

No. 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 Writs of Certiorari to the
United States Courts of Appeals for
the Seventh and Second Circuits*

**BRIEF OF ELEVEN STATE-BASED FIREARMS
ADVOCACY ORGANIZATIONS AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS**

Trevor Burrus
Counsel of Record
2301 S. June St.
Arlington, VA, 22202
720-231-4899
TrevorBurrus@gmail.com

Counsel for Amici Curiae

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QUESTION PRESENTED

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

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INTEREST OF *AMICI CURIAE*¹

Amici are eleven state-based firearms advocacy organizations. They are: **California Firearms Association; Florida Gun Owners; Georgia Gun Owners; Indiana Firearms Coalition; Iowa Gun Owners; North Carolina Gun Owners; Missouri Firearms Coalition; Ohio Gun Owners; Tennessee Gun Owners; Washington Gun Rights; and Wyoming Gun Owners.**

Each *amicus* is a 501(c)(4) state-based group that defends the right to keep and bear arms in its respective state. As grassroots mobilization organizations that advocate for the right to keep and bear arms, they fight on behalf of members to defend the Second Amendment and the natural right to self-defense in their respective state legislature and in courts.

This case concerns *amici* because prohibitions on the AR-15 platform and similar semiautomatic rifles infringe on Second Amendment rights. *Amici* are dedicated to preserving Americans' natural right to keep and bear arms enshrined in the Second Amendment. *Amici's* expertise on firearms and related legal issues can help this Court with this case.

¹ Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amici* funded its preparation or submission.

SUMMARY OF ARGUMENT

This case presents this Court with the important opportunity to clarify the types of arms that are protected by the Second Amendment. Because the question has been directly analyzed by this Court only three times—in *United States v. Miller*, 307 U.S. 174 (1939), *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *Caetano v. Massachusetts*, 577 U.S. 411 (2016)—there is not a significant body of case law on this issue comparable to, say, the political speech protected by the First Amendment. Thus, this Court has seemingly broader freedom to craft a relatively clear, effective, and constitutionally faithful test that can be readily applied by lower courts, which are certainly in need of further guidance.

Despite what some might describe as clear guidance by this Court in *Heller* and its progeny regarding how to assess which types of firearms can be banned, some courts ignore this guidance in favor of balancing tests and other approaches. While some circuit court judges understood *Heller* to be straightforward, *see, e.g., Heller v. District of Columbia*, 670 F.3d 1244, 1276 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) (*Heller II*), other circuit courts are frankly befuddled by how to apply *Heller* and its progeny. *See, e.g., Kolbe v. Hogan*, 849 F.3d 114, 137 (4th Cir. 2017).

Amici submit this brief to make two broad points. *First*, the semiautomatic rifles are clearly “arms” under the plain text of the Second Amendment and easily pass the common use test as currently understood. That test is useful and important and shouldn’t be discarded, but it is also incomplete. The test is still unclear about how it is to be applied. Is it as simple as counting the number of owners or the total number of

a type of firearm? At what level of generality is it to be applied—*e.g.* is the relevant category “AR-15 platform and similar semiautomatic rifles”—as asked by the question presented in this case—or the broader category “semiautomatic rifles”? The test also has difficulties dealing with both new, as-yet-uncommon technologies as well as older technologies that have long been regulated or banned and thus are uncommon.

Without further constitutionally faithful guidance from this Court, lower courts are likely to continue using rhetorical legerdemain to uphold future restrictions on Second Amendment rights. There are future questions coming that will address firearm accessories, ammunition types, new technologies, and long-regulated guns and accessories—such as suppressors (often called “silencers”) and short-barreled rifles and shotguns—that are not easily solved by the common use test in its current form. To ask one question: should short-barreled shotguns be viewed as a category itself, and therefore not in common use due to nearly a century of regulation, or as a subset of shotguns, therefore certainly in common use as this Court has defined it?

Second, AR-15s and similar rifles are normal semiautomatic rifles with characteristics that make them more useful for law-abiding activities. The semiautomatic rifles at issue have been overwhelmingly purchased by law-abiding citizens for self-defense, target shooting, hunting, and defense against oppressive government. In fact, nationwide, there are more AR-15s and similar style rifles in private hands than there are Ford F-Series pickups on the streets, one of the most popular vehicles in the country. *Kolbe v. Hogan*, 813 F.3d 160, 174 (4th Cir. 2016) rev’d, 849 F.3d 114 (4th

Cir. 2017) (en banc). And almost none of those rifles are being used for crime.

No one had heard the term “assault weapon” to describe the AR-15 when the gun was introduced in the 1960s. Stephen P. Halbrook, *America’s Rifle: The Case for the AR-15* 14–15 (2022). The term is often linked to a 1988 paper by gun-control activist Josh Sugarmann of the Violence Policy Center. Sugarmann felt the incendiary term, coupled with public ignorance, could increase support for banning the weapons: “The weapons’ menacing looks, coupled with the public’s confusion over fully automatic machine guns versus semi-automatic assault weapons—anything that looks like a machine gun is assumed to be a machine gun—can only increase the chance of public support for restrictions on these weapons.” Aaron Blake, “Is it fair to call them ‘assault weapons?’” *Wash. Post* (Jan. 17, 2013).² Inventing a term like “assault weapon” and then applying it to an *ad hoc* group of weapons does not change the Second Amendment’s scope.

But this case isn’t really about “assault weapons,” it’s about normal semiautomatic guns that are among the most commonly owned types of guns in the country. While parties in this case, courts, scholars, and commentators have been debating the term “assault weapons” for decades, the rhetorical gamesmanship here matters. The First Amendment would be completely toothless if legislatures were freely allowed to pass “bad speech” bills—or even “assault speech” bills—and courts took the legislature’s characterization as facially valid. Similarly, the Second Amendment and the decisions in *Heller*, *McDonald*, *Caetano*,

² <https://perma.cc/8HCC-FZGK>.

and *Bruen* require more than trusting the legislature that such weapons are dangerous “assault weapons.”

