No. _____

IN THE
Supreme Court of the United States

GUN OWNERS OF AMERICA, INC. AND GUN OWNERS FOUNDATION,

Petitioners,

v.

KWAME RAOUL, Attorney General of Illinois, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United State Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

This Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), triggered several states to enact retaliatory measures designed not just to negate the protections for gun rights afforded by *Bruen*, but to clamp down on the right to keep and bear arms even more than before *Bruen* was decided. Illinois responded to *Bruen* with a law that bans millions of the most commonly owned firearms and ammunition magazines in the nation. After a district court enjoined this patently unconstitutional statute, a panel of the Seventh Circuit became the first federal appellate court to uphold such a law after *Bruen*, over a strong dissent. Concluding that the Second Amendment's two clauses have no relation to one another, the Seventh Circuit contrived an atextual and ahistorical distinction between "military-grade weaponry" and "civilian weaponry," asserting that millions of common arms are "similar" enough to "military weapons" that they fall on "the military side of that line" and thus are not "Arms" at all.

The question presented is:

Whether Illinois' categorical ban on millions of the most commonly owned firearms and ammunition magazines in the nation, including the AR-15 rifle, violates the Second Amendment.

PARTIES TO THE PROCEEDING

Petitioners

Gun Owners of America, Inc., and Gun Owners Foundation were appellees below and plaintiffs in S.D. Ill. Case No. 3:23-cv-215.

Plaintiffs-Respondents

Dane Harrel, C4 Gun Store, LLC, Marengo Guns, Inc., the Illinois State Rifle Association, the Firearms Policy Coalition, Inc., and the Second Amendment Foundation were appellees below and plaintiffs in S.D. Ill. No. 3:23-cv-141.

Jeremy W. Langley, Timothy B. Jones, and Matthew Wilson were appellees below and plaintiffs in S.D. Ill. No. 3:23-cv-192.

Robert Bevis, Law Weapons, Inc., and the National Association for Gun Rights were appellants below and plaintiffs in N.D. Ill. No. 1:22-cv-4775.

Javier Herrera was an appellant below and a plaintiff in N.D. Ill. No. 1:23-cv-532.

Caleb Barnett, Brian Norman, Hood's Guns & More, Pro Gun & Indoor Range, and the National Shooting Sports Foundation, Inc., were appellees below and plaintiffs in S.D. Ill. No. 3:23-cv-209.

Federal Firearms Licensees of Illinois, Guns Save Life, Piasa Armory, Debra Clark, Jasmine Young, and Chris Moore were appellees below and plaintiffs in S.D. Ill. No. 3:23-cv-215 and joined a separate petition in No. 23-879.

Defendants-Respondents

Kwame Raoul, in his official capacity as Attorney General of Illinois; Brendan Kelly, in his official

capacity as Director of the Illinois State Police; and Jay Robert "J.B." Pritzker, in his official capacity as Governor of Illinois, are respondents here and were defendants-appellants below.

James Gomric, in his official capacity as State's Attorney of St. Clair County; Jeremy Walker, in his official capacity as State's Attorney of Randolph County; Patrick D. Kenneally, in his official capacity as State's Attorney of McHenry County; Richard Watson, in his official capacity as Sheriff of St. Clair County; Jarrod Peters, in his official capacity as Sheriff of Randolph County; and Robb Tadelman, in his official capacity as Sheriff of McHenry County, were defendants below in the *Harrel* proceedings.

Cole Price Shaner, in his official capacity as State's Attorney of Crawford County, was a defendant below in the *Langley* proceedings.

The City of Naperville and Jason Arres, in his official capacity as Naperville Police Chief, were defendants-appellees in the *Bevis* proceedings. The State of Illinois was intervenor-appellee as well.

Cook County; Toni Preckwinkle, in her official capacity as County Board of Commissioners President; the City of Chicago; Kimberly M. Foxx, in her official capacity as Cook County State's Attorney; Thomas J. Dart, in his official capacity as Sheriff of Cook County; and David O'Neal Brown, in his official capacity as Superintendent of the Police for the Chicago Police Department, were defendants-appellees below in the *Herrera* proceedings.

CORPORATE DISCLOSURE STATEMENT

Petitioners Gun Owners of America, Inc. and Gun Owners Foundation each certifies that it has no parent corporation and no publicly held company owns 10% or more of its respective stock.

STATEMENT OF RELATED PROCEEDINGS

Bevis, et al. v. City of Naperville, *Illinois, et al.* (petition for writ of certiorari, filed on February 12, 2024, docketed on February 14, 2024, No. 23-880).

Harrel, et al. v. Raoul, et al. (petition for writ of certiorari, filed on February 12, 2024, docketed on February 14, 2024, No. 23-877).

Herrera v. Raoul, et al. (petition for writ of certiorari, filed on February 12, 2024, docketed on February 14, 2024, No. 23-878).

Barnett, et al. v. Raoul, *et al.* (petition for writ of certiorari, filed on February 12, 2024, docketed on February 14, 2024, No. 23-879).

Langley, et al. v. Kelly, et al. (petition for writ of certiorari, filed on February 23, 2024, docketed on February 29, 2024, No. 23-944).

Bevis, et al. v. City of Naperville, Illinois and *Arres*, and *Illinois* as intervening-appellee, No. 23-1352; *Herrera v. Raoul, et al.*, No. 23-1792; *Barnett, et al. v. Raoul* and *Kelly*, Nos. 23-1825, 23-1826, 23-1827, and 23-1828 (7th Cir.) (consolidating cases for disposition) (panel opinion, issued November 3, 2023).

Barnett, et al. v. Raoul and *Kelly*, Nos. 23-1985, 23-1826, 23-1827, and 23-1828 (7th Cir.) (order denying petition for rehearing *en banc*, issued December 11, 2023).

Bevis, et al. v. City of Naperville and *Arres*, No. 23-1353 (7th Cir.) (order denying petition for rehearing and rehearing *en banc*, issued December 11, 2023).

Herrera v. Raoul, et al., No. 23-1792 (7th Cir.) (order denying petition for rehearing and rehearing *en banc*, issued December 11, 2023).

Bevis, et al. v. City of Naperville and *Arres*, No. 23-1353 (7th Cir.) (order denying motion for an injunction pending disposition of a petition for a writ of certiorari, issued November 22, 2023).

National Association for Gun Rights, et al. v. City of Naperville, et al., No. 23A486 (S.Ct.) (the application for a writ of injunction pending certiorari was denied on December 14, 2023).

Bevis, et al. v. City of Naperville and *Arres*, No. 1-22-cv-04775-VMK (N.D. Ill.) (memorandum opinion and order denying preliminary injunction, issued February 17, 2023).

Herrera v. Raoul, et al., No. 1-23-cv-00532-LCJ (N.D. Ill.) (memorandum opinion and order denying preliminary injunction, issued April 25, 2023).

