

Nos. 25-238, 25-566

IN THE
Supreme Court of the United States

CUTBERTO VIRAMONTES, ET AL., *Petitioners*,

v.

COOK COUNTY, ILLINOIS, ET AL., *Respondents*.

EDDIE GRANT, ET AL., *Petitioners*,

v.

RONNELL HIGGINS, ET AL., *Respondents*.

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

**Brief *Amicus Curiae* of Gun Owners of
America, Gun Owners Fdn., Gun Owners of CA,
TN Firearms Assoc., TN Firearms Fdn.,
VA Citizens Def. League, VA Citizens Def. Fdn.,
Coal. of NJ Firearm Owners, Grass Roots NC,
Heller Fdn., America's Future, Citizens United,
Citizens United Fdn., DownsizeDC.org,
Downsize DC Fdn., U.S. Constitutional Rights
Legal Def. Fund, Cons. Legal Def. & Ed. Fund,
B&T USA, Century Arms & CANiK, and Fostech
in Support of Petitioners**

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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	iii
INTEREST OF THE <i>AMICI CURIAE</i>	1
STATEMENT OF THE CASE	3
STATEMENT	6
SUMMARY OF ARGUMENT.	8
ARGUMENT	
I. MODERN SEMIAUTOMATIC RIFLES LIKE THE AR-15 ARE UNQUESTIONABLY IN “COMMON USE,” AND THIS CASE IS EASILY RESOLVED UNDER THIS COURT’S PRECEDENTS	9
A. Semiautomatic Rifles Easily Qualify as “Arms” Entitled to Presumptive Protection	9
B. This Court’s “Common Use” Precedents Recognize the Founding-Era Concept of Popular Sovereignty, Under Which the American People’s Preferences Always Prevail	13
C. This Court Has Recognized that Semi- automatic Rifles Are in “Common Use” . .	18
II. SHOULD THIS COURT CHOOSE TO ADDRESS ITS DICTA ON “DANGEROUS AND/OR UNUSUAL WEAPONS,” THE HISTORICAL RECORD CLARIFIES	

WHAT THAT PHRASE DOES – AND DOES NOT – MEAN	20
A. Historical Regulations of “Dangerous and Unusual Weapons” Did Not Prohibit Simple Possession, but Rather the Public Brandishing of Arms in a Manner that Disturbed the Peace	20
B. The Framers Expressly Intended the Second Amendment to Protect “Military” and “Military-Style” Weapons.	23
III. THESE CASES ARE NOT ABOUT “MACHINEGUNS” OR “MILITARY” WEAPONS, AND THERE IS NO NEED TO ADDRESS THOSE RED HERRINGS HERE.	26
CONCLUSION	28

TABLE OF AUTHORITIES

	<u>Page</u>
<u>U.S. CONSTITUTION</u>	
Amendment I	10
Amendment II 3, 4, 7, 9-14, 16, 23, 25, 26	
Amendment XIV	3
 <u>STATE CONSTITUTIONS</u>	
Massachusetts Const. of 1780, pt. I, art. V	17
 <u>STATUTES</u>	
Virginia Declaration of Rights § 2 (1776)	17
 <u>CASES</u>	
<i>ANJRPC, Inc. v. Att’y Gen. N.J.</i> , 2026 U.S. App. LEXIS 21156 (3d Cir. July 17, 2026)	15, 26
<i>Aymette v. State</i> , 21 Tenn. 154 (1840)	25
<i>Barnett v. Raoul</i> , 756 F. Supp. 3d 564 (S.D. Ill. 2024)	6
<i>Bevis v. City of Naperville</i> , 85 F.4th 1175 (7th Cir. 2023) 3, 4, 11, 22, 24, 26, 27	
<i>Bianchi v. Brown</i> , 111 F.4th 438 (4th Cir. 2024)	6, 26
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) 4, 5, 7-9, 11-14, 18-20, 23, 24, 27	
<i>Garland v. Cargill</i> , 602 U.S. 406 (2024)	18
<i>Heller v. District of Columbia</i> , 670 F.3d 1244 (D.C. Cir. 2011)	19
<i>N.Y. State Rifle & Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022) 4, 6, 10, 12, 14-16, 20, 25	
<i>Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos</i> , 605 U.S. 280 (2025).	19
<i>Snope v. Brown</i> , 145 S. Ct. 1534 (2025) 7, 12, 18, 19	
<i>Staples v. United States</i> , 511 U.S. 600 (1994).	18

<i>United States v. Miller</i> , 307 U.S. 174 (1939) . .	13, 24
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024)	10, 21
<i>Wolford v. Lopez</i> , 146 S. Ct. 2032 (2026)	10, 11, 12, 16

MISCELLANEOUS

Henry Campbell Black, <u>Handbook of American Constitutional Law</u> (2d ed. 1897)	25
4 William Blackstone, <u>Commentaries on the Laws of England</u> (John Taylor Coleridge ed., 1825)	20, 21
Tench Coxe, “A Pennsylvanian, No. 3,” <i>Pa. Gazette</i> , (Feb. 20, 1788)	25
The Declaration of Independence (1776).	16
Alexander Hamilton “Federalist No. 29”	25
James Madison, “Federalist No. 46”	24
James Madison, “Federalist No. 49”	17
“Popular Sovereignty,” <i>Britannica</i> (2026).	17
Brenée Goforth Swanzey, “How John Locke Influenced the Declaration of Independence,” <i>The John Locke Foundation</i> (July 4, 2019) . .	17
E. Gregory Wallace, “Assault Weapon’ Myths,” 43 S. Ill. U. L.J. 193 (2018)	23, 27
Francis Wharton, <i>A Treatise on the Criminal Law of the United States</i> (2d ed. 1852)	22

