

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 COURT OF
APPEALS FOR THE SEVENTH AND SECOND CIRCUITS

**BRIEF OF AMICI CURIAE NATIONAL
ASSOCIATION FOR GUN RIGHTS, INC.
AND TEXAS GUN RIGHTS, INC.
IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICI CURIAE¹

The right to keep and bear arms is a fundamental right that existed prior to the Constitution. It is not granted by, and does not depend upon, the Constitution. Rather, the Second Amendment declares that the pre-existing “right of the people to keep and bear Arms shall not be infringed.” The National Association for Gun Rights, Inc. (“NAGR”) and Texas Gun Rights, Inc. (“TGR”) are membership-based and donor-supported nonprofits whose sole purpose is to protect every American’s right to keep and bear arms. NAGR, with hundreds of thousands of members across the United States, regularly litigates and files amicus briefs in that cause; TGR’s members span Texas.

These cases concern the constitutional protection—or lack thereof—of the most widely owned, purchased and used rifles in America, including among the members of both amici—rifles kept for the reasons Americans have always kept arms: self-defense, hunting, competition, and defense against tyranny.

Amici have litigated this question in both of the courts below. NAGR was the petitioner in *Nat’l Ass’n for Gun Rights v. City of Naperville*, cert. denied, No. 23-880 (July 2, 2024), decided below as *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023)—the reasoning the Seventh Circuit applied in *Viramontes v. Cook County*,

1. No counsel for a party authored or funded this brief in whole or in part. No person or entity, other than the amici curiae, their members, or their counsel, made a monetary contribution to its preparation or submission.

No. 24-1437, 2025 WL 1553896 (7th Cir. June 2, 2025); and NAGR's own petition challenging the Connecticut statute at issue in *Grant v. Higgins*, No. 25-566, remains pending here. *Nat'l Ass'n for Gun Rights v. Lamont*, No. 25-421 (cert. pending). Amici have repeatedly litigated the evasion at the heart of these bans—regulating a firearm's parts to accomplish what may not be done to the firearm itself—obtaining relief against the federal pistol-brace rule, *Texas Gun Rights, Inc. v. ATF*, 697 F. Supp. 3d 593 (N.D. Tex. 2023), and addressing Colorado's restrictions on unserialized frames, receivers, and parts kits, *Nat'l Ass'n for Gun Rights v. Polis*, No. 24-1209 (10th Cir. Apr. 23, 2026).

Amici thus appear not as observers but as litigants whose challenges to such bans have twice been rejected below. They write to address three matters the parties' own interests do not require them to develop: 1) whether a government may ban an arm by banning its component parts; 2) the Second Amendment's role as a bulwark against tyranny; and 3) how this Court might resolve these cases so that its decisions are not evaded below.

SUMMARY OF ARGUMENT

Every statute under review bans a protected arm by prohibiting its components. Cook County reaches any semiautomatic rifle with the capacity to accept a "large capacity magazine" and bans such magazines outright; and Connecticut separately criminalizes the feeding devices themselves. The component question is therefore before the Court whether or not named in the question presented; a holding that protects the rifle but not the parts that make it function would leave the AR-15, as

actually manufactured and sold, banned in every enacting jurisdiction, and invite the next generation of evasion.

The Second Amendment's text forecloses that evasion. Possession of protected arms has always implied the ammunition and equipment that make them effective, and the governing test is facilitation of the right's lawful exercise, not "necessity"—Founding-era law imposed ammunition floors and equipment mandates, never capacity ceilings. What the Constitution forbids directly, it forbids indirectly. Because the banned magazines are themselves bearable arms in common use by any measure, the Court should resolve the question presented in terms that extend the Amendment's protection to the components and equipment that facilitate a protected arm's lawful use.

Second, the decisions below did not merely misread *Heller*; they inverted the Amendment, withdrawing protection from the banned rifles precisely because they are effective for organized, collective defense. *Heller* holds that the right protects against "both public and private violence," *District of Columbia v. Heller*, 554 U.S. 570, 594 (2008), a purpose lived by the ratifying generation, which codified the right after the Crown moved to seize its arms and powder at Concord and Williamsburg, and confirmed by Reconstruction and the civil-rights era. Because deterring tyranny is a codified purpose of the right, suitability for militia service places an arm at the Amendment's core, and its check operates first by deterrence, not battle: a rule that withdraws protection from arms in proportion to their effectiveness for that purpose reads the prefatory clause as a limitation on the operative clause it was written to introduce.

Third, the record below exhibits sustained resistance, not doctrinal confusion. Eighteen years after *Heller*, every court of appeals to confront an “assault weapon” or magazine ban had sustained it—until the en banc Third Circuit, applying *Wolford v. Lopez*, No. 24-1046 (U.S. June 25, 2026), struck New Jersey’s rifle ban and magazine limit. When this Court writes crisply, faithful courts comply immediately; the uniform contrary record reflects methods this Court has already condemned.

The Court should therefore write rules rather than standards, and identify by name the decisions its holding abrogates, as *Bruen* did. It should answer any post-judgment recharacterization with the short, prompt, cumulative summary reversals it employs for every other constitutional right. It should dispose of the held cases by summary reversal or a merits grant rather than additional remands, keeping certiorari before judgment and interim relief visible. The Second Amendment must not remain “a second-class right.” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 70 (2022) (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality opinion)).

