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.

UNOPPOSED MOTION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

Attorney General Nicholas W. Brown requests that the Court grant discretionary review of the superior court's order denying the Attorney General's motion for judgment on the pleadings. The parties have stipulated that review is appropriate under RAP 2.3(b)(4). Appx. 121.[1]

Petitioner-Respondents Geoffrey McLellan and Jackson Holloway ("Petitioners") claim that the Second Amendment gives them a right to keep and bear arms despite their convictions for at least two DUI offenses in seven years, prohibiting them from firearm possession under RCW 9.41.040(2)(a)(i)(D). The Attorney General moved for judgment on the pleadings because there is no dispute that Petitioners were in fact convicted of these crimes and, as a matter of law, that is all that is necessary to bar them from possessing firearms for five years.

[1] The parties also sought certification from the superior court under RAP 2.3(b)(4), but the court denied that motion.

But the superior court disagreed, holding that facts relevant to Petitioners' individual propensity to violence are necessary to decide whether their as-applied challenge should succeed. The parties have stipulated that this order involves a controlling question of law as to which there is substantial ground for a difference of opinion, for which immediate appellate review is warranted under RAP 2.3(b)(4).

This Court should grant discretionary review. The superior court's ruling goes against the weight of authority holding that legislatures may disarm *groups* of people found to pose a heightened risk of dangerousness, without any requirement of evaluating their individual propensity to violence. There is no dispute that recidivist drunk driving is a dangerous crime or that recidivist drunk drivers are more prone to firearm violence as a group. Judged against the sorts of disarming legislation found throughout the history and tradition of the United States, the two-in-seven provision is constitutional and may be lawfully applied to anyone meeting its plain terms.

The superior court's ruling also poses practical problems warranting immediate appellate review. RCW 9.41.040 is a criminal law, making possession of firearms contrary to its provisions a class C felony. If the superior court is correct, then prosecutors' ability to enforce this public safety law will be severely impaired. Moreover, the superior court's ruling upends previously settled questions about the rights of individuals currently subject to the two-in-seven restriction: can they carry firearms if a court has not made individualized findings or not? Binding appellate guidance is necessary to ensure that this important public safely law will be enforced in all appropriate cases. This Court should grant discretionary review.

II. IDENTITY OF MOVING PARTY

This motion is filed by Petitioner Nicholas W. Brown, the Attorney General of the State of Washington, Intervener-Respondent in the superior court.

III. DECISION BELOW AND STATEMENT OF RELIEF SOUGHT

The Attorney General asks this Court to grant discretionary review of the superior court's order denying his motion for judgment on the pleadings. The order is attached as part of the appendix to this motion. Appx. 105.

IV. ISSUE PRESENTED FOR REVIEW

Does the Second Amendment permit the Washington Legislature to constitutionally disarm persons convicted of two driving under the influence offenses in seven years, without the need for a further individualized showing of dangerousness?

V. STATEMENT OF THE CASE

A. The Legislature's Passage of H.B. 1562

Washington's Legislature passed Substitute House Bill 1562 (H.B. 1562) to reduce gun violence. Laws of 2023, ch. 295, § 1(1). The Legislature reviewed "[a]n extensive body of research" to "identif[y] specific risk factors that increase the likelihood of individuals engaging in future violence, including gun violence, and presenting further risk to public safety."

Id. § 1(4). One "particularly strong risk factor[] for future violence include[s] . . . frequent risky alcohol use[.]" *Id.* Thus, to ensure that "the laws regarding firearm possession and the restoration of firearm rights are grounded in risk assessment data to help protect public health and safety while upholding individual liberty," *id.*, the Legislature amended RCW 9.41.040 to make it unlawful for anyone to possess a firearm who has twice been convicted of driving while intoxicated within a seven-year period. *Id.* § 3 (codified at RCW 9.41.040(2)(a)(i)(D)).

This prohibition is not permanent. Rather, an individual may have their firearm rights restored by a court if they have been out of custody for five years without committing a felony or certain serious misdemeanors (such as domestic violence, stalking, and second-degree animal cruelty, or another DUI). RCW 9.41.040(9); RCW 9.41.041(2). The legislature found that "it is important to recognize and remove barriers for individuals who have demonstrated that they have safely reintegrated into their communities." Laws of 2023, ch. 295, § 1(7).

