

The Honorable David G. Estudillo

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

GABRIELLA SULLIVAN, et al.,

Plaintiffs,

v.

BOB FERGUSON, in his Official Capacity  
as Washington State Attorney General, et al.,

Defendants,

ALLIANCE FOR GUN RESPONSIBILITY,

Intervenor-Defendant.

NO. 3:22-cv-05403-DGE

REPLY IN SUPPORT OF STATE  
DEFENDANTS' CROSS-MOTION  
FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR:  
October 16, 2023

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## I. INTRODUCTION

Ten district courts have addressed the constitutionality of LCM restrictions following *Bruen*. All but two have rejected plaintiffs’ challenges (or found them unlikely to succeed), concluding that the Second Amendment does not protect LCMs and/or that LCM restrictions are consistent with America’s historical tradition of regulating weapons disproportionately used in criminal violence. Dkt. # 131-1 (MSJ) at 6-7 (citing decisions issued prior to Sept. 1, 2023); *Brumback v. Ferguson*, 2023 WL 6221425 (E.D. Wash. Sept. 25, 2023). And the judgments of the two district courts that concluded differently were each promptly stayed by the Court of Appeals. *Barnett v. Raoul*, 2023 WL 3160285 (S.D. Ill. Apr. 28, 2023) (stayed pending appeal); *Duncan v. Bonta*, 2023 WL 6180472 (S.D. Cal. Sept. 22, 2023) (stayed pending appeal). In *Duncan*, an *en banc* panel of the Ninth Circuit concluded that California “is likely to succeed on the merits” of its appeal. Order, Dkt. # 10 at 2, No. 23-55805 (9th Cir. Oct. 10, 2023).

Facing the great weight of authority against them, Plaintiffs argue that everyone is wrong—except them. They insist that commonality is the sole question courts can consider in evaluating constitutionality, even though courts addressing this very question—including Judge Bryan of this Court—have consistently rejected their attempt to rewrite the *Bruen* test to suit their preferences. MSJ at 13-14. Under a proper application of Supreme Court precedent, SB 5078 is constitutional and should be upheld.

## II. ARGUMENT

### A. Plaintiffs Fail to Carry Their Burden at *Bruen* Step One

Plaintiffs fail to carry their burden at *Bruen* step one for three independent reasons: (1) LCMs are accessories, not arms; (2) LCMs are not commonly used for self-defense; and (3) LCMs are military-style accessories, outside the scope of the Second Amendment. Plaintiffs fail to overcome any of these grounds, let alone all three.

1           **1.       LCMs are accessories, not arms**

2           Plaintiffs do not dispute that they bear the burden of demonstrating that LCMs are “arms”  
 3 at *Bruen*’s first step. Yet they offer no evidence on the merits whatsoever, not even to *rebut*  
 4 Defendants’ historical, linguistic, and contemporary evidence proving that force-multiplying  
 5 accessories like LCMs have never been understood to be “arms.” MSJ at 14-17. Nor do Plaintiffs  
 6 rebut the evidence showing that SB 5078 does not otherwise interfere with their use of arms  
 7 because LCMs are not necessary for any gun to fire exactly as intended. *Id.* at 11. This is fatal  
 8 to their claim. See *Brumback*, 2023 WL 6221425, at \*9 (“Plaintiffs have offered insufficient  
 9 evidence suggesting that the text of the Second Amendment was meant to include large capacity  
 10 magazines.”); *Ocean State Tactical, LLC v. Rhode Island*, 2022 WL 17721175, at \*12-13 (D.R.I.  
 11 Dec. 14, 2022); *Or. Firearms Fed’n v. Kotek (OFF)*, 2023 WL 4541027, at \*25-26 (D. Or. July  
 12 14, 2023).

