NO. 102940-3

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Appellant,

GATOR'S CUSTOM GUNS, INC., a Washington for-profit corporation, and WALTER WENTZ, an individual,

Respondents.

BRIEF OF *AMICUS CURIAE* GOLDWATER INSTITUTE IN SUPPORT OF RESPONDENTS

Mark C. Lamb
WSBA #30134
CARNEY BADLEY SPELLMAN
701 Fifth Avenue, Suite 3600
Seattle, Washington 98104
(206) 607-4101
mlamb@carneylaw.com
Counsel of Record

Timothy Sandefur
Parker Jackson
Scharf-Norton Center for Constitutional Litigation at the GOLDWATER INSTITUTE
500 East Coronado Road
Phoenix, Arizona 85004
(602) 462-5000
litigation@goldwaterinstitute.org

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Constitutional Provisions

IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Goldwater Institute was established in 1988 as a nonpartisan public policy and research foundation devoted to advancing the principles of limited government, individual freedom, and constitutional protections through litigation, research, policy briefings, and advocacy. Through its Scharf-Norton Center for Constitutional Litigation, the Institute litigates cases, and it files amicus briefs when its or its clients' objectives are directly implicated.

Among other rights the Institute seeks to protect is the constitutional right of armed self-defense, and in that regard the Goldwater Institute has represented parties and appeared as amicus in several cases involving this fundamental right. *See, e.g.*, *Wilson v. Hawaii*, No. 23-7517 (U.S. Sup. Ct. filed May 21, 2024) (pending); *Arizona Citizens Defense League, Inc.* v. *Pima County*, No. C2024-2478 (Ariz. Super. Ct. filed Apr. 26, 2024) (pending); *United States* v. *Rahimi*, 144 S. Ct. 1889 (2024); *Marszalek* v. *Kelly*, No. 20-CV-4270, 2022 WL 225882 (N.D. Ill.

Jan. 26, 2022); *Korwin* v. *Cotton*, 323 P.3d 1200 (Ariz. App. 2014); *McDonald* v. *City of Chicago*, 561 U.S. 742 (2010). Institute scholars have also published important research on the right to possess firearms. *See, e.g.*, Timothy Sandefur, *The Permission Society* 165-194 (2016).

The Institute has a particular interest and expertise in researching, litigating, and promoting state constitutions, including the Washington Constitution, as more fully explained in the accompanying Unopposed Motion for Leave to File Brief Amicus Curiae of Goldwater Institute in Support of Respondents.

INTRODUCTION

Article 1, Section 24 of the Washington Constitution protects the "right of the individual citizen to bear arms in defense of himself, *or the state*" from being "impaired." (Emphasis added). The only textual exception to this broad protection is that it does not authorize "individuals or

corporations to organize, maintain or employ an armed body of men." *Id.*

Similar to provisions in many other state constitutions—and made mandatory by Article 1, Section 29—this intentionally chosen language provides greater protections for the right to bear arms than does the text of the Second Amendment to the United States Constitution, whose operative text provides simply that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. *See State v. Rupe*, 101 Wash.2d 664, 706 (1984) (noting that Article 1, Section 24 "is facially broader than the Second Amendment").

That broader protection should easily extend to so-called "large-capacity magazines": common firearm components used for a variety of lawful purposes and, by Appellant's own admission, ideal for defense of the state. *See, e.g.,* App. Br. at 7.

Because this Court can, and should, hold that individual citizens have a right to use "LCMs" in self-defense *or in defense of the state* under Article 1, Section 24—and that Appellant

cannot impair that right—there is no need to address whether the keeping and bearing of "LCMs" is protected by the Second Amendment, or even whether that claim is properly before the Court.

