No. 102940-3

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Appellant,

v.

GATOR'S CUSTOM GUNS, INC., et al.,
Respondents,

AMICUS BRIEF OF ALLIANCE FOR GUN RESPONSIBILITY AND BRADY CENTER TO PREVENT GUN VIOLENCE

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I. INTRODUCTION

The trial court's decision, if sustained, will endanger the lives of countless Washingtonians. Senate Bill 5078 (SB 5078 or the Law) is a reasonable regulation designed to prevent large-capacity magazines (LCMs) from being used to inflict mass murder in our state. As dedicated supporters of common-sense gun safety reforms in Washington, amicus curiae the Alliance for Gun Responsibility (Alliance) has spent more than a decade studying and developing the evidence-based policy analysis undergirding SB 5078. Amicus curiae the Brady Center to Prevent Gun Violence (Brady) also supported SB 5078 and has worked on these issues on a national level. Social scientists and experts have repeatedly demonstrated that laws like SB 5078 save lives.

Neither the Washington nor the federal constitution supports invalidation of SB 5078. In its attempt to convince this Court otherwise, Respondent Gator's Custom Guns and Walter Wentz (Gator's) attempts to muddy the constitutional waters.

This amicus brief will address two of these misguided attempts: (1) Gator's baseless argument that Washington courts must follow Second Amendment standards when interpreting Washington's constitution; and (2) Gator's misreading of Oregon's jurisprudence to try to convince this Court that Washington's constitution does not permit restrictions on LCMs like SB 5078. Both arguments unravel under the slightest scrutiny.

An ever-growing number of courts have recognized in recent years that live-saving laws like SB 5078 are constitutional. Gator's offers no reason for this Court to move backward, against this tide. This Court should reverse the trial court's decision, and find SB 5078 constitutional.

II. AMICI'S IDENTITY AND INTEREST IN THE ISSUE RAISED

The Alliance is a nonprofit organization based in Washington State that works to save lives and eliminate harms caused by gun violence in every community through advocacy, education, and partnerships. The Alliance spent more than six

years working to enact the restrictions that ultimately were contained in SB 5078. The Alliance actively assisted in policy research and development, assisted in drafting proposed bill language, and recruited experts to provide analysis of and legislative testimony on the special dangers of LCMs and the efficacy of restrictions on their sale and distribution. The Alliance also was the primary organizer of public support for passage of SB 5078, coordinating thousands of advocates in support of the bill and tens of thousands of communications direct to legislators. Alliance staff and board members also testified in support of the law. In an acknowledgment of the Alliance's leading role, its CEO and members attended the signing ceremony for SB 5078. The Alliance has intervened to defend the constitutionality of SB 5078 in lawsuits in the U.S. District Courts for the Western and Eastern Districts of Washington. *See Brumback v. Ferguson*, 343 F.R.D. 335, 339 (E.D. Wash. 2022) (granting Alliance's motion to intervene in challenge based on federal and Washington constitutions);

Sullivan v. Ferguson, No. 3:22-CV-05403-DGE, 2022 WL 10428165, at *1 (W.D. Wash. Oct. 18, 2022) (same in challenge based on federal constitution).

Brady is the nation's most longstanding nonpartisan, nonprofit organization dedicated to reducing gun violence through education, research, legal advocacy, and political action. Brady also supported the passage of SB 5078. Brady has a substantial interest in protecting the authority of democratically elected officials to address the nation's gun violence epidemic, and in the ability of states and cities to address local problems with local solutions. Brady has filed numerous briefs as amicus curiae in cases involving firearms regulations, including in this Court, *e.g.*, *Bass v. City of Edmonds*, 199 Wash. 2d 403, 508 P.3d 172 (2022), and in the United States Supreme Court, *e.g.*, *United States v. Rahimi*, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024), *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 42 S. Ct. 2111, 2117, 213 L. Ed. 2d 387 (2022), and *District of Columbia v. Heller*, 554 U.S.

