Nos. 25-238, 25-566

IN THE

Supreme Court of the United States

CUTBERTO VIRAMONTES, *et al.*,

Petitioners,

v.

COOK COUNTY, ILLINOIS, *et al.*,

Respondents.

[Additional Caption Listed On Inside Cover]

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE SEVENTH CIRCUIT AND FOR THE SECOND CIRCUIT

BRIEF OF *AMICUS CURIAE* HAWAII FIREARMS COALITION IN SUPPORT OF PETITIONERS

KEVIN O'GRADY
Counsel of Record
THE LAW OFFICE OF
KEVIN O'GRADY, LLC
1164 Bishop Street, Suite 1605
Honolulu, HI 96813
(808) 521-3367
kevin@kevinogradylaw.com

Attorney for Amicus Curiae
Hawaii Firearms Coalition

132402

COUNSEL PRESS
A Proceed Service
The Appellate Experts®
(800) 274-3321 • (800) 359-6859

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.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF CITED AUTHORITIES ii

INTEREST OF AMICUS CURIAE 1

SUMMARY OF THE ARGUMENT 2

ARGUMENT 2

CONCLUSION 24

TABLE OF CITED AUTHORITIES

Page

Cases

Caetano v. Massachusetts,
577 U.S. 411 (2016) 5, 16

District of Columbia v. Heller,
554 U.S. 570 (2008). 2-13, 15-18, 22, 23

Fisher v. Kealoha,
855 F. 3d 1067 (9th Cir. 2017) 1

Garner v. State of LA,
368 U.S. 157 (1961) 8

Lewis v. United States,
445 U.S. 55, 100 S.Ct. 915, 63 L.Ed.2d 198 (1980) . . .7

New York State Rifle & Pistol Association, Inc. v. Bruen,
597 U.S. 1 (2022). 3, 4, 6, 13, 21-24

Roberts v. Ballard, et al.,
Civ. No. 18-00125 1

Roberts v. City and County of Honolulu,
Civ. No. 15-00467 ACK-RLP 1

State v. Kessler,
289 Ore. 359, 614 P.2d 94 (1980) 17

Cited Authorities

Page

The Paquete Habana,
175 U.S. 677 (1900) 8

United State v. Miller,
307 U.S. 174 (1939) 5-10, 16-18

United States v. Hemani,
146 S. Ct. 1677(2026) 22

United States v. Rahimi,
602 U.S. 680 (2024). 21-23

Viramontes v. Cook County,
2025 WL 1553896. 10

Wolford et al. v. Anne E. Lopez,
1:23-cv-00265 1

Statutes and Other Authorities

U.S. Const. amend. I 15

U.S. Const. amend. II . . . 1, 3-6, 8-11, 14, 15, 17, 18, 21-23

Hawaii Revised Statutes § 134-8. 12

G. Neumann, Swords and Blades of the American Revolution (1973) 17

The Individual Right To Bear Arms For Common Defense, 102 Notre Dame L. Rev. ___ (forthcoming 2027) 22-23

Cited Authorities

Page

The Militia of the Sea, The Marque and Reprisal Clause as Textual Proof of Private Heavy-Arms ownership at the Founding, Jonathan S. Goldstein, Esq, Published on July 28, 2026, revised, August 12, 2026 . . . . . 15, 16

The National Firearms Act of 1934: A Constitutional Critique Gram Gross, April 2026 (Revised July 2026) 6, 8-13, 18

The Peculiar Story of *United States v Miller*, NY Journal of Law and Liberty, Vol. 3, 2008 7

https://digital.denverlibrary.org/nodes/view/1131280, last accessed September 1, 2026 19

https://gunmagwarehouse.com/blog/the-guns-of-the-roof-koreans/#:~:text=The%20Remington%20700%20acted%20as,every%20caliber%20under%20the%20sun, last accessed August 31, 2026 14

https://marcliebman.com/brown-bess-meets-the-pennsylvania-rifle/ 13

https://nationalinterest.org/blog/buzz/ultimate-mistake-introducing-gun-us-army-said-no-39502, last accessed September 2, 2026. 11

https://postalmuseum.si.edu/object/npm_2013.2011.158, last accessed September 2, 2026. 7

Cited Authorities

Page

https://thecmp.org/about/, last accessed September 2, 2026. 20

https://www.americanrifleman.org/content/guns-of-the-battle-of-blair-mountain/, last accessed September 1, 2026. 11

https://www.atf.gov/resource-center/data-statistics, last accessed August 31, 2026 12

https://www.craftholsters.com/beretta-m9-vs-92fs-side-by-side-comparison-of-berettas-best?srsltid=AfmBOoqAZLNcZfD7zjY0-5f3A4WJ8J8hya3kjgVFleR1vqsDxReWS5XN, last accessed September 2, 2026 11

https://www.explorekingman.com/event-big-sandy-shoot-03-21-2025/, last accessed August 31, 2026. 12

https://www.fire.org/news/cassius-marcellus-clay-brought-cannons-free-press-fight, last accessed September 2, 2026 15

https://www.historic-uk.com/HistoryUK/HistoryofBritain/The-Puckle-or-Defense-Gun/, last accessed September 2, 2026. 19

https://www.militarytimes.com/industry/techwatch/2026/08/10/cmp-approved-to-sell-more-than-100000-surplus-m14-rifles/. 20

