Nos. 25-238 and 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, in His Official Capacity as Commissioner of the Connecticut Department of Emergency Services and Public Transportation, et al.
Respondents.
On Writs of Certiorari to the United States Courts of Appeals for the Seventh and Second Circuits

BRIEF OF MICHIGAN COALITION FOR RESPONSIBLE GUN OWNERS (MCRGO) AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

STEVEN W. DULAN
Counsel of Record
THE LAW OFFICES OF STEVEN W. DULAN, PLC
5311 Park Lake Road
East Lansing, Michigan 48823
(517) 332-3149
swdulan@stevenwdulan.com
Counsel for Amicus Curiae

TABLE OF CONTENTS

INTEREST OF AMICUS CURIAE 1
SUMMARY OF ARGUMENT 1
ARGUMENT 3
I. THE SECOND AMENDMENT RECOGNIZES A PRE-EXISTING RIGHT AND LIMITS GOVERNMENTAL POWER; THE FOUNDING-ERA MILITIA SYSTEM CONFIRMS, RATHER THAN DEFEATS, THAT LIMITATION. 3
II. RECONSTRUCTION-ERA STATUS-BASED DISARMAMENT LAWS DO NOT ESTABLISH A HISTORICAL TRADITION OF PROHIBITING CLASSES OF ARMS. 7
III. THE GOVERNMENT MUST DEMONSTRATE A HISTORICALLY GROUNDED LIMITATION ON THE PEOPLE'S RIGHT; MILITARY RESEMBLANCE AND GENERALIZED DANGEROUSNESS DO NOT SATISFY THAT BURDEN. 10
CONCLUSION 18

TABLE OF AUTHORITIES

Cases

Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Att'y Gen. N.J., 183 F.4th 211 (3d Cir. 2026) 2, 16
Barnett v. Raoul, Nos. 24-3060, 24-3061, 24-3062 & 24-3063, slip op. at 1 (7th Cir. July 9, 2026) .. 15–16
Bevis v. City of Naperville, 85 F.4th 1175 (7th Cir. 2023) 15–16
Caetano v. Massachusetts, 577 U.S. 411 (2016)..... 12
District of Columbia v. Heller, 554 U.S. 570 (2008) . 1, 3, 5–7, 12–15
Dred Scott v. Sandford, 60 U.S. (19 How.) 393 (1857) 8
McDonald v. City of Chicago, 561 U.S. 742 (2010).... 9

Nat'l Ass'n for Gun Rts. v. Lamont, 153 F.4th 213 (2d Cir. 2025) 12, 15–16
N.Y. State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1 (2022)..... 2, 10, 13–17
Staples v. United States, 511 U.S. 600 (1994) 13
State v. Newsom, 27 N.C. (5 Ired.) 250 (1844)..... 8
United States v. Miller, 307 U.S. 174 (1939) 1, 6–7, 15
United States v. Rahimi, 602 U.S. 680 (2024) 2, 10–11
Viramontes v. Cook County, No. 24-1437, 2025 WL 1553896 (7th Cir. June 2, 2025)..... 15
Wolford v. Lopez, 609 U.S. ___ (2026)..... 2, 10–11

Constitutional Provisions and Statutes

U.S. Const. art. I, § 8 4
U.S. Const. amend. II 5
Act of May 8, 1792, ch. 33, § 1, 1 Stat. 271 5
Act of July 16, 1866, ch. 200, § 14, 14 Stat. 173 9
Bill of Rights 1689, 1 W. & M., sess. 2, c. 2 4
1865 La. Acts No. 10, § 1, at 14 11

Other Authorities

Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* 298 (3d ed. 1898)..... 5–6
The Federalist No. 46 (James Madison) (Jacob E. Cooke ed., 1961)..... 4
1 Jonathan Elliot, The Debates in the Several State Conventions on the Adoption of the Federal Constitution (2d ed. 1836) 5
1 William Blackstone, Commentaries on the Laws of England..... 4
Lois G. Schwoerer, The Declaration of Rights, 1689 (1981)..... 3
Petition of Right, 3 Car. 1, c. 1 (1628) 3
Virginia Declaration of Rights § 13 (1776) 5
Pa. Declaration of Rights §§ 13–14 (1776)..... 5

