No. 17-127

In The Supreme Court of the United States

STEPHEN V. KOLBE, *et al.*,

Petitioners,

v.

LAWRENCE J. HOGAN, JR., GOVERNOR, *et al.*,

Respondents.

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

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the court of appeals properly uphold Maryland's ban on assault weapons and large-capacity magazines when it found, like every other court of appeals to consider a similar challenge, that the ban does not violate the Second Amendment, as interpreted by this Court in *District of Columbia v. Heller*?

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STATEMENT

In this case, the United States Court of Appeals for the Fourth Circuit joined the Second, Seventh, and District of Columbia Circuits in upholding the constitutionality of a ban on assault weapons and large-capacity magazines. Contrary to the plaintiffs' contention that the Fourth Circuit's decision is an "outlier," Pet. 14, no court of appeals has reached a contrary result. The Fourth Circuit's decision, which was based on its analysis of this Court's ruling in *District of Columbia v. Heller*, 554 U.S. 570 (2008), applied the same two-step framework that the majority of federal courts have followed in analyzing Second Amendment claims, and reached the same ultimate conclusion as every other court of appeals to consider a similar challenge: laws banning assault weapons and large-capacity magazines are constitutional. This Court should deny certiorari, as it has in the other cases upholding similar laws in which a petition was filed. *See New York State Rifle & Pistol Ass'n v. Cuomo*, 804 F.3d 242 (2d Cir. 2015) ("*NYSRPA*"), *cert. denied sub nom. Shew v. Malloy*, 136 S. Ct. 2496 (2016); *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir.), *cert. denied*, 136 S. Ct. 447 (2015).

1. In the wake of the December 14, 2012 mass shooting in Newtown, Connecticut, in which a gunman used an AR-15-type rifle and detachable 30-round magazines to murder twenty first-graders and six adults at Sandy Hook Elementary School, Maryland enacted the Firearms Safety Act of 2013 ("FSA"), 2013 Md. Laws ch. 427. Pet. App. 8-10. Among other

firearms-related provisions, the FSA bans (1) the possession, sale, offer for sale, transfer, purchase, or receipt of "assault long guns," defined by reference to a list of mostly semiautomatic rifles and their copies, Pet. App. 12-15, and (2) the manufacture, sale, offer for sale, purchase, receipt, or transfer of detachable magazines having a capacity of more than 10 rounds of ammunition, referred to as large-capacity magazines, Pet. App. 15.[1]

2. On September 26, 2013, the plaintiffs filed a complaint in the United States District Court for the District of Maryland against the Maryland State Police as well as Maryland's Governor, the Maryland Attorney General, and the Superintendent of the Maryland State Police, in their official capacities. Pet. App. 16. In their operative third amended complaint, the plaintiffs alleged that (1) Maryland's bans on assault weapons and large-capacity magazines violate their rights under the Second Amendment, (2) an exception in the law applicable to retired law-enforcement officers violates the Equal Protection Clause of the Fourteenth Amendment, and (3) the application of the assault weapons ban to "copies" of enumerated firearms violates the Fourteenth Amendment's Due Process Clause. Pet. App. 17. The plaintiffs sought declaratory and injunctive relief. Pet. App. 17-18.

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[1] The assault weapons ban is codified in § 4-303(a) of the Criminal Law Article of the Annotated Code of Maryland. The definition of assault long guns is in § 4-301(d) of that article, and the list of banned assault long guns is in § 5-101(r)(2) of the Public Safety Article. The large-capacity magazines ban is codified in § 4-305(b) of the Criminal Law Article.

On August 22, 2014, the district court entered summary judgment in favor of the defendants on all claims. Pet. App. 195-260. In ruling on the plaintiffs' Second Amendment claim, the district court found that the evidence in the record raised "serious[] doubts that the banned assault long guns are commonly possessed for lawful purposes, particularly self-defense in the home, which is at the core of the Second Amendment right." Pet. App. 227. But the court nonetheless assumed, without deciding, that the FSA "places some burden on the Second Amendment right," Pet. App. 229, and assessed whether the law would withstand the applicable level of means-end scrutiny, Pet. App. 229-47. Because the ban "does not seriously impact a person's ability to defend himself in the home," the district court applied intermediate scrutiny, Pet. App. 231, and upheld the law based on the undisputed evidence, Pet. App. 238-47. The court also rejected the plaintiffs' equal protection and due process claims. Pet. App. 247-60. The plaintiffs appealed.

