Nos. 25-238, 25-566

In the Supreme Court of the United States

CUTBERTO VIRAMONTES, *et al.*,
Petitioners,

v.

COOK COUNTY, ILLINOIS, *et al.*,
Respondents.

EDDIE GRANT, JR., *et al.*,
Petitioners,

v.

RONNELL HIGGINS, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE CONNECTICUT DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC TRANSPORTATION, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit and the Second Circuit

BRIEF OF *AMICUS CURIAE* ILLINOIS STATE RIFLE ASSOCIATION IN SUPPORT OF PETITIONERS REQUESTING REVERSAL

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IDENTITY AND INTERESTS OF *AMICUS CURIAE*[1]

Amicus curiae Illinois State Rifle Association ("ISRA") is a non-profit membership organization incorporated under Illinois law with its principal place of business in Chatsworth, Illinois. ISRA's purposes include securing the constitutional right to privately own, possess, and carry firearms in Illinois, through education, outreach, and litigation. ISRA has thousands of members and supporters in Illinois, as well as many members outside the State of Illinois. ISRA submits this *amicus* brief on behalf of its members who are adversely and directly harmed by the Respondent's enforcement of the laws at issue.

ISRA's interests will be substantially affected by the outcome of this case. First, the Second Amendment rights of ISRA's members who reside within or visit Cook County are infringed by the broad scope of the subject ordinances. Second, ISRA's members are impacted by the fact that the right to keep and bear arms applies in a manner in Illinois's largest County which contravenes this Court's rulings.

Third, because ISRA and its members are often litigants in cases challenging firearm restrictions, including as Plaintiffs in a similar case recently ruled

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[1] Rule 37.6 Disclosure – No counsel for a party authored this brief in whole or in part, though counsel briefly represented Petitioners at the district court level only. Neither counsel nor any party made any monetary contribution intended to fund the preparation or submission of this *amicus* brief. No one other than the *amicus* made such a monetary contribution.

upon in the Seventh Circuit, and for which the time for filing a Petition for *writ of certiorari* is currently pending (*Harrel, et al v. Raoul, et al*, 24-3062 (cons. with *Barnett v. Raoul*, 24-3060), Op. at *Barnett v. Raoul*, 180 F.4th 1035 (7th Cir., July 9, 2026)), ISRA has an interest in ensuring that its members' rights are properly protected.

ISRA respectfully submits that it offers a unique perspective and information that will assist the Court beyond the help the parties will provide. ISRA frequently litigates and files *amicus* briefs in Second Amendment challenges to various restrictions and prohibitions in Illinois.

Specifically, ISRA discusses the decisions where the lower court has addressed the issue at bar, specifically in a manner which not does not follow this Court's precedents, but instead flouts them. Because these concerns affect the constitutional rights of *amicus*'s members, *amicus* respectfully submits this brief to the Court in support of Petitioners.

SUMMARY OF ARGUMENT

The Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008). "The very text of the Second Amendment implicitly recognizes the pre-existence of the right and declares only that it 'shall not be infringed.'" *Id.*

This Court further explained that arms protected under the Second Amendment are "those 'in common use at the time.'" *Id.* at 627 (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939). The Court explained this referred to "the historical tradition of prohibiting the carrying of "dangerous and unusual weapons." *Heller*, 554 U.S. at 627.

Beginning in 2015, the Seventh Circuit Court of Appeals has created standards for analyzing Second Amendment claims pertaining to semi-automatic rifles which claim to follow this Court's mandates in *Heller* and *New York State Rifle and Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), but instead circumvent them entirely. This avoidance has led directly to the lower court decision at bar, which has followed the Seventh Circuit's wrongly-reasoned opinions discussed below. As these prior decisions have veered from this Court's directives, reversal of the lower court's decision in this case is both appropriate and necessary.

ARGUMENT

I. The Lower Court Has Continuously Relied on Tests of Its Own Making Which Completely Contradict and Have Strayed Far From the Principles of *Heller* and *Bruen.*

A. *Friedman v. City of Highland Park*

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear

Arms, shall not be infringed." The Supreme Court stated in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, 561 U.S. 742 (2010) that the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation." *Heller*, 554 U.S. at 592. The enumerated right to possess a firearm for lawful purposes, most notably for self-defense, is fundamentally core to the Second Amendment. *Heller*, 554 U.S. at 629; *see also McDonald*, 561 U.S. at 778. This right "is fully applicable to the States." *McDonald*, 561 U.S. at 750.

Under *Heller*, "the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller*, 554 U.S. at 582.

The Second Amendment protects a right to possess those weapons typically possessed by law-abiding citizens for lawful purposes. *See Heller*, 554 U.S. at 625. The Court only excluded from that guarantee "those weapons not typically possessed by law-abiding citizens for lawful purposes," *Id.* at 625, sometimes also referring to those excluded as "dangerous and unusual."

Further, "[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." *Heller*, 554 U.S. at 634-635.

St. George Tucker wrote: "Wherever . . . the right of the people to keep and bear arms is, under any colour or pretext whatsoever, prohibited, liberty, if not already annihilated, is on the brink of destruction." Tucker, *View of the Constitution of the United States*, 1 BLACKSTONE'S COMMENTARIES, ed. app. at 300 (1803). *Heller* endorsed this passage from Tucker. 554 U.S. at 606.

In *United States v. Miller*, 307 U.S. 174 (1939), the Court found that "the type of weapon at issue [a short-barreled shotgun] was not eligible for Second Amendment protection," *Heller*, 554 U.S. at 622 (emphasis omitted), because short-barreled shotguns were not commonly kept for lawful purposes by responsible, law-abiding citizens, see *Miller*, 307 U.S. 174. This last portion encapsulates the proper test for analyzing whether a firearm restriction violates the Second Amendment.