The Legislature's finding that recidivist drunk driving convictions indicate a heightened risk of gun violence is amply supported by public health research. During hearings on the bill, the Legislature heard testimony about "study after study" demonstrating a "correlation between alcohol abuse and future gun violence."[2] Among other things, the Legislature heard about a recent study in which "researchers found that firearm-specific homicide [death] rates among women were nineteen percent lower in states where firearm access was restricted after one or two DUI offenses, eighteen percent lower in states with restrictions after three or more offenses."[3] Another study "found that disqualifying persons with a history of alcohol misdemeanors . . . led to a reduction in firearm homicide

[2] *See* Hr'g on H.B. 1562 Before the S. Law & Justice Comm. (March 21, 2023), at 45:20-30, *video recording by TVW*, https://tvw.org/video/senate-law-justice-2023031425/?eventID=2023031425.

[3] *Id.* at 45:33-45:53.

and . . . suicide."[4]

Corroborating this testimony, recent peer-reviewed studies have concluded "that there is an association between alcohol misuse and increased risk of firearm injuries and deaths."[5] One study of more than 78,000 gun purchasers in California found that those with prior DUI convictions were subsequently arrested for violent crimes at a rate almost *five times* higher than those without criminal records.[6] Another found

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[4] *Id.* at 46:00-46:12; *see also* Hr'g on H.B. 1469 Before the S. Law & Justice Comm. (March 22, 2023), at 18:33-18:45, *video recording by TVW*, https://tvw.org/video/senate-law-justice-2023031427/?eventID=2023031427 (statement of Sen. Keith Wagoner, an opponent of the bill, acknowledging "a plethora of studies" identifying a correlation between DUIs and gun violence).

[5] Andrew G. Bowen, et al., *Relation of Driving Under the Influence Laws to Access to Firearms Across US States*, 111 Am. J. of Pub. Health, 253-258 (2021), https://doi.org/10.2105/AJPH.2020.305995 (citing studies).

[6] Rose M.C. Kagawa, et al., *Association of Prior Convictions for Driving Under the Influence With Risk of Subsequent Arrest for Violent Crimes Among Handgun Purchasers*,
180 JAMA Intern Med., 35-43 (2020), https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2751947; *see also* Garen Wintemute, et al, *Firearms, alcohol and crime:*

that gun purchasers with prior DUI convictions and no other criminal history had close to three times the risk of subsequent arrest for intimate partner violence than those with no criminal history.[7] Thus, public health researchers have recommended restricting firearm access by individuals with multiple prior DUI convictions.[8]

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convictions for driving under the influence (DUI) and other alcohol-related crimes and risk for future criminal activity among authorised purchasers of handguns, 24 Inj. Prev., 68-72 (2018), https://injuryprevention.bmj.com/content/24/1/68?mod=article_inline (finding that 32.8% of handgun purchasers with prior alcohol-related convictions were subsequently arrested for a violent or firearm-related crime, as opposed to 5.7% of those with no prior criminal history, and finding that handgun purchasers with alcohol-related convictions were 5.9 times more likely to be arrested for murder, rape, robbery, or aggravated assault).

[7] *See* Hannah Laqueur, et al., *Alcohol-related crimes and risk of arrest for intimate partner violence among California handgun purchasers*, 38 Health Aff (Millwood), 1719-26 (2019), https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2019.00608.

[8] *See, e.g.*, Emma E. McGinty and Daniel W. Webster, *The Roles of Alcohol and Drugs in Firearm Violence*, 177 JAMA Internal Med., 325 (2017), ("[R]estricting access to firearms among individuals who misuse alcohol or sell illegal drugs could help."); Charles C. Branas, et al., *Alcohol Use and Firearm*

States are nearly unanimous in treating recurrent alcohol abuse, including recidivist drunk driving, as a condition warranting firearm restrictions. At least three other states and Washington, D.C., specifically restrict firearm possession by individuals with multiple DUI convictions in a set span of time.[9] At least 11 more states restrict firearm access for those suffering alcohol dependence.[10] The federal restriction on firearm possession for felons, 18 U.S.C. § 922(d)(1), sweeps in *47 states* (including Washington) that treat recidivist drunk driving as a felony or felony-equivalent offense. *See* Bowen, et al., *supra*, at

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Violence, 38 Epidemiologic Reviews, 32-45 (2016), https://doi.org/10.1093/epirev/mxv010; Laqueur, et al., *supra*.