3. Initially, the court of appeals, in a divided panel decision, held that strict scrutiny should apply, and remanded the case to the district court to apply strict scrutiny. Pet. App. 110-94. After the defendants successfully petitioned for rehearing en banc, the court of appeals affirmed the district court in a judgment joined by 10 of 14 judges. Pet. App. 1-109.

In reviewing the "uncontroverted evidence" in the record, the court observed that the banned assault long guns "are exceptionally lethal weapons of war," Pet.

App. 18; they "'are firearms designed for the battlefield, for the soldier to be able to shoot a large number of rounds across a battlefield at a high rate of speed,'" resulting "'in a capability for lethality – more wounds, more serious, in more victims – far beyond that of other firearms in general, including other semiautomatic guns.'" Pet. App. 22 (record citations omitted). For example, the AR-15, the firearm used in the Newtown shooting, is the semiautomatic version of the military's M16 rifle, which was developed for military use and adopted by the United States Army because of its superior "hit-and-kill potential." Pet. App. 18-19 (record citation omitted). Another military-style firearm banned by the FSA is the semiautomatic version of the AK-47, similarly "developed for offensive use and . . . adopted by militaries around the world." Pet. App. 20.

While assault long guns comprise less than 3% of the national gun stock and are owned by fewer than 1% of Americans, the court observed that they "have been used disproportionately to their ownership in mass shootings and the murders of law enforcement officers." Pet. App. 24. And large-capacity magazines have been used even more frequently than assault long guns in such shootings. *Id.* These undisputed facts are significant, the court found, because "when the banned assault weapons and large-capacity magazines are used, more shots are fired and more fatalities and injuries result than when shooters use other firearms and magazines." Pet. App. 25. As a consequence, "reducing the number of rounds that can be fired without

reloading increases the odds that lives will be spared in a mass shooting." Pet. App. 28.

In contrast to this evidence of disproportionate use – and effect – in mass shootings and in killings of law enforcement officers, the court of appeals noted the "lack of evidence that the banned assault weapons and magazines are well-suited to self-defense." Pet. App. 26. Indeed, none of the parties could identify even a single incident of self-defense in Maryland involving either an assault long gun or more than ten rounds of ammunition fired in self-defense. Pet. App. 26.

After reviewing the record evidence, the court of appeals began its legal analysis with an in-depth exploration of this Court's decision in *Heller*. Pet. App. 33-38. The court of appeals then applied the same two-step framework employed by most federal courts addressing Second Amendment claims, under which a court first asks whether the challenged law imposes a burden on conduct falling within the scope of the Second Amendment's protection and, if so, proceeds to determine and then apply the appropriate level of means-end scrutiny. Pet. App. 38-39. The court of appeals concluded that the plaintiffs' challenge in this case failed at both steps of the analysis.

With respect to whether the banned assault weapons and large-capacity magazines fall within the scope of the Second Amendment's protection, the court of appeals looked to this Court's observation in *Heller* that "weapons that are most useful in military service – M-16 rifles and the like – may be banned." Pet. App.

44-46 & n.10. The court noted the record evidence establishing that the assault long guns banned by Maryland are essentially the same as "M-16 rifles," in that (1) "their rates of fire . . . are nearly identical," (2) "in many situations, the semiautomatic fire of an AR-15 is more accurate and lethal than the automatic fire of an M16," and (3) the weapons share the features "that make the M16 a devastating and lethal weapon of war." Pet. App. 47. Similarly, large-capacity magazines "'are particularly designed and most suitable for military and law enforcement applications.'" Pet. App. 49 (record citation omitted). "Large-capacity magazines enable a shooter to hit 'multiple human targets very rapidly' [and] 'contribute to the unique function of any assault weapon to deliver extraordinary firepower . . . .'" Pet. App. 49 (record citation omitted). Thus, the court determined, the firearms and magazines at issue are not entitled to Second Amendment protection.

As an alternative ground for affirmance, the court of appeals determined that, even if the firearms and magazines at issue were protected by the Second Amendment, Maryland's law would withstand the applicable level of constitutional scrutiny. Pet. App. 50. The court of appeals identified intermediate scrutiny as the "appropriate standard because the FSA does not severely burden the core protection of the Second Amendment, i.e., the right of law-abiding, responsible citizens to use arms for self-defense in the home." Pet. App. 50 (citing *NYSRPA*, 804 F.3d at 260). Indeed, the court of appeals observed, Maryland's law leaves its

citizens "with a plethora of other firearms and ammunition" with which to defend themselves, including the entire class of weapons this Court found to be overwhelmingly chosen by Americans for self-defense. Pet. App. 50. And there was "scant evidence," the court observed, "that the FSA-banned assault weapons and large-capacity magazines are possessed, or even suitable, for self-protection." Pet. App. 51 (citing *Kolbe*, 42 F. Supp. 3d at 791).