Page

https://www.npr.org/2018/02/28/588861820/a-brief-history-of-the-ar-15, last accessed September 2, 2026. 19-20

https://www.nps.gov/articles/000/war-in-the-coalfields-the-ludlow-massacre-and-its-impact-on-the-eight-hour-workday.htm, last accessed September 1, 2026. 19

https://www.nramuseum.org/guns/the-galleries/world-war-i-and-firearms-innovation/case-36-great-inventors/colt-model-1921-thompson-rifle.aspx, last accessed September 2, 2026. 19

https://www.pbpd.org/upages.php?id=180, last accessed September 2, 2026 20

https://www.rockislandauction.com/riac-blog/assault-weapons-before-the-second-amendment, last accessed September 2, 2026. 19

https://www.sanleandro.org/DocumentCenter/View/1982/SLPD-Patrol-Rifle-Specs-PDF, last accessed September 2, 2026 20

https://www.stpaul.gov/books/24900-ar15-type-patrol-rifles, last accessed September 2, 2026 20

https://www.yonkersny.gov/DocumentCenter/View/2158/120-24-Use-of-AR-15-Patrol-Rifle-PDF, last accessed September 2, 2026. 20

INTEREST OF AMICUS CURIAE

This amicus curiae brief is filed on behalf of the Hawaii Firearms Coalition in support of petitioners. Hawaii Firearms Coalition (HIFICO), is a non-profit, member driven organization incorporated under the laws of the State of Hawaii with its principal place of business in Honolulu Hawaii, dedicated to the correct construction, interpretation, and application of the law[1] and which promotes legislative and legal action, as well as research, and advocacy, in support of people's civil liberties. Hawaii Firearms Coalition litigates firearm-regulation cases, and it has consistently advocated for a principled interpretation of the United States Constitution to prevent government from violating the basic civil rights of its citizens. Members of HIFICO have provided informed analysis and been organizational plaintiffs in a variety of firearm related cases, including *Fisher vs. Louis Kealoha*, et al., 855 F. 3d 1067 (9th Cir. 2017), *Roberts vs. City and County of Honolulu*, Civ. No. 15-00467 ACK-RLP, and *Roberts vs. Ballard*, et al., Civ. No. 18-00125, and *Wolford et al. v Anne E. Lopez*, 1:23-cv-00265. Hawaii Firearm Coalition's interest in this matter is for this Court to come to the correct interpretation of the Second Amendment such that all members of the people may exercise the Second Amendment completely and as applicable to this case, that the arms include, "**any thing** that a man wears for his defense, or takes into his hands, or used in wrath to cast at or strike another.", and that there is no well-

1. No counsel for a party authored this brief in whole or in part, nor did such counsel or any party make a monetary contribution to fund this brief. No person other than the amicus, its members or counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

established and enduring historical tradition of banning arms that could contribute to the efficiency of the militia and or could be useful in case of confrontation.

SUMMARY OF THE ARGUMENT

This Court should find that the arms at issue in this litigation are of the kind and nature that have a reasonable relationship to the preservation or efficiency of the militia and are of the sort that militia members are expected to possess, train with, and carry for confrontation whether while in militia service or in defense of themselves and others. As will be shown below, "arms" include, not only "militia" or "military" weapons, but any weapon of offense.

ARGUMENT

Amicus begins by stating that Amicus agrees with Petitioners' arguments regarding the "in common use" aspect of the arms in question. Additionally, Amicus agrees not only with Petitioners' arguments regarding the "…historical tradition of prohibiting the ***carrying*** of dangerous and unusual weapons…", (Emphasis added),[2] but also the more precise and thorough argument of Amicus Hawaii Rifle Association, filed August 31, 2026, that ties the "historical tradition" of "…prohibiting the carrying of dangerous and unusual weapons…" to the act of how a weapon was employed, not the mere possession or ownership of the weapon, nor any intrinsic characteristic of the arm. Furthermore, under the *Heller* framework, as explicated by *Bruen,* Amicus argues that any and all "arms" or *any* "weapons of offence of armour of defence"[3]

2. See Petitioners' brief filed August 28, 2026, pages 43-46.

3. *Heller* at 627.

are included in step one of *Bruen*, as implicated in the text of the Second Amendment, and whether or not there is a tradition of regulation is addressed at step two, examining the history and tradition.

Writing for the Court in *District of Columbia v. Heller*, 554 U.S. 570, 595-596, (2008), Justice Scalia, while determining that the Second Amendment was an individual right, discussed that the individual bore arms, in part, as a member of the "militia".

> The militia of a country are the able bodied men organized into companies, regiments and brigades… and required by law to attend military exercises on certain days only, but at other times left to pursue their usual occupations."
>
> …
>
> …the militia of the State, that is to say, of every man in it able to bear arms".

But to what end? For what purposes does the individual keep and bear arms[4]? *Heller* informed us that, at base, the Second Amendment protects the right to keep and bear arms as follows—

---

4. And exercise all aspects related to the "keeping" and bearing", such as making, purchasing, trading, modifying, training, practicing, buying bags, training equipment, ammunition, targets, optics, hearing protection, cleaning materials, holsters, storage boxes, safes, hunting, plinking, target shooting, competitive shooting, establishing collections, etc, all beyond "individual" or group, confrontation.

> "When used with "arms," however, the term has a meaning that refers to carrying for a particular purpose—confrontation."
>
> "Putting all of these textual elements together, we find that they guarantee the individual right to possess and carry weapons in case of confrontation."

Heller at 584[5], 592.