Finally, the military’s choice of weapons does not, by itself, affect the scope of the Second Amendment. The military’s adopted version of the AR-15—the M16—is significantly and importantly different from the arms at issue here, and why the military chooses a particular small arm depends on numerous factors that, nevertheless, do not affect whether a type of firearm is in common use for lawful purposes.

There is an inescapable reality around firearms: the characteristics that make a gun effective for lawful uses are often the same characteristics that make it effective for harmful and criminal uses. Just as there is no such thing as a printing press that is only good for printing unprotected obscene literature or true threats, no commonly used gun is good only for violence and mayhem.

Protecting firearms in common use for lawful purposes is as important to the Second Amendment as protecting commonly used printing presses is to the First Amendment. People have chosen these tools as an effective way to exercise the natural rights protected by the Constitution. This Court should not supplant its own judgment about what common firearms people should be allowed to use to pursue lawful ends, nor should it allow legislatures to do the same. Those decisions were made when the Second Amendment was ratified.

ARGUMENT

I. THE SECOND AMENDMENT PROTECTS BEARABLE AND KEEPABLE “ARMS,” A TERM WHICH IS DEFINED TEXTUALLY BEFORE APPLYING THE COMMON USE/DANGEROUS AND UNUSUAL TEST

Cook County and Connecticut have banned commonly owned firearms that are presumptively protected by the Second Amendment as “Arms.” 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. Those bans are unconstitutional under the standards articulated by this Court.

Yet the Seventh Circuit below adopted a convoluted and simplistic form of reasoning that ignores the plain-text approach to interpreting the meaning of “Arms.” The lower court in *Viramontes* relied on *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023), a decision that put significant weight on the fact that both machineguns and portable nuclear weapons are banned or heavily regulated. *Id.* at 1193. Thus, through this reasoning, the court felt it had the right to reinterpret the meaning of “Arms” in the Second Amendment to avoid the question of whether a given firearm is “commonly used” for lawful purposes.

This type of reasoning could be termed the “inch-mile fallacy.” The Seventh Circuit believes that if it can find an inch—*i.e.* a type of bearable arm like a machinegun or nuclear weapon that can be arguably banned or regulated—then it can take a mile. The “mile” here is the free-form analysis the court engaged in to determine that some of the most commonly owned

arms in the country are not, in fact, “Arms.” In the words of the court, plaintiffs “have the burden of showing that the weapons addressed in the pertinent legislation are Arms that ordinary people would keep at home for self-defense[.]” *Id.* at 1194. That millions of ordinary people do in fact keep the arms at home for self-defense is apparently insufficient.

But in *Heller* and *Bruen* the Court adopted a text-first approach that is informed by history and tradition. *Heller*, 554 U.S. at 582. “[W]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022); *id.* at 31–33. Thus, under *Heller* and *Bruen*, a court should first look to whether something is an “arm,” and subsequent analysis looks to common use and whether such regulations are “consistent with the Nation’s historical tradition of firearm regulation.” *Id.* at 24.

Unlike some difficult-to-interpret constitutional terms, the definition of bearable “arms” is straightforward. For example, in the context of the full text of the Second Amendment, the term does not include F-16 fighter jets because no one can “bear” a fighter jet. And the amendment’s definition of “Arms” is no more restricted to 18th-century weapons than the First Amendment’s definition of “speech” is restricted to parchment, town criers, and movable-type printing. *Caetano*, 577 U.S. at 411–12 (2016) (per curiam) (stun guns). The relevant question is whether a given “arm” is a bearable “modern instrument[] that facilitate[s] armed self-defense.” *Id.* If the answer to that question is “yes,” then a court should presume that the arm is protected and look to whether it is in common use for

lawful purposes to determine whether the arm can nevertheless be banned.

II. LOWER COURTS OFTEN MISAPPLY PAST SECOND AMENDMENT DECISIONS; THEREFORE THIS COURT SHOULD CLARIFY THE COMMON USE TEST ARTICULATED IN *HELLER* AND SOLIDIFIED IN *CAETANO*

A. Understanding How Lower Courts Have Misread and Misapplied *Heller*, *McDonald*, *Caetano*, and *Bruen* Can Help this Court Rectify the Confusion

In the wake of *Heller*, *Caetano*, and *Bruen*, lower courts have struggled to apply the Second Amendment to bans on entire classes of weapons. Although *Bruen* articulated the “test, history, and tradition” test for laws that burden Second Amendment rights, *Bruen*, 597 U.S. at 79 (Kavanaugh, J., concurring), it’s still unclear to some courts how this framework applies to bans on different types of firearms. That makes sense because *Bruen* concerned a regulation on carrying firearms rather than a prohibition on a class of firearms. *Id.* at 11–16. Nevertheless, some courts have grabbed onto language in *Bruen* to ratify prohibitions on entire classes of firearms in common use. *Bruen* invalidated New York’s discretionary permitting system for carrying handguns, but the Court acknowledged that “other cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach.” *Id.* at 27. This passage has been seized on by many courts using a “nuanced approach” to uphold bans on “assault weapons.” *See, e.g., Herrera v. Raoul*, 670 F. Supp. 3d 665, 675 (N.D. Ill. 2023) (“Here, the City Code, County Code, and Illinois Act

similarly responded to ‘dramatic technological changes’ and ‘unprecedented societal concerns’ of increasing mass shootings by regulating the sale of weapons and magazines used to perpetrate them.”).

