IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANDREW HANSON, et al., Plaintiffs, v. DISTRICT OF COLUMBIA, et al., Defendants.	Civil Action No. 22-cv-2256

BRIEF OF *AMICI CURIAE* BRADY, GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, AND MARCH FOR OUR LIVES IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' APPLICATION FOR A PRELIMINARY INJUNCTION

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DISCLOSURE STATEMENT

Amici curiae Brady, Giffords Law Center to Prevent Gun Violence ("Giffords"), and March For Our Lives ("MFOL") are each non-profit organizations with no parent corporation. No publicly held company owns 10 percent or more of the stock of Brady, Giffords or MFOL.

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INTEREST OF *AMICI CURIAE*

Amici curiae are national gun violence prevention organizations with an acute interest in ensuring that firearms are regulated in ways that will reduce the staggering incidence of gun violence in this country. *Amici* also have a particular interest in ensuring that litigation related to the constitutionality of firearms regulations is fully informed by social science research, authorities and factual information of the sort addressed in this brief.[1]

Brady is the nation's most longstanding non-partisan, non-profit organization dedicated to reducing gun violence through education, research, legal advocacy and political action. Brady has filed numerous *amicus* briefs in cases involving the constitutionality of firearms regulations, and courts have cited Brady's research and expertise. Brady works across Congress, courts and communities, uniting gun owners and non-gun-owners alike, to take action to prevent gun violence.

Giffords is a non-profit policy organization that promotes and defends the laws and policies proven to reduce gun violence and advocates for the interests of gun owners and law enforcement officials who understand that Second Amendment rights have always been consistent with gun

[1] By moving for a preliminary injunction, Plaintiffs bear the evidentiary burden of demonstrating that D.C. Code Section 7-2506.01(b) is not historically grounded and impinges on the right of armed self-defense in violation of Plaintiffs' Second Amendment rights. This brief offers a discussion of social science research and factual information in the manner of a "Brandeis brief," to make clear that Plaintiffs' conclusory assertions are seriously disputed and cannot carry their evidentiary burden. *See Young v. Conway*, 698 F.3d 69, 78 (2d Cir. 2012) ("referenc[ing] an extensive body of scientific literature presented . . . by *amicus curiae* the Innocence Project"); *Cont'l Ins. Co. v. Illinois Dep't of Transp.*, 709 F.2d 471, 475 (7th Cir. 1983) (declining to reach the merits where plaintiff did not "produce evidence, or argument, or the kind of 'legislative facts' associated with a 'Brandeis brief,' that might persuade the district court or this court" regarding the merits); *Ctr. for Biological Diversity v. Morgenweck*, 351 F. Supp. 2d 1137, 1144 (D. Colo. 2004) ("tak[ing] judicial notice of the contents of documents as 'legislative facts' . . . for the limited purpose of establishing that the view of [the U.S. Fish and Wildlife Service] as to the merits of the Petition is not necessarily shared by all in the scientific and environmental communities") (citing the Brandeis brief submitted in *Muller v. Oregon*, 208 U.S. 412 (1908)).

safety legislation and community violence-prevention strategies. Giffords has contributed technical expertise and informed analysis as an *amicus* in numerous cases involving firearms regulations and constitutional principles affecting gun policy.

MFOL is a youth-led non-profit organization dedicated to promoting civic engagement, education and direct action by youth to achieve sensible gun violence prevention policies that will save lives. Formed after the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida, MFOL immediately began organizing the largest single day of protest against gun violence in the nation's history. From its Road to Change initiative that registered 50,000 new voters in 2018 to its successful advocacy for dozens of state, local and federal laws, MFOL uses the power of youth voices to create safe and healthy communities and livelihoods for all. MFOL has filed numerous *amicus* briefs in cases involving firearm regulations.

Amici bring a broad and deep perspective to the issues raised in this case and have a compelling interest in ensuring that the Second Amendment is construed properly to permit reasonable government action to prevent gun violence.[2]

INTRODUCTION

D.C. Code Section 7-2506.01(b), which prohibits certain large-capacity magazines ("LCMs") capable of accepting more than ten rounds of ammunition, is consistent with the history and tradition of firearms regulation in this country because it regulates the manner in which firearms may be carried without burdening the right of armed self-defense. In *New York State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court instructed

[2] Pursuant to Local Civil Rule 7(o)(5), no party or counsel to any party in this matter authored this brief in part or in whole, no party or counsel to any party in this matter contributed money intended to fund the preparation or submission of this brief, and no person other than *amici* contributed money intended to fund the preparation or submission of this brief.

courts considering a Second Amendment challenge to assess whether a firearms regulation is "relevantly similar" to historical firearms regulations by evaluating "whether modern and historical regulations impose a comparable burden on the right of armed self-defense" and "whether that burden is comparably justified." *Id*. at 2132–33 (citation omitted).

The District's law is "relevantly similar" to historical regulations that limited where firearms could be carried, what weapons could lawfully be possessed, and the manner in which weapons could be carried. (Part I, *infra*.) Further, given the dramatic changes in firearms technology, the most relevant historical comparisons are to early twentieth century laws restricting guns capable of firing repeatedly without reloading. (Part I.C, *infra*.) Similar to these historical analogues, the District's LCM regulation does not burden the right to armed self-defense because LCMs are not necessary for self-defense. (Part II, *infra*.)[3]

ARGUMENT

I. "REASONABLE, WELL-DEFINED" RESTRICTIONS ON THE MANNER OF CARRYING ARMS ARE NOT CONTRARY TO THE SECOND AMENDMENT.

A. Under the *Bruen* Test, Courts Should Evaluate Historical "Analogues" to a Challenged Firearms Regulation to Assess Whether It Imposes a "Comparable Burden" on Self-Defense.

Bruen instructed courts evaluating a Second Amendment challenge to assess whether a modern regulation is "consistent with this Nation's historical tradition of firearm regulation."

[3] The District's LCM regulation is also permissible because, as addressed by Defendants, LCMs are not "arms" within the meaning of the Second Amendment but instead are accessories not subject to separate constitutional protection. *See* Defendants' Opp. to Plaintiffs' Appl. for Prelim. Injunction at 9–12, ECF No. 17 (Nov. 23, 2022) ("Def. Opp."). This is because LCMs are not required to use a firearm, and a ban on LCMs does not prevent the use of any firearm. In this respect, the District's LCM regulation is analogous to a restriction on silencers, which does not implicate the Second Amendment because it does not prevent the use of any firearm. *See United States v. Cox*, 906 F.3d 1170, 1186 (10th Cir. 2018); Def. Opp. at 12. This *amicus* brief demonstrates why restrictions on LCMs are permissible even assuming *arguendo* that LCMs fall within the scope of Second Amendment protections.