570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). It has also filed in support of SB 5078, *see Sullivan v. Ferguson*, No. 3:22-CV-5403-DGE, ECF No. 134 (W.D. Wash. Oct. 2, 2023) (granting Brady's motion for leave to file amicus brief).

The Alliance and Brady (together, Amici) supported the passage of SB 5078 for a simple reason: SB 5078 has saved, and will continue to save, Washingtonian's lives. The danger posed by mass shootings is real, as is the fear of parents sending their children to school, worshippers attending their mosque or synagogue, and ordinary people going to concerts, malls, and political rallies. And the evidence in the record demonstrates that LCM restrictions are effective at reducing mass shootings. The record also demonstrates that the Legislature was correct when it determined that "magazine capacity limits do not interfere with responsible, lawful self-defense." E.S.S.B. 5078 § 1, 67th Leg., Reg. Sess. (Wash. 2022). Put simply, SB 5078 places no meaningful burden on responsible gun-owners. But it

will save lives. And it is permissible under both the Washington and federal constitutions.

III. STATEMENT OF THE CASE

Amici concur with and adopt the statement of the case set forth in the State's Opening and Reply Briefs.

IV. ARGUMENT

SB 5078 is a common-sense law that will save lives without meaningfully burdening Washingtonians' ability to defend themselves. The State's briefing effectively explains why SB 5078 passes constitutional muster under both the Washington and federal constitutions. In this brief, Amici focuses on two troubling requests that Gator's makes of this Court in its Response Brief.

First, Gator's argues that this Court should incorporate federal constitutional jurisprudence into its analysis of article I, section 24. This Court has already determined that it will interpret article I, section 24 separately and independently from the Second Amendment, and Gator's offers no compelling

reason to import into our State Constitution the difficult-to-apply standards recently set forth by the U.S. Supreme Court.

Second, Gator's argues that when interpreting article I, section 24, this Court should follow the approach used by Oregon courts when interpreting Oregon's parallel constitutional provision. Though Gator's is correct that this Court should look to Oregon case law, Gator's is under the misimpression that this approach would lead to an affirmance of the trial court's ruling. That is false. Under the standards followed by Oregon's appellate courts in interpreting article I, Section 27 of the Oregon Constitution, SB 5078 is constitutional.

A. This Court Should Reject Gator's Invitation to Import the *Bruen* Test into Article I, Section 24.

Gator's suggests that this Court's analysis of Washington's constitution should be guided by the U.S. Supreme Court's interpretations of the Second Amendment to the federal constitution. *See, e.g.*, Resp. Br. at 43–44 (arguing there are "significant limitations" placed on this Court's

analysis of article I, section 24 by federal case law); *id.* at 44 ("the federal constitution . . . is not simply ignored when analyzing a state constitution."); *id.* at 44–45 (citing *Heller* as binding authority as to this Court's interpretation of article I, section 24).

Gator's arguments misunderstand the relationship between the federal and Washington constitutions. In *State v. Jorgenson*, 179 Wn.2d 145, 152, 312 P.3d 960 (2013), this Court conducted a *Gunwall* analysis and concluded that "the state and federal rights to bear arms have different contours and mandate separate interpretation." *See also Kitsap Cnty. v. Kitsap Rifle & Revolver Club*, 1 Wn. App. 2d 393, 413, 405 P.3d 1026 (2017) ("Although the right to bear arms is protected by both the United States and Washington Constitutions, the rights are not identical and our Supreme Court has determined that the state right should be interpreted separately from its federal counterpart."). Gator's offers no arguments as to why this Court should revisit this analysis. It should not. Gator's

treatment of *Heller* as binding precedent is especially misguided. In *Jorgenson*, this Court squarely refused to apply *Heller*'s Second Amendment analysis to article 1, section 24: "while *Heller* rejected the use of a 'freestanding "interest-balancing" approach' to determine the scope of Second Amendment rights, we read the Washington Constitution's provisions independently of the Second Amendment pursuant to *Gunwall*." 179 Wn.2d at 156 (citation omitted) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 634, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008)).