The district court in Mr. Grant’s case purported to apply the common use test and modified the Second Circuit’s pre-*Bruen* holding in *Cuomo* to be abrogated by *Bruen* “to the extent it treated common use as a solely statistical question.” *Nat’l Ass’n for Gun Rights v. Lamont*, 685 F. Supp. 3d 63, 87 (D. Conn. 2023); see also *N.Y. State Rifle & Pistol Ass’n v. Cuomo*, 804 F.3d 242 (2d Cir. 2015). The district court then concluded that “*Bruen* requires the Court to determine both *how and why* the firearms are commonly used and possessed, whether it be for self-defense or for some unlawful end that makes the weapons dangerous and unusual[.]” 685 F. Supp. at 88 (emphasis added). That reasoning is starkly at odds with this Court’s decision in *Heller*, which highlighted self-defense but did not confine the inquiry to a “how and why” certain common firearms are possessed. *Heller*, 554 U.S. at 630–35.

On appeal, the Second Circuit then mostly endorsed this logic and erroneously concluded that this Court’s prior decisions in *Heller* and *Bruen* “do not hold that the Second Amendment *necessarily* protects *all* weapons in common use.” *Nat’l Ass’n for Gun Rights v. Lamont*, 153 F.4th 213, 233 (2d Cir. 2025). The panel then invoked the Fourth Circuit’s reasoning in *Bianchi* that criticized reducing the common use test to a “‘trivial counting exercise’ that would ‘lead[] to absurd consequences’ where unusually dangerous arms like the M-16 or ‘the W54 nuclear warhead’ can ‘gain constitutional protection merely because [they] become[] popular before the government can

sufficiently regulate [them].” *Id.* at 233 (quoting *Bianchi v. Brown*, 111 F.4th 438, 460 (4th Cir. 2024)).

This is another example of the “inch-mile” fallacy. Judges identify some weapons that are heavily regulated or banned—everything from a machinegun to a nuclear warhead—and then conclude, despite this Court’s precedents, that something akin to a balancing test is still required. Yet, as Justice Thomas argued, dissenting from the denial of certiorari in *Bianchi*, “[t]his reasoning illustrates why the scope of the right to bear arms cannot turn on judicial speculation about the American people’s self-defense needs,” and correctly pointing out that nuclear warheads could never “become a *common* means of self-defense.” *Snope v. Brown*, 145 S. Ct. 1534, 1538 (2024) (Thomas, J., dissenting from denial of certiorari) (emphasis original).

Ultimately, the Second Circuit below applied a balancing test in all but name and justified it by *Bruen*’s reference to “unprecedented societal concerns” and “dramatic technological changes.” The court argued that, “as technology has facilitated an increase in mass shootings, mass shootings have become the object of widespread fear and societal concern.” 153 F.4th 213, 236–37. The Fourth Circuit in *Bianchi* did something similar, nodding at *Bruen* and smuggling in a balancing test by calling it part of “tradition.” That court said a lot in this simple sentence: “Our nation has a *strong tradition* of regulating excessively dangerous weapons once it becomes clear that they are *exacting an inordinate toll on public safety and societal wellbeing*.” *Bianchi v. Brown*, 111 F.4th 438, 446 (4th Cir. 2024) (emphasis added). This sentence essentially says, “there’s a strong tradition banning some weapons like portable nuclear warheads, so we’re going to do what the

Supreme Court has said we shouldn't do and apply a balancing test."

In the *Viramontes* case, the Seventh Circuit held that "*Bevis* upheld the constitutionality of this very ordinance, at least preliminarily," so the court did not disturb its reasoning in that case. Vir.Pet.App.5a. In *Bevis*, the court followed its 2015 decision in *Friedman v. City of Highland Park*, 784 F.3d 406 (7th Cir. 2015). Despite this Court's intervening decision in *Bruen*, the *Bevis* court found *Friedman* "as basically compatible with *Bruen*, insofar as *Friedman* anticipated the need to rest the analysis on history, not on a free-form balancing test." *Bevis*, 85 F.4th at 1189.

But this is an inaccurate characterization of *Friedman*. The *Friedman* majority purported to look at the "historical tradition" of firearms regulation, invoked considerations of the militia and "military-grade" arms, and concluded that, "[i]f it has no other effect," banning common semiautomatic rifles "may increase the public's sense of safety." *Friedman*, 784 F.3d at 408, 409, 412. Rather than concluding that "[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 634–35, the *Friedman* majority endorsed legislative balancing of fundamental Second Amendment rights and judicial approval of that balancing. "[W]hen there is no definitive constitutional rule," the court wrote, "matters are left to the legislative process." *Friedman*, 784 F.3d at 412. But there is a constitutional rule, which apparently needs to be clarified and solidified. As Justice Thomas said dissenting from denial of certiorari in *Friedman*, the court "ultimately upheld a

ban on many common semiautomatic firearms based on speculation about the law’s potential policy benefit.” *Friedman v. City of Highland Park*, 577 U.S. 1039, 1042 (2015) (Thomas, J., dissenting from denial of certiorari).

B. The Common Use Test Needs Clarification

In his dissent in *Heller*, Justice Breyer raised questions about the common use test that proved to be somewhat prescient. He asked why the majority was willing to concede that machineguns were not in common use but, “[a]ccording to the majority’s reasoning, if Congress and the States lift restrictions on the possession and use of machineguns, and people buy machineguns to protect their homes, the Court will have to reverse course and find that the Second Amendment *does*, in fact, protect the individual self-defense-related right to possess a machinegun.” *Heller*, 554 U.S. at 721 (Breyer, J., dissenting). Similar questions were raised in *Friedman*, where the Seventh Circuit observed that “relying on how common a weapon is at the time of litigation would be circular to boot.” *Friedman*, 784 F.3d at 409. The panel observed that “[m]achine guns aren’t commonly owned for lawful purposes today because they are illegal; semi-automatic weapons with large-capacity magazines are owned more commonly because, until recently (in some jurisdictions), they have been legal.” *Id.*

Although this Court in *Caetano* further clarified that arms must be “*both dangerous and unusual*,” 577 U.S. at 417 (Alito, J., concurring in the judgment) (emphasis original), and instructed courts to look to text, history, and tradition in *Bruen*, lower courts are still understandably confused by inevitable questions. How common should a given firearm be? What level of

generality should the question be asked—*i.e.* should courts look at all rifles, all semiautomatic rifles, or perhaps all semiautomatic rifles with a pistol grip? And the idea of “dangerousness” has vexed some courts for lacking proper definition. The Second Circuit below observed that “[i]t is axiomatic that to some degree all firearms are ‘dangerous,’” so thus a modifier is needed and “*unusually dangerous* is the obvious fit[.]” *Lamont*, 153 F.4th at 233, 234.