INTEREST OF AMICUS CURIAE[1]

Michigan Coalition for Responsible Gun Owners ("MCRGO") is a Michigan non-partisan, nonprofit corporation, founded in 1996 to support and defend the right to keep and bear arms through education, legislation, and litigation. MCRGO has thousands of members statewide, with members residing in every Michigan county. MCRGO has a particular interest in the historical and doctrinal principles governing the Second and Fourteenth Amendments and in ensuring that modern firearms restrictions are assessed under the historical method this Court has prescribed.

SUMMARY OF ARGUMENT

The Second Amendment recognizes a pre-existing right of the people and commands that it "shall not be infringed." *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). Once the Amendment's text covers the conduct at issue, the government must establish that its restriction is consistent with the Nation's historical tradition of firearm regulation. The lower courts inverted that inquiry by treating a semiautomatic rifle's military ancestry, asserted effectiveness, or resemblance to military equipment as a reason to remove it from the people's right.

United States v. Miller, 307 U.S. 174 (1939), as interpreted by *Heller*, points the other way. The founding-era militia consisted of citizens who privately possessed lawful arms and ordinarily

---

1 Pursuant to Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than MCRGO, its members, or its counsel made such a monetary contribution.

brought those arms to service. That history may not establish a right to every weapon used by a modern armed force, but it forecloses treating military relevance itself as a categorical reason to deny protection. The government must instead identify a distinct, well-established historical principle supporting a comparable modern burden.

Reconstruction reinforces that discipline but does not transform this arm-based case into a status-based one. Antebellum and Black Code restrictions often rested on judgments about the status of the persons burdened. The Fourteenth Amendment and the Freedmen's Bureau Act repudiated that status order. Such status-based restrictions do not establish a tradition of prohibiting an entire class of bearable arms from possession by the people generally.

The same principle governs the phrase "dangerous and unusual." That historically defined, conjunctive limitation does not permit courts to exclude arms based on lethality, military lineage, or asserted effectiveness. *Bruen*, *Rahimi*, and *Wolford* require a relevantly similar historical analogue imposing a comparable burden for a comparable reason. Restrictions directed at threatening conduct, individualized dangerousness, or a historically recognized status may supply rules in their proper settings. None establishes that a semiautomatic rifle becomes unprotected because it resembles military equipment or is thought particularly effective.

The courts below relied materially on that broader inference, while the Third Circuit reached the contrary result in *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Att'y Gen. N.J.*, 183 F.4th 211 (3d Cir. 2026). It held that New Jersey had not demonstrated a sufficiently analogous historical tradition to justify a prohibition on semiautomatic rifles. This Court

should reject military association and generalized dangerousness as substitutes for the historically grounded principle the Second Amendment inquiry requires.

ARGUMENT

I. THE SECOND AMENDMENT RECOGNIZES A PRE-EXISTING RIGHT AND LIMITS GOVERNMENTAL POWER; THE FOUNDING-ERA MILITIA SYSTEM CONFIRMS, RATHER THAN DEFEATS, THAT LIMITATION.

The Second Amendment does not grant the people a right created by the Constitution. It recognizes a pre-existing right and commands that it "shall not be infringed." *Heller*, 554 U.S. at 592. History therefore identifies the historically understood limits on governmental power over that right; it does not authorize government to revise the right's scope based upon contemporary judgments about a firearm's military utility, lethality, or asserted necessity for ordinary self-defense.

A. The English settlement limited prerogative disarmament but retained a status-bound right.

The English antecedents of the Second Amendment arose from seventeenth-century disputes concerning royal prerogative, standing forces, militia authority, and selective possession of arms. The Petition of Right objected to forced quartering and martial law in peacetime, and control of the militia became central to the constitutional conflict preceding the English Civil War. See Petition of Right, 3 Car. 1, c. 1 (1628); Lois G. Schwoerer, *The Declaration of Rights, 1689* 42–69 (1981).

