

Nos. 25-238, 25-566

IN THE
Supreme Court of the United States

CUTBERTO VIRAMONTES, *et al.*,
Petitioners,

v.

COOK COUNTY, *et al.*,
Respondents.

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

v.

RONNELL HIGGINS, IN HIS OFFICIAL CAPACITY, *et al.*,
Respondents.

**On Writs of Certiorari to the
United States Courts of Appeals
for the Second and Seventh Circuit**

**BRIEF OF AMERICAN FIREARMS
ASSOCIATION, ILLINOIS FIREARMS
ASSOCIATION, CONNECTICUT FIREARMS
ASSOCIATION, NEW YORK STATE FIREARMS
ASSOCIATION, PENNSYLVANIA FIREARMS
ASSOCIATION, MINNESOTA GUN RIGHTS,
MICHIGAN FIREARMS ASSOCIATION, AND
WISCONSIN FIREARMS COALITION AS
AMICI CURIAE IN SUPPORT OF PETITIONERS**

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INTERESTS OF *AMICI CURIAE*¹

The American Firearms Association is a nonprofit organized under section 501(c)(4) of the Internal Revenue Code that supports Second Amendment rights at the national level and in states nationwide. The American Firearms Association therefore opposes the imposition of draconian and ahistorical bans upon commonly owned firearms.

The Illinois Firearms Association, Connecticut Firearms Association, New York State Firearms Association, Pennsylvania Firearms Association, Minnesota Gun Rights, Michigan Firearms Association, and Wisconsin Firearms Coalition are all nonprofits organized under section 501(c)(4) of the Internal Revenue Code that oppose bans of commonly owned firearms in their respective states.

SUMMARY OF THE ARGUMENT

The challenged laws prohibit numerous semiautomatic rifles that are commonly possessed nationwide and that were openly marketed to civilians in Cook County and Connecticut for decades. The M1 Carbine, Ruger Mini-14, and Armalite AR-180 illustrate the breadth of those prohibitions: each includes a long-marketed civilian configuration now prohibited by a named-model clause, a feature test, or both. The M1 Carbine is a semiautomatic rifle traditionally sold with a 15-round magazine; Cook County's feature test reaches versions with a qualifying barrel shroud and prohibits the folding-stock, pistol-grip paratrooper

¹ No counsel for a party authored this brief in whole or in part. No person or entity, other than *amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

version, which Connecticut likewise prohibits. The Mini-14 is banned by name in Cook County, while Connecticut bans its folding-stock model by name. And the semiautomatic AR-180, commercially marketed to civilians since at least 1970, is banned by name in Connecticut and falls within Cook County's prohibition if its handguard constitutes a barrel shroud or the rifle is treated as a "copy or duplicate" of the AR-15. These are only three examples of longstanding civilian semiautomatic rifles swept within the challenged laws alongside the AR-15.

Owing to the ban of these and thousands of other semiautomatic rifles that are "similar semiautomatic rifles" to the AR-15, the Court should rule that both the Cook County Ordinance and Connecticut Statute are facially unconstitutional. As applied relief simply will not cure either statute because each firearm going forward will confront defenses that are not even detailed in the statutes. For instance, certain state governments will argue that the AR-10 is not similar because it is chambered in a larger round. Moreover, the provisions at issue are unconstitutional in all applications because they simply ban innocuous features of firearms and ban myriad semiautomatic rifles by name without any justification. But if the Court finds that it cannot parse the laws' rifle provisions from the statutes as a whole and their few legitimate applications, the Court should apply an overbreadth standard similar to the First Amendment and nevertheless rule the statutes are facially invalid.