Barnett, et al. v. Raoul, et al., Nos. 3-23-cv-00209-SPM, 3:23-cv-00141-SPM, 3:23-cv-00192-SPM, 3:23-cv-00215-SPM (S.D. Ill.) (memorandum opinion and order granting preliminary injunction, issued April 28, 2023).

Barnett, et al. v. Raoul, et al., Nos. 3-23-cv-00209-SPM, 3:23-cv-00141-SPM, 3:23-cv-00192-SPM, 3:23-cv-00215-SPM (S.D. Ill.) (memorandum opinion and order denying *Langley* Plaintiffs' motion for partial summary judgment, issued December 14, 2023).

Barnett, et al. v. Raoul, et al., Nos. 3-23-cv-00209-SPM, 3:23-cv-00141-SPM, 3:23-cv-00192-SPM, 3:23-cv-00215-SPM (S.D. Ill.) (memorandum opinion and

order granting defendants' motion to dismiss due process claims, issued December 22, 2023).

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MISCELLANEOUS

PETITION FOR WRIT OF CERTIORARI

Preferring its own decision in *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015), to this Court's precedents,[1] the Seventh Circuit flatly rejected the notion that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms." *District of Columbia v. Heller*, 554 U.S. 570, 582 (2008). Rather, according to the panel majority, the Second Amendment only presumptively protects purportedly "civilian weaponry," while other weapons "can be dedicated exclusively to military use." App.47, App.31; *see Friedman* at 408.

The majority reached this *Heller*-defying and text-defying conclusion by rejecting this Court's determination that there must be "a link … [a] logical connection" between the Second Amendment's

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[1] In *Friedman*, the Seventh Circuit upheld a local "assault weapon" and magazine ban, thinking it "better to ask … whether law-abiding citizens retain adequate means of self-defense," and opining that "states … should be allowed to decide when civilians can possess military-grade firearms." *Id.* at 410. Recognizing this dressed-up interest balancing for what it was, Justice Thomas did not mince words: "the Seventh Circuit['s] ... noncompliance with our Second Amendment precedents ... eviscerates many of the protections recognized in *Heller* and *McDonald*." *Friedman v. City of Highland Park*, 577 U.S. 1039, 1039, 1041 (2015) (Thomas, J., dissenting from denial of certiorari). But after Justice Thomas authored *Bruen*'s majority opinion, *Friedman*'s author reappeared on the panel below, which recycled the same test and reached the same result as *Friedman*. Justifying its obstinance, the majority characterized *Friedman* "basically compatible with *Bruen*, insofar as *Friedman* anticipated the need to rest the analysis on history," App.23, but applied that historical analysis at step one (with Petitioners bearing the burden), not step two (with Respondents bearing the burden).

prefatory and operative clauses. *Heller* at 577. In fact, the majority claimed just the opposite, that *Heller* somehow "severed th[e] connection" between the clauses. App.21. Unsurprisingly, the majority did not explain how the Founders' permeating fear of standing armies – like the one they had just defeated – is compatible with the notion that they would voluntarily and intentionally subjugate themselves to possession of only second-class "civilian weaponry" that would make their future ability to "resist tyranny" (*Heller* at 598) impracticable, if not impossible.

The majority's failure to abide by this Court's holdings permeated its decision. Its artificially created "civilian" versus "military" distinction first infected the majority's threshold "plain text" determination under *Bruen*. Concluding that hundreds of millions of the most popular firearms and magazines in the nation in fact are not "Arms" at all, the majority foisted on Petitioners "the burden of showing that the weapons … are Arms that ordinary people would keep at home," and are "not weapons that are exclusively or predominantly useful in military service…."[2] App.32-33. This apparently required Petitioners to convince the court that the quintessential *semiautomatic* AR-15 is "distinguish[able]" enough from the fully automatic

[2] Issuing an order "to clarify the path … forward" post-*Bevis*, the district judge in *Barnett* correctly observed that the Seventh Circuit's new "precertification process" for presumptive textual protection takes a "different direction than that utilized by the Supreme Court in *Bruen*" and "manifestly shifts which party bears the burden." *Barnett v. Raoul*, 2024 U.S. Dist. LEXIS 31798, at *8, *11 (S.D. Ill. Feb. 23, 2024).

M16 (App.35) that it "fall[s] on the … civilian" and not "military … side of the line" (App.39).

This manufactured distinction between "military" and "civilian" arms also infected the majority's alternative holding that PICA is supported by the historical tradition under *Bruen*'s analytical framework. App.40-50. Proving that "he who writes the resolved clause wins the debate," the majority rewrote the *Bruen* test. Instead of evaluating whether Illinois had demonstrated a Founding-era historical tradition of banning *possession* of certain types of firearms, the majority instead relied on a purported tradition of firearm *discharge* and *carry* restrictions (*i.e.*, not gun bans) under which members of law enforcement and the military were exempted. App.49.

At bottom, and contrary to this Court's precedents, the majority reached the atextual, ahistorical, and judge-empowering conclusions that the Second Amendment offers no protection for "weapons and accessories designed for military or law-enforcement use," and that many of the most commonly owned firearms in the nation fall into that category because they are *similar enough*[3] to weapons used by the military. App.50.

The Seventh Circuit's decision demonstrates a continuing refusal to follow this Court's Second Amendment precedents and manifests a continued distaste for, if not hostility towards, the people's right to keep and bear arms. Moreover, because many other states have enacted bans similar to Illinois' (several of

[3] As Judge Brennan noted, "[n]o army in the world uses a service rifle that is only semiautomatic." App.89 (Brennan, J., dissenting).

which are currently subject to legal challenge),[4] the panel majority's "reasoning is a virus that may spread if not promptly eliminated" by this Court. *See Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 2024 U.S. LEXIS 986, at *12 (Feb. 20, 2024) (Alito, J., and Thomas, J., dissenting from denial of certiorari).

OPINIONS BELOW

The Seventh Circuit's opinion in the consolidated appeals, 85 F.4th 1175, is reproduced at App.5. The preliminary-injunction opinion in the *Barnett* case, 2023 WL 3160285, is reproduced at App.105.

JURISDICTION

The Seventh Circuit issued its opinion on November 3, 2023, App.5, and denied the petition for rehearing en banc on December 11, 2023, App.104. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment is reproduced at App.137.

The relevant Illinois statutory provisions (720 ILCS 5/24-1, 5/24-1.9, and 5/24-1.10) are reproduced at App.137.

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[4] *See, e.g.*, *Antonyuk v. Chiumento*, 89 F.4th 271 (2d Cir. 2023); *Miller v. Bonta*, 2023 U.S. Dist. LEXIS 188421 (S.D. Cal. Oct. 19, 2023) ("assault weapons"); *Bianchi v. Brown*, 2024 U.S. App. LEXIS 974 (4th Cir. Jan. 12, 2024) (same); *Duncan v. Bonta*, 83 F.4th 803 (9th Cir. 2023) ("large-capacity magazines").

