

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

**BRIEF OF AMICI CURIAE ADVANCING AMERICAN FREEDOM;
ET AL. IN SUPPORT OF PETITIONERS
(Additional Amici Curiae Listed on Inside Cover)**

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QUESTIONS PRESENTED

1. Whether the Second and Fourteenth Amendments guarantee the right to possess AR-15 platform and similar semiautomatic rifles.

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STATEMENT OF INTEREST OF AMICI CURIAE

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including freedom from arbitrary power.¹ AAF “will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,”² and believes American prosperity depends on ordered liberty and self-government.³ AAF files this brief on behalf of its 164,819 members nationwide.

Amici American Values; Idaho Freedom Foundation; Independent Institute; International Conference of Evangelical Chaplain Endorsers; JCCWatch.org; Louisiana Family Forum; Men and Women for a Representative Democracy in America, Inc.; Stand Up Michigan; Women for Democracy in America, Inc.; Charlie Gerow, Former Vice Chairman, American Conservative Union; Tim Jones, Former Speaker, Missouri House, Founder, Leadership for America Institute; Melissa Ortiz, Principal & Founder, Capability Consulting; and Hon. William

¹ All parties received timely notice of the filing of this amicus brief. No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

² Edwin J. Feulner, Jr., *Conservatives Stalk the House: The Story of the Republican Study Committee*, 212 (Green Hill Publishers, Inc. 1983).

³ Independence Index: Measuring Life, Liberty and the Pursuit of Happiness, Advancing American Freedom available at <https://theindependenceindex.org/>.

Wagner (Ret), Distinguished Professor of Law Emeritus believe that the right to self-defense and thus the Second Amendment-protected right to keep and bear arms is essential to liberty.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

These cases concern laws that restrict the ownership of popular⁴ rifles in Connecticut and Cook County, Illinois. These cases also present the Court with an opportunity to reiterate that the Second Amendment’s protections are not challenges for government officials to overcome but are limits on their power.

In *New York State Rifle and Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022), this Court announced a two-part test designed to ensure that laws regulating firearm ownership and use were consistent with the Second Amendment. “First, a court must determine whether the law before it clashes with the ‘plain text’ of the Amendment’s language.” *Wolford v. Lopez*, 146 S. Ct. 2032, 2043 (2026) (quoting *Bruen*, 597 U.S. at 24). If the law does clash with the text of the Second Amendment, the law in question is presumptively unconstitutional and the government carries the burden of showing that the law has “open, widespread,

⁴ “In total, 30.0% of gun owners, approximately 26.4 million adults, currently own at least one rifle of the type commonly classified as an ‘assault weapon.’” William English, *2026 National Firearms Survey: Results from the Second Wave, Including Ownership of AR-15 Style Rifles, Other “Assault Weapons,” and Magazines that Hold More than 10 Rounds*, 37 available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7347338.

and unchallenged” historical analogues that are relevantly similar. *Id.* at 2044 (quoting *Bruen*, 597 U.S. at 36).

This case provides the Court with an opportunity to correct lower court applications of *Bruen* which have given state and local governments wide leeway to constrict the Second Amendment right.

Recognition of the right of the people to keep and bear arms developed over hundreds of years in English law, with kings at times seeking, largely ineffectively, to limit the people’s ownership of weapons. In 1689, the English Declaration of Rights enshrined in British constitutional law the right of protestants, in contradistinction to Roman Catholics, to own arms for self-defense.⁵

America’s Founders learned from this history as well as their own experience in the colonies. For many Americans, owning and using firearms was not only their right as Englishmen, but was an essential part of life. From feeding their families to defending themselves in remote dwellings, firearms were a means of personal impudence. The skills they developed would later become a means of national independence when American marksmen faced off against British Regulars in the Revolutionary War.