ARGUMENT

I. The Laws at Issue Ban Myriad Firearms Previously in Common Use in Cook County and Connecticut That Are Not Dangerous and Unusual

Although the question presented focuses on the AR-15 and similar rifles, the challenged named-model and feature-based clauses also prohibit other semiautomatic rifles that were openly sold in Cook County and Connecticut for decades before those jurisdictions enacted their first “assault weapons” bans in the 1990s. *See* Cook County Ord. No. 93-O-37; *Wilson v. Cnty. of Cook*, 968 N.E.2d 641, 645 (Ill. 2012) (explaining that the original Cook County ordinance prohibited firearms identified by a list of 60 rifles and pistols designated by model name or type, as well as ammunition magazines exceeding 12 rounds); Firearms—Assault Weapons, 1993 Conn. Legis. Serv. P.A. 93-306 (H.B. 7332). That history matters because the current laws reach longstanding civilian rifles whose basic operation is materially similar to the AR-15 and whose possession long predates the prohibitions now imposed upon them. The M1 Carbine, Ruger Mini-14, and Armalite AR-180 illustrate the point. Each was commercially available to ordinary civilians in one or both jurisdictions well before the challenged restrictions, yet each is now prohibited in at least one common configuration by a named-model clause, a feature test, or both. As *Heller* and *Bruen* make clear, arms in common use for lawful purposes cannot be prohibited on the ground that they are “dangerous and unusual.” *See New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 21 (2022) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 627 (2008)). The rifles discussed below are neither unusual civilian novelties

nor materially distinct from the broader class of semiautomatic rifles at issue here.

Common use should not turn on the regulatory preferences or resulting ownership levels of a particular state or county. In *Wolford v. Lopez*, this Court reaffirmed that the Second Amendment has the same meaning throughout the Nation and that local attitudes can neither shrink nor enlarge a fundamental right. 146 S. Ct. 2032, 2049–50 (2026) Although *Wolford* did not separately decide the geographic denominator for the common-use inquiry, its national uniformity principle strongly supports assessing common possession among Americans generally rather than requiring an arm to satisfy a separate numerical threshold within every jurisdiction.

Local advertisements collected in this brief serve a narrower but important evidentiary function. They corroborate the national evidence and establish that the M1 Carbine, Mini-14, and AR-180 were marketed as ordinary civilian products in Cook County and Connecticut long before the challenged prohibitions. These were not novel arms. They appeared in ordinary newspaper advertisements alongside bolt-action rifles, lever-action rifles, shotguns, and handguns.

Nor should a jurisdiction be permitted to rely heavily on scarcity produced by its own prohibition. Otherwise, a government could suppress possession for decades and then invoke the resulting local scarcity as proof that the prohibited arm is “unusual.” The contemporaneous advertisements provide evidence of the civilian market before regulation altered it and therefore avoid that circularity.

The M1 Carbine is a celebrated rifle born in World War II. It is loved and enjoyed by many owners, including Aaron Dorr, a director of *amicus* American Firearms Association. The M1 Carbine was freely available for purchase by civilians in Cook County by 1961 and is not materially different from the version issued to soldiers.

**30-CAL., 15 SHOT
M-1 CARBINES**

**"THE GUN EVERY
G.I. WANTED
TO OWN!"**

**FIRST
TIME
OFFERED!**

\$79⁹⁵



The only U. S. military small arm made with the lines and weight of a modern sporter. Weighs only 5½ lbs., 18" barrel, 36" overall. Gas operated. 15 shot semi-automatic. Receiver Sight adjustable from 100 to 300 yds. Like New Condition.

6
STORES

Klein's

Sporting Goods

227 W. Washington	79 W. Jackson (Formerly Kaspers)	Hillside Shopping Center
4056 N. Cicero	4540 W. Madison Warehouse Store—Also Open SUNDAY	2438 N. Harlem
All Stores Open Monday & Thursday Nights to 9 p.m.	10 A.M. to 3 P.M.	Hillside, Harlem, Cicero Ave. Stores Also Open Friday Night

Chi. Trib., May 23, 1961, Spts.-Bus. Sec. at 3. Numerous advertisements listed the rifle for commercial and private sale in the ensuing decades. *See, e.g.,* Daily Herald (Chicago, Ill.), Aug. 26, 1970, Want Ads at I. The M1 Carbine can easily fire 120 rounds per minute.² *See Rapid Firing My M1 Carbine*, JonBoy Militaria, YouTube, May 27, 2017, <https://youtu.be/0qwFJpNeczo?si=-s1Yn9raqQFKMQPA>.