STATEMENT OF THE CASE

A. Legal Background

On June 23, 2022, this Court handed down *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). In it, the Court flatly rejected the two-step "judge-empowering 'interest-balancing'" test that the circuit courts had exploited to relegate the Second Amendment to "second-class" status, clarified that the Second Amendment protects a broad right of "'all Americans' … to bear commonly used arms in public," and elucidated the proper historical framework by which to determine the Second Amendment's original meaning. *Bruen* at 70.

But soon after *Bruen* was handed down, Illinois set about to undermine it, making it a crime merely to "keep" (much less to "bear") a large portion of the "commonly used arms" that *Bruen* explained are protected. To that end, on January 10, 2023, Governor J.B. Pritzker signed into law the "Protect Illinois Communities Act" ("PICA"), imposing a sweeping ban on hundreds of makes and models of the most commonly owned and lawfully used firearms and ammunition magazines in the country.

Some of PICA's requirements were immediately effective, while some took effect on January 1, 2024. PICA made it immediately "unlawful for any person" in Illinois "to manufacture, … sell, … or purchase … an assault weapon." 720 ILCS 5/24-1.9(b). And this year, it became unlawful even to "possess" an already-owned "assault weapon," unless previously registered with the state. *Id.* at (c).

PICA defines the pejorative term "assault weapon" expansively, to include "[a] semiautomatic

rifle that has the capacity to accept … or that may be readily modified to accept … a detachable magazine," so long as the rifle has "one or more" prohibited "features," including:

"(i) a pistol grip or thumbhole stock;

(ii) any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;

(iii) a folding, telescoping, thumbhole, or detachable stock, or a stock that is otherwise foldable or adjustable…;

(iv) a flash suppressor;

(v) a grenade launcher;

(vi) a shroud attached to the barrel or that partially or completely encircles the barrel…."

720 ILCS 5/24-1.9(a)(1)(A).

Dissatisfied with the scope of this feature-based ban on most modern rifles, PICA further bans any "semiautomatic rifle that has a fixed magazine with the capacity to accept more than 10 rounds, except for an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition." 720 ILCS 5/24-1.9(a)(1)(B).

PICA also bans any "semiautomatic pistol that has the capacity to accept a detachable magazine or that may be readily modified to accept a detachable magazine," if the firearm has one or more of the following:

"(i) a threaded barrel;

(ii) a second pistol grip…;

(iii) a shroud attached to the barrel or that partially or completely encircles the barrel…;

(iv) a flash suppressor;

(v) the capacity to accept a detachable magazine at some location outside of the pistol grip; or

(vi) a buffer tube, arm brace, or other part that protrudes horizontally behind the pistol grip and is designed or redesigned to allow or facilitate a firearm to be fired from the shoulder."

720 ILCS 5/24-1.9(a)(1)(C).

PICA likewise bans (i) any "semiautomatic pistol that has a fixed magazine with the capacity to accept more than 15 rounds," (ii) "[a]ny shotgun with a revolving cylinder," and any "semiautomatic shotgun" that has one or more of the following:

"(i) a pistol grip or thumbhole stock;

(ii) any feature capable of functioning as a protruding grip that can be held by the non-trigger hand;

(iii) a folding or thumbhole stock;

(iv) a grenade launcher;

(v) a fixed magazine with the capacity of more than 5 rounds; or

(vi) the capacity to accept a detachable magazine."

720 ILCS 5/24-1.9(a)(1)(D)-(F).

Next, PICA bans "[a]ny semiautomatic firearm that has the capacity to accept a belt ammunition feeding device," redundantly bans "[a]ny firearm that has been modified to be operable as an assault weapon as defined in this Section," and also bans "[a]ny part

or combination of parts designed or intended to convert a firearm into an assault weapon, including any combination of parts from which an assault weapon may be readily assembled if those parts are in the possession or under the control of the same person." 720 ILCS 5/24-1.9(a)(1)(G), (H), (I).

Finally, if not already caught up in one of these dragnet bans, PICA for good measure bans a multitude of rifles, pistols, and shotguns by name, including the AR-15 and AK-47, along with all "copies, duplicates, variants, or altered facsimiles with the capability of any such weapon[.]" 720 ILCS 5/24-1.9(a)(1)(J), (K), (L).

And to make PICA future-proof, the Illinois State Police is granted unbridled authority to expand the list of prohibited "assault weapons" if deemed necessary to advance amorphous notions of "public interest, safety, and welfare." 720 ILCS 5/24-1.9(d)(3).

Possession of a banned "assault weapon" (unless previously owned and registered under PICA's grandfathering provision) is a misdemeanor, and a felony for subsequent violations. 720 ILCS 5/24-1(a)(15), (b). Each banned firearm unlawfully owned constitutes a "single and separate violation." 720 ILCS 5/24-1(b).

PICA promises grandfathering for any person who lawfully owned one of these now-banned firearms prior to January 10, 2023, and registered it with the State Police prior to January 1, 2024. But this promise rings hollow, since PICA restricts where the owner may legally "keep and bear" grandfathered arms: only "on private property owned or immediately controlled by the person," "on private property that is

not open to the public with the express permission of the person who owns or immediately controls such property," "while on the premises of a licensed firearms dealer or gunsmith for the purpose of lawful repair," "at a properly licensed firing range or sport shooting competition venue," or "while traveling to or from these locations" (but only if the firearm is unloaded and in a container). 720 ILCS 5/24-1.9(d). The newly banned firearms may not be carried anywhere.

To complement this sweeping prohibition of ubiquitous firearms, PICA also neuters ammunition magazines, assigning millions of standard magazines the arbitrary moniker "[l]arge capacity ammunition feeding device[s]" if they accommodate more than 10 rounds in long guns or 15 rounds in handguns. 720 ILCS 5/24-1.10(a)(1). Here, too, PICA criminalizes mere peaceful possession, imposing a fine of $1,000 per offending magazine obtained after PICA's effective date. 720 ILCS 5/24-1.10(g). Grandfathered possessors of registered magazines may continue to possess them but, as with "assault weapons," cannot "bear" them in public for self-defense. 720 ILCS 5/24-1.10(d).

B. Proceedings Below

1. District Court Proceedings

Petitioners filed their Complaint on January 24, 2023 and their Motion for Preliminary Injunction on February 6, 2023. On February 24, 2023, the district court consolidated this case with three others, and designated *Barnett, et al. v. Raoul, et al.* (3:23-cv-209-SPM) the lead case. The court held a hearing on

Petitioners' Motion for Preliminary Injunction on April 12, 2023 and issued an opinion granting that Motion on April 28, 2023. App.105.

