

Commonwealth of Massachusetts

Appeals Court

No. 25-P-0190

Worcester, ss.

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Commonwealth, Appellee

v.

Bryce S. Shufelt, Appellant

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On Appeal from Winchendon District Court

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Appellant's Brief for Bryce S. Shufelt

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Dated: November 13, 2025

Respectfully submitted,  
The Appellant,  
By his attorney,

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TABLE OF CONTENTS

**TABLE OF AUTHORITIES.....-4-**

**STATEMENT OF ISSUES.....-7-**

I. Whether G.L. c. 269 § 10(m)'s Prohibition of Large Capacity Magazines Violates the Second Amendment.

II. Whether G.L. c. 269 § 10(m) is Unconstitutional on its Face.

III. Whether the Appellant's Appeal is Moot.

**STATEMENT OF THE CASE.....-7-**

**STATEMENT OF THE FACTS.....-9-**

**SUMMARY OF THE ARGUMENT.....-11-**

**ARGUMENT.....-15-**

**I. THIS COURT SHOULD FIND THAT G.L. c. 269 § 10(m) VIOLATES THE SECOND AMENDMENT AND REVERSE THE DENIAL OF THE APPELLANT'S MOTION TO DISMISS.....-15-**

a. Standard of Review.....-15-

b. The Possession of Large Capacity Magazines is covered by the Second Amendment.....-16-

c. There is No Historical Tradition of Laws Similar to G.L. c. 269 § 10(m).....-21-

d. There is No History of Arms Regulations Similar to G.L. c. 269 § 10(m) to Address Mass Shootings..-35-

e. Large Capacity Magazines are Not Unusual.....-39-

**II. THIS COURT SHOULD FIND THAT G.L. c. 269 § 10(m) IS UNCONSTITUTIONAL ON ITS FACE AND REVERSE THE DENIAL OF THE APPELLANT'S MOTION TO DISMISS.....-44-**

a. Standard of Review.....-44-

b. There are No Conceivable Grounds Which Support  
the Validity of G.L. c. 269 § 10(m).....-46-

**III. THIS APPEAL IS NOT MOOT.....-51-**

a. Standard of Review.....-51-

b. This Appeal is Not Moot.....-52-

**CONCLUSION.....-55-**

**ADDENDUM.....-57-**

**CERTIFICATE OF COMPLIANCE .....-97-**

**CERTIFICATE OF SERVICE.....-98-**

**TABLE OF AUTHORITIES**

**Cases:**

Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Att'y Gen. New Jersey, 910 F.3d 106, 116 (3<sup>rd</sup> Cir. 2018).....19

Barnett v. Raoul, 756 F.Supp.3d 564 (2024).....17

Blake v. Massachusetts Parole Bd., 369 Mass. 701 (1976).....51

Capen v. Campbell, 134 F.4<sup>th</sup> 660 (1<sup>st</sup> Cir. 2025) .....12, 20, 29, 35, 36, 37

Caetano v. Massachusetts, 577 U.S. 411 (2016)...passim

Chief of Police of City of Worcester v. Holden, 470 Mass. 845 (2015).....48

City of Lynn v. Murrell, 489 Mass. 579 (2022).....52, 53, 54

Commonwealth v. Canjura, 494 Mass. 508 (2024)...passim

Commonwealth v. Donnell, 495 Mass. 741 (2025)}.....51

Commonwealth v. Marquis, 495 Mass. 434, 442 (2025).....passim

D.C. v. Heller, 554 U.S. 570 (2008).....passim

Duncan v. Bonta, 133 F.4<sup>th</sup> 852 (9th Cir. 2025)(en banc).....18

Gillespie v. City of Northampton, 460 Mass. 148 (2011).....45

Hanson v. District of Columbia, 120F.4th 223 (D.C. Cir. 2024).....16, 18, 19

Leibovich v. Antonellis, 410 Mass. 568 (1991).....45

Lockhart v. Attorney General, 390 Mass. 780 (1984).....52, 53, 54

Luis v. United States, 578 U.S. 5 (2016).....18, 21

Marbury v. Madison, 5 U.S. 137 (1803).....	46, 50
Matter of Sturtz, 410 Mass. 58, (1991).....	55
National Association for Gun Rights v. Lamont, --- F.4th ---- 2025 WL 2423599 (2nd Cir. 2025).....	19, 20
NYSRPA v. Bruen, 597 U.S. 1 (2022).....	passim
Ocean State Tactical, LLC v. Rhode Island, 95F.4 <sup>th</sup> 38 (1 <sup>st</sup> Cir. 2024).....	12, 20, 35, 36, 37
Oregon Firearms Federation, Inc. v. Brown, 644 F.Supp.3d 782 (2022).....	19, 20
Pielech v. Massasoit Greyhound, Inc., 441 Mass. 188 (2004).....	44
United States v. Rahimi, 602 U.S. 608 (2024).....	26, 31, 32, 33, 45, 48
Washington State Grange v. Washington State Republican Party, 552 U.S. 442 (2008).....	45, 50
Zeller v. Cantu, 395 Mass. 76 (1985).....	45
<b>Constitutional Provisions:</b>	
U.S. Const. Amend. II.....	passim
U.S. Const. Amend. XIV.....	passim
<b>Statutory Provisions:</b>	
G.L. c. 140 § 131.....	21, 49
G.L. c. 140 § 131M (1998).....	33, 34, 42
G.L. c. 269 § 10(m)(2024).....	passim
G.L. c. 269 § 10(m)(1998).....	passim
18 USC § 922.....	36
26 U.S.C. § 5849.....	37
34 U.S.C. 10281(o)(1)(A).....	36
1821 Me. Laws 98, chap. 25 § 5.....	29

**Other Authorities:**

Act of Mar. 1, 1783, 1782 Mass. Acts 218, 218-19  
(Benjamin Edes & Sons 1783).....34

The History of Sniping and Sharpshooting. Plaster,  
J.L.....40

The Second Amendment Primer, A Citizen’s Guidebook to  
the History, Sources, and Authorities for the  
Constitutional Guarantee of the Right to Keep and Bear  
Arms. Adams, L.....24, 25

NSSF Detachable Magazine Report. 1990-2021.  
[https://nssfresearch.s3.amazonaws.com/Detachable-  
Magazine-NSSFReport.pdf](https://nssfresearch.s3.amazonaws.com/Detachable-Magazine-NSSFReport.pdf).....43

An Act against wearing Swords, &c., Ch. IX (1686),  
printed in The Grants, Concessions, and Original  
Constitutions of the Province of New Jersey  
(1881).....30

Gun Control: Constitutional Mandate or Myth? Spitzer,  
Robert J. (2011).....37

Key Congressional Acts Related to Firearms.  
[https://giffords.org/lawcenter/gun-laws/policy-  
areas/other-laws-policies/key-federal-regulation-  
acts/](https://giffords.org/lawcenter/gun-laws/policy-areas/other-laws-policies/key-federal-regulation-acts/).....38

Omnibus Crime Control and Safe Streets Act of 1968.  
[govinfo.gov/content/pkg/COMPS-1696/uslm/COMPS-  
1696.xml](http://govinfo.gov/content/pkg/COMPS-1696/uslm/COMPS-1696.xml).....38

### STATEMENT OF THE ISSUES

1. Whether G.L. c. 269 § 10(m)'s prohibition of large capacity magazines violates the Second Amendment.
2. Whether G.L. c. 269 § 10(m) is Unconstitutional on its face.
3. Whether the Appellant's Appeal is Moot.

### STATEMENT OF THE CASE

On March 13, 2025, the Winchendon District Court issued a Criminal Complaint against the Appellant.

R.A. 3. The Complaint, bearing Docket No.: 2470CR000083, charged the Appellant with two counts of possession of a large capacity feeding device, G.L. c. 269 § 10(m). R.A. 3. The Appellant was not held pending a summons arraignment. R.A. 3. The Appellant was arraigned before the Winchendon District Court on March 15, 2024. R.A. 4.

On October 25, 2024, the Appellant, through Counsel, filed a Motion to Dismiss in the Winchendon District Court. R.A. 10. In his Motion to Dismiss, the Appellant argued that the charges violated the Second Amendment under the tests set forth in *Commonwealth v. Canjura*, 494 Mass. 508 (2024) & *NYSRPA v. Bruen*, 597 U.S. 1 (2022). *Id.* The Motion to Dismiss was argued on

November 27, 2024. R.A. 5. Also filed that day was the Commonwealth's Motion to Amend Criminal Complaint.

R.A. 32. Justice Goldstein denied the Motion to Dismiss on December 9, 2024. R.A. 23. The Criminal Docket shows the Motion to Amend as being allowed on November 27, 2024. R.A. 5. However, the motion itself was not acted on until it was allowed January 17, 2025 by Justice Greenhalgh as part of the plea hearing.

R.A. 33.

The matter next came before the court on January 17, 2025. R.A. 5. On that day the Appellant and the Commonwealth submitted an agreed upon Tender of Plea or Admission and Waiver of Rights. R.A. 28. In it, the charges were to be amended to Possession of Ammunition without an F.I.D., G.L. c. 269 § 10(h). *Id.* The Appellant then received a Continuance Without a Finding on the amended charges. R.A. 4.

Another filing made that day was a Stipulation of the Parties. R.A. 30. The Stipulation preserved the Appellant's right to appeal Justice Goldstein's denial of his Motion to Dismiss, pursuant to Mass. R. Crim. P. 12(b)(6). *Id.* Following this, the Appellant filed his Notice of Appeal on February 6, 2025. R.A. 31.

### STATEMENT OF THE FACTS

Officer Anthony Webb was on duty with the Gardner Police Department on February 10, 2024. R.A. 6. At approximately eight p.m., he was dispatched to the lobby of the police station to speak with an individual requesting an emergency restraining order. *Id.* The individual was the Appellant's then girlfriend. *Id.*

While reviewing the application for a restraining order, Officer Webb noticed the applicant had written that the Appellant owns firearms. *Id.* When asked, the applicant explained to Officer Webb that she had seen the Appellant with a handgun in his home. *Id.* The Appellant's home was outside the City of Gardner. *Id.*

At this point, the Appellant was already in police custody due to an incident earlier in the day. *Id.* Upon learning this, Officer Webb, along with Detective Starzynski, interviewed the Appellant *Id.* The interview was about the reported handgun in his residence. *Id.* The Appellant waived Miranda and agreed to speak with Officer Webb and Detective Starzynski. *Id.*

During the interview, the Appellant admitted to the police he had a handgun in his residence. *Id.*

Gardner Police then obtained consent from the Appellant to go to his residence and seize the firearm. *Id.*

Officer Webb along with a different detective, Detective Allard, travelled to the Appellant's residence and met with his mother. *Id.* After explaining the purpose of their visit, they were allowed into the home. *Id.* The Appellant's mother directed the police to the Appellant's safe where he stored the firearm. *Id.*

Upon opening the safe, the police seized: 1 9mm Glock 19 Ghost Gun, 9mm ammunition, 2 9mm magazines and 1 firearm lower. *Id.* These items were returned to the Gardner Police Station and a report was sent to the Templeton Police Department, the jurisdiction in which the items were seized. *Id.* The items were subsequently held for pickup by the Templeton Police Department. *Id.*

On February 22, 2024, Detective Eric Smith received an email from the Gardner Police Department. R.A. 7. The email was from Officer Anthony Webb with the Gardner Police Department. *Id.* The email was informing him of the above, and that two items which are illegal by nature were seized by the Gardner P.D.

inside Templeton. *Id.* On February 29, 2024 Detective Smith travelled to the Gardner P.D. and took possession of the two large capacity magazines seized in Templeton. *Id.* As a result of this seizure, the Appellant was charged with the aforementioned offenses. R.A. 3.