INTEREST OF THE *AMICI CURIAE*¹

Amici Gun Owners of America, Inc., Gun Owners Foundation, Gun Owners of California, Inc., Tennessee Firearms Association, Tennessee Firearms Foundation, Virginia Citizens Defense League, Virginia Citizens Defense Foundation, Coalition of New Jersey Firearm Owners, Grass Roots North Carolina, Heller Foundation, America's Future, Citizens United, Citizens United Foundation, DownsizeDC.org, Downsize DC Foundation, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code.

B&T USA, founded in 2014, is a leading designer and manufacturer of firearms, and its offerings include a wide range of rifles and pistols. Virtually all of B&T's firearms would be classified as "assault weapons" under the statutes challenged in this case.

Century Arms and CANiK are leading firearms companies committed to providing Americans with innovative, unique, and affordable firearms. Their U.S. operations demonstrate a commitment to American industry and the constitutional rights upon which this nation was founded, with Century Arms serving as America's AK Manufacturer.

¹ It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

Fostech is a family-owned, American firearms manufacturer in Seymour, Indiana, building lightweight AR-platform firearms, the Origin-12 shotgun, factory-installed trigger systems, and more.

The nonprofit *amici*, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

Some of these *amici* are currently litigating state and federal constitutional challenges to various “assault weapons” bans nationwide. *See Fed. Firearms Licensees of Ill. v. Pritzker*, 180 F.4th 1035 (7th Cir. 2026) (Illinois ban on “assault weapons” and “large-capacity magazines”) (same parties previously sought interlocutory review in *Gun Owners of Am., Inc. v. Raoul*, No. 23-1010 (U.S.), *cert. denied*, 144 S. Ct. 2491 (2024)); *see also Crump v. Katz*, No. CL26000201-00 (Va. Cir. Ct. Lancaster County) (Virginia ban on the same; preliminarily enjoined June 30, 2026).

Additionally, some of these *amici* have filed *amicus* briefs in cases involving “assault weapons.” *See, e.g., Brief Amicus Curiae of Gun Owners of America, Inc. et al., Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011); *Brief Amicus Curiae of Gun Owners of America, Inc. et al., Kolbe v. Hogan*, 813 F.3d 160 (4th Cir. 2016); *Brief Amicus Curiae of Gun Owners of America, Inc. et al., Kolbe v. Hogan*, No. 17-127 (U.S. Aug. 25, 2017); *Brief Amicus Curiae of Gun Owners of*

America, Inc. et al., *Miller v. Bonta*, No. 23-2979 (9th Cir. Dec. 29, 2023); Brief Amici Curiae of Gun Owners of America et al., *Snope v. Brown*, No. 24-203 (U.S. Sept. 23, 2024).

STATEMENT OF THE CASE

This consolidated case involves Second and Fourteenth Amendment challenges to the “assault weapons” bans of Cook County, Illinois and the State of Connecticut. Both bans generally criminalize the acquisition, disposition, and even the simple possession of magazine-fed, semiautomatic rifles with features commonly associated with the AR-15. *See* Viramontes Petition Appendix (“Viramontes.Pet.App.”) 29a-41a; Grant Petition Appendix (“Grant.Pet.App.”) 97a-122a. In each case, Petitioners were denied relief at the district-court level, and the respective Courts of Appeals affirmed. *See* Viramontes.Pet.App.7a, 2a; Grant.Pet.App.75a, 3a.

In *Viramontes*, the Seventh Circuit summarily affirmed the denial of Petitioners’ motion for summary judgment, relying exclusively on its prior decision in *Bevis v. City of Naperville*, 85 F.4th 1175 (7th Cir. 2023). Viramontes.Pet.App.2a. Like *Viramontes*, *Bevis* involved a Second and Fourteenth Amendment challenge to the “assault weapons” ban of Cook County, Illinois. There, a panel majority concluded that Cook County’s ban on semiautomatic rifles did not even *implicate* the Second Amendment’s plain text, on the theory that ubiquitous AR-15s are not “Arms” in the first place. *See Bevis*, 85 F.4th at 1197.

Purporting to follow this Court’s decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the *Bevis* panel first opined that the Second Amendment presumptively protects *only* those “weapons in common use for self-defense.” *Bevis*, 85 F.4th at 1192. Citing *Heller*’s dicta on machineguns in support, the panel asserted that any weapon that “can be dedicated exclusively to military use” – apparently such as the fully automatic M16 – simply falls outside “the scope of the term ‘Arms’” at the threshold. *Id.* at 1193. Thus, the *Bevis* panel claimed, the AR-15’s textual protection would turn on its degree of similarity to the “military” M16, and where it fell on the “military or civilian side of the line” the panel identified. *Id.* at 1197. Ultimately concluding that the AR-15 is not “materially different from the M16” because “[b]oth weapons share the same core design, and both rely on the same patented operating system,” the panel held that the AR-15 is not an “Arm” under the Second Amendment’s plain text. *Id.* at 1197, 1195-96.