At the outset, the district court observed that "PICA seems to be written in spite of the clear directives in *Bruen* and *Heller*, not in conformity with them." App.108. The district court concluded that PICA's outlawed firearms, features, accessories, and magazines are clearly "Arms" under the Second Amendment's plain text, despite Respondents' atextual and revisionist military usefulness and essential feature theories which the court rejected as "not persuasive." App.124. For example, discounting Respondents' claim that so-called "accessories" (such as magazines, threaded barrels, flash suppressors, and arm braces) are "not necessary to the functioning of a firearm and are thus not 'arms,'" the district court noted that it is "hard to imagine something more closely correlated to the right to use a firearm in self-defense than the ability to effectively load ammunition into the firearm." App.124.

Having found the banned firearms and magazines to be "Arms," the district court proceeded to the historical analysis required by *Bruen*, evaluating Respondents' effort to meet their burden to disprove the "common use" of the banned "Arms" and to identify a historical tradition of arms regulation sufficient to uphold PICA. Noting Respondents' failure on both fronts, the district court catalogued the overwhelming evidence that PICA's prohibited "Arms" are, in fact, in common use, and explained that Respondents' purported 'history' amounted to nothing more than irrelevant "concealed carry regulation[s]." App.131.

2. Seventh Circuit Proceedings

On May 2, 2023, Respondents sought an emergency stay of the district court's injunction, as well as a stay pending appeal of the order in *Barnett v. Raoul*. The Seventh Circuit granted the emergency stay on May 4, 2023, without allowing Petitioners the opportunity to respond and offering no analysis of the required factors for a stay. App.1. On May 12, 2023, the Seventh Circuit continued its stay pending appeal, again without offering any analysis. App.2.

On November 3, 2023, over a vigorous dissent, a Seventh Circuit panel issued an opinion in the consolidated cases, overturning the district court's injunction entered in the *Barnett* consolidated cases, while affirming the decisions of the other two district courts which had refused to enjoin PICA. App.5.

From start to finish, the panel majority based its Second Amendment analysis on the theory that, when the *Heller* Court "concluded that the Amendment recognized an individual right to keep and bear arms," it "severed" the connection "between the prefatory clause which refers to the Militia and the operative clause, which refers to the right to keep and bear Arms." App.21. Drawing from *Heller*'s statement that the meaning of operative clause is "not limited to" the prefatory militia clause (*id.* at 589), the majority concluded that the two clauses have no relation to one other – actually, an *inverse* relationship – creating a novel civilian versus military arms dichotomy. Under the majority's test, whenever a judge believes "the regulated weapons lie on the military side of that line," they "are not within the class of Arms protected by the Second Amendment." App.8.

Applying this analysis to PICA under *Bruen*'s two-part framework, the majority first rejected the "all … bearable arms" standard specified in *Heller* and *Bruen*, instead using its civilian/military dichotomy to determine whether so-called "assault weapons" and purportedly "large capacity" magazines are "Arms" in the first place. The majority focused attention on the ubiquitous semiautomatic AR-15, which the court described as a "paradigmatic example of the kind of weapon the statute covers."

Placing on Petitioners the "burden" to demonstrate that weapons like the AR-15 "are Arms that ordinary people would keep at home for purposes of self-defense, [and] not weapons that are exclusively or predominately useful for military service or weapons that are not possessed for lawful purposes," the majority found that the so-called "assault weapons" banned by PICA are "much more like machine guns and military-grade weaponry than they are like the many different types of firearms that are used for individual self-defense." App.36; *cf. Bruen,* 597 U.S. at 26. Thus, the majority reached the conclusion that millions of the most popular firearms and ammunition magazines in the nation are not even "Arms" presumptively protected by the Second Amendment.

Nevertheless, the majority then proceeded to apply what it claimed was *Bruen*'s historical framework – again relying on its civilian versus military distinction. Instead of looking for potential historical analogues for PICA's categorical "Arms" ban, the majority instead believed that PICA's validity turned on police and military exemptions incorporated

into all manner of disparate and unrelated restrictions. Offering a piecemeal tradition that included zero late-18th-century "Arms" bans, the majority concluded that PICA's restrictions fell squarely within the Second Amendment's original meaning because 18th and 19th Century carry and use laws had occasionally exempted military or law enforcement.

Dissenting, Judge Brennan described PICA as "dramatically redefin[ing] the legality of firearms and magazines in Illinois[,] … eliminat[ing] the ownership, possession, and use for self-defense of many of the most commonly-owned semiautomatic handguns, shotguns, rifles, and magazines." App.57 (Brennan, J., dissenting). Addressing the majority's civilian/miliary distinction, Judge Brennan noted that "neither *Heller* nor *Bruen* draw a military/civilian line for the Second Amendment." App.89. Unlike the majority, Judge Brennan concluded that "ammunition feeding devices" are obviously "Arms" because they are "required as part of the firing process" and that PICA "effectively bans firearms that come standard with magazines over the limit." App.61. Finally, disagreeing with the majority's application of the *Bruen* historical framework, Judge Brennan explained that Respondents' proffered analogues "are not relevantly similar," and that any "regulations restricting semiautomatic firearms and ammunition feeding devices … all come from the twentieth century." App.81.

REASONS FOR GRANTING THE PETITION

I. THE SEVENTH CIRCUIT'S DECISION FLOUTS THIS COURT'S PRECEDENTS.

A. The Seventh Circuit "Severed" the Second Amendment's Militia Clause, Manufacturing an Atextual and Ahistorical Distinction between "Civilian" and "Military" Weaponry.

Perhaps the Seventh Circuit's most egregious error was its fundamental misunderstanding of the Second Amendment's historical purpose. Concocting a "civilian" versus "military" distinction between those "Arms" that are constitutionally protected and those that are not, the panel concluded that hundreds of millions of common firearms and magazines may be banned simply for *appearing* to be more useful to a standing army than a private citizen. App.26. But if the Second Amendment is to have a "spirit and meaning," *Strauder v. West Virginia*, 100 U.S. 303, 307 (1879), then this "spirit" is the elimination of firepower disparities between those who govern and those who consent to be governed. The Seventh Circuit has only exacerbated our modern imbalance (*see Heller* at 627-28), one that our forebears already would have found gravely concerning.

Remarkably, the panel majority asserted that, "in *Heller* the Supreme Court severed th[e] connection" between the Second Amendment's prefatory and operative clauses. App.21. No doubt, this would have come as quite a shock to *Heller*'s author, who said literally the opposite, explaining that "[l]ogic demands

that there be a link … [a] logical connection … between the [Second Amendment's] stated purpose … its prefatory clause … and the command … its operative clause."[5] *Id.* at 577; *see also* at 598 (devoting an entire section to the "Relationship Between [the] Prefatory Clause and Operative Clause").