The grievances against James II joined those concerns. The Declaration of Rights charged the Crown with maintaining a standing army in peacetime without parliamentary consent and with causing Protestant subjects to be disarmed while Catholics were armed and employed contrary to law. Bill of Rights 1689, 1 W. & M., sess. 2, c. 2. The ensuing arms guarantee was meaningful but qualified: Protestant subjects could possess arms for defense if suitable to their conditions and allowed by law. Blackstone later described the right as auxiliary to self-preservation while retaining those qualifications. 1 William Blackstone, *Commentaries on the Laws of England* *139–40.

The English experience therefore supplied both an inheritance and a limitation. It associated selective executive disarmament with constitutional abuse, but it did not remove the right's scope from a system organized around subjecthood, legal status, and parliamentary supremacy. The American Revolution inherited the constitutional problem while rejecting the authority structure within which the English settlement had operated.

B. The Founding combined governmental military power with an armed citizenry.

The Constitution substantially enlarged federal military authority. Congress could raise armies, maintain a navy, call forth the militia, and provide for organizing, arming, and disciplining it. U.S. Const. art. I, § 8. But the ratification-era defense of those powers did not posit a citizenry constitutionally external to armed defense. Madison referred to "the advantage of being armed, which the Americans possess over the people of almost every other nation," and contemplated citizens with arms in their hands

organized under lawful authority. *The Federalist No. 46*, at 299 (James Madison) (Jacob E. Cooke ed., 1961).

The state constitutional and ratification materials reflect the same arrangement. Virginia described a militia "composed of the body of the people, trained to arms" as the proper defense of a free State. Va. Declaration of Rights § 13 (1776). Pennsylvania recognized the people's right to bear arms for defense of themselves and the State. Pa. Declaration of Rights §§ 13–14 (1776). New Hampshire proposed that Congress should never disarm a citizen except one in actual rebellion. 1 Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 326–27 (2d ed. 1836).

The Second Amendment constitutionalized that relationship in a single provision: a well-regulated militia is necessary to the security of a free State, while the right of the people to keep and bear arms shall not be infringed. U.S. Const. amend. II. *Heller* holds that the operative clause protects an individual right rather than a right confined to formal militia service. 554 U.S. at 577–600. The Militia Act of 1792 likewise required enrolled citizens to provide themselves with specified arms and equipment. Act of May 8, 1792, ch. 33, § 1, 1 Stat. 271, 271.

The Constitution and early militia laws therefore did not presume a divide between privately held arms and arms relevant to collective defense. To the contrary, they proceeded from the premise that the militia consisted of citizens who retained arms in private life and would appear for public service with those arms. The constitutional concern was not that citizens might possess arms useful in organized defense; it was that a government possessing military power might disarm the people from whom the militia was drawn. Under the heading "The Right is General,"

Cooley later rejected the notion that the militia clause confined the right to formally enrolled members:

> It may be supposed from the phraseology of this provision that the right to keep and bear arms was only guaranteed to the militia; but this would be an interpretation not warranted by the intent. The militia, as has been elsewhere explained, consists of those persons who, under the law, are liable to the performance of military duty, and are officered and enrolled for service when called upon. . . . [I]f the right were limited to those enrolled, the purpose of this guaranty might be defeated altogether by the action or neglect to act of the government it was meant to hold in check. The meaning of the provision undoubtedly is, that the people, from whom the militia must be taken, shall have the right to keep and bear arms, and they need no permission or regulation of law for the purpose. Thomas M. Cooley, *The General Principles of Constitutional Law in the United States of America* 298 (3d ed. 1898).

United States v. Miller, 307 U.S. 174 (1939), confirms that historical reference point. Although the Court rejected the particular challenge before it because the record did not show that the short-barreled shotgun bore the required relationship to a well-regulated militia, *id.* at 178, its account of the militia is clear. The militia consisted of citizens capable of acting together for the common defense, who ordinarily appeared for service with arms they had supplied themselves and that were "of the kind in common use at the time." *Id.* at 179.