As a semiautomatic rifle with the capacity to accept a magazine larger than 10 rounds, the M1 Carbine may or may not be exempt from the Cook County Ordinance depending on whether law enforcement and prosecutors consider the top piece in front of its receiver to be a “a shroud attached to the barrel[.]” Code of Ordinances of Cook County, Ill., § 54-211(1)(D) (“C.C. Ord.”). The record in the underlying litigation suggests that the rifle’s original wood cover would be a shroud. *Viramontes*, 21-CV-04595, Dkt. 81-5 at 24 (expert report for Cook County calling the “wooden handguard which covered the top 2/3rds of the barrel” on the larger M1 Garand a “shroud.”). Some versions of the M1 Carbine feature a metal cover with ventilation holes instead of the wood handguard, which seems more likely to lead to six months of imprisonment. *See* C.C. Ord. § 54-214; *see also Nat’l Ass’n for Gun Rights v. Lamont*, 153 F.4th 213, 226 (2d Cir. 2025) (Grant.Pet.App.15a) (“[b]arrel shrouds are

² The lawsuits subject to this appeal demonstrate that rounds-per-minute estimates are unrealistic even considering a “large capacity magazine” because the speed by which users can change magazines varies considerably. *See Viramontes v. County of Cook*, 2024 WL 897455 at *4 (N.D. Ill. 2024) (Vir.Pet.App.15a-16a) (discussing *Bevis v. City of Naperville*, 85 F.4th 1175, 1196–97 (7th Cir. 2023)). For purposes of discussion, it is fair to say all of the rifles in this section can spend a magazine quickly.

ventilated covers[.]”). The rifle may be legal in Connecticut so long as one does not use the standard 15-round magazine. Conn. Gen. Stat. §§ 53-202w(a)(1), (b) (felony to possess a magazine that can hold more than ten rounds). In any event, the paratrooper version of the M1 Carbine features a folding stock and a pistol grip, so that is banned in both jurisdictions. C.C. Ord. § 54-211(1)(C); Conn. Gen. Stat. § 53-202a(1)(E)(i)(I). That version is less common, but it was also openly sold in Cook County and Connecticut for decades. *See* Chi. Trib., Nov. 7, 1964, Sec. 2 at 11; Norwich Bulletin, Mar. 30, 1990, at E3.

A more modern rifle, the Mini-14, was invented in the mid 1970s. It was also marketed for sale in Cook County. *See, e.g.,* The Life (Berwyn, IL), Feb. 4, 1979 at 5. Advertisements often included the Mini-14 among bolt-action and lever-action rifles.

SERVICE MERCHANDISE
Catalog Showrooms

You don't have to hunt for savings. We're always... **Priced Right**

A SPORTING GOOD SALE!

MARLIN

RUGER

WINCHESTER

1. MARLIN 22 MAG. RIFLE **99⁹⁷**
763MH Reg. \$114.97
Bolt action. American black walnut stock. Full
pistol grip. 12 shot magazine.
• Winchester 22 Mag Hollow Point Ammo
X22WMRUHD Reg. \$5.47 **4⁹⁷**

2. RUGER MINI-14 223 CALIBER
SEMI AUTO RIFLE **249⁹⁷**
145UPP Reg. \$289.97
Bolt lock mechanism. One-piece American hard
wood stock.
Winchester 223-Cal. 55 Gr. SP. Ammo
X223RUHD **8⁹⁷**

Chi. Trib., Oct. 20, 1983, Sec. 4 at 6. It is a semiautomatic rifle that is capable of accepting magazines that hold more than 10 rounds. It uses .223 caliber ammunition, the same as the AR-15, and can easily fire 240 rounds per minute. *See Rapid Fire Ruger Mini 14 Ranch Rifle*, John White, YouTube, Nov. 22, 2014, <https://youtu.be/L3PZEG9nkwo?si=vlwrnsd3NjJJZLyT>.