These issues will remain until the common use test is clarified. While the common use test “automatically and necessarily protects existing technology and addresses any contemporary societal concerns stemming from such modern technology,” there are still questions about long-regulated firearms and accessories. Mark W. Smith, *What Part of “In Common Use” Don’t You Understand?: How Courts Have Defied Heller in Arms-Ban-Cases—Again, Per Curiam*, Harv. J.L. & Pub. Pol’y 14 (Sep. 27, 2023).

The National Firearms Act of 1934 (NFA) raises such questions. The NFA applies heightened regulations and taxes to an assortment of firearms and accessories chosen for their purported unique dangerousness and susceptibility to use by criminals. *See generally* Joseph G. Greenlee, *The Tradition of Short-Barreled Rifle Use & Regulation in America*, 25 Wyo. L. Rev. 111 (2025); 26 U.S.C. § 5801 *et seq.* Firearms covered by the NFA include machineguns, short-barreled rifles (SBRs) and short-barreled shotguns (SBSs). The Act also covers suppressors, an accessory often called a “silencer.” Because NFA weapons are among the most heavily regulated private arms in the country, they are not as commonly owned as they would be in the absence of the NFA.

Yet the history of the Act shows that the choice of which weapons to include was somewhat arbitrary and not informed by modern interpretations of the Second Amendment handed down by this Court. This is especially true of SBRs and SBSs, which had long been commonly used for lawful purposes before the NFA and often function identically to millions of commonly used arms, including the semiautomatic rifles the Court is considering here. Greenlee, *supra*, at 113–27 (describing the long history of common use of SBRs).

Moreover, the inclusion of SBRs and SBSs in the NFA seems to have been almost an afterthought, if not an oversight. As originally proposed, the NFA would have included pistols in the tax and registration requirements. *Id.* at 130–36. The inclusion of SBSs, and eventually SBRs, came from the same perceived dangers of concealability as pistols. *Id.* As Attorney General Cummings said in testimony, the bill defined “firearms” as “a pistol, revolver, shotgun having a barrel less than sixteen inches in length, or any other firearm capable of being concealed on the person, a muffler or silencer therefor, or a machine gun.” *National Firearms Act: Hearings on H.R. 9066 Before the H. Comm. on Ways & Means*, 73d Cong. 1, 6 (1934). Dangerousness was linked by lawmakers to a firearm’s capability of “being concealed on the person.” *Id.* at 88 (statement of Joseph B. Keenan, Asst. Att’y Gen. of the United States). Adding SBRs was suggested by Rep. Knutson of Minnesota, who asked, “General, would there be any objection, on page 1, line 4, after the word ‘shotgun’ to add the words ‘or rifle’ having a barrel less than 18 inches?” *Id.* at 13.

But pistols were removed from the draft NFA after significant outcry. Greenlee, *supra*, at 134–35. The

focus was still on guns that were thought to be uniquely used by gangsters like “Dillinger and men of his type.” *National Firearms Act: Hearings, supra*, at 49 (statement of Rep. James A. Frear, Member, H. Comm. on Ways & Means). Despite removing pistols, SBRs and SBSs were left in and remain heavily regulated to this day.

Are SBRs and SBSs in “common use”? The ATF reported that, in 2024, there were 870,286 registered SBRs and 165,180 registered SBSs. ATF, *Firearms Commerce in the United States: Statistical Update 2024* at 12 (2024).³ It’s unclear whether a strictly applied common use test would view these weapons as sufficiently “common.” SBSs and SBRs may be by some definition “unusual” due to nearly a century of heavy regulation, but they are not dangerous compared to widely used guns, including the semiautomatic rifles at issue here.

III. THE GUNS TARGETED BY COOK COUNTY AND CONNECTICUT’S LAWS ARE STANDARD SEMIAUTOMATIC RIFLES THAT ARE COMMONLY USED FOR LAWFUL PURPOSES

Because the firearms that are banned here are arms that are “presumptively protect[ed]” by the Second Amendment, *Bruen*, 597 U.S. at 24, the Court should next look to whether such weapons are

³ <https://www.atf.gov/media/22706/download>.

“typically possessed by law-abiding citizens for lawful purposes.” *Heller*, 554 U.S. at 625.

**A. The Semiautomatic Rifles at Issue Here
Are Used by Millions of Americans for
Lawful Purposes**

It has been recently estimated that 22.1 million Americans own an AR-15, and that there are approximately 60 million AR-15s and similar rifles in private hands. William English, *2026 National Firearms Survey: Results from the Second Wave, Including Current Ownership of AR-15 Style Rifles, Other “Assault Weapons,” and Magazines that Hold More than 10 Rounds*, Geo. Univ. Rsch. Paper 37 (Aug. 24, 2026).⁴ As mentioned *supra*, that’s more than the number of Ford F-Series pickup trucks on the road.