Bruen, 142 S. Ct. at 2126. The Court wrote that "determining whether a historical regulation is a proper analogue for a distinctly modern firearms regulation requires a determination of whether the two regulations are relevantly similar." *Id*. at 2132 (quotation and citation omitted). The Court explained that this "analogical reasoning requires only that the government identify a well-established and representative historical ***analogue***, not a historical ***twin***. So even if a modern-day regulation is not a dead ringer for historical precursors, it still may be analogous enough to pass constitutional muster." *Id*. at 2133.[4]

Bruen held that courts conducting this historical inquiry must consider "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id*. at 2133. "As we stated in *Heller* and repeated in *McDonald*, 'individual self-defense is "the ***central component***" of the Second Amendment right.'" *Id.* at 2133 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008)).

In *Bruen*, the Court invalidated New York's "proper-cause" standard, which required that applicants for a state license to carry a handgun in public demonstrate a special need for self-defense distinguishable from that of the general public. *Id*. at 2122–23. At the same time, the Court stated that the Second Amendment is "neither a regulatory straightjacket nor a regulatory blank check." *Id*. at 2133. "Properly interpreted, the Second Amendment allows a 'variety' of gun regulations." *Id*. at 2162 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 636).

Bruen identified several presumptively lawful firearms regulations that are "relevantly similar" to historical laws. As the Court noted, "the right to keep and bear arms in public has traditionally been subject to well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry

[4] All emphases in the original unless otherwise noted.

arms." *Id*. at 2138. Therefore, since "historical evidence from antebellum America does demonstrate that ***the manner*** of public carry was subject to reasonable regulation," laws that impose "reasonable, well-defined restrictions" on the manner of carrying firearms do not violate the Second Amendment. *Id*. at 2150, 2156.

Bruen further instructed courts to consider the impact of technological and societal change when evaluating Second Amendment challenges. The Court wrote that "[w]hile the historical analogies here and in *Heller* are relatively simple to draw, other cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach." *Id*. at 2132.

B. The District's LCM Regulation Is Analogous to Historical Firearms Restrictions That Did Not Burden the Right of Armed Self-Defense.

During the Founding Era and the period surrounding ratification of the Fourteenth Amendment, states enacted restrictions on where arms may be brought, what arms may be possessed, and the manner in which arms may be carried. These laws included restrictions on carrying firearms into sensitive places, limitations on the type of arms individuals could lawfully possess, and prohibitions on the concealed carry of arms.

Under *Bruen*, "whether modern and historical regulations impose a ***comparable burden on the right of armed self-defense*** and whether that burden is comparably justified are '***central***' considerations when engaging in an analogical inquiry." 142 S. Ct. at 2133 (first emphasis added) (quoting *McDonald*, 561 U.S. at 767). Applying this standard, although none of these historical laws are "dead ringer" analogues (because modern LCM technology did not exist and arms capable of firing repeatedly without reloading were not widely accessible at the time, *see* Part I.C, *infra*), the District's LCM regulation is "relevantly similar" to these historical laws because it imposes a "comparable burden" on the right of armed self-defense. *Id*. at 2132–33. Unlike the regulations

addressed in *Bruen* and *Heller*, which the Supreme Court held entirely prevented the exercise of the right to armed self-defense, *see id.* at 2156 (New York's "proper-cause" requirement); *Heller*, 554 U.S. at 635–36 (the District's restriction on handgun possession in the home), the District's LCM regulation does not prevent armed self-defense (*see* Part II, *infra*) but rather imposes restrictions "relevantly similar" to those imposed by historical laws regulating firearms:

1. ***Sensitive places.*** Around the time of the ratification of the Bill of Rights, colonial Philadelphia, New York and Boston prohibited the discharge of firearms within their cities.[5] By the time of the Fourteenth Amendment's ratification in 1868, states such as Virginia and Delaware had passed regulations on the discharge of firearms in sensitive or crowded public places.[6] Courts consistently upheld these regulations on the carrying or discharge of firearms in sensitive places, reasoning that such laws did not impinge on the right of armed self-defense.

For example, the Georgia Supreme Court in 1874 upheld a law forbidding the carrying of pistols, revolvers and other "deadly weapon[s]" to courthouses, polling places, places of public worship, "or any other public gathering in this state" against a challenge under the Second Amendment and Georgia state constitutional analogue. *Hill v. State*, 53 Ga. 472, 474, 482–83 (1874). The court found that carrying arms to sensitive places was simply not necessary for the right to "use [arms] as to become familiar with that use," but did risk impinging on the "constitutional duties of the legislature" to ensure "[t]he preservation of the public peace, and the protection of the people against violence." *Id.* at 477–79.[7]

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[5] *See* Robert H. Churchill, *Gun Regulation, the Police Power, and the Right to Keep Arms in Early America: The Legal Context of the Second Amendment*, 25 Law & Hist. Rev. 139, 162–63 (2007).

[6] *See* Act of Jan. 30, 1847, ch. 79, 1846–47 Va. Acts 67; Act of Feb. 4, 1812, ch. 195, 1812 Del. Sess. Laws 522, 522–24.

[7] The post-Civil War judicial decisions discussed in text at pages 6–8 address statutes enacted before or shortly after ratification of the Fourteenth Amendment. The "public understanding" of the scope of the Second Amendment can be properly discerned from statutes adopted by

2. ***Excessively dangerous weapons.*** States have also historically regulated weapons deemed excessively dangerous, and courts have consistently upheld these laws, reasoning that such arms are not necessary for self-defense. For example, the North Carolina Supreme Court wrote in 1824 that arming oneself with "dangerous and unusual weapons, in such a manner as will naturally cause a terror to the people," is "an offence at common law, and is strictly prohibited by statute." *State v. Langford,* 10 N.C. 381, 383–84 (1824); *see also O'Neill v. State*, 16 Ala. 65, 67 (1849) (noting that persons arming themselves with "deadly or unusual weapons for the purpose of an affray . . . may be guilty of this offence, without coming to actual blows").

Shortly after the Civil War, in 1871, the Tennessee Supreme Court in *Andrews v. State* upheld the constitutionality of a statute making it unlawful "for any person to publicly or privately carry a dirk, swordcane, Spanish stiletto, belt or pocket pistol or revolver." 50 Tenn. 165, 171, 186 (1871). The court reasoned that the banned weapons were not needed for self-defense: "[a]dmitting the right of self-defense in its broadest sense, still on sound principle every good citizen is bound to yield his preference as to the means to be used, to the demands of the public good." *Id*. at 188–89.

