right to obtain the bullets necessary to use them[.]"); *see also Fyock v. City of Sunnyvale*, 779 F.3d 991, 999 (9th Cir. 2015) ("Because Measure C restricts the ability of law-abiding citizens to possess large-capacity magazines within their homes for the purpose of self-defense, we agree with the district court that Measure C may implicate the core of the Second Amendment."); *cf. Heller*, 554 U.S. at 630, (holding that "the District's requirement (as applied to respondent's handgun) that firearms in the home be rendered and kept inoperable at all times ... makes it impossible for citizens to use them for the core lawful purpose of self-defense and is hence unconstitutional"). Indeed, *Heller* did not differentiate between regulations governing ammunition and regulations governing firearms themselves. *See* 554 U.S. at 632; *see also United States v. Miller*, 307 U.S. 174, 179-80 (1939) (citing 1 Herbert L. Osgood, The American Colonies in

the 17th Century 499 (1904) (discussing the implicit right to possess ammunition)).

Lower courts have correctly rejected any illusory distinction between firearms and ammunition, noting that a regulation on the latter does not fall "outside the historical scope of the Second Amendment." *Jackson v. City & County of San Francisco*, 746 F.3d 953, 967-68 (9th Cir. 2014) ("[R]estrictions on ammunition may burden the core Second Amendment right of self-defense[.]"); *Fyock v. City of Sunnyvale*, 25 F. Supp. 3d 1267, 1276 (N.D. Cal. 2014), *aff'd*, 779 F.3d 991 (9th Cir. 2015) (collecting cases). Thus, that California has banned magazines, and not the firearms for which they are needed, does not alter the constitutional analysis.

As for commonality, Standard Magazines are essential to "bear[ing] arms" in that they come standard with, and are integral to, some of the most popular firearms in America. *See Ass'n of N.J. Rifle & Pistol Clubs*, 974 F.3d at 256 (Matey, J., dissenting) (collecting sources demonstrating the popularity and ubiquity of Standard Magazines). Standard Magazines are commonly used in many handguns, which the Supreme Court has recognized as the "quintessential self-defense weapon." *Heller*, 554 U.S. at 629. The three-judge panel majority below, which observed that Standard Magazines constitute nearly half of all magazines in the United States, was correct in determining that Standard Magazines are commonly owned and used. App. 187 ("[N]early half of all magazines in the United States today hold more than ten rounds of ammunition."); *see also Heller II*, 670 F.3d at 1261 ("We think it clear enough in the record that semi-automatic rifles and magazines holding more than ten rounds are indeed in 'common

use,' as the plaintiffs contend" because "fully 18 percent of all firearms owned by civilians in 1994 were equipped with magazines holding more than ten rounds, and approximately 4.7 million more such magazines were imported into the United States between 1995 and 2000."); *Fyock*, 25 F. Supp. 3d at 1275 ("'[I]t is safe to say that whatever the actual number of such magazines in United States consumers' hands is … in the tens-of-millions, even under the most conservative estimates.'"); App.133 (Bumatay, J., dissenting) ("[A]s many as 100,000,000 such magazines are currently lawfully owned by citizens of this country."). By banning the mere possession of magazines necessary to operate millions of guns, including some of the most widely-used guns in America, California has also banned use of those guns, including in the home for self-defense.

Moreover, use of Standard Magazines is not a new phenomenon; magazines holding more than ten rounds have existed for centuries. *See Ass'n of N.J. Rifle & Pistol Clubs*, 974 F.3d at 257-58 (Matey, J., dissenting) (analyzing the history of regulations on Standard Magazines and concluding that it "reveals a long gap between the development and commercial distribution of magazines, on the one hand, and limiting regulations, on the other hand"); *see also* App. 188 ("Firearms or magazines holding more than ten rounds have been in existence—and owned by American citizens—for centuries."); App. 188-191 (detailing the long history of arms equipped with multi-round capabilities). And government regulation of large capacity magazines is of relatively recent vintage. *See Ass'n of N.J. Rifle & Pistol Clubs*, 974 F.3d at 258 (Matey, J., dissenting) ("Yet regulations did not grow until the 1990s and 2000s, and even

today, only a handful of states limit magazine capacity."); *see also* App. 195 ("Modern [large capacity magazine] restrictions are of an even younger vintage, only enacted within the last three decades.").