Despite the teachings in *Heller* and *McDonald*, the lower court decided in *Friedman v. City of Highland Park,* 784 F.3d 406 (7th Cir. 2015) that a local ordinance did not violate the Second Amendment in banning certain arms – similar to the banned arms in this case - in a manner comparable to the Cook County ordinances pending here.

Friedman departed from *Heller* by articulating a different, three-part standard for analyzing that issue, asking:

> 1. Whether the banned arms were in common use when the Second Amendment was ratified?
>
> 2. Whether the arms at issue are suitable for militia use?
>
> 3. Whether outlawing the banned arms preserves adequate means of self-defense for those subject to the ban?

Friedman, 784 F.3d at 410-11.

Friedman observed, correctly, that arms like the semi-automatic rifles at issue were not extant at ratification. *Id.* at 410. *Friedman* then deferred to the legislative and executive branches of Illinois state government to answer whether arms like those arms are suitable for militia use, answering in the affirmative. *Id.* at 410-411.

Last, *Friedman* asked whether those in Highland Park - while denied arms like those at issue - still had means to adequately defend themselves, but then deferred to the legislative branch of local government in Highland Park for the answer. *Id.* at 411.

For the following reasons, the lower court's continued use of the *Friedman* standard violates the Second Amendment and the holding in *Heller* and *Bruen*:

1. The "Common At the Time of the Second Amendment" Test Violates *Heller*

The first part of the *Friedman* test asked whether the prohibited arms were in common use when the Second Amendment was ratified. *Friedman*, 784 F.3d at 410. Yet, *Heller* admonished against using this as a factor when analyzing Second Amendment questions:

> Some have made the argument, bordering on the frivolous, that only those arms in existence in the 18th century are protected by the Second Amendment. We do not interpret constitutional rights that way. Just as the First Amendment protects modern forms of communications, and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.

Heller, 554 U.S. at 582 (internal citations omitted).

This Court reiterated that holding in *Caetano v Massachusetts*, 577 U.S. 411 (2016): "The Court has held that "the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding ....” *Id.* at 411 (quoting *Heller*, 554 U.S. at 582).

Amicus urges this Court to reject the *Friedman* factor (later followed in *Wilson* and maintained in *Bevis*) of asking whether a prohibited arm existed in the 18th Century in determining whether a regulation violates the Second Amendment.

2. The “Connection To the Militia” Test Violates *Heller*

The second part of the *Friedman* standard asks whether the prohibited arms are suited for militia use. *See Friedman*, 784 F.3d at 410. *Friedman* answered that question by deferring to the legislative and executive branches of state government, and arriving at “yes, but the state is still free to ban them.” *Id.* at 410-11. *But see Bevis v. City of Naperville*, *infra*, 85 F.4th 1175, 1194 (7th Cir. 2023) (Seventh Circuit held that if arm is “predominantly for military use, it can be banned).

This Court rejected the notion that the Second Amendment existed only in connection with militia service, *Heller*, 554 U.S. at 593-94, or that the arms must bear some connection to a militia, instead emphasizing whether the applicable arms are commonly possessed by private citizens, *Id.* at 627-629, and “the individual right to possess and carry weapons in case of confrontation.” *Id.* at 592. This Court reinforced this holding in *Caetano*, 577 U.S. at 412 (“*Heller* rejected the proposition ‘that only those weapons useful in warfare are protected.'") (quoting *Heller*, 554 U.S. at 624-25).

Additionally, Congress - not the states - retains plenary authority to organize the militia. *Heller*, 554 U.S. at 600. And "[b]ecause the Second Amendment confers rights upon individual citizens - not state governments—it was doubly wrong for the *Friedman* court to delegate to States and localities the power to decide which firearms people may possess." *Friedman*, 136 S. Ct. at 448-49 (Thomas, J., dissenting) (emphasis added). *Friedman*'s deference to other branches of government to identify the breadth and the depth of an enumerated fundamental right, as the second prong does, defies constitutional jurisprudence launched almost ninety years ago. *See*, *e.g.*, *United States v. Carolene Products Company*, 304 U.S. 144, 152, fn.4 (1938).

This Court should enforce *Heller* and reject this element of the *Friedman* standard as improper Second Amendment analysis.

3. The "Adequate Alternative Means of Self Defense" Test Violates *Heller*

The third and final part of the *Friedman* test asks whether those subject to a ban or limit on their arms retain adequate alternative means of self-defense. *See Friedman*, 784 F.3d at 411. *Friedman* held that the judiciary should defer to the legislative branch of government to answer that question. *Id.* at 412.

This Court should reject the third part of the *Friedman* standard for two reasons. First, *Heller* provides sufficient guidance with a principled standard for courts to apply: whether the arms that other branches of government seek to ban or limit are in common use for lawful purposes. *Heller*, 554 U.S. at 625. If the answer is yes, under *Heller*, that is all that is needed for private citizens to have a right under the Second Amendment to keep such arms. See *McDonald*, 561 U.S. at 767-768; *Heller*, 554 U.S. at 628-629; *see also Friedman v. City of Highland Park*, 136 S. Ct. 447, 449 (2015) (Thomas, J., dissenting from den. of *certiorari*).

Also, the third prong of the *Friedman* standard defies traditional fundamental rights jurisprudence by deferring to other branches of government setting the breadth and depth of the right to keep and bear arms.

