

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
2/21/2025 11:22 AM  
BY SARAH R. PENDLETON  
CLERK

NO. 103799-6

---

**SUPREME COURT OF THE STATE OF WASHINGTON**

---

GEOFFREY G. MCLELLAN AND JACKSON W.  
HOLLOWAY,

Respondents,

v.

NICHOLAS W. BROWN, in His Official Capacity as Attorney  
General,

Petitioner.

---

**PETITIONER'S REPLY IN SUPPORT OF  
MOTION FOR DISCRETIONARY REVIEW**

---

NICHOLAS W. BROWN  
Attorney General

ANDREW R.W. HUGHES, WSBA #49515  
WILLIAM MCGINTY, WSBA #41868  
Assistant Attorneys General  
EMMA GRUNBERG, WSBA #54659  
Deputy Solicitor General  
Complex Litigation Division  
OID No. 91157  
800 Fifth Ave., Ste. 2000  
Seattle, WA 98104-3188  
(206) 464-7744  
Andrew.Hughes@atg.wa.gov  
William.McGinty@atg.wa.gov  
Emma.Grunberg@atg.wa.gov  
*Attorneys for Petitioner  
Nicholas W. Brown*

## I. ARGUMENT ON REPLY

Both parties agree that discretionary review should be granted. *See* Feb. 3, 2025 Ltr. to Comm’r from Vitaliy Kertchen at 1.<sup>1</sup> The Court should grant review to determine this significant question of constitutional law; provide guidance to lower courts and law enforcement in interpreting and enforcing the two-in-seven firearm possession restriction; and avoid lengthy and potentially needless discovery in the superior court.

As the parties stipulated, the superior court’s ruling presents a controlling question of law warranting discretionary review under RAP 2.3(b)(4). App. 121. Namely: whether it is constitutional as a matter of law for the Legislature to disarm persons convicted of at least two driving under the influence

---

<sup>1</sup> Both parties also agree that this Court should grant direct review because this case involves a “fundamental and urgent issue of broad public import which requires prompt and ultimate determination” under RAP 4.2(a)(4). *See* Statement of Grounds at 9–14; Feb. 3, 2025 Ltr. to Comm’r from Vitaliy Kertchen at 1; *see also* Statement of Grounds at 15–17 (arguing that direct review is also warranted under RAP 4.2(a)(2) and RAP 4.2(a)(5)).

offenses within seven years. Both Petitioner–Respondents, Mr. McLellan and Mr. Holloway (Petitioners), were denied concealed pistol licenses under the statute, and there is no dispute that both had the predicate convictions. Nonetheless, the superior court suggested that beyond the convictions required by the statute, the State must also prove the more amorphous proposition that Petitioners individually present a credible threat to public safety.

This is a significant and controlling question of law, and the superior court’s ruling conflicts with post-*Bruen* decisions from the U.S. Supreme Court and federal appellate courts stating that legislatures may enact laws banning firearm possession by categories of persons presenting a special danger of misuse. *See, e.g., United States v. Rahimi*, 602 U.S. 680, 698, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024); *United States v. Jackson*, 110 F.4th 1120, 1128 (8th Cir. 2024); *United States v. Perez-Garcia*, 96 F.4th 1166, 1186 (9th Cir. 2024). In so holding, these decisions have extensively analyzed the historical record under the *Bruen*

framework, meaning this question may be decided as a matter of law without the need for expert testimony. *See, e.g., Perez-Garcia*, 96 F.4th at 1186–91; *Jackson*, 110 F.4th at 1126–29.

Moreover, given the potential practical difficulties with the individualized determination contemplated by the superior court, appellate review will provide important guidance for law enforcement in enforcing state law and lower courts in interpreting it. This controlling question of law is thus highly appropriate for certification under RAP 2.3(b)(4).

Second, the parties also agree that immediate review of the order will materially advance the ultimate termination of the litigation. App. 121; Feb. 3, 2025 Ltr. to Comm’r from Vitaliy Kertchen at 1 (noting Petitioners’ position that immediate review will avoid “months or years of potentially needless litigation in the trial court.”). If review is not granted, the case will proceed to discovery, which, based on the superior court’s ruling, would include discovery about Petitioners’ criminal, behavioral health, and substance abuse histories, as well as anything else that might

shed light on their individual propensity for violence or dangerousness. Appellate review now may render this process unnecessary or, depending on the Court's decision, would at the least provide appellate guidance on what facts, if proven, would entitle Petitioners to the relief they request, thus streamlining and accelerating the termination of this matter. *See* Mot. for Disc. Rev. at 23–26.

## II. CONCLUSION

The Attorney General respectfully requests that this Court grant discretionary review under RAP 2.3(b)(4) of the superior court's order denying the Attorney General's motion for judgment on the pleadings.

This document contains 612 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 21st day of  
February 2025.

NICHOLAS W. BROWN  
Attorney General

*/s/ Andrew R.W. Hughes*

ANDREW R.W. HUGHES, WSBA #49515

WILLIAM MCGINTY, WSBA #41868

Assistant Attorneys General

EMMA GRUNBERG, WSBA #54659

Deputy Solicitor General

Complex Litigation Division

OID No. 91157

800 Fifth Ave., Ste. 2000

Seattle, WA 98104-3188

(206) 464-7744

Andrew.Hughes@atg.wa.gov

William.McGinty@atg.wa.gov

Emma.Grunberg@atg.wa.gov

*Attorneys for Petitioner*

*Nicholas W. Brown*

**DECLARATION OF SERVICE**

I hereby declare that on this day I caused the foregoing document to be served, via e-mail, on the following:

Lynden P. Smithson  
Office of the City Attorney  
808 W. Spokane Falls Blvd.  
Spokane, WA 99201-3326  
Lsmithson@spokanecity.org  
*Attorney for Spokane Police Department*

Vitaliy Kertchen  
Kertchen Law  
917 S 10th St.  
Tacoma WA 98405  
Vitaliy@Kertchenlaw.com  
*Attorney for Respondents*

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

DATED this 21st day of February 2025, at Seattle, Washington.

/s/ Andrew R.W. Hughes  
ANDREW R.W. HUGHES, WSBA #49515  
Assistant Attorney General

**February 21, 2025 - 11:22 AM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 103,799-6  
**Appellate Court Case Title:** Geoffrey G. McClellan et al. v. Robert W. Ferguson  
**Superior Court Case Number:** 24-2-02793-6

**The following documents have been uploaded:**

- 1037996\_Answer\_Reply\_2025022111117SC152159\_3678.pdf  
This File Contains:  
Answer/Reply - Reply to Answer to Motion for Discretionary Review  
*The Original File Name was Reply\_MtnDirectRvw.pdf*

**A copy of the uploaded files will be sent to:**

- SGOOlyEF@atg.wa.gov
- Victoria.Johnson@atg.wa.gov
- amy.hand@atg.wa.gov
- comcec@atg.wa.gov
- emma.grunberg@atg.wa.gov
- lsmithson@spokanecity.org
- vitaliy@kertchenlaw.com
- william.mcginity@atg.wa.gov

**Comments:**

---

Sender Name: Evan Heckler - Email: evan.heckler@atg.wa.gov

**Filing on Behalf of:** Andrew Russell Wende Hughes - Email: andrew.hughes@atg.wa.gov  
(Alternate Email: Christine.Truong@atg.wa.gov)

Address:

800 Fifth Avenue, Suite 2000  
Seattle, WA, 98104  
Phone: (206) 464-7744

**Note: The Filing Id is 2025022111117SC152159**