

Nos. 25-238, 25-566

**In The
Supreme Court of the United States**

CUTBERTO VIRAMONTES, ET AL.,
Petitioners,

v.

COOK COUNTY, ILLINOIS, ET AL.,
Respondents.

EDDIE GRANT, JR., ET AL.,
Petitioners,

v.

RONNELL HIGGINS, ET AL.,
Respondents.

*On Writ of Certiorari to the U.S. Courts of Appeals
for the Seventh Circuit and the Second Circuit*

**BRIEF *AMICUS CURIAE* OF
G. ANTAEUS B. EDELSON
IN SUPPORT OF PETITIONERS**

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IDENTITY AND INTEREST OF *AMICUS
CURIAE*

G. Antaeus B. Edelson respectfully submits this brief in support of Petitioners.¹ Mr. Edelson is a licensed attorney in California, Vermont, and the District of Columbia. As an officer of the court in multiple U.S. jurisdictions, Mr. Edelson has a keen interest in the rule of law, and the preservation of the rights, freedoms, and liberties enshrined in the Constitution. As the foundation of the American experiment in democracy, the Constitution serves as more than just a framework for the branches and duties of the federal government, it acts as the guarantor of certain fundamental and inalienable rights, universally applicable across this nation.

Mr. Edelson is also currently an LLM candidate at the University of Virginia School of Law focusing on Constitutional Law. While these cases concern weapons and the Second Amendment, Mr. Edelson harbors serious concerns about the potential ramifications and legal ripple effects for other rights ostensibly guaranteed by the Constitution, should Petitioners be unsuccessful. Specifically, he fears any arguments which might successfully curtail

¹ In accordance with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae* made a monetary contribution to its preparation or submission.

the scope of rights covered by the plain text of the Constitution and Second Amendment could naturally be applied to constrain and limit other enumerated rights and freedoms, far beyond how we presently perceive them.

Given both the legal and social implications of the matter at issue in these cases, Mr. Edelson felt a personal ethical obligation to take a stand on behalf of the U.S. Constitution and the rights of the American people. While sympathetic to the earnest sentiments of those concerned about violence due to weapons, Mr. Edelson believes any change in clearly enumerated Constitutional rights must come from amendments to the document itself, and not result from state or local legislation seeking to pull an end-around.

SUMMARY OF ARGUMENT

The Second Amendment states “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.” Despite the expansive language used, some states and localities, like Cook County, Illinois, and the State of Connecticut, believe the scope of rights protected extend only to personal defense, and specifically seek to ban firearms which they believe are not reasonable for such purposes. In this Brief, *Amicus* argues such positions are fundamentally unsound, running contrary to the

language and meaning of both the Constitution and established Supreme Court precedent. *Amicus* believes the challenged municipal and state codes banning semiautomatic rifles, like the AR-15, are unconstitutional and argues in favor of Petitioners, asking the Court to reverse the rulings of the Seventh and Second Circuit Courts.

This Brief looks first at the text, history, and meaning of both the Second Amendment and Article I of the Constitution. The texts of both intentionally use language addressing the militia of the United States, which is comprised of ‘the People.’ A review of Supreme Court precedent shows there is ample caselaw on point, addressing the importance of these references to the militia, including *United States v. Miller*, and *District of Columbia v. Heller*. *Miller* emphasized the Second Amendment protections apply to weapons relevant to militia service, with an exception for dangerous or unusual weapons outside what a militiaman might be reasonably expected to provide. *Heller* reaffirmed the martial origin of the Second Amendment while also recognizing an individual right to armed self-defense. This Brief also reviews the history and historical role of the militia and volunteer forces and addressees the century-long effort by the government to promote and encourage individual civilian marksmanship. *Amicus* argues modern semiautomatic rifles, like the AR-15, fall squarely within such a recognized

purpose and should therefore be protected by the Second Amendment.

This Brief then distinguishes semiautomatic arms from machineguns or other dangerous and unusual weapons, arguing that because of the clear technical distinctions, semiautomatic arms are presumptively within the Second Amendment's scope.

Finally this Brief argues constitutional protections of enumerated rights must accommodate technological advancement, and that protections extend to the relevant technology in existence when such rights are exercised, including semiautomatic rifles.

ARGUMENT

I. Modern semiautomatic rifles, like the AR-15, are specifically within the ambit of the text of the Second Amendment.

In 1939 the Court determined short-barrel shotguns were not protected under the Second Amendment because there lacked any evidence such weapons had “some reasonable relationship to the preservation or efficiency of a well regulated militia,” that such shotguns were “any part of the ordinary military equipment, or that [their] use could contribute to the common defense.” *United States v. Miller*, 307 U.S. 174, 178 (1939). The Court explained the significance of this observation and understanding by basing its analysis of the Second Amendment in Section

8 of Article 1 of the Constitution, which enumerates Congressional powers vis-à-vis the militia:

The Constitution as originally adopted granted to the Congress power—“To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions; To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.” With obvious purpose to assure the continuation and render possible the effectiveness of such forces the declaration and guarantee of the Second Amendment were made. It must be interpreted and applied with that end in view. *Miller*, at 178.

In 2006 Cook County, Illinois, passed the Blair Holt Assault Weapons Ban, presently codified at COOK COUNTY, ILL., CODE ch. 54, art. III, div. 4 (2025), which explicitly bans a considerable number of weapons by aggregate features, if not explicitly by name, including semiautomatic rifles like the AR-15. *Id.* at § 54-211–212. In defending the ordinance against

Petitioner Viramontes, Cook County asserts the banned weapons, including AR-15s, are not “arms” under the Second Amendment, because they “do not facilitate armed self-defense,”² essentially asserting only defensive-centric weapons receive Second Amendment protections.