That same year, the Texas Supreme Court in *English v. State* upheld a law that regulated, and in some cases prohibited, the carrying of pistols, dirks and certain other "deadly weapons" against a challenge under the Second Amendment and state constitutional analogue. 35 Tex. 473, 474, 477 (1871). The court held that the law did not interfere with the right to self-defense because the law "makes all necessary exceptions, and points out the place, the time and the manner in

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legislatures shortly before or after they ratified the Fourteenth Amendment. *See Bruen*, 142 S. Ct. at 2136 (explaining that "evidence of 'how the Second Amendment was interpreted from immediately after its ratification through the end of the 19th century' . . . [is] a 'critical tool of constitutional interpretation'" in evaluating "***the public understanding***" of the Second Amendment (quoting *Heller*, 554 U.S. at 605)).

which certain deadly weapons may be carried as means of self-defense, and these exceptional cases, in our judgment, fully cover all the wants of society." *Id*. at 477.

3. *Concealed carry.* States across the country have regulated the concealed carry of firearms for more than two centuries, and courts have repeatedly upheld these laws. *See, e.g.*, *State v. Mitchell*, 3 Blackf. 229, 229 (Ind. 1833) (upholding Indiana's concealed carry law against a Second Amendment challenge); *Ex parte Thomas*, 97 P. 260, 265 (Okla. 1908) (upholding a state concealed carry law against a state constitutional challenge). State supreme courts have often explicitly upheld concealed carry laws because they did not burden an individual's right to armed self-defense. For example, in 1840, the Alabama Supreme Court upheld a concealed carry conviction against a challenge under a state constitutional analogue to the Second Amendment, concluding that "[t]here was no evidence . . . that the defendant could not have defended himself as successfully, by carrying the pistol openly, as by secreting it about his person." *State v. Reid*, 1 Ala. 612, 614, 621 (1840).

Two years later, the Arkansas Supreme Court upheld the state's concealed carry statute, which prohibited the "wear[ing] [of] any pistol . . . concealed as a weapon, unless upon a journey." *State v. Buzzard*, 4 Ark. 18, 18 (1842) (divided opinion). One justice found that the rights protected by the Second Amendment were "not in the slightest degree encroached upon by the legislative enactment of this State prohibiting the wearing of concealed weapons." *Id*. at 31 (Dickinson, J.). Another justice similarly stated that the Second Amendment creates "no such immunity as exempts it from all legal regulation and control." *Id*. at 22 (Ringo, C.J.).

In 1850, the Louisiana Supreme Court upheld the constitutionality of a concealed carry statute, writing that the law "interfered with no man's right to carry arms" and was "absolutely necessary to . . . prevent bloodshed and assassinations." *State v. Chandler*, 5 La. Ann. 489, 489–

90 (1850). Eight years later, the Louisiana Supreme Court reaffirmed the constitutionality of a substantially similar provision, holding that the statute did "not infringe the right of the people to keep or bear arms," but rather restricted "only ***a particular mode*** of bearing arms which is found dangerous to the peace of society." *State v. Jumel*, 13 La. Ann. 399, 399–400 (1858).

These regulations demonstrate that states have a broad and deep tradition of regulating the manner of carrying firearms, and that courts have consistently upheld such laws when they imposed little or no burden on the right of armed self-defense. The District's regulation is ***relevantly similar*** to these historical restrictions because the District's regulation also does not burden the right of armed self-defense (as addressed further below in Part II).

C. The District's Regulation Is "Relevantly Similar" to Historical Laws Restricting Weapons Capable of Firing Repeatedly Without Reloading.

The District's regulation is also consistent with nearly a century of state firearms laws restricting weapons capable of firing repeatedly without reloading.[8] For example, a 1927 Rhode Island law prohibited "any weapon which shoots automatically and any weapon which shoots more than twelve shots semi-automatically without reloading."[9] That same year, Michigan passed a law prohibiting any firearm that fired more than sixteen times without reloading.[10] In 1933, Ohio outlawed any firearm that "shoots automatically, or any firearm which shoots more than eighteen shots semi-automatically without reloading," and South Dakota banned firearms "from which more than five shots or bullets may be rapidly, or automatically, or semi-automatically discharged

[8] *See* Robert J. Spitzer, *Gun Law History in the United States and Second Amendment Rights*, 80 Law & Contemp. Probs. 55, 68–71 (2017).

[9] Act of Apr. 22, 1927, ch. 1052, 1927 R.I. Pub. Laws 256, §§ 1, 4.

[10] Act of June 2, 1927, no. 372, 1927 Mich. Pub. Acts 887, 888, § 3.

from a magazine."[11] In total, between 1927 and 1934, at least seven states and as many as ten restricted access to certain weapons capable of firing repeatedly without reloading.[12]

These laws demonstrate a clear history and tradition of regulations on firearms that can fire repeatedly without reloading. And they reflect a recognition that such regulations do not impinge on any legitimate needs for armed self-defense. These laws do not date back to the Founding Era or the Civil War, but weapons capable of firing repeatedly without reloading were not in widespread circulation until ***after*** the ratification of the Fourteenth Amendment in 1868 and ***long after*** the ratification of the Second Amendment in 1791. *See, e.g.,* Decl. of Michael Vorenberg at ¶ 43, *Ocean State Tactical, LLC v. Rhode Island*, No. 1:22-cv-00246 (D.R.I. Oct. 14, 2022), ECF No. 19-2 ("Rifles holding more than 10 rounds made up a tiny fraction of all firearms in the United States during Reconstruction. Furthermore . . . legal possession . . . was limited almost exclusively to U.S. soldiers and civilian law enforcement officers.").

1. *Firearms Capable of Firing Repeatedly Without Reloading Were Not Broadly Available Until After Enactment of the Fourteenth Amendment.*

During the Founding Era, civilians did ***not*** have widespread access to firearms capable of firing more than ten rounds without reloading. Plaintiffs identify two firearms invented prior to the ratification of the Second Amendment, but neither weapon was widely used by civilians.[13] First, Plaintiffs point to the Puckle 11-round "defence gun," which was patented in 1718 by British inventor James Puckle. However, the weapon barely made it out of the prototype phase as a result

[11] Act of Apr. 8, 1933, no. 64, 1933 Ohio Laws 189, 189, § 12819-3; Act of Feb. 28, 1933, ch. 206, 1933 S.D. Sess. Laws 245, 245, § 1.

[12] *See* Spitzer, *supra* note 8, at 68, 70–71 (collecting laws).