[9] *See* Md. Public Safety Code § 5–133(b)(4); 18 Pa. Cons. Stat. § 6105(c)(3); Mass. Gen. Laws ch. 140, § 129B(1)(i); Mass. Gen. Laws ch. 90, § 24(1)(a)(1); D.C. Code § 7-2502.03.

[10] *See* Ala. Code § 13A-11-72; Haw. Rev. Stat. § 134-7(c)(1); Ind. Code § 35-47-4-1; Kan. Stat. § 21-6301(9), (13); Mo. Rev. Stat. § 571.070; N.J. Stat. § 2C:58-3; Ohio Rev. Code § 2923.13(A)(4); S.C. Code § 16-23-30; Tenn. Code Ann. § 39-17-1316; Tex. Gov't Code § 411.172; W. Va. Code § 61-7-7(a)(2).

253-58 (collecting state laws).[11] Moreover, 38 states have their own felon-in-possession laws, many of which independently bar recidivist drunk drivers from possessing firearms.[12]

B. Petitioners' As-Applied Challenge and the Superior Court's Order

Petitioners brought this lawsuit, initially styled as a "Petition for Writ of Mandamus," against the Spokane Police Department on August 6, 2024. Appx. 1. They claimed that the Spokane Police Department violated their Second Amendment rights by denying their applications for concealed pistol licenses.

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[11] 18 U.S.C. § 922(d)(1) restricts firearm possession by anyone who "has been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year[,]" except "any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less." 18 U.S.C. § 921(a)(20). Thus, the count of 47 states includes those states who treat recidivist drunk driving as a felony, as well as those who treat it as a misdemeanor punishable by more than two years. In Washington, a fourth DUI conviction within ten years triggers the federal prohibition of 18 U.S.C. § 922(d)(1). RCW 46.61.502(6)(a).

[12] *See* Everytown Research & Policy, *Which states prohibit people with felony convictions from having firearms?*, https://everytownresearch.org/rankings/law/felony-prohibitor/ (last visited Oct. 23, 2024) (citing state laws).

Appx. 6. Both Petitioners are disqualified from firearm possession by the two-in-seven provision of RCW 9.41.040(2)(a)(i)(D). *Id.* Petitioners allege that the two-in-seven provision is unconstitutional as applied to them. Appx. 6. The Attorney General intervened in the case to defend the constitutionality of the law as applied to Petitioners. Appx. 23.

Shortly thereafter, Petitioners moved for summary judgment. Appx. 25. The Attorney General opposed the motion and cross-moved for judgment on the pleadings, arguing that individuals who had been convicted twice of DUI-related offenses in seven years may be constitutionally prohibited from possessing firearms without any need for an individualized determination of their propensity for gun violence. *See* Appx. 47. The State further maintained that legislative findings and social science research (*see supra* 7-8) of which the court could take judicial notice established a link between recidivist DUI convictions and firearm violence. Appx. 51. The Spokane Police

Department also opposed summary judgment and argued that mandamus was not available as a remedy against it. Appx. 35.

The superior court issued its order on the various motions on December 16, 2024. Appx. 105. It held that mandamus was not available as a remedy against the Spokane Police Department and dismissed SPD from the case. Appx. 106. It denied both Petitioners' motion for summary judgment and the Attorney General's motion for judgment on the pleadings, holding that "there are issues of material fact regarding whether the Petitioners' possession of firearms poses a credible threat to public safety" that precluded granting either motion. *Id.* (citing *United States v. Rahimi*, 602 U.S. 680, 702 (2024)).

The remaining parties stipulated that interlocutory review is appropriate under RAP 2.3(b)(4) because the superior court's order involves a controlling question of law for which there is a substantial ground for a difference of opinion and immediate appellate review of the superior court's order may materially advance the ultimate termination of the litigation. Appx. 108; *see*

also RAP 2.3(b)(4). They also jointly moved the superior court to certify that question. Appx. 121. The superior court denied certification, reiterating that in its view, it needed to review further facts relating to the Petitioners' individual histories before making a final ruling. Appx. 137.