In 1993, Connecticut passed as an “Assault Weapons Ban” (AWB), Act of June 29, 1993, Public Act No. 93-306, 1993 Conn. Acts 824, and updated it in 2023, An Act Addressing Gun Violence, Public Act No. 23-53, 2023 Conn. Acts 1, codified at CONN. GEN. STAT. § 53-202a et seq. (2025). This law also explicitly bans weapons by aggregate features, if not explicitly by name, including semiautomatic rifles like the AR-15. In defending the statute against Petitioner Grant, Connecticut likewise argues semiautomatic rifles, like the AR-15, are not “arms” under the Second Amendment, because they are “useful not for self-defense but for . . . offensive combat.”³ Connecticut goes even further, arguing the Second Amendment “protects only keeping and carrying arms for self-defense.”⁴

² Memorandum in support of Motion for Summary Judgment, *Viramontes v. Cook County*, No. 1:21-cv-04595 (N.D. Ill. Aug 27, 2021), Docket # 82, at 5 (citations omitted) (hereinafter Docket # 82).

³ Brief of Defendants-Appellees, *Grant v. Lamont*, No. 23-1344 (2d Cir. May 2, 2024), Docket # 48, at 18.

⁴ *Id.* at 22.

Putting aside any arguments explaining just how useful a weapon like an AR-15 can be for legal personal defense of one's person and home, or for lawful purposes of hunting or varmint control, Cook County and Connecticut clearly base their entire positions on the flawed argument that the purpose of the Second Amendment is only personal self-defense/protection. This understanding simply does not square with the text of the Constitution, including the Second Amendment, nor with the Court's precedent in *Miller*. Accordingly, the rulings of the Seventh and Second Circuits, which supported such incorrect interpretation, should be overturned.

A. The Court has recognized the prefatory language of the Second Amendment emphasizes the military nature and purpose as part of the rationale for which the right the bear arms sought to grant protection.

The prefatory language of the Second Amendment emphasizes the military nature and purpose for which the right the bear arms sought to grant protection. The Amendment states: "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."⁵ As noted, *supra*, the Court has already recognized the martial provenance and foundation of the

⁵ U.S. CONST. amend. II.

Second Amendment in *United States v. Miller*, 307 U.S. 174 (1939) even if it did not conduct a comprehensive review of that amendment and the rights granted by it. The Court’s more recent gun cases addressing questions regarding the ancillary, though no less important, aspect of self-defense rights under the Second Amendment, do not alter this. In *District of Columbia v. Heller*, 554 U.S. 570 (2008), Justice Scalia recognized “[t]he Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause,” explaining “[t]he former does not limit the latter grammatically, but rather announces a purpose.” *Heller*, at 577. While the Court made clear the Second Amendment included an “inherent right of self-defense,”⁶ which it described as an “individual right unconnected to militia service,”⁷ it also clearly stated “[l]ogic demands that there be a link between the stated purpose and the command.”⁸ *Heller*’s extensive recitation of the history, meaning, and purpose of “bearing arms” was to emphasize the fact “bearing arms” was not merely curtailed to the application of bearing arms in a military role or purpose, but also extended to applications outside of such roles: “It is clear from those formulations that “bear arms” did not refer *only* to carrying a weapon in an organized

⁶ *Heller*, at 628.

⁷ *Id.* at 612.

⁸ *Id.* at 577.

military unit.” *Id.*, at 585 (emphasis added). Nowhere in the Court’s opinion does it demean or excise the martial side of the Second Amendment; quite the contrary, as it chided the Dissent for seeking to “protect[] only the right to possess and carry a firearm in connection with militia service.” *Id.*, at 577. More notably, even the Dissent acknowledged the Second Amendment “protects the right to keep and bear arms for certain military purposes.” *Id.*, at 637 (Stevens, J., dissenting). *Heller* also favorably regarded 19th century commentators which recognized the martial reasons for the people to have access to arms relevant for militia service: “[The purpose of the Second Amendment is] to secure a well-armed militia But a militia would be useless unless the citizens were enabled to exercise themselves in the use of warlike weapons.” *Heller*, at 618 (citing JOHN POMEROY, AN INTRODUCTION TO THE CONSTITUTIONAL LAW OF THE UNITED STATES § 239, p. 157 (9th ed. 1886) (1868)).

Shortly after its decision in *Heller*, the Court reaffirmed its stance about the breadth of rights guaranteed by the Second Amendment, making clear such rights were not only valid against the federal government, but against the states as well in *McDonald v. City of Chicago*, 561 U.S. 742 (2010). Though the issue in *McDonald* concerned municipal statutes as applied to personal defense weapons, Justice Alito once

again explained “the codification of [the Second Amendment] right was prompted by fear that the Federal Government would disarm and thus disable the militias, but we reject[] the suggestion that the right was valued only as a means of preserving the militias.” *McDonald*, at 787 (Alito, J., Opinion). Again, a clear recognition of the martial application of the amendment.

It is true neither *Miller* nor *Heller* endorse a limitless right under the Second Amendment, instead acknowledging its grant is “not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Heller*, at 626. This is clarified as a prohibition on the “carrying of dangerous and unusual weapons,” *Id.*, at 627 (internal citation omitted), but notably *not* against arms with which a member of a militia might be “expected to appear . . . supplied by themselves and of the kind in common use at the time.” *Miller*, at 179. *Miller*’s application of the “common use” appellation does not mean common use for limited recreational or defensive purposes, but rather includes arms which would be normally applicable for an individual’s use in a militia or martial application. *Heller* makes this clear stating, “[w]e think that Miller’s ‘ordinary military equipment’ language must be read in tandem with what comes after: ‘[O]rdinarily when called for [militia] service [able-bodied] men were expected to appear bearing arms supplied by themselves and of the

kind in common use at the time.” *Heller*, at 624 (quoting *Miller*, at 179). With this understanding of the purpose, a modern semiautomatic-only rifle which has a similar, though not identical, function and handling to modern infantry rifles is clearly consonant with the Court’s precedent, and well within the ambit of the Second Amendment protections.

B. The Constitution, American military history, federal law, and state corollaries of such laws, emphasize the relevance of this militia pedigree of the Second Amendment.