For Americans, firearms have always been a multi-purpose tool of liberty and thus an essential fundamental right. Yet some states and localities today seek to limit their residents’ exercise of that

⁵ Joyce Lee Malcom, *To Keep and Bear Arms: The Origins of an Anglo-American Right* 115, 119 (1994).

right however they can.⁶ Here Defendants have outlawed popular weapons that Americans around the country use for self-defense and hunting, and which serve to preserve liberty.⁷

Some lower courts, further, rather than vindicating the fundamental rights protected by the Second Amendment, have read this Court's *Bruen* decision narrowly, leaving some Americans without judicial relief.

This case provides the opportunity to reaffirm what it has already made clear: The Second Amendment is not a “second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010). This Court has repeatedly ruled that what government is constitutionally barred from doing directly, it is constitutionally barred from doing indirectly. Yet certain jurisdictions are determined to burden firearm ownership however they can.

⁶ See Independence Index, *supra* note 3, at 52 (showing the disparity between states that have laws affording high respect to their residents' Second Amendment rights and those the laws of which afford little respect to those rights.).

⁷ Outlawing these rifles would also be an ineffective means of protecting public safety. Rifles like the AR-15 are used in only 3-4% of homicides, and “most mass public shootings” do “not involve the use of a rifle.” Amy Swearer, *Answering Policymakers' Most Common Questions (And Debunking Their Most Common Misconceptions) About Gun Policy*, The Heritage Foundation (Mar. 3, 2023) available at <https://www.heritage.org/sites/default/files/2023-03/LM325.pdf>.

ARGUMENT

I. Keeping Arms is Essential to American Liberty.

The founding generation saw themselves as both the heirs to and refiners of their rights as Englishmen. They were immersed in English history, culture, and law, and understood the virtues and shortcomings of the English system. In the centuries preceding the War for Independence, the right of citizens to possess and carry weapons was developing in fits and starts in Britain.

In the sixteenth century as firearms started to become common, the kings of England began enacting restrictions on their ownership and use.⁸ From that time until the American revolution, religious tension played a significant part in English firearm regulation. Yet, while the sixteenth century English government distrusted Catholics and sometimes prohibited them from keeping arms in their homes, “it was the stockpiling of arms, even the rumor of stockpiling, rather than the possession of weapons for self-defence, that caused their neighbors anxiety.”⁹

At the same time, game acts arose which “imposed a property qualification on hunting and prohibited those who failed to meet it from using, and in some instances even owning, hunting equipment.”¹⁰ These laws were as much about protecting game as they

⁸ Malcom, *supra* note 5, at 10-11.

⁹ *Id.* at 11.

¹⁰ *Id.* at 12.

were about preventing those of lesser means from owning or carrying firearms.¹¹

The game and forest policies of Charles I sparked riots and contributed to the public dissatisfaction that preceded the British civil war.¹² After the civil war and the execution of Charles I, the Commonwealth government adopted its own game laws and restricted gun ownership by Catholics and royalists.¹³ After the death of Oliver Cromwell, the government passed an act requiring that householders submit a list of those living with them and their firearms to local officials who had authority to confiscate those firearms where there was “just cause of suspicion and danger to the Commonwealth.”¹⁴ Compliance with this law was “fitful.”¹⁵

With the return of the monarchy in 1660, the new king, Charles II, directed that “those of ‘suspected or knowne disaffection’ to the Crown” be disarmed.¹⁶ For the duration of his reign, Charles II repeatedly sought to disarm his political opponents. In one instance, Charles had the walls of towns that had opposed his father during the Civil War razed after disarming the residents.¹⁷

The introduction of a new game act in 1671 was particularly important. By significantly raising the property requirement to hunt, it removed that

¹¹ *Id.* at 12.

¹² *Id.* at 14-16.

¹³ *Id.* at 25-27.

¹⁴ *Id.* at 28.

¹⁵ *Id.* at 29.

¹⁶ *Id.* at 35.