Gator's arguments for incorporating federal constitutional analysis into this Court's treatment of article I, section 24 should be rejected for another reason. Since *Heller* and *Jorgenson*, the U.S. Supreme Court has adopted a new mode of Second Amendment analysis. Its decision in *New York State Rifle and Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), "represented a sea-change in Second Amendment jurisprudence." *United States v.*

Dorsey, 105 F.4th 526, 530 (3d Cir. 2024). In *Bruen*, the U.S. Supreme Court rejected the Second Amendment framework that every federal court of appeals to reach the issue had adopted post-*Heller*. *See Bruen*, 597 U.S. at 103 ("The Court today replaces the Courts of Appeals' consensus framework with its own history-only approach. That is unusual.") (Breyer, J., dissenting). Instead, *Bruen* instructed courts to engage in a different two-step process where they assess (1) whether the regulated activity is covered by the plain text of the Second Amendment and, if so, (2) whether the regulation is "consistent with the Nation's historical tradition of firearm regulation." *Id.* at 24.

In other words, Gator's suggestion that this Court apply *Heller* would necessarily require that this Court also incorporate the *Bruen* standard into its analysis of article I, section 24. For all the reasons described in the *Gunwall* analysis in *Jorgenson*, this Court should reject Gator's attempt to collapse state and federal standards.

This Court should also reject Gator's argument for another reason: in the two years since *Bruen*, its text-and-history standard has produced confusion and inconsistent results in the federal courts. As Justice Jackson recently observed, the lower courts "say there is little method to *Bruen*'s madness." *United States v. Rahimi*, 144 S. Ct. 1889, 1927 & n.1, 219 L. Ed. 2d 351 (2024) (Jackson, J., concurring) (collecting cases).

Many federal appellate judges have noted that *Bruen* has been difficult to apply. *See, e.g.*, *Wolford v. Lopez*, 116 F.4th 959, 978 (9th Cir. 2024) ("The Court's analysis in *Bruen* misled some courts into imposing too rigid a test when considering historical sources."); *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024) ("We require clearer instruction from the Supreme Court before we may reconsider the constitutionality of [the challenged law]"); *United States v. Daniels*, 77 F.4th 337, 358 (5th Cir. 2023) (Higginson, J., concurring) ("[C]ourts, operating in good faith, are struggling at every stage of

the *Bruen* inquiry. Those struggles encompass numerous, often dispositive, difficult questions."); *Atkinson v. Garland*, 70 F.4th 1018, 1024 (7th Cir. 2023) ("[T]he historical analysis required by *Bruen* will be difficult and no doubt yield some measure of indeterminacy.").

Federal district courts, too, which oversee the development of the record in these lawsuits, have been uncharacteristically frank in their criticisms as they struggle to apply the test, which requires in-depth research and historical training that far exceed the qualifications to be a judge or member of a court's staff. As one court wrote, "[t]he Court is staffed by lawyers who are neither trained nor experienced in making the nuanced historical analyses called for by *Bruen* . . . ." *Fraser v. Bureau of Alcohol, Tobacco, Firearms & Explosives*, 672 F. Supp. 3d 118, 137 n.20 (E.D. Va. 2023); *see also United States v. Nutter*, 624 F. Supp. 3d 636, 640 n.6 (S.D.W. Va. 2022) (noting that *Bruen* "requires original historical research into somewhat obscure statutory and

common law authority from the eighteenth century by attorneys with no background or expertise in such research."). *See also United States v. Bullock*, No. 3:18-CR-165-CWR-FKB, 2022 WL 16649175, at *1 (S.D. Miss. Oct. 27, 2022) ("[W]e are not experts in what white, wealthy and male property owners thought about firearm regulations in 1791"). Another court remarked that *Bruen* "announc[ed] an inconsistent and amorphous standard" and "created mountains of work for district courts." *United States v. Love*, 647 F. Supp. 3d 664, 670 (N.D. Ind. 2022).