Constitution

The Constitution explicitly describes the concurrent and sometimes overlapping nature of the militia with a regular army in Section 8 of Article I. Article I vests Congress with the power to “raise and support Armies” as necessary, with the provision that any appropriation therefore could not extend “for a longer Term than two Years,”⁹ in lieu of separately establishing a permanent army. This reflects a pervasive fear at the time of the founding that “a standing army could lead to domestic tyranny.”¹⁰ Separately, though in the same section, Congress is also

⁹ U.S. CONST. art. I, § 8, cl. 12.

¹⁰ Judge Gregory E. Maggs & Robert Leider, *The Armies Clause*, in *THE HERITAGE GUIDE TO THE CONSTITUTION* 207 (Josh Blackman & John G. Malcolm eds., 3d ed. 2025).

granted the powers to “call[] forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions,”¹¹ and “provide for organizing, arming, and disciplining the militia,”¹² as necessary. The choice of different language between the army clause and the militia clauses indicates the distinct natures of how the Framers’ conceived of both armies and militias. The constitutional requirement for any armies to be ‘raised and supported’ means Congressional action is required to bring an army into existence, and sustain its existence. This stands in direct contrast to militias which impliedly exist independent of Congressional action. Indeed, prior to ratification of the Constitution, Federalist No. 46 went to great lengths to explain how the prospective government would not interrupt the existence of a robust militia system whereby the people would retain the “advantage of being armed.”¹³ While suppressing insurrections or repelling invasions are duties traditionally in the bailiwick of regular armies, the fact those roles can fall to militias, should Congress deem it necessary, serves to emphasize the martial role which militia can be called to fill. The Second Amendment, and its grounding in the role of

¹¹ U.S. CONST. art. I, § 8, cl. 15.

¹² U.S. CONST. art. I, § 8, cl. 16.

¹³ THE FEDERALIST NO. 46 (James Madison).

militia service, should therefore be read concurrently with this section.

Federal law and state corollaries

The Second Amendment is also notable in its timing, as its passage in the Bill of Rights, Resolution of Sept. 25, 1789, 1 Stat. 97 (1789), coincides with the statutory adaptation of the federal military forces in place under the Articles of Confederation into the new framework of the Constitution, Act of Sept. 29, 1789, ch. 25, 1 Stat. 95 (1789).¹⁴ The Founders were aware of the value of a professional military force, acknowledging the martial superiority of regular forces over a comparable militia force, because “[w]ar, like most other things, is a science to be acquired and perfected by diligence, by perseverance, by time, and by practice.”¹⁵ The desire to balance domestic and national security needs such that the nation would not be “incapacitated by its Constitution,”¹⁶ while empowering the citizens with a robust system of

¹⁴ Congress passed the Amendments via joint resolution on September 25, 1789, *see The Bill of Rights: A Transcription*, NAT. ARCHIVES, <https://www.archives.gov/founding-docs/bill-of-rights-transcript> (last visited Aug. 10, 2026), and the military adaptation act on September 29, 1789. *See Today in History – September 29*, LIBRARY OF CONG., <https://www.loc.gov/item/today-in-history/september-29/> (last visited, Aug. 10, 2026).

¹⁵ THE FEDERALIST NO. 25 (Alexander Hamilton).

¹⁶ *Id.*

general armament, and state and local militias to counter any danger posed by a standing federal army, was clearly a focus. This focus persisted into the Second Congress, with the passage of two militia acts according to the Section 8 powers: the Act of May 2, 1792, ch. 28, 1 Stat. 264 (1792), which gave a two-year standing permission for the President to call up the militias should the need arise, and the Act of May 8, 1792, ch. 33, 1 Stat. 271 (1792), which set the requirements for who was defined to be part of the militia, and detailing the duties and obligations for what such membership entailed. In 1795, the May 2 Act was replaced by another militia act, which notably removed the two-year standing permission and granted an indefinite standing permission to call up the militia. Act of Feb. 28, 1795, ch. 36, 1 Stat. 424 (1795). Of particular note, the Act of May 8 stipulated “every citizen, so enrolled [in the militia] shall . . . provide himself with a good musket or firelock, . . . or with a good rifle,” as well as a minimum amount of ammunition and other firearm-related materials, in addition to other necessary supplies. 1 Stat. 271 (1792). Such mandatory self-arming provisions were also present in most of the states in the late 18th and early 19th centuries, following the federal militia act.¹⁷ The fact self-armament for militia purposes

¹⁷ *E.g.* Delaware, AN ACT FOR ESTABLISHING THE MILITIA IN THIS STATE, ch. 36, § 4, 1793 Del. Laws 199, 202–04 (1793); Pennsylvania, AN ACT FOR THE REGULATION OF

was deemed so important as to be codified into law only emphasizes the military pedigree of the Second Amendment.

The idea of, and statutes regarding, militia forces is not merely antiquated history, as many supporters of AWBs often attempt to argue, but continues in the present day. The modern organizational system of the martial forces of the United States was established by the Militia Act of 1903, which refreshed the standard scope of eligibility—*viz.* all able-bodied male citizens of their respective states or territories, and able-bodied male foreigners who had declared an intent to become American citizens, who are between the ages of 18 to 45—and then notably created two distinct classes of militia: the “organized militia” and the “Reserve Militia.”¹⁸ The organized militia would consist of the “regularly enlisted, organized, and uniformed active militia in the several States and Territories” which would thereafter be known as “National Guard.”¹⁹ In contrast, the “Reserve

THE MILITIA OF THE COMMONWEALTH OF PENNSYLVANIA § 5, 1793 Pa. Laws 457 (1793); Rhode Island, AN ACT TO ORGANIZE THE MILITIA OF THIS STATE § 14, 1798 R.I. Pub. Laws 436 (1798); North Carolina, AN ACT TO REVISE AND AMEND THE MILITIA LAWS, ch. 28, part I (1800); and Vermont AN ACT, FOR REGULATING AND GOVERNING THE MILITIA OF THIS STATE § 17, 1818 Vt. Laws 19 (1819).