On September 6, 2024, Officer Caleb Matson inspected the two magazines. R.A. 8. He inspected the magazines because he is the Templeton P.D. Firearms Instructor. *Id.* Upon completing his inspection of the magazines, he was certain that both were manufactured after 1994. R.A. 8-9.

#### **SUMMARY OF THE ARGUMENT**

G.L. c. 269 § 10(m) violates the Second Amendment. It does so, because it is inconsistent with this Nation's Historical Tradition of Firearms Regulation. *Infra* pg. 21. Under the analysis set forth in *Bruen*, the law does not survive even the lightest of scrutiny. *Infra* pg. 15. The law does not withstand scrutiny, because the possession of Large Capacity Magazines ("LCM") is covered by the Second Amendment. *Infra* pg. 16. It is covered by the Second Amendment, because as numerous courts have noted, magazines are an essential part of exercising the rights protected

by the Second Amendment. *Id.* This is because the Second Amendment subsumes more than just firearms. *Infra* pg. 17. The Second Amendment also covers magazines, because they themselves, are arms. *Id.*

Once a court determines that the Second Amendment covers an individual's conduct, it is presumed to be protected. *Infra* pg. 16. To rebut this presumption, the government must show that the law or regulation is consistent with America's historical tradition of arms regulation. *Infra* pg. 15. There is no historical tradition of laws similar to G.L. c. 269 § 10(m). *Infra* pg. 16. To prove a historical tradition, the government may point to analogous regulations enacted close in time to the enactment of the Second or Fourteenth Amendments. *Infra* pg. 22. There are no analogous regulations from either of these times. *Id.*

The Commonwealth is not entitled to the more nuanced approach the First Circuit used in *Capen*, and *Ocean State Tactical*. *Infra* pg. 35. It is not entitled to it, because there is no implication of unprecedented societal concerns. *Id.* While mass shootings are a problem America faces; they are not new. *Infra* pg. 36. The first mass shooting happened in 1900. *Id.* The Federal Government did not enact

legislation to address this until 1994, and Massachusetts did not until 1996. *Id.* Because of these gaps, the Commonwealth is not entitled to a more nuanced examination here. *Infra* pg. 38.

The Commonwealth will also be unable to carry its burden of showing that LCMs are unusual and dangerous. It cannot do so because Large Capacity Magazines are not unusual. *Infra*. pg. 38. LCMs exist in great numbers in America and are in common use. *Infra* pg. 39. Not only are they in common use, they have existed since approximately 1580. *Id.* Near the time of the passage of the Second Amendment, the state of the art rifle had a twenty-two round magazine capacity. *Infra* pg. 40. Less than a decade before the passage of the Fourteenth Amendment, a lever action rifle in mass production had a thirty-round magazine. *Id.* Additionally, between 1873 and 1919, over 720,000 copies of this rifle were manufactured. *Infra* pg. 41. Between 1990 and 2021, approximately 717,000,000 LCMs entered the public market. *Infra* pg. 43. As a result, 43.3 percent of firearm owners in America reported owning an LCM. *Id.*

This Court should find that G.L. c. 269 § 10(m) is unconstitutional on its face, and reverse the

denial of the Appellant's motion to dismiss. *Infrapg.* 44. It is unconstitutional, because there are no conceivable grounds which support its validity. *Infra* pg. 45. There are no conceivable grounds, because the law is inconsistent with this Nation's history of arms regulation. *Id.* Because of this fact, it is not valid under any circumstances. *Id.*

The statute violates the Second Amendment. *Infra* pg. 46. Appearances aside, *Marquis* does not control the outcome here. *Id.* It does not control because it was limited to a different portion of the law, and did not approve of the entire licensing scheme in Massachusetts. *Id.* Because the statute is inconsistent with this Nation's history of arms regulations, it is invalid. *Infra* pg. 47. Additionally, under the how and why of the *Bruen* analysis it is likewise invalid. *Infrapg.* 47-48.

For the Commonwealth to prevail, it need only show that any application of the law is valid. *Infra* pg. 50. The Commonwealth cannot do this, because as stated above, there is no historical tradition of such laws. *Id.* This lack of analogous historical tradition prevents there being any validity to the statute. *Id.*

This Court should hear this appeal for it is not moot. *Infra* pg. 50. It is not moot, because it does not satisfy any of the criteria for a case to be considered moot. *Infra* pg. 52. The Appellant still has a concrete stake in the outcome, will adequately represent the issues presented, and the interests of judicial economy support the resolution of this appeal. *Infra* pg. 52-55.

### ARGUMENT

**I. THIS COURT SHOULD FIND THAT G.L. C. 269 § 10(m) VIOLATES THE SECOND AMENDMENT AND REVERSE THE DENIAL OF THE APPELLANT'S MOTION TO DISMISS.**

**a. Standard of Review**

In determining whether the Second Amendment protects an individual's conduct, "Bruen requires that we employ a two-part test to determine whether "the Second Amendment's plain text covers an individual's conduct." *Commonwealth v. Canjura*, 494 Mass. 508, 511 (2024) quoting *NYSRPA v. Bruen*, 597 U.S. 1 (2022). "First, we must determine whether "the Second Amendment's plain text covers an individual's conduct." Id. To make this determination, the court is "guided by the Supreme Court's decision in Heller." *Canjura* at 512. Put simply, the Court analyzes the "plain meaning of the term "arms," observing its

"[Eighteenth Century] meaning is no different from the meaning today." *Id.*

"If the regulated conduct falls outside the scope of the Second Amendment, our analysis ends." *Id.* "If, on the other hand, we conclude the regulated conduct is covered by the plain text of the Second Amendment, "the Constitution presumptively protects that conduct," and "we proceed to the second part of the analysis." *Id.* "In the second part of the analysis, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of [arms] regulation. *Id.*

**b. The Possession of Large Capacity Magazines is covered by the Second Amendment.**

In determining whether the possession of LCMs is covered by the Second Amendment, the Court must first determine whether a magazine is an arm, and thus protected, by the Second Amendment. *Hanson v. District of Columbia*, 120F.4th 223 (D.C. Cir. 2024). From the Court's holding *Hanson*, it is clear that the answer is yes. *Id.* It is yes, because an arm is anything, "that a man ... takes into his hands," that is "carr[ied] ... for the purpose of offensive or defensive action."

*District of Columbia v. Heller*, 554 U.S. at 581, 584 (simplified).

Magazines are included in this definition, because it covers not only arms, but it also, "covers modern instruments that facilitate armed self-defense." *Id.* citing *Caetano v. Massachusetts*, 577 U.S. 411, 411-412 (2016). This is because, "Second Amendment protections subsume more than just firearms." *Commonwealth v. Canjura*, 494 Mass. 508, 511(2024) citing *Caetano v. Massachusetts*, 577 U.S. 411 (2016).

The Court in the Southern District of Illinois has found that LCMs are protected by the Second Amendment. In the case of *Barnett v. Raoul*, the court held, "regarding thirty-round large-capacity magazines" ... "that these devices are also in common use and have legitimate self-defense purposes." *Barnett v. Raoul*, 756 F.Supp.3d 564, 628 (2024). "For magazines, every round matters in a self-defense scenario - reloading takes away significant time during which the defender can be injured or wounded." *Id.*

The Ninth Circuit recently recognized that, "the Second Amendment's text necessarily encompasses the

corollary right to possess a magazine for firearms that require one." *Duncan v. Bonta*, 133 F.4<sup>th</sup> 852, 867-68 (9th Cir. 2025)(en banc). This is because, "Constitutional rights ... implicitly protect those closely related acts necessary to their exercise." *Luis v. United States*, 578 U.S. 5 (2016). Put another way, the Supreme Court has stated, "th[is] Court has acknowledged that certain unarticulated rights are implicit in enumerated guarantees," because they are, "indispensable to the enjoyment of rights explicitly defined." *Cf. Richmond Newspapers v. Virginia*, 448 U.S. 555, 579-80 (1980). Logically, this means that "[t]he right to keep and bear arms ... 'implies a corresponding right to obtain the bullets necessary to use them,'" *Luis v. United States*, 578 U.S. 5, 26 (2016).

This logic was applied by the Court in *Hanson* which said, "We therefore agree with Hanson and the district court that ELCMs very likely are "Arms" within the meaning of the plain text of the Second Amendment." *Hanson v. District Columbia*, 120 F.4<sup>th</sup> 223, 232 (D.C. Cir. 2024). They fall within the plain meaning, "Because magazines feed ammunition into certain guns, and ammunition is necessary for such a

gun to function as intended, magazines are 'arms' within the meaning of the Second Amendment." *Ass'n of New Jersey Rifle & Pistol Clubs, Inc. v. Att'y Gen. New Jersey*, 910 F.3d 106, 116 (3rd Cir. 2018) (abrogated on other grounds).

In 2022, the District Court in Oregon recognized that, "magazines in general are necessary to the use of firearms for self-defense." *Oregon Firearms Federation, Inc. v. Brown*, 644 F.Supp.3d 782, 789 (2022). In August of 2025, the Second Circuit Court of appeals "assumed without deciding," that LCMs, "are bearable arms within the meaning of the Second Amendment." *National Association for Gun Rights v. Lamont*, --- F.4th ---- 2025 WL 2423599 (2nd Cir. 2025).

The D.C. Circuit Court of Appeals also held that magazines with a capacity greater than ten rounds, "very likely are 'Arms' within the meaning of the plain text of the Second Amendment." *Hanson v. District of Columbia*, 120F.4th 223, 232 (D.C. Cir. 2024). "To hold otherwise would allow the government to sidestep the Second Amendment with a regulation prohibiting possession at the component level, "such as a firing pin." *Id.* The First Circuit has also

assumed without deciding, "that [magazines] are 'arms' within the scope of the Second Amendment." *Ocean State Tactical, LLC v. Rhode Island*, 95F.4<sup>th</sup> 38, 43 (1<sup>st</sup> Cir. 2024).

Across the nation, courts are recognizing, even if they don't decide, that magazines-whether they hold ten, twenty or thirty rounds, are 'arms' under the Second Amendment. *Capen v. Campbell*, 134 F.4<sup>th</sup> 660 (1<sup>st</sup> Cir. 2025); *Ocean State Tactical, LLC v. Rhode Island*, 95F.4<sup>th</sup> 38 (1<sup>st</sup> Cir. 2024); *Oregon Firearms Federation, Inc. v. Brown*, 644 F.Supp.3d 782, 789 (2022); *National Association for Gun Rights v. Lamont*, --- F.4th ---- 2025 WL 2423599 (2nd Cir. 2025). The reason for this, is that an arm is any, "thing that a man ... takes into his hands," that is "carr[ied] ... for the purpose of offensive or defensive action." *District of Columbia v. Heller*, 554 U.S. at 581, 584 (simplified). Magazines fit this definition because they, "facilitate armed self-defense," thus bringing them under the, "Second Amendment Protections." *Id.* citing *Caetano v. Massachusetts*, 577 U.S. 411, 411-412 (2016). This is so, because, "Second Amendment protections subsume more than just firearms." *Caetano v. Massachusetts*, 577 U.S. 411, 411-412 (2016).

Magazines, regardless of capacity, are also protected by the Second Amendment, because it also applies to those items necessary to utilize the rights guaranteed by the Second Amendment. *Luis v. United States*, 578 U.S. 5 (2016)(the Second Amendment also means the right to purchase ammunition); *Cf. Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980)(press and public erroneously excluded from a murder trial). As all of the foregoing shows, possession of a magazine, large capacity or not, is covered by the Second Amendment, the Appellant now turns to the second prong of the *Bruen* test.