ARGUMENT

I. The Second Amendment Does Not Permit the Government To Ban Protected Arms by Banning Their Components.

Petitioners have shown that the AR-15 platform and similar semiautomatic rifles are bearable arms in common use for lawful purposes and therefore may not be banned. Amici write to address a structural feature of the statutes under review that will determine whether this Court’s

judgment endures: each prohibits the protected rifle *by prohibiting its components*. Unless the Court’s opinion makes clear that the Second Amendment’s protection extends to the parts and equipment that make a protected arm what it is—above all, its magazine—a decision vindicating “the most popular rifle in the country,” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025), would be readily evaded by legislation aimed at the rifle’s operating parts.

A. The statutes under review ban rifles by prohibiting their parts and that legislative model is spreading.

The Cook County ordinance does not principally describe a gun; it describes a gun’s relationship to a component. It reaches any semiautomatic rifle with the “capacity to accept a large capacity magazine” and one listed feature; it bans magazines holding more than ten rounds outright; and it extends to “parts” from which a covered rifle “can be assembled.” Cook County, Ill., Code of Ordinances §§ 54-211, 54-212.

Connecticut’s scheme is likewise keyed to detachable-magazine acceptance and capacity. It separately criminalizes “any firearm magazine, belt, drum, feed strip or similar device” that can accept more than ten rounds—including any device that “can be readily restored or converted” to that capacity. Conn. Gen. Stat. § 53-202w(a)(1) & (b) (2025).

The component-based statutory strategy is spreading and accelerating toward its logical terminus. For example, Colorado defines the restricted firearm as a semiautomatic

rifle or shotgun “with a detachable magazine”—the magazine interface itself now defines the banned gun. Colo. Rev. Stat. § 18-12-116(1)(d)(I)(A) (2026). And Colorado has stipulated in litigation that semi-automatic pistols and rifles cannot function as designed without a magazine. See *Colo. Outfitters Ass’n v. Hickenlooper*, No. 13-cv-01300 (D. Colo. Jan. 31, 2014) (stip. 20); see also Compl. ¶ 34, *United States v. Colorado*, No. 1:26-cv-01950 (D. Colo. filed May 6, 2026). The component-ban structure is not incidental drafting; it is the enacting government’s own judgment that the arm and its feeding device are one functional unit. That judgment cannot define the Constitution’s scope—no legislative label can “govern the reach of the Second Amendment’s text,” *Ass’n of N.J. Rifle & Pistol Clubs Inc. v. Att’y Gen. N.J.*, No. 24-2415 (3d Cir. July 17, 2026) (en banc), slip op. 57 (*ANJRPC*)—but it is an admission of the operative fact: ban the magazine and you have banned the gun.

The component-ban question is therefore inside these cases whether or not it is named in the question presented. Holding that “the AR-15 is protected” but not its components would leave the rifle as actually manufactured and sold—with its standard 20- or 30-round magazine—banned in every enacting jurisdiction, and would leave unresolved *Duncan v. Bonta*, No. 25-198 (U.S.) (cert. pending), which presents the magazine question directly.

B. The Amendment’s text protects the components and equipment that allow an arm to function, *inter alia*, because they “facilitate armed self-defense.”

1. The principle is as old as this Court’s arms jurisprudence.

United States v. Miller recognized that “[t]he possession of arms also implied the possession of ammunition, and the authorities paid quite as much attention to the latter as to the former.” 307 U.S. 174, 180 (1939). The point was not ornamental. *Miller*’s account of the Founding-era militia—citizens “expected to appear bearing arms supplied by themselves and of the kind in common use at the time,” *id.* at 179—describes a *system*: the arm, its ammunition, and the equipment that feeds one to the other. The courts of appeals long followed that understanding. *E.g.*, *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014) (“[W]ithout bullets, the right to bear arms would be meaningless.”); *Ass’n of N.J. Rifle & Pistol Clubs Inc. v. Att’y Gen. N.J.*, 910 F.3d 106, 116 (3d Cir. 2018) (“[M]agazines are ‘arms’ within the meaning of the Second Amendment.”); see *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in the judgment) (“The right to keep and bear arms, for example, ‘implies a corresponding right to obtain the bullets necessary to use them.’” (quoting *Jackson*, 746 F.3d at 967)).

2. The governing test is facilitation of the right’s lawful exercise—not “necessity.”

Bruen supplies the rule: the Second Amendment’s reference to “arms” “covers modern instruments that

facilitate armed self-defense.” *Bruen*, 597 U.S. at 28. Applying that instruction, the Fifth Circuit recently held that even suppressors—accessories in the colloquial sense—are “Arms,” because protected arms “need not be necessary for a firearm’s functioning but instead must only ‘facilitate armed self-defense.’” *United States v. Comeaux*, No. 24-30307 (5th Cir. June 18, 2026), slip op. 7; accord *id.* at 9 (Clement, J., concurring) (“[L]awful purpose, not necessity, is the proper test when assessing whether firearm components, such as silencers, are entitled to constitutional protection.”).