Even so, the *Bevis* panel proceeded to conduct an alternative historical analysis under *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), again infused with a military-civilian distinction. Claiming that historical firearm regulations have “long contemplated that the military and law enforcement may have access to especially dangerous weapons,” the panel upheld Cook County’s ban based on one Founding-era city ordinance from 1746 Boston, Massachusetts, followed by a collection of regulations from the “late 1800s.” *Bevis*, 85 F.4th at 1201. But rather than banning the possession of any particular type of weapon, the panel’s sole Founding-era

ordinance regulated only the “discharg[e]” of firearms within city limits, exempting “soldiers ... on their training days.” *Id.*

For its part, the Second Circuit devoted more of its opinion below to historical analysis. In *Grant*, a panel of the Second Circuit affirmed the denial of Petitioners’ motion for preliminary injunction against Connecticut’s “assault weapons” ban. Assuming without deciding that Petitioners’ “proposed possession of the firearms ... at issue is presumptively entitled to constitutional protection,” the *Grant* panel upheld the Connecticut ban as “consistent” with a purported “historical tradition” of banning “unusually dangerous weapons unsuitable for and disproportionate to the objective of individual self-defense.” *Grant*.Pet.App.6a. According to the *Grant* panel, this “unusually dangerous weapons” principle derived from *Heller*’s reference to a “historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons.’” *Grant*.Pet.App.25a; see *Heller*, 554 U.S. at 627. Observing that these “[h]istorical prohibitions on affray” often adopted the phrase “dangerous *or* unusual” rather than “dangerous *and* unusual,” the *Grant* panel interpreted these textual variations as evidence that the phrase is a literary “hendiadys, which individuals in the founding era would have interpreted as ‘unusually dangerous.’” *Grant*.Pet.App.31a, 32a n.19.

But as the *Grant* panel acknowledged, historical regulations of “dangerous and/or unusual weapons” were not “exact historical analogues” to Connecticut’s broad ban. *Grant*.Pet.App.37a-38a. Indeed, these

historical regulations only “restricted the ... carry of particular arms in public,” not “the acquisition and possession of certain weapons.” Grant.Pet.App.59a. Even so, the *Grant* panel justified its reliance on these admittedly “distinguishable” regulations (*id.*), on the theory that modern rifles present a “dramatic technological change[]” and “unprecedented societal concern” warranting “a ‘more nuanced approach’” under *Bruen*. Grant.Pet.App.39a, 42a, 39a. Thus, without *Bruen*’s typically rigorous framework, the panel upheld Connecticut’s ban based on a combination of these public-carry regulations and other “statutes that imposed *taxes* on the sale and possession of ... weapons....” Grant.Pet.App.59a (emphasis added). Taken together, the panel claimed, these regulations “provide[d] an historical tradition of restricting unusual weapons that is relevantly similar to the challenged statutes.” *Id.*

STATEMENT

Introduced in the early 1960s, the semiautomatic AR-15 rifle has come to be known as “America’s rifle.”² The reason is simple – rifles of the AR platform, and other semiautomatic firearms like them, are “easy to operate, more accurate, and ha[ve] a larger magazine capacity” than other weapons on the market. *Barnett v. Raoul*, 756 F. Supp. 3d 564, 634 (S.D. Ill. 2024), *rev’d*, 180 F.4th 1035 (7th Cir. 2026). These features prove ideal in self-defense encounters and hunting and

² See, e.g., *Bianchi v. Brown*, 111 F.4th 438, 518 n.54 (4th Cir. 2024) (Richardson, Niemeyer, Agee, Quattlebaum & Rushing, JJ., dissenting).

sporting applications – not to mention guaranteeing “the security of a free State.” U.S. Const. amend. II. Unsurprisingly, then, ordinary Americans have purchased these weapons by the “[t]ens of millions.” *Snope v. Brown*, 145 S. Ct. 1534, 1536 (2025) (Thomas, J., dissenting from denial of certiorari). Today, semiautomatic rifles “are both widely legal and bought by many ordinary consumers,” and “[t]he AR-15 is the most popular rifle in the country.” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025) (unanimous opinion). By any metric, these weapons are in “common use.” See *Heller*, 554 U.S. at 627.

Yet contrary to the overwhelming preferences of the American people, some outlier jurisdictions have sought to ban these weapons. Citing semiautomatic rifles’ occasional criminal misuse to justify pejorative labels such as “assault weapon,” these jurisdictions have deprived their citizens of some of the most effective modern firearms available. And the judges who have upheld these bans against Second Amendment challenge have done so for similarly histrionic reasons – by likening semiautomatic rifles to supposedly unprotected “military” weapons, or claiming they are just “like” mechanically distinct machineguns, or by declaring them “unusually dangerous,” each in an attempt to justify their ban. Such epithets reflect the personal opinions of judges and are interjected to avoid a decision based on constitutional text and historical understanding.

Ultimately, this case is about whether the government gets to decide for “the people” which

bearable “Arms” they may own. But the Second Amendment leaves no room for the government to exercise such power: the right of the people to keep and bear Arms “shall not be infringed.” When legislators and unelected judges override the people’s overwhelming choices, they in a very real way seize power from the sovereign and transfer it to government, endangering the preservation of our “free State.” The “assault weapons” bans under review are unconstitutional.

SUMMARY OF ARGUMENT

According to the courts below, no American has the right to own “America’s rifle.” That is absurd on its face, and it violates the Second Amendment. This Court should reverse the decisions below for at least three reasons in addition to those discussed by Petitioners.