[13] Plaintiffs' Mem. of Points and Authorities in Supp. of Appl. for Prelim. Injunction at 14–15, ECF No. 8-1 (Aug. 19, 2022) ("Plaintiffs' Mem.").

of mechanical problems,[14] and was so heavy that it could not be carried by a single person.[15] The British Army and Navy declined to purchase any, reportedly because of the weapon's "clumsy and undependable" ignition and other mechanical problems, and only ***two*** defence guns were ever known to have been built (they were both sold to a British duke).[16]

Second, Plaintiffs point to the Girandoni air rifle, which they describe as "the state of the art for multi-shot guns" when the Second Amendment was ratified.[17] However, the Girandoni air rifle used a wagon-mounted pump filled with water to sustain the pressure needed to operate the rifle.[18] Without the pump, the weapon took nearly 1,500 manual hand pumps to restore power.[19] Moreover, the weapon was delicate, would frequently malfunction, and faced significant manufacturing difficulties.[20] Only 1,500 or so were ever built.[21]

Plaintiffs claim that "[f]irearm technology progressed rapidly in the 1800s as manufacturers sought to produce reliable firearms with greater ammunition capacities for

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[14] Waheed UK, *Puckle Gun: A Machine Gun Built 70 Years Before the 2nd Amendment*, Blade City: Blog, https://perma.cc/8Q9S-5NYN (last visited Nov. 29, 2022).

[15] Frank Jardim, *Wonder Gun That Never Was*, Guns Magazine, https://perma.cc/NJY7-HTFR (last visited Nov. 29, 2022) (describing the firearm as "really, a small cannon").

[16] *Id*.

[17] Plaintiffs' Mem. at 15 (citing David B. Kopel, *The History of Firearm Magazines and Magazine Prohibitions*, 88 Alb. L. Rev. 849, 849 (2015)).

[18] John Paul Jarvis, *The Girandoni Air Rifle: Deadly Under Pressure*, Guns.com (March 15, 2011), https://perma.cc/57AB-X2BE.

[19] *Id*.

[20] *Girandoni Air Rifle*, Fandom: Military Wiki, https://perma.cc/4RFA-Q9BK (last visited Nov. 29, 2022).

[21] Mike Markowitz, *The Girandoni Air Rifle: A Weapon Ahead of Its Time?*, Defense Media Network (May 14, 2013), https://perma.cc/5F8G-UZAR.

consumers."[22] In reality, multi-shot firearms developed during the antebellum period were "experimental efforts"[23] and suffered from numerous shortcomings that limited their popularity.[24]

Plaintiffs identify ten of these experimental multi-shot firearms introduced prior to the ratification of the Fourteenth Amendment, but ***no firearm*** capable of firing more than ten rounds without reloading achieved widespread commercial success prior to ratification of the Fourteenth Amendment in 1868:

1. ***Jennings Multi-Shot Flintlock Rifle*** **(1821)**[25]: Just 521 of these multi-shot firearms were produced for use by the New York militia, and the weapon was considered to be "anything but a common firearm."[26] The Jennings flintlock rifle most frequently allowed for just four shots to be fired without reloading, and manual manipulation was required between each shot.[27]
2. ***"Pepperbox" Pistols*** **(1830s)**: The most common "pepperbox" pistols could fire just five or six rounds without reloading.[28] Although a Belgian pepperbox pistol with 24 different barrels was manufactured, it was "monstrously unwield[y]."[29] The weapon was also notorious because of its shortcomings: its accuracy did not extend "much beyond the width of a poker table" [30]; its firing power was extremely modest[31]; and it was so unreliable that at times all of its barrels would fire at the same time (known as "chain-firing").[32]

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[22] Plaintiffs' Mem. at 15 (citing Kopel, *supra* note 17).

[23] John Paul Jarvis, *Bennett & Havilland Revolving Rifle: A Link in the Repeating Rifle Chain*, Guns.com (April 3, 2012), https://perma.cc/6FLX-AE5G.

[24] *See* Vorenberg Decl. ¶ 43.

[25] The years listed in this section correspond to the year that the firearm was introduced, according to Plaintiffs (unless otherwise noted). *See* Plaintiffs' Mem. at 14–19.

[26] Rock Island Auction Co., *Repeating Flintlock Rifles?!?*, YouTube (Sept. 7, 2021), https://www.youtube.com/watch?v=0FkW-CSTCwo.

[27] *Id.*

[28] Charles Worman, *The Iconic Pepperbox Revolving Pistol*, J. Antiques & Collectibles, https://perma.cc/E3K8-W3LH (last visited Nov. 29, 2022).

[29] *Wheelgun Wednesday: A Closer Look at Pepperbox Pistols*, The Firearm Blog (Dec. 8, 2021), https://perma.cc/2Z2U-RJ62; Worman, *supra* note 28.

[30] Worman, *supra* note 28.

[31] Danielle Hollembaek, *The Pepperbox Pistol*, Rock Island Auction Co. (Jan. 16, 2019), https://perma.cc/2ERY-26CX.

[32] *Id*.

3. ***Bennett and Havilland Rifle*** **(1838)**[33]: The Bennett & Havilland rifle was known to be as "safe as juggling chainsaws," and the weapon's design was "inherently unsafe" because it could cause chain-firing that could result in severe injury or death for the gunman.[34] As a result, "very few of these rifles were actually produced, with experts saying that less than ten were ever made."[35]

4. ***Rifle Invented by Colonel Perry W. Porter*** **(1851)**[36]: This rifle was known to be "unsafe in any direction" because it had a risk of chain-firing that could cause rounds to fire in different directions.[37] The rifle had "radial chambers" with at least one chamber pointing back at the shooter, creating a risk of self-harm.[38] In an era when firearms could chain-fire without warning, "the notion of having a loaded chamber pointing at your face was less than appealing to most people."[39] Only approximately 1,250 Porter rifles were ever produced.[40]

5. ***Pin-Fire Revolvers*** **(1850s)**: Pin-fire revolvers most commonly had a capacity of five or six rounds.[41] Although pin-fire revolvers capable of holding as many as 20 rounds did exist, they were "extraordinarily large and unwieldy."[42] The pin-fire revolver "was not a success" in the United States, in part because "accidental discharge of the cartridges before being loaded into the weapon became a serious problem."[43]

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[33] This rifle was patented in 1838. *See* Jarvis, *supra* note 23.

[34] *Id*.

[35] *Bennett & Havilland Revolving Rifle*, Fandom: Military Wiki, https://perma.cc/D68U-MSGU (last visited Nov. 29, 2022).

[36] This rifle was patented in 1851. Forgotten Weapons, *Porter Turret Rifle (2nd Variation) - Unsafe in Any Direction*, YouTube (March 7, 2018), https://www.youtube.com/watch?v=Wm_1Ny6r6zg.

[37] *Id*.

[38] Ian McCollum, *RIA: Porter Turret Rifle, Forgotten Weapons* (Feb. 7, 2016), https://perma.cc/N5J5-R93H.

[39] *Id*.

[40] Forgotten Weapons, *Porter Turret Rifle*, *supra* note 36.

[41] *Rare 20-Shot Lefaucheux "High Capacity" Pin Fire Revolver*, College Hill Arsenal, https://perma.cc/TNY6-8PTL (last visited Nov. 29, 2022).