But not only did *Heller not* "sever" the prefatory Militia Clause from the right "to keep and bear Arms," it actually reinforced the Militia Clause's significance. *Heller* pointed out that the militia was not separate from "the people" – it was drawn *from the people*: "[t]he traditional militia was formed from a pool of men bringing arms 'in common use at the time' for lawful purposes like self-defense." *Id.* at 624. This language does not indicate some dichotomy between military and civilian weapons – rather, they are now as they were at the Founding: "'one and the same.'" *Id.* at 625.

The majority's novel theory amounts to a wholesale rejection of this Court's express language to the contrary, and was key to its Second Amendment revisionism, limiting "the right to keep and bear arms" only to what the majority decreed to be "civilian weaponry."[6]

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[5] The panel's untethering of the Second Amendment's two clauses also violates basic rules of statutory interpretation. *See* A. Scalia & B. Garner, Reading Law at 167 (Thomson West 2012) ("the whole-text canon" requires "the entire text, in view of its structure" and "logical relation of its many parts" to be considered.).

[6] To be sure, *Heller* explained that the Second Amendment *also* protects "an individual right unconnected with militia service," because, "apart from [its] clarifying function, a prefatory clause

In addition to flouting *Heller*, the panel's proposition is as ahistorical as it is incoherent: that the Founders, who had just cast off the yoke of British oppression and were deeply skeptical of centralized military power, would undertake to deliberately handicap themselves at the starting gate by guaranteeing *in writing* that they could possess only inferior "arms," including "weapons that may be reserved for military use." App.33. Unsurprisingly, the opposite is true – the Founders set about to ensure that the ordinary citizen could access and maintain quintessentially "military" equipment as a last line of defense and failsafe against both foreign threats and domestic tyranny.

This Court repeatedly discussed that motivation in *Heller*. Noting that a "'citizens' militia' [i]s a safeguard against tyranny" and "necessary to oppose an oppressive military force if the constitutional order broke down," this Court recognized the Founders' central concern that "the Federal Government would disarm the people in order to impose rule through a standing army or select militia." *Heller* at 600, 599,

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does not limit or expand the scope of the operative clause." *Id.* at 582, 578. In other words, the Second Amendment presumptively protects "all instruments that constitute bearable arms" – whether allegedly military, purportedly civilian, or otherwise. *See Heller* at 582; *see also* at 581 ("all firearms constituted 'arms.'"). That was the conclusion the dissent below correctly reached: this passage most naturally means that the public understanding of 'Arms' encompassed *more than* weapons designed for or employed in a military capacity." App.90 (emphasis added). Yet the majority read this Court's "refusal to endorse the idea that the Amendment protects '*only* those weapons useful in warfare'" as altogether *excluding* protection of such weapons. App.22 (emphasis added).

598. The district court below echoed that sentiment, noting that this "purpose of securing the ability of the citizenry to oppose an oppressive military, should the need arise, cannot be overlooked." App.118. It defies logic that, in response to such a concern, the Founders would have endorsed the Seventh Circuit's neutered conception of the right to keep and bear arms.[7] Importantly, the Seventh Circuit's imagined regime – wherein "the people" are relegated to firearms that are less powerful, useful, or effective[8] than the "military" – would entirely undermine one of the militia's central roles as an "oppos[ition]" force against tyranny.[9] *Heller* at 599.

While acknowledging the importance of the ubiquitous citizen-soldier, this Court observed that "most undoubtedly thought [the Second Amendment] even more important for self-defense and hunting,"

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[7] On the contrary, the Founders required the citizens to appear for militia duty with *sufficiently military-grade* weaponry – "a good Musket or Firelock, a sufficient Bayonet and Belt," "a good, clean musket," and "proper accoutrements." *United States v. Miller*, 307 U.S. 174, 181, 182 (1939). If the Seventh Circuit's view were correct, then the militia would have been ordered to muster with "a good musket, but *not that good*, and certainly not as good as the Redcoats."

[8] *See* App.47 n.12 (claiming "there are important differences between the lethality of the military-grade weapons, as compared with guns that are commonly owned and used for self-defense and other lawful purposes").

[9] The majority instead adopted what is essentially an *inverse relationship* between the Second Amendment's clauses – that the only weapons definitively *not* protected by the operative clause are those *necessary* to fulfill the purpose of the prefatory clause – *i.e.*, purportedly military-grade weapons. That conclusion is not just *Heller*-defying but is incompatible with the text.

and that this effectuation of the right to self-defense constitutes the "*central component* of the [Second Amendment] right itself." *Heller* at 599.[10] But that focus on "self-defense" simply incorporates the Founders' tyranny deterrent in different terms. Uncomfortable to modern proclivities as it may be, the inherent right to self-defense naturally encompasses defense against a rogue government. And it was this concern that predominated at the Founding.

Indeed, there is no shortage of authority on the Second Amendment's liberty-preserving, tyranny-deterrent value. For example, contemporaneous commentaries evince a preoccupation with ensuring the citizenry would be of equal match to the government's standing army as a failsafe against despotism. American lexicographer and federalist Noah Webster wrote:

> Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe. The supreme power in America cannot enforce unjust laws by the sword; because the whole body of the people are armed, *and constitute a force superior to any band of regular troops that can be, on*

[10] Paradoxically, prior to *Heller* establishing an individual right, the Seventh Circuit maintained that the Second Amendment protected *only military arms*, as it protected only a collective right to "protection by a militia." *Gillespie v. City of Indianapolis*, 185 F.3d 693, 710 (7th Cir. 1999). Now, the Seventh Circuit believes the only arms that are *not* protected are military arms. The pendulum has swung quite far indeed.

> *any pretence, raised in the United States.*[11]

Alexander Hamilton had the same view, that an "army can never be formidable to the liberties of the people while there is a large body of citizens, *little, if at all, inferior to them in discipline and the use of arms*, who stand ready to defend their own rights and those of their fellow-citizens."[12] To hold otherwise – that the citizen ought to be vulnerable to the professional soldier – would invert the power structure the Founders intended to guarantee.

Disputing this Founding-era objective that the Second Amendment would guarantee parity of armament between the free citizen and the government infantryman, the majority below rejected the notion that "the people" should be "superior to" or "little if at all inferior" to the government they elect. Instead, the majority fashioned a new constitutional regime wherein certain "weapons [] may be reserved for military use." App.33. But as the dissent noted, "neither *Heller* nor *Bruen* draw a military/civilian line for the Second Amendment." App.89 (Brennan, J., dissenting). Indeed, contrary to the Seventh Circuit's thoroughly modern "civilian" distinction, the Founders never distinguished between arms "protected for private use" and those "reserved for

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[11] Noah Webster, An Examination into the Leading Principles of the Federal Constitution Proposed by the Late Convention Held at Philadelphia at 43 (Prichard & Hall: 1787) (emphasis added).