First, when this Court decided *Heller*, it explained that bans on weapons in “common use” are simply “invalid.” Since then, both this Court and individual Justices have acknowledged the ubiquity of the AR-15 and other semiautomatic rifles. That means these cases are easily resolved under this Court’s precedents. Because the American government owes all its power and legitimacy to “the people,” no legislator or judge can second-guess their overwhelming preferences.

Second, the courts below maligned the weapons at issue as “dangerous and unusual,” “unusually dangerous,” and even “militaristic,” on the theory that those supposed characteristics justify their ban.

Although this Court need not address these nonsensical epithets here, the lower courts' errors bear emphasis. There is no historical tradition of *banning* the *possession* of supposedly "dangerous and unusual weapons." Historical regulations of "dangerous and unusual weapons" reached only *public carry* and prohibited the unjustified brandishing of arms in breach of public peace. Nor can weapons be banned by virtue of their supposed "military" connection. The Framers codified the Second Amendment to protect military weapons, first and foremost.

Third, this Court should resist any temptation to weigh in on the issue of "machineguns" and so-called "military" weapons. The weapons at issue are neither of those things, and if the lower courts' treatment of this Court's prior dicta is any indicator, discussion of these tangential matters will only hurt the Second Amendment in the long run.

ARGUMENT

I. MODERN SEMIAUTOMATIC RIFLES LIKE THE AR-15 ARE UNQUESTIONABLY IN "COMMON USE," AND THIS CASE IS EASILY RESOLVED UNDER THIS COURT'S PRECEDENTS.

A. Semiautomatic Rifles Easily Qualify as "Arms" Entitled to Presumptive Protection.

The Second Amendment guarantees "the right of the people to keep and bear Arms." In *District of*

Columbia v. Heller, 554 U.S. 570 (2008), this Court instructed that the term “Arms” means “[w]eapons of offence, or armour of defence,” and “any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another,” and includes “all firearms” as originally understood. *Id.* at 581. And, because the Constitution must protect enumerated rights in modern contexts, this Court explained that “the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” *Id.* at 582. Indeed, “applying the protections of the right only to muskets and sabers” would be as “mistaken” as applying the First Amendment only to quills and parchment. *United States v. Rahimi*, 602 U.S. 680, 692 (2024).

Then, in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), this Court further elaborated that the Second Amendment’s “general definition” of “Arms” “covers modern instruments” that so much as “facilitate armed self-defense,” such as “stun guns.” *Id.* at 28 (citing *Caetano v. Massachusetts*, 577 U.S. 411, 411-12 (2016)). Thus, this Court instructed that, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.” *Id.* at 17. And ultimately, “we use history to determine which modern ‘arms’ are protected by the Second Amendment...” *Id.* at 28 (emphasis added).

Finally, in *Wolford v. Lopez*, 146 S. Ct. 2032 (2026), this Court recently reiterated that the Second Amendment’s plain text covers “any form of ‘Arms,’ *i.e.*,

any weapon customarily used for offensive or defensive purposes,” and that such term plainly “refers to implements used for offense or defense.” *Id.* at 2043, 2041. Should a “law place any restrictions” on the keeping or bearing of such an implement, then it is “presumptively unconstitutional,” and the government must bear its historical burden to justify its regulation. *Id.* at 2043, 2044.

In blatant contravention of these principles, the courts below mutilated this Court’s simple textual analysis beyond recognition. The Seventh Circuit conditioned a weapon’s presumptive protection on its use in “civilian” “self-defense,” excluding firearms that, in its opinion, should “exclusively” be left for the “military.” *Bevis*, 85 F.4th at 1197, 1192, 1193. Likewise, the Second Circuit “understood” – but did not ultimately decide – that “the meaning of ‘Arms’” should be “cabin[ed]” to those weapons “generally owned and used by ordinary citizens for lawful purposes,” “principally individual self-defense.” *Grant.Pet.App.34a*. But neither of these approaches has any basis in the Second Amendment’s plain text. The text contains no “individual self-defense” qualifier, nor does it draw any distinction between “civilian” and “military” weapons. To the contrary, the Second Amendment’s prefatory clause guarantees Americans the ability to engage in defense of “a free State” – not just against common criminals. And it also contemplates the ownership of “ordinary military equipment,” which at the Founding was “one and the same” as the “weapons used in defense of person and home...” *Heller*, 554 U.S. at 624, 625. Courts cannot “smuggle” these sorts of atextual, “additional limits ...

into the plain-text stage of the inquiry. The answer is and always has been no.” *Wolford*, 146 S. Ct. at 2054 n.1 (Barrett, J., concurring).

Properly applying this Court’s precedents, AR-15s and other semiautomatic rifles “are clearly ‘Arms’ under the Second Amendment’s plain text.” *Snope*, 145 S. Ct. at 1535 (Thomas, J., dissenting from denial of certiorari). These weapons can be used for “‘offence’” or “‘defence’” when “‘take[n] into [one’s] hands ... to cast at or strike another,’” and indeed, they are “‘firearms.’” *Heller*, 554 U.S. at 581 (emphasis added). Obviously, one may “‘wear, bear, or carry’” these weapons “‘upon the[ir] person,’” and so they are “‘instruments that constitute bearable arms’” irrespective of their “‘existence at the time of the founding.’” *Id.* at 584, 582. And they are “‘modern instruments’” that *at minimum* “‘facilitate armed self-defense.’” *Bruen*, 597 U.S. at 28.