¹⁸ MILITIA ACT OF 1903, Pub. L. No. 57-33, 32 Stat. 775, § 1 (1903).

¹⁹ *Id.* at § 3.

Militia” would consist of all those who constituted the militia but were not members of the “organized militia.”²⁰ The current federal statutes governing militia composition and arrangement, 10 U.S.C. §§ 246–47, were enacted in 1956, and changed the designation “Reserve Militia” to “unorganized militia.”²¹ While no state retains mandatory self-armament statutes, state corollaries of current federal militia laws, specifically regarding militia membership to include unorganized or reserve militia, exist in almost every state,²² containing roughly the same general provisions: all able-bodied citizens, or foreigners with a declared interest in becoming citizens, between the ages of 18 to 45, who are not otherwise disqualified, are deemed to be part of the militia. *E.g.*, CONN. GEN. STAT. § 27-2; 20 ILL. COMP. STAT. 1805/1 and /2. Under this intentionally broad scope of who constitutes the militia, protecting general access by members of such militia to semiautomatic rifles is exactly the purpose of the Second Amendment.

Military history

The United States also has a long history of Congressional authorizations calling forth the militia or volunteers under the Article I, Section

²⁰ *Id.* at § 1.

²¹ Pub. L. No. 84-1028, 70A Stat. 14, § 311 (1956).

²² Delaware, Nevada, and Vermont are notable exceptions, however Nevada allows volunteer military organizations to be included in the militia. NEB. REV. STAT. § 412.026.

8 powers. Examples include: calling forth nearly 13,000 militia from Virginia, New Jersey, Maryland, and Pennsylvania to suppress the Whiskey Rebellion in 1794;²³ repeated authorizations regarding the War of 1812 to accept volunteers into a Volunteer Military Corps,²⁴ and calling up militia forces,²⁵ with some records indicating traditional military forces numbered 68,000 while 470,000 volunteer and militiamen were mustered;²⁶ the beginning of the Civil War relied almost entirely on state militia forces and large numbers of volunteer units until Congress supplemented those forces with federal draftees.²⁷ One particularly notable example includes the use the volunteer units in the Spanish-American War. In 1898, President William McKinley made two proclamations, first

²³ *Presidential Proclamation, Aug. 7, 1794*, 4 ANNALS OF CONG. 1412–13 (1794). *Proclamation, 7 August 1794*, NAT'L ARCHIVES, <https://founders.archives.gov/documents/Washington/05-16-02-0365> (last visited Aug. 18, 2026).

²⁴ Act of Feb. 6, 1812, ch. 21, 1 Stat. 676–77 (1812); Act of July 6, 1812, ch. 138, 1 Stat. 785–86 (1812).

²⁵ Act of April 10, 1812, ch. 55, 1 Stat. 705–07 (1812).

²⁶ JOHN A. FAIRLIE, *THE NATIONAL ADMINISTRATION OF THE UNITED STATES* 136 (1922).

²⁷ *See, e.g.* Herman Hattaway, *The Civil War Armies: Creation, Mobilization, and Development*, in *ON THE ROAD TO TOTAL WAR THE AMERICAN CIVIL WAR AND THE GERMAN WARS OF UNIFICATION, 1861–1871*, 173 (Stig Förster & Jörg Nagler eds., 1997).

calling for 125,000 volunteers on April 23,²⁸ and then calling for 75,000 more on April 25.²⁹ All told, Congressional records indicate “223,235 militia or volunteers” were called up.³⁰ At the time of these proclamations, the U.S. military only numbered between 59,000 and 73,000 regulars.³¹

Though the U.S. won the Spanish-American War decisively, the manner in which the war was conducted, including, logistics, organization, training, etc. revealed deep flaws and deficiencies throughout the defense system. Indeed, problems with the militia and volunteer-dependent organization of the nation’s military were known back in the Civil War,³² but apropos the instant case, in a post-war commission report, known as the ‘Dodge Report,’ the government found “the country unprepared with any large stock of arms,

²⁸ CALLING FORTH VOLUNTEERS TO SERVE IN THE WAR WITH SPAIN, Proclamation No. 412, 30 Stat. 1770 (1898).

²⁹ CALLING FORTH ADDITIONAL VOLUNTEERS TO SERVE IN THE WAR WITH SPAIN, Proclamation No. 415, 30 Stat. 1772 (1898).

³⁰ 52 CONG. REC. S128 (Dec. 11, 1914).

³¹ A House record from 1900 gives the 73,000 figure, 33 CONG. REC. H2278 (Feb. 26, 1900), but a later Senate record from 1914 states the 59,000 figure, 52 CONG. REC. S128 (Dec. 11, 1914).

³² EMORY UPTON, THE MILITARY POLICY OF THE UNITED STATES 91 (4th ed. 1917).

ammunition . . . and equipments.”³³ One officer noted there were only enough standard military rifles to equip “the increased regular army and about two thousand volunteers,” and “more than two hundred thousand volunteers, had to be furnished with [obsolescent] Springfield rifles,” firing limited black powder rounds.³⁴ In fact, not only did the U.S. lack enough modern service rifles to equip all the forces, but it could not “manufacture them fast enough to supply the demand.”³⁵ It was not unheard of for volunteers to bring their own arms, with which “they were already thoroughly familiar.”³⁶ Indeed, future President Theodore Roosevelt’s volunteer force, the 1st U.S. Volunteer Cavalry known as the “Rough Riders,” was gifted two early Colt Browning model 1895 machine-guns which they brought to Cuba, at least one of which was gifted to the regiment by a wealthy sergeant in the unit.³⁷

The American military of the modern era is much more advanced and well-equipped than it

³³ REPORT OF THE COMMISSION APPOINTED BY THE PRESIDENT TO INVESTIGATE THE CONDUCT OF THE WAR DEPARTMENT IN THE WAR WITH SPAIN VOL. 1, S. DOC. NO. 56-221, at 113 (1900) (hereinafter DODGE REPORT).