STATEMENT OF THE CASE

In 2022, the Washington Legislature enacted SB 5078, prohibiting the manufacture, distribution, and sale of so-called "large-capacity magazines." 2022 Wash. Sess. Laws 105, 647–53. In a consolidated action in which Respondents sought declaratory relief from the prohibition and Appellant sought to enforce it, the trial court found the statutory ban unconstitutional under both the Second Amendment of the U.S. Constitution and Article 1, Section 24 of the Washington Constitution. CP 2109–63. That order was immediately stayed (Ruling, *State v. Gator's Custom Guns, Inc.,* No. 102940-3 (Wash., April 8, 2024), pending review of this Court.

ARGUMENT

This Court reviews constitutional issues de novo[1]. *State v. Jorgenson*, 179 Wash.2d 145, 150 ¶ 8 (2013) (citation omitted). Where feasible, the Court resolves constitutional questions *first* under the state constitution, *before* turning to federal law,[2] in part

---

[1] "Due respect for our constitutional system requires the court to review, de novo, every challenge to a governmental act where the challenge is that the government has transcended the constitutional boundaries of its authority." *Island County v. State*, 135 Wash.2d 141, 167 (1998) (Sanders, J., concurring). Because the presumption of constitutionality currently imposed by this Court places an undeserved thumb on the scales in favor of the government and abdicates the "emphatic[] … duty of the judicial department to say what the law is," *Marbury v. Madison*, 5 U.S. 137, 177 (1803), the Court should take this opportunity to abandon the practice of presuming statutes constitutional. The better approach is to independently interpret and apply the strong protections for individual liberty contained in the Washington Constitution to the facts and law of each case that comes before it. *See, e.g., Island County*, 135 Wash.2d at 155–70 (Sanders, J., concurring); *State v. Arevalo*, 470 P.3d 644, 652–56 ¶¶ 29-46 (Ariz. 2020) (Bolick, J., concurring) (arguing same).

[2] Since state constitutions can provide greater protection than the Federal Constitution, resolving a case on state constitutional grounds can often satisfy the rule whereby courts try to avoid addressing constitutional issues when possible, *see, e.g., Tropiano v. City of Tacoma*, 105 Wash.2d 873, 877 (1986)—whereas the reverse is often not true. *See also State v. Coe*, 101 Wash.2d 364, 374 ("[T]o apply the federal constitution before the Washington Constitution would be as improper and premature as

because the Court has a responsibility to interpret Washington's Constitution. *Id.* at 152 ¶ 11. *See Coe*, 101 Wash.2d at 373–74.[3]

I. Article 1, Section 24 provides broader protections for the right to bear arms than does the Second Amendment.

Under the well-known *Gunwall* test,[4] "the state and federal rights to bear arms have different contours and mandate separate interpretation." *Jorgenson*, 179 Wash.2d at 152 ¶ 12. Yet Washington courts have struggled to give meaning to this insight by interpreting Article 1, Section 24 consistently with its text and history. This Court should make clear that Article 1, Section 24

---

deciding a case on state constitutional grounds when statutory grounds would have sufficed, and for essentially the same reasons."); *State v. Surge*, 160 Wash.2d 65, 83, 85 ¶¶ 35, 37 (2007) (Owens, J., concurring in the result) (describing "amnesic approach" of "provid[ing] a state constitutional analysis and then a federal analysis," one of which is "redundant").

[3] *See also* Clint Bolick, *Principles of State Constitutional Interpretation*, 53 Ariz. St. L. J. 771 (2021).

[4] The six factors are: 1) the text of the state constitution, 2) differences in the text of parallel state and federal constitutional provisions, 3) the history of the state constitution, 4) preexisting state law, 5) structural differences between the state and federal constitutions, and 6) matters of particular state interest or local concern. *Jorgenson*, 179 Wash.2d at 152 ¶ 12 (citing *State v. Gunwall*, 106 Wash.2d 54, 61–62 (1986)).

provides broader protections for the right to bear arms than does the Second Amendment based on its text and its interaction with the "Mandatory Clause" of the state constitution (Article 1, Section 29). Those protections easily encompass the right of individual citizens to use "LCMs" for defense of self and state.