[42] *Id*.

[43] *Original U.S. Civil War French M1854 Lefaucheux Cavalry Model 12mm Pinfire Revolver with Round*, Int'l Military Antiques, https://perma.cc/58KW-PHS7 (last visited Nov. 29, 2022).

6. ***Rifle Invented by Alexander Hall*** **(mid-1850s)**[44]: There is very little publicly available information about this rifle, but collectors have stated that they are "extremely scarce."[45] Like the Bennett and Havilland Rifle, the rifle had a "giant flaw" in that the weapon could chain-fire, creating a risk of severe injury to the gunman.[46]

7. ***Volcanic Rifle*** **(1855)**: The Volcanic Rifle was "[u]npopular because of its unreliability" as "it suffered from design defects including gas discharge around the breech and misfires."[47] According to one expert, "[t]here weren't a lot of these weapons made."[48] The rifle was ineffective for self-defense because it was "grossly underpowered" and did not fire with enough force to be a "man stopper."[49]

8. ***Henry Lever Action Rifle*** **(1862)**: Although the Henry rifle featured technological advances, "it also had some issues that hindered its rapid acceptance in the marketplace."[50] The rifle was "underpowered for a military firearm"; the "open magazine bottom under the barrel could easily become fouled"; the rifle's design could make it difficult to operate and aim; the rifle was prone to becoming jammed; the barrel became hot with repeated firing; the firing pins were fragile and could break, rendering the firearm inoperable; and the frame was prone to damage, causing the cartridges not to feed into the rifle.[51] Just 14,000 Henry rifles were manufactured by 1866, and the weapon saw only limited use during the Civil War.[52] After the Civil War, the Henry company ceased production of the Henry rifle.[53]

9. ***Josselyn Belt-Fed Chain Pistol*** **(1866)**: The Josselyn belt-fed pistol featured an "odd" design consisting of a loop of chambers linked together in a chain.[54] The design caused it

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[44] This rifle was manufactured in the mid-1850s. *See Lot 1099: Very Rare Hall 15 Round Percussion Revolving Rifle*, Rock Island Auction Co., https://perma.cc/43X5-EKSG (last visited Nov. 29, 2022).

[45] *Rare Alexander Hall Percussion Revolving Rifle*, Cowan's, https://perma.cc/T4F3-49KM (last visited Nov. 29, 2022); *see also Lot 1099: Very Rare Hall 15 Round Percussion Revolving Rifle*, *supra* note 44.

[46] *POTD: Very Rare Hall 15 Round Percussion Revolving Rifle*, All Outdoor (June 18, 2021), https://perma.cc/39V8-75RR.

[47] John Sammon, *The Case for Caselessness: The Volcanic Rifle*, Guns.com (April 19, 2011), https://perma.cc/462K-M6TA.

[48] *Id*.

[49] *Volcanic Rifles & Pistols*, Winchester Arms Collectors Ass'n, https://perma.cc/52FB-2PCF (last visited Nov. 29, 2022).

[50] *1st DC Cavalry Martial Henry Rifle*, College Hill Arsenal, https://perma.cc/LFP3-AVDY (last visited Nov. 29, 2022).

[51] *Id*.

[52] Dan Alex, *Henry Model 1860: Lever-Action Repeating Rifle*, Military Factory, https://perma.cc/N47S-7PKR (last edited Feb. 4, 2022).

[53] *1860 Henry Repeating Rifle*, Fandom: Deadliest Warrior Wiki, https://perma.cc/H9YW-SZHG (last visited Nov. 29, 2022).

[54] *Josselyn Revolver—Patent Protype*, FLicense Blog (Sept. 23, 2014), https://perma.cc/8CRB-7XH7.

to "fail[] to make it commercially,"[55] "possibly because of the inconvenience of carrying one around."[56] In addition, the design likely meant that "bringing the chain's next chamber into position isn't a rapid endeavour."[57] As one commentator quipped: "It is relatively easy to imagine what embarrassment might be experienced by a man who, in defense of his person, is required to extract from his pocket a gun with a foot or so of loose chain attached."[58] The weapon's shortcomings led it to become a "mechanical curiosity," and it does not "appear to have been produced in significant quantities."[59]

10. ***Winchester Repeating Rifle*** **(1866)**: The Winchester rifle represented a "serious leap forward in firearms capability," but it still suffered from significant limitations.[60] The rifle's exposed magazine was open to dirt and debris, which could lead to jamming, and the barrel could become dangerously hot after firing.[61] The Winchester rifle also suffered from "poor accuracy at longer ranges" and was very heavy when fully loaded.[62] Professor David B. Kopel, cited by Plaintiffs (Mem. at 14–15), described the Winchester as the first rifle with more than ten rounds of ammunition to achieve "mass-market success in the United States."[63] However, sales of the Winchester almost entirely postdated the ratification of the Fourteenth Amendment in 1868. The first deliveries of the Winchester rifle were not made until 1867, and the model sold just 4,500 firearms worldwide in its first five months on the civilian market.[64]

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[55] *Id*.

[56] *Chain Guns—I*, Firearms History, Technology & Development Blog (July 23, 2014), https://perma.cc/MT7P-JP5L.

[57] *Old West Firearms—Weapons Locker*, writeups.org, https://perma.cc/RHY4-7GX4 (last visited Nov. 29, 2022).

[58] *Revolver - Invented by Samuel Colt*, Edubilla, https://perma.cc/4AS9-PQ5U (last visited Nov. 29, 2022).

[59] *Old West Firearms—Weapons Locker*, *supra* note 57.

[60] Ian McCollum, *Winchester Lever Action Development: Model 1866*, Forgotten Weapons (June 7, 2017), https://perma.cc/2LMH-CQK5.

[61] Ryan Hodges, *The 1866 Rifle*, Taylor's & Company (Aug. 26, 2020), https://perma.cc/7STW-8WMS.

[62] *Why Britain Didn't Adopt the Winchester 1866*, The Armourer's Bench, https://perma.cc/PRY3-YHSN (last visited Nov. 29, 2022).

[63] Kopel, *supra* note 17, at 849.

[64] *Winchester 1866 Prototype Musket*, The Armourer's Bench, https://perma.cc/PB83-TSM4 (last visited Nov. 29, 2022).

2. *Modern Firearms Capable of Firing Repeatedly Without Reloading Require a "More Nuanced Approach" Under* **Bruen** *That Cannot Rely Solely on Historical Antecedents Pre-Dating the Fourteenth Amendment.*

Plaintiffs also identify roughly fifteen additional multi-shot weapons invented ***after*** ratification of the Fourteenth Amendment. *See* Complaint at 16–17, ECF No. 2 (Aug. 3, 2022) ("Compl."). But none provides a basis for historical comparison under *Bruen*, because none was in widespread circulation when either the Second Amendment or Fourteenth Amendment was ratified. *See Bruen*, 142 S. Ct. at 2136–38 (consulting the "public understanding of the right to keep and bear arms" when the "Second Amendment was adopted in 1791 [and when] the Fourteenth [Amendment was ratified] in 1868"). More crucially, when multi-shot firearms ***did*** begin to gain widespread civilian use, states across the country passed laws limiting access to these weapons. *See* pages 9–10, *supra*.

