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, ET AL.,
Respondents.

On Writs Of Certiorari To The United States Courts Of Appeals For The Seventh And Second Circuits

BRIEF OF THE SECOND AMENDMENT INSTITUTE, TYLER YZAGUIRRE AND CARLOS AYALA AS AMICI CURIAE IN SUPPORT OF PETITIONERS

GEORGE L. LYON, JR.
Counsel of Record
ARSENAL ATTORNEYS
4000 Legato Road, 11th Floor
Fairfax, VA 22033
202-669-0442
gll@arsenalattorneys.com

TABLE OF CONTENTS

QUESTION PRESENTED i
TABLE OF AUTHORITIES iv
INTEREST OF AMICUS CURIAE 1
SUMMARY OF ARGUMENT 1
ARGUMENT 5

I. The Militia Purpose Confirms—Rather Than Narrows—the Individual Right to Keep Rifles Capable of Common Defense 5

A. *Heller* preserved the logical connection between the Amendment's two clauses 5
B. The Amendment preserves an individual right for common defense 7
C. Common defense includes defense against invasion, insurrection, and usurpation 8
D. The concern with standing armies was with professionalized coercive power 10
E. Nineteenth century cases placed military-Suitable arms at the right's core 11

II. The Decisions Below Invert *Miller*, Misread *Heller*, and Evade *Bruen* 15

A. *Viramontes* inherits *Bevis's* categorical military-versus-civilian error 15
B. *Grant* converts functional usefulness into a constitutional defect and substitutes balancing for history 20
C. *Bianchi* illustrates the same inversion 23

III. AR-15 Type Rifles Are "Arms," Are Commonly Possessed, And Cannot Be Banned 25
A. "Common use" reflects civilian possession before the call to service 26
B. The common-defense theory identifies a floor, not an exclusive limit 27
CONCLUSION 28

TABLE OF AUTHORITIES

CASES

Andrews v. State,
50 Tenn. (3 Heisk.) 165 (1871) 14
Aymette v. State,
21 Tenn. (2 Hum.) 154 (1840) 11
Bevis v. City of Naperville,
85 F.4th 1175 (7th Cir. 2023) 2, 3, 15, 16, 17, 18
Bianchi v. Brown,
111 F.4th 438 (4th Cir. 2024) (en banc) 11
Caetano v. Massachusetts,
577 U.S. 411 (2016)
(per curiam) 3, 9, 13, 21, 25, 26, 27
District of Columbia v. Heller,
554 U.S. 570 (2008) 1,2, 3, 4, 5, 6, 7, 13, 17, 18,
..... 19, 20, 21, 22, 24, 25, 26, 27, 28
English v. State,
35 Tex. 473 (1872) 14
Fife v. State,
31 Ark. 455 (1876) 14, 22
Hanson v. District of Columbia,
120 F.4th 223 (D.C. Cir. 2024) 22
McDonald v. City of Chicago,
561 U.S. 742 (2010) 6, 12
National Ass'n for Gun Rights v. Lamont,
153 F.4th 213 (2d Cir. 2025) 3, 20, 21, 22, 23
New York State Rifle & Pistol Ass'n v. Bruen,
597 U.S. 1 (2022) 3, 18, 19, 20, 22, 23, 27
Nunn v. State,
1 Ga. 243 (1846) 11, 12
Presser v. Illinois,
116 U.S. 252 (1886) 12, 14

Staples v. United States,
511 U.S. 600 (1994) 17, 24, 25
United States v. Miller,
307 U.S. 174 (1939) .... 2, 3, 5, 12, 13, 16 ,17, 25, 27
United States v. Rahimi,
602 U.S. 680 (2024) 22
Viramontes v. County of Cook,
2025 U.S. App. LEXIS 13331 (7th Cir.,
June 2, 2025) 3, 15, 16, 18
Wolford v. Lopez,
609 U.S. __, slip op. (June 25, 2026) 18, 19

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. II 5
U.S. Const. article I, § 8, cls. 12 10
U.S. Const. article I, § 8, cls. 13 10
U.S. Const. article I, § 8, cls. 14 10
U.S. Const. article I, § 8, cls. 15 ..... 6, 9, 10
U.S. Const. article I, § 8, cls. 16 ..... 7, 10

STATUTES

18 U.S.C. § 2383 9
18 U.S.C. § 2384 9
Act of May 8, 1792, ch. 33, 1 Stat. 271 ..... 3, 25
Cook County, Ill. Code § 54-211 (2024) 16

OTHER AUTHORITIES

1 Annals of Congress (1789)
(Joseph Gales, ed.1789) 8
William Baude & Robert Leider, The General-
Law Right to Bear Arms, 99 Notre Dame L.
Rev. 1467 (2024) 14, 24

Thomas M. Cooley, General Principles of Constitutional Law (1880) 13
Robert Leider, The Individual Right to Bear Arms for Common Defense (2024), SSRN No. 491800 ..... 4, 7, 8, 9, 10, 11, 14
Petition, *Grant v. Higgins*, No. 25-566 (Nov. 7, 2025) 25
Petition, *Viramontes v. Cook County*, No. 25-238 (Aug. 27, 2025) 25
Clinton Rossiter, Ed., The Federalist Papers, (1961) 2, 6
Joseph Story, 3 Commentaries on the Constitution § 1890 (1833) 5, 9

INTEREST OF AMICI CURIAE

The Second Amendment Institute ("SAI") is a nonprofit educational organization dedicated to educating, activating, and empowering Americans to defend the right to keep and bear arms. Founded in 2016, SAI conducts public education, publishes commentary, and supports litigation concerning the Second Amendment. Its members and supporters include citizens who possess or wish to possess semiautomatic rifles for defense of self, family, community, and country. SAI therefore has a direct interest in ensuring that the Court does not permit lower courts to sever the Amendment's operative guarantee from its declared object—the security of a free state—or to transform a rifle's suitability for common defense into a reason to exclude it from constitutional protection.