A. At statehood, "arms" encompassed ordinary military weapons.

There is an ongoing debate regarding the application of the Second Amendment to the states whether the proper timeframe to look for definitional and contextual clues is ratification of the Second Amendment itself, or ratification of the Fourteenth Amendment. *See, e.g., New York State Rifle & Pistol Ass'n, v. Bruen*, 597 U.S. 1, 37–38 (2022). Whatever the answer to that question might be with respect to the Second Amendment, there should be no controversy that the proper time to look for the meaning of Article 1, Section 24 is statehood—1889.

At the time the framers of the Washington Constitution adopted Article 1, Section 24, the term "arms" broadly meant "*[a]nything* that a man wears for his defense, or takes in his

hands, *or uses* in his anger, *to cast at* or strike at another." *Arms,* Black's Law Dictionary 88 (1st ed. 1891) (emphasis added). *See also Arms,* Anderson's Law Dictionary 72-73 (1889) ("Weapons, offensive or defensive … *Anything that may be used for defense or attack* … [including] fire-arms." (emphasis added)); *Arms,* Bouvier's Law Dictionary 181 (1883 ed.) ("*Any thing* that a man wears for his defence, or takes in his hands, *or uses* in his anger, *to cast at* or strike at another." (emphasis added)); *Arms,* Rapalje's Law Dictionary 77 (1883) ("Weapons; implements of attack. 'Arms in the common law signifieth *anything that a man striketh or hurteth withal*,' …" (citing 1 E. Coke, *Institutes* ** 161b, 162a)).

Importantly, statehood-era lexicographers understood the term "arms" to encompass "the arms of a militiaman or soldier, and the word is used in its military sense." *Black's*, *supra,* at 88. *Black's* went as far as to list certain "military arms" covered by the term: "The arms of the infantry soldier are the musket and bayonet; of cavalry and dragoons, the sabre, holster pistols, and

carbine; of the artillery, the field-piece, siege-gun, and mortar, with side arms." *Id*. *See also Anderson's*, *supra*, at 73 ("By arms … is meant such as are usually employed in civilized warfare and constitute the ordinary military equipment.").

The Arizona Court of Appeals, interpreting an essentially identical constitutional provision—indeed, one copied from Article 1, Section 24—adopted a similar definition, finding that "[w]ith respect to [the Arizona] state constitution, the term 'arms' as used means such arms as are recognized in civilized warfare … ." *State v. Swanton*, 629 P.2d 98, 99 (Ariz. App. 1981).

These broad definitions cut against this Court's explanation in *City of Seattle v. Montana* that "the term 'arms' extends only to weapons designed as such, and not to every utensil, instrument, or thing which might be used to strike or injure another person." 129 Wash.2d 583, 591 (1996), *abrogated on other grounds*, *Yim v. City of Seattle*, 194 Wash.2d 682, 704 (2019). The only legal authority *Montana* cited for that proposition was a single case out of Louisiana, called *State v.*

Nelson, 38 La.Ann. 942, 946 (1886). But when *Nelson* was written, Louisiana was operating under its sixth constitution, whose "keep and bear arms" provision paralleled the text of the Second Amendment, with an added proviso allowing laws punishing concealed carry. *See* La. Const. of 1879, art. 3. The Court in *Montana* engaged in little additional textual analysis,[5] nor explained why the interpretation of Louisiana's *textually and contextually distinct* 1879 constitution had any direct bearing on the interpretation of Article 1, Section 24. Suffice to say that when the language of two state constitutions differs entirely, the

[5] The *Montana* Court declined to reach the question of whether the interpretation of "arms" is broader under Article 1, Section 24 than the Second Amendment, because *the parties* did not conduct a *Gunwall* analysis. 129 Wash.2d at 591. But given the fact that the words of the Washington Constitution "are mandatory, unless by express words they are declared to be otherwise," Wash. Const. art. I § 29, this Court is obligated to apply the state constitution even where litigants may overlook important constitutional issues. *Cf. Seattle Sch. Dist. No. 1 of King Cnty. v. State*, 90 Wash.2d 476, 501 (1978) (Mandatory Clause imposes a "judicially enforceable affirmative duty" to "go to any length within the limits of judicial procedure, to protect … constitutional guaranties.").

interpretation should differ, too. That is *Gunwall* factor number one.