But since 1791, governmental efforts to abolish or strangle Second Amendment rights, have shifted gears. In *Heller*[6], the government sought to restrict Heller's access to a pistol[7]. Yet, in *Heller*, the court discussed how the Second Amendment was not *limited* to the protection of weapons of militia service. The Second Amendment is expansive,

---

5. Also see 594.

6. *Heller* discussed how the government had sought to limit the militia to select militias. *Heller* at 592, 598, 600. That effort remains today with government trying to limit the Second Amendment by limiting who is covered by "the people". The courts and governments most resistant to *Bruen,* try to smuggle in restrictions at step one, instead of looking at the history and tradition in step two, as *Bruen* dictates. This effort to avoid *Bruen,* or the mistake in applying *Bruen*, is the second prong, the first is to limit the persons covered in the Second Amendment, the second is to just eliminate large categories of arms, purportedly, at step one.

7. *Heller* at 574-575. The dissent, then argued, that pistols were associated with criminals and crime, and therefore were not "militia" service related. Here, the government takes the approach that the arms are too close to militia related, i.e. they are *too* dangerous and unusual (a misapplication of the term of art).

covering "confrontation" in all its forms[8]. "Confrontation" covers protection everything from individual assailants to assisting in the defense of one's country.

Heller explained, and Bruen explicated, that the text of the Second Amendment controls and covers "arms". *Heller* "…defined 'arms' as '**any thing** that a man wears for his defense, or takes into his hands, or used in wrath to cast at or strike another." (Emphasis added). A broad definition indeed. And to make clear, *Heller* added "…**all firearms** constituted 'arms'… *Heller* at 581. (Emphasis added). *Heller* continued "…the second Amendment extends, prima facie, to **all instruments** that constitute bearable arms, …" (Emphasis added).

Beyond that very broad scope, a distinct, but not limiting, aspect of the Second Amendment was militia service. *Heller* explained, at 585, "It is clear from those formulations that "bear arms" did not refer **only** to carrying a weapon in an organized *military* unit."

While that discussion in *Heller* was, in that specific paragraph, discussing the "people" and the fact that keeping and bearing "arms" was not limited to militia service, it begs the question, what sort of "arm" did the individual keep and bear, not only for individual confrontation, but also for "militia service"?

Justice Scalia noted, at 602, "19th century courts never read common defence to **limit** the use of weapons to militia service." (Emphasis added). In addressing the minimal impact of the *Miller* case, Justice Scalia noted,

8. *Caetano,* 577 U.S. 411 (2016).

at 622, "…the Second Amendment confers an individual right to keep and bear arms…that have some reasonable relationship to the preservation or efficiency of a well regulated militia."

Miller itself, was not a *challenge* to the specific arm, or characteristic of an arm, in question, because it was instead merely an odd case[9] about the "…transporting

9. In fact it was not only odd but suspicious because it was essentially the government that crafted it to be a test case to determine whether arms could be almost banned through the tax power under the constitution, recognizing, and implicitly admitting, that the government could not directly ban the weapons, and arguing instead that the registration and taxation was aimed at persons who committed crimes, by applying the tax to weapons that criminals liked to use. The government argued that the weapons might not be "protected" because they were used by criminals, an argument foreclosed by *Heller.* The Supreme Court dodged that precise question and noted that the arm, a short-barreled shotgun, was not, as a *matter of judicial notice*, part of ordinary military equipment or *could* contribute to the common defense. The implication is that if there had been *some* evidence, any evidence, or argument (the precise evidentiary question was not raised in the trial court) that a shorter barreled shotgun was a part of ordinary military equipment, that a member of the militia brought himself, or *could* contribute to the common defense, then the analysis would have been very different. Even that examination is suspect considering *Bruen's* explication that if the plain text of the Second Amendment covers the issue, "an arm", then the burden falls to the government to establish a tradition of regulation. And even the *Miller* court considered the shorter barreled shotgun to be an "arm". The government argued the "arm" could be regulated not because of what it was, intrinsically, but rather by whom it was being used. It did not argue that it was not an "arm"- though the case focused on "short" barreled shotguns, the Tommy Gun machine gun, also covered by the NFA,

an **unregistered** short-barreled shotgun…", *Heller* at 621-622. (Emphasis added)(It was the fact that it was "unregistered", not that it was "short-barreled", and transported in interstate commerce, that constituted the crime. Shotguns without short barrels were not required to be "registered", and if they were unregistered they were legal to possess and lawfully use. And even short-barreled shotguns were legal to buy, possess, own and use, provided it was "registered". If "registered" they must have had some use for self-defense, and perhaps militia service.) It was not a real challenge because no one showed up to make the challenge.[10] *See* The Peculiar Story of United States v Miller, NY Journal of Law and Liberty, Vol. 3, 2008. *Miller* did not address, nor even raise the issue of, an arm being "dangerous and unusual" as it pertained to the weapon at issue, that was "unregistered", such weapon being a

---

was in fact used by the Postal Service and United States Marines to guard the mail in the 1920's, see https://postalmuseum.si.edu/object/npm_2013.2011.158, last accessed September 2, 2026.