13           In lieu of evidence, Plaintiffs offer only their counsel’s arguments. First, though Plaintiffs  
 14 do not dispute that corpus linguistics is relevant to the textual-historical question presented,<sup>1</sup> nor  
 15 do they question Dr. Baron’s qualifications or offer any rebuttal expert testimony, Plaintiffs  
 16 assert he did not consider the “most important sources”: the Militia Act of 1792 and article I,  
 17 section 8, clause 16 of the Constitution. Dkt. # 133 (Resp.) at 10. But the Militia Act *supports*  
 18 Dr. Baron’s arms/accoutrements distinction; it refers to militiamen carrying “a good musket or  
 19 firelock, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch, with a box  
 20 therein, to contain not less than twenty four cartridges” as being “armed, *accoutred* and  
 21 provided.” Militia Act of 1792, ch. 33, 1 Stat. 271 § 1 (emphasis added). That Congress has the  
 22 authority to “organiz[e], arm[], and disciplin[e] the Militia,” and that the Militia Act required “a  
 23 knapsack, a pouch, with a box therein” for militiamen, does not somehow mean that knapsacks,  
 24 pouches, and cartridge-boxes are “arms.” Resp. at 10.

25 \_\_\_\_\_  
 26 <sup>1</sup> Cf. *Facebook, Inc. v. Duguid*, 141 S.Ct. 1163, 1174 (2021) (Alito, J., concurring) (inviting corpus  
 linguistics analysis of future interpretive questions).

1       Second, Plaintiffs wave away expert Ryan Busse’s testimony with a single,  
 2       unsubstantiated sentence, arguing that the firearm industry’s classification of LCMs as  
 3       “accessories” has “no constitutional significance.” Resp. at 10. But undisputed evidence that  
 4       industry experts have for decades marketed and sold LCMs as accessories (not as firearms) is  
 5       certainly probative, especially since the industry’s modern understanding of its own products is  
 6       fully consistent with the historical evidence.

7       Third, SB 5078 is not comparable to a ban on all triggers as Plaintiffs suggest. Resp.  
 8       at 11. That argument is flawed because LCMs are just one type of magazine. The apt analogy  
 9       would be between LCMs and trigger cranks or forced-reset triggers—accessories that convert  
 10       ordinary firearms into military-style weaponry. *See United States v. Rare Breed Triggers, LLC*,  
 11       2023 WL 5689770, at \*50 (E.D.N.Y. Sept. 5, 2023) (enjoining defendant from selling “forced-  
 12       reset triggers[] and other machinegun conversion devices”).

13       Finally, Plaintiffs argue that the State Defendants’ argument lacks a “limiting principle”  
 14       and, relatedly, that there is no textual basis for treating LCMs differently from lower-capacity  
 15       magazines. Resp. at 11. But the Second Amendment provides both a limiting principle and a  
 16       textual basis for regulating LCMs. Because LCMs are accessories, not arms, the Second  
 17       Amendment is only implicated if SB 5078 otherwise “infringes” the right to use arms. MSJ at  
 18       15-16. Infringement is the limiting principle, and it explains why Washington’s law is  
 19       constitutionally distinguishable from, for example, a ban on anything but “one-shot gun[s].” *Id.*  
 20       at 11; *contra* Resp. at 11.<sup>2</sup> Because Plaintiffs offered *no* evidence that LCMs provide meaningful  
 21       self-defense benefits over ordinary magazines, they have failed to show that Washington’s  
 22       regulation of these accessories is an infringement. This is dispositive.

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23  
 24  
 25  
 26       <sup>2</sup> It is Plaintiffs’ argument that lacks a limiting principle, as it leads to the untenable conclusion that 100-  
 or even 1,000-capacity magazines presumptively cannot be regulated.

2. **Plaintiffs bear the burden to show LCMs are in common use—they cannot**

a. **Plaintiffs bear the burden at *Bruen* step one**

Plaintiffs’ insistence that “common use” is the *State*’s burden, Resp. at 12-14, cannot be squared with *Bruen*, as a straightforward reading of the case demonstrates. In applying its own test, the *Bruen* Court addressed “common use” at step one. *New York State Rifle & Pistol Ass’n v. Bruen*, 142 S.Ct. 2111, 2134-36 (2022). Specifically, the Court first confirmed that “handguns are weapons ‘in common use’ today for self-defense” in concluding that “[t]he Second Amendment’s plain text . . . presumptively” applied. *Id.* at 2134-35. Only then did the Court proceed to step two, shifting the burden to New York. *Id.* at 2135.