As with the M1 Carbine, one might wonder whether the top portion of the Mini-14 in front of the receiver is a “shroud,” making it subject to Cook County’s current general ban. But ultimately it does not matter, because now the Mini-14 is literally banned by name. C.C. Ord. § 54-211(7)(A)(xvii). It was, however, not subject to Cook County’s ban in the 1990s, and by 1997 Sturm, Ruger & Co. reported that it had manufactured a million Mini-14s. Melvin Claxton & William Gaines, *Assault gun ‘ban’ designed to backfire*, Chi. Trib., Dec. 31, 1997, at 1. Only the “folding stock model” of the Mini-14 is banned by name in Connecticut. Conn. Gen. Stat. § 53-202a(1)(A)(i). The folding stock model of the Mini-14 was also available for sale in the state long before it wasn’t. *See, e.g., The Day* (New London, Ct.), June 29, 1982, at 11; *Norwich Bulletin*, Dec. 11, 1989, at C6.

The final example, the Armalite AR-180, looks more like the focus of the present case. It was based on the AR-18, a fully automatic successor to the M-16. *See* Petitioners’ Br. at 8. The AR-180 was semiautomatic and marketed for sale to the public by 1970:

 New, Deluxe DOUBLE BARREL SHOTGUN Folding model made in Spain. A hard to get .410 shotgun, chambered for 2 3/4" or 3" shells. Has outside hammers. Engraved scroll patterns. 39⁹⁵	
 BRAND NEW 223 CAL. ARMALITE AR 100 SEMI-AUTOMATIC RIFLE Reg. 237.00 Lightweight, air cooled & gas operated. Has flash suppressor and recoil compensator. Scope Extra. 199⁰⁰	
NEW .22 CAL. L.R. 7-SHOT DOUBLE ACTION REVOLVER  American made Mark-059 14⁹⁹	New .22 Cal. DERRINGER  A well balanced, top breaking Derringer that shoots .22 Cal. shorts. Choice of gold, nickel or blue & gold. 15⁹⁹

The Daily Breeze (Torrance, CA), Dec. 20, 1970, at B4. It was sold in Cook County and Connecticut in classifieds and retail ads in the 1980s. See, e.g., Chi. Trib., June 9, 1985, Sec. 4 at 20; Bridgeport Telegram,

Aug. 15, 1986, at 39. Though distinct from the AR-15, it likely it fits into Cook County’s general ban owing to its “shroud attached to the barrel” and law enforcement and prosecutors would also probably call it a “duplicate” of the AR-15. *See* C.C. Ord. § 54-211(1), (7)(A)(iii). It is banned by name in the Connecticut law. Conn. Gen. Stat. § 53-202a(1)(A)(i). These are but three rifle models that are now criminalized either in their entirety or in one arbitrary form or another after decades of availability.

These examples illustrate the breadth of the challenged rifle provisions. Each includes a semiautomatic-rifle configuration that was openly marketed to civilians in Cook County or Connecticut for decades and is now prohibited by a named-model clause, a feature test, a magazine restriction, or some combination of them. The challenged provisions therefore sweep well beyond the AR-15 and operate against a broader class of longstanding civilian semiautomatic rifles. That breadth matters because there is no justification “for restricting the [possession] of weapons that are unquestionably in common use today.” *Bruen*, 597 U.S. at 47; *see Heller*, 554 U.S. at 624–25; *Staples v. U.S.*, 511 U.S. 600, 611–12 (1994). Nor does the addition of features such as a barrel shroud or folding stock transform an otherwise commonly possessed semiautomatic rifle into a dangerous and unusual weapon. Cook County, for example, treats as constitutionally significant even a feature affecting where a user may conveniently place a hand on the forward portion of a rifle. *Viramontes*, 21-CV-04595, Dkt. 81 at 20 (Joint App.29) (Defendants’ Statmt. of Undisputed Material Facts ¶¶ 143–144). The historical record discussed above instead shows ordinary civilian rifles, commercially available for decades, that have

become criminalized through increasingly expansive named-model and feature-based prohibitions.