10. See *Heller*, footnote 25. In discussing the decision in *Lewis v. United States,* 445 U.S. 55, 100 S.Ct. 915, 63 L.Ed.2d 198 (1980), which in turn discussed *Miller*, Justice Scalia noted "It is inconceivable that we would rest our interpretation of the basic meaning of any guarantee of the Bill of Rights upon such a footnoted dictum in a case where the point was not at issue and was not argued." Here, similarly, *Heller* was not about "dangerous and unusual weapons". And *Miller,* did not decide anything about "dangerous and unusual" weapons, in part because the concept, issue and argument was never raised, and because one party didn't make any argument at all. But also because, as explained in Amicus Hawaii Rifle Association's brief, the concept of "dangerous and unusual" meant *how* an arm was carried- and being "unregistered" was not "to the terror" of the people, nor was a weapon being "short".

"short barreled shotgun"[11]. The *Miller* court, importantly, considered the "short barreled shotgun" an "arm", thus it would be covered and the NFA would be implicated by the text of the Second Amendment. The *Miller* court simply stated "…it is not within judicial notice[12] that this weapon is any part of the ordinary military equipment…". That meant, whether or not the arm could be regulated in *some* way, was connected to its service in the militia or common defense.

It should be noted that as to the precise question of whether or not a short-barreled shotgun had any "reasonable relationship to the preservation or efficiency of the …militia", or was "…**any** part…of the ordinary **military** equipment or that its use ***could*** **contribute** to the common defense.", (Emphasis added), that question was not necessary for the underlying indictment, criminal charge and, since no one appeared to argue on behalf of Miller, was not addressed at the U.S. Supreme Court in argument by Miller.

Despite the exceedingly shallow nature of *Miller,* and the fact that *Heller* all but disregarded it, (in response to the dissent), Justice Scalia pointed out at 623, that the government, in *Heller*, argued, "…for the proposition that the ***only*** uses of arms protected by the Second Amendment

11. What constitutes "short" in a shotgun is completely arbitrary and does not eliminate the utility of a shorter shotgun from militia or self-defense applications or use.

12. Judicial notice can be used to accept that international law exists. See The Paquete Habana, 175 U.S. 677 (1900). But facts applicable to an item, such as a short-barreled shotgun, specific facts, are the kinds of facts that cannot be judicially noticed, See Garner v State of LA, 368 U.S. 157 (1961).

are those that *relate to the* ***militia***, not self-defense[13]." This was to support the government's position, to use the *Miller*[14] case as a National Firearm Act test case to use the NFA to prosecute specific types of criminals, i.e. "gangsters", that short-barreled guns are associated with crimes and used by criminals. But, as Justice Scalia noted in discussing *Miller*, at 624, "It assumes from the prologue that the Amendment was designed to preserve the militia." And *Heller* ruled that even if an arm is used by criminals, it does not mean that it falls out of the text of the Second Amendment, nor that it necessarily has a history and tradition of regulation[15] or a ban of the arm (as opposed to the possession by a particular person). See *Heller* at 636 –

"We are aware of the problem of handgun violence in this country, and we take seriously the concerns raised by the many *amici* who believe that prohibition of handgun ownership is a solution. The Constitution leaves the District of Columbia a variety of tools for combating that problem, including some measures regulating handguns, see *supra,* at 2816 – 2817, and n. 26. But the enshrinement of constitutional rights necessarily takes certain policy

13. And it is now well-established, under *Heller*, that general confrontation is what is, also, protected under the Second Amendment.

14. But *Miller* itself was not about the mere possession or existence of a short-barreled shotgun, or a weapon with certain characteristics, but rather it was "registered" because the government knew, criminals would not register an arm, while a law abiding person would. The NFA had originally sought to include pistols, see FN 19, page 17. So, they too, were used by criminals.

15. Putting aside other regulation of arms generally such as a prohibition of using an arm, any arm, to commit robbery or homicide.

choices off the table. These include the absolute prohibition of handguns held and used for self-defense in the home.

Undoubtedly some think that the Second Amendment is outmoded in a society where our standing army is the pride of our Nation, where well-trained police forces provide personal security, and where gun violence is a serious problem. That is perhaps debatable, but what is not debatable is that it is not the role of this Court to pronounce the Second Amendment extinct[16]".

Many courts have inappropriately stretched discussion, not ruling, in *Heller,* twisted it, and avoided a proper *Bruen* analysis as it pertains to "machine guns" and, accordingly, other "arms". In *Viramontes*, 2025 WL 1553896, the court wrote "We held that the plaintiffs had failed to show, at the preliminary injunction stage, that the covered firearms materially differed from **machineguns and military-grade weaponry, which the Supreme Court instructed can be banned under the Second Amendment**. *Id.* at 1194–97, 1203." (Emphasis added). The *Heller* court stated no such thing.

First, the *Heller* court was dealing with a handgun ban[17]. The language most often cited for the proposition to

16. Amicus notes that the "assault rifles" at issue here, are, as shown by Petitioners, owned in the millions, and handguns, as indicated in *Heller*, "…are the most popular weapon chosen by Americans for self defense in the home,…", at 629. As Petitioners note, at 2, "It did not matter, as a dissent emphasized, that handguns also are "the overwhelmingly favorite weapon of armed criminals." This argument, that only criminals use a certain type of weapon, was raised in support of the NFA, and in *Miller*, but was not dispositive, and was ruled as irrelevant in *Heller.*

17. Handguns too can be "militia" or "military" grade, or "style" weaponry, but the 7th Circuit's main focus was on the

ban weapons, such as so-called "assault" rifles, which was not a part of the issue decided in *Heller*, at 627-628, is –