Lawful users of AR-15s choose their rifles for many of the same reasons drivers choose Ford pickups: not to commit mayhem or break the law—and both have many deadly uses—but to reliably accomplish the lawful task it is designed to perform. An unreliable truck that is uncomfortable to the driver and can’t go in a straight line is barely useful for transportation, and an unreliable rifle that is cumbersome and inaccurate is barely useful to hunt, sport shoot, or defend oneself against crime and possibly oppressive governments. Such inadequate trucks or firearms could be common, but they wouldn’t be *commonly used* to accomplish lawful tasks.

AR-15s and similar rifles have different characteristics that appeal to different users, but all are semiautomatic rifles at heart. The weapons’ “bearability” is a significant reason why so many people prefer to use them for lawful purposes rather than other, more

⁴ <https://tinyurl.com/yy77swyv>.

cumbersome guns. Halbrook, *supra*, at 8 (“They are particularly attractive for women and older individuals because of their light weight and ease of use, particularly in comparison to shotguns.”). The average “starting weight” for an unloaded AR-15 is around 6.4 lbs—7 lbs with a loaded 30-round magazine. Everyday Marksman, “Deal With Compromise: AR-15 Weight, Capability, and Balance” (Feb. 8, 2022).⁵ By contrast, an M1 Garand, the semiautomatic rifle that was the standard-issue weapon for American troops in World War II—a literal “weapon of war”—weighs 9.5 lbs unloaded and around 11 lbs loaded. *Id.*

“The overwhelming majority of citizens who own and use such rifles do so for lawful purposes, including self-defense and target shooting.” *Friedman*, 577 U.S. at 1042 (Thomas, J., dissenting from denial of certiorari). Nevertheless, even though nearly every AR-15 and similar semiautomatic rifle that exists has never been nor will be involved in a crime, some describe these weapons with language usually reserved for deadly diseases or nuclear weapons. Illinois Governor J.B. Pritzker claimed that the state’s banned guns are “weapons of war” and “mass-killing machines.” Amanda Vinicky, “Which Guns are Covered by Illinois’ Assault Weapons Ban?,” WTTW.com (Feb. 16, 2023).⁶ Illinois Senate President Don Harmon said the law is “against weapons whose *only intent* is to eviscerate other human beings.” Press Release, “Gov. Pritzker Signs Legislation Banning Assault Weapons and High-Capacity Magazines,” Illinois.gov (Jan. 10, 2023) (emphasis added).⁷

⁵ <https://perma.cc/B8Y4-JHFC>.

⁶ <https://tinyurl.com/2kmfyhcs>.

⁷ <https://tinyurl.com/5n8yxme6>.

Those claims would come as a surprise to the estimated 360,000 people who defend themselves with rifles in any given year. English, *2026 National Firearms Survey*, *supra*, at 16 (estimating 2.2 million defensive gun uses per year with 16.4% of instances involving a rifle). Of the estimated 22.1 million people who own an AR-15 style rifle, 83 percent say personal defense or home defense is the reason. *Id.* at 37. Yet, according to some, millions of Americans are making an irrational choice by choosing a “mass killing machine” for personal defense.

Furthermore, a significant number of police departments equip their officers with AR-15s and similar rifles for the lawful defense of self and others. Police Executive Research Forum, *Police Department Service Weapon Survey 2* (2013), (“Ninety-three percent of responding agencies equip some of their officers with rifles or assault weapons.”).⁸ A Massachusetts police training manual describes the utility of such weapons, which are used “due to the increased accuracy that the rifle afforded over the pistol and the shotgun.” Massachusetts Municipal Police Training Committee, *Basic Firearms Instructor Course: Patrol Rifle 3* (Sept. 2007).⁹ The weapons are useful because the department “found most officers have difficulty hitting the MPTC Q target with regularity using their service pistol at distances further than the 10-yard line,” and when you “factor in the stress level of a life and death encounter with rapidly evolving circumstances—the actual hit ratio drops even further.” *Id.* Ordinary citizens who aren’t as extensively trained would of course suffer from similar difficulties. Moreover, rather than being a distinctly powerful rifle, “the most popular

⁸ <https://perma.cc/5AMT-WNGN>.

⁹ <https://perma.cc/6HMQ-QS7W>.

patrol rifle round, the 5.56mm NATO (.223 Remington) will penetrate fewer walls than service pistol rounds or 12-gauge slugs,” thus lowering the possibility of accidents. *Id.* In short, “[t]he rifle is a superior tool” for law enforcement officers in many situations. *Id.* Law-abiding citizens use the rifles for the same purposes.

In short, AR-15s and similar rifles are in common use for lawful purposes. Any gun can be misused for horrible crimes. The misuse of a constitutional right by some does not negate the constitutional rights of others. But misuse and criminal use of semiautomatic guns is atypical. The question the Supreme Court has directed courts to ask is whether the weapons are “*typically* possessed by law-abiding citizens for lawful purposes.” *Heller*, 554 U.S. at 625 (emphasis added). The answer is clearly yes.

B. The Arms Prohibited by Cook County and Connecticut Are Standard Semiautomatic Arms with Characteristics that Make Them More Effective for Lawful Uses

A type of weapon that outnumbered one of the most popular cars in the country should clearly be considered in “common use.” Yet the proper category for constitutional analysis is not simply so-called “assault weapons” or “modern sporting rifles”—or whatever rhetoric is used to define the category—but whether the prohibited weapons have characteristics that make them uniquely suitable for unlawful purposes and unsuitable for lawful purposes.

While the term “assault weapon” is a gun-control advocate’s rhetorical invention, *Stenberg v. Carhart*, 530 U.S. 914, 1001 n.16 (2000) (Thomas, J., dissenting) (citation omitted), *amici* acknowledge that other terms

like “modern sporting rifle” are also rhetorical inventions used to counter the intentionally ominous sounding “assault weapon.” The important question for Second Amendment analysis is whether such terms articulate a constitutionally relevant category of firearms that are dangerous and unusual and not in common use for lawful purposes. Mere rhetoric can’t trump constitutional text or the Supreme Court’s interpretation of that text. To determine whether a certain firearm is commonly used for lawful purposes, the firearm should be properly defined with relevant characteristics.