Plaintiffs appear to suggest that “common use” cannot be part of *Bruen*’s first step because these words are not found in the Second Amendment’s text, *see* Resp. at 14, but this oversimplification not only ignores how *Bruen* applied the test, it ignores the jurisprudential underpinnings of *Heller*, *McDonald*, and *Bruen*. The Supreme Court’s Second Amendment jurisprudence focuses on what its words meant at ratification. *See Bruen*, 142 S.Ct. at 2127. Thus, at step one, plaintiffs must prove that a particular weapon is among those that Founding-era Americans would have understood the Second Amendment to cover, i.e., “weapons in common use today for self-defense.” *Id.* at 2134 (cleaned up). *Bruen* step two—evaluating historical analogues—is only necessary if a presumption of Second Amendment protection is established at step one. *See id.* at 2135-36.

The Ninth Circuit in *Alaniz* correctly applied *Bruen*, explaining that step one examines, *inter alia*, whether a weapon is “‘in common use’ today for self-defense[.]” *United States v. Alaniz*, 69 F.4th 1124, 1128 (9th Cir. 2023) (quoting *Bruen*, 142 S.Ct. at 2134-35).<sup>3</sup> Plaintiffs, however, assert that *Teter v. Lopez*, 76 F.4th 938 (9th Cir. 2023), absolves them of their step-one burden. Resp. at 12-13. While *Teter* may, at first blush, appear in tension with *Heller*, *Bruen*,

<sup>3</sup> This portion of *Alaniz* is not “dicta.” Resp. 6. *Alaniz* articulated the test, then applied it to hold that a state statute did not violate the Second Amendment. *Alaniz*, 69 F.4th at 1128-29. The Court’s assumption *arguendo* that *Bruen* step one was satisfied in no way undermines its (correct) articulation of the test.



1 and *Alaniz*, a closer look reveals that *Teter*'s burden-shifting discussion focuses not on butterfly  
 2 knives' commonality, but whether they are "dangerous and unusual." *Teter*, 76 F.4th at 950-51.  
 3 Though related, these are distinct questions that courts often analyze separately. *See infra* at  
 4 II.A.3; MSJ at 22-23; *see, e.g., OFF*, 2023 WL 4541027, at \*34. *Teter* says nothing about the  
 5 former, whereas *Heller*, *Bruen*, and *Alaniz* place the burden of proving "common use" squarely  
 6 on Plaintiffs.<sup>4</sup>

7 **b. Plaintiffs fail to carry their burden of proving that LCMs are**  
 8 **commonly used for self-defense**

9 As the State Defendants have shown, LCMs' extended rapid-fire capabilities may be  
 10 useful on the battlefield, but they are basically never used for self-defense. MSJ at 19-22.  
 11 Plaintiffs may wish *Heller* and *Bruen* had set a different standard, but common *ownership* alone  
 12 is not enough; Plaintiffs must prove that LCMs actually "facilitate armed self-defense." *Bruen*,  
 13 142 S.Ct. at 2132; *see also OFF*, 2023 WL 4541027, at \*29; *Nat'l Ass'n for Gun Rights v.*  
 14 *Lamont*, 2023 WL 4975979, at \*13 (D. Conn. Aug. 3, 2023); *Ocean State Tactical*, 2022 WL  
 15 17721175, at \*15. Plaintiffs have failed to carry their step-one burden.

16 Again calling on *Teter*, Resp. at 14, Plaintiffs place too much weight on its paraphrasing  
 17 of *Heller*, while ignoring the actual standard established by both *Heller* and *Bruen*: that  
 18 "common use," not common ownership, is the relevant metric. *Heller* makes clear that the  
 19 Second Amendment covers only "arms 'in common *use* at the time for lawful purposes like self-  
 20 defense.'" *District of Columbia v. Heller*, 554 U.S. 570, 624 (2008) (cleaned up; emphasis  
 21 added); *see also id.* at 627 (recognizing that "the right to keep and carry arms" for self-defense  
 22 extends only to "the sorts of weapons . . . in common *use* at the time") (cleaned up; emphasis  
 23 added ). *Bruen* reaffirms this, quoting *Heller*'s "common use" language. *Bruen*, 142 S.Ct. at  
 24 2128, 2134.<sup>5</sup> Following *Heller*, courts that have specifically addressed the question (which *Teter*

25 <sup>4</sup> Of course, even if *Teter* did require Defendants to prove LCMs are not commonly used for self-defense,  
 26 the State Defendants have made that showing through un rebutted expert testimony. *See* MSJ at 9-10, 19-22.