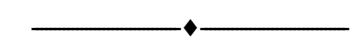
Applying intermediate scrutiny, the court of appeals held that the assault weapons and large-capacity-magazine bans are reasonably adapted to Maryland's compelling interest in public safety. Pet. App. 53-56. The court observed "that there is substantial evidence indicating that the FSA's prohibitions against assault weapons and large-capacity magazines will advance Maryland's goals." Pet. App. 56. Rejecting arguments of the dissenters, the court of appeals expressed confidence that its approach "is entirely faithful to the *Heller* decision and appropriately protective of the core Second Amendment right." Pet. App. 57.[2]

In a concurring opinion, Judge Wilkinson observed that accepting the position of the plaintiffs would effectively remove from the control of state legislatures any role in addressing firearm violence and that "[d]isenfranchising the American people on this life and death subject would be the gravest and most serious of

[2] The court of appeals also affirmed the district court's judgment in favor of the defendants with respect to the equal protection and due process claims. Pet. App. 69-77. The plaintiffs have not raised those claims in their petition.

steps." Pet. App. 78. "To say in the wake of so many mass shootings in so many localities across this country that the people themselves are now to be rendered newly powerless, that all they can do is stand by and watch as federal courts design their destiny," Judge Wilkinson believed, "would deliver a body blow to democracy as we have known it since the very founding of this nation." Pet. App. 78. Indeed, Judge Wilkinson explained, *Heller* stopped "far short of the kind of absolute protection of assault weapons" that the plaintiffs and the dissent urged. Pet. App. 79. Emphasizing the particular features of the firearms and magazines at issue that distinguish them from the majority of firearms and magazines, Judge Wilkinson concluded that if "these weapons are outside the legislative compass, then virtually all weapons will be." Pet. App. 80.

Judge Diaz concurred in the majority's conclusion that the FSA survives intermediate scrutiny, but would have found it unnecessary to decide whether assault long guns and large-capacity magazines are protected by the Second Amendment at all. Pet. App. 82. Four judges dissented, and would have held that the firearms and magazines at issue fall within the protection of the Second Amendment and that Maryland's law should have been subjected to strict scrutiny. Pet. App. 82-83.



REASONS FOR DENYING THE WRIT

There is no conflict among the courts of appeals in evaluating the constitutionality of bans on assault weapons and large-capacity magazines. Every court of appeals to consider the issue has found that such bans do not violate the Second Amendment, and the purported split that the petitioners allege regarding the scope of the Second Amendment right is illusory.

I. There Is No Conflict Among the Courts of Appeals on the Constitutionality of Bans on Assault Weapons and Large-Capacity Magazines.

There is no disagreement among the circuits about the central question in this case, namely, whether a ban on assault weapons and large-capacity magazines violates the Second Amendment. To the contrary, every court of appeals to consider the constitutionality of similar bans has answered that question in the negative. *See NYSRPA*, 804 F.3d at 254-64; *Friedman*, 784 F.3d at 408-12; *Heller v. District of Columbia*, 670 F.3d 1244, 1260-64 (D.C. Cir. 2011) ("*Heller II*"); *see also Fyock v. Sunnyvale*, 779 F.3d 991, 998-1001 (9th Cir. 2015) (upholding a district court's denial of a preliminary injunction as to a large-capacity-magazine ban and concluding that the district court did not abuse its discretion in concluding that the challenge was unlikely to succeed). Although the reasoning in these decisions is not identical in every respect, each court of appeals grounded its analysis on this Court's decision in *Heller* and relied on similar evidence to come to the

same conclusion. There is thus no conflict for this Court to resolve.

Indeed, the Fourth Circuit's analysis here followed a nearly identical approach to those of the D.C., Second, and Ninth Circuits, because each court applied the same two-step framework that the majority of courts of appeals have used to evaluate Second Amendment claims. *See* Pet. App. 38-39; *NYSRPA*, 804 F.3d at 254; *Fyock*, 779 F.3d at 996; *Heller II*, 670 F.3d at 1252. At the first step of this framework, each court either concluded that the ban did not burden the Second Amendment right or declined to resolve that issue. *See* Part II, *infra*. Then, at the second step, each court applied intermediate scrutiny to the challenged ban, and found based on the evidence in the record that the ban satisfied that level of scrutiny.