In addition to the difficulty of applying the standard, district courts have explained its futility. *See, e.g.*, *United States v. Kelly*, No. 3:22-CR-00037, 2022 WL 17336578, at *4 n.6 (M.D. Tenn. Nov. 16, 2022) ("Attempting to reconstruct past constitutional understandings through a litigation-driven process of keyword searches seems to rely on the assumption that the past was little more than a differently-dressed version of the present, ripe for easy one-to-one comparisons without

regard for deep changes in political structure, unspoken institutional arrangements, or language. As far as the court can tell, that is not what actual historians, as opposed to litigants and litigators, believe."); *United States v. Price*, 635 F. Supp. 3d 455, 462 n.3 (S.D.W. Va. 2022), ("I am hard pressed to determine what types of historical regulations may be 'relevantly similar' to [a] prohibition on possession of a firearm without a serial number.") *rev'd and remanded*, 111 F.4th 392 (4th Cir. 2024); *United States v. Sing-Ledezma*, 706 F. Supp. 3d 650, 655 (W.D. Tex. 2023) ("[T]he Court pauses to join the choir of lower courts urging the Supreme Court to resolve the many unanswered questions left in *Bruen*'s wake.").

The U.S. Supreme Court recently clarified that *Bruen*'s test is not as exacting as the gun lobby would like. *See Rahimi*, 144 S. Ct. at 1897 (emphasizing that *Bruen* was "not meant to suggest a law trapped in amber" and that new regulations "need not be a dead ringer or a historical twin" for a prior regulation in order to withstand scrutiny) (cleaned up). But the

methodological difficulties identified by a legion of federal courts remain. *See, e.g.*, *Suarez v. Paris*, No. 1:21-CV-710, 2024 WL 3521517, at *11, *11 n.17 (M.D. Pa. July 24, 2024) (describing how *Rahimi* "endeavored" to correct misreadings of *Bruen*, but "[v]arious and discordant assessments offered by the several concurrences [in *Rahimi*] further obfuscate proper analysis of gun regulations").

To be clear, SB 5078 is constitutional under the Second Amendment for all of the reasons set forth in the State's briefing. *See* Op Br. at 44–77; *id.* at 18-20 (collecting cases upholding LCM regulations against Second Amendment challenges); *see also Hanson v. District of Columbia*, 120 F.4th 223 (D.C. Cir. 2024) (concluding that post-*Bruen* challenge to LCM regulation was unlikely to succeed on the merits). For the purposes of the Second Amendment, LCMs are not arms and SB 5078 is part of a historical tradition of regulating dangerous weapons used for lawless violence. But there is no denying that *Bruen* created an unclear standard that can be difficult for

courts to implement. Under *Jorgenson*, Washington courts need not wade into the historical morass when interpreting the Washington Constitution.[1] This Court should reject Gator's invitation to do so.

B. SB 5078 Is Constitutional Under the Framework Used by Oregon Courts

Gator's also urges this Court to "follow the analysis under the Oregon Constitution when analyzing this case under Wash. Const. art. I, § 24 that magazine capacity restrictions impair the right to bear arms." Resp. Br. at 27. Gator's is correct that this Court has previously looked to the Oregon Supreme Court's interpretation of the Oregon Constitution to guide analysis of article 1, section 24. But Gator's is fundamentally incorrect that this should support *affirming* the trial court's decision. Gator's points to one decision from an

[1] It also is not clear that this Court need reach the Second Amendment question. *See* Ruling Granting Emergency Motion for Stay, slip op. at 28 (Apr. 25, 2024) ("If the reviewing court ultimately determines the Second Amendment question was not properly teed up for purposes of the summary judgment motion, Gator's Guns will need to rely solely on its argument pertaining to our state constitution.").

Oregon trial court judge on a law that is materially distinguishable from SB 5078. *See* Op. Br. at 20–21 (explaining how Oregon's LCM restriction differs from SB 5078). But Gator's declines to engage with any of the relevant Oregon jurisprudence. Surveying Oregon's case law, it is clear that the Oregon trial court's decision was error, and Oregon's constitution permits common-sense regulation of LCMs.