<sup>5</sup> Like *Teter*, *Heller* once refers to "weapons not typically *possessed* by law-abiding citizens." 554 U.S. at  
 625 (emphasis added). But it does so only to distinguish them from "arms 'in common *use* at the time' for lawful

1 did not) have concluded that use, not ownership, is the lodestar. *See, e.g., Nat'l Ass'n for Gun*  
 2 *Rights*, 2023 WL 4975979, at \*13-14; *Or. Firearms Fed'n, Inc. v. Brown*, 644 F. Supp. 3d 782,  
 3 799-800 (D. Or. Dec. 6, 2022). And, notwithstanding its imprecise paraphrasing, *Teter's* analysis  
 4 clearly focuses on use. It reasons "that butterfly knives may be *used* for self-defense," and that  
 5 they "are an integral part of the [F]ilipino martial art called Escrima." *Teter*, 76 F.4th at 950  
 6 (emphasis added; cleaned up). This is in marked contrast to LCMs, which are neither useful nor  
 7 actually used for self-defense. MSJ at 9-10, 19-22. Once again, *Teter* does not support Plaintiffs.

8 Plaintiffs are correct that a firearm can be "used" even if it is not fired. Resp. at 14; *see*  
 9 Dkt. # 123-1 (Allen Rpt.) at 7. But this doesn't help them, as the court explained in *OFF*:  
 10 "Plaintiffs presented no evidence . . . that brandishing a firearm with an LCM, as opposed to  
 11 brandishing a firearm with a magazine holding ten or fewer rounds, facilitates armed  
 12 self-defense." 2023 WL 4541027, at \*33. "[T]he size of a firearm's magazine—as opposed to  
 13 the firearm itself—has little deterrent effect in the average civilian self-defense context." *Id.*  
 14 Here too, whether shots are fired or not, Plaintiffs offer *no* evidence that LCMs facilitate armed  
 15 self-defense. As Lucy Allen's research conclusively shows, as court after court has found, and  
 16 as even the NRA has acknowledged, LCMs do not. MSJ at 9, 20-22.<sup>6</sup>

17 Finally, Plaintiffs argue that if handguns cannot be banned despite their criminal use,  
 18 LCMs must also be constitutionally protected. Resp. at 8. But *Heller* undermines this argument  
 19 too, holding that even though handguns are often used in crime, they cannot be banned because  
 20 they are "overwhelmingly chosen by American society" for self-defense. *Heller*, 554 U.S. at

21 \_\_\_\_\_  
 22 purposes like self-defense," which are the arms covered by the Second Amendment, according to *Heller*. *Id.* at 624  
 (emphasis added).

23 <sup>6</sup> As previously explained, Plaintiffs' LCM-ownership estimates are based on unreliable, inadmissible  
 24 hearsay. MSJ at 24-27. Plaintiffs respond by citing additional sources they claim "find[] similar levels of  
 25 ownership," Resp. at 18, but they fall far short. *Compare* Dkt. # 101 at 17-18 (asserting Americans have owned 542  
 26 million LCMs) *with* Resp. at 18-19 (citing cases with estimates of 115 and 75 million). Moreover, it is not at all  
 clear where these numbers come from, or why this Court should accept them, particularly in light of recent evidence  
 demonstrating how the gun industry inflated estimates. MSJ at 24-25.

Plaintiffs also contend that their proffered estimates are "legislative facts." Resp. at 18. The *OFF* court  
 properly rejected this argument, finding that facts going to common use are "adjudicative," not "legislative." *OFF*,  
 2023 WL 4541027, at \*3 n.2 (citations omitted).

628. By contrast, Plaintiffs provide no competent evidence that LCMs are similarly situated, and the evidence shows they are virtually never used for self-defense.