Individual amici Yzaguirre and Ayala are members of SAI and possess semiautomatic rifles such as are at issue in this case and would acquire additional such rifles if legal to do so.[1]

SUMMARY OF ARGUMENT

The Second Amendment's guarantee of an individual right to arms is settled, but its underlying purpose been neglected by the lower courts' mistaken laser focus on individual self-defense. *District of Columbia v. Heller,* 554 U.S. 570 (2008) held the

[1] No counsel for a party authored this brief in whole or in part, and no person other than amici, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. *See* Sup. Ct. R. 37.6.

operative clause secures an individual right to arms unconnected to actual militia service. *Id.* at 595, 598–600 (2008). Yet *Heller* also insisted that "logic demands" a connection between the prefatory clause and the right it announces. *Id.* at 577. The Amendment undoubtedly protects individual self-defense, but its protection of an individual right to arms is grounded on the preservation of a citizen militia. The amendment's two clauses are not enemies. The individual right to arms is the constitutional means; the security of a free state is the announced end.

That end matters here. The founding generation feared a government possessing a standing army could disable popular resistance by disarming the body of the people. The constitutional answer was not a government-issued right to report for duty. It was the preservation of the pre-existing right of citizens to keep and bear their own arms—ready for personal defense, militia service, resistance to domestic tyranny, and defense against foreign invasion. *See Heller*, 554 U.S. at 597-98; Clinton Rossiter ed., The Federalist Papers, 299–300 (No. 46, James Madison) (1961). These purposes drive the determination of what arms are protected.

United States v. Miller, 307 U.S. 174 (1939) applied exactly that understanding. It asked whether a short-barreled shotgun had a "reasonable relationship to the preservation or efficiency of a well regulated militia." *Id.* at 178. The Court did not exclude military arms as would the 7th Circuit. *See Bevis v. City of Naperville,* 85 F.4th 1175, 1182, 1194-95 (7th Cir. 2023). Rather,

Miller treated militia suitability as the reason an arm would be protected, while finding the record insufficient as to a short-barreled shotgun. 307 U.S at 178–83. *Heller* translated *Miller's* holding into modern terms: protected arms are those "in common use at the time," because citizens historically appeared for militia duty bearing lawful arms they kept at home. 554 U.S. at 624–25, 627. *See also Caetano v. Massachusetts*. 577 U.S. 411, 416 (2016) (Alito, J., concurring).

The decisions below invert that rule. The Seventh Circuit in *Viramontes v. County of Cook, Viramontes,* 2025 U.S. App. LEXIS 13331 (7th Cir. June 2, 2025), followed its decision in *Bevis*, which divined a supposed divide between "civilian" arms and arms of military capability. 85 F.4th at 1192–94. *Nat'l Ass'n for Gun Rights v. Lamont*, 153 F.4th 213 (2d Cir. 2025), cert. granted sub nom. *Grant v. Higgins*, 2026 WL 1871312 (U.S. June 30, 2026) (hereinafter "*Grant*"), likewise treated the AR-15's effectiveness, military lineage, and alleged reduced utility for close-quarters self-defense as reasons it falls outside of the right. *See Id.* at 241–42. But the Constitution does not protect a rifle only to the extent it does not resemble a military arm. The textual inquiry asks whether the object is a bearable arm. *New York State Rifle and Pistol Association v. Bruen*, 597 U.S. 1, 28 (2022). If it is, it is presumptively protected and the government must justify its ban by historical tradition. *Id.* at 24, 33–34. With respect to the rifles at issue here, that is a tall order because the AR-15 platform rifle is the very type of commonly possessed arm a citizen would possess for militia service even beyond the

overwhelming evidence it is widely possessed for individual self-defense.

Although *Heller* focused on handguns for individual self-defense, as that was the issue in that case, the Court acknowledged the amendment's purpose to ensure an armed citizenry able to provide for the common defense. *See* 554 U.S. at 602-03 (discussing state constitutional provisions, inter alia, protecting the right for common defense). *See also* Robert Leider, The Individual Right to Bear Arms for Common Defense 1–5, 27–43, SSRN No. 4918009 (2024) (hereinafter "Leider"). As Professor Leider explains, the Constitution contemplates dual land forces: a professional standing army and an amateur militia drawn from the people. *Id.* at 16–29. The Second Amendment preserves citizens' capacity to serve as amateur soldiers, prevents professional or select armed factions from monopolizing the tools of force, reduces dependence on a permanent military establishment, and maintains a final check against usurpation. *See Id.* at 27–30. That theory gives operative force to every word of the Amendment and explains why rifles suitable for common defense—not merely weapons used for private quarrels—stand at its center.