"It may be objected that if weapons that are most useful in military service—M–16 rifles and the like—may be banned, then the Second Amendment right is completely detached from the prefatory clause. But as we have said, the conception of the militia at the time of the Second Amendment's ratification was the body of all citizens capable of military service, who would bring the sorts of lawful weapons that they possessed at home[18] to

"rifles" at issue with "features" such as a thumbhole stock, folding or telescoping stock, flash suppressor, and the like. One feature, "pistol grip" would obviously be applicable to all or almost all pistols. *See* https://nationalinterest.org/blog/buzz/ultimate-mistake-introducing-gun-us-army-said-no-39502, last accessed September 2, 2026, an article that notes that the M9, civilian version 92F, Beretta 9mm pistol was the United States Army's pistol since 1985 for more than thirty years. That same pistol, with miniscule differences, has been available to civilians, from initial production. See https://www.craftholsters.com/beretta-m9-vs-92fs-side-by-side-comparison-of-berettas-best?srsltid=AfmBOoqAZLNcZfD7zjY0-5f3A4WJ8J8hya3kjgVFleR1vqsDxReWS5XN, last accessed September 2, 2026.

18. Amicus notes that Petitioners have ably proven that millions of Americans owns millions of AR15 platform style rifles. Amicus notes that as far as fully automatic firearms, covered by the National Firearms Act (NFA) of 1934 is concerned, *prior to the enactment of the NFA,* fully automatic firearms, unregistered, were in ample supply in the country. See https://www.americanrifleman.org/content/guns-of-the-battle-of-blair-mountain/, last accessed September 1, 2026. This article describes the battle of Blair mountain in 1921. The article describes miners, civilians, "… volunteers showed up with an unimaginable assortment of their own guns. Civilian hunting rifles, shotguns and handguns of all makes, models, calibers and gauges are described in the accounts of the period, as too are surplus obsolescent military arms (including some foreign designs), and even some

militia duty. It may well be true today that a militia, to be as effective as militias in the 18th century, would require sophisticated arms that are highly unusual in society at large[19]. Indeed, it may be true that no amount of small arms could be useful against modern-day bombers and tanks. But the fact that modern developments have limited the degree of fit between the prefatory clause ***628** and the protected right cannot change our interpretation of the right."

That language is not a definitive ruling that "M-16's", "and the like'" "may be banned"[20]. Important language

---

muzzleloaders. In addition, there were large numbers of Thompson submachine guns, as well as Winchester Model 1897 riot shotguns, available to the Logan County Defenders. American Legionnaires carried the surplus U.S. Krag rifles that had been distributed to Legion posts nationwide by the U.S. government only the year before. Mine-company-owned Colt-Browning "potato digger" **machine guns** were pressed into service, and there are reports of **Gatling guns and perhaps even some then-current U.S.-issue automatic arms** being used …" (Emphasis added).

19. This speculation by Justice Scalia is unsupported and unjustified by actual records. Again, *Heller* did not address or make any rulings with regard to fully automatic weapons. Justice Scalia "presumed" for the sake of argument, that M-16's "may be banned" and that the NFA "might" be constitutional, or unconstitutional. Despite the NFA, which doesn't per se "ban" fully automatic weapons, it merely requires them to be "registered" and a tax paid with them, Americans own more than 782,958 machineguns, see https://www.atf.gov/resource-center/data-statistics, last accessed August 31, 2026. Owning and shooting fully automatic machine guns is not "unusual" in the United States, *see* https://www.explorekingman.com/event-big-sandy-shoot-03-21-2025/, last accessed August 31, 2026. At least not in states that do not ban machineguns outright, separately, *See* for example, Hawaii Revised Statutes § 134-8.

20. Amicus does not urge or request that the court determine that M-16's, differing from AR15 platform style most importantly

from that paragraph is "But 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.**"[21] (Emphasis added).

Putting aside M-16's and fully automatic firearms, which are not the precise issue of this case[22], a part of the

due to the fact that an M-16 has fully automatic firing capability, do not have a tradition and history of being "banned", or some other "regulation". This case does not address fully automatic weapons and to what degree regulation, at some level, might be constitutional.

21. Again, *Heller* did not address fully automatic weapons. But what this discussion by Justice Scalia alludes to, as it was not the issue in *Heller*, is that a level of regulation *might* be constitutional as it pertains to M-16's. This means first, that M-16's are arms in the plain text of the first step of *Bruen.* To the extent that *some level* of regulation might be constitutional, a background check, for M-16's and "registration", *Miller* indicates it might be constitutional. But *see* The National Firearms Act of 1934: A Constitutional Critique Gram Gross, April 2026 (Revised July 2026), arguing that a direct prohibition is unconstitutional and a backdoor effort, like the NFA, through the taxation power, and registration, similarly, is unconstitutional.

22. Amicus also notes that Petitioners noted that the Continental Congress sought "…six companies" armed with a "rifle". At 5. This, "rifle" and "rifling" was a technological advancement. Petitioners noted that the Kentucky long rifle was of critical importance to "frontiersmen"- not soldiers. That is, the average militiaman owned a Kentucky long rifle- that is what he brought if he joined the fight as a militiaman. Petitioner's letter reference pointed out that the Continental Congress sought to have better arms, the arms the frontiersmen had. And what the frontiersman brought was highly dangerous, certainly to the British redcoat soldier. *See* https://marcliebman.com/brown-bess-meets-the-pennsylvania-rifle/, While a British *soldier*, employing "military" or "military grade" "arms" was armed with the Brown Bess, he shot a maximum range of 50-100 yards, and

Second Amendment, at least with respect to militia duty[23], is to have arms sufficient to the task at hand- militia duty, or confrontation more generally.