To hold that Americans’ most popular firearm is in fact not an “Arm” at all defies reason. AR-15s and other semiautomatic rifles “fall squarely” within the Second Amendment’s basic definition of “Arms.” *Snope*, 145 S. Ct. at 1535 (Thomas, J., dissenting from denial of certiorari). That is all that is needed for the bans under review to be “presumptively unconstitutional.” *Wolford*, 146 S. Ct. at 2044.

B. This Court’s “Common Use” Precedents Recognize the Founding-Era Concept of Popular Sovereignty, Under Which the American People’s Preferences Always Prevail.

In addition to articulating the Second Amendment’s textual and historical framework, this Court has recognized an “important” precept with historical roots – that the Second Amendment protects weapons “in common use at the time.” *Heller*, 554 U.S. at 627. As *Heller* explained, bans on weapons in common use are simply “invalid.” *Id.* at 629. But that does not mean that *only* those weapons in “common use” are constitutionally protected, as the courts below claimed. Instead, this Court’s precedents make clear that “common use” is just *one* way to invalidate an “Arms” ban on its face. Accordingly, recognition that semiautomatic rifles are in “common use” neatly and decisively resolves this case in Petitioners’ favor, regardless of any historical tradition to the contrary. The genesis and historical underpinnings of this Court’s “common use” precedents support this view.

As this Court first recognized in *United States v. Miller*, 307 U.S. 174 (1939), the Founding-era militia “ordinarily” was “expected to appear bearing arms supplied by themselves and of the kind in common use at the time.” *Id.* at 179. This observation was merely factual, and it did not purport to limit the Second Amendment’s protections to *only* that which was “common.” Rather, *Miller* simply observed that, at the Founding, “ordinary military equipment” was ubiquitous and privately owned. *Id.* at 178.

Even so, some misread *Heller*'s subsequent discussion of *Miller* to suggest that commonality somehow limits the scope of the Second Amendment. Under that view, the Second Amendment "protected" only those weapons presently in "common use," and the Amendment "does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes...." *Heller*, 554 U.S. at 627, 625. Even under this reading, *Heller* only hinted at an unexplained "historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'" *Id.* at 627. It would be error to draw too much from these comments, as the *Heller* Court made clear that it was only its "first in-depth examination of the Second Amendment," and there would be future opportunities "to expound upon the historical justifications ... if and when those exceptions come before us." *Id.* at 635.

Bruen later explained what *Heller* meant. Elaborating on the historical regulation of "dangerous and unusual weapons," *Bruen* concluded that "the Second Amendment protects only the *carrying* of weapons that are those 'in common use at the time,' as opposed to those that 'are highly unusual in society at large.'" *Bruen*, 597 U.S. at 47 (emphasis added). In other words, under *Bruen*, historical regulations of *public carry* can only inform the scope of *public carry*. This clarification naturally comports with *Bruen*'s own analogical guidance. Indeed, a historical regulation of "*carrying*" weapons provides no justification for a broader prohibition on simply *owning* or *possessing* those weapons. Those broader prohibitions do not "impose a comparable burden on the right of armed

self-defense,” and so they would fail *Bruen*’s analogical “how.” *Id.* at 29.

Bruen likewise explained the effect of a weapon’s modern “common use” on the historical analysis. There, this Court stated that, “even if ... [historical] laws prohibited the carrying of handguns because they were considered ‘dangerous and unusual weapons’ ... they provide no justification for laws restricting the public carry of weapons that are unquestionably in common use today.” *Bruen*, 597 U.S. at 47. In other words, not even a *relevant historical tradition* of regulation may override the American people’s modern preferences. Because “the traditions of the American people ... demand[] our unqualified deference” (*id.* at 26), the *people’s preferences prevail*. It does not matter whether concealed carriers of pocket pistols were thought to cause “strife and excitement” hundreds of years ago (*id.* at 48), when pocket pistols are *now* chosen by lawyers and soccer moms.

Thus, under this Court’s precedents, a weapon’s “common use” serves at most two analytical roles. First, it is *sufficient but not necessary* to invalidate an arms ban without further analysis, as the people’s modern choices will trump even a historical tradition of regulation. *See Bruen*, 597 U.S. at 47; *see also ANJRPC, Inc. v. Att’y Gen. N.J.*, 2026 U.S. App. LEXIS 21156, at *33-34 (3d Cir. July 17, 2026) (“*Bruen* makes clear that when we assess common use for lawful purposes, we consider how a given arm is used in present times – not in the past.”). And second, “common use” might serve as a narrow limitation on public carry. *See Bruen*, 597 U.S. at 47; *see also*

Rahimi, 602 U.S. at 697 (discussing “going armed” laws, a particular subset of the ancient common-law prohibition on affrays,” which “prohibited ‘riding or going armed, with dangerous or unusual weapons, [to] terrify[] the good people of the land’”). But at no point has this Court instructed that “common use” is *required* to demonstrate that a weapon is either presumptively or conclusively protected under the Second Amendment. In fact, in its latest explication of the *Bruen* framework in *Wolford*, this Court never mentioned “common use” once. *See generally Wolford*, 146 S. Ct. 2032. If “common use” was a prerequisite to Second Amendment protection, then the colonists’ muskets would find no protection today.