[12] The Federalist No. 29 at 181 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (emphasis added).

military use." App.26. To the Founders, these weapons "'were one and the same.'" *Heller* at 625.

B. The Seventh Circuit Twisted *Bruen*'s Initial Hurdle Beyond Recognition, Saddling Petitioners with the Burden to Prove an AR-15 Is Not "Useful in Military Service."

1. The Seventh Circuit Invented a New Test.

Armed with its newly invented "military versus civilian distinction" (App.89 (Brennan, J., dissenting)), the Seventh Circuit concluded that millions of commonly owned firearms are not actually "Arms" within the meaning of the Second Amendment.[13] Although PICA bans firearms that one federal district judge noted are twice as common as the

[13] The majority postulated that all "fundamental rights ... have their limits [and] the Second Amendment is no different," stating that its responsibility was to determine "the types of 'Arms' that are covered by the Second Amendment" – which it described as a judicial "line-drawing" problem. App.7. But under *Bruen*, the panel's responsibility was not to use its own judgment to draw a line and decide which "types of Arms" are "covered," but rather to determine if the banned weapons were arms under the Second Amendment's "plain text." That should not have been a difficult inquiry. The majority's slippery-slope speculation as to whether someone might contend that backpack nuclear weapons constitute "Arms" (App.7) is not only absurd, but also quite irrelevant to a case involving conventional, widely owned pistols, rifles and shotguns and firing bullets using gunpowder.

ubiquitous F-150 pickup truck,[14] the majority nevertheless found its approach consistent with the test that this Court established in *Heller* and reiterated in *Bruen*.

Despite promising to "look[] at the 'plain text' of the Second Amendment" the majority instead announced that "[o]ur starting point is, once again, *Heller*." App.30. But then again, after announcing *Heller* as its guiding light, the majority took issue with *Heller*'s holdings, objecting that this Court could not possibly have meant what it said when it held that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms." App.31; *Heller* at 582. Rather, according to the majority, "'[b]earable' ... must mean more than 'transportable' or 'capable of being held,'" otherwise machineguns presumptively would be classified as "Arms," something the panel wrongly believed to be expressly foreclosed by *Heller*. App.31 (citing *Heller* at 627).

And although *Bruen* explains that the "general definition" of "arms" "covers modern instruments that facilitate armed self-defense," *id.* at 28, the panel determined this could not actually be so, because "[i]t is not too much of a stretch to think that some people might like the fully automatic feature of a machinegun, if they were hoping to defend their

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[14] *See Miller v. Bonta*, 542 F. Supp. 3d 1009, 1020, 1022 (S.D. Cal. 2021) ("[R]ifle[s] built on the AR-15 platform with prohibited features ... are popular [and] legal to build, buy, and own under federal law and the laws of 45 states.… In 2018, 909,330 Ford F-150s were sold. Twice as many modern rifles were sold the same year.").

families, their property, and themselves from invaders." App.35.

Having thus promised to analyze the Second Amendment and then ignored its plain text, and thereafter having promised to follow *Heller* but then rejected its clear language, the Seventh Circuit moved on to provide its own replacement framework.

First, the majority concluded that "the definition of 'bearable Arms' extends only to weapons in common use for a lawful purpose." App.32. To this, the panel added, "the plaintiffs in each of the cases before us thus have the burden of showing that the weapons addressed in the pertinent legislation are [i] Arms that ordinary people would keep at home for purposes of self-defense, [ii] not weapons that are exclusively or predominantly useful in military service, or weapons that are not possessed for lawful purposes." App.32-33.

Thus, whereas *Heller* and *Bruen* require only a minimal showing that a weapon is a "bearable arm[]" in order to be "presumpt[ively]" protected, the majority's convoluted approach required Petitioners to prove:

> (a) that a certain type of firearm is in common use;
> (b) that it is used (presumably either exclusively or predominantly) for "a lawful purpose";
> (c) that it is kept by "ordinary people" within "the home" for "self-defense"; and
> (d) that it is *not* "exclusively or predominantly useful in military service...."

App.32-33; *see also Barnett*, 2024 U.S. Dist. LEXIS 31798, at *23-24 (identifying on remand no fewer than *15 factual questions* derived from the Seventh Circuit's holding that the district court must address *just so Petitioners can clear the textual starting gate*).

This is not the sort of minimal textual showing that *Heller*, *Caetano*, or *Bruen* employed or endorsed for future use. Indeed, if this convoluted saddling of challengers was the true test, surely this Court at some point would have used it. But the *Heller* Court never consulted statistical, sociological, or criminological studies to conclude that handguns are in common use; it simply stated the obvious. Nor did *Heller* remand for voluminous factfinding on, *inter alia*, the possible military uses of handguns, or their use for criminal purposes. *Caetano*'s discussion was similarly brief, treating stun guns' common usage as a given, with Justice Alito highlighting "'approximately 200,000'" examples in civilian hands in concurrence. *Caetano v. Massachusetts*, 577 U.S. 411, 420 (2016). And when presented with the opportunity to articulate in *Bruen* the multi-part test deployed by the panel majority, this Court did no such thing. Surely, the fundamental test for Second Amendment challenges making its debut in a Seventh Circuit split panel opinion is not something this Court intended all along.

2. The Seventh Circuit Then Ignored Its New Test.

Having read this Court's alleged "tea lea[ves]" (App.22) and divined a multi-elemental test to determine whether certain firearms are "Arms"

presumptively protected by the Second Amendment, the Seventh Circuit selectively applied its own test.

First, after announcing "common use" as a *threshold* textual consideration (App.30), the panel cast it aside as a mere "factor" that is "not ... very helpful." App.41. Second, although endorsing analysis into lawful use versus criminal misuse (App.33), the panel dismissed *Staples v. United States*, 511 U.S. 600 (1994), *chiding this Court* for acknowledging the AR-15s' "wide[] accept[ance] as lawful possessions" but providing "*no empirical support*." App.34 (emphasis added). Third, the Seventh Circuit did not consider whether "ordinary people would keep [PICA's banned weapons] at home for purposes of self-defense", having already chosen to overlook the tens of millions of such firearms (and more than a hundred million such magazines) that are owned by law-abiding Americans. App.32.

Instead, the majority focused on the "useful[ness] in military service" prong of its test, devoting almost its entire analysis to determining whether machineguns should be military-only "weaponry [that] is for the state only," and then inquiring as to whether PICA's banned semiautomatic "assault weapons" and "large capacity magazines" are "much more like" and "almost the same" as that "military-grade weaponry" "that civilian ownership of those weapons may be restricted." App.36, App.48. And then, going well beyond even that, the majority upheld *the entirety* of PICA's "sprawling ... legislation made up of 99 sections," which cover hundreds of distinct firearm types, makes, and models, based *solely* upon a

comparison between the AR-15 and M16. App.9, App.35-39.