---

somewhat inaccurately. Though slower to shoot, the Kentucky long rifle was highly accurate out to 200-300 yards. This is what the militiaman owned and brought to militia duty. The American had a "military style" weapon that was a "militia" weapon that in fact was more advanced than the British soldier's. The British, no doubt, had many more Brown Bess weapons and so, *at first*, being a technological improvement, the Kentucky long rifle was "unusual" to a British soldier. Because of its utility it became very common. The concept of "dangerous and unusual" here too does not apply to an improved weapon that then becomes popular, and common, because of the improvement. That's because "dangerous and unusual" pertains to use, not an intrinsic feature of an arm.

23. And "militia" duty includes quelling "insurrection and rebellion", as well as confrontation that is self-defense. The Americans who had to defend themselves while police and military stood back, armed themselves with a variety of weapons, and some of them would probably not survive the bans in the current case. *See* https://gunmagwarehouse.com/blog/the-guns-of-the-roof-koreans/#:~:text=The%20Remington%20700%20acted%20as,every%20caliber%20under%20the%20sun, last accessed August 31, 2026. The infamous red-shirted American from the 1998 Los Angeles riots, with the K1A1, pictured in the article, had a weapon that had a pistol grip, on an AR15 associated platform with a flash suppressor. Other news reports had Americans in Korea-town armed with M1 Carbines and Ruger Mini14's. (The M1- is an American military weapon having been issued to soldiers in WWII, the Korean war and the Vietnam war). Additionally, when faced with a home invasion, there are benefits to such a weapon. *See* Petitioners' brief at page 9, "AR-15s are "easy to shoot [with] little recoil, making [them] popular with women, [and] … so user friendly that a group called 'Disabled Americans for Firearms Rights' " recommends them for people who find it physically difficult to use other firearms."

As pointed out in "The Militia of the Sea"[24], citing Blackstone and Tucker, at pages 5-6, "Tucker frames the right as the counterweight to standing armies- that is, to concentrated, professional, heavily equipped military force. A counterweight to an army is not, in conception, a pocketknife. Tucker's "palladium" rhetoric presupposes that the arms in the people's hands are at least in kind adequate to the martial purpose he names.", and "The whole rhetorical structure of the founding-era arms tradition- resistance to oppression, the militia as a check on the standing army- is unintelligible if "arms" means only the lightest and least consequential weapons."[25]

Neither the Second Amendment, nor *Heller*, place a categorical limit, or ceiling, on the concept of "arms" rather, as explained in *Heller*, the question is, can the arm, including technological advancements[26], have a function, so

24. The Militia of the Sea, The Marque and Reprisal Clause as Textual Proof of Private Heavy-Arms ownership at the Founding, Jonathan S. Goldstein, Esq, Published on July 28, 2026, revised, August 12, 2026.

25. Again, the precise issue before the court here is not whether or not there is a history and tradition of regulation or banning, of heavy crew serviced cannon or artillery, though the paper "The Militia of the Sea" places serious doubt on an outright ban on the ownership and possession of such "arms", but rather, the concept that "arms" encompasses "any thing" that "could" contribute to the efficiency of a militia, or more generally, as expressed in *Heller*, confrontation. *See* the story of Cassius Marcellus Clay, and how he used firearms, a Bowie knife and cannon to defend himself and his exercise of the First Amendment, https://www.fire.org/news/cassius-marcellus-clay-brought-cannons-free-press-fight, last accessed September 2, 2026.

26. *Heller*, at 582.

as to serve a "militia" purpose or be "any thing" that a man would use in "confrontation"? Then, the item is an "arm[27]". Thus, "If "arms" is defined functionally and grounded in a natural right of resistance, the party claiming that a whole class of weapons sits outside the concept must point to something- text, history, or tradition- that puts it there."[28]

This comports with *Heller*, even language that some might think otherwise supports outright bans of certain "types" of arms, *see Heller* at 624-625—"We may as well consider at this point (for we will have to consider eventually) *what* types of weapons *Miller* permits. Read in isolation, *Miller*'s phrase "part of ordinary military equipment" could mean that only those weapons useful in warfare are protected. That would be a startling reading of the opinion, since it would mean that the National Firearms Act's restrictions on machineguns (not challenged in *Miller*) might be unconstitutional, machineguns being useful in warfare in 1939. We think that *Miller* 's "ordinary military equipment" language must be read in tandem with what comes after: "[O]rdinarily when called for [militia] service [able-bodied] men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time." 307 U.S., at 179, 59 S.Ct. 816. The traditional militia was formed from a pool of men bringing arms "in common

27. Amicus notes that a cooking pot could, in a pinch, be used to defend one's self, but that is not the primary or even secondary, purpose of such an item. The all-encompassing language of *Heller* includes all things associated with "confrontation", from stun guns, see *Caetano*, to holsters, ammunition, clips and optics, to here, "militia" style arms such as the AR15.

28. The Militia of the Sea, at page 9.

use at the time" for lawful purposes like self-defense. "In the colonial ***625** and revolutionary war era, [small-arms] weapons used by militiamen and weapons used in defense of person and home were one and the same." *State v. Kessler,* 289 Ore. 359, 368, 614 P.2d 94, 98 (1980) (citing G. Neumann, Swords and Blades of the American Revolution 6–15, 252– 254 (1973)). Indeed, that is precisely the way in which the Second Amendment's operative clause furthers the purpose announced in its preface. We therefore read *Miller* to say only that the ****2816** Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns."