It is evident, therefore, that the Act fails under the Second Amendment because it is a categorical ban on the possession of Standard Magazines, which are "Arms." Here, like in *Heller*, the state has outlawed a class of arms "overwhelmingly chosen by American society for [the] lawful purpose [of self-defense]." *Heller*, 554 U.S. at 628. Moreover, California's ban reaches into the home, where "Second Amendment guarantees are at their zenith[.]" *Kachalsky*, 701 F.3d at 89; *see also McDonald*, 561 U.S. at 780 (right to keep and bear arms applied "most notably for self-defense within the home").

Lower courts, like the Ninth Circuit here, have too long pretended that the tiers of scrutiny allow them to rebalance the core of the Second Amendment. They do not even acknowledge that an outright ban is the antithesis of tailoring in their eagerness to rewrite the Second Amendment. The Court should grant certiorari to make clear that an outright ban on arms commonly used by law-abiding citizens, like California's here, is unconstitutional.

CONCLUSION

For the foregoing reasons, Amici States respectfully request that the Court grant certiorari and reverse the decision below.

April 1, 2022

Respectfully submitted,

JEFF LANDRY
Attorney General of Louisiana
ELIZABETH B. MURRILL
Solicitor General
JOSIAH KOLLMEYER
Assistant Attorney General
LOUISIANA DEPARTMENT OF JUSTICE
1885 N. Third Street
Baton Rouge, LA 70804
(225) 205-8009

MARK BRNOVICH
Attorney General of Arizona
BRUNN W. ROYSDEN III
Solicitor General
MICHAEL S. CATLETT
Deputy Solicitor General
Counsel of Record
KATE B. SAWYER
Assistant Solicitor General
OFFICE OF THE ARIZONA ATTORNEY GENERAL
2005 N. Central Ave.
Phoenix, AZ 85004
(602) 542-5025
Michael.Catlett@azag.gov

JOHN M. O'CONNOR
Attorney General of Oklahoma
BRYAN CLEVELAND
Deputy Solicitor General
OKLAHOMA ATTORNEY GENERAL'S OFFICE
313 NE 21st Street
Oklahoma City, OK 73105
(405) 521-3921

PATRICK MORRISEY
Attorney General of West Virginia
LINDSEY S. SEE
Solicitor General
OFFICE OF THE WEST VIRGINIA ATTORNEY GENERAL
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305
(304) 558-2021

Counsel for Amici Curiae
(Additional Counsel listed below)

STEVE MARSHALL
Attorney General
of Alabama

TREG R. TAYLOR
Attorney General
of Alaska

LESLIE RUTLEDGE
Attorney General
of Arkansas

CHRISTOPHER M. CARR
Attorney General
of Georgia

LAWRENCE G. WASDEN
Attorney General
of Idaho

THEODORE E. ROKITA
Attorney General
of Indiana

DEREK SCHMIDT
Attorney General
of Kansas

DANIEL CAMERON
Attorney General
of Kentucky

LYNN FITCH
Attorney General
of Mississippi

ERIC S. SCHMITT
Attorney General
of Missouri

AUSTIN KNUDSEN
Attorney General
of Montana

DOUGLAS J. PETERSON
Attorney General
of Nebraska

DAVE YOST
Attorney General
of Ohio

ALAN WILSON
Attorney General
of South Carolina

JASON R. RAVNSBORG
Attorney General
of South Dakota

HERBERT H. SLATERY III
Attorney General and
Reporter of Tennessee

KEN PAXTON
Attorney General
of Texas

SEAN D. REYES
Attorney General
of Utah

BRIDGET HILL
Attorney General
of Wyoming