II. Myriad Provisions of the Cook County Ordinance and Connecticut Law Are Facially Unconstitutional

The Petitioners presented facial challenges to the Cook County and Connecticut laws, respectively. *Viramontes*, 2025 WL 1553896 at *1 (Vir.Pet.App.2a); *Lamont*, 153 F.4th at 229 (Grant.Pet.App.22a). Below, the Seventh Circuit tersely found that this “challenge falters for want of an adequate record” and that the Petitioners were obligated to “demonstrate that the text of the Second Amendment, viewed through the lens of historical tradition, protects the regulated conduct[,]” apparently for any and all applications. *Viramontes*, 2025 WL 1553896 at *2 (Vir.Pet.App.4a). The Second Circuit, relying on *Rahimi*, ruled that the plaintiffs “offered no arguments or evidence in opposition to many of the challenged statutes’ applications, thereby failing to ‘establish that no set of circumstances exists under which the [challenged statutes] would be valid.’” *Lamont*, 153 F.4th at 229 (Grant.Pet.App.22a) (quoting *U.S. v. Rahimi*, 602 U.S. 680, 693 (2024)). Both approaches are wrong, but, if correct, it requires an adjustment of this Court’s overbreadth doctrine to apply to Second Amendment challenges.

A. As Applied Relief Will Not Cure Either Statute

Rahimi, like *Hemani*, concerned the circumstances in which a person may be disarmed. These cases concern whether a defined class of arms may be prohibited. *Rahimi*, 602 U.S. at 690; *U.S. v. Hemani*, 146 S. Ct. 1677 (2026). The challenged provisions here

attach criminal liability to model names and physical features; they do not turn on an owner's conduct, dangerousness, adjudicated status, or individual circumstances. Thus, unlike a person-based disqualification whose constitutionality may depend on a judicial finding or individualized proof, the constitutional validity of these rifle provisions does not vary from owner to owner.

The material questions are correspondingly class-level questions: whether the rifles operate semiautomatically, whether the identified features materially affect their operation, whether the rifles are commonly possessed for lawful purposes, and whether the Nation's historical tradition permits prohibition of that class. Those are general or legislative facts, not adjudicative facts unique to a particular owner. *Barnett v. Raoul*, 180 F.4th 1035, 1043 (7th Cir. 2026), itself recognizes the distinction between facts concerning the application of a rule to a particular party and general facts that do not vary from person to person or locality to locality.

Petitioners likewise explain that the AR-15 is broadly representative of the prohibited semiautomatic-rifle class and that the covered rifles share common features regardless of model or manufacturer. Petitioners' Br. at 17-20. Relief should therefore correspond to the rule causing the injury: the named-model and feature-based prohibition of AR-15-platform and materially similar semiautomatic rifles. Requiring a new lawsuit for each listed model would artificially convert a categorical prohibition into scores of nominally individualized controversies without changing the governing constitutional facts.

The records of the respective cases below show the absurdity of as applied relief against blunderbuss

statutes like Cook County Ordinance and Connecticut law. To be sure, if this Court finds the laws unconstitutional as applied to the AR-15 and similar semi-automatic rifles, there should be extensive downstream effects that free many other firearms from outright bans, including rifles such as those discussed in the previous section. But that is not guaranteed—indeed, the Court should view such an outcome skeptically. Without facial relief, legislatures and courts intent on defying the Second Amendment will continue to present an endless game of statutory and constitutional whack-a-mole to law-abiding citizens.

The Second Circuit called the Connecticut law an assembly of “highly specific restrictions on assault weapons, 2023 assault weapons, and large capacity magazines[.]” *Lamont*, 153 F.4th at 226 (Grant.Pet.App.16a). Yet it brushed away its obligations by stating a facial challenge goes only against “the *entirety* of the Connecticut restrictions[.]” *Id.* at 229 (Grant.Pet.App.22a) (emphasis added). Such a principle would make any extensive restriction—especially the ones here—immune from suit. For instance, *Rahimi* did not address 18 U.S.C. § 922, nor even 18 U.S.C. § 922(g), but only 18 U.S.C. § 922(g)(8). *See Rahimi*, 602 U.S. at 700. Facially, Conn. Gen. Stat. §§ 53-202a(1)(A)(i) and 53-202c(a) ban machine guns, or fully automatic weapons, a ban likely to survive Second Amendment review. But the definitional provision also bans “the following specific *semiautomatic* firearms[.]” Conn. Gen. Stat. § 53-202a(1)(A)(i) (emphasis added). Within that one provision, relief should not be limited to the specific rifle sought or owned by a petitioner, such as the “Colt AR-15 and Sporter.” *Id.*; *see Lamont*, 153 F.4th at 227–28 (Grant.Pet.App.19a). Yet that is just what as applied

relief might require, leaving dozens of other similarly situated firearms banned.