And the en banc Third Circuit has now held that *all* magazines are arms: “[E]ven where a particular arm does not require the use of a magazine, a magazine unquestionably facilitates the arm user’s ability ‘to cast at or strike another.’ . . . Accordingly, magazines are arms.” *ANJRPC*, slip op. 58. Because the test is facilitation of lawful use—self-defense first among the Amendment’s lawful uses, but also hunting, target shooting, training, and militia service, see *Heller*, 554 U.S. at 624–25—capacity is textually irrelevant: “[I]t cannot be that a magazine that can hold ten rounds is an ‘Arm[]’ covered by the plain text of the Second Amendment but a magazine that can hold eleven rounds is not.” *ANJRPC*, slip op. 59.

Wolford v. Lopez confirms that the analysis begins and ends with the Second Amendment’s text at *Bruen*’s first step. *Wolford* restated *Bruen*’s threshold inquiry as purely textual—does the law concern “Arms,” restrict “keep[ing]” or “bear[ing],” and apply to “the people.” *Wolford*, slip op. 7. And, when the government offered founding-era authorities to defeat coverage at the threshold, the Court answered: “We will discuss all these

authorities, but they are out of place at *Bruen*’s first step.” *Id.* at 16.

A “necessity” screen for components—the theory that a part is unprotected unless no firearm can operate without it—is precisely the kind of extra-textual limiting principle *Wolford* excludes from the threshold. It is also unadministrable and boundless in the government’s favor: if the magazine is unprotected because a firearm could use a smaller one, then triggers, sights, stocks, and barrels are unprotected because a firearm could use cruder ones, and the “right” reduces to a bare receiver.

Founding-era law refutes that premise. The Militia Act of 1792 required every enrolled citizen to provide himself not merely with “a good musket or firelock” but with “a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges.” Act of May 8, 1792, ch. 33, § 1, 1 Stat. 271, 271. The Founders’ own statutes treated these so-called accoutrements as integral parts of the citizen’s required armament.

3. Even the courts that sustained these bans concede the point.

On the component question, the governments’ own authorities have surrendered. The D.C. Circuit—while upholding a ten-round cap—conceded that “[a] magazine is necessary to make meaningful an individual’s right to carry a handgun for self-defense,” because otherwise the government could “sidestep the Second Amendment with a regulation prohibiting possession at the component level, ‘such as a firing pin.’” *Hanson v. District of Columbia*,

120 F.4th 223, 232 (D.C. Cir. 2024). And in *ANJRPC*, even the principal dissent, joined by all four judges who would have sustained New Jersey’s ban, rejected the accessory theory: “Magazines, however, are necessary components for the use of certain firearms, as they supply bullets to the gun’s chamber. Thus, the right to bear magazines that are not unusually dangerous could be viewed as part and parcel of the right to bear arms, much like the right to possess ammunition.” *ANJRPC*, slip op. 149 n.21 (Shwartz, J., dissenting). In the only circuit to consider the question en banc since *Wolford*, not one of fifteen judges adopted the position that magazines, as such, fall outside the Amendment.

The lone contrary holding is the Ninth Circuit’s: magazines over ten rounds “fall clearly within the category of accessories, or accoutrements, rather than arms,” because a larger magazine “is not necessary to operate any firearm.” *Duncan v. Bonta*, 133 F.4th 852, 867–68 (9th Cir. 2025) (en banc). *Duncan*’s logic has already metastasized: within weeks of the Fifth Circuit’s contrary holding, the Ninth Circuit extended *Duncan* to place “‘optional accessories’ to firearms—such as gun slings, scopes, and, importantly, silencers” outside the Amendment’s plain text altogether. *United States v. DeBorba*, No. 24-3304 (9th Cir. June 3, 2026), slip op. 11. The theory’s own author-court cannot state its stopping point, and its sharpest formulation—that a magazine is “surely a component of a firearm but otherwise harmless when not properly inserted and loaded,” *ANJRPC*, slip op. 170–71 (Krause, J., dissenting)—proves too much: an unloaded firearm is equally “harmless.” The Constitution protects functional arms, not paperweights. U.S. Const. Amend. II.

C. What the Constitution forbids directly, it forbids indirectly.

“[W]hat cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows.” *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 325 (1867). This Court has enforced that principle across the Bill of Rights. Minnesota did not ban newspapers; it taxed “the cost of paper and ink products” consumed in producing them—and this Court struck the tax, because a burden on the press’s *inputs* “can operate as effectively as a censor.” *Minneapolis Star & Tribune Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575, 585 (1983). Texas did not forbid Black citizens from voting; it closed the primary—and this Court answered that “[c]onstitutional rights would be of little value if they could be thus indirectly denied.” *Smith v. Allwright*, 321 U.S. 649, 664 (1944); see also *Lane v. Wilson*, 307 U.S. 268, 275 (1939) (the Constitution “nullifies sophisticated as well as simple-minded modes” of rights denial).

The Second Amendment is entitled to the same rule, and this Court has already stated its premise twice. *Heller* held that “[i]t is no answer to say . . . that it is permissible to ban the possession of handguns so long as the possession of other firearms (*i.e.*, long guns) is allowed.” 554 U.S. at 629. And in *Caetano*, Justice Alito explained that “the right to bear other weapons is ‘no answer’ to a ban on the possession of protected arms.” *Caetano v. Massachusetts*, 577 U.S. 411, 421 (2016) (Alito, J., concurring in the judgment). If “other guns are available” is no answer to a gun ban, “other magazines are available” is no answer to a magazine ban—a state that could not even differentially *tax* the ink and paper

consumed by the press cannot *criminalize* the feeding device without which a protected arm cannot function as designed and sold.