¹⁷ *Id.* at 51.

privilege from many who had been exercising it.¹⁸ “The immediate result was that less than 1 percent of those living on the land were entitled to hunt game, even on their own property.”¹⁹ Also, unlike earlier game acts which had prohibited the use of “engines,” including firearms for *taking* game, the 1671 act prohibited the mere ownership of such “engines.”²⁰

Charles’s restrictive firearms policies tended to particularly disfavor Catholics. His successor, James II, reversed that policy, installing Catholic leaders to the displeasure of England’s protestants.²¹ The stage was thus set for the Glorious Revolution and the installation of the protestant King William and Queen Mary.

Along with inviting William and Mary to take the throne in 1689, they were presented with the Declaration of Rights which listed among the “true, ancient, and indubitable” rights of Englishmen, the right of protestants to “have Arms for their Defence suitable to their conditions and as allowed by Law.”²²

For America’s Founders, this history demonstrated that, directly or indirectly, those in power who wish to expand their power regularly seek to disarm the people.

Thus, for the founding generation, while self-defense “was the *central component* of the right”

¹⁸ *Id.* at 71.

¹⁹ *Id.* at 72.

²⁰ *Id.* at 72.

²¹ *Id.* at 92-102.

²² *Id.* at 115, 119.

protected by the Second Amendment,²³ *District of Columbia v. Heller*, 554 U.S. 570, 599 (2008), it was not only about weapons useful to stop a home-invader or armed robber on the road. It was about equipping the people to protect their liberty, whether from government or private threats. The Founders' thinking about the right to keep and bear arms and its relationship to good government, like their thinking on government generally, was shaped by their immediate experience, their understanding of contemporary politics in Europe and elsewhere, and their understanding of history. As history and experience taught them, preserving the individual right to keep and bear arms was essential to the preservation of liberty.

During the First Congress's consideration of the Bill of Rights, the Senate rejected a proposal that the Second Amendment protect the right "to keep and bear arms *for the common defense*,"²⁴ an additional

²³ Statistically, thousands of Americans use their firearms to defend themselves and others against criminal activity every day. And that is not to mention firearm's preventative function, stopping an unknowable number of would-be criminals who choose not to engage in criminal activity because of the risk of encountering a Second Amendment American. As Amy Swearer, Senior Legal Fellow at Advancing American Freedom's Edwin Meese III Institute for the Rule of Law, reminds readers each month, defensive use of firearms protects real people from predation. Amy Swearer, *Meet the Other Armed Civilians Who Saved Lives Before Jordan Salinas Made Headlines*, PJ Media (Aug. 20, 2026 8:32 PM) <https://pjmedia.com/amy-swearer/2026/08/20/meet-the-other-armed-civilians-who-saved-lives-before-jordan-salinas-made-headlines-n4956371>.

²⁴ Stephen Halbrook, *The Founders' Second Amendment: Origins of the Right to Bear Arms* 277 (2008).

phrase which would have unnecessarily confused the scope of the right. Nonetheless, the consideration of this language suggests part of the Amendment's purpose. The common defense, Stephen Halbrook explains, "could include armed defense against foreign aggression, insurrection, domestic tyranny, and criminal violence."²⁵

In framing the government and adopting the Bill of Rights, the prevention of tyranny was a central concern of the founding generation. As this Court recognized in its discussion of the relationship between the operative and prefatory clauses of the Amendment, "history showed" the founding generation "that the way tyrants eliminated a militia consisting of all the able-bodied men was not by banning the militia but simply by taking away the people's arms." *Heller*, 554 020 at 598.

The Second Amendment was thus about preserving fundamental rights by resisting tyranny. Of course, the Founders did not believe in vigilantism or terrorism. The founders only declared American independence through a nationally representative process after "a long train of abuses and usurpations" The Declaration of Independence para. 2 (U.S. 1776). Yet the armed populace was a central component of the plan to ensure that American liberty remained a reality.