**3. LCMs are not covered by the Second Amendment because they are military items not suitable for self-defense**

Plaintiffs do not—and cannot—dispute that LCMs are “most useful in military service.” *See Resp.* at 20-21; *State’s MSJ* at 19-22. Instead, they again attack the legal premise, but they wander still further astray from *Heller* and *Bruen* by arguing that whether a weapon is “most useful in military service” is irrelevant. *Resp.* at 20-21. As *Heller* makes clear, specialized combat weapons fall outside the Second Amendment’s scope. *Heller* held that because militia weapons were historically not specialized tools of warfare, but “the sorts of lawful weapons that [civilians] possessed at home,” the Second Amendment allows “weapons that are most useful in military service—M-16s and the like—[to] be banned” altogether. 554 U.S. at 627. “[S]mall arms” commonly used for self-defense, and not military weapons, are the “arms” protected by the Second Amendment. *Id.* at 627; *see also id.* at 624 (“The traditional militia was formed from a pool of men bringing arms ‘in common use at the time’ for lawful purposes like self-defense.”); *id.* at 627-28 (acknowledging that “modern developments” in military technology “have limited the degree of fit between the prefatory clause and the protected right.”). Nothing in *Bruen* changed this analysis: *Bruen* fully embraced and applied *Heller* in its entirety.

It is not surprising, then, that the Ninth Circuit has found “significant merit” to the argument that the Second Amendment does not apply to LCMs because they “have limited lawful, civilian benefits, whereas they provide significant benefits in a military setting.” *Duncan v. Bonta*, 19 F.4th 1087, 1102 (9th Cir. 2021) (*en banc*), *vacated and remanded in light of Bruen*, 142 S.Ct. 2895 (2022), *post-remand appeal pending*, Case No. 23-55805 (9th Cir.). This application of *Heller* is equally sound after *Bruen*, defeating Plaintiffs’ claim at step one. *MSJ* at 27-28; *see also, e.g., Hanson v. District of Columbia*, 2023 WL 3019777, at \*8-9 (D.D.C. Apr. 20, 2023); *Nat’l Ass’n for Gun Rights*, 2023 WL 4975979, at \*24-26.

**B. Defendants Have Met Their Burden at *Bruen* Step Two**

Even if Plaintiffs could meet their step-one burden, which they haven't, their claim would still fail because the State has amply rebutted any "presumpti[on]" of constitutional protection by showing that SB 5078 is "consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 142 S.Ct. at 2129-30; *contra* Resp. at 26 (erroneously arguing that historical analogues are irrelevant). Contrary to Plaintiffs' misguided argument, *Bruen* never says all commonly possessed arms are immune from regulation. In fact, *Bruen* did not "decide anything about the kinds of weapons that people may possess." 142 S.Ct. at 2157 (Alito, J., concurring). The State has shown that multiple historical analogues are relevantly similar to SB 5078.

Trap Guns

To start, Plaintiffs' characterization of SB 5078 as a "flat ban," Resp. at 28, is flatly wrong. The law only prohibits LCMs' manufacture, sale, and import—not their possession. SB 5078, § 3. So when Plaintiffs argue that analogous trap-gun regulations only "restrict conduct with arms," not "what *types* of arms a person can own," Resp. at 27, they misconstrue Washington's law and attack a strawman.

Plaintiffs' attempt to distinguish between "conduct" with arms and "types" of arms is also flawed because, to the extent historical trap-gun laws can be characterized as regulating either one, the same is true of Washington's LCM law. A trap gun, as Plaintiffs acknowledge, is a gun rigged with a "String, Rope, or other Contrivance" to fire by itself. Resp. at 27. That is, by employing an accessory in conjunction with a firearm, a trap gun functions differently than a gun without the accessory. So too, by combining a firearm with a particular accessory—an LCM—it gains rapid-fire functionality it would not have absent the accessory. Either equipping a gun with an LCM is "conduct" and so is equipping a gun with a string or rope, or a gun with an LCM is a "type" of arm just like a gun set up to fire unattended is a "type" of arm.