D. History confirms the point: Founding-era law imposed ammunition floors and equipment mandates, never capacity ceilings.

“At the time the Second Amendment was adopted, there were no laws restricting ammunition capacity.” David B. Kopel, *The History of Firearm Magazines and Magazine Prohibitions*, 78 Alb. L. Rev. 849, 864 (2015). The era’s arms laws ran the opposite direction: they *required* citizens to keep the complete functional system—arm, ignition components, edged fixture, and ammunition-feeding equipment with a prescribed minimum load. § 1, 1 Stat. 271 (musket, bayonet, spare flints, cartridge box containing “not less than twenty-four cartridges”); 12 William Waller Hening, *The Statutes at Large; Being a Collection of All the Laws of Virginia* 12–13 (1823) (Act of Oct. 1785, ch. 1, § III) (musket, bayonet, cartridge box containing 20 cartridges, knapsack, canteen, powder, and lead). Repeating arms exceeding ten rounds were known to the Founders. The Founding-era 22-shot Girandoni air rifle traveled with Lewis and Clark. By the mid-nineteenth century, repeating firearms with capacities well above ten rounds were mass-market articles, including the 16-shot Henry and the 17-shot Winchester Model 1866, yet no legislature responded with a capacity limit. The twentieth-century outliers were few, late, and ultimately repealed: Michigan (1927, repealed 1959); Rhode Island (1927, repealed 1975); Ohio (1933, repealed 2014). Kopel, 78 Alb. L. Rev. at 864–65. Under *Bruen* and *United States v. Rahimi*, 602 U.S. 680 (2024), enactments of the 1920s

cannot establish a Founding-era tradition, and a handful of abandoned statutes cannot establish an enduring one.

E. The banned magazines are themselves in common use, and their prohibition operates as a rifle ban.

The numbers are not close. Between 1990 and 2021, over 717 million magazines holding more than ten rounds entered the American market—74 percent of all magazines sold. National Shooting Sports Foundation (“NSSF”), *Detachable Magazine Report (1990–2021)* (2024). More than 100 million 30-round AR-15 magazines are in circulation, and AR-platform rifles “typically come standard with 20- or 30-round magazines.” *ANJRPC*, slip op. 62. The United States itself has alleged that magazines over fifteen rounds number at least 448 million and that the “large capacity” label “is a misnomer, because magazines capable of holding more than 15 rounds are, in fact, standard capacity magazines for many popular firearms, including the AR-15 rifle, the most popular rifle in America.” Compl. ¶¶ 5, 41, *United States v. Colorado*, No. 1:26-cv-01950 (D. Colo.). As the D.C. Circuit put it before *Bruen*: whatever capacity might someday fall outside common use, “that capacity surely is not ten.” *Heller v. District of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011) (“*Heller II*”).

Because the banned magazines are the standard equipment of the protected rifle—and required for their function—their prohibition is the rifle’s prohibition in operation. The rifle this Court has been asked to protect is the rifle as tens of millions of Americans actually acquired it—not a modified curiosity limited to equipment its

manufacturer never shipped. And federal law draws the line between semiautomatic and automatic weapons based on the firing mechanism, not magazine capacity. See 26 U.S.C. 5845(b); *Garland v. Cargill*, 602 U.S. 406, 410–11, 428 (2024). A machinegun fires “automatically more than one shot, without manual reloading, by a single function of the trigger.” Section 5845(b). A magazine does not fire automatically. It does not fire at all.

F. The Court should decide the rifle question in terms that foreclose the component evasion.

Amici respectfully urge the Court to hold, as part of its resolution of the question presented, that the Second Amendment’s protection of an arm extends to the components and equipment that facilitate its function and lawful use—including the magazines with which it is designed, manufactured, and commonly sold—and that a prohibition on such components is subject to the same constitutional rule as a prohibition on the arm itself. That holding decides *Duncan* (which should be resolved by summary disposition rather than remanded to the Ninth Circuit, which adopted the accessory theory), resolves the magazine provisions of the statutes before the Court, and forecloses the next generation of evasion before it is enacted.

II. The Amendment’s Purpose of Deterring Tyranny Confirms That Arms Suitable for Militia Service Stand At The Core of Its Protection—Not Outside It.

The courts below took different doctrinal paths to the same destination. The Seventh Circuit excluded the

banned rifles from the Second Amendment’s coverage as “arms” at the threshold—they are, in its telling, arms that “may be reserved for military use,” and thus not covered by the Second Amendment. *Bevis*, 85 F.4th at 1194.² The Second Circuit assumed the rifles are “arms,” but sustained Connecticut’s ban at the historical step as a regulation of arms “legislators determined were unusually dangerous because of their characteristics,” and thus legislators “have presumed that they are not used or intended to be used for lawful purposes.” *Grant*, Pet. App. 31a (emphasis omitted). The rationales differ, but the premise is the same: the more effective an arm for organized defense, the less protected it becomes—whether excluded from the text altogether or surrendered to legislative judgment. Such premises do not merely misread *Heller*; they invert the Second Amendment. U.S. Const. Amend. II. The right was codified so that the people could never be stripped of the means of collective defense against public violence—tyranny and mob alike. A rule that withdraws protection from arms in proportion to their suitability for that purpose turns the prefatory clause into a limitation on the operative clause it was written to introduce; and a rule that commits the question to legislative presumption entrusts the right’s scope to the very government the right was codified to check.