Finally, *Friedman*, which was based on what *Bruen* would later expose as improper interest-balancing, offered only the speculative "benefits" that its categorical ban "may reduce the overall dangerousness of crime" (*Friedman*, 784 F.3d at 412) and "may increase the public's sense of safety." *Id.* This is notwithstanding Justice Thomas' apt observation that "[i]f a broad ban on firearms can be upheld based on conjecture that the public might feel safer (while being no safer at all), then the Second Amendment guarantees nothing." *Friedman*, 136 S. Ct. at 449 (Thomas, J., dissenting from denial of *certiorari*). Though the government interest is no longer a consideration after *Bruen*, this faulty motivation is yet another crack in the foundation of what has become the lower court's jurisprudence on this issue.

All together, *Friedman* diverted from *Heller* and adopted the above-discussed three-prong standard that defied precedent, fostered intra-Circuit confusion about the proper standard for reviewing Second Amendment claims, and inevitably led to the situation at bar, especially as the later-decided *Bevis* touted the "continuing vitality" of *Friedman*. *Id.* at 1184, 1198.

B. *Wilson v. Cook County*

The Seventh Circuit's next case to address the issue was *Wilson v. Cook County*, 937 F.3d 1028 (7th Cir. 2019); *cert. den.*, 590 U.S. 992 (2020), which challenged the same ordinances (Code of Ordinances of Cook Cnty. §§ 54-211–215) as are at issue in this case. In upholding the ordinances, the court specifically held it was following *Friedman*:

> We answer only the two questions presented by the appellants: should the district court have given the plaintiffs an opportunity to develop a factual record on which to distinguish *Friedman*, and should we revisit our holding in *Friedman*. Our answer to both questions is no.

Wilson, 937 F.3d at 1036.

In discussing *Friedman*, the court in *Wilson* applied the improper "common at the time of the Founding" test and answered the same as *Friedman*: "no." *See Wilson*, 937 F.3d at 1034. *Wilson* held that *Friedman* tracked with *Heller* and "fit comfortably under the umbrella" of the since-discredited two-step level of scrutiny test described in *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011). *See Wilson*, 937 F.3d at 1035-36.

As discussed above, *Friedman* irreconcilably conflicts with *Heller*, and *Ezell*'s interest-balancing test was unequivocally discarded in *Bruen*. While the *Wilson* court could not have known about *Bruen* in 2019 (though plaintiffs did argue "their claim should be evaluated under a test that tracks more closely the language that the Supreme Court employed in [*Heller*]," *see Wilson*, 937 F.3d at 1031), the *Wilson* court could have, and chose not to, revisit the inconsistencies between *Friedman*'s analysis and that of *Heller*, thus perpetuating the error that *Friedman* was of sound legal analysis. By upholding and following *Friedman*, *Wilson* set the stage for the present dispute.

C. *Bevis v. City of Naperville*

Finally, the Seventh Circuit reviewed an Illinois state law substantially identical to the Cook County ordinance, the Protect Illinois Communities Act ("PICA"). *See* 720 ILCS 5/24-1.9, 5/24-1.10. By this time, *Bruen* had been decided, but the Seventh Circuit once again created its own test that conflicted with

Bruen and *Heller*, *see Bevis*, 85 F.4th at 1194 ("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 selfdefense, not weapons that are exclusively or predominantly useful in military service, or weapons that are not possessed for lawful purposes."), while wrongly claiming it was following those decisions. *See*, *e.g.*, *Bevis*, 85 F.4th at 1195.

After *Bevis*, certain of the consolidated cases before the court were remanded to the district court for trial to determine whether plaintiffs could meet the *Bevis* standard. The district court entered judgment for plaintiffs (*see Barnett v. Raoul*, 756 F. Supp. 3d 564 (S.D. Ill. (2024)), finding they met the burden of the *Bevis* standard, and the Seventh Circuit *again* reversed, this time brushing aside its ruling in *Bevis* without specifically overruling it. *See Barnett v. Raoul*, 180 F.4th 1035, 1046 (7th Cir. 2025) ("We will assume for purposes of today's ruling that the regulated items are "Arms" under *Bevis*, such that their possession is presumptively entitled to constitutional protection, and move to *Bruen*'s second step."[2]

While a further discussion of *Bevis* follows, what is clear is that the Seventh Circuit again approached the issue at bar in a manner that flouts this Court's

[2] The plaintiffs in *Barnett* and the consolidated cases will soon be addressing the Seventh Circuit's errors in that decision to this Court, and *amicus*, a plaintiff in one of those cases, expects to speak specifically to *Barnett* with its co-plaintiffs at that time.

instruction, creating its own standards and constantly moving the goalposts in such a way that the plaintiffs in this case were chasing an ever-elusive standard with no hope of actually meeting it, because if they did, then the lower court would implement a new standard while claiming to follow precedent. *Amicus* hopes that with the straightforward question addressed by the Court in this matter, plaintiffs can cut through the lower court's smoke and mirrors.

II. This Court Should Reverse Based on *Heller*, *Bruen*, and *Rahimi*.

As is now well-known, to resolve a Second Amendment challenge, the reviewing court must determine whether the challenged regulation is consistent with the historical tradition of firearm regulations in our country. First, the court asks whether the plain text of the Amendment is implicated. *Bruen*, 597 U.S. at 24-25. If so, the government then must justify its infringement on the right by pointing to a historical tradition that demonstrates the right does not actually protect the plaintiff's conduct. *See id.*

Bevis misapplied this test at both steps. Its reasoning has been described by *Bruen*'s author as "contort[ed]," "tautological[]," "contrived," and unmoored from both [the] text and history" of the Second Amendment, *Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024) (Mem.) (Thomas, J., statement respecting the denial of certiorari), and by another circuit court as "the pinnacle of abstraction," *Hanson v. Smith*, 120 F.4th 223, 234 (D.C. Cir. 2024) (*per curiam*). The lower court's reasoning in *Bevis*, which was relied upon by that same lower court in this case, should be repudiated by the Court.