The concept of “common use” as an instant-win condition is deeply rooted in Founding-era writings, and it reflects the principle that the people are the ultimate source of all governmental power. Indeed, the Declaration of Independence recognized that “all men ... are endowed by their Creator with certain unalienable Rights,” and that “to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed....”³ The Declaration’s primary author, Thomas Jefferson, credited philosopher John Locke with influencing its content. Locke’s theories on natural rights and the social contract helped establish the notion of popular

³ The Declaration of Independence (U.S. 1776).

sovereignty⁴ that served as the “background” from which the Declaration of Independence “sprang.”⁵

Other Founding-era documents similarly hold that the American government derives all its legitimacy from the consent of the governed. In 1776, George Mason authored the Virginia Declaration of Rights, which states in part that “all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants and at all times amenable to them.”⁶ John Adams later authored a similar state constitutional declaration in Massachusetts.⁷ And in Federalist No. 49, James Madison wrote that “the people are the only legitimate fountain of power, and it is from them that the constitutional charter, under which the several branches of government hold their power, is derived....”⁸

It follows that the right to choose which bearable “Arms” to buy must be vested solely in the people – without artificial and atextual limitations devised by

⁴ See “Popular Sovereignty,” *Britannica* (Aug. 24, 2026).

⁵ Brenée Goforth Swanzy, “How John Locke Influenced the Declaration of Independence,” *The John Locke Foundation* (July 4, 2019).

⁶ Va. Declaration of Rights § 2 (1776).

⁷ See Mass. Const. of 1780, pt. I, art. V.

⁸ The Federalist No. 49, at 310 (James Madison) (Clinton Rossiter ed., 1961).

legislators and sanctioned by judges. Justice Thomas said it best: “Our Constitution allows the American people – not the government – to decide which weapons are useful for self-defense.” *Snope*, 145 S. Ct. at 1537 (Thomas, J., dissenting from denial of certiorari). If this Court is satisfied that tens of millions (or more) AR-15s and other semiautomatic rifles constitute being in “common use,” then nothing more is needed to strike the bans under review.

C. This Court Has Recognized that Semi-automatic Rifles Are in “Common Use.”

In *Heller*, this Court concluded that handguns are among “the most popular weapon[s] chosen by Americans” without resort to voluminous discovery, expert testimony, or statistical analysis. *Heller*, 554 U.S. at 629. As in *Heller*, development of such evidence is not necessary here. Indeed, AR-15s and other semiautomatic rifles are unquestionably in “common use,” and both this Court and individual Justices already have acknowledged as much, in so many words. Consequently, this case can be resolved simply by applying what already has been determined.

For instance, in *Staples v. United States*, 511 U.S. 600 (1994), this Court recognized that semiautomatic rifles “traditionally have been widely accepted as lawful possessions....” *Id.* at 612. Echoing these weapons’ ubiquity in *Garland v. Cargill*, 602 U.S. 406 (2024), Justices Sotomayor, Kagan, and Jackson acknowledged that AR-15s are “commonly available, semiautomatic rifles.” *Id.* at 430 (Sotomayor, Kagan & Jackson, JJ., dissenting). Likewise, in *Snope v.*

Brown, 145 S. Ct. 1534 (2025), Justice Kavanaugh observed that “Americans today possess an estimated 20 to 30 million AR-15s. And AR-15s are legal in 41 of the 50 States, meaning that the States such as Maryland that prohibit AR-15s are something of an outlier.” *Id.* at 1534 (Kavanaugh, J., respecting denial of certiorari). As Justice Thomas separately explained, the AR-15 is “the most popular civilian rifle in America.” *Id.* at 1535 (Thomas, J., dissenting from denial of certiorari). In fact, “[t]ens of millions of Americans own AR-15s, and the ‘overwhelming majority’ of them ‘do so for lawful purposes, including self-defense and target shooting.’” *Id.* at 1536; *accord Heller v. District of Columbia*, 670 F.3d 1244, 1269-70 (D.C. Cir. 2011) (Kavanaugh, J., dissenting) (“Semi-automatic rifles, like semi-automatic handguns, have not traditionally been banned and are in common use by law-abiding citizens for self-defense in the home, hunting, and other lawful uses.”).

Thus, in *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280 (2025), this Court unanimously explained that so-called “‘military style’ assault weapons, ... includ[ing] AR-15 rifles, AK-47 rifles, and .50 caliber sniper rifles,” are “both widely legal and bought by many ordinary consumers,” and “[t]he AR-15 is the most popular rifle in the country.” *Id.* at 297. If that does not constitute “common use,” it would be difficult to understand what is. Semiautomatic rifles’ widespread ownership and use is uncontroversial, and this Court need only recognize it to conclude that the Cook County and Connecticut bans are simply “invalid.” *Heller*, 554 U.S. at 629.

II. SHOULD THIS COURT CHOOSE TO ADDRESS ITS DICTA ON “DANGEROUS AND/OR UNUSUAL WEAPONS,” THE HISTORICAL RECORD CLARIFIES WHAT THAT PHRASE DOES – AND DOES NOT – MEAN.

A. Historical Regulations of “Dangerous and Unusual Weapons” Did Not Prohibit Simple Possession, but Rather the Public Brandishing of Arms in a Manner that Disturbed the Peace.