First, as stated before, *Heller*, did not undertake an exhaustive review of the Second Amendment[29], and specifically did not address "dangerous and unusual" arms nor "M-16's[30]" (the two are not synonymous, as the first is an "act").

The second section- "That would be a startling reading of the opinion, since it would mean that the National Firearms Act's restrictions on machineguns (not challenged in *Miller*) might be unconstitutional, machineguns being useful in warfare in 1939.", must

29. *Heller* at 626.

30. Marching as part of the ROTC in a town parade, with an M-16, or shooting one at the local shooting range, would not be to the terror of the people, whilst carrying one at the low or high ready and walking into the mall, would be to the terror of the people. In identical situations, the AR15 would not be to the terror of the people in the first two examples above, but would well be in the last example.

be taken with a grain of salt. Justice Scalia noted that "machineguns" were "not challenged in *Miller*", thus, it would be startling to read *Miller* that way because it would be leaping to a conclusion to a question that was never raised- not that "machineguns, being useful in warfare", might be "regulated" through the NFA, which again, required registration and a tax fee, not an outright ban on the possession of "machineguns".

Third, balance out the language Justice Scalia used- A "startling" reading of *Miller* that Justice Scalia heavily cautioned against[31], that "only" those weapons useful in warfare are protected would mean that the National Firearms Act's restrictions on machineguns (not challenged in *Miller*) "might be unconstitutional,…" Justice Scalia never stated, and the *Heller* court never ruled, one way or another, that the "National Firearm Act's restrictions on machineguns…" are constitutional or unconstitutional.

Fourth, what follows immediately is instructive— "[O]rdinarily when called for [militia] service [able-bodied] men were *expected to appear bearing arms supplied by themselves and of the kind in common use* at the time." (Emphasis added). Before the NFA, what did Americans have with regard to quelling disturbances, or otherwise resolving "confrontation"?

---

31. In fact, he later stated, at 625, "We therefore read *Miller* to say **only** that the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful; purposes, such as short-barreled shotguns." (Emphasis added)(and the discussion regarding short-barreled shotguns is weightless because there was never any argument or even a prima facie question or statement raised, by Miller, as to the possible or potential use, or possible or potential "contribution" to either self defense or the militia.

In the 1920's miners conducted strikes against mining companies. Mining companies fought back. One instance involved the Lulow massacre, *see* https://www.nps.gov/articles/000/war-in-the-coalfields-the-ludlow-massacre-and-its-impact-on-the-eight-hour-workday.htm, last accessed September 1, 2026. The Colorado Fuel and Iron Company, not a government actor, hired the Baldwin-Felts Detective agency, another non-governmental actor, to assist with combatting the miners. The detective agency manufactured a vehicle, known to miners as the "Death Special", equipped with machineguns. See https://digital.denverlibrary.org/nodes/view/1131280, last accessed September 1, 2026.

This is not a case about "military" firearms capable of fully automatic fire, despite Americans' deep and long-lasting familiarity, use and possession of such arms from the Puckle gun in 1718, through John Shaw's Cookson Volitional Repeaters, in 1750, to the 1921 Tommy gun, for militia and other lawful purposes. See https://www.rockislandauction.com/riac-blog/assault-weapons-before-the-second-amendment, https://www.historic-uk.com/HistoryUK/HistoryofBritain/The-Puckle-or-Defense-Gun/, https://www.nramuseum.org/guns/the-galleries/world-war-i-and-firearms-innovation/case-36-great-inventors/colt-model-1921-thompson-rifle.aspx, all accessed September 2, 2026.

The case here is instead, a much much easier case. The arms in question are AR15 platform "style" weapons[32]. The AR 15 started off as a military rifle design, but the M-16 came out of the general design with the AR 15 being the "civilian" version. See https://www.npr.

32. These are all semi-automatic weapons and as Petitioners have pointed out at 7, that technology is old.

org/2018/02/28/588861820/a-brief-history-of-the-ar-15. The AR15 thus has the genetics of a "militia" weapon. Soldiers would be familiar with the basics of the weapon and those who have never been on active duty military duty status could, with acquisition, training and use of the AR-15, similarly fire the weapon and use it for self-defense, home defense, militia duty, to quell an insurrection, or riot, and also, if necessary, assist the standing army of the United States. The military does not use AR15's. The M-16 has fully automatic fire capability- the AR15 does not.

Police use AR15's as "Patrol Rifles" , not "assault weapons", *see* https://www.pbpd.org/upages.php?id=180, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.yonkersny.gov/DocumentCenter/View/2158/120-24-Use-of-AR-15-Patrol-Rifle-PDF, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.sanleandro.org/DocumentCenter/View/1982/SLPD-Patrol-Rifle-Specs-PDF, https://www.stpaul.gov/books/24900-ar15-type-patrol-rifles, for the Pine Bluff Arkansas, Yonkers and San Leandro police departments as examples, last accessed September 2, 2026.