District of Columbia v. Heller supplies the controlling interpretation of *Miller*. *Heller* explained that the traditional militia was drawn from citizens

who brought to militia duty the lawful weapons they possessed at home. 554 U.S. 570, 624, 627 (2008). That is precisely the way the operative clause's individual right furthered the militia purpose. *Id.* at 627. *Miller*, as interpreted by *Heller*, therefore confirms that the Second Amendment's historical reference point was a citizen militia carrying privately possessed lawful arms.

That principle does not establish a right to every weapon used by a modern armed force. *Heller* recognizes that M-16 rifles and similar weapons may be prohibited. *Id.* But it forecloses the inverse proposition advanced by respondents and adopted by the courts below: that military utility, military lineage, or resemblance to modern military equipment is itself a categorical exclusion from the right. The historical relationship was overlapping rather than mutually exclusive. A government seeking to prohibit a class of otherwise bearable arms must identify the separate historical principle that authorizes that prohibition. The historical examples in the next section reinforce this important distinction. They show why a historical restriction directed at particular persons or conduct cannot be severed from its burden and justification and converted into a categorical rule about a class of arms.

II. RECONSTRUCTION-ERA STATUS-BASED DISARMAMENT LAWS DO NOT ESTABLISH A HISTORICAL TRADITION OF PROHIBITING CLASSES OF ARMS.

The Fourteenth Amendment repudiates status-based disarmament. Historical regulations must therefore be understood in their actual legal context and cannot be stripped of their limiting principle to create a generalized governmental power over arms.

The dispute over whether 1791 or 1868 supplies the principal historical reference point does not displace that constitutional command. To the extent Reconstruction-era evidence informs a Second Amendment case, a court may not treat every state firearms restriction enacted near Reconstruction as neutral evidence of the right's scope. The Fourteenth Amendment was adopted to displace the legal order that enforced subordinate civic status, not to preserve that order as a source of regulatory authority over citizens generally.

Before Reconstruction, arms disabilities did not rest on a single principle. States regulated threatening conduct, concealed carry, and dangerous misuse. But other disabilities followed an antecedent judgment that particular persons stood outside equal civic membership. *State v. Newsom*, 27 N.C. (5 Ired.) 250 (1844), illustrates the distinction. The court sustained North Carolina's firearms restriction on free persons of color because they were not regarded as citizens "in the largest sense of the term." *Id.* at 254–55. The disability thus reflected a legal status judgment, not a generally applicable conclusion that the arms at issue were categorically unfit for citizens. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), made the inverse connection: it identified the ability to keep and carry arms as one consequence of citizenship precisely while denying Black persons that status. *Id.* at 417.

After emancipation, Southern Black Codes attempted to preserve forms of subordinate civic status, including through restrictions on firearms possession. Congress responded in the language of equal citizenship, personal security, and constitutional right. Section 14 of the Freedmen's Bureau Act of 1866 secured, without respect to race or

previous condition of slavery, the full and equal benefit of laws concerning personal liberty and personal security, including "the constitutional right to bear arms." Act of July 16, 1866, ch. 200, § 14, 14 Stat. 173, 176–77. And the Fourteenth Amendment altered the constitutional relationship between citizens and state governments. *McDonald v. City of Chicago*, 561 U.S. 742, 770–78 (2010) (plurality opinion).

The point is not that all Reconstruction-era firearm regulations are irrelevant, nor that respondents rely on Black Codes. It is narrower. The Fourteenth Amendment cannot be understood by treating the very disabilities it repudiated as neutral evidence of a general power to disarm citizens. A historical restriction cannot be abstracted from its legal object, target, mechanism, and justification, then converted into a generalized governmental authority over arms.

That principle applies beyond status-based laws. A restriction directed at a subordinated class, threatening conduct, a judicially identified dangerous person, gunpowder storage, a particular manner of carry, or automatic-fire weapons has a defined historical object and burden. It may illuminate the historically understood limits of the right in its own setting. But it does not establish that government may categorically prohibit law-abiding citizens from possessing a class of semiautomatic rifles merely because the modern restriction and the historical law both concern weapons or public safety.

Reconstruction therefore supplies the necessary rule of historical classification. Historical regulations must be read according to the persons burdened, the conduct regulated, the mechanism imposed, and the

purpose served. The modern cases require precisely that discipline.