³⁴ HERBERT H. SARGENT, THE CAMPAIGN OF SANTIAGO DE CUBA 97 (1907).

³⁵ DODGE REPORT at 197.

³⁶ THEODORE ROOSEVELT, THE ROUGH RIDERS 35–36 (1899).

³⁷ *Id.* at 71.

was in the 19th century, and it has been a long time since the militia or volunteer forces were called out for national defense. Thus, it is easy for proponents of AWBs to argue we are in a new world now, and the role of the militia is no longer relevant or applicable. The Court should be mindful however that time since an event is not the deciding factor when adjudicating constitutional rights—as the Chief Justice so eloquently stated during oral argument last term, “it's a new world; it's the same Constitution.”³⁸ With these words in mind, the Court should declare semiautomatic rifles, like the AR-15, covered by the Second Amendment.

C. The government has a long history of not only supporting private ownership of rifles relevant to militia or military duty, but has specifically encouraged it for over 120 years in the promotion of civilian marksmanship.

Since 1903, the federal government has actively supported and promoted civilian marksmanship, including promoting skills with military rifles. The Dodge Report directly noted how general marksmanship skills of the volunteers in the Spanish-American War were inadequate.³⁹ In fact, the first General Order

³⁸ Transcript of Oral Argument at 34, *Trump v. Barbara*, 146 S. Ct. 2438 (No. 25-365).

³⁹ DODGE REPORT at 222 and 276.

from the Headquarters of the First Division, First Army, on May 19, 1898, specifically directed commanders to make “condition, discipline, and *marksmanship* the ultimate aim.”⁴⁰ The Report further illustrated how those with specific marksmanship skills were able to distinguish themselves and effect a meaningful advantage on the battlefield.⁴¹ That said, these were the outliers, with many historical records indicating general marksmanship was quite poor.⁴² In order to prevent a repeat of this situation for the next time the government needed to call up militias or volunteers to supplement regular forces for the national defense, the Report recommended a number of changes, and would play a decisive role in the reorganization of the federal militia.⁴³ These changes would come not just in the form of the Militia Act of 1903, *see supra*, but also the Army Appropriations Act of 1904,⁴⁴ which called

⁴⁰ *Id.* at 273 (emphasis added).

⁴¹ *Id.* at 381–382.

⁴² *E.g.*, *Flashback Friday: “Uncle Sam’s Sharpshooters”: Military Marksmanship at Fort Omaha and Bellevue, 1882-1894*, NEB. ST. HIST. SOC’Y, <https://history.nebraska.gov/flashback-friday-uncle-sams-sharpshooters-military-marksmanship-at-fort-omaha-and-bellevue-1882-1894/b> (last visited Aug. 13, 2026).

⁴³ *E.g.* RUSSELL F. WEIGLEY, *HISTORY OF THE UNITED STATES ARMY* 315 (1967).

⁴⁴ Act of Mar. 2, 1903, ch. 975, 32 Stat. 927 (1903).

for the Secretary of War to establish national matches to promote marksmanship.⁴⁵

Under that statutory authority, Secretary of War Elihu Root established the National Board for the Promotion of Rifle Practice (NBPRP) in December 1903.⁴⁶ As part of its initial recommendations, the NBPRP not only established and promoted shooting competitions for the newly recognized National Guard and other organized militia units, it also recommended “every facility should be offered [to] citizens outside of the Army, Navy, Marine Corps, and organized militia to become proficient in rifle shooting, and that this purpose can best be accomplished by means of rifle clubs.”⁴⁷ The NBPRP also recommended the War Department “encourage[] . . . the organization of rifle clubs” for persons in the unorganized militia, and to “issue, if practicable . . . service rifles and ammunition to such clubs for target practice, [so] that the training may be with the military arm.”⁴⁸ This was not a singular occurrence or passing fad, as legislation in 1908 ensured the Army would be involved in civilian marksmanship instruction,⁴⁹ and in 1916, Congress would pass specific

⁴⁵ *Id.* at 941–42.

⁴⁶ U.S. DEPT OF THE ARMY, GEN. ORDER NO. 61 (1903).

⁴⁷ *Id.* at 4.

⁴⁸ *Id.*

⁴⁹ Act of May 27, 1908, ch. 204, § 20, 35 Stat. 399, 403 (1908).

legislation authorizing camps for “military instruction and training” and providing “such arms and ammunition” as deemed necessary.⁵⁰ Later that year, additional legislation would open the national shooting matches to all “members of rifle clubs and civilians,” and the Office of the Director of Civilian Marksmanship (DCM) would be established.⁵¹ Again the purpose of all of this was “to provide standard military arms and ammunition, indoor gallery rifles and ammunition” to civilians for the purpose of facilitating marksmanship and firearms proficiency among members of the unorganized militia.⁵² In an annual report to Congress, the Secretary of War noted the rifle clubs and their civilian members, numbering over 100,000, constituted “an important military asset.”⁵³ This emphasis on promoting and encouraging civilian marksmanship and proficiency with military rifles has been codified in U.S. Code from 1916 through the present: first in Chapter 12 of Title 32, 32 U.S.C. §§ 181 et seq. (1925), and then moved to Chapter 401 of Title 10 in 1956, 10 U.S.C. §§ 4307 et seq. (1952 Supp. IV 1957), before the DCM would be privatized in 1996 as a

⁵⁰ Act of June 3, 1916, ch. 134, § 54, 39 Stat. 166, 194 (1916).

⁵¹ Act of Aug. 29, 1916, ch. 418, 39 Stat. 619, 643 and 648 (1916).

⁵² *Id.* at 648.

⁵³ WAR DEPARTMENT ANNUAL REPORTS, 1917 V. I at 899 (1918).

federally chartered 501(c)(3) corporation and retitled the Civilian Marksmanship Program (CMP), 36 U.S.C. §§ 40701 et seq (2024).