Because the decisions below prohibit possession of commonly owned rifles on the basis of alleged military features the decisions below conflict with the very purpose for which the Second Amendment was ratified. As such the decisions below must be reversed.

ARGUMENT

I. The Militia Purpose Confirms—Rather Than Narrows—The Individual Right To Keep Rifles Capable Of Common Defense.

A. *Heller* preserved the logical connection between the Amendment's two clauses.

The Second Amendment begins with a proposition of political theory: "A well regulated Militia" is "necessary to the security of a free State." U.S. Const. amend. II. It then states a legal rule to preserve that institution: "the right of the people to keep and bear Arms, shall not be infringed." *Id.* *Heller* correctly rejected the claim that the first clause confines the right to persons acting under government command. 554 U.S. at 577–600. "The people," as in the First and Fourth Amendments, means members of the political community who hold individual rights. *Id.* at 579–81. "Keep" meant possess, and "bear" meant carry for confrontation. *Id*. at 581–92.

But *Heller* did not erase the preface. A prefatory clause may resolve ambiguity but must remain logically connected to the operative command. *Id.* at 577–78. *Heller* thus returned to the militia clause to confirm its reading. The militia was not a small state-created corps. It comprised the body of citizens capable of acting together for common defense. *Id.* at 595–96. Those citizens ordinarily supplied arms themselves. *Id.* at 624, citing *Miller,* 307 U.S. at 179. The Federalists' assurance was that an armed population, organized when necessary by the states, would check both invasion and a potentially

oppressive standing army. *See* The Federalist Papers at 184 (No. 29, Alexander Hamilton); *Id.* at 299–300 (No. 46, James Madison).

The 1792 Militia Act made the architecture concrete. Every enrolled able-bodied white male citizen was required to "provide himself" with a musket or firelock, bayonet, ammunition, and related equipment. Act of May 8, 1792, ch. 33, § 1, 1 Stat. 271. The arm was privately acquired and kept, then brought when called to service. The institution depended on antecedent civilian possession of militia suitable arms. Illinois and Connecticut cannot preserve that design while forbidding possession of an ordinary rifle particularly suited for militia service.

This understanding does not reduce the right to one of collective service. It explains why the right was an individual right. A militia that may exist only after the government chooses to arm it cannot check the government's decision to disarm it. As *Heller* put it, the founding-era fear was that the Federal Government would disarm the people in order to disable this citizens' militia, enabling a politicized standing army or a select militia to rule. *See* 554 U.S. at 598-99. The remedy was to deny government the power to abridge the people's pre-existing right. *Id.*; *see McDonald v. City of Chicago*, 561 U.S. 742, 770–78 (2010) (plurality opinion) (recounting the right's importance against public and private violence).

At the founding, militia functions included repelling invasion, suppressing insurrection, enforcing law, and responding when regular forces were absent. U.S. Const. art. I, § 8, cls. 15. The same

citizen may keep one arm for household defense today and common defense tomorrow. The Constitution does not divide the object according to the owner's momentary purpose.

B. The Amendment preserves an individual right for common defense.

Modern Second Amendment doctrine has often presented a false choice. One theory says the Amendment protects a collective entitlement of states or organized militia units; another says it protects an individual's choice of a firearm solely for defense against ordinary crime. Professor Leider identifies a historically grounded third position: the right belongs to individuals, but its expressly announced public purpose is common defense. *See* Leider, supra, at 1–16. The holder of the right is the citizen. The protected conduct includes acquiring, keeping, carrying, and training with suitable arms. The constitutional beneficiary is both the individual and the political community whose security depends on a population capable of military service. *See Id.* at 5–16, 36–40.

That synthesis answers the standard objection that citizens outside an organized unit cannot invoke a militia-related right. The founding militia had two related meanings: the body of citizens capable of bearing arms and the portion actually enrolled or called into service. *See Heller*, 554 U.S. at 595–96; Leider, supra, at 29 n. 203. Congress may decide whom to organize, when to train them, and how to discipline them. U.S. Const. art. I, § 8, cl. 16. But the antecedent capacity of the people to furnish themselves with arms cannot depend on Congress

first choosing to organize them. If governmental inaction could extinguish the right, the political branches could accomplish by neglect the disarmament the Amendment forbids directly.

The distinction between right and duty is equally important. The Second Amendment secures liberty to acquire and train with arms; it does not itself conscript every right-holder. Madison's proposed conscientious-objector language—providing that a person religiously scrupulous of bearing arms should not be compelled to render military service—underscores that a right held broadly could coexist with narrower legal duties of service. *See* 1 Annals of Cong. 451 (1789) (Joseph Gales, ed.1834); Leider, supra, at 30. The right therefore belongs to "the people," including those not presently enrolled, because preserving broad civilian capacity is the necessary foundation for any future call to common defense.

C. Common defense includes defense against invasion, insurrection, and usurpation.

Justice Story described the militia as the "natural defence of a free country" against three dangers: "sudden foreign invasions," "domestic insurrections," and "domestic usurpations of power by rulers." 3 Joseph Story, Commentaries on the Constitution § 1890, at 746 (1833). Each danger explains why privately kept military-suitable arms matter. Invasion may require rapid mobilization before regular forces can arrive. Insurrection may overwhelm ordinary civil officers. Usurpation presents the harder constitutional case because the threat may come from

those who command public force. A population capable of common defense supplies resilience against all three.