Oregon's constitution's article I, section 27 states: "The people shall have the right to bear arms for the defense of themselves, and the State, but the Military shall be kept in strict subordination to the civil power." This Court and scholars have repeatedly recognized that Washington's right to bear arms was modeled after article I, section 27 of the Oregon Constitution. *E.g.*, *City of Seattle v. Evans*, 184 Wn.2d 856, 868, 366 P.3d 906 (2015); ("Washington's article I, section 24 was drawn from Oregon's article I, section 27 . . . ."); *The Journal of the Washington State Constitutional Convention, 1889* (1999) at 512 n.40, available at https://digitalcommons.law.uw.edu/cgi/

viewcontent.cgi?article=1003&context=selbks (same). Indeed, in *Evans*, this Court surveyed Oregon's article I, section 27 case law to assist in interpreting Washington's Constitution. *See* 184 Wn.2d at 867–68 (citing *State v. Christian*, 354 Or. 22, 307 P.2d 429 (2013); *State v. Kessler*, 289 Or. 359, 614 P.2d 94 (1980); and *State v. Delgado*, 298 Or. 395, 692 P.2d 610 (1984)). Looking at the legal standards applied by Oregon's courts, it is clear that SB 5078 would pass constitutional muster under Oregon's constitution for two reasons: (1) LCMs are not "arms" that fall under the constitution's ambit of protection; and (2) SB 5078 is a reasonable regulation related to public safety that does not seriously infringe on self-defense.

1. LCMs are not "arms"

An unbroken line of Oregon precedent establishes that the Oregon Constitution protects the right to bear *only* those arms used *for self-defense*. As the Oregon Supreme Court explained, the term "arms" includes "some firearms and certain hand-carried weapons commonly used for self-defense at the

time the provision was drafted." *Christian*, 354 Or. at 30. More specifically, to receive constitutional protection in Oregon, a weapon must satisfy three criteria: "(1) although the weapon may subsequently have been modified, it must be 'of the sort' in existence in the mid-nineteenth century; (2) the weapon must have been in common use; and (3) it must have been used for personal defense." *Or. State Shooting Ass'n v. Multnomah Cnty.*, 122 Or. App. 540, 544, 858 P.2d 1315 (1993), *rev. den.*, 877 P.2d 1315 (1994) (citing *Delgado*, 298 Or. at 400). Under this standard, semi-automatic magazines are not "arms" because they fail all three criteria. *Id.*

So too with LCMs. As explained in the State's briefing, LCMs were not in common use when Washington's constitution was adopted, and they are not commonly used for personal self-defense—either in 1889 or today. *See, e.g.*, Op. Br. at 29 ("LCMs were originally designed for military use in World War I and did not become widely available for civilian use until the 1980s.") (quoting *Nat'l Ass'n for Gun Rights v.*

Lamont, 685 F. Supp. 3d 63, 101 (D. Conn. 2023)); *id.* at 31 (collecting cases concluding that LCMs are rarely—if ever—used for self-defense in contemporary times).[2] Because LCMs

[2] Numerous other courts have thoroughly examined empirical research establishing that LCM restrictions do not burden the right to self-defense because the ability to fire more than 10 rounds without reloading is empirically unnecessary for self-defense. *Ocean State Tactical, LLC v. Rhode Island*, 646 F. Supp. 3d. 368, 388–90 (D.R.I. 2022), *aff'd on other grounds*, 95 F.4th 38 (1st Cir. 2024); *Hanson v. District of Columbia*, 671 F. Supp. 3d 1, 12–16 (D.D.C. 2023), *aff'd on other grounds*, 120 F.4th 223 (D.C. Cir. 2024); *Vermont Fed'n of Sportsmen's Clubs v. Birmingham*, No. 2:23-CV-710, 2024 WL 3466482, at *13 (D. Vt. July 18, 2024); *Bianchi v. Brown*, 111 F.4th 438, 458 (4th Cir. 2024); *Duncan v. Bonta*, 19 F.4th 1087, 1104–05 (9th Cir. 2021) (en banc), *cert. granted, judgment vacated*, 142 S. Ct. 2895 (2022), *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*, 597 U.S. 1; *Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Att'y Gen. New Jersey*, 910 F.3d 106, 121 n.25 (3d Cir. 2018), *abrogated on other grounds by Bruen*, 597 U.S. at 1; *Kolbe v. Hogan*, 849 F.3d 114, 127 (4th Cir. 2017), *abrogated on other grounds by Bruen*, 597 U.S. at 1; *State v. Misch*, 214 Vt. 309, 356–57, 256 A.3d 519 (2021), *reargument denied* (Mar 29, 2021); *Rocky Mountain Gun Owners v. Polis*, 467 P.3d 314, 331 (Colo. 2020). *See also Delaware State Sportsmen's Ass'n, Inc. v. Delaware Dep't of Safety & Homeland Sec.*, 108 F.4th 194, 216 (3d Cir. 2024) (explaining how LCMs are not useful for self-defense, but are "most useful as weapons of war") (Roth, J., concurring).