Thus, in his *Remarks on the First Part of the Amendments to the Federal Constitution* published

²⁵ *Id.*

while the House of Representatives considered Madison's proposed amendments, Tench Coxe wrote:

As civil rulers, not having the duty of the people before them, may attempt to tyrannize, and as the military forces which must be occasionally raised to defend our country, might pervert their power to the injury of their fellow-citizens, the people are confirmed by the next article in their right to keep and bear their private arms.²⁶

Coxe argued that the proposed amendment “was designed to guarantee the right of the people to have ‘their private arms’ in order to prevent tyranny and to overpower an abusive standing army.”²⁷

As James Madison wrote in *Federalist* No. 51, “[a] dependence on the people is, no doubt, a primary control on the government.”²⁸ While Madison was likely thinking primarily of the ballot box, the people also function as a check on government power when they are armed and prepared to defend their liberties.

Daniel Webster recognized that “Before a standing army can rule, the people must be disarmed; as they are in almost every kingdom in Europe.”²⁹ Disarmament precedes tyranny.

The British recognized this too and sought to capture American arms in the lead up to the

²⁶ Halbrook, *supra* note 24, at 257.

²⁷ *Id.*

²⁸ The *Federalist* No. 51, at 269 (James Madison) (George W. Carey and James McClellan, eds., The Liberty Fund 2001).

²⁹ Halbrook, *supra* note 24, at 177.

Revolution. It was just such a military excursion that resulted in the battles of Lexington and Concord that set off the War for Independence. British General Thomas Gage likewise sought to disarm the population of Boston as a means of tamping down resistance to British imperial rule.

When the founding generation thought of the right to keep and bear arms, they thought in part of resisting tyranny. They also thought of “defense against foreign aggression.”³⁰

A perennial question for any nation is how to defend itself from foreign attack. Many in the founding generation warned that a standing army was the end of liberty, an understandable position given their experience with the British Regulars. This fear of standing armies stretched back in England at least 150 years before the founding to the time of King Charles I.³¹ In this regard, as in so many others, the Founders were thinking as good Englishman.

Yet, without a standing army, the nation would be more vulnerable to attack by foreign powers. A John Adams-endorsed publication authored by William H. Sumner in 1823 likewise warned “that the United States would be a target for invasion ‘if its population, like that of Europe, chiefly consisted of an unarmed

³⁰ *Id.*

³¹ “Since Englishmen had an intense distaste for professional armies, any attempt to improve their militia ought to have been especially welcome. . . [T]heir fears of standing armies soared as news filtered back to England of the terrible depredations on the Continent resulting from the Thirty Years War.” Malcom, *supra* note 5, at 7.

peasantry, and its whole reliance was on its regular army.”³²

The solution was an armed populace ready to take up arms to defend against an invading force while an army could be raised.³³ As James Jackson of Georgia argued in the First Congress, “In a Republic every man ought to be a soldier, and be prepared to resist tyranny and usurpation, as well as invasion and to prevent the greatest of all evils—a standing army.”³⁴

Hunting, too, was an important part of the right’s protection, both for its own sake³⁵ and to avoid repeating what had occurred in England. Indeed, the colonists’ hunting experience contributed to the quality of their marksmanship during the war for independence.³⁶ Pennsylvania and Vermont even included provisions in their state constitutions protecting hunting.

“Pennsylvania was the first state to adopt a formal guarantee of the right of the people to bear arms.”³⁷ The declaration of rights in the state’s constitution

³² Halbrook, *supra* note 24, at 315.

³³ *See id.* at 158 (“The American patriots saw themselves as bearing arms for the common defense against the lawless government of the Crown. To bear arms for the common defense included not only defense against foreign invasions but also institutions such as the hue and cry in which citizens defended themselves from and pursued felons.”).

³⁴ *Id.* at 302.

³⁵ “For many rural whites, too, firearms were used to put food on the table. [Samuel] Adams’ above message made clear that the colonists saw hunting as a significant purpose of the right to keep and bear arms.” *Id.* at 93.

³⁶ *Id.* at 96.