A. Bevis is Fundamentally Incompatible with Supreme Court Precedent.

Bevis supposedly applied the analytical standard articulated in *Heller*, which was clarified in *Bruen* and *United States v. Rahimi*, 602 U.S. 680 (2024). But *Bevis*'s textual and historical analysis diverged significantly from those precedents. As such, *Bevis* is further proof that the lower court has repeatedly circumvented this Court's precedent - while claiming its decisions are harmonious with them - and the lower court's contrary standards should be overruled once and for all.

1. The Term "Arms" Covers All Handheld Weapons, Not Exclusively Civilian Weapons.

Bevis concluded the textual meaning of "arms" in the Second Amendment does not include "weapons that are exclusively or predominantly useful in military service [.]" 85 F.4th at 1194. However, per *Heller*, "arms" in the Second Amendment's text contains no such exception.

Heller addressed whether "arms" meant only military weapons and not those kept for purposes of self-defense. In giving the term "arms" its plain meaning, *Heller* held that the term covers "*all* instruments that constitute bearable arms." 554 U.S. at 582 (emphasis added); *see also Bevis*, 85 F.4th at 1225 (Brennan, J., dissenting). That is, "arms" in the Second Amendment are "any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another." *Heller*, 554 U.S. at 582 (quoting 1 *A New and Complete Law Dictionary*). At no point in its analysis did *Heller* even ask whether exclusive or predominant military usefulness makes a handheld weapon not an "arm" within the meaning of the Second Amendment.

Rebutting the dissent's contention that the Second Amendment only applies to persons enrolled in a militia, *Heller* explained that "[t]he term [arms] was applied, then as now, to weapons that were not specifically designed for military use and were not employed in a military capacity." *Heller*, 554 U.S. at 581. But the fact that "arms" included nonmilitary weapons does not mean that it excluded military weapons. Such an inference, as *Bevis* made, is both illogical and implausible given that one citation *Heller* used in that same paragraph defined arms with an explicit reference to "instruments of offence generally made use of in war." *See id.* at 581-82.

Additionally, ordinary tools of interpretation demonstrate that *Heller* correctly concluded that all bearable weapons are arms. Founding-era dictionaries universally define "arms" as "weapons of offence," or "armour of defence" or something substantially similar. *To Arm*, 1 SAMUEL JOHNSON, *Dictionary of the English Language* (6th ed. 1785), available at https://perma.cc/6J2U-MUAG; *Arms*, Noah Webster, American Dictionary of the English Language (1828), https://perma.cc/89UG-Y9WB ("Weapons of offense, or armor for defense and protection of the body."); *Arms, Weapons*, 1 John Trusler, *The Distinction Between Words Esteemed Synonymous in the English Language* 37 (3d ed. 1794), available at https://perma.cc/39EN-AHMP (defining arms as "instruments of offence *generally* made use of in war" (emphasis added)). Not a single known dictionary from the Founding era defines "arms" exclusively in civilian terms. Indeed, in *Heller* Justices Scalia and Stevens debated over dictionaries that used a military-specific definition and those that used a broader one. *See* 554 U.S. at 581-89; *id.* at 646-48 (Stevens, J., dissenting), but neither claimed that "arms" had a civilian-specific meaning.

There is no reason to read "arms" in the Second Amendment narrower than every contemporary dictionary did. It is black-letter law that "[g]eneral words (like all words, general or not) are to be accorded their full and fair scope." ANTONIN SCALIA & BRYAN A. GARNER, *Reading Law: The Interpretation of Judicial Texts* 101 (2012). A court should not "arbitrarily limit[]" the breadth of a term, like "arms," unless there exist clear textual indicia demanding so. *Id.* This rule of interpretation has existed uncontroversially since the early days of the republic. *See, e.g.*, 2 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 506, § 1057 (1833), available at https://perma.cc/B7LJ-AXDG ("The words being general, the sense must be general also, and embrace all subjects comprehended under them.").

With nothing in the Second Amendment's "unqualified" text signifying a limit on the definition of "arms," *Bruen*, 597 U.S. at 17 (cleaned up), it should be given its "full and fair scope," SCALIA & GARNER, *supra*, at 101.

In other words, just as "[n]othing in the Second Amendment's text draws a home/public distinction with respect to the right to keep and bear arms," *Bruen*, 597 U.S. at 32, nothing in that text draws a distinction between any type of bearable arm, and it is not for the courts to read distinctions into the plain text that are not present there. *See Duncan v. Bonta*, 133 F.4th 852, 899—900 (9th Cir. 2025) (*en banc*) (Bumatay, J., dissenting).

Bevis did not follow these principles. Ignoring the evidence, *Bevis* misread *Heller* to hold that "arms" was textually limited to exclude "weapons that are exclusively or predominantly useful in military service." 85 F.4th at 1194. *Bevis*'s primary evidence was this Court's *dictum* in *Heller* that "machineguns . . . can be dedicated exclusively to military use." *Id.* (citing *Heller*, 554 U.S. at 624). *Bevis* took from this proposition that the bearable arms covered by the plain text of the Second Amendment cannot include all weapons that are " 'transportable' or 'capable of being held,' " *id.* (citing *Heller*, 554 U.S. at 627), but that conclusion only follows from faulty logic. Machineguns plainly are bearable arms under the definitions relied on by *Heller*, and nothing in that opinion suggests a different conclusion. But under *Heller* (and later

Bruen), plain-text coverage results only in presumptive protection, with the burden then shifting to the government to prove that any restrictions on conduct covered by the plain text are consistent with history. And it is after this historical analysis that *Heller* suggested machineguns could be banned only if they are "highly unusual in society at large," 554 U.S. at 627 — not because they somehow are not bearable arms in the first place.