VI. ARGUMENT

Orders of the superior court which are not appealable as of right may nonetheless be appealed if they meet the requirements of RAP 2.3(b). Where an order "involves a controlling question of law as to which there is substantial ground for a difference of opinion" and where "immediate review of the order may materially advance the ultimate termination of the litigation," the parties may stipulate to immediate review, subject to the appellate court's grant of a motion for discretionary review. RAP 2.3(b)(4). The purpose of discretionary review under RAP 2.3(b)(4) is to narrow and advance the litigation in order to avoid a useless trial. *See Shannon v. State,* 110 Wn. App. 366,

369, 40 P.3d 1200 (2002) ("immediate appeal would serve judicial economy and simplify the trial").

Here, whether the Second Amendment requires an individual determination of dangerousness before an individual convicted of multiple DUI offenses may be temporarily disarmed is a controlling question of law that at the least presents substantial ground for a difference of opinion. And binding appellate guidance on that question will materially advance the termination of this litigation. The Court should therefore certify this question for immediate review under RAP 2.3(b)(4).

A. Whether the Second Amendment Permits Categorical Prohibitions on Firearm Possession for Recidivist DUI Offenders Is, At the Least, Subject to Reasonable Differences of Opinion

Following the U.S. Supreme Court's decision in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111 (2022), federal appellate courts around the country have held that case-by-case determinations of an individual's propensity for firearm violence are unnecessary to adjudicate as-applied challenges to prohibitions on firearm possession by groups of persons deemed

dangerous. *See, e.g.*, *United States v. Jackson*, 110 F.4th 1120, 1128 (8th Cir. 2024) ("[T]here is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons."); *United States v. Perez-Garcia*, 96 F.4th 1166, 1186 (9th Cir. 2024) ("[T]he historical record reflects that legislatures have long disarmed groups [and] individuals whose possession of firearms would pose an unusual danger, beyond the ordinary citizen, to themselves or others."); *United States v. Dubois*, 94 F.4th 1284, 1293 (11th Cir. 2024) ("[F]elons are categorically 'disqualified' from exercising their Second Amendment right[.]") (certiorari granted, vacated, and remanded in light of *Rahimi* by __ S.Ct. __, 2025 WL 76413 (January 13, 2025)). These judgments are based on the history and tradition of the United States, which includes a long history of disarming groups of individuals judged dangerous by early legislatures. *See United States v. Williams*, 113 F.4th 637, 652–54 (6th Cir. 2024) (listing groups prohibited from possessing firearms at the Founding).

The superior court reached a different conclusion, ruling that facts particular to Petitioners' criminal and individual histories are necessary to adjudicate their as-applied challenge. Appx 106-107 ("There are material issues of fact regarding whether the Petitioners' possession of firearms poses a credible threat to public safety."). In doing so, the superior court endorsed the view that Petitioners can prove the two-in-seven provision is unconstitutional as applied to them if there are facts suggesting they personally are unlikely to abuse guns. *See id.*

In so holding, the superior court cited *United States v. Rahimi*, 602 U.S. 680, 702 (2024)—but if anything, *Rahimi* suggests that this sort of individualized determination is not required. While the statute at issue in *Rahimi* certainly involved individualized determinations of dangerousness, *id.* at 684, the Court did not hold that these are necessary for a firearm prohibition to be constitutional, or that categorical determinations are unconstitutional. To the contrary, the Court emphasized it was "*not* suggest[ing] that the Second Amendment

prohibits the enactment of laws banning the possession of guns by categories of persons thought by a legislature to present a special danger of misuse[.]" *Id*. at 698 (emphasis added). And the Court reiterated that "many such prohibitions, like those on the possession of firearms by 'felons and the mentally ill,' are presumptively lawful." *Id*. at 699; *see also Bruen*, 597 U.S. at 39 n.9 ("[N]othing in our analysis should be interpreted to suggest the unconstitutionality of . . . licensing regimes[]" that "require applicants to undergo a background check," because such regimes "are designed to ensure only that those bearing arms in the jurisdiction are, in fact, 'law-abiding, responsible citizens.'") (quoting *District of Columbia v. Heller*, 554 U.S. 570, 635, 128 S. Ct. 2783 (2008)); *id.* at 81 (Kavanaugh, J., concurring); *N.Y. State Rifle & Pistol Ass'n v. City of N.Y.*, 590 U.S. 336, 364, 140 S. Ct. 1525 (2020) (*Heller* "recognized that history supported the constitutionality of . . . laws . . . prohibiting possession by felons and other dangerous individuals[]") (Alito, J., dissenting).