Moreover, modern firearms capable of firing repeatedly without reloading bear little resemblance to their historical predecessors. At the time of the Founding, the typical Revolutionary-era musket (i) could hold just one round at a time, (ii) could fire no more than three rounds per minute, (iii) had a maximum accurate range of 55 yards, and (iv) had a muzzle velocity of approximately 1,000 feet per second.[65] By contrast, a typical modern AR-15 (i) can hold 30 rounds (30 times more than a typical Revolutionary-era musket), (ii) can fire approximately 45 rounds per minute (15 times more), (iii) can shoot accurately from approximately 600 yards (11 times further), and (iv) attains a muzzle velocity of over 3,000 feet per second (3 times faster).[66]

Although firearms technology had improved by the Civil War, even the most advanced firearms of the era were a far cry from the modern AR-15. For example, the Winchester Model

[65] Christopher Ingraham, *What 'Arms' Looked Like When the 2nd Amendment Was Written*, Wash. Post (June 13, 2016), https://perma.cc/H6X5-C2NL.

[66] *Id*.

1866, discussed *supra*, had a maximum effective range of approximately 100 yards (about one-sixth of an AR-15) and had a muzzle velocity of just 1,100 feet per second (roughly one-third of an AR-15).[67] In short, modern LCMs, coupled with advances in firearm technology, pose a risk of far greater carnage than was possible—or could even be contemplated—during the Founding Era or the nineteenth century. Indeed, as of July 2020, LCMs were used in the ten deadliest mass shootings of the prior decade, and mass shootings from 1990 to 2017 involving LCMs resulted in a 62 percent higher death toll compared to those that did not involve an LCM.[68]

These modern advances in firearms technology constitute the type of "dramatic technological changes" that *Bruen* held requires a "more nuanced approach" to judicial review of modern firearms regulations. 142 S. Ct. at 2132. In other words, *Bruen* itself recognizes that there cannot be a rote comparison to historical firearms regulations when firearms technology is now fundamentally different. There may inherently be no comparable regulation from the colonial period or antebellum era when the technology now at issue simply ***did not exist*** then. As *Bruen* acknowledged, "[t]he regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868." *Id*. Unlike the handgun regulations addressed in *Bruen* and *Heller*, for which the Supreme Court looked to historical antecedents limiting the right of armed self-defense, a "more nuanced approach" is required when evaluating firearms restrictions on technology that did not exist before 1791 or 1868. *Id.*

[67] Dan Alex, *Winchester Model 1866 Lever-Action Repeating Rifle*, Military Factory (March 12, 2019), https://perma.cc/4ZJA-5V4M.

[68] *Large Capacity Magazines*, Giffords Law Ctr., https://perma.cc/X84S-97DT (last visited Nov. 29, 2022).

Accordingly, the more pertinent historical comparison is to early twentieth century laws restricting guns capable of firing repeatedly without reloading. *See* pages 9–10, *supra*. As those laws reflect, reasonable restrictions on the ability to shoot bullets repeatedly without reloading are not undue burdens on any right of armed self-defense, but are instead intended to reduce the carnage that can result when many rounds can be fired without reloading. *See, e.g.*, *Heller*, 554 U.S. at 627 (suggesting that M16 rifles, an automatic firearm with a 20- or 30-round magazine capacity, "and the like" may be banned consistent with the Second Amendment).

In short, applying a "more nuanced approach" in light of the "dramatic technological changes" in firearms technology, as *Bruen* instructs, the District's LCM regulation is "relevantly similar" to laws from around the country regulating weapons capable of firing repeatedly without reloading. *See* 142 S. Ct. at 2132. These laws, passed in the early twentieth century, were enacted as this firearms technology became more advanced and widely available.

II. THE DISTRICT'S LCM REGULATION IS "REASONABLE" AND "WELL-DEFINED" BECAUSE IT DOES NOT BURDEN AN INDIVIDUAL RIGHT TO SELF-DEFENSE.

As the Supreme Court "stated in *Heller* and repeated in *McDonald*, 'individual self-defense is "the ***central component***" of the Second Amendment right.'" *Bruen*, 142 S. Ct. at 2133 (quoting *McDonald*, 561 U.S. at 767 (quoting *Heller*, 554 U.S. at 599)). Given that the core Second Amendment inquiry as instructed by *Bruen* is whether there is a "burden on the right of armed self-defense," the District's LCM regulation is constitutional. *Id.* The regulation does not burden the right to armed self-defense because LCMs are not necessary for civilian self-defense.

A. Large-Capacity Magazines Are Not Necessary For Self-Defense.

Empirical research, thoroughly examined by sister courts,[69] establishes that the ability to fire more than ten rounds of ammunition without reloading is not needed for self-defense.

The National Rifle Association's database of "armed citizen" accounts, describing private individuals' successful use of firearms in self-defense or defense of others, shows that the use of more than ten rounds of ammunition for self-defense is "rare."[70] Studies of this database by firearms instructor Claude Werner (analyzing data from 1997 to 2001), and by economist Lucy P. Allen (evaluating 2011 to 2017 data), have found that the average number of shots fired by civilians in self-defense was about ***two***.[71] Moreover, of 736 self-defense incidents from January 2011 to May 2017 reflected in the NRA database, there were only "***two*** incidents (0.3% of all incidents), in which the defender was reported to have fired more than 10 bullets."[72]

Numerous federal and state courts have similarly found no evidence that firing more than ten bullets without the need to reload is necessary for self-defense. The Ninth Circuit, for example,

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[69] *See Duncan v. Bonta*, 19 F.4th 1087, 1104–05 (9th Cir. 2021), *cert. granted, judgment vacated*, 142 S. Ct. 2895, *and vacated and remanded on other grounds*, 49 F.4th 1228 (9th Cir. 2022); *Worman v. Healey*, 922 F.3d 26, 37 (1st Cir. 2019), *abrogated on other grounds by Bruen*, 142 S. Ct. 2111; *Ass'n of New Jersey Rifle & Pistol Clubs, Inc. (ANJRPC) v. Att'y Gen. New Jersey,* 910 F.3d 106, 121 n.25 (3d Cir. 2018), *abrogated on other grounds by Bruen*, 142 S. Ct. 2111; *Kolbe v. Hogan*, 849 F.3d 114, 127 (4th Cir. 2017), *abrogated on other grounds by Bruen*, 142 S. Ct. 2111; *State v. Misch*, 214 Vt. 309, 356–57 (2021), *reargument denied* (Mar. 29, 2021); *Rocky Mountain Gun Owners v. Polis*, 467 P.3d 314, 331 (Colo. 2020); *Kolbe v. O'Malley*, 42 F. Supp. 3d 768, 786 (D. Md. 2014), *aff'd in part, vacated in part, remanded sub nom. Kolbe v. Hogan*, 813 F.3d 160 (4th Cir. 2016), *on reh'g en banc*, 849 F.3d 114 (4th Cir. 2017), *and aff'd*, 849 F.3d 114 (4th Cir. 2017).