City of Seattle v. Evans, 184 Wash.2d 856 (2015), unlike *Montana,* did attempt to conduct a textual analysis, but it conflated the frameworks for Article 1, Section 24 and the Second Amendment, which are supposed to be separate per *Jorgenson* and *Gunwall*. The *Evans* Court looked to select portions of *Dist. of Columbia v. Heller*, 554 U.S. 570 (2008), and to eighteenth-century definitions relevant to the distinct text of the Second Amendment, rather than to the meaning of the text of Article 1, Section 24, at the time of statehood. It also mentioned non-binding modern cases from Connecticut and Oregon. Yet *Evans* did little more than adopt the cursory analysis of the *Montana* case.

More should be done here. The Court should conduct a more thorough textual analysis and give the term the broad meaning it conveyed at the time of statehood—in particular,

recognizing that its terminology encompassed ordinary military equipment.[6]

B. The word "impair" restricts arms regulation more than the word "infringe."

Respondents accurately identify this Court's nineteenth-century definition of "impair" as "[t]o make worse; to diminish in quantity, value, excellence or strength; to deteriorate." Resp. Br. at 14 (quoting *Swinburne v. Mills*, 17 Wash. 611, 615 (1897)). *See also Black's*, *supra*, at 593 ("To weaken, diminish, or relax, or otherwise affect in an injurious manner.")

The word "infringe," by contrast, seems to indicate something more dramatic than "impair." In *Heller*, the U.S. Supreme Court, while not expressly providing an accepted founding-era definition, cited a Georgia Supreme Court case

---

[6] This would not render "*every* military weapon" such as "nuclear weapons" or "cluster bombs" "constitutionally sacrosanct," as Appellant hyperbolically asserts. App. Br. at 34 (emphasis added). But it does mean that weapons *ordinarily* used by *individual* members of the militia for defense of the state—including "LCMs," rifles, handguns, etc.—would be constitutionally protected for law-abiding civilians, subject, of course, to superseding federal law.

using the terms "curtailed, or broken in upon," immediately after the term "infringed." 554 U.S. at 612 (2008) (quoting *Nunn v. State*, 1 Ga. 243, 251 (1846)). Similarly, the dissent in *Bruen, supra,* pointed to a Reconstruction-era Tennessee case pairing the word "infringed" with "forbidden." 597 U.S. at 125 (Breyer, J. dissenting) (quoting *Andrews v. State*, 50 Tenn. 165, 179–80 (1871)).

Black's and other statehood-era dictionaries seem to confirm that an "infringement" was "[a] breaking into; a trespass or encroachment upon; a violation of a law, regulation, contract, or right," *Black's*, *supra*, at 622. *See also Anderson's*, *supra*, at 544 ("Breaking, infraction, violation; a trespass, transgression, invasion."). "When a person does an act which he has no right to do, and thereby interferes with the right of another person, he is said to infringe that right." *Rapalje's*, *supra*, at 655.

But Article 1, Section 24 doesn't use the word "infringe." It uses "impair." Thus, not only are blatant violations, invasions, trespasses, etc., prohibited when it comes to the right of

individual citizens to bear arms in self-defense or defense of the state, but so, too, are lesser restrictions: *anything that would weaken, diminish, deteriorate, or make worse* a citizens' ability to bear arms (i.e., any subtle, incremental deprivation) is also prohibited.

Appellant effectively concedes that's what is occurring here, since the "LCM" ban applies only prospectively. *See* App. Br. at 26 ("SB 5078 … leaves individuals free to possess and use the LCMs they already own."); *see also* CP 2159–60 (comparing prospectively limiting or hindering right to bear arms to prior restraints on speech). This type of incremental deprivation arguably might not be "infringement," but it is certainly "impairment," which is prohibited by Article 1, Section 24.