Each court applied intermediate scrutiny for the same reason: even if a ban on assault weapons or large-capacity magazines burdens the Second Amendment in some way, such a ban does not impose a "severe" or "substantial" burden on the core Second Amendment right. Pet. App. 50; *NYSRPA*, 804 F.3d at 259-61; *Fyock*, 779 F.3d at 999; *Heller II*, 670 F.3d at 1261-62. Unlike the ban on handguns at issue in *Heller*, the bans in question did not prohibit either an entire class of weapons or "the quintessential self-defense weapon," Pet. App. 51 (quoting *Heller*, 554 U.S. at 629); *Fyock*, 779 F.3d at 999 (same); *Heller II*, 670 F.3d at 1261-62 (same), that is, the weapon "overwhelmingly chosen by American society" for self-defense, Pet. App. 52 (quoting *Heller*, 554 U.S. at 628 (emphasis omitted));

NYSRPA, 804 F.3d at 260 (same). Rather, as each court observed, the bans leave open ample alternative means for self-defense, and they do not "effectively disarm individuals or substantially affect their ability to defend themselves." *Heller II*, 670 F.3d at 1262; *see* Pet. App. 52 (quoting *NYSRPA*, 804 F.3d at 260, which in turn quoted *Heller II*); *Fyock*, 779 F.3d at 999 (quoting *Heller II*).

Similarly, in applying intermediate scrutiny, the Fourth Circuit engaged in reasoning nearly identical to that of the D.C., Second, and Ninth Circuits. Each court found it obvious that the government had a substantial interest in public safety. Pet. App. 53; *NYSRPA*, 804 F.3d at 261; *Fyock*, 779 F.3d at 1000; *Heller II*, 670 F.3d at 1262. And, in evaluating the fit between that interest and the statutes under review, the courts found sufficient evidence to support the bans, and emphasized in particular that "military-style" assault weapons and large-capacity magazines pose an especially serious threat to public safety. Pet. App. 54-56; *NYSRPA*, 804 F.3d at 262-64; *Heller II*, 670 F.3d at 1263-64; *see also Fyock*, 779 F.3d at 1000-01 (concluding that the district court's similar conclusions, based on similar evidence, were not clearly erroneous).

As to assault weapons, the Fourth Circuit echoed the Second Circuit's conclusion that "assault weapons . . . pose unusual risks," because, "[w]hen used, these weapons tend to result in more numerous wounds, more serious wounds, and more victims[,]" and also because "such weapons are disproportionately used in crime, . . . particularly in criminal mass shootings" and

"to kill law enforcement officers." Pet. App. 54 (quoting *NYSRPA*, 804 F.3d at 262); *accord Heller II*, 670 F.3d at 1263. Indeed, the Second, Fourth, and D.C. Circuits all reasoned that the military-style features of the banned assault weapons create a "capability for lethality . . . far beyond that of other firearms in general, including other semiautomatic guns" and thus make the weapons far more dangerous and deadly. Pet. App. 22 (internal quotation marks omitted); *NYSRPA*, 804 F.3d at 262 (quoting the same evidence); *accord Heller II*, 670 F.3d at 1262-63 (explaining that the military features "are designed to enhance their capacity to shoot multiple human targets very rapidly," making them attractive to criminals and putting police officers at risk (internal quotation marks omitted)).

Similarly, as to large-capacity magazines, the Fourth Circuit again echoed the conclusions of other courts of appeals that "large-capacity magazines may present even greater dangers to crime and violence than assault weapons alone." Pet. App. 54-55 (quoting *NYSRPA*, 804 F.3d at 263); *accord Heller II*, 670 F.3d at 1263 (relying on evidence that "'[t]he threat posed by military-style assault weapons is increased significantly if they can be equipped with high-capacity ammunition magazines'"). Indeed, like assault weapons, "use of large-capacity magazines results in more gunshots fired, results in more gunshot wounds per victim, and increases the lethality of gunshot injuries," and such magazines "are disproportionately used in mass shootings [and] crimes against law enforcement." *Fyock*, 779 F.3d at 1000; *accord NYSRPA*, 804 F.3d at

263-64 (citing similar evidence); *Heller II*, 670 F.3d at 1263 (same).