³⁷ *Id.* at 135.

adopted in 1776 provided, “[t]he people have a right to bear arms for the defense of themselves, and the state; and as standing armies in the time of peace, are dangerous to liberty, they ought not to be kept up.”³⁸ The constitution also provided that “[t]he inhabitants of this state shall have liberty to fowl and hunt in seasonable times on the lands they hold, and on all other lands not inclosed.”³⁹ The following year, Vermont copied this language verbatim in its own constitution.⁴⁰ While the Pennsylvania constitution was being considered, some criticized this provision as being inappropriate in a constitution, but defenders pointed back to England where game laws had been enacted to disarm the people.⁴¹

As William Blackstone explained, “a reason oftener meant, than avowed, by the makers of forest or game laws” was “for preventing of popular insurrections and resistance to the government, by disarming the bulk of the people.”⁴² Americans had seen these game laws and were reacting against them.

As St. George Tucker wrote:

In England, the people have been disarmed, generally, under the specious pretext of preserving the game . . . True it is, their bill of rights seems at first view to counteract this policy: but the right of bearing arms is confined to protestants, and the words suitable to their condition

³⁸ *Id.* at 136.

³⁹ *Id.* at 138.

⁴⁰ *Id.* at 156.

⁴¹ *Id.* at 139.

⁴² *Id.*

and degree, have been interpreted to authorise the prohibition of keeping a gun or other engine for the destruction of game to any farmer, or inferior tradesman, or other person not qualified to kill game. So that one man in five hundred can keep a gun in his house without being subject to penalty.⁴³

In practice, the disarmament of the English population was not so universal as Tucker believed. Halbrook notes, “English judicial precedents actually held that the people at large could keep arms at home and that guns could be seized only when actually being used contrary to hunting prohibitions.”⁴⁴ Nonetheless, the view that Americans had of the English laws is as relevant to the Second Amendment as is the reality of those laws.

The right to keep and bear arms protected by the Second Amendment has, at its core, self-defense. But self-defense was by no means the only or even historically the most salient aspect of individual arm ownership. This Court’s decision here should clarify for states and lower courts that an emphasis on self-defense is not a means of shrinking the scope of the Second Amendment and thereby of the “true, ancient, and indubitable right” it was adopted to preserve.

⁴³ *Id.* at 311.

⁴⁴ *Id.*

II. States and Lower Courts Need the Guidance of a Clear Decision Defining the Scope of the Second Amendment-Protected Right.

This Court’s test announced in *Bruen* for laws alleged to violate the Second Amendment is less than five years old. Naturally, development over time is necessary to determine the full scope of the Second Amendment. That the test does not itself answer every possible question raised by a gun regulation policy does not mean that the test is unworkable.

At the same time, the text may appear more difficult to apply in cases challenging state laws designed to strain it. States seek ways to circumvent the Second Amendment’s limits on their power, enacting laws intended to limit the right to keep and bear arms as much as possible. Whether through a system of cumulative burdens designed to make exercising the pre-existing right protected by the Second Amendment difficult or by specific regulations intended to circumvent the *Bruen* test, states have hobbled the right.

Some states and localities have made it extremely difficult to meet the requirements to obtain firearm permits. For example, plaintiffs in Boston sought judicial relief after the Boston Police Department made “applicants wait for months to obtain a fingerprint appointment, which is needed by the State Police to complete the background check and subsequently issue the license.”⁴⁵ Similarly, some had

⁴⁵ Mark W. Smith, *Licenses Delayed, Rights Denied: How Contemporary Firearm Carry Licensing Regimes Continue to*

to wait a year for fingerprint appointments in New York City and some were forced to wait two years to have their license applications processed.⁴⁶

Similarly, the United States Department of Justice recently reached a settlement⁴⁷ with the Los Angeles County Sheriff's Department after it sued the city for its lengthy and difficult process for obtaining a concealed carry permit.⁴⁸

As Mark W. Smith explains, “[i]n Green County, Ohio, applicants can apply for a concealed carry permit only from 8 a.m. to 3 p.m. on Fridays, and the lobby accommodates only one person at a time.”⁴⁹

This systematic resistance burdens the Second Amendment exercise of Americans living in jurisdictions insistent on treating it as a “second-class right.” *McDonald*, 561 U.S. at 780. Yet when Americans seek to vindicate their rights before the judiciary, they often find courts unreceptive to their *Bruen* claims.