**c. There is No Historical Tradition of Laws Similar to G.L. c. 269 § 10(m).**

G.L. c. 269 § 10(m) criminalizes the possession of LCMs unless licensed pursuant to G.L. c. 140 § 131 or 131F. Addendum pg. 74. The problem is that there is no historical tradition of such regulations in the United States. To determine whether there is a historical tradition of such regulations, or not, the Court utilizes the second prong of the *Bruen* test.

"In the second part of the analysis, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of

[arms] regulation. *Commonwealth v. Canjura*, 494 Mass. 508, 511 (2024) citing *NYSRPA v. Bruen*, 597 U.S. 1 (2022). "The lack of" a "distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Commonwealth v. Canjura*, 494 Mass. 508, 513 (2024) citing *NYSRPA v. Bruen*, 597 U.S. 1 (2022).

It is true that the, "Commonwealth may meet its burden by pointing to analogous regulations enacted close in time to the ratification of either the Second Amendment in 1792 or the Fourteenth Amendment in 1868." *Commonwealth v. Canjura*, 494 Mass. 508, 514 (2024) citing *NYSRPA v. Bruen*, 597 U.S. 1 (2022). There is however, no history of analogous regulations from around either of those times to support this statute.

The Commonwealth of Massachusetts first enacted legislation pertaining to LCMS in 1996. Addendum pg. 66. Since that time, the law has remained in effect and largely unchanged. Addendum pg. 74. The Federal Government first enacted legislation pertaining to LCMS in 1994. Addendum pg. 76. This law had a "sunset," provision of ten years, and lapsed in

2004. *Id.* Apart from that ten-year period, the Federal Government has never regulated LCMS.

The evidence of this fact, is that prior to 1994, there was no Federal LCM legislation of any kind. Addendum pg. 76. Massachusetts bears the distinction of being the first State in the Union to enact such legislation in 1998. Addendum pg. 64. The Massachusetts legislation largely mirrored the Federal. Addendum pg. 64 & 76. Prior to that, no state legislated LCMS. The history is clear; LCM legislation is not part of America's traditions. Nor is it part of our ancestors' traditions.

The Commonwealth will be unable to, "meet its burden by pointing to analogous regulations enacted close in time to the ratification of either the Second Amendment in 1792 or the Fourteenth Amendment in 1868." *Commonwealth v. Canjura*, 494 Mass. 508, 514 (2024) citing *NYSRPA v. Bruen*, 597 U.S. 1 (2022). The Commonwealth cannot do so, because there simply were no such laws in effect at the time of, "the ratification of either the Second Amendment in 1792 or the Fourteenth Amendment in 1868." *Id.*

In America, at and around the time of the passing of the Second Amendment, the right to possess arms was

widely recognized. "[I]t is the Right of every English subject to be prepared with Weapons for his Defence." The Second Amendment Primer, pg. 117 citing North Carolina Gazette (Newburn) July 7, 1775. Boston also recognized this inherent right. "It was absolutely necessary to carry arms ... and unlawful for any man to deprive him of those weapons of self defence." *Id.* at 118 citing Boston Independent Chronicle October 25, 1787. "THE POWERS OF THE SWORD ARE IN THE HANDS OF THE YEOMANRY OF AMERICA FROM SIXTEEN TO SIXTY" and "Congress have no power to disarm the militia." *Id.* at 121 citing Tench Coxe, writing in support of the proposed Constitution, under the pseudonym "a Pennsylvanian") February 20, 1788. [Emphasis in original]. George Washington also spoke out against arms regulations, "A free people ought ... to be armed." *Id.* at 126 quoting Boston Independent Chronicle. January 8, 1790 reporting a speech George Washington gave to Congress, January 7, 1790.

George Washington was not the only founding father to speak against arms regulations. "The ultimate authority ... resides in the people alone ... the advantage of being armed, which the Americans possess ... forms a barrier against the enterprises of

ambition." James Madison, *Federalist No. 46*. "Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom of Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed" Noah Webster, *An Examination of the Leading Principles of the Federal Constitution*, 1787. Put most succinctly, the purpose, "the great object is, that every man be armed ... every one who is able may have a gun." Patrick Henry, *Speech of June 14, 1788*.

The disapproval for arms regulations at the time was not confined to America. In 1764, a Milanese jurist and criminologist named Beccaria carried on the tradition of resisting laws restricting the possession of weapons. In his 1764 *On Crimes and Punishments*, he wrote, "The laws that forbid the carrying of arms are laws of such a nature. They disarm those only who are neither inclined nor determined to commit crimes." *Id.* at 34. "John Adams thought so highly of this writing that he began his opening argument in the Boston Massacre trial in 1770 with a quote from this text." *The Second Amendment Primer*, pg. 33. Thomas Jefferson too, "copied into his *Commonplace Book* ... the entire paragraph in its original Italian." *Id.*

A law in effect for only 31 years, is insufficient to prove a 'longstanding' tradition for this regulation. It is not, because the Court in *Bruen* cautioned, "against giving postenactment history more weight than it can rightly bear." *NYSRPA v. Bruen*, 597 U.S. 1, 83 (2022). Elaborating on this, the Court in *Bruen* said that, "courts should not "uphold every modern law that remotely resembles a historical analogue," because doing so "risk[s] endorsing outliers that our ancestors would never have accepted." *NYSRPA v. Bruen*, 597 U.S. 1, 30 (2022).

"At the founding, the bearing of arms was subject to regulations ranging from rules about firearm storage to restrictions on gun use by drunken New Year's Eve revelers." *United States v. Rahimi*, 602 U.S. 680, 691 (2024). One example of such a law, which was found to be too remote of an analogue, is the black powder storage law of Boston from the Eighteenth Century. Addendum pg. 94. In it, the Commonwealth banned the storage of more than twenty-five pounds of black powder in an individual's home, and banned the storing of loaded firearms. *Id.* However, even the most cursory of readings reveals that these laws were addressing the volatility of black powder, and the

protection of firemen. *Id.* "Whereas the depositing of loaded Arms in the Houses of the Town of Boston, is dangerous to the Lives of those who are disposed to exert themselves when a fire happens to break out." *Id.* (emphasis in original). The legislature was not regulating arms in this law, but rather for the safety of fire fighters and the public due to the danger of explosion from black powder.

Not only was the law enacted for the safety of firemen, it was not enacted as a criminal, but rather a civil, statute. The punishment for violating this statute was to, "forfeit and pay the sum of *ten pounds*, to be recovered at the Suit of the Firewards of the said Town, in an Action of Debt, before any Court proper to try the same." *Id.* at 79-80. The legislature simply was not trying to regulate arms; they were enacting laws for the benefit of firefighters. There were no criminal penalties attached to this statute, but rather civil ones, to be enforced by a civil agency, not the criminal courts.

This historical analogue is remote, because it was a time, place and manner restriction which did not ban the possession of these items. *Id.* at 79-81. In fact, under this law, the layman could possess as much

black powder as he wished; he just had to store it in a specified manner. *Id.* Indeed, the law even acknowledged that civilians could possess, "Cannon, Swivels, Mortars, Howitzers, Cohorns, Fire-Arms, Bombs, Granades." Addendum pg. 94. If someone were to violate this law, they were subject to a civil lawsuit, with a damages cap of ten pounds, and forfeiture of the item, not arrest and prosecution. Addendum pg. 79-81.

In addition to the law regarding black powder storage, the State of New York enacted a law prohibiting the firing of firearms "by drunken New Year's Eve revelers." 5 Colonial Laws of New York ch. 1501, pp 244-246 (1894). "And New York City banned, on penalty of a 20-shilling fine, the firing of guns (even in houses) for the three days surrounding New Year's Day." *District of Columbia v. Heller*, 554 U.S. 570, 684 (2008) (Breyer, J., Stevens, J., Souter, J., Ginsburg, J., dissenting). This law is not at all close to G.L. c. 269 § 10(m), because it regulated the discharging of firearms, "for the three days surrounding New Year's Day;" not the possession of an item covered by the Second Amendment. *Id.* The purpose of this law is clear; keeping drunken revelers at New

Years from discharging firearms, not outlawing the possession of them.

Another historical analogue which has been held to be sufficient, but not applicable here, is that of Maine's selectmen. *Capen v. Campbell*, 134 F.4<sup>th</sup> 660 (D. Mass). During the Nineteenth Century, selectman in Maine were authorized to enter buildings to search for black powder. 1821 Me. Laws 98, chap. 25 § 5. They could do so after obtaining a warrant. *Id.* When this matter was reviewed by the First Circuit Court of Appeals, it found the law to be analogous enough to affirm the LCM law being challenged. *Capen v. Campbell*, 134 F.4<sup>th</sup> 660 (1<sup>st</sup> Cir. 2025). The holding in *Capen* (1<sup>st</sup> Cir. 2025) notwithstanding, this law is not sufficiently analogous to support G.L. c. 269 § 10(m).

It is not analogous enough for several reasons. First, it did not ban the possession of black powder. It may have imposed limitations on how much you could own, how you could store it and permitted the selectman to obtain a warrant to search your residence for black powder, but it did not ban its possession, nor its transportation. 1821 Me. Laws 98, chap. 25 § 5. Second, you were permitted to use it, carry it with you, and purchase it without any permits. *Id.* Third,

the penalties for violating these laws, were a forfeiture of the black powder and a fine of \$20.00-\$100.00. This is quite different from G.L. c. 269 § 10(m) imposing mandatory jail time, not forfeiture and a fine.

Another law which is commonly cited in support of LCM bans comes from Seventeenth Century New Jersey. "No person ... shall presume to wear any pocket pistol, skeines, stilladoes, daggers or dirks, or other unusual or unlawful weapons within this Province." *An Act against wearing Swords, &c.*, Ch. IX (1686), *printed in* The Grants, Concessions, and Original Constitutions of the Province of New Jersey (1881). This statute, while seemingly analogous, should still be discarded and not used to support G.L. c. 269 § 10(m). First, it existed more than one hundred years before the Second Amendment was enacted. Second, it is from a time when the British still ruled America and so enacted laws our court would find repugnant. Given that Massachusetts revolted against the British for, inter alia, arms regulations, it is hard to believe our ancestors would have accepted this law. "Are we at last brought to such a humiliating and debasing degradation, that we cannot be trusted with arms for

our own defense? Where is the difference between having our arms in our possession and under our own direction, and having them under the management of Congress?" Patrick Henry, Speech of March 23, 1775, Second Virginia Convention.

When the penalties are considered, as they must be, it becomes clearer that this law has no historical analogue. The penalty must be considered, because it is, "another relevant aspect of the burden," that the Commonwealth must carry. *United States v. Rahimi*, 602 U.S. 680, 699 (2024). G.L. c. 269 § 10(m) imposes a penalty of 2.5 to 10 years in a state penitentiary. This is in stark contrast to the fines and civil asset forfeiture that our ancestors tolerated.

Even if an item is covered by the Second Amendment, it can still be regulated or banned. "Some jurisdictions banned the carrying of "dangerous and unusual weapons.'" *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008). It is true that an item covered by the Second Amendment can still be banned if it is both "dangerous and unusual." *Id.* If the item does not satisfy both parts of the test however, it cannot. "A weapon may not be banned unless it is *both* dangerous and unusual." *Caetano v. Massachusetts*, 577 U.S. 411,

417 (2016)[emphasis in original]. As discussed throughout this brief, LCMs are not unusual, and so whether they are dangerous is irrelevant. *Caetano v. Massachusetts*, 577 U.S. 411 (2016). Given that LCMs do not satisfy both prongs of the test, this exception to the Second Amendment does not support the Commonwealth here.