For example, a semiautomatic rifle that is painted hot pink would not be considered “in common use” if the color is regarded as a salient feature (presumably, relatively few people own hot pink semiautomatic rifles). Yet a ban on a certain color of weapon should not survive even rational basis review. This only underscores the obvious fact that the function of any feature singled out for prohibition is relevant to analyzing a law. In other words, the Second Amendment prohibits the government from inventing a category of weapons—*e.g.* “hot pink semiautomatic rifles”—and then declaring such weapons are dangerous and unusual “assault weapons” that are not in common use. More is required to clear the Second Amendment’s hurdle.

The firearms prohibitions considered in this case are not so cosmetic as to ban certain colors of weapons, yet the prohibitions focus on characteristics that are either mostly cosmetic or that make the gun more effective for lawful uses. As argued in the Petitioners’ merits brief, both Cook County and Connecticut’s laws are substantially similar and ban a variety of rifles that are typified by the AR-15. *Pet. Br.* at 14–20. For example, the laws ban AR-15-style rifles that have a

“pistol grip” for the trigger hand or a forward pistol grip that “can be held by the non-trigger hand.” Conn. Gen. Stat. § 53-202a(1)(E); C.C. Ord. § 54- 211, *Assault weapon* ¶ (1). Such grips help the shooter pull the weapon comfortably against his/her shoulder for better control. Halbrook, *supra*, at 14. Any law-abiding gun owner cares about accuracy because shooting an inaccurate gun is both dangerous to others and relatively ineffective for law-abiding uses. The odd implication here is that law-abiding citizens should apparently have guns that are harder to control, while criminals evidently prefer more accurate guns. Similarly, both sets of laws ban AR-15-style rifles with folding or telescoping stocks that allow users to better adjust the weapon to their height. It’s common sense that a short person shooting an exceptionally long gun will not be able to control the gun as well as a gun more tailored to her size. And Cook County bans AR-15-style rifles that have barrel shrouds, which allow “the bearer to hold the firearm with the non-trigger hand without being burned.” C.C. Ord. § 54- 211, *Assault weapon* ¶ (1). This is a particularly strange acknowledgement that a law-abiding gun owner who does not want to get burned is apparently preferring a characteristic that only criminals would want.

It’s an interesting world Cook County and Connecticut want to bring about: a world where criminals who acquire and use the banned guns are better equipped with more accurate guns (that don’t burn them) than law-abiding citizens. If a law-abiding citizen diligently obeys the bans, they will be deprived of more accurate and effective weapons for authorized purposes like self-defense, hunting, target shooting, and defense against oppressive government. A criminal who chooses to disobey the ban—as a criminal is more

likely to do—will have a more effective weapon for both lawful and criminal activities.

IV. THE MILITARY’S USE OF ANALOGS TO “ASSAULT WEAPONS” IS CONSTITUTIONALLY IRRELEVANT

The Seventh Circuit below applied its decision in *Bevis* to this case. Vir.Pet.App.4a-5a. In *Bevis*, the panel engaged in a backdoor means/end analysis by highlighting the “fact” that so-called “assault weapons” are “more like machineguns and military-grade weaponry than they are like the many different types of firearms used for individual self-defense (or so the legislature was entitled to conclude).” *Bevis*, 85 F.4th at 1195. Aside from the fact that the Second Amendment does not “entitle [the legislature] to conclude” that commonly used semiautomatic rifles can be banned, as discussed in Section III *supra*, the court also erroneously concluded that “the AR-15 is almost the same gun as the M16.” *Id.*

While this claim is false as applied to the AR-15s before the Court, even if were true, the Second Amendment protects a civilian’s right to own bearable arms that are also used by the military. “In the colonial and revolutionary era, [small arms] weapons used by militiamen and weapons used in defense of person and home were one and the same.” *Heller*, 554 U.S. at 624–25 (internal quotation marks omitted) (quoting *State v. Kessler*, 614 P.2d 94, 98 (Or. 1980)). But many courts have highlighted the military’s use of some semiautomatic rifles, and they have used terms like “military-grade” as an argumentative trump card. *Friedman*, 784 F.3d at 409. But whether the military chooses to use a given arm is constitutionally irrelevant.

First, it would be odd if the military's adoption of a particular bearable arm changed the constitutional protection of that arm for civilians. Such a theory would move arms in and out of constitutional protection based on the complexities of military procurement and strategy. Moreover, the military adopts small arms for a variety of reasons that are not entirely related to lethality.

Highlighting the military's use of analogs to civilian-available "assault weapons" invokes an implicit assumption that the military primarily chooses a small arm based on its ability to kill as many people as quickly as possible. This is wrong. The military considers numerous factors in choosing a weapon, such as "mission adaptability, weight, reliability, maintenance, and cost." E. Gregory Wallace, "*Assault Weapon*" *Lethality*, 88 Tenn. L. Rev 1, 7–8 (2020). In fact, those characteristics are not dissimilar to why a civilian may prefer an "assault weapon" for self-defense and sporting reasons.

What makes a particular gun more or less lethal depends on a variety of factors. The M16 is not the most effective known small arm for efficiently killing large numbers of enemy troops. *Id.* at 8–10. Some ammunition, such as the 5.56mm NATO rounds used by the M16 and M4—which is identical to the .223 Remington round used by many modern sporting rifles—is preferred because it is less lethal per shot but lighter, thus allowing troops to carry more rounds. *Id.* at 8. A bigger round—such as the .30-06 round used by the M1 Garand in World War II—could be more lethal per shot but also much heavier for soldiers to carry around, and how much weight a soldier carries is an important factor. *Id.* Which gun is more "lethal"?