This anti-usurpation function is not a license for private violence or a judicially administered right to revolt whenever a citizen dislikes public policy. Government retains authority to punish assault, rebellion, intimidation, and misuse of arms. *See* U.S. Const. art. I, § 8, cl. 15; 18 U.S.C. §§ 2383–2384. The structural point is different: the Constitution deliberately denied government a complete monopoly over ordinary arms. An armed population raises the cost of unlawful seizure of power, makes exclusive reliance on professional soldiers less necessary, and helps keep coercive power aligned with the citizenry. *See* Leider, supra, at 27-28. Constitutional structure often operates prospectively by preventing dangerous concentrations of power; it need not wait for the feared abuse to occur.

The precise equipment and organization of modern forces have changed, but *Caetano* forbids freezing constitutional protection to eighteenth-century technology. *See* 577 U.S. at 411–12. The enduring principle is civilian capacity. A modern semiautomatic rifle commonly possessed and suitable for individual defensive use is closer to the privately supplied musket or rifle of the founding scheme than is a weapon selected precisely because it lacks utility beyond a private altercation.

D. The concern with standing armies was with professionalized coercive power.

The framing-era objection was not that a national standing army might interfere with state military prerogatives. It was that a permanent, professional force could become a separate armed faction with interests, discipline, and political leverage distinct from the people. *See* Leider, supra, at 20–23. A standing army was more proficient than a citizen militia, but that proficiency carried constitutional risks: separation from civilian society, expense and taxation, executive use of soldiers for domestic enforcement, and the possibility that rulers could employ a concentrated armed body against the public. *Id*.

The Second Amendment's compromise did not forbid a standing army or transfer military sovereignty to the states. Congress retained power to raise armies, organize the militia, prescribe uniform arms, and create select units. U.S. Const. art. I, § 8, cls. 12–16. What the Amendment did was preserve the foundation of the universal militia system: the political community's ability to acquire, keep, and become proficient with arms. Leider, supra, at 26–28. Congress could regulate the militia—put it in good order—but regulation could not become destruction.

That structural compromise serves three related ends. First, professional and select armed bodies cannot enjoy a legal monopoly on the tools of violence. Second, a pool of armed civilians reduces the degree to which the Nation must depend on full-time soldiers in peacetime. Third, the distribution of military capacity

supplies a check against abuse of power. Leider, supra, at 27–28. A doctrine that protects handguns but permits government to prohibit the ordinary rifle most readily adapted to common defense preserves the individual personal protective aspects of the Second Amendment while weakening all three of the structural ends discussed above.

E. Nineteenth century cases placed military-suitable arms at the right's core.

Nineteenth century cases do not support a civilian-versus-military dichotomy. To the contrary, even courts adopting a comparatively narrow view of the right to keep and bear arms treated militia-type weapons as protected.

Aymette v. State, 21 Tenn. (2 Hum.) 154 (1840). construed Tennessee's guarantee that citizens may bear arms "for their common defence." Its description of protected arms is powerful evidence that weapons of military utility are protected. *Aymette* said the constitutional term "arms" referred to weapons "usually employed in civilized warfare" and that the citizen had an unqualified right to keep a weapon "of the character before described." *Id.* at 158, 160. Rifles, muskets, swords, and similar arms of the citizen-soldier were not excluded as "weapons of war;" military usefulness in fact defined the protected category. *Id.* at 158–61.

Nunn v. State, 1 Ga. 243, 251 (1846). reached the right's individual dimension and invalidated a prohibition on openly carrying pistols and other arms. It described the object of the Second Amendment as

preserving the "right of the whole people" to keep and bear arms so that a well-regulated militia could be reared and qualified. *Id.* That formulation joins individual possession to collective security without collapsing one into the other.

Presser v. Illinois, 116 U.S. 252, 264–66 (1886) likewise distinguished a state's authority to prohibit unauthorized private military companies from any authority to disarm the people. *Presser* held that states could regulate bodies of men drilling as military organizations, *id.* at 267–68 but emphasized they could not "prohibit the people from keeping and bearing arms" so as to deprive the United States of its reserve military force, *id.* at 265. Incorporation doctrine has since changed the decision's federalism framework. *See McDonald*, 561 U.S. at 750, 791. Nonetheless, *Presser's* recognition that the body of armed citizens remained available for public defense nevertheless confirms the historic relationship between private keeping and military readiness.

Miller synthesized this tradition. The Court found no evidence in the record that a short-barreled shotgun bore a reasonable relationship to militia efficiency, and therefore could not judicially notice that the Second Amendment protected it. 307 U.S. at 178. The premise was that militia-suitable arms receive protection. *Miller* explained that the militia comprised civilians "physically capable of acting in concert for the common defense;" when called, they were "expected to appear bearing arms supplied by themselves and of the kind in common use at the time." *Id.* at 179. It then surveyed laws requiring

citizens to furnish muskets, firelocks, rifles, bayonets, and ammunition. *Id.* at 179–82.