“From the earliest days of the common law, firearm regulations have included provisions barring people from misusing weapons to harm or menace others.” *United States v. Rahimi*, 602 U.S. 680, 694 (2024). “The act of “go[ing] armed to terrify the King’s subjects” was recognized at common law as a “great offence.” *Id.* citing *Sir John Knight’s Case*, 3 Mod. 117, 118, 87 Eng. Rep. 75, 76 (K. B. 1686). This statute from the common law period is also of no assistance to the Commonwealth. It is of no assistance to the Commonwealth, because it is a specific intent crime aimed at preventing the public from become terrified at the sight of an individual brandishing weapons; not the denial of possessing or transporting them. Here, G.L. c. 269 § 10(m) is not aimed at preventing the populace from becoming terrified; it is aimed at barring the possession of LCMs unless one

complies with G.L. c. 140 § 131M and it is quite old. As such, this law from the common law period, nearly one hundred years before the Second Amendment, from another country, is of no assistance to the Commonwealth.

Another historical law utilized by the Court in *Rahimi* permitted the confiscation of arms from those deemed a threat to public safety. "In the aftermath of the Reformation and the English Civil War, Parliament passed further restrictions. The Militia Act of 1662, for example, authorized the King's agents to "seize all Armes in the custody or possession of any person ... judge[d] dangerous to the Peace of the Kingdome. 14 Car. 2 c. 3, § 13 (1662). This law is of no assistance to the Commonwealth, because: 1) it is already well settled that disarming threats to public safety does not violate the Second Amendment, 2) the issues at hand do not involve that scenario and 3) it does not come close to being analogous to G.L. c. 269 § 10(m). It is not analogous because G.L. c. 269 § 10(m) impacts the right of the law-abiding individual to possess an LCM. It is not about the disarming of threats to public safety. This is a far cry from the modern statute, G.L. c. 269 § 10(m), which imposes

stiff criminal penalties for possession of a LCM unless licensed, and it was manufactured before September 13, 1994. G.L. c. 140 § 131M.

The often-cited statutes are of no support to the Commonwealth, because they are not analogous to the modern statutes. The Act of Mar. 1, 1783, imposed a maximum penalty of civil asset forfeiture and a fine. Furthermore, it makes clear that cannons and hand grenades were permissible, whereas the modern statutes ban possession of an LCM entirely. Our ancestors tolerated the Maine Statute, because it required a warrant before a search could occur. Given that our ancestors did not bar the possession of cannons and hand grenades, items capable of at least as much damage as LCMS, if not more, the Second Amendment covers the possession of LCMS.

The Court in *Bruen*, instructed all courts that just because these laws have been on the books for a few decades, does not mean they should be upheld. "Courts should not "uphold every modern law that remotely resembles a historical analogue," because doing so "risk[s] endorsing outliers that our ancestors would never have accepted." *NYSRPA v. Bruen*, 597 U.S. 1, 30 (2022). Given that our ancestors

permitted the possession of cannons and hand grenades, it strains credulity to believe they would have accepted a law such as G.L. c. 269 § 10(m). We know they would not have accepted it, because there are no laws showing a historical tradition of such arms regulations.

**d. There is No History of Arms Regulations Similar to G.L. c. 269 § 10(m) to Address Mass Shootings.**

An oft cited reason for upholding LCM bans, is their utility during a mass shooting. *Capen v. Campbell*, 134 F.4<sup>th</sup> 660 (1<sup>st</sup> Cir. 2025); *Ocean State Tactical, LLC v. Rhode Island*, 95F.4<sup>th</sup> 38 (1<sup>st</sup> Cir. 2024). In each of these cases the First Circuit found that the challenged statute, “‘implicat[es] unprecedented societal concerns.’” *Capen v. Campbell* 134 F.4<sup>th</sup> 660, 668 (1<sup>st</sup> Cir. 2025). Because of this finding, they each found that LCM bans do not violate the Second Amendment. The Court in both of these cases, was incorrect.

The court was incorrect, because mass shootings are nothing new in American history. The Public Safety Office Support Act of 2022 defined a mass shooting as one with three or more fatalities. “The term ‘mass shooting’ means a multiple homicide incident in which

not fewer than 3 victims are killed - (i) with a firearm; (ii) during one event; and (iii) in one or more locations in close proximity." 34 U.S.C. 10281(o)(1)(C). The holdings in *Capen & Ocean State Tactical* were both premised, at least in part, on the laws being a response to an unprecedented public crisis; mass shootings. While Mass Shootings in America are not unprecedented, the challenged statute certainly is.

The first mass shooting, as defined by Federal Law, occurred in Frankfort, Kentucky on January 16, 1900. *The Register of the Kentucky Historical Society: Congressman David Grant Colson and the Tragedy of the Fourth Kentucky Volunteer Infantry*. Stephens, Thomas E. (200   ). Conversely, the first Federal firearm regulation addressing this problem, was not enacted until 1994. 18 USC § 922. Furthermore, Massachusetts did not first address this problem until 1996. G.L. c. 269 § 10(m).

A ninety-four- and ninety-six-year gap between the problem first occurring, and it first being addressed through legislation, is quite telling. It is telling, because it shows that this statute is one "our ancestors would never have accepted." *NYSRPA v.*

*Bruen*, 597 U.S. 1, 30 (2022). Because it was not enacted close in time to the Second or Fourteenth Amendments, and was not enacted until ninety-six-years after the first emergence of mass shootings, the Court must guard, "against giving postenactment history more weight than it can rightly bear." *NYSPRA v. Bruen*, 597 U.S. 1, 83 (2022). Specifically, this Court should not use the, "more nuanced approach," the First Circuit did in prior cases. *Capen v. Campbell*, 134 F.4<sup>th</sup> 660, 665 (1<sup>st</sup> Cir.)(2025); *Ocean State Tactical, LLC v. Rhode Island*, 95F.4<sup>th</sup> 38 (1<sup>st</sup> Cir. 2024).

Admittedly, there were Federal laws regulating firearms before 1994, but they were not enacted in response to this problem. In 1934, Congress enacted the National Firearms Act. 26 U.S.C. § 5849. This act imposed a tax on the transfer of certain firearms, machine guns and the importation and transportation of them. It was not enacted to address the problem America is facing currently; it was enacted in the wake of gangland violence related to prohibition. *Gun Control: Constitutional Mandate or Myth?* Spitzer, Robert J. (2011). The 1938 Federal Firearms Act also impacted the Second Amendment, but not in the same manner as G.L. c. 269 § 10(m). Instead, it required

licensing and prohibited the transfer of firearms to certain classes of people. *Key Congressional Acts Related to Firearms*. In 1968, Congress prohibited the interstate trade in handguns and increased the minimum age for buying them, to twenty-one. *Omnibus Crime Control and Safe Streets Act of 1968*. None of these laws however, addressed the issue of mass shootings; they addressed and regulated far different issues.

For at least ninety-four years, America has been plagued by this problem, but did not address it. As a result, these statutes are the sort of post enactment legislation that *Bruen* cautioned against. Because America decided to wait until 1994 to begin enacting these laws, and Massachusetts waited until 1996, they come far too late and cannot stand. They cannot stand, because they fail the second prong of the *Bruen* test. They fail, because there is no historical tradition of laws similar to G.L. c. 269 § 10(m). As such, this Court should correct that which the First Circuit got wrong, find that LCMs are protected by the Second Amendment, and reverse the denial of the Appellant's motion to dismiss.

**e. Large Capacity Magazines are Not Unusual.**

The existence, and common use, of magazines with a capacity greater than ten rounds in America is both widespread and long standing. *The History of Firearm Magazines and Magazine Prohibitions*, pg. 851. In fact, the history of magazines capable of holding more than ten rounds is "older than the United States." *Id.* "The first known firearm that was able to fire more than ten rounds without reloading was a sixteen-shooter created around 1580." *Id.* at pg. 852. Beginning in 1862, a mere six years before the ratification of the Fourteenth Amendment, Detachable box magazines had become widespread. *Id.* The history of LCMs in America does not begin in 1862 though. Rather, it began nearly three-hundred years earlier.

"The first known firearm that was able to fire more than ten rounds without reloading was a sixteen-shooter created around 1580." *Id.* at pg. 852. For the next century, "multi-shot guns continued to develop ... with such guns first issued to the British Army in 1658." *Id.* The spread of firearms with magazines capable of holding more than ten rounds continued into the early Eighteenth Century. "One early design was the eleven-round "Defence Gun," patented by lawyer and

inventor James Puckle." *Id.* While many opponents of gun control assert that the Second Amendment only applies to Eighteenth and Nineteenth Century Technology, the Supreme Court found this to be, "bordering on the frivolous." *D.C. v. Heller*, 554 U.S. 570, 582 (2008). It bordered on the frivolous, because, "Second Amendment protections subsume more than just firearms." *Caetano v. Massachusetts*, 577 U.S. 411, 411-412 (2016).

Magazine capacity continued to grow as passage of the Second Amendment drew near. "At the time that the Second Amendment was being ratified, the state of the art for multi-shot guns was the Girandoni air rifle, with a twenty-two-shot magazine capacity. *Id.* While modern air rifles are quite low powered, this was not the case in the Eighteenth Century. Air rifles were actually equivalent to, and in some cases more powerful, than rifles utilizing powder. *John L. Plaster, the History of Sniping and Sharpshooting*. 69-70 (2008).

As the Nineteenth Century progressed, so too did the capacity of magazines. The, "Volcanic Repeating Arms Company, introduced the lever action rifle in 1855. This rifle came equipped with a tubular magazine

under the barrel, that held up to thirty rounds that was operated by manipulating a lever on the bottom of the stock. The lever-action allowed a shooter to quickly expel spent cartridges and ready the firearm for additional shots. An 1859 advertisement bragged that the guns could be loaded and fire thirty shots in less than a minute." *The History of Firearm Magazines and Magazine Prohibitions*, pg. 855. Firearms with these magazines were not limited in number. "There were over 720,000 copies of the Winchester 1873 made from 1873 to 1919." *Id.* pg. 855-856.

When the Evans Repeating Rifle was introduced, it had the largest magazine capacity to date. "The innovative rotary helical magazine in the buttstock held thirty-four rounds." *Id.* at 856. More than twelve-thousand such rifles were produced. *Id.*

Handguns with detachable magazines first entered the market in 1862. "The first handgun to use a detachable box magazine was the ten-round jarre harmonica pistol, patented in 1862." *Id.* This was six years before the Fourteenth Amendment was ratified. Thirty-Four years later the technology advanced again with the introduction of the C-96 Broomhandle pistol

with models that had a twenty round detachable box magazine. *Id.* at 857.

"In 1927, the Auto Ordinance Company introduced their semiautomatic rifle that used thirty-round magazines." *Id.* at 858-859. Moving forward another fifty years, Springfield Armory began producing the M1A semiautomatic rifle in 1974, with a twenty-round detachable box magazine. *Id.* at 860. LCMs were not limited to rifles though, as beginning in 1935, the Hi-Power Pistol was sold with a thirteen round detachable magazine. *Id.* at 861.

Based on the foregoing history, LCMs are not unusual. For the Commonwealth to prevail, it must demonstrate that LCMs are both dangerous *and* unusual. "A weapon may not be banned unless it is *both* dangerous *and* unusual." *Caetano v. Massachusetts*, 577 U.S. 411, 417 (2016)[emphasis in original]. A review of the States which have enacted legislation prohibiting, or at least restricting, LCMs, shows that they are not unusual at all.