[70] Decl. of Lucy P. Allen ¶ 8, *Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Grewal (ANJRPC)*, 2018 WL 4688345 (D.N.J. Sept. 28, 2018), *aff'd*, 910 F.3d 106 (3d Cir. 2018), No. 3:18-cv-10507 (ECF No. 31-2) (filed July 5, 2018); *see also Armed Citizen Stories*, NRA-ILA, https://perma.cc/H9BC-95HF (last visited Nov. 29, 2022).

[71] *See* Claude Werner, *The Armed Citizen – A Five Year Analysis*, Guns Save Lives (Mar. 12, 2012), https://perma.cc/QTL7-U8EM (average of 2.2 defensive shots fired per incident from 1997–2001); Allen Decl., *ANJRPC*, *supra* note 70, ¶ 10 (same, from January 2011 to May 2017).

[72] Allen Decl., *ANJRPC*, *supra* note 70, ¶ 10 (emphasis added).

found that "[t]he use of more than ten bullets in defense of the home is ***'rare,'*** or ***non-existent***," and that the record in that case, "as in other cases," offered no indication that "the added benefit of a large-capacity magazine—being able to fire more than ten bullets in rapid succession—has ***ever*** been realized in self-defense in the home." *Duncan*, 19 F.4th at 1104–05 (citations omitted) (first two emphases added). The First Circuit found that "not one of the plaintiffs or their six experts could identify even a single example of . . . a self-defense episode in which ten or more shots were fired." *Worman*, 922 F.3d at 37. And the Colorado Supreme Court similarly concluded, based on trial testimony, "that [i]n no case had a person fired even five shots in self-defense, let alone ten, fifteen, or more." *Rocky Mountain Gun Owners*, 467 P.3d at 331 (quotation omitted); *see also ANJRPC,* 910 F.3d at 121 n.25 ("The record reflects that most homeowners only use two to three rounds of ammunition in self-defense."); *Kolbe*, 42 F. Supp. 3d at 787 ("Maryland law enforcement officials are unaware of any Marylander . . . needing to fire more than ten rounds, to protect himself."); *Misch*, 214 Vt. at 356 ("[I]t appears from the available data that . . . the large-capacity magazine [] is almost never used for self-defense.").

These findings are consistent with prior testimony and analyses of law enforcement officers that civilians do not need to fire more than ten rounds of ammunition for self-defense. The D.C. Council's Committee on Public Safety and the Judiciary "agree[d]" with the then-D.C. Chief of Police that "magazines holding[] over 10 rounds are more about firepower than self-defense."[73]

Edward Troiano, chief of Rhode Island's Bureau of Criminal Identification and Investigation and former Special Agent for the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), testified in a challenge to Rhode Island's LCM restriction that the

[73] D.C. Council Comm. on Public Safety & the Judiciary, *Report on Bill 17–843*, *"Firearms Registration Amendment Act of 2008*," at 9 (Nov. 25, 2008), https://perma.cc/YN6H-2U9M.

"[c]ircumstances where it is necessary to have more than 10 rounds of ammunition without the need to change magazines involve ***limited circumstances applicable to law enforcement***." Decl. of Edward Troiano ¶¶ 9, 10, *Ocean State Tactical, LLC*, No. 1:22-cv-00246 (D.R.I. Oct. 14, 2022) ECF No. 19-3 (emphasis added) ("I am unaware of ***any incident*** in which a civilian has ***ever*** fired as many as 10 rounds in self-defense." (emphasis added)). In a case challenging Maryland's LCM restriction, the then-Baltimore County Police Chief—head of the twentieth-largest police department in the U.S.—testified that he was "***unaware of any self-defense incident***" in Baltimore County or "anywhere else in Maryland" for which "it was necessary to fire as many as 10 rounds in self-defense." Decl. of James W. Johnson ¶¶ 2, 30, 31, *Kolbe v. O'Malley*, 42 F. Supp. 3d 768 (D. Md. 2014), No. 1:13-cv-02841 (ECF No. 44-3) (filed Feb. 14, 2014) (emphasis added). And in a case challenging an Illinois municipal ordinance regulating firearms capable of accepting more than ten rounds of ammunition, former longtime ATF official Mark D. Jones testified that "the ammunition capacity of a standard revolver (6 cartridges) would satisfy one's self defense needs most of the time and a semi-automatic pistol with a 10 round capacity magazine even more so."[74]

Even advocates of the permissive use of firearms have acknowledged that the ability to fire more than ten rounds of ammunition without reloading is not necessary for defensive purposes. For example, recent compilations by The Heritage Foundation's *The Daily Signal* of national reports of defensive gun use cases reflect that ***none*** involved the use of anywhere close to ten rounds of ammunition.[75] A blog post for ammunitions retailer Lucky Gunner stated that in the

[74] Decl. of Mark D. Jones ¶ 40, *Friedman v. City of Highland Park*, 68 F. Supp. 3d 895 (N.D. Ill. 2014), *aff'd*, 784 F.3d 406 (7th Cir. 2015), No. 13-cv-9073 (ECF No. 22-1, Ex. C) (filed Feb. 7, 2014).

[75] Amy Swearer & Holden Edwards, *Second Amendment Isn't About Deer in Kevlar Vests, Mr. President, As These 11 Incidents Show*, The Daily Signal (Sept. 26, 2022), https://perma.cc/DR5E-XQLR; Amy Swearer & Isaac Bock, *Second Amendment Protects Everyone, As 12 Examples of Defensive Gun Use Show*, The Daily Signal (July 29, 2022), https://perma.cc/8JJS-Z44K; *see also* Jim Barrett, *Assault Weapons Bans: Are You Ready?*, The Truth About Guns (June 8, 2012),

"very rare instances . . . [that involved] round counts in the low double digits," the suspect was generally "disabled after the first couple of shots."[76] Firearms training officer Greg Ellifritz similarly found that "[a]ll the common defensive calibers required around 2 rounds on average to incapacitate," and that "in the majority of shootings, the person shot merely gives up without being truly incapacitated by the bullet."[77] Another advocate concluded that, in 98 percent of defensive gun use cases, "people simply brandish weapons to stop attacks."[78] In fact, Plaintiffs themselves concede that "most crimes which are stopped by armed citizens do not require the firing of a single shot." Compl. ¶ 27.