C. The phrase "defense of … the state" must be given non-superfluous meaning.

The framers of the Washington Constitution intended that the people be allowed to bear arms for self-defense *and for defense of the state*. *See* Wash. Const. art. 1 § 24. Appellant's arguments effectively write out the words "or the state" from the

state constitution. But "[c]onstitutional provisions should be construed so that no portion is rendered superfluous." *State ex rel. Heavey v. Murphy*, 138 Wash.2d 800, 811 (1999).

Self-defense and defense of the state, while potentially overlapping, are distinct concepts. Defending the state requires defending *others* in addition to self, and it contemplates a range of scenarios beyond the lone-shooter, personal-protection situations highlighted by the State. *See, e.g.,* App. Br. at 11–12. Defense of the state can involve tactics, long-range planning, and action from a distance, which are not typically involved in mere personal self-defense.

Washington's territorial history shaped Article 1, Section 24 in ways that are instructive here. Even the original proposal presented at the constitutional convention provided that "[t]he people shall have the right to bear arms in defense of themselves *and of the state*." The Journal of the Washington State Constitutional Convention 53 (1889). But the language later added regarding corporations organizing, maintaining, or

employing an armed body of men "arose from a territorial experience of having armed detectives used in labor strikes at mines in the eastern part of Washington territory." *Id.*, Analytical Index at 513. *See also* Knute Berger, *Why Washington State's Constitution Bans Armed Militias*, Cascade PBS (Jan. 21, 2021).[7]

So not only were Washington's framers concerned about not constitutionalizing a right to private armed bodies of men—**they also knew that such groups were a threat that individual citizens might have to defend against**, whether for themselves or the state.[8] That is fully consistent with an interpretation of Article 1, Section 24 that encompasses the types of arms an

[7] https://www.cascadepbs.org/politics/2021/01/why-washington-states-constitution-bans-armed-militias.

[8] Some state constitutions, such as Montana's, protect the right of a person to bear arms "in aid of the civil power when thereto legally summoned." Mont. Const. art. II § 12. This is a narrower protection than is at issue here, but it does support the idea that individual citizens, as militiamen, should have access to ordinary military equipment in case they are legally summoned to formally defend the state as an organized group.

individual citizen would need in such a confrontation—i.e., ordinary military-style weapons.

In short, "defense of … the state" cannot mean merely self-defense. That would render a critical portion of the constitutional provision, conspicuously offset by commas, superfluous.[9] Therefore, the State's argument that "LCMs" should not be available to individual citizens because "a smaller magazine means a lower-profile gun that is easier to carry, shoot, and conceal, making weapons equipped with smaller magazines more suitable for self-defense" is as irrelevant as it is nonsensical. *See* App. Br. at 9.

Importantly, provisions of SB 5078 that create exceptions to the "LCM" ban for armed forces branches and law enforcement agencies run completely counter to the "defense of … the state" prong of Article 1, Section 24.

[9] Unsurprisingly, the State uses the phrase "or the state" exactly once in its briefing when introducing Article 1, Section 24, then ignores it. *See* App. Br. at 21.

Specifically, Section 3 of the law exempts:

> (a) The manufacture, importation, distribution, offer for sale, or sale of a large capacity magazine by a licensed firearms manufacturer for the purposes of sale to any branch of the armed forces of the United States or the state of Washington, or to a law enforcement agency in this state for use by that agency or its employees for law enforcement purposes; [and]
>
> (b) The importation, distribution, offer for sale, or sale of a large capacity magazine by a dealer that is properly licensed under federal and state law for the purpose of sale to any branch of the armed forces of the United States or the state of Washington, or to a law enforcement agency in this state for use by that agency or its employees for law enforcement purposes;

2022 Wash. Sess. Laws 105, 652–53.

Obviously, military and law enforcement uses are quintessential areas where one might have to defend the state. But the protection of Article 1, Section 24 is not for *branches* of the military or for law enforcement *agencies*. Rather, the right to bear arms in defense of the state—like other Declaration of Rights protections—runs directly to *individuals*.