A total of thirteen States, MA, VT, NY, RI, CT, NJ, DE, MD, IL, CO, CA, WA, have all enacted legislation restricting, or banning, LCMs. (G.L. c. 140 § 131M, G.L. c. 269 § 10(m)), (Vt.Stat.Ann.tit 13

§ 4021(c)(1)), (N.Y. Penal Law §§ 265.00(23)), (R.I. Gen. Laws § 11-47.1-3(a)), (Conn. Gen. Stat. § 53-202w(a)(1)), (N.J. Stat. Ann. § 2C:39-9h), (Del. Code Ann. tit. 11, § 1469(a)), (Md. Code Ann., Crim. Law § 4-305(b)), (720 ILCS 5/24-1.10), (Colo. Rev. Stat. § 18-12-302(1)(a)), (Cal. Penal Code § 32310), (RCW 9.41.370). Thirteen legislatures would not have gone to the trouble of enacting such laws, if LCMS were not commonly found in the United States.

Between the years of 1990 and 2021, approximately 963,000,000 firearm magazines entered the market. NSSF Report pg. 3. Of these, approximately 717,000,000 were LCMS. *Id.* This accounts for approximately 74% of all magazines entering the market. *Id.* Based on these numbers, an average of 23,129,032, new LCMS entered the market each and every year. The old ones in circulation were not removed they, thereby increasing the volume of LCMS in America, eventually making them not unusual.

In the United States, "43.3 percent of firearm owners reported owning a detachable magazine with a capacity of 11 rounds or more." *NSSF Report*, pg. 4. "These findings indicate that approximately 8.9 percent of the U.S. population owns a magazine holding

11 or more rounds." *Id.* Given that nearly one in ten Americans owns an LCM, they are clearly not unusual.

Given that LCMs are not unusual, the question of whether they are dangerous, is irrelevant. "A weapon may not be banned unless it is *both* dangerous *and* unusual." *Caetano v. Massachusetts*, 577 U.S. 411, 417 (2016)[emphasis in original].

As discussed *supra*, LCMs are protected by the Second Amendment, and there is no historical tradition of restricting or banning them. Furthermore, they are not unusual, and therefore not subject to the more nuanced approach used by the First Circuit. Therefore, this Court should reverse the denial of the Appellant's motion to dismiss.

**II. THIS COURT SHOULD FIND THAT G.L. c. 269 § 10(m) IS UNCONSTITUTIONAL ON ITS FACE AND REVERSE THE DENIAL OF THE APPELLANT'S MOTION TO DISMISS.**

**a. Standard of Review.**

When a facial challenge is made to a statute the "statute is presumed to be constitutional and every rational presumption in favor of the statute's validity is made." *Gillespie v. City of Northampton*, 460 Mass. 148, 152 (2011) citing *Pielech v. Massasoit Greyhound, Inc.*, 441 Mass. 188 (2004). "Consequently, a facial challenge ... requires a defendant to

'establish that no set of circumstances exist under which the [statute] would be valid." *Commonwealth v. Marquis*, 495 Mass. 434, 441-442 (2025) citing *United States v. Rahimi*, 602 U.S. 680, 693 (2024)

To do this, "the challenging party must demonstrate beyond a reasonable doubt that there are no "conceivable grounds" which could support its validity. *Leibovich v. Antonellis*, 410 Mass. 568, 576 (1991) citing *Zeller v. Cantu*, 395 Mass. 76 (1985). "For the Commonwealth to prevail, it "need only demonstrate" that the Commonwealth's nonresident firearm licensing scheme is compatible with the Second and Fourteenth Amendments "in some of its applications." " *Marquis* at 442 citing *United States v. Rahimi*, 602 U.S. 680, 693 (2024). "Conversely, the defendant shall prevail if and only if he demonstrates "that the law is unconstitutional in all of its applications." *Marquis* at 442 citing *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450-451 (2008). Finally, the statute is subject to heightened scrutiny because as the Court stated in *Heller*, the Second Amendment is at its strongest, its "most acute," when inside the home. *D.C. v. Heller*, 554 U.S. 570, 628 (2008).

**b. There are No Conceivable Grounds Which Support the Validity of G.L. c. 269 § 10(m).**

The denial of the Appellant's motion to dismiss should be reversed. It should be reversed, because there are no conceivable grounds that support G.L. c. 269 § 10(m)'s validity. There are no conceivable grounds which support its validity, because as discussed *supra*, it is inconsistent with this Nation's tradition of arms regulation. This inconsistency is what renders G.L. c. 269 § 10(m) facially invalid.

G.L. c. 269 § 10(m) violates the Second Amendment. As such, the Court is empowered to, and should, find G.L. c. 269 § 10(m) unconstitutional. *Marbury v. Madison*, 5 U.S. 137 (1803). While it may appear that *Marquis* controls, it does not. It does not, because *Marquis* addressed G.L. c. 269 § 10(a) and not G.L. c. 269 § 10(m). *Marquis* also addressed a New Hampshire resident who was charged with carrying a handgun in Massachusetts without a license on a public road. The instant action concerns a Massachusetts resident who possessed two LCMS in his residence. As such, the question of G.L. c. 269 § 10(m)'s validity has yet to be answered.

While it may appear that the holding in *Marquis* approved of all of the Commonwealth's firearm's licensing scheme, it does not. It does not, because the Court in *Marquis* reached only G.L. c. 269 § 10(a) in its analysis. "Because the motion judge allowed the defendant's motion to dismiss only with respect to the § 10(a) charge, our holding does not address G.L. c. 269 § 10(h)(1). *Marquis* at 438 n.4. Given that the Court went to the trouble of making clear the holding only applied to section 10(a), it clearly does not apply to section 10(m). Additionally, *Marquis's* challenge to the discretionary nature of licensing scheme, with suitability determination, is pending Certiorari with the Supreme Court.

Because it is inconsistent with this Nation's history of arms regulations, G.L. c. 26 § 10(m) is not valid under any circumstances. "To succeed on a facial challenge, the defendant must "establish 'that no set of circumstances exist under which [the statute] would be valid'" *Chief of Police of Worcester v. Holden*, 470 Mass. 845, 860 (2015). It is true that the Court in *Bruen* said that arms regulations are permissible under the Second Amendment. However, it also said that to be permissible, there must be a historical tradition of

such regulations. *NYSRPA v. Bruen*, 597 U.S. 1 (2022). Absent a historical tradition to support G.L. c. 269 § 10(m), which as detailed *supra* there is not, the statute is not valid under any circumstances.

Furthermore, even under the, the “why” and “how” of the *Bruen* analysis, G.L. c. 269 § 10(m) is invalid. “At this stage of the analysis, the United States Supreme Court has “point[ed] toward at least two metrics: how and why the regulations burden a law-abiding citizen’s right to armed self-defense.” *Marquis* at 451.

Step one. The why of G.L. c. 269 § 10(m). “The “why” inquiry requires us first to articulate the purpose of,” the statute. *Id.* at 451. We must then, “ask “if laws at the founding regulated firearm use to address particular problems,” as “that will be a strong indicator that contemporary laws imposing similar restrictions for similar reasons fall within a permissible category of regulations.”” *United States v. Rahimi*, 602 U.S. 680, 692 (2025).

The purpose of G.L. c. 269 § 10(m), is to create a licensing scheme for possession of LCMs. “Notwithstanding the provisions of paragraph (a) or (h), any person not exempted by statute who knowingly has

in his possession, or knowingly has under his control in a vehicle, a ... large capacity feeding device therefor who does not possess a valid license to carry firearms issued under section 131 or 131F of chapter 140, except as permitted or otherwise provided under this section or chapter 140." G.L. c. 269 § 10(m). While licensing schemes are generally permissible under *Bruen*, this one is not. It is not, because, as detailed *supra*, there is no historical tradition of arms regulation similar to this law. This lack of even a remote historical analogue is what invalidates it.

Step two. "Licensing schemes of one form or another have been used to regulate firearm use and possession in this country at least since the Nineteenth Century." *Commonwealth v. Marquis*, 495 Mass. 434, 455 (2025). Although not all licensing schemes are created equally. *Marquis* at 454. There is obviously a difference between permissible and impermissible licensing schemes. Here, the licensing scheme is impermissible, because there is no history of regulating LCMs. This means that the statute regulating them cannot stand. While the licensing scheme may appear to be a minor burden, it is still an impermissible one. It is impermissible because no

historical tradition of similar laws exist to support it.

"As a general matter, the United States Supreme Court has cautioned that facial challenges are "disfavored" because they "often rest on speculation" and "threaten to short circuit the democratic process." *Marquis* at 441 citing *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008). Despite the fact that facial validity challenges are disfavored, considered speculative, and intrusive on the legislative domain, that is not the situation here. It is not the situation here, because there is nothing speculative about the fact that this statute is facially invalid. Furthermore, it is not intrusive on the legislative domain, because it is the duty of the Court to strike down any law which violates the Constitution. *Marbury v. Madison*, 5 U.S. 137 (1803). For this same reason, it would not be a short circuit of the democratic process to rule against the statute's validity.

The Commonwealth is unable to prevail, because it cannot show that any application of this statute is valid. For the Commonwealth to prevail, it need only show that, "any application is valid." *Commonwealth v.*

*Donnell*, 495 Mass. 471, 479 (2025). That is an impossibility for the Commonwealth, because as discussed above, the statute is unconstitutional. It is unconstitutional for want of an analogous historical tradition of similar laws. Because of the lack of conceivable grounds to support it, it cannot possibly have any valid application.

### **III. THIS APPEAL IS NOT MOOT**

#### **a. Standard of Review.**

For a party to obtain relief from a court, there must be an active controversy between the parties. "Litigation is considered moot when the party who claimed to be aggrieved ceases to have a personal stake in its outcome." *Blake v. Massachusetts Parole Bd.*, 369 Mass. 701, 702 (1976). A party no longer has a personal stake in a case, "where a court can order 'no further effective relief.'" *City of Lynn v. Murrell*, 489 Mass. 579, 916 (2022). This is done to ensure positions are adequately represented, the legislative domain is respected and judicial economy is preserved. *Lockhart v. Attorney General*, 390 Mass. 780 (1984).

To make the determination whether an issue is moot, the court considers, "whether "(1) the issue was fully

argued on both sides; (2) the question was certain, or at least very likely, to arise again in similar factual circumstances; (3) ... appellate review could not be obtained before the recurring question would again be **moot**; and (4) most importantly, the issue was of public importance. *City of Lynn v. Murrell*, 489 Mass. 579, 583 (2022)(emphasis in original).

Even if the issue is moot, a Court can still hear these issues. "Despite the "general rule" that we will not decide cases that have become moot ... mootness differs from other doctrines of justiciability in that it is "'a factor affecting [the court's] discretion, not its power,' to decide a case. *Id.* at 583 This is because it is always, "within our discretion to answer a question which, because of the circumstances, is no longer important to the parties." *Lockhart v. Attorney General*, 390 Mass. 780, 782 (1984).

**b. This Appeal is Not Moot.**

While it may seem on the surface that this appeal is moot, it is not. It is not, because the Appellant's case does not satisfy the requirements for mootness to apply. Because of this, this Court should hear this Appeal.

There exists between the parties a concrete dispute, which was "fully argued on both sides." *Murrell* at 583. It was fully argued on both sides in the trial court on November 27, 2024. R.A. 5. Each side was represented by counsel, and had an opportunity to present their arguments to the court, and were provided the opportunity to file written pleadings. As such, the issue has been fully argued and so the first factor is satisfied.