The question, then, is not whether history contains weapons regulations. It is whether respondents have identified a historical limitation on the people's right that is genuinely comparable in target, mechanism, burden, and justification to the categorical rifle restrictions at issue. *Bruen*, *Rahimi*, and *Wolford* require that showing.

III. THE GOVERNMENT MUST DEMONSTRATE A HISTORICALLY GROUNDED LIMITATION ON THE PEOPLE'S RIGHT; MILITARY RESEMBLANCE AND GENERALIZED DANGEROUSNESS DO NOT SATISFY THAT BURDEN.

A. *Bruen*, *Rahimi*, and *Wolford* place the burden on government.

Once the Second Amendment's text covers the conduct at issue, the Constitution presumptively protects that conduct. *N.Y. State Rifle & Pistol Ass'n v. Bruen* requires the government to demonstrate that its restriction is consistent with the Nation's historical tradition of firearm regulation. 597 U.S. 1, 24 (2022). The premise is crucial: history identifies the limits on governmental power over a pre-existing right; it does not give government a free-ranging authority to redefine that right based on present-day assessments of a weapon's utility or danger. Historical analogies need not be identical, but the inquiry asks whether modern and historical regulations impose comparable burdens for comparable reasons—their "how" and "why." *Id.* at 29–30. The government must identify a well-established and representative analogue, not an isolated law or a superficial resemblance. *Id.* at 30.

United States v. Rahimi, 602 U.S. 680 (2024), confirms that analogical reasoning is neither a regulatory straightjacket nor a blank check. Its holding concerned a targeted disarmament restriction applicable after a court found that the covered person posed a credible threat to an intimate partner or child. *Id.* at 698–700. The object, trigger, burden, and justification of that person-specific restriction differ from a categorical ban on a class of semiautomatic rifles possessed by citizens generally. *Rahimi* thus supplies no rule that a historically supported restriction on dangerous persons automatically validates a restriction on an arm category.

Wolford v. Lopez, 609 U.S. ___ (2026), applies the required discipline directly. Hawaii relied in part on an 1865 Louisiana enactment that barred carrying firearms on another person's "premises or plantations" without consent. 1865 La. Acts No. 10, § 1, at 14. This Court declined to give that law weight because it was neither widespread nor widely accepted. It also explained that the enactment belonged to Louisiana's Black Code and was designed to subordinate and disarm newly freed Black persons—a purpose materially different from Hawaii's modern justification. *Wolford*, slip op. at 23–24.

Wolford does not render every discriminatory or Reconstruction-era law categorically irrelevant. Nor is it an analogue concerning a ban on semiautomatic rifles. Its lesson is methodological: the fact that two laws concern firearms does not establish similarity. A proffered historical law must be evaluated in its actual constitutional setting—who was burdened, what conduct was restricted, how the restriction operated, and why it was imposed.

That method governs respondents' reliance on military association. The question is not whether the relevant rifles have some connection to military development or possess features that may be useful in military service. The question is whether that connection identifies a historically recognized boundary of the right, or instead merely describes a modern firearm in terms that cannot substitute for a demonstrated analogue. The Court must therefore determine what *Heller*'s reference to M-16 rifles actually establishes and whether it supplies the historical principle respondents need.

B. Heller and Caetano reject military utility as the test of protection.

The principal doctrinal objection to Amicus's position is *Heller*'s observation that the Second Amendment does not protect an unlimited set of weapons and that "M-16 rifles and the like" may be banned. 554 U.S. at 627. That language does not establish that any firearm with military lineage, military-style features, or substantial defensive effectiveness is categorically outside the Amendment.

Caetano v. Massachusetts, 577 U.S. 411 (2016), confirms that military utility is not a threshold condition of protection. The state court there concluded that stun guns lay outside the Second Amendment because they were not readily adaptable to military use. This Court vacated that judgment because *Heller* rejected the proposition that only weapons useful in warfare are protected. *Id.* at 411–12.