The lower court followed the incorrect burden of proof standard stated in *Bevis*:

> We held in *Bevis* that it is the plaintiff's burden to demonstrate that the text of the Second Amendment, viewed through the lens of historical tradition, protects the regulated conduct.

Viramontes v. Cook Cnty., 2025 U.S. App. LEXIS 13331, *4 (citing *Bevis*, 85 F.4th at 1192, 1194). This demonstrates the lower court committed reversible error in *Bevis*, and compounded that error in this case.

To the extent *Heller* left any confusion over what constitutes an "arm," *Bruen* confirms that semiautomatic rifles are "arms." The methodology of *Bruen* requires the courts to first look at the plain text of the Second Amendment to see if the relevant conduct - such as possessing an AR-15 - falls within its "unqualified command." 597 U.S. at 17 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 49 n.10 (1961)). If so, the court then determines whether the government can demonstrate that a modern restriction is consistent with the Nation's historical tradition of firearm regulation. *Id.* The test is unambiguous about how courts must analyze these challenges: plain text first, then historical justifications. But *Bevis* transgresses *Bruen*'s command and imports an *atextual* historical test into the first part of the analysis. *Bevis*, 85 F.4th at 1189.

Bevis is not only inconsistent with binding Supreme Court precedent but also is internally inconsistent. After incorrectly declaring that Supreme Court decisions and historical sources indicate that the Arms the Second Amendment" covers as a matter of plain text are "weapons in common use for self-defense," 85 F.4th at 1192, *Bevis* later purported to "assume (without deciding the question)" that the common-use test "is a step two inquiry, where the state bears the burden of proof," *id.* at 1198. These two statements are contradictory. The first sentence purports to establish that the "common-use" test is part of the textual inquiry at step one of *Bruen*, and the second sentence expresses ambiguity about in which step the "common-use" test belongs.

There are two more noteworthy issues with *Bevis*'s improper textual analysis. First, *Bevis*'s statement that it was treating the Second Amendment's text like the text of other amendments is confusing, *id.* at 1194, given that in the First Amendment context, unprotected expressive activities, such as those which are obscene, defamatory, or fighting words, are still "speech." *United States v.*

Stevens, 559 U.S. 460, 470 (2010). They are just "unprotected speech." *Id.* "[S]uch speech is unprotected because history and tradition tell us so, not because it falls outside the plain meaning of 'speech.' " *Bianchi v. Brown*, 111 F.4th 438, 522 n.65 (4th Cir. 2024) (*en banc*) (Richardson, J., dissenting). Second, *Bevis*'s reliance on the absurdity of private citizens owning handheld nuclear arms is inapposite. *See* 85 F.4th at 1182. Such weapons are obviously not in common use and would fall into the much-discussed category of "dangerous and unusual weapons," so the fact that they are not excluded at step one is meaningless. *See Snope v. Brown*, 145 S. Ct. 1534, 1536 (2025) (Thomas, J., dissenting from denial of *certiorari*).

Bevis's misreading of the Second Amendment's text and binding Supreme Court precedent is not harmless error. *Heller* and *Bruen* laid out a clear burden-shifting analysis in which the State bears the burden to identify a justifying historical tradition for its regulation, but *Bevis* combined the inquiries and shifted the burden. If historical restrictions are considered as part of the definition of "arms," then the plaintiff now bears the burden of demonstrating them, not the defendant. *Contra Bruen*, 597 U.S. at 24-25.

2. No Historical Evidence or Analogue Supports Banning Commonly Used Rifles or Their Standard Magazines.

Although the *Bevis* court was "satisfied that these appeals can be resolved at the first step of the

Bruen framework," it nonetheless examined whether the State's semi-automatic rifle ban was "consistent with the history and tradition of firearms regulation" in our country. 85 F.4th at 1197-98. Given its previous conclusion that the text of the Second Amendment only covers civilian weapons, the *Bevis* court predictably discovered a supposed historical tradition of banning militaristic arms. *Id.* at 1198. But such a holding contradicts what this Court has said on the matter.

When it comes to firearm bans, this Court has held that two related traditions - one establishing an unprotected class of arms and one showing a protected class - are relevant. The unprotected category is "dangerous and unusual arms," which *Heller* found "fairly supported" in Founding-era practice. 554 U.S. at 627; *see also* Mark W. Smith, *What Part of "In Common Use" Don't You Understand?: How Courts Have Defied Heller In Arms-Ban Cases - Again*, Harv. J. L. & Pub Pol'y Per Curiam (Sept. 27, 2023), https://perma.cc/QNA2-NZ8T. The protected category is arms "in common use" for "lawful purposes" - which, by definition, cannot be dangerous and unusual. *Heller*, 554 U.S. at 625, 627; *see also Caetano v. Massachusetts*, 577 U.S. 411, 417 (2016) (Alito, J., concurring in the judgment) ("As the [Supreme Court] opinion recognizes, this is a conjunctive test: A weapon may not be banned unless it is both dangerous and unusual."). This protected class of arms also dovetails with historical tradition - the tradition that members of the militia would bring common arms when pressed into service. *See Heller*, 554 U.S. at 627; *see also Miller*, 307 U.S. at 179-82.