2. Amici focus on *Bevis* because the decision below merely applied *Bevis* to the same Cook County ordinance. See *Viramontes*, Pet. App. 5a (explaining that *Bevis* “upheld the constitutionality of this very ordinance, at least preliminarily,” and that no intervening Supreme Court decision had called *Bevis* into doubt).

A. The codified right secures defense against public violence as well as private violence.

Heller traced the right to the English “natural right of resistance and self-preservation” and concluded that it “was by the time of the founding understood to be an individual right protecting against both public and private violence.” *Heller*, 554 U.S. at 593–94. The common-law authorities *Heller* cited say expressly what those doublets encode. Granville Sharp: the greater the standing army, “so much more necessary is it that there should be a proper balance to that power.” Granville Sharp, *Tracts, Concerning the Ancient and Only True Legal Means of National Defence, by a Free Militia* 26 (3d ed. 1782). De Lolme, in a chapter titled “Right of Resistance,” stated the mechanism with precision: “The power of the people is not when they strike, but when they keep in awe: it is when they can overthrow every thing, that they never need to move . . . *Ostendite bellum, pacem habebitis*”—show war, and you will have peace. J. L. de Lolme, *The Constitution of England; or, An Account of the English Government* 317–18 (4th ed. 1784). The early American cases understood the right the same way: the people are armed so that they may “keep in awe those who are in power, and to maintain the supremacy of the laws and the constitution.” *Aymette v. State*, 21 Tenn. (2 Hum.) 154, 158 (1840)—and the arms so protected are those “usually employed in civilized warfare, and that constitute the ordinary military equipment.” *Id.*

Just two Terms ago, this Court reaffirmed both halves of the right in a single paragraph. “The spark that ignited the American Revolution was struck at Lexington and Concord, when the British governor dispatched soldiers

to seize the local farmers' arms and powder stores.”³ *Rahimi*, 602 U.S. at 690. And Reconstruction's framers likewise understood, in Representative Stevens's words: “Disarm a community and you rob them of the means of defending life. Take away their weapons of defense and you take away the inalienable right of defending liberty.” *Id.* (quoting Cong. Globe, 40th Cong., 2d Sess., 1967 (1868)). Stevens's two sentences capture both dimensions of the right: the means of defending *life* protects against private violence; the inalienable right of defending *liberty* protects against public violence. In *Rahimi*, eight Justices joined the opinion of the Court quoting both statements.

B. The Founding generation codified the right immediately after surviving a government program of civilian disarmament. Virginia's experience is exemplary.

The tyranny-deterrence purpose is not an inference from stray quotations; it is the lived history of the ratifying generation, in every State. Virginia's is set out as exemplary because its chain runs unbroken from disarmament attempt to constitutional text.

3. Immediately following Lexington and Concord, on the night of April 20–21, 1775, Virginia's royal governor, Lord Dunmore, seized the gunpowder in the Williamsburg Magazine to deny it to the colonists. Letter from Lord Dunmore to Lord Dartmouth (May 1, 1775), in *1 Naval Documents of the American Revolution* 259 (William Bell Clark ed., 1964). Dunmore explained that the colonists' preparations to raise armed men throughout Virginia “made me think it prudent to remove some Gunpowder which was in a Magazine in this place.” *Id.* At both Concord and Williamsburg, royal authorities sought to seize gunpowder needed to make the colonists' arms effective, not merely the arms themselves.

The disarmament was a program, not an episode. By Order in Council of October 19, 1774, the Crown embargoed the export of arms and gunpowder to America, while the ministry directed the seizure of colonial arms and powder stores—the policy executed at Charlestown in September 1774,⁴ at Lexington and Concord on April 19, 1775, and at Williamsburg two nights later, when Lord Dunmore’s sailors emptied the public magazine of 15 half-barrels of gunpowder. See David B. Kopel, *How the British Gun Control Program Precipitated the American Revolution*, 6 *Charleston L. Rev.* 283, 291–301, 308–12 (2012). What followed is the Founding era’s proof of the deterrence principle: the armed citizenry mustered, Patrick Henry marched the Hanover independent company toward the capital, and the confrontation ended without bloodshed—the royal government paid £330 for the powder, and within months Dunmore had fled.⁵ The people’s power, as de Lolme wrote, was not in striking but in keeping in awe.

Virginia then wrote the lesson into fundamental law. Its Declaration of Rights of June 1776 declared “a well regulated militia, composed of the body of the people, trained to arms,” to be “the proper, natural, and safe

4. General Thomas Gage removed the remaining powder from the Charlestown magazine, north of Boston, on September 1, 1774, on his own authority, before Lord Dartmouth’s October 19, 1774 directives announcing the embargo of arms, gunpowder and military stores to the colonies. Letter from Thomas Gage to William Legge, Earl of Dartmouth (Sept. 2, 1774), in 1 *The Correspondence of General Thomas Gage with the Secretaries of State, 1763–1775* 369, 370 (Clarence E. Carter ed., 1931).