Ultimately, based on this evidence, the Fourth Circuit agreed with the Second and D.C. Circuits that the challenged bans are substantially related to the government's important objective in protecting public safety, and so survive intermediate scrutiny. Pet. App. 56; *NYSRPA*, 804 F.3d at 263-64; *Heller II*, 670 F.3d at 1263-64; *see Fyock*, 779 F.3d at 1000-01 (concluding for the same reasons and based on similar evidence that the district court did not abuse its discretion in finding that a ban on large-capacity magazines likely does not violate the Second Amendment). Thus, far from creating a conflict, these decisions all landed in the same place.

Nor does the Seventh Court's decision in *Friedman* conflict with these decisions. Although the Seventh Circuit declined to apply a particular standard of scrutiny, the court relied on largely the same rationale and the same evidence to come to the same conclusion. Like the other circuits, the Seventh Circuit emphasized that the challenged ban left "ample means to exercise the 'inherent right of self-defense' " in the home, while pointing out that "assault weapons with large-capacity magazines can fire more shots, faster, and thus can be more dangerous" than handguns, which makes assault weapons the "weapons of choice in mass shootings[.]" 784 F.3d at 411 (quoting *Heller*, 554 U.S. at 628).

The Seventh Circuit also recognized, like the Fourth Circuit and other courts of appeals, that a legislature may conclude based on the evidence that a ban on those weapons might "reduce the carnage if a mass shooting occurs," *id.* at 411, and "reduce the overall dangerousness of crime," *id.* at 412. The Seventh Circuit's decision thus does not conflict in any meaningful way with that of the Fourth Circuit or any of the other courts of appeals to address these issues.

In sum, no court of appeals has held that an individual has a constitutional right to possess the assault weapons and large-capacity magazines banned under Maryland's law, and there is thus no circuit split for this Court to resolve. If a disagreement arises in the future, there will be ample opportunity for this Court to resolve that hypothetical disagreement. But, at this juncture, this Court should allow the issue to continue to percolate in the lower courts. Currently, there are pending in federal district courts at least three cases challenging bans on assault weapons, large-capacity magazines, or both. *See Worman v. Baker*, No. 17-cv-10107 (D. Mass., complaint filed Jan. 23, 2017) (ban on assault weapons and large-capacity magazines); *Wiese v. Becerra*, No. CV 2:17-903, 2017 WL 2813218 (E.D. Cal. June 29, 2017) (denying preliminary injunction as to ban on large-capacity magazines); *Duncan v. Becerra*, No. 3:17-CV-1017, 2017 WL 2813727 (S.D. Cal. June 29, 2017) (granting preliminary injunction as to same ban).

II. There Is No Conflict Among the Courts of Appeals on Whether Assault Weapons and Large-Capacity Magazines Fall Within the Protection of the Second Amendment.

Even as to the purported conflict identified by the petitioners, there is no actual split among the circuits on whether state laws banning assault weapons and large-capacity magazines burden conduct falling within the protection of the Second Amendment. Although the Fourth Circuit is the first court to hold that the banned assault weapons and large-capacity magazines do not fall within the Second Amendment's protection, no other court of appeals has resolved the issue in a way that conflicts in any meaningful sense with the Fourth Circuit's holding. The D.C. and Second Circuits merely assumed, without deciding, that the bans at issue burdened the Second Amendment right, while the Seventh Circuit did not squarely address the issue, and the Ninth Circuit – given the procedural posture of the case – did not resolve the ultimate merits of the question.

In *Heller II*, for example, the D.C. Circuit merely "assum[ed]" that the banned assault weapons and large-capacity magazines fell within the scope of the Second Amendment right. 670 F.3d at 1261. Although finding the record "clear enough" to support the challengers' contention that "semi-automatic rifles and magazines holding more than ten rounds" were in common use, the court could not determine based on the evidentiary record whether those weapons and accessories "are commonly used or are useful specifically for

self-defense or hunting and therefore whether the prohibitions . . . meaningfully affect the right to keep and bear arms." *Id.* at 1261. Ultimately, the D.C. Circuit declined to resolve that question because, even assuming the prohibitions impinged upon the Second Amendment right, the prohibitions satisfied intermediate scrutiny. *Id.* at 1261.