In addition to conducting matches and hosting instructional events, from its inception the DCM was authorized to engage in sales of rifles from military stores to civilians who are members in affiliated clubs or organizations.⁵⁴ In WWII and the Korean War, the M1 Garand, a semiautomatic .30 caliber clip-fed rifle, was the standard arm of U.S. forces; by 1957, the M1 was replaced in service by the M14, an updated .30 caliber box magazine-fed rifle with both semi and full-auto capabilities, and the surplussed Garands transferred to the DCM for public sales.⁵⁵ In early August 2026, the CMP announced the upcoming sale of over 100,000 M14 rifles (converted to semiautomatic only) to the public as part of its mission to promote civilian marksmanship.⁵⁶ While the DCM and now CMP do not sell full-auto rifles to the public, they did

⁵⁴ *E.g.* 32 U.S.C. § 181(d) (1925); 10 U.S.C. § 4038(5) (1952 Supp. IV 1957).

⁵⁵ Miguel Ortiz, *JFK's M1 Garand sold for nearly \$150,000*, WE ARE THE MIGHTY (Nov. 14, 2024), <https://www.wearethemighty.com/military-news/jfks-m1-garand-sold-for-nearly-150000/>.

⁵⁶ Daniel Terrill, *CMP approved to sell more than 100,000 surplus M14 rifles*, MILITARY TIMES (Aug. 10, 2026), <https://www.militarytimes.com/industry/techwatch/2026/08/10/cmp-approved-to-sell-more-than-100000-surplus-m14-rifles/>.

and do provide such rifles (M14s and M16s) for certain instructional classes and encourage participants to bring semi-automatic versions of military rifles to trainings and matches.⁵⁷ With M16 pattern rifles (and carbine-variant M4s) now the standard U.S. military small arm, and under the aforementioned landscape and history, the semiautomatic civilian variant, AR-15, is clearly within the scope of weapons the Second Amendment was written to protect.

II. Modern semiautomatic weapons, like the AR-15, are easily distinguishable from the classes/types of weapons which this Court has held are not protected in *Miller* and *Heller*.

A big part of the concern regarding AR-15s seems to be that they appear visually to be identical to the standard military small-arm, the M16/M4, which has automatic fire capabilities. As discussed above, the Court has clarified the Second Amendment does “not [grant] a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”

⁵⁷ See Dick Jones & Serena Juchnowski, *Excellence in Competition Rifle: Then and Now*, SHOOTING SPORTS USA (June 17, 2020), <https://www.ssusa.org/articles/2020/6/17/excellence-in-competition-rifle-then-and-now>; Aslhey Dugan, *CMP's National Matches Educational Clinics offer something for everyone*, BEACON (July 9, 2024), <https://www.thebeacon.net/cmpps-national-matches-educational-clinics-offer-something-for-everyone/>.

Heller, 554 U.S. at 626. While not explicitly stated, the general consensus is automatic weapons are not protected by the Second Amendment. Indeed, in addressing language from *Miller* about the Second Amendment covering “part of ordinary military equipment” the *Heller* Court said it would be “startling” to infer the “National Firearms Act’s [NFA] restrictions on machineguns ... might be unconstitutional, machineguns being useful in warfare in 1939.” *Heller*, at 624. This distinction however should clearly mean semiautomatic weapons *are* presumptively under the umbrella of the Second Amendment. The Court’s reference to which arms “Americans overwhelmingly choose for the lawful purpose of self-defense,” *Id.*, at 628, and Justice Alito’s concurrence in *Caetano v. Mass.*, 577 U.S. 411, 417 (2016)(Alito, J., concurring), strongly suggest this to be true.

A. *Miller* and *Heller* restrictions on “dangerous and unusual weapons” should properly be read to mean weapons which would be outside those which a person called for militia duty would be expected to bring.

Dangerous and unusual

Accepting *arguendo* that fully-automatic firearms are not protected, semiautomatic firearms can be clearly distinguished at a technical level, as they only allow one shot per pull of the trigger, contrasting with the multiple shots possible with a fully-automatic firearm.

Federal statute strictly regulates machineguns including “any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger,” as well as “the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun.” 26 U.S.C. § 5845(b). Federal statute also prohibits private citizens from owning any machinegun manufactured after May 1986. 18 U.S.C. § 922(o). Given the fact semiautomatic handguns are legally purchased nearly every day in each state across the nation, this technical distinction is centrally important in evaluating what is presumptively protected, and what is not. This Court recently looked at the distinction between semi and fully-automatic firearms in *Garland v. Cargill*, 602 U.S. 406 (2024). It determined a firearm which can only fire one shot at a time, even when equipped with an accessory to help a shooter approximate automatic fire, is statutorily not a machinegun and thus outside the realm of the NFA’s regulations.

In the context of the AR-15/M16 analysis, the “dangerous and unusual” appellation which is applied to weapons unprotected by the Second Amendment seems to relate to the capacity of the weapon to function as a machinegun. The

relevant portion of federal statute appears, at least in part, to be the language about the weapon itself, or specific parts, being “designed and intended” for automatic fire. 26 U.S.C. § 5845(b). In *F.J. Vollmer Co. v. Higgins*, 23 F.3d 448 (D.C. Cir. 1994), the D.C. Circuit determined a HK94 receiver which was originally manufactured as a semiautomatic, but had since been modified to fully-automatic before being completely restored to the original semiautomatic status, did not qualify as a machinegun because it was in its original condition, undistinguishable from any other brand new and fully-legal HK94. In the mid 1960’s the DCM allowed civilians to purchase modified and “National Match” M14 rifles, which were manufactured to permanently eliminate the capacity for automatic fire.⁵⁸ After the passage of the Gun Control Act, Pub. L. No. 90-618, 82 Stat. 1213 (1968), the government tried to reverse course, arguing that since the M14 is a full-auto rifle, the DCM sold rifles should be regulated under the NFA. In a notable civil forfeiture case, a district court found dispositive the fact the rifle in question was “designed to shoot only in a semi-automatic fashion” and “intended that it would be permanently impossible for it to operate in an automatic manner.” *United States v. One U.S. (TRW) 7.62mm M-14 Nat’l Match Rifle, Serial No. 1453711*, No. C-3-78-125, 1980 WL 95647, at *2

⁵⁸ ARMY REG. NO. 920-25, RIFLES, M14M AND M14NM, FOR CIVILIAN MARKSMANSHIP USE (1965).