5. John F. Lowe, *The Magazine Historical Report, Block 12 Building 9 Lot 00* 44–51 (1972) (originally entitled *Manual for the Public Magazine*).

defense of a free state,” and further noted that standing armies are “dangerous to liberty”—direct ancestor of the Second Amendment’s prefatory clause. Va. Declaration of Rights § 13 (1776); see *Heller*, 554 U.S. at 597. At the ratifying convention, George Mason recalled that when Britain formed “the resolution of enslaving America,” its Parliament was advised “to disarm the people; that it was the best and most effectual way to enslave them; but that they should not do it openly, but weaken them, and let them sink gradually.” 3 Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 380 (2d ed. 1836) (Elliot). Mason’s warning deserves particular attention in these cases: the method he described was not open confiscation but disarmament by increments—precisely the method of statutes that reach the people’s common rifles through their features, parts, and magazines. See *supra* Part I. Patrick Henry pressed the same theme, and Virginia’s proposed seventeenth amendment of June 27, 1788—pairing the people’s right to keep and bear arms with the militia “composed of the body of the people” and suspicion of standing armies—became the text from which Madison worked. Elliot 45, 657–59.

Leading national authorities confirm that Virginia’s understanding was shared universally. Madison counted “the advantage of being armed, which the Americans possess over the people of almost every other nation,” among the structural “barrier[s] against the enterprises of ambition,” and observed that in Europe “the governments are afraid to trust the people with arms.” *The Federalist* No. 46, at 299 (James Madison) (Clinton Rossiter ed., 1961). Hamilton wrote that a standing 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.” *The Federalist* No. 29, at 185 (Alexander Hamilton) (Clinton Rossiter ed., 1961). And St. George Tucker—whose 1803 Blackstone *Heller* described as “the most important early American edition” of that work, 554 U.S. at 594—called the right “the true palladium of liberty;” “Wherever standing armies are kept up, and the right of the people to keep and bear arms is, under any colour or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction.” 1 St. George Tucker, *Blackstone’s Commentaries* app. 300 (1803). Tucker’s warning about “colour or pretext” speaks directly to these cases: “assault weapon” is a label under which the arms most protected by the Amendment’s purpose are recharacterized as the least protected.

C. Reconstruction and the civil-rights era confirm the purpose at the scale on which tyranny actually recurs in America.

The objection that tyranny is a Founding-era abstraction fails on this Court’s own account of the Fourteenth Amendment. U.S. Const. Amend. XIV. American tyranny has typically been local and racial and the disarmed were its victims. *McDonald* recounts the Black Codes’ arms confiscations, the militia disarmaments, and Congress’s response in the Freedmen’s Bureau Act, which expressly secured “the constitutional right to bear arms.” *McDonald*, 561 U.S. at 771–76. At Colfax, Louisiana, in 1873, a paramilitary force massacred freedmen defending a parish courthouse and disarmed the survivors. The resulting prosecution produced *United States v. Cruikshank*, 92 U.S. 542 (1876), which held that the Second Amendment did not constrain the

States—a proposition *McDonald* later repudiated. 561 U.S. at 754, 758, 765 & n.8. The consequence was stark: the Constitution, as then construed, left the victims without a federal Second Amendment remedy against state or private disarmament.

A century later, the pattern recurred within living memory: Robert Williams’s Monroe NAACP chapter and the Deacons for Defense and Justice protected Southern Black communities and workers in the nonviolent civil-rights movement where “local police officers were often sympathetic to the Klan, and federal officials provided little protection.” See Robert J. Cottrol & Brannon P. Denning, *To Trust the People with Arms: The Supreme Court and the Second Amendment* 124–25 (2023); see also Charles E. Cobb Jr., *This Nonviolent Stuff’ll Get You Killed: How Guns Made the Civil Rights Movement Possible* (2014). Cottrol and Denning call this “micro-tyranny:” the “ruthless suppression of disfavored minorities brought about by the systemic failure of federal and state governments to protect citizens against racial violence.” Cottrol & Denning 122. Against micro-tyranny, the right operates exactly as codified: protecting the people against both public and private violence.

D. Because deterring tyranny is a purpose of the codified right, suitability for militia service places an arm at the Amendment’s core.

The doctrinal consequence of the Amendment’s tyranny-deterrence purpose follows in three steps. *First*, the Amendment was codified to prevent the government from destroying the citizen militia by disarming the people. *Heller*, 554 U.S. at 598–99. “[W]hen the able-bodied men

of a nation are trained in arms and organized, they are better able to resist tyranny,” *id.* at 598, and “history showed that the way tyrants had eliminated a militia . . . was not by banning the militia but simply by taking away the people’s arms,” *id.* at 599. *Second*, the arms the right presumptively protects are those the citizen would supply from home for that collective purpose. *Miller* asked whether an arm was “part of the ordinary military equipment” of the militiaman, 307 U.S. at 178, and *Heller* described the militia as “the body of all citizens capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty.” 554 U.S. at 627. *Third*, the modern counterpart of the musket brought to muster is the common semiautomatic rifle with its standard magazines, such as the AR-15, owned in the tens of millions and “the most popular rifle in the country.” *Smith & Wesson Brands*, 605 U.S. at 297.