Private citizen Aaron Dorr, the political director of *amicus* the Missouri Firearms Coalition, owns an M1 Garand that was sold into the private market by the Civilian Marksmanship Program (CMP), which sells surplus military arms.¹⁰ In fact, the CMP’s sales program would be constitutionally suspect if “military-grade” carried independent constitutional significance. Moreover, is it constitutionally relevant that Dorr’s rifle—which General Patton described as the “greatest battle implement ever devised”¹¹—is no longer regularly used by the military? Of course not.

In fact, many have criticized the U.S. military’s use of the M16 and M4 rifles because the rifles are not lethal enough. *See, e.g.*, Joseph P. Avery, *An Army Outgunned: Physics Demands a New Basic Combat Weapon*, *Mil. Rev.*, July–Aug. 2012 (“Despite an increasing portfolio of enemies that are flexible, well-armed, and robust, our Army, Marine Corps, and special operations forces have been stuck for decades hauling assault rifles firing NATO 5.56x45 millimeter (mm) (.223 caliber) varmint rounds over a half-century old.”).¹² During the Battle of Mogadishu in 1993, famously recounted in the book and movie *Black Hawk Down*, soldiers complained that the 5.56mm rounds used—which are, again, identical to the .223 Remington civilian round—lacked stopping power. Shooting someone “was like sticking somebody with an ice pick. The bullet made a small, clean hole, and unless it happened to hit the heart or spine, it wasn’t enough to stop

¹⁰“Sales and Services,” *thecmp.org*, https://thecmp.org/cmp_sales/ (last visited Aug. 30, 2026).

¹¹ T. Logan Metesh, “When the Garand Became the Greatest Battle Implement,” *HighCaliberHistory.com*, (Mar. 1, 2022), <https://shorturl.at/atLN4>.

¹² <https://tinyurl.com/54ehupba>.

a man in his tracks. [The soldier] felt like he had to hit a guy five or six times just to get his attention.” Mark Bowden, *Black Hawk Down: A Story of Modern War* 208 (1999).

Recent studies and surveys have shown that many servicemen and women request ammunition with more stopping power and lethality. Wallace, “*Assault Weapon*” *Lethality*, *supra*, at 11. A 2006 test by the U.S. Joint Service Wound Ballistics Integrated Product Team concluded that a 6.8mm round is more effective than the 5.56mm round, and “[t]he next generation of combat rifles likely will use a more effective intermediate caliber round between 6.5mm and 7.0mm rather than the smaller 5.56mm round.” *Id.* Yet even if the military moves away from civilian variants like AR-15s, that shouldn’t affect the constitutional status of so-called “assault weapons.”

This is not to say that semiautomatic rifles such as AR-15 are not lethal, as all guns are. The relevant question is whether they have unique traits that make them less suitable for lawful uses than other semiautomatic civilian rifles that are not banned. The military’s choice to use a variant of these guns shouldn’t be regarded as demonstrating a level of danger such that the guns can be banned for civilian use.

Moreover, the difference between the military’s M16 and a civilian’s AR-15 is not merely incidental to the rifle’s use in military contexts. E. Gregory Wallace, “*Assault Weapon*” *Myths*, 43 S. Ill. U. L.J. 193, 205–06 (2018). That civilian-available semiautomatic rifles share functionality with military rifles—namely semiautomatic fire—does not make them “weapons of war.” “[S]emi-automatic fire is useful in law enforcement and military situations because it is useful in *all*

legitimate shooting applications.” Dennis Chapman, *Firearms Chimera: The Counter Productive Campaign to Ban the AR-15 Rifle*, 8 Belmont L. Rev. 191, 205 (2020) (emphasis original). The crucial difference is selective-fire capability (the ability to choose fully automatic or burst fire), and that capability “is the only significant uniquely military firearms feature.” *Id.* Automatic fire creates unique functionality for military applications because it “enables an attacker to direct such a high volume of fire at that enemy that he is suppressed—that is to say, the intensity of the attacker’s fire materially degrades the defender’s ability to return effective fire or to maneuver to counter the attack.” *Id.* at 206 Focusing on actual differences in firing capability is a better argument that such guns are uniquely suited for military applications and therefore can be more heavily regulated in civilian hands, as they are under the National Firearms Act.¹³ Such an argument would at least identify a unique capability of the military’s rifles that is not a trait—*e.g.* semiautomatic fire—shared by hundreds of millions of guns in private hands.

V. “ASSAULT WEAPONS” ARE NOT “DANGEROUS AND UNUSUAL” COMPARED TO OTHER FIREARMS IN COMMON USE

As described above, this Court has been clear that weapons that are commonly owned by law-abiding citizens for lawful purposes cannot be banned under the Second Amendment. Weapons that can be banned or heavily regulated are those that are “dangerous *and*

¹³ *Amici* do not concede the constitutionality of the National Firearms Act. But identifying a unique, meaningful difference between the military’s firearms and civilian-owned analogs is a better argument than what the lower courts proposed here.

unusual,” which also means they are not in common use for law-abiding purposes. *Caetano*, 577 U.S. at 417. AR-15s and similar rifles are normal, commonly owned semiautomatic firearms that are not comparatively dangerous or unusual.

Semiautomatic firearms discharge a single shot per trigger pull and the next round loads into the chamber without any intervening action—such as cocking—by the user. The Seventh Circuit argued that there is no meaningful difference between a fully automatic M16 and a semiautomatic AR-15. The M16, it claims, can fire 700 rounds per minute, “while the AR-15 has a semiautomatic rate of ‘only’ 300 rounds per minute.” *Bevis*, 85 F.4th at 1196; *see also Kolbe*, 849 F.3d at 136 (claiming that the firing rate of the AR-15 is “nearly identical” to a fully automatic M16). The *Bevis* court also cited the possibility of attaching a “bump stock” to an AR-15 as another reason to ban them. *Id.* But it is bizarre to cite an optional firearms accessory—whether legal or illegal—as a reason to ban the firearm itself. Someone could illegally “saw off” a shotgun, yet that is not a reason to prohibit full-length shotguns. Whether certain accessories or alterations of a gun are lawful is a different question than whether an entire category of firearms is commonly used for lawful purposes.