The distinction is concrete. The Second Circuit described the M-16 and M4 as selective-fire firearms whose operator can choose semiautomatic or automatic fire. *Nat'l Ass'n for Gun Rts. v. Lamont*, 153 F.4th 213, 221–22 (2d Cir. 2025). It separately

described AR-15-style rifles as semiautomatic and recognized that their primary difference from the M-16 is the lack of fully automatic firing capability. *Id.* at 244–45. An automatic weapon continues firing while the trigger remains depressed; a semiautomatic firearm fires one round for each trigger pull. See *Staples v. United States*, 511 U.S. 600, 602 n.1, 603 (1994).

That mechanical distinction alone does not decide these cases. But it shows why *Heller*'s reference to M-16 rifles cannot be converted, without the historical showing *Bruen* requires, into a general military-association exception. A court may not substitute labels such as "military-style," "combat-functional," or "especially effective" for analysis of the historical principle asserted. If the government maintains that a class of arms may be prohibited because of a particular combination of firing capacity, destructive capacity, dangerousness, or historical use, it must demonstrate the relevantly similar historical tradition.

This proposition has a defined limit. It does not deny the government's authority to regulate arms on the basis of a demonstrated historical tradition. Common lawful possession is not the only consideration, but it is constitutionally significant: an arm cannot be treated as unusual while disregarding evidence that law-abiding citizens widely possess it for lawful purposes. The argument instead rejects a shortcut: the proposition that an arm otherwise within the Amendment's text may be excluded merely by associating it with modern military equipment.

C. "Dangerous and unusual" is a historical limitation, not a generalized dangerousness test.

Petitioners' position is not that "dangerous and unusual" arms can never be regulated. It is that the phrase is a historically defined, conjunctive limitation, not a generalized dangerousness test. Firearms are dangerous if improperly used. That ordinary fact cannot distinguish protected arms from unprotected ones, or the exception would swallow the rule. The government must instead show that the particular arm is unusual in lawful society and that its categorical prohibition accords with a well-established historical tradition. Military lineage, claimed lethality, and legislative characterizations such as "military-style" cannot substitute for that showing.

Heller juxtaposed arms "in common use" with the historical tradition of prohibiting the carrying of "dangerous and unusual weapons." 554 U.S. at 627. *Bruen* likewise explained that, even if handguns were historically regarded as dangerous and unusual, that history could not justify modern restrictions on handguns unquestionably in common use today. 597 U.S. at 47. Common lawful possession is not the only consideration, but it is constitutionally significant. A court cannot characterize an arm as unusual while disregarding evidence that law-abiding citizens widely possess it for lawful purposes.

The relevant inquiry is therefore not whether a semiautomatic rifle can cause grave harm if wrongfully used—a premise true of firearms generally—but whether respondents have carried their burden to show a historical tradition of categorically prohibiting a class of arms that law-abiding citizens possess for lawful purposes. The

government may not use present-day assessments of danger, lethality, or military resemblance to create the historical limitation it must prove.

D. The lower courts' approaches depend on variants of that unsupported proposition.

The lower courts use military resemblance as a reason to exclude an otherwise bearable arm from the Second Amendment. But the militia history on which they rely establishes the opposite starting point: citizens privately possessed the lawful arms that formed the pool from which militia arms were drawn. The lower courts thus invert the *Miller–Heller* relationship between private possession and collective defense.

The Seventh Circuit's approach is explicit. In *Bevis v. City of Naperville*, the court concluded at the first step of the *Bruen* inquiry that the covered rifles were not protected because they were much more like machineguns and military-grade weapons than firearms used for individual self-defense. 85 F.4th 1175, 1194–97 (7th Cir. 2023). In the decision under review, *Viramontes v. Cook County*, the court held that petitioners had not developed a record sufficient to depart from *Bevis*. No. 24-1437, 2025 WL 1553896, at *1–2 (7th Cir. June 2, 2025).