Moreover, historical trap gun regulations did not prohibit trap guns only sometimes or in particular circumstances; trap guns were prohibited no matter how or when they were set, further

belying Plaintiffs' conduct/type distinction. *See* Dkt. #122-1 (Spitzer Rpt.) at 247-54. And, since trap guns were predominantly used to defend homes and businesses (*id.* at 20), and historical laws prohibited them completely, the burden on self-defense was greater than SB 5078's. Trap-gun restrictions are relevant and appropriate analogues, and Plaintiffs do not contest that such restrictions are well represented in the Nation's historical tradition of weapons regulation.

#### Clubs/Bludgeons

Plaintiffs similarly fail to distinguish historical regulations concerning clubs often used by criminals. Plaintiffs completely ignore that the sale and manufacture of bludgeons was prohibited in at least 11 states between 1849 and 1923. *See* Dkt. #121-1 (Rivas Rpt.) at 28 (Vermont and Kentucky); Spitzer Rpt. at 163 (California), 171 (Florida), 177 (Illinois), 191-92 (Massachusetts), 194 (Michigan), 195 (Minnesota), 219 (Oklahoma), 211-12 (New York), 221 (Oregon). These laws are very similar to or more restrictive than SB 5078 and provide further historical evidence that SB 5078 is consistent with the Second Amendment. And while it is true that early laws restricting clubs sometimes served odious, racially discriminatory ends, such laws nonetheless show that clubs were widely restricted based on concerns about their use in lawless violence. What matters under *Bruen* is that from 1664 to today, such weapons were consistently singled out by state legislatures which banned their sale, manufacture, carry, and possession in a wide variety of laws, some of which barred sale and manufacture in a way strikingly similar to SB 5078. *See* Spitzer Rpt. at 18-21.

#### Bowie Knives

Plaintiffs argue that the cited analogues regulating Bowie knives "do not impose 'a comparable burden on the right' to [SB 5078], since the historical regulations did not bar *possession*, as Washington's law does." Resp. at 30. Again, this is completely wrong: Washington's law does not bar possession. And Plaintiffs fail entirely to grapple with the historical laws that, like SB 5078, barred the manufacture, import, or sale of Bowie knives or

1 taxed them prohibitively. Spitzer Rpt. at 156 (Alabama tax on dealers), 170 (Florida tax on  
2 dealers and possessors), 172 (Georgia prohibition on sale), 227 (Tennessee prohibition on sale).

3 Plaintiffs’ central argument on Bowie knives is a disagreement with Dr. Spitzer’s  
4 un rebutted opinion that “15 states all but banned the possession of Bowie knives outright (by  
5 banning both concealed carry and open carry).” *See* Resp. at 29-30. But Plaintiffs’ protestations  
6 are (1) not evidence and (2) meritless. They complain that Colorado and Indiana only barred  
7 concealed carry and carry with intent to commit a crime (Resp. at 29), but ignore the historical  
8 context of nineteenth century America where openly carrying weapons was so unusual, and  
9 Bowie knives so associated with criminality, that openly carrying one could be *prima facie*  
10 evidence of criminal intent. *See* Rivas Rpt. at 21-23, 32. They say the Louisiana statutes were  
11 not extensive (Resp. at 29), but ignore the law’s language making it virtually impossible to carry  
12 a Bowie knife in a way that would not be prohibited. Rivas Rpt. at 22. They have a similar  
13 complaint about Tennessee, but there it was illegal to carry “publicly or privately” “any dirk” as  
14 well as a “Bowie-knife” while attending a “public assembly of the people.” Spitzer Rpt. at 229.  
15 And in Nashville in particular merely “carrying” a “bowie-knife, dirk-knife ... or other deadly  
16 weapon” was prohibited. *Id.* at 230.