3. The Seventh Circuit's Demand for Onerous Factfinding Invites Absurd Results.

Further compounding its myopic focus on allegedly "military" only firearms, the majority noted that it had inquired of "the plaintiffs at oral argument to explain what distinguishes AR-15s from M16s, the military's counterpart that is capable of both fully automatic operation and semiautomatic operation." App.35. Unsurprisingly, the panel found the plaintiffs' responses "unconvincing." *Id*. Instead, the majority announced that "the AR-15 is almost the same gun as the M16 machine gun" and "not ... materially different." App.36, App.39. Basing its conclusion on military *appearances* (App.38), the mere possibility of illegal *conversion* (App.38) to fully automatic fire, caliber commonality (App.37), and even firing rate (App.39), the panel placed its thumb on the scale to find millions of semiautomatic firearms to be *basically the same thing* as fully automatic machineguns.[15]

Of course, none of these inquiries is necessary or even permissible under this Court's precedents. If the

[15] The majority suggested that "[b]etter data on firing rates" and "other evidence" could draw a "sharper distinction," whatever that might mean. App.39, App.40. *But see Bridge Aina Le'a, LLC v. Haw. Land Use Comm'n*, 141 S. Ct. 731, 732 (2021) (Thomas, J., dissenting from denial of certiorari) ("A know-it-when-you-see-it test is no good if one ... sees it and another does not.").

court below had applied *Heller* and *Bruen* correctly, it would have easily found that the semiautomatic "assault weapons" at issue are "Arms," and the burden would then have shifted to Respondents to demonstrate a "well-established and representative historical *analogue*" for such a ban. *Bruen* at 30. Instead, having abandoned the *Bruen* methodology altogether and invented its own atextual and ahistorical test, the majority withdrew Second Amendment protection from an entire class of "bearable arms."

Absent this Court's intervention, courts such as the panel majority will be emboldened. If *Heller* and *Bruen*'s simple threshold analysis as to what constitutes "Arms" can be complicated to the Nth degree, then the judiciary retains "the power to decide on a case-by-case basis whether the right is *really worth* insisting upon." *Heller* at 634.

C. The Seventh Circuit's Artificial "Civilian" versus "Military" Distinction also Infected Its Historical Analysis.

Apparently unwilling to rely solely on its remarkable assertion that many of the most popular firearms and magazines in America are not "Arms" at all, the Seventh Circuit purported to conduct the historical analysis that *Bruen* requires.[16] App.40. But

[16] Here, the court made a quick detour to challenge this Court's "common use" language. *Heller* instructed that the Second Amendment protects "weapons … 'in common use at the time.'" *Heller* at 627. Apparently concerned that its determination that

again, rather than faithfully applying *Bruen*, the court criticized its methodology and substituted its own.

Criticizing *Bruen*'s use of the "how" metric, which examines "'whether modern and historical regulations impose a comparable burden' on th[e] right," the majority opined that, "[f]or all its disclaiming of balancing approaches, *Bruen* appears to call for just that…." App.44. Similarly critical of *Bruen*'s "why" metric – "whether a [modern] burden is 'comparably justified'" – the majority claimed this "question is another one that at first blush seems hard to distinguish from the discredited means/end analysis." App.45.

Thus, unhappy with *Bruen*'s framework for historical analysis, the majority again chose to substitute its civilian-military distinction drawn from the Seventh Circuit's seemingly repudiated *Friedman* opinion. The majority explained it like this: "[h]arking [sic] back to our examination of covered Arms, we find the distinction between military and civilian weaponry to be useful for *Bruen*'s second step, too." App.47. And, according to the majority, "[b]oth

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scores of millions of firearms and magazines are not "arms" would not square well with *Heller*, the court criticized "common use" as "a slippery concept" relying on "circular reasoning." App.25. Refusing to accept that overwhelmingly widespread ownership of certain firearms "insulates them from regulation," the court relied on its prior *Friedman* opinion, whose "analysis" the majority found "particularly useful," and thus "decline[d] to base [its] assessment of the constitutionality of these laws on numbers alone." App.41, App.43; *cf. Caetano* at 411-12; *Heller* at 629 ("[w]hatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid.").

the states and the federal government have long contemplated that the military and law enforcement may have access to especially dangerous weapons, and that civilian ownership of those weapons may be restricted." *Id.*

Fixated on this civilian-military distinction, the majority never required Illinois to provide relevant historical laws banning commonly owned arms. Instead, the majority lost itself in the weeds of *military and police exemptions* to various laws in all manner of unrelated contexts, across all manner of irrelevant time periods. How these disparate exemptions could be cobbled together to support a tradition of banning common arms, the majority did not say.

For example, the majority thought "relevantly similar" a 1746 Boston ordinance that outlawed discharges of "any cannon, gun, or pistol within city limits, but [where] soldiers were still permitted to discharge weaponry on their training days." App.48. But this ordinance did not ban *the possession* of anything, nor did most of the later Bowie knife and pistol regulations identified by the majority (App.78-79). Indeed, even fast-forwarding to the 19th century, which may serve only as "'mere confirmation of what … had already been established'" (*Bruen* at 37), most of the regulations the majority identified only "limit[ed] … public carry" ("bear[ing]"), and not mere ownership or possession ("keep[ing]") – a "critical" distinction, according to the dissent below. App.78, App.81 (Brennan, J., dissenting).

Further belying the majority's preoccupation with historical laws which provided exemptions to the

military or police, these restrictions were deemed unconstitutional even then. App.79 (Brennan, J., dissenting) ("the Supreme Court of Georgia declared the 1837 statute unconstitutional"). And the remainder of the majority's laws with military and police exemptions date to the 20th century, which is utterly irrelevant, as it "does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence." *Bruen* at 66 n.28.

But even accepting the majority's contrived civilian-military distinction as the appropriate historical focus (it is not), Founding-era history clearly establishes a tradition *contrary to the majority's premise*. Indeed, the Founders repeatedly sought to ensure the citizenry would be as well-equipped as the military. Countless contemporaneous sources confirm the Second Amendment's original meaning as guaranteeing armament parity between the citizen and government. For example, James Madison[17] and Tench Coxe[18] assuaged antifederalists' concerns of centralized military power by promising that well-armed citizens would provide a sufficient check on despotic ambition. In order to effectuate this purpose, the Founders understood that the citizen militia had to be as well-equipped as the standard infantryman. *See* n.11 and n.12, *supra*. The glaring absence of Founding-era restrictions distinguishing "civilian" and "military" arms confirms this understanding, as

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[17] The Federalist No. 46 at 295-96 (James Madison) (Clinton Rossiter ed., 1961).

[18] Tench Coxe, "Remarks on the First Part of the Amendments to the Federal Constitution," *Federal Gazette*, June 18, 1789, at 2.

these weapons "'were one and the same.'" *Heller* at 625.