Similarly, in *NYSRPA*, the Second Circuit "proceed[ed] on the assumption that [New York's and Connecticut's] laws ban weapons protected by the Second Amendment." 804 F.3d at 257. Although the court found that the banned assault weapons and large-capacity magazines were "'in common use' as that term was used in *Heller*," 804 F.3d at 255, the court could not resolve based on the evidence in the record "whether semiautomatic assault weapons and large-capacity magazines are 'typically possessed by law-abiding citizens for lawful purposes.'" *Id.* at 256-57 (quoting *Heller*, 554 U.S. at 625). The Second Circuit instead found that the bans passed constitutional muster under intermediate scrutiny. *Id.* at 257.

In *Friedman*, the Seventh Circuit did not expressly address whether the banned assault weapons and large-capacity magazines burdened conduct protected by the Second Amendment. Notably, however, the court – like the Fourth Circuit – refused to distinguish machine guns like M16s from semi-automatic weapons on the basis that the latter are commonly owned. *Friedman*, 784 F.3d at 408-09.

And in *Fyock*, the Ninth Circuit acknowledged that it was "not called upon" in that interlocutory appeal "to determine the ultimate merits." 779 F.3d at 995. Instead, the Ninth Circuit merely concluded that the district court, in resolving the motion for preliminary injunction, "did not clearly err in finding, based on the record before it, that a regulation restricting possession of certain types of magazines burdens conduct falling within the scope of the Second Amendment." *Id.* at 998.

Notwithstanding the lack of any actual split among the circuits, the petitioners claim that the courts of appeals have followed "three irreconcilable paths" in arriving at their unanimous conclusion that prohibitions on assault weapons and large-capacity magazines are constitutional. Pet. 26. The petitioners, relying on *Friedman*, contend that the Seventh Circuit's inquiry into whether the banned weapons have some reasonable relation to militia service, 784 F.3d at 410, is "diametrically opposed" to the Fourth Circuit's holding that the banned weapons do not fall within the scope of the Second Amendment's protection. Pet. 29. Far from creating a circuit split, however, application of these standards led both courts to conclude that, under *Heller*, states "should be allowed to decide when civilians can possess military-grade firearms." *Friedman*, 784 F.3d at 410.

Nor is the Fourth Circuit's decision in conflict with the courts of appeals that have assumed, without deciding, that assault weapons and large-capacity magazines fall within the scope of the Second Amendment's

protection. The Fourth Circuit did not, as the petitioners claim, reject the " 'in common use' test," but instead declined to resolve the "difficult questions" inherent in that analysis in light of its conclusion that the banned assault weapons and large-capacity magazines are " 'like M-16 rifles,' . . . and thus outside the ambit of the Second Amendment[.]" Pet. App. 46 (quoting *Heller*, 554 U.S. at 627). The Fourth Circuit's reticence to flesh out the contours of a "common use test" when alternate grounds existed is not in conflict or even in tension with any of these other federal appellate decisions.

By highlighting the inconsequential differences in the analytical approaches taken by the courts of appeals in resolving Second Amendment challenges to similar bans of assault weapons and large-capacity magazines, the petitioners ignore that each court reached exactly the same outcome. If a real conflict ever develops on the constitutionality of bans on assault weapons, large-capacity magazines, or some other type of arms, this Court will have an opportunity to resolve it. At this time, any such conflict is merely conjectural.

III. The Unanimous Conclusion of the Courts of Appeals That Bans on Assault Weapons and Large-Capacity Magazines Do Not Violate the Second Amendment Is Both Correct and Consistent with *Heller*.

As this Court made clear in *Heller*, the Second Amendment does not guarantee "a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." 554 U.S. at 626. Consistent with that common-sense recognition, the Second Amendment does not afford the petitioners any right to possess "dangerous and unusual," *id.* at 627, assault weapons and large-capacity magazines that are designed for the battlefield and used disproportionately in mass shootings and shootings of law enforcement officers. Pet. App. 19-20, 24. What is more, there is no evidence that these weapons and magazines are commonly used for self-defense. Pet. App. 26. Nothing in *Heller* suggests that legislatures are rendered powerless to ban these unusually dangerous threats. As the Fourth Circuit found, a ban on military-style assault weapons and large-capacity magazines survives constitutional scrutiny because there is substantial evidence of its fit with the State's compelling interest in protecting the public.

It is not surprising that every court of appeals to consider the issue has held that legislatures may constitutionally prohibit military-style assault weapons and large-capacity magazines. That conclusion is supported by the evidence, consistent with this Court's decision in *Heller*, and correct.

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CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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