While appearing to acknowledge *Heller*'s holding that commonly used firearms cannot be banned, *Bevis* nonetheless concluded that the common-use test does not turn on the prevalence of a weapon in civil society but whether it is "militaristic." 85 F.4th at 1199. *Bevis* was mistaken. *Heller* held that all weapons in "common use" for lawful purposes are protected under the Second Amendment. 554 U.S. at 624-25; *see also Snope*, 145 S. Ct. at 1534 (statement of Kavanaugh, J.). *Heller* never inquired into whether a weapon was predominantly useful for military purposes because common use was sufficient for the handguns in that case to be protected. 554 U.S. at 624-25; *Snope*, 145 S. Ct. at 1534 (slip op. at 1) (statement of Kavanaugh, J.); *see also Hanson*, 120 F.4th at 268 (Walker, J., dissenting) ("[T]he government cannot ban an arm in common use for lawful purposes. That alone decides this case."). And if anything, the historical evidence amassed by *Heller* and *Bruen* demonstrates that military usefulness is a factor in favor of protected status and not a sign that the arm is "dangerous and unusual."

Bevis's holding otherwise misinterpreted binding Supreme Court precedent that established these categories of arms and the history that went into that determination.

a. Dangerous and Unusual Arms

Heller held that the American history of firearms regulation established that only arms which are "dangerous and unusual" fall outside of the Second Amendment's protection. 554 U.S. at 627. As the word "and" requires, the government must establish both criteria to succeed. *See Caetano*, 577 U.S. at 417 (Alito, J., concurring in the judgment).

This conjunctive nature of the dangerous and unusual test follows directly from *Heller*. In that case, the Supreme Court determined that handguns are in common use and then noted that protection for commonly used weapons was "fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.' " *Heller*, 554 U.S. at 627 (citing several historical sources). In addition to using the word "and," the Court did not undertake a separate analysis of whether modern handguns were "dangerous" under the "historical tradition" described. *Id.* And, to be sure, the alleged "danger" of handguns was extensively briefed and highlighted by one dissenting opinion, which argued that they were "particularly dangerous." *See id.* at 711 (Breyer, J., dissenting). But despite the fact that the Court was told handguns were used in an "extraordinary percentage of this country's well-publicized shootings, including the large majority of mass shootings," *Heller* still stopped the analysis upon concluding they were in common use. *Hanson*, 120 F.4th at 272 (Walker, J., dissenting) (quoting an *amicus* brief). *Bruen* also acknowledged the government's argument "that handguns" may have been "considered 'dangerous and unusual' during the colonial period" and concluded that, even if true, the point was now irrelevant because "they . . . are unquestionably in common use today."

597 U.S. at 47; *see also Caetano*, 577 U.S. at 418 (Alito, J., concurring in the judgment) ("[T]he relative dangerousness of a weapon is irrelevant when the weapon belongs to a class of arms commonly used for lawful purposes."). The direct contrast between dangerousness and common use demonstrates that alleged dangerousness standing alone cannot be a basis for restricting a common type of arm.

Even if dangerousness were an independent basis for restricting arms, that would not materially change the test, because the question would be to what is the dangerousness compared. Even *Bevis* noted that proving an arm is "dangerous" requires more than the fact that it can inflict grievous wounds or death. 85 F.4th at 1201 n.12 ("We realize that all guns are dangerous when used as intended: a gunshot wound may be fatal or life-threatening."). All weapons, including firearms, are "dangerous" in the abstract. They expel projectiles at extremely fast speeds with the purpose of causing harm to the target.

The definition that is more consistent with Supreme Court precedent is a comparative one. *Heller* and *Bruen* contrasted "dangerous and unusual weapons" with weapons in "common use." *Heller*, 554 U.S. at 627; *Bruen*, 597 U.S. at 47-48. The natural inference from *Heller* and *Bruen* juxtaposing these categories is that "dangerous" means "dangerous when compared to commonly used weapons." *See Bevis*, 85 F.4th at 1201 n.12. An arm therefore is sufficiently "dangerous" to be restricted only if it is dangerous in some discrete way that a commonly used arm is not.

See id. at 1215 n.10 (Brennan, J., dissenting); *see also* Eugene Volokh, *Implementing the Right to Keep and Bear Arms for Self Defense: An Analytical Framework and a Research Agenda*, 56 UCLA L. Rev. 1443, 1481-82 (2009). Or, as the Ninth Circuit has formulated, whether it has "uniquely dangerous propensities" that distinguish it from common arms. *Fyock v. Sunnyvale*, 779 F.3d 991, 997 (9th Cir. 2015), *abrogated on other grounds* by *Bruen*.

The "unusual" requirement of the dangerous-and-unusual test has been more plainly fleshed out by this Court. As *Bruen* confirmed, the question is whether ownership of the arm is "highly unusual in society at large." 597 U.S. at 47 (quoting *Heller*, 554 U.S. at 627); *see also Heller*, 554 U.S. at 627 (assuming that "sophisticated arms that are highly unusual in society at large" would not be protected). The Court's reference is to our modern "society," as this Court has rejected the argument that the inquiry is tethered to "the time of the Second Amendment's enactment." *Caetano*, 577 U.S. at 412 (*per curiam*) (quotation marks omitted). What matters is whether the arm is "highly unusual in society" today, not whether it was in 1791 or 1868. This accords with how other rights work. *See Heller*, 554 U.S. at 582 (citing *Reno v. ACLU*, 521 U.S. 844, 849 (1997), and *Kyllo v. United States*, 533 U.S. 27, 35-36 (2001)). In short, this Court has held that only arms which are uniquely dangerous and uncommon in society at large may be banned consistent with the Second Amendment. And even if the Court had not so held, our Nation's history would compel that conclusion.