are a modern instrument of war with little-to-no utility for self-defense, they are not "arms" under the Oregon constitution's definition. This alone would be sufficient to find SB 5078 constitutional should this Court follow Oregon's jurisprudence.

2. SB 5078 is a reasonable public safety regulation

Even when a category of weapons or accessories falls under the umbrella of "arms" under Oregon's constitution, that does not entitle it to absolute protection. Instead, Oregon's constitution permits "reasonable regulations to promote public safety as long as [an] act does not unduly frustrate the individual right to bear arms for the purpose of self-defense." *Christian*, 354 Or. at 33. When assessing whether regulations are reasonable, Oregon courts look to (1) the threat to the public safety that the law seeks to address; (2) if the law reasonably relates to that purpose; and (3) whether the law unduly infringes armed self-defense. *Id*. When weighing these considerations, Oregon courts recognize "that the legislature has wide latitude

to enact specific regulations restricting the possession and use of weapons to promote public safety." *Id.*

Again, the evidence in the record demonstrates that SB 5078 easily passes this low bar. The Legislature concluded—and the State's evidence shows—the Law is a "well-calibrated policy" that will likely save lives. SB 5078 § 1. Though LCMs are not commonly, if ever, used for self-defense, they are used routinely and lethally by mass shooters. *See* Op. Br. at 32–33.

Mass shootings in the United States are on the rise, and have been since the turn of the 21st century. *See* John Gramlich, *What the data says about gun deaths in the U.S.*, Pew Research Center (April 26, 2023), https://www.pewresearch.org/short-reads/2023/04/26/what-the-data-says-about-gun-deaths-in-the-u-s/. The number of mass shootings more than doubled between 2014 and 2020. J. Duchesne et al., *State gun law grades and impact on mass shooting event incidence: an 8-year analysis*, 234 J. Am. Coll. Surg. 645–651 (2022). And the years 2020, 2021 and 2022 were, in turn, each much deadlier than the year

before. Nadine Yousif, *Why Number of US Mass Shootings Has Risen Sharply*, BBC News (March 28, 2023), https://www.bbc.com/news/world-us-canada-64377360.

Research shows that the number of people shot in such attacks has also increased since 2015. Everytown Policy & Research, *Mass Shootings in the United States* (March 2023), https://everytownresearch.org/mass-shootings-in-america/. In 2022 alone, over 600 people were killed in mass shootings, with over 2,700 wounded. *Id.*

Shootings involving LCMs are deadlier than shootings that do not involve them. Since 2010, 86% of all high-fatality mass shootings (defined as a shooting where at least six or more people died, not including the perpetrator) have involved LCMs. *See Or. Firearms Fed'n v. Kotek*, 682 F. Supp. 3d. 874, 897–98 (D. Or. 2023). Since 2020, every single high-fatality mass shooting has involved LCMs. *See id.* The average number of shots fired in a mass shooting where an LCM was not used

was 16; the average shots fired in a mass shooting where an LCM was used is 99. *See id.*