This particular issue is very likely, if not certain, to arise again in similar factual circumstances. G.L. c. 269 § 10(m) does not appear likely to be struck by the legislature. Individuals will likely be charged with violating this statute again in the future. Some may go to trial; others may take a plea similar to the Appellant's. Either way, this issue is going to come back and will need to be answered eventually. It certainly serves the interests of judicial economy to have this dispute resolved sooner, rather than later.

This particular issue might have difficulty satisfying the third prong, because of the of the law; people will continue to be charged, so the issue will likely recur. However, this does not mean that the

Court is unable to address these issues. This is because this Court does have discretion over the types of cases that it hears. *Lockhart v. Attorney General*, 390 Mass. 780 (1984). Because it has discretion, it can certainly exercise it and hear this appeal, due to the important public policy interests in play.

The most important factor used to determine whether an issue is moot, is the fourth and final one. "Most importantly, the issue was of public importance." *Murrell* at 583. The topic of LCMs is of great importance to the public and their interests. Across the country, courts are repeatedly being asked to decide this very issue. The First Circuit addressed it twice in recent months, and reached a conclusion which is at odds with multiple other courts. This Court now has the opportunity to address this particular issue and make a clear ruling; such an opportunity should not be wasted.

Simply put, there is a factually concrete dispute because the Appellant was charged for violating G.L. c. 269 § 10(m). R.A. 3. As a result of being charged with violating this statute, the Appellant admitted sufficient facts to a lesser included offense. R.A. 27. While the charges were amended down, this does not

render the case moot. It does not render it moot, because but for the original charges issuing, the Appellant would not have entered into the plea that he did. Finally, the issue was fully argued by both sides in the trial court.

As there is still an "actual controversy" between the parties, this is not a hypothetical dispute, the resolution of which would infringe on the legislature's domain. *Matter of Sturtz*, 410 Mass. 58, (1991). Furthermore, this is not an insubstantial controversy that should not be litigated. It is a controversy in an ever-changing area of the law, which will surely arise again, and so the controversy should be resolved now. This would ensure that future cases have a clear answer as to this question. As such this Court should hear this case.

#### **CONCLUSION**

The possession of Large Capacity Magazines is covered by the Second Amendment. Furthermore, they are not unusual such that the holding in *Canjura* is applicable here. Additionally, G.L. c. 269 § 10(m) is unconstitutional on its face. Finally, this appeal is not moot. Therefore, this Honorable Court should hear this appeal, reverse the denial of the Appellant's

motion to dismiss, permit him to withdraw his  
admission to sufficient facts, and all other relief  
this Honorable Court shall deem just and proper.

Respectfully submitted,  
The Appellant,  
By his attorney,

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**ADDENDUM**

**TABLE OF CONTENTS:**

Decision on Appellant’s Motion to Dismiss.....-58-

U.S. Const. Amend. II.....-62-

U.S. Const. Amend. XIV § 1.....-63-

G.L. c. 140 § 131 (1998).....-64-

G.L. c. 140 § 131 (2024).....-65-

G.L. c. 269 § 10 (1996).....-66-

G.L. c. 269 § 10(m) (2022).....-74-

18 USC § 922 (1994)(b)(w)(1)(until 10/25/2004)....-76-

18 USC § 922 (2004).....-77-

34 U.S.C. 10281(o)(1)(C).....-93-

Act of Mar. 1, 1783, 1782 Mass. Acts 218, 218-19  
(Benjamin Edes & Sons 1783).....-94-

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

DISTRICT COURT DEPARTMENT  
WINCHENDON DIVISION  
DOCKET NO.: 2470CR00083

COMMONWEALTH  
Plaintiff

v.

DECISION ON THE DEFENDANT'S  
MOTION TO DISMISS

BRYCE SCOTT SHUFELT  
Defendant

On November 1, 2024, this Court held a hearing concerning Defendant's Motion to Dismiss. The Court finds the following Statement of Facts, Rulings of Law, and Order:

**1. Statement of Facts**

On Thursday, February 22, 2024, the Templeton Police Detective received an email from Officer Anthony Webb ("Officer") of the Gardner P.D. Officer who informed the Detective, that on February 10, 2024, he had seized two illegal items. The Detective went to the Gardner Police Department and retrieved these items which included a 15 round Glock Magazine and a 31 round Glock Magazine. The Detective returned to the Templeton Police Department with these items and requested that the Defendant be summonsed to appear on two charges of possession of a large capacity feeding device. The Defendant was arraigned on March 15, 2024.

**2. Legal Analysis**

A. *"As Applied" Challenge Concerning the Constitutionality Possessing a Large Capacity Firearm and Not Possessing a Valid Class A or B License to Carry G.L.c. 269§10(m) and Issued Under G.L.c. 140§ 131 or 131F is Not Appropriate as a Pre Trial Motion.*

The Defendant is precluded from claiming the constitutional validity of Massachusetts General Laws Chapter 269, Section 10(m). The as-applied challenge is not appropriate for a pretrial motion to dismiss but is reserved for a motion for a required finding of not guilty, or if denied, is an issue of fact for the jury. Whether or not the Commonwealth has proven that the Defendant had a valid license is an element - which is clearly an issue of fact and not one to be determined in a motion to dismiss.

A "challenge to the constitutionality of a statute as applied should be preserved in a motion for a required finding of not guilty under Mass. R. Crim. P. 25." *Commonwealth v.*

*Marshall*, 65 Mass. App. Ct. 710, 717 (2006), quoting *Commonwealth v. Oakes*, 407 Mass. 92, 94 (1990). An as-applied challenge may be preserved in a motion for a required finding of not guilty after the Commonwealth has presented its evidence. *Commonwealth v. Figueroa*, 83 Mass. App. Ct. 251, 266 (2013), citing *Commonwealth v. Jasmin*, 396 Mass. 653, 655 (1986).

*Commonwealth v. Harris*, 481 Mass. 767, 771 (2019): “[I]hose who do not apply for a Massachusetts firearm license are not entitled to assert as-applied challenges to the licensing laws because they cannot demonstrate that they sought, and were denied, a Massachusetts firearm license. See *Commonwealth v. Johnson*, 461 Mass. 44, 58, 958 N.E.2d 25 (2011).

The defendant gave no indication that he had applied for a Massachusetts firearm license. Nor has he argued that applying for a license would have been futile. See *Hamilton v. Pallozzi*, 848 F.3d 614, 620-621 (4th Cir.), cert. denied, 138 S. Ct. 500, 199 L. Ed. 2d 384 (2017). Therefore, he would not have been able to proceed on an as-applied challenge. See *Commonwealth v. Cassidy*, 479 Mass. 527, 539 n.10 cert. denied, 139 S. Ct. 276 (2018); *Commonwealth v. Allen*, 474 Mass. 162, 174 (2016); *Commonwealth v. Powell*, 459 Mass. 572, 590 (2011), cert. denied, 565 U.S. 1262 (2012).

The decision in *Commonwealth v. Guardado*, 491 Mass. 666, 690 (2023) placed the burden on the Commonwealth to prove that the defendant was not licensed, the issue is clearly one for the jury and/or a judge at the required finding stage. Whether or not the Defendant is properly licensed or has an exemption to the licensing requirement is to be determined at trial appropriate for a motion to dismiss pleading.

## II. *The Defendant’s Facial Challenge to The Constitutionality Of Massachusetts General Laws Chapter 269, Section 10(m) Are Presumed Constitutional.*

With respect to the defendant’s facial challenge to the constitutionality of the statutes, “[a] facial challenge to the constitutional validity of a statute is the weakest form of challenge, and the one that is the least likely to succeed.” *Blixt v. Blixt*, 437 Mass. 649, 652 (2002), citing *United States v. Salerno*, 481 U.S. 739, 745 (1987). “A statute so questioned is presumed constitutional.” *Id.* “A court may interpret a statute to set forth considerations to clarify and specify, and, where necessary, to narrow, the statute’s terms in order that it may be held constitutional.” *Id.*, citations omitted. “A facial challenge is an attack on a statute itself as opposed to a particular application.” *Commonwealth v. Harris*, 481 Mass. 767, 771-772 (2019), quoting *Los Angeles v. Patel*, 135 S.Ct. 2443, 2449 (2015).

Such challenges “are disfavored” because they “run contrary to the fundamental principle of judicial restraint” and “threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution” (citation omitted). *Harris*, 481 Mass. at 772 (2019), citing *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450-451, (2008). “For his facial attack to succeed [the Defendant] ‘would have to establish that no set of circumstances exists under which [the challenged licensing scheme] would be valid,’ [*Salerno*, 481 U.S. at 745], or that the statute lacks any ‘plainly legitimate sweep,’ [*Washington v. Glucksberg*, 521 U.S. 702,

740 n. 7 (1997)]” *Id.*, quoting *United States v. Stevens*, 559 U.S. 460, 472 (2010). *Id.* at 771-772 (noting that question of which standard controls is unresolved and applying both).

Because the Defendant is limited to mounting a facial challenge to the constitutionality of the statutory scheme, the Defendant’s argument, if accepted, would appear to invalidate not only his prosecution for the specified charges, but any prosecution of a resident unlicensed in Massachusetts, regardless of individual circumstances.

A facial challenge to a legislative act is and the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid. *United States v. Salerno*. 481 U.S. 739, 745 (1987). In Massachusetts, the licensing requirements in G.L.c. 140, s 131(d) (effective August 10, 2022) may be valid as applied to many other situations.

This statute is *Buen-* compliant as it is “designed to ensure only that those bearing arms in the jurisdiction are, in fact, ‘law-abiding, responsible citizens.’ The statute appears to contain only narrow, objective, and definite standards guiding licensing officials, rather than requiring the appraisal of facts, the exercise of judgment, and the formation of an opinion.” *Bruen* 142 S. Ct. at 2138 (shall-issue regimes...often require applicants to undergo a background check or pass a firearms safety course).

“[T]he right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose....Nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings...” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111, 2162 (2022) (Kavanaugh, J., concurring), quoting *District of Columbia v. Heller*, 554 U.S. 570, 536 (2008). *Chief of Police of the City of Worcester v. Holden*. 470 Mass. 845, 860 (2015).

“Every court to have expressly considered the issue” has rejected the applicability of the overbreadth doctrine in the context of the Second Amendment (citations omitted). *Hightower v. Boston* 693 F.3d 61, 81-83 (1<sup>st</sup> cir. 2012).

### *III. The Holding in Canjura is Not Applicable in This Case.*

In the Supreme Judicial Court decision of *Commonwealth v. Canjura* SJC 13432 (2024) the Court applied the two-part analytical framework of *New York State Rifle and Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). The Court held first that a switchblade is an “arm” under the plain text of the Second Amendment, and second that the Commonwealth did not meet its burden of identifying analogous regulations of switchblade knives in place at the time of the country’s founding or the ratification of the Fourteenth Amendment. Slip op. at 6-13. The Court also held that switchblade knives are in “common use” today and are not considered “dangerous and unusual,” while noting that the Supreme Court has not clarified how the “common use” standard fits within *Bruen*’s two-part framework. Slip op. at 14-15, 14 n.10. Accordingly, the Court

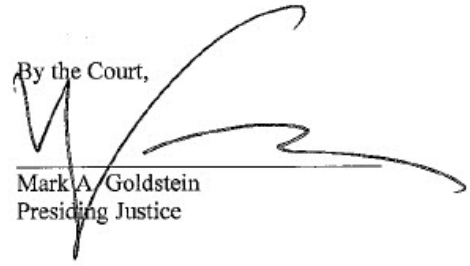
invalidated the prohibition against carrying a switchblade knives in §10(b). Slip op. at 18 & n.14. The Court declined to opine on the constitutionality of the prohibitions on any of the other weapons contained in § 10(b). Slip Op at 18 n.14. As a result of this narrow decision, this Court does not equate the possession of a switchblade to that of a firearm.