The available evidence, in other words, demonstrates that more than ten rounds are not needed for armed self-defense. Under the tests of *Bruen* and *Heller*, the District's LCM regulation is therefore constitutional because it does not "burden a law-abiding citizen's right to armed self-defense." *Bruen*, 142 S. Ct. at 2132–33.

B. Plaintiffs Fail to Identify a Single Incident in Which a District Resident Needed a Large-Capacity Magazine for Self-Defense.

Plaintiffs nevertheless assert that LCMs are necessary when a "determined opponent" is not persuaded by "the threat or application of deadly force," and where it may be impossible to reload a firearm "under certain circumstances." Compl. ¶¶ 27, 34–35. Yet Plaintiffs have failed to make any showing that a District resident has ever been in such a circumstance.[79] Indeed, not

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https://perma.cc/DEN3-VCJN ("Hollywood aside, my guess is that most DGUs [defensive gun uses] are short affairs with a few shots fired by each party.").

[76] Chris Baker, *How Much Ammo Capacity Is Enough*, Lucky Gunner: Lounge (Sept. 2, 2016), https://perma.cc/9UYC-7ZZC.

[77] Greg Ellifritz, *An Alternate Look at Handgun Stopping Power*, Buckeye Firearms Association (July 8, 2011), https://perma.cc/7AW4-EXJV.

[78] Tim Lambert, *Statements by John R. Lott, Jr. on Defensive Gun Brandishing*, ScienceBlogs (Oct. 17, 2002), https://perma.cc/65PN-YMA4.

[79] Plaintiffs assert that "the District of Colorado recently addressed a similar magazine" regulation in *Rocky Mountain Gun Owners v. Town of Superior*, Case No. 22-cv-01685 (D. Colo.). Compl.

one of the six incidents cited by Plaintiffs (*see* Compl. ¶¶ 29–33) occurred in the District, and as Plaintiffs acknowledge, five of the six were "officer involved" shootings, Compl. ¶¶ 28–33—in other words, incidents involving law enforcement, ***not*** a citizen's armed self-defense.

The only example cited by Plaintiffs in which a civilian used more than ten rounds of ammunition, purportedly for defensive purposes, occurred roughly three decades ago, and involved a merchant whose frequent engagements in gunfights with would-be shoplifters earned him the moniker "sure shot" and strongly suggested an offensive use of firearms. *See* Compl. ¶ 30.[80] Beyond this idiosyncratic example, Plaintiffs have offered only hypotheticals—"a person attempting to fend off an attacker in physical contact" who is unable to reload, or a District resident "set upon by multiple assailants," Compl. ¶ 35—while offering no evidence that these theoretical situations have in fact ever occurred.

Plaintiffs rely almost entirely on examples involving law enforcement's use of firearms, rather than "a law-abiding citizen's right to armed self-defense." *Bruen*, 142 S. Ct. at 2132–33. But by conflating the use of firearms by law enforcement with the defensive use of firearms by civilians, *see* Compl. ¶ 36, Plaintiffs fail to acknowledge the unique and offensive nature of law enforcement operations. Indeed, as the then-Baltimore County Police Chief testified in a challenge to Maryland's LCM regulation, unlike civilians firing in self-defense, law enforcement "use[s]

¶ 37. Yet that court did not have the opportunity to apply the *Bruen* test on a full evidentiary record, instead granting in part Plaintiffs' request for a temporary restraining order *ex parte*, without the benefit of evidence regarding historically analogous regulations or social science research from the law's defenders. Order Granting in Part Motion for Temp. Restraining Order, *Rocky Mountain Gun Owners*, No. 22-cv-01685 (ECF No. 18) (filed July 22, 2022). The case has since been voluntarily dismissed. Order Dismissing Case Without Prejudice, 22-cv-01685 (ECF No. 53) (filed Oct. 12, 2022).

[80] *See* Sheryl Stolberg & Ashley Dunn, *Merchant's Rising Death Toll Raises Questions*, L.A. Times (Feb. 22, 1992), https://perma.cc/9XTK-2RE5 ("When you have somebody who repeatedly acts in self-defense, you've got to ask yourself: 'Are they really reasonably in fear?'") (quoting Loyola Law School criminal law Professor Laurie Levenson).

firearms in connection with a wide variety of actions that are inherently ***offensive*** in nature," for which LCMs may be necessary. Johnson Decl., *Kolbe*, ¶¶ 28, 29 (emphasis added). That is entirely different from the "right to armed self-defense" articulated in *Bruen*.

Moreover, although Plaintiffs assert (without foundation) that during a "criminal attack" the time required to reload a magazine may undermine the use of a gun in self-defense, *see* Compl. ¶ 35, they make no showing that reloading is needed for self-defense. *See* Part II.A, *supra*. Further, it is precisely this pause for reloading that may reduce the number of victims of ***offensive*** uses of LCMs. During the 2018 mass shootings in Parkland, Florida, and Thousand Oaks, California, for example, numerous victims were able to escape to safety when the offenders paused to reload.[81] This "2 or 3 second pause" to reload can also "be of critical benefit to law enforcement" in offensive operations, as the then-D.C. Chief of Police testified in a case that upheld the District's restriction of magazines capable of holding more than ten rounds. *Heller*, 670 F.3d at 1264 (citation omitted).

In short, all available evidence indicates that LCMs are not necessary for civilian self-defense, and reinforces that the District's regulation does not impinge on the right to armed self-defense as articulated in *Bruen* and *Heller*.

CONCLUSION

D.C. Code Section 7-2506.01(b) does not violate the Second Amendment because it is "relevantly similar" to historical laws that imposed reasonable restrictions on the manner of carrying firearms. *Bruen*, 142 S. Ct. at 2132–33. Further, applying the standards of *Bruen* and

[81] *See Marjory Stoneman Douglas High School Public Safety Commission Initial Report*, at 32 (Jan. 2, 2019), https://perma.cc/KKA7-8A8A; *People Threw Barstools Through Window to Escape Thousand Oaks, California, Bar During Shooting*, USA Today (Nov. 8, 2018), https://perma.cc/JT9H-JSL2.

Heller, the District's LCM regulation does not burden the right to self-defense because LCMs are not necessary for "a law-abiding citizen" to engage in "armed self-defense." *Id*.

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CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2022, an electronic copy of the foregoing *Amicus Curiae* Brief was filed with the Clerk of Court for the United States District Court for the District of Columbia using the Court's *CM-ECF* system and was served electronically by the Notice of Docket Activity upon registered *CM-ECF* participants.

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