(S.D. Ohio May 20, 1980). While some district courts have found original M14s which were subsequently converted to semiautomatic only to still fall under the NFA,⁵⁹ the recently announced release of 100,000 M14s for sale by the CMP, *see supra*, indicates the dispositive nature of the semi/fully-automatic distinction. In the instant cases, the weapons at issue are all designed, manufactured, and intended to be semiautomatic only, and are therefore easily distinguished from the “dangerous and unusual weapons” contemplated by *Miller* and *Heller*.

Militia weapons

When discussing the protections of the Second Amendment in the context of militia service, Justice Scalia explained the meaning was not about making any given militiaman a one-man-army, but rather should be read as what equipment would be reasonable and appropriate for someone to bring with them when called for militia service: “[O]rdinarily when called for [militia] service [able-bodied] men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.” *Heller*, at 624 (quoting *Miller*, at 179). Accordingly, it would have been unreasonable to expect, let alone require, an individual to provide their own artillery pieces and associated

⁵⁹ *E.g.* United States v. One TRW, Model M14, 7.62 Caliber Rifle 294 F.Supp. 2d 896 (2003).

ammunition, at the founding of this nation. So too would it have been outlandish to suggest one must or ought to provide their own man-of-war. In fact, there are good reasons why the government might specifically restrict such independent provisions, as their proper employment in military operations requires extensive cooperation with other elements of a fighting force. The modern analogue to such weapons would include items like rockets, missiles, bombs, or other destructive devices.⁶⁰ Such weapons would certainly fall under the category of “dangerous and unusual,” and are easily distinguishable from semiautomatic rifles, like AR-15s, which can utilize the standard ammunition and magazines used across the U.S. military, despite lacking automatic fire capabilities.

D. The manner in which semiautomatic weapons are utilized, compared to fully automatic weapons, emphatically reinforces the distinction between them, and the types of weapons delineated by *Miller* and *Heller*.

Bans on semiautomatic rifles incorrectly conflate form with function, when in fact federal law and this Court’s precedents make clear the two are distinct and must be evaluated separately. Since the matter before the Court

⁶⁰ As defined by statute. 18 U.S.C. § 921(a)(4).

does not deal with the legality of rifles as a class, but instead only the select category of semiautomatic rifles, the relevant issue is function. To this end, numerous military publications (ATP), including field manuals (FM), training circulars (TC), and handbooks, clearly and repeatedly delineate between semiautomatic fire and any form of automatic or burst fire, both in terms of training and in application. Army ATP 3-21.8 defines different roles in an infantry rifle squad/fire team, the smallest sub-unit within an infantry platoon, and distinguishes between the positions of a “Rifleman” and an “Automatic Rifleman.”⁶¹ The ‘Rifleman’ is defined as the “baseline standard for all Infantrymen” whose “primary capability” is “[p]lacing well-aimed, effective fire . . .,” and only secondarily “[b]e prepared to assume the duties of the automatic rifleman”⁶² In contrast, the ‘Automatic Rifleman’ “provides . . . a high volume of sustained suppressive and lethal fires for target areas.”⁶³ In lay terminology, the standard infantryman’s role is to use targeted, single shots to defeat an enemy, the same as could be accomplished with a semiautomatic only rifle. In contrast, the automatic rifleman is usually supplied with a

⁶¹ U.S. DEPT OF THE ARMY, ARMY TECHNIQUE PUBLICATION NO. 3-21.8, THE INFANTRY RIFLE PLATOON AND SQUAD at 1-13 and 1-14 (2025 ed.).

⁶² *Id.* at 1-15.

⁶³ *Id.* at 1-16.

different weapon entirely, and is supposed to use the volume of shots available with a machinegun to either inhibit the general movement/operations of an enemy in the targeted area, or to provide volume of attack which is beyond the scope of a general rifle. The automatic capabilities on the rifle of an infantryman would allow them to provide a volume of fire like a machinegun for a brief period, should they need to, but that is not the primary role. In fact, when training, fully-automatic fire with an infantry rifle appears to be extremely rare, and highly restricted, if even allowed. This differentiation in practical use and purpose between semiautomatic and fully-automatic reiterates the distinction between such weapons.

E. Proponents of bans against modern semiautomatic weapons rely on misleading arguments involving tort theories of dangerous activities or inapposite comparisons to limitations on speech.

Tort theories

Proponents of bans against modern semiautomatic weapons unreasonably try to encourage courts to adopt tort concepts common for “abnormally dangerous activities” vis-à-vis such weapons, instead of recognizing the inherent dangers of anything when associated with calculated misuse. Arguments in favor of bans also rely heavily on examples of criminal activity

where mass shooters have used such rifles in the commission of heinous atrocities, and the possibility for similar such tragedies being perpetrated in the future.⁶⁴ What such arguments seek to do, however, is substitute the idea of inherent dangers with a more politicized idea of dangers associated with calculated misuse; *viz.* because semiautomatic rifles *can* be misused to cause extreme damage, they *must* be treated as though they are always dangerous, irrespective of how and when used. This argument though is inapplicable to constitutional rights and instead becomes an adaptation of the tort concept of “abnormally dangerous activity.” RESTATEMENT (THIRD) OF TORTS § 20(B)(1) (AM. LAW INST. 2010). While this type of argument is certainly applicable in the context of matters within state police power, like when considering activities like blasting,⁶⁵ or operating motor vehicles on public roads,⁶⁶ arguments to impose restrictions on expressly enumerated constitutional rights must meet a higher bar.

⁶⁴ *E.g.* Docket # 82, *supra* note 2, at 28.