It follows that the decisions below have the Amendment exactly backward. They withdraw protection from the banned rifles *because of* the very characteristics—effectiveness for organized, collective defense—that place such arms at the center of the Amendment’s codified purpose. On that logic, the arms most clearly within *Miller*’s holding are the arms most easily banned, and the government may achieve by classification what Mason warned it would achieve by increments. No other constitutional guarantee is read to abandon first the instruments most suited to its purpose. Judges applying this Court’s precedents faithfully have recognized as much: the banned arms fall “within the heartland of the Second Amendment protection—an ‘individual right to own privately and keep weapons suitable for militia service.’” *ANJRPC*, slip op. 77 n.14 (Matey, J., joined

by Mascott, J., concurring) (quoting scholarship and asking how an originalist reading could “exclude from its protection the kinds of weapons necessary to resist tyranny”). And Judge Kozinski similarly warned:

tyranny thrives best where government need not fear the wrath of an armed people. . . . The Second Amendment is a doomsday provision, one designed for those exceptionally rare circumstances where all other rights have failed. . . . However improbable these contingencies may seem today, facing them unprepared is a mistake a free people get to make only once.

Silveira v. Lockyer, 328 F.3d 567, 569–70 (9th Cir. 2003) (Kozinski, J., dissenting from denial of rehearing en banc).

The perennial objection to Judge Kozinski’s conclusion is that modern military technology has rendered the citizen militia obsolete, and the constitutional check on tyranny with it. *Heller* answered that objection: “the fact that modern developments have limited the degree of fit between the prefatory clause and the protected right cannot change our interpretation of the right.” *Heller*, 554 U.S. at 627–28. It also assumes that the Amendment’s check on tyranny depends on the citizenry’s ability to defeat a modern military in battle. But the check operates first by deterrence, not by battle: a people that retains the ordinary arms of organized defense ideally need never use them. De Lolme’s maxim, Madison’s “barrier,” the bloodless resolution at Williamsburg and the (many) quiet decades since all describe a provision that succeeds precisely when nothing happens. A deterrent that does not

need to be used is not obsolete. It is working—unless the government may first ban the arms that make it credible.

III. This Court Should Decide These Cases in Terms the Lower Courts Cannot Evade—and Should Stand Ready to Enforce Its Decision with the Tools It Uses for Every Other Right.

A. The record below is not doctrinal confusion; it is sustained resistance.

Eighteen years after *Heller*, every court of appeals to confront an “assault weapon” or magazine ban has sustained it—the First, Second, Fourth, Seventh, Ninth, and D.C. Circuits—save the Third, sitting en banc, shortly after certiorari had been granted in this case. The uniformity does not reflect difficulty; it reflects methods this Court has already condemned. The Seventh Circuit held the most popular rifle in America is not an “Arm” at all because such arms “may be reserved for military use.” *Bevis*, 85 F.4th at 1194. That is *Caetano* inverted: Massachusetts placed stun guns outside the Amendment because they were *not* “readily adaptable to use in the military,” *Caetano*, 577 U.S. at 412 (per curiam); the Seventh Circuit placed AR-15s outside it because they are *too* adaptable. Either way the government wins. The Fourth Circuit relocated “dangerous and unusual” into the definition of “Arms” and remitted the question to “democratic processes,” *Bianchi v. Brown*, 111 F.4th 438, 442 (4th Cir. 2024) (en banc)—the move *Heller* forbade, 554 U.S. at 636 (“the enshrinement of constitutional rights necessarily takes certain policy choices off the table”). The Ninth Circuit, after a remand in light of *Bruen*, held magazines are not arms but “accessories,

or accoutrements,” *Duncan*, 133 F.4th at 867—“interest balancing . . . masquerading as respect for the Second Amendment’s historical scope.” *Id.* at 913–14 (Bumatay, J., dissenting). And after the Court granted certiorari in these very cases, the Seventh Circuit reversed a permanent injunction and upheld Illinois’s statewide ban on AR-15s and 30-round rifle magazines. *Barnett v. Raoul*, No. 24-3060 (7th Cir. July 9, 2026), slip op. 2.

Members of this Court and of the courts of appeals have described the pattern. Justice Thomas wrote that the Court’s refusal to review a decision “that flouts two of our Second Amendment precedents stands in marked contrast to the Court’s willingness to summarily reverse courts that disregard our other constitutional decisions,” *Friedman v. City of Highland Park*, 577 U.S. 1039, 1043 (2015) (Thomas, J., joined by Scalia, J., dissenting from denial of certiorari). A decade later, he reiterated the same point: “I doubt we would sit idly by if lower courts were to so subvert our precedents involving any other constitutional right.” *Snope v. Brown*, 605 U.S. ____ (2025) (Thomas, J., dissenting from denial of certiorari), slip op. 7. And in a rare action recently, a judge of the Ninth Circuit formally asked this Court to summarily reverse his own court: “[B]etween *Heller* in 2008, and *Bruen* in 2022, we considered at least 50 Second Amendment challenges . . . and ultimately denied *all of them*”; “the Supreme Court’s occasional grant of certiorari and reversal has done *nothing*—and I mean that literally—to change our court’s behavior.” *Knife Rights, Inc. v. Bonta*, No. 24-5536 (9th Cir. July 16, 2026), slip op. 14, 23 (VanDyke, J., dissenting from denial of rehearing en banc).