Heller did not disturb *Miller's* holding. It said *Miller's* basis was that the Second Amendment protects the kind of weapon that has a "reasonable relationship to the preservation or efficiency of a well regulated militia," 554 U.S. at 622, and it rejected the dissent's effort to convert that reasoning into a limitation requiring the possessor to be enrolled in an organized service. *Id* at 622–25. *Heller's* "common use" phrase is therefore not a free-floating popularity contest. It describes the practical mechanism of a citizen militia: people bring the lawful arms they commonly possess to militia service. *Id.* at 624–25. *See also Caetano*, 577 U.S. at 416 (Alito, J., concurring).

Leading nineteenth-century commentators agreed. Justice Story called the militia "the natural defence of a free country" against invasion, domestic insurrection, and rulers' usurpation, and warned that indifference could undermine it. 3 Joseph Story, Commentaries on the Constitution § 1890, at 746–47. Thomas Cooley explained that to bear arms "implies the learning to handle and use them in a way that makes those who keep them ready for their efficient use" in the militia and the arms protected "are such as are suitable for the general defence of the community against invasion or oppression…." Thomas M. Cooley, General Principles of Constitutional Law 271 (1880).

Modern scholarship reaches the same conclusion. Military-suitable arms were unanimously understood by 19th Century state courts and commentators to be protected, even amid disagreement over concealable

weapons and modes of carry. William Baude & Robert Leider, The General-Law Right to Bear Arms, 99 Notre Dame L. Rev. 1467, 1500–01 (2024).

Andrews v. State made the relationship explicit. The right existed to preserve arms that would contribute to the efficiency of the citizen as a soldier and be useful in the common defense. *See* 50 Tenn. (3 Heisk.) 165, 178–79 (1871). *English v. State,* 35 Tex. 473, 476 (1872) similarly described protected arms as "the arms of a militiaman or soldier." *Fife v. State,* 31 Ark. 455, 460–61 (1876) treated "the rifle, of all descriptions, the shot gun, the musket and repeater" as within the constitutional class while excluding a small pocket revolver. These courts disagreed about some weapons and carrying practices, but their disagreements occurred against shared ground: arms of the citizen-soldier were protected, not disqualified by military usefulness. *See* Leider, supra, at 43–45; Baude & Leider, supra, at 1500–1501.

The common-defense account also explains *Presser's* otherwise puzzling distinction. Illinois could prohibit an unauthorized private military company from drilling in public because government may regulate collective military organizations. 116 U.S. at 267–68. But the state could not disarm the citizenry and thereby destroy the reserve military resource upon which public security depended. *Id.* at 265. The right protects individual capacity; it does not create independent private armies. That distinction answers any objection that recognizing the militia purpose of the Second Amendment constitutionalizes paramilitary organizations.

II. The Decisions Below Invert *Miller*, Misread *Heller*, And Evade *Bruen*.

A. *Viramontes* inherits *Bevis's* categorical military-versus-civilian error.

Cook County prohibits possession, acquisition, and transfer of numerous semiautomatic rifles, including AR-15s by name and others by features. *Viramontes,* 2025 U.S. App. LEXIS 13331, at *2. The Seventh Circuit affirmed the district court's dismissal because it regarded the claim as foreclosed by *Bevis,* 85 F.4th 1175, and faulted petitioners for not developing a record sufficient to distinguish that ruling. *Id.* at *3-5.

Bevis began from a false premise, however. It appeared to read *Heller* to say that the sole purpose of the Second Amendment was to protect armed self-defense. 85 F.4th at 1192. And it drew a distinction between "civilian" weapons on one side and weapons "reserved for military use" on the other, then asked whether prohibited semiautomatic rifles were more like handguns or machineguns. *Id.* at 1192–94, 1197. That distinction meant that

> [i]n order to show a likelihood of success on the merits, the plaintiffs in each of the cases before us thus have the burden of showing that the weapons addressed in the pertinent legislation are Arms that ordinary people would keep at home for purposes of self-defense, not weapons that are exclusively or predominantly useful in military service, or weapons

> that are not possessed for lawful purposes.

Id. at 1194. Because the record did not convince the court that AR-15-type rifles materially differed from military arms, it treated them as potentially outside the Amendment. *Id.* at 1195–97. *Viramontes* carried that error from an interlocutory record into a final judgment. 2025 U.S. App. LEXIS 13331, at *4-5.

That is *Miller* upside down. *Miller* asked whether the weapon has militia utility as a reason for coverage. 307 U.S. at 178. *Bevis* treated military utility as a reason for exclusion. 85 F.4th at 1194. The error is especially stark because the challenged ordinances identify rifles by features associated with effective use: adjustable stocks, pistol grips, barrel shrouds, flash suppressors, and capacity to accept detachable magazines, etc. *See* Cook County, Ill., Code §§ 54-211, 54-212 (2024). A government cannot transform the Second Amendment's stated purpose into a drafting guide for prohibitions.