**Order**

Based upon the review of the pleadings and the evidence and the law, the Court **DENIES** the Defendant's Motion to Dismiss.

Dated: December 9, 2024

By the Court,



Mark A. Goldstein  
Presiding Justice

**U.S. Constitution Amendment II**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

**U.S. Constitution Amendment XIV § I**

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**G.L. c. 140 § 131 (1998)**

Section 131M. No person shall sell, offer for sale, transfer or possess an assault weapon or a large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994. Whoever not being licensed under the provisions of section 122 violates the provisions of this section shall be punished, for a first offense, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment, and for a second offense, by a fine of not less than \$5,000 nor more than \$15,000 or by imprisonment for not less than five years nor more than 15 years, or by both such fine and imprisonment.

The provisions of this section shall not apply to: (i) the possession by a law enforcement officer for purposes of law enforcement; or (ii) the possession by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving such a weapon or feeding device from such agency upon retirement.

**G.L. c. 140 § 131 (1998) (In effect until  
October 2, 2024)**

Section 131M. No person shall sell, offer for sale, transfer or possess an assault weapon or a large capacity feeding device that was not otherwise lawfully possessed on September 13, 1994. Whoever not being licensed under the provisions of section 122 violates the provisions of this section shall be punished, for a first offense, by a fine of not less than \$1,000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment, and for a second offense, by a fine of not less than \$5,000 nor more than \$15,000 or by imprisonment for not less than five years nor more than 15 years, or by both such fine and imprisonment.

The provisions of this section shall not apply to: (i) the possession by a law enforcement officer; or (ii) the possession by an individual who is retired from service with a law enforcement agency and is not otherwise prohibited from receiving such a weapon or feeding device from such agency upon retirement.

**G.L. c. 269 § 10 (1996)**

(a) Whoever, except as provided or exempted by statute, knowingly has in his possession; or knowingly has under his control in a vehicle; a firearm, loaded or unloaded, as defined in section one hundred and twenty-one of chapter one hundred and forty without either:

(1) being present in or on his residence or place of business; or

(2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or

(3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or

(4) having complied with the provisions of sections one hundred and twenty-nine C and one hundred and thirty-one G of chapter one hundred and forty; or

(5) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B; and whoever knowingly has in his possession; or knowingly has under control in a vehicle; a rifle or shotgun, loaded or unloaded, without either:

- (1) being present in or on his residence or place of business; or
- (2) having in effect a license to carry firearms issued under section one hundred and thirty-one of chapter one hundred and forty; or
- (3) having in effect a license to carry firearms issued under section one hundred and thirty-one F of chapter one hundred and forty; or
- (4) having in effect a firearms identification card issued under section one hundred and twenty-nine B of chapter one hundred and forty; or
- (5) having complied with the requirements imposed by section one hundred and twenty-nine C of chapter one hundred and forty upon ownership or possession of rifles and shotguns; or
- (6) having complied as to possession of an air rifle or BB gun with the requirements imposed by section twelve B; shall be punished by imprisonment in the state prison for not less than two and one-half years nor more than five years, or for not less than one year nor more than two and one-half years in a jail or house of correction. The sentence imposed on such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this

subsection be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served one year of such sentence; provided, however, that the commissioner of correction may on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to an offender committed under this subsection a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of a relative; to visit a critically ill relative; or to obtain emergency medical or psychiatric service unavailable at said institution. Prosecutions commenced under this subsection shall neither be continued without a finding nor placed on file. No person having in effect a license to carry firearms for any purpose, issued under section one hundred and thirty-one or section one hundred and thirty-one F of chapter one hundred and forty shall be deemed to be in violation of this section. The provisions of section eighty-seven of chapter two hundred and seventy-six shall not apply to any person seventeen years of age or older, charged with a violation of this subsection, or to any child between

ages fourteen and seventeen so charged, if the court is of the opinion that the interests of the public require that he should be tried as an adult for such offense instead of being dealt with as a child.

The provisions of this subsection shall not affect the licensing requirements of section one hundred and twenty-nine C of chapter one hundred and forty which require every person not otherwise duly licensed or exempted to have been issued a firearms identification card in order to possess a firearm, rifle or shotgun in his residence or place of business.

(b) Whoever, except as provided by law, carries on his person, or carries on his person or under his control in a vehicle, any stiletto, dagger, or a device or case which enables a knife with a locking blade to be drawn at a locked position, any ballistic knife, or any knife with a detachable blade capable of being propelled by any mechanism, dirk knife, any knife having a double-edged blade, or a switch knife, or any knife having an automatic spring release device by which the blade is released from the handle, having a blade of over one and one-half inches, or a slung shot, blowgun, blackjack, metallic knuckles or knuckles of any substance which could be put to the

same use with the same or similar effect as metallic knuckles, nunchaku, zoobow, also known as klackers or kung fu sticks, or any similar weapon consisting of two sticks of wood, plastic or metal connected at one end by a length of rope, chain, wire or leather, a shuriken or any similar pointed starlike object intended to injure a person when thrown, or any armband, made with leather which has metallic spikes, points or studs or any similar device made from any other substance or a cestus or similar material weighted with metal or other substance and worn on the hand, or a manrikigusari or similar length of chain having weighted ends; or whoever, when arrested upon a warrant for an alleged crime, or when arrested while committing a breach or disturbance of the public peace, is armed with or has on his person, or has on his person or under his control in a vehicle, a billy or other dangerous weapon other than those herein mentioned and those mentioned in paragraph (a), shall be punished by imprisonment for not less than two and one-half years nor more than five years in the state prison, or for not less than six months nor more than two and one-half years in a jail or house of correction, except that, if the court finds that the

defendant has not been previously convicted of a felony, he may be punished by a fine of not more than fifty dollars or by imprisonment for not more than two and one-half years in a jail or house of correction.

(c) Whoever, except as provided by law, possesses a machine gun, as defined in section one hundred and twenty-one of chapter one hundred and forty, without permission under section one hundred and thirty-one of said chapter one hundred and forty; or whoever owns, possesses or carries on his person, or carries on his person or under his control in a vehicle, a sawed-off shotgun, as defined in said section one hundred and twenty-one of said chapter one hundred and forty, without being the holder of a valid license to carry firearms issued in accordance with the provisions of said section one hundred and thirty-one of said chapter one hundred and forty, shall be punished by imprisonment in the state prison for life, or for any term of years provided that any sentence imposed under the provisions of this paragraph shall be subject to the minimum requirements of paragraph (a).

(d) Whoever, after having been convicted of any of the offenses set forth in paragraph (a), (b) or (c) commits a like offense or any other of the said

offenses, shall be punished by imprisonment in the state prison for not less than five years nor more than seven years; for a third such offense, by imprisonment in the state prison for not less than seven years nor more than ten years; and for a fourth such offense, by imprisonment in the state prison for not less than ten years nor more than fifteen years. The sentence imposed upon a person, who after a conviction of an offense under paragraph (a), (b) or (c) commits the same or a like offense, shall not be suspended, nor shall any person so sentenced be eligible for probation or receive any deduction from his sentence for good conduct.

(e) Upon conviction of a violation of this section, the firearm or other article shall, unless otherwise ordered by the court, be confiscated by the commonwealth. The firearm or article so confiscated shall, by the authority of the written order of the court be forwarded by common carrier to the commissioner of public safety, who, upon receipt of the same, shall notify said court or justice thereof. Said commissioner may sell or destroy the same, except that any firearm which may not be lawfully sold in the commonwealth shall be destroyed, and in the case of a

sale, after paying the cost of forwarding the article, shall pay over the net proceeds to the commonwealth.

(f) The court shall, if the firearm or other article was lost by or stolen from the person lawfully in possession of it, order its return to such person.

(g) Whoever, within this commonwealth, produces for sale, delivers or causes to be delivered, orders for delivery, sells or offers for sale, or fails to keep records regarding, any rifle or shotgun without complying with the requirement of a serial number, as provided in section one hundred and twenty-nine B of chapter one hundred and forty, shall for the first offense be punished by confinement in a jail or house of correction for not more than two and one-half years, or by a fine of not more than five hundred dollars.

**G.L. c. 269 § 10(m) (In effect until October 2, 2024)**

(m) Notwithstanding the provisions of paragraph (a) or (h), any person not exempted by statute who knowingly has in his possession, or knowingly has under his control in a vehicle, a large capacity weapon or large capacity feeding device therefor who does not possess a valid license to carry firearms issued under section 131 or 131F of chapter 140, except as permitted or otherwise provided under this section or chapter 140, shall be punished by imprisonment in a state prison for not less than two and one-half years nor more than ten years. The possession of a valid firearm identification card issued under section 129B shall not be a defense for a violation of this subsection; provided, however, that any such person charged with violating this paragraph and holding a valid firearm identification card shall not be subject to any mandatory minimum sentence imposed by this paragraph. The sentence imposed upon such person shall not be reduced to less than one year, nor suspended, nor shall any person convicted under this subsection be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct until he shall have served such minimum term

of such sentence; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent or other person in charge of a correctional institution or the administrator of a county correctional institution, grant to such offender a temporary release in the custody of an officer of such institution for the following purposes only: (i) to attend the funeral of a spouse or next of kin; (ii) to visit a critically ill close relative or spouse; or (iii) to obtain emergency medical services unavailable at such institution. Prosecutions commenced under this subsection shall neither be continued without a finding nor placed on file. The provisions of section 87 of chapter 276 relative to the power of the court to place certain offenders on probation shall not apply to any person 18 years of age or over charged with a violation of this section.

**18 USC § 922 (1994)(b)(w)(1)(1994)**

(w)(1) Except as provided in paragraph (2), it shall be unlawful for a person to transfer or possess a large capacity ammunition feeding device.

(2) Paragraph (1) shall not apply to the possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed on or before the date of the enactment of this subsection.