As this Court clarified in *Bruen*, historical regulations of so-called “dangerous and unusual weapons” restricted only the “*carrying*” of weapons in public. *Bruen*, 597 U.S. at 47 (emphasis added). Even so, the Second Circuit below relied on these regulations to uphold Connecticut’s *possessory* ban on “assault weapons,” on the theory that history supports banning “unusually dangerous” weapons altogether. See Grant.Pet.App.59a. Should this Court address this historical argument here, it should correct the record. The Framers never banned the ownership or possession of discrete classes of weapons by virtue of their perceived dangerousness or rarity. A closer examination of the historical materials clarifies that the “dangerous and unusual” offense actually reached only certain instances of public *brandishing*.

When this Court first recognized the “historical tradition of prohibiting the carrying of ‘dangerous and unusual weapons’” (*Heller*, 554 U.S. at 627), it did so by citing Sir William Blackstone’s Commentaries on

the Laws of England. Importantly, Blackstone categorized this prohibition as an “Offence[] Against the *Public* Peace.”⁹ Thus, it shared a common theme with the twelve other common-law offenses with which it was codified. All were “either ... an actual breach of the peace; or constructively so, by tending to make others break it.” *Id.* The relevant text of this historical regulation reads:

The offence of riding or going armed, with dangerous or unusual weapons, is a crime against the *public* peace, by terrifying the good *people* of the land; and is particularly prohibited by the statute of Northampton.... [*Id.* at 149 (emphasis added).]

In other words, this sort of regulation was nothing more than a “[h]istorical prohibition[] on affray....” Grant.Pet.App.31a. Affray laws “regulated a niche subset of Second Amendment-protected activity” and did not ban possession. *Rahimi*, 602 U.S. at 770 (Thomas, J., dissenting). Indeed, Blackstone made clear that the common-law offense required something more than simple possession of a “dangerous or unusual weapon” in order for criminal liability to attach. The law required that the weapon not only be possessed, and not even just that it be present in public (“riding or going armed”), but also that its presence breach “the public peace” and cause “terr[or].” And obviously, for this to happen, such weapon must

⁹ 4 William Blackstone, Commentaries on the Laws of England 142 (John Taylor Coleridge ed., 1825) (emphasis added).

have been carried openly and visibly. A firearm that is concealed on the person or stored in the home cannot “terrify[]” anyone, and in the latter case, it is not even in “public.”

Confirming this understanding, a later treatise by Francis Wharton explained that this prohibition did not reach the peaceful possession of weapons within the home:

[T]here may be an affray where there is no actual violence; as where a man arms himself with dangerous and unusual weapons, in such a manner as will naturally cause a terror to the people, which is said to have been always an offence at common law ... *but it is clear that no one incurs the penalty of the statute for assembling his neighbours and friends in his own house, against those who threaten to do him any violence therein, because a man’s house is his castle.*¹⁰

Thus, these historical regulations on certain extreme behaviors while publicly carrying are no analogues for Respondents’ broad bans on the ownership, acquisition, disposition, and mere possession of so-called “assault weapons.” No matter how “unusually dangerous” (Grant.Pet.App.54a), “militaristic” (*Bevis*, 85 F.4th at 1199), or “uniquely

¹⁰ Francis Wharton, A Treatise on the Criminal Law of the United States 726-27 (2d ed. 1852) (emphasis added).

susceptible to criminal misuse”¹¹ these weapons may be, no relevant tradition supports banning them outright.

**B. The Framers Expressly Intended the
Second Amendment to Protect “Military”
and “Military-Style” Weapons.**

The opinions below face another problem: semiautomatic AR-15s are not “military” weapons. In fact, “[n]o military in the world uses a service rifle that is semiautomatic only.”¹² But even if the weapons at issue here *were* “military” weapons, that would be no reason to ban them, because the Framers specifically sought to guarantee access to military weapons, first and foremost. Indeed, after having just thrown off the yoke of the then-most powerful empire in the world, the Framers codified the Second Amendment to be “better able to resist tyranny.” *Heller*, 554 U.S. at 598. It therefore seems unlikely that they would have voluntarily and intentionally relegated themselves to possessing only second-class “civilian” weaponry. That would have defeated the animating purpose of the Second Amendment entirely.

The Second Amendment’s own text and structure confirms this understanding. Its prefatory militia

¹¹ Memorandum in Opposition to Plaintiffs’ Motion for Summary Judgment at 30, *Silencer Shop Found. v. BATFE*, No. 6:25-cv-00056-H (N.D. Tex. Nov. 20, 2025), ECF No. 60 (emphasis added).

¹² E. Gregory Wallace, “Assault Weapon” Myths, 43 S. Ill. U. L.J. 193, 205 (2018).

clause “does not limit the latter [operative clause] grammatically, but rather announces a purpose.” *Heller*, 554 U.S. at 577. The militia clause therefore serves a “clarifying function,” because “[l]ogic demands that there be a link between the stated purpose and the command.” *Id.* at 578, 577.

The Founders understood the militia – “a subset of ‘the people’” described in the operative clause – to be “useful in repelling invasions and suppressing insurrections,” to “render[] large standing armies unnecessary,” and to “train[] in arms and organize[] ... to resist tyranny.” *Heller*, 554 U.S. at 580, 597-98. All of these functions, they explained, were “necessary to the security of a free State.” *Id.* at 597. Thus, the Second Amendment must protect, at a minimum, that conduct which effectuates its prefatory clause – the citizen ownership, “proper discipline,” “training,” and use, if necessary, of “ordinary military equipment” as a “safeguard against tyranny.” *Id.* at 597, 624, 600; *see also Miller*, 307 U.S. at 178.