The justifications offered by the respective governments in this matter in support of specific restrictions make this conundrum clear. Nowhere in either the Cook County or Connecticut laws do specific semiautomatic firearm regulations have any terms relating to rates of fire. Yet rates of fire have been extensively discussed in both Second and Seventh Circuit precedents as a basis for determining whether a firearm is as dangerous and unusual as a fully automatic weapon, or whether the weapon is even protected by the Second Amendment in the first place. *Lamont*, 153 F.4th at 238 (Grant.Pet.App.41a-42a); *Bevis*, 85 F.4th at 1196–97 (“Better data on firing rates might change the analysis of whether the AR-15 and comparable weapons fall on the military or civilian side of the line.”). To challenge a law that literally bans *any* semiautomatic rifle that can accept a magazine that can hold more than ten rounds and has a “shroud attached to the barrel”, one must delve deeply into even non-regulated characteristics of a given firearm. C.C. Ord. § 54-211(1). Balderdash. The mystery only gets bigger when one tries to address a named firearm, for they are not prohibited according to any other characteristic.

To top it all off, the unwritten characteristics that matter will change per as applied challenge, and quite arbitrarily. The record below features page after page of expert reports that at points comically conflict or, at least, provide defenses that would be abandoned when confronted with other as applied cases. Cook County contends that “[f]irearms other than assault weapons

are more suitable for personal defense” (an argument, it bears noting, that has no place in Second Amendment jurisprudence) because, among other reasons, “[m]ost confrontations involve gunfire at close range[.]” *Viramontes*, 21-CV-04595, Dkt. 81 at 4-5 (Joint App.6-7) (§§27, 29). Yet rifles with “folding and/or telescoping stocks” should be banned because they “allow[] the operator to more easily . . . maneuver the rifle in a confined space.” *Id.* at 20 (Joint App.28) (§141); *see* Conn. Gen. Stat. § 53-202a(1)(E)(i)(I); C.C. Ord. § 52-211(1)(C). The AR-15 is simultaneously unsuitable for close range defense but is dangerous and unusual owing to a feature that makes it suitable for close range defense. When ammunition impact is assessed, Cook County asserts that “[t]he temporary cavity of the 5.56 NATO bullet is over three times the size of the .45 caliber bullet’s temporary cavity from the Thompson Machine gun.” *Viramontes*, 21-CV-04595, Dkt. 81 at 10 (Joint App.15) (§65); *but see* Petitioners’ Br. at 9 (“AR-15s in their ordinary configuration are also less powerful than many older rifle designs.”). Yet Cook County bans not just the proverbial Tommy Gun, but literally “[a]ll Thompson rifles,” including the semiautomatic Thompson T150D. C.C. Ord. § 54-211(7)(A)(xix); *see also* Conn. Gen. Stat. § 530-202a(1)(A)(i) (also banning “Auto-Ordnance Thompson type”). Surely, in an as applied context, the experts will find something to make up for the semiautomatic Thompson’s inferiority to a Marlin Camp Gun chambered in .45.³

³ The legion of so-called expertise is itself a problem for constitutional rights. “The First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day.”

As applied relief against statutes that regulate thousands of models of firearms in common use—including some 123 named rifle models in Cook County and some 77 in Connecticut—will simply not work. For instance, if this challenge is successful, Cook County will strike (or its prosecutors will merely decline to enforce) the law against the AR-15 but will keep the AR-10 banned because it uses a larger round of ammunition and is thus, according to the experts, not a “similar semiautomatic rifle” to the AR-15. *See* C.C. Ord. § 54-211(7)(A)(ii)-(iii). Connecticut will do the same. *See* Conn. Gen. Stat. § 53-202a(1)(A)(i), (1)(B)(xx). The Court should thus explore both statutes at their most basic forms, which leaves the laws facially unconstitutional.