Excluding individual citizens from these exceptions (i.e., subjecting them to the "LCM" prohibition), directly impairs their right to bear arms in defense of themselves and the state.

D. Article 1, Section 24 must be interpreted in accordance with Article 1, Section 29, the state constitution's "Mandatory Clause."

In *State v. Sieyes*, this Court recognized that it was "not at liberty to disregard th[e] text" of Article 1, Section 24, because "[t]he provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise," as provided in Article 1, Section 29 (referred to here as the Mandatory Clause[10]). 168 Wash.2d 276, 293 ¶ 30 (2010). The Court further explained that the mandatory nature of the "bear arms" provision "is strengthened by its two textual exceptions to the otherwise textually absolute right to keep and bear arms," articulating an

[10] Washington is one of six states with a Mandatory Clause in its state constitution. *See* Timothy Sandefur, *The "Mandatory" Clauses of State Constitutions* (June 12, 2024), Gonzaga L. Rev. (forthcoming), at 3, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4874766.

expressio unius est exclusio alterius theory. *Id.* (citation omitted). *See also* Resp. Br. at 37, 90–91; CP 2117.

The Mandatory Clause, "being clear and unambiguous has been the subject of comparatively few judicial comments." *State ex rel. Anderson v. Chapman*, 86 Wash.2d 189, 192 (1975) (documenting few citations). The earliest majority opinion citing the Mandatory Clause resolved a mandamus proceeding initiated by a county clerk against the same county's auditor and board of county commissioners to compel the payment of his salary. *State v. Neal*, 25 Wash. 264, 265 (1901). While the procedural posture suggests that the clause naturally supported mandamus relief, the case says little else about its text or purpose.

The next two cases dealt with enforcement of Washington's Gift Clause (Wash. Const. art. 8 § 7), which forbids the government from subsidizing private enterprise with tax dollars or other forms of aid. In *Johns v. Wadsworth*, 80 Wash. 352, 352–54 (1914), the appellants "contend[ed] for a liberal construction" of the Gift Clause, saying that as long as an

appropriation was "to promote a public purpose," that was enough to satisfy the Clause. *Id.* at 354. But this Court unanimously disagreed, and applied the Clause "strictly" according to its terms. *Id.* at 352-57. It did so because the Mandatory Clause makes clear that the constitution is to be obeyed as written, not whittled away through construction. *See id.* at 353.

Justice Ellis, writing separately, noted his "extreme reluctance" to join the Court's opinion, because, in his view, the expenditure in question (a county fair) was "of obvious public benefit." *Id.* at 357. Yet he ultimately had to agree that the constitutional provision(s) were "*so clear and explicit as to leave no room for construction*." *Id.* (emphasis added). Given the Mandatory Clause, the Court could "do no more than acquiesce in what the Constitution ha[d] already plainly declared." *Id.* ***"To do otherwise would be an act of judicial lawlessness."*** *Id.* (emphasis added).

Two decades later, in the midst of the Depression, a ferry operator filed a mandamus action against Pierce County and its commissioners to compel the payment of $7,000 in subsidies under a set of contracts with the ferry covering a period of ten years. *State ex rel. Washington Nav. Co. v. Pierce Cnty.*, 184 Wash. 414 (1935). Relying on *Johns*, the Court had no trouble finding that the Gift Clause prohibited such contracts, again pointing to the Mandatory Clause, and even emphasizing Justice Ellis's concurrence that the Constitution was "so clear and explicit as to leave no room for construction." *Id.* at 422–23.

In 1954, the Court in *State ex rel. Lemon v. Langlie* made repeated mention of the mandatory nature of the language in Article 3 and Article 14. 45 Wash.2d 82, 97, 103, 110 (1954). And because *"Constitutions do not change with the varying tides of public opinion and desire,"* the Court acknowledged it was "bound by the mandatory language of Article III and Article XIV of the constitution **as adopted by the people in 1889** until such

time as the people see fit to exercise their sovereign right to change it." *Id.* at 110 (boldface added).