⁶⁵ *E.g.* *Fitzsimmons & Connell Co. v. Braun*, 199 Ill. 390, 394 (1902) (“[I]t is a matter of common knowledge that the use of dynamite as an explosive is intrinsically dangerous.”).

⁶⁶ *E.g.* *Southern Cotton Oil Co. v. Anderson*, 80 Fla. 441, 460 (1920) (“[An] automobile operated upon the public highways is so dangerous to other users of the highways as to require its regulation and control under the police power.”).

Free speech

Proponents of AWBs also sometimes point to restrictions on the scope of other constitutional rights, often referencing limits on the First Amendment, against “libel, incitement, true threats, fighting words, or falsely shouting fire in a crowded theater.” *Bianchi v. Brown*, 111 F. 4th 438, 447 (4th Cir. 2024). These arguments are in error however as they highlight activity or actions which are willfully dangerous and intentionally harmful as examples of why the words “Congress shall make no law . . . abridging the freedom of speech,”⁶⁷ are not as limitless as a straightforward reading would suggest. The problem again is this type of argument relies on examples of deliberate abuse and misconduct as opposed to recognizing the broad protections which protect even offensive speech. *E.g. Matal v. Tam*, 582 U.S. 218, 246 (2017) (“Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express ‘the thought that we hate.’ (internal citation omitted)). After all, there is no legal or protected way in which one is allowed to libel and defame someone, make imminent threats against another’s health and safety, or cause a false panic in a public place. Therefore,

⁶⁷ U.S. CONST. amend. I, cl. 3.

the proper corollary to the limits on willful and intentional misconduct via speech would be limits to the willful and intentional misconduct with firearms; and there is no shortage of federal and state regulation addressing such activity.

III. The Second Amendment contemplates technological advances and specifically includes technology which is current in a given era.

Following this Court's ruling in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), establishing a rubric of text, history, and tradition to evaluate the constitutionality of firearms restrictions, advocates on both sides of the debate around firearms have sought to point to the historical record as justification for why their position succeeds and the other fails. Gun advocates point to the history of firearms innovation and advancement in repeating weapons and multi-shot rifles during the 18th century, including public advertisements for the display and demonstration of such weapons, correspondence between the Continental Congress and an inventor of a multi-shot firearm discussing the possibility of equipping Continental Army troops with the weapon, and the use of a novel 20-shot air rifle use by Lewis and Clark on their expedition west across the

continent, among other examples.⁶⁸ Opponents address these historical examples by highlighting the experimental (read ‘unusual’), and often dangerous nature of these weapons, pointing to the fact that improper manufacture, loading, or use of chain-firing black-powder weapons could result in a detonation of the weapon, instead of an orderly discharge of shots.⁶⁹ In the case of the air rifle, they point to its delicate nature and the fact it required skilled handling, as opposed to a rugged musket of the time. They also point to the difficulties of reloading, the fouling which occurred from repeated use of black powder, and the reduced power of such firearms compared to modern firearms when firing projectiles of comparable weights.⁷⁰

While the opponents of modern firearms are correct to point out the significant differences between a Ferguson, Belton, Lorenzoni, or Girardoni rifle (all experimental firearms which were never widely adopted), and a modern semiautomatic rifle, it is jejune and sophomoric to

⁶⁸ Ashley Hlebinsky, *History of Multi-Shot and Repeating Firearms, Part 1: 1400-1791 – Earliest Repeaters*, U. WYO. FIREARMS RES. CTR. (Aug. 6, 2026), <https://firearmsresearchcenter.org/forum/history-of-multi-shot-and-repeating-firearms-part-1-1400-1791-earliest-repeaters/>

⁶⁹ *E.g.* Def. Exhibit # 60, Rupp v. Bonta, No. 17-cv-00746 (C.D. Cal. May 26, 2023), Docket # 151-14.

⁷⁰ *E.g.* Brian DeLay, *The Myth of Continuity in American Gun Culture*, 113 CALIF. L. REV. 1, 45 (2025).

assume the founding fathers were ignorant of the concept of technological advancement or the general march of technological progress over time. While the Founders may very well have found the early inventions to be unsafe and dangerous, it defies logic that they could not or would not envision a world with significantly more advanced technology than existed at the time. Two years after Alexander Graham Bell invented the telephone, Punch magazine published a cartoon depicting futuristic videotelphony,⁷¹ despite the fact no such technology was practically conceivable at the time. In the age of Zoom courtrooms, let alone video calls on smartphones, the fantasy has certainly become reality.

Perhaps a clearer example of the applicability of constitutional rights to advancing technology is in the Fourth Amendment's protections against "unreasonable searches and seizures"⁷² and how that applies to digital technology. In *Chatrue v. United States*, 146 S. Ct. 2193 (2026), this Court held emails and digital calendars were covered by the Fourth Amendment, and should be "shielded from the 'inquisitive eyes' of the government." *Id.* at 2197 (quoting *Carpenter v. United States*, 585 U.S.

⁷¹ George du Maurier, *Edison's Telephonoscope (Transmits Light as Well as Sound)*, in PUNCH'S ALMANACK FOR 1879 (1878).

⁷² U.S. CONST. amend. IV.

296, 305 (2018). Emails are certainly more advanced than modern firearms. To argue the Founders could not even begin to conceive of safe and efficient repeating firearms, nevertheless intending Fourth Amendment protections for the digital age, simply strains credulity.

CONCLUSION

In line with the arguments above, the Court should reaffirm its established precedent, recognizing and respecting the militia/martial pedigree of the Second Amendment, and hold that semiautomatic rifles are well within its scope. Additionally, the Court should strongly reject any attempt to reinstitute any form of means-balancing test, and instead explicitly tell lawmakers the only way to curtail explicitly enumerated constitutional protections is through the process laid out in Article V of the Constitution.

For the foregoing reasons, the Court should overrule the decisions of the Seventh and Second Circuit Courts of Appeal.

Respectfully submitted,

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