In the decades that followed the Founding, citizen access to military-used arms persisted. By the mid-19th century, courts understood the Second Amendment's protection to be expansive, covering "arms of every description, and not such merely as are used by the militia." *Nunn v. State*, 1 Ga. 243, 251 (1846) (emphasis removed). When presented with historical expert testimony, one Oregon court confirmed that "there was no clear distinction between private and military use at the time of [Oregon] statehood [in 1859]." *Arnold v. Kotek*, 2023 Ore. Cir. LEXIS 3887, at *9 (Harney Cnty. Nov. 24, 2023). Indeed, while "most private gun manufacturers were angling for military contracts" at the time, they "would sell any firearm to private citizens who could afford one." *Id.* at *10. Private citizens then used these arms "for self-defense," "defense of the state," and in "militia activities." *Id.*

The Seventh Circuit made no attempt to grapple with this uniform, enduring historical tradition under which no distinction was ever drawn between civilian and military arms. By excising and casting aside the prefatory Militia Clause from the rest of the Second Amendment – finding *no relation* between the clauses *at all* – the panel rejected the very historical practices that govern resolution of this case. One need not look any further than the "large capacity magazine weapon" Meriwether Lewis brought "on the Lewis and Clark expedition to impress upon the Indian tribes" in 1803. *Arnold* at *10.

This Court's intervention is necessary to course correct the Seventh Circuit's rejection of the principles elided in *Heller* and *Bruen*. If courts continue to operate under the misimpression that the right to keep and bear arms protects only neutered firearms like break-barrel shotguns and bolt-action hunting rifles, the Second Amendment will offer little but a parchment barrier against tyranny.

II. THIS CASE OFFERS A CRITICAL OPPORTUNITY TO END PROLIFERATION OF LOWER-COURT REVISIONISM BEFORE IT AGAIN TAKES HOLD.

After this Court's decision in *Heller*, it quickly became clear that many lower courts were entirely unimpressed with the importance of the rights protected by the Second Amendment. As numerous opinions refused to respect those rights in the dozen years after *Heller*, many petitions for certiorari were filed in this Court, but almost all were denied. Looking back over this period, numerous dissents from denial of certiorari tell the story of what happens when this Court does not act quickly to correct erroneous rulings below.

For example, when *Friedman* came before this Court, Justices Thomas and Scalia noted that, "despite" the Court's precedents, during the intervening seven years "several Courts of Appeals … upheld categorical bans on firearms that millions of Americans commonly own for lawful purposes" and believed that "noncompliance with [the Court's] Second Amendment precedents warrants this Court's attention…." *Friedman*, 577 U.S. at 1039 (Thomas, J.,

dissenting from denial of certiorari). That same year, Justices Thomas and Scalia stated that, "[d]espite the clarity with which we described the Second Amendment's core protection for the right of self-defense, lower courts, including the ones here, have failed to protect it." *Jackson v. City & County of San Francisco*, 576 U.S. 1013, 1014 (2015) (Thomas, J., dissenting from denial of certiorari).

Two years later, Justices Thomas and Gorsuch called the two-step "approach taken by the en banc [Ninth Circuit] ... indefensible." *Peruta v. California*, 582 U.S. 943, 945 (2017) (Thomas, J., dissenting from denial of certiorari). And the year after that, Justice Thomas explained that another circuit court decision was "symptomatic of the lower courts' general failure to afford the Second Amendment the respect due an enumerated constitutional right." *Silvester v. Becerra*, 583 U.S. 1139, 1140 (2018) (Thomas, J., dissenting from denial of certiorari); *see also* at 1149 (Thomas, J., dissenting from denial of certiorari) ("[b]y refusing to review decisions like the one below, [the Court] undermine[s]" the declaration that the "Second Amendment is not a 'second-class right….'").

Then, in 2020, Justices Thomas and Kavanaugh opined that "many courts have resisted our decisions in *Heller* and *McDonald*," believing that the Court had been presented "an opportunity to provide lower courts with much-needed guidance [and] ensure adherence to our precedents…." *Rogers v. Grewal*, 140 S. Ct. 1865, 1866, 1875 (2020) (Thomas, J., dissenting from denial of certiorari). And when this Court *did* grant certiorari in *N.Y. State Rifle & Pistol Ass'n v. City of New York*, 140 S. Ct. 1525 (2020), and New

York sought to avoid this Court's review by quickly repealing its statute, Justice Alito was uncomfortable with dismissing the case as moot, noting that "[w]e are told that the mode of review in this case is representative of the way *Heller* has been treated in the lower courts. If that is true, there is cause for concern." *Id.* at 1544 (Alito, J., dissenting).

Bruen set the record straight, and many lower courts (including the district court below) have "gotten the message," understanding "[t]he right to keep and bear arms is [not] this Court's constitutional orphan." *Silvester* at 1149 (Thomas, J., dissenting from denial of certiorari). But many courts have not.

Post-*Bruen*, many courts are again in search of the most expedient ways to avoid this Court's holdings and frustrate the right to keep and bear arms. Some are seemingly in competition for the prize 'most unfaithful opinion.' *See, e.g.*, *NRA v. Bondi*, 61 F.4th 1317, 1322 (11th Cir.) ("Historical sources from the Reconstruction Era are more probative of the Second Amendment's scope than those from the Founding Era."), *vacated, reh'g en banc granted*, 72 F.4th 1346 (11th Cir. 2023); *Antonyuk v. Chiumento*, 89 F.4th 271 (2d Cir. 2023) (distinguishing *Bruen* as an "exceptional" decision that need not be followed too closely) (Pet. Cert. docketed Feb. 22, 2024, No. 23-910); *Ocean State Tactical, LLC v. Rhode Island*, No. 23-1072, slip op. at 13 (1st Cir. Mar. 7, 2024) (emphasis added) (banning "[large-capacity magazines] … imposes *no meaningful burden* on the ability of Rhode Island's residents to defend themselves").

Old habits die hard, it would seem. So that the Second Amendment is not again relegated to "second class" status, it is vital that this Court not to allow the nation to return to the type of lower-court defiance that followed *Heller*. As Justices Alito and Thomas made clear just last month in a different context, erroneous reasoning by lower courts "is a virus that may spread if not promptly eliminated." *Coal. for TJ*, 2024 U.S. LEXIS 986, at *12 (Alito, J., dissenting from denial of certiorari).

The Seventh Circuit has decided an important federal question in a way that conflicts with multiple relevant decisions of this Court. Similar deeply flawed decisions are beginning to sprout up in other circuits as well. This case presents an ideal vehicle to stop the problem from spreading further, and prevent this Court's *Bruen* decision from being treated with the same disrespect as was shown for over a decade to this Court's decision in *Heller*.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for certiorari.

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