Bevis's two-pole spectrum—handguns at one end, machineguns at the other—has no basis in the constitutional text. *See* 85 F.4th at 1193. "Arms" does not mean weapons that judges believe are sufficiently civilian.[2] *Heller* defined the term broadly as weapons of offense or armor of defense and held that all

[2] *Bevis's* logic was that since *Heller* said machineguns can be banned, a firearm similar to a machinegun can be banned. *See Id.* at 1195. But that is a misreading of *Heller*. *Bevis* failed to acknowledge that *Heller* explains that the guns that can be banned are "arms that are highly unusual in society at large." 554 U.S. at 627. That is certainly the case with machineguns, and certainly not the case with AR-15s and similar modern rifles.

bearable arms receive prima facie protection. 554 U.S. at 582. Nor does *Miller* establish a continuum under which protection shrinks as a weapon becomes more capable of common defense. *Miller* asks whether an arm has a relevant relationship to a well regulated militia; it most assuredly does not authorize courts to deny protection because the relationship is too strong. *See* 307 U.S. at 178–83.

Bevis's record-based framing compounds the error. The difference between automatic and semiautomatic fire is a legal and mechanical fact: an ordinary semiautomatic rifle fires one round per function of the trigger; an M-16 may fire multiple rounds with one function of the trigger. *Staples v. United States*, 511 U.S. 600, 602 & n.1 (1994). Whether a semiautomatic rifle is a bearable arm does not depend on dueling experts. And whether millions of citizens may keep one cannot turn on a court's impression that challengers failed to prove enough factual distance from a rarely possessed weapon the federal government heavily regulates. Constitutional coverage is determined by text informed by history, not a judicial weapons-similarity trial.

Bevis also misplaced the constitutional burden. Once plaintiffs show they seek to possess bearable arms, the Second Amendment's plain text covers the conduct; the government must then demonstrate the restriction's consistency with historical tradition. *Bruen*, 597 U.S. at 24, 33–34. *Bevis* instead required plaintiffs to prove at "step one," through a fact-heavy comparison, that their rifles were sufficiently unlike the military M-16 machinegun. *See* 85 F.4th at 1192–

97. *Viramontes* repeated that the plaintiffs bore the burden to show textual protection "viewed through the lens of historical tradition." 2025 U.S. App. LEXIS 13331, at *3-4. That merges *Bruen's* two steps and transfers the government's historical burden to the right-holder contrary to this Court's clear directives.

Wolford v. Lopez, 609 U.S. __, slip op. (June 25, 2026) clarified the methodology of text first and history second. *See Id.* at 7-8. In determining whether a law clashes with the plain text, three questions arise: First, does the law apply to "the people"—which is to say, to "all members of the political community"? *Id.* at 7, quoting *Heller,* 554 U.S. at 580. Second, does it concern any form of "Arms," i.e., any weapon customarily used for offensive or defensive purposes? *Id.,* citing *Heller,* 554 U.S. at 584.[3] Third, does the law place any restrictions on either the "keep[ing]" (i.e., possession) or the "bear[ing]" (i.e., carrying) of arms? *Id.,* citing *Bruen,* 597 U.S. at 32-33. Plainly the answer to each of these questions here is "Yes."

Justice Barrett's concurring opinion underscored the majority's discussion of *Bruen's* Step One methodology and eschewed any attempt to import additional requirements into the *Bruen* Step One analysis, for example, supposed historical limitations on the right.

---

[3] Arms customarily used for offense or defense the Court elsewhere noted, refers to implements used for offense or defense, such as handguns that are "overwhelmingly chosen by American society" for self-defense. *See Heller,* 554 U.S. at 628.

Addressing the dissent's proposed use of history to delimit the meaning of the Second Amendment's text, Justice Barrett in her concurring opinion explained:

> No one disputes that the Second Amendment's text has a fixed meaning that must be satisfied before a law is deemed presumptively unconstitutional. See *ante*, at 7 (identifying "three subsidiary questions" that must be answered at *Bruen*'s first step). The disagreement is instead whether courts can smuggle additional limits, drawn from our regulatory tradition, into the plain-text stage of the inquiry. The answer is and always has been no.

Wolford, concurring slip op. at n.1 (Barrett, J.).

The proper textual threshold then is straightforward. The semiautomatic rifles at issue here are instruments that can be carried and used offensively or defensively; they are therefore "Arms." *Heller*, 554 U.S. at 581–82. Historical limitations enter at the government's justification for a restriction at *Bruen* Step Two, not by narrowing "Arms" through modern judicial policy judgments. *See Bruen*, 597 U.S. at 19, 22–25.

B. *Grant* converts functional usefulness into a constitutional defect and substitutes balancing for history.

The Second Circuit's decision in *Grant* rests on the same inversion. It acknowledged that Connecticut defines prohibited rifles through "military-style

features," including folding or telescoping stocks, pistol grips, forward grips, flash suppressors, and launcher mounts. *Nat'l Ass'n for Gun Rights*, 153 F.4th at 225–26. Yet it treated those features, the AR-15's military lineage, and evidence of rapid fire capability as reasons to weaken or deny constitutional protection finding such firearms to be "unusually dangerous," akin to Bowie Knives. *Id.* at 244–50. Under *Miller* and the 19th century state cases discussed above, those "military" features point toward the militia function, and constitutional protection.

Grant, like *Bevis,* also wrongly limits arms protection exclusively to personal self-defense, and is thus inconsistent with *Heller's* acknowledgment of the other lawful purposes for which the Second Amendment was enacted, such as hunting, target shooting and most importantly here, preserving a well trained populace capable of effectively serving in the militia. *Heller,* 554 U.S. at 599.