As noted above, federal courts of appeal since *Bruen* have routinely reached the same conclusion. *Supra* at 17. Indeed, the only federal appellate decisions upholding as-applied challenges to possession bans have been for crimes that are not "closely associated with physical danger." *See Range v. Attorney General*, 124 F.4th 218, 230 (3rd Cir. Dec. 23, 2024) (upholding as-applied challenge to felon-in-possession law for person convicted of food stamp fraud). Similarly, the Fifth Circuit has held that federal prohibitions on firearm possession are unconstitutional as applied to non-violent and non-dangerous drug possession crimes. *See United States v. Connelly*, 117 F.4th 269, 272, 276-77 (5th Cir. 2024) (plaintiff was "non-violent" woman who "would at times smoke marijuana as a sleep aid and for anxiety[]"); *see also United States v. Daniels*, 77 F.4th 337 (5th Cir. 2023), *vacated and remanded by United States v. Daniels*, 144 S. Ct. 2707 (2024) (similar facts). But those cases did not hold that individual determinations were required for all crimes. Nor would the logic of those decisions apply to

convictions for crimes that regularly result in death and dismemberment—like drunk driving. *See Begay v. United States*, 553 U.S. 137, 141, 128 S. Ct. 1581 (2008), *abrogated on other grounds by Johnson v. United States*, 576 U.S. 591, 135 S. Ct. 2551 (2015) ("Drunk driving is an extremely dangerous crime"); *see also Birchfield v. N. Dakota*, 579 U.S. 438, 443, 136 S. Ct. 2160 (2016) ("The imminence of the danger posed by drunk drivers exceeds that at issue in other types of cases.").[13]

In the particular case of prohibitions on firearm possession for DUI convictions, the authority tips against any requirement for an individualized determination of dangerousness. The Sixth Circuit held that DUI convictions are sufficient to prohibit a person from possessing firearms under the Second Amendment

[13] A panel of the Ninth Circuit held that the lifetime prohibition on firearm possession in 18 U.S.C. § 922(g)(1) could not be constitutionally applied to non-violent offenders. *See generally United States v. Duarte*, 101 F.4th 657 (9th Cir. 2024) *vacated and rehearing granted by* 108 F.4th 786 (9th Cir. 2024). But that decision has been vacated and is currently awaiting a decision by the en banc court. *Duarte*, 108 F.4th 786.

without any need to show the challenger posed a particular individualized threat of firearm violence. *United States v. Goins*, 118 F.4th 794, 801 (6th Cir. 2024) ("Goins engaged in conduct that endangered the Kentucky public when he drove under the influence. It is within this nation's historical tradition for Kentucky to temporarily limit his firearm possession as a result of the dangerousness his conduct exhibited."). The only other case to consider this precise question is an unpublished federal district court decision, currently on appeal, in which the court itself expressed doubts about the wisdom of its ruling. *Williams v. Garland*, No. 17-cv-2641, 2023 WL 7646490 at *3-4 (E.D. Penn.) ("this Court remains quite concerned about the prospect of granting access to firearms to persons who have demonstrably abused alcohol").

Requiring individualized adjudications for the two-in-seven provision, as the superior court's ruling does, would also present significant practical difficulties. In 2023, there were 12,713 sentences for DUI, and negligent and reckless driving that

had been amended down from DUI, in Washington.[14] And for individuals with a DUI conviction, recidivism is unfortunately common. Nationwide, thirty percent of people convicted of DUI offenses have been convicted of such offenses before. National Highway Traffic Safety Administration, *Countermeasures That Work*, 1-3 11th ed. (2023).[15]

The superior court's ruling would require the State to not only prove beyond a reasonable doubt that a given individual had in fact committed two predicate drunk driving offenses, but also to undertake a second adjudication to prove that the individual person's possession of firearms poses a heightened danger to public safety for the two-in-seven provision to apply to them. This constitutionally unnecessary procedure is particularly ill-suited for the two-in-seven provision's most common

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[14] https://www.courts.wa.gov/caseload/?fa=caseload.showReport&level=d&freq=a&tab=dui&fileID=duisent.