The Second Circuit reached the same terrain by a different route. It assumed that the rifles were bearable arms presumptively covered by the Second Amendment, but held that Connecticut had demonstrated a tradition of regulating unusually dangerous weapons. *Lamont*, 153 F.4th at 233–55. In applying that formulation, the court emphasized the rifle's military development, near-equivalent muzzle velocity to the M-16, asserted combat-functional features, and evidence concerning the comparative effects of rapid semiautomatic fire. Id. at 242–55. It

analogized the modern restrictions to historical rules governing Bowie knives, dirks, and later machineguns and submachine guns. *Id.*

The Seventh Circuit's later decision in *Barnett v. Raoul* underscores the issue and must be acknowledged. After a developed record and a bench trial, *Barnett* upheld Illinois's Act as applied to AR-15s and thirty-round rifle magazines. Nos. 24-3060, 24-3061, 24-3062 & 24-3063, slip op. at 1–2 (7th Cir. July 9, 2026). *Barnett* concluded that the Act accords with principles purportedly underlying a national tradition of firearm regulation, including a tradition of reserving especially dangerous weapons to military use. *Id.* at 1–2, 10–12.

The contrary approach of the Third Circuit further illustrates the question presented. In *Ass'n of N.J. Rifle & Pistol Clubs, Inc. v. Att'y Gen. N.J.*, 183 F.4th 211 (3d Cir. 2026), the court held that New Jersey's prohibition on semiautomatic rifles violated the Second Amendment. It concluded that semiautomatic rifles are bearable arms within the Amendment's text and that the State had not carried its burden to show a historical tradition supporting a de facto prohibition on a class of arms in common lawful use. The court further concluded that a history of regulating armed threats or weapon misuse does not establish a comparably justified tradition of generally prohibiting possession of an entire class of firearms.

Amicus does not ignore *Barnett*'s record-based treatment of the differences between civilian AR-15s and M-16s. Nor does it contend that those arms are identical. The issue is instead whether the characteristics on which *Barnett*, *Bevis*, and *Lamont* rely establish a historically recognized constitutional category. Firing rate, muzzle velocity, ergonomic features, military ancestry, asserted ease of

conversion, or comparative effectiveness may bear on factual or policy judgments. But those features do not themselves identify the historical "how" and "why" of a categorical arm prohibition. Unless a demonstrated historical tradition treats a relevantly similar class of civilian arms as outside the right, those characteristics cannot perform the historical work required by *Bruen*.

A historical rule directed to threatening conduct speaks to conduct. A restriction activated by a judicial finding of dangerousness speaks to persons. A rule targeting automatic weapons may speak to that weapon category. And a status-based disability speaks to the legal status of those subjected to it. None establishes, without further historical support, a general principle that a semiautomatic rifle becomes unprotected because it has military associations or is particularly effective.

E. The historical burden should be stated precisely.

The question is not whether civilian possession must mirror the equipment of a modern armed force. It is whether the historical tradition recognized a categorical rule under which an arm otherwise within the people's possession became unprotected simply because it was effective for organized defense or shared characteristics valued in military service.

The history developed above supplies no such background presumption. It instead requires the government to identify a genuinely comparable historical principle. Petitioners separately address textual coverage, common use, dangerousness, and the historical analogues offered for these bans. Amicus does not ask the Court to decide those issues through a mechanical comparison of eighteenth-century and modern rifle designs. Its contribution is

narrower: if respondents contend that military association or asserted effectiveness itself places a semiautomatic rifle on the government's side of an implied civilian-military line, *Bruen* requires them to demonstrate that claimed arm-category principle in the Nation's historical tradition rather than assume it at the threshold.

CONCLUSION

English law constrained prerogative disarmament. The Founding paired federal military authority with a right retained by the people and a militia drawn from an armed citizenry. Reconstruction-era status-based restrictions do not establish a tradition of prohibiting classes of arms.

The history does not establish a right to every military weapon; it shows that military utility and civilian possession were not opposing constitutional categories. Because the lower courts identified no historical principle under which military lineage, military-style features, asserted effectiveness, or generalized dangerousness removes a widely possessed semiautomatic rifle from the Second Amendment, the judgments should be reversed.

Respectfully submitted,

STEVEN W. DULAN
Counsel of Record
THE LAW OFFICES OF STEVEN W. DULAN, PLC
5311 Park Lake Road
East Lansing, Michigan 48823
(517) 332-3149
swdulan@stevenwdulan.com
Counsel for Amicus Curiae
September 2026