As far as weapons being close to military arms, the Civilian Marksmanship Program is a program that is federally funded to ensure that civilians have access to surplus "military", and "military" style arms. *See* https://thecmp.org/about/, last accessed September 2, 2026. Civilians can buy model 1911 "military" pistols, M1 Garand "military" rifles and now M14 military riles as well, *see* https://www.militarytimes.com/industry/techwatch/2026/08/10/cmp-approved-to-sell-more-than-100000-surplus-m14-rifles/.[33]

33. The M14, a "battle rifle", has a 20 round magazine and shoots a large caliber 7.62mm round, compared to most AR15 and

The United States government funds the CMP and obviously wants Americans trained and skilled in the use of firearms, but also including actual military firearms. "The Civilian Marksmanship Program (CMP) is a national organization dedicated to training and educating U. S. citizens in responsible uses of firearms and airguns through gun safety training, marksmanship training and competitions. The CMP is a federally chartered 501(c)(3) corporation that places its highest priority on serving youth through gun safety and marksmanship activities that encourage personal growth and build life skills." CMP webpage. The CMP thus supports the idea of the militia, through the use and training with "military" style weapons.

This comports with *Rahimi*[34]. "At the founding, the bearing of arms was subject to regulations ranging from rules about firearm storage to restrictions on gun use by drunken New Year's Eve revelers." *Rahimi* at 691. The tradition of regulation was on "how" one used arms. "Even when a law regulates arms bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding. And when a challenged regulation does not precisely match its historical precursors, "it still may be analogous enough to pass constitutional muster." *Id.*, at 30, 142 S.Ct. 2111. The law must comport with the **principles** underlying the Second Amendment, but it need not be a "dead ringer" or a "historical twin." *Ibid.* (emphasis deleted)." (Emphasis added). *Rahimi* at 692.

M-16 rifles, which are chambered in 5.56mm caliber. Far from banning these arms, the federal government sells them to civilians.

34. 602 U.S. 680 (2024).

While the current law at issue need not be a "dead ringer" to survive constitutional scrutiny, the law in question must present a very congruous, "neat", or tight fit. "Its prohibition on the possession of firearms by those found by a court to present a threat to others fits *neatly* within the tradition the surety and going armed laws represent." (Emphasis added). *Rahimi* at 698. The law must fit the "how" and "why" and also may never be a law that our Forefathers would have not accepted[35] or went "beyond" what the Foundering era allowed.

Here, the Seventh Circuit's application of *Bruen* completely flips the lens of the telescope through which the Second Amendment right is viewed. Instead of seeing the vast expanse of the horizon through a telescope, that is the scope of the Second Amendment, "**any thing** that a man wears for his defense, or takes into his hands, or used in wrath to cast at or strike another.", "**all firearms** constituted 'arms', and arms "that have some reasonable relationship to the preservation or efficiency of a well regulated militia.", the Seventh Circuit found that arms that hew too *close* to a militia purpose or militia utility, or an actual military arm, are arms that fall completely out of the definition of "arms" and can thus be completely banned. The cases below do not pass the how and why and go way beyond what the Founding-Era would have ever accepted.[36]

---

35. "it may not be compatible with the [Second Amendment] if it does so to an extent beyond what was done at the founding." *Hemani* at 1691.

36. For a detailed discussion of how courts have interpreted *Heller* to focus on self- defense and have tried to completely remove the "common defense" or "militia" aspect of the Second Amendment, see *The Individual Right To Bear Arms For Common*

This violates the Second Amendment, plainly under a *Bruen* analysis, but also because it violates the principles of the Second Amendment- "confrontation" and "militia" duty. "Even when a law regulates arms-bearing for a permissible reason, though, it may not be compatible with the right if it does so to an extent beyond what was done at the founding." *Rahimi* at 692[37]. Banning whole categories of *possession* of arms, because the legislature, or worse, the court, felt that the arms are too capable for militia purpose or "confrontation", followed by a statement of purported comfort that there are other arms available, is wholly inconsistent and contrary to the Second Amendment. And most obviously, it must not be forgotten that, under *Bruen*, that the government cannot prove a well-established and lasting history and tradition, banning arms that could serve as militia weapons or that could contribute to a militia[38], because there is none[39].

Defense, 102 Notre Dame L. Rev. ___ (forthcoming 2027). *Heller* did not have to discuss bearing arms for militia service as that case had to do with personal self-defense.

37. Amicus does not concede that the regulation is for a permissible purpose since the ban in question seems tied to the argument that the AR15 is used for criminal purposes. Alternatively, the purpose of the ban is impermissible because if the purpose is that the AR 15 is too much like a good militia weapon, according to the Seventh Circuit, that would add to the efficiency of the militia, then the purpose is directly contrary to the purpose as stated in the Second Amendment itself.

38. "In the colonial ***625** and revolutionary war era, [small-arms] weapons used by militiamen and weapons used in defense of person and home were one and the same." *Heller* at 624-625.

39. The Seventh Circuit could not possibly provide a list of analogues that prove a well-established, enduring history and tradition of banning weapons that are good for militia purposes.

CONCLUSION

This Court should determine that the bans in question are unconstitutional because AR15's and effected items are "arms" as implicated by the first step of the *Bruen* test, as "anything" a man could use in his defense, and, under the second step, the arms in question constitute arms that contribute to the efficiency of the militia and there is no well-established tradition and history of the banning of arms that contribute to the preservation and efficiency of the militia.

Respectfully submitted,

KEVIN O'GRADY
Counsel of Record
THE LAW OFFICE OF
KEVIN O'GRADY, LLC
1164 Bishop Street, Suite 1605
Honolulu, HI 96813
(808) 521-3367
kevin@kevinogradylaw.com

Attorney for Amicus Curiae
Hawaii Firearms Coalition