Heller described self-defense as "the central component" of the right, 554 U.S. at 599, but never said it was the only lawful purpose for arms possession. The opinion specifically identified preservation of the citizen militia as the purpose announced by the preface. *Id.* at 598–99. A *central* component is not an *exclusive* component, and an ordinary rifle does not lose protection because judges consider a handgun a more appropriate arm for a particular defensive scenario.

Grant nevertheless contrasted AR-15s with handguns, reasoning that rifles may be longer, heavier,

harder for an inexperienced user to maneuver indoors, and more capable of penetration. 153 F.4th at 241. Aside from ignoring AR-15s utility for common defense, *Heller* forecloses substitute-weapon reasoning. The District could not ban handguns because long guns remained available; citizens were entitled to choose commonly possessed arms for self defense. *See* 554 U.S. at 629. The constitutional vice is not cured by leaving "more than 1,000" government-approved firearms on the market. *Nat'l Ass'n for Gun Rights*, 153 F.4th at 242. The First Amendment would not tolerate a ban on one protected medium because a thousand others remain.

Nor may heightened lethality resolve the case. Every firearm is dangerous. *Caetano* held that dangerousness alone is insufficient; the historical rule concerns weapons that are both dangerous *and* unusual. *See* 577 U.S. at 417 (Alito, J., concurring). An arm commonly possessed by law-abiding citizens cannot simultaneously be "unusual" in the constitutionally relevant sense. *See Heller*, 554 U.S. at 627. *Heller* made this crystal clear when it explained that "unusual" means "highly unusual in society at large." *Id*. The government may punish misuse and disarm persons shown to threaten others under historically grounded principles. *See United States v. Rahimi*, 602 U.S. 680, 693–700 (2024). It may not prohibit possession of common arms by relabeling their effectiveness as unusually dangerous.

Finally, the Second Circuit's invocation of Bowie knives, percussion pistols, and laws regulating concealed carry does not establish a tradition of

banning possession of common rifles. *See Nat'l Ass'n for Gun Rights*, 153 F.4th at 236, 242-445; *Id. at* 251–52 (Nathan, J., concurring). *Bruen* requires relevant similarity in "how and why" historical and modern regulations burden the right. *See* 597 U.S. at 29–31. And that test is not met here. First, Bowie knives and many pistols were not considered to have utility for the militia. *See, e.g., Fife v. State,* 31 Ark. at 460–61. Second, regulations of manner, misuse, or concealed carry are not analogues to a flat ban on keeping an entire class of arms in the home. *See Heller*, 554 U.S. at 629. *Cf. Bruen*, 597 U.S. at 52-54 (concealed carry prohibitions did not justify outright bans on carry).

The supposed historical analogues fail at a more basic level. Bowie-knife statutes often regulated concealed carry or enhanced punishment for misuse; they did not generally prohibit peaceable citizens from keeping the knives in the home. *Hanson v. District of Columbia,* 120 F.4th 223, 272-73 (D.C. Cir. 2024) (Walker, J., dissenting). Trap-gun and discharge laws regulated dangerous conduct. Gunpowder-storage laws regulated how volatile material was kept in dense places. None rested on the principle that an ordinary arm could be prohibited because criminals might inflict greater harm with it. The relevant "why" was manner-specific danger, not suppression of civilian militia capability; the relevant "how" was regulation, not categorical disarmament.

Grant also revives interest balancing under historical labels. Its discussion of wall penetration, mass shootings, rates of fire, and alternative firearms asks whether Connecticut made a reasonable policy

choice. *See* 153 F.4th at 247. *Bruen* rejected that inquiry because the Second Amendment already embodies the constitutional balance. 597 U.S. at 25–26 & n.6. Modern empirical claims may inform legislation within constitutional bounds, but they cannot substitute for a historical tradition of comparable restriction.

C. *Bianchi* illustrates the same inversion.

Although *Bianchi* is not under review, its en banc reasoning demonstrates entrenched error that has infected lower courts. The Fourth Circuit reaffirmed its view that *Heller* said that arms "'like' M-16 rifles"—those "most useful in military service"—fall outside the Amendment, and asserted *Bruen* left that categorical holding intact. *Bianchi v. Brown*, 111 F.4th 438, 451–52 (4th Cir. 2024) (en banc).

Heller's discussion of M-16s cannot bear that weight. *Heller* stated the right *was not limited* to arms useful in warfare and cautioned that "M-16 rifles and the like" may be banned. 554 U.S. at 624–28. But it derived the protected category from *Miller*: weapons commonly possessed by law-abiding citizens and thus brought to militia duty. *Id.* at 624–25, 627. Whatever the precise boundary for machineguns, which are not commonly possessed, *Heller* did not announce that semiautomatic rifles become unprotected when military forces value accurate semiautomatic fire. *Staples* confirms the legal and functional distinction: an AR-15 ordinarily fires only one shot per trigger press, unlike an automatic M-16. *See* 511 U.S. at 602 & n.1.

Bianchi's rule would produce the constitutional absurdity identified by Baude and Leider: legislatures may ban a rifle because its features make it useful for the very militia which the Second Amendment sought to preserve. 99 Notre Dame L. Rev. at 1501–02. This Court should reject that inversion expressly, lest the operative clause remain individual in name but stripped of the arms needed to fulfill the announced purpose of the preamble.