In the deadliest mass shooting event in U.S. history to date, which occurred in Las Vegas in 2017, the shooter's LCM enabled him to fire 100 rounds "in between nine and eleven seconds." *Or. Firearms Fed'n*, 682 F. Supp. 3d at 898. In total, LCMs facilitated the killing of 60 people and the wounding of an additional 410—all in the span of just 10 minutes. *Las Vegas Attack: What Took Police So Long?*, BBC News (October 10, 2017), https://www.bbc.com/news/world-us-canada-41530477. Restrictions on LCMs have been proven to promote public safety. State laws prohibiting LCMs reduce the incidents of mass shootings by between 48 and 72 percent, and decrease the number of fatalities that occur in these mass shootings by 37 to 75 percent. *See Or. Firearms Fed'n*, 682 F. Supp. 3d at 898.

It is not difficult to understand why studies show LCM restrictions promote public safety: Firsthand accounts demonstrate that the few seconds it takes to swap out a

magazine or change firearms give victims the chance to run, hide, or perhaps disarm the shooter. In the 2011 shooting in Tucson that killed federal District Judge John M. Roll and severely injured then-U.S. Representative Gabby Giffords, bystanders were able to disarm and tackle the shooter as he was replacing a spent magazine. *See Woman Wrestled Fresh Ammo Clip from Tucson Shooter as He Tried to Reload*, ABC News (Jan 9, 2011), https://perma.cc/CE4Y-4ZSY. As the State correctly notes, during the Sandy Hook Elementary School mass shooting in 2012, nine children were able to flee and two were able to hide when the shooter paused to exchange magazines. *See* Op. Br. at 11; *see also Or. Firearms Fed'n*, 682 F. Supp. 3d at 898. And during the 2019 mass shooting at a synagogue in Poway, California, congregants confronted and pursued the shooter after he had fired all 10 rounds from his firearm and was forced to pause to reload. *See Or. Firearms Fed'n*, 682 F. Supp. 3d at 898–99. These pauses necessarily occur less frequently when a mass shooter uses an LCM,

thereby depriving victims of crucial opportunities to protect themselves.

SB 5078, then, is not just *related* to public safety. *See Christian*, 354 Or. at 33. The law saves lives. Accordingly, if this Court were to follow Oregon's precedents, it should conclude that SB 5078 passes constitutional muster for the separate, independent reason that it is a reasonable public safety regulation that does not unduly infringe on the right to self-defense. *Christian*, 354 Or. at 33.

Gator's does not engage with these Oregon precedents. Instead, Gator's points to a decision by one county court judge in Oregon. *See* Resp. Br. at 27. This judge sits in a county where 85% of its 3,808 voters voted against the initiative that enacted the challenged firearm safety regulation, Measure 114. *See* Harney County General Election Results, at 12, Nov. 8, 2020, https://harneycountyor.gov/wp-content/uploads/2023/03/2022-General-Election-Abstracts.pdf. That decision has been appealed, and the Alliance is confident it will be reversed. *See*

Arnold v. Kotek, No. A183242 (Or. Ct. App.).[3] This is because, as described above, the Harney County decision sharply departs from how Oregon's appellate courts approach challenges to gun safety laws under their state constitution. Should this court heed Gator's urging and "follow the analysis under Oregon's constitution," it should follow the precedents set forth in Oregon's appellate case law, and not an isolated ruling by a trial court judge that is pending on appeal. This Court should conclude that SB 5078 is constitutional.

V. CONCLUSION

For the reasons above, as well as those set forth in the State's briefing, this Court should reverse the superior court's grant of summary judgment to Gator's and its denial of summary judgment to the State and hold that SB 5078 is constitutional.

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[3] A federal district court, after a week-long trial, determined that the same Oregon law did not violate the Second Amendment to the federal constitution. *See Or. Firearms Fed'n*, 682 F. Supp. 3d 874.

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RESPECTFULLY SUBMITTED this 27th day of November, 2024.

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this day I caused a copy of the foregoing document to be served upon the following counsel of record via electronic mail:

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s/Erica Knerr
Legal Assistant

PACIFICA LAW GROUP

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Comments:

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