18 USC § 922 (2004)

(a) It shall be unlawful--

(1) for any person--

(A) except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce; or

(B) except a licensed importer or licensed manufacturer, to engage in the business of importing or manufacturing ammunition, or in the course of such business, to ship, transport, or receive any ammunition in interstate or foreign commerce;

(2) for any importer, manufacturer, dealer, or collector licensed under the provisions of this chapter to ship or transport in interstate or foreign commerce any firearm to any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, except that--

(A) this paragraph and subsection (b)(3) shall not be held to preclude a licensed importer, licensed manufacturer, licensed dealer, or licensed collector from returning a firearm or replacement firearm of the

same kind and type to a person from whom it was received; and this paragraph shall not be held to preclude an individual from mailing a firearm owned in compliance with Federal, State, and local law to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector;

(B) this paragraph shall not be held to preclude a licensed importer, licensed manufacturer, or licensed dealer from depositing a firearm for conveyance in the mails to any officer, employee, agent, or watchman who, pursuant to the provisions of section 1715 of this title, is eligible to receive through the mails pistols, revolvers, and other firearms capable of being concealed on the person, for use in connection with his official duty; and

(C) nothing in this paragraph shall be construed as applying in any manner in the District of Columbia, the Commonwealth of Puerto Rico, or any possession of the United States differently than it would apply if the District of Columbia, the Commonwealth of Puerto Rico, or the possession were in fact a State of the United States;

(3) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed

collector to transport into or receive in the State where he resides (or if the person is a corporation or other business entity, the State where it maintains a place of business) any firearm purchased or otherwise obtained by such person outside that State, except that this paragraph (A) shall not preclude any person who lawfully acquires a firearm by bequest or intestate succession in a State other than his State of residence from transporting the firearm into or receiving it in that State, if it is lawful for such person to purchase or possess such firearm in that State, (B) shall not apply to the transportation or receipt of a firearm obtained in conformity with subsection (b)(3) of this section, and (C) shall not apply to the transportation of any firearm acquired in any State prior to the effective date of this chapter;

(4) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, to transport in interstate or foreign commerce any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the

Attorney General consistent with public safety and necessity;

(5) for any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) to transfer, sell, trade, give, transport, or deliver any firearm to any person (other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector) who the transferor knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the transferor resides; except that this paragraph shall not apply to (A) the transfer, transportation, or delivery of a firearm made to carry out a bequest of a firearm to, or an acquisition by intestate succession of a firearm by, a person who is permitted to acquire or possess a firearm under the laws of the State of his residence, and (B) the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(6) for any person in connection with the acquisition or attempted acquisition of any firearm or ammunition from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, knowingly to

make any false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, intended or likely to deceive such importer, manufacturer, dealer, or collector with respect to any fact material to the lawfulness of the sale or other disposition of such firearm or ammunition under the provisions of this chapter;

(7) for any person to manufacture or import armor piercing ammunition, except that this paragraph shall not apply to--

(A) the manufacture or importation of such ammunition for the use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof;

(B) the manufacture of such ammunition for the purpose of exportation; and

(C) any manufacture or importation for the purposes of testing or experimentation authorized by the Attorney General;

(8) for any manufacturer or importer to sell or deliver armor piercing ammunition, except that this paragraph shall not apply to--

(A) the sale or delivery by a manufacturer or importer of such ammunition for use of the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof;

(B) the sale or delivery by a manufacturer or importer of such ammunition for the purpose of exportation;

(C) the sale or delivery by a manufacturer or importer of such ammunition for the purposes of testing or experimenting authorized by the Attorney General; and

(9) for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes.

(b) It shall be unlawful for any licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell or deliver—

(1) any firearm or ammunition to any individual who the licensee knows or has reasonable cause to believe is less than eighteen years of age, and, if the firearm, or ammunition is other than a shotgun or

rifle, or ammunition for a shotgun or rifle, to any individual who the licensee knows or has reasonable cause to believe is less than twenty-one years of age;

(2) any firearm to any person in any State where the purchase or possession by such person of such firearm would be in violation of any State law or any published ordinance applicable at the place of sale, delivery or other disposition, unless the licensee knows or has reasonable cause to believe that the purchase or possession would not be in violation of such State law or such published ordinance;

(3) any firearm to any person who the licensee knows or has reasonable cause to believe does not reside in (or if the person is a corporation or other business entity, does not maintain a place of business in) the State in which the licensee's place of business is located, except that this paragraph (A) shall not apply to the sale or delivery of any rifle or shotgun to a resident of a State other than a State in which the licensee's place of business is located if the transferee meets in person with the transferor to accomplish the transfer, and the sale, delivery, and receipt fully comply with the legal conditions of sale in both such States (and any licensed manufacturer,

importer or dealer shall be presumed, for purposes of this subparagraph, in the absence of evidence to the contrary, to have had actual knowledge of the State laws and published ordinances of both States), and (B) shall not apply to the loan or rental of a firearm to any person for temporary use for lawful sporting purposes;

(4) to any person any destructive device, machinegun (as defined in section 5845 of the Internal Revenue Code of 1986), short-barreled shotgun, or short-barreled rifle, except as specifically authorized by the Attorney General consistent with public safety and necessity; and

(5) any firearm or armor-piercing ammunition to any person unless the licensee notes in his records, required to be kept pursuant to section 923 of this chapter, the name, age, and place of residence of such person if the person is an individual, or the identity and principal and local places of business of such person if the person is a corporation or other business entity.

Paragraphs (1), (2), (3), and (4) of this subsection shall not apply to transactions between licensed importers, licensed manufacturers, licensed dealers,

and licensed collectors. Paragraph (4) of this subsection shall not apply to a sale or delivery to any research organization designated by the Attorney General.

(c) In any case not otherwise prohibited by this chapter, a licensed importer, licensed manufacturer, or licensed dealer may sell a firearm to a person who does not appear in person at the licensee's business premises (other than another licensed importer, manufacturer, or dealer) only if--

(1) the transferee submits to the transferor a sworn statement in the following form:

"Subject to penalties provided by law, I swear that, in the case of any firearm other than a shotgun or a rifle, I am twenty-one years or more of age, or that, in the case of a shotgun or a rifle, I am eighteen years or more of age; that I am not prohibited by the provisions of chapter 44 of title 18, United States Code, from receiving a firearm in interstate or foreign commerce; and that my receipt of this firearm will not be in violation of any statute of the State and published ordinance applicable to the locality in which I reside. Further, the true title, name, and address of the principal law enforcement officer of

the locality to which the firearm will be delivered  
are \_\_\_\_\_

Signature ..... Date

....."

and containing blank spaces for the attachment of a true copy of any permit or other information required pursuant to such statute or published ordinance;

(2) the transferor has, prior to the shipment or delivery of the firearm, forwarded by registered or certified mail (return receipt requested) a copy of the sworn statement, together with a description of the firearm, in a form prescribed by the Attorney General, to the chief law enforcement officer of the transferee's place of residence, and has received a return receipt evidencing delivery of the statement or has had the statement returned due to the refusal of the named addressee to accept such letter in accordance with United States Post Office Department regulations; and

(3) the transferor has delayed shipment or delivery for a period of at least seven days following receipt of the notification of the acceptance or refusal of delivery of the statement.

A copy of the sworn statement and a copy of the notification to the local law enforcement officer, together with evidence of receipt or rejection of that notification shall be retained by the licensee as a part of the records required to be kept under section 923(g).

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person--

(1) is under indictment for, or has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

(2) is a fugitive from justice;

(3) is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(4) has been adjudicated as a mental defective or has been committed to any mental institution;

(5) who, being an alien--

(A) is illegally or unlawfully in the United States;

or

(B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant

visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C.

1101(a)(26)));

(6) who 1 has been discharged from the Armed Forces under dishonorable conditions;

(7) who, having been a citizen of the United States, has renounced his citizenship;

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force

against such intimate partner or child that would reasonably be expected to cause bodily injury; or (9) has been convicted in any court of a misdemeanor crime of domestic violence.

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 of this chapter is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925 of this chapter.

(e) It shall be unlawful for any person knowingly to deliver or cause to be delivered to any common or contract carrier for transportation or shipment in interstate or foreign commerce, to persons other than licensed importers, licensed manufacturers, licensed dealers, or licensed collectors, any package or other container in which there is any firearm or ammunition without written notice to the carrier that such firearm or ammunition is being transported or shipped; except that any passenger who owns or legally possesses a firearm or ammunition being transported

aboard any common or contract carrier for movement with the passenger in interstate or foreign commerce may deliver said firearm or ammunition into the custody of the pilot, captain, conductor or operator of such common or contract carrier for the duration of the trip without violating any of the provisions of this chapter. No common or contract carrier shall require or cause any label, tag, or other written notice to be placed on the outside of any package, luggage, or other container that such package, luggage, or other container contains a firearm.

(f)(1) It shall be unlawful for any common or contract carrier to transport or deliver in interstate or foreign commerce any firearm or ammunition with knowledge or reasonable cause to believe that the shipment, transportation, or receipt thereof would be in violation of the provisions of this chapter.

(2) It shall be unlawful for any common or contract carrier to deliver in interstate or foreign commerce any firearm without obtaining written acknowledgement of receipt from the recipient of the package or other container in which there is a firearm.

(g) It shall be unlawful for any person--

- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- (2) who is a fugitive from justice;
- (3) who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));
- (4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
- (5) who, being an alien--
  - (A) is illegally or unlawfully in the United States;or
  - (B) except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigrant visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));
- (6) who has been discharged from the Armed Forces under dishonorable conditions;
- (7) who, having been a citizen of the United States, has renounced his citizenship;
- (8) who is subject to a court order that--

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or

(9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

34 U.S.C. 10281(o)(1)(C)

(o) Post-Traumatic Stress Disorder, Acute Stress Disorder, or Trauma and Stress Related Disorders

(1) Definitions

In this section:

(C)Mass fatality event

The term "mass shooting" means a multiple homicide incident in which not fewer than 3 victims are killed—

(i)with a firearm;

(ii)during one event; and

(iii)in one or more locations in close proximity.

Act of Mar. 1, 1783, 1782 Mass. Acts 218

Chapter XIII. An Act in addition to the several Acts already made for the prudent Storage of Gun-Powder within the Town of *Boston*.

*Whereas the depositing of loaded Arms in the Houses of the Town of Boston, is dangerous to the Lives of those who are disposed to exert themselves when a fire happens to break out in the said Town:*

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the Authority of the same, That if any Person shall take into any Dwelling-House, Stable, Barn, Out-House, Warehouse, Store, Shop or other Building, within the Town of Boston, any Cannon, Swivel, Mortar, Howitzer, or Cohorn, or Fire-Arm, loaded with, or having Gun-Powder in the same, or shall receive into any Dwelling-House, Stable, Barn, Out-house, Store, Warehouse, Shop, or other Building, within the said Town, any Bomb, Grenade, or other Iron Shell, charged with, or having Gun-Powder in the same, such Person shall forfeit and pay the Sum of *ten Pounds*, to be recovered at the Suit of the Firewards of the said Town, in an Action of Debt, before any Court proper to try the same; one Moiety thereof to the Use of the said Firewards, and*

the other Moiety to the Support of the Poor of the Town of *Boston*.

*And be it further enacted by the Authority aforesaid*, That all Cannon, Swivels, Mortars, Howitzers, Cohorns, Fire-Arms, Bombs, Granades, and Iron Shells of any Kind, that shall be found in any Dwelling-House, Out-House, Stable, Barn, Store, Warehouse, Shop, or other Building, charged with, or having in them any Gun-Powder, shall be liable to be seized by either of the Firewards of the said Town: And upon Complaint made by the said Firewards to the Court of Common Pleas, of such Cannon, Swivels, Mortars, or Howitzer, being so found, the Court shall proceed to try the Merits of such Complaint by a Jury; and if the Jury shall find such Complaint supported, such Cannon, Swivel, Mortar, or Howitzer, shall be adjudged forfeit, and be sold at public Auction; and one Half of the Proceeds thereof shall be disposed of to the Firewards, and the other Half to the Use of the Poor of the Town of Boston. And when any Fire-Arms, or any Bomb, Grnade, or other Shell, shall be found in any House, Out-House, Barn, Stable, Store, Warehouse, Shop, or other Building, so charged, or having Gun-Powder in the same, the same shall be liable to be

seized in Manner aforesaid; and on Complaint thereof,  
made and supported before a Justice of the Peace,  
shall be sold and disposed of as is above provided for  
Cannon."

**CERTIFICATE OF COMPLIANCE**

**Pursuant to Rule 16(k) of the  
Massachusetts Rules of Appellate Procedure**

I, Luther C. Henshaw, Esq., hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 16(a)(13);  
Mass. R. A. P. 16I;  
Mass. R. A. P. 18;  
Mass. R. A. P. 20; and  
Mass. R. A. P. 21.

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the monospaced font Courier New at size 12, 10 characters per inch, and contains 49 total non-excluded pages.

**CERTIFICATE OF SERVICE**

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on November 13, 2025, I have made service of this Brief, and Appendix, upon the Commonwealth via electronic notice through Odyssey e-file to, Ellyn H. Lazar, Esq., Counsel for the Commonwealth.

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Respectfully submitted,  
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