Some lower courts considering laws that burden firearm ownership or carriage apply *Bruen* loosely, allowing states or the federal government to impose regulations that significantly burden the right to keep and bear arms on the basis of a historical law

Violate the Second Amendment 2025 Harv. J.L. & Pub. Pol'y Per Curiam 23, *2 (2025).

⁴⁶ *Id.* at *3.

⁴⁷ *Justice Department and LA County Sheriff's Department Settle Lawsuit*, Department of Justice (Aug. 13, 2026) <https://www.justice.gov/opa/pr/justice-department-and-la-county-sheriffs-department-settle-lawsuit>.

⁴⁸ Smith, *supra* note 43.

⁴⁹ *Id.* at *3.

which is either not indicative of the scope of the Second Amendment right or is not relevantly similar to the law at issue.

For example, in *Bianchi v. Brown*, the Fourth Circuit, applying *Bruen*, upheld Maryland’s ban on “assault weapons” because the court found that they are “excessively dangerous weapons ill-suited and disproportionate” to self-defense. 111 F.4th 438, 452 (4th Cir. 2024). As the discussion in Section I above shows, self-defense was not the only concern that motivated the adoption of the Second Amendment.

The Second Amendment was enacted to ensure that Americans could arm themselves for the mundane activity of hunting and so that they would be prepared to resist both tyranny from their own governments and sudden invasion by foreign power. In a time when moving military forces from one part of the country to another took significant time, an armed populace was the first line of defense against such an invading force. Thus, even if the Fourth Circuit were correct in its conclusion that semiautomatic rifles are not viable for self-defense, they would still be well within the scope of the Second Amendment’s purpose.

Yet by taking this cramped view of the Second Amendment’s purpose, the Fourth Circuit concluded that its protection did not extend to these popular firearms. As Justice Thomas explained in his dissent from denial of certiorari in that case, “[a] constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all.” *Snope v. Brown*, 145 S. Ct. 1534, 1537 (2025) (Thomas, J., dissenting).

Similarly, the Fourth and Ninth Circuits, relying on *Bruen*'s footnote 9 which clarifies that that decision did not "suggest the unconstitutionality of 43 states' 'shall issue' licensing regimes," *Bruen*, 597 U.S. at 38 n.9. have found that "shall-issue" regimes are "presumptively constitutional." *Maryland Shall Issue, Inc. v. Moore*, 116 F.4th 211, 222 (4th Cir. 2024). *See also United States v. DeBorba*, 177 F.4th 1005, 1012 (9th Cir. 2026). These decisions thus place the burden back on the challenger to show that the regime in question has been "put to abusive ends." *Bruen*, 597 U.S. at 38 n.9.

Some states have sought, either by regulation or procedure, to make it difficult for residents of those states to exercise their right to keep and bear arms. Many lower courts have applied *Bruen* accurately. Some though, either resisting its implications or struggling with state and local regulations designed to circumvent it, have applied *Bruen* loosely, allowing burdensome policies to persist.

The Court has the opportunity in this case to reaffirm the *Bruen* test and clarify for states and lower courts the scope of the Second Amendment's protection. Semiautomatic rifles are in common use by the American people. They are effective for self-defense and are the descendants of type of weapon the founders expected Americans to own so as to be prepared to repel invasions and guard against tyranny.

The Court's ruling here should clarify that semiautomatic rifles are just as central to the Second Amendment's purpose and just as protected by its language as handguns.