[15] Available at: available at: https://www.nhtsa.gov/sites/nhtsa.gov/files/2023-12/countermeasures-that-work-11th-2023-tag_0.pdf.

applications, namely criminal prosecutions in which law enforcement officers discover individuals barred from firearm possession with guns in violation of the law. *See* RCW 9.41.040(2)(b) (unlawful possession of a firearm in violation of the two-in-seven provision is a class C felony). Perhaps more significantly, the superior court's ruling raises uncertainties for those currently subject to the two-in-seven restriction. Can they carry a firearm or not? Does it depend on whether the sentencing court entered specific findings of dangerousness? Or even more concerningly, can a person be convicted based on an *ex post* finding that they individually posed too high a risk of violence, as the superior court's ruling seems to suggest? Appellate guidance is necessary to ensure consistent enforcement of the law by prosecutors and lower courts.

The Court's ruling that Petitioners have validly stated a Second Amendment claim—that even though they have each committed at least two DUI offenses in seven years, they may

nonetheless be constitutionally entitled to possess firearms—is against the weight of authority on this question and, at the least, is subject to substantial ground for a difference of opinion as required by RAP 2.3(b)(4). It would also upend routine applications of the statute, creating uncertainties for both prosecutors and those to whom the statute might apply. This controlling question of law is thus highly appropriate for certification under RAP 2.3(b)(4), and this Court should certify it for immediate appellate review.

B. Immediate Appellate Review Will Materially Advance the Ultimate Termination of This Matter

In addition to requiring a controlling question of law as to which there is substantial ground for a difference of opinion, RAP 2.3(b)(4) also requires that immediate review may materially advance the ultimate termination of the litigation. That requirement is met here regardless of this Court's ultimate decision.

If the State is correct and RCW 9.41.040(2)(a)(i)(D) is constitutional as applied to Petitioners without the need for an

individualized determination of dangerousness, appellate review now rather than later will materially advance the termination of this matter because it would end the litigation. As it stands, the superior court's order sets the parties on a path to months or years of burdensome discovery, including expensive, taxpayer-funded expert discovery. This would include expert testimony concerning the dangerousness of drunk driving, the association between drunk driving and crimes of violence, and the history and tradition of the United States concerning the regulation of firearms and alcohol. *See* Appx. 76. And under the superior court's framing of the issue—whether "Petitioners' possession of firearms poses a credible threat to public safety" (*see* Appx. 107)—Petitioners' lives would be necessarily thrust under a microscope. The State would be forced to conduct discovery on their criminal, behavioral health, and substance abuse histories, along with anything else that might shed light on their individual propensity for violence or dangerousness. Appellate review now, rather than later, may render this process unnecessary.

Even if this Court does not dismiss Petitioners' claims—which it should—it is still likely to issue guidance about what facts, if proven, would entitle Petitioners to the relief they request. Even if the Court concludes that two convictions for DUI in seven years, standing alone, are not sufficient under the Second Amendment to prohibit a person from possessing weapons for five years, it may still provide guidance on what sort of additional facts would be relevant. This will ultimately streamline, focus, and accelerate the termination of this matter.

Finally, an appellate decision adverse to the State would also materially advance the ultimate termination of the litigation. As things stand now, no matter what discovery shows regarding these Petitioners, the State will continue to litigate the question of whether facts specific to Petitioners are relevant to their Second Amendment claim. But if this Court disagreed, then the State would be able to evaluate the facts as they develop and attempt to negotiate a resolution if the facts warrant one. In sum, regardless of the Court's ultimate decision, immediate appellate

review of this controlling question of law will materially advance the termination of this litigation under RAP 2.3(b)(4).

VII. 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 4,207 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 30th day of January 2025.

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

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

DATED this 30th day of January 2025, at Seattle, Washington.

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