The phrase "M-16 rifles and the like" is dicta addressing the outer boundary of protection, not a license to ban any weapon sharing ergonomic features or ammunition with a service rifle. *See Heller,* 554 U.S. at 627. Read in context, the sentence follows *Heller's* explanation that modern limits may constrain militia effectiveness but do not alter the historical meaning of the right. *Id.* at 627–28. *Heller* did not silently overrule *Miller's* holding that militia relationship supports protection. At minimum, "and the like" must preserve the distinction between machineguns and ordinary commonly possessed semiautomatic rifles that this Court recognized in *Staples,* 511 U.S. at 602 & n.1.

Bianchi's reliance on rifle features it terms military that promote accuracy, controllability, and capacity is particularly incompatible with common defense. Those qualities help a citizen hit an intended target, provide for rapid follow-up shots if needed, and avoid unintended harm. A pistol grip improves control; an adjustable stock permits fit to body size; a flash suppressor can preserve the shooter's vision in low light; detachable magazines permit reliable

reloading. That soldiers value function does not make function constitutionally suspect. The founding militia laws demanded effective arms in working order, not deliberately inferior substitutes. *See Miller,* 307 U.S. at 179–82.

III. AR-15 Type Rifles Are "Arms," Are Commonly Possessed, And Cannot Be Banned.

The Court can resolve these cases without inventing a new test. First, AR-15 platform and similar semiautomatic rifles are plainly bearable arms. *Heller,* 554 U.S. at 582. Caetano makes clear that the category was not frozen in 1791 and extends prima facie to modern instruments. 577 U.S. at 411–12 (per curiam).

Second, these rifles are commonly possessed by law-abiding citizens for lawful purposes. The petitions document millions of rifles in civilian hands and describe the AR-15 as the Nation's most popular rifle. Pet. *Viramontes v. Cook County*, No. 25-238 at 5–10 (Aug. 27, 2025); Pet. *Grant v. Higgins*, No. 25-566 at 5–13, (Nov. 7, 2025). Common possession defeats the "unusual" half of "dangerous and unusual." *Heller*, 554 U.S. at 627. *See Caetano*, 577 U.S. at 417–18 (Alito, J., concurring).

Third, respondents cannot identify a historical tradition of banning possession of ordinary militia-suitable rifles by peaceable citizens. Founding-era law generally required such citizens to acquire and maintain arms suitable for the militia. *See Miller*, 307 U.S. at 179–82; Act of May 8, 1792, ch. 33, § 1, 1 Stat. 271.

Respondents may invoke concerns for public safety such as mass shootings. Those incidents, while rare compared to criminal misuse of handguns, are certainly grave, but *Bruen* forecloses judicial interest balancing. 597 U.S. at 22–23. The Constitution itself reflects a judgment that an armed citizenry contributes to the security of a free State, notwithstanding risks that attend to the people possessing weapons. Courts must apply that judgment through text and history, not replace it with their assessments of which arms citizens need.

A clear rule follows: a State may not ban possession of a bearable rifle that is commonly kept by law-abiding citizens for lawful purposes. The rifle's usefulness for militia service strengthens rather than defeats the textual and historical case. That rule respects *Heller's* individual right, *Miller's* militia-centered arms inquiry, *Caetano's* treatment of modern weapons, and *Bruen's* allocation of the historical burden.

A. "Common use" reflects civilian possession before the call to service.

The common-use principle is sometimes treated as a bare numerical test. Numbers matter because widespread lawful possession forecloses the label "unusual." But the principle has deeper historical logic. *Miller* and *Heller* refer to citizens appearing for service with arms supplied by themselves. *Miller,* 307 U.S. at 179; *Heller*, 554 U.S. at 624–25. Common civilian possession is therefore not an accidental proxy for constitutional status. It is the mechanism through which a citizen militia remains possible.

That mechanism also defeats circularity. A government cannot manufacture unusualness by banning a protected arm early and then rely on the ban's success to prove that the arm is uncommon. *Caetano* rejected temporal freezing, 577 U.S. at 411–12, and *Bruen* rejected using twentieth-century restrictions to contradict the founding understanding of the right. *See* 597 U.S. at 66 & n. 28.

B. The common-defense theory identifies a floor, not an exclusive limit.

Recognizing common defense does not require retreat from *Heller's* protection of personal self-defense. A right may serve multiple lawful purposes. The same rifle may protect a household during a violent emergency, defend a community when civil order collapses, and furnish useful familiarity if its owner is called for public service. *Heller's* point was that actual militia enrollment does not condition the individual right which belongs to the people in general. *See* 554 U.S. at 581, 592.

The Court therefore need not decide every question which may arise from the common-defense theory. This case concerns rifles that are bearable, commonly possessed, and suitable for the traditional functions of an individually equipped citizen. On the historical evidence, those rifles lie at the protected core under both *Heller's* self-defense reasoning and the Amendment's common-defense purpose. Accordingly, the Second Amendment protects their possession and mandates reversal of the decisions below.

CONCLUSION

The judgments of the courts of appeals should be reversed.

Respectfully submitted,

/s/ George L. Lyon, Jr.

GEORGE L. LYON, JR.
Counsel of Record
ARSENAL ATTORNEYS
4000 Legato Road, 11th Floor
Fairfax, Virginia 22033
202-669-0442
gll@arsenalattorneys.com

September 4, 2026