Moreover, the Seventh Circuit’s claim about firing rates are false and don’t stand up to cursory scrutiny. To fire an AR-15 at 300 rounds in a minute—as a fully automatic M16 can easily do—a shooter would have to pull the trigger *five to eight times a second for 60 seconds*, which would require significant strength and endurance. Wallace, “*Assault Weapon*” *Lethality*, *supra*, at 20. Rather than being uniquely dangerous, “[t]here

is little if any difference between the rates of fire for the semiautomatic AR-15 and a semiautomatic handgun[.]” the weapons that were resoundingly protected by this Court in *Heller*. *Id.* at 25.

Nor are the rounds fired from an AR-15 and similar rifles dangerous compared to the rounds fired by other commonly owned weapons, despite numerous claims to the contrary. *See, e.g.*, Glenn Kessler, “Biden bungled talking point on the muzzle velocity of AR-15s,” *Wash. Post* (Sept. 2, 2022) (noting that President Biden was “clearly wrong” in his claim that the muzzle velocity of an AR-15 is five times faster than any other gun).¹⁴ In fact, the round that most AR-15s fire, the .223 Remington (also known as 5.56 mm), is considered by many states to be too weak to hunt deer because the round will only cruelly injure rather than kill the animal. Wallace, “*Assault Weapon*” *Lethality*, *supra*, at 54. And, as discussed *supra*, many military analysts complain that the M16 is underpowered because it fires a variant of “a commercial Remington rifle cartridge that had been designed to kill small varmints.” Robert H. Scales, “Gun Trouble,” *Atlantic* (Jan./Feb. 2015).¹⁵

When looking at crime rates, AR-15s are also not comparatively dangerous. The recently updated National Firearms Survey found that 26.4 million adults own at least one rifle commonly described as an “assault weapon,” and there are approximately a total of 40 million AR-15-type rifles and 20 million similarly styled rifles in private hands. English, *2026 National Firearms Survey*, *supra*, at 37. The same study estimates that Americans own in total about 461 million

¹⁴ <https://tinyurl.com/jjxx3s6t>.

¹⁵ <https://tinyurl.com/bddah2n2>.

guns of which 154 million are rifles of any type. *Id.* at 28. That makes AR-15-style rifles about 39 percent of all rifles. *Id.*

Rifles, in general, are used in very few crimes. As discussed in the merits brief, between 2015–2025, rifles of any type were used in an average of 425 homicides per year. Pet. Br. at 13. Handguns on average killed sixteen times more people, 7,087. *Id.* at 14. Each of those years, about 1,604 people were killed with knives and around 706 were killed with “personal weapons” such as fists and feet. *Id.*

While the data are not deep enough to determine how many murders with any kind of rifle were committed with AR-15-style rifles, it’s reasonable to assume something around 39 percent, the same ratio of such “assault weapons” to total rifles. That would be 166 murders. One hundred and sixty-six murders is a lot, but it should be looked at comparatively and with the question of whether the data show that AR-15-style rifles are dangerous compared to, say, the handguns that received unequivocal protection from this Court in *Heller*. With 60 million AR-15s and similar rifles, and approximately 166 murders, and assuming one gun per homicide, means that around 0.000003% of the rifles at issue in this case are used to kill.

Of course, raw numbers of crimes committed don’t entirely explain whether a type of firearm can be considered uniquely dangerous. Some firearms may have particularly lethal capabilities and are essentially never used for crime. A grenade launcher, for example, is a bearable arm that is distinct in how it operates—a wide explosion rather than a targeted bullet—and *amici* were unable to find one instance of a crime being

committed with the weapon.¹⁶ That is one reason the test is conjunctive—“*both* dangerous *and* unusual,” *Caetano*, 577 U.S. at 417 (Alito, J., concurring in the judgment)—and why the “common use” test makes conceptual sense, even if it needs clarification.

Moreover, this Court has been told before that certain weapons are too dangerous to be protected by the Second Amendment. It is beyond cavil that handguns are used in far more crimes than rifles, as well as in more mass shootings, and both facts were pushed on this Court by *amici* in *Heller* as a reason to uphold the DC gun ban. Pet. Br. at 41. Similar data are now being used to argue that “assault weapons” are not protected by the Second Amendment.

Both criminals and law-abiding citizens often chose a particular firearm because of the same characteristics: the guns are accurate, reliable, easy to use, adjustable if not modifiable, bearable if not concealable, and relatively inexpensive. That some people misuse a gun does not take away the Second Amendment protection of that gun any more than a misused printing press allows all similar printing presses to be banned.

¹⁶ It is worth noting that Illinois, where Cook County resides, does not prohibit the possession of large bore “destructive devices” (like grenade launchers) as long as the device is registered in accordance with federal law. Illinois’s recent law requires *non-transferable* registration of AR-15s and similar rifles, yet, under federal law, grenade launchers can be registered with a *transferable* license. The state seeks to regulate common rifles more strictly than grenade launchers. See 720 ILCS 5/24- 1.9(d).

CONCLUSION

This Court should reverse the decisions below and remand with instructions that judgment be entered for Petitioners in both cases.

Respectfully submitted,

Trevor Burrus

Counsel of Record

2301 S. June St.

Arlington, VA, 22202

720-231-4899

TrevorBurrus@gmail.com

Counsel for Amici

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