B. Numerous Provisions of the Laws at Issue are Unconstitutional in All Applications

The laws at issue ban semiautomatic rifles that are capable of accepting magazines that hold more than ten rounds so long as they have one additional feature, including “a shroud attached to the barrel” in Cook County and “[a] folding or telescoping stock” in both jurisdictions. C.C. Ord. § 54-211(1); Conn. Gen. Stat. § 53-202a(1)(E). As discussed in the prior section, such weapons were in common use in Cook County and Connecticut (and across the entire nation) for decades before they were banned. They are not dangerous and

Citizens United v. Fed. Election Comm’n, 558 U.S. 310, 324 (2010). So, too, should the Second Amendment foreclose laws that force gun owners to litigate over not only what is written in a statute, but unwritten governmental interests, simply to possess firearms that were freely available for decades in a given jurisdiction and remain widely available across the country. *See* Conn. Gen. Stat. § 53-202a(7)(A) (a grandfather clause).

unusual and there are no analogous statutes to such bans prior to the late 1990s. *See* Petitioners’ Br. at 7-10.

As a result, at a minimum the Court should facially strike Section 54-211(1), (1)(C), and (1)(D) of the Cook County Ordinance and much of Section 53-202a(1)(A) and (1)(B) of the Connecticut Statute. Yet the Petitioners convincingly show that the other distinctions in the statutes—protruding grips, folding stocks and muzzle brakes—do not make a meaningful difference in a rifle as to rate of fire or power. Petitioners’ Br. at 16-20. Such attachments or modifications to commonly used firearms do not remove them from common use or fundamental Second Amendment protection and do not make them dangerous and unusual. That is, every item in these provisions is a far cry from creating a sawed-off shotgun. *Staples*, 511 U.S. at 611–12. So, the Court should facially strike all of the rifle provisions in Section 53-202a(1)(A)(i) of the Connecticut law and Section 54-211(1), respectively.

The named firearm provisions are a peculiar problem. Cook County bans some 123 semiautomatic rifles “or copies or duplicates thereof” by name while Connecticut bans roughly 77 semiautomatic rifles by name.⁴ C.C. Ord. § 54-211(7); Conn. Gen. Stat. § 53-202a(1)(A)(i), (B). The only identifiable distinguishing characteristic that distinguishes but a few of these rifles from the general ban is a bullpup design, where the action and ammunition magazine are behind the

⁴ The first set of Connecticut’s named bans includes rifles, pistols and shotguns. Conn. Gen. Stat. § 53-202a(1)(A)(i). The undersigned counsel endeavored to distinguish rifles for the tally here. On remand, enforcement of each specific rifle provision should be enjoined.

trigger assembly. *See, e.g.*, C.C. Ord. § 54-211(7)(A)(xvi), (xxxviii) (Steyr AUG, banned twice for good measure); Conn. Gen. Stat. § 53-202a(1)(A)(i) (Steyr AUG). This is also a distinction that makes no meaningful difference—certainly not one that removes a semiautomatic rifle that can carry more than 10 rounds in a detachable magazine from common use. Unless the governments here can identify some other distinction (and they cannot, though something like “the villain wielded the fully automatic version with one arm at the end of the movie *Die Hard* and that highlights its battlefield appeal” might make it into an expert report regarding the Steyr AUG), these named weapons should not be excluded from consideration as “similar semiautomatic rifles” and the respective prohibitions should be ruled facially unconstitutional.

Under no circumstances is it constitutional to ban a semiautomatic rifle that may accept a large capacity magazine owing to innocuous features such as a barrel shroud or folding stock. This is how both the Cook County Ordinance and Connecticut Statute operate. The Court should rule that these provisions as well as those specifically banning semiautomatic rifles are unconstitutional.