Except for *Bevis*, *amicus* knows of no judicial opinion in any jurisdiction that relied on the militaristic nature of a weapon to conclude that it was dangerous or unusual. To the extent courts upheld restrictions on weapons such as Bowie knives, they did so because they concluded such weapons were *not* useful for military purposes. *See*, *e.g.*, *Aymette v. State*, 21 Tenn. (2 Hum.) 154, 159 (1840) (affirming conviction for concealed carry of a Bowie knife and reasoning that the government has "a right to prohibit the wearing or keeping weapons dangerous to the peace and safety of the citizens, and which are not usual in civilized warfare, or would not contribute to the common defence"); *English v. State*, 35 Tex. 473, 477 (1871) ("The terms dirks, daggers, slungshots, sword-canes, brass-knuckles and bowie knives, belong to no military vocabulary."); *State v. Workman*, 14 S.E. 9, 11 (W.V. 1891) ("[I]n regard to the kind of arms referred to in the amendment, it must be held to refer to the weapons of warfare to be used by the militia, such as swords, guns, rifles, and muskets, . . . and not to pistols, bowie-knife, brass knuckles, billies, and such other weapons as are ... only habitually carried by bullies, blackguards, and desperadoes...."). *Heller* and *Bruen* did criticize these decisions for being too narrow in their conception of the right to keep and bear arms, because they were too focused on the militia purpose of the right to the detriment of other purposes advanced by the right, such as individual self-defense. *See Heller*, 554 U.S. at 613; *Bruen*, 597 U.S. at 65.

Heller and *Bruen*'s criticisms are thus incompatible with the notion that militaristic nature is a valid basis to ban arms. And such a result would have been absurd because it was precisely military weapons that men were expected to bring with them when the militia was called forth. *See Heller*, 554 U.S. at 624-25. Although the fact that a weapon is useful in military contexts is a mark in favor of protection, that does not mean that no weapon used by the military can qualify as "dangerous and unusual." As explained in *Miller*, "ordinarily when called for service [militia] 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.

Heller thus concluded that "sophisticated arms that are highly unusual in society at large" may be banned despite - not because of - any military utility they may possess. 554 U.S. at 627.

b. Arms in "Common Use"

As *Heller* and *Bruen* held, the necessary implication that only "dangerous and unusual" weapons can be banned means that arms in "common use" cannot be banned. *Bruen*, 597 U.S. at 21; *Heller*, 554 U.S. at 624-25, 627; *Miller*, 307 U.S. at 179. If an arm is "common" it, by definition, cannot be "highly unusual in society at large." *Bruen*, 597 U.S. at 47. Nothing about *Heller* and *Bruen*'s logic on this point changes if the "common" arm is also so-called "militaristic." Indeed, as *Heller* explained, "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 to militia duty." *Heller*, 554 U.S. at 627. Thus, *Heller* explicitly contemplated weapons that are used in the militia as part of the *per se* protected class of "commonly used" arms.

Since the purpose of the Second Amendment was to preserve the militia by guaranteeing *individuals* the right to keep and bear arms, *Heller*, 554 U.S. at 594, these militia statutes are strong evidence of what types of firearms the Constitution protects.

In accord with that purpose, state courts in the 19th century held that even military arms in common use were protected, while especially dangerous and uncommon weapons were not. *See*, *e.g.*, *Nunn v. State*, 1 Ga. 243, 251 (1846) (Georgia Supreme Court held "right to keep and bear arms" included bearing of pistols because it encompassed weapons "not *such* merely as are used by the *militia*." *Id.* (emphasis in original). *Nunn* presumed that militia-style weapons were protected, and asked whether pistols were as well regardless of their military utility. *Nunn*, like *Heller*, concluded "yes."

The courts which addressed the issue of which arms were eligible to be carried, and owned within one's home, held that a military use for a firearm was a mark *in favor of* protection. *See Wilson v. State,* 33 Ark. 557, 559-60 (1878) (reversing conviction against man carrying an "army size pistol"); *see also State v.*

Smith, 11 La. Ann. 633, 633 (1856) ("[t]he arms there spoken of are such as are borne by a people in war"); *Aymette*, 21 Tenn. (2 Hum.) at 157-58 (both Tennessee Constitution and Second Amendment gave individuals the right to possess "the arms . . . such as are usually employed in civilized warfare, and that constitute the ordinary military equipment."

The history thus perfectly aligns with *Heller* and *Bruen*, and the Second Amendment's text. The purpose of the Second Amendment was to guarantee that the militia could protect "the security of a free State." U.S. CONST, amend. II; *Heller*, 554 U.S. at 599, 624-25. To say that firearms can be banned *because* they serve a military or militia purpose would be to completely detach [] . . . the prefatory clause" from the rest of the Second Amendment. *Heller*, 554 U.S. at 627.

The above discussion does not remove the distinction between arms that are in common use by civilians for lawful purposes and those that are dangerous and unusual, which would not be "the sorts of lawful weapons" that are "possessed at home" that at the Founding would have been brought "to militia duty." *Heller*, 554 U.S. at 627; *see also Snope*, 145 S. Ct. at 1536 (Thomas, J., dissenting from denial of *certiorari*) (discussing arms that would be "highly unusual in society at large").

c. *Bevis* Misunderstands These Categories.