17 Plaintiffs dismiss territorial laws on the basis that *Bruen* gave little weight to certain  
18 territorial statutes (Resp. at 29-30), but *Bruen* did not say that all territorial laws are irrelevant to  
19 the original public meaning of the Constitution. Rather, *Bruen* held that such laws could not  
20 “overcome the overwhelming evidence of an otherwise enduring American tradition” and that  
21 “absent any evidence explaining why these unprecedented prohibitions on all public carry were  
22 understood to comport with the Second Amendment, they do little to inform the origins and  
23 continuing significance of the Amendment.” 142 S.Ct. at 2121 (cleaned up). But here, territorial  
24 laws were exemplars, not outliers, since Bowie knives and similar weapons were restricted  
25 across the country. *See* Spitzer Rpt. at 8-14; Rivas Rpt. at 17-44. And, moreover, the State’s  
26 expert historians have explained—again, without rebuttal—exactly why these regulations were



1 understood to comport with the Second Amendment. In summary: weapons associated with  
 2 interpersonal violence and crime were consistently ejected from the public sphere and were not  
 3 understood to be protected by a pre-existing right to lawful self-defense. Rivas Rpt. at 7-8;  
 4 Spitzer Rpt. at 4-6. LCM restrictions fit well within that American tradition.

#### 5 Revolvers

6 Plaintiffs repeat their mistakes in discussing revolvers. They make no attempt to  
 7 distinguish the most analogous regulations to SB 5078 (the Tennessee and Georgia statutes  
 8 prohibiting revolver sales) or the prohibitory taxes levied on revolver vendors and owners. Resp.  
 9 at 30; *see* Rivas Rpt. at 23-26. Instead, Plaintiffs attack the relevance of public-carry restrictions,  
 10 but they ignore that these laws applied to revolvers after the Civil War because, as concealable  
 11 revolvers spread, they were singled out as particularly deadly weapons. *See* Rivas Rpt. at 12-13.  
 12 This shows a robust historical tradition of restricting revolvers because they were used in  
 13 intrapersonal violence (similar to the “why” of SB 5078) and a particular strain of that tradition  
 14 of restricting the sale of such weapons (similar to its “how”).

#### 15 Machineguns

16 After once again ignoring salient analogues from earlier periods, Plaintiffs acknowledge  
 17 that anti-machinegun laws of early twentieth century America are “remotely similar,” but  
 18 criticize them for coming “much too late” in America’s history to be of use. Resp. at 31. But  
 19 these laws are relevant because they show the application of a longstanding regulatory tradition  
 20 to a new category of weaponry—and the same is true of LCMs. Machinegun restrictions are  
 21 fully in line with earlier traditions of restricting trap guns, clubs, fighting knives, and revolvers,  
 22 so *Bruen*’s instruction to ignore post-enactment history *inconsistent* with the Second  
 23 Amendment is inapplicable. *See* 142 S.Ct. at 2137.

24 Plaintiffs also try to distinguish machinegun laws for the same flawed reason that they  
 25 say historical analogues are irrelevant in the first place: supposedly these laws did not regulate  
 26 arms in “common use.” Resp. at 31. But Plaintiffs have no evidence for that proposition, only

dicta from *Staples v. United States*, 511 U.S. 600, 612 (1994). There, the Court commented that some weapons are lawful and some “no doubt including the machineguns, sawed-off shotguns, and artillery pieces that Congress has subjected to regulation” have a “quasi-suspect character.” *Id.* The Court never made the broad automatic vs. semiautomatic distinction that Plaintiffs say renders early twentieth century machinegun laws non-analogous, nor did the Court ever say that machineguns, sawed-off shotguns and artillery pieces were the *only* weapons subject to regulation. *See id.* And while sales of Tommy guns and BARs never met their manufacturers’ desires, “practically every sporting goods establishment in Chicago carried the firearms and sold them readily” (Spitzer Rpt. at 39), much like LCMs today. Fundamentally, Plaintiffs cannot explain why prohibiting machineguns in the early twentieth century (or LCMs in the late twentieth) was allowed under the Constitution, but prohibiting LCMs in the early twenty-first is not.

\* \* \*

The State has amply satisfied its burden of proving that SB 5078 fits comfortably within the Nation’s historical tradition of weapons regulation. MSJ at 24-32.

### III. CONCLUSION

Summary judgment should be granted for Defendants and denied to Plaintiffs.

DATED 16th day of October 2023.

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I certify that this memorandum contains 4,161  
words, in compliance with the Stipulated Motion  
and Order Extending Deadlines (Dkt. # 100).

**DECLARATION OF SERVICE**

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will send notification of such filing to all counsel of record.

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED this 16th day of October 2023, at Seattle, Washington.

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