C. Alternatively, the Court Should Adopt a First Amendment-Like Overbreadth Standard

This Court has “not recognized an ‘overbreadth’ doctrine outside the limited context of the First Amendment.” *U.S. v. Salerno*, 481 U.S. 739, 745 (1987). In the context of censorship, instead of requiring a law to be constitutional in but one application to be facially constitutional, “a statute is facially invalid if it prohibits a substantial amount of protected speech . . . relative to the statute’s plainly legitimate sweep.” *U.S.*

v. Williams, 553 U.S. 285, 292 (2008). If the Court finds that the AR-15 and similar semiautomatic rifles are protected by the Second Amendment, but that the statutes at issue nevertheless have a lawful sweep, it should consider the overbreadth doctrine in the context of the Second Amendment and rule the laws are facially unconstitutional.

The legitimate sweep of the Cook County Ordinance at its zenith is to ban semiautomatic shotguns that have grenade or rocket launchers. C.C. Ord. § 54-211(4)(F). The legitimate sweep of the Connecticut Statute is to ban selective-fire firearms—that is, machine guns. Conn. Gen. Stat. § 53-202a(1)(A)(i). That’s about it, and these provisions are unrelated to the firearms at issue. The rest of each law is just a ban on semiautomatic firearms and certain accessories, restricting some firearms directly and then indirectly via attachments that have no serious bearing on a dangerous and unusual analysis. Just considering named semiautomatic rifle models alone, 123 banned rifle models to 1 legitimate application in Cook County and 77 banned rifle models to 1 legitimate application in Connecticut is a substantial prohibition that requires facial invalidation of the rifle provisions.

This sort of asymmetry presents the same practical problem that animates the First Amendment’s overbreadth doctrine. That doctrine recognizes that many people, rather than undertake the “considerable burden (and sometimes risk)” of vindicating their constitutional rights through case-by-case litigation, will simply refrain from exercising them. *Virginia v. Hicks*, 539 U.S. 113, 119 (2003); *see also Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973). The resulting deterrence justifies facial review when a law’s unconstitutional reach is substantial in relation to its

legitimate sweep. *Hicks*, 539 U.S. at 118–20. The same concern has particular force here. A gun owner confronted with a criminal prohibition on dozens of specifically named rifles cannot safely possess each firearm and litigate its constitutionality one model at a time. The practical alternatives are to surrender or modify the firearm, refrain from acquiring it, or undertake the expense and risk of another constitutional lawsuit.

Requiring such serial litigation imposes especially substantial burdens where the constitutional questions do not materially change from firearm to firearm. If this Court holds that the AR-15 and similar semiautomatic rifles are protected arms, an owner of a Mini-14, AR-180, AR-10, or another materially similar rifle should not have to commence a new lawsuit merely because a legislature placed a different model name in the same statutory list. Nor should the government be able to preserve a sweeping prohibition on protected arms by pointing to a handful of constitutionally permissible applications involving materially different weapons. The First Amendment does not require speakers to incur substantial legal expense merely to determine whether they may exercise a protected right. *See Citizens United*, 558 U.S. at 324. A comparable principle has force where citizens must determine, on pain of criminal punishment, whether they may possess arms protected by the Second Amendment.

Extending overbreadth principles to this context would not mean that every partially unconstitutional firearms law must fall. The First Amendment doctrine itself demands substantial overbreadth measured against a law's plainly legitimate sweep. *Williams*, 553 U.S. at 292; *Hicks*, 539 U.S. at 119–20. A Second

Amendment analogue could impose the same limiting principle. But where, as here, a statute sweeps within its prohibition scores of protected semiautomatic rifles while its legitimate applications are comparatively few and materially distinct, requiring model-by-model challenges would leave a substantial unconstitutional prohibition in force merely because no individual plaintiff could reasonably litigate every application. Facial review would prevent that result and ensure that the scope of a constitutional right does not depend upon an endless succession of citizens willing to bear the cost and risk of establishing it one firearm at a time.

CONCLUSION

For the foregoing reasons, the Court should hold the Cook County Ordinance and Connecticut Statute banning commonly owned semiautomatic firearms similar to the AR-15 are facially unconstitutional, respectively.

Respectfully submitted,

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