Bevis misunderstood *Heller*, *Bruen*, and their holdings about the relationship between commonly used arms and dangerous and unusual arms. It correctly noted that "the idea of 'common use' cannot be severed from the historical scope of the common-law right that the Second Amendment was designed to protect against encroachment," but then made the mistaken conclusion that this logic would exclude "militaristic" weapons. *Bevis*, 85 F.4th at 1199. But the Founders knew their adversaries in England possessed militaristic weapons, and wanted to ensure the people of their new nation would be able to confront such foreign, and domestic, threats as necessary. One apparent reason *Bevis* claimed the most useful weapons are unprotected is that it arbitrarily limited the "lawful purposes" for which one could own a firearm. *Heller*, 554 U.S. at 625. Although *Bevis* acknowledged that firearms are lawfully possessed for reasons other than individual self-defense, the court dismissed those reasons as being outside the core of the Second Amendment and only asked whether the relevant weapons were helpful to "the individual right to self-defense." 85 F.4th at 1192. But "individual" self-defense, while certainly a core component of the Second Amendment right, is not the only protection afforded by it. *Heller*, 554 U.S. at 599; *see also Hanson*, 120 F.4th at 233 (rejecting argument that some arms "are outside the scope of the Second Amendment because they are most useful in military service").

In contrast, *Bevis* took far too narrow a view of the Second Amendment's purpose, rejecting the predominant view of the state courts that the right to keep and bear arms included both individual and collective self-defense. *See Bliss v. Commonwealth*, 12 Ky. (2 Litt.) 90 (1822); *State v. Reid*, 1 Ala. 612, 616, 619 (1840); *Nunn*, 1 Ga. 243; *Simpson v. State*, 13 Tenn. (5 Yer.) 356 (1833); *State v. Chandler*, 5 La. Ann. 489 (1850); *State v. Duke*, 42 Tex. 455, 459 (1875).

Bevis's conclusion that a firearm's military utility weighed against protected status is unsurprising, given that court failed to properly consider the American legal tradition forming the basis of the Second Amendment's meaning.

Bevis also erred when it stated that "the Supreme Court severed" the "connection" between the prefatory clause and the operative clause of the Second Amendment in *Heller*. 85 F.4th at 1188. It did not. This Court explained that "the Second Amendment's prefatory clause announces the purpose for which the right was codified" in the operative clause. *Heller*, 554 U.S. at 599. The two "fit[] perfectly," once one knows the history that the Founding generation knew, that is, the history of English monarchs seizing firearms from private individuals to squash the militia. *Id.* at 598.

If anything, it was *Bevis* that severed that connection by reducing the Second Amendment to purely individual defense.

But *Bevis*'s misunderstanding of the Second Amendment's purpose was not its only flaw. For instance, *Bevis* asserts that the proper test to determine whether an arm is in "common use" cannot be whether it is a popular firearm in the civilian sector because firearm restrictions often influence which weapons are popular. *Id.* at 1190, 1198-99 (citing *Friedman*, 784 F.3d at 409). But as Judge Brennan explained in his dissent, that conclusion does not follow. *Id.* at 1211 (Brennan, J., dissenting). The fact that a firearm is in "common use" means that it is *per se* protected, *Heller*, 554 U.S. at 627, but the reverse is not true. The fact that an arm is not in common use does not mean that it is *per se* unprotected. If a new firearm comes on the market, the mere fact that it is not yet commonly owned is not dispositive to its unprotected status. *Bevis*, 85 F.4th at 1211 (Brennan, J., dissenting). If that arm is comparable to firearms in common use, it would be protected because it is not more "dangerous" than a commonly used arm. *Cf.* Eugene Volokh, *supra*, 1481-82 (2009).

B. This Case Is Straightforward Under *Heller* and *Bruen*.

The above analysis is relevant to this matter because if this Court rejects the Seventh Circuit's holdings in *Friedman*, *Wilson*, and *Bevis*, then this case should be easily resolved in Petitioner's favor. The first question under *Bruen* is whether the "plain text" of the Second Amendment protects owning semiautomatic rifles. The plain text of the Second Amendment states that it protects the right to "keep and bear [a]rms." U.S. CONST, amend. II. The question here is what was understood by the term "arms" at the Founding. *Heller* offers a simple answer to that question: "The 18th-century meaning is no different from the meaning today." 554 U.S. at 581. "The 1773 edition of Samuel Johnson's dictionary defined 'arms' as '[w]eapons of offence, or armour of defence.' " *Id.* And "Timothy Cunningham's important 1771 legal dictionary defined 'arms' as any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another.' " *Id.* The Court also cited without quoting Webster's 1828 American Dictionary of the English Language, which gave as its first definition of arms "[w]eapons of offense, or armor for defense and protection of the body," and said that "in law, arms are any thing which a man takes in his hand in anger, to strike or assault another." Arms, WEBSTER, *supra*.

Firearms plainly are encompassed within "arms." Indeed, while the Court noted one anomalous Founding-era source that "limited 'arms' (as opposed to weapons') to 'instruments of offence generally made use of in war,' " it emphasized that "even that source stated that all firearms constituted 'arms.' " *Heller*, 554 U.S. at 581 (citation omitted). In sum, "the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms[.]" *Id.* at 581-582. Because Cook County's law bans certain types of firearms, the plain text is necessarily implicated, and the County bears the burden to justify its law by reference to history and Supreme Court holdings, not the lower court's incorrect standards.

CONCLUSION

The lower court based its erroneous holdings on faulty precedent, which has perpetuated for more than a decade in contravention to this Court's rulings in *Heller* and *Bruen*. Because these concerns affect the constitutional rights of *amicus*'s members, and for all the reasons stated above, *amicus* respectfully prays that the Court reverse the judgment below.

Respectfully submitted,

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