Unsurprisingly, the Framers intended the Second Amendment to guarantee a parity of armament between the citizen-soldier and the government infantryman – “military-grade weaponry” (*Bevis*, 85 F.4th at 1195) included. James Madison famously “doubted whether a militia thus circumstanced could ever be conquered by ... regular troops.”¹³ Alexander Hamilton likewise contemplated “a large body of citizens, little if at all inferior ... in discipline and the

¹³ The Federalist No. 46, *supra*, at 296 (James Madison).

use of arms” to a standing army.¹⁴ And Tench Coxe explained that “Congress have no power to disarm the militia. Their swords, and every other terrible implement of the soldier, are the birth-right of an American.”¹⁵

This understanding persisted well into the 19th century. See *Bruen*, 597 U.S. at 37 (“19th-century evidence [i]s ‘treated as ... confirmation of what the Court thought had already been established.’”). Decades after the Founding, the Supreme Court of Tennessee explained that “arms ... are such as are usually employed in civilized warfare, and that constitute the ordinary military equipment.” *Aymette v. State*, 21 Tenn. 154, 158 (1840). And in discussing the Second Amendment in 1897, Henry Campbell Black, author of the eponymous Black’s Law Dictionary, recognized that “[t]he ‘arms’ here meant are those of a soldier. ... The citizen has at all times the right to keep arms of modern warfare.”¹⁶

By sanitizing the Second Amendment of its militia pedigree, the courts below denied the Amendment its true “core” protection – deterrence (and as a last resort, self-defense) against the government itself. If AR-15s are as similar to “military” weapons as the

¹⁴ The Federalist No. 29, *supra*, at 181 (Alexander Hamilton).

¹⁵ Tench Coxe, A Pennsylvanian, No. 3, *Pa. Gazette*, Feb. 20, 1788, at 2 (emphasis removed).

¹⁶ Henry Campbell Black, Handbook of American Constitutional Law § 203 (2d ed. 1897).

Seventh Circuit claims (they are not), then that is reason enough to *protect* them, not *ban* them.

III. THESE CASES ARE NOT ABOUT “MACHINEGUNS” OR “MILITARY” WEAPONS, AND THERE IS NO NEED TO ADDRESS THOSE RED HERRINGS HERE.

In a prior *amicus* brief in this Court, some of these *amici* highlighted the “methodological landmines” that this Court’s Second Amendment dicta inadvertently have left for the lower courts to “explode.”¹⁷ The pattern was clear – whenever this Court opines on a tangential firearm matter unnecessary to its ultimate holding, result-oriented lower courts will seize such dicta to avoid this Court’s express holdings.

For instance, some lower courts, including the Courts of Appeals below, have claimed that *Heller* limits the Second Amendment’s protections to *only* those weapons in “common use” *for* “self-defense.” *Bevis*, 85 F.4th at 1192; Grant.Pet.App.34a; *see also Bianchi v. Brown*, 111 F.4th 438, 452-53 (4th Cir. 2024) (claiming the AR-15 is unprotected because it is “not ‘in common use today for self-defense’”).¹⁸ Other courts, including the Second Circuit below, have abused *Heller*’s dicta on “dangerous and unusual

¹⁷ Brief Amicus Curiae of Gun Owners of America et al. at 18, *Wolford v. Lopez*, 146 S. Ct. 2032 (2026).

¹⁸ *But see ANJRPC*, 2026 U.S. App. LEXIS 21156, at *32 (“self-defense is one lawful purpose relevant to the common-use inquiry, but it is not the only one”).

weapons” to suggest that purportedly “unusually dangerous” weapons may be banned altogether – including some of the most popular firearms in the country. Grant.Pet.App.59a. And other courts *still* – including the Seventh Circuit below – have latched onto *Heller’s* discussion of fully automatic machineguns, treating the constitutionality of their strict regulation as a given and using it to bootstrap bans on various *semiautomatic* firearms. *Bevis*, 85 F.4th at 1193.

This Court should resist the temptation to perpetuate this cycle. Indeed, some participants in this litigation already have attempted to place *machineguns* at issue. At the petition stage, the Cook County Respondents claimed that the AR-15 is in fact *deadlier* than a “Thomspon [sic, Thompson] Machine Gun.” Brief in Opposition at 9. And now on the merits, at least one *amicus curiae* supposedly favoring *Petitioners* has gratuitously asserted that such weapons are “dangerous and unusual” and therefore “distinguish[able]” from semiautomatic rifles.¹⁹ Likewise, the Seventh Circuit below asserted that “militaristic weapon[s] such as the AR-15” may be banned. *Bevis*, 85 F.4th at 1199. But there is no reason to address that issue here. The weapons at issue – semiautomatic AR-15s and other similar rifles – are neither fully automatic machineguns *nor* are they “military” weapons.²⁰ Accordingly, there is no reason for this Court to distinguish these weapons

¹⁹ Brief Amicus Curiae of G. Antaeus B. Edelsohn at 4.

²⁰ *See Wallace, supra*, at 205.

from those which are not at issue. Doing so will risk arming the lower courts with even more ammunition to rule against the Second Amendment in future cases.

CONCLUSION

For the foregoing reasons, the judgments below should be reversed.

Respectfully submitted,

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