III. The Court Has Consistently Prohibited States from Indirectly Curtailing Rights.

The Second Amendment protects a “true, ancient, and indubitable right.” But in some jurisdictions, government officials treat that right as an illegitimate restriction on the power they wish to wield.⁵⁰

As this Court has recognized in numerous contexts, the Constitution’s limits on government power are fixed limits, not puzzles to be solved by clever officials. “[W]hat cannot be done directly cannot be done indirectly.” *Cummings v. Missouri*, 71 U.S. 277, 325 (1866). The Constitution’s liberty-protecting provisions “deal[] with substance, not shadows.” *Id.*

For example, if the government cannot ban speech directly, it cannot threaten “legal sanctions and other means of coercion’ against a third party ‘to achieve suppression’ of disfavored speech.” *Nat’l Rifle Ass’n of America v. Vullo*, 602 U.S. 175, 180 (2024) (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963)).

In *Vullo*,⁵¹ Maria Vullo, superintendent of the New York Department of Financial Services, “allegedly pressured regulated entities to help her stifle the NRA’s pro-gun advocacy by threatening enforcement actions against those entities that refuse to

⁵⁰ Ironically, in many of the same jurisdictions where law-abiding citizens find it difficult to exercise their Second Amendment-protected rights, those who use illegally possessed guns to commit crimes can often expect prosecutorial lenience.

⁵¹ See Brief of Amici Curiae Advancing American Freedom et al., *Nat’l Rifle Ass’n of America v. Vullo*, 602 U.S. 175 (2024) available at <https://advancingamericanfreedom.com/legal-filings/national-rifle-association-of-america-v-maria-t-vullo>.

disassociate from the NRA and other gun-promotion advocacy groups.” *Id.* at 180-81. As the Court unanimously determined, such pressure would amount to an unconstitutional attempt to silence First Amendment-protected speech. *Id.* at 198.

The same protection against indirect restrictions on constitutionally protected rights applies to the freedom of association. In 1956, the state of Alabama sought, with the help of state courts, to prevent the NAACP from operating in the state. *See NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288, 289-90 (1964). The resulting case reached this Court four times over eight years as the state’s courts sought to avoid this Court’s directives. *Id.* at 290-93.

Among the issues that case raised was the First Amendment-protected right to association. The state sought to force the NAACP to turn over its membership list. In 1958, the Court denied that effort, explaining that the members of the NAACP had a right to associate anonymously with the organization under the Fourteenth Amendment. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 466 (1958).

The NAACP, though, only received full relief six years later when the Court addressed the merits of the case, restating the principle that “a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.” *NAACP v. Alabama ex rel. Flowers*, 377 U.S. at 307.

Of course, this attempt to treat black Americans as second class citizens was neither confined to the Civil Rights era nor the First Amendment.

The British recognition of the right to keep and bear arms explicitly excluded Catholics. Similarly, in America during the postbellum period, many southern states passed facially race-neutral laws designed to restrict black Americans' ability to own guns. For example, an 1865 statute in Louisiana "made it unlawful 'for any person or persons to carry fire-arms on the premises or plantations of any citizen, without the consent of the owner or proprietor, other than in lawful discharge of a civil or military order.'" *Wolford*, 146 S. Ct. at 2053. The purpose of that law, and many others like it, was to disarm black people, "thus leaving them defenseless against attacks." *Id.* In this and many other areas, states used facially race-neutral laws to unconstitutionally limit the fundamental and political rights of black Americans.

Governments seek to expand their power. It is a fact the founders recognized which is why they designed the Constitution with structural limitations on federal power. But Antifederalists and others perceptively warned that that structure would not stop unscrupulous government officials from finding ways to infringe the fundamental rights the founding generation was seeking to preserve. Thus, the Bill of Rights was adopted by the First Congress as a backstop against government abuse.

The Fourteenth Amendment expanded the scope of those fundamental protections so that they would act as a barrier against state abuses as well. Undaunted, those who would expand government power seek in

some cases to use clever means to achieve indirectly what they cannot constitutionally achieve directly. This Court has rightly rejected many of these efforts. In others, like the one here, these states directly curtail a constitutionally protected right.

The Court should rule for Petitioner in this case and its reasoning should be robust enough to protect Americans' Second Amendment-protected rights against not only direct, but also carefully crafted restrictions on liberty.

CONCLUSION

For the foregoing reasons, the Court should rule for Petitioners.

Respectfully submitted,

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