So, the Mandatory Clause here serves to freeze the meaning of the text at the time of adoption. Courts—and everyone else—are bound by the original constitutional terms until the people amend them.

In applying the Mandatory Clause to this case, the logical conclusion is that Article 1, Section 24 must be strictly interpreted against the State to afford the full breadth of protection mandated at statehood in 1889. That means that the *only* exception to the right of the individual citizens to bear arms in self-defense *or defense of the state* is the constitutional provision which expressly disclaims the constitutional authorization of private armed bodies of men. Outside of that provision, merely "reasonable regulations" cannot suffice to elude the Mandatory Clause—regardless[11] of the holdings of

[11] The Mandatory Clause imposes a "judicially enforceable affirmative duty" to "*go to any length within the limits of judicial*

various judicial decisions that have departed from the constitution's original meaning[12] (which again, is distinct from,

---

procedure, to protect … constitutional guaranties" that "look to protection of personal rights." *Seattle Sch. Dist. No. 1 of King Cnty.,* 90 Wash.2d at 501 (emphasis added). That would obviously include overruling or clarifying prior decisions where necessary. *See, e.g, State v. Otton*, 185 Wash.2d 673, 678 ¶¶ 6-7 (2016) ("Stare decisis is not an absolute impediment to change. This court will reject its prior holdings upon a clear showing that an established rule is incorrect and harmful [and therefore] so problematic that it *must* be rejected, despite the many benefits of adhering to precedent." (cleaned up, citations omitted)). *See also id.* at 702 ¶ 53 (McCloud, J., concurring) (explaining that "precedent is certainly harmful when it infringes a constitutional protection" and citing examples).

[12] These may include: *Sieyes*, 168 Wash.2d at 295 ¶ 34 n.20 (discussing "occasional rhetoric about 'reasonable regulation' of firearms" and mentioning "decision not to employ levels-of-scrutiny analysis); *Jorgeson*, 179 Wash.2d at 155–56 ¶ 21 (reciting prior holdings regarding "reasonable regulation"); *Montana*, 129 Wash.2d at 592 (regulation is reasonable "if it promotes public safety, health or welfare and bears a reasonable and substantial relation to accomplishing the purpose pursued"); *Rupe*, 101 Wash.2d at 707 n.9 (acknowledging tension between "the seemingly absolute language of the constitutional provision" and "reasonable regulation by the state under its police power"); *State v. Spencer*, 75 Wash. App. 118, 122 (1994); *State v. Krantz*, 24 Wash.2d 350, 353 (1945) (citing out-of-state cases for the premise that "the right to keep and bear arms … is subject to reasonable regulation by the state under its police power"); *State v. Spiers*, 119 Wash. App. 85, 93 (2003); *Second Amendment Found. v. City of Renton*, 35 Wash. App. 583, 586

and more robust than, that of the Second Amendment). Indeed, the Mandatory Clause *restricts* the State's police power, leaving no room for a construction of Article 1, Section 24 that allows for the impairment of an enumerated constitutional right, let alone impairment that is justified by so mild a constitutional test as mere "reasonableness."

To refuse to enforce Article 1, Section 24 and Article 1, Section 29 to the full extent that their language warrants would amount to what Justice Ellis called "judicial lawlessness." *Johns*, 80 Wash. at 357 (Ellis, J., concurring).

(1983). And while cases like *Morris v. Blaker*, 118 Wash.2d 133, 150 (1992), may go further and articulate a "compelling state interest in the safety of the public," that alone will fail under the Mandatory Clause as well, as that is only one half of a strict scrutiny analysis. If strict scrutiny or something similar indeed applies, some form of narrow tailoring or strong connection between the interest and the regulation is required. *Cf. Savord v. Morton*, 330 P.3d 1013, 1017 ¶ 20 (Ariz. App. 2014) ("A higher standard of review applies when a court's order implicates a defendant's right to possess firearms … .").