The Third Circuit proves such defiance is a choice, not confusion. Applying the same precedents to the same genre of statute—and applying *Wolford v. Lopez*’s instruction that atextual limits are “out of place at *Bruen*’s first step” within three weeks of its issuance—the en banc court held New Jersey’s rifle ban and magazine limit unconstitutional. *Wolford*, slip op. 16; *ANJRPC*, slip op. 55, 63–64. When this Court writes crisply, faithful courts comply immediately. Candid criticism with compliance is legitimate; the pattern above is the inverse—professed compliance with defiance.

B. The Court knows how to answer this pattern; it has simply never used those tools here.

Where lower courts serially underenforce a right, this Court’s settled response is the summary reversal, repeated until behavior changes. In 14 months, the Court corrected the Ninth Circuit’s free-exercise analysis five times, counting aloud: “This is the fifth time the Court has summarily rejected the Ninth Circuit’s analysis of California’s COVID restrictions on religious exercise.” *Tandon v. Newsom*, 593 U.S. 61, 64 (2021) (per curiam). The Court has likewise used summary dispositions to correct lower courts in qualified-immunity, habeas, Eighth Amendment, and Takings Clause cases. See, e.g., *White v. Pauly*, 580 U.S. 73 (2017) (per curiam) (qualified immunity); *Cavazos v. Smith*, 565 U.S. 1 (2011) (per curiam) (federal habeas review); *Taylor v. Riojas*, 592 U.S. 7 (2020) (per curiam) (Eighth Amendment); *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474 (2021) (per curiam) (Takings Clause). In Second Amendment cases, by contrast, the Court has summarily intervened in only one case in the 18 years since *Heller: Caetano*.

The gentler tools have been tried and have failed. This Court’s GVR orders in the hardware cases—*Bianchi*, *Duncan*, *ANJRPC v. Bruck*, 142 S. Ct. 2894 (2022) (mem.), after *Bruen*; *Antonyuk v. James*, 144 S. Ct. 2709 (2024) (mem.), after *Rahimi*—produced reinstated resistance on remand in every instance: *Bianchi* returned as the en banc opinion upholding Maryland’s ban, and *Duncan* returned as the “accoutrements” holding. *Rahimi*’s unnamed correction—“some courts have misunderstood the methodology of our recent Second Amendment cases,” 602 U.S. at 691—was absorbed without effect, increasing the possibility that this Court’s methodology was not in fact ‘misunderstood’ but was defied.

C. What the Court should do.

1. Write rules, and abrogate by name. The most effective remedy costs nothing procedurally. The Court should hold that “Arms” at *Bruen*’s first step means all bearable arms, without functional or historical carve-outs, *Heller*, 554 U.S. at 582; *Wolford*, slip op. 7; clarify that common use for lawful purposes is dispositive against prohibition, with ownership as the measure; and it should identify by name the circuit decisions its holding abrogates: *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015); *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017) (en banc); *Bevis*; *Bianchi*; *Hanson*; *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38 (1st Cir. 2024); *Nat’l Ass’n for Gun Rights v. Lamont*, 153 F.4th 213 (2d Cir. 2025); and *Duncan*—exactly as *Bruen* listed the two-step decisions it repudiated. 597 U.S. at 18–19 & n.4. Standards invite relitigation; named abrogation ends it.

2. Use the *Caetano* cadence for what follows. If, after judgment here, a court of appeals sustains a ban by recharacterization—“this ban is really about features,” “really about magazines,” “really about licensing”—the answer is the *Tandon* practice: short, prompt, cumulative summary reversals that state the count. The Court has authority to dispose of such cases summarily. Sup. Ct. R. 16.1.

3. Dispose of held cases accordingly. *Duncan*, No. 25-198, is emblematic. Now distributed for roughly twenty conferences, it should be resolved by summary reversal or a merits grant—not by a GVR to the court whose en banc majority produced the accessory theory after a prior remand. A third trip through that door is not supervision; it is delay.

4. Keep the structural tools visible. Certiorari before judgment answers the en banc funnel through which one circuit has channeled—and reversed—every panel ruling favoring the right. 28 U.S.C. 2101(e); Sup. Ct. R. 11. And interim relief on the emergency docket against re-enacted or evasively amended bans, cf. *Tandon*, 593 U.S. at 61 (injunctive relief pending appeal), would change enacting incentives more than any single merits ruling.

Amici close with candor about the stakes of inaction. Two members of this Court have already begun converting the lower courts’ post-*Bruen* record into an argument for replacing *Bruen* itself under the guise of “unworkability.” But the causation runs the other way: much of the claimed unworkability *is* the resistance, and the remedy for resistance is clarity plus enforcement, not surrender—otherwise any disfavored precedent could be repealed

from below by sustained noncompliance. Amici do not ask the Court to favor the Second Amendment. They ask only that it police this right with the same tools it uses for every other—because a constitutional guarantee enforced everywhere but here is precisely what this Court has twice said the Second Amendment must never become: “a second-class right.” *McDonald*, 561 U.S. at 780 (plurality opinion); *Bruen*, 597 U.S. at 70. “We are not final because we are infallible, but we are infallible only because we are final.” *Brown v. Allen*, 344 U.S. 443, 540 (1953) (Jackson, J., concurring in the result). Finality that lower courts may renegotiate is not finality.

CONCLUSION

For the foregoing reasons, Amici urge the Court to rule in favor of petitioners and reverse the judgments of the Courts of Appeals.

Respectfully submitted,

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