CONCLUSION

The Court should give full meaning to the unique terms in Article 1, Section 24, especially in light of the "Mandatory Clause" in Article 1, Section 29. Ultimately, the Court should find that the right of individual citizens to use "LCMs" in self-defense or defense of the state is protected by the state constitution, affirm on that ground, and decline to reach the Second Amendment-related issues.

This document contains 4652 words, excluding the parts exempted from the word count by RAP 18.17.

Respectfully submitted this 27th day of November 2024,

s/ Mark C. Lamb
Mark C. Lamb
WSBA #30134
CARNEY BADLEY SPELLMAN
701 Fifth Avenue, Suite 3600
Seattle, Washington 98104
(206) 607-4101
mlamb@carneylaw.com
Counsel of Record

Timothy Sandefur
Parker Jackson
Scharf-Norton Center for Constitutional Litigation at the GOLDWATER INSTITUTE
500 East Coronado Road
Phoenix, Arizona 85004
(602) 462-5000
litigation@goldwaterinstitute.org

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, PS, over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorneys of record by the method noted:

Via Appellate Portal:

Counsel for Appellant
Noah G. Purcell
Kristin Beneski
Andrew R.W. Hughes
William McGinty
R. July Simpson
Ben Carr
Bob Hyde
John Nelson
Attorney General's Office
800 Fifth Ave, Suite 2000
Seattle, WA 98104
(206) 464-7744
Noah.purcell@atg.wa.gov
Kristin.beneski@atg.wa.gov
Andrew.hughes@atg.wa.gov
William.mcginty@atg.wa.gov
July.simpson@atg.wa.gov
Ben.carr@atg.wa.gov
Bob.hyde@atg.wa.gov
John.nelson@atg.wa.gov

Counsel for Respondents
Austin F. Hatcher
Hatcher Law, PLLC
11616 N. Market St., #1090
Mead, WA 99021
austin@hatcherlawpllc.com

S. Peter Serrano
Silent Majority Foundation
5238 Outlet Dr.
Pasco, WA 99301
pete@smfjb.org

DATED: November 27, 2024.

s/ Jamie Porter
Jamie Porter, Legal Assistant

CARNEY BADLEY SPELLMAN

November 27, 2024 - 3:18 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,940-3
Appellate Court Case Title:	State of Washington v. Gator's Custom Guns, Inc., et al.
Superior Court Case Number:	23-2-00897-0

The following documents have been uploaded:

- 1029403_Briefs_20241127151655SC841546_8938.pdf
  This File Contains:
  Briefs - Amicus Curiae
  The Original File Name was Amicus Brief.pdf

A copy of the uploaded files will be sent to:

- Christine.Truong@atg.wa.gov
- SGOOlyEF@atg.wa.gov
- Victoria.Johnson@atg.wa.gov
- andrew.hughes@atg.wa.gov
- austin.f.hatcher@gmail.com
- austin@hatcherlawpllc.com
- ben.carr@atg.wa.gov
- blarson@cooperkirk.com
- bob.hyde@atg.wa.gov
- comcec@atg.wa.gov
- cprreader@atg.wa.gov
- derek@smithandwhite.com
- don@dklawoffice.com
- eerhardt@nrahq.org
- jennah.williams@atg.wa.gov
- jgreenlee@nrahq.org
- john.nelson@atg.wa.gov
- july.simpson@atg.wa.gov
- kristin.beneski@atg.wa.gov
- mlamb@carneylaw.com
- noah.purcell@atg.wa.gov
- pete@silentmajorityfoundation.org
- porter@carneylaw.com
- ppatterson@cooperkirk.com
- serrano4pascocitycouncil@gmail.com
- wbergstrom@cooperkirk.com
- william.mcginty@atg.wa.gov

Comments:

Sender Name: Patti Saiden - Email: saiden@carneylaw.com
Filing on Behalf of: Mark Christopher Lamb - Email: mlamb@carneylaw.com (Alternate Email:)

Address:
701 5th Ave, Suite 3600
Seattle, WA, 98104
Phone: (206) 622-8020 EXT 149

Note